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The crime of electoral corruption (Art. 250a of The Penal Code)

Summary of the doctoral dissertation

This work has been devoted to one of the most characteristic crimes against elections and referendums - electoral corruption (Art. 250a of the Penal Code). The indicated prohibited act was not provided for in the original version of the Penal Code of 6 June 1997 and in Polish normative system, it occurred when the amending act of 13 June 2003, called "anti-corruption amendment", was implemented. As a result of the indicated legislative procedure, elections and referendums, along with business trading and sport competition, have become another areas of social relationships, next to the public sphere, in relation to which the legislator decided to criminalise the phenomenon of corruption.

In this work, an interpretation of Art. 250a of the Penal Code will be made, and its purpose is to set the boundaries of criminalisation of electoral corruption in Polish criminal law. The decisions made within this range will allow to obtain an answer to the question - is the normative structure of this crime proper and is it, in its form, an effective instrument in the fight against the corruption within elections and referendums? The manner of conducting legislative operations and of working on the anti-corruption amendment of 13 June 2003 and the decisions made on the basis of this manner predestines to formulate such questions. It should be noted that the legislator, by reinstating the crime of electoral corruption to criminal codification, resigned from some significant solutions determining its normative form in the Penal Code of 1932. The legislator resigned from, among others, the penalisation of actions of assuring financial profits or personal gains for voting in a specified manner, separate typification of the crime of payable electoral proxying or the criminalisation of behaviours related to the participation in voting itself or to preventing the participation in voting. In this place, it was decided to introduce the act of a lesser significance (Art. 250a§3 of the Penal Code), as well as the institution breaking the solidarity of perpetrators of those crimes (Art. 250a§4 of the Penal Code). It should be noted that the differences occurring in this background are largely the result of conscious decisions of the creators of this Act. During legislative works on Art. 250a of the

Penal Code, it was also ceased to confront criminal law regulations created in such a way with material provisions of electoral and referendum law.

The applied research hypothesis allows to distinguish the following research problems (questions):

- what categories of elections and referendums are subject to criminal law protection on the basis of provisions of chapter 31 of the Penal Code of 6 June 1997?
- is the resignation from the criminalisation of acts such as giving, getting and demanding profits for participation in voting or preventing participation in voting a solution appropriate from the viewpoint of criminal law protection of elections and referendums?
- is the abandonment of penalisation of giving, getting and demanding the assurance of financial profit or personal gain for voting in a specified manner substantively reasonable and has it an influence on criminal law protection of elections and referendums?
- is the decision about the introduction of the act of a lesser significance in the case of electoral corruption (Art. 250a§3 of the Penal Code) reasonable and are there any grounds for isolating the aggravated type(s) of the crime of electoral corruption crime?
- does the size of the assumed criminal threat allow to use appropriate repressive punishment measures, and is the criminal sanction proportional to social noxiousness of behaviours penalised on the basis of Art. 250a§1-2 of the Penal Code?
- has the institution breaking the solidarity of perpetrators of electoral corruption (Art. 250a§4 of the Penal Code) been formed in a proper manner and is it, in its form, an effective instrument in the fight against the corruption within elections and referendums?
- with what criminal provisions will Art. 250a§1-3 of the Penal Code be concurrent, and with what prohibited acts will the crimes defined in these provisions be in practice most frequently concurrent?

The basic research technique applicable to this work is legal dogmatics analysis of the provision (specified also as formal-dogmatic method). In the conducted research, a historical-legal and comparative legal methods were also used in a limited scope. The first technique was applied on the ground of considerations devoted to the genesis of electoral corruption and the evolution of criminalisation of this phenomenon in the Polish criminal law. The comparative legal method was used in confrontation of signs of electoral corruption with the types of this crime occurring in the Penal Code of 1932, as well as with other corruption actions occurring both in the penal codification of 6 June 1997 and in the Penal Codes of 1932 and 1969. This method was also used in the confrontation of criminal regulations related to electoral corruption with the current provisions of electoral and referendum law.

