

# OBLIGATION TO LEAVE THE PREMISES OCCUPIED JOINTLY WITH THE VICTIM AS A PROBATION MEASURE

BLANKA J. STEFAŃSKA \*

DOI 10.2478/in-2025-0012

## ABSTRACT

The subject of the article is the obligation to leave the premises occupied jointly with the aggrieved party, imposed on the accused person as a probation measure. The considerations include the evolution of this obligation, its legal nature, purpose, essence, grounds, mode of adjudication, timing, manner of execution and the effects of its violation. The aim of the article is to analyse the probation measure of the perpetrator's obligation to leave the premises occupied jointly with the aggrieved party and to indicate the function fulfilled by this measure. The research thesis is that the obligation to leave residential premises occupied jointly with the aggrieved party as a probation measure serves mainly to protect the aggrieved, and affects the convicted person to a lesser extent. The research hypothesis is the assumption that this obligation is generally regulated correctly and requires some small normative amendments. The theoretical-legal method is used in the article, as it focuses on the analysis of theoretical aspects of this order and its normative analysis in relation to the views of representatives of the doctrine.

Key words: conditional discontinuance of a proceeding, conditional release from serving the sentence, conditional suspension of the execution of the sentence, domestic violence, aggrieved party, obligation to leave, premises, probation measure, probation period

---

\* LLD hab., Professor of Lazarski University, Lazarski University in Warsaw (Poland), e-mail: [blanka.stefanska@lazarski.pl](mailto:blanka.stefanska@lazarski.pl), ORCID: 0000-0003-3146-6842



This is an open access article licensed under the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International (CC BY-NC-SA 4.0) (<https://creativecommons.org/licenses/by-nc-sa/4.0/>).

## INTRODUCTION

Striving to increase the effectiveness of counteracting domestic violence, and to initiate and support actions aimed at raising social awareness of the causes and effects of domestic violence, the legislator introduced, *inter alia*, an accused person's order/obligation to leave the premises occupied jointly with the aggrieved party, giving it a varied legal character. It occurs in the form of:

- 1) a civil law measure (Articles 560<sup>2</sup> – Article 560<sup>12</sup> of the Code of Civil Procedure);
- 2) an injunction (Articles 755<sup>1</sup>–755<sup>3</sup> of the Code of Civil Procedure);
- 3) a provisional measure applied by the Police (Articles 15aa–15ak of the Act of 6 April 1990 on the Police);<sup>1</sup>
- 4) a provisional measure applied by the Military Police (Articles 18a–18k of the Act of 24 August 2001 on the Military Police and Military Order-Enforcing Bodies);<sup>2</sup>
- 5) an obligation under conditional Police probation (Article 275 § 3 of the Code of Criminal Procedure);
- 6) a preventive measure of an order to temporarily leave the residential premises occupied jointly with the aggrieved (Article 275a of the Code of Criminal Procedure);
- 7) a penal measure of an order to leave the premises occupied jointly with the aggrieved (Article 39(2e), Article 41a §§ 1 and 2 of the Penal Code (PC));
- 8) a probation measure in connection with the conditional suspension of the sentence execution (Article 72 § 1(7b) PC);
- 9) a probation measure in connection with the conditional discontinuance of the criminal proceeding (Article 67 § 3 PC);
- 10) a probation measure in connection with conditional release from serving the remaining part of the imprisonment sentence (Article 159 § 1 Executive Penal Code (EPC) in conjunction with Article 72 § 1 PC).

The article is aimed at analysing the probation measure in the form of a perpetrator's obligation to leave the premises occupied jointly with the aggrieved party and at indicating the function fulfilled by the measure. The research thesis is that the obligation to leave the premises occupied jointly with the aggrieved party as a probation measure mainly serves to protect the aggrieved and affects the convicted person to a lesser extent.

The research hypothesis is the assumption that this obligation is regulated correctly and does not require normative changes. The theoretical-legal method is used in the considerations because they focus on the analysis of the theoretical aspects of this order and its normative analysis in relation to the views of representatives of the doctrine.

---

<sup>1</sup> Journal of Laws of 2024, item 145.

<sup>2</sup> Journal of Laws of 2023, item 1266.

## DEVELOPMENT OF THE ACCUSED PERSON'S OBLIGATION TO LEAVE THE PREMISES OCCUPIED JOINTLY WITH THE AGGRIEVED PARTY AS A PROBATION MEASURE

The obligation to leave the premises occupied jointly with the aggrieved was introduced into the catalogue of probation measures in connection with the conditional suspension of the execution of the sentence by the Act of 29 July 2005 on Counteracting Family Violence<sup>3</sup> (Article 15(3)(c)), which added the obligation to leave the premises occupied jointly with the aggrieved to Article 72 § 1 item 7b PC.

The act of 10 June 2010 amending the Act on Counteracting Family Violence and Certain Other Acts<sup>4</sup> (Article 5(5)(b)) obliged the court that imposes an obligation on a perpetrator of an offence committed with the use of violence or illegal threat against a close relative to leave the premises occupied jointly with the aggrieved to specify the way in which the convicted person may contact the aggrieved (Article 72 § 1a PC). By force of the Act of 20 February 2015 amending the Act: Penal Code and Certain Other Acts<sup>5</sup> (Article 1(36)(c)) the content of this provision has been numbered § 1b.

The Act of 29 July 2005 on Counteracting Family Violence did not add the obligation to the probation measures adjudicated in connection with the conditional discontinuance of a criminal proceeding (Article 67 § 3 PC), despite the fact that the Act amended this provision. However, Article 13 ACDV stipulated that while conditionally discontinuing a criminal proceeding against a perpetrator of an offence committed with the use of violence or illegal threat against a close relative or suspending the execution of a sentence for such an offence, the court imposing the obligation referred to in Article 72 § 1(7a) and (7b) PC shall specify the way in which the convicted person may contact the aggrieved or may prohibit the convicted person from approaching the aggrieved in particular circumstances. The mention of the obligation to leave the premises occupied jointly with the aggrieved in the provision of Article 72 § 1(7b) PC raises doubts as to whether this allows for the adjudication of the measure also in the event of conditional discontinuance of a proceeding. It is assumed in the doctrine that the cited Article 13 extends the content of Article 67 § 3 PC, allowing the possibility of imposing this obligation in the event of conditional discontinuance of a criminal proceeding, arguing that Article 13 ACDV is *lex specialis* in relation to Article 67 § 3 PC, but only with regard to a perpetrator of an offence committed with the use of violence or an unlawful threat against a family member, as indicated by the hypothesis of this norm.<sup>6</sup> This view is incorrect, because in order to be able to adjudicate the measure, it would have to result directly from the provision. Since such a probation measure does not exist in Article 67 § 3 PC, the content of Article 13 ACDV cannot be applied to it.<sup>7</sup> Deriving such a possibility from Article 13 ACDV is unacceptable, as it results from an inadmissible extensive interpretation.

<sup>3</sup> Journal of Laws of 2024, item 167, hereinafter 'the ACDV'.

<sup>4</sup> Journal of Laws of 2010, No. 125, item 842, hereinafter 'the 2010 Amendment'.

<sup>5</sup> Journal of Laws of 2015, item 396.

<sup>6</sup> R.A. Stefański, 'Nowe środki probacyjne', *Prokuratura i Prawo*, 2006, No. 4, pp. 27–28.

<sup>7</sup> Thus, also, S. Spurek, *Przeciwdziałanie przemocy domowej. Komentarz*, Warszawa, 2023, p. 422.

The obligation on the accused person to leave the premises occupied jointly with the aggrieved was added to the probation measures applied in connection with the conditional discontinuance of a proceeding by means of the 2010 Amendment (Article 5(4)) and the reference made in Article 67 § 3 PC to Article 72 § 1(7b), providing for such a measure, while repealing Article 13 ACDV at the same time. The last provision, in connection with the adjudication of this measure against a perpetrator of an offence committed with the use of violence or an illegal threat against a family member, required specification of the way in which the convicted person could contact the aggrieved or the possibility of prohibiting the convicted person from approaching the aggrieved in particular circumstances. The 2010 Amendment introduced an obligation to specify the way in which a perpetrator can contact the aggrieved in the event of the obligation to leave the premises occupied jointly with the aggrieved, in relation to a perpetrator of an offence committed with the use of violence or an unlawful threat, but only when the offence is committed against a close relative (Article 67 § 3 *in fine* PC),<sup>8</sup> and not just a family member. The Act of 11 March 2016 amending the Act: Penal Code and Certain Other Acts<sup>9</sup> (Article 7(7)) specified the possibility of adjudicating this obligation by reference to the adequate application of the provisions of Article 72 § 1(7b) PC.

