Summary

The purpose of this dissertation is to comprehensively analyze the institution of the so-called small crown witness, normalized in Articles 60 § 3-5 of the Penal Code and Article 61 § 1 of the Penal Code, with particular emphasis on Article 60 § 3 of the Penal Code. This institution is controversial in jurisprudence and doctrine in practically every aspect of its functioning. Also in the mass media, doubts are repeatedly raised about the introduction of this institution into the Penal Code in connection with the risk of using it to unfoundedly slander innocent people and then wrongfully hold them criminally responsible. The term "sixty" (which has unambiguously negative connotations) has become popular in the vernacular[3]. It can be said that Article 60 § 3 of the Penal Code is much more popular in the public debate than the institution of a "large" crown witness, regulated by a separate law. It is also of greater practical significance.

Clauses providing for the exclusion or mitigation of criminal liability of an offender who discloses details of a committed crime to a state authority were already known to the pre-war criminal codification. Articles 60 § 3-5 of the Penal Code and Article 61 § 1 of the Penal Code introduced a *novelty* in the sense that previously there had been no regulation obliging the court to grant extraordinary mitigation of penalty to perpetrators of a predetermined category of crimes, provided that they were committed in cooperation with other persons. The imprecise definition of the prerequisites of this institution (especially in the case of Article 60 § 3 of the Penal Code) raised serious interpretive doubts, which were the subject of interest of the judicature and the literature especially at the turn of the 20th and 21st centuries. Interestingly, despite several legislative projects aimed at (sometimes very significant) modifications to the wording of Articles 60 § 3-5 of the Penal Code, these provisions remain unchanged until 1st October 2023[4], which made this regulation quite unique also from this perspective, given the frequency of amendments to the current criminal codification.

The fact that the aforementioned institution has been the subject of a very large number of publications and court decisions proves that it is not only of interest to criminal law theorists, but also very useful in the practice of law application. Therefore, the resolution of interpretive problems in

[3] One of the words submitted in the poll for the 2021 Youth Word of the Year was "sixty", meaning "denouncer, complainer" (https://sjp.pwn.pl/mlodziezowe-slowo-roku/haslo/szescdziesiona;9283232.html; accessed 11th June 2023).
[4] Initially, Article 60 § 3 of the Penal Code was amended by Article 1(18)(a) of the Act of 7th July 2022, on Amendments to the Act - Penal Code and Certain Other Acts (Journal of Laws 2022, item 2600) and, according to Article 33(1) of that amendment, was to come into force 3 months after its promulgation, i.e. 14th March 2023. However, Article 5 of the Act of 26th January 2023 on Amendments to the Act - Code of Civil Procedure and Certain Other Acts (Journal of Laws 2023, item 403) extended the *vacatio legis* to 1st October 2023.

this area would allow the unification of jurisprudential practice, so it would be useful for judicial authorities.

The institution of a small crown witness is associated with the crown witness, which is covered by a separate law. In order to comprehensively present the former institution, it is necessary to refer to the features of the latter, also taking into account the experience of other European and non-European countries, as well as Polish legislation, not limiting itself to codification. For, as already mentioned, regulations resembling the current crown witness were introduced in the past, although they were not generally called so at the time. These issues are addressed in Chapter 1 of the dissertation.

Next, Chapter 2 addresses the issue of the legislature's treatment of the perpetrator's behavior of disclosing to a law enforcement agency information regarding a criminal act committed. Indeed, it should be borne in mind that the legislator gives a bonus to the perpetrator's provision of information regarding the crime (committed by the denouncer himself or by others) with impunity, and in other cases with waiver of penalty or optional or mandatory extraordinary mitigation of penalty. Thus, denunciation can have different consequences, and the various grounds for the exclusion or mitigation of criminal responsibility are based on different types of grounds. Some of these institutions are limited by certain criteria of a subjective or objective nature, including those related also to the perpetrator's functioning within the framework of organized crime. The latter concept is itself difficult to define. The national legislature has neglected to formulate this definition. A common feature of these institutions is that they seek to break group solidarity, with this dissertation attempting to answer the question of whether it is necessary for the perpetrator to disclose information objectively unknown to the law enforcement agency in order to break group solidarity.

