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Functions of administrative financial penalties regulated in energy law – an analysis of their importance in the axiological and financial-law context

Funkcje administracyjnych kar pieniężnych uregulowanych w prawie energetycznym – analiza ich znaczenia w ujęciu aksjologicznym i finansowoprawnym

Abstract

Directions of interpretation of sanctions-involving provisions in the energy law should be outlined by axiology. It is the main assumption of this paper and has had a significant impact on the analysis intended to identify functions of financial penalties in the Polish legal order and to determine their meaning and definition. The conclusions indicate that financial penalties are a tool for disciplining energy market participants, i.e. they have a preventive (in general and individual terms) as well as repressive function, whereby their fiscal function cannot be of primary (dominant) importance. Proceeds of tort cannot constitute a significant source of financing for public tasks, as this would be contrary to the axiological foundations of the laws in which they are regulated. The research methodology used has limited the scope of the analysis to the recognition of fines from the perspective of administrative and financial law. The research methods involve investigation of the law in force and an analytical study. Comparative research is only used as a complementary tool, i.e., German and French law measures are only referred to as an auxiliary instrument. The article uses selected acts of universal law, relevant literature, decisions of courts and tribunals and also data published by the President of the Energy Regulatory Office.

Keywords: energy law, administrative financial penalties and its functions

Streszczenie

Aksjologia powinna wyznaczać kierunki interpretacji przepisów sankcyjnych w regulacjach energetycznych. Jest to główne założenie niniejszego artykułu, które wpływało istotnie na analizy zmierzające do wyodrębnienia funkcji kar pieniężnych w polskim porządku prawnym, ustalenia ich znaczenia i definicji. We wnioskach wskazano, że kary pieniężne są narzędziem dyscyplinowania uczestników rynku energetycznego, tj. oddziałują prewencyjnie (w wymiarze ogólnym i indywidualnym), jak i represyjnie, wobec czego funkcja fiskalna tych kar nie może mieć podstawowego (dominującego) znaczenia. Dochody z czynów niedozwolonych nie mogą stanowić istotnego źródła finansowania zadań publicznych, gdyż byłoby to sprzeczne z aksjologicznymi podstawami ustaw, w których zostały uregulowane. W metodyce prowadzonych badań ograniczono zakres analiz do ujęcia kar pieniężnych z perspektywy prawa administracyjnego i finansowego. W badaniach stosowano metodę dogmatycznoprawną i analityczną. Badania porównawcze miały charakter uzupełniający, tzn. do rozwiązań prawa niemieckiego i francuskiego w tym zakresie odwoływano się jedynie pomocniczo. W artykule wykorzystano wybrane akty prawa powszechnego, literaturę przedmiotu, orzecznictwo sądów i trybunałów, a także dane opublikowane przez Prezesa Urzędu Regulacji Energetyki.

Słowa kluczowe: prawo energetyczne, administracyjne kary pieniężne i ich funkcje

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Introduction

In this research I look at the subject matter in question from the point of view of law (administrative, economic and financial) and axiology of law. My investigations present the significance (goal) and functions that should be played by financial penalties, which are not criminal penalties imposed by courts (fines) but administrative financial penalties imposed by public administration bodies. These functions are assigned corresponding objectives, tasks and results. They may be examined from the point of view various criteria, that is the direction of the law, its kind and how it affects individuals. The functions of public finance include tasks they are intended to exercise in modelling social relations (Kosikowski, 2013). The role of financial penalties should not be based mainly on their fiscal meaning. The underlying premise of such penalties is their preventive and repressive function towards offenders. While financial penalties do have an economic dimension, the state should never make them an essential source of budget or other revenues. Doing so would be contrary to the axiological basis of introducing such penalties. They are not public levies like taxes (which mainly play a fiscal function). Poland's example points to their growing fiscal importance, which is a worrying trend, especially that these penalties are imposed by public authorities, not courts. The literature lacks in-depth research in this regard, which has inspired me to initiate such in this study. Financial penalties are legal measures that feature in various European legal orders. Their functions are exercised with different intensity and their occurrence depends on general social, economic and political determinants in a given country. In connection to the growing importance of energy law in the Polish law, financial penalties have also been successfully used in this area. Scholars and commentators formulate basic functions of financial penalties in different ways, which is most often down to a very broad application of these sanctions and specific characteristics of the relevant branch of law, which in itself is internally diversified. The values protected by these penalties can be looked at in several different ways. Their importance may be associated with the value of universal goods, experiences, aspirations, things or capital, some of which are measurable while others are not (Żukowska, 2016; Herman, 2015, pp. 19–37).

