

Offence of Failure to Report a Work-related Accident in Poland¹

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Abstract: *This paper focuses on the criminal offence of failure to report a work-related accident. The offence in question has been defined under the Article 221 of the Polish Criminal Code. The author starts by considering what kind of interest is protected against the offence in question and continues with a detailed analysis of the offender and the objective element of the offence. The author also explains the mental element of this crime and analyses the relevant provisions of the Polish Criminal Code, Labour Code and other legal acts concerning labour law and social insurance law.*

Key Words: *Criminal Law; Labour Law; Social Insurance Law; Work-related Accident; Fatal Work-related Accident; Duty to Report Work-related Accident; Criminal Code; Labour Code; Poland.*

Introduction

Article 221 of the Polish Criminal Code² stipulates that: “Anyone who fails to report on time to the competent authority a work-related accident or a case of occupational disease, or who fails to prepare or to present the required documentation, despite a duty to do so, is liable to a fine of up to 180 times the daily rate or the restriction of liberty”. This provision addresses two different and separate occurrences, i.e. work-related accidents and occupational diseases. This paper concerns only work-related accidents and focuses only on the criminal offence of failure to report a work-related accident. This offence will be described in terms of the protected interest, the offender as well as the objective element and the subjective element. An in-depth analysis of the offender will be carried out, as this is the most controversial element of the offence in question.

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² See *Statute of 6 June 1997 – The Criminal Code* [1997]. Journal of Laws, no. 88, item 553, as amended.

Discussion

The legal interest protected under the Article 221 of the Criminal Code includes the rights of persons performing work to social insurance benefits in the event of work-related accidents as well as the right to safe and healthy working conditions.³ Reporting a work-related accident to a competent authority that supervises and controls the compliance with occupational health and safety helps this authority to carry out its task better and, as a result, improves health and safety at work establishments. Inadequate occupational health and safety conditions are a common cause of work-related accidents. Contrary to the view expressed in the literature,⁴ the right of authorities to which accidents should be reported to information does not constitute an interest protected under the Article 221 of the Criminal Code, as this is not the purpose or objective of criminalisation of behaviours defined in this provision.

The offender under the Article 221 of the Criminal Code was defined using the words: “Anyone who fails [...] despite a duty to do so [...]”. Interpretation of this criterion needs to be combined with a clarification of the elements describing the objective element of the offence. The causative act which is a constituent element of the offence in question has been defined using the words “fails to report”. The provision in the Article 221 of the Criminal Code is a blanket provision. The Criminal Code does not define a work-related accident. In order to be able to elucidate the elements of the provision in question, we need to refer to provisions of the labour law and social insurance law.

The concept of a work-related accident was defined in the Act on Social Insurance in Case of Work-related Accidents and Occupational Dis-

³ Cf. A. Ziółkowska in KONARSKA-WRZOSEK, V. ed. *Kodeks karny: Komentarz*. 1. wyd. Warszawa: Wolters Kluwer, 2016, pp. 1000-1001. ISBN 978-83-8092-163-4; P. Daniluk in STEFAŃSKI, R. A. ed. *Kodeks karny: Komentarz*. 1. wyd. Warszawa: C. H. Beck, 2015, p. 1509. ISBN 978-83-255-6855-9; and D. Szeleszczuk in GRZEŠKOWIAK, A. and K. WIAK, eds. *Kodeks karny: Komentarz*. 3. wyd. Warszawa: C. H. Beck, 2015, p. 1112. ISBN 978-83-255-7493-2.

⁴ See JACHIMOWICZ, M. Niezawiadomienie o wypadku przy pracy lub chorobie zawodowej (przestępstwo z art. 221 k.k.). *Ruch Prawniczy, Ekonomiczny i Socjologiczny*. 2003, vol. 65, nr 3, p. 114. ISSN 0035-9629; and D. Szeleszczuk in GRZEŠKOWIAK, A. and K. WIAK, eds. *Kodeks karny: Komentarz*. 3. wyd. Warszawa: C. H. Beck, 2015, p. 1112. ISBN 978-83-255-7493-2. Similarly W. Radecki in WĄSEK, A. ed. *Kodeks karny: Część szczególna: Tom I: Komentarz do artykułów 117 – 221*. 2. wyd. Warszawa: C. H. Beck, 2004, p. 1177. ISBN 83-7387-473-9.

