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GLOSS
on the Supreme Court ruling of 14 September 2017, I KZP 7/17¹

The phrase “threat referred to in Article 190” contained in Article 115 §12 CC concerns only a perpetrator’s conduct and does not cover a result in the form of eliciting a threatened person’s justified fear that the threat can be carried out.

The Supreme Court ruling that is the subject of the present gloss discussed a very interesting issue concerning the phrase “threat referred to in Article 190” contained in Article 115 §12 Criminal Code (henceforth: CC). The Supreme Court ruling was issued after the examination of the case of K.H. accused under Article 245 CC and others, which a District Court referred to the Supreme Court, in accordance with Article 441 §1 Criminal Procedure Code (henceforth: CPC) in connection with a legal question requiring interpretation of statute: “Is it necessary for the needs of criminal liability for an offence under Article 245 CC to establish whether a threat elicits justified fear that it can be carried out, in case a perpetrator uses a punishable threat in the meaning of Article 115 §12 CC (referred to in Article 190 CC) to exert pressure on a witness, and does the fear of the aggrieved that the threat can be carried out constitute a statutory feature of a prohibited act under Article 245 CC?”

The Supreme Court refused to adopt a resolution concerning the issue indicating that it does not meet the requirements for a prejudicial question and, in addition, referred to the Supreme Court ruling of 27 March 2014² issued in connection with an almost identical formulation of a legal question,³ in the justification of which (in the Supreme Court’s opinion) the answer to the question can be found in this case.

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¹ LEX No. 2352165.

² I KZP 2/14, OSNKW 2014, No. 7, item 53.

³ “Is it necessary for liability under Article 245 CC, in a situation in which a perpetrator in order to exert pressure on a witness uses an unlawful threat in the form of a punishable threat determined in Article 190 §1 CC, to establish whether the threat raises a justified fear that it can be carried out?”

Refusing to adopt a resolution concerning the issue, the Supreme Court emphasised in the justification for its decision that “Article 115 §12 CC defines three forms of an unlawful threat: (1) of committing an offence; (2) of causing criminal proceedings; (3) of publicising an insulting message. It is not possible to derive an opinion that eliciting a threatened person’s justified fear is an element of threats under subparas. (2) and (3) without usurping the legislative rights by a court”. Moreover, refusing to answer the prejudicial question in the further part of the justification, the Supreme Court referred to it stating that: “the legislator ‘built’ this element (eliciting fear that a threat can be carried out) in many types of offences characteristic also of those forms of threats, although did not incorporate it in the set of features. It concerns substantive offences determined in the Criminal Code in Articles: 124 §1, 128 §3, 153 §1, 197 §1, 224 §1, 232 §1, 249, 250 and 260.⁴ Causing an effect that is a feature of those acts by means of a threat, e.g. in the form of exerting pressure (Articles 128, 224 §1, 232 §1, 250), already contains the occurrence of an element of subjective fear that the threat will be carried out (as a result, the lack of such determination in the description of an act will not make the features of an offence incomplete)”.

In the light of the conclusions formulated by the Supreme Court in the justification for its decision, it is necessary to discuss two issues. Firstly, how should the phrase used in the definition of a punishable threat “threat referred to in Article 190 §1 CC” be interpreted (does it apply only to a perpetrator’s conduct and does not cover the result in the form of eliciting justified fear that the threat can be carried out)? Secondly, is the assumption that it covers the effect referred to in Article 190 §1 CC important for the comprehension of the whole definition of an unlawful threat, i.e. does eliciting fear that a threat can be carried out also constitute an element of a threat of causing criminal proceedings and publicising an insulting message? In the light of the lack of uniformity of the opinions on the matter of the criminal law doctrine representatives and of case law, the issue needs a deepened analysis.

At the beginning, it should be assumed that the concept of a punishable threat is determined in the binding Criminal Code in the same way as in Article 120 §10 CC of 1969 and in a similar way as in Article 91 §4 CC of 1932. The difference between the approach to an unlawful threat in the Criminal Code of 1969 and the former one consisted in the fact that Article 91 §4 CC of 1932 did not contain a clause stipulating that “the announcement of causing criminal proceedings does not constitute a threat if it is only aimed at protecting the right infringed by an offence”.

