Maciej Błotnicki

Forfeiture under the Polish Criminal Code. A Regulation Free of Defects?

Maciej Błotnicki

Research and teaching fellow at the Department of Criminal Law and Criminology of the Faculty of Law and Administration of the Maria Curie-Skłodowska University, attorney.

maciej.blotnicki@mail.umcs.pl

https://orcid.org/0000-0002-1946-2606

The essence of forfeiture is an essential issue from the point of view of the rationality of the means of criminal legal response provided for offenders. This measure should be an effective weapon, realizing its goals. For this to be the case, the norm contained in Article 316 § 1 of the Criminal Code should be adapted to the wording of the typifying provisions of Chapter XXXVII of the Criminal Code. According to the wording of the provision, money, documents, and tokens of value counterfeited, forged, or with the sign of cancellation removed, as well as counterfeit or forged measuring instruments, as well as objects used to commit the crimes specified in this chapter are subject to forfeiture, even if they are not the property of the perpetrator. Consideration of the measure of criminal legal response will be limited only to those elements of the subject scope relevant to the criminal protection of money and its surrogates.

Key words: forfeiture, special basis, money, money sign, other means of payment

https://doi.org/10.32082/fp.6(74).2022.1111

It is necessary to begin by pointing out the ratio legis of the specific basis for the imposition of a punitive measure. The element that unites all views on this issue is the reference, albeit with varying intensity, to the preventive function of forfeiture. On the one hand, it is based on exposing the unprofitability of committing criminal acts by taking away their "fruits," on the other hand, hindering or preventing further criminal conduct[1]. The views of doctrine representatives on this subject can be put into three groups. According to the first, the imposition of forfeiture of objects is motivated by their creation of a danger to monetary circulation[2].

1 Janusz Raglewski, *Materialnoprawna regulacja przepadku w polskim prawie karnym* (Kraków 2005), 36–37.

2 It is worth noting here that already, in the course of the work of the Substantive Criminal Law Section of the Codification Commission, when designing the normative basis for the forfeiture of objects, close attention was paid to this circumstance. This is because it was pointed out

The second rationalize the application of the measure with the will to prevent the reproduction or the production of counterfeit money or securities[3]. The view from the last group is the most representative. It refers to the prevention or reintroduction of the object of the executive action. In addition, the application of forfeiture implies the impossibility of reusing objects used to commit a criminal act[4]. There are two problematic issues to consider that are relevant for further analysis. The first is the nature of the closing institution of Chapter XXXVII of the Criminal Code. The second is the relationship between the analyzed basis of forfeiture and the regulations of Article 44 § 1–2 and § 6 of the Criminal Code[5]. Discussing these will help indicate the subject matter scope of the interpreted criminal measure.

Regarding the first issue, Article 316 § 1 of the Criminal Code includes an institution whose application is mandatory. The regulation is based on a norm of a firm nature, which is evident from the phrase: "shall be subject to forfeiture." If the prerequisites are met, the court must rule on the measure of criminal responsibility. Failure to do so should be read as a gross violation of the substantive law within the meaning of Article 438.1a of the Code of Criminal Procedure[6]. As for the second, it should be stated that Article 316 § 1 of the Criminal Code does not create a unique variety of forfeiture from those functioning in the Criminal Law[7]. The statement of O. Górniok that: "(…) Special provisions provide for perpetrators of this category of crimes only one criminal measure - forfeiture of objects, listed in Article 39, point 4 of the Criminal Code, and constituting a particular form of forfeiture regulated in Article 44 of the Criminal Code."[8]. Due to the enumeration of elements constituting the scope of the subject matter, the provision can be an exceptional basis for deciding on the forfeiture of objects[9]. Verifying the presumption requires an analysis of the General Part of the Criminal Law provisions directed at the application of this punitive measure.

It is appropriate to draw attention to Article 44 § 1 of the Criminal Code. Under this provision, the court shall order the forfeiture of items directly derived from

that the existence of an adequate measure of criminal legal response stems from the desire to remove: "(…) from the circulation of objects, violating the balance of economic life", see Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Sekcja prawa karnego. Tom V. Zeszyt 4 …, 113; L. Peiper, Kodeks…, 392. Moreover, "(…) the instruments of a criminal act have such clear features of their purpose that the necessity of their forfeiture is undoubtedly in the general interest" see Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Sekcja prawa karnego. Tom V. Zeszyt 6…, 24.

3 Zbigniew Ćwiąkalski *Kodeks karny. Część szczególna, t. III* eds. Włodzimierz Wróbel, Aandrzej Zoll, 990.

4 Zbigniew Ćwiąkalski in *Kodeks karny…*, eds. Włodzimierz Wróbel, Aandrzej Zoll, 990; Jerzy Skorupka in *Kodeks…*, Ryszard A. Stefański, 1839; Jerzy Skorupka in *Kodeks karny. Komentarz*, eds. Andrzej Wąsek, Robert Zawłocki, 1720; Jerzy Skorupka, *Przestępstwa przeciwko obrotowi pieniędzmi i papierami wartościowymi. Rozdział XXXVII Kodeksu karnego. Komentarz,* 167–68; Mateusz Błaszczyk in *Kodeks karny. Część szczególna, Tom II*, eds. Michał Królikowski, Robert Zawłocki, 1093; Zygfryd Siwik in *Kodeks karny. Komentarz*, ed. Marian Filar, 1684; Oktawia Górniok, *Przestępstwa…*, 146–7.

5 It is worth noting the statement of W. Makowski, who, in the context of the specific normative basis for the decision on the forfeiture of money, documents, and other objects that were used to commit a crime, stated that: "Although the general provisions of the criminal law provide for the confiscation of instruments and fruits of crime, however, when it comes to the forgery of money (…) they found it necessary to devote a separate provision to this matter, providing for the confiscation of made forgeries, materials, instruments, etc. objects, as far as the forgery of money and securities is concerned, and this even though no one has been sentenced to punishment", see Wacław Makowski, *Prawo…*, 231.

6 The determination of forfeiture under Article 316 § 1 of the Criminal Code must be distinguished from the facts falling under the disposition of Article 34(1) of the National Bank Act. According to the latter's content, monetary signs that do not meet the conditions established by the President of the National Bank of Poland as a result of wear or damage cease to be legal tender in the territory of the Republic of Poland and are subject to exchange.

7 Zygfryd Siwik in *Kodeks…* Marian Filar (ed.) *Kodeks…*, 1684.

8 Oktawia Górniok, *Przestępstwa…*, 146–7.

9 Jerzy Skorupka in *System Prawa Karnego. Tom 9. Przestępstwa przeciwko mieniu i gospodarcze*, ed. Robert Zawłocki, 766.

the crime. Considering Article 44 § 5 of the Criminal Code, this institution is relatively obligatory. Juxtaposing the norms of Article 316 § 1 of the Criminal Code and Article 44 § 1 of the Criminal Code allows the scope conflict rule to conclude. First, the regulation in question is, on the one hand, richer in content, on the other hand, narrower in scope, due to the indicated catalog of objects, than the mandatory basis for the forfeiture of objects directly derived from the crime. The second argument can be found in the view of Z. Siwik. The author expressed that: "(…) at the same time, Article 316 § 1 has a broader scope than Article 44 § 1 if within the framework of these strictly enumerated objects it applies to objects both constituting the property of the perpetrator and not constituting it"[10]. It is worth noting that in the absence of a basis for forfeiture in the particular part of the Criminal Law, it is not Article 44 § 1 of the Criminal Code that would apply to counterfeit, forged, or with the sign of redemption removed money or documents. This thread will be developed later in work.

