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MAIN PROBLEMS OF THE CODIFICATION WORKS ON SUBSTANTIVE MISDEMEANOR LAW IN PEOPLE'S POLAND

This article deals with the main problems of the codification works on substantive misdemeanour law in People's Poland¹. Those problems are presented in the context of solutions adopted in the Code on Misdemeanours² from 1971 and the practice of implementation of its provision by the boards adjudicating in petty offences cases. The Code on Misdemeanours was the final effect of the codification works carried out in the years 1960-1963 and 1967-1971 under supervision of the Ministry of Internal Affairs.

During the codification works on substantive misdemeanor law there were two contradictory concepts. The first one, which was created at the peak of the Polish Stalinism in the early 1950s, included the misdemeanour law into the system of administrative law. As a consequence, the traditional term "misdemeanour law" was substituted by the term "criminal and administrative law". Pursuant to an administrative concept, misdemeanours were acts threatening peace and public order, and distorting the organisational acts of administration. The general part of criminal and administrative law was separated from the provisions of the criminal law³. Especially, this concept was supported by the Ministry of Internal Affairs, in whose structures the boards adjudicating in the petty offences were placed. The socialistic reform of December 1951⁴ established collective boards to adjudicate in cases of petty offences involving a social component. Deciding adjudicating boards were placed in the local branches of the state administrative

¹ The time of the Polish People's Republic covers the years 1944-1989, when Poland was in the sphere of the Soviet influence. Poland was governed in an authoritarian way by the communist party – the Polish United Workers Party.

² Ustawa z dnia 20 maja 1971 r. Kodeks wykroczeń (Dz. U. nr 12, poz. 114).

³ T. Grzegorzcyk, A. Gubiński, *Prawo wykroczeń*, Warszawa 1995, p. 19.

⁴ Ustawa z dnia 15 grudnia 1951 r. o orzecznictwie karno-administracyjnym (Dz. U. nr 66, poz. 454).

structures, thus the general guidelines on the penalty policy were issued by the Minister for Internal Affairs. Facing abolition of the judicial review of adjudication in petty offences, adjudicating boards were separated from the judicial structures⁵.

The second concept, which perceived misdemeanour law as part of criminal law, was supported by the adherents of the criminal law science. Unexpectedly, in 1963 the central authorities of the Polish communist party – Polish United Workers Party – made a decision, following the position of the scientists, to withhold the codification works pending the draft of the new criminal code. This decision of the party authorities conclusively prejudged the return of the misdemeanour law to the area of criminal law. The tightening of links between the criminal and misdemeanour laws was fostered by reclassification of some existing petty offenses as misdemeanours in an operation effected under law on transfer in 1966⁶. The Act on transfer served as a starting point for the second stage of the codification works, which were resumed in 1967⁷. These works were conducted based on the assumption of close harmonisation of misdemeanour law with criminal law. During the second stage of the codification works there was a process of a gradual adoption of several general parts of the criminal law institutions into the misdemeanour law. Due to the takeover of another group of petty offences into the group of misdemeanours, Polish substantive misdemeanour law has significantly changed. The term “criminal-administrative law”, which existed from the beginning of the Stalinist period, was replaced by the commonly used term “misdemeanour law”. As a result of codification works, the misdemeanour law, both in terms of content and external shape, became a part of widely understood criminal law⁸.

The second phase of codification works (1967-1971) was carried out based on the assumption of synchronising the provisions of the future misdemeanour law with the draft of the Criminal Code of People’s Poland. As a consequence, the principle of polarisation of misdemeanours and stratification of responsibility was adopted. This approach referred to the resolution that had been made in September 1961 by the central authorities of the Polish United Workers Party. It started a new chapter in the criminal policy on minor criminal offences. Implementing the resolution of the party authorities, the authors of the substantive misdemeanour law codification confined the repressive legislation only to the most serious

⁵ M. Łysko, *Kształtowanie się ustroju kolegiów orzekających w Polsce Ludowej (1952–1956)*, „Czasopismo Prawno-Historyczne” 2012, Vol. LXIV, issue 2, pp. 250-253.

