

REVOCATION OF CONDITIONAL RELEASE IN THE POLISH EXECUTIVE PENAL CODE

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1. INTRODUCTION

Conditional release of a convict sentenced to imprisonment from serving a portion of the penalty constitutes a probation period. The time that remains to be served may not be shorter than two years and longer than five years (Article 80 §1 of the Criminal Code¹, hereinafter CC). If a convict is a habitual offender (Article 64 §2 CC), the period may not be shorter than three years (Article 80 §2 CC), and in case of conditional release from 25 years' imprisonment or life sentence, the probation period shall be 10 years (Article 80 §3 CC). The probation period is a continuation of rehabilitation in the conditions of monitored freedom.² It is a period of checking whether the convict complies with the legal order, especially whether he refrains from relapsing into crime. In literature, the probation period is believed to be the basic measure of pedagogical influence.³ It influences convicts' behaviour by exerting pressure on them in order to make them fulfil their obligations and prevent relapse into crime.⁴ If a convict fails to observe the conditions and shows that he does not deserve the conditional release, which can be demonstrated by a violation of the legal order, especially the commission of crime, evasion of supervision, performance of imposed duties or adjudicated penal measures, forfeiture or compen-

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¹ *Kodeks karny*, Act of 6 June 1997, Journal of Laws [Dz.U.] of 1997, No. 88, item 553, as amended.

² A. Zoll, [in:] W. Wróbel, A. Zoll (ed.), *Kodeks karny. Komentarz* [Criminal Code: Commentary], Vol. I, Part 2, Wolters Kluwer, Warsaw 2016, p. 380.

³ J. Bafia, K. Buchała, *Warunkowe zwolnienie. Wprowadzenie i komentarz do ustawy z dnia 29 maja 1957 r.* [Conditional release: Introduction and commentary on the Act of 29 May 1957], Warsaw 1957, p. 69; J. Wasik, *O konieczności dalszego doskonalenia instytucji warunkowego zwolnienia* [On the necessity of continuing improvement of conditional release], *Wojskowy Przegląd Prawniczy* No. 1, 1982, p. 93.

⁴ M. Ryba, *Warunkowe zwolnienie w polskim prawie karnym* [Conditional release in the Polish criminal law], Wydawnictwo MON, Warsaw 1966, p. 131.

sation, the conditional release shall or may be revoked (Article 160 §1–4 Executive Penal Code,⁵ hereinafter EPC). The revocation of conditional release is a negative result of the probation and a verification of a penitentiary court's former optimistic criminological forecast of the convict's behaviour.⁶

2. REVOCATION MODE

Depending on the type of the convict's behaviour during the probation period, the revocation of conditional release shall be obligatory or optional. The former may be absolute or relative in nature.

A penitentiary court is obliged (absolute obligatoriness) to revoke conditional release in case of a serious violation of the legal order such as:

- the commission of deliberate crime for which a court adjudicated a valid penalty of imprisonment without conditional suspension of its execution (Article 160 §1 EPC);
- a crime committed with the use of violence or illegal threat against a close relation or a juvenile residing together with the perpetrator, a flagrant violation of the legal order consisting in the relapse into using violence or illegal threat against a close relation or a juvenile residing together with the perpetrator (Article 160 §2 EPC).

The revocation of conditional release is – in accordance with Article 160 §4 EPC – obligatory when, after an admonition issued by a court's professional probation officer, a convict flagrantly violates the legal order, especially commits a crime other than premeditated, or the adjudicated penalty has been other than absolute imprisonment, or he evades supervision, fulfilment of imposed obligations or adjudicated penal measures, forfeiture or compensation, unless there are special reasons against it (absolute obligatoriness).

In compliance with Article 160 §3 EPC, the revocation of conditional release may take place in case of a flagrant violation of the legal order, especially the commission of a crime other than premeditated or adjudication of a penalty other than absolute imprisonment, or evasion of supervision, fulfilment of imposed obligations or adjudicated penal measures, forfeiture or compensation (optional revocation).

3. REASONS FOR OBLIGATORY REVOCATION OF CONDITIONAL RELEASE

Reasons for obligatory revocation of conditional release laid down in the Executive Penal Code are individually formulated in relation to all convicts and persons convicted for a crime committed with the use of violence or illegal threat against a close relation or a minor residing together with the perpetrator.

⁵ *Kodeks karny wykonawczy*, Act of 6 June 1997, Journal of Laws [Dz.U.] of 1997, No. 90, item 557, as amended.

⁶ W. Rodakiewicz, *Warunkowe zwolnienie młodocianych z reszty kary pozbawienia wolności* [Conditional release of juvenile perpetrators from serving the remaining imprisonment sentence], *Kolonia Limited* 2005, p. 226.

