ISSUES CONCERNING ADJUDICATION AND EXECUTION OF A FINE AFTER THE 2015 REFORM OF CRIMINAL LAW

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One of the main penal policy aims of the broad criminal law reform on the basis of the Act of 20 February 2015,[1] which entered into force on 1 July 2015, was to rationalise penal policy via changes in the structure of penalties adjudicated for crimes with emphasis placed on non-custodial penalties (a fine and limitation of liberty).

In the justification for the Bill, it was clearly indicated that it is necessary to change the former practice of justice administration, which was characterised by excessive use of the penalty of deprivation of liberty with conditional suspension of its execution (circa 60% of convictions), with a small share of self-standing fines (circa 20%) and the penalty of limitation of liberty (circa 13%). At the same time, attention was drawn to the low rate of self-standing fines in comparison with most of the European Union countries, where a self-standing fine is a dominating penalty (e.g. in the UK it accounts for over 70%, in Germany – over 60%, in Belgium – over 91%, in Finland and Denmark – over 87%), and the very "scarce value of such penalties adjudicated, even if limited wealth of Polish society was taken into consideration" was emphasised.[2]

This diagnosis together with inappropriateness of the application of the penalty of deprivation of liberty with conditional suspension of its execution occurring sometimes[3] determined the adoption of a new strategy in penal policy in which

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1 Act of 20 February 2015 amending the Act: Criminal Code and some other acts, Journal of Laws [Dz.U.] of 2015, item 396.

2 Justification for the government Bill amending the Act: Criminal Code and some other acts with draft secondary regulations of 15 May 2014, paper no. 2393, pp. 1–5; also see, Part IX of the document entitled "Ocena skutków regulacji", pp. 97–98.

3 For more, see Justification for the government Bill, pp. 1–4; *Uzasadnienie projektu ustawy o zmianie ustawy Kodeks karny*, Czasopismo Prawa Karnego i Nauk Penalnych No. 4, 2013, pp. 45–47.

"it is necessary to quickly adjudicate penalties that are really painful". It was assumed that "the penalty of deprivation of liberty with conditional suspension of its execution should be almost completely exchanged for a fine or a more broadly applied penalty of limitation of liberty".[4] It is expected that, as a result, the penalty of a fine will constitute 60% of penalties, limitation of liberty – 20%, and the penalty of deprivation of liberty, mostly suspended, will constitute the rest.[5] Thus, a fine is to become the main measure of penal response to petty and medium-gravity crimes.

The above assumptions were translated into specific normative solutions, which created a realistic opportunity to implement them.

Among the regulations that are to be conducive to the rebuilding of the system of punishment in the adopted direction, the most important solutions are those creating broad opportunities to adjudicate non-custodial penalties, including a fine, with the simultaneous limitation of the scope of application of the penalty of deprivation of liberty, especially the one with conditional suspension of its execution. They are to guarantee real restoration of the priority to non-custodial penalties in relation to the petty and medium-gravity crimes and strengthen the principle of *ultima ratio* of the penalty of deprivation of liberty in order to reduce prison population, and especially to considerably decrease the quota of people waiting for the execution of a valid imprisonment sentence, the number of whom (over 40,000) undoubtedly questions the rationality of the penal policy.

In order to achieve the aim, a new provision was introduced to the Criminal Code (hereinafter: CC): Article 37a, which changed the system of statutory penalties for crimes. By the way, it should be noticed that in the doctrine, the legal nature of the provision laid down in Article 37a is questioned. Some scholars say that the regulation envisages a directive on the length of penalty.[6] In accordance with this provision, if statute envisages the penalty of deprivation of liberty for up to eight years, a fine or the penalty of limitation of liberty may be imposed. This means that a fine and the penalty of limitation of liberty have been introduced to all statutory exposures to punishment laid down in codes and in other acts in case of the penalty of deprivation of liberty for up to eight years, in which they were non-existent in the past. This legislative step considerably extended the grounds for imposing fines (as well as the penalty of limitation of liberty).[7] It is rightly emphasised in the doctrine that the modification of the statutory exposure to punishment developed in the new legal state for a given type of crime by the introduction of an alternative penalty of a fine or limitation of liberty is "one of the most fundamental changes in the whole reform".[8]

A very important change in the provision of Article 58 §1 CC strongly corresponds to the newly adopted solution. In the original version, it laid down the principle of

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4 Justification for the government Bill, pp. 4–5.

