Ius Novum
2/2022

INCEST. PENAL-LAW AND CRIMINOLOGICAL ASPECTS

KATARZYNA NAZAR*

DOI: 10.26399/iusnovum.v16.2.2022.11/k.nazar

INTRODUCTION

The prohibition of incest is one of the oldest and most widespread norms that have accompanied man since the beginning of the development of societies. In the legal systems of other countries, the penalisation of voluntary sexual relations between adult family members is quite common, although it is possible to identify countries in which this crime does not occur at all (e.g. Azerbaijan, Belarus, Georgia, Latvia, Mongolia, Russia) as well as those in which it does not occur, but sexual relations with close family members are the statutory features of the definition of the crime of rape or other acts of sexual nature (Estonia, France, Kazakhstan, Lithuania, Malta, Tajikistan, Turkey, Uzbekistan, Ukraine, Spain). It is also important to point to legal systems (Bulgaria, Croatia) in which incest as an independent type of offence is also accompanied by the offence of incestuous rape.[1] Such an approach is also provided for in the Polish Penal Code currently in force.

1. ANALYSIS OF THE STATUTORY FEATURES OF THE OFFENCE OF INCEST

In the Polish legal system incest was penalised in the first Penal Code of 1932 in Chapter XXXII "Criminal Sexual Conduct" in Article 206 ("Whoever mates with a relative with lineal consanguinity, brother or sister, shall be punished by imprisonment

* PhD, Professor at the Department of Criminal Law and Criminology, University of Maria Curie-Sklodowska, Faculty of Law and Administration, e-mail: katarzyna.nazar@poczta.umcs.lublin.pl, ORCID: 0000-0001-7987-0727

[1] More on this topic, see Nazar, K., *Kazirodztwo. Studium prawnokarne i kryminologiczne*, Lublin, 2019, pp. 67–95.

of up to 5 years")[2] and in the Penal Code of 1969, in Article 175 ("Whoever undertakes a sexual intercourse with a relative with lineal consanguinity, brother or sister or a person related by adoption shall be punished by imprisonment of 6 months to 5 years")[3] which is included in Chapter XXIII "Offences against morality". At present, the prohibition of incest provided for in Article 201 of the Penal Code of 1997 is set out in Chapter XXV "Offences against sexual freedom and morality" and, as a rule, deviate from the arrangements provided for in Article 175 of the Penal Code from 1969.[4] The offence referred to in Article 201 PC involves committing a sexual intercourse with respect to an ascendant, descendant, adoptive parent, adoptive child, brother or sister and is punishable by imprisonment of 3 months to 5 years.

The problem of determining the protected interest in the case of incest has existed since the beginning of the development of contemporary Polish criminal law. The justification of penalisation of incest has been subject to changes over the years, which was reflected in the statutory approach to its defining elements. In the Penal Code of 1932, the use of the term "mates" in Article 206 and narrowing the circle of persons subject to punishment only to close relatives determined the adoption the of eugenic justification for the criminality of incest.[5] Eugenic aspects of the justification for the criminality of incest were also stressed under the Penal Code of 1969, although in the 1950s and 1960s, in the course of work on the amendment of the criminal law, it was noticed that, in addition to eugenic reasons, incest is also a serious threat to the functioning of the family.[6] It is not easy to clearly point to rational arguments justifying the existence of the prohibition of incest. Currently, the prevailing view among scholars of penal law is that the protected value of the crime under Article 201 of the Penal Code is morality, and the sexual intercourse of the persons mentioned in this provision is perceived as reprehensible and immoral.[7] The proper functioning of

---

[2] Mating consisted not in any criminal sexual act, but only a natural sexual act, i.e. an activity, which may lead to fertilization and birth of the offspring. Therefore, the term ("mating") meant only a normal heterosexual intercourse. The provision was intended to protect the species from endogamy leading to degeneration of the breed.

[3] The scope of incest was largely extended in Article 175 of the Penal Code of 1969 (compared to Article 206 of the Penal Code of 1932) to persons under the legal relationship of adoption and homosexual relationships, not penalized before, and other ways of satisfying heterosexual sex drive. The term "mating" used in Article 206 PC of 1932 was replaced by the term "sexual intercourse".

[4] Some differences in the wording of the two provisions are merely of an editorial nature. In Article 201 of the Penal Code of 1997, the phrase "relatives with lineal consanguinity" was replaced by the corresponding terms "ascendant" and "descendant" and the term "persons under the legal relationship of adoption" was replaced by the terms "adoptive parent" and "adoptive' child".

[5] Makarewicz, J., *Kodeks karny z komentarzem*, Lwów 1932, pp. 253–254. See also: Peiper, L., *Komentarz do kodeksu karnego, prawa o wykroczeniach, przepisów wprowadzających obie te ustawy*, Kraków, 1936, p. 427, and Papierkowski, Z., *Prawo karne (część szczególna)*, Lublin, 1947, p. 111.

[6] Cf. Skupiński, J., 'Problematyka kodyfikacji przestępstw "nierządu"', *Palestra,* 1960, No. 10, p. 53, see also: *Projekt kodeksu karnego oraz przepisów wprowadzających kodeks karny*, Warszawa, 1968, p. 141.

[7] Surkont, M., *Prawo karne. Podręcznik dla studentów administracji*, Sopot, 1998, p. 173; Górniok, O., in: Górniok, O., Hoc, S., Kalitowski, M., Przyjemski, S.M., Sienkiewicz, Z., Szumski, J., Tyszkiewicz, L., Wąsek, A., *Kodeks karny. Komentarz, t. 2: Art. 117–363*, Gdańsk, 2005, p. 210; Wąsek, A., 'W kwestii tzw. odmoralizowania prawa karnego', *Studia Filozoficzne,* 1985,

the family is also sometimes considered to be the protected value.[8] It is also argued that the reasons for the penalisation of incest are of an emotional nature, the reason for this emotion being not entirely clear.[9] Moreover, it should be noted that although looking for eugenic reasons as a ratio legis behind incest prohibition is rare, it has not completely disappeared.[10] The analysis of available empirical research and the views of geneticists does not unequivocally confirm or deny that children from incestuous relationships are at greater risk (than children of unrelated people) from genetic defects. Existing studies only confirm the thesis that incest is only one of the causes of the diseases found in children. Similarly, in the genetic literature a view is presented that an increase in the frequency of occurrence of recessive hereditary diseases is present in the interbreeding between relatives, but it is not supported by any studies.[11] The above allows us to assume that the *ratio legis* of the prohibition of incest cannot be based only on a supposition. It should be clearly stated that it is inappropriate to draw any conclusions solely on the basis of an assessment of the health condition of children from incestuous relationships, without examining the health condition of their parents. It is almost certain that if the parents (or one of them) are mentally handicapped, their child is, more likely than the child of healthy parents, to be handicapped and this does not necessarily involve parental consanguinity.[12] As J. Godlewski noted, the percentage

