UNIVERSITY OF BIALYSTOK
FACULTY OF LAW

BIALYSTOK LEGAL STUDIES

BIAŁOSTOCKIE STUDIA PRAWNICZE

BIAŁYSTOK 2024 VOLUME 29 no. 4

BIALYSTOK LEGAL STUDIES

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VOLUME 29 no. 4

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The original version of the journal is a print one.

ISSN 1689–7404

e-ISSN 2719–9452

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Publisher: Faculty of Law, University of Białystok; Temida 2

All volumes can be purchased from Wydawnictwo Temida 2. Address: ul. A. Mickiewicza 1, 15-213 Białystok, Poland. E-mail: temida2@uwb.edu.pl, Tel. +48 85 745 71 68

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Bialystok Legal Studies
Białostockie Studia Prawnicze
2024 vol. 29 no. 4

sciendo

DOI: 10.15290/bsp.2024.29.04.01

Received: 25.03.2024
Accepted: 15.10.2024

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Discrimination from a Criminological and Criminal-Political Perspective

Abstract: The subject here is the phenomenon of discrimination from the perspective of criminology, victimology and the tasks of criminal policy. The author first reconstructs the definition of discrimination and its causes, manifestations and negative consequences for people affected by discrimination. The issue of regulating manifestations of discrimination through criminal law regulations is then analysed. Ultimately, the belief is put forward that criminology and victimology provide material to recognize the real social harm of an act in the form of discrimination and unequal treatment in access to social goods. The findings in the area of criminal and criminalization policy make it possible to recognize that other criminalization prerequisites have been fulfilled. This finally makes it possible to call for the introduction into the petty offences law of a prohibited act in the form of unjustified refusal to provide a service that is within the scope of a given actor's offer.

Keywords: criminalization, discrimination, restriction of rights, unequal treatment, vulnerable people

Introduction

The idea of sustainable development is aptly captured in a sentence from the 1987 report of the World Commission on Environment and Development: it is 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs' (Agenda 2030). The 2030 Agenda for Sustainable Development is a plan of action for people, planet and prosperity. The first of the five great transformative changes that are envisaged, defined as the 5 Ps of sustainable development (People, Planet, Prosperity, Peace, Partnership), state: 'Leave no one behind, i.e. reach excluded groups, create conditions and opportunities for all people to enjoy universal human rights and economic achievements' (gov.pl, n.d.).

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These goals cannot be met without eradicating discrimination and lack of respect for diversity in social life. This is mentioned by the 2030 Agenda, which envisages 'a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity' (United Nations, 2015).

The problem of preventing discrimination and respecting diversity besets countries at different stages of development, with different economic statuses, cultures and socio-political models. It is vertical and horizontal in nature. The Preamble to the 2030 Agenda reads: 'As we embark on this collective journey, we pledge that no one will be left behind.' Fighting discrimination is addressed by Goal 5 of the 17 Sustainable Development Goals of the Agenda, which provides: 'Achieve gender equality and empower all women and girls.' The problem of discrimination also falls unquestionably under Goal 10, defined as '[r]educe inequality within and among countries', and within its framework under sentence 10.3, which reads, '[e] nsure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard'. Another important goal is Goal 16, which states that it is necessary to '[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels' (Redo, 2019, pp. 850–852).

The search for solutions to social problems such as discrimination must start with a diagnosis of the phenomenon – what is discrimination, what causes it and what social and individual effects it produces. At this stage, given the role of criminology and its relations to criminal law, penal policy and other state policies, the knowledge and experience of criminologists are essential and their findings can benefit the international community. It must be assumed that criminology involves a comprehensive study of deviant phenomena (taking the form of social pathology) and control mechanisms (Błachut et al., 2004, p. 19; Filipkowski & Guzik-Makaruk, 2019). Criminology should therefore provide an answer to the question of the aetiology and phenomenology of discrimination, and victimology an answer to the question of the negative consequences of discrimination. A criminological study should be completed with the development of a theoretical basis for combating these phenomena, including through a critical analysis *de lege lata* and the formulation of *de lege ferenda* postulates (within a so-called criminal policy).

This article aims to examine the problem of discrimination in criminological and criminal-political terms. It seeks to formulate an answer to the question of what discrimination is, what its causes are, its phenomenological image and consequences, and how penal legislation can or should respond to it. This study presents the preliminary assumptions of a criminalization policy sensitive to the problem of discrimination. These assumptions are intended to be complementary

to the algorithms for criminalization decisions already developed in Polish doctrine (Gardocki, 1990; Hryniewicz, 2011b; Kulesza, 2017). The issues of systemic discrimination related to the specific design of criminal law regulations are beyond the scope of interest of this study (for more, see Sitarz, 2024).

1. A diagnosis of the phenomenon of discrimination

It is crucial to define the phenomenon of discrimination as regards its diagnosis and prevention. It is assumed that discrimination is an unfair, harmful, selective and inappropriate treatment of a person based on their membership of a socially identifiable group, based on one or more characteristics (Jabłońska, 2017, p. 17). It is a situation where a person, because of various characteristics, is treated less favourably than another person would be in a comparable situation (Trociuk, 2013). In his socio-cognitive concept of prejudice in discourse, Teun A. van Dijk distinguishes 'the seven Ds of discrimination': 'dominance, differentiation, distance, diffusion, diversion, depersonalization or destruction and daily discrimination' (quoted in: Reisigl, 2010, p. 32).

A (new) criminological approach can therefore be proposed, under which, in essence, discrimination is an arbitrary, egoistical, unjust and unfair resolution – from the perspective of (universal and recognized) social and cultural standards – of a conflict of interest based on an irrelevant (in given circumstances) characteristic of a person (or a group of people). The conflict arises from, on the one hand, the rights and freedoms of a discriminated-against actor who lacks access to specific benefits, services and possibilities, and, on the other, a discriminating actor who has the freedom to pursue his/her own beliefs (based on prejudices and stereotypes) and to maximize his/her own material and non-material benefits. The narrowing of human autonomy in the social dimension may therefore be called discrimination. The key to the term discrimination is certainly a lack of reasonable and legitimate justification for differentiation in the legal and social situation of individuals. From this perspective, it must be concluded that discrimination is an (arbitrary) decision based on prejudices and stereotypes.

2. The aetiology and phenomenology of discrimination

To determine the aetiology of the phenomenon of discrimination is not an easy task. A review of the main criminological theories explaining discrimination was carried out by Fibbi, Midtbøen and Simon, who listed authoritarian personality theory, aversive racism theory and 'colour-blind racism'. While discrimination is often theorized as part of decision-making processes at the individual level, collective phenomena such as stereotypes and prejudices, and their diffusion or change, are also part of the dynamics between individuals and groups. In everyday life, actors inevitably classify people into social categories where new information is assigned to existing

categories. This categorization process is useful and even necessary to orient oneself in an environment rich in stimuli, information and events. However, information confirming one's own convictions tends to be stored, while information contradicting them tends to be disregarded, as it disrupts routine and requires an additional cognitive effort. Categorization assigns individuals to social groups; it often entails the division of social space into an 'in-group', which includes the categorizer, and an 'out-group'. It relies on stereotyping, an inevitable by-product of normal cognitive processes. In turn, structural discrimination shifts attention precisely towards such broader societal structures. The contextual dimension neglected in early theories provides tools to understand variations in discrimination across time and space and the way it is produced and reproduced by institutions. Compared to individual and organizational theories, the structural discrimination approach expands the analysis of discrimination, usually confined to one domain and a point in time, in the two significant directions of time and scope (Fibbi et al., 2020, pp. 21–42). According to Reskin (2000), all common social science theories on discrimination and the dominant legal approach to discrimination locate its source in intrapsychic processes, such as prejudices, ignorance, a sense of threat and a desire to maintain or improve one's position. However, they differ in whether they perceive the consequences of intrapsychic processes as motivated or automatic. The theories assuming that discrimination is motivated by dislike or fear of another group see it as an aberration within a generally fair reward system. Under social cognition theory, the basic cognitive processes through which the brain of every human sorts out data distort our perception, affect all our attributes and lead us all to favour members of our group. A laissez-faire decision-making process in worker organizations and other areas, including schools, voluntary organizations and the family, transforms these prejudices into discrimination against out-group members. If the cognitive processes leading to discrimination are universal, as the experimental evidence suggests, they cause a huge amount discrimination (for example in employment) that is neither intentional nor motivated by conscious negative feelings towards out-groups. In turn, organizational practices that define how the input of individuals contributes to personal decisions, and thereby accelerate, enable or prevent the activation of cognitive errors, are the direct causes of the greater part of employment discrimination.

Discrimination takes on various forms; its phenomenology is immensely rich and varied. In addition to restrictions based on sex, race, skin colour, religion or philosophy and age, discrimination can result from the discriminated persons' level of intelligence, skills, competencies (including language competence), economic situation (most frequently in the form of indirect or covert discrimination), name, disability and obesity. Discrimination also encompasses violence, including violence against women, domestic violence and sexual violence (Helios & Jedlecka, 2017, p. 50, 60–66; Kowalewska-Borys & Truskolaska, 2014, pp. 89–91). In addition, it is worth looking at discrimination in the future. The problem of accessibility for vaccinated individuals will raise criminal law dilemmas (for example, the question arises whether

it would be justified to limit participation in education or mass events for unvaccinated people). Microchip implants are certainly also a new challenge in anti-discrimination policy: they can on the one hand be a cause of discrimination and on the other be a tool for obtaining information leading to discrimination (Shainaz, 2018). The list is not exhaustive, because 'as a rule, any attribute which the dominant group considers undesirable in a given situation may lead to discrimination against any minority group characterised by that attribute' (Winiarska & Klaus, 2011, pp. 10–11).

It is difficult to determine the magnitude of discrimination, but it may certainly be evidenced by the number of court cases. Locally conducted studies show how huge and widespread the problem is (Blendon & Casey, 2019, p. 54; Molero et al., 2012). One in three European workers (34%) have felt discriminated against at work for some reason; in Italy, this number rose to 42% and in France, Spain and Great Britain to 37%, with the lowest number recorded in the Netherlands (21%). Another problem is highlighted by the Office of the Commissioner for Human Rights; a study carried out in 2018 showed that in the case of personal experience, only 2% of respondents replied that they had been victims of discrimination, while 3% said that their relatives had shared that experience. On the whole, over 90% of respondents declared that they had no direct experience of discrimination in the past year. As was rightly observed in the report, the findings should not give rise to optimism, since an analysis of the previous questions proved that the level of knowledge among Poles about what constitutes discrimination is very low, and a majority do not even recognize some discriminatory actions (also punishable by law) as discrimination (Domaradzka-Widła & Widła-Domaradzki, 2020, pp. 73–74).

3. A victimological perspective on discrimination

It is also necessary to make a victimological diagnosis. Most studies on prejudice have adopted a one-way orientation, exploring why members of majority groups become prejudiced against minorities, without considering the effects of prejudice and discrimination on their victims, minority members and subordinate groups. If we are to adopt a two-way approach, it is argued that understanding prejudice will also require knowledge of how members of minorities react to and defend themselves against it (Dion et al., 1978). The consequences of discrimination depend on its type; the situation of victims of gender discrimination differs from the situation of victims of disability discrimination. In any case, the effects of discrimination can be considered on an individual and a societal basis. The former encompasses mental effects, which include minority stress (Everett et al., 2016) and associated low self-esteem, anxiety and other permanent psychological damage (Stop Hate UK, 2023). Studies confirm that stigma, prejudice and discrimination create a hostile and stressful social environment, which causes mental health problems (Meyer, 2003). Writers also mention the externalization of

stereotypes. The awareness of the existence of an unfavourable social image, and suffering its social consequences by experiencing discrimination, activates a self-fulfilling prophecy (Popiołek & Januszek, 2018). Simultaneously, an increasing body of evidence suggests that racial discrimination is an emerging risk factor for disease and contributes to racial disparities in health (Williams et al., 2019). Discrimination on the societal level results in the brutalization of language, the marginalization of social groups, spatial segregation and lack of equal access to essential services and goods such as education and a health service. The loss of specific individuals (e.g. due to emigration) or the loss of their activity (demotivation) are surely a societal cost of discrimination. All these consequences are far-reaching, because research has found that even when someone does not explicitly encounter discrimination or hatred personally, seeing it happen to others can still have an effect on self-esteem due to vicarious traumatization. In addition, if someone belonging to a minority group sees another member being discriminated against, then they are more likely to assume this could happen to them too, leading them to feel more vulnerable and less confident (Stop Hate UK, 2023); perceived racial discrimination is a robust predictor of involvement in delinquency (Unnever et al., 2009).

The criminological perspective provides a new understanding of discrimination that is extremely rare in scholarly discourse, namely, that separate attention should be given to the problem of the criminogenic nature of discrimination. Studies in this field are not very well developed, though as early as 1899, Du Bois observed: 'In the case of the Negro there were special causes for the prevalence of crime […] he was the object of stinging oppression and ridicule, and paths of advancement open to many were closed to him' (quoted in Burt et al., 2012). For example, it has been established that discrimination is a common stressor among African Americans and may increase susceptibility to risk behaviour, such as early initiation of psychotropic substance use and physical aggression (Xie et al., 2020). One study has also shown the relationship between perceived racial discrimination, especially in childhood, and both arrest and incarceration reported in adulthood. The authors pointed out that the results of their study suggest that early perceived racial discrimination, especially when it involves the police (i.e. 'hassling'), increases the likelihood of African American adolescents engaging in illegal behaviour and being arrested and incarcerated. Racial pride moderates these effects: it reduces the likelihood of illegal behaviour in the absence of police 'hassling', but increases illegal behaviour and arrest when the discrimination comes from the police (Gibbons et al., 2020). The researchers argue that the harmfulness of discrimination has been conceptualized within the stress-process framework as an acute stressor causing mental and physiological suffering. In criminology, the general strain theory, which is a social-psychological extension of classic strain theory, applies a stress framework to crimes. This theory perceives crime as a way of coping with distress caused by strain, defined as negative social relations. Stress or negative emotions can put pressure on an individual so that he or she (1) attempts to achieve his or her objectives or obtain positively valued incentives through illegal channels; (2) attacks,

escapes or seeks vengeance on the source of negative emotions, or a substitute for them (frequently a more vulnerable and more readily available substitute); and (3) copes with or avoids his or her suffering by other behaviour. Thus, under the general strain theory, racial discrimination causes suffering that increases the likelihood of committing a crime (Burt et al., 2012, and the studies cited therein).

Finally, to paraphrase Harrell's (2000, p. 42) words about racism, it can be concluded that the toxin of discrimination that runs through the veins of society has yet to find an antidote. Discrimination can traumatize, hurt, humiliate, enrage, confuse and ultimately prevent the optimal growth and functioning of individuals and communities.

4. Discrimination and criminal policy

The findings of criminologists and victimologists allow the question of whether and how to regulate the prevention of discrimination in legal terms and what the role of criminal law is in this regard. The search for answers must take place at the *de lege lata* and *de lege ferenda* levels. To begin with, the history of law is, in a sense, a history of (structural) discrimination when law introduced or preserved societal inequalities (for example, the prohibition on the deprivation of life did not apply to everyone, such as slaves, peasants in a feudal state or sometimes women and children (Lang, 2012, pp. 16–19)). Simultaneously, the evolution of law is to make efforts to rise above prejudices in order to respect equality and diversity and recognize human rights. Consequently, international declarations, conventions and constitutions are cited as the first anti-discrimination instruments. Previous legislative instruments removing unjustified inequality before the law were also anti-discrimination regulations.

The Polish legal system provides a range of protection against discrimination. The vast majority of EU *acquis* which regulate the principles of equality and non-discrimination were developed in the area of labour and employment. Consequently, the most tangible changes in the Polish legal order in the process of the implementation of EU standards occurred in the provisions on employment (Kędziora et al., 2018, p. 20; Maliszewska-Nienartowicz, 2012, pp. 84–115; Pużycka & Wojnowska-Radzińska, 2011, pp. 265–266; Śledzińska-Simon, 2011). For greater certainty, the prohibition of discrimination is expressed in Article 32 of the Constitution of the Republic of Poland; in particular, the regulations on employment can be found in the Labour Code (Article 18(3)(a)–(d)). Moreover, the Law on the Implementation of Certain EU Provisions on Equal Treatment is an important legal instrument (Sejm of Poland 2023). From the perspective of the issue under analysis, allegations of incompatibility with the objectives set by EU directives have been made in relation to this law. One of its most conspicuous implementation deficiencies seems to be the question of establishing adequate sanctions for a violation of the rights guaranteed by

the provisions. EU regulations require that national legislatures design sanctions in such a way that they are effective, proportionate and dissuasive.

Two questions arise: whether these instruments are sufficient and whether criminal law measures responding to discrimination should exist in the legal system. In *de lege lata* terms, discrimination may be subjected to a criminal law assessment based on the provisions of the Criminal Code (primarily Articles 119, 194, 199, 212, 216 and 257) and the Code of Petty Offences (Article 135). The indicated regulations refer to discrimination quite clearly, but without using this wording. Notably, when making a criminal law assessment of discriminatory behaviour, other provisions of criminal law may also apply, for example, provisions on domestic violence (Article 207 of the Criminal Code) or on sexual violence (Articles 197–199 of the Criminal Code).

Article 138 of the Code of Petty Offences occupied a special place until, in a judgment delivered by the Constitutional Tribunal on 26 June 2019 (Judgment of the Constitutional Tribunal 2019), it was deemed unconstitutional in the part containing the words 'or intentionally refuses, without good reason, to provide a service to which it is obliged'; that part was repealed with effect from 4 July 2019 (Sejm of Poland 2019). A review of the analyses and positions in connection with that ruling (Jabłońska, 2017, pp. 107–116) and the glosses and discussions (Derlatka, 2018; Zarębska, 2019) of an earlier (2018) order of the Supreme Court (Judgment of the Supreme Court 2018) concerning the behaviour of a printer who refused to provide a service to an organization supporting the LGBT+ community make a list of arguments regarding the possible re-criminalization of discriminatory behaviour. Iwański was right to argue in 2019 that lending an anti-discriminatory nature to Article 138 of the Code of Petty Offences is a kind of 'prosthesis' resulting from the statutory gap in the area of introducing the penalization of discriminatory acts, 'with one's head held high', into the Polish legal system. Until this gap has been filled, the analysed regulation will remain the only measure providing a sanction for this type of behaviour; therefore, it seems that it should be used, but with caution (Iwański, 2019). Kulesza makes a valid point when he argues that:

> An interpretation in line with the Constitution of the Republic of Poland must lead to the conclusion that Article 138 of the Code of Petty Offences is applicable only to the few cases in the legal system where there is a statutory restriction of economic freedom and freedom of contract by an obligation to conclude a contract imposed explicitly by a relevant provision of law. The notion of 'reasonable cause' for refusing to conclude this type of service contract should also be understood to include considerations arising from the exercise of freedom of conscience and religion. However, the unbridgeable limit to this freedom is the commission of an act of discrimination to which an individual is not entitled, irrespective of his or her religious convictions or presented philosophy of life. Freedom of conscience and religion that manifests itself in discrimination against another person does not enjoy constitutional protection (2019, p. 127).

While Article 138 was in force in its entirety, a question also arose as to whether the penalty foreseen in the petty offences regime is not symbolic and therefore fails to meet the anti-discrimination objectives (Jabłońska, 2017, p. 197).

The cited legislative changes make it legitimate to ask whether a criminalization postulate can or should be formulated *de lege ferenda*. First, it is important whether, in the light of its international obligations, Poland must adopt criminal law measures. The practice of criminal prosecution had modest beginnings in Europe for decades, but in the past few years, due to the determination and pressure exerted by the governments assembled in the European Council, it has taken on a new shape and grown to a vast size. It is indicated that acts committed on EU territory should draw a response of adequate modernization and the Europeanization of legal measures relevant to the protection of legal goods (Pływaczewski & Guzik-Makaruk, 2014, p. 25). The 2000 European Council Directive requires the introduction of penalties but does not indicate their nature (Burek, 2007, p. 12), only that they 'must be effective, proportionate and dissuasive' (Wróblewska, 2020, p. 91). The lack of an obligation to criminalize seems all the more appropriate given that the Supreme Court held that a compensation awarded based on the Law on the Implementation of Certain EU Provisions on Equal Treatment should be dissuasive, of a general preventive nature and individual (Jabłońska, 2017, p. 198). This approach does not prevent a consideration of the validity of the criminalization of discrimination based on other arguments. Jabłońska (2021) is right to argue that the usefulness of the standardization provision cannot be understood in a way that requires a sanctioning standard encoded in it to guarantee behaviour in line with the content of that standard. Taking into account the functions of criminal (repressive) law, it cannot be expected that a sanctioning standard will eliminate a certain category of unlawful behaviour completely.

Criminal law as an instrument is not to be created spontaneously; certain rules need to be set, openly discussed, promoted and applied. Otherwise, the criminalization process will be vulnerable to the opportunistic exploitation of criminal law by politicians to put fresh ideas into effect and satisfy the temporary emotions of the public (Gardocki, 1990, p. 127). The doctrine of Polish criminal law has produced a body of important scholarly work structuring the criminalization process (Gardocki, 1990; Kulesza, 2017). Special attention should be paid to the arguments formulated by Hryniewicz; she has distinguished some dimensions of the coherence of legal goods' protection by criminal law, which must be assimilated into the theory of criminalization for an assessment of a draft sanctioning standard. It is a systemic coherence requiring the continuity of protection of goods, taking into account the axiological assumptions of the whole legal system. The second dimension is coherence understood as consistency of protection, requiring the extension of criminalization to new behaviour that infringes or endangers a legal good to a degree comparable to that of the criminalized behaviour. Then, coherence at the international

level requires the transfer of the scope of protection of a good accepted as a standard to national criminal law. Finally, coherence in the scope of penalties is imposed for attacks of a similar nature on specific legal goods (Hryniewicz, 2011b, p. 62). In the case of discrimination, assessment of the validity of criminalization is hampered by the rich picture of that phenomenon. Taking into account the criminological and victimological dimensions of discrimination, for the purposes of the criminalization process, essentially two types of behaviour can be distinguished:

1) Discrimination, in particular intolerance of diversity ('otherness') as stereotype-based dislike, taking the form of aggressive and violent behaviour (including hate speech, violence, domestic violence and sexual violence);
2) Discrimination, in particular intolerance of diversity ('otherness') as stereotype-based dislike, taking the form of denial of access to certain goods, services or employment.

The first form is generally criminalized in every legal system as a crime against life, health, property or honour. Some standardizations can indeed raise doubts as to whether they are an adequate response to cases of discrimination (for example, in respect of discrimination based on gender and age which manifests itself in domestic violence). A specific diagnosis is provided by a document prepared by the Office of the Commissioner for Human Rights, *Combating violence against women, including elderly women and women with disabilities. Analysis and recommendations* (Trociuk, 2013, pp. 91–104). It also remains to be considered whether types qualified with regard to an offender's objective should be introduced – in Europe, two-thirds of states have introduced stricter penalties for prejudice-motivated crimes (Godzisz, 2017, p. 76). They may be labelled 'hate crimes' (Brookman et al., 2022; Dudek, 2012, p. 35), and a doubt arises in connection with this type of crime: Are hate and prejudice worse than other emotional states accompanying criminal activity? Dudek recalls the arguments most frequently given in support of such a thesis, which include the argument of greater harm, the argument of the greater culpability of hatred, a (more severe) penalty as a message of condemnation of hatred and prejudice, the argument of oppression and compensation of wrongs. Dudek believes that there is no justification for such political-criminal decisions (Dudek, 2012, p. 36).

A real challenge is presented by a decision on penalizing discriminatory denial of access to certain goods, services and employment. There is no room for a broader discussion here, so only a few points can be mentioned. The starting point should be to define criminal law regulations' object of protection; the question arises of whether it is freedom and diversity on the social level or goods that are breached as a result of discrimination (in particular, the aforementioned mental and physical condition of harmed individuals). The former is an extremely vague concept that lies far beyond the classical understanding of a legal good in criminal law; one must therefore share the view expressed by Hryniewicz, who argues that 'non-discrimination is not a legal

good protected by criminal law. Instead, it constitutes a way (standard) of dealing with other legal goods where the protection of that good requires that equal access to it is ensured' (2011a, p. 106). This approach is also supported by the content of Article 31(3) of the Constitution, which indicates the substantive grounds for interference, among which the freedom and rights of others assume particular importance.

When making a decision on the criminalization of discrimination, it is necessary to remember that such a decision means taking into account two aspects: first, a conflict of interest, values and goods, and second, the subsidiarity principle of criminal law sanctions. Since every criminalization limits human freedom (meaning the freedom of choice of behaviour), every restriction of this freedom should be the last resort (the *ultima ratio* principle of criminal law) (Gardocki, 1989) and reasonably justified. Consequently, attention should be paid to goods, values and rights that are potentially restricted in connection with the creation of a (new) criminal provision to 'secure' the principle of equality and respect for diversity. These include economic freedom, freedom to manifest one's philosophy of life and to engage in behaviour compatible with it in the public space, freedom of religion, freedom of the media, freedom to organize socio-cultural events and freedom of artistic creation. In the case of the criminalization of behaviour restricting the availability of certain goods or services, what is in fact restricted under pain of penalty is, for example, freedom of contract, freedom to organize space, etc. However, these restrictions result from abandoning the absolute principle of fighting for one's own good (which is a natural impulse and ultimately forms the basis for functioning in a group or groups) in favour of supporting weaker actors. This approach is a measure of civilization and humanism.

Simultaneously, equality and diversity are not absolute values. Restrictions of the equality principle and respect for diversity can result from the need to respect the right to life and health, the right to security, and freedom in the private sphere. The following regulation is obvious: 'This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities' (European Union, 2000). Where restrictions on equality of access are reasonably justified (*verba legis*: 'it is objectively and reasonably justified by a legitimate aim and the means of achieving that aim are adequate and necessary'), unequal treatment 'loses' the status of discriminatory behaviour (in a primary manner). This principle must be fully actualized in the process of making a criminalization decision. Justified refusal of access to goods and services may not constitute a criminal act.

Remarkably, respect for or a violation of human dignity should not be a decisive criterion in the process of making a criminalization decision (for a different view, see Iwański, 2019, p. 43). It is an extremely broad concept, in which the real harm suffered by the two parties to a conflict of goods and values 'gets lost'. Moreover, this argument

can be relied on by both parties to the conflict. The conscience clause should not be used in the criminalization process because it itself leads to discrimination (for more, see Sitarz, 2023).

It is generally accepted that the subsidiarity principle assumes that the introduction of criminalization of a specific type of prohibited act requires that it is established beforehand that civil or administrative liability is not sufficient (Jaworska-Wieloch, 2018, p. 28). Such assumptions include the view formulated by Hryniewicz, who argues that 'discrimination is and should be punishable only when it expresses itself in behaviour liable to cause actual disorganization of social or economic life, which would be difficult to eliminate effectively using instruments from other, presumably less repressive, fields of law' (2011a, p. 111). One must share the view held by Kaczmarek (2008, p. 29), who argues that treating criminal law standards as secondary, sanctioning only behaviour contrary to the sanctioned standard arising from other regulations, leads to an incomprehensible and unacceptable procedure of making criminal law a mere appendix to other areas of law. Criminal law is not only a more effective tool for the eradication of undesirable acts; the (criminal) penalty condemns an act, and its evaluative nature – distinct from other repressive legal institutions – is its characteristic feature. Ultimately, an administrative sanction does not express social disapproval of an act, though it may appear to be more adequate judging by the nature of the breached duty of equal treatment in access to services. From this perspective, civil law measures appear to be insufficient too. In turn, a criminal conviction and its legal consequences do not make it possible to call for the criminalization of discriminatory behaviour in the form of denial of access to goods or services.

Conclusions

In sum, criminology and victimology provide material to recognize the real social harm of an act in the form of discrimination and unequal treatment in access to social goods. The findings in the area of criminal and criminalization policy make it possible to recognize that other criminalization prerequisites have been fulfilled. This finally makes it possible to call for the introduction into petty offences law of a prohibited act in the form of an unjustified refusal to provide a service that is within the scope of a given actor's offer.

Finding a solution to the problem of discrimination and ensuring respect for diversity is to ensure 'larger freedom' (as mentioned in the 2030 Agenda; Redo, 2019, p. 854). In view of the growing or increasingly noticeable clash of goods and freedoms, the prohibition of discrimination means to do so in an equitable manner, without undue, unreasonable or disproportionate prejudice to other actors. Much as multiculturalism (respect for diversity on the cultural level) is 'the process of widening moral boundaries, by finding compromises for mutual acceptance within a

democratic society' (Redo, 2019, p. 888), so should an inclusive society free from all discrimination, mentioned in Goal 16 of the 2030 Agenda, be the result of a common agreement on the limits of freedom in the areas of employment, education, economic freedom and one's own choice.

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Bialystok Legal Studies
Białostockie Studia Prawnicze
2024 vol. 29 no. 4

sciendo

DOI: 10.15290/bsp.2024.29.04.02

Received: 7.05.2024
Accepted: 18.11.2024

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The Presumption of the Age of Victims under International and Domestic Regulations

Abstract: The question of the security of proceedings and protection for victims involves a whole array of issues. One of them is the principle of the presumption of the age of the victim, which is an important element in the regulations on the legal protection of children in criminal proceedings. The Polish government has indicated that introducing the principle of the presumption of the victim's age into the Polish legal system was part of the implementation of the Sustainable Development Goals adopted in the UN Agenda 2030. For several years, there has been an emphasis in the field of European law on the need to implement appropriate procedures and take legislative steps for the comprehensive implementation of the obligations under Directive 2011/93/EU of the Parliament and of the Council of 13 December 2011 and Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012. Both of these are to be implemented through the provision of Article 49(b) of the Code of Criminal Procedure, which was introduced into the Code by the Act of 16 December 2020 amending the Code of Criminal Procedure, which came into force on 9 February 2021. The principle provided for in Article 49(b) establishes a legal assumption used to indicate the provisions of the Code of Criminal Procedure that should be applied to a victim if their age cannot be determined and they may be a minor.

Keywords: age of the victim, child abuse, child victims, children's rights, restorative justice

Introduction

The protection measures available to a victim serve to ensure their freedom and sense of security in particular, as well as creating a sense of comfort during proceedings

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in which they are involved and to protect them from possible retaliation by the suspect. The importance of these regulations is significant, if only because the very fact of being a victim of any crime is a very difficult experience. In order to protect victims from secondary victimisation, it is especially important that their participation in the investigation should not aggravate the trauma associated with the crime (Bieńkowska, 2016, p. 263; Falandysz, 1980, pp. 183, 185; Gronowska, 1989, pp. 112, 115).

The question of the security of proceedings and protection for the victim involves a whole array of issues. One of them is the principle of the presumption of the age of the victim, which is an important element in the regulations on the legal protection of children in criminal proceedings. Both internationally, including in EU law, and more recently in domestic law, there are regulations that provide for extending the application of special standards in respect of child victims to persons whose age cannot be established and whose physical and mental characteristics may indicate that they are minors.

The Polish legal system contains a number of international human rights acts (Jasudowicz, 2010, pp. 47–91; Malinowska, 1996, p. 17; Michalska, 1982, pp. 36–66; Mierzwińska-Lorencka, 2012, pp. 207–216; Mik, 1992, pp. 4–14), which guarantee the general rights of the individual and those related to participation in criminal proceedings but which do not address specifically the situation of a victim or a minor related to his or her interrogation. However, when establishing laws in individual countries – parties to international agreements – these rights should be taken into account so that they do not contradict the safeguards of fundamental rights contained therein.[1]

1. The rights of child victims in the 2030 Agenda for Sustainable Development and in EU law

The 2030 Agenda for Sustainable Development, adopted at the 2015 UN Summit and titled 'Transforming Our World', provides a set of global Sustainable Development Goals aimed at eradicating poverty and addressing the economic, social and environmental aspects of sustainable development. The goal set forth in Article 16 of the Agenda begins with a recommendation to '[s]ignificantly reduce all forms of violence and related death rates everywhere'. It concludes with a recommendation to '[p]romote and enforce non-discriminatory laws and policies for sustainable development'. As has been rightly pointed out, the sequence of tasks seems to emphasise specifying

1 There are several international documents that address the issue of protection measures for victims; bearing in mind the issues addressed in this article, it is worth noting in particular the Universal Declaration of Human Rights (adopted on 10 December 1948 in Paris by the United Nations General Assembly), the International Covenant on Civil and Political Rights (adopted on 19 December 1966 in New York by the United Nations General Assembly) and the Convention on the Rights of the Child (adopted on 20 November 1989 in New York by the United Nations General Assembly).

and making subjective activities for peace, inclusiveness and justice.[2] Agenda 2030 reiterates that there are 'responsibilities of all States […] to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status' (United Nations, 2015).

The European Union also played an important role in the process that led to the adoption of the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals in September 2015. In its communications, as well as its directives, the Council of the European Union reiterated that the EU and its Member States are determined to fully implement Agenda 2030 and achieve the 17 goals (Council of the European Union, 2017). It is worth pointing out that the Polish government also indicated that introducing the principle of the presumption of the victim's age into the Polish legal system was part of the implementation of the Sustainable Development Goals (gov.pl, 2024).

For several years, there has been an emphasis in the field of European law on the need to implement appropriate procedures and take legislative steps for the comprehensive implementation of the obligations under Directive 2011/93/EU of the Parliament and of the Council of 13 December 2011 on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography and Replacing Council Framework Decision 2004/68/JHA (European Parliament, 2011) and Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Assistance and Protection of Victims of Crime and Replacing Council Framework Decision (European Parliament, 2012). The provisions of Polish criminal procedure overwhelmingly ensure the implementation of these directives. The provisions of Directive 2012/29 are mainly reflected in the regulations of the Code of Criminal Procedure (CCP), in particular on the right of the victim to information on their rights and about the proceedings, the right to translation, including the right to file a crime report in the language that the victim speaks, to be heard, to legal aid, to reimbursement of expenses incurred, to compensation, to protection measures and, in addition, through the Criminal Executive Code in terms of the Victim Support Fund and the Post-Penitentiary Aid Fund, which provide a wide range of assistance measures for victims, with material and non-material assistance in the form of legal advice or psychological assistance (Sejm of Poland, 1997), as well as in the Law on Protection

2 The ideological basis for the goal expressed in Article 16 derives from the UN Charter. Peacekeeping is an objective of the Charter overriding all other UN objectives, as declared in its preamble. According to the UN's interpretation, peacekeeping is subordinate to justice and all other human values. This is the initial interpretation of the hierarchy of these values. In the translation of United Nations law into domestic law, which may use other legal principles, this may imply interpretation issues, for example on the subjects of gender equality, prohibition of discrimination or abolition of the death penalty (see Filipkowski et al., 2019).

and Assistance for an Aggrieved Party and a Witness (Sejm of Poland, 2014). This law introduced transparent mechanisms that provide victims and witnesses with support and protection both before and during criminal proceedings. The situation is exactly the same with regard to Directive 2011/93. The provisions of this Directive are echoed in a number of laws, including the Criminal Code in terms of sexual offences, the Code of Criminal Procedure in terms of the rights of child victims, including the special questioning procedure and the recording of such questioning, the Act on Counteracting Domestic Violence (Sejm of Poland, 2005) and the aforementioned laws: the Criminal Executive Code (with regard to the Victim Support Fund and the Post-Penitentiary Aid Fund) and the Law on Protection and Assistance for an Aggrieved Party and a Witnesses.

Both of these documents also address the issue of the age of the victim. The provision of Article 24(2) of Directive 2012/29 states that '[w]here the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall, for the purposes of this Directive, be presumed to be a child'. In turn, it follows from Article 18(3) of Directive 2011/93 that

> Member States shall ensure that, where the age of a person subject to any of the offences referred to in Articles 3 to 7 is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 19 and 20.

As part of the infringement procedures, the European Commission has addressed requests (Infringement No. 2019/2106 and No. 2019/2107) regarding Poland's incomplete implementation of Directives 2011/93 and 2012/29.

2. Presumption of the age of the victim in Polish criminal law

The above-mentioned directives are to be implemented through the provision of Article 49(b) of the CCP, which was introduced into the Code by the Act of 16 December 2020 amending the Code of Criminal Procedure, which came into force on 9 February 2021 (Sejm of Poland, 2020). The idea behind the new measures is to specify and clarify the existing provisions of the CCP relating to the protection measures during investigation to which victims are entitled (Sejm of Poland, 2021). The explanatory memorandum to the draft amendments indicates that the purpose of introducing the principle of the presumption of the age of the victim is to extend the application of special standards pertaining to child victims to persons whose age cannot be determined (e.g. foreigners whose identity is unknown) and whose physical and mental characteristics may indicate that they are minors. The provision's function and

purpose of protecting victims who may be minors is unquestionable, but the practical application of this institution may prove problematic, as will be discussed later.

The principle provided for in Article 49(b) of the CCP establishes a legal assumption used to indicate the provisions of the CCP that should be applied to a victim if their age cannot be determined and they may be a minor. According to this provision, the regulations of the Code relating to minors apply to the victim provided that the conditions indicated in Article 49(b) of the CCP are met. The first of these is when there are doubts about the age of the victim that cannot be resolved, i.e. a comprehensive evidentiary investigation does not provide grounds for resolving these doubts. The phrase used in the Act that refers to insoluble doubts is found in Polish law in the principle of the presumption of innocence and the resolution of all doubts in favour of the accused. It should be borne in mind, however, that the term 'insoluble doubts' means that the application of the above principle is possible only when a comprehensive evidentiary investigation has not provided grounds for the removal of such doubts. The use of such wording in the provision of Article 49(b) seems to imply that the recognition of a victim as a minor, and the subsequent application of the measures that the Code of Criminal Procedure provides for such victims, can take place only after the comprehensive activities of the investigative body have not resulted in a clear determination of the age of the victim, due to, for example, an inability to determine their age on the basis of civil registration documents, an identity document or the statement of another person who knows the victim. As Świecki (2024) rightly points out, when carrying out these investigations, it is necessary to take into account the victim's declaration of age, but this declaration should be verified, especially if the appearance of the victim suggests that they are a minor. If the provision in question were to be applied literally, this would mean that, for example, the questioning of a victim about whose age there are doubts cannot take place until the authority has carried out all the steps that could ascertain the above circumstance. In the case of a foreign victim, for example, this could mean asking the competent embassy to send relevant information.

In any event, these steps may be time-consuming and may therefore constitute an obstacle to carrying out an activity that is crucial to any investigation, that is, questioning the victim. Needless to say, questioning provides the basic and most important information about the circumstances of the crime, and it is often only by carrying out the questioning that the proceedings can continue and the remaining evidence can be secured. It is therefore obvious that any delay in questioning may entail very detrimental consequences. Therefore it seems that, taking into account the above, this provision should be interpreted as referring to doubts that cannot be resolved at a given moment, at a given stage of the proceedings. Such an interpretation in no way violates the safeguard function of the provision, and also ensures that the fulfilment of the norm contained therein does not contradict the best interests of the proceedings and does not impede the fulfilment of its objectives (Kochanowski, 2021).

The second premise concerns a reasonable suspicion that the victim is a minor. This presumption may arise from the person's overall characteristics (his or her phenotype, physical traits, including, for example, tertiary sexual characteristics, or psychological traits such as the way he or she behaves, expresses emotions or responds to stimuli). It is necessary to carry out an individual assessment of such persons in order to apply special protection measures, which in this case include separate rules for the questioning of minors (Articles 147(2)(a) and 185(a)–(d) CCP). The assumption established by the provision in question is rebuttable by convincingly demonstrating the victim's age of majority, such as providing a document that clearly indicates their actual age (Paluszkiewicz, 2023).

It is worth quoting here one of the rulings of the Supreme Court on a case of sexual abuse of a minor, in which it was pointed out with regard to the determination of the perpetrator's awareness of the minor's age that the determination of developmental age involves the evaluation of many elements of physique, i.e. the degree of bone development, teeth and bodily functions (physiological age) and the stage of development of somatic features, i.e. size and proportions (morphological age), which is the task of anthropology, or more strictly speaking, the branch of it referred to as ontogenetic anthropology or auxology (Judgment of the Supreme Court, 2021).[3] It follows from this ruling that in order to determine the developmental age of the victim, knowledge beyond life experience and the competence of law enforcement authorities and the court is required. Of course, this does not apply to obvious situations, i.e. the determination of minority in a child a few years old. Ambiguity about the age of the victim, however, applies to minors in their teens, i.e. from about 14 to 17 years of age, because sometimes the appearance of a person at the age of 16 or 17 is no different from that of an adult at the age of 18 or 19.

The consequence of applying the assumption of Article 49(b) CCP is that the regulations on minor victims apply to such a person, and thus the rights of the victim are exercised in the proceedings by the person in whose permanent custody they remain (Article 51(2) CCP). Regulations on questioning a minor in situations provided for in the provisions of Article 185(a)–(c) also apply to such a person. The application by judicial bodies of the provision of Article 49(b) is connected with the fact that it is also necessary to carry out an individual assessment with regard to such persons in order to apply special protection measures. This makes it possible to use special protections for victims against them, including the recording of questioning during pre-trial proceedings by means of video and audio recording devices (Article 147(1) and (2)(a) CCP), the right to legal assistance and professional representation depending on the child victim's role in the proceedings (Article 87(1) CCP) or the

3 In this ruling, the Supreme Court referred to the concept of ontogenic anthropology, indicating that it is a field that deals with the study of the variability of the human body structure in time and space, including in small periods measured by sections of a single person (Charzewski et al., 1993, p. 7).

questioning of victims in specially prepared rooms, by or with the participation of trained professionals or by persons of the same sex if the offences involved sexual misconduct (Article 185(a)–(d) CCP).

The regulation of Article 49(b) CCP is a provision that serves to protect victims who may be minors. If such a person is considered a minor, the application is included in the protection for this category of victim. The application of the summary of principles is only possible if a complementary and comprehensive evidentiary procedure is carried out, which does not occur if these problems are removed. In practice, this may cause difficulties and become an obstacle to interrogating such a victim or repeatedly interrogating him or her outside the protective mode (Dziergawka, 2024; Kulesza, 2024).

Regarding the aforementioned provision of Article 24 of Directive 2012/29, it should be noted that it refers to specific protections for child victims during criminal proceedings. Paragraph 1 of this provision mentions the following protection rights for child victims in criminal proceedings: recording of questioning during pre-trial proceedings by means of video and audio recording devices (Article 147(1) and (2)(a) CCP), appointment of a representative for the child (Article 51(2) CCP, Article 99 of the Family and Guardianship Code), and the right to legal assistance and professional representation depending on the child victim's role in the proceedings and when there is a conflict of interest between the child and those exercising parental authority (Article 87(1) CCP). In turn, Article 23(2) and (3) of Directive 2012/29 provides for questioning of victims in specially prepared rooms, by or with the participation of trained specialists, by the same persons, by persons of the same sex (if they are not conducted by a judge or prosecutor) if the offences involved sexual misconduct (Article 185(a)–(d) CCP); questioning should be conducted so as to avoid eye contact between the victim and the perpetrator, without the perpetrator in the courtroom (Articles 177(1)(a) and 390(2) and (3) CCP); unnecessary questions should be avoided during the questioning (Article 171(6) CCP) and the questioning should take place without members of the public present (Article 360(1) CCP).[4]Under Polish law, only some of these provisions apply explicitly to minors; in other cases, the provisions apply to all individuals, including those under the age of 18. The provision of Article 49(b), introduced by the 2020 Amendment Act, refers directly only to the provisions applicable to minors and leaves out those that apply regardless of the age of the victim. It is also noteworthy that some of the above-mentioned provisions of the CCP regarding protections for victims are applicable if the conditions specified therein are met. The existence of such conditions does not contradict the requirements of

4 EU law stipulates in the provision of Article 19(3) of Directive 2011/93 that taking specific measures to provide child victims with the help and support that will enable them to exercise their rights under the Directive should follow a case-by-case assessment of the specific situation of each victim, with due consideration of their opinions, needs and concerns.

Directive 2012/29, which, in Article 23(1), stipulates that certain protections may be exercised if justified by the competent authority's individual assessment of the victim (Sejm of Poland, n.d.).

The collection of information, as well as the hearing of the victim as part of the individual assessment, is covered by Article 52(a) CCP, which, like Article 49(b), is a result of the implementation of Directives 2011/93 and 2012/29. Prior to the introduction of this norm, whether measures such as those provided for in Article 185(a) or (c) CCP were necessary was decided based on the circumstances revealed in the course of the proceedings, following activities carried out in pursuance of the proceedings' general objective; that is, to determine whether a criminal act had been committed and to identify the perpetrator, the extent of the damage, etc. When it emerged from the circumstances thus established, for example, that the victim was a minor, this resulted in the application of judicial institutions defining the rules for carrying out an investigation with such a victim. The provision of Article 52(a) CCP introduced a change in this regard, imposing an obligation on the investigating body to conduct proceedings aimed at determining the circumstances listed therein, such as the personal characteristics and circumstances of the victim as well as the extent and consequences of the damage caused to them.

This special 'resultant evidentiary hearing' should lead to a determination of whether there are grounds for the application of the measures indicated in the provision. There are two duties of the investigation authority in applying the provision of Article 52(a) CCP prior to the commencement of the procedures referred to in Articles 143(1)(2), 177(1)(a), 184–185(c), 185(e), 299(a)(1), 360(1)(1)(d) and (3), and 390(2) and (3) CCP and in Article 10(2) of the Act on the Protection of an Aggrieved Party and a Witness. On the one hand, it is a legal obligation to establish the circumstances of the case, in particular regarding the characteristics and personal circumstances of the victim, as well as the nature and extent of the negative consequences of the crime. On the other hand, there is the obligation to collect a statement from the aggrieved person as to whether they want the measures provided for in the provision to be applied, i.e. whether they want the testimony that they will give to be recorded with a video or audio recording device.[5]

In the original version of Article 52(a) CCP, the lawmakers did not include an explicit obligation to update the individual assessment. In an effort to streamline the procedure for individual assessment of the victim and to ensure equal treatment of all victims, the norm of Article 52(a) was supplemented by a dedicated tool: a questionnaire

5 The issue of taking a statement from the victim as to whether they want the prescribed measures to be applied can prove problematic in practice. The victim may not have sufficient knowledge as to the meaning of particular investigative steps, which in turn may negatively affect their decisions on the subject. Moreover, upon first contact with the investigative body, the victim may not be able to predict which activities will be of particular importance to them.

for individual assessment of the victim (Sejm of Poland, 2023). This solution is meant to help the authority conducting the criminal proceedings to determine the characteristics and personal circumstances of the victim and the type and extent of the adverse consequences of the crime committed against them, taking into account the nature of the crime and the circumstances under which it was committed, on the basis of a standardised questionnaire. Its template is to be specified by the Minister of Justice by means of a regulation. This measure, in essence, should permit quick and efficient identification of the needs of the victim in terms of criminal proceedings. According to Article 52(a)(3) CCP, the individual assessment should be carried out no later than before the start of the proceedings indicated in the provisions of Article 52(a)(1). In practice, the lack of definition of the timing for the individual assessment may raise some doubts. Certainly, the assessment must be made before the statement is taken, the cut-off point for which, in turn, is also the commencement of the proceedings specified in Article 52(a)(1). The use of a questionnaire in making an individual assessment of the victim is the rule, and the only exception for waiving it is a situation in which there is a danger of losing or distorting the evidence in case of delay or when this will impede the investigation. In such a case, in accordance with Article 52(a)(3) CCP *in fine*, the information on the making of an individual assessment and the information on the victim's statement will have to be included in the report of the proceedings (Mierzwińska-Lorencka, 2023).

The literature rightly points out that the individual assessment should take into account such personal characteristics of the victim as age, sex, gender identity and expression, sexual orientation, ethnicity, race, religion, health status, disability, residence rights, communication problems, relationship with or dependence on the perpetrator, and prior experience of the crime; in assessing the crime, it should take into account whether it is a crime motivated by hate, resulting from prejudice or discrimination, whether sexual violence, violence in a close relationship or exploitation of a relationship of dependency is involved, as well as whether the victim resides in an area with a high crime rate. The assessment is a two-step process, in which the first stage aims to determine whether the victim, according to the criteria listed in Article 22(2) of the Directive, has special needs; if they do, the second step should identify which of the protection measures listed in its Articles 23 and 24 are necessary in that particular case. The Directive introduces neither priority categories of victims nor a hierarchy of them with regard to making individual assessments, but lists certain categories of victims as those who tend to be more vulnerable to further victimisation (for example, children) (Bieńkowska, 2015; Falenta, 2021).

The measures proposed in the provisions in question clearly seek to strengthen the position and increase the standard of protection of the interests of minors, aggrieved parties and witnesses to crimes, as well as adults – victims of crimes against sexual freedom and morality. The amendments focus on showing more respect for the dignity of such persons and are designed to minimise cases in which aggrieved

parties and witnesses to crimes experience secondary victimisation, i.e. re-exposure to traumatic experiences due to the reaction of those around them to their experience. Simultaneously, domestic regulations meet the requirements of the EU directives indicated above. The current provisions of the Polish Code of Criminal Procedure offer a broad range of institutions that guarantee the protection of the rights of the victim in criminal proceedings. Some of them are mandatory, i.e. applied in every case, some depend on the decision of the authority to apply them and some require action from the victim.

