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‘INTERVENTION’ DRAFT AMENDMENT TO THE PENAL CODE IN THE CONTEXT OF CHANGES MADE TO CRIMINAL LAW PURSUANT TO THE ACT OF 7 JULY 2022 (SELECTED PROBLEMS)

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Abstract

This study examines the changes in substantive criminal law already made and planned for the years 2022–2025. The starting point for the analysis is the issue of the motives for and scope of the changes introduced to the Penal Code under the Act of 7 July 2022, which radically tightened criminal liability, significantly increasing the level of punitiveness of criminal law, while being based on an unreliable diagnosis of the reality concerning the picture of crime. In this context, proposals for a corrective and, at the same time, interventionist amendment to the Penal Code of 14 June 2024, presented by the Criminal Law Codification Commission, are discussed. Expressing a positive opinion on the proposed changes, it is considered that their scope is narrow, and the need to undertake work on the preparation of a new Penal Code in the near future is indicated. Following the comments made on the draft amendments to the Penal Code prepared by the Codification Commission, a proposal for the government draft amendment to the Penal Code of 28 October 2024 (UD 153), developed on the basis of the draft of the Criminal Law Codification Commission and adopted by the Council of Ministers on 15 July 2025, is presented. Although the direction of changes in both drafts is similar, not all solutions proposed by the Codification Commission received government support. The final part of the study indicates those proposals of the Codification Commission that were rejected by the government, which points to a very narrow, albeit necessary, scope of the

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proposed amendment. Nevertheless, in the opinion of the author of the study, the proposed changes presented in the draft significantly increase the court's discretion in the imposition of punishment and may contribute to the rationalisation of the administration of justice.

Keywords: criminal law, amendment to the Penal Code, Criminal Law Codification Commission, government draft amendment to the Penal Code

Against the background of over 100 amendments to the Penal Code of 1997 (hereinafter referred to as the 'PC'),[1] what stands out is the extensive and profound change in criminal law introduced under the Act of 7 July 2022.[2] Based on the belief that the effectiveness of criminal law depends on the severity of criminal repression, with a clearly populist[3] undertone referring to the need to strengthen citizens' sense of security, it radically tightened criminal liability, significantly increasing the level of punitiveness of criminal law. This was not limited to a drastic tightening of the limits of statutory penalties assigned to particular types of prohibited acts, leading to a clear internal inconsistency in the criminal statute; systemic changes were also introduced in the general part of the Penal Code which, additionally, within the framework of such tightened criminal sanctions, limited the courts' freedom in determining the penalty, directing the courts towards the choice of more severe penal repression.

The legislator has, of course, the right to set a higher degree of punitiveness of the criminal law system than before, but changes aimed at making punishment more stringent require the drafter to indicate real axiological and criminal-policy reasons. This is required by the constitutional principle of proportionality contained in Article 31(3) of the Constitution of the Republic of Poland.[4] Meanwhile, the justification for the Act shows that:

> 'The basic assumption underlying the draft amendments to the Penal Code was the need to strengthen criminal-law protection in the field of acts detrimental to such fundamental legal interests as human life and health, freedom, sexual freedom or property. The main objective of the draft is to strengthen criminal-law protection against the most serious categories of crimes by tightening criminal liability for: (1) the most serious crimes against sexual freedom, in particular to the detriment of minors, (2) road crimes committed while under the influence of alcohol or drugs, (3) crimes committed as part of organised criminal groups.'[5]

Later in the justification, it was indicated that 'The current legal state does not fully implement the protective function of criminal law and therefore does not provide

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1 Act of 6 June 1997 – Penal Code (Journal of Laws of 2015, item 383).

2 Act of 7 July 2022 amending the Act – Penal Code and Certain Other Acts (Journal of Laws of 2022, item 2600). The Act entered into force on 1 October 2023 (Journal of Laws of 2023, item 403).

3 On the concept of 'penal populism', see W. Zalewski, 'Populizm penalny – próba zdefiniowania zjawiska', in: Sienkiewicz Z., Kokot R. (eds), *Populizm penalny i jego przejawy w Polsce*, Wrocław, 2009, pp. 13–32.

4 See K. Wojtyczek, 'Zasada proporcjonalności jako granica prawa karania', *Czasopismo Prawa Karnego i Nauk Penalnych*, 1999, No. 2, pp. 33–51.