After reviewing the relevant literature, at least a few approaches to researching financial penalties emerge. Penalties *in genere* are an area of in-depth investigations, not only in legal science (Polinsky & Shavell, 2000, pp. 223–237) (a penalty should be fair), but also in economic science (a penalty that has a monetary dimension should be adequately severe and deterrent – Polinsky & Shavell, 2000, pp. 223–237) and sociological science (a penalty should serve to educate the offender and to ensure a social sense of justice – Engelen et al., 2016, pp. 247–262). Studies that focus on the normative approach to financial penalties are often combined, quite rightly, with an economic analysis. Values are encoded in

legal norms, but the assessment of adequacy and usefulness of these regulations would often not be possible without using research methods that are typical to economic science. This happens especially in the case of financial sanctions, whose pecuniary character facilitates research to determine the correct correlation between justice and severity (penalising certain behaviours). We may conclude that such an interdisciplinary approach serves to maintain a balance between deterrence and fairness considerations (Polinsky & Shavell, 2007, pp. 403–454; Sunstein et al., 2000), though legal writers note that: “The deterrence hypothesis and its logical extension – the market model – rely on the marginal efficacy of both positive and negative incentives and on the interaction between market demand and supply forces, to explain the observed variability in the frequency of offenses across space and time. The empirical evidence is consistent with the hypothesis that punishment and other general incentives exert a deterrent effect on offenders. This suggests, for example, that there is no need to rely exclusively on harsh or incapacitating sanctions to achieve efficient crime control” (Ehrlich, 1996, pp. 43–67). There are not many positions that would address the axiological basis of financial (non-criminal) penalties imposed by public administration bodies (regulatory basis) in energy law from the perspective of their functions and importance. Hence, research on this matter is very much necessary. Any manifestation of human activity (approached from the legal, economic, sociological and even philosophical point of view) should be assessed through the prism of values that certain measures are to serve.

This research aims to establish the axiological basis (values, objectives), which should be taken into account in the process of interpretation of penalty-involving provisions of energy law approached *in genere* and also to specify functions that administrative fines regulated therein play. If we take into account the legal (economic, financial) context, the economic dimension and the fiscal significance of the financial penalties analysed, we may pose interrelated research questions. To confirm or falsify the research hypothesis formulated before and to solve the research problems included in it, I rely on a belief that we need to protect values typical to energy law *in genere* at the stage of imposing financial penalties. This is why this research mostly takes into account their preventive, not fiscal or repressive, function. This research hypothesis is supported by the following questions that are designed to confirm or negate it: What are the main goals (values) protected in energy law regulations in the legal orders analysed? Do these goals legitimise a conclusion that the basic function of financial penalties in energy law should be their preventive role, or is it perhaps another function, e.g. repressive (disciplining) or fiscal? What is the importance of the fiscal function of financial penalties in energy law in the context of the amount of proceeds to the state budget from revenues from financial penalties imposed by the President of the Energy Regulatory Office (hereinafter: the President) in 2017–2023?

Administrative financial penalties – a look at Polish measures in the context of German and French regulations

The Polish legal order has seen a significant rise of regulations on administrative penalties. On many an occasion these are state revenues that are allocated for consumption (as part of a pro-social policy). We then witness an absurd situation where unlawful acts are used to create a source of state revenue that serves to cover public expenditure. What is more, the Polish legislator increasingly resigns from explaining the foundation of such regulations in reasoning to draft laws (or possibly draft laws that amend the main law). This is not an appropriate manoeuvre, especially from the point of view of citizens' trust in the state and the given law. In the Polish legal order (Act of 14 June 1960 Code of Administrative Proceedings,¹ hereinafter: CAP) an administrative financial penalty means a monetary sanction specified by statute and imposed by the public administration authority by way of a decision. This penalty is imposed as a result of an infringement of law consisting in failure to comply with an obligation or in a breach of a prohibition imposed on a natural person, a legal person or an organisation unit not having the status of a legal person (Article 189b CAP). Such a take on administrative penalties is especially important in energy law, given the values protected, types of market participants and the subject of regulation.

In the German legal order, the regulations of the Administrative Offences Act (*Gesetz über Ordnungswidrigkeiten* of 24 May 1968, BGBl. I p. 602, hereinafter: OWiG) are equally important. General principles specified in this statute also apply to sanctions employed in the German energy law. This act was a model for regulations adopted in other EU Member States, such as Italy, Portugal, and Romania (Paliero, 2013, pp. 1–35). Pursuant to § 1 OWiG, a regulatory offence shall be an unlawful and reprehensible act, set forth in the law (statute) that enables the act to be sanctioned by imposition of a regulatory fine (*Geldbuße*). Thus, OWiG stipulates economic sanctions that may be applied towards natural persons, legal persons or organizational units without legal personality (Brière, 2014, p. 25; Noak, 2012a, pp. 330–331). Therefore, the personal scope of this approach is similar to the one taken in the Polish legal order. What is more, like in Poland, the compulsory character of financial penalties and their position under public law result from the fact that OWiG refers to a legal situation in which one of the entities is superior, whereas the second (or more) is subordinate to it. German literature points out that a financial penalty as a legal consequence of an administrative (order-related) offence serves not only retaliatory (repressive) goals and to discipline the person who violates a standard under administrative law, but also preventive (educational) objectives in an individual as well as a general aspect, whereby the citizens' trust in the state increases (Noak, 2012b, p. 329). *Geldbuße* are commonly applied in German energy law. For example, under Article 86(1) of the German