Conclusion

In light of the assumptions indicated in the acts of EU law and the basic rules of conduct for sustainable development addressed in the UN Agenda 2030, the changes made to Polish criminal procedure should be assessed positively. The relatively short period in which the new regulations have been in force means that their effectiveness in practice has yet to be determined. Some of the norms may obviously raise doubts; nevertheless, one should appreciate the efforts of the lawmakers manifested in the successive additions to the code's regulation of new norms, the purpose of which is to broaden the rights of the victim and strengthen the protection of their rights in ongoing proceedings. However, as the experience of the application of the law shows, the fundamental problems do not arise from the statutory regulations but from the practice of the law enforcement agencies and the judiciary. The first point to be mentioned here is, of course, the length of proceedings – their duration is steadily increasing – followed by the practice of communication between investigation authorities and the victim (as an example, we should mention here, unfortunately, the quite frequent practice of persuading the victims not to report the crime), the alleged impact of statistical results on the manner of ending proceedings, and others. To a certain extent, the active involvement of the victims themselves and their attorneys in the course of the proceedings constitutes a preventive measure, and this is done at the pre-trial stage: submitting requests for evidence and information on evidence, presenting the position of the victim on the measures that can be used by the investigation authority, and finally, resorting to complaints about the length of the proceedings. Nevertheless, as long as the fundamental problem of the malfunctioning of the justice system is not resolved, all such measures will have extremely limited effectiveness in terms of properly guaranteeing the rights of victims in ongoing proceedings (Kochanowski, 2021; Mierzwińska-Lorencka, 2023).

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Bialystok Legal Studies
Białostockie Studia Prawnicze
2024 vol. 29 no. 4

sciendo

DOI: 10.15290/bsp.2024.29.04.03

Received: 25.04.2024
Accepted: 4.11.2024

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Protecting Women from Violence in Light of the UN Sustainable Development Goals from the Perspective of a Postmodern Society

Abstract: Among the 17 UN Sustainable Development Goals adopted in the so-called Agenda 2030, Goal 5 is defined as achieving gender equality and empowering women and girls, and the objective labelled 5.2 is about the elimination of all forms of violence against women and girls in the public and private spheres, including trafficking, sexual exploitation and other forms of exploitation. The way gender equality is framed in Agenda 2030 in the context of countering violence is unsatisfactory. It relies on outdated perceptions of sexuality, fails to recognize new problems related to the fluidity of gender identity and may indirectly lead to ignoring the problem of violence against people of a gender other than women.

Keywords: Agenda 2030, human trafficking, protection, violence, women

Introduction

Among the 17 United Nations Sustainable Development Goals adopted in the so-called Agenda 2030, Goal 5 is defined as achieving gender equality and empowering women and girls (Kampania 17. Celów, n.d.). Within this area, nine task-specific goals are listed, most of which relate to combating discrimination against women and girls and eliminating violence against them. These include the goal labelled 5.2, which is about the elimination of all forms of violence against women and girls in

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the public and private spheres, including human trafficking, sexual exploitation and other forms of exploitation (Grzyb, 2018, p. 224).[1]

Violence in general and human trafficking in particular are undoubtedly dangerous and difficult to eradicate. However, the laudable goals of the Agenda regarding the elimination of violence and especially human trafficking are overshadowed by the way gender equality is framed in the context of countering violence. One can note here a certain discrepancy between the perception of gender roles and a woman's place in the social system in postmodern western societies and the view of them in traditional societies, where structural inequality between the two sexes is considered the main cause of violence against women (Caban, 2010; Grzyb, 2018, p. 222; Nowacka, 2020). The latter is how violence against women in the European Union, for example, is viewed within the framework of gender equality policy (European Commission, 2016a; European Commission, 2016b; European Commission, 2024).

Since roughly the middle of the 20th century, western countries (such as in Europe and North America) have seen a gradual transformation of traditional society, which was homogeneous and place-bound, into a postmodern (pluralistic) society, which is not (Mariański, 2014, pp. 33–75). Instead, it lacks internal order and is hardly susceptible to planned reform efforts (Encyklopedia PWN, n.d., Społeczeństwo ponowoczesne; Encyklopedia PWN, n.d., Ponowoczesna teoria społeczna; Oniszczuk, 2012). Moral values have been replaced by pragmatic ones, leading to a state of fluid social norms and strangely conceived moral autonomy (Budyn-Kulik, 2022, pp. 38–48). This is accompanied by transformations in human morality and sexuality, including the increasing acceptance of forms of sexuality previously unaccepted or marginalized and the lack of unequivocal condemnation of these, which, until recently, were evaluated negatively. These phenomena have resulted in the emergence of new aspects of violence, including those based on gender, which were not included in Agenda 2030. It should be remembered that this document was created in 2015, when certain social transformations were not yet occurring with the intensity they are today. It should be emphasized that the very idea of combating and preventing violence, including human trafficking, is as appropriate as possible, especially when it takes place without the consent of the person concerned and is carried out by people who are incapable of understanding the situation, resisting the perpetrator, etc. The discussion below will focus on issues related to the way in which Agenda 2030 includes combating and preventing violence against women (and girls) and one of its aspects, human trafficking.

1 It is worth noting that research shows that the victimization rates of women in countries with very advanced equality procedures are higher than in countries perceived as traditionalist.

1. Preventing and combating violence against women

1.1. Definition of the object of protection

Agenda 2030 formulates Goal 5.1 as the elimination of all forms of violence against women and girls; it was placed in the section on gender equality. Such a solution does not seem optimal, since violence is a widespread phenomenon and affects a variety of people, regardless of gender. The current framing seems to downplay the problem in relation to people of a gender other than women and men, and non-binary, gender-fluid people (Cordis, 2021; European Parliament, 2021). Perhaps a better solution would be to differentiate the scope of protection from violence by age. Special protection for children before they enter the teenage years, especially up to the onset of puberty (11–14 years), is not in doubt. Due to their level of development – primarily in the cognitive sphere, but also in the social and emotional spheres – they are usually not persons capable of making a rational decision regarding their own situation. Their protection is therefore of a paternalistic nature (so-called weak paternalism): the state enters, as it were, into the role of a parent who knows better than the minor him/herself what is good for him/her (Budyn, 2003, pp. 59–60; Feinberg, 1983, p. 18).

The Agenda uses the term 'girls' rather than 'children' and tends to refer to people whose sex characteristics are already clear, so the term 'woman' would suffice here. In the case of young children, this protection does not fit into the area of gender equality and non-discrimination; it is based on the assumption of lack of fitness for decision-making due to developmental characteristics (age). It would therefore be more correct to identify women and children as these specific objects of protection.

Placing only one gender in the equality goals seems a little wrongheaded. The most frequent victims of violence, particularly domestic violence, are indeed women (NCADV, 2024), but it must be remembered that men and non-binary people are also victims of violence such as domestic violence, although the figures are not as complete in this regard as they are for women and children (Bodzon, 2013; Kolbe & Büttner, 2020; McLeod, 1984; Thobejane et al., 2018; Thureau, 2015). With regard to the singling out of women as a special object of protection from violence, it should be noted that the prevention of violence in an institutionalized, normative way is necessary; without appropriate legal, including criminal law, measures, it does not seem possible to change certain attitudes and behaviour patterns. This is particularly important in those areas of the world where, on the one hand, there is a strong cultural acquiescence to violence, and on the other, the structures and institutions of the state do not always function properly and the poor financial condition of the state and most of the society makes it difficult to find sources of funding for the activities that should be undertaken. In other regions (such as Europe, North America), the situation is somewhat different. Despite often intensive efforts in this regard, the measures taken so far have not led to the eradication of violence from social life; moreover, new manifestations are emerging. States and their institutions are

therefore looking more and more for new solutions which, in addition to supportive and accessory actions, can increasingly replace the activity of those concerned. Such actions on the legislative level, as well as related endeavours in the social sphere, can sometimes lead to the creation of a belief that the state has taken all responsibility for the lives of certain groups of citizens (in this case women) and give the impression that there is no need for victims to take responsibility for their own lives. This can make it difficult to take measures that can actually have an impact on changing social attitudes towards violence and thus on its prevention (Budyn-Kulik, 2020, pp. 81–83).

1.2. Stereotyping in the image of the victim

The attempt to change attitudes towards violence (especially family violence) from approval or at least toleration to decided disapproval, which has been observed for many years, including in Poland, is definitely commendable (Kowalewska-Birys & Truskolaska, 2014). Social campaigns aimed at explaining the mechanism of family violence, dispelling certain myths (e.g. that it is a rare phenomenon that occurs only in certain environments) and creating a system of assistance for victims (e.g. women's shelters, support groups) have made victims more courageous in revealing the fact they are experiencing violence, actively seeking help and not being ashamed to talk about the fact that they have been victims (Budyn-Kulik, 2020, pp. 79–80). Addressing this issue, also at the normative level, requires adequate definition of the phenomenon. Somewhat worryingly, existing definitions of violence, especially domestic or gender-based violence, are vague; in an effort to provide the best possible protection for all potential victims, these definitions are increasingly being expanded. They tend to include content that is irrelevant and not constitutive of the phenomenon, so they become too general and address behaviour that may be disapproved of but that does not yet constitute violence. At the same time, the mistake is also made of omitting some essential features from the definition, which makes it unable to cover the entire concept to which it refers. This results in stereotyping the image of violence of a given type by narrowing it down to the most common situations, such as in the case of domestic violence, to that in which the perpetrator is a man and the victim is a woman (and possibly children) (Budyn-Kulik, 2020, pp. 80–81; Dutka, 2014). The consequence of definitional errors and a certain way of portraying violence against women in the public space is the creation of many prejudices, building a stereotypical image of the victim (Sękowska-Kozłowska, 2016): she is a weak woman, with no chance in a confrontation with a male perpetrator, is always credible and deserves sympathy and help (Grzyb, 2017). Victims of violence (most often of domestic violence) are usually portrayed as helpless and powerless. The portrayal of the victim as weak and in need of intensified institutional assistance justifies the operation of many state and non-governmental agencies and organizations – those involved in helping victims 'sharpen' their image, either in good faith or unconsciously. It is possible that they perceive such behaviour as making it easier to organize assistance to victims, and they probably also feel greater satisfaction from the work they have done

(Budyn-Kulik, 2020, pp. 81–82). This is by no means to deny the legitimacy of helping victims of violence who need it; however, the dominant narrative somehow negates the victim's right to demonstrate resourcefulness, strength and their lack of submission and helplessness. It is as if the victim's possession of such qualities and their taking remedial and/or defensive action makes the perpetrator's behaviour, that has the hallmarks of a criminal act, no longer criminal in nature (Budyn-Kulik, 2020, p. 82). In the US literature on domestic violence, an alternative concept emerged many years ago in this regard, according to which victims of violence are viewed as survivors (Bejenaru, 2011; Gondolf & Fisher, 1988, pp. 78–80; Hoff, 1990, pp. 16–31).

In a broader perspective, building an image of victims of violence as always being weak and not trying to find a way out of their difficult situation is not beneficial to victims – either from a social or an individual perspective. Maintaining such a strategy and extending protection may result in 'social boredom' with the issue and a loss of public sympathy and thus of support for victims of violence. This is especially true for victims of domestic violence, but also for victims of human trafficking for sexual exploitation (Budyn-Kulik, 2020, p. 83).

Agenda 2030 was created nine years ago, but social changes have made the framing of its various tasks somewhat archaic and inadequate to the requirements of modern times. If there were an opportunity to make adjustments to this document, it would be worthwhile reformulating the objectives of Goal 5 somewhat, emphasizing not only the need to make efforts, so to speak, 'external' to those involved – by states and their institutions – to protect victims who are actually weaker and require such help, but also stressing the need to support women themselves in making efforts to take responsibility for their own lives and encouraging them to see themselves as causal individuals. Inscribing a victimized woman into a victim pattern can make her, consciously or not, try to conform to it, which can lead her to develop the belief that since she is a victim of violence, she is weak, and any attempts to find a way out of the situation are pointless. Conscious adjustment can occur when the victim realizes that conforming to the pattern of a victim of violence makes her credible in the eyes of administrative, law enforcement or judicial personnel. This conscious adjustment, even if initially purely formal and external, can lead to the victim stepping into the role and forming a belief over time that she actually possesses characteristics consistent with the schema (Budyn-Kulik, 2020, pp. 83–84).

It is important to note a certain inconsistency in the way violence against women is portrayed. On the one hand, the idea of social roles (especially feminine and masculine gender roles) is blurred; on the other hand, a schema of women as strong, self-conscious, decisive and autonomous (without the need to seek support from a partner) is built in the eyes of the public, while at the same time a model of women as victims of violence (especially in the family) and as weak and incapable of deciding for themselves is created (Budyn-Kulik, 2020, pp. 84–85). The protectionist approach to women as victims of violence is particularly puzzling in the context of portraying them as victims

of an oppressive patriarchal system in which, as women, they are deprived of the right to decide for themselves. Presenting women victims as by definition weak and unable to cope without help is an expression of paternalism; that is, they are still deprived of the ability to decide for themselves, only this time under the pretext of looking out for their welfare. Even if one accepts that this is so-called weak paternalism, a doubt arises as to whether it is really justified (Budyn-Kulik, 2020, p. 86).

1.3. New problems related to gender-based violence

At the same time, some new aspects of gender-based violence remain unnoticed or seem controversial. The emergence of such phenomena is related, for example, to an individual's ability to freely choose his or her gender. In addition to transgender people, who feel discomfort between their biological sex and the way they perceive their gender identity and who usually seek to make a transition, i.e. to physically reconcile their biological sex with their psychological (social) sex (Kłonkowska, 2015; Leżucha & Czerwiec, 2022a,; Leżucha & Czerwiec, 2022b), more and more people declare gender fluidity, manifested, among other things, in periodic identification with one of the genders without taking steps to physically reconcile it (Ziemińska, 2015). This generates all sorts of problems that were not realized when the Agenda was passed (Leżucha & Czerwiec, 2023). On the one hand, persons entering the gender reconciliation procedure are, for a certain period of time, physically in a state of limbo, so to speak; certain properties and physical characteristics of the previous gender have not yet been removed or modified, and the properties and characteristics of the new gender have already been introduced (RPO, 2020, pp. 14–17). Such a person may become a target of violence in certain situations, such as placement in a male prison of a person who was originally a biological male but who is in the process of gender reassignment and who may be subject to aggression from fellow inmates. At the same time, however, there is an increased risk of victimization of women by those who are biological males and who declare themselves to be women (without feeling the need to reconcile their biological sex with their declared sex and without taking steps to do so). The problems associated with this phenomenon can perhaps most clearly be seen in the context of imprisonment. The incarceration in women's prisons of biological men who declare themselves as women is increasingly common, which undoubtedly increases the risk of violence (physical or sexual) to other female prisoners (Anywhere, 2024; Grzyb, 2022).

2. Human trafficking in a postmodern society

In the case of human trafficking in a postmodern society, there may also be some doubts about the traditional way of viewing this phenomenon and, consequently, regulating issues related to its combating and prevention on the normative level. This

crime is usually committed by organized criminal groups, often of an international nature, which entails a high level of danger, not only for individuals but for entire communities, including states and international structures (Bajda, 2021). On the normative level, both from the international aspect and in national orders, efforts are being made to combat and prevent it.[2]

Human trafficking is a complex phenomenon both in terms of subject matter (the purpose of human exploitation) and geography (depending on the region of the world) (Antonów, 2014). A United Nations Office on Drugs and Crime report details ten territorial zones of human trafficking: 1. North Africa and the Middle East, 2. sub-Saharan Africa, 3. North America, 4. South America, 5. Central America and the Caribbean, 6. East Asia and the Pacific, 7. South Asia, 8. Eastern Europe and Central Asia, 9. Western and Southern Europe, and 10. Central and South-Eastern Europe. Different types of human exploitation are prevalent in different regions, i.e. trafficking for sexual exploitation will definitely prevail in North and South America, Central America and the Caribbean, East Asia and the Pacific, and Central and South-Eastern Europe, and trafficking for forced labour in sub-Saharan Africa, South Asia, Eastern Europe and Central Asia (UNODC, 2020, p. 95).[3] Most victims of trafficking for forced labour are men and boys (UNODC, 2020, p. 96). In Western and Southern Europe most detected victims are adult women (37%), but men and boys are being increasingly detected (28% men, 21% boys) (UNODC, 2020, p. 133). The most detected form of trafficking is sexual exploitation (44%); forced labour is next (32%), and the rest is trafficking for other purposes, mainly for criminal activity and exploitative begging (UNODC, 2020, p. 133). Most victims of trafficking for sexual exploitation are adult women (74%) and girls (16%). Slightly higher percentages of adult female victims (53%) and girls (22%) are detected in Central and South-Eastern Europe; the share of trafficking for sexual exploitation is also higher, with a noticeably lower share of forced labour (18%). The most-detected victims of trafficking for sexual exploitation are women (59%) and girls (35%) (UNODC, 2020, p. 134). The percentage of adult women (46%) and girls (11%) as trafficking victims is lower in

2 In the international sphere, f.e., it is United Nations Convention against Transnational Organized Crime of 15 November 2000, together with the Supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Particularly Women and Children, Dz.U. z 2005 r. nr 18, poz. 158; Convention for the Suppression of Trafficking in Persons and the Exploitation of Prostitution (ratified under the Act of 29 February 1952), Dz.U. 1952, nr 41, poz. 278; ILO Convention No. 29 relating to forced or compulsory labor of 28 June 1930, Dz.U. z 1959 r. nr 20, poz. 122; International Convention for the Suppression of Traffic in Women and Children, signed at Geneva on 30 September 1921 (ratified in accordance with the Act of 13 February 1924), Dz.U. z 1925 r. nr 125, poz. 893, Dz.U. z 1925 r. nr 125, poz. 893; Convention for the Suppression of Trafficking in Adult Women of 11 October 1933, Dz.U. z 1938 r. nr 7, poz. 27 i in, on the basis of Polish domestic law, Konstytucja RP, art. 115 § 22 k.k.

3 Everywhere, however, human trafficking for the purpose of obtaining organs shows the lowest percentage. On this phenomenon, see Głogowska (2013).

Eastern Europe; here and in Central Asia, the highest percentage of trafficking is forced labour (66%), with 83% adult male victims (UNODC, 2020, pp. 144–145). Although in global statistics the number of female victims is higher than the number of male victims, in many regions the percentage differences are not large, and usually, where trafficking for forced labour is prevalent, the percentage of adult males exceeds that of female victims (UNODC, 2020, pp. 131–173).

Because of this, it does not seem entirely justified to emphasize so strongly the need to combat trafficking as far as female victims are concerned. Protecting women and girls from being trafficked is important (Olszewska, 2014, pp. 156–157), but it seems that such a strong emphasis on the need to protect just them leads to downplaying the trafficking of male victims, which does not seem justified. Special emphasis should undoubtedly be placed on protecting children, regardless of sex, from trafficking (Lasocik, 2021).

If we look at the Polish regulation on human trafficking, which is basically a repetition of the content of international regulations, there is no doubt that the content of Article 115 § 22 of the Polish Criminal Code basically follows the direction set by the Agenda, although the Polish legislation protects all victims to the same extent, regardless of sex, and provides special protection to minors.[4] The way in which the elements of the crime of trafficking in human beings has been included has raised many doubts in the doctrine of Polish criminal law, which has been expressed in numerous publications by the doctrine's representatives (Budyn-Kulik, 2022, p. 399, footnote 183, and the literature cited there; Hudzik & Paprzycki, 2009, p. 7; Sakowicz, 2009, p. 10; Sitarz, 2011; Zielińska, 2007, p. 45); therefore, it will not be analysed in this study. The following remarks do not concern the manner of using a human being as defined in Article 115 § 22 of the Polish Criminal Code but only the scope of activities to which human trafficking applies.

From a criminological and state perspective, and probably also from a moral one, the need to combat human trafficking is not in doubt (Lasocik, 2012; Wojnicz, 2010), but public attitudes, including those of potential victims towards some aspects of this practice, seem to be changing. This stems from a change in the understanding of individual freedom and the right to make decisions about one's own life. On the basis of the concept of postmodern society, the individual can decide for him/herself on all aspects of his/her own life – on its quality and on the moment of its termination – and the decision should not be subject to evaluation from others (Budyn-Kulik, 2022, pp. 282–283). In a postmodern society, paradoxically, a human has a commercial value, and the legislature's treatment of him/her as *res extra comertium* limits his/her freedom to decide for him/herself (Budyn-Kulik, 2022, p. 224). As the scope of

4 The introduction of the definition is due to Poland's ratification of the. See also Markiewicz-Stanny (2012); Sakowicz (2006); Sokołowska-Walewska (2012).

human rights expands, the question arises of whether the prohibition of trafficking in consenting adults violates a person's ability to decide for him/herself (Klebeko, 2015).

Meanwhile, it is clear from the definition in Article 115 § 22 of the Penal Code that the perpetrator's behaviour is punishable even if it is undertaken with the consent of the persons involved. It lists certain types of conduct towards a person which, according to the legislation (referring to traditional morality), as it were by definition, cause degradation of human dignity; these include prostitution, pornography, other forms of sexual exploitation, forced labour or services (Perkowska & Jurgielewicz, 2014, pp. 73–74), begging and slavery. The legislation juxtaposes these with the signifier 'or in other forms of exploitation degrading human dignity'. From this formulation, it follows that the examples of forms of exploitation given are also of the nature of 'degrading human dignity' (Daniluk, 2015, p. 719; Hypś, 2018, p. 767). Human trafficking therefore constitutes an attack on dignity.

Since the state and the economy in the postmodern world base their functioning on pragmatic, functional principles, traditional moral norms have less and less importance in a consumer society, and even morality has virtually disappeared from the social structure. Consumer morality is based on individualism and hedonism (Budyn-Kulik, 2022, p. 41). In the postmodern world, each person determines for him/herself the extent of his/her own dignity and decides for him/herself whether s/he feels that his/her dignity has been offended. Prostitution, pornography or various other manifestations of human sexual activity in postmodern society are not considered degrading. Sexuality is the feature by which a person defines him/herself and defines his/her identity. S/he has complete freedom in this regard, and since postmodern society rejects traditional morality, it cannot be judged in ethical terms. From a postmodern libertarian perspective, the current portrayal of trafficking is discriminatory, as it clearly implies that prostitution is something reprehensible (the very use of the term is considered by those providing such services to be non-neutral and discriminatory). Voluntary prostitution was considered at least morally ambiguous behaviour, or even treated as morally reprehensible; nowadays, one can find numerous statements in the public space and on the internet indicating that attitudes towards this phenomenon have changed (Budyn-Kulik, 2014, pp. 259–264). This can already be seen in the terminology: the term 'sex worker' is now used to describe such activity.[5] Statements by those who provide such services go in the direction of professionalizing this activity, as well as gaining social acceptance for it and showing respect to those who engage in it (Charkowska, 2010, pp. 138–148, 166–180; Klimczak, 2022; Wiadomości, 2017; Właszczuk, 2021). The inclusion of voluntary sex work by adults in the definition of human trafficking can be seen as a restriction of freedom, as well as a manifestation of discrimination against those

5 This means a person (male or female) who provides paid sexual services. It is considered a neutral, non-deprecatory term; Wikisłownik (2023); Wikisłownik (n.d.).

who engage in such activity (by placing such activity in the catalogue of phenomena degrading human dignity).

It is worth noting in passing that the term 'forced labour or services' is undefined. It can be seen as a manifestation of a kind of discrimination that some of their formsare widely accepted and considered legal under the law. One can consider, for example, 'trade in football players' from this angle; this is done with the player's consent, but in most cases s/he cannot change employers without their consent, nor can s/he continue to provide work when the employer wants to 'sell' him/her. Usually these transfer moves are justified by financial reasons (the financial condition of the club or the possibility of raising funds from the buyout of the player's contract by another club).

Conclusion

Protection against violence is extremely important. Taking actions to prevent and combat it both internationally and domestically is necessary. However, realistic goals should be set, because even the most noble but utopian assumptions, impossible to achieve, may undermine the efforts undertaken. It is also important to properly balance protection objectives, in this case between combating a socially harmful phenomenon (violence, including human trafficking) and equalizing inequalities related to a woman's place in traditional society. An attempt to correct existing irregularities in this area should not lead to the creation of new inequalities. It also remains an open question whether legislation (international, supranational or national) should notice and take into account social changes, even those that, for example from a moral point of view or from a broad social perspective, are unfavourable or harmful to society, even if they are approved of and perceived as beneficial by individuals, or rather perpetuate self-approved social attitudes (Budyn-Kulik, 2023).

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Bialystok Legal Studies
Białostockie Studia Prawnicze
2024 vol. 29 no. 4

sciendo

DOI: 10.15290/bsp.2024.29.04.04

Received: 20.03.2024
Accepted: 30.11.2024

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Providing Safe Shelter to Victims of Domestic Violence in the Light of Goal 16.1 of the 2030 Agenda for Sustainable Development

Abstract: Interest in the issue of domestic violence in Poland has resulted from the rapid development of international law. One of the essential documents in this area is the resolution adopted by the General Assembly of the United Nations on 25 September 2015 titled 'Transforming Our World: The 2030 Agenda for Sustainable Development'. One of the main challenges associated with domestic violence is ensuring the safety of the victims. Poland has adopted certain solutions to address this issue, including the establishment of specialized support centres. The purpose of this paper is to discuss the essential characteristics and functions of shelter provided by these centres as one of the forms of assistance provided at the municipality level to persons who have experienced violence. The paper also seeks to assess how such centres operate in practice.

Keywords: domestic violence, specialized support centres, victims, 2030 Agenda for Sustainable Development

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Introduction

According to the popular theory by the American psychologist Abraham Maslow, the need for safety ranks second in the hierarchy of human needs, just above physiological needs, which lie at the base of the pyramid reflecting this hierarchy. Maslow defines this tier as a set of needs that involve ensuring certainty, stability, support, care, and freedom from fear (Maslow, 2009, pp. 65–68). An approach prioritizing safety, protection, and care focuses primarily on the need to be safe and protected from violence (including violence that may occur at home). That need is global, and satisfying it requires the partnership of multiple actors at various levels.

The inspiration and the grounds for an international exchange of experience in the field of violence prevention can be found in the Resolution adopted by the United Nations General Assembly on 25 September 2015 titled 'Transforming Our World: The 2030 Agenda for Sustainable Development' (United Nations, 2015). According to its Preamble, Agenda 2030 constitutes a plan of action for the benefit of people, our planet, and prosperity, and also aims to strengthen universal peace within a larger freedom. It encompasses a total of 17 Sustainable Development Goals and 169 related targets (Biswas et al., 2021; Kury & Redo, 2021b, p. 768). These goals and targets are interdependent and inseparable, balancing the three aspects of sustainable development: economic, social, and environmental. Among these, one should particularly focus on Goal 16, according to which nations should aim to '[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'. Its associated Target 16.1 is to '[s]ignificantly reduce levels of violence in all forms and the associated mortality rate worldwide' (United Nations General Assembly, 2015).

Agenda 2030 (United Nations General Assembly, 2015) draws on the tragic history of humankind in the 20th century, and is an example of an instrument promoting 'thick' democracy; it should provide guidance for everyone concerned during the years of its implementation (Kury & Redo, 2021a, p. 7.) It offers the clearest form of the 'language of justice' the UN has so far produced and has its own genuinely transformative justice language: justice is a journey, not a destination (Redo, 2013; Redo, 2021, p. 596).

The development goals only provide a framework within which the impact of violence can be measured in comparison to other development dimensions (Kusuma & Babu, 2017). Therefore the links between them should be emphasized. Most victims of domestic violence are women and children; it should be noted that according to Polish family law, parents are required, among other things, to protect their children from any dangers to their lives, health, and development (in all areas) (Sitarz, 2022). Therefore Goal 5, which concerns achieving gender equality and empowering women and girls, and especially Target 5.1, is also an important tool for

combatting all forms of discrimination against these groups worldwide. Combating violence against children regardless of their gender is to be achieved through the implementation of Target 4.7, which includes 'promoting a culture of peace and non-violence', and Target 4a, which aims to '[b]uild and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all'.

In order to meet these challenges, the Polish legislature has amended the Family and Guardianship Code through what is called Kamilek's Act (Sejm of Poland, 2023). The name of the act is a commemoration of an 8-year-old boy from the Polish city of Częstochowa who died as a result of extreme domestic violence. The amendments introduced include implementation of the serious case review procedure, which involves the requirement to analyse the most serious cases of violence against children. In each such case, it is mandatory to determine, among other things, why appropriate actions had not been taken before the child was harmed, as well as what should be done to prevent tragic events in the future. The same Act also changed the provisions regarding the standards of protection of minors contained in Article 22(b) and (c) of the Act of 13 May 2016 on Counteracting the Threat of Sexual Crime and Protecting Minors (Sejm of Poland, 2016). The obligation to introduce standards for the protection of minors is incumbent on the bodies managing units of the education system (kindergartens, schools, and youth hostels) and other institutions and facilities concerned with education, care, upbringing, rehabilitation, religion, art, health, recreation, sports, and related to the development of interests, which minors attend or where they stay, as well as the organizers of these activities and entities providing hotel and tourist services or other places of collective accommodation.

One can hardly imagine that these goal targets could be accomplished without an immediate and effective response to violence that consists of a permanent isolation of the perpetrator from the victim. The Polish legal system provides for various measures and modes of isolation of perpetrators from victims of domestic violence, according to the principle that the perpetrator should leave the premises occupied jointly with the victim, even if he or she is the owner of such a property (Karaźniewicz & Kotowska, 2023). In practice, however, it is often the person experiencing violence who, fearing for his or her health or even life, has to immediately leave the dwelling and seek shelter (Czarkowska, 2016; Klaus, 2016, pp. 531–553). It has been argued in the literature that other solutions need to be developed in order to protect victims effectively; many report that they were able to leave because they received external support, both informal (from relatives, friends, or neighbours) and professional (from the police or women's aid support workers) (see Heron et al., 2022, p. 686). Research shows that a lack of affordable housing that would provide safety for the victim and their children is one of the most frequent reasons for staying in a violent relationship (Ganley, 1995, p. 33.)

In particular, some researchers recommend creating various types of intervention centres and, at a later stage, residential centres for people who have experienced violence (Klaus, 2016, p. 540). This has been made possible by the Act of 29 July 2005 on Counteracting Domestic Violence (Sejm of Poland, 2005).

One of the forms of free assistance to victims of domestic violence is shelter provided at a specialized support centre, according to Article 3(1)(4) of the Act on Counteracting Domestic Violence. Article 4(1) of this Act specifies the support that must be provided as part of the shelter at such a centre for persons experiencing domestic violence, in terms of emergency relief, therapy and personal assistance, and living needs. A similar scope of activities is also the result of commonly used definitions; for example, a 'shelter for victims of domestic violence or "shelter" means a facility that provides temporary residential service or facilities to family or household members who are victims of domestic violence or to persons with whom the actor is or was in a dating relationship who are victims of domestic violence' (Law Insider, n.d.). The legislature chose to indicate that the persons who provide assistance and support to persons experiencing domestic violence should be specialized professionals, including psychologists, educators, social workers, lawyers, and therapists (Piskozub & Wrona, 2023, p. 33).

The obligation to provide shelter was defined by the legislature as a task of the municipality (Article 6(2)(3) of the Act). Even though the obligation to create a local system for counteracting domestic violence has been delegated to municipalities, no additional resources have been provided, which results in numerous problems as municipalities attempt to accomplish this task.

The purpose of this paper is to discuss the essential characteristics and functions of shelter provided by specialized support centres (SSCs) as one of the forms of assistance provided at the municipality level to persons who have experienced violence. The paper also seeks to assess how such centres operate in practice. To this end, the main research problem was formulated as follows: Does the current scope of the law pertaining to this form of assistance, as well as its practical application, meet the premises of Target 16.1 of the 2030 Agenda for Sustainable Development?

Assuming that providing shelter to a person experiencing domestic violence largely fulfils the goal and the detailed target stated in Agenda 2030 (United Nations General Assembly, 2015), this paper relies primarily on the formal-legal method. The analysis focuses on the relevant provisions of the amended Act on Counteracting Domestic Violence. In order to demonstrate how this form of assistance is provided in practice, relevant information was requested from the Ministry of Family, Labour, and Social Policy according to the procedure regarding the right of access to public information.

1. The legal grounds and organization of specialized support centres for persons experiencing domestic violence

According to data from the Ministry of Family, Labour, and Social Policy, there are 37 specialized support centres for victims of domestic violence in Poland (Ministerstwo Rodziny, Pracy i Polityki Społecznej, 2022), and this number has not changed in recent years.[1] Each centre operates according to the Act on Counteracting Domestic Violence and performs the tasks set out in the Government Programme for Counteracting Domestic Violence (Rada Ministrów, 2023). Facilities of this kind also meet the standards formulated in the Regulation of the Minister of Family and Social Policy of 20 June 2023 on the Standard of Basic Services Provided by Specialized Support Centres for Persons Experiencing Domestic Violence and the Qualification Requirements for Persons Employed at Such Centres (the 2023 Regulation).

The conditions of such shelter services may vary depending on their location, although they must meet the standard specified in the 2023 Regulation. In terms of living needs, the Regulation guarantees: (a) temporary residence for no more than 30 persons, a number which may increase depending on the capacity of the specific centre and upon approval of the authority in charge; (b) a sleeping room designed for no more than five persons, taking into account the family situation of the person who experiences domestic violence; (c) a common room for daytime stays, with a play area for children and a place for study; (d) a communal bathroom equipped to be used by both adults and children, but by no more than five persons at once; (e) at least one laundry and drying room; (f) a communal kitchen or kitchenette with food preparation areas, whereby the number of the latter should be proportionate to the number of persons in the centre, including children: one food preparation area for no more than ten persons, equipped with at least one cooker, sink, and refrigerator and kitchen furniture, as well as equipment and utensils for the preparation and consumption of meals; (g) rooms for the storage of baby carriages, if the premises allow it; (h) rooms for individual work with persons experiencing domestic violence; (i) food, clothing, and footwear; and (j) personal hygiene and cleaning products (Section 1(1)(3)). These facilities should be adapted to persons with special needs, notably health-related, including persons with disabilities (Section 1(2)).

The number of places at individual centres varies greatly. In 2022, 2,110 places enabling residential stay were available in all such facilities in Poland. Based on data from recent years, it should be noted that the number of places is systematically and rapidly increasing. Compared with 2015 (591 places), the number increased more than three-and-a-half times (by 357%). Interestingly, only two provinces saw a very

1 In 2015–2018 there were 35 such establishments in the country. A new centre was opened in 2019 in the Małopolskie Province and another in 2020 in the Kujawsko-Pomorskie Province (Ministry of Family, Labour, and Social Policy, 2024).

significant rise in terms of SSC capacity: specifically, the number of available places in the Świętokrzyskie Province increased from 18 to 943 in 2021 and 973 in 2022. Likewise, in the Śląskie Province, 36 places were available in 2020, but the number grew to 529 in 2021 and 563 in 2022. In the remaining provinces, the number of places has remained at a similar level and has even decreased in some cases. (The detailed data are presented in Table 1.) The spike in the number of places in the Świętokrzyskie Province is not surprising, given that the relevant indicator in that province – the average number of 'Blue Card – A' forms completed by the police in 2022 per 100,000 inhabitants – was equal to 296, the highest in the country (Województwo Świętokrzyskie, 2023).

Table 1. The number of places for residential stays at specialized support centres for persons experiencing domestic violence in 2015–2022, by province.

Province	2015	2016	2017	2018	2019	2020	2021	**2022**
Dolnośląskie	55	55	55	55	55	55	55	55
Kujawsko-Pomorskie	20	20	20	20	20	32	32	32
Lubelskie	50	50	50	50	50	50	50	50
Lubuskie	20	20	20	20	20	20	22	22
Łódzkie	24	24	24	24	24	24	24	24
Małopolskie	30	30	30	30	55	55	55	55
Mazowieckie	51	51	51	41	60	41	51	41
Opolskie	25	25	25	25	25	25	25	25
Podkarpackie	88	88	88	88	88	88	88	88
Podlaskie	24	24	24	24	24	24	24	24
Pomorskie	23	23	23	23	23	23	23	23
Śląskie	36	36	36	36	36	36	529	563
Świętokrzyskie	10	10	10	10	18	18	943	973
Warmińsko-Mazurskie	55	55	55	55	55	55	55	55
Wielkopolskie	60	60	60	60	60	60	60	60
Zachodniopomorskie	20	20	20	20	20	20	20	20
TOTAL	591	591	591	581	633	626	2,056	2,110

Source: prepared by the authors based on data obtained from the Ministry of Family, Labour, and Social Policy, 2024.

The SSC in Olsztyn, which can accommodate 15 persons in three rooms (with bathrooms), may serve as an example of how such a centre operates. Its premises also include a communal day room, a children's playroom with a study area, a therapy room, a therapeutic clinic-room, a communal kitchen, and a laundry and drying room (Specjalistyczny Ośrodek Wsparcia dla Osób doznających Przemocy Domowej, n.d.).

The location where victims of domestic violence may seek shelter is not necessarily the same as the address of an SSC; occasionally, a centre may send the victim to another location. For instance, in Wrocław, victims may seek shelter at the Specialized Support Centre for Victims of Domestic Violence, the Crisis Intervention Centre, and the Home for Women. Moreover, as part of the SSC's tasks, two separate apartments are available in the Śródmieście and Psie Pole districts of the city (Stowarzyszenie Pomocy Akson, 2024).

Specialized support centres achieve their objectives in close cooperation with non-governmental organizations. One such institution is the Women's Rights Centre Foundation (Centrum Praw Kobiet), which runs a shelter for women who experience violence and their children in Warsaw. Through its website, the Foundation solicits donations from individuals, listing the current needs of the SSC; these include toys, books, films, and games for the children's playroom, as well as a supply of towels, blankets, bedding (pillows, comforters) and bed linen (pillowcases, sheets), waterproof mattress covers, silverware, a small couch and armchairs (Centrum Praw Kobiet, 2024). In this manner, the foundation actively engages the local community in helping to provide shelter for victims of violence. This is one of the ways of building an inclusive society in which any person willing to help others in need can get involved.

2. Shelter as a special form of assistance to persons affected by violence

The decision to leave one's own home is extremely difficult for many reasons. Due to the violence experienced, a person is deprived of a sense of agency while being convinced that nothing can be changed (Romańczuk-Grącka, 2022, pp. 77–82). The complicated relationship between the person experiencing violence and the abuser makes it difficult to hope that the situation may improve. Finally, the victim may believe that he or she has nowhere to go. Therefore the decision rests entirely with the person who experiences violence, but once he or she has made it, the centre can help him or her to go through that change and reclaim his or her own life without violence and fear (Wykluczeni, 2021).

Providing shelter primarily means that residential accommodation is free of charge at the request of the person experiencing domestic violence. The 2023 Regulation defines the standards applicable to such a service in terms of emergency relief, therapy, personal assistance, and living needs.

As regards emergency relief, the principal standard is to provide shelter to the person who experiences domestic violence and the children under his or her care for a period of up to three months, with the possibility of extending that period in cases justified by the circumstances of the person concerned, particularly with a view to ensuring his or her safety (Section 1(1)(1) of the 2023 Regulation). As a result, persons coming to the shelters are, most importantly, guaranteed separation from the perpetrator of violence, protection, and safety (Ulatowska, 2007).

The possibility of benefiting from such assistance is reserved for those who fear for their own life and health; the relatively small number of available places does not allow assistance to be provided to less severe cases. A person experiencing violence should present a document stating his or her identity, e.g. an ID card, passport, or other similar official document, as well as providing his or her personal identification number. If possible, such a person should carry documents confirming that he or she is a victim of violence: a Blue Card or a medical certificate stating the cause and type of injury, for example. However, this is not mandatory (gov.pl).

The fact that the number of persons requiring assistance (and not just accommodation at residential support centres) is definitely larger than before is evidenced by the data on the number of people using the services of SSCs. For example, in 2022, SSCs offered 2,110 places for residential stays, while 5,047 people benefited from their support in that year. Regrettably, the Świętokrzyskie Province still leads in the statistics. Even so, the analysis of data from recent years indicates that the number of persons receiving support at SSCs is decreasing. The detailed data are shown in Table 2.

Table 2. The number of persons who received assistance from SSCs in 2015–2022, by province.

Province	2015	2016	2017	2018	2019	2020	2021	**2022**
Dolnośląskie	443	254	1,490	794	190	129	111	274
Kujawsko-Pomorskie	483	432	397	465	346	352	354	355
Lubelskie	875	766	1,103	207	117	65	44	204
Lubuskie	315	244	78	44	51	25	33	41
Łódzkie	166	148	163	133	127	103	118	124
Małopolskie	129	115	205	148	216	191	672	222
Mazowieckie	141	317	485	393	804	648	317	522
Opolskie	634	665	675	557	531	406	419	464
Podkarpackie	417	379	439	442	366	392	289	400

Podlaskie	78	87	91	120	90	75	97	103
Pomorskie	430	538	608	633	325	174	63	86
Śląskie	757	720	663	553	576	524	619	634
Świętokrzyskie	1,887	1,716	1,570	1,714	1,696	960	943	973
Warmińsko-Mazurskie	458	407	371	383	455	394	421	391
Wielkopolskie	194	187	197	183	228	146	158	164
Zachodniopomorskie	47	29	23	23	21	27	104	90
TOTAL	7,454	7,004	8,558	6,792	6,139	4,611	4,762	5,047

Source: prepared by the authors based on data obtained from the Ministry of Family, Labour, and Social Policy, 2024.

Providing shelter is only a temporary solution. For this reason, persons under the care of SSCs benefit from other, comprehensive forms of support, no less important and intended to equip them with the tools they need to cope with crises they experience in the future. The literature on this topic emphasizes that the process of preparing the victim to leave the shelter starts at the moment he or she is accepted at that facility (Thunberg & Arne, 2024). With regard to ongoing living needs, housing in particular, the Act on Counteracting Domestic Violence provides for another mode of assistance in Article 3(1)(6), which provides that a person who experiences domestic violence and does not hold a legal title to the dwelling occupied jointly with the abuser is to receive help in obtaining housing. This is a measure that requires analysis that is outside the scope of this paper.

It is worth noting that shelter provided by SSCs to persons affected by violence serves a variety of functions, as the role of SSCs in the system for counteracting domestic violence is not limited to ensuring a roof over the victim's head. One of the SSCs' tasks is to support the victim in making the decision to continue living away from the aggressor and to plan further steps accordingly. While staying at an SSC, victims of domestic violence can also expect essential therapeutic and assistance services at the least, the goal of which is not only to ensure their safety but also to aid and support them according to their needs related to their actual situation. This function involves (a) formulating a diagnosis concerning the circumstances of the person experiencing domestic violence who resides at the centre and the children in his or her care; (b) supporting them through expert counselling, notably legal, psychological, social, and medical; (c) organizing support and therapeutic groups for them; (d) conducting individual therapy that, in addition to supporting the person experiencing domestic violence, will enable him or her to acquire the skills needed to protect himself or herself from the perpetrator of violence; (e) providing access to medical assistance; (f) assessing the situation of the children under the care of the person experiencing

domestic violence by means a family interview, as referred to in Article 107 of the Act of 12 March 2004 on Social Welfare (Sejm of Poland, 2004); and (g) providing the person staying at the centre with educational consultations by professionals employed there (Section 1(1)(2) of the 2023 Regulation).

Such assistance and support are ensured by the staff of the SSC, including psychologists, educators, social workers, lawyers, and therapists, as provided for in Article 4(1) and (2) of the Act on Counteracting Domestic Violence (Bieńkowska et al., 2023). This includes fostering proactive attitudes and self-reliance when facing a crisis and dysfunctional relations in the family or helping the person to find employment. Moreover, the shelters must also strive to create a normal family atmosphere, thus meeting more than just the basic needs of victims of violence (Ulatowska, 2007).

The tremendous need for legal, medical, psychological, social, occupational, and family counselling is evinced by the substantial number of people who have received such assistance from SSCs. In 2022, there were nearly 170,000 such people. The number of people who require counselling is systematically increasing. The detailed data are shown in Table 3.

Table 3. The number of persons receiving assistance in the form of counselling (medical, legal, psychological, occupational, family, and social) in 2015–2022, by province.

Province	2015	2016	2017	2018	2019	2020	2021	**2022**
Dolnośląskie	11,107	9,131	13,192	12,975	12,898	13,111	17,494	17,098
Kujawsko-Pomorskie	6,098	6,291	5,796	6,718	6,147	7,377	7,266	7,211
Lubelskie	10,705	10,370	11,943	11,609	10,105	7,962	9,413	7,926
Lubuskie	4,091	3,803	3,640	5,116	4,953	3,023	3,905	5,086
Łódzkie	7,015	8,491	9,685	11,040	8,357	6,480	8,468	7,911
Małopolskie	13,680	12,818	10,637	9,864	10,598	9,423	7,526	10,805
Mazowieckie	23,921	24,443	22,635	22,948	25,265	25,727	18,842	19,425
Opolskie	5,251	4,857	5,130	4,270	4,405	4,091	4,429	5,225
Podkarpackie	5,788	6,646	5,949	6,288	5,729	5,371	7,515	6,738
Podlaskie	6,100	6,301	5,843	5,536	6,698	5,410	5,804	7,941
Pomorskie	12,496	10,653	11,819	10,117	9,090	9,072	13,774	12,125
Śląskie	16,218	18,150	15,604	15,301	15,755	14,131	13,899	15,965
Świętokrzyskie	9,467	6,707	5,665	4,515	5,357	5,108	7,939	8,405
Warmińsko-Mazurskie	10,094	9,783	8,928	9,045	9,177	6,673	7,531	8,274

Wielkopolskie	7,177	10,557	12,796	12,802	14,457	13,920	17,704	19,488
Zachodniopomorskie	5,443	3,844	4,944	4,808	6,412	4,000	6,947	8,892
TOTAL	154,651	152,845	154,206	152,952	155,403	140,879	158,456	168,515

Source: prepared by the authors based on data obtained from the Ministry of Family, Labour and Social Policy, 2024.

From the very first days of their stay at a dedicated institution, victims of violence are included in the education process involving individual and group meetings. Consequently, they may follow individual plans for leaving their violent environment, which aim to help the victims avoid exposure to violence in the legal sense (e.g. through divorce), find out about the underlying mechanisms of violence, and learn to recognize and express their own needs and feelings. Each resident is assigned an individual mentor, usually a social worker, who develops a list of goals to be achieved and the methods to achieve them. Failure to actively participate in the programme leads to a loss of the right to stay at the shelter (Ulatowska, 2007).

3. Cooperation with other institutions in providing shelter

As Ostaszewski (2022, p. 19) observes, crimes against the family have historically been largely ignored by the criminal justice system, criminal jurisprudence, and criminology as being a private affair.

Counteracting violence requires the cooperation of multiple actors, including public authorities, institutions, and organizations established to combat and prevent violence, as well as society at large. It is important for various institutions and individuals to work together, form coalitions against violence, and create support networks for victims of domestic violence that include local partners (Ulatowska, 2007). Assistance to victims of domestic violence should be provided by both natural support systems (relatives, friends, and acquaintances) and institutional frameworks that respond professionally in emergencies. Institutional assistance is mainly provided by social welfare, crisis support systems, helplines, consultation points for victims of domestic violence, shelters for victims, foundations and NGOs, medical facilities, schools, and the police (Mazur, 2002, pp. 144–150, 156–162).[2]

Due to the unique characteristics of domestic violence, quick and effective assistance to victims depends primarily on clear procedures and the quality of the cooperation between institutions and organizations that form a local coalition. In practice, the crucial element is adequate coordination between all organizations and institutions involved in helping victims (Ulatowska, 2007).

2 For an overview of the operation of a local system of assistance to victims of domestic violence through the example of Rzeszów, see Urbańska (2016).

The literature on this topic emphasizes that helping persons affected by domestic violence is one of the principal areas of action for the so-called 'outreach administration', which should get involved whenever the societally important needs of an individual cannot be satisfied by that individual and difficult life situations cannot be overcome by their own efforts (Sierpowska, 2017, p. 285).

Shelter facilities for victims of domestic violence are part of the system established to counteract this problem and, together with other coalition partners, promote higher competence among local entities and raise public awareness of domestic violence through direct exchange of experience and good practice, joint problem-solving, and partnership-based mutual support. However, it needs to be noted that the system cannot work on its own, as everything is contingent on the activity of the individual coalition partners. To give a simple example, the absence of (or poorly kept) statistics concerning the number of victims of violence who have received assistance may lead to an underreporting of the scale of the problem, which consequently affects the amount of funding for activities in this area. On what grounds, then, could support be requested (Ulatowska, 2007)?

4. Providing shelter to victims of violence: Practical issues

The above functions of shelter in the domestic violence prevention system cannot be carried out without adequate funding. The operation of shelter facilities relies on the volume of institutional aid and support from private persons, since this determines the type of assistance and range of services made available to victims. Shortage of financial resources leads to a mismatch between the number of staff at the shelters and the responsibilities they have; excessive workload and, simultaneously, low wages are the most common reasons for them quitting their jobs. Consequently, the economic aspect plays a vital role in the system of assistance to victims of violence and affects the performance of tasks that shelters are required to complete within the violence prevention system (Ulatowska, 2007).

The increasing need for various forms of support for and assistance to victims of domestic violence is recognized by the state. The amount of funds allocated for the day-to-day operation of SSCs and the establishment of new centres is increasing every year; PLN 25,080,000 has been earmarked for the former and PLN 900,000 for the latter in 2024. The detailed data on the financing of SSCs are shown in Table 4.

Table 4. Funding allocated annually for the day-to-day operation of SSCs for persons experiencing domestic violence and for the creation of new centres between 2015 and 2024.

