

GABRIELA HOŁDYS
Studentka prawa
Uniwersytet Łódzki
ORCID: 0009-0005-2484-3090
e-mail: gabriela.holdys@edu.uni.lodz.pl
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HOMICIDE VERSUS CAUSING GRIEVOUS BODILY HARM RESULTING IN DEATH. DILEMMAS IN DOCTRINE AND JURISPRUDENCE

Zabójstwo a spowodowanie ciężkiego uszczerbku na zdrowiu ze skutkiem śmiertelnym. Dylematy doktryny i orzecznictwa

Abstract

The author analyses the issue of classifying criminal behaviour in the form of taking a person's life as homicide – Article 148 § 1 of the Polish Criminal Code, or as causing grievous bodily harm resulting in death – Article 156 § 3 of the Polish Criminal Code. The aim of this article is to outline the scope of criminal liability from the subjective perspective of homicide and causing grievous bodily harm resulting in death, as defined in the Criminal Code, and to outline the theoretical and practical problems that arise in the academic literature and judicial practice. The scope of the research on court rulings and legal scholarship was set for the period from 2000 to 2025. This period was considered adequate for the research to correspond to the current legal situation and to serve to resolve current legal doubts. The analysis focused primarily on the considerations of legal scholarship concerning the distinction between the subjective elements of homicide and grievous bodily harm resulting in death. Given the breadth of the subject matter, the study focuses primarily on the perpetrator's intent as a key factor in determining the correct legal classification. The article examines the issue from both practical and doctrinal perspectives. In addition, the conclusions drawn from the analyses will be useful in understanding the reasons why the taking of a human life will not always be clearly classified as homicide. The work points to the often difficult to notice, but very significant for the courts and the defendant, boundary between establishing the perpetration of the aforementioned crimes.

Keywords: criminal law, criminal code, homicide, grievous bodily harm resulting in death, intent

Abstrakt

Autor artykułu analizuje problematykę kwalifikacji zachowania przestępnego w postaci pozbawienia życia człowieka jako przestępstwa zabójstwa – art. 148 § 1 k.k., albo jako dokonania ciężkiego uszczerbku na zdrowiu ze skutkiem śmiertelnym – art. 156 § 3 k.k. Celem artykułu jest wskazanie granic między przestępstwami zabójstwa oraz ciężkiego uszczerbku na zdrowiu ze skutkiem śmiertelnym, nakreślenie problemów teoretycznych oraz praktycznych

pojawiających się w doktrynie oraz w praktyce sądowej. Zakres prowadzonych badań nad orzecznictwem sądowym i doktryną przyjęto na okres od 2000 roku do 2025 roku. Taki przedział czasowy uznano za adekwatny ze względu na to by przeprowadzone badania odpowiadały obecnemu stanowi prawnemu i służyły rozwiązywaniu aktualnych wątpliwości prawnych. Analizie poddano przede wszystkim rozważania przedstawicieli doktryny, dotyczące rozgraniczenia znamion strony podmiotowej w przypadku zabójstwa oraz ciężkiego uszczerbku na zdrowiu ze skutkiem śmiertelnym. W artykule wskazuje się na aspekt zamiaru sprawcy jako kluczowego dla trafnej kwalifikacji prawnej. Ponadto wnioski wypływające z pracy przydatne będą do zrozumienia powodów, dla których pozbawienie życia człowieka nie zawsze będzie jednoznacznie kwalifikowane jako zbrodnia zabójstwa. Praca wskazuje często niełatwą do zauważenia, ale jakże znaczącą dla sądów i osoby oskarżonego, granicę między ustaleniem sprawstwa wymienionych przestępstw.

Słowa kluczowe: prawo karne, kodeks karny, zabójstwo, ciężki uszczerbek na zdrowiu ze skutkiem śmiertelnym, zamiar

1. Introduction

Homicide is one of the most serious offences defined in the Criminal Code¹, as it infringes upon the most important good protected by law, namely human life. It is not the only type of offence aimed at protecting it. Committing grievous bodily harm resulting in death constitutes a violation of the legal good that is human life.

The aim of this article is to determine the scope of criminal liability from the perspective of the subjective element of the types of offences under discussion, in the context of the provisions of the current Criminal Code. The difficulties in correctly classifying criminal conduct resulting in the death of a human being stem from the consequence of the perpetrator's conduct, which in both cases is the death of a person. It is difficult to determine the intent with which the defendant acted or failed to act.

The research thesis assumes that the most important factor differentiating between the attribution of homicide or grievous bodily harm resulting in death is whether the fatal outcome was caused intentionally or unintentionally².

The first part of the study focuses on an analysis of the views of legal scholarship from 2000 to 2025, with particular emphasis on the subjective aspects of both types of offences discussed. It is therefore devoted to the analysis of theoretical issues related to the subject matter of the article.