eases of 30 October 2002,⁵ also known as the “Accidents Act” (hereinafter referred to as the “Accidents Act”). Article 3(1) of the Accidents Act stipulates that: “A work-related accident is a sudden incident arising from an external cause resulting in death or an injury that occurred in connection with work: 1) during or in connection with the employee carrying out ordinary activities or following his/her managers’ instructions; 2) during or in connection with the employee carrying out activities on behalf of the employer, even if uninstructed; 3) during the time the employee remains at the employer’s disposal on his/her way from the employer’s office to the location where he/she is expected to perform his/her duties under the employment contract”. Contrary to the opinion found in the literature,⁶ work-related accidents under the Article 221 of the Criminal Code do not include the accident defined in the Article 3(2) of the Accidents Act, as the provision focuses on the rights to benefits (“As concerns the right to benefits defined in the Act, the following accidents shall be treated as equal to work-related accidents: 1) an employee’s accident occurring during a business trip otherwise than in circumstances specified in paragraph 1 unless the accident resulted from the employee’s conduct that bears no connection to the performance of activities entrusted to him/her; 2) an employee’s accident that occurred during a national self-defence training; 3) an employee’s accident occurring when carrying out tasks ordered by the trade unions operating at the employer’s establishment”). It should be emphasized that an extensive interpretation is not allowed when constructing the criteria of a forbidden act.

On the other hand, a work-related accident under the Article 221 of the Criminal Code includes the accident defined in the Article 3(3) of the Accidents Act (“A work-related accident is a sudden incident arising from an external cause resulting in death or an injury that occurred in the period of relevant accident insurance during: 1) sports activity at competitions and during training by a person receiving a sports scholarship; 2) performing unpaid work based on a work referral during the period of detention or temporary arrest; 3) the exercise of mandate by members of Parliament or senators receiving emoluments; 3a) (revoked); 4) undergoing training, internship, vocational preparation for adults or on-site

⁵ See *Statute of 30 October 2002 on Social Insurance in Case of Work-related Accidents and Occupational Diseases* [2002]. *Journal of Laws*, no. 199, item 1673, as amended.

⁶ See P. Daniluk in STEFAŃSKI, R. A. ed. *Kodeks karny: Komentarz*. 1. wyd. Warszawa: C. H. Beck, 2015, p. 1511. ISBN 978-83-255-6855-9.

vocational preparation by a person receiving scholarship in the period of such training, internship, vocational preparation for adults or on-site vocational preparation based on a work referral issued by a district employment office or another referring body, receipt of scholarship under provisions on promotion of employment and labour market organisations during post-graduate studies; 5) performance of work by a person who is a member of a farming cooperative, farmers' cooperative association and by another person treated as equal to a member of a cooperative, as defined in provisions on the social insurance system, when such work is performed on behalf of those cooperatives; 6) performance of work based on an agency contract, contract of mandate or services contract to which, in accordance with the Civil Code, the provisions on the contract of mandate are applied; 6a) performance of work based on an activation agreement defined in the Act on Caring for Children of Up to Three Years Old of 4 February 2011 (Journal of Laws of 2018, items 603 and 650); 7) cooperating in the performance of work based on an agency contract, contract of mandate or services contract to which, in accordance with the Civil Code, the provisions on the contract of mandate are applied; 8) performance of ordinary activities as part of a non-agricultural business, as defined by the social insurance system regulations; 9) performance of ordinary activities as part of a cooperation in a non-agricultural business, as defined by the social insurance system regulations; 10) performance of religious activities or pastoral/monastic duties by members of the clergy; 11) alternative military service; 12) attendance at the Lech Kaczyński National School of Public Administration by students receiving scholarship; 12a) attending doctoral school by doctoral students receiving scholarship; 13) performance of work based on an agency contract, contract of mandate or services contract to which, in accordance with the Civil Code, the provisions on the contract of mandate are applied, or based on a contract of specific work if such a contract was concluded with the employer by whom the person is employed or if, as part of such a contract, the person provides work to the employer by whom he/she is employed"). It should be explained that the case in the Article 3(1) of the Accidents Act concerns an employee, while the case in the Article 3(3) of the Accidents Act concerns a person who is not an employee, but is covered with an accident insurance policy.