Years	Day-to-day operation of SSCs	Establishment of new SSCs
2015	PLN 12,180,000	
2016	PLN 12,180,000	
2017	PLN 13,440,000	
2018	PLN 13,824,000	PLN 200,000
2019	PLN 15,540,000	PLN 200,000
2020	PLN 15,540,000	
2021	PLN 15,895,200	
2022	PLN 16,827,600	
2023	PLN 21,428,000	
2024*	PLN 25,080,000	PLN 900,000

**As part of the Government Programme for Counteracting Domestic Violence 2024–2030, launched in 2024*
Source: prepared by the authors based on data obtained from the Ministry of Family, Labour, and Social Policy, 2024.

In 2015, the Supreme Audit Office (SAO) launched an audit on its own initiative (Najwyższa Izba Kontroli, 2016), with the aim of assessing the efficacy of the measures taken to assist victims of domestic violence.[3] The audit, covering the period from 2012 to the first half of 2015, focused on the availability of expert counselling – medical, psychological, legal, and family-related – and shelter for people experiencing violence. The audit was carried out at 27 institutions in 24 municipalities, including 11 cities with the rights of a district. This covered 24 social welfare centres, a crisis intervention centre, a specialized support centre for victims of violence, and an independent public healthcare facility (Celińska, 2017).

All the centres audited by the SAO provided shelter to victims of abuse in circumstances that required immediate intervention, although only some of the institutions, especially those operating in larger cities, had their own facilities. Support centres operated in five of the 24 municipalities, with a total of 199 residential places available. Three municipalities ran homes for mothers with children and for pregnant women, with 40 places each. Specialized support centres in seven units of local government offered 131 residential places, while crisis intervention centres in 14 municipalities had 248 places (Najwyższa Izba Kontroli, 2016). A total of 8,915

3 The report contains the most recently available data. The Supreme Audit Office has not conducted any comprehensive nationwide audit since 2015.

people received shelter in a crisis situation across all the audited institutions. Of those, 3,656 stayed at crisis intervention centres, 3,120 benefited from the assistance offered by support centres, 1,960 persons, including 617 children, benefited from the services of specialized facilities, and 179 women resided in homes for mothers with children and for pregnant women. Units of local government without their own residential centres used the premises offered by neighbouring municipalities. Five audited institutions signed agreements or contracts with centres or associations with appropriate facilities and financed the stays of persons referred there. Due to the considerable distance from their place of previous residence, some of the affected persons could have refused to receive assistance in such a form, which meant that they had to continue staying with their abusers (Celińska, 2017, pp. 68–69).

The imposition on 20 March 2020 of the state of epidemic due to the outbreak of the COVID-19 pandemic resulted in a number of restrictions, which limited personal contact, movement, and certain services and business activities. This reduced the ability to counteract domestic violence effectively and led to more conflicts in isolated families (The Shadow Pandemic: Violence against women during COVID-19, (n.d.).[4] As a result of the prolonged pandemic, the social welfare system not only had to face the challenges posed by the new or exacerbated difficulties experienced by families, but also needed to focus its crisis outreach activities on enhancing methods of preventive and intervention work.[5] Support for families that experienced difficulties during the pandemic was subject to a planned audit by the Supreme Audit Office, which covered the activities of 12 social welfare centres (SWCs),[6] as well as six district family support centres (DFSCs) in six provinces: Kujawsko-Pomorskie, Lubuskie, Łódzkie, Mazowieckie, Pomorskie, and Zachodniopomorskie, in the period from 2019 to 28 October 2022 (Najwyższa Izba Kontroli, 2023).[7]

Four of the audited DFSCs offered temporary residence for persons and families in crisis at crisis intervention centres (CICs). Emergency accommodation was not available during the COVID-19 pandemic at the Municipal SWC in Płock (Mazowieckie) and the CIC in Chełmno (Kujawsko-Pomorskie), but this did not result in a possible failure

4 The COVID-19 pandemic led to what has been termed a 'shadow pandemic of violence against women'. Studies suggest that the number of violent incidents affecting women, and their frequency, increased during that period. The hindering of access to help is also highlighted, given that victims of domestic violence found it difficult to contact dedicated institutions while remaining isolated with their abusers. Furthermore, centres providing shelter did not operate at their usual capacity, for example due to personnel shortages caused by isolation or quarantine of their staff. This topic is discussed more broadly in European Parliament (2023).

5 For information on new challenges related to the COVID-19 pandemic from the perspective of the staff of shelters for victims of domestic violence, see Pless et al. (2024).

6 The SWCs included those at municipal, city-municipal, or city level, and the Centre for Social Services in Kozienice.

7 The DFSC and the city SWC in Płock are organizational units of the social welfare system in a city with district rights, where the audit covered the implementation of district tasks assigned to the DFSC.

to provide shelter to those in need. SWCs also provided assistance in the form of shelter: two SWCs operated night shelters as part of their structure, while other institutions of this type provided emergency and provisional shelter places for homeless people and other persons in need under agreements and contracts with organizations helping such individuals and families or other entities which ran facilities where such places were available. Nearly 1,700 individuals and families received assistance, 33% (547) of whom benefited from it in 2020 (Najwyższa Izba Kontroli, 2023).

Conclusions

Goal 16 of Agenda 2030 consists of 12 hierarchically arranged and interdependent targets. It begins with a recommendation to 'significantly reduce all forms of violence and related death rates everywhere' and finally stipulates that it is necessary to 'promote and enforce non-discriminatory laws and policies for sustainable development'. It is most likely no coincidence that the sequence of tasks appears to underscore more concrete and empowered efforts for global peace, inclusiveness, and justice. As Redo aptly observes, Agenda 2030 does not envisage any kind of social reform but a reform aimed at progressive social transformation (Redo, 2019, pp. 850, 855).

Providing shelter to a person affected by domestic violence is part of Target 16.1 of Agenda 2030. The current scope of legislation pertaining to such assistance and its practical application in Poland partly meets the premises of this target. The Act on Counteracting Domestic Violence contains solutions that make it possible to reduce violence in all forms. However, it should be stressed emphatically that violence cannot be eliminated from social life and, quite reasonably, Agenda 2030 refers to 'reducing the degree of violence' rather than to a fictitious 'eradication of the phenomenon'.

It may be noted that as far as the implementation of Agenda 2030 is concerned, Poland currently ranks 12th among the 195 Member States of the UN. The task of measuring this progress is within the purview of Statistics Poland, which launched a special website to present its results. Apart from the global indicators adopted by the UN, the site provides additional national indicators which have been developed domestically in order to keep closer track of issues that are relevant at the national level. In addition, Statistics Poland periodically releases a digital publication titled 'Poland on the Way to SDGs: Environmentally Sustainable Development', which outlines the process of social and economic transformation against a global and an EU background, making it possible to compare Poland's achievements (Kampania 17. Celów, 2023).

When evaluating Polish law on combating domestic violence, it can be determined that it is being systematically developed, and the protection of victims is one of the most important elements of this law. The regulations provide a wide range of assistance to victims ensuring their physical safety, as well as legal and psychological assistance. However, the reality is far from perfect; this is primarily due

to the scale of the problem of domestic violence. The establishment of new SSCs and the increase in the number of places available should be assessed positively; however, it is still an insufficient offer. According to data on the 'Blue Card' procedure, in 2022, there were 71,631 people suspected of being affected by domestic violence. In 2023, the number rose significantly and 77,832 victims were reported. At the same time, in 2022, only 2,110 places for 24-hour stays were available in SSCs; the need is therefore much greater. It is also important to keep in mind that legislation defines the standards for the operation and equipment of SSCs, which make it possible to meet the needs not only for shelter, but also for a relatively normal life. This is very important, especially since minors constitute a large group among the victims of domestic violence (10,982 in 2022 and as many as 17,039 in 2023). Research shows the need for a broader consideration of the impact of stays in a shelter on minors and a greater attention to their needs (Thunberg et al., 2022); this requires huge financial outlays. Attention should also be brought to the necessity of taking into account the special needs of the disabled (cf. Ballan et al., 2022). The amount of funds allocated for the day-to-day operation of SSCs and the establishment of new centres is increasing every year; however, taking into account the indicated scale of domestic violence, these resources are not sufficient. Attention must also be paid to the costs of the support provided in the fields of legal, medical, psychological, social, professional, and family counselling. Thus Poland still faces major challenges in helping victims of domestic violence, although much has already been done.

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Bialystok Legal Studies
Białostockie Studia Prawnicze
2024 vol. 29 no. 4

sciendo

DOI: 10.15290/bsp.2024.29.04.05

Received: 10.11.2024
Accepted: 30.11.2024

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Foreseeability and Prior Fault: Examining the Assessment Framework for Intoxication, Blame and Criminal Responsibility[1]

Abstract: Prior fault in cases of intoxication prevents any mental impairments stemming from the intoxication from having exculpatory or mitigatory effects. This article critically examines the pitfalls of using 'foreseeability' as a main requirement to establish prior fault in such cases in the Netherlands, with brief comparative references to Polish law. The appropriateness of foreseeability as a criterion strongly depends on the approach taken. When foreseeability is interpreted in an abstract manner, the ability to adequately differentiate between situations of prior fault is greatly reduced. Specifically for intoxication combined with addiction or other mental disorders, this approach to foreseeability may cause overcriminalization. The article provides suggestions for a more appropriate assessment framework, which could include a more concrete foreseeability requirement and a volitional criterion.

Keywords: addiction, foreseeability, intoxication, non-accountability, non-responsibility, prior fault

Introduction

Recently, the Court of Amsterdam was confronted with a particularly complex and compelling case of manslaughter (Court of Amsterdam, 2023), not only due to the extremely violent nature of the offence – the victim was found with over 60 stab

1 I would like to acknowledge the support of the University of Białystok, and specifically thank Prof. Elżbieta Kużelewska and Dr Dariusz Kużelewski, for hosting my stay as a visiting professor at Białystok's Faculty of Law during October and November 2024. Additionally, I wish to thank Dr Roosmarijn van Es and Dr Tasniem Anwar for their time and invaluable feedback on an earlier version of this paper.

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wounds – but also due to the court's task to adequately understand and incorporate the defendant's mental capacities in the assessment of responsibility. Based on the report by three behavioural expert witnesses, the defendant was considered to suffer from an alcohol, cocaine and GHB use disorder, in addition to a personality disorder. Moreover, the experts considered it likely that the defendant was psychotic during the time of the offence, which was potentially caused or otherwise exacerbated by their substance use. Commonly, the severity of the impairments caused by an acute psychosis could be a reason to consider the defendant not responsible. Yet based on the interplay of disorders and the use of substances, the judges considered the defendant to be 'diminished accountable' instead of 'non-accountable', thereby following the experts' advice (Court of Amsterdam, 2023).[2]

The reason why the presence of the psychosis could not unequivocally lead to non-responsibility, in this specific case but also in comparable conditions, relates to the role of prior fault. One may consider the defendant to have some 'anterior culpability', for instance, because of their continuation of hazardous substance use or failure to engage in appropriate health care programmes.[3] As such, the defendant's previous (culpable) behaviour may be incorporated into the overall responsibility assessment. Many jurisdictions employ prior fault rules to prevent reckless and/or culpable behaviour from becoming an excusatory condition (Goldberg et al., 2021). Such rules essentially mean that one may lack the required *mens rea* at the time of the offence (which we can call T2): perhaps one's mental capacities are impaired to such a degree that an excuse applies or the required intent cannot be formed. Yet suppose the missing mental elements at T2 were brought about culpably, through blameworthy behaviour at some point in time prior to the offence (referred to as T1). In that case, we may use the behaviour at T1 to replace the missing elements at T2. Thus, despite the defendant being *a priori* not responsible for the offence, culpable prior behaviour may trigger prior fault rules to prevent exculpation (Child, 2016).[4]

Prior fault rules are most commonly discussed in the context of intoxication. In such cases, the prior fault mechanism prevents intoxication-induced exculpatory conditions, such as substance-induced psychoses, which may have robbed the

2 These concepts are explained and discussed further in section 1. In general, the terms 'non-responsibility' or 'diminished responsibility' are used to refer to the more universal concepts of defences and mitigations based on mental impairments. When discussing the Dutch jurisdiction directly or citing from Dutch case law, the terms 'non-accountability' and 'diminished accountability' are used, as these are the more appropriate translations of the relevant Dutch laws.

3 Anterior culpability is a term commonly used to describe a sense of fault or blameworthiness prior to the offence at hand.

4 Note that in civil law jurisdictions, prior fault rules are conceptualized as preventing exculpation by 'blocking' the applicability of a defence. In common law systems, however, prior fault rules may also be used to construct an offence, for instance by using prior behaviour to construct intent, thereby fulfilling the substantive requirements of the offence definition. For a discussion on the difference between blocking defences and constructing offences, see Child (2016) or Goldberg et al. (2021).

defendant of their ability to understand the nature of their actions or conform their behaviour according to the law (Van Netburg, 1994). A common argument to prove prior fault is that of foreseeability (Bijlsma, 2011), i.e. whether the defendant could have foreseen the negative effects or risks that their behaviour brought about. If these were indeed foreseeable, then the defendant can be blamed for failing to prevent these outcomes and thus can be considered responsible for the consequences. In cases such as the one highlighted earlier, one can argue that the defendant knew that his substance use could have resulted in harmful behaviour or unexpected consequences. After all, through his substance use disorder, the defendant was an expert in the effects of these substances and could thus have foreseen that they may have negative or unexpected (side) effects. Even if the defendant did not actively consider such consequences, he could and should have inferred this from the fact that GHB and cocaine are illicit substances. By prohibiting their use, distribution and sale, the law signals the dangerousness of such drugs, and thus users can be expected to foresee negative consequences. As a result, the defendant – in our case or in general – may be held responsible if they consume them nonetheless.

Although foreseeability seems at first sight a sensible criterion for prior fault, it has serious shortcomings. In this paper, I focus on the assessment framework for prior fault, and foreseeability in particular, and argue that more refined criteria must be used to ensure fairness and equality. A brief illustration based on our example case introduces this argument, before I explore it further in the next sections. In the example, it is indeed clear that a general sense of foreseeability could easily be satisfied, both through the defendant's prior experiences with the drugs and due to the illegal nature of the substances. However, whether such an abstract interpretation of foreseeability ought to be sufficient is a matter for debate. One can argue that at least some concrete consequences or risks of harm must be foreseen for prior fault to apply; otherwise, there seems to be no connection between the drug consumption – which is, arguably, always dangerous to some extent – and the offence at hand. Moreover, the question arises whether foreseeability alone is sufficient for blame. In our case example, we can read that the defendant has an addiction to the use of these substances. Based on foreseeability only, there is no reason to account for his volitional impairments, for instance through cravings for the substances, even though these impairments may have been crucial in his becoming intoxicated. These arguments are, amongst others, explored in further detail later in this paper.

It is important to examine the prior fault assessment framework critically. Often, an intoxication is straightforwardly voluntary and blameworthy, and establishing responsibility for the consequences is thus generally not controversial. Yet as the example case demonstrates, reality can be more complex: disorders may interact, and severe substance use disorders may (at least intuitively) reduce the perception that the defendant should have acted differently. The need for appropriate criteria mostly arises once cases become more complex. The defendant

who has a few drinks too many at the pub, then decides to drive home and later causes an accident, arguably clearly consumed the drink voluntarily and was (or could have been) easily aware of the negative consequences. As a result, it was in his power to do otherwise. Yet one can understand an intuitive difference between a recreational user and a long-term, hardened user who is compelled to use through their cravings. In the latter case, one may wonder whether their prior behaviour is really culpable (enough) to satisfy prior fault. Based on an abstract foreseeability requirement only, even the most severe long-term addicted user will be at (prior) fault: they know from their experience what the effects of intoxication are or can be. Thus no distinction seems to be made between these two intuitively different situations if the assessment framework is not explicated or expanded.

I address these issues through an analysis of Dutch law, but relate these findings incidentally to the Polish doctrine of prior fault. The purpose of this comparison is twofold. First, I aim to relate my arguments to the wide Polish audience that this journal draws. Although the analysis is rooted in Dutch (case) law, the challenges and potential pitfalls outlined may be universal to any jurisdiction relying on foreseeability as a criterion for prior fault, such as Poland. Second, there is a fundamental difference between the Dutch and Polish prior fault rules – their codified versus non-codified nature – that makes it worthwhile to draw comparisons.

While spending time at the University of Białystok on a research visit, I learned that the Polish Criminal Code (*Kodeks karny*, PCC) includes a prior fault concept in its non-responsibility defence. After the requirements of the non-responsibility defence (section 1) and the diminished responsibility mitigation (section 2) are outlined in Article 31 PCC, the subsequent Article 31 section 3 reads: 'The provisions of § 1 and 2 shall not be applied when the perpetrator has brought himself to a state of insobriety or intoxication, causing the exclusion or reduction of accountability which he has or could have foreseen.'[5] This is interesting, as such a provision does not exist in the Netherlands, Germany or England and Wales, just to name a few (Goldberg et al., 2021); in these countries, the concept of prior fault is known and applied but is not codified or otherwise formalized. One immediate benefit that springs to mind when reading the Polish prior fault provision is the increased clarity of a potential assessment framework for prior fault. Based on the provision itself, it seems that prior fault is applicable if the consequence of substance use 'was or could have been foreseen'. This already sets a clear criterion for prior fault, i.e. foreseeability, which may consequently be further developed in case law. Without such a provision, the Netherlands (and possibly other countries) experience inconsistent prior fault reasonings, which may affect legal certainty and equality (Goldberg et al., in press). Importantly, although a clear provision such as the

5 Przepisów § 1 i 2 nie stosuje się, gdy sprawca wprawił się w stan nietrzeźwości lub odurzenia powodujący wyłączenie lub ograniczenie poczytalności, które przewidywał albo mógł przewidzieć (translation from Faulkner (2012)).

Polish Article 31(3) may have benefits by providing a clearer framework for assessment, it does not remedy the shortcomings of foreseeability as a requirement.

As prior fault may stand in the way of a successful non-responsibility defence or a diminished responsibility mitigation, a lot is at stake. In the example case, the defendant did not straightforwardly consume substances causing impairment in his capacities. Not only was there an underlying substance use disorder, which may help understand the defendant's urges to use, but he was also psychotic during the time of the offence (Court of Amsterdam, 2023). It is difficult to disentangle whether he experienced (pre-)psychotic episodes already or whether the psychosis was fully caused by the substance use. One of the behavioural experts who provided a forensic expert opinion on the case explained this further during one of the court hearings:

> [T]here is normally no question of diminished accountability in the case of substance use. In the defendant's situation, however, the substance use disorder is so serious that one cannot consider the consumption of substances to be free. Furthermore, the suspect's intellectual abilities were under pressure due to cognitive damage caused by substance use and the psychotic symptoms. (Court of Amsterdam, 2023)

This citation highlights that normally, diminished accountability would not be an option when there is a case of substance use, because prior fault would prevent such a mitigatory effect. Yet due to the complex interplay of factors, the experts believed this situation to be an exception.[6] Interestingly, however, they do not seem to mention foreseeability as a criterion in their reasoning. Instead, they mention that the voluntariness of the consumption was impacted. Had they looked at the circumstances by only addressing foreseeability, they may have reached a different conclusion: after all, it seems that the lack of voluntary or free acts is the main impairment for the defendant, not his ability to foresee the negative consequences of substance use. As mentioned before, as an addicted individual, he is likely very much aware of such consequences through his years of experience, and this could have been used to his disadvantage. This example illustrates how using different criteria for prior fault may have far-reaching consequences. The defendant in the example case was considered diminished accountable, commonly associated with a mitigated sentence (Claessen & De Vocht, 2012), whereas through a sole foreseeability argument, he could have been considered fully accountable and received a full, unmitigated sentence. Moreover, without prior fault rules at all, his psychosis may have been sufficient to satisfy the non-accountability excuse and he could be considered not responsible for the offence. Non-accountability in the Netherlands, as well as the non-responsibility

6 Although a (behavioural) expert may provide advice to the judge regarding the defendant's capacities and accountability, the decision is ultimately up to the judge.

equivalent in Poland, means that the defendant is excused and cannot be sentenced, although both systems have structures in place that allow for (potentially indefinite) mandatory psychiatric hospitalization (Heitzman & Markiewicz, 2012; Lindenberg & Wolswijk, 2021).[7] Therefore, the difference between full accountability/responsibility, diminished accountability/responsibility, and non-accountability/non-responsibility in both systems is significant. This highlights the need for clear and consistent assessment criteria for prior fault.

In this paper, I further discuss prior fault in the context of intoxication and addiction, specifically focusing on the role of foreseeability as a criterion. Although foreseeability is commonly addressed in Dutch jurisprudence and literature as a requirement, I argue that it is not consistently invoked as a criterion, and if it is, different interpretations thereof are applied. These pitfalls of foreseeability as a (sole) requirement for prior fault are, by extension, also relevant to the Polish interpretation of the doctrine, as they also rely on foreseeability as a criterion. Then, I further address the need for a volitional prong in the prior fault rules to remedy the purely cognitive approach of foreseeability. The final section of this article addresses how an unclear prior fault assessment framework paves the way for more implicit prior fault arguments towards addiction, which could have its roots in stigma. First, however, I briefly outline some basic legal frameworks of Dutch criminal law, so that the subsequent discussion on the problems of prior fault can be fully understood.

1. Non-accountability and diminished accountability in the Netherlands

Although prior fault may affect a range of defences (such as self-defence or duress; see Jansen, 2020), in this particular discussion I focus on the effects of intoxication and addiction. As such, this contribution focuses on the non-accountability excuse and the non-codified but generally accepted diminished accountability construct. Very similarly to Article 31 in the PCC, the Dutch Criminal Code (*Wetboek van Strafrecht*, DCC) recognizes a mental incapacity defence in Article 39. This provision explains that an offender is not liable if 'due to a mental disorder, psychogeriatric condition or intellectual disability, the offence cannot be accounted to him'.[8] The Polish equivalent reads: 'Whoever, at the time of the commission of a prohibited act, was incapable of recognizing its significance or controlling his conduct because of a mental disease, mental deficiency or other mental disturbance, shall not commit

7 Importantly, both Poland and the Netherlands have a civil law tradition. The structure of non-responsibility as an excuse must be considered against that background.

8 Niet strafbaar is hij die een feit begaat, dat hem wegens de psychische stoornis, psychogeriatrische aandoening of verstandelijke handicap niet kan worden toegerekend (personal translation).

an offence.'[9] Note that the Dutch non-responsibility excuse outlined in Article 39 ('*ontoerekeningsvatbaarheid*') directly translates to 'the inability to attribute accountability', and is therefore commonly translated as 'non-accountability'. For this reason, I consistently refer to non-accountability and diminished accountability when discussing the Dutch context directly, and I refer to the more generalized terms of non-responsibility and diminished responsibility in universal settings.

One difference between the Dutch and Polish articles immediately becomes apparent. The Dutch provision seems to employ an 'open norm', i.e. it specifies that non-accountability is possible and that it must be related to mental impairment, but it does not further specify criteria under which conditions this applies (Meynen, 2022). This is different in the Polish equivalent, where the types of impairments are specified. The Poles seem to base non-responsibility on either a lack of understanding towards the offence (a cognitive requirement) or an impairment in behavioural control (a volitional requirement). The Polish approach is the more common one: England and Wales (the M'Naghten rules), Germany (*Schuldunfähigkeit*, Article 20 of the German Criminal Code (*Strafgesetzbuch*)) and some jurisdictions in the United States (the Model Penal Code), just to mention a few, similarly specify the types of impairment that could lead to (their equivalents to) non-responsibility, although what kind of impairments are relevant may differ (Meynen, 2016).[10]

Even though the DCC does not specify criteria, case law has developed over the years through which an assessment framework has been laid out (Bijlsma, 2016). The Supreme Court only recently addressed this framework for the first time in the case of *Thijs H* (Supreme Court of the Netherlands, 2023). Essentially, this judgment acknowledged three main criteria for the acceptance of the non-accountability excuse, thereby affirming previous lower court rulings and scholarly discussions (Bijlsma et al., 2022).

The first requirement, naturally, concerns the presence of a mental disorder. The Supreme Court specified that this ought to be a disorder 'in a legal sense', meaning judges do not have to specify the behavioural qualification of the disorder (such as through a diagnostic set of criteria, as in the DSM-5) and the judges can determine the existence of the disorder themselves (Nauta et al., 2024). Generally, however, judges will strongly rely on the advice from a behavioural expert witness, such as a psychiatrist or psychologist, and their diagnoses (Goldberg et al., in press). The second requirement considers a causal connection between the disorder and the

9 Nie popełnia przestępstwa, kto, z powodu choroby psychicznej, upośledzenia umysłowego lub innego zakłócenia czynności psychicznych, nie mógł w czasie czynu rozpoznać jego znaczenia lub pokierować swoim postępowaniem (translation from Faulkner (2012)).

10 Whether a volitional prong (i.e. impairments in control) is included in the requirements may be different, for instance. The M'Naghten rules do not include this, whereas the German and Polish systems do. See Meynen (2016).

offence at hand (Supreme Court of the Netherlands, 2023). This outlines that the mere presence of a disorder is insufficient; a post-traumatic stress disorder, for instance, would likely be unrelated to tax fraud, whereas a psychotic disorder with persecutory hallucinations could very well describe a violent outburst.

As a third criterion, the disorder must mean that the offence cannot be accounted to the offender. This criterion in itself has two sub-requirements which specify under what conditions such non-accountability may take place. Non-accountability is accepted either in a situation in which the defendant 'could not understand the content, the legal and moral impermissibility of his actions', i.e. a cognitive requirement, or 'was unable to form his will to conform to this understanding', i.e. a volitional requirement (Supreme Court of the Netherlands, 2023).[11] Hence, through the jurisprudence of the Supreme Court, the Dutch non-accountability excuse contains almost identical requirements to Article 31(1) PCC.

Aside from the non-accountability excuse, the Netherlands also accepts a diminished accountability plea (Lindenberg & Wolswijk, 2021). In Polish law, this is codified under Article 31(2) PCC and reads: 'If at the time of the commission of an offence the ability to recognise the significance of the act or to control one's conduct was diminished to a significant extent, the court may apply an extraordinary mitigation of the penalty.'[12] The requirements seem very similar to the full excuse under Article 31(1) PCC, addressing both volitional and cognitive impairments. Rather than the offender being 'incapable' of having these capacities, the diminished responsibility provision merely requires a significant limitation. In the Netherlands, a similar construct can be found, although it has never been codified. As such, it is not a formal mitigatory condition, although in practice, diminished accountability often results in a more lenient sentence (Claessen & De Vocht, 2012).

Currently, the Netherlands allows for three degrees within the accountability scale: accountable, diminished accountable and non-accountable (Mebius et al., 2023). Previously, a five-point scale was employed, resulting in two extra options, namely somewhat diminished accountable and severely diminished accountable (Meynen, 2016). This scale was abolished as a general practice in 2012 (although it is still sometimes used), as it was criticized for, amongst other things, creating a false sense of mental capacities being quantifiable and able to be empirically assessed. After all, such seemingly clear-cut boundaries between the points on the scale are not supported by evidence from behavioural sciences that such categories are even possible to

11 Of de verdachte door een psychische stoornis of gebrekkige ontwikkeling de strekking, de wettelijke en morele ongeoorloofdheid en/of context van zijn gedraging(en) niet heeft (kunnen) begrijpen, dan wel niet in staat was om overeenkomstig dat begrip zijn wil te vormen (personal translation).

12 Jeżeli w czasie popełnienia przestępstwa zdolność rozpoznania znaczenia czynu lub kierowania postępowaniem była w znacznym stopniu ograniczona, sąd może zastosować nadzwyczajne złagodzenie kary (translation from Faulkner (2012)).

consistently demarcate. Hence in the guidelines for forensic psychiatric assessment that followed, the three-point scale was suggested (Meynen, 2016). Importantly, the concept is available as general mitigation to the offence, meaning it applies to all crimes. This is similar to the Polish Article 31(2) but is different from common law systems such as England and Wales, where a diminished responsibility argument can only apply to reduce a murder charge to manslaughter (Allen & Edwards, 2019).

To conclude, prior fault can prevent the non-accountability excuse from being accepted or may negate the mitigating effects of diminished accountability. With these basics of the Dutch framework in mind, let us turn to the application of the foreseeability requirement of prior fault and the pitfalls thereof.

2. Foreseeability as a requirement for prior fault

Although no formal requirements exist, Dutch law and literature have emphasized the role of foreseeability (Bijlsma, 2011), similar to the prior fault provision in the PCC. A main line of jurisprudence has been developed through two landmark cases: the *culpa in causa* case, and the cannabis psychosis case (Supreme Court of the Netherlands, 1981; 2008a). Both instances concerned a defendant who became psychotic after the use of substances and committed the offence while in their psychotic episode. In both cases, the Supreme Court ruled that the defendants had prior fault in causing their psychoses, and thus the non-accountability defence ought not to apply. Yet the reasoning that made up these prior fault arguments differed between the two cases.

In the first case, the defendant had used heroin and cocaine simultaneously, leading to a paranoid psychosis in which he caused his grandmother's death. The initial ruling, later upheld by the Court of Appeal, stated that he was responsible for the psychosis since he had voluntarily taken drugs, rendering him accountable for his mental state at the time of the manslaughter. Therefore the psychosis could not lead to a successful non-accountability defence. According to the Court of Appeal, accountability involves understanding and recognizing the full impact of one's actions, including an awareness of the potential dangers of drug use (Supreme Court of the Netherlands, 1981).[13] In this case, the offender was deemed accountable for his psychotic state for four main reasons. First, cocaine and heroin are widely known to be dangerous and harmful, and second, using these substances can impair one's moral judgment. These two facts, the court argued, are expected to be known by anyone, particularly given the state's prohibition of these drugs. Third, the offender had previously experienced psychotic symptoms after cocaine use, such as hallucinations – although he was unaware that these events were not real – and had

13 The full verdict and transcripts of the Court of Appeal in this case are not available, but the arguments by the Court of Appeal are directly cited by the Supreme Court in their later conclusion.

reported violent fantasies that he only experienced while under the influence. Finally, despite already feeling agitated, the defendant chose to inject an even higher dose of the drugs. Given these factors, the court concluded that he was aware of the widely recognized risks associated with drug use as well as the specific effects thereof on his own mind, demonstrating an understanding and acceptance of the full extent of his actions (Supreme Court of the Netherlands, 1981).

This reasoning seems valid and, looking at it through the foreseeability lens, one can indeed say that the defendant was able to foresee the negative consequences. The specifics of the case, such as his prior experience with psychotic symptoms, suggest that the defendant had been aware of the potential risks and thus can be expected to have acted differently (Bijlsma, 2011; Goldberg, 2022). In light of this, the second landmark case seems to employ a slightly different – and less convincing – reasoning.

In the cannabis psychosis case, the defendant had used cannabis, resulting in acute psychosis, and committed an attempted theft, destruction of property and assault (Supreme Court of the Netherlands, 2008a). Here, the defence specifically focused on the concept of foreseeability in their arguments against prior fault and in favour of a non-accountability plea. As the defence argued, a psychosis stemming from cannabis is highly unlikely, and in this case, no similar symptoms had ever been experienced before by the defendant, unlike in the original *culpa in causa* decision. The court, however, did not concur. The judges emphasized that a defendant's specific awareness of the negative effects of drug use is not necessary; prior fault can also apply without such awareness. In this particular case, four arguments were provided to hold the defendant accountable: (1) the defendant was a frequent cannabis user; (2) he knew that cannabis affected his mental state; (3) he could have known that using cannabis was not completely safe; and (4) it is commonly known that the effects of cannabis may differ individually (Supreme Court of the Netherlands, 2008a).

These arguments clearly suggest a much broader interpretation of foreseeability than the original *culpa in causa* case (Bijlsma, 2011; Goldberg, 2022). In the original case, there was specific awareness of the negative consequences (due to the defendant's prior experiences). Conversely, in the latter case, the defendant had not experienced adverse effects from cannabis before. In the first case, the defendant had used multiple illegal drugs, as opposed to the second case, where the defendant had consumed cannabis, which is not unequivocally prohibited in the Netherlands (Grund & Breeksema, 2017). Thus the application of foreseeability seems to have moved from a rather concrete one (foreseeing relatively concrete negative consequences) to an abstract assessment (being able to foresee any negative consequence suffices).

The consequence of a more abstract foreseeability requirement is that it reduces the amount of control the defendant has to act otherwise (Bijlsma, 2011; Goldberg, 2022). In cases of concrete foreseeability, such as in the first case, we can expect the defendant to have acted differently based on his concrete knowledge of potential consequences. But if one is unaware of negative consequences, how can one prevent

them from happening? Without awareness of potential negative consequences, there is no control for the individual to decide and act differently. The only possibility would be to refrain from drug use altogether, to avoid potential adverse effects. Consequently, abstract foreseeability can seemingly be implied from any voluntary substance use, because all substance use may potentially have negative consequences (Goldberg et al., in press). Essentially, this means that a broad and abstract interpretation of the foreseeability requirement simply boils down to accepting *any* voluntary intoxication as a sufficient reason for prior fault. The second Supreme Court case clearly states that we can expect drugs to affect the mind, to differ per person and to never be entirely safe (Supreme Court of the Netherlands, 2008a). Consequently, it is always possible to find some form of abstract foreseeability in any kind of substance use. The use of substances could, therefore, be considered a type of abstract endangerment offence (Bijlsma, 2011; Goldberg, 2022).

3. Challenges of the foreseeability requirement for prior fault

Although this position – equating any voluntary substance use to a form of prior fault – may be the position the law wishes to take, it is important to recognize its flaws. First is that of fair labelling (Goldberg et al., 2021; Jansen, 2020). If the law refers to some form of foreseeability requirement, which is suggested through the two landmark Supreme Court cases, this requirement cannot be reduced to mere voluntariness: the label 'foreseeability' would not sufficiently cover the meaning of the concept.

The second is the mechanism which allows us to use T1 behaviour (i.e. the prior fault behaviour) to be relevant at the mental capacity assessment of T2 (i.e. the time of the offence). Normally, substantive liability operates in a narrowly defined temporal time frame in which there needs to be a correspondence between the objective and subjective elements of the offence definition. This means that the objective and subjective elements of the offence both need to be present at T2. If mental impairments at T2 result in non-responsibility for the defendant, and the law uses T1 behaviour instead to 'replace' what is lacking at T2, it would deviate from the general mechanisms of inculpation (Goldberg et al., 2021). Legal theorists have yet to find a satisfactory answer to justify the inclusion of T1 behaviour in the assessment of T2 responsibility. Especially when cases are more complex, such as including addiction, and the prior fault behaviour cannot be pinpointed to a specific moment in time but rather is a string of actions, it is unclear what the temporal scope may be.

For instance, consider an alcoholic who wakes up, still (somewhat) intoxicated, proceeds to drink further and commits an offence. Which action is the prior fault behaviour? Her most recent drink(s) were already consumed in an intoxicated (and thus impaired) state, so we may need to look at her drinking the day before, or even the days before those, potentially going back all the way to the moment she became addicted – if

such a moment is even clearly identifiable. In this example, we may intuitively feel that it is the broader range of reckless behaviour that we find culpable (Browning & Goldberg, 2024). Therefore applying prior fault in such a case may not be controversial in practice, as one may understand the law's need to avoid exculpation or mitigation due to the defendant's inability or unwillingness to remain sober. Theoretically, however, it is unclear what legal mechanism allows for the inclusion of a broad, unidentified and unrelated range of actions in the assessment of responsibility. Especially for complex cases, such a justification is necessary (Goldberg, 2022).

Third, and related to the previous argument, is the concern of equivalence (Child et al., 2020). If voluntary intoxication at T1 is sufficient to replace responsibility that is missing at T2 – although, as mentioned, this is yet to be convincingly justified – we would expect the behaviours to be of comparable culpability, or at least normatively related. Is being aware that one is using substances, and that substances have an effect on one's psyche (which is, more often than not, the reason to take drugs in the first place), the same as knowingly and willingly engaging in dangerous behaviour? In the severest of cases, is a homicide committed while in a cannabis-induced psychosis on a par with the voluntary decision to smoke a joint? This, in very crude terms, is what it ultimately boils down to, as non-accountability for the homicide would be rejected based on the consumption of drugs. Although nobody would deny that substance use is risky, it is questionable to what extent this behaviour is really so reckless as to justify the substitution of responsibility for manslaughter. In the Netherlands, around 5% of adults have used cannabis in the past month (Jellinek, n.d.). Moreover, although there is much evidence of a relationship between cannabis use and psychotic symptoms, this connection is not a causal one per se, and the exact risks of cannabis use remain unclear (Hall & Degenhardt, 2008). Moore and colleagues (2007) reported an odds ratio of 1.4 for a psychotic disorder if the individual had used cannabis before, i.e. cannabis users were more likely to experience a psychotic disorder than non-users.

This begs the question of what an acceptable empirical benchmark is for considering T1 behaviour risky enough to be considered culpable, and to replace responsibility at T2. If voluntary intoxication is sufficient for prior fault, then the intoxication itself ought to carry a degree of risk that is criminally relevant. If, hypothetically, using a substance were entirely free of risk, then pinpointing prior fault on its consumption would not be justified, as the behaviour cannot be considered culpable. Because all substance use, even of legal substances, carries at least some risk, the question is not whether the consumption is risky but how much risk is necessary to satisfy the requirements of anterior culpability and whether substance use meets this threshold.

Returning to Poland, depending on the exact application of the foreseeability requirement that is mentioned in Article 31(3) PCC, these critiques may also apply to the Polish prior fault doctrine. Unfortunately, not many Polish authors have discussed this topic in English, although one author states that the 'requirement of the foreseen [in Article 31(3) PCC] refers to the possibility of the offender to

foresee the results of the state of intoxication, not to the prediction of committing a crime' (Golonka, 2021, p. S154). As such, this would also suggest a rather abstract foreseeability requirement and could thus be subjected to the same criticism as in Dutch law. Further research on Polish case law, however, ought to clarify how freely or strictly this criterion is applied in practice. A more concrete prior fault criterion would be preferable, as this will satisfy a normative connection between the behaviour at T1 and the offence at T2 (Bijlsma, 2011).

Having discussed the pitfalls of abstract foreseeability, let me specifically focus on cases where the defendant suffers from volitional impairments and how these effects could be part of prior fault assessment.

4. Prior fault in cases of volitional impairment

Specifically for cases where there are volitional impairments, such as with addicted defendants, a problem arises regarding the volitional criteria of prior fault, or rather the lack of it.[14] The emphasis on the rationality and knowledge of the defendant in prior fault cases is different from the requirements for non-accountability, which contains a cognitive and a volitional prong, as was explained earlier (Meynen, 2016). Thus theoretically, a disorder resulting in volitional incapacity can be the basis for allowing a non-accountability excuse, but this same incapacity can be disregarded when applying prior fault rules (Goldberg, 2022). It seems odd that a lack of volition can be the basis of the excuse but is not taken into account in some way in the evaluation of prior fault when this excuse is blocked. As mentioned already, what seems to be important here is that if prior fault rules aim to replace a lack of culpability at T2 with culpability at T1, these two types of culpability ought to correspond somehow (Goldberg et al., 2021). This argument can be extended by expecting the assessment requirements to correspond and assessing similar criteria for the prior fault behaviour as those that the excuse in question (here: non-accountability) requires.

This is particularly relevant for cases of (severely) addicted defendants. For users with a substance use disorder, the effects of a substance are well known due to their previous experiences. After all, using substances repeatedly is the essence of the condition (American Psychiatric Association, 2013). Moreover, the negative consequences of substance use are commonly known amongst addicted users, yet the main problem with dependency is the urge to continue anyway, as is also featured

14 Addiction is commonly associated with impairments in volitional capacities. Individuals with substance use disorders show impairments in their inhibition (the act of suppressing pre-motor responses) and heightened impulsivity (acting without thinking), both necessary to the capacity to exercise control. See Goldstein & Volkow (2011), Jentsch et al. (2014) and Smith et al. (2014).

in the diagnostic criteria.[15] Hence addicted individuals generally consume the substance despite their specific awareness of harmful consequences, because of their difficulties in ceasing their drug use (Sjöberg & Olsson, 1981). Addiction can lead to strong urges as well as generally impaired impulse control, which can (depending on the individual case) negate this volitional aspect (Campbell, 2003). Thus the lack of a volitional prong in prior fault rules especially disadvantages this group. Based on their experience, they most likely satisfy a foreseeability requirement, yet they may have serious impairments that ought to be included in the assessment of responsibility. I argue that a volitional requirement ought to be included in the prior fault assessment framework in order to achieve more coherency. Such a criterion may take a similar shape to the volitional requirement in non-accountability (Goldberg, 2022).

Based on my limited knowledge of the Polish system, this problem also seems to arise in Poland. Article 31 PCC stipulates a volitional as well as cognitive prong for non-accountability: lack of capacity to 'recognize the significance of an act' as well as 'controlling their actions' are both mentioned in section (1) of the Article for non-responsibility. Conversely, section (3), the prior fault provision, only refers to the foreseeability of the negative consequences. As such, the Polish system may also suffer from a mismatch between the excuse requirements and the doctrine that prevents its application. Again, further clarification from Polish case law is needed to fully understand the practical application of both the non-responsibility defence and prior fault rules, an avenue not explored in the current paper.

Moving towards the final section of this article, I want to draw attention to the consequences of inappropriate or inconsistent assessment frameworks for cases of addiction and intoxication. Ambiguous assessment criteria result in more judicial freedom, which makes such cases vulnerable to the effects of bias or preconceived notions on the legal decision-making process. This is especially problematic for defendants with addictions, who suffer from a great deal of stigma, and may negatively affect their perceived prior fault and thus their responsibility assessment.

5. Addiction as a form of prior fault

Let us consider a hypothetical situation where severe addiction could result in a judgment of diminished accountability. If the defendant was not intoxicated at the time of the offence, how does prior fault apply, if at all? On what grounds would it be determined whether the basis for the mitigation – in this case, the addiction – was culpably self-caused? Arguably, foreseeability becomes an inadequate standard, for there is no clear T1 moment where one may identify the prior culpable behaviour

15 For instance, Diagnostic Criteria A9: 'Substance use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance' (American Psychiatric Association, 2013, p. 491).

and assess whether those acts had any foreseeable negative consequences. Perhaps the moment he took his first drink or drugs could be used, but one may contend that such a T1 moment is usually too far removed from the offence. Additionally, previous arguments concerning equivalence as discussed in Section 3 above also apply here. As such, it is unclear how the presence of addiction must be assessed in light of the current prior fault framework.[16]

Indeed, there is a fundamental concern when the assessment framework for prior fault, which is focused on a clear act or omission that can be assessed as potential prior fault behaviour, is used to address a broader behavioural notion such as addiction. If there is a lack of fit between the situation at hand and the assessment criteria to be employed, courts are left with a large degree of judicial freedom. Without clear requirements, there is a risk that addiction becomes a form of prior fault in itself, i.e. that the presence of an addiction becomes a blameworthy circumstance. This is indeed highlighted by several judgments. For instance, in the *Tolbert* case (Supreme Court of the Netherlands, 2008b), the defendant, a habitual amphetamine user, suffered an amphetamine-induced psychosis that led to the killing of his girlfriend's two children. The court emphasized that the defendant, as a regular user, was aware of the substance's dangerous effects and thus bore significant criminal responsibility. This perspective appears to not only hold addicted individuals accountable, but even *more* accountable than non-addicted individuals simply because of their continued (and disordered) use. While it may be understandable that allowing addiction to become a mitigating factor is somewhat controversial, applying stricter standards to addicts compared to non-addicts suggests a moral judgement of addiction itself.

A similar argument can be found in a different homicide case, where the court reasoned that 'in the end, the defendant is responsible himself for the origination and continuation of his addiction behaviour. Thus, he can be considered blameworthy, although the offence can be only partially accounted to him' (Court of Appeal 's-Hertogenbosch, 2016).[17] This perspective highlights a broader concern: criminal liability should primarily address the offence and the conduct at issue, not general lifestyle blame, known in German as *Lebensführungsschuld*.[18] Dutch legal theorists

16 Elsewhere I discuss in more detail whether it is appropriate to view addiction (i.e. without a subsequent intoxication) as a form of prior fault at all, and argue that only behaviour stemming from addiction must be considered, not the state of addiction itself (Goldberg, 2022).

17 Hij is in laatste instantie zelf verantwoordelijk voor het ontstaan en continueren van zijn verslavingsgedrag. Er kan hem dus een schuldverwijt worden gemaakt, ook al is het delict hem in verminderde mate toerekenbaar (personal translation).

18 An important concept in German law, *Lebensführungsschuld* refers to the blameworthiness of a person's lifestyle as opposed to a specific act itself (*Tatschuld*). Many scholars strongly oppose such a general lifestyle culpability. In the Netherlands, this concept is less controversially discussed, although it is often mentioned that the Dutch system also focuses on an 'act-centred criminal law' (*daadstrafrecht*) rather than a general character or lifestyle culpability. The focus is consequently only on the specific range of human behaviour that is prohibited by the law. See Hörnle (1999).

have stated that the law must focus on the specific blame for a given act; a generalized form of culpability is ultimately irrelevant to criminal liability (De Hullu, 2018). What matters is the concrete culpability of behaviour at the time of the offence or, in assessing prior fault, the behaviour at a prior moment before the offence. Foreseeability as a requirement for prior fault, as mentioned, also seems to be suited specifically to one such moment, act or omission.

It also raises a cardinal question: Is a person truly responsible for becoming addicted? This question requires a broader look at the theoretical underpinnings of addiction. Perspectives on responsibility and addiction largely depend on one's view of addiction and the individual involved (Goldberg, 2020). This is not a straightforward discussion. Conceptualizations of addiction differ greatly: for example, the 'brain disease model' frames addiction as a chronic, relapsing disease, while the 'choice model' views it as the result of behavioural choices and preferences (see Leshner, 1997 and Heyman, 2009, respectively).[19] The court's statement aligns more closely with the choice model. However, assuming that all addicts choose to become or remain addicted oversimplifies the issue. A subset of individuals with severe addictions, where the disorder often presents together with complex comorbidities, may not be able to recover from their addiction (Pickard, 2012). Consequently, the perspective of addiction being a condition that is culpably caused is not based on a (socio-)scientific consensus.

As this indicates, prior fault rules also convey a more implicit perception of addiction. This fits the broader framework of the stigmatization of addiction, which has been extensively researched and confirmed. For instance, Boekel et al. (2013) found that laypeople tend to impose restrictions on alcohol – and drug-dependent individuals, such as prohibiting them from raising children. They found that respondents had the expectation that addicted individuals would display more aggressive behaviour than others, and assumed that those with a substance use disorder are personally responsible for their addiction. Relatedly, Crisp et al. (2000) also observed that people perceive addicts as unpredictable. Moreover, individuals dependent on substances were viewed as a danger to their own lives and the lives of their children (Holma et al., 2011). Researchers also found that stigmatization is greater for drug addicts than for the homeless or people with mental disorders such as schizophrenia (Pescosolido et al., 1999; Room et al., 2001; Van Boekel et al., 2013). However, not all addicted individuals are stigmatized to the same degree; this appears to depend on various factors, such as age and the duration of the addiction (Sattler et al., 2017). There is no evidence that judges are not equally susceptible to preconceived notions about addiction, thereby letting stigma influence the way prior fault arguments are applied to cases of addiction.

19 Naturally, there are more perspectives on addiction, but these two are often highlighted as they reflect the (primarily Anglo-American) 'addiction debate'. For the use and relevance of these models and the debate, see Goldberg (2020).

As such, cases of addiction may be at a disadvantage in the application of prior fault rules, especially when a clear assessment framework is lacking or when such a framework is inadequate. Under those circumstances, bias and stigma may more easily find their way into judgments. Bringing the discussion back to the use of foreseeability as a requirement for prior fault, I argue that using the foreseeability requirement more consistently and applying a more concrete interpretation of it would help reduce the influence of stigma and bias towards addiction in a prior fault assessment. After all, with a clearer criterion to be applied to complex cases, a judge may be less susceptible to preconceived notions, as there is less judicial freedom in how to interpret prior fault rules.

Conclusion

Inspired by the specific prior fault provision under Article 31(3) PCC, this article has critically examined the pitfalls of the current assessment framework of prior fault in the Netherlands, which by extension is also relevant to Polish law or other jurisdictions employing a foreseeability requirement. A focus on foreseeability as a criterion for prior fault seems sensible at first, but its appropriateness is strongly dependent on the approach taken towards foreseeability. Once this is interpreted as an abstract requirement, meaning that the defendant did not foresee any concrete risks of harm but that general awareness of potential risky consequences suffices, this may lead to over-criminalization. Such an abstract requirement essentially diminishes the foreseeability requirement to the extent that it becomes irrelevant, as all forms of substance use can be argued to have some risk of harmful, unwanted consequences. Thus it seems that, when foreseeability is interpreted and applied abstractly, the voluntariness of the substance use is the main driver for prior fault. A solution to this problem of fair labelling would be to employ a more concrete foreseeability requirement, where there at least needs to be a normative connection between the prior fault behaviour and the offence behaviour.

Specifically for addiction, a sole foreseeability requirement creeps towards further over-criminalization, as addicted defendants are experts in the consequences of substance use and know from their experience what the potential harms could be. It would be appropriate, therefore, if prior fault assessment also included a volitional component, to account for those offenders who may have had knowledge and awareness but who were unable to control their impulses. By including such a requirement, the prior fault assessment also becomes more equivalent to the assessment of non-accountability and non-responsibility (Article 39 DCC and Article 31(1) PCC). As prior fault is the mechanism whereby this excuse can be denied, some equivalence between the two should be expected.

