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THE ISSUE OF THE EXECUTION OF THE PENALTY OF RESTRICTION OF LIBERTY IN THE FORM OF DEDUCTION OF PART OF THE REMUNERATION

Z PROBLEMATYKI WYKONYWANIA KARY OGRANICZENIA WOLNOŚCI W POSTACI POTRĄCENIA CZĘŚCI WYNAGRODZENIA

Summary: The article presents the issues related to the execution of the penalty of restriction of liberty in the form of a deduction from the remuneration. The publication analyses the notional and subjective aspects, as well as selected procedural issues.

Keywords: execution of the sentence, restriction of liberty, deduction, convicted

Streszczenie: Artykuł przedstawia problematykę związaną z wykonaniem kary ograniczenia wolności w formie potrącenia z wynagrodzenia. Analizie został poddany aspekt pojęciowy, podmiotowy, a także problematyka wybranych zagadnień proceduralnych.

Słowa kluczowe: wykonanie kary, ograniczenie wolności, potrącenie, skazany

GENERAL COMMENTS – CONCEPTUAL ASPECT

I will begin my analysis of the issue of the execution of the penalty of restriction of liberty in the form of a deduction of part of the salary[1] from the conceptual lev-

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[1] Cf. K. Postulski, *Kodeks karny wykonawczy*, Warszawa 2016, p. 530 et seq; S. Lelental, *Kodeks karny wykonawczy. Komentarz*, Warszawa 2010, p. 283 et seq.; A. Michalek, *Kara ograniczenia wolności w teorii i praktyce orzeczniczej*, Lublin 2018, p. 16 et seq.

el. This aspect is of central importance both doctrinally, for jurisprudence and for practice especially for the entities executing the punishment. The starting point for further consideration will be the thesis that there is a lack of conceptual coherence at the material level between the regulation adopted in the Criminal Code[2] and the regulation from the Executive Criminal Code[3]. The first of the aforementioned codes, Article 35 § 2, uses the term "employed person," while the second of the aforementioned codes uses the term convicted "employed" in Article 59 § 1. Thus, the question of whether these terms are the same or whether they denote different entities requires consideration. Preliminarily, following the theory – wide prohibition of synonymous interpretation, I represent the position that in the criminal law system, different phrases used in legislation should not be given the same meaning.

First of all, the relationship between the terms employed person (Article 35 § 2 of the Criminal Code) and employed (Article 59 § 1 of the Executive Criminal Code) requires analysis. Its definition is of momentous importance with regard to both the adjudication and execution of the penalty of restriction of liberty involving the deduction of part of the remuneration. Article 35 § 2 of the Criminal Code *in fine verba legis* applies to those employed under an employment relationship, that is, in system-wide terms, to employees[4]. In my opinion, however, this does not mean that the type of penalty of restriction of liberty discussed here cannot be imposed on persons employed on other legal grounds[5]. This interpretive option is supported by *a completudine* argument, since Article 34 § 1a of the Criminal Code does not specify the basis for the convicted person's employment. Thus, in this context, the statement of J. Lachowski[6], that the penalty of restriction of liberty in the form of a deduction can apply only to employment in an employment relationship, appears as unjustified. I do not share this view, since Article 35 § 2 of the Criminal Code refers exclusively to the inadmissibility of termination of employment. This provision, as a special norm, cannot be interpreted extensively, to other types of non-employment. This does not mean, however, that those employed in them cannot be convicted to the penalty of restriction of liberty in the form of a deduction. In its judgment IV KK 211/09, the Supreme Court[7] did not elaborate on this issue, indi-

[2] Law of June 6, 1997, Criminal Code (uniform text, Journal of Laws of 2020, item 1444).

[3] Law of June 6, 1997, Executive Criminal Code (uniform text, Journal of Laws of 2020, item 523, as amended). Cf. V. Konarska-Wrzosek [in:] *Kodeks karny. Komentarz*, ed. II., LEX 2018; M. Szewczyk [in:] *Kodeks karny. Część ogólna*, Volume I, Part I, Commentary to Articles 1-52, ed. V, LEX 2016, and L. Osiński [in:] *Kodeks karny wykonawczy. Komentarz*, ed. by J. Lachowski, Warszawa 2018, p. 319.