⁶ Ustawa z dnia 17 czerwca 1966 r. o przekazaniu niektórych drobnych przestępstw jako wykroczeń do orzecznictwa karno-administracyjnego (Dz. U. nr 23, poz. 149).

⁷ Z. Kocel-Krekora, *Kierunki rozwoju polskiego prawa wykroczeń*, „Zagadnienia Wykroczeń” 1987, issue 3, p. 11.

⁸ H. Rot, *Problemy kodyfikacji prawa w PRL*, Wrocław 1978, pp. 108-109.

acts. Perpetrators of minor offences were to be treated with the institutions of the educational influence, besides or instead of the traditional punishments⁹. As a result, the misdemeanour law system created during the second stage of codification works included a complex catalogue of the punishments and the beyond-criminal influences, along with a precise definition of the penalty principles¹⁰. Synchronisation of the misdemeanour law with the criminal code was also supported by adopting a division of the penalties into principal and additional ones, which was consistent with the Polish legislation traditions. A formal separation of those two categories of penalties had not functioned under the misdemeanour law, though taking it into account in the future codification was necessary in view of a significant enrichment of the methods of influencing the violators. Going beyond the traditional arrest and fine penalties served to create the basis for running a flexible criminal policy. Rising a reprimand into the rank of principal penalty helped to treat the minor offenders gently, as there was no need to use repressive measures for them¹¹.

Expanding the catalogue of principal penalties was also made by introducing restriction of personal liberty that had not existed in the misdemeanour law before. The penalty of restriction of personal liberty, which was adopted from the Criminal Code¹² of People's Poland, underwent creative modifications to adjust it to the specifics of misdemeanours as acts of minor liability¹³. Besides penalties in the traditional understanding of the term, the Code on Misdemeanours provided fines and compensation obligations, whose roles became stronger in the existing acquis¹⁴. In order to give flexible character to misdemeanour case-law, the authors of the codification created a system of social and educational influence means, which was contrary to traditional penalties. Despite introducing several non-repressive means into the Code on Misdemeanours, in practice only the solution, which provided resignation from initiating the proceedings for the sake of an individual solving the case by a body revealing the misdemeanour, worked well. Such solution, though in a modified form, has functioned until the present day,

⁹ S. Walczak, *Niektóre problemy kodyfikacji prawa karnego*, „Państwo i Prawo” 1968, issue 4-5, p. 594.

¹⁰ H. Popławski, *Problemy granic przestępstwa i wykroczenia*, „Nowe Prawo” 1973, issue 9, p. 1294.

¹¹ A. Gubiński, *O niektórych kierunkach orzecznictwa kolegiów do spraw wykroczeń w latach 1972-1975*, „Państwo i Prawo” 1976, issue 3, s. 71.

¹² Ustawa z dnia 19 kwietnia 1969 r. Kodeks karny (Dz. U. nr 13, poz. 94).

¹³ P. Kłosiewicz, T. Olszewska, *Doniosłe problemy „małej sprawiedliwości”*, „Więź” 1970, issue 11, p. 17.

¹⁴ *Nowe ustawy o wykroczeniach – narzędziem ochrony porządku publicznego i dyscypliny społecznej*, „Zagadnienia Karno-Administracyjne” 1971, issue 3, p. 5.

as the Code on Misdemeanours provides the possibility to address an admonishment, warning or a notice, or to use other means of educational influence¹⁵.

Also the catalogue of additional penalties was supposed to include the idea, which accompanied the second stage of the codification works, of “differentiating and enriching the means at adjudicating boards disposal, enabling widely understood individualisation of penalty”¹⁶. In practice, the catalogue of additional penalties that had been created as a result of the codification works, was characterised by a far-reaching stringency, as the consequences of the additional penalties were much more severe than those of the principal ones. These were: a ban on engaging in a specific activity and performing actions that required an authorisation, as well as a ban on driving¹⁷. The additional penalty of the ban on driving which was adjudicated for two years, had especially severe consequences for persons performing a job of a driver¹⁸.