---

No. 2–3, p. 232; Bielski, M., in: Wróbel, W., Zoll, A. (eds.), *Kodeks karny. Część szczególna*, *t. 2: Komentarz do art. 117–211a*, Warszawa, 2017, p. 780; Filar, M., 'Przestępstwa seksualne w nowym kodeksie karnym', *Nowa Kodyfikacja Karna. Kodeks Karny. Krótkie Komentarze*, 1997, Vol. 2, p. 45. Cf. also: Banasik, K., 'Karalność kazirodztwa jako naruszenie wolności seksualnej', in: Dymińska, Z. (ed.), *Konteksty prawa i praw człowieka*, Kraków, 2012, p. 37 et seq.; Płatek, M., 'Kodeksowe ujęcie kazirodztwa – pozorny zakaz i pozorna ochrona', in: Mozgawa, M. (ed.), *Kazirodztwo*, p. 136, in more detail: pp. 126, 133–134. A very original approach to justifying the criminalization of incest is represented by V. Konarska-Wrzosek. See Konarska-Wrzosek, V., 'Przedmiot ochrony przy typie przestępstwa kazirodztwa', in: Pohl, Ł. (ed.), *Aktualne problemy prawa karnego. Księga pamiątkowa z okazji Jubileuszu 70. urodzin Profesora Andrzeja J. Szwarca*, Poznań, 2009, pp. 290–292.

[8] Baranowski, J., 'Ratio legis prawnokarnego zakazu kazirodztwa', *Przegląd Prawa Karnego*, 1990, No. 3, p. 67; Zoll, A., 'Ochrona prywatności w prawie karnym', *Czasopismo Prawa Karnego i Nauk Penalnych*, 2000, Vol. 1, p. 225; Rodzynkiewicz, M., in: Zoll, A. (ed.), *Kodeks karny. Część szczególna. Komentarz do art. 117–277*, Kraków, 2006, p. 659; Tomkiewicz, M., 'Kazirodztwo a prawnokarna ochrona rodziny w Polsce', *Profilaktyka Społeczna i Resocjalizacja*, 2013, No. 21, p. 31; Hypś, S., in: Grześkowiak, A., Wiak, K. (eds.), *Kodeks karny. Komentarz*, Warszawa, 2018, p. 1040. See also: Konarska-Wrzosek, V., in: Konarska-Wrzosek, V. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2018, p. 975.

[9] Gardocki, L., *Prawo karne*, Warszawa, 2017, p. 278.

[10] As proposed by e.g. Kubik, A., *Specyficzne zaburzenia życia seksualnego*, Warszawa, 2011, pp. 41–42, and Bojarski, M., in: Bojarski, M. (ed.), *Prawo karne materialne. Część ogólna i szczególna*, Warszawa, 2012, p. 546.

[11] See, e.g.: Winter, P.C., Hickey, G.I., Fletcher, H.L., *Genetyka*, translated by Augustyniak, J., Warszawa, 2000, pp. 213, 218; Joachimiak, A., *Genetyka*, Kraków, 1998, p. 24; Szibor, R., 'Inzestund Konsanguinität – Eine Übersichtsoziologischen, klinisch-genetischen und rechtsmedizinischen Aspekten', *Rechtsmedizin*, 2004, Bd. 14, pp. 391–392; Bennett, R.L., Motulsky, A.G., Bittles, A.H., Hudgins, L., Uhrich, S., Doyle Lochner, D., Silvey, K., Scott, C.R., Cheng, E., McGillivray, B., Steiner, R.D., Olson, D., 'Genetic Counseling and Screening of Consanguineous Couples and Their Offspring: Recommendations of the National Society of Genetic Counselors', *Journal of Genetic Counselling*, 2002, Vol. 11(2), pp. 97–119; Kliemannel, K., *Beischlafzwischen Verwandten. Eineinterdisziplinäre Betrachtung*, Halle-Wittenberg, 2014, pp. 11–13.

[12] W. Makowski pointed that "the issue of degeneration in the offspring from incestuous relationships (where there are no symptoms of disease in the parents) is a matter of debate in

of handicapped children from incestuous relationships is relatively high (according to the data provided by the author – 66%), however, the very prohibition of incest is breached by individuals among whom there is a high percentage of handicapped persons.[13] A similar view is presented by G. Simson and F. Geerds, who claim that in a genetically healthy and mentally not susceptible family, the mating among relatives, if not being a long-term process, is probably harmless, and even – as in the case of animal cross-breeding – can cause above-average biological and breeding effects. However, if there are recessive psychophysical deficiencies in the family – and this is the rule, because the tendency to incestuous acts is manifested primarily by people with defects – as a result of incest these will multiply as negative hereditary factors.[14]

The actus reus of the offence of incest consists in "committing sexual intercourse" by the persons specified in Article 201 of the Penal Code. The term "commits" should be understood as an act that has the character of the so called perpetration with one's own hands. "Committing", and not "undertaking an intercourse", determines that this crime is committed by all persons who voluntarily interact with each other, and not only by the person who has taken the initiative of intercourse. Both the scholarly opinion and judicial decisions agree that the element "sexual intercourse" includes the so-called proper sexual intercourse (mating), as well as surrogates of sexual intercourse, i.e. all forms of sexual contact equivalent to mating that may lead (like mating) to satisfying the sex drive, i.e., oral and anal intercourses.[15] The prohibition under Article 201 PC concerns only sexual intercourse. The undertaking of "other sexual activities" remains outside the scope of the penalisation under this provision. This means that stimulating or satisfying sexual drive between the closest family members (in the form of e.g. acts of mutual masturbation carried out with mutual consent) is legally irrelevant.[16] The notion of sexual intercourse also does not include touching the genitals, as such behaviour constitutes "another sexual activity". It should be assumed, however, that any other act, exceeding mere touching, and involving the penetration of genitals, e.g. with a finger or another

science." See Makowski, W. (ed.), *Encyklopedia podręczna prawa karnego (prawo karne materialne i formalne, karne skarbowe i administracyjne; socjologja i psychologja kryminalna; medycyna i psychjatrja sądowa; kryminalistyka i więziennictwo), t. 2: Egipt – międzynarodowe prawo karne*, Warszawa, 1934–1936, p. 710.

[13] Godlewski, J., 'Kilka uwag na temat szczególnych cech kazirodztwa i transseksualizmu', *Psychiatria Polska*, 1976, No. 5, p. 560.

[14] Simson, G., Geerds, F., *Straftaten gegen die Person und Sittlichkeitsdelikte in rechtsvergleichender Sicht*, München, 1969, p. 414.

[15] See Judgement of the Appellate Court of Lublin, of 24 August 2011, II AKa 154/11, LEX No. 1108586; Judgement of the Appellate Court of Katowice of 2 June 2011, II AKa 142/11, LEX No. 1001359; Judgement of the Appellate Court of Katowice of 13 May 2004, II AKa 75/04, KZS 2004, No. 9, item 58.