3.1. REVOCATION OF CONDITIONAL RELEASE IN RELATION TO EVERY CONVICT

In relation to every convict, the revocation of conditional release depends on:

- the commission of premeditated crime;
- a valid and final imprisonment sentence without conditional suspension of its execution (Article 160 §1 EPC).

The above reasons are to substantially limit the scope of obligatory revocation of conditional release.

The only limitation to the type of crime is the requirement that it should be deliberate. A mixed fault crime (*culpa dolo exorta*) is also deliberate.

In compliance with *argumentum a contrario*, the effect does not result from the commission of an unintentional crime and conviction for it even for imprisonment without conditional suspension of its execution. It does not matter whether a crime committed is a felony or a misdemeanour or whether it is similar to the one the released has been convicted of and has been serving the imprisonment for that is subject to release. The condition is broader than in case of ordering suspended penalty execution because then it requires that the perpetrator should have been convicted for committing a similar deliberate crime (Article 75 §1 CC). It is rightfully stated in the doctrine that this difference is not rationally justified and it is proposed *de lege ferenda* to standardise the conditions by adopting the condition specified for ordering penalty execution.⁷

The type of penalty adjudicated for a crime committed has been narrowed to imprisonment without conditional suspension of its execution. It is a legitimate solution because the penalty of imprisonment with conditional suspension of its execution for a deliberate crime committed in the probation period indicates that there is no need to isolate a perpetrator from the society and imprison him, and there is still an optimistic criminological forecast on his behaviour.

Taking into consideration that conditional suspension of imprisonment execution is possible only in case the imprisonment penalty is imposed for a period not exceeding one year (Article 69 §1 CC), the discussed crimes are more serious. It is emphasised in the doctrine that a convict who, after he has been trusted and released, commits a new crime in the probation period is a dangerous criminal requiring that decisive measures be taken, including the revocation of conditional release.⁸ The conviction for an intentional crime with a sentence of imprisonment with conditional suspension of its execution or a fine, or limitation of liberty with conditional suspension of its execution, does not result in the revocation of conditional release. Consequently, the conviction for one of the penalties does not mean that the probationer has betrayed trust. It does not matter whether and to what extent the penalty has been executed. Article 160 §1 EPC does not make the decision on the revocation of release dependent on the penalty execution. Thus, the

⁷ J. Lachowski, *Warunkowe zwolnienie z reszty kary pozbawienia wolności* [Conditional release from serving the remaining imprisonment sentence], C.H. Beck, Warsaw 2010, p. 329.

⁸ M. Ryba, *Warunkowe zwolnienie...* [Conditional release...], p. 132.

remission of penalty based on amnesty or a granted pardon has no influence on the decision. It is rightly pointed out in the doctrine that amnesty and an individual act of granting a pardon are not circumstances that waive the criminality of an act.⁹

Although Article 160 §1 EPC refers to crime commission, which suggests that valid and final conviction is not required, such supposition is in conflict with the further part of the provision that requires a valid and final sentence. Therefore, the revocation of conditional release is not possible until a valid sentence for a new crime is issued. Conviction for the commission of a deliberate crime in a valid imprisonment sentence without conditional suspension of its execution makes the adjudicating court – based on Article 160 §1 EPC – bound to revoke the conditional release of the perpetrator.¹⁰

3.2. REVOCATION OF CONDITIONAL RELEASE FOR A CRIME OF DOMESTIC VIOLENCE

The conditions for the revocation of conditional release of the convicted of a crime committed with the use of violence or illegal threat against a close relation or a juvenile residing together with the perpetrator are broader. The revocation of conditional release of such a convict takes place in case of a flagrant violation of the legal order consisting in the relapse into using violence or illegal threat against a close relation or a juvenile residing together with the perpetrator (Article 160 §2 EPC). The word “relapse” indicates that it refers to the conditionally released from serving the penalty for a crime committed against a close relation or a juvenile residing together with the perpetrator. Linking *modus operandi* in the form of “violence” and “illegal threat” with the conjunction “and/or”, meaning an inseparable alternative, proves that both acts do not have to be committed in the same way. The crime that the conditionally released has been sentenced for might have been committed with the use of violence and the perpetrator committing a crime in the probation period might have used only illegal threat and vice versa. Both acts have to be committed against a close relation or a juvenile residing together with the perpetrator, however, the persons do not need to have the same identity.

Conviction for the act of using violence or illegal threat against a close relation or a juvenile residing together with the perpetrator is not required; the assessment is made at a penitentiary court’s discretion.

⁹ M. Ryba, *Warunkowe zwolnienie...* [Conditional release...], p. 133.

¹⁰ The Supreme Court ruling of 18 April 1979, VI KZP 5/79, OSNKW 1979, No. 6, item 64.

