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REVIEW OF THE RESOLUTIONS OF THE SUPREME COURT CRIMINAL CHAMBER CONCERNING SUBSTANTIVE CRIMINAL LAW PASSED IN 2022

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Abstract

The scholarly and research-focused article aims to analyse resolutions and rulings of the Supreme Court Criminal Chamber concerning substantive criminal law passed in 2022 as a response to the so-called legal questions. The subject of the analysis covers such issues as: the crime of failure to report a crime (Article 240 § 1 of the Criminal Code); suspension of the statute of limitations for criminal offenses due to the COVID-19 pandemic; a student of the Faculty of Public Order of the Academy of Internal Affairs in Szczytno as a person not serving in the state security bodies; and revocation of a driving licence in the event its holder who is a member of a military unit performing tasks outside the country commits an act consisting in driving a motor vehicle under the influence of alcohol (Article 135(1) of the Road Traffic Act).

The fundamental objective of this scientific research is to evaluate the legitimacy of this body's interpretation of the regulations encompassing legal issues referred to the Supreme Court for resolution. The primary research theses aim to demonstrate that the so-called legal questions referred to the Supreme Court play an important role in ensuring the uniformity of common and military courts' judgements, given that the body's stance relies on in-depth reasoning. The research findings present an original perspective developing the interpretation found in the analysed resolutions in a creative way. While the research primarily focuses on national aspects, the article holds significant importance for the scientific community. This is due to its detailed dogmatic analysis and substantial theoretical discourse. Moreover, its practical utility is evident as it enriches the Supreme Court's arguments and addresses circumstances that justify diverse opinions.

Keywords: serving in the state security bodies, statute of limitations, driving license revocation, reporting a crime, suspension of the statute of limitations

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CRIMINAL CODE

1. OFFENCE OF FAILURE TO REPORT A CRIME (ARTICLE 240 § 1 CC)

The offence specified in Article 240 § 1 CC consists in a person's failure to without delay notify the body authorised to prosecute crimes of the fact of having reliable information about the punishable preparation, attempt or commission of a prohibited act referred to in Article 118, 118a, 120–124, 127, 128, 130, 134, 140, 148, 148a, 156, 163, 166, 189, Article 197 §§ 3–5, Article 198, 200, 252 CC, or a terrorist crime.

Against the background of this provision, a question was raised whether the term "without delay" used therein refers only to the time of obtaining the reliable information about the prohibited act, or whether it may refer to the moment when the obligation to denounce was updated, and also whether the phrase "having reliable information" concerns the state of knowledge of the subject or object of that act.

The doubts were related to the fact that, pursuant to Act of 23 March 2017 amending Criminal Code Act, Act on the Procedure for Dealing with Juvenile Offenders, and Criminal Procedure Code Act,[1] the obligation to denounce concerned, inter alia, crimes of rape in the qualified types (Article 197 §§ 3 and 4 CC), sexual exploitation of helplessness or insanity (Article 198 CC) and paedophilia (Article 200 CC). The question was whether the obligation applied to the crimes committed before the date of the Act's entry into force, i.e. 13 July 2017, of which the person obliged learned before the date and failed to report them after the date.

When solving the issue, the Supreme Court, in its resolution of 1 July 2022, I KZP 5/22 (OSNK 2022, No. 9, item 32), rightly assumed that **the phrase "having reliable information" used in Article 240 § 1 CC should be understood as the state of knowing of the subject of the act at the time of its commission; the term "without delay" refers not to the moment of getting to know about a prohibited act added to the catalogue of crimes listed in Article 240 § 1 CC by means of Act of 23 March 2017 amending Criminal Code Act, Act on the Procedure for of Dealing with Juvenile Offenders and Criminal Procedure Code Act (Journal of Laws of 2017, item 773), but the moment when the denunciation obligation was updated, which took place on 13 July 2017; the only object of a crime under Article 240 § 1 CC is specified with the use of the verb "fails to notify".** The stance was approved of in the doctrine.[2]

There is no doubt that the notification without delay must take place as soon as possible after obtaining information from a reliable source about the commission of a prohibited act referred to in Article 240 § 1 CC.[3] However, the mere possession of such

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1 Journal of Laws of 2017, item 773.