[16] Daniluk, P., Nowak, C., 'Kazirodztwo jako problem karnoprawny (dwugłos)', *Archiwum Kryminologii*, 2007–2008, Vol. 29–30, p. 476. It should be noted that this concerns acts of mutual masturbation, which are not combined with inserting e.g. a finger into the vagina or anus, as this behaviour is covered by the definition of sexual intercourse. Similarly, the use of an inanimate object by one of the partners to penetrate the body of the other one constitutes sexual inetrcourse, but the penetration of one's own genitals with such an object does not.

inanimate object, will fall under the category of sexual intercourse.[17] Thus, all those activities which are not of a penetrating nature and consist in bodily contact between the participants of such an activity, involving the physical engagement of the intimate spheres of the body of at least one of them, or at least the physical engagement of the intimate spheres of the body of one of them, which will be of a sexual nature, i.e. can be considered a form of satisfying or stimulating natural sex drive, are considered "other sexual activities." Such activities include non-penetrative contact with genitals or anus, touching, kissing them, touching breasts, mutual masturbation (which is not connected with inserting e.g. a finger into the vagina or anus).[18] Limiting the penalisation of incest only to sexual intercourse raises doubts from the point of view of the protected value under Article 201 PC. The proposal *de lege ferenda* to extend the scope of penalisation under Article 201 PC to other sexual activities seems to be justified. From the point of view of the protected value of the discussed offence, namely morality, it should be stated that it is no less indecent than sexual intercourse to undertake other sexual activities by the closest family members.

Incest is a formal type of offence (no result is necessary) which occurs when sexual intercourse is undertaken. Its defining elements do not include any result such as e.g. fertilization or birth of the offspring. The object of the action of perpetration in the offence under Article 201 PC is the body of the partner of the incestuous intercourse, or more specifically the body of both partners of such an intercourse, since both persons commit the crime. The body of one of the perpetrators is therefore also the object of the act in relation to an offence committed by the other participant of the incestuous sexual intercourse. Of course, when referring to the action of perpetration, only about the persons referred to in Article 201 PC are meant.

Incest is a proper individual offence which can only be committed by a person who is in the relationship referred to in Article 201 PC, with the other person (with whom he or she is engaged in sexual intercourse) that is, in a relationship of an ascendant, descendant, adoptive child, adoptive parent, brother or sister. Scholars in the field indicate that the offence of incest is an example of the so-called necessary joint participation. In cases of voluntary incestuous intercourse, each participant in such an act shall be considered the perpetrator of the offence. There are two perpetrators in this arrangement and there is no victim, which allows incest to be classified into the victimological category of the so-called victimless crimes. First of all, the provision of Article 201 PC identifies relatives as the perpetrators of the offence. The prohibition of incest applies to lineal consanguinity without any restrictions with regard to the degree of this consanguinity. Consanguinity is

---

[17] Judgement of the Supreme Court of 24 June 2008, III KK 47/08, LEX No. 438423; Judgement of the Appellate Court of Katowice of 9 November 2006, II AKa 323/06, KZS 2007, No. 1, item 62. See also Judgement of the Appellate Court of Katowice of 19 April 2007, II AKa 40/07, KZS 2007, No. 11, item 25.

[18] For more detail, see Nazar, K., *Kazirodztwo*…, op. cit., p. 203; Bielski, M., 'Wykładnia znamion "obcowanie płciowe" i "inna czynność seksualna" w doktrynie i orzecznictwie sądowym', *Czasopismo Prawa Karnego i Nauk Penalnych*, 2008, No. 1, p. 211 et seq.; Budyn-Kulik, M., 'Inna czynność seksualna. Analiza dogmatyczna i praktyka ścigania', *Prawo w Działaniu,* 2008, No. 5, pp. 159–160.

commonly understood as a relationship that takes place between persons connected by blood bonds (biological bonds).[19] Relatives are persons who come directly or indirectly from each other or who come from a particular common ancestor. "Descendants" are relatives from a common ancestor in a straight line (children, grandchildren, great-grandchildren). "Ascendants" are relatives preceding a given person in a chain of kinship in a straight line (parents, grandparents, great-grandparents).[20] These are persons who are the biological ancestors of the perpetrator and those who have been legally equated with them, i.e. those persons who have been correctly entered on the child's birth certificate as parents or persons whose fatherhood or motherhood has been determined by other means and has not been denied should be regarded as father or mother. The terms "adoptive child" and "adoptive parent" refer to the legal relationship of adoption. It is a relationship based on legal fiction, the equivalent of which is the relationship between parents and children (Article 121(1) of the Family and Guardianship Code). The institution of adoption aims to create a family relationship which is the strict equivalent of a natural parental relationship.[21] The terms "brother" and "sister" refer to collateral consanguinity and include a relationship between two persons in which at least one parent is their common ancestor (ascendant). The concept of siblings therefore includes full siblings, half-siblings (that is, children of the same mother and another father or of the same father and another mother) and extramarital ones. However, there will be no required relationship and thus no crime of incest in the case of sexual intercourse between the children of siblings.[22] Doubts arise in cases in which one child is a natural child and the other has been adopted.

From the mens rea point of view, incest is an intentional crime, which can only be committed with direct intent. Some authors accept the possibility of committing incest with a conditional intention,[23] while others argue that from the ontological point of view sexual intercourse with *dolus eventualis* is impossible.[24] It seems that it is possible to adopt a quasi-*dolus eventualis* when people engage in sexual intercourse without being certain of the actual existence of the consanguinity or adoptive ties between them while accepting the possibility of their existence. It seems that most scholars in the field assume that both direct intent and quasi-*dolus eventualis* may occur.[25]

---

[19] See Szczekala, A., 'Przeszkody małżeńskie pokrewieństwa i przysposobienia oraz ustalenie stanu cywilnego a zakaz kazirodztwa', in: Mozgawa, M. (ed.), *Kazirodztwo*, Warszawa, 2016, p. 242.

[20] Smyczyński, T., *Prawo rodzinne i opiekuńcze*, Warszawa, 2016, pp. 6–8.

[21] Ignatowicz, J., Nazar, M., *Prawo rodzinne*, Warszawa, 2016, p. 467.

[22] Bielski, M., in: Wróbel, W., Zoll, A. (eds.), *Kodeks karny*…, op. cit., p. 783.

[23] As proposed by: Hypś, S., in: Grześkowiak, A., Wiak, K. (eds.), *Kodeks karny*…, op. cit., p. 1042.

[24] Kłączyńska, N., in: Giezek, J. (ed.), *Kodeks karny. Część szczególna. Komentarz*, Warszawa, 2014, p. 552.

[25] Góral, R., *Kodeks karny. Praktyczny komentarz z orzecznictwem*, Warszawa, 2005, p. 319; Filar, M., in: Andrejew, I., Kubicki, L., Waszczyński, J. (eds.), *System Prawa Karnego, t. 4, cz. 2: O przestępstwach w szczególności*, Wrocław–Warszawa–Kraków–Gdańsk–Łódź, 1989, p. 195; Wojciechowska, J., in: Kunicka-Michalska, B., Wojciechowska, J. (eds.), *Przestępstwa przeciwko wolności, wolności sumienia i wyznania, wolności seksualnej i obyczajności oraz czci i nietykalności*

2. EMPIRICAL RESEARCH OF INCEST

My empirical research on the offence of incest is the most recent and, in principle, the only study on this issue as regards Polish criminal law. The first empirical research on the issue of incest was carried out in the period 1960–1965,[26] while the subsequent studies concerned the analysis of finalisted court proceedings in the years 1970–1975.[27]

Addressing this issue was primarily to identify the criminological picture of the offence of incest and its scale compared to total crime figures in Poland and the policy of punishing. The next aim of the research was to characterise the families, in which incestuous acts took place, and thus to answer the key questions in this context: whether incest is a factor determining the so-called family pathology or maybe it is a phenomenon conditioned by it and whether it occurs spontaneously or is connected with sexual violence in the family.

