

# Deferral of an imprisonment sentence

KATARZYNA SITNIK

Chair of Executive Penal Law, University of Wrocław

Deferral of a custodial sentence is the institution of Criminal Executive Law which is an exception of the principle of immediate penalty execution<sup>1</sup> mentioned in Art. 9 of the Executive Penal Code<sup>2</sup>. This institution enables the court to suspend the start of the sentence where the decision has become enforceable, and the prerequisites specified in the provisions of the Criminal Code of the Executive.

It should be noted that the court decides about postponing the sentence if the convicted hasn't started serving the sentence yet, hence before being sent to prison. On the other hand, when the convicted has been already sent to prison, postponing is being replaced by the institution of interruption<sup>3</sup> of the punishment. Therefore, in cases where the convicted is sent to prison after applying for postponement of the sentence and before its diagnosis, then the application is forwarded to the penitentiary court as a request for interruption of the punishment<sup>4</sup>.

---

<sup>1</sup> Act of 6 June 1997. Executive Penal Code, OJ No. 90, item 557.

<sup>2</sup> According to Art. 9 § 3 Executive Penal Code, a provision for enforcement proceedings becomes enforceable at the time of issue, unless otherwise provided by law or a court issuing the order or court responsible for hearing appeals suspend its execution.

<sup>3</sup> K. Postulski, [in:] Z. Hołda, K. Postulski, *Executive Penal Code. The Comment*, Gdansk 2007, p. 492.

<sup>4</sup> Order of 26 October 2011, Ref. Act II AKzw 1029–1011: “At the rear convict in prison legally unrecognized request for postponement of execution of the sentence should be treated as a request for a break in its serving”.

The submission of the postponing application does not hold the punishment execution, but according to 9 § 4 EPC, in particularly legitimated cases the court may decide otherwise<sup>5</sup>.

In practice a certain situation may happen that the convicted begins serving a sentence after the decision refusing to postpone the execution of the sentence, but before the court diagnosis of appeal against that decision. Then there is no reason to refuse to accept a complaint by the President of the Court of First Instance (art. 439 § 1 Code of Criminal Procedure<sup>6</sup> in connection with Art. 1 § 2 Executive Penal Code) (There is also no reason to leave such a complaint without consideration by the court of appeal (Art. 430 § 1 Code of Criminal Procedure in connection with Art. 1 § 2 Executive Penal Code), or abandon proceedings for the deferral (Art. 15 § 1 Executive Penal Code). The lodged appeal must in fact be essentially recognized and its validity should be assessed according to the situation existing at the moment of adjudication by a first instance court. The appeal court shall uphold a decision either in power, or if there is a basis for its repeal, will refer the matter back to the penitentiary court, treating it as a request for an interruption of the penalty execution<sup>7</sup>.

Analysis of the data presented in the table below leads to the conclusion that the number of those sentenced by the district courts to imprisonment, who have not been incarcerated in a penitentiary unit despite the passage of 14 days increases. Conversely, the percentage of convicts awaiting the sentence, for which the institution of postponement has been inflicted decreases, because in 2007 it hit 14.24%, while in 2012 12.89% only. We can also observe the decrease of the number of those convicted and sentenced by District Courts who haven't been placed in a penitentiary unit despite the passage of 14 days. The downward trend is also noticeable in the case of institutions of the deferral to this category of the convicted, in 2007 20.60% of those sentenced were granted postponement, while in 2012 14.64% only. Noteworthy is the fact that until 2009 there was a visible increase in the number of deferrals granted by both

---

<sup>5</sup> Order of 26 October 2011, Ref. Act II AKzw 1029-1011: "The submission of the first application for a postponement of the execution of imprisonment, as no application in enforcement proceedings, does not suspend the execution of the sentence under the law".

<sup>6</sup> Act of 6 June 1997., The Code of Criminal Procedure, OJ No. 89, item 555.

<sup>7</sup> K. Postulski, *Executive Penal Code. The Comment*, Warsaw 2012, p. 592.