3.3. REVOCATION OF CONDITIONAL RELEASE AFTER A WRITTEN ADMONITION

Grounds for the revocation of conditional release after the issue of a written admonition by a court's professional probation officer are the same as those that justify an optional revocation. These are: a flagrant violation of the legal order, especially the commission of a crime other than deliberate or adjudication of a penalty other than absolute imprisonment or evasion of supervision, fulfilment of the imposed penal measures, forfeiture or compensation (Article 160 §4 EPC). The issue of a written admonition by a court's professional probation officer is a circumstance resulting in the change of the optional mode of the revocation of conditional release into the obligatory one. The above-mentioned circumstances concerning the convicted person's behaviour have to take place after the admonition; the behaviour before does not matter. The former behaviour, which is discussed below, may result in the optional revocation of conditional release (Article 160 §3 EPC).

The issue of an admonition by a court's probation officer may take place only when the conditionally released is under his supervision in the probation period. Only the court's probation officer in charge of the convicted is authorised to issue a written admonition to him. A court's probation officer in charge of the supervision of the convicted person keeps contact with him (Article 172 §1 EPC). He organises and conducts activities that are to help the convicted in social rehabilitation and prevent him from relapsing into crime as well as supervises him in fulfilling the obligations imposed by the court or connected with the supervision (Article 173 §1 EPC).

The convicted is given an admonition in case there are circumstances justifying a motion to revoke conditional release laid down in Article 160 §3 EPC, but a court's probation officer drops the action due to the type and degree of violation justifying a belief that, although the motion is abandoned, the aims of the probation measure will be achieved (Article 173 §3 EPC). Filing a motion might result in the revocation of conditional release. Dropping the action, a court's probation officer is obliged to give the convicted a written admonition in which he indicates the type of violation and notifies about the consequences of failing to meet the recommendations, i.e. that continuation to act in the same way shall result in the revocation of conditional release. The copy of the admonition is submitted at the court (Article 173 §4 EPC). A written admonition is a warning given to the convicted that if he does not change his behaviour, the conditional release shall be invoked.

If a convict, in spite of the admonition, does not change his behaviour and continues to flagrantly violate the legal order or evades the supervision, the fulfilment of imposed obligations or adjudicated penal measures, forfeiture or compensation, a court may take a decision not to revoke conditional release, provided there are special reasons to do so. A court may refrain from revoking conditional release in case the above-mentioned convict's behaviour has been caused by a series of different reasons that can be justified to some extent.

4. CONDITIONS FOR OPTIONAL REVOCATION

Revocation of conditional release – in accordance with Article 160 §3 EPC – is possible in case the released:

- flagrantly violates the legal order, especially commits a crime other than deliberate or where the adjudicated punishment has been different from absolute imprisonment;
- evades supervision;
- evades fulfilling imposed obligations;
- evades the adjudicated penal measures, forfeiture or compensation.

There is a correlation between the scope of these breaches and the elements of optimistic criminological forecast that has resulted in conditional release. It is because the condition for release is a court's confidence that the convict will comply with the penal or protective measures and the legal order, in particular, that he will not relapse into crime (Article 77 §1 CC).

Evading supervision or obligations must be the fault of the conditionally released.¹¹ It is rightly assumed in the doctrine that evading supervision and the fulfilment of imposed obligations or adjudicated penal measures, forfeiture or compensation, occurs where the released can submit to supervision, fulfil imposed obligations or adjudicated measures but does not want to do that, which demonstrates negative mental attitude to the obligations¹² and indicates ill will on his part.¹³ Inability to conform to the obligations caused by independent circumstances does not constitute evasion. The Supreme Court rightly states: "Non-performance of a specified obligation imposed on the convict (...) is not tantamount to evasion (...). Because the term 'to evade' incorporates the obliged person's negative mental attitude towards an imposed obligation (ill will) where, in spite of real opportunity to fulfil the obligation, he does not do it".¹⁴

The content of Article 160 §3 EPC has been wrongly interpreted in literature as the exemplification of the violation of the legal order as well as the evasion of supervision, imposed obligations and adjudicated penal measures, forfeiture and

¹¹ The Supreme Court ruling of 28 July 1980, V KRN 146/80, OSNKW 1980, No. 10–11, item 82 with a gloss by M. Leonieni, OSP 1981, No. 7–8, item 144; the Supreme Court ruling of 17 October 1995, III KRN 96/95, LEX No. 479155 with a gloss of approval by Z. Gostyński, Prokuratura i Prawo No. 9, 1996, pp. 85–89.

¹² A. Zoll, [in:] W. Wróbel, A. Zoll (ed.), *Kodeks karny...* [Criminal Code...], p. 382; the Supreme Court ruling of 6 June 1972, V KRN 122/72, OSNKW 1972, No. 11, item 177.