5 *Uzasadnienie do projektu ustawy* (Sejm print No. 2024), Sejm of the 9th term, p. 1.

sufficient tools to reduce crime and safeguard important social values.'[6] It is difficult to find, in such arguments, real reasons for the need to drastically increase the degree of punitiveness of criminal law. In particular, there is a lack of reliable criminal-policy argumentation, that is, a proper diagnosis of the facts concerning the image of crime and the state of justice practice, which would support the need for changes or modifications in the area of criminal law in order to make it more repressive.

The statistical data referred to in the 'Regulatory Impact Assessment' attached to the justification, regarding the diagnosis of the state of crime in the area of the most serious crimes, do not confirm the thesis concerning the need for severe repression against perpetrators of acts with a high degree of reprehensibility. On the contrary, as demonstrated in the opinion prepared for the Senate of the Republic of Poland,[7] 'Crime "targeted" by the draft initiator is systematically decreasing (…) the downward trend is evident.' The authors of the opinion note, among other things, that the number of identified crimes of rape decreased from 1,567 in 2010 to 1,326 in 2018 and to 1,034 in 2020; sexual abuse of minors (Article 200 PC) decreased from 1,532 in 2010 to 1,360 in 2020; murder decreased from 680 in 2010 to 641 in 2020; and the crime of participating in an organised criminal group (Article 258 PC) decreased from 1,311 in 2010 to 804 in 2020. In turn, the number of persons convicted of crimes against transport safety decreased from 71,861 in 2014 to 56,771 in 2018, including convictions for the crime of causing an accident resulting in death or serious bodily injury (Article 177 § 2 PC), which decreased from 1,999 in 2016 to 1,412 in 2020.[8] It should be added that, in arguing for the thesis concerning the need to tighten the punishment system, the drafter also referred to the results of surveys carried out at the Institute of Justice on society's opinion regarding the tightening of criminal liability. However, as the authors of the opinion prepared for the Senate of the Republic of Poland correctly point out, surveys, partly conducted 'incorrectly', refer to the social 'acceptance of a specific criminal policy' and are not an appropriate tool for diagnosing the effectiveness of criminal law; therefore, 'They cannot determine the substantive necessity of interfering with civil rights and freedoms.'[9]

Moreover, the latest results of extensive research analysing, among other things, the state of crime in Poland and residents' sense of security, published by the Institute of Justice in the 'Atlas of Crime in Poland 7',[10] not only confirm, in principle, the findings made by the authors of the opinion referred to above regarding the decline

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[6] Ibidem, p. 3.

[7] J. Giezek, D. Gruszecka, K. Lipiński, *Opinia na temat ustawy z dnia 7 lipca 2022 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw (druk senacki nr 762)*, Biuro Analiz, Dokumentacji i Korespondencji, Warszawa, 2022, pp. 1–97.

[8] For more on this subject, see J. Giezek, D. Gruszecka, K. Lipiński, *Opinia*…, op. cit., pp. 12–13 and 19. See also M. Melezini, 'Tendencje w polityce karnej po reformie prawa karnego z 2015 r.', in: Góralski P., Muszyńska A. (eds), *Racjonalna sankcja karna w systemie prawa*, Warszawa, 2019, pp. 125–127.

[9] For more on this subject, see J. Giezek, D. Gruszecka, K. Lipiński, *Opinia*…, op. cit., pp. 13–20.

[10] P. Ostaszewski, J. Włodarczyk-Madejska, J. Klimczak, B. Gruszczyńska, P. Waszkiewicz, *Atlas przestępczości w Polsce 7*, Warszawa, 2025, pp. 5–246; https://iws.gov.pl/product/atlas-przestepczosci-w-polsce-7/ (accessed: 6 July 2025).

in crime in the area of the most serious crimes in the crime categories listed by the draft initiator, but also indicate a continuing downward trend in crime in recent years. The summary of the research stated that

> 'The most important finding presented in the "Atlas of Crime in Poland 7", resulting from virtually every chapter, is the unprecedented state of security in Poland over the past three decades. In terms of criminal security, Poland is one of the safer European countries (…) Despite regularly publicised drastic cases of violations of social and legal norms in the media, people living in Poland feel safe and declare that they rarely fall victim to the most serious crimes.'[11]

