Ius Novum
2/2016

CRIME OF COERCION (ARTICLE 191 CC) AFTER AMENDMENTS OF 10 SEPTEMBER 2015

MAREK MOZGAWA
KATARZYNA NAZAR

In the Penal Code of 1932, coercion was included in Article 251 (in Chapter XXXVI – Crimes against liberty). In accordance to this provision, whoever uses force or an illegal threat with the purpose of compelling another person to act, to desist from or to submit to acting in a specified manner shall be subject to the penalty of imprisonment of up to two years or detention of up to two years. The provision of Article 167 CC[1] of 1969 (lied down in Chapter XXII – Crimes against liberty) was given a bit different wording. The provision of Article 191 § 1 CC of 1997 is closer to its counterpart in the PC of 1932 (Article 251) than to Article 167 CC of 1969. Following the example of the Penal Code of 1932, the new legislation criminalised coercion of another person "to act, desist from or submit to acting" in a specified manner, and not "to conduct himself in a specified manner"[2] as it was laid down in the Criminal Code of 1996. Moreover, the scope of criminalisation was narrowed down by the use of a term "violence against a person" instead of a broad term "violence" that was used formerly, and by addition of a type of aggravated crime (if a perpetrator acts in order to extort a debt – Article 191 § 2 CC). The Act of 10 September 2015 (amending the Act – Criminal Code, the Act – Building regulation and the Act – Misdemeanour Procedure Code)[3] adds a new provision: Article 191 § 1a[4], which justifies closer examination of the crime of coercion.

[1] "Whoever uses force or illegal threat with the purpose of compelling another person to conduct himself in a specified manner shall be subject to the penalty of deprivation of liberty for up to two years, limitation of liberty or a fine".

[2] J. Wojciechowska [in:] B. Kunicka-Michalska, J. Wojciechowska, *Przestępstwa przeciwko wolności, wolności sumienia i wyznania, wolności seksualnej i obyczajności oraz czci i nietykalności cielesnej Rozdziały XXIII, XXIV, XXV i XXVII kodeksu karnego. Komentarz [Crimes against liberty, freedom of conscience and belief, right to sexuality and decency as well as dignity and bodily integrity: Chapters 23, 24, 25 and 27 of the Criminal Code. Commentary]*, Warszawa 2001, p. 40.

[3] Journal of Laws of 2015, item 1549.

[4] "Whoever uses violence persistently or hinders another person from using an apartment with the purpose laid down in § 1 is subject to the same penalty."

1. BASIC TYPE UNDER ARTICLE 191 § 1 CC

a. Individual liberty of choosing conduct according to one's will; in other words, individual freedom to choose to act in a certain manner or not, the freedom of choice of conduct, is subject to protection[5]. As L. Peiper rightly noticed (still based on the PC of 1932): "In fact, every man should have absolute freedom to choose what they want to do, what they want to desist from doing and what they want to submit to; this freedom refers to legal steps (e.g. entering into a contract, making their last will etc.) as well as to their physical activities (sitting down, driving, walking, eating etc.); thus, it protects persons, their property (…) and their things, constituting non-pecuniary value (…), or in general this legal and physical state of things in the centre of which an aggrieved person is and which they want or do not want to preserve. This freedom in its entire scope is protected in Article 251 (at present Article 191 CC – authors)"[6].

Attention must be drawn, however, to the fact that the analysed provision does not protect against all limitations to the freedom of conduct, but only those that occurred in case of the use of force or an illegal threat. Other ways of influencing another person (e.g. deceit) are, from the point of view of Article 191 CC, irrelevant although they may be morally wrong or relevant but from the point of view of other provisions[7].

b. Crime of coercion under Article 191 CC is committed by whoever uses violence against another person or an illegal threat in order to compel another person to act, desist from or submit to acting in a specified manner. Thus, the provision defines two ways of a culprit's action that can consist in the use of violence against another person or an illegal threat (or both types of conduct together). Therefore, it is necessary to discuss these concepts more thoroughly.

The first method of culprit's action specified in the provision of Article 191 CC is the use of violence. Although the term has been used in criminal law for years, there are serious differences in its understanding (similarly in relation to the establishment of the relation between this term and an illegal threat)[8]. M. Surkont even notices that there are not many terms that are "equally unclear and difficult to define" as the concept of the use of violence[9]. Usually, definitions mention the use of physical force of physical influence. J. Śliwowski believes that violence is "the use of physical force, it is direct coercion with the use of ravishment"[10]. K. Daszkiewicz-Pluszyńska puts it similarly ("violence consists

---

[5] M. Surkont, *Przestępstwo zmuszania w polskim prawie karnym [Crime of coercion in Polish criminal law]* Gdańsk 1991, p. 48; also see J. Kosonoga [in:] *Kodeks karny. Komentarz [Criminal Code: Commentary]*, R.A. Stefański (ed.), Warszawa 2015, p. 1098.

[6] L. Peiper, *Komentarz do kodeksu karnego, prawa o wykroczeniach i przepisów wprowadzających obie te ustawy [Commentary on the Criminal Code, Misdemeanour Code and secondary legislation for the two acts]*, Kraków 1936, p. 509.

[7] A. Spotowski [in:] I. Andrejew, L. Kubicki, J. Waszczyński (ed.), *System prawa karnego. O przestępstwach w szczególności [Criminal law system: on crimes in particular]*, vol. IV, Part 2, Ossolineum 1989, p 37; also see N. Kłączyńska [in:] *Kodeks karny. Część szczególna. Komentarz [Criminal Code – Special issues: Commentary]*, J. Giezek (ed.), Warszawa 2014, pp. 474–475.

[8] A. Spotowski [in:] *System… [System…]*, p. 40; J. Wojciechowska [in:] B. Kunicka-Michalska, J. Wojciechowska, *Przestępstwa… [Crimes…]*, p. 43.

[9] M. Surkont, *Przestępstwo… [Crime…]*, p. 56.

[10] J. Śliwowski, *Prawo karne [Criminal law]*, Warszawa 1979, p. 385.

in the use of physical force"[11]). In I. Andrejew's opinion, it is connected with "the use of physical force that compels another person to act, desist from acting or submit to something"[12]. According to M. Siewierski, the concept of violence "should be understood in a broad sense, not only as a direct influence on bodily integrity of the aggrieved (e.g. by hitting, pushing etc.), but also as any other physical act having impact on their body or psyche in such a severe way that it subjugates them to a perpetrator's will"[13]. A. Spotowski criticises the above-mentioned ways of interpreting violence and states that the former ones are too general (and because of that, they do not make it possible to establish the limits of violence), and the latter one (proposed by M. Siewierski) does not make it possible to distinguish violence from a threat and, moreover, "assumes the existence of violence only in case of subjugation to a perpetrator's will, while violence also occurs when the compelled person has not submitted to a perpetrator's will"[14]. It is worth highlighting M. Surkont's interesting observations that "the characteristic feature of violence is that by physical influence it aims to subdue the will of the aggrieved and impose certain conduct desired by a perpetrator. It is enough to determine the use of physical force even if it does not have the features of a prohibited act"[15]. However, it can be assumed that T. Hanausek provides the most complete (and the most relevant) definition of violence. According to him, "Violence is such influence with the use of physical means that is to either prevent their wilful decisions to occur or be implemented by obstructing or overcoming the resistance of the compelled persons, or to make these decisions be made in the way desired by a perpetrator by exerting pressure on the compelled person's motivational processes with the use of actually caused hardship[16]. Analysing the above definition, A. Spotowski rightly states that we can find all necessary features of violence in it, i.e. (a) clear meaning that it consists in influence with the use of physical means; (b) an element of overcoming the compelled person's resistance (although sometimes it may be also connected with obstructing such resistance); (c) indication that actually caused hardship can be an element of violence. The last element in connection with the criterion of influencing with the use of physical means makes it possible to distinguish between violence and a threat[17]. In accordance with the above interpretation, violence may take the form of *vis absoluta* as well as *vis compulsiva*[18].

---

[11] K. Daszkiewicz-Paluszyńska, *Groźba w polskim prawie karnym [Threat in Polish criminal law]*, Warszawa 1958, p. 20.

[12] I. Andrejew, *Kodeks karny. Krótki komentarz [Criminal Code: a short commentary]*, Warszawa 1981, p. 141.

[13] M. Siewierski [in:] J. Bafia, K. Mioduski, M. Siewierski, *Kodeks karny, Komentarz [Criminal Code: Commentary]*, Warszawa 1977, p. 427.