The research material was the files of cases under Art 201 PC registered in all public prosecutor's offices in Poland in 2013–2014. The analysis covers not only judicial cases in which criminal proceedings were initiated during this period, but also those in which there was a refusal to initiate proceedings or the proceedings were discontinued.[28] The entire research material consisted of 389 cases. The following procedural decisions were made in these cases: 1) 83 refusals to initiate criminal proceedings, 2) 209 discontinued cases, 3) 91 cases were referred to courts with indictments, 4) 6 cases were settled in a different way (referral to a family court – 4 cases, suspension of proceedings – 2 cases). The research covered all cases, except for those 6 that were settled in a different way, i.e. 383 cases covering 506 criminal acts. It should be noted that the number of cases remained relatively stable throughout the period concerned. In 2013, there were 43 refusals to initiate criminal proceedings, 109 decisions to discontinue the proceedings and 53 cases in which the indictment was

---

cielesnej. Rozdziały XXIII, XXIV, XXV i XXVII Kodeksu karnego. Komentarz, Warszawa, 2001, p. 116; Warylewski, J., in: Stefański, R.A. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2018, p. 1329; Mozgawa, M., in: Mozgawa, M. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2021, p. 709; Marek, A., *Kodeks karny. Komentarz*, Warszawa, 2010, p. 460.

[26] At the first stage, it covered an analysis of nationwide materials contained in the prosecutorial files of incest cases, while at the second stage, 24 visits were made to those families, in which – according to information obtained at the first stage of research – children from incestuous relationships were born. For more detail, see Pilinow, A., 'Kazirodztwo – geneza zakazu i skutki', *Problemy Rodziny,* 1969, No. 3, pp. 62–68; eadem, 'Teoretyczne i empiryczne wersje kazirodztwa', *Kultura i Społeczeństwo,* 1968, No. 3, pp. 181–187.

[27] See Ślusarczyk, B., 'Z problematyki kazirodztwa (charakterystyka rodzin, w których ujawniono fakty współżycia kazirodczego)', *Studia Kryminologiczne, Kryminalistyczne i Penitencjarne,* 1977, Vol. 6, pp. 131–140.

[28] The fact that there has been no criminal proceeding or it has been discontinued does not always mean that the act was not committed and that all the cases of these groups analysed are an example of false reporting of a crime. This applies in particular to cases where proceedings have not been initiated or discontinued on the grounds of statutes of limitation or the death of the suspect (Article 17(1)(5) and (6) of the Code of Criminal Procedure). – there were a total of 22 of them. It is worth noting one of the cases that ended in the discontinuation due to the suspect's death. The grounds for the decision state clearly that, with a near-certainty probability, the victim was sexually abused by her father from an early childhood.

brought to the court. In 2014, there were 40, 100 and 38 such cases, respectively. For all procedural decisions, the analysis covered: the territorial distribution of criminal proceedings; place where the act was committed; who notified law enforcement authorities about the committed crime; what the prohibited conduct consisted of (and what was the legal classification applied); what kind of family relationship linked the participants of incestuous behaviour. In the first two groups of the discussed procedural decisions, the basis for refusal or discontinuation of criminal proceedings was specified. In the case of discontinued cases and those in which the indictment was filed with the court, the issues of expert opinions invoked were also taken into account (only 1 opinion was issued for the refusal to initiate proceedings). In the last group of cases (indictments), the perpetrator was characterized in terms of his/her education, employment, age, marital status, etc., as well as the type of preventive measures, penalties and penal measures applied, and the course of court instances in criminal proceedings. Since incestuous behaviour may be conditioned by a particular situation, psychopathologically, homosexually or related to paedophilia and family pathology, the research focused also on factors such as mental retardation, alcohol addiction, sexual preference disorders and the general characteristics of the family (including family being under social care due to poor social and family situation, educational failure, conflicts between the parents/cohabitants).

The conducted analysis led to the conclusion that most often the fact of committing a crime (either actual or alleged[29]) was notified by the victim's mother (67 cases), the victim himself/herself (56) or the social welfare centre (38) – this is respectively 17.49%, 14.62% and 9.92% of all cases. It is worth noting that the data on the place where the crime was committed is not typical in comparison with the geography of Polish crime, as 80% of crimes are committed in cities/towns. In the case of incest, on the other hand, it is also often committed in cities/towns and villages, with a small percentage dominance of urban environment (52% to 48%).

As regards the relationship between the participants in incestuous behaviour (both voluntary and non-voluntary), most numerous were the cases of father-daughter sexual intercourse (262),[30] then the cases of brother-sister intercourse (135);

---

[29] The presumption of the commission of a criminal offence takes place in cases which ended in a refusal or discontinuation of proceeding. In those cases, the motivation behind reporting the crime included conflicts between the reporting person and the alleged perpetrator (e.g. property-related conflict between ex-spouses who have accused each other of poor custody of children), gossips, confabulations, revenge or a desire to get back (e.g. a husband getting back at his wife because she divorced him). The source of informing authorities, which can undoubtedly be combined with both conflict and the desire to get back, was slander. In this context, it is worth pointing out that in only one case of false accusation, the material on false statements has been excluded to form separate proceedings. The reports of crime were also made by people in a state of intoxication, under the influence of drugs or suffering from mental disorders. In single cases, the reporting of the offence was connected with persistent harassment (so-called stalking).

[30] Similar conclusions result from the analysis of court proceedings concluded with a final decision, conducted in the years 1970–1975 concerning 310 incestuous relations. In 75%, they concerned father-daughter relations. Cf. more in: Ślusarczyk, B., 'Z problematyki kazirodztwa…', op. cit., pp. 131–140. Cf. Gromska, J., Masłowski, J., Smoktunowicz, I., 'Badanie przyczyn kazirodztwa na podstawie analizy opinii sądowych', *Psychiatria w Praktyce Ogólnolekarskiej*, 2002, No. 4, p. 269.

these figures constitute, respectively, 51.78% and 26.68% of all the cases examined. It should be stressed that when it comes to cases of voluntary incestuous intercourse, the brother-sister relationship prevails,[31] while the perpetrators of forced incestuous behaviour are usually fathers and their victims are daughters.

In the cases under consideration, expert opinions were very often presented (502 opinions in all cases examined). This is understandable given the specificity and importance of the cases under analysis (involving crimes of high social harmfulness, such as paedophilia or rape). In these cases, it was often necessary to diagnose not only the perpetrators, but also the victims. Psychological and psychiatric opinions were most frequent ones (a total of 362 opinions were issued – they represent 72.11% of all opinions issued in the cases studied).

The results of the research show that the so-called "regular incest" (voluntary on both sides), qualified only under Article 201 PC, is relatively rare in the practice of the judiciary. Most of the incestuous sexual intercourse cases took place in the context of paedophilia or rape. These results seem to confirm the thesis that incest is rarely the only committed offence, but is most often related to domestic sexual violence. In all the cases, as noted, there were altogether 506 acts, of which 182 were qualified only under Article 201 PC, which constitutes 35.97% of all acts. The remaining acts, constituting 64.03%, were related to paedophilia (Article 200 § 1 PC), taking advantage of the victim's helplessness or the relationship of dependence (Article 198 PC or Article 199 PC) or rape (including incestuous rape).