It is worth considering the issue of the relationship of the forfeiture included in the special part of the Penal Code to the institution of Article 44 § 6 of the Penal Code[11]. Addressing this issue will make it possible to answer whether Article 316 § 1 of the Criminal Code regulates the specific normative basis for the forfeiture of objects that should be considered producta or *obiecta sceleris*. The issue is controversial in the science of criminal law, and its resolution is relevant to the practice of law application. The observation will initiate the analysis that the distinction between the two ranges of objects is not free from interpretative doubts. It is objectionable to include counterfeited, forged, or with the sign of redemption removed money or documents among the "fruits of crime" or its "products." It should be recalled that an object within the meaning of Article 44 § 1 of the Criminal Code is one whose condition for obtaining it is the realization of the elements of the type of criminal activity[12]. Prima facie, it is possible to assume that the result of the forgery activity is the effect of the commission of the criminal act. In opposition, voices are raised that the forgery can be treated as an object from the disposition of Article 44 § 6 of the Criminal Code[13]. The doctrine indicates that it refers to the objects of direct action, which belong to the statutory elements of the type[14]. Attention should be paid to the statement of B. Mik, who sees the differentiating element between the two forms of forfeiture in the genesis of the source of the prohibition. In the author's opinion, if the prohibition is interpreted from norms devoid of criminal-legal provenience, the punitive measure should be adjudicated based on Article 44 § 6 of the Criminal Code. When the prohibition has a strict criminal-legal source, the application of the forfeiture should be seen in Article 44 § 1 of the Criminal Code[15]. Worthy of mention is the analysis of W. Wróbel, who concluded that: "(…) There is no reason why objects for which the prohibition of manufacture, possession, circulation, or transportation has been established cannot at the same time be objects directly derived from a crime if the condition is

10 Zygfryd Siwik in *Kodeks*…, ed. Marian Filar, 1685.

11 Marek Kulik in *Kodeks* op. cit., ed Marek Mozgawa, LEX/el art. 44 teza 16; Damian Szeleszczuk in Alicja Grześkowiak, Krzysztof Wiak (ed.) Kodeks…, 507–508; D. Gruszecka in Jacek Giezek (ed.) Kodeks karny. Część ogólna…, 427; Krzysztof Szczucki in Michał Królikowski, Robert Zawłocki (ed.) Kodeks Karny. Część ogólna…, 833–834; Janusz Raglewski, Włodzimierz Wróbel in Włodzimierz Wróbel, Andrzej Zoll (ed.) Kodeks karny. Część ogólna. Tom I, Komentarz do art. 53–116…, 857–860; Jerzy Skorupka in Mirosława Melezini (ed.) System…, 831–835; Ryszard A. Stefański in M. Filar (ed.) Kodeks…, 292; Andrzej Marek, Kodeks…, 122; R. Góral, Kodeks…, 90; Z. Sienkiewicz in Oktawia Górniok et. al., Kodeks…, 483; Janusz Raglewski, Materialnoprawna…, 162–168; K. Postulski, M. Siwek, Przepadek…, 138–142.

12 Instead of many: Supreme Court Judgment of April 15, 2008, ref. II KK 29/08, Proc. and Pr.-orz. 2008, no. 10, item 2; Judgment of the Supreme Court of April 14, 1977, ref. I KR 39/77, OSNKW 1977, no. 6, item 62.

13 Mateusz Błaszczyk in Michał Królikowski, Robert Zawłocki (ed.) Kodeks karny. Część szczególna, Tom II…, 1094–1095; Damian Szeleszczuk in Alicja Grześkowiak, Krzysztof Wiak (ed.) Kodeks…, 507–508; Krzysztof Szczucki in Michał Królikowski, Robert Zawłocki (ed.) Kodeks karny. Część ogólna…, 828, 833–834; Zygfryd Siwik in M. Filar (ed.) Kodeks…, 1683–1684; B. Mik, Nowela antykorupcyjna z dnia 13 czerwca 2003 r. Rys historyczny i podstawowe problemy interpretacyjne, Kraków 2004, 86.

14 Jan Waszczyński, Kary dodatkowe w nowym kodeksie karnym, PiP 1969, z. 10, 535; K. Postulski, M. Siwek, Przepadek…, 138.

15 B. Mik, *Nowela*…, 86.

fulfilled that, thanks to the commission of the crime they came into the perpetrator's power"[16]. Argumentation leads the Author to point out that: "(…) the decision as to whether forfeiture is mandatory or optional in this case must be based on the rule of specialty. There is no reason why objects directly derived from the crime, manufactured by the perpetrator, should be subjected to a more lenient (optional) regime of forfeiture," and the conclusion that Article 44 § 6 of the Criminal Code is *lex specialis* to Article 44 § 1 of the Criminal Code[17]. This view deserves to be taken into account. The obligatory nature of the regulation of *producta sceleris* cannot have a decisive influence in determining the relationship between the two forms of forfeiture. What is crucial is their subject matter scope. This means that the forfeiture of imitation money or documents under Article 316 § 1 of the Criminal Code provides a special basis for the forfeiture of *obiecta sceleris*. The above view seems to be shared by K. Szczucki[18], D. Szeleszczuk[19], Z. Siwik[20] and M. Błaszczak[21].

Next, attention should be paid to the relationship of the regulation in question to the forfeiture under Article 44 § 2 of the Criminal Code. According to the wording of this provision, the court may declare, and in cases indicated by the law shall declare, the forfeiture of objects that served or were intended for the commission of a crime. Several remarks are worth making. First, a special case of mandatory adjudication of a punitive measure against objects used in the commission of a crime is precisely Article 316 § 1 of the Criminal Code. Second, the general regulation is broader in scope than that provided for in Chapter XXXVII of the Criminal Code[22]. This is justified by the fact that Article 44 § 2 of the Criminal Code, in addition to objects used in the commission of the crime, provides for the forfeiture of objects intended for the crime's commission. This means that the regulation from the special part is *lex specialis* to Article 44 § 2 of the Criminal Code, only to the extent that the provision regulates the forfeiture of objects constituting *instrumenta sceleris* as serving to carry out the criminal act. In the case of the commission of an offense against the foundations of the financial system, the forfeiture of objects intended for the commission of the offense may fall under a provision from the general part of the law. This inconsistency is not justified, and de lege ferenda requires amendment.

Initiating the third issue, attention should be drawn to Article 44 § 7 of the Criminal Code. According to this provision, if the objects listed in Article 44 § 2 or

The obligatory nature of the regulation of *producta sceleris* cannot have a decisive influence in determining the relationship between the two forms of forfeiture. What is crucial is their subject matter scope.