Table. Persons sentenced to imprisonment but not sent to prison despite the passage of 14 days after the judgment comes into force in the years 2007–2012

Specification		2007	2008	2009	2010	2011	2012
Courts	Regional	1,979	1,960	2,097	2,078	2,112	2,412
		100 %	100%	100%	100%	100%	100%
	including the postponement of the sentence	282	359	326	366	298	311
		14.24%	18.32%	15.55%	17.60%	14.11%	12.89%
	District	67,735	67,904	69,852	67,999	69,376	64,946
		100 %	100%	100%	100%	100%	100%
	including the postponement of the sentence	13,955	14,255	15,003	14,366	9,987	9,509
		20.60%	21%	21.48%	21.13%	14.40%	14.64%

Source: Department of Statistics and Analysis of Justice.

district and regional courts. We can conclude that the problem of overcrowded prisons occurring until 2009 impacted prison policy.

The current Executive Penal Code, according to Art. 150 and 151 of the Executive Penal Code provides for mandatory or optional deferral of imprisonment.

Article 150 § 1 of the Executive Penal Code obliges the court to postpone the sentence of imprisonment in the case of:

1. mental illness or
2. other serious illness preventing execution of the penalty.

It should be noted, however, that the deferral institution does not apply in the case of any mental illness of the convicted, but only one that prevents the execution of the penalty. Only mental illness so severe that it renders understanding of the essence of the punishment and submitting to its educational influence<sup>8</sup> impossible is considered. According to the order of the Court of Appeal of 29 August 2001<sup>9</sup>, only mental illness that is a severe disease, preventing the convicted from serving the sentence is taken into consideration. This institution therefore does not apply to other, apart from the already mentioned, mental illness, it is not applicable in the case of mental disability or other disturbance of mental activities.

According to § 2 of the commented article, severe illness is considered as a state of the convicted, in which placement in a penal institution may endanger life or cause serious danger for his/her health.

“Serious illness” is not a term derived from the science of medicine. Whether the disease should be considered as “severe” within the meaning of the law, decides the current clinical condition of the patient only, not the name of the disease<sup>10</sup>. Examining the case for postponement of the sentence for the reason of severe illness, therefore, the court should assess whether and to what extent the convicted’s imprisonment may in-

---

<sup>8</sup> S. Lelental, *Executive Penal Code with the Jurisprudence*, Sopot 1999, p. 131.

<sup>9</sup> Orders of the Court of Appeal in Lublin from August 29, 2001, II AKz 395/01, OSA 2001/12/98.

<sup>10</sup> L. Przybylczak, J.T. Marcinkowski, *The interval in imprisonment penalty execution*, Problems of Forensic Science 1985, No. 8–9, p. 80 and further; K. Postulski, op. cit., p. 493.

crease the risk of deterioration or complications compared with the threat of the same or similar effects while at liberty<sup>11</sup>.

Analyzing the content of the commented article we can't avoid posing the question as to whether the term "serious illness" refers only to non-mental illness, or also to mental illness. It is noteworthy that the position on this matter is not the same both in doctrine and jurisprudence<sup>12</sup>. However, we must agree with the opinion of S. Lelental, that mental illness is always a prerequisite for mandatory deferral of imprisonment, while the other disease is the basis only if the disease is severe, i.e:

1. it may endanger the convicted's life or
2. cause serious danger for his/her health<sup>13</sup>.

Mental illness of the convicted as an obstacle to imprisonment lasts as long as the medical condition that prevents the rehabilitative impact of imprisonment on the convicted remains. Therefore, full recovery of the convicted is not necessary and it depends on the type and extent of disease and the structure of the personality of the convict<sup>14</sup>. "Therefore such a state is concerned with the way in which the basic activity of body systems and organs are disordered (central nervous system, respiratory system or circulatory system), which may cause inhibition or cessation of these organs' activity and consequently death at any time"<sup>15</sup>.

In agreement with Art. 193 § 1 Code of Criminal Procedure in connection with Art. 1 § 2 Executive Penal Code, to postpone the adjudication of imprisonment pursuant to Art. 150 Executive Penal Code must be preceded by the establishing of appropriate medical experts. In the case of serious illness, the experts should not only say that the convicted suffers from a disease, but also their opinion must include a statement that imprisonment may endanger his/her life or health<sup>16</sup>.