¹³ The Supreme Court ruling of 12 October 1988, V KRN 212/88, LEX No. 17938; the Supreme Court ruling of 7 October 2010, V KK 301/10, Prokuratura i Prawo – annex 2011, No. 2, item 4; the Appellate Court in Kraków ruling of 27 October 2005, II AKzw 641/05, KZS 2005, No. 11, item 34; K. Postulski, *Kodeks karny wykonawczy. Komentarz* [Executive Penal Code: Commentary], Wolters Kluwer, Warsaw 2012, p. 654.

¹⁴ The Supreme Court ruling of 23 February 1974, IV KRN 17/74, OSNKW 1974, No. 5, item 95 with comments by S. Paweła, *Przegląd orzecznictwa Sądu Najwyższego w zakresie prawa karnego wykonawczego za lata 1973–1975* [Review of the Supreme Court rulings on the executive penal law in 1973–1975], Nowe Prawo No. 10, 1976, p. 1431 ff; the Supreme Court ruling of 12 October 1988, V KRN 212/88, LEX No. 17938; the Supreme Court resolution of 12 December 1995, I KZP 35/95, OSNKW 1996, No. 1–2, item 2 with a gloss by K. Postulski, *Palestra* No. 7–8, 1996, p. 268.

compensation.¹⁵ The provision links the preceding list of these circumstances with the violation of the legal order with the use of a sentence conjunction “or”, thus the sentence is a disjunctive alternative, which means that the two terms are separate beings.

4.1. FLAGRANT VIOLATION OF THE LEGAL ORDER

The legal order is a legal system that is in force in every field of social life. It refers to all the branches of law. It is not right to narrow the range of this term to the collection of principles and rules laid down as criminal law norms.¹⁶

The violation of the legal order means the behaviour that does not conform to the law in force. It is rightly assumed in literature that public law crimes may be considered the violation of the legal order provided that this violation is validly proved in the course of procedure laid down in the law.¹⁷

Article 160 §3 EPC does not refer to any violation of the legal norms but only such that is flagrant. The word “flagrant” [*rażący*] means “shocking because done in an easily noticed way showing unquestionable defects”.¹⁸ Thus, it is such a violation of the legal norms in force that indicates their flagrant breach. Court judgements rightly emphasise that: “The violation of the legal order is a convict’s action against obligations and prohibitions of the criminal law, especially the commission of crime or a misdemeanour and acting against the rules the compliance with which is within the limits of tasks and aims that criminal law relates with such measures as conditional release, especially by evading imposed obligations, supervision or adjudicated penal measures. The recognition of the ‘flagrant’ nature of the violation of the legal order requires that significant pejorative content be present in it. Thus, it is such a breach of the legal order that is flagrant, persistent, obvious and with a lot of ill will”.¹⁹

The commission of a serious misdemeanour may be such a violation. The judicature rightly notices that: “the commission of a misdemeanour, although it

¹⁵ W. Rodakiewicz, *Warunkowe zwolnienie...* [Conditional release...], p. 231.

¹⁶ K. Łuczarski, *Zakaz prowadzenia pojazdów jako środek polityki kryminalnej* [Ban on driving as a measure of criminal law policy], Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław 2005, pp. 218–219; K. Postulski, *Kodeks karny wykonawczy...* [Executive Penal Code...], p. 655.

¹⁷ J. Skupiński, *Rażące naruszenie porządku prawnego jako podstawa odwołania środka probacyjnego* [Flagrant violation of the legal order as grounds for revocation of a probation measure], [in:] A. Michalska-Warias, I. Nowikowski, J. Piórkowska-Flieger (ed.), *Teoretyczne i praktyczne problemy współczesnego prawa karnego. Księga jubileuszowa dedykowana Profesorowi Tadeuszowi Bojarskiemu* [Theoretical and practical issues of contemporary criminal law: Professor Tadeusz Bojarski jubilee book], Lublin 2011, pp. 317–318.

¹⁸ *Praktyczny słownik współczesnej polszczyzny* [Practical Dictionary of Contemporary Polish Language], H. Zgórkowa (ed.), Vol. 35, Poznań 2002, p. 265.

¹⁹ The Appellate Court in Kraków ruling of 26 August 2014, II AKzW 835/14, KZS 2014, No. 10, item 43; the Appellate Court in Kraków ruling of 21 October 2015, II AKzW 965/15, Prokuratura i Prawo – annex 2016, No. 6, item 23.

is a violation of the legal order, is not always ‘flagrant’”.²⁰ The requirement that it should be committed persistently and with ill will is too far reaching.²¹

The commission of crime is a flagrant violation of the legal order. It is directly mentioned in the provision and is provided as an example of a violation of the legal order, which is confirmed by the use of the word “especially”. Undoubtedly, the commission of any crime, although Article 160 §3 EPC indicates that it applies to a crime different than the one laid down in §1, may be a violation of the legal order. This legislative solution is justified by the fact that it was to exclude from the provision the commission of crime resulting in obligatory revocation of conditional release.

