

*Paweł Ostaszewski* ■

Transition in offences of not paying maintenance in Poland

Przemiany przestępstwa niealimentacji w Polsce

Abstract: How can the courts ensure someone pays maintenance? What is a sufficient and just reaction to avoiding these obligations? Non-payment of maintenance is an offence in most, but not all, European countries. Due to an amendment in the Polish Penal Code of 23 March 2017, the scope of the criminalisation of this offence in Poland expanded significantly. This paper presents a statistical analysis on this specific type of crime 30 years before and 30 years after the socio-political transformation in Poland and discusses the methods and purpose of criminal justice responses to this issue.

Keywords: evading alimony obligation, non-payment of maintenance, Poland, political transformation, statistical analysis

Abstrakt: Jak skłonić osobę zobowiązaną do płacenia alimentów, aby wypełniała ten obowiązek? Jaka jest wystarczająca i sprawiedliwa reakcja na unikanie tych zobowiązań? Niepłacenie alimentów jest przestępstwem w większości, ale nie we wszystkich krajach europejskich. W związku z nowelizacją polskiego Kodeksu karnego z 23 marca 2017 r. zakres kryminalizacji tego przestępstwa w Polsce znacznie się rozszerzył. W artykule przedstawiono wyniki analiz poświęconych przestępstwu niealimentacji z okresu 30 lat przed i 30 lat po transformacji ustrojowej w Polsce oraz poddano dyskusji sposoby reakcji wymiaru sprawiedliwości na to zjawisko.

Słowa kluczowe: analizy statystyczne, Polska, przestępstwo niealimentacji, transformacja ustrojowa, zobowiązania alimentacyjne

Introduction

Avoiding payment of maintenance support (which mainly involves child maintenance – Chelstowska 2016) is an example of what is known as family crime, domestic violence, and domestic abuse – especially economic abuse and the concept of coercive control (Stark 2007). Money, support, and contributions to the maintenance or care of a family member can be used as a method of control or a kind of interpersonal abuse in an intimate relationship, especially after the breakup of an intimate relationship with joint minor children.

Historically, this ‘family crime’ was largely ignored within criminology and the criminal justice system as a ‘private matters’ (Saraga and Muncie 2001). The change was initiated by women’s emancipation, followed by feminist movements asserting that ‘private is political’ and demanding that private matters become public. Attention was paid first to physical domestic violence, physical abuse of children, then sexual abuse, and elder abuse, and later to psychological and emotional violence such as stalking. All these issues are currently the subject of many analyses and discussions in criminology. Domestic abuse and violence against women are presented as the result, element, and confirmation of systemic inequalities between women and men and the discrimination of women in society, not merely as an individual aberration or a feature of dysfunctional families (Grzyb 2020). Thus, the need to criminalise these behaviours and for the justice system to take them seriously is no longer under discussion.

It is a bit different in the case of economic abuse of an intimate partner that does not include typical physical force. This type of violence is included, for example, in the definition of violence against women and domestic violence in the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention 2011), but not in the WHO definition of violence (Krug et al. 2002). Economic abuse among intimate partners fits well within the concept of coercive control, which includes behaviour towards an intimate partner that jeopardises their rights and liberties, but does not necessarily cause physical injuries. Coercive control is defined as a new form of gender-based violence situated next to physical violence, a means of subordinating women to men’s power and exercising male privilege (Stark 2007).

In the field of family crime and family abuse research in criminology, a lot of attention is paid to physical violence, much less to psychological abuse, and practically none to economic abuse (Chelstowska and Niżyńska 2015). The same applies to the problem of the offence of not paying maintenance, despite its presence in almost all national penal codes (certainly European ones). This problem is very broad, affecting many issues such as family crises, divorces, separations, ex-partner relationships, abandonment of children, child neglect, offences related to the violation of an order from a court or other institution, etc. Important questions arise – is child support, for example, not paid with an intention to harm (an important

element of violence and abuse) and, if yes, who is the target of this violence, the child or the ex-partner?

Additionally, the most critical issue, in fact, is whether we define it as a criminal or a social problem. If we consider that the most important is to provide an adequate livelihood, maintenance, or support to those who need it, e.g. children, then we may decide that it is not so important to punish those who avoid taking care of their children, but to provide support by the state.

This paper examines the changes the offence of non-payment of maintenance was subject to in the course of socio-political transformation in Poland. It is composed of four parts. The first one briefly analyses changes in provisions of the law penalising the offence of non-payment of maintenance in Polish penal codes since World War II. The second part presents general statistical data of this offence over the longest possible timeframe. The third one adds to this analysis data on the 'second demographic transition' in Poland in regards to non-payment of maintenance. The fourth part presents criminological research on social attitudes towards and characteristics of perpetrators and proceedings of offences of non-payment of maintenance in Poland before and after political transformation.

1. Offence of non-payment of maintenance in Polish penal codes

Avoiding payment of maintenance support is one of main articles in the section 'Crimes against the family' in the Polish Penal Code, next to the crime of abusing a close relation and neglecting a child.

This behaviour was first criminalised in Poland before the Second World War, in the Polish Penal Code of 1932, Article 201. This provision provided criminal liability of malicious evasion of the obligation to provide maintenance support for a close relation which leads to misery (the inability to meet the most basic needs of food, clothing, housing, etc.) or to the need to rely on support from others. Prosecution of the offence was at the request of the victim. The justification for this criminalisation was the statement that the obligation to pay maintenance is on the family rather than the whole of society, but society cannot ignore the problem of neglecting to fulfil this obligation. The extent of criminalisation was limited to only intentional and malicious behaviour. After the Second World War, in the beginning of the communist era, this provision of the article was preserved – until the introduction of the new Penal Code of 1969. In the Penal Code of 1969, in place of Article 201 from the Penal Code of 1932 Article 186 was introduced with the following, rather similar, content: 'Whoever persistently refuses to comply with his obligation under the Act to provide for the maintenance of a child, parents, or other close relation and thereby exposes him or her to the inability to meet basic

needs is subject to imprisonment of up to 3 years.' Therefore, the only changes were the replacing the word 'maliciously' with the word 'persistently' and the concept of 'misery' with the concept of not satisfying 'basic needs', which led to the criminalisation of this behaviour being extended. In 1975 another amendment changed the form of prosecution to *ex officio* (Jodłowski 2017).