---

<sup>11</sup> K. Postulski, op. cit., p. 495.

<sup>12</sup> Order of 14 February 2001, the second AKz 496/00, OSA 2001/11/85, which states that included in Art. 150 § 1 k.k.w. the phrase "serious illness" refers also to mental illness.

<sup>13</sup> S. Lelental, *Executive Penal Code. The Comment*, Warsaw 2012, p. 634.

<sup>14</sup> M. Cieślak, [in:] M. Cieślak, K. Spett, A. Szymusik, *A Psychiatrist in a Criminal Trial*, Warsaw 1991, p. 103, by: S. Lelental, *Executive Penal Code...*, p. 635.

<sup>15</sup> Orders of SC from 30 August 1976, II KR 167/76 and 15 September 1983r., II KR 191/83.

<sup>16</sup> S. Lelental, *Executive Penal Code...*, p. 635.

Deferral of imprisonment under the commented article lasts until the “cessation of the obstacle”, that is, to achieve such an improvement in the convicted’s health that the basis for the mandatory application of the institution terminates. However, particularly important to note is that the court in its decision to postpone the sentence should still rely on the opinion of experts, indicate the date by which the deferral is expected to last, and to control the duration of the postponement, if any evidence to justify the postponement of punishment hasn’t dropped out<sup>17</sup>. I completely share the view of S. Lelental that if mental illness or the health condition of the convicted referring to Art. 150 § 2 Executive Penal Code is permanent, suspension or discontinuance of the executive proceedings in the part concerning the prison sentence should be taken into consideration<sup>18</sup>.

Conditions of optional deferral of imprisonment are indicated in Art. 151 § 1–2 EPC<sup>19</sup>. This regulation envisages the following circumstances, which provide the court with a basis for application of the deferral institution:

1. immediate execution of the sentence would lead the convicted or his family to experience too severe effects;
2. in relation to a pregnant woman and a convicted person taking care of the child alone, the court may postpone the execution of a sentence for a period of up to three years after the birth of the child;
3. if the number of inmates in prisons or custodial remand exceeds the total capacity of these institutions nationwide, the court may postpone the sentence of imprisonment for up to two years, with the proviso that the postponement is not granted to convicts who have committed a crime using violence or the threat of its use, the convicted defined in Article 64 § 1 or 2 of the Penal Code or Article 65 of the Penal Code, and sentenced for the offenses referred to Article 197–203 of the Penal Code committed in connection with disorders of sexual preferences.

---

<sup>17</sup> Ibid., p. 636.

<sup>18</sup> Ibid.

<sup>19</sup> Apart from the commented article Art. 336 § 1 the Criminal Code (Act of 6 June 1997. Penal Code, OJ No. 88, item 553) refers to the institution of the optional deferral, which provides that the court may postpone the execution of the conscript soldier imprisonment not exceeding 6 months’ time of completion of the service.

The first prerequisite of the optional deferral — if immediate execution of the sentence would lead the convicted or his family to experience too severe effects — includes the typical general clause. The doctrine indicates among others, the following factors leading to “too severe effects for the convicted person”<sup>20</sup>:

1. completion of treatment therapies;
2. passing important exams completing the course<sup>21</sup>;
3. arranging a very important property case<sup>22</sup>;
4. completing essential work for the convict<sup>23</sup>;
5. disease of the convicted, other than one specified in Art. 150 Code of Execution;

6. a chance occurrence, requiring urgent steps to eliminate its effects.

On the other hand to the circumstances that can cause “the convicted or his family too severe effects” include among others<sup>24</sup>:

1. illness of a family member who needs care, which can be provided by the convicted only;
2. leaving the family of the convicted destitute;
3. age or disability of family members of the convicted, with whom he/she resides, or take care of as the only person;

<sup>20</sup> S. Lelental, *Executive Penal Code. Commentary*, Warsaw 2010, p. 599.