Referring to the data presented in the above-mentioned publication regarding recorded crimes in selected categories, limited to 2013 (from that year onwards, the Police has used a new statistical system) and to 2023, it should be noted that the total number of recorded crimes decreased from 992,978 in 2013 to 792,014 in 2023, including: the number of murders decreased from 570 to 559, rape from 1,256 to 1,040, robberies from 7,822 to 1,966, burglary from 126,553 to 68,185, and thefts from 197,498 to 110,443. The number of recorded crimes of sexual intercourse with a minor (Article 200 § 1 PC) was variable and amounted to: 1,078 in 2013, 954 in 2015, 1,126 in 2019, and 1,089 in 2023. It is also worth noting that the number of convictions for driving offences decreased from 141,906 in 2013 to 59,812 in 2023, including convictions for driving a motor vehicle under the influence of alcohol or drugs, which decreased from 55,792 in 2013 to 36,682 in 2023, and convictions for repeated driving under the influence of alcohol or drugs, which decreased from 11,444 in 2013 to 6,506 in 2023.[12] Therefore, it should be stated that the increase in the level of repressiveness of criminal law by the Act of 7 July 2022, in the face of the decreasing level of crime and citizens' high sense of security, should be considered irrational. It was based on a faulty diagnosis of reality. Thus, it does not respect the constitutional principle of necessity in the field of criminal regulations (Article 31(3) of the Constitution of the Republic of Poland).

The justification for the amendment to the Penal Code shows that the normative transformations fundamentally rebuilding the criminal law system concerned three levels, i.e. changes in the severity of criminal sanctions and the structure of individual types of prohibited acts, changes expanding the grounds for the extraordinary aggravation of penalties, and changes in general penalty directives aimed at selecting more severe penal repression.[13] However, a comprehensive analysis of the changes introduced allows one to conclude that they increased the punitiveness of the entire Penal Code.[14]

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[11] P. Waszkiewicz, 'Zakończenie', in: Ostaszewski P., Włodarczyk-Madejska J., Klimczak J., Gruszczyńska B., Waszkiewicz P. (eds), *Atlas przestępczości…*, op. cit., p. 243.

[12] For more on this subject, see J. Klimczak, J. Włodarczyk-Madejska, 'Przestępstwa stwierdzone', in: Ostaszewski P., Włodarczyk-Madejska J., Klimczak J., Gruszczyńska B., Waszkiewicz P. (eds), *Atlas przestępczości…*, op. cit., pp. 17–56; P. Ostaszewski, 'Prawnokarna reakcja na popełniane przestępstwa i wykroczenia', in: Ostaszewski P., Włodarczyk-Madejska J., Klimczak J., Gruszczyńska B., Waszkiewicz P. (eds), *Atlas przestępczości…*, op. cit., pp. 77–118.

[13] *Uzasadnienie do projektu ustawy…*, op. cit., p. 1.

[14] See, among others, the previously cited opinion on the Act by J. Giezek, D. Gruszecka,

A change of key importance for a number of other new solutions in the Penal Code was the modification of the catalogue of penalties as a result of the new shaping of the limits of so-called term imprisonment (Article 37 PC), along with the removal of the point-based penalty of 25 years' imprisonment from the catalogue of penalties (repealed Article 32(4) PC). Consequently, in accordance with Article 37 PC, term imprisonment, which previously could generally be imposed from one month to 15 years, currently has an upper limit of 30 years. There has been discussion in the doctrine about long-term prison sentences for many years. On the one hand, it was pointed out that there was such a large gap between the upper limit of imprisonment, set at 15 years, and the point-based penalty of 25 years' imprisonment that, in cases concerning serious crimes, it made it difficult to fully implement the principle of individualisation of criminal responsibility and prevented the achievement of the so-called internal justice of the judgment. On the other hand, it was argued that increasing the upper generic limit of term imprisonment could increase the degree of repressiveness of criminal law, because, following the change in the maximum limit of term imprisonment from 15 years to 25 years, there would be a need to revise certain criminal sanctions within the provisions of the special part of the Penal Code defining crimes. This is precisely what happened. The legislature not only filled the gap between the penalty of 15 years' imprisonment and the penalty of 25 years' imprisonment, but even increased the upper generic limit of imprisonment to 30 years, completely omitting the justification for this decision.[15] There is no doubt that this increases the repressiveness of the Penal Code and may lead to an increase in the punitiveness of the practice of justice, which is highly probable, among other things, in the context of changes made to the regulation contained in Article 53 PC, specifying general directives for judicial sentencing, which adheres to the idea of negative general prevention.