Act on Granting Priority to Renewable Energy Sources (Renewable Energy Sources Act, original name: *Gesetz für den Vorrang Erneuerbarer Energien – Erneuerbare-Energien-Gesetz*),² illegal sale of electricity or gas is penalised.

The system of administrative liability and related sanctions is formulated differently in the French legal order, though it was an equally long process (Staniszewska, 2016). At that, a lack of codification relating to administrative sanctions is a significant difference between French and German solutions (Peters & Spapens, 2015, p. 127) which accommodate administrative fines regulated in various special laws (also referred to the energy sector). It may be noted that the dispersion of regulations that address administrative penalties among many legal acts (also in energy law) is common to the Polish and French legal system while the French legislation, additionally, also lacks a legal definition of an administrative penalty. According to views expressed in the established line of judicial decisions and in the French literature, this penalty, as one type of administrative sanctions, may be imposed unilaterally by administrative authorities on natural persons and institutions (Delmas-Marty & Teitgen-Colly, 1994, pp. 184–185; European Commission, 1994, p. 11) (i.a. legal persons) for unlawful behaviour (Van Daele, 2015, pp. 126–127). These sanctions come as a consequence of a specific violation of law (Frier & Petit, 2013, pp. 303–304). They are intended to have a repressive, preventive and restorative impact (Teitgen-Colly, 2017, p. 7; Conseil D'état, 2017, p. 4). At the same time, it is pointed out that since financial penalties are a frequently applied administrative sanction, then relevant regulations extensive (Szumiło-Kulczycka, 2004, pp. 31–32, 43). To sum up, the aim of this research is to establish whether the creation of conditions for sustainable development in the area of energy law equates to the goal that guides administrative financial penalties regulated in this law.

When reviewing general regulations of the Polish, German and French law, at least a few functions exercised by the financial penalties analysed may be identified, namely the preventive (educational, motivational), protective, repressive, regulatory and fiscal functions. Each of these legal orders – within the scope outlined in the title – differs from others (sometimes at the programme basis). This is not only down to social, economic or political factors, but also regime-related determinants and the legal culture established in a given country. This does not mean that we cannot look into German and French legal orders to search for elements that are also found in Polish measures. This also applies to economic and financial law in the part associated with energy law. The preventive function is one of the fundamental tasks financial penalties hold in the realm of energy law. It is this role that is crucial from the point of view of sanctions that feature in this law. Next to the preventive role, there is also the protective function, the repressive function, the regulatory function and the restorative function. It must be noted that repression, though not alien to the sanctions analysed, is the main

feature of fines – criminal punishments (sanctions under criminal law). They are imposed only on natural persons. Meanwhile, administrative fines (financial penalties issued by the President as a public authority that is not a court) may be ruled not only against natural persons, but also against legal persons and other organizational units. It must be borne in mind that that individual countries do not rule out the joining of solutions typical to administrative law and criminal law, which results in liability under penal administrative law, e.g. in Germany. Thus, acts regulated in OWiG are located between the public law and the criminal law *largissimo* (Osterloh, 2016, p. 22). Moving further in-depth in these conclusions, we must point out that determination of the essence of the preventive function required investigation of an axiological basis of the legislative acts analysed, in particular the definition of an administrative fine (example of Poland and Germany). Where there was no legal definition of these sanctions (example of France), we had to rely on results of an analysis of judicial decisions, views of legal scholars and commentators and decisions of regulatory authorities (public administration). Financial penalties (which are consistently separate from criminal fines) may be imposed for educational reasons in all analysed legal orders to a broad spectrum of entities without narrowing it down to natural persons only. At the same time, we must emphasize the need for a rational and balanced approach to the repressive function when determining the sums of financial penalties in energy law. Results of this research led to a conclusion that this sanction should indeed be a serious burden for the entity concerned (in other words, it needs to be effective and justified). However, at the same time, it cannot carry the risk of eliminating this entity from economic trading, which should be understood as its adequacy. From the point of view of energy law, this conclusion is especially important because a punishment should play its preventive function in such a way that it provides a clear and financially noticeable warning for the future that prevents reprehensible practices on the energy market. This is why an appropriate legislative level of laws that stipulate and regulate their application is so important.

