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Przemysław HUS[1]

BEGINNINGS OF AN APPLICATION OF ART. 209 PENAL CODE IN THE PENAL CODE OF 11 JULY 1932 AND OF 1969

Abstract: The subject of this article was to show when the current Article 209 of the Criminal Code was applied for the first time and what changes took place in its application until 1969. In the article a number of judgments that have been issued since the introduction of the notion of non-alimony in the penal code in 1932 were discussed. It was also describedthe form of committing a crime of non-alimonyand the premises that should be fulfilled in order to be able to assign the perpetrator of a non-alimony offense; whether it was possible to assign a crime after fulfilling all the conditions currently in force to one parent or both parents (in the case when the maintenance obligation was imposed). Differences in formulations such as, for example, malice persistence, and an inability to satisfy the basic life needs of the person for whom the maintenance obligation was pronounced, were assessed. The profiles of authors working on the codification of criminal law including the non-alimony offense before 1932 and in 1969were presented. It was shown who was involved in the crime of non-alimony and on whose behalf it could be committed. It was also presented the penalty for committing crimesin 1932. It was also cited which chapter remained unchanged from 1932 to 1982 (chapter on minors) repealed on October 26, 1982 after the introduction of the Youth Act.

Keywords: penal code from 1932, changes in the penal code from 1969, beginnings of application of art. 201 of the Criminal Code of 1932, penal code of 1969, article 201 of the old previous code.

1. INTRODUCTION

Considering the importance of the current art. 209 of the Penal Code should be referred to its source, i.e. to its beginning when the penal code was first applied in the Act. No doubt the current art. 209 of the Penal Code was introduced for the first time by the Ordinance of the President of the Republic, Ignacy Mościcki, dated July 11, 1932, Journal No. 1932, No. 60, item 571 (Rozporządzenie…, 1932; Komisja Kodyfikacyjna…, 1930) of the penal code in chapter XXXI Crimes 0077 Against Care and Supervision under the article then 201 Penal Code. The Code entered into force on September 1, 1932.

Works on the creation of a criminal law project was entrusted to specially selected faculty members and then to the Criminal Law Codification section composed of ten people first and then 12 including eight professors and three judges from the Supreme Court and two MPs to the Sejm. Among these people there were: (1859–1924) president of the Criminal Chamber of the Supreme Court, president of the Criminal Section of the Codification

[1] Przemysław Hus M.Sc.MA, District Prosecutor's Office in Rzeszów Prokuratura, ul. Lisa-Kuli 20; e-mail: przemyslaw.hus@wp.pl, ORCID: 0000-0002-6848-9231.

Commission, Edmund Krzymuski (1851–1928) prof. JU Vice-president of the Criminal Division, Juliusz Makarewicz (1872–1955) vice-president of the Criminal Section of the Codification Committee, prof. JU, then prof. JKU., Aleksander Mogilnicki (1875–1956) secretary of the Criminal Division, Emil Stanisław Rappaport (1877–1956) judge of the Supreme Court secretary general of the Codification Commission, secretary of the Criminal Section of the Codification Commission, Wacław Makowski (Makowski, 1933) (1880––1942) prof. UW Vice-president of the criminal law section, clerk of the criminal law project, Adolf Czerwiński (1852–1937) retired president of the Court of Appeal in Lviv, Henryk Ettinger (1852–1929), lawyer in Warsaw. The Code had 295 articles contained in 42 chapters. This code was called the Makarewicz (Makarewicz, 1932) code from the name of one of the committee members (Juliusz Makarewicz, lawyer, senator, codifier, lecturer, educator, social worker).

The Code was distinguished by uniform, modern systematics. Written in a concise and transparent language, it was considered a masterful work. It should be noted here that the first work on the draft criminal code commenced in 1915 and then it was corrected in 1916, however, the first acceptance took place in 1922. Evasion of the obligation to maintain family members was a crime already in the penal codes of the partitioning powers and also found in art. 201 of the Criminal Code of 1932. The wording of this article differed significantly from the current content as well as from the content from 1969 to 2017, and from the current content revised in 2017, however some forms were preserved unchanged until 2017.