2 Wilk, A., 'Glosa do uchwały Sądu Najwyższego – Izba Karna z dnia 1 lipca 2022 r. I KZP 5/22', *Orzecznictwo Sądów Polskich*, 2023, No. 1, pp. 48–59; Mozgawa, M., in: Mozgawa, M. (ed.), *Kodeks karny. Komentarz zaktualizowany*, LEX/el., 2023, thesis 6 to Article 240.

3 Mozgawa, M., in: Mozgawa, M. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2019, p. 796; Żylińska, J., 'Prawny obowiązek zawiadomienia o niektórych przestępstwach (art. 240 k.k.)', *Prokuratura i Prawo*, 2015, No. 10, p. 54.

information does not match the features of the crime under this provision. This takes place when there is a legal obligation to report it to a body authorised to prosecute crimes. In the issue discussed, the moment is when the denunciation obligation was updated, and this is the date when the amendment entered into force. The Supreme Court was right to point out that the present participle "having" used in Article 240 § 1 *in principio* CC specifies the state of the perpetrator's knowledge, which, in fact, must coexist with omission, which is prohibited by law, but obtaining information about the crime before the statutory denunciation obligation entered into force in no way waves this obligation. Failure to comply with it before its entry into force was irrelevant from the criminal law perspective. The Court rightly highlighted that such interpretation does not infringe the prohibition of retroactive effect of the criminal law act, but it could be the case if the provision regulated the conduct consisting in obtaining information about a prohibited act commission and having it before the entry into force of the amended Article 240 § 1 CC. In the right opinion of the Supreme Court, the adopted interpretation is consistent with the *ratio legis* of extending the catalogue of prohibited acts, inter alia, by adding acts infringing sexual freedom. In the explanatory memorandum for the Amendment bill, it is emphasised that

> "the wellbeing of a child is one of the most important constitutional principles of the Republic of Poland, because it directly results from the principle of common good and the principle of human dignity. In this context, the omission of prohibited acts against which minors should be protected, especially sexual crime that endangers them, from the list laid down in Article 240 CC does not seem to be justified. In accordance with Article 19(1) of the Convention on the Rights of the Child, States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child against all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".[4]

There is an important argument consisting in the fact that many cases of sexual abuse of minors took place before the entry of the above-mentioned amendment into force, and the assumption that failure to report them to law enforcement bodies without delay after its entry into force does not exhaust the features of a crime under Article 240 § 1 CC may evoke the sense of impunity in the perpetrators of acts that drastically affect the wellbeing of children and, as a result, create a real danger that they will continue their criminal practices causing irreparable harm to juvenile victims.

In this state of affairs, the view expressed in the literature is inaccurate; thus, it cannot be said that the term "without delay" used in Article 240 § 1 CC only refers to the moment of obtaining reliable information about a prohibited act and the lack of notification "without delay" takes place only in relation to the moment of obtaining reliable information; as the information had been updated in the conscience of the perpetrator before the amendment to Article 240 § 1 CC entered into force, after

[4] Justification for the Bill amending Criminal Code Act and Act on the Procedure of Dealing with Juvenile Offenders introduced by the President of the Republic of Poland (Sejm print No. 846, https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=846p, accessed on 22 January 2022).

the occurrence of the formal obligation to report acts in this category, he did not have the possibility of notification without delay after obtaining reliable information about the possible crime commission.[5]

ACT OF 2 MARCH 2020 ON SPECIAL SOLUTIONS FOR PREVENTING, COUNTERACTING AND COMBATING COVID-19, OTHER CONTAGIOUS DISEASES AND CRISIS SITUATIONS THEY EVOKE (JOURNAL OF LAWS OF 2020, ITEM 374, AS AMENDED)

2. SUSPENSION OF THE STATUTE OF LIMITATIONS FOR CRIMINAL OFFENCES DUE TO THE COVID-19 PANDEMIC (ARTICLE 15ZZR PAR. 6)

By means of Act of 31 March 2020 amending Act on special solutions for preventing, counteracting and combating the COVID-19 pandemic, other contagious diseases and crisis situations they evoke, and some other acts,[6] Article 15zzr was added to Act of 2 March 2020 on special solutions for preventing, counteracting and combating the COVID-19 pandemic, other contagious diseases and crisis situations they evoke.[7] Its par. 6 in conjunction with par. 1, stipulating the suspension of the statute of limitations for criminal offences, fiscal offences and misdemeanours, and other misdemeanours at the time of the state of epidemic threat or the state of epidemic announced in connection with the COVID-19 pandemic.