In 1998 the newest Polish Penal Code of 1997 was introduced, with a provision – Article 209 – which was very similar to Article 186 from the Penal Code of 1969. The changes include a return to prosecution at the request of the victim, except in cases of payment of benefits from the alimony fund, and replacement of the words 'obligation to provide maintenance' ('*obowiązku łożenia na utrzymanie*') with words 'obligation to care by neglecting maintenance support' ('*obowiązku opieki przez niełożenie na utrzymanie*'). The maximum penalty for this offence in the new Penal Code was reduced from 3 to 2 years' imprisonment. Since the introduction of the new Penal Code, this article has been amended several times, generally in relation to the list of entities that may apply for prosecution and the specification of situations in which prosecution may take place *ex officio*.

The last amendment to the Polish Penal Code – of 23 March 2017 – introduced a radical change to Article 209 which expanded the scope of criminalisation of this type of behaviour significantly. After that amendment, the offence covered in Article 209 §1 is expressed as the perpetrator evading their obligation to carry out maintenance payments specified as the amount (monetary) which is equivalent to at least three periodic (monthly) benefits. Article 209 §1a established an aggravated type of non-payment offence. A stricter liability is imposed on those who, by failing to comply with maintenance obligations under §1, expose the beneficiary to an inability to meet their basic needs. Prosecution of this offence is at the request of the victim, social welfare body, or the entity taking action against the maintenance debtor. If the victim has been granted adequate family benefits or cash benefits paid in the event of ineffective enforcement of maintenance, prosecution of the offence is *ex officio*. Paragraphs 4 and 5 introduced the principle of not punishing the perpetrator if he or she, in general, pays all maintenance in full. The subject of this crime is the right to material security for people who cannot support themselves, and the right to dignified living conditions – to provide material support for persons entitled to maintenance (Lachowski 2018; Mozgawa 2019).

Thus, the current provision of Article 209 defines the basic type of offence for non-payment of maintenance as a failure to comply with maintenance obligations, regardless of the consequences that this behaviour may entail for the victim (e.g. in the form of misery – as was the case under the Penal Code of 1932, or exposing the victim to the inability to satisfy basic needs – as is the case in the Penal Code of 1969 and the previous legal status of the Penal Code of 1997) or whether it is of a malicious or persistent nature. This raises the question of the main goal of criminalising this behaviour after the amendment. Is it still a fundamental threat to an important, legally protected interest, in this case, the interest of family well-being

and the duty of care? Or is it just an inability to fulfil a contractual obligation – non-compliance with the maintenance obligations (which may be considered contrary to Art. 1 of Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms)?

To sum up, instead of one type of offence, two were introduced – the basic one and the aggravated type, the latter of which covering situations where not paying maintenance leads to serious deprivation for the victim. As a result, the old type became the aggravated one and the new basic type was introduced. Thus, it was not an example of tightening criminal law, but of extending the scope of criminalisation – the creation of a new, less serious crime. Two main purposes for these changes were introduced: improving the economic situation of families for which maintenance should be paid – by increasing the efficiency of enforcement of maintenance payments from people avoiding this obligation – and eliminating this behaviour – by deterring potential perpetrators of this crime. Another aim was to simplify the proceedings. According to the legislature, the previous wording of this provision caused numerous difficulties related not only to the various interpretations of the term ‘persistence’ (long-term, repetitive behaviour, characterised by bad will), but also to the obligation to prove the existence of a relationship between the fact of persistent failure to pay maintenance and exposure leading to serious deprivation of the victim’s needs.

In studies of Polish criminal law, there was a very intense discussion continuing for many years on the criminalisation and decriminalisation of non-payment of maintenance. It was said that the current provision is ineffective and often irrational due to the increasing inability to fulfil this obligation in the future, and that it should not be the subject of criminal law, but rather of family or civil law (Kołakowska-Przełomiec 1989; Ratajczak 1980; Siwik 1974). Therefore, it has been claimed that these offences should not be punished by imprisonment (Warylewski 2012: 1035). However, non-custodial and community sanctions such as fines or community service are not good either, because they reduce the perpetrator’s earning potential. Imprisonment would only be effective if all prisoners were effectively employed and paid (Siwik 2016).

In short, non-payment of maintenance was not a top priority of the police, the criminal justice system, or even criminologists, but it has always been a significant part of all registered and punished crimes in Poland. It is interesting to show how changes to the provisions of the Criminal Code have affected the statistical picture of non-payment offences in Poland and to what extent they were able to achieve the goals set for them.

2. Statistical overview of offences of non-payment of maintenance in Poland

The number of registered offences of non-payment of maintenance was published in Polish statistical yearbooks from 1965 to 1997. To a greater extent, the statistics present the number (and gender) of people convicted of this crime from 1959 to the present. In addition, some of these yearbooks also contain other selected data on this phenomenon, such as the number of suspects broken down by gender and age group (1970–1975) or the number of convicted people according to the length of prison sentence (1995).

Looking at the number of non-payment of maintenance offences in reference to the total number of crimes nationwide and the number of inhabitants in the corresponding years (crime rates), one can distinguish several periods (Table 1 and Figure 1). From 1965 to 1989, that is, the last 25 years before the political transformation, there was a period of rather stable total crime rate (with the exception of a slight decrease in the seventies and an increase in the eighties) and a rather stable number of non-payment offences (with the exception of two increases – in the late seventies, probably related to the change in the way this offence was prosecuted – and late in the eighties, divided by a decline in the early eighties).

Figure 1. Crime rates (total crime and non-payment of maintenance offences) in Poland



Sources: Siemaszko, Gruszczyńska and Marczewski 2015, Polish Statistical Yearbooks, Polish Police data.

After the political transformation, we can observe a significant increase in the number of non-payment of maintenance offences, similar to the general rise in the number of crimes in Poland. Then, despite the continuing increase in crime, the number of non-payment of maintenance offences started to fall in 2001. The huge decrease in 2004 was due to a change in the welfare system which led to less reporting of such crimes: the Alimony Fund was closed on 1 May 2004 with the introduction of the Act on Family Benefits. This fund was restored in July 2008. At the same time, the list of entities that may apply for prosecution was extended to social welfare entities and authorities taking action against maintenance debtors; this resulted in a rise of reporting non-payment of maintenance offences since that year.