The order to leave the premises occupied jointly with the aggrieved party became a probation measure once it was added to Article 72 § 1 PC, because since it entered into force, the penitentiary court was authorised to impose obligations referred to in Article 72 § 1 PC on the conditionally released convict; thus every change to this provision also concerned obligations related to the conditional release.

Due to the fact that the admissibility of the application of this measure in connection with the conditional discontinuance of a criminal proceeding and conditional release from the execution of the remaining penalty was regulated by means of the reference made in Article 67 § 3 PC to some obligations under Article 72 § 1 PC, including the obligation in question, and in Article 159 § 1 EPC to the whole Article 72 § 1 PC, the last provision is of fundamental importance.

## LEGAL NATURE OF THE OBLIGATION

Determination of the legal nature of the obligation to leave premises occupied jointly with the aggrieved, as provided for in Article 67 § 3, Article 72 § 1(7b) PC, and Article 159 § 1 EPC, is relatively straightforward. Article 72 § 1 PC contains obligations applicable during the probation period related to the conditional suspension of the execution of the penalty of deprivation of liberty. Article 67 § 3 PC and Article 159 § 1 EPC refer to the obligations laid down in Article 72 § 1 PC, applicable respectively in the event of conditional discontinuance of a criminal proceeding and conditional release from the remaining imprisonment penalty, which means that in all these cases they have the same legal nature. The obligations during the probation period, as is rightly emphasised

---

<sup>8</sup> In the wording of Article 3(2) of the Act of 3 February 2011 amending Act: Penal Code and Certain Other Acts (Journal of Laws of 2011, No. 39, item 202).

<sup>9</sup> Journal of Laws of 2016, item 437.

in the doctrine, are the basis of Polish probation.<sup>10</sup> The obligation to leave premises occupied jointly with the aggrieved party in all these cases is a probation measure.<sup>11</sup> Doubts as to such a definition of the legal nature are raised by statements in the literature in relation to measures adjudicated in connection with the conditional discontinuance of a criminal proceeding.<sup>12</sup> It is assumed that they constitute, *inter alia*, a substitute for punishment (*quasi*-punishment),<sup>13</sup> criminal law measures of socialisation,<sup>14</sup> educational measures of socialisation devoid of penal elements,<sup>15</sup> adaptation measures constituting verifiers of a positive criminological prognosis<sup>16</sup> or a substitute for a penal measure.<sup>17</sup> Their nature is also determined by their placement in Article 72 § 1 PC, because they are not mentioned by name in Article 67 § 3 PC and Article 159 § 1 EPC, as indicated earlier, but by reference to Article 72 § 1(7b) PC.

## OBJECTIVE OF THE OBLIGATION

In general, the obligation to leave premises occupied jointly with the aggrieved party is primarily intended to eliminate the conditions that enable the perpetrator to perpetrate another offence against the aggrieved, as well as to protect the aggrieved from experiencing emotional harm resulting from daily contact with the perpetrator.<sup>18</sup> It is intended to guarantee the aggrieved a sense of security and to enable them to live in safe and peaceful conditions, in which the perpetrator of an offence is isolated from them.<sup>19</sup> It is one of the ways of ensuring that the aggrieved are secure.<sup>20</sup>

<sup>10</sup> J. Śliwowski, *Zasady wykonania kary pozbawienia wolności i ograniczenia wolności według nowego ustawodawstwa karnego*, Warszawa, 1969, p. 34.

<sup>11</sup> B. Kunicka-Michalska, in: Melezini M. (ed.), *System Prawa Karnego. Kara i inne środki reakcji prawnokarnej*, Vol. 6, Warszawa, 2016, p. 1071; S. Spurek, *Izolacja sprawcy od ofiary. Instrumenty przeciwdziałania przemocy w rodzinie*, Warszawa, 2013, p. 258; A. Jaworska-Wieloch, O. Sitarz, 'Funkcjonalność i adekwatność środka karnego i obowiązku probacyjnego nakazu opuszczenia lokalu zajmowanego wspólnie z pokrzywdzonym. Czy regulacje prawnokarne odpowiadają potrzebom osób pokrzywdzonych?', *Archiwum Kryminologii*, 2019, No. 1, p. 300; judgment of the Supreme Court of 18 June 2009, IV KK 144/09, LEX No. 512111.

<sup>12</sup> For more see B. Kunicka-Michalska, *Warunkowe umorzenie postępowania karnego w latach 1970–1977*, Wrocław–Warszawa–Kraków–Łódź, 1982, pp. 133–141, and the literature cited therein.

<sup>13</sup> M. Leonieni, W. Michalski, *Efektywność warunkowego umorzenia postępowania karnego w praktyce sądowej*, Warszawa, 1975, p. 10; S. Paweł, 'Środki probacyjne w kodeksie karnym', *Nowe Prawo*, 1974, No. 2, p. 141; B. Kunicka-Michalska, *Warunkowe umorzenie...*, op. cit., p. 235.

<sup>14</sup> A. Marek, *Warunkowe umorzenie postępowania karnego*, Warszawa, 1973, pp. 61 and 131.

<sup>15</sup> J. Kutrzebski, 'Warunkowe umorzenie postępowania a odpowiedzialność karna', *Zeszyty Naukowe Uniwersytetu Jagiellońskiego*, 1974, No. 63, p. 183.

<sup>16</sup> A. Zoll, *Materiałnoprawna problematyka warunkowego umorzenia postępowania karnego*, Kraków, 1973, pp. 94–97.

<sup>17</sup> B. Kunicka-Michalska, in: Melezini M. (ed.), *System Prawa Karnego...*, op. cit., p. 1071.

<sup>18</sup> S. Spurek, *Ustawa o przeciwdziałaniu przemocy w rodzinie*, Warszawa, 2011, pp. 21–40.

<sup>19</sup> P. Skonieczna-Masternak, 'Prawnopraktyczne aspekty istnienia środków kompensacyjnych w polskim prawie karnym z punktu widzenia rozwoju systemu pomocy osobom pokrzywdzonym przestępstwem', in: Sopiński M. (ed.), *Aksjologia systemu prawa*, Vol. II, Warszawa, 2023, pp. 161–162.

<sup>20</sup> S. Spurek, 'Izolacja sprawcy przemocy w rodzinie od ofiary', *Prokuratura i Prawo*, 2013, No. 7–8, p. 147.

Joint use of the premises by the perpetrator and the aggrieved poses a risk of a repeat act of aggression. It is rightly argued that in a legal system that does not provide for a procedure obliging the perpetrator to leave the place of residence, or in which such an obligation cannot be enforced, people experiencing violence are not adequately protected.<sup>21</sup>

It is rightly noted in the literature that the application of this measure is an expression not only of the protection of the aggrieved against violence, but also of the prevention of offences against minors by significantly hindering, and in principle preventing, contact of the perpetrator not only with the aggrieved but also with other members of the household; it is also intended to influence the perpetrator's psyche and make them reconsider their conduct.<sup>22</sup>

The primary objective of this obligation as a probation measure is to increase the effectiveness of counteracting domestic violence, including protecting victims against further harm, as well as helping the perpetrators change their attitude.<sup>23</sup> It is to prevent the perpetrator from continuing to commit offences, in particular from abusing close relatives, and to protect them from negative experiences connected with everyday contact with the perpetrator.<sup>24</sup>

## CONTENT OF THE OBLIGATION

The obligation to leave premises occupied jointly with the aggrieved party consists in physically leaving the premises that the perpetrator used to occupy together with the aggrieved. The word 'leaving' (*opuszczenie* in Polish) means 'moving out, quitting, going away'.<sup>25</sup> The linguistic interpretation does not raise any doubts that the perpetrator must not only leave the premises but also may not return to them. The Supreme Court, in the light of Article 41a § 1 PC, rightly indicated that the essence of leaving the premises occupied jointly with the aggrieved party does not come down only to leaving the premises but also includes the obligation to remain outside the premises occupied jointly with the aggrieved.<sup>26</sup>

Therefore, it is a form of separation that enables the aggrieved affected by violence to remain in the occupied premises, and is an alternative to escaping from them and having to look for another safe shelter for themselves and possibly their children.<sup>27</sup>

<sup>21</sup> G. Wrona, 'Obowiązki nakładane na osoby skazane z art. 207 § 1 k.k. w orzecznictwie sądów rejonowych', *Archiwum Kryminologii*, 2011, No. XXXIII, p. 216.

