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Amendment of Article 209 of the Penal Code — Legal and Practical Aspects

On 31 May 2017, the Act of 23 March 2017 amending the Act - Penal Code and the Act on Assistance to Persons Entitled to Maintenance entered into force[2], introducing significant amendments to Article 209 of the Penal Code[3], which were supposed to increase the effectiveness of the obligation to care for minors by satisfying their material needs, but instead caused paralysis of the investigation units of the Police involved in conducting preparatory proceedings, and problems in their practical application[4].

In the current wording of the provision, the main feature of the multi-factor crime of not paying child maintenance was "persistence", interpreted - due to the lack of a legal definition - on the basis of jurisprudence and doctrine. It was assumed that for its implementation, it was sufficient for a maintenance debtor (paying parent) to withhold payment for at least three months[5]. The legislator, using a decoupling alternative, introduced into the scope of the conceptual provision another crime in the form of arrears constituting the equivalent of at least three periodical benefits or a delay of arrears of benefits other than periodical benefits amounting to at least three months, whereby benefits other than periodical benefits are defined as maintenance benefits paid once, in the future and determined by a court decision, an agreement or settlement between the creditor and the debtor, or maintenance benefits capitalised and awarded once (in particular when the moment of expiry of the maintenance obligation

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[2] Tekst jedn. DzU z 2019 r., poz. 670.

[3] Ustawa z 6 czerwca 1997 r. — Kodeks karny (tekst jedn. DzU z 2016 r., poz. 1137 ze zm.).

[4] The article includes the author's considerations, remarks and guidelines resulting from her service in the investigation unit.

[5] Ł. Pohl, *Prawo karne — wykład części ogólnej*, Warszawa 2015, p. 215.

is known)[6]. However, the existence of the crime still requires a sign in the form of "evasion" understood as a deliberate, intentional act, resulting from the negative psychological attitude of the perpetrator towards the imposed obligation. It is therefore not sufficient to establish that the perpetrator has not paid maintenance, because such a construction of the provision requires gathering evidence indicating the actual evasion of the maintenance obligation by the perpetrator, interpreted in the abovementioned manner, i.e. intentionally. In the course of pre-trial proceedings, the following information should be obtained about the perpetrator, covering the entire period of not paying child maintenance, and their current situation, i.e.:

— information from the employment office detailing the periods of time during which the perpetrator was registered as unemployed, the entitlement to receive unemployment benefit, the periods of time during which unemployment benefit was received, and the amount of benefit received, the job offers made and the job offers rejected,
— information from the social welfare centre competent for the current and previous place of residence of the perpetrator with respect to the use of material benefits (obtaining data from the social welfare centre competent locally with respect to the previous place of residence of the perpetrator is justified only if the period of the perpetrator's residence in a given area covers the period for which preparatory proceedings are conducted),
— information concerning the current family status of the perpetrator (if the perpetrator does not comply with the maintenance obligation only because they have a spouse/cohabiting partner being supported by the perpetrator and children from another family relationship whose living costs are provided or by the perpetrator, and the financial capacity of the perpetrator makes it objectively impossible to comply with the overdue benefits, the perpetrator does not meet the requirements of a prohibited act),
— information on land, premises, buildings and motor vehicles of which the perpetrator is or was the owner[7],
— information on the perpetrator's stays in penitentiary units (both serving a sentence of imprisonment and being remanded in custody),

[6] Explanatory note to the draft law amending the Penal Code Act of 3 January 2017, print No. 1193. Retrieved August 8, 2018 from <www.orka.sejm.gov.pl/Druki8ka.nsf/0/88242DAE71B97187C12580A500613635/%24File/1193.pdf>

[7] Information on the real estate owned by the perpetrator can be obtained through a police officer who acts as a property recovery coordinator and is authorised to submit enquiries to the Central Land and Mortgage Register Database and the Head Office of Geodesy and Cartography. In the case of motor vehicles, in addition to checking the Central Register of Vehicles and Drivers, it is worth considering checking the civil aircraft registers, registers of sea and inland vessels, yachts and sea boats - especially when the perpetrator is a person of a high social and financial status.

