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FORFEITURE OF A MOTOR VEHICLE OR ITS EQUIVALENT: AN ANALYSIS OF THE NEW REGULATION OF THE PENAL CODE AND ITS IMPACT ON SAFETY

Crimes against safety in public transport constitute a serious problem and threat to social functioning. A failure to comply with the provisions of the Highway Code, especially excessive speeding, poses a serious threat to other road users, as well as to pedestrians who, as a result of drivers' carelessness, become victims of road accidents. However, drivers who decide to get behind the wheel after drinking alcohol pose a particularly serious threat. Therefore, legislation declares severe punishment for such actions. This paper is a response to the changes that came into force in the Polish legal system beginning March 14, 2024, which included extremely severe sanctions against people committing certain crimes against safety.

Keywords: safety in public transport, safety in land traffic, safety of road users, road accidents, vehicle forfeiture, Penal Code.

1. INTRODUCTION

The need to assess the introduced penal regulations is extremely important as the solutions themselves divide society into supporters and opponents of their implementation in the Act of June 6, 1997, Penal Code. On the one hand, tightening sanctions, among others, for drivers driving motor vehicles in land traffic while drunk or under the influence of an intoxicating substance is socially accepted and approved, on the other one, however, the sanction introduced by the Legislator is characterized by a certain injustice, and according to some experts speaking in public space, it may even violate the constitutional principle of proportionality in the judicial application of the law. It is undoubted that all the assessments and attempts to take sides in the dispute are purely hypothetical in nature since a clear answer to the question whether the change that is to become a permanent part of the Polish legal system from March 14, 2024 is good or not will be possible only after common courts start applying the provisions. It should also be noted that the provisions leave the court adjudicating in the case some discretion in certain matters, and also allow the court to waive the application of these sanctions in the event of *an exceptional case*

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justified by special circumstances. Certainly, this concept is vague and open, so only judicial practice will make it possible to complete this catalogue. The above inclusion is important as the authors would like to draw the reader's attention at the beginning that a categorical, unambiguous assessment of the introduced changes will only be possible after several years of application of the new regulations in practice by the adjudicating courts.

2. A COMPARATIVE ANALYSIS OF SELECTED PROVISIONS OF THE PENAL CODE AS AMENDED BY THE ACT OF JULY 7, 2022 AMENDING THE ACT – PENAL CODE AND CERTAIN OTHER ACTS

Pursuant to art. 1 point 14 of the Act of July 7, 2022 amending the Act – Penal Code and certain other acts, a new provision has been encoded in the legal norms of Art. 44b. This article is divided into four paragraphs and sets out the following principles:

§ 1. In the cases specified in the Act, the court orders the forfeiture of the motor vehicle driven by the perpetrator in land traffic.

§ 2. If the forfeiture of a motor vehicle due to its disposal, loss, destruction or significant damage is impossible or inappropriate, or if the vehicle was not the exclusive property of the perpetrator at the time of committing the crime, instead of forfeiture of the motor vehicle, the forfeiture of the equivalent value of the vehicle shall be ordered. The equivalent of a vehicle is the value of the vehicle specified in the insurance policy for the year in which the crime was committed, and in the absence of a policy – the average market value of the corresponding vehicle, taking into account the make, model, year of production, body type, type of drive and engine, capacity or power. engine and approximate mileage, to the vehicle driven by the perpetrator, determined on the basis of available data, without appointing an expert for this purpose.

§ 3. The forfeiture of a motor vehicle and the forfeiture of the equivalent of a vehicle specified in § 2 shall not be imposed if the perpetrator drove a motor vehicle that was not their property while performing professional or official activities involving driving a vehicle for the employer. In such a case, the court awards compensation in the amount of at least PLN 5,000 to the Victims' Assistance Fund and Post-penitentiary Assistance.

§ 4. If determining the average market value of a motor vehicle corresponding to the vehicle driven by the perpetrator in the manner specified in § 2 is not possible due to the specific characteristics of this vehicle, an expert opinion is sought (Act of July 7 2022 amending the Act – Penal Code and certain other acts, Article 1 point 14).

