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SELECTED ISSUES CONCERNING A NEW APPROACH TO THE IDEA OF PUNISHMENT IN THE LIGHT OF ACT OF 13 JUNE 2019

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The Act of 13 June 2019 amending the Criminal Code[1] turned out to be such a controversial law that, before taking a decision to sign it, the President sent it to the Constitutional Tribunal, due to his serious doubts whether the constitutional standards of the legislative process were met. However, the enacting of the new statute was criticised by scientists and experts as well as the Ombudsman not only for procedural but also substantive reasons. The critical opinions indicated, in particular, the lack of criminal and political arguments diagnosing the current state in the area of combating criminality and the practice of the administration of justice established at present, which might indicate the need to aggravate penal sanctions, as well as the dogmatically erroneous approach to some provisions, sometimes in conflict with international law or infringing constitutional values.[2] As of today (10 February 2020), the status of the statute has not changed because the Constitutional Tribunal

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1 Act of 13 June 2019 amending the Act: Criminal Code and some other acts, Sejm print no. 3451; hereinafter CC.

2 See critical statements made in over 20 legal opinions posted on the Ombudsman's website: https://www.rpo.gov.pl/pl/content/zmiany-wprawie-karnym-2019-opinie-ekspertow-i-RPO (accessed 20.10.2019), including: Opinia na temat projektu zmian przepisów kodeksu karnego (uchwała Senatu Rzeczypospolitej Polskiej z dnia 24 maja 2019 roku), Katedra Prawa Karnego Materialnego, Uniwersytet Wrocławski; Opinia Komisji Legislacyjnej Naczelnej Rady Adwokackiej do projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, przygotowana przez adw. prof. Jacka Giezka i adw. prof. Roberta Zawłockiego z 14.02.2019 r.; Opinia Ośrodka Badań, Studiów i Legislacji Krajowej Rady Radców Prawnych na temat projektu z dnia 25 stycznia 2019 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, sporządzona przez dr hab., prof. UWr. Annę Muszyńską. Also see M. Melezini, *Problemy reformy*

has not resolved the problem. It does not change the fact that the solutions proposed in the statute constitute a good reason for discussion.

The discussion presented below aims to analyse the most important changes introduced to the Criminal Code concerning penalties and penalty imposition. In judicial adjudicating practice, they have essential influence on the shape of the penal policy being implemented.

The presentation of changes proposed in the statute requires that reference be made to the legislator's motives expressed in the justification of the bill. The legislator's declaration indicates that: 'The main assumption that was the basis for the work on the bill amending the Criminal Code was the need to strengthen the penal law protection in the field of acts committed to the detriment of such fundamental legal interests as human life and health, sexual freedom or ownership'. At the same time, the authors of the bill decided that 'The present legal state does not correspond to the demands resulting from the protective function of criminal law, and because of that it does not ensure sufficient tools to limit criminality and protect essential social values […]', which 'justifies legislative activities aimed at aggravating penal sanctions and developing institutions that influence penalty imposition in such a way that they direct a court's decisions towards limiting the possibility of making use of a reduced sanction or extend the possibility of aggravating a penal sanction to perpetrators of offences at high degree of blameworthiness'. The justification of the bill highlights that the means of strengthening penal law protection in the field consists in 'adequate development of the type and size of a penal sanction for a given type of offence, taking into account the need of strict punishment for perpetrators of acts that raise a strong social desire to have revenge and stigmatise'.[3]

According to the justification of the amendment, the increase in the punitive characteristics of the Criminal Code takes place at three levels that concern:

1) changes in the area of penal sanctions severity and the structure of some types of prohibited acts;
2) extension of the institution of extraordinary aggravation of a penalty;
3) changes in general directives for penalty administration aimed at selecting a more severe penal response.[4]

The direction of changes in criminal law adopted by the authors of the amendment was undoubtedly based on the idea of aggravating penal sanctions. This way the rationality of the former Criminal Code was challenged. Therefore, one should expect a presentation of detailed justification of the reasons for changes based, inter alia, on facts, i.e. a diagnosis of the current state in the field of combating crime and developing penalty administration practice with reference to empirical data. Otherwise, the binding normative solutions should not be questioned, and the Criminal Code should not be amended without a good reason for that. Unfortunately,

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prawa karnego. Uwagi na tle ustawy z 13 czerwca 2019 r., [in:] P. Góralski, A. Muszyńska (eds), *Reforma prawa karnego w latach 2015–2019*, in print.

[3] Uzasadnienie do projektu ustawy z dnia 13 czerwca 2019 r. o zmianie ustawy – Kodeks karny oraz innych ustaw [Justification of the Bill of 13 June 2019 amending the Act: Criminal Code and some other acts], Sejm print no. 3451, p. 1.

[4] *Ibid*., pp. 1–2.

regardless of a decreasing criminal threat, the occurrence of positive changes in the practice of law application after the 2015 criminal law reform[5] and the improvement of the citizens' sense of safety,[6] far-reaching changes are introduced, which express a new vision of penal policy based on the idea to aggravate penal sanctions, in particular towards perpetrators of offences against life, health, sexual freedom and ownership. The amendments to the Criminal Code concern over a hundred articles. Thus, it is an extensive amendment.

Getting down to the analysis of the amendments introduced, it is necessary to discuss the modifications to the penalty of deprivation of liberty.

The statute introduces an amendment to the catalogue of penalties laid down in Article 32 CC accompanied by the modification to the content of Article 37 CC determining the generic limits of the penalty of deprivation of liberty. The penalty of deprivation of liberty for 25 years was repealed from the catalogue of penalties, however, the two other penalties of deprivation of liberty, i.e. penalties of life imprisonment and deprivation of liberty for a period determined by court, were maintained. It was rightly indicated in the legislative motives that giving up the fixed penalty of deprivation of liberty for 25 years and at the same time raising the maximum limit of the penalty of deprivation of liberty for a period determined by court to 30 years will ensure a court's sentencing discretion and will make it possible to impose a fully individualised penalty, taking into account a varied level of guilt intensity and harm caused in a given case, which was difficult especially in the case of criminal co-perpetration and when a court had a choice between a penalty of deprivation of liberty for up to 15 years and a penalty of deprivation of liberty for 25 years.[7] On the other hand, the modification of Article 37 CC consisted in raising the maximum limit of the penalty of deprivation of liberty from 15 to 30 years, while the minimum period of deprivation of liberty for a period determined by court remains unchanged and is one month. The amendment results in the modification to the regulation laid down in Article 38 § 2 CC, which raises the maximum limit of aggravated penalty of deprivation of liberty from 20 to 30 years, and the regulation of Article 38 § 3 CC stipulating the rules of mitigating the most severe penalties in connection with the fact that the penalty of deprivation of liberty for 25 years was repealed and the maximum limit of the penalty of deprivation of liberty for a period determined by court was raised.