— information about the business activity conducted by the perpetrator or the shares held in companies[8],
— checking social networking sites such as Facebook, Instagram and other similar sites in the framework of the so-called open-source intelligence in order to collect and analyse information provided by the perpetrator - in particular, about holiday trips, movable and immovable property, current location, contacts, work, etc.,
— data on the perpetrator's criminal record (including sentences for crimes under Article 209 of the Penal Code),
— determining, during the interrogation of the victim, whether the perpetrator made any payments on account of the maintenance obligation in the examined period, as well as whether the victim is aware of the whereabouts of the perpetrator, their income and property,
— determining the current place of domicile and registered residence of the perpetrator[9],
— in special cases, it may be helpful to obtain information from the tax office through the prosecutor and verify it against the established facts.

Obtaining part of the above information, which clearly indicates that there is no sign of "evasion", makes it possible to terminate the proceedings conducted pursuant to Article 307 of the Code of Criminal Procedure[10] with the denial to initiate an investigation. One should not forget about the necessity to determine if there have been conducted any previous pre-investigative activities and preparatory proceedings involving the indicated paying and receiving parents, which is of crucial importance for determining the time when the crime has been committed, and for including in the description of the alleged act only the period which until now has not been considered or has been considered, but the proceedings ended with the issuance of a decision on discontinuance or a denial of initiation of an investigation due to a lack of data being a sufficient proof that a prohibited act has been committed, i.e. pursuant to Article 17 (1)(1) of the Code of Criminal Procedure. It would be advisable to obtain a certified photocopy of the decisions issued and attach them to the

[8] This information can be obtained from the website of the Central Electronic Register and Information on Business Activity — <www.prod.ceidg.gov.pl>, and the National Court Register — <www.ekrs.ms.gov.pl>, as well as from the access points to the Police information systems.

[9] Such arrangements should be made through the KSIP database (National Police Information System) and the PESEL database (Personal Identification Number), as well as interviews with family members. In addition, it may be helpful to analyse the existing identity checks and the court registrations in the KSIP database, and then to ask the Police units performing activities with the person of interest for information on the residency addresses and contact details. The source of the necessary information may also be an application for issuing an identity card or passport, which may be obtained in the commune office (useful if it was submitted in the period which may indicate that it is still valid).

[10] Ustawa z 6 czerwca 1997 r. — Kodeks postępowania karnego (tekst jedn. DzU z 2017 r., poz. 1904 ze zm.).

investigation file. It is important that particular care is taken when interrogating a suspect who is willing to provide explanations and who claims that at the time of the alleged act they were homeless, unemployed, did not undertake casual work, and did not possess any movable or immovable property. In such a case, the role of a police officer is to obtain information from the suspect concerning the place of accommodation (especially in winter), data of persons who helped the suspect financially, and sources of assistance from which they benefited, and then to verify them.

Going further, the legislator makes the realisation of the elements of the type of qualified crime of not paying child maintenance dependent on the occurrence of an effect in the form of exposure to the inability to satisfy basic life needs caused by the perpetrator's evasion of the provision of maintenance services, i.e. the failure to act in a specific way. At this point, it is worthwhile to refer to the case law, which states that the scope of basic needs is not a constant and unchanging concept, but depends on specific socio-economic conditions[11]. In addition to the necessity to provide food, housing, clothing, and school supplies, the basic needs are also consumption and cultural needs, which include entertainment, the pursuit of passions, the development of talents, and the possibility of training in sports or learning foreign languages. This is a matter for individual assessment, taking into account the child's age, state of health and other factors. These circumstances and facts should be established during the hearing of the receiving parent representative (usually the other parent of the entitled person). Moreover, the legislator did not include the relevant act among the sources of the maintenance obligation, and extended the catalogue with a settlement concluded in court or by another authority. It is difficult to share this view in accordance with the provisions of the Law of 25 February 1964 - The Family and Guardianship Code[12]. As indicated by the Supreme Court in its decision of 25 January 2018[13], "in the current wording of Article 209 (1) of the Penal Code, if the maintenance obligation applies to the closest persons and results from the abovementioned provisions of the Family and Guardianship Code, its source, and still an independent one, is the Act. The court's decision, settlement or agreement determining the amount of such a benefit shall be declaratory in nature only, as has already been mentioned, and shall not in that case give rise to any obligation to provide for the maintenance of the person entitled".

