

INTERVENTION-RELATED SELF-DEFENCE

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ABSTRACT

The scholarly and research-focused article examines the content of Article 25 §§ 4 and 5 CC, which was transferred to the new Article 231b §§ 1 and 2 CC of Chapter XXIX of the Criminal Code by means of Act of 20 February 2015 amending the Criminal Code Act and Certain Other Acts. The regulation concerns the intervention-related self-defence, wherein a person acting in self-defence and repelling an attack on another's good protected by law, while simultaneously protecting public security or order, is granted the same legal protection as public officials. The article analyses the genesis and development of this defence, its legal nature, objectives, conditions for application, the scope of criminal law protection for a person acting within the intervention-related self-defence, the exclusion of this protection, and the relationship between Article 231b § 1 and Article 217a CC. The primary scientific objective is to evaluate the legitimacy of its introduction to the Criminal Code and the correctness of defining the premises for its application and its scope. The aim of the considerations is to demonstrate that this measure, despite the negative assessment of its introduction to the Criminal Code in the doctrine, can play a vital role in ensuring security and public order.

Keywords: attack, crime, criminal law protection, intervention, public official, public order, public security, self-defence

INTRODUCTION

The Act of 20 February 2015 amending the Criminal Code Act and Certain Other Acts¹ introduced Article 231b, containing provisions of Article 25 §§ 4 and 5 CC, previously repealed. It ensures the same legal protection for an individual acting in self-defence, repelling an attack on another's good protected by law, while also

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¹ Journal of Laws of 2015, item 396, hereinafter referred to as the 2015 Amendment.



protecting security and public order, as for a public official. Given the regulation's transfer from one Chapter of the Criminal Code to another, it is crucial to assess this legislative step, understand its nature and grounds for its maintenance, and clarify doubts about its components. The primary scientific aim of this article is to evaluate the rationale for this measure introduction to the Criminal Code, and the accuracy of defining prerequisites for its application and scope. The objective is to demonstrate that, despite negative assessment of its introduction in doctrine, the measure can play a significant role in ensuring security and public order. The research hypothesis presumes that the introduction of this type of self-defence is justified and was correctly regulated in Chapter XXIX of the Criminal Code. Its verification is conducted mainly using a formal dogmatic method analysing the legal text alongside hermeneutic and reasoning methods. The research findings are original, as they summarise and assess the doctrine's *acquis*. While the research primarily covers national law, it could be useful elsewhere as it concerns an original measure that goes beyond traditional interpretation of self-defence. This paper holds significant scientific relevance due to its in-depth dogmatic analysis and extensive theoretical thought. It also has practical importance, showing directions of interpretation for prerequisites applying the measure and its other elements, potentially contributing to its uniform application.

GENESIS AND DEVELOPMENT OF INTERVENTION-RELATED SELF-DEFENCE

As mentioned above, this measure was not regulated in the Criminal Code by means of the 2015 Amendment, but was introduced to the Criminal Code by Act of 26 November 2010 amending Criminal Code Act and Act on the Police,² which added the following two paragraphs to Article 25:

“§ 4. A person who uses self-defence to repel an attack on someone else's good protected by law and protects security or public order shall be entitled to legal protection stipulated for public officials.

§ 5. The provision of § 4 shall not be applicable if an attack perpetrator's act addressed against a person repelling it infringes only reverence and dignity of that person.”

