

REMARKS ON THE INCREASING OF LIABILITY OF FOR CERTAIN TRAFFIC OFFENCES

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ABSTRACT

The author discusses the nature and scope of changes introduced to the Code of Petty Offences and the Code of Procedure in Petty Offences Cases by the Act of 2 December 2021. The amendment represents a drastic intervention by the legislator in the current legal framework regarding offences against safety and order in transportation. It foresees significant modifications in the legal and criminal response to these offences, transformations in the characteristics of selected types of prohibited acts, and proposes entirely new types of prohibited acts. The analysis suggests that the guiding principle behind these changes is to increase the degree of punitiveness of petty offences law towards perpetrators of traffic violations. This legislative approach raises concerns about the instrumental use of petty offences law with respect to the perpetrators of these offences. The adopted direction of changes raises suspicions that the legislator has not thoroughly familiarised themselves with the matter covered by their intervention. In any case, it is not grounded in the current state of traffic criminality, or in the analysis of judicial practice. An increase in repressiveness has never directly translated into a reduction in traffic criminality. The latter is a much more complex problem, involving the necessity of multi-faceted references.

Keywords: traffic offence, traffic violation, criminal punishment, prohibited act, fine

The solutions provided by the Act of 2 December 2021 amending the Road Traffic Act and Certain Other Laws,¹ constitute drastic interference by the legislator in the current legal framework regarding traffic offences. The legislator enters the domain of the general part of the Code of Petty Offences (CPO) by modifying the terms of

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¹ Journal of Laws of 2021, item 2328.



pecuniary penalties and the institution of reoffending, without omitting its special part, implementing changes in Chapter XI regarding the severity of pecuniary penalties, the construction of individual types of *mala prohibita*, and introducing completely new *mala prohibita*. Appropriate transformations are also continued within the framework of the Code of Procedure in Petty Offences (CPPO),² and, in principle, they amount to facilitating the practical implementation of the substantive legal assumptions of the amendment. A superficial insight into the content of transformations briefly outlined here reveals that they fit into the general trend of increasing the punitiveness of legal regulations. The essence of the mentioned amendment is best illustrated by the legislator's statement in the justification about the need to strengthen legal protection against acts infringing on such fundamental legal goods as the life and health of road users.³ According to the legislative concept, the current legal state does not provide sufficient tools to limit traffic crime and safeguard such important social values. In particular, in the legislator's view, too low pecuniary penalties for certain traffic violations hinder achieving the desired results. Hence, in his estimation, calming traffic and creating conditions for safe participation in it, especially for unprotected participants must be accompanied by the introduction of strong sanctioning solutions guaranteeing compliance with legal restrictions and principles arising from the essence of road safety.⁴ While fully sharing the legislative pursuit to guarantee optimal safety protection, doubts arise about the method of its implementation. It seems that in order to reverse the adverse trend in traffic crime the legislator intends mainly to employ criminal law solutions of a deterrent nature, aimed at discouraging perpetrators from committing the most dangerous traffic violations. This raises the question of whether the proposed direction of changes in misdemeanour law is grounded in rational reasoning. It should also be noted that the statistical depiction of traffic crime presented by the legislator in quantitative terms does not necessarily provide reliable grounds for increasing the repressiveness of misdemeanour law in the form presented by them. If so, it is believed that somewhat different intentions, of a rather populist nature, are hidden behind these normative efforts. Increasing the level of protection for the life and health of road users is just a proverbial 'smoke-screen' for the schematic tightening of criminal measures in this area of legal regulation.

The picture emerging from the new decisions of the amendment necessitates an initial examination of the changes in the imposition of pecuniary penalties. The amending Act allows for the imposition of a fine of up to PLN 30,000 for the offences enumerated in Article 24 § 1a CPO. It should be emphasised that such an escalation of sanctions is not entirely new to misdemeanour law. In principle, it does not contradict *de lege lata* neither Article 1 § 1 CPO nor Article 24 § 1 CPO. The literature on the subject generally agrees that the cited provisions, particularly the clause in Article 24 § 1 CPO 'unless the Act provides otherwise,'

² Official Journal of Laws of 2022, item 1124.

³ Sejm document No. 1504, 9th term of the Sejm, <https://orka.sejm.gov.pl/Druki9ka.nsf/0/9C68E8FF143EDFFAC125872E0047444E/%24File/1504.pdf>, (regulation impact assessment, p. 6) [accessed on 15 July 2024].

⁴ *Ibidem*.