The revocation of conditional release due to the commission of crime may take place where the conditionally released commits a crime:

- that is deliberate and the punishment adjudicated has been imprisonment with conditional suspension of its execution, a fine or limitation of liberty;
- that is unintentional, regardless of the adjudicated punishment, which may even be imprisonment without conditional suspension of its execution.

The commission of a crime is *ex lege* recognised as a flagrant violation of the legal order.²² It is hard to approve of the opinion that not every crime commission is a flagrant violation of the legal order justified by the fact that a penitentiary court cannot be deprived of the possibility of assessing the degree of the legal order violation.²³ The linguistic interpretation of Article 160 §3 EPC is an obstacle to this. It clearly indicates that the commission of crime is one of the examples of a flagrant violation of the legal order.

The commission of crime must be confirmed by a valid sentence or a valid decision of conditional discontinuation of the criminal proceedings.²⁴ A sentence may also be one in which a court renounces inflicting a punishment.²⁵ Thus, the opinion that a sentence in which a court renounces inflicting a punishment on the conditionally released does not constitute grounds for a facultative revocation of the conditional release cannot be agreed with.²⁶

It might seem that in this case a valid sentence is not necessary to confirm the commission of crime as Article 160 §3 EPC does not lay down such a specification while it is included in §1 of the provision. This may prove that the legislator abandoned that condition. However, one cannot ignore the fact that the issue of a ruling to revoke conditional release based on an invalid sentence would be in conflict with the constitutional principle of presumption of innocence (Article 42(3)

²⁰ The Appellate Court in Kraków ruling of 29 May 2015, II AKzW 408/15, Prokuratura i Prawo – annex 2016, No. 2, item 17.

²¹ J. Lachowski, *Warunkowe zwolnienie...* [Conditional release...], p. 339.

²² S. Lelental, *Kodeks karny wykonawczy* [Executive Penal Code], Warsaw 2001, p. 432.

²³ J. Lachowski, *Warunkowe zwolnienie...* [Conditional release...], p. 333.

²⁴ A. Zoll, [in:] W. Wróbel, A. Zoll (ed.), *Kodeks karny...* [Criminal Code...], p. 382.

²⁵ E. Skrętowicz, *Wyrok sądu karnego pierwszej instancji* [First instance criminal court ruling], UMCS, Lublin 1989, pp.74–75.

²⁶ M. Kalitowski, [in:] O. Górniok, S. Hoc, M. Kalitowski, S.M. Przyjemski, Z. Sienkiewicz, J. Szumski, L. Tyszkiewicz, A. Wąsek, *Kodeks karny, Komentarz* [Criminal Code: Commentary], Vol. I, Gdańsk 2005, p. 675.

of the Constitution of the Republic of Poland). As a result, the opinion that “ruling on the release, a court has the discretion – in accordance with the principle of judicial independence (Article 8 §1 EPC) – to decide whether the convict committed acts he was accused of in other proceedings, still not concluded, and does not have to wait with its decision until the other sentence is valid should be considered incorrect. The decision is made only for the use in the proceedings after the revocation of conditional release and is not important for the sentence in the new proceedings, thus also for the potential punishment for a new act the convict was charged with. It is conditioned only by rational argumentation, including evidence, that constitutes grounds for denying the right to the convict who did not plead guilty to the latest charges”.²⁷

Another erroneous opinion is that the “guilty” verdict and sentencing of the conditionally released to imprisonment with conditional suspension of its execution or conditional discontinuation of the proceedings cannot constitute actual grounds for the revocation of conditional release, because in both cases a court has decided there is a positive criminal forecast for the convict.²⁸ Although the revocation of conditional release due to the commission of crime is based on the assumption that the convict does not show promise as a law-abiding citizen and due to that courts’ assessments would be in conflict. However, the facultative revocation can prevent this conflict, and it cannot be excluded that a sentence for a crime committed during the probation period is wrongful and the exclusion of the possibility of revoking conditional release would promote the convict who has been wrongly sentenced to imprisonment with conditional suspension of its execution or where the proceedings have been conditionally discontinued. Moreover, it would be flagrantly unjust as the revocation of conditional release might take place in case of more lenient sentences, e.g. a fine or limitation of liberty, as well as the violation of other branches of law. A convict sentenced to a more severe punishment such as imprisonment with a suspension of its execution would be in a better situation than the one whose punishment was a fine or limitation of liberty.