A punishable threat is especially important among unlawful threats. It is laid down in Article 115 §12 CC as the most serious among all the other forms and constitutes a self-standing offence against liberty determined in Chapter XXIII CC (Article 190 §1 CC). The remaining forms of an unlawful threat (a threat of causing criminal proceedings and a threat of publicising a message insulting a threatened person or his/her close relation) occur as a means of a perpetrator’s *modus operandi* aimed at obtaining a particular aim. According to K. Daszkiewicz-Paluszyńska, an argument for this approach was undoubtedly the fact that the intensification of the

⁴ There is no information why the Supreme Court listed only a few types of offences and ignored others in which an unlawful threat occurs as a method of a perpetrator’s conduct.

will of a perpetrator who threatens to commit an offence is greater than of the one who threatens to cause criminal proceedings or publicise an insulting message.⁵

Analysing the first issue (constituting the thesis of the discussed ruling), it is necessary to notice that the legislator, using the phrase “threat referred to in Article 190 CC” in Article 115 §12 CC, refers to the directive of Article 190 §1 CC, the features of which consist of two elements that must occur jointly. It is an executor act, i.e. threatening another person that an offence will be committed to the detriment of him/her or his/her close relation, and the effect in the form of eliciting a threatened person’s justified fear that the threat will be carried out. The provision of Article 115 §12 CC does not limit the scope of that reference so it should be assumed that it is a reference in a complete scope. Thus, the phrase “threat referred to in Article 190 CC” should be interpreted as a threat of committing an offence to the detriment of the threatened person or his/her close relation and eliciting a threatened person’s justified fear that it will be carried out.⁶ From the logical point of view, there is no justification for making the description of the features incomplete, limited to an executor act and ignoring the effect. Such a stand was already presented earlier based on the Criminal Code of 1969 in case law and the doctrine. According to A. Spotowski, “since Article 120 §10 CC of 1969 [Article 115 §12 CC of 1997 – note by K.N.] stipulated that an unlawful threat is a threat referred to in Article 166 CC of 1969 [Article 190 CC of 1997 – K.N.], this phrase should be interpreted as concerning a threat having all the features determined in Article 166 CC. A threat of committing an offence that does not elicit a threatened person’s justified fear is not a threat referred to in Article 166 CC [of 1969 – K.N.]”.⁷ In addition, it should be emphasised that if the legislator’s intention had been to limit the interpretation of this phrase, he would not have referred to Article 190 CC but would have directly determined that an unlawful threat was, inter alia, a threat of committing an offence, regardless of the effect referred to in Article 190 §1 CC. It is worth highlighting that the Criminal Code Bill of 1956 laid down in Article 96 that: “A threat in accordance with the provisions of the Criminal Code is a threat of committing an offence against life, health, freedom or property”, and then indicated a threat of causing criminal proceedings and a threat of publicising a message insulting a threatened person or his/her close relation.⁸ A similar solution to the problem of defining an unlawful threat was proposed in the Criminal Code Bill of 1963, where Article 433 §4 laid down that “a threat includes (...) an announcement that an offence will be committed”.⁹ The application of such a legislative technique would not raise doubts as to whether a punishable threat like one of the forms of unlawful threats concerns only a perpetrator’s conduct and not the effect.

⁵ K. Daszkiewicz-Paluszyńska, *Groźba w polskim prawie karnym*, Warsaw 1958, p. 105.

⁶ Similarly, P. Daniluk, *Wzbudzenie w zagrożonym uzasadnionej obawy spełnienia groźby w konstrukcji groźby bezprawnej*, *Prokuratura i Prawo* No. 1, 2018, p. 7.

⁷ See, A. Spotowski, [in:] I. Andrejew, L. Kubicki, J. Waszczyński (ed.), *System prawa karnego. O przestępstwach w szczególności*, Vol. IV, part 2, Ossolineum, Wrocław–Warszawa–Kraków–Gdańsk–Łódź 1989, pp. 43–44. Also see, the judgement of the Appellate Court in Poznań of 8 November 1994, II Akr 252/94, OSA 1995, No. 1, item 1.

⁸ *Projekt kodeksu karnego Polskiej Rzeczypospolitej Ludowej i przepisy wprowadzające*, Wydawnictwo Prawnicze, Warsaw 1956, p. 27.

⁹ *Projekt kodeksu karnego*, Wydawnictwo Prawnicze, Warsaw 1963, p. 88.

