

THE PASSAGE OF TIME BETWEEN THE COMMISSION OF AN OFFENCE AND SENTENCING AS A GROUND FOR PUNISHMENT MITIGATION

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ABSTRACT

This paper addresses the issue of rational sentencing in criminal proceedings, focusing specifically on the significance of the passage of substantial time between the commission of an offence and the imposition of a sentence as a potential ground for extraordinary mitigation of punishment. The aim is to resolve the question of whether a significant lapse of time between the commission of an offence and sentencing may serve as a mitigating factor in the punishment imposed by the court for that offence, or, more specifically, whether it may justify extraordinary mitigation of the statutory penalty or constitute a circumstance warranting leniency within the ordinary sentencing framework. The research hypothesis assumes that a lengthy interval between the offence and adjudication may exert a mitigating influence on the sentence imposed, both in cases where the court applies a sentence within the ordinary sentencing framework and where it resorts to extraordinary mitigation, although the time lapse does not constitute an autonomous basis for such mitigation. The study employs the dogmatic method, understood as an analysis of legal norms, with reference to relevant judicial decisions and the views of legal academics and commentators.

Keywords: judicial sentencing, extraordinary mitigation of punishment, mitigating circumstances, time in criminal law

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INTRODUCTION

The passage of time between the commission of a criminal offence and sentencing is of unquestionable significance in criminal law. Scholarly literature¹ highlights, among other things, its fundamental importance – particularly in light of the principle of legality, which requires that an act be defined as prohibited under the law in force at the time of its commission (Article 1 § 1 of the Polish Penal Code) – for classifying the offence and, in some cases, for assessing criminal liability. This is especially relevant in view of the intertemporal rule *lex mitior*, set forth in Article 4 § 1 of the Penal Code (PC), which determines the law applicable when a normative change occurs after the offence but before sentencing. Other significant implications arise in the context of the statute of limitations, which extinguishes the possibility of imposing a criminal sanction after a specified period following the commission of the offence (cf. Articles 101–102 and 105 PC), as well as in cases involving reclassification of the act as a petty offence or its decriminalisation.²

The significance of the lapse of time for determining punishment is equally multifaceted. It encompasses both the penalty prescribed for a given type of offence (statutory penalty) and the penalty that may be imposed by a court in a specific criminal proceeding. In the first of these aspects – that is, the statutory penalty – the aforementioned intertemporal rule of *lex mitior* under Article 4 § 1 PC may apply. In contrast, the type and severity of the penalty imposed for a specific offence, and subsequently enforced, may be governed by the provisions set out in Article 4 §§ 2–3 PC. In certain cases, the conviction may be expunged (Article 4 § 4), thereby nullifying the legal consequences of the judgment. Moreover, the passage of time between the commission of the offence and sentencing may necessitate consideration of changes in the offender's personal circumstances, which can affect both the type and severity of the penalty imposed (cf. e.g. Article 53 § 2 PC).

The aim of this study is not, of course, to provide a comprehensive account of all legal issues arising from the passage of time within the sequence: criminalisation of a specific type of act – commission of a specific offence – conviction and sentencing – enforcement of the imposed penalty. This area of inquiry is complex, with many of its dimensions having already been thoroughly examined in both judicial decisions and criminal law literature.³ For that reason, the present analysis focuses on the specific issue of whether the passage of time may be regarded as a basis for extraordinary (special) mitigation of the statutory (ordinary) penalty, or alternatively, as a mitigating circumstance in the judicial determination of punishment within

¹ See, e.g. J. Baściuk, P. Ochman, K. Ondrysz, 'Problematyka czasu w orzecznictwie Sądu Najwyższego i sądów apelacyjnych na tle przepisów kodeksowych', in: Bogunia L. (ed.), *Nowa kodyfikacja prawa karnego*, Vol. XXIV, 2009, pp. 11–34; T. Bojarski, 'Znaczenie czynnika czasu w zakresie karalności czynu i wymiaru kary', *Teka Komisji Prawniczej PAN – Oddział w Lublinie*, 2010, Vol. 3, pp. 48–61.

² The procedural consequences of this circumstance are governed by Article 17 § 1(2) of the Code of Criminal Procedure ('CCP').

³ Cf. J. Warylewski (ed.), *Czas i jego znaczenie w prawie karnym*, Gdańsk, 2010, *passim*.

the ordinary sentencing framework.⁴ More precisely, it concerns situations in which the time elapsed between the commission of the offence and the delivery of the judgment (conviction) is unduly long (substantial).

Given the inherent ambiguity of such a determinant in sentencing, a fundamental question arises: what precisely constitutes a 'substantial' passage of time, and more importantly, whether it is possible to formulate any fixed criteria for its recognition. It must be acknowledged that such an indeterminate formulation of a factor that may potentially justify mitigation – despite its evident lack of clarity and precision – simultaneously acquires a discretionary quality, which is significant from the standpoint of the court's latitude in shaping the sentence. This appears to be inevitable, albeit with the caveat that it does not concern situations that would justify a finding of undue delay in the proceedings.⁵ Accordingly, it is for the court alone to determine whether the condition of a substantial passage of time has been met *in concreto*. Given that the nature, character, and gravity of the offence play a decisive role in this assessment, it is reasonable to assume that, as a general rule, the relevant period should be measured in years rather than merely in months.

