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ASSESSING THE CAPACITY OF SUBSTANTIVE CRIMINAL LAW TO CAPTURE SERIAL HOMICIDE IN THE LEGAL QUALIFICATION OF THE ACT

Ocena zdolności istniejących instytucji prawa karnego materialnego do ujęcia istoty kryminologicznego zjawiska seryjności zabójstw w kwalifikacji prawnej czynu.

Abstract

This paper examines the extent to which current substantive criminal law instruments can adequately capture the criminological phenomenon of serial homicide in legal qualification. The author aims to establish a definition of seriality among homicide offenders and poses two key research questions: do legal concepts such as continuous acts, series of offences, and recidivism provide a suitable representation of the complex nature of serial homicide, and how does criminology, as an auxiliary science of criminal law, encounter this phenomenon? Employing a formal-dogmatic approach alongside analysis of the literature and case law, the author critically assesses whether the Polish Criminal Code can fully encompass the complexities of serial homicide.

Keywords: substantive criminal law, criminology, serial homicide, legal qualification of the act, multi-act offence, recidivism

Abstrakt

Problemem badawczym poruszonym w niniejszym artykule jest możliwość adekwatnego ujęcia kryminologicznego zjawiska seryjności zabójstw w kwalifikacji prawnej czynu przy wykorzystaniu istniejących instytucji prawa karnego materialnego. Autorka podejmuje próbę sformułowania definicji seryjności w kontekście sprawców zabójstw, stawiając dwa zasadnicze pytania badawcze: czy konstrukcje takie jak czyn ciągły, ciąg przestępstw oraz recydywa trafnie oddają złożony charakter seryjnych zabójstw, a także w jaki sposób kryminologia – jako nauka pomocnicza prawa karnego – podchodzi do tego zjawiska. Przy wykorzystaniu formalno-dogmatycznej metody badawczej oraz analizy literatury i orzecznictwa autorka krytycznie ocenia zdolność polskiej ustawy karnej do pełnego uwzględnienia złożoności seryjności zabójstw w kwalifikacji prawnej czynu.

Słowa klucze: prawo karne materialne, kryminologia, seryjne zabójstwo, kwalifikacja prawna czynu, przestępstwo wieloczynowe, recydywa

1. Introduction

This article analyses and evaluates substantive criminal law instruments for their capacity to address seriality in the legal classification of acts. The analysis centres on serial killers as a distinct category of perpetrators under Article 148 of the Criminal Code¹, given the significance of the protected legal interest and the investigative importance of recurring behaviours. Since ‘seriality’ is not a legal concept and the phenomenon is inherently complex, it remains difficult to define with precision. No statutory definition exists, nor are there sufficient grounds for independent reconstruction. This situation raises questions regarding the scope and limitations of normative approaches and the potential for excessive interpretative discretion in classifying acts committed by serial killers.

Seriality appears to evade rigid normative frameworks, underscoring the importance of drawing on auxiliary sciences of criminal law, particularly criminology. Employing a criminological perspective is justified by the necessity of understanding seriality primarily as an empirical phenomenon, characterised by the repeatability of the perpetrator’s behaviour or specific action patterns, and subsequently addressing it comprehensively in legal provisions. Utilising a formal-dogmatic research method, supplemented by court rulings, this study adopts a two-pronged approach: first, analysing the normative constructs provided in the Criminal Code; second, assessing their application by courts over recent decades.

2. The term ‘seriality’ in the context of serial killers

Developing a uniform definition of seriality applicable to all factual scenarios remains a significant challenge. Nonetheless, ongoing scholarly interest in serial homicide necessitates a comprehensive analysis. An effective definition should encompass all essential elements of the concept and specify the conditions under which multiple² homicides constitute serial killing. Establishing a hierarchy among these prerequisites is also crucial. The absence of certain conditions precludes seriality, whereas others may be interpreted differently depending on the perpetrator.

As such, the fundamental issue is determining the number of murders that have to be committed by a single perpetrator³. In this regard, it is often pointed out that at least two or

¹ Act of 6 June 1997, Criminal Code (Journal of Laws 1997, No. 88, item 553, as amended).

² There is no universal consensus on the minimum number of murders a perpetrator must commit to be considered a serial killer.

³ However, it is not the number of victims of a single perpetrator (in a specific incident or in total) but the number of acts committed by them that is of fundamental importance for these conclusions. Establishing a specific minimum or maximum number of victims to define seriality does not seem to play a key role, though it has been considered, see C. Skrapec, *Defining serial murder: A call for a return to the original Lustmör*, ‘Journal of Police and Criminal Psychology’ 2001, No 16(2), p. 10-24.

three (or more) murders must be committed⁴, but in separate incidents⁵. Although the minimum threshold set at both levels may be justified, it seems that a minimum of two murders is sufficient. The fact that the perpetrator has already committed at least two murders proves their sufficient mental and physical capacity as well as willingness to commit further crimes⁶; on the other hand, such a limit is most justified in the light of current findings⁷.

However, there is no doubt that the perpetrator must maintain appropriate time intervals and certain breaks between individual acts (cooling-off periods) so that each murder can be distinguished as a separate event. However, specifying precisely how long these breaks should last is not particularly important for defining seriality⁸.