Where there is no valid sentence yet, there are no obstacles in the way of a penitentiary court assessing the commission of an act as a flagrant violation of the legal order.²⁹ Judicial decisions emphasise that “For the assessment of the convict’s compliance with the conditions of probation, it does not matter that there are other criminal proceedings conducted against him. Until there is a valid sentence in these proceedings, no conclusion disadvantageous for the convict can be made only because the proceedings are pending. That would violate the principle of presumption of innocence laid down in Article 42(3) of the Polish Constitution. However, this is not an obstacle to a penitentiary court examining the probation also

²⁷ The Appellate Court in Kraków ruling of 24 September 2004, II AKz 572/04, KZS 2004, No. 9, item 44; the Appellate Court in Kraków ruling of 25 June 2004, II AKzw 389/04, KZS 2004, No. 6, item 21.

²⁸ J. Lachowski, *Warunkowe zwolnienie...* [Conditional release...], p. 333; the Appellate Court in Kraków ruling of 13 October 2004, II AKzw 589/04, KZS 2004, No. 10, item 15; the Appellate Court in Kraków ruling of 28 February 2002, II AKz 61/02, KZS 2002, No. 2, item 30.

²⁹ W. Rodakiewicz, *Warunkowe zwolnienie...* [Conditional release...], p. 233.

based on this new proceedings. The court takes decisions on its own and assesses facts and legal issues that are important in its opinion (Article 8 §1 EPC), and does not have to wait for the another sentence".³⁰ Not questioning this option, it is necessary to emphasise that it may take place only when the commission of crime is unquestionable, e.g. when the convict is caught red-handed committing crime.

4.2. EVASION OF SUPERVISION

Supervision is optional. It is obligatory only in accordance with Article 159 §1 *in fine* EPC, when:

- a convict has been sentenced for a crime committed due to paraphilia: rape (Article 197 CC), taking sexual advantage of mental disability or vulnerability (Article 198 CC), sexual abuse in relationship of dependence (Article 199 CC), sexual abuse of a minor (Article 200 CC), use of communications or communications network to commit some crimes against sexual liberty and decency (Article 200a CC), promotion of paedophile-related behaviour (Article 200b CC), incest (Article 201 CC), presentation of pornographic material in public (Article 202 CC) or subjecting to prostitution (Article 203 CC);
- a minor perpetrator has committed a deliberate crime;
- a convict has been sentenced for a crime committed in the special relapse circumstances (Article 64 CC);
- a convict has been sentenced to life imprisonment.

Evasion of supervision may result in the revocation of conditional release only when a convict has been subdued to supervision. Evasion of supervision is a failure to fulfil obligations that result from supervision. A convict is obliged to fulfil supervision-related obligations (Article 169 §1 CPC). Having this in mind, one may recognise the following examples of evading supervision:

- failure to meet a probation officer of the competent court immediately, not later than in seven days from the receipt of the notification of imposed supervision (Article 169 §2 EPC);
- failure to appear in court or meet a court's probation officer in order to answer questions connected with the course of supervision and the fulfilment of imposed obligations (Article 169 §3 EPC);
- failure to answer questions concerning the course of supervision and the fulfilment of imposed obligations (Article 169 §3 CPC);
- change of permanent domicile without the court's prior consent (Article 169 §3 EPC);
- precluding a probation officer from entering the place of residence (169 §3 EPC);
- failure to inform a court's probation officer about the change of employment (Article 169 §3 EPC).

³⁰ The Appellate Court in Kraków ruling of 8 July 1999, II AKz 300/99, OSA 2000, No. 3, item 24.

It is rightly assumed in judicial decisions that: "Evasion of supervision takes place through the behaviour demonstrating a convict's negative mental attitude towards obligations imposed on him, indicating his ill will and resulting in failure, despite a physical possibility, to fulfil obligations and submit to supervision, which is his fault. Failure to contact a probation officer is an indication of such evasion. It prevents a probation officer from supervising the convict and monitoring his behaviour, as well as obligations imposed on him".³¹

4.3. EVASION OF IMPOSED OBLIGATIONS

A penitentiary court, taking a decision to conditionally release a convict – in accordance with Article 159 §1 EPC – may impose the following obligations on him: (1) to inform the court or the court's probation officer about the course of the probation; (2) to apologise to the aggrieved party; (3) to fulfil an obligation to pay another person's maintenance; (4) to work, study or obtain vocational qualifications; (5) to refrain from excessive consumption of alcohol or narcotic drugs; (6) to participate in addiction treatment programmes; (7) to undergo to therapy, especially psychotherapy and psycho-education; (8) to participate in educational rehabilitation programmes; (9) to refrain from spending time in specified company or places; (10) to refrain from contacting the aggrieved party or other persons in a specified way or approaching the aggrieved party or other persons; (11) to leave the place of residence occupied together with the aggrieved party; (12) to behave in another appropriate way in the probation period, which can prevent relapse into crime.