MITIGATION OF PUNISHMENT IN CRIMINAL LAW

It should first be noted that the issue of punishment mitigation in criminal law may be approached along two distinct lines. First, mitigation may be considered in relation to the institution of extraordinary sentencing, understood as a departure (modification) from the statutory, ordinary sentencing framework, that is, the framework defined by the content of the sanctioning norm which sets the limits of penalty for a given type of prohibited act. The ordinary sentencing framework typically corresponds to the statutory penalty prescribed for each offence under the provisions of the Special Part of the Penal Code or in other laws that classify prohibited acts as criminal offences (cf. Article 116 PC). The basis for modifying the ordinary penalties lies

⁴ Therefore, the scope of analysis will not include, among other things, the issue of applying probationary measures regulated in the Penal Code (cf. e.g. Articles 69 § 2 and 70 § 1 PC), in which the passage of time may benefit the offender, provided that the anticipated positive criminological prognosis is borne out. Also excluded is the specific situation of so-called recidivism limitation, which concerns cases of relapse into crime after a period longer than that specified in Article 64 § 1 or § 2 PC. In such instances, the aggravating effect does not apply automatically – and is, in fact, often viewed favourably, including on humanitarian grounds; cf. e.g. T. Bojarski, *Znaczenie...*, op. cit., p. 59.

⁵ That is, undue delay in the conduct and adjudication of the case, that is, proceedings that last longer than necessary to clarify the relevant factual and legal circumstances (see Article 2 of the Act of 17 June 2004 on Complaints for Violation of a Party's Right to Have a Case Heard in Preparatory Proceedings Conducted or Supervised by the Prosecutor and in Court Proceedings Without Undue Delay, i.e. Journal of Laws of 2023, item 1725). Polish law does not recognise the excessive length of proceedings as a mitigating factor, although this is the case in the legal systems of some EU Member States. In those jurisdictions, mitigation may be considered not only in relation to undue delay in the proceedings, but also with regard to the extended period between the commission of the offence and sentencing – for a detailed discussion, see: M. Budyn-Kulik, 'Dyrektywy wymiaru kary w państwach członkowskich Unii Europejskiej', *Prawo w Działaniu. Sprawy karne*, 2017, No. 3, pp. 131–134.

in the competence norms set out in the General Part of the Penal Code, which empower the court to impose a penalty below the statutory minimum established in the sanctioned norm, to apply a less severe penalty or measure (extraordinary mitigation), or, conversely, to impose a penalty exceeding the statutory minimum or maximum (extraordinary aggravation). It should be emphasised, however, that the scope of this paper is limited to the specific context of modifying the ordinary penalty through extraordinary mitigation.⁶

Secondly, mitigation of punishment may be considered from the perspective of mitigating circumstances affecting the judicial determination of sentence, which takes place within the boundaries set by the legislature for a given type of prohibited act. This process involves specifying the type and severity of the sentence to be imposed on a particular offender (or an accessory involved in a non-perpetrator form of its commission) whose guilt has been proven in criminal proceedings. It is carried out within the limits of the statutory penalty and in accordance with the principles and directives for sentencing, as set out in particular in Chapter VI of the Penal Code.⁷

The purpose of this paper is therefore to propose a resolution to the question of whether a substantial lapse of time between the commission of an offence and sentencing may serve as a mitigating factor in the sentence imposed by the court for that offence in a specific criminal proceeding, and, in particular, whether it may constitute a basis for extraordinary mitigation of the statutory penalty prescribed for the offence or, alternatively, a mitigating circumstance in the judicial determination of sentence within the ordinary sentencing framework.

This objective may be articulated in the form of a central research question concerning the significance of a prolonged lapse of time between the commission of the offence and conviction for the sentence imposed by the court in a specific criminal proceeding. This central research question may be further specified through two subsidiary questions: (1) Can the passage of a long period of time between the commission of an offence and conviction serve as a basis for modifying the statutory, ordinary penalty prescribed for a specific type of offence, by enabling the court to impose a penalty subject to extraordinary mitigation? (2) Can the passage of a long period of time between the commission of an offence and conviction be regarded as a mitigating circumstance affecting the judicial determination of sentence within its ordinary statutory framework – and, in the absence of an expressly stated normative basis, even as a non-statutory mitigating factor?

⁶ For a detailed discussion of this institution, see J. Raglewski, *Model nadzwyczajnego złagodzenia kary w polskim systemie prawa karnego (analiza dogmatyczna w ujęciu materialnoprawnym)*, Kraków, 2008; J. Raglewski, in: Kaczmarek T. (ed.), *System Prawa Karnego. Tom 5. Nauka o karze. Sądowy wymiar kary*, 2nd ed., Warszawa, 2017, pp. 409–466.

⁷ For the sake of clarity, it should be noted that the principles and directives set out in Articles 53, 54 § 1, and 55 PC apply not only to the imposition of penalties, but also respectively – i.e. with due regard to their function and the degree of repression – to the adjudication of other measures regulated by the Penal Code, with the exception of the obligation to repair damage caused by the offence or to provide redress for the harm suffered, which are strictly compensatory in nature (cf. Article 56 PC).