The 2015 Amendment transferred the provisions in extenso to Chapter XXIX titled “Offences against operations of the state institutions and local self-government” and placed there as a new editorial unit: Article 231b §§ 1 and 2. The explanatory memorandum of the bill indicated that: “Article 25 stipulates the lack of criminal liability (countertype) or consequences of exceeding the limits of the countertype concerning a person acting in self-defence and not with regard to an aggressor's liability and its grounds. That is why it is proposed to transfer the regulation to an

² Journal of Laws of 2010, No. 240, item 1602, hereinafter referred to as the 2010 Amendment.

adequate section of the system of Criminal Code, i.e. to introduce a new provision under Article 231b CC".³

In literature, the change of the placement of the provision is assessed divergently. The authors who dispute this legislative step believe it was unnecessary and merely technical.⁴

Its positive assessments are linked, inter alia, to challenges faced during legislative work on the 2010 Amendment bill, questioning the grounds for placing the provision in Article 25 CC and suggesting to place it in Chapter XXIX Criminal Code.⁵ It was recognised that Article 25 defined a countertype of self-defence and exceeding its limits, i.e. it concerned criminal liability of a person repelling an attack and not an aggressor's criminal liability.⁶ With this in mind, it is emphasised that the authors of the bill were correct in recognising that the regulation should not be placed in Article 25 CC.⁷ The current location of the norm is viewed by some as superior to its former placement in Article 25 CC, which was seen as a technical legislative error, since it failed to define the characteristics and consequences of exceeding the self-defence limits.⁸

Recognising the validity of this reasoning, it is still important to note that, from a legislative perspective, the placement of Article 231b in Chapter "Offences against operations of the state institutions and local self-government" is unfortunate.⁹

Taking into account that the regulation provides offers legal protection to persons acting in self-defence and in public interest equivalent to that of public officials, the placement of the regulation within the chapter that includes provisions concerning offences against, inter alia, such persons is appropriate. The placement of intervention-related self-defence in Article 231b CC is more than a straightforward legislative manoeuvre; as discussed below, it provides crucial interpretive guidance on the legal nature of the regulated measure.

³ Justification for the governmental bill amending Act: Criminal Code and certain other acts (print no. 2393), p. 27, <https://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=2393>, accessed on 15 January 2023.

⁴ Mozgawa, M., in: Mozgawa, M. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2019, p. 775; Guzik-Makaruk, E.M., Pływaczewski, E.W., in: Filar, M. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2016, p. 1394.

⁵ *Opinion of the Criminal Law Codification Committee on the bill amending Criminal Code Act and Act on the Police* (version of 26 March 2010), p. 3; Sakowicz, A., 'Opinia prawna o zmianie ustawy – Kodeks karny oraz ustawy o Policji z dnia 8 czerwca 2010 r.', (print 2986), p. 6.

⁶ Zoll, A., 'Prace nad nowelizacją przepisów części ogólnej kodeksu karnego', *Państwo i Prawo*, 2012, No. 11, pp. 8–9.

⁷ Wiak, K., 'Zmiany w części szczególnej Kodeksu Karnego wprowadzone nowelizacją z 20 lutego 2015 r.', *Studia Prawnicze KUL*, 2015, p. 65.

⁸ Majewski, J., *Kodeks karny. Komentarz do zmian 2015*, Warszawa, 2015, pp. 43–44 and 471; Zoll, A., in: Zoll, A. (ed.), *Kodeks karny. Część ogólna. Komentarz do art. 1–116 k.k.*, t. I, Warszawa, 2012, p. 474; Barczak-Oplustil, A., Iwański, M., in: Wróbel, W., Zoll, A. (eds), *Kodeks karny. Część szczególna. Komentarz do art. 212–277d*, Vol. II, Part II, Warszawa, 2017, p. 288.

⁹ Janczukowicz, K., 'Kodeks karny. Omówienie zmian wprowadzonych ustawą z dnia 20 lutego 2015 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw (Dz.U.2015.396)', *LEX/el.*, 2015.