The last significant (fourfold) increase in the number of non-payment of maintenance offences was caused by the above-mentioned last change to the provision of the corresponding Article of the Penal Code from 2017. In 2018, non-payment of maintenance offences covered 9.2% of all crime in Poland; in 2016 it was 1.3% (more or less the average level for the 2000s), and before 1989 it was approximately 3%. What should be emphasised is that introducing new penal codes in 1969 and 1997 (with insignificant changes to the corresponding article) had no effect on the number of these offences.

As mentioned above, conviction data for offences of non-payment of maintenance have been available since 1956. On average, the number of people convicted for non-payment accounts for about 70% of the number of all related crimes registered (Table 2). This quite high proportion (especially compared to the proportion of the total convictions and the total number of crimes, which was about 33% on average) is connected to the fact that the identity of all maintenance offenders are known to the victims and law enforcement authorities. This is also one of the main reasons maintenance offences covered a greater part of all convictions, especially in times when that figure was lower, such as just before and just after the political transformation. The number of convictions of this crime is not affected much by the efficiency of law enforcement agencies in detecting the crime, so in times of organisational turmoil the decrease was not as significant as that of other crime.

The number of people convicted for avoiding payment of maintenance underwent similar changes as described for the number of offences. Additionally, the period of 1956–1964 was a time of large, difficult-to-explain fluctuation in the total number of convictions and the number of those convicted for non-payment. In addition, data from 1974 and 1977 were affected by two general amnesties.

In 2018, people convicted for non-payment of maintenance comprised 15.3% of all people sentenced in Poland; in 2016 it was 3.4% (as with the police data, it was average for the 2000s); before and after 1989 it was approx. 9%.

Table 1. Police data on non-payment of maintenance in Poland

Year	Total number of crimes	Crime rate* (total)	Non-payment of maintenance crimes	Crime rate* (maintenance-related)	Year	Total number of crimes	Crime rate* (total)	Non-payment of maintenance crimes	Crime rate* (maintenance-related)
1965	486,007	1,543.1	13,280	42.2	1992	881,076	2,296.6	22,104	57.6
1966	525,540	1,658.0	12,069	38.1	1993	852,507	2,216.7	23,739	61.7
1967	498,027	1,559.1	11,831	37.0	1994	906,157	2,351.0	27,874	72.3
1968	468,602	1,450.6	11,208	34.7	1995	974,941	2,526.6	27,193	70.5
1969	497,971	1,529.6	13,686	42.0	1996	897,751	2,324.7	28,349	73.4
1970	424,217	1,304.2	13,215	40.6	1997	992,373	2,567.6	30,394	78.6
1971	475,411	1,449.2	13,363	40.7	1998	1,073,042	2,775.1	31,037	80.3
1972	379,086	1,146.4	11,732	35.5	1999	1,121,545	2,901.5	28,487	73.7
1973	355,125	1,064.4	10,674	32.0	2000	1,266,910	3,278.2	29,967	77.5
1974	339,542	1,007.8	10,542	31.3	2001	1,390,089	3,597.4	28,264	73.1
1975	340,423	1,000.6	10,686	31.4	2002	1,404,229	3,672.9	23,280	60.9
1976	324,182	943.4	10,752	31.3	2003	1,466,643	3,839.9	22,061	57.8
1977	344,507	992.9	12,308	35.5	2004	1,461,217	3,827.2	16,728	43.8
1978	355,493	1,017.8	14,903	42.7	2005	1,379,962	3,616.1	10,994	28.8
1979	337,301	956.7	14,664	41.6	2006	1,287,918	3,377.5	9,982	26.2
1980	337,936	949.8	15,144	42.6	2007	1,152,993	3,025.0	11,814	31.0
1981	379,762	1,057.8	12,469	34.7	2008	1,082,057	2,838.9	11,133	29.2
1982	436,206	1,204.1	11,290	31.2	2009	1,129,577	2,960.6	18,718	49.1
1983	466,205	1,274.8	10,701	29.3	2010	1,151,157	3,014.5	19,304	50.6
1984	538,930	1,460.0	14,314	38.8	2011	1,159,554	3,009.8	18,775	48.7
1985	544,361	1,463.2	19,982	53.7	2012	1,119,804	2,906.0	14,262	37.0
1986	507,913	1,356.0	18,865	50.4	2013	1,061,237	2,756.3	18,249	47.4
1987	508,533	1,350.2	18,390	48.8	2014	867,855	2,255.1	16,664	43.3
1988	475,273	1,255.3	15,674	41.4	2015	799,779	2,079.8	13,368	34.8
1989	547,589	1,442.4	12,624	33.3	2016	748,459	1,947.8	9,398	24.5
1990	883,346	2,317.3	13,558	35.6	2017	753,963	1,962.3	16,885	43.9
1991	866,094	2,264.6	20,069	52.5	2018	768,049	1,999.4	70,412	183.3

* Number of crimes per 100,000 population

Sources: Siemaszko, Gruszczynska and Marczewski 2015, Polish Statistical Yearbooks, Polish Police data.

Table 2. Convictions for non-payment of maintenance in Poland

Year	Total number of people convicted	Convictions for non-payment of maintenance	Year	Total number of people convicted	Convictions for non-payment of maintenance
1956	135,743	4,466	1988	137,159	12,840
1957	176,697	5,287	1989	93,373	8,452
1958	257,004	5,470	1990	106,464	7,563
1959	280,761	4,206	1991	152,333	12,464
1960	301,927	4,999	1992	160,703	15,322
1961	328,490	6,250	1993	171,622	16,161
1962	298,090	6,436	1994	185,065	16,321
1963	271,545	6,124	1995	195,455	15,386
1964	191,933	4,865	1996	227,731	19,524
1965	222,323	7,303	1997	210,600	19,129
1966	248,447	7,876	1998	219,064	20,677
1967	231,786	7,461	1999	207,607	19,455
1968	220,520	7,108	2000	222,815	20,984
1969	150,668	5,602	2001	315,013	20,527
1970	166,049	9,349	2002	365,326	17,361
1971	197,334	9,931	2003	415,933	17,700
1972	169,321	9,686	2004	513,410	18,065
1973	152,176	8,060	2005	504,281	10,946
1974	147,469	7,598	2006	462,937	7,870
1975	161,286	8,348	2007	426,377	8,922
1976	159,363	8,733	2008	420,729	9,960
1977	137,847	7,634	2009	415,272	12,139
1978	157,463	10,785	2010	432,891	17,910
1979	153,026	11,491	2011	423,464	16,138
1980	151,958	11,107	2012	408,107	12,271
1981	126,403	9,588	2013	353,208	13,911
1982	148,456	9,103	2014	293,852	12,967
1983	141,768	7,689	2015	260,034	10,746
1984	125,132	7,137	2016	289,512	9,744
1985	149,414	12,535	2017	241,436	7,711
1986	153,037	11,967	2018	275,768	42,220
1987	166,753	13,788			

Sources: Polish Statistical Yearbooks, Polish Ministry of Justice data.