<sup>21</sup> Order of the Court of Appeal in Wroclaw on 13 October 2004, II Akzw 837/04 inability to continue their education may be considered as a “severe effect” within the meaning of Art. 151 § 1 Executive Penal Code, only if the immediate enforcement of the sentence interrupts education, the end of which the fragment or separate (class, semester) is non-existent. Otherwise, however, you must assess the situation, in which the convicted takes further education in the course of criminal proceedings, and the deadline for completion of education far exceeds the period for which the application of Art. 151 § 3 Code of Execution it is possible to defer the execution of the sentence”.

<sup>22</sup> According to the decision of 15 December 2010, Ref. Act II AKzw 845/10, the possible inability to repay credit obligations due to the start of serving the insulation sentence by the convicted is not a sufficient reason to postpone the execution of the penalty.

<sup>23</sup> Order of the Court of Appeal in Krakow on 21 September 2000. II AKz 344/00 KZS 2000/9/44 “difficulties with the farm does not justify termination (deferral) of imprisonment. A farm is a type of economic establishment, which can be carried out by persons hired or refrain from carrying it when you do not have it all possible”.

<sup>24</sup> See. S. Lelental, *Executive Penal Code...*, Warsaw 2010, p. 599; K. Postulski, *Optional postponement of execution of a sentence of imprisonment*, Palestra 5–6, Warsaw 2013, p. 56; pp. 157–158.

4. efforts of the convicted for leaving children under proper care, or to place an ill family member in the hospital.

However, it should be noted that the Court of Appeal in Lublin<sup>25</sup> was correct in pointing out that “imprisonment always causes some negative consequences for the family of the convicted person. But we cannot forget that these are the natural implications of isolation in prison. A person committing a crime must be cognizant with the fact that he/she will have to bear adequate punishment prescribed by law, which can be a big problem for all, including family members”.

In relation to the convicted, a pregnant woman as well as a single parent, the court may postpone the execution of a sentence of up to three years after birth. Deferral to that category of convicts is optional. There is no need, however, to demonstrate that the immediate execution of the sentence of the convicted would lead to too severe consequences. The situation is different in the case of postponement of the sentence of imprisonment on a person who personally takes care of a child up to 3 years after birth (which may be a different person than the mother). The prerequisite for applying this regulation is the fact that the convicted person takes care of a child and the clear decision that imprisonment of the convicted will lead to serious consequences to a child and other members of the family. Therefore, the main requirement is to determine that no one else but that person is able to provide the child with such care<sup>26</sup>.

It should be, however, taken into account that in the matter of the examination of the case on the postponement of imprisonment, the court must consider the ability to place the convicted to prison with a hospital, maternity ward or organized home for mother and child, referred to art. 87 § 4 EPC.

Not only the mother, but also another person may therefore benefit the possibility of optional deferral. The prerequisite for applying this regulation is the fact that a convicted person takes care of a child and a clear decision that imprisonment of the convicted will lead to serious consequences for a child and other members of the family<sup>27</sup>.

<sup>25</sup> Order of Court of Appeal in Lublin, 12 December 2007, II AKzw 939/07.

<sup>26</sup> K. Postulski, *Optional postponement of execution of a sentence of imprisonment...*, pp. 59–60.

<sup>27</sup> K. Postulski, *Executive Penal Code...*, p. 606.

The basis for determining the existence of reasons justifying granting of the reprieve upon Art. 151 § 1 EPC is the evidence presented to the court by the convicted person, information regarding the convicted person present in the file of the case (Art. 11 of the EPC) as well as the information gathered during background interviews<sup>28</sup>.

Another prerequisite is prison overcrowding. On 31st of July 2014 in prisons and custodial remand, in residential units across the whole country there were 76,343 prisoners, and in others (infirmaries, isolation cells, cells and departments for “N”, hospitals, homes for the mother and child, temporary housing units for the convicted) there were 1,892 prisoners. The population in residential units is 92%, which means that according to the Regulation of the Minister of Justice on 25 November 2009 concerning the procedures of competent authorities in cases where the number of inmates in prisons and custodial remands exceeds total capacity of these institutions<sup>29</sup>, formally, the phenomenon of overcrowding has not occurred.