The next section addresses the subject and object scope of Article 60 § 3 of the Penal Code, which defines the institution of a small crown witness *in sua causa*. The legislator has narrowed the scope of application of this norm only to cases of complicity in a configuration of at least three persons. However, there are no restrictions of a material nature. This issue is not free from certain interpretive problems related, for example, to the application of Article 60 § 3 of the Penal Code in the case of a continuous act (Article 12 § 1 of the Penal Code) or a sequence of crimes (Article 91 § 1 of the Penal Code), as well as the impact of the exclusion of criminal liability of some collaborators on the scope of liability of the others.

In the case of Chapter 4, the main topic of consideration is the impact of the motivation and attitude of the offender on the applicability of Article 60 § 3 of the Penal Code. In doing so, the legitimacy of qualifying Article 60 § 3 of the Penal Code as one of the cases of the institution of active contrition was touched upon, as well as the postulate of introducing into the regulation in

question the premise of the necessity of achieving the goals of criminal proceedings as a condition for extraordinary mitigation of penalty.

The most controversial issue related to the institution in question is the understanding of the phrase used in Article 60 § 3 of the Penal Code „he shall disclose to an authority established for the prosecution of crimes information concerning the persons involved in the commission of the crime and the relevant circumstances of its commission" which raises many questions of interpretation. They are related, for example, to the definition of who is the "authority appointed to prosecute crimes" referred to in the provision - whether it is only the authority competent (locally or materially) to recognize a given case, according to what criterion to assess the level of knowledge of this authority, whether it is permissible to disclose information to this authority through another entity (state or private). Also controversial is the topic of the scope of the information obligation imposed on a denouncer wishing to take advantage of the benefit of Article 60 § 3 of the Penal Code. Namely, it should be resolved whether the perpetrator must disclose all information about the persons involved in the commission of the crime and the relevant circumstances of its commission, and if so, whether it is all information in the objective sense or all data covered by the perpetrator's consciousness. It is also unclear whether information about the participants in the crime should be considered at the same time as information about the relevant circumstances of the commission of the act. Also disputed is the catalog of factual elements that can be considered relevant circumstances from the point of view of Article 60 § 3 of the Penal Code. The most momentous issue on this ground is to decide whether an offender wishing to obtain extraordinary mitigation of penalty should disclose information that is objectively unknown to the addressee of such information, or whether it is sufficient for him to provide information that he believes the law enforcement agency does not have, regardless of the actual state of knowledge of the agency. The importance of this problem stems from the fact that its resolution makes it possible to clarify whether, on the basis of Article 60 § 3 of the Penal Code, it is preferable to provide the trial authority with relevant evidence useful in criminal proceedings, or to have a properly directed attitude on the part of the perpetrator who wants to help this authority, regardless of the importance of this help from the point of view of the proper conclusion of the proceedings. The aforementioned issues are devoted to Chapter 5.

Chapter 6 deals with the subject of formal and temporal requirements related to the implementation of the prerequisites of Article 60 § 3 of the Penal Code. In other words, an attempt was made to resolve whether the perpetrator can disclose information, for example, in written form, or whether it is necessary to make the denunciation orally in the form of a witness statement or a suspect's explanation. Linked to this is the problem of determining the final moment at which the perpetrator should make a disclosure in the manner described in Article 60 § 3 of the Penal Code. Whether this must occur in the course of ongoing criminal proceedings, and if so, at which phase (in

particular, whether Article 60 § 3 of the Penal Code places a premium on denunciation only in court proceedings, including at the appellate stage).