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Bialystok Legal Studies
Białostockie Studia Prawnicze
2024 vol. 29 no. 4

sciendo

DOI: 10.15290/bsp.2024.29.04.06

Received: 16.04.2024
Accepted: 4.11.2024

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Control of Poaching in Poland as a Form of Implementation of the Agenda for Sustainable Development 2030[1]

Abstract: This article's purpose is to present how the goals of the Agenda for Sustainable Development 2030 are implemented in Poland in terms of combating poaching. It discusses which services combat poaching in Poland and how they operate. The characteristic methods of legal sciences and criminology, namely literature analysis and criticism, the dogmatic method, secondary data analysis, and the interview method, were used to achieve the research goals. The first of these was used to analyse the scientific literature on poaching published to date, with a particular focus on the poaching of land animals. The dogmatic method was used to examine selected legal acts regulating poaching. The dogmatic and literature analysis methods were often applied simultaneously, which allowed interpretation of the regulations analysed. The secondary data analysis consisted of analysing statistics on poaching, specifically criminal statistics obtained from police headquarters. The final research method used were interviews carried out using a computer-assisted individual interview technique. Interviews were conducted with an employee of the Regional Directorate of State Forests in Białystok and an officer of the State Hunting Guard in Białystok, because both institutions are statutorily obliged to combat poaching in Poland.

Keywords: Agenda 2030, crime control, hunting law, poaching, wildlife

Introduction

On 25 September 2015, the United Nations adopted a resolution defining 17 Sustainable Development Goals (SDGs), on the basis of which 169 specific targets were formulated (UN, 2015). The SDGs address five areas: people, planet, prosperity,

1 Publication funded by the state budget as part of the 'Science for Society' programme of the Minister of Science and Higher Education (formerly Minister of Education and Science), project no. NdS/536259/2021/2021; grant amount PLN 379,155; total project value PLN 379,155.

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peace, and partnership (known as the 5Ps). According to the Agenda, the goals set out therein are to be achieved by 2030 at the latest. The document was adopted because today's global problems, especially those related to climate, are so serious and complex that it is impossible to solve them at the level of an individual, a single state, or a single international organization (Kampania 17. Celów, n.d.).

Sustainable development implies taking measures for the improvement of the world's socio-economic situation that will take into account respect for the environment and the needs of future generations. This precludes arbitrary and uncontrolled exploitation of the environment and its resources. Unfortunately, activities that are harmful to the environment, including in particular environmental crimes, are a global threat nowadays and, worse still, one that is increasing. Due to their current characteristics, environmental crimes require a transnational response and have to be fought by various institutions working together. This is confirmed by Agenda 2030, which indicates that the foundation of the SDGs is a concern for environmental sustainability that consists largely in the protection of species and conservation of biodiversity (White, 2021, p. 259).

Some of the SDGs address broadly defined social pathologies, including crime. Therefore they are related to criminology, which is, in simple terms, the scientific study of crime. From the standpoint of criminology, priority is given to SDG 16, which entails promoting peaceful and inclusive societies, providing access to justice for all, and building effective and accountable institutions at all levels that are conducive to social inclusion (UN, 2015). On the other hand, when analysing the SDGs through the lens of both criminology and the natural environment, it is necessary to make reference to Goal 15, which declares a commitment to protecting terrestrial ecosystems, the sustainable management of forests, combating desertification, halting and reversing land degradation, and halting loss of biodiversity. Deforestation, desertification, and land degradation are mainly the consequences of human actions, including by organized crime groups that have seen the financial potential in environmental crimes (Europol, 2022).

One of the targets formulated on the basis of Goal 15 is Target 15.7, which directly relates to crime and the fight against it; it is closely connected not only with criminology in general, but primarily with eco-criminology. This target demands urgent action to eliminate such crimes as poaching of and trafficking in protected animal and plant species, as well as measures to prevent the purchase and sale of illegal wildlife products. It is estimated that the value of the game killed by poachers ranges from USD 5 billion to USD 23 billion. Elephants and rhinos are of greatest interest to criminals, since ivory is a very valuable raw material used for jewellery and art products, and rhino tusks are used for medicinal purposes (Redo, 2019, p. 935).

When analysing the links between the SDGs and environmental crimes, it is impossible to ignore Goal 14 and especially Target 14.4, which involves the elimination of overfishing, illegal, unregistered, and unregulated fishing, and destructive fishing

practices. However, since the scope of this paper is limited to poaching on land, this issue is addressed here only symbolically. What is worth noting in this context is the problem of resistance by some countries to measures aimed at protecting sea and ocean waters; a clear example of this is the acceptance by the Japanese government of unethical whaling and dolphin-fishing practices (Pływaczewski et al., 2021, p. 288).

The implementation of the goals defined in Agenda 2030 is constantly monitored, and information on progress toward goals is regularly published in reports. It is noteworthy that Poland has been successful in achieving the goals; it has almost fully achieved Goal 15 and is taking effective measures to sustain the results achieved so far (Sachs et al., 2023). Because work is still underway to fully achieve this goal and sustain the results over the long term, I deemed necessary to look at selected measures aiming to achieve it. Due to my area of research interest and the relationship between Goal 15 and eco-criminology, the analysis is narrowed down to examine the control of poaching in Poland, with a particular focus on forest poaching. In this study, poaching is understood as a criminal activity involving the illegal capture, acquisition, killing, or interception of terrestrial animals – both protected and unprotected species – without appropriate authorization, in violation of environmental protection laws, species protection regulations, and principles of sustainable natural resource management. It is important to emphasize that poaching as I use it here represents a specific form of poaching focused solely on land animals. However, the term 'poaching' is a broader concept encompassing all types of illegal hunting, irrespective of the habitat in which the animals are found, thereby can include poaching either on land or in water. The purpose of this paper is to broaden the knowledge about this form of crime against animals and the fight against it.

1. Methodological issues

At the beginning of the research process that resulted in this paper, the specific research problems that required scientific investigation were identified. They were formulated in three questions: (1) Does Poland implement the objectives of the 2030 Agenda for Sustainable Development in terms of poaching control? (2) What government agencies control poaching in Poland? (3) How do these agencies combat poaching in Poland? The following methods specific to legal science and criminology were used to solve the problems: literature analysis and critique, the dogmatic method, secondary data analysis, and the interview method. The first of these was used to analyse the existing scientific literature on poaching, with a particular focus on poaching of land animals. This exploration of the state of research described in monographs and periodicals made it possible to identify a research gap and complete the state of knowledge about poaching and its control in the context of the objectives of sustainable development and Agenda 2030. The dogmatic method, on the other hand, was used to examine selected legal acts that govern poaching; this analysis made it possible

to characterize the crime of poaching and to present the rules and scope of criminal liability for its perpetration. The dogmatic and literature analysis methods were often applied simultaneously, which made it possible to interpret the legislation.

The secondary data analysis involved analysing the crime statistics on poaching obtained from the Polish National Police Headquarters. They included information on crimes gathered independently by police officers, as well as information received from the State Hunting Guard and the State Forest Guard. Both of these conduct reporting activities on poaching in Poland, providing information on such crimes to the police, and both have powers related to the control of poaching. Employees of these institutions are most often the first to learn about poaching, as well as about attempts to commit this crime and preparations to commit it, in the areas they manage. They are therefore a major source of information on poaching for the police.

The last research method used was the computer-assisted personal interview. The interviews were conducted using an electronic questionnaire; questions were read out to respondents and their answers were entered into the computer immediately. The interviews were conducted with an employee of the Regional Directorate of State Forests in Białystok and an officer of the State Hunting Guard in Białystok. Both of these institutions are obliged to fight poaching, which is a form of forest sabotage. The practical knowledge of foresters and hunting guards, which results from direct, professional, and often investigation-based experience with poaching and poachers, has allowed a much deeper understanding of the forms of fighting this phenomenon, as well as of its etiological and phenomenological aspects. The research sample was chosen arbitrarily: I decided to select units to which I had the best access, while ensuring that the selection of respondents remained consistent with the research objectives.[2]

2. Poaching in Poland: Legal aspects

Poaching in the general sense is hunting animals or fishing in an unauthorized manner or at an unauthorized time and place (Słownik języka polskiego PWN, 2023). The Polish legislature has made the concept more specific by formulating its legal definition; thus poaching is 'an action aimed at gaining possession of an animal in a manner that does not constitute hunting or in violation of the conditions for permissible hunting' (Hunting Law, 1995). While the definition of poaching is provided in Article 4(3) of the Hunting Law, the definition of hunting in the context of poaching can be found in its Article 4(2). The legislature has assumed that hunting is:

2 At this point, I would like to thank the employee of the Podlasie Branch of the State Hunting Guard and the employee of the Regional Directorate of State Forests in Białystok for their time and commitment to providing as much information as possible about poaching control in their professional practice.

1) tracking, shooting with hunting firearms, and catching by permitted means live game, birds, or mammals of invasive alien species that pose a threat to the European Union or Poland;
2) hunting game with the help of hunting birds with the approval of the minister competent for environmental matters; and
3) catching animals of invasive alien species that pose a threat to the European Union or Poland.

For these activities to be considered hunting, they must be aimed at taking possession of game. Thus it should be pointed out that the Polish legislature has adopted two criteria for understanding the concept of hunting: the manner of the hunter's action and the goal of the action (Pązik, 2023).

If a person takes actions aimed to gain possession of animals in ways other than legal hunting, e.g. by unauthorized methods, he or she is poaching. Importantly, poaching does not necessarily end with the capture of the game. It is irrelevant whether the perpetrator has achieved the purpose of his or her action and come into possession of the game or whether he or she has obtained nothing. According to the Polish legislature, taking possession of game is only the result of poaching, not its essence (Zwolak, 1999).

The Polish legislation does not give explicit examples of activities that are considered a form of poaching. Nevertheless, the doctrine most often identifies the crime as being the acts prohibited by Article 53 of the Hunting Law, according to which, poaching is committed by a person who:

1) hunts migratory game birds on the sea coast within a 3,000-meter-wide strip extending from the coast into the sea or a 5,000-meter-wide strip extending inland (Article 53(1));
2) hunts with greyhounds or their hybrids (Article 53(2));
3) hunts during the protected period (Article 53(3));
4) hunts without having a hunting licence (Article 53(4));
5) in violation of the prohibition, sets up tools or devices intended for catching, capturing, or killing game (Article 53(4a));
6) takes possession of game by means of weapons and ammunition other than hunting ones, or by means of explosive devices and materials, poisons, food with intoxicating properties, artificial light, glue traps, snares, irons, pits, crossbows, digging in burrows, or other unauthorized means (Article 53(5));
7) takes possession of game without being authorized to hunt (Article 53(6)).

In order to characterize the forms of poaching specified in Article 53 of the Hunting Law, one should start with the illegal hunting of birds in the coastal strip, as specified in item 1 above. The purpose of Section 1 is to protect migratory game birds, which include geese, greylag geese, greater white-fronted geese, bean geese, mallards,

teals, common pochards, tufted ducks, pigeons, woodcocks, and coots (Słomski, 2023a). Game animal species are defined in § 1(1)(2) of the Regulation of the Minister of Environment of 11 March 2005 Establishing a List of Game Animal Species. The need to protect migratory birds is primarily due to the fact that a bird migration route runs along the Polish coast. The ban on hunting stems from the need to ensure the birds' safe and peaceful migration when they move from northern Europe and Siberia to the warmer parts of western and southern Europe (Słomczyński, 2018).

The second form of poaching, included in Article 53(2) of the Hunting Law, is the use of greyhounds or their hybrids in hunting. Greyhounds are probably the oldest hunting dogs in the world used for pursuing game in open spaces; they are sometimes referred to as ancient hunting dogs. In some countries, such as Spain, it is still legal to hunt with them (although it is controversial). These dogs are bred solely for use in hunting; after the hunting season, they become useless, even problematic for their owners (if only because of the cost of maintenance), and therefore are killed or abandoned by their caretakers to certain death, e.g. their paws are broken, they are tied to trees, or are left in deep, dried-up wells (Daly, 2016).

In Poland, the breeding or keeping of greyhounds or their hybrids requires a permit from a district head, issued at the request of the person intending to breed or keep such a dog. Regulation of breeding or keeping dogs of this type is based on Article 10(1) of the Hunting Law. The requirement to obtain a permit for owning, breeding, or keeping greyhounds and their hybrids is imposed as a result of the recognition of these animals – due to their nature – as a threat to the safety of wildlife (Judgment of the Provincial Administrative Court in Kielce, 2010); in the past, the use of greyhounds in hunting resulted in the partial extermination of some animal species (Słomski, 2023b). Importantly, hunting with greyhounds differs from hunting with other dogs. Other breeds of hunting dogs (e.g. pointers) expose the game by signalling it to the hunter and allowing him or her to shoot it (which is intended to be a death that is quick and without undue suffering and pain). Greyhounds, on the other hand, are not able to only point to the game, and from the moment they sense it, they chase it until they catch it (Sokolnictwo.pl, n.d.). It was mainly for these reasons that it was deemed necessary to abandon the use of greyhounds in hunting.

The third type of poaching listed in Article 53 of the Hunting Law is hunting during the protected period. The ban on hunting during this period stems from the need to protect game from excessive depletion (Nazar, 2017). A protected period is a time during which hunting of certain animal species is prohibited in order to allow the species to reproduce, protect its young, and maintain healthy populations. The protected periods for individual game species are specified in a Regulation of the Minister of Environment (Regulation Establishing the Hunting Periods for Game Animals, 2005). The protected periods for individual game species are in some cases differentiated by the age or sex of the individual, and in one case, involving three species of geese, also differentiated territorially between various provinces. It is worth

noting at this point that elk, classified as a game animal, is the only species under complete year-round protection without any exceptions. Hunting during protected periods is considered one of the most serious hunting offences because it causes extremely negative natural consequences; for example, once a wild boar sow with piglets is shot, the young have little chance of survival (Stec, 2014).

Hunting without a licence is another form of poaching specified by the legislature in Article 53(4) of the Hunting Law. In this case, the poacher's behaviour involves hunting without holding the required licence. The criteria of the offence are met when the perpetrator hunts without obtaining a hunting licence at all, during a period of suspension of his or her hunting licence, or despite the revocation of his or her hunting licence. Liability under Article 53(4) of the Hunting Law is also incurred by a person who hunts even though he or she has lost his or her membership of the Polish Hunting Association. This is because the Hunting Law allows hunting primarily to members of the Polish Hunting Association, as well as to foreigners – citizens of EU Member States, if they hold a hunting licence in another EU Member State and take a supplementary exam in the Polish language on the applicable regulations concerning the terms and conditions of hunting. According to Article 43(1) of the Hunting Law, after meeting certain requirements, foreigners or Polish citizens who live abroad with the intention of permanent residence are also allowed to hunt (Nazar, 2017).

Poaching also involves setting up tools or devices designed to catch or kill game; this form of poaching is defined in Article 53(4a) of the Hunting Law. For the existence of this particular crime, it is irrelevant whether these tools or devices are actually used to capture game. The criminalized behaviour consists solely in installing or placing items that can be used to catch or kill an animal in any location. This is a new form of the criminal act and was introduced into the law by a 2018 amendment. The offence is the result of the addition of Article 42(a)(a) to the Hunting Law, which contains a catalogue of prescriptions and prohibitions related to hunting.

The sixth type of poaching, identified in Article 53(5) of the Hunting Law, consists in taking possession of game by means of weapons and ammunition other than hunting ones, or by means of explosive devices and materials, poisons, food with intoxicating properties, artificial light, glue traps, snares, irons, pits, crossbows, digging in burrows, or other unauthorized means. This provision regulates the most dangerous form of poaching, as it involves the greatest suffering of animals. This form of poaching most deeply contradicts the idea of humane treatment of animals and care for their existence and reproduction (Słomski, 2023a). The purpose of this provision is to eliminate situations where animals suffer before dying and to avoid additional and absolutely unnecessary stress. Therefore, the *ratio legis* in this case is primarily the aforementioned humanitarian reasons. This provision seeks to protect animals and their life without undue suffering (i.e. without suffering that is unacceptable from a moral and common-sense point of view) and to end the animal's life in the same way (Gabriel-Węglowski, 2009).

The last form of poaching defined in Article 53 of the Hunting Law is taking possession of game without having a hunting licence (paragraph 6). In that provision, the legislature used the phrase 'takes possession'. It means that attributing the perpetration of the offence specified in Article 53(6) of the Hunting Law requires an effect in the form of obtaining game (Słomski, 2023a). Therefore, it is an effect-based offence, and its perpetration is independent of the value of the game that the perpetrator obtains (Supreme Court, 2014).

A person who commits the offence of poaching in any of the forms specified in Article 53 of the Hunting Law is subject to the penalty of imprisonment for up to five years. However, penalizing the perpetrator with a prison sentence is not the only option. Pursuant to Article 37(a) of the Criminal Code, for a crime punishable by imprisonment for a period not exceeding eight years, when the punishment imposed for it would not be longer than one year, the court may, instead of that punishment, impose a sentence of restriction of freedom for a period of not less than four months or a fine of not less than 150 daily rates, in particular if the court simultaneously imposes a punitive measure, a compensatory measure, or forfeiture (Criminal Code, 1997). The court may also use the institution of mixed punishment set forth in Article 37(b) of the Criminal Code: mixed punishment consists in the court simultaneously imposing a sentence of imprisonment (in the case of poaching not exceeding three months) and a sentence of restriction of freedom for up to two years. The penalty of imprisonment is then executed first, unless otherwise provided by law. It should be added that in accordance with Article 66(1) of the Criminal Code, in connection with the upper limit of the penalty of imprisonment provided for in Article 53 of the Hunting Law, conditional discontinuance of the criminal proceedings is also possible in the case of the offence in question. In addition, according to Article 54 of the Hunting Law, the court may also order the forfeiture of weapons, vehicles, tools, and dogs with which the poaching offence was committed, as well as the forfeiture of trophies, game carcasses, and parts thereof. A forfeiture ruling can also apply to items that are not owned by the offender.

3. Aspects of the fight against poaching in Poland

Crime statistics are the primary source of knowledge about crime. In order to determine the scale of the poaching phenomenon, an analysis was conducted of police statistics from the years 1998 to 2022. It should be emphasized that the analysed data do not show a complete picture of the offence of poaching in Poland; they only give an idea . This paper does not address the problems of the so-called 'dark number' of crimes, since no law enforcement agencies consider data on all crimes actually committed in their studies (Błachut et al., 2004, p. 227). At the same time, one must bear in mind the specific characteristics of poaching, which involves a high risk of being undetected by law enforcement agencies, due to, among other things, the place where the offence is committed, where the daily presence of humans is limited and

also because of the silent victims, namely animals. Therefore, while the statistics on poaching should be included in analyses, they must be treated with caution and with awareness of their selectivity.

Importantly, the data for the period from 1998 up to 2012 that were made available by the National Police Headquarters were prepared on the basis of a data set in which, due to the way the data was collected at the time, information on the qualification of the offence was based on a catalogue of digital symbols. This means that a single statistical code covers an entire article (with all its sections) from either the Criminal Code or another law containing criminal law provisions. Sometimes a single code even includes data on more than one article; this was the case with the offence discussed here, as information on poaching in these years was placed under a symbol that takes into account up to two articles of the Hunting Law, namely Articles 52 and 53. The police stressed that it was not possible to distinguish the legal qualifications and figures in more detail; I was also informed that it was not possible to obtain data for periods before 1998 because before that year, the statistical symbol for the Hunting Law was not distinguished at all (meaning that the police did not include any crime specified in that law in their statistics). It should also be added that until the end of 2012, the data presented included information both on pre-trial proceedings conducted by the police and on proceedings conducted by the prosecutor's office without involvement of the police. However, since the beginning of 2013, due to a change in the data collection system, the data collected has included only information on pre-trial proceedings conducted by the police.

Table 1. The number of proceedings initiated and offences detected in Poland between 1998 and 2022

Source: prepared by the author based on data from the National Police Headquarters

It should be pointed out that, based on the data presented in Table 1, the changes in the offence of poaching detected in Poland from 1998 to 2022 are characterized by an overall decreasing trend. At the same time, there are very clear deviations from this general trend, which took place in 1998–2001, 2002–2003, 2004–2006, 2008–2010, 2011–2013, 2014–2015, and 2018–2021. The volume of poaching recorded each year, especially in the last years covered by the analysis, has decreased by roughly half compared to the period of 1999–2013. Until 2013, about 700 cases of poaching were detected almost every year. Since 2014, about 200–300 such offences were detected each year.

It should be emphasized that this sharp change in the number of detected crimes is noticeable at a specific point in time. This is due to the aforementioned changes in the statistical registration methods, which affected both the Hunting Law itself and the systemic mechanism for collecting statistical data on criminal offences. Both changes in the collection of data on poaching (which consist in the separate collection of data on Articles 52 and 53 of the Hunting Law after 2012) and changes to the entire system of collection of information on crimes (which consist in the inclusion of information only on proceedings conducted by the police) are reflected in the statistical picture of poaching in Poland. For this reason, it is difficult, if not impossible, to specify the actual direction of the changes in this type of offence in the period from 1998 to 2012. However, it is worth looking at how the situation evolved between 2013 and 2022, when the methods of collection of numerical information on crimes became relatively better organized. It also needs to be clarified that the years 2016–2017 are excluded from the analysed period; the materials sent by the National Police Headquarters did not include data for these years, and a request for supplemental information in this regard was not answered.

In 2013, 824 cases of poaching were recorded. The reason for this was that the proceedings had already been initiated before the aforementioned changes came into effect. In subsequent years, about 200–300 poaching offences were detected per year. The smallest number of poaching offences, 177, was recorded in 2022, while the largest number, 383, was recorded in 2021.

Against the background of the statistics presented, one more point is worth mentioning. In the case of poaching, there are more crimes recorded than the number of proceedings initiated. However, the discrepancy between the number of prosecutions initiated and crimes detected is natural and is due to the fact that some of the ongoing cases are so-called 'multi-offence cases', where more than one offence is detected in the course of an investigation (Rzymkowski, 2017, p. 240).

In light of the above, it is worth emphasizing once again that the poaching statistics provided by the Polish police are extremely difficult to analyse. The picture of crime that emerges from these statistics is ambiguous and uncertain, because of the changes in the way data is collected and also by unexplained gaps in the statistical material. However, despite the difficulties, it is indisputable that the volume of

poaching offences is decreasing. This is confirmed not only by the numbers, but also by information obtained from persons who fight poachers professionally.

In order to gain a more in-depth understanding of the criminological aspects of poaching, and in particular the ways to fight it, interviews were conducted with two professionals involved in countering this type of crime. The first respondent was an employee of the Podlasie branch of the State Hunting Guard; the respondent was selected for the study because the statutory tasks of the State Hunting Guard include the fight against poaching (Hunting Law, 1995). The other respondent was an employee of the Forest Guard of the Regional Directorate of State Forests in Białystok. The choice of that person for the study was based on the fact that forest guards are specifically authorized to fight poaching on state-owned land managed by the state forests (Forest Law, 1991).

The respondents were interviewed one at a time, at different times, without interacting with each other. However, both expressed the identical opinion that poaching is a less and less frequent crime in Poland. At the same time, they stressed that the frequency of poaching is particularly low in Podlasie; they explained that it is committed less frequently because people's tastes and interests are changing, especially in the case of young people, for whom other areas of life are much more attractive and engaging. The respondents indicated that in the past, the root cause of poaching was poverty: poor people poached to get meat, a valuable food for themselves and their families. However, this reason for poaching no longer exists.

Nowadays, poaching is motivated by personal preferences, e.g. an ambition to get possession of an animal regardless of whether it is legal or not (this applies to wolves, for example). Some people want to experience something special or dangerous and to prove to themselves, and also to their friends, that they are special because they know how to catch game. Poaching is done both to catch game and also to get hunting trophies, i.e. body parts of captured animals, which for a hunter can be a souvenir of a successful 'hunt'.

New motivations for poaching are also emerging, arising from conflicts between humans and wildlife. These primarily concern troublesome species that pose threats to crops, livestock, and even human safety in urban areas. An example includes farmers who lay out poisoned meat to eliminate wolves. Hunters cannot reduce the populations of protected species, prompting affected groups to take matters into their own hands. Urban poaching is also a significant issue, particularly impacting bird populations. Analysis of available online sources reveals that numerous urban residents experience discomfort due to the presence of birds, which they kill when the birds disturb them in the morning or contaminate residential or recreational spaces (Leszczyński, 2020; Pająk, 2021). Those affected by this issue indicate that spring and summer are particularly troublesome periods, as birds begin singing at dawn, with the first rays of daylight causing noise that disrupts residents' sleep. Remote work, which became more prevalent during the lockdowns, has intensified

the perception of discomfort due to natural sounds in suburban areas. Additionally, the increased presence of birds results in more frequent contamination, requiring time and financial resources for cleaning, which unfortunately exacerbates social irritation (Gwiazdowicz, 2011, p. 15). Consequently, some urban residents engage in independent illegal actions such as shooting birds with airguns or poisoning them, treating these animals as bothersome pests (Dajczak et al., 2021, p. 809). The issue of urban poaching warrants special attention, particularly as it largely remains overlooked, with a significant legal gap that hinders effective resolution.

Modern instances of poaching are thus largely the result of an intensifying human–wildlife conflict (Gwiazdowicz et al., 2023), exacerbated by environmental changes and increasing pressure on natural resources . Consequently, certain species are beginning to cause more significant damage and pose a nuisance to humans, who, lacking knowledge of effective countermeasures, resort to primitive solutions such as animal elimination through poaching. Addressing this issue requires effective preventive measures, primarily through policymakers and legislators developing systemic solutions. These solutions should be formulated based on available research and scientific evidence to ensure the effectiveness and appropriateness of the measures undertaken (see, e.g., Conover, 2001).

Continuing the discussion on poaching in forested areas, it is worth noting that trapping as a form of poaching, which involves setting snares, metal lines, or traps, is currently disappearing, and fortunately, such activities are less and less common. The state forestry employee stressed that a number of preventive and control measures are being carried out in connection with trapping. In addition, both respondents noted that poachers are increasingly aware that the use of snares is highly inhumane. The perpetrators are concerned that the use of such tools would be considered particularly cruel if their offence was detected and would thus provide grounds for a harsher punishment to be imposed. In addition, poaching involves risks even before the offence is committed: the mere possession of snares and traps is illegal and punishable. Trapping is also more time-consuming than other forms of poaching, requiring setting-up of snares and then regularly checking to see if an animal has been caught. This form of catching game can take a lot of time, therefore poachers prefer to act in a different way: they use firearms.

Currently, poaching with firearms is the most common form of poaching. The respondents indicated that this was fostered by 'open' national borders and Poland's membership in the Schengen zone, which greatly facilitated illegal access to firearms. The most common paths for bringing illegal weapons to Poland lead from Belgium, the Netherlands, and France, where those interested in owning weapons for poaching purposes buy them at local markets and antique fairs and then freely bring them into Poland. Many poachers also own firearms legally; this group consists primarily of hunters who want to obtain game illegally and in violation of regulatory restrictions. Such hunters receive a so-called 'odstrzał' for culling a specific animal, the colloquial

name for a document that authorizes a hunter to perform an individual hunt. The document contains information on the quantity, species, and sex of the game to be hunted. However, hunters often do not adhere to the stipulations set out in the document for economic reasons, among others; this is because, according to the regulations, a hunter can take a shot animal for his or her own use but must pay for it. Some people do not want to pay and do not include the shot animals in the report from the hunt. Animals obtained in this way are used by the poachers for meat, for example, but also for hunting trophies.

It should be added that poachers also include former hunters who have been excluded from a hunting club but have not had their firearms taken away. It is also noteworthy that within the hunting community, some individuals condemn poaching and actively participate in efforts to counter this practice. Law-abiding hunters combat poaching by supporting game wardens' activities, reporting suspicious actions, and educating their peers. This involvement is crucial, as poaching undermines the reputation of the entire hunting community. Hunters' engagement strengthens the effectiveness of anti-poaching measures, as evidenced by data from the Polish Hunting Association, which shows that in 2023, hunters discovered and deactivated 25,192 snares, 400 iron traps, and 769 other poaching devices across 4,429 hunting districts (Polish Hunting Association, 2024).

The respondents indicated that poaching is a practice that is very difficult to detect. The fight against this crime is hampered by the frequent unwillingness of the public to cooperate in it, due to the fact that reporting a crime is often considered as equivalent to denunciation. The employee of the State Hunting Guard pointed out that although it is sometimes possible to obtain information about poaching 'from the field', i.e. from other hunters, for example, as well as from people unrelated to hunting, such as neighbours of the perpetrator, those informants do not want the notifications to be of a formal nature because they do not want to sign them.

The fight against poaching by the State Hunting Guard is carried out, among other things, by conducting patrols, for example in areas indicated by people informally reporting such crimes. Patrols are then conducted jointly with Forest Guard employees or police officers. Routine patrols are also conducted in selected hunting districts, which make it possible to obtain information about offences and also serve a preventive function. Information about the increased presence of guards in an area discourages poachers from undertaking their activities.

The state forestry employee, on the other hand, explained that forestry districts have their own posts, with two to four forest guards employed in each. It is those individuals who bear the greatest burden in terms of the fight against poaching. In order to carry out their duties effectively, they have motor vehicles and firearms at their disposal and also have the powers granted to them by the Forest Law. They obtain information about poaching from their own activities and also from outsiders.

Many hunters adhere to the ethics of hunting and the laws that govern it, and as a gesture of their opposition to poaching, they report the practice to the Forest Guard.

To combat poaching, the Forest Guard uses, among other things, their official vehicles, long – and short-range weapons, night vision devices, thermal-imaging devices, and surveillance cameras (camera traps). When something disturbing or unusual happens 'in the field', the cameras transmit data to a forest guard's telephone. He or she then has a live view of the event and is able to quickly react, intervene, and arrive promptly at the scene of the crime. Camera traps also provide information on where to step up monitoring and intensify patrols, for example showing that an off-road vehicle is driving in a particular forest area at night. With this knowledge, guards can go to the site, start searching for a potential poacher, and plan future inspections.

The fight against poaching is made more difficult by the perpetrators obliterating their traces; very rarely is it possible to catch them red-handed. Poachers plan their actions and know how to avoid liability. They shoot their firearms so that there are no traces and do not gut the game at the place of its capture but quickly take it from there and hide it. According to the employee of the Hunting Guard, 'a poacher enters the forest with nothing, and leaves the forest with nothing because he often stores his tools, weapons, and captured animal in a hiding place in the forest. He does so in order to make detection more difficult.'

According to both respondents, the 'dark number' of poaching offences is very large, definitely much larger than the number of cases disclosed. The perpetrators are caught only sporadically. There are many reasons for this: most importantly, poaching is a crime that is very often committed without witnesses and occurs in a large area rarely visited by people. At the same time, the area is well known to the poacher. Knowing the terrain makes it possible to plan the crime and thus minimize the risk of incurring any liability for committing it. In addition, it is difficult to determine the actual reasons for an animal's death; sometimes it is not clear whether an animal was poached or attacked by predators.

Both respondents agreed that poaching is one of the most difficult offences to detect. Poachers rarely leave clear traces of their actions. Sometimes they leave traces of their vehicles behind them and sometimes witnesses say they heard the sound of shooting; however, these are incidental situations. Moreover, the perpetrators are often equipped with professional equipment such as thermal-imaging devices. In addition, they observe the area, act professionally, and attract the animals to come to a specific location. Sometimes a poacher only needs ten minutes to commit the crime, so even if a witness notifies the relevant agencies, they will not be able to reach the scene of the crime so quickly. Most often, however, this crime has no witnesses, therefore much of the fight against poachers is based on monitoring and organizing ambushes. Detecting a poacher is also significantly hampered by the fact that a large proportion of poachers come from the hunting community, which means that

they have professional knowledge of how to get the animals and at the same time understand how forest and hunting guards work.

An important aspect of the fight against poaching is the cooperation of the Hunting Guard and the Forest Guard with the police. Upon finding that a poaching crime has been committed, hunting and forestry guards notify the police, who conduct all investigative activities to determine the perpetrator. Police officers secure traces, write reports, and collect the tools used to commit the crime and then hand over the collected material to the prosecutor's office. Forest and hunting guards primarily serve the role of experts in the whole process; thanks to their experience and daily direct contact with animals and the terrain, they provide valuable information to the police regarding the operation of poachers and the illegally obtained animals (which are also a loss to the state treasury). Guards are witnesses in the proceedings and can (and often do) act as auxiliary prosecutors.

In addition, the Forest Guard and the Hunting Guard cooperate with the police in various planned prevention activities, with economic crime departments and also with prevention departments and local police units. The Forest Guard organizes preventive and monitoring campaigns, e.g. 'poacher' campaigns, which take place, for example, before holidays, when there is a higher demand for meat. The campaign involves organizing patrols that drive around the hunting grounds and check the legality of hunting; it also takes the form of inspections of vehicles on roads close to the forest to check the compatibility of the hunted game with the documentation. During such campaigns, poachers are often detected and then are either fined (if they have committed a misdemeanour) or pre-trial proceedings are initiated (if it is determined that they have committed a crime). Searches for snares are also organized, and campaigns such as the 'wreath' campaign, concerning the search for people who illegally come into possession of dropped antlers, also take place. In this regard, the guards cooperate with the police, hunting clubs, border guards, fishing guards, and also with municipal guards.

Both respondents stressed in their interview that the fight against poaching is very important but also extremely difficult. It is also hampered by the approach of courts: the justice system often treats poaching cases lightly. In Poland, animal protection is treated by some judges as a manifestation of the 'Bambi syndrome'. Both the State Forests employee and the Hunting Guard employee indicated that the operation of the justice system needs to be improved and that judges need to be more involved in the cases they adjudicate and take animal protection more seriously. Otherwise, the anti-poaching efforts may be useless.

Conclusions

Based on the research, it became possible to solve the research problems formulated at the outset. It should be emphasized that Poland has been implementing the 2030 Agenda for Sustainable Development in terms of the fight against poaching for years. The Agenda highlights the need to combat many human activities that have a destructive impact on the environment, and poaching, which poses a serious, direct threat to wildlife, is one of those activities. Goal 15 of Agenda 2030 indicates the need to fight against poaching; Poland has been successful in achieving this goal, but in order to preserve the achievements so far, the control of poaching must continue.

The analyses led to the conclusion that Poland is effectively combating poaching. However, due to the evolving nature of this activity, continual adaptation of countermeasures and strategies is necessary to ensure the effective protection of wildlife. Those who are legally appointed to fight the crime are alarmed by the justice system's trend of downplaying the poaching problem. Treating poaching as a behaviour that is of little harm to society may cause its escalation, if it leads to poachers gaining a sense of impunity. In addition, such an approach by courts gives the officers who fight this problem an unpleasant and quite hurtful feeling that their work is of little value. After all, by fighting to protect wild animals, they are in fact fighting for the natural environment, which is our common good.

Poaching in Poland is in decline. This is influenced, among other things, by the effective work carried out by officers of the State Hunting Guard and the State Forest Guard, the two primary state agencies that are legally required to combat poaching. To some extent, the effectiveness of their actions is confirmed by crime statistics, which show a decreasing number of detected poaching offences. The guards themselves also confirm that the scale of poaching is going down, but point out other reasons for this, such as the better financial situation of Polish society compared to 10 or 20 years ago, as well as a change in young people's interests, greater ecological awareness, and increased activity by pro-environment organizations. Nevertheless, poaching still occurs, and perpetrators sometimes use new technologies to commit it; this is why it is so important to provide the relevant government agencies with modern high-tech equipment.

In the fight against poaching, it is very important to take action 'on the ground' – observation and patrols, as well as contacts with local residents of the area and with the hunting community. Prevention campaigns organized together with the police also bring positive effects. Educational activities are also of great value, especially those intended for children and adolescents, who, after all, will in the future assume the burden of responsibility for the environment in which they live and in which they will raise their own children.

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Bialystok Legal Studies
Białostockie Studia Prawnicze
2024 vol. 29 no. 4

sciendo

DOI: 10.15290/bsp.2024.29.04.07

Received: 11.04.2024
Accepted: 4.11.2024

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Understanding the United Nations Sustainable Development Goals in the Context of Safety and Security for Rural Communities[1]

Abstract: This article examines challenges to the study of rural crime and criminal justice through the lens of the United Nations Sustainable Development Goals (SDGs). It emphasizes that the rural population of the world and within many countries is a significant share of the total, even though urbanization will inevitably continue through the remainder of the 21st century. Contrary to longstanding stereotypes, especially those found in criminology, rural places are quite diverse. In addition, rural localities everywhere are changing, and with these changes emerge important issues related to the safety and security of rural populations. All 17 SDGs are discussed within the context of crimes that affect rural people and their perceptions of safety; we examine what rural criminology can do to help criminal justice policymakers and practitioners focus strategies and tactics suitable for a rural context.

Keywords: community, criminological theory, fear of crime, rural crime, rural criminology, safety and security, United Nations Sustainable Development Goals

1 This work is the result of research project No. UMO-2021/43/D/HS5/01645 funded by the National Science Centre.

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Introduction

Something historic occurred in 2007, an event that had never happened before in the history of humanity. For the first time, the majority of the world's population became urban, an unceasing trend that continues to this day. According to World Bank estimates, the rural population has now declined to 43%, and there is no end in sight to this downward trend (World Bank, 2018; United Nations, 2018). England was the first country to reach urban-majority status, in 1855, during the early years of the Industrial Revolution, which makes sense because this was where the Industrial Revolution mostly started (Wrigley, 1985). The United States was likely second, with 1917 estimated as the year for its shift to an urban-majority population status; today, its rural population has declined to only 17% (U.S. Census Bureau, 2016). Poland joined the urban-majority club in the mid-1960s, with a rural population today of about 40% (Statistics Poland, 2024), which closely matches the trend for all countries located in Central and Eastern Europe.

It may seem odd to begin an article on criminological concerns about safety and security in rural localities within the context of the United Nations Agenda for Sustainable Development with a description of the way the world has urbanized, but urbanization is a reality that must be recognized because it is the background within which this discussion must occur. There are three immediate and highly important points to be made. First, rural populations have not stopped growing; they are simply not growing as fast as the number of people who live in urban places. At 17%, rural America's population is approximately 56.66 million, and if it were counted as a separate country, it would rank in the top 25 in the world by size. Rural America alone is approximately the same number of all the people who live in Italy. Poland's rural population is 15.3 million, a number that surpasses the total populations of such countries as Belgium, Greece and Sweden. Altogether, the rural population for all countries of the world is 3.42 billion out of a total population of 8.1 billion. What we mean by rural is certainly not insignificant, and across every continent except Antarctica, there are millions of rural communities, impossible to count precisely, that are the diverse locales where crime and fear of crime affect the safety and security of these non-urban citizens (Meško, 2020, pp. 3–13; World Bank, 2022).

Second, the unrelenting pace of urbanization has real implications for the safety and security of rural communities, because transportation systems and communication infrastructure tie together the rural and urban populations of every country. The welfare of the rural sector depends on the welfare of the urban sector, and vice versa. Hence a focus on the safety and security of rural communities and rural people in relation to the United Nations Sustainable Development Goals (SDGs) is essential to fully explicating the link to the field of criminology and criminal justice.

Third, it can be argued that rural populations are unique, and therefore so are the issues of their safety and security. This would not be a correct assumption, however,

despite the vast diversity of rural places. Rural communities have at least one thing in common, regardless of what region of the world is referred to: smaller, less dense populations (Donnermeyer, 2015, pp. 161–162). It is this characteristic which in turn affects their various economic, cultural and sociological dimensions (Wilkin, 2022, pp. 11–27). From these simple features of places with smaller populations and lower population densities follow some other distinctive characteristics. Rural communities tend to have a higher density of acquaintanceship (Freudenburg, 1986, pp. 29–30), display more cohesive networks and possess values that are more traditional when compared to urban places. These distinctions may be true for a great number of rural places, but not all, hence the criminological community must be cognizant of the diversity found within such populations and not adhere to a falsity that they all look alike (Ceccato & Abraham, 2022, p. 10). One of the myths about rural areas is that they are safe places to live, but it would be wrong to assume that rural people are not faced with real concerns about safety and security, concerns that speak directly to various UN SDGs.

1. Rural criminology

Rural criminology is the study of crime and criminal justice as they are expressed within the context of places with smaller populations and population densities, that are not contiguous with more populous places. As a sub-field within criminology, its development accelerated in the mid-1990s with a first synthesis of literature and in the first two decades of the 21st century with the founding of the *International Journal of Rural Criminology*, the establishment of the Division of Rural Criminology in the American Society of Criminology, the European Society of Criminology Rural Crime Working Group and the International Society for the Study of Rural Crime (Donnermeyer, 2019). More recently, an *Encyclopedia of rural crime* has been published (Harkness et al., 2023). In Poland, rural crime and criminal justice studies are sparse, except for the recent work of Jurgielewicz-Delegacz (2023; n.d.), Terelak & Kołodziejczak (2023) and Kołodziejczak et al. (2019).

Over the years, many rural criminologists have warned against dichotomous thinking, such as urban versus rural, because it masks the diversity found in both the countryside and cities (Ceccato, 2016, pp. 31–33; Donnermeyer, 2015, pp. 162–163; Wells & Weisheit, 2004, pp. 19–20). As Ceccato and Abraham rightly observe: 'Rural areas are heterogeneous entities, and thus the search for a singular definition of the rural is illusory […] the idea of the "rural" as a homogeneous environment is commonly fueled by mediated, streamlined images of what the "rural" is expected to be' (2022, p. 2). Donnermeyer (2019) advocates for a definition of rural that is based solely on population size and/or population density (and not next to an urban centre). There are no other essential characteristics, hence all other cultural, economic and

sociological features are left as variables, depending on the location (Stanny, 2014). It should also be added that past dichotomies not only stereotype rural communities, but marginalize rural studies within the field of criminology.

In their monograph, Ceccato and Abraham (2022, p. 10) discuss several key points about rural communities and the diversity of non-urban environments that are important to any consideration of the UN SDGs. First, all rural areas are continuously changing (Bukraba-Rylska, 2008). They are not static, and they are influenced by many different kinds of external forces – demographic, economic, cultural and social. For example, agriculture, an occupation synonymous with the rural, is a smaller and smaller occupation of the rural population of most countries (Jurgielewicz-Delegacz, 2023, pp. 484–485) and of their economies as measured by such indicators as gross domestic product. Compared to only two generations ago, farms are much larger, more mechanized and increasingly reliant on computer technology, yet are more central to a country's food security because it is more dependent on fewer people to grow crops, vegetables and fruit or raise animals for meat than in years past (Gray, 2018, pp. 12–16). Yet farms are also increasingly crime targets because of these expensive production inputs.

Ceccato and Abraham (2022, pp. 12–13) make two other key points of particular importance for this article. One is that crime is influenced or contextualized by the very nature of rural areas. Kołodziejczak et al. (2019, pp. 94–95), for example, found high rates of domestic violence (about 40%) against seniors in rural West Pomerania. Further, senior victims of violence were likely to experience multiple victimizations across a variety of types, such as psychological violence (being blamed for everything by younger family members), neglect (negligence in providing care when they are ill and/or family members who are uninterested in their welfare), economic violence (such as being forced to give money to younger family members) and physical (non-sexual) violence (pushing/shoving, slapping and kicking). The victims are more often women than men; this is apparent from research carried out in rural areas of West Pomerania on domestic violence against older women. The survey results show that more than 40% of older women report experiencing domestic violence. The scale of this phenomenon justifies asking questions about both the quality of life of older people and the patterns of everyday family life. It is important to note that if violence on the part of the closest relatives is present in the everyday experience of such a large category of senior women, it can be assumed that the phenomenon is in some way included in the existing social order and cultural patterns associated with it. Traditional patriarchal values and patterns of intra-family relations are still present in rural communities in Poland. In the mentality of rural women, the permanence of the family is perceived as crucial, and the well-being of the family is more important than their own well-being (Terelak & Kołodziejczak, 2023, p. 259).

Another key observation made by Ceccato and Abraham (2022, pp. 13–14) is that perceptions of safety and security among rural populations are quite uneven, an observation also made by Meško (2020). It is commonly believed that rural people feel safer than city dwellers, an overgeneralized statement that reflects stereotypical images of rural areas as 'idyllic' places that are apparently peaceful and quiet (Donnermeyer, 2023, pp. 117–118). Yet rural criminological research says otherwise. For example, DeKeseredy's (2021, pp. 7–22) synthesis of the literature on violence against rural women noted the link to strong norms of patriarchy, which is associated with localities that exhibit cohesive relationships among its residents but that are certainly not crime-free. Although these rural communities may appear peaceful to a visitor from the outside, they are not to many of the women (especially wives and girlfriends) who live there. The point is that the same set of cohesive social relationships in rural community environments might deter some crimes but encourage others. Likewise, in a recently published volume edited by Ceccato and Harkness, with chapters that explore the safety and security of rural populations in 18 countries from Kenya to Sweden, they remind readers that 'the study of fear of crime has traditionally been explored through an urban-centric lens in criminological literature, predominately emphasizing theoretical frameworks and specific forms of victimisation. The approach has often neglected to address the unique issues and challenges related to victimisation in rural contexts' (2024, p. 6).

2. Criminological theory and place

With these considerations in mind, let us focus more directly on the UN SDGs in relation to crime, safety and security within rural places around the world. It is the very diversity of places that underlies the UN's statements of sustainability for both rural and urban locations. Consider, for example, the eleventh goal, the most obvious in relation to the concept of community. It states: 'make cities and human settlements inclusive, safe, resilient and sustainable' (United Nations, 2023). Even though it singles out 'cities', it does also say 'human settlements', which includes all communities, both large and small. A 2001 UN report defines a human settlement as a 'distinct population cluster […] in which the inhabitants live in neighbouring sets of living quarters and that has a name or locally recognized status', including 'fishing hamlets, mining camps, ranches, farms, market towns, villages, towns, and cities' (United Nations, 2001, p. 13). Even that report, which is woefully inadequate because it provides information from only 67 countries and fails to count settlements in Brazil, China, Egypt, Great Britain, India and many other countries, shows that of well over two-thirds of a million human settlements, the vast majority (about 88%) are considered rural.

It is assumed that urban places contain more diverse populations than rural places. That may be the case, given their much larger populations (Ceccato

& Abraham, 2022, pp. 10–11; Donnermeyer & DeKeseredy, 2014, pp. 6–7); however, it can be argued that across the millions of rural places found around the world, there is more diversity than in the urban realm. Certainly, a small village may have little diversity within it, but comparatively with other rural places, there may be as much if not more diversity. A village in Brazil dependent on the production of cassava can display a different set of characteristics than a small town in the middle of the corn-producing state of Iowa in the US, and both are very distinct from a hamlet in Poland surrounded by dairy production. With differing rural contexts, how do expressions of crime and peoples' perception of safety, the police and the criminal justice system in general vary? How do these contexts challenge the ways that issues related to the SDGs should be understood?

When we think about what a community is, whether for research or for planning various criminal justice services, we should first start with a concept of the community and then understand the context of crime, safety, security and sustainability within it. For too long, criminologists and criminal justice scholars have first considered issues of crime, and then in an ad hoc fashion have built frameworks around community to understand the context of these issues (Donnermeyer & DeKeseredy, 2014, pp. 15–18; Kaylen & Pridemore, 2012, pp. 135–137). It is like the centuries-old idiom 'putting the cart before the horse', that is, starting with the wrong end of things. We have various popular criminology theories that illustrate this idiom, such as:

1) The theory of collective efficacy, which assumes that within specific places, neighbours express shared expectations of what is acceptable (considered conforming) or not acceptable (considered deviant/criminal), which in turn reduces crime and improves safety and security. Yet we also know that localized values, norms and beliefs (i.e. culture) may tolerate and even encourage criminal behaviour, such as poaching (Holmes, 2016, pp. 309–313) and violence against women (DeKeseredy, 2021 pp. 65–66).
2) Hotspot or crime pattern theory, that is, the occurrence of crime is not random spatially or temporally but based on the interplay of identifiable characteristics of specific places. This theory (Lilly et al., 2015, pp. 373–375) is built almost solely on considerations of urban places and is rarely applied to rural contexts, for example the specific locations on farms where property crimes are most likely to occur (Donnermeyer, in press).
3) Routine activities theory, that is, crime occurs through the convergence in space and time of an offender and a target (either a person or a property) in which the offender perceives an opportunity for the successful commission of the offence (Lilly et al., 2015, p. 360). Yet this theory does not consider larger social forces that impact smaller, rural communities, such as the many smaller places which have suffered economically through deindustrialization.

4) Social capital/network theory, which postulates that both conforming and criminal behaviours are learned through networks of individuals within a community (Deller & Deller, 2011 p. 330) but ignores networks that often extend outward to various extra-community groups, such as the connectedness of organized crime across communities and across the borders of countries. This is particularly true for issues of drug production and misuse, and for many other offences as well.
5) Social disorganization theory, which assumes that social control breaks down and crime goes up with particular characteristics of places, such as high rates of poverty or a high proportion of single-parent households. Even though this theory is the most frequently applied to the situations of crime in rural communities (Donnermeyer, 2015, pp. 160–161), the rural results are often inconsistent with the assumptions of the theory (Kaylen & Pridemore, 2012, pp. 145–146), demonstrating a need for substantial revisions and perhaps replacement of the theory.
6) Subcultural theory, which explores how deviant and criminal groups emerge from specific urban neighbourhoods, often along lines of race, ethnicity, immigration status, social class and other social structural factors (Lilly et al., 2015, pp. 72–75). This theory is rarely used to examine the contexts of rural populations, such as gangs and right-wing / neo-Nazi groups, among others.