[4] Cf. e.g., M. Lewandowicz-Machnikowska [in:] *Prawo pracy i ubezpieczeń społecznych*, ed. by K.W. Baran, Warszawa 2019, p. 186.

[5] Cf. also M. Szewczyk on this subject [in:] *System Prawa Karnego. Kary i inne środki reakcji prawnokarnej*, vol. 6, Warszawa 2010, pp. 253-254; R. Giętkowski, *Kara ograniczenia wolności w polskim prawie karnym*, Warszawa 2007, pp. 111-112.

[6] J. Lachowski, *Zasady orzekania kary ograniczenia wolności – wybrane zagadnienia*, Nowa Kodyfikacja Prawa Karnego 2016, No. 40, p. 25 et seq., thesis 3 and 5.

[7] LEX No. 608287.

cating in general terms that the conviction applies to the employed person and the remuneration received by him or her. Such framing of the issue, however, does not prejudge the type of basis for this person's employment.

Summing up this subject, I conclude that "employed person" from Article 35 § 2 of the Criminal Code and employed from Article 59 § 1 of the Executive Criminal Code do not mean the same subject categories because a rational legislator always gives the same meaning to the same term. Against this background, the question arises about the logical relationship between the two concepts. In my opinion, the concept of an employed person is included in the concept of an employed. Article 35 § 2 of the Criminal Code *lege non distinguente* does not even *implicite* specify the nature of the employment relationship of the person against whom a deduction of part of the remuneration can be ruled. *De lege lata*, therefore, there is no justification for imposing restrictions on the basis of § 2 of this norm which applies only to one category of legal relationship which is the employment relationship.

EMPLOYMENT AS A PREREQUISITE FOR THE AWARD AND EXECUTION OF A PENALTY OF RESTRICTION OF LIBERTY IN THE FORM OF A DEDUCTION OF PART OF THE REMUNERATION

Against the background of the above considerations, the question arises as to which categories of workers under a non-employment contract may be subject to a penalty of restriction of liberty in the form of a deduction of part of their remuneration. In general, this includes employment under the civil law[8], administrative law[9] and other specific bases[10]. However, before I turn to these problems, I will present the issue of labor employment under the restriction of liberty.

The deduction of a portion of an employee's remuneration raises *de lege lata* relatively the least legal questions within the framework of a punishment of restriction of liberty. Furthermore, representatives of criminal sciences limit its application only to persons employed under an employment relationship[11]. Hence, I will begin my argument on this topic with employees. The starting point in this matter will be the thesis that the penalty of restriction of liberty in the form of a deduction of part of the remuneration can be imposed on all categories of employees. Article 34 § 1a of the Criminal Code, let alone Article 59 of the Executive Criminal Code, does not differentiate their employment status, thus this view is legitimate based on *lege non*

[8] Cf. A. M. Swiatkowski [in:] *System prawa pracy. Zatrudnienie niepracownicze*, vol. 7, ed. K.W. Baran, Warszawa 2015, p. 47 et seq. and the extensive literature cited therein.
[9] Cf. T. Kuczyński, E. Mazurczak-Jasińska [in:] *System prawa pracy…*, vol. 7, *passim*.
[10] Cf. *System prawa pracy…*, vol. 6, *passim*.
[11] Cf. R. Giętkowski, *Kara ograniczenia wolności w polskim…*, LEX/el.

distinguente reasoning. This means, in the context of the norms of labor law, especially Article 2 of the Labor Code, that a deduction of part of the remuneration can be ruled against the employee regardless of the basis of his work. I mean not only those employed under an employment contract[12], but also to appointment[13], election[14], nomination[15] or cooperative employment contract. Generalizing the issue, it appears legitimate to say that the possibility of applying this penalty applies to both contractual and non-contractual employees. As far as the former category of employees is concerned, a deduction of part of their remuneration can be ruled against both those employed for an indefinite period and those employed on temporary contracts (e.g., a fixed-term contract[16]). In the context of the provisions of Article 34 § 1 of the Criminal Code, the admissibility of imposing the penalty discussed here against an employee hired under a probationary contract is questionable. According to the provisions of Article 25 § 2 of the Civil Code[17], it can last up to a maximum of 3 months which, in light of the directive of Article 34 § 1 of the Criminal Code, severely limits the temporal dimension of the punishment of restriction of liberty in the form of deduction of part of the remuneration, which undermines not only its sense, but also its effectiveness. There are also views in the doctrine that paid periods of non-work by the convicted (due, for example, to the time of excused absence from work), cannot be credited for the execution of the penalty and should be treated as a de facto break in serving the sentence[18].