The then art. 201 of the Penal Code had the wording of § 1 (Kodeks karny…, 1932). Who, by malicious evasion of the obligation to pay for the maintenance of a close person, maliciously deprives the person of his or her deprivation of poverty or the need to receive support is punishable by imprisonment of up to 3 years or arrest up to 3 years, § 2 (Kodeks karny…, 1932) it is punishable by the perpetrator of the act specified in § 1 against another person, if the obligation to maintain it was confirmed by a final decision of the Court, § 3 The prosecution takes place at the request of the victim, and in case of death, caused by the offense specified in § 1 or § 2 – ex officio.

2. THE ANALYSIS OF CHANGES

When analyzing the first paragraph of art. 201 of the penal code of 1932 (Rozporządzenie…, 1932), it can be noticed that the form of malice contained in it and then persistence was preserved until 2017, which means that no crime could be attributed to this behavior. This is of course the first form but very basic, which required criminal liability. This responsibility was directed to the closest person and so it should be understood that the person cannot maintain himself or the child. In connection with the provision of art. 201 we find in the explanatory memorandum of the Codification Commission the following remarks: a society based on the institution of marriage and the family cannot take on those duties which by their nature fall on a smaller social group, called family. Society, on the other hand, cannot look indifferently at neglecting the fulfillment of such duties, negligence dangerous directly for the neglected person, and indirectly for the whole society. The essence of such a reprehensible act is the fact that the perpetrator is obliged to make a property payment to the victim, and the perpetrator of this duty does not fulfill it".

The original concept of the Codification Commission was more general, threatening to punish the failure to pay for the maintenance of another person, regardless of what occurred

between the perpetrator and the victim, as soon as such a duty arose for any reason. The Penal Code limits criminal liability for failure to pay for up to two accidents only. The first concerns such an obligation towards the closest people. The description of people closest to you can be found in art. 91 § 1. The second case requires that an obligation to pay for the maintenance of any person was found by the court with an appropriate ruling. In both cases, there must be a legal basis for the obligation. The condition of liability, mentioned in the instruction of art. 201 of the Penal Code is that the negligence of the obligation leads the person concerned to poverty or the need to use support, in other words, in addition to the funds received from the perpetrator who fails to fulfill his duty, the victim did not have other necessary means of subsistence. The second condition, in an act that is not mentioned, but which is understood by itself, is that the perpetrator can satisfy the needs of the aggrieved party. The concept of providing for subsistence covers the satisfaction of life's needs in relation to the normal life of both parties, i.e. the debtor and the aggrieved party. It is also worth mentioning here the voice to the Judgment of August 22, 1968:

> The fact that the obligation to pay maintenance for children from the first marriage established a new family, and therefore has fewer opportunities to comply with the maintenance obligation imposed on it by the court, does not deprive him of the proceedings, consisting in paying alimony in a lesser amount than the sentence awarded, the features of the offense under art. 201 § 1 d.p.c. (Glossary: Wanatowska W. Glosa to the judgment of the Supreme Court of 22 August 1968, V KRN 444/68 and to the Supreme Court resolution of 18 June 1966, VI KZP 10/66).

Regarding the interpretation of the concept of "poverty", in the judgment of April 11, 1953 (IV K 356/52 OSN No. 1 of 1954, item 12), the Supreme Court recognized that it was tantamount to the concept of "deprivation" and to fulfill the child's situation deteriorates as a sign of a crime of not feeding. By order of the Supreme Court of February 2, 1952, Ko 416/51, the Court ruled that the notion of poverty was well known in the capitalist system that existed in 1932. Currently, at the time of this resolution in 1952, such a concept cannot be known and used because the People's Poland abolished the capitalist system and thus eliminated misery. At that time, the Supreme Court recognized that it was enough for someone to find themselves in poverty and not wait until they fall into poverty. Thus, the Supreme Court at that time believed that the system of the time guaranteed protection of a man in the moment of deprivation and not only at the moment of poverty.