16 Włodzimierz Wróbel, Środki karne w projekcie Kodeksu karnego, cz. 2, Przepadek…, 106.

17 Ibidem. In the same way argues Janusz Raglewski, see, Janusz Raglewski, Materialnoprawna…, 95.

18 Krzysztof Szczucki in Michał Królikowski, Robert Zawłocki (ed.) Kodeks karny. Część ogólna…, 833–834.

19 Damian Szeleszczuk in Alicja Grześkowiak, Krzysztof Wiak (ed.) Kodeks…, 507–508.

20 Zygfryd Siwik in M. Filar (ed.) Kodeks…, 1683–1684.

21 Mateusz Błaszczyk in Michał Królikowski, Robert Zawłocki (ed.) Kodeks …, 1094–1095.

22 Zygfryd Siwik in *Kodeks*…, ed. M. Filar, 1685.

§ 6 of the Criminal Code are not the property of the perpetrator, their forfeiture may be pronounced only when the law so provides; in the case of joint ownership, the forfeiture of the share belonging to the perpetrator or the forfeiture of the equivalent of this share shall be pronounced. On the other hand, the objects or items enumerated in Article 316, paragraph 1 of the Criminal Code used in the commission of crimes are subject to forfeiture, even if they are not the perpetrator's property. The basis for the imposition of a measure of criminal justice, which is included in the special part, is precisely an "accident" within the meaning of Article 44 § 7 of the Criminal Code. This leads to the conclusion of the admissibility of the application of forfeiture, regardless of whether the object subject to forfeiture is the property of the perpetrator[23]. The argument should be supplemented with an apt observation by Z. Ćwiąkalski, who points out that, by way of forfeiture, property may be deprived of any entity appearing in the market which is not the perpetrator of a type of criminal act, i.e., a natural person, a legal person or an organizational unit which is not a legal person, to which special regulations grant legal capacity[24]. The determination of the loss of the right in rem to the objects is made in isolation from the good or bad faith of the purchaser[25]. The position of J. Raglewski, who disputes that Article 316 § 1 of the Criminal Code excludes - on a special basis - the application of Article 44 § 7 of the Criminal Code, should be highlighted. He motivates his view by saying that: "Indeed, the wording of Article 316 § 1 of the Penal Code of 1997 indicates that this provision contains only a normative clause, providing for certain categories of objects listed therein, which may be subject to forfeiture, the permissibility of their adjudication regardless of whose property they are."[26].

The subject scope of the forfeiture under review requires discussion. The presentation of the issue, supported by examples from court case law, will allow us to expose the doubts related to the wording of Article 316 § 1 of the Criminal Code. The catalog of objects indicated in its content can be divided into two categories.

The first is counterfeit, forged, or with the sign of redemption removed money or documents. The term "document" in the provision's wording could prima facie suggest a reference to the legal definition in Article 115 § 14 of the Criminal Code, which would lead to a broad application of the regulation. However, this conclusion would be misguided. The wording should be read in specific content and systemic context. It is not about any document but a document constituting the subject of executive action on the grounds of Chapter XXXVII of the Criminal Code. The documents relevant within the framework of Article 316 § 1 of the Criminal Code include those that: entitle to receive a sum of money or contain an obligation to pay capital, interest, profit sharing, or state participation in a company (Article 310 § 1 of the Penal Code); are related to trading in securities (Article 311 of the Penal Code)[27]. This class can be defined as the *obiecta sceleris* of the acts stipulated in Chapter XXXVII of the Criminal Code. Reviewing the positions presented in the case law as "objects of the crime," it is possible

23 Marek Kulik in Marek Mozgawa op. cit., LEX/el art. 316 teza 1; Zbigniew Ćwiąkalski in *Kodeks karny. Część szczególna* vol III…, eds. Włodzimierz Wróbel, Andrzej Zoll, 991; Tomasz Oczkowski in *Kodeks…* ed. Violetta Konarska-Wrzosek (ed.) Kodeks…, 1429; Mateusz Błaszczyk in *Kodeks karny. Część szczególna*, vol. II Michał Królikowski, Robert Zawłocki (ed.) …, 1093–1095; Zygfryd Siwik in *Kodeks…*, ed. Marian Filar, 1684; Joanna Piórkowska-Flieger in Tadeusz Bojarski (ed.) Kodeks op. cit., LEX/el art. 316 teza 1; Andrzej Marek, *Kodeks…*, 578; R. Góral, *Kodeks…*, 522; Andrzej Krukowski in *Systems…*, eds. Igor Andrejew, Leszek Kubicki, Jan Waszczyński, 523; Mieczysław Siewierski in *Kodeks…*, eds. Jerzy Bafia, K. Mioduski, Mieczysław Siewierski, 542; W. Świda in *Kodeks…*, eds. Igor Andrejew, Witold Świda, Władysław Wolter, 738; Igor Andrejew, Kodeks…, 207; Włodzimierz Gutekunst in *Prawo…*, eds. Olgierd Chybiński, Włodzimierz Gutekunst, W. Świda, 434; Judgment of the Court of Appeals in Lublin of March 27, 2013, ref. II AKa 40/12, LEX No. 1298954.

24 Zbigniew Ćwiąkalski in *Kodeks karny. Część szczególna,* vol. III, eds. Włodzimierz Wróbel, Andrzej Zoll, 991.

25 Włodzimierz Gutekunst in *Prawo…*, eds. Olgierd Chybiński, Włodzimierz Gutekunst, W. Świda, 434.

26 Janusz Raglewski in *Kodeks…*, ed. Włodzimierz Wróbel, Andrzej Zoll, 860; Jerzy Skorupka in *System…*, ed. Mirosława Melezini, 802.

27 G. Łabuda in *Kodeks…*, ed. Jacek Giezek, 1539; Zygfryd Siwik in *Kodeks…*, ed. Marian Filar, 1686.

to draw attention to three statements of the appellate courts. The first - is set still on the grounds of the 1969 Criminal Code. - it was pointed out that: "(…) in the jurisprudence of the courts it was emphasized that the legal basis for the ruling on the forfeiture of counterfeit money (…) is a provision of the special part of this code (as *lex specialis*), establishing the obligatory nature of their forfeiture"[28]. In turn, concerning another carrier of a legal good, the Cracow Court of Appeals stated that: "(…) The legal basis for the forfeiture of a counterfeit bill of exchange (another document authorizing the receipt of a sum of money, a means of payment or money) is Article 316 § 1 as a special provision."[29]. The Court of Appeals presented the most recent view in Szczecin, which stated that: "If the offender is convicted of an act under Article 310 § 1, the substantive legal basis for the forfeiture of the counterfeit means of payment should be Article 316 § 1 as a special provision."[30]. Among representatives of the doctrine, an analogous view was expressed by A. Marek[31], J. Skorupka[32] and Z. Siwik[33].

