

# OFFENCE UNDER ARTICLE 244C OF THE POLISH PENAL CODE AS AN EXAMPLE OF DISPROPORTIONATE CRIMINAL LIABILITY FOR DEBT

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DOI 10.2478/in-2025-0022

## ABSTRACT

The subject of the article is an original presentation of the crime specified in Article 244c of the Penal Code. Based on the amendment to the Penal Code of 2022, which entered into force a year later, a new type of crime was introduced under Article 244c of the Penal Code. Pursuant to it, a perpetrator who avoids implementing a compensatory measure in favour of the injured party or a person closest to them is subject to imprisonment. The rationality of this solution raises fundamental doubts, as it ignores other regulations provided for in the Penal Code, as well as the fact that the person to whom a compensatory measure has been awarded may pursue it through civil enforcement.

Key words: compensation, evasion, liability for debts, enforcement

## INTRODUCTION

The Act of 7 July 2022 amending the Penal Code Act and Certain Other Acts<sup>1</sup> introduced a new type of offence under Article 244c of the Penal Code regarding evasion of performance of a compensatory measure. This approach exemplifies a radically unjustified penalisation of behaviour related to strictly civil-law relationships and leads to the penalisation of debt. The provision was introduced

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<sup>1</sup> Act of 7 July 2022 amending the Penal Code Act and Certain Other Acts, Journal of Laws of 2022, item 2600.



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recently and has yet to be discussed by experts (except for one research article), which justifies a detailed presentation of the problem. The present article demonstrates the scope of penalisation under the new Article 244c of the Penal Code. It provides arguments for immediate abrogation through an amendment or a judgment of the Constitutional Tribunal.

## MOTIVES AND SCOPE OF PENALISATION UNDER ARTICLE 244C OF THE PENAL CODE

According to Article 244c § 1 of the Penal Code, whoever evades the performance of a compensatory measure awarded by the court to an injured party or a person closest to them in the form of an obligation to redress damage, compensate for harm, or pay vindictive damages for an indictable offence, shall be subject to imprisonment from three months to five years. Nevertheless, § 2 excludes punishment for the offence as long as the perpetrator fully performs the compensatory measure within 30 days following the first interrogation as a suspect. The offence is prosecuted at the request of the injured party (§ 3). The introduced offence draws on a previously drafted Article 244c of the Penal Code in the Act of 13 June 2019,<sup>2</sup> which did not come into force because the Constitutional Tribunal ruled the Act unconstitutional as a whole.<sup>3</sup> The wording of the draft Article 244c of the Penal Code of 2019 differed slightly from the provision currently in force.<sup>4</sup>

Legal sciences experts agree that the new provision is intended to protect the administration of justice.<sup>5</sup> This is because it is located in Chapter XXX of the Penal Code, titled 'Crimes against the Administration of Justice'. The generic subject matter of protection (generic legal interest) of a given prohibited act is, in principle, derived from the title of the Penal Code chapter in which the given offence type is located.<sup>6</sup> The protective objective of the sanctioned norm under Article 244c § 1 of the Penal Code is to guarantee proper enforcement of the court's judgment regarding the

<sup>2</sup> Act of 13 June 2019 amending the Penal Code Act and Certain Other Acts, not published in the Polish Journal of Laws.

<sup>3</sup> Judgment of the Constitutional Tribunal of 14 July 2020 Kp 1/19, OTK-A 2020/36.

<sup>4</sup> Draft wording of Article 244c of the Penal Code in the Act of 13 June 2019: '§ 1. Whoever evades the performance of a compensatory measure referred to in Article 46 ordered by the court in the form of an obligation to redress damage, provide compensation for harm, or pay vindictive damages for an indictable offence shall be subject to imprisonment from three months to five years.

§ 2. The perpetrator of the offence defined in § 1 shall not be punished if they have performed the compensatory measure in whole:

(1) no later than within 30 days following the first interrogation as a suspect; or

(2) no later than within the time specified in § 3.

