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Agnieszka Kania-Chramęga
Uniwersytet Zielonogórski
ORCID: 0000-0001-6246-3172
a.kania@wpa.uz.zgora.pl

The role of the directive on the degree of guilt in the judicial determination of punishment. Comments in the context of the Polish Penal Code*

Introduction

In Polish criminal law, guilt is linked to two fundamental concepts of this branch of the law[1], namely the concept of offence (here it legitimises criminal liability – in accordance with the principle of *nullum crimen sine culpa* – Article 1 § 3 of the Polish Penal Code[2]) and the concept of punishment (in this respect it limits – or in other words sets the upper limit of adjudicated measures of criminal law reaction – Article 53 § 1 of the Polish Penal Code *in principio*[3]). In the present study, attention is focused on the restricting notion of guilt,

* Penal Code of 6 June 1997 (consolidated text: Journal of Laws 2022, item 1138).

[1] A. Barczak-Oplustil, *Zasada koincydencji winy i czynu w Kodeksie karnym*, Kraków 2021, p. 340; Polish Supreme Court, Judgment of 14 March 2019, Ref. No. I DSK 10/18, Lex No. 2643280.

[2] Polish Supreme Court, Judgment of 18 August 2020, Ref. No. I DSK 1/20, Lex No. 3129424.

[3] Appellate Court in Wrocław, Judgment of 15 January 2015, Ref. No. II AKa 416/14, Lex No. 1659018; Appellate Court in Warsaw, Judgment of 19 February 2016, Ref. No. II AKa 406/15, Lex No. 2166533. Here, it should be noted that in the light of the amending project the directive on the degree of guilt would change its allocation. It will be moved to the second sentence of Article 53 § 1 of the Polish Penal Code. Taking into account the assumptions of this amendment, due to the change the directive on the degree of guilt might no longer be an independent and fundamental sentence directive and, as a result, it will only perform limiting functions in the context of the other directives – *Rządowy projekt ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw*, druk sejmowy No. 2024, https://www.sejm.gov.pl/Sejm9.nsf/PrzebiegProc.xsp?id=-3C6A8DB95D4CB9CEC12587F10042A9B8 (accessed: 27.09.2022); A. Barczak-Oplustil et al., *Populistyczna nowelizacja prawa karnego. Ustawa z 7.07.2022 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw (druk senacki nr 762)*, p. 16, https://kipk.pl/ekspertyzy/populistyczna-nowelizacja-prawa-karnego/ (accessed: 27.09.2022).

prohibiting the courts from applying penalties and "accordingly" (Article 56 of the Polish Penal Code) other measures provided for in the Code beyond the guilt of the offender[4].

As a more general reflection, it is worth mentioning that the reference to the limiting formulation of guilt was made for the first time, under the codification being in force, in the 1997. The omission of this regulation in the earlier codes was undoubtedly connected with taking a "comfortable position" by the legislator, who thus avoided several complications related to its normative distinction. Under the 1932 Penal Code, the failure to take this indication into account was linked primarily to Makarewicz's affirmation of the directive of special prevention, the priority of which, it was argued, could be violated the moment the individual-preventive rationalisation was subjected to the guilt limit. On the other hand, quite different motives guided the authors of the Penal Code of 1969, who abandoned the introduction of the commented solution mainly due to difficulties in reconciling its assumptions with the general-preventive rationalisation and the directive of social danger of the act[5]. This position of the codifiers reflected, in fact, a "dubious compromise", which was to say: "(...) That the disputed issue is not decided at all. In this way, it should be added, nobody is satisfied, but nobody is annoyed either"[6].

"Limiting" function of guilt

Dissenting from the above-mentioned legislative traditions, the drafters of the current Penal Code favoured the introduction into its provisions of a regulation prohibiting the infliction of punishment on the offender beyond the degree of his or her guilt. It was clear from the *Explanatory Memorandum to the draft Penal Code* that the commented code wording – "taking care that the severity of the punishment does not exceed the degree of guilt" – contains an absolute order to consider the limiting function of guilt in the individual act of punishment assessment, thus crossing out the possibility of its gradation within the scope of the upper limit of punishment. Indeed, the drafters consi-

[4] See more about the "limiting" construction of guilt A. Kania, *Prewencja ogólna jako dyrektywa sądowego wymiaru kary. Rozważania na tle Kodeksu karnego*, Zielona Góra 2016, p. 38 and following; P. Zakrzewski, *Stopniowanie winy w prawie karnym*, Warszawa 2016, p. 505 and following. See also Article 56 of the Polish Penal Code: "The provisions of Article 53, Article 54 § 1 and Article 55 shall apply accordingly when imposing other measures provided for herein, save for the obligation to redress the damage caused by the offence or to compensate for the harm suffered".

