

SUBJECTIVE ELEMENT OF AN OFFENCE WITH A SPECIFIC PURPOSE

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As the title of the article suggests, the subject of the analysis is the issue of a subjective element of a prohibited act with a specific purpose that is usually called an offence with a specific purpose in the criminal law dogma. The issue has not been the subject of deeper doctrinal analysis lately,¹ because most often, the description of an offence with a specific purpose, as far as the description of the subjective element features are concerned, is limited to an indication that it can be committed with direct intent having special features: *dolus directus coloratus*, which exclude its commission with oblique intent or, all the more, unintentionally.

It might seem that the task does not pose any problems because it consists in developing general comments on the nature of the concept signalled in the title. Unfortunately, it is a false assumption, especially if we consider the fact that even the issue of a subjective element of a prohibited act alone is one of the most complicated and often the most controversial in the whole criminal law. Undoubtedly, it is also problematic how we should interpret the element delimiting the nature of intent in case of offences with a specific purpose, i.e. what decides about the "specific purposefulness" of this category of acts, whether this is just a perpetrator's conduct or "something" more, i.e. a motive or perhaps an impulse. If it is justifiable to state that in order to classify a prohibited act as an offence with a specific purpose, it is necessary to attribute, obviously apart from conduct, acting with a specific aim, a motive or on impulse to a perpetrator, a question arises how we should define "aim", "motive" and "impulse" and, what is even more important, whether

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¹ Of course, one cannot lose sight of a significant, from the point of view of this article, S. Frankowski's monograph entitled *Przestępstwa kierunkowe w teorii i praktyce* [Offences with a specific purpose: theory and practice], published in 1970 by Wydawnictwo Prawnicze. Undoubtedly, the book is an example of a complete opinion of jurisprudence concerning the issue but one cannot fail to notice that it originates from the early 1970s and uses concepts that are not used at present (due to the separation of guilt and the subjective side in the Criminal Code of 1997), such as e.g. "combined guilt", and refers to such concepts as "impulse", for which there is no substantiation in psychology.

criminal law specialists are entitled to develop those definitions, while the indicated concepts have an outstandingly psychological background.² In order to make the further discussion clear, it is necessary to make a few comments organising the interpretation of the concept of an “offence with a specific purpose” as well as the issue of a subjective element of a prohibited act.

1. CHARACTERISTIC FEATURES OF OFFENCES WITH A SPECIFIC PURPOSE

In the criminal law doctrine, there has for long been a division of offences with a specific purpose into those *sensu stricto* and *sensu largo*. According to S. Frankowski,³ who proposed this distinction, the first category includes acts, the characteristic feature of which is a perpetrator’s will that aims at a specific direction. This concerns crimes characterised by a motive understood as an objective, i.e. crimes in which a perpetrator directly strives to achieve an assumed result.⁴ On the other hand, the second category includes acts in which an element of conscience is emphasised in particular, however, it is not an objective pursued by a perpetrator.⁵ These are, inter alia, acts the features of which include especially subjective causative factors such as “invective”, “derision”, “humiliation”, “management”, “incitement” or “facilitation”. According to S. Frankowski, “incitement” or “facilitation” must be the kind of conduct that is aimed at obtaining effects in the form of incitement or facilitation.⁶ Another group of offences with a specific purpose *sensu largo* are acts with especially subjective features of a *modus operandi*: “deceit”, “violence” or “threat”⁷ and crimes of special awareness, the essence of which is emphasising a perpetrator’s knowledge.⁸

Referring to the presented division of offences with a specific purpose, M. Budyn-Kulik indicated that offences with a specific purpose *sensu stricto* should also include those that the legislator clearly defines as ones characterised by an objective and motivation, and offences with a specific purpose *sensu largo* should include those that are characterised by motivation that the legislator does not directly articulate in statute. According to M. Budyn-Kulik, the element of knowledge distinguished by S. Frankowski may be only viewed on the plane of intent, and thus, it does not seem to be right to include this group in the category of offences with a specific purpose.⁹

² See, M. Budyn-Kulik, *Umyślność w prawie karnym i psychologii. Teoria i praktyka sądowa* [Wilfulness in criminal law and psychology. Theory and judicial practice], Warsaw 2015, pp. 75–110, 276–288; M. Kowalewska-Łukuc, *Zamiar ewentualny w świetle psychologii* [Dolus eventualis in psychology], Poznań 2015, pp. 156–160.

³ See, S. Frankowski, *Przestępstwa kierunkowe...* [Offences with a specific purpose...], pp. 33–35.

⁴ *Ibid.*, pp. 34–35.

⁵ *Ibid.*, p. 35.

⁶ *Ibid.*, p. 117.

⁷ *Ibid.*, pp. 121–123.

⁸ *Ibid.*, pp. 126–127.

⁹ M. Budyn-Kulik, *Umyślność...* [Wilfulness...], pp. 400–401.

Nevertheless, it should be assumed that only those prohibited acts the features of which sufficiently enough indicate the possibility of their commission with *dolus directus coloratus* can be treated as offences with a specific purpose. They are the only ones that can be clearly differentiated from other intentional crimes. As a result, offences with a specific purpose, which will be further discussed below, are acts characterised by the aim of a perpetrator's action. Insofar as S. Frankowski is right that crimes with specially marked subjective features of the *modus operandi*, an action specifically characterised by a nuanced verb or a perpetrator's specific knowledge, have a specifically shaped subjective element, this does not mean that they constitute an example of offences with a specific purpose. Indeed, it must be remembered that the essence of offences with a specific purpose is a possibility of committing them only with direct intent of a special character, however, in case of the construction of offences with a specific purpose *sensu largo*, oblique intent is not excluded. In this context, it is worth drawing attention to the crime of offending religious feelings under Article 196 of the Criminal Code (hereinafter CC), the sense of which consists in offending the religious feelings of other persons by outraging in public an object of religious worship or a place dedicated to the public celebration of religious rites. Among the features of this act, one can also distinguish such ones that, according to S. Frankowski, indicate that a crime under Article 196 CC is an offence with a specific purpose in a broad sense. This is connected with the features of the verbs "offends" and "outraging". Nevertheless, in jurisprudence¹⁰ as well as in the judicature¹¹, it is assumed that the crime discussed may be committed with direct intent or with oblique intent. The concept of aiding and abetting, which consists in facilitating the commission of crime by another person, should be looked at in a similar way. In this case, oblique intent is possible.¹² Similarly, it is necessary to perceive crimes characterised by clearly articulated perpetrator's knowledge.¹³ On the other hand, a deceitful activity or one committed with the use of violence or threat is an intentional act but can be committed with no specific purpose.¹⁴ This results in a conclusion that is more general in nature, namely that offences with a specific purpose require not only particular conduct of a perpetrator but also an additional element indicating an objective set by a perpetrator as the object of his/her pursuit.