It should be emphasised that, for years, the issue of maintaining the maximum limit of the penalty of deprivation of liberty for 15 years and the fixed penalty of deprivation of liberty for 25 years has been the subject matter of lively discussions and criticism, as well as many proposals for changes put forward, inter alia, by the authors of the bill amending the Criminal Code. It is worth mentioning that even the governmental Bill amending the Criminal Code of 19 June 2001 (print no. 2510), and

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[5] See Act of 20 February 2015 amending the Act: Criminal Code and some other acts (Dz.U. of 2015, item 396). Compare M. Melezini, *Tendencje w polityce karnej po reformie prawa karnego z 2015 r.*, [in:] P. Góralski, A. Muszyńska (eds), *Racjonalna sankcja karna w systemie prawa*, EuroPrawo 2019, pp. 123–135.

[6] See M. Melezini, *Problemy reformy*, *supra* n. 2.

[7] For more on the issue, see justification of the Bill, *supra* n. 3, pp. 2–4.

the Act of 24 August 2001 (print no. 785) based on it, which was vetoed by the President of the Republic of Poland, and the MPs' Criminal Code Bill of 1 March 2002 (print no. 775), and next the Bill amending the Criminal Code of 2004 prepared by the Sejm committee (print no. 2696) proposed abandoning a separate special penalty of deprivation of liberty for 25 years and raising the maximum limit of the penalty of deprivation of liberty from 15 to 25 years.[8] In the course of the discussion on the scope of the proposed amendment to the Criminal Code of 2001, the controversies over the penalty of deprivation of liberty for 25 years focused mainly on two issues:

– firstly, a fixed nature of the penalty of deprivation of liberty for 25 years and a big difference in the length of time between this penalty and the penalty of deprivation of liberty for 15 years, which does not make it possible to measure the painfulness in the case of the most serious offences, especially those committed in co-perpetration;
– secondly, the need to maintain two extremely strict penalties, i.e. life imprisonment and deprivation of liberty for 25 years.

There were proposals in literature at that time to amend the Criminal Code based on a variant-like approach. It was believed that the penalty of deprivation of liberty should be extended for a period from one month to 25 years, or another level of the penalty of deprivation of liberty for a period from 20 to 30 years should be introduced.[9]

The Bill amending the Criminal Code of 18 May 2007 (print no. 1756) also proposed abandoning the penalty of deprivation of liberty for 25 years as a separate type of penalty, and the change in the maximum limit of the penalty for a period determined by court from 15 to 25 years. The opinions about the proposed changes varied.

On the one hand, the proposal was 'strongly critically' assessed because it was assumed that it would most probably result in the increase in the number of cases of 'total remission, desocialisation and imprisonment of convicts as a consequence of the imposition of a bigger number of penalties of deprivation of liberty for a period exceeding 15 years'. At the same time, it was indicated that it would result in the need to modify many penalties specified in the Special part of the Criminal Code, which became evident in the proposals of the bill, in which the modifications to statutory penalties did not only have an adjusting character but led to aggravating the existing penalties.[10] On the other hand, there were opinions that the proposal

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[8] For more details on the issue, see M. Melezini, *Granice czasowe kary pozbawienia wolności*, [in:] L. Gardocki, M. Królikowski, A. Walczak-Żachowska (eds), *Gaudium in litteries est. Księga jubileuszowa ofiarowana Pani Profesor Genowefie Rejman z okazji osiemdziesiątych urodzin*, Warszawa 2005, pp. 453–462.

[9] See L. Tyszkiewicz, *Wystąpienie panelisty*, [in:] *Czy trzeba zmieniać kodeks karny? Materiały z konferencji naukowej „Nowelizacja kodeksu karnego", Warszawa, 10 lutego 2003 r.*, Warszawa 2003, pp. 42–43; *idem*, *Co i jak zmienić w nowym kodeksie karnym*, Palestra 12–1, 1999–2000, pp. 29–30.

[10] See J. Warylewski, *Opinia w sprawie rządowego projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw w zakresie dotyczącym nowelizacji katalogu kar i zmiany sankcji karnej w części szczególnej (art. 32–38 k.k.)*, [in:] *Kodeks karny – projekt nowelizacji*, Sejm print no. 1756, Biuro Analiz Sejmowych Kancelarii Sejmu, No. 5, Warszawa 2007, pp. 48–49.

of abandoning the penalty of deprivation of liberty for 25 years and increasing the maximum limit of the penalty of deprivation of liberty for a period determined by court from 15 to 25 years did not raise any objections as long as it did not lead to the increase in the maximum limits of statutory penalties for particular offences. It was emphasised, inter alia, that the maximum limit of imprisonment imposed by court for 15 years was a traditional limit in our legal system, but it was only a matter of a certain convention in the same way as the penalty of deprivation of liberty for 25 years. However, in fact, the extension of the possibility of imposing the penalty of imprisonment for a period between 15 and 25 years 'will facilitate the implementation of the principle of penalty individualisation in the case of most severe offences, and the implementation of the principle of the so-called internal justice of a sentence in the case of criminal co-perpetration'.[11]

Another proposal to be considered in the area concerning the possible maintenance of the penalty of deprivation of liberty for a period determined by court for up to 15 years and the fixed penalty of deprivation of liberty for 25 years, or the introduction of a uniform penalty of deprivation of liberty with a varied maximum limit, was presented at the session of the Criminal Law Codification Commission during a conference organised in Popowo in November 2011. The recognition that the current legal state 'does not give a court discretion to shape a penalty size in the case of the most severe offences' led to an assumption that 'determination of the maximum limit of the penalty of deprivation of liberty and increasing it to e.g. 20 years (or even 25 years) would give a court more possibilities of freely developing the level of punishment without the need to follow the strictly determined penalty of deprivation of liberty for 25 years', the maintenance of which in the catalogue of penalties would not be justified. Therefore, it would be necessary to repeal it from the Criminal Code. At the same time, attention was drawn to the fact that such changes would require that penal sanctions should be redesigned and, in the case of some specific offences, they might prescribe the penalty of deprivation of liberty with the maximum limit determined at a lower level.[12]

