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**KARA PIENIEŻNA JAKO ALTERNATYWNA
KONCEPCJA KARY
W SYSTEMIE PRAWA KARNEGO
NA SŁOWACJI**

**PECUNIARY PENALTY AS AN ALTERNATIVE
CONCEPT OF PUNISHMENT
IN THE CRIMINAL LAW SYSTEM
IN SLOVAKIA**

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Streszczenie

W niniejszym opracowaniu autor opisuje problematykę stosowania alternatywnych kar. W szczególności autor koncentruje się na kwestii kary pieniężnej poprzez jej definicję i pozycję w systemie prawa karnego Republiki Słowackiej. Autor wyjaśnia wykonanie i nałożenie kary alternatywnej w warunkach prawnych Republiki Słowackiej w porównaniu z prawem Republiki Czeskiej. Rolą kary pieniężnej jest zatrzymanie skazanego przed osadzeniem w więzieniu i nałożenie takiego rodzaju kary, która uniemożliwi skazanemu popełnienie kolejnych przestępstw, będzie chronić społeczeństwo i zaspokoi żądania ofiar przestępstwa. Celem alternatywnej koncepcji kary jest utrwalenie pozytywnych i społecznie akceptowanych nawyków i postaw sprawcy, niezbędnych do prowadzenia właściwego życia w społeczeństwie.


Słowa kluczowe: kodeks postępowania karnego, kara alternatywna, sprawiedliwość naprawcza, kara pieniężna, sankcja

Abstract

In this expert contribution, the author deals with the description of alternative penalties in a broader sense and with their meaning. In particular, the author focuses on the issue of pecuniary penalty by its definition and position in the criminal law system in Slovakia. The contribution professionally explains the execution and imposition of this alternative penalty in the conditions of the Slovak Republic as well as a comparison with the Czech Republic. The role of the pecuniary penalty is to keep the convict out of prison and to impose such a type of pen-

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alty that will prevent the convict from committing further criminal offences, will protect the society and, last but not least, will meet demands of the victims of the crime. The aim of the alternative concept of punishment is to consolidate the perpetrator's habits and attitudes necessary for leading a proper life.

Keywords: criminal procedure code, alternative penalty, restorative justice, pecuniary penalty, sanction

Introduction

Pecuniary penalty, the forfeiture of assets and the forfeiture of a thing are some of the alternative penalties that can be imposed not only on natural persons but also on juridical persons. The imposition of alternative penalties is very relevant to the conditions of the Slovak Republic. In the second half of the twentieth century, new forms of justice which could replace or complement certain traditional but in our view not completely effective and sufficiently recognized criminal law institutions, began to be searched for. This process is related to criminal policy which is as a new concept referred to as restorative justice. Worldwide, the idea of using non-custodial types of penalties is dominant. Therefore, the effort for finding an alternative is sought after.


The significance of alternative penalties

The imposition of these penalties is a certain alternative to imprisonment, therefore they are also known as alternative penalties. In this case, it is necessary to distinguish alternative penalties from the penalties that are sometimes mistakenly confused with alternative penalties. Non-custodial penalties are the penalties specified in Section 32 (b) to (l). "By alternative penalties, we mean penalties which, without being connected with the deprivation of liberty, guarantee the fulfilment of the purpose of the punishment as if the unconditional custodial sentence had been enforced on the convict." (Ivor, J., Polák, P., Záhora, p. 373).

The principle of retributive justice is not the search for an alternative penalty, as is the case with the restorative justice concept. The alternative penalties derive from the principle of the restorative justice. A significant shift for the principle of restorative justice is the way of looking at the perpetrator and the victim, as well as the need for cooperation not only between the perpetrator and the law enforcement authority, but

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also cooperation between the perpetrator and the injured party (Žatecká, E., Fryšták, M. 2008. pp.101-102).

Annually, there are approximately 600,000 pecuniary penalties imposed in the Federal Republic of Germany. It represents more than 80% of all the punishments imposed in criminal proceedings. Western states of the European Union prefer it, as a preferable type of sanction, to the imprisonment. A pecuniary penalty is imposed in two-thirds of the sentences in the area of road traffic and in one fourth in case of property crimes. Approximately 10% share is attributed to other offences. The pecuniary penalty in the Slovak Republic is one of the alternative penalties that affects exclusively the property of the perpetrator. This alternative penalty is usually imposed in case of minor offences, in order to replace short-term custodial sentences i.e. imprisonment of up to six months. The imposition of such short custodial sentences can lead to negative consequences in the form of contact with fellow prisoners, as well as stigmatization even in the case of short-term exclusion from society, which cannot be replaced by the positive and desired effects of serving a custodial sentence due to a short period of time (Poláková, V. 2014. p. 388).

