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REVIEW OF RESOLUTIONS OF THE SUPREME COURT CRIMINAL CHAMBER IN THE FIELD OF SUBSTANTIVE CRIMINAL LAW FOR 2018

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1. NEGATIVE FACTOR FOR AWARDING AN AGGREGATED PENALTY (ARTICLE 85 § 3 CC)

The necessary condition for awarding an aggregated penalty is the fact that aggregated or joint penalties should be subject to execution. On the date of passing a sentence, a complete or partial execution of aggregated penalties must be possible in the way prescribed for a given penalty in the Penalty Execution Code.[1] In accordance with Article 85 § 3 of the Criminal Code (CC), if after the beginning and before the completion of serving a penalty or aggregated penalty a perpetrator commits an offence for which the same type of penalty or another penalty subject to aggregation was awarded, the given penalty is not subject to aggregation with the penalty being served at the time of the commission of an offence. The provision bans aggregation of the penalty being served at the time of the commission of a new offence with the penalty awarded for that new offence.

In the context of this provision, a problem arose whether the commission of an offence by a perpetrator at the time of probation established in connection with conditional release from serving the remaining part of the penalty of deprivation of liberty constitutes a negative factor, within the meaning of Article 85 § 3 CC, for awarding an aggregated penalty of deprivation of liberty that covers the penalty that

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[1] The Supreme Court judgment of 21 November 2018, III KK 626/18, LEX No. 2580208.

was subject to conditional release and a penalty awarded for the offence committed in the period of probation.

Solving the problem, the Supreme Court bench of seven judges passed a resolution on 25 January 2018, I KZP 11/17 (OSNKW 2018, No. 4, item 28), in which it presented their stand that: **"The commission of an offence by a perpetrator during the probation period established in the decision on conditional release from serving the remaining part of the penalty of deprivation of liberty does not constitute a negative factor prescribed in Article 85 § 3 CC for imposing an aggregated penalty covering the penalty (joint penalties) from the serving of which the perpetrator was conditionally released and the penalty (joint penalties) for the offence committed during the probation period."** The stand is right and has been approved of in literature[2] and adopted by the judicature[3]. The Court rightly noted that the basic condition for a negative factor under Article 85 § 3 CC is commission of a criminal act by the perpetrator at the time of serving the sentence, the execution of which started but was not concluded. Therefore, it is essential to understand the phrase "serving a penalty" (*odbycie kary*). It is essential because the phrases "penalty execution" (*wykonywanie kary*) and "serving a penalty" used to be treated as synonymous in the doctrine of law.[4] The word *odbycie* means "participation in something, being somewhere, taking part in an activity or given activities"[5], and *odbyć/odbywać* assumes being for some time or taking part in an activity or a process lasting for a fixed time.[6] The linguistic meaning of the word proves that serving a penalty of deprivation of liberty is connected with the perpetrator's submission to penitentiary influence typical of a particular type of penalty laid down in the sentence; however, serving the penalty of deprivation of liberty does not have to be connected only with imprisonment. The concept of a penalty being executed covers penalties subject to execution, i.e. penalties possible to be executed and not necessarily penalties being executed within the meaning of the provisions of Penalty Execution Code.[7]

Thus, the Supreme Court rightly assumed that the phrases "penalty execution" and "serving a penalty" are not synonymous.[8] Serving a penalty is a narrower concept

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[2] Glosses on the resolution by A. Nowosad, Palestra No. 9, 2018, pp. 88–94; M. Kaszubowicz, Palestra No. 11, 2018, pp. 86–93.

[3] The opinion was presented again in the resolution of seven judges of the Supreme Court of 25 January 2018, I KZP 11/16, OSNKW 2018, No. 4, item 28, LEX No. 2574094, with glosses of approval by P. Poniatowski, Ius Novum No. 4, 2018, pp. 160–176; M. Bielski, OSP 2018, No. 9, pp. 55–61; the Supreme Court judgment of 27 March 2018, III KK 353/17, LEX No. 2510661; the Supreme Court judgment of 10 April 2018, III KK 80/18, LEX No. 2515709.

[4] P. Kozłowska-Kalisz, [in:] M. Mozgawa (ed.), *Kodeks karny. Komentarz*, Warszawa 2017, p. 289.

[5] H. Zgółkowa (ed.), *Praktyczny słownik współczesnej polszczyzny*, Vol. 25, Poznań 2000, p. 243.

[6] S. Dubisz (ed.), *Uniwersalny słownik języka polskiego*, Vol. 3, Warszawa 2003, p. 82.

[7] Judgment of the Court of Appeal in Szczecin of 24 March 2016, II AKa 27/16, LEX No. 2080917; judgment of the Court of Appeal in Wrocław of 30 March 2016, II AKa 69/16, LEX No. 2039680.

[8] D. Kala, M. Klubińska, *Kara łączna i wyrok łączny*, Kraków 2017, p. 76; M. Bielski, *Glosa do uchwały 7 sędziów SN z dnia 25 stycznia 2018 r., I KZP 11/17*, OSP No. 9, 2018, p. 59; *idem*, *Zakres zastosowania negatywnej przesłanki wymiaru kary łącznej z art. 85 § 3 i 3a k.k.*, Prokuratura i Prawo

than execution of a penalty and constitutes an element of the execution proceedings. Both terms in the Polish legal language express their own content and none of them can be treated *per non est*. Thus, the execution of a penalty is a concept superior in relation to serving.[9] A convict serves a penalty of deprivation of liberty also in the period when he/she is temporarily released from prison (Article 91(2)–(4) and (8), Article 92(2)–(5) and (9), Article 131 §§ 1 and 2, Article 138(7) and (8), Article 141a § 1, Article 165 § 2, Article 234 § 2 of the Criminal Procedure Code, henceforth CPC). It is confirmed by the fact that, based on the permissions listed, the time of staying outside prison is not deducted from the period of serving a penalty, unless a penitentiary court decides otherwise (Article 140 § 4 CPC).[10] The Supreme Court is right that "The convict who was given permission to leave prison without supervision for a period not exceeding 14 days at a time, in accordance with Article 138 § 1(8) CPC, continues to serve a penalty of deprivation of liberty within the meaning of Article 85 § 3 CC. The commission of an offence for which a penalty of the same type or another one that is subject to aggregation is awarded constitutes a negative factor for awarding an aggregated penalty in the aggregated sentence. A situation in which a convict commits an offence after the release period has ended, i.e. during the period of unlawful stay outside prison, should be assessed in the same way."[11] However, he/she does not serve a penalty in the case of a break in the penalty execution[12] or earlier release from serving the remaining part of the penalty.[13] In the latter case, in accordance with Article 77 § 1 CC, a convict does not serve a penalty because he/she is released from serving its remaining part. Logically, an offence committed during a probation period is not committed in the course of serving a penalty; a convict does not serve it since he/she has been released from serving it.[14]

The analysis of the provisions of the Criminal Code and the Penalty Execution Code that contain the phrase confirms that serving a penalty does not mean the same as execution of a penalty. The phrase "serving a penalty" is used in the

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No. 11, 2018, pp. 54–63; judgment of the Court of Appeal in Katowice of 20 April 2017, II AKa 64/17, LEX No. 2317640. Contrary and erroneous in: ruling of the Court of Appeal in Katowice of 3 November 2016, II AKz 558/16, LEX No. 2242141; judgment of the Court of Appeal in Katowice of 20 July 2017, II AKa 290/17, LEX No. 2382750.

