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ABSTRACT

Taking life due to dealing single stab wound is very characteristic kind of crime. In most cases the stabbing takes place during an argument, both victim and the killer are drunk, and the thing happens at home of either of them. The purpose of this article was to examine if the classification of a criminal act, which was initially classified as a "murder", would maintain as such act within the court decision. In most cases of such type, the killer is accused of homicide, however in half of them, it gets changed to dealing damage or hitting with a deadly result later.

KEYWORDS

stab wound, homicide, penal law

INTRODUCTION

Taking a victim's life by a single stab wound is a crime interesting enough to warrant a closer inspection. Cases like that constitute more than 40% of deaths caused by sharp tools, that have been examined at the Cracovian Department of Forensic Medicine. Among 80 cases of deaths resulting from stabbing with a knife by another person that were studied during the years 1996-2000, death caused by a single stab wound occurred in as many as 34 instances. This type of life-taking is very specific. It is certain that the perpetrator is not attacking his victim with a firm intent to inflict death, because then he would not confine himself to one blow only. Nonetheless, those cases are commonly called murders, also by media that announce another 'killing after drinking', and by the investigative authorities. The aim of this study is to analyze whether it is actually appropriate to identify these cases as murders.

MATERIALS AND METHODS

Among autopsies that had been carried out at the Cracovian Department of Forensic Medicine, cases were selected, where death occurred due to infliction of a single stab wound by another person. Circumstances of each case were analyzed, such as the scene of the event, relationship between the perpetrator and his or hers victim, the influence of alcohol on the course of events. If the case led to a judgment by the Cracovian Court of Appeal, also the case files and the court sentence were examined.

RESULTS

In the period 1991-2006, at the Department of Forensic Medicine in Cracow, there were 62 cases examined where a single stab wound had been identified on the front of the thorax, piercing the heart or large vessels, with consequent bleeding to death. The majority of victims were men, there were only 6 women among victims. Among men the age ranged from 15 to 60, and among women from 24 to 42.

Interesting results were obtained when a distinction was made between cases where the perpetrator was somebody close to the victim and where the perpetrator and his or hers victim were strangers to each other[1]. Differentiation was possible in 48 cases, in the remaining 14 cases

[1] T. Konopka, F. Bolechała, M. Strona, *Porównanie ran kłutych klatki piersiowej w samobójstwach i zabójstwach*, „Archiwum Medycyny Sądowe j i Kryminologii", 2003; 53, p. 117-128.

only the results of the autopsy are known, with no information about the perpetrator. In 33 instances the stabber was somebody close to the victim – a spouse or other family member, a partner or an acquaintance. In 15, so almost half of the cases, the perpetrators were women[2]. What is interesting, in almost all the cases the event took place at the perpetrator's or the victim's apartment, or one they were sharing. For those cases it was also typical that the victim had a high blood alcohol content. Twenty seven victims had blood alcohol content higher than 2‰ (and among them 13 had higher than 3‰), for further 4 it ranged from 1 to 2‰ and only 2 victims had blood alcohol content lower than 0,5‰. Unfortunately, the blood alcohol level of the perpetrator is known in only few cases.

This group of cases, which among criminologists and in statistics are known as murders against the background of a family conflict[3], is very distinct and characteristic. As the Polish statistics indicate: "According to the Police, the perpetrators of murders that took place in Poland in 2011 had the following motives: family conflicts in 198 cases, "other" (ruffianly, out of jealousy) in 94 cases, unknown in 94 cases, robbery in 61 cases, sexual in 14 cases and by contract in 1 case"[4]. In 2011 there were 662 murders, and among those 209 were attempts[5]. As to the murder (or attempt) weapon, in 2012 a firearm was used 30 times, and other dangerous item (such as a knife) in as many as 271 instances[6].

A completely different group of events is constituted by the 15 cases where the stabber was stranger to the victim. Here, as contrasted to the cases described above, the majority of events took place outside (in the street, residential area or park). Infliction of a single stab wound was a consequence of robbery or mugging, there were no women among perpetrators. Only in two cases the stabbing took place inside an apartment, but also in these instances it was not because of a family conflict. In the first case, the victim was a burglar who was stabbed by the apartment's owner while breaking-in, the other was a man who intended to puncture a car's tyres, and the perpetrator was the car's owner who came to the victim's apartment. Substantially lower was the percentage of intoxinations. Ten people had blood alcohol content lower than 0,5‰, for 3 it ranged from 0,5-1‰, and only for 2 it was higher (1,5‰ and 1,7‰). Moreover, within this group of murders committed by strangers, it was characteristic for victims to be young – the majority was between 15 to 30 years old.