In the literature, we find a view that the Article 221 of the Criminal Code does not cover those work-related accidents under the Article 3.3

which concern persons not engaged in paid work,⁷ e.g. members of the clergy performing religious activities. The title of the Chapter XXVIII of the Criminal Code (“Offences against the Rights of Persons Pursuing Paid Work”) of which the Article 221 of the Criminal Code is part is quoted as an argument to support this view. This view is not accurate. The titles of the chapters in the Special Part of the Criminal Code are used to systematise and to order the contents of the Criminal Code. They may be helpful in defining the protected interests and interpreting the elements of the offences, but they are not conclusive. Decisive for the scope of criminalisation of a given conduct are the statutory elements of an offence. The “work-related accident’s” element included in the Article 221 of the Criminal Code should be interpreted in line with the Accidents Act. Neither this act nor other provisions regulating the procedure for establishing causes of work-related accidents contain any exclusion in this respect. Moreover, differentiating between the scope of protection guaranteed under the criminal law to victims of accidents who do paid work and to those performing unpaid work (for example, members of the clergy performing pastoral work which, by its nature, is an unpaid work) would not be reasonable.

An offender under the Article 221 of the Criminal Code can only be a person who has a legal obligation to act (to report a work-related accident) and fails to fulfil this duty. It is, thus, an individual offence (*delictum proprium*).⁸ It can be only committed by omission.⁹ The obligation to re-

⁷ See W. Wróbel in WRÓBEL, W. and A. ZOLL, eds. *Kodeks karny: Część szczególna: Tom II: Część 2: Komentarz do art. 212 – 277d*. 5. wyd. Warszawa: Wolters Kluwer, 2017, p. 136. ISBN 978-83-8107-547-3; P. Daniluk in STEFAŃSKI, R. A. ed. *Kodeks karny: Komentarz*. 1. wyd. Warszawa: C. H. Beck, 2015, p. 1511. ISBN 978-83-255-6855-9; A. Ziółkowska in KONARSKA-WRZOSEK, V. ed. *Kodeks karny: Komentarz*. 1. wyd. Warszawa: Wolters Kluwer, 2016, p. 1002. ISBN 978-83-8092-163-4; and HRYNIEWICZ, E. in KRÓLIKOWSKI, M. and R. ZAWŁOCKI, eds. *Kodeks karny: Część szczególna: Tom I: Komentarz do art. 117 – 221*. 1. wyd. Warszawa: C. H. Beck, 2013, p. 916. ISBN 978-83-255-4565-9.

⁸ See W. Wróbel in WRÓBEL, W. and A. ZOLL, eds. *Kodeks karny: Część szczególna: Tom II: Część 2: Komentarz do art. 212 – 277d*. 5. wyd. Warszawa: Wolters Kluwer, 2017, p. 135. ISBN 978-83-8107-547-3; A. Ziółkowska in KONARSKA-WRZOSEK, V. ed. *Kodeks karny: Komentarz*. 1. wyd. Warszawa: Wolters Kluwer, 2016, p. 1007. ISBN 978-83-8092-163-4; P. Daniluk in STEFAŃSKI, R. A. ed. *Kodeks karny: Komentarz*. 1. wyd. Warszawa: C. H. Beck, 2015, p. 1512. ISBN 978-83-255-6855-9; E. Hryniewicz in KRÓLIKOWSKI, M. and R. ZAWŁOCKI, eds. *Kodeks karny: Część szczególna: Tom I: Komentarz do art. 117 – 221*. 1. wyd. Warszawa: C. H. Beck, 2013, p. 917. ISBN 978-83-255-4565-9; MAREK, A. *Kodeks karny: Komentarz*. 5. wyd. Warszawa: Wolters Kluwer, 2010, p. 493. ISBN 978-83-264-0275-3; W. Radecki in WARYLEWSKI, J. ed. *System Prawa Karnego: Tom 10: Przestępstwa przeciwko dobrom indywidualnym*. 2. wyd. Warszawa: C. H. Beck, 2016, p. 1283. ISBN 978-