Therefore, assuming that a “threat referred to in Article 190 CC” concerns a perpetrator’s conduct as well as the effect in the form of eliciting fear that the threat will be carried out, it is worth discussing doubts occurring when it is assessed whether the existence of a threatened person’s justified fear that the threat will be carried out constitutes an element of the essence of an action in case of the whole punishable threat.

The opinions of the representatives of the doctrine about the matter have been varied. M. Surkont drew attention to this problem making comments on an offence of coercion. The author considered whether only a person using a threat that elicited a threatened person’s justified fear can be liable for coercion committed by means of a threat of causing criminal proceedings or publicising an insulting message, or whether it is sufficient to use a threat in order to coerce somebody into something to be liable for coercion. He pointed out two stands. According to one of them, an unlawful threat differs from a threat of committing an offence only in the scope of the content of the hazard and the negative consequences presented to the threatened person, while the essence of a threat remains unchanged. Thus, all the conditions for a threat of committing a crime concern an unlawful threat. According to the other, which he approved of, in relation to the two other forms of an unlawful threat, the statute does not require that they should elicit a threatened person’s fear that they will be carried out, and the introduction of this condition by means of interpretation is inadmissible. In his opinion, Article 120 §10 CC of 1969 [Article 115 §12 CC of 1997] explains, unlike Article 166 CC of 1969 [Article 190 CC of 1997], the concept of the entire unlawful threat. There is a lack of whatever mention of the necessity of such fear occurring there.¹⁰ The author presented two examples: when a perpetrator threatens another person with causing criminal proceedings but does not elicit a threatened person’s fear that the threat will be carried out because he knows he has not committed any offence, and when a blackmailer threatens a woman that he will publicise a message about her immoral conduct but her husband trusts her and she is not afraid of rumours, i.e. is not afraid of the threat.¹¹ M. Siewierski presented a similar opinion based on the Criminal Code of 1969. According to him, “the criminality condition (eliciting a threatened person’s fear) laid down in Article 166 CC does not belong to the features of an offence determined in Article 167 CC; however, what is a criminality condition for coercion by means of an unlawful threat referred to in Article 167 CC is the potential of that threat, conditioned by external circumstances of a given act, to exert pressure on the threatened person’s will in order to induce action, endurance or omission”.¹² Also case law was not uniform as far as this issue is concerned. The Supreme Court judgement of 2 December 1948 states that: “the difference between an unlawful threat and a punishable one does not consist in the quality, i.e. does not concern the essence of a threat alone, but in the quantity, because it extends the scope of methods of an unlawful threat, in which a perpetrator expresses his threat (apart from a threat of committing a crime, also a threat of causing

¹⁰ M. Surkont, *Przestępstwo zmuszania w polskim prawie karnym*, Gdańsk 1991, p. 83.

¹¹ *Ibid.*, p. 84.

¹² M. Siewierski, [in:] J. Bafia, K. Mioduski, M. Siewierski, *Kodeks karny. Komentarz*, Warsaw 1977, p. 428; also see, judgement of the Appellate Court in Łódź of 20 July 1994, II AKR 175/94, Prok. i Pr. 1995, No. 3, item 18, p. 14.

criminal proceedings or publicising an insulting message). An unlawful threat laid down in Article 251 CC [Article 167 CC of 1969 and Article 191 CC of 1997 – K.N.] must also have the same quality features that characterise a punishable threat, thus, must be capable of eliciting a threatened person's fear. When a threat under Article 251 CC does not meet the condition, the essence of the act under this Article does not exist".¹³ The Supreme Court presented a different opinion in its judgement of 19 December 1949, where it emphasised that "the existence of a threatened person's fear that the threat will be carried out is a statutory condition for liability for a punishable threat but is not a statutory condition of an unlawful threat laid down in Article 251, provided that this threat is not expressed in the form of the above-mentioned punishable threat but in other forms, i.e. in the form of a threat of causing criminal proceedings or publicising a message insulting a threatened person or his/her close relations".¹⁴ It is also necessary to indicate the resolution of the Supreme Court Criminal Chamber bench of seven judges of 18 October 1949,¹⁵ where attention was drawn to the fact that the nature of coercion being different from a threat is against the reception of the conditions for a threat of committing an offence in relation to an act consisting in coercion. An offence of a punishable threat is special in nature. Its direct object of protection is freedom from concern, fear. The mode of operation consists in a threat of committing an offence of special features, which are determined in the provision. The conditions belong to the essence of the object of an offence, they are object-related in nature, and a lack of any of them causes that a threat is no longer an offence. In case of an offence of coercion, a threat is not only one of the components of this act. However, the Act does not make a reservation concerning any object-related conditions as in case of a punishable threat.¹⁶ A threat used by a perpetrator of coercion does not have to be intended to be serious; carrying it out does not have to be intended or possible. However, it should seem to be serious so that it could have impact on the will of the threatened person. A person threatening must be aware of that feature of the threat.¹⁷ In another judgement of 4 November 1963, the Supreme Court stated that the ability to elicit justified fear is not an indispensable element of every unlawful threat but only a condition for the existence of a particular offence determined in Article 250 CC of 1932.¹⁸