In the light of this provision, a legal question was referred to the Supreme Court for resolution: Does the suspension of the statute of limitations for criminal offences, fiscal offences and misdemeanours, and other misdemeanours at the time of the state of epidemic threat or the state of epidemic announced in connection with the COVID-19 pandemic, which was laid down in Article 15zzr par. 6, added to Act of 2 March 2020 on special solutions for preventing, counteracting and combating the COVID-19 pandemic, other contagious diseases and crisis situations they evoke by means of Act of 31 March 2020 amending Act on special solutions for preventing, counteracting and combating the COVID-19 pandemic, other contagious diseases and crisis situations they evoke, and some other acts, concern only the statute of limitations for prohibited acts committed after 31 March 2020 (the date when the amendment entered into force) or also the statute of limitations for other such acts committed before the date?

The Supreme Court, in the resolution of seven judges of 14 September 2022, I KZP 9/22 (OSNK 2022, No. 11–12, item 39) explained that: **The suspension of the statute of limitations for criminal offences, fiscal offences and misdemeanours, and other misdemeanours from 31 March 2020, which is laid down in Article 15zzr par. 6 added to Act of 2 March 2020 on special solutions for preventing, counteracting**

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[5] Królikowski, M., 'Problemy z nowym zakresem obowiązku zawiadomienia o przestępstwie', *Forum Prawnicze*, 2021, No. 4, p. 19.

[6] Journal of Laws of 2020, item 568.

[7] Journal of Laws of 2020, item 374, as amended.

and combating the COVID-19 pandemic, other contagious diseases and crisis situations they evoke by means of Act of 31 March 2020 amending Act on special solutions for preventing, counteracting and combating the COVID-19 pandemic, other contagious diseases and crisis situations they evoke, and some other acts, concerns the statute of limitations for those prohibited acts regardless of whether they were committed before or after the date of 31 March 2020. The stance is right and well justified, and it is important mainly because the issue used to be treated differently both in the Supreme Court judgements and in literature. The resolution presents opinions that the provision is applicable:

(1) not only to acts committed after the provision entered into force, i.e. 31 March 2020, but also to acts committed before the date[8];

(2) not only to crimes, fiscal crimes and misdemeanours, and other misdemeanours committed after 31 March 2020.[9] Justifying this opinion, the Court indicated that the legislator did not introduce a regulation ruling the application of the norm in relation to acts committed before its entry into force as was done in case of e.g. Article 7 of the Act of 20 April 2021 amending Criminal Code Act and certain other acts,[10] as well as Article 68(5) of the Act of 14 May 2020 amending certain acts concerning protective activities in relation to the expansion of SARS-CoV-2 virus,[11] which stipulated that the running of the limitation for the imposition of a penalty and the limitation for the penalty execution in cases concerning crimes, fiscal crimes and misdemeanours, and other misdemeanours starts on the day the statute enters into force. It is argued that, in this case, a provision excluding the application of Article 4 § 1 CC was not laid down, and as an act that is unfavourable for a perpetrator, because in fact it prolongs the time limit, as it is rightly emphasised in the doctrine,[12] its application to acts committed before its entry into force is not possible without the exclusion of application of Article 4 § 1 CC.[13] It is added that, despite certain admissibility of retroactive enforceability of a legal act sometimes, in the case considered it cannot take place due to the worsened situation of an individual and the extension of his criminal liability in time.[14]

Justifying its stance, the Supreme Court referred to:

– the linguistic interpretation and indicated that the content of Article 15zzr par. 6 Act of 2 March 2020 proves it covers acts committed before and after its entry into force. The term "the statute of limitations does not run" referring to the

[8] The Supreme Court judgement of 3 March 2022, IV KK 726/21, LEX No. 3372327; the Supreme Court judgement of 11 March 2022, II KK 34/22, LEX No. 3372328.

[9] The Supreme Court judgement of 11 June 2021, III KK 173/21, LEX No. 3228386.

[10] Journal of Laws of 2021, item 1023.

[11] Journal of Laws of 2020, item 875.