The second part analyses the case law of Polish courts, focusing on the circumstances of the case that determined the courts' legal classification of the criminal behaviour as an offence under Article 148 § 1 of the Criminal Code or Article 156 § 3 of the Criminal Code, or for changing the basis of liability during appeal proceedings.

The study covers the years 2000–2025 due to the need to present the problems faced by the contemporary justice system and the academic literature. The period of twenty-five years was considered appropriate for the analysis of emerging lines of jurisprudence and the views of

¹ Act of 6 June 1997 – Criminal Code (Journal of Laws of 2025, item 383). Hereinafter: The Criminal Code.

² Supreme Court judgment of 3 September 2002, ref. no. V KKN 401/01, LEX no. 74581.

legal scholarship. The article addresses the most significant issues relevant to determining the scope of criminal liability from the perspective of the subjective element of offences. Given the broad scope of the subject matter, the focus is on issues of key importance to the topic under discussion. Bearing in mind the thematic limits of this study, attention is devoted to homicide as a completed offence, whilst omitting the subject of attempt to homicide.

2. Theoretical considerations – the boundary between Article 148 § 1 of the Criminal Code and Article 156 § 3 of the Criminal Code

The types of offences analysed in the article, as mentioned earlier, are aimed at protecting the same legal good, namely human life, and therefore the fulfilment of the statutory elements of an offence in question will result in the violation of the same good³. For this reason, homicide and grievous bodily harm resulting in death are included in the same chapter of the Criminal Code – Chapter XIX, which describes offences against life and health.

It should be noted that the dogmatic construction of the offences described is essentially similar. After a proper analysis, it should be assumed that there are more similarities in the structure of the types of offences in Article 148 § 1 of the Criminal Code and Article 156 § 3 of the Criminal Code than differences. For the purpose of this introduction, the similarities between the discussed types of offences were analysed first.

As legal scholarship rightly points out, homicide and grievous bodily harm resulting in death are material offences – in order to attribute responsibility for either of them, there must be an objective effect in the form of human death, and thus the object of the executive act is also identical, which in the case of the analysed types of offences is a living human being⁴. If the effect does not result in the death of the victim, it is not possible to assign responsibility for committing any of the acts in question.

Another clearly noticeable similarity is that the effect in the form of human death, in the case of both types of offences, does not have to be immediate. In order to attribute criminal liability to the perpetrator under Article 148 § 1 of the Criminal Code or Article 156 § 3 of the Criminal Code, a causal link between the perpetrator's behaviour and the occurrence of the fatal outcome is sufficient, whereby it is not necessary for the perpetrator's behaviour to be the sole cause of the victim's death⁵.

The offences may be committed either by action – in which case the subject of the offence is generally liable, and the act is a common offence – or by omission, where the subject of the offence is the guarantor, i.e., according to the definition contained in Article 2 of the Criminal Code, a person who had a specific legal duty to prevent the criminal consequences⁶. In the case of homicide or grievous bodily harm resulting in death by omission, the acts will be individual offences⁷.

³ R. Kokot, [in:] *Criminal Code. Commentary*, ed. R. A. Stefański, Warsaw 2023, pp. 941, 1024.

⁴ For more details: A. Zoll, [in:] *Criminal Code. Special Part. Volume II. Commentary on Articles 117–211a*, ed. W. Wróbel, A. Zoll, Warsaw 2017, pp. 258-261, 356.

⁵ V. Konarska-Wrzosek, [in:] *Criminal Code. Commentary*, ed. V. Konarska-Wrzosek, Warsaw 2023, pp. 839, 884-885.

⁶ G. Rejman, *Criminal Code. General Part. Commentary*, ed. G. Rejman, Warsaw 1999, p. 181.

⁷ A. Zoll [in:] *Criminal Code. Special...*, *op. cit.*, pp. 262, 355.

With regard to severity of the types of offences, both are indictable offences⁸. Moreover, the legislator recognizes them as some of the most serious, which is reflected in the fact that, pursuant to Article 10 § 2 of the Criminal Code, the perpetrators aged 15 and above may be held liable for them if the other conditions required by that article are met.

The fact that the court may impose a penalty of an eliminatory nature⁹, i.e. life imprisonment, for each of these offences also speaks in favour of recognising the described offences as some of the most serious. The difference in the penalties for both of them is evident in their lower limits – homicide, considered a more reprehensible act, is punishable by imprisonment for a term of between 10 and 30 years or life imprisonment, while the act under Article 156 § 3 of the Criminal Code may be punished with a lower penalty – from 5 to 30 years' imprisonment or life imprisonment.

