the determinacy and legal predictability, since it is only, when the judge makes an assessment, whether an action was or was not capable of harming a legally protected good (interest), that the perpetrator can know for sure of his or her criminality. The new category of crime was further declared questionable from the standpoint of the traditional theoretical system of (inadequate) attempt.

Although only one offence from the Slovenian Criminal Code has been identified in case-law as a potential endangerment offence as of yet, there seem to be some others, waiting to be discovered and affirmed. In this context, some interesting developments are expected in the upcoming years.

Literature

1. Translations from Slovenian and German to English in the text: J.K.

2. Schröder, H. Abstrakt-konkrete Gefährdungsdelikte. *JuristenZeitung*, 1967, 22(17), p. 522–525.

3. Gallas, W. Abstrakte und konkrete Gefährdung, in: Lüttger, H., Blei, H. and Hanau, P. (ed.), *Festschrift für Ernst Heinitz zum 70. Geburtstag am 1. Januar 1972*. 2nd edn. Berlin: De Gruyter Verlag, 2017, p. 171-184.

4. VSRS Judgment I Ips 65803/2012, dating 4th July 2019.

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CLASSIFICATION OF CRIMES AGAINST FREEDOM IN POLISH PENAL CODES

In the Polish Penal Code of 1932, Chapter XXXVI "Offences against freedom" contained only five types of offences: deprivation of liberty (Article 248), slave trafficking (Article 249), punishable threat (Article 250), extortion (Article 251) and home intrusion, known as violation of domestic peace (Article 252). In general, the object of legal protection in the whole above-mentioned group of offences was personal freedom of an individual, which he or she enjoyed within the legal order in force within society at that time [1]. It was stated that freedom can be understood in two ways: a) as physical freedom, freedom of movement, to move from place to place; b) as moral freedom, freedom to dispose of one's goods, to exercise or not to exercise one's rights, to undertake one action or another [2]. However, in both of the above-mentioned cases, personal freedom can only be the object of the offence if the criminal conduct is directed against it. Thus, human will (as a manifestation of freedom) only enjoys protection if it is in conformity with the legal order and only concerns those goods of a person which the person can freely dispose of. If, on the other hand, there was a connection between the infringement of such a

decision and other personal or property goods, it was considered that this other particular good should be taken as the basis for qualification. Thus, for example, an infringement of the freedom to dispose of property was deemed to be an attack on property, while an infringement of the freedom to dispose of sexual life was deemed to be an attack on sexual freedom. Chapter XXXVI thus covered only the group of those assaults on person's goods in which physical or moral freedom is the dominant good and cannot be regarded as complementary to (or a component part of) another private or public good that has been violated. Consequently, offences such as rape (Article 204), indecent act with an mentally incompetent person or a person under 15 years of age (Article 203), indecent act with abuse of dependence (Article 205) were left out of Chapter XXXVI. All of these offences were included in Chapter XXXII entitled "Indecent acts". An indecent act was understood as any behaviour aimed at the satisfaction of sexual desire in a manner other than that accepted by well-organised society in terms of purity of morals [3] Obviously, indecent acts were not *per se* criminal offences according to the Penal Code of 1932, and only became such by the addition of a certain factor; be it acting against the will of another person (Article 204), or acting for profit (for same-sex indecent acts - Article 207), or acting in public (Article 213) or with immediate relatives (Article 212).

The Penal Code of 1969, in Chapter XXII ("Offences against freedom") comprised 8 types of criminal offences: deprivation of liberty (Article 165), threat (Article 166), coercion (Article 167), rape (Article 168), sexual intercourse with a mentally incompetent person (Article 169), abuse of a relationship of dependence (Article 170), violation of domestic peace (Article 177), violation of the secrecy of correspondence (Article 172). The inclusion in the offence-specific part of the Code of a provision on the surrender of a person to the authority of a foreign state (Article 248 §2 of the Penal Code of 1932) and enslaving a person and the slave trafficking (Article 249 of the Penal Code of 1932), the so-called convention-governed offences, which were included in the provisions implementing the Penal Code, has been abandoned. Thus, out of the eight offences listed in Chapter XXII of the PC of 1969 ("Offences against freedom"), three of them have the nature of so-called sexual offences (Articles 168, 169, 170). In the Penal Code of 1932, these offences were included in Chapter XXXII, titled "Indecent acts". Unfortunately, under the influence of the then-promoted thesis on freedom as a subject of protection in the case of rape, under the Penal Code of 1969 the single group of sexual crimes was split into two parts placed in two different chapters (i.e. in Chapters XXII - "Crimes against freedom" and XXIII - "Crimes against morality"). Admittedly, the concept had both advocates [4] and opponents [5] (and in my opinion it was, however, incorrect [6]). It should be noted that, as regards the development of the treatment of offences against freedom in Polish criminal law, from 1932

