

BLANKA J. STEFAŃSKA



## ERASURE OF THE CONVICTION FROM CRIMINAL RECORD IN THE AMENDMENTS TO THE CODE OF 2015

### I. Introduction

Act of 20 February 2015 amending Act – the Criminal Code and some other Acts<sup>1</sup> introduces substantial changes to the scope of erasure of a conviction from criminal record. This is the first amendment to the Criminal Code concerning this institution. It consists in:

- 1) Mitigation of the conditions for erasure of a conviction from criminal record in case of adjudication of a fine or a non-custodial sentence (Article 107 § 4 and 4a of the CC);
- 2) Differentiation of the conditions for erasure of a conviction from criminal record in case of being sentenced to imprisonment with the conditional suspension of the execution of a punishment depending on the consequences of unsuccessful fulfilment of the probation period (Article 76 § 2 of the CC);
- 3) Extension of the conditions limiting erasure of a conviction from criminal record (Article 76 § 2, Article 107 § 6 of the CC);
- 4) Re-regulation of erasure of a conviction from criminal record in connection with a sentence issued by another member state of the European Union (Article 114a § 2 point 2 of the CC);
- 5) Limitation to the exemptions of erasure of a conviction from criminal record (Article 84 § 2a of the CC).

### II. Erasure of a conviction from criminal record in case of a non-custodial sentence

Before the above-mentioned amendment, erasure of a conviction in case of a non-custodial sentence was applied *ipso iure* (Article 107 § 4 of the CC) or was based on a court ruling (Article 107 § 4 *in fine* of the CC).

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<sup>1</sup> Journal of Laws of 2015, item 396, hereinafter also cited as the amended statute.

Erasure of a conviction *ipso iure* took place after a period of five years from the execution or remission of a punishment, or the limitation of the execution of a punishment. The time limit required for erasure of a conviction in case of this penalty was by half shorter than that required in case of being sentenced to imprisonment (Article 107 § 4 of the CC).

Erasure of a conviction based on a court ruling could take place after the period of three years from the moment of the execution or the remission of a punishment, or the limitation of the execution of a punishment on condition that the convict filed a motion for it.

At present, erasure of a conviction in case of this punishment takes place only *ipso iure* after three years from the execution or the remission of a punishment, or the limitation of the execution of a punishment (Article 107 § 4 of the CC<sup>2</sup>), i.e. a period that was earlier required for the erasure of a conviction based on a court ruling.

Shortening of the period required for erasure of a conviction is connected with the fact that the legislator prefers non-isolation punishments. The justification for the Bill indicates that “the discussed priority of non-detention punishments is also connected with the amendment to Article 107 § 4 of the CC, which now lays down a shorter, six-month period – from the moment of the execution, the remission or the limitation of the execution of a punishment – required for erasure of a conviction *ipso iure*”<sup>3</sup>. The Bill planned that period to take six months<sup>4</sup>, but in the course of legislative proceeding in the Sejm, it was determined to take three years.

### III. Erasure of a conviction from criminal record in case of the adjudication of a fine

Originally, the Criminal Code stipulated the same conditions for erasure of a conviction in case of the adjudication of a fine as in case of a non-custodial sentence. Erasure of a conviction in case of a fine took place *ipso iure* after five years from the execution or the remission of a punishment, or the limitation of the execution of a punishment, and on the convict’s motion a court could rule it already after three years (Article 107 § 4 of the CC). The Bill proposed the same mode and conditions for erasure of a conviction in case of a fine as was laid down in case of a non-custodial sentence, i.e. only *ipso iure* after six months

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<sup>2</sup> The provision entered into force on 21 March 2015 (Article 29 point 1 of the amended statute)

<sup>3</sup> The justification for the Bill amending Act – the Criminal Code and some other acts (Sejm’s printout no. 2393), p. 14, <http://www.sejm.pl/Sejm7.nsf/druk.xsp?nr=2393>.