To clarify doubts whether cases of taking a life by a single stab wound are classified as murders, court sentences were analyzed of completed cases. Cases were selected where the proceedings took place before the Cracovian Court of Appeal – there were 19 cases like that, among the 62 which were examined at the Department of Forensic Medicine during the years 1991-2006. Eighteen cases started with charges of murder (art. 148 of the Polish Penal Code – k.k) and one with charges of beating with the consequence of death of a human being (art. 158 § 3 k.k). Only in 10 cases, and often after appeals, the charge of murder was upheld in the final and binding judgment. Nonetheless, in none of the cases did the court establish direct intent to kill; in all it was found that the perpetrator committed the act with possible intent. In eight cases that started with charges from art. 148 k.k, the perpetrator was eventually sentenced for art. 156 § 3 or 155 k.k. (causing of grievous bodily harm with the consequence of death of a human being or

[2] For more information about murders committed by women see: M. Budyn-Kulik, *Zabójstwo tyrana domowego. Studium prawnokarne i wiktymologiczne*, Verba, Lublin 2005; Z. Majchrzak, *Kiedy kobieta zabija. Motywy, osobowość, relacje sprawcy i ofiary, strategie obronne*, Wydawnictwo Uniwersytetu Kardynała Stefana Wyszyńskiego, Warszawa 2009.

[3] Z. Majchrzak, *Zabójczynie i zabójcy. Osobowość, motywy, uwarunkowania sytuacyjne. Analiza z perspektywy psychologicznego orzecznictwa sądowego*, Wydawnictwo Uniwersytetu Kardynała Stefana Wyszyńskiego, Warszawa 2008, p. 82.

[4] Poland 2011 Crime and Safety Report, Ministry of Internal Affairs, Warszawa 2012, p. 36. See: B. Michalski, *Przestępstwa przeciwko życiu i zdrowiu* [in:] A. Wąsek, R. Zawłocki, *Kodeks karny. Część szczególna,, Komentarz do art. 117-221*, Wydawnictwo C.H.Beck, Warszawa 2010, p. 165.

[5] http://www.statystyka.policja.pl/portal/st/894/83413/Raport_statystyczny_za_2011_rok.html (accessed on June 17th 2013).

[6] http://www.statystyka.policja.pl/portal/st/952/50844/Przestepstwa_przy_uzyciu_broni.html (accessed on June 17th 2013).

manslaughter), as no intention to kill was established. The court did not convict of murder, if at least possible intent to kill could not be proven (where the perpetrator is foreseeing the possibility of perpetrating the act and accepts it). From the analysis of the statements of reasons it follows that not even possible intent was being established, if the perpetrator rendered assistance to the victim, called an ambulance, did not obliterate physical evidence of the offence. If the Court decided to uphold murder charges (art. 148 k.k.), perpetrators were sentenced to 8 to 13 years in prison, whereby 8 years in prison was the most frequent type of punishment. It is worth highlighting that it is the lowest possible sentence for violating art. 148 § 1 k.k. Only in two cases the sentences were lesser - extraordinary mitigation of the penalty was applied due to art. 31 § 2 k.k. If the court decided to change the initial charges, the most frequent penalty was 2 to 5 years of imprisonment, only in 2 individual cases the court sentenced the defendants to respectively 1 and 6 years in prison.

DISCUSSION

In the discussion, we will focus mainly on the group of events where the stabbing takes place against the background of a family conflict. Although it was stated in the introduction that there are doubts whether cases of killing by a single stab wound should be classified as murders, it is difficult to say that in these instances we are dealing with an entirely accidental causing of death – which is anyway the most frequent excuse given by the perpetrator. Somebody stabbing a knife into the victim's chest should take into account that "accidental" in this situation is rather avoidance of death than its materialization. Murder is an offence with criminal consequences, therefore it is not relevant how the death was brought about[7]. Nevertheless, it should be remembered that events like that are characterized by intense dynamics, the perpetrator is not always able to reconstruct in his memory how the blow had been struck. Even if he is able to do so, such cases are hard to substantiate with evidence. The victim is dead, third parties are usually lacking, as the event takes place inside an apartment while the perpetrator and his or hers victim are drunk. Practically, it is only possible to built the case relying on the explanations of the perpetrator, who - as it was mentioned above – usually admits committing the act, but denies being guilty. It is common for the perpetrator to confirm that he was holding a dangerous weapon in his hand, but at the same time he asserts that the victim walked into the knife, or that the injury happened accidentally during a tussle. It is then difficult to charge the perpetrator with specific intent to kill the victim.

