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TIME PERIODS FOR EXPUNGEMENT OF CONVICTIONS INVOLVING FINES AND RESTRICTION OF LIBERTY

Abstract

The subject of the article is the problem of limitation periods for expunging a conviction in Polish criminal law in a situation where a fine or restriction of liberty was imposed. The study evaluates the current state of the law, which provides for expunging a conviction imposing a fine with the lapse of one year from the enforcement of the penalty, its remittance or the expiration of the limitation period for its enforcement, and for the penalty of restriction of liberty with the lapse of three years. The Ministry of Justice's proposals to amend Article 107 of the Penal Code were also analyzed.

In addition, the article discusses the problem of expunging a conviction when cumulative punishments are imposed – a fine or a sentence of restriction of liberty in addition to imprisonment. It was noted that the Penal Code lacks rules for expunging this type of conviction. The article assumes that in a situation where a conviction consists of more than one penalty, the conditions for expunging the conviction of all these penalties must be jointly met in order for such a conviction to be expunged.

KEYWORDS

expungement of a conviction, fine, restriction of liberty, cumulative punishments

SŁOWA KLUCZOWE

zatarcie skazania, grzywna, kara ograniczenia wolności, kary kumulatywne

The institution of expungement of a conviction involves the adoption of the fiction that a person has not been convicted¹. It involves removal of information about a person's conviction from the National Criminal Register. As a result of such expungement, the status of a convicted person is reinstated to the status of having no criminal record, which results in state authorities not being able to apply to that person restrictions provided for convicted persons.

The institution of expunging a conviction is not directly anchored in the Constitution of the Republic of Poland, but it is linked to the principle of humanitarianism². Expungement has a tradition in Polish criminal law³. It was known in the 1932 and 1969 Penal Codes and is present in the current Penal Code, although it was regulated differently in all of these codes.

The Penal Code of 1932, in Article 90, introduced the expungement of a conviction, as a rule, by a court decision, which could be made at the request of the convicted person after the lapse of 10 years from the enforcement or remittance of the conviction or from the expiration of the limitation period for the enforcement of the conviction, or from the release of the person from a security institution⁴. At the same time, ordering the expungement of a conviction by the court was not mandatory⁵. The 10-year term was the same for each conviction regardless of what punishment was imposed on the offender. However, the punishment inflicted on the offender was relevant to the application of the principle of simultaneous expungement of all convictions, which covered only situations where a prison sentence was imposed on the offender for a new crime (Article 90(3) of the 1932 Penal Code). A conviction for a new crime with a different pun-

¹ M. Błaszczuk, *Instytucja zatarcia skazania w polskim prawie karnym*, 'Studia Iuridica' 2006, No 46, p. 9; L. Gardocki, *Prawo karne*, Warsaw 2021, p. 226.

² A. Zientara, *Sporne problemy dotyczące wyłączenia możliwości zatarcia skazania na podstawie art. 106a k.k.*, 'Przegląd Sądowy' 2010, No. 3, p. 96; T. Pilikowski, *Istota zatarcia skazania jako zdarzenie prawne*, 'Prokuratura i Prawo' 2021, No. 9, p. 93; M. Błaszczuk, A. Zientara, *Przed Art. 106*, (in:) M. Królikowski, R. Zawłocki (eds), *Kodeks karny*. Vol. I. *Część ogólna. Komentarz. Art. 1–116*, Warsaw 2021, p. 1371.

³ M. Błaszczuk, 2006, *op. cit.*, p. 10

⁴ The Penal Code of 1932 knew the institution of expungement of a sentence by operation of law. It applied to the imposing a punishment with conditional suspension of its execution, unless the execution of the punishment was ordered. In such a case, the expungement of the sentence occurred at the expiration of 3 months after the end of the probation period.

⁵ J. Makarewicz, *Kodeks karny z komentarzem*, Lviv 1938, p. 284.

ishment could be taken into account by the court when deciding whether to grant the expungement⁶.