[9] D. Kala, M. Klubińska, *supra* n. 8, p. 76.

[10] The Supreme Court ruling of 17 May 1990, V KZP 5/90, Przegląd Sądowy No. 9, 1990, p. 103 with a gloss of approval by R.A. Stefański, Orzecznictwo Sądów Polskich No. 1, item 16, 1991; the Supreme Court ruling of 14 September 2017, I KZP 6/17, OSNKW 2017, No. 11, item 62.

[11] The Supreme Court ruling of 19 January 2017, I KZP 12/16, OSNKW 2017, No. 2, item 8 with a gloss of approval by D. Krakowiak, LEX/el. 2017 and such comments by R.A. Stefański, *Przegląd uchwał Izby Karnej Sądu Najwyższego w zakresie prawa karnego materialnego, prawa karnego wykonawczego, prawa karnego skarbowego i prawa wykroczeń za 2017 r.*, Ius Novum No. 1, 2019, pp. 73–74.

[12] Judgment of the Court of Appeal in Katowice of 13 October 2016, II AKa 388/16, Biuletyn SA w Katowicach 2016, No. 4, item 7; ruling of the Court of Appeal in Katowice of 13 April 2016, II AKz 156/16, Biuletyn SA w Katowicach 2016, No. 2, item 4; judgment of the Court of Appeal Szczecin of 1 June 2017, II AKa 65/17, LEX No. 2379122.

[13] V. Konarska-Wrzosek, [in:] V. Konarska-Wrzosek (ed.), *Kodeks karny. Komentarz*, Warszawa 2018, p. 503.

[14] A. Nowosad, *Glosa do uchwały SN z dnia 25 stycznia 2018 r., I KZP 11/17*, Palestra No. 9, 2018, p. 91.

Criminal Code in relation to: deciding on the choice of prison and a therapeutic system (Article 62); relapse into crime (Article 64 §§ 1 and 2), grounds for conditional earlier release from serving the remaining part of a penalty (Article 77 § 1 CC), and recognition of a penalty as executed (Article 82 § 2). In the Penalty Execution Code it is used in the regulations concerning, inter alia, appealing against decisions in execution proceedings (Article 11 § 4), signalling recognition of unlawful deprivation of liberty (Article 34 § 4), initiating the execution of electronic tagging (Article 43k § 2), the place of a penitentiary court meeting to decide on the permission to serve the penalty of deprivation of liberty in the electronic tagging system in case a convict serves a penalty in prison (Article 43le), types of prisons for convicts serving a penalty of deprivation of liberty (Article 69(2) and (4)), a penitentiary commission tasks (Article 76 § 1(2), (6) and (10)(a)), aims and rules of classifying convicts (Article 82 § 2(3)), prisons for minors (Article 84 §§ 1 and 2), prisons for first-time convicts, second-time convicts and women (Articles 85, 86 and 87), imprisonment of perpetrators subject to the programmed influence system or serving a substitute penalty of deprivation of liberty or a penalty of detention (Article 88 §§ 1 and 2), serving a penalty within the programmed influence and therapeutic system (Article 95 §§ 1 and 4, Article 96 §§ 1 and 3), and prison features (Article 100 § 1). According to the content of those provisions, serving a penalty is connected with activities related to actual implementation of a sentence.

2. LIMITATION OF PENALTY IMPOSITION (ARTICLE 101 CC)

2.1. LIMITATION OF PENALTY IMPOSITION IN CASE OF CUMULATIVE LEGAL CLASSIFICATION OF AN ACT

Article 101 CC is formulated clearly and it might seem that its application does not pose any problems. However, it raises doubts as to what time limits should be applicable in the case of an act matching the features of two or more provisions of the Criminal Code (Article 11 § 2 CC), i.e. whether the time limit prescribed for an offence determined in the provision laying down the most severe penalty (Article 11 § 3 CC) and thus to the whole act is subject to cumulative legal classification or whether the time limit is calculated separately in relation to each provision within the cumulative classification, and the recognition of its expiry prevents making reference to this provision in the legal classification of the act attributed to the accused. The issue has led to discrepancies in the case law where the following stands are presented:

1) If an act matches the features of two or more provisions of the Criminal Code, limitation is determined in a provision laying down the most severe penalty (Article 11 § 3 CC) because, in accordance with Article 11 § 1 CC, the same act can constitute only one offence. On the other hand, Article 101 CC prescribes limitation in relation to an offence penalisation and not legal classification.[15]

[15] The Supreme Court judgment of 14 January 2010, V KK 235/09, OSNKW 2010, No. 6, item 50; the Supreme Court ruling of 30 October 2014, I KZP 19/14, OSNKW 2015, No. 1,

As a result of the application of cumulative legal classification of an act, a new type of a prohibited act comes into being that consists of all provisions being in real concurrence, which is sometimes called unavoidable concurrence.[16] Such offences carry a penalty determined in the provision prescribing the most severe penalty.[17] Due to the fact that limitation of penalty imposition concerns an act constituting one offence and not its legal classification,[18] the time limit is only one.[19] It should be related to an offence in its integral entirety, although various time limits concern individual types of offences subject to cumulative legal classification.[20]

2) In the case of concurrence of the Criminal Code provisions, making reference to all concurring provisions in the grounds for sentencing is admissible only when the time limits in relation to all of them have not expired because the principle of cumulative legal classification of an act cannot ignore other provisions that exclude sentencing a person committing a particular type of offence.[21] Sentencing based on all concurring provisions constitutes the expression of attributing