<sup>4</sup> Article 1 point 64 letter a of the governmental Bill amending Act – the Criminal Code and some other acts (Sejm’s printout no. 2393), <http://www.sejm.pl/Sejm7.nsf/PrzebiegProc.xsp?id=AE8BCC6CA-5B2782EC1257CDE003CC471>.

from the execution or the remission of a punishment, or the limitation of the execution of a punishment (Article 1 point 64 letter a of the Bill). The six-month period was justified by the need to maintain proportionality because in case of a sentence to imprisonment with the conditional suspension of the execution of a punishment, erasure of a conviction takes place after six months from the end of the probation period, thus the punishment is subject to faster erasure of a conviction than the punishment of a fine or a non-custodial sentence. It was proposed to lay down a period of six months as for erasure of a conviction in case of imprisonment with conditional suspension of the execution of a punishment<sup>5</sup>. It was pointed out in the course of the legislative proceeding that “the idea behind the proposal is the introduction of a gradation of the periods required for erasure of a conviction in relation to different punishments. We want to limit the periods required for erasure of a conviction in relation to a fine to six months, and in relation to a non-custodial sentence to three years. Taking into account that renouncement of inflicting a punishment takes place after one year, it seems that such gradation, in comparison with the severity of the punishments, would be justified”<sup>6</sup>.

Act of 15 January 2015 amending Act – the Criminal Code and some other acts<sup>7</sup> adopted the proposal for the time limits, but then Resolution of 7 February 2015 of the Senate on Act amending Act – the Criminal Code and some other acts proposed to raise the period to one year<sup>8</sup>.

The Sejm approved of this amendment and, currently, erasure of a conviction in case of the adjudication of a fine takes place *ipso iure* after a year from the execution or the remission of a punishment, or the limitation of the execution of a punishment (Article 107 § 4a of the CC). Undoubtedly, it is reasonable to differentiate the periods required for erasure of a conviction with regard to the type of the punishment adjudicated. Justifiably, various periods were laid down for erasure of a conviction in case of a fine and in case of a non-custodial sentence. However, the asymmetry of the solutions concerning erasure of a conviction was not eliminated.

The same yearly period is required for erasure of the conviction in case of a court’s ruling on the renouncement of inflicting a punishment (Article 107 § 5 of the CC). It does not need justification that a sentence to a fine is more severe

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<sup>5</sup> The statement made by the Secretary of State in the Ministry of Justice, J. Kazdroń, at the sitting of the Working Committee for amending codification (no. 83) on 14 January 2015, Bulletin No. 4174/VII, <http://orka.sejm.gov.pl/Zapisy7.nsf/wgskrnrr/NKK-83>.

<sup>6</sup> The statement made by a senior specialist in the Ministry of Justice, P. Rogoziński, at the sitting of the Working Committee for amendments in codification (no. 78) on 6 November 2014, Bulletin No. 3939/VII, <http://orka.sejm.gov.pl/Zapisy7.nsf/wgskrnrr/NKK-78>.

<sup>7</sup> Passed to the Senate [http://orka.sejm.gov.pl/opinie7.nsf/nazwa/2024\\_u3/\\$file/2024\\_u3.pdf](http://orka.sejm.gov.pl/opinie7.nsf/nazwa/2024_u3/$file/2024_u3.pdf).

<sup>8</sup> Point 14 of the Resolution of the Senate of the Republic of Poland of 7 February 2015 on Act amending Act – the Criminal Code and some other acts (printout no. 3131), <http://www.sejm.pl/Sejm7.nsf/druk.xsp?nr=3131>.

than the renouncement of inflicting a punishment. In fact, the renouncement of inflicting a punishment is connected with a conviction and a clear statement that the accused is guilty of a crime he was charged with but the court decides to renounce inflicting a punishment<sup>9</sup>. That is why the period after which erasure of a conviction from criminal record should be shorter.

#### **IV. Erasure of a conviction from criminal record due to the successful probation period in relation to conditional suspension of the execution of a punishment**

In case of a sentence with conditional suspension of the execution of a punishment, erasure of a conviction – in accordance with Article 76 § 1 of the CC – takes place *ipso iure* after six month from the end of the probation period. The provision remained unchanged, but because of the introduction of new solutions in relation to the breach of conditions for the probation (Article 75a of the CC), it was necessary to determine conditions for erasure of a conviction in case a court uses them.