It is worth emphasising that offences with a specific purpose have different features with respect to their unlawfulness, in this context, non-conformity with the norms of criminal law as well as within the scope of the subjective aspect, i.e. the intellectual-psychical attitude of a perpetrator to the act that he/she has

¹⁰ Ł. Pohl, S. Czepita, *Strona podmiotowa przestępstwa obrazy uczuć religijnych i jego formalny charakter* [Subjective element of the crime of offending religious feelings and its formal nature], *Prokuratura i Prawo* No. 12, 2012, pp. 73–78.

¹¹ Supreme Court resolution of 29/10/2012, I KZP 12/12, OSNKW No. 12, item 112, 2012.

¹² Supreme Court judgement of 15/10/2013, III KK 184/13, OSNKW No. 2, item 15, 2014.

¹³ R.A. Stefański, *Prawo karne materialne. Część szczególna* [Substantive criminal law. Specific part], Warsaw 2009, p. 140.

¹⁴ See, N. Kłaczyńska, [in:] J. Giezek (ed.), D. Gruszecka, N. Kłaczyńska, G. Łabuda, A. Muszyńska, T. Razowski, *Kodeks karny. Część szczególna. Komentarz* [Criminal Code. Specific part. Commentary], Warsaw 2014, comments on Article 203, thesis 12.

committed. The differences in the area of unlawfulness are manifested in the fact that subjective elements of offences with a specific purpose, such as malice, persistence or undertaking an act in order to achieve a financial benefit, co-determine the content of a sanctioned norm, which means that in case of their lack, an act loses its unlawful feature. On the other hand, as far as the subjective aspect is concerned, differences between offences with a specific purpose consist in, if we anticipate the discussion to follow, rejection of a possibility of their commission with oblique intent and unintentional conduct.¹⁵

Speaking about offences with a specific purpose, it is not possible to avoid the issue of defining the elements having impact on such a character of those crimes. Traditionally, the classification of offences with a specific purpose was based on the distinction of an aim, a motive and an impulse among their statutory features. So far, a motive has referred to a human idea (human thought) of the past, present time or the future, which makes one conduct oneself in a particular, strictly fixed, oriented way. Thus, a motive has been an element of a man's intellectual sphere because it has been expressed in his thought or imagination, or an element of volition since it might take the form of pursuit of a specific state. An impulse, on the other hand, has been referred to feeling(s) influencing a perpetrator's decision-making process. In other words, it has been a factor with an emotional content originating from the pursuit of the specific state. An aim, on the other hand, has been viewed as a certain future state, which a man wants to achieve through his/her entire conduct.¹⁶

At present, there is an opinion that the above-defined concepts do not fully reflect the current state of psychological knowledge. Thus, lawyers are blamed for developing such definitions disregarding the basic assumptions of psychology. The distinction between a motive and an impulse is unjustified. There are no grounds for it because attributing an impulse only a feature of an emotional feeling does not find substantiation in the findings of the research into motivation.¹⁷ At present, in the assessment of a perpetrator of a prohibited act, the achievements of the psychology of motivation are taken into account. Experts emphasise that the concept of "motivation" may be interpreted in two ways. Firstly, as a "relatively constant human tendency to achieve specific aims, life tasks and values", and secondly, as a motivational process, which as a typical phenomenon lies "at the foundation of determined, particular human conduct". That is why, in order to understand the reasons behind human behaviour, it is necessary to ask a fundamental question: Why did a given person act in this particular way? This is a question that always concerns a man's motivation.¹⁸

The question can be answered (at least partially) by finding the aim a perpetrator wanted to achieve. As it was presented above, the aim is a certain specified future state, which a man pursues through his/her entire conduct. According to G. Rejman,

¹⁵ M. Nawrocki, *Przestępstwa kierunkowe a zamiar niby-ewentualny* [Offence with a specific purpose and *quasi-eventualis* intent], *Prokuratura i Prawo* No. 5, 2012, p. 44.

¹⁶ *Ibid.*, p. 42.

¹⁷ J.K. Gierowski, T. Jaśkiewicz-Obydzińska, M. Najda, *Psychologia w postępowaniu karnym* [Psychology in criminal proceedings], Warsaw 2010, pp. 354–356.

¹⁸ *Ibid.*, pp. 351–352.

in criminal law, an aim may fulfil different functions. Firstly, in the construction of a crime, it plays the function limiting the verb-related feature to those acts that match its content. An aim understood this way fulfils the function to precisely define the behaviour laid down in the definition of an offence described with the use of a verb. Not every instance of seizure constitutes a theft but only the one that leads to the aim of appropriation. According to the author, based on the examples of acts under Article 127 CC and Article 130 CC, the aim of some types of prohibited acts attributes the same term to many different activities, i.e. refers to the same feature from the point of view of the activity expressed with the same verb. And thus, a felony or a coup (Article 127 §1 CC) consists in undertaking, together with other perpetrators, an activity intended directly to achieve an aim to deprive the Republic of Poland of independence, to detach a portion of its territory, to overthrow by force its constitutional system. Thus, all activities undertaken in so determined aim are included in a collective description of “undertaking, in agreement with other persons, activities aiming at the materialisation of this purpose”. Moreover, as a result of this aim, a number of perpetrators can commit the same crime, although they do not cooperate as accomplices, despite partially matching the features. G. Rejman presents an example of a crime under Article 310 §2 CC, i.e. the release into circulation counterfeit money, where alternative executive activities indicated in the provision (receiving, storing, transporting, carrying, dispatching or assisting in selling or concealing counterfeit or altered Polish or foreign money, other legal tender or a document which entitles one to obtain a sum of money or contains an obligation to pay capital, interest, share of profits, or verifies a share in a company, or removes a sign of cancellation from money or other legal tender) are made equivalent to release into circulation provided that they were committed with the aim of releasing into circulation. G. Rejman emphasises that the aim performs one more function, namely, in accordance with Article 115 §20 CC, divides the whole criminal law into criminal law characterised by a terrorist aim and criminal law without that aim.¹⁹

It seems that offences with a specific purpose characterised by the aim of a perpetrator’s activity are most significant. It is so because offences with an aim constitute the biggest number of offences with a specific purpose.²⁰ Sometimes, the two categories are identified with one another. Nevertheless, it must be remembered that offences with an aim are just a sub-category of offences with a specific purpose.²¹

¹⁹ G. Rejman, *Zasady odpowiedzialności karnej. Art. 8–31 k.k. Komentarz* [Principles of criminal liability. Articles 8–31 CC. Commentary], Warsaw 2009, pp. 54–58.