The above-presented doubts can also be found in literature and case law based on Article 115 §12 of 1997. Some authors believe that other forms of a threat, apart from a punishable one, do not have to elicit a threatened person's feeling of hazard.¹⁹ Others, on the other hand, believe that *mutatis mutandis* it should be assumed that the condition of reality of carrying out an announced threat also concerns an unlawful

¹³ The Supreme Court judgement of 2 December 1948, K 1668/48, PiP 1949, No. 4, p. 145.

¹⁴ The Supreme Court judgement of 19 December 1949, WaK 605/49, PiP 1950, No. 7, p. 140.

¹⁵ The Supreme Court resolution of 18 October 1949, K 1228/49, PiP 1950, No. 1, p. 133.

¹⁶ Justification for the Supreme Court resolution of 18 October 1949, K 1228/49, PiP 1950, No. 1, pp. 133–135.

¹⁷ *Ibid.*, p. 135

¹⁸ See, the Supreme Court judgement of 4 November 1963, III K 72/63, OSNKW 1964, No. 5, item 76.

¹⁹ Thus, T. Oczkowski, [in:] V. Konarska-Wrzošek (ed.), *Kodeks karny. Komentarz*, Warsaw 2016, p. 588; O. Górniok, [in:] O. Górniok (ed.), *Kodeks karny. Komentarz*, Warsaw 2006, p. 430; J. Bojarski, O. Górniok, [in:] M. Filar (ed.), *Kodeks karny. Komentarz*, Warsaw 2016, p. 815.

threat in the remaining scope,²⁰ i.e. the occurrence of a state of justified fear that the threat will be carried out in the threatened person's psyche should be assumed also in relation to a threat of causing criminal proceedings or publicising an insulting message.²¹ A. Zoll objectifies and presents it flexibly as "the existence of grounds for treating this threat seriously by an addressee".²² On the other hand, according to J. Majewski, although the condition of eliciting justified fear was expressed *expressis verbis* only in case of a punishable threat, due to functional reasons, it should be referred to two other forms of an unlawful threat. The author believes that "in fact, this means narrowed interpretation of the provision discussed but departure from linguistic interpretational directives does not act to a perpetrator's disadvantage (i.e. is not an absolutely inadmissible solution) and, at the same time, it is necessary in order to save the presumption of the legislator's axiological rationality, because the result of the linguistic interpretation challenges this assumption".²³ Presenting his own opinion, he asks a question how it can be rationally justified that, on the one hand, every threat of causing criminal proceedings or publicising an insulting message and, on the other hand, not every threat of committing an offence, but only one that is serious, should be treated as an unlawful threat if this form of unlawful threat is of the greatest gravity.²⁴ That is why, according to J. Majewski, it should be assumed that a threat of causing criminal proceedings or publicising a message insulting a threatened person or his/her close relation constitutes an unlawful threat in the meaning of Article 115 §12 CC only when it is so serious that it is capable of eliciting a threatened person's justified fear that it will be carried out.²⁵ Such an interpretational approach dominates the doctrine of criminal law,²⁶ but case law still differs in this area. Sometimes this limitation is applied,²⁷ sometimes not.²⁸

²⁰ A. Wąsek, [in:] O. Górniok, S. Hoc, M. Kalitowski, S.M. Przyjemski, Z. Sienkiewicz, J. Szumski, L. Tyszkiewicz, A. Wąsek, *Kodeks karny. Komentarz*, Vol. I: *Art. 1–116*, Gdańsk 2005, p. 843.