The second category includes objects used to commit crimes regulated in Chapter XXXVII of the Criminal Code, i.e., their *instrumenta sceleris*[34]. In this context, there is a refinement of the subject scope and an indication of raw materials, tools, equipment, and technical means that the perpetrator consumed or planned to use at any stage of the implementation of the criminal act[35]. Before presenting the examples highlighted in the literature and case law, it is necessary to resolve doubts about the nature of objects used to commit a crime. Specifically, we are talking about the issue of whether the judgment of forfeiture is possible only concerning objects specifically adapted to the implementation of a criminal act or whether such a decision can also be made for objects devoid of this feature, although used for a criminal purpose. This issue is essential for applying the law and affects the material scope of objects threatened with forfeiture. The problem should be resolved individually concerning each object. O. Górniok[36], M. Gałązka[37], and Z. Ćwiąkalski[38] advocate the first solution. The last Author's view deserves mention. He indicated that: "(…) Do not constitute such [objects used for the commission of a crime - note M.B.] those of them which do not have characteristics specially predestinating them for use in a given crime, especially facilitating its commission by their properties or additional adaptation, and which the perpetrators use only on occasion, as it were, by their purpose"[39]. This means that the regulation of Article 316 § 1 of the Criminal Code should be applied only to objects that have permanent

28 Judgment of the Court of Appeals in Cracow of January 1, 1991, ref. II AKr 13/90, KZS 1991, z. 1, item 8.

29 Judgment of the Court of Appeals in Cracow of April 17, 2003, ref. II AKa 72/03, KZS 2003, z. 5, item 38.

30 Judgment of the Court of Appeals in Szczecin of February 14, 2013, ref. II AKa 8/13, LEX No. 1283239.

31 Andrzej Marek, *Kodeks*…, 578.

32 Jerzy Skorupka in *Kodeks*…, ed. R. A. Stefański, 1839; Jerzy Skorupka in *Kodeks*…, eds. Andrzej Wąsek, Robert Zawłocki,1720; Jerzy Skorupka, *Przestępstwa*…, 167–8.

33 Zygfryd Siwik in *Kodeks*…, ed. Marian Filar, 1683–4.

34 Zbigniew Ćwiąkalski in *Kodeks*…, ed. Włodzimierz Wróbel, Andrzej Zoll 990–92; Marek Gałązka in *Kodeks*…, ed. Alicja Grześkowiak, Krzysztof Wiak, 1643; Tomasz Oczkowski in *Kodeks*…, ed. V. Konarska-Wrzosek, 1429; Mateusz Błaszczyk in *Kodeks karny*…, eds. Michał Królikowski, Robert Zawłocki, 1093–5; Joanna Piórkowska-Flieger in *Kodeks*…, ed. Tadeusz Bojarski, LEX/el art. 316 teza 1; Andrzej Marek, 578; Oktawia Górniok, *Przestępstwa*…, 147; Kazimierz Buchała in *Komentarz*…, eds. Kazimierz Buchała, Piotr Kardas, J. Majewski, Włodzimierz Wróbel, 241– 2; Andrzej Krukowski in *System*…, eds. Igor Andrejew, Leszek Kubicki, Jan Waszczyński, 523; Mieczysław Siewierski in *Kodeks*…, ed. Jerzy Bafia, K. Mioduski, Mieczysław Siewierski, 542; Leon Peiper, *Kodeks*…, 393; Wacław Makowski, *Prawo*…, 231; Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Sekcja prawa karnego. Tom V. Zeszyt 6…, 24.

35 Zbigniew Ćwiąkalski in *Kodeks karny*…, ed. Włodzimierz Wróbel, Andrzej Zoll, 992; Marek Gałązka in *Kodeks*…, eds. Alicja Grześkowiak, Krzysztof Wiak, 1643; Mateusz Błaszczyk in *Kodeks karny*…, eds. Michał Królikowski, Robert Zawłocki, 1095; Joanna Piórkowska-Flieger in *Kodeks*…, ed. Tadeusz Bojarski, LEX/el art. 316 teza 1; Andrzej Marek, *Kodeks*…, 578; Oktawia Górniok, *Przestępstwa*…, 147.

36 Oktawia Górniok, *Przestępstwa*…, 147.

37 Marek Gałązka in *Kodeks*…, ed. Alicja Grześkowiak, Krzysztof Wiak, 1643.

38 Zbigniew Ćwiąkalski in *Kodeks*…, ed. Włodzimierz Wróbel, Andrzej Zoll, 992.

39 Ibidem.

or imparted properties that enable the commission of a criminal act. A different view - in the opinion of the proponents of the first view - can lead to absurd conclusions in the form of the forfeiture of any object used by the perpetrator[40]. However, it is worth noting that adopting a narrow view does not solve the problems arising from the vague nature of forfeiture. Applying the measure to specially adopted objects shifts the interpretive doubts from the aspect of "serving to commit a crime" to the valuation of whether and when an object meets the criterion of specialness. A broad interpretation of object forfeiture under Article 316 § 1 of the Criminal Code was advocated by: G. Łabuda[41], M. Blaszczyk[42] and J. Piórkowska-Flieger[43]. The authors point out that there are no doubts about the sentencing of a punitive measure against objects specially manufactured or adapted for the commission of a crime and those that serve legitimate activity but were used in criminal activity. This interpretation is also fraught with shortcomings. Among the most important are the difficulties in achieving the desired results and functions associated with the imposition of forfeiture when applied to objects of everyday use.

Despite the doubts arising from, among other things, the weakening of the preventive function of forfeiture[44], the proponents of a broad approach are right[45]. In order to avoid the undesirable consequences of adopting this view, a restrictive interpretation of individual cases is necessary. The interpretive result must consider the conclusions from applying purpose and functional directives. As W. Dashkevich pointed out, "(…) otherwise the application of a legal norm could lead to paradoxical situations, passing by common sense - a rule that should guide every interpreter of the law"[46]. It is worth verifying that forfeiture is, on the ground of law enforcement practice, applied when it is substantively justified.

The resolution of this issue makes it possible to exemplify the application of the measure in question. The argument should begin with such objects, which are immanent or even intuitively associated with a crime against the foundations of the financial system. Objects used to commit a crime within the meaning of Article 316 § 1 of the Criminal Code include printing machines and equipment, lathes, punches, locksmith tools, paper, inks, metals, and their alloys, xerographs, magnifying glasses and microscopes, blanks of various kinds, calibrators, seals, sealers, plates, photographic instruments[47]. In addition, elements for securing money, like holograms or specialized computer programs for counterfeiting money, are mentioned[48]. There is no objection to applying the punitive measure to the cited range of objects and their media in CDs, floppy disks, hard drives, or portable disks. Some doubts have arisen in jurisprudence when deciding on the forfeiture of items such as computers, multifunction devices, or photocopiers. Existing reservations are a consequence of advocating a narrow interpretive model. It is worth noting the reasoning adopted by the ordinary courts, where the application of a punitive measure was approved[49]. The Cracow Court of

40 Zbigniew Ćwiąkalski in *Kodeks…*, eds. Włodzimierz Wróbel, Andrzej Zoll, 992; Marek Gałązka in *Kodeks…*, ed. Alicja Grześkowiak, Krzysztof Wiak, 1643; Oktawia Górniok, *Przestępstwa…*, 147; Judgment of the Court of Appeals in Katowice of August 1, 2013, ref. II AKa 234/13, Prok. i Pr.-orz. 2014, no. 2, item 31; Judgment of the Court of Appeals in Cracow of November 26, 1997, ref. II AKa 224/97, KZS 1997, z. 11–12, item 53.