²⁰ Offences with an aim are laid down, inter alia, in Articles 16 §1 CC, 24 CC, 118 §1 CC, 127 §1 CC, 128 §1 CC, 140 §1 CC, 200a §1 CC, 202 §3 CC, 204 §1 CC, 286 §1 CC, 287 §1 CC, 289 §1 CC, 290 §1 CC, 297 §1 CC or 298 §1 CC.

²¹ An offence with a specific purpose which is not an offence with an aim is for example the type of a prohibited act under Article 302 §2 CC. Pursuant to this provision, it is committed by whoever who gives or promises to give a financial profit to a creditor in return for actions detrimental to other creditors in connection with insolvency proceedings or bankruptcy prevention proceedings. Thus, the activity of giving a financial profit or promising to give it is aimed to be detrimental to other creditors. See, the same opinion G. Łabuda, [in:] J. Giezek (ed.), *Kodeks karny. Część szczególna...* [Criminal Code. Specific part...], comments on Article 302, thesis 22.

2. INTENTIONAL COMMISSION OF A PROHIBITED ACT

The assessment whether a perpetrator acted intentionally and with *dolus directus coloratus* is not an easy task. As T. Kaczmarek indicates, “thorough determination of the relation between intention and the features of objective elements of a prohibited act faces some specific difficulties. Their general reason is, inter alia, the fact that the scope of meaning of a perpetrator’s ‘psychical experiences’, based on which we want to determine his/her attitude to an act committed, has not been established in psychology yet, in the same way as the mechanism of their influence on the conduct has not been fully recognised. Unlike the objective aspect of an act, externally perceived, available direct sensual observation, the subjective aspect of an act is implemented in a perpetrator’s psyche, which constitutes the most difficult sphere of human life to examine.”²² Then, let us start from elementary issues. According to W. Wolter, an intention is a subjective bond between a perpetrator and his/her act.²³ The Criminal Code formulates its two forms: “volition” and “consent”. Both consist in a certain act of will, which is called “intention”. The act of will, i.e. intention, consisting in the fact that a perpetrator “directly wants” something is called direct intent (*dolus directus*) in comparison to an act, which a perpetrator does not directly want but he/she “gives consent to”, which is called “oblique intent” (*dolus eventualis*).²⁴ It is necessary to draw special attention to A. Zoll’s words here. He emphasises that Article 9 §1 CC introduces a technical, typical of criminal law only, definition of intention, not necessarily the same as the general interpretation of the word. According to this author, in colloquial language, intention is limited to this form of intent, which is called direct intent in law. In conformity with colloquial language, whoever acts in order to achieve a specific state, he/she acts intentionally. The introduction of oblique intent to the definition of a prohibited act committed intentionally is an extension of the meaning of intention for the needs of criminal law.²⁵

Extending those comments, we might say that intent is the most important element of intentional commission of a prohibited act. It has substantial significance for awareness of a prohibited act perpetrator as well as influences this perpetrator’s will to match the statutory features. It is commonly assumed in jurisprudence that intent has two aspects. On the one hand, it is intellectual in nature and requires that a perpetrator is aware of all circumstances constituting the features of a prohibited act. These are objective circumstances that can be subsumed under the features constituting a description of a prohibited act, thus they are *designata* of those

²² T. Kaczmarek, *Sporne problemy umyślności* [Disputable issues related to wilfulness], [in:] J. Majewski (ed.), *Umyślność i jej formy* [Wilfulness and its forms], Toruń 2011, p. 30.

²³ W. Wolter, *Prawo karne. Zarys wykładu systematycznego. Część ogólna* [Criminal law. Overview of the systemic discussion. General part], Warsaw 1947, p. 155.

²⁴ *Ibid.*

²⁵ A. Zoll, *Strona podmiotowa i wina w kodeksie karnym z 1997 r. i w projektach jego nowelizacji* [Subjective element and guilt in the Criminal Code of 1997 and in the drafts of its amendments], [in:] A. Łopatka, B. Kunicka-Michalska, S. Kiewlicz (eds), *Prawo, społeczeństwo, jednostka. Księga jubileuszowa dedykowana Profesorowi Leszkowi Kubickiemu* [Law, society, individual. Professor Leszek Kubicki jubilee book], Wolters Kluwer, Warsaw 2003, p. 411.

features.²⁶ An important requirement is that awareness cannot be identified with knowledge. Knowledge is a collection of information about the surrounding reality. Without it, it is not possible to realise the specific state. In this sense, awareness constitutes updated knowledge.²⁷ The second element characterising intention is defined as a “volitional aspect”, “voluntative aspect” or “volitive aspect”. As the name suggests, it concerns the will occurring on the part of a perpetrator to match the features of a prohibited act. It is the emanation of a perpetrator’s conscious decision to implement the statutory features and constitutes a process that takes place in the human psyche, which expresses his or her attitude to the reality related to those features.²⁸ Thus, will is a secondary element in relation to awareness. The intellectual aspect of intention to commit a prohibited act is a necessary condition for a man’s possession of any type of volitional attitude towards an act. One who is not aware of the possibility of committing a prohibited act cannot have a volitional attitude towards that act.²⁹

The distinction between an intellectual aspect and a volitional aspect has a deep sense because it shows the complexity of the subjective element of an intentionally committed prohibited act, obviously including an offence with a specific purpose. As it has been signalled above, a perpetrator can intentionally commit a prohibited act in two situations, i.e. when he/she wants to commit it and when he/she does not want it but gives consent to it. Thus, this double-form intention consists in the differences occurring between a volitional aspect of direct intent and oblique intent. With respect to this, intellectual aspect does not play a very important role.³⁰

The discussion to follow will be devoted only to direct intent, which is directly connected with the fact that offences with a specific purpose cannot be committed with intent different than the one indicated. Due to a perpetrator’s purposeful, especially motivated conduct, it is not possible to assume a possibility of committing a prohibited act with a specific purpose with oblique intent³¹ or unintentionally.³²

²⁶ A. Zoll, [in:] G. Bogdan, Z. Cwiąkański, P. Kardas, J. Majewski, J. Raglewski, M. Szewczyk, W. Wróbel, A. Zoll (ed.), *Kodeks karny. Część ogólna. Tom I. Komentarz do art. 1–116 k.k.* [Criminal Code. General part. Vol. I. Commentary on Articles 1–116 CC], Wolters Kluwer, Warsaw 2012, p. 141.