warrant the modification of the standard term of pecuniary penalties, including the upper limit of the threat.⁵ In this context, there is nothing preventing the CPO or any other act from stipulating, for example, a pecuniary penalty of up to PLN 10,000. The position opposing raising the upper limit of the pecuniary penalty above PLN 5,000 is considered unconvincing and even unjustified.⁶ At the same time, it is emphasised that the possibility of such threats occurring does not mean that there is a conflict between this latter regulation and the provision typifying an offence punishable by a fine exceeding PLN 5,000, requiring the application of collision rules.⁷ The latter is conceivable only in the case of a collision of legal norms. Here, however, we are not dealing with a conflict requiring the application of such rules, since, on the one hand, there are provisions typifying offences punishable by a fine exceeding PLN 5,000, and, on the other hand, Article 1 § 1 CPO in conjunction with Article 24 § 1 CPO provides for the possibility of exceeding the standard fine threshold. However, it should be added that not all authors allow for the establishment of the maximum threat of a pecuniary penalty exceeding PLN 5,000 in the special part of the CPO itself.⁸ In their opinion, this manoeuvre seriously collides with Article 1 § 1 CPO. When explaining the content of Article 24 § 1 CPO, they refer to Article 1 § 1 CPO in conjunction with Article 7 § 3 of the Criminal Code (CC) (in its current wording), indicating that it can also be interpreted to mean that the CPO allows for an increase in the minimum fine or a decrease in the maximum fine but does not allow for an increase in the maximum fine, because then the act would become a crime instead of an offence. Therefore, in the special part of this Code, the legislator can only reduce the upper limit of this penalty, which is often done, but cannot increase it under any circumstances. The validity of this observation is further reinforced by the wording of Article IX § 3 of the Provisions introducing the CPO,⁹ according to which whenever the Act provided for a collegial adjudication penalty of imprisonment exceeding 3 months or a fine exceeding PLN 5,000, the upper limit was reduced to 3 months of detention or a PLN 5,000 fine. However, these authors reserve the possibility of exceeding the statutory maximum fine penalty for extra-codified misdemeanour legislation. They argue that when seeking

⁵ Jakubowska-Hara, J., in: Daniluk, P. (ed.), *Reforma prawa wykroczeń*, Vol. I, Warszawa, 2019, pp. 252–253; Daniluk, P., in: Daniluk, P. (ed.), *Kodeks wykroczeń. Komentarz*, Warszawa, 2016, pp. 16–17.

⁶ According to P. Daniluk, this is still indicated by the current justification of the draft CPO, which clearly shows that Article 24 § 1 CPO may set the fine limits differently (Law on Offences, draft, Warszawa, 1970, pp. 87–88). The use of the pronoun ‘them’ (plural) in the fragment concerning the fine (‘The provision [Article 24 § 1 CPO], setting the fine limit, reserves that the law may determine them differently’) indicates that the legislator’s intention with this provision is to modify both the lower and upper limits of the fine. Moreover, it is not reserved anywhere that change in the upper limit of this penalty can only consist in its reduction and not in its increase. This seems to predetermine – according to the quoted author – the legislator’s allowance for modifying the upper limit of the fine above PLN 5,000 (Daniluk, P., in: Daniluk, P. (ed.), *Kodeks...*, op. cit., pp. 16–17).

⁷ *Ibidem*, p. 17.

⁸ Radecki, W., ‘Co dalej z polskim prawem wykroczeń? (część 1)’, *Prokuratura i Prawo*, 2023, No. 5., p. 16.

⁹ Journal of Laws of 1971, No. 12, item 115, as amended.

a legal basis for increasing the upper limit of the fine above PLN 5,000 in extra-codified misdemeanour law, they should rather refer to Article 48 CPO, and not to Article 24 § 1 CPO, emphasising that the argumentation referring to the formula ‘unless these Acts contain different provisions’ seems legally clearer.¹⁰

Without prejudging the merit of any position here, one thing remains certain, that the legislator quite eagerly uses this solution and ‘through the back door’ introduces in the non-codified legislation the maximum penalty of a fine exceeding many times its basic term. For example, the increase of the upper limit to PLN 10,000 is provided by the Metrology Act of 11 May 2001;¹¹ to PLN 30,000 – Act of 26 June 1974 – Labour Code;¹² to PLN 100,000 – Act of 19 August 2011 on the Transport of Dangerous Goods;¹³ and also the Act of 10 January 2018 on Limiting Trade on Sundays and Holidays and on Some Other Days;¹⁴ to PLN 70,000 – Act of 4 November 2022 on the Central Animal Asylum;¹⁵ and even up to PLN 200,000 – Act of 28 May 2020 amending the Act on Chemical Substances and Mixtures and Some Other Acts.¹⁶ What astonishes here is the ease with which the legislator reaches for the ‘second maximum of the misdemeanour fine’. Such actions unnecessarily deepen the difference between the ‘code misdemeanour law’ and the ‘non-code misdemeanour law’, especially since the reasons for adopting such a substantial scale of maximum terms of the pecuniary penalties in non-code misdemeanour law are not fully clear and established (from PLN 10,000, through PLN 30,000, PLN 50,000, PLN 70,000, PLN 100,000 up to PLN 200,000).¹⁷ Moreover, by going beyond the code maximum of the pecuniary penalties, it disintegrates the criminal law at the crime-misdemeanour junction.¹⁸ Ignoring the law contained in Article 1 § 1 CPO blurs the criteria for classifying behaviours as misdemeanours, thereby complicating the identification of their true nature. Misdemeanours are usually identified with violations characterised by generally lower social harmfulness, hence threatened with lower and less severe punishment. High social harmfulness in abstracto, reflected in the severe criminal threat, is reserved for crimes.¹⁹ Sanctioning misdemeanours with severe fines thus seems to completely overlook the original sense that stands on the foundation of creating the law on misdemeanours.²⁰ Although such a solution is formally considered

¹⁰ Radecki, W., in: Daniluk, P. (ed.), *Reforma prawa wykroczeń*, Vol. I, Warszawa, 2019, pp. 26–27.

¹¹ Journal of Laws of 2021, item 2068.

¹² Journal of Laws of 2020, item 1320, as amended.

¹³ Journal of Laws of 2022, item 2147.

¹⁴ Journal of Laws of 2021, item 936, as amended.

¹⁵ Journal of Laws of 2022, item 2375.