Paragraph 2.1 of the regulation states that when the number of inmates in prisons or custodial remands and their subordinate units exceeds the scale of the overall capacity of these plants, the CEO of the SW within 7 days from the day it exceeds capacity, presents the situation to the Minister of Justice, SW regional directors and directors institutions. In compliance with the content of § 2.3, the Minister of Justice shall immediately forward the information to the Minister responsible for internal affairs, the Minister of National Defense and the Prosecutor General, as well as the presidents of courts of appeal and the military district courts, appellate prosecutors and military district prosecutors. Whereas § 5 states that the President of the Court of Appeal immediately after receiving the information, shall forward it to the presidents of regional and

---

<sup>28</sup> See S. Leleń, *Executive Penal Code...*, Warsaw 2012, p. 639.

<sup>29</sup> Regulation of the Minister of Justice on 25 November 2009. On the procedure of the competent authorities in the event that the number of inmates in prisons or detention centers in the country exceeds the total capacity of these plants (Journal of Laws 202.1564), as amended by Regulation of the Minister of Justice of 29 November 2013. Amending the Regulation on the procedure of the competent authorities in the case, when the number of inmates in prisons or detention centers in the country exceeds the total capacity of these plants, OJ pos. 1523.

district courts in the area of operation of the appellate court, the president of the regional military court — respectively to the presidents of regional garrison military courts, while the appellate prosecutor and the regional military prosecutor — to their subordinate prosecution units.

In accordance with § 6 of this regulation, after receipt of the information the president of the competent court shall immediately order:

1. an examination of all cases in which those convicted to a term of imprisonment and have not started it yet, to determine the admissibility of the postponement of the penalty execution;

2. taking specific action leading to bring for a session cases in which postponement of the penalty execution is acceptable to consider issuing the order upon art. 151 § 2 EPC;

3. examining cases referred to art. 79 § 1 EPC to determine the summoning order of the convicted to appear in prison in the prescribed period;

4. other organizational activities aimed to take advantage of the court's powers under the provisions of the Executive Penal Code.

Deferral period of imprisonment shall start from the date of decision and the request of the convicted for a deferral subject to a fee of 80 PLN in accordance with Art. 15 paragraph 1, item 1 of the Law on criminal charges<sup>30</sup>.

In case of deferred punishment whose judgment has been sent to execution § 361 paragraph 4 of office work rules of the common courts of law<sup>31</sup> is applied, which provides that in such a situation the president of the court or an authorized judge shall immediately send a copy of the decision to postpone the execution of the sentence to the appropriate prison or remand prison and inform the police unit which was instructed to bring the convicted person.

According to Art. 151 § 3 Executive Penal Code, a postponement may be granted on several occasions, but the total deferral period may not exceed one year, or three years if the convicted is a pregnant woman or a person taking care of a child alone.

Delaying the sentence of imprisonment, the court may oblige the convicted person to find paid employment, to report to designated police

---

<sup>30</sup> The Act of 23 June 1973. On charges in criminal matters, OJ No. 27, pos. 152, as amended.

<sup>31</sup> K. Postulski, *Executive Penal Code...*, p. 503.

unit at specified periods of time or to undergo appropriate treatment or rehabilitation, therapeutic interaction or participation in corrective and educational programs (Art. 151 § 4 Executive Penal Code).

Implementing the decision to postpone a sentence of imprisonment in relation to a convicted person who was obliged to fulfill the obligations specified in the preceding paragraph, the court shall apply respectively art. 14 of Executive Penal Code (151 § 5 of the Penal Code)<sup>32</sup>, and the interview on the basis of this article, should give the answer to all the questions that relate to the existence of circumstances justifying the granting of the deferred penalty execution<sup>33</sup>.

According to Article 152 of the Executive Penal Code, if the postponement of the sentence not exceeding two years imprisonment has lasted for at least one year — the court may conditionally suspend execution of the sentence under the terms of Art. 69–75 of the Criminal Code. The application for a conditional suspension of imprisonment may be also submitted by a professional judicial probation officer. The decision regarding the conditional suspension of sentence may be appealed by a public prosecutor, the convicted, defender, as well as judicial professional probation officer if a request is submitted for an order have the right to attend the session.