²⁷ *Ibid.*, p. 142.

²⁸ J. Lachowski, [in:] R. Dębski (ed.), *System prawa karnego. Nauka o przestępstwie. Zasady odpowiedzialności* [Criminal law system. Discussion on crime. Principles of liability], Vol. III, C.H. Beck, Warsaw 2012, p. 530.

²⁹ Ł. Pohl, *Prawo karne. Wykład części ogólnej* [Criminal law. Discussion of the General part], LexisNexis, Warsaw 2013, p. 135.

³⁰ As J. Giezek indicated, on the intellectual plane, when a diagnosis of circumstances in which a perpetrator acts is formulated, the state occurs in the same way on the basis of conscious non-intention as well as oblique intent (and actually also direct intent). As a result, the author assumes that the state of awareness in connection with both types of intent and in conscious non-intention seems to be similar if not identical. Clearer differences concern, however, the volitional sphere. See, J. Giezek, *Świadomość sprawcy czynu zabronionego* [Awareness of a prohibited act perpetrator], Wolters Kluwer, Warsaw 2013, pp. 193–194.

³¹ See, M. Kowalewska-Łukuć, *Zamiar ewentualny...* [*Dolus eventualis...*], pp. 159–160.

³² M. Cieślak held a different opinion. He indicated that: “The opinion excluding oblique intent in offences with a specific purpose is correct only within the limitation that what is indicated as an aim of a perpetrator’s action must be subject to direct intent. Similarly, it is not

Dolus directus consists in the fact that a perpetrator wants to commit a prohibited act. The “volition” as a volitional aspect of the subjective element means a will to materialise a specific state. As J. Lachowski indicates, “to want” means to feel like doing, to need, to wish.³³ As a result, a perpetrator’s wish does not assume any hesitation but is an effect of an unambiguous decision to materialise the features of a prohibited act. The will is not conditional in this case because it does not contain whatever shade of doubt about the implementation of reality matching the statutory features.³⁴ In the criminal law doctrine, it is raised that “The object of volition must be expressed as the implementation of conduct matching the features of a prohibited act treated as a whole. Volition as a form of intent does not refer to particular features but to the whole conduct characterised by the features of a prohibited act”.³⁵

The intellectual aspect of direct intent looks a bit different. Describing intentional commission of a prohibited act, J. Giezek indicates its intellectual foundation, the essence of which is that a perpetrator must be aware of the actual circumstances in which he/she operates. Therefore, a perpetrator’s (updated) knowledge must cover what is contained in the statutory features.³⁶ What is important, a perpetrator must be aware of all the circumstances that decide about the materialisation of the statutory features of the objective element of a prohibited act. A perpetrator’s failure to realise any of those features makes him/her act within the limits of an error, which, on the other hand, causes that he/she cannot intentionally violate a criminal law ban.³⁷

It is worth emphasising here that, while a perpetrator must be aware of the implementation of all the features of an act, it is not required that he/she “should think in the linguistic manner of statute”. A thief’s awareness does not have to contain the phrases used in Article 278 §1 CC: “wilfully takes”, “with the purpose of appropriation”, “somebody else’s movable property”. It is enough to be aware that he/she takes not his/her wallet from another man’s pocket and may use the money in it for what he/she wants.³⁸ This way, the act realised matches the act’s *designata*, which the legislator laid down in Article 278 §1 CC, however, perceived by a perpetrator with the use of different terms.³⁹ Explaining the phenomenon, T. Kaczmarek indicates that: “It most often happens because the perception of

possible for a perpetrator to set a target and not to want it at the same time. However, as a rule, a perpetrator’s triple-type voluntative attitude is possible towards any other feature of the type (except an aim): either a perpetrator wants it (which means that the circumstance fits him), or does not want it but accepts it just in case it comes true (“he gives consent”), or eventually does not want it and does not accept it but acts in a specific way in the hope that he will avoid the given circumstance.” See, M. Cieślak, *Polskie prawo karne. Zarys systemowego ujęcia* [Polish criminal law. Systemic overview], Wydawnictwo Uniwersytetu Jagiellońskiego, Kraków 2011, pp. 262–263.

³³ J. Lachowski, [in:] R. Dębski (ed.), *System prawa karnego...* [Criminal law system...], p. 535.

³⁴ *Ibid.*

³⁵ A. Zoll, [in:] A. Zoll (ed.), *Kodeks karny. Część ogólna...* [Criminal Code. General part...], p. 145.

³⁶ J. Giezek, [in:] N. Kłaczyńska, G. Łabuda, J. Giezek (ed.), *Kodeks karny. Część ogólna. Komentarz* [Criminal Code. General part. Commentary], Warsaw 2012, comments on Article 9, thesis 5.

³⁷ *Ibid.*

³⁸ T. Kaczmarek, *Sporne problemy...* [Disputable issues...], p. 32.

³⁹ *Ibid.*

a perpetrator refers to actual physical reality. Therefore, committing a murder, a perpetrator does not realise what he/she did with the use of abstract phrases generalised by the legislator in statute but substitutes more specific and personalised phrases for the words: 'kills a human being'.⁴⁰

J. Giezek draws attention to another issue connected with awareness of a prohibited act perpetrator. The author indicates that the elements constituting the objective aspect of a prohibited act may be diagnosed and predicted by a perpetrator. A diagnosis consists in the establishment of the already existing state and, thus, is a reconstruction. A prediction, on the other hand, is an opinion about the possibility of an imagined state occurrence within a specified future period on a time scale.⁴¹ Skilful differentiation of a diagnosis (awareness of an actual state) from a prediction (awareness of circumstances that may occur in the future) makes it possible to draw a conclusion that a perpetrator diagnoses some features of a prohibited act and predicts some of them.⁴²

Successive questions arise here. Namely, from what temporary perspective is it necessary to diagnose and formulate occurrence of a prediction of statutory features? Secondly, which elements of the objective aspect of a prohibited act can be diagnosed and which require predicting?

J. Giezek gives answers to both questions. Firstly, the author indicates that the moment the subject of the prohibited act starts implementing the action, i.e. violates the ban laid down in the sanctioned norm, is the most appropriate moment to assess

⁴⁰ *Ibid.*

⁴¹ J. Giezek, *Świadomość...* [Awareness...], p. 57–58.