Even more doubts arise when the victim survives thanks to a prompt medical intervention. Although in almost all such instances the charge filed is attempted murder, in a surprisingly many cases the victim (being a next of kin) invokes his or hers right to refuse to testify, claims that he or she does not remember the circumstances of the event, or even takes the responsibility, by asserting that he or she ran into the knife or stabbed himself/herself.

It seems that in many cases the concept of murder is overused. Probably this word is often being used according to its common, non-criminal code meaning (the victim is undoubtedly dead), or in its criminological, and not criminal sense. We are of course referring to the stage of pending criminal proceedings, before the final and binding judgment is delivered. However, from the analysis of the examined cases it follows that the proceedings can take several years, starting with investigations, then the trial, some of the cases come before the Court of Appeal, some are remanded to the District Court for re-examination.

The notion of homicide or murder is overused not only by media[8] but also criminal statistics[9], or

[7] M. Szwarczyk*, Przestępstwa przeciwko życiu i zdrowiu (art. 148-162)* [in:] T. Bojarski (ed.), *Kodeks karny. Komentarz do art. 117-277,* LexisNexis, Warszawa 2009, p. 285*;* A. Zoll, *Przestępstwa przeciwko życiu i zdrowiu* [in:] A. Zoll (ed.) *Kodeks karny. Część szczególna*, Zakamycze, Kraków 2006, p. 238.

[8] W. Spirydowicz, *Obraz przestępczości w środkach masowego przekazu (na przykładzie niektórych krajów zachodnich)*, „Państwo i Prawo", 1992, 9, p. 67-72; J. Błachut, A. Gaberle, K. Krajewski, *Kryminologia*, Arche s.c., Gdańsk 1999, p. 417 and next; A. Gaberle, *Nierozłączna triada. Przestępczość. Przestępca. Społeczeństwo*, Arche, Gdańsk 2003, p. 40; J. Malec, *Przestępczość – to ciekawe*

even - as it follows from the analysis of final and binding judgments - by the investigative authorities. Media are usually reporting such events shortly after they had taken place, without any analysis of the underlying motives, and practically always classify them as murders. Even if the spokesperson for the KGP (Polish Police Headquarters) informs the media, that "the victim's life was taken", media "translate" this information into a statement that the deceased is a victim of murder or that he or she "was murdered": "…the press is usually interested in the victim if he or she was part of a crime sensational enough to ensure: getting ahead of the competition, even short-term increase of circulation and greater share in the publishing market."[10] Other mass media, such as television, do almost exactly the same[11]. It may happen in order to simplify the message, but also to increase interest in the information being communicated. If the case is famous, information about "the murder" is given again when the case is filed and when judgments are passed. If after last appeal the accused is sentenced to 2-3 years in prison (and often is released at that point), media display their surprise at the leniency of the sentence for "murder". These are the consequences of misunderstandings between the judiciary and the media[12].

The media very rarely see to the presumption of innocence. As S. Waltoś pointed out: "It is unacceptable to forejudge in accounts, reports and columns the result of a pending lawsuit, at least until the first-instance judgment is delivered. It is then impermissible to issue a so-called press judgment, or even to dub the accused a criminal (…). Unfortunately, the reality is far away from that postulate. Examination of everyday press released in Cracow in years 1952-1953, 1961-1963, 1972-1973 showed, that only around 60% of information regarding criminal cases was impartial. The rest consists of expressions of indignation, condemnation of the accused, and even suggestions for the investigative authorities and the administration of justice. Such information was always unfavorable to the defendant."[13]

The media often portray cases as particularly grave, from which follows the thesis of "an upturned pyramid of crime". The most widely commented are crimes that happen the least often. As it was worded by A. Gaberle: "In a nutshell, it is how information is selected by the mass media, which leads to a distorted image of crime being conveyed to society, and shaping perception. Not only everyday observation but also findings of a number of studies indicate that most common crimes get little media coverage, but the rarer is the crime the more screen time, newspaper space and internet attention it gets. That is way criminologists are speaking about "an upturned pyramid of crime", because the message conveyed to society by the media is such that it seems that the most frequent – and therefore fundamental – are murders, and above that there are less frequent assaults and sex crimes, rarely supplemented by burglaries and robberies, which are almost only related to art theft or large-scale or particularly brazen embezzlement schemes."[14]

Media are not the only institutions that overuse the notion of murder. Police crime statistics are reported annually, which means that at the end of the calendar year the crimes committed are summed up. Only exceptionally stabbing cases can be finalized (with a final and binding judgment) within such a period of time. Therefore in the statistics they appear with the criminal qualification according to which the investigation is being conducted, so almost always as murders.