onwards, the legal solution adopted in the Penal Code of 1969 was a huge step backwards in relation to the legal situation defined in the previous Penal Code. Thus, scholars in the field used to point to the need of a substantial modification of the structure of the chapter on offences against freedom [7].

Such a modification took place in the Penal Code of 1997, where in Chapter XXIII ("Offences against freedom") only 5 offences were originally included: unlawful deprivation of freedom (Article 189 PC), threat (Article 190 PC), coercion (Article 191 PC), medical treatment without the patient's consent (Article 192 PC), and violation of domestic peace (Article 193 PC). It thus includes acts where freedom (physical or moral) is the dominant good and cannot be considered as a supplement or component of another violated good. Statutorily defined factual states in which an attack on freedom is merely a means of violating other goods (e.g. robbery - Article 280 of the Penal Code) are categorised under a different scope of protection of legal goods. In such situations, the attack on freedom is kind of "consumed" by the attack on this very legal good, and freedom may be (although not necessarily) only an additional object of protection [8]. As a result of recent amendments to the PC, five further offences have been included in Chapter XXIII: 1) recording the image of a naked person or a person in the course of sexual activity or dissemination of such content (Article 191a PC)1; 2) human trafficking (Article 189a PC, which was previously in Chapter XXXII - "Offences against public order" in Article 253); 3) persistent harassment – stalking (Article 190a § 1 PC); 4) so-called identity theft (Article 190a § 2 PC); 5) coercion by use of indirect violence (Article 191 § 1a PC). While there can be no objections to the inclusion of human trafficking in the group of offences against freedom, serious doubts may stem from the inclusion in Chapter XXIII of the offence under Article 191a. It is difficult to understand such a decision of the legislature, as no connection between this offence and other ones in this chapter of the Penal Code can be seen. By including Article 191a in Chapter XXIII, the internal coherence of the chapter was broken. It seems that it would be more accurate to place this crime in Chapter XXV ("Crimes against sexual freedom and morality"), as it is reasonable to say that morality is the protected good here (although the main one is human intimacy and privacy). As regards the crime governed by Article 190a § 2 of the Penal Code, (identity theft), as stated in the explanatory memorandum to the bill (Sejm paper no. 3553): "It was not decided to place the newly designed misdemeanour in the Act of 29 August 1997 on the protection of personal data (…) primarily due to the fact that the provision being drafted concerns definitely an offence of universal character, which may be committed by anyone, in contrast to the majority of penal provisions placed in the above-mentioned Act, which are of specific-perpetrator character and usually include the penalisation of the actions of data controllers or persons processing personal data. Also, the object of protection in these offences is, first

of all, the correct handling of data contained in databases kept under the provisions of the above-mentioned statutory regulation. However, the intention of the originators of the provision of Article 190a § 2 PC was primarily to protect the freedom to decide about the use of information about one's personal life, which correlates perfectly with the right to the protection of private life [9]". It is worth noting that a view appeared in the scholarly protection that perhaps a more appropriate location for the provision of Article 190a §2 would be Chapter XXXIII of the Penal Code. ("Offences against the protection of information"), because this crime seems more to attack the protection of information [10]. According to M. Budyn-Kulik, one could also consider placing the provision among crimes against dignity and bodily integrity, since the implementation of the elements of the offence under Article 190 and § 2 can typically harm the dignity and good name of the victim [11].

