L. Kubicki, J. Waszczyński, Ossolineum, 1989, pp. 113–114; K. Buchała, Prawo karne materialne, Warszawa, 1989, p. 696; A. Marek, Kodeks, p. 487; L. Gardocki, Prawo karne, Warszawa, 2017, p. 292; W.Kulesza, Zniesławienie, p. 168 et seq.

16. Marek A., Kodeks, p. 487.

17. Górniok O. in: O. Górniok et al., Kodeks karny, p. 244.

18. Wojciechowski J., Przestępstwa przeciwko czci i nietykalności cielesnej. Rozdział XXVII Kodeksu karnego. Komentarz, Warszawa, 2000, pp. 52-53).

19. Peiper L., Komentarz do kodeksu karnego, Kraków 1936, p. 538.

20. Hypś S. in: Kodeks, s. 1162.

21. Mozgawa M., Odpowiedzialność, p. 152.

22. Makarewicz J., Kodeks karny z komentarzem, Lwów 1932, p. 337.

23. https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/

UDC 343.292(043.2)

Marta Mozgawa-Saj,
Maria Curie-Sklodowska University in Lublin, Poland

PARDON IN THE POLISH CODE OF CRIMINAL PROCEDURE - ANALYSIS OF THE INSTITUTION

The discussed topic in this paper is the institution of pardon understood as an act of the executive power's interference in the justice system. The Author pays special attention to criminal law and procedural regulations of this institution, trying to present the essence and character of the act of pardon.

A pardon is a constitutionally permissible interference of the President in the area of jurisdiction exercised by independent and autonomous courts of law. The issue of the act of pardon is regulated by the Constitution of the Republic of Poland of 1997 and the Code of Criminal Procedure of 1997 (hereinafter: CCP). It should be emphasized that the act of pardon does not change the sentence and does not question the guilt of the convicted person. Therefore, it does not interfere with the material layer of the final verdict [1, p. 6]. The right of pardon may be exercised only when the ordinary measures envisaged by the law are no longer sufficient and considerations of justice and humanity demand an alteration of the legal situation of the convicted person [2].

As the Constitutional Court noted in its decision of 21 February 2007 (Ts 47/06, LEX No 277465) *"…the object of the procedure for pardon is the possibility of showing a special act of clemency to the convicted person, i.e. a person whose criminal responsibility has already been determined by a final court judgment. However, since the reason for the pardon cannot be any circumstance concerning the crime committed or contesting the determination of criminal responsibility, thus the convicted person no longer benefits from the right of defence*". The Code od Criminal Procedure regulates the pardon in Section XII devoted to proceedings after the judgment becomes final.

Therefore, it should be pointed out that the right of pardon - on the grounds of the Code of Criminal Procedure - may only be applied when a final conviction has been passed. The power to apply the act of pardon is held exclusively by the President of the Republic of Poland, who has full discretion in its application.

The essence of the pardon may consist in the remission of the punishment and penal measure, total or partial abandonment of execution of the punishment or penal measure imposed or mitigation of the effects of the conviction. The criminal procedure law distinguishes two types of pardon proceedings: at the request of the authorized person and ex officio.

According to Article 560 CCP, a petition for pardon may be filed to the court which pronounced the the first instance judgment by the convicted person himself/herself, a person entitled to appeal against the judgment in his/her favour, direct relatives, adopters or adoptees, siblings, spouse or a person cohabiting with the convicted person. The court rules on the petition for pardon during a session, in which the parties may participate. Article 563 CCP provides that when considering the petition for pardon, the court shall take into account only the circumstances arising after the judgment has been passed, and in particular, the convicted person's behaviour after passing the sentence, the extent of the sentence already served, the convicted person's health condition and family conditions and reparation of the damage caused by the offence. The court should consider the request for pardon within two months from its submission, issuing a decision based on relevant documentation. As to the pardon, the Court may leave the request without consideration, give it further course and issue a positive opinion, or find no grounds for issuing a positive opinion and leave the request without further course.

The second mode of pardon proceedings involves an ex officio action. It is initiated by the General Prosecutor independently or upon an order of the President of the Republic of Poland. The Public Prosecutor General may turn to the courts which decided the case, requesting that they send the files together with their opinion on the justifocation for granting the right of pardon. The General Prosecutor is not bound by the content of opinions presented to him, so he may present the file to the President even if the courts' opinions are negative [3, p. 1244]. The General Prosecutor may also submit the file directly to the President of the Republic of Poland without seeking the opinion of the courts deciding the case. In that case, he submits the file to the President together with his conclusion on the scope of the pardon. The General Prosecutor is obliged to initiate proceedings ex officio if the President so decides. Ultimately, it is the President who has the final decision on the application of the pardon law, without being bound by either opinion.

The initiated clemency proceedings do not automatically affect the sentence. A change in this respect can occur by a decision issued by an authorized body. Persuant to the content of Article 568 CCP, the decision shall be made by the court issuing the opinion or by the General Prosecutor if these

authorities deem that there are particularly important reasons for pardon. Suspending the execution of the sentence or ordering a pause in its execution may take place, especially when the convicted person has a short remaining time to serve. Suspension of the execution of a sentence may consist of ordering temporary cessation of execution of a sentence, which has not yet started. Conversely, suspension of the sentence takes place when the sentence has already started to be served. Suspending the execution of a penalty or ordering a pause in its execution may take place until the completion of pardon proceedings.

Summarizing, it should be pointed out that the purpose of the proceedings in question is first and foremost to establish whether there have been circumstances in the life of the convicted person after the sentence was passed, which make the execution of the final decision unduly burdensome. The act of pardon is treated as a certain "safety valve" intended to regulate, in a manner consistent with considerations of fairness, those cases in which the conduct, although not contrary to the requirements of the criminal statute, could lead to unjust harm to the convicted person [4, p. 417].

Literature

1. Pracki H. Funkcjonowanie prawa łaski w Polsce i innych krajach europejskich, Warszawa, 2003.

2. Resolution of the Court of Appeal in Cracow of February 20, 2019, II AKo 14/19, Lex No 2707061.

3. Ważny A. (in:) K.T. Boratyńska, A. Górski, A. Sakowicz, A. Ważny, Kodeks postępowania karnego. Komentarz, Warszawa, 2009.

4. Makowski W., Prawo karne. Część ogólna. Wykład porównawczy prawa karnego austriackiego, niemieckiego i rosyjskiego obowiązującego w Polsce, Warszawa, 1924.

УДК 341.41/46(043.2)

Мартин Белтран Сауседо, доктор наук,
Виолетта Мендезкарло Сильва, доктор наук,
Автономный университет Сан-Луис-Потоси, Мексика

ПРАВОВОЕ РЕГУЛИРОВАНИЕ И НАКАЗАНИЕ ЗА ЦИФРОВОЕ СЕКСУАЛЬНОЕ НАСИЛИЕ В МЕКСИКЕ. ЗАКОН «ОЛИМПИЯ»

I. Введение. Начало законодательной реформы по наказанию за сексуальные домогательства в Интернете. Так называемый Закон «Олимпия» возник в результате инициативы, продвигаемой «Олимпия Корал Мело». Этот Закон направлен на прекращение и наказание за цифровое насилие в отношении женщин, наказание в уголовном законодательстве за преследование и распространение так называемых