A court is obliged to rule the execution of a punishment:

- if, during the period of probation, the convict committed a similar crime with intent, for which he was validly sentenced to imprisonment without conditional suspension of the execution of a punishment (Article 75 § 1 of the CC);
- if a person convicted of a crime committed with the use of violence or unlawful threat towards a close relation or a minor residing with him once again flagrantly breaches the legal order during the probation period, uses violence or unlawful threat towards a close relation or a minor residing with him (Article 75 § 1a of the CC);
- if the convict, during the probation period, flagrantly breaches the legal order, especially if he commits a crime that is different from a similar crime committed with intent, for which he was validly sentenced to imprisonment without conditional suspension of the execution of a punishment, or if he evades a fine, surveillance, imposed duties or ruled penal or compensatory measures or forfeiture, if the circumstances referred to in § 2 take place after a court probation officer admonished him in writing, unless there are special reasons to act alternatively (Article 75 § 2a of the CC);
- if the convict, despite the probation officer's written admonition, during the probation period flagrantly violates the legal order, especially if he commits a crime that is different from a similar crime committed with intent for which he was validly sentenced to imprisonment without conditional suspension of

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<sup>9</sup> P. Gensikowski, *Odstąpienie od wymierzenia kary w polskim prawie karnym* [Renouncement of inflicting a punishment in the Polish criminal law], Warszawa 2011, p. 331.

the execution of a punishment, or if he evades a fine, surveillance, imposed duties or ruled penal or compensatory measures or forfeiture, unless there are special reasons to act alternatively (Article 75 § 2a of the CC).

A court may rule the execution of a punishment:

- if in the probation period a convict flagrantly violates the legal order, especially if he commits a crime that is different from a similar crime with intent for which he was validly sentenced to imprisonment without conditional suspension of the execution of a punishment, or if he evades a fine, surveillance, imposed duties or ruled penal or compensatory measures or forfeiture (Article 75 § 2 of the CC);
- if a convict, after the sentence has been issued but before it comes into force, flagrantly violates the legal order, especially if he commits a crime during this period (Article 65 § 3 of the CC).

In spite of the circumstances justifying an optional ruling on the execution of a punishment as referred to in Article 75 § 2 of the CC, it is possible not to rule the execution of it and exchange it into a non-custodial sentence to supervised unpaid community service or a fine. It is possible when, because of the weight and type of the unlawful act the perpetrator is charged with, the purpose of the punishment is served this way. In such case it is assumed that one day of imprisonment equals two days of non-custodial service, and one day of imprisonment equals double daily fine rate. Non-custodial punishment cannot last longer than two years and a fine cannot exceed 810 daily rates (Article 75a § 1 of the CC). The determination of these rates means that such an operation is possible only in case of a convict sentenced to imprisonment with conditional suspension of the execution of a punishment, but is not applicable to convicts sentenced to a statutory fine or a non-custodial punishment with conditional suspension of the execution of a punishment, which was possible earlier.

The exchange can be ruled on a convict's motion in cases, in which (before the amendment comes into force, i.e. before 1 June 2015):

- 1) a convict has been validly sentenced to imprisonment with conditional suspension of the execution of a punishment and the execution of a punishment was not ruled, if the purposes of the punishment are served this way, but:
  - a) the exchange into a fine may take place only when the income of the convict, his property ownership status or his income opportunities are sufficient to let him pay the fine, and it is established that one day of imprisonment equals double daily fine rate and the total fine cannot exceed 810 daily rates;
  - b) the exchange into a non-custodial supervised unpaid community service may take place when the convict's income, his property ownership status or his income opportunities are not sufficient to let him pay the fine; it is established that one day of imprisonment equals two days of non-custodial punishment provided that a non-custodial punishment cannot last longer than four years (Article 16 item 1 of the new CC);

2) a court, based on Article 75 § 2 of the CC, has validly ruled on the execution of a punishment of one year's imprisonment with conditional suspension of the execution of it and because of the weight and type of a crime the convict was charged with, the purposes of the punishment will be served this way; but the punishment of imprisonment can be exchanged into non-custodial supervised unpaid community service provided that one day of imprisonment equals two days of non-custodial punishment (Article 17 item 1 of the new CC).

