ABSTRACT / SUMMARY

In case if one deed fulfils the features of a few forbidden deeds, we face a so called concurrence of offences. When such a created concurrence cannot be eliminated by means of reduction mechanisms, elaborated on in the theory of law (that are called exclusion rules, like principles of specialization, consumption, subsidiarity) then the following can be applied:
a)cumulative concurrence of law provisions, characteristic of contemporary Polish criminal legislation
b)eliminative concurrence of law provisions, appearing in the penal code from 1932, and finally:
c)ideal concurrence of law provisions, characteristic of Polish fiscal penal legislation

The subject of herein PhD thesis is the latter of the above mentioned concurrences, i.e. ideal concurrence of prohibited acts of fiscal penal legislation. In spite of the fact that this construction has been operating in Polish fiscal penal legislation since 02.08.1926 (it was introduced within the first legislation in free Poland, which took place in 1918) the growing interest in it has been observed since 1989, when political transformation in Poland began. An increase in crime against the fiscal interests of the state as well as other public law subjects frequently led to a conclusion that protection of these goods is not sufficient owing to the fact that penal legal sanctions are too moderate. The solutions of this problem were connected with applying the ideal concurrence of prohibited acts (described in fiscal penal code, article 8, paragraph 1). Such attitude was claimed by Supreme Court, stated in the 24.01.2013 act, according to which the rules for excluding multiple ratings (i.e. specialization, consumption and subsidiarity) are to be applied only in case of ideal concurrence of law provisions whereas they are not applicable in case of ideal of law provision, mentioned in fiscal penal code, article 8, paragraph 1, i.e. the event of concurrence of fiscal penal statute along with another penal act. Position of Supreme Court make it possible to apply extensively the provisions of a penal code special part towards the actions that until now were remaining within the specter of the fiscal penal legislation.

The dissertation includes an introduction, four chapters and a conclusion. In this work there was used the vast number of judicial decisions produced by Supreme Court, courts of appeal, Constitutional Court, European Court of Human Rights in Strasbourg and Court of Justice of the European Union. The bibliography consists of over 350 items. The scientific method adopted in the work is based on linguistic – logical interpretation of legal provisions.

In the introduction, four hypotheses were accepted. A critical analysis of these hypotheses has led to the following conclusions:

Firstly, the was critically assessed that fiscal responsibility was not entirely homogeneous in relation to the penal code based responsibility. Numerous functions of general criminal law and penal fiscal law were pointed out to have the same identity, where the latter is doubtlessly specialized field of repressive law. In addition, there are identical rules of bearing penal and penal fiscal responsibility that are based on identical foundations, e.g. material definition of a criminal offence and fiscal criminal offence, individual quilt, identical demand regarding penalization change and depenalization, identical age of penal responsibility and fiscal penal responsibility, alike circumstances barring penal and fiscal penal responsibilities, twin general directives of judicial sentencing.

The dissertation also refers to the criteria elaborated in Constitutional Court and Court of Justice of the European Union judicial decisions. Their adoption allows to, in the author's opinion, doubtlessly credit the penal fiscal law to the repressive law, which consequently implies the necessity of implementation within a proceeding based on penal fiscal responsibility all the guarantee functions connected with repressive responsibility that results from either Polish

constitutional regulations or the act of international law.

In the further course of study, the author assesses thoroughly the opinions (appearing in related literature) that criticized necessity of holding in the Polish judicial system a separate legal act, which is supposed to protect the state fiscal interests along with the remaining public tribute beneficiaries. It was pointed out that there is a shortage of convincing scientific arguments able to find their legitimacy either in the theory of law or in the policy of combating criminality that would justify their different view in a satisfying way. The separate fiscal penal regulation seems to be a definitely better solution and such a tradition ought to be kept. An outstanding Polish expert in the field of penal law, Juliusz Makarewicz emphasized strongly that the penal law needs to be an expression of the sovereign will of the state and its society, should an autonomic and a true representation of tradition in society – instead of uncritical duplication of foreign solutions. Since regaining independence by Poland in 1918, penal responsibility for deeds harmful to state fiscal interest and public tribute beneficiaries was placed in seven consecutive acts separate from criminal law, which appears itself to be quite a long legislative tradition having its own value and usefulness. In other words, it is unacceptable to approve (without convincing arguments) views denying the validity of keeping a separate legal act – within the Polish judicial system – that performs penalization and forms the rules of penal fiscal responsibility for criminal deeds and offences violating financial interests of subjects mentioned in this act in detail.

