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DOI: 10.26399/iusnovum.v14.4.2020.43/j.kosonoga-zygmunt

Gloss on the Supreme Court judgment of 4 February 2020, III KK 113/19

THESIS

Extraordinary mitigation of a penalty may be applied if it is demonstrated that the case involves exceptionally justified circumstances which lead to the conclusion that even the least severe penalty for the offence in question must be considered 'grossly severe'. The occurrence of such exceptional circumstances should be accompanied by unusual circumstances of the incident or such features of the perpetrator, which characterise them in an exceptionally positive way and warrant the imposition of a penalty lesser than the least severe penalty imposable for a given offence. When imposing an extraordinarily mitigated penalty, the court is therefore obliged to present arguments supporting the belief that, on the facts of the case at hand, the grounds for mitigation exist. Moreover, there can be no doubt that the exceptionally justified circumstances referred to under Article 60 § 2 of the Criminal Code (CC) materially differ from ordinary circumstances covered by the standard sentencing directives, which offer a range of sentencing options existing within the scale of penalties for a given offence. On the other hand, if the court applies extraordinary mitigation of a penalty without demonstrating that such mitigation is indeed justified by exceptional circumstances, one may draw a legitimate conclusion that the penalty imposed in such a situation is grossly disproportionate.[1]

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[1] The Supreme Court judgment of 4 February 2020, III KK 113/19, unpublished. See also: the Supreme Court judgment of 28 March 2019, V KK 125/18, unpublished.

COMMENTARY

In the judgment discussed in this gloss, the Supreme Court referred to the legal concept of extraordinary mitigation of a penalty, a question often addressed by the courts and scholarship.[2] However, the top-level court rarely refers to the issue of other, exceptionally justified circumstances which justify the conclusion that even the least severe penalty which may be imposed for a given offence is 'grossly severe'. Whether or not an offence is grossly severe, should, in turn, be assessed on the facts of a particular case.

In the discussed case, A.W. was accused of having delivered on the victim, with the direct intention of killing the victim, multiple, violent blows (kicks and punches), which caused, inter alia, multiple injuries to the head, extensive bilateral thoracic trauma causing ecchymosis in soft tissues surrounding the fracture gaps and also massive ecchymosis on the skin of the shoulder and the adjacent upper arm areas and on the back of an upper limb, which led to the acute respiratory and circulatory failure and sudden death of the victim, more specifically of the offence under Article 148 § 1 CC.

A regional court found the accused guilty of the offence in question but ruled that A.W. had acted knowingly. On these grounds the court sentenced A.W. to six years of imprisonment, invoking Article 148 § 1 CC, Article 60 § 2 CC and Article 60 § 6(2) CC.

The prosecution appealed against the above judgment. Challenging the judgment to the disadvantage of the accused in its part related to sentencing, a prosecutor alleged that the judgment involved 'an error in the findings of facts taken as a basis for the sentence which affected the content of the sentence resulting from the conclusion that, in the case at hand, there have been exceptionally justified