This provision has not yet had an equivalent in the Penal Code Act of 1997, but special attention should be paid to its place in the taxonomy of the indicated criminal act. This provision will be located in Chapter Va, entitled *Forfeiture and compensatory measures* (Act of July 7 2022 amending the Act – Penal Code and certain other acts, Chapter Va). Especially at this stage, it should be clarified that forfeiture is neither a punitive nor a compensatory measure. Forfeiture is a very specific, separate type of penal reaction of the legislator aimed at perpetrators of certain crimes. The very essence of forfeiture has already been encoded in the name of this institution as it consists in the State Treasury taking over certain assets belonging to the perpetrator. This is an important issue because forfeiture, referred to as a type of penal reaction, conceptually escapes the obligation to be subject to the principle of proportionality of the penalty or penal measure to the committed act. While the penalties and penal measures specified in the Act are subject to a certain moderation, i.e. they depend on the discretion of the court, or if they are obligatory, they

can be additionally moderated in terms of their duration, forfeiture, unless its ruling is optional, always applies items obtained by crime, items used to commit a crime and items prohibited from production, distribution, shipment or sale. The purpose of forfeiture is primarily to prevent the perpetrator from using the items used to commit the crime again and from deriving further benefits from the items obtained by committing the crime (Limburska, <https://>). The above is extremely important because already at this stage it is necessary to realize that, for instance, a driver driving a motor vehicle in land traffic under the influence of alcohol will be subject to a sanction in the form of a driving ban for a specified period of time, determined by the adjudicating court. In such a case, the criminal measure, as a sanction subject to the principle of proportionality, will be equally severe for a person who drove a car worth several thousand zlotys and for a person who drove a car worth several hundred thousand zlotys. The effect of the sanction will be the inability to drive motor vehicles, and its cause will be the violation of the legal order. In the case of applying a criminal sanction in the form of forfeiture, the legislator does not focus directly on the person of the perpetrator and the effect (or the gravity of the violation), but on their material sphere, i.e. those items that he used to commit the crime or those that, as part of the committed crime, obtained the crime. For a more complete illustration, imagine a person who, under the influence of alcohol, drives a motor vehicle worth several thousand zlotys and another person who drives a motor vehicle worth several hundred thousand zlotys. If the court orders forfeiture against both of these people for the same act, the financial (economic) burden will be different for each of these people because it will result in a completely different depletion of their assets.

When analyzing the remaining provisions of the Penal Code regarding crimes against communication safety, indications are required to include those to which the legislator, as of March 14, 2024, decided to add an additional sanction in the form of forfeiture referred to in the previously presented Art. 44b.

Collectively, the legislator applied this sanction by adding it to Art. 178 of the Penal Code, implementing an additional third paragraph, which clearly indicates that in the event of a conviction, on the basis of increased punishment for selected crimes against safety in land traffic of the aggravated type, described in detail in Art. 178 of the Penal Code (§1, §1a), the court may order forfeiture referred to in Art. 44b of the Penal Code. The court obligatorily orders this forfeiture if the alcohol content in the perpetrator's body at the time of committing these acts was higher than one permille in the blood or 0.5 mg/dm³ in the exhaled air or led to such a concentration (Act of June 6, 1997, Penal Code, Article 178). The above undoubtedly draws the recipient's attention to the fact that Art. 178 of the Penal Code, already in the version before March 14, 2024, contained provisions that additionally tightened the punishment for perpetrators of causing a traffic disaster or a traffic accident in a situation where the result was the death of a person, or the occurrence of injuries to many people (also in the case of property in large sizes) even if the perpetrator violated the safety rules unintentionally. In the version after March 14, 2024, the legislator decided to additionally tighten sanctions for the above-mentioned crimes by imposing forfeiture on the perpetrators. The above clearly illustrates that the legislator's goal is to maximize the criminal penalty for the most serious crimes against communication safety in order to deter potential perpetrators. This procedure actually influences the recipient's imagination, although one should definitely adhere to the unwritten rule, repeated many times in judges' chambers, that what matters most is the inevitability of a criminal sanction, which outweighs its disadvantage in terms of deterring potential perpetrators (Act of June 6, 1997, Penal Code, Article 178).