41 G. Łabuda in *Kodeks…*, ed. Jacek Giezek, 1539.

42 Mateusz Błaszczyk in *Kodeks…*, eds. Michał Królikowski, Robert Zawłocki, 1095.

43 J. Piórkowska-Flieger in *Kodeks…*, ed. Tadeusz Bojarski, LEX/el art. 316 teza 1.

44 A. Spotowski, *Konfiskata…*, 104.

45 K. Mioduski in *Kodeks…*, ed. Jerzy Bafia, K. Mioduski, Mieczysław Siewierski, 186; Witold Świda, *Prawo…*, 266.

46 Quoted in Janusz Raglewski, *Materialnoprawna…*, 139.

47 Zbigniew Ćwiąkalski in *Kodeks…*, ed. Włodzimierz Wróbel, Andrzej Zoll, 992; Marek Gałązka in *Kodeks…*, ed. Alicja Grześkowiak, Krzysztof Wiak, 1643; Joanna Piórkowska-Flieger in *Kodeks…*, ed. Tadeusz Bojarski, LEX/el art. 316 thesis 1; Judgment of the Court of Appeals in Katowice of August 1, 2013, ref. II AKa 234/13, Prok. i Pr.-orz. 2014, no. 2, item 31; Judgment of the Court of Appeals in Cracow of January 18, 2006, ref. II AKa 260/05, KZS 2006, z. 3, item 35.

48 Mateusz Błaszczyk in *Kodeks…*, ed. Michał Królikowski, Robert Zawłocki, 1095.

49 Judgment of the Court of Appeals in Warsaw of November 9, 2015, ref. II AKa 323/15, LEX no. 1932002; Judgment of the Court of Appeals in Wroclaw of December 19, 2014, ref. II AKa 392/14, LEX no. 1630910.

Appeals expressed the view that: "(…) The allegation that these items should be excluded from this scope is misplaced because they do not have characteristics predestinating them for such an action but are objects of common use, and the accused merely used them for their normal purpose. Without using them, the accused would not have been able to forge banknotes, just as it would have been impossible in the past without printing equipment, also after all not manufactured to counterfeit money."[50]. This conclusion deserves approval. It is supported by arguments based not only on the methodology of committing crimes against the foundations of the financial system or pointing to the results of applying purpose-functional directives but also on pragmatics. It is, after all, the case that a computer and a multifunctional device are used not only to carry out a criminal act. No less, the features and technical characteristics that the tools above possess make it possible to commit the crime of forgery because the perpetrator has used them in a certain way. If they are so used, they constitute *instrumenta sceleris* within the meaning of Article 316 § 1 of the Criminal Code. In the doctrine, the above position was approved by Z. Siwik[51], M. Blaszczyk[52], G. Łabuda[53], and Z. Ćwiąkalski[54]. It is worth pointing out objects that both jurisprudence[55] and doctrinal considerations[56] exclude from the group of those used to commit the analyzed crimes. We are talking about means of transportation and facilities used for storage. The decision of the Court of Appeals in Krakow, where we read that: "(…) if even if the defendants distributed counterfeit money by moving in a car leased and owned by the bank, the price of which had not yet been paid, it was not a technical means used or intended for the commission of a crime and therefore subject to mandatory forfeiture. There were no special devices in the car related to the crime, so the car was an ordinary means of transportation."[57]. The perpetrator's use of the locomotive function, typically attributed to motor vehicles, cannot automatically translate into a qualification recognizing them as a means of performing a criminal act. This conclusion would be hasty. Similarly, it is not reasonable to declare the forfeiture of storage means (suitcases, bags, nets, boxes, or containers) unless their modification was found to realize the criminal act[58].

It is worth analyzing the content scope of Article 316 § 1 of the Criminal Code from the point of view of the criterion of completeness and adequacy. It should begin with the apt observation of Z. Siwik that the content scope of the forfeiture, especially concerning the disposition of the relevant typifying provisions of Chapter XXXVII of the Criminal Code, raises concerns[59]. The primary issue is to try to answer whether the state of affairs is due to the legislature's selective approach to the compilation of objects at risk

50 Judgment of the Court of Appeals in Katowice of August 1, 2013, ref. II AKa 234/13, KZS 2013, z. 10, item 87; Judgment of the Court of Appeals in Cracow of January 18, 2006, ref. II AKa 260/05, KZS 2006, z. 3, item 35.

51 Zygfryd Siwik in *Kodeks*…, ed. M. Filar, 1685.

52 Mateusz Błaszczyk in *Kodeks*…, ed. Michał Królikowski, Robert Zawłocki, 1095.

53 Gerard Łabuda in *Kodeks*…, ed. Jacek Giezek, 1539.

54 Zbigniew Ćwiąkalski in *Kodeks*…, ed. Włodzimierz Wróbel, Andrzej Zoll, 992.

55 Judgment of the Court of Appeals in Cracow of January 18, 2006, ref. II AKa 260/05, KZS 2006, No. 3, item 35; Judgment of the Court of Appeals in Cracow of November 26, 1997, ref. II AKa 224/97, KZS 1997, z. 11–12, item 53.

56 Zbigniew Ćwiąkalski in Włodzimierz Wróbel, Andrzej Zoll (ed.) Kodeks karny. Część szczególna. Tom III…, 992–993; Zygfryd Siwik in M. Filar (ed.) Kodeks…, 1685; Oktawia Górniok, Przestępstwa…, 147.

57 Judgment of the Court of Appeals in Cracow of November 26, 1997, ref. II AKa 224/97, KZS 1997, z. 11–12, item 53.

58 Zbigniew Ćwiąkalski in *Kodeks*…, ed. Włodzimierz Wróbel, Andrzej Zoll, 992; Joanna Piórkowska-Flieger *Kodeks*…, ed. in Tadeusz Bojarski, LEX/el art. 316 thesis 1.

59 Leaving aside at this point the doctrinal disputes related to the interpretation of individual phrases in Article 316 § 1 of the CC, it is necessary to signal a certain sloppiness of the legislator and inconsistency in the chosen terminology. As an example, let us take the example of the legislator's use of the phrase that "tokens of value" are subject to forfeiture in a situation where, on the grounds of the acts stipulated in Article 313 § 1 and 2 of the Penal Code, reference is made to official tokens of value. Only through appropriate interpretive procedures, available through the use of all the directives of interpretation of the legal text, is this provision applicable to official signs of value, see Zygfryd Siwik in *Kodeks*…, ed. Marian Filar, 1686.

of forfeiture or whether such and not such a different inventory of objects contained in Article 316 § 1 of the Criminal Code is a consequence of inaccuracies and shortcomings in the course of designing the provision.

Against the background of the indicated institution, significant doubts have arisen. They are related to the achievement of divergent interpretive results, in particular, whether it is possible to break the linguistic meaning of the legal text in order to interpret from it - according to some Authors - the elements not expressed there. It requires consideration whether it is acceptable to have an interpretative result created for the decision on applying a punitive measure, which breaks away from the results inherent in the typifying provisions included in Chapter XXXVII of the Criminal Code. The relevant issues for consideration can be put into two problematic issues. The first relates to the ruling on the forfeiture of a monetary sign that has been established as legal tender but has not yet been put into circulation under Article 316 § 1 of the Criminal Code. The second is related to the admissibility of applying forfeiture to means of payment other than money. It is worth reviewing the positions in both areas.

