DISQUALIFICATION FROM DRIVING VEHICLES IN THE PETTY OFFENCES LAW IN POLAND

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Abstract: *The article presents, in a comprehensive manner, the current model of the disqualification from driving vehicles (driving ban) in the petty offences law. Using historical references, the author discusses regulations adopted in this regard, taking account of the doubts arising as to the interpretation of certain aspects of the functioning of the ban. Indicating areas which in the author's opinion prove that the driving ban's current formulation is flawed, she signals the need for further amendments, which would lead to the establishment of more rational normative solutions.*

Keywords: *driving ban, disqualification from driving vehicles, petty offences law, penal measure*

1. INTRODUCTION

Disqualification from driving vehicles (hereinafter also referred to as "driving ban") as a criminal justice response measure appeared for the first time in the Petty Offences Code of 1971.[2] In the period preceding the entry into force of the Petty Offences Code, deprivation of the right to drive a vehicle in connection with the commitment of a traffic offence could only be imposed in an administrative mode and was confined to revocation of the driving licence in the instances specified in various legal provisions.[3] It should be stressed that since the Petty Offences Code has been in force, the regulation of this penal measure has undergone numerous changes. In its original version article 29 (1) of the Petty Offences Code provided that: "the penalty of disqualification from driving a motor vehicle shall be meted out in months or years, for the period of between three months and two years". The usage of the term 'penalty' stemmed from the division of penalties in the Petty Offences Code into principal penalties (article 18 of the Petty Offences Code) and additional penalties (article 28 of the Petty Offences Code). The division was finally abolished by the Act on Amendment of the statute – Petty Offences Code, statute – Petty Offences Procedure Code, statute – an Act on the system of Petty Offences Boards, statute – Labour Code and on Amendments to Certain Other Acts of 28 August 1998,[4] which introduced a new notion of penal measures in article 28 of the Petty Offences Code. Under the Road Traffic Act of 1 February 1983,[5] section 3 was added to article 29 of the Petty Offences Code, pursuant

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[2] Dz.U. (Journal of Laws) No. 12, item 114.

[3] For example, in the Public Roads Safety and Order Act of 27 November 1961 [Article 20 (3) and 20 (4)], Dz.U. (Journal of Laws) No. 53, item 295, as amended). See more: STEFAŃSKI, R. A. *Zakaz prowadzenia pojazdów*. Warsaw: Państwowe Wydawnictwo Naukowe, 1990, pp. 18–20.

[4] Dz.U. (Journal of Laws) No. 113, item 717.

[5] Dz.U. (Journal of Laws) No. 6, item 35, as amended, repealed by a later statute: Road Traffic Act of 20 June 1997, consolidated text, Dz. U. (Journal of Laws) of 2020, item 110, as amended.

to which the period of seizure of a driving licence was credited towards the additional penalty of disqualification from driving motor vehicles. Initially, this ban applied only to motor vehicles. This unfortunate oversight has not been eliminated until the Act on Amendment of Certain Provisions of Criminal Law and Petty Offences Law of 10 May 1985,[6] under which the legal form of the penalty was re-shaped into "disqualification from driving motor or other vehicles (article 28 (1) (2) of the Petty Offences Code). The same statute has also extended the period for which the ban could be imposed to 3 years. Finally, under the already mentioned amendment of 28 August 1998 further modifications in the substance of this penal measure were made. In essence, these modifications included adopting a slightly altered terminology, imposing on the court an obligation to specify the type of vehicle covered by the ban, connecting the former more closely with an obligation to surrender the document authorising to drive (unless such document had been withdrawn previously) and making the running of the ban's period contingent on the fulfilment of this obligation. Although the amendment was intended to reflect the modifications made to the Criminal Code of 1997, the legislator did not follow the said changes closely. The above-mentioned regulations were confined primarily to the specification of the existing normative shape of the ban and, contrary to expectations, did not lead to its substantial remodelling. It is no different with the latest amendment introduced to article 29 of the Petty Offences Code,[7] which eliminates the obligation of the driver to surrender the driving licence to the authorities in the instances where the court imposes the driving ban and changes the way how the running of the ban's period is assessed.

2. LEGAL NATURE OF THE DRIVING BAN

As a result of the amendment of 28 August 1998 the driving ban was classified in the category of penal measures (article 28 (1) (1) of the Petty Offences Code) which, as was mentioned previously, replaced former additional penalties. Such legislative activities seem to only confirm that the substance of this measure did not undergo any significant change compared to its previous legal regulation. Currently, just as before, it can accompany the penalty or act as a criminal-law response equivalent thereto. The latter occurs only when the court refrains from imposing the penalty in cases specified by law (article 39 of the Petty Offences Code). However, as the statutory regulation of this penal measure is limited, autonomous imposition of the driving ban in connection with traffic offences remains a rather theoretical option and has no considerable practical relevance, which raises some legitimate concerns. After all, it is a burdensome, highly preventive measure, which makes it suitable to serve as an independent criminal justice response.[8] To open up the possibilities of autonomous imposition of the driving ban, the

[6] Dz.U. (Journal of Laws) No. 23, item 100.

