

SUMMARY

Reduction of responsibility in the scope of standard sentences in the Polish criminal law

Most crimes committed in Poland are minor or medium as far as crime severity is concerned. 2800 crimes are committed in Poland per 100 000 people, this places Poland in “average” among the European Union states. It is important that after a period of increase in the number of committed crimes to the number of 1 500 000 per year in the period 2003-2004, since that time a systematic decrease was noted. At the moment the number of detected crimes decreased to half of this highest level. Despite those favourable tendencies in the image of crime the judicial decisions of Polish courts is dominated by imprisonment, its share in the structure of adjudicated sentences is about 65%, while 80% of those are adjudicated with a conditional suspension. Courts rarely adjudicate non-custodial sentences. The share of the penalty of imprisonment in the structure of imposed sentences is about 12%, while solely-imposed fine about 22-24% (see Statystyka sądowa. Prawomocne skazania osób dorosłych. [Court Statistics. Legally Binding Convictions of Adults] 2011-2015, p. 22 and 24). In other European states that have a more numerous and more serious criminal activity than in Poland – the fine is the main penalty while the penalty of imprisonment amount to about 10-12 % of all imposed penalties.

Due to negative results of imprisonment for the penalised person, lack of sufficient crime fighting results with its use and high costs of its imposition the lawmakers have been trying for years to change the penalty policy of courts and create legal solutions aimed at making imprisonment the final means of legal reaction, used in cases of dangerous criminals committing serious crimes. They are trying to make non-custodial penalties the basic instrument of countering most crimes.

The aim of my thesis was the presentation of various institutions and statutory solutions included in the Polish Criminal Code of 1997 that allow the the reduction of criminal liability in reference to the one provided for in the sanction, to such that in the given case can secure the performance of penalty's objectives without sentencing the perpetrator to any penalty or by sentencing with penalty waiver or by sentencing to one of the non-custodial penalties or so called mixed penalty that includes the combination of a short imprisonment with restriction of liberty. It must be stressed that all those possibilities of criminal liability reduction were provided for courts' use in the scope of so called normal sentence, that is without the need to use the instrument of

extraordinary penalty mitigation. In order for the courts to use the criminal liability reduction on the basis of regulations on extraordinary penalty mitigation special causes, specified in the act, must take place, this is not required when criminal liability reduction is used in the scope of a normal sentence. In this case courts received a general possibility of a wide and sometimes significant reduction of criminal liability of the perpetrators at their discretion, however with the obligation to ensure that the sentence in scope of criminal liability or penalty was just and has a preventive effect both on the perpetrator and the society in general.

The first chapter deals with the instrument of conditional discharge of proceedings. This is a probation means for use in reference to perpetrators that have not been penalised for a purposeful crime, with a positive criminological prognosis, that committed a crime the sentence for which does not exceed 5 years of imprisonment. This type of legal reaction is the most advantageous for the perpetrator. The sentence of conditional discharge stops the process and what is more important is not a judgement of conviction, although it is entered in the National Criminal Register. It is connected to subjecting the perpetrator to a trial period of 1 to 3 years, it can be connected to supervision, and is obligatorily connected with obliging the perpetrator to make good the damage caused in whole or in part, as well as, if possible, to compensate for the wrongs. Moreover, the court may impose a number of so called probation obligations on the perpetrator that are to grant satisfaction and a feeling of safety to the victim of the crime, discipline the perpetrator and counter the possibility of the perpetrator committing another crime. The court may also sentence the perpetrator to a consideration in cash as well as a prohibition to drive vehicles for up to 2 years (articles 66 and 67 of the Polish Criminal Code).

The second chapter of the thesis shows the possibility of criminal liability reduction by passing a judgement of conviction with penalty waiver and restriction of legal consequences of the crime to imposing a punitive measure, foreclosure or a compensation. Such a possibility is provided for perpetrators of minor crimes the sentence for which does not exceed 3 years of imprisonment or a more lenient penalty subject to minor social danger of the crime and such a limited reaction to the crime can fulfil the the objective of the penalty (article 59 of the Polish Criminal Code).

The third chapter of the thesis focuses on the special directive of the sentencing established in article 58 §1 of the Polish Criminal Code, which introduces a limitation on imposing an imprisonment penalty for crimes that are subject to an alternative sanction. These include minor offences for which the act provides the possibility to choose the penalty, that is the choice of non-

custodial penalties in the form of a fine or restriction of liberty or imprisonment, while the possible imprisonment penalty does not exceed 5 years. In the original version of the code, in case of such crimes the *ultima ratio* rule referred only to the severity of immediate custodial sentence. Currently (after the novelization of the code of 20 February 2015) the imposing of imprisonment penalty both in immediate and conditional mode should only take place as a last resort, that is when an other penalty or penal means cannot fulfil the penalty's objective.