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item 1; ruling of 28 May 2015, II KK 131/15, Krakowskie Zeszyty Sądowe No. 9, item 9, 2015; the Supreme Court judgment of 29 October 2015, WA 13/15, LEX No. 1827149; the Supreme Court judgment of 29 October 2015, SDI 42/15, LEX No. 1938293; the Supreme Court ruling of 22 March 2016, V KK 345/15, LEX No. 2015139; the Supreme Court ruling of 19 October 2016, IV KK 333/16, LEX No. 2157282; the Supreme Court judgment of 23 November 2016, III KK 225/16, OSNKW 2017, No. 4, item 18; the Supreme Court ruling of 29 June 2017, IV KK 203/17, LEX No. 2342179; judgment of the Court of Appeal in Katowice of 24 May 2013, II AKa 563/12, Krakowskie Zeszyty Sądowe No. 10, item 70, 2013; judgment of the Court of Appeal in Katowice of 2 August 2013, II AKa 480/12, LEX No. 1422278; judgment of the Court of Appeal in Wrocław of 19 February 2015, II AKa 13/15, LEX No. 1661274; judgment of the Court of Appeal in Wrocław of 25 February 2016, II AKa 331/15, LEX No. 2023603; judgment of the Court of Appeal in Katowice of 30 May 2016, II AKa 71/16, LEX No. 2101695; judgment of the Court of Appeal in Katowice of 2 June 2016, II AKa 141/16, LEX No. 2101687; judgment of the Court of Appeal in Katowice of 22 June 2017, II AKa 150/17, LEX No. 2343421; judgment of the Court of Appeal in Warsaw of 20 October 2016, II AKa 233/16, LEX No. 2171226; judgment of the Court of Appeal in Wrocław of 22 December 2016, II AKa 337/16, LEX No. 2200278; M. Kulik, *Przedawnienie karalności i przedawnienie wykonania kary w polskim prawie karnym*, Warszawa 2014, pp. 231–234; *idem*, *Glosa do wyroku Sądu Najwyższego z dnia 14 stycznia 2010 r., V KK 235/09*, LEX/el. 2011; I. Zgoliński, [in:] V. Konarska-Wrzosek (ed.), *Kodeks karny. Komentarz*, Warszawa 2018, p. 566.

[16] W. Wolter, *Kumulatywny zbieg przepisów ustawy*, Warszawa 1960, pp. 48–49; the Supreme Court judgment of 14 January 2010, V KK 235/09, OSNKW 2010, No. 6, item 50.

[17] The Supreme Court ruling of 29 June 2017, IV KK 203/17, LEX No. 2342179; judgment of the Court of Appeal in Katowice of 24 May 2013, II AKa 563/12, LEX No. 1378466.

[18] The Supreme Court ruling of 30 October 2014, I KZP 19/14, OSNKW 2015, No. 1, item 1; the Supreme Court ruling of 28 May 2015, II KK 131/15, LEX No. 1786792; the Supreme Court ruling of 22 March 2016, V KK 345/15, LEX No. 2015139; the Supreme Court judgment of 23 November 2016, III KK 225/16, OSNKW 2017, No. 4, item 18.

[19] The Supreme Court judgment of 14 January 2010, V KK 235/09, OSNKW 2010, No. 6, item 5.

[20] The Supreme Court ruling of 30 October 2014, I KZP 19/14, OSNKW 2015, No. 1, item 1; the Supreme Court ruling of 22 March 2016, V KK 345/15, LEX No. 2015139; the Supreme Court ruling of 19 October 2016, IV KK 333/16, LEX No. 2157282.

[21] Judgment of the Court of Appeal in Białystok of 31 January 2013, II AKa 254/12, LEX No. 1298865; judgment of the Court of Appeal in Wrocław of 6 May 2015, II AKa 88/15, KZS 2016, No. 3, item 50.

conduct that matches the features of all types of prohibited acts laid down in those provisions, which means attributing guilt for an act classified this way and fulfilment of other conditions for sentencing that are related to substantive law and are formal in nature.[22] Thus, applying cumulative legal classification of an act, one cannot ignore other provisions that exclude the possibility of sentencing a person committing a particular type of offence.[23] Elements decisive for the unity of an act, classified cumulatively based on the concurrence of provisions, cannot neutralise negative procedural conditions concerning its individual fragments, e.g. limitation.[24]

Expressing its stand on the issue, the Supreme Court bench of seven judges passed a resolution on 20 September 2018, I KZP 7/18 (OSNK2018, No. 11, item 72), in which it stated that: **"In the case of an act that matches the features of two or more provisions of the Criminal Code and constitutes an offence subject to cumulative legal classification (Article 11 § 2 CC), the time limit for imposition of a penalty for it is determined in accordance with Article 101 CC, based on the penalty prescribed for this offence laid down in Article 11 § 3 CC or other factors listed in the provisions concerning limitation, and it is applicable to the whole act classified cumulatively."** The stand is not right and was criticised in the doctrine.[25] Justifying its stand, the Supreme Court stated that the interpretation of the term "offence" used in Article 101 CC and Article 11 § 2 CC is a key to solve the problem, i.e. whether the term refers to the type of offence established as a result of the application of cumulative classification and not to individual types of offences the features of which are matched by the same act, or to individual types of offences subject to cumulative legal classification. Concerning the same issue, the Court assumed that the concept of "offence" used in Article 101 CC refers to such human conduct that fulfils all elements of the offence structure that constitute conditions for criminal liability for the offence. Article 11 § 1 CC means *expressis verbis* that the same act can constitute only one offence and the large number of legal evaluations of an act does not lead to a large number of offences. Due to the fact that it concerns only one offence, there can only be one time limit for it. Since a penalty is determined based on the provision prescribing the most severe penalty, the time limit should also be determined based on this provision. The Supreme Court recognised limitation determined this way as basic but noted that an offence subject to cumulative legal classification can also fulfil the conditions important for the establishment of a longer imitation period than the one resulting from the

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[22] Judgment of the Court of Appeal in Wrocław of 19 June 2001, II AKa 218/01, OSA 2001, No. 10, item 63; judgment of the Court of Appeal in Katowice of 20 November 2014, II AKa 313/14, LEX No. 1665550.

[23] Judgment of the Court of Appeal in Wrocław of 19 June 2001, II AKa 218/01, OSA 2001, No. 10, item 63.

[24] Judgment of the Court of Appeal in Wrocław of 6 May 2015, II AKa 88/15, LEX No. 1755252; judgment of the Court of Appeal in Wrocław of 15 October 2015 r., II AKa 245/15, LEX No. 1927509; judgment of the Court of Appeal in Wrocław of 19 June 2001, II AKa 218/01, Orzecznictwo Sądów Apelacyjnych 2001, No. 10, item 63.