[7] Pursuant to Article 2 of the Statute of 14 August 2020 on the Amendment of the statute – Road Traffic Act and on Amendment of certain other acts (Dz. U. (Journal of Laws) of 2020, item 1517) the second and third sentence in article 29 (3) of the Petty Offences Code were repealed.

[8] On the subject of establishment of separate and much broader grounds for autonomous imposition of penal measures in the future Petty Offences Code – see: SZUMSKI, J. *Środki penalne w polskim prawie wykroczeń na tle doświadczeń praktyki*. Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, 1995, p. 192.

Petty Offences Code could adopt mechanisms provided for in article 59 or article 60 (7) of the Criminal Code.

The Petty Offences Code does not depart from the uniform legal formula of the driving ban. It does not create separate grounds for the ban's imposition. The primary determinant of its position in the Petty Offences Code is the provision placing it in the catalogue of penal measures (article 28 (1) (1) of the Petty Offences Code). Unfortunately, there is still no possibility to apply the driving ban as the so-called administrative preventive measure, when the offender is in a state of non-accountability (insanity) *tempore criminis*. It is worth adding that a similar regulation has been in operation for many years in the criminal law *sensu stricto* (article 99 (1) of the Criminal Code) and it seems that there are no obstacles to transpose this regulation in an analogous form to the Petty Offences Code. In terms of substance and scope of obligations, the ban imposed pursuant to this new legal basis would not have to depart too much from its penal measure counterpart. The difference between the two would lie not so much in the threat presented by the offender to the traffic safety (or even more broadly, to the legal order) as in the determination whether at the moment of the offence, the offender was in a state of non-accountability or not.

3. MATERIAL SCOPE OF THE DRIVING BAN

Similarly, the fact that the lengthy name was abandoned and replaced with a more compact term "disqualification from driving vehicles" does not make any significant contribution to the case. This change merely brought to an end the already outdated discussions on whether it is a single measure with two different forms or two separate measures, i.e. disqualification from driving motor vehicles and disqualification from driving non-motor vehicles.[9] Simultaneously, to avoid further confusion, an obligation to specify in each court ruling the type of vehicle to which the ban applies has been introduced (article 29 (2) of the Petty Offences Code); as sticking to the literal meaning of the name could suggest that a combined ban should always be imposed. Previously, the problem of incompatibility between the material scope of the ban and the traffic petty offence committed was also not rare. The guidelines formulated in this regard by case law and legal scholars and commentators have been repeatedly ignored and almost automatic application of the provisions of the statute occurred.[10] At the same time, lower *in genere* level of the social consequences of traffic petty offences is in clear opposition to the disqualification of those who commit them from driving all types of vehicles in all traffic zones. And the imposition of the requirement to specify the material scope of the ban clearly stops its snowball effect.[11] Given the current formulation there is no longer any doubt that the court has to specify, in each case, the material scope of the driving ban; and although the possibilities of shap-

[9] KULESZA, J. Aktualne problemy wymiaru kar dodatkowych utraty praw. *Palestra*. 1987, No. 10-11, p. 190; STEFAŃSKI, R. A. Kara dodatkowa zakazu prowadzenia pojazdów mechanicznych na tle noweli do kodeksu karnego i kodeksu wykroczeń. *Nowe Prawo*. 1985, No. 11-12, pp. 57–58.

[10] Guidelines of the Supreme Court of 28 February 1975, File No. V KZP 2/74. *Orzecznictwo Sądu Najwyższego Izba Karna i Izba Wojskowa*. 1975, No. 3-4, Item 33; STEFAŃSKI, R. A. *Zakaz prowadzenia pojazdów*. pp. 42–45.

[11] BACHRACH, A. Nowe wytyczne Sądu Najwyższego w sprawach o przestępstwa drogowe (dyrektywy wymiaru kary). *Państwo i Prawo*. 1976, No. 5, p. 58.

ing the ban are broad, they are not entirely arbitrary. The decisive factor should be its preventive function. The imposition of the driving ban should serve to eliminate from traffic those drivers who, due to their having committed a petty offence, do not ensure safe participation therein. Hence, it is crucial to determine to what extent driving a vehicle by such person would endanger road safety. The extent of the threat to road safety can be assessed on the basis of the nature of the traffic petty offence committed. Ultimately, the nature of the offence will indicate whether the threat is only posed while driving one type of vehicle or multiple types of vehicles, in one or in many traffic zones (pursuant to the rule: the greater the threat, the broader the scope of the ban). What is more, the preventive function mentioned above requires that the discussed ban should cover in the first place the vehicle which the offender was driving while committing a traffic petty offence.[12] Although it has been observed in the existing literature that the obligation to determine the traffic zone to which the ban should apply does not follow directly from the regulation of article 29 (2) of the Petty Offences Code, it should still be noted that a vast majority of traffic petty offences can only be committed in road traffic (an exception to this is article 87 (1) of the Petty Offences Code). If we wish to attribute the features of a purposive retributory measure to the ban, then this goal should not be overlooked by the adjudicating bodies. It is also worth adding that the obligation to specify the type of vehicle can be fulfilled both in the "positive" form, i.e. by specifying the type or types of vehicles covered by the ban, as well as in the "negative" form, i.e. by excluding certain types of vehicles from the scope of the ban.[13] More or less broad criteria can be used to specify particular types of vehicles, and the choice of said criteria is in the sole competence of the court. Yet, the way in which the material scope is determined is of secondary importance. It is vital, though, to ensure that the ban explicitly states the types of entitlements which it covers.