Perhaps it is better to reverse the order of how issues of crime, safety and security are framed, hence improving our criminological eyesight, especially as we see the challenges of sustainability. As humans, we think in terms of frameworks. For example, the universe looks different to us today because of Copernicus and his influence on astronomy from the Renaissance up to the present time. The same is true for criminology and criminal justice scholars. Frameworks are important because they are our reality; they serve as the parameters within which we make decisions about how to conduct research, how to interpret the data and how to recommend criminal justice policy and practice.

The criminological community should now recognize that social disorganization, the most popular theory applied to rural contexts, does not exist, but there are indeed forms of social organization that are associated with variations in crimes. The logic of social disorganization theory (and the theory of collective efficacy) is likely wrong, that is, there is no such thing as disorganization, only forms of organization as expressed by various economic, cultural and social factors, no matter how slowly or rapidly they may change (Donnermeyer & DeKeseredy, 2014, pp. 8–10). It is time to build a new view of our criminological universe, which begins with the idea of what a community is, without reference to crime issues, and then apply it to crime.

The UN report on settlements provided the beginnings of a good definition of a community when it recognized that people who live close by each other are more

likely to interact than with people who live farther away (density of acquaintanceship), and they identify the locality with a name that is presumably shared by everyone. This is a classic social science statement of a community (United Nations, 2001, p. 13). In other words, humans turn a 'space' into a 'place' through their beliefs, values and interactions with each other, creating consequences, including if it is a safe or a not-so-safe place (Liepins, 2000, pp. 23–24).

How does all of this variation come about, and why is it important to criminologists and criminal justice practitioners? All definitions of a community devised by social scientists over the past 100+ years have engaged with the idea that places have some essential, that is, universal elements. The three universal elements are practices, meanings, and spaces and structures (Liepins, 2000, pp. 28–31); they create the contexts within which individuals behave. Because they mutually influence each other, there are six possible ways that community-level expressions of crime and perceptions of it can change, whether slowly or rapidly. Further, they provide six possible ways that criminologists can visualize frameworks for how we think about crime, safety and security in various rural contexts (Liepins, 2000, p. 30).

First, meanings (values and beliefs) legitimate practices, defining what is deviant and what is not. In many rural places, poaching is not considered illegal by the people who live there and may even be seen as a type of heroic opposition to the state. Second, practices enable the circulation and challenging of meanings. For example, especially through social media outlets nowadays, stories about crime which often occurred at distant places, many miles from where rural populations live, greatly influence how they define their own safety and security. This phenomenon is often referred to as vicarious victimization. Third, practices (that is, human behaviour) occur in spaces and through structures, and in turn shape those spaces and structures. We see this in the variety of architecture in various countries, and even graffiti on buildings is an example of this. Fourth, spaces and structures affect how practices can occur, that is, both natural and built environments influence how humans use space. We may perceive some places as dangerous and other places as safe; the Crime Prevention Through Environmental Design (CPTED) and Broken Windows theories recognize this relationship (Lilly et al., 2015, p. 359). Fifth, spaces and structures enable the materialization of meanings, which is why we put up Neighbourhood Watch signs and signs identifying where the police station is located. Finally, meanings are embodied in spaces and structures. For example, those same signs are intended to give people a sense of safety, not merely to ward off possible thieves and burglars. It is within the multitudinous, nearly infinite, contexts created by the interplay of these six community-level dynamics that the issues of sustainability in relation to crime and its impact on rural people and rural communities can be considered.

3. The UN Sustainable Development Goals and challenges for rural criminology

Blaustein et al. (2018, pp. 768–769) make important claims about the UN SDGs: first, that they are not entirely suitable for solving the problems of development found in countries of the Global South, most of whom have populations that are more rural than most countries north of the equator. Second, they chide UN policy initiatives for focusing largely on the security of various countries and regions, especially in areas where there were recent conflicts, ignoring broader criminological issues of safety and security from crime. Their observation is germane to both rural and urban populations. Here is how each of the goals pertains to an understanding of crime in a rural context.

Goal #1: *End poverty in all forms everywhere.* Crime impoverishes rural people, both by taking away economic resources necessary for sustaining their quality of life according to their cultural standards and by constraining entrepreneurship necessary for future forms of economic development that they wish to achieve. Rural poverty can be of a different nature when compared to urban poverty, because the former is usually associated with limited satisfaction of cultural and educational needs and a restricted scope of leisure activities and transportation options, while the latter is associated with housing requirements and the realization of current needs such as hunger (Donnermeyer, in press). Kaylen and Pridemore (2012, pp. 136–138), in their study of rural communities in the US, noticed that poverty does not necessarily have the same link to crime. Is it possible the same is true in other countries? That is the challenge for rural criminology: to examine the causal link of poverty and rural poverty, which in turn will help define more appropriate programmes and policies for a rural context.

Goal #2: *End hunger, achieve food security and improved nutrition and promote sustainable agriculture.* Food producers the world over are frequent victims of crime, with negative economic, emotional and physical costs for them and the well-being of their families (Smith, 2020, p. 525). Countries like Poland and the United States, for example, are concerned about food security and attempt to develop nationwide policies that address the fundamental needs of citizens.[2] As agriculture has

2 Poland and many European Union countries have seen an increase in farmer protests in 2024. One of the reasons for the protests is opposition to the European Green Deal; farmers criticize its requirements, which they see as excessive and unworkable, and fear that the introduction of these changes will lead to a significant increase in production costs (putting a big question mark over the profitability of their production) and a decrease in the competitiveness of Polish agriculture on the European market. It is also worth mentioning other demands that emerged during the protests, such as stopping the import of agricultural products from Ukraine. Polish farmers stress that the agricultural sector is struggling with the consequences of Russia's attack on Ukraine, which has led to an increase in exports of Ukrainian agricultural products to the EU (Donaj et al.,

industrialized, farms across the world and of all types have become more attractive targets for crime (Osborne & Swartz, 2021, pp. 4–5). Rural criminology must continue to research the key characteristics of the vulnerability of agricultural operations to crime and its effects on the sustainability of those in the profession of growing food and raising livestock. Goal #2 also refers to hunger, so it is worth considering whether rural criminologists should investigate the relationship between poverty, hunger and, for example, juvenile delinquency in rural areas. After all, it is known that poverty and hunger can lead children (and even adults) to seek illegal sources of income, such as petty theft, prostitution or begging (Redo, 2019, pp. 868–870).

Goal #3: *Ensure healthy lives and promote well-being for all at all ages.* Crime is costly to all rural people and reduces trust, cohesion and mutual support among those who live in rural communities (Ceccato & Harkness, 2024, p. 4). Strategies that improve access to justice for rural people, and the provision of adequate police and other criminal justice services, are essential to healthy lifestyles and secure places to live. In an age when a great share of rural residents receive their news through social media outlets, rural criminology must press forward with research on the ways that rural people perceive the criminal justice system, especially law enforcement.

Goal #4: *Insure inclusive and equitable quality education and promote lifelong learning opportunities for all.* Social science research consistently finds that rural places which provide adequate educational services are also places where locally owned businesses are more likely to exist, hence strengthening identity with a place and reducing crime (Czyżewski & Polcyn, 2016, p. 199). Without high-quality education, entrepreneurship can be impaired, especially in relation to computer technology; rural populations descend to subsistence-level lifestyles, may become more vulnerable to crime and may become more likely to join in organized criminal activities to provide for their families (McElwee et al., 2011, pp. 45–46).

Goal #5: *Achieve gender equality and empower all women and girls.* In many parts of the world, both rural women and girls are disproportionately affected by crime, especially as victims of domestic violence and human trafficking, perpetuating gender inequality (DeKeseredy, 2021, p. 18). In Poland, the idea of 'rural housewives' associations' was reborn several years ago. These are voluntary, independent and self-governing social organizations that support the development of entrepreneurship in the countryside and actively work for the benefit of rural communities (Szczepańska & Szczepański, 2019). They support the advancement of rural women's entrepreneurship and develop local and regional folk culture, keeping Polish

2023). The blockade of ports on the Black Sea and the Sea of Azov has forced Ukraine to look for new export routes, resulting in an increased flow of its products to the Polish market and a fall in purchase prices for Polish products. Farmers see imports from Ukraine as a threat to the stability of the internal market and to Poland's food security; they are calling for restrictions or controls on these imports to ensure fair competition and protect domestic production.

traditions alive. Indeed, they are forms of social capital and collective efficacy that build sustainable communities, and with proper research, these kinds of empowering associations in Poland and around the world can be proven to reduce crimes against rural women and girls. Hence, one opportunity for rural criminology is to determine the extent of a positive association between empowering associations and less crime, and if there are greater benefits for women and girls.

Goal #6: *Ensure availability and sustainable management of water and sanitation for all.* Climate change and population growth strain water resources, promoting land and water theft that threatens the well-being of rural people (Eman & Gorazd, 2021, pp. v–vi). In addition, safe drinking water is essential to the health of any population. As of 2018, the entire area of Poland has been included in the so-called 'Action Programme', aimed at reducing water pollution by nitrates from agricultural sources and preventing further pollution. This includes a set of recommendations for good agricultural practice to protect waters from pollution by nitrates, including a set of voluntary rules and practices for fertilizer storage and nitrogen fertilization, as well as the most important aspects of farm management that contribute to reducing water pollution. In Poland and across the globe, understanding farmers' motivations for compliance or opposition to environmental regulations should be near the front of the research agenda for rural criminology.

Goal #7: *Ensure access to affordable, reliable, sustainable and modern energy for all.* There is an established empirical link between resource-extractive industries and other forms of energy development located in rural areas and increases in drug use, prostitution, violent crime and property crime (Ruddell, 2017, pp. 79–88). Energy development will be an issue that impacts rural populations, perhaps more so than urban populations, where energy supply may be more important but the source of the energy less so. Regardless, past rural criminological research has established a link between energy and crime, in part because energy development is owned and controlled by corporate enterprises headquartered in cities that may not have an interest in the health and welfare of the rural people who live in the area.

Goal #8: *Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.* Many rural communities suffer from high rates of unemployment, part-time employment, low wages and poverty, all of which are associated with higher rates of substance misuse, violence and many other forms of crime (Donnermeyer, 2015, pp. 162–163). Unemployment is very often associated with transportation exclusion, with those affected finding it difficult to get a new or better-paying job (Kaczorowski, 2019, p. 12; Żukowska et al., 2023, p. 10), as this would often involve daily commuting to larger urban centres. The low or complete lack of provision of public transport makes it difficult for people to move around and prevents them from reaching their place of work, or makes it more expensive. This results in an increase in the level of unemployment in rural regions (Kuciaba et al., 2013, p. 14). Moreover, it is also worth mentioning that low occupational mobility for

many rural people, and the lack of new jobs, is related to computer technology that impacts various economic enterprises through automation, perhaps more adversely in manufacturing, agriculture and other economic sectors found more prominently in rural settings. Rural criminology needs to continue to explore these economic impacts on crime.

Goal #9: *Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation.* Too often, economic and infrastructural developments in rural communities lead to increases in crime, both violent and property crime, the impacts of which are not assessed when infrastructural, industrial and other types of economic development are proposed for rural localities (Ruddell, 2017, pp. 13–15). Infrastructure is multi-dimensional, including roads/transportation, community services such as sewage treatment plants and waste recycling, digital technologies and much more. However, with improved technologies comes the greater possibility of new residents who live in rural localities but commute to work or simply work at home. Criminology has long established the link of population turnover with crime (Kaylen & Pridemore, 2012, pp. 138–141), and this link should be explored more fully by rural criminological researchers, as new economic developments change the volume and kinds of individuals who move into and out of rural towns and villages.

Goal #10: *Reduce inequality within and among countries.* Often, crime in the rural regions of many societies is an unfortunate heritage of colonialism, racism, forms of apartheid and other long-term inequities (Donnermeyer, in press). Economic development itself, if the enterprises are owned in absentia and not by residents of the area, may display similar impacts to historic forms of colonialism. Refugees and émigrés from other countries due to war, revolution and even natural disasters, such as Ukrainians moving to Poland, may impact many rural communities and the long-term residents who live there. New workers in an area may change levels of inequality, especially economically. Within rural settings, how are these developments related to changes in perceptions of safety and in the kinds of criminal activities that occur there?

Goal #11: *Make cities and human settlements inclusive, safe, resilient and sustainable.* Broader social, cultural and economic trends continuously change rural places (Błąd, 2022) and can negatively influence perceptions of safety and security among their inhabitants. A great deal of past rural criminological research is locality-based, that is, case studies from a single community or a single region. The importance of developing a new theory of rural crime and place is fundamental to providing a theoretical framework by which more comparative scholarship that synthesizes these diverse studies can be carried out, and thereby generalizations across diversity of place can be discerned (Donnermeyer, 2015, pp. 160–163).

Goal #12: *Ensure sustainable consumption and production patterns*. As the economies of rural communities change, so too do the consumption patterns of its inhabitants, and unfortunately, many rural communities are now dependent on illegal

production activities (such as drug production, trafficking of flora, fauna and people, and poaching, among others), especially as the lack of employment opportunities and poverty increase. Drugs and poaching, for example, were not ways of life for people in these rural places only a generation ago, but times have changed (Garriott, 2011, pp. 25–26). One key area where sustainability is important is food production. The formation of national sustainable food systems that increase production, strengthen agriculture's ability to adapt to climate change and extreme weather events, and improve soil quality is fundamental to the welfare of rural people and communities. In turn, these systems are the backdrop against which issues of crime and safety occur. The challenge for rural criminology is to show the link between the two empirically.

Goal #13: *Take urgent action to combat climate change and its impacts*. Rising sea levels, desertification, permafrost thawing and other impacts of climate change on the land and in the seas modify the ways of life of people in thousands of rural communities, re-organizing established patterns of living. Agriculture makes a large, though not always recognized, contribution to greenhouse gas emissions and thus affects climate change. It can also perform many useful functions related to the state of the natural environment and climate protection by changing production methods, protecting and restoring biodiversity, proper water management, reducing food waste, etc. Proposals contained in the European Green Deal address policies on climate, energy and transportation and the introduction of new fees for greenhouse gas emission rights in land, sea transport and housing. This package aims to modernize EU climate legislation for 2030, in favour of transformational changes in the economy, society and industry, so that climate neutrality can be achieved by 2050 and net emissions can be reduced by at least 55% (compared to 1990) by 2030. There are criminological dimensions to any kind of economic and social change; a challenge to rural criminology will be to 'scope out' (Smith & Byrne, 2017, p. 192) how these initiatives may affect levels of crime, the kinds of crime that occur and perceptions of safety among rural people.

Goal #14: *Conserve and sustainably use the oceans, seas, and marine resources for sustainable development*. Marine life is an important source of food, livelihood, cultural heritage and fundamental security for many rural communities, all of which are threatened by poaching and other exploitative extractive practices both by rural people and those from the outside (Donnermeyer, in press). The shorelines of the world are mostly rurally located, and many rural people have relied for centuries on the harvesting of marine animals as their major food source. As mentioned in Goal #13, how will climate change, and legislation to mitigate its effects, possibly impact these rural localities in terms of crime, safety and security? How will rural criminology contribute to forecasting these changes?

Goal #15: *Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and reverse land degradation and halt biodiversity loss.* Poaching, the theft of livestock, land and water theft, ethnic

and tribal conflicts, and a host of other illegal and harmful practices threaten the safety and security of people who live in rural regions throughout the world. Threats include the decline in the biodiversity of rural areas, including, among other things, the reduction in the natural value of areas where agricultural production has been abandoned, which played an important role for the environment. Plus there are the adverse impacts of climate change on rural development opportunities (droughts, violent weather events). It is incumbent on rural criminology to acquire a more thoroughly 'green' perspective on these threats to the sustainability and welfare of rural people (Blaustein et al., 2018, pp. 779–781).

Goal #16: *Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels*. The centralization and relocation of criminal justice resources to cities will likely increase crime, diminish access to justice and increase concerns about safety and security for rural people around the world. For example, in Poland, courts function only in cities; there are no courts in villages. In the past, policing styles have often differed between cities and smaller places. Will this change with centralization, and what will its effects be for the welfare of people who live in rural communities?

Goal #17: *Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development*. Rural criminologists, police who work in rural settings and other rural-focused criminal justice practitioners must continuously share their research and their proposed solutions for reducing crime and increasing the safety and security of rural people for there to be real, sustained development in their communities (Meško, 2020).

Conclusion

There are several points made in this article. First, the rural population of the world, and of individual countries like Poland and the United States, is large, and therefore significant to the study of crime and to the ways that change impacts crime, safety and security. Without understanding change, we cannot hope to likewise understand how the SDGs potentially apply to rural communities. Second, rural communities have always changed and will continue to; this impacts the welfare of rural populations everywhere. Third, in order to advance the study of rural criminology, especially in relation to a discussion of the SDGs, it is necessary to adopt a sound theoretical framework that begins with the concept of community to understand the context of crime and to provide for comparative work on rural populations from various localities. Although the general field of criminology offers a variety of place-based theories, they each have their shortcomings. An alternative theory of community was offered around which the SDGs can be addressed in terms

of crime, safety and security. Finally, with each of the 17 goals, there are implications for how rural criminology should focus its scholarship.

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Bialystok Legal Studies
Białostockie Studia Prawnicze
2024 vol. 29 no. 4

sciendo

DOI: 10.15290/bsp.2024.29.04.08

Received: 17.01.2024
Accepted: 4.11.2024

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Student Safety in Educational Facilities in Light of Goal 4a of Agenda 2030

Abstract: In order to fill this research gap, the authors undertook an analysis of the problem specified in the title in the context of public elementary schools in Białystok. First, a dogmatic approach was taken, which involved a detailed analysis of selected provisions of educational law. Second, an empirical approach was applied by reviewing documents in the form of statutes from 44 out of 47 elementary schools, focusing on the degree of implementation of the United Nations 2030 Agenda for Sustainable Development, Goal 4a. The research was based on criteria developed by the authors, grounded in the available literature, which focused on four key aspects considered essential for assessing the level of achievement of the stated goal. These criteria include ensuring the physical and psychological safety of students, internal and external aspects of security, safety education, and cooperation of schools with institutions charged with the provision of safety. The analyses partially confirmed the hypothesis that the examined national regulations and the statutes of public elementary schools are only minimally aligned with SDG 4a. These findings shed light on the existing theoretical and practical challenges related to the effective implementation of international educational standards at the local level and may serve as inspiration for further research.
Keywords: safety, school, security, sustainable development goals

Introduction

Schools are places where students spend a significant part of the day. It is there that they acquire knowledge, as well as undergo the process of education. Parents,

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entrusting their children to teachers, believe that schools will guarantee their children's safety and a high-quality education (infuture institute, 2023, p. 22). This expectation, which is universal and basic, is explicitly expressed in Goal 4a of the 2030 Agenda for Sustainable Development's Sustainable Development Goals (SDGs), adopted in 2015 (United Nations, 2015). It stipulates that by 2030, educational facilities should be built and improved so that they are safe, non-discriminatory, and accessible to all, especially to children, people with disabilities, and people who are members of vulnerable social groups. Unfortunately, there is a lack of scholarlystudies on the degree of implementation of this SDG in individual countries (Ferguson & Roofe, 2020, p. 959; Shabalala & Ngcwangu, 2021, p. 1573; Singh & Singh, 2022, p. 11685). This problem has also not been noticed in the implementation of the SDGs in Poland (Ministry of Development & Technology, 2023, pp. 79–82). At the same time, there are also reports that, due to global megatrends, it will be impossible to achieve these goals within the assumed timeframe (infuture institute, 2023, p. 9).

The subject of the research presented here is the safety of students in schools. Its aim is to develop scientific knowledge about methods of implementing SDG 4a in ensuring this safety and the degree to which they are implemented. It should be noted that this is the first study of its kind in Poland and is exploratory in nature; it focuses on selected Polish regulations which are generally applicable and on the statutes of public elementary schools in the city of Białystok that are based on these regulations.

The primary research problem is: What is the degree of alignment between the regulations analysed and SDG 4a concerning the safety of educational facilities (in elementary schools)? For the purposes of the study, the hypothesis was formulated that the analysed regulations at the national level and the statutes of public elementary schools are only minimally aligned with SDG 4a. To verify this, a dogmatic analysis of selected regulations in force as of December 2023, during the research phase, was conducted. This analysis focused on the 2016 Education Law and the 2002 Regulation on Safety and Health in Public and Non-Public Schools and Institutions. It aimed to determine the extent to which internal legal acts in schools, specifically statutes, addressed provisions related to student safety at that time. (Consequently, the study excluded the amendment to the 13 May 2016 Act on Preventing Sexual Crime and Protecting Minors, which came into effect on 15 February 2024, after the research was conducted.) For this purpose, the document analysis method was applied, examining 44 of the 47 available statutes of public elementary schools in the city of Białystok (Białystok Oficjalny Portal Miasta, n.d.).

1. Dimensions of student safety at school

The literature on this subject discusses many typologies relating to the dimensions of safety in education, which certainly go beyond just the aspect of physical safeguards

to encompass emotional, psychological, and educational aspects, which are key to ensuring holistic safety in educational institutions. In the context of the implementation of SDG 4a, safety in education can be linked to the following dimensions:

- Physical safety: Ensuring that educational institutions are safe from physical harm, such as natural disasters, violence, and accidents. This includes implementing security measures such as surveillance cameras, security personnel, and access-control systems (Díaz-Vicario, 2017, p. 307).
- Emotional and psychological well-being: Providing a supportive environment that promotes the emotional and psychological well-being of students, teachers, and employees. This can be achieved through counselling services, peer support programmes, and creating a positive school culture (Díaz-Vicario, 2017, p. 309).
- Safety of persons: Ensuring the safety of teachers, employees, and students in educational institutions. This includes providing training in safety procedures, emergency responses, and conflict resolution (Díaz-Vicario, 2017, p. 307).
- Community engagement: Encouraging open communication between schools, students, parents, and community members to identify potential safety concerns and address them promptly (Write, 2019, p. 423). Schools should cooperate with local authorities and institutions responsible for safety to ensure effective protection of students and school personnel.
- Safety education: Educating students and the school community about safety is also an important element. This could include training on procedures to follow in emergencies, first aid, and hazard awareness (Kitamura, 2019, p. 221).

Considering the above aspects, dimensions, and types of safety in education, schools can consider them when creating a safe and inclusive learning environment that supports the achievement of SDG 4a.

2. Implementation strategies for SDG 4

General strategies for creating a safe educational environment can include, for example (Flannery et al., 2021, p. 237; Zhu & Reed, 2023):

- Creating a positive school culture that promotes respect, inclusion, and tolerance and discourages bullying, harassment, and violence.
- Encouraging open communication between teachers, administrative staff, students, and parents to identify potential safety and security concerns and to promptly resolve them.
- Developing and enforcing clear policies and procedures to be followed during emergencies such as natural disasters, medical emergencies, and incidents involving the use of violence.

– Providing training for employees and students on safety and security procedures, including how to respond to emergencies.
– Implementing technical safety and security measures such as surveillance cameras, security personnel, and access-control systems to prevent unauthorized access to school premises.
– Providing mental health support services for students who may have emotional or psychological problems.

3. Selected aspects of legislation concerning student safety at school in Poland

It should be stated that, at the end of 2023, there were 41 pieces of legislation (acts and regulations) that addressed the issue of safety at school, broadly defined (Portal Oświatowy, n.d.). Due to the limited scope of this paper, the most relevant solutions to the problem under study are indicated here synthetically, in relation to physical and psychological safety, internal and external security, issues of safety education, and schools' cooperation with institutions responsible for safety, which are characterized in second paragraph of this paper.

3.1. Act of 14 December 2016 – Education Law

According to Article 1 of the Education Law (EL), the purpose of the educational system in Poland is to promote the full development of students, including in the physical, emotional, intellectual, spiritual, and social spheres. Schools are required to maintain safe and hygienic conditions for learning, upbringing, and care (Article 1(14)). This means they are required to diagnose, monitor, and solve students' problems, including those that threaten their safety, and to provide an infrastructure that promotes a sense of safety.

Article 10(1) of the EL says that the authority running the school has the duty to ensure the appropriate conditions for the operation of the school, including safe and hygienic conditions for learning, upbringing, and care. The principal is responsible for the safety of students during classes, and the school's educational and preventive programme is developed in cooperation with the school staff council and the parents' council (Articles 68(6) and 84(2)). The school must diagnose the needs of students and develop and implement an upbringing and prevention programme, taking into account risk factors, psychoactive substances, and online safety (Articles 26(1–3) and 27). Ensuring safety at school also includes installing and updating internet security software. Article 108(a)(1) allows the introduction of surveillance to ensure the safety of students and employees. The decision in this regard is made by the school principal after consultation with the staff council, the parents' council, and the student government, excluding some rooms. Safety education, both online and

in the context of sustainable development, is important and in line with Article 1(15) and (21). Cooperation with institutions responsible for ensuring safety, according to Article 3(3–4), may include the support of public administration bodies and various services in conducting classes on enhancing the safety of children and young people.

3.2. Regulation of the Minister of National Education and Sport of 31 December 2002, on Safety and Health in Public and Non-Public Schools and Institutions

The 2002 Regulation on Safety and Health in Public and Non-Public Schools and Institutions was issued on the basis of the statutory delegation contained in Article 125 of the EL. The provisions contained therein precisely define the duties of school principals with regards to ensuring the safe and hygienic conditions for both students' stay at school and their participation in activities outside the school grounds (§ 2). The principal is obliged to systematically inspect conditions for the use of school facilities, including the learning conditions, and to determine directions for their improvement. Such inspections must be conducted at least once a year (§ 3).

In the area of physical safety at school, the regulation's provisions focus on the procedures to be followed in the event of accidents and regulate in detail such issues as care for injured students (§ 40), notification of competent authorities and persons (§ 41), conduct of post-accident investigations (§ 43), and registration of accidents (§ 50), as well as analysis by the school principal of their circumstances and causes (§ 51). In terms of internal and external security, the regulation specifies in detail conditions for the use of school facilities, as well as for laboratories and practical vocational training locations. The school principal is required, among other things, to post an evacuation plan in a visible place (§ 5), to organize repair and installation works during students' absence (§ 6), to guarantee security on school grounds, the evenness of pavements, and lighting and wastewater drainage (§ 7), and to properly mark and secure workplaces and rooms against unauthorized access (§ 15). In addition, the provisions of the regulations address matters related to the safety of students during class breaks, the performance of repairs and installation works, and the provision of first aid kits and personal protective equipment to students (§ 14(1), (20), and (22)).

In the context of safety education, the legislature imposes an obligation on schools to disseminate safety knowledge and to form appropriate attitudes toward hazards, especially those related to the use of information and communication technologies (Article 1(21)). Despite the indicative nature of this requirement, it is an important tool to support student safety. On the issue of cooperation with institutions responsible for ensuring safety, both the Education Law and the Regulation provide for the possibility of public administration bodies and various services supporting the activities of schools in disseminating knowledge of threats to safety (Article 3(3–4)). However, there is no explicit mention of cooperation with NGOs.

In conclusion, the pieces of legislation analysed here regulate in detail issues related to safety in public schools, covering both organizational and practical aspects, with an emphasis on precisely specifying the duties of the school principal and the procedures to be followed when various types of accidents happen. They also support safety education and assume the possibility of support from government agencies and services in the area of safety. However, there are no direct references to the issue of ensuring the psychological safety of students.

3.3. The extent of student safety in schools based on analysis of the statutes of elementary schools in Białystok

According to the provisions of Article 98(4) of the EL, school statutes play an important role in determining the goals and tasks of educational institutions, taking into account the principles of safety. An analysis of the statutes of elementary schools in Białystok showed that each of the documents deliberately emphasizes the performance of the school's basic functions, especially those relating to education and care. The educational and preventive programme and the provision of safe conditions for students are key elements of those functions. Particular emphasis is placed on respecting school health and safety regulations, which include both the physical and the mental dimensions of students. Educational safety is defined as concern for the health and mental balance of students through the broad prevention of threats to which school-age children may be exposed. In the context of regulations applicable to public schools, it is therefore important to consider and highlight the issues listed below, which directly affect the safety of schools and their students.

3.3.1. The entities required to ensure the safety of students at school

Ensuring the safety of students during school activities is entrusted to the principal, teachers, school psychologists, or school counsellors, as well as other school employees. The principal is responsible for the overall safety of students during school and extracurricular activities, including outings and trips. Teachers, especially class teachers, are charged with key tasks related to the protection of the life, health, and safety of students, as well as compliance with health and safety regulations. The school counsellor coordinates safety activities in situations where there is no direct threat to the health or life of students and deals with problems such as conflicts, violence, cyberbullying, and substance abuse. The school psychologist, on the other hand, implements preventive measures relating to addiction and other problems of young people. The analysis of school statutes showed that there are extensive structures responsible for safety, such as safety coordinators and occupational health and safety officers. Their task is to initiate measures to improve security, analyse needs, monitor the state of safety, develop emergency procedures, and educate the school community about safety rules.

Students also have a role in maintaining safety by following the rules on school grounds, reporting accidents, and countering violence and demoralization. School statutes specify consequences for those students who disregard safety rules, including the possibility of lowered grades for inappropriate behaviour. Ultimately, the system of punishments and sanctions ranges from a reprimand given by the class teacher or principal, through informing parents, to a possible transfer of the student to another school, especially in cases of serious offences such as physical violence, drug use, or a criminal act. Ensuring school safety involves a comprehensive approach that combines legislation with specific measures implemented in the school environment.

3.3.2. Ensuring physical and psychological safety

Legislation on safety in public schools covers a variety of issues in the areas of both physical and mental health. School statutes clarify the provisions of that legislation and often place them in detailed chapters, such as 'Student safety', 'Safety on school grounds during classes', and 'Occupational health and safety'. The statutes differ significantly in terms of the topics they cover. In particular, their provisions govern the care provided by teachers, prohibitions on bringing dangerous objects to school, teachers' duties in emergency situations, and rules for using the sports field or organizing school events. Issues relating to teachers' responsibility for students' safety, procedures to follow during a fire or in the event of a threat of crime, and rules for the use of mobile phones and electronic devices are also within the scope of these statutes.

In addition, school statutes include specific procedures, such as those to be followed in the event of special threats or in the event of threats to students that involve crime and demoralization. All elementary schools have upbringing and preventive programmes that cover issues of addiction, threats posed by civilization, and social risks. In addition, provisions on internet use, blocking access to content that is dangerous to students' development, and adherence to rules on the use of mobile phones and other electronic devices are common in school statutes. Sanctions for failing to follow these rules include warnings, asking parents to attend meetings with school staff, and even devices being taken away by teachers.

3.3.3. Ensuring internal and external security

In the area of internal and external security, the statutes of several schools provide for the use of video surveillance on school grounds; cameras are installed both inside and outside school buildings. Camera recordings can be made available upon written request to authorities responsible for the supervision of public order. In addition, with the approval of the principal, these recordings can be made available to those involved in the investigation of incidents; the video materials are recorded and viewed in designated areas of the school, or in the principal's office.

3.3.4. Providing safety education

In the context of safety education, few school statutes include as part of their tasks the need to disseminate safety knowledge and develop appropriate attitudes toward threats and emergencies, or promotion of the issue of the safety of children and young people among students, teachers, and parents. In some cases, this task may be performed by a health and safety officer or a safety coordinator. For example, one school organizes regular training for teachers on dangerous student behaviour and the dangers brought by the advancement of civilization and cultural changes.

3.3.5. Cooperation of schools with institutions responsible for ensuring safety

In this context, school statutes provide information on cooperation in the areas of teaching, upbringing, care, prevention, and innovative activities. Few of them identify specific bodies and institutions, such as the Psychological and Pedagogical Counselling Centre No. 2 in Białystok, the Specialized Counselling Centre for Children and Young People with Emotional Disorders, the Child and Family Protection Centre, the Municipal Family Assistance Centre in Białystok, the Crisis Intervention Centre, the ETAP Prevention and Therapy Centre for Adolescents and Adults, the Stumilowy Las Sociotherapeutic Day Care Centre, the Nazaret Sociotherapeutic Day Care Centre, the Pomóż Im Foundation, the Nasz Dom Society, the police, the municipal guard, the fire department, Roman Catholic or Orthodox parishes, or primary care doctors.

Some statutes indicate cooperation with a court of law, especially with probation officers caring for students and their families. In addition, there are mentions of cooperation with the police in the field of education about various threats, the liability of minors for committing criminal offences, and safety rules, as well as risky behaviour and ways to avoid it. The police can assist schools in solving difficult problems on school grounds, including through direct intervention. In some schools, the safety coordinator or the health and safety officer is responsible for working with the local community and institutions that support schools in their efforts to improve student safety. These institutions include the school superintendent's office, the police, the prosecutor's office, the juvenile court, and others that can assist schools in solving safety problems.

Table 1 summarizes the results obtained from the document analysis. The data is provided in absolute numbers and percentages relative to all 44 statutes of the public primary schools regarding the individual criteria.

Table 1. The degree of alignment between the statutes of public primary schools in Białystok and SDG 4a.

Criteria	Specific issues	Number of statutes of public elementary schools	Percentage of statutes (n=44)
Ensuring physical and psychological safety	General provisions	19	43.18
	Specific provisions including: – rules on the use of mobile phones and other electronic devices	7	15.91
	– the implementation of prevention programmes	3	6.82
Ensuring internal and external security	In the form of video surveillance and its rules of operation	7	15.91
Providing safety education	General provisions	8	18.19
Cooperation of schools with institutions responsible for ensuring safety	General provisions	44	100.00
	Specific provisions including cooperation with: – police	4	9.10
	– juvenile and family probation officers	2	4.54

Source: compiled based on document analysis

Conclusions

The examination of literature on the implementation of the SDG 4a in the context of the safety of elementary schools in Białystok reveals an existing gap in scientific knowledge. It was therefore necessary to conduct a study to fill that gap, especially regarding the scope of the shaping of safe educational facilities. These results will hopefully not only expand our knowledge, but also contribute to the development of the research area in other localities and even internationally. This exploratory approach can inspire others by emphasizing the importance of the adaptation of global ideas at the local level – in accordance with the principle of 'Think globally, act locally' (Klekotko et al., 2018, p. 24). At the same time, it can help promote local innovation on the global stage.

The Education Law of 2016 precisely defines the scope of the protection of student safety in schools. It imposes numerous responsibilities on the principal, teachers, and school employees, as well as the students. In particular, it focuses on the protection of children from accidents, the harmful effects of drugs, inappropriate content on the internet, and inappropriate use of mobile phones. This leads to the conclusion that it comprehensively fulfils the criteria we established for assessing the implementation

of SDG 4a. The 2002 Regulation is a complementary act that broadly and specifically regulates aspects of student safety in schools; however, it should be noted that issues related to ensuring the psychological safety of students are omitted. This leads to the conclusion that the Regulation largely, but not fully, meets the criteria for assessing the degree of implementation of SDG 4a.

The analysis of school statutes shows that, in most cases, they include detailed provisions concerning various aspects of student safety (43.18% of all statutes), primarily addressing physical safety and cooperation with external institutions and authorities (100% of all statutes). It is worth noting that issues related to safety education (18.19%) and internal and external security (15.91%) are rarely mentioned in these documents.

Based on the obtained research results, it is possible to partially confirm the hypothesis that the national level and the statutes of public elementary schools are only minimally aligned with SDG 4a during the period of the research. The result of the dogmatic analyses and the empirical research is the identification of issues that require regulation to achieve a higher level of SDG 4a implementation in Poland. Further efforts are needed to explore innovative solutions, such as best practices, which could enhance the safety of elementary schools, particularly in the context of psychological aspects. Additionally, effective cooperation with the school's local social environment, including non-governmental organizations, is undervalued, even though they can provide innovative solutions in this area.

Further dogmatic research in this area is required, particularly in connection with the enactment of the amendment to the Act of 13 May 2016 on Preventing Sexual Crime and Protecting Minors, which includes Chapter 4b on Standards for the Protection of Minors. The aim of this future research should be to determine the extent to which national and international standards are implemented by schools in their statutes, which will allow for an assessment of their impact on the safety levels of elementary schools.

Furthermore, recognizing the importance of the issues discussed, more empirical research would deepen the knowledge obtained from the studies in additional areas that require investigation. For instance, there could be more in-depth analysis of the impact of education on students' actual safety, with a focus on the effectiveness of educational programmes and the role they play in shaping students' safety attitudes and awareness. Additionally, it is worth exploring how schools are cooperating with local authorities and organizations to implement innovative school-safety solutions. Another research area covers the role of technology, especially modern educational tools and monitoring systems, in ensuring safe learning conditions. In addition, it would be useful to conduct comparative studies between different cities or regions to identify local peculiarities and best practices in school safety. A final but equally important direction for further research is to analyse the effectiveness of measures implemented by schools in the context of the prevention of the risks of addiction to

new technologies. These areas provide the foundation for future research that can make a significant contribution to improved safety practices in public schools.

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Bialystok Legal Studies
Białostockie Studia Prawnicze
2024 vol. 29 no. 4

sciendo

DOI: 10.15290/bsp.2024.29.04.09

Received: 19.11.2024
Accepted: 13.12.2024

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The Norwegian Model of Victim–Offender Mediation as an Original System Approach[1]

Abstract: Victim–offender mediation is considered the most widespread restorative justice measure. It is an institution based on a universal scheme of activities involving the victim and the offender, yet it occurs in a diverse legal environment. Various legal systems regulate the prerequisites for the use of mediation differently, defining in which cases it can be used and who can be a mediator, or giving an institutional framework to entities offering mediation services. One of the most interesting European mediation systems has been developed in Norway, which can be considered a pioneering country in terms of the origins of victim–offender mediation. Comprehensive legal regulation of mediation is a Norwegian peculiarity; it will be analysed in this article against the background of Polish solutions. This analysis will be a starting point for outlining the pitfalls and challenges facing mediation in Norway.

Keywords: criminal proceedings, National Mediation Service, restorative justice, victim–offender mediation

Introduction

While the legal systems of the USA, the UK, France or Germany are commonly referred to in Polish literature on mediation, the Norwegian concepts are not, but they are still worth bringing up.

1 This article is financially supported by the Polish Minister of Science under the Regional Initiative of Excellence (RID) programme.

Ministry of Science and Higher Education Republic of Poland
Regionalna Inicjatywa Doskonałości

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Firstly, Norway was one of the first countries in Europe to regulate mediation in both criminal and civil cases.[2] Mediation in criminal cases in Norway was introduced in the 1980s; initially, it was a pilot project established in 1981 for juvenile delinquents (persons under 18 who had committed a crime for the first time), and was chronologically the first in European countries (Mestitz, 2005, p. 11). Subsequently, from 1983, conflict resolution boards (*konfliktråd*) were established in individual municipalities to implement experimental mediation projects in their areas.[3] Over time, mediation was expanded to include adult offenders, and the restriction to only first-time offenders was abandoned. Criminal cases were referred to conflict resolution boards based on guidelines and circulars from the Director of Public Prosecutions (Kemény, 2000, p. 84; Kemény, 2005, pp. 102–103; Nergård, 1993, pp. 81–82; Paus, 2005, pp. 505–507).

Secondly, the legal regulation of mediation in Norway is much more detailed than in other, more familiar, legal systems. The experience gained in the 1980s resulted in a law that comprehensively regulated the use of mediation relatively early compared to other countries. It is difficult to identify a legal system where, as in Norway, there is a separate act of statutory rank that regulates in detail the systemic and procedural aspects of mediation in criminal cases and other secondary legislation. In addition to the regulation, there are also circulars from the Director of Public Prosecutions.

The Act Relating to Mediation by the National Mediation Service (the National Mediation Service Act) (*Lov om megling i konfliktråd*) was passed on 15 March 1991 and contained general rules concerning the institution of mediation, as well as provisions relating to the procedure itself.[4] Under it, disputes arising because one or more persons had inflicted damage or loss on or otherwise offended another person could be referred to mediation (§ 1 of the Act). Mediation could be used to resolve both criminal and civil disputes. Provisions implementing the Act were issued in the form of the Regulation Relating to Mediation by the National Mediation Service (*Forskrift om megling i konfliktråd*) introduced by a royal decree of 13 August 1992.[5]

2 The first pieces of legislation on mediation in criminal matters, still in the 20th century, were introduced by Austria (1988), Germany (1990), Norway (1991), France (1993) and Poland (1997). Interestingly, from the start of the first pilot project in 1981 to the adoption of a mediation law was ten years in the case of Norway, while in Poland the period was only two years (Mestitz, 2005, p. 11). This should not be surprising: the countries that started their mediation experimental projects much later (Poland in 1995) could be inspired by the experiences of the pioneer countries and could more easily incorporate the existing regulations into their legal systems.

3 The literal translation of *konfliktråd* as 'conflict resolution boards' existed in older literature. Nowadays, the phrase 'the National Mediation Service' is commonly used in English translations of Norwegian legislation (e.g. Storting (2014)), documents (e.g. Central Administration of the National Mediation Service, 2021), and in more recent literature. This article adopts the latter version.

4 For the English translation of the Act, see Storting (1991).

5 For the text of the Regulation in Norwegian, see Justis- og beredskapsdepartementet (1992).

The Regulation emphasised that mediation is not only an alternative to the traditional justice system but also increases community participation in the conflict resolution process. A new circular from the Director of Public Prosecutions of 6 December 1993 was also issued, in which mediation was considered a very good alternative to traditional justice, aiming to prevent crime and reduce the stigmatisation of offenders (Paus, 2005, pp. 505–507).

A particular feature of the early period of development of victim–offender mediation in Norway was the establishment of relevant legal regulations during the first experiments. One can observe a kind of 'methodical' approach to the establishment of the institutional framework for mediation according to the scheme: proposals and discussion – creation of a programme by the government – establishment of regulations – experimental project phase – enactment of a law and establishment of a nationwide network of the Mediation Service. In other countries, it has usually started with the spontaneous creation of local projects, often varying fundamentally not only in their modi operandi but also in the philosophy adopted. In the absence of legal regulations, the results of mediation have mostly been taken into account by individual prosecutors and judges interested in with the idea of restorative justice. In Norway, due to the circulars issued by the Director of Public Prosecutions and later the adoption of a separate law and amendments to the Criminal Procedure Act, this problem did not exist.

Thirdly, Norway has a remarkably well-developed and coherent mediation service system that ensures equal access to mediation for all residents of the country. The Act of 1991 required the establishment of the Mediation Service in each municipality (unless two or more set up a joint structure) and guaranteed their state financing. The Regulation of 1992 stipulated that the Mediation Service was an independent institution of local government financed by the state and controlled by the Ministry of Justice. Municipalities were required to provide premises and general assistance to the Mediation Service, arrange practical considerations and manage the staff, but at the same time, they could not use state funds for the Mediation Service's work nor influence its activities. The Ministry of Justice had control over the Mediation Service, and the counties' Chief Administrative Officers supervised and collected statistics and budget reports. In practice, the division of competencies was complex and dysfunctional, and therefore needed to be corrected radically. As a result, since 1 January 2004, the Mediation Service has been placed under the Ministry of Justice as a more centralised and hierarchically subordinated, and therefore more effective, structure. On the other hand, there is a fear that in the long run, the interest in mediation among local communities may decrease (Paus, 2005, p. 515). Currently, under Section 8 of the Act of 2014, the Public Administration Act applies to the activities of the Mediation Service. As a sovereign entity, it cannot accept any instructions or guidelines on how to handle an individual case. This organisational autonomy and independence from the justice system resulted from the philosophy

of strengthening the ability of local communities to resolve minor criminal conflicts (Kemény, 2000, p. 90).

By the end of 2003, there were 36, mostly inter-municipal, offices of the Mediation Service, covering the entire Norwegian territory and with a total of 700–800 mediators. Since 1 January 2004, their number has been reduced to 22 (Kemény, 2005, p. 103). The two-level structure currently consists of the Central Administration of the National Mediation Service in the Ministry of Justice and Public Security as a central administrative unit, and 12 regional offices located in 22 localities and providing access to mediation services in all 356 Norwegian municipalities. On 31 December 2023, 430 mediators and 129 administrative staff worked at the Mediation Service, including 32 at the Central Administration in Oslo (Sekretariatet for konfliktrådene, 2024, p. 7).

The following sections of this paper will present the legal basis of mediation, the organisation of the Mediation Service, and mediation procedures in Norway, with references to mediation in Poland. These will serve as a starting point for assessing the functioning and effectiveness of the Norwegian mediation model. The paper uses a dogmatic and legal comparative method.

1. Legal basis

The first mediation act in Norway and the implementing regulations based on it were in force for 23 years. The current Norwegian law on mediation is based on the new Act Relating to Mediation by the National Mediation Service (the Mediation Service Act) (*Lov om konfliktrådsbehandling (Konfliktrådsloven)*),[6] passed on 20 June 2014, and the Regulation Relating to Mediation by the National Mediation Service (*Forskrift om konfliktrådsbehandling*), issued on 30 June 2014 under Section 1 of the above Act.[7] In addition, the Director of Public Prosecutions issued two circulars under the new Act, dated 16 January 2015 (Circular Containing Preliminary Guidelines for the New Sanctions of Youth Punishment, Youth Follow-Up and Follow-Up within the National Mediation Service) (Riksadvokaten, 2015) and 9 August 2017 (Youth Punishment – Updated Guidelines) (Riksadvokaten, 2017), indicating, among other things, which criminal cases qualify for the procedure in the National Mediation Service.

The Act of 2014 formulated the scope of mediation similarly to the Act of 1991. According to Section 1 of the Act of 2014, the Mediation Service arranges meetings between the parties in disputes that arise because one or more persons have inflicted damage, injury or loss on or otherwise offended another person. In addition, the Mediation Service:

6 For the English translation of the Act, see Storting (2014).

7 For the text of the Regulation in Norwegian, see Justis- og beredskapsdepartementet (2014).

– executes the following criminal sanctions: victim–offender mediation, follow-up by the Mediation Service, youth follow-up and youth punishment;
– handles civil cases brought by the parties or by government agencies, provided the case is suited for processing by the Mediation Service.

In addition to classic mediation, the Mediation Service can organise other types of meetings, including a conference where more affected persons and support persons are present, a youth conference, a specially facilitated meeting, a follow-up meeting or other meetings.

Victim–offender mediation in Poland was legislated for in the Act of 6 June 1997 – Code of Criminal Procedure (*Kodeks postępowania karnego*) (CCP), which entered into force on 1 September 1998. Paradoxically, the provisions on mediation concerning criminal proceedings involving adult offenders were enacted in Poland a few years earlier than the provisions for juvenile proceedings. The original regulations were imprecise and raised many interpretation difficulties (Kużelewski, 2014, pp. 175–183), therefore the CCP was amended in this regard twice, in 2003 and 2013. The current version has been in force since 1 July 2015.

The basic provision regulating mediation is Article 23a of the CCP. As in the case of the Norwegian regulations, the Polish legislature has not defined the detailed scope of cases that can be referred to mediation. Under Article 23a, Section 1 of the CCP, the judge or the court clerk (*referendarz sądowy*), and in the preparatory proceedings the state prosecutor or other agency conducting the prosecution, may on their own initiative, or with the consent of the injured and the accused, refer the case to an institution or an authorised person to conduct a victim–offender mediation. Both parties must be informed about the purposes and principles of the mediation proceedings, including the contents of Article 178a of the CCP (the prohibition on hearing from the mediator, as will be discussed further under the principle of confidentiality). Article 23a of the CCP is even more general than the Norwegian act and does not provide any grounds for referring a case to mediation, nor indicate the explicit purpose of mediation in a criminal process. It only specifies the authorities entitled to decide in this matter, the condition of the parties' consent and the duty of information. The CCP establishes general rules on mediation and regulates the link between the criminal process and the non-procedural mediation process; however, it is not possible to read from these rules what should be achieved through mediation (Kulesza & Kużelewski, 2018, p. 12). This appears to have advantages, as in theory, mediation can be used in any case, even a serious crime with a particular offender and victim. On the other hand, the lack of a specific ground may confuse judges and prosecutors and discourage them from applying mediation.

The act specifying the Polish statutory regulations is the Regulation of the Minister of Justice of 7 May 2015 on Mediation in Criminal Matters (*Rozporządzenie w sprawie postępowania mediacyjnego w sprawach karnych*), which specifies the

conditions that must be met by an institution or persons authorised to conduct mediation proceedings, how such institutions or persons are appointed and dismissed, the scope and conditions of granting them access to case files, as well as the scope of reports on the results of mediation proceedings, bearing in mind the need for the efficiency of these proceedings. Nevertheless, it does not go as far as the Norwegian legislation in defining the rules for the working of the Mediation Service or the activities carried out by the mediator.

A criminal case in Norway can be referred to mediation in three situations. Under Section 71a of the Criminal Procedure Act (*Lov om rettergangsmåten i straffesaker (Straffeprosessloven)*) of 22 May 1981, the prosecutor may do this if he or she considers that the offender's guilt would be proven and sees the usefulness of such a measure.[8] This can also be done based on Section 53 of the Act Relating to the Execution of Sentences, etc. (the Execution of Sentences Act) (*Lov om gjennomføring av straff mv (Straffegjennomføringsloven)*) of 18 May 2001 by the Norwegian Correctional Service (*kriminalomsorgen*), which, in consultation with the convicted person, determines the precise contents of the community sentence (*samfunnsstraff*) within the limits set by the court in its judgment.[9] The third possibility is provided for in Section 37(i) of the Penal Code (*Lov om straff (Straffeloven)*) of 20 May 2005 (entered into force 1 October 2015), which indicates participation in mediation as one of the special conditions for suspension of a sentence.[10]

2. The Mediation Service and mediators

Currently, there is only one model of victim–offender mediation in Norway – through the Mediation Service – but it encompasses a wide variety of objectives, depending on local circumstances, historical background and the degree of professionalism and beliefs of the coordinators. This diversity is considered a weakness of Norwegian mediation. At the same time its usefulness, even necessity and inevitability, in the early development of the mediation idea is also recognised (Paus, 2005, p. 516).