⁴² *Ibid.*, p. 63, expanding this thought, J. Giezek states that: "Features describe, taking into account the dynamic aspect of a perpetrator's conduct, the present time (i.e. what is happening at present) and the future (i.e. what is going to materialise together with the occurrence of a state called a result). When an intention to commit a prohibited act develops, diagnostic awareness of the subject is limited to the elements of the starting point. Being on the 'threshold' of purposeful conduct, a perpetrator diagnoses such its elements that do not exist in that situation any more. Thus, he mainly notes circumstances in the light of which he becomes capable of committing a given type of a prohibited act. (...) Therefore, it may be said that at this stage a future perpetrator's awareness covers the features characterising the subject of a prohibited act, which is important, as a rule, mainly in connection with the individual crimes. Other features of the type that have not started to materialise yet may be only predicted because they are the future states of things. It concerns a final situation corresponding to intention in particular. In other words, a situation that a subject-perpetrator pursues, in fact being a set of predicted states, constitutes the object of his more or less 'vague' visions. The dynamic of conduct causes of course that its particular elements are successively materialised. Thus, at a certain moment a perpetrator starts materialising the conduct matching the description of the action (verbs), which was earlier only planned. (...) Next, when the conduct aimed at changing the starting point situation is materialised, its result occurs. It is necessary to add that information retained by the subject in the course of purposeful conduct implementation may verify the prediction made at the beginning in a positive or negative way, i.e. either confirm its rightfulness or indicate errors, which are either diagnostic (if they concern the existing states) or prognostic (if they relate to the future and result from erroneous predicting)." J. Giezek, *Świadomość...* [Awareness...], pp. 63–64. Also, see J. Giezek, *Dynamika stanu świadomości sprawcy czynu zabronionego oraz jej wpływ na odpowiedzialność karną* [Change of awareness of a prohibited act perpetrator and its impact on criminal liability], [in:] P. Kardas, T. Sroka and W. Wróbel, *Państwo prawa i prawo karne. Księga jubileuszowa Profesora Andrzeja Zolla* [State ruled by law and criminal law. Professor Andrzej Zoll jubilee book]. Vol. II, Wolters Kluwer, Warsaw 2012, p. 563 ff.

the statutory features in relation to a perpetrator's awareness. Secondly, from this perspective, it is noticeable that the features of the subject, the object of activity, conduct described with the use of a verb and some modal features (e.g. tools used to commit crime) can be diagnosed. On the other hand, the features of the effect and proximate cause (including its particular elements) as well as some modal features (especially if they contain an additional description of an effect) may be subject to prediction.⁴³

3. DIRECT INTENT WITH A SPECIFIC PURPOSE

It is still necessary to say a few words to characterise direct intent with a specific purpose. Earlier, the essence of offences with a specific purpose has been discussed and the aim of a perpetrator's action, inter alia, defined. Here, on the other hand, it is necessary to focus on showing the position of this intent and the aim that is connected with it in the structure of crime. The essence of *dolus directus coloratus* consists in the fact that a perpetrator wants to commit a prohibited act and heads for a specified direction. Thus, he/she has a specific will and wish to commit a prohibited act and achieve a particular state. What is important, this state must constitute an element of the statutory features of a prohibited act and a perpetrator must strive to achieve it. He/she does not have to materialise it (e.g. the wish to obtain financial benefits when committing fraud under Article 286 §1 CC⁴⁴). As it is emphasised in jurisprudence, an aim characterising direct intent with a specific purpose is an element of will and not awareness.⁴⁵ It must occur in a perpetrator's psyche, at the latest, at the moment of committing the act being part of the objective aspect. Thus, it may occur earlier but must be present at the moment of committing crime. If such an aim occurs after the implementation of the action, the legal assessment of the act changes.⁴⁶ It is clearly seen in case of the crime of fraud, where causing another person to disadvantageously dispose of their property by deception, taking advantage of a mistake or inability to adequately understand the action undertaken, has a legal sense only when it is undertaken in order to obtain financial benefits. If a perpetrator does not act with such an aim, the whole set of the features of the objective element is not materialised and, thus, an offence is not committed. In such a case, only civil liability is possible due to failure to perform an obligation or inappropriate performance of an obligation.⁴⁷

⁴³ J. Giezek, *Świadomość...* [Awareness...], pp. 76–77.

⁴⁴ M. Nawrocki, *Strona podmiotowa przestępstwa oszustwa klasycznego (art. 286 §1 k.k.)* [Subject of the crime of fraud (Article 286 §1 CC)], *Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury* issue 1, 2011, pp. 110–111; and *ibid.*, *Oszustwo klasyczne (art. 286 §1 k.k.) jako przestępstwo kierunkowe* [Fraud (Article 286 §1 CC) as an offence with a specific purpose], *Przegląd Sądowy* No. 11–12, 2011, p. 84.

⁴⁵ J. Lachowski, [in:] R. Dębski (ed.), *System prawa karnego...* [Criminal law system...], p. 543.

⁴⁶ *Ibid.*, p. 548.

⁴⁷ M. Nawrocki, *Przestępstwo oszustwa klasycznego a bezprawie cywilne* [The crime of fraud vs. civil lawlessness], *Palestra* No. 11–12, 2011, p. 83 ff.

The above leads to a conclusion that in case of offences with a specific purpose, the intellectual element, and the awareness of the existence of (diagnosed and predicted) objective features of a prohibited act as well as the volitional element, i.e. the wish to implement them in a particular direction (aim), must occur together at the moment, at the latest, when a perpetrator starts the performance of conduct that is legally relevant under criminal law, i.e. at the moment when he/she starts an action laid down among the features of a prohibited act.⁴⁸ Thus, there are no doubts that intention (including this with a specific purpose) requires awareness of all circumstances, objective in nature, that compose the characteristic features of this type of offence. However, it is quite commonly assumed that the elements of the objective side cannot be an object of a perpetrator's awareness.⁴⁹ Nevertheless, J. Giezek indicates that "it is possible to prove in many ways (...) that there are situations, quite frequent ones, when a subject (a perpetrator) becomes aware of the accompanying volitional processes. In fact, it should be even assumed that it usually happens because most often the subject 'knows what he/she wants'. If it is possible to relate a perpetrator's awareness to the features of the objective side, it would be justified to conduct an analysis aiming to state its lack, which might result, e.g. in establishing that a perpetrator is not aware e.g. that he/she wants something or gives consent to something, or does not realise that some specific emotions accompany him/her (e.g. compassion, fear or agitation). Making use of the rich output of cognitive psychology, we immediately notice that the exclusion of such a possibility would be premature and too far-reaching simplification".⁵⁰ As a result, one cannot negate the justification of an opinion that in case of subjective features, it is necessary for a perpetrator to be aware at least of the circumstances that are conditions for their occurrence.⁵¹ Translating this into the statutory features of classical fraud (Article 286 §1 CC), we would say that a perpetrator, to be able to act to achieve financial benefits, must realise that causing another person to disadvantageously dispose of his property results in taking advantage by him or another entity. To generalise, the characteristic feature of the subjective side of the construction of offences with a specific purpose is that a perpetrator must be aware of the shape of objective features decisive for the specific nature of a committed act. Most often, this element will be an aim of criminal action but a perpetrator does not have to realise it directly. It is enough that a perpetrator realises there are circumstances that are conditions for its occurrence.