[5] K. Buchała, *System sądowego wymiaru kary w projekcie kodeksu karnego*, [in:] S. Waltoś (ed.), *Problemy kodyfikacji prawa karnego. Księga ku czci prof. M. Cieślaka*, Kraków 1993, p. 143.

[6] W. Mącior, *Stopień społecznego niebezpieczeństwa czynu jako priorytetowa dyrektywa sądowego wymiaru kary*, „Państwo i Prawo" 1973, No. 12, p. 105.

dered that: "The lower limit of a specific punishment is determined, in principle, by those (resulting from the assumptions of general prevention – my emphasis) needs for stabilisation (of the legal order – my emphasis), while the upper limit is determined (limited) by the principle of guilt. Within these limits, the court may impose punishment according to the needs of individual prevention"[7]. The limiting approach to guilt thus served to emphasise the link between the offender's act and the punishment imposed on him[8]. In other words – in the light of the proposed interpretation, guilt would be – on the one hand – a limiting factor of the punishment dictated by the former negative-preventive considerations (deciding *de facto* the punishment exceeding the degree of guilt of the perpetrator – my emphasis) and, on the other hand, its magnitude would not constitute an obstacle to the mitigation of the punishment, if individual-preventive considerations would support it. By means of the proposal to replace the repressive criminal policy with the postulate to rationalise it, an attempt was made to draw attention to the fact that severe punishment not only causes many negative social consequences, not excluding the generation of criminogenic phenomena, but also turns out to be a very costly undertaking. Thus, the adopted line of interpretation harmonized with the legal and constitutional obligation to respect human dignity (Article 30 of the Constitution of the Republic of Poland), as well as with the promoted principle of economy in the application of measures of criminal reaction[9].

"Limiting" formulation of guilt at the level of judicial assessment of punishment has, however, raised certain reservations in the literature[10]. In the

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[7] *Nowe kodeksy karne z 1997 r. z uzasadnieniami*, Warszawa 1997, p. 153.

[8] A. Zoll, *Aksjologiczne podstawy prawa karnego*, [in:] B. Czech (ed.), *Filozofia prawa a tworzenie i stosowanie prawa. Materiały Ogólnopolskiej Konferencji Naukowej zorganizowanej w dniach 11 i 12 czerwca 1991 roku w Katowicach*, Katowice 1992, p. 308.

[9] K. Buchała, *Dyrektywy sądowego wymiaru kary*, Warszawa 1964, pp. 151–153. However, one may wonder, as regards the above, whether the approach indicated in the Code (in the context of its limiting character) did include the postulated "novelty" in its contents, for – as M. Płatek noted – it did not differ from the maxim (already promoted under the Code of Hammurabi) that one was not to agree that: "(…) For an eye – more than an eye was to be taken, or elsewise, for a tooth – the entirety of dentition (…)" – M. Płatek, *Rola prawa karnego wykonawczego w zapobieganiu przestępczości*, „Studia Iuridica" 2000, No. XXXVIII, p. 111.

[10] A view was voiced in the scholarship, in that considering the directive of the degree of guilt only through its limiting function is too narrow and restricted. On that, it has also been posited in the scholarship that there are no obstacles of the legal nature for the court seised to respect the requirement in the form of meting out a sentence corresponding to the degree of guilt of the perpetrator – T. Kaczmarek, *Ogólne dyrektywy wymiaru kary jako problem kodyfikacyjny*, [in:] T. Bojarski, E. Skrętowicz (eds.), *Problemy reformy prawa karnego*, Lublin 1993, pp. 53–54; compare also: J. Giezek, *Komentarz do art. 53 § 1 k.k.*, [in:] J. Giezek (ed.), *Kodeks karny. Część ogólna. Komentarz*, 2021, Lex; T. Bojarski, *Społeczna szkodliwość czynu i wina w projekcie k.k.*, [in:] S. Waltoś (ed.), op. cit., p. 81; V. Konarska-Wrzosek, *Dyrektywy wyboru kary w polskim ustawodawstwie karnym*, Toruń 2002, p. 81 and following. A dissenting view was however voiced by A. Barczak-Oplustil, *Sporne zagadnienia istoty winy w prawie karnym. Zarys problemu*, „Czasopismo Prawo Karnego i Nauk Penalnych" 2005, No. 2, p. 79.