According to Article 316 § 1 of the Penal Code, money and documents forged, counterfeited, or with the sign of redemption removed are subject to forfeiture. It is not controversial to state that the catalog above does not expressly mention the money sign, which has been established as legal tender but has not yet been put into circulation. The question arises as to whether this inclusion of the legal text precludes the application of forfeiture on a specific basis. The answer seems to be in the affirmative. Although this will be discussed when analyzing the ruling on the forfeiture of other means of payment, it is worth noting that linguistic, systemic, and axiological reasons support this conclusion. What is different on the subject side of the types is money, and what is different is a monetary sign that has been established as legal tender but has not yet been put into circulation. Attempts to equate these concepts, from the point of view of the linguistic and systemic directives of interpretation, must fail. It is worth highlighting the view of M. Blaszczyk, who states that: "(…) under Article 316 § 1 of the CC, only those monetary signs could be forfeited that were counterfeited even before they entered circulation, but at the time of adjudication such legal monetary signs were already functioning in circulation. In contrast, there is no basis for subjecting to forfeiture those counterfeit monetary signs that have been established as legal tender but have not yet been put into circulation at the adjudication stage."[60]. This opinion needs to be more convincing for at least two reasons. First, it seems inaccurate to take the date of adjudication as the appropriate differentiating criterion about the qualification of the object of the executive action as an object fit to be forfeited. The relevant "status" of the object of direct action should be determined as of the date of the act. The object in question is either money within the meaning of Article 316 § 1 of the Criminal Code, or it is deprived of this status due to its non-entry into circulation. Changes that may occur in this field between the commission of the criminal act and the date of sentencing should not matter. This means that the introduction into circulation by the competent state authorities of a monetary sign equivalent to the counterfeit in question and its acquisition of the characteristic of legal tender does not imply the admissibility of their forfeiture. Secondly, if, regardless of the timing of the binding determination of the status of the object to be forfeited, one would partially share the Author's view, it should be pointed out that these considerations do not introduce any novelty into the existing analysis and do not affect the inclusion or not of monetary signs in the catalog of Article 316 § 1 of the Criminal Code. Forfeiture in the factual situation indicated by M. Blaszczyk would be subjected not to a counterfeit, altered, or with the redemption mark removed "money sign" but to an imitation of money functioning in circulation.

De lege lata, it is impossible to declare the forfeiture of a money sign established as legal tender but which has not yet been circulated under Article 316 § 1 of the Criminal Code. This object does not fall within the scope of the provision in question. This is supported by applying the linguistic directives of the legal text, in particular, the prohibition of synonymous interpretation and the order to take into account the internal systematics of the legal act. It should be emphasized

60 Mateusz Błaszczyk in *Kodeks*..., ed. Michał Królikowski, Robert Zawłocki, 1094–5.

that fundamental considerations spoke in favor of making a distinction of this element of the object side on the grounds of crimes under Chapter XXXVII of the Criminal Code. It is impossible to equate it with money. The conclusion is also justified by systemic considerations, in particular, the need to preserve the coherence and completeness of the legal system. This does not mean that Polish legislation does not provide a normative basis for the forfeiture of these objects. In such a case, it is necessary to "reach" the regulations contained in the general part of the Criminal Law, i.e., Article 44 § 6 of the Criminal Code. As part of de lege ferenda postulates, it is necessary to modify Article 316 § 1 of the Criminal Code by including a money mark corresponding to the designations of Article 310 § 1 of the Criminal Code.

It is necessary to proceed to an analysis to resolve doubts regarding the ruling on the forfeiture of other means of payment under the provision in question. It is necessary to present selected views expressed in the literature on the subject. Among the representatives of the doctrine, one can notice voices both approving and denying the forfeiture of other means of payment under Article 316 § 1 of the Criminal Code. Tracing the arguments cited by supporters and opponents of a given position is necessary. It is worth noting that based on judicial jurisprudence, this issue is not the subject of deeper reflection[61]. There is little implicit acceptance of the application of the provision in question to means of payment other than money. For example, the Court of Appeals in Szczecin indicated that: "(…) in the case of a conviction of the offender for an act under Article 310 § 1, the substantive legal basis for ruling on the forfeiture of counterfeit means of payment should be Article 316 § 1."[62]. Such a general formulation does not allow the reproduction of the thought process that led to the signaled conclusion. Among the representatives of the doctrine in favor of ruling on the forfeiture of another means of payment under Article 316 § 1 of the Criminal Code, unequivocally advocated: M. Gałązka[63], G. Łabuda[64], T. Fołta, and A. Mucha[65]. The view of the first two authors can be reduced to the formula that another means of payment should be considered a document within the meaning of the specific basis for the judgment of forfeiture of objects. One searched in vain for arguments to prove the chosen position, and T. Fołta and A. Mucha carried out the most detailed argument. The view of these Authors provided a point of reference for others who accept the application of Article 316 § 1 of the Criminal Code to other means of payment.

It is impossible to declare the forfeiture of a money sign established as legal tender but which has not yet been circulated under the Polish Criminal Code. This object does not fall within the scope of the provision in question.

61 Judgment of the Court of Appeals in Cracow of April 17, 2003, ref. II AKa 72/03, LEX No. 81570; Judgment of the Court of Appeals in Cracow of January 1, 1991, ref. II AKr 13/90, KZS 1991, z. 1, item 8.

62 Judgment of the Court of Appeals in Szczecin of February 14, 2013, ref. II AKa 8/13, LEX No. 1283239.

63 Marek Gałązka in Alicja Grześkowiak, Krzysztof Wiak (ed.) Kodeks…, 1643.

64 G. Łabuda in Jacek Giezek (ed.) Kodeks…, 1539.

65 T. Fołta, A. Mucha, Glosa do wyroku Sądu Apelacyjnego w Krakowie z dnia 17 kwietnia 2003 r., sygn. II AKa 72/2003, Prok. i Pr. 2008, nr 7–8, 241–242.

This justifies the analysis of the said authors' reasoning and the verification of the formulated conclusions. Attention is drawn to the distinction of three groups of premises to motivate the forfeiture of surrogate money. The first indicates that another means of payment is a particular type of document that corresponds in scope to the designator of the object to be forfeited[66]. The second is to state that: "(…) other means of payment" referred to in Article 310 § 1 of the Criminal Code is, as it were, an intermediate category between "money" and "documents" mentioned in this provision. "Other means of payment" by fulfilling the function of payment is, as if to put it, functionally identical to the category of "money."[67]. In turn, the third exposes the functions attributed to promissory notes as means of payment or documents authorizing the receipt of a sum of money. This allowed the authors to express a view based on argumentum ad absurdum. It would be difficult, in their view, to accept the imposition of forfeiture when a promissory note is the designator of a document under Article 310 § 1 of the Criminal Code. At the same time, it would be inadmissible to apply a punitive measure when it is a means of payment[68]. The totality of the circumstances gave rise to the claim that other means of payment fall under the disposition of Article 316 § 1 of the Criminal Code. It is worth mentioning that the above view seems to be supported by M. Blaszczyk. When formulating the position, she does so with great caution. On the one hand, the author points out that: "As for "other means of payment," in light of Article 115 § 14 of the Criminal Code, they should be considered a special type of document. Falsified ones will be subject to forfeiture under Article 316 § 1 of the Criminal Code."[69], to conclude the findings with the statement that the special basis for forfeiture covers only the items enumerated therein and, as a de lege ferenda postulate, there is a need to supplement the content scope of the provision[70].