[25] J. Lachowski's gloss on this resolution in Orzecznictwo Sądów Polskich No. 6, 2019, pp. 65–72.

penalty for this offence. For example, in the case of offences against life and health committed to the detriment of a minor carrying the highest penalty of more than five years of deprivation of liberty or offences laid down in Chapter XXV CC committed to the detriment of a minor, or when pornographic content involves participation of a minor, limitation of penalty imposition cannot be applicable before he/she reaches the age of 30 (Article 101 § 4 CC). Expressing this right reservation, the Supreme Court created a contradiction because the fundamental argument for the opinion that the cumulative legal classification should not take into account an offence for which the penalty imposition time limit has expired was a statement that Article 11 § 1 CC constitutes one offence. Consistently, one should not take into account those acts determined in the provisions that do not carry the most severe penalty and as a result do not constitute grounds for sentencing. Therefore, the Supreme Court reasoning is rightly criticised and it is urged that Article 11 § 2 CC does not create a new type of offence but only instructs a court to sentence a perpetrator based on all the concurring provisions. Thus, it only indicates the basis for sentencing and does not create a new offence type. In accordance with the principle *nullum crimen sine lege*, the catalogue of prohibited acts is closed and only the legislator and not actual circumstances can establish them. If an act matches the features described in more than one provision of the Criminal Code, a court sentences a perpetrator based on all the concurring provisions. Sanctions prescribed in particular provisions are also in concurrence and the most severe penalty is chosen in sentencing.

Contrary to the statement made in the doctrine,[26] Article 11 § 3 CC does not establish a new statutory penalty but only grounds for sentencing. It is rightly concluded that: "Since in the light of Article 101 CC, the sanctions laid down in a provision determining the type of a prohibited act indicate time limits for penalty imposition, in the case of cumulative concurrence of the statutory provisions, all concurring sanctions are important from the point of view of limitation."[27]

2.2. CONCEPT OF CONSEQUENCE AS A FEATURE OF A PROHIBITED ACT

The period of limitation runs from the moment an offence is committed (Article 101 § 1 CC), however, in the case the commission of an offence depends on the occurrence of a consequence specified in statute, the running of limitation starts at the moment when the consequence occurs (Article 101 § 3 CC). The latter provision raised doubts concerning the moment from which the running of the limitation should be counted in relation to an offence with the features of alternative consequences, i.e. whether it should be the first one chronologically or, in case a much later consequence occurs, the one that is graver. Alternative consequences constitute the features of an offence under Article 177 § 2 CC that take the form of another person's death or serious harm to their health.

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[26] P. Kardas, *Zbieg przepisów ustawy w prawie karnym. Analiza teoretyczna*, Warszawa 2011, pp. 235–237.

[27] J. Lachowski, *Glosa do uchwały SN z dnia 20 września 2018 r., I KZP 7/18*, Orzecznictwo Sądów Polskich No. 6, 2019, pp. 66–68.

Explaining the issue in the ruling of 28 March 2018 (I KZP 15/17, OSNK2018, No. 6, item 43), the Supreme Court stated that: **"The concept of consequence as a feature of a prohibited act should be interpreted as a final (ultimate) consequence, i.e. necessary to the occurrence of a substantive offence in the form of commission and not an indirect (partial) consequence relating to the course of a causal relationship between a perpetrator's conduct and a final consequence."** The stand is justified and the arguments supporting it are convincing. The essence of the problem consists in the interpretation of a consequence referred to in Article 101 § 3 CC. Undoubtedly, it concerns a consequence that is a feature of an offence. The Supreme Court rightly assumed that it is a change in the external world that can be distinguished from a perpetrator's conduct and constitutes a feature of a prohibited act,[28] which can be different in nature, can be separated from a perpetrator's conduct and lasts for some, even short, time after its completion. In a situation when a consequence is implemented over a period of time, it should be treated as a whole. It is the right opinion expressed in the doctrine that the concept of consequence as a feature of a prohibited act should be understood as a final (ultimate) consequence, i.e. one that is necessary to the occurrence of a substantive offence in the form of commission and not an indirect (partial) consequence relating to the course of the causal relationship between a perpetrator's conduct and the final consequence.[29]

3. EVADING THE OBLIGATION OF MAINTENANCE (ARTICLE 209 § 1 CC)

In the Criminal Code, an offence of evading the obligation of maintenance originally consisted in persistent evasion of fulfilling the statutory obligation or a court's ruling to ensure care by failure to pay maintenance to the next of kin or another person and exposing them to inability to satisfy their basic life needs (Article 209 § 1 CC). The Act of 23 March 2017 amending the Act: Criminal Code and the Act on assistance to persons entitled to maintenance[30] amended the provision in such a way that criminalisation covers evading the fulfilment of the obligation of maintenance amount determined in a court ruling, an agreement entered into before a court or another state body or another agreement, provided that the total value of arrears constitutes the equivalent of at least three periodical payments, or if the delay in payment other than periodical is at least three-month long. The essence of the change consists in, inter alia, the elimination of two sources of the obligation to ensure care by payment of maintenance to the next of kin or another person, i.e. the statute and a court ruling. In accordance with the new regulation, the obligation

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[28] W. Wolter, *Nauka o przestępstwie. Analiza prawnicza na podstawie przepisów części ogólnej kodeksu karnego z 1969 r.*, Warszawa 1973, p. 65; K. Wiak, [in:] A. Grześkowiak (ed.), *Prawo karne*, Warszawa 2009, p. 95; Ł. Pohl, *Prawo karne. Zarys części ogólnej*, Warszawa 2012, p. 137; W. Wróbel, A. Zoll, *Polskie prawo karne. Część ogólna*, Kraków 2012, p. 196; M. Królikowski, R. Zawłocki, *Prawo karne*, Warszawa 2015, p. 180; L. Gardocki, *Prawo karne*, Warszawa 2017, p. 63.

[29] E. Hryniewicz, *Skutek w prawie karnym*, Prokuratura i Prawo No. 7–8, 2013, p. 111; M. Kulik, *Przedawnienie karalności*, *supra* n. 15, p. 300.

[30] Dz.U. of 2017, item 952.

amount must be determined in a court ruling, an agreement entered into before a court or another state body or another agreement. Therefore, a doubt is raised whether all types of conduct consisting in evading the obligation of maintenance resulting from the statute have been decriminalised.

In the ruling of 25 January 2018, I KZP 10/17 (OSNKW 2018, No. 3, item 24), the Supreme Court expressed its opinion that: **"Both before the amendment to Article 209 § 1 CC introduced by the Act of 23 March 2017 amending the Act: Criminal Code and the Act on assistance to persons entitled to maintenance (Dz.U. 2017, item 952), and after the amendment, the statute constitutes one of the sources of the obligation of maintenance, however, from 31 May 2017 the obligation amount shall be determined in a court ruling, an agreement entered into before a court or another state body or another agreement."** This is right and is confirmed in the current case law[31] and presented in literature.[32] Justifying it, the Supreme Court rightly emphasised that the elimination of evading the fulfilment of a statutory obligation from the features of this offence does not mean that all types of conduct consisting in the evasion of the obligation of maintenance that have their source in the statute are decriminalised. Partial decriminalisation takes place only in relation to such conduct of perpetrators obliged to pay maintenance to the next of kin based on the statute whose obligation of maintenance has not been determined with regard to its amount in a court ruling or an agreement.[33] On the other hand, situations in which an obligation of maintenance results from the statute and its amount has been determined in a court ruling or an agreement are subject to criminalisation.