The analysis of the second stage of codification works leads to a conclusion that in the works on creating the general part of the future codification the greatest emphasis was put on creating the basis for severe treatment of offenders of serious offences. As a result, the Code on Misdemeanours was marked by “rigorous provisions towards people who were particularly a burden to the society, namely, repeat offenders and hooligans”¹⁹. The codification of 1971 treated hooligan character of an act as an aggravating circumstance, introducing several further restrictions of the penalty for the offenders of this category of acts. Among them there were ones that had not been known in the current legislation, they included no suspended arrest sentence, a total prohibition on ruling a reprimand, and a possibility to rule a fine in case of damage caused by a hooligan act²⁰. New anti-hooligan regulations were accompanied by restricting penalties for the acts performed under the influence of alcohol, which legitimised the current practice of classifying intoxication of the offender as a basic premise of a hooligan character of the act. Harsh attitude of the 1971 codification authors towards repeat offenders was also expressed in perceiving a formal fact of previous sentencing as essential. For that reason the adjudicating entities did not take into consideration the real level of the offenders’ demoralisation and the character of the commit-

¹⁵ A. Gubiński, *Środki oddziaływania wychowawczego na tle zasady celowości w prawie wykroczeń*, „Państwo i Prawo” 1972, issue 10, pp. 32-33.

¹⁶ J. Bafia, *Kodyfikacja prawa o wykroczeniach*, „Państwo i Prawo” 1971, issue 10, p. 517.

¹⁷ W. Radecki, *System kar i innych środków oddziaływania w prawie wykroczeń*, „Służba MO” 1977, issue 6, p. 651.

¹⁸ K. Porada, *Mikrospołeczne skutki stosowania zakazu prowadzenia pojazdów mechanicznych*, „Studia Kryminologiczne, Kryminalistyczne i Penitencjarne” 1979, Vol. X, pp. 340-341.

¹⁹ *Tezy wystąpienia Ministra Spraw Wewnętrznych Kazimierza Świtły*, „Zagadnienia Karo-Administracyjne” 1970, issue 2, p. 52.

²⁰ A. Marek, *Prawo wykroczeń w zarysie*, Warszawa 1975, p. 55.

ted acts²¹. In practices, the idea of polarisation of misdemeanours and stratification of the offenders' responsibility has affected the new solution of general part of the Code on Misdemeanours in spirit of intensifying penalization. Most of those solutions were created in order to treat severely the perpetrators of "alcohol and hooligan" acts, the most numerous group of offenders at magistrate courts. Although the codification of 1971 created many possibilities of gentle reactions, and therefore did not oblige the adjudicating entities to conduct harsh legislative policy, in practice it was a continuation of the punitive legislative tendencies. The Ministry of Internal Affairs, which perceived complex misdemeanour law codification as a tool to "protect public order and maintain social discipline", had a decisive impact on the codification works²².

As the general part of the Code on Misdemeanours covered some regulations that supported a gentle criminal policy, the specific part of it, created during codification works, was much more severe. The analysis of the second phase of those works leads to a conclusion that, while choosing sanctions for the specific misdemeanours the general prevention was taken into consideration in the first place. As a result, the codification of 1971 widely used traditional penalties that were of custodial nature. Even the provision of a general part that was highlighting a unique character of principal arrest could not conceal the repressive character of the specific part. That solution should be seen as a propaganda declaration that was to hide the fact of common use of that most severe of principal penalties. Nearly every third misdemeanour from the specific part of the Code on Misdemeanours was punishable by principal arrest which was nearly always sentenced for the maximum term²³.

The authors of the codification of 1971 can be partially justified by the need to take into consideration some misdemeanours that evolved from current petty offences of typically criminal character included in the specific part. Making those petty offences punishable by arrest was justified by their serious character, similar to the "alcohol and hooligan" misdemeanours that were particularly burdensome for the society. There was no rational explanation of the frequent use of principal arrest for misdemeanours against public order. In spite of this, the Code on Misdemeanours provided for the use of that punishment for the traffic offenders, people begging in public places, or women prostituting themselves in public

²¹ A. Gubiński, *Recydywa w prawie wykroczeń*, „Zagadnienia Wykroczeń” 1976, issue 1, p. 30.