66 Ibidem, 241.

67 Ibidem, 242.

68 Ibidem.

69 Mateusz Błaszczyk in *Kodeks*…, ed. Michał Królikowski, Robert Zawłocki, 1094–5.

70 Ibidem.

It is also worth considering the arguments of the polemicists of the above position. Knowing both sides' motives will allow us to present our views and the presentation of counterarguments. Against the admissibility of ruling on the forfeiture of other means of payment under Article 316 § 1 of the Criminal Code, O. Górniok[71], Z. Siwik[72], Z. Ćwiąkalski[73] and J. Skorupka argued[74]. The first two Authors, the inapplicability of the provision in question to the forfeiture of other means of payment infer from the results of applying the linguistic and systemic directives of interpretation. As O. Górniok states, "(…) After all, this provision does not list all the objects of the act constituting the elements of the types of crimes of this chapter"[75]. In succor of this is the thesis of Z. Siwik, who states that: "(…) Article 316 § 1 does not mention other objects of the crime specified in the commented chapter, such as other means of payment (Article 310 § 1 and 2, Article 312)"[76]. Moreover, he points out that from a systemic point of view, this is an incomprehensible and undesirable state of affairs. The argumentation leads both to conclude that the items are forfeited, although under Article 44 of the Criminal Code[77].

It is worth noting the position of J. Skorupka, which has evolved and changed over the years. Initially, the author advocated applying the rules set by Article 316

71 Oktawia Górniok, *Przestępstwa*…, 147.

72 Zygfryd Siwik in *Kodeks*…, ed. Marian Filar, 1684–5.

73 Zbigniew Ćwiąkalski in *Kodeks*…, ed. Włodzimierz Wróbel, Andrzej Zoll, 990–91.

74 Jerzy Skorupka in *Kodeks*…, ed. Ryszard A. Stefański, 1839.

75 Oktawia Górniok, *Przestępstwa*…, 147.

76 Zygfryd Siwik in *Kodeks*…, ed. Marian Filar, 1684–5.

77 It was intentionally omitted here to indicate the detailed normative basis contained in the text of Article 44 of the Criminal Code. This is justified by the fact that these authors express divergent views on the nature of the forfeiture under which other means of payment should fall. Oktawia Górniok proclaims the position that they may be subject to forfeiture, which has an optional character (Article 44 § 6 of the Criminal Code); see Oktawia Górniok, *Przestępstwa*…, 147. In turn, Zygfryd Siwik believes that counterfeited, forged, or with the sign of redemption removed other means of payment are subject to forfeiture under Article 44 § 1 of the Criminal Code, see Zygfryd Siwik in *Kodeks*…, ed. Marian Filar, 1684–5.

§ 1 of the Criminal Code to adjudicating a punitive measure against other means of payment[78]. He justified this view in the same way as the proponents of the first view[79], and interestingly enough, this opinion is still cited by them in support of their rationale[80]. It is necessary to notice the modification of the view by J. Skorupka in the direction of stating that Article 316 § 1 of the Criminal Code does not provide a sufficient basis for the forfeiture of another means of payment[81]. Indeed, he pointed out: "(…) Since the "means of payment" referred to in Article 310 § 1 of the Criminal Code (e.g., so-called bank money or electronic money) does not have a material form, it is not possible to order its forfeiture. On the other hand, it is possible to forfeit tangible media or means of payment, such as payment cards, credit cards, and electronic money instruments. The forfeiture of such items and the forfeiture of a legalized probationary instrument should be ruled based on Article 44 of the Criminal Code."[82]. The statement leads to a rejection of the previously held position and in favor of the thesis that the legal norm allowing the adjudication of forfeiture of surrogate money should be sought in the general part of the Criminal Act. The argumentation of Z. Ćwiąkalski appears to be the most detailed. According to the Author, only the objects laxative enumerated in Article 316 § 1 of the Criminal Code are subject to forfeiture[83]. Motivating the position taken, reference was made to the linguistic and systemic directives of interpreting the legal text. It was argued that: "(…) If one were to accept the argumentation of the polemicists, one would have to ask for what reason, however, the legislator distinguished in Article 310 "other means of payment" from "a document authorizing the receipt of a sum of money or containing an obligation to pay capital, interest, participation in profits or a statement of participation in a company." He used the conjunction "or" for this purpose. Using different concepts in one provision also requires consistency in the interpretation of further provisions. Particularly if the legislator explicitly refers in Article 316 to "the crimes specified in this chapter."[84]. The argumentation led the Author to conclude that other means of payment do not fall under the scope of the designators indicated in the norm interpreted from Article 316 § 1 of the Criminal

It should be noted that it is impossible to carry out an interpretive procedure, the effect of which would be to identify other means of payment with the documents constituting the subject of the executive action of each type. Although it leads to a satisfactory and expected interpretative result, the different optics are close to lawmaking, detached from operative interpretation.

78 Jerzy Skorupka, *Przestępstwa*…, 167–8; Jerzy Skorupka in *Kodeks*…, ed. Andrzej Wąsek, Robert Zawłocki, 1720.

79 Ibidem.

80 Marek Gałązka in *Kodeks*…, eds. Alicja Grześkowiak, Krzysztof Wiak, 1643; T. Fołta, A. Mucha, Glosa…, 241.

81 Jerzy Skorupka in *Kodeks*…, ed. Ryszard A. Stefański, 1839.

82 Ibidem.

83 Zbigniew Ćwiąkalski in *Kodeks karny*…, ed. Włodzimierz Wróbel, Andrzej Zoll, 990.

84 Ibidem, 991.

Code. Their forfeiture can be decreed only based on a provision from the general part of the Criminal Law.

Presented the arguments for and against the admissibility of the punitive measure, it is appropriate to motivate our assessment. The position of those Authors who contest the application of a specific basis for the imposition of forfeiture to other means of payment deserves approval. The resolution of the doubts that arise is not straightforward because, to some extent, convincing arguments have both sides of the doctrinal dispute. However, it is difficult not to resist the impression that those who accept the forfeiture pretive effect can be obtained only by considering the linguistic context, including sentence formation and inter-word connections. Based on the regulations in Chapter XXXVII of the Criminal Code, it should be noted that it is impossible to carry out an interpretive procedure, the effect of which would be to identify other means of payment with the documents constituting the subject of the executive action of each type. Although it leads to a satisfactory and expected interpretative result, the different optics are close to lawmaking, detached from operative interpretation. The fact that the same object, depending on its

There are no rational arguments that would justify the forfeiture of a counterfeit coin on a special basis while surrendering the counterfeit payment card to the regulations contained in the general part of the Code. This remark can only be part of *de lege ferenda* postulates.

of other means of payment based on Article 316 § 1 of the Criminal Code are, de facto, performing such interpretative procedures that lead to the interpretative result postulated by many, but which does not correspond to what results from the application of all the directives of the analysis of the legal text.

It should be pointed out that the admissibility of forfeiture of other means of payment under Article 316 § 1 of the Criminal Code would follow in circumvention of the prohibition of synonymous interpretation. It should be recalled that phrases that sound different and are located within a single normative act should not be given the same meaning. When interpreting, it is necessary to remember and refer to the semantic relations between the different phrases used in individual provisions of the same legal act (the so-called sentence mini context)[85]. The correct interfunctions, can fall under another means of payment or a document authorizing the receipt of a sum of money does not introduce a variable. It is not a justification leading to a break in the linguistic meaning of the analyzed provision[86]. Also unconvincing is the argument of T. Folta and A. Mucha, who, in motivating the ruling of forfeiture under Article 316 § 1 of the Criminal Code, pointed to the "indirect" nature of other means of payment between fiat money and individual documents[87].