4. MALICIOUS OR PERSISTENT INFRINGEMENT OF AN EMPLOYEE'S RIGHTS RESULTING FROM THE LABOUR RELATIONSHIP OR SOCIAL INSURANCE (ARTICLE 218 § 1A CC)

Article 218 § 1a CC specifies an offence of malicious or persistent infringement of an employee's rights resulting from the labour relationship or social insurance committed by a person performing activities related to the issues of labour and social insurance law. In the context of this provision, the following legal issue was referred to the Supreme Court for examination: "Should the term 'employee' used in Article 218 § 1a CC be interpreted as exclusively a person employed based on an employment contract, election, appointment or a cooperative employment contract

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[31] The Supreme Court ruling of 9 May 2018, IV KK 79/18, LEX No. 2499811; the Supreme Court ruling of 24 October 2018, IV KK 446/18, LEX No. 2583089; the Supreme Court ruling of 6 December 2018, IV KK 284/18, LEX No. 2593386; the Supreme Court ruling of 14 February 2019, IV KK 755/18 LEX No. 2633972; the Supreme Court ruling of 23.04.2019, IV KK 432/18, LEX No. 2657503; A. Partyk, *Nialimentacja dziecka w dalszym ciągu jest przestępstwem*, LEX/el. 2019.

[32] M. Borodziuk, *Zakres kryminalizacji przestępstwa niealimentacji po nowelizacji w 2017 r.*, Prokuratura i Prawo No. 4, 2018, p. 36.

[33] Ł. Pohl, *Zakres i skutki depenalizacji wywołanej nowelizacją przepisu określającego znamiona przestępstwa niealimentacji*, Ruch Prawniczy Ekonomiczny i Socjologiczny No. 4, 2017, p. 92.

or also as a person doing paid work based on a civil law contract, e.g. a specific task or service provision contract or a specific work contract, which under the pretence of a civil law contract is actually an employment contract within the labour relationship?"

The Supreme Court passed a resolution on 20 September 2018, I KZP 5/18 (OSNK2018, No. 11, item 74), in which it explained that: **"The scope of Article 218 § 1a CC covers only employees within the meaning of Article 2 LC and Article 22 § 1 and § 1(1) Labour Code, i.e. persons employed in conditions typical of the labour relationship, regardless of the name of a contract entered into by the parties; a court at its discretion determines this in a criminal trial in accordance with jurisdictional independence expressed in Article 8 § 1 CPC."** This way, the Supreme Court adopted a broad interpretation of the concept.[34] In the justification of the resolution, the Supreme Court referred to its former resolution in which it explained that: "The objects of protection under the norms laid down in Article 220 CC are the rights of a person being in the labour relationship within the meaning of Article 22 § 1 LC, i.e. in such a relationship that, taking into account factual features, is or should be entered into by performing one of the legal activities determined in Article 2 LC."[35] According to the Supreme Court, both types of offences use the same term and are placed in the same Chapter entitled "Offences against the rights of persons doing paid work", which is an argument for the possibility of using the interpretation included therein, although it does not concern this provision but Article 220 CC. Moreover, as concerns the term "employee", in both provisions it was necessary to refer to the definition of an employee laid down in the Labour Code. In accordance with Article 2 LC, an employee is a person hired based on an employment contract, nomination, election, appointment, or a cooperative employment contract. The status of an employee is acquired by entering into the labour relationship by the force of which, in accordance with Article 22 § 1 LC, an employee undertakes to do specified work for an employer and under his management, and in the place and time determined by the employer, and the employer undertakes to employ the employee for remuneration. It is rightly assumed in the Supreme Court judgments that: "Employment can be performed based on the civil law relationship (a specific task/service provision contract or a manager's contract) or labour relationship. If the features typical of the labour relationship determined in Article 22 § 1 LC (performance of specified work for

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[34] See J. Marciniak, *Pojęcie pracownika w rozumieniu art. 218 § 1 k.k.*, Wojskowy Przegląd Prawniczy No. 3, 2009, pp. 25–36.

[35] The Supreme Court resolution of 15 December 2005, I KZP 34/05, OSNKW 2006, No. 1, item 2 with glosses of approval by P. Daniluk, W. Witoszko, Orzecznictwo Sądów Polskich No. 7–8, item 93, 2006; A. Wróbel, Przegląd Prawa i Administracji No. 93, 2013, pp. 121–126 and a critical one by J. Jankowiak, A. Musiała, Prokuratura i Prawo No. 2, 2007, pp. 163–167 and comments of approval by R.A. Stefański, *Przegląd uchwał Izby Karnej Sądu Najwyższego z zakresu prawa karnego materialnego, prawa karnego skarbowego i prawa wykroczeń za 2005 r.*, Wojskowy Przegląd Prawniczy No. 1, 2006, pp. 107–109; the Supreme Court ruling of 13 April 2005, III KK 23/05, OSNKW 2005, No. 7–8, item 69 with glosses of approval by J. Unterschütz, Gdańskie Studia Prawnicze-Przegląd Orzecznictwa No. 1, 2006, pp.123–134, A. Wróbel, Studia Iuridica Toruniensis No. 1, 2013, pp. 265–272.

remuneration for an employer and under his management, and in the place and time determined by the employer) dominate the content of the labour relationship between the parties (assessed not only from the point of view of the content of a contract but, first of all, the way of its performance), we deal with the labour relationship, regardless of the name of the contract the parties have entered into (Article 22 § 1^1 LC).[36] In Article 22 § 1^1 LC, the legislator established a specific principle of employment within the employment relationship, which means that every type of employment that has the features of the labour relationship is *ex lege* treated as employment within the labour relationship, regardless of the type of contract entered into by the parties.[37] A contract based on which work is done cannot be of a mixed nature, linking elements of an employment contract and a civil law contract.[38] The assessment of whether the characteristic features of the labour relationship are dominant is made based on all circumstances of the case, first of all, such as the parties' will, including that expressed in the name given to a contract by the parties.[39]

Taking into account the definition of an employee laid down in the Labour Code, based on Article 218 § 1a CC, is justified by the fact that the legal definition in the statute that is believed to be a basic one is binding also in the area of other statutes;[40]

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[36] The Supreme Court judgment of 25 November 2004, I PK 42/04, OSNP 2005, No. 14, item 209; the Supreme Court judgment of 16 January 1979, I CR 440/78, OSPiKA 1979, No. 9, item 168; the Supreme Court judgment of 2 December 1975, I PRN 42/75, Służba Pracownicza No. 2, 1976, p. 28; the Supreme Court judgment of 2 September 1998, I PKN 293/98, OSNAPiUS 1999, No. 18, item 582; the Supreme Court judgment of 14 September 1998, I PKN 334/98, OSNAPiUS 1999, No. 20, item 646; the Supreme Court judgment of 6 October 1998, I PKN 389/98, OSNAPiUS 1999, No. 22, item 718; the Supreme Court judgment of 22 December 1998, I PKN 517/98, OSNAPiUS 2000, No. 4, item 138; the Supreme Court judgment of 12 January 1999, I PKN 535/98, OSNAPiUS 2000, No. 5, item 175; the Supreme Court judgment of 9 February 1999, I PKN 562/98, OSNAPiUS 2000, No. 6, item 223; the Supreme Court judgment of 7 April 1999, I PKN 642/98, OSNAPiUS 2000, No. 11, item 417.