Another noteworthy issue is the motivation for repeated murders. Many studies find that sexual motives are the most common, but focusing only on this is not appropriate, considering the diverse motivations among serial killers. Any practical definition should not limit itself to one motive. Each perpetrator will have unique reasons, but the common element is the satisfaction of some internal need⁹.

In light of the above considerations, it seems reasonable to adopt the following definition for the purpose of this article: seriality (in the context of perpetrators of murder) should be understood as the deliberate, unlawful killing of at least two people by the same perpetrator, in separate incidents with intervals between successive murders, each motivated by a desire for fulfilment and an urge to achieve a sense of personal satisfaction from their actions¹⁰.

3. Criminal law approach to seriality

The continuous act and the series of offences (as legal concepts that may be applied to offences committed under conditions of ‘continuity’), as well as special recidivism under Article 64 of the Criminal Code¹¹, undoubtedly warrant discussion and reference to the

⁴ Naturally, some definitions assume a significantly higher number of murders committed by the same perpetrator, but these will not be discussed in detail in this article. One such definition is that proposed by the Behavioural Science Unit (BSU), now the Behavioural Analysis Unit, an FBI unit. At that time, there was even mention of 10 or more individual murders.

⁵ K. D. Haggerty, *Modern serial killers* ‘Crime Media Culture an International Journal’ 2009, nr 5(2), s. 168–187, C. Skrapec, *Defining serial murder: A call for a return to the original Lustmörd*, ‘Journal of Police and Criminal Psychology’ 2001, No. 16(2), p. 10–24.

⁶ S. Adjorlolo, H. C. Chan, *The controversy of defining serial murder: Revisited*, “Aggression and Violent Behaviour” 2014, No. 19(5), p. 486–491.

⁷ This refers to the conclusions drawn from the discussions at the FBI Symposium in 2006 and to the definition of ‘serial murder’ established at that time, which considers a minimum of two murders sufficient to qualify as serial murder.

⁸ It should not be forgotten that a serial killer will continue to take the lives of further victims until he is caught or abandons his intention, and any break will most likely be caused by objective obstacles, circumstances beyond the perpetrator's control that temporarily prevent him from committing further crimes.

⁹ S. Adjorlolo, H. C. Chan, *The controversy of defining serial murder: Revisited*, “Aggression and Violent Behaviour” 2014, No. 19(5), p. 486–491.

¹⁰ The question of the perpetrator's subjective experiences will, of course, be secondary and assessed individually in each case only when the other (objective) elements of such a definition are reflected. Nevertheless, taking them into account is important, particularly for determining the perpetrator's *modus operandi* and motivation and, consequently, for profiling serial killers.

¹¹ Another issue concerns the possibility (or lack thereof) of applying any of these institutions in a specific factual situation, in the case of murder.

individual premises of the above definition of seriality. Each of these may influence the final classification of the conduct under criminal law or the principle of sentencing¹².

4. Seriality and continuous act

Article 12 of the Criminal Code establishes the institution of a continuous act, referring to behaviours that constitute elements of a single offence committed in parts or stages¹³, and states that ‘under certain conditions, multiple behaviours constitute a single fulfilment of the characteristics of a certain type of prohibited act’.¹⁴ First and foremost, this refers to two or more behaviours that fulfil the elements of a crime, linked by a subjective aspect, occurring within a short period of time.

The minimum number of acts the perpetrator must commit for this instrument to apply to him is clearly specified in Article 12 § 1 of the Criminal Code. However, this provision does not, of course, limit the number of acts that may constitute a continuous act. A complex of such acts may consist of as few as two acts, which does not preclude a larger number – in such a case, we are dealing with a single series of offences covering all these acts¹⁵, each of which must be criminally relevant, i.e., fulfilling the characteristics of a specific type of prohibited act¹⁶. The legislator’s definition of a continuous act coincides with the definition of seriality formulated for this study, which also assumes that two acts committed by the same perpetrator constitute the lower limit.

Furthermore, the acceptance of a continuous act in a given factual situation depends on the fulfilment of two basic conditions – a subjective one, i.e., that all of the perpetrator’s actions were covered by a ‘preconceived intention’, and an objective one in the form of ‘short intervals of time’. It should be noted that both conditions are equivalent, and there are no grounds for giving primacy to either of them¹⁷.

The subjective condition limits the application of the concept of a continuing offence to intentional conduct¹⁸, as interpreted under Article 9 § 1 of the Criminal Code¹⁹, thereby excluding the unintentional commission of a continuing offence²⁰. The key factor, however, is ‘the perpetrator’s specific awareness of the future conduct that is to constitute a continuous act, at least in those elements that are relevant to the adoption of the characteristics of a given type of prohibited act’²¹. The intent in the perpetrator’s mind at the moment of its conception,

¹² The second of these points will not be discussed in this article.

¹³ P. Kardas [in:] *Criminal Code. General part. Part I. Commentary on Articles 1-52, 5th edition*, ed. W. Wróbel, A. Zoll, Warsaw 2016, Article 12, p. 208.

¹⁴ Supreme Court judgement of 26 March 1999, IV KKN 28/99, LEX No. 37938.

¹⁵ Ł. Pohl [in:] *Criminal Code. Commentary, 7th edition*, ed. R. A. Stefański, 2025, Article 12, p. 187.

¹⁶ *Ibidem*, p. 187.