[12] Wróbel, W., *Zmiana normatywna i zasady intertemporalne w prawie karnym*, Kraków, 2003, p. 546.

[13] Lipiński, K., 'Modyfikacje terminów przedawnienia karalności przestępstw, przestępstw i wykroczeń skarbowych oraz wykroczeń w związku z epidemią COVID-19', *Czasopismo Prawa Karnego i Nauk Penalnych*, 2020, No. 2, pp. 43–44; idem, in: Giezek, J. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2021, p. 805.

[14] Kluza, J., 'Zawieszenie terminów przedawnienia karalności czynów zabronionych w czasie pandemii koronawirusa', *e-Palestra*, 2020.

running of the limitation term without differentiating the situation subject to whether it started running or not;
– the internal systemic interpretation, emphasising that the statutory provisions stipulating the suspension of the running of the statute of limitations use phrases identical to that in Article 15zzr, par. 6, i.e. "the statute of limitations does not run" (Article 104 § 1 CC) and are normatively neutral in nature in the sense that they cover, in the event of a specific legal obstacle, both situations: where the obstacle occurred at the moment of a prohibited act commission and where a prohibited act was committed earlier than the obstacle would have been updated;
– teleological interpretation, namely, the opinion that the reasons for purposefulness of the introduction of the suspension of the statute of limitations in the period of the state of epidemic threat or the state of pandemic occur to the same extent in case of both types of acts: committed before and after 30 March 2020. As the Constitutional Tribunal emphasises,

> "The legislator's decision to extend the limitation periods is also justified by the principle of proportionality (Article 31(1) of the Constitution). The legislator is obliged to react to the changing circumstances of the actual situation and if, as a result, punishing perpetrators still turns out to be necessary, it cannot be abandoned. The length of the periods of limitation does not affect the fact of punishment alone or the type of penalty that can be imposed. The provisions stipulating limitation are not of a guarantee nature and are not established in view of a perpetrator of a prohibited act but for the purpose of punishment. Retroactive extension of the limitation periods is assessed in the light of the principle of the rule of law, but it is not connected with the infringement of the acquired rights or the protection of trust in regulations determining that the commission of prohibited acts is punishable. For these reasons, they do not fall within the scope of the guarantee principle *lex severior poenali retro non agit*. It would be also difficult to find regulations excluding the possibility of extending the limitation periods in the norms of international law".[15]

The provision interpreted by the Supreme Court was repealed by means of Article 46(20) of the Act of 14 May 2020 amending some acts in the field of protective measures applicable in connection with the spread of the SARS-CoV-2 virus,[16] and it became invalid on 16 May 2020, but the opinion did not lose its relevance because the effect provided for in Article 15zzr Act of 2 March 2020 takes place *ex nunc* and not *ex tunc,* and therefore does not result in reversing the effect in the form of suspension of the running of limitation coming into effect retroactively. Anyway, as a rule, after the period of suspension of the limitation period ends, it continues running and the time of suspension is not included in the running period.[17] Thus, if the statute of limitations does not run at the time of suspension, the time when an obstacle specified in the statute existed is deducted from the period necessary

[15] The Constitutional Tribunal judgement of 25 May 2004, SK 44/03, OTK ZU 5A, 2004, item 46.

[16] Journal of Laws of 2020, item 875.

[17] Zgoliński, I., in: Konarska-Wrzosek, V. (ed.), *Kodeks karny. Komentarz,* Warszawa, 2020, p. 593.

for the statute of limitations to take effect.[18] The time of suspension is not included in the limitation period; therefore, it does not extend the period of limitation by the time of its rest.[19]

ACT OF 18 OCTOBER 2006 ON REVEALING INFORMATION ABOUT DOCUMENTS OF STATE SECURITY BODIES IN THE PERIOD 1944–1990 AND THE CONTENT OF THOSE DOCUMENTS (JOURNAL OF LAWS OF 2021, ITEM 1633)

3. STUDENT OF THE FACULTY OF PUBLIC ORDER OF THE ACADEMY OF INTERNAL AFFAIRS AS A PERSON NOT SERVING IN THE STATE SECURITY BODIES (ARTICLE 2 PAR. 1 (6))

In accordance with Article 2 par. 1(6) of the Act of 18 October 2006 on revealing documents of the state security bodies of the period 1944–1990 and the content of those documents,[20] the Academy of Internal Affairs was a state security body. In the light of this provision, a doubt arose