The advantages of the pecuniary penalty include:

- No disruption of the social and integration links of the convict.
- An absence of the unwanted effect in the form of social exclusion.
- Anonymity and a low degree of stigmatization of the convict.

The disadvantages of the pecuniary penalty include: (Benčík, M. 1994. pp. 49-56).

- A lateral effect of influencing close relatives
- The concurrence to the damages
- Uncertainty if it is the perpetrator who pays the penalty

Definition and position of the pecuniary penalty

The pecuniary penalty is exhaustively listed in Section 56 and Section 57 of the Criminal Code. A pecuniary penalty may be imposed on the perpetrator of an intentional offence who, by the offence, obtained or sought to obtain a property benefit. The motive of the offence committed by the perpetrator was the profitability, and in such case, usually, a fine is imposed along with a custodial sentence. The exemption

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from the general level of imposing the pecuniary penalty is Section 56(2) of the Criminal Code. A pecuniary penalty may be imposed on a perpetrator for a minor offence if, considering the nature of the committed minor offence and the remedy of the perpetrator, the court does not impose a custodial sentence, i.e. the pecuniary penalty is imposed as a separate alternative penalty. To sum up, we can state that a pecuniary penalty can be imposed separately for all offences with a maximum term of imprisonment of five years, even without the so-called property benefit, and a pecuniary punishment can be imposed for all intentional criminal offences as a secondary punishment if the so-called property benefit is demonstrated (Korgo, D. a kol. 2012. p. 175).

A specific question is the provision of Section 49(2) of the Criminal Procedure Code, according to which a conditional sentence is not possible if the court convicts the perpetrator of an intentional criminal offence committed during the probationary period of a conditional sentence or conditional release from the imprisonment. However, in this provision, the legislator does not explicitly prohibit the imposition of alternative penalties, such as pecuniary penalty, in case of committing a criminal offence during the probationary period. The amount of the pecuniary penalty is from 160 EUR to 331 930 EUR and cannot be reduced or increased outside the stated range. When imposing a pecuniary penalty, the court must take into account the personal and financial circumstances of the perpetrator. When the pecuniary penalty is imposed, examination of this condition includes the examination of the obligations of the accused with a focus to the amount of his maintenance obligation and the extent of the liability for damages. The imposition of the pecuniary penalty provides the court with the opportunity to affect also the property acquired by the perpetrator through honest work (Ivor, J., Polák, P., Záhora, J. 2016., p. 373).

For example, the western EU countries such as Germany, France or Austria, use the system of a "daily rate". In this system, the number of days of the daily rate stated in the sentence represents all the circumstances relating to the guilt along with the perpetrator. The amount of the daily rate/instalment is calculated and adjusted in compliance with the perpetrator's financial circumstances. Both factors are separate. In the sentence, we do not find the final amount of the pecuniary penalty that results

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from the number of days of the daily rate and the daily rate. This fact does not lead to erroneousness of the sentence but it would divert attention from the statement of the number of days of the daily rate which bears the assessment of the perpetrator's degree of fault and perpetrator's personality, which has a decisive influence on the perception of equality before the law (Poláková, V. 2014. p. 390).