Until now, the act under Article 209 (1) of the Penal Code has been punishable by a fine, penalty of restricted liberty or custodial sentence of up to 2 years. In the current legal status, the basic type of the crime should be distinguished, as defined in paragraph 1, providing for a penalty in the form of a fine, restricted liberty or custodial sentence of up to 1 year, and the qualified type in paragraph 1a imposing a fine,

[11] Wyrok SN z 27 marca 1987 r., sygn. V KRN 54/87, OSN 1987, nr 87, poz. 103.
[12] DzU z 1964 r., nr 9, poz. 59 ze zm.
[13] Sygn. I KZP 10/17.

restricted liberty or custodial sentence of up to 2 years on the perpetrator. Determination of the statutory penalty of deprivation of liberty at such a level — with simultaneous fulfilment of the conditions listed in Article 43la (1) of the Executive Penal Code — allows for the application of a penalty in the system of electronic supervision for an act stipulated in Article 209 (1) of the Penal Code. In the case of a conviction under Article 209 (1a) of the Penal Code, the abovementioned mode of sentence enforcement is possible only in a situation when the court has pronounced a sentence of imprisonment not exceeding one year and the convicted person meets other conditions resulting from the aforementioned provision of the Executive Penal Code. A penalty of isolation will not solve the problem, but will exacerbate it, so it should be imposed only as *ultima ratio*[14]. There are no premises justifying the necessity of separating the perpetrator who does not pay their child maintenance liability from the rest of society, and the type of crime committed does not require their social rehabilitation[15]. Not suggesting *de lege ferenda* postulates, in the current legal status - if there are no negative premises - the most axiologically justified punishment seems to be a sentence of imprisonment for the act under Article 209 of the Penal Code conditionally suspended for the trial period with simultaneous imposition of the probationary obligation specified in Article 72 (1)(3) of the Penal Code[16].

The issue of maintenance being paid to a minor during the debtor's stay in prison also remains problematic. The authorities conducting preparatory proceedings, after establishing that the perpetrator was detained in a penitentiary unit during a given period, shall conclude that they did not have an objective opportunity to comply with the maintenance obligation and shall therefore exclude that period from the description of the act. In some cases, this will result in the discontinuance of the stipulation due to the absence of any prohibited act. The analysis of the jurisprudence shows that the courts are not unanimous on this matter. According to the sentence of the Supreme Court of 7 April 1994[17], if the debtor has no means of earning a living or property, including by serving a prison sentence, and does not work due to a lack of space for convicts, they are exempt from maintenance. Another opinion was presented by the Administrative Court in Łódź in the judgement of 23 November 2010, where it held that the waiver of maintenance may only take place when the income situation of the debtor or their family resulting from objective factors does not allow for the fulfilment of the imposed obligation, which does not include serving a custodial sentencey because it is the result of prohibited actions of the debtor, and these do not constitute an exceptional

[14] D.J. Sosnowska, *Alimenty a prawo karne. Praktyka wymiaru sprawiedliwości*, Warszawa 2012, p. 196.

[15] A. Ornowska, *Kara ograniczenia wolności*, Warsaw 2013, p. 28.

[16] When suspending the enforcement of a sentence, the court shall oblige and, if it decides on a penalty measure, may oblige the sentenced person to fulfil their obligation to pay for the maintenance of another person.

