

*"Individual facilitation in the payment of social insurance contributions as a separate and diversified institution of social insurance law"*

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### **Abstract**

The aim of the research described in the paper is to analyse the legal regulations of individual facilitation in the payment of social insurance contributions in the general and agricultural social insurance system. The research hypothesis of the doctoral thesis assumes that individual facilitation in the payment of social insurance contributions constitute a separate and diversified group of legal institutions. The diversity of this category may be evidenced by the fact that there are certain differences between them (for example in terms of substantive legal grounds, procedural regulations or the function performed), but they also have common typical features. These typical features testify to the distinctiveness of individual facilities. Thanks to them, they can be distinguished from other tools provided for in the social insurance law, in particular from general facilitations in the payment of social insurance contributions. The author adopted the following partial hypotheses: individual facilitations are convergent in terms of ratio legis, essence and the functions they fulfil; the legal permits for providing them are similar and formulated with the use of underspecified phrases; as a rule, they constitute state aid; they are granted under the conditions of discretion granted to the social security organ, which is a departure from the formalism and schematism of social security law; each of these facilities is of great importance for the practice of fulfilling the obligations of contribution payers, insured persons and farmers. The dissertation aims to show that the discussed regulations are a very complex theoretical structure and that they are important for the practice of applying the law. The author will present the shortcomings of the statutory solutions that have been in force for years, despite the postulates and remarks of the doctrine and significant discrepancies in jurisprudence. In the doctoral dissertation, the formal-dogmatic method was the most used, and the historical method was used supplementarily. The author analysed both the provisions of substantive and procedural law, as well as the views of the doctrine and jurisprudence. This work consists of an introduction, five chapters and an ending. At the end of chapters II, III and IV, there is a tabular study of public information provided by the Social Insurance Institution and the Agricultural Social Insurance Fund, regarding the number of applications for granting facilities and the methods of settling these matters in the period from January 1, 2017 to December 31, 2019.

### **Chapter I "Construction and legal nature of social security contributions".**

It describes the structural elements of contributions, also referring to the regulations from the interwar and post-war period. The chapter discusses the amount of contributions, the principles of their payment and financing as well as payment obligations, both in the general system and in the agricultural system. The consequences of non-payment of social security contributions were analysed. The legal nature of contributions was considered. In reference to the theories presented in the chapter, it was concluded that the insurance premium is a cash, compulsory, purposeful, paid, non-returnable, public-law benefit, relating only to natural

persons and constituting a public tribute within the meaning of Art. 5 sec. 2 point 1 of the Law on Public Finances. The considerations in this part of the paper constituted the basis for the analysis of specific legal institutions, which constitute individual facilitation in the payment of social insurance contributions. The insurance contributions is the basis of any insurance structure, defining the essence of social insurance.

## **Chapter II „Approval on payment of a social insurance contribution after the deadline”.**

This institution is a facility that can only be used by those insured persons who are not covered by the compulsory insurance title. Before analysing the legal grounds for the approval on payment of a social insurance contribution after the deadline and making further comments, the basic features of voluntary insurance were discussed. Then, the consequences of not paying the contribution on time were commented on, with particular reference to the doctrinal dispute. The author also referred to the most important procedural issues related to it. The legal forms of operation of the Social Insurance Institution were discussed, especially the practice of omitting to issue an administrative decision. Although, in general, the approval on payment of a social insurance contribution after the deadline is not considered as facilitating the payment of contributions, the main goal of this institution is to enable the insured person to continue to be covered by social insurance by avoiding the consequences of failure to meet the deadline for the payment of contributions and meeting the payment obligation in a situation where which was not met due to justifiable reasons. In the author's opinion, this is consistent with the ratio legis of the other discussed facilitations.

## **Chapter III „Unpaid insurance contributions remission”.**

First, the legal premises for this facilitation and the differences between the general system and the agricultural system are discussed. In particular, the focus was on the unpaid insurance contributions remission in a situation other than total uncollectibility of the unpaid insurance contributions. Subsequently, the most important procedural issues related to this were brought into consideration. It was very relevant to discuss the operation of the social security organ under the conditions of administrative discretion.

## **Chapter IV „Instalment settlement and deferred payment of the unpaid insurance contributions”.**

The author discussed the legal premises for this facilitation and the differences between the general system and the agricultural system at first. This chapter focuses in particular on the forms of operation of public administration in the context of various modes of regulation in both systems. In the general system, the legislator decided that the facilitation would be granted in the form of a contract, and in the agricultural system, it is about issuing an administrative decision. Although the structure of the contract referred to in Art. 29 sec. 1a of the Social Insurance Act is functionally similar to the other discussed institutions, but it differs significantly from them in terms of the procedure for its application. The mode of concluding the agreement, its legal nature and whether there is any legal remedy against it are in dispute. It is not clear whether it constitutes a different form of settling an administrative matter, an administrative settlement, a "pure" private law contract or finally some kind of administrative contract, essentially unknown to the Polish legal system. An important conclusion of this

chapter is that the legislator, allowing for the interpenetration of the provisions of public law and private law, did it without a well-thought-out regulation of the effects of such a legislative procedure.

### **Chapter V „Essence and functions of individual facilitation in the payment of social insurance contributions”.**

This part of the work describes the place of individual facilities in the system of law, especially whether they are an expression of the State Treasury's tributary power. They are compared with analogous legal and tax institutions. Then their functions are discussed. It was pointed out that individual facilitations are similar to some regulations of social support services or social assistance. Their relation to state aid has been described and a reference has been made to the decision-making leeway granted to social security organ on the basis of considerations from the previous chapters. The discussed institutions were distinguished from general facilitations.

### **Conclusion.**

The "Conclusion" provides concluding remarks and addresses the relationship of the current regulations to the Crisis Shield standards, pointing out the differences between them. The results of the research conducted by the author allowed to verify the research hypothesis outlined in the introduction of the work and the related partial hypotheses. In the author's opinion, the categorical features of individual facilitations in the payment of insurance premiums include: the formulation of material and legal premises for their use with the use of underspecified phrases; their fulfilling of the social and economic function by supporting the premium payer or farmer in the realization of obligations connected with the payment of social insurance contributions, which positively influences financial or living situation of insured persons; their granting at the request of the interested party under the conditions of the discretionary decision of the social security organ. In turn, other features, such as: similarity of the formulation of the substantive and legal premises, recognition of the facilitation as public aid, practical importance - are secondary, although helpful in the process of assigning a given regulation to the discussed type.