²¹ Similarly, A. Michalska-Warias, [in:] T. Bojarski (ed.), *Kodeks karny. Komentarz*, Warsaw 2016, pp. 310–311; and also, as it seems, M. Filar, *Przestępstwa przeciwko wolności*, [in:] Nowa kodyfikacja karna. Kodeks karny. Krótkie komentarze, issue 18, Warsaw 1998, p. 83, and J. Giezek, [in:] J. Giezek (ed.), *Kodeks karny. Część ogólna. Komentarz*, Warsaw 2012, p. 707.

²² A. Zoll, [in:] K. Buchała, A. Zoll (ed.), *Kodeks karny. Część ogólna. Komentarz do art. 1–116 Kodeksu karnego*, Kraków 1998, p. 636.

²³ See, J. Majewski, [in:] W. Wróbel, A. Zoll (ed.), *Kodeks karny. Część ogólna. Komentarz*, Vol. I: *Komentarz do art. 53–116*, Warsaw 2016, p. 1007.

²⁴ *Ibid.*, pp. 1007–1008, and also M. Bielski, [in:] A. Zoll (ed.), *Kodeks karny. Część szczególna. Komentarz*, Vol. II: *Komentarz do art. 117–277 k.k.*, Warsaw 2008, p. 592.

²⁵ J. Majewski, [in:] W. Wróbel, A. Zoll (ed.), *Kodeks karny...*, p. 1008.

²⁶ Thus also, A. Michalska-Warias, [in:] *Kodeks karny...*, p. 310, and S. Hypś, [in:] A. Grześkowiak, K. Wiak (ed.), *Kodeks karny. Komentarz*, Warsaw 2015, p. 747.

²⁷ The Supreme Court judgement of 7 December 1999, WA 38/99, OSNKW 2000, No. 3–4, item 32; the Supreme Court judgement of 26 September 2006, WA 27/06, OSNwSK 2006, No. 1, item 1809; judgement of the Appellate Court in Poznań of 14 July 2005, II AKA 155/05, OSA 2006, No. 1, item 1; judgement of the Appellate Court in Lublin of 13 October 2008, II AKA 236/08, LEX No. 477863; judgement of the Appellate Court in Wrocław of 23 August 2012, II AKA 227/12, LEX No. 1220370.

²⁸ The Supreme Court ruling of 6 June 2011, V KK 128/11, LEX No. 897778; the Supreme Court ruling of 27 March 2014, I KZP 2/14, OSNKW 2014, No. 7, item 53; judgement of the Appellate Court in Lublin of 6 September 2012, II AKA 189/12, LEX No. 1217723.

As it is seen, the problem has triggered considerable differences in the doctrine and case law. The difficulties would not occur if the legislator had clearly determined whether the condition of “eliciting a threatened person’s fear” should be applied to the entire concept of an unlawful threat. While a threat determined in Article 190 CC is a self-standing offence and its essence consists in eliciting a threatened person’s fear, the Criminal Code uses the concept of an unlawful threat also to describe the statutory set of features of other types of offences. In such a situation, a threat and its direct consequence constitute only a certain stage in the implementation of a perpetrator’s other criminal intention. Eliciting fear is not a final objective of his action but constitutes a means planned to obtain another objective.²⁹ Thus, it seems that a threat should be so serious that a threatened person, objectively speaking, would be convinced that he/she is in danger of the announced wrong. Regardless of the fact that the discussed provision of Article 115 §12 CC, in literal terms, does not speak about the effect in the form of eliciting fear of causing criminal proceedings and publicising a message insulting a threatened person or his/her close relation, it should be assumed that such a threat (in accordance with grammatical interpretation) may but does not have to lead to eliciting fear, however, due to the purpose, this effect must occur. A different interpretation would first of all negate the essence of a threat and, in addition, would lead to absurd situations. It is hard to imagine that an unlawful threat as a means of a perpetrator’s influence on the aggrieved, intended to produce a result belonging to the features of a particular offence (e.g. in case of rape, leading to sexual intercourse), will not elicit fear that it will be carried out. If a threat did not elicit fear that it will be carried out, one could not speak about matching the features of an offence under Article 197 §1 CC. However, it can happen that sexual intercourse takes place, although a threat does not elicit fear, but then the sexual intercourse should be recognised as voluntary.