If a perpetrator of an offence with a specific purpose must be aware of at least the circumstances being conditions for occurrence of subjective features, especially

⁴⁸ T. Kaczmarek held a little different opinion indicating that the updating of subjective features of a prohibited act in a perpetrator's conscience may, but does not have to, take place at the moment of an act commission. The more complicated the objective aspect, the less probable is that a perpetrator thinks about "everything" at the moment of the act. See, T. Kaczmarek, *Sporne problemy...* [Disputable issues...], p. 32.

⁴⁹ See, inter alia, A. Zoll, [in:] A. Zoll (ed.), *Kodeks karny. Część ogólna...* [Criminal Code. General part...], p. 141.

⁵⁰ J. Giezek, *Świadomość...* [Awareness...], p. 96.

⁵¹ A. Zoll, [in:] A. Zoll (ed.), *Kodeks karny. Część ogólna...* [Criminal Code. General part...], p. 141.

those deciding on the direction of an action, a question arises whether this awareness must be diagnosis-like or prediction-like. As it has been indicated above, a diagnosis constitutes a reconstruction of the reality in a perpetrator's mind, and a prediction is a perpetrator's assessment of the probability of occurrence of the imagined state. It seems that, on the basis of offences with a specific purpose, the aim (direction) of an action may have a dual nature, i.e. it can be diagnostic-predictive. Therefore, based on the example of classical fraud again, let us draw attention to the fact that a perpetrator, misleading the aggrieved, is aware of what he/she wants to achieve: take possession of property that is subject to disadvantageous disposal. A perpetrator of an act under Article 286 §1 CC, applying to a bank for a loan and obtaining it under false pretences, is fully aware that his/her activity leads to gaining a financial benefit, which must be equivalent to the property disadvantageously disposed of. Thus, the subject of diagnosis is the reality of a perpetrator's state of mind demonstrating itself in his/her conscious striving for a specific direction. This corresponds to J. Giezek's opinion that a perpetrator "knows what he/she wants". From the point of view of the present analysis, a predictive element is also important. It has been stated that a perpetrator wants to take possession of property that is subject to disadvantageous disposal. In other words, a perpetrator diagnoses the existence of property and, what is also important, knows that his/her activity leads to gaining profits, which correspond to the value of the property disadvantageously disposed of. He/she cannot, however, diagnose whether the activity (undertaken in a specific direction) will result in the desired effects, i.e. in the achievement of the assumed aim (in our example: gaining benefits equivalent to the value of property disadvantageously disposed of). A classical fraudster may only presume, with more or less precision, the financial benefit of a certain value. This corresponds to a statement that a perpetrator of an offence with a specific purpose must strive to achieve an aim but does not have to materialise it. This means that a perpetrator must predict the probability of achieving the object of his pursuit, i.e. a substrate of the direction (aim), but the accuracy of the prediction (i.e. its value calculated, e.g. as a percentage) is not a condition of criminal liability. Let me repeat, in order to assign liability for an offence with a specific purpose, it is enough to prove that a perpetrator has acted in order to achieve a certain aim, without the necessity of its materialisation.

4. SUDDEN AND PREMEDITATED INTENT

There are other problematic issues in connection with the subjective side of an offence with a specific purpose formulated above. Namely, a question must be asked whether it is possible to commit an offence with a specific purpose with a premeditated or sudden intent. In other words, is it possible for the two different types of direct intent, specific intent with premeditated intent as well as specific intent with sudden intent, to overlap?

The discussion of the issue should start from the indication that the above-mentioned distinction, introduced on the basis of direct intent, is justified

methodologically as well as from the point of view of criminal law. The notice is necessary because one can also find an opinion in the literature that "There are no (...) legal and factual grounds for distinguishing the sudden intent and premeditated intent within the subjective element of a prohibited act".⁵² It seems that this is an isolated opinion, especially when it is noted that in assessing the level of social harmfulness, in accordance with Article 115 §2 CC, it is necessary to take into account, inter alia, the form of intent; and a practical aspect of this distinction, which plays a significant role in penalty imposition.⁵³ Making an attempt to characterise the two forms of *dolus directus*, it is necessary to point out that premeditated intent (*dolus praemeditatus*) occurs when an idea of crime commission matures in a perpetrator's psyche, i.e. he/she considers a prohibited act commission and then takes a decision to materialise the statutory features. Thus, the construction covers a perpetrator's thinking processes preceding a decision to commit a prohibited act and planning the method of committing it after the intent occurred, thus already after the decision to commit an act was taken.⁵⁴ On the other hand, the characteristic feature of sudden intent is the fact that it occurs in situations when a perpetrator acts without the typical process of the fight of motives, which is connected with the lack of sufficient amount of time and conditions for thinking an act over thoroughly. Thus, a perpetrator takes a decision on a conduct in a specific way, which would probably not be undertaken in other conditions. The decision is taken rapidly, under the influence of emotions, without the possibility of rational analysis of circumstances, consideration of which might lead to a different conduct.⁵⁵

It seems that answering the question whether direct intent and premeditated intent can overlap is simple. Indeed, an action planned to unavoidably lead to the achievement of the set aim (constituting a statutory feature of a committed act) is a natural feature of a perpetrator's conduct characterised by direct intent with a specific purpose. To generalise, it can be said that premeditated intent usually accompanies intent with a specific purpose.

Therefore, how should we answer the question about the possibility that a perpetrator has sudden intent and intent with a specific purpose? It seems that, due to the elements of *dolus repentinus*, the variant in which a perpetrator might act purposefully and at the same time rapidly, without considering all circumstances

⁵² *Ibid.*, p. 151.