[14] A. Spotowski [in:] *System... [System…]*, p. 41.

[15] M. Surkont, Tzw. karalna samowola w ramach przestępstwa zmuszania [So-called punishable wilfulness within the crime of coercion], *Nowe Prawo* 1987, No. 9, pp. 84–85.

[16] T. Hanausek, *Przemoc jako forma działania przestępnego [Violence as a form of criminal act]*, Kraków 1966, p. 65.

[17] A. Spotowski [in:] *System… [System…]*, pp. 41–42.

[18] Inter alia A. Marek, *Prawo karne [criminal law]*, Warszawa 2006, pp. 482–483, M. Filar [in:] M. Filar (ed.), *Kodeks karny. Komentarz [Criminal Code: Commentary]*, Warszawa 2014, p. 1107; J. Kędzierski, O właściwą treść i wykładnię przepisu regulującego przestępstwo zmuszania – art. 191 § 1 k.k. [For appropriate contents and interpretation of the provision regulating the crime of coercion – Article 191 § 1 CC] [in:] *Ius et Lex, Księga jubileuszowa ku czci Profesora Adama Strzembosza [Ius et Lex. Professor Adam Strzeębosz jubilee book]*, A. Dębiński, A. Grześkowiak, K. Wiak (ed.), Lublin

Based on Article 167 CC of 1969, since the term "violence" is used in a general way, it was assumed in jurisprudence that its broad interpretation is justified. Thus, it was assumed that violence might consist not only in direct influence on the compelled but also in indirect influence, i.e. the environment of the compelled (i.e. things surrounding them and people being in close relation with them)[19]. The judicature presented the same stand. Inter alia, the ruling of the Supreme Court of 12 August 1974 indicated that. It stated: "The essence of a criminal act specified in Article 167 § 1 CC consists in (with the exception of a situation when only a threat occurs) a perpetrator's use of violence, i.e. broadly understood physical act aimed directly against the aggrieved, which subdues them to submit to a perpetrator's will and specified conduct, or against a thing possessed by the aggrieved, which limits the freedom of will of the aggrieved in the scope of possession of the thing or the use of it"[20].

Article 191 CC introduces a term "violence against a person" instead of a broad term "violence". It must be noticed that in the provisions of the binding CC, the legislator clearly distinguishes between the terms "violence" (e.g. Article 197 § 1) and "violence against a person" (e.g. Article 153 § 1), which undoubtedly indicates different scopes of the terms. Therefore, based on the Criminal Code of 1997, there is a limitation (in relation to Article 167 § 1 CC of 1969) of the term "violence" as one of the forms of compelling to "violence against a person"[21]. As the Supreme Court noticed in its resolution of 10 December 1998[22], "Violence against a person as a form of compelling – as understood in Article 191 § 1 CC – may only consist in direct physical influence on a person and does not include indirect influence (the so-called indirect violence) consisting in the treatment of things". It seems that in jurisprudence a dominant opinion is that *de lege lata* violence against a person should be interpreted in a narrow way (i.e. as violence targeting a person and not things), although there are doubts whether this limitation of criminalisation is right[23]. The supporters of the narrow interpretation of violence emphasise that *de lege lata* it concerns the use of force directly against a person compelled or other persons if this way a perpetrator wants to exert pressure on the conduct of the aggrieved (e.g. force used against a child may be a way of compelling a mother to conduct in a specified way); the exchange of the door locks in order to prevent somebody from entering a house or cutting off the supply of water or energy does not constitute violence any more; such cases should be solved in the course of civil proceedings[24]. A. Zoll, supporting the

---

2002, p. 137; also the Supreme Court in its resolution of 10 December 1998, I KZP 22/98, *Orzecznictwo Sądu Najwyższego Izba Karna i Wojskowa* 1999, No. 1–2, item 2.

[19] T. Hanausek, *Przemoc… [Violence…]*, p. 139; A. Spotowski [in:] *System… [System…]*, pp. 42–43.

[20] Rw 403/74, *Orzecznictwo Sądu Najwyższego Izba Karna i Wojskowa* 1974, No. 11, item 216. Also compare the ruling of the Appellate Court in Katowice of 26 March 1998, II AKa 8/98, *Orzecznictwo Sądów Apelacyjnych* 1998, No. 11–12, item 66, *Prokuratura i Prawo* – supplement 1998, No. 11–12, item 29.

[21] M. Mozgawa [in:] J. Warylewski (ed.), *System Prawa Karnego, Przestępstwa przeciwko dobrom indywidulanym [Criminal law system: Crimes against publicity rights]*, vol. X, Warszawa 2012, p. 469.

[22] I KZP 22/98, *Orzecznictwo Sądu Najwyższego Izba Karna i Wojskowa* 1999, No. 1–2, item 2.

[23] A. Marek, *Kodeks karny. Komentarz [Criminal Code: Commentary]*, Warszawa 2010, s. 439.

[24] The supporters of a narrow interpretation of violence based on Article 191 CC are inter alia: Compare J. Wojciechowski, *Kodeks karny. Komentarz. Orzecznictwo [Criminal Code: Commentary. Judicial decisions]*, Warszawa 2002, p. 362; A. Marek, *Kodeks… [Criminal Code…]*, p. 439; O. Gór-

narrow interpretation of violence in general, notices however that the regulation adopted in Article 191 § 1 CC does not exclude penalisation of the use of violence directly against a thing if the use of force against a thing takes the form of a punishable threat (e.g. a perpetrator damages a set of fine china in order to compel its owner to return a debt[25]). Some authors, despite the change of the provision, state that there are no grounds for exclusion of violence against things from the scope of the provision, e.g. M. Filar[26], K. Grzegorczyk[27], R. Góral[28], M. Wysocki[29], J. Wyrembak[30]. These authors' opinions are perhaps rational, however, one cannot lose sight of what is obvious. The legislator (who, as we assume, is a "rational legislator") consciously changed the term "violence" into "violence against a person" and there is no doubt that the two concepts are not the same (otherwise their differentiation based on the Criminal Code would be groundless). It would be difficult to refute a statement that the term "violence" has a broader meaning than "violence against a person'. Supporting the narrow understanding of violence based on Article 191 CC, it is necessary to notice that the systemic and historic interpretation is an argument for it[31]. It is also worth emphasising that the reasons for the Criminal Code of 1997 clearly indicated: "The Code stipulates that it is violence against a person in order to exclude its application instead of the provisions of the civil law"[32]. The fact that the adopted solution (narrowing the scope of violence only to violence against a person) is, as it seems, wrong cannot lead to interpretation *contra legem*. It must also be underlined that the Constitutional Tribunal (in its judgement SK/8/00 of 9 October 2001) stated the narrowing of the scope of application of Article 191 § 1 CC is in compliance with

---

niok, *Nowa kodyfikacja karna. Krótkie komentarze [New criminal codification: Short commentaries]*, Warszawa 1999, vol. 7, p. 59; M. Mozgawa [in:] M. Mozgawa (ed.), *Kodeks karny. Komentarz [Criminal Code: Commentary]*, Warszawa 2015, p. 512; L. Paprzycki, Przemoc przemocy nierówna [Violence may be of different types], *Rzeczpospolita* of 14 April 1999; W. Cieślak, Glosa a gloss of approval on the resolution of the Supreme Court of 10 December 1998, I KZP 22/98, *Przegląd Sądowy* 1999, No. 10, p. 141 and subsequent ones.

[25] A. Zoll [in:] A. Zoll (ed.), *Kodeks karny. Część szczególna. Komentarz, t. II, Komentarz do art. 117–277 k.k. [Criminal Code – Special issues: Commentary, Vol. II, Commentary on Articles 117–277 CC]*, Kraków 2013, p. 613; according to M. Filar: "Because when a perpetrator wanting to compel another person to conduct himself in a specified manner breaks their set of fine china, he commits a crime to their detriment (it has already been instituted) and not only threatens he is going to commit it". M. Filar, Critical gloss on the resolution of the Supreme Court of 10 December 1998, I KZP 22/98, *Państwo i Prawo* 1999, No. 8, p. 116.

[26] M. Filar, Critical gloss on the resolution of the Supreme Court of 10 December 1998, I KZP 22/98, *Państwo i Prawo* 1999, No. 8, p. 115.

[27] K. Grzegorczyk, Critical gloss on the resolution of the Supreme Court of 10 December 1998, I KZP 22/98, *Wojskowy Przegląd Prawniczy* 1999, No. 1–2, pp. 161–162.