5 See, Justification for the government Bill, Part IX "Ocena skutków regulacji", pp. 126–127.

6 See, V. Konarska-Wrzosek, [in:] V. Konarska-Wrzosek (ed.) *Kodeks karny. Komentarz*, Warsaw 2016, pp. 225–227; A. Grześkowiak, [in:] A. Grześkowiak, K. Wiak (ed.), *Kodeks karny. Komentarz*, Warsaw 2015, pp. 321–324.

7 See, J. Majewski, [in:] W. Wróbel, A. Zoll (ed.), *Kodeks karny. Część ogólna*. Vol. I: *Komentarz do art. 1–52*, Warsaw 2016, pp. 736–742.

8 J. Giezek, *O sankcjach alternatywnych oraz możliwości wyboru rodzaju wymierzanej kary*, Palestra No. 7–8, 2015, p. 25.

treating the penalty of deprivation of liberty in its absolute form as *ultima ratio* in case of crimes carrying alternative non-custodial penalties (a fine or limitation of liberty). The new version of Article 58 §1 CC, which stipulates that if statute does not stipulate a possibility of choosing the type of punishment and a crime carries the penalty of deprivation of liberty for up to five years, a court must impose the penalty of deprivation of liberty only if another penalty or a penal measure cannot meet the aim of punishment, changed the principle of the absolute penalty of deprivation of liberty into the principle of *ultima ratio* of the penalty of deprivation of liberty in general, i.e. also in case of conditional suspension of its execution. It is easy to notice that the penalty of deprivation of liberty with conditional suspension of its execution was excluded from the directive on the priority to non-custodial penalties in case of alternative exposure to punishment, which obviously, in conformity with the aim of the reform, limits the application of conditional suspension of the penalty of deprivation of liberty execution and increases the preference for non-custodial penalties, including a fine.

It is worth noticing that in the present legal state, the directive on the priority to non-custodial penalties is applicable to crimes carrying the penalty of deprivation of liberty for up to five years, which at the same time carries a penalty or penalties of more lenient nature. With respect to the content of the provision of Article 37a CC, which changed all statutory exposures including the penalty of deprivation of liberty not exceeding five years (in general eight years) into alternative exposures,[9] the scope of the directive on the priority to non-custodial penalties, also a fine, was considerably extended. Thus, if the statutory exposure to a penalty is an alternative one and envisages a possibility of choosing between imprisonment and non-custodial penalties, a court should first of all consider a possibility of adjudicating a fine or the penalty of limitation of liberty, or a penal measure.

The radical limitation of the possibility of applying conditional suspension of the execution of the penalty of deprivation of liberty also serves the extension of the scope of application of the penalty of a self-standing fine (as well as the penalty of limitation of liberty). It is pointed out in literature that they are of critical importance for the success of the penal policy reform.[10] And although changes covered almost all areas of conditional suspension of the execution of punishment, in the context of new penal philosophy, the most important modifications concern the conditions for the application of this solution. Indeed, the amended provision of Article 69 §1 CC limited the possibility of applying conditional suspension of the execution of punishment exclusively to the penalty of deprivation of liberty for the maximum of one year. In the original version of Article 69 §1 CC, the maximum limit to the penalty of deprivation of liberty, which could be subject to suspension, was two years. Moreover, a new additional condition for the application of conditional suspension of the execution of the penalty of deprivation of liberty was introduced in Article 69 §1 CC, i.e. one concerning the former period of life of a perpetrator as a condition that at the time of committing a crime, a perpetrator was not sentenced to imprisonment (adjudicated as an absolute or conditionally suspended pen-

[9] In some authors' opinion, Article 37a CC lays down a directive on the type of punishment. See, footnote no. 6.