The time periods for expungement were regulated differently in the 1969 Penal Code. According to its Article 111, they varied depending on what punishment was imposed on the offender. In the case of a prison sentence, expungement occurred after the lapse of 10 years from the enforcement or remittance of that sentence or from the expiration of the limitation period. And in the case of a fine or restriction of liberty, the conviction was expunged with the lapse of 5 years from the enforcement or remittance of the sentence or from the expiration of the limitation period. In principle, the expungement of a conviction occurred by operation of law and did not require a court decision⁷. At the same time, the Code introduced the possibility of expungement of a conviction already after the lapse of 5 years (and therefore before the expiration of the time limit for expungement of a conviction by operation of law) by a court acting at the request of the convicted person, if at that time he or she complied with the law and was given a sentence of imprisonment not exceeding 2 years. The Penal Code did not provide for the possibility of shortening the period required for the expungement of a sentencing imposing a fine or restriction of liberty.

Initially, the 1997 Penal Code provided for solutions similar to those under the previous Penal Code. As a rule, expungement of all convictions by operation of law was adopted after the lapse of 10 years in the case of imprisonment (fix-term imprisonment, 25 years and life imprisonment) and after the lapse of 5 years in the case of fines and restrictions of liberty. The time limits are calculated from the enforcement or remittance of the penalty or from the limitation period on its enforcement, and in the case of life imprisonment from its recognition as executed, from its remittance or from the expiration of the limitation period on its enforcement. The 1997 Penal Code also provided for the expungement of a conviction by virtue of a court decision. Unlike the 1969 Penal Code, however, the possibility of shortening the period needed to expunge a conviction applied not only to imprisonment, but also to fines and restriction of liberty. According to the original wording of Article 107 of the 1997 Penal Code, if the imposed sentence of imprisonment did not exceed 3 years, the court could, at the request of the convicted person, order the expungement of the conviction after just 5 years, provided the convicted person complied with the law during that period. On the other hand, if a fine or restriction of liberty was imposed, the court could, at the convict's request, order the expungement of the conviction after just 3 years.

The above-mentioned wording of Article 107 of the Penal Code was in effect until the entry into force of the Act of 20 February 2015 amending the Penal Code

⁶ B.J. Stefańska, *Zatarcie skazania*, Warsaw 2014, p. 152.

⁷ J. Bafia, (in:) J. Bafia, K. Mioduski, M. Siewierski (eds), *Kodeks karny. Komentarz*, Warsaw 1971, p. 270.

and certain other laws⁸. This amendment led to the shortening of the period needed to expunge a fine or restriction of liberty conviction. According to the amended Article 107(4) of the Penal Code, the expungement of a conviction by operation of law for a penalty of restriction of liberty occurs with the lapse of 3 years from the enforcement or remittance of that penalty or from the expiration of the limitation period for its enforcement. However, in the case of a fine, the period is even shorter and is only 1 year (Article 107(4a) of the Penal Code). In addition, by virtue of the 2015 amendment, the possibility of expungement of a conviction by virtue of a court decision was excluded in the case of fines and restriction of liberty sentences. Currently, analogous to the 1969 Penal Code, the possibility of reducing the period needed to expunge a conviction applies only to a prison sentence.

As I pointed out in one of my earlier publications⁹, in the context of shortening of the time period for the expungement of fine and restriction of liberty convictions, the legislator's abandonment of the possibility of early expungement of a conviction by court order was a rational solution. With such short time periods – one and three years – introducing the possibility of shortening them, given the time needed for the court to decide the case, is not reasonable.

The legislator's decision to shorten the time periods for expungement of a conviction for a restriction of liberty and a fine is more difficult to assess.