In this context, we cannot ignore the view expressed in its resolution of 25 February 2009<sup>34</sup>, according to which the total period of deferment of imprisonment, creates the opportunity to apply for a conditional suspension of imprisonment under Art. 152 EPC. the period between the

---

<sup>32</sup> Article 14 § 1 of the Executive Penal Code provides that, in proceedings for enforcement, an authority may order the enforcement proceedings to collect information on the convicted person. The authority referred to in Art. 2 points 1–5 Executive Penal Code executing a judgment (court of first instance, court or other equivalent, penitentiary court, the president of the court or an authorized judge, the penitentiary, the director of the prison detention center, as well as the District Director and the Director-General of the Prison Service or the person in charge of another undertaking provided for in the criminal law of the Executive committee and the penitentiary) may also order to collect information on convicted by a community interview conducted by a probation officer. In the event of reasonable doubt as to the identity of the convicted person, the executing authority may request the judgment of his identity by the police.

<sup>33</sup> K. Postulski, *Executive Penal Code...*, p. 503.

<sup>34</sup> Resolution of SC dated from 25 February 2009, I KZP 32/08.

date of completion of the earlier granted deferral and the date of the next order for the postponement shall be counted only if the request for a further postponement was made before the completion of earlier granted deferral, but the total deferral period may not exceed one year, unless the convicted is a pregnant woman or in a period of 3 years after the birth or taking care of a child.

This standpoint is also expressed in the resolution of the Supreme Court in 2008, which states that the term of granted postponement of the sentence of imprisonment upon Art. 151 EPC. shall start from the date of the order in the subject matter of (Art. 151 § 2 of the Code of Execution), unless the convicted or his defender submits another request before the end of the period indicated in that decision, and the court approves it, it is continued until the date indicated in the final decision on the matter, while it cannot exceed one year in accordance with Art. 151 § 3 EPC. For the aggregation of the individual periods of deferrals of sentence, regardless of the time between the end of the previously adjudicated postponement and the date of the next order of prolonged deferral, occurs only when the convicted or his defender submits a further application after the expiry of the period specified in the earlier decision to postpone it and the court takes this into account. On the other hand, for the purposes of Art. 152 EPC. Postponement of imprisonment must be understood and applied as is defined in Art. 151 of the Executive Penal Code. It also concerns the method of calculating all periods of deferral, therefore if the total period of deferral granted on the basis of Art. 151 § 3 EPC lasted one calendar year at least counted from the date of the first order for the postponement, it creates the opportunity to apply for conditional suspension of a sentence that does not exceed two years' imprisonment<sup>35</sup>.

The public prosecutor, the convicted, and his defender, and judicial professional probation officer or director of the penitentiary, if submitting a request for an order, have the right to attend the session on the postponement matter (Art. 153 a EPC).

The conditions of appeal of imprisonment postponement are defined in Art. 156 Code of Execution. According to § 1 of this Article,

---

<sup>35</sup> Resolution of SC dated from 30 June 2008, I KZP 15/08.

postponement of sentence of imprisonment, may be dismissed by the court in case of:

1. the removal of the cause for which it was granted,
2. if the convicted does not use the postponement for the purpose it was granted,
3. significant infringement of the law,
4. failure to comply with obligations determined in Art. 151 § 4.

According to § 3 of the commented regulation, the competent court may dismiss the postponement of imprisonment sentence if the circumstances mentioned in § 1 occur after the prisoner receives a written warning from a professional probation officer, unless special arguments appeal against.

In accordance with § 5, if at the time of the postponement of imprisonment the convicted was remanded in custody, the court shall immediately forward the decision to carry it out.

It must be noted that according to art. 156 § 1 EPL, dismissal of deferral is optional. It is, however, worth adding that § 3 of the regulation anticipates mandatory demission of deferral if the conditions for cancellation of deferral will occur after giving a written warning by the professional probation officer. As shown by K. Postulski<sup>36</sup>, the commented article's point is reduced to the fact that in the case where, despite the existence of the conditions defined in art. 156 § 1 Executive Penal Code, the probation officer does not apply for a postponement appeal, and is satisfied with giving the convicted a warning and admonishing only, and the decision has not been challenged by the court, only not following the rigors which are the results of the granted deferral by the convicted, means that the probation officer is demanded to apply, and such an appeal becomes obligatory.