To conclude the issue of the material scope of the ban it should be finally stressed that the provisions regulating the substance, grounds and execution of this penal measure indicate that it cannot apply to vehicles for which a driving licence (issued by a competent authority) is not required.[14] As a result, it is not permissible to impose on a person who is over 18 years old disqualification from driving a moped, bicycle or an animal-powered vehicle, since pursuant to article 87 (3) (1) of the Road Traffic Act there is no requirement that such person should possess a relevant permit or licence to drive these vehicles. It is however possible to disqualify from driving said vehicles a person

[12] ŁUCARZ, K. Zakres przedmiotowy zakazu prowadzenia pojazdów. *Wojskowy Przegląd Prawniczy*. 2006, No. 2, p. 19; STEFAŃSKI, R. A. Commentary on the Supreme Court judgement of 1 June 1995 – II KRN 54/95. *Wojskowy Przegląd Prawniczy*. 1995, No. 3-4, pp. 101–104.

[13] *Judgement of 16 June 1994, File No. II KRN 101/94, Orzecznictwo Sądu Najwyższego Izba Karna i Izba Wojskowa*. 1994, No. 7-8, item 45 with the commentary of STEFAŃSKI, R. A. *Wojskowy Przegląd Prawniczy*. 1995, No. 1, pp. 88–92.

[14] Cf. inter alia: HERZOG, A. Zakaz prowadzenia rowerów, motorowerów i pojazdów zaprzęgowych. *Prokuratura i Prawo*. 2002, No. 5, p. 129; STEFAŃSKI, R. A. Zakres przedmiotowy zakazu prowadzenia pojazdów. *Prokuratura i Prawo*. 1999, No. 11-12, p. 145; SIENKIEWICZ, Z. Commentary on the Supreme Court resolution of 26 October 2002– KZP 20/2. *Przegląd Sądowy*. 2003, No. 10, pp. 148–149; ŁUCARZ, K. *Zakaz prowadzenia pojazdów jako środek polityki kryminalnej*. Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 2005, pp. 203–207.

who has not attained the age of 18 (as such persons should hold a valid permit or licence authorising them to drive these vehicles), both under liability regime regulated by the Petty Offences Code and applicable to persons who are over 17 years old, as well as in case of application of the measure provided for in article 6 (7) of the Proceedings in Juvenile Cases Act of 26 October 1982.[15] Undoubtedly, due to this state of affairs, the entire judicial practice is faced with a difficult task. When a sentence is imposed for an offence under article 87 (1a) or article 87 (2) of the Petty Offences Code, a dilemma arises with regard to which types of non-motor vehicles should be covered by the material scope of the ban. It seems that only a normative amendment eliminating the inconsistencies between the provisions of the petty offences law and the Road Traffic Act could solve this problem.

4. MODE OF ADJUDICATION OF THE DRIVING BAN

The legal grounds for the imposition of the driving ban remained almost unchanged under the revised state of the law.[16] The legislators once again failed to specify universal conditions for its application. Instead, they only provided general rules for imposing the ban, and in the remaining scope reference to the special part of the Petty Offences Code was made, i.e. Chapter XI in which Offences against Safety and Order in Traffic were classified. To reconstruct the conditions for the imposition of the ban it is necessary to refer to the provision which regulates a particular petty offence. Given the above, it can be observed that the scope of grounds whereunder the driving ban can be imposed was regulated quite casuistically. In addition, it is also limited by article 28 (2) of the Petty Offences Code, pursuant to which penal measures can only be applied if they are provided for by a special provision. This rule, typical of petty offences law, determines that the driving ban cannot be applied freely, that is, in case of every traffic petty offence. Lack of a special provision allowing the court to impose the driving ban is equivalent to the prohibition of its imposition, and the question of purposefulness is of limited relevance in this case.[17] The existence of the principle of specificity of penal measures in petty offences law has usually been justified by procedural guarantees considerations, namely the protection of the offender from the undue interference of the deciding authority. In order to minimize the risk of over-instrumental approach, the legislators, using their own judgement, indicated those petty offences which, due to their nature and importance or the need to act as a deterrent for the offender, require application of such measures.[18] Nonetheless, this argu-

[15] Consolidated text, Dz.U. (Journal of Laws) of 2018 Item 969.

[16] Under the Act on Amendment of the statute- Code of Criminal Procedure and Certain Other Acts of 27 September 2013 (Dz.U. [Journal of Laws] of 2013, Item 1247, as amended) the offence regulated in article 178a (2) of the Criminal Code has been reclassified as a petty offence governed by article 87 (1) of the Petty Offences Code, effective from 9 November 2013.