In the discussion on the issue of the penalty of deprivation of liberty for 25 years, there were opinions opting for the maintenance of this penalty. It was indicated that the increase in the maximum limit of the penalty of deprivation of liberty for a period determined by court from 15 to 25 years as well as the establishment of a new 'extent' of the penalty of deprivation of liberty from 20 to 30 years would result in the treatment of penalties exceeding 20 years' imprisonment as 'standard' and not 'extraordinary' ones. In such a situation, 'when the penalty of life imprisonment exists, another similarly extraordinary intermediate penalty, also non-gradable

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[11] See J. Majewski, *Opinia na temat projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw (w zakresie rozdziałów IV, VII oraz XIV k.k.)*, [in:] *Kodeks karny – projekt nowelizacji*, Sejm print no. 1756, Biuro Analiz Sejmowych Kancelarii Sejmu, No. 5, Warszawa 2007, p. 54.

[12] See Z. Sienkiewicz, *Ocena obowiązujących rozwiązań w zakresie kar, środków karnych, środków probacyjnych oraz wymiaru kary łącznej*, Biuletyn Komisji Kodyfikacyjnej Prawa Karnego 3, 2011, pp. 116–118; and *idem*, *Niektóre propozycje zmian w regulacji kar, środków karnych i środków probacyjnych*, Państwo i Prawo 4, 2012, p. 31.

[…], seems to be useful'.[13] It was emphasised that the maintenance of the penalty of deprivation of liberty for 25 years results in less frequent imposition of life imprisonment. It was not noticed that there is a need to modify the maximum limit of the penalty of deprivation of liberty for a period determined by court (from 15 to 25 years) and it was indicated that such a change might result in considerable increase in the level of repressiveness of penal solutions. It was also assumed that the increased time limit of the penalty of deprivation of liberty, e.g. to 30 years, would mean approximating it to life imprisonment.[14]

A different stance, opting for the abolition of the penalty of deprivation of liberty for 25 years and the increase in the penalty of deprivation of liberty for a period determined by court to 25 years[15] was expressed in the Opinion for the Criminal Law Codification Commission, where it was raised that at present there is a too big 'unused space' between the penalty of deprivation of liberty for up to 15 years and the penalty of deprivation of liberty for 25 years, which in the cases concerning felonies hampers full implementation of the principle of individualised penal liability. At the same time, attention was drawn to the fact that the introduction of such a change would result in the necessity of amending other provisions, including the modification to sanctions prescribed for felonies, which could be limited to the maximum punishment of 15 years.[16]

There was also a new proposal concerning the most severe penalties in the doctrine, namely the elimination of the penalty of deprivation of liberty for 25 years and life imprisonment, i.e. the two fixed penalty types, from the Polish penal system, and the maintenance of the penalty of deprivation of liberty for a period from one month to 15 years, and the introduction of a long-term penalty of deprivation of liberty for the statutory period from 20 to 30 years as alternative penalties for the most serious felonies. It was indicated that the introduction of such changes 'would enable courts to impose just, severe and individualised penalties on perpetrators, their accomplices, and other persons cooperating in the commission of crime, with a determined prospect of the end of penalty and return to liberty'.[17]

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[13] L. Wilk, *Kara 25 lat pozbawienia wolności*, [in:] M. Melezini (ed.), *System Prawa Karnego*, Vol. 6: *Kary i środki karne. Poddanie sprawcy próbie*, Warszawa 2010, p. 144; J. Raglewski, *Referat na posiedzenie Komisji Kodyfikacyjnej Prawa Karnego dotyczący propozycji nowelizacyjnych kodeksu karnego z 1997 r. w zakresie kar, środków karnych, środków probacyjnych, a także zagadnień związanych z wymiarem kary łącznej i zanikiem karania*, Biuletyn Komisji Kodyfikacyjnej Prawa Karnego 3, 2011, pp. 136–138. Also see opinions in the discussion in Biuletyn Komisji Kodyfikacyjnej Prawa Karnego 3, 2011, pp. 192–198.

[14] See J. Raglewski, *supra* n. 13, pp. 136–138.

[15] See J. Kulesza, *Głos w dyskusji*, Biuletyn Komisji Kodyfikacyjnej Prawa Karnego 3, 2011, p. 202.

[16] See J. Lachowski, *Opinia dla Komisji Kodyfikacyjnej Prawa Karnego w związku z Konferencją, która odbyła się w dniach 15–16 listopada 2011 r. w Popowie*, Biuletyn Komisji Kodyfikacyjnej Prawa Karnego 3, 2011, pp. 183–184.

[17] See V. Konarska-Wrzosek, *Głos w dyskusji na posiedzeniu Komisji Kodyfikacyjnej Prawa Karnego*, Biuletyn Komisji Kodyfikacyjnej Prawa Karnego 3, 2011, pp. 193–194. For more particulars on the new proposal, see V. Konarska-Wrzosek, *Propozycje zmian katalogu kar w kodeksie karnym z 1997 r. w zakresie kar pozbawienia wolności oraz dolegliwości związanych z niektórymi rodzajami kar wolnościowych*, [in:] P. Kardas, T. Sroka, W. Wróbel (eds), *Państwo prawa i prawo karne. Księga jubileuszowa Profesora Andrzeja Zolla*, Vol. II, Warszawa 2012, pp. 858–861.

Undoubtedly, the normative solutions adopted in the Act of 13 June 2019, which eliminate the penalty of deprivation of liberty for 25 years from the catalogue of penalties and increase the maximum limit of the penalty of deprivation of liberty from 15 to 30 years, are elements of the basic direction of change aimed at aggravating the penal system. The penalty of deprivation of liberty for 25 years, which was in practice treated as an extraordinary penalty, is becoming a standard penalty of deprivation of liberty for a potentially lengthened period of up to 30 years.