[10] See, A. Zoll, *Środki związane z poddaniem sprawcy próbie i zamiana kary*, [in:] W. Wróbel (ed.), *Nowelizacja prawa karnego 2015. Komentarz*, Kraków 2015, pp. 429–430 and 436.

alty). The third condition for the application of conditional suspension of the execution of the penalty of deprivation of liberty, which is the criminological prediction concerning a perpetrator of a crime, i.e. an assumption that the conditional suspension of the execution of the penalty not exceeding one year will be sufficient for the achievement of the aim of punishment, especially the prevention of a return to crime, remained unchanged.

Such important changes may play an important role in reducing the application of conditional suspension of the execution of the penalty of deprivation of liberty and the increase in the frequency of adjudicating a fine and the penalty of limitation of liberty. Indeed, they should be perceived in the context of the new regulation of Article 37a CC and the directive of Article 58 §1 CC, which treats the (absolute and conditionally suspended) penalty of deprivation of liberty as *ultima ratio*. Nevertheless, in literature, it is rightly raised that such a drastic limitation on the application of conditional suspension of the execution of the penalty of deprivation of liberty may cause an increase in the number of people sentenced to imprisonment, which can result in a deepened crisis of the penal policy.[11] By the way, it should be added that the amendment to Article 69 §1 CC completely excludes the application of conditional suspension of the execution of non-custodial penalties, i.e. a self-standing fine and the penalty of limitation of liberty, inter alia due to a scarce scope of application of this penal response in the practice of justice administration.

The repealing of Article 58 §2 CC, which laid down the principle that a fine must not be imposed on a perpetrator whose income, financial relations or earning possibilities substantiate a belief that a perpetrator will not pay that fine and there will be no possibility of enforcing it, is also to serve to fulfil the legislator's aim to make a fine a basic means of response to petty and medium-gravity crimes. The introduction of that principle to the Criminal Code of 1997 aimed to prevent adjudicating unenforceable fines and, this way, limit the number of executed substitute penalties of imprisonment and, at the same time, ensure personal painfulness by avoiding the transfer of the obligation to pay a fine onto the family.[12] J. Majewski rightly notices that: "Those reasons did not stop being up-to-date" and he is "absolutely critical" of the decision on the derogation of Article 58 §2 CC.[13]

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[11] See, Oświadczenie Komisji Kodyfikacji Prawa Karnego z dnia 22 maja 2014 r. (copied paper); A. Zoll, *Regulacja warunkowego zawieszenia wykonania kary pozbawienia wolności w ustawie z 20 lutego 2015 r.*, [in:] M. Bojarski, J. Brzezińska, K. Łucarz (ed.), *Problemy współczesnego prawa karnego i polityki kryminalnej. Księga jubileuszowa Profesor Zofii Sienkiewicz*, Wrocław 2015, p. 412; V. Konarska-Wrzosek, [in:] A. Adamski, M. Bernat, M. Leciak (ed.), *Ustawowe przesłanki stosowania warunkowego zawieszenia wykonania kary w założeniach nowej polityki karnej*, Warsaw 2015, pp. 168 and 180; J. Lachowski, *Ocena wybranych zmian w zakresie instytucji warunkowego zawieszenia wykonania kary w ustawie z 20 lutego 2015 r.*, [in:] M. Bojarski, J. Brzezińska, K. Łucarz (ed.), *Problemy współczesnego prawa…*, pp. 250–251 and 254–255.