Criminal sanction in the form of forfeiture referred to in Art. 44b of the Penal Code, was also added to the fifth paragraph, Art. 178a of the Penal Code. In this way, the legislator decided to oblige the adjudicating court to order forfeiture in a situation where the perpetrator has committed an offense of driving a motor vehicle in land, water or air traffic while drunk or under the influence of a narcotic drug, and if the perpetrator has previously been legally convicted of driving a motor vehicle while drunk or under the influence of a narcotic drug or for other crimes (Article 173, Art. 174, Art. 355 § 2 of the Penal Code) committed in a state of intoxication or under the influence of a narcotic drug, or the perpetrator drove a vehicle under the same conditions during the period of driving ban, if the ban was imposed in connection with committing a crime. The obligation for the court to order forfeiture referred to in Art. 44b of the Penal Code remains valid only to the extent that the alcohol content in the perpetrator's body was not lower than 1.5 (one and a half) per mille in the blood or 0.75 mg/dm³ in the exhaled air, or did not lead to such a concentration. The legislator also left the adjudicating court with an additional option, stating that the court may refrain from ordering forfeiture if there is an exceptional case justified by special circumstances (Act of June 6, 1997, Penal Code, Article 178). Adding an additional sanction for perpetrators of the crime of driving motor vehicles in land, water and air traffic in the form of forfeiture of the vehicle is undoubtedly a continuation of the previously mentioned strategy of the legislator, aimed at deterring potential drunk drivers as effectively as possible. A meaningful assessment of the Legislator's strategy in this area will only be possible in a few years, based on the statistics prepared, with the necessary consideration of how the courts will approach the application of forfeiture, and what use will be made of the loophole left to the court in the form of the possibility of waiving the forfeiture order, with attention to an exceptional case justified by special circumstances. It should also be borne in mind that even though the provisions of Art. 178a § 1 of the Penal Code, speaks directly about driving a vehicle in land, water or air traffic, then forfeiture under Art. 44b of the Penal Code only covers a motor vehicle driven by the perpetrator in land traffic (Act of June 6, 1997, Penal Code, Article 44b).

3. THE LEGAL NATURE OF THE REGULATION ESTABLISHING THE FORFEITURE OF A MOTOR VEHICLE OR ITS EQUIVALENT

The provision of Art. 44b of the Penal Code introduces a form of forfeiture of an item, which is a motor vehicle driven by the perpetrator in land traffic, previously unknown to the Polish legal system. Such forfeiture may be imposed in cases strictly defined by law. These situations include:

1. conviction for the crime of causing a transport disaster (Article 173 of the Penal Code),
2. causing the risk of a communication disaster (Article 174 of the Penal Code),
3. causing a traffic accident (Article 177 § 1 and § 2 of the Penal Code),
4. sentencing the perpetrator who fled the scene of the incident while intoxicated or under the influence of a narcotic drug, or who consumed alcohol or took a narcotic drug after the event specified in Art. 173 § 1, § 2, art. 174 or 177 § 1 of the Penal Code (and before it is subjected to an examination by an authorized authority to determine the alcohol content or the presence of a narcotic drug in the body),
5. driving a motor vehicle in a state of intoxication or under the influence of intoxicants in land, water or air traffic by the perpetrator in a state of intoxication, in which the alcohol concentration in the body was not less than 1.5 per mille in the

blood or 0.75 mg/ dm³ in the exhaled air or led to such a concentration, or by the perpetrator being under the influence of a narcotic drug or in the event of committing a crime of driving a motor vehicle in land, water or air traffic while under the influence of alcohol or under the influence of a narcotic drug, if the perpetrator was previously legally convicted of driving a motor vehicle under the influence of alcohol or drugs or for an offense specified in Art. 173, 174, 177 or 355 § 2 of the Penal Code committed in a state of drunkenness or under the influence of a narcotic drug, or he committed driving a motor vehicle while drunk or under the influence of a narcotic drug during the period of driving ban imposed in connection with a conviction for a crime, or he consumed alcohol or took a narcotic drug after the event and before it was subjected to testing by an authorized authority to determine the alcohol content or the presence of a narcotic drug in the body (Kulig, 2024).