LEGAL NATURE OF INTERVENTION-RELATED SELF-DEFENCE

In literature on both the repealed Article 25 §§ 4 and 5 CC¹⁰ and Article 231b CC,¹¹ the measure is identified as intervention-related self-defence. This terminology is justified by the fact that it pertains to a person who intervenes in defence of another's attacked good protected by law. The word 'intervention' means an act of 'getting involved in a situation' or 'exerting influence in order to make something happen'.¹²

The change of its placement in the Criminal Code does not alter the essence of the measure, because it still involves action in necessary defence of the good protected by law that does not belong to the intervening individual and the protection of security or public order. The unchanged wording of Article 231b CC compared to Article 25 §§ 4 and 5 CC indicates that the provision relocation does not affect its legal nature. The new placement of the provision in Chapter XXIX CC confirms prioritisation of the intervening person's legal protection, should they commit a criminal act in the course of defensive activities. It is not a new countertype and the form of self-defence is constrained by: firstly, the limitation to repelling an attack on someone else's, not the intervening person's, good protected by law; and secondly, the requirement that a defensive activity also protects public security or order. The repealed Article 25 §§ 4 and 5 CC also did not provide grounds for recognising it as a new type of self-defence, and its erroneous interpretation as such in literature, i.e. as intervention-related necessary defence, was a defence of those who do not undertake activities to defend themselves, but rather act for the benefit of others or a collective entity, attributing a special social dimension to their conduct.¹³

AIMS OF INTERVENTION-RELATED SELF-DEFENCE

The purpose of introducing this measure to the Criminal Code, which also serves as its aim, is clearly articulated in the explanatory memorandum for the 2010 Amendment bill, in which it is emphasised that it is being introduced "to support those citizens who, despite not being obligated to respond to observed breaches of

¹⁰ Palka, P., 'Interwencyjna obrona konieczna (art. 25 § 4 i 5 k.k.)', *Przegląd Policyjny*, 2012, No. 3, p. 125; Berent, M., Filar, M., in: Filar, M. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2016, p. 126.

¹¹ Szwarczyk, M., in: Bojarski, T. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2016, p. 686; Sosik, R., *Obrona konieczna w polskim i amerykańskim prawie karnym. Studium prawnoporównawcze*, Lublin, 2019, p. 261; Mozgawa, M., in: Mozgawa, M. (ed.), *Kodeks karny...*, op. cit., p. 775; Hałas, D., in: Grześkowiak, A., Wiak, K. (eds), *Kodeks karny. Komentarz*, Warszawa, 2019, p. 1209; Barczak-Oplustil, A., Iwański, M., in: Wróbel, W., Zoll, A. (eds), *Kodeks karny...*, Vol. II, Part II, 2017, p. 289; Giezek, J., in: Giezek, J. (ed.), *Kodeks karny. Część ogólna. Komentarz*, Warszawa, 2021, p. 898.

¹² Szymczak, M. (ed.), *Słownik języka polskiego*, Vol. I, Warszawa, 1979, p. 802.

¹³ Kilińska-Pekacz, A., 'Rozszerzenie ochrony przysługującej funkcjonariuszom publicznym na inne osoby', *Jurysta*, 2012, No. 3, p. 20; Kilińska-Pekacz, A., 'Nowe ujęcie obrony koniecznej po nowelizacjach kodeksu karnego z lat 2009–2010', *Studia z Zakresu Prawa, Administracji i Zarządzania UKW*, 2013, Vol. 3, p. 97.

law and intervene in defence of security and public order”,¹⁴ and “The axiological basis for the proposed solutions in the area is the assumption that persons who, not being legally obligated to do this, intervene in defence of the law, often overcoming fear and exposing themselves to the aggressive reaction of an offender, respond to hooliganism or other criminal conduct, should be entitled to enhanced legal protection. Therefore, if these persons truly act for the protection of security and public order, an attack on them should be legally regarded as an attack on a public official”.¹⁵ In addition, the authors of the bill intend to raise “the sense of security in society and the authority of law by encouraging citizens to overcome fear and a sense of helplessness in the face of aggressive conduct in public space and by demonstrating that the legislator appreciates civic-minded attitudes shown in public interest. At the same time (...) to have advantageous influence in the general preventive area by discouraging potential perpetrators of offences, especially those who commit offences in public spaces (e.g. acts of vandalism, battery, thefts), from committing them as they are aware that more and more people may actively and efficiently resist their acts, as well as that those people will be under special legal protection in such situations”.¹⁶ Critics argue that this rationale would only hold if the regulation concerned a person defending one’s own property as well as that of others. In both cases the defender is simultaneously preserving security and public order. Therefore, it should not matter whether the defender is protecting their own or someone else’s good protected by law when considering the right to apply necessary defence and the legal status of a person acting in self-defence.¹⁷