[17] Sygn. I CR 3/94, LEX nr 188339.

situation[18]. For obvious reasons, the presented judgements are not complete and constitute only a prelude to further considerations, which are not the subject of this study.

In police practice, in the event of such a situation, it may be helpful to address a question to the penitentiary unit in which the detainee is staying with regard to the possibility of taking up employment and the amount of remuneration possible to be obtained, and first of all to determine whether they are serving a sentence for an intentional crime in which they were aware of the negative legal consequences for them, or for an unintentional one (e.g. Article 177 of the Penal Code). Not without significance in the context of the aforementioned problem is the regulation of Article 122 of the Executive Penal Code, according to which a convicted person who is obliged to provide maintenance benefits shall be sent first to work. Each case must be considered on a case-by-case basis, and in some cases, the debtor's stay in prison may be irrelevant to the proceedings. For objective reasons, a serious illness preventing them from taking up employment, a medical report on incapacity for work, hospital treatment, and registration in the employment office (only if the perpetrator has not rejected any job offer) prevent the debtor from acquiring any income.

The amendment to the legislation has led to an increased inflow of cases of maintenance evasion to prosecutors' offices throughout the country. According to the data made available by the National Prosecutor's Office, in the period from 1 August 2016 to 31 May 2017, it amounted to 26,994 cases, whereas in the period from 1 June 2017 to 31 March 2018, it was almost three times as many, i.e. 70,145 cases[19]. In the same period, an increase in the number of substantive decisions terminating proceedings, amounting to 250.2%, was also noted[20]. According to data generated from the National System of Police Information, for the first half of 2018, 90,241 proceedings for acts under Article 209 (1) of the Penal Code were initiated in the whole country, whereas in the analogous period of 2017, this number amounted to 10,195. In 2018, 70,500 proceedings in cases involving failure to pay child support maintenance were conducted. By August this year, it amounted to almost 100,000 cases.

An increase in the number of proceedings in the prosecutor's office is equivalent to an increase in the number of conducted police investigations in cases relevant to Article 209 of the Penal Code. Depending on the

[18] Sygn. II SA/Łd 784/10. Retrieved August 8, 2018 from <www.orzeczenia.nsa.gov.pl/doc/AD9F3872DA>

[19] According to various assumptions included in the justification to the Act amending the Act, the increase in the number of initiated proceedings for an act specified in Article 209 of the Penal Code was expected to amount to 10-20%, i.e. between 6.3 and 12.7 thousand cases per year.

[20] See the reply of the deputy national prosecutor of 13 April 2018 to the Ombudsman's question on the issue of the crimes of evading maintenance obligation, letter No. PK I BP 071.54.2018, <www.rpo.gov.pl/sites/default/files/Odpowied%C5%BA%20Prokuratury%20dotycz%C4%85ca%20art.%20209%20kk.pdf>, 8 August 2018.

organisational structure of a given unit, preparatory proceedings are conducted by criminal departments, investigation departments or teams carrying out investigative tasks in municipal and district police headquarters as well as police stations and police posts. In the current bad human resources situation, which is particularly noticeable in the aforementioned departments, the performance of procedural activities related to a submitted notification of a failure to pay maintenance takes up a significant portion of the available man-hours. Apart from procedural activities in the form of interrogating witnesses or, alternatively, the suspect, and obtaining information about their previous criminal record and personal identification data, the investigating officer is obliged to prepare KSIP registration forms[21] and complete the data in the Electronic Register of Investigation Activities. The change of regulations has led to a situation in which, on a single day, the locally competent social welfare centre sends several dozen notifications of a crime referred to in Article 209 of the Penal Code, and officers performing investigative activities conduct a dozen or even several dozen of such proceedings simultaneously.