The exchange of a punishment is inadmissible in case the convict fails to comply with the obligation of the 'no contact' provision, i.e. to refrain from contacting the victim or other persons in a determined way, or the 'stay away' provision, i.e. to refrain from approaching a victim or other persons, or the 'support' provision, i.e. support the victim, or the 'restitution' provision, i.e. fully or partly compensate for damage caused by a crime committed (Article 75a § 2 of the CC, and Article 16 item 1 and Article 17 item 2 of the new CC). Moreover, the exchange is inadmissible in case of conditional suspension of the execution of a punishment ruled towards the so-called 'to turn state's evidence' (Article 60 § 5 of the CC, Article 16 item 1 of the new CC) or under Article 75 § 7 of the CC because of the conviction made at the sitting or without the conduction of evidential proceeding (Article 335, Article 338a or Article 387 of the CPC).

In the event of such an exchange, a doubt might arise when erasure of the conviction should take place, namely, whether according to the principles determined for erasure in relation to a non-custodial sentence or a fine, and when the new punishments are served as they substituted for the ones with conditional suspension of the execution of a punishment. The last solution is strongly justified in the current legal state, where the possibility of applying conditional suspension of the execution of a punishment is limited to imprisonment (Article 69 § 1 of the CC) The legislator adopted the first solution and laid down in Article 76 § 1 of the CC that 'erasure of a conviction from criminal record takes place with the end of periods laid down in Article 107 § 4 and 4a', and thus is applied *ipso iure* in case of a non-custodial sentence – after three years' time, and in case of a fine – a year's time from the execution or the remission of a punishment, or the limitation of its execution (Article 76 § 1 *in fine* of the CC, Article 16 item 3, Article 17 item 3 of the new CC).

In case a perpetrator is convicted of two or more non-concurrent crimes and it is after the start of but before the end of the period required for erasure of a conviction from criminal record when he commits a crime again, only erasure of all convictions is admissible (Article 108 of the CC). In such a situation, the possibility of erasure of only the exchanged punishment is excluded by reference made in Article 76 § 1 *in fine* of the CC to use the provision of Article 108 of the CC directly.

## V. Limitation to erasure of a conviction from criminal record

Erasure of a conviction from criminal record under general conditions (Article 107 of the CC) depended on the execution or the remission of the penal measure, or the limitation of the execution of the penal measure – if adjudicated – with the exception of the penal measure of remedy for the damage or redress for the distress. Erasure of a conviction did not depend on a fine adjudicated in addition to a punishment<sup>10</sup> (Article 107 § 6 of the CC). Due to the separation of a distinct group of penal measures from the penal measures existing earlier, i.e. a group including forfeiture of objects directly originating from a crime (Article 44 of the CC) and forfeiture of profits obtained from the commission of a crime (Article 45 of the CC) as well as compensatory measures including the obligation to remedy or compensate the damage (Article 46 § 1 of the CC) or redress the distress (Article 47 of the CC), erasure of a conviction was made dependent on the remission or the limitation of the execution of these measures (Article 107 § 6 of the CC). The use of a general term ‘compensatory measures’ without the exclusion of whichever of them means that – unlike it was before – erasure of a conviction depends on the fulfilment of the obligation to remedy the damage and redress the distress.

Moreover, erasure of a conviction is not possible before the execution of the preventive measure (Article 107 § 6 *in fine* of the CC). Article 107 § 6 *in fine* of the CC does not lay down a preventive measure, which means it can be any measure of this kind referred to in Article 93 of the CC, i.e. (1) electronic tagging, (2) therapy, (3) addiction treatment, (4) referral to a psychiatric clinic as well as (5) ban on holding a given post, doing a given job or doing specific kind of business, (6) ban on being involved in upbringing, treatment and education of children or providing daycare for them, (7) ban on staying in particular places or in company with particular persons, approaching and contacting particular persons and leaving a particular place without a court’s consent, (8) ban on participating in mass events, (9) ban on entering gambling facilities and on getting involved in gambling, (10) obligation to temporarily leave the place of residence used together with the victim, and (11) ban on driving vehicles.

Due to the fact that from the moment the new statute enters into force the adjudicated measure constitutes an obstacle for erasure of a conviction till the moment of its execution, a question arises whether the condition must be fulfilled also in case of a conviction adjudicated before the date.