At that time, the Supreme Court recognized that it was enough for someone to find themselves in poverty and not wait until they fall into poverty. Thus, the Supreme Court at that time believed that the system of the time guaranteed protection of man in the moment of deprivation and not only at the moment of poverty. According to the above, Article should be 201 p.c. interpret it broadly because it measures in a father who maliciously leads to the fact that his child's state falls below the level at which then the People's Poland had the right to demand that the parents maintain and raise their child. Another issue raised by the Supreme Court was issued on February 11, 1956. III Penalty 78/56 the decision of the Supreme Court as a result of an extraordinary review by the Prosecutor General of the People's Republic from the final judgment of the District Court in Elbląg of June 28, 1953 regarding the offense under art. 201 § 2 of the Penal Code. This position was changed by the Supreme Court after a few years by accepting that the mark "poverty" cannot be replaced by the term "scarcity" (resolution of the Supreme Court of July 27, 1959. IV KO 78/59 OSN

No. 11 of 1960, item 18). The initial form of malice, which was later replaced by persistence, concerned a particular behavior, i.e. malice or intentional action not resulting from reasons not dependent on the obligee and characterized by the desire to inflict on the next person a material harm, so that the closest person was brought to misery and thus to use with the help of other people or State Institutions. The concept of poverty at that time was the first and innovative term adapted to the then times and meant (as one would suppose at the moment) the same as satisfying basic life needs. This issue was recognized for the first time by the Supreme Court by issuing the Judgment on April 11, 1953. (IV K 356/52 OSN No. 1 of 1954, item 12) recognizing this concept and calling it "shortage" meaning a much worse situation of the child than before and thus before this state of affairs was created and thus for the purpose of fulfilling the features of the crime of not feeding, it was enough for the child's situation to deteriorate.This situation must have arisen, of course, only from ill will and not due to independent reasons, i.e. the obliged person had to lose his existing earning or living abilities and, not worsening his previous earnings, deteriorate the life of the person or people obliged to pay for maintenance. This behavior must have been malignant, and for a long time and as it was commonly accepted, a long time meant at least three months. The perpetrator by his behavior causes an unlawful state and maintains it for a long time (the so-called legal unity of the act). Therefore, in each case it should be examined whether there were real possibilities at a given time, i.e. whether the perpetrator could fulfill the obligation to pay maintenance and regularly pay the dues. The mere fact of not fulfilling a specific duty is not tantamount to evasion. In a situation where the obliged child does not pay them due to the lack of earning opportunities, for example, is completely unable to work because of sickness or disability and no material means, or the funds are sufficient to cover treatment and food, then we will not be they were dealing with abandonment, and thus there will be no question of evading the alimony obligation. Of course, this period did not mean in practice obligatory crime, because often obliged to show that despite earning income they do not show malice and ill will because the income only covers their keeping, of course, excluding health situations, i.e. this applies to healthy people and able to work. This situation lasted from 1932 to a virtually unchanged form until 2017 (only the amendment of the Penal Code in 2017 made that demonstrating persistence is irrelevant and it suffices that the period of non-payment of maintenance obligations would be three months). The first "change" of malice occurred during the amendment of the Penal Code Act of April 19, 1969, when the meaning of the word malice was changed, replacing it with the word persistence, and thus leading to inability to meet the basic needs of life. This situation must have arisen, of course, only from ill will and not due to independent reasons, i.e. the obliged person had to lose his existing earning or living abilities and, not worsening his previous earnings (Wyrok…, 1953; Wyrok…, 1956; Uchwała…, 1957; Uchwała…, 1959), deteriorate the life of the person or people obliged to pay for maintenance. This behavior must have been malignant, and for a long time and as it was commonly accepted, a long time meant at least three months. The perpetrator by his behavior causes an unlawful state and maintains it for a long time (the so-called legal unity of the act). Therefore, in each case it should be examined whether there were real possibilities at a given time, i.e. whether the perpetrator could fulfill the obligation to pay maintenance and regularly pay the dues. The mere fact of not fulfilling a specific duty is not tantamount to evasion. In a situation where the obliged does not pay alimonies due to the lack of earning opportunities, for example, is completely unable to work because of sickness or disability and no material means, or the funds are sufficient to cover treatment and food, then we will not be they were dealing with