argumentation raised, the view is expressed that *de lege lata* such an approach does not create grounds for imposing a punishment corresponding to the degree of guilt, since the content of Article 53 § 1 of the Penal Code is limited to the requirement, expressed *expressis verbis* therein, obliging to impose a punishment which does not exceed the degree of guilt[11]. The "cardinal error" attributed to the legislator, according to some theorists, would consist in the fact that guilt, in the light of the present formulation, does not legitimise punishment. Consequently, this would mean that the statutory requirement to "take care" that the severity of punishment does not exceed the degree of guilt and that the meting out of punishment shall be commensurate with guilt do not have a complementary character, but, on the contrary, it should be stated that there is a relationship of exclusion between them[12]. The practical consequence of the described situation would in turn be that the courts would impose lighter penalties than those indicated by the degree of guilt. This is because, so it has been argued, that since the punishment does not contain the discomfort (since it is not adequate to the guilt of the offender), it must be a "contradiction in itself"[13]. In light of the above interpretation, accepting the assumption of the limiting function of guilt would mean, in effect, that: "(...) the court may impose a punishment below the degree of guilt and, consequently, may impose an unjust punishment if special or general preventive considerations would require it"[14].

However, the objections expressed above in relation to the code-based approach to the directive on the degree of guilt have met with a critical response in the literature. It has been argued that the proposal does not consider the *sui generis* multifunctionality of punishment, which enables it to achieve various penological goals. Indeed, taking into account the content of the Code's sentencing directives, it has been argued that "each" – and not, in fact, only one – of the statutory indications deserves separate attention in the assessment of punishment and, at the same time, "each" of them has a different role to play in this process[15]. The "cardinal error" alleged by the legislator in the formulation of Article 53 § 1 of the Penal Code has also been attempted to neutralise it by stating[16], that the requirement that: "(...) the severity of pu-

[11] W. Mącior, *Kara dostosowana do stopnia winy sprawcy*, „Rzeczpospolita" of 27 May 2003.

[12] Ibidem. See also critical comments K. Skowroński on the views of W. Mącior, *Nie bójmy się zaufać sędziom*, „Rzeczpospolita" of 25 July 2003.

[13] W. Wolter, *Zasady wymiaru kary w kodeksie karnym z 1969 r.*, „Państwo i Prawo" 1969, No. 10, p. 508.

[14] J.M. Iwaniec, *Kara celowa a kara sprawiedliwa*, „Przegląd Sądowy" 2004, No. 1, pp. 141–142.

[15] A. Zoll, *O reformie prawa karnego (W odpowiedzi W. Mąciorowi)*, „Państwo i Prawo" 1992, No. 1, p. 98.

[16] K. Skowroński, op. cit. The author, disagreeing with the views of W. Mącior, advocated instead that assumptions thus made – which stresses the importance of guilt regarding sentencing – are significantly outdated, adequate for views of XIXth-century legal theorists.

nishment does not exceed the degree of guilt and the dosage of punishment commensurate with guilt are not, after all, mutually exclusive (...). In practice (...), very often a punishment which does not exceed, in terms of severity, the threshold determined by the degree of guilt, will at the same time be commensurate with this guilt, unless other important reasons speak in favour of its mitigation"[17]. With such a view, limiting the role of guilt to limiting the level of punishment "from above" would thus not be in contradiction with the concept of just punishment. Indeed, this would only be the case if guilt were the only determinant responsible for the fairness of the punishment[18].

The appearance of further controversies, related to the interpretation of the said directive, was also due to the lack of clarification in the provisions of the Penal Code not only of the very notion of "guilt", but also of the indication in it of the factors allowing its gradation[19]. The statement contained in the *Explanatory Memorandum to the draft Penal Code*[20] that the acceptance of a particular theory of guilt was not prejudged in the code provisions[21], leaving

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[17] J. Giezek, op. cit.; compare also: T. Bojarski, op. cit., p. 81; V. Konarska-Wrzosek, op. cit., p. 81 and following.

[18] K. Skowroński, op. cit. From the point of view of a "more profound cognitive perspective", one would have to assume that a statutory requirement that: "(…) The sentence is not to exceed the boundaries of guilt of the perpetrator, is nothing else than, specifically, the rationalisation of teleologically-inclined retribution. Thus, a court is bound by a rule that sentences meted out thereby are not to exceed the degree of blameworthiness in their severity, and is also obliged, in essence, to mete out a just sentence. It was provided by the promoter of the bill for the court to take account, also in sentencing, of the objective of satisfying the social sense of justice". Meeting that would constitute: "(…) A specific, distinct and important purpose of a properly understood idea of just retribution". Cf. T. Kaczmarek, op. cit., pp. 52–53.