In the doctrine, it is rightly believed that the measure constitutes a specific call to citizens to intervene when someone else’s good is endangered¹⁸, potentially mobilising people to act for security and public order.¹⁹

The assertion that its introduction is aimless is not convincing, because the subjective and objective content of Article 25 §§ 4 and 5 CC is laid down in § 1 of this Article, and the goal of stirring society to a more eager response in defence of security or public order was not achieved, as no records demonstrated a noticeable rise in heroic attitudes motivated by the sense of obligation towards public property, despite the increased scope of legal protection.²⁰ Similarly, claims that the regulation does not de facto introduce any new content, and is another instance of the legislator’s populism, contributing to the already extensive code-related casuistry, are unsubstantiated. Empirical research suggests that the application of self-defence of one’s own good prevails in practice.²¹ Indeed, empirical studies on self-defence show that 70% of

¹⁴ *Uzasadnienie rządowego projektu ustawy o zmianie ustawy – Kodeks karny oraz ustawy o Policji* (Sejm print No. 2986), <https://orka.sejm.gov.pl/Druki6ka.nsf/wgdruk/2986>, accessed on 15 January 2023, p. 1.

¹⁵ *Uzasadnienie rządowego projektu...*, op. cit., p. 2.

¹⁶ *Uzasadnienie rządowego projektu...*, op. cit., pp. 4–5.

¹⁷ Sakowicz, A., *Opinia prawna...*, op. cit., p. 4.

¹⁸ Lach, A., in: Konarska-Wrzošek, V. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2020, p. 1133.

¹⁹ Kilińska-Pekacz, A., *Rozszerzenie ochrony...*, op. cit., p. 20.

²⁰ Berent, M., Filar, M., in: Filar, M. (ed.), *Kodeks karny...*, op. cit., p. 126.

²¹ Mozgawa, M., ‘Obrona konieczna w polskim prawie karnym (zagadnienia podstawowe)’, *Annales Universitatis Mariae Curie – Skłodowska*, 2013, No. 2, pp. 183 and 189.

cases involved defending one's own good, and only 10% were about protecting someone else's good.²² The Criminal Law Codification Committee stated that: "There is a misguided belief (...) that stricter criminal liability for those infringing on the good of persons protecting common good or other persons' good would encourage people to this type of activity. If someone overcomes fear and engages in the so-called intervention-related defence, they surely deserve recognition. However, strengthened legal protection should not be considered a specific reward. A criminal sanction is not a reward for the aggrieved but a manifestation of the justice system fulfilling its role and responding to a committed offence. Also, from this point of view, there are no grounds for differentiating sanctions for an attack on a person acting in self-defence and an attack on a person applying intervention-related necessary defence".²³

It is difficult to agree with this opinion because a person who acts in defence of security or public order certainly deserves special protection. Article 25 §§ 4 and 5 CC ensures that they are not liable for an act committed while repelling a direct unlawful attack on the good protected by law, including that of others. However, it does not guarantee any other protection should the aggressor commit a criminal act in the course of defensive activities. For instance, if a perpetrator violates bodily integrity, they commit an offence under Article 217 § 2 CC, which is prosecuted based on private accusation (Article 217 § 3 CC). Therefore, if the aggrieved wants a perpetrator to be held liable, they must initiate a criminal proceeding by filing a complaint, unless a prosecutor initiates an investigation or inquiry due to public interest (Article 60 § 1 CPC). Article 231b § 1 CC alleviates these difficulties because the act aligns with the features of an offence under Article 222 § 1 CC and then a proceeding will be carried out *ex officio*. In this way, such a person is provided with comprehensive protection, which they undoubtedly merit due to their public-spirited attitude.

