

A perpetrator committing a crime is subject to criminal liability. The prosecutor who has a credible information about a crime – instigates the investigation and if he decides that the evidence is solid – files an indictment or a notion to undergo penalty without a trial. The court based on the indictment or a notion tries the perpetrator and imposes penalty adequate to the gravity of the offence, the perpetrator character and other circumstances of the case. This is how it usually is and probably as to the principle – should be. Contrary to some countries (Germany, USA or UK) our legal system has adopted the principle to prosecute every crime. Criminal statutes however provide some exceptions - immunities, crown witness status, proscription of punishability etc. Some of them only delay the prosecution in time when others due to its lapse demand ending of the case once and for all. But there is a specific group of cases where the perpetrator in fact commits a prohibited act but post-factum undertakes some actions leading to reversing, preventing or restituting the negative consequences of his act. He withdraws from an organized criminal group, releases a hostage, renounces the criminal conduct in progress or redresses the damage. If he does that voluntarily – the statute states that he “is not subject to penalty”. What does it mean? An obligation of the law enforcement and the court not to investigate at all or to discontinue the ongoing trial. No completed trial. No conviction. Is this a usual aftermath? No. The cases of impunity do not apply to every crime. Some have general application (renouncement from attempt) but some concern only a single crime (e.g. redressing the damage by the CEO who has previously not fulfilled his duties). So what happens in other, similar cases? When the thief returns a stolen item or the person who damaged a property – fixes it – the court may only mitigate the penalty or renounce from its imposition. But the individual is still convicted. Moreover after the 1st of July 2015 in the above cases the court is able to discontinue the proceedings if the perpetrator reconciles with the victim.

This short indication of consequences of the perpetration must raise some questions about the reasons of such different statutory description of ways of action of the law enforcement and the administration of justice. Why in some cases of damage redress one is granted impunity and in others (overwhelming majority) is not? Is there any theoretical, axiological and constitutional model/pattern of demanded procedure which clearly states which cases should provide the perpetrator with impunity and which grant him only the possibility of lenient penalty? After the 1st of July 2015 when some new provisions were introduced (allowing to discontinue proceedings if in cases of lesser gravity victim reconciles with the perpetrator or the notion to undergo without a trial for a crime with upper limit of 5 years of deprivation of liberty) a lack of coherence may be raised. Apart from the above examples with damage redress, the lawmaker differentiates the cooperation with the law enforcement. If a person after giving a bribe provides the law enforcement with all relevant information before they got them in another way – he is granted impunity, but if the same amount of information is delivered by an individual who has participated in a battery – the court may only suspend the enforcement of the penalty or mitigate it. Is such a differentiation justified?

In the Polish criminal doctrine there is no comprehensive analysis containing even a try to provide a coherent axiological core and constitutional limits of the statutory decision of granting impunity due to the post factum behavior of the perpetrator. No coherent model has been suggested. Only some ad hoc analysis are present. There is also no analysis in the constitutional and comparative perspectives. Impunity in particular cases is justified only by pragmatism or more or less well diagnosed criminal policy.