The statutory regulation of individual types of offences was modified as a result of amendments made to the Penal Code (in 2009, 2015, 20117, 2022), and the penalty range for most of them significantly increased (without substantive justification – e.g. for stalking (Art. 190a §1) originally punishable by imprisonment of up to 3 years and from 14 March 2023 by imprisonment of 6 months to 8 years). The current arrangement of the catalogue of offences against freedom under the Penal Code of 1997 may raise some doubts, especially in view of the inclusion in it of the offence of recording or disseminating the image of a naked person (Article 191a) and the offence of identity theft (Art. 190 a § 2 PC). The internal coherence of this chapter seems to have been broken again. Another issue is whether the newly introduced crime types are correctly constructed. Unfortunately, it seems necessary to correct these provisions, although the construction of classical crimes against freedom contained in Chapter XXIII of the Penal Code 1997 is also far from perfection.

Literature

1. M. Mozgawa, [in:] Przestępstwa przeciwko wolności, ed. M.Mozgawa, Lublin 2020, p. 12.

2. Komisja Kodyfikacyjna Rzeczypospolitej Polskiej, Sekcja Prawa Karnego, Projekt Kodeksu Karnego. Uzasadnienie części szczególnej, vol. 5, part 4, Warszawa 1930, p. 193.

3. J. Makarewicz, Kodeks karny z komentarzem, Lwów 1932, p. 298.

4. E.g. L. Falandysz [in:] Prawo karne, eds. L. Lernell, A. Krukowski, Warszawa 1969, p. 56.

5. E.g. K. Daszkiewicz -Paluszyńska, Uwagi o przestępstwach przeciwko wolności i godności człowieka w projekcie k.k., Nowe Prawo, 1963, no. 6, p. 674.

6. M. Mozgawa [in:] System Prawa Karnego. Przestępstwa przeciwko dobrom indywidualnym, ed. J. Warylewski, Warszawa 2016, p. 351.

7. M. Mozgawa, Zmiany w ujmowaniu przestępstw przeciwko wolności w polskim prawie karnym, [in:] Problemy ewolucji prawa karnego, ed. T. Bojarski, Lublin 1990, p. 98.

8. M. Filar, Przestępstwo zgwałcenia w polskim prawie karny, Warszawa - Poznań 1974, p. 55.

9. Rządowy projekt ustawy o zmianie ustawy - Kodeks karny. https://orka.sejm.gov.pl/Druki6ka.nsf/wgdruku/3553 (accessed: 14.01.2023)

10. M. Kulik, Opinia na temat projektu z 20 lipca 2010 roku ustawy o zmianie ustawy– kodeks Karny (druk DL– P-I-4001-5/09) [Opinion on the bill of 20 July 2010 amending the Penal Code (Sejm paper no. DL– P-I-4001-5/09)] (prepared for the Centre for Studies and Legislation of the Polish National Bar of Attorneys-at-law (not published), p.2.

11. M. Budyn-Kulik, Kodeks karny. Komentarz do zmian wprowadzonych ustawą z dnia 25 lutego 2011 r. o zmianie ustawy – Kodeks karny, LEX/el 2011, teza 54.

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THE CRIME OF UNLAWFUL DEPRIVATION OF LIBERTY IN THE POLISH PENAL CODE (ARTICLE 189)

In the Penal Code of 1932, unlawful deprivation of liberty was included in Article 248, which, in its basic type, coincided with the current wording of Article 189 §1 of the currently applicable Polish Penal Code of 1997 ("Whoever deprives a person of liberty shall be punished by imprisonment for up to 5 years"). Article 248 §2 provided for four aggravating circumstances: a/ length of unlawful deprivation of liberty (exceeding 14 days); b/ special torment; c/ other particularly grave cases; d/ surrender of a person to the power of a foreign state. It should also be noted that Article 288 of the Penal Code of 1932 penalised the conduct of an official who, through negligence in office, deprived a person of liberty (for which a sentence of imprisonment for up to 3 years was provided). The Penal Code of 1969 regulated unlawful deprivation of liberty in Article 165. The basic type (whoever deprives a person of his liberty is punishable by imprisonment from 6 months to 5 years) was left unchanged (compared to the Penal Code of 1932), while the aggravated type (punishable by imprisonment from one year to 10 years) defined three aggravating circumstances: a/ length of imprisonment (longer than 14 days); b/ special torment; c/ other particularly grave cases. It should also be kept in mind that the provisions introducing the Code (Article VIII) provided for the type of crime consisting in enslaving another person or engaging in the slave trade