On one hand, it seems reasonable to differentiate the time periods for expunging a conviction in relation to the type of punishment imposed on the offender. The more lenient the punishment, the smaller the additional inconveniences associated with it, for example, in the form of an entry in the National Criminal Register, should be. On the other hand, in the state of law prior to the amendment, in the case of a sentence of imprisonment not exceeding 3 years, the expungement of the conviction by a court decision could take place after a period of 5 years, which was identical to the period required for expungement of a conviction for restriction of liberty and a fine. In addition, in the case of a sentence of imprisonment with a conditional suspension of its enforcement for a probation period of less than 5 years, prior to the 2015 amendment, the conviction was expunged more quickly than in the case of a fine sentence, because it occurred already after the lapse of 6 months from the end of the probation period (Article 76(1) of the Penal Code). Such a solution was not appropriate, since a person who was given a fine or a sentence of restriction of liberty and against whom the court did not order the expungement of the conviction earlier, faced longer lasting consequences of the conviction related to inclusion in the National Criminal Register than a person sentenced to a more severe punishment – imprisonment. After the entry into force of the 2015 amendment, such a situation is no longer the case with the imposition

⁸ Dz. U. (Journal of Laws) of 2015 item 396, hereinafter referred to as “the 2015 amendment”.

⁹ A. Zientara, *Nowelizacja kodeksu karnego w zakresie zatarcia skazania*, ‘Studia Iuridica’ 2016, No. 65, p. 191.

of a fine. This is because in such a case the expungement of the conviction now occurs after a year. On the other hand, in the case of the imposition of a sentence of imprisonment with conditional suspension of its enforcement, the expungement of the conviction occurs only after 6 months¹⁰ from the end of the probation period – and the shortest probation period is 1 year. Thus, the period for expunging a fine conviction is shorter than the period required for expunging a conditionally suspended prison sentence.

However, the 2015 amendment led to inconsistent time periods for the expungement of felony and misdemeanour convictions. According to Article 46(1) of the Misdemeanour Code, “a punishment shall be considered null and void after the lapse of 2 years from the enforcement, remittance or limitation period on enforcement of the punishment.” This means that the time period for expungement of a misdemeanour punishment is longer than the time period for expungement of a felony fine conviction, which is only 1 year. The literature¹¹ has rightly assessed it as an inconsistency that requires legislative intervention. This inconsistency is particularly evident in the case of fiscal felonies and misdemeanours. According to Article 52(1) of the Fiscal Penal Code, the sentence for a fiscal misdemeanour is considered to be non-existent with the lapse of 2 years from the enforcement, remittance or the expiration of the limitation period of its enforcement. On the other hand, for calculating the time periods for expungement of a conviction for fiscal felonies, pursuant to Article 20(2) of the Fiscal Penal Code, Article 107 of the Penal Code applies. So in the case of an adjudication of a fine for a fiscal felony, the expungement of the conviction will already occur with the lapse of one year from the enforcement or remittance of the punishment or from the expiry of the limitation period for its enforcement. Thus, the punishment of a fine for a fiscal misdemeanour (and therefore for conduct less harmful than a felony) will be expunged after a period longer than the time required to expunge a conviction of a fine for a fiscal felony.

This inconsistency was noticed by the Ministry of Justice several years ago. During the eighth term of the government (2015-2019), a bill was drafted to amend the Fiscal Penal Code¹², which planned to repeal Article 107(4a) and equalize the period required to expunge a fine conviction and a restriction of liberty conviction, setting it at 3 years counted from the enforcement or remittance

¹⁰ From 1 October 2023, i.e. from the entry into force of the Law of 7 July 2022 on amendments to the law – Penal Code and certain other laws (Dz. U. (Journal of Laws), item 2600), the period will be extended from 6 months to 1 year.

¹¹ W. Górski, Chapter 3. *Grzywna*, (in:) W. Wróbel (ed.), *Nowelizacja prawa karnego 2015. Komentarz*, Kraków 2015, p. 81; M. Błaszczuk, A. Zientara, *Komentarz do art. 107*, (in:) M. Królikowski, R. Zawłocki (eds), *Kodeks karny*. Vol. I. *Część ogólna. Komentarz. Art. 1–116*, Warsaw 2021, p. 1397.