As indicated in the literature on the subject (Kulig, 2024), there is a need to add Art. 44b to the Penal Code, was a kind of necessity resulting from the position of the Supreme Court, regarding the inadmissibility of ordering the forfeiture of a motor vehicle as an item used to commit a crime. It is worth mentioning here the theses of the resolution of the Supreme Court, issued by a panel of seven judges of October 30, 2008, ref. no. No. I KZP 20/08, according to which:

A motor vehicle is the subject of an enforcement action of the offense specified in Art. 178a § 1 of the Penal Code, and therefore does not belong to the category of objects that serve or are intended, within the meaning of Art. 44 § 2 of the Penal Code, to commit this crime

and As is clear from the wording of Art. 44 of the Penal Code, the forfeiture of three categories of items was regulated separately. In § 1 – obligatory, if the items come directly from a crime (*producta sceleris*), in § 2 – optional, and in the cases specified in the Act, obligatory, if they served or were intended to commit a crime (*instrumenta sceleris*) in § 6 – optional, and in the cases specified obligatory in the Act if they are items prohibited from producing, possessing, trading, transmitting, carrying or transporting, and the perpetrator has been convicted of a crime of violating such prohibitions (*obiecta sceleris*). [...] as well as:

In Art. 44 § 6 of the Penal Code forfeiture of the objects of enforcement action is provided for. This provision limits the scope of forfeiture to those types of crimes whose causative action consists in dealing with the executive object in a manner described therein, violating the statutory prohibition of their production, possession, trade, transmission, transfer or transport. About the possibility or obligation to make a ruling pursuant to Art. 44 § 6 of the Penal Code The forfeiture of items strictly defined in penal provisions is therefore determined by whether the perpetrator has performed prohibited executive actions with respect to them, thus committing a prohibited act (Resolution of the Supreme Court of October 30, 2008, I KZP 20/08, OSNKW 2008, No. 11, item 88).

The view presented by the Supreme Court directly indicates that a car – defined in the Penal Code as a motor vehicle – is not included in the group of objects used or intended to commit a crime typified by in art. 178a of the Penal Code. The Supreme Court, justifying

its position, stated that in this approach, a motor vehicle is only the subject of the enforcement action of this offense and therefore does not fall into the category of items subject to forfeiture. (It should be noted that this view was not fully appreciated by the representatives of the doctrine.)

From a legal and criminal point of view, it is also worth paying attention to the fact that the forfeiture referred to in Art. 44b of the Penal Code applies only to a motor vehicle that is the property of the perpetrator of the penalized conduct. When assessing the ownership right, the court adjudicating the case takes into account whether the perpetrator is entitled to this right during the act and during the adjudication of the case. If for some reason, at the time of committing the act by the perpetrator, the motor vehicle was not their exclusive property, or if after committing the crime the perpetrator got rid of the ownership rights to this vehicle (sold, donated, hid), instead of forfeiture, the court also orders forfeiture, but in such a situation, the subject of forfeiture is the equivalent of this vehicle (Article 44b § 2 of the Penal Code). Only for the sake of precision of the issue at hand, it should be added that the sale of a vehicle is understood by the Legislator as the transfer of ownership of the vehicle by the perpetrator to another person for a fee, while donation is understood as the free transfer of the vehicle to another person (not necessarily the closest one), and the concept of hiding a vehicle should be understood as the creation of by the perpetrator of such a situation in which the law enforcement authorities do not know where the perpetrator located the vehicle.