[2] Z. Ćwiąkalski, *Nadzwyczajny wymiar kary w kodeksie karnym z 1997 roku po nowelizacjach – próba oceny*, [in:] *Zmiany w polskim prawie karnym po wejściu w życie kodeksu karnego z 1997 r.*, T. Bojarski, K. Nazar, A. Nowosad, M. Szwarczyk (eds), Lublin 2006, pp. 105–122; Z. Ćwiąkalski, *Zwyczajne i nadzwyczajne złagodzenie kary po zmianach*, [in:] *Kary jako podstawowe sankcje w prawie karnym*, S. Hoc, D. Mucha (eds), Opole 2018, pp. 19–31; V. Konarska-Wrzosek, *Zwyczajny i nadzwyczajnie złagodzony wymiar kary w świetle kodeksu karnego po nowelizacji z 20 lutego 2015 roku*, [in:] *Nowa kodyfikacja prawa karnego. Księga jubileuszowa Profesora Tomasza Kaczmarka*, J. Giezek, D. Gruszecka, T. Kalisz (eds), Vol. XLIII, Wrocław 2017, pp. 255–264; J. Paśkiewicz, *Procesowe aspekty nadzwyczajnego złagodzenia kary – uwagi wybrane*, [in:] *Współzależność prawa karnego materialnego i procesowego w świetle kodyfikacji karnych z 1997 r. i propozycji zmian*, Z. Ćwiąkalski, G. Artymiak (eds), Warszawa 2009, pp. 603–614; J. Raglewski, *Model nadzwyczajnego złagodzenia kary w polskim systemie prawa karnego. Analiza dogmatyczna w ujęciu materialnoprawnym*, Kraków 2008, reviewed by T. Kaczmarek in Prokuratura i Prawo 6, 2010 pp. 153–161; Z. Sienkiewicz, *O podstawach nadzwyczajnego złagodzenia kary*, [in:] *Nowa kodyfikacja prawa karnego*, L. Bogunia (ed.), Vol. V, Wrocław 2000, pp. 57–68; Z. Sienkiewicz, *O niektórych projektowanych zmianach w zakresie nadzwyczajnego złagodzenia kary*, [in:] *Nowa kodyfikacja prawa karnego*, L. Bogunia (ed.), Vol. XI, Wrocław 2002, pp. 75–84; A. Ważny, *Praktyka nadzwyczajnego łagodzenia kary i odstępowania od jej wymierzenia*, Edukacja Prawnicza 6–9, 2009, pp. 25–27; R. Zawłocki, *Nowa funkcja nadzwyczajnego złagodzenia kary po reformie Kodeksu karnego,* Palestra 1–2, 2016, pp. 57–63; for a discussion on the former law, see in particular Z. Ćwiąkalski, *Nadzwyczajne złagodzenie kary w praktyce sądowej*, Warszawa 1982; J. Wojciechowska, *Nadzwyczajne złagodzenie kary w orzecznictwie sądowym 1979–1981*, Wrocław–Warszawa–Kraków–Gdańsk–Łódź 1987; K. Daszkiewicz, *Nadzwyczajne złagodzenie kary*, Warszawa 1976.

circumstances which allow for the extraordinary mitigation of the accused's penalty and, consequently, which warrant the imposition of a penalty lesser than the least severe penalty for the offence in question (six years of imprisonment), whereas it appears from the evidence collected in the case that such exceptionally justified circumstances do not exist, since the first-instance court erred in assessing the gravity and relevance of the mitigating circumstances for the sentencing purposes and failed to take into account all the circumstances adverse to the accused's case.'

The prosecutor also pointed out that 'the penalty of six years of imprisonment imposed on the accused was grossly disproportionate in a situation where the analysis of the subjective and objective elements of the offence in question, and, in particular, the circumstances of the incident, the high degree of social harm presented by the offence, the characteristics and personal conditions of the accused, the way of life of the accused person in the period preceding commission of the offence and her subsequent behaviour, should have led the first-instance court to conclude that the accused does not deserve the lenient penalty of six years' imprisonment since this would not be sufficient to achieve the objectives of the penalty envisioned for the accused and, in particular, to prevent re-offending, which calls for the imposition of a 12-year imprisonment on the accused.'

A court of appeal upheld the first-instance judgment. The cassation appeal against the appellate judgment was brought by the Minister of Justice (Prosecutor General), who challenged the judgment to the disadvantage of the accused in the part concerning the sentencing, alleging a violation of laws of criminal procedure, namely Article 433 § 2 and Article 457 § 3 of the Criminal Procedure Code (CPC), which was 'gross and which materially affected the content of the judgment'. In the Minister's view, the violation consisted in 'the erroneous examination of the grounds for appeal raised in the prosecutor's appeal, an error in the findings of fact accepted as the basis for the sentence and a gross disproportionality of the sentence of six years' imprisonment imposed on the accused' for the serious offence of manslaughter. According to the cassation appeal, this error manifested itself in 'vague conclusions that the grounds for appeal were unreasonable and the repeated emphasis that the first-instance court was correct in its ruling'. According to the Minister, the appellate court failed to offer 'any concrete and evidence-based arguments why the grounds for appeal were regarded as unfounded', which resulted in the upholding of the judgment in which the regional court imposed 'a disproportionally lenient penalty, which did not adequately consider all the aggravating circumstances relevant to the length of the penalty'.