Remedial sources of public revenues cannot constitute the main source of financing public tasks. Given the above, the fiscal function is only of secondary importance, though we cannot rule out that financial penalties play this role too. Such conclusions are inspired by findings relating to an axiological basis of all energy law statutes analysed as part of this research. From an axiological point of view, we must add that it would not be acceptable to make them sanctions-dependent incomes as the state's main source revenue. This would be ethically wrong. Administrative fines in energy law serve to educate and discipline entities of the energy market, that is to safeguard respect for the law and its underlying values.

In conclusion, the German and French legal systems are different to the Polish one and are modelled by different traditions (historical factors) and political, social and economic determinants. Each of these systems pictures the

essence of the financial penalties discussed, which is never based on their fiscal importance. Taking these legal orders into account means also that we can place the example of Poland between these two comparable legal orders. A legal definition of administrative financial penalties (Article 189b CAP) has been effective in Poland relatively recently only and may also be applied to energy law. Therefore, we may conclude that to some extent before this definition was introduced (and other important general regulations on e.g. premises of imposing these penalties) the Polish legal order had been closer to the French concept. Now, on the other hand, we may see clear approximation to German legal measures.

When taking into account the scope and methodology of the research, we need to emphasize that there are objective difficulties in specifying clearly the hierarchy of basic functions of financial penalties that occur in energy law, especially in the comparative perspective. It is not an easy task, also at the level of regulations of the energy law of a given country itself because these functions may depend, as has already been pointed out, on many factors. We need to bear in mind that functions of financial penalties may constitute, naturally and importantly, derivatives of functions of statutes that establish these sanctions (Wincenciak, 2008, pp. 255–256), which by default concern regulations of a limited scope. Individual penalties also differ, i.e., in their detailed objectives, scope of application, or intensity of functions. This is down to the individual features of detailed statutory solutions and values that these sanctions protect.

Functions of administrative financial penalties in energy law – results of a literature review

Modelling future behaviours of energy market participants is mainly associated with the financial penalties' preventive function (Bąkowski, 2017, p. 379). It corresponds with the educational role (creation of certain attitudes in addressees of legal norms or in other persons) (Mamczarek, 2019, art. 66, point 2)³ and the motivational role (which serves a timely and correct performance of obligations specified in laws). Prevention involves seeking to counteract unlawful acts, thus to ensure compliance with legal norms to protect public resources that are crucial for society (Nowicki, 2017, p. 642). There is general prevention and individual prevention in energy law. The next, preventive, role of financial penalties in energy law involves protection of interests in a material approach and also values (broadly understood public security, common good, or public order, etc.). Therefore, we are talking here about protection of those goods which from the point of view of the general public are especially important. The experience of the Polish jurisprudence shows that the regulatory function also has fundamental importance in energy law (Tarniowy, 2017, p. I.1). The role of financial penalties in this case is to "discipline" entities that have

specific obligations towards the state. This is intended to bring about their timely and due performance (Krasuski, 2005). The objective achieved in this case, where the regulatory office, that is the President, imposes a financial penalty is to shape human conduct so as to create and accept specific models of behaviour. This itself is axiologically significant. Despite a clearly administrative character of financial penalties in the Polish energy law, we cannot say that these sanctions do not also a repressive role too (typical mainly to criminal law). However, this may not be their only or dominant function. Due to the burden associated with these penalties, elimination of the repressive role from the catalogue of functions of administrative fines is not possible. What is more, we may agree that it is not necessary. This objective remains related to the preventive function and safeguards the performance of obligations under administrative law. This repression means that a behaviour reprehensible from the legal point of view entails specific substantive consequences (distress) in the sphere of rights of the entity penalised. Apart from the above, we may identify a restorative function of the financial penalties analysed, directly associated with the public interest. It entails compensating for the damage caused by the administrative offence (restoration of the status of compliance of reality with a legally desired status – Przybysz, 2011, p. 170). At that, we need to take into account the fact that the damage done by an unlawful act should be covered in full, though compensation should not exceed the size of the damage (Majka, 2011, p. 8). The financial (material) character of these penalties helps achieve these goals.

According to well-established views, a penalty should carry appropriate severity, certainty and celerity. These three key components, the so-called “3 Cs” of punishment, are the ingredients of the classical deterrence theory (Abramovaite et al., 2022, pp. 2–5). A financial penalty in energy law, like a criminal sanction in criminal law, should be adequately (proportionally) severe to a specific case. However, economic investigations carried out today show that the impact of a more severe punishment may not be unambiguous (Abramovaite et al., 2022). Therefore, conclusions put forward by A.M. Polinsky and S. Shavell still seem valid. They believe that: “Notably, if the fairness ideal is less than the conventional deterrence ideal, the optimal probability may be higher than would be called for on the basis of deterrence alone because the optimal sanction may be lower than would be desirable solely from the perspective of deterrence. These observations may help to explain what one often observes in public enforcement: sanctions that are quite low in relation to potential violators’ capacity to pay, and accompanying probabilities of detection that require substantial enforcement resources to maintain” (Polinsky & Shavell, 2000).