¹⁷ Supreme Court decision of 4 March 2008, III KK 302/07, OSNwSK 2008, No. 1, item 523.

¹⁸ P. Kardas [in:] *Criminal Code. General part. Part I. Commentary on Articles 1-52, 5th edition*, ed. W. Wróbel, A. Zoll, Warsaw 2016, Article 12, p. 226.

¹⁹ It is assumed that this refers to both direct intent and eventual intent. See Ł. Pohl [in:] *Criminal Code. Commentary, 7th edition*, ed. R. A. Stefański 2025, Article 12, p. 194, P. Kardas [in:] *Criminal Code. General part. Part I. Commentary on Articles 1-52, 5th edition*, ed. W. Wróbel, A. Zoll, Warsaw 2016, Article 12, p. 226.

²⁰ P. Kardas [in:] *Criminal Code. General part. Part I. Commentary on Articles 1-52, 5th edition*, ed. W. Wróbel, A. Zoll, Warsaw 2016, Article 12, p. 226.

²¹ Supreme Court decision of 15 May 2014, IV KK 8/14, LEX No. 1491137.

i.e., now of taking the first action or even before proceeding with the first behaviour, must include, at least in general, all the behaviours that constitute the entire continuous act²². The scope and content of this intent must remain the same for each action²³. It is therefore exclusively about the very same intent of the perpetrator, which appears only successively when each subsequent behaviour is undertaken²⁴. The intention itself, in its most vivid form, consists in the fact that ‘the perpetrator expresses a willingness to take advantage of a recurring opportunity to commit a crime and takes advantage of this [...] at every opportunity that arises’²⁵. In the context of this specific reference to seriality, one can imagine a situation in which the perpetrator plans a whole series of murders in a specific, precise and meticulous manner, which he will consistently strive to carry out in the near or distant future²⁶. This understanding of ‘premeditation’ also aligns with the most common motives for the perpetrator’s actions, as accepted in the definition of seriality, which focuses on satisfying personal needs and urges.

Meanwhile, the requirement that the acts be committed within a short period has not been specified in the Criminal Code, leading to numerous interpretive discrepancies in the literature and case law. The prevailing view, however, considering the nature of this construct and the requirement of the same premeditated intent for all acts committed, is that the concept of ‘short intervals’ should cover a period ranging from several minutes to several days²⁷, but exceeding this ‘short period of time’ does not necessarily preclude a continuous act²⁸. However, the perpetrator’s individual actions must not exceed the reasonable limits of temporal unity to be considered part of a larger whole²⁹. Another issue, which needlessly raises doubts, concerns whether, regardless of how it is understood, ‘short intervals’ should refer to the distance between individual acts covered by a single series of offences or to the period between the first and last of these acts. The former position seems to be more rational. It is justified by the linguistic interpretation of Article 12 of the Criminal Code, as it refers to ‘the period between successive acts’ (i.e., the first and the second, the second and the third, etc.)³⁰. The elements of

²² Supreme Court decision of 9 March 2006, V KK 271/05, OSNKW 2006, No. 5, item 50.

²³ J. Lachowski [in:] *Criminal Code. Commentary, 4th edition*, ed. V. Konarska-Wrzosek, Warsaw 2023, Article 12, p. 102.

²⁴ Discussed in more detail in P. Kardas [in:] *Criminal Code. General part. Part I. Commentary on Articles 1-52, 5th edition*, ed. W. Wróbel, A. Zoll, Warsaw 2016, Article 12, p. 229; M. Dąbrowska-Kardas, P. Kardas, *Continuous act and series of offences in the 1997 Criminal Code*, [in:] *New criminal codification. Criminal Code. Brief commentaries*, Warsaw 1998.

²⁵ Judgment of the Court of Appeal in Katowice of 5 March 2015, II AKa 2/15, LEX No. 1711708.

²⁶ The question of whether each of these actions will end in ‘success’ for him is also important, as it depends only on the actual fulfilment of the characteristics of a prohibited act.

²⁷ P. Kardas [in:] *Criminal Code. General part. Part I. Commentary on Articles 1-52, 5th edition*, ed. W. Wróbel, A. Zoll, Warsaw 2016, Article 12, p. 231-232; Supreme Court ruling of 5 April 2000, V KKN 41/00, LEX No. 50957.

²⁸ P. Kardas [in:] *Criminal Code. General part. Part I. Commentary on Articles 1-52, 5th edition*, ed. W. Wróbel, A. Zoll, Warsaw 2016, Article 12, p. 231-232.

²⁹ However, an interval lasting more than a few months, or even exceeding a year, breaks the ‘temporal link between the elements of the act’ and cannot be classified under Article 12 of the Criminal Code. See Supreme Court decision of 4 March 2008, III KK 302/07, OSNwSK 2008, No. 1, item 523, Supreme Court decision of 9 March 2006, V KK 271/05, OSNKW 2006, No. 5, item 50.