Despite the availability of these quite long-term data, more specific, comparable statistical data is hard to come by, concerning, for example, the socio-demographic characteristics of perpetrators. To compare such characteristics from before and after the political transformation in Poland, the author had to use the data of both suspects and people convicted (Table 3). Offenders of non-payment of maintenance are almost exclusively male. There has been a very slight increase in the percentage of female perpetrators – from less than 2% to less than 4%. As for age, there were no significant differences between the four time-points under consideration – in most cases the offenders were between 30 and 49 years old.

Table 3. Gender and age of non-payment of maintenance perpetrators

Year		1970	2000	2016	2018
Suspects – total	N	12,262	28,742	-	-
Suspects – men	N	11,834	27,765	-	-
	%	96.5%	96.6%	-	-
Convicted – total	N	9,349	20,984	9,744	42,220
Convicted – men	N	9,189	20,423	9,436	40,449
	%	98.3%	97.3%	96.8%	95.8%
Perpetrators:	1970, 2000 – suspects 2016, 2018 – convicted	12,262	28,742	9,744	42,220
Up to 17 years	N	21	2	0	0
17–20 years	N	51	87	169	464
	%	0.4%	0.3%	1.7%	1.1%
21–24 years	N	624	845	766	2,378
	%	5.1%	2.9%	7.9%	5.6%
25–29 years	N	2,071	2,912	1,719	6,747
	%	16.9%	10.1%	17.6%	16.0%
30–49 years	N	8,967	22,384	6,549	29,861
	%	73.1%	77.9%	67.2%	70.7%
50+ years	N	482	2,512	539	2,764
	%	3.9%	8.7%	5.5%	6.5%
Unidentified	N	46	0	2	4

Sources: Polish Statistical Yearbooks, Polish Ministry of Justice data.

We can also look at a different source of statistics for this offence for a very interesting three years (2016–2018). The aforementioned amendment to the Penal Code from 23 March 2017 came into force in mid-2017. Since then there has been

a huge, unprecedented increase in the numbers of reported crimes, incoming cases to prosecutors' offices (including police cases) people sentenced, and people sentenced to imprisonment (Table 4). In fact, the percentage of custodial sentences are lower than in previous years, though, and the highest increase was in sentences for community service.

Table 4. Offences for non-payment of maintenance in Poland, 2016–2018

	Year		
	2016	2017	2018
Cases sent to prosecutors' offices	27,976	57,596	156,502
Proceedings initiated by prosecutors	18,017	40,797	118,040
Offences registered by the police	9,398	16,885	70,412
Indictments and applications for conviction prepared by prosecutors	7,957	13,647	59,503
People sentenced (final)	9,744	7,711	42,220
People sentenced to imprisonment (final)	1,381	1,216	4,529

Sources: Polish Police data, Polish Prosecutors Office data, Polish Ministry of Justice data.

3. Demographic transition in Poland related to non-payment of maintenance

This paper does not claim to describe the whole course of the political transformation in Poland after 1989 and its impact on all criminal policy in Poland. This topic has been the subject of numerous studies (e.g. Szymanowski 2012; 2018; Wiczorek 2006). Here, it is important to point out some aspects of the so-called second demographic transition, which describes Poland in a period of political transformation, to offences of evading alimony obligation.

The second demographic transition is a process of gradually decreasing birth and death rates, increasing life expectancy, changing of the cross-section of society, and a growing proportion of older people. This period is accompanied by cultural changes, e.g. the more important role of education and careers, postponing the age of starting a family, falling marriage rates and rising divorce rates. In the sixties and seventies in Poland, 95% of children were born in wedlock (Domański 2013: 364–371); in the beginning of the nineties it was 93%–94%, and in 2013 it was 77% (Stańczak, Stelmach and Urbanowicz 2016: 7).

There is also no place in this paper to present all of the demographic data or to describe in detail all aspects of Polish family law and changes to it over the past few decades, but it should be noted that maintenance orders are issued as part of divorce judgments or judgments which strictly establish or change a maintenance order. Therefore, it is also worth examining whether and to what extent the numbers of these cases and decisions have changed.

In Poland, the period of the ‘Polish People’s Republic’ – from the Second World War to the political transformation in 1989 – was characterised by a rather stable, high number of marriages and a growing number of divorces (Table 4). It was also a time of increasing maintenance cases and orders, but – as mentioned above – a rather stable number of cases and convictions for non-payment of maintenance. The increase in the number of offences for non-payment of maintenance after the political transformation in Poland, and especially in 2018, coincides with falling numbers of cases imposing maintenance orders. This of course requires an in-depth analysis, but it could nonetheless be concluded that there is probably no simple relationship between these cases and that changes in non-payment of maintenance offences are not the result of demographic transition.

Table 5. Numbers of marriages, divorces, maintenance orders, non-payment of maintenance offences, and convictions in Poland

Year	Marriages	Incoming divorce cases	Divorce judgments	Incoming cases on maintenance orders	Maintenance orders	Non-payment offences	Convictions for non-payment
1946	282,000	-	8,000	-	-	-	-
1950	267,100	-	11,012	-	-	-	-
1960	244,900	30,254	14,800	22,888	-	-	4,999
1970	280,000	59,065	34,600	56,080	-	13,215	9,349
1980	307,000	82,380	39,833	102,378	77,404	15,144	11,107
1990	255,000	76,421	42,400	313,226	299,182	13,558	7,563
2000	211,000	81,993	42,770	220,398	176,728	29,967	20,527
2010	228,337	91,400	61,300	135,993	136,175	19,304	17,910
2018	192,443	89,200	62,843	80,383	81,081	70,412	42,220

Sources: Polish Statistical Yearbooks, Polish Ministry of Justice data.