In legal scholarship, the possibility of committing the described types of offences in complicity is also pointed out as a similarity between them, and the impossibility of attempting to commit the act under Article 156 § 3 of the Criminal Code is pointed out as a difference, whereas such a possibility exists in the case of the type of offence under Article 148 § 1 of the Criminal Code¹⁰. However, due to the thematic scope of the study, a detailed discussion of the possible forms and stages of the offences described has been omitted.

In order to determine the scope of criminal liability from the perspective of the subjective element of homicide and causing grievous bodily harm resulting in death, it is necessary to analyse the verbal elements of the offences in question. In the case of the type of offence referred to in Article 148 § 1 of the Criminal Code, this is the element "kills", which in its dictionary meaning, according to the definition of the word "kill - to kill", should be understood as "to deprive (deprive) someone or something of life in a violent manner, to inflict (inflict) death on someone; kill (to kill)"¹¹. Based on this understanding of the perpetrator's actions it follows that this refers to any act committed with the deliberate intent to take a person's life. It does not matter what object the perpetrator uses to carry out the act of "killing" or whether they carry out the elements of the offence alone or with the help of third parties, or even whether they affect the victim physically or mentally¹². According to the view expressed in the academic literature, "the catalogue of behaviours leading to human death remains open"¹³.

⁸ It is worth noting that until 2017, Article 156 § 3 of the Criminal Code constituted a summary offence. The change in the penalty and, consequently, the change in the severity of the offence was introduced by the Act of 23 March 2017 amending the Criminal Code, the Act on Juvenile Proceedings and the Code of Criminal Procedure (Journal of Laws of 2017, item 773). Justification for the draft Act of 23 March 2017 amending the Criminal Code, the Act on Juvenile Proceedings and the Code of Criminal Procedure, document no. 846, pp. 8-10. Document available at: <https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=846> (accessed on: 15 December 2025).

⁹ W. Wróbel, A. Zoll, *Polish Criminal Law. General Part*, Krakow 2010, p. 438. The courts also draw attention to the eliminatory nature of the penalty in their judgments: see: Judgment of the Court of Appeal in Wrocław of 22 November 2017, ref. no. II AKa 323/17, LEX no. 2432036; Judgment of the Court of Appeal in Lublin of 17 September 2018, ref. no. II AKa 175/18, LEX no. 2574810; Judgment of the Court of Appeal in Lublin of 6 June 2022, ref. no. II AKa 67/21, LEX no. 3576185.

¹⁰ R. Kokot, *op. cit.*, pp. 943-945, 1025, 1030, B. Michalski, [in:] *Penal Code. Special Part. Volume I. Commentary on Articles 117–221*, ed. A. Wąsek, Warsaw 2006, pp. 331-332.

¹¹ *Great Dictionary of the Polish Language PWN*, ed. S. Dubisz, vol. 5, Warsaw 2018, p. 600.

¹² R. Kokot, *op. cit.*, p. 945.

¹³ B. Michalski, [in:] *Penal Code. Special Part. Volume I. Commentary on Articles 117–221*, ed. A. Wąsek, R. Zawłocki, Warsaw 2010, p. 159.

As regards the type of offence under Article 156 § 3 of the Criminal Code, the difference in the content of the provision is apparent *prima facie*. The type of offence is not about "killing" but about "causing" grievous bodily harm. According to the dictionary meaning, "to cause" means "to be the perpetrator, reason, or cause of something, to bring about or provoke something"¹⁴. In order to accurately analyse what exactly this act entails, it is necessary to first analyse the wording of Article 156 § 1 of the Criminal Code, which describes the forms of grievous bodily harm resulting in death referred to in § 3 of the provision in question. In order to assign criminal liability for causing grievous bodily harm resulting in death, there must be a causal link between causing one of the enumerated forms of grievous bodily harm (Article 156 § 1 of the Criminal Code) and the death of a person¹⁵. Causing grievous bodily harm does not have to be the sole cause of the victim's death; it is sufficient that there is a causal link between the perpetrator's criminal behaviour and the fatal outcome¹⁶. If death occurs, but as a result of circumstances other than those listed in the provision, it should be assumed that it will not be possible to hold the perpetrator liable on the basis of the type of offence in question¹⁷. When describing grievous bodily harm, criteria such as the following may be used: anatomical, functional, physiological, social and aesthetic¹⁸. According to the current wording of the provision, grievous bodily harm may consist, *inter alia*, in causing serious disability, serious incurable disease, a disease that poses a real threat to life or permanent mental illness¹⁹. When analysing the term "causes", it should be assumed that it refers to "any type of behaviour on the basis of which the perpetrator can be objectively attributed with the effect of grievous bodily harm to the victim"²⁰ (e.g., a life-threatening illness) occurring in the victim. However, the fact that a person's death is to be the "consequence" of causing grievous bodily harm indicates the previously discussed necessity of a causal link between the perpetrator's behaviour leading to grievous bodily harm and the death of the victim.