Unfortunately, as it was predicted, the change caused a significant increase in almost all maximum limits of the statutory penalties for serious offences, which raises considerable objections. Some changes are adjusting in nature and result from the increase in the maximum limit of the penalty of deprivation of liberty to 30 years. This concerns both the provisions of the General part and the Special part of the Criminal Code. However, as a result of the adoption of new types of statutory penalties (deprivation of liberty for a period from two to fifteen years, deprivation of liberty for a period from three to twenty years, deprivation of liberty for a period from five to twenty-five years, deprivation of liberty for a period from eight to thirty years, deprivation of liberty for a period from ten to thirty years, and deprivation of liberty for a period from twelve to thirty years, and in the three latest cases with the possibility of imposing the penalty of life imprisonment), the statutory maximum penalty limits were drastically raised for many types of prohibited acts, and the scale of those changes is enormous as it embraces 50 provisions of the Special part of the Criminal Code.[18] Undoubtedly, they are connected with the implementation of the idea to aggravate penal liability, which is also reflected in the increase in some minimum limits of statutory penalties and the development of sanctions with high penalty limits for aggravated types of prohibited acts.[19]

It should be noted that while the motive behind the statutory solutions in relation to the penalty of deprivation of liberty was the need to ensure courts' discretion and enable them to impose fully individualised penalties for the most serious offences, which took into account the basic assumption of the new act concerning the increase in the level of repressiveness of the penal system, the statutory solutions determining the minimum limits of non-custodial penalties are a reflection of the tendency to narrow the scope of judicial discretion and increase the severity of imposed penalties.

Namely, the statute increased the minimum limit of a fine (Articles 33 § 1a CC and 33 § 2a CC were added) and penalties of limitation of liberty (Article 34 § 1aa CC was added) differentiating their level depending on the maximum limit of the statutory penalty of deprivation of liberty for a given type of a prohibited act. In accordance with Article 33 § 1a CC, if the statute does not stipulate otherwise and the offence carries a penalty of a fine and deprivation of liberty, the fine shall be at least: 50 daily rates in the case of an act carrying the penalty of deprivation of liberty for up to one year; 100 daily rates in the case of an act carrying the penalty of deprivation of liberty for up to two years; 100 daily rates in the case of an act

[18] See justification of the Bill, *supra* n. 3, pp. 21–22.
[19] *Ibid.*, pp. 20–21.

carrying the penalty of deprivation of liberty for up to three years; and 300 daily rates in the case of an act carrying the penalty of deprivation of liberty for a period exceeding three years. At the same time, the application of the regulation was extended in the case of a fine imposed together with a penalty of deprivation of liberty (Article 33 § 2a CC). On the other hand, in accordance with Article 34 § 1aa CC, if the statute does not stipulate otherwise and the offence carries both the penalty of limitation of liberty and the penalty of deprivation of liberty, the penalty of limitation of liberty shall be imposed for at least: two months in the case of an act carrying the penalty of deprivation of liberty for up to one year; three months in the case of an act carrying the penalty of deprivation of liberty for up to two years; six months in the case of an act carrying the penalty of deprivation of liberty for up to three years; and nine months in the case of an act carrying the penalty of deprivation of liberty for a period exceeding three years.

It was indicated in the justification of the bill amending the Criminal Code that non-custodial penalties should be most important in the case of petty crimes. However, carrying out a coherent and efficient penal policy makes it difficult to establish the minimum limit of penalties for offences punishable with a fine and the penalty of limitation of liberty at a very low level, inadequate to their blameworthiness, and makes this limit uniform in relation to acts that are very different, incomparably socially harmful, which made judicial decisions imposing those penalties too arbitrary and often irrational in nature, thus decreasing the efficiency of the penal policy.[20] Such arguments are not convincing. The solutions adopted constitute useless casuistry in the field of non-custodial penalties and unnecessarily increase the level of severity of the existing solutions, which limits flexibility of the statutory penalty of a fine and limitation of liberty as well as narrows the scope of judicial discretion. Due to the principle of individualisation of penal liability, it is justified to give a court that hears a particular case broad sentencing possibilities so that it can consider different factors and, in particular, all circumstances of an act commission, and a different level of social harmfulness.

The modification to the content of Article 37a CC, which admits the possibility of imposing a fine and the penalty of limitation of liberty instead of the penalty of deprivation of liberty, also raises objections. It considerably limits the scope of non-custodial penalties application to substitute for the penalty of deprivation of liberty, and its only justification seems to be striving to aggravate penal sanctions. In accordance with the presently binding regulation, which was introduced by the amendment to the Criminal Code of 20 February 2015,[21] if the statute stipulates the penalty of deprivation of liberty not exceeding eight years, instead of this penalty, a fine or the penalty of limitation of liberty referred to in Article 34 § 1a(1), (2) or (4) can be imposed. Ignoring the discussion about the issue concerning the nature of the legal norm here, it should be emphasised that the existing regulation determined broadly the possibilities of applying non-custodial penalties, because it referred to

[20] *Ibid*., pp. 6–7.

[21] Act of 20 February 2015 amending the Act: Criminal Code and some other acts (Dz.U. item 396).

cases in which the provisions prescribe the penalty of deprivation of liberty not exceeding eight years as the only penalty, as well as cases of cumulative penalties of deprivation of liberty and a fine, or alternative-cumulative penalties of deprivation of liberty and a fine. However, in accordance with the new wording of Article 37a § 1 CC, which became an instrument of judicial imposition of a penalty, the non-custodial penalty can be imposed only in the case an offence carries the penalty of deprivation of liberty for up to eight years, and the penalty of deprivation of liberty imposed for it does not exceed a year, however, it cannot be shorter than three months and a fine cannot be lower than 100 daily rates. Moreover, in order to apply Article 37a § 2 CC, it is also necessary to apply a penal measure, a compensatory measure or forfeiture.

Further limitation of the application of Article 37a § 1 CC is connected with the added Article 37a § 2 CC, which excludes the application of Article 37a § 1 CC to perpetrators who commit an offence, while acting in an organised group or association aimed at committing an offence or a fiscal offence, and perpetrators of terrorist offences. The limitation of possibilities of imposing non-custodial penalties instead of the penalty of deprivation of liberty to the above-mentioned category of perpetrators does not raise objections, although one can consider its grounds, taking into account the requirements for the application of Article 37a § 1 CC and obliging a court to establish particular facts concerning a predicted penalty and then a penalty that would be imposed.