[17] See: *judgement of the Supreme Court of 28 August 2002, File No. WK 28/02. Orzecznictwo Sądu Najwyższego Izba Karna i Izba Wojskowa*. 2002, No. 11-12, Item 108.

[18] EGIERSKA, D., SMERCZAŃSKI, J. Projekt prawa o wykroczeniach. *Nowe Prawo*. 1969, No. 4, p. 528; TOMCZYK, W. Kary dodatkowe w projekcie prawa o wykroczeniach. *Zagadnienia Karno-Administracyjne*. 1969, No. 3-4, p. 68.

ment seems to be losing its relevance.[19] The foregoing solution might have been justifiable when decisions in petty offences cases were rendered by dedicated petty offences boards, which indeed frequently failed to observe the procedural rights and guarantees provided for in the statute. However, after court jurisdiction in petty offences cases was granted in 2001, retention of that solution in an unchanged shape proves legislators' lack of trust in the judicial branch which, due to its professionalism and autonomy, should enjoy a little more respect from the legislative bodies. Thus, it would be advisable to lift the above-mentioned restriction and, following the example of the Criminal Code, introduce in article 29 of the Petty Offences Code a general normative basis granting the right to impose a driving ban each time the court deems it necessary and appropriate.

For the time being we have to stick to the current code formulation which limits the application of this penal measure to only several most serious traffic petty offences. It is worth reminding that the principle of specificity of penal measures determines also the mode of their imposition. Discretionary application of penal measures is a rule, and mandatory application is used only when a special provision expressly provides for that. Consequently, imposition of the driving ban is optional against a person having committed a petty offence under article 86 (1) of the Petty Offences Code (causing endangerment in road traffic), article 87 (1) of the Petty Offences Code (driving a vehicle other than motor vehicle in a state of insobriety), article 86 b (3) of the Petty Offences Code (failure to give way to a pedestrian), article 87 (2) of the Petty Offences Code (driving a vehicle other than motor vehicle under the influence of alcohol, or other substance having similar effect), article 92 (2) of the Petty Offences Code (failure to stop at the signal of an authorized road traffic controller), and article 94 (1) of the Petty Offences Code (driving a vehicle without the required licence). Whereas mandatorily, the ban has to be imposed on the perpetrator of a petty offence under article 87 (1) of the Petty Offences Code (driving a motor vehicle under the influence of alcohol, or other substance having similar effect) and article 93 (1) of the Petty Offences Code (failure to offer first aid and assistance to the victim of an accident). As should be rightly observed, in the current state of the law the driving ban is regulated mainly as a discretionary penal measure – the Petty Offences Code provides that it is possible (optional) to impose the ban in case of five out of total seven grounds for its imposition, and only in case of two grounds makes it mandatory. Since there is no general rule determining the usage of either of the above-mentioned modes, it may be assumed that the gravity of the traffic petty offence played a key role in this regulation.[20] Nevertheless, it seems that the legislator was rather sceptical about the mandatory mode of the driving ban, which prompts questions about this mode's continued existence. It is worth

[19] The case concerning the extension of grounds for the arrest and, as a result of that, revocation of the driving licence by the Head of the District (starosta), can serve as a proof of how misguided the current regulation is in this regard (it concerns the Act on Amendment of the statute- Criminal Code and Certain Other Acts of 20 March 2015 (Dz.U. [Journal of Laws] of 2015, Item 541, as amended). Without getting into details of the adopted regulations, it should be stressed that this way the legislators compensated themselves for no possibility to impose the ban for the petty offences set forth in article 92a and article 97 of the Petty Offences Code.

[20] STEFAŃSKI, R. A. Kara dodatkowa zakazu prowadzenia pojazdów w prawie wykroczeń. In: T. Bojarski – M. Mozgawa – J. Szumski (eds.). *Rozwój polskiego prawa wykroczeń*. Lublin: Lubelskie Towarzystwo Wydawnicze, 1996, p. 65.

recalling that mandatory nature, excluding any decision on merits, reduces the court's role to a tool automatically recording the conviction. The assessment of purposiveness of the penal measure is taken away from the court, and the measure itself is diminishing in importance.[21] Driving ban has numerous advantages, but only when full individualization is guaranteed, also in respect of the circumstances mandating its imposition, which usually occur with varying degrees of intensity.[22] It seems that the legislators notice that too, since for committing a petty offence under article 87 (1a) and article 87 (2) of the Petty Offences Code they reserve a possibility, not an obligation, to order the driving ban. They sense that the policy of punishment based on stringent assessment criteria can lead to unjust decisions. The mandatory mode of the ban's imposition is not even reconciled by article 39 (2) of the Petty Offences Code, pursuant to which it is possible to refrain from imposing a mandatory penal measure. Mainly, because one of the conditions for the application of this provision is simultaneous granting of absolute discharge. Hence, it is not permitted to make the same decision solely with regard to the mandatory penal measure (without granting absolute discharge). And the latter could prevent routine application of the driving ban when there is no need for as severe treatment of perpetrators of traffic petty offences, as the statute provides. Although this may not be apparent, the abandonment of the mandatory mode of the ban does not necessarily mean refraining from applying it on a larger scale. It is rightly stressed that every time a person driving a vehicle is punished for a traffic petty offence, it is a good "starting point" to consider the purposiveness of ordering the ban. To verify whether the offender should be permitted to continue to participate in the traffic as a driver, it is necessary to assess the threat posed by that person to traffic safety. Therefore, non-imposition of the discretionary driving ban should be based on the conviction of the decision-making authority that the offender will not constitute a threat to the traffic safety in the future.[23]