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This form lasted until 2017. Next, it should be noted in paragraph 2 of the Penal Code of July 11, 1932, which stipulated that criminal liability was imposed on anyone who committed the act described in paragraph 1 in relation to another person, if the obligation to pay for it was confirmed by a final decision of the Court. The Supreme Court, by virtue of a resolution of November 14, 1957, stated that a person was convicted of an offense under Art. 201 of the Penal Code, it was necessary to make determinations that as a result of malicious evasion of the alimony obligation, the aggrieved party fell into actual poverty or was forced to use financial support. By the same resolution, the Supreme Court in its justification did not share the position regarding issued rulings of the Supreme Court especially (ZO 44/52, OSN 10/53 and 12/54) giving a broadening interpretation of art. 201 p.c. in terms of "poverty" and "the need to use support" in the present political and economic conditions of Poland, it should be dropped. In particular, the position (ZO 44/52) cannot be ruled out that misery was completely wiped out in the People's Poland, and that it was not only poverty, but the shortage of the person to whom the obligation to pay for maintenance was to be fulfilled, at that time brought criminal responsibility according to art. 201 p.c. on the malicious evasion of this obligation. The fact that the person entitled to alimony was in a shortage, i.e. in a situation where he has insufficient means of subsistence, only raises the civil liability (Ustawa…, 1932; Ustawa…, 1969; Bereżnicki, 1969) of the obliged person (Article 73 of the code). Criminal liability (Orzeczenie…, 1962) begins where there has to be a serious deprivation, already having the features of poverty or necessitating the use of support. The ruling of the Supreme Court dated June 5, 1962 states that "it is sufficient for" accepting scarcity that the means of the rightholder are not sufficient for self-subsistence, but it is not necessary to establish that the right holder did not have any means of subsistence at all".

Because the first of the above-quoted judgments of the Supreme Court uses (in the sense of the reference system in determining the nature of deprivation) the notion of justified needs. There is a consensus in the civilian literature that "justified needs should be determined individually, according to age, health status, location and other circumstances of each specific accident. Justified needs include, in particular, measures necessary to secure housing, clothing, meals, care in the event of illness, etc., as well as means of upbringing in children. "This paragraph was amended in the Penal Code of 19 April 1969 by specifying its definition and thus adding to its content that the prosecution of an offense under paragraphs 1 and 2 takes place at the request of a victim, social welfare authority or social organization Previous content was limited to the victim and in case of death caused by the offense specified in § 1 or § 2 – ex officio. This meant that the original version was solely the responsibility of the victim and other institutions took only legal steps in the event of

death, which occurred as a result of an offense specified in paragraph 1 or 2. This meant that the State Institutions took steps only when result of the lead to the misery of the person for whom he was obliged and then as a consequence to death. The condition was the death of the injured only because of bringing her to misery. The first amendment to the Act of 1932 was made by the Act of 19 April 1969 Dz.U. 1969 no. 13 item 94, which entered into force on January 1, 1970 and lasted until August 31, 1998. Chapter XI of the Penal Code of 1932 (Articles 69–78) on minors remained in force until the adoption of the Law on the Treatment of Juveniles on October 26, 1982. The Makarewicz (1932) Code was replaced by the Adrejev's Code.