> "whether the semantic scope of the phrase 'work or service in the state security bodies' within the meaning of Article 2 par. 1 (6) and par. 3 in conjunction with Article 3a in conjunction with Article 7 par. 1 Act on lustration means that in order to meet the requirement indicated, it is sufficient to establish that the lustrated person was a full-time student of the Faculty of Public Order in Szczytno, a branch of the Academy of Internal Affairs in Warsaw, in the period from 1 October 1989 till 31 July 1990, and at the same time remained in the corps of Milicja Obywatelska [the Citizens' Militia], started studying at Franciszek Jóźwiak 'Witold' Higher Officers' School in Szczytno and graduated from Higher Officers' School in Szczytno, or whether the semantic scope of the phrase 'work and service in the state security bodies' within the meaning of Article 2 par. 1 (6) and par. 3 in conjunction with Article 3a in conjunction with Article 7 par. 1 of the above-mentioned statute means that in order to recognise the lustrated person as one who worked or served in the state security bodies, it is necessary to additionally establish that at that time the lustrated person undertook whatever activities aimed at combating the democratic opposition, trade unions, associations, churches and religious associations, and violating the right to freedom of speech and assembly, violating the right to life, freedom, property and security of the citizens or indulged in conduct connected with the breach of human and civil rights for the benefit of the communist totalitarian system."

The doubts arise, inter alia, from the different statements of the Supreme Court concerning this issue. The Court stated that:

– "The education of the lustrated person (being a student of the same educational institution, regardless of the change of its name or structure) cannot be recognised

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[18] Marszał, K., 'Spoczywanie terminu przedawnienia w prawie karnym', *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 1966, No. 2, pp. 81–82.

[19] Stefański, R.A., 'Spoczywanie biegu przedawnienia', in: *Kodeks karny*, in: *Interdyscyplinarność – w nauce najciekawsze rzeczy dzieją się na styku różnych dziedzin. Księga jubileuszowa Profesor Małgorzaty Król-Bogomilskiej*, Warszawa, 2021, p. 242.

[20] Journal of Laws of 2021, item 1633.

as service in the state security bodies within the meaning of the statute if the alleged service (alleged, because it was connected with 'full-time employment' in the educational institution) in fact consisted in learning the policing job";[21]

– "Sources of law applicable in the analysis of Feliks Dzierżyński Higher Officers' School of the Ministry of the Interior do not allow for recognising this School as a central institution of the Security Service within the meaning of Article 2 par. 1 (5) of the Act of 18 October 2006 on revealing information about documents of the state security bodies in the period 1944–1990 and the content of these documents (consolidated text: Journal of Laws of 2007, No. 63, item 425, as amended). Due to the fact that the School does not meet the criteria laid down in Article 2 par. 3 either, it does not meet any of the requirements for recognising it as the state security body within the meaning of Article 2 par. 1 *in principio* of the above-mentioned statute".[22]

The Court also recognised that "the specificity of the Academy of Internal Affairs means that it cannot be compared to a classical university. Therefore, the circumstance that the lustrated person was at the same time a holder of an ID of WUSW in G. [the Voivodeship Office of Internal Affairs] does not mean that the recognition of his service in the Academy of Internal Affairs is inaccurate".

Resolving this doubt, the Supreme Court, in the resolution of seven judges of 2 June 2022, I KZP 9/21 (OSNK 2022, No. 7, item 25), stated that: **A student of the Faculty of Public Order in Szczytno, a branch of the Academy of Internal Affairs, in the period from 1 October 1989 till 31 July 1990, as a result of this fact, is not a person who served in the state security bodies within the meaning of Article 2 par. 1 (6) in conjunction with Article 3a in conjunction with Article 7 par. 1 of the Act of 18 October 2006 on revealing information about documents of the state security bodies of the period 1944–1990 and the content of those documents (consolidated text: Journal of Laws of 2021, item 1633).** This stance is right and based on rational arguments.