[12] Uzasadnienie rządowego projektu kodeksu karnego [Justification for the government Bill amending the Criminal Code], [in:] I. Fredrich-Michalska, B. Stachurska-Marcińczak et al. (ed.), *Nowe kodeksy karne z 1997 r. z uzasadnieniami*, Warsaw 1997, pp. 137–138. For more on the issue, see M. Melezini, *Kara grzywny*, [in:] M. Melezini (ed.), *System Prawa Karnego*. Vol. 6: *Kary i inne środki reakcji prawnokarnej*, 2nd edition, Warsaw 2016, pp. 128–132 and literature referred to therein.

[13] See, J. Majewski, *Kodeks karny. Komentarz do zmian 2015*, Warsaw 2015, p. 168. Also see, T. Szymanowski, *Nowelizacja Kodeksu karnego w 2015 r.*, Przegląd Więziennictwa Polskiego No. 87, 2015, p. 17.

The justification for the government Bill of 2015 in general does not point out the motives for repealing Article 58 §2 CC, and reference to the effectiveness of enforcement of fines in case of the lack of execution or adducing an argument that adjudication of a fine is equalled to the principle of defining painfulness of financial penalties in other parts of the legal system cannot be treated as the justification of the made change. Moreover, it should be noted that in another part of the justification for the government Bill, concerning changes in the Penalty Execution Code (henceforth: PEC), there is a statement that "It is commonly known that efficiency of enforcement of fines and court fees is very low. It results in lower revenue to the state budget and discontinuation of executive proceedings (especially concerning court fees) as well as the necessity to adjudicate and order execution of substitute penalties of imprisonment, which additionally increases the incarceration rate in our country".[14] And this fact of low efficiency of fines execution induced the legislator to introduce changes to the Penalty Execution Code, which are expressed in two new provisions, i.e. in Article 12a PEC and Article 48a PEC, which is discussed below.

Not earlier than in Part IX of the justification, entitled "Assessment of execution results", arguments for repealing Article 58 §2 CC were pointed out. It was assumed that the directive banning adjudication of a fine laid down in Article 58 §2 CC is "the basic source of problems and pathologies connected with adjudication of fines". It was also emphasised that it was just this provision that contributed to the considerable limitation of the role of a self-standing fine in the penal policy, especially in a situation in which deprivation of liberty with conditional suspension of its execution substitutes for a self-standing fine.[15] There is no justification, as J. Majewski rightly notes, for such a belief.[16] The reasons for the defective structure of adjudicated penalties are more complicated. It is necessary to leave this issue outside the scope of the present discussion because it goes beyond its subject matter, however, it is worth drawing attention to the fact that they are mainly connected with schematic adjudication practice that has been present in our country for dozens of years as well as defectiveness of some statutory solutions concerning, e.g. conditional suspension of the execution of the penalty of deprivation of liberty. If the success of the new penal strategy really depended only on the regulation concerning the ban on adjudicating a fine in the conditions laid down in Article 58 §2 CC, the criminal law reform would not be so broad and in-depth and the change in the legal state would only consist in repealing Article 58 §2 CC.

The justification for the government Bill points out that the repealing of Article 58 §2 CC "frees a court from an obligation to examine a perpetrator's financial position in order to determine grounds for adjudicating a fine".[17] As a result, when a court chooses a fine, it should take into account general directives on imposing penalty and not what the financial position of a perpetrator is.

It should be highlighted that the ban on adjudicating an unenforceable fine laid down in the repealed Article 58 §2 CC was connected with almost the same

[14] See, Justification for the government Bill, paper no. 2393, pp. 14 and 15.
[15] See, Justification for the government Bill, Part IX: "Ocena skutków regulacji", pp. 125–126.
[16] See, J. Majewski, *Kodeks karny. Komentarz…*, p. 169.
[17] Justification for the government Bill, p. 13.