<sup>22</sup> M. Słapek, 'Nakaz okresowego opuszczenia lokalu zajmowanego wspólnie z pokrzywdzonymi i inne środki ochrony prawnej pokrzywdzonych przemocą domową', in: Helios J., Jedlecka W., Kwieciński A. (eds), *Prawo wobec wyzwań współczesności. Z zagadnień nauk penalnych*, Wrocław, 2019, pp. 185–186.

<sup>23</sup> R.A. Stefański, 'Nowe środki...', op. cit., p. 25; S. Spurek, *Przeciwdziałanie przemocy...*, op. cit., p. 451.

<sup>24</sup> S. Spurek, *Przeciwdziałanie przemocy...*, op. cit., pp. 453–454.

<sup>25</sup> H. Zgólkowa (ed.), *Praktyczny słownik współczesnej polszczyzny*, Vol. 26, Poznań, 2000, p. 389.

<sup>26</sup> Judgment of the Supreme Court of 6 December 2012, V KK 306/12, LEX No. 1231655.

<sup>27</sup> M. Czarkowska, 'Nakaz opuszczenia wspólnie zajmowanego mieszkania przez osobę stosującą przemoc w rodzinie', *Praca Socjalna*, 2021, No. 1, p. 141.

The mere fact of leaving the premises may not fully protect the aggrieved, as the perpetrator may come close to them and negatively affect their well-being with his behaviour, or even commit acts of aggression against them. As a result, a conclusion *de lege ferenda* can be formulated that this obligation should be combined with the obligation to refrain from approaching the jointly occupied premises and their immediate surroundings. Article 72 § 1(7b) PC might read as follows: '7b – to leave the premises occupied jointly with the aggrieved party, and not to approach them and their immediate surroundings'. Such an obligation is provided for cumulatively with the order to leave the premises occupied jointly with the aggrieved, which has a different legal nature. And thus:

- a preventive measure in the form of an order to temporarily leave the premises occupied jointly with the aggrieved is combined with an order to leave their immediate surroundings (Article 275a § 1 CPP);
- a civil law measure includes the obligation to leave the apartment occupied jointly and its immediate surroundings (Article 260<sup>7</sup> CCP);
- a temporary measure applied by the Police or the Military Police takes the form of an order to immediately leave the apartment occupied jointly and its immediate surroundings and a ban on approaching the apartment occupied jointly and its immediate surroundings (Article 15aa Act of 6 April 1990 on the Police,<sup>28</sup> Article 18a Act of 24 August 2001 on the Military Police and Military Order-Enforcing Bodies).<sup>29</sup>

Only the penal measure is in the form of an order to temporarily leave the premises occupied jointly with the aggrieved party (Article 41a § 1 PC).

However, it is permissible to impose an additional obligation to refrain from staying in certain places as a probation obligation (Article 72 § 1 item 7 PC) or a penal measure in the form of a ban on staying in certain environments and places (Article 41a § 1 PC), which may be the immediate surroundings of the premises left by the accused. Nevertheless, a simpler solution is to combine these obligations or orders into a single one. Moreover, this is supported by the symmetry of these regulations.

The legislator uses the term 'premises' (*lokal* in Polish) to describe the place that a perpetrator is to leave. It is defined in legislation as:

- a place used to meet housing needs, as well as a studio used by an artist to conduct activity in the field of culture and art; places intended for short-term stays, in particular those located in boarding houses, dormitories, guesthouses, hotels, holiday homes, or other buildings used for tourist or recreational purposes, are not considered premises within the meaning of the statute (Article 2(1)(4) of the Act of 21 June 2001 on the Protection of Tenants' Rights, the Communes' Housing Resources, and amending Civil Code);<sup>30</sup>
- premises comprising a separate residential apartment or premises used for other purposes (Article 2(1) of the Act of 24 June 1994 on the Ownership of Premises).<sup>31</sup>

<sup>28</sup> Journal of Laws of 2024, item 145.

<sup>29</sup> Journal of Laws of 2023, item 1266.

<sup>30</sup> Journal of Laws of 2023, item 725.

<sup>31</sup> Journal of Laws of 2021, item 1048.



A separate residential apartment is defined as a room or a set of rooms with permanent walls separating them within the building, which, together with auxiliary rooms, serve to satisfy housing needs. However, the definition also applies accordingly to separate premises used in accordance with their intended non-residential purpose (Article 2(2) of the above-cited statute). The premises may include, as their component part, accessory rooms, even if they are not directly adjacent to the premises or are located within the boundaries of the real property ground but outside the building in which the given premises are separated, in particular: a cellar, an attic, a storeroom, a garage (Article 2(4) of the above-cited statute);

- a room or a set of rooms separated by permanent walls within a building, together with other rooms intended for the permanent residence of people, or a residential building in which there is only one residential apartment, provided that the building or premises have a separate entrance from the outside or from a staircase (§ 3(1) of the Regulation of the Minister of the Interior and Administration of 16 August 1999 on technical requirements for the use of residential buildings).<sup>32</sup>

It might seem that these definitions should also be applied to the interpretation of the term ‘premises’ used in defining the measure in question, since a statutory definition can apply to other legal acts if it is included in the act considered to be the basic one in the field.<sup>33</sup> The problem lies in the fact that the above-mentioned definitions differ significantly from one another, which results from the different purposes they are meant to serve. Therefore, it is not possible to transfer any of them directly to the Penal Code. Indeed, none of the above-mentioned definitions is binding when interpreting terms used in the Penal Code, although they may be helpful in the interpretation of the concepts contained therein.<sup>34</sup>

In the linguistic sense, *premises* (*lokal* in Polish) means ‘apartment, room, part of a house or building’, but also ‘a public place, an establishment conducting business or entertainment activities, where people spend time, most often with others in company’.<sup>35</sup>

Taking into account these definitions and the colloquial sense of the word *lokal*, one can assume that the obligation in question refers to a room or a set of rooms separated by permanent walls within a building, together with auxiliary rooms used to meet housing needs. What is important is not the designated purpose of the room, but its actual use. Article 72 § 1(7b) PC emphasises joint occupation of the premises and not residing in them, which means that its scope includes not only premises intended for residential purposes. There is no doubt that the concept includes an apartment, which is a set of residential and auxiliary rooms, with a separate entrance, separated by permanent building partitions, enabling permanent stay of people and running an

<sup>32</sup> Journal of Laws of 1999, No. 74, item 836.

<sup>33</sup> M. Zieliński, *Wykładnia prawa. Zasady. Reguły. Wskazówki*, Warszawa, 2010, p. 331.

<sup>34</sup> R.A. Stefański, in: Stefański R.A. (ed.), *Kodeks karny. Komentarz*, Legalis, 2024, thesis 52 to Article 41a.

<sup>35</sup> H. Zgólkowa (ed.), *Praktyczny słownik współczesnej polszczyzny*, Vol. 19, Poznań, 1998, p. 285.



independent household (§ 3(9) of the Regulation of the Minister of Infrastructure of 12 April 2002 on the technical requirements that buildings and their location should meet).<sup>36</sup> It can also be a room for temporary use, e.g. a shanty or a barge.<sup>37</sup>

In the literature, the term 'premises' is interpreted as any separate room used for residential purposes,<sup>38</sup> as well as a room or rooms separated by permanent walls within a building, together with other auxiliary rooms serving to meet the housing needs of people (accessory rooms), e.g. a cellar, attic, storage room, and garage located within the boundaries of one land property.<sup>39</sup>

Premises, within the meaning discussed above, do not include:

- commercial premises consisting of one room or a set of rooms separated by permanent building partitions, not constituting an apartment, a technical room or a utility room (§ 3(14) of the above-cited Regulation), despite the fact that the name contains the word 'premises'. Such premises are used for purposes other than residential, e.g. for conducting business activities;
- a utility room, as it is a room located outside the apartment or commercial premises, used for storing objects or groceries owned by the users of the building, materials or equipment related to the operation of the building, as well as fuel or solid waste (§ 3(13) of the above-cited Regulation);
- a technical room, which is a room intended for devices used for the operation and technical maintenance of the building (§ 3(12) of the above-cited Regulation).