PREMISES FOR INTERVENTION-RELATED SELF-DEFENCE

Article 231b § 1 CC explicitly concerns:

- (1) an action in self-defence;
- (2) repelling an attack on someone else's good protected by law;
- (3) the protection of security or public order.

All the conditions must be present concurrently.

1. ACTION IN SELF-DEFENCE

The basic requirement for applying Article 231b § 1 CC is a self-defensive act by a person subject to this provision. It is highlighted by a clear emphasis on *verba legis*, a person "who in self-defence repels an attack". Article 231b § 1 CC does not

²² Bachmat, P., 'Instytucja obrony koniecznej w praktyce prokuratorskiej i sądowej', *Prawo w Działaniu*, 2008, No. 3, p. 57.

²³ *Opinia o projekcie o zmianie ustawy – Kodeks karny oraz ustawy o Policji – wersja z dnia 26 marca 2010 roku*, unpublished.

amend the provisions concerning self-defence in any way,²⁴ except for restricting an attack to someone else's legal good. The explanatory memorandum of the 2010 Amendment bill underlines this point, stating that the provision under Article 231b § 1 CC "does not alter the essence of the limits of the countertype of self-defence in any way, but rather stipulates the enhancement of protection for persons acting in the specific form of self-defence, which is intervention-related necessary defence, i.e. applied by persons acting not in self-defence but in defence of another person or a collective entity, lending their conduct a special social dimension. Thus, it involves cases where a person undertaking self-defence has not been compelled to do so, especially by the situational compulsion in which they found themselves, because neither their person nor their property, nor their other goods have been subject to a criminal attack. Instead, they intervened against a lawless assault without any particular interest and no legal obligation".²⁵

This means that all the self-defence characteristics laid down in Article 25 §§ 4 and 5 CC must align, with the single change noted above, that an assault cannot be aimed at the defender's good protected by law. The attack can be initiated against an individual or a private or public good.²⁶ A person must repel a direct lawless attack on the good protected by law and the defensive action should be a measure necessary to repel the attack. The defence should be proportional to the danger created by an attack (arg. ex Article 25 § 2 CC). The requirement of acting in self-defence is fulfilled when the intervening person's conduct is motivated by a desire to repel a lawless assault.²⁷ Given that reference to self-defence must align with all its components, the notion that the nature of an attack referred to in the provision needed further clarification by adding the phrase 'direct lawless' before the word 'attack' cannot be supported.²⁸ The requirement of an action in self-defence should be interpreted within the limits laid down in Article 25 § 1 CC. Therefore, Article 231b § 1 CC is not applicable if the defence limits are exceeded, either intensively or extensively. A defender's act that exceeds the limits of self-defence is unlawful and it is challenging to justify granting such a person special legal. In literature attention is drawn to the fact that a perpetrator of an attack may provoke an intervening person to exceed the necessary defence limits in order to avoid strict liability under Article 231b § 1 CC,²⁹ but it does not change the above assessment.

Pursuant to Article 22 § 2 CC of 1969, which extended self-defence to include actions of a person intervening to restore peace or public order even if it does not result from their professional duty, the Supreme Court decided that: "Involvement in the defence of life or health of another person, as well as intervention to restore peace or public order, is a socially desired action. Generally, if these actions exceed

²⁴ Grzeškowiak, A., in: Grzeškowiak, A., Wiak, K. (eds), *Kodeks karny. Komentarz*, Warszawa, 2012, p. 205.

²⁵ *Uzasadnienie rządowego projektu...*, op. cit., p. 2.

²⁶ Szwarczyk, M., in: Bojarski, T. (ed.), *Kodeks karny...*, op. cit., p. 687.