¹² Draft number on the list of the Government Legislation Center – UD 188, draft of 18 April 2019, available at <https://legislacja.gov.pl/docs//2/12319850/12561944/dokument391547.pdf> (accessed 27.07.2023).

of the punishment or from the expiry of the limitation period for its enforcement. The explanatory memorandum to the draft indicates that it is unreasonable for a misdemeanour conviction to be expunged after a period twice as long as the expungement of a fine imposed for a crime. It was also considered unreasonable to introduce the same periods for expunging a conviction in felony and misdemeanour cases. Therefore, it was intended to extend the period of expungement of a criminal conviction imposing a fine by equating it with the period of expungement of a restriction of liberty conviction (3 years). This bill was not presented to the Polish Parliament due to the end of its term.

The idea of amending the Fiscal Penal Code and amending the Penal Code with regard to the time period for expunging a fine conviction was returned to in the next parliamentary term. A draft providing for an identical amendment to Article 107 of the Penal Code and containing identical justification was again the subject of work at the Ministry of Justice¹³. However, it was withdrawn. As a result, the legal status introduced by the Law of 20 February 2015 remains in force. Also, the Law of 7 July 2022, amending the Penal Code as of 1 October 2023, does not provide for changes in the period of expungement of criminal convictions imposing fines.

The Ministry of Justice's proposed amendment to Article 107 of the Penal Code addresses the problem of faster expungement of a felony conviction compared to a misdemeanour conviction by extending the time limit for a felony conviction imposing a fine.

However, another solution to this problem is possible – shortening the period for expunging a misdemeanour conviction¹⁴. The period for expunging a misdemeanour conviction currently stands at 2 years and is longer than the period needed to expunge a felony conviction that may have not resulted in a fine. This is because it is possible to have a felony conviction in which the court waives punishment. A conviction for a crime in which punishment is waived is subject to entry in the National Criminal Register and is expunged with the lapse of one year from the final judgment. Thus, even if Article 107 of the Penal Code is amended in the way proposed by the Ministry of Justice, there will be no situation in which any conviction for a crime will be subject to expungement within a period shorter than that of a misdemeanour punishment. Reducing the time period required for expunging a misdemeanour conviction to 1 year would bring the time period for expunging a misdemeanour conviction on par with the time period for expunging a felony conviction imposing a fine and the time period for expunging a conviction related to waiving the felony punishment.

¹³ Draft of 3 March 2022, No. UD357, available on website of the Government Legislation Center – <https://legislacja.gov.pl/projekt/12357450/katalog/12860114#12860114> (accessed 27.07.2023).

¹⁴ Such a proposal was made in W. Górowski, 2015, *op. cit.*, p. 81.

In the explanatory memorandum to the two draft amendments to Article 107 of the Penal Code described above, the view was expressed that the introduction of the same periods for expunging convictions in felony and misdemeanour cases is unreasonable. Such an assessment is most likely related to the degree of social harm of misdemeanours, which, as a rule, is lower than that of felonies. Thus, it might seem right that a person who has committed an act causing minor social harm should obtain the status of a person without a criminal record earlier than a perpetrator of a crime, i.e. a more harmful act. However, it is important to consider the different legal consequences of a felony conviction and a misdemeanour conviction. First of all, only final misdemeanour convictions are recorded in the National Criminal Register¹⁵. On the other hand, in the case of felonies, this applies to all convictions regardless of the sentence imposed¹⁶. In addition, a felony conviction can cause much more serious consequences in the professional sphere of a convicted person than a misdemeanour punishment situation. This is due to the fact that the regulations governing certain professions or certain functions exclude convicted persons from practicing them; this depends on the regulation: it may involve any crime, an intentional crime or a crime of a certain type¹⁷. As a rule, however, such effects do not arise from punishment for a misdemeanour. However, there are exceptions to this – for example, in Article 166(1) sentence 1 of the Law of 27 July 2001. The Law on the Common Court System¹⁸ indicates that “the mandate of a juror expires in the event of a final conviction for a felony or misdemeanour, including a fiscal felony or misdemeanour.” A conviction for a misdemeanour is taken into account when examining whether a person demonstrates “impeccability of character,” which is required for certain positions. However, perpetration of even several misdemeanours does not automatically assume that the candidate does not possess this trait¹⁹. In view of the above, it seems reasonable to argue that if identical time periods were introduced for expunging a misdemeanour conviction and a felony conviction imposing a fine, the ailment associated with a felony conviction would still be much higher.

