

Summary

Crime of the non-fulfilment of the duty from the range of the health and safety at work (art. 220 c.c.)

The matter of the safe and hygienic working conditions is closely connected with the labour law. Regulations of labour law, concerning this matter, seem to provide sufficient protection of the weaker side of the employment relationship - the employee. In case of the pathological situations, threatening in the special way to labour relations, the safety and the hygiene of performed work, workers'-rights, including the right to the health and life protection of the worker, the legislator foresaw penal interference, for example in art. 220 c.c. In this regulation the nonperformance - by the responsible, perpetrator - of the obligation from the range of the health and safety at work, which brings the exposure of the worker on the imminent danger of the loss of life or the heavy damage on health, is penalized.

Problems of the crime penalized in art. 220 c.c. raise interpretative doubts, and also doctrinal disputes, which bring theoretical and practical problems.

In this monograph, the features of the crime of the non-fulfilment of the duty from the range of the health and safety at work were analysed, as well as its historic genesis; analyses: the coincidence of the regulation of art. 220 c.c. with the other chosen provisions which have the penal character, the possibility of use of the institution of the active repentance (art. 220 § 3 c.c.) and the matter of the threat of punishment for the commission of this crime.

The subjects of carried out analysis are legal settlements, views expressed in the literature and in the judicature, which have the relationship with undertaken issue. Thereby, during the research, the following methods have been used: dogmatic-analytical, analytical-legal, and also historic.

A scientific hypothesis was the assumption that the crime of the non-fulfilment of the duty from range of the health and safety at work, fulfilled the important role

in strengthening of safe and hygienic working conditions; statutory definition of discussed crime is correct and does not require changes.

In Chapter I, the history of the provisions of health and safety at work - having chiefly penal character, are discussed. Infringement of provisions and rules of the health and safety at work, became penalized for the first time in art. 5 in usu with art. of 1 presidential proclamation of the Republic of Poland from the day 16 March 1928 about the health and safety at work. This regulation was a starting point of the later penal normalizations related to the responsibility for safe and hygienic working conditions.

The penal code from 1932 did not separately foresee criminal responsibility for the non-fulfilment of duties from the range of the health and safety at work. However, art. 242, typified intentional and unintentional: the exposure of life on the imminent danger (§ 1), and also the exposure of life on the imminent danger, if on his perpetrator weighed the obligation of the care or the supervision in relation to the exposed (§ 2), which obligation also included the care and the supervision within the range of safe and hygienic working conditions.

In post-war Poland, in art. 42 of the decree from the day 13 June 1946 about particularly dangerous crimes within a period of the reconstruction of the state, the maliciously or stubbornly evasion from the statutory or social obligation of the care for the good of workers and through this exposure them on the damage became penalized. Thereby, since safe and hygienic working conditions have legal as well as social character, they belong to workers'-goods, so their infringement could be connected to the criminal responsibility in virtue of this crime.

On 30 March 1965, the act about the health and safety at work was released, which has the weighty meaning for analyzed matter. Its subject was, among other things, the management of a place of employment or the group of workers, as well as not observing the regulations or rules of the health and safety at work.

The crime of the non-fulfilment of the duty from range of the health and safety at work, for the first time was determined in art. 191 c.c. from 1969. Its perpetrator could be responsible for health and safety at work in the place of employment, who by not fulfilling the obligation, could expose the worker to the imminent danger of the loss of the life, the grievous bodily harm or the heavy confusion of the health. Finally, the modern form of the crime of non-fulfilment of the duty from the range of the health and safety at work, was penalized in art. 220 c.c.