It is assumed in the doctrine that *premises* within the meaning of the Penal Code also include commercial premises, because they are a place of conflict or the subject of conflict exhausting the features of offences, the commission of which should be prevented.<sup>40</sup> It does not seem necessary to reach for such a burdensome penal instrument, because if an offence is committed on such premises, the penalty itself is sufficient.

A building where separate rooms do not constitute an integral whole but are arranged in such a way that the connecting link enabling their use is another room, e.g. a corridor, on the opposite sides of which there are rooms, and this connecting link is a room common to several premises, should be treated as containing separate premises. It is rightly assumed in case law that:

'Since the persons residing in the premises have the possibility of satisfying their housing needs on the basis of a separate set of rooms and premises, even in a situation where they are located on opposite sides of the corridor and separated from each other by a staircase, this does not constitute sufficient grounds to deny these premises the attribute of independence'.<sup>41</sup>

The obligation to leave premises occupied jointly with the aggrieved party does not depend on who owns the premises; it may also be imposed on the accused when

<sup>36</sup> Journal of Laws of 2022, item 1225, as amended.

<sup>37</sup> R.A. Stefański, in: Stefański R.A. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2025, p. 403; M. Budyn-Kulik, in: Mozgawa M. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2023, p. 198.

<sup>38</sup> M. Budyn-Kulik, in: Mozgawa M. (ed.), *Kodeks...*, op. cit., Warszawa, p. 1198.

<sup>39</sup> R.A. Stefański, in: Filar M. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2016, p. 249.

<sup>40</sup> V. Konarska-Wrzosek, in: Konarska-Wrzosek V. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2023, p. 523.

<sup>41</sup> R.A. Stefański, in: Filar M. (ed.), *Kodeks karny...*, op. cit., p. 249.

he is the owner or co-owner of the premises.<sup>42</sup> In this way, his right to ownership is limited, which includes the rights to possess property (*ius possidendi*), to use property (*ius utendi*), to collect benefits (*ius fruendi*), to consume the property (*ius abutendi*) and to dispose of it (*ius disponendi*). By using property, its owner may, in particular, collect benefits and other income from it (Article 140 CC). The accused who is the owner of the premises is deprived, by force of a court decision, of the possibility of using the premises. These restrictions do not concern the possibility of disposing of the premises, so he may sell or rent the premises.<sup>43</sup> An objection is raised in the literature that the application of this measure in relation to a perpetrator who is the owner of the premises is in conflict with the Polish legal order expressed in Article 21(1) of the Constitution of the Republic of Poland of 1997, i.e. the principle of protection of ownership rights,<sup>44</sup> as well as Article 64(3) of the Constitution of the Republic of Poland, which stipulates that:

'The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right.'<sup>45</sup>

For this reason, it is claimed that the obligation does not apply to the owner of the premises, because the statute does not contain an appropriate consent formulated *expressis verbis*.<sup>46</sup> When questioning the latter objection, it is rightly argued that the content of Article 64(3) of the Constitution of the Republic of Poland cannot be interpreted in such a way that every restriction on ownership requires an act of the rank of a statute, because an act is always a legal act of a general and not individual nature, and the above-mentioned provision of the Constitution of the Republic of Poland requires that restrictions on ownership have their basis in a statute. Based on the statutory restriction on the right to ownership contained in the Penal Code, the court has the right to oblige the perpetrator who is the owner or co-owner of the premises to leave them for a specified period, adjudicating this in a conditionally suspended imprisonment sentence.<sup>47</sup>

The imposition of this obligation is not prevented by the perpetrator's registration of residence in the premises he must leave, because residence registration is actually

<sup>42</sup> A. Ziółkowska, in: Konarska-Wrzosek V. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2023, p. 312; P. Zakrzewski, in: Majewski J. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2024, p. 326.

<sup>43</sup> R.A. Stefański, 'Warunkowy dozór Policji – nowy środek zapobiegawczy', *Państwo i Prawo*, 2006, No. 6, p. 42.

<sup>44</sup> M. Tomkiewicz, 'Bezpieczeństwo rodziny w świetle znowelizowanych przepisów prawa polskiego – teoria i rzeczywistość', *Studia Warmińskie*, 2012, No. 49, p. 281.

<sup>45</sup> J. Lachowski, in: Królikowski M., Zawłocki R. (eds), *Kodeks karny. Część ogólna. Komentarz do art. 32–116*, Vol. 2, Warszawa, 2011, p. 571. The author softened this view, stating that 'One must bear in mind, however, that the admissibility and imposition of such an obligation on the owner (co-owner) constitutes a limitation to the right to ownership, which is protected in the Constitution of the Republic of Poland (cf. Article 64(1)–(2)). This regulation should therefore be applied exceptionally and with caution.' (J. Lachowski, in: Królikowski M., Zawłocki R. (eds), *Kodeks karny. Część ogólna. Komentarz do art. 32–116*, Vol. 2, Warszawa, 2021, p. 1002).

<sup>46</sup> J. Mierzwińska-Lorencka, in: Stefański R.A. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2023, p. 595.

<sup>47</sup> V. Konarska-Wrzosek, in: Konarska-Wrzosek V., *Kodeks...*, op. cit., p. 523.

a material and technical activity specified in Article 28(4) of the Act on Registration of Population<sup>48</sup> and certifies the stay of a person in the premises and the right to stay there. However, it is not a legal title to take possession of the real property.<sup>49</sup>

## GROUND FOR ADJUDICATING THE OBLIGATION

The Penal Code and the Executive Penal Code do not determine the grounds for adjudicating not only the obligation in question but also other probation measures. This means that the court has a wide range of possibilities for applying this measure. However, this is a significant shortcoming in the regulation. It is rightly pointed out in the literature that the lack of more detailed directives opens the way to fairly arbitrary interpretation, both broadening and narrowing.<sup>50</sup> The Penal Code does not limit the use of this measure to a specific type of crime.

It might seem that this obligation can only be applied in the event of a conviction for domestic violence-related offences, since the obligation adjudicated in connection with the conditional suspension of the penalty execution was added by the Act of 29 July 2005 on Counteracting Family Violence, and by the Act of 9 March 2023 amending the Act on Counteracting Family Violence and Certain Other Acts,<sup>51</sup> renamed as the Act on Counteracting Domestic Violence, and in connection with the conditional discontinuance of a criminal proceeding by the Act of 10 June 2010 amending the Act on Counteracting Family Violence and Certain Other Acts. It is rightly pointed out in the literature that the subject matter of statutes introducing the probation obligation does not determine the scope of application, unless such a limitation is laid down.<sup>52</sup> This means that the adjudication of this measure depends on a conviction for an offence in which the aggrieved party is a person occupying the premises jointly with the perpetrator, and the circumstances of its commission and the characteristic features of the perpetrator support this, in particular the fear of its commission if the perpetrator occupies the premises jointly with the aggrieved. The limitation of the catalogue of offences to those committed to the detriment of persons occupying the premises jointly with the perpetrator results from the essence of this obligation; the obligation should be related to the offence committed.<sup>53</sup> Its adjudication is also not limited to offences committed with the use of violence or unlawful threat, which is supported by the fact that the obligation to determine the

<sup>48</sup> Journal of Laws of 2024, item 736.

<sup>49</sup> A. Grochoła, D. Kozłowska, 'Aspekty przeciwdziałania przemocy w rodzinie w świetle nowelizacji Kodeksu postępowania karnego z 11 marca 2016 r. Wybrane zagadnienia', *Kwartalnik Policyjny*, 2017, No. 1, p. 84.

<sup>50</sup> J. Skupiński, *Warunkowe skazanie w prawie polskim na tle prawnoporównawczym*, Warszawa, 1992, p. 282.

<sup>51</sup> Journal of Laws of 2023, item 535.

<sup>52</sup> T. Koziół, *Warunkowe umorzenie postępowania karnego*, Warszawa, 2009, p. 202.

<sup>53</sup> M. Leonieni, W. Michalski, *Efektywność warunkowego umorzenia...*, op. cit., p. 55; J. Skupiński, *Warunkowe skazanie...*, op. cit., pp. 289–290; judgment of the Supreme Court of 6 November 1970, V KRn 419/70, OSNKW, 1971, No. 2, item 26; judgment of the Supreme Court of 6 February 1973, V KRn 582/71, OSNKW, 1973, No. 11, item 139.

manner of contact between the convicted person and the aggrieved party – when the obligation to leave premises occupied jointly with the aggrieved is imposed – is expressly restricted to that category of offences (Article 72 § 1b PC).