¹⁶ Journal of Laws of 2020, item 1337.

¹⁷ Radecki, W., ‘Co dalej...’, op. cit., p. 20.

¹⁸ Radecki, W., ‘Dezintegracja polskiego prawa penalnego’, *Prokuratura i Prawo*, 2014, No. 9, pp. 13–15.

¹⁹ Daniluk, P., in: Daniluk, P. (ed.), *Kodeks...*, op. cit., pp. 17–18.

²⁰ This issue was most clearly addressed by the authors of the first commentary on the CPO, who only annotated the regulation of Article 24 § 1 determining the fine limits with one remark: other fine limits were determined by the CPPO provisions in payment order proceedings from PLN 100 to 1,500 and in administrative penalty proceedings from PLN 50 to 1,000 (Bafia, J., in: Bafia, J., Egierska, D., Śmietanka, I., *Kodeks wykroczeń. Komentarz*, Warszawa, 1980, p. 69).

acceptable, it does not find any rational justification from a systematic point of view. A misdemeanour burdened with a disproportionately severe pecuniary penalty is simply a methodologically false concept. Concerns about the correct recognition of the content and scope of this concept are probably not unfamiliar to the legislator since adjudication in cases involving offences at risk of a fine exceeding PLN 5,000 is subjected to the procedure of the CPPO each time.²¹ This way, albeit indirectly, it ensures their accurate classification as misdemeanours. The rationality of the new solution is further undermined by the fact that this time the breach concerns the 'code misdemeanour law'. Until now, liberation from the too-tight framework of the general part of the misdemeanour law took place only on the grounds of non-code acts. It is not excluded at all that too much freedom in this respect finally 'emboldened' the legislator to create a 'second maximum of the fine' in the CPO itself.²² Moreover, the weakness of the analysed change is further emphasised by its selectivity. Article 24 § 1a of the CPO allows for the imposition of a fine of up to PLN 30,000 for the misdemeanour under Article 86 § 1, 1a and 2, Article 86b § 1, Article 87 § 1, Article 92 § 1 and 2, Article 92a § 2, Article 92b, Article 93 § 1, Article 94 § 1, Article 96 § 3 and Article 97a CPO.²³ Such an approach results in a disproportionate and inconsistent raising of the thresholds of statutory risk within the same legal act. Apart from traffic offences, we can easily point out examples of code typification deserving of a harsher criminal reaction due to similar objects of protection (e.g., offences against the safety of persons and property). However, the amending act did not stop at tightening the upper statutory threats, a similar intention also accompanies the lower limits of the pecuniary penalty. As a result of the changes made, its minimum punishment is now at the level of PLN 500, PLN 800, PLN 1,000, PLN 1,500, and even PLN 2,500.²⁴ The exception here is only Article 86b § 2 CPO, in which case the lower limit of the statutory risk still amounts to PLN 20. Raising the lower statutory threat limits seems particularly alarming, as it generates consequences in the form of limiting the judicial shaping of the punishment. This, in turn, contradicts any sensible shaping of case-law practice, which is reduced to the mechanical reproduction of artificial statutory frameworks. The general tendency of the legislator to increase the penal severity in this respect is not explained, in any case, by the statement about the supposedly low effectiveness of the pecuniary penalties according to the previously applicable limits. It does not find support in axiological or empirical arguments.

All that has been said thus far does not mean to undermine the necessity of increasing the limits of pecuniary penalties in the CPO. The current term of this penalty not only incites the aforementioned issues but also does not conform

²¹ Supreme Court decision of 24 February 2006, I KZP 52/05, OSNKW 2006, No. 3, item 23.

²² In W. Radecki's opinion, by violating the principles of proper legislation, the 2021 amendment led to internal inconsistency within the same code-ranked law (see more in Radecki, W., 'Co dalej...', *op. cit.*, p. 23).

²³ The amending act provides for exceptions from the rule expressed in Article 24 § 1a CPO in the form of limits up to PLN 500 for Article 90 § 1 or up to PLN 1,500 for Article 94 § 1a CPO.

²⁴ Following the amendments, the lower threshold of statutory threat in the case of the offence under Article 86 § 1a CPO amounts to PLN 1,500, under Article 86 § 2 CPO – PLN 2,500, under Article 94 § 1a CPO – PLN 1,500, and under Article 140 § 3 CPO – PLN 1,500.

to contemporary penal requirements.²⁵ It does not assure a sufficient level of repressiveness in petty offence law. The upper limit of the fine penalty (PLN 5,000) was established in 1995,²⁶ a period when the average remuneration (PLN 691) was nearly eight times lower than the upper limit of the pecuniary penalties in petty offence law. As the years have progressed, the statutory intensity of this penalty has significantly diminished, as indicated by the relationship between the statutory threat of this penalty and the national average wage. At present, the average remuneration in Poland slightly exceeds the upper limit of the fine penalty in the CPO (in 2022 it amounted to PLN 6,346.15).²⁷ Consequently, it is rightly asserted that the only remedy to rectify the legal condition in this scope is an increase of the upper limit of the fine penalty for petty offences.²⁸ An urgent need for changes in the statutory terms of the pecuniary penalties also concerns the lower limit, which in its current term of PLN 20 is easy to negate for the same reasons. However, updating the fundamental limits of the fine penalty should be coupled with an amendment of Article 1 § 1, Article 24 § 1 CPO (without the necessity to add a separate § 1a), and Article 7 § 3 CC. In the context of Article 24 § 1 CPO, it is worth considering removing the final phrase 'unless the statute provides otherwise.' This phrase can inadvertently lead to behaviours being categorised as petty offences despite their significant social harm. Since different fine limits appear in mandate proceedings, these limits should also be defined in Article 24 CPO (e.g., in § 2).²⁹ for the alignment of systemic inconsistencies in the application of this penal reaction measure. When addressing the alignment of the basic term for pecuniary penalties, one must not overlook the potential irregularities that may arise from its application in practice. An inherent flaw of the fine penalty is the risk that it may be paid by someone other than the perpetrator, which contradicts the personal nature of the penalty itself. Similarly, the inability of the sanctioned individual to pay the fine due to a lack of assets or its imposition in an amount exceeding their payment capabilities often results in the imposition of a substitute penalty, thereby highlighting the inefficiency of this criminal law instrument.³⁰ Particularly, this last possibility, combined with