[28] R. Góral, *Kodeks karny. Praktyczny komentarz [Criminal Code: Practical commentary]*, Warszawa 2005, p. 303.

[29] M. Wysocki, Przemoc wobec osoby w rozumieniu art. 191 k.k. [Violence against a person in accordance with Article 191 CC], *Prokuratura i Prawo* 1999, No. 3, p. 64; *ibid*., Critical gloss on the resolution of the Supreme Court of 10 December 998, I KZP 22/98, *Orzecznictwo Sądów Polskich* 1999, No. 4, pp. 169–171.

[30] J. Wyrembak, Critical gloss on the resolution of the Supreme Court of 10 December 1998, I KZP 22/98, *Przegląd Sądowy* 1999, No. 7–8, p. 142; *ibid*., Szkolna argumentacja nie przekonuje [School arguments are not convincing], *Rzeczpospolita*, of 6 May 1999.

[31] M. Mozgawa [in:] *System… [Criminal law system…]*, p. 472.

[32] *Nowe kodeksy karne z 1997 r. z uzasadnieniami [New Criminal Codes of 1997 with reasons]*, Warszawa 1997, p. 195.

Article 30 and Article 2 of the Constitution[33]. *De lege lata* imposing compulsion on a person by affecting things is unpunished unless it has the statutory features of other crimes (e.g. damage to property – article 288 CC) or misdemeanours (e.g. unauthorised use of someone else's property – Article 127 Misdemeanour Code, damage to property worth less than one quarter of the minimum salary). In case of a threat of damaging, impairing or making something unsuitable for use (obviously under the condition that it is worth more than one quarter of the minimum salary) we deal with a threat of committing a crime (within the scope of an illegal threat), which implicates liability under Article 190 CC[34].

The second method of a perpetrator's acting indicated in the provision of Article 191 CC is a threat. An illegal threat (Article 115 § 12 CC) includes a punishable threat and a threat of causing a criminal proceeding or a threat of disseminating information dishonouring the aggrieved or their next of kin. Within an illegal threat, a threat of committing a crime (Article 190 § 1 CC) is especially significant. It is laid down in Article 115 § 12 CC as the most serious one among other types of threats. It constitutes a crime against liberty while other types of an illegal threat are activities aiming at achieving a particular objective at the time of committing various crimes, e.g. during coercion or rape. The Criminal Code that is in force at present, in Article 190, specifies "a threat of committing a crime". Thus, it is not important for the existence of a punishable threat whether a perpetrator announces the commission of a felony or a misdemeanour. The phrase "threatens to commit a crime" classifies an act as an illegal threat as defined in Article 115 § 12 CC. Its essence is an announcement of the commission of a crime (an illegal and punishable act), thus an announcement of the commission of a felony or a misdemeanour against the threatened or their next of kin. A threat is influence on the psyche of another person by an announcement of the wrong that is going to happen to the threatened from the threatening party or another person whose conduct is influenced by the threatening party. Usually, the wrong announced to the threatened person is to happen in case they desist from the perpetrator's will, but there is also a possibility of a threat that is not connected with any demand and is only intended to elicit a state of fear of a threat institution. The persons threatened must be unambiguously specified although a threat does not have to be made in their presence. A threat does not have to be immediately carried out. It may constitute a future danger. For the existence of a crime, it is not necessary for a perpetrator to undertake any steps to carry out a threat, or to have the real intention of carrying it out or an actual possibility of carrying it out as well as what the aim of a threat is[35]. What is only significant is the subjective perception of a threat by the aggrieved, i.e. whether it actually evoked the feeling of fear that it will be carried out, whether it caused the feeling of fear or danger[36]. It is possible to threaten, i.e. to announce that one is going to get something bad to happen, in different ways. The Criminal Code that is in force in Poland at present does not introduce any limitations to the form of a threat. It is

---

[33] *Orzeczenia Trybunału Konstytucyjnego* 2001, No. 7, item 211 (with a gloss of approval by A.R. Światłowski, *Prokuratura i Prawo* 2002, No. 5, item 75).

[34] A. Marek, *Kodeks… [Criminal Code…]*, s. 439.

[35] K. Daszkiewicz-Paluszyńska, Groźba… [Threat…], s. 137–138; also see M. Filar [in:] M. Filar (ed.), *Kodeks…* [*Criminal Code…*], p. 1099.

[36] See the ruling of the Supreme Court of 27 April 1990, IV KR 69/90, *Przegląd Sądowy* 1993, no. 5.

important that the addressees understand that they are going to suffer hardship. In case of a punishable threat, they should realise that a crime is to be committed to their detriment or the detriment of their next of kin. A threat may be explicit or implicit. The form of a threat is sometimes determined by circumstances of an event, especially personal features of the threatening party and an addressee of a threat[37]. The crime of a punishable threat is a crime of immediate effect where the effect is causing a fear that a threat will be carried out. Carrying out a threat, i.e. the commission of the crime announced, cannot be treated as an effect. For the existence of a crime under Article 190 CC, carrying out a threat is not significant. Neither can one agree with the opinion that the crime is committed when a threat is issued[38]. A crime of a punishable threat has been specified in the Polish criminal law as a common and intentional crime that may be committed with a direct intention. Another form of intention, i.e. potential intent, raises controversies[39].

An announcement of causing a criminal proceeding, unlike a punishable threat, does not occur as a crime in itself and undertaking steps causing a criminal proceeding by a person who has learned about a commission of a crime is not only a permitted act but in accordance with Article 304 CPC, reporting a crime is a civic duty. A threat of this kind would remain unpunished if its perpetrator has only made it or even carried it out. But the knowledge of a crime cannot be used to compel other persons to conduct themselves in a specified manner[40]. A punishable threat of causing a criminal proceeding constitutes a means of coercion[41]. By "influencing, exerting pressure on the will of the aggrieved, a perpetrator wants to achieve desired conduct, extorts (…) submission to his will"[42]. Truthfulness or untruthfulness of data being grounds for a threat and the conscience of this untruthfulness are not significant for the existence of coercion. Illegal threat maintains this character both when it is based on invented facts and when these are real facts (when

---

37 Compare W. Makowski, *Prawo karne. O przestępstwach w szczególności. Wykład porównawczy prawa karnego austrjackiego, niemieckiego I rosyjskiego, obowiązującego w Polsce [Criminal law: on crimes in particular. Comparative lecture on Austrian, German and Russian criminal law binding in Poland]*, Warszawa 1924, p. 228.

38 M. Siewierski [in:] J. Bafia, K. Mioduski, M. Siewierski, *Kodeks… [Criminal Code…]*, p. 426; this opinion is expressed by inter alia J. Wojciechowski, *Kodeks karny… [Criminal Code…]*, p. 360 and R. Góral, who stated that the consequence of this crime is invoking a fear of a threat fulfilment and the commitment takes place with its issue; see *Ibid*., *Kodeks… [Criminal Code…]*, p. 302.

39 There are a number of supporters of a direct intention: S. Goczałkowski [in:] W. Makowski (ed.), *Encyklopedja podręczna prawa karnego [Pocket encyclopaedia of criminal law]*, vol. II, Warszawa 1934–1936, p. 575; M. Siewierski [in:] J. Bafia, K. Mioduski, M. Siewierski, *Kodeks karny... [Criminal Code…]*, p. 426; W. Świda, *Prawo karne [Criminal law]*, Warszawa 1978, p. 519; D. Gajdus [in:] A. Marek (ed.), *Prawo karne. Zagadnienia teorii i praktyki [Criminal law: Theoretical and practical issues]*, Warszawa 1986, p. 343; A. Marek, *Kodeks… [Crinminal Code…]*, p. 437; A. Zoll [in:] A. Zoll (ed.), *Kodeks… [Criminal Code…]*, p. 603. The following authors present a different opinion: O. Górniok [in:] O. Górniok, S. Hoc, M. Kalitowski, S.M. Przyjemski, Z. Sienkiewicz, J. Szumski, T. Tyszkiewicz, A. Wąsek, *Kodeks karny. Komentarz [Criminal Code: Commentary]*, vol. I, Gdańsk 2005, p. 186; similarly R. Góral, *Kodeks… [Criminal Code…]*, p. 304; A. Spotowski [in:] *System… [Criminal law system…]*, p. 35; K. Daszkiewicz-Paluszyńska, *Groźba... [Threat…]*, p. 147 and subsequent ones.