[37] P. Daniluk, W. Witoszko, *Glosa do uchwały SN z 15 grudnia 2005 r., I KZP 34/05*, OSP No. 7–8, 2006, p. 93.

[38] The Supreme Court judgment of 23 January 2002, I PKN 786/00, OSNP 2004, No. 2, item 30.

[39] The Supreme Court judgment of 5 September 1997, I PKN 229/97, OSNAPiUS 1998, No. 11, item 329; the Supreme Court judgment of 25 April 1997, II UKN 67/97, OSNAPiUS 1998, No. 2, item 57; the Supreme Court judgment of 28 January 1998, II UKN 479/97, OSNAPiUS 1999, No. 1, item 34; the Supreme Court judgment of 4 February 1998, II UKN 488/97, OSNAPiUS 1999, No. 2, item 68; the Supreme Court judgment of 17 February 1998, I PKN 532/97, OSNAPiUS 1999, No. 3, item 81, Monitor Prawniczy No. 1, 2000, p. 36 with a gloss by W. Cajsel; the Supreme Court judgment of 3 June 1998, I PKN 170/98, OSNAPiUS 1999, No. 11, item 369; the Supreme Court judgment of 18 June 1998, I PKN 191/98, OSNAPiUS 1999, No. 14, item 449; the Supreme Court judgment of 2 September 1998, I PKN 293/98, OSNAPiUS 1999, No. 18, item 582; the Supreme Court judgment of 23 September 1998, II UKN 229/98, OSNAPiUS 1999, No. 19, item 627; the Supreme Court judgment of 6 October 1998, I PKN 389/98, OSNAPiUS 1999, No. 22, item 718; the Supreme Court judgment of 4 March 1999, I PKN 616/98, OSNAPiUS 2000, No. 8, item 312; the Supreme Court judgment of 7 April 1999, I PKN 642/98, OSNAPiUS 2000, No. 11, item 417; the Supreme Court judgment of 9 December 1999, I PKN 432/99, OSNAPiUS 2001, No. 9, item 310; the Supreme Court judgment of 5 December 2000, I PKN 127/00, OSNAPiUS 2002, No. 15, item 356.

[40] M. Zieliński, *Wykładnia prawa. Zasady, reguły, wskazówki*, Warszawa 2010, p. 212.

moreover, the established definitions from other branches of law in general should not be modified in the process of decoding the features of offences.[41] Attributing a broader meaning to the concept of an employee used in Article 218 § 1a CC than the one functioning in labour law would constitute inadmissible interpretation to the detriment of the accused, which would be in conflict with the *nullum crimen sine lege* principle.[42]

5. TYPE OF DOMINANT ACTIVITY IN RETAIL TRADING JOINTLY IN NEWSPAPERS, PUBLIC TRANSPORT TICKESTS, TOBACCO PRODUCTS, AND LOTTERY AND BETTING TICKETS (ARTICLE 6 PARA. 1(6) ACT ON SUNDAY TRADING BAN)

In accordance with Article 5 of the Act of 10 January 2018 on the limitation of retail business on Sundays, public holidays and some other days,[43] on Sundays and public holidays shops are prohibited from retail trading and performing any activities connected with retail business as well as requesting employees or hired persons to do any jobs in retail business and perform activities connected with retail business. The ban does not apply to shops the key activity of which is retail trading in newspapers, public transport tickets, tobacco products, and lottery and betting tickets (Article 6 para. 1(6) of the Act on Sunday trading ban). The regulation raised doubts whether the dominant activity should consist in selling newspapers, public transport tickets, tobacco products, and lottery and betting tickets jointly or whether it is sufficient that the dominant activity consists in retail trading in only one of the products listed.

In the Supreme Court resolution of 19 December 2018, I KZP 13/18 (OSNK2019, No. 1, item 1), the Court stated that: **"The 'dominant activity', referred to in Article 6 para. 1(6) of the Act of 10 January 2018 on the limitation of retail business on Sundays, public holidays and some other days (Dz.U. of 2018, item 305), means retail trading in newspapers, public transport tickets, tobacco products, and lottery and betting tickets jointly as well as retailing only one of the products listed."** The opinion deserves approval. The Court rightly highlighted that the interpretation of Article 6 para. 1(6) of the statute from the linguistic point of view, especially the role of linguistic connectors and punctuation, does not allow unequivocal understanding of its content. Each type of retail activity is separated by a comma and the last one is preceded by the conjunction "and". In accordance

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[41] P. Wiatrowski, *Dyrektywy wykładni prawa materialnego w judykaturze Sądu Najwyższego*, Warszawa 2013, pp. 123–134.

[42] J. Unterschűtz, *Glosa do postanowienia SN z 13 kwietnia 2005 r., III KK 23/05*, Gdańskie Studia Prawnicze – Przegląd Orzecznictwa No. 1, 2006, pp. 123–134; *idem*, *Wybrane problemy orzecznictwa Sądu Najwyższego w sprawach przestępstw z rozdziału XXVIII k.k.*, Gdańskie Studia Prawnicze – Przegląd Orzecznictwa No. 4, 2015, p. 167.

[43] Dz.U. of 2018, item 305 (Dz.U. of 2019, item 466).

with the rules of the legislative technique, a comma means a conjunction.[44] Thus, it should be assumed that, in order to obtain the status of a business exempt from the ban on operating on Sundays, a shop should refer to all the types of products listed in Article 6 para. 1(6) of the statute in its application to be entered into the registry and be given one Polish Business Classification (PKD) number corresponding to the type of its dominant activity. However, the Supreme Court rightly emphasises that the use of the conjunction "and" in Article 6 para. 1(6) of the statute weakens the conjunctive power of commas between the particular types of products. Therefore, the exemption of the ban on retail trading on Sundays, public holidays and some other days is justified by including at least one type of retail activity as dominant in the application to be entered in the National Business Register (KRS). This is also indicated in the reasons behind the introduction of the general prohibition on retail trading and performing any activities connected with retail business as well as requesting employees or hired persons to do any jobs in retail business and perform activities connected with retail business on Sundays and public holidays. It was to create better conditions for additional employees' protection, in particular from the point of view of the protection of tradition and family, and was not to limit retail trading in selected goods.

As far as the dominant activity is concerned, it is the type of activity indicated in the business's application to be entered into the National Business Register.