Obviously, the most important cases are those concluded with bringing the indictment to the court, therefore they should be distinguished from those concluded with a refusal to initiate or discontinuation of criminal proceedings. In this group of cases, there were 150 acts (related to incest), of which only 38 acts were qualified solely under Article 201 PC, which constitutes 25.33% of all acts. The remaining acts, constituting 74.67%, were related to paedophilia (Article 200 § 1 PC), taking advantage of the victim's helplessness or the relationship of dependence (Article 198 PC or Article 199 PC) or rape (including incestuous rape). Only 23 people were convicted under Article 201 PC, for 2 persons the proceedings were discontinued (pursuant to Article 17 § 1 point 3 of the Criminal Procedure Code in conjunction with Article 1 § 2 PC), one person was acquitted.

---

[31] As H.J. Albrecht notes, incestuous relationships among siblings constitute a special group of cases which have not received special attention so far. All studies have focused on father-daughter and mother-son relationships. The author claims that the voluntary nature of sexual contacts between siblings results from structural equality in siblings. It is different in the case of sexual relations between children and adults, which are always characterised by a relationship of dependence. In fact, the only research from the first half of the 20th century on the criminal prosecution of incest cases in Germany has shown that incestuous relationships among siblings, compared to father-daughter incest cases, are exceptions in judicial and police practice. The individual cases of incest between siblings that have been identified in these studies speak in favour of an "older brother – younger sister" combination. See Albrecht, H.J., *Inzest und Strafrecht. Ein rechtsvergleichendes und empirisches Gutachten*, www.ethikrat.org/fileadmin/PDF-Dateien/Veranstaltungen/Albrecht.pdf [accessed on: 20.03.2022].

The analysis of cases concluded with a court verdict made it possible to characterize the perpetrator[32] (and to some extent also the victim). Of course, in the case of "regular" incest (voluntary on both sides) it is not possible to speak of a victim of this offence, however, due to the fact that in most cases the actual concurrence of provisions took place (and the cumulative qualification, for example, with Article 201 PC, Article 198 PC or Article 199 PC), the use of the term "victim" in these situations is justified. Taking this into account, the following categories of victims can be distinguished in the 91 analysed cases concluded with an act indictment directed to the courts: perpetrator's daughter: 52 (of which 39 were under the age of 15, while 6 of them were also sexually abused after the age of 15), perpetrator's sister: 27 (of which 12 were under the age of 15); perpetrator's brother: 3 (of which 2 were under the age of 15); perpetrator's son: 4 (of which 2 were under the age of 15, and 1 of them also just above the age of 15); perpetrator's mother: 3; perpetrator's granddaughter: 2 (both under 15 years of age); perpetrator's niece: 1 (under 15 years of age); female perpetrator's father: 1. It should be noted that among the victims there were 12 mentally handicapped people (6 cases – sisters, 5 cases – daughters, 1 case – brother).

In cases where "regular" incest (qualified under Article 201 PC) was involved (38 acts), in each case the perpetrator's behaviour was defined by the statutory phrase "sexual intercourse" (in the form of: "had sexual intercourse" or "committed sexual intercourse"). In 7 cases, it was specified what the sexual intercourse consisted of (the following terms appeared twice in the description of the act: "vaginal intercourse" and "sexual intercourse"; 1 case for each of the following: "oral intercourse", "vaginal penetration with fingers" and "fellatio"). In the case of the qualification in connection with Article 12 PC, the following additional terms were used: "repeatedly" or "acting in circumstances of continuity of action".

The analysis of data also allowed creating a picture of a typical defendant. The typical defendant is a man (89.42%), in more than half of the cases not exceeding the age of 40 (62.5%), much more often he is an unmarried person (69.23%), unpunished (65.38%), with children (69.23%). More than half of defendants do not plead guilty (57.69%), and three-fourths of defendants are poorly educated (primary, lower secondary and vocational education – 78.85%).[33]

---

[32] The characteristics of the defendants included a total of 104 persons – 93 men and 11 women.

[33] The image of a typical perpetrator of incestuous acts (from a psychiatric point of view) is presented by J. Gromska, J. Masłowski and I. Smoktunowicz. According to them: "The average Polish perpetrator of incestuous acts is characterized by a definitely low level of education and a reduced level of intelligence. He comes from the countryside, from a single-parent family, and often abuses alcohol. He was incorrectly educated about sexual matters and had a family history of deviations. He could have suffered mental, physical or sexual injuries. He had a conflict with the law, despite the strict upbringing. He was intimidated, embarrassed, or subject to attempted seduction in childhood, he may have developed inconsistently with the phases of libido development, he may have experienced regression or fixedness, and he may have experienced identification disorders. His development was anti-social and against the norms. The Polish perpetrator of incestuous acts has an immature personality, psychopathic features, may have a characteropathy, neurosis or libido disorders, he is characterized by impaired self-esteem,

In practice, incestuous relations are maintained for a long time. The analysis of examined cases, in which acts of indictment were directed to the court (91 in total) leads to the conclusion, that only in 23 cases there were single acts concerned. In the remaining 68 cases, the court had to deal with multiple deeds conducted in a continuous manner or with several acts occurring in one case, but in a fairly large time span. Very often, the duration of unlawful conduct was long: over 1 year was observed in 46 cases (50.54% of all cases concluded with an act of indictment), whereas if to take into consideration the period exceeding 5 years, these were 22 such cases (24.17% of all cases).[34]

Preventive measures were often applied: in two thirds of cases where indictments were directed to courts (65.93%) and against more than half of the defendants (62.5%). It should be noted that this is not a consequence of perceiving incest as an act with particularly high load of social harmfulness, but the fact that incest was usually cumulatively qualified with another provision describing a more serious offence, threatened with a more severe penalty (mainly Article 200 § 1 PC [paedophilia] or Article 197 PC [rape]) or the fact that the same perpetrators committed at the same time other (more severe) offences, which were in actual concurrence of offences. Where the offender was only accused of committing the offence of incest, preventive measures were not usually taken. These were only applied in 6 cases (against 7 perpetrators[35]).

In view of the severity of the sentence imposed on perpetrators of acts which consist of consensual incest only, it must be stated that the courts are not strict in this regard.[36] In such cases, suspended custodial sentences prevailed, mostly oscillating

---

complexes and poor self-control. He's rather an extrovert." See Gromska, J., Masłowski, J., Smoktunowicz, I., 'Badanie przyczyn…', op. cit., p. 269.

[34] Studies by other authors also confirm the fact of long periods of unlawful incestuous behaviour, e.g. A. Pilinow points out that periods of unlawful sexual relations sometimes last up to several years – more than 2 years – 22.5% of the population studied. Pilinow, A., 'Kazirodztwo…', op. cit., p. 66.

[35] In 4 cases it was a pre-trial detention, and in 3 cases – police supervision (including 2 cases with a ban on leaving the country and a ban on issuing a passport).