[19] In the assessment of T. Bojarski: "A phrase included in Article 53 § 1, first sentence of the Polish Penal Code, that the severity of a sentence should not exceed the degree of guilt does not translate to the language of practice. Nobody can prove that an excess of the degree of guilt happened, or not. Such an assumption is unreal and unworkable". In the opinion of the author, an approach mandating that the severity of a sentence should correspond to the degree of guilt and the social harm has been accepted as substantively correct and rational. As the author specified: "To correspond means to come close to the judge's, and the society's idea of that degree. Simple proportionality is not achievable, nor would it be always justified" – T. Bojarski, *Uwagi o karach i ich orzekaniu na tle projektowych zmian kodeksu karnego*, [in:] B. Janiszewski (ed.), *Nauka wobec współczesnych zagadnień prawa karnego w Polsce. Księga pamiątkowa ofiarowana Profesorowi Aleksandrowi Tobisow*i, Poznań 2004, p. 39; idem, *Środki karne i zasady wymiaru kary w projekcie kodeksu karnego*, „Biuletyn Lubelskiego Towarzystwa Naukowego. Humanistyka" 1991, No. 1–2, pp. 61–62.

[20] *Nowe kodeksy karne*…, p. 5.

[21] In the assessment of M. Dąbrowska-Kardas, the relational theory of guilt remains the closest to the dually-functional construction of guilt, as it expressly distinguishes blameworthiness: 1) construed as non-gradable relation to the extent of the function of legitimation and 2) as a gradable element to the extent of the function of limitation – i.e., as a directive of sentencing. Cf. M. Dąbrowska-Kardas, *Analiza dyrektywalna przepisów części ogólnej kodeksu karnego*, Warszawa 2012, p. 263. Compare also: J. Majewski, *Stopień winy jako podstawowy wyznacznik dolegliwości reakcji karnej*, [in:] J. Majewski (ed.), *Dyrektywy sądowego wymiaru kary. Pokłosie X Bielańskiego Kolokwium Karnistycznego*, Warszawa 2014, p. 27; A. Wilkowska-Płóciennik,

the elaboration of this issue to the science of criminal law and jurisprudence, clearly attested that its authors did not undertake to resolve doctrinal disputes at the normative level. For in doing so, they shied away from unequivocally advocating a particular theory of guilt, as well as from cataloguing the quantifiers that would allow for its gradation in the assessment of punishment. The position taken by the codifiers thus prejudged the validity of the view, already expressed under the 1969 Penal Code, that: "The gradeability of guilt belongs (...) to those concepts without which, although we are not able to do without, but which – so far – effectively escape unambiguous, universally recognised concretisation"[22].

To overcome the concerns expressed here, one should – almost intuitively – start with an analysis of the theories of guilt identified in the criminal justice literature. A review of these concepts, from the most ancient to the more contemporary ones, led – on the one hand – to a sceptical assessment, suggesting that none of them proves helpful in interpreting the limiting view of guilt[23]. On the other hand, however, in the literature on the subject the view has been expressed that a comprehensive normative theory, which allows for gradation of guilt on the basis of criteria on which the chargeability of a prohibited act depends, as well as on the basis of circumstances concerning the perpetrator's attitude to the act[24], offers a suitable solution in this respect. However, the possibility of gradation of guilt thus indicated raises certain doubts. Making the assessment of the degree of guilt independent of the degree of social harmfulness, which would follow from the essence of the above assumptions, seems unconvincing. It would be difficult to accept the assumption that mere intentionality or unintentionality, without reference to the subjective elements of the act, is able to determine the upper limit of punishment[25].

Niepoczytalność i ograniczenie poczytalności jako okoliczności wpływające na stopniowanie winy, „Wojskowy Przegląd Prawniczy" 2006, No. 2, pp. 6–7.

[22] J. Waszczyński, *Problem stopniowania winy w polskiej nauce prawa karnego*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1976, No. 4, p. 91; compare also: L. Tyszkiewicz, *Problem istoty winy w projekcie kodeksu karnego z 1994 r. (Uwagi krytyczne i wnioski de lege ferenda)*, „Państwo i Prawo" 1995, No. 3, p. 85.