²⁵ Similarly, Radecki, W., in: Daniluk, P. (ed.), *Reforma prawa...*, op. cit., p. 30. The author indicates that attempts to break free from the restrictive framework of the general part of misdemeanour law are twofold: by raising the maximum fine for (so far) non-codified offenses and by replacing liability for offenses with liability for administrative offenses.

²⁶ Act of 12 July 1995, amending the Criminal Code, the Criminal Enforcement Code, and on Raising the Lower and Upper Limits of Fines and Contributions in Criminal Law (Journal of Laws from 1995, No. 95, item 457).

²⁷ Compensation according to GUS data, www.stat.gov.pl [accessed on 15 July 2024].

²⁸ Recently on this topic, *inter alia*, P. Daniluk, in: Daniluk, P. (ed.), *Reform of Misdemeanor Law*, p. 110, and Jakubowska-Hara, J., in: Daniluk, P. (ed.), *Reforma...*, op. cit., p. 255, and the literature cited therein.

²⁹ Jakubowska-Hara, J., in: Daniluk, P. (ed.), *Reforma...*, op. cit.

³⁰ The National Bar Council in its opinion ([https://orka.sejm.gov.pl/Druki9ka.nsf/0/8AD4775C38BB9A66C125876C0053D637/\\$File/1504-006.pdf](https://orka.sejm.gov.pl/Druki9ka.nsf/0/8AD4775C38BB9A66C125876C0053D637/$File/1504-006.pdf)) and the National Council of the Judiciary (<https://krs.pl/pl/dzialalnosc/opinie-stanowiska-uchwaly/1160-opinia-krajowej-rady-sadownictwa-z-dnia-10-wrzesnia-2021-r-wo-420-88-2021.html>) [accessed on 15 July 2024], and recently Kluza, J., 'Nowelizacja Kodeksu wykroczeń w zakresie wykroczeń przeciwko bezpieczeństwu i porządkowi w komunikacji', *Ius Novum*, 2022, No. 4, pp. 65–66; letter of the Ombudsman, II.561.1.2021.MH, <https://orka.sejm.gov.pl/Druki9ka.nsf/0/1A0310008295FFD7C125875E003EC>

the tightening of the rigours of applying substitute forms of pecuniary penalties execution, calls for a distance from any attempts to create its standard term too rigorously in the CPO framework. From the perspective of such expectations, a reasonable compromise seems to be the proposal to shape the codified term of the pecuniary penalty within the range of PLN 200 to PLN 15,000.³¹ The possibility of adjudicating this penalty within such clearly delineated limits respects the objectives and considerations outlined in Article 33 § 1 and Article 24 § 3 CPO. Therefore, it fully meets the requirements for individualisation of the penalty term.

The introduction of a mechanism for significantly increasing punishment for selected traffic offences committed under conditions of specifically defined recidivism has sparked considerable controversy. The amendments resulted in the transfer of the institution of intensified criminal repression, hitherto solely encompassed within Article 38 CPO, to § 1, distinguishing within its scope a new § 2, which stipulates the obligation to impose a fine of not less than twice the minimum statutory penalty for specifically delineated prohibited acts. Examining the amendment in this regard, a pronounced trend towards enhancing the repressiveness of petty offence law should be noted. It seems to stem more from the legislator's adopted ideology of punishing perpetrators of traffic violations rather than authentic needs based on an analysis of the prevailing type of criminality in Poland. The rationale for the act does not facilitate finding an appropriate reference in this regard. Another issue is that the mechanism for automatically doubling the lower limit of statutory threats has already been sufficiently scrutinised under the 1969 criminal codification and has yielded many negative experiences, rightly criticised in the subject literature. Transposing solutions burdened with such significant flaws to the realm of petty offence law thus signifies a disregard for conclusions from obsolete, dysfunctional legal regulations. Moreover, by resorting to this, the legislator jeopardises the principle of equal treatment of perpetrators committing prohibited acts as recidivistic offences. In Article 38 § 1 CPO, the clause for extraordinary aggravation of punishment was not, after all, subjected to the requirement of obligatory application. From the content of this provision, it is inferred that the imposition of arrest as a penalty upon the perpetrator, despite fulfilling the conditions specified in this provision, has been left to the court's discretionary judgment, which must be agreed upon. The situation is different in the case of 'traffic recidivism' under Article 38 § 2 CPO. Although consideration of the symmetry of legal solutions would mandate resignation from the obligatory application of the institution of extraordinary aggravation of fine punishment here as well.