The explanatory memorandum to the ministerial draft amendments to Article 107 of the Penal Code indicated that the proposed change would lead to the legal status as it was until 21 March 2015. This view cannot be agreed with. The Ministry of Justice planned to introduce a uniform *ex lege* time period of 3 years for expunging a conviction imposing a fine and a conviction restricting liberty.

¹⁵ Cf. Article 1(2)(7) of the Act of 24 May 2000 on the National Criminal Register (Dz. U. (Journal of Laws) of 2023, item 1068).

¹⁶ Cf. *ibidem*, Article 1(2)(1).

¹⁷ Examples of regulations are given, for example, in: T. Pilikowski, 2021, *op. cit.*, pp. 91–92.

¹⁸ Consolidated text, Dz. U. (Journal of Laws) of 2023, item 217, as amended.

¹⁹ Cf. for example, judgment of the Supreme Court of 15 March 2018, III KRS 3/18. On the concept of “impeccability of character” see also G. Ławnikowicz, S. Pilipiec, *Nieskazitelność charakteru i nieposzlakowana opinia w prawie prawniczych samorządów zawodowych*, ‘Annales Universitatis MCS Lublin’ 2016, Series G, Vol. LXIII.

Meanwhile, in the legal state before the entry into force of the amendment of 20 February 2015²⁰, the expungement of a fine or restriction of liberty conviction by operation of law occurred with the lapse of 5 years from the enforcement or remittance of the punishment or from the expiration of the limitation period. On the other hand, after the lapse of 3 years, the court could order the expungement of the conviction at the request of the convicted person. The Ministry of Justice's proposals therefore did not constitute a return to the legal status previously in force, which was less favorable to convicted persons than the solutions advocated by the Ministry.

The current time period for expunging a criminal conviction imposing a fine of 1 year may seem very short. However, it is worth mentioning that it was initially planned to be a period of only six months, calculated from the moment of enforcement, remittance or expiration of the limitation period for the enforcement of the conviction, and it was to apply to both the fine and the penalty of restriction of liberty²¹. The explanatory memorandum indicates that the draft for such an amendment to Article 107(4) of the Penal Code was intended to give priority to penalties other than imprisonment.

The Ministry of Justice's proposal to extend the expiration date for fines to 3 years would again lead to a situation where in some cases a suspended prison sentence would be expunged earlier than a fine. This is not an acceptable solution, as a fine conviction should be expunged earlier than a more severe punishment, i.e. imprisonment.

In view of the above, a better solution to the inconsistency associated with the longer period for expunging a conviction for a misdemeanour compared to the period required to expunge a felony conviction imposing a fine is to shorten the period for expunging a misdemeanour conviction to 1 year counted from the time after the enforcement, remittance or expiration of the limitation period of the punishment.

Another problem related to the expungement of a fine or restriction of liberty sentence involves the possibility of imposing these punishments in addition to imprisonment. Article 107 of the Penal Code ties the period needed to expunge a conviction to the type of punishment imposed (imprisonment, restriction of liberty and fine), but does not indicate how to calculate the period in the situation of a conviction in which two punishments were imposed. The Penal Code allows the imposition of a fine or restriction of liberty in addition to imprisonment. The

²⁰ The law entered into force on 1 July 2015. However, some amendments came into effect at different times, and this was the case with the amendment to Article 107 of the Penal Code, which amended the Penal Code on the day after the date of its promulgation, i.e. 21 March 2015.

²¹ Government bill on amendments to the law – Penal Code and certain other laws, Print No. 2393, 7th term of the Polish Parliament, available on the website of the Parliament of the Republic of Poland <https://www.sejm.gov.pl/sejm7.nsf/PrzebiegProc.xsp?id=AE8BCC6CA-5B2782EC1257CDE003CC471> (accessed 27.07.2023).

time periods for expunging a conviction for each of these punishments are different, and, in addition, the wording of Article 107 of the Penal Code ties the start of the time period to the moment when the sentence is enforced, remitted or the limitation period has expired. In the case of a conviction involving cumulative punishments, the enforcement of each of these penalties or the statute of limitations on each enforcement will occur at a different time. Therefore, in the situation of a conviction involving cumulative penalties, the problem arises not only from what period to take into account, but also from when exactly the time period begins to run.

