

SEVERE DETRIMENT TO HEALTH AS A STATUTORY FEATURE OF THE CRIMES DESCRIBED IN THE POLISH PENAL CODE

Severe detriment to health is mentioned in the Polish Penal Code (PC) in various contexts. In the general part of the Code, this category occurs in the contexts of determining the conditions for adjudicating a driving ban (Article 42 § 3 PC), vindictive damages (Article 47 § 1 PC), and the waiver of statute of limitations for certain offences (Article 105 § 2 PC). In the special part of the Penal Code, severe detriment to health is integrated in a varied manner into the statutory features of certain crimes. This article is intended to systematize the situations in which severe detriment to health constitutes a feature of a type of criminal act under the Polish Penal Code.

Severe detriment to health has been defined for the purposes of penal law in Article 156 § 1 PC. Such a detriment include a violation of the function of a body organ or derangement of health in the form of loss of sight, hearing, speech, ability to procreate, the occurrence of other serious disability, severe incurable or prolonged illness, an illness actually dangerous to life, a permanent mental illness, a permanent total or substantial incapacity to work in an occupation, or a permanent serious bodily disfigurement or deformation [1].

There are the following groups of criminal offences the features of which include severe detriment to health:

1. Causing severe detriment to the health of another person

This group includes such offences as:

a) the general type of the offence of causing severe detriment to health (Article 156 § 1 and § 2 PC);

b) causing severe detriment to the health of a person belonging to a national, ethnic, racial, political, religious group or a group with a certain worldview for the purpose of destroying such a group in whole or in part (Article 118 § 1 PC);

c) causing severe detriment to the health in connection with taking part in a mass attack or at least in one of multiple attacks against a group of people, undertaken to implement or support state or organisation policies (Article 118a § 1 PC);

d) causing severe detriment to the health of persons who laid down their arms or who surrendered lacking any means of defence, the wounded, sick, shipwrecked persons, medical personnel or clergy, prisoners of war, civilians in an occupied area, annexed or under warfare, or other persons who are protected by international law during warfare (Article 123 § 2 PC);

e) causing severe detriment to the health of another person, with the consent of such a person, in order to assist in obtaining exemption from military service (or service substituting military service) or postponing that service (Articles 143 § 2 and 3 PC);

f) causing derangement of health in an unborn child putting this child's life at risk (Article 157a § 1 PC) [2].

Of course, in most of these cases, severe detriment to health is committed against the will of the injured. The exception here is the offence under Article 143 § 2 and § 3 PC. Also a situation cannot be ruled out in which the offender under Article 156 § 1 PC acts with the consent of the person suffering the bodily harm (e.g. voluntary sterilization), which, however, does not exclude the unlawfulness of his conduct.

2. So-called offences aggravated by their effects

These are modified offence types, where the feature increasing the social harmfulness of the act, and thus justifying a more severe range of punishment, is the occurrence of severe detriment to health as a consequence of the criminal act, which was foreseen or could have been foreseen by the offender (hence it was covered by his inadvertence) [3].

This group comprises the following offences:

a) committing a violent assault on a unit of the Armed Forces of the Republic of Poland, destroying or damaging a facility or a piece of equipment of significance to defence of the Republic of Poland if the consequence of the act is a severe detriment to the health of many persons (Article 140 § 2 PC);

b) taking part in a fight or battery resulting in a severe detriment to human health (Article 158 § 2 PC);

c) causing an event which imperils human life or the health of many persons, or property of a considerable extent, taking the form of: 1) fire, 2) collapse of buildings, flooding, or rock or landslide, or snow avalanche, 3) explosions of explosive or flammable materials or other rapid release of energy, the spread of poisonous, suffocating or burning substances, 4) the rapid release of nuclear energy or the release of ionizing radiation, which results in severe detriment to the health of many people (Article 163 § 3 and § 4 PC);

d) posing threat to the life or health of many people, or property of a considerable extent, by: 1) causing an epidemiological hazard or spread of a contagious disease or an animal or plant disease, 2) producing or marketing substances, foodstuffs or other commonly used goods that are harmful to health or pharmaceuticals that are not compliant with applicable quality standards, 3) causing damage to or preventing the operations of a public utility equipment, in particular the equipment used to supply water, light, heat or energy or equipment averting the occurrence of public danger or serving to prevent it, 4) interfering, preventing or otherwise affecting the automatic processing, collecting or transmitting of data, 5) acting in another manner in especially dangerous circumstances, which results in a severe detriment to the health of

many people (Article 165 § 3 and § 4 PC);

e) taking control of a ship or aircraft using a deceit or violence, or a threat to use such violence, takes control of a ship or an aircraft which results in a severe detriment to the health of many people (Article 166 § 3 PC);

f) causing a catastrophe on land or water or to air traffic which posed threat to life or health of many people, or property of a considerable extent, which resulted in a severe detriment to the health of many people (Article 173 § 3 and § 4 PC);

g) causing unintentionally, also by a soldier driving an armed vehicle, an accident in land, water or air traffic in which another person has suffered a severe detriment to the health of that person (Article 177 § 2 and Article 355 § 2 PC.);

h) polluting water, air or earth surface with a substance or ionizing radiation in such quantity or form that it may endanger human life or health or cause significant deterioration in the quality of water, air or ground or destruction in the plant or animal life to a significant extent, including where the act was committed in connection with the operation of a system that works as part of the facility, as part of the use of the environment for which permission is required, which has resulted in severe detriment to the health of a person or many people (Article 185 § 2 and § 3 PC);