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zjawisko. Kryminologia nieelitarna, Wydawnictwo C.H.Beck, Warszawa 2006, p. 109.

[9] The number of murders is decreasing, see http://www.statystyka.policja.pl/portal/st/894/83413/Raport_statystyczny_za_2012_rok.html (accessed at June 17th 2013).

[10] C. Kulesza, *Ofiara przestępstwa w polskiej prasie* [in:] D. Dőlling, K. H. Gőssel, S. Waltoś, *Relacje o przestępstwach karnych w prasie codziennej w Niemczech i w Polsce*, Katedra Postępowania Karnego Uniwersytetu Jagiellońskiego, Kraków 1997, p. 151.

[11] See: H. J. Schneider, *Zysk z przestępstwa. Środki masowego przekazu a zjawiska kryminalne*, PWN, Warszawa 2002.

[12] M. Celej, *Nasz wspólny obowiązek*, „Na wokandzie", 2010, 1, p. 32-33.

[13] S. Waltoś, *Proces Karny. Zarys systemu*, LexisNexis, Warszawa 2003, p. 246; see J. Błachut, *Doniesienia kryminalne w polskiej prasie codziennej*, p. 78-110 [in:] D. Dőlling, K. H. Gőssel S. Waltoś, *Relacje o przestępstwach karnych w prasie codziennej w Niemczech i w Polsce*, Katedra Postępowania Karnego Uniwersytetu Jagiellońskiego, Kraków 1997.

[14] A. Gaberle, op. cit., p. 40-41.

The murder detection rate, as it follows from the statistics, is high, especially in comparison with such crimes as assault, theft or damage to property[15]. In the year 2012 the detection rate for murder was 94,2%, and for theft 33,5%. Partly it is due to investing substantial funds and staff resources to detect serious crimes – many police officers are involved in chasing the perpetrator, large-scale activities are carried out, operational actions are executed. However, there are cases - like taking a life by a single stab wound – where the Police do not need to expose the perpetrator, who is already waiting at the scene and admits committing the act, the qualification of which is usually changed only after a few years of litigation. In the annual statistics the event is nonetheless classified as a detected murder. From the point of view of forensic science (and this is how the event should be viewed at the beginning), it should be emphasized that forensic science does not use the concept of "murder" or "murderer". It uses the words "perpetrator" and "event", which seems fully reasonable.

The problem of overusing the concept of "murder" by the prosecution office is even more serious, at least because of the fact, that if murder charges are presented, regardless of the circumstances of the event, the prosecutor usually requests a preliminary detention order from the court and detention usually lasts till the qualification of the offence is changed in the sentence. Criminology draws attention to the prosecutors' practice of overcharging in cases where death occurred. It is a litigation strategy where the prosecutor levels the most grievous charge possible (of murder), and then the court is left to decide. Undoubtedly, the media play a part in that. If the event has already been dubbed "murder" and then the perpetrator is charged "only" with beating with the consequence of death of a human being, it may cause unfavourable commentaries, as media often preach harsher punishments[16].

To talk about murder from the criminal law point of view, all the elements of art. 148 k.k. must be present. The structure of each crime assumes that an act has to be committed, this act needs to be unlawful, prohibited under penalty, socially undesirable (its social consequences must be more than insignificant) and culpable[17].

The event must then be an act of a person, therefore an activity aimed at achieving a specific purpose. An act is not present, if the victim walks into the knife, because then there is no activity of the perpetrator. In this instance the wording "whoever kills a human being" assumes certain action and activity on the part of the perpetrator (murder can be committed by omission, but only by a person who had borne a legal, special duty to prevent such a consequence, and this element of special duty was missing in the examined cases).