As in the case of Makarewicz, Igor Anrejew was also a co-author of the penal code of 1969 and also a member of the International Association of Criminal Law AIDP and the chairman of this association in the Polish section. He was also the Honorary Vice President of this Association until 1989, when he was deprived of this title at the request of the Polish delegation at the General Assembly of AIDP, after revealing his participation in the case of General Fieldorf. He was also excluded from the Scientific Council of the Institute of Criminal Law. The so-called Andrejev's code provided for a fine, a penalty of restriction of liberty, lasting from 3 months to 2 years, imprisonment for a period of 3 months to 15 years, a penalty of 25 years imprisonment, life imprisonment (introduced from November 20, 1995) and the death penalty (suspended for 5 years from November 20, 1995), imposed for the most serious crimes committed by hanging or by shooting against soldiers. The death penalty could be imposed by the court interchangeably with the penalty of 25 years imprisonment and the penalty of life imprisonment (from November 20, 1995). Turning to the assessment and changes that took place in the penal code of 1969, it can be noted that the previous art. 201 of the Penal Code was changed and after 1969 he appeared under art. 186 p.c. Of course, this was only a numerical change, however, at that time it was impossible to find case law under Art. 186 of the Penal Code as an article on non-alienation. In the penal code of 1969, art.186 of the Penal Code was given the wording of paragraph 1 on Important noticeable changes. Whoever stubbornly evades the obligation to pay for the maintenance of a child, parents or other close person, and thus exposes them to the inability to meet basic life needs is punishable by imprisonment of up to 3 years, paragraph 2. The same penalty is imposed on who the act specified in paragraph 1 is admitted in respect of a person whose obligation to pay for maintenance was established by a valid or enforceable judgment of the Court, paragraph 3, Prosecution takes place at the request of the aggrieved party, social welfare body or social organization. Considering further the changes applied in art. 186 of the Penal Code immediately changes the paragraph 1 (the short changes to paragraphs 2 and 3 of the 1969 Code are discussed above), namely its content has been improved by adding "who persistently evades" by replacing the existing form of "who by maliciously evading" . The word malice has been replaced by the word persistence. From 1932 to 1969, the established case law and judgments by the courts stipulated that making changes to art. 201 p.c. it is necessary and raises the need to change its disposal. The project, based on the premises of criminality developed by case-law, replaces the previous determination of the effect to others, more adapted to the needs of criminal prosecution under conditions in which neither misery nor the need to use support are typical phenomena. The project also resigns from the subjective premise, which according to art. 201 p.c. there is malice. The further wording of paragraph 1 is clearly marked and extended by mentioning that a child, parent or other close person can be brought (Uchwała…, 1973; Wyrok…, 1994; Bojarski,

1994). There is no doubt that the persistent evasion of the obligation to pay for its maintenance actually harms the family, hindering or even preventing its proper functioning (see the Supreme Court ruling: OSNKW from 1971, item 111, from 1974). , items 45 and 1976, item 151.) The previous considerations concerned one parent, usually a father of children, who persistently or maliciously evaded the duty imposed on him, but the case was also expressed in the case-law concerning two parents who exposed their child. In this regard, the position was taken by the Supreme Court in the judgment of August 23, 1973 VI KZP 25/73 stating that the parents also have an obligation to meet their life needs when the children were placed in the State Orphanage on the basis of The provisions of the Juvenile Department Court by applying the then a The Supreme Court took the position that placement of a child or children on the basis of the family and guardianship code does not release parents from the maintenance obligation and it does not stop. If the court ordered the parents to pay the costs related to the maintenance of the child at the Children's Home, the parents were obliged to do so and, without complying with that obligation, they were subject to criminal liability under art. 186 of the Penal Code. Exposure to the inability to satisfy basic life needs (The basic needs include in particular the need for food, clothing, housing and necessary learning. When, as a result of a persistent failure to perform the maintenance obligation, it is necessary to provide – without a corresponding parental allowance – benefits by an educational institution or other persons in order to meet the said needs. The circumstance, therefore, that the educational institution fully provides for the maintenance of the child cannot be a reason for the fact that the child has not been exposed to the inability to satisfy basic needs. Of course, with the fulfillment of two elements persistent evasion of the obligation to pay for the maintenance of the child and exposing him to the inability to satisfy basic life needs. These two elements taken together form the basis for the penalisation of the act specified in art. 186 § 1 p.c. (Ustawa…, 1969; Wyrok…, 1995). In this form art.186 of the Penal Code survived until 1997, where it was amended by the Penal Code of 6 June 1997 and Art. 186 of the Penal Code was registered under art. 209 p.c.

3. CONCLUSION

The changes that have been made are positive, the legal situation in this regard is expected to improve in the future. Through this novelisation Poland positioned itself among the best examples of the European law in this regard.

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