Separate reservations are also aroused by the editorial formulation of the provision of Article 38 § 2 CPO. The way its personal scope has been formed does not entirely harmonise with the personal scope of the offences listed therein. The typifications of prohibited acts referred to therein utilise the concepts of 'driver',

CC4/\$File/1504-004.pdf [accessed on 15 July 2024], pp. 8–9, have pointed out the risk of the fine not being adapted to the directives of the sentence determined in Article 33 CC or the financial capabilities of the accused, difficulties with its enforcement and thus an increase in the number of substitute arrests.

³¹ Jakubowska-Hara, J., in: Daniluk, P. (ed.), *Reforma...*, op. cit., p. 255.

'traffic participant or another person present on the public road, in the residential area or traffic zone,' and even the impersonal formula 'who'. Meanwhile, Article 38 § 2 CPO exclusively refers to 'the person at the wheel'. Some of the terms mentioned have received legal definitions (i.e. 'traffic participant' – Article 2(17), 'person at the wheel' – Article 2(20) of the Road Traffic Act³²), while others have been extensively and competently explained by criminal law doctrine ('driving').³³ Realising the semantic differences between them does not allow for equating the concept of 'the person at the wheel' with 'the person driving'. The latter undoubtedly exceeds the boundaries delineated by the definition of 'the person at the wheel'. Therefore, if it was not the legislator's intention to limit the aggravation of the fine punishment only to 'persons at the wheel', it is necessary to verify of his position in this respect. Depending on the legislative assumption adopted, the term 'person at the wheel' used in Article 38 § 2 CPO should be replaced with 'person driving' or 'the penalised individual'. Another example of clumsy editing is the phrase 'commits the same offence', which should likewise be subject to correction. In the case of recidivism, the issue is not the same, but a similar (identical) offence. It is also inappropriate to include in the catalogue of offences subject to the mechanism of obligatory aggravation the typification from Article 92 § 2 CPO, for which the lower limit of the threat of a fine amounts to PLN 20.

Considering these remarks, it is worth noting that even before the amendment, accusations of redundancy were levied against the provisions of Article 38 CPO.³⁴ It was deemed that the lack of a central registry of those fined for offences makes the application of this institution random in nature.³⁵ Although we still do not have a satisfactory solution in this regard, it seems that this is not a sufficient reason to abandon the institution of recurrence for offences altogether. Instead, efforts should be made to improve courts' access to a central registry of individuals who have been legally fined for offences.³⁶ In the current legal state, this registry contains the data of individuals sentenced to arrest, including for offences against traffic safety and order as envisaged in Chapter XI CPO. Therefore, the registration of punishments for offences is selective and incomplete. It does not include data on individuals who have been legally fined with a non-custodial sentence or fined as a result of mandatory proceedings. In the case of offences related to traffic violations, the situation is somewhat mitigated by the records kept by the Police based on Article 130(1) of the Road Traffic Act (including final court judgments and penal orders) and by the Minister responsible for informatisation based on Article 100a(4) of the Road Traffic Act regarding data mentioned in Article 100aa(4)(12)–(13) of the same Act, which is also accessible by the courts. However, to ensure proper

³² Act of 20 June 1997 – Traffic Law (consolidated text, Journal of Laws from 2021, item 450, as amended).

³³ Stefański, R.A., *Wykroczenia drogowe. Komentarz*, Zakamycze, 2005, pp. 237–251.

³⁴ Marek, A., *Prawo wykroczeń (materialne i procesowe)*, Warszawa, 2012, p. 112.

³⁵ *Ibidem*.

³⁶ See Article 2 of the Act of 4 October 2018 amending the Act – Code of Petty Offences, and Some Other Acts (Journal of Laws from 2018, item 2077). However, this solution is limited, as it concerns specific offenses against property.

application of Article 38 § 2 CPO, it would be desirable to expand the range of data on offences collected in the National Criminal Register to include information on all convicted offenders, regardless of the type of sentence imposed or the procedure applied. Only such an action will guarantee judicial authorities full and independent access to knowledge about the previous criminality of the perpetrator of each offence. Additionally, it would be recommended to introduce into the CPPO a provision corresponding in content to the standard contained in Article 213 § 1b of the Code of Criminal Procedure (CCP), which in proceedings on land traffic crimes specified in Chapter XXI CC imposes on the court the obligation to obtain information from the central drivers' registry and from the Police's record of drivers violating traffic regulations concerning the accused. The suggested proposal could significantly assist in organising matters related to determining by the court the previous criminality of the perpetrator of a traffic offence.

Further changes proposed by the legislator go far beyond the criticised and schematic regulation of fine boundaries or the so-called traffic recidivism and confront us with the addition or significant modification of selected provisions from Chapter XI CPO.

Changes associated with the introduction of new prohibited acts concern Article 86b CPO (failing to yield the right of way to a pedestrian and other behaviour variants violating their right of way), Article 92b CPO (violation of overtaking ban), and Article 97a(2) CPO (unauthorised bypassing of barriers at railway crossings and entering a railway crossing if there is no space to continue driving on the other side). In other aspects, an increase in liability can be observed for acts previously penalised based on pre-existing legal regulations. Among this group of provisions, it is necessary to mention Article 86 § 1a (road collision in case of a health disorder qualified against Article 86 § 1 CPO), Article 92a § 2 (exceeding the speed limit by 30 km/h qualified against the act from Article 92a § 1 CPO), Article 92b CPO (disregard of the overtaking ban qualified against the act from Article 92 § 2 CPO), and Article 97a(1) CPO (bypassing barriers at a railway crossing).