The dynamics of the initiation of criminal investigations regarding a lack of maintenance payments not only affects prosecutors and police officers, but also the workload of judicial officers, who, pursuant to the decision on release from professional secrecy, are obliged to provide the documentation of a maintenance case against a debtor, which is necessary to establish the facts by law enforcement agencies. There is also an increased amount of work for employees providing information from the National Criminal Register in district courts and, of course, for employees of social welfare centres who are obliged to both collect and send full documentation concerning the debtor, and to provide information about the parent receiving benefits from the maintenance fund. It seems impossible to interview an employee of a social welfare centre in the circumstances of the notification, taking into account the number of such notifications. One should not forget the costs associated with proceedings involving unpaid child maintenance, including, in particular, personal and material costs, but also expenses on experts, medical examinations, delivery of letters, reimbursement of travel expenses for summoned witnesses, costs of legal defence, translators and interpreters, escorts of suspects serving custodial sentences in other cases[22] as well as the disproportionately high costs for escorting suspects detained under a European Arrest Warrant[23]. The abovementioned factors cause the time between the incoming notification to the Police unit and the final decision on the case to be significantly increased.

[21] Pursuant to the decision no. 165 of the Police Commander-in-Chief of 25 July 2017 on the functioning of the National Police Information System.

[22] The issue of the cost of the proceedings is regulated by Articles 616-618 of the Code of Criminal Procedure and the Act of 23 June 1973 on Fees in Criminal Matters.

[23] Depending on the country from which it is organised, the cost of the most commonly used air convoy is on average several dozen thousand PLN.

Another challenge for investigation teams are the opportunities offered to suspects by the previously absent institutions, as currently defined in Article 209 (4) and (5) of the Penal Code, i.e. elements of voluntary disclosure. They are based on the fact that the perpetrator of the basic type of the crime is not subject to a penalty if they not later than before the expiry of 30 days from the date of the first interrogation as a suspect, have paid all of the overdue maintenance in full, while with respect to the perpetrator of the qualified type of the crime who, not later than within 30 days from the date of the first interrogation as a suspect, has paid all of the overdue maintenance in full, the court shall waive the imposition of a penalty, unless the guilt and social harmfulness of the act speak against resignation from the imposition of a penalty. The adoption of such a solution was probably intended by the legislator to increase the recoverability of maintenance, but in practice, it can be very difficult to interpret[24].

The fulfilment of the condition specified in Article 209 (4) of the Code of Criminal Procedure will result in a decision being issued to discontinue an investigation, pursuant to Article 17 (1)(4) of the Code of Criminal Procedure. It may happen that a maintenance debtor, indicated in the notification of a crime, voluntarily reports to the Police, presenting a document confirming payment of all of the previous maintenance arrears, even before the decision on the presentation of charges is issued. In such a case, verification and confirmation of compliance with the existing obligation for the benefit of the receiving parent, as well as a determination that in the given factual situation, the paying parent did not commit the qualified type of the crime, gives the authority to terminate the proceedings *in rem,* before the interrogation as a suspect. Such an interpretation is supported by the assumption of a rational legislator, as well as by the use of linguistic, functional and systemic interpretation.

Taking into account the amount of several or dozen or so years of debt of maintenance debtors, usually expressed in tens of thousands of PLN, it is difficult to count on their sudden discipline, even more so because the application of the discussed institution can take place only when the entire amount of the debt is repaid. The question of determining the scope of the term "all overdue maintenance" used in the Act is controversial and raises many doubts. Should only maintenance owed in respect of the claimed period be regarded as past due or should all maintenance owed by the perpetrator be regarded as past due, including arrears of an earlier period, enforcement fees and time-barred receivables?. The concept allowing the perpetrator to take advantage of the possibility to avoid criminal liability for committing a crime under Article 209 (1) of the Penal Code after payment of maintenance arrears arising only within the period of the described charge seems to be justified. This interpretation is supported

[24] A. Duda, D. Sokołowska, Nowe granice kryminalizacji przestępstwa niealimentacji oraz mechanizmy redukcji karania według znowelizowanego brzmienia art. 209 k.k., [in:] *Czasopismo Prawa Karnego i Nauk Penalnych* 2017, No. 4, p. 40.

by both the guarantee function of criminal law and the resulting principle of *nullum crimen sine lege stricta*[25]. It is not possible to apply a broad interpretation to the detriment of the perpetrator of a debt order, which goes beyond the scope of the conduct complained of, even if it exists and even if the legislature intended to strengthen the position of the creditor and to increase the recovery of maintenance obligations[26]. However, it can be assumed that, in the vast majority of cases, this institution will be used by debtors who are in several months' arrears only, due to the real possibility of being repaid.