port a work-related accident is envisaged in the Article 234 § 2 of the Labour Code¹⁰ which stipulates that: “The employer is obliged to promptly notify the competent regional labour inspector and public prosecutor of any fatal, very serious or group work-related accident and of any other accident resulting in the above-mentioned consequences, bearing connection to work, if it can be considered a work-related accident.” Thus, the employer’s obligation, sanctioned under the Article 221 of the Criminal Code, does not concern all work-related accidents but rather accidents described in the Article 234 § 2 of the Labour Code. In the Article 3(4), the Accidents Act defines a fatal work-related accident as follows: “A fatal work-related accident is an accident which resulted in the death of a person within six months from the date the accident occurred”. “A very serious work-related accident is an accident which resulted in a grave injury, including blindness, deafness, loss of speech, infertility, or in other type of bodily injury or disturbance of health impairing the basic functions of the body as well as in an incurable or life-threatening disease, partial or complete incapacity for work or a permanent disfigurement or deformity” (Article 3(5) of the Accidents Act). “A group work-related accident is an accident where at least two persons were injured as a result of the same occurrence” (Article 3(6) of the Accidents Act). Only natural persons are subject to criminal liability which means that if the employer is not a natural person, the obligation to report an accident rests with a person managing the work establishment (e.g. President of the Board) or another person acting on behalf of the employer (e.g. a person granted general power of attorney to act on behalf of the company in all matters related to the employment relationship).¹¹

In accordance with the Article 234 § 2 of the Labour Code, the “competent authority” mentioned in the Article 221 of the Criminal Code is a “competent regional labour inspector and public prosecutor”. This en-

83-255-8500-6; and UNTERSCHÜTZ, J. *Karnoprawna ochrona praw osób wykonujących pracę zarobkową*. 1. wyd. Warszawa: Wolters Kluwer, 2010, p. 166. ISBN 978-83-264-0069-8.

⁹ See e.g. M. Budyn-Kulik in MOZGAWA, M. ed. *Kodeks karny: Komentarz*. 8. wyd. Warszawa: Wolters Kluwer, 2017, p. 692. ISBN 978-83-8107-544-2; and LACH, D. E., S. SAMOL and K. ŚLEBZAK. *Ustawa o ubezpieczeniu społecznym z tytułu wypadków przy pracy i chorób zawodowych: Komentarz*. 1. wyd. Warszawa: Wolters Kluwer, 2010. 244 p. ISBN 978-83-264-0106-0.

¹⁰ See *Statute of 26 June 1974 – The Labour Code* [1974]. *Journal of Laws*, no. 24, item 141, as amended.

¹¹ See *Judgment of the District Court for Warsaw-Mokotów in Warsaw Ref. No. XIV K 315/14* [2015-05-29]. LEX No. 2133571.

tails that the employer is obliged to notify both the labour inspector and the public prosecutor. If only one of the above-mentioned parties is notified, the employer commits the offence under the Article 221 of the Criminal Code.

In accordance with the Article 234 § 2 of the Labour Code, the element of “on time” included in the Article 221 of the Criminal Code should be understood as “promptly”, e.i. “without unreasonable delay”. It should be indicated that reporting an accident to a competent authority is not the first thing that should be done after an accident occurs. Article 234 § 1 of the Labour Code stipulates that in the case of a work-related accident, the employer is obliged to take the necessary efforts to eliminate or to limit any threats, to ensure that first aid is provided to victims and that circumstances and causes of the accident are established in line with the prescribed procedures as well as to apply the appropriate measures to prevent similar accidents from happening in the future. The obligation to report an accident is envisaged only in § 2 of this provision. The order in which the legislator imposed the obligations on the employer is significant.¹² It gives rise to a question of when to start counting that period. It should be assumed that the period runs not from the moment of the accident but rather from the moment the employer (the person obliged to report it) learned about the accident. If it becomes known at a later time that the accident was fatal, very serious or involved a group of people, the period runs from the moment the employer learned about such consequences of the accident.¹³

The form in which an accident should be reported has not been regulated. It should be assumed that the accident can be reported in any form, provided that the relevant report is made without undue delay. The employer may notify a competent authority personally, through a delegated employee, by phone or by e-mail. For a legal safety (to be able to prove that the obligation has been fulfilled by him/her), it is recommended that the employer keeps a written confirmation of making the report. If, for instance, the employer contacted the regional labour inspectorate by phone, he/she may follow the report with an e-mail asking for confirmation of receipt.