It should also be emphasised that the consequence of increasing the upper limit of the generic penalty of imprisonment from 15 years to 30 years and removing the point-based penalty of 25 years' imprisonment from the catalogue of penalties was an increase in the upper thresholds of the statutory threat for a number of crimes. For example, instead of the previous sanction setting the upper limit of the statutory penalty at 12 years' imprisonment, a penalty of up to 15 years' imprisonment was introduced (e.g. in Article 163 § 3, Article 166 § 1, Article 190 § 3, Article 223 § 2 and Article 280 § 1 PC), and instead of the sanction providing for the upper limit of deprivation of liberty at 15 years, a penalty of up to 20 years' imprisonment was

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K. Lipiński, *Opinia…*, op. cit., pp. 1–97; A. Barczak-Oplustil, M. Małecki, S. Tarapata, M. Iwański, *Ekspertyza. Populistyczna nowelizacja prawa karnego. Ustawa z dnia 7.07.2022 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw (druk senacki nr 762)*, Kraków, 19 July 2022; https://kipk.pl/ekspertyzy/populistyczna-nowelizacja-prawa-karnego/ (accessed: 14 April 2026); T. Gardocka, *Opinia dotycząca projektu zmian w Kodeksie karnym (druk sejmowy nr 2024, data projektu: 22 lutego 2022 r.)*, Warszawa, 2022.

[15] For the ongoing discussion in the literature, see M. Melezini, 'Proponowane zmiany w regulacji kar', in: Mozgawa M., Poniatowski P., Wala K. (eds), *Aktualne problemy i perspektywy prawa karnego*, Warszawa, 2022, pp. 166–173; O. Sitarz, 'Najważniejsze zmiany w zakresie przepisów dotyczących kar w Kodeksie karnym z 1997 roku', in: Lachowski J. (ed.), *Polskie prawo karne po 25 latach obowiązywania kodeksu karnego z 1997 roku*, Warszawa, 2024, pp. 92–99.

introduced (e.g. in Article 156 § 1, Article 189a § 1, Article 197 § 3, Article 252 § 1 and Article 270a § 2 PC). The scale of changes in the provisions of the special part of the Penal Code is considerable, and only in some individual cases is a modification of the statutory threat justified (e.g. in Article 130 PC). New types of crimes were also introduced (e.g. accepting an order to commit murder – Article 148a PC), including new qualified types, e.g. due to the great value of the subject of the executive act in Article 228 § 5a PC and in Article 229 § 4 PC, i.e. in the regulations concerning the crimes of venality and bribery. In addition, some existing qualified types were modified, extending the qualifying features (e.g. in Article 197 § 3 PC concerning the crime of rape), and at the same time the upper limit of the statutory threat was increased from 15 years to 20 years. It is evident that the legislature used the increase in the upper limit of term imprisonment to significantly increase sanctions for numerous crimes, without comparing these sanctions with others in the provisions of the Penal Code, which led to a deep internal inconsistency in the system of criminal sanctions.

The changes that increase the punitiveness of the Penal Code correspond to numerous changes that significantly limit judicial discretion in imposing penalties. The lack of trust in judicial sentencing is expressed, among other things, by the introduction of additional casuistic regulations specifying higher lower limits of non-custodial penalties, i.e. stand-alone and cumulative fines (Article 33 § 1a–2a PC) and penalties of restriction of liberty (Article 34 § 1aa PC), the severity of which was linked to the level of the statutory threat of imprisonment. At the same time, the modified content of Article 37a PC established higher thresholds for fines (150 daily rates) and restriction of liberty (four months) in the event of the imposition of a non-custodial penalty instead of the statutory penalty of imprisonment not exceeding eight years under the institution of substitution of penalty.

The tightening of penal repression is also facilitated by new solutions regarding the concurrence of grounds for the extraordinary aggravation or mitigation of punishment, contained in Article 57 § 3 PC. Pursuant to this provision, if the grounds for the extraordinary mitigation or aggravation of a penalty of a mandatory and optional nature coincide, the court applies the mandatory basis. However, it should be noted that the Penal Code generally provides for mandatory extraordinary aggravation, while mitigation of punishment in most cases is optional. This means that, in the vast majority of cases, there will be an obligation to apply extraordinary aggravation of the penalty.