³⁰ P. Kardas [in:] *Criminal Code. General part. Part I. Commentary on Articles 1-52, 5th edition*, ed. W. Wróbel, A. Zoll, Warsaw 2016, Article 12, p. 233. See for a different interpretation: Ł. Pohl [in:] *Criminal Code. Commentary, 7th edition*, ed. R. A. Stefański, 2025, Article 12, p. 194.

a continuous act would theoretically correspond to the most important determinants of seriality. Still, there is a fundamental problem that definitively precludes the application of the legal concept of a continuous act to perpetrators of serial murders. Article 12 § 1 of the Criminal Code requires that the identity of the victim be the same for multiple acts to be considered a single prohibited act. This means that the same person would have to be the victim of the same perpetrator on two separate occasions. In other words, the perpetrator would have to take the life of the same person more than once, which is obviously impossible. It is also assumed that acts directed against two or more persons, of which at least one is of a personal nature, cannot constitute a continuous act if they were committed against different persons³¹. Consequently, even if the other conditions are met, the concept of a continuing offence will not apply to the crime of murder, and thus it will not be possible to take it into account in the legal classification of the act of a serial killer.

5. Seriality and series of offences

The foundation for a series of offenses as outlined in Article 91 of the Criminal Code can pertain solely to instances where the perpetrator has committed multiple crimes – specifically, at least two – that are characterised by the same legal provision forming the basis for the punishment of each, involve the utilization of the same opportunity³², occur within brief intervals, and are not separated by any judgment issued concerning any of them³³.

When considering the elements involved in the construction of a series of crimes indicated in the provision, it should be noted that, in this case, the limit of two or more crimes committed by the perpetrator reappears, as does the concept of short intervals of time between individual acts³⁴. However, given the absence of a condition addressing the subjective aspect of the act in this case, it seems acceptable, and even advisable, to depart from the principle of uniform understanding of the same term within a single legal act and to interpret the concept using the functional interpretation method³⁵. Consequently, this will involve adopting a broader understanding of ‘short intervals’ than in the case of a continuous act. Even breaks lasting several months ‘in systematically conducted criminal activity over a longer period of time, caused by reasons beyond the perpetrator's control, do not affect the continuity of the crime’³⁶. Such intervals of several months between individual crimes should be assessed on a case-by-

³¹ P. Kardas [in:] *Criminal Code. General part. Part I. Commentary on Articles 1-52, 5th edition*, ed. W. Wróbel, A. Zoll, Warsaw 2016, Article 12, p. 238.

³² As a result of regulatory changes, this condition replaced the requirement that these crimes be committed ‘in a similar manner’, which was intended to broaden the scope of application of this institution. See more in Ł. Pohl [in:] *Criminal Code. Commentary, 7th edition*, ed. R. A. Stefański, 2025, Article 91, p. 672.

³³ P. Kardas [in:] *Criminal Code. General Part. Volume I. Part II. Commentary on Articles 53–116, 5th edition*, ed. W. Wróbel, A. Zoll, Warsaw 2016, Article 91, p. 697.

³⁴ These two premises align with the elements that constitute a continuous offence. The issue of the minimum number of offences committed by the perpetrator should be understood in the same way – in the case of a continuous offence, we are talking about behaviour, but one that, as already indicated, involves a violation of a criminal law norm by the perpetrator – but identical understanding of ‘short intervals’ in relation to both institutions may raise some doubts.

³⁵ P. Kardas [in:] *Criminal Code. General Part. Volume I. Part II. Commentary on Articles 53–116, 5th edition*, ed. W. Wróbel, A. Zoll, Warsaw 2016, Article 91, p. 715.

³⁶ Supreme Court judgment of 17 September 1973, I KR 165/73, LEX No. 21576.

case basis³⁷. It therefore appears that the time criterion is purely conventional, and that what matters is not only the objectively assessed length of the breaks but, above all, the nature of the sequence and the perpetrator's intention to continue the criminal activity throughout this period, updated as opportunities arise³⁸.

Another condition for accepting this construction in each factual situation is the equivalence of the legal provision that determines the penalty for each offence in the series³⁹. It is necessary to establish that the basis for determining the penalty for each offence comprising the series is in the same provision. Under the current legal framework, there are therefore no obstacles to applying a series of offences where some of the acts fulfil the criteria set out in a single provision, others – fulfil the criteria specified in that provision and, in addition, in another provision constituting an element of cumulative qualification, provided that the same provision forms the basis for determining the penalty for each of them⁴⁰. It is also possible for a series of acts fulfilling the characteristics of different stages of committing a crime, i.e., attempts and completions, to be linked⁴¹. Of course, the equivalence of classification of the offences under criminal law is not met in this case. However, Article 14 of the Criminal Code clearly indicates that the basis for determining the penalty for an attempt is the provision that specifies the statutory penalty for the stage of commission, and this view is also supported by case law⁴². There is now also the possibility of covering a series of crimes that meet the criteria for various forms of criminal cooperation, i.e., committed in different forms. On the other hand, a single series of crimes undoubtedly cannot include behaviours, one of which meets the criteria for the primary type, while others meet the criteria for the aggravated or privileged type, which are determined by a completely different set of criteria and a differently defined basis for determining the penalty for each⁴³. Therefore, after the amendment, the premise of the equivalence of the provision that forms the basis for determining the penalty for each of the crimes covered by the series will be understood more broadly than the condition of identity of the legal classification of all crimes resulting from the previously applicable provisions.

In turn, the requirement to commit crimes 'using the same opportunity' is a supplementary condition, complementing the previous prerequisite, and thus limiting the scope of application of the institution of a series of crimes⁴⁴. This element is objective in nature and refers directly to the circumstances in which the characteristics are realised by individual

³⁷ Judgment of the District Court in Słupsk of 3 December 2015, II K 453/07, LEX No. 1963299.