Undoubtedly, the institution of the expungement of a conviction applies to the conviction as a whole, and not to individual punishments²². Therefore, it is not possible to count the expungement of a conviction separately for each of these penalties. It is impermissible, for example, to consider that after the expiration of the time period for the expungement of a fine conviction, and before the expiration of the time period for the expungement of the conviction in the part concerning the imprisonment penalty, the information on the fine is removed from the National Criminal Register, and the information on the imposed imprisonment penalty will remain in the register until the imprisonment punishment is expunged.

Imposition of a sentence of restriction of liberty in addition to imprisonment is possible under Article 37b of the Penal Code, which introduces the institution of the so-called mixed punishment (sequential, linked, combined punishments, sequence of punishments)²³.

Imposition of a fine in addition to imprisonment is possible in several cases:

1) under Article 33(2) of the Penal Code, i.e., when the perpetrator of the crime acted with the aim of achieving a financial gain or achieved such a gain (the imposition of a fine on this basis is possible only in addition to the so-called fixed-term imprisonment);

2) under Article 71(1) of the Penal Code, i.e. in a situation where there has been a conditional suspension of imprisonment and imposing a fine in addition to imprisonment based on other grounds is not possible;

3) under Article 289(4) of the Penal Code;

²² B. J. Stefańska, *Komentarz do art. 107*, (in:) R.A. Stefański (ed.), *Kodeks karny. Komentarz*, Warsaw 2023, Legalis, para. 20; A. Grześkowiak, *Komentarz do art. 107*, (in:) A. Grześkowiak, K. Wiak (eds), *Kodeks karny. Komentarz*, Warsaw 2021, Legalis, para. 3.

²³ The institution under Article 37b of the Penal Code is called variously. It is also problematic whether it is one penalty or two penalties imposed cumulatively – see B.J. Stefańska, *Zatarcie skazania obejmującego kary orzeczone kumulatywnie*, 'Ius Novum' 2022, No. 1, pp. 120–122; B. Czarnecka-Działuk, *Kary kombinowane – kary pozbawienia wolności i kary ograniczenia wolności orzekane na podstawie art. 37b k.k. Zagadnienia teoretyczne i praktyka orzecznicza*, Warsaw 2017, pp. 9–10; M. Małecki, *Sekwencja krótkoterminowej kary pozbawienia wolności i kary ograniczenia wolności (art. 37b k.k.) – zagadnienia podstawowe*, 'Palestra' 2015, Nos 7-8.

4) under non-Code provisions, when the sanction between imprisonment and fine contains the functor “and”²⁴ or the functor “or”²⁵ or the sanction contains the statement “shall be subject to a fine or imprisonment or both together”²⁶.

The Penal Code contains a provision for the expungement of convictions of cumulative penalties only in the case of a fine imposed in addition to a conviction of imprisonment imposed with conditional suspension. This is stated in Article 76(2) of the Penal Code, which stipulates that “if a fine, punitive measure, forfeiture or compensatory measure has been imposed on the convicted person, the expungement of the conviction may not take place before their enforcement, remittance or the expiry of the limitation period for their enforcement. The expungement of a conviction may also not take place before the enforcement of a protective measure.” According to Article 76(1) of the Penal Code, as a rule, a conviction is expunged by operation of law with the expiration of 1 year from the end of the probation period. This means that in a situation where a fine has been adjudicated in addition to a conditionally suspended sentence of imprisonment, the expungement of the conviction can take place only after the enforcement of the fine, its remittance or the expiration of the limitation period, even if the time period indicated in Article 76(1) of the Penal Code has already expired. Thus, failure to execute the fine extends the appearance of the conviction information in the National Criminal Register beyond the period stated in Article 76(1) of the Penal Code. In the case of a fine imposed in addition to an absolute prison sentence, there is no analogous provision. Indeed, Article 107(6) of the Penal Code indicates that “if a criminal measure, forfeiture or compensatory measure has been adjudged, the expungement of the conviction may not take place before its enforcement, remittance or expiry of the limitation period for its enforcement. The expungement of the conviction may also not take place before the enforcement of the protective measure”. This provision, unlike Article 76(2) of the Penal Code, does not mention a fine.