The changes in the sentencing directives also match the entirety of changes aggravating the penal system. In particular, the bill introduces a complete change in Article 53 § 1 CC, i.e. the basic provision determining the directives on the judicial imposition of penalties. In accordance with the new wording of Article 53 § 1 CC, 'A court shall impose a penalty at its discretion, within the limits prescribed in the statute, taking into account the level of social harmfulness of an act, aggravating and extenuating circumstances, the aim of a penalty concerning its social impact, and preventive objectives that can be achieved in relation to a convict. The painfulness of a penalty cannot exceed the level of guilt.'

The new wording of the provision of Article 53 § 1 CC substantially changes the model of sentencing, in accordance with which a penalty is to be imposed considering social harmfulness of an act and the general preventive purposes specified as 'the aims within the scope of social influence of a penalty'. As it is emphasised in the legislative motives, it is to be the most important directive on sentencing.[22] Thus, it focuses on the negative aspect of the so-called general prevention, using the aims of a penalty within the scope of its social influence when issuing a sentence instead of taking into consideration the development of legal awareness of society. At the same time, in the new approach, the assessment of the level of guilt that plays the role of limiting the painfulness of a penalty to a perpetrator was placed at the end of the provision. The new provision also abandons educational aims that a penalty should have for a convict and limits the directive on individual prevention exclusively to preventive objectives in relation to the convict. The change analysed is undoubtedly

[22] See justification of the Bill, *supra* n. 3, pp. 7–8.

an expression of a deterrent effect, which is becoming the main determinant of punishment. It is in conformity with the entirety of changes aimed at aggravating penal sanctions. It raises concerns over instrumental treatment of a perpetrator, whose punishment is to be a 'means' of deterring other potential perpetrators.

What is another significant novelty is the introduction of the catalogue of aggravating and extenuating circumstances as special directives on judicial sentencing. It should be emphasised that the statutory determination of such circumstances is in conflict with the principle of judicial discretion and is a reflection of limitation of judicial power to issue sentences. As a result, there is a threat of automatism that will not allow taking into account untypical factors concerning a particular event or a perpetrator, which can have influence on a penalty in a given case. The catalogue of aggravating and extenuating circumstances is open.

In the light of Article 53 § 2a CC, the aggravating circumstances include in particular: (1) former conviction for an intentional offence or a similar unintentional offence; (2) unlawfully influencing the content of the aggrieved persons' testimonies or statements, witnesses' testimonies, experts' opinions, or the content of other accused persons' explanations; (3) abusing the aggrieved persons' helplessness, disability, illness or advanced age; (4) modus operandi leading to the aggrieved party's humiliation or torment; (5) commission of an offence with premeditation; (6) commission of an offence with motivation deserving particular condemnation or for such reasons; (7) commission of an offence with the use of violence motivated by hatred resulting from national, ethnic, racial, political, religious or atheistic identity of a victim; (8) acting with extraordinary cruelty; (9) commission of an offence under the influence of alcohol or intoxicating substances, provided the state was a factor leading to the commission of an offence or to an increase in its consequences; (10) commission of an offence in cooperation with a minor or making use of their participation. On the other hand, Article 53 § 2b CC stipulates that extenuating circumstances include, in particular: (1) acting for the reasons that deserve consideration; (2) commission of an offence under the influence of anger, fear or agitation justified by the circumstances of the event; (3) acting under the influence of a person to whom a perpetrator is in subjection; (4) commission of an offence as a response to a sudden situation the assessment of which was very difficult due to a perpetrator's personal circumstances, range of knowledge or life experience; (5) acting under the influence of especially difficult personal conditions; (6) voluntary taking steps to prevent damage or harm resulting from an offence or to limit its size; (7) reconciliation with the aggrieved; (8) voluntary redressing of the damage caused by an offence; (9) voluntary giving satisfaction to the aggrieved; and (10) voluntary revealing of the offence committed to law enforcement agencies. Moreover, Article 53 § 2c CC stipulates that: 'A circumstance constituting a feature of an offence committed by a perpetrator is not a circumstance referred to in §§ 2a and 2b, unless it occurred with especially high or especially low intensity.'

It is worth noticing that the formulation of the obligation to examine aggravating and extenuating circumstances in the process of deciding on a penalty, as well as the legal shape of particular circumstances, encountered doubts and objections in litera-

ture.[23] It was indicated, inter alia, that a court hearing a case is able to assess which circumstance should influence the imposition of a more severe penalty and which a more lenient one, and it is hard to imagine that a court can ignore, e.g. acting with extraordinary cruelty, former conviction, motivation deserving particular condemnation or the aggrieved persons' humiliation or torment.[24] In the light of the above, the solution adopted should be recognised as useless.

Among the numerous amendments made by the Act of 13 June 2019, Article 77 CC that introduces a possibility of banning a conditional release in the case of convicts sentenced to life imprisonment cannot escape our attention. In accordance with Article 77 § 3 CC, 'Imposing the penalty of life imprisonment for an act committed by a perpetrator who has been sentenced for a different offence to life imprisonment or the penalty of deprivation of liberty for at least 20 years, a court can ban a conditional release.' On the other hand, in accordance with § 4, 'Imposing the penalty of life imprisonment, a court can ban a conditional release of a perpetrator if the nature and circumstances of the act and the perpetrator's personal features indicate that leaving him/her at large will create persistent threat to other people's life, health, liberty or sexual freedom.'

It should be emphasised that the possibility of banning a conditional release of a convict sentenced to life imprisonment encounters basic objections in literature, which are expressed in numerous legal opinions.[25] Thus, referring to the expressed stance and fully approving of it, it is necessary to state that the solution discussed is in conflict with the European Court of Human Rights judgments, because it breaches Article 3 of the European Convention on Human Rights (ECHR), which lays down

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[23] See in particular: Opinia na temat projektu zmian przepisów kodeksu karnego (uchwała Senatu Rzeczypospolitej Polskiej z dnia 24 maja 2019 roku), Katedra Prawa Karnego Materialnego, Uniwersytet Wrocławski, pp. 12–15; Opinia do uchwały Senatu Rzeczypospolitej Polskiej z dnia 24 maja 2019 r. w sprawie ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, uchwalonej przez Sejm Rzeczypospolitej Polskiej na 81. posiedzeniu w dniu 16 maja 2019 r., Kraków, 9 June 2019, Krakowski Instytut Prawa Karnego Fundacja, pp. 93–96.