In Chapter II, the problem of the subject of the protection of the art. 220 c.c. was presented. The author analyzed the issue of the matter of the health and safety at work and the right to the safe and hygienic work conditions, its sources and character; one characterized discriminants of the worker, which are specified in art. 220 § 1 c.c. The carried out analysis led to the conclusion, that a victim of the crime of art. 220 c.c., is the worker, whose protection is realized particularly through: the health and live protection, protection of rights to safe and hygienic working conditions and safe and hygienic working conditions - themselves. In the doctrine and the judicature rightly dominate the view, that a worker protected through the regulation of art. 220 c.c., is the worker in the meaning of labour law, that is the person, for whom a base of the employment is the contract of employment, the appointment, the choice, the nomination or the cooperative contract of employment, connected also with the employer with the node of the employment relationship on the strength of which this worker commits himself to the job processing of the determined kind in the interest of the employer and under his management and in local and in the time designated by the employer, and the employer to employing of the worker behind the salary. The concept of health and safety at work is more complex, than the concept of the worker. It includes among other things, technical, legal, organizational, medical, psychological and hygienic means, which task is eliminating, or else maximum levelling of the negative environmental influence of the work on the part of the worker. The health and safety at work as the concept, is inseparable, logically and actually inseparable, which indicates its medical and legal range belong to the field of the labour protection. The right to safe and hygienic working conditions are guaranteed, among other things, in art. 66 of Constitution of Republic of Poland, the frame-directive 89/391/EEC in the case of the introduction of measures for the purpose of the improvement of the safety and the health of workers in the workplace, and the labour code in art. 15. The right of the worker to safe and hygienic working conditions, is one of elements of the content of the employment relationship, which assertion will rest on the guarantor.

In Chapter III, the objective side of the discussed crime, was analysed. Into her range enter, for instance, duties of guarantor-perpetrator was analyzed. The sources of these duties are provisions of labour law, included in laws and ordinances, which do not contradict with the rule nullum crimen sine lege. These duties have their source - among other things - in the provisions, which regulate the issues of the health and safety at work in

the labour code, mainly in the department X; provisions of other laws, concerning health and safety at work; provisions of executive acts; rules of the safe and hygienic work, that is some of not casuistically codified rules, of which realization is legally required. The crime of the non-fulfilment of the duty from the range of the health and safety at work can be realized passively or actively.

The perpetrator of the discussed crime must cause into being, the exposure to the determined danger, where the worker is the victim. The exposure to the danger - determined in art. 220 c.c. - is individual and specific. The regulation of art. 220 c.c. does not indicate on „the danger” as such, but on the imminent danger of the loss of life or the heavy damage on the health. In this case not for arising a sequence in the form of the loss of the life or the heavy damage on the health, but for itself exposure to it. This exposure of the worker on the imminent danger of the loss of life or the heavy damage on the health, is in case of the crime of the non-fulfilment of the duty from the range of the health and safety at work, a criminal result; the result which is connected causally with the non-fulfilment of the duty by perpetrator-guarantor. The perpetrator of the crime of the non-fulfilment of the duty from the range of the health and safety at work, can realize exposure to these danger in two ways, i.e.: a) to move the worker-victim from the safe state, into the state of the exposure to the imminent danger of the loss of life or the heavy damage on the health, or b) to move the worker-victim from the state already dangerous into the state more dangerous; causing in the result, the direct risk of life or the heavy damage on the health.

The danger determined in art. 220 c.c. is indissolubly connected with the concept of the immediacy. In this case, it is not about the general danger, so to say ethereal, but special, specific - the immediate danger of the loss of life or the heavy damage on the health. In the literature on the subject, numerous attempts of the definition appear, which describe what the imminent danger is; on their base one can separate several interpretations of criteria immediacies, being based on: a) the temporary element, b) the element of the probability degree, c) the element of the sufficient reason, d) the element of the inevitability. On this base one can indicate that generally, „the imminent danger” is a close danger, following into the while - that is in a very short period of time - before his sequence. This highly probable sequence, as result of the threat, could occur in the absence of any additional, incidental interference into the kinetic sphere. Above mentioned criteria – as long as their use is applicable – should

not be omitted or excluded at the attempt of the definition, whether it has to do with immediate danger or not, but to adapt it in the exhausting way, what should provide the correct recognizing and correct characterizing, and in consequence bring a solution of the considered penal problem; that is - in analyzed case - give the answer to a question, whether the imminent danger of art. 220 c.c. exists.