While examining the cassation appeal, the Supreme Court needed to take a closer look at the elements of the exceptionally justified circumstances test, which must be proved so that even the least severe penalty can be considered 'grossly severe'. Without question, the expression 'exceptionally justified circumstances' refers to a highly evaluative notion which includes evaluation statements linked by a conjunction.[3] Although, according to the statutory language, such circumstances

[3] Cf. judgment of the Court of Appeal in Katowice of 8 February 1991, II AKr 3/91, OSA 1991, No. 1, item 1; the Supreme Court judgments: of 29 September 1971, V KRN 338/71, LEX No. 64014; of 11 July 1975, V KR 105/75, OSNKW 1975, No. 12, item 158; of 29 July 2008, WA 27/08, OSNKW 2008, No. 11, item 93.

do not have to be *exceptional* (as referred to in Article 57 § 2 of the former Criminal Code of 1969), they must be *exceptionally justified*. It is therefore about demonstrating circumstances which are based on an objective rationale (grounds)[4] and are extraordinary and exceptional.[5] Moreover, the circumstances in question must warrant a conclusion that even the least severe penalty which may be imposed for a given offence is 'grossly severe', the latter being understood as a penalty that is clearly, obviously and apparently[6] too severe. The scholarship aptly indicates that factors decisive for the identification of a disproportionately severe penalty are the type and length of a given penalty, as well as its combination with other penalties or measures intended to influence the perpetrator. A penalty becomes disproportionately severe when its burden does not correspond to the degree of social harm (caused by the offence) and there is a serious imbalance between the two factors.[7]

The legislator gives two examples of circumstances demonstrating that the application of extraordinary mitigation of a penalty is appropriate: the compensatory attitude of the perpetrator (Article 60 § 2(1)–(2) CC) and a major detriment suffered by the perpetrator of an unintentional offence or a member of their immediate family (Article 60 § 2(3) CC). These grounds are autonomous and non-exhaustive. As the courts have rightly noted in their decisions, the view that the absence of *any* of the grounds described in Article 60 § 2 CC prevents the application of extraordinary mitigation of a penalty is incorrect. The linguistic (grammatical) interpretation of Article 60 § 2 CC leads to the unequivocal conclusion that, except for the cases set out in Article 60 § 1 CC, the court may also apply the extraordinary mitigation of a penalty in exceptionally justified circumstances, where even the least severe penalty imposable for a given offence would be disproportionately severe, i.e. if the court is satisfied that one or more factors occur which make the imposition of a sentence within the scale of penalties unjust on account of its severity. The circumstances justifying the extraordinary mitigation of a penalty may vary and differ from those listed in Article 60 § 2(1)–(2) CC. By using the expression 'in particular', the legislator made it clear that the grounds laid down in Article 60 § 2(1) to (2) are illustrative and non-exhaustive.[8] The list of circumstances justifying the application of the extraordinary mitigation of a penalty based on the above provision is developed by judicial practice on a case-by-case basis and will probably never become exhaustive.[9]

Article 60 § 2 CC does not introduce any temporal limitation as to the occurrence of factors pointing to the exceptionally justified circumstances, which means – under the *lege non distiguente* principle – that these may be circumstances occurring both

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[4] *Uniwersalny słownik języka polskiego*, S. Dubisz (ed.), Vol. 4, Warszawa 2003, p. 312.

[5] *Ibid.*, p. 233.

[6] *Ibid.*, p. 33.

[7] K. Daszkiewicz, *supra* n. 2, p. 84.

[8] Judgment of the Court of Appeal in Lublin of 18 April 2002, II AKa 89/02, Prokuratura i Prawo – Orzecznictwo 2, 2003, item 19.