New solutions regarding perpetrators committing crimes in conditions of repeated recidivism lead to increased criminal liability. First of all, a new form of special recidivism was introduced (Article 64a PC) in relation to the crime of murder in connection with rape or an offence against sexual freedom punishable by imprisonment whose upper limit is at least eight years. It should be noted that very severe penalties are provided for this type of crime under the so-called ordinary statutory sentencing range, and a previous conviction for an intentional crime is an aggravating circumstance (Article 53 § 2a(1) PC); meanwhile, the legislature has introduced a further tightening of criminal liability in the event of their being committed again, because the court will have to impose a prison sentence ranging

from the lower limit of the statutory threat increased by half to the upper limit of the statutory threat increased by half. A new wording has also been given to Article 64 § 1 and § 2 PC, under which, in the case of special recidivism, there was introduced, among other things, the obligation to impose a penalty above the lower limit of the statutory threat with the possibility of imposing it up to the upper limit of the statutory threat increased by half (§ 1), and, in the case of multiple recidivism, the obligation to impose a penalty of imprisonment from the lower limit of the statutory threat increased by half to the upper limit of the statutory threat increased by half (§ 2). Regulations designed in this way make it impossible to respond flexibly to acts committed in the context of recidivism.

An expression of the legislature's desire to change the philosophy of punishment is also the modification of the content of Article 53 PC regarding the principles and directives of judicial sentencing. Namely, the principle of guilt, with its limiting role in sentencing the perpetrator and in setting an insurmountable threshold of severity in a given case, was moved to the end of Article 53 § 1 PC, which may be interpreted as reducing the significance of the degree of guilt in the process of imposing a penalty, especially since the legislature gave priority to the directive concerning the act's degree of social harmfulness and then to the requirement to take into account aggravating and mitigating circumstances (Article 53 § 2a and § 2b PC). Moreover, the content of the preventive directives was significantly modified. In place of general positive prevention, previously formulated as 'the need to shape the legal awareness of society', general negative prevention was introduced, related to the goals of punishment in terms of social impact, emphasising the deterrent function of punishment, which, through its severity, is intended to deter other potential perpetrators from committing crimes. The modification of the content of Article 53 § 1 PC also covered the individual prevention directive. The educational goals that the punishment was supposed to achieve in relation to the convict were abandoned, leaving only the preventive goals of the punishment.

Moreover, drastic aggravations even included life imprisonment. Namely, the possibility was introduced for the court to impose, in a sentencing judgment, even a prohibition on conditional release for a person sentenced to life imprisonment who has again been sentenced to life imprisonment or to imprisonment for a period of not less than 20 years (Article 77 § 3 PC), and for a person sentenced to life imprisonment whose remaining at liberty will pose a danger to others (Article 77 § 4 PC). Furthermore, the minimum period of serving the sentence after which a person sentenced to life imprisonment will be able to apply for conditional early release was increased from 25 years to 30 years (Article 78 § 3 PC). Two new provisions of Article 77 PC, commonly criticised in the doctrine and authorising a ban on conditional release, were found to be in violation of Articles 30 and 40 of the Constitution of the Republic of Poland and Article 3 of the European Convention on Human Rights. There is no doubt that a sentence of life imprisonment without the right to apply for parole is an inhuman and cruel punishment. It should be added that, in the event of a sentence of life imprisonment, the court may, already in the sentencing judgment, set stricter restrictions on the convict's use of conditional release (Article 77 § 2 PC).

A separate, significant issue is the lowering of the age of criminal responsibility for minors as a result of the introduction of the possibility of attributing criminal liability to a minor who commits an offence under Article 148 § 2 or § 3 PC after reaching the age of 14 and before reaching the age of 15, provided that additional conditions are met (Article 10 § 2a PC). This means that a person who has reached the age of 14 can be sentenced to as much as 30 years' imprisonment. It is easy to notice that, instead of applying educational measures to such a minor, the possibility of applying severe penal repression related to placing the minor in prison was introduced. This change is all the more surprising because the Act on Support and Resocialisation of Minors of 2022[16] introduced the possibility for a family court to order, against minors who have committed the most serious criminal acts, including those specified in Article 148 § 1, § 2 or § 3 PC, placement in a correctional facility beyond the age of 21, i.e. until they reach the age of 24. At the same time, in accordance with the assumptions of the Act, it is envisaged to create a new type of facility, namely a correctional facility for minors who have reached the age of 21. This type of solution, introduced by the Act on Support and Resocialisation of Minors, allows for a *quasi*-penal measure to be applied to a 14-year-old for a period of 10 years. Therefore, it is difficult to rationally justify the rigour of treatment of 14-year-old minors introduced by the Penal Code, resulting from Article 10 § 2a PC.