requirements (with the exception of personal features and conditions), which influence the determination of a daily rate of a fine adjudicated in accordance with the rate model or an amount of a fine adjudicated in accordance with the amount model. However, the models of adjudicating a fine remained unchanged. Within the rate model of adjudicating a fine, a court first of all determines the number of daily rates in accordance with the gravity of a crime and the size of guilt in a given case, and then, in the second stage, it determines the daily rate taking into consideration the requirements laid down in Article 33 §3 CC. Pursuant to this provision, a court takes into consideration a perpetrator's income, his personal and family situation, financial position and earning possibilities. Within the amount model of adjudicating a fine, a court also determines a fine amount having considered a perpetrator's income, personal and family situation, financial position and earning possibilities (Article 11 §3 of CC implementation regulations).[18] The indicated circumstances are identical. Thus, a court, determining a daily rate or the amount of a fine, still should take into consideration the broadly understood financial status of a perpetrator and, as W. Górowski emphasises, conduct proceedings to take evidence in order to verify a perpetrator's financial circumstances.[19] Moreover, Article 213 §1a Criminal Procedure Code (henceforth: CPC) introduced a very important procedural instrument making it possible to obtain information concerning a perpetrator's financial relations and sources of income, including conducted and concluded fiscal proceedings, in the form of an obligation to obtain this information from the ICT system of the minister for public finance, which can be done electronically. However, if in the course of proceedings it is determined that a perpetrator has no property and the directives on punishment suggest adjudication of a fine, this penalty may be adjudicated due to the repealing of the ban on adjudicating an unenforceable fine. In such a case, a court must determine a daily rate at the minimum level of PLN 10,[20] and in case of an amount of fine, when determining it, it must take into consideration that fact.

It is worth quoting the latest statistical data concerning the structure of penalties adjudicated in 2014, i.e. in the last full year before the reform, and in 2016, the first full year after the reform,[21] in order to initially verify the results of the 2015 reform of criminal law and establish the role of a self-standing fine in criminal courts case law.

The analysis of case law in 2014 and 2016 proves that the structure of adjudicated penalties considerably changed. First of all, the share of self-standing fines increased (from 21.3% in 2014 to 34.1% in 2016). It should be emphasised that in the period when the Criminal Code of 1997 was in force, i.e. in 1999–2016, it was the highest rate of self-standing fines adjudicated. Earlier (until 2016), it never exceeded 24%.

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[18] See, M. Melezini, *Kara grzywny…*, pp. 122–145.

[19] For more on the issue, see W. Górowski, *Orzekanie kary grzywny po 1 lipca 2015 r.*, Palestra No. 7–8, 2015, pp. 68–74.

[20] See, W. Górowski, *Grzywna*, [in:] W. Wróbel, *Nowelizacja prawa karnego 2015. Komentarz*, Kraków 2015, p. 71.

[21] Statistical data are available on the website of the Department of Managerial Statistics of the Ministry of Justice [Wydział Statystycznej Informacji Zarządczej Ministerstwa Sprawiedliwości]: https://isw.ms.gov.pl/pl/baza-statystyczna/opracowanie-wieloletnie [accessed on 30/01/2018]; calculations made by the author.

The number of self-standing fines increased from 63,078 in 2014 to 98,778 in 2016, i.e. by 35,700 sentences. Therefore, one can state that the importance of a self-standing fine in the penal policy greatly increased, which should be recognised as an absolutely positive tendency.

At the same time, in that period, the rate of penalties of limitation of liberty also rose (from 11.2% in 2014 to 21.3% in 2016). The number of such sentences rose from 33,009 in 2014 to 61,720 in 2016, i.e. by 28,711.

Such a considerable increase in non-custodial sentences makes it possible to state that in 2016 non-custodial penalties (a self-standing fine and limitation of liberty) played a dominating role in the penal policy. Their share in the structure of sentences in 2016 exceeded 50% (it rose from 32.5% in 2014 to 55.4% in 2016).