[9] Judgment of the Court of Appeal in Kraków of 16 September 2004, II AKa 173/04, KZS 2004, No. 10, item 13; see also judgment of the Court of Appeal in Kraków of 28 December 2012, II AKa 243/12, OSN Prokuratura i Prawo 7–8, 2013, item 26.

before, during and after the commission of an offence.[10] Importantly, a decision on the extraordinary mitigation of a penalty constitutes a part of the sentencing and, as such, all the elements relevant to the severity of the penalty under Article 53 CC are also important for the extraordinary mitigation of a penalty.[11]

Since the situations that are likely to determine the extraordinary mitigation of a penalty under Article 60 § 2 CC may vary, it is impossible to create a catch-all list of the circumstances referred to in the descriptive part of the provision in question. In general, the requirement of the exceptionally justified circumstances covers situations where the scale of penalties does not correspond to an abnormally low degree of social harm caused by the offence.[12] The literature also refers to such factors as a severe, incurable illness of the accused, their old age, disability, serious financial hardship bordering on poverty, particularly difficult family or personal conditions, the perpetrator's minor role in committing an offence committed in collusion with other persons or circumstances that are clearly out of the ordinary.[13] The courts have ruled that the extraordinary mitigation of a penalty under Article 60 § 2 CC may be admissible in the aggregate presence of such circumstances as the fact that the accused limits themselves to threatened use of violence, the absence of the victim's bodily injury, the negligible value of the property stolen in a robbery (PLN 3.56), the perpetrator's clear criminal record, the fact that the perpetrator is gainfully employed and has positive references from the place of residence and work.[14]

As a rule, the courts do not consider a mere verbal admission that the accused has committed an offence to be an exceptionally justified circumstance allowing for the extraordinary mitigation of the penalty to be applied.[15] However, such mitigation is possible if one of the following grounds arise: the accused has given extensive explanations and pleaded guilty, including to the extent not covered by the case in question, which subsequently led to a conviction in another case, the accused has identified persons involved in a criminal undertaking or the accused has shown repentance (even if it was not clear whether these actions were merely elements of the accused's defence strategy).[16]

A special family situation is a factor that does not constitute grounds for the extraordinary mitigation of a penalty, as the court ruled in a case in which

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[10] K. Daszkiewicz, *supra* n. 2, p. 79.

[11] Judgment of the Court of Appeal in Gdańsk of 11 July 2013, II AKa 224/13, LEX No. 1369293; judgment of the Supreme Court of 31 May 1977, VI KRN 97/77, OSNKW 1977, No. 7–8, item 81.

[12] Cf. J. Bafia, K. Mioduski, M. Siewierski, *Kodeks karny. Komentarz*, Warszawa 1971, p. 183.

[13] See R. Reguliński, *Wyjątkowe okoliczności w świetle orzecznictwa SN i piśmiennictwa*, Biuletyn Prokuratury Generalnej 4, 1964, p. 31 et seq.; T. Leśko, *Nadzwyczajne złagodzenie kary na podstawie art. 53 § 1 k.k.*, Wojskowy Przegląd Prawniczy 4, 1967, p. 421 et seq.; K. Daszkiewicz, *supra* n. 2, p. 79; A. Marek, *Kodeks karny. Komentarz*, Warszawa 2010, p. 114; Z. Ćwiąkalski, [in:] *Kodeks karny. Część ogólna*, Vol. I: *Komentarz do art. 53–116*, W. Wróbel, A. Zoll (eds), Warszawa 2016, p. 139.

[14] Judgment of the Court of Appeal in Kraków of 16 February 2011, II AKa 256/10, LEX No. 936465.

[15] Judgment of the Court of Appeal in Kraków of 16 November 2004, II AKa 192/04, KZS 2004, No. 12, item 23; cf. judgment of the Court of Appeal in Katowice of 15 May 2008, II AKa 13/08, LEX No. 447031.

[16] Judgment of the Court of Appeal in Katowice of 9 October 2003, II AKa 313/03, OSN Prokuratura i Prawo 7–8, 2004, item 25.

the accused had six children over whom she did not actually exercise her parental responsibilities arising out of the Family and Guardianship Code.[17] Likewise, the fact that both the victim and the accused were addicted to alcohol and consumed it together during the commission of the offence, as well as the fact that the accused was homeless,[18] or that the offence was prevented at the stage of attempted commission[19] are not all grounds for the extraordinary mitigation of a penalty.