The most important changes presented by way of example, introduced under the Act of 7 July 2022, indicate how drastically the punitive nature of the Penal Code has increased. These changes are so extensive and profound that they significantly modify the previously constructed axiology of the Penal Code and the adopted philosophy of punishment, and at the same time they find not the slightest justification in the reality related to the state of crime. The current direction of development of criminal law, based on the paradigm of rationalism in criminal law, has undoubtedly been stopped and even reversed. Apart from radically tightening criminal liability, the legislature did not introduce any new solutions that would ensure further progress in the development of criminal law and enable the modernisation of penal policy, while protecting human rights and freedoms against excessive and unjustified interference by state authorities. On the contrary, it introduced changes that may reverse the positive transformations in the practice of justice that began to emerge after the reform of the Penal Code in 2015.

It should be recalled that the solutions adopted by the Act of 7 July 2022 had been announced for a long time. Essentially, they duplicate the regulations contained in the Act of 13 June 2019,[17] which, for procedural reasons, was found by the Constitutional Tribunal[18] to be inconsistent with the Constitution of the Republic of Poland and did not enter into force. The provisions of that Act gave rise to numerous substantive reservations from experts and many institutions, including the Supreme

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[16] Act of 9 June 2022 on the Support and Social Rehabilitation of Minors (Journal of Laws of 2024, item 978, as amended).

[17] Act of 13 June 2019 on the adoption of the Act – Penal Code and Certain Other Acts (Sejm print No. 3451, Sejm of the 8th term).

[18] Judgment of the Constitutional Tribunal of 14 July 2020, Kp 1/19, OTK ZU A/2020, item 36.

Court, the Commissioner for Human Rights, the Polish Bar Council, the National Council of Attorneys-at-Law, the Helsinki Foundation for Human Rights, as well as representatives of academic scholarship and legal practice.[19] Although most of the comments remained valid in relation to the changes made in the Act of 7 July 2022, they were ignored in the legislative process. The influence of independent experts on creating criminal law and shaping the foundations of criminal policy, which requires specialist knowledge, was rejected. The alleged social expectations that the state should ensure citizens' safety became more important than scientific analyses of crime and punishment.

In the new political situation after the last parliamentary elections on 4 April 2024, the Criminal Law Codification Commission[20] was established and the possibility of rational reform of criminal law returned.

The draft Act of 14 June 2024, developed by the Criminal Law Codification Commission, amending the Act – Penal Code and Certain Other Acts,[21] was 'essentially interventionist' in nature, and the proposed remedial amendment was made 'only to the extent necessary'.[22] In the justification for the draft, the Codification Commission stated that the basic assumption of the amendment to criminal law was to lead to the 'modification or elimination of the most controversial regulations, violating the standard of rational law-making in accordance with the Constitution of the Republic of Poland', as well as 'the need to adapt the Penal Code to international agreements binding on Poland and European Union regulations'.[23] Therefore, after over 100 amendments to the Penal Code, the Codification Commission proposed another amendment which, although it provides for very important changes, is an amendment to the previous amendment and does not have the more ambitious intention of reforming criminal law. At the same time, further changes to the provisions of the Penal Code are announced, which will be implemented 'in the short and medium term'.[24] However, it seems that Polish criminal law requires thorough changes, not merely point-by-point ones, essentially restoring the legal status before the amendment to the Penal Code in 2022. It should be considered necessary to undertake work on the preparation of a new Penal Code in the near future.

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[19] More than 20 legal opinions by experts, including a legal opinion signed by over 150 academics and the opinion of the Commissioner for Human Rights, were published at: https://bip.brpo.gov.pl/pl/content/zmiany-w-prawie-karnym-2019-opinie-ekspertow-i-RPO (accessed: 10 July 2019).

[20] Regulation of the Council of Ministers of 5 March 2024 amending the regulation on the establishment, organisation and mode of operation of the Criminal Law Codification Commission (Journal of Laws of 2024, item 348).

[21] See https://www.gov.pl/web/sprawiedliwosc/projekty-aktów-prawnych (accessed: 4 August 2025).

[22] *Uzasadnienie projektu ustawy sanacyjnej w zakresie prawa karnego*, p. 2; https://www.gov.pl/web/sprawiedliwosc/projekty-aktów-prawnych (accessed: 14 April 2026).

[23] Ibidem, pp. 2 and 7.

[24] P. Rojek-Socha, 'Prof. Wróbel: komisyjny projekt pilnych zmian w prawie karnym na dniach u ministra', *Prawo.pl*, 23 May 2024; https://www.prawo.pl/prawnicy-sady/zmiany-w-kodeksie-karnym-wykroczen-wykonawczym-postepowania-karnego-prof-wlodzimierz-wrobel,527076.html (accessed: 20 August 2025).