Significant changes took place in relation to the penalty of deprivation of liberty. Attention should be drawn to a significant decrease in the number of this type of penalties (from 199,167 in 2014 to 125,368 in 2016), i.e. by 73,799. The rate of sentences of deprivation of liberty fell from 67.4% in 2014 to 43.3% in 2016. What is important, the number of the penalties of deprivation of liberty with conditional suspension of execution fell considerably (from 163,534 in 2014 to 81,673 in 2016), i.e. by as many as 81,861 sentences. The percentage of the penalty of deprivation of liberty with conditional suspension of its execution fell from 55.4% in 2014 to 28.2% in 2016. The penalty of deprivation of liberty with conditional suspension of its execution stopped playing the dominating role in penal policy and its share in the structure of penalties (28.2%) was lower than the share of a self-standing fine (34.1%).

The picture of adjudication practice in relation to the penalty of absolute deprivation of liberty is alarming. The share of this type of punishment in the structure of sentences increased from 12.1% in 2014 to 15.1% in 2016. The number of sentences of absolute deprivation of liberty rose from 35,633 in 2014 to 43,695 in 2016, i.e. by 8,062 sentences. It can be presumed that in some cases the penalty of absolute deprivation of liberty was adjudicated instead of the penalty of deprivation of liberty with conditional suspension of its execution because of the drastic limitation of the scope of application of this probation instrument.

The brief analysis of the penal policy in 2014 and 2016[22] and the role of a self-standing fine in the structure of sentences makes it possible to formulate a careful conclusion that the direction of changes in case law is in general in conformity with the assumptions of the criminal law reform. This is because the importance of a self-standing fine (as well as the penalty of limitation of liberty) is growing and the role of the penalty of deprivation of liberty with conditional suspension of its execution is decreasing. However, at the same time, courts more often apply a more painful penal response, i.e. a penalty of absolute deprivation of liberty. At present, it is not possible to unambiguously answer the question whether it results from aggravation of penal repression, or changes in the requirements for the application of the penalty of deprivation of liberty with conditional suspension of its execution, or perhaps the changes in the structure of criminality. We should hope that successive years

[22] I will present a broad analysis of the penal policy after the 2015 criminal law reform in a separate paper.

would bring further positive changes in case law, including an increase in the share of a self-standing fine to the level expected, i.e. 60% of all sentences.

It is necessary to take into account that the success of the whole criminal law reform depends not only on changes in case law, including the increase in the significance of a self-standing fine as a means of fighting against petty and medium-gravity crimes. Execution proceedings also play an important role in achieving the legislator's assumptions.

In case of a fine, the issue of fundamental importance is to develop such a statutory model of its execution that the form of painfulness of a fine (an economic nature) will not basically change and become different in terms of quality, especially a substitute penalty of deprivation of liberty. A considerable increase in the execution of substitute penalties of deprivation of liberty may have a negative impact on prison population, contributing to the rise in the number of convicts. It is worth reminding that the main assumption of the 2015 criminal law reform was the reduction of prison population and a decrease in the number of people waiting for the execution of valid imprisonment sentences.[23]

On the other hand, in literature, an "increase in the number of adjudicated and executed substitute penalties, which had already been high", was reported.[24] The statistical data presented by K. Postulski indicate that, while in 2011 the number of substitute penalties of deprivation of liberty ruled and ordered to be executed instead of a fine, in relation to convicts who were not in prison, accounted for 40,324 (5.7% of concluded proceedings), in 2012 it rose to 59,162 (8.9% of concluded proceedings). At the same time, this author established that "15% of convicts serving a sentence in 2011 were people who should have paid a fine and/or immediately leave prison, or reduce the time of staying there in connection with the execution of other penalties of deprivation of liberty".[25]

The diagnosis indicating the deteriorating efficiency of executing fines and a concern about a further increase in the number of substitute penalties as well as a critical opinion about rules of ordering execution of substitute penalties aggravated by the Act of 16 September 2011 amending the Act: Penalty Execution Code and some other acts indicated an urgent need of changes to the legal state. They were introduced by the already mentioned Act of 20 February 2015 within an in-depth criminal law reform.