40 For more: K. Nazar-Gutowska, *Groźba bezprawna w polskim prawie karnym [Illegal threat in Polish criminal law]*, Warszawa 2012, p. 73 and subsequent ones.

41 M. Surkont, *Przestępstwo… [Crime…]*, p. 96 and subsequent ones.

42 Ruling of the Cupreme Court of 12 August 1974, Rw 403/74, *Orzecznictwo Sądu Najwyższegi Izba Karna i Wojskowa* 1974, no. 11, item 216.

the threatened person really committed a crime, which a perpetrator threatens to reveal)[43]. A threat based on invented facts, however, can constitute an efficient means of coercion.

A threat of causing a criminal proceeding does not only refer to a threat of causing a criminal proceeding in case of a crime but also a proceeding in case of a fiscal crime[44]. A threat does not refer, however, to a proceeding in case of a misdemeanour or fiscal misdemeanour[45] nor a proceeding in cases against minors.

Still under the Criminal Code of 1969, it was rightly raised that a threat of causing a criminal proceeding is an announcement of initiating a criminal proceeding against the threat addressee and his next of kin[46]. The opinion remained in force at present[47]. A threat of causing a criminal proceeding covers an announcement of reporting the commission of a crime prosecuted ex officio as well as an announcement of filing a motion to initiate private prosecution or an announcement of filing a motion to prosecute. However, an announcement of taking steps in connection with the current proceeding, e.g. an announcement of an intention to testify against someone, should not be treated as a threat of causing a criminal proceeding.

A threat of causing a criminal proceeding that aims only to protect a legal good infringed in the course of a crime by a person to whom it is addressed is excluded from the scope of a punishable threat under the statute in force.

Another form of an illegal threat is a threat of disseminating information dishonouring the aggrieved or their next of kin. A threat of disseminating information dishonouring, if it does not aim to compel someone, does not constitute a crime. In this kind of act, a perpetrator demands that the threatened persons conduct themselves in a specified manner, thus a perpetrator influences the psyche of the compelled persons. The demand is based on the intent to use the possessed information about the aggrieved or their next of kin. Therefore, a person who coerces another person does not create a situation in which the aggrieved person must conduct himself in a specified manner, but finds such a situation and makes use of it[48]. The contents of the analysed threat are to refer to

---

[43] M. Surkont, *Przestępstwo… [Crime…]*, p. 97.

[44] A. Wąsek [in:] O. Górniok, S. Hoc, M. Kalitowski, S.M. Przyjemski, Z. Sienkiewicz, J. Szumski, T. Tyszkiewicz, A. Wąsek, *Kodeks karny… [Criminal Code…]*, vol. I, p. 843; similarly J. Majewski [in:] A. Zoll (ed.), *Kodeks karny. Część ogólna. Komentarz [Criminal Code – General issues: Commentary]*, vol. 1, Kraków 2004, p. 1448. In the ruling of 5 February 1935, the Supreme Court decided that an illegal threat will "be e.g. compelling the aggrieved by an announcement of an intention to report an alleged infringement of tax law", ruling of the Supreme Court of 5 February 1935, I K 1177/34, *Orzecznictwo Sądu Najwyższego* (K) 1935, no. 9, item 380.

[45] W. Świda, *Prawo… [Criminal Law]*, p. 520 i A. Spotowski [in:] *System… [Criminal law system…]*, p. 46, also compare different opinions: K. Daszkiewicz-Paluszyńska, Groźba… *[Threat…]*, p. 103.

[46] Compare W. Wolter [in:] I. Andrejew, W. Świda, W. Wolter, *Kodeks karny z komentarzem [Criminal Code with a commentary]*, Warszawa 1973, p. 380; also A. Zoll [in:] K. Buchała (ed.), *Komentarz do kodeksu karnego. Część ogólna [Commentary on Criminal Code: General issues]*, Warszawa 1990, p. 406.

[47] See A. Wąsek [in:] O. Górniok, S. Hoc, M. Kalitowski, S.M. Przyjemski, Z. Sienkiewicz, J. Szumski, T. Tyszkiewicz, A. Wąsek, *Kodeks karny... [Criminal Code…]*, vol. I, p. 843.

[48] For more on this topic: M. Surkont, Zapowiedź rozgłoszenia wiadomości uwłaczającej czci jako postać groźby bezprawnej [Suggestion of disseminating information insulting dignity as a form of lawless threat], *Nowe Prawo* 1989, no. 5–6, pp. 101–113.

dishonouring "information". It is an expression that is broader than in case of defamation where concepts of "conduct" and "features" are used. According to M. Surkont, the term "information" used in the definition of an illegal threat seems to be more adequate. This is because there are circumstances which cannot be treated as the conduct of the aggrieved or classified as features but are undoubtedly dishonouring, e.g. dissemination of information that a person has been turned out or slapped across the face. In this author's opinion, a term "information" seems to practically exhaust the scope of the contents of information that can insult[49]. Disseminated information is to dishonour, thus it is information that discredits, impairs a good reputation of the aggrieved. A perpetrator of the discussed form of a threat menaces reputation, authority and moral values of the threatened. It may consist in ridiculing, accusing someone of a shameful act or compromising someone. All this is to influence the aggrieved person's will, steer his conduct in a desired direction[50]. The dishonouring information a perpetrator threatens to disseminate may be true or false. The person who is threatened as well as his next of kin is undoubtedly aggrieved. There is only an open question whether it concerns only the next of kin who are alive or also those who are dead[51]. A threat maintains its illegal character regardless of whether a perpetrator intends to carry it out.

In accordance with the wording of the provision of article 191 § 1 CC, a perpetrator (using the above-mentioned means, i.e. violence or a threat) must act with the purpose of compelling another person to act in a specified manner, to desist form acting or submit to that. The subject to this act is another person who a perpetrator compels to conduct himself in a specified manner; in case of violence, the subject to influence may also be a person whose conduct is to influence the decision of the compelled. Obviously, the term "another person" refers only to a natural person, and coercion of a collective entity may lead to classification of other crimes (e.g. Article 128 §§ 3 CC, Article 232 CC)[52]. Using the word "to act", we mean a situation in which the aggrieved wants to remain passive (does not will to be active, i.e. act) and a perpetrator compels him to be active (act), which is a legal or just an actual act[53]. As far as other forms are concerned, i.e. desisting from and submitting to, they consist in passive conduct of the aggrieved. As L. Peiper emphasised, "the difference, however, lies in that when desisting the aggrieved does not do anything and as a result nothing happens in this sphere, when submitting the aggrieved also does not do anything or what is to happen is something that the aggrieved does not want and probably would not peacefully submit to if he were not under a perpetrator's coercion. What happens in case of submission by the aggrieved, may happen as a result of a perpetrator's or another person's will or

---

[49] M. Surkont, *Przestępstwo... [Crime…]*, pp. 111–112.

[50] *Ibid*., p. 112.

[51] According to M. Surkont "although termination of physical personality breaks legal protection of the dead, but in many cases dissemination of insulting information may impair the reputation of the alive next of kin. This can be the aim of the person compelling", *Ibid*., *Przestępstwo… [Crime…]*, p. 114.

[52] L. Pepier, *Komentarz… [Commentary…]*, p. 510; A. Zoll [in:] A. Zoll (ed.), *Kodeks… [Criminal Code…]*, p. 615. Also compare the reasons for the ruling of the Appellate Court in Katowice of 12 January 2006, II Aka 448/05, *Orzecznictwo Sądów Apelacyjnych* 2007, No. 7, item 32, *Krakowskie Zeszyty Sądowe* 2007, No. 7–8, item 82.

[53] L. Pepier, *Komentarz… [Commentary...]*, p. 510.

because of other reasons independent of anyone's will (e.g. a perpetrator compels the aggrieved to submit to the natural flow of liquid onto his land"[54].

From the point of view of the statutory features of the crime of coercion under Article 191 § 1 CC, it is not important whether the compelled person was obliged to act in a specified manner, desist from it or submit to it. Obviously, unlawfulness of the institution of the features of this type of a prohibited act may be subject to exemption in case of a countertype occurrence[55]. It seems that there may be a state of necessity, self-defence, scolding minors or self-help. Action within someone's powers or professional duties may be especially important within this subject matter; there are numerous cases of legalised use of violence – usually in the form of direct coercive measures (e.g. the use of coercive measures by the Police: Articles 16–17 of Act on the Police of 6 April 1990[56], by the Internal Security Agency: Articles 25–26 ISA and IA[57] of 24 May 2002, by the Central Anticorruption Bureau: Articles 15–16 CAB of 9 June 2006[58]). Coercion takes place many times in case of authorisation to deprive a person of liberty.