Failure to serve the preventive measure is an obstacle to erasure of a conviction in case of a fine or a non-custodial sentence adjudicated in exchange for imprisonment with conditional suspension of the execution of a punishment that was not ordered to be carried out although the sentence was valid before

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<sup>10</sup> B.J. Stefańska, *Zatarcie skazania* [Erasure of a conviction], Warszawa 2014, pp. 273–274.

the new CC entered into force (Article 16 item 1 of the new CC) and in cases in which a court, based on Article 75 § 2 of the CC validly ruled the execution of a punishment with conditional suspension of the execution of a punishment of under one year's imprisonment (Article 17 item 1 of the new CC). The new CC clearly indicates that erasure of a conviction is admissible also before the execution of the preventive measure (Article 16 § 4, Article 17 item 4 of the new CC).

In the field of erasure of a conviction ordered in a valid sentence before the new CC enters into force – under its Article 21 – the provisions of the new CC shall be applied, except for cases in which the period required for erasure of the conviction expires before the new CC enters into force. This means that after the new CC enters into force, erasure of a conviction is not possible if a preventive measure has not been executed; erasure of the conviction is not possible although it would be possible in accordance with the statute before the amendments. However, if in accordance with the statute after the amendments the period required for erasure of a conviction expired before the new statute enters into force, erasure shall come into force simultaneously with the statute (Article 21 of the new CC). The new CC introduced a principle of direct application of the new statute regardless of the fact whether it is favourable for the perpetrator or aggravates the former conditions for erasure of a conviction from criminal record, except for the situations in which the conditions for erasure have been fulfilled before the new CC enters into force. In such case, Article 4 § 1 of the CC stipulating compliance with the former statute if it is more favourable for the convict is not applicable. Article 21 of the new CC is an interpolary provision and as a special provision in the scope of erasure of a conviction excludes the application of Article 4 § 1 of the CC. The provision independently stipulates the use of the amended statute if the period required for erasure of the conviction has not expired under the force of the former statute.

As far as erasure of a conviction from criminal record is concerned, due to a successful probation period under conditional suspension of the execution of a punishment, it earlier depended – if adjudicated – on the execution or remission of the punishment, or the limitation of the execution of a punishment of a fine or a penal measure, with the exception of a penal measure in the form of obligation to compensate the damage or redress the distress (Article 76 § 2 of the CC). At present, similarly to erasure of a conviction based on general provisions, due to the exclusion of forfeiture and compensatory measures, the possibility was limited by these measures, including the obligation of remedy and redress.



## VI. Erasure of a conviction from criminal record in case of a sentence issued in another member state of the European Union

Erasure of a conviction from criminal record can be applied to adjudications of Polish courts. A Polish court cannot erase a conviction from criminal record in case of a sentence issued by a court of another state. It is due to the fact that a sentence is valid in the state of issue and executed by that state. Foreign sentences are not executed in Poland because in compliance with the Roman principle *par in parem non habet imperium*, each state has an exclusive right to execute its powers towards its citizens and other sovereign entities of international relations must not implement whatever imperious acts on the territory of another state<sup>11</sup>.

Due to the fact that in the period before the amendment to the Criminal Code, valid sentences rendered in other member states of the European Union were recognised in some criminal proceedings in Poland and a convict was treated as guilty of a crime committed in a case other than the one being subject to the Polish criminal proceeding (Article 114a of the CC), Article 107a of the CC clearly excluded erasure of such a conviction by a Polish court. The amendment repeals the provision, which may suggest that it is possible now. The conclusion like that is not justified because at present the issue is regulated in Article 114a § 2 point 2 of the CC. In accordance with this provision, a valid conviction for a crime issued by a competent criminal court in a member state of the European Union is a conviction recognised in Poland, with the exception of an act that is not a crime in Poland in which case the perpetrator is not subject to punishment or the punishment is not known under the statute. However, with respect to erasure of a conviction from criminal record resulting from such a sentence *verbal legis* “the statute that is in force in the place of conviction is applied” (Article 114a § 2 point 2 of the CC). This means that the erasure of conviction adjudicated in a member state of the European Union takes place under the conditions and in the mode stipulated in the law of the country where the sentence was issued. This is a logical solution because erasure of a conviction from criminal record is incorporated in the legal system of a given state and applying foreign regulations would interfere in the coherence of the given system. Thus, a Polish court is not competent to erase convictions from criminal record, and in case of convictions rendered in other European Union member states, erasure does not take place by virtue of law even if the requirements for that laid down in Polish criminal law were met<sup>12</sup>. It might seem that the clear exclusion of erasure of a conviction