The measure is imposed regardless of the will of the aggrieved party; it may be applied even when they raise an objection. This is somewhat peculiar, given that the measure is intended to serve their interests and was introduced into the Penal Code primarily for that purpose. The solution has been criticised in the literature, with arguments including: firstly, if the perpetrator is the owner of the premises, they may sell the property or otherwise decide on its use, which could create an unfavourable situation for the aggrieved, who might otherwise assess the risk of such an outcome and decide for themselves on the appropriateness of applying the measure; secondly, the aggrieved may have no interest in the removal of the perpetrator from the premises for economic reasons – for example, where the perpetrator is the main provider for the family and the aggrieved lacks the means to meet basic living needs; and thirdly, disregarding the victim's wishes may result in the separation of a family who, despite the problems that led to the infringement of certain legal interests, still care for one another and wish to maintain their relationship.<sup>54</sup>

This does not mean that the court may apply this measure arbitrarily. It is rightly emphasised in the doctrine that when applying probation measures, the court is obliged to carefully consider the type of criminal act and the circumstances of its commission, as well as the conditions and personal characteristic features of the perpetrator.<sup>55</sup> They are to be adequate to the act committed and the personality traits of the perpetrator.<sup>56</sup> It is assumed that its adjudication should be considered primarily in the case of a conviction for offences against the family, in particular the abuse of a close relative (Article 207 PC), or against life or health.<sup>57</sup>

The Supreme Court indicated that:

'Obligations imposed in connection with the conditional suspension of the penalty execution (...) should take into account the basic purpose of a conditional sentence, which is to prevent a return of crime.'<sup>58</sup>

Emphasising the importance of educational considerations, it is argued that the establishment, extension or change of obligations during the probation period may take place, in accordance with Article 74 § 2 CPP, if educational considerations support it.<sup>59</sup> In general, such a view is correct, but not for every measure. In the case of the obligation to leave the premises occupied jointly with the aggrieved, these

<sup>54</sup> A. Jaworska-Wieloch, O. Sitarz, 'Funkcjonalność i adekwatność...', op. cit., p. 305.

<sup>55</sup> M. Leonieni, *Warunkowe zawieszenie wykonania kary w polskim kodeksie karny. Analiza ustawy i praktyki sądowej*, Warszawa, 1974, p. 117.

<sup>56</sup> Judgment of the Supreme Court of 6 February 1973, V KRN 582/72, OSNKW, 1973, No. 11, item 139.

<sup>57</sup> P. Hofmański, L.K. Paprzycki, A. Sakowicz, in: Filar M. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2016, pp. 549–550.

<sup>58</sup> Judgment of the Supreme Court of 11 October 2011, WA 21/11, OSNwSK, 2011, No. 1, item 1812.

<sup>59</sup> J. Skupiński, *Warunkowe skazanie...*, op. cit., p. 281.

considerations are secondary, and the protection of the aggrieved is paramount; this circumstance is the overriding priority.

The Supreme Court is undoubtedly correct in stating that it is not permissible to impose an obligation that would constitute one of the penal measures or an element of a penalty on the perpetrator whose imprisonment sentence execution was conditionally suspended.<sup>60</sup> This stance is indirectly supported by the content of Article 72 § 1 *in principio* PC, which stipulates that the mandatory adjudication of a probation obligation becomes optional when a penal measure is applied. This is a particularly valid recommendation in the field of adjudicating the obligation to leave the premises occupied jointly with the aggrieved party, since its content overlaps with the penal measure of the order to temporarily leave the premises occupied jointly with the aggrieved.

## ADJUDICATION PROCEDURE

Adjudication of this obligation in connection with the conditional discontinuance of a criminal proceeding and the conditional release from serving the remainder of the deprivation of liberty penalty is optional; it is left to the discretion of the court. Article 67 § 3 PC and Article 159 § 1 CPP specify the court's rules of conduct in relation to this obligation with the use of the phrase 'it may impose it'. As for the application of probation measures in the event of conditional release, it is noted that the court's is left to assess which measures are necessary in a given case to achieve the goals of the conditional release and successful continuation of the re-adaptation process in non-custodial conditions. The court should apply only such measures as are truly necessary to obtain a positive result from the probation.<sup>61</sup> Undoubtedly, these recommendations do not fully apply to the obligation to leave the premises occupied jointly with the aggrieved party, because – as indicated earlier – its main purpose is to isolate the convicted person from the aggrieved person. Due to the fact that this measure plays an important role in ensuring peace of mind to the person occupying the premises with the convict, one cannot share the view that there is no point in applying it to persons conditionally released.<sup>62</sup>

The situation is different in the case of conditional suspension of the penalty execution. Article 72 § 1 PC stipulates that the adjudication of a probation measure is obligatory; it becomes optional when the court adjudicates a penal measure.<sup>63</sup>

---

<sup>60</sup> Judgment of the Supreme Court of 28 September 1972, I KR 134/72, OSNKW, 1973, No. 1, item 8; the Supreme Court ruling of 12 March 2020, V KK 19/20, LEX No. 3009110; judgment of the Appellate Court in Kraków of 24 June 1999, II AKa 119/99, LEX No. 38092; judgment of the Appellate Court in Katowice of 16 February 2006, II AKa 5/06, LEX No. 191747; judgment of the Appellate Court in Gdańsk of 18 March 2022, II AKa 382/21, LEX No. 3398669; A. Zoll, in: Wróbel W., Zoll A. (eds), *Kodeks karny. Część ogólna. Komentarz do art. 53–116*, Vol. I, Part 2, Warszawa, 2016, p. 320.

<sup>61</sup> K. Postulski, *Kodeks karny wykonawczy. Komentarz*, Warszawa, 2017, p. 762.

<sup>62</sup> S. Lelental, *Kodeks karny wykonawczy. Komentarz*, Warszawa, 2020, p. 642.

<sup>63</sup> Judgment of the Supreme Court of 17 December 2019 II KK 369/19, LEX No. 3561629; judgment of the Supreme Court of 16 April 2019, II KK 283/18, LEX No. 2657501.

This solution is approved in the literature.<sup>64</sup> The ruling of at least one obligation is mandatory (Article 72 § 1 *in fine* PC), which significantly mitigates the obligatory nature of their application. Despite the optional nature of the ruling regarding obligation to leave the premises occupied jointly with the aggrieved party, it should be applied if the circumstances of the offence and the characteristic features of the perpetrator support its adjudication. The Supreme Court rightly pointed out that a right should be transformed into an obligation if the circumstances of the case support a socially justified need to impose any of the obligations on the perpetrator, while noting that not every measure is universally applicable.<sup>65</sup> It is assumed in the doctrine that its application is justified in particular in cases of any type of domestic violence against people who live under the same roof and have a legal title to it.<sup>66</sup>

In the literature, there is a *de lege ferenda* proposal to introduce mandatory imposition of probation obligations on the perpetrator regardless of the application of penal measures against him, which would make it possible to achieve the goals of probation more completely, i.e. to genuinely verify a positive criminological forecast, and would have a positive influence on the social perception of the conditional suspension of the execution of a penalty.<sup>67</sup> This is unfounded, because the court can best assess, based on the circumstances of a specific case, whether the application of a specific measure is necessary.

## TIME AND MANNER OF FULFILLING THE OBLIGATION

The obligation is imposed for a probation period and is closely related to it. The Penal Code does not specify the deadline for the perpetrator to leave the premises, which gives rise to doubts in this regard. In the doctrine, it is assumed that the court, having heard the convicted person, shall decide on this based on Article 74 § 1 PC.<sup>68</sup> The requirement to impose the obligation after 'having heard the convicted person' means that hearing him is mandatory and the court cannot waive this rule.<sup>69</sup> However, the Supreme Court rightly points out that:

'The phrase contained in the provision: "after having heard the convicted person" should be interpreted as 'a directive, the implementation of which requires making every effort to hear the convicted person and their counsel for the defence, especially before issuing

<sup>64</sup> P. Gensikowski, in: 'Obowiązki probacyjne związane z poddaniem sprawcy próbie w świetle najnowszych zmian kodeksu karnego', in: Adamski A., Berent M., Leciak M. (eds), *Warunkowe zawieszenie wykonania kary w założeniach nowej polityki karnej*, Warszawa, 2016, pp. 246–250.