The foregoing considerations permit the formulation of the central research hypothesis, according to which a long period of time between the commission of an offence and sentencing may have a mitigating effect on the sentence imposed by the court for that offence. This influence may arise both when the court determines the sentence within the ordinary sentencing framework and when it applies extraordinary mitigation, although the lapse of time alone does not constitute an independent basis for such mitigation.

THE PASSAGE OF TIME AS A BASIS FOR EXTRAORDINARY MITIGATION OF PUNISHMENT

In the context outlined above, particular attention should be given to the question of whether a considerable lapse of time between the commission of an offence and sentencing may be recognised as a factor enabling modification of the statutory, ordinary penalty prescribed for a specific type of offence through the imposition by the court of an extraordinarily mitigated punishment.

The general normative basis for extraordinary mitigation is provided by Article 60 PC, which defines the essence and principles of this institution (cf. Article 60 § 6) and specifies the conditions under which it may be applied, including whether its application is mandatory or discretionary. The context of the present study justifies limiting the analysis to the scope of Article 60 § 2, which grants the court discretionary authority to apply extraordinary mitigation of punishment to any offender⁸ within the bounds of its sentencing discretion (cf. Article 53 § 1 PC).⁹ The prerequisite for such mitigation is the existence of a particularly justified case in which 'even the lowest penalty stipulated for the offence in question would be disproportionately severe'. Points 1 to 3 of the cited provision list exemplary situations in which the legislature presumes that the minimum statutory penalty may be disproportionately severe, thereby justifying the application of extraordinary mitigation;¹⁰ still, it should be noted, for the sake of clarity, that these examples do not include the lapse of time as a relevant factor.¹¹

Since the legal framework governing extraordinary mitigation of punishment allows the court, in the process of sentencing, to take into account individual circumstances related both to the offence and to the offender, thereby enabling the application of the principles of individualised sentencing and humanitarian considerations, while also ensuring flexibility and rationality in criminal policy,¹² a question arises as to

⁸ See also V. Konarska-Wrzošek, in: Stefański R.A. (ed.), *Kodeks karny. Komentarz*, 7th ed., Warszawa, 2025, Article 60, margin number 15.

⁹ See decisions of the Supreme Court: of 17 March 2021, III KK 427/20; and of 16 February 2022, V KK 69/21.

¹⁰ Cf. judgment of the Court of Appeal in Warsaw of 13 November 2018, II AKa 372/18.

¹¹ Due to the absence of a statutory basis, this factor also falls outside the scope of Article 60 § 1 PC.

¹² Cf. e.g. K. Patora, in: Kulesza J. (ed.), *Prawo karne materialne. Nauka o przestępstwie, ustawie karnej i karze*, Warszawa, 2023, p. 551; I. Zgoliński, in: Konarska-Wrzošek V. (ed.), *Kodeks karny. Komentarz*, 4th ed., Warszawa, 2023, Article 60, margin number 2.

whether the extended passage of time between the commission of the offence and the delivery of judgment may itself constitute such a circumstance. In other words, whether the passage of time, understood in this manner, can constitute grounds for recognising a particularly justified case within the meaning of Article 60 § 2 PC – that is, an exceptional circumstance which, in the context of a specific factual situation, warrants the conclusion that even the minimum statutory penalty for the offence in question would be disproportionately severe.¹³

Against this background, two fundamental questions arise. First, under what circumstances does a particularly justified case occur, in which the imposition of a sentence corresponding to the minimum statutory penalty for a specific offence would be disproportionately severe? Second, how should the severity of the applicable penalty be assessed in the context of a potential finding that it is disproportionate?

It is generally accepted that a particularly justified case arises where, in the specific factual context, there are atypical features of the event itself, numerous mitigating factors inherent in the act, as well as personal characteristics and life circumstances of the offender, such as their conduct prior to the commission of the offence and their behaviour thereafter, which warrant a distinctly positive evaluation and portray the individual in an exceptionally favourable light, thereby justifying the imposition of a penalty below the statutory minimum.¹⁴

The indicated severity of the applicable penalty refers to the disproportion between the statutory minimum penalty prescribed for a certain type of offence and the penalty that ought to be imposed in the specific case. Scholarly commentary emphasises that such disproportionality must be apparent, though it need not be manifestly excessive.¹⁵ This determination is made based on the specific facts of the case, taking into account all extraordinary objective and subjective circumstances,

¹³ The exceptional nature of this circumstance is emphasised in the judicial decision: 'Extraordinary mitigation of punishment is an exceptional mechanism in the sentencing process [...]. Exceptional circumstances must therefore be demonstrated by the offender in order to benefit from such mitigation.' – see decision of the Supreme Court of 24 November 2005, III KO 52/04. It is worth noting that the exceptional nature of the basis set out in § 2 is also reflected in its subsidiary character, as it applies only where extraordinary mitigation of punishment is not possible on any other ground; cf. Supreme Court judgments of 7 March 2003, WA 11/03, *OSNwSK*, 2003/1, item 539; and of 19 March 2004, WA 68/03, *OSNwSK*, 2004/1, item 622. It is also worth emphasising that particularly justified cases must be distinguished from ordinary ones, in which the standard sentencing directives apply and operate within the limits of the statutory penalty range; cf. the Supreme Court judgments of 15 December 2021, V KK 316/20; and 28 March 2019, V KK 125/18.