4. Social transition in offences of non-payment of maintenance in Poland?

The last part of this paper is an attempt to answer the question of whether any change in social attitudes towards non-payment of maintenance or in the detailed characteristics of offenders can be observed in Poland before and after political transformation. Not many surveys were conducted on the topic of non-payment of maintenance, though two are worth mentioning here – one carried out by Jerzy Kwaśniewski and Andrzej Kojder in 1976 on a sample of Warsaw citizens and another by Aleksandra Szymanowska in 1993, 1995, and 2006 on representative samples from around the country. Unfortunately, no similar studies were carried out in subsequent years. In 1976, 90.5% of respondents strongly condemned non-payment of maintenance and another 8% somewhat condemned it (Kwaśniewski 1983: 57–62). The only behaviours condemned even more were rape, pickpocketing, purse-snatching, and espionage. Even unintentional homicide during a quarrel and fighting received lower rates of condemnation.

According to Aleksandra Szymanowska's surveys on a representative sample of Poles, non-payment of child maintenance after the political transformation was not one of the most reprehensible behaviours from all crimes and violations of law (Szymanowska 2008: 64–126). The level of condemnation towards it did not change significantly from 1993 to 2006. The percentage of the responses which 'strongly condemn' this act was 77% in 1993, 79% in 1995, and 73% in 2006. The level of general condemnation (both the answers 'strongly' and 'somewhat' condemn) was rather stable – 97% in 1993, 95% in 1995, and 96% in 2006; this was also comparable to the result from 1976 (98.5%). This may indicate a slight change from unconditional to conditional (rather) condemnation of this behaviour and not to acceptance of it.

Among the most often condemned behaviours were 'traditional' crimes: rape, incest, murder, robbery, kidnapping, sexual exploitation of children, battering, theft, or destruction of property. Non-payment of maintenance after political transformation was similarly condemned as giving false testimony, using one's position to obtain undue benefits, offering a bribe, or assisting a wanted criminal. Interestingly, in the factor analysis carried out by the author, non-payment of child support did not combine with other behaviours considered in the study, which may suggest that this crime is assessed differently from the others on the scale of condemnation–non-condemnation and that no group of behaviours would be similarly rated by the same people.

Another interesting result of the reported study was the very high level of responses that non-payment of maintenance is a crime for which the state could decline to adjudicate and instead allow mediation (53.4% of such answers in 2006). This rate was much higher than in the case of traffic accidents, assault, or theft. The breakdown for the answers to the question 'How should courts punish people who

persistently do not pay their maintenance' were 17% – courts should not punish them and the case should be dealt with in civil proceedings; 22% – imprisonment (suspended or not); and 59% – other punishment. This suggests respondents were not quite certain of the appropriate reaction to these offences.

To reveal any changes in the criminal justice system's response to the crime of non-payment of maintenance and the characteristics of the perpetrators, it is worth mentioning two courts case-files studies – one carried out by Helena Kołakowska-Przełomiec on court cases which ended in 1979 and another one on court cases ending in 2017–2018 and carried out at the Polish Institute of Justice in 2018 by Paweł Ostaszewski, Justyna Włodarczyk-Madejska and Joanna Klimczak (not published).

Kołakowska-Przełomiec conducted an examination of 160 case files from Article 186 of the Penal Code which ended in a single month (March 1979) and were drawn from the list of 1,196 perpetrators sentenced in that month in all common courts in Poland (Kołakowska-Przełomiec 1989). The proceedings in question were initiated by bailiffs (45.2%), the wife/ex-wife/mother of the children of the perpetrator (42.5%), and other people (11.9%). The maintenance orders which were unpaid by the perpetrators were handed down uniformly, approximately 30% for each category: 1–2 years before initiating the case, 3–4 years before, and 5–10 years before. Maintenance orders which were handed down more than 10 years before the non-payment case constituted 11.2% of cases. 73% of the non-payment of maintenance offences were committed in towns, and 27% in villages. Interestingly, due to the very low reported income of the perpetrators in about half of the cases, the amount of child maintenance was estimated to be about 50%–90% of their total income.

The maintenance orders of 160 investigated perpetrators were awarded to 263 people. In all cases they were children, while in one case it was the children and ex-wife of the perpetrator. 34.4% of cases concerned a maintenance order awarded during the marriage, 20% awarded in the divorce proceedings, 17.5% in judgments regarding non-marital relationships, and 13.1% together with a paternity case. 38.8% of the debtors had never paid maintenance, 46.9% paid it irregularly from the very beginning, and 12.5% paid regularly at the beginning. In 53.2% of cases, due to the insolvency of the perpetrator the entitled individuals received payments from the Alimony Fund.

Child maintenance orders were awarded as follows: for young children (0–3 years) – 40%; for pre-schoolers (4–6 years) – 24.6%; for primary-school students (7–14 years) – 23%; and for adolescents (15–17 years) – 5.6%. At the time of initiating the case, the children were usually 7–14 years old (42.5%). The children typically remained under the care of the mother, very rarely with grandparents or other relatives. Perpetrators usually did not maintain contact with their children – only 2.5% were interested in their children and 31.3% showed little interest.

Criminal proceedings of non-payment of maintenance offences were rather brief – most often they lasted 3–4 months from submitting a notification of a crime

to filing an indictment. In 36% of cases, the perpetrators were detained pre-trial. Most of them (72%) admitted their guilt, while 11% denied it.