³⁸ P. Kardas [in:] *Criminal Code. General Part. Volume I. Part II. Commentary on Articles 53–116, 5th edition*, ed. W. Wróbel, A. Zoll, Warsaw 2016, Article 91, p. 716.

³⁹ Notably, the primary consequence of this amendment is that, according to the current wording of Article 91 § 1, a single series of offences may encompass acts with varying legal classifications, each of which is supported by at least one of the provisions serving as the basis for sentencing.

⁴⁰ P. Kardas [in:] *Criminal Code. General Part. Volume I. Part II. Commentary on Articles 53–116, 5th edition*, ed. W. Wróbel, A. Zoll, Warsaw 2016, Article 91, p. 699.

⁴¹ The situation is different in the case of preparation, as the penalty is determined by the statutory limits set out in a separate provision, which also extends liability to this stage.

⁴² As the Supreme Court has indicated, 'crimes committed in the form of an attempt may be part of a single series of crimes within the meaning of Article 91 § 1 of the Criminal Code'. See more in the Supreme Court's resolution of 11 August 2000, I KZP 17/00, OSNKW 2000, No. 7-8, item 56.

⁴³ P. Kardas [in:] *Criminal Code. General Part. Volume I. Part II. Commentary on Articles 53–116, 5th edition*, ed. W. Wróbel, A. Zoll, Warsaw 2016, Article 91, p. 705.

⁴⁴ *Ibidem*, p. 709.

acts committed by the same perpetrator, which, as a rule, are not reflected in the statutory set of characteristics of the type of prohibited act constituting the basis for qualification⁴⁵. This refers to the perpetrator's use of the same tools or a similar method of operation⁴⁶.

This raises the question of whether a series of crimes can serve as the basis for classifying an act as serial. On the one hand, the grounds for applying this concept appear to correspond largely to the characteristics of serial behaviour in murderers and thus favour its inclusion in the description of the legal basis for classification. On the other hand, however, case law and doctrine do not agree on the possibility of invoking Article 91 § 1 of the Criminal Code in the point of the judgment specifying the basis for legal classification in general, as the adoption of the concept of a series of crimes in a given factual situation primarily (and perhaps only) affects the issue of the severity of the punishment. The Supreme Court, on the other hand, indicates that Article 91 § 1 of the Criminal Code should also be considered in the legal classification, because 'it reflects [...] the full material content of the attributed offence'⁴⁷. However, this view is debatable, as classifying a series of offences as a special case of concurrence of offences means that the sole consequence of referring to a series of acts committed by a specific perpetrator is a modification of the sentence imposed on him⁴⁸. This view of the cited doctrine in this regard appears more convincing.

6. Seriality and recidivism

Recidivism is a term with multiple meanings, which may lead to interpretive discrepancies. This section focuses on recidivism as understood in the juridical sense⁴⁹, which is regulated under Article 64 of the Criminal Code. The aforementioned article defines the conditions and the basic consequence (i.e., extraordinary aggravation of punishment) of committing a crime under the conditions of so-called special recidivism, both basic and multiple. Such a circumstance must always be reflected in the legal classification of the act attributed to a given perpetrator, as it belongs to the essence of the crime⁵⁰.

The essence of special recidivism lies in the existence of a relevant relationship between crimes committed by the same perpetrator. It concerns two similar intentional crimes, whereby the concept of their 'similar nature' should be understood in accordance with its legal definition set out in Article 115 § 3 of the Criminal Code. Furthermore, the perpetrator must have been

⁴⁵ *Ibidem*, p. 711.

⁴⁶ M. Dąbrowska-Kardas, P. Kardas, *Continuous act and series of offences in the 1997 Criminal Code* [in:] *New criminal codification. Criminal Code. Brief commentaries*, vol. 20, Warsaw 1998.

⁴⁷ Supreme Court judgment of 29 August 2003, WA 37/03, OSNwSK 2003, No. 1, item 1871.

⁴⁸ P. Kardas [in:] *Criminal Code. General Part. Volume I. Part II. Commentary on Articles 53–116, 5th edition*, ed. W. Wróbel, A. Zoll, Warsaw 2016, Article 91, p. 719.

⁴⁹ Furthermore, recidivism exists, first, in the penitentiary sense and, second, in the criminological sense, where the conditions specified in the law are not assessed, and even individuals with no prior convictions can be regarded as recidivists in this context. See more in W. Zalewski, S. Krajnik [in:] *Criminal Code. Commentary, 7th edition*, ed. R. A. Stefański, Warsaw 2025, Chapter VII, p. 535.