i) unlawful storage, disposal, processing, collection, recycling, neutralization or transport of waste or substances under such conditions or in such a way that it may endanger human life or health or cause a reduction in the quality of water, air or ground or destruction in the plant or animal life, as well as allowing to commit such an act contrary to the obligation, the consequence of which is severe detriment to the health of a person or many people (Article 185 § 2 and § 3 PC);

j) manufacturing, processing, transporting, importing, exporting, collecting, stockpiling, storage, possessing, using, handling, disposing of, abandoning or leaving without proper protection nuclear material or other source of ionizing radiation, in such conditions or in such a way that it may endanger human life or health or cause a substantial deterioration in the quality of water, air or ground or destruction of the plant or animal life to a considerable extent, as well as allowing to commit such an act contrary to the obligation, which has resulted in a severe detriment to the health of a person or many people (Article 185 § 2 and § 3 PC);

k) an active assault on a public official or a person assisting the official in the course of or in connection with the performance of official duties by the former, when the perpetrator acted jointly and in agreement with another person or using a firearm, knife or other similarly dangerous object or incapacitating measure, resulting in a severe detriment to the health of the public official or the assisting person (Article 223 § 2 PC);

l) the use of violence or an unlawful threat in order to force a public officer

or an assisting person to undertake or abandon a legal official act, the consequence of which is a severe detriment to human health (Article 224 § 3 PC);

m) taking an active part in a gathering whose participants jointly commit an attempt of violent attack on a person or property, if the consequence of the attempt is a severe detriment to human health (Article 254 § 2 PC);

n) committing an active assault by a soldier on his superior, the consequence of which is severe detriment to the latter's health (Article 345 § 4 PC);

o) careless handling by a soldier with military weapons, ammunition, explosives or other means of combat or their careless use, the consequence of which is a severe detriment to the health of another person (Article 354 § 2 PC).

3. Exposing another person to the immediate risk of a severe detriment to health

These are offences which do not consist in causing a severe detriment to health but in causing an immediate danger of such detriment. This immediacy should be understood either as an imminent consequence of further life-threatening or health-threatening developments or as a high probability of its occurrence [4]. The Polish Penal Code provides for a general type of offence of exposing to risk (Article 160 § 1), as well as types related to a particular factual situation: exposure of a person the offender is obliged to care of (Article 160 § 2 PC), exposure due to taking part in a fight or battery (Article 158 § 1 PC) and exposure of an employee by the person responsible for occupational health and safety by failing to comply with an obligation concerning occupational health and safety (Articles 220 § 1 and § 2 PC).

4. Causing severe detriment to one's own health or allowing another person to cause such detriment

The offender may commit such an act to be exempt from the duty of military service (or service replacing military service) or to postpone that service (Articles 143 § 1 and 3 PC), for the purpose of partially or completely evading a service replacing the military service or the performance of a duty under that service (Article 145 § 1 (2) (a) PC), or where the offender is a soldier, in order to completely or partially evade military service or the performance of a duty under that service (Article 342 § 1 (1) PC). These cases are characterized by that the person who suffers a severe detriment to health wants this.

5. Failure to provide help to a person in a situation where this person is in imminent danger of severe detriment to health (Article 162 § 1 PC)

This offence consists in the fact that the offender does not provide help to a person in imminent danger of loss of life or serious injury, being able to provide it without exposing oneself or another person to the danger of loss of life or severe detriment to health.

As the above analysis shows, severe detriment to health (in the meaning

given in Article 156 § 1 PC) has been incorporated into the structure of the statutory features of many offences. As a rule, it is a damage to the health of another person than the offender; however, there are situations where the offender wishes to evade military service (or a substituting service). It should be noted that certain elements contained in the definition of severe detriment to health are of an evaluative nature, e.g. **severe** disability, **severe** incurable disease, **serious** body disfigurement. This makes the concept of severe detriment to health ambiguous, thus the criminal liability of the offender depends, in practice, on the subjective assessment of the court. Most cases, the opinion of the procedural body will be influenced by the opinions of experts appointed in the case. This problem grows in the context of offences where there is a risk of severe detriment to health. In such situations, not the actual detriment to health is to be assessed, but the likelihood of it occurring, which makes it even more difficult to issue a correct resolution of the case.

References

1. A. Marek, *Kodeks karny. Komentarz*, Warszawa 2010, commentary on Article 156, thesis 2.
2. See R. Kokot, (in:) *Kodeks karny. Komentarz*, R.A. Stefański (ed.), Warszawa 2018, commentary on Article 157a, paragraph 6.
3. Pursuant to Article 9 § 3 PC, the perpetrator shall be liable to a more severe liability which the law makes contingent on a certain consequence of a prohibited act, if he has and could have foreseen such a consequence.
4. Decision of the Supreme Court of 26 January 2016, V KK 342/15, LEX no. 1977834.

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PRINCIPLE OF LEGALITY IN CRIMINAL LAW: THE ECHR PERSPECTIVE

No punishment without law. A basic principle of criminal and penal law, which is universally recognised and outlined in major human rights conventions [8, p. 1; 6, p. 226]. Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) states that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed [5, article 7(1)]. Moreover, the penalty imposed must not be heavier than the one applicable at the time of the criminal offence [5, article 7(2)]. Nevertheless, a careful reader might notice that the wording “*criminal offence*” is used. Does this cover also minor or