The existence of a requirement for the offender to present a consistent attitude during criminal proceedings, i.e. the need for the offender to confirm the information he has disclosed in the later stages of the proceedings, is highly controversial. Some of the doctrine and judicature question the functioning of this obligation on the grounds that the linguistic content of Article 60 § 3 of the Penal Code does not explicitly confirm the existence of such a premise. In order to resolve this problem, it is necessary to refer to other cases of rewarding the offender for a denunciatory attitude provided for in the criminal legal system, as well as to procedural regulations, in particular, Article 434 § 4 and Article 540a (1) of the Code of Criminal Procedure, which is addressed in Chapter 7.

As of 1st October 2023, an amended version of Article 60 § 3 of the Penal Code will come into force, taking into account the need for the public prosecutor to file a request for application of extraordinary mitigation to the offender (similar to Article 60 § 4 of the Penal Code). Chapter 8 describes the related problems, focusing primarily on the question of whether the amendment will lead to the actual deprivation of the court's authority to decide on the degression of penalty if the public prosecutor files a motion, and what the consequences of failing to file such a motion will be.

Chapter 9 describes the second basic component of the institution of a small crown witness, i.e. a small crown witness *in altera causa* (Article 60 § 4 of the Penal Code), characterized by certain differences compared to Article 60 § 3 of the Penal Code, although carrying similar interpretive problems (e.g., the concept of "relevant circumstances"; the form and timing of disclosure; the need to confirm the disclosed information in court proceedings). The basic problem, the resolution of which allows to determine the scope of application of Article 60 § 4 of the Penal Code, is the interpretation of the phrase „regardless of the explanations given in his case". The issue is to determine whether a small crown witness in this case (i.e., in the situation of disclosure of information relating to an act other than the act that is the subject of criminal proceedings in which the perpetrator has the status of a suspect or defendant) must give explanations with respect to the alleged act, and if so, whether from the perspective of Article 60 § 4 of the Penal Code it is their content, as well as their truthfulness, that matters.

The next section addresses the other elements of the institution of a small crown witness, set forth in Article 60 § 5 of the Penal Code (the basis for conditionally suspending the execution of a sentence of imprisonment against the offender according to modified, in relation to Article 69 § 1 of the Penal Code) and Article 61 § 1 of the Penal Code (basis for waiver of penalty). Also in these cases, it cannot be said that the indicated regulations are unambiguous, and the doctrine and case law understand them uniformly. Doubts relate, for example, to the directives that should guide the court

in deciding on the conditional suspension of penalty, as well as to the circle of offenders to whom Article 61 § 1 of the Penal Code is addressed.

The last chapter consists of three main parts. The first cites the views of selected (it is impossible to indicate all) authors in assessing the regulation of the small crown witness as such, concerning, for example, its legislative correctness, compliance with the general principles and directives of penalty, as well as usefulness in the practice of law enforcement agencies. The second presents the regulation of the small crown witness against the background of the applicable principles of the criminal process and practical research on cases of application of Article 60 § 3 and 4 of the Penal Code. The third presents its own assessment of the regulation, as well as formulates *de lege ferenda* postulates aimed primarily at cutting through the doubts signaled above.

The considerations in this trial lead to the following fundamental conclusions:

1. the use of the institution in question is not conditioned by any considerations related to the motivation of the perpetrator behind his decision to cooperate with law enforcement authorities;
2. in order to meet the requirement of disclosure of information within the meaning of Article 60 § 3 and 4 of the Criminal Code, it is necessary that the information is objectively unknown to the trial authority at the time of its transmission by the denouncer;
3. the form of disclosure of information by the offender is arbitrary, however, regardless of the form, the denouncer must at least confirm the information provided in his explanations (as a suspect in pre-trial proceedings);
4. in the case of Article 60 § 3 of the Penal Code, only such disclosure of information that occurs until the completion of pre-trial proceedings conducted for the act to which the denunciation relates is relevant;
5. despite the lack of unambiguously enunciated requirements in Article 60 § 3 and 4 of the Penal Code in this regard, in order to benefit from extraordinary mitigation of penalty, it is necessary for the perpetrator to present a consistent procedural attitude related to the prohibition of cancellation of explanations or their significant change in matters essential from the point of view of Article 60 § 3 and 4 of the Penal Code and the subject of the criminal proceedings conducted.