Based on the Penal Code of 1932, it was debatable when a crime of coercion may be recognised as committed (which resulted from the legislator's use of a phrase "whoever … compels another person" in Article 251). Some pointed out that it occurs at the moment of the use of violence or a threat and not at the moment of compelling to act, desist from or submit to acting because the provision protects liberty and the term "compels" cannot be interpreted as "leads to" but as synonymous to "uses violence or a threat"[59]. Others, on the other hand, presented a stand that a crime under Article 251 is committed only at the time of compelling (to act, desist from or submit to acting), and not at the moment of using measures laid down in the statute because of the fact that the legislator did not specify clearly that it refers only to the use of violence or a threat[60]. As per the Criminal Code of 1969, the dispute did not take place because the legislator used an unambiguous phrase "whoever uses violence, a threat…" (and per Article 191 CC of 1997, a phrase "whoever makes use of violence, a threat…"). Such approach (both "uses" and "makes use") leads to a conclusion that a crime of coercion is committed at the moment of using violence or a threat, and the fact whether the aggrieved conducted himself following a perpetrator's will is not included in the scope of the statutory features of the crime of coercion[61]. *De lege lata* coercion is undoubtedly a formal crime[62].

---

[54] *Ibid*., p. 510.

[55] A. Zoll [in:] A. Zoll (ed.), *Kodeks… [Criminal Code…]*, p. 611.

[56] Uniform text, Journal of Laws of 2015, item 355 of 16 March 2015.

[57] Uniform text, Journal of Laws of 2015, item 1929 of 20 November 2015.

[58] Uniform text, Journal of Laws of 2014, item 1411 of 17 November 2014.

[59] J. Makarewicz, *Kodeks karny z komentarzem [Criminal Code with a commentary]*, Lwów 1938, p. 562. As L. Peiper writes, "A crime is committed just by compelling (not by having compelled) someone; it does not make a difference whether an effect has been obtained, i.e. whether the aggrieved submitted to the perpetrator's will. icy, L. Peiper, *Komentarz… [Commentary…]*, p. 510.

[60] S. Glaser, A. Mogilnicki, *Kodeks karny – komentarz; prawo o wykroczeniach, przepisy wprowadzające, tezy z orzeczeń Sądu Najwyższego, wyciągi z motywów ustawodawczych [Criminal Code – Commentary: misdemeanour law, regulations on the implementation of the rulings of the Supreme Court, legislative reasons]*, Warszawa 1934, p. 809.

[61] A. Spotowski [in:] *System... [Criminal law system…]*, p. 50.

[62] J. Wojciechowska [in:] B. Kunicka-Michalska, J. Wojciechowska, *Przestępstwa… [Crimes…]*, p. 42; M. Mozgawa [in:] M. Mozgawa (ed.), *Kodeks… [Criminal Code…]*, p. 513.

c. A crime under article 191 § 1 CC is a common one. Its objective aspect does not raise any doubts. While per the Penal Code of 1932 there were doubts about the form of objective aspect of the existence of this crime, in case of Article 167 CC of 1969 as well as Article 191 of the Criminal Code that is in force at present there are no doubts that we deal with an intentional crime (thus, there is only a direct intention). The condition for liability is a perpetrator's action in order to compel another person to act, desist from acting or submit to acting; violence or a threat used by a perpetrator is just a means to achieve the intended objective[63]. In case a perpetrator has used violence or a threat without such an objective, he may be liable for the commission of another crime, e.g. under Article 217 CC (abuse of bodily integrity)[64].

2. BASIC TYPE UNDER ARTICLE 191 § 1A CC

On 7 January 2016, a ne provision of Article 191 § 1a was introduced to the Criminal Code, which criminalises the conduct of a perpetrator who with the purpose of achieving the aim specified in § 1 makes use of violence of another type persistently or in the way that substantially hinders another person from using an occupied apartment[65].

The prohibited act laid down in Article 191 § 1a consists in the fact that a perpetrator should:

a) act in order to achieve the aim specified in § 1,
b) use violence of another type (than specified in § 1),
c) act persistently or in a way that substantially hinders another person from using an occupied apartment.

Re. a) As it was mentioned earlier, in accordance with Article 191 § 1 CC, whoever uses violence against another person or an illegal threat with the purpose of compelling another person to act in a specified manner, desist from acting or submit to acting is liable under that provision. Thus, a perpetrator of a crime under Article 191 § 1a must also act with the purpose of compelling another person to specified conduct (to act or desist from acting) or submission.

Re. b) For the existence of a crime under Article 191 § 1a CC, it is necessary to use violence of another type than that specified in § 1. Therefore, as § 1 clearly indicates that it must only be violence against a person, in case of § 2 this type of violence is

---

[63] A. Zoll [in:] A. Zoll (ed.), *Kodeks… [Criminal Code…]*, p. 616.

[64] J. Wojciechowska [in:] B. Kunicka-Michalska, J. Wojciechowska, *Przestępstwa… [Crimes…]*, p. 50.

[65] As the reasons for the Bill suggest, "There is commonly unpunished conduct such as cutting off electricity or central heating, supply of water, seizure of car keys, removing windows, bricking up the entrance to an apartment or locking rooms. Apartment owners who want to compel lodgers to leave often decide to flood the flats, devastate the building, pollute or destroy shared parts, e.g. by removing doors and windows. Article 191 § 1 CC results in helplessness of people against whom such actions are undertaken and inability to request the Police to undertake steps because the features specifying the action causing the crime of coercion to specified conduct do not cover this type of conduct (unlike the former regulation of article 167 of the Criminal Code of 1969)".

excluded and it refers only to the so-called violence against a thing (more precisely, influencing a person by dealing with a thing), i.e. the so-called indirect violence.

Re. c) A perpetrator must act persistently or in a way that substantially hinders another person from using an occupied apartment[66].

It is not simple to determine what "persistently" means. Although this feature occurs also in other provisions of the Criminal Code (Articles 209, 190a), also based on them it raises serious interpretational doubts. Obviously, one may quote a series of the Supreme Court judgements in this matter but they do not solve the problem. The judicature assumes that persistence means long lasting, repetitive conduct with the features of ill will and tenacity[67]. The judgement of the Supreme Court of 5 January 2001 states that persistence is antinomy of single or even multiple instances of a perpetrator's conduct (V KKN504/00)[68]. This shows how the judicature treats the issue of persistence, which in practice means only problems, i.e. as a rule even multiple instances of a perpetrator's conduct will not be sufficient and will meet with permanent refusal to initiate a proceeding (or discontinuance of a proceeding), as happens in case of Article 190a CC because of a lack of institution of the feature of persistence.

The situation is similar in connection with the feature of the way "substantially hindering" another person from using an occupied apartment. To hinder means "to create difficulties, obstacles, to make it difficult"[69] (but not to make it impossible). This manner must not only be (more or less) hindering but also substantially (to a big extent) hindering. It seems that the assessment whether the manner is or is not substantially hindering may be made only *in concerto* (in the reality of the given event)[70]. Most probably, the legislator wanted to make these types of conduct concerning hindering another person using an apartment that are not really substantial (i.e. insignificant) exempt from the scope of the provision application. One may wonder whether the solution was necessary because those insignificant difficulties would be examined with Article 1 § 2 CC in view (low level of social impact) [71].

What deserves attention is the fact that the legislator limited the subjective scope of the provision only and exclusively to an apartment. This narrowing is groundless because commercial premises should also be taken into account (there are many such premises in apartment blocks and their value is sometimes higher than the value of

---

66 This means that there are various correlations between those situations possible: a perpetrator's persistent action that does not substantially hinder another person from using an occupied apartment; a perpetrator's persistent action that hinders another person from using an apartment in a moderate way; a perpetrator's persistent action that does not hinder another person from using an occupied apartment; a perpetrator's persistent action that at the same time substantially hinders another person from using an occupied apartment; a perpetrator's action that is not persistent (e.g. undertaken once) but at the same time substantially hindering another person from using an occupied apartment.

67 Ruling of the Supreme Court of 27 February 1996, II KRN 200/95, *Orzecznicwo Prokuratury i Prawa*, no. 10; Ruling of the Appellate Court in Kraków of 13 December 2000, II AKz 289/00, *Krakowskie Zeszyty Sadowe* 2000, vol. 12, item 28.