²² J. Szumski, *Główne kierunki polityki karnej realizowane przez kolegia do spraw wykroczeń w latach 1972-1989*, „Archiwum Kryminologii” 1993, Vol. XIX, p. 131.

²³ A. Gubiński, *Wokół problemów nowej kodyfikacji*, „Zagadnienia Wykroczeń” 1972, issue 2, p. 8.

places²⁴. Repressive nature of the misdemeanour law system, which was created as a result of the codification works, was enhanced by introducing solutions other than principal arrest, leading to imprisonment for committing an offence. The arrest could happen as a consequence of executing a conditionally suspended arrest sentence, evasion of the execution of restriction of personal liberty, and especially the execution of an alternative arrest sentence in case of failure to pay the imposed fine. The common use of imprisonment as a peculiar “reinforcement of penal measures influence” made Polish misdemeanour law one of the most repressive systems worldwide²⁵.

The idea of decriminalization, which accompanied the second phase of codification works, in practice had a marginal impact on the shape of the specific part of the Code on Misdemeanours. The process of complete resignation from penalization of the acts that had hitherto been petty offences, included only few acts rarely occurring in practice of case-law. The authors of codification of the substantial misdemeanour law considered in an equally limited scope the idea of partial decriminalization. It provided for penalization of infringement by the citizens of some obligations with which the administrative enforcement procedure was previously ineffective²⁶. That idea was accomplished on the basis of the acts for which offenders previously were responsible only in the administrative procedure. This remark applies in particular to the conditionally suspended penalization of avoiding the obligation to register a library or double failure to pay contractual fines for travelling without a ticket (fraud). It would be much more preferable to partially decriminalize, as was common in the practice of magistrate courts case-law, misdemeanours against the obligation of population registers. Instead, they were sanctioned, quite inadequately to their importance, with the restriction of liberty²⁷. The process of decriminalization was not able to cover the repressive aspects of the provisions in the specific part of the 1971 codification. Its sustainability was fostered by introducing the penalty of acts that had not been misdemeanours, substantiated by prevalence of new actual states and their negative perception of the society. However, only a part of them were behaviours which, due to the changing conditions of life, were reinforced and required an effective countering of their spread by the use of the repressive means. From the social point of view penalization was required of such acts as: throwing stones at vehicles, malicious and lawless impeding the use of infrastructure for public use, or careless driving aside from a public

²⁴ L. Falandysz, *Wykroczenia przeciwko porządkowi i spokojowi publicznemu*, „Państwo i Prawo” 1970, issue 11, p. 708.

²⁵ J. Skupiński, *Kierunki doskonalenia polskiego prawa wykroczeń*, „Studia Prawnicze” 1981, issue 4, p. 5.

²⁶ L. Kubicki, W. Świda, *Stan prawa karnego*, „Państwo i Prawo” 1972, issue 4, p. 34.

²⁷ M. Łysko, *Prace nad kodyfikacją materialnego prawa wykroczeń w Polsce Ludowej (1960-1971)*, Białystok 2016, pp. 317-318.

road. Stressing the responsibility connected with the fact of taking care or having custody over a minor was supported by acknowledging cases of putting a child's health or life at risk as misdemeanours²⁸.

The analysis of the provision from the specific part of 1971 codification, which penalizes the most common cases of infringement of public peace and order (Art. 51 of the Code on Misdemeanours), leads to a conclusion that it was created to implement the party authorities' guidelines which demanded to "fight negative social phenomena definitely and consistently"²⁹. General stating and ambiguous attributes of a prohibited act were accompanied by an extremely wide scope of penalization. Penalization was since provided for difficult to define inciting and aiding for infringement of public peace and order. The provision undermining the guarantee function of criminal law was validly defined by L. Falandysz as a "little criminal code" formulated in three sentences. The provision had been introduced not only for the "alcohol and hooligan" offenders, it also served to make criminally liable individuals depraved due to the alcohol abuse³⁰.