<sup>11</sup> A. Sakowicz, *Zasada ne bis in idem w prawie karnym w ujęciu paneuropejskim* [Principle *ne bis in idem* in criminal law – Pan-European approach], Białystok 2011, p. 134.

<sup>12</sup> B.J. Stefańska, *Zatarcie skazania wynikającego z wyroku państwa obcego* [Erasure of a conviction rendered in a foreign country], PiP 2011, No. 10, p. 104.

rendered in another European Union country from the proceeding carried out in accordance with Polish regulations may *a contrario* lead to a conclusion that there is such a possibility in case of non-European Union countries' convictions. Such a conclusion is in conflict with *ratio legis* of Article 114 § 2 point 2 of the CC. The exclusion *expressis verbis* of such a possibility is connected with the requirement to take into account during a criminal proceeding valid convictions in criminal cases adjudicated in other European Union states. The provision refers to such sentences that were rendered and executed in another European Union state.

The wording of Article 114a § 2 of the CC: "in case of a conviction rendered by a court referred to in § 1, in relation to (...) erasure of a conviction – the statute that is in force in the place of issue is applied" indicates that the organ competent to erase a conviction is the competent organ of the state where the conviction was rendered. The law of the country of the sentence issue determines the requirements for erasure of convictions as well as organs authorised to take the decision and the mode of proceeding<sup>13</sup>.

The provision excludes erasure of a conviction in accordance with any mode: by virtue of law and based on a court's decision. However, it is rightly highlighted that the exclusion is not applicable in case of erasure of a conviction as a result of the amendment to the Polish Act – the Criminal Code, which de-penalises an act that the perpetrator was convicted for. The same consequence results from de-penalisation of an act, for which a perpetrator was convicted in Poland, in another country and it does not matter that the act remains illegal in Poland<sup>14</sup>. A Polish court cannot take into account a conviction rendered by another member state of the European Union that, in accordance with the law of the country, has been erased from criminal record. It also does not matter what the mode of erasure of conviction in another European Union country was, i.e. whether it was by virtue of law or based on a court's decision, and whether Polish law admits erasure of a conviction in such case. A Polish court is not competent to examine the grounds for erasure of a conviction as well as the compliance of that legal solution with the Polish regulations. It is laid down in Article 114a § 2 of the CC, which *expressis verbis* excludes the use of Article 108 of the CC, which lays down collective erasure of two or more convictions. If in another European Union country erasure of one of a few convictions takes place, although it would be impossible in accordance with Article 108 of the CC, a Polish court is obliged to acknowledge erasure of one conviction.

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<sup>13</sup> B.J. Stefańska, *Zatarcie skazania...* [Erasure of a conviction...], p. 211.

<sup>14</sup> G. Bogdan, [in:] G. Bogdan, Z. Cwiąkański, P. Kardas, J. Majewski, J. Raglewski, M. Szewczyk, W. Wróbel, A. Zoll, *Kodeks karny. Komentarz* [Criminal Code – Commentary], vol. I, Warszawa 2012, p. 1279.

## VII. Limitations to the exclusion of erasure of a conviction from criminal record

Not all convictions are subject to erasure from criminal record regardless of the time passed. The Criminal Code explicitly or tacitly excludes erasure of a conviction in some circumstances.

According to Article 106a of the CC, erasure of a conviction is not applicable in case of a sentence to imprisonment without conditional suspension of its execution for a crime against sexual freedom and morality of a victim being a minor under 15 years of age. The amended statute did not repeal this exclusion, neither did it limit it, although it was criticised in literature<sup>15</sup> and the Bill of 10 December 2013 on amending Act – the Criminal Code and some other acts contained a proposal to repeal this exclusion of erasure of a conviction and to substitute it with a requirement for a 30-year period from the execution or the remission of a punishment, or the limitation of the execution of a punishment (Article 106a of the CC Bill)<sup>16</sup>.

