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Mozgawa Marek, Prof. dr hab.,
Institute of Penal Law,
Faculty of Law and Administration, UMCS, Lublin, Poland

THE PENALTY OF FINE IN THE POLISH PENAL CODE

1. Undoubtedly, one of the oldest punishments is the fine, which is a punishment involving a certain financial annoyance, leading to depletion in the property of the convict. It has many advantages: it does not entail isolation of the convict from his/her family and work, it does not lead to demoralisation under the influence of other convicted persons, it can be imposed proportionally to the guilt and property status of the convict, and its execution is not expensive. But it is not flawless. Theoretically, it has a personal nature, but it cannot be ruled out that it will be suffered by a close person of the convict or even other persons from outside the family. Depending on the amount of property held, a fine may either be hardly noticeable (by a very prosperous person) or even lead a poor convict (and his family) to financial ruin.

Under the previous Polish penal codes (the codes of 1932 and 1969), fines were imposed in specific amounts. The 1997 code radically changed the nature of fine: instead of the specific amount system it introduced the system of so-called daily rates. It consists in the imposition of a fine in two stages; in the first one the number of daily rates is determined, and in the second one - the amount of a daily rate, according to the individual capability to pay the fine of the convicted person. This fine model has already proved effective in many European countries (e.g. Finland, Austria, Germany, Portugal, Sweden, Hungary).

2. There are two types of fines in the Penal Code: fine imposed as an independent punishment and a cumulative fine (combined with deprivation of liberty).

As regards an independent fine, it may be imposed in the following cases:

– where it is provided for in the sanction for the offence in question (usually as an alternative to a punishment of restriction of liberty and deprivation of liberty);

– Pursuant to Article 37a of the Penal Code – hereinafter PC (if the statute provides for a sentence of deprivation of liberty not exceeding 8 years, then a fine or restriction of liberty referred to in Article 34 § 1a paragraph 1 or 4 may

be imposed instead);

- when the court applies extraordinary mitigation of punishment (Article 60 § 6 PC);

- as a replacement punishment pursuant to Article 75 a § 1 PC.

Many solutions contained in the Penal Code indicate the priority significance of fine (such as listing it as first item in the catalogue of punishments as well as in alternative sanctions of the Penal Code).

A cumulative fine may be imposed in addition to the punishment of deprivation of liberty in two cases. The first one is referred to in Article 33 § 2 PC which states that the court may impose a fine in addition to the punishment of deprivation of liberty if the perpetrator committed an offence with the intention to obtain property gain or when he obtained property gain. Property gain means an increase in assets or a reduction in liabilities, while the assets are all assets that have some pecuniary value.

The second case is related to the application of conditional suspension of the execution of sentence. When suspending the execution of the punishment of deprivation of liberty, the court may order a fine of up to 540 daily rates, if it is not possible to impose it together with the punishment of deprivation of liberty on other bases (Article 71 § 1 of the Penal Code).

3. As it has already been mentioned herein, the fine is imposed in two stages. In the first, the court determines the number of daily rates. Pursuant to Article 33 § 1 PC, the lowest number of daily rates is 10, while the highest is 540. In the case of extraordinary aggravation of the punishment (Article 38 § 2 PC) and when imposing a combined sentence (Article 86 § 1 PC), the fine may not exceed 810 daily rates. In the special part of the Penal Code, we can find examples of both raising the upper limit of daily rates (e.g. Article 309 PC - up to 3000 rates), as well as lowering this limit (e.g. Article 255 § 3 PC - up to 180 rates).

In the second stage, the court sets the amount of a daily rate which may neither be lower than PLN 10, nor can it exceed PLN 2000. Establishing the amount of one rate, the court takes into account the income of the perpetrator, his/her personal and family circumstances, financial condition and earning capabilities (Article 33 § 3 of the Code of Penal Procedure). Therefore, as a general rule, the fine ranges from PLN 100 (10 rates x PLN 10) to PLN 1,080,000 (540 rates x PLN 2000). Pursuant to Article 309 (or 277b) PC, it can amount up to PLN 6,000,000 (3,000 rates of PLN 2,000), and for a combined sentence (in the case set out in Article 86 § 2b PC) up to PLN 9,000,000 (4,500 rates x PLN 2000).

4. Apart from the daily rate fine system adopted in the penal code, a fine may, in some cases, be determined in specific amounts. This is the case, for example, under the Code on Petty Offences (fine ranging from 20 PLN to 5000 PLN - Article 24 § 1 of the Code on Petty Offences), and in many cases of the so-called “outside the Code” criminal law (e.g. the Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism (consolidated text:

Journal of Laws of 2018, item 2137) in Article 452 provides for a fine ranging from PLN 10,000 to 500,000). Pursuant to Article 11 of the introductory provisions for the Penal Code, the principles of fine imposing specified in the Penal Code shall not apply in cases where a special law determines a fine by setting its specific amount. A problem arises when the special law does not determine the minimum fine (and only its upper limit). What is the minimum in this case? The Penal Code does not contain any suggestions in this matter, while legal scholars are divided with regard to this issue. Some argue that the minimum fine is PLN 1, while others are of the opinion that the minimum is PLN 100 (as this is the minimum fine in the Penal Code - 10 rates of PLN 10).