While critically evaluating the typically repressive character of some provisions of the specific part of the Code on Misdemeanours, the fact of creating a legal act meeting the requirements of codification of a partial character should be acknowledged. It covers the most important misdemeanours that were ruled at magistrate courts, as reflected by grouping actual states of more than 90% of cases referred to magistrate courts by law enforcement authorities in the specific part. In comparison with the misdemeanour law that was a starting point for the codification works, the specific part of the 1971 codification was sensibly comprehensive. It was done by grouping those actual states provided for in special laws, whose importance increased with the rapid transformation of social relations. Although the Code on Misdemeanours protected much wider scope of social relations, its specific part was developed in quite a reasonable way, without excessive resorting to descriptive dispositions or including an illustrative listing of actual states of misdemeanours of administrative character³¹.

In spite of the critical remarks which proved right in the practice of the boards judging petty offences, totally dispositional towards the Ministry of Internal Affairs, the legal system created through codification works should be evaluated positively. It was a skilful connection of traditional concepts of misdemeanour law of a typically repressive character with a socialist idea of educational influence focused on softening repressions until they could be completely replaced

²⁸ J. Szumski, *Zmiany w prawie wykroczeń i ich wpływ na politykę kryminalną*, „Państwo i Prawo” 1986, issue 7, p. 45.

²⁹ *Nowe ustawy o wykroczeniach – narzędziem...*, p. 1.

³⁰ L. Falandysz, *Wykroczenia przeciwko...*, p. 709.

³¹ M. Łysko, *Prace nad kodyfikacją...*, pp. 319-320.

by non-criminal means. When evaluating the results of the codification works that were carried in the 1960s, it was pointed out that those works were done by the agenda of the Ministry of Internal Affairs. During the whole time of People's Poland the Ministry of Internal Affairs demonstrated an ambition to make the misdemeanour law a peculiar ministerial law focused on repressing the society to enforce its subordination³². On its initiative, some solutions were adopted, included in the Code on Misdemeanours, that supported treating adjudicating in petty offences as an instrument of realizing the current interests of the ministry. Those solutions were used particularly during the political crises³³. A clear contradiction between the principle of polarization of misdemeanours and stratification of responsibility, which underlied the codification works, in the practice of boards adjudicating in petty offences was an outcome of an administrative concept of case-law on misdemeanours. Under the influence of Ministry of Internal Affairs the provisions of specific part of the Code on Misdemeanours had been applied not only against the "alcohol and hooligan" offenders, but also served to repress the political opponents of communist authorities³⁴. In 1986 several petty crimes of political character, which up to then were addressed in a more favourable way for the accused criminal proceeding, were transformed into the specific part the Code on Misdemeanours³⁵. In order to eliminate the political opposition, it was vital to transfer cases of illegal printing and distribution of informative materials, publications criticizing the system and policy of the communist authorities, to the properties of board judging petty offences. Forfeiture of assets, the punishment provided for those acts, was overused to order forfeiture of cars or video equipment³⁶. It was the consequence of interpreting guidelines contrary to the essence of such punishment in the petty offences law. As the assets subject to forfeiture were of a value more than ten times higher than the maximum fine, the forfeiture of these asset came close to the punishment of confiscation of assets³⁷.

When, due to the systematic transformation started in 1989, the adjudicating boards were transferred to the structures of the Ministry of Justice³⁸, it sud-

³² J. Bafia, *Jeszcze raz o czynach przepołowionych – artykuł polemiczny*, „Zagadnienia Wykroczeń” 1988, issue 6, p. 94.

³³ J. Szumski, *Środki penalne w polskim prawie wykroczeń na tle doświadczeń praktyki*, Lublin 1995, p. 211.