The scale of change in relation to the execution of a fine was not big. In general, it was connected with the introduction of two new provisions, i.e. Article 12a PEC and very important Article 48a PEC.

The solution laid down in Article 12a PEC is connected with the need to improve the efficiency of enforcing fines, which the legislator noted. Having that in mind, the legislator introduced an additional instrument motivating a convict to settle liabilities resulting from fines (and other court fees). Namely, Article 12a PEC

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[23] See, Justification for the government Bill, pp. 1–4.

[24] See, K. Postulski, *Zmiany dotyczące wykonywania kary grzywny obowiązujące od 1 lipca 2015 r.*, Palestra No. 5–6, 2015, p. 61.

[25] *Ibid*., p. 56. Also see, K. Postulski, *Orzekanie i wykonywanie zastępczej kary pozbawienia wolności (stan prawny, obawy, propozycje)*, Probacja No. II, 2013, pp. 57–71.

obliges a court, in case a convicted person does not settle a fine in time laid down in the provisions of PEC, to immediately pass the information about the debt to offices of economic information, operating on the basis of the Act of 9 April 2010 on the provision of economic information and exchange of economic data.[26] A court is obliged to pass the information to all such operating offices. In case of partial or full settlement of liabilities or their enforcement, a court is obliged to immediately, not later than in 14 days, request that those offices update the economic information. It should be added that the provision of Article 12a PEC at the same time imposed an obligation on a court to inform the convicted person in the call for a fine payment that in case the full amount is not settled in time laid down in PEC, the economic information will be passed to those offices.[27] The justification for the government Bill expresses a hope that this information will result in the expected way and motivate a considerable group of the convicted to settle their liabilities.[28]

Article 48a PEC introduced a significant and expected change. It took into consideration one of many proposals of the doctrine concerning moderation of rigours connected with ordering the execution of substitute penalty of deprivation of liberty. The provision introduced a possibility of a stay of the execution of the substitute penalty of deprivation of liberty at any time, provided the convicted declares in writing that he/she will perform community service and succumb to its rigours. As far as the motives for the new solution of Article 48a PEC are concerned, the legislator indicated the pursuit of substitute execution of a fine, especially in the form of community service and pointed out that this form of the execution of a fine has an educational, creative value and reduces prison population and budgetary spending in this area.[29]

The stay of the execution of the substitute penalty of deprivation of liberty takes place until community service is performed or the remaining amount of money to be paid as a fine is settled. At the same time, a court determines the type of community service to be performed by the convict. If he/she evades the responsibility to perform community service, a court must order the substitute penalty of deprivation of liberty. It should be added that, in accordance with Article 48 §6 PEC, it is inadmissible to re-apply a stay of the execution of the same substitute penalty of deprivation of liberty.[30]

The regulation adopted should result in the reduction of the number of substitute penalties of deprivation of liberty served. Undoubtedly, it makes the model of fines execution more flexible. It must be emphasised at the same time that, in practice, community service constitutes a significant alternative to the substitute penalty of deprivation of liberty. The statistical data presented by K. Postulski show that the number of decisions concerning the exchange of a fine for community service to be

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[26] Journal of Laws [Dz.U.] No. 81, item 530, as amended.

[27] For more on the issue, see W. Górowski, *Grzywna*, [in:] W. Wróbel, *Nowelizacja…*, pp. 77–80; K. Postulski, *Zmiany dotyczące wykonywania…*, pp. 56–57.

[28] Justification for the government Bill, pp. 45–48.

[29] Justification for the government Bill, p. 53.

[30] See, K. Postulski, *Kodeks karny wykonawczy. Komentarz*, 3rd edition, Warsaw 2016, pp. 472–476.

performed is considerable and accounts for: 92,514 in 2010, 25,496 in 2011, 45,541 in 2012, and 83,465 in 2013.[31]

To sum up, it should be emphasised that the nearest future will show whether the introduced changes concerning the statutory model of fine execution will increase its efficiency and reduce the number of substitute penalties of deprivation of liberty served. A hope may be expressed that with the increase in the role of a fine in the penal policy, the efficiency of fine execution will rise, too.