[36] Where only the provision of Article 201 PC was applicable, the courts issued the following rulings: – 23 sentenced persons; – in relation to 2 persons, the proceedings were discontinued; – 1 person was acquitted. As for the convictions, 1 person was sentenced to a fine (20 x 20 PLN) with a conditional suspension for 1 year, whereas 17 people were sentenced to imprisonment with a conditional suspension: in 4 cases for 3 months (in 2 cases for the probation period of 2 years, and in 2cases – 3 years), in 2 cases for 6 months (suspended for 2 and 3 years), in 2 cases for 7 months (suspended for 2 years), in 2 cases for 10 months (suspended for 2 and 3 years), in 3 cases for 1 year (suspended for 3 years), in 4 cases for 2 years (suspended for 5 years). In 5 cases, probation officer supervision was also imposed, in 1 – the convict was obliged to actively look for a job, and in 4 – to pay a fine alongside a conditionally suspended sentence of imprisonment (in 2 cases 80 x 10 PLN, 80 x 15 PLN, 50 x 10 PLN). In 1 case, apart from the conditionally suspended sentence, the court ruled on a punitive measure in the form of a prohibition to approache the victim (sister). On 3 perpetrators custodial sentences were imposed: – in two cases, for 1 year (and in the first case, it was forbidden to contact the victim and to approach her at a distance of not less than 10 meters for a period of 3 years, in the second – an order to leave the premises and a ban on approaching the victim at a distance of no less than 20 meters for 2 years), – in one case for 6 months. In 1 case, concerning 2 perpetrators and 6 acts qualified under Article 201 PC (3 assigned to each of the perpetrators), an actual concurrence of

at the lower limit of the penalty range provided for in Article 201 PC. The highest sentence of those imposed was 2-years imprisonment (suspended for 5 years) – in 4 cases, and the lowest sentence was the penalty of 3-months imprisonment (also in 4 cases – for two the probation period was 2 years, for another two – 3 years). On three (out of 23) offenders a custodial sentence was imposed (in 2 cases for 1 year and in 1 case for 6 months in prison). In the case of cumulative qualification under Article 201 PC and other provisions of the Penal Code, a custodial sentence was most often imposed. This is understandable, since, in the case of an actual concurrence, the penalty was based on a provision with a much higher penalty than the one for incest. The level of punishment in this group of cases varied. However, the sentence of three-years imprisonment was the most frequent. In cases where suspended sentences have been imposed, their level also varied. In relation to 4 (out of 10) convicted persons, this was a sentence of 1 year (in 2 cases suspended for 5 years, in one 1 case 4 years and in one case 3 years). Three offenders were sentenced to 2 years in prison with a conditional suspension for 5 years. In the event of an actual concurrence of offences, it is difficult to draw any conclusions on the sentence imposed due to the multiplicity of acts, often additionally being in an actual proper concurrence of provisions. The sentences in these cases are based on the provisions containing stricter penalties than those provided for in Article 201 PC. For that reason, the examination of those cases does not make it possible to define unequivocally the criminal policy on the offence of incest.

CONCLUSIONS

As previously indicated, "regular" incest (voluntary for both parties), qualified only under Article 201 PC, is relatively rare in the judicial practice. This conclusion confirms the view expressed by J. Leszczyński that incest concerns the most intimate sphere of human life and as such will represent a large "dark figure", and the actual number of these acts cannot be determined. The public is aware of the most drastic cases (rape, pregnancy, etc.), while voluntary incest relationships are rarely disclosed.[37]

The psychosociological and cultural reflection on domestic sexual violence leads to the search for conditions for this phenomenon. They include the "pathological structure" of the family. In this context, the question arises whether incest is

offences was assumed and an aggregate sentence was issued (3 individual sentences of 8-months imprisonment) of 1 year and 8 months of imprisonment with a conditional suspension of its execution for 4 years, a fine (100 x 10 PLN) and probation officer supervision.

[37] Leszczyński, J., 'O projektach reformy przepisów dotyczących przestępstw seksualnych', *Państwo i Prawo*, 1992, Vol. 2, p. 84. The "dark figure" of incest offences is also referred to by L. Lernell, who argues that the number of incest court cases is negligible, almost none and that intimate relationships that take place within close family rarely come to light'. See Lernell, L., 'Liberalizm i rygoryzm seksualny. Zagadnienia współczesne', in: Imieliński, K. (ed.), *Seksuologia kulturowa*, Warszawa, 1980, p. 314. Also K. Grott and M. Szostak write about the "dark figure" of the offence of incest. For more on the topic, see Grott, K., Szostak, M., *Incest. Criminological Studies*, Poznań, 2013, p. 147 et seq.

a factor conditioning the so-called dysfunctionality in the family or whether it is a phenomenon conditioned by the dysfunctionality. I put forward a thesis that incest is a phenomenon conditioned by the already existing dysfunctionality of the family, and not its cause. The thesis is confirmed by the research carried out. Based on the analysis of files of examined cases, in which an act of indictment was directed to the court, it can be concluded that almost half of the families (46.15%), in which incestuous acts occurred, did not function properly. Family dysfunctionality consisted of a number of factors, which very often occurred together. These include: poor social and family situation, causing the family to remain under the care of social assistance services; educational inefficiency and alcoholism; mental disability of people entering into incestuous relationships; conflicts between parents/cohabitants (often after the divorce or split-up). Such families have also often experienced abuse (psychological, physical).[38] Based on these factors, it can be concluded that the cases of endemic incest occurring in the examined cases were both related to family pathology (disturbed family relations occurred in 21 cases) and were psychopathologically conditioned (alcohol addiction, mental disability or immature personality of the perpetrator). Psychopathological disorders were discovered in expert opinions issued for 42 defendants (these were: mental disability, sexual preference disorders, abnormal personality, alcohol addiction). Therefore, such factors occurred in the case of 40% of the defendants. A total of 67 expert opinions were issued, written by specialists in sexology. In cases where no paedophilia or other sexual preference disorders were found, it was indicated that it was an act qualified as the group of substitute contacts.[39] In cases where a decision on refusal to initiate proceedings was issued, it was not possible to determine how the families in which the behaviours indicated in the reports of a crime were functioning, as in most cases the files were limited to the decision on refusal to initiate proceedings. However, such a possibility existed for cases in which criminal proceedings were discontinued. The analysis of these cases made it possible to state that in more than a half of cases (107, which makes 51.19% of all cases) dysfunctionality of families was noted. Despite the fact that they ended with

[38] Ślusarczyk, B. ('Z problematyki kazirodztwa…', op. cit., pp. 138–139) reached similar conclusions as a result of an analysis of finally concluded judicial proceedings in the period 1970–1975.