The diligence and comprehensiveness with which the legislator regulated the issue of determining the value of a vehicle subject to forfeiture in the event of its sale, donation or concealment should be assessed positively. It should be emphasized that forfeiture in such a situation covers the entire value of the vehicle. The equivalent of a vehicle is its value specified in the insurance policy concluded in the year in which the crime was committed, and if the vehicle does not have an insurance policy, the average market value of the vehicle corresponding to – taking into account the make, model, year of production, body type, type of drive and engine, engine capacity or power and approximate mileage – the specificity of the vehicle that was driven by the perpetrator at the time of committing the prohibited act. What is equally important, the value of the vehicle is determined on the basis of this data, without the need to appoint experts (the principle of maintaining procedural economy – at this point, according to the author – the legislator tried, by introducing an additional obligation imposed on the adjudicating court, not to excessively prolong the duration of proceedings before court of first instance). The legislator also noted a possible case in which determining the approximate value of the vehicle would be impossible in the absence of an insurance policy and in the presence of special properties of the vehicle that cannot be determined using the comparative method. Only in such a case will it be necessary and justified to appoint an expert to determine the value of the vehicle. In addition to the above-mentioned circumstances, the court conducting the proceedings will also order the forfeiture of the vehicle's value if the perpetrator was entitled to the vehicle only on the basis of co-ownership.

A case in which the court will not order the forfeiture of a motor vehicle and its equivalent is a situation in which the perpetrator of the crime was driving a motor vehicle that was not his property, while performing professional or official activities for his employer. In such a situation, the court will order the perpetrator of the crime to pay compensation specified in the lower limit, at least PLN 5,000, to the Victims' Assistance Fund and Post-penitentiary Assistance (Kulig, 2024).

Undoubtedly, according to the analyzed provision, the forfeiture of a vehicle or its equivalent is excluded if the vehicle is a wreck or the vehicle was lost by the perpetrator after committing a crime as a result of an action other than taking a specific legal action involving the perpetrator (and hiding the vehicle). It should also be emphasized that the forfeiture referred to in Art. 44b of the Penal Code applies only to motor vehicles, i.e. vehicles that have been legally permitted to participate in road traffic. Therefore, when the forfeiture of a vehicle or its equivalent is ordered, the car must be a motor vehicle under the law. A vehicle that has been damaged, e.g. as a result of an incriminated event, in such a way that it cannot be allowed to participate in road traffic becomes waste and ceases to be a motor vehicle, and therefore the sanction of forfeiture or forfeiture of its equivalent becomes obsolete. The doctrine strongly emphasizes the fact that, apart from the destruction or significant damage to the vehicle, the reason excluding the order of forfeiture is also its loss for reasons beyond the control of the perpetrator of the crime. As rightly pointed out by dr hab. Tomasz Oczkowski such a solution may encourage reports of fictitious thefts (Oczkowski, 2023).

4. FORFEITURE OF A MOTOR VEHICLE OR ITS EQUIVALENT IN SELECTED EUROPEAN UNION COUNTRIES

The institution of forfeiture of a motor vehicle or its equivalent, although *a novelty* in our country, is very well known to citizens of other countries that are members of the European Union. When making only a cursory analysis of legal regulations regarding the forfeiture of a motor vehicle or its equivalent, attention should be paid in particular to:

Austria

The forfeiture of a motor vehicle may be imposed for exceeding the speed limit in conditions that adversely affect road safety (e.g. heavy rainfall, driving on sections covered by road works), exceeding the established speed limit by twice the amount, or participating in illegal races. The same sanction will also apply to Austrians who will be checked while driving despite being banned from driving for speeding or who will speed without having a driving license (as an authorization, not a document).

Germany

The forfeiture of a motor vehicle will be ordered in the absence of a valid insurance contract (it is, therefore, logical that the forfeiture will only apply to persons who drive such a vehicle and are also its owner).

France

In this case, we are dealing with a full range of forfeiture sanctions in every variety. It would not be an exaggeration to say that in Europe, France has the most stringent regulations regarding the forfeiture of motor vehicles or their equivalent. Every citizen of this country can count on the forfeiture of their car or its equivalent in EUR if they exceeded the speed limit by 50 km/h, had alcohol in excess of 0.5 per mille, caused a road collision and then fled the scene, did not enter into an obligatory civil liability insurance contract, or did not have the right to drive motor vehicles. Just like our Legislator, the French Legislature has also decided to impose forfeiture on the owners of the vehicle, and otherwise, the perpetrator will be charged with forfeiture of the value of the vehicle that violated the law.

Italy

In this country, the forfeiture of a vehicle is ordered in a situation where the driver does not have a valid civil liability insurance contract or drives the vehicle under the influence

of alcohol, and the lower concentration limit for forfeiture is as much as 3.15 per mille (in order to be able to order forfeiture, the perpetrator must be the owner of the vehicle).