Summing up, it should be recognised that a result in the form of eliciting a threatened person’s fear, constituting a feature of a punishable threat (Article 190 §1 CC) is also an element of other forms of a threat (laid down in Article 115 §12 CC), which may constitute an effective method of influencing another person’s motivational processes, but (as it has been stated above) only when they can really have impact on the threatened person’s psyche and persuade him/her to give in to a perpetrator’s will.

Thus, one cannot approve of the thesis of the Supreme Court ruling that “a threat referred to in Article 190 CC” concerns only a perpetrator’s conduct and does not cover an effect in the form of eliciting a threatened person’s fear that the threat will be carried out. It concerns a perpetrator’s conduct as well as eliciting justified fear that the threat will be carried out. This result, in accordance with purpose-related interpretation, should be also referred to other forms of threats.³⁰ A belief that a perpetrator using unlawful threats must elicit a threatened person’s fear that the threat will be carried out if it is a punishable threat and does not have to elicit

²⁹ Z. Czerwiński, *Groźba użycia przemocy jako forma popełnienia przestępstwa z art. 208 k.k.*, *Problemy Praworządności* No. 11, 1984, p. 43.

³⁰ Compare, P. Daniluk, *Wzbudzenie w zagrożonym...*, pp. 14–15.

such fear in case of the use of another type of threats leads to a differentiation of a perpetrator's legal situation, depending on the type of a threat he uses, and it cannot be defended from the point of view of logical interpretation. A perpetrator using a punishable threat that does not elicit justified fear that it will be carried out would be liable for an attempt to commit, and in case of using other types of threats, he would be liable for the commission of this offence, regardless of the failure to elicit a threatened person's fear.

The presented comments induce one to formulate respective *de lege ferenda* proposals. The definition of an unlawful threat should be formulated in the way that would not raise any doubts concerning its interpretation. This means it is necessary to give up reference to Article 190 §1 CC and to state that an unlawful threat is "a threat of committing an offence to the detriment of a threatened person or his/her close relation" and clearly indicate that the effect in the form of eliciting justified fear that the threat will be carried out concerns also other types of threats. The wording of Article 115 §2 CC might be as follows: "An unlawful threat is a threat of committing an offence to the detriment of a person threatened or his/her close relation as well as a threat of causing criminal proceedings or publicising a message insulting a threatened person or his/her close relation, provided it elicits justified fear that it will be carried out".

Finally, it is necessary to comment on the prejudicial question, which the Supreme Court refused to answer stating at the same time that "(...) the legislator 'built' this element (eliciting fear that a threat will be carried out) into many other types of offences also characteristic of these forms of threats, although he did not contain it in the set of features (...). Producing, by means of a threat, a result being the feature of those acts, e.g. in the form of exerting impact (Articles 128, 224 §1, 232 §1, 250), contains the implementation of an element of subjective occurrence of fear that the threat will be carried out (as a result, the lack of such determination in the description of an act will not make the features of the given offence incomplete)".

It should be analysed whether the effect in the form of eliciting fear is important for matching the features of an offence, in case of which a threat was a perpetrator's method of acting. In this case, controversies do not concern only Article 245 CC,³¹

³¹ One can point out two stands that give different answers to the question whether eliciting a fear is a condition for criminal liability under Article 245 CC. First, that eliciting a threat, an addressee's fear is a condition for liability under Article 245 CC. See, judgement of the District Court in Wrocław of 29 May 2017, III K 343/16, LEX No. 2306082; judgement of the Appellate Court in Lublin of 3 October 2013, II AKa 152/13, LEX No. 1388873; judgement of the Appellate Court in Wrocław of 23 August 2012, II AKa 227/12, LEX No. 1220370; judgement of the Appellate Court in Lublin of 13 October 2008, II AKa 236/08, LEX No. 477863; the Supreme Court judgement of 7 December 1999, WA 38/99, LEX No. 39910. And second, that eliciting fear is not a condition for liability under Article 245 CC. See, judgement of the District Court in Gliwice of 31 July 2015, VI Ka 358/15, LEX No. 1831043; judgement of the District Court in Warszawa-Praga of 23 June 2015, VI Ka 227/15, LEX No. 1841829; judgement of the District Court in Lublin of 14 May 2015, XI Ka 81/15, LEX No. 1933779; judgement of the Appellate Court in Białystok of 9 October 2014, II AKa 202/14, LEX No. 1532570; judgement of the Appellate Court in Katowice of 24 March 2014, II AKa 20/14, LEX No. 1646974; the Supreme Court ruling of 14 February 2013, II KK 120/12, LEX No. 1405555; judgement of the Appellate Court in Lublin

which was the basis for the prejudicial question asked in the case analysed, but also apply to other types of offences in which the feature of an unlawful threat occurs.