Referring the above to the issues analysed, it should be noted that this paper only discusses financial penalties imposed by the President and those that are imposed by courts. I do not discuss any other sanctions. We cannot overlook the fact that the financial (material) dimension

of the legal sanctions analysed was expressed directly in their name.

An analysis of the Polish, German and French legal orders as well as relevant literature, consistent with methodological assumptions, makes us accept that common values are universal in an international approach. By this we must understand that not only do they result from regulations of national legal orders, but that they are also based on EU laws (Tarczyńska-Luniewska et al., 2022, pp. 4–5) and ratified international agreements. They are also valid in many legal orders of non-European countries. It needs to be emphasized that the legislative activity of many European countries demonstrates a strive to create an effective, safe and sustainable energy system. This, in turn, is done mainly through intensification of promotion and actual use of renewable energy sources. For example, Germany has adopted the Renewable Energy Sources Act, whose § 1 points to the need to focus on sustainable development of energy supply, in particular in the interest of protection of climate and environment, on lowering economic costs of supply of energy, and on the development of technologies that promote production of electricity from renewable sources (e.g. increasing the share of electricity generated from renewable energy sources in gross energy consumption to 65% in 2030). An analysis of the Polish legal order also allows a formulation of legitimate pragmatic and universal goals on which the axiologically correct interpretation of provisions relating to the penalties analysed should be based. The purpose of action is founded on sustainable development, environmental protection, general security and strictly economic security (energy security or food security), freedom of establishment and competition protection (Szafranski, 2020, points 5–15; Reasoning to the government draft law on renewable energy sources, pp. 1, 4). These goals have been expressed in, for example, Article 1 of Energy Law. What is crucial, they correlate with goals specified in § 1 of the German act on electricity and gas supply – Energy Industry Act (Gesetz über die Elektrizitäts- und Gasversorgung, Energiewirtschaftsgesetz – EnWG) or Article L100-1A and L100-1 French energy code (Code de l’énergie). For objective reasons, other goals have also been taken into account in laws of individual countries. For example, it was pointed out that the French energy policy should take into account values such as human health, and moreover, it should be based on a drive to support innovation or encourage the creation of the European Energy Union.

The President of the Energy Regulatory Office as a public administration body imposing an administrative financial penalty

One of the factors that affected the intensity with which financial penalties achieved individual functions in energy law is the status of a public administration authority and its place in the legal system. These functions go hand in

hand with the regulatory authority's constant influence on community life (Wróblewski, 1926, pp. 19–20). However, some scholars and commentators associate it with, for example, the way this sanction meets the objective of protection of society against unlawful acts (Piłowski, 1968, pp. 19, 31). In Poland, the President is the authority that imposes energy law-related administrative penalties. The President is a central government authority established to carry out tasks related to the regulation of fuel and energy management and competition promotion. The Energy Law of 10 April 1997 (hereinafter: EnL)⁴ is the most important act in stipulating rights and obligations of the President. Nevertheless, many other obligations of the President have also been specified in EU regulations applied directly without having to be incorporated into the national legal order. The responsibilities of this regulatory authority are evolving towards the division, specified in EU law, of rights and obligations between security, market development and sustainable development. It follows from, *i.a.*, progressing development of competition on the energy and gas market. This is done by monitoring the functioning of regulated sectors and supporting essential aspects of their development (e.g. ensuring security of electricity supply to end users, reviews and reporting resulting from, among other things, the obligation of exercising international cooperation). The President is also equipped with typical control-related rights. They involve imposing financial penalties under the terms specified in the statute, which is normatively reflected in Article 23 EnL.

A financial penalty issued by the President should ensure respect for a given law and its effective implementation by motivating addressees of legal norms to present legislative attitudes.⁵ When imposing a penalty, the President should be guided by a strive to ensure energy security and development of competition; he should take into account requirements of environmental protection, obligations resulting from international agreements and the need to balance the interests of energy companies and recipients of fuels and energy.