An act is unlawful if it is contrary to the binding law. There is no doubt that killing is forbidden, and the life of every human being is subject to special legal protection. At this stage the constituent elements of an offence are examined. There are objective and subjective features of a prohibited act. The examination of the objective part consists of investigating whether death has occurred and whether it was actually the activity of the perpetrator what caused that consequence. The situation is pretty obvious in case of stabbing, that brought about death. The examination of the subjective part consists of analyzing intent. Intent can take a form of direct intent (i.e. the perpetrator used a knife in order to kill) or resultant intent, also called possible intent (the perpetrator thought it highly probable that death will occur due to the use of a knife and accepted it).

It is when the cases analyzed in this article (thus related to a family conflict) become problematic. The perpetrator is indeed admitting that he or she did hold a knife in his hand, that this knife caused the victim's death, but is not admitting having intention to kill, so denies being

[15] http://www.statystyka.policja.pl/portal/st/842/47682/Postepowania_wszczete_przestepstwa_stwierdzone_i_wykrywalnosc_w_latach_1999__201.html (accessed at June 17th 2013).

[16] M. Szafrańska, *Polityka instrumentalizacji strachu przed przestępczością*, Wydawnictwo Adam Marszałek, Toruń 2010, see Part 3 *Instrumentalizacja polityczna strachu przed przestępczością*, p. 79-148.

[17] A. Zoll, *Zasady odpowiedzialności karnej* [w:] A. Zoll (red.) *Kodeks karny. Część ogólna. Komentarz do art. 1-116 Kodeksu karnego*, Zakamycze, Kraków 2001, p. 14 and foll.

guilty! Murder though is an intentional crime, so at least possible intent to kill must be present[18].

If the perpetrator denies intent to kill, all the circumstances of the event must be examined. Establishing intent is very difficult, from the criminal and also criminological and psychological point of view. A. Zoll indicates that in the judicature two trends of evaluating perpetrator's intent have evolved:[19] one favours the objective circumstances of the event, the other focuses on the totality of the circumstances, also the character of the perpetrator and the nature of his relationship with the victim before the occurrence of the event. The fact that there are two different approaches discernable within judicial decisions have also been described by M. Budyn-Kulik[20]. These relate to the use of a knife – some believe that the use of a knife does not automatically translate into possible intent, others think it is sufficient to establish it. This problem was considered by the Supreme Court a number of times, but the decisions are not always uniform.

While establishing possible intent the Court takes into account the number of blows struck, as it was pointed out in a Supreme Court decision of June 18th 1974: "the type of weapon used, as well as the force of the blows and position of stabs are all part of evidence, and quite often may indicate intention to kill, but the sum of this elements can not automatically be treated as decisive evidence, but it is always necessary to refer to all the other circumstances of the event, because only taking into account the totality of the circumstances allows to establish properly the real intentions of the perpetrator."[21] In its decision of January 4th 2006 the Court confirmed that interpretation: "To demonstrate the fulfillment of the subjective attributes of murder – in the form of direct or possible intent – it is not sufficient to specify the mode of action, including its elements such as the type of weapon used, the force of the blow or aiming aggressive activities at vital organs. Without doubt these are important elements, but cannot automatically be seen as conclusive proof of the fulfillment of the subjective elements of the offence, or determine the type of intent attributed to the perpetrator. Usually it is also indispensable to analyze the motives of the perpetrator, his or hers relationship with the victim during times proceeding the event, the background to the event."[22] Further, the Court of Appeal in Poznań stated in its judgment of May 30th 1995: "The conclusion on the intent to kill (even if possible intent) can not be based on the sole fact of using a dangerous weapon, or the mode of action consisting of aiming at the victim's vital organs, but should be grounded in the totality of circumstances of the event and the personality of the perpetrator". [23]

Thinking about the problem of intent, the Court of Appeal in Katowice advanced a following thesis in its June 13th 2002 judgment: "Infliction of a single stab wound with a dangerous weapon such as a knife, followed by calling an ambulance and showing active repentance indicates lack of intention to kill and lack of acceptance of death as a consequence of action."[24] Some of the criminal law specialists question that thesis, as perpetrator's behavior after the event does not relate to intent – "the evidence of intention or lack of thereof can be the circumstances preceding the prohibited act or present at the time of acting".[25] Other criminal law specialists, and often criminologists are in favour of taking the behavior following the act into consideration. Just as L. Tyszkiewicz: „When we are dealing with only one blow, that caused death, then even if it was aimed at the parts of human body where vital organs are located, it is not in itself a conclusive proof that allows to determine intent." [26] The judicature is not uniform in this respect. A wide selection of court

[18] L. Tyszkiewicz, *Przestępstwa przeciwko życiu i zdrowiu* [w:] M. Filar (red.) *Kodeks karny. Komentarz*, LexisNexis, Warszawa 2008, p. 609.