²⁷ *Uzasadnienie rządowego projektu...*, op. cit., p. 3.

²⁸ Sakowicz, A., *Opinia prawna...*, op. cit., p. 5.

²⁹ Zontek, W., in: Wróbel, W. (ed.), *Nowelizacja prawa karnego 2015. Komentarz*, Kraków, 2015, p. 837.

the limits of necessary defence, they should constitute grounds for the application of Article 22 § 3 CC".³⁰ However, as rightly pointed out in doctrine, this view cannot be applicable to the current legal state, because the former regulation was different in nature.³¹

2. REPELLING AN ATTACK ON SOMEONE ELSE'S GOOD PROTECTED BY LAW

The target of an attack defined in Article 231b § 1 CC compared to Article 25 § 1 CC is narrower in scope. While the latter provision covers any good protected by law – a defender's or anyone else's – the former provision limits it to another's good, not someone acting in necessary defence. This person cannot be one that has the right to the good protected by law. It must be a third person repelling an attack, i.e. someone who is not a holder of the good protected by law. This is indicated in the requirement laid down in Article 231b § 1 CC stipulating that an attack should be launched on "whatever someone else's good protected by law". The phrase "someone else's" means "something belonging to someone else".³² A person must act for the benefit of another person or a collective entity.³³ That is why the regulation is criticised for unjust differentiation within the protection of a person acting in necessary defence, since as a result a person repelling an attack on someone else's good protected by law is granted stronger protection than the one defending their personal property.³⁴ It is also emphasised that this distinction is difficult to justify.³⁵ It is not right because a person defending their own good undertakes defensive activities to protect it against damage and this motivates them to act. In contrast, an intervening person has an entirely different motivation: their intention consists in the desire to prevent the violation of legal order. They show public-spirited attitude and deserve special appreciation. This is a key feature differentiating them from a person defending their own interest.

The doctrine admits situations where a person repelling an attack on another's good protected by law and protecting security and public order at the same time defends their own interest.³⁶ However, it is unclear how the good protected by law co-held by an intervening person should be treated. It might seem that if an intervening person is not the sole holder of the property, it cannot be recognised as someone else's. Yet, it is rightly argued in literature that an opposing view would exclude the possibility of applying this defence for common goods of security and

³⁰ The Supreme Court judgement of 26 February 1976, *Rw 72/76*, *OSNKW 1976*, No. 4–5, item 65.

³¹ Kulesza, J., in: Paprzycki, L.K. (ed.), *Nauka o przestępstwie. Wylączenie i ograniczenie odpowiedzialności karnej. System Prawa Karnego. Tom 4*, Warszawa, 2013, p. 248.

³² Zgólkowa, H. (ed.), *Praktyczny słownik współczesnej polszczyzny*, Vol. 7, Poznań, 1996, p. 297.

³³ Grześkowiak, A., in: Grześkowiak, A., Wiak, K. (eds), *Kodeks karny...*, op. cit., 2012, p. 205.

³⁴ Sakowicz, A., *Opinia prawna...*, op. cit., pp. 3–4.

³⁵ Zoll, A., in: Zoll, A. (ed.), *Kodeks karny...*, op. cit., 2012, p. 474.

³⁶ Mozgawa, M., in: Mozgawa, M. (ed.), *Kodeks karny...*, op. cit., p. 776.

public order.³⁷ In this context, the stance negating such a possibility is difficult to support.³⁸

The requirement that the good defended by an intervening person should be someone else's excludes persons repelling an attack on their own good protected by law from the subjective scope of this protection. Thus, there is no doubt as to who is entitled to the legal protection laid down in Article 231b § 1 CC. Hence, the proposal *de lege ferenda* to explain the concept of 'an intervening person' as 'a person who applies intervention-related self-defence' in the glossary of statutory terms used in the Criminal Code (Article 115 CC) is not justified.³⁹ Despite the unnecessary nature of such a definition, the proposed term is problematic, since it is used in the Fiscal Penal Code and has a fixed meaning, i.e. a party to a fiscal penal proceeding; it refers to one of the parties to a fiscal penal proceeding (Article 120 § 1 FPC) and it cannot be attributed two different meanings within the same branch of law. Of course, it is rightly indicated that it concerns criminal law *sensu largo*, including fiscal penal law.⁴⁰ Moreover, the proposed definition *de facto* does not clarify anything, and its *definiens* stems directly from Article 231b § 1 CC.