§ 3. If it is impossible or very difficult for the perpetrator to pay the entire amount due under the compensatory measure within the time limit specified in § 2(1), the prosecutor may grant the perpetrator a suitable time limit, not longer than 12 months, to perform this obligation.'

<sup>5</sup> I. Zgoliński, in: Konarska-Wrzošek V. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2023, p. 1262.

<sup>6</sup> M. Filipczak, in: Kulesza J. (ed.), *Prawo karne materialne. Nauka o przestępstwie, ustawie karnej i karze*, Warszawa, 2023, p. 201.

awarded compensatory measure.<sup>7</sup> In previous legal circumstances, offences under Chapter XXX of the Penal Code led only to the penalisation of a failure to conform to strictly specified types of punitive measures (Article 244), failure to appear at a specific location or Police division in relation to a 'stadium ban' (Article 244a), or failure to conform to obligations ruled in relation to a preventive measure (Article 244b). Due to the 2015 amendment,<sup>8</sup> the obligation to redress damage, compensate for harm, and vindictive damages are no longer punitive measures but, *de lege lata*, compensatory measures.<sup>9</sup> This way, the new Article 244c of the Penal Code penalises behaviour that had previously been outside the domain of criminal law. This was pointed out by the initiator of the bill in the explanatory memorandum:

'the axiology of the protected values should also include evasion of performance of a compensatory measure in the form of the obligation to redress damage, provide compensation for harm, or pay vindictive damages awarded by the court in favour of an injured party or a person closest to them for an indictable offence (draft Article 244c of the Penal Code)'.<sup>10</sup>

However, Ł. Pilarczyk aptly noted that

'Apparently, the legislator intends to treat redressing damage as a punitive measure. Hence the readiness to penalise a failure to perform it. In contrast, the Penal Code does not consider redressing damage to be a punitive measure. It is evident not only from a different label but also the fact that no sentencing directives are applied when it is awarded. Instead, civil law provisions are employed (as explicitly follows from Article 46 § 1 of the Penal Code)'.<sup>11</sup>

This suggests the completely misguided motivation of the legislator, which fails to consider the subsidiary role of criminal law in governing social interactions.

Contrary to the situations described above, in the case of an offence under Article 244c of the Penal Code, the perpetrator's behaviour additionally harms the individual interest of the injured party awarded the compensatory measure. Therefore, the personal interest of that person is under the protection of Article 244c of the Penal Code, as it is intended to protect also their economic rights stemming from the previous offence.<sup>12</sup> Thus, such a person qualifies as an injured party under Article 49 § 1 of the Code of Criminal Procedure, also in criminal proceedings of the type discussed here. Indeed, their request is necessary to initiate criminal proceedings because the offence under Article 244c § 1 of the Penal Code is prosecuted based

<sup>7</sup> I. Zgoliński, in: Konarska-Wrzosek V. (ed.), *Kodeks karny...*, op. cit., p. 1260.

<sup>8</sup> Act of 20 February 2015 amending the Penal Code Act and Certain Other Acts, Journal of Laws of 2015, item 396.

<sup>9</sup> T. Dukiet-Nagórska, in: Dukiet-Nagórska T. (ed.), *Prawo karne. Część ogólna, szczególna i wojskowa*, Warszawa, 2020, p. 279.

<sup>10</sup> Sejm print No. 2024, 9<sup>th</sup> term of the Sejm, p. 79.

<sup>11</sup> Ł. Pilarczyk, 'Przestępstwo uchylania się od wykonania środka kompensacyjnego (art. 244c Kodeksu karnego) – ocena zasadności wprowadzenia regulacji', *Prawo w Działaniu*, 2023, No. 55, p. 190.

