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THE NEW SHAPE OF THE PUNISHMENT OF RESTRICTION OF LIBERTY IN THE POLISH CRIMINAL CODE¹⁰⁸

After amendments introduced to the Polish Criminal Code by the statute from 20th February 2015¹⁰⁹ (which came into force on 1st July 2015) the construction of the punishment of restriction of liberty has undergone some considerable changes. As the justification of the draft bill states: “The aim of the planned changes (...) is to intensify the discomforts connected with the punishment of restriction of liberty and to reduce the attractiveness of the probation regime connected with the imposing of the punishment of deprivation of liberty with conditional suspension of its execution. The punishment of restriction of liberty, alongside the punishment of fine, should become the basic punishment imposed in case of misdemeanors whose social harmfulness is not particularly high. (...) The content of this punishment has undergone major changes making it the most elastic and possible to be given a concrete form a *casu ad casum*. It starts to comprise the deprivation of liberty in the form of electronic surveillance and other obligations which limit concrete human liberties”¹¹⁰.

The punishment of restriction of liberty is imposed in months, and its statutory length is from 1 month to 2 years. In case of the extraordinary increase of punishment (art. 38 § 2 of the Criminal Code) and in case of imposing the combined punishment (art. 86 § 1 of the Criminal Code) the punishment of restriction of liberty can be imposed for the maximum of 2 years as well. As a result, there is *de facto* no possibility to apply the extraordinary increase of punishment to restriction of liberty. As the maximum length of the punishment was extended it was assumed that as a result of the obligations constituting this punishment, a yet longer period, taking into account also the changing labour market and the need for socially useful work, is not functional.

The analysed punishment can be imposed when it appears in the sanction of a given type of forbidden act and moreover in situations described in the general part of the Criminal Code: a) in case of the extraordinary mitigation of punishment (art. 60 § 6 point 3 and 4); b) in case of the so called mixed

108 - The number of convictions for restriction of liberty in Poland: in 1997 – 10 934; in 1998 – 13 263; in 1999 – 15 648; in 2000 – 14 796; in 2001 – 28 507; in 2002 – 39 156; in 2003 – 52 763; in 2004 – 71 887; in 2005 – 67 254; in 2006 – 57 918; in 2007 – 47 091; in 2008 – 40 643; in 2009 – 43 524; in 2010 – 49 692; in 2011 – 49 611; in 2012 – 50 730.

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

110 www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=2393

punishment which consists of the punishment of deprivation of liberty and of the punishment of restriction of liberty up to 2 years (art. 37b); c) on the basis of art. 37a (“Whenever the statute states that an offence is to be punished with deprivation of liberty not exceeding 8 years, the court may instead of that punishment impose a fine or the punishment of restriction of liberty described in art. 34 § 1a point 1, 2 or 4”); d) as a substitute punishment on the basis of art. 75a § 1¹¹¹.

The punishment of restriction of liberty can have the following forms:

1. the obligation to perform an unpaid, controlled work for social needs;
2. the obligation to remain in the place of permanent residence or in another indicated place, with the use of the electronic surveillance system¹¹²;
3. the obligation described in art. 72 § 1 pkt. 4-7a, i.e. the obligation of the offender to perform a paid work, to obtain education or to prepare for a profession; to abstain from alcohol abuse or from the use of other intoxicating substances; to undergo an addiction therapy; to undergo a therapy, especially psychotherapy or psycho-education; to participate in correctional and educative actions; to abstain from being in certain environments and places; to abstain from contact with the victim or other persons in a certain way or from approaching the victim and other persons;
4. deduction from salary from 10 to 25 % a month for a social aim indicated by the court (art. 34 § 1a of the Criminal Code)¹¹³;

It should be mentioned here that the punishment of restriction of liberty in the form of unpaid controlled work for social needs is not to be imposed if the state of the accused person’s health or his personal features lead the court to the belief that he would not perform that obligation (art. 58 § 2a of the Criminal Code).

It is very important to notice that the obligations and the deduction described in art. 34 § 1a can be imposed jointly or separately¹¹⁴. It should also be stressed that the period of the obligation to work (or the period of the deduction from salary) does not have to be identical with the duration of the punishment of restriction of liberty¹¹⁵. The punishment may be composed as a

111 It should be mentioned that after the amendments from 20th February 2015 it is no longer possible to conditionally suspend the execution of the punishment of restriction of liberty. Compare also: T. Sroka, *Kara ograniczenia wolności*, (in:) *Nowelizacja prawa karnego 2015. Komentarz*, W. Wrybel (ed.), Kraków 2015, s. 87.

112 Electronic surveillance allows for the control of the convicted person's behaviour due to the use of technical means (art. 43b § 1 of the Executive Criminal Code), the system of electronic surveillance means in turn all the methods of conduct and technical means used to execute electronic surveillance (art. 43b § 2 of the Executive Criminal Code). The punishment of restriction of liberty in the form of electronic surveillance system is executed as stationary surveillance (art. 43c § 1 of the Executive Criminal Code), when it is possible to control whether the convicted person stays at the place indicated by the court during certain days of the week or at certain hours.