Clearly, the conduct of a person whose attack an intervening person repels must exhibit features of an offence, because when an act is irrelevant from the criminal law perspective, that person must not be held liable for an offence in the same way as if committed against a public official. Regarding the assessment of such conduct, there is no need, as it is suggested in the doctrine,⁴¹ to refer *mutatis mutandis* to Article 231b § 1 CC.

3. PROTECTING SECURITY OR PUBLIC ORDER

In order to apply Article 231b § 1 CC, a person acting in self-defence should also act in way that protects security or public order. The explanatory memorandum of the 2010 Amendment bill underlines the requirement: "that their conduct should, in an objective sense, act for the protection of security or public order. This condition will also be fulfilled when a person repelling an unlawful attack the moment they fight it back does not realise that their actions aim at protecting of security or public order, but when assessed objectively, the conduct demonstrates such characteristics".⁴² Contrary

³⁷ Kulesza, J., in: Paprzycki, L.K. (ed.), *Nauka o przestępstwie...*, op. cit., p. 249.

³⁸ Giezek, J., in: Giezek, J. (ed.), *Kodeks karny...*, 2021, p. 901; *ibidem*, 'W obronie granic obrony koniecznej', in: Kalisz, T. (ed.), *Prawo karne w wykonawcze w systemie nauk kryminologicznych. Księga pamiątkowa ku czci Profesora Leszka Boguni*, Wrocław, 2011, pp. 65–66.

³⁹ Narodowska, J., Banaszkiewicz, A., Duda, M., 'Wzmocniona ochrona osoby podejmującej obronę konieczną interwencyjną w świetle nowelizacji art. 25 kodeksu karnego', in: Pikulski, S., Romańczuk-Grącka, M., Orłowska-Zielińska, B. (eds), *Tożsamość polskiego prawa karnego*, Olsztyn, 2011, pp. 107–108.

⁴⁰ Nazar-Gutowska, K., Piórkowska-Flieger, J., 'Recenzja książki, S. Pikulski, M. Romańczuk-Grącka, B. Orłowska-Zielińska (red.), *Tożsamość polskiego prawa karnego*, Olsztyn, 2011', *Ius Novum*, 2012, No. 2, p. 183.

⁴¹ Kulesza, J., in: Paprzycki, L.K. (ed.), *Nauka o przestępstwie...*, op. cit., p. 248.

⁴² *Uzasadnienie rządowego...*, op. cit., p. 3.

to what literature states,⁴³ it is not necessary that the conduct of a person repelling an attack should be motivated to protect security or public order. Article 231b § 1 CC does not support such a conclusion. The condition is met even if intervening person is not even aware at the time of repelling the attack that they are acting for the protection of security or public order, but objectively it occurs.⁴⁴

Literature emphasises that anyone acting in self-defence at the same time protects public order, which is confirmed by the lack of proportionality condition, making the requirement to protect security or public order redundant.⁴⁵ In addition, it suggests that actively opposing lawlessness is always, not only within the intervention for third parties, an act in the public interest. Hence, every person repelling an unlawful attack, even if protecting personal interest, acts for the protection of security and public order.⁴⁶ This view is correct and, in addition, highlighting the fulfilment of this condition in Article 231b § 1 CC emphasises that an intervening person acts in that interest.