68 *Orzecznictwo Sądu Najwyższego Izba Karna i Wojskowa* 2001, no. 7–8, item 57.

69 http://sjp.pl/utrudniaj%C4%85cy

70 Also see A. Michalska-Warias [in:] T. Bojarski (ed.), *Kodeks karny. Komentarz [Criminal Code: Commentary]*, Warszawa 2015, p. 542.

71 M. Mozgawa [in:] M. Mozgawa (ed.), *Kodeks… [Criminal Code…]*, p. 508.

apartments). A question also arises about the objective scope of the new type of crime and whom it is against. A "clear" model that the legislator certainly had in mind was a "bad" landlord and the aggrieved lodger. It may happen and surely often does. But in fact the scope of application of that provision is much wider. It can carry liability of e.g. the owner of an apartment in a block or even a lodger who, e.g. wants to compel a neighbour to leave (or influence their conduct, maybe in an objectively appropriate way) and uses this type of indirect violence against them (e.g. by cutting off the supply of energy with the use of the main electrical switch that is in the staircase). However, an owner (a lodger) of an apartment in a block (unfortunately) will not be liable under the provision if they undertake the same action against the owner (or e.g. a leaseholder) of neighbouring commercial premises whose business (although absolutely legal and objectively not a nuisance) subjectively disturbs them.

The crime under Article 191 § 1a is common, formal and may be committed only with direct intention (namely, *dolus coloratus*).

3. AGGRAVATED TYPE

In comparison with the Criminal Code of 1997, the aggravated type of the crime of coercion (Article 191 § 2 CC) is a novelty. It occurs when a perpetrator using violence or an illegal threat acts with the purpose of extorting the return of a debt (which carries a penalty of imprisonment for a period of three months to five years). As A. Marek emphasises, it is a new type of crime, which "is a response to these types of criminal conduct and often its very brutal forms that take place in practice"[72]. The provision of Article 191 § 2 specifies the aggravated type of coercion in relation to the provision of article 191 § 1 (and the relation between the two provisions is the relation of mutual exclusion). The crimes differ mainly because of the features characteristic of the objective aspect: in § 2 the scope of punishable conduct is limited only to action with the purpose of extorting the return of a debt"[73].

Based on the analysed provision, two basic issues occur: the first one concerns understanding the term "debt", the second the placement of the feature in the provision. As far as the definition of a debt is concerned, there is no doubt the meaning is the same as in the civil law. The definition of a debt is one of the most important concepts of the law of obligations and a rational legislator could not differentiate this term for the needs of different branches of law. If there were such an intention, it would have to be clearly specified in a statute. Thus, in accordance with the civil law, a debt means a creditor is entitled to demand a return of it based on an obligation relation between a creditor and a debtor that is composed of one or many claims or rights"[74]. It should

---

[72] A. Marek, *Kodeks… [Criminal Code…]*, p. 440.

[73] P. Kardas, Zasada ochrony wolności a odpowiedzialność za wymuszenie zwrotu wierzytelności [Principle of protection of liberty vs. liability for extortion of a debt], [in:] *Prawnokarne aspekty wolności [Criminal law aspects of freedom]*, M. Mozgawa (ed.), Wolters Kluwer – Zakamycze 2006, pp. 157–158.

[74] For more on this topic compare Z. Radwański, A. Olejniczak, *Zobowiązania – część ogólna [Liabilities: General issues]*, Warszawa 2010, p. 11 and subsequent ones.

be given the same meaning under article 191 CC (as well as per the whole criminal law). It is worth mentioning, however, that the different understanding of a debt in the judgement of 5 March 2003 in which the Supreme Court stated that "it would be wrong to assume that a term "debt", constituting a feature of an aggravated crime of coercion, has strictly the same meaning as in the light of civil law."[75] It is difficult to approve of the arguments presented by the Supreme Court indicating the difficulties connected with civil law approach to the concept (necessity to establish whether the extorted debt was one in accordance with civil law, whether it really existed, in what amount and who the debtor is, which might cause the change a criminal proceeding into a civil proceeding, sometimes lengthy, without a real reason for that). It is a fact that the above-mentioned findings are not the easiest to establish but establishing them is a court's duty (irrespective of whether it is easy or difficult to do). Adopting an interpretation that is in fact to lead to make the work of criminal courts easier is inadmissible (and is in conflict with the provision).

The second problem that must be solved in order to properly carry out a dogmatic analysis of the provision seems to be whether the feature "debt" is classified as the subjective aspect of a crime or a feature constituting an objective aspect of a crime under Article 191 § 2 CC. Part of jurisprudence rightly classifies a "debt" as a feature of the subjective aspect (inter alia A. Marek, J. Wojciechowska, B. Michalski, O. Górniok, A. Zoll); others believe that it is an objective aspect of a crime (P. Kardas[76]). According to A. Marek, the condition for penalisation under Article 191 § 2 is that a debt really exists; it is not enough that a perpetrator claims the victim owes him a debt. Otherwise a perpetrator's act has the statutory features of extortion (Article 282 CC)[77]. A Wojciechowska puts it similarly, however, she believes that in case the benefit were independent, it should be classified a robbery (Article 280 CC[78]). According to O. Górniok, it is extortion[79]. B. Michalski thinks that per Article 191 § 2 a perpetrator compels the aggrieved to return an actual debt and in case of a misdemeanour under Article 282 there is no obligation relation whatsoever between a perpetrator and a victim (and a perpetrator's action is illegal from the very beginning)[80]. According to A. Zoll, the fact that a debt exists is a subjective element (although certainly for the institution of features of Article 191 § 2 CC it is necessary that an objective element, i.e. a purpose to recover a debt, also exists). Appellate courts judgements presented the same opinion (that a debt must really exist and thus, it constitutes an element of the subjective aspect of the aggravated type of coercion).[81] The Supreme Court presented

---

[75] III KKN 195/01, *Orzecznictwo Sądu Najwyższego Izba Karna i Wojskowa* 2003, No. 5–6, item 55.

[76] P. Kardas, Zasada… [Principle…], p. 141 and subsequent ones.

[77] A. Marek, Kodeks… [Criminal Code…], p. 440.

[78] J. Wojciechowska [in:] A. Wąsek (ed.), *Kodeks karny. Część szczególna [Criminal Code: Special issues]*, vol. I, Warszawa 2004, p. 702.

[79] O. Górniok [in:] O. Górniok, S. Hoc, M. Kalitowski, S. M. Przyjemski, Z. Sienkiewicz, J. Szumski, L. Tyszkiewicz, A. Wąsek, *Kodeks karny. Komentarz Criminal Code: Commentary]*, vol. II, Gdańsk 2005, p. 191.

[80] B. Michalski [in:] A. Wąsek (ed.), *Kodeks karny. Część szczególna [Criminal Code: Special issues]*, vol. II, Warszawa 2006, p. 952.

[81] Compare e.g. the ruling of the Appellate Court in Kraków of 12 March 2003, II Aka 39/03, *Prokutatura i Prawo* – supplement 2003, No. 10, item 12, *Krakowskie Zeszyty Sądowe* 2003, No.

a different stand in the subject matter in its ruling of 5 March 2003[82] in which it stated: "For the exhaustion of the features of a crime of using violence or an illegal threat with the purpose of extorting the return of a debt (as laid down in Article 191 § 2 CC), it is sufficient that a perpetrator is convinced that a debt really exists and a person against whom he uses means specified in Article 191 § 1 CC, even indirectly, is a person who is capable (has a possibility, a duty etc.) of providing the benefit, i.e. giving the things, returning money, paying the interest etc." In the successive rulings (of 8 December 2004[83] and 5 December 2008[84]), the Supreme Court upheld its stand expressed in its ruling of 5 March 2003. The result of such an approach to the issue is the Supreme Court's conviction that a perpetrator's mistaken belief that a debt exists is not important for the legal assessment of a perpetrator's act because "A mistake as understood in Article 28 CC as a circumstance constituting a feature of a prohibited act may refer only to subjective features. The objective features cannot be included in the scope of a mistake as they are only typical of a perpetrator's psyche. Due to that they cannot be confronted with reality because as such they constitute that reality (…)"[85].