From the above considerations, it can be concluded that the subject matter of the types of offences in question is clearly similar – in both cases, the result of their commission is the death of a person. The element that constitutes the fundamental difference in their construction is the subjective aspect²¹, i.e., whether the perpetrator caused the fatal outcome intentionally or unintentionally. As rightly pointed out in the academic literature²², homicide can only be committed intentionally – with direct or eventual intent. According to the wording of Article 9 § 1 of the Criminal Code, a person acts intentionally if they want to commit an offence or if they accept the possibility of committing it. This provision contains the definition of *dolus directus* and *dolus eventualis*. The perpetrator of an offence under Article 148 § 1 of the Criminal Code may therefore be charged with this offence only if the prosecutor is able to prove

¹⁴ *Great Dictionary of the Polish Language PWN*, ed. S. Dubisz, vol. 3, Warsaw 2018, p. 832.

¹⁵ M. Królikowski, [in:] *Penal Code. Volume II. Special Part. Commentary. Articles 117–221*, ed. M. Królikowski, R. Zawłocki, Warsaw 2023, p. 338.

¹⁶ B. Michalski, [in:] *System of Criminal Law. Volume 10. Offences against individual interests*, ed. J. Warylewski, Warsaw 2016, p. 273.

¹⁷ L. Tyszkiewicz, [in:] *Criminal Code. Commentary*, ed. M. Filar, Warsaw 2016, p. 951.

¹⁸ A. Marek, *Criminal Code*, Warsaw 2010, p. 386.

¹⁹ For more details, see: A. Zoll, *Criminal Code. Special Part...*, *op. cit.*, pp. 357-363.

²⁰ R. Kokot, *op. cit.*, p. 1024.

²¹ A. Malicka-Ochtera, [in:] *Criminal Code. Provisions applicable in medical cases. Commentary*, ed. R. Tymiński, Warsaw 2023, pp. 196-197.

²² M. Budyn-Kulik, [in:] *Criminal Code. Commentary*, ed. M. Mozgawa, Warsaw 2023, p. 585.

that he or she acted or failed to act with the intention of causing the death of a person, or consent to the occurrence of a fatal outcome as a result of an act or omission undertaken by the perpetrator in pursuit of a goal other than causing the death of the victim, but with the perpetrator being aware of the high probability of its occurrence and being indifferent to the fatal outcome.

The situation is different when it comes to the subjective element of grievous bodily harm resulting in death. This type of offence is classified by its consequence and is characterised by a so-called combined (or mixed) subjective element, described in Article 9 § 3 of the Criminal Code. The perpetrator intentionally – with direct or eventual intent – causes grievous bodily harm to the victim but does not intend to cause their death. They do not want and do not accept that their criminal behaviour may result in death. The perpetrator is attributed with unintentional causation on the basis of the finding that the perpetrator did not intend to commit the act, but foresaw its consequences, yet unreasonably assumed that they would not occur (conscious inadvertence), or did not foresee the consequences at all, but should and could have done so (unconscious inadvertence)²³. This anticipation or the possibility of anticipation must occur at the latest at the moment when the perpetrator commits the act²⁴.

It is the accurate determination of the subjective element of the particular offence that forms the basis for the proper legal classification of conduct resulting in the death of a human being. Given the similarity in the consequences of committing the offences under Article 148 § 1 of the Criminal Code and Article 156 § 3 of the Criminal Code, the only element that allows the distinction between these types of offences to be determined is the determination of the effect the perpetrator sought to achieve. The court should determine whether, at the time of committing the act, the perpetrator had the intention or consent to take a human life²⁵ in order to determine whether the fatal outcome was intentional or unintentional. It is crucial to determine whether the perpetrator intended to take the victim's life or "only" to cause grievous bodily harm. It would be wrong to presume the existence of direct or eventual intent on the part of the perpetrator of the act. In its justification of the judgment, the court must indicate and justify that the perpetrator has been proven to have had the intent to kill and its form, if the conviction is based on Article 148 § 1 of the Criminal Code²⁶.

Particular problems arise in distinguishing between eventual intent and conscious inadvertence. In a situation where there is doubt as to the legal classification of the perpetrator's behaviour on the basis of one of the provisions discussed, it may be difficult to determine whether the perpetrator accepted the possibility of death as a consequence or merely foresaw the possibility of its occurrence but, for some reason, assumed that such a consequence would

²³ A. Zoll, [in:] *Criminal Code. Special Part. Commentary. Volume II. Commentary on Articles 117–227 of the Criminal Code*, ed. A. Zoll, Warsaw 2008, p. 310. In this article, the discussion of the subjective aspect is based on the purely normative theory of guilt presented in the current Criminal Code and in the commentary to the Criminal Code – see: T. Przesławski [in:] *Criminal Code. Commentary*, ed. R. A. Stefański, Warsaw 2023, pp. 162–163. It is worth noting that in some works on the interpretation of the Criminal Code, authors continue to use the terms recklessness and negligence – cf.: A. Marek, V. Konarska-Wrzosek, *Criminal Law*, Warsaw 2016, p. 140, used in the context of the comprehensive normative theory of guilt. For more on the pure and comprehensive theories of guilt, see: M. Kowalewska-Łukuć, *Guilt in Criminal Law*, Warsaw 2019, pp. 51–57, 59–61.