<sup>12</sup> M. Mozgawa, in: Mozgawa M. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2023, p. 977; M. Banaś-Grabek, in: Gadecki B. (ed.), *Kodeks karny. Art. 1–316. Komentarz*, Warszawa, 2023, p. 761.

on a complaint (Article 244c § 3 of the Penal Code). Therefore, the offence directly concerns the awarded party or their closest person. The latter applies when the injured party was represented by their closest persons in the original proceedings when the compensatory measure was awarded (Article 52 § 1 of the Code of Criminal Procedure). Article 244c § 1 of the Penal Code requires that the measure be awarded to the closest persons. As a result, a situation where the compensatory measure was awarded to the injured party and then inherited by the closest persons does not involve criminalisation. In this case, the prerequisite that the measure is awarded to the closest person is not satisfied, and the legislator intends to protect the persons awarded the compensatory measure. The arguments are invalid in the case of general succession. It should be noted that Article 244c § 1 of the Penal Code does not protect other persons to whom the court might award such an obligation under Article 52 § 1 of the Code of Criminal Procedure, namely a deceased injured party's dependants who were not their closest persons.

The fact that the offence also protects the individual interest of the person awarded the compensatory measure has one further highly relevant consequence. Considering that Article 244c § 1 of the Penal Code concerns an injured party or their closest person, awarding vindictive damages in favour of entities other than the injured party or their closest person falls within the scope of potential criminalisation. Furthermore, there are many circumstances where vindictive damages may be awarded; these can include awards to the Victim and Post-Correction Aid Fund under Article 47 §§ 1, 2a, and 3 of the Penal Code, or to the National Fund for Environmental Protection and Water Management under Article 47 § 2 of the Penal Code. Other examples include vindictive damages awarded under related legislation, such as drug addiction vindictive damages under Article 70(4) of the Act on Drug Addiction Prevention<sup>13</sup> or vindictive damages for animal protection under Article 35(5) of the Act on Protection of Animals.<sup>14</sup>

The substantive scope of the offence under Article 244c § 1 of the Penal Code directly specifies that it concerns only the compensatory measure in the form of the obligation to redress damage, compensate for harm, or pay vindictive damages. The grounds for awarding these measures are provided in relevant provisions in Chapter Va of the Penal Code: Article 46 § 1 of the Penal Code regarding the obligation to redress damage or compensate for harm and Articles 46 § 2 of the Penal Code and 47 § 2 of the Penal Code regarding vindictive damages. In addition to Chapter Va of the Penal Code, Article 57a § 2 of the Penal Code also provides a basis for awarding vindictive damages to the injured party. In this case, the vindictive damages are a compensatory measure,<sup>15</sup> and may constitute a legally protected interest under Article 244c of the Penal Code. Beyond the Penal Code, special acts also provide for awarding vindictive damages to injured parties, such as Article 79(1)(3) of the Act on Copyright and Related Rights.<sup>16</sup> If vindictive damages awarded under such special

<sup>13</sup> Act of 29 July 2005 on Drug Addiction Prevention, Journal of Laws of 2023, item 1939.

<sup>14</sup> Act of 21 August 1997 on Protection of Animals, Journal of Laws of 2023, item 1580.

<sup>15</sup> W. Wróbel, in: Wróbel W., Zoll A. (eds), *Kodeks karny. Część ogólna. Tom I. Część II. Komentarz do art. 53–116*, Warszawa, 2016, p. 99.

<sup>16</sup> Act of 4 February 1994 on Copyright and Related Rights, Journal of Laws of 2022, item 2509.