The court may also oblige the convict to redress the damage in full or in part if the damage caused by a crime for which the convict was sentenced has not been redressed. Failure to fulfil any of the obligations may result in the revocation of conditional release.

4.4. EVASION OF ADJUDICATED PENAL MEASURES, FORFEITURE AND COMPENSATION

There is a dispute in the legal doctrine whether it is evasion of only those penal measures, forfeiture or compensation, constituting grounds for the revocation of conditional release that were adjudicated in the imprisonment sentence from which the convict has been conditionally released or those adjudicated in another sentence. It is believed that the revocation of conditional release is decided based on the evasion of the above-mentioned measures adjudicated in the same sentence that inflicted the punishment being subject to conditional release.³² Still, there are also

³¹ The Appellate Court in Kraków ruling of 15 January 2009, II AKz w 1130/08, Prokuratura i Prawo – annex 2009, No. 7–8, item 35.

³² J. Śpiewak, *Warunkowe zwolnienie w kodeksie karnym i kodeksie karnym wykonawczym* [Conditional release in the Criminal Code and the Executive Penal Code], *Przegląd Więziennictwa Polskiego* No. 20–21, 1998, pp. 19–20.

opinions that this should apply to all measures adjudicated in any other cases before a convict's conditional release.³³ It is argued that evasion of these measures may indicate inappropriate use of the probation period, disrespect for the law and court's rulings, which may be classified as a flagrant violation of the legal order during the conditional release.³⁴ The latter stand is erroneous and it is based, as it has been proved above, on the assumption that evasion of adjudicated penal measures, forfeiture and compensation is a flagrant violation of the legal order.

5. CONSEQUENCES OF THE REVOCATION OF CONDITIONAL RELEASE

The direct consequence of the revocation of conditional release is the necessity to return to prison to serve the remaining punishment that had to be served when conditional release was granted. The probation time is not offset from the penalty period (Article 160 § 8 EPC).

Another consequence is the extension of the quantity of service required for the next conditional release. In accordance with Article 81 CC, where conditional release is revoked, the next conditional release cannot take place before a convict serves at least a year's imprisonment after the return to prison, and where the punishment is 25 years' imprisonment or life imprisonment – before he serves at least five years' imprisonment. This new quantity of the punishment service covers the period spent in prison after the return. The judiciary rightly points out that "The provision of Article 81 CC clearly indicates the necessity to fulfil the first of the listed requirements, i.e. serving at least one year's imprisonment of the adjudicated punishment, which means that in other cases of the re-application of conditional release, the imprisonment limits laid down in Article 78 §1 and 2 CC, calculated based on the total punishment, are applicable".³⁵ The time limits start running from the return to prison and not the very start of the whole punishment service from which the convict was conditionally released and then the release was revoked.³⁶ The day when the convict is imprisoned again because of the revocation of conditional release is taken into account, not the day when the revocation decision was made or became valid.³⁷ Article 81 CC provides for the re-imprisonment and the quantity of punishment to be served.³⁸

³³ T. Szymanowski, [in:] T. Szymanowski, Z. Świda, *Kodeks karny wykonawczy. Komentarz. Ustawy dodatkowe, akty wykonawcze* [Executive Penal Code. Commentary. Additional acts, secondary legislation], Librata, Warsaw 1998, p. 365; J. Lachowski, *Warunkowe zwolnienie...* [Conditional release...], p. 339.

³⁴ W. Rodakiewicz, *Warunkowe zwolnienie...* [Conditional release...], p. 235.

³⁵ The Appellate Court in Katowice ruling of 17 February 1999, II AKz 79/99, *Prokuratura i Prawo* – annex 1999, No. 9, item 22.

³⁶ The Appellate Court in Lublin ruling of 2 March 2011, II AKz 179/11, LEX No. 852293.

³⁷ V. Konarska-Wrzosek, [in:] V. Konarska-Wrzosek (ed.), *Kodeks karny. Komentarz* [Criminal Code: Commentary], Wolters Kluwer, Warsaw 2016, p. 457.

³⁸ L.K. Paprzycki, A. Sakowicz, [in:] M. Filar (ed.), *Kodeks karany. Komentarz* [Criminal Code: Commentary], Wolters Kluwer, Warsaw 2016, p. 626.