113 The regulations of art. 34 § 1a point 1, 2 and 4 do not apply to soldiers (art. 323 § 1 of the Criminal Code).

114 Compare: J. Majewski, *Kodeks karny. Komentarz do zmian 2015*, Warszawa 2015, p. 60.

115 Compare: T. Sroka (in:) *Kara...*, p. 96.

compilation and therefore have quite a complex character. It is therefore possible to have a case where the offender is punished with restriction of liberty for two years and during the first year he will be obliged to perform the unpaid, controlled work for social needs, and during the second year the punishment will take the form of deduction from his salary (from 10 to 25%). The other obligations indicated in art. 34 § 1a of the Criminal Code may, of course, (though don't have to) be imposed on him. It is therefore clear that there are many theoretical variants of constructing the punishment of restriction of liberty which – depending on the accepted construction – may be either quite mild or pretty severe¹¹⁶. As it has been stressed in the justification of the draft bill from 20th February 2015, it is possible to impose the restriction of liberty for a given time and to construct its content by imposing one or a few of the obligations or the deduction from salary described by art. 34 § 1a. Besides that the court may describe the time of the execution of the obligation to remain in the place of permanent residence or in another place (with the use of electronic surveillance) both in terms of days and months. All this makes it possible for the court to compose the content of the punishment of restriction of liberty as changeable in time. This will obviously require the will to undertake additional actions by the court and will cause some execution difficulties¹¹⁷.

Two permanent obligations are connected ex lege with the punishment of restriction of liberty: 1) the convicted person may not, without the court's consent, change the place of his permanent residence; 2) he is obliged to make statements about the execution of the punishment. These obligations are a form of restriction of liberty and their aim is to ensure the proper court supervision over the execution of the punishment¹¹⁸. According to art. 34 § 3 the court may also impose on the convicted person the cash benefit (described in art. 39 point 7 of the Criminal Code) or the obligations described in art. 72 § 1 point 2 and 3 (to apologise to the victim; to execute the obligation to pay for the living of another person).

The obligation to perform the unpaid, controlled work for social needs (from 20 to 40 hours a month) can be imposed both on an offender who is employed and on an unemployed person. The labour time of an unemployed convicted person cannot exceed 8 hours per day, yet on that person's motion it can be prolonged to 12 hours¹¹⁹. The convicted person who is employed should

116 – M.Królikowski, R.Zawłocki, *Prawo karne*, Warszawa 2015, p. 340.

117 The execution of the punishment of restriction of liberty is described in art. 53-66 of the Executive Criminal Code and in the decree of the Minister of Justice from 1st June 2010 on the entities in which the punishment of restriction of liberty and social works are performed (Official Journal No. 98, position 634) and the decree of the Minister of Justice from 25th May 2015 on the means and detailed conditions in which punishments, penal measures and protective measures are executed in the system of electronic surveillance (Official Journal position 773).

118 A. Grześkowiak (in:) *Kodeks karny. Komentarz*, A Grześkowiak, K.Wiak (eds.), Warszawa 2015, p. 297.

119 § 5 section 3 of the decree of the Minister of Justice from 1st June 2010 on the entities in which the punishment of restriction of liberty and social works are performed.

be given such work that can be performed when he is not at his regular work. The total labour time of the convicted person cannot exceed 8 hours a day; at that person's motion it can be prolonged to 12 hours (§ 5 section 4 of the decree). The execution of the unpaid, controlled work for social needs can also take place on public holidays days and on non-work days of the employer, for whom the work is being performed (art. 57a § 3 of the Executive Criminal Code).

If the court imposed on the convicted person the deduction from salary (from 10 to 25%) instead of the obligation to perform some indicated work, a copy of the decision is sent to the convicted person's employer with the indication of the entity which should benefit from the deduction and at whose account the money should be paid in, it should be indicated moreover from which elements of the salary the deduction is to be made and how it is to be done (art. 59 § 1 of the Executive Criminal Code). When the employer makes salary payments for the convicted person, the indicated amount of the salary is deducted from it and sent on without delay according to the court's indications. The court should be notified about all this. The costs connected with sending the money are deducted from the sum already taken from the salary (art. 59 § 2 of the Executive Criminal Code).

If it seems proper from the educational point of view, the court may decrease the number of labour hours to be performed monthly or the height of the deduction from salary, yet it cannot be less than the statutory minimum described in art. 34 § 1a point 4 and art. 35 § 1 of the Criminal Code (art. 61 § 2 of the Executive Criminal Code). In some justified circumstances the court may change the form of performing the work by assuming that 20 hours of work for social needs is equal to 10% of the salary; the imposed work cannot exceed 40 hours a month (art. 63a § 1 of the Executive Criminal Code).

