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Summary of the PhD dissertation
"Analysis of the crime of non-alimentation in Polish law".

The dissertation (consisting of an introduction, eight chapters and a conclusion) analyzes the issue of the crime of non-maintenance in Polish law, both in the historical aspect and in terms of currently binding solutions.

The present study draws attention to the fact that the contemporary typification of the above-mentioned offence is still (despite far-reaching changes under the Act on amending the Polish Penal Code of 23 March 2017, Journal of Laws, item 952) inadequate in light of the problems permanently faced by persons entitled to alimony who are unable to meet their basic living needs due to the failure of obliged persons to fulfil their duty of care (consisting in paying for the maintenance of their next of kin or other persons to whom they are obliged to care).

At the same time it should be pointed out that the social essence of the problem of alimony, legislative changes, as well as the debt collector's apprenticeship completed by the author of this dissertation and many years of experience in the area of enforcement of alimony were the basis for the construction of this dissertation.

Within the framework of the introduction to the dissertation in question, it has been justified why the material means are the condition of proper fulfillment of the basic needs of life, it has been pointed out how important the equal contribution to the development of the family remains in the scope of satisfying these elementary needs, as well as the argumentation has been presented in the aspect of rationalizing the criminalization of the transgression of child neglect. It also contains, among others, information in the sphere of the research problem, the aim of the work, as well as the adopted methodology.

Within the framework of the first chapter the conditions of non - maintenance before the domestic codification were indicated, and then the historical conditions of non - maintenance were presented in the Polish penal codes (the Penal Code of 1932, the Penal Code of 1969, the currently binding Penal Code, as well as in the aspect of the amendment of the Penal Code of 23 March 2017).

In the second chapter of this dissertation the problem of different ways of viewing the object constituting the protected good is indicated. For the designation of the object of the crime defines what - socially important - value under criminal law remains protected from attack.

By protected good we understand that which has a social value, which the criminal prohibition protects and the offender attacks. Every crime must demonstrate some object of protection (protected good); its absence makes the criminal prohibition an empty norm, and committing a crime an impossibility. In order to recognize whether in a particular case a person remains a victim in accordance with Article 49 § 1 of the Code of Penal Procedure. it is of fundamental importance to precisely indicate the object of protection of a given provision of substantive criminal law, the elements of which should be exhausted by the act which is the essence of specific proceedings. It is of fundamental importance for the proper determination of the circle of victims manifests itself in indicating the object of protection of the criminal law norm.

It seems that it is the duty of care that remains fundamental from the point of view of the object of the crime of non-maintenance. In the sphere of Article 209 § 2 of the Penal Code, in turn, the object of protection seems to be the proper satisfaction of the needs of the entitled person.

Chapter three of this dissertation analyzes the subject matter of the crime (i.e., there are subchapters such as the evasion of evasion of the maintenance obligation as a causative act, the sources of the maintenance obligation, the scope of maintenance, unjustified failure to meet the maintenance obligation, justified failure to meet the maintenance obligation, the psychological attitude of the perpetrator, a historical condition of persistent evasion, partial realization of the benefit, meeting the needs of the beneficiary thanks to factors other than alimony versus the fact of fulfilling the elements of the crime of failure to maintain, the State's support in ensuring the maintenance costs of the person entitled to alimony, the situation of exemption from the obligation to provide material care, the scope of elementary needs in life). Among significant changes in the subject matter of the act, which have been modified as a result of the amendment, the following should be mentioned removal of the temporal marker of "persistence" in case of evading the obligation by the perpetrator from fulfilling his/her duty. For the fact remains that a person cannot be held criminally responsible for the lack of objective possibilities to fulfil the maintenance obligation.

In the fourth chapter of this dissertation attention is paid to the configuration of the concurrence of regulations. In some types of crimes, such as the crime of non-maintenance, determining whether the same person commits one or more crimes is problematic. Additionally,

In the case when the perpetrator in the same period of time fails to support several people - this criterion (in the form of temporal and spatial compactness) would indicate that only one act can be attributed to him. The assessment of the crime of non-maintenance supports

the assumption that the perpetrator commits as many acts as many persons harmed by his/her actions or lack thereof (in the desired direction). It is worth noting that Article 209 of the Penal Code as well as an article 300 § 2 of the Penal Code are often the logical consequence of the perpetrator's passivity and disregard for the surrounding legal order. It should be noted that for the enforcement of maintenance payments, legislators have provided a slightly different model of proceedings than the typical for most other entities.