²⁴ B. Michalski, op. cit., p. 273.

²⁵ M. Budyn-Kulik, *Intentionality in Criminal Law and Psychology. Theory and Judicial Practice*, Warsaw 2015, p. 554.

²⁶ L. Tyszkiewicz, op. cit., p. 935.

not occur, and therefore did not want it to occur and did not accept it²⁷. As mentioned earlier, in such a case, the court must strictly determine why (if at all) it accepts the conditional intent to commit homicide, recognising that the perpetrator caused the fatal outcome intentionally.

In order to determine the existence or non-existence of intent and its form, or the form of inadvertence, it is essential to take into account the relevant factors. Here, it is important to point out the significance of the circumstances that characterize the perpetrator and their relationship with the victim²⁸. The analysis of such circumstances often allows conclusions to be drawn about the existence or non-existence of intent to kill. Other factors that allow for the determination of the subjective aspect, and thus the accurate classification of criminal behaviour, in cases of doubt as to whether we are dealing with homicide or grievous bodily harm resulting in death, are: the means used to commit the offence, the manner in which they were used, the perpetrator's mode of operation, brutality, intensity of actions, degree of probability of the effect occurring, motivation, existence or non-existence of threats made by the perpetrator to the victim, the perpetrator's previous conflicts with the law, experience, knowledge of the effects of actions taken or omissions²⁹. In the further part of the study, devoted to the analysis of court rulings, it will be indicated how the above-mentioned circumstances influenced the court's decision on the existence or non-existence of intent.

In order to summarise the theoretical part of the argument, attention should be paid to the conclusions drawn from it. As the analysis shows, legal scholarship attempts to resolve the difficulties arising from the topic discussed in the thesis by analysing the entirety of the subjective and objective elements relating to both types of offences. The deliberations confirmed the view that the most crucial factor in distinguishing between homicide and grievous bodily harm resulting in death was determining whether the perpetrator had intended the consequence of causing a person's death, or whether that outcome was not part of their intent. Similarities were also identified in the objective aspects of the types of offences discussed. The existence of similar objective characteristics indicates the need to focus particularly on the correct determination of the subjective aspect as the only element that provides a basis for accurate classification.

3. Practical considerations – analysis of court rulings

As follows from the theoretical part of the article, in order to distinguish between homicide and causing grievous bodily harm resulting in death, it is necessary to establish the subjective aspect of the act committed by the perpetrator. In order to determine what circumstances actually influence the assumption of intent or inadvertence on the part of the accused of committing a given type of offence, the case law of Polish courts was analysed, and thus cases in which the issue of distinguishing between the types of offences under Article 148 § 1 of the Criminal Code and Article 156 § 3 of the Criminal Code. The justifications for the judgments contain detailed explanations of the premises that influenced the classification of a given behaviour under one of the legal bases discussed in the study and the factors that

²⁷ W. Wróbel, A. Zoll, *Polish Criminal Law. General Part*, Krakow 2014, pp. 220-221.

²⁸ R. Kokot, *op. cit.*, p. 947.

²⁹ *Ibidem*, pp. 948-949.

determined the acceptance of the existence or non-existence of the intention to cause a fatal outcome.

The courts confirm the previously described view of legal scholarship that the behaviour of the perpetrator causing grievous bodily harm does not have to be the sole cause of the victim's death, but there must be a causal link between the perpetrator's behaviour and the fatal outcome³⁰.

The case law also confirms the previously stated thesis that the most important element differentiating the types of offences under Article 148 § 1 of the Criminal Code and Article 156 § 3 of the Criminal Code is the subjective aspect. The courts are unanimous on this issue and it is not possible to question this statement. Case law clearly indicates the intention to cause the death of a person as the element distinguishing the two types of offences discussed, just as legal scholarship emphasise the existence of intent in the case of the type of act under Article 148 § 1 of the Criminal Code and the so-called combined subjective element in the case of causing grievous bodily harm resulting in death³¹. An important phenomenon noted and expressed by the case law is that the intent to kill is extremely rarely articulated by the perpetrator, and therefore it must be determined on the basis of the circumstances accompanying the criminal behaviour³². In most cases, the perpetrator does not express the intent accompanying his action or omission, so the existence of intent must be inferred from the subject matter of the act. This phenomenon is also noted in the academic literature³³, and the author of the article agrees with this statement.