The main tasks faced by the Mediation Service include 1) strengthening the capacity of local communities to deal with petty crime and other conflicts; 2) offering alternatives to more lenient criminal sanctions and increasing the variety of these sanctions; 3) controlling juvenile delinquency more effectively through quicker and less complicated case proceedings; 4) making sanctions more rational and understandable for young offenders; 5) motivating parties to reach an agreement by

8 For the English translation of the Act, see Ministry of Justice and the Police (1981).
9 For the English translation of the Act, see Storting (2001).
10 For the English translation of the Code, see Storting (2005).

paying attention to the situation of both victims and offenders (Kemény, 2000, p. 89; Paus, 2005, pp. 515–516).

Mediators are not professionals, although they should have the appropriate skills to cope with the task and are appointed for a four-year term of office by an appointment committee consisting of one representative designated by the municipal council, one representative from the police, and the head of the mediation office (Section 4 of the Act of 2014). They must be over 18 years of age, have Norwegian or Nordic citizenship or be registered as a resident of that country within the last three years before their appointment, have the aptitude to act as a mediator and reside in the municipality where they are applying to be a mediator (Section 5). The Act has a catalogue of situations that exclude the appointment of a mediator, related to a punishment for a specific penalty. Employees of the prosecuting authority who are competent to prosecute, police staff who have police authority and students at the National Police Academy in their practice year also cannot be appointed mediators (Sections 6 and 7).

The Polish legislature has adopted a different model for the organisation of mediation services. Poland does not have a uniform, centralised mediation service like the Norwegian one. A pluralistic and decentralised model has been chosen, in which the mediation proceedings may be conducted by institutions or persons registered by the president of a particular district court after complying with certain conditions, somewhat similar to but more precisely specified than in the case of Norwegian mediators.[11] The Polish CCP also provides for more extensive exclusions from the possibility of acting as a mediator. Under Article 23a, Section 3, a professionally active judge, prosecutor or assessor prosecutor, or a trainee in these professions, or a juror, court clerk, assistant judge, assistant prosecutor or an

11 An institution shall be entitled to conduct the mediation proceedings if it meets the following four conditions: 1) under its statutory tasks it was appointed to perform mediation, rehabilitation, protection of the public interest, protection of important individual interests or protection of liberties and human rights; 2) it ensures that the mediation process is carried out by persons who comply with the formal requirements for conducting mediation specified in Section 4 of the Regulation of 2015; 3) it possesses the organisational and human resources for the conduct of mediation; 4) it is registered in the list of institutions or persons competent to conduct mediation that is held in the district court (Section 3 of the Regulation of 2015). A person shall be entitled to conduct the mediation proceedings if he or she meets the following conditions: 1) is a Polish citizen, a citizen of another EU Member State, a Member State of the European Free Trade Association (EFTA) or a party to the Agreement on the European Economic Area or of the Swiss Confederation, or a citizen of another country, if, under the provisions of European Union law, he or she is entitled to take up employment or self-employment on the territory of the Republic of Poland under the rules set out in those provisions; 2) fully benefits from civil rights; 3) is at least 26 years old; 4) is fluent in Polish; 5) has no criminal record for an offence; 6) has the skills and knowledge to conduct mediation proceedings, resolve conflicts and establish interpersonal relations; 7) guarantees proper execution of his or her duties; 8) is registered in the list that is held in the district court (Section 4 of the Regulation of 2015).

official of any other authority which prosecutes offences is disqualified. Additionally, mediation proceedings cannot be conducted by a person to whom the restrictions specified in Articles 40 and 41, Section 1 of the CCP apply in a given case.[12]

Stronger protection of the principle of confidentiality is provided for in the Polish CCP. Mediation proceedings are conducted impartially and confidentially (Article 23a, Section 7), and it is not permitted to examine a mediator as a witness concerning facts learnt from the accused or the injured while conducting mediation proceedings, except for the information about offences referred to in Article 240, Section 1 of the Criminal Code (Article 178a of the CCP). In the Polish criminal process, the prohibition on hearing from the mediator is absolute. Except for a dozen or so of the most serious offences, there is no possibility of hearing from the mediator, which is a fair solution and protects the accused's guarantees of the right to defence.

Norwegian mediators are bound by the principle of confidentiality in the course of mediation and regarding the personal data of the parties. This principle is guaranteed not only by criminal liability for violating the obligation of confidentiality: a court of justice cannot admit evidence that a witness cannot give without breaching his or her duty of confidentiality unless the court weighs the importance of observing the duty of confidentiality against the importance of obtaining information in the case and decides by a court order that the witness must give evidence. Unless both parties consent, the witness cannot give evidence concerning what the parties have acknowledged or offered during mediation (Section 9 of the Act of 2014).

The rules for the recruitment of mediators are provided in Section 2 of the Regulation of 2014. Recruitment is the task of the Mediation Service; the head of the mediation office determines the number of mediators needed. Vacancies are made public, and written applications are sent to the head of the mediation office, who draws up a list of candidates and may recommend those he or she considers most suitable. The selection shall take place by a majority of the committee members, and in the event of a tie, the head of the mediation office shall have the deciding vote.

Candidates are offered basic training consisting of four days of theoretical training and three days of practical training (Paus, 2017, p. 31). Apart from that, mediators attend meetings and seminars several times a year, where they have the opportunity to exchange experiences and discuss current problems. Although one's type of education is not a criterion for being selected as a mediator, they are mostly educated people, such as teachers, lawyers, businessmen, former policemen and managers and directors. On average, a mediator deals with one case per month (Kemény, 2005, pp. 107, 112). Mediators receive remuneration and reimbursement

12 The restrictions listed in Article 40 refer to a judge disqualified by virtue of law from participation in a case (a judge so-called *iudex inhabilis*). Article 41, Section 1 refers to a judge disqualified where circumstances arise that might give rise to justified doubts as to his or her impartiality in a case (a judge so-called *iudex suspectus*). Both provisions apply accordingly to a mediator.

of expenses at rates set by the Ministry of Justice and Public Security (Section 2 of the Regulation of 2014). In 1996, a code of ethics for mediators and staff involved in mediation was established on the initiative of the heads of the mediation offices (Paus, 2005, p. 520).[13]

There are advantages and disadvantages in both systems of mediation service described above. The Norwegian Mediation Service is structurally closely linked to the state and therefore does not have the same freedom and autonomy as independent institutions (usually NGOs) and individual mediators. Instead, thanks to better control over the recruitment of mediators (which is decided by a collegial body independent of the judiciary and not by the president of the court alone, as in Poland), a limited number of vacancies, the provision of obligatory training and the principle of a fixed term of office for mediators, greater professionalism of mediators and mediation services is guaranteed. In addition, the coordinators and professional administrative staff of the offices of the Mediation Service, using their knowledge and experience based on their everyday jobs, exercise constant control over mediators. In Poland, on the other hand, it is the prosecutors, judges or court clerks themselves who appoint an institution or an individual mediator to conduct mediation proceedings, choosing them in a discretionary manner from a list kept at the district court, based on their individual preferences and experience. They also do not have any influence on the upskilling of the mediators. Once a person is included in the list at the county court, he or she can mediate for years without being reviewed.

3. Mediation procedure

In Norway the parties participate in the mediation meeting voluntarily (their consent must be real and informed), in person and generally cannot be represented by a proxy. If one party is younger than 18, his or her guardians must also consent to the case being handled and are entitled to attend; if the guardian is unable or unwilling to protect the party's interests in the case, a provisional guardian must be appointed under the provisions of the Guardianship Act. The Mediation Service may permit the parties to have one or more persons supporting them in the meeting, who cannot be an advocate or legal adviser. The Mediation Service may allow indirect mediation (Sections 11, 12 and 15 of the Act of 2014). As a rule, mediation must be handled by the mediation office for the municipality where the complainant or the victim lives or is staying. In cases referred by the prosecuting authority, the latter decides which mediation office should handle the case, but the mediation office may agree with the prosecuting authority that the case will be referred to a different office. The parties must have a chance to express their views on the matter in advance (Section

13 These guidelines are under the 'Ethical Guidelines for the Public Service in Norway' governing public services (Central Administration of the National Mediation Service, 2021, p. 12).

13 of the Act of 2014). In cases referred by the public prosecutor's office or a public institution, consent to mediation must usually be obtained before the case is referred to the Mediation Service (Section 4 of the Regulation of 2014). The mediation office determines how many mediators will be mediating in each case; in cases with more than one mediator, a main mediator must be appointed (Section 14 of the Act of 2014). The proceedings are free of charge for all parties, and they are also entitled to a free interpreter (Sections 1 and 16 of the Act of 2014).

The course of the mediation procedure is similar in both countries. In Norway, the preparatory activities and the face-to-face meeting of the parties are regulated in Sections 4 and 5 of the Regulation of 2014. Once the case has been registered and other necessary administrative activities have been carried out, the mediator contacts the parties, informs them of the purpose and consequences of the mediation, and sets a date and place for the meeting. Mediation may take place anywhere, but it should not be held on the parties' premises. The parties themselves shall seek to resolve the conflict. The mediator may propose possible solutions based on what the parties bring to the meeting. In violent cases, it is standard procedure for the mediator to meet each party in advance of the actual mediation session to create an atmosphere of trust and for the mediator to see if it is right to resolve the case through mediation (Paus, 2005, p. 517). In Poland, all mediation proceedings follow a standardised five-stage scheme.[14] Indirect mediation is also allowed under Section 15 of the Regulation of 2015: if a direct meeting of the suspect or the accused and the injured is not possible, the mediator may indirectly conduct the mediation proceedings, giving the information and proposals on the settlement to both parties. The mediation proceedings shall not be conducted on premises occupied by the participants or their families (unless in justified cases, with the consent of the participants) or in the buildings of the authorities entitled to refer the case to mediation (Section 13 of the Regulation of 2015).

The agreement reached by the parties must be set out in writing and be signed by the parties. If the obligation to pay compensation is agreed upon, the agreement must stipulate the amount to be paid and when payment is due, as well as a clear statement of whether it represents the final settlement between the parties. If the party is a minor, it also requires approval from his or her guardian. The mediator approves the agreement in writing unless it unreasonably favours one of the parties

14 Immediately after receiving the order to refer the case to mediation, the mediator 1) makes contact with the injured and the suspect or the accused, setting the date and place of meeting with each of them; 2) conducts individual meetings with the suspect or the accused and the injured, informing them about the nature and principles of the mediation proceedings and the rights of the parties; 3) conducts the mediation meeting with the participation of the suspect or the accused and the injured; 4) assists in the formulation of the content of a settlement between the suspect or the accused and the injured; and 5) verifies the implementation of the obligations (Section 14 of the Regulation of 2015).

or is unfortunate for other significant reasons.[15] In cases referred by the prosecuting authority, each of the parties may withdraw from an agreement by informing the mediation office within two weeks after the agreement has been approved by the mediator, except when it has been fulfilled. When mediation has been completed, the mediation office must forward the case documents to the prosecuting authority with information as to whether the parties have entered into an approved agreement. Once the agreement has been fulfilled, the mediation office must promptly send confirmation of this to the prosecuting authority (Sections 17, 18 and 20 of the Act of 2014). If mediation or agreement is not reached, the case must be returned to the prosecuting authority immediately, usually no later than three months after the referral, with information on why the mediation session did not take place or the agreement was not reached (Section 6 of the Regulation of 2014).

If the agreement is found difficult to implement or is broken, the parties have the opportunity to renegotiate it at a new meeting. The prosecuting authority is notified of the content of the renegotiated agreement. Failure to agree on a new settlement shall result in the notification of the prosecuting authority, along with the reasons and other relevant information, any statements by the parties and the opinion of the Mediation Service on the consequences to which the breach of the settlement should lead. The parties are obliged to notify the Mediation Service of the fulfilment of the agreement or the breach of its terms. The decisions of the Mediation Service are not subject to appeal (Sections 7, 8, 9 and 10 of the Regulation of 2014).

The possibility of refusing to accept the agreement if it unjustifiably favours one of the parties or cannot be accepted for other important reasons grants the mediator certain jurisdictional power, placing him or her somewhat closer to the position of an arbitrator. This may be disputable, since the mediation is an extra-judicial proceeding and only the judicial authorities have the competence to act with decision-making powers. On the other hand, the refusal to accept an agreement while the mediation procedure is still in progress has practical value, as it significantly shortens the proceedings. Using parallels with criminal proceedings, it is justified to believe that this provision guarantees the principle of equality of arms. Another original concept is the possibility of renewing mediation if the agreement appears to be difficult to implement, there has been a change in circumstances that make the agreement unreasonable or the agreement has been violated for other reasons. This fact confirms the intention of the Norwegian legislature that the resolution of the conflict by a court is a last resort.

15 Although not always possible, forgiveness and reconciliation are considered the most important outcomes and goals of a mediation meeting. The agreement is often formulated and written down by the parties themselves. Most often, it includes only the conclusion itself – either in the form of a statement that the parties consider the case to be over, the offender apologises to the victim and his or her apology is accepted, or a description of actions to restore the previous relationship between the parties, such as compensation for damages by the perpetrator, even in a symbolic way (Paus, 2000, p. 299).

The Polish provisions on the conclusion of an agreement between the participants in mediation are concise compared to the Norwegian ones. Article 23a, Section 6 of the CCP only requires that when the mediation proceedings are concluded, a report of its course and results is drawn up by an authorised institution or person. An agreement voluntarily signed by the accused, the injured and the mediator is enclosed with the report, whereas Article 107, Section 3 of the CCP indicates that the mediation agreement will be the executory clause after being made enforceable by the judge or court clerk. If the mediation proceedings have not been completed within the time limit set by the prosecutor or judge and the participants wish to continue the proceedings, the mediator shall immediately draw up and submit information on the progress of the proceedings to the authority that referred the case, specifying the reasons for the expiry of the time limit. In justified cases, the authority that referred the case to mediation, at the request of the mediator, may extend the deadline for the time necessary to complete the proceedings (Section 17 of the Regulation of 2015). It would be a good idea to copy the Norwegian solutions regarding renewing mediation if the agreement appears to be difficult to implement, there has been a change in circumstances that make the agreement unreasonable or the agreement has been violated for other reasons.

For both countries, positive results from mediation can have a significant impact on the criminal trial and its outcome. The Norwegian Penal Code, Section 34 provides the possibility of suspension of a sentence of imprisonment in part or in full by the court for two years (ordinarily) with the imposition of one or more special conditions under Sections 35 to 37. Such a measure indicated in Section 37(i) is participation in mediation by the Mediation Service and compliance with any agreement entered into during the mediation proceedings. By the same terms under Section 60, the court may defer sentencing for a probation period even if guilt is deemed proven. If the positive results of the mediation are considered exceptional reasons, even if guilt is deemed proven, the court may waive sentencing (Section 61 of the Penal Code) or the prosecuting authority may waive the prosecution of the offence for two years (Section 69 of the Criminal Procedure Act). If none of the above options is applied, the court may at any time take the results of mediation into account when sentencing and impose a milder punishment compared to if no mediation had been applied.

In Polish criminal proceedings, in addition to the conditional waiver of the prosecution (Article 63 of the Penal Code), conditional suspension of a sentence of imprisonment (Article 69, Section 2 of the Penal Code) or the imposition of a milder punishment or a punitive or probationary measure (Article 53, Section 3 of the Penal Code), the positive outcomes of the mediation proceedings may influence extraordinary mitigation of punishment (Article 60, Section 2 of the Penal Code), lack of objection of the injured party to the accused's conviction without trial (Articles 335 and 338a of the CCP), voluntary submission to punishment (Article 387 of the CCP) and upholding the terms of the mediation agreement to the

sentence (e.g. reparation of damages, financial restitution, compensation of moral injury, personal or community service, the obligation of the accused to change his or her behaviour, to undertake anti-drug or anti-alcohol therapy or to apologise to the victim). In private prosecution cases, mediation concluded by reconciliation results in an obligatory unconditional waiver of criminal proceedings (Article 492, Section 1 of the CCP). The legislatures of both countries thus provide a wide range of possibilities to take into account the results of mediation in the criminal trial.

4. Pitfalls and challenges

The evaluation of the first mediation experiences in Norway was not unequivocally positive. Among other things, negative phenomena were pointed out: conflict resolution boards received trivial cases that would have been discontinued anyway (instead of being an alternative to imprisonment, mediation became an alternative to discontinuation); the impact of cases was negligible (almost half of the boards did not receive any mediation cases); the police showed little interest in mediation and referred fewer cases than was possible; the boards dealt with offenders under 15 years of age, who are not subject to criminal liability at all; cases referred to the boards were only criminal cases, although the boards should deal with various types of conflict; a professionalisation of mediators was feared (Falck, 1992, pp. 133–134; Nergård, 1993, p. 83).

Among the most important pitfalls and challenges for the future are the issues of ensuring the quality of the work of the Mediation Service, voluntary participation in mediation and the unification of the main purpose of mediation. Concern is expressed about the educational aspect of mediation. It is argued that the willingness of society to help prevent crime may lead to overreaction and situations where one of the parties is used to gain a certain effect on the other party. Another problem is the close connection of the Mediation Service with the traditional justice system. On the one hand, it has the appropriate status and financial support, but on the other, such a situation may lead to a violation of the principle of voluntary participation in mediation, because where there is a threat of punishment and being given a criminal record, the offender will choose this mode for its short-term effect even if he or she is not interested in reconciliation, while the victim, using this type of psychological coercion, may seek to impose his or her terms of agreement. In addition, there is the risk that the Mediation Service may be influenced by the authoritative culture of law enforcement agencies and their definitions of parties, values and objectives. Therefore, the main dilemma is that the Mediation Service is a hybrid that combines features of a state institution and of an independent organisation (Paus, 2005, pp. 524–526).

The lack of diverse mediation programmes in Norway is characteristic; instead, there is a large number of uniform Mediation Service offices subject to a unified law.

The paradox is that the state has formalised mediation, which was intended to grow as a grassroots initiative separate from the justice system. Nevertheless, mediation remains an alternative means of responding to crime, not against the justice system but within it (Kemény, 2000, pp. 84–85).

The strong integration of mediation into the official justice system, despite criticism from 'orthodox' followers of the idea of grassroots development of alternative measures to criminal punishment, does not seem to have caused any major deviations. Statistical data on the number of cases referred to the Mediation Service (despite the recent unfavourable trend, discussed below) and the clear predominance of positive assessments given by the parties towards mediation indicate that it is not a facade but is a real alternative to court proceedings (Lundgaard, 2015, p. 632). The somewhat compromising nature of the positioning of mediation in the Norwegian legal system (a 'centrally controlled' institutionalisation including full state funding and, on the other hand, far-reaching autonomy in the sphere of mediation proceedings and guarantees of the independence of the heads of the mediation offices and mediators, the latter remaining non-professionals originating from local communities) reflects social relations in the Scandinavian countries based on the ethos of dialogue, agreement and cooperation. Moreover, the top-down imposition on local authorities to establish the Mediation Service has undoubtedly dynamised the development of the institution and guaranteed access to mediation for all members of society.

Another problem is related to efficiency, regarded as the number of cases referred to the Mediation Service annually. Table 1 presents how many criminal cases per year have been referred to mediation over the past 30 years in Norway and Poland. It should be noted that the first cases in Poland were referred to mediation at the end of 1998, i.e. after the CCP of 1997 came into force.

Table 1. Number of criminal cases referred to mediation in Norway and Poland in the years 1994–2023

Year	Number of referrals to mediation service	
	Norway	Poland
1994	1,963	–
1995	2,964	–
1996	3,178	–
1997	2,795	–
1998	3,025	12
1999	3,002	406
2000	2,840	822

2001	2,922	824
2002	2,174	1,055
2003	3,229	1,918
2004	3,937	3,894
2005	4,264	5,139
2006	4,521	6,428
2007	4,513	6,097
2008	4,497	5,504
2009	4,663	5,104
2010	4,371	4,806
2011	4,144	4,671
2012	3,977	4,544
2013	3,824	4,845
2014	3,325	4,839
2015	3,419	4,046
2016	3,133	5,005
2017	3,093	5,002
2018	2,638	4,544
2019	2,383	4,676
2020	1,931	3,534
2021	1,804	4,365
2022	1,825	4,121
2023	1,879	3,817
Total	96,233	100,018

Source: own elaboration based on Paus, 2015; Sekretariatet for konfliktrådene, 2024, p. 13; Ministerstwo Sprawiedliwości, 2024

In both countries, a significant upward trend occurred during the same period between 2005 and 2009. It is difficult to identify any universal, specific reason influencing the increased interest in mediation in countries that differ in demography, social structure and legal culture. A decline followed this period in both countries, but it was more significant in Norway (a 43.5% decrease between 2014 and 2023). The sharp decrease between 2019 and 2020 was certainly related to the COVID-19 pandemic; however, after the end of the pandemic, there has been no sharp increase

in the number of criminal cases referred to mediation in Norway, while in Poland the number of cases referred to mediation has almost returned to pre-pandemic levels. Together with the decade-long decline in the number of cases referred to the Mediation Service by the prosecuting authority, the severity and complexity of the cases have increased (Sekretariatet for konfliktrådene, 2024, pp. 8–10, 13).

On the other hand, due to a significant increase in civil cases and criminal cases that were previously discontinued (mainly against minors under 15, who are not criminally liable), the total number of cases referred to mediation in Norway is gradually increasing. In 2023, in addition to 1,879 criminal cases, 2,560 cases that were previously dismissed and 3,050 civil cases (7,489 in total) were referred to mediation. At first glance, it is clear that civil mediation and previously discontinued cases are replacing mediation in criminal cases, but it is difficult to find any logical connection. The greatest decline is observed in the Mediation Service in districts with large populations, which reinforces the unfavourable development nationwide (Sekretariatet for kontfliktrådene, 2023, pp. 14–15). In-depth research is needed to clarify the reasons for this. Practice thus shows that mediation in Norway is not a dead institution, but the continuing downward trend, especially in criminal cases, may be worrying. On the other hand, comparing the demographic aspect, in Poland, which is seven times more populous, only about twice as many mediations in criminal cases have been registered in recent years.

The decrease in the number of criminal cases in Norway after 2014 may also be because the close link between the Mediation Service and the judiciary has increased since the Act of 2014 entered into force, which charged the Mediation Service with the task of supervising the implementation of the newly introduced sanctions for juvenile delinquents aged 15–18, i.e. youth punishment (*ungdomsstraff*) sentenced by courts and youth follow-up (*ungdomsoppfølging*) sentenced by courts or referred by prosecutors. This has so far not been associated with mediation, which raises concerns that the councils will be considered more as quasi-executive authorities, justice system agendas with a strong professional component rather than independent arenas of handling conflicts in local communities with the help of lay mediators who are members of these communities (Andersen, 2015, pp. 114–118; Christie, 2015, pp. 109–113; Paus, 2017, pp. 42–53). These concerns may impact a lack of confidence from parties who have not previously encountered the Mediation Service and who may believe that it will not be neutral. However, it is important to note that participation in mediation improves trust and reduces the fears of participants, as over 90% of surveyed victims and offenders participating in mediation, parents of minors and supporters would recommend it to others (Paus, 2018, p. 43).

Already in the first years of the Mediation Act being in force, negative phenomena were observed, such as the perception by the Minister of Justice, the Director of Public Prosecutions and some heads of the mediation offices and mediators of mediation being a narrowly understood means of crime prevention rather than as

a forum for comprehensive conflict resolution, as well as the punitive approach of some mediators towards offenders (Kemény, 2000, p. 91). A lively discussion on whether mediation should be settlement-driven or process-oriented ended with the conclusion that it essentially combines elements of both of these concepts, although more attention should be paid to the mediation process itself than to the search for agreement. The focus on agreement does not automatically prove the punitive nature of such mediation (Kemény, 2000, p. 93).

In the past, attention has also been paid to the existence of a very clear net-widening effect. An increasing number of juveniles under the age of 15, who were held as not responsible for their acts, participated in mediation because of the hope of law enforcement authorities that it would be a preventive measure against committing crimes in the future (Dullum, 1996, p. 94). This is confirmed by the data collected in Table 2. In 2023, the Mediation Service received 87.8% more criminal cases that had previously been discontinued than in 2014 (mainly against minors under 15.

Table 2. Number of cases referred to mediation in Norway between 2014 and 2023 after previous discontinuation by the public prosecutor's office

Year	Number of referrals to Mediation Service
2014	1,363
2015	1,488
2016	1,340
2017	1,512
2018	1,439
2019	1,420
2020	1,622
2021	1,978
2022	2,121
2023	2,560
Total	16,843

Source: own elaboration based on Sekretariatet for konfliktrådene, 2023, p. 15; Sekretariatet for konfliktrådene, 2024, p. 14.

In addition, there have been problems in the functioning of the Mediation Service itself. Firstly, there were significant differences in the content of agreements reached in similar cases. Secondly, some victims requested at least minimal financial compensation, which was often beyond the offender's capacity (Brienen & Hoegen, 2000, p. 728).

When it comes to evaluating mediation regulation, there is a perception that the advantages outweigh the disadvantages. The latter include, in particular, the restriction in the circular of the Director of Public Prosecutions on the use of mediation in less serious cases and the treatment of this institution almost exclusively as an alternative measure to punishment (Kemény, 2005, p. 106).

Another negative phenomenon is that society in general is unaware of the functions and tasks facing the Mediation Service, which results in the need for the coordinators of the mediation offices to focus on providing information to the public, law enforcement agencies and community organisations (Paus, 2000, p. 290). On the other hand, the interest of political elites and the government in developing mediation as a response to crime (especially juvenile delinquency) results in about 90% of cases being referred to the Mediation Service by the police and prosecuting authorities (Kemény, 2000, p. 91).

Conclusion

The legal regulation of victim–offender mediation in Norway is a phenomenon on a European scale. It is not only, as in other countries that have created a legal framework for mediation, the general provisions of the penal codes or the codes of criminal procedure that constitute the ground for referring a case to mediation and the issuing of a certain procedural decision by the procedural authorities based on its results. Above all, it is a separate and quite extensive piece of legislation regulating the systemic aspects of the National Mediation Service, the status of the mediator and, in a comprehensive manner, the rules and procedure for the use of mediation. Paradoxically, the legal regulation of referring a case to mediation is very general, with no specific grounds or purpose; an analogous situation applies with Polish regulations. This has advantages and disadvantages: the positive aspect is universality, as theoretically mediation can be used in any case, even a serious one, involving a particular offender and victim. On the other hand, the lack of a specific ground may discourage judges and prosecutors from using mediation in criminal cases.

Due to the relevant provisions of the penal codes and the criminal procedure codes, in both countries the use of victim–offender mediation gives the judicial authorities broad opportunities to take its results into account as part of the final judicial decision. The courts may, for example, conditionally suspend the execution of a sentence of imprisonment, defer sentencing for a probation period, waive sentencing, extraordinarily mitigate the punishment or impose a milder punishment. The prosecuting authority may conditionally waive the prosecution of the offence. By using mediation, this kind of flexibility in choosing the appropriate sanction allows for an adequate criminal response to the offence with maximum involvement of the victim and the offender.

There is a noticeable evolution of the Mediation Service towards a closer relationship with the justice system. Until 2014, a network of mostly cross-municipal, independent mediation centres operated separately from the official justice system, providing only institutional support to non-professional mediators. The transfer of the Mediation Service under the new Mediation Service Act from municipal structures to state structures and the creation of a two-level structure, i.e. the Central Administration of the National Mediation Service in the Ministry of Justice and Public Security and 12 regional offices, has centralised this institution and forced it back into the framework of procedural formalism. This is happening against the assumption that mediation should be an alternative measure to formalised criminal proceedings and should take place outside the official agencies of the justice system, an assumption that is one of the cornerstones of the idea of restorative justice. The outcomes of mediation proceedings alone are supposed to be the 'link' with the procedural authorities.

The addition of new powers to enforce juvenile justice response measures has further linked the Mediation Service to the justice system. By entrusting the supervision of the execution of youth punishment sentenced by courts and youth follow-up sentenced by courts or referred by prosecutors, the Mediation Service has become a kind of executive body for juvenile criminal proceedings. Thus a 'hybrid' institution has been created, where non-professional staff (mediators) on a semi-voluntary basis implement the idea of the participation of a civic factor (society) in the resolution of criminal conflicts, while professionals exercise authority functions (decision-making, enforcement) concerning juveniles who have been subjected to certain measures of reaction to a criminal act. There is a concern that the Mediation Service will cease to be associated with neutrality towards the parties and the act itself, which is characteristic of restorative justice and mediation. In this regard, the Polish model of a pluralism of institutions and individuals entitled to mediate seems more secure from the point of view of realising the assumption that mediation entities should be autonomous and independent from the judiciary. This is facilitated by the decentralisation of the policy on the appointment of those authorised to mediate in criminal cases, which has been entrusted to dozens of presidents of district courts. In contrast, the more formalised Norwegian model is certainly more favourable to ensuring the professionalism of mediators and mediation services.

The duality of the tasks of the Mediation Service as an institution that is part of the judicial machinery, as indicated above, may provoke a perception and evaluation of mediation in terms of seeking maximum efficiency regarding the rate of settlements reached so that conflict resolution by the court is a last resort. This line of thinking is guided by the Norwegian Mediation Service Act, which provides for the possibility of renewing mediation if the agreement appears to be difficult to implement, there has been a change in circumstances that make the agreement

unreasonable or the agreement has been violated for other reasons, which is original compared to other legal systems.

Another determinant of mediation effectiveness is worrying: the statistics show a downward trend in the number of mediation proceedings conducted annually by the Mediation Service. Perhaps this is due precisely to the perception of the Mediation Service as an institution more and more closely linked to the justice system and its agenda than as a community support entity. Secondly, an increasing number of cases are coming to mediation in the Mediation Service that were previously discontinued by the judicial authorities, most often against juveniles under 15 who are not criminally responsible anyway. In this way, the judicial authorities seem to be looking for the possibility of any response to criminal acts, treating the mediation procedure as an educative measure to prevent an offender from feeling impunity.

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Bialystok Legal Studies
Białostockie Studia Prawnicze
2024 vol. 29 no. 4

sciendo

DOI: 10.15290/bsp.2024.29.04.10

Received: 22.02.2024
Accepted: 4.11.2024

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Considerations Regarding the Typology of Counter-Detection Measures in the Light of Quantitative Research on Organised Crime Groups that Recruit Football Hooligans

Abstract: Through the application of counter-detection activities, football hooligan groups in Poland have created organised crime networks, that are able to identify, locate and neutralise police intelligence activities. In the 20th and 21st centuries, the issue of counter-detection activities undertaken by members of organised crime groups has not been acknowledged by researchers. Therefore, the existing body of work on forensic tactics as a scientific discipline needs to be critically analysed, and new definitions need to be adopted. The scope of the study includes definitions of forms of counter-detection activities (e.g. counter-surveillance or inverse surveillance), as well as the classification and functions of counter -detection activities. The article seeks to establish a framework and define the conceptual grid and key assumptions underlying the concept of counter-detection activities. It is the first desk-research analysis to systematise knowledge on the counter-detection activities of criminal groups. Analysis results are the basis for the creation of a theory of anti-forensics,: its typology is presented with the example of groups of football hooligans. The authors define the concept of counter-detection activities and its purpose, and seek to delineate the basic forms and strategies of counter-detection. The knowledge presented is also referred to as 'anti-forensics', which in fact, is a specific area of knowledge on how to prevent the detection of crimes and criminals. This follows directly from the wording of the cardinal rule of all crime-fighting: 'Think like a criminal'.

Keywords: counter-detection activities, counter-surveillance, delaying actions, legalisation and hiding criminal assets

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Introduction

When committing a criminal act, the offender produces certain pieces of information – leaving physical traces, giving knowledge to witnesses, etc. It is in the interest of the offender that this information does not reach law enforcement services. The flow of information between the offender, the witness(es) and the detective is of great importance as long as the detection process continues. The latter is a kind of 'battle' for information between the offender, seeking to minimise his/her role as the source or issuer of information, and the detective, whose aim is to maximise the flow of information about the crime. The ability of criminals to limit the flow of information to detectives, and their reasons for doing so, varies considerably. In practice, there are some who do almost nothing to restrict the flow of information (due to lack of skill and motive); at the other extreme, there are criminals who do everything in their power to inhibit it (Willmer, 1970).

The vast majority of criminals seek to avoid being punished and so do all they can to ensure that the crime they have committed remains undetected and that they do not get apprehended as perpetrators. Among the exceptions are offenders who come forward after committing a crime and incriminate themselves; these are usually people with mental disorders, emotionally driven murderers or politically motivated offenders. In the case of the latter, the act (such as murder or an act of terror) is generally a manifestation of an opinion, a demonstration of a certain attitude. Leaving these demonstration crimes aside, as well as crimes committed on the spur of the moment (*dolus repentinus*), offenders responsible for crimes of violence and other common crimes generally try to commit their offences without witnesses and possibly leaving few traces that would allow them to be detected, apprehended and later proven guilty. By contrast, the perpetrators of economic crimes usually try to make their crimes appear as if they are legal (Widacki, 2022).

Currently, activities aimed at an offender evading detection, so-called 'counter-detection activities', are increasingly seen as part of a planned criminal strategy and tactics. Generally, countermeasures are the actions and behaviours of individual criminals and criminal groups to disrupt or prevent law enforcement activities against them. Organised crime groups (OCGs) use various countermeasures to recognise and mitigate law enforcement actions; their application requires an awareness of the methods and techniques used by law enforcement authorities in investigating criminal networks. OCGs use a number of countermeasures to secure their communication against law enforcement surveillance, including technology such as the use of encryption and foreign and pre-paid SIM cards or satellite telephones, as well as reliance on code. To evade physical surveillance during transport, OCGs frequently change vehicles, often hired or leased using fraudulent IDs (Europol, 2017a).

This article presents a case study on the development of a system of counter-detection activities by criminal groups operating within groups of football hooligans in Poland. The analysis relies on empirical research on criminal counter-detection practice (Chlebowicz et al., 2021; Chlebowicz et al., 2022; Horosiewicz et al., 2020; Łabuz & Safjański, 2017; Michna et al., 2005; Safjański, 2007), as well as on research on stadium crime and hooliganism (Chlebowicz, 2009; 2010; 2014). In order to expand the empirical base, the authors analysed information from journalistic investigations and court judgments published on courts' electronic portals. Another important source of information was announcements by the National Prosecutor's Office of Poland and information provided by the Central Police Investigation Bureau. In addition, press releases available in electronic media were analysed. The criteria adopted during these searches included activities within organised groups of hooligans and elements of their modus operandi related to counter-detecting activities.

The article discusses key tactical undertakings and technical measures aimed at strengthening the imperviousness of a criminal group and at neutralising the efficiency of police intelligence activities, which are most suited to the needs and specifics of criminal groups based in football hooligan groups in Poland. Against this background, it should be noted that from a forensic point of view, only the combined use of criminal tactics and the latest technology can lead to the successful thwarting of police measures, both at the level of operational activities and at the procedural stage. Consequently, this translates into the impossibility of detecting perpetrators and bringing them to justice.

The prevalence of initiatives and techniques aimed at neutralising police operations and their active influence on ongoing criminal proceedings has clearly been growing and can be interpreted in terms of the professionalisation of the criminal world. Undoubtedly, the factor that has facilitated and accelerated the expansion of these forms of criminal activity is broad access to devices and technologies whose counter-detection potential is fully exploited by criminal groups. This calls for the reflection that perhaps this is a response to the surveillance capabilities that have emerged as a consequence of the development of the so-called information society. Regardless of sociological assessments of the phenomenon of using information technologies and their social and psychological consequences, it must be assumed that they are being used to increase the efficiency of criminal enterprises (Chlebowicz et al., 2021). The most effective counter-detection strategies of organised crime groups include corruption, paying for confidential information, infiltrating key positions in the public sphere, blackmail, counter-surveillance, disinformation and using violence against officers, witnesses and group members, among others (Vander Beken, 2004).

1. The concept of counter-detection activities in forensic science and police practice

The description of the relationship between the perpetrator of a crime and law enforcement agencies can be made by referring to the so-called theory of combat. Indeed, while the objective of tactical and forensic activities carried out by police forces is to identify the perpetrator of a crime and collect evidence of guilt for the purposes of a trial, the objective of the perpetrator is not only to commit a crime but also to avoid criminal liability. The theory of combat modified for the purposes of forensic science further assumes that the objectives of the perpetrator and the law enforcement agencies are incompatible and that both entities are aware of this and, above all, consider the efforts of the other entity in their own action (Chlebowicz & Safjański, 2021).

Counter-detection activities refer to efforts aimed at avoiding detection, hindering criminals' identification through the secrecy of activities, limiting evidence left behind, and intimidating witnesses (Eck & Rossmo, 2019). Europol defines counter-detection activities as actions and measures used by individual criminals and criminal groups to prevent or disrupt actions taken against them by law enforcement authorities. Familiarity with the methods and techniques used by law enforcement agencies in investigations and operational cases constitutes a prerequisite for the efficiency of organised crime groups' use of counter-detection activities. According to Europol, the most common counter-detection activities include measures to protect communications from operational control (encryption of correspondence, use of foreign and pre-paid SIM cards or satellite phones, use of codes) and methods to evade police surveillance, e.g. frequent changes of vehicles, including renting or leasing vehicles using forged documents (Europol, 2017b).

In the 19th century, attempts to change one's appearance during or after a crime (e.g. growing or adding hair, beards or moustaches), using false names, impersonating others or using forged documents were considered to be the most rational counter-detection measures (Gross, 2020). At the beginning of the 20th century, Polish forensic literature referred to rational actions that hinder the detection and apprehension of the perpetrator of a crime as 'tricks of the felons', including simulating various illnesses, pickpockets discarding stolen wallets after they have been emptied, brazenly denying facts when apprehended by the police, keeping firearms away from home, burglars using gloves and hiding the loot of a crime (Łukomski, 1924). However, some irrational behaviour was also recorded besides criminals' rational acts to make it more difficult to track them down. In the 19th century, excrement was frequently revealed at crime scenes; criminals believed that this protected them from detection. Sometimes the faeces was covered with a piece of cloth to keep it warm for as long as possible; according to superstition, as long as the faeces remained warm, the perpetrator could safely leave the scene of the crime (Gross, 2020).

We cannot address the issues of defining counter-detection without first looking at the concept of modus operandi. The desire to avoid detection and apprehension is, in principle, a crucial element in determining an offender's modus operandi (Łukomski, 1924). It is assumed that the individual elements of the modus operandi represent the three stages of committing a crime, i.e. preparation, execution and concealment. Counter-detection activities undertaken at the stages of planning and concealment of a crime are exceptionally important (Wnorowski, 1978). If the crime is planned, the perpetrators usually try to minimise the probability of being apprehended, either caught red-handed or afterwards, given the traces they have left. Hence they generally choose the scene and conditions of the crime with great caution; for example, they prefer a desolate place to rob or, alternatively, a crowded place to carry out pickpocketing. Sexually motivated serial killers, whom criminology classifies as so-called organised killers, carefully decide on the location of the attack on their victim, the place to which they drag the corpse or unconscious victim after the attack – in order to manipulate the body – and finally, the route of safe escape. The prime directive for such forward thinking is to avoid capture and consequent criminal liability (Widacki, 2022). Actions during the stage of concealment of a crime consist, inter alia, in covering up traces of the activity and are aimed at delaying its detection, making it difficult or even impossible to detect it at all, therefore ensuring impunity for the perpetrator (Wnorowski, 1978).

Counter-detection activities commonly known as delaying tactics aim to hinder the investigation by preventing investigators from obtaining information that could lead to the identification of the perpetrator, rather than merely causing a delay in the investigation process (Konieczny, 2020). The following main forms of delaying behaviour can be distinguished:

1) Destruction of material by covering up ('cleaning') traces found at a crime scene in order to destroy evidence (dactyloscopic, biological, traseological, etc.), as well as larger-scale activities, such as setting a vehicle used in a crime on fire or setting a fire in a room where a murder has been committed;
2) Intimidation of and control over witnesses and victims in order to prevent them from transmitting detection-relevant information to detectives (this may take the form of psychological and physical violence, social condemnation, interference with family relationships, etc.);
3) Forging documents, providing false alibis or other fraudulent information either by oneself or with the assistance of friendly (bribed) persons;
4) Suspects' refusal to provide information by giving false statements or resorting to the option, perfectly legal in civilised systems, of remaining silent (Stelfox, 2009).

The following tactical measures are also applicable as part of counter-detection efforts:

1) Creating a false narrative already at the planning and preparation stage of a crime;
2) The offender's behaviour during apprehension consisting in giving false explanations, providing deceptive leads (e.g. by handing over a 'set of IT data that is difficult to analyse'), presenting a false alibi or making a false admission of guilt;
3) Active disruption of police operations, an extremely broad category that includes disinformation activities introduced in the course of operational control or surveillance by an offender who has realised that he/she is being surveilled. These activities are often based on dedicated methodologies such as self-monitoring, counter-surveillance, and rapid handover of materials;
4) In an information society saturated with technology, delaying tactics also involve the use of advanced technical tools that, among other things, aim to neutralise the methodologies used in computer forensics;
5) A wide range of corruption techniques, involving not only traditional bribery, i.e. offering a financial, sometimes personal, advantage, but also engaging police officers in criminal activities and 'exerting political pressure through previously obtained influence' (Konieczny, 2020).

An innovative scientific study concerning the role of counter-detection activities in the threat of organised crime was initiated by researchers from Ghent University. The outcome of their research was a conceptual model for preventing organised crime that includes the recognition of the extent to which, apart from the traditional elements, counter-detection actions are used by organised crime groups (Black et al., 2000; Black et al., 2001). Subsequently, the Ghent researchers' conceptual model became the cornerstone for the development of a model for the use of strategic analysis in the process of combating organised crime across the European Union. Work in this area was carried out at the Institute for International Research on Criminal Policy in cooperation with the Joint Research Centre on Transnational Crime of the Università Cattolica del Sacro Cuore of Milan, the University of Trento and the Swedish Council for Crime Prevention. The research made it possible to create the Europol Organised Crime Threat Assessment Methodology, which, in addition to analysing organised crime groups and monitoring criminal markets, included an analysis of counter-detection activities carried out by organised crime groups (European Commission, 2002).

At the same time, a concept for the study of counter-detection activities was developed in Poland at the Strategy Bureau of the Warsaw Police Headquarters, according to which, from the point of view of law enforcement agencies, the classification of counter-detection activities based on the criterion of the direction

of their application is of utmost importance. This way, counter-detection activities can be classified as offensive, defensive and universal. Typically, offensive actions represent the most complex criminal enterprises, which include direct and indirect infiltration, intelligence or disruption operations. Defensive actions include activities aimed at strengthening one's own group, which include, inter alia: counter-intelligence and disinformation activities, disciplinary action against group members and associates, traditional methods of a tactical nature (counter-surveillance, self-monitoring), cover-up operations or changes in the internal organisation of criminal groups. Universal measures include the use of expert knowledge, corruption or the use of information technology to commit crimes (Michna et al., 2005).

Counter-detection activities can therefore be divided into delaying or eliminating, reactive or proactive, and also strategic or tactical, offensive or defensive, and simple or complex (Konieczny, 2021). An action is considered as delaying if it extends the time elapsed between the origin of the information and its acquisition by detectives relative to the amount of time that would have elapsed if the perpetrator had not carried out a counter-detection operation. Let us refer to the categorisation of criminals into organised or unorganised, without going into detail: the organised take a keen interest in the course of the detection process for the crimes they have committed and, more importantly, develop a good social relationship with the detectives, which may cause them to recognise that it is unlikely that their 'colleague' is the perpetrator of the crime being solved – although generally only up to a certain point. Elimination efforts are those that lead to the definitive loss of evidence that could incriminate the perpetrator, who is aware of this dangerous potential; examples include the destruction of a CCTV data carrier used to record critical events, of a knife used during a robbery, of false documents used by the perpetrator to extort credit, etc. (Konieczny, 2021).

An activity is deemed reactive if it is a kind of response (reaction) to a specific undertaking carried out by detectives. For example, the perpetrator learns that a particular witness has received a summons to testify; the message is therefore conveyed to him/her that if any testimony incriminating the perpetrator is given, he/she will risk losing his/her life. Another perpetrator may refuse to undergo a polygraph test, and another, using his/her contacts, may cause a sample of biological material taken from him/her to be swapped for a different one. An action is deemed to be proactive if it is carried out prior to the crime in order to interfere with the course and/or outcome of a detection operation that is anticipated to occur after the crime has been committed. A typical example is the preparation of a false alibi in advance. A rare but noteworthy method is for the offender to study forensic literature on interrogation techniques in advance, become familiar with them and subsequently, during the actual interrogation, successfully play the role of the person answering honestly the questions asked. Based on expert knowledge, proactive measures also include the development of a routine and professional lifestyle to avoid even being

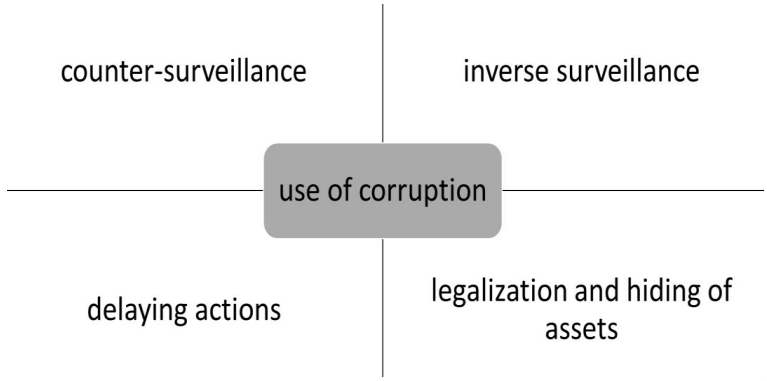
flagged by detectives as a potential perpetrator. Proactive operations carried out by criminal groups are among the most sophisticated counter-detection operations; they will be discussed further below (Konieczny, 2021).

An action is deemed defensive if it directly serves to minimise the possibility of detecting the perpetrator. Examples of such an action include the removal of traces at a crime scene, disposal of stolen goods or evading the surveillance carried out by detectives in pursuit of the perpetrator. An action is offensive if it is intended to lower the credibility of detectives in the eyes of their superiors and thus cause confusion among the authorities. One example is the introduction of disinformation having the guise of truthfulness, resulting in a waste of the forces and resources of the service on unnecessary activities (Konieczny, 2021).

A counter-detection activity is simple if it consists of a single, conceptually distinguishable operation. An example would be fleeing the scene, if the perpetrator does not engage in other operations at the same time. Other examples could be altering one's appearance (e.g. growing/shaving off a beard), intimidating a particular witness or obtaining a false identity document. If these actions are not conceptually linked to each other, then they can be regarded as simple in nature. The criterion of the duration of the use is not relevant; if the perpetrator hides in one particular place, even for a long period of time, such a method of counter-detection may also be considered simple. An activity is complex if the perpetrator carries out more than one counter-detection operation at the same time and these operations are interlinked to ensure their effectiveness, for example the perpetrator uses information provided by a compromised investigator and adapts his/her behaviour to its content (Konieczny, 2021).

Counter-detection activities do not necessarily constitute a crime within the meaning of the Penal Code. Secondly, they may be carried out independently of the specific criminal act, and thirdly, they are often elements of activities or even lifestyles carried out by perpetrators, who, for instance, routinely use counter-surveillance and self-monitoring (this seems to be especially true of terrorists, especially so-called 'lone wolves'). As such, counter-detection activities constitute a separate segment of the behaviour of members of criminal or terrorist groups, although they can (and usually do) accompany behaviour that relates to the crime committed (Chlebowicz & Safjański, 2021). Therefore, it appears that basic forms of counter-detection activity, such as corruption, counter-surveillance, inverse surveillance, delaying actions, legalisation (money laundering) and hiding assets, can be distinguished, although we are aware that the boundaries between the various forms can be fluid and blurred. Figure 1 illustrates a typology of forms of counter-detection activities.

Figure 1. Forms of countermeasures.



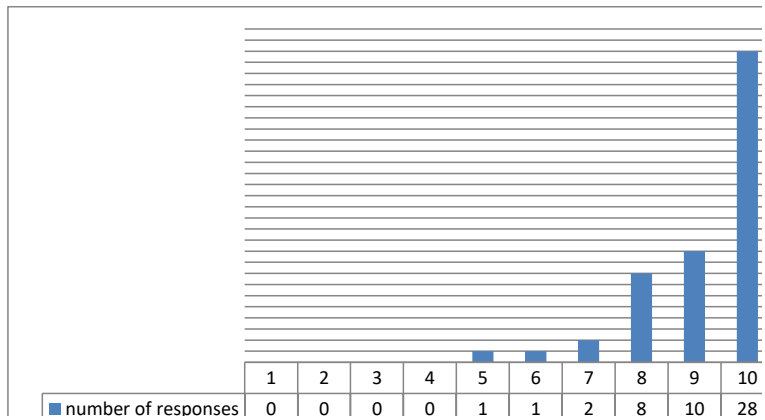
Counter-surveillance is intended to ensure the secrecy of criminal activities or to limit the effectiveness of police surveillance activities. In practice, it most often includes special methods and technical means used to detect or limit the effectiveness of police observation (of persons, objects or processes) or wiretapping (interception or monitoring of electronic communications over wired or wireless networks). For criminals it is natural to look for solutions that allow for the effective concealment and then legalisation of assets (any property) related to the crime. From the tactical and forensic point of view, this form of counter-detection activity aims to make it as difficult as possible for law enforcement to identify and locate property that is directly or indirectly related to the crime. Inverse surveillance is focused on actively collecting information about law enforcement officers in order to identify risks to criminal activities. Various tools and methods may be used in inverse surveillance, from the legal (e.g. analysis of activity on social media forums) to the illegal (e.g. access to information subject to banking secrecy by a bank employee). Methods used as part of delaying activities include corruption of prosecutors and judges, intimidation of witnesses, disinformation activities, disintegration activities and building relationships with politicians. From the point of view of law enforcement agencies, disintegration activities are the most dangerous; their mechanism is to create a situation that raises suspicions about the professional honesty of a police officer. The most common examples are denunciations, slander and provocation. It is important to recognise the mechanisms of disintegration activities due to the protection of the most valuable police officers (Chlebowicz& Safjański, 2021).

