specially stressed that the cooperation between different organisations and states in the prosecution of international crime is of utmost importance.

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MIXED PUNISHMENT – A NEW CONSTRUCTION IN POLISH CRIMINAL LAW

As a result of the amendment from 20th February 2015[100] (which came into force on 1st July 2015) a new art. 37b was introduced to the Polish Criminal Code. It sounds as follows: "In a case concerning a misdemeanor punished with deprivation of liberty, regardless of the minimum statutory punishment provided for such an act, the court may impose simultaneously deprivation of liberty up to 3 months, and in cases when the maximum punishment is at least 10 years of imprisonment – up to 6 months and the punishment of restriction of liberty up to 2 years. The punishment of deprivation of liberty is to be executed first, unless the statute states otherwise".

In the motives of the law-maker the term 'mixed punishment" was used, which does not seem to be quite appropriate as it may suggest that just one punishment is imposed (with mixed features), while on the basis of art. 37b two punishments, which remain separate entities, are in fact imposed.

The provision of art. 37b enlarges the "punishment boundaries" mentioned in art. 53 § 1 of the Criminal Code by making it possible to impose two punishments simultaneously for every misdemeanor punished with deprivation of liberty, regardless of the minimum statutory punishment: short-term deprivation of liberty and restriction of liberty. This means that the court may impose simultaneously:

1. the punishment of deprivation of liberty from 1 to 3 months (when the maximum statutory punishment is less than 10 years of imprisonment) and the punishment of restriction of liberty from 1 month to 2 years;
2. the punishment of deprivation of liberty from 1 to 6 months (when the maximum statutory punishment is at least 10 years of imprisonment) and the punishment of restriction of liberty from 1 month to 2 years.

On the basis of art. 37b – as there are no exclusions whatsoever – the punishment of restriction of liberty may be imposed in any of its forms described in art. 34 § 1a of the Criminal Code, so it may mean:

100 Statute from 20th February introducing amendments to the statute – Criminal Code and some other statutes (Official Journal 2015, position 396).

the obligation to perform an unpaid, controlled work for social needs;

the obligation to remain in the place of permanent residence or in another indicated place, with the use of the electronic surveillance system;

the obligation described in art. 72 § 1 pkt. 4-7a;[101]

deduction from salary from 10 to 25 % a month for a social aim indicated by the court

- or any combination of the restrictions (art. 34 § 1b of the Criminal Code).

The institution of the so called mixed punishment should be, according to the law-maker, "especially attractive in case of more serious misdemeanors"[102], as it broadens and makes more elastic the arsenal of criminal law reaction measures for such misdemeanors. The analysed provision introduces a statutory punishment imposition directive which is only crucial from the point of view of the minimum sanction (verba legis "regardless of the minimum statutory punishment"), which means that the institutions of extraordinary increase or mitigation of punishment do not apply, nor does art. 38 § 1 k.k.[103]

The expression used in art. 37b of the Criminal Code: " regardless of the minimum statutory punishment provided for such an act" means that this refers to the minimum statutory punishment of deprivation of liberty provided for a given misdemeanor. It seems that to avoid any doubts the expression " regardless of the minimum statutory punishment of deprivation of liberty provided for such an act " would be clearer. Another expression used in art. 37b which seems not precise enough is " in a case concerning a misdemeanor punished with deprivation of liberty". This is the source of the doctrinal problem whether mixed punishment can be imposed in case of all misdemeanors which are punished **only** with deprivation of liberty or whether it is also possible in case of misdemeanors punished alternatively also with non-isolation punishments (fine and restriction of liberty). There are opposing opinions referring to this problem[104]. As the expression used is "in a case concerning a misdemeanor punished with deprivation of liberty" and not "in a case concerning a misdemeanor punished only with deprivation of liberty", it seems that art. 37b can be applied not only in situations when the provision describes the punishment as only the deprivation of liberty. It should be enough

101 This refers to the following obligations: the obligation to perform some paid work, to obtain education or to prepare for a profession; abstaining from alcohol abuse or from the use of other intoxicating substances; undergoing an addiction therapy; undergoing a therapy, especially psychotherapy or psycho-education; participation in correctional and educative actions; abstaining from being in certain environments and places; abstaining from contact with the victim or other persons in a certain way or from approaching the victim and other persons.

102 See the justification of the draft bill referring to the amendments to the statute – Criminal Code and some other statutes, sejm.gov.pl, publication no. 2393, point II.3.

103 – M. Mozgawa (in:) Kodeks karny. Komentarz, M. Mozgawa (ed.), Warszawa 2015., p. 123.