It was a rule in the past that – because of the inability to fulfil the prerequisite of time to pass from the execution of a penal measure or the limitation of its execution, which in accordance with Article 107 § 6 of the CC is the requirement for erasure of a conviction – erasure of a conviction could not be applied in case of an adjudication of a penal measure forever (tacit exclusion). It referred to the adjudicated forever: ban on holding posts and doing all or some types of jobs or being involved in activities connected with upbringing, education and treatment of minors as well as providing daycare for them (Article 41 § 1a and 1b of the CC), obligation to refrain from staying in company with certain circles and in certain places, ban on contacting specified persons or ban on leaving a given place of residence without a court's consent (Article 41a § 3 of the CC), and ban on driving all motor vehicles (Article 42 § 3 and 4 of the CC). It is the exception, not the rule that erasure of a conviction could take place in case of adjudication on refraining from staying in company of some circles and in some places, a ban on contacting some persons or a ban on leaving the place of residence without a court's consent, should a court – based on Article 84a § 1

<sup>15</sup> S. Szyrmer, *Nowelizacja prawa karnego w świetle ustawy z dnia 27 lipca 2005 r. o zmianie ustawy – Kodeks karny, ustawy – Kodeks postępowania karnego i ustawy – Kodeks karny wykonawczy (Dz.U. Nr 163, poz. 363)* [Amendments to criminal law in the light of Act of 27 July 2012 amending Act – the Criminal Code, Act – Criminal Procedure Code and Act – the Penalties Execution Code (Journal of Laws No. 164 item 363)], CZPKiNP 2006, No. 1, pp. 64–65; A. Marek, *Nieprzemysłane zaostrenie kar z pedofilią* [Not well-thought aggravation of punishments for paedophilia], *Rzeczpospolita* of 14 August 2005, p. C 3; *ibid.*, *Kodeks karny. Komentarz* [Criminal Code – Commentary], Warszawa 2010, p. 295; P. Stępniański, *Środki penalne we Francji i Polsce. Doktryna, legislacja, praktyka* [Penal measures in France and Poland – doctrine, legislation, practice], Warszawa 2012, p. 405.

<sup>16</sup> See B.J. Stefańska, *Zmiany w zakresie zatarcia skazania* [Change in the scope of erasure of a conviction], [in:] *Reforma prawa karnego* [Criminal Code reform], (ed.) I. Sepiolo-Jankowska, Warszawa 2014, pp. 422–425.

of the CC – recognise them as executed. It could do that, after taking opinions of expert witnesses whether the convict's conduct after the commission of crime and during the punishment execution justified a belief that after the quashing of the ban or obligation the convict would not commit a crime against sexual freedom or morality of a minor, and after the ban or obligation was executed for at least ten years (Article 84a § 1 and 2 of the CC).

The amended statute introduced substantial changes with respect to that area, allowing for the shortening of the period of applying a penal measure adjudicated forever and defined it as a measure for life. In accordance with Article 84 § 2 a of the CC, if a penal measure is adjudicated for life, a court may recognise it as executed if the convict complies with the legal order and there is no threat that he will commit a crime similar to that for which he was convicted and for which he was sentenced to a penal measure, which was executed for at least 15 years. Shall a court recognise the penal measure as executed, erasure of a conviction may take place. Thus, the amendment indirectly extended the objective scope of erasure of a conviction and the limitation to the exclusion of erasure of a conviction from criminal record.

## VIII. Conclusions

The amended statute decreased the required time limits for erasure of a conviction in case of the adjudicated punishment of a fine and a non-custodial sentence, but the period required for erasure of a conviction in case of imprisonment should have been made dependent on the length of the adjudicated imprisonment. It was highlighted in literature that a convict sentenced to three months' imprisonment should not be treated in the same way as a convict sentenced to 25 years' imprisonment because the convictions are for crimes of a different weight and the perpetrators are different, too. It was suggested that erasure of the conviction by *ipso iure* take place after 20 years from the end of the execution or the remission of a punishment, or the limitation of the execution of a punishment – in case of 25 years' imprisonment, after 15 years – in case of over five years' imprisonment, and after ten years – in case of under five years' imprisonment<sup>17</sup>.