The subject of the danger, which follows in case of the realization of the crime of the non-fulfilment of the duty from the range of the health and safety at work, remained clearly specified by the legislator; it is „the loss of the life or the heavy damage on the health”. The loss of the life (the death) refers to definitive ceasing of the blood circulation and so called the cerebral death. However, the heavy damage on the health refers to the deprivation of the sight, the hearing, the speech, the ability of the procreation, with causing of other - than above indicated - heavy invalidity, the incurable serious illness, the long-lasting serious illness, the illness of really endangering life, permanent mental illness, the total permanent disability in the profession, the considerable permanent disability in the profession, the permanent essential disfigurement of the body, the permanent essential distortion of the body.

The content of Chapter IV concentrates on the subject of the crime penalized in art. 220 c.c., as on the person responsible for the health and safety at work, that is on the issue of his perpetrator. It is concluded, that the subject of the crime of the non-fulfilment of the duty from the range of the health and safety at work - depending on resting duties - can be: the employer as the natural person (art. 15 l.c.); the person performing actions from the range of the labour law for the employer (art. 31 § 1 and 2 l.c.), in this e.g. the member of the board of the determined companies of the commercial law (art. 201 § 1, art. 368 § 1 c.c.l.), the partner of the registered partnership (art. 39 § 1 c.c.l., the liquidator (art. 78 § 2, art. 283 § 1, art. 469 § 1 c.c.l.), the proxy (art. 1091 § 1 c.c.); manager of works, construction, department, faculty, etc. (art. 212 l.c.); the coordinator of works (art. 208 l.c.); the person who performs supervisory operations from the range of the health and safety at work, as e.g. the inspector of the State-Inspection of the Work (art. 184 § 1 l.c., art. 1 s.i.w.), the inspector of the State-Sanitary Inspection (art. 184 § 2 l.c.), the inspector of the social inspection of the work (art. 11 par. 3 and 4 s.i.w. in usu with art. 3 pkt 7 s.i.w.), the person who officiates the duties of the organ of the mining supervision (art. 168 par. 1 point 1 and 2 act of the geological and mining law); the expert to cases of the safety and the industrial health (§ 14 of the ordinance in the case of

experts from the range of the health and safety at work); the designer (art. 20 par. 1 point 1a, 1b c.l. in usu with art. 213 § 1 l.c.); the building investor (art. 18 par. 1 point 1-5 c.l.), the person who officiates the duties of the management and the supervision of the mining movement plant (§ 10 of the ordinance of the Minister of the Economy in the case of the health and safety at work, the conducting of the movement and the specialist of fire-fighting protection in underground mining movement plants); the rector (art. 228 par. 1 of the law about the higher education). However, this collection of subjects is not a closed collection.

In Chapter V the matter of the subjective side of the crime of the non-fulfilment the duty from the range of the health and safety at work was analyzed. In its range, he takes the intentional (art. 220 § 1 c.c.) or unintentional (art. 220 § 2 c.c.) form. The intentionality of the criminal act determined in art. 220 § 1 c.c. relies on this, that the perpetrator wants or reconciles not to fulfill the duty resulting from the responsibility for health and safety at work and as the result of this to expose the worker on the imminent danger of the loss of the life or the heavy damage on the health. In case of the unintentional realization of the discussed crime of art. 220 § 2 c.c., the perpetrator have no intent to commit it but commits it as the result of the non-observance of the caution, required under the circumstances, although the possibility of the commission of this act, and exposure of the worker to the imminent danger of the loss of the life or heavy damages on the health, foresaw or could foresee.

In Chapter VI the problem of the active repentance, which foresaw the legislator in art. 220 § 3 c.c. was raised. This regulation determines, that the perpetrator is not subject to punishment of analyzed crime - independently whether he realized his intentional or unintentional form - which voluntarily evades the impending danger. Necessary is in this case the voluntary rescission of the impending danger, that is the specifically direct risk of life or the heavy damage on the health. This rescission can lead to complete prevention of the danger, or even prevention of the immediacy, with which the danger is related to. The voluntariness means, that this rescission it should not connected with any compulsion, either rising the absolute or compulsive form.

