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THE PETTY OFFENCE OF INDECENT MISCONDUCT UNDER THE POLISH LAW OF PETTY OFFENCES (ARTICLE 140 OF THE CODE ON PETTY OFFENCES)

Pursuant to Article 140 of the Code on Petty Offences, whoever publicly commits indecent behaviour shall be punished with custody, restriction of liberty, a fine of up to PLN 1,500 or the penalty of reprimand. This petty offence is included in Chapter XVI of the Code on Petty Offences ("Petty Offences against Public Morality"). Article 140 of the Code on Petty Offences had its equivalent in the earlier codification of the substantive law of petty offences, namely Article 31 of the Law on Petty Offences of 1932, which originally had the same wording as the current Article 140 of the Code on Petty Offences. It was subsequently modified in 1946 by adding to it the conduct consisting in the public use of indecent words (currently this behaviour is penalized in Article 141 of the Code on Petty Offences).

The general object of protection under Article 140 of the Code on Petty Offences is public morality. It is not an easily defined concept. However, it can be assumed that public morality is a set of essential patterns of behaviour in various spheres of human life, approved and recommendable in a given society, shaped on the basis of history and tradition, as well as by the current socio-economic and cultural situation, the adherence to which is supposed to ensure the proper functioning of society, while failure to adhere to them by an individual implies a negative reaction from society [1, pp. 78-79]. It is therefore evident that in this case public morality is not limited only to sexually-related behaviour. Furthermore, it should be noted that public morality varies in time, in the sense that what was considered indecent in the past may no longer be considered as such. An example of this can be the judgement of the District Court in Szczecin of 3 February 2009, under which two women were acquitted of the alleged indecent misconduct by sunbathing topless at a municipal beach, and what is significant, the court, when issuing this judgement, pointed to, among other things, the issue of changing social habits [2]. Morality also appears as a protected interest under the Penal Code of 1997. (Chapter XXV -

"Offences against Sexual Freedom and Morality"), however, in this case its protection is limited only to the penalisation of sexual life behaviours. As M. Berent and M. Filar rightly put it, morality under the Penal Code means a set of socio-cultural rules in force in a given society, which concern conduct from the human sexual sphere [3, p. 1210].

The essence of the conduct specified in Article 140 of the Code on Petty Offences consists in publicly committed indecent misconduct. It is worth noting that the criteria that form the objective side of the infraction in question are highly evaluative. Of the various concepts regarding the understanding of the term "misconduct", the most accurate seems to be presented by L. Falandysz, treating misconduct as an act grossly deviating from the current norms of conduct adopted in given circumstances and showing their disregard by the perpetrator [4, p. 30]. On the one hand, this approach emphasizes the objective element of the misconduct (non-compliance with the norms of conduct), and also reasonably emphasizes the subjective element necessary to consider a given behaviour the misconduct (disregarding of the norms by the perpetrator), which reduces this term to wilful behaviour. However, it should be stressed that Article 140 of the Code on Petty Offences refers to misconduct which has the feature of indecency. Therefore, not everyone will be treated as meeting this criterion. It can be assumed that indecent misconduct is a behaviour that violates socially accepted and desirable patterns of behaviour, and thus objectively is capable of scandalizing a man having an average sense of decency [1, p. 117]. Thus, every indecent misconduct must simultaneously meet the criteria for misconduct as such, but not every misconduct as such is also an indecent misconduct (an indecent misconduct is narrower in scope than misconduct as such). Scholars in the field rightly refer to the following acts as examples of indecent misconduct: public urinating or defecating, unjustified public presentation of one's nudity (e.g. exhibitionism) [5, p. 497], or public sleeping/lying in a place not intended for this [6, p. 648]. It should be added that in the case of the recent of these examples, the perpetrator's behaviour must be accompanied by additional elements (e.g. the clothing stained with bodily fluids) that would justify considering it an indecent misconduct [1, p. 154]. These are typical aggravated cases based on Article 140 of the Code on Petty Offences, although other behaviours may also be involved, of course. An example would be the judgement of the District Court in Janów Lubelski of 27 April 2009, in which a woman was found guilty of committing an indecent misconduct by making to police officers a gesture commonly considered vulgar and offensive (showing the middle finger) while driving a motor vehicle [7]. Doubts also arise with regard to the criterion of public nature of the action. D. Egierska-Miłoszewska assumed that this is a situation in which a specific behaviour can be noticed by an indefinite number of unidentified people, and this possibility must be fully real [8, pp. 67-68]. Such a concept raises doubts in the context of the phrase that it is about an "indefinite number of unidentified