The convict must eventually pay the amount of the fine, which is determined by multiplying the number of days of the daily rate and the daily rate. In the event that a pecuniary penalty is imposed on two persons, in the roles of accessories, convicted for the same act, under the same circumstances decisive for the amount of the penalty, the judge will determine the number of days of the daily rate - for example, 100 days on the level of guilt. If the case of the different financial and personal circumstances of the two perpetrators is to occur, the judge shall determine the daily rate of 20 EUR to the socially weaker perpetrator and the rate of 200 EUR to the socially stronger one. The socially weaker perpetrator will pay 200 euros for the same act and the socially stronger one 20,000 EUR. In the case of the failure to pay the pecuniary penalty, both shall serve a substitute prison sentence of the same length. Under the conditions of imposing a pecuniary penalty in the Slovak Republic, the court will not impose a pecuniary penalty if it is obvious that the convict will not be able to pay it. The court in the Slovak Republic, as well as abroad, may decide that the convict pays the penalty in monthly instalments. The amount and time period within which the pecuniary penalty shall be paid shall not exceed one year from the date on which the judgement of conviction became final. The court will not impose a pecuniary penalty if it will pervert the possibility of compensation for the damage caused by the offence. The state is entitled to the amount that is obtained by imposing a pecuniary penalty. If the court assumes that the pecuniary penalty could be deliberately obstructed, it will impose a substitute custodial sentence of up to five years, while the substitute penalty plus the penalty imposed must not exceed the lawful maximum term. If the pecuniary penalty is imposed in place of life imprisonment or if the substitute penalty exceeds that limit, the court will not impose a substitute penalty (For reference, have a look at: Korgo, D. a kol. 2012. Trestné právo hmotné (všeobec-

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náčast'), p. 175-177. Šebest, M., Tkačik, M. 2014, pp. 123-137. Ivor, J., Polák, P., Záhora, J. 2016. pp. 398-399).

Execution and imposition of the pecuniary penalty


The procedure for the execution of the pecuniary penalty is stipulated in the provisions of Section 429-432 of Act no. 301/2005 Coll. Criminal Procedure Code, as amended, hereinafter referred to as CPC. The judgment or the penalty order imposing the pecuniary penalty became enforceable in the sense of Section 429 (1) CPC. The chairman of the panel or the single judge will call on the convict to pay it within fifteen days. The period shall begin on the day following the day when the chairman of the panel or the single judge called on the convict to pay the pecuniary penalty. The effectiveness of this call relates to Section 406(2) CPC, where the court with jurisdiction is the court that decided at first instance. A call that takes the form of a measure must include a warning that if the convict fails to pay the pecuniary penalty in the stipulated period, a substitute custodial sentence will be imposed. To avoid unnecessary misunderstandings, the court account number, the bank name, the bank code and a variable symbol shall be stated in the call for payment of the pecuniary penalty. The provision of Section 430(1) CPC allows the convicted person to file a motion for suspension of the execution of the pecuniary penalty or for the payment of the pecuniary penalty in instalments. The authorization of the suspension or of the payment in instalments is optional for the court and is conditioned by:

- The convict's motion.
- The existence of important reasons on the part of the convict which lead, without any fault on convict's part, to obstacles to an immediate or a complete payment of the penalty while the convict does not seek to avoid payment of the pecuniary penalty. This argument is supported also by Section 57(1) CC since the pecuniary penalty cannot be imposed by the court if it is apparent that the convict is not able to pay it.

If the court upholds the motion of the convict, it may then "suspend the execution of the pecuniary penalty for a maximum of three months from the date on which the judgment of conviction became final" in the enforcement proceedings in accordance with Section 430(1) (a) CPC (Section 430(1) (a) CP).

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This period may be even shorter but it cannot be exceeded under any circumstances. Pursuant to Section 430 (1) (b) CPC there exist another alternative. The court may "allow payment of the pecuniary penalty in instalments so as to ensure its full payment not later than within one year, and if the amount of pecuniary penalty is higher than 16 590 EUR then within two years from the date on which the judgment of conviction became final." (Section 430(1) (b) CP_.

The Criminal Procedure Code, in contrast to the Criminal Code, differentiates the two periods only if the convict has been allowed to pay the pecuniary penalty in the instalments exclusively by the presiding judge or by the single judge under the conditions stipulated in Section 430(1) (b) CPC. According to Section 56(3) CC, the court is allowed to decide already in the judgment that the convict shall pay the pecuniary penalty in instalments, while it is evident in the law that the instalments have to be on a monthly basis and the overall period for the payment of the pecuniary penalty is within one year from the date on which the judgment of conviction became final. The two-year period is stipulated exclusively in the Criminal Procedure Code, while within the meaning of Section 56(3) CC, if the court imposes the pecuniary penalty by the judgement of conviction, it may allow the payment of the pecuniary penalty for a maximum of one year. In case there are serious reasons (for example insolvency of the convict), the presiding judge or the single judge may decide in the execution proceedings that they allow the payment of the pecuniary penalty in instalments as to ensure its full payment within one year even without the prior stipulation of the monthly instalments in the judgement of conviction. If the final judgement has imposed a pecuniary penalty of more than 16 590 EUR, it may be paid in instalments within the period of two years from the date on which the judgment of conviction became final. The presiding judge is obliged to determine the amount of the monthly instalments as to abide by the time periods. "The one-year or two-year period for payment of the imposed penalty is pursuant to Section 430 (1) (b) CPC, or the three-month period pursuant to Section 430 (1) (a) CPC shall begin on the following day from the date on which the decision to suspend the payment or to pay the penalty in monthly instalments became final." (Zeman, Š. 2014. p. 16).