The fourth chapter deals with with the possibility of reduction of criminal liability for the medium gravity crimes by imposing a non-custodial penalty in the form of a fine or restriction of liberty instead of the imprisonment penalty for a given crime if its statutory sentence is no more than 8 years (article 37a of the Polish Criminal Code). Much is said in this chapter about the legal nature of this regulation which resulted in significant divergence in opinions within the criminal law doctrine. Most authors think that article 37a of the Polish Criminal Code formulates a directive of the sentence which allows in cases of crimes carrying a penalty of imprisonment (without a non-custodial alternative) the use of so called alternative non-custodial penalties in the form of a fine or restriction of liberty. According to some authors article 37a of the Polish Criminal Code transforms all single-type sentences with an imprisonment penalty, if its statutory sentence does not exceed 8 years into alternative sanctions that include a choice of imprisonment penalty, a fine and restriction of liberty. Acceding to one of these statements brings about very serious consequences for the legal situation of perpetrators that commit crimes carrying a penalty of imprisonment not exceeding 8 years. If we assume that article 37a of the Polish Criminal Code transforms single-type sentences into alternative sanctions then in consequence the sentence directive of article 58 §1 of the Polish Criminal Code that – as a matter of principle – prohibits the choice of imprisonment penalty, should be used in reference to some of the crimes from such group. As a result courts would only exceptionally be able to impose a penalty of imprisonment for up to 5 years for all the crimes for which the lawmaker provided such a penalty without a non-custodial alternative. As a result this would lead to equation of sentences for perpetrators of minor and medium offences and this is hard to agree with.

The fifth chapter discusses a new institution enabling the reduction of criminal liability of perpetrators of medium and major offences in the form of the possibility to impose a so called mixed (joint) penalty. It is the combination of two types of penalties imposed simultaneously for the same crime, that is from an immediate imprisonment penalty and a limitation of liability penalty. The possibility of imposing a mixed penalty was introduced by article 37b of the Polish

Criminal Code for offences carrying the penalty of imprisonment, including the gravest ones that carry a 10 to 12 years of imprisonment penalty. In such case the court instead of a single penalty may impose a short imprisonment sentence from 1 to 6 months and a limitation of liberty penalty from 1 month to 2 years. In case of medium offences the imprisonment penalty sentence is appropriately shorter and amounts from 1 to 3 months. Execution of penalties included in the mixed penalty is carried out in order, starting from the imprisonment penalty connected to placing the convicted perpetrator in prison and when this is completed the limitation of liberty penalty is executed. Pronouncement of the so called mixed penalty is supposed not to allow the negative effects of the perpetrator's longer stay in prison, while at the same time to enable a just punishment for the committed crime and a "shock" retribution that is continued afterwards in the form of the far less troublesome limitation of liberty penalty. According to article 37b of the Polish Criminal Code, that is the basis for imposing the so called mixed penalties, the main interpretation problem is the category of offences to which it may be used. One opinion is that only for those that carry the imprisonment penalty without non-custodial alternatives, so medium and grave offences, other authors say that for all offences, including minor ones that carry the alternative of imposing non-custodial and imprisonment penalties.

In the sixth chapter of my thesis I present the results of criminal liability reduction that can be achieved in the scope of a normal sentence in correlation with the results that can be achieved using the institution of extraordinary mitigation of punishment, which in order to be used requires the fulfilment of a number of special requirements that are not required when using the normal sentence institution. This confrontation inevitably leads to a conclusion that using the extraordinary penalty mitigation institution in case of minor offences is in the current legal situation completely unnecessary.

In my thesis I wanted most of all to present all the possibilities of criminal liability reduction that were given for the disposition of the courts in the scope of so called normal sentence and dismiss the doubts that can become obstacles in their correct and uniform use by various courts in Poland. In the conclusion of my contemplations I also pointed out that in the face of so many possibilities of reduction of liability of perpetrators committing offences – it is almost needless to use the instrument of extraordinary penalty mitigation (the presupposition of which is to have an exceptional nature and requires the fulfilment of numerous conditions), as the same or very similar result can be achieved in the scope of so called normal sentence. Time will tell if this really comes to be and the courts start to rationalize and limit the penalties to required minimum.