¹² See WIDZISZ, R. Odpowiedzialność karna za niezawiadomienie o wypadku przy pracy. *Prokuratura i Prawo*. 2007, nr 5, p. 46. ISSN 1233-2577.

¹³ So also WIDZISZ, R. Odpowiedzialność karna za niezawiadomienie o wypadku przy pracy. *Prokuratura i Prawo*. 2007, nr 5, pp. 47-48. ISSN 1233-2577.

It remains a controversial question whether entities indicated in the Article 5(1) of the Accidents Act may be deemed perpetrators of the offence of failure to report a work-related accident (in relation to the accident defined in the Article 3(3)), e.g. an entity paying out a sports scholarship – with respect to persons receiving such scholarships; an entity on behalf of whom paid work is provided during the period of detention or temporary arrest – with respect to persons performing such work based on a work referral; Chancellery of the Sejm – with respect to members of Parliament and Chancellery of the Senate – with respect to senators; the competent diocese or monastic authority – with respect to members of the clergy; Lech Kaczyński National School of Public Administration – with respect to students of the school receiving a scholarship; an entity administering doctoral school – with respect to doctoral students receiving a scholarship. The procedure for deciding that an incident mentioned in the Article 3(3) of the Accidents Act was a work-related accident is defined in the Regulation of the Minister of Labour and Social Policy of 19 December 2002 on the Procedure for Establishing that an Incident Occurring During a Period of Accident Insurance Was a Work-related Accident, on Legal Classification of Incidents, Sample Accident Sheet and the Period for Its Preparation (hereinafter referred to as the “Regulation”).¹⁴ In accordance with the Section 5 of the Regulation, promptly after receiving an accident report, the entities obliged to establish the circumstances and causes of an accident, as mentioned in the Article 5(1) of the Accidents Act, send a written report to a locally competent organisational unit of a designated institution informing that procedure to establish circumstances and causes of a work-related accident has been initiated. The “institution” in question is the Polish Social Insurance Institution. It should be noted that the above-mentioned entities are not obliged to report the accident to the labour inspector or the public prosecutor. Another difference in the reporting obligation between those entities and the employer is the form of report. It should be remembered that the written form has been reserved here for evidentiary purposes (*ad probationem*), which means that a failure to keep this form and making a report e.g. by phone constitutes fulfilment of this obligation. The above-mentioned Regulation does not literally provide for the obligation to report a work-

¹⁴ See *Regulation of 19 December 2002 on the Procedure for Establishing that an Incident Occurring During a Period of Accident Insurance Was a Work-related Accident, on Legal Classification of Incidents, Sample Accident Sheet and the Period for Its Preparation* [2013]. Journal of Laws, item 1618.

related accident, but it introduces a further-going obligation which, in fact, includes an obligation to report an accident. The obligation to report that a procedure concerning an accident has been initiated includes the obligation to report the accident itself. Therefore, we may assume that the entities mentioned in the Article 5(1) of the Accidents Act can be offenders under the Article 221 of the Criminal Code in failing to report a work-related accident. The scope of their obligations raises, however, serious questions, as it is much broader than the scope of employer's obligations. Section 5 of the Regulation mentions "an accident" without further qualifying the term. This suggests that these entities are obliged to report all work-related accidents rather than only fatal, very serious or group accidents. This results from the fact that representatives of the Polish Social Insurance Institution can participate in proceedings initiated by these entities to establish circumstances and causes of work-related accidents. Failure to report an accident and the resultant non-participation of a representative of the Polish Social Insurance Institution could later lead to difficulties in establishing a person's eligibility for social insurance benefits which also matters to victims of non-serious accidents. Considering the above-mentioned, the current solution should be accepted and deemed as reasonable.