In the fifth chapter of this dissertation an attempt was made to determine the so-called optimal sanction for a perpetrator of a crime of nonpayment. It seems that an adequate solution is the application of the penalty of restriction of liberty together with.

It seems that an adequate solution is the application of the penalty of restriction of liberty together with the imposition of certain obligations on the perpetrator of this crime. It would not be advisable to impose on the perpetrator of the crime of nonpayment of rent, which would include not only a fine, but also the penalty of restriction of liberty (in one of its two forms), namely the deduction of 10% to 25% of the remuneration for work per month for a social purpose designated by the court.

Within chapter six, modes of prosecution are presented. It seems that the construction of the prosecution of the crime of non-payment based on the victim's motion remains misguided. It is not difficult to imagine that the perpetrator exerts significant pressure on the entitled person not to file a notice of the possibility of committing an offence under Article 209 of the Penal Code. It would therefore be reasonable to adopt solutions allowing for the implementation of a kind of automatism in the reaction of relevant public institutions within the framework of submitting appropriate notifications about the possibility of committing an offence from Article 209 of the Penal Code.

Chapter seven of the dissertation analyses the obligation to notify the family court; it points to the dispositions of Article 572 of the Code of Civil Procedure, where the legislator has distinguished this type of obligation in certain cases. The dispositions of Article 572 of the Code of Civil Procedure were indicated, where the legislator distinguished this type of obligation in certain cases about it the guardianship court. It is pointed out that this obligation rests primarily on such entities as civil registry offices, courts, prosecutors, notaries, bailiffs, self-government and government administration organizations, police authorities, educational institutions, social guardians as well as organizations and institutions taking care of children or mentally ill persons. Nevertheless, although the provision of Article 572 of the Code of Civil Proceedings does not contain specific sanctions covering behavior different from the previously presented disposition, for violation of this statutory obligation a given entity may be held liable

whether criminal or tort liability.

Among the conclusions of chapter eight there are postulates *de lege lata* and postulates *de lege ferenda* in the aspect of possible modifications of legal regulations aimed at increasing the effectiveness of enforcement of alimony benefits.

As far as the postulates *de lege lata* are concerned, the doubts in interpretation of the provision have been stressed. The provision stating that the prosecution of the crime of non-alimony takes place at the request of, inter alia, the authority taking action against the maintenance debtor. The point is the phrase indicating the fact that the prosecution of the crime specified in Article 209 § 1 of the Penal Code and Article 209 § 1a of the Penal Code is prosecuted on the application of an aggrieved party, a social welfare body or an authority which takes action against the maintenance debtor. The authority taking action against the maintenance debtor is the court enforcement authority, i.e. the bailiff. In this regard, it should also be noted that, in fact, from the justification of the draft amendment of the Penal Code Act of 23 March 2017, it is not clear whether the intention of the legislator is to give judicial officers the power to demand the prosecution of the maintenance debtor as part of the criminal proceedings for the crime styled in the disposition of Article 209 of the Penal Code.

Moreover, it has been stressed that it would be advisable to consider whether in the framework of the current system of obligations imposed on the perpetrator of an offence it is worthwhile to implement a new institution of the obligation imposed on the perpetrator - by introducing another penal measure to the Penal Code concerning the prohibition of the use of social networking sites. On the one hand, such an amendment would be justified by the lack of possibility to impose such a ban as e.g. using social networking sites in the current catalog of penal measures - although certain interpretation possibilities are ascribed to the disposition of Article 72 of the Penal Code. - concerning the list of possible obligations within the framework of suspended sentence execution (Article 72 § 1 point 7 of the Penal Code, i.e. "refraining from spending time in particular environments or places", the wording "place" e.g. as a "place" in the area of the Internet is an important area for interpretation). On the other hand, the legitimacy of the introduction of this type of penal measure would be advisable due to the fact that the Internet (in which social networking sites play a significant role) has become an important element in the daily functioning of a large number of citizens in our country.

Additionally, it was raised that shortly after the entry into force of the Act of 23 March 2017 on the amendment of the Penal Code began to appear reports of problems related to the practical interpretation of the amending provisions by individual district courts in Poland. However, from the received from the Ministry of Justice, however, it appears that due to the

type of changes made to the Penal Code - by the amendment to the Penal Code of 23 March 2017. - individual courts were de facto obliged to consider the application of the rule referred to as lex mitior, specified in the framework of Article 4 of the Penal Code. The Ministry of Justice indicated that when deciding on the issue of depenalization, the court may not by no means limit itself to verifying whether the description of the act attributed to the particular offender in the judgment was limited to stating that the maintenance obligation arose from the act, but should also determine whether this obligation remained specific, as to the amount. Then, in a situation in which such an issue is positively determined, together with a finding as to the existence of the total amount of arrears required by the law, it is impossible to accept that, under the new law, the act covered by the judgment is no longer a criminal offence and the conviction is erased. by operation of law (as stipulated by Article 4 § 4 of the Penal Code).