¹⁴ See e.g. judgments of the Supreme Court of 28 March 2019, V KK 125/18; and of 15 December 2021, V KK 316/20. Cf. M. Kulik, in: Mozgawa M. (ed.), *Kodeks karny. Komentarz aktualizowany*, LEX/el., 2025, Article 60 § 4; K. Patora, in: Kulesza J. (ed.), *Prawo karne materialne...*, op. cit., p. 552.

¹⁵ Cf. e.g. Z. Cwiakalski, in: Zoll A., Wróbel W. (ed.), *Kodeks karny. Część ogólna. Tom 1 Część II. Komentarz do art. 53–116*, 5th ed., Warszawa, 2016, Article 60, margin number 12. The Supreme Court, however, adopted a different view, stating that 'the basis for applying the institution of extraordinary mitigation of punishment under the conditions set out in Article 60 § 2 of the Penal Code is to demonstrate that there are particularly justified circumstances in the case which mean that even the minimum statutory penalty provided for by the law must be considered excessively severe'; see the Supreme Court judgment of 28 March 2019, V KK 125/18.

i.e. those relating to the offence itself (e.g. low value of the object of the offence)¹⁶ as well as to the offender (e.g. exceptional motives for the act), with due regard to the degree of culpability and the social harmfulness of the act, alongside the general sentencing directives and any specific directives, if applicable *in concreto*.

Accordingly, a comprehensive analysis of the above elements enables an assessment of whether a just sentence¹⁷ may be imposed within the boundaries of the statutory penalty, or whether this function can only be fulfilled by an extraordinarily mitigated sentence, given that a standard sentence would prove unduly harsh. This is to be determined by comparing and contrasting the aggravating and mitigating circumstances in the specific case, the balance of which should indicate a clear preponderance of circumstances in favour of the offender. Such a finding necessarily leads to the conclusion that an exceptional situation has arisen in which even the minimum statutory penalty prescribed for the offence would be disproportionately severe,¹⁸ and that, in order to fulfil all the objectives of punishment, the imposition of an extraordinarily mitigated sentence is warranted.

It is evident that, due to the inherent vagueness and relativity of the condition expressed in Article 60 § 2 PC, the court exercises discretion in determining whether this particularly justified case¹⁹ exists *in concreto*, which does not ensure either consistency or correctness of assessment. Nevertheless, the court is invariably obliged to present arguments substantiating its position. In this context, the precise and narrowly defined statutory grounds for other forms of extraordinary mitigation may be interpreted as a legislative directive addressed to the judiciary, urging a thorough, prudent, and non-automatic application of this institution in the sentencing process.²⁰ This implies that the court must first establish that the statutory minimum penalty would be disproportionately severe in the circumstances of the case, and only then proceed to determine the specific (extraordinarily mitigated) sentence.

In light of the foregoing considerations, when assessing the relevance of the lapse of time between the commission of an offence and conviction for the possibility of extraordinary mitigation of the penalty, it becomes apparent that the factors typically identified as decisive for the court's application of Article 60 § 2 PC predominantly concern objective and subjective circumstances present **at the time** of the offence. This same temporal perspective also shapes the sentence from the standpoint of the general sentencing directives, which emphasise the proportionality of the sentence to

¹⁶ Cf. judgment of the Court of Appeal in Katowice of 15 December 2005, II Aka 375/05, KZS 2006/4, item 52.

¹⁷ Scholarly commentary rightly emphasises that a disproportionately severe penalty should be equated with an unjust one; cf. K. Patora, in: Kulesza J. (ed.), *Prawo karne materialne...*, op. cit., p. 552.

¹⁸ See J. Majewski, in: Majewski J. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2024, Article 60, margin number 29; I. Zgoliński, in: Konarska-Wrzošek V. (ed.), *Kodeks karny...*, op. cit., Article 60, margin number 2. Cf. also judgment of the Court of Appeal in Wrocław of 16 October 2013, II Aka 298/13.

¹⁹ See also J. Majewski, in: Majewski J. (ed.), *Kodeks karny...*, op. cit., Article 60, margin number 30.

²⁰ Cf. also Z. Ćwiakalski, in: Zoll A., Wróbel W. (ed.), *Kodeks karny...*, op. cit., Article 60, margin number 14; G. Łabuda in: Giezek J. (ed.), *Kodeks karny. Część ogólna. Komentarz*, Warszawa, 2021, Article 60, margin number 12.

the degree of social harmfulness of the act and the offender's culpability (cf. Article 53 § 1 PC). However, relevant weight must also be given to those general directives in which the legislature highlights the preventive dimension of punishment, aimed at achieving its objectives in terms of societal impact (general prevention),²¹ and deterrence with respect to the convicted individual (individual prevention). Given that preventive directives require the court to incorporate into the sentencing process the element of crime deterrence, both with respect to the offender and to society at large, in order to reinforce public awareness of the reprehensibility of certain behaviours, to foster positively valued attitudes,²² and to instil the conviction that violations of legal interests entail inevitable consequences and are not worth pursuing,²³ it is reasonable to conclude that the court should assess the achievement of these preventive goals not as of the time of the offence, but as of the time of sentencing.²⁴