Since it is necessary to determine the subjective aspect in order to distinguish between the types of offences discussed, the courts are faced with the task of correctly interpreting the circumstances surrounding the act, which may indicate the existence or non-existence of intent to take a person's life.

One of the circumstances undoubtedly taken into account when determining the existence of intent (or inadvertance) on the part of the perpetrator is whether they used a dangerous tool or whether they directed their blows or strikes at parts of the body that are important for health and life, as noted earlier in this study.

For the purpose of an in-depth analysis of court rulings, the judgment of the Court of Appeal in Poznań³⁴ is important, as its content points to two different lines of jurisprudence established in Poland in cases where there is doubt as to whether the perpetrator had the intent to kill. The courts express different views on whether the use of a dangerous tool or striking blows to areas of the body that are vital to life and health can determine that the perpetrator had the intent to kill. According to the first view, discussed in the judgment, "neither the use of

³⁰ See: Judgment of the Court of Appeal in Lublin of 3 June 2014, ref. no. II AKa 102/14, LEX no. 1488649; Judgment of the Court of Appeal in Szczecin of 6 June 2019, ref. no. II AKa 49/19, LEX no. 2719378; Judgment of the Court of Appeal in Gdańsk of 16 December 2020, II AKa 258/20, LEX no. 3358192.

³¹ See: Judgment of the Court of Appeal in Białystok of 24 January 2019, ref. no. II AKa 201/18, LEX no. 2669380; Judgment of the Court of Appeal in Poznań of 20 September 2019, ref. no. II AKa 59/19, LEX no. 3057930; Judgment of the Court of Appeal in Wrocław of 25 April 2023, ref. no. II AKa 85/23, LEX no. 384331.

³² See: Judgment of the Court of Appeal in Łódź of 16 October 2014, ref. no. II AKa 227/14, LEX no. 1661223; Judgment of the Court of Appeal in Poznań of 27 May 2021, ref. no. II AKa 22/21, LEX no. 3196736; Judgment of the Court of Appeal in Lublin of 18 May 2022, ref. no. II AKa 307/21, LEX no. 3346799.

³³ B. Michalski, [in:] *Penal Code. Special Part. Volume I. Commentary on Articles 117–221, op. cit.*, p. 159.

³⁴ Judgment of the Court of Appeal in Poznań of 19 October 2017, ref. no. II AKa 173/17, LEX no. 2747963.

a dangerous weapon nor even striking or hitting vital parts of the body is sufficient to prove the perpetrator's intent to kill"³⁵. However, according to the second view expressed by the courts, these circumstances are sufficient to attribute intent to kill to the perpetrator³⁶. It follows from this, in accordance with the considerations set out in the theoretical part of the work, that circumstances such as the use of a specific tool characterised by its dangerous nature, or the location of the blows or strikes, are undoubtedly taken into account by the courts when assessing the existence or non-existence of intent to cause death by one's actions, and thus when classifying the act. The content of the aforementioned judgment indicates that such circumstances "provide certain indications as to whether the perpetrator had the intent to commit homicide"³⁷. However, given the emergence of two different views in the Polish judiciary on whether the mere use of such a tool or the infliction of blows or strikes to vital parts of the human body is a clear indication of such intent, it cannot be definitively determined whether such behaviour will always mean to the court that the perpetrator acted with intent to cause death.

For example, in one case³⁸, in which the defendant charged with an offence under Article 148 § 1 of the Criminal Code used a knife, which in the practical application of criminal law is clearly recognised as a dangerous tool capable of causing death, and even more so grievous bodily harm³⁹, was found guilty by the Court of Appeal only of the offence under Article 156 § 3 of the Criminal Code, and not of homicide, as previously stated by the Court of First Instance. The Court of Appeal found that the defendant struck "blindly", which, in the Court's opinion, proves the absence of intent to kill. Moreover, the blows were struck to the victim's hand, which, according to the Court, does not usually indicate intent to cause death. However, it was accepted that the defendant agreed to cause grievous bodily harm, and the fatal outcome was unintentional. In this situation, the defendant was held liable under Article 156 § 3 of the Criminal Code.

When analysing the relevant case law, it should be noted that the use of a dangerous tool to commit an act, as well as striking and hitting sensitive parts of the human body, will not always be unequivocally interpreted by the courts as grounds for assuming intent to kill⁴⁰. Case law points to cases where even blows to the victim's head, the injuries of which (both internal and external) have very serious consequences⁴¹, will not be sufficient grounds for automatically concluding that the death of a person was caused intentionally. This will not be justified in a situation where other circumstances, such as those indicated in the judgments: the perpetrator's attempt to resuscitate the victim, or agitation caused by alcohol consumption, in a situation where the perpetrator is an impulsive person, or a conflict in a nightclub, argue for

³⁵ *Ibidem*.