[24] See J. Giezek, J. Brzezińska, D. Gruszewska, R. Kokot, K. Lipiński, Opinia na temat wybranych zmian przepisów kodeksu karnego, part 2 of: Opinia na temat projektu zmian przepisów kodeksu karnego (uchwała Senatu Rzeczypospolitej Polskiej z dnia 24 maja 2019), Katedra Prawa Karnego Materialnego, Uniwersytet Wrocławski, posted on the Ombudsman's website, https://www.rpo.gov.pl/plcontent/zmiany-wprawie-karnym-2019-opinie-ekspertow-i-RPO (accessed 20.10.2019).

[25] See opinions posted on the Ombudsman's website indicated in footnote 2 *supra*, in particular: Opinia Rzecznika Praw Obywatelskich do ustawy z dnia 16 maja 2019 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw; Opinia – sygnowana przez ponad 150 naukowców – dotycząca uchwalonej przez Sejm w dniu 13 czerwca 2019 r. ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, przedstawionej Prezydentowi Rzeczypospolitej Polskiej w trybie art. 122 ust. 1 Konstytucji RP, pp. 22–25; Opinia Krakowskiego Instytutu Prawa Karnego Fundacja z dnia 9 czerwca 2019 r. do uchwały Senatu Rzeczypospolitej Polskiej z dnia 24 maja 2019 r. w sprawie ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, uchwalonej przez Sejm Rzeczypospolitej Polskiej na 81. posiedzeniu w dniu 16 maja 2019 r., pp. 106–110; Opinia Biura Studiów i Analiz Sądu Najwyższego do projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw; Opinia Katedry Prawa Karnego Materialnego Uniwersytetu Wrocławskiego na temat projektu zmian przepisów kodeksu karnego (uchwała Senatu Rzeczypospolitej Polskiej z dnia 24 maja 2019 roku), pp. 24–31.

a ban on inhuman and degrading treatment. The European Court of Human Rights drew attention to the fact that, while the penalty of life imprisonment as such does not breach it, the lack of regulation in national law that lays down a possibility of verifying grounds for further execution of such a penalty after a statutory period which is usually 25 years does. This does not mean that a convict is entitled to finish serving the penalty earlier than when the period ends. It means that they can apply for a conditional release, which gives them hope for regaining freedom. It should be added that the European Court of Human Rights recognised the situation in which the only method to reduce the penalty of life imprisonment was the President's pardon as one that infringes Article 3 ECHR.

Summing up, it should be stated that the statute contains solutions that raise considerable objections. They lead to aggravation of the penal system, which is justified neither by the diagnosis of the present criminality nor by the practice of justice administration. At the same time, the statute introduces regulations that limit judicial discretion in the field of sentencing, and even such that are in conflict with international law. Due to the above, the amendments presented do not deserve approval.

BIBLIOGRAPHY

Konarska-Wrzosek V., *Propozycje zmian katalogu kar w kodeksie karnym z 1997 r., w zakresie kar pozbawienia wolności oraz dolegliwości związanych z niektórymi rodzajami kar wolnościowych*, [in:] P. Kardas, T. Sroka, W. Wróbel (eds), *Państwo prawa i prawo karne. Księga jubileuszowa Profesora Andrzeja Zolla*, Vol. II, Warszawa 2012.

Lachowski J., *Opinia dla Komisji Kodyfikacyjnej Prawa Karnego w związku z Konferencją, która odbyła się w dniach 15–16 listopada 2011 r. w Popowie*, Biuletyn Komisji Kodyfikacyjnej Prawa Karnego 3, 2011.

Majewski J., *Opinia na temat projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw (w zakresie rozdziałów IV, VII oraz XIV k.k.)*, [in:] *Kodeks karny – projekt nowelizacji*, Sejm print no. 1756, Biuro Analiz Sejmowych Kancelarii Sejmu, Warszawa 2007.

Melezini M., *Granice czasowe kary pozbawienia wolności*, [in:] L. Gardocki, M. Królikowski, A. Walczak-Żochowska (eds), *Gaudium in litteris est. Księga jubileuszowa ofiarowana Pani Profesor Genowefie Rejman z okazji osiemdziesiątych urodzin*, Warszawa 2005.

Melezini M., *Tendencje w polityce karnej po reformie prawa karnego z 2015 r.*, [in:] P. Góralski, A. Muszyńska (eds), *Racjonalna sankcja karna w systemie prawa*, EuroPrawo 2019.

Melezini M., *Problemy reformy prawa karnego. Uwagi na tle ustawy z dn. 13 czerwca 2019 r.*, [in:] P. Góralski, A. Muszyńska (eds), *Reforma prawa karnego w latach 2015–2019*, (in print).

Opinia Biura Studiów i Analiz Sądu Najwyższego do projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, 26 kwietnia 2019 r.

Opinia Komisji Legislacyjnej Naczelnej Rady Adwokackiej do projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, przygotowana przez adw. prof. Jacka Giezka i adw. prof. Roberta Zawłockiego, 14 lutego 2019 r.

Opinia Krakowskiego Instytutu Prawa Karnego Fundacja z dnia 9 czerwca 2019 r. do uchwały Senatu Rzeczypospolitej Polskiej z dnia 24 maja 2019 r. w sprawie ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, uchwalonej przez Sejm Rzeczypospolitej Polskiej na 81. posiedzeniu w dniu 16 maja 2019 r.

Opinia na temat projektu zmian przepisów kodeksu karnego (uchwała Senatu Rzeczypospolitej Polskiej z dnia 24 maja 2019 roku), Katedra Prawa Karnego Materialnego, Uniwersytet Wrocławski.

Opinia Ośrodka Badań, Studiów i Legislacji Krajowej Rady Radców Prawnych na temat projektu z dnia 25 stycznia 2019 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, sporządzona przez dr hab. prof. UWr. Annę Muszyńską.

Opinia Rzecznika Praw Obywatelskich do ustawy z dnia 16 maja 2019 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw.

Opinia – sygnowana przez ponad 150 naukowców – dotycząca uchwalonej przez Sejm w dniu 13 czerwca 2019 r. ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, przedstawionej Prezydentowi Rzeczypospolitej Polskiej w trybie art. 122 ust. 1 Konstytucji RP.