Another issue is the problem of adjudicating this penalty against employees under a fixed-term contract[19]. Specifically, the question is whether a conviction can exceed the time of this contract. I allow for such a possibility, since the dimension of the sanction under Article 34 § 1a of the Criminal Code covers its temporal scope for the entire duration of the period of employment, and not its individual obligation bases. I believe the view that this penalty covers all acts of obligation, including those entered into with various employers, in the conceptual terms adopted in Article 59 of the Executive Criminal Code, called the workplace.

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[12] Cf. P. Korus [in:] *Kodeks pracy. Komentarz*, ed. by A. Sobczyk, Warszawa 2017, p. 5 et seq; T. Liszcz [in:] *System prawa pracy. Indywidualne prawo pracy. Część ogólna*, vol. 2, volume editor G. Goździewicz, Warszawa 2017, p. 246 et seq. and extensive literature and jurisprudence cited therein.

[13] Cf. K. Stefanski [in:] *System prawa pracy. Indywidualne prawo pracy. Pozaumowne stosunki pracy*, vol. 4, volume editor Z. Góral, Warszawa 2017, p. 425 et seq. and the literature cited therein.

[14] Cf. M. Wlodarczyk [in:] *System prawa pracy. Indywidualne*..., vol. 4, pp. 135 et seq.

[15] Cf. A. Giedrewicz-Niwińska [in:] *System prawa pracy. Indywidualne*..., vol. 4, pp. 205 et seq.

[16] Cf. M. Gersdorf [in:] *System prawa pracy. Indywidualne*..., vol. 2, pp. 301 et seq.

[17] Cf. A. Sobczyk, *Umowa na okres próbny od 2016 r.*, "Monitor Prawa Pracy" 2016, no. 1, p. 3 et seq.

[18] Cf. also J. Śliwowski, *Kara ograniczenia wolności. Studium penalistyczne*, Warszawa 1973, p. 94; E. Huzar, Z. Ponarski, *Kara ograniczenia wolności i obowiązki uspołecznego zakładu* pracy, "Praca i Zabezpieczenie Społeczne1971, no. 1, pp. 22-26; otherwise Z. Kwasieborski, *Kara ograniczenia wolności i uprawnienia pracownika odbywającego tę karę*, PiZS 1970, no. 6, p. 37.

[19] Cf. M. Gersdorf [in:] *System prawa pracy. Indywidualne*..., vol. 2, p. 307 et seq. and L. Florek, *Umowa o pracę na czas określony*, "Praca i Zabezpieczenie Społeczne" 2015, no. 12, p. 2 et seq.

Against the background of the regulation of Article 34 § 1a (4) of the Criminal Code, the problem arises as to whether it is permissible to impose a penalty of deduction of part of the salary from two employers, if the employee is employed by them under an employment relationship. In my opinion, the question posed in this way should be answered in the negative, since the provision uses the concept of salary in the singular and not in plural. Adopting the opposite interpretive option would violate the principle of *nulla poena sine lege certa*.

Based on the provisions of Article 34 § 1a of the Criminal Code, the question also arises as to whether a conviction for decution of a part of a remuneration can be enforced if the basis of employment has been transformed, for example, from an employment contract to a nomination. Considerations of expediency support the permissibility of its execution, since the provisions of the Executive Criminal Code do not in any way differentiate the act creating employment. This means in practice that these rulings are enforceable even if there has been a transformation of the basis of employment of a particular employee.