Among the postulates *de lege ferenda*, the following proposals should be pointed out, e.g. introduction into the Code of Penal Procedure of a new type of a prohibited act consisting in e.g. evading

The first one is a criminal offence of evading the obligation to pay alimony to a lesser extent than the one described in Article 209 § 1 of the Penal Code. Moreover, it seems that a more significant modification of Art. 9 Section 2 of the Act on Assistance to Persons Entitled to Alimony would be justified. and increase the amount authorizing to receive benefits from the alimony fund (perhaps by correlating the threshold authorizing the award of benefits from the alimony fund with, for example, a rate of 75% of the amount of each minimum remuneration). Despite two modifications (made under the Act on amending certain laws in order to improve the effectiveness of enforcement of alimony benefits and related to the state of the epidemic through the Act of 30 April 2020 on amending certain laws on protective measures in connection with the spread of the SARS-CoV-2 virus), it should be noted that raising the income threshold to PLN 900 is still insufficient, especially when compared with the successively increasing minimum remuneration. The introduction of the full "zloty for zloty" principle (i.e. an extension of the scope of the (and thus extending the scope of Art. 9 sec. 2b of the Act on Assistance to Persons Entitled to Alimony).

Against the background of the Ordinance of the Minister of Justice on the Organizational and Orderly Rules of Execution of Prison Punishment of 21 December 2016, it would be worth considering the addition of the disposition of § 58a stipulating that the transfer of a convicted person obliged to provide maintenance to another penal institution takes place in the event that there is no possibility of employing the convict in a given penitentiary unit.

Moreover, a useful solution could be the introduction of a kind of "anti-crisis shield"

for persons entitled to alimony through the adoption of a law The Act on Immediate Alimony - which could be a kind of remedy for the time for the time of occurrence of such extraordinary circumstances as e.g. coronavirus pandemic.

The conclusion summarizes the essence of the dissertation in question. It was stressed that each case of non-payment of alimony is a significant disturbance of the social order of the surrounding world and all citizens are indirectly affected by the deficit in payment of due alimony benefits. It was pointed out, inter alia, that unfortunately the average monthly number of recipients of benefits paid by the alimony fund continues to grow. At the same time, it was raised that expenditure on benefits from the alimony fund in 2019 fell to 1 136 000 PLN (which confirms the thesis of decreasing the amount of money spent on benefits from the alimony fund). It was emphasized that the effectiveness of institutions of criminal law should be considered in a broader context of social policy, analyzing many factors that may affect the level of occurrence of a given crime in the indicated population. It was pointed out that it would be worth considering modification of sanctions against employers under the Polish Labour Code. It should also be considered whether - in specific cases - the crime indicated by the legislator in the disposition of Article 209 of the Penal Code does not deserve exclusion from the scope of application of the standard of Article 37a of the Penal Code.

Additionally, it was emphasized that it seems legitimate to gradually increase the role of mediation in criminal cases. This is because mediation can be an effective means of mitigating conflicts where the wronged party is a designated natural person; this type of institution is helpful in a situation where, for example, relations between the parents of a child are normalized through an agreement on payment of alimony for the benefit of an entitled person with a simultaneous reduction of the penalty or even its total absence.

At the same time, it was emphasized that an interesting solution is the provision of assistance to, among others, persons wronged by crime by the so-called Justice Fund. It was pointed out that the fund organizes and finances legal aid,

The fund organizes and finances legal aid, including alternative methods of conflict resolution, and finances periodic payments to, among others, current rent obligations and payments for heating, electricity, gas, water, and fuel.

At the same time, it was emphasized that even the most casuistic legal texts and high and inevitable criminal sanctions may fail in a situation where there is a prevailing lack of empathy in the community and a conviction that to attack important social goods, such as the well-being of children (which in the perspective of society as a whole). The inability to develop mechanisms of internal self-discipline and the consent to inflict harm on those around

us will always result in the moral depreciation of the value of the whole community, not only as citizens, but above all as human beings.

KEY WORDS: offence of non-alimony payment, creditor, unsatisfied claims, criminal law, judicial execution, jurisdiction, social cost, the penal code, persistence, criminal sanction, amendment, stubbornness, evasion, maintenance obligation, alimony fund, history, crime.