Raglewski J., *Referat na posiedzenie Komisji Kodyfikacyjnej Prawa Karnego dotyczący propozycji nowelizacyjnych kodeksu karnego z 1997 r. w zakresie kar, środków karnych, środków probacyjnych, a także zagadnień związanych z wymiarem kary łącznej i zanikiem karania*, Biuletyn Komisji Kodyfikacyjnej Prawa Karnego 3, 2011.

Sienkiewicz Z., *Ocena obowiązujących rozwiązań w zakresie kar, środków karnych, środków probacyjnych oraz wymiaru kary łącznej*, Biuletyn Komisji Kodyfikacyjnej Prawa Karnego 3, 2011.

Sienkiewicz Z., *Niektóre propozycje zmian w regulacji kar, środków karnych i środków probacyjnych*, Państwo i Prawo 4, 2012.

Tyszkiewicz L., *Co i jak zmienić w nowym kodeksie karnym*, Palestra 12–1, 1999–2000.

Tyszkiewicz L., *Wystąpienie panelisty*, [in:] *Czy trzeba zmieniać kodeks karny? Materiały z konferencji naukowej „Nowelizacja kodeksu karnego", Warszawa, 10 lutego 2003 r.*, Warszawa 2003.

Uzasadnienie do projektu ustawy z 13 czerwca 2019 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, Sejm print no. 3451.

Warylewski J., *Opinia w sprawie rządowego projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw w zakresie dotyczącym nowelizacji katalogu kar i zmiany sankcji karnej w części szczególnej (art. 32–38 k.k.)*, [in:] *Kodeks karny – projekt nowelizacji*, Sejm print no. 1756, Biuro Analiz Sejmowych Kancelarii Sejmu, Warszawa 2007.

Wilk L., *Kara 25 lat pozbawienia wolności*, [in:] M. Melezini (ed.) *System Prawa Karnego*, Vol. 6: *Kary i środki karne. Poddanie sprawcy próbie*, Warszawa 2010.

SELECTED ISSUES CONCERNING A NEW APPROACH TO THE IDEA OF PUNISHMENT IN THE LIGHT OF ACT OF 13 JUNE 2019

Summary

The article discusses the issues concerning extensive amendments to the provisions of the Criminal Code laid down in the Act of 13 June 2019. It considers the most important solutions introduced to the General part of the Criminal Code in the field of penalties and sentencing. These concern: elimination of the penalty of deprivation of liberty for 25 years from the catalogue of penalties; increasing the maximum limit of the penalty of deprivation of liberty for a period determined by court from 15 years to 30 years; modification of the content of Article 37a CC admitting a possibility of imposing a fine or the penalty of limitation of liberty instead of the penalty of deprivation of liberty; general directives on judicial sentencing decisions and the catalogue of aggravating and extenuating circumstances; and imposition of the penalty of life imprisonment without a possibility of conditional release. The analysis carried out leads to a conclusion that the proposed solutions do not deserve approval.

Keywords: penalty of deprivation of liberty for a period of 25 years, penalty of deprivation of liberty for a period determined by court, penalty of limitation of liberty, directives on judicial sentencing decisions, catalogue of aggravating and extenuating circumstances, penalty of life imprisonment

WYBRANE PROBLEMY NOWEGO PODEJŚCIA DO FILOZOFII KARANIA W ŚWIETLE USTAWY Z 13 CZERWCA 2019 R.

Streszczenie

Artykuł podejmuje problemy rozległych zmian przepisów kodeksu karnego w ujęciu ustawy z 13 czerwca 2019 r. Przedmiotem rozważań uczyniono najważniejsze rozwiązania wprowadzone w części ogólnej kodeksu karnego w obrębie kar i instytucji wymiaru kary. Dotyczyły one: wyeliminowania kary 25 lat pozbawienia wolności z katalogu kar; wydłużenia z 15 lat do 30 lat górnej granicy terminowej kary pozbawienia wolności; podwyższenia dolnej granicy grzywny oraz kary ograniczenia wolności; modyfikacji treści art. 37a k.k. dopuszczającego możliwość orzeczenia grzywny lub kary ograniczenia wolności zamiast kary pozbawienia wolności; ogólnych dyrektyw sądowego wymiaru kary oraz katalogu okoliczności obciążających oraz łagodzących; orzeczenia kary dożywotniego pozbawienia wolności bez możliwości warunkowego zwolnienia skazanego. Przeprowadzona analiza doprowadziła do konkluzji, że przestawione rozwiązania nie zasługują na aprobatę.

Słowa kluczowe: kara 25 lat pozbawienia wolności, terminowa kara pozbawienia wolności, grzywna, kara ograniczenia wolności, dyrektywy sądowego wymiaru kary, katalog okoliczności obciążających i łagodzących, kara dożywotniego pozbawienia wolności

PROBLEMAS SELECTOS DE NUEVA ACTITUD DE FILOSOFÍA DE LA PENA EN EL MARCO DE LA LEY DE 13 DE JUNIO DE 2019

Resumen

El artículo analiza problemas de modificaciones extensas del código penal contenidas en la ley de 13 de junio de 2019. Las soluciones más importantes previstas en la parte general del código penal en cuanto a las penas y su duración son: eliminación de la pena de 25 de privación de libertad del catálogo de las penas; prolongación de 15 a 30 años del límite máximo de la pena de privación de libertad, agravación del límite mínimo de la multa y de la pena de restricción de libertad, modificación del art. 37a CP, que admite la posibilidad de imponer la multa o la pena de restricción de libertad, directivas generales de imposición judicial de la pena y el catálogo de circunstancias agravantes y atenuantes, imposición de la pena de privación de libertad vitalicia sin la posibilidad de libertad condicional del penado. El análisis lleva a la conclusión de que las soluciones propuestas no pueden aprobarse.