104 According to M. Mozgawa, mixed punishment can be imposed only in case of those misdemeanors which are punished only with deprivation of liberty (M. Mozgawa [in:] Kodeks..., op cit., p. 123). Another opinion is expresses by J. Majewski, see: J. Majewski, Kodeks karny. Komentarz do zmian 2015, Warszawa 2015., p. 98.

that such a punishment is one of elements of the statutory sanction.

There are no doubts about the possibility to impose penal measures alongside the mixed punishment (in some cases this will be obligatory). It seems that there are no formal obstacles to conditional suspension of the deprivation of liberty imposed on the basis of art. 37b. There is no statutory interdiction to use this institution[105]. Such interdiction should not be found in the second sentence of the commented provision, which only refers to the order of executing the two simultaneously imposed punishments. In case of imposing simultaneously the punishment of deprivation of liberty and the punishment of restriction of liberty it is the deprivation of liberty which should, unless the statute states otherwise, be executed first. This stipulation "unless the statute states otherwise" demonstrates that there are exceptions from the general rule. Such an exception is described in art. 17a of the Executive Criminal Code, according to which the punishment of restriction of liberty should be directed to execution as the first one only when there are legal obstacles to execute the deprivation of liberty without delay. When such obstacles disappear – no matter whether the punishment of restriction of liberty has been carried out in full – the punishment of deprivation of liberty should be directed to execution without delay.

There have been expressed some justified doubts connected with the erasion of the conviction in case of the mixed punishment. When deprivation of liberty and restriction of liberty are imposed cumulatively the erasion of the conviction can take place only when conditions referring to both punishments are met. De lege lata there is a different time needed for the erasion of the conviction in case of the punishment of deprivation of liberty (in case of the mixed punishment not exceeding 3 or 6 months it will be 10 years from the execution, pardon or prescription of punishment execution – art. 107 § 1 of the Criminal Code, and on the convicted person's motion – 5 years – art. 107 § 2 of the Criminal Code; in case of the punishment of restriction of liberty – it is 3 years from its execution (art. 107 § 4 of the Criminal Code). The binding Criminal Code states that conviction can be erased only as w whole and the erasion of individual punishments is not possible. So it is justly stressed in the jurisprudence that "leaving different periods necessary for the erasion of the conviction in case of punishments which are elements of the mixed punishments atomizes the unity of this penal reaction and does not help the integration of reaction through mixed punishment as unity on the convicted person"[106].

105 A contrary opinion is expressed by M. Małecki who states "as the imposed punishments are to be executed, and especially deprivation of liberty is to be executed, it is not admissible to conditionally suspend the execution of this punishment", M. Małecki [in:] Nowelizacja prawa karnego 2015. Komentarz, W. Wrybel (ed.), Krakyw 2015., p. 298.

106 See: A. Grześkowiak (in:) Kodeks karny. Komentarz, A. Grześkowiak, K. Wiak (eds.), Warszawa 2015.,p. 332.

Concluding, it should be stated that the introduction of mixed punishment into the Polish Criminal Code was to be useful especially in case of serious misdemeanors and was connected with the radical reduction of the possibility of imposing deprivation of liberty with conditional suspension of its execution. Such a reduction could, in the opinion of M. Królikowski and R. Zawłocki lead to some not desired consequences – the imposing of the not-suspended deprivation of liberty too often[107]. It should be mentioned here that the same statute from 20th February 2015 restricted the possibility to impose deprivation of liberty with conditional suspension of its execution by limiting the use of this institution only to the punishment of deprivation of liberty not exceeding 1 year (earlier it used to be 2 years). This means that the executions of the other punishments cannot be suspended at all.

The presented doubts connected with the interpretation of art. 37b of the Criminal Code, which is a novelty in Polish criminal law, show only some of the difficulties that the courts will have to cope with while imposing the mixed punishment in practice.

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OMISSION OF MEDICALLY UNNECESSARY TREATMENT AT THE FINAL STAGES OF HUMAN LIFE AS A PROBLEM OF CRIMINAL LAW

Slovenia is one of those countries, where omissive acts are being incriminated in one of two possible ways: by direct incriminations of omissions (so called proper omissive incriminations) and by omissions by commission (in Slovenian criminal legal terminology: improper omissions). In the Slovenian Criminal Code, the so-called CC1, adopted in the parliament in 2008 (entered into force on November 1st 2008, OJ RS Nr.: 50/12 from 29th of June 2012, including amendments, adopted until present), in Art. 17 under the title "The Manner of Commission of Criminal Offence" one can find the following legal definitions: *"(1) A criminal offence may be performed by commission or by omission. (2) A criminal offence may be performed by omission only when the perpetrator has failed to perform the act, which he was obliged to perform. (3) A criminal offence may also be performed by omission, though the criminal offence is not prescribed as omission in the statute, when the perpetrator has*

107 M. Królikowski, R. Zawłocki, Prawo karne, Warszawa 2015., p. 345.