Assuming that in case of any form of threat eliciting a threatened person's fear is important for the commission of an offence the features of which include the use of a threat, it is necessary to highlight that this effect does not belong to those features. Eliciting fear is not an effect of a given prohibited act. This is an effect of a threat that, in order to be efficient, must be serious enough to persuade its addressee to give in to a perpetrator's will. Regardless of whether an offence is formal and aims, e.g. at exerting influence (Article 245 CC), or substantive, where the effect is, e.g. leading to sexual intercourse (Article 197 §1 CC), eliciting fear is the element that should occur. Thus, it is important for matching the features of an offence, although it does not belong to its features.

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Supreme Court ruling of 14 September 2017, I KZP 7/17, LEX No. 2352165.

GLOSS ON THE SUPREME COURT RULING OF 14 SEPTEMBER 2017, I KZP 7/17**Summary**

The gloss presents comments on the ruling (issued by the Supreme Court on 14 September 2017, I KZP 7/17, LEX No. 2352165) concerning the issue of interpretation of the phrase “threat referred to in Article 190” contained in Article 115 §12 CC. The author tries to prove that eliciting a threatened person’s justified fear that the threat will be carried out constitutes an element of

a punishable threat as a from of an unlawful one. Presenting her critical attitude to the thesis of the discussed ruling, she expresses her opinion that the phrase "threat referred to in Article 190" covers a perpetrator's conduct as well as a result in the form of eliciting justified fear that the threat will be carried out. The effect, in accordance with the purpose-related interpretation, should be also referred to other types of threats (a threat of causing criminal proceedings and a threat of publicising a message insulting a threatened person or his/her close relation), which may constitute an efficient method of influencing another person's motivational processes only in case they can really influence a threatened person's psyche and persuade him/her to give in to the perpetrator's will. In the face of different opinions of the representatives of the doctrine and case law concerning the issue, the author formulates respective *de lege ferenda* proposals.

Keywords: unlawful threat, punishable threat, justified fear, eliciting fear

GŁOSA DO POSTANOWIENIA SĄDU NAJWYŻSZEGO Z DNIA 14 WRZEŚNIA 2017 R., I KZP 7/17

Streszczenie

Przedmiotem głosowanego postanowienia (wydanego przez Sąd Najwyższy 14 września 2017 r., sygn. I KZP 7/17, LEX nr 2352165) jest problematyka dotycząca rozumienia zwrotu „groźba, o której mowa w art. 190”, zawartego w art. 115 §12 k.k. Autorka podjęła próbę wykazania, że wzbudzenie w zagrożonym uzasadnionej obawy spełnienia groźby stanowi element groźby karalnej jako postaci groźby bezprawnej. Krytycznie odnosząc się do tezy głosowanego postanowienia, wyraziła pogląd, że zwrot „groźba, o której mowa w art. 190”, obejmuje zarówno zachowanie sprawcy, jak i skutek w postaci wzbudzenia uzasadnionej obawy spełnienia groźby. Skutek ten, zgodnie z wykładnią celowościową, należy odnosić także do pozostałych postaci gróźb (groźby spowodowania postępowania karnego i groźby rozgłoszenia wiadomości uwłaczającej czci zagrożonego lub jego osoby najbliższej), które mogą stanowić skuteczny sposób oddziaływania na procesy motywacyjne drugiej osoby tylko wtedy, gdy są w stanie realnie wpłynąć na psychikę zagrożonego i skłonić go do poddania się woli sprawcy. Wobec niejedności poglądów przedstawicieli doktryny i orzecznictwa sądowego, dotyczących przedmiotowego zagadnienia, sformułowano stosowne postulaty *de lege ferenda*.

Słowa kluczowe: groźba bezprawna, groźba karalna, uzasadniona obawa, wzbudzenie obawy

Cytuj jako:

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