<sup>65</sup> Judgment of the Supreme Court of 6 November 1970, V KRN 419/70, OSNKW, 1971, No. 2, item 26.

<sup>66</sup> V. Konarska-Wrzošek, in: Konarska-Wrzošek V., *Kodeks...*, op. cit., p. 522.

<sup>67</sup> B. Kolarz, M. Literski, K. Sączek, 'Obowiązki probacyjne (istota, założenia, cele oraz stosowanie w praktyce sądowej)', *Czasopismo Prawa Karnego i Nauk Penalnych*, 2018, No. 1, p. 87.

<sup>68</sup> R.A. Stefański, 'Nowe środki...', op. cit., p. 29; W. Marcinkowski, 'Termin wykonalności orzeczeń sądowych w przedmiocie roszczeń majątkowych wynikających z zastosowania środków karnych bądź nałożenia obowiązków probacyjnych', *Przegląd Sądowy*, 2005, No. 2, p. 61; V. Konarska-Wrzošek, in: Konarska-Wrzošek V., *Kodeks...*, op. cit., p. 523.

<sup>69</sup> B. Kunicka-Michalska, in: Melezini M. (ed.), *System Prawa...*, op. cit., p. 1071.



a judgment that may be unfavourable for the convicted person. Refraining from hearing them should be of an exceptional nature and is only permissible when it is not possible to perform this activity. It cannot be justified by the application of temporary detention of the convicted person in another case, in particular when in the procedural documents he raises circumstances that may be significant for the judgment.<sup>70</sup>

In this mode, the court determines a specific date by which the perpetrator must fulfil the obligation.<sup>71</sup> Article 74 § 1 PC applies to this obligation adjudicated in connection with the conditional discontinuance of a criminal proceeding by reference to it in Article 67 § 4 PC.

On the other hand, the Penalty Execution Code does not refer to Article 74 § 1 PC and does not contain a similar provision concerning conditional release, and therefore, this obligation is binding on the convicted person from the moment of his release. This means that he cannot return to the premises he used to occupy with the aggrieved before he started serving the sentence.

This measure may be executed until the end of the probation period. The Supreme Court rightly stated that:

'The essence of probation measures imposed in accordance with Article 72 § 1 and § 2 PC is that they may be executed, but also enforced, only in the probation period.'<sup>72</sup>

It is accessory in nature and is connected with the conditional discontinuance of a proceeding, conditional suspension of the execution of a penalty, and a conditional release respectively; in the event of the expiry of the probation period, this obligation loses its *raison d'être*.<sup>73</sup>

A conditionally released convict who has not been placed under supervision and has been ordered to fulfil the obligations connected with the probation period is required to: (1) without delay, and no later than within seven days of release from prison, report to the professional probation offices of the regional court in the district of his permanent residence; (2) report to the professional probation officer on dates specified by him and provide explanations as to the course of the probation period; (3) refrain from changing the place of permanent residence; fulfil obligations imposed on him (Article 159 § 2 EPC).

In the event of adjudicating the measure against the perpetrator of an offence committed with the use of violence or unlawful threat against a close relative in connection with conditional discontinuance of a proceeding and conditional suspension

<sup>70</sup> Judgment of the Supreme Court of 25 January 1996, II KRN 183/95, OSNKW, 1996, No. 11–12, item 91; the Supreme Court ruling of 10 June 1991, II KRN 48/91, OSNKW, 1991, No. 10–12, item 54.

<sup>71</sup> A. Zoll, in: Wróbel W., Zoll A. (eds), *Kodeks...*, op. cit., p. 324; V. Konarska-Wrzonek, in: Konarska-Wrzonek V. (ed.), *Kodeks...*, op. cit., p. 823.

<sup>72</sup> Judgment of the Supreme Court of 10 December 2008, II KK 106/08, OSNwSK, 2008, No. 1, item 2530.

<sup>73</sup> Judgment of the Supreme Court of 23 August 2018, V KK 262/18, LEX No. 2538861; judgment of the Supreme Court of 21 November 2017, III KK 472/17, LEX No. 2408305, KZS 2018, No. 2, item 7; judgment of the Supreme Court of 16 October 2014, III KK 261/14, KZS 2015, No. 1, item 17; J. Mierzwińska-Lorencka, in: Stefański R.A. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2025, pp. 594–595.



of the execution of a penalty, the court shall determine the way in which the convict may contact the aggrieved (Article 72 § 1b, and Article 67 § 3 in conjunction with Article 72 § 1b PC). Its determination is mandatory. It concerns the determination of the minimum distance from protected persons, which the perpetrator must not breach. According to the Supreme Court:

‘Determining the way in which the accused may contact the aggrieved, pursuant to Article 72 § 1a PC, is supplementary to the ruling on the obligation to leave the premises, referred to in Article 72 § 1(7b) PC.’<sup>74</sup>

The phrase ‘imposing an obligation on the perpetrator’ used in Article 72 § 1b PC indicates that the determination of the manner of fulfilling the obligation in question must occur simultaneously with the ruling. This obligation must therefore be stated in a judgment. Although, pursuant to Article 74 § 1 PC, the time and manner of fulfilling the obligation may be specified both in the jurisdictional proceeding and in the execution proceeding, the provision is applied in the execution proceeding if the court does not specify the time and manner of fulfilling the obligations in the sentence.<sup>75</sup> The provision constitutes a basis for the accused to demand the specification of these contacts, and the court must specify them even if the aggrieved party opposes this.<sup>76</sup> However, the determination of these contacts by the court may, in certain situations, be justified and dictated by the need to determine important current issues concerning, for example, the children of the accused and the aggrieved, and the court, depending on the circumstances, may specify the way of contact that will ensure the safety of the aggrieved party.<sup>77</sup> It mainly concerns the specification of the way in which close relatives in conflict may contact each other in order to settle important life matters, e.g. property-related ones or those concerning their minor children, in order to guarantee the possibility of contact between people who stop living together and to ensure maximum safety for the aggrieved and not to create opportunities for the accused to commit new offences. It is necessary to specify in the judgment the way in which the accused may contact the aggrieved, even if it is to be only indirect contact for the purpose of discussing and settling certain matters.

---

<sup>74</sup> Judgment of the Supreme Court of 25 June 2014, II KK 96/14, LEX No. 1483579 with an approving gloss by K. Postulski, ‘Glosa do wyroku SN z dnia 25 czerwca 2014 r., II KK 96/14’, LEX/el., 2015.

<sup>75</sup> M. Siwek, ‘Glosa do wyroku SA w Lublinie z dnia 27 września 2000 r., II AKa 180/00’, *Palestra*, 2003, No. 7–8, p. 256; R.A. Stefański, ‘Przegląd uchwał Izby Karnej Sądu Najwyższego w zakresie prawa karnego materialnego, prawa karnego wykonawczego, prawa karnego skarbowego i prawa wykroczeń za 2010 r.’, *Wojskowy Przegląd Prawniczy*, 2006, No. 1, p. 81; K. Postulski, ‘Postępowanie przed sądem w zmienionym kodeksie karnym wykonawczym’, *Prokuratura i Prawo*, 2012, No. 2, p. 107; K. Postulski, ‘Glosa...’, op. cit.; judgment of the Appellate Court in Katowice of 26 January 2012, II AKa 518/11, KZS 2012, No. 7–8, item 79.

<sup>76</sup> R.A. Stefański, ‘Środki probacyjne. mające na celu przeciwdziałanie przemocy w rodzinie’, *Probacja*, 2011, No. 1, p. 17.

<sup>77</sup> S. Spurek, ‘Izolacja sprawcy...’, op. cit., p. 261.

At the same time, it is possible to impose an obligation to refrain from contacting the aggrieved or other persons in a specified manner or from approaching the aggrieved or other persons (Article 72 § 1(7a) PC).<sup>78</sup>

## CONSEQUENCES OF BREACH OF THE OBLIGATION

The decision contained in the judgment on the obligation to leave the premises occupied jointly with the aggrieved party does not constitute independent grounds for carrying out eviction.<sup>79</sup> A judgment containing such an obligation does not constitute an enforcement title allowing for the commencement of a mandatory proceeding conducted in the execution proceeding mode.<sup>80</sup>

In the event of failure to fulfil the obligation adjudicated in connection with the conditional suspension of the penalty execution, there is a possibility of ruling the execution of the suspended imprisonment sentence (Article 75 § 2 PC), and in the event of the obligation adjudicated in connection with the conditional discontinuance of a criminal proceeding, it is possible to resume this proceeding (Article 68 § 2 PC), and in the case of the obligation imposed in connection with the conditional release – to revoke the conditional release (Article 160 § 3 EPC).