⁵³ In case law, there are no examples of differentiating direct intent as the premeditated one and the sudden one, and drawing consequences on the basis of the level of guilt, and as a result penalty imposition – see, the Supreme Court judgement of 18/03/1949, K 1135/48, OSN(K) No. 2 item 51, 1949, LEX No. 161446; Supreme Court judgement of 26/01/1966, IV KR 222/65, OSNKKW No. 8, item 82, 1966, LEX No. 114627; Supreme Court judgement of 27/10/1995, III KRN 118/95, LEX No. 24861; judgement of the Appellate Court in Warsaw of 10/10/2012, II AKa 276/12, LEX No. 1238292; judgement of the Appellate Court in Kraków of 22/11/2012, II AKa 184/12, KZS issue 2, item 45, 2013, LEX No. 1315305; and KZS issue 2, item 46, 2013, LEX No. 1315308; judgement of the Appellate Court in Krakow of 6/11/2013, II AKa 203/13, KZS issue 12, item 36, 2013, LEX No. 1444533.

⁵⁴ J. Lachowski, [in:] R. Dębski (ed.), *System prawa karnego...* [Criminal law system...], p. 537. Also, see M. Budyn-Kulik, *Umysłność...* [Wilfulness...], pp. 61–64.

⁵⁵ Judgement of the Appellate Court in Wrocław of 18/09/2013, II AKa 242/13, LEX No. 1378922; also, see M. Budyn-Kulik, *Umysłność...* [Wilfulness...], pp. 64–66.

accompanying the materialisation of the features of a prohibited act with a specific purpose, should be excluded. It has been indicated above that a perpetrator of such an offence must be aware of the complete set of the objective features and at least the circumstances conditioning the occurrence of an aim (constituting a feature of this type of a prohibited act). Taking into account the fact that a perpetrator lacks time and conditions for thoroughly thinking over an act that characterises sudden intent, one can doubt if he/she will be able to become aware of the features described above, especially if they are expended on the objective side. As far as this is concerned, T. Kaczmarek's words about updating all features of a prohibited act in a perpetrator's awareness at the moment of an act commission gain a new value.

Despite the above, one cannot exclude the commission of an offence with a specific purpose with sudden intent. For example, a theft under Article 278 §1 CC is a classical situation commonly called "crime of opportunity". Let us imagine a situation in which someone in a shop putting his/her wallet into the bag does not notice that the wallet does not actually get to the bag but falls on the floor. Another person notices the fact and picks the wallet to come into possession of the content. Although the perpetrator notices the moment when the wallet falls on the ground by accident and reacts extremely fast, nobody is going to make him exempt from criminal liability for appropriation under Article 278 §1 CC. It is certainly due to the fact that everybody (unfortunately, also a judge adjudicating in such a case), although it is not possible to verify a perpetrator's psychical relation to his conduct, intuitively feels that every instance of picking up somebody else's wallet and failure to undertake activities to give it back to the owner must be treated as an activity undertaken in order to come into possession of its content. It corresponds to the comments made earlier about the state of a perpetrator's awareness of the features of the objective side, where it was indicated that he does not have to directly achieve the aim of his conduct but only the circumstances of its occurrence. As a result, J. Giezek is also right to indicate that: "sudden intent (...) occurs (...) when a stream of information flowing to the subject of information induces to take a decision that it is absolutely necessary to (immediately) behave in a particular way. The subject notices a sudden need to achieve a certain aim. Thus, it is hard to imagine that a state neutral for the subject, the occurrence of which the subject only accepts, might be an object of his sudden intent".⁵⁶ It would be difficult to imagine that the perpetrator in the example presented picking up a wallet and failing to return it was indifferent to what was in it.

As it was shown above, it is possible to commit an offence with a specific purpose with sudden intent in a situation when the statutory features are not numerous. But how about a situation, as T. Kaczmarek asks, when the objective side of the type of a prohibited act is more complex? Is it possible that a perpetrator of classical fraud (Article 286 §1 CC) or robbery with the use of violence (Article 281 CC) commits them with sudden intent? In both cases, we deal with the two-act crimes, which the legislator constructed with the use of two verbs instead of one and they must

⁵⁶ J. Giezek, *Świadomość...* [Awareness...], p. 98.

be materialised in conjunction.⁵⁷ In case of robbery with the use of violence, there is one more element, namely the subjective side regulated in a special way reflected in a perpetrator's conduct pursuing two aims. First, a perpetrator undertakes steps aimed at taking somebody's property with the purpose of appropriation and next, after coming into possession of the object, undertakes activities consisting in the use of violence against that person, threatening to use it immediately or causing a person to become unconscious or helpless in order to maintain possession of the stolen property.⁵⁸

The above leads to a conclusion that while in case of prohibited acts with uncomplicated objective elements (and looking through the prism of robbery with the use of violence, including the subjective side), it is possible to commit an offence with a specific purpose with sudden intent, in case of the types in which the objective side (and sometimes also the subjective one) is complex, there may be justified doubts concerning the possibility of their commission with *dolus repentinus*. One cannot forget the fact that sudden intent is characterised by rapidity of action and materialisation, which excludes the possibility that a perpetrator will become aware of all the statutory features, including those that co-determine the direction of action, especially if the action is complex and the aim is not single.

On the basis of offences with specific intent, also the specific nature of the types of prohibited acts that are characterised by numeral features may constitute a problematic issue. To keep the presentation in the right order, I will demonstrate that, in accordance with the dominating opinion in this area, a numeral feature constitutes an element of the objective side and should consist in a perpetrator's prediction in the same way as other objective features.⁵⁹ Although the numeral amount assessment is characterised by full accuracy, it may cause some difficulties in the subjective area, i.e. in the field of determining whether a perpetrator of intentional crime must also cover the numeral feature with his intention. In W. Wolter's opinion, awareness of a number is not a necessary requirement for liability for intentional crime, which means it is enough if a perpetrator is aware that in colloquial meaning it concerns something substantial, greater, which numbers express.⁶⁰ In connection with this opinion, the Supreme Court judgements, on the basis of the crime of appropriation, which was an offence with a specific

⁵⁷ M. Nawrocki, *Czas popełnienia czynu zabronionego w polskim prawie karnym. Podstawowe zagadnienia materialno-prawne* [Time of commission of a prohibited act in the Polish criminal law. Basic substantive and legal issues], Wydawnictwo Naukowe Uniwersytetu Szczecińskiego, Szczecin 2014, p. 142. It is worth mentioning that robbery with the use of violence has also the features of a complex crime because particular elements of this action are laid down in Article 281 CC and, taken in separation, correspond still to other criminal law provisions, e.g. Article 278 §1 CC, Article 190 §1 CC, and Article 157 §1 CC.