De lege lata I have no doubt that the penalty of restriction of liberty in the form of a deduction from part of the remuneration can be imposed on a teleworker[20], an employee providing remote work or a temporary employee[21]. In the latter case, the problem arises as to who is to carry out this penalty, whether the temporary employment agency or the user employer[22]. In my view, this obligation is incumbent on the subject supplementing the remuneration. So, it should be assumed that it will usually be a temporary employment agency.

Continuing with the analysis of legal relationships related to employment, under which the penalty of restriction of liberty in the form of a deduction of part of the remuneration can be imposed, it is first necessary to consider issues related to civil-law employment. In industrial relations, the most common in practice, the basis is a contract of mandate. In civil law theory, it is categorized as a contract of due diligence, and is therefore similar in essence to employment contracts[23]. Thus, if a mandatory performs work personally and for a fee and for a reasonable time, there is no obstacle to ruling against him a deduction of part of his or her remuneration under Article 34 § 1a of the Criminal Code. A similar obligation mechanism to that of mandataries is in place for the employment of people under service contracts and managerial contracts[24]. The latter category of employees *a natura rerum* performs work for pay. The analogous situation is also the case of persons performing home-

[20] Cf. A. Sobczyk [in:] *System prawa pracy. Indywidualne*..., vol. 2, pp. 819 ff.
[21] Cf. D. Makowski [in:] *System prawa pracy. Indywidualne*..., vol. 2, p. 855.
[22] Cf. E. Drzewiecka, *Agencje pracy tymczasowej – trójstronny charakter zatrudnienia*, "Monitor Prawa Pracy" 2004, no. 2, p. 48 et seq.
[23] Cf. A.M. Świątkowski [in:] *System prawa pracy. Zatrudnienie*... vol. 7, pp. 133 et seq.
[24] Ibidem, pp. 143 et seq.

based work[25] and in agricultural production cooperatives[26]. *De lege lata*, I do not see any obstacle to impose a penalty of restriction of liberty, in the form of a deduction of part of the remuneration, against these categories of employees.

On the other hand, the situation is somewhat different when work is performed under civil law contracts, but by business entities. I mean primarily the self-employed[27] (B2B formula) and agents executing an order within their business activity. In both cases indicated, the person doing the work is an individual, but he or she operates under a business name. In light of the textual wording of Article 34 § 1a of the Criminal Code, there is no possibility of imposing the penalty of deducting part of the remuneration on the company or enterprise. *De lege lata* there is also no such possibility for a person engaged in agricultural activities within the framework of a farm, since he or she does not receive remuneration within the meaning of Article 34 of the Criminal Code and Article 59 of the Executive Criminal Code and does not perform work for workplace. In practice, a similar mechanism is encountered in the case of volunteers[28] providing work for public benefit organizations and people performing work in social integration centres.

A separate category of employees whose status from the point of view of Article 34 of the Criminal Code and Article 59 of the Executive Criminal Code needs to be considered are those who provide work on an administrative-legal bases. Service in militarized structures is characterized[29] by subordination to the employing entity, which, within statutory limits, determines the terms and conditions of employment, including remuneration[30]. In the Polish legal system, this type of employment is found in the case of officers of the Police, Border Guard, Prison Service, Customs and Fiscal Service, Internal Security Agency, Central Anti-Corruption Bureau, State Protection Service, firefighters of the State Fire Service and professional soldiers. This enumeration is only of an illustrative nature and does not pretend to be enumerative. The officers of the above-mentioned services do not have the *de lege lata* status of an employee, but in my opinion, there is no obstacle to imposing on them under Article 34 § 1a of the Criminal Code a penalty of restriction of liberty in the form of a deduction of part of their remuneration, since as employment they receive remuneration for their work in the form of a emolument.

[25] Cf. T. Wyka [in:] *System prawa pracy. Zatrudnienie*..., vol. 7, pp. 191 et seq.
[26] Cf. T. Duraj [in:] *System prawa pracy. Zatrudnienie*..., vol. 7, p. 161.
[27] Cf. K. Walczak [in:] *System prawa pracy. Zatrudnienie*..., vol. 7, pp. 298 et seq.
[28] Cf. A. Wypych-Żywicka [in:] *System prawa pracy. Zatrudnienie*..., vol. 7, pp. 277 et seq.
[29] Cf. T. Kuczyński. E. Mazurczak-Jasińska [in:] *System of Labor Law*..., vol. 7, pp. 391 et seq.
[30] This issue will be presented in more detail later in this chapter.