The passage of time becomes particularly relevant in this context insofar as the court's assessment of the preventive aims of punishment from the perspective of the sentencing moment acquires 'special significance when a considerable period has elapsed between the commission of the offence and the time of sentencing'.²⁵ Nevertheless, this does not mean that the mere fact of an unduly long interval can, in itself, autonomously justify the court's decision to impose an extraordinarily mitigated penalty, although it is not without relevance to such a decision. What is crucial for recognising this circumstance as a basis for departing from the ordinary sentencing framework is its coexistence and interrelation with other factors arising **after** the commission of the offence, alongside the objective and subjective circumstances present **at the time** of the act. These include, in particular, the offender's favourably assessed attitude, reflecting their stance toward the offence and the violated legal interest,²⁶ as well as conduct deserving of approval,²⁷ which reveals their personal qualities and character. Thus, only the cumulative presence of these

²¹ Under current law, this aspect reflects general prevention in its negative form. By contrast, Article 53 § 1 PC, in its version prior to the amendment introduced by the Act of 7 July 2022 amending the Penal Code and Certain Other Acts (Journal of Laws of 2022, item 2600), framed it as positive general prevention, namely 'the need to shape the legal awareness of society'.

²² Cf. V. Konarska-Wrzošek, in: Stefański R.A. (ed.), *Kodeks karny...*, op. cit., Article 53, margin number 10.

²³ See also judgment of the Court of Appeal in Szczecin of 29 June 2017, II AKa 80/17.

²⁴ This interpretation was adopted, for instance, in the judgment of the Court of Appeal in Cracow of 17 December 2009, II AKa 223/09, KZS 2010/2, item 32; and further developed in subsequent rulings referring to that decision, including: judgment of the Court of Appeal in Cracow of 9 December 2015, II AKa 138/15; judgment of the Regional Court in Suwałki of 21 March 2013, II Ka 93/13; and judgments of the Regional Court in Gliwice: of 9 March 2015, V Ka 659/14; of 9 April 2015, V Ka 15/15; and of 24 March 2017, VI Ka 156/17.

²⁵ Cf. judgment of the Court of Appeal in Cracow of 17 December 2009, II AKa 223/09, KZS 2010/2, item 32.

²⁶ For example, by admitting guilt (even in separate proceedings), making efforts to repair the damage, or offering an apology to the victim; cf. Supreme Court decision of 24 November 2005, III KO 52/04; judgment of the Court of Appeal in Wrocław of 14 June 2005, II AKa 144/05.

²⁷ For instance, by demonstrating efforts to normalise and stabilise one's life circumstances, breaking with a previously reprehensible lifestyle, or eliciting favourable social inquiry reports regarding the offender; cf. judgment of the Court of Appeal in Cracow of 16 February 2011, II AKa 256/10, KZS 2011/5, item 41.

circumstances may warrant the recognition of a particularly justified case within the meaning of Article 60 § 2 PC, warranting extraordinary mitigation of punishment which, despite its exceptional leniency, fulfils the intended aims of social impact and individual deterrence.²⁸ Accordingly, if the offender consistently demonstrates appropriate attitudes and behaviours following the commission of the offence, the passage of time until sentencing may be favourable and beneficial for them, insofar as it evidences the achievement of certain preventive aims of punishment even prior to the issuance of the judgment. Yet, this is not solely attributable to the passage of time itself. As a factor external to the offence and independent of the offender, it cannot, on its own, constitute an exceptional circumstance justifying the conclusion that even the minimum statutory penalty would be disproportionately severe in the specific case. Therefore, the significance of the passage of time as a factor lies in its capacity to complement and reinforce the effect of other circumstances that may justify extraordinary mitigation of punishment, either individually or cumulatively. The cumulative occurrence of several circumstances may, however, lead to two distinct outcomes. First, it may result in a situation where multiple mitigating circumstances (including the passage of time) jointly provide sufficient grounds for finding a particularly justified case under Article 60 § 2 PC, even though none of them would warrant such recognition if considered in isolation. Second, a lapse of time between the offence and sentencing that does not qualify as excessive does not, in itself, preclude the possibility of extraordinary mitigation under Article 60 § 2 (or other relevant provisions) PC, provided that the remaining conditions for applying this institution are met.

THE PASSAGE OF TIME AS A MITIGATING CIRCUMSTANCE WITHIN THE ORDINARY FRAMEWORK OF SENTENCING

As established above, the passage of a long period between the commission of the offence and the imposition of the sentence cannot be regarded as an autonomous basis for extraordinary mitigation. At most, it may serve a supplementary and reinforcing function in relation to other circumstances that satisfy the conditions for applying this institution. Consequently, it is appropriate to examine whether this factor may constitute a mitigating circumstance within the ordinary framework of judicial sentencing.

First and foremost, it should be recalled that judicial sentencing consists in the court imposing upon a specific offender, proven to have committed a criminal

²⁸ As stated in the ruling of the Court of Appeal in Cracow (II AKa 223/09): 'If the offender, despite not having been punished, has reformed, lived honestly, and worked, then imposing a severe penalty is not purposeful. A harsh sentence would amount to pure repression (retribution), failing to serve the aims of punishment in terms of individual prevention. Admission of guilt, apology to the victim, and obtaining the victim's forgiveness create an **exceptional sentencing context** [emphasis added by J.D.-J.], conducive to extraordinary mitigation of punishment and indicative of the achievement of one of the objectives of criminal proceedings, namely, the redress of individual harm caused by the offence, and that prior to the issuance of the judgment.'

offence, the penal consequences prescribed by law by determining the type and severity of the penalty and, where applicable, applying other penal measures.²⁹ Thus, the assessment of whether the passage of an unduly long period of time may constitute a mitigating circumstance within this sentencing framework requires reference to the general sentencing directives (Article 53 § 1 PC), as well as to the circumstances defined by the legislator, which the court is obliged to consider when determining the sentence (Article 53 §§ 2–2b PC).