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[44] S. Wronkowska, M. Zieliński, *Problemy i zasady redagowania tekstów prawnych*, Warszawa 1993, p. 153.

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REVIEW OF RESOLUTIONS OF THE SUPREME COURT CRIMINAL CHAMBER IN THE FIELD OF SUBSTANTIVE CRIMINAL LAW FOR 2018

Summary

The article presents an analysis of the Supreme Court Criminal Chamber resolutions and rulings adopted in the course of interpreting statutes or provisions that raised doubts and caused discrepancies in case law and were referred for examination to the Supreme Court by appellate courts or the First President of the Supreme Court. These concerned: a negative factor for awarding an aggregated penalty in the form of a penalty of deprivation of liberty for an offence committed in the course of serving a penalty (Article 85 § 3 CC); limitation of penalty imposition in the case of cumulative legal classification of an act (Article 101 § 1 CC); the concept of a consequence as a feature of a prohibited act from which the running of limitation starts (Article 110 § 3 CC); evasion of the obligation of maintenance in the context of a legal act that is more favourable to a perpetrator (Article 209 § 1 CC); a concept of an employee in the case of malicious and persistent infringement of an employee's rights resulting from the labour relationship or social insurance (Article 218 § 1a CC); and the type of dominant activity concerning retail trading jointly in newspapers, public transport tickets, tobacco products, and lottery and betting tickets (Article 6 para. 1(6) of the Act of 10 January 2018 on the limitation of retail business on Sundays, public holidays and some other days).

Keywords: retail business, aggregated penalty, serving a penalty, employee, limitation, evading the obligation of maintenance, consequence of an offence

PRZEGLĄD UCHWAŁ IZBY KARNEJ SĄDU NAJWYŻSZEGO W ZAKRESIE PRAWA KARNEGO MATERIALNEGO ZA 2018 R.

Streszczenie

W artykule została przeprowadzona analiza uchwał i postanowień Izby Karnej Sądu Najwyższego, podjętych w wyniku przestawienia przez sądy odwoławcze i Pierwszego Prezesa Sądu Najwyższego zagadnień prawnych wymagających zasadniczej wykładni ustawy lub interpretacji przepisów prawnych, które wywołały w orzecznictwie sądów rozbieżności w wykładni przepisów prawa będących podstawą ich orzekania. Dotyczyły one: negatywnej przesłanki orzeczenia kary łącznej w postaci kary pozbawienia wolności orzeczonej za przestępstwo popełnione w czasie odbywaną kary (art. 85 § 3 k.k.); przedawnienia karalności przy kumulatywnej kwalifikacji prawnej czynu (art. 101 § 1 k.k.); pojęcia skutku jako znamienia czynu zabronionego, od którego biegnie termin przedawnienia (art. 110 § 3 k.k.); uchylania się od obowiązku alimentacyjnego w kontekście ustawy względniejszej dla sprawcy (art. 209 § 1 k.k.); pojęcie pracownika w przestępstwie złośliwego lub uporczywego naruszania praw pracownika wynikających ze stosunku pracy lub ubezpieczenia społecznego (art. 218 § 1a k.k.) oraz rodzaju przeważającej działalności, dotyczącej handlu łącznie prasą, biletami komunikacji miejskiej, wyrobami tytoniowymi, kuponami gier losowych i zakładów wzajemnych (art. 6 ust. 1 pkt 6 ustawy z dnia 10 stycznia 2018 r. o ograniczeniu handlu w niedziele i święta oraz niektóre inne dni).

Słowa kluczowe: działalność handlowa, kara łączna, odbywanie kary, pracownik, przedawnienie, uchylanie się od obowiązku alimentacyjnego, skutek przestępstwa

REPASO DE ACUERDOS DEL TRIBUNAL SUPREMO, SALA DE LO PENAL, RELATIVOS AL DERECHO PENAL SUSTANTIVO, EMITIDOS EN 2018

Resumen

El artículo analiza acuerdos y autos del Tribunal Supremo, sala de lo Penal, adoptados previa presentación de cuestiones legales por tribunales de apelación y por el Primer Presidente del Tribunal Supremo que requerían la interpretación fundamental de la ley o la interpretación de normativa legal, ya que ocasionaron discrepancias en la jurisprudencia en cuanto a la interpretación de la norma que fundamentaba la resolución. Se trata de: requisito negativo para dictar la sentencia conjunta, consistente en la pena de privación de libertad impuesta por el delito cometido durante la ejecución de la pena (art. 85 § 3 del código penal); prescripción de delito en la calificación legal cumulativa del hecho (art. 101 § 1 del código penal); resultado como elemento de delito, a partir del cual corre el plazo de prescripción (art. 110 § 3 del código penal); evasión de la obligación alimenticia en cuanto a la ley más favorable para el autor (art. 209 § 1 del código penal); concepto del trabajador en el delito de infracción malvada o persistente de derechos del trabajador resultante de contrato laboral o seguro social (art. 218 § 1a del código penal) y el tipo de actividad dominante, relativa a comercio junto con prensa, billetes de transporte público, tabaco, cupones de loterías y de apuestas (art. 6 ap. 1 punto 6 de la ley de 10 de enero de 2018 sobre la reducción de comercio los domingos y festivos y algunos otros días).

Palabras claves: actividad comercial, pena conjunta, ejecución de la pena, trabajador, prescripción, evasión de la obligación alimenticia, resultado del delito

ОБЗОР ПОСТАНОВЛЕНИЙ УГОЛОВНОЙ ПАЛАТЫ ВЕРХОВНОГО СУДА В ОБЛАСТИ МАТЕРИАЛЬНОГО УГОЛОВНОГО ПРАВА ЗА 2018 Г.

Резюме

В статье содержится анализ резолюций и постановлений Уголовной палаты Верховного суда, принятых в ходе рассмотрения по представлению апелляционных судов и Председателя Верховного суда юридических вопросов, требующих фундаментального толкования закона или интерпретации правовых норм, которые вызвали расхождения в судебной практике, являясь основанием для вынесения решений. Резолюции и постановления касались: отрицательной предпосылки для назначения совокупного наказания в виде лишения свободы за преступление, совершенное во время отбытия наказания (ст. 85 § 3 УК); срока давности при кумулятивной квалификации деяния (ст. 101 § 1 УК); понятия результата как признака запрещенного деяния, от которого ведется отсчет срока давности (ст. 110 § 3 УК); уклонения от оплаты алиментов в контексте применения закона, более благоприятного для правонарушителя (ст. 209 § 1 УК); понятия «работника» в составе преступления, предусматривающем злонамеренное или постоянное нарушение прав работника по трудовым отношениям или социальному обеспечению (ст. 218 § 1a УК), а также понятия преобладающего вида деятельности, связанной с торговлей прессой, билетами на общественный транспорт, табачными изделиями, лотерейными билетами и купонами букмекерских ставок (ст. 6 § 1 п. 6 Закона от 10 января 2018 года «Об ограничении торговли по воскресеньям, а также в праздничные и некоторые другие дни»).