5. PERSONAL SCOPE OF THE DRIVING BAN

The grounds for imposition of the driving ban cited above clearly limit its personal scope. It follows therefrom that this measure can only be imposed on a person who drives a motor vehicle or other type of vehicle at the time of the offence. Without repeating commonly presented views on this topic, it primarily denotes a person who performs any type of activities directly connected with the movement of a given vehicle.[24] The person driving the vehicle is both the one who sets the vehicle in motion using his or her own body movement, as well as the one who is authorized to give binding instructions concerning vehicle's direction and speed to the vehicle personnel.[25] Obviously, driving a vehicle refers to

[21] PŁAWSKI, S. Zagadnienie kar dodatkowych i prawnych skutków skazania. *Nowe Prawo*. 1958, No. 1, p. 15.
[22] SZUMSKI, J. *Środki penalne w polskim prawie wykroczeń na tle doświadczeń praktyki*, p. 193.
[23] WASILEWSKI, J. O wypadkach drogowych nieco inaczej. *Gazeta Sądowa i Penitencjarna*. 1971, No. 16, p. 15.
[24] BUCHAŁA, K. Przestępstwa drogowe popełnione w stanie nietrzeźwości (I). *Nowe Prawo*. 1960, No. 7-8, p. 992; SAWICKI, J. Karalne stany nietrzeźwości. (Na marginesie ustawy antyalkoholowej z 1959 r.). *Państwo i Prawo*. 1960, No. 4-5, p. 651.
[25] ANDREJEW, I. In: I. Andrejew – W. Świda – W. Wolter (eds.). *Kodeks karny z komentarzem*. Warsaw: Wydawnictwo Prawnicze, 1973, pp. 904–905.

a vehicle in motion. Mere sitting in the driver's seat and activation of the engine with an intent to drive should be considered, at most, as an attempt to commit a petty offence.[26] This is all the more important because the Petty Offences Code does not prescribe the possibility to order a driving ban for an attempt to commit any of the petty offences for which the ban can imposed, as well as for instigation of and aiding and abetting the perpetration of these offences.

On the other hand, whether the offender holds a licence to drive a vehicle is irrelevant. One must agree with the supreme judicial authority that this ban should not be restricted only to those persons who possess a relevant driving licence, but should also apply to those, who at the time of the offence did not have the required permit at all. The latter group will be deprived of the possibility to obtain such a permit for the time specified in the court ruling.[27] The effects of the ban will differ, depending on which of these two categories of persons it applies to. Consequently, when this measure is imposed on a person who already has a driving licence, it means that the person's empowerments, covered by the material scope of the ban, are suspended, and when it is imposed on a person who does not hold any licence, it precludes that person from obtaining the types of licences specified in the court ruling.[28]

6. DRIVING BAN PERIOD

Driving ban is a termed measure, meted out in months or years, for between 6 months to 3 years. It is not possible to shorten or extend these periods, even based on article 39 of the Petty Offences Code. This provision sets forth a mechanism of extraordinary mitigation of the penalty, but not of the penal measure.[29] And the time frame of the ban is not linked to any of the penalties which is a consequence of the rule prevailing in the Petty Offences Code, i.e. the individualization of the penalty. From the very beginning this regulation has been subject to criticism by some legal scholars and commentators.[30] It has been argued that nowadays, when a vehicle became an object which makes daily life much easier and lack thereof can make it considerably more difficult, there is no need to apply such an excessive time limit to the ban. Accordingly, it was recommended that its lower limit should be set at 3 months and upper limit at 6 months or 1 year. Opponents of this idea requested that the upper limit is raised to 5 or even 10 years. In their opinion such a long period

[26] *Resolution of the Supreme Court of 8 December 1960, File No. VI KO 64/60. Państwo i Prawo.* 1961, issue 4-5, pp. 845–846.

[27] *Guidelines of the Supreme Court of 28 February 1975, File No. V KZP 2/74. Orzecznictwo Sądu Najwyższego Izba Karna i Izba Wojskowa.* 1975, No. 3-4, Item 33.

[28] STEFAŃSKI, R. A. Konsekwencje prawne kierowania pojazdem po zatrzymaniu dokumentów stwierdzających uprawnienia do prowadzenia pojazdów albo po orzeczeniu zakazu prowadzenia pojazdów mechanicznych lub innych pojazdów bądź po cofnięciu uprawnień w trybie administracyjnym. *Zagadnienia Wykroczeń.* 1989, No. 1, pp. 23–25.