It needs to be said that the President's responsibilities involve imposing financial penalties in energy law, *i.a.* on the basis of EnL, the Act of 20 May 2016 on energy efficiency (hereinafter EnEf),⁶ the Act of 20 February 2015 on renewable energy sources (hereinafter: RES Law),⁷ the Act of 14 December 2018 on promoting electricity from high-efficiency cogeneration⁸ and the Act of 16 February 2007 on oil stocks, stocks of other petroleum products and gas stocks and procedure in situations of a threat to fuel security of the state and disruptions on the oil market.⁹

We must add, that in the majority of cases the President may decide about the amount of the penalty. These penalties may be executed in a mixed fashion (in this case it may impact the intensity of individual functions as it imposes the penalty in the top or bottom threshold amount) and an unambiguous fashion (a rigid (specific) way of specifying the amount of a financial penalty) – in this case the legislator stipulates the amount in which the penalty is to be imposed. They are sometimes based on mathematical

formulas (e.g. Article 170(2) RES Law) specified by statute, while at other times they are amount thresholds (e.g. Article 56(2g) EnL), specific amounts expressed in PLN or percentage (e.g. Article 56(5) EnL).

An analysis of data published by the President and of selected regulations of the Polish energy law leads to interesting conclusions that are important from the point of view of the issues analysed. The financial dimension of these instruments, that is the fiscal function played by the financial penalties discussed, cannot be overlooked. It is necessary to refer here to statistical data of the Polish Energy Regulatory Office (hereinafter: URE) as proceeds from financial penalties are a source of state revenue. These observations ask for a closer analysis of the importance of the fiscal function of these sanctions and for a correlation of conclusions with an axiological basis of legal acts in which these penalties are regulated. Given the above, we must note the URE's plan of revenues and expenses at the end of several years:¹⁰

a) 2021 – stipulated incomes of PLN 130,800,000, which later in reality amounted to PLN 163,064,100 (that is 124.7% of the plan);

b) 2022 – stipulated incomes of PLN 144,700,000, which later in reality amounted to PLN 202,926,100 (that is 140.2% of the plan);

c) 2023 – stipulated incomes of PLN 178,000,000, which later in reality amounted to PLN 274,241,000 (that is 154.1% of the plan).

Expenses, on the other hand, were envisaged to come to PLN 59,335,000 in 2021, PLN 65,400,000 in 2022 and PLN 72,231,000 in 2023.¹¹ What is important, the 2021 proceeds from financial penalties amounted to 13.7% of URE's income.¹² It was an unprecedented and significant growth of the fiscal importance of these public funds. We need to bear in mind that until 2020 incomes achieved by URE came mainly from annual fees paid by energy companies which were granted licenses for operating a business activity involving generation, storage, transmission and distribution of energy and fuels and trading in them (Table 1). I conclude that this results from expanding the catalogue of financial penalties as a consequence of introduction of new obligations, from specifying lower thresholds of the financial penalty (Article 56 EnL) and further, from effective pursuance of these State Treasury's dues, or from the fact that the 2021 regulations introduced following the COVID-19 pandemic which allowed reinstatement of the deadline for making specific acts were not in effect.

When taking into account Polish legal measures one may conclude that energy law calls for loosely fixed (flexible) determination of amounts of administrative fines. This is mainly motivated by the need to exert a preventive impact on the entity penalized and to ensure its adequacy to the circumstances of a specific case. It is a frequently employed measure that takes the form of a penalty determined as a percentage of incomes of the entity penalized (e.g. Article 170(1) RES Law, Article 56(3) EnL, Article 40(1)(1) EnEf), according to a predefined formula (Article 170(2) RES Law, Article 40(1)(2) EnEf), or within

Table 1

URE's revenue in 2017–2023 broken down into concession fees, financial penalties and other

Year	Concession fees		Financial penalties		Other (in %)	Total (PLN)
	PLN	(in %)	PLN	(in %)		
2017	113,703,000	98.9	202,000	0.2	1.1	114,937,000
2018	113,685,000	98.7	376,000	0.3	1.3	115,229,000
2019	137,189,900	98.8	341,600	0.2	1.2	138,823,100
2020	150,051,100	98.0	721,100	0.5	2.0	153,168,300
2021	139,616,800	85.6	22,283,700	13.7	0.7	163,064,100
2022	175,111,500	86.3	20,412,900	10.1	2.6	202,926,100
2023	237,731,000	86.7	24,680,000*	9.9	2.4	274,241,000

*approximate data – author's own calculation due to lack of data in the 2023 report.

Source: author's own compilation on the basis of: The President of the Energy Regulatory Office, Reports on the activity of the President of the Energy Regulatory Office for 2017–2023; <https://www.ure.gov.pl/pl/urzad/informacje-ogolne/edukacja-i-komunikacja/publikacje/sprawozdania-z-dzialaln/2916,Sprawozdania-z-dzialalnosci-Prezesa-URE.html> (access: 15.04.2025).

a range (e.g. Article 56(2g) EnL). However, the Polish legislator does not always apply such a solution, which should be disapproved of (Article 170(4) and (7) RES Law). The regulatory authority should be allowed to adapt the amount of the financial penalty imposed to the needs of a specific case. From a systemic point of view, this should be considered advisable.