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Consequently, we would like to note that it is possible for the presiding judge to decide to suspend the payment and later also to pay the pecuniary penalty in instalments for the same convict if there are valid reasons. Section 430(2) CPC states: "If the reasons, for which the execution of the pecuniary penalty has been suspended, cease to exist or if the convict does not observe without a serious reason the instalments, the presiding judge may withdraw the decision to suspend the penalty or to allow the monthly instalments." (Section (430) (2) CP).

The abovementioned paragraph gives a facultative option to the chairman of panel or the single judge who, in a resolution to suspend the execution of a pecuniary penalty or to allow its payment in instalments, always instructs on the grounds for revoking a suspension or payment in instalments. If the convict fails to pay the full amount of the pecuniary penalty, the paid part will be included in the substitute penalty, calculated in a 2:1 ratio, which means two days of the daily rate per one day of the substitute penalty. Pursuant to Section 432(3) CPC, the convict may at any time, which means also after the execution of the mass punishment was ordered, to avert its execution or the execution of its part in such a way, that it is either fully paid or its part is paid. "The key how to proceed in case of a partial payment of the pecuniary penalty is stated neither in the Criminal Code nor in the Criminal Procedure Code." (Poláková, V. 2014, p. 393).


Pecuniary penalty legislation in the Czech Republic

Pecuniary penalty legislation can be found in Section 67 to 69 of Act No. 40/2009 Coll. CC, as well as in the provisions of Section 341 to 344 of Act no. 141/1961 Coll. on criminal court proceedings. The imposition of a pecuniary penalty on juveniles is, on the contrary to the Slovak legislation, contained in a special law, namely in Section 27 to 30 of Act No. 218/2003 Coll. on youth liability for offences and on juvenile justice and on the amendment of certain laws. Unlike the Slovak legislation, the Czech law imposes the pecuniary penalty in three cases (Zeman, Š. 2014. p. 17):

- if the perpetrator, by an intentional offence, obtained or sought to obtain a property benefit for himself or for another person – Section 67(1)CC, or

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- if the criminal law in a special part permits the imposition of a pecuniary penalty for the offence committed - Section 67 (2) (a) CC, or
- if the perpetrator committed a minor offence and in consideration of the nature and gravity of the minor offence and the perpetrator's person and financial circumstances, the court simultaneously does not impose an unconditional custodial sentence – Section 67(2) (b) CC.


By comparing the Slovak and Czech legislation, we come principally to the same conclusions. The difference can be seen in the fact that the Czech Criminal Code mentions several types of penalties in its special part, while our Criminal Code mentions only one type of penalty, namely a sentence of imprisonment for a certain period. Another difference we would like to point out is that the Czech legislation explicitly refers to the unconditional sentence of imprisonment, which means that the combination with the conditional sentence is possible. Our Criminal Code speaks of overall incompatibility with the prison sentence and does not differentiate between its conditional and unconditional form (Zeman, Š. 2014. p. 17).

Conclusion

The meaning of the alternative penalties is that the judge, when imposing a sentence, has an option to impose a custodial sentence or non-custodial sentence. We see the meaning of alternative penalties in absence of linking of the negative aspects of the custodial sentences - for example, the negative impact on the family, the work and the environment from which the convict has come. There is no obstacle for the convict in the process of reintegration back into the society which we consider to be an advantage of alternative penalties. An important fact is that the alternative penalty alone is associated with lower costs than imprisonment. The restorative concept of punishment means different treatment of perpetrators, meaning different from the standard, retributive concept of punishment, which essentially tries to properly identify crimes and justly punish their perpetrators.

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