Kořakowska-Przełomieć pointed out the active role the mother of the children for whom maintenance was awarded played in the proceedings, and not the active role of the children. She stated that unpaid child maintenance orders were always preceded by some conflict in the family. According to the mothers, the conflict was usually caused by alcohol, a failure to support the family, and the father's abandonment of the family. According to the father-perpetrators, the wives or children's mothers contributed in various ways to the breakup of the families by causing quarrels, demanding more money than they were able to earn, or mismanaging the money, also citing interference from distant relations (Kořakowska-Przełomieć 1989: 48–49). The author identified three attitudes of mothers to criminal cases for non-payment of maintenance:

- mothers who wanted maintenance but not to punish the father of their children – they didn't initiate criminal cases themselves, e.g. when they received money from the Alimony Fund (approx. 12%)
- women in difficult financial situations, who wanted fathers of their children to return home (approx. 18%)
- women who did not want to forget about the conflict and harm and who wanted to take revenge and to punish the perpetrator (approx. 60%; Kořakowska-Przełomieć 1989: 49–60)

The vast majority (96.3%) of the perpetrators were men. At the time of case initiation, their ages were as follows: below 25 years – 10%; 25–29 years – 28.7%; 30–34 years – 26.9%; 35–39 years – 19.4%; 40–44 years – 11.3%, 45–49 years – 9.4%; and 50+ years – 5.6%. 48.8% were married, 35.6% divorced, and 13.1% were single. In 40% of the cases they had 1 child, in 37.5% of cases 2 children, and in 22.5% 3 or more children. They had a low level of education: 56.3% had finished primary school at most – of whom 12% did not even complete it – 18.7% had graduated from vocational school, 12.5% from lower secondary school, and only 1 person had graduated from high school. Only 23.7% had permanent work, 49.4% only did odd jobs, 5% were farmers, and 20% did not work at all. Additionally, 18.1% of the perpetrators were chronically ill and 9.4% also had other maintenance orders than those from the cases analysed.

Approximately two-thirds (66.3%) of the offenders had been previously sentenced, and one-fourth (25.6%) had been sentenced 3 or more times. Domestic abuse was the reason for the previous sentence in 11.9% of cases and non-payment of maintenance covered 27%. Most perpetrators abused alcohol (78%) and only 22% drank alcohol moderately or not at all. Approximately 14% of the offenders were addicted to alcohol. The author identified five types of perpetrators:

- I – socially and psychophysically degraded (alcohol abusers), 24%
- II – socially degraded (criminals and alcohol abusers), 13%

- III – unstable in life (abandoning family and work, irregular payment of maintenance), 22%
- IV – careless (didn't remember, didn't want to pay), 26%
- V – shiftless (with financial and employment difficulties), 15%

In general, penalties in the period of the Polish People's Republic were rather severe. Of the cases analysed by the author, 30.6% ended in imprisonment, 53.3% in suspended imprisonment, and 14.2% in community service. Not a single fine was handed down and only 1.9% of cases ended in conditional discontinuance of proceedings. The prison sentences (both types) were most often 1 year, 1.5 years, and 2 years in length. Additionally, the courts imposed different obligations on the majority of offenders: to pay child maintenance (65.7%), to have a paying job (38.9%), to pay overdue maintenance payments (36%), and to abstain from alcohol abuse (30.6%).

The author also analysed the sanctions which were imposed on the perpetrators of a given type. What was interesting was that the most severe sanctions were imposed on people from types I and II – repeat offenders and alcoholics – and the lowest rate of imprisonment was given to type IV offenders – the careless – which, paradoxically, could be most reformed by punishment. These kinds of judgment often raised doubts as to whether it was the right reaction to those offences. Severe sanction was also imposed on afflicted, often permanently ill people without a chance to take up a paying job and pay off their obligations, or people raising other children in desperate financial situations. The results showed that the only factor important to the courts in sentencing was non-payment for a certain period of time. Examining the existence of payment options and a negative attitude towards payment were secondary. This was especially visible in cases initiated by bailiffs.

Similar data to those from Kołakowska-Przełomieć's research from 1979 case files was collected in the course of a research project carried out at the Polish Institute of Justice in 2018, which examined a total of 211 cases ending in 2017–2018, including 107 cases of domestic abuse offences (article 207 of the Polish Penal Code) and 104 cases of non-payment of maintenance offences (article 209 of the Polish Penal Code). Half of both types of cases were finalised at the stage of prosecutors' proceedings (a decision of discontinuance of the proceedings or a refusal to initiate proceedings – from 12 randomly drawn district prosecutor's offices) and half at the stage of court proceedings (a final conviction – from 12 randomly drawn district courts). The main subjects of that analysis were the criminal justice response to such acts and the characteristics of the perpetrators, victims, and the relationship between them. The data collected (from 104 perpetrators) are largely comparable to those from 1979 analysed by Kołakowska-Przełomieć (160 perpetrators), and they are worth noting because they are the most recent and have not been previously published.

Eighty-five percent of those cases were related to acts committed before the middle of 2017, that is, before the last amendment discussed above came into force. The length of the pre-trial proceedings – as with those in 1979 – were rather short: up to 1 month in 18.3% of cases; 1–2 months in 26.9%; 2–3 months in 20.2%; 3–4 months in 15.4%; and 5 months or more in 19.2%. The length of court proceedings (regarding 52 cases) was up to 1 month in 44.2% of cases; 1–2 months in 25%; 2–3 months in 11.5%; 3–4 months in 7.7%; and 5 months or more in 11.5%. The crime of non-payment of maintenance was reported by the victim in 16.3% of cases; a social assistance body in 26% of cases; an authority taking action against the maintenance debtor in 54.8%; and by bailiffs in 2.9%. Therefore, one should note the significant change in the structure of entities reporting the crime: individuals entitled to maintenance are currently in the definite minority, and the authorities responsible for payments from the Alimony Fund, which initiate these proceedings *ex officio*, prevail.

The proceedings under study ended in a refusal to initiate in 16.3% of cases; in a decision to discontinue the preparatory proceedings in 33.7%; and in conviction in 50% of cases. The reasons for refusing to initiate or discontinuing proceedings were mainly ‘no signs of a prohibited act’. In two cases, it was because of the death of the suspect and one case was due to a lack of sufficient data to justify the suspicion of an act, other pending proceedings, and the lack of a required prosecution application from an authorised person. Most of the offenders who were sentenced were given community service (33 people, 20–30 hours of work monthly for 3–24 months), though the other punishments included suspended imprisonment (10 people, 2–12 months suspended for 1–3 years), imprisonment (7 people, 3–12 months), and fines (3 people, 1000–2000 PLN). Most of them (36 people) were also required to provide for the maintenance of another person and one was ordered to abstain from alcohol abuse, to hold a paying job, to inform the court about the course of the probation period, and to systematically compensate the Alimony Fund and the victim within 2 years of the final judgment. There was only one appeal – against the decision to refuse to initiate the proceeding.

Maintenance orders for 104 perpetrators from 2017–2018 were awarded to 154 people – 152 children and 2 ex-wives. The beneficiaries of the maintenance orders were one child (59.6%), two children (26%), three children (5.8%), four children (1%), five children (1%), the mother and 2 children (1.9%), and an adult child (4.8%). Only five (out of 104) offenders lived together with someone entitled to maintenance when the case was initiated. Despite the fact that, as stated before, non-payment of maintenance often coexists with domestic violence, in only one of the analysed cases was there also an accusation of physical violence.