Bearing in mind that the role of the general sentencing directives is not only to limit judicial discretion but also to define the framework for individual sentencing decisions and to shape the model of penal policy,³⁰ it is worthwhile to assess the significance of the passage of time through the lens of directives that reflect the legislator's adopted purposes of punishment.

For the sake of clarity, it should be noted that the general sentencing directives requiring the court to consider the degree of social harm caused by the offence and the offender's culpability are irrelevant to the present discussion, as their temporal reference point is the moment of the offence. Subsequent circumstances, including the offender's conduct after the commission of the act, do not influence these particular considerations.

In comparison, the preventive directives – i.e. those of general prevention ('the aims of punishment in terms of its impact on society') and individual prevention ('the deterrent aims that punishment is intended to achieve with respect to the offender') – previously discussed, remain applicable in the present context. They are complemented by the circumstances listed in Article 53 §§ 2–2b PC, whose relevance to sentencing lies in the statutory obligation imposed on the court to consider all circumstances that may arise in the specific factual circumstances of the case and thereby influence the appropriate determination of punishment. These provisions thus ensure that the aims of punishment are properly defined and effectively implemented, thereby supporting the application of all general sentencing directives, including the preventive ones.³¹

Two of the circumstances listed in Article 53 § 2 PC are particularly relevant in this context: 'the personal characteristics and conditions of the offender' and '[the offender's] conduct following the commission [of the offence]'.

As emphasised in the views of legal academics and commentators,³² the offender's personal characteristics and conditions play a crucial prognostic role, and the criminological prognosis derived from them determines the imposition of a penalty that is not only just but also consistent with the preventive aims of punishment. However, for such a prognosis to produce a favourable outcome for the offender in terms of sentencing, the court must, at the time of adjudication, positively assess both the offender's individual traits (characteristics) and their familial, financial, social,

²⁹ Cf. e.g. Z. Sienkiewicz, in: Bojarski M. (ed.), *Prawo karne materialne. Część ogólna i szczególna*, 9th ed. Warszawa, 2023, p. 449.

³⁰ *Ibidem*.

³¹ Cf. J. Majewski, in: Majewski J. (ed.), *Kodeks karny...*, op. cit., Article 53, margin number 28.

³² Cf. V. Konarska-Wrzosek, in: Stefański R.A. (ed.), *Kodeks karny...*, op. cit., Article 53, margin numbers 49 et seq.

and environmental situation (conditions). Accordingly, recognising these elements as mitigating circumstances is contingent upon the court's finding that the offender does not pose a social threat throughout the entire period under consideration, that is, from the commission of the offence to the delivery of the judgment.³³ If a significant amount of time has passed between these two events, the court will undoubtedly need to take this factor into account. Nonetheless, it is impossible to determine its significance for sentencing in the abstract; rather, it may, depending on the circumstances of the case, operate either to the offender's benefit or detriment.

Similarly, the passage of a long period between the offence and sentencing may be taken into account by the court when evaluating the second of the aforementioned circumstances, namely, the offender's conduct following the commission of the offence, which determines the criminological prognosis, whether favourable or unfavourable. In this context as well, the lapse of time may influence the sentence either positively or negatively, depending on the specific circumstances of the case. The assessment made at the time of sentencing extends over the entire period beginning with the commission of the offence and continuing throughout the criminal proceedings until the judgment is rendered. It may encompass both isolated acts by the offender (e.g. remorse driven by guilt, an apology to the victim, or expressed sorrow over the victim's death) and conduct sustained over time (e.g. a demonstrable change in attitude and behaviour,³⁴ or a positive reputation within the community). It should be borne in mind that the mitigating effect of this circumstance may be further reinforced by its positive resonance, for instance, if it leads to forgiveness from the victim or from members of the victim's immediate family.³⁵

The mitigating effect of the offender's post-offence conduct on the penalty imposed may, in principle, be justified by the fact that the offender retrospectively evaluates their prior behaviour as reprehensible and renounces the offence committed. Such a positively assessed attitude, reflecting the offender's personal characteristics and circumstances, lends credibility to the view that their earlier conduct no longer aligns with their current values or way of life. It must be emphasised, however, that the key element is a genuine change in lifestyle, manifested in the consistent observance of legal norms despite the real possibility of engaging in unlawful behaviour.³⁶

A positive assessment of the offender's new attitude and post-offence conduct may, of course, be subject to gradation and rewarded accordingly, depending on the degree to which the offender's actual behaviour after committing the offence aligns to the conduct expected in the context of potential sentence mitigation and reflects a break from their previously reprehensible way of life. This assessment will include, among other things, whether the change in lifestyle consists solely in verbal

³³ See also judgment of the Court of Appeal in Szczecin of 26 October 2017, II AKa 112/17.

³⁴ Cf. V. Konarska-Wrzošek, in: Stefański R.A. (ed.), *Kodeks karny...*, op. cit., Article 53, margin number 53; I. Zgoliński, in: Konarska-Wrzošek V. (ed.), *Kodeks karny...*, op. cit., Article 53, margin number 12.