A similar situation may happen at the *in-personam* phase after the debtor is interrogated as a suspect. Within 30 days from the interrogation date, the debtor may cover the existing arrears. That legislation has the effect of forcing the investigating authority to take no action during that period, since, as a rule, the statement of objections and the interrogation of the suspect are final steps. After 30 days, the time at which the crime was committed must be re-examined and, if necessary, the charge must be changed to take account of the next settlement period if it has already expired. Subsequently, it is necessary to provide the suspect with a revised charge and to interrogate him/her. Only after these steps have been taken, can the investigation be concluded with an indictment or a request for a conviction, and can a decision be made on the penalties or other provided measures agreed with the person accused of the alleged act. Based on the previous Article 209 of the Penal Code, while maintaining an appropriate rhythm of conducted activities, the proceedings could be completed within one month from the date of receipt of the notification of the commission of a crime. Under the current legal framework, it is impossible to complete the investigation in the case of unpaid maintenance within 30 days of the date of the suspect's interrogation, and it should not be forgotten that it also takes time for evidence to be gathered before processing the suspect[27].

The clause described in Article 209 (5) of the Penal Code is constructed in a manner different from the one in the preceding paragraph. A perpetrator of the qualified type of the crime specified in Article 209 (1a), despite the payment of overdue maintenance, due to the effects of the committed act, i.e. exposing the entitled person to the inability to satisfy basic life needs, is treated more severely than a perpetrator of the basic type of the crime. The Act confers competence in the final settlement of the case only to the court, which is obliged to subject the committed act to evaluation in terms of guilt and its social harmfulness. If the court finds those to be significant and based on a passive attitude or bad faith on the part of the suspect, it shall issue a conviction and impose a penalty, taking into account mitigating circumstances, which shall be the repayment

[25] Ł. Pohl, Prawo karne..., *op. cit.*, pp. 29–30.

[26] R. Kmiecik, E. Skrętowicz, *Proces karny – część ogólna*, Warszawa 2009, p. 45.

[27] M. Borodziuk, *Zakres kryminalizacji przestępstwa niealimentacji po nowelizacji w 2017 r.*, "Prokuratura i Prawo" 2018, No. 4, p. 51.

of the obligation under that provision. In such a case, pursuant to Article 107 (5) of the Penal Code, the expunction of a conviction record shall take place by force of law within one year from the date of the (final and) legally binding decision. In view of the provisions formulated in this way, it will be justified from the point of view of practice to document in the protocol of the suspect's interrogation the instructions contained in Article 209 (4) and (5) of the Penal Code, as well as to collect a preliminary statement as to whether the suspect intends to use this institution or not.

Another problematic issue is the application of intertemporal provisions. Based on Article 4 (1) of the Penal Code, in the course of preparatory proceedings concerning acts committed after the entry into force of the amendment, the new act is applied, while with regard to perpetrators of crimes committed before that date, each case should be considered individually, taking into account which of the acts is more relevant to the perpetrator.

In the justification for the amendment to the Act, it was indicated that it would affect bodies conducting preparatory proceedings through "a temporary increase in the number of preparatory proceedings for the crime of not paying a child maintenance liability"[28]. The author of the referred document did not predict, however, that the examination of a case concerning the same creditor and debtor will take place periodically, after the nodes specified in Article 209 (1) of the Penal Code have been fulfilled, i.e. even every 3 months. If the offender evades the maintenance obligation throughout the year, the same case may be subject to up to four preparatory proceedings per year conducted by the police in the event of a change in the period covered by the accusation. The increase will not be temporary but permanent, which will be directly reflected in the prosecution, police and judicial statistics. Suspects who do not appear on the summons, are in hiding or have been living abroad for several years often constitute an obstacle to the quick termination of proceedings. There is therefore no doubt that the number of investigations that will have to be suspended for the above reasons will increase.