laws are compensatory in nature, their evasion may give rise to criminal liability under Article 244c § 1 Penal Code). However, Article 244c § 1 of the Penal Code provides an exhaustive list of three compensatory measures to which it applies. The elements of the description of a prohibited act must meet the criterion of sufficient specificity. They must not be construed extensively, and no analogies unfavourable to the perpetrator may be employed.<sup>17</sup> Consequently, where there is doubt as to whether a particular behaviour falls within the scope of penalisation, the criminal law norm must not be interpreted in a manner detrimental to the perpetrator.<sup>18</sup> Therefore, the prohibited act in question does not apply to legal costs awarded to the injured party acting as an auxiliary prosecutor. It should also be noted that Article 46 § 1 Penal Code *in fine* prevents the awarding of lifetime compensation to the injured party. Accordingly, evading payment of lifetime compensation awarded under civil-law provisions for tort also entails no criminal liability. In light of the above, Article 244c § 1 of the Penal Code employs a category of substantive criminal law in the form of a compensatory measure, granting criminal-law protection only to claims resulting from a conviction. By contrast, other claims of the injured party awarded in civil proceedings regarding the same act are not protected under Article 244c § 1 of the Penal Code.

In final notes on the subject matter of the offence under Article 244c § 1 of the Penal Code, one should note a significant statutory limitation. According to the literal wording of the provision, evading performance of a compensatory measure is limited to those awarded in relation to an indictable offence (*ex officio* prosecution). The science of criminal law categorises offences into those prosecuted through public indictment, upon a complaint of the injured party, and through private indictment.<sup>19</sup> Still, procedural law defines 'prosecution' slightly differently:

'The criminal procedure in Poland employs two primary modes of prosecution: public prosecution leading to public indictment, with some variations, i.e. prosecution upon complaint or consent, and private prosecution, with subsidiary action as a supplemental option for the former.'<sup>20</sup>

This is evident in Article 10 § 1 of the Code of Criminal Procedure, which sets out the prosecuting authority's obligation to initiate and conduct preparatory proceedings, and the public prosecutor must file and support charges of an offence prosecuted *ex officio*. Thus, *ex officio* prosecution is synonymous with public prosecution and encompasses offences where only the public prosecutor is competent, regardless of whether prosecution occurs unconditionally or upon complaint of the injured party.<sup>21</sup> As a result, compensatory measures of the same

<sup>17</sup> W. Wróbel, A. Zoll, *Polskie prawo karne. Część ogólna*, Kraków, 2013, p. 118.

<sup>18</sup> J. Długosz, *Ustawowa wyłączność i określoność w prawie karnym*, Warszawa, 2016, p. 337.

<sup>19</sup> J. Lachowski, A. Marek, *Prawo karne. Zarys problematyki*, Warszawa, 2021, p. 99.

<sup>20</sup> T. Grzegorzczuk, in: Hofmański P. (ed.), *System prawa karnego procesowego. Zagadnienia ogólne. Tom I. Cz. 2*, Warszawa, 2013, p. 291.

<sup>21</sup> M. Kurowski, in: Świecki D. (ed.), *Kodeks postępowania karnego. Tom I*, Warszawa, 2020, p. 86.

type awarded for the same offence under private prosecution<sup>22</sup> are not protected under Article 244c § 1 of the Penal Code. Such differentiation in criminal protection between claims arising from public indictment and those from private indictment is unfounded. The bill offered no rationale in this regard. This raises concerns as to why the legislator would treat the same claims of the injured party under private indictment differently. Courts may award vindictive damages or remedies in privately prosecuted cases as well, and often do, given the nature of offences against reputation (defamation, insult) and minor bodily harm. This legislative decision clearly lacks logical justification and exemplifies the penalisation of the evasion of a compensatory measure without coherent reasoning.

### ACTUS REUS AND MENS REA

The most controversial aspect, which suggests weak justification for introducing the offence into the Penal Code, relates to the act defined as 'evading' and its *mens rea*. The dictionary defines 'to evade' as 'to avoid something or someone, especially in a dishonest way';<sup>23</sup> 'to avoid the performance of';<sup>24</sup> or 'to escape by contrivance or artifice from'.<sup>25</sup> In the context of the Penal Code, the act of evading is already a feature of another offence, namely, the non-payment of maintenance under Article 209 § 1 of the Penal Code. Accordingly, the terms should be construed as having identical meanings, following the rule of contextual interpretation.<sup>26</sup> Literature concerning Article 209 § 1 of the Penal Code explains that