In the draft bill, the Criminal Law Codification Commission proposed the following changes to the Penal Code:

1. Repeal of Article 10 § 2a PC, introducing the possibility of criminal liability for a 14-year-old minor, and restoration of the original wording of Article 10 § 2 PC and Article 10 § 3 PC regarding the imposition of punishment on a minor.
2. Repeal of Article 33 § 1a and § 2a PC and Article 34 § 1aa PC, increasing the lower limits of statutory threats of fines and restriction of liberty, together with the introduction of an appropriate amendment to Article 37a PC.
3. Lowering from 30 years to 25 years the upper generic limit of so-called term imprisonment imposed under the so-called ordinary sentencing range (Article 37 PC) and, as a result, modification of, among other provisions, Article 38 § 3 PC.
4. Modification of the content of Article 37a PC and a return to the wording of the provision specified in the Act of 20 February 2015, under which non-custodial penalties supplement the statutory threat for an offence punishable by imprisonment not exceeding eight years.
5. Elimination from Article 42 § 2 and § 3 PC, introduced by the Act of 7 July 2022, of one of the grounds for imposing a driving ban in the form of drinking alcohol or taking a narcotic drug after committing an offence under Article 173, 174 or 177 PC and before the perpetrator undergoes a test by an authorised authority to determine the alcohol or drug content in the body.
6. Introduction of optionality instead of obligatory ordering of forfeiture of a motor vehicle (Article 44b § 1 PC) and a synthetic approach to the provision of Article 44b § 2 PC, as well as the introduction of the possibility of awarding compensatory damages to the State Treasury if the award of forfeiture or its equivalent would be disproportionate to the gravity of the act (Article 44b § 3 PC).
7. Return to the original approach and system of general directives of judicial sentencing (Article 53 PC), along with the shift of the principle of guilt from the content of Article 53 § 1 PC to a separate editorial unit, i.e. Article 53 § 1a PC, as well as the abandonment of the statutory catalogue of aggravating and mitigating circumstances.
8. Return to the original principles specifying the consequences of the concurrence of the grounds for the extraordinary aggravation of the penalty and the grounds for extraordinary mitigation of the penalty (changes in the provisions of Article 57 PC).
9. Extension of the principle of *ultima ratio* of imprisonment to all cases in which not only imprisonment, but also a fine or restriction of liberty, may be imposed for a committed prohibited act (Article 58 § 1 PC); introduction of a new rule in Article 58 § 1a PC, allowing life imprisonment to be imposed only where exceptional circumstances exist, as well as in Article 58 § 1b PC, allowing a sentence of imprisonment exceeding 15 years to be imposed only where exceptional circumstances exist, provided that the offence is not punishable by life imprisonment.
10. Return to the original solution of Article 60 § 3 PC and introduction of adjusting changes in Article 60 § 6–7a PC, regulating extraordinary mitigation of the penalty as a result of the proposed changes to Article 37a PC.

11. Abandonment of the introduced new grounds for the extraordinary aggravation of the penalty, i.e. return to the original wording of Article 64 § 1 and § 2 PC and repeal of Article 64a PC regarding a specific form of special recidivism and Article 73 § 2 PC related to that solution.
12. Return to the previous regulation of conditional release of a convict from serving the remainder of a prison sentence and elimination of the possibility of imposing a ban on conditional release in the event of life imprisonment (Articles 77–80 PC), with certain modifications, including, among other things, those related to the repeal of Article 64a PC, as well as lowering the formal minimum period of serving a sentence in the case of a person sentenced to life imprisonment from 30 years' imprisonment to 25 years (Article 78 § 3 PC).
13. Return to the original wording of Article 85a PC regarding directives on the imposition of the total penalty and modification of the model for the imposition of the total penalty (Article 86 PC and Article 87 § 1 PC).
14. Modification of the content of the provision of Article 102 § 1 PC and repeal of Article 102 § 2 PC, regarding the extension of the limitation period, as well as Article 107 § 3 PC regarding the expungement of a conviction carrying a life sentence.
15. Repeal of Article 115 § 9a PC regarding particularly brazen theft and the corresponding Article 278 § 3a PC.
16. Return, in principle, to the system of statutory threats prior to the amendment of the Penal Code by the Act of 7 July 2022, and modification of the content of some provisions of the special part of the Penal Code, e.g. Article 165a § 1 PC, and Articles 178 and 178a PC.