³⁶ *Ibidem*.

³⁷ *Ibidem*.

³⁸ Judgment of the Court of Appeal in Warsaw of 6 July 2020, ref. no. II AKa 388/19, LEX no. 3102699.

³⁹ Cf.: Supreme Court decision of 22 September 2016, ref. no. III KK 146/16 LEX no. 2124044; Judgment of the Court of Appeal in Warsaw of 10 October 2022, ref. no. II AKa 303/21, LEX no. 3435747; Judgment of the Court of Appeal in Warsaw of 12 October 2022, ref. no. II AKa 200/22, LEX no. 3437239.

⁴⁰ See: Judgment of the Court of Appeal in Krakow of 16 November 2010, ref. no. II AKa 188/10, LEX no. 794647; Judgment of the Court of Appeal in Szczecin of 10 October 2018, ref. no. II AKa 113/18, LEX no. 2668134; Judgment of the Court of Appeal in Poznań of 8 September 2022, ref. no. II AKa 82/22, LEX no. 3423628.

⁴¹ T. Marcinkowski, *Forensic Medicine for Lawyers*, Szczytno 2010, p. 230.

the absence of intent to kill on the part of the perpetrator⁴². In the judgments referred to in the footnote, it was accepted that the outcome of the perpetrator's behaviour was unintentional, which manifested itself in various ways. For example, it was the attempt to resuscitate the victim after causing grievous bodily harm, which, in the opinion of the court, proved that the perpetrator did not want the fatal outcome to occur and therefore decided to save the victim's life. In another case, it was found that the perpetrator, who was intoxicated and prone to aggression, did not want to kill his partner, but only to "teach her a lesson" by hitting her on the head. Finally, a situation in which a security guard – an employee of a nightclub – caused death by striking two blows to the head, which resulted in a vegetative state and then the death of the victim, who, despite requests, did not want to leave the club, thereby exposing himself to aggression on the part of the security guard, was also classified as grievous bodily harm resulting in death, as there were no grounds to conclude that, in the given circumstances, the accused security guard wanted or agreed to cause the death of an unwanted club customer. Analysing the case law, and thus the specific facts, it is difficult not to notice that each case is considered by the courts individually, taking into account the unique circumstances of the act, specific to each case, which means that despite the identical or similar subject matter, the subjective aspect of the act may differ in each case.

In their judgments, the courts also point to circumstances other than the use of a dangerous tool or striking sensitive parts of the body, which indicate the existence or non-existence of intent to kill and are thus helpful in determining the scope of criminal liability from the subjective perspective of the types of offences in question. It should be noted that there is a convergence with the circumstances indicated by the academic literature, as described in the earlier part of this study. According to the courts, intent can be inferred "in particular from the perpetrator's relationship with the victim, his personal characteristics and previous lifestyle, motives and reasons for his actions, the force of the blow, the depth and direction of the wound and the size of the tool used, and any other circumstances indicating that the perpetrator, wishing to cause bodily harm, consented, as a real mental process, to such an exceptionally serious consequence as the death of the victim. The conclusion regarding the intent to kill (including possible intent) should be confirmed by the overall circumstances of the act and the personality traits of the perpetrator"⁴³. The court's assessment of the existence of intent will therefore depend on various factors, such as whether the perpetrator was in conflict with the victim, what kind of lifestyle he led, whether, for example, he was a person leading a sedate lifestyle, what education he had, whether he had previously been prone to aggression, and if so, to what extent they were capable of taking a person's life. Finally, the perpetrator's life experience will be relevant in determining intent, whether they could have foreseen with a high degree of probability that their behaviour would result in death, and whether they had previously been convicted of crimes against life and health. Examples of circumstances indicated by courts and the academic literature as key constitute an open catalogue, because all

⁴² See: Judgment of the Court of Appeal in Katowice of 7 December 2017, ref. no. II AKa 450/17, LEX no. 2663630; Judgment of the Court of Appeal in Gdańsk of 16 July 2020, ref. no. II AKa 50/20, LEX no. 3217305; Judgment of the Court of Appeal in Białystok of 10 November 2022, ref. no. II AKa 95/22, LEX no. 3572513.

⁴³ Judgment of the Court of Appeal in Katowice of 18 March 2021, ref. no. II AKa 454/20, LEX no. 3398403. Similarly: Judgment of the Court of Appeal in Białystok of 7 August 2023, ref. no. II AKa 80/13, LEX no. 1362656; Judgment of the Court of Appeal in Warsaw of 30 December 2015, ref. no. II AKa 436/15, LEX no. 2023536.

circumstances relevant to the facts of the case must always be taken into account. It is worth noting that whether the perpetrator has medical training does not determine the existence of intent to kill⁴⁴.