[23] J. Majewski, op. cit., p. 27. Gradeability of guilt pursuant to Article 53 § 1 of the Polish Penal Code in turn confirms a distinct character of guilt as a statutory indication for judicial sentencing, from guilt as an element under dogmatic-legal structure of an offence. Cf. A. Barczak-Oplustil, *Sporne zagadnienia*..., p. 89.

[24] A. Marek, *Nowa kodyfikacja karna. Krótkie komentarze*, Warszawa 1998, p. 16. It is worth noting that this remains in contrast to the assumptions of a final (purely normative) theory of guilt. An iteration of that theory inserted in the Code by its framers follows in particular from distinguishing guilt from the issue of the state of mind in regard to the criminal act, as well as from the regulation under Article 26 § 2 of the Polish Penal Code; cf. also: P. Jakubski, *Wina i jej stopniowalność na tle kodeksu karnego*, „Prokuratura i Prawo" 1999, No. 4, p. 46 and 49, where the author highlights that the view of the representatives of the final theory of guilt, which rejects any possibility of gradation thereof, was met with critical remarks in the literature.

[25] A. Barczak-Oplustil, *Sporne zagadnienia*..., p. 95.

Also, in the convention of the doubts raised were those views which recognised the *strictly* practical difficulties of being able to 'measure' the degree of guilt. Indeed, on an empirical level, it remains unrealistic to demonstrate that the degree of guilt has or has not been exceeded[26]. Determination of the size of the wrong done by the perpetrator, corresponding to the social harmfulness of the act, as well as assessment of his/her guilt, showing its dependence on, inter alia, premises related to the characteristics of the perpetrator (e.g. his/her age, state of insanity), circumstances influencing the motivation process in a given case (e.g. feelings of fear or agitation), as well as related to the type and number of violated precautionary rules[27] does not allow to obtain a fractional or percentage determination of guilt. Using this "algorithm" of procedure, it is at most possible to try to determine – according to the nomenclature appearing in the provisions of the code – whether the degree of guilt of the perpetrator was significant or insignificant[28].

Final remarks

Summing up the above considerations, it is therefore worth answering the question whether, in accordance with the wording of Article 53 § 1 of the Penal Code, the role of the degree of guilt is limited only to the function of limiting the size of the punishment, or whether it constitutes a directive co-determining its type and size. For it follows from the stylistics of the said provision that the degree of guilt does not determine the specific amount of punishment, but only establishes an impassable barrier for it. Such an interpretation may, however, raise certain doubts. Treating the directive of the degree of guilt, solely through the prism of its limiting function, is in fact too narrow an approach to the problem[29].

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[26] T. Bojarski, *Uwagi o karach*..., p. 39; compare also: M. Szczepaniec, *Wybór optymalnej kary w świetle sądowych dyrektyw wymiaru kary*, „Prokuratura i Prawo" 2014, No. 3, pp. 38–39.

[27] Z. Sienkiewicz, *Komentarz do art. 53 k.k.*, [in:] M. Kalitowski et al., *Kodeks karny. Komentarz*, Vol. II, Gdańsk 1999, p. 89. An example of a certain 'shortcoming' in a widely understood subjective state of the perpetrator would not be satisfied by recidivism. "(...) Recidivism is not a circumstance influencing the gradation, or increasing the degree of guilt, for it is hard to indicate gradation of a prior conviction; it cannot be decided by, of instance, a gravity of an offence. Guilt of a recidivist remains the same as that of a perpetrator which committed an identical criminally prohibited act while not acting in the conditions for recidivism. An increase is allotted only to the limit of statutory sentencing endangerment pursuant to the provisions of the Specific Part ("Część szczególna") of the Code, according to which an upper limit of a sentence needs to be indicated per the degree of guilt, which nevertheless may be low". Cf. A. Piaczyńska, *Kryteria stopniowania winy*, „Prokuratura i Prawo" 2012, No. 9, p. 64; R. Kaczor, *Limitująca funkcja winy przy wymiarze kary*, „Przegląd Sądowy" 2008, No. 11–12, pp. 141–143.

[28] Appellate Court in Kraków, Judgment of 31 May 2007, Ref. No. II AKa 90/07, Lex No. 314009.

[29] T. Kaczmarek, op. cit., pp. 53–54; compare also: J. Giezek, op. cit.; T. Bojarski, *Społeczna szkodliwość*..., p. 81; V. Konarska-Wrzosek, op. cit., p. 81 and following. A dissenting view was however voiced by A. Barczak-Oplustil, *Sporne zagadnienia*..., p. 79.