³⁵ Cf. judgment of the Court of Appeal in Cracow of 4 November 2010, II AKa 178/10.

³⁶ That may be excluded, for example, when the offender remains in a coma for an extended period or is unable to engage in illegal conduct for other reasons (e.g. health issues).

dissociation from the past offence (such as expressions of remorse, apologies to the victim, or admission of guilt), or whether it is reflected in specific, desirable actions (for example, efforts to repair the harm caused by the offence).

Some difficulties may arise in assessing post-offence situations in which no other relevant circumstances are present apart from the offender's adoption of a law-abiding attitude as a member of society. The presence of this factor alone will, as a rule, be insufficient to justify sentence mitigation, particularly due to its lack of direct link to the committed offence. Such an attitude merely indicates that the offender is no longer indifferent to the legal order and, at least declaratively, recognises its binding nature. Even so, a different assessment may be warranted where this favourably assessed attitude is consistently maintained over a prolonged period following the commission of the offence and prior to sentencing. In specific cases, it cannot be excluded that the court, in the course of criminal proceedings, may regard the passage of an unduly long period of time as a compensatory factor that offsets the absence of a direct link between the offender's current attitude and the offence committed in the past, thereby allowing this to be treated as a circumstance mitigating the sentence.³⁷

Separate attention should be given to the mitigating circumstances listed in Article 53 § 2b PC. This normative catalogue, introduced alongside the list of aggravating circumstances in Article 53 § 2a by the Act of 7 July 2022, was intended, according to the legislator, to support accurate determinations regarding the gravity of the offence,³⁸ and also 'to guide the court toward giving particular consideration to these circumstances in the sentencing process, while also exerting a motivational effect on the offender after the commission of the offence, who will be assured that, for instance, if the harm caused is repaired, this will be recognised as a mitigating circumstance, which may contribute to better protection of the victim's interests',³⁹ as well as to support accurate determinations regarding the gravity of the offence.

Although Article 53 § 2b PC does not explicitly list the passage of a long period of time since the commission of the offence as a mitigating factor, the enumeration it contains is open-ended, which means that the court may also take into account other circumstances established in the course of the proceedings that have a mitigating effect on the sentence.⁴⁰ However, the question of whether the mere lapse of

³⁷ Without engaging in a comparative analysis, it is worth noting briefly the numerous contributions on this issue found in German criminal law doctrine; see e.g. T. Horter, 'Zeitabstand zwischen Tat und Verurteilung als ungeschriebener Strafmilderungsgrund?', *Zeitschrift für die gesamte Strafrechtswissenschaft*, 2021, Vol. 133, pp. 393 et seq.

³⁸ See the explanatory memorandum to the government's draft Act amending the Penal Code and Certain Other Acts, 22 February 2022, Sejm print No. 2024, pp. 18–19; <https://www.sejm.gov.pl/Sejm9.nsf/druk.xsp?nr=2024> [accessed on 31 July 2025]. For a critical perspective on the introduction of a new catalogue of aggravating and mitigating circumstances (Article 53 §§ 2a and 2b PC), see, *inter alia*, J. Giezek, P. Kardas, 'Nowe ujęcie zasad i dyrektyw sądowego wymiaru kary. Kilka uwag na tle uchwalonych zmian normatywnych', *Prokuratura i Prawo*, 2023, No. 7–8, pp. 15–37; J. Majewski, in: Majewski J. (ed.), *Kodeks karny...*, op. cit., Article 53, margin numbers 20–21.

³⁹ See also the explanatory memorandum to the government's draft act (see footnote 38), p. 20.

⁴⁰ Cf. e.g. K. Patora, in: Kulesza J. (ed.), *Prawo karne materialne...*, op. cit., p. 417.

an unduly long period between the commission of the offence and sentencing may be regarded as an independent mitigating circumstance must be answered in the negative. An analysis of the catalogue of circumstances listed in Article 53 §§ 2a–2b PC leads to the conclusion that their nature has been clearly defined by the legislator in such a way that they are closely linked either to the offence itself or to the offender, encompassing their internal experiences or motives, personal circumstances, and conduct following the commission of the offence. By contrast, the passage of time is a factor entirely independent of both the offender and the offence committed.

CONCLUDING REMARKS ON THE NATURE OF THE PASSAGE OF TIME BETWEEN THE OFFENCE AND SENTENCING AS A MITIGATING FACTOR

While the court, when determining the sentence in a specific case, may take into account circumstances which, though not expressly listed in the law, affect not only the assessment of the offender's culpability and the social harm of the offence, but also the achievement of the preventive aims of punishment, the passage of a long period between the offence and sentencing does not fall within this category. This means that the passage of time cannot serve as an autonomous mitigating circumstance within the ordinary sentencing framework, nor as an independent ground for extraordinary mitigation. This is due not only to the absence of express normative grounds in the law but, above all, to the nature and distinct functions of both institutions.