The aggravated type of coercion (Article 191 § 2) is a common and formal crime (committed at the moment of the use of violence or an illegal threat). The perpetrator can be not only a creditor but also a third person using violence or a threat with the purpose of recovering a debt owed to a third person who commissioned that debt recovery[86]. It is an intentional crime and as such may be committed only with a direct intention (because a perpetrator acts "with the purpose"). It is worth emphasising, however, that the purpose of a perpetrator's action makes it possible to differentiate the types of prohibited acts specified in Article 191 § 1 and § 2 CC. Based on § 1, it can be any type of acting, desisting from acting or submitting to acting to which a perpetrator wants to compel the aggrieved with the exception of the return of a debt. If the return of a debt is involved (i.e. a perpetrator, using violence against a person or a threat, acts with the purpose of its extortion) then it must be classified under Article 191 § 2 CC[87].

4, item 35; ruling of the Appellate Court in Białystok of 20 April 2000, II Aka 22/00, *Orzecznictwo Sądów Apelacyjnych* B 2000, No. 2, item 26; ruling of the Appellate Court in Kakowice of 10 January 2002, II Aka 340/01, *Krakowskie Zeszyty Sądowe* 2002, No. 4, item 12. After the Supreme Court issued a ruling of 5 March 2003, also appellate courts seem to approve of the stand of the Supreme Court. Compare e.g. the ruling of the Appellate Court in Katowice of 12 January 2006, II Aka 448/05, *Orzecznictwo Sądów Apelacyjnych* 2007, No. 7, item 32; ruling of the Appellate Court in Białystok of 30 March 2004, II Aka 62/04, *Orzecznictwo Sądów Apelacyjnych* B 2004, No. 3, item 26.

[82] III KKN 195/01, *Orzecznictwo Sądu Najwyższego Izna Karna i Wojskowa* 2003, No. 5–6, item 55, *Biuletyn Sądu Najwyższego* 2003, No. 5, item 12, *Wokanda* 2003, No. 11, item 20.

[83] V KK 282/04, *Orzecznictwo Sądu Najwyższego Izba Karna i Wojskowa* 2005, No. 1, item 10.

[84] K/K 200/08, *Lex* no. 486199.

[85] V KK 282/04, *Orzecznictwo Sądu Najwyższego Izba Karna i Wojskowa* 2005, No. 1, item 10. The judicature treats such a mistake as a factual mistake (W. Cieślak, critical gloss on the ruling of the Appellate Court in Kraków of 6 March 2003, II Aka 231/03, *Palestra* 2004, No. 7–8, p. 292 and subsequent ones), or a legal mistake (J. Waszczyński, Gloss (of approval) on the ruling of the Supreme Court of 7 December 1973, IV KR 314/73, *Orzecznictwo Sądów Polskich i Komisji Arbitrażowych* 1975, No. 10, item 219, p. 454).

[86] Ruling of the Supreme Court of 15 June 2010 r., II KIK 319/09, *Lex* no. 590222.

[87] M. Mozgawa [in:] *System… [Criminal law system…]*, p. 477.

CONCLUSION

The present construction of the provisions of Article 191 CC raises doubts. The introduction of Article 191 § 1a was unnecessary because the same (or even better) result might have been achieved by reference to the wording of the provision of Article 167 § 1 CC of 1969 (without the use of unclear features such as "persistent", "substantially hindering" and narrowing the scope of the provision application only to apartments). *De lege ferenda* the provision of Article 191 § 1 should read: "Whoever uses violence or an illegal threat with the purpose of compelling another person to act, desist from acting or submit to acting in a specified manner…". It is reasonable to repeal the provision of Article 191 § 1a because adoption of § 1 would also cover the so-called indirect violence (even in a broader scope than Article 191 § 1a CC does). It is also reasonable to reintroduce the mode of prosecution proposed for the basic type of coercion (with maintaining prosecution ex officio in case of the aggravated type).

BIBLIOGRAPHY

Andrejew I., Świda W., Wolter W., *Kodeks karny z komentarzem [Criminal Code with a commentary]*, Warszawa 1973.

Andrejew I., *Kodeks karny. Krótki komentarz [Criminal Code: a short commentary]*, Warszawa 1981.

Andrejew I., Kubicki L., Waszczyński J. (ed.), *System prawa karnego. O przestępstwach w szczególności [Criminal law system: on crimes in particular]*, vol. IV, Part 2, Ossolineum 1989.

Bafia J., Mioduski K., Siewierski M., *Kodeks karny, Komentarz [Criminal Code: Commentary]*, Warszawa 1977.

Bojarski T. (ed.), *Kodeks karny. Komentarz [Criminal Code: Commentary]*, Warszawa 2015.

Buchała K. (ed.), *Komentarz do kodeksu karnego. Część ogólna [Commentary on Criminal Code: General issues]*, Warszawa 1990.

Cieślak W., Gloss on the resolution of the Supreme Court of 10 December 1998, I KZP 22/98, *Przegląd Sądowy* 1999, No. 10.

Cieślak W., Gloss on the ruling of the Administrative Court in Kraków of 6 March 2003, II Aka 231/03, *Palestra* 2004, No. 7–8.

Daszkiewicz-Paluszyńska K., *Groźba w polskim prawie karnym [Threat in Polish criminal law]*, Warszawa 1958.

Dębiński A., Grześkowiak A., Wiak K. (ed.), *Ius et Lex, Księga jubileuszowa ku czci Profesora Adama Strzembosza [Ius et Lex. Professor Adam Strzeębosz jubilee book]*, Lublin 2002.

Filar M. (ed.), *Kodeks karny. Komentarz [Criminal Code: Commentary]*, Warszawa 2014.

Filar M., Gloss on the resolution of the Supreme Court of 10 December 1998, I KZP 22/98, *Państwo i Prawo* 1999, No. 8.

Giezek J. (ed.), *Kodeks karny. Część szczególna. Komentarz [Criminal Code – Special issues: Commentary]*, Warszawa 2014.

Glaser S., Mogilnicki A., *Kodeks karny – komentarz; prawo o wykroczeniach, przepisy wprowadzające, tezy z orzeczeń Sądu Najwyższego, wyciągi z motywów ustawodawczych [Criminal Code – Commentary: misdemeanour law, regulations on the implementation of the rulings of the Supreme Court, legislative reasons]*, Warszawa 1934.

Góral R., *Kodeks karny. Praktyczny komentarz [Criminal Code: Practical commentary]*, Warszawa 2005.

Górniok O., Hoc S., Kalitowski M., Przyjemski S. M., Sienkiewicz Z., Szumski J., Tyszkiewicz T., Wąsek A., *Kodeks karny. Komentarz [Criminal Code: Commentary]*, vol. I, Gdańsk 2005.

Górniok O., Hoc S., Kalitowski M., Przyjemski S. M., Sienkiewicz Z., Szumski J., Tyszkiewicz T., Wąsek A., *Kodeks karny. Komentarz [Criminal Code: Commentary]*, vol. II, Gdańsk 2005.

Górniok O., *Nowa kodyfikacja karna. Krótkie komentarze [New criminal codification: Short commentaries]*, Warszawa 1999, vol. 7.

Grzegorczyk K., Gloss on the resolution of the Supremme Court of 10 December 1998, I KZP 22/98, *Wojskowy Przegląd Prawniczy* 1999, No. 1–2.

Hanausek T., *Przemoc jako forma działania przestępnego [Violence as a form of criminal act]*, Kraków 1966.

Kunicka-Michalska B., Wojciechowska J., *Przestępstwa przeciwko wolności, wolności sumienia i wyznania, wolności seksualnej i obyczajności oraz czci i nietykalności cielesnej. Rozdziały XXIII, XXIV, XXV i XXVII kodeksu karnego. Komentarz [Crimes against liberty, freedom of conscience and belief, right to sexuality and decency as well as dignity and bodily integrity: Chapters 23, 24, 25 and 27 of the Criminal Code. Commentary]*, Warszawa 2001.

Makarewicz J., *Kodeks karny z komentarzem [Criminal Code with a commentary]*, Lwów 1938.

Makowski W. (ed.), *Encyklopedja podręczna prawa karnego [Pocket encyclopaedia of criminal law]*, vol. II, Warszawa 1934–1936.

Makowski W., *Prawo karne. O przestępstwach w szczególności. Wykład porównawczy prawa karnego austrjackiego, niemieckiego i rosyjskiego, obowiązującego w Polsce [Criminal law: on crimes in particular. Comparative lecture on Austrian, German and Russian criminal law binding in Poland]*, Warszawa 1924.