Conclusions

I used various research methods in this investigation which are relevant to the scope and objective of the analysis, and typical to the discipline of legal science, part of social sciences. These methods included investigation of the laws in force, supplemented by the comparative method and the analytical method. The latter involved statistical research, investigating documents and also an analysis and critical assessment of the body of relevant writings, judicial decisions and legislative acts. The analysis that lay at the basis of the research intended to establish the objective and function of administrative fines in energy law had to be based on statistical data. By doing so, I could present the pragmatic importance of these issues. The research uses data resulting mainly from reports on the activity of the President.

The issues discussed and the approach to them are crucial for addressees of laws in interpreting them. If elementary principles of imposing financial penalties in the realm of energy law are not to be violated, then the values that these laws are to serve must be expressly named. They outline the direction of interpretation of provisions of universal law. This is why we cannot focus on the fiscal meaning of these penalties. Their main role is to prevent (educate), to discipline (inform) and to realize concern,

in general and individually, about maintaining stability in the energy sector. The organ that imposes the penalty should moderate how distressing such a sanction is for the offender looking at the preventive, not financial (income-related), objective, from the point of view of public finance. Since it is a financial penalty, material suffering is inscribed in its essence. This essence, however, must not be contrary to the general objective of the law in which it is regulated, and thus it must be axiologically in line with the will of the legislator. As a consequence, goals that one must focus on in applying energy law and that one must include when imposing financial penalties regulated within it, make up the aspiration to create an effective, secure and sustainable energy system.

Therefore, regardless of the analysis criterion adopted, axiology should outline directions of development of the energy sector. An axiological value includes all that is valuable and desirable and what people strive to achieve. For objective reasons, not all values typical to legal science may be subject to a sociological or economic discussion, which is down to limitations such as their usefulness, rationality or profitability. Taking the above into account, it should be added that during the proceedings related to the imposition of financial penalties, the preventive (deterrent) nature of the financial penalty is often too strongly emphasized, considering that financial hardship they involve will achieve the objectives of this sanction. Here, however, certain doubts may arise as to the justification of such an approach. It is also necessary to take into account educational objectives and the fact that often the regulations are not sufficiently precise and stable. This dynamic may burden the punished entity with consequences, which raises doubts. It cannot be assumed that business entities will be able to quickly meet the challenges of new legal regulations. These circumstances should be taken into account in proceedings that stipulate imposition of a sanction.

Given that administrative financial penalties are not criminal fines, they should mostly play a preventive, protective and deterrent role. The fiscal function is only auxiliary. The amount of a financial penalty in energy law, given the goals identified above, should be first of all proportional and adequate to the offence and, second of all, materially severe to execute a preventive and repressive function and also to serve to ensure a social sense of justice since the principle of citizens' trust in the state and given law must be cultivated.

The fiscal function of financial penalties, even if it were an auxiliary function, is immanently associated with their essence. Proceeds to the budget are adequately modest and thus insignificant. Therefore, it is paramount that we look at it through the prism of its preventive impact on the offender.

In conclusion, this research indicates that the prime, as well as universal, objective in the legal aspect that lies at the axiological root of energy law *in genere* is to create conditions for sustainable development of a given country, to ensure energy security, to use fuels and energy economically and rationally, to develop competition, to take into consideration environmental protection requirements and

obligations under international agreements and to balance the interest of energy companies and energy and fuels users (Szafrński, 2014, pp. 215–217). The correct interpretation of provisions concerning financial penalties applied in energy law depends on how far these objectives are taken into account and understood. This is why we need to assume that regulations of individual legislative acts should be interpreted in a systemic connection with other legal acts. Values encoded in provisions of energy law result from general values typical to the democratic rule of law and cover a generally understood common interest, beauty and equality. We need to bear in mind that the goals referred to above should be taken into account when interpreting all provisions of energy law.

This is also confirmed by a statistical analysis based on the example of penalties imposed by the President in 2017–2023. It needs to be said here that the basic and dominant part of revenues of URE comes from proceeds from concession fees whereas financial penalties only reached 13.7% in 2021 and did not exceed 0.5% earlier. In 2022–2023, however, it fluctuated around 10%. This analysis confirms the recognition of proceeds from financial penalties as extraordinary.

Notes/Przypisy

¹ Journal of Laws of 2024, item 572.

² https://www.gesetze-im-internet.de/eeg_2014/ (access: 15.04.2025).

³ See also judgment of the Supreme Court of 27 October 2015, III SK 3/15, *Radca Prawny*, 2016, no 2, p. 191.

⁴ Journal of Laws of 2024, item 266 as amended.

⁵ Judgement of the Constitutional Tribunal of 5 January 2007, P 19/06, <https://sip.legalis.pl/document-full.seam?documentId=mrsvglrwguydsnjvhe2q> (access: 15.04.2025).