Legal solutions in the area of traffic offences have drawn significant criticism. It does not seem justified to multiply further legal entities within this category. The introduction of a provision on 'light road accidents' (Article 86 § 1a CPO) alongside the existing regulation from Article 86 CPO, of a represents a revival of the previously abandoned concept of such accidents. A similar proposal was contained in the 1991 draft of the CPO,³⁷ stating that: 'Whoever violates, even unintentionally, the principles of safety in land, water or air traffic and causes an accident in which another person suffers injuries impairing the functions of an organ of the body lasting no longer than 14 days (consistent with the draft of the Criminal Code – note by K.L.), or unintentionally causes damage to someone else's property, is subject to a fine.' With the established interpretation of Article 86 CPO and its practical use, it is necessary to consider adopting such a distinction of liability for an accident

³⁷ Draft of the Code of Petty Offences (edition from February 1991), prepared by the Commission for the Reform of Criminal Law – Team for the Unification of Solutions of Criminal Law and Misdemeanor Law.

that is a crime and a 'light road accident' that is an offence as an unnecessary procedure. If one rightly weighs, Article 86 CPO previously applied, among others, to the perpetrator of a road accident in which participants suffered bodily injuries impairing the proper functioning of the body for a period not exceeding 7 days, regardless of the value of the damaged property.³⁸ Therefore, it does not require additional stratification. For slightly different reasons, the expansion of existing types of acts also does not gain approval. The issue of the legitimacy of distinguishing new structures of offences from Article 90 § 2, Article 92a § 2 and Article 94 § 1a CPO remains debatable due to the manner of the perpetrator's actions (exceeding the speed limit by over 30 km/h), the nature of participation in traffic (driving a vehicle or another participant in traffic/road user), or the type of vehicle used (mechanical or non-mechanical). Such a division seems artificial. A more rational solution is to leave to the justice authorities the assessment of these circumstances and to adapt the dimension of the penalty defined within the limits of the appropriately modified statutory threat to them. Finally, a cautious approach should be taken to distinguishing new offences provided for in Article 86b, Article 92b or Article 97a CPO. It should be noted that the legislator, in building new types of offences in the amending act, cultivates unnecessary casuistry, replacing the solution of the general problem of comprehensive regulation of 'traffic' matters. So far, the punishment of behaviours mentioned in these provisions has often been ensured by Article 97 CPO. This provision, as complementary to the regulations provided for in Articles 94–96d CPO, allows consideration of the whole range of different violations of the Road Traffic Law or regulations issued on its basis. Regarding offences against other provisions in the field of road law, Article 97 CPO is applied. With such a blanket legislative technique, duplicating identical regulations in the substantive layer should be considered unnecessary and categorically erroneous.

Separate remarks are needed here concerning the drastic modifications in the scale of the pecuniary penalties for traffic offences covered by the amendment. As mentioned earlier, the changes in penalties indicate an increase in both the lower and upper limits of statutory threats of pecuniary penalties. Usually, these limits are disproportionately high, both in relation to the threats of this penalty provided for similar types of offences, and due to the standards regulating this scope. Such 'messy' lawmaking conflicts with the requirement of rational punishment. A lack of respect for the principles of proper legislative technique is especially highlighted by the regulation contained in Article 87 § 1a CPO, which, in terms of the scale of punishment, refers to Article 87 § 1 CPO threatened after the amendment with the penalty of arrest or a fine not less than PLN 2,500.³⁹ It seems unnecessary to

³⁸ Cf., *inter alia*, resolution of the Supreme Court of 18 November 1998, I KZP 16/98, Lex No. 34208, judgment of the Supreme Court of 20 February 2008, V KK 313/07, Lex No. 406889; decision of the Supreme Court of 27 March 2014, I KZP 1/14, OSNKW 2014, No. 7, item 54.

³⁹ We have the opposite situation in Article 94 § 2 CPO, in which a reference was left ('the same penalty applies (...)') to the penalty specified for the offense under Article 94 § 1a of the CPO. It is difficult to understand and explain the mitigation of the penalty for an act consisting in driving a vehicle despite the lack of its approval for traffic. In terms of weight, this is similar to driving a mechanical vehicle without licence (i.e. an offense under Article 94 § 1 CPO).