In the light of Article 60 § 2 CC, only a particularly justified (and therefore exceptional) circumstances are relevant. The above requirement is not met by typical circumstances, including, for example, the convicted person having clear criminal record, a positive assessment presented in a community interview report (in other words, the characteristics that should be the norm for every member of society) or a method of production of narcotic drugs described as 'home-brew'.[20] On the facts of a specific case, a court decided that even the simultaneous existence of such circumstances as the confession of guilt, repentance, reconciliation with the victim or the accused's promise to pay for the damage caused, assessed from the point of view of the nature of the offence committed by the accused, did not suffice to establish the existence of the grounds under Article 60 § 2 CC. The court held that these circumstances were not exceptional and extraordinary and were merely a consequence of an understanding of the reprehensibility of the committed offence and an attitude completely natural in proper social relations, namely a promise of improvement or compensation for a moral loss. However, no extraordinary dimension can be attributed to any of the above factors, which, as shown by the judicial practice, are present, to a greater or lesser extent, in the majority of criminal cases. Otherwise, the exceptional benefits associated with the extraordinary mitigation of a penalty would become commonly available.[21]

Some doubts may arise as to whether a prior criminal record excludes the application of the extraordinary mitigation of a penalty. While this is undoubtedly an aggravating circumstance relevant to the sentencing, one must remember, as the courts and legal scholars rightly point out, that this factor, which, by its very nature, is a circumstance concerning a person and not an act, does not affect the assessment of the degree of the person's guilt and the social harm caused by the offence committed. Accordingly, Article 60 § 2 CC does not preclude the application of the extraordinary mitigation of a penalty to offenders that have already been punished, including repeat offenders.[22]

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[17] Judgment of the Court of Appeal in Katowice of 22 November 2001, II AKa 381/01, OSN Prokuratura i Prawo 7–8, 2002, item 19.

[18] Judgment of the Court of Appeal in Kraków of 28 December 2012, II AKa 243/12, OSN Prokuratura i Prawo 7–8, 2013, item 26.

[19] Judgment of the Court of Appeal in Katowice of 25 October 2001, II AKa 315/01, OSN Prokuratura i Prawo 7–8, 2002, item 18.

[20] The Supreme Court judgment of 28 March 2019, V KK 125/18, unpublished; see also the Supreme Court judgment of 8 May 1974, V KRN 34/74, LEX No. 479157.

[21] Judgment of the Court of Appeal in Katowice of 11 October 2012, AKa 313/12, OSN Prokuratura i Prawo 3, 2013, item 25.

[22] Judgment of the Court of Appeal in Katowice of 22 January 2004, II AKa 497/03, LEX No. 142875; as in the guidelines of the Supreme Court in its resolution of 22 December 1978 on the application of the provisions on re-offending, VII KZP 23/77, OSNKW 1979, No. 1–2, item 1.

Applying the above reasoning to the facts of the case under consideration, one should note that the view presented by the Supreme Court remains in line with the existing jurisprudence and supports the argument that the extraordinary mitigation of a penalty applicable in exceptionally justified circumstances is an extraordinary measure. The Supreme Court is correct in its holding that the occurrence of exceptional circumstances should be accompanied by unusual circumstances of the incident or such features of the perpetrator, which characterise them in an exceptionally positive way and warrant the imposition of a penalty lesser than the least severe penalty imposable for a given offence. The exceptionally justified circumstances referred to in Article 60 § 2 CC materially differ from ordinary circumstances covered by the standard sentencing directives, which offer a range of sentencing options existing within the scale of penalties for a given offence. On the other hand, if the court applies extraordinary mitigation of a penalty without demonstrating that such mitigation is indeed warranted by special circumstances leads to the correct conclusion that the penalty imposed in such circumstances is grossly disproportionate.[23]

Apart from referring to the exceptional nature of the legal concept of extraordinary mitigation of a penalty, the Supreme Court also addressed the standard of appellate review in cases of this type. In the discussed case, the Supreme Court reversed the judgment of the appellate court as grossly violating Article 433 § 2 CPC read in conjunction with Article 457 § 3 CPC, correctly pointing to the need for particularly thorough verification of the appellant's allegations regarding the assessment of the grounds for the existence of exceptionally justified circumstances within the meaning of Article 60 § 2 CC.