Prima vista, it might seem that in the context of linguistic interpretation, mentioning the Academy of Internal Affairs *expressis verbis* in Article 2 par. 1 (6) of the statute referred to herein as the state security body should not raise any doubts, that the scope of this concept should also cover the Faculty of Public Order of the Academy of Internal Affairs in Szczytno, being its integral part. However, it is rightly indicated in case law that this interpretation leads to results difficult to accept in the light of constitutional principles, as well as from the point of view of systemic coherence of the law, and the elementary sense of justice.[23] In addition, as it is indicated in

[21] Judgement of the Appellate Court in Poznań of 2 June 2021, II AKa 44/21, LEX No. 3189578; judgement of the Appellate Court in Poznań of 27 May 2021, II AKa 16/21, LEX No. 3189580; judgement of the Appellate Court in Warszawa, of 24 October 2014, III AUa 128/13, LEX No. 1770727; judgement of the Appellate Court in Gdańsk of 18 November 2009, II AKa 322/09, KZS 2010, No. 4, item 67.

[22] Judgement of the Appellate Court in Warszawa, of 14 May 2010, II AKa 108/10, LEX No. 832778; judgement of the Appellate Court in Gdańsk of 18 November 2009, II AKa 322/09, KZS 2010, No. 4, item 67.

[23] Judgement of the Appellate Court in Gdańsk of 16 June 2021, II AKa 87/21, LEX No. 3301505.

the judicature: "The provision of Article 2 of the Act on revealing information about documents of the state security bodies of the period 1944–1990 and the content of those documents, which is of a guarantee nature, should not be interpreted in a broadened way, and all doubts concerning the legal nature (status) of particular organisational units of the Ministry of the Interior as the state security bodies before the Security Service was dissolved and the Office of State Protection was founded (Articles 129–130 of the Act on the Office of State Protection (UOP)) should be resolved in favour of the vetted person".[24] The aim of the lustration, as the Constitutional Tribunal emphasised, is to protect the newly born democracy, and therefore it should focus on threats to fundamental human rights and the process of democratisation. The main purpose of the Lustration Act is to disclose the fact of work or service in the state security bodies or cooperation with them in the years 1944–1990, or to establish that such facts do not apply to a given person. Already the Preamble to the Lustration Act suggests that in this way the legislator strives to ensure the transparency of public life, to eliminate blackmail with the use of facts from the past that may be considered compromising, and to make these facts be subject to public scrutiny. The Lustration Act, in accordance with the principles of functioning of the state based on the rule of law must be founded, inter alia, on the assumption that lustration can only serve to eliminate or considerably reduce the threat to the establishment of a sustainable and free democracy that a vetted person may pose by using a particular position to get involved in activities infringing human rights and blocking the democratisation process. The purpose of submitting a lustration declaration is to make the people who were officers, employees and collaborators of the state security bodies in the past reveal the fact of that work, service or cooperation in the name of the transparency of public life. This is to eliminate a danger e.g. connected with possible blackmail on people due to undisclosed facts concerning their past.[25]

Carrying out a historical analysis, the Supreme Court rightly demonstrated that General Franciszek Jóźwiak 'Witold' Higher Officers' School in Szczytno had a task of preparing staff for the needs of the Citizens' Militia by means of educating students in the field of administrative law and the protection of public security and public order. It was dissolved on 30 September 1989 pursuant to the Regulation of the Council of Ministers of 10 June 1989 concerning the dissolution of higher officers' schools supervised by the Minister of the Interior.[26] On the other hand, pursuant to Regulation No. 50/89 of the Minister of the Interior of 21 June 1989 concerning the establishment of branches of the Academy of Internal Affairs,[27] inter alia, the Faculty of Public Order was established in Szczytno. This means that the dissolution of this Higher Officers' School was a purely formal step, because the scientific and didactic faculty, as well as the infrastructure and the area of training were maintained, only in a new organisational form.

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[24] Judgement of the Appellate Court in Lublin of 21 March 2013, III AUa 83/13, LEX No. 1298964.

[25] The Constitutional Tribunal judgement of 11 May 2007, K 2/07, OTK-A 2007, No. 5, item 48.

[26] Journal of Laws of 1989, No. 37, item 204.

[27] Unpublished.