[19] *A. Zoll, Przestępstwa przeciwko życiu i zdrowiu* [in:] A. Zoll (red.) *Kodeks karny. Część szczególna.* Tom II, a Wolters Kluwer business Warszawa 2007, p. 219.

[20] M. Budyn-Kulik, *Przestępstwa przeciwko życiu i zdrowiu* [in:] M. Mozgawa (red.), *Kodeks karny. Praktyczny komentarz*, Wolters Kluwer, Warszawa, p. 313, p. 316.

[21] Supreme Court judgment of 18.06.1974, III KR 53/74, OSNKW 1974, 9, s. 170.

[22] Supreme Court judgment of 4.01.2006, Lex no. 172208, see also the judgment of the Court of Appeal in Katowice of 27.02.2007, II Aka 21/07, KZS 2007, 3, 26.

[23] The judgment of the Court of Appeal in Poznań of 30.05.1995, II Akr 153/95, OSA 1998, 9, 48.

[24] The judgment of the Court of Appeal in Katowice of 13.06.2002, II AKa 158/02, KZS 2003, 2, 39.

[25] A. Zoll*, Przestępstwa*… (2007), p. 223.

[26] L. Tyszkiewicz, op. cit., p. 610.

decisions relating to this subject area has been developed by A. Lisowski[27].

It seems that in real life cases, their circumstances are decisive, as it is not possible *in abstracto* to list instances when possible murder intent can be established versus intent to cause bodily harm, the unintended consequence of which can be death. Therefore, the type of weapon used is not conclusive, nor the place where the knife has hit the body,[28] but the totality of the circumstances, which usually are very complex.

As it was relevantly stated in the Supreme Court judgment of September 3th 2002: "The difference between murder and the crime described in art. 156 § 3 k.k. lies in the *mens rea* (subjective element of the offence) and rests on the fact that in case of murder the perpetrator has a direct or possible intent to kill a human being and that leads him to action or omission, while in case of a crime described in art. 156 § 3 k.k., which is a misdemeanor, the perpetrator acts with a direct or possible intent to cause grievous bodily harm, whereas the consequence of the act in the form of death is not covered by intent." [29] Already in its judgment of June 28th 1977 the Supreme Court took a stand that: "The attribution of possible intent can not be based solely on certain fragmentary facts related to the objective elements of the offence, but it should be a condition *sine qua non*, stemming from an analysis of the totality of objective and subjective circumstances of the event, and especially the perpetrator's relationship with the victim, his personal features and style of life so far, his motives and reasons for action, the force of the blow, its depth, direction and the size of the weapon used, as well as all the other circumstances of the event indicating that the perpetrator, while willing to inflict grievous bodily harm, had also foreseen and accepted, with an actual mental process, such a grave consequence of his action as his or hers victim's death." [30] The Court of Appeal in Łódź, in its March 20th 2002 judgment added persuasively that: "Possible intent can not be presumed, or assumed, but it has to follow from specific facts seen from the angle of the totality of the circumstances of the event, including the personal features of the perpetrator and his relationship to the victim. The sole fact that the accused admits to the charge or the type of weapon used (a knife), are not sufficient to assume murder with possible intent. To attribute murder it is no enough to establish a causal link between activities against a person, and their consequence in the form of death, but it is also necessary to point at some circumstances of the event that give reasons to believe that, the consequence in the form of death was at least accepted by the perpetrator or that it follows from his behavior that he was at least indifferent to bringing about the effect."[31]

The attribution of intent is of paramount importance, as it has impact on the degree of penalty[32]. Also important is the final qualification of the offence – it definitely matters whether someone is sentenced for murder versus manslaughter.

The Court is also examining whether the perpetrator has been previously sentenced for a similar act, because if so, it means that he or she knows that such an act may produce such an effect, as it was indicated by the Court of Appeal in Wrocław in its decision of December 14th 2002.[33] Among the analyzed cases there were no previous sentences for a similar act.