The court indicates the duration of the execution of the obligation to remain in the place of permanent residence or in another indicated place with the use of the electronic surveillance system, taking into account the convicted person's work conditions and the other obligations imposed on him, so as to make them executable and not more severe than is necessary from the point of view of the punishment's essence. The statutory description of the time of execution of the obligation described in art. 34 § 1a point 2 of the Criminal Code ("to remain in the place of permanent residence or in another indicated place, with the use of the electronic surveillance system") is of a three step character; there is a global (total), weekly and daily limit. As far as the total limit is concerned, the obligation may not exceed 12 months (even if the punishment of restriction of liberty was imposed for 2 years). Its duration is to be established in months and every month equals 30 days (art. 12c of the Executive Criminal Code). Its weekly amount has been set as 70 hours a week (41,7% of the weekly amount), and the daily amount cannot exceed 12 hours a day (50% of the period of 24

hours)¹²⁰. It should be noticed that the maximum duration of the punishment of restriction of liberty is set in years and it equals 2 years (while it can be imposed in months and years – art. 34 § 1 of the Criminal Code), while the upper limit of the discussed obligation is 12 months and it is to be imposed in months. If the punishment of restriction of liberty will be imposed on the convicted person for a year (and not for 12 months, as it can be imposed both in years and months) and the obligation to remain in the place of permanent residence with the use of the electronic surveillance system will be imposed for 12 months, there will appear a time discrepancy between them. It is so because, according to art. 12c of the Executive Criminal Code a year means 365 days, a month means 30 days and a week – 7 days. Therefore a year of the punishment of restriction of liberty means 365 days of its duration, while 12 months of the imposed obligation mean 360 days (12 x 30). This discrepancy may lead to some practical difficulties¹²¹.

The Criminal Code only indicates the maximum time of the obligation connected with using the system of electronic surveillance (the already mentioned 12 months, 70 hours a week and 12 hour a day); this, of course, means that it can be imposed for a shorter time. During the executive proceedings the court indicates the place of executing the surveillance, the periods of time during 24 hours and on separate days of the week, when the convicted person is obliged to stay at the place where surveillance is being executed (art. 43 § 1 of the Executive Criminal Code); the indicated periods of time cannot begin or end between 11 p.m. and 5 a.m., unless it is justified by special circumstances connected with the professional work of the convicted person (art. 43 § 3 of the Executive Criminal Code).

The punishment of restriction of liberty is to be executed in the place of the convicted person's permanent residence or his employment or not far from that place, unless important reasons make it more rational to execute the punishment in a different place (art. 54 of the Executive Criminal Code).

It is possible to postpone the execution of the punishment of restriction of liberty (art. 62 of the Executive Criminal Code), to grant a pause in its execution (art. 63 of the Executive Criminal Code), as well as to change the form of the obligation to work (art. 63a of the Executive Criminal Code). If the convicted person tries to evade the execution of the punishment of restriction of liberty, the court decides – and if the convicted person tries to evade the payment of the cash benefit or the obligations imposed on the basis of art. 34 § 3 of the Criminal Code, the court may decide – that the replacement punishment of deprivation of liberty should be executed. If the convicted person has already performed some part of the punishment of restriction of liberty, the court decides that the replacement punishment of deprivation of liberty shall be

120 – M.Mozgawa (in:) Kodeks karny. Komentarz, M.Mozgawa (ed.), Warszawa 2015, p. 118.

121 A.Grześkowiak (in:) Kodeks..., A. Grześkowiak, K.Wiak (eds.), p. 312.

executed to an extent corresponding with the punishment of restriction of liberty that remains to be executed, assuming that one day of the replacement punishment of deprivation of liberty equals two days of the punishment of restriction of liberty. If the statute does not provide for deprivation of liberty as punishment for a given offence, then the maximum replacement punishment of deprivation of liberty may not exceed 6 months (art. 65 § 1 ad 2 of the Executive Criminal Code).

The court may release the convicted person from the rest of the punishment, assuming it to be executed, if that person has been sentenced to restriction of liberty and has already served at least half of it and during that time observed the law and also performed all the obligations imposed on him, all the penal measures, compensation measures and forfeiture (art. 83 of the Criminal Code).

It is therefore obvious that after the amendments to the Polish Criminal Code, the punishment of restriction of liberty has taken a new shape, yet time will show how these solutions shall be accepted and if they shall turn out useful in the criminal justice practice.

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НЕКОТОРЫЕ ВОПРОСЫ КВАЛИФИКАЦИИ ПРЕСТУПЛЕНИЙ, СОВЕРШЕННЫХ ОРГАНИЗОВАННОЙ ПРЕСТУПНОЙ ГРУППОЙ

После восстановления своей государственной независимости Азербайджанская Республика во всех сферах, в том числе и в сфере борьбы с преступностью, осуществила основополагающие реформы. Правовые и структурные реформы играют существенную роль в предупреждении правонарушений. Однако, без полного, всестороннего изучения с помощью криминологических исследований содержания преступности невозможно проведение мер борьбы, основанных на стратегических анализах.

С этой точки зрения изучение и анализ региональной преступности составляет основу профилактических мер, направленных на предупреждение преступности. Изучение региональных аспектов вызывает необходимость проведения исследований отдельных видов преступлений. Одними из таких видов преступлений являются организованные преступления, которые в общей структуре преступности занимают особое место. Являясь самым сложным и опасным видом преступности, организованная преступность, прежде всего, посягает на