What is also worth emphasising is that counter-detection activities are still evolving, which is most probably closely related to the increasing professionalism of certain types of organised crime. It seems reasonable to argue that the apparent increase in counter-detection activities comes as a response of the criminal world

to undercover operations conducted by law enforcement authorities (Chlebowicz & Safjański, 2021). Today, criminals take counter-detection protection seriously, and those who want to defeat them need to understand this (Foertsch, 1999). In fact, holding a reputation within the criminal community for being an organised crime group forces its members to use even more sophisticated counter-detection measures (Lavorgna, 2016).

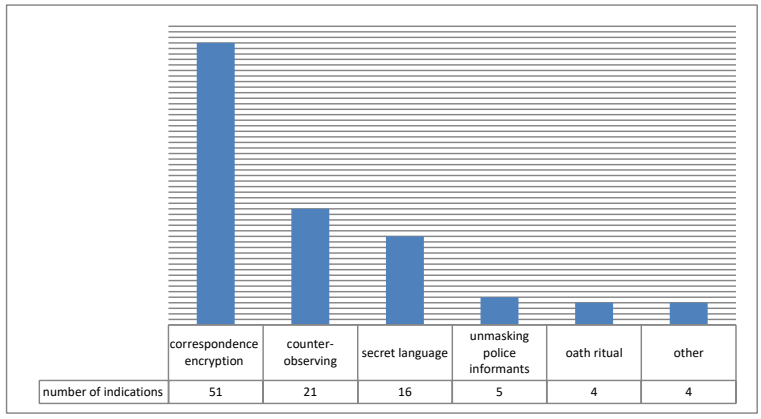
In 2021–2023, one of the authors of this paper (Chlebowicz) conducted a diagnostic survey on cross-border crime in Poland, using a structured interview technique with 50 former Polish law enforcement officers (PLEOs) experienced in countering organised crime. When asked how they assess the effectiveness of countermeasures used by Polish organised crime groups based in groups of football hooligans in preventing detection of criminal activity, 76% of the PLEOs rated the countermeasures as very effective (38 answers gave a rating of 9 to 10, on a scale of 1 to 10); 22% of officers surveyed rated them as effective (11 answers gave a rating of 6 to 8); 2% rated them as rather effective (1 answer gave a rating from 3 to 5). None of the PLEOs rated the countermeasures used by these organised crime groups as ineffective (ratings of 1 or 2). The results are presented in Figure 2.

Figure 2. The distribution of PLEOs' answers to the question 'How do you assess the effectiveness of countermeasures used by Polish organised crime groups based in groups of football hooligans in preventing detection of criminal activity?' on a scale from 1 to 10. N=50.



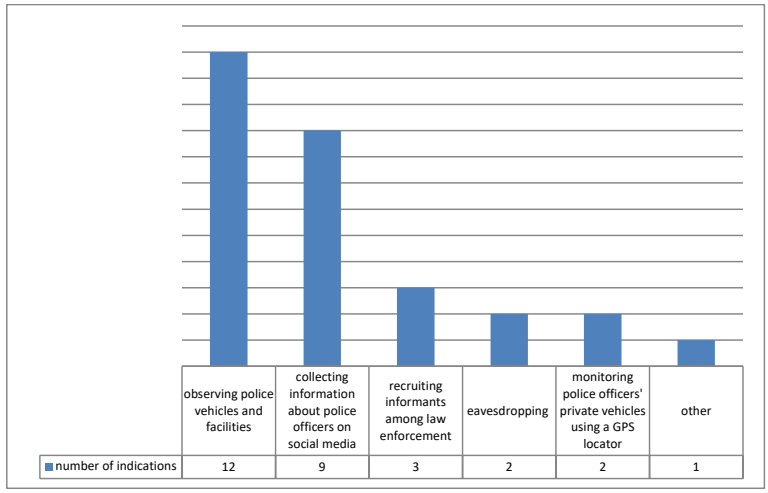
When asked what counter-surveillance methods used by criminal groups based in the football hooligan community had been encountered during the PLEOs' detection practice, communication encryption was indicated as the most popular method (50 indications). Another very popular method was counter-observation (21 indications). The results are presented in Figure 3.

Figure 3. The distribution of PLEOs' answers to the question 'What counter-surveillance methods used by criminal groups based in the football hooligan community did you encounter during your detection practice as a law enforcement officer?' Several indications could be given. N=50.



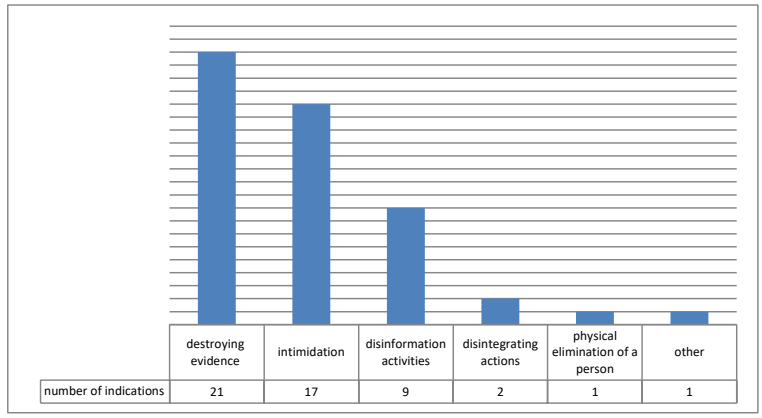
When asked what inverse surveillance methods used by criminal groups based in the football hooligan community had been encountered during detection practice, observation of police vehicles and facilities was indicated as the most popular method (12 indications). Another very popular method was collecting information about police officers on social media (9 indications). The results are presented in Figure 4.

Figure 4. The distribution of PLEOs' answers to the question 'What inverse surveillance methods used by criminal groups based in the football hooligan community did you encounter during your detection practice as a law enforcement officer?' Several indications could be given. N=50.



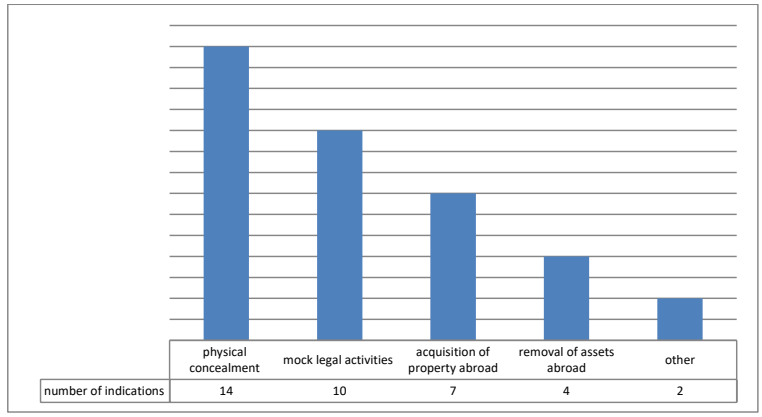
When asked what delaying action used by criminal groups based in the football hooligan community had been encountered during detection practice, destroying evidence was indicated as the most popular method (21 indications). Another very popular method was intimidation (17 indications). The results are presented in Figure 5.

Figure 5. The distribution of PLEOs' answers to the question 'What delaying action used by criminal groups based in the football hooligan community did you encounter during your detection practice as a law enforcement officer?' Several indications could be given. N=50.



When asked what methods of hiding assets used by criminal groups based in the football hooligan community had been encountered during detection practice, physical concealment was indicated as the most popular method (14 indications). Another very popular method was mock legal activities (10 indications). The results are presented in Figure 6.

Figure 6. The distribution of PLEOs' answers to the question 'What methods of hiding assets used by criminal groups based in the football hooligan community did you encounter during your detection practice as a law enforcement officer?' Several indications could be given. N=50.



2. An outline of the criminological image of so-called 'stadium crime'

Studies conducted independently by British and Polish researchers during the first decade of the 21st century on criminal groups operating within the football hooligan milieu have revealed the significant potential threat posed by these circles (Chlebowicz, 2009; 2010; Frosdick et al., 2005). The football hooligan community in Poland has undergone a significant and profound transformation, with the main result being the formation of criminal groups inside these communities. It is reasonable to hypothesise that it is the organisational forms of stadium hooligans, modelled on those typical of criminal groups and associations, that currently constitute the dominant part of the so-called 'stadium crime' phenomenon. This means that gangs of football hooligans constitute a significant component of the phenomenon of organised crime in Poland (Chlebowicz, 2009). At this point, it is important to stress that these authors unanimously agree that stadium hooliganism is evolving by gradually 'abandoning' the stadium context and shifting criminal activity outside (Frosdick et al., 2005).

Two areas of football hooliganism can be distinguished today. The first, often equated with stadium hooliganism, involves acts of violence that are closely linked to a football match. In this context, it should be noted that the violence used against rival groups of supporters and hooligans, or in later stages primarily against the police, is devoid of spontaneity. The organisation of public-order disturbances in connection with sports events requires a division of tasks, the ensuring of a minimum level of discipline, the drawing-up of an action plan and implementation of its individual elements. As is well known, the organisation of arranged fighting also requires considerable commitment on the part of the participants. This manifests itself in preparations for physical confrontation, with hooligans often practising martial arts and other sports together within their groups. The second area is the wide range of crimes, the motivations for which are primarily financial rather than subcultural (Chlebowicz, 2010).

Undoubtedly, an ongoing trend is the extensive involvement of football hooligan gangs in drug-related crime. Practically all criminal groups operating in hooligan environments are active in the drug market (Pytlakowski & Latkowski, 2017). However, it is worth pointing out that drug trafficking is taking the form of a professional undertakings on a relatively large scale. No longer is it just the shady selling of drugs in circles of people directly associated with supporters' groups but wide-ranging activities that can be described as the creation of new areas in the black market. Surveys into the activities of football hooligans in Cracow revealed that one scheme of drug distribution involved, among other things, an organised criminal group composed of pseudo-fans supplying drugs to persons aspiring to become members of this group. The 'candidates' were then tasked with distributing the drugs within their local neighbourhood, with the profits being passed on to members of the fighting squad. This arrangement resembles the relationship between a wholesaler

and retailers (Chlebowicz, 2009). The British variant of the transformation of football hooliganism has thus been mirrored in Poland. At the same time, one integral element of this process is the clear increase in the role of organised groups of football pseudo-fans (Chlebowicz, 2014).

There are numerous indications that hooligan organisations are already strong enough to participate effectively in smuggling operations throughout the European Union. This means that football hooligan crime is, at least to some extent, already cross-border in nature, which corresponds to general trends in the internationalisation of criminal activities. The successes of the Polish law enforcement agencies in dismantling the largest organised criminal groups have encouraged the leaders of stadium hooligans to develop counter-detection activities aimed at ensuring the closed nature of the group and the secrecy of their undertakings and gaining an informational advantage (Chlebowicz, 2009).

According to information made available by the Central Investigation Bureau of Police, it is known that 41 football hooligans were detained in February 2023, 37 of whom were suspected of being part of an organised criminal group charged with, among other things, murder, robbery, extortion and drug offences. In the course of the operation, in which more than 1,000 Polish police officers participated, cocaine, amphetamines and cannabis, as well as dozens of machetes, telescopic batons, pyrotechnics and seven firearms, were confiscated. Assets originating from robberies and worth PLN 200,000 were also recovered (Central Investigation Bureau of Police, 2023).

Criminal groups composed of hooligans serve as intermediaries between sources of drugs located outside Poland and retail sales in the country. Furthermore, an expansion of the 'product range' has been observed, since, in addition to classical drugs, an illegal trade in anabolic steroids is also developing; it is probable that the same distribution channels are used for the trafficking of steroids, which are in high demand (Chlebowicz, 2010). This trend was already signalled in 2010, when it was rightly foreseen that 'some supporter groups, displaying confrontational tendencies, would evolve into classical criminal gangs supervised and led by leaders of organised structures, particularly specialising in the production and distribution of drugs (Pływaczewski, 2010).

3. The origins of counter-detection activities in organised crime groups functioning among football hooligans

From the very beginning, stadium crime was considered a form of organised crime. This was due to the simple fact that the very nature of football hooliganism required efficient coordination of the activities of individual hooligans. Regardless of whether the hooligans participated in arranged fighting or were engaged in initiatives such as organising brawls in the stands of sports venues, their modus operandi had to take into account such elements as the distribution of tasks, areas of expertise and,

most importantly, the existence of effective leadership, exercised either by a single individual (a group leader) or by collective leadership (elders), who made the key decisions. Leadership conceived as a permanent organisational element of the group meant at the same time that the individual members of the group had to obey the commands of the leader (or, depending on the local context, the elders).

Access to specific internal information within hooligan structures is hierarchical. Members considered by the group to be credible and loyal (a status they often obtain after multiple verification and screening activities) have access to valuable information from the point of view of law enforcement agencies. The lower someone is in the hierarchy, the more accessible the information, but it is usually of lesser importance (Radwaniak, 2011). The activities described here additionally foster the formation of a hierarchy in the group and, by way of feedback, strengthen the position of the group leader. Effective leadership also enables criminal groups to undertake activities that extend well beyond the area of the stadium.

In the case of the Polish variant of organised crime originating from football hooligan circles, it needs to be observed that it is highly capable of planning counter-detection activities. This results from the ability to commit financial resources, a well-developed network of contacts, significant criminal experience and effective leadership. The qualifications, abilities, routines and personality traits of individual group members, as well as the availability of appropriate technical facilities, mean that the modus operandi of the criminal group as a whole is highly characterised by individual elements. However, the group's modus operandi cannot be considered to be that of each of its members (Wnorowski, 1978). The results of criminological research in Poland indicate unequivocally that in the case of so-called stadium crime, counter-detection activities were the result of the evolution of modus operandi, which began to include actions designed to avoid criminal liability; particular elements began to incorporate specific counter-detection activities.

Counter-detection activities undertaken at the planning stage of a crime are unique; this applies both to mass disruptions of public order at sports venues and to other forms of behaviour that show no connection to a football match. So-called criminal intelligence serves as an example of this phenomenon: the literature suggests that one of its sources is direct observation of the venue or surveillance of individuals. Groups of football hooligans become familiar with the security of sports venues in great detail; an illustration is the mass disturbances of public order at the municipal stadium in Toruń on 21 May 2005, which were preceded by intensive reconnaissance activities undertaken by the 'Młode Orły' fighting unit of supporters of the Lechia Gdańsk team. Members of this unit mapped the Toruń stadium, creating a video recording of its topography, including access routes. Another interesting example demonstrating the planning element of actions undertaken by football hooligans was the mass disturbance of public order during the match between Ruch Chorzów and ŁKS Łódź on 3 May 2005 in Chorzów. After a large group of hooligans forced their way onto the pitch, a dozen

or so pre-selected individuals damaged a CCTV camera by cutting off its power supply (Chlebowicz, 2009).

Criminal intelligence is being consistently developed and advanced, drawing on the practical experience of football hooligans as well as on modern technology. It is virtually standard procedure to track hooligans from rival 'firms' by means of GPS trackers attached to their cars. GPS trackers are also attached to smugglers' cars in order to determine where contraband is stored; for example, GPS tracking enabled football hooligans to break into an underground cigarette factory in Silesia. It has been noted that in the case of some crimes, hooligans refrain from using mobile phones in order to avoid being linked to the place where the act was committed and their movements being traced; communication is instead maintained by means of short-wave radios. In the course of one particular case, it was revealed that the hooligans who had fatally beaten one of the leaders of a rival criminal group had stashed their mobile phones in a basement before committing the crime; gangsters with connections to the footballs hooligan community jammed the locators and mobile network near one of the production halls, because an illegal cigarette factory was operating inside. The criminal group, Psycho Fans, based in Chorzów, employed a systematic approach to their activities, which were carried out by a dedicated hooligan unit led by Łukasz B., also known as 'Baluś'. This involved gathering information on rival gangs through regular social media searches, tracking their vehicles using GPS trackers and even using software specifically purchased for hacking into social network accounts.

The range of counter-detection behaviour includes the destruction of traces and evidence of crimes, especially during actions involving beatings using dangerous objects by members of rival groups of football hooligans or hooligans who have chosen to cooperate with the Central Investigation Bureau of the Police and testify in criminal trials. Such behaviour includes the destruction of footwear, machetes used during attacks and mobile phones. Cars used during such incidents are usually destroyed by burning, cut up for scrap, thrown into bodies of water or otherwise hidden. An undoubtedly offensive counter-detection technique is the intimidation of witnesses, usually former hooligans. The main methods of intimidation are usually beating, causing bodily harm – for example, through the use of flares (in one case, flares were used against a key witness travelling in a car) – or drawing graffiti in housing estates where hooligans reside stating that the witness in question is an informer.

Criminal groups operating in football hooligan circles have significant financial resources at their disposal gained from illegal activities; this gives them the opportunity to initiate corrupt activities. The collected materials show that a gang based with the Cracovia Krakow hooligans (the Cracovia Gang) used corruption and inverse surveillance in the local court to get access to court files, laundered money through investments in the development industry and used counter-surveillance, which can be illustrated by a situation involving the evacuation of a drug warehouse while the immediate vicinity was patrolled with cars in order to possibly block police

cars. The secret communication platform used by the Cracovia hooligans, 'Anom', is also used by criminals around the world, including the bosses of Colombian and Mexican drug cartels. They were convinced that their messages could not be traced; however, they did not know that Anom was a trap set by the FBI.

The efficiency of corruption counter-detection efforts is dependent on the durability of the relationship between the criminal group member and the police officer. Lasting relationships between police officers and criminal group members are most often based on spending time together in places such as gyms, pubs, clubs or social agencies (Miller, 2003). Paweł M., aka 'Misiek', the leader of the criminal group of Wisła Kraków hooligans, the so-called 'Sharks', testified that in April 2018, he received a call from Mirek from Gdańsk, who said that the police were preparing actions to detain Wisła Kraków hooligans. Mirek allegedly learned this from one of the anti-terrorist agents with whom he went to the gym. An extreme example of delaying actions was an order given by Torcida, the gang of hooligans of the Gornik Zabrze club, to assassinate a judge. While pursuing their goal of subverting criminal trials, hooligans also corrupted doctors who issued medical certificates in exchange for money. This enabled criminals to obtain evidence that their health condition did not allow them to stand trial.[1]

Table 1 illustrates the range of forms of counter-detection activities undertaken by the most dangerous criminal groups operating within football hooligan groups in Poland.

Table 1. Range of forms of counter-detection activities undertaken by the most dangerous criminal groups operating within football hooligan groups in Poland.

Gang	Counter-surveillance	Inverse surveillance	Use of corruption	Delaying actions	Legalisation and hiding of assets
Cracovia Gang (Cracovia Cracow)	YES	YES	YES	YES	YES
Psycho-Fans (Ruch Chorzów)	YES	YES	YES	YES	YES

1 In order to expand the empirical material, we analysed information on organised criminal groups operating in the football hooligan milieu based on information from journalistic investigations and a review of court judgments published on electronic portals available on the websites of courts in Kraków, Katowice, Wrocław and Łódź. Announcements from the National Prosecutor's Office and information provided by the Central Police Investigation Bureau were also an important source of information. In addition, press information available in electronic media was analysed. The criteria adopted during this search included activities within organised groups of football hooligans and elements of the modus operandi that are related to counter-detection activities.

Sharks (Wisła Cracow)	YES	YES	YES	YES	NOT CONFIRMED
Torcida (Górnik Zabrze)	YES	YES	NOT CONFIRMED	YES	NOT CONFIRMED
Teddy Boys 95 (Legia Warsaw)	YES	NOT CONFIRMED	YES	YES	YES
Brygada Banici (Lech Poznan)	YES	NOT CONFIRMED	YES	YES	YES
Green Gang (Lechia Gdansk)	YES	NOT CONFIRMED	NOT CONFIRMED	YES	NOT CONFIRMED

Conclusions

The phenomenon of counter-detection activities of criminals, although noticed by forensic scientists over the last 100 years, has not been exhaustively studied. For this reason, not even a basic typology of these activities has been developed within forensics. To systematise knowledge on anti-forensics, we have described the scope, characteristics and contexts of the counter-detection activities undertaken by groups operating within football hooligan groups in Poland. This has allowed us to create a framework in which we could describe the typology of the main forms of counter-detection activities by criminals.

The actual nexus between undertaking counter-detection activities and the operations of organised crime groups involving football hooligans in Poland is more complex and nuanced than is generally described in this article. Moreover, for other countries, the relationship between the two varies across time and territories, and may depend on various factors, including the specific socio-cultural context and the state involved. We note that the application of counter-detection activities in practice gives organised crime groups based in groups of football hooligans a crucial advantage over law enforcement. According to our observations, there has been a general increase in counter-detection activities applied by criminals throughout Poland since 2000.

There are two contexts in which inference about counter-detection activities limited only to criminal groups in Poland based among football hooligans remains problematic. First of all, most criminal trials in Poland against members of these groups are still ongoing, and there is no full access to court files for forensic researchers. Furthermore, the scope of criminal counter-detection activities has all the appearance of being significantly more extant than criminal groups based

in groups of football hooligans. Most counter-detection activities undertaken by criminal groups in Poland based among football hooligans within the domestic sphere is done locally, whether legally or illegally. In this context, we note a thriving illicit market. While Poland could, indeed, simply be an outlier in Europe, it could also be the herald of a possible future for other countries.

Counter-detection activities constitute an interesting area for further research, one worth investigating, studying and drawing conclusions from, especially with regard to the preparation of police and special forces to work out the modus operandi of criminal groups operating among football hooligans, who more and more frequently imbue criminal tactics with elements showing clear signs of counter-detection activities. It should be noted that a range of counter-detection measures similar to those used by criminal groups operating in football hooligan circles is employed by members of motorbike gangs (Pływaczewski, 2022).

Combating threats posed by the football hooligan milieu and arising from the professionalisation of their criminal activities, exemplified by the application of a system of counter-detection measures, ought to become an essential element of contemporary security strategy, both locally and regionally. In view of this, it is also possible to conclude that counter-detection issues lie at the root of the actual causes of crime and, incidentally, confirm the validity of the assertion that it is not the severity of punishment but its inevitability that deters people from committing a crime or strengthens their motivation to do so (Beccaria, 1973). Consequently, the results of research on counter-detection measures, if they are not ignored, may, in future shape an effective yet increasingly less severe penal policy.

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Bialystok Legal Studies
Białostockie Studia Prawnicze
2024 vol. 29 no. 4

sciendo

DOI: 10.15290/bsp.2024.29.04.11

Received: 31.07.2024
Accepted: 18.11.2024

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Integrating Routine Activity Theory and Transparency in Governance for Food Security through the Example of Operation Opson

Abstract: This article explores the integration of criminology into food security policies through the lens of Routine Activity Theory (RAT) and transparency in governance, with a specific focus on Operation Opson. Food-related crimes, including fraud, theft, and contamination, pose significant threats to global food security and the achievement of Sustainable Development Goal 2: Zero Hunger. The study develops an integrated framework combining RAT and transparency to identify, prevent, and respond to food-related crimes, ultimately strengthening food security. RAT helps map out the food supply chain's vulnerabilities, identifying motivated offenders, suitable targets, and the absence of capable guardians. Transparency in governance enhances accountability and public trust by making regulatory processes and results openly accessible. The case study of Operation Opson, a joint initiative by Interpol and Europol, illustrates the practical application of this framework. The findings underscore the importance of incorporating criminological insights into food security strategies to achieve zero hunger by 2030, promoting a more secure and resilient global food system.

Keywords: criminology, food security, Operation Opson, routine activity theory, transparency in governance

Introduction

Food security remains a pressing global issue, with millions of people around the world still lacking reliable access to adequate nutrition. According to the Food and Agriculture Organisation of the United Nations (FAO), food security exists when 'all people, at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and

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healthy life' (FAO, 1996). Despite significant global efforts, this challenge persists, closely linked to socio-political and economic factors that impact international development agendas. As such, food security is central to Sustainable Development Goal 2 (SDG 2), which aims to achieve zero hunger by 2030 (United Nations, 2015). While food security policy traditionally focuses on agricultural productivity, distribution systems, and economic access, new threats have emerged that are less often addressed within these frameworks. Food-related crimes, such as food fraud, theft, corruption, and other illegal activities in food systems, pose increasingly severe risks by disrupting supply chains, compromising food quality, inflating prices, and contributing to malnutrition, health risks, and social instability.

This article addresses the research problem of how criminological insights (Pływaczewski et al., 2019), specifically Routine Activity Theory (RAT) (Cohen & Felson, 1979) and governance transparency (Donaldson & Kingsbury, 2013; Hale, 2008; Kosack & Fung, 2014), can be integrated to prevent food-related crimes and enhance food security efforts aligned with SDG 2. It aims to develop an integrated framework that incorporates criminological insights into food security policy, by applying RAT and governance transparency to counter food-related crimes.

In exploring this framework, it is essential to consider existing governance practices that exemplify these principles. The European Union's regulatory framework for food security, which emphasizes transparency, traceability, and risk management, serves as a strong example. Its key regulations, such as the General Food Law Regulation (EC) No. 178/2002 (European Parliament & Council, 2002), establish principles for food safety, traceability, and swift response mechanisms for food-related risks, contributing to a robust legal foundation. In alignment with environmental, social, and governance (ESG) practices, the EU's regulatory framework also supports sustainability, ethical governance, and corporate responsibility, which are critical in managing food supply vulnerabilities. These regulations provide a form of 'guardianship' in the Routine Activity Theory framework, ensuring that food products meet stringent standards of safety and integrity, fostering public trust, and promoting ethical practices within food systems.

Although food-related crimes are gaining attention in the literature both in English (Rizzuti, 2020; Robinson, 2023; Wilson, 2008) and in Polish (Pływaczewski & Płocki, 2013; Pływaczewski & Lewkowicz, 2015), there remains a need for deeper research on the practical applications of criminological theory to combat these threats. To contribute to this field, this study poses the following research question: How can integrating RAT and governance transparency in food security policy reduce vulnerabilities in food supply chains and deter food-related crime? The study hypothesizes that integrating RAT with transparency in governance will help identify and mitigate vulnerabilities in food supply chains, thereby enhancing food security.

The article consists of three parts: the first examines the nature and impact of food crime on food security, emphasizing the need to integrate criminology into

food security policy; the second details the theoretical foundations of RAT and transparency in governance, establishing the basis for the proposed framework; the third presents the case study of Operation Opson, showing how these strategies work in practice to deter food-related crime. The research employs a theoretical approach, integrating content analysis and case study analysis. Content analysis is applied to examine secondary data sources, including international reports from Interpol, Europol, and the FAO, as well as relevant academic literature. This allows for the identification of recurring themes and patterns regarding the roles of RAT and transparency in governance in mitigating food-related crimes in supply chains. The case study of Operation Opson serves as an illustrative validation of the proposed theoretical framework and demonstrates the practical application of RAT and transparency in combating food-related crimes.

1. Food-related crimes and their impact on food security

Food-related crimes have a long history (Wilson, 2008) and have evolved with changes in food production and distribution. The concept involves illegal activities that compromise the integrity, safety, and availability of food, typically driven by financial gain. These crimes can occur at any stage of the food supply chain, from production and processing to distribution and retail, and have severe consequences for public health, consumer trust, and economic stability.

There are many definitions of food-related crimes. According to the United Kingdom Food Standards Agency, 'food crime is serious fraud and related criminality in food supply chains'. This definition also includes activity impacting on drinks and animal feed (FSA, 2023). The FAO defines food fraud as 'a situation in which the consumer is deceived about the amount, quality and/or identity of the food they consume' (2023). According to Spink and Moyer, food fraud is defined as 'a collective term used to encompass the deliberate and intentional substitution, addition, tampering, or misrepresentation of food, food ingredients, or food packaging; or false or misleading statements made about a product, for economic gain' (2011). Although there is no universally accepted definition of food crime or food fraud, several key elements are highlighted in the various definitions provided by different authors; these emphasize intentionality, fraud, economic gain, and the potential threat to public health.

Food fraud is a major global issue today, costing the food industry up to USD 40 billion a year (Financial Times, 2023) and causing USD 110 billion in lost productivity and medical costs each year due to unsafe food, particularly in low – and middle-income countries (World Health Organization, 2022). It involves various food groups, such as meat, dairy, seafood, spices, and alcohol. For example, almost half of the honey imported into the EU was filled with sugar syrups, a practice known

as 'honey laundering' (European Commission, 2024). In addition to the financial costs, food crime carries a high risk to the health and life of consumers. According to the World Health Organization (2022), an estimated 600 million people a year worldwide – almost 1 in 10 – become ill after eating contaminated food, and 420,000 die, resulting in the loss of 33 million years of healthy life.

The number of incidences of food-related crimes has significantly increased due to the industrialization of food production and distribution. As food supply chains have become more complex and globalized, opportunities for fraudulent and illegal activities have expanded, undermining efforts to ensure the safety, availability, and nutritional quality of food. The shift towards industrial-scale food production and distribution has led to longer and more complex supply chains. Food products now often travel long distances and pass through multiple hands before reaching consumers, creating numerous opportunities for food fraud. These illegal practices pose a serious threat to food security, as defined by the FAO in 1996.It should be noted, however, that the concept of food security has evolved considerably over time (Marzęda-Młynarska, 2014; Shaw, 2007) and has relatively recently expanded to include food quality and safety issues, reflecting changing understanding and priorities. Addressing food-related crime is thus critical to achieving SDG Targets 2.1 and 2.4 by 2030, which include access to safe and nutritious food.

Applying criminological perspectives to food security is an area of growing research interest, though direct studies are still limited. Internationally, this field has attracted attention through studies on 'green criminology' and its focus on the environmental impacts of food production (e.g. Donnermeyer, 2017; Holley et al., 2018), as well as research on specific food-related crimes, like fraud and exploitation in supply chains (e.g. Hendricks & Masehela, 2024; Khamala, 2022). This increased interest is echoed in Alice Rizzuti's (2020) literature review, which highlights criminological approaches to food crimes, particularly in relation to food safety, a key part of food security. Rizzuti's review shows that, while the topic is gaining ground, criminological studies on food-related crimes are still underrepresented. She identifies two main research directions: studies that focus on fraudulent practices in the food industry and policies to prevent them, and 'green criminology', which looks at environmental harm, social justice, and fair access to food (Rizzuti, 2020, p. 4). In Polish scholarship, there is also a growing interest in exploring the criminological aspects of food security; the contributions of Wiesław Pływaczewski (Pływaczewski & Lewkowicz, 2015; Pływaczewski & Płocki, 2013) and scholars from the University of Warmia and Mazury in Olsztyn (Lenartowicz, 2021), whose work integrates criminology with various aspects of food system vulnerabilities and advances the intersection of criminology and food security, are especially noteworthy. Despite these contributions, however, there remains a need for further research to develop comprehensive frameworks that address food security policy through a criminological lens, specifically focusing on how criminological tools can be applied

to identify and mitigate vulnerabilities in food supply chains, thereby enhancing food security efforts in alignment with SDG 2.

2. Theoretical background and integrated framework: Routine Activity Theory and transparency in governance

Routine Activity Theory (RAT), developed by Lawrence E. Cohen and Marcus Felson in 1979, is a significant framework in criminology that examines the environmental aspects contributing to crime (Cohen & Felson, 1979; also Clarke & Felson, 1993; Felson, 2002). This theory emphasizes the importance of situational factors in the incidence of crime, positing that for a crime to occur, three elements must converge in time and space: a motivated offender, a suitable target, and the absence of a capable guardian. The absence of any one of these elements is sufficient to prevent such violations from occurring (Cohen & Felson, 1979, p. 589).

A 'motivated offender' refers to an individual or group inclined to commit a crime. RAT assumes that there is always a pool of motivated offenders ready to exploit criminal opportunities. A 'suitable target' can be a person, object, or place attractive to an offender, with factors like value, visibility, and accessibility determining suitability. The 'absence of capable guardians' refers to a lack of individuals or mechanisms that can deter criminal activity. Capable guardians include police officers, security personnel, vigilant bystanders, or even technological measures like surveillance systems and locks. When these guardians are absent, the likelihood of crime increases (Cohen & Felson, 1979, p. 590).

RAT provides a framework for understanding how specific situations can lead to criminal acts, shifting the focus from offender characteristics to broader environmental and situational factors that facilitate crime. By identifying and addressing these factors, it becomes possible to develop effective crime prevention strategies. This theory has been extensively applied in criminology to understand and prevent various types of crime, from property crimes and urban crime to cybercrime, retail theft, food-related offences like food fraud, tourism-related crimes, and farm crime (Anderson & McCall 2005; Astor et al., 2010; Brantingham & Brantingham, 1995; Brunt et al., 2000; Ceccato & Newton, 2015; Clarke, 1999; Eck & Weisburd, 1995; Felson, 2002; Holt & Bossler, 2008; Newman & Clarke, 2003; Spink & Moyer, 2011; Weitzer, 2014).

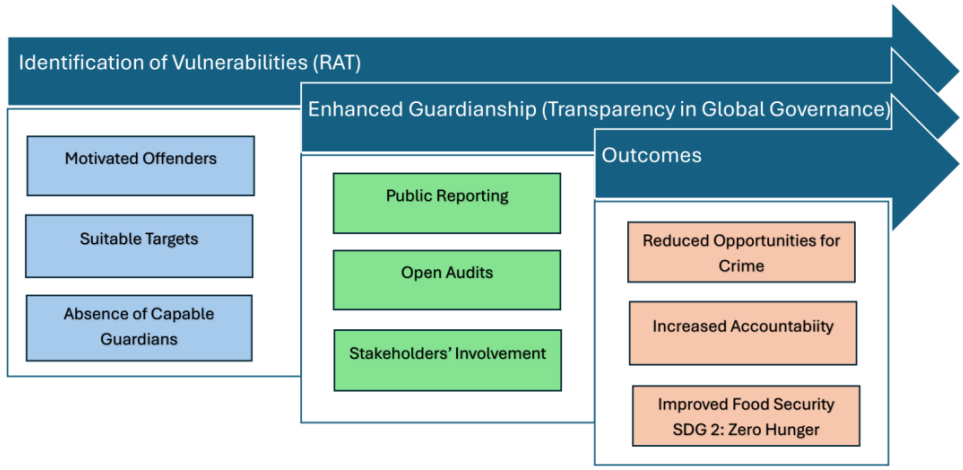
In parallel, transparency in governance refers to the openness and accessibility of information regarding the decision-making processes, activities, and policies of international or domestic regulatory bodies. Transparency ensures accountability, inclusiveness, and integrity by making actions and outcomes public and accessible for scrutiny by stakeholders, including states, civil society, and the general public (Florini, 2007; Grant & Keohane, 2005). This openness fosters trust and enhances

the legitimacy of institutions while deterring corruption and unethical behaviour (Hillebrandt et al., 2014; Kaufmann & Bellver, 2005).

Transparency in governance aligns closely with ESG principles, such as accountability and sustainability, by fostering clear, secure, and accessible regulatory practices in complex sectors like international trade (Laszuk & Šramková, 2021). For instance, the European Union's Regulation (EU) 2017/625 on Official Controls (European Parliament & Council, 2017) mandates rigorous oversight at every stage of the food supply chain, ensuring compliance with safety standards and reducing the likelihood of fraudulent activities. Likewise, Directive (EU) 2019/633 on Unfair Trading Practices (European Parliament & Council, 2019) enforces fair and ethical trading practices within the agricultural sector, promoting transparency and strengthening trust across supply chains. These regulatory frameworks can function as 'capable guardians' within the RAT model, establishing preventative controls and offering oversight to reduce criminal opportunities within food systems. In the context of food security, transparency therefore strengthens governance by ensuring that regulatory bodies operate openly, creating a monitored and accountable food supply chain. For example, public reporting of inspections and audits in food production helps discourage criminal activities by making it clear that all actors are subject to oversight. Transparency thus plays a crucial role in ensuring the safety, integrity, and availability of food supplies, which are core elements of the UN's Zero Hunger goal (SDG 2).

The integration of RAT with transparency in governance forms a framework that supports food security policy by preventing crime in food systems. RAT highlights vulnerabilities in food supply chains, such as weak regulatory oversight that could lead to food fraud, and allows for targeted crime prevention efforts. Transparency complements this by enhancing accountability within the supply chain, reducing opportunities for exploitation and criminal activity. Together, these elements create a robust framework for reducing food-related crimes and enhancing food security, directly contributing to SDG 2. By focusing on crime prevention and accountability, the framework helps secure food availability, quality, and access, thus supporting specific SDG 2 targets. For instance, reducing food-related crimes indirectly supports Target 2.1, which aims to end hunger and ensure access by all people, particularly the vulnerable, to safe, nutritious, and sufficient food by ensuring a reliable and affordable food supply, while transparency measures encourage sustainable practices aligned with Target 2.4, which seeks to ensure sustainable food production systems and implement resilient agricultural practices that increase productivity and production. This integrated framework contributes to Agenda 2030 by promoting a stable and resilient food system essential for achieving zero hunger. A visual representation of this framework is shown in Figure 1, illustrating how RAT identifies vulnerabilities in the food supply chain and how transparency measures enhance guardianship, thereby leading to fewer food-related crimes and improved food security.

Figure 1. Integrated framework combining Routine Activity Theory and transparency in governance for enhanced food security.



Source: Own elaboration

3. Case study of Operation Opson: Deterring food-related crimes

Operation Opson, coordinated by Interpol and Europol, is an international law-enforcement operation aimed at combating the trade in counterfeit and substandard food and beverages. The operation's name, derived from the ancient Greek word for food, reflects its core mission: to safeguard the integrity of the global food supply. Since its inception in 2011, the operation has significantly expanded in scope and impact, addressing the growing complexity of food fraud (Interpol, 2024).

In its early years (2011–2013), Operation Opson focused primarily on its core mission. The initial operations aimed to disrupt local and regional food fraud networks while raising awareness about the issue. The operation began with fewer participating countries, mainly concentrating on Europe and parts of Asia. During these foundational years, cooperation between Interpol and Europol was established, setting the groundwork for future expansions (Europol, 2014). The operation expanded its focus between 2014 and 2016 to include a broader range of food products and beverages, emphasizing the complexity of global supply chains. More countries from different continents joined the operation, enhancing its global reach. New and more sophisticated inspection techniques and advanced technology for better detection and traceability were introduced in this period (Europol, 2014; 2015; 2016; Europol, Interpol, 2017). The years 2017–2019 marked a period of consolidation, where Operation Opson strengthened its methodologies and focused on more sophisticated forms of food fraud, including counterfeit health supplements and

organic products. Coordination between participating countries and international agencies improved, leading to more synchronized operations. Greater involvement of private sector partners helped enhance transparency and accountability in supply chains. Extensive public awareness campaigns were launched to educate consumers about the risks of food fraud and how to identify legitimate products (Interpol, 2019). Since 2020, Operation Opson has integrated advanced technologies such as blockchain for traceability, DNA testing for authenticity, and data analytics for identifying patterns of fraud. The use of cutting-edge technologies has significantly improved the detection, traceability, and verification of food products. The operation has seen enhanced global collaboration, with participation from over 80 countries demonstrating its extensive reach (Interpol, 2021).

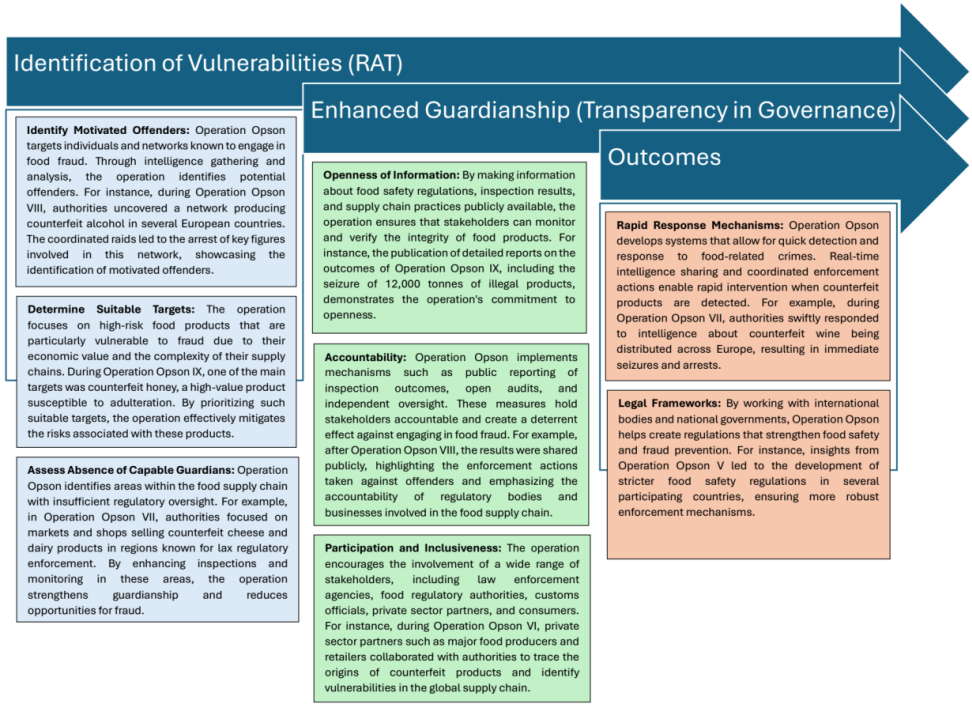
The key element of Operation Opson's strategy is its methodology, which involves several key steps that ensure comprehensive action against food fraud. Initially, participating countries collaborate to identify potential targets and plan coordinated inspection and enforcement activities. This involves scrupulous mapping of the food supply chain to pinpoint vulnerabilities where food-related crimes, such as fraud, theft, and contamination, are likely to occur. By focusing on high-risk products and areas with insufficient regulatory oversight, the operation enhances its effectiveness in identifying and intercepting fraudulent activities. Inspections are carried out at various points in the supply chain, including production facilities, warehouses, markets, and transport vehicles. Suspect products are seized and subjected to rigorous laboratory testing to verify their authenticity and safety. Detailed analysis helps trace the origins of counterfeit goods and uncover the networks involved in their production and distribution. Legal actions, including fines, facility closures, and criminal prosecutions, are then taken against individuals and organizations involved in food fraud. The results of the operation are compiled into detailed reports and shared with the public and relevant stakeholders, promoting transparency and accountability (Europol, 2024).

The impacts and results of Operation Opson have been significant, reflecting its success in enhancing global food security. Over the years, the operation has resulted in the seizure of thousands of tonnes of counterfeit and substandard food and beverages, worth millions of dollars. For instance, during Operation Opson IX in 2020, authorities seized 12,000 tonnes of illegal products, including contaminated dairy and counterfeit honey, thereby avoiding potential health crises. The operation has also disrupted numerous organized crime networks involved in food fraud, with hundreds of individuals arrested and prosecuted. Insights gained from the operation inform the development of better policies and regulations, leading to stricter food safety laws and improved enforcement mechanisms globally (Europol, Interpol, 2021).

The Operation Opson methodology closely aligns with the principles of RAT and incorporates transparency in governance to achieve its objectives. Motivated offenders are identified through intelligence gathering and analysis, which targets individuals and networks known to engage in food fraud. Suitable targets are prioritized based on

their economic value and vulnerability, such as olive oil, honey, and wine, which are particularly susceptible to fraud due to their high value and complex supply chains. The operation enhances guardianship by focusing on areas with weak regulatory oversight; inspections at these points help identify and intercept fraudulent activities, with suspect products being subjected to rigorous laboratory testing to verify their authenticity and safety. By making processes and decisions open and clear, the operation ensures that actions are subject to scrutiny and accountability. Public reporting of inspection results, open audits, and the involvement of independent oversight bodies create a deterrent effect against engaging in food fraud. Transparency measures also include the involvement of various stakeholders such as law enforcement agencies, food regulatory authorities, customs officials, private sector partners, and consumers. Awareness campaigns and media engagement further promote transparency by informing the public about the dangers of food fraud and the importance of purchasing food from reputable sources. An overview of Operation Opson's methodology and its impact on combating food fraud was used to illustrate the practical application of the proposed framework to integrate criminology into food security policies, represented in Figure 2.

Figure 2. Integrated framework combining Routine Activity Theoryand transparency in governance for enhanced food security through the example of Operation Opson.



Source: Own elaboration

Conclusions

This article has explored the integration of the criminological theory of RAT with transparency in governance for food security through the example of Operation Opson. The study set out to answer the research question 'How can integrating RAT and governance transparency in food security policy reduce vulnerabilities in food supply chains and deter food-related crime?', which supported the hypothesis that this integration would mitigate vulnerabilities within the food supply chain and enhance food security.

The findings confirm that integrating RAT and transparency in governance establishes a practical framework to address weaknesses in food systems. The developed framework functions by strengthening 'capable guardianship' through transparency and accountability measures that systematically reduce criminal opportunities. Regulatory bodies, for instance, could implement stricter traceability protocols, disclose inspection results, and employ real-time monitoring systems that detect disruptions early. These measures not only deter food-related crimes but also stabilize food prices and protect consumer health, verifying the hypothesis that the combined approach improves food system resilience.

Beyond crime prevention, the integration of RAT and governance transparency significantly benefits key stakeholders, including regulators, suppliers, and consumers. Transparent governance encourages ethical behaviour within supply chains, holding suppliers accountable and fostering consumer confidence in food quality and safety. This openness also allows regulatory agencies to respond swiftly to emerging risks, thereby minimizing threats to public health and supporting a sustainable, trustworthy food system. Furthermore, this integrated framework aligns with Sustainable Development Goal 2, which aims to end hunger and ensure food security. By embedding transparent, accountable processes within food systems, the approach protects vulnerable populations from issues like food fraud and contamination, which disproportionately affect low-income communities. In doing so, it supports both food safety and social equity, extending the impact of this criminological model beyond mere crime reduction.

The integration of RAT and governance transparency also establishes preventive mechanisms within the food sector. Enhanced visibility through regular audits and public reporting increases the perceived risk of detection among offenders, thus reducing incidents of food fraud and contamination. This approach bolsters the resilience of food supply chains against future threats, ensuring long-term food security. This study validates the hypothesis, demonstrating that the combined application of RAT and governance transparency not only strengthens food security but also fosters an ethical, transparent food system that aligns with broader sustainable development goals.

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Bialystok Legal Studies
Białostockie Studia Prawnicze
2024 vol. 29 no. 4

sciendo

DOI: 10.15290/bsp.2024.29.04.12

Received: 14.03.2024
Accepted: 4.11.2024

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The Observance of Human Rights and Freedoms during the Covert Obtaining of Information in Criminal Proceedings

Abstract: This article focuses on the analysis of problematic aspects of the system of internal control and judicial review over the protection of human rights and freedoms in the context of covert obtaining of information for the needs of criminal justice. Focusing on control measures and striking a balance between justice and human rights, the article dwells upon the effectiveness of supervision mechanisms and the factors affecting their efficiency. Analysis of legislation and case law of various European countries is therefore carried out to assess the effectiveness of control measures. Various factors that determine the effectiveness of control measures are examined. In addition, ways of solving these issues in the legislation of European countries and other jurisdictions are considered. As a result, the main problems and obstacles in ensuring the rights and freedoms of citizens while secretly obtaining information for criminal justice are identified. Furthermore, the effectiveness of mechanisms of internal control and judicial review in criminal proceedings is evaluated. Finally, a course of actions is suggested to maintain the balance of interests between criminal justice and human rights and freedoms.

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Keywords: covert obtaining of information, criminal justice, human rights and freedoms, internal control, judicial review

Introduction

Against the background of the rapid development of special technologies and technical means of investigation, covert methods of obtaining information for the needs of criminal proceedings have become particularly relevant. Covert data collection in criminal proceedings is an important aspect of law enforcement; it includes various methods and techniques used to gather information without the suspects' knowledge (Rakipova et al., 2023). In connection with the development of technology and the increasing complexity of crimes, the question of the legality, ethics, and effectiveness of such methods is acute. The use of special software and artificial intelligence facilitates the search, analysis, systematization, and accumulation of information about a person's private life, which can violate privacy. However, public authorities justify such interference in privacy mainly in reference to the fight against terrorism and countering drug trafficking, human trafficking, the arms trade, and corruption.

The Universal Declaration of Human Rights provides several guarantees associated with the application of covert measures in criminal justice (Gronowska, 2022), namely the right to liberty and personal security (Article 3), the right to an effective remedy for violations of fundamental rights (Article 8), and guarantees against (unwarranted) interference with personal and family life, infringements of the inviolability of the home, confidentiality of correspondence, honour, and reputation (Article 12). Moreover, Article 8 of the European Convention on Human Rights stipulates that everyone has the right to respect for their private and family life, their home, and their correspondence. State authorities cannot interfere with the exercise of this right except in cases where interference is carried out in accordance with the law and is necessary in a democratic society for the interests of national and public security or the economic well-being of the country to prevent disorder or crime, protect health or morals, or protect the rights and freedoms of others.