⁵⁰ J. Majewski [in:] *Criminal Code. General Part. Volume I. Part II. Commentary on Articles 53–116, 5th edition*, ed. W. Wróbel, A. Zoll, Warszawa 2016, Article 64, p. 230. A similar approach is outlined in the Supreme Court judgment of August 24, 2000, IV KKN 325/00, LEX No. 51397. It should be noted that, in cases of recidivism under Article 64 of the Criminal Code, the situation differs from that of multiple crimes, in which the latter only affects the severity of punishment.

convicted and then served at least 6 months of imprisonment⁵¹; from a functional interpretation of the provision, it seems reasonable to include in this formulation not only fixed-term prison sentences but also sentences of 25 years and life imprisonment⁵². As indicated by the Supreme Court, the determination of the conditions for recidivism requires, in each case, the examination of evidence from a conviction for a similar offence and data on the serving of the sentence [...]’⁵³. Therefore, if a previous conviction for a crime is one of the characteristics of a prohibited act, it is ‘factored into the statutory penalty’⁵⁴, and the condition in Article 64 of the Criminal Code is not met, so there are no grounds for applying the penalties provided for recidivism. An additional condition for recidivism is that the perpetrator commits another offence within 5 years of completing the minimum 6-month imprisonment for the prior offence⁵⁵.

§ 2 regulates special multiple recidivism, which requires establishing that the perpetrator has committed at least one additional, third crime, intentionally, that falls within one of the groups of crimes specified in the provision⁵⁶. These include crimes against life or health, rape, robbery, burglary, or other crimes against property committed with the use of violence or the threat of violence. In addition, the perpetrator must have been previously convicted under the conditions of special basic recidivism, and the court is obliged to take the fact of previous convictions into account *ex officio*⁵⁷. Another prerequisite for so-called multiple recidivism is that the perpetrator has served a total of at least one year of imprisonment⁵⁸, and the offence, falling within one of the categories specified in Article 64 § 2 of the Criminal Code, must be committed within 5 years after serving the entire or part of the previous sentence⁵⁹. However, these findings alone are not sufficient to establish special multiple recidivism, as there must be a specific link between the subsequent offence committed by the perpetrator, already convicted under Article 64 § 1 of the Criminal Code, and the offence that formed the basis for that conviction – the repeat offence is ‘similar to the previous one in a specific way, narrower than the concept of similarity in Article 115 § 3 of the Criminal Code. Namely, both the previous

⁵¹ This premise should be interpreted narrowly. More on the limitations of its interpretation J. Majewski [in:] *Criminal Code. General Part. Volume I. Part II. Commentary on Articles 53–116, 5th edition*, ed. W. Wróbel, A. Zoll, Warszawa 2016, Article 64.

⁵² Similar interpretation in W. Zalewski, S. Krajnik [w:] *Criminal Code. Commentary, 7th edition*, ed. R. A. Stefański (ed.), Warsaw 2025, Article. 64, p. 539.

⁵³ Supreme Court judgment of 15 February 2005, III KK 3/05, OSNwSK 2005, No. 1, item 360.

⁵⁴ J. Majewski [in:] *Criminal Code. General Part. Volume I. Part II. Commentary on Articles 53–116, 5th edition*, ed. W. Wróbel, A. Zoll, Warszawa 2016, Article 64, p. 236.

⁵⁵ This term is referred to as ‘statute of limitations for recidivism’.

⁵⁶ It should be emphasised here that the stance according to which Article 64 § 2 of the Criminal Code would require the perpetrator to commit the same offence as in the previous conviction was not widely accepted. The term ‘again’ used in this provision refers both to a situation where the perpetrator commits the same offence as previously or to any offence specified in this provision. Supreme Court presented this view in its resolution of 25 April 1996, I KZP 3/96, OSNKW 1996, No. 5-6, item 23, which was also supported by the Regional Court in Warsaw in its judgment of 28 August 2019, X Ka 567/19, LEX No. 2747826.

⁵⁷ W. Zalewski, S. Krajnik [in:] *Criminal Code. Commentary, 7th edition*, ed. R. A. Stefański, Warsaw 2025, p. 548.

⁵⁸ The doctrine rightly points out that Article 64 § 2 of the Criminal Code does not require the perpetrator to have served at least 6 months’ imprisonment for an offence committed under the conditions specified in § 1. The length of sentences served for crimes for which the perpetrator was previously convicted is irrelevant, except for the first conviction; the only requirement is that the perpetrator must have served at least 1 year’s imprisonment. More on the topic in J. Majewski [in:] *Criminal Code. General Part. Volume I. Part II. Commentary on Articles 53–116, 5th edition*, ed. W. Wróbel, A. Zoll, Warszawa 2016, Article 64, p. 548.

⁵⁹ Z. Gądzik [in:] *Criminal Code. Commentary, 9th edition*, ed. A. Grześkowiak, K. Wiak 2026, Article 64, p. 709.

and the subsequent offence must belong to the category of acts enumerated in Article 64 § 2 of the Criminal Code⁶⁰.

These considerations, therefore, raise the question of whether Article 64 of the Criminal Code, which, as already indicated, should be considered in the legal classification of the act itself, allows for a comprehensive understanding of seriality. Special recidivism (basic or multiple, depending on the specific facts) can apply only to perpetrators of serial murders already known to law enforcement and judicial authorities. This is because it concerns perpetrators who have previously been sentenced to imprisonment, have served their sentence within the appropriate term specified in § 1 or 2, and then, within the statutory time frame, have committed further intentional crimes, which undoubtedly include the act referred to in Article 148 of the Criminal Code. However, offenders who have not been detected or convicted, as well as those in whose case any of the conditions for special recidivism are not considered to have been met, will remain outside the scope of application of this provision.