According to the law, employees and persons who are not employees, but are covered by accident insurance are also obliged to report a work-related accident. Pursuant to the Article 211(6) of the Labour Code, the employee is obliged to immediately notify the superior about any accident observed in the place of work. According to the Section 2 of the Regulation of the Council of Ministers of 1 July 2009 Concerning the Procedures for Establishing Circumstances and Causes of Work-related Accidents,¹⁵ an employee who had an accident should, provided that his/her condition allows him/her to do so, immediately report an accident to his/her superior. We should, however, assume that by failing to report an accident, the employee does not commit the offence under the Article 221 of the Criminal Code, because his/her superior is not an authority mentioned in the Article 221 of the Criminal Code.¹⁶ Moreover, it should

¹⁵ See *Regulation of the Council of Ministers of 1 July 2009 Concerning the Procedures for Establishing Circumstances and Causes of Work-related Accidents* [2009]. *Journal of Laws*, no. 105, item 870.

¹⁶ See W. Wróbel in WRÓBEL, W. and A. ZOLL, eds. *Kodeks karny: Część szczególna: Tom II: Część 2: Komentarz do art. 212 – 277d*. 5. wyd. Warszawa: Wolters Kluwer, 2017, p. 135. ISBN 978-83-8107-547-3; JACHIMOWICZ, M. Niezawiadomienie o wypadku przy pracy lub chorobie zawodowej (przestępstwo z art. 221 k.k.). *Ruch Prawniczy, Ekonomiczny*

be noted that the above-mentioned provision of the Labour Code imposes on the employee an obligation to report every accident (not just a fatal, very serious or group accident) that happened to any employee (not only to himself/herself). Thus, if we assumed that the failure to fulfil this obligation results in criminal liability under the Article 221 of the Criminal Code, then the scope of criminalisation of the employee's conduct would be broader than the scope of criminalisation of the employer's conduct, which would disagree with the *ratio legis*, as the provision in the Article 221 of the Criminal Code was designed to protect employee's interests. In accordance with the Section 2 of the Regulation, persons who are not employees, but are covered by accident insurance and have had an accident, report the accident to the competent authorities mentioned in the Article 5(1) of the Accidents Act. Such a report should expedite the correct establishment of causes of an accident and protect the interests of victims. Failure to report an accident cannot result in criminal liability of the persons whose interests are protected through this obligation. To sum up, employees and persons who are not employees, but are covered by accident insurance are not perpetrators under the Article 221 of the Criminal Code.

When interpreting the criterion defining the offender under the Article 221 of the Criminal Code, we also need to refer to the Geological and Mining Law of 9 June 2011¹⁷ which contains special regulations in relation to the general labour law and social insurance law. According to this Geological and Mining Law, mining facility operations' managers can also be perpetrators of the offence involving failure to report a work-related accident. Pursuant to its Article 119(4), a mining facility operations' manager is obliged to promptly report each fatal, very serious or group accident to a competent authority. The Geological and Mining Law does not provide a definition of a fatal, very serious or group accident. In the absence of such a definition in a special law, accidents should be understood as they were defined in the Accidents Act. The term "promptly" should be understood in the same way as in the Labour Code.

Mens rea of the offence criminalised under the Article 221 of the Criminal Code involves the intention to commit the offence. It is indisput-

i Socjologiczny. 2003, vol. 65, nr 3, p. 116. ISSN 0035-9629; and P. Daniluk in STEFAŃSKI, R. A. ed. *Kodeks karny: Komentarz*. 1. wyd. Warszawa: C. H. Beck, 2015, p. 1513. ISBN 978-83-255-6855-9.

¹⁷ See *Geological and Mining Law of 9 June 2011* [2011]. *Journal of Laws*, 2011, no. 163, item 981, as amended.

able in the Polish doctrine of criminal law that the offence may be committed with a direct intent (*dolus directus*) or eventual intent (*dolus eventualis*).¹⁸