Again, the vast majority (93.3%) of offenders were male, while 7% were female. Their ages ranged from 22–29 years in 11.5% of cases, 30–39 years in 34.6%, 40–49 years in 32.7%, and 50+ in 21.2%. The perpetrator’s place of residence was a village in 37.5% of cases, a town with up to 10,000 inhabitants in 10.7% of cases, a town with 10,000–50,000 inhabitants in 20.4%, a town with 50,000–100,000 residents in 5.8%,

and a city with over 100,000 residents in 24%. Additionally, 1 person lived abroad. Their level of education was primary school – 21.2%, vocational school – 32.7%, secondary school – 11.5%, and higher education – 1%; there was no such data for 33.7% of them. Only 20 of the offenders maintained a permanent job, 36 only did odd jobs, 5 were pensioners, 4 were in prison, 2 work abroad, and 1 woman – the perpetrator – took care of her other small children. As for the marital status of offenders, 37.5% were divorced, 20.2% were married, 13.4% cohabited, 15.4% were single, and 1.9% were widowed. There were no such data for 10.6% of the cases. The financial and living situation of the perpetrators was rather poor – 38 of them had significant financial problems, 24 were alcoholics, 21 were unemployed, 11 had severe physical illnesses or disabilities, 1 was mentally ill, and 3 were homeless. Twenty-seven of them received welfare benefits. Most of them (62 people) had previously been sentenced, usually once or twice, and in 1 case – even 15 times. Their previous sentences were for non-payment of maintenance (24 people), drink driving (23), offences against property (20), family violence (12), assaults (7), and violation of a court ban on driving vehicles (6); 29 had been in prison before.

To sum up, the characteristics of those entitled to child maintenance and those obliged to pay it did not change significantly before and after the political transformation in Poland. However, according to changes in regulations regarding the initiation of these proceedings, the role of actual victims – the person entitled to maintenance – has been reduced; administration bodies now play the main role in initiating cases. One can state that non-payment of maintenance is now more of a conflict between local government authorities that supervise the payment of maintenance from the Alimony Fund and the perpetrators. The actual victims (and the victims' mothers) bring forward cases only approximately 16% of the time.

Conclusion

The paper discussed changes in non-payment of maintenance offences in Poland in relation to the political transformation. The author analysed changes to the provisions of the article which penalises this offence in Polish penal codes since World War II and the statistical data on this offence over the longest possible timeframe. Finally, the author compared the criminological research on this topic made before the socio-political transformation in Poland with the most recent research, including some conducted by the author and not published before.

In the period of the Polish People's Republic, the number of offences for non-payment of maintenance was rather stable, with exceptions – in the late seventies, there was an increase connected with changing the prosecution of this offence to *ex officio*, and another increase in the late eighties followed a decline earlier in the decade. After the political transformation, a significant increase in the number of

non-payment offences can be observed, similar to the general rise in the number of crimes in Poland. Then, despite the continuing increase in crime, the number of offences for non-payment of maintenance started to fall in 2001. The huge decrease in 2004 caused by the closing of the Alimony Fund, which resulted in less reporting of these acts. The fund was restored in July 2008, which resulted in a rise in non-payment offences, as did adding the social welfare body and authorities taking action against maintenance debtors to the list of entities which may apply for prosecution. The last significant (fourfold) increase in the number of offences of non-payment of maintenance was caused by the amendment of the Polish Penal Code from 2017. In 2018, people convicted of non-payment offences constituted 15.3% of the total number of people sentenced in Poland; in 2016 it was 3.4% (this was the average level for the 2000s). Before and after 1989 it was about 9%.

In a detailed view of court proceedings for non-payment of maintenance, the only significant change was the proportion of the entities reporting the crime – the people entitled to maintenance are currently in the definite minority, and the authorities responsible for payments from the Alimony Fund, which initiate such proceedings *ex officio*, prevail. Perpetrators of non-payment of maintenance, as in the seventies, are male, 30–49 years old, uninterested in their children, with little education, likely to be unemployed, and prone to alcohol abuse and recidivism. The types of penalties imposed have changed – in 1979 suspended and unsuspended imprisonment dominated, while in 2018 it was community service.

When it comes to the efficiency of the criminal justice response to non-payment of maintenance, one can look at a very interesting change in the Polish Penal Code from 2017 and the creation of a new, less serious offence for non-payment of maintenance. After more than two years, a huge increase in the number of non-payment offences and convictions can be observed. At the same time, there has been no improvement in the recovery of maintenance according to reports of the Polish Registry of Debtors Office, but some evidence of improvement in the National Alimony Fund data (in terms of the amount and percentage of debts paid off). According to the same data, there is clearly no evidence that non-payment of maintenance has been eliminated – statistically, it has grown by several times.

On the potential deterrence effect of criminalisation and punishment, we can look from two perspectives – the general and specific deterrence hypothesis (e.g. the conditional hypothesis, the replacement hypothesis, and the additive hypothesis) and the labelling perspective (legal sanctions escalate crime by assigning the role of criminal) (Sherman et al. 1992: 681–683). It is of course impossible to test these hypotheses with the data presented in this paper; it requires additional research and, importantly, till now there have been no evaluations of the different types of interventions to reduce economic violence and non-payment of maintenance, such as a meta-analysis on interventions against physical violence. That is why this topic is very interesting for criminology, the criminal justice system, and public policy and why it is worth an in-depth analysis.