The considerations included in this work also contain the works of the doctrine and judicature constituted both under the Penal Code of 6 June 1997, as well as on the basis of previous codifications - the Penal Code of 1932 and (in limited scope) the Penal Code of 19 April 1969. It should be noted that the features of crimes defined in Art. 250a§1-2 of the Penal Code have been structured in a similar manner, using the same expressions (mostly within the range of criminal proceeds or actions performed). In the process of analysis of statutory features of crime defined in Art. 250a of the Penal Code, there were also references to other corruption acts located in the Penal Code of 6 June of 1997 - both those introduced by the anti-corruption amendment of 13 June 2003, as well as crimes located in criminal act effective before this normative act was implemented.

This work fills quite a significant gap that was created in Polish criminal law literature in the field of crimes against elections and referendums. It should be noted that no scientific publication fully devoted to only one prohibited act from chapter 31 of the Penal Code of 6 June 1997 has been written so far, and any statements of the representatives of the doctrine of criminal law within this scope have been in the form of articles of exiguous nature. Little interest that is paid to the subject matter in the literature of criminal law is disproportional to the role that the elections and referendums play in the Polish structural practice, where they are the main instruments of governing on the state level and on the level of local self-government. It is also worth noting that electoral corruption (Art. 250a of the Penal Code) is currently one of the few corruption crimes occurring in the Polish criminal law that has not got a monographic work so far.

This dissertation will consist of 9 chapters preceded by introduction and closed by conclusion including *de lege lata* comments and *de lege ferenda* postulates. Chapter I ("The genesis of electoral corruption and the beginnings of its criminalisation") includes issues related to the formation of the phenomenon of corruption within the first electoral procedures and the methods of fighting this phenomenon within the criminal law field. Including this matter in the scope of research on the issues related to the crime of electoral corruption in the Polish criminal law will allow to present the genesis of electoral corruption, the approach of the legislator towards this phenomenon, as well as the methods of criminal law reaction to this phenomenon. Chapter II ("The evolution of criminalisation of electoral corruption in the Polish criminal law") includes considerations devoted to the evolution of criminal regulations related to electoral corruption from the moment of the creation of the Polish state to modern times. The next chapter of the work (III) called "Elections and referendums as subject of criminal law protection" accumulates research related to the issues connected with the protection of elections and

referendums in the Polish criminal law. Within its scope, it was attempted to solve the problems of interpretation occurring within the notion of "elections", as well as the features of elections and referendums that are subject of criminal law protection in the Polish law system. Chapter IV, "Objective side of the crime of electoral corruption" includes the analysis of the most important notions connected with normative structure of electoral corruption in the current Penal Code of 6 June 1997. In this respect, criminal proceeds and the notion of "voting in a specified manner" will be the subject of more detailed analysis. Considerations located in this part of the work also include characteristic features of interpretation problems that occur in this background. Chapter V includes considerations related to the subject and the subjective side of the crime of electoral corruption. The next chapter (VI) called "Generic varieties of the crime of electoral corruption" is devoted to the institution of the act of a lesser significance from Art. 250a§3 of the Penal Code and to the considerations about the legitimacy of normative isolation of the aggravated types of electoral corruption. Chapter VII focuses on the issues connected with the measure of penalty for the crime of electoral corruption. The next chapter, VIII, includes the analysis of a clause defined in Art. 250a§4 of the Penal Code, which provides for the possibility to use extraordinary mitigation of punishment or the possibility to renounce from inflicting a punishment upon the perpetrator of electoral venality (in basic type and in the act of a lesser significance) who had notified law enforcement authorities about the fact of crime and the circumstances of committing it before this law enforcement authority learnt about it. Chapter IX of the work addresses the issues of concurrence of provisions in the case of electoral corruption. A key role in the context of the conducted study will be played by criminal regulations located in the Electoral Code and in the current acts on referendums.