According to the first-instance court, the grounds described in the descriptive part of Article 60 § 2 CC have been met, as suggested by the factors such as the accused's growing sense of fatigue, emotional burnout, powerlessness and, at the same time, a sense of responsibility for the loved ones who put the accused in a difficult situation, the way in which the victim behaved and, in particular, her behaviour towards the accused, the ineffectiveness and a certain indifference of government and local government bodies in assisting the family of the accused, as well as the previous lifestyle of the accused, in particular, her involvement in voluntary work, a very positive assessment presented in a community interview report and clear criminal record. This conclusion was endorsed by the appellate court which argued that, although none of the above-mentioned factors would constitute a standalone ground for the extraordinary mitigation of a penalty, a combination of the factors constituted 'exceptionally justified circumstances', in which even the least severe penalty imposable for the offence would be disproportionately severe.

The Supreme Court aptly assessed that, since the prosecutor questioned the evaluation of the factors allegedly demonstrating the existence of exceptionally justified circumstances which were to warrant the extraordinary mitigation of

[23] Involving the fact that an error in the findings of facts alleged in the appeal was not duly examined which, in turn, in the Supreme Court's view, led to an incorrect approval of the findings made by the first-instance court as regards the existence of an exception as the grounds for the application of the extraordinary mitigation of a penalty.

the penalty, then it was necessary to present arguments demonstrating that these circumstances indeed deserve to be called 'extraordinary'. Accordingly, the court of appeal should not have limited its reasoning to a mere approval of the regional court's arguments in this regard, accompanied by references to general and broad statements intended to express the court of appeal's approval of the regional court's approach. All the circumstances described by this court referred in fact to the general grounds relevant to the length of the penalty for the serious offence charged and did not indicate the existence of the grounds for the application of Article 60 § 2 CC. Therefore, although the statement of reasons for the judgment of the court of appeal formally included deliberations in that respect, such deliberations arguably fell short of directly addressing the arguments presented in the prosecutor's appeal.

Referring to the specific elements of the reviewed judgment, the Supreme Court criticised the lower courts' assessment of the grounds for exceptionally justified circumstances within the meaning of Article 60 § 2 CC. The Supreme Court accepted that the sentenced person had been in a difficult life situation resulting from her taking over the care of her elderly mother (aged 86), who was physically disabled and unable to communicate verbally and logically as well as her sick husband, who is also physically disabled and uses a wheelchair, especially given her very modest housing conditions, but correctly concluded that such circumstances cannot constitute a defence to the taking of the victim's life. The above argument, in the Supreme Court's view, is especially valid given the fact that the sentenced person voluntarily decided to take her mother in and could have asked other family members (e.g. her sons) for assistance and could have requested the assistance of relevant government or local government bodies. Moreover, one should share the Supreme Court's argument that the accused did not commit the offence because she felt humiliated and violated by her mother, since the latter had suffered a stroke several months before she was killed and was generally unable to verbally communicate, bedridden and required around-the-clock care. As such, there is no merit in saying that, in the months immediately preceding the killing, the sentenced person's mother deliberately made her life miserable or behaved maliciously towards her.

The Supreme Court's views regarding the impact of the accused's previous lifestyle (in particular her clear criminal record and positive assessment in a community interview report) on the grounds for the extraordinary mitigation of a penalty follow the established jurisprudence. The Supreme Court correctly concludes that there is nothing special in the fact that the accused has been observing the legal order and functioned properly in the society. Such a law-abiding behaviour should be the norm for every person living in the society and it should not warrant a decision not to impose on the perpetrator a penalty which remains within the scale of penalties established for the offence of manslaughter.

The position of the Supreme Court regarding the assessment of the legal nature of the extraordinary mitigation of a penalty, as well as the factors constituting the exceptionally justified circumstances and the standard of appellate review in such cases, should be fully approved.