³⁴ M. Łysko, *Polityczne uwarunkowania orzecznictwa karno-administracyjnego Polski Ludowej*, „Studia z Dziejów Państwa i Prawa Polskiego” 2014, Vol. XVII, pp. 230-232.

³⁵ Ustawa z dnia 24 października 1986 r. o zmianie niektórych przepisów prawa o wykroczeniach (Dz. U. nr 39, poz. 193).

³⁶ J. Szumski, *Główne kierunki polityki...*, p. 118.

³⁷ *Kolegia ds. wykroczeń w PRL (rozwiązania ustawowe i praktyka)*, Warszawa, Kraków 1987, pp. 17-18.

³⁸ The reform was carried out by the following legal act: Ustawa z dnia 8 czerwca 1990 r. o zmianie ustaw: Kodeks postępowania karnego, Kodeks postępowania w sprawach o wykroczenia, o ustroju kolegiów do spraw wykroczeń i Kodeks pracy (Dz. U. nr 43, poz. 251).

denly turned out that the Code on Misdemeanours created the conditions to lead a rational criminal policy. Due to that, a process of defusing repressive case-law of adjudicating boards started in 1990³⁹. It revealed in a full realization of the principles that were accepted as the basis for the codification works of the misdemeanour law in the 1960s. Entering into force the Criminal Code⁴⁰ of 1997 necessitated novelization of the Code on Misdemeanours⁴¹ to adjust its solutions to the current codification of criminal law. The introduced changes did not affect the core of the solutions created during the codification works carried out in People's Poland⁴². The reform of 1998, though, contributed to the elimination of a vast majority of errors of substantial misdemeanour law codification that were noticed by academics and legal practitioners⁴³.

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³⁹ S. Stachowiak, *Ewolucja polskiego systemu postępowania w sprawach o wykroczenia*, (in:) B. Janiszewski (ed.), *Nauka wobec współczesnych zagadnień prawa karnego w Polsce. Księga pamiątkowa Profesora Aleksandra Tobisa*, Poznań 2004, pp. 213-214.

⁴⁰ Ustawa z dnia 6 czerwca 1997 r. Kodeks karny (Dz. U. nr 88, poz. 553).

⁴¹ The novelization was carried out by the following legal act: Ustawa z dnia 28 sierpnia 1998r. o zmianie ustawy – Kodeks wykroczeń, ustawy – Kodeks postępowania w sprawach o wykroczenia, ustawy o ustroju kolegiów do spraw wykroczeń, ustawy – Kodeks pracy oraz niektórych innych ustaw (Dz. U. nr 113, poz. 717).

⁴² T. Grzegorzczuk (ed.), *Kodeks wykroczeń*, Warszawa 2013, pp. 25-27.

⁴³ T. Bojarski, *Zmiany dostosowawcze przepisów prawa wykroczeń do nowych kodeksów karnych*, (in:) A. Szwarc (ed.), *Rozważania o prawie karnym. Księga pamiątkowa z okazji siedemdziesięciolecia urodzin Profesora Aleksandra Ratajczaka*, Poznań 1999, p. 40.

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Summary

The result of the codification works that were carried out in the years 1960-1971 on substantive misdemeanour law in Poland was a Code on Misdemeanours of 1971. The measures created in this Code were strongly influenced by the idea of misdemeanours polarization and stratification of responsibilities. According to this idea, severe repression was supposed to be limited to the most serious misdemeanours. Towards other offenders progressive leniency was provided, with non-criminal means replacing them. Under influence of political factors the character of general part of Code on Misdemeanours was determined by provisions which were introduced aimed at severe treatment of serious offenders. Also the specific part was shaped in the repressive spirit. The conditions to realise the assumptions accepted by codifiers of the substantive misdemeanour law were created only after the fall of communist system in Poland, when in 1990 the adjudicating boards were cut off from the influence of Ministry of Internal Affairs and placed in the structures of the Ministry of Justice.

KEYWORDS

People's Poland, Code on Misdemeanours, codification works

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Polska Ludowa, kodeks wykroczeń, prace kodyfikacyjne