



Uniwersytet
ŁÓDZKI



WYDZIAŁ PRAWA
I ADMINISTRACJI

Jarosław Chamernik

Przestępstwo niealimentacji jako problem prawny i społeczny

The crime of no-alimonies as a social and legal problem

-Summary-

A doctoral paper written in the
Chair of Criminal International Law
under the supervision of
Prof. dr. hab. Krzysztof Indeck

Łódź 2016

The thesis has an analytical and normative nature. The problems discussed therein determined the outline of the paper. The paper was divided into ten chapters preceded by an introduction.

In the introduction, an institution of marriage, family, maternity and paternity were presented. The functions were described being fulfilled by a family in social life resulting even from the importance attached by you which was reflected in the provisions of the Polish Constitution¹ protecting a family. The liabilities of the state to protect the family results also from the provisions of international public law. The response of the Polish legislator to the recommendations of the Constitution and international conventions in the area of the family protection are the provisions of the 26th chapter of the Penal code² which is entitled: „Crimes against family and care”.

In the first chapter of the paper, the analysis covered the provisions applicable on Polish land during the partitions of Poland which penalized the non-alimonies. The crime of non-alimony was described therein in the first Polish Penal Code from 1932 (art. 201)³ and in the Penal Code from 1969 (art. 186)⁴. Penalization of the deeds involving the the non-fulfillment of the alimony obligation goes back to the end of the 19th century. It was determined by the role of a man in the family and shaping in this time a model of modern state. After regaining independence, the problem of penal liability for avading alimonies was reflected in art. 201 of the Penal Code of 1932. Persistent evasion from the alimony obligation was also penalized in the Penal Code of 1969.

In the second chapter the characteristics of the non-alimony were interpreted including the literature of the subject and jurisdicature.

In the third chapter, the legal-penal consequences were discussed towards the persons who persistently evade the alimony obligation. The bodies conducting the preparatory procedure were indicated in the cases for non-alimony crime – the police and prosecutor's office. The tasks of justice were described in the aspect of doing by the cinvuct the penalty of deprivation of freedom for the deed in the penalty institution. In this chapter also the legal solutions were presented which govern the maintenance of contacts with the family and the attention was paid to the aspect of work by the convicts who do the penalty of deprivation of freedom. Also the the threats were presented with the penalty for the non-alimony crime.

¹ Constitution of the Republic of Poland of 2.4.1997 – Journal of Law 1997, number 78, item 483 as corrected and amended.

² Penal Code of 1997 - Law of 6.6.1997 – Journal of Law 1997, number 88, item 553 as amended.

³ Penal Code of 1932 – Regulation of the President of the Republic of Poland of 11.7.1932 – Journal of Law 1932, number 60, item 571 as amended (abated).

⁴ Penal Code of 1969 – Law of 19.4.1969 – Journal of Law 1969, number 13, item 94 as amended (abated).

In the fourth chapter the institution of the affected party was focused on and the importance of the item adjudicated in the applicable penal code of 1997 including the jurisdiction of the Supreme Court.

In the fifth chapter the statistical data was presented of the non-alimony crime. The amount of the completed preparatory procedures by the police was provided between 2008-2014. In the chapter the information was analysed on performing the penalty of deprivation of freedom and temporary arrest, average pay, amount transferred to the persons authorized for the alimonies by the convicts, expenses for maintaining the convict, the level of minimum remuneration for work and level of the unemployment benefit. Also the system of penalties and penal means adjudicated for the non-alimony crime was characterized. The data was provided concerning the persons doing the penalty of deprivation of freedom in the conditions of recurrence for the non-alimony crime. The amount of the funds from the state budget was provided transferred to the communes for the realization of the act on aid for the persons entitled to alimonies. The assessment was made of reasonability of the convicts sentenced for the non-alimony crime staying in the penal institution for the absolute penalty of deprivation of freedom through the prism of the expenses incurred by the State treasury per one convict in relation to the average pay achieved by him with the level of an average alimony installment transferred to the entitled persons. The balance is negative. The costs were compared those incurred by the State for maintaining one convict to the level of minimum remuneration for work, average remuneration in the national economy and level of the unemployment benefit.

In the sixth chapter, the functions, features and prerequisites were discussed of the alimony obligation defined in the Family and Guardianship Code ⁵. A legal protection of alimony claims was described, including security for performing the alimony obligation, court seek of alimony claims and procedural facilitation. Also the recourse claims were concentrated on and facilitation in case of enforcement of alimony facilities.

In the seventh chapter, the institution of aid for was characterized for the persons entitled to alimonies and alimony fund in historical basis. Then, the act of 7th of September 2007 was characterized on aid for the persons entitled to alimonies⁶ on the basis of which the alimony benefits are paid to the persons entitled to the alimonies. Therefore, the subjective and objective scope were described of the cases in alimony benefit, including the tasks of the

⁵ Family and Guardianship Code – Law of 25.2.1964 – unified text – Journal of Law 2012, item 788 as amended.

⁶ Law of 7.9.2007 on aid to the persons authorized for alimonies – unified text – Journal of Law 2009, number 1, item 7 as amended.

debtor and creditor bodies. The procedure of granting the the alimony benefit was followed and its return, as well as legal actions undertakes towards the alimony debtor. The alimony benefits granted on the basis of the act is temporary made available to the creditor and doesnot constitute the non-returnable benefit. The return of the alimony benefit which was made available to the creditor, it takes place not from the person, who collected the benefit, but from the debtor. The actions were characterized undertakes towards the alimony debtor aiming at improving the enforcement of the alimony benefits. The activities which discipline the alimony debtor are: transferring information to the Office of Economic Information, withholding the driving license and professional activisation.

The eighth chapter refers to the reasonability of the penalization of the non-alimony in law. The institution of referring to the public works was characterized and court forcing the alimony debtor to incur cash liabilities for settling the alimony debt.

In the ninth chapter, it was referred to the program of developing alimony debts by the debtors. The social benefits were indicated in case of paying alimonies and social costs of the crime of non-alimony.

In the tenth chapter, it was recommended that the level of alimony benefit was correlated with a parameter which would be reviewed. The penalty of absolute deprivation of freedom was confronted with an economic aspect. Also the reduction of the penalty of deprivation of freedom was recommended from two years to one year.

In the paper (except for the literature on the topic) the jurisdiction of the Constitutional Tribunal, the Supreme Court, the Appellate Courts, the Supreme Administrative Court were used, as well as provisions of international and Polish law.

The conclusions were supported (where reasonable) with proper statistical data to expose – if possible – the social aspect of the phenomenon analysed in the dissertation.

Legal acts

1. Constitution of the Republic of Poland of 2.4.1997 – Journal of Law 1997, number 78, item 483 as corrected and amended.
2. Penal Code of 1997 – Law of 6.6.1997 – Journal of Law 1997, number 88, item 553 as amended.
3. Penal Code of 1932 – Regulation of the President of the Republic of Poland of 11.7.1932 – Journal of Law 1932, number 60, item 571 as amended (abated).
4. Penal Code of 1969 – Law of 19.4.1969 – Journal of Law 1969, number 13, item 94 as amended (abated).

5. Family and Guardianship Code – Law of 25.2.1964 – unified text – Journal of Law 2012, item 788 as amended.
6. Law of 7.9.2007 on aid to the persons authorized for alimonies – unified text – Journal of Law 2009, number 1, item 7 as amended.

Juostas egaimevnt