'The very fact of non-performance of the obligation referred to in Article 209 is not tantamount to evasion. If an offence under Article 209 is suspected, one must always investigate the causes of the alleged perpetrator's failure to perform the maintenance obligation. Some may be beyond their control (such as serious illness necessitating hospitalisation). Evasion of the obligation to provide for the maintenance of a person entitled to it occurs when the obligor fails to perform the obligation in bad faith despite being objectively able to perform it'.<sup>27</sup>

This interpretation remains valid despite subsequent amendments to Article 209 of the Penal Code,<sup>28</sup> as the act of non-payment of maintenance remained

<sup>22</sup> These include offences under Article 157 § 4 of the Penal Code (slight bodily harm), Article 212 §§ 1 and 2 of the Penal Code (defamation), Article 216 §§ 1 and 2 of the Penal Code (insult), and Article 217 § 1 of the Penal Code (battery).

<sup>23</sup> Definition of 'evade', *Cambridge Dictionary*, Cambridge University Press & Assessment; <https://dictionary.cambridge.org/pl/dictionary/english/evade> [accessed on 13 November 2024].

<sup>24</sup> Definition of 'evade', *Merriam-Webster.com Dictionary*, Merriam-Webster; <https://www.merriam-webster.com/dictionary/evade> [accessed on 13 November 2024].

<sup>25</sup> Definition of 'evade', *Oxford English Dictionary*, Oxford University Press; <https://www.oed.com/search/dictionary/?scope=Entries&q=evade> [accessed on 13 November 2024].

<sup>26</sup> L. Morawski, *Zasady wykładni prawa*, Toruń, 2010, p. 119.

<sup>27</sup> J. Jodłowski, in: Wróbel W., Zoll A. (eds), *Kodeks karny. Część szczególna. Tom II. Część I. Komentarz do art. 117–211a*, Warszawa, 2016, p. 915.

<sup>28</sup> Act of 23 March 2017 amending the Penal Code Act and the Act on Aid to Persons Entitled to Maintenance, *Journal of Laws* of 2017, item 952.

unchanged.<sup>29</sup> Case law indicates that evasion of an obligation takes place when the obligor 'expresses an adverse mental attitude towards performing their obligation, which leads to them purposefully failing to perform it despite being able to because they do not want to perform it or choose to ignore it'.<sup>30</sup> Therefore, just as in the case of failure to pay maintenance, it holds true for the offence under Article 244c § 1 of the Penal Code that 'evasion requires demonstrating that the perpetrator was objectively able to provide the means of maintenance but failed to do so'.<sup>31</sup> Hence, the mere fact of non-payment of claims awarded in a criminal case to an injured party (or their closest person) does not amount to a constituent element of the offence. It is thus necessary to investigate the reason for this omission. This means that the offence under Article 244c § 1 of the Penal Code can only be committed with intent. It is only right to assume that the intent can be direct intent (*dolus directus*) or legal intent (*dolus eventualis*), as in the case of a failure to pay maintenance. This is because the perpetrator must be aware of the judgment constituting the source of their obligation and must either be unwilling to perform it or consciously ignore it.<sup>32</sup>

The introduction of the offence under Article 244c § 1 of the Penal Code is another sign of an irrational approach by the legislator who disregarded the fact that 'compensatory measures are of an entirely different nature than punitive measures, especially regarding their enforcement'.<sup>33</sup> The *ratio legis* for introducing the offence seems unfounded. The offence under Article 244c § 1 of the Penal Code is formal in nature, which means the evasion of performing the compensatory measure constitutes an offence. Indeed, when awarded in a criminal case, the measures constitute a civil-law claim of the injured party that may be pursued through enforcement, where the judgment is the enforcement order. It should be noted that penalisation of such behaviours was controversial even at the time when the offence of non-payment of maintenance was introduced, especially after the 2017 amendments when the basic type from Article 209 § 1 of the Penal Code became a formal offence. J. Jodłowski noted that

'A solely general evaluation of the change in Article 209 should first note that Article 209 in its current form indeed introduces liability for debt. This would be in stark conflict with Article 1 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which states that "no one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation." The separation of the perpetrator's behaviour and the financial situation of the injured party by eliminating one feature of the offence, namely putting the injured party at risk of being unable to meet

<sup>29</sup> J. Kluzka, 'Jedność czynu w odniesieniu do przestępstwa niealimentacji', *Monitor Prawniczy*, 2022, No. 6, pp. 303–304.