References

- Chelstowska A. and Nizyńska A. (2015). 'Jak działa przemoc ekonomiczna? Najważniejsze wnioski z badań jakościowych' [How does economic abuse work? The most important conclusions from qualitative research]. *Niebieska Linia* 5/100, pp. 29–32.
- Domański M. (2013). *Względne zakazy małżeńskie* [Relative Marriage Prohibitions]. Warszawa: Wolters Kluwer.
- Grzyb M. (2020). 'Jeśli biją to tylko kwiatkiem? O niskich wskaźnikach przemocy wobec kobiet w Polsce' [When they batter, they only use a flower? About low rates of violence against women in Poland]. In E.W. Pływaczewski, D. Dajnowicz-Piesiecka and E. Jurgielewicz-Delegacz (eds.) *Przestępczość XXI wieku. Szanse i wyzwania dla kryminologii* [Crimes of 21st Century: Chances and Challenges for Criminology]. Warszawa: Wolters Kluwer, pp. 177–193.
- Jodłowski J. (2017). 'Art. 209' [Article 209]. In W. Wróbel and A. Zoll (eds.) *Kodeks karny. Część szczególna. Tom II. Część I. Komentarz do art. 117–211a* [The Penal Code: Specific Part. Volume II. Part I: Commentary to Art. 117–211a]. Warszawa: Wolters Kluwer, pp. 897–928.
- Lachowski J. (2018). 'Art. 209' [Article 209]. In V. Konarska-Wrzošek (ed.) *Kodeks karny. Komentarz* [The Penal Code: Commentary]. Warszawa: Wolters Kluwer, pp. 1000–1004.
- Kołąkowska-Przełomiec H. (1989). *Przestępstwa niealimentacji. Studium kryminologiczne* [Offences of Evading Alimony Obligation: Criminological Study]. Wrocław: Zakład Narodowy im. Ossolińskich.
- Kwaśniewski J. (1983). *Spółeczeństwo wobec dewiacji* [Society and Deviance]. Warszawa: Wydawnictwa Uniwersytetu Warszawskiego.
- Mozgawa M. (2019). 'Art. 209' [Article 209]. In M. Mozgawa (ed.) *Kodeks karny. Komentarz aktualizowany* [The Penal Code: Updated commentary]. System Informacji Prawnej LEX.
- Ratajczak A. (1980). *Przestępstwa przeciwko rodzinie, opiece i młodzieży w systemie polskiego prawa karnego* [Offenses against Family, Care and Youth in the Polish Criminal Law System]. Warszawa: Wydawnictwo Prawnicze.
- Saraga E. and Muncie J. (2001). 'Family crime'. In E. McLaughlin and J. Muncie (eds.) *The Sage Dictionary of Criminology*. London–Thousand Oaks–New Delhi: Sage, pp. 117–118.
- Sherman L.W., Smith D.A., Schmidt J.D. and Rogan D.P. (1992). 'Crime, punishment, and stake in conformity: Legal and informal control of domestic violence'. *American Sociological Review* 57(5), pp. 680–690.
- Siemaszko A., Gruszczyńska B. and Marczewski M. (2015). *Atlas przestępczości w Polsce 5* [Atlas of Crime in Poland 5]. Warszawa: Oficyna Naukowa.
- Siwik Z. (1974). *Przestępstwo niealimentacji ze stanowiska polityki kryminalnej* [Offence of Evading Alimony Obligation from a Criminal Policy Perspective]. Wrocław: Uniwersytet Wrocławski.

- Siwik Z. (2016). 'Art. 209' [Article 209]. In M. Filar (ed.) *Kodeks karny. Komentarz* [The Penal Code: Commentary]. 5th ed. Warszawa: Wolters Kluwer, pp. 1292–1302.
- Stark E. (2007). *Coercive Control: The Entrapment of Women in Personal Life*. New York: Oxford University Press.
- Szymanowska A. (2008). *Polacy wobec przestępstw i karania. Opinie i postawy społeczeństwa polskiego wobec przestępstw, zachowań patologicznych i kontrowersyjnych oraz środków kontroli nad tymi zachowaniami* [Opinions and Attitudes of the Polish Society towards Crimes, Pathological and Controversial Behaviors and Control Measures over These Behaviors]. Warszawa: Wydawnictwa Uniwersytetu Warszawskiego.
- Szymanowski T. (2012). *Przestępczość i polityka karna w Polsce w świetle faktów i opinii społeczeństwa w okresie transformacji* [Crime and Criminal Policy in Poland According to Facts and Opinions of the Society during the Transformation]. Warszawa: Wolters Kluwer.
- Szymanowski T. (2018). 'Zmiany w przestępczości w Polsce w okresie po odzyskaniu niezależności oraz ewolucja polityki karnej w tym okresie w świetle danych statystycznych' [Changes in crime in Poland in the period after regaining independence and the evolution of criminal policy in this period according to statistical data]. *Palestra* 9, pp. 13–26.
- Warylewski J. (ed.) (2012). *Przestępstwa przeciwko dobrom indywidualnym* [Offenses against Individual Interests]. *System Prawa Karnego* 10. Warszawa: C.H. Beck, INP PAN.
- Wieczorek L. (2006). *Przestępczość i demoralizacja nieletnich w Polsce w okresie transformacji ustrojowej* [Juvenile Crime and Demoralization in Poland during the Political Transformation]. Katowice: Wydawnictwo Naukowe "Śląsk".
- Wróbel W., Wojtaszczyk A. and Zontek W. (2014). *Kodeks karny. Przepisy dwujęzyczne* [Criminal Code: Bilingual Provisions]. Warszawa: Wolters Kluwer.

Internet sources

- Chełstowska A. (2016). *Alimenty na dzieci – diagnoza polskiego systemu i przegląd praktyk zagranicznych* [Child Support – Diagnosis of the Polish System and Review of Foreign Practices]. Instytut Spraw Publicznych. Available online: <https://www.rpo.gov.pl/sites/default/files/Agata%20Che%20C5%82stowska%20Alimenty%20-%20diagnoza.%20Raport%20ISP.pdf> [17.12.2019].
- Istanbul Convention (2011). *The Council of Europe Convention on preventing and combating violence against women and domestic violence, 11 May 2011*. Available online: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210> [27.01.2020].
- Krug E.G., Dahlberg L.L., Mercy J.A., Zwi A.B. and Lozano R. (2002). *World Report on violence and health*. Geneva: World Health Organization. Available online: <https://>

www.who.int/violence_injury_prevention/violence/world_report/en/full_en.pdf [27.01.2020].

Polish Statistical Yearbooks from 1946 to 2019, Polish Statistics. Available online: stat.gov.pl [20.01.2020].

Stańczak J., Stelmach K. and Urbanowicz M. (2016). *Małżeństwa oraz dzietność w Polsce* [Marriages and Fertility in Poland], Główny Urząd Statystyczny. Departament Badań Demograficznych i Rynku Pracy. Available online: https://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5468/23/1/1/malzenstwa_i_dzietnosc_w_polsce.pdf [16.01.2020].