elaborate further that setting the lower limit of the fine for driving a non-mechanical vehicle while intoxicated at the level of PLN 2,500 (before the change – from PLN 50) grossly violates the ‘internal justice’ when resolving the issue of responsibility for a prohibited act committed while intoxicated.⁴⁰ It can be read as nullifying the existing assumptions of criminal policy, for which the effectiveness of combating this type of crime is not dependent, as the legislator declared at the time, on the severity of criminal repression.⁴¹ The consequences of changing the threats of fine penalties for individual traffic offences are, therefore, multidimensional and have not been properly considered. Thus, when considering the postulate of making the quantitatively indicated limits of pecuniary penalties more realistic, care should be taken to ensure that the proposals formulated in this regard remain in appropriate correlation to the national average wage. Instead of significantly expanding the hierarchy of threats with this penalty in Chapter XI CPO, it is sufficient to leave the generally defined ‘quota-free’ fine penalty, modifying its upper limit according to the scheme adopted for the entire CPO. Of course, these changes require synchronisation with Article 24 CPO. It would also be desirable to abandon the designation of the lower limit of the pecuniary penalties. In this regard, the general term ‘pecuniary penalties’ can be used as a substitute. When submitting further comments on the scope of penalisation of traffic offences, the introduction of the penalty of restriction of liberty as an alternative to the penalty of arrest and the penalty of a fine to the provisions typifying traffic offences should also be considered. Where the justification for imposing pecuniary penalties falls away in concrete terms and there is a threat of imposing a substitute penalty, such an alternative definition of the sanction appropriately expands the judge’s scope for individualising the scale of the penalty. When analysing the sanctions occurring in Chapter XI CPO, it is also worth considering the possibility of removing the penalty of reprimand. The symbolic character of this sanction, which resembles more a measure of educational influence in connection with the rank of traffic offences, argues in favour of the proposed postulate. After all, in cases deserving special consideration, the court has at its disposal the institution of extraordinary mitigation of the penalty or abstaining from its imposition. Finally, the use of the driving ban should be left to the court’s discretion. Contrary to appearances, moving away from the obligatory nature of the driving ban does not have to mean retreating from its application on a large scale. It is rightly pointed out that every case of punishing a person driving a vehicle for a traffic offence is a ‘starting point’ for considering the purpose of imposing this criminal measure. The overall set of conditions that justify imposing a driving ban indicates that resorting to this measure is warranted, especially when the circumstances of the committed offence demonstrate that the individual’s driving poses a threat to traffic safety.

⁴⁰ For more on this topic, see Kluza, J., ‘Nowelizacja Kodeksu wykroczeń...’, op. cit., pp. 66–69.

⁴¹ Justification for the parliamentary draft act amending the act – Criminal Code, print No. 378, Sejm of the 7th term, <https://orka.sejm.gov.pl/Druki7ka.nsf/0/E737B26FC8784129C12579F9003263A4/%24File/378.pdf> [accessed on 15 July 2024].

The amendments introduced in the CPO have led to concurrent amendments in the CPPO. Moreover, there has been an escalation in the scale of liability for traffic offences. Until recently, fines of up to PLN 500 could be imposed in the ticket procedure, and in the case where provisions coincided as per Article 9 § 1 CPO, fines could reach up to PLN 1,000 (Article 96 § 1 CPPO). Meanwhile, the new provision Article 96 § 1ad CPPO introduces a departure from this general rule, allowing for fines to be imposed in the ticket procedure for offences specified in Chapter XI CPO, up to PLN 5,000. In cases where multiple offences are committed with a single act, the fine can be increased to up to PLN 6,000. Additionally, for the offence under Article 96 § 3 CPO, which involves failure to indicate, at the request of an authorised body, the person entrusted by the perpetrator with the vehicle for driving or use at a specified time, fines in such proceedings can reach up to PLN 8,000 (Article 96 § 1d CPPO). Setting the upper limit of the fine at such a high level in a procedure that is inherently simplified and subsidiary in relation to court proceedings provokes opposition for several reasons. First and foremost, in the ticket procedure, the fine is not adjudicated but ‘imposed’ on the perpetrator by the police or officers (inspectors) of other bodies through a criminal ticket. In this way, the legislator emphasises that the non-judicial body authorised to impose a fine does not perform adjudicatory functions and does not enter the realm of justice administration, which is the exclusive competence of the judiciary. This body is usually represented by an officer without in-depth legal knowledge, which would allow for a thorough consideration of all relevant legal and factual circumstances of the committed act. Handling the case almost ‘on the spot’, they usually lack the ability to take into account factors that could affect the fine amount, such as the perpetrator’s income, personal and family conditions, financial relations, and earning opportunities. This limitation appears to be recognised by the legislators themselves, who introduced in Article 95 § 6 CPPO a so-called tariff specifying a priori, i.e., disregarding the individualising features of the perpetrator and their act, the amount of the fine imposed in the ticket procedure for particular offences.⁴² With such an approach, the fine imposed in the ticket procedure resembles an administrative monetary penalty, which, combined with its designation in the new tariff at a significantly higher level than before, invites deserved criticism of the changes made in this regard.

The extremity of the analysed regulation is not even mitigated by the fact that the legislator had previously bypassed the general principle expressed in Article 96 § 1 CPPO and raised the upper limit of fines for certain offences under some special acts. For example, in all cases where the public prosecutor is the competent authority of the National Labour Inspectorate and in four other cases specified in Article 96 § 1a, 1aa, and § 1c CPPO,⁴³ the maximum fine in the ticket procedure was raised

⁴² The legal act currently in force is the Regulation of the Prime Minister of 30 December 2021, amending the Regulation on the Amount of Fines Imposed by Way of Criminal Tickets for Selected Types of Offenses (Journal of Laws of 2021, item 2484).