Although the Supreme Court expressed the opinion that: 'The literal interpretation of Article 244 PC suggests that the scope of this provision should cover the conduct that violates the obligations imposed in accordance with Article 72 § 1 PC,'<sup>81</sup> Article 244 PC does not mention the obligation in question. The provision sanctions failure to comply with the order ruled by the court *verba legis* 'to temporarily leave the premises occupied jointly with the aggrieved party', and this is how this order, which is a penal measure, is defined (Article 39(2e) PC). The lack of the word 'temporarily' in the name of the obligation to leave the premises occupied jointly with the aggrieved, which is a probation measure, makes it impossible to include failure to comply with it within the scope of Article 244 PC, because doing so would require reasoning *per analogiam*, which is inadmissible in criminal law. The Supreme Court rightly pointed out that:

'The application of analogy to the detriment of the perpetrator within the scope of the catalogue of prohibitions and obligations is excluded under Article 244 PC.'<sup>82</sup>

<sup>78</sup> V. Konarska-Wrżosek, in: Konarska-Wrżosek V. (ed.), *Kodeks...*, op. cit., p. 523.

<sup>79</sup> G. Łabuda, in: Giezek J. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2021, p. 622.

<sup>80</sup> R. Skarbek, in: Królikowski M., Zawłocki R. (eds), *Kodeks karny. Część ogólna. Komentarz do artykułów 32–116*, Vol. II, Warszawa, 2010, p. 466; J. Mierzwińska-Lorencka, in: *Kodeks...*, op. cit., 2025, p. 594.

<sup>81</sup> Judgment of the Supreme Court of 21 November 2012, III KK 42/12, LEX No. 1252719; judgment of the Supreme Court of 29 October 2019, III KK 522/19, LEX No. 3561391.

<sup>82</sup> The Supreme Court ruling of 24 February 2010, I KZP 33/09, OSNKW, 2010, No. 3, item 25 with approving glosses by B. Kurzepa, 'Glosa do postanowienia SN z dnia 24 lutego 2010 r., I KZP 33/09', *Prokuratura i Prawo*, 2010, No. 7–8, pp. 333–339; W. Zalewski, 'Glosa do postanowienia SN z dnia 24 lutego 2010 r., I KZP 33/09', *Gdańskie Studia Prawnicze – Przegląd Orzecznictwa*, 2010, No. 3–4, pp. 131–138; C. Kąkol, 'Glosa do postanowienia SN z dnia 24 lutego 2010 r., I KZP 33/09', *Prokuratura i Prawo*, 2011, No. 3, pp. 175–184; and approving comments

There is no need to include the said obligation in this provision, because the sanctions provided for in Article 68 § 2, Article 75 § 2 PC, and Article 160 § 3 EPC are sufficient for its enforcement.

## CONCLUSIONS

1. The analysis carried out herein confirmed the research thesis that the obligation to leave the residential premises occupied jointly with the aggrieved party, ruled as a probation measure, serves mainly to protect the aggrieved and to a lesser extent affects the convicted person. The research hypothesis that its regulation does not require significant changes was also positively verified. In order to ensure its full effectiveness, it is justified to extend it to include the obligation to refrain from approaching the premises occupied jointly with the aggrieved and its immediate surroundings. It also allowed for the formulation of several *de lege lata* conclusions.
2. The order/obligation imposed on the accused to leave the premises occupied jointly with the aggrieved party occurs in various legal forms in criminal law, but their common purpose is to increase the effectiveness of counteracting domestic violence and to eliminate the conditions enabling the perpetrator to commit a repeat offence against the aggrieved; they are to guarantee the aggrieved a sense of security and enable them to live in safe and peaceful conditions.
3. The obligation on the accused to leave the premises occupied jointly with the aggrieved, applied in the event of conditional discontinuance of a criminal proceeding, conditional suspension of the imprisonment sentence execution, or conditional release from serving the remaining part of the penalty of deprivation of liberty, plays the role of a probation measure, which results from its placement in the catalogue of probation measures laid down in Article 72 § 1 PC, to which Article 67 § 1 and Article 159 § 1 EPC refer.
4. The regulations of this obligation do not contain specified grounds for its application or for limiting its adjudication to specific offences. Nevertheless, the purpose and content of the obligation indicate that its adjudication depends on a conviction for an offence, the aggrieved party of which is a person occupying the premises jointly with the perpetrator, and the circumstances of its commission

---

by R.A. Stefański, 'Przegląd uchwał...', op. cit., pp. 95–99; judgment of the Supreme Court of 4 April 2000, II KKN 335/99, *Prokuratura i Prawo* – supplement 2001, No. 9, item 1; the Supreme Court ruling of 29 January 2009, I KZP 28/08, OSNKW, 2009, No. 2, item 14; the Constitutional Tribunal ruling of 13 June 1994, S 1/94, *Orzecznictwo Trybunału Konstytucyjnego*, 1994, No. 1, item 28; judgment of the Constitutional Tribunal of 6 July 1999, P 2/99, *Orzecznictwo Trybunału Konstytucyjnego*, 1999, No. 5, item 103; judgment of the Constitutional Tribunal of 20 February 2001, P 2/00, *Orzecznictwo Trybunału Konstytucyjnego*, 2001, No. 2, item 32; judgment of the Constitutional Tribunal of 7 July 2003, SK 38/01, *Orzecznictwo Trybunału Konstytucyjnego*, Series A, 2003, No. 6, item 61; judgment of the Constitutional Tribunal of 25 May 2004, SK 44/03, *Orzecznictwo Trybunału Konstytucyjnego*, Series A, 2004, No. 5, item 46; R. Dębski, *Pozastawowe znamiona przestępstwa*, Łódź, 1995, p. 19; L. Morawski, *Zasady wykładni prawa*, Toruń, 2010, pp. 194 and 224–233.

and the characteristic features of the perpetrator support this, in particular the fear that the offence will be committed in the event of joint occupation of the premises with the aggrieved. Although the court, when adjudicating probation measures, should take into account their educational purpose, these considerations are of secondary importance as regards this measure, and the protection of the aggrieved is a priority.

5. This obligation is imposed for a probation period and is closely related to it, but there is no statutory deadline for the perpetrator to leave the premises. In the event of applying it in connection with conditional discontinuance of a proceeding and conditional suspension of the execution of a penalty, the court shall determine the date for leaving the premises after hearing the accused. In the event of conditional release, the obligation is binding on the convicted person from the moment he is released and means that he cannot return to the premises he used to occupy with the aggrieved before he started serving the sentence.
6. In the event of failure to comply with the obligation imposed in connection with conditional suspension of the execution of the sentence, there is a possibility of ruling the execution of the suspended imprisonment sentence (Article 75 § 2 PC); it is possible to revoke the proceeding in the case of the obligation adjudicated in connection with conditionally suspended criminal proceeding (Article 68 § 2 PC); and in the case of the obligation adjudicated in connection with a conditionally release, it is possible to revoke the conditional release (Article 160 § 3 EPC). Failure to comply with the obligation does not exhaust the features of the offence under Article 244 PC, as it is not listed therein; this provision concerns the order for the temporary eviction from premises occupied jointly with the aggrieved, which constitutes a penal measure (Article 39(2e) PC).

## BIBLIOGRAPHY

- Budyn-Kulik M., in: Mozgawa M. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2023.
- Czarkowska M., 'Nakaz opuszczenia wspólnie zajmowanego mieszkania przez osobę stosującą przemoc w rodzinie', *Praca Socjalna*, 2021, No. 1.
- Dębski R., *Pozastawowe znamiona przestępstwa*, Łódź, 1995.
- Gensikowski P., 'Obowiązki probacyjne związane z poddaniem sprawcy próbie w świetle najnowszych zmian kodeksu karnego', in: Adamski A., Berent M., Leciak M. (eds), *Warunkowe zawieszenie wykonania kary w założeniach nowej polityki karnej*, Warszawa, 2016.
- Grochoła A., Kozłowska D., 'Aspekty przeciwdziałania przemocy w rodzinie w świetle nowelizacji Kodeksu postępowania karnego z 11 marca 2016 r. Wybrane zagadnienia', *Kwartalnik Policyjny*, 2017, No. 1.
- Hofmański P., Paprzycki L.K., Sakowicz A., in: Filar M. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2016.
- Hypś S., in: Grześkowiak A., Wiak K. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2019.
- Jaworska-Wieloch A., Sitarz O., 'Funkcjonalność i adekwatność środka karnego i obowiązku probacyjnego nakazu opuszczenia lokalu zajmowanego wspólnie z pokrzywdzonym. Czy regulacje prawnokarne odpowiadają potrzebom osób pokrzywdzonych?', *Archiwum Kryminologii*, 2019, No. 1.