[29] *Judgement of the Supreme Court of 20 December 1991, File No. II KRN 296/91. Orzecznictwo Sądów Powszechnych.* 1992, No. 7-8, Item 183; *judgement of the Supreme Court of 9 November 1992, File No. II KRN 175/92. Orzecznictwo Sądu Najwyższego Izba Karna i Izba Wojskowa.* 1993, No. 1-2, Item 14.

[30] Comprehensively on this subject: STEFAŃSKI, R. A. *Kara dodatkowa zakazu prowadzenia pojazdów w prawie wykroczeń.* pp. 70–73.

was compatible with the primary objective of this penal measure, that is ensuring the safety of traffic. Contrary to what one might expect, the dispute briefly described above was not settled. The discussion concerning the time limit of the ban is still open among scholars. Primarily, because the most grievous petty offence – driving a motor vehicle on land, water or in the air, while in a state of insobriety or under the influence of an intoxicant has been re-classified as an offence under Criminal Code (article 178a of the Criminal Code). Given the above, it is hard to resist the impression that in case of other petty offences, imposition of the ban for such a long term is rather purposeless. Especially, since no empirical evidence exists that only a driving ban lasting at least 6 months will have a deterrent effect on some offenders, prompting them to exercise greater caution while participating in traffic. Equally, a 3-month disqualification from driving vehicles could produce similar effect. It is no different when it comes to the upper limit of this penal measure. Also in this case there are no obstacles to restore the previously binding regulation. Besides, the analysis of case law demonstrates that the driving ban is rarely imposed in the upper limit laid down in article 29 (1) of the Petty Offences Code.[31] Most probably, the awareness of the correlation between the length of the ban and the frequency with which this court order is violated discourages judicial authorities from "overdosing" it. This in turn indicates that a criminal response in the form of a several-year driving ban, should be reserved for more serious violations of traffic safety, namely those regulated as traffic offences in the Criminal Code. While the driving ban in petty offences law should work as a type of "shock treatment". And its statutory limit should be adjusted to serve this particular task.[32]

The severity of the ban is unnecessarily reinforced by the retention of the current time limits of the ban, combined with the obligation to enforce it in full. This leads to unjustified inequalities in the treatment of perpetrators of traffic incidents. For instance, if the court imposes a 2-year motor vehicles driving ban for the petty offence under article 86 (1) of the Petty Offences Code, this measure has to be unconditionally enforced in full. However, if the same ban is imposed on a person convicted for an offence specified in article 177 (1) of the Criminal Code, the said convict could exercise the option provided in Article 84 (1) of the Criminal Code, and just after one year and fulfilment of some additional conditions, the period of the penal measure could be shortened, and the offender could expect earlier return to active participation in the traffic. Surely, such inconsistency should be immediately eliminated by the legislator. The incorporation of the possibility of an early release from the driving ban into the petty offences law could facilitate this process.[33] Drawing on the example of article 84 (1) of the Criminal Code, also in this case it would

[31] MIECZKOWSKA, D. Zakaz prowadzenia pojazdów w polskim prawie karnym w teorii i praktyce. Białystok, 2016, p. 389. In: *Uniwersytet w Białymstoku wydział prawa* [online]. 2016 [2021-04-05]. Available at: <https://repozytorium.uwb.edu.pl/jspui/bitstream/11320/5162/1/Mieczkowska_Dorota_doktorat.pdf>.

[32] On the subject of modification of the time frame of the driving ban in Petty Offences Code, see: STEFAŃSKI, R. A. *Kara dodatkowa zakazu prowadzenia pojazdów mechanicznych na tle noweli do kodeksu karnego i kodeksu wykroczeń*. pp. 60–62.

[33] A similar proposal was regulated by the draft Petty Offences Code as edited on 22 February 1996 (reproduced typewriting). In article 44a it provided for an early release from the remainder of the driving ban after half of the period for which it has been imposed, if the ban has been applied for at least 6 months, and if the offender has respected the legal order during that period.

be advisable to authorize the court to consider final and non-appealable driving ban served in full if specified conditions are satisfied. However, shortening the period of execution should be more closely related to the substance of the ban, which serves not to combat any offences, but only offences against traffic safety. Thus, the primary condition for considering the ban served earlier should be the determination that the convict no longer endangers traffic safety. Another condition would be that the ban was enforced against the offender at least half of the term for which it has been imposed. The above is necessary to properly evaluate the attitude of the offender and to asses if his or her return to active participation in the traffic poses any threat. Due to the generally short term for which the ban can be imposed, there is no need to set a minimum period of its enforcement. Moreover, lower, *in genere*, degree of reprehensibility of traffic petty offences, contradicts *a priori* exclusion of the possibility to apply the analysed privilege of early release to the ban imposed even for the shortest term possible.