⁶ Journal of Laws of 2024, item 1041.

⁷ Journal of Laws of 2024, item 1361.

⁸ Journal of Laws of 2024, item 639.

⁹ Journal of Laws of 2024, item 1281.

¹⁰ Reports on the activity of the President of the Energy Regulatory Office for 2021–2023, <https://www.ure.gov.pl/pl/urząd/informacje-ogolne/edukacja-i-komunikacja/publikacje/sprawozdania-z-dzialaln/2916,Sprawozdania-z-dzialalnosci-Prezesa-URE.html> (access: 15.04.2025).

¹¹ *Ibidem*.

¹² Report on the activity of the President of the Energy Regulatory Office, 2021, April 2022, <https://www.ure.gov.pl/pl/urząd/informacje-ogolne/edukacja-i-komunikacja/publikacje/sprawozdania-z-dzialaln/2916,Sprawozdania-z-dzialalnosci-Prezesa-URE.html> (access: 15.04.2025).

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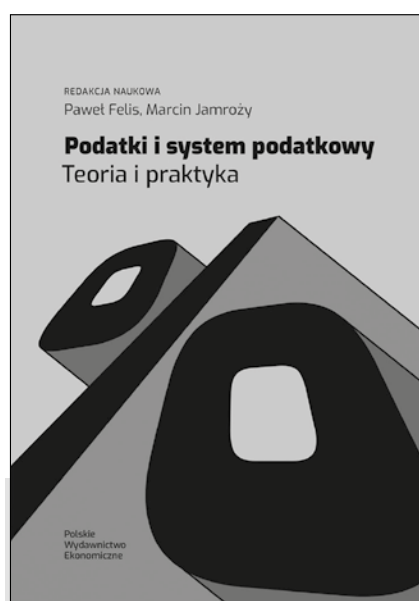
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Profesor uczelni, doktor habilitowany, zatrudniony na Wydziale Prawa i Administracji Uniwersytetu Szczecińskiego. Jego badania naukowe koncentrują się na obszarze prawa finansowego, ze szczególnym uwzględnieniem prawa finansów publicznych i prawa rynku finansowego. Autor kilkudziesięciu publikacji naukowych z tej dziedziny, w szczególności dotyczących odpowiedzialności za naruszenie dyscypliny finansów publicznych, poręczeń i gwarancji Skarbu Państwa oraz z państwowego długu publicznego i środków publicznych, jak również dostępności produktów i usług dla osób ze szczególnymi potrzebami.

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**REDAKCJA NAUKOWA
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PODATKI I SYSTEM PODATKOWY. TEORIA I PRAKTYKA

W ramach toczącej się od dłuższego czasu dyskusji na temat potrzeby przeprowadzenia reformy systemu podatkowego w Polsce szczególnie dużo miejsca poświęca się koniecznym zmianom w systemie podatków bezpośrednich (dochodowych i majątkowych). Obecny system podatkowy w Polsce jest przedmiotem

krytyki z różnych stron. Wśród jego wad wskazuje się niestabilność, duży fiskalizm oraz skomplikowaną konstrukcję większości podatków. Przedstawiciele nauki i praktyki są zgodni co do konieczności reformy systemu podatkowego w Polsce. Problemem jest, jak to zrobić, czyli według jakich teoretycznych podstaw, m.in. zasad racjonalizacji systemu podatkowego, wynikających z ogromnego dorobku teorii opodatkowania. Ponadto istotne jest uzyskanie akceptacji społecznej. Z większości badań wynika bowiem, że problematyka podatkowa jest odbierana przez społeczeństwo z dużą nieufnością oraz przekonaniem, iż nakładany na nie ciężar jest nieustannie powiększany.

Monografia dotyczy wyzwań podatkowych związanych z funkcjonowaniem (aspekt aktualny) i budową polskiego systemu podatkowego (aspekt przyszłościowy), ważnych z perspektywy teoretyków, jak również praktyków. Jej celem jest przedstawienie gospodarczych i społecznych skutków podatków w kontekście funkcjonujących systemów podatkowych i alternatywnych jego koncepcji. Ważne miejsce zajmują również rozważania dotyczące perspektyw rozwoju systemu podatkowego. Monografia ma za założenia charakter wielowątkowy, a realizacji tak postawionych celów podporządkowana jest logika układu treści.

Autorami monografii są praktycy i teoretycy prawa podatkowego. Reprezentują oni różne ośrodki naukowe i różne dyscypliny naukowe – ekonomię i finanse, nauki prawne, nauki o polityce i administracji. Taki dobór autorów gwarantuje nie tylko pogłębioną ocenę obecnych rozwiązań, różnorodność spojrzeń na różne aspekty systemu podatkowego, ale także oparcie propozycji zmian na podstawach naukowych oraz doświadczeniach zawodowych.

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