

The preventive function of non-custodial preventive measures

SUMMARY

The subject of the doctoral dissertation is the issue of the preventive function of non-custodial preventive measures, understood as preventing the accused (suspect) from committing further crimes. The research problem posed in the work is to analyze the model of non-custodial preventive measures from the perspective of statutory goals and premises for their use as issues focusing on the preventive function of the title coercive measures. The result of the analyzes carried out is the identification of inconsistencies in the objectives and premises for the application of preventive measures specified in Art. 249 § 1 CCP and Art. 258 § 3 CCP, which inconsistency results from their common definition both for non-custodial preventive measures and for pre-trial detention. In the author's opinion, this solution does not correspond to the essence of individual non-custodial preventive measures as instruments intended to realize their potential primarily (and not exceptionally, as the Act stipulates) by preventing the accused from committing another crime. Taking into account the lower degree of interference in the rights and obligations of the accused, which is associated with the use of non-custodial preventive measures in comparison to pre-trial detention, it is necessary to separate, at the *de lege lata* level, the premise related to the fear of committing a new, serious crime against life, health and general security, a preventive ground for the application of non-custodial preventive measures, which would not be limited to the most serious crimes and not only to a situation in which the accused was charged with a crime or an intentional misdemeanor, but also a misdemeanor committed without intention, and as a result of failure to exercise the caution required in the circumstances. The dissertation also deals with issues directly related to the title issue, such as directives on the application of non-custodial preventive measures, access to case files in the event of their application, authorities adjudicating these measures and the time of their application, the appealability of decisions in their subject matter, as well as compensation for their unjust use as elements of the model of non-custodial preventive measures necessary to ensure procedural guarantees of the accused in view of the postulated extension of the possibility of adjudicating non-custodial preventive measures and the introduction of uniform mechanisms to ensure the effectiveness of these coercive measures.

The doctoral dissertation has been divided into five chapters. The first of them was devoted to introductory issues, aimed at introducing further argumentation by defining preventive measures, outlining the origins of these coercive measures, discussing their systematics and relation to administrative and civil law instruments performing similar or identical functions. The second chapter discusses the objectives and functions of non-custodial preventive measures. The emphasis is placed on the issue of introducing restrictions on the preventive function of the title coercive measures by identifying it with the preventive function of pre-trial detention. The third chapter deals with the issue of prerequisites for the use of non-custodial preventive measures. It refers to the inadequacy of the dichotomous division into general and specific grounds known to the doctrine in the context of non-custodial preventive measures. This chapter also includes considerations on the possibility of extending the prerequisite for the use of procedural coercion measures, corresponding to the preventive function, also to situations in which the accused was accused of committing an unintentional offence. The fourth chapter is devoted to the issues that make up the standard guaranteeing the accused the protection of his rights and freedoms in connection with the use of non-custodial preventive measures, which appears to be particularly important in the context of the formulated postulate to change the wording of Art. 249 § 1 CCP and Art. 258 CCP. This chapter also includes the production of quantitative statistics on the use of non-custodial preventive measures. In the last, fifth chapter, the regulations of international and European law on non-libertarian preventive measures are discussed, referring at the same time to the jurisprudence of the European Court of Human Rights. This part of the work also refers to the issue of the Community instrument of cooperation, which is regulated in chapters 65c and 65d of the Code of Criminal Procedure. In the context of the application of non-custodial preventive measures, selected issues related to EU regulations on access to a lawyer were also discussed.

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