Nonetheless, as demonstrated in the practical application of either institution, the passage of time may supplement and reinforce the mitigating effect of other circumstances on the sentence imposed by the court, provided that certain conditions are met. These include, in particular, the offender's consistently irreproachable conduct throughout the entire duration of the criminal proceedings, from the moment the offence was committed until the judgment is rendered, as well as favourably assessed post-offence behaviour reflecting personal qualities and characteristics. It follows that the lapse of time between the offence and sentencing should not be viewed as a distinct and autonomous ground for mitigation, whether within the ordinary or extraordinary sentencing framework, but rather as a reflection of the offender's post-offence conduct, evidencing the early realisation of certain preventive aims – that is, prior to the issuance of the judgment. It is worth emphasising, however, that the mere passage of a long period of time since the commission of the offence does not automatically indicate that the goal of special prevention has been achieved, unless it is supported by the offender's irreproachable attitude and commendable conduct following the offence. If the offender, having committed one offence, subsequently commits another, the mere fact that a long period of time has passed between these offences cannot justify a mitigating effect on the sentence. A return to criminal behaviour clearly shows that the offender's attitude and conduct have not improved, meaning that no form of 'automatic' (i.e. prior

to the judgment) rehabilitation has occurred, which, as a result, would reduce the need to exert influence on the offender through the imposition of a severe penalty.

It must be acknowledged that, on the one hand, as time passes following the commission of an offence, the rationale for imposing a penalty within the statutory sentencing framework may gradually diminish, although – as has been repeatedly emphasised – the mere passage of time is neither the sole nor the principal cause of such a reduction. On the other hand, it cannot be overlooked that a lengthy period (particularly one defined in detail by the provisions of Chapter XI of the Penal Code) may, in the case of most offences (for exceptions, see Article 105 PC), lead to the expiration of criminal liability, that is, in substantive terms, the elimination of the possibility to prosecute the act and impose an appropriate penal sanction.⁴¹

It is also worth noting that there is no direct or automatic correlation between the length of time elapsed from the commission of the offence to sentencing and a diminished need to pursue the penal objectives related to social impact. Under the current legal framework, the general preventive rationale for sentencing places primary emphasis on generating a deterrent effect that resonates across society, with its educational function taking secondary importance. Accordingly, the public interest in holding the offender accountable for a committed offence remains intact, regardless of the passage of time.

BIBLIOGRAPHY

- Baściuk J., Ochman P., Ondrysz K., 'Problematyka czasu w orzecznictwie Sądu Najwyższego i sądów apelacyjnych na tle przepisów kodeksowych', in: Bogunia L. (ed.), *Nowa kodyfikacja prawa karnego*, Vol. XXIV, 2009.
- Bojarski T., 'Znaczenie czynnika czasu w zakresie karalności czynu i wymiaru kary', *Teka Komisji Prawniczej PAN – Oddział w Lublinie*, 2010, Vol. 3.
- Budyn-Kulik M., 'Dyrektywy wymiaru kary w państwach członkowskich Unii Europejskiej', *Prawo w Działaniu. Sprawy karne*, 2017, No. 3.
- Ćwiakalski Z., in: Zoll A., Wróbel W. (eds), *Kodeks karny. Część ogólna. Tom 1. Część II. Komentarz do art. 53–116*, 5th ed., Warszawa, 2016.
- Giezek J., Kardas P., 'Nowe ujęcie zasad i dyrektyw sądowego wymiaru kary. Kilka uwag na tle uchwalonych zmian normatywnych', *Prokuratura i Prawo*, 2023, No. 7–8.
- Horter T., 'Zeitabstand zwischen Tat und Verurteilung als ungeschriebener Strafmilderungsgrund?', *Zeitschrift für die gesamte Strafrechtswissenschaft*, 2021, Vol. 133.
- Konarska-Wrzosek V., in: Stefański R.A. (ed.), *Kodeks karny. Komentarz*, 7th ed., Warszawa, 2025.
- Kulik M., in: Mozgawa M. (ed.), *Kodeks karny. Komentarz aktualizowany*, LEX/el., 2025.
- Łabuda G., in: Giezek J. (ed.), *Kodeks karny. Część ogólna. Komentarz*, Warszawa, 2021.
- Majewski J., in: Majewski J. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2024.
- Patora K., in: Kulesza J. (ed.), *Prawo karne materialne. Nauka o przestępstwie, ustawie karnej i karze*, Warszawa, 2023.

⁴¹ For a more detailed discussion, see e.g. V. Vachev, 'Charakter prawny przedawnienia karalności w polskim prawie karnym', *Studia Iuridica*, 2022, No. 93, pp. 243 et seq., as well as the literature cited therein.

- Raglewski J., *Model nadzwyczajnego złagodzenia kary w polskim systemie prawa karnego (analiza dogmatyczna w ujęciu materialnoprawnym)*, Kraków, 2008.
- Raglewski J., in: Kaczmarek T. (ed.), *System Prawa Karnego. Tom 5. Nauka o karze. Sądowy wymiar kary*, 2nd ed., Warszawa, 2017.
- Sienkiewicz Z., in: Bojarski M. (ed.), *Prawo karne materialne. Część ogólna i szczególna*, 9th ed., Warszawa, 2023.
- Vachev V., 'Charakter prawny przedawnienia karalności w polskim prawie karnym', *Studia Iuridica*, 2022, No. 93.
- Warylewski J. (ed.), *Czas i jego znaczenie w prawie karnym*, Gdańsk, 2010.
- Zgoliński I., in: Konarska-Wrzosek V. (ed.), *Kodeks karny. Komentarz*, 4th ed., Warszawa, 2023.

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