Luxembourg

In Luxembourg, the regulations are relatively lenient; here, as in Italy, the cause of the loss of the vehicle is related to driving under the influence of alcohol, with the reservation, however, that the driver must have more than 0.5 per mille of alcohol and must commit such an act twice in a short period of time. intervals – only such a model of driver behavior will result in the forfeiture of the vehicle, and in order to be subject to this sanction, the drunk driver must also be the owner of the vehicle.

Finland

The Finns definitely have the most rational approach to the issue of forfeiture of motor vehicles. In this country, forfeiture may be ordered when a vehicle is used for fuel theft or other intentional crimes. The same sanction applies to drivers who do not have a valid third party liability insurance contract or who have been detained multiple times while driving a vehicle without the required license (in each case, only the person who owns the vehicle is affected by forfeiture).

Switzerland

In this case, of course, the sanctions of forfeiture cannot be applied to perpetrators violating the order. Therefore, forfeiture may be imposed against drivers who generate excessive noise, especially at night, against drivers exceeding the speed limit by 50 km/h on the highway, or against drivers who drove under the influence of alcohol (above 0.5 per mille). Each time, however, before ordering forfeiture, the purposefulness of such a decision is examined, and the forfeiture may affect the owner of the car even if he was not the perpetrator of the offenses referred to, but was at least a passive participant in them (Pokorzyński, <https://>).

5. EXPERTS' OPINIONS ON THE INTRODUCED PENAL REGULATIONS AND THEIR IMPACT ON PUBLIC TRANSPORT SAFETY

Before the introduction of the regulations in question, the media often criticized the planned solutions. It is worth paying attention to the most important aspects that were raised against the introduced regulations and the *ratio legis* presented in the draft act introducing the discussed changes.

Professor Andrzej Zoll expressed an extremely negative attitude towards the regulations that will come into force from March 14, 2024, pointing out that although driving under the influence of alcohol cannot be justified in any way, the proposed *confiscation* creates a situation in which the repressive nature of the sanction applied criminal penalties depend on the brand of the car subject to forfeiture and its individual characteristics. In such a situation - according to the professor - there is an unjustified difference that arises in the severity of the punishment meted out to the perpetrator for potentially the same act. According to the former president of the Constitutional Tribunal, another effective solution would be the application of severe financial penalties, consisting in determining the minimum number of daily rates and the minimum value of one rate. In this way – according to the professor – the same effect would be achieved, i.e. the possibility of imposing fines of several hundred thousand zlotys on the perpetrators (Adamski, <https://>).

Table 1. Comments on the newly introduced changes, Article 44b of the Penal Code

No.	Body reporting the note	Note content	Position of the legislator
1	National Council of Legal Advisors; IUSTITIA	The objection concerned primarily the compliance of the proposed changes with the constitutional principle of proportionality and the constitutional standard of equality before the law. The commenters pointed out in particular the difference in sanctions for perpetrators of penalized offenses due to the value of the vehicle subject to forfeiture. In addition, attention was drawn to the significant problem of sanctions against people with different financial status using a car that was, for example, rented. The position of the person making the comment was categorically negative.	The comment was not taken into account. The legislator stated that the forfeiture of a motor vehicle or its equivalent was neither a penalty nor a punitive measure, therefore it did not have to be correlated with its financial status. The essence of the introduced regulation is to make it difficult (preventable) for the perpetrator to commit this or a similar crime in the future by depriving him of a car or funds to purchase this car in the future.
2	Pro Futuro Theologiae	The tone of the comments is strictly social, focused on the utilitarian nature of the motor vehicle. The person submitting the comment tries to emphasize that the imposed sanction may significantly affect the interests of third parties (family, relatives, sick people, elderly people requiring care) who benefit from the benefit of a car.	The comment was not taken into account. The legislator strictly refers to the person of the perpetrator and his illegal behavior. It indicates that the sanction of forfeiture of a motor vehicle or its equivalent applies only to the perpetrator, and the fact that other people use the vehicle is of no importance.
3	1. Pro Futuro Theologiae. 2. National Trade Union of Court Probation Officers	1. Indication of the lack of equal treatment of perpetrators of crimes against transport safety. The main axis of the submitted comment is the fact that the lower limit of the compensation that can be awarded is PLN 5,000.00, and in the event of ordering the forfeiture of a motor vehicle or its equivalent, the amount expressed when awarding the compensation has nothing to do (is not correlated) with average value of a motor vehicle. 2. The probation officers, in turn, pointed out that there was no solution to recover the imposed forfeiture of the vehicle's value.	1. The comment was not taken into account. The legislator indicated that the compensation is equivalent to the forfeiture of the vehicle's value. 2. The comment was not taken into account. As indicated by the Legislator, in the event of the forfeiture of the equivalent of a motor vehicle, the monetary benefit awarded pursuant to Art. 43a § 2 of the Penal Code may be set within its lower limits. When determining the amount, the court will be able to take into account the harm resulting from the forfeiture of the motor vehicle.