DEDUCTIONS OF PART OF THE REMUNERATION AS A TYPE OF PENALTY OF RESTRICTION OF LIBERTY

Fundamental to determining the essence of the type of the penalty of restriction of liberty in question is decoding the meaning of the deduction of part of the remuneration. I will begin my analysis of the issue by defining the concept of remuneration, as it is the subject of the implementation of Article 59 of the Executive Criminal Code. The starting point for further consideration of remuneration under Article 34 § 1a of the Criminal Code and Article 59 of the Executive Criminal Code will be the observation that it does not have a legal definition in the criminal legal system. Meanwhile, the concept of remuneration is used by at least several legal disciplines, ranging from labor and social security law to administrative law and civil law, as well as financial law. In this context, there is no doubt that the concept does not have a uniform and universally established scope of meaning. At the same time, following the directive that the same concepts within the same branch of law should not be given different meanings, unless the context of expediency supports this[31]. Its essence, on the other hand, is always payment for work performed in the course of hiring. However, it does not only refer to the employment-based job. First of all, on an abstract level, it is a monetary benefit of a congenial nature paid to an employee in the framework of an existing legal relationship[32]. At this point, it is worth emphasizing that neither Article 34 § 1a of the Criminal Code, nor even more so Article 59 of the Executive Criminal Code, specifies the qualities of remuneration, and therefore it seems legitimate – *lege non distinguente* – to say that it does not have to be strictly periodic. This justifies including within the scope of this concept also the benefit paid to officers in the framework of the service relationship, although the legislation uses the concept of emolument. This does not change the fact, however, that it is a monetary benefit of an additive and material nature paid for work, and therefore, in its essence, meets all the criteria of remuneration. The name of the monetary benefit itself, in my opinion, is of secondary importance.

The above-mentioned criteria defining remuneration within the meaning of Article 34 § 1a of the Criminal Code and Article 59 of the Executive Criminal Code, in my opinion, also apply to other, non-employee financial benefits, especially those of a civil law nature. For instance Article 735 of the Civil Code with regard to the provision of work under a contract of mandate, or Article 759 § 1 of the Civil Code with regard to an agency contract. This terminology also applies in cooperative law, and

[31] Cf. similarly R. Giętkowski, *Kara ograniczenia wolności…*, LEX/el.

[32] Cf. K. Walczak, *Aksjologiczne podstawy wynagrodzenia zatrudnionych w gospodarce postindustrialnej – wybrane zagadnienia*, [in:] *Aksjologiczne podstawy prawa pracy i prawa ubezpieczeń społecznych*, ed. by M. Skąpski, K. Ślebzdak, Poznań 2014, p. 121 et seq.

not only to the member of the cooperative, but even his or her household member[33]. The doctrine of executive criminal law indicates that the concept of remuneration should be understood broadly, as material benefits paid for any work, regardless of the type of entity to which it is provided, that is, for example, also the sums received for literary or artistic work[34], which should be noted with approval.

Periodic monetary benefit is also the rule in some unnamed contracts, civil law contracts. I mean the performance of work under a service contract or management contract. *De lege lata*, there is no obstacle to making a deduction, under Article 59 of the Executive Criminal Code of a part of such remuneration. However, there are doubts about its qualification as remuneration within the meaning of Article 34 § 1a of the Criminal Code of a stipend paid periodically to students, doctoral candidates and athletes. Due to the fact that they usually constitute payment for past achievements (scientific or sports) and not for work performed on an ongoing basis, I think that they do not have the characteristic of remuneration in the sense adopted in Article 34 § 1a of the Criminal Code and Article 59 of the Executive Criminal Code. Analogously, in my opinion, pension and annuity benefits should be treated. An annuity is a monetary benefit paid to those who are unable to work[35], while a pension is paid to those who have stopped working after reaching a statutorily defined age. The view of the inadmissibility of ruling of the penalty of restriction of liberty in the form of a deduction from an annuity was formulated by the Supreme Court in the judgment IV KK 211/09[36]. This position has met with the approval of the doctrine of criminal law[37]. This is because it should be borne in mind that pension and annuity benefits are never paid for work, as is always the case with remuneration.