[39] Only as a side note, it is worth mentioning the image of the perpetrator of sexual violence presented by J. Bradshaw, who considers incest as one of the forms of violence. The author writes that the perpetrators of incest get sexually aroused by children and allegedly they see nothing wrong with satisfying themselves at the expense of children. This is not true in every case, but very often perpetrators of violence see children as having no rights. Most of the perpetrators had been victims of violence themselves. Half of them were sexually abused and the other half were harmed in some other way. Most of these other abuses were related to physical violence. Almost all perpetrators of sexual abuse are sex addicts, although not all sex addicts are paedophiles. Most of them are emotionally immature and feel maladjusted to the adult world. They turn towards children to get respect, affection and satisfaction of sexual needs. The perpetrators are often alcoholics or drug addicts. They have poor impulse control, especially with regard to sex-related behaviour. Most have a weak relationship with a same-sex parent and have very unstable idea about how to be a man or woman. See Bradshaw, J., *Zrozumieć rodzinę*, translated by H. Szczepańska, Warszawa, 1994, pp. 155–156.

discontinuance, "pathological family relations" constitute their background and confirm the thesis. It is worth noting that even the first empirical research on incest in Poland confirmed this as well. As pointed out by its author, A. Pilinow: "In the light of the data gathered, the fact of social harmfulness resulting from breaching the prohibition of incest in the family remains undisputed. Nevertheless, it seems that the general conditions of living and functioning of the family are the main factors in breaching this prohibition. Therefore, the occurrence of incestuous relations in the community under research can be considered a secondary phenomenon".[40] Taking into account the above, it can be concluded that out of the total number of 300 cases (discontinued cases and those referred to court) in 149 there was a family dysfunction diagnosed, which constitutes almost half of the total number of cases in which the indicated procedural decisions were issued (exactly 49.67%).

BIBLIOGRAPHY

Albrecht, H.J., *Inzest und Strafrecht. Ein rechtsvergleichendes und empirisches Gutachten*, www.ethikrat.org/fileadmin/PDF-Dateien/Veranstaltungen/Albrecht.pdf [accessed on: 20.01.2020].

Banasik, K., 'Karalność kazirodztwa jako naruszenie wolności seksualnej', in: Dymińska, Z. (ed.), *Konteksty prawa i praw człowieka*, Kraków, 2012.

Baranowski, J., 'Ratio legis prawnokarnego zakazu kazirodztwa', *Przegląd Prawa Karnego*, 1990, No. 3.

Bennett, R.L., Motulsky, A.G., Bittles, A.H., Hudgins, L., Uhrich, S., Doyle Lochner, D., Silvey, K., Scott, C.R., Cheng, E., McGillivray, B., Steiner, R.D., Olson, D., 'Genetic Counseling and Screening of Consanguineous Couples and Their Offspring: Recommendations of the National Society of Genetic Counselors', *Journal of Genetic Counselling*, 2002, Vol. 11(2).

Bielski, M., in: Wróbel, W., Zoll, A. (eds.), *Kodeks karny. Część szczególna, vol. 2: Komentarz do art. 117–211a*, Warszawa, 2017.

Bielski, M., 'Wykładnia znamion "obcowanie płciowe" i "inna czynność seksualna" w doktrynie i orzecznictwie sądowym', *Czasopismo Prawa Karnego i Nauk Penalnych*, 2008, No. 1.

Bojarski, M., in: Bojarski, M. (ed.), *Prawo karne materialne. Część ogólna i szczególna*, Warszawa, 2012.

Bradshaw, J., *Zrozumieć rodzinę*, translated by H. Szczepańska, Warszawa, 1994.

Budyn-Kulik, M., 'Inna czynność seksualna. Analiza dogmatyczna i praktyka ścigania', *Prawo w Działaniu*, 2008, No. 5.

Daniluk, P., Nowak, C., 'Kazirodztwo jako problem karnoprawny (dwugłos)', *Archiwum Kryminologii*, 2007–2008, Vol. 29–30.

Filar, M., in: Andrejew, I., Kubicki, L., Waszczyński, J. (eds.), *System Prawa Karnego, t. 4, cz. 2: O przestępstwach w szczególności*, Wrocław–Warszawa–Kraków–Gdańsk–Łódź, 1989.

Filar, M., 'Przestępstwa seksualne w nowym kodeksie karnym', *Nowa Kodyfikacja Karna. Kodeks Karny. Krótkie Komentarze*, 1997, Vol. 2.

Gardocki, L., *Prawo karne*, Warszawa, 2017.

Godlewski, J., 'Kilka uwag na temat szczególnych cech kazirodztwa i transseksualizmu', *Psychiatria Polska*, 1976, No. 5.

[40] Pilinow, A., 'Kazirodztwo…', op. cit., p. 68.

Góral, R., *Kodeks karny. Praktyczny komentarz z orzecznictwem*, Warszawa, 2005.
Górniok, O., in: Górniok, O., Hoc, S., Kalitowski, M., Przyjemski, S.M., Sienkiewicz, Z., Szumski, J., Tyszkiewicz, L., Wąsek, A., *Kodeks karny. Komentarz, Vol. 2: Art. 117–363*, Gdańsk, 2005.
Gromska, J., Masłowski, J., Smoktunowicz, I., 'Badanie przyczyn kazirodztwa na podstawie analizy opinii sądowych', *Psychiatria w Praktyce Ogólnolekarskiej*, 2002, No. 4.
Grott, K., Szostak, M., *Incest. Criminological Studies*, Poznań, 2013.
Hypś, S., in: Grześkowiak, A., Wiak, K. (eds.), *Kodeks karny. Komentarz*, Warszawa, 2018.
Ignatowicz, J., Nazar, M., *Prawo rodzinne*, Warszawa, 2016.
Joachimiak, A., *Genetyka*, Kraków, 1998.
Kliemannel, K., *Beischlafzwischen Verwandten. Eineinterdisziplinäre Betrachtung*, Halle-Wittenberg, 2014.
Kłączyńska, N., in: Giezek, J. (ed.), *Kodeks karny. Część szczególna. Komentarz*, Warszawa, 2014.
Konarska-Wrzosek, V., 'Przedmiot ochrony przy typie przestępstwa kazirodztwa', in: Pohl, Ł. (ed.), *Aktualne problemy prawa karnego. Księga pamiątkowa z okazji Jubileuszu 70. urodzin Profesora Andrzeja J. Szwarca*, Poznań, 2009.
Konarska-Wrzosek, V., in: Konarska-Wrzosek, V. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2018.
Kubik, A., *Specyficzne zaburzenia życia seksualnego*, Warszawa, 2011.
Lernell, L., 'Liberalizm i rygoryzm seksualny. Zagadnienia współczesne', in: Imieliński, K. (ed.), *Seksuologia kulturowa*, Warszawa, 1980.
Leszczyński, L., 'O projektach reformy przepisów dotyczących przestępstw seksualnych', *Państwo i Prawo*, 1992, Vol. 2.
Makarewicz, J., *Kodeks karny z komentarzem*, Lwów, 1932.
Makowski, W. (ed.), *Encyklopedia podręczna prawa karnego (prawo karne materialne i formalne, karne skarbowe i administracyjne; socjologja i psychologja kryminalna; medycyna i psychjatrja sądowa; kryminalistyka i więziennictwo), Vol. 2: Egipt – międzynarodowe prawo karne*, Warszawa, 1934–1936.
Marek, A., *Kodeks karny. Komentarz*, Warszawa, 2010.
Mozgawa, M., in: Mozgawa, M. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2021.
Nazar, K., *Kazirodztwo. Studium prawnokarne i kryminologiczne*, Lublin, 2019.
Papierkowski, Z., *Prawo karne (część szczególna)*, Lublin, 1947.
Peiper, L., *Komentarz do kodeksu karnego, prawa o wykroczeniach, przepisów wprowadzających obie te ustawy*, Kraków, 1936.
Pilinow, A., 'Kazirodztwo – geneza zakazu i skutki', *Problemy Rodziny*, 1969, No. 3.
Pilinow, A., 'Teoretyczne i empiryczne wersje kazirodztwa', *Kultura i Społeczeństwo*, 1968, No. 3.
Płatek, M., 'Kodeksowe ujęcie kazirodztwa – pozorny zakaz i pozorna ochrona', in: Mozgawa, M. (ed.), *Kazirodztwo*, Warszawa, 2016.
Rodzynkiewicz, M., in: Zoll, A. (ed.), *Kodeks karny. Część szczególna. Komentarz do art. 117–277*, Kraków, 2006.
Simson, G., Geerds, F., *Straftaten gegen die Person und Sittlichkeitsdelikte in rechtsvergleichender Sicht*, München, 1969.
Skupiński, J., 'Problematyka kodyfikacji przestępstw "nierządu"', *Palestra*, 1960, No. 10.
Smyczyński, T., *Prawo rodzinne i opiekuńcze*, Warszawa, 2016.
Surkont, M., *Prawo karne. Podręcznik dla studentów administracji*, Sopot, 1998.
Szczekala, A., 'Przeszkody małżeńskie pokrewieństwa i przysposobienia oraz ustalenie stanu cywilnego a zakaz kazirodztwa', in: Mozgawa, M. (ed.), *Kazirodztwo*, Warszawa, 2016.
Szibor, R., 'Inzestund Konsanguinität – Eine Übersichtsoziologischen, klinisch-genetischen und rechtsmedizinischen Aspekten', *Rechtsmedizin*, 2004, Bd. 14.