In support of the chosen position, it is worth pointing out that the regulation of forfeiture, which closes Chapter XXXVII of the Criminal Code, constitutes a special normative basis for adjudicating a measure of criminal legal response. Its atypicality is due to its mandatory nature and the necessity of its application,

85 Piotr Wiatrowski, *Dyrektywy…*, 94–109.

86 T. Fołta, A. Mucha, Glosa…, 241–2.

87 Ibidem, 242.

in isolation from the issue of the material rights of other persons. Consequently, Article 316 § 1 of the Criminal Code is a *lex specialis* to the provisions of Article 44 § 1–2 and § 6 of the Criminal Code. If it is correctly assumed that the provision has the character of an exception to the rules of the general part, then conclusions should be drawn from this. Exceptions should be interpreted strictly (exceptions non sunt extendae). Then, from a systemic and axiological point of view, it is possible to preserve the purpose that justifies the exception introduced in the special part. The rational legislator regulating the relevant narrowing consciously made the exclusion of specific objects from the scope of application of the analyzed institution. Respecting this state of affairs refers to the need to preserve the coherence and completeness of the legal system. Whether this procedure was carried out correctly by considering all systemic and axiological rationales is a separate issue. There are no rational arguments that would justify the forfeiture of a counterfeit coin on a special basis while surrendering the counterfeit payment card to the regulations contained in the general part of the Code. In addition, the adoption of a broad model of interpretation of Article 316 § 1 of the Criminal Code would undermine the guarantee aspect of criminal law regulations. It could lead to undermining the principle of nulla poena sine lege.

The linguistic meaning of a legal text does not constitute an absolute limit of interpretation. Its transgression, however, requires a strong basis of a systemic nature and the support of purpose-functional arguments. These, however, need to be added on the grounds of the legal discourse being conducted. It is not the case that excluding other means of payment from the group of objects subject to forfeiture under Article 316 § 1 of the Criminal Code leads de lege lata to unacceptable consequences. The court is "forced" to look for the source of the normative basis of the decision to apply the law in the general regulations on the forfeiture of objects instead of located in Chapter XXXVII of the Criminal Code. The interpretative model preferred in the text does not detach itself from the axiological consistency expressed by the legislator because such institutions can be applied, which allows for achieving the assumed goals. At the same time, there are no relevant interpretative doubts.

This article is funded by the National Science Centre in Poland, under the project „Zagadnienie fałszu pieniądza na gruncie polskiej ustawy karnej i w ujęciu prawnoporównawczym" [The issue of money forgery in the polish criminal code as well as in the comparative law approach] No UMO-2018/29/N-HS5/01091.

Bibliography

Andrejew, Igor. *Kodeks karny. Krótki komentarz*, Warszawa 1988.

Królikowski, Michał and Robert Zawłocki, ed. *Kodeks karny. Część szczególna*, vol II, *Komentarz do artykułów 222–316*, Warszawa 2017.

Buchała, Kazimierz, et al. ed. *Komentarz do ustawy o ochronie obrotu gospodarczego*, Warszawa 1995.

Wróbel, Włodzimierz, and Andrzej Zoll, ed. *Kodeks karny. Część szczególna*, vol. III. *Komentarz do art. 278–363 k.k.*, Warszawa 2022.

Grześkowiak, Alicja, Wiak, Krzysztof, ed. *Kodeks karny. Komentarz*, Warszawa 2021.

Góral R., *Kodeks karny. Komentarz*, Warszawa 2005.

Górniok, Oktawia, *Przestępstwa gospodarcze. Rozdział XXXVI i XXXVII Kodeksu karnego. Komentarz*, Warszawa 2000.

Giezek, Jacek ed. *Kodeks karny. Część ogólna. Komentarz*, Warszawa 2021.

Chybiński, Olgierd, and Włodzimierz Gutekunst, Witold Świda, ed. *Prawo karne. Część szczególna*, Warszawa-Wrocław 1980.

Komisja Kodyfikacyjna Rzeczypospolitej Polskiej. Sekcja prawa karnego, vol V/4, Warszawa 1930.

Andrejew, Igor, and Leszek Kubicki, Jan Waszczyński, ed. *System Prawa Karnego* vol. IV, *Część 2: O przestępstwach w szczególności*, Wrocław-Warszawa-Kraków-Gdańsk-Łódź 1989.

Mozgawa, Marek, ed. *Kodeks karny. Komentarz*, LEX/el art. 44.

Makowski, Wacław. *Prawo karne. O przestępstwach w szczególności. Wykład porównawczy prawa karnego austrjackiego, niemieckiego i rosyjskiego, obowiązującego w Polsce*, Warszawa 1924.

Marek, A., *Kodeks karny. Komentarz*, Warszawa 2010.

Mik, B., *Nowela antykorupcyjna z dnia 13 czerwca 2003 r. Rys historyczny i podstawowe problemy interpretacyjne*, Kraków 2004.

Konarska-Wrzosek, Violetta, ed. *Kodeks karny. Komentarz*, Warszawa 2020.

Peiper, Leon, *Komentarz do kodeksu karnego*, Kraków 1936.

Bojarski, Tadeusz, ed. *Kodeks karny. Komentarz*. LEX/el.Postulski Kazimierz, Siwek, Marcin. *Przepadek w polskim prawie karnym*, Kraków 2004.

Raglewski, Janusz. *Materialnoprawna regulacja przepadku w polskim prawie karnym*, Kraków 2005.

Górniok, Oktawia et. al., ed. *Kodeks karny. Komentarz*, Gdańsk 2004.

Bafia, Jerzy, Mioduski, K., Siewierski, Mieczysław. *Kodeks karny. Komentarz*, Warszawa 1971.

Filar, Marian, ed. *Kodeks karny. Komentarz*, Warszawa 2016.

Melezini, Mirosława ed. *System prawa karnego*, vol. 6: *Kary i inne środki reakcji prawnokarnej*, Warszawa 2016.

Zawłocki, Robert, ed. *System prawa karnego*, vol. 9: *Przestępstwa przeciwko mieniu i gospodarcze*, Warszawa 2015.

Stefański, Ryszard, ed. *Kodeks karny. Komentarz*, Warszawa 2018.

Skorupka, Jerzy. *Przestępstwa przeciwko obrotowi pieniędzmi i papierami wartościowymi. Rozdział XXXVII Kodeksu karnego. Komentarz*, Warszawa 2002.

Spotowski, Andrzej. "Konfiskata mienia i przepadek rzeczy (uwagi de lege ferenda)." *Prokuratura i Prawo* 3 (1989).Andrejew, Igor and Witold Świda, Władysław Wolter, *Kodeks karny z komentarzem*, Warszawa 1973.Waszczyński, Jan. "Kary dodatkowe w nowym kodeksie karnym." *Prokuratura i Prawo* 10 (1969). Wiatrowski, Piotr. *Dyrektywy wykładni prawa karnego materialnego w judykaturze Sądu Najwyższego* 2013.