Conclusions

Criminalisation of failure to report a work-related accident in the form of a criminal offence, implying criminal liability of a perpetrator, should be recognised as rational and justified. It aims at the protection of the rights of persons performing work to social insurance benefits in the event of work-related accidents. It also contributes to improving the working conditions in the aspects of health and safety. By making punishable under the Criminal Code the act of failing to report a work-related accident, the Polish lawmakers showed how seriously they perceive protection of the rights of persons performing work. The level of the criminal law protection depends not only on the inclusion of the appropriate category of offence in the Criminal Code, but also on the severity of the punishment to which the perpetrator of this offence is subject. Bearing in mind the penalties provided for other criminal offences and the requirement of axiological proportionality in the punishment process, it is important to recognise that the penalties imposed for a failure to report a work-related accident are appropriate. The creation of the offence of failure to report a work-related accident in the form of a blanket provision should not raise objections. Taking into consideration the nature of this offence, it is obvious that its statutory description has to refer to provisions of the labour law and social insurance law. It is indisputable that the employers and the mining facility operations' managers are potential offenders un-

¹⁸ See J. Piórkowska-Fliieger in BOJARSKI, T. ed. *Kodeks karny: Komentarz*. 7. wyd. Warszawa: Wolters Kluwer, 2016, p. 645. ISBN 978-83-264-9387-4; W. Wróbel in WRÓBEL, W. and A. ZOLL, eds. *Kodeks karny: Część szczególna: Tom II: Część 2: Komentarz do art. 212 – 277d*. 5. wyd. Warszawa: Wolters Kluwer, 2017, p. 137. ISBN 978-83-8107-547-3; A. Ziólkowska in KONARSKA-WRZOSEK, V. ed. *Kodeks karny: Komentarz*. 1. wyd. Warszawa: Wolters Kluwer, 2016, p. 1007. ISBN 978-83-8092-163-4; P. Daniluk in STEFAŃSKI, R. A. ed. *Kodeks karny: Komentarz*. 1. wyd. Warszawa: C. H. Beck, 2015, p. 1513. ISBN 978-83-255-6855-9; M. Budyń-Kulik in MOZGAWA, M. ed. *Kodeks karny: Komentarz*. 8. wyd. Warszawa: Wolters Kluwer, 2017, p. 693. ISBN 978-83-8107-544-2; Z. Siwik in FILAR, M. ed. *Kodeks karny: Komentarz*. 5. wyd. Warszawa: Wolters Kluwer, 2016, p. 1353. ISBN 978-83-264-9966-1; G. Łabuda in GIEZEK, J. ed. *Kodeks karny: Część szczególna: Komentarz*. 1. wyd. Warszawa: Wolters Kluwer, 2014, p. 687. ISBN 978-83-264-4199-8; MAREK, A. *Kodeks karny: Komentarz*. 5. wyd. Warszawa: Wolters Kluwer, 2010, p. 493. ISBN 978-83-264-0275-3; and GÓRAL, R. *Kodeks karny: Praktyczny komentarz*. 5. wyd. Warszawa: Zrzeszenia Prawników Polskich, 2007, p. 368. ISBN 978-83-87218-39-3.

der the Article 221 of the Criminal Code. It is not entirely clear whether all the entities mentioned in the Article 5(1) of the Accidents Act may be deemed potential perpetrators of the offence in question. The above-made analysis proved that this controversy can be solved through an interpretation of the relevant provisions. In a final conclusion, it can be stated that from the perspective of the failure to report a work-related accident, the provision in the Article 221 of the Polish Criminal Code does not require to be amended.