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GLOSS ON THE SUPREME COURT JUDGMENT OF 4 FEBRUARY 2020, III KK 113/19

Summary

The author of this gloss accepts the argument that the existence of 'exceptionally justified circumstances' within the meaning of Article 60 § 2 CC should be inferred from unusual circumstances of the incident or the features of the perpetrator which characterise them in an exceptionally positive way and warrant the imposition of a penalty lesser than the least severe penalty imposable for the offence in question. Based on a review of court decisions and scholarly works, the author identifies the key determinants guiding the assessment of whether exceptionally justified circumstances exist. Furthermore, the author endorses the call for

maintaining an appropriate standard of appellate review in cases involving the extraordinary mitigation of a penalty. Such a standard implies the need for a substantive and not merely formal revision of the grounds for the appeal challenging the legitimacy of the application of the extraordinary mitigation of a penalty.

Keywords: penalty, extraordinary mitigation of a penalty, sentencing directives, the least severe penalty for an offence, criminal law

GLOSA DO WYROKU SĄDU NAJWYŻSZEGO Z DNIA 4 LUTEGO 2020 R., III KK 113/19

Streszczenie

W glosie zaaprobowano tezę, iż wystąpienie szczególnie uzasadnionego wypadku w rozumieniu art. 60 § 2 k.k. powinno znajdować wsparcie w okolicznościach nietypowych samego zdarzenia albo w takich cechach sprawcy, które charakteryzują go w sposób wyjątkowo pozytywny i powodują, że zasługuje on na wymierzenie kary poniżej minimum ustawowego. Dokonując przeglądu orzecznictwa i doktryny, wskazano na główne determinanty oceny szczególnie uzasadnionego wypadku. Podzielono również pogląd o konieczności zachowania odpowiedniego standardu kontroli odwoławczej w tego typu sprawach, polegającego na konieczności merytorycznego a nie jedynie formalnego zweryfikowania zarzutów odwoławczych kwestionujących zasadność zastosowania nadzwyczajnego złagodzenia kary.

Słowa kluczowe: kara, nadzwyczajne złagodzenie kary, dyrektywy wymiaru kary, najniższa kara przewidziana za przestępstwo, prawo karne

COMENTARIO DE SENTENCIA DE TRIBUNAL SUPREMO DE 4 DE FEBRERO DE 2020, III KK 113/19

Resumen

El comentario aprueba la tesis que la existencia de caso excepcionalmente fundado a la luz del art. 60 § 2 de código penal ha de apoyarse en condiciones extraordinarias de hecho en sí o en tales características de autor que le describen de manera excepcionalmente positiva y por ello merece la pena por debajo mínimo legal. Analizando la jurisprudencia y doctrina se indica los principales elementos para valorar caso excepcionalmente fundado. Se comparte también la postura de la necesidad de preservar el estándar de control de recursos en este tipo de causas que consiste en la necesidad de verificar sustancialmente y no sólo formalmente las alegaciones de recurso que cuestionan la aplicación de rebaja extraordinaria de la pena.

Palabras claves: pena, rebaja extraordinaria de la pena, directivas de imposición de la pena, la pena mínima prevista por el delito, derecho penal

КОММЕНТАРИЙ К РЕШЕНИЮ ВЕРХОВНОГО СУДА № III KK 113/19 ОТ 4 ФЕВРАЛЯ 2020 ГОДА

Аннотация

В комментарии автор приводит аргументы в пользу того, что наличие «особо обоснованного случая» в понимании ст. 60 §2 УК должно подтверждаться нетипичными обстоятельствами самого события преступления либо особенностями поведения преступника, которые характеризуют его в исключительно позитивном ключе и означают, что он заслуживает наказания ниже установленного законом минимума. Анализ существующей судебной практики и положений доктрины позволил выявить основные факторы, определяющие оценку каждого конкретного случая как «особо обоснованного». Автор разделяет мнение о необходимости поддержания надлежащих стандартов апелляционного надзора при рассмотрении подобных дел. Это выражается в необходимости не только формально-правовой, но и материально-правовой проверки апелляций, оспаривающих обоснованность чрезвычайного смягчения наказания.