In the dissertation, the author also supports the argument that construction included in regulation of fiscal penal code, article 8, paragraph 1 – is in fact a construction of regulation concurrence and therefore the exclusion rules (specialization, subsidiarity, accumulation) can be applied to it. Contrary to the thesis exclaimed by Supreme Court (act from 24.01.2013), this dissertation justifies the opinion that elaborated on in the theory of law exclusion rules can be used on the foreground of construction of the ideal concurrence of prohibited acts (fiscal penal code, article 8, paragraph 1). This leads to a conclusion that we can acknowledge the ideal concurrence exclusively in case of real concurrence fiscal penal code and another act, instead of virtual (negligible) concurrence.

Another topic to be touched upon is an existing, real danger of violation of the constitutional and conventional principle ***ne bis in idem*** in case of sequential or parallel proceeding in the field of fiscal penal responsibility and responsibility for a criminal offence and/or universal offence. The judicial decisions of Constitutional Court was discussed along with those of European Court of Human Rights.
Their analysis led to a conclusion that even reduction mechanisms, mentioned in fiscal penal code, article 8, paragraph 2 and 3, along with fiscal penal code, article 181, which order to perform only the most severe penalties, do not do secure sufficiently the above mentioned principle that has after all outstandingly warranty character. The line of jurisprudence which has already been consolidated by European Court of Human Rights. Its beginning was marked by the 10.02.2009 sentence (case: *Zalotukhin* against Russia) and it indicates that to evaluate if the law was broken – forbidding proceeding that concerns the same deed – the factual identity is relevant, not the normative one. Taking the Strasbourg judicial decisions into consideration, the view may be expressed that there exists a noticeable contradiction of regulations of fiscal penal code, article 8, paragraph 1 with the prohibition described in European Convention of Human Rights, article 4, part of a section 1, protocol no 7.

The analysis conducted in the dissertation leads to a conclusion (according to the author as well) that this construction inspires significant doubt and difficulties of interpretative character. In addition, it leads to discrepancies in the practice of its use. The question arises if it is necessary to maintain the ideal concurrence of prohibited acts within the Polish system of fiscal penal law. The author's standpoint is that contemporarily there is a lack of convincing axiologically as well as criminalally right reasons , which would support the need to maintain the structure that has its

normative authority within the regulation of fiscal penal law code, article 8, paragraph 1. On the other hand, the systemic reason in vertical terms – forcing the law order to be kept in cohesion status (within the system: statutory provisions – constitution provisions and international provisions) literally orders derogation of this construction from Polish fiscal penal law system.

Maintaining the construction of ideal concurrence of prohibited acts within the fiscal penal law system would have its justification only if for both prohibited acts remaininig in ideal concurrence there were two items of punishment, sentenced and conducted. But in situation when reduction mechanisms within the area of punishment conducting modify it in the direction of complete absorption, the practical and theoretical sense of this institution is denied. It generates needless cost – taking into consideration the constitution duty of protectiing financial interests of state (which is particularly emphasized by Constitutional Court) – which may be of crucial importance in the disscussion about further keeping the standard costruction of fiscal penal code, article 8, paragraph 1.

It has already been noticed that related literature stresses out the fact that there are numerous arguments supporting supremacy of cumulative qualification over the ideal and eliminative concurrence construction. The author supports the view that it is highly advisable to replace the current regulation (fiscal penal code, articles 7 & 8) with the uniform cumulative concurrence of the act regulations, which will completely reflect all criminal illegality of the deed. In addition, will be devoid of doubt of a constitutional and conventional nature, which are tied with possible collision of ideal concurrence with warranty principle ***ne bis in idem.***