⁵⁸ Judgement of the Appellate Court in Białystok of 19/03/2013, II AKa 42/13, LEX No. 1311930.

⁵⁹ I. Andrejew, *Ustawowe znamiona przestępstwa* [Statutory features of a crime], Warsaw 1959, pp. 232–233; W. Wolter, *Nauka o przestępstwie* [Discussion on crime], PWN, Warsaw 1973, pp. 227–228; Ł. Pohl, *Błąd co do okoliczności stanowiącej znamię czynu zabronionego w polskim prawie karnym (zagadnienia ogólne)* [Error as to a circumstance being the feature of a prohibited act in the Polish criminal law (general issues)], *Ars Boni et aequi*, Poznań 2013, pp. 101–102.

⁶⁰ W. Wolter, *Nauka...* [Discussion...], p. 229.

purpose,⁶¹ admit a construction assuming that a perpetrator's direct intent refers to appropriation only; on the other hand, the considerable value of the property stolen may only be related to oblique intent. In other words, the subjective side of an offence is materialised even when a perpetrator predicts that the value of appropriated property may be considerable and he gives consent to that.⁶² This opinion is, however, hard to approve of. M. Dąbrowska-Kardas and P. Kardas are right that numeral features, which in accordance with Article 294 §1 CC and Article 294 §2 CC are also classifying features, supplement the statutory description of a prohibited act type. Thus, they constitute an element of the subjective side of the given type. As far as the aggravated types under Article 294 §1 CC and Article 294 §2 CC are concerned, their objective side is determined each time in the provision laying down the basic type. As a result, the features must be subject to intention in the form adequate to the given type of crime against property that is the basis for determining an aggravated type.⁶³ The authors' opinion is consistent and right that with regard to offences with a specific purpose such as theft or fraud, the aggravating feature in the form of property of considerable value or of significant cultural value must be subject to a specific purpose of a perpetrator's activity.⁶⁴ Supplementing these arguments, it is necessary to indicate that if numeral features constitute elements of the objective side of the type of a prohibited act and as such are not subject to internal (in this group of features) assessment, they should not be differentiated with regard to the subjective side, either, by classifying some under the concept of direct intent and others "only" oblique intent. There are no legal grounds for such treatment.

5. CONCLUSIONS

The above considerations have aimed to characterise the subjective side of offences with a specific purpose. To sum up, it is first of all necessary to emphasise that offences with a specific purpose are not one unique group of prohibited acts. They contain the offences with specific intent but, as it has been demonstrated, there are also offences with a specific purpose that are not characterised by such features as the aim of a perpetrator's action. What is important is the fact that the construction signalled in the title requires intention characterised by direct intent

⁶¹ See, J. Bafia, K. Mioduski, M. Siewierski, *Kodeks karny. Komentarz. Tom II. Część szczególna* [Criminal Code. Commentary. Vol. II. Specific part], PWN, Warsaw 1987, pp. 227–228.

⁶² In the Supreme Court judgement of 10/10/1974, III KR 95/74, OSNKW No. 1, item 7, 1975, LEX No. 18909; the Supreme Court judgement of 19/03/1984, II KR 49/84, OSNKW No. 11–12, item 118, 1984, LEX No. 19989; and the Supreme Court judgement of 14/10/1988, IV KR 186/88, OSNKW No. 1, item 7, 1989, LEX No. 20334.

⁶³ M. Dąbrowska-Kardas, P. Kardas, [in:] A. Barczak-Oplustil, G. Bogdan, Z. Cwiakalski, M. Dąbrowska-Kardas, P. Kardas, J. Majewski, J. Raglewski, M. Rodzynekiewicz, M. Szewczyk, W. Wróbel, A. Zoll (ed.), *Kodeks karny. Część szczególna. Tom III. Komentarz do art. 278–363 k.k.* [Criminal Code. Specific part. Vol. III. Commentary on Articles 278–363 CC], Wolters Kluwer, Kraków, Kraków 2006, p. 488.

⁶⁴ *Ibid.*, pp. 488–489.

of specific nature concerning all objective features and at least circumstances being a requirement for the occurrence of the direction (aim) of a perpetrator's activity. In this last case, we deal with the specifically understood perpetrator's awareness of the features of the subjective side of the committed act. As the comments made in the article show, offences with a specific purpose reveal differences not only with regard to the subjectively perceived elements connected with the subjective side of a prohibited act but also with regard to the objective side. It turns out that there are such offences with a specific purpose the commission of which with sudden intent is excluded because of the size of objective features. A perpetrator, despite the necessity of being aware of them, has no actual opportunity for that mainly because of the lack of time necessary to become aware of those features. Thus, offences with a specific purpose turn out to be a construction much more complicated than it is commonly thought. The article, although it may seem to be too brief in some aspects, is a modest attempt at presenting the real function of the construction concerned.

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SUBJECTIVE ELEMENT OF AN OFFENCE WITH A SPECIFIC PURPOSE

Summary

The article discusses the issue of a subjective element of an offence with a specific purpose. The issue has not been the subject of broader scientific analysis. Its characteristic is most often limited to indicating that an offence with a specific purpose can be committed only with direct intent, which excludes its commission with oblique intent and, all the more, unintentionally. The article explains the issue taking into consideration the possibility of committing an offence with a specific purpose with sudden and premeditated intent and distinguishing what a perpetrator diagnoses and predicts among the statutory features in his or her conscience.

Keywords: offence with a specific purpose, subjective element, intent, wilfulness

STRONA PODMIOTOWA PRZESTĘPSTWA KIERUNKOWEGO

Streszczenie

Niniejszy artykuł dotyczy zagadnienia strony podmiotowej przestępstwa kierunkowego. Zagadnienie to nie było przedmiotem szerszych rozważań naukowych. Najczęściej jego charakterystyka ogranicza się do wskazania, że przestępstwo kierunkowe można popełnić tylko w zamiarze bezpośrednim, co wyklucza jego popełnienie z zamiarem ewentualnym, a tym bardziej nieumyślnie. W artykule przybliżono tę problematykę, ze szczególnym uwzględnieniem możliwości popełnienia przestępstwa kierunkowego w zamiarze nagłym i przemyślanym, a także z rozróżnieniem tego, co sprawca spośród znamion ustawowych diagnozuje a co prognozuje w swojej świadomości.

Słowa kluczowe: przestępstwo kierunkowe, strona podmiotowa, zamiar, umyślność