In Chapter VII, the matter of the coincidence of provisions, thereby that the perpetrator of the discussed crime could with his preservation violate also and other provisions was undertaken. In special cases, the real or apparent coincidence of the provision of art. 220 § 1 or 2 c.c., may appear along with other chosen provisions

which have the penal character. The real, actual coincidence of provisions takes the form of the cumulative coincidence, happening when between a set of individual elements of coinciding provisions, the full interference does not happen – in this case the rule of the exceptive plurality of evaluations in the penal law cannot be applied. In this context one should indicate, that the cumulative coincidence takes place in case of: a) the coincidence of art. 220 § 1 c.c. with: art. 155, 156 § 2, 157 § 1, 2 or 3, 163, 164, 165, 218 § 1, 231 § 1, 2 or 3 c.c., art. 91a c.l., art. 63 par. 1 or 2 of act of the technical supervision; b) the coincidence of art. 220 § 2 c.c. with art. 157 § 1, 2 or 3, 163, 164, 165, 218 § 1, 231 § 1, 2 or 3 c.c., art. 91a c.l., art. 63 par. 1 or 2 laws about the technical supervision. Moreover between provisions typifying intentional (art. 220 § 1 c.c.) or unintentional (art. 220 § 2 c.c.) form of the crime of the non-fulfilment of the duty from the range of the health and safety at work with some other penal provisions, the apparent coincidence of provisions can appear, in such cases, the rules of exceptive a plurality of evaluations in the penal law can be applied. One of the forms of the apparent coincidence of provisions is the rule of the speciality, in case of which, the special provision, annuls the provision, which has a general relation to him. The special provision includes all the features of the general provision, having besides the features defining it in the more detailed way. Thereunder, the regulation of art. 220 § 1 c.c. is a special regulation in relation to art. 160 § 1 c.c., and art. 220 § 2 c.c. to art. 160 § 3 c.c. The apparent coincidence of provisions is connected also with the subsidiarity rule, where full inference of provisions happens, e.g. the regulation which penalized the exposure of the health and the life is auxiliary-subsidary regulation in relation to the regulation about the violation of these goods. Thereunder this provision a) art. 220 § 1 c.c. is subsidiary to art. 148 § 1, 156 § 1 or 3 c.c.; b) art. 220 § 2 c.c. is a subsidiary regulation to art. 155, art. 156 § 2 c.c. Besides, with the apparent coincidence of provisions, the rule of the consumption is also connected, and appears, when features of the one act (absorbing act) will include as a whole features of other act (absorbed act). This rule happens in case of the absorption of art. 283 § 1 l.c. through suitably art. 220 § 1 or 2 c.c.

In Chapter VIII the issue of the threat of punishment, in the context of the criminal responsibility of the perpetrator of the crime of the non-fulfilment of the duty from the range of the health and safety at work was analyzed. For the commission of the crime determined in art. 220 c.c. in the intentional form (§ 1), the perpetrator is subject to punishment for deprivations of liberty to years 3, and for realizing of this crime

in the unintentional form (§ 2), the perpetrator is subject to the fine, to the penalty of the restriction of liberty or the deprivation of liberty until one year. However, this rule does not limit exceptions. Moreover: the penalty for the crime of the non-fulfilment of the duty from the range of the health and safety at work, can have greater rigor or could be alleviated; the perpetrator of this crime can remain the subject to probation. There is a possibility that the perpetrator of this crime, can be fined, along with the restriction of liberty, if the perpetrator committed the act for the purpose of the gain of the material benefit or when the material benefit was gained. On the perpetrator of the crime of art. 220 § 1 or 2 c.c., the court can, beside imposing penalties, also undertake punitive measures which can be imposed also idiosyncratically. Simplifying, these measures can be: public deprivation of rights; the prohibition of the occupation of the specified position, prohibition of practicing the specified profession or managing the specified economic activity; the forfeit of the objects servants to commission of this crime or intended to his commission or the injunctive for the State Treasury or the forfeit of the equivalent of objects coming directly from the crime or objects which served or were intended to the commission of the crime; the forfeit of objects coming directly or indirectly from the offence; the reparation (satisfaction) for experienced harm or the injunctive for the wronged; public announcement of the sentence; the deprival or the restriction of parental or welfare rights in case of the commission of the crime to the detriment of juvenile or in the cooperation with him.