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ISSUES CONCERNING ADJUDICATION AND EXECUTION OF A FINE AFTER THE 2015 REFORM OF CRIMINAL LAW

Summary

The article discusses the issue of new solutions concerning a fine introduced to the Criminal Code and the Penalty Execution Code by an abundant amendment to criminal law of 20 February 2015. The discussion focuses on the analysis of regulations that, in compliance with the legislator's assumptions, are to make a fine the basic means of penal response to petty and medium-gravity crimes. The article also attempts to present a preliminary evaluation of case law in 2014 and 2016. The confrontation of the 2015 criminal law reform assumptions with the practice made it possible to state that the significant changes that took place in case law in general go in the right direction and should be positively assessed. Undoubtedly, the importance of a fine in the penal policy considerably rose and its share increased from 21.3% to 34.1%. It has also been established that non-custodial penalties dominated the structure of sentences. They accounted for 55.4% of convictions. In conformity with the reform assumptions, the share of the penalty of deprivation of liberty with conditional suspension of its execution clearly decreased (from 67.4% to 43.3%). What is alarming, there is an increase in the percentage of the adjudicated penalty of absolute deprivation of liberty (from 12.1% to 15.1%). Finally, the article analyses selected issues concerning the execution of a fine, especially the new regulation laid down in Article 12a PEC and Article 48a PEC, which are aimed at raising the efficiency of fine execution and reducing the scope of application of the substitute penalty of deprivation of liberty.

Keywords: a fine, criminal law reform, non-custodial penalties, *ultima ratio* of the penalty of deprivation of liberty, substitute penalty, penal policy

Z PROBLEMATYKI ORZEKANIA I WYKONYWANIA GRZYWNY PO REFORMIE PRAWA KARNEGO Z 2015 R.

Streszczenie

Przedmiotem artykułu są nowe rozwiązania dotyczące grzywny, wprowadzone do kodeksu karnego i kodeksu karnego wykonawczego obszerną ustawą nowelizującą prawo karne z dnia 20 lutego 2015 r. Rozważania koncentrują się na analizie uregulowań, które zgodnie z założeniami ustawodawcy mają uczynić z kary grzywny podstawowy środek reakcji karnej na przestępstwa drobne i średniej wagi. W opracowaniu podjęto również próbę przedstawienia wstępnych ocen orzecznictwa sądów w 2014 r. i w 2016 r. Konfrontacja założeń reformy prawa karnego z 2015 r. z praktyką pozwoliła stwierdzić, że istotne zmiany, które nastąpiły w orzecznictwie sądów, zasadniczo zmierzają w dobrym kierunku i należy je ocenić pozytywnie. Nie ulega wątpliwości, że wydatnie wzrosło znaczenie grzywny w polityce karnej, której udział powiększył się z 21,3% do 34,1%. Ustalono też, że kary nieizolacyjne dominowały w strukturze kar orzeczonych. Stanowiły 55,4% ogółem skazań. Zgodnie z założeniami reformy wyraźnie zmniejszył się udział kary pozbawienia wolności z warunkowym zawieszeniem jej wykonania (z 67,4% do 43,3%). Niepokoi wzrost odsetka orzeczonych kar bezwzględnego pozbawienia wolności (z 12,1% do 15,1%). W końcowej części artykułu analizie poddano wybrane problemy związane z wykonywaniem grzywny, a w szczególności nowe uregulowania ujęte w art. 12a k.k.w. i art. 48a k.k.w., które mają na celu zwiększenie efektywności wykonywania grzywny i ograniczenie zakresu stosowania zastępczej kary pozbawienia wolności.

Słowa kluczowe: kara grzywny, reforma prawa karnego, kary nieizolacyjne, *ultima ratio* kary pozbawienia wolności, kara zastępcza, polityka karna

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