Interesting conclusions can be drawn when considering the legal grounds cited in the decisions on refusal to initiate or terminate an investigation. Excluding the most frequent ones — specified in Article 17 (1)(1-2) of the Code of Criminal Procedure — in individual cases, it may be necessary to terminate the proceedings, the reason being the inability to determine the perpetrator of the crime. However, such a procedural decision will be taken very rarely. If a debtor who is obliged to provide maintenance effectively negates paternity or invalidates its recognition, and after the decision in this case becomes final and a notification is submitted about committing a crime under Article 209 of the Penal Code, in which he is the designated perpetrator, then the person in charge of the proceedings must first of all determine the date on which the decision

[28] Explanatory Memorandum to the draft law amending the Penal Code law..., *op. cit.*

becomes final, and obtain information about whether the debtor has filed a lawsuit to repeal the maintenance obligation. Issuing a decision on discontinuance of an investigation due to a failure to determine the perpetrator of a crime should take into account the time between the decision repealing the maintenance obligation becoming final and filing a complaint about the crime - of course, if the procedural authorities do not have information about the actual father of the entitled person. In the remaining period - when the maintenance obligation was specified in a court decision - the perpetrator is subject to criminal liability on general principles, even though the paternity was denied. The parent's obligations towards the child based on legal norms and principles of social coexistence must be fulfilled until the existing legal relationship is broken by the respective authorities. This view, although controversial, is justified by axiological reasoning, for example, in the argumentation presented in the Supreme Court's decision of 26 January 2012.[29]

It is worth noting the proposal to change the mode of prosecution of this type of crime to private prosecution as well as the introduction of legal instruments allowing for effective enforcement under civil law[30]. There are cases where a representative of a minor interviewed as a witness is not interested in filing a motion for the prosecution of a maintenance debtor, for various reasons. It is not difficult to imagine that there may be an emotional relationship between the former partners and the resulting resistance to penal liability of the debtor. The current structure of the provision gives the right to file a motion to both the victim, the social welfare body and the body undertaking actions against the maintenance debtor, and if the victim is granted family benefits or cash benefits paid in the event of ineffective enforcement of child maintenance, the prosecution of the crime takes place *ex officio* - thus it is possible even against the will of the victim.

Summarising the above considerations, from the point of view of the Police as the authority conducting preparatory and initial investigation, more than two years of the amended provisions being in force should be assessed negatively, mainly due to the lack of adequate measures and resources in the field units and the imprecision of the amended legal act implying problems in its practical application.

[29] Sygn. III CZP 91/11.

[30] Cf. D. Gil, Postępowanie w sprawach z oskarżenia prywatnego w polskim procesie karnym, Warsaw 2011, p. 76.

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Summary: This article considers the legal and practical aspects of the amendment to Article 209 of the Penal Code, which provides for liability for evading maintenance obligations, determined by the number of court orders, settlements and other agreements. The necessity to change the regulations was justified by the low recoverability of maintenance arrears and the relatively small number of indictments made against the perpetrators of these acts. The crime of not paying child maintenance is socially burdensome and generates significant expenses from the state budget. The legislator, justifying the draft law, considered that its amendment would temporarily increase the burden of law enforcement, but the author cites arguments that this increase will be permanent and will affect not only the prosecutor's office and the police, but also other institutions which will be required to report information about the offender. However, for over a year after the introduction of the amendment, the authorities conducting preparatory proceedings have been overburdened. In addition, imprecise regulations are difficult to interpret and put into practice. The study also addresses the issues of new institutions enabling the perpetrator to avoid liability for the act committed in connection with the payment of all maintenance arrears and the current penalties, as well as the features of both the basic and qualified types of the crime.