- Kąkol C., 'Glosa do postanowienia SN z dnia 24 lutego 2010 r., I KZP 33/09', *Prokuratura i Prawo*, 2011, No. 3.
- Kolarz B., Literski M., Sączek K., 'Obowiązki probacyjne (istota, założenia, cele oraz stosowanie w praktyce sądowej)', *Czasopismo Prawa Karnego i Nauk Penalnych*, 2018, No. 1.
- Konarska-Wrzosek V., in: Konarska-Wrzosek V. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2023.
- Kozioł T., *Warunkowe umorzenie postępowania karnego*, Warszawa, 2009.
- Kunicka-Michalska B., *Warunkowe umorzenie postępowania karnego w latach 1970–1977*, Wrocław–Warszawa–Kraków–Łódź, 1982.
- Kunicka-Michalska B., in: Melezini M. (ed.), *System Prawa Karnego. Kara i inne środki reakcji prawnokarnej*, Vol. 6, Warszawa, 2016.
- Kutrzebski J., 'Warunkowe umorzenie postępowania a odpowiedzialność karna', *Zeszyty Naukowe Uniwersytetu Jagiellońskiego*, 1974, No. 63.
- Kurzepa B., 'Glosa do postanowienia SN z dnia 24 lutego 2010 r., I KZP 33/09', *Prokuratura i Prawo*, 2010, No. 7–8.
- Lachowski J., in: Królikowski M., Zawłocki R. (eds), *Kodeks karny. Część ogólna. Komentarz do art. 32–116*, Vol. 2, Warszawa, 2011.
- Lachowski J., in: Królikowski M., Zawłocki R. (eds), *Kodeks karny. Część ogólna. Komentarz do art. 32–116*, Vol. 2, Warszawa, 2021.
- Lelental S., *Kodeks karny wykonawczy. Komentarz*, Warszawa, 2020.
- Leonieni M., *Warunkowe zawieszenie wykonania kary w polskim kodeksie karnym. Analiza ustawy i praktyki sądowej*, Warszawa, 1974.
- Leonieni M., Michalski W., *Efektywność warunkowego umorzenia postępowania karnego w praktyce sądowej*, Warszawa, 1975.
- Łabuda G., in: Giezek J. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2021.
- Marcinkowski W., 'Termin wykonalności orzeczeń sądowych w przedmiocie roszczeń majątkowych wynikających z zastosowania środków karnych bądź nałożenia obowiązków probacyjnych', *Przegląd Sądowy*, 2005, No. 2.
- Marek A., *Warunkowe umorzenie postępowania karnego*, Warszawa, 1973.
- Mierzwińska-Lorencka J., in: Stefański R.A. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2023.
- Mierzwińska-Lorencka J., in: Stefański R.A. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2025.
- Morawski L., *Zasady wykładni prawa*, Toruń, 2010.
- Pawela S., 'Środki probacyjne w kodeksie karnym', *Nowe Prawo*, 1974, No. 2.
- Postulski K., 'Glosa do wyroku SN z dnia 25 czerwca 2014 r., II KK 96/14', *LEX/el.*, 2015.
- Postulski K., *Kodeks karny wykonawczy. Komentarz*, Warszawa, 2017.
- Postulski K., 'Postępowanie przed sądem w zmienionym kodeksie karnym wykonawczym', *Prokuratura i Prawo*, 2012, No. 2.
- Siwek M., 'Glosa do wyroku SA w Lublinie z dnia 27 września 2000 r., II AKa 180/00', *Palestra*, 2003, No. 7–8.
- Skarbek R., in: Królikowski M., Zawłocki R. (eds), *Kodeks karny. Część ogólna. Komentarz do artykułów 32–116*, Vol. II, Warszawa, 2010.
- Skonieczna-Masternak P., 'Prawnaturalne aspekty istnienia środków kompensacyjnych w polskim prawie karnym z punktu widzenia rozwoju systemu pomocy osobom pokrzywdzonym przestępstwem', in: Sopiński M. (ed.), *Aksjologia systemu prawa*, Vol. II, Warszawa, 2023.
- Skupiński J., *Warunkowe skazanie w prawie polskim na tle prawnoporównawczym*, Warszawa, 1992.
- Słapek M., 'Nakaz okresowego opuszczenia lokalu zajmowanego wspólnie z pokrzywdzonymi i inne środki ochrony prawnej pokrzywdzonych przemocą domową', in: Helios J., Jedlecka W., Kwieciński A. (eds), *Prawo wobec wyzwań współczesności. Z zagadnień nauk penalnych*, Wrocław, 2019.

- Spurek S., *Izolacja sprawcy od ofiary. Instrumenty przeciwdziałania przemocy w rodzinie*, Warszawa, 2013.
- Spurek S., 'Izolacja sprawcy przemocy w rodzinie od ofiary', *Prokuratura i Prawo*, 2013, No. 7–8.
- Spurek S., *Przeciwdziałanie przemocy domowej. Komentarz*, Warszawa, 2023.
- Spurek S., *Ustawa o przeciwdziałaniu przemocy w rodzinie*, Warszawa, 2011.
- Stefański R.A., 'Nowe środki probacyjne', *Prokuratura i Prawo*, 2006, No. 4.
- Stefański R.A., 'Przegląd uchwał Izby Karnej Sądu Najwyższego w zakresie prawa karnego materialnego, prawa karnego wykonawczego, prawa karnego skarbowego i prawa wykroczeń za 2010 r.', *Wojskowy Przegląd Prawniczy*, 2011, No. 1.
- Stefański R.A., 'Środki probacyjne mające na celu przeciwdziałanie przemocy w rodzinie', *Probacja*, 2011, No. 1.
- Stefański R.A., 'Warunkowy dozór Policji – nowy środek zapobiegawczy', *Państwo i Prawo*, 2006, No. 6.
- Stefański R.A., in: Filar M. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2016.
- Stefański R.A., in: Stefański R.A. (ed.), *Kodeks karny. Komentarz*, Legalis, 2024.
- Stefański R.A., in: Stefański R.A. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2025.
- Śliwowski J., *Zasady wykonania kary pozbawienia wolności i ograniczenia wolności według nowego ustawodawstwa karnego*, Warszawa, 1969.
- Tomkiewicz M., 'Bezpieczeństwo rodziny w świetle znowelizowanych przepisów prawa polskiego – teoria i rzeczywistość', *Studia Warmińskie*, 2012, No. 49.
- Wrona G., 'Obowiązki nakładane na osoby skazane z art. 207 § 1 k.k. w orzecznictwie sądów rejonowych', *Archiwum Kryminologii*, 2011, No. XXXIII.
- Zakrzewski P., in: Majewski J. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2024.
- Zalewski W., 'Głos do postanowienia SN z dnia 24 lutego 2010 r., I KZP 33/09', *Gdańskie Studia Prawnicze – Przegląd Orzecznictwa*, 2010, No. 3–4.
- Zgółkowa H. (ed.), *Praktyczny słownik współczesnej polszczyzny*, Vol. 19, Poznań, 1998.
- Zgółkowa H. (ed.), *Praktyczny słownik współczesnej polszczyzny*, Vol. 26, Poznań, 2000.
- Zieliński M., *Wykładnia prawa. Zasady. Reguły. Wskazówki*, Warszawa, 2010.
- Ziółkowska A., in: Konarska-Wrzosek V. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2023.
- Zoll A., *Materialnoprawna problematyka warunkowego umorzenia postępowania karnego*, Kraków, 1973.
- Zoll A., in: Wróbel W., Zoll A. (eds), *Kodeks karny. Część ogólna. Komentarz do art. 53–116*, Vol. I, Part 2, Warszawa, 2016.

**Cite as:**

Stefańska B.J. (2025), *Obligation to leave the premises occupied jointly with the victim as a probation measure*, *Ius Novum* (Vol. 19) 2, 35–55. DOI 10.2478/in-2025-0012