Source: own study based on Form No. 2024 – draft Act amending the Act – Penal Code and certain other acts.

It is also of great importance that already at the stage of developing the Act of July 7, 2022 amending the Act – Penal Code and certain other acts, the draft received many comments submitted as part of the consultations. In order to present the significance of the submitted comments and the position taken by the Legislator in relation to these comments, the author decides to present the results of the consultations in the form of a table below (the presented comments concern only the proposed Article 44b of the Penal Code).

6. CONCLUSIONS

The above analysis actually arouses extreme feelings since, on the one hand, the sanction introduced from March 14, 2024 in the form of forfeiture of a motor vehicle or its equivalent is nothing new among our European neighbors, but on the other hand, it raises several important questions about criminal ailment among individual perpetrators of the so-called road crimes, due to their property status, as well as the impact of new regulations on the real improvement of safety on Polish roads. Apart from the above doubts, it should undoubtedly be recognized that the new regulations regarding the forfeiture of a drunk driver's car are an important step towards increasing safety on Polish roads. This is a signal that the state treats driving under the influence of alcohol very strictly. However, it is also an appeal to all drivers not to drive under the influence of alcohol, taking care of their lives and the lives of others. It's not worth the risk – the loss of a car cannot be compared to the loss of a human life. Safe driving is our common responsibility and we must take it seriously.

When attempting to answer the question whether the discussed regulations, in force in the Polish substantive criminal law system since March 14, 2024, are consistent with the constitution, the answer should be negative. The justification of the position adopted by the author leads, first of all, to the need to draw attention to Art. 31 section 1 of the Constitution of the Republic of Poland (Constitution of the Republic of Poland of April 2, 1997, according to which „Everyone is obliged to respect the freedoms and rights of others. No one may be forced to do what the law does not require him to do” and Art. 32 section 1 of the Constitution of the Republic of Poland, according to which „Everyone is equal before the law. Everyone has the right to equal treatment by public authorities”. The above is an expression of the implementation into the Polish Basic Law of the principle of proportionality, widely approved and respected throughout the European community, which in its essence should safeguard the equal treatment of citizens, and in the scope of imposing sanctions on them for violating the law, be responsible for ensuring that these sanctions are equally painful for perpetrators committing the same act in similar circumstances. The forfeiture mechanism described in this study is contrary to one of the fundamental principles of the rule of law, which is the principle of proportionality. This contradiction is reflected primarily in the fact that this forfeiture is an extremely drastic measure used by the Legislator and may, in extreme cases, lead to the loss of the life achievements of the perpetrator himself and his family. The drastic nature of this measure, which violates the principle of proportionality, is also revealed when the Court is obliged to adjudicate the equivalent of the vehicle used by the perpetrator at the time of committing the crime, when the vehicle did not belong to him (or the perpetrator sold, hid or destroyed the vehicle). The obligation to order the forfeiture of the equivalent of a vehicle in a situation where the vehicle was only co-owned by the perpetrator also directly violates the principle of proportionality – in such a situation, the entire value of the vehicle is subject to forfeiture, not only the share he is entitled to (Łukaszewicz, [https](https://)).