Ключевые слова: наказание; институт чрезвычайного смягчения наказания; положения об определении меры наказания; наименьшее наказание, предусмотренное за преступление; уголовное право

GLOSSE ZUM URTEIL DES SĄD NAJWYŻSZY VOM 4. FEBRUAR 2020, AKTENZEICHEN: III KK 113/19

Zusammenfassung

Die Autorin des Meinungsbeitrags teilt die Auffassung, dass das Vorliegen eines besonders begründeten Falles im Sinne von Artikel 60 § 2 des polnischen Strafgesetzbuches durch die außergewöhnlichen Umstände des Ereignisses selbst oder solche Merkmale des Täters belegt werden sollte, die ihn auf besonders positiv erscheinen lassen und bewirken, dass er ein Strafmaß verdient, das unter der gesetzlichen Mindeststrafe liegt. Mit Blick auf die Rechtsprechung und die Rechtslehre werden die wesentlichen Bestimmungsfaktoren für die Beurteilung eines Falles als besonders begründet bezeichnet. Es wird auch die Ansicht geteilt, dass in solchen Fällen die Gewährleistung einer angemessenen Nachprüfung und damit verbunden einer inhaltlichen und nicht nur formalen Überprüfung der Rechtsmittelgründe notwendig ist, durch die die Rechtmäßigkeit der Anwendung einer außerordentlichen Strafmilderung in Frage gestellt wird.

Schlüsselwörter: Strafe, außerordentliche Strafmilderung, Strafzumessungsrichtlinien, für eine Straftat angedrohte Mindeststrafe, Strafrecht

GLOSE DE L'ARRÊT DE LA COUR SUPRÊME DU 4 FÉVRIER 2020, III KK 113/19

Résumé

La glose approuvait la thèse selon laquelle la survenance d'un accident particulièrement justifié au sens de l'article 60 § 2 du Code pénal devrait trouver appui dans des circonstances inhabituelles de l'événement lui-même ou dans des caractéristiques de l'auteur qui le

caractérisent d'une manière exceptionnellement positive et lui font mériter une peine inférieure au minimum légal. Lors de l'examen de la jurisprudence et de la doctrine, les principaux déterminants de l'évaluation d'un accident particulièrement justifié ont été indiqués. On a également estimé qu'il était nécessaire de maintenir une norme appropriée de contrôle des recours dans ce type d'affaires, consistant en la nécessité d'une vérification de fond et pas seulement formelle des allégations d'appel mettant en cause la légitimité de l'application de la clémence extraordinaire.

Mots-clés: peine, clémence extraordinaire, directives de détermination de la peine, peine la plus basse prévue pour un crime, droit pénal

COMMENTO ALLA SENTENZA DELLA CORTE SUPREMA DEL 4 FEBBRAIO 2020, III KK 113/19

Sintesi

Nel commento si è approvata la tesi che l'insorgenza di un caso particolarmente motivato ai sensi dell'art. 60 § 2 del Codice penale deve essere sostenuta dalle circostanze insolite dell'evento stesso oppure da caratteristiche del reo, tali da caratterizzarlo in maniera particolarmente positiva e che fanno sì che meriti l'applicazione di una pena inferiore al minimo di legge. Effettuando una rassegna della giurisprudenza e della dottrina sono stati indicati i determinati principali della valutazione del caso particolarmente motivato. Si è condivisa anche la posizione circa la necessità di rispettare un adeguato standard di controllo in sede d'impugnazione in questo tipo di procedimenti, consistente nella necessità di una verifica di merito e non solamente formale delle accuse d'impugnazione che contestano la fondatezza dell'applicazione di una attenuante eccezionale.

Parole chiave: pena, attenuanti eccezionali, direttive di determinazione della pena, pena minima prevista per il reato, diritto penale

Cytuj jako:

Kosonoga-Zygmunt J., *Gloss on the Supreme Court judgment of 4 February 2020, III KK 113/19 [Glosa do wyroku Sądu Najwyższego z dnia 4 lutego 2020 r., III KK 113/19]*, „Ius Novum" 2020 (14) nr 4, s. 193–204. DOI: 10.26399/iusnovum.v14.4.2020.43/j.kosonoga-zygmunt

Cite as:

Kosonoga-Zygmunt, J. (2020) 'Gloss on the Supreme Court judgment of 4 February 2020, III KK 113/19'. *Ius Novum* (Vol. 14) 4, s. 193–204. DOI: 10.26399/iusnovum.v14.4.2020.43/j.kosonoga-zygmunt