There is no justification for the same period required for erasure of a conviction in case of the adjudication of a fine and the renouncement of inflicting a punishment.

The introduction of an opportunity to recognise a penal measure adjudicated for life as executed made it possible to erase a conviction with regard to such a measure, which was earlier a substantial drawback of the statute.

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<sup>17</sup> B.J. Stefańska, *Zatarcie skazania...* [Erasure of a conviction...], p. 282.

## **ERASURE OF THE CONVICTION FROM CRIMINAL RECORD IN THE AMENDMENTS TO THE CRIMINAL CODE OF 2015**

### **Summary**

The article discusses the changes introduced by the amendments of 20 February 2015 to the Criminal Code with respect to erasure of a conviction from criminal record. It analyses the shortening of the periods required for erasure of a conviction in case of the adjudication of a fine or a non-custodial sentence, the differentiation of the conditions for erasure of a conviction in case of imprisonment with conditional suspension of the execution of a punishment depending on the consequences of the unsuccessful probation period, the extension of the conditions limiting erasure of a conviction in case of the adjudication of all compensatory measures, and the re-regulation of erasure of a conviction rendered in another member state of the European Union and the limitation of the exclusion of erasure of a conviction from criminal record.

## **ZATARCIE SKAZANIA W NOWELIZACJI KODEKSU KARNEGO Z 2015 R.**

### **Streszczenie**

Przedmiotem artykułu są zmiany wprowadzone nowelą z dnia 20 lutego 2015 r. do kodeksu karnego w zakresie zatarcia skazania. Analizowane są zmiany polegające na skróceniu okresów wymaganych do zatarcia skazania na grzywnę lub karę ograniczenia wolności, zróżnicowaniu warunków zatarcia skazania na karę pozbawienia wolności z warunkowym zawieszeniem jej wykonania w zależności od skutków niepomyślnego upływu okresu próby, rozszerzeniu warunków ograniczających zatarcie skazania na wszystkie środki kompensacyjne, ponownym uregulowaniu zatarcia skazania wynikającego z wyroku innego państwa członkowskiego Unii Europejskiej oraz ograniczeniu wyłączeń zatarcia skazania.

## **L'EFFACEMENT DE LA CONDAMNATION DANS LA NOVÉLISATION DU CODE PÉNAL DE 2015**

### **Résumé**

Le sujet de l'article concerne les changements introduits par la nouvelle du 20 février 2015 au Code pénal dans le cadre de l'effacement de la condamnation. On analyse les changements concernant la minimalisation de période exigée pour effacer la condamnation contre une amende ou la punition de la privation de la liberté, la diversification des conditions de l'effacement de la condamnation contre la punition de la privation de la liberté en sursis conditionnel à l'exécution d'une peine dépendante des effets défavorables du temps de période d'essai, l'élargissement des conditions limitant l'effacement de la condamnation contre tous les moyens compensatoires, le règlement réitéré de l'effacement de la condamnation décidé par la sentence d'une autre Etat-membre de l'Union européenne ainsi que la limitation des exclusions de l'effacement de la condamnation.

## **ПОГАШЕНИЕ СУДИМОСТИ В НОВЕЛЛИЗАЦИИ УГОЛОВНОГО КОДЕКСА ОТ 2015 Г.**

### **Резюме**

Предметом статьи являются изменения, внесённые новеллой от 20 февраля 2015 г. в уголовный кодекс по вопросу погашения (снятия) судимости. Проанализированы изменения, заключающиеся в сокращении сроков, необходимых для погашения судимости, касающейся штрафа либо наказания в виде лишения свободы, дифференцировании условий погашения осуждения на наказание в виде лишения свободы с условным приостановлением его исполнения в зависимости от последствий неблагоприятного истечения испытательного срока, расширении условий, ограничивающих погашение судимости, касающейся всех компенсационных мер, повторном урегулировании погашения судимости, являющейся следствием судебного постановления другого государства – члена Европейского Союза, а также ограничения исключений погашения судимости.