Article 32 of the Constitution of Ukraine enshrines that no one can suffer interference in their personal and family life except in cases provided by law. The collection, storage, use, and dissemination of confidential information about a person without his/her consent are not allowed, except as provided by law and only in the interests of national security, economic well-being, and human rights. Every citizen is guaranteed the right to familiarize themselves with information held by state authorities, local government bodies, and institutions. Covert surveillance in Ukraine is regulated by the Criminal Procedure Code; in particular, Article 10 defines the conditions under which law enforcement agencies can intercept private communications. This provision requires judicial review and internal control, and there is a strict legislative framework on the duration of such surveillance. However,

the case law of the Constitutional Court of Ukraine reveals a gap in the supervision of prolonged wiretapping, raising questions about whether the current guarantees are sufficient to protect the privacy of citizens (Koval, 2019).

Therefore, the necessity to ensure a balance between the interests of criminal justice and human rights is considered a fundamental principle in the context of the use of covert forms and methods of obtaining information. Compliance with this principle envisages the establishment of an adequate and effective mechanism for monitoring and controlling the observance of such rights and freedoms. Methods of covert obtaining of information in criminal proceedings differ significantly in terms of their interference with and impact on confidentiality. In this article, the methods of wiretapping, interception of data (such as emails or mobile communications), and video surveillance are considered; we aim to provide a detailed analysis of the legal guarantees of the rights and freedoms of citizens during the use of these methods. The research aim presupposes the following objectives:

- To present modern approaches to and methods of covert obtaining of information during criminal proceedings (such as wiretapping, video surveillance, GPS tracking, and data interception, as well as degrees of intervention);
- To examine the specific legal framework governing covert obtaining of information in criminal proceedings in Ukraine and other European countries;
- To analyse the effectiveness of judicial review and internal control in supervising secret surveillance;
- To consider possible reforms that could improve the balance between the needs of criminal justice and the protection of human rights.

During the research, the effectiveness of such control measures is assessed in terms of ensuring a balance between justice and human rights. Consequently, the factors influencing their efficiency and methods of solving these issues in the legislation of selected European countries are investigated.

1. Literature review

Since modern crime has become complex and technological, the covert obtaining of information in criminal investigations gains particular importance in the context of human rights protection. However, there is an insufficient amount of literature that addresses in detail the main issues related to the covert obtaining of data. Although much research focuses on general principles and methods (Suleymanli, 2023), discussions of the problems with the covert obtaining of information remain underdeveloped, such as covert data collection and its ethical aspects in countries with different legal systems. Researchers such as Smith (2000), Bloustein and Gavison

(1980), Koval (2019), Kubuj (2022), Leiva (2024), Yuhno (2013), Zafar (2024) have dedicated significant attention to the scholarly development of issues related to ensuring judicial and internal control over interventions in private life.

Covert obtaining of information can be classified into various types, including surveillance, wiretapping, installation of video surveillance, and the use of undercover agents. Legislative regulation of covert data collection varies by jurisdiction, making comparative analysis difficult. Studies conducted in several countries demonstrate that the regulation of covert data collection often faces challenges related to privacy protection. For example, in the UK, legislation such as the Electronic Communications Privacy Act provides for certain restrictions on wiretapping and surveillance (Stoykova, 2024). In Ukraine, it is regulated by the Criminal Procedure Code of Ukraine (2013), which establishes clear rules and requirements for the application of such methods. The ethical aspects of covert data collection are also debatable. Consideration of the ethics of such methods involves the analysis of their impact on public confidence in law enforcement agencies. Many researchers point to the risk of the abuse of such methods, which can lead to unlawful interference in citizens' private lives (Kubuj, 2022). It is also important to introduce control and reporting mechanisms to prevent possible abuse.

A comparative analysis of the covert data collection procedures in different countries shows that the most effective systems combine technical capabilities with clear regulation and ethical standards. For example, in Austria, the use of covert obtaining of information is regulated by strict laws that protect the rights of citizens and prevent abuse (Leiva, 2024). At the same time, in countries with less developed legal systems, there is a greater risk of misuse of such methods. In addition, there are certain challenges that complicate the study of covert data collection: firstly, there is a lack of open information sources due to the specifics of law enforcement activities. Secondly, ethical and legal aspects can be so sensitive that many researchers avoid in-depth analysis of them (Zafar, 2024). This creates a gap in knowledge that needs to be filled, and covert data collection in criminal proceedings requires a comprehensive analysis. Regulation, ethical issues, and comparison of case law in different countries emphasize the need to achieve a balance between the effectiveness of investigations and the protection of individual rights. Further research should focus on developing new methods that will ensure maximum effectiveness without compromising human rights.

2. Materials and methods

During the study, general scholarly (empirical and general logical) and legal methods (specific sociological research, content analysis, the statistical-mathematical method, and comparative legal, formal-legal, and alternative methods) were utilized. A comparison of the key provisions of international acts on human rights guarantees

and the national legislations of Ukraine, Moldova, Lithuania, Estonia, and Germany helped identify similarities and differences in the regulation of the covert obtaining of information in criminal proceedings. Various forms of judicial, internal, and public control to ensure the balance of state and societal interests in upholding human rights and freedoms were examined.

The components of the covert obtaining of information were analysed, identifying specific elements of regulation and its trends. The method of specific sociological research was implemented through monitoring information sources that address various aspects of intrusions into private life, the capabilities of special services, and the effectiveness of control over their activities. Document analysis was also employed, using official communications from state bodies and institutions in Ukraine, judicial practice, and public opinions on the effectiveness of control over law enforcement activities. Based on statistical data from the State Judicial Administration, the High Anti-Corruption Court of Ukraine, and the Office of the Prosecutor General, trends in the increase of cases involving covert methods of obtaining information were studied, using a statistical-mathematical method.

3. Results

3.1. Interference in private life through covert measures to collect information: Statistics and trends

According to the statistics of the Judicial Authority (2024), there is a trend of increasing use of covert measures in Ukraine. This is particularly evident when comparing their quantity with the number of criminal cases sent to court for consideration. After the introduction of the new Criminal Procedure Code of Ukraine in 2013, Ukrainian law enforcement agencies submitted 156,878 criminal cases to courts for consideration. During the same period, investigative judges issued 108,243 permits for covert measures, which typically included several different forms of control. Over the following years, until the imposition of martial law, there is a consistent trend of an increasing number of covert information-gathering measures. Table 1 provides the statistical data from the official website of the judiciary.

Table 1. Statistics on the number of criminal cases submitted to courts and rulings on the use of covert measures, 2015–2021 (before the introduction of martial law).

Year	Number of criminal cases	Number of covert measures used
2015	130,414	117,232
2016	116,745	119,456
2017	132,894	152,185

2018	131,398	154,705
2019	125,761	137,388
2020	121,742	148,664
2021	115,919	144,675

These figures indicate that measures for the covert obtaining of information related to interference in private life and communication has gradually lost its exceptionality and is used more often. This development is concerning in terms of a substantial decrease in the number of investigated cases where individuals who committed crimes are apprehended. The trend of increasing interventions in private life through covert investigation is also evident in specialized agencies created to counter corruption: the National Anti-Corruption Bureau of Ukraine, the Specialized Anti-Corruption Prosecutor's Office, and the High Anti-Corruption Court of Ukraine. The statistical data from these agencies demonstrate that in 2019, prosecutors and detectives submitted 626 motions for permission to conduct covert investigation, obtaining approvals in 520 cases and facing 69 rejections. In 2020, such motions increased to 2,164, with 1,985 approved and 212 rejected. In 2021, 2,384 motions were submitted, with 2,061 approved and 312 rejected. In 2022, 2,243 motions were submitted, with 2,036 approved and 180 rejected. In 2023, 3,246 motions were submitted, with 2,765 approved and 480 rejected (High Anti-Corruption Court of Ukraine, 2024a).

Particular concern arises from comparing the number of cases sent by the National Anti-Corruption Bureau for consideration with the number of permits obtained for covert measures. In 2020, 1,985 permits for covert measures were obtained, and only 85 cases were sent to court. This means that for every case where the guilt of an individual or individuals was established, there were 23 permits issued by investigative judges. In the following years, this ratio was 1:33 in 2021, 1:24 in 2022, and 1:21 in 2023. However, these figures do not account for the number of covert measures carried out at the prosecutor's and detectives' discretion, the granting of permits by a single court decision for a whole complex of covert measures, or a failure to conduct covert investigations. Another trend of judicial control is observed when comparing the number of permits granted by investigative judges for covert measures with the number of refusals to conduct them. The proportional weight of approvals granted by investigative judges is approximately 85%.

3.2. The legal framework of covert obtaining of information in Ukraine

In the legislation of Ukraine, the main regulatory acts that govern the organization, conduct, and documentation of covert obtaining of information and the storage, use, and destruction of information obtained as a result of such measures are the Criminal

Procedure Code of Ukraine (2013) and the Instruction on the Organization of Covert Investigations and the Use of Their Results in Criminal Proceedings (2012). Key mechanisms aimed at balancing the interests of criminal justice and human rights in the application of such measures include the introduction of internal control and judicial review in legislation, which involves the following elements:

1) Placing all covert measures related to interference in private communication exclusively under judicial control;
2) Minimizing the possibility of conducting covert measures in urgent cases without the permission of the investigative judge;
3) Dual control over covert measures, involving the consent of the prosecutor for the submission of a motion by the investigator to be considered by the investigative judge;
4) Assigning exclusive authority to the prosecutor to make decisions on monitoring the commission of a crime (controlled and operational purchases, controlled delivery, special investigative experiments, and simulation of the crime scene);
5) Assigning to the investigative judge decisions on the use of materials obtained during covert investigation in another criminal proceeding;
6) The prosecutor's decision to terminate covert measures and use or destroy their results;
7) Notifying individuals about the conduct of covert investigation against them after the completion of the pre-trial investigation.

However, despite the aforementioned controls, ensuring the balance of interests and compliance with the 'exceptionality' of covert information-gathering measures that are applicable in exceptional cases remains problematic.

The Parliamentary Commissioner for Human Rights (Ombudsman) of the Verkhovna Rada of Ukraine is advised about the lack of information in the investigation of the restriction of the rights and freedoms of individuals during covert investigation. This includes ensuring that law enforcement agencies adhere to the requirements for informing individuals about interventions in their private lives (Business Ombudsman Council, 2024). No investigations into issues related to the use of covert obtaining of information as a means of pressuring businesses, raiding, intercepting insider information and restricted-access information, banking, or commercial secrecy have been conducted by the Business Ombudsman Council (2024).

The absence of information in state institutions regarding the effectiveness of the use of special measures related to interference in private life indicates a lack of purposeful state activity aimed at establishing an adequate control mechanism for ensuring respect for rights and freedoms in this area. The formality of internal control and judicial review over compliance with guarantees of rights and freedoms is

apparent. Consequently, considering the constant increase in the number of measures involving interference in private life, they are no longer viewed as exceptions from general forms of evidence-gathering but rather as routine procedures.

Due to the existence of these problems, the National Human Rights Strategy (the Strategy) (Verkhovna Rada of Ukraine, 2021a) sets forth the task of creating mechanisms to minimize abuses during covert investigations as one of the strategic directions to ensure the right to privacy (Paragraph 6). It also aims to provide access to such mechanisms for every individual who has experienced such an interference. In accordance with Section 2 of the Strategy, it involves ensuring progress in the implementation of Ukraine's international agreements in the field of human rights, including the association agreements between Ukraine on the one hand and the European Union, the European Atomic Energy Community, and EU Member States on the other. It also encompasses the realization of the Sustainable Development Goals of Ukraine for the period until 2030 and the improvement of Ukraine's standing in international human rights rankings.

During the development of the Strategy, the principles introduced by Regulation (EU) 2016/679 of the European Parliament (2016) on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation) (the Regulation (2016)) were applied. The protection of individuals during the processing of personal data is a fundamental right provided for in Article 8 of the Charter of Fundamental Rights of the European Union and in Article 16 of the Treaty on the Functioning of the European Union (European Union, 2010). These acts consider the right to the protection of personal data regarding its function in society. In other words, it should be balanced with other fundamental rights according to the principle of proportionality and observance of all fundamental rights and freedoms, such as respect for private and family life, home and communication, freedom of thought, conscience, and religion, freedom of expression and information, freedom of enterprise, and the right to an effective remedy and a fair trial, as well as cultural, religious, and linguistic diversity. Moreover, special attention is paid to compliance with the procedure. The legal basis for conducting an investigation should meet the following requirements: a written form, clarity and unambiguity, the signature of the authorized person, the justification for its application, the inclusion of information on the right to an effective legal remedy, and possibilities for reviewing such a decision (Point 129).

At the same time, the National Strategy for the Development of Civil Society in Ukraine for 2021–2026 (Verkhovna Rada of Ukraine, 2021b) does not envisage the creation of mechanisms aimed at minimizing abuses during covert investigation or providing access to such mechanisms for individuals who have experienced such an interference. Moreover, the implementation of the National Human Rights Strategy has not influenced the introduction of relevant changes to the criminal procedural legislation of Ukraine. The existing system of covert obtaining of information

in Ukraine requires significant reform to eliminate the identified gaps and ensure reliable protection of individual rights. Specific legislative measures need to be taken to provide clearer guidance and strengthen control mechanisms. The objectives of the National Human Rights Strategy should be prioritized to align Ukraine's practice with international human rights standards, promoting greater accountability in the use of covert investigative actions.

3.3. Legislation of EU Member States on mechanisms aimed at achieving a balance of interests

The issues of the exceptionality of covert forms and methods of obtaining information, the sufficiency of grounds for interference in private life, and the establishment of mechanisms for restoring violated rights of individuals subjected to such measures are relevant not only for Ukraine but also for EU countries and other nations worldwide. European countries have introduced various approaches in their legislation to implement mechanisms aimed at achieving a balance of interests (OECD, 2007; Yuhno, 2013). Thus Article 126 of the Criminal Procedure Code of the Republic of Estonia (2004) introduces principles of public control alongside conventional forms of surveillance and control over covert investigations. Law enforcement agencies are mandated to submit quarterly reports on the application of investigative measures. Based on this information, the Ministry of Justice publishes a report annually covering the quantity and nature of open materials related to the investigation, the number of permits issued for covert investigation categorized by types, and the number of individuals notified of the covert investigation and the number for whom a notification was postponed for over a year. In this regard, the Estonian legislation allows for the filing of appeals against court decisions granting permission for such investigations due to failure to provide the notification or a refusal to disclose information obtained during the covert investigation. Furthermore, the person subject to such measures has the right to access all materials collected concerning him/her, including audio and video recordings and photographs. In addition, in Estonia, Article 126 of the Criminal Procedure Code mandates notifications about covert investigations be sent after their completion, regardless of whether the investigation in the case is concluded. However, Ukrainian legislation does not require sending notifications about the covert investigation if the case is not submitted to court.

The legislation of the Republic of Kazakhstan (1994) provides a measure to avoid formalism. When considering a motion for covert investigation, the investigative judge has the authority to initiate the relevant verification if there are doubts about the accuracy of the information. The covert investigation based on the ruling of the investigative judge may be terminated by the decision of the judge upon the prosecutor's resolution. Moreover, the person who was subject to such measures has the right to appeal to the court for compensation for inflicted damage.

The control mechanism introduced in the Criminal Procedure Code of the Republic of Moldova (2003) also deserves attention. In cases where the prosecutor or investigative judge determines that the rights and freedoms of an individual were substantially violated during the covert investigation, they declare the covert measure invalid and report this to the competent authorities. The prosecutor's decision can be appealed to a higher-ranking prosecutor, while the judge's decision is not subject to appeal. The legislation of the Republic of Moldova establishes a mandatory requirement to record information about the equipment used, the conditions and methods of its application, and the sealing of the data storage device on which the events are documented. Furthermore, notifying the person about the actions taken against him/her is not considered a mere formality of sending a letter with relevant information; on the contrary, it imposes an obligation on the investigative judge and prosecutor to verify the results of the conducted measure for compliance with human rights and freedoms, accompanied by the respective conclusion.

In the legislation of Germany (Letwin, 2023), the key principle is the application of the proportionality principle in determining the form of covert obtaining of information. Some covert measures, such as monitoring correspondence or conducting surveillance in personal dwellings, may be carried out exclusively only if the accused is one of the addressees of the correspondence or a resident of the dwelling. Judicial control over the results of such measures is introduced, along with the possibility of challenging the permission for their conduct in certain cases. The results of telecommunications monitoring are subject to judicial review. Moreover, the Code of Criminal Procedure (CCP) of Germany (German Federal Ministry of Justice, 1987) establishes principles of public (civil) control during the application of telecommunications surveillance. In particular, it is stipulated that the federal states and the Federal Attorney General publish an annual report to the Federal Justice Ministry which compiles an overview of the measures conducted. The report includes the number of criminal proceedings in which covert measures were appointed; the number of decisions on communication surveillance, including initial decisions and extensions and decisions regarding phone or internet communication surveillance; and criminal offences for which this measure was applied.

A special approach is implemented in the German CCP regarding control measures related to interference with private communication in a person's residence. Decisions on the application of measures that are implemented without the knowledge of the individuals involved are made by a panel of judges and, in urgent cases, by the presiding judge. Such decisions lose legal force if not confirmed by the panel within three days. The court that issued the authorization is informed of the results of the implemented measure. In cases where the grounds for the measure are no longer valid, it is terminated by a decision of the panel of judges.

The requirements of the German CCP regarding the conduct and documentation of covert investigations concern restrictions on access to certain information. Thus

it is prohibited to seize documents (including electronic ones) that fall under the right to refuse to provide testimony and those related to providing legal, medical, psychotherapeutic, or psychiatric assistance to the individual. However, if they were used in the commission of a criminal offence or were the subject of a crime, this prohibition is invalid. Moreover, partial restrictions are established regarding individuals who are carriers of professional secrecy. In the German procedural legislation, decisions on the use of information obtained during a covert investigation are made considering the criteria of absolute and relative prohibition. The distinction depends on whether the recorded conversation pertains to the internal sphere of private life or communication with a representative (lawyer) and close relatives; in such cases, there is an absolute prohibition on using the obtained information. In other cases, the possibility of using the obtained information containing professional secrecy is resolved based on the principle of proportionality in restricting the rights and freedoms of the individual under investigation for a crime.

Apart from that, there is an obligation to inform individuals whose interests were affected and whose residences were visited by the covert investigator about the application of covert measures. Sending such a notification is carried out by the prosecutor and entails the obligation to explain the possibilities for protecting one's rights. However, if such measures contradict the legitimate interests of the affected persons or if the restriction of their rights was insignificant, the notification may not be issued.

3.4. Limits of state interference in private life in ECHR case law

A significant number of cases related to interference in private life have been examined by the ECHR, with special attention given to cases involving data interception per se, i.e. mass surveillance. The term 'mass surveillance' is used to describe measures employed in the investigation of crimes, searches for missing persons, and gathering intelligence and counterintelligence data. It does not limit the definition to a specific group of individuals under observation, and the applied criteria are often quite vague (Council of Europe, 2015). When examining the legislation on the grounds for conducting covert measures in the case of Roman Zakharov v. Russia, the ECHR recognized the formulation 'events or actions (inaction) creating a threat to state, military, economic, information, or environmental security' as one that provides the authorities with 'virtually unlimited discretion', thus opening up broad possibilities for abuse (Judgment of the ECHR, 2015). In this context, the ECHR paid attention to criteria such as reasonable suspicion, the existence of factual grounds for suspicion against a specific person, and strict necessity. The Court also emphasized that defining the scope of individuals subject to surveillance should be based on individual suspicion, supported by relevant facts and materials. Surveillance is justified only when conducted to obtain crucial information during a specific (individual) operation. In the case of Azer Ahmadov v. Azerbaijan (2021),

the Court emphasized that decisions on conducting covert obtaining of information must include the personal data of the individual under surveillance. Otherwise, it violates their right to private life guaranteed by the European Convention.

In the case of Big Brother Watch and Others v. the United Kingdom (2021), the applicants – three non-governmental organizations, an international researcher of privacy and freedom of expression, and journalists – claimed that they were likely subjected to surveillance by the intelligence services of the United Kingdom during journalistic investigations. The ECHR slightly softened its position, acknowledging the possibility of mass interception of metadata as a preventive measure, provided that such interception is not of a mass nature and is limited to combating serious crime, applying the principle of strict necessity. The Court examined such aspects of monitoring as mass interception of telecommunications, exchange of intelligence information between countries, and obtaining communication data (billing information) from operators and telecommunications providers. However, in this case, the Court recognized the relatively broad discretion of intelligence services regarding data interception and sharing such information with other states.

In the context of judicial review of the protection of human rights and freedoms in this area, the findings of the ECHR in the case of Zoltán Varga v. Slovakia (2021) are also noteworthy. In this case, two extremely important aspects were considered, namely the assessment of judicial control over granting permission for covert surveillance measures, and inaction regarding the destruction and leaking of information obtained by intelligence services. According to the case materials, the Slovak Intelligence Service (SIS) conducted surveillance in the applicant's apartment based on court permits, later revoked by the court (Vaško, 2022). Moreover, part of the materials ended up on the internet. Thus the Court noted that when reviewing the submissions of the intelligence service, judges did not investigate the grounds for the use of special technical control measures, and the permission was granted based on the intelligence agency's impression of the suspect. Insufficiently clear jurisdictional rules, the absence of procedures for implementing existing norms, and deficiencies in their application during covert investigation led to the conclusion that the intelligence agency enjoyed unlimited authority, which was not accompanied by safeguards against arbitrary interference, as required by the rule of law.

In the context of the use, retention, and destruction of information, the Court found that despite the higher court's annulment of the decisions on granting permission for covert investigation, the illegally obtained materials were not destroyed but continued to be stored in the SIS electronic information system, despite the higher court determining the need for their destruction. The Court also noted that crucial aspects regarding access to such materials, the examination of their content and scope, and timelines for their destruction could not be assessed due to the classified nature of the order regulating these issues. Moreover, there was no

established body with the authority to oversee the actions of the intelligence service in executing court-issued surveillance permits (Paragraphs 162–170).

3.5. Measures aimed at ensuring human rights and freedoms

Among the measures aimed at ensuring rights and freedoms during the covert obtaining of information, attention should be paid to the following aspects:

- The implementation of consistent monitoring and enforcement of the Regulation (2016);
- The existence of powers in relevant authorities and officials for investigating, correcting, applying sanctions, and issuing permits;
- Providing consultations on the right to present the facts of such violations before a court.

These measures also extend to the possibility of imposing temporary or final restrictions, including a ban on processing the obtained information. It is worth noting that the Regulation (2016) emphasizes that each measure must be justified, necessary, and proportionate, taking into account the circumstances of each individual case, avoiding unnecessary costs and excessive inconvenience for the individuals involved. Such a mechanism can be effective only in cases where a comprehensive approach is ensured, which should include the following elements:

1) Clear criteria for the application of covert investigation depending on the severity and category of the criminal offence, serving as the basis for balancing the interests of criminal proceedings and guarantees of human rights;
2) The differentiation of responsibilities among investigating judges, prosecutors, and heads of pre-trial investigation bodies in making decisions on the application of covert obtaining of information measures;
3) Providing the authorized persons making decisions on intervention in private life the opportunity to familiarize themselves with materials confirming the grounds for their implementation;
4) The implementation of post-measure control, assessing the results, and examining compliance with human rights during the investigation;
5) Providing timely information to the affected persons about the limitations on their rights and freedoms, explaining the procedure for challenging the decision made, and compensating for any damages incurred;
6) Establishing control over the storage, use, and destruction of information obtained during the covert investigation, including specific retention periods for such information;
7) The mandatory analysis of covert measures' effectiveness by law enforcement agencies;

8) Introducing the obligation for law enforcement agencies to publish general data on the application of covert measures involving restrictions on rights and freedoms, disseminating such information to the public, governmental authorities, and local government bodies.

4. Discussion

The issue of judicial review and internal control and its effectiveness has received significant attention, particularly in cases considered by the ECHR related to the collection, processing, and use of personal data by law enforcement agencies, as well as interception of telephone conversations. In this regard, it is important to define the criteria for the concept of private life and the permissible limits of state intervention. The boundaries and content of the concept of private life remain a subject of ongoing debate. In the case of Niemietz v. Germany (1992), the ECHR noted the difficulty in providing a comprehensive definition of the term 'private life'. At the same time, the positions of scholars on this matter are quite diverse. Thus Davies defines private life as the 'boundary beyond which society should not penetrate' (1996, p. 9). Smith describes it as 'the intention of each of us to have a physical space where we could be free from external interference, from interested third parties, from the demand to account for our thoughts, affairs […] it is the place where we can control our personal data' (2000, p. 11). In contrast, Gavison (1980) identifies three elements of privacy, namely secrecy, anonymity, and confidentiality, which can be relinquished by the individual's own choice or due to external interference. Moreover, four components of this right are distinguished as follows (Electronic Privacy Information Centre and Privacy International, 2002):

1) Informational privacy (collection and processing of personal data, such as banking and medical confidentiality);
2) Physical privacy (protection of the human body from external interference, including compulsory drug testing, DNA analysis, or examination of internal organs);
3) Communication privacy (integrity of postal messages, telephone conversations, email, and other means of communication);
4) Territorial privacy (integrity of living spaces, workplaces, and shared public spaces).

While the definition of private life remains a subject of debate in international law and in ECHR case law, it is also essential to establish the limits of state intervention in the sphere of privacy. Typically, ECHR decisions on defining these limits and justifying them employ terms such as 'legality', 'necessity in a democratic society', and 'proportionality', which cannot be considered clear guidelines. As a result, motions for

wiretapping or electronic surveillance are rarely rejected. From the law enforcement perspective, such measures are deemed necessary for successful crime prevention, and in these circumstances, a court cannot be a guarantee against abuse. Therefore the only way to minimize abuses is to ensure transparency in decision-making procedures for conducting the covert investigation, guaranteeing objectivity in investigating the grounds for their application, providing justification for decisions to permit such measures, control over their implementation, and the recording, preservation, use, and destruction of items, objects, and information obtained during their application.

Furthermore, the exceptionality of covert obtaining of information in terms of interference with private life remains declarative. Despite the provision in Part 2 of Article 246 of the Criminal Procedure Code of Ukraine that such covert measures may be carried out as exceptions when information about a criminal offence and the person who committed it cannot be obtained in any other way, this requirement is reduced to a mere citation in procedural documents. Moreover, control mechanisms by law enforcement agencies, courts, and state institutions in ensuring guarantees of human rights and freedoms are absent.

According to the official data, the State Judicial Administration does not separate information on permits granted for interference in private life, the effectiveness of judicial control, and the record of motions issued (State Judicial Administration of Ukraine, 2024). Prosecution authorities maintain a general record of the number of motions sent to courts seeking permission for covert investigation and the results of their consideration. In this regard, a record of prosecutors' decisions on monitoring criminal activities, the outcomes of the implemented measures, and their utilization for the interests of criminal justice is not conducted. Issues related to the effectiveness of using such measures, potential abuses, and specific guidelines on the application of covert measures have not been studied, and prosecutors have not been held accountable for violations during the organization and implementation of such covert measures (Office of the Prosecutor General of Ukraine, 2024). Similarly, the National Police, the Bureau of Economic Security, the National Anti-Corruption Bureau, the State Investigation Bureau, the High Anti-Corruption Court of Ukraine, and the State Judicial Administration maintain only a general record of the number of submissions for permission to conduct covert measures, the number of granted permissions, and refusals (Bureau of Economic Security, 2024; High Anti-Corruption Court of Ukraine, 2024b; National Anti-Corruption Bureau of Ukraine, 2024a; National Anti-Corruption Bureau of Ukraine, 2024b; National Police of Ukraine, 2024).

Conclusions

Balancing the interests of criminal justice and human rights during covert investigations remains relevant and requires continuous improvement at the

state level and through the adoption of international acts implementing specific standards regarding the scope, grounds, and conditions of interference in private life and the use and destruction of the obtained data. Ensuring guarantees of the rights and freedoms of citizens during covert obtaining of information in the interests of criminal justice is an important aspect of the legal order. The analysis of the current state of legislation demonstrates that the existing mechanisms of internal control and judicial review do not always provide a sufficient level of protection of citizens' rights and freedoms. However, with improvement and effective application, these mechanisms can help strike a balance between the interests of criminal justice and the rights and freedoms of citizens.

It is therefore necessary to improve legislation and develop and apply new technologies to ensure effective control over covert obtaining of information. The state should develop and implement an effective mechanism for judicial review and internal control over the organization, conduct, recording, use, storage, and destruction of information. In addition, it is important to involve civil society and human rights organizations in monitoring human rights observance in criminal proceedings. Thus the main task is to ensure adequate protection of the rights and freedoms of citizens in the context of technology development by strengthening supervision, enhancing the effectiveness of law enforcement agencies, and improving the mechanisms of internal control and judicial review. Such mechanisms may involve the establishment of certain state institutions for external control over covert obtaining of information and an expansion of public control over the grounds for and results of covert investigation.

This article offers a unique look at the human rights issues involved in covert obtaining of information, focusing on its controversial aspects. Through comparative analysis of practices in different countries and assessment of Ukrainian legislation, the study reveals aspects of regulation that have been ignored. In addition, it offers recommendations for possible reforms aimed at increasing the protection of human rights in Ukraine.

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Bialystok Legal Studies
Białostockie Studia Prawnicze
2024 vol. 29 no. 4

sciendo

DOI: 10.15290/bsp.2024.29.04.13

Received: 12.07.2024
Accepted: 14.10.2024

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A Difficult Neighbourhood with Hybrid War in the Background: An Analysis of Relations between Poland and Belarus

Abstract: Belarus has been dependent on the Russian Federation for many reasons for years. The possibilities for shaping its foreign policy are also very limited. Nevertheless, until recently, mutual relations with Poland still functioned, despite being complicated and not without difficult periods. However, the events related to the situation in Belarus after the rigged presidential elections in 2020, the enormity of the repression of representatives of the Belarusian opposition, parts of the media and ordinary citizens, the involvement of Belarus on the Russian side in its aggression against Ukraine, the hybrid war launched in mid-2021 consisting of the instrumental use of migrants for political purposes, and the subsequent packages of sanctions imposed by the European Union in response to these illegal and shameful actions raise legitimate questions about the future of mutual relations between Warsaw and Minsk. For this reason, it seems important to analyse the relations between Belarus, ruled continuously since 1997 by Lukashenko, and Poland.

Keywords: crisis on the Polish–Belarusian border, hybrid war, Poland–Belarus relations

Introduction

Poland's political relations with Belarus since both countries' independence in 1991 have been characterized by relatively low activity, compared to relations with other eastern neighbours. Despite Poland and Belarus having a common historical and cultural heritage, mutual relations between the two countries are very difficult due to geopolitical conditions, Poland's accession to the EU and NATO, and the simultaneous creation of a dictatorship in Belarus by Lukashenko's regime – which today is closer to Putin's Russia than to western democracies. Nearly 35 years of mutual

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political relations between Poland and Belarus have been characterized by cyclical periods of conflict and disappointment, alternating with short periods of warming in bilateral relations. Nevertheless, Belarus's support for Russia in the war in Ukraine, the actions of the Belarusian regime in the hybrid war with Poland and the EU, and Lukashenko's preparations for his seventh term as president raise questions about the future of mutual political relations.

1. The beginning of mutual relations (until the end of the 1990s)

The turn of the 1980s into the 1990s brought the collapse of the USSR. As a result of the coup in Moscow by Yanayev in August 1991, the Belarusian parliament adopted the Act on the Independence of Belarus as a State on 25 August (Karski, 2015, pp. 127, 144; Sobczak, 1994, pp. 32–33). The Polish Sejm already referred to this in a resolution of 31 August, and on 27 December 1991, Poland was one of the first countries in the world to officially recognize the independence of Belarus (Zięba, 2010, p. 226). It is worth emphasizing that the first Polish–Belarusian interstate contacts took place in 1991. On 10–11 October that year, a delegation of the Belarusian government headed by Prime Minister Kiebicz arrived in Poland, during which a declaration on good neighbourliness, mutual understanding and cooperation was concluded, among others, which was the first Polish–Belarusian document regulating interstate relations (Stolarczyk, 1998, p. 251). In turn, on 2–3 March 1992, a working visit of the Minister of Foreign Affairs of Belarus, Kravchenko, took place in Warsaw, during which a declaration on establishing mutual diplomatic relations was signed (Stolarczyk, 1998, p. 255). On 23 June 1992 the heads of both states, Wałęsa and Shushkevich, signed a treaty in Warsaw on good neighbourliness and friendly cooperation. They confirmed, inter alia, the inviolability of the border and a lack of mutual territorial claims. On the basis of state succession, the former Polish–Soviet border was recognized as the Polish–Belarusian border (Góralczyk et al., 2024, pp. 225–226).

After a period of recovery in 1992–1993, Polish–Belarusian interstate political relations reached an impasse in the following years. As Zięba (2010, p. 230) rightly points out, the years 1993–1994 brought clear signals about the different geopolitical concepts of the two countries. In response to Poland's aspirations to join NATO, the Belarusian side expressed concern about the prospect of direct proximity to the North Atlantic Alliance (Zięba, 2010, p. 230). Moreover, on 5 January 1994, the president of the Supreme Council of Belarus, Shushkevich, who was considered a moderately pro-western politician, was dismissed (Zięba, 2010, p. 230). In the summer of 1994, the first – and so far only – completely free presidential elections were held in Belarus, as a result of which Lukashenko became president.[1] However, the first deci-

1 Alexander Grigoryevich Lukashenko (Belarusian: Аляксандр Рыгоравіч Лукашэнка, Russian: Александр Григорьевич Лукашенко), born 30 August 1954 in Kopyś, Belarusian politician,

sions of the newly elected president aroused justified concern on the Polish side because he initiated a policy of reintegration with Russia, which was manifested, among others, by the signing of an agreement on the establishment of an association between Russia and Belarus on 2 April 1996. In the same year, the internal situation in Belarus also worsened, as Lukashenko extended his term of office by one-and-a-half years and also removed the opposition from the Belarusian parliament (Zięba, 2010, p. 233). These actions were accompanied by systematic restrictions on civil liberties, which hit Poles living in Belarus, among others. In November 1996, the president changed the constitution of Belarus, significantly strengthening his position in the country, and limited media freedom (Czachor, 2011, pp. 236–244). It should be emphasized at this point that on 12 March 1999, Poland officially became a member of NATO, which was met with a cold reception by the Belarusian authorities. In 1999, Lukashenko failed to organize the next presidential elections in Belarus, and he considered activities by the opposition related to their organization an attempt to commit a *coup d'état*. It should be stressed that these factors, among others, formed the basis for the method used by Poland since the late 1990s towards Belarus, the so-called policy of 'critical dialogue', which consisted in criticizing the violation of the principles of a democratic state of law, fundamental human rights and civil liberties, while maintaining contacts with the Belarusian authorities at the working level (Czachor, 2013, p. 263).

2. Mutual relations until 2020

In the autumn of 2000, parliamentary elections were held in Belarus, which were boycotted by part of the opposition due to restrictions on access to the media and the registration of candidates. After his re-election in 2001, Lukashenko tried to change the attitude of western countries towards him, but to no avail.[2] In the autumn of 2002, the Belarusian authorities took actions that hindered the activities of the Organization for Security and Co-operation in Europe mission in Minsk. In response, some EU countries even recognized him as a *persona non grata* at the end of 2002 and the start of 2003 (Czachor, 2013, p. 263).

Further problems in mutual relations appeared in connection with the adoption of the Accession Treaty – which imposed an obligation to introduce visas for Belarusian citizens – and Poland's upcoming accession to the EU. At the end of 2004, as a re-

president of Belarus since 1994.

2 Lukashenko has won elections four more times: in 2006, 2010, 2015 and 2020, and thus has ruled Belarus continuously since 1994. Due to numerous cases of electoral fraud in each election, persecution of the opposition and the remnants of an independent media, and, above all, acceptance of human rights' violations by the apparatus of his power, Lukashenko is nowadays called 'the last dictator of Europe'.

sult of the 'Orange Revolution' in Ukraine, the Belarusian regime further intensified its repression of the opposition, the media and independent associations, including one of the largest organizations, the Union of Poles in Belarus (Zięba, 2010, p. 238). This crisis in mutual relations lasted until the end of 2007.

The year 2008 brought a temporary improvement in relations. Due to the reduction of repression in Belarus, Poland supported the idea of including the country in the Eastern Partnership programme it had initiated (Zięba, 2010, p. 239). As Kubin (2013, p. 176) notes, in the autumn of 2008 it seemed that the EU's sanctions policy towards the Lukashenko regime and its political environment was beginning to bring specific results. Before the parliamentary elections of 28 September 2008, Lukashenko released some political prisoners and agreed to the state-wide distribution of two independent newspapers and to the registration of the opposition movement 'For Freedom' (Kubin, 2013, p. 176). In November 2008, the EU Council even suspended some of the sanctions against Belarus. Another manifestation of the improvement in mutual relations was the inclusion of Belarus in the Eastern Partnership (Council of the European Union, 2009). It should be recalled that in 2010, on Poland's initiative, a bilateral agreement on local border-traffic rules was signed and ratified, which simplified the crossing of the Polish–Belarusian border for people living in those areas. However, the Belarusian side blocked the agreement coming into force (Fedorowicz, 2020a, p. 27).

But this recovery did not last long. After the brutal repression of peaceful protesters, the democratic opposition and civil society following the Belarusian presidential elections in 2010, another difficult moment came in mutual relations. As Dalinczuk (2021, p. 25) notes, in 2011–2012, the Belarusian state media attacked the Polish authorities and its eastern policy, expelling Polish ambassador Szerepka and EU ambassador Mor in response to the extension of sanctions by the EU in February 2012. Despite the tough attitude of the EU and Poland towards the Belarusian authorities, the overall situation in the country has not improved. Moreover, there has been no progress towards the democratization of Belarus.

From 2015, mutual relations revived once again. The Belarusian authorities released the last people considered by the EU as political prisoners, and at the same time Belarus became involved in the peace process in Ukraine, which resulted in the possibility of renewing diplomatic contacts with EU representatives (Dyner, 2016). In 2016, Waszczykowski, the then Polish Minister of Foreign Affairs, paid an official visit to Belarus and talked with Lukashenko, while Makei, the Belarusian Minister of Foreign Affairs, visited Warsaw three times from 2014 (Dalinczuk, 2021, p. 25). Moreover, in 2016–2017, four Poland–Belarus interparliamentary meetings were held, which, according to Yeliseyeu (2017, p. 171), was a new trend in bilateral relations, because previously Poland had largely ignored official contacts with the undemocratic Belarusian parliament.

3. Polish–Belarusian relations after the 2020 Belarusian presidential elections

However, the presidential elections in Belarus that took place in August 2020, and the subsequent unacceptable actions of Lukashenko's regime towards the opposition and protesting demonstrators, put a final end to another cautious opening in relations between Poland and the EU and Belarus. The first protests in Belarus began on 29 May 2020 in Minsk and other cities, initially as a reaction to the arrest of opposition presidential candidates and thus their exclusion from participation in the August elections (Bieńczak, 2020). On 9 August 2020, the elections were held, as a result of which – once again – Lukashenko was re-elected. After the publication of the first official polls confirming Lukashenko's alleged crushing victory in the first round, protests spread to many cities across the country; their main goal was a fair recount of votes and the resignation of Lukashenko (Kropman & Saakov, 2020). Security forces began to disperse peaceful protests using force, which resulted in clashes with the Belarusian OMON – a riot police force under the Ministry of Internal Affairs of the Republic of Belarus that specialized in combat and patrolling in urban areas, counter-revolutionary, covert operation, crowd control and internal security. The Belarusian authorities carried out actions involving mass arrests of civilians. There were also reports in the international media about torture in detention and victims' accounts of physical and mental abuse by representatives of the militia and OMON (Do Rzeczy, 2020). From the beginning of the clashes with security forces until 19 August 2020, three deaths were officially confirmed and almost 80 people disappeared without a trace. It should be emphasized that after these elections, Poland supported the Belarusian opposition; its leader Tsikhanouskaya was received in Warsaw by the then prime minister Morawiecki, and within two months over 700 Belarusians came to Poland under special conditions (Polska Agencja Prasowa, 2020).

In October 2020, the EU Council imposed sanctions on 40 individuals found responsible for the repression and intimidation of peaceful protesters, opposition members and journalists following the 2020 presidential elections and for irregularities in the electoral process (Council of the European Union, 2020c), and added a further 15 Belarusians and authorities in November, including Lukashenko and his son and national security adviser Viktor Lukashenko (Council of the European Union, 2020a). The following month, in response to the brutal methods used by the Belarusian authorities, including constantly repeated repression such as the brutal beating and death of the oppositionist Bondarenko, the EU Council decided to impose sanctions on another 36 people and entities (Council of the European Union, 2020b). As Fedorowicz (2020b) rightly points out, the authorities' brutal methods of pacifying peaceful protest in Belarus resulted in a thorough re-evaluation of Poland's policy towards its eastern neighbour, as well as the adoption of two types of actions: on the one hand actions aimed at the widest possible internationalization of the political cri-

sis in Belarus, and on the other, actions consisting in developing many aid solutions for people injured in the protests and forced to emigrate (Fedorowicz, 2020b). The Polish government also developed a special aid package, 'Solidarity with Belarus', for which PLN 50 million was allocated in the first year alone (Fedorowicz, 2020b).

The next year did not bring any improvement in the relations between Poland, the EU and Belarus; in this context the key factor was the forced landing in Minsk of a Ryanair plane flying from Athens to Vilnius on 23 May 2021, resulting in the detention of the Belarusian oppositionist Pratasiewicz and his partners. As a result, on 4 June 2021 the EU Council decided to tighten sanctions against Belarus by banning all Belarusian carriers from flying through EU airspace and accessing EU airports (Council of the European Union, 2021a); then on 21 June it decided to impose another package of sanctions against another 78 persons and eight entities (Council of the European Union, 2021b). The EU sanctions system thus covered a total of 166 people and eight entities from Belarus; these sanctions were of course recognized by Poland as an EU member. Poland was even one of the initiators and co-creators of these sanctions.

4. Relations in the era of hybrid war: Crisis on the Polish–Belarusian border

The imposition of subsequent packages of sanctions by the EU was met with a sharp and unprecedented reaction from the Lukashenko regime, which in mid-2021 launched channels for the transfer of migrants to the territory of the EU through Belarus's borders with Lithuania, Poland and Latvia, thus leading to a crisis on the border between Belarus and the EU. As Wawrzusiszyn (2022) emphasizes, in order to bring migrants to the borders of Belarus with EU countries, the Lukashenko regime used 'Operation Sluice', developed in 2010–2011 by the heads of the KGB and a special unit of border troops, and the recruitment of volunteers took the form of a large-scale disinformation operation, consisting in convincing potential migrants about the ease of crossing the border with Poland, among others, and continuing their journey to Germany and other western EU countries (Karska & Oręziak, 2024, pp. 211–226; Karska et al., 2023, pp. 27, 40, 66 & 78; Kużelewska & Piekutowska, 2023, pp. 39–55).

Already in the first days of August 2021, the Polish Border Guard detained 349 migrants from Iraq and Afghanistan who had illegally crossed the Polish–Belarusian border (Charlish, 2021). On 17 August the Polish Government Information Centre reported that since the beginning of that month, over 1.9 thousand people had tried to cross the Polish–Belarusian border, of which over 1.1 thousand were returned and 760 were sent to centres for foreigners. It should be noted that at the end of August, the Polish government publicly announced for the first time the strengthening of protection of the Polish–Belarusian border by starting the construction of an approxi-

mately 180 km-long (Polsatnews.pl, 2021a), and on 31 August it adopted a resolution to introduce a state of emergency in the zone located directly next to the border – including 115 towns in the Podlaskie voivodeship and 68 towns in the Lublin voivodeship – which entered into force by virtue of the regulation of the president of the Republic of Poland on 2 September 2021, initially for a period of 30 days (International Law Association, 2024, p. 10; Zdanowicz, 2023). Also in August, Morawiecki – then prime minister – confirmed plans to further seal the Polish–Belarusian border, announcing that the Polish government would not allow 'waves of unauthorized persons to enter Polish territory' and directly accusing the Belarusian authorities of escalating the conflict and conducting hybrid activities (TVN24, 2021a). At that time, an increase in unfavourable messages against Poland in the Belarusian media was also observed (Gov.pl, n.d.).

In autumn 2021, the Sejm decided to extend the state of emergency in Poland (Onet.pl, 2021). Shortly after, the Polish authorities sent a note to the Belarusian authorities in connection with the migration crisis, and in mid-October an increase in the number of soldiers stationed on the border with Belarus was announced. November 2021 turned out to be particularly difficult: on 8 November Belarusian services sent the largest group of migrants so far to the Polish–Belarusian border, near the crossing in Kuźnica. The migrants were directed to the forest, where they set up camp. Due to this situation, the Polish government convened a crisis headquarters (Polsatnews.pl, 2021b), and soldiers of two light infantry battalions from the 1st Podlasie Territorial Defence Brigade from Białystok and Hajnówka were put on alert (Polsatnews.pl, 2021c). On the same day, there was an attempt by migrants to forcefully and illegally cross the border; the security measures erected at the border were destroyed and there were attacks on Border Guard officers, police officers and soldiers. The migrants were equipped with tools to help them destroy the border fences (Kacprzak & Zawadka, 2021). During the incidents on the border in the Kuźnica area, there were 12,000 soldiers, 8,000 Border Guard officers and 1,000 policemen. The then spokesman for the Minister-Coordinator of Secret Services, Żaryn, said that the estimated number of migrants brought to the border area was approximately 4,000 (Polsatnews.pl, 2021d). The situation on the border was so tense and unpredictable that on 15 November, the then prime minister, Morawiecki, stated that, together with the prime ministers of Lithuania and Latvia, he was considering using Art. 4 of the North Atlantic Treaty in connection with the escalation of tension on sections of their borders with Belarus (TVN24, 2021b). Between August 2021 and 2022, the Polish Border Guard prevented almost 40,000 people who illegally tried to enter the territory of Poland from Belarus from crossing the border (Klyta, 2024). The illegal immigrants mainly came from Iraq, Afghanistan and other countries in the Middle East and Africa.

Starting in the autumn of 2021, western countries publicly disclosed information from intelligence sources about the armed, full-scale aggression against Ukraine planned by the Russian Federation. At the turn of January and February 2022 on the

territory of Belarus, the joint Russian and Belarusian armies carried out extraordinary exercises, 'Allied Resolve 2022', in which approximately 60,000–80,000 soldiers took part (Wilk, 2022). On 24 February, an open armed conflict of the nature of a regular war broke out when the Russian Federation launched a large-scale invasion of independent Ukraine (Karska & Dąbrowski, 2024). From the very beginning, Belarus actively sided with the Russian Federation, supporting it politically and militarily, thus becoming a co-aggressor in this war which continues to this day. This triggered further sanctions from the EU and worsened the already very bad relations between Poland and Belarus. Additional tensions were caused by the devastation of Polish memorial sites in Belarus in 2022; among others, the Home Army monument in Stryjówka (Kozłowski, 2022), cemeteries in Mikuliszki and Surkonty, graves and commemorations of the Home Army in Bogdany, Bobrowicze, Jodkiewicze, Wołkowysk, Dyndyliszki, Kaczyce, Iwie, Piaskowce, Osmianie and Plebaniszki, and the Katyn monument at the military cemetery in Grodno were destroyed. In turn, the crisis on the Polish–Belarusian border decreased in 2022 compared to the previous year. According to the Polish Border Guard, in 2022 there were 15,600 attempts to illegally enter the territory of Poland (Klyta, 2024).

The year 2023 and the first half of 2024 have not brought any changes in the relations between Poland and Belarus. The crisis on the border that began in the second half of 2021 still seems to have no end. Compared to the previous year, in 2023 the crisis intensified again: the border with Poland was illegally crossed about 26,000 times (Klyta, 2024). However, from 1 January 2024 to 23 June 2024, the Podlaski Branch of the Polish Border Guard recorded nearly 20,000 attempts to illegally cross the border. Due to the still difficult situation on the border between Poland and Belarus, on 13 June 2024, a regulation of the Minister of Internal Affairs and Administration, on the introduction of a temporary ban on staying in a specific area in the border zone adjacent to the state border with Belarus, entered into force. However, there are more and more reports in the media about the possible complete closure of border crossings with Belarus (Chołodowski, 2024).

Conclusions

Mutual relations and cooperation between Poland and Belarus, although extremely limited, did once exist. After the rigged presidential elections of August 2020, the intimidation and brutal repression of peaceful protesters, opposition members and journalists, Belarus's involvement in Russian aggression against Ukraine and the start of a hybrid war by the Belarusian regime on the border with Poland, the future of mutual relations is now under serious threat.

Today's Belarus is definitely closer to Moscow than to Warsaw, and Poland's long-term goal should undoubtedly be a democratic, free and independent Belarus.

Poland will not be safe as long as its neighbours Russia and Belarus are unable to democratically decide on their system and direction of development. If the Belarusian authorities continue to repress their citizens, including representatives of the Polish minority, and provoke a hybrid war, Poland will consistently strive to impose further EU sanctions and apply the full range of measures at Poland's disposal.

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