Marek A. (ed.), *Prawo karne. Zagadnienia teorii i praktyki [Criminal law: Theoretical and practical issues]*, Warszawa 1986.

Marek A., *Kodeks karny. Komentarz [Criminal Code: Commentary]*, Warszawa 2010.

Marek A., *Prawo karne [Criminal law]*, Warszawa 2006.

Mozgawa M. (ed.), *Kodeks karny. Komentarz [Criminal Code: Commentary]*, Warszawa 2015.

Mozgawa M. (ed.), *Prawnokarne aspekty wolności [Criminal law aspects of freedom]*, Wolters Kluwer – Zakamycze 2006.

Nazar-Gutowska K., *Groźba bezprawna w polskim prawie karnym [Illegal threat in Polish criminal law]*, Warszawa 2012.

Nowe kodeksy karne z 1997 r. z uzasadnieniami [New Criminal Codes of 1997 with justification], Warszawa 1997.

Paprzycki L., *Przemoc przemocy nierówna [Violence may be of different types]*, *Rzeczpospolita* of 14 April 1999.

Peiper L., *Komentarz do kodeksu karnego, prawa o wykroczeniach i przepisów wprowadzających obie te ustawy [Commentary on the Criminal Code, Misdemeanour Code and secondary legislation for the two acts]*, Kraków 1936.

Radwański Z., Olejniczak A., *Zobowiązania – część ogólna [Liabilities: General issues]*, Warszawa 2010.

Stefański R.A. (ed.), *Kodeks karny. Komentarz [Criminal Code: Commentary]*, Warszawa 2015.

Surkont M., *Przestępstwo zmuszania w polskim prawie karnym [Crime of coercion in Polish criminal law]*, Gdańsk 1991.

Surkont M., Tzw. karalna samowola w ramach przestępstwa zmuszania [So-called punishable wilfulness within the crime of coercion], *Nowe Prawo* 1987, No. 9.

Surkont M., Zapowiedź rozgłoszenia wiadomości uwłaczającej czci jako postać groźby bezprawnej [Suggestion of disseminating information insulting dignity as a form of lawless threat], *Nowe Prawo* 1989, No. 5–6.

Śliwowski J., *Prawo karne [Criminal law]*, Warszawa 1979.

Światłowski A.R., Gloss on the ruling of the Constitutional Tribunal of 9 October 2001, SK/8/00, *Prokuratura i Prawo* 2002, No. 5, item 75.

Świda W., *Prawo karne [Criminal law]*, Warszawa 1978.

Warylewski J. (ed.), *System Prawa Karnego, Przestępstwa przeciwko dobrom indywidulanym [Criminal law system: Crimes against publicity rights]*, vol. X, Warszawa 2012.

Waszczyński J., Gloss on the ruling of the Supreme Court of 7 December 1973, IV KR 314/73, *Orzecznictwo Sądów Polskich i Komisji Arbitrażowych* 1975, No. 10, item 219.

Wąsek A. (ed.), *Kodeks karny. Część szczególna [Criminal Code: Special issues]*, vol. II, Warszawa 2006.

Wąsek A. (ed.), *Kodeks karny. Część szczególna [Criminal Code: Special issues]*, vol. I, Warszawa 2004.

Wojciechowski J., *Kodeks karny. Komentarz. Orzecznictwo [Criminal Code: Commentary. Judicial decisions]*, Warszawa 2002**.**

Wyrembak J., Gloss on the resolutions of the Supreme Court of 10 December 1998, I KZP 22/98, *Przegląd Sądowy* 1999, No. 7–8.

Wyrembak J., Szkolna argumentacja nie przekonuje [School arguments are not convincing], *Rzeczpospolita* of 6 May 1999.

Wysocki M., Gloss on the resolution of the Supreme Court of 10 October 1998, I KZP 22/98, *Orzecznictwo Sądów Polskich* 1999, No. 4.

Wysocki M., Przemoc wobec osoby w rozumieniu art. 191 k.k. [Violence against a person in accordance with Article 191 CC], *Prokuratura i Prawo* 1999, No. 3.

Zoll A. (ed.), *Kodeks karny. Część ogólna. Komentarz [Criminal Code – General issues: Commentary]*, vol. 1, Kraków 2004.

Zoll A. (ed.), *Kodeks karny. Część szczególna. Komentarz, t. II, Komentarz do art. 117–277 k.k. [Criminal Code – Special issues: Commentary, Vol. II, Commentary on Articles 117–277 CC]*, Kraków 2013.

CRIME OF COERCION (ARTICLE 191 CC) AFTER AMENDMENTS OF 10 SEPTEMBER 2015

Summary

The provision of Article 191 § 1 CC of 1997, as far as its construction is concerned, is closer to its counterpart in the Penal Code of 1932 (Article 251) than to Article 167 CC of 1969. Following the example of the PC of 1932, criminalisation covers compelling another person "to act, desist from acting or submit to acting" in a specified manner and not "to conduct himself in a specified manner" as it was formulated in the CC of 1969. However, the scope of penalisation was narrowed by the use of a phrase "violence against a person" instead of formerly used "violence" understood broadly and a new aggravated type of the crime was added (if a perpetrator acts with the purpose of compelling the return of a debt – Article 191 § 2 CC). Act of 10 September 2015 introduced a new provision of Article 191 § 1a CC which reads: "Whoever with the purpose specified in § 1 uses violence of another type persistently or in a way substantially hindering another person from using an occupied apartment is subject to the same penalty." This solution is assessed to be

pointless; the same effect can be achieved by reference to the wording of the provision of Article 167 § 1 CC of 1969 (without the use of unclear features such as "persistently", "substantially hindering" and narrowing the scope the provision application only to apartments). *De lege ferenda* the provision of Article 191 § 1a should read: "Whoever uses violence or an illegal threat with the purpose of compelling another person to act, desist from acting or submit to acting in a specified manner…" and the provision of Article 191 § 1a should be repealed. It is also reasonable to reintroduce the mode of prosecution proposed for the basic type of coercion (with maintaining prosecution ex officio in case of the aggravated type).

Key words: *coercion*, *violence*, *illegal threat*, *extortion*, *debt*

PRZESTĘPSTWO ZMUSZANIA (ART. 191 K.K.) PO ZMIANACH Z 10 WRZEŚNIA 2015 R.

Streszczenie

Przepis art. 191 § 1 k.k. z 1997 r. pod względem konstrukcji jest bardziej zbliżony do swojego odpowiednika z k.k. z 1932 r. (art. 251) niż do art. 167 k.k. z 1969 r. Wzorem k.k. z 1932 r. kryminalizacją objęto zmuszanie innej osoby do określonego „działania, zaniechania lub znoszenia", a nie – jak było to w k.k. z 1969 r. – do „określonego zachowania się". Zawężono natomiast zakres penalizacji poprzez użycie określenia „przemoc wobec osoby", a nie – jak było to poprzednio – szerokiego sformułowania „przemoc" oraz dodano typ kwalifikowany przestępstwa (jeżeli sprawca działa w celu wymuszenia zwrotu wierzytelności – art. 191 § 2 k.k.). Ustawą z dnia 10 września 2015 r. wprowadzono nowy przepis art. 191 § 1a k.k. w brzmieniu: „Tej samej karze podlega, kto w celu określonym w § 1 stosuje przemoc innego rodzaju uporczywie lub w sposób istotnie utrudniający innej osobie korzystanie z zajmowanego lokalu mieszkalnego". Zabieg ten należy ocenić jako chybiony; ten sam efekt można by osiągnąć nawiązując do brzmienia przepisu art. 167 § 1 k.k. z 1969 r. (bez używania nieostrych znamion takich jak „uporczywie", „w sposób istotnie utrudniający" i zawężania zakresu funkcjonowania przepisu jedynie do lokali mieszkalnych). *De lege ferenda* przepis art. 191 § 1 powinien uzyskać brzmienie: „Kto stosuje przemoc lub groźbę bezprawna w celu zmuszenia innej osoby do określonego działania, zaniechania lub znoszenia…", zaś przepis art. 191 § 1a winien zostać skreślony. Zasadne jest również przywrócenie wnioskowego trybu ścigania odnośnie do typu podstawowego zmuszania (przy pozostawieniu ścigania z urzędu w przypadku typu kwalifikowanego).

Słowa kluczowe: *zmuszanie*, *przemoc*, *groźba bezprawna*, *wymuszenie*, *wierzytelność*