7. ISSUES RELATED TO THE ENFORCEMENT OF THE DRIVING BAN

The severity of disqualification from driving vehicles could also be reduced by the mechanism of conditional suspension of the execution of this penal measure.[34] It could apply to the discretionary driving ban not exceeding 2 years (given the current time limits of the ban),[35] provided that it would suffice to ensure traffic safety. Furthermore, the abovementioned mechanism would have to be imposed for a probation period lasting from six months to two years (given the current time limits of the ban)[36] and would start running from the moment the judgement became final and non-appealable. Following conditional suspension of the execution of the ban the court could impose relevant probationary measures on the offender. For instance, the offender could be obliged to take a learning course on road traffic regulations or a specified number of driving lessons with a driving instructor. Conditional suspension of the discretionary driving ban would have to be revoked if the offender, during the probation period, was blatantly violating the legal order, particularly if he or she committed an offence other than traffic petty offence or persistently failed to perform probationary obligations imposed thereon. On the other hand, conditional suspension of the mandatory driving ban (if the mandatory mode was maintained) would have to be revoked if the offender committed another offence against safety in traffic. The court would order the driving ban to be carried out within two months from the termination of the probation period; if the conditional suspension was not revoked during that period, the conviction concerning this penal measure would have to be considered non-existent.

[34] See among others: STEFAŃSKI, R. A. Model normatywny zakazu prowadzenia pojazdów w projekcie kodeksu karnego. *Wojskowy Przegląd Prawniczy*. 1992, No. 1-02, p. 85; See also: KULESZA, J. Aktualne problemy wymiaru kar dodatkowych utraty praw. *Palestra*. No. 10-11, p. 193; ŁUCARZ, K. O propozycji warunkowego zawieszenia wykonania zakazu prowadzenia pojazdów. *Nowa Kodyfikacja Prawa Karnego*. 2008, Vol. XXII, pp. 91–100.

[35] If the lower limit of the driving ban was reduced to 3 months, and upper limit to 2 years, the above-mentioned considerations would have to be revised and it should be assumed that conditional suspension of the execution of this penal measure could apply to the ban not exceeding 1 year.

[36] With reduced limits (see footnote 35) the period of probation should last between 3 months and 1 year.

In principle, this mechanism should apply to those offenders who do not need to be absolutely eliminated from traffic, and should cover the so-called less significant acts. Given this formulation, conditional suspension of the execution of the ban would serve as a warning given to the offender to make him or her more cautious in the future. By boosting the chance of a more lenient treatment, it could encourage the offender to respect broadly understood legal order. Moreover, educational potential would be additionally reinforced by the period of probation and the possibility to revoke the suspension and order the execution of the unserved penal measure in case the probation was unsuccessful. Nevertheless, the court could conditionally suspend the execution of the ban only, if the circumstances of the case would justify the conclusion that it would be sufficient, to prevent the offender from relapsing into committed traffic offence (despite non-execution of the penal measure). Since the decision on the effective non-execution of the ban would have to be based on the conviction of the deciding authority that the offender will respect the legal order in the future, it can be expected that the application of this mechanism in practice would be quite rare. Nonetheless, this presumption does not undermine great advantages of conditional suspension of the execution of the ban.

The driving ban comes into effect from when the sentence becomes final and non-appealable (article 29 (3) of the Petty Offences Code). Following recently introduced amendments, the court is no longer bound to impose an obligation to surrender the driving licence. It is connected with the abolition of the obligation to carry the driving licence imposed previously on the drivers and an introduction to the Road Traffic Act of the new article 135b (1), pursuant to which the seizure of a state-issued driving licence is effected by entering data on the seizure to the central driver register. Until recently, the court, when imposing the driving ban, ordered the driver to surrender the driving licence to the issuing authority – if the licence had not already been seized. Until the driving licence was surrendered, ban's period was not running.[37] The new approach has significantly simplified the procedure. It is assumed that the ban still comes into effect the moment when the sentence becomes final and non-appealable. However, the time limit for enforcing the ban will also start to run from that moment. In the event of electronic seizure of the document, the police shall, instead of physically seizing the document, inform a competent prosecutor or court of the seizure. The period of seizure of the driving licence will still be credited towards the period of execution of the driving ban – starting from the date of the seizure of the document understood as either the date of the physical seizure of the document or the date of its electronic seizure.[38] Unfortunately, the legislator attempting to safeguard proper execution of this measure forgot to extend the mechanism of conditional suspension of the running of the ban to the situations when the offender, for objective reasons, cannot make use of the seized licence. This occurs for example when the offender is in detention on remand or serves the penalty of imprisonment (also when imposed as

[37] By doing so, the legislator clearly intended to ensure that the term of the ban doesn't run when the offender is still in possession of the driving licence; this should prevented not so uncommon practice of using the driving licence in contravention of a validly imposed ban.

[38] Justification of the bill on the Amendment of the statute – Road Traffic Act and on Amendment of certain other acts, parliamentary document No. 388, 9th term of office, p. 24.

a replacement penalty). Due to the isolation, the offender is not affected by the severity of the discussed penal measure. Deprived of its retributory element the ban ceases to function as a penalty and turns into pure fiction.[39] To change this unfavourable state of affairs it would be necessary to supplement the wording of article 29 (3) of the Petty Offences Code with a clause which would prescribe, similarly to article 43 (2a) of the Criminal Code, that the period for which the measure is imposed does not run while the offender is in a criminal institution.