Palabras claves: pena de 25 de privación de libertad, la pena de privación de libertad de duración determinada, multa, pena de restricción de libertad, directivas de imposición judicial de la pena, catálogo de circunstancias agravantes y atenuantes, pena de privación de libertad vitalicia

ИЗБРАННЫЕ ПРОБЛЕМЫ НОВОГО ПОДХОДА К ФИЛОСОФИИ НАКАЗАНИЯ В СВЕТЕ ЗАКОНА ОТ 13 ИЮНЯ 2019 ГОДА

Аннотация

Статья посвящена обширным изменениям, внесенным в Уголовный кодекс Законом от 13 июня 2019 года. Рассматриваются наиболее важные изменения, внесенные в общую часть Уголовного кодекса в отношении наказаний и института назначения меры наказания. К этим изменениям относятся: исключение меры наказания в виде лишения свободы сроком на 25 лет из перечня наказаний; повышение верхнего предела срока временного лишения свободы с 15 до 30 лет; повышение нижних пределов наказаний в виде штрафа и ограничения свободы; изменение содержания статьи 37a УК, предусматривающей возможность назначения наказания в виде штрафа или ограничения свободы вместо лишения свободы; изменение общих директив относительно системы судебных наказаний, а также включение в УК перечня отягчающих и смягчающих обстоятельств; возможность назначения наказания в виде пожизненного лишения свободы без возможности условно-досрочного освобождения. На основании проведенного анализа автор делает вывод о том, что предложенные решения не заслуживают одобрения.

Ключевые слова: наказание в виде лишения свободы на срок 25 лет, наказание в виде временного лишения свободы, штраф, наказание в виде ограничения свободы, директивы относительно системы судебных наказаний, перечень отягчающих и смягчающих обстоятельств, наказание в виде пожизненного лишения свободы

AUSGEWÄHLTE PROBLEME DES NEUEN ANSATZES FÜR DIE STRAFTHEORIE MIT BLICK AUF DAS GESETZ VOM 13. JUNI 2019

Zusammenfassung

Der Artikel greift die Probleme der umfangreichen Änderungen der Bestimmungen des polnischen Strafgesetzbuches durch das Gesetz vom 13. Juni 2019 auf. Gegenstand der Überlegungen sind die wichtigsten, im allgemeinen Teil des polnischen Strafgesetzbuches im Bereich der Strafen und der Institution der Strafzumessung eingeführten Regelungen. Diese betreffen: die Abschaffung und Streichung der Freiheitsstrafe von 25 Jahren aus dem Strafenkatalog des Gesetzes; die Erhöhung der Obergrenze einer zeitlich begrenzten Freiheitsstrafe von 15 auf 30 Jahre; Erhöhung der Untergrenze von Geldbußen und Freiheitsbeschränkungen; die Abänderung von Artikel 37a des polnischen Strafgesetzbuches, der die Möglichkeit einer Geldstrafe oder Strafe in Form einer Freiheitsbeschränkung anstelle von Freiheitsentzug zulässt; die allgemeine Richtlinien für die gerichtliche Strafzumessung und den Katalog von strafschärfenden und strafmildernden Umständen; die Verhängung einer lebenslänglichen Freiheitsstrafe ohne Möglichkeit der Freilassung des Verurteilten auf Bewährung. Die Untersuchung kommt zu dem Schluss, dass die vorgestellten Lösungen keine Zustimmung verdienen.

Schlüsselwörter: Freiheitsstrafe von 25 Jahren, zeitige/zeitlich begrenzte Freiheitsstrafe, Geldstrafe, freiheitsbeschränkende Strafe, Richtlinien für die gerichtliche Strafzumessung, Katalog von strafschärfenden und strafmildernden Umständen, lebenslange/lebenslängliche Freiheitsstrafe

PROBLÈMES SÉLECTIONNÉS DE LA NOUVELLE APPROCHE DE LA PHILOSOPHIE DE LA PUNITION À LA LUMIÈRE DE LA LOI DU 13 JUIN 2019

Résumé

L'article aborde les problèmes de modifications importantes des dispositions du Code pénal à la lumière de la loi du 13 juin 2019. Les solutions les plus importantes introduites dans la partie générale du Code pénal dans le cadre des sanctions et des institutions de la peine ont été examinées. Ils concernaient: l'élimination de la peine de 25 ans d'emprisonnement du catalogue des peines; la prolongation de 15 à 30 ans de la peine maximale d'emprisonnement; l'augmentation de la limite inférieure de l'amende et de la peine restrictive de liberté; la modification du contenu de l'art. 37a du Code pénal permettant la possibilité d'une amende ou d'une peine de restriction de liberté au lieu d'une peine de privation de liberté; les directives générales de la condamnation judiciaire et du catalogue des circonstances aggravantes et atténuantes; la peine de réclusion à perpétuité sans possibilité de libération conditionnelle du condamné. L'analyse a permis de conclure que les solutions présentées ne méritent pas d'être approuvées.

Mots-clés: 25 ans d'emprisonnement, emprisonnement en temps opportun, amende, restriction de liberté, directives de la condamnation judiciaire, catalogue des circonstances aggravantes et atténuantes, emprisonnement/réclusion à perpétuité

PROBLEMI SCELTI DEL NUOVO APPROCCIO PUNITIVO ALLA LUCE DELLA LEGGE DEL 13 GIUGNO 2019

Sintesi

L'articolo tratta i problemi delle estese modifiche delle norme del codice penale introdotte con la legge del 13 giugno 2019. Oggetto delle riflessioni sono state le soluzioni più importanti introdotte nella parte generale del codice penale, nell'ambito delle pene e dell'istituzione della determinazione della pena. Esse riguardano: l'eliminazione della pena detentiva di 25 anni dal catalogo delle pene, l'estensione del limite superiore della pena detentiva a tempo determinato da 15 a 30 anni, l'innalzamento del limite inferiore della pena pecuniaria e della pena detentiva; la modifica dell'art. 37a del codice civile che ammette la possibilità di comminare una pena pecuniaria o una pena detentiva invece di una pena detentiva, le direttive generali sulla determinazione giudiziale della pena e il catalogo delle circostanze aggravanti e attenuanti, la sentenza di pena detentiva perpetua senza possibilità di liberazione anticipata o condizionale della persona condannata. L'analisi condotta ha portato alla conclusione che le soluzioni presentate non sono degne di approvazione.

Parole chiave: pena detentiva di 25 anni, pena detentiva a tempo determinato, pena pecuniaria, pena detentiva, direttive sulla determinazione giudiziale della pena, catalogo delle circostanze aggravanti e attenuanti, pena detentiva perpetua

Cytuj jako:

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