Indeed, it seems that: "(...) Even then, if one were to take the view that guilt only limits the dimension of the punishment, this still means, after all, that – in this way – it co-determines it. Thus, the circumstances influencing the degree of guilt are considered in the assessment of the punishment, of course, primarily through the prism of its limiting function, but after all, it is impossible to determine the place of this limiting function in the assessment of a specific punishment, without relating the circumstances influencing the degree of guilt to the other prerequisites of the punishment. Hence, it is probably difficult to defend the view that the degree of guilt is a certain premise which, in the assessment of punishment, is completely detached from the others and abstractly sets a certain upper limit of this assessment"[30].

Within the framework of *de lege ferenda* remarks, it would be particularly desirable not only for the legislator to state what is to be understood by the notion of a limiting concept of guilt, but also to indicate a catalogue of circumstances which would act as quantifiers enabling its gradation[31]. In the context of the last issue, it might be recommended to take into account such factors as: 1) the possibility of recognising the importance of the offence, which depends on the level of intellectual and social development of the perpetrator as well as their knowledge and experience, 2) the possibility of deciding to act in line with the law, which primarily depends on the motivation situation of the perpetrator and 3) the possibility of controlling your actions resulting from your decision[32].

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[30] M. Dąbrowska-Kardas, op. cit., pp. 266–267 and p. 270; compare also: M. Kowalewska-Łukuć, *Wina w prawie karnym*, Warszawa 2019, p. 254.

[31] P. Jakubski, op. cit., pp. 56–57.

[32] W. Wróbel, [in:] W. Wróbel. A. Zoll (eds.), *Kodeks karny. Część ogólna*, Vol. I: *Komentarz do art. 53–116*, 2016, Lex.

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Summary

The role of the directive on the degree of guilt in the judicial determination of punishment. Comments in the context of the Polish Penal Code

Keywords: criminal law, guilt in criminal law, guilt degree directive, sentencing, sentencing principles, guilt degree directive.

This study focuses on the controversial issues related to one of the directives of the judicial assessment of punishment, i.e., the directive of the degree of guilt. The limiting approach to guilt has raised some objections in literature (Article 53 § 1 of the Polish Penal Code *in principio*). In addition, the lack of statutory determinants which influence the assessment of the degree of guilt was no less controversial. Given the above issues, the article aims to: 1) determine whether the normative requirement that the sentence severity cannot exceed the degree of guilt and the imposition of a sentence which is proportional to the guilt are mutually exclusive, as well as to 2) verify the problematic nature of the lack of identification of factors determining the assessment of the degree of guilt. Based on the carried out analyses, it was concluded that reducing the role of guilt to limiting the level of punishment does not *per se* mean imposing on the perpetrator a punishment which is disproportional to the degree of guilt. Within the framework of the present analyses, it was attempted to prove that it would be particularly postulated to indicate a catalogue of circumstances which would act as quantifiers, enabling the gradation of guilt.

Streszczenie

Rola dyrektywy stopnia winy w procesie sądowego wymiaru kary. Rozważania na tle przepisów polskiego Kodeksu karnego

Słowa kluczowe: prawo karne, wina w prawie karnym, sądowy wymiar kary, determinanty sądowego wymiaru kary, dyrektywa stopnia winy.

W niniejszym opracowaniu zwrócono uwagę na kontrowersyjne kwestie związane z jedną z dyrektyw sądowego wymiaru kary, tj. dyrektywą stopnia winy. „Limitujące" ujęcie winy na płaszczyźnie sądowego wymiaru kary (art. 53 § 1 k.k. *in principio*) wzbudziło bowiem pewne zastrzeżenia. Wątpliwości generował również brak ustawowych determinantów, które wpływają na ocenę stopnia winy. Dostrzegając powyższe problemy, celem artykułu jest: 1) ustalenie, czy normatywny wymóg, aby dolegliwość kary nie przekroczyła stopnia zawinienia i dawkowanie kary współmiernej do winy, się wykluczają, jak również 2) zweryfikowanie problematyczności braku określenia czynników, determinujących ocenę stopnia winy. Na podstawie przeprowadzonych analiz stwierdzono, że ograniczenie roli winy do limitowania wymiaru kary nie oznacza *per se* wymierzenia sprawcy kary niewspółmiernej do stopnia winy. W ramach uwag *de lege ferenda* wyrażono ponadto postulat dookreślenia katalogu okoliczności, które pełniłyby rolę swoistych kwantyfikatorów, umożliwiających stopniowanie winy w procesie sądowego wymiaru kar.