<sup>30</sup> Judgment of the Supreme Court of 10 May 2023, II KK 135/23, LEX No. 3563358; see also judgment of the Supreme Court of 24 November 2022, IV KK 405/22, LEX No. 3557040.

<sup>31</sup> Judgment of the Supreme Court of 19 October 2022, II KK 255/22, LEX No. 3513055.

<sup>32</sup> P. Bogacki, M. Oleżątek, *Kodeks karny. Komentarz do nowelizacji z 7.7.2022 r.*, Warszawa, 2023, p. 513.

<sup>33</sup> S. Herzog, in: Stefański R.A. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2023, margin number 1 to Article 244c § 1 of the Penal Code, Legalis.

basic livelihood needs, may lead to a conclusion that the amendment of Article 209 was not aimed at protecting the family and child care.<sup>34</sup>

M. Małecki, in turn, emphasised that:

‘The role of criminal law is to stigmatise the grossest and most reprehensible violations of norms of conduct that affect legal interests rather than to govern social interactions through mechanisms for satisfying financial claims in place of – or as an alternative for – procedures provided by other branches of law. Criminal legislation should not replace restitution mechanisms provided for in other laws with criminal law provisions. Furthermore, it should not restrict a person’s freedoms and rights with a criminal-law provision when this is not necessary to protect important constitutional values in a country with a sound rule of law (Article 31(3) of the Constitution of the Republic of Poland).’<sup>35</sup>

Nevertheless, penalisation of non-payment of maintenance is grounded in the protection of the interests of the family and the beneficiary since, as J. Jodłowski put it,

‘It is impossible to justify a belief that a deterioration of the financial standing of a family caused by the obligor failing to fulfil their maintenance obligation does not affect the interests of the family in a broad sense even if it does not put them at risk of being unable to meet basic livelihood needs. In this context and in a sense, the motivation for penalising non-payment of maintenance (regardless of the specific circumstances) will always be to protect the family and child care.’<sup>36</sup>

This is not the case for the offence under Article 244c § 1 of the Penal Code, and the above-mentioned comment by M. Małecki applies to this offence in full. According to Article 1 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>37</sup> ‘no one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.’ It should be noted, though, that the Article ‘does not apply to obligations under public or private law’.<sup>38</sup> A similar regulation is provided for in Article 11 of the International Covenant on Civil and Political Rights.<sup>39</sup> However, in this case, the injured party’s civil-law claims are based on a criminal court judgment rather than a contractual obligation. Nevertheless, the provision of Article 244c § 1 of the Penal Code remains clearly disproportionate considering the legislator’s objective. Still, regarding Article 11 of the Covenant, the literature demonstrates that:

<sup>34</sup> J. Jodłowski, in: Wróbel W., Zoll A. (eds), *Kodeks karny...*, op. cit., p. 902.

<sup>35</sup> M. Małecki, ‘Przestępstwo niealimentacji w perspektywie zmian (uwagi do rządowego projektu nowelizacji art. 209 k.k. z 28 października 2016 r.)’, *Czasopismo Prawa Karnego i Nauk Penalnych*, 2016, No. 4, p. 40.

<sup>36</sup> J. Jodłowski, in: Wróbel W., Zoll A. (eds), *Kodeks karny...*, op. cit., p. 903.

<sup>37</sup> Protocols No. 1 and 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms drafted in Paris on 20 March 1952 and drafted in Strasbourg on 16 September 1963, *Journal of Laws* of 1995, No. 36, item 175/2.