At the very end culpability is scrutinized. Guilt is present if somebody can be blamed for not abiding the law, while being able to do so[34]. Nonetheless it should be noted that the issue of guilt is not seen as unambiguous in the literature,

[27] A. Lisowski, *Przestępstwa przeciwko zdrowiu i życiu. Orzecznictwo Sądu Najwyższego*, Wydawnictwo Comer, Toruń 1996. See K. Daszkiewicz, *Przestępstwa przeciwko życiu i zdrowiu. Rozdział XIX kodeksu karnego. Komentarz,* Wydawnictwo C.H.Beck, Warszawa 2000.

[28] See the judgment of the Supreme Court of 11.121991, II KR 284/91, unpublished, after A. Lisowski, op. cit., p. 57.

[29] The judgment of the Supreme Court of 3.09.2002, V KKN 401/01, LEX nr 74581.

[30] The judgment of the Supreme Court of 28.06.1977, VI KRN 14/77, OSNKW 1978, 4-5, 43.

[31] The judgment of the Court of Appeal in Łódź 20.03.2002, II Aka 35/02 *KZS 2004, 4, 5.*

[32] L. Tyszkiewicz, op. cit., p. 610.

[33] The judgment of the Court of Appeal in Wrocław of 13.12.2002, II AKa 533/02, KZS 2003, 6, 37.

[34] A. Zoll,. *Zasady*…, p. 23 and following; See the theories of guilt: W. Wróbel, A. Zoll, P*olskie prawo karne. Część ogólna*, Wydawnictwo Znak, Kraków 2010, p. 155 and following.; A. Marek, *Prawo karne*, Wydawnictwo C.H.Beck, Warszawa 2011, p. 126; L. Gardocki, *Prawo karne*, Wydawnictwo C.H.Beck, Warszawa 2010, p. 9.

especially in the context of guilt as defined by criminal law, versus its use in criminology and other disciplines, and the common understanding of it in everyday life.

To find somebody guilty of murder the Court needs to establish that all criteria of the offence are met. From the analyzed cases, that were concluded with a final and binding judgment, it follows that in half of the cases of killing by a single stab wound intention to kill could not have been attributed to the perpetrator. The qualification was usually changed by the Court to art. 156 § 3 k.k.

There is also a group of cases, that often start with murder charges (art. 148 k.k.), but eventually their qualification is changed to a brawl or a beating – art. 157 k.k., if at least 3 persons took part in the brawl and the consequence was death of a human being. These events are not "family murders", but it is also unjustified to generally call them murders[35].

To sum up, apart from the feature that the authors deem most important, i.e. the fact that the perpetrator confines himself or herself to one blow only, while being able to strike more than once, if having the intent, even if only possible, to kill (after all life can not be taken in a few seconds), other important characteristics are – admitting to committing the act from the very beginning, active repentance shown right after the event, manifested by rendering assistance to the victim, calling an ambulance and not obliterating physical evidence of the offence. What is interesting, it was also noted that if a woman is charged with murder the qualification tends to be changed more often into a milder one than when the perpetrator is a man[36].

CONCLUSIONS

Taking a human life by a single stab wound, especially if happening against the background of a family conflict, is a very specific type of crime. In the majority of cases the stabbing takes place during an argument, the perpetrator as well as the victim are drunk, and the event occurs at the apartment of one of them or one they are sharing. In the majority of cases not only does the perpetrator not run away, but also tries to save the victim, asking neighbours for help or calling an ambulance, admits to committing the act from the start, but denies having intention to kill and claims that everything happened by accident.

From the analysis of the examined cases it follows that almost always the perpetrator was charged with murder – public prosecutor used art. 148 k.k. Nonetheless, in almost half of the cases the Court changed the final qualification to art. 156 k.k. or art. 155 k.k., and in the rest of the cases the penalties did not approach the maximum penalty limit. It is very important, as only proving intent can differentiate art. 148 k.k. from art. 156, 158 and 155 k.k. It follows from the examined cases that classifying all the instances of taking a life by a single stab wound *a priori* as murders is at least controversial. Moreover, cases like that, not posing any evidence problems to the investigative authorities, groundlessly overestimate murder detection rates.

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[35] See K. Olszak, *Bójka i pobicie. Aspekty wykrywcze i dowodowe*, Wolters Kluwer, Warszawa 2009, p. 30, p. 191.

[36] About the apparent leniency of the judges towards women see M. Bydyn-Kulik, *Zabójstwo*…, p. 31, which pertains only to the most serious crimes and sentencing.

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