As was mentioned before, the period of seizure of the driving licence or other document certifying the right to drive is credited towards the period of execution of the driving ban (article 29 (4) of the Petty Offences Code). Crediting the period of document seizure towards the driving ban does not constitute a departure from the principle specified in article 29 (3) of the Petty Offences Code, pursuant to which the driving ban comes into effect the moment the sentence becomes final and non-appealable. It does not shift the commencement of this penal measure to the moment the document is seized, as is the case with the running of its period; it only has the effect that the period of seizure, up to the moment the judgement becomes final and non-appealable, is treated *ex post* as equivalent to the execution of the driving ban.[40] By adopting a legal fiction of execution of this penal measure, the legislator eliminated negative consequences of the driving licence seizure. Otherwise, the ban couldn't have been executed until the judgement became final and non-appealable, even if the offender was prevented from exercising the right to drive because of the licence seizure. The material scope of the above- mentioned "crediting" has to correspond with the type of the document seized and category of the driving rights covered by the ban. The period of seizure of the driving licence is credited towards the driving ban on the basis of a court ruling, which is constitutive in effect. Said crediting does not occur by operation of law, but needs to be expressly stated by the adjudicating authority in the judgement of conviction (article 82 (2) of the Petty Offences Procedure Code), or alternatively, in a separate ruling issued on the basis of article 84 (1) of the Petty Offences Procedure Code.

8. CONCLUSIONS

The analysis conducted here shows that regard for the safety and efficiency of traffic is the motive behind the driving ban. By eliminating those who do not provide a guarantee of cautious participation therein, it gives preference to the protection of social relations in traffic. Therefore, it is safe to assume that the purpose of incapacitation served by the driving ban (stemming somewhat from its substance) comes to the fore, whereas other aims typical of the penalty generally take second place. Whether the ban is actually going to be a preventive measure in traffic petty offences cases depends not only on its juridical

[39] KULESZA, J. Bieg kar dodatkowych wymienionych w art. 38 pkt 1–4 k.k. *Nowe Prawo*. 1981, No. 5, p. 40; STEFAŃSKI, R. A. Zawieszenie biegu kar dodatkowych pozbawienia praw lub zakazu. *Wojskowy Przegląd Prawniczy*. 1988, No. 2, p. 144.

[40] *Judgement of the Supreme Court of 7 December 2011, File No. V KK 364/11*, Lex No. 1095978. In: *Wolters Kluwer* [online]. [2021-04-05]. Available at: <https://sip.lex.pl>.

values, but primarily on how it is regulated in the provisions of the Petty Offences Code, especially in terms of grounds for its imposition. The statutory regulation of said grounds can either provide the judges with a wide array of possibilities for the application of the driving ban or to the contrary, can limit their discretion. Assessing from this perspective, it is clearly visible that the statutory regulation of the driving ban is fairly limited. To remove the unnecessary restrictions, it would be vital to comprehensively determine the conditions for the ban's imposition as part of an autonomous ground contained already in the general part of the Petty Offences Code. Simultaneously, the provision of article 28 (4) of the Petty Offences Code (which refers to the special part of the code with regard to the application of the penal measure) should be removed from the code's general part. Furthermore, the new formula of the ban could be supplemented by a special directive for its imposition, which could specify that the application of the ban is particularly justified if the circumstances of the committed act indicate that a particular person driving a vehicle would endanger traffic safety. The concept of the ban's application adopted under the current Petty Offences Code doesn't address the properties of this penal measure. And yet, those who apply it should know not only how to impose it and against whom, but also why and for what purpose. The addition of the above-mentioned condition would create a type of "safety valve", limiting the application of the driving ban to cases in which it is truly required to protect traffic safety. Irrespective of how the general conditions for the application of the driving ban are formulated as part of an autonomous ground, it is worth considering whether it is necessary to maintain in the petty offences law the mandatory mode of imposition of the driving ban, as even today its use is highly limited. It seems that the legislator overestimated the intended effect of general deterrence. Similar revision would be necessary with regard to the time frame of the driving ban. The current time frame of the ban does not correspond with the nature of the traffic offences for which it can be imposed. Taking into account their lesser gravity, it seems necessary to create a provision devoted to the early release from the execution of the driving ban in full. It would be sufficient to transfer the legislative solution adopted in the criminal law *sensu stricto*. The specification of the ban's formulation should finally cover the issue of suspension of its running. This would include suspension of the running of the driving ban not only until the relevant licence is surrendered, but also while the penalty of imprisonment or detention on remand is being served, even if it has been imposed for another offence or petty offence. Further refinement of the model of the driving ban should be continued under selected probationary mechanisms and such other mechanisms which provide either for its autonomous imposition or its cumulation with other non-custodial measures. Full compatibility between the provisions regulating the substance and grounds for imposition of this penal measure cannot be achieved until the above-mentioned proposals are taken into account. Thus, if the driving ban is to constitute an instrument of rational criminal policy, having proper application in the judicial practice, the legislator should take more decisive, goal-oriented legislative actions to adopt the foregoing proposals of amendments.