Ключевые слова: торговая деятельность, совокупное наказание, отбывание наказания, работник, срок давности, уклонение от оплаты алиментов, результат преступления

ÜBERSICHT ÜBER DIE BESCHLÜSSE DER STRAFKAMMER DES OBERSTEN GERICHTSHOFS IM BEREICH DES MATERIELLEN STRAFRECHTS FÜR DA JAHR 2018

Zusammenfassung

Der Artikel analysiert die Beschlüsse und Entscheidungen der Strafkammer des Obersten Gerichtshofs, die aufgrund der Vorlage von Rechtsfragen durch die Berufungsgerichte und den Ersten Präsidenten des Obersten Gerichtshofs erlassen wurden, die eine grundlegende Auslegung des Gesetzes oder eine Auslegung der gesetzlichen Bestimmungen erfordern, was zu Unstimmigkeiten in der Rechtsprechung der Gerichte bei der Auslegung ihrer Entscheidung zugrunde liegenden Rechtsbestimmungen geführt hat. Sie betrafen: eine negative Voraussetzung für eine Gesamtstrafe in Form einer Haftstrafe, die für eine Straftat verhängt wurde, die während der Vollstreckung der Strafe begangen wurde (Artikel 85 Absatz 3 des Strafgesetzbuchs); die Verjährungsfrist für die strafrechtliche Haftung für die kumulative rechtliche Qualifikation einer Handlung (Artikel 101 Absatz 1 des Strafgesetzbuchs); der Begriff der Wirkung als Zeichen einer verbotenen Handlung, von der die Verjährungsfrist abläuft (Artikel 110 § 3 des Strafgesetzbuches); Umgehung der Wartungsverpflichtung im Rahmen einer relativen Handlung für den Täter (Artikel 209 Absatz 1 desStrafgesetzbuchs); Das Konzept eines Arbeitnehmers in einer böswilligen oder anhaltenden Straftat verletzt die Rechte des Arbeitnehmers aus dem Arbeitsverhältnis oder der Sozialversicherung (Artikel 218 Absatz 1a des Strafgesetzbuchs) und die Art der vorherrschenden Tätigkeit, einschließlich des Handels mit der Presse, Fahrkarten für den öffentlichen Verkehr, Tabakerzeugnissen, Gutscheinen für Glücksspiele und Wetten (Artikel 6 Absatz 1 Nummer 6 des Gesetzes vom 10. Januar 2018 über die Beschränkung des Handels an Sonn- und Feiertagen und einige andere Tage).

Schlüsselwörter: Geschäftstätigkeit, Gesamtstrafe, Verbüßung einer Haftstrafe, Angestellter, Verjährung, Umgehung der Verpflichtung zur Zahlung von Unterhalt, Auswirkung des Verbrechens

REVUE DES RÉSOLUTIONS DE LA CHAMBRE CRIMINELLE DE LA COUR SUPRÊME DANS LE DOMAINE DU DROIT PÉNAL MATÉRIEL POUR 2018

Résumé

L'article analyse les résolutions et décisions de la Chambre pénale de la Cour suprême adoptées à la suite de la présentation par les cours d'appel et du Premier président de la Cour suprême des questions juridiques nécessitant une interprétation fondamentale de la loi ou une interprétation des dispositions légales, qui ont entraîné des divergences dans la jurisprudence des tribunaux dans l'interprétation des dispositions juridiques sous-jacentes à leur décision. Ils concernaient: une prémisse négative pour une peine totale sous la forme d'une peine d'emprisonnement prononcée pour une infraction commise en purgeant une peine (article 85 § 3 du code pénal); le délai de prescription de la responsabilité pénale pour la qualification juridique cumulative d'un acte (article 101 § 1 du code pénal); la notion d'effet en tant que signe d'un acte interdit à pratir duquel le délai de prescription court (article 110 § 3 du code pénal); la violation des obligations alimentaires dans le cadre de la loi plus favorable pour l'auteur (article 209 § 1 du code pénal); la notion de salarié dans une infraction malveillante ou persistante viole ses droits découlant d'une relation de travail ou d'une assurance sociale (article 218 § 1

bis du code pénal) et le type d'activité prédominante liée au commerce, y compris la vente de journaux, de billets de transports publics, de produits du tabac, de coupons de jeux de hasard et de paris (article 6, al. 1, point 6 de la loi du 10 janvier 2018 sur les restrictions commerciales les dimanches et jours fériés ainsi que certains autres jours).

Mots-clés: activité commerciale, peine totale, purge d'une peine, salarié, employé, prescription, soustraction à une obligation alimentaire, effets délictueux

RASSEGNA DELLE DELIBERE DEL 2018 DELLA CAMERA PENALE DELLA CORTE SUPREMA NELL'AMBITO DEL DIRITTO PENALE SOSTANZIALE

Sintesi

Nell'articolo è stata condotta un'analisi delle delibere e delle ordinanze della Camera Penale della Corte Suprema assunte in seguito alla presentazione, da parte delle corti di appello e del Presidente della Corte Suprema, di questioni giuridiche che richiedevano un'interpretazione fondamentale di leggi o di norme giuridiche, che hanno determinato nella giurisprudenza dei tribunali divergenze nell'interpretazione delle norme di legge che hanno costituito la base delle sentenze. Esse riguardavano: la condizione negativa per l'applicazione della pena cumulativa sotto forma di pena detentiva comminata per un reato compiuto durante l'esecuzione della pena (art. 85 § 3 del Codice penale); la prescrizione del reato in caso di classificazione giuridica cumulativa del reato (art. 101 § 1 del Codice penale); il concetto di effetto come elemento costitutivo del reato, dal quale decorre il termine di prescrizione (art. 110 § 3 del Codice penale); la sottrazione all'obbligo di mantenimento nel contesto di una legge più favorevole per il reo (art. 209 § 1 del Codice penale); il concetto di dipendente nel reato di violazione dolosa o continuata dei diritti del lavoratore derivanti dal rapporto di lavoro o dalla previdenza sociale (art. 218 § 1a del Codice penale) nonché il tipo di attività prevalente, riguardante il commercio di periodici, biglietti dei trasporti urbani, prodotti a base di tabacco, tagliandi di giochi e scommesse (art. 6 comma 1 punto 6 della legge del 10 gennaio 2018 sulla limitazione del commercio la domenica, nei giorni festivi e in altri giorni determinati).

Parole chiave: attività commerciale, pena cumulativa, esecuzione della pena, dipendente, prescrizione, sottrazione all'obbligo di mantenimento, effetto del reato

Cytuj jako:

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