ACT OF 17 DECEMBER 1998 ON THE RULES OF USING OR MAINTAINING ARMED FORCES OF THE REPUBLIC OF POLAND OUTSIDE THE COUNTRY

4. REVOCATION OF A DRIVING LICENCE IN THE EVENT ITS HOLDER WHO IS A MEMBER OF A MILITARY UNIT PERFORMING TASKS OUTSIDE THE COUNTRY COMMITS AN ACT CONSISTING IN DRIVING A MOTOR VEHICLE UNDER THE INFLUENCE OF ALCOHOL (ARTICLE 135 PAR. 1 RTL)

In accordance with Article 7 par. 1 of the Act of 17 December 1998 on the rules of using or maintaining armed forces of the Republic of Poland outside the country,[28] persons who are members of military units performing tasks outside the country are subject to disciplinary, criminal and order-related regulations that are in force in the Republic of Poland. In this context, a question was raised whether revocation of a driving licence pursuant to Article 135 par. 1(1(a)) of the Act of 20 June 1997: Road Traffic Law[29] may be applied to a person who is a member of a military unit performing tasks outside the country and committed an act consisting in driving a motor vehicle being in the state under the influence of alcohol abroad (Article 178a § 1 CC).

The Supreme Court, in its ruling of 16 November 2022, I KZP 14/22,[30] assumed that: **Revocation of a driving licence applied in accordance with Article 137 par. 1(1) in conjunction with Article 135 par. 1(1(a)) of the Act of 20 June 1997: Road Traffic Law takes place based on the rules of criminal procedure law. This results from the content of the above-mentioned provisions that directly stipulate that the measure is applied in the preparatory proceeding and the body entitled to apply it is a public prosecutor.**

The Court admitted revocation of a driving licence and, justifying this stance, focused on the nature of the proceeding in case of revocation of a driving licence, and revocation of a driving licence due to justified suspicious that the driver of a motor vehicle is in the state of insobriety or after the consumption of alcohol or a drug that has a similar effect (Article 135 par. 1(1(a)) RTL). The Court recognised that both the proceeding and the revocation of a driving licence are of criminal procedure law nature, which the following circumstances confirm:

– a decision to revoke a driving licence is issued by a public prosecutor in the course of a preparatory proceeding or by a court after the case is referred to it (Article 137 par. 1(1) RTL);
– the period of revocation of a driving licence is put towards the penal measure that consists in banning a driver from driving motor vehicles (Article 63 § 4 CC). With regard to this solution, the Supreme Court referred to its stance in the

[28] Journal of Laws of 2021, item 396, as amended.
[29] Journal of Laws of 2022, item 988, as amended, hereinafter referred to RTL.
[30] http://www.sn.pl/orzecznictwo/SitePages/Najnowsze_orzeczeniaIOZ.aspx?Izba=Karna, accessed on 10 February 2022.

resolution of 25 February 2009, I KZP 33/08,[31] issued on the basis of the invalid legal state, because Act of 20 February 2015 amending Criminal Code Act and certain other acts[32] regulated the issue *expressis verbis* in Article 63 § 4 CC, which stipulates that: "the period of revocation of a driving licence or another relevant document shall be put towards a penal measure referred to in Article 39(3)";
– by analogy, a preventive measure consisting in the order to refrain from driving a particular type of vehicles is put towards a ban on driving (Article 276 CPC);
– the aim of revocation of a driving licence, in this case, is to protect the execution of the possible penal measure in the form of a ban on driving motor vehicles.

Such a nature of the revocation of a driving licence does not raise any doubts; more precisely, it is a procedural coercive measure.[33] At the same time, the Supreme Court, for unknown reasons, approved of the opinion being in conflict with what it stated earlier and which is expressed in the literature that the revocation of a driving licence in such a situation is a penal measure.[34]

What is decisive in relation to a person who is a member of a military unit performing tasks outside the country and who commits an act consisting in driving a motor vehicle being in the state of insobriety (Article 178a § 1 CC) is not the nature of the revocation of a driving licence but the fact that the substantive basis for its application is a penal provision that is in force in the Republic of Poland. If a perpetrator who is a member of a military unit performing tasks outside the country commits an offence that is specified in Article 178a § 1 CC, it means that he violates a criminal provision that is in force in the Republic of Poland, and therefore meets the condition for criminal liability under Article 7 par. 1 of the Act on the rules of using or maintaining the Armed Forces of the Republic of Poland outside the country. This is an argument for the application of revocation of this person's driving licence, which results from the application of a Polish criminal provision, i.e. Article 178a § 1 CC.

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