<sup>38</sup> M.A. Nowicki, *Wokół Konwencji Europejskiej. Komentarz do Europejskiej Konwencji Praw Człowieka*, Warszawa, 2021, p. 1089.

<sup>39</sup> International Covenant on Civil and Political Rights opened for signature at New York on 19 December 1966, *Journal of Laws* of 1977, No. 38, item 167, hereinafter ‘the Covenant’.

'Its prohibition applies to private contractual obligations rather than offences of non-performance of public interest obligations resulting from statutory provisions or a decision of the court. Such obligations include maintenance.'<sup>40</sup>

Although the compensatory measure does not originate from a contractual obligation, it is also not governed by public law. It is a civil-law claim from a prohibited act. In this way, the provision of Article 244c § 1 of the Penal Code indeed starts to resemble the penalisation of debt. The Iustitia Association of Polish Judges noted this problem in their bill opinion. They believed the provision to lead to a 'penalty spiral' because previously sentenced perpetrators 'by evading the obligations under Article 46 § 1 of the Penal Code will shortly become repeated offenders with the full attention of law enforcement authorities without any reasonable justification for this scheme'.<sup>41</sup> Another doubt concerns conformity of the provision with Article 31(1) of the Constitution of the Republic of Poland. As demonstrated above, the type of offence discussed here concerns only claims of the injured party (or their closest person) originating from a criminal-law sentence, as evident from the reference to a compensatory measure. Therefore, the status of such a perpetrator is worse than that of a perpetrator who was ordered to redress damage or compensate for harm under the judgment of a civil court. The Polish Ombudsman pointed out this problem, emphasising the differentiation between people in the same position, which is baseless under Article 31(3) of the Constitution of the Republic of Poland.<sup>42</sup> The same applies to a situation where the obligation to redress damage or compensate for harm is awarded to an injured party as a probative measure under Article 67 § 3 of the Penal Code. In this context, it is not a compensatory measure and not subject to criminalisation under Article 244c § 1 of the Penal Code.<sup>43</sup>

The disproportionality of the new Article 244c of the Penal Code is due to the legislator having completely disregarded the fact that the interests of the injured party awarded a compensatory measure are already sufficiently protected by criminal law. The explanatory memorandum for the bill of 2019 with a similar Article 244c of the Penal Code indicates that:

'Currently the legislator penalises non-performance by the convict of other decisions regarding their relationship with the injured party, such as periodic vacation of a residential unit occupied together with the injured party or restraining orders. Simultaneously, the non-performance of such penal measures may be evaluated through criminal-law conse-

<sup>40</sup> K. Sękowska-Kozłowska, in: Wieruszewski R. (ed.), *Międzynarodowy pakt praw obywatelskich (osobistych) i politycznych. Komentarz*, Warszawa, 2012, p. 256.

<sup>41</sup> *Opinion of the Criminal Law Division of the Iustitia Association of Polish Judges on the Bill of 16 September 2021 amending the Penal Code Act and Certain Other Acts*, p. 16; <https://legislacja.rcl.gov.pl/docs//2/12351306/12815612/12815615/dokument525810.pdf> [accessed on 14 August 2025].

<sup>42</sup> Ombudsman's letter, II.510.1043.2021.PZ, p. 35; <https://legislacja.rcl.gov.pl/docs//2/12351306/12815618/12815621/dokument525804.pdf> [accessed on 14 August 2025].