One of the circumstances relevant to determining the perpetrator's intent is the victim's resistance to the injuries sustained. If the defendant was aware of his victim's low resistance, it can be concluded that he was aware of the consequences of his actions, such as serious injury or even death. In one case heard by the Supreme Court⁴⁵, the victim was HIV-positive. During the attack, in which the perpetrator hit him, the victim informed the attacker that he was infected with the virus. The Supreme Court ruled on this circumstance as follows: "In a situation where the victim, asking the defendant not to beat him, said that he was HIV-positive, this must have raised obvious concerns about the destruction of his body and, as a consequence, his reduced immunity, including to injuries, which cannot be forgotten in the case of classification under Article 156 § 3 of the Criminal Code". This judgment points to another example of a circumstance that has a significant impact on the process of proving what effect the perpetrator intended and what he could have foreseen.

The conclusion from the considerations on what is decisive for the courts in accepting the existence or non-existence of intent, and thus what determines the scope of criminal liability from the subjective perspective of the offences under Article 148 § 1 of the Criminal Code and Article 156 § 3 of the Criminal Code, are the objective and subjective circumstances. These indicate whether the perpetrator had reasons for causing the death of the victim. Due to the similarity of the objective aspect of both types of offences discussed, it is crucial for the administration of justice to correctly assess the subjective aspect, which the courts do based on the circumstances of the act described.

4. Summary and conclusions

The thesis contained in the introduction to this article has been confirmed by research on legal scholarship and court rulings. It has been confirmed that the most important factor in distinguishing between the attribution of homicide or grievous bodily harm resulting in death is whether the fatal outcome was intentional or unintentional. As noted by legal scholarship and case law, although the types of offences are noticeably similar (the same object of protection, causing the death of a person by the action or omission of the perpetrator, the types of offences recognised as indictable offences, or even the existence of intent – but with regard to achieving a different result, and other similarities mentioned in the section devoted to theoretical considerations), there is a noticeable difference in the subjective aspect, which completely determines the legal basis on which a given criminal behaviour should be classified. Case law has developed a catalogue, albeit an open one, of circumstances that must be considered to correctly determine whether the fatal outcome was intentional or unintentional, which proves

⁴⁴ In the judgment of the Court of Appeal in Warsaw, the defendant was a nurse, but despite this, the Court of Appeal did not share the opinion of the court of first instance that this was evidence of intent to kill. The court of first instance pointed out that, due to her profession, the defendant knew that she was stabbing the brachial artery. The Court of Appeal ruled that stabbing the arm could not be considered an attempt to cause death, especially since the other circumstances of the act indicated that she did not want this and did not agree to it. See: Judgment of the Court of Appeal in Warsaw of 6 July 2020, ref. no. II AKa 388/19, LEX no. 3102699.

⁴⁵ Judgment of the Supreme Court of 14 February 2022, ref. no. V KK 215/11, LEX no. 1119580.

helpful in cases where it is difficult to make such a determination. In view of the above findings, it should be recognised that, thanks to the correctly determined subjective elements of the act, it is possible to accurately classify a criminal act resulting in the death of a person, on the basis of Article 148 § 1 of the Criminal Code or Article 156 § 3 of the Criminal Code, without any major difficulties.

The main conclusion of the article is that determining the existence or non-existence of intent is crucial for establishing the scope of criminal liability from the subjective perspective of homicide and causing grievous bodily harm resulting in death. As a result of an analysis of contemporary views in legal scholarship and jurisprudence, the author of the article agrees with this conclusion. It is worth noting that each determination of whether the perpetrator should be held liable under Article 148 § 1 of the Criminal Code or Article 156 § 3 of the Criminal Code cannot be made "automatically" by recognising the occurrence of specific circumstances as appropriate for only one legal classification. It should be noted that case law points to the importance of the circumstances accompanying the act committed for the accurate classification of criminal behaviour, as it is their correct interpretation that is most important for practice, as follows from the above considerations, in order to determine the scope of criminal liability from the subjective perspective of the offences. The approach described by legal scholarship, who emphasise the multi-faceted nature of the problem in question, pointing to the similarities and differences between the types of offences discussed, deserves approval. To draw a precise line between the offences in question, it would be necessary to adopt a closed catalogue of circumstances which would indicate, in each case, whether the perpetrator intended to cause death. However, this solution to the problem described would involve automatism, as cases would not be decided based on circumstances specific to a particular factual situation, which would jeopardise the procedural guarantees of the accused, and therefore such a proposal would not be applicable in court practice. Therefore, the only way to make a distinction between homicide and causing grievous bodily harm resulting in death, and to classify criminal behaviour on the basis of one of these provisions, is for the court to analyse all the circumstances of the act committed in each case in order to correctly determine its subjective aspect.

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