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

administrative offences (misdemeanours)? In any case, what are the substantial requirements for an offence to be in line with the principle of criminal legality?

Firstly, it must be determined what is meant by the wording "*criminal offence*". An important judgement of the European Court for Human Rights (hereinafter: ECtHR) in this aspect is the case of *Engel and others v. The Netherlands* [7, p. 260]. In the latter, the ECtHR stated that the states are free to designate which offences amount to criminal acts or misdemeanours. However, the member states cannot decide by themselves which acts are (not) "criminal offences" for the purposes of the ECHR. If the states were able to do so unilaterally, the operation of fundamental clauses (article 7 ECHR) would depend upon the states sovereign will. Therefore, the ECtHR itself needs to have the jurisdiction to determine whether a certain offence is "*criminal*" within the meaning of the convention [1, para. 81].

For this purpose, the ECtHR developed certain criteria. At the outset, it is important to check the formal classification of the offence under national law. For instance, if the offence is a criminal act within the national criminal code. Nonetheless, this is only the first step, which has relative value. In addition, "*the very nature*" of the offence and "*the degree of severity of the penalty that the person risks incurring*" have to be examined [1, para. 82]. Consequently, the ECtHR will look beyond the formal classification, and might rule that also minor offences, misdemeanours or disciplinary sanctions fall within the meaning of the "*criminal offence*" under article 7 ECHR.

This approach was reaffirmed, *inter alia*, in a more recent ECHR case *Žaja v. Croatia* [4, para. 86]. It was disputed whether an administrative offence under Croatian law falls within the notion of "*criminal offence*" under article 7 ECHR. Although the administrative offence in question was not a "criminal act" under the Croatian Criminal code, the ECtHR decided that article 7 ECHR is applicable. The punitive nature of the administrative offence, and the severe penalty (fine) prescribed in case of a breach were decisive [4, paras. 87-89].

Lastly, the ECtHR used the same "autonomous" approach (criteria) to determine whether a certain penalty (fine) falls within the scope of "*penalty*" under article 7 ECHR [8, p. 5]. For example, in the case of *Welch v. The United Kingdom* the ECtHR applied the abovementioned criteria to determine whether a confiscation order connected to a criminal trial was a "*penalty*" within the meaning of article 7 ECHR [3, paras. 23, 27].

It follows from the foregoing, that the term "*criminal offence*" under article 7 ECHR might encompass also administrative offences, misdemeanours, disciplinary sanctions, if certain criteria are met. The classification under national law is not decisive. The ECtHR examines on a case-to-case basis the (punitive) nature of the offence, and the severity of the penalty (fine) imposed.

Secondly, after analysing the scope of article 7 ECHR we will concisely elaborate upon the content of the criminal legality principle. One of the ECtHR judgments laying down these concepts is the case of *Vasiliauskas v. Lithuania*.

The applicant claimed that the criminal act of genocide was widely interpreted by the Lithuanian courts [2, para. 114]. The ECtHR stated that the principle of legality is an "*essential element of the rule of law*", and that no derogations are possible even in the times of war. It is also an important safeguard to prevent arbitrary punishment or prosecution [2, para. 153].

The principle of criminal legality entails that "*only the law*" can determine a crime or prescribe a penalty. The criminal law provision must not be interpreted broadly and against the accused (prohibition of analogy) [9, p. 788-789]. In contrast, the offence and the corresponding penalty must be "*clearly defined*". More specifically, an individual has to know - from the wording of the provision, if necessary with assistance of the informed legal advice - for which acts he will be held criminally liable [2, para. 154]. Thus, the legislator has to draft criminal law provisions very carefully and clearly in order to comply with the legality principle.

Nonetheless, the ECtHR acknowledged that despite the required clarity (in criminal law) there still has to be room for judicial interpretation. As a necessary part of legal tradition, also criminal law has to progressively develop through interpretation. Consequently, article 7 ECHR is not outlawing "*gradual clarification*" of the rules of criminal law through judicial interpretation. However, the ECtHR stresses that this development has to be "*consistent with the essence of the offence*", and has to be reasonably foreseen [2, para. 155].

Lastly, all the above mentioned substantial requirements of the legality principle in criminal law (offences) were confirmed in a ECtHR case of *Žaja v. Croatia* concerning an administrative offence (misdemeanour) [4, paras. 103-106].

To conclude, the legality principle in criminal law puts a significant burden on the legislator which - in order to comply with article 7 ECHR - has to draft criminal provisions and penalties clearly. In a state based on the rule of law every individual has to clearly know which acts or omissions are punishable. Nonetheless, this does not preclude the possibility for the scope of a criminal offence to develop through case law. Finally, the legislator must take into account that not only "classical" criminal offences, but also administrative offences or misdemeanours have to be defined clearly and precisely in order to comply with the legality principle under article 7 ECHR.

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МІЖНАРОДНІ ОРГАНІЗАЦІЇ З ПРОТИДІЇ КІБЕРЗЛОЧИННОСТІ

Розповсюдження та використання новітніх технологій як у приватному, так і в державному секторі зумовлює питання, які потребують вирішення проблем інформаційної безпеки та захисту мережі від несанкціонованого доступу до інформації. Прогресивні системи мають свої недоліки, зокрема, незахищеність серверів, де знаходяться бази даних, які можуть бути знищені або модифіковані зловмисниками. Розвиток техніки зумовлює не тільки позитивні зміни в економіці, але й негативні тенденції появи нових форм і видів злочинних посягань. Це проявляється, насамперед, в тому, що за допомогою інформаційних технологій відбувається розповсюдження комп'ютерних вірусів, порнографічних матеріалів, шахрайство з пластиковими картками, розкрадання банківських рахунків тощо.

Злочини у сфері інформаційно-комп'ютерних технологій (ІКТ) з кожним роком набувають все більш глобального масштабу, вони є загрозою для всієї міжнародної інформаційної безпеки. Розвиток та поширення комп'ютерних злочинів, що мають транснаціональний характер, свідчить про те, що окрема держава не може самотужки боротися з даним явищем. Цей факт є причиною створення міжнародної системи організацій та співробітництва країн у боротьбі з кіберзлочинністю.