people" (e.g. behaviour at a concert in a club, where a total of 100 people are staying and each of them is identified as to identity). Accepting this concept, it should be stated that the behaviour undertaken in such circumstances would not be a public action, which statement does not deserve approval. Hence, one should agree with the concept of L. Gardocki, who believes that public action occurs when the perpetrator's behaviour can be noticed by an indefinite number of people, but also when the number of these people is defined, but is characterized by a greater number (e.g. act committed at a factory staff meeting) [9, p. 320]. In this case, the question arises as to what is the greater number? It seems that boiling this criterion down to a specific number would not be justified, and the assessment of whether a given number of people can be deemed "greater" will depend on the specific factual state. M. Mozgawa is right in saying that the criterion in the form of public action indicates a situation that should not be treated *in abstracto*, but *in concreto* [5, p. 156]. Public action should also be distinguished from the criterion of "public place" also used in the Polish Code on Petty Offences. It can be assumed that public place means a kind of space that is accessible to the public without any restrictions (a park, a railway or bus station), as well as one to which entry is possible after purchasing an appropriate entrance card, ticket, or upon receiving an invitation (cinema, theater), concert) [10, p. 104]. Most often it is the case that public action is taken simultaneously in a public place (e.g. indecent exposure on a busy street). However, it may also happen that the perpetrator acts in public, although his act is undertaken in a non-public place (e.g. the perpetrator exposes himself in the window of his flat). There are also situations possible in which the perpetrator acts in a public place, but his behaviour is not of a public character, as there is no objective possibility for it to be noticed in given circumstances by some larger number of people (e.g. urinating while on an unlighted beach without presence of other people).

It should be stressed that the petty offence in question is not the type characterized by its effect. It does not require any effect to be considered committed. It is committed at the moment of the offender's behaviour that meets the criteria of indecent misconduct. If there is actually a scandal in a public place, the relevant legal qualification is Article 51 § 1 or 2 of the Code on Petty Offences, which penalizes, among other things, the causing of a scandal in a public place [1, pp. 148-149]. One should accept the position that this petty offence can only be committed in the form of an action. J. Kulesza rightly points out that it would be difficult to construct a case of indecent misconduct in the form of an omission [11, p. 919]. As far as the subjective side of the petty offence in question is concerned, it is characterised by intentionality, with both direct intention and legal intention. It is a general petty offence, and therefore the offender can be any person who may be held criminally liable.

The petty offence of indecent misconduct is punishable by custody (from 5

to 30 days), restriction of liberty (one month), a fine (up to PLN 1500) or a reprimand. Such a form of punishment should be positively evaluated. Article 140 of the Code on Petty Offences, which was mentioned earlier, penalizes various perpetration behaviours, while such broadly defined criminal-law consequences make it possible to adjust the level of repression to the degree of social harmfulness of a specific factual situation. It should be pointed out that in the Polish law of petty offences, penal measures may only be applied if a specific provision so provides (Article 28 § 2 of the Code on Petty Offences). In the case of an indecent misconduct, there is no relevant clause with this regard, and thus it is not possible to adjudicate penal measures in this case.

The case file research carried out has shown that the infraction of indecent misconduct is often committed in social realities. The research was carried out based on the analysis of 340 court cases concluded with a final ruling in 2014 and covered the entire territory of Poland [1, p. 185-186]. The following conclusions should be drawn: 1) the main factor influencing the perpetration of an indecent misconduct is alcohol abuse (in 86% of cases the perpetrator was under the influence of alcohol), 2) the behaviours most often qualified under Article 140 of the Code on Petty Offences were sleeping/ lying in a public place in a state of deep alcohol intoxication, often in clothes stained with body secretions (67% of incidents). The second quite frequent act was urinating or defecating in a place not intended for this purpose (24%). Other types of conduct, including those of exhibitionist character, were marginal, 3) as a rule, cases of indecent misconduct are not complex from the evidence-taking point of view, and the perpetrators quite often admit to committing the alleged infraction (in 60% of cases the perpetrators admitted to have committed alleged act), 4) the most frequent penalty is a fine (70%), although it is noteworthy that the penalty of restriction of liberty is often used (19.5%) [1, pp. 185-221].

It seems that the current solution concerning the protection of public morality under the Polish Code on Petty Offences against indecent misconduct corresponds to the reality, and thus there is no need for the legislature to interfere in the shape of the act described in Article 140 of the Code on Petty Offences. The synthetic approach of the prohibited act under analysis requires restrictive interpretation. At the same time, it should be stressed that the assessment of particular behaviours in terms of meeting the criteria set out in Article 140 of the Code on Petty Offences must always be carried out *in concreto*. A significant proportion of cases resolved by Polish courts in this respect confirms the practical significance of the functioning of this petty offence in the Polish legal system.

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PARTICIPATION OF THE INJURED PARTY IN SLOVENIAN CRIMINAL PROCEDURE

The historical development of the criminal process has led to the idea of the public nature of the criminal justice system. The view that the state is the injured party in criminal cases evolved to a stage where the public prosecutor was given a monopoly of the criminal charge (Krapac, 1985; Sebba, 1982). Some authors have argued that the victim had, therefore, been "totally forgotten by the penal system" (Sebba, 1982, p. 226). However, in recent decades, the role of the victim of crime is becoming increasingly important (O'Hara, 2005, p. 237). International and supranational organisations, in particular the Council of Europe, the European Union, and the United Nations have adopted various victims' rights instruments. The most significant European instrument on victims' rights is arguably the Directive 2012/29/EU of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime (Androulakis, 2014; Buczma, 2013). The Directive grants victims, inter alia, the right to participate in the criminal procedure [1].

The Slovenian legal system provides various possibilities for victims to