In case of the release from a total of two or more penalties (Article 79 §1 CC), which may take place when conditional release is revoked because of the commission of a crime in the probation period, the subsequent terms are calculated from the day when the convict was imprisoned to serve any of the penalties and not the day when he started serving the penalty from which he was released and then the release was revoked.³⁹

6. CONCLUSIONS

1. Conditional release from imprisonment starts a probation period during which the convict's behaviour is monitored to check whether he has readjusted to life in the society. A violation of the (broadly understood) legal order by him results, depending on the significance of that violation, in the obligatory or optional revocation of conditional release.
2. A penitentiary court is obliged to revoke conditional release in case:
 - a) of the commission of deliberate crime for which the convict was validly sentenced for imprisonment without conditional suspension of its execution (Article 160 §1 EPC); as well as mixed fault crime committed with intent but causing unintended consequences (*culpa dolo exorta*). The court deciding on conditional release is bound by the sentence.
 - b) a convict sentenced for a crime committed with the use of violence or illegal threat against a close relation or a minor residing together with the perpetrator flagrantly violates the legal order by relapsing into the use of violence or illegal threat against a close relation or a minor residing together with the perpetrator (Article 160 §2 EPC); the revocation is connected with the domestic violence. It is not necessary to sentence the perpetrator again for an act committed with the use of violence or illegal threat against a close relation or a minor residing together with the perpetrator; a penitentiary court alone assesses the situation.
 - c) a convict, despite the written admonition issued by a court's professional probation officer, flagrantly violates the legal order, especially when he commits a crime other than deliberate or the adjudicated punishment was different from absolute imprisonment, or a convict evades supervision, the fulfilment of imposed obligations or adjudicated penal measures, forfeiture or compensation, unless there are special reasons against (Article 160 §4 EPC). The revocation is ruled because of the same circumstances that justify optional revocation of conditional release. A written admonition issued by a court's

³⁹ The Appellate Court in Kraków ruling of 17 November 2010, II AKZw 977/10, LEX No. 785269; the Appellate Court in Kraków ruling of 18 November 2003, II AKz 548/03, KZS 2003, No. 11, item 28; J. Lachowski, [in:] M. Królikowski, R. Zawłocki (ed.), *Kodeks karny. Część ogólna* [Criminal Code; General part], Vol. II, C.H. Beck, Warsaw 2015, p. 452; and J. Skupiński, [in:] R.A. Stefański (ed.), *Kodeks karny. Komentarz* [Criminal Code: Commentary], C.H. Beck, Warsaw 2015, p. 527; V. Konarska-Wrzošek, [in:] V. Konarska-Wrzošek (ed.), *Kodeks karny...* [Criminal Code...], p. 457; A. Zoll, [in:] W. Wróbel, A. Zoll (ed.), *Kodeks karny...* [Criminal Code...], p. 383.

professional probation officer is a circumstance resulting in the change of the type of revocation from optional to obligatory. A written admonition is a warning that if a convict does not change his behaviour, conditional release shall be revoked.

3. The revocation of conditional release is optional in case of a flagrant violation of the legal order, especially the commission of a crime other than deliberate or the adjudication of a penalty different from absolute imprisonment, or evasion of supervision, the fulfilment of imposed obligations or adjudicated penal measures, forfeiture or compensation (Article 160 §3 EPC). Evasion of supervision, the fulfilment of imposed obligations or adjudicated penal measure takes place when the released may submit to supervision, fulfil imposed obligations or adjudicated measures but he does not want to do that, which indicates his negative mental attitude towards these obligations, i.e. his ill will. Inability to fulfil the obligations due to justified reasons is not regarded as evasion.

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REVOCAION OF CONDITIONAL RELEASE IN THE POLISH EXECUTIVE PENAL CODE

Summary

The article discusses the revocation of conditional release from the imprisonment penalty. The release is for a probation period during which a convict's behaviour is monitored in order to check if he has re-adjusted to life in the society. His violation of the legal order in its broad meaning, depending on the significance of this violation, results in the obligatory or optional revocation of the conditional release. The article presents thoroughly the circumstances that result or may result in the revocation of the conditional release.

Key words: probation period, legal order, imprisonment, conviction, conditional release, sentence

ODWOŁANIE WARUNKOWEGO ZWOLNIENIA W POLSKIM PRAWIE KARNYM WYKONAWCZYM

Streszczenie

Przedmiotem artykułu jest odwołanie warunkowego zwolnienia od odbycia kary pozbawienia wolności. Zwolnienie następuje na okres próby, w trakcie której sprawdzane jest zachowanie skazanego pod kątem jego przystosowania do życia w społeczeństwie. Naruszenie przez niego szeroko pojętego porządku prawnego skutkuje – w zależności od wagi jego naruszenia – obligatoryjnym lub fakultatywnym odwołaniem warunkowego zwolnienia. Szczegółowo omówione są przyczyny powodujące lub pozwalające na odwołanie warunkowego zwolnienia.

Słowa kluczowe: okres próby, porządek prawy, pozbawienie wolności, skazanie, warunkowe zwolnienie, wyrok