References

- BOJARSKI, T. ed. *Kodeks karny: Komentarz*. 7. wyd. Warszawa: Wolters Kluwer, 2016. 1103 p. ISBN 978-83-264-9387-4.
- FILAR, M. ed. *Kodeks karny: Komentarz*. 5. wyd. Warszawa: Wolters Kluwer, 2016. 1818 p. ISBN 978-83-264-9966-1.
- Geological and Mining Law of 9 June 2011* [2011]. *Journal of Laws*, 2011, no. 163, item 981, as amended.
- GIEZEK, J. ed. *Kodeks karny: Część szczególna: Komentarz*. 1. wyd. Warszawa: Wolters Kluwer, 2014. 1311 p. ISBN 978-83-264-4199-8.
- GÓRAL, R. *Kodeks karny: Praktyczny komentarz*. 5. wyd. Warszawa: Zrzeszenia Prawników Polskich, 2007. 678 p. ISBN 978-83-87218-39-3.
- GRZEŚKOWIAK, A. and K. WIAK, eds. *Kodeks karny: Komentarz*. 3. wyd. Warszawa: C. H. Beck, 2015. 1511 p. ISBN 978-83-255-7493-2.
- JACHIMOWICZ, M. Niezawiadomienie o wypadku przy pracy lub chorobie zawodowej (przestępstwo z art. 221 k.k.). *Ruch Prawniczy, Ekonomiczny i Socjologiczny*. 2003, vol. 65, nr 3, pp. 113-125. ISSN 0035-9629.
- Judgment of the District Court for Warsaw-Mokotów in Warsaw Ref. No. XIV K 315/14* [2015-05-29]. LEX No. 2133571.
- KONARSKA-WRZOSEK, V. ed. *Kodeks karny: Komentarz*. 1. wyd. Warszawa: Wolters Kluwer, 2016. 1441 p. ISBN 978-83-8092-163-4.
- KRÓLIKOWSKI, M. and R. ZAWŁOCKI, eds. *Kodeks karny: Część szczególna: Tom I: Komentarz do art. 117 - 221*. 1. wyd. Warszawa: C. H. Beck, 2013. 961 p. ISBN 978-83-255-4565-9.
- LACH, D. E., S. SAMOL and K. ŚLEBZAK. *Ustawa o ubezpieczeniu społecznym z tytułu wypadków przy pracy i chorób zawodowych: Komen-*

- tarz. 1. wyd. Warszawa: Wolters Kluwer, 2010. 244 p. ISBN 978-83-264-0106-0.
- MAREK, A. *Kodeks karny: Komentarz*. 5. wyd. Warszawa: Wolters Kluwer, 2010. 770 p. ISBN 978-83-264-0275-3.
- MOZGAWA, M. ed. *Kodeks karny: Komentarz*. 8. wyd. Warszawa: Wolters Kluwer, 2017. 1048 p. ISBN 978-83-8107-544-2.
- Regulation of 19 December 2002 on the Procedure for Establishing that an Incident Occurring During a Period of Accident Insurance Was a Work-related Accident, on Legal Classification of Incidents, Sample Accident Sheet and the Period for Its Preparation* [2013]. Journal of Laws, item 1618.
- Regulation of the Council of Ministers of 1 July 2009 Concerning the Procedures for Establishing Circumstances and Causes of Work-related Accidents* [2009]. Journal of Laws, no. 105, item 870.
- Statute of 6 June 1997 – The Criminal Code* [1997]. Journal of Laws, no. 88, item 553, as amended.
- Statute of 26 June 1974 – The Labour Code* [1974]. Journal of Laws, no. 24, item 141, as amended.
- Statute of 30 October 2002 on Social Insurance in Case of Work-related Accidents and Occupational Diseases* [2002]. Journal of Laws, no. 199, item 1673, as amended.
- STEFJAŃSKI, R. A. ed. *Kodeks karny: Komentarz*. 1. wyd. Warszawa: C. H. Beck, 2015. 1950 p. ISBN 978-83-255-6855-9.
- UNTERSCHÜTZ, J. *Karnoprawna ochrona praw osób wykonujących pracę zarobkową*. 1. wyd. Warszawa: Wolters Kluwer, 2010. 323 p. ISBN 978-83-264-0069-8.
- WARYLEWSKI, J. ed. *System Prawa Karnego: Tom 10: Przestępstwa przeciwko dobrom indywidualnym*. 2. wyd. Warszawa: C. H. Beck, 2016. 1295 p. ISBN 978-83-255-8500-6.
- WĄSEK, A. ed. *Kodeks karny: Część szczególna: Tom I: Komentarz do artykułów 117 – 221*. 2. wyd. Warszawa: C. H. Beck, 2004. 1200 p. ISBN 83-7387-473-9.
- WIDZISZ, R. *Odpowiedzialność karna za niezawiadomienie o wypadku przy pracy. Prokuratura i Prawo*. 2007, nr 5, pp. 41-64. ISSN 1233-2577.

WRÓBEL, W. and A. ZOLL, eds. *Kodeks karny: Część szczególna: Tom II: Część 2: Komentarz do art. 212 – 277d*. 5. wyd. Warszawa: Wolters Kluwer, 2017. 871 p. ISBN 978-83-8107-547-3.

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