It is important that the conditions for cancellation of postponing the sentence of imprisonment must exist and should appear in the period of deferment. However, if in the period of the postponement new circumstances occur, which are unknown to the court, which exist at the time of granting a deferral rule and could cause a refusal to grant a deferral,

---

<sup>36</sup> K. Postulski, *The appeal postponement or suspension of execution of sentence of imprisonment*, Palestra 5–6, Warsaw 2014, p. 13.

the legal basis of the provisions of repealing or amending the decision is Art. 24 § 1 Executive Penal Code<sup>37</sup>.

It should also be pointed out that, in accordance with the content of Article 336 § 1 of the Penal Code, the court may postpone the conscript soldier's imprisonment not exceeding six months until completion of service. According to Art. 336 § 3–5 of the Penal Code, the court, after hearing the opinion of the commander of the unit, may release the convicted soldier from the punishment, if the deferral period lasted at least 6 months, and a soldier distinguished himself in the performance of his official duties or showed courage or particularly important reasons supporting exemption may be decided in spite of the shorter deferral period. Exemption from punishment entails the spent conviction under the law.

It should be mentioned that postponement of imprisonment under the commented article is the institution of executive criminal law and substantive criminal law, as the postponement of the sentence may be ordered in the judgment<sup>38</sup>. Therefore it is a derogation from the principle expressed in Art. 9 § 2 Executive Penal Code, that the legitimacy judgment is necessary to postpone the execution of the sentence<sup>39</sup>.

The institution of deferral allows for a unique withdrawal from the principle of promptly initiated enforcement proceedings. Therefore, the conditions of its use should not be interpreted broadly.

According to the order of the Court of Appeal in Krakow<sup>40</sup>, “postponement of execution of a sentence, including a pause in the penalty or postponing its execution without sufficiently serious reasons, is contradictory to the adjudication of the case without undue delay (Art. 45, paragraph. 1 of the Constitution<sup>41</sup>) or consider within a reasonable time (Art. 6 of paragraph 1 of the Convention for the Protection of human

---

<sup>37</sup> Zob. K. Postulski, [in:] Z. Hołda, K. Postulski, *Executive Penal Code, Comment*, Gdansk 1998, p. 347.

<sup>38</sup> Order of SC dated from 10 June 1986, N 15/86, OSNKW 1986, No. 3–4, item 28.

<sup>39</sup> K. Postulski, *Optional referral of...*, p. 63.

<sup>40</sup> Resolution of the Court of Appeal in Krakow from 20 October 2004, AKzw 688/04, KZS 2004/11/20.

<sup>41</sup> Polish Constitution of 2 April 1997. Passed by the National Assembly on 2 April 1997, Adopted by the Nation in the constitutional referendum on 25 May 1997, Signed by the President of the Polish Republic on 16 July 1997, Journal of Laws No. 78 item 483.

Rights and fundamental Freedoms<sup>42</sup>) and with the duty of immediate execution of the judgment (Art. 9 § 1 Executive Penal Code). Although in line with temporary wishes of the convicted, a procrastination penalty becomes after some years an abstract ailment and is experienced by the convict and her/his family more as harm than as a reward for hurting another person”.

### Summary

Deferral of an imprisonment sentence is the institution of Criminal Executive Law, which is an exception to the principle of immediate penalty execution mentioned in Art. 9 of the Executive Penal Code. The institution of deferral allows for a unique withdrawal from the principle, promptly initiating enforcement proceedings. Therefore, the conditions of its use should not be interpreted broadly.

**Keywords:** deferral of the imprisonment sentence, imprisonment sentence, imprisonment sentence execution, the convicted.

---

<sup>42</sup> Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950. As amended by the Protocols then 3, 5 and 8, and supplemented by Protocol No. 2, OJ 1993 No. 61, item. 284.