Continuing with the issue of the deduction of part of the remuneration as a type of punishment of restriction of liberty, I will focus my remarks on the employee's remuneration, since it is from it that enforcement is most often carried out in practice. The starting point for further analysis will be the statement that the doctrine and jurisprudence of labor law distinguish two basic meanings of the concept of remuneration. The first *sensu largo*, based on Article 18[3a] of the Labor Code, is understood as total labor income, and the second *sensu stricto,* as an equivalent benefit for work performed[38]. The latter formula correlates with the regulation adopted in Article 87 of the Labor Code defining the mechanism of remuneration deductions, and therefore *a cohaerentia* should be adopted in the executive criminal law.

[33] Cf. Article 159 of the Cooperative Law.
[34] Cf. also J. Śliwowski, *Kara ograniczenia wolności…*, pp. 93-94.
[35] Cf. K. Antons [in:] *Prawo pracy i ubezpieczeń…*, p. 844.
[36] LEX No. 608287.
[37] Cf. J. Lachowski, *Zasady orzekania kary ograniczenia wolności…*, *passim*.
[38] Cf. B. Wagner, *Ekwiwalentność wynagrodzenia i pracy*, "Praca i Zabezpieczenie Społeczne" 1996, no. 6, p. 10.

An issue that needs to be considered is the question of salary components from which a deduction is made under Article 59 § 3 of the Executive Criminal Code. In this matter, the doctrine of executive criminal law[39] refers to the resolution of the Supreme Court of December 16, 1971, VI KZP 576/71[40], in which it was indicated that deductions are made after deduction of public dues ("from the sum of remuneration remaining after deduction of payroll tax and other fees due by law"), while at the same time the basis for deductions is the basic remuneration (without allowances for work such as overtime). As a result of the 2003 amendments to the Executive Criminal Code, an additional obligation was imposed on the court to indicate which components of wages are to be deducted by the workplace[41]. At this point, it should be noted that in the science of executive criminal law it is assumed that it is within the discretion of the court to determine these components, due to the fact that the Executive Criminal Code does not specify this issue[42]. It is worth noting that prior to the 2003 amendment of Article 59 § 1 of the Executive Criminal Code, the issue of the rules for making deductions was regulated by § 15 and 16 of the Ordinance of the Council of Ministers of 25 August 1998 on the designation of workplaces in which the penalty of restriction of liberty and socially useful work adjudged in exchange for an uncollectible fine is carried out, thedetailed obligations of these establishments in the field of employment of the convicted and the rules of managing the funds obtained therefrom, as well as the reliefs to which the establishments are entitled[43]. According to the regulations of the cited 1998 Ordinance, such allowances as for overtime, for night work, for work in harmful, arduous, and hazardous conditions, and the amounts of jubilee awards paid were excluded from deduction (§ 15). At this point, it should be noted that the cited repealed regulations, as indicated by contemporary doctrine, can provide a kind of guidance for the court on the determination of the components of remuneration[44]. Part of the doctrine of the science of executive criminal law indicate that the deduction is made from the components of remuneration except for the components indicated above, as it was regulated in the legal state that is no longer in force[45]. It is impossible to agree with the latter view due to the fact that *de lege lata*