The changes proposed by the Criminal Law Codification Commission should be considered appropriate, and their introduction urgent. They aim primarily to eliminate those regulations that have been widely criticised and which introduced an unnecessary and unjustified increase in criminal liability, or were inconsistent with the Constitution of the Republic of Poland or international law, and led to a limitation of judicial discretion in determining the penalty.

Based on the draft prepared by the Criminal Law Codification Commission, the final version of the draft was developed at the Ministry of Justice, which, as a draft Act amending the Act – Penal Code, the Act – Code of Criminal Procedure and Certain Other Acts of 28 October 2024 (UD 153),[25] was adopted by the Council of Ministers on 15 July 2025.

The government's draft amendment to the Penal Code is limited to proposals for changes to the most controversial regulations, which are contrary to constitutional norms and violate the standards of rational law-making in accordance with the Constitution of the Republic of Poland, also in the context of the need to restore the principles of the rule of law. The recitals for the legislative initiative indicate that the proposed amendment is interventionist in nature and that its implementation

[25] Project number UD 153; https://www.gov.pl/web/premier/projekt-ustawy-o-zmianie-ustawy--kodeks-karny-ustawy--kodeks-postepowania-karnego-oraz-niektorych-innych-ustaw2 (accessed: 20 August 2025).

under an urgent procedure was considered necessary.[26] The idea of amending some regulations of the Penal Code adopted in the government draft was essentially consistent with the basic objective of amending the Penal Code indicated in the draft of the Criminal Law Codification Commission, as the remedial nature of the changes was also emphasised.

The general feature of the proposed solutions in the government draft is the acceptance of the direction of normative changes included in the Codification Commission's draft. However, not all solutions proposed by the Codification Commission received government support.

First of all, the Codification Commission's proposal to lower the upper generic limit of so-called term imprisonment from the current 30 years to 25 years (Article 37 PC) was rejected and, consequently, the proposed amendment to Article 38 § 2 PC setting the maximum of an exceptionally aggravated prison sentence at 25 years was omitted. This resulted in the proposal to change the upper thresholds of the statutory threat for individual crimes not being taken into account. The government did not share the position of the Codification Commission on the need to return to the sanctions system in the form preceding the amendments introduced by the Act of 7 July 2022. However, in several provisions, the government adopted the Codification Commission's proposals regarding modifications to statutory threats, i.e. in Article 190 § 1 PC, Article 270a § 2, Article 271a § 2, Article 277a § 1 and § 2, and Article 305 § 1 PC.

The government draft also omitted the Codification Commission's proposal to repeal Article 10 § 2a PC, which introduced the possibility of criminal liability of a minor from the age of 14 for the crime specified in Article 148 § 2 or § 3 PC, provided that additional conditions are also met. This decision was met with a negative opinion from the Commissioner for Human Rights.[27]

The Codification Commission's proposal to change the provision of Article 42 § 2 and § 3 PC was also not supported by the government, repealing the new condition for imposing the penal measure of a driving ban in the form of drinking alcohol or taking a narcotic drug after committing an offence under Article 173, 174 or 177 PC, and before the perpetrator undergoes an examination to determine the alcohol or drug content in the body. The modification of the regulation contained in Article 44b PC, regarding the forfeiture of a motor vehicle, was also omitted.

The Codification Commission's proposal to repeal Article 64a PC, which introduced into the Penal Code, under the Act of 7 July 2022, a new specific form of special recidivism related to sexual offences with increased criminal liability, was also rejected.

Moreover, the repeal of Article 115 § 9a PC, which established the legal definition of particularly brazen theft, and of the crime under Article 278 § 3a PC in the form of particularly brazen theft, was omitted. In the remaining scope, the proposed changes presented by the Codification Commission were transferred to the government's draft amendment to the Penal Code.

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[26] Ibidem, *Purpose and reasons for the planned solutions*.

[27] Ibidem, *Comments of the Commissioner for Human Rights on the draft amendments to criminal law*.

It should be emphasised that the modifications to the current legal status proposed in the version of the government draft developed on the basis of the draft presented by the Codification Commission include the most significant changes and should be considered the most urgent, although their scope is small. They are mainly related to changes that eliminate unjustified restrictions on the court's decision-making freedom in the area of sentencing and to changes that rationally shape the directives of judicial sentencing. This creates hope that the possibility of rationalising the practice of justice will return, although it is not certain whether 'fixing' criminal law, even in such a narrow scope, will end on an optimistic note.

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