Ślusarczyk, B., 'Z problematyki kazirodztwa (charakterystyka rodzin, w których ujawniono fakty współżycia kazirodczego), Studia Kryminologiczne', *Kryminalistyczne i Penitencjarne*, 1977, Vol. 6.
Tomkiewicz, M., 'Kazirodztwo a prawnokarna ochrona rodziny w Polsce', *Profilaktyka Społeczna i Resocjalizacja*, 2013, No. 21.
Warylewski, J., in: Stefański, R.A. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2018.
Wąsek, A., 'W kwestii tzw. odmoralizowania prawa karnego', *Studia Filozoficzne*, 1985, No. 2–3.
Winter, P.C., Hickey, G.I., Fletcher, H.L., *Genetyka*, translated by J. Augustyniak, Warszawa, 2000.
Wojciechowska, J., in: Kunicka-Michalska, B., Wojciechowska, J. (eds.), *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*, Warszawa, 2001.
Zoll, A., 'Ochrona prywatności w prawie karnym', *Czasopismo Prawa Karnego i Nauk Penalnych*, 2000, Vol. 1.

INCEST. PENAL-LAW AND CRIMINOLOGICAL ASPECTS

Summary

The article discusses the statutory features of the offence of incest in the Polish Penal Code from 1997 (Article 201) and the results of empirical research carried out. Doubts were raised in doctrine about the rationalization of the prohibition of incest and the definition of the object of protection of this crime. The conduct that constitutes the actus reus as well as the subject and the subjective side of the offence of incest were also analysed. The research material was the files of cases under Article 201 of the Penal Code registered in all public prosecutor's offices in Poland in 2013–2014 (389 cases). Research was intended to was primarily to identify the criminological picture of the offence of incest and its scale compared to total crime figures in Poland and the policy of punishing. The next aim of the research was to characterise the families, in which incestuous acts took place, and thus to answer the key questions in this context: whether incest is a factor determining the so-called family pathology or maybe it is a phenomenon conditioned by it and whether it occurs spontaneously or is connected with sexual violence in the family. The results of the research show that the so-called "regular incest" (voluntary on both sides), qualified only under Article 201 of the Polish Penal Code, is relatively rare in the practice of the judiciary. Most cases of incestuous sexual relations were combined with the crime type of sexual abuse of a minor or rape. These results seem to confirm the thesis that incest is rarely the only committed offence, but is most often related to domestic sexual violence. They also support the thesis that incest is a phenomenon conditioned by already existing family dysfunctionality, not its cause.

Keywords: incest, offence, empirical research, sexual intercourse, family members

KAZIRODZTWO. ASPEKTY PRAWNOKARNE I KRYMINOLOGICZNE

Streszczenie

W artykule omówiono ustawowe znamiona przestępstwa kazirodztwa w polskim Kodeksie karnym z 1997 r. (art. 201) oraz wyniki przeprowadzonych badań empirycznych. W doktrynie występują wątpliwości dotyczące racjonalizacji zakazu kazirodztwa oraz określenia przedmiotu

ochrony tego przestępstwa. Analizie poddano również zachowanie stanowiące czynność sprawczą oraz stronę podmiotową przestępstwa kazirodztwa. Materiał badawczy stanowiły akta spraw z art. 201 k.k. zarejestrowanych we wszystkich jednostkach prokuratury w Polsce w latach 2013–2014 (389 spraw). Badania miały na celu przede wszystkim przedstawienie obrazu kryminologicznego przestępstwa kazirodztwa i jego skali na tle ogólnej liczby przestępstw w Polsce oraz polityki karania. Kolejnym celem badań była charakterystyka rodzin, w których dochodziło do czynów kazirodczych, a tym samym odpowiedź na kluczowe w tym kontekście pytania: czy kazirodztwo jest czynnikiem determinującym tzw. patologię rodziny, czy może jest zjawiskiem przez nią uwarunkowanym oraz czy występuje spontanicznie, czy też jest związane z przemocą seksualną w rodzinie. Wyniki badań wskazują, że tzw. kazirodztwo klasyczne (obustronnie dobrowolne), kwalifikowane jedynie z art. 201 k.k., jest stosunkowo rzadko spotykane w praktyce orzeczniczej. Większość przypadków kazirodczych stosunków płciowych łączyła się z typem przestępstwa wykorzystania seksualnego osoby małoletniej lub zgwałcenia. Wyniki te zdają się potwierdzać tezę, że kazirodztwo rzadko jest jedynym popełnianym przestępstwem, ale najczęściej jest związane z przemocą seksualną w rodzinie. Potwierdzają również tezę, że kazirodztwo jest zjawiskiem uwarunkowanym istniejącą już dysfunkcjonalnością rodziny, a nie jej przyczyną.

Słowa kluczowe: kazirodztwo, przestępstwo, badania empiryczne, obcowanie płciowe, członkowie rodziny

Cite as:

Nazar K. (2022) 'Incest. Penal-law and criminological aspects', *Ius Novum* (Vol. 16) 2, 20–36. DOI: 10.26399/iusnovum.v16.2.2022.11/k.nazar

Cytuj jako:

Nazar K., *Kazirodztwo. Aspekty prawnokarne i kryminologiczne*, „Ius Novum" 2022 (16) nr 2, s. 20–36. DOI: 10.26399/iusnovum.v16.2.2022.11/k.nazar