[39] Cf. K. Postulski, *Kodeks karny…*, pp. 531 et seq.
[40] OSNKW 1972, no. 3, item 42, LEX no. 18374.
[41] Cf. K. Postulski, *Kodeks karny wykonawczy. Komentarz*, Warszawa 2017, p. 443.
[42] Cf. L. Osiński [in:] *Kodeks karny wykonawczy. Komentarz*, ed. by J. Lachowski, Warszawa 2018, p. 319; K. Postulski, *Kodeks Karny Wykonawczy. Komentarz*, LEX/el. 2017 and S. Lelental, *Kodeks Karny Wykonawczy. Komentarz*, Warszawa 2017, p. 306.
[43] Ordinance of the Council of Ministers of 25.8.1998 on the designation of work establishments where the penalty of restriction of liberty and socially useful work adjudged in exchange for an uncollectible fine is carried out, the detailed duties of these establishments in the field of employment of convicted persons and the principles of management of the funds obtained therefrom, as well as the reliefs to which the establishments are entitled, Journal of Laws No. 113, item 720, hereinafter referred to as the Ordinance of 1998.
[44] Cf. L. Osiński in: *Kodeks karny…*, p. 319.
[45] Cf. K. Postulski, *Kodeks karny wykonawczy…*, p. 444.

there are no code regulations in the field in question, and the repealed legal norms in no way have binding force in the current state of the law. At the same time, by the way, it should be noted that in the jurisprudence of the Supreme Court, it is accepted that the jubilee award is also understood as remuneration from Article 87 of the Labour Code[46]. It is also indicated that allowances for functions performed and for length of service are subject to deductions[47]. On the issue of the amount of remuneration close to the minimum remuneration and in the situation of carrying out remuneration enforcement pursuant to Article 34 § 1a of the Criminal Code, the doctrine of criminal executive law refers to the cited Supreme Court resolution of 1971[48].

Another problem worth analyzing is the question of which court has the authority to determine the components from which the deduction is to be made. The court authorized to resolve doubts about the execution of the sentence is, according to Article 13 of the Executive Criminal Code, the court issuing the sentence. At this point, it is worthwhile to examine the issue of the enforcement of the sentence of restriction of liberty in the form of a deduction of part of the salary by the workplace in the absence of a determination of the components of the salary in the enforceable judgment. Without specifying the components of remuneration, the obliged workplace cannot proceed with the implementation of the conviction[49]. Therefore, it is obliged to ask the court to resolve doubts in this regard under Article 13 of the Executive Criminal Code[50].

Of particular importance is the notice sent to the court by the employer ("the workplace") informing the court of the fact that the first deduction was made, as this event determines the date on which the penalty begins to be executed (in accordance with Article 57a § 2 of the Executive Criminal Code). Obligations on the part of the workplace include those to provide information on the termination of the employment relationship. The termination of the employment relationship may be grounds for changing the form of penalty.

SUMMARY

Concluding the arguments presented in this paper, it is fair to emphasize that the issue of the implementation of a sentence of restriction of liberty in the form of a deduction of part of the remuneration leaves several doubts, especially in the subject area. In accordance with the reasoning outlined above, this penalty can be imposed on those who provide work in both employee and non-employee employment relationships. Summarizing the arguments presented, it should be pointed out that

[46] Cf. Supreme Court judgment of February 17, 2004, I PK 217/03, OSNP 2004/24, item 419.
[47] Cf. K. Postulski, *Kodeks karny wykonawczy…*, p. 444.
[48] Cf. L. Osiński in: *Kodeks karny…*, p. 319.
[49] Cf. S. Lelental, *Kodeks karny wykonawczy…*, p. 306, also L. Osiński [in:] *Kodeks karny…*, p. 319.
[50] Cf. K. Dabkiewicz, *Kodeks karny wykonawczy. Komentarz*, Warszawa 2018, p. 362.

the analyzed form of punishment of restriction of liberty is based on a legal instrumentality that can be an acute sanction – especially in conditions of inflation - for the crime committed, against a wide spectrum of offenders who receive a periodic monetary benefit on an ongoing basis.

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Normative acts

Law of June 6, 1997 Criminal Code (i.e., Journal of Laws of 2020, item 1444).

Law of June 6, 1997 Executive Criminal Code (i.e., Journal of Laws of 2020, item 523, as amended).

Ordinance of the Council of Ministers of 25.8.1998 on the designation of work establishments where the penalty of restriction of liberty and socially useful work adjudged in exchange for an uncollectible fine is carried out, the detailed duties of these establishments in the field of employment of convicted persons and the principles of management of the funds obtained therefrom, as well as the reliefs to which the establishments are entitled, Journal of Laws No. 113, item 720, hereinafter referred to as the Ordinance of 1998.