7. Criminological approach to seriality

The phenomenon of serial killings and their perpetrators has historically attracted significant public interest and fascination, primarily because of the way serial killers are depicted in the media and popular culture⁶¹. Nevertheless, it was not until the 1970s that the term ‘serial killer’ was systematically adopted within criminology to refer to a specific category of offenders who commit multiple murders in a notably sensational manner⁶². This concept should be clearly distinguished from other forms of multiple killings, such as mass murder or spree murder⁶³. As already emphasised, it has not yet been possible to develop a uniform definition of serial killings (or seriality as a phenomenon in general), nor is there a single consistent profile of a serial killer. However, several dominant trends have been identified in the literature on the subject. Serial killers generally operate over a long period of time, with intervals, so that each murder is a separate act within a larger series. Most often, they have no prior contact with the victim⁶⁴, while the victims themselves often share certain characteristics that influence the perpetrator’s choice of one person over another⁶⁵.

⁶⁰ Supreme Court judgment of 12 June 2003, IV KK 166/03, OSNwSK 2003, no. 1, item 1279.

⁶¹ This primarily refers to the true-crime genre, which comprises narratives based on real events that describe or reconstruct actual crimes and highlight the profiles of their perpetrators, especially their motivations and methods.

⁶² B. Hołyst, *Criminology*, Warsaw 2016, p. 245-246.

⁶³ Although neither of these phenomena is the subject of this article, it is important to note that serial murder represents only one of several phenomena encompassed by the broader term of multiple murder. Further information on this in: 阿部憲二, & アベケンジ, *Serial killers, mass murderers, and spree killers: Three factors decide the murder type on the same continuum* ‘International Journal of Social Science and Humanities Research’ 2019, No. 7(2), p. 137-141; J. A. Fox, J. Levin. *Multiple homicide: Patterns of serial and mass murder* ‘Crime and justice’ 1998, No. 23, p. 407-455.

⁶⁴ However, doubts arise regarding the assumption that there was no previous relationship between the perpetrator and the victim. See in S. Adjorlolo, H. C. Chan, *The controversy of defining serial murder: Revisited* ‘Aggression and Violent Behaviour’ 2014, No. 19(5), p. 486-491.

⁶⁵ B. Hołyst, *Criminology*, Warsaw 2016, p. 250.

Analysing the personalities of serial killers reveals childhood traumas common among them, such as violence, often of a sexual nature, neglect, abuse⁶⁶, and improper development, which in their case lead to a lack of empathy, coldness, and ruthlessness⁶⁷. From a clinical and psychological perspective, serial killers are an extremely heterogeneous group, encompassing a range of disorders, but the majority of perpetrators exhibit at least one personality disorder⁶⁸. Antisocial and narcissistic disorders seem to be the most significant. Among psychopathic disorders, which alter all human mental functions, schizophrenia and delusional disorders also play a significant role. A person prone to such disorders, when faced with a 'difficult situation'⁶⁹, may exhibit tendencies towards intense aggressive behaviour. Unknown, painful situations, states of danger, or overload are considered the main criminogenic factors. However, none of these circumstances, in themselves, necessarily lead to the pathologisation of an individual's behaviour—only their coexistence with certain personality traits can result in serious disturbances in functioning⁷⁰.

Each of the personality disorders listed above often occurs in combination with sexual deviations (sadism and other paraphilias)⁷¹, also referred to as sexual perversions⁷². Due to the frequent occurrence of sexually motivated perpetrators, serial killers are primarily identified as men, with the most commonly described type being a white male between the ages of 25 and 35, of average intelligence⁷³, who selects his victims from his own ethnic group. However, a sexually motivated sadistic murderer is only one of the possible types of serial killers—typologies have been created, which can be helpful in many situations, but it is sometimes difficult to 'pigeonhole' a given perpetrator, especially when the modus operandi is variable, as a result of learning new things, wanting to try something new, or simply chance or coincidence⁷⁴. The most practical classification appears to divide perpetrators by the distinct motives underlying their actions. The classification often cited in the literature distinguishes the following categories of serial killers: delusional (experiencing hallucinations that prompt them to commit further acts), mission-driven (perceiving their actions as a kind of necessary crusade), hedonistic (a heterogeneous group, including perpetrators focused on sexual gratification, cruelty, or the achievement of other pragmatic goals), and perpetrators hungry for power and control⁷⁵. From the perspective of constructing a supplementary profile of a serial killer, the

⁶⁶ T. Hussain, S. S. Fazal, *The Psychology of Crimes through the minds of Serial Killers: A Critical Study* 'International Journal on Law and Psychology Education (IJLPE)' 2024, No. 1(1).

⁶⁷ B. Hołyst, *Criminology*, Warsaw 2016, p. 252-253.

⁶⁸ B. Hołyst, *Forensic Psychology: Diagnosis and Practice*, Warsaw 2018, p. 324.

⁶⁹ In psychology, the term 'difficult situation' refers to 'a set of conditions, tasks, goals, and possibilities of a subject in which the balance among these elements has been disturbed to such an extent that new coordination is required, which [...] leads to the emergence of negative emotions'. For more details, see: T. Tomaszewski, *Traces and Patterns*, Warsaw 1982.

⁷⁰ B. Hołyst, *Forensic Psychology: Diagnosis and Practice*, Warsaw 2018, p. 333.

⁷¹ Deviant and dissociative states begin in most perpetrators at an early age, and they often become victims of similar abuse in childhood.