One should agree with the position expressed by legal scholars and commentators that the lack of regulation concerning the expungement of a conviction imposing a fine and an absolute prison sentence at the same time, as well as a conviction imposing restriction of liberty and imprisonment at the same time, is a legal loophole requiring legislator’s intervention²⁷. Before this happens, however, it is necessary to consider when, in the current state of the law, a convic-

²⁴ For example, in Article 171(1) of the Banking Law of 29 August 1997 (Dz. U. (Journal of Laws) of 2022, item 2324, as amended) and in Article 74v of the Law of 5 November 2009 on cooperative savings and credit unions (Dz. U. (Journal of Laws) of 2023, item 1278).

²⁵ Pl. “i”. This is the case, for example, in Article 171(6) of the Banking Law.

²⁶ Pl. “lub”. For example, in Article 74w(1) and (2) of the Law on cooperative savings and credit unions.

²⁷ B.J. Stefańska, 2022, *op. cit.*, p.125; M. Błaszczuk, *Kara mieszana*, (in:) S. Pikulski, W. Cieślak, M. Romańczuk-Grącka (eds), *Przyszłość polskiego prawa karnego. Alternatywne reakcje na przestępstwo*, Olsztyn 2015, p. 162; A. Grześkowiak, 2021, *op. cit.*, para. 13.

tion is expunged in a situation of imposition of cumulative punishments. This is because the lack of a provision explicitly resolving this situation cannot mean the impossibility of expunging such a conviction. In my opinion, it will be most appropriate to adopt the simplest and most intuitive solution by recognizing that the expungement of a conviction in the case of the imposition of cumulative punishments (a prison conviction in addition to a fine or a restriction of liberty sentence) will occur when the conditions for the expungement of the conviction for both punishments indicated in the judgment are met²⁸. Since the conviction consists of more than one punishment, the conditions for expunging the conviction of all these punishments must be met in order for such a conviction to be expunged²⁹. As a result, the period will never be shorter than the time required to expunge a conviction for a sentence of imprisonment (as a general rule, ten years from its enforcement, remittance or expiry of the limitation period for its enforcement, or five years in the case of a sentence of imprisonment not exceeding 3 years in a situation where the conditions for expunging the conviction by court order are met). However, it may be longer. This will be the case when, despite the expiration of the 10-year period indicated in Article 107(1) of the Penal Code, the conditions required for expungement of a fine or a restriction of liberty sentence have not been met (i.e., the time period for expungement of a fine or restriction of liberty sentence has not yet expired).

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²⁸ J. Majewski, *Kodeks karny. Komentarz do zmian 2015*, Warsaw 2015, p. 101; S. Tarapata, Chapter 15. *Przedawnienie i zatarcie skazania*, (in:) W. Wróbel (ed.), *Nowelizacja prawa karnego 2015. Komentarz*, Kraków 2015, p. 825; A. Zientara, 2016, *op.cit.*, p. 192; S. Tarapata, *Kilka uwag na temat nowelizacji przepisów Kodeksu karnego dotyczących instytucji przedawnienia oraz zatarcia skazania*, 'Palestra' 2015, Nos 7-8, p. 142; M. Błaszczuk, 2015, *op. cit.*, p. 162.

²⁹ As Błaszczuk points out, it is possible to impose as many as three punishments for a single crime, i.e. imprisonment and restriction of liberty under Article 37b of the Penal Code and a fine under Article 33(2) of the Penal Code – M. Błaszczuk, 2015, *op. cit.*, p. 162.

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