⁴³ Offences under the Act of 6 September 2001 on Road Transport, when the prosecutor is the competent authority of the Road Transport Inspection or Police (consolidated text, Journal of Laws from 2021, item 919, as amended); offenses under the Act of 20 April 2004 on Promoting Employment and on Labour Market Institutions, in which the public prosecutor is the competent

to PLN 2,000, and under the conditions described in Article 96 § 1ab, the fine can even go up to PLN 7,500.⁴⁴ A fine of up to PLN 5,000 can generally be imposed for the offences committed within the framework of recidivism. This applies to offences against workers' rights specified in the Labour Code, offences specified in the Act of 9 July 2003 on the Employment of Temporary Workers, offences specified in the Act of 10 October 2002 on the Minimum Wage for Work, and offences specified in the Act of 10 January 2018 on Restricting Trade on Sundays and Holidays and on Certain Other Days (Article 96 § 1b, 1ba, 1bb and 1bc CPPO). In one instance, the legislator also raised the upper limit of fines imposed through a criminal ticket to PLN 5,000 (Article 96 § 1ab CPPO). The legislator's increase in the maximum amount of fines imposed by way of a criminal ticket does indeed prove that, with regard to certain offences or the offences committed under conditions of recidivism, a fine of PLN 500 is inadequate due to their gravity. Nevertheless, until recently, this solution was limited in its statutory scope. All these exceptions applied to individual, enumerated, and prohibited acts under specific acts. The new regulation, however, is comprehensive; it covers every offence contained in Chapter XI CPO, regardless of its gravity and its relation to traffic safety. It is worth emphasising at this point that Chapter XI CPO primarily safeguards two key interests: traffic safety, and secondly, traffic order. The lack of clear and unambiguous criteria for distinguishing between these concepts often leads to their conflation into a single term and means that, as a result, they are recognised jointly. However, it is indisputable that violations of traffic safety can carry significantly graver consequences for human life, health, and property than violations of traffic order, which, while troublesome, do not jeopardise to the same extent the values or arrangements protected by law. The identified valuation plane of acts typified within the framework of Chapter XI CPO, while undoubtedly one of the most important, does not exhaust the entirety of the issue. Another possible division is one that distinguishes offences closely related to the provisions of the road traffic law (Articles 84–98 CPO) and refers to the Act on public roads (Articles 99–103 CPO). Without elaborating further, it is evident that the discrepancy in the perception of traffic offences indicated above should be addressed through tailored procedural solutions. Any generalisations in this regard, when coupled with improper practice, may inadvertently reduce the perpetrator of a traffic offence to a mere subject of criminal policy.

Examining the changes in the scale of fines imposed through criminal tickets for traffic offences, it is crucial to acknowledge a significant advantage of such non-mandatory proceedings: they relieve courts from handling a large volume of minor cases. The social costs associated with the judicial process and the interests of the accused themselves are also pivotal considerations. Especially given the latter issue, one should refrain from extending the boundaries of criminal tickets imposed

Border Guard authority (consolidated text, Journal of Laws of 2021, item 1100, as amended); offenses under the Act of 20 March 2009 on the Safety of Mass Events (consolidated text, Journal of Laws of 2019, item 2171); offense under the Act of 7 July 1994 – Construction Law (consolidated text, Journal of Laws of 2020, item 1333, as amended).

⁴⁴ Act of 9 March 2017 on the System of Monitoring Road and Rail Transport of Goods and the Turnover of Solid Fuels (consolidated text, Journal of Laws of 2021, item 1857).

for traffic offences too far. It is worth noting that, the accused must consent to this method of resolving their case for the ticket procedure to be maintained. The excessively inflated limits of fines that can be imposed under this procedure, coupled with a rigorous enforcement model (Article 25 § 2(1) CPO), could potentially hinder its effective application. This could result in a significant increase in cases being brought before the courts in the long term.

Concluding considerations on the changes introduced in the CPO amendment, it becomes apparent that the legislator has taken a rather simplified approach towards the task of ensuring proper traffic safety. Their main idea is to increase the degree of punitiveness of petty offence law with regard to offenders of road violations. This assumption is primarily implemented by intensifying the severity of fines and expanding the scope of penalties by adding new types of prohibited acts, as well as casuistically delineating already existing types of acts. Particularly alarming is the restriction on the discretion of judicial sentencing, brought about by rigidly defined penalty boundaries and mandatory mechanisms for their application. Such legislative methods lacks substantive justification in the current state of traffic crime or in the analysis of judicial practice. Changes altering the statutory term of pecuniary penalties and adjusting the types of prohibited acts, combined with constraints on the freedom of court action, essentially reduce the role of the court to a 'mouth of the law' with a clearly repressive message. Combating traffic violations in this way seems to be a simple misunderstanding. It likely stems from an unsupported belief in the omnipotence of the means proper to petty offence law in preventing this kind of crime. However, petty offence law typically intervenes with its means to combat traffic crime after the fact, often too late. Moreover, the instruments at its disposal generally address symptoms rather than underlying causes, making them inadequate substitutes for or competitors to measures that are applicable in the sphere of broadly understood pre-crime prevention. Recognising this aspect of the issue requires examining the root causes of traffic crime and subsequently developing a system of solutions ensuring that the severity of penalties under petty offence law and their scope remain rational and functional. The focus should particularly be on optimising the formulation sanctions, which occurs when statutory frameworks empower courts to levy fair penalties. The realisation of this assumption in cases of traffic offences necessitates a comprehensive review of all sanctions outlined in Chapter XI CPO. Additionally, there would also be an expectation to revise the structure of certain traffic offences. Reflecting misleadingly similar classification, terminological disorder, and the resulting uncertainty in the interpretation of attributes, are examples of the most contentious issues. As part of the proposed intervention, it is crucial to address the issue of systemic inconsistency or even the complete lack of foundation for imposing penalties for certain behaviours classified as traffic offences. In light of the afore-mentioned oversights by the legislator, it is difficult to view the solutions implemented by the amending act as satisfactory and deserving approval. The shortcomings of the amendment, demonstrated so far in many ways, instead suggest that the provisions of the petty offence law discussed in this study were designed without a precise understanding of the subject matter they are intended to regulate.

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