⁷² B. Hołyst, *Forensic Psychology: Diagnosis and Practice*, Warsaw 2018, p. 325.

⁷³ This challenges the prevalent myth, particularly within popular culture, portraying serial killers as elusive 'criminal geniuses' possessing above-average intelligence. It has been observed that offenders who commit solely sexual crimes seldom alter their modus operandi.

⁷⁴ It is observed that perpetrators driven by sexual motives infrequently exhibit behavioural modifications behaviour.

⁷⁵ B. Hołyst, *Criminology*, Warsaw 2016, p. 256.

analysis of the crime scene and the issue of the perpetrator's geographical mobility are of great importance. On this basis, we can distinguish between 'organised' perpetrators, who have a higher IQ, are eloquent and well-adjusted in society, and 'disorganised' perpetrators, who are lonely, avoid contact with people, and commit murder in a much less planned and meticulous manner. Geographical mobility, in turn, refers to the place where the crime was committed and its possible significance for the perpetrator⁷⁶.

All of these findings form the basis for police investigative methods used to identify (profile) perpetrators of a series of murders by constructing a profile of the likely perpetrator.

8. Conclusion and findings

The considerations presented in this paper lead primarily to the conclusion that the current criminal law instruments, based on the multiplicity and repetitiveness (of a whole series) of the perpetrator's behaviour, are, in their current form, insufficient to address seriality in legal classification comprehensively. Firstly, it should be noted that the introduction of the condition of the victim's identity in the case of an attack on personal rights in Article 12 § 1 of the Criminal Code renders the application of the concept of a continuous act to the crime under Article 148 of the Criminal Code in general, and thus to the issue of serial killings, inadmissible. Therefore, it is not possible to refer to Article 12 § 1 of the Criminal Code in the legal classification. On the other hand, the concept of a series of crimes concerns only the severity of the punishment and does not address the material content of the act attributed to the perpetrator. Just as the concept of a continuing offence leads to the normative treatment (provided that the conditions specified in the provision are met) of several behaviours as a single prohibited act, the only consequence of accepting a series of offences is a modification of the sentence actually imposed by the court. Therefore, it is neither necessary nor advisable to regard Article 91 § 1 of the Criminal Code, as it currently stands, in the legal classification itself. Consequently, this instrument proves to be too restrictive, as it encompasses only a narrow segment of serial killers and does not account for the complexity of the phenomenon. The legal construct set out in Article 64 § 1 and 2 of the Criminal Code applies only to a narrow category of serial killers. This is primarily because, to strengthen the penalty, both in the case of specific basic and multiple recidivism, all the prerequisites specified in this provision must be met. The omission of any of these conditions constitutes a violation of substantive law⁷⁷.

De lege ferenda, it would be reasonable to introduce a separate regulation into the Criminal Code, establishing an autonomous basis for including seriality in the legal classification – an instrument that affects not only the sphere of punishment (by enabling or even requiring the court to impose a punishment above the statutory limits) but, above all, takes seriality not as a secondary circumstance but as an element co-determining the substantive content of the act attributed to the perpetrator. This objective could be achieved by the statutory inclusion of seriality in the general part of the Criminal Code as a special form of concurrence

⁷⁶ *Ibidem*, p. 255-256. However, it seems futile to look for any clear correlations between the perpetrator's specific motivation and their method of operation, which, as already pointed out, may differ in each murder case.

⁷⁷ Z. Gądzik [in:] A. Grześkowiak, K. Wiak (ed.) *Criminal Code. Commentary, 9th edition*, Warsaw 2026, Article 64, p. 703.

of offences. This need not take the form of a rigid legal definition, but rather of a new construct that regulates seriality as a special category of multiple criminally relevant behaviours directed against the personal well-being (i.e., life) of many different people, with a single, lasting, and constant intent. An alternative option is to introduce a separate type of aggravated murder into Article 148 of the Criminal Code, covering serial killings, so that this circumstance would be considered at the level of legal classification itself, without the need to resort to any other legal concepts from the general part of the Criminal Code⁷⁸.

Finally, it is essential to highlight once again the significant role of criminology, as an auxiliary science of criminal law, in the study and explanation of complex social phenomena that are also subject to legal regulation. The close relationship between criminology (as well as other auxiliary sciences) and criminal law, together with the need for an interdisciplinary approach to serial killings, enables a better understanding of the multifaceted determinants of serial killers' behaviour, thereby increasing the effectiveness of actions taken by law enforcement and the justice system⁷⁹. Criminal profiling seems to be of greatest importance in the practical application of criminological knowledge. Many factors shape the psychological profile of serial killers. Although each case is different, identifying recurring characteristics common to most cases can be an effective tool for supporting both the investigation and prevention of this type of crime. Therefore, only by taking criminological findings into account in criminal law analysis will it be possible to respond to the phenomenon of serial killings in the most appropriate manner, corresponding to both its specific nature and the needs of practice.

⁷⁸ While Article 148 § 3 of the Criminal Code, addressing an aggravated form of murder, considers a prior valid conviction for murder as an aggravating factor, this alone is not enough to encompass all cases of serial killings murder.

⁷⁹ T. Hussain, S. S. Fazal, *The Psychology of Crimes through the minds of Serial Killers: A Critical Study* 'International Journal on Law and Psychology Education (IJLPE)' 2024, No. 1(1).

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