5. It is worth noting the option of fine payment in instalments (for a period not exceeding 1 year, and in cases deserving special consideration, especially when the amount of the fine is considerable, up to 3 years - Article 49 of the Executive Penal Code - hereinafter EPC) and even remission of the fine in whole or in part (Article 51 EPC).

6. The person sentenced to a fine is called upon by the court to pay it within 30 days; if he/she fails to do so within the prescribed period, the fine shall be executed by enforcement procedure (Article 44 EPC). If the enforcement of a fine not exceeding 120 daily rates is found to be ineffective, or if in the light of the circumstances of the case it becomes apparent that it would be ineffective, the court may replace the fine with the obligation of socially useful work, assuming that ten daily rates are equivalent to a month of socially useful work, rounded up to a full month. Socially useful work shall be determined in months, and the amount of working hours determined between 20 and 40 hours per month, following the instructions of Article 53 of the Penal Code (Article 45 § 1 EPC). Here is a clear reference to the concept known to the Penal Code of 1932 (Article 43) - a concept of so-called work in lieu of fine.

7. If the fine enforcement has proved ineffective or the circumstances of the case demonstrate that it would be ineffective, the court shall order the enforcement of a replacement sentence of imprisonment when: 1) the convict declares that he/she does not agree to undertake socially useful work under Article 45 or evades its performance, or 2) the conversion of the fine into socially useful work is impossible or unreasonable (Article 46 § 1 EPC). When ordering execution of the replacement punishment of imprisonment, it is presumed that one day of imprisonment is equivalent to two daily rates; the replacement punishment may not exceed 12 months of imprisonment, as well as the upper limit of the custodial sentence for the offence in question, and if the statute does not provide for imprisonment for the criminal offence in question, the upper limit of the replacement punishment may not exceed 6 months (Article 46 § 2 EPC). The provisions of Article 46 § 1 and 2 EPC shall apply *mutatis mutandis* to a fine specified in amount, provided that one day of imprisonment is equivalent to a fine in an amount between PLN 20 and 4000 (Article 46 § 3 EPC).

Where the fine has been paid or enforced only in part, or where it has been

executed only in part in the form of socially useful work, the court, when ordering the enforcement of a replacement punishment of imprisonment shall determine its amount according to the rules provided for in article 46 § 2 or 3 EPC (Article 46 § 4 EPC);

8. If the fine has been paid in part, the President of the Court or an authorized judge shall order the reduction of the replacement punishment in a manner corresponding to the proportion of the amount paid to the amount of the fine (article 47 § 1 EPC). Any replacement punishment of deprivation of liberty or socially useful work may at any time be exempted by payment of the amount still to be paid as fine (Article 47 (2) EPC). It is also worth noting the option of remission of a fine. Pursuant to Article 51 EPC, if the convict, for reasons beyond his/her control, failed to pay the fine and the execution of that punishment in another way proved impossible or unreasonable, the court may, in a particularly justified case, remit the fine in part and, exceptionally, also in whole; the enforcement shall not be ordered if it is clear from the circumstances of the case that it would be ineffective. The impossibility or non-desirability of imposing a fine in another manner must be related to all other forms (except for voluntary payment) of its execution as set out in EPC, namely: enforcement, payment in instalments, socially useful work and replacement punishment of deprivation of liberty. The inability to pay a fine must be permanent and not merely temporary, as the latter case may be solved by suspending enforcement proceedings (Article 15 § 2 EPC) or by adjourning the execution of the fine (Article 49 § 1 EPC).

9. The number of convictions for independent fine in Poland is quite considerable: in 2010 – 92 329; in 2011 – 93 571; in 2012 – 91 296; in 2013 – 76 759; in 2014 – 62 761; in 2015 – 61 461. In 1990, the courts imposed the punishment of independent fine in 18.3% of total convictions, in 2000 – in 15%, in 2007 – in 19.5%, while in 2014 – in 21.4%. In 1990 in 70%, in 2008 in 30.5%, and in 2014 in 25.5% of convictions to imprisonment, the court imposed an additional punishment of fine.

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Сергійчик О.М., викладач,
Установа освіти «Академія Міністерства внутрішніх справ
Республіки Білорусь», м. Мінськ, Білорусь

ОБ’ЄКТИВНА НЕЗВОРОТНІСТЬ ЧАСУ І КРИМІНАЛЬНИЙ ЗАКОН

На сьогоднішній день немає єдиного, загальноприйнятого підходу до визначення поняття «час», проте щодо властивостей часу певні загальні підходи простежити можна.

Так, час характеризує еволюцію (розвиток) явищ, спрямовану з