<sup>43</sup> J. Zagrodnik, *Opinia w sprawie projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw z dnia 16 września 2021 r.*, p. 25; <https://legislacja.rcl.gov.pl/docs//2/12351306/12815612/12815615/dokument525808.pdf> [accessed on 14 August 2025].

quences of the prohibited act in relation to which they are awarded (such as enforcement of a conditionally suspended imprisonment, Article 75 § 2 of the Penal Code). The same applies to a compensatory measure that affects the actual and legal situation of the injured party regarding the accused's performance of their obligations under a final judgment to the same or even greater (*pro futuro*) extent. Therefore, there is no reason for weaker criminal-law protection against non-performance of a compensatory measure than in the case of penal measures against the accused ordering them to perform specific behaviour towards the injured party.<sup>44</sup>

The legislator employed the same arguments in 2022. Nevertheless, the purpose of penalising non-compliance with penal measures related to the injured party, as referred to in Article 244 of the Penal Code, is clearly distinct and is aimed at ensuring the injured party's safety. By contrast, Article 244c § 1 of the Penal Code plainly fails to serve this purpose. In addition, according to Article 300 § 2 of the Penal Code, a perpetrator is penalised when they prevent or diminish the satisfaction of the creditor in order to prevent enforcement of a decision by a court or another state authority by removing, concealing, disposing of, transferring, destroying, actually or superficially encumbering, or damaging their assets that have been foreclosed or are at risk of foreclosure or by removing forfeiture marks. The literature offers some doubts about whether this type of offence concerns non-business entities,<sup>45</sup> but it is true that 'the legislator neither differentiates between protected debts regarding their source nor indicates the relationship between the debt and commercial activity.'<sup>46</sup> Therefore, Article 300 § 2 of the Penal Code protects 'also the propriety (certainty, security) of civil-law transactions in the remaining scope, particularly legitimate claims of creditors against dishonest actions of debtors seeking to prevent satisfaction of the claims'.<sup>47</sup> Hence, purposeful actions of a debtor against the performance of a compensatory measure awarded in a criminal court can be penalised under Article 300 § 2 of the Penal Code. As a result, the introduction of a separate type of offence under Article 244c § 1 of the Penal Code penalising the very fact of evading the performance of a compensatory measure is unfounded.

## CONCLUSION

In summary of the foregoing deliberations, it must be emphasised that the newly introduced offence under Article 244c § 1 of the Penal Code gives rise to serious concerns regarding the proportionality of penalising the conduct regulated by the legal norm. The rationale for introducing the prohibited act provided in the bill is insufficiently detailed and unconvincing. The injured party (or their closest person)

<sup>44</sup> Sejm print No. 3451, 8<sup>th</sup> term of the Sejm, p. 41.

<sup>45</sup> See, for example, G. Łabuda, in: Giezek J. (ed.), *Kodeks karny. Część szczególna. Komentarz*, Warszawa, 2021, pp. 1457–1458.

<sup>46</sup> A. Gałązka, in: Grześkowiak M., Wiak K. (eds), *Kodeks karny. Komentarz*, Warszawa, 2021, p. 1604.

<sup>47</sup> J. Majewski, in: Wróbel W., Zoll A. (eds), *Kodeks karny. Część szczególna. Tom III. Komentarz do art. 278–363 k.k.*, Warszawa, 2023, p. 773.

may enforce the performance of a compensatory measure from a criminal court judgment in civil law proceedings. Only where the obligee prevents the enforcement may such conduct be punishable under Article 300 § 2 of the Penal Code. Criminal liability for evading the performance of a compensatory measure is also dubious because this liability resembles a kind of liability for debt. Therefore, the entire Article 244c of the Penal Code should be repealed either through amendment or by a court faced with such an indictment by addressing the Constitutional Tribunal with a legal question regarding the constitutionality of the provision. Regardless of these controversies, the wording of Article 244c § 1 of the Penal Code reveals significant shortcomings, as evasion of the performance of a probative or compensatory measure in favour of people other than the closest persons of the injured party – which is potentially permissible under Article 52 § 1 of the Code of Criminal Procedure – falls outside the scope of criminalisation.

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**Cite as:**

Kluza J. (2025), *Offence under Article 244c of the Polish Penal Code as an Example of Disproportionate Criminal Liability for Debt*, *Ius Novum* (Vol. 19) 3, 29–40. DOI 10.2478/in-2025-0022