The concepts of 'public security' and 'public order' are undefined and not sufficiently specific.⁴⁷ They do not have an unambiguous meaning⁴⁸ and they are defined differently. It is rightly emphasised in literature that these terms are vague, imprecise, incomplete, ambiguous and inaccurate, and thus difficult to define and differentiate.⁴⁹ Their ambiguity lies in the legislator's intention to use them to cover actual states that cannot be precisely described, and attempts to define them would impede the use of normative texts due to their illegibility. Therefore, they allow for flexible law application, adjustment to changing situations, and this way for relative stability of the law in force.⁵⁰

Given that these concepts constitute a normative foundation of more severe punishment for a perpetrator fighting back against a person intervening to defend someone else's good protected by law, it is necessary to outline their limits, at least in a general way. Literature treats the concepts of security and public order objectively as particular states and subjectively as a specific state of social awareness, or in material, formal, and institutional sense, as well broadly and narrowly.⁵¹ Doctrine presumes a generic difference between the concepts; however, public security

⁴³ Lachowski, J., in: Królikowski, M., Zawłocki, R. (eds), *Kodeks karny. Część szczególna. Komentarz. Art. 222–316*, Vol. II, Warszawa, 2017, p. 184.

⁴⁴ Narodowska, J., Banaszkiewicz, A., Duda, M., *Wzmocniona ochrona...*, op. cit., p. 102.

⁴⁵ Zontek, W., in: Wróbel, W. (ed.), *Nowelizacja...*, p. 837.

⁴⁶ Giezek, J., in: Giezek, J. (ed.), *Kodeks karny...*, op. cit., 2021, p. 900;

⁴⁷ Palka, P., 'Przestępstwa przeciwko działalności instytucji państwowych oraz samorządu terytorialnego w ochronie bezpieczeństwa i porządku publicznego', *Studia Prawnoustrojowe*, 2013, No. 22, p. 33.

⁴⁸ Ura, E., 'Zagadnienie teoretyczne ochrony bezpieczeństwa i porządku publicznego', in: Łętowski, J., Pruszyński, J.P. (eds), *Prawo. Administracja. Gospodarka. Księga ku czci Profesora Ludwika Bara*, Wrocław–Warszawa–Kraków–Gdańsk–Łódź, 1983, p. 499 et seq.

⁴⁹ Osierda, A., 'Prawne aspekty pojęcia bezpieczeństwa publicznego i porządku publicznego', *Studia Iuridica Lublinensia*, 2014, No. 23, p. 90.

⁵⁰ Wyrzykowski, M., *Pojęcie interesu społecznego w prawie administracyjnym*, Warszawa, 1986, pp. 49–50.

⁵¹ Widacki, J., Sarnecki, P., 'Pojęcie bezpieczeństwa i porządku publicznego', in: *Ustrój i organizacja Policji w Polsce oraz jej funkcje i zadania w ochronie bezpieczeństwa i porządku publicznego*, Warszawa–Kraków, 1997, pp. 10 and 11.

is considered a higher level of public order.⁵² Due to their ambiguity, as rightly emphasised in literature, they should be specified by law-applying entities whom the legislator grants considerable discretion to apply and define them.⁵³

Public security is a state where there is no threat to the functioning of the state organisation and the fulfilment of its interests, enabling its standard and free development; it signifies a lack of danger for any local community and society at large.⁵⁴ It is a state where there is no threat to the functioning of the state organisation and its interests are fulfilled, allowing for its standard and free development.⁵⁵ Public security means particular society's freedom from whatever threats to its members' goods.⁵⁶ It represents a situation within a state where individuals and society as a whole face no hazards, regardless of their sources. The limits of security are determined by legal regulations and any violation of those limits constitutes danger.⁵⁷ It is a certain positive state concerning the protection of life and health of people, their property, and the environment.⁵⁸ Literature correctly posits that public security is a desired actual state in a country that, regardless of damage caused by people, natural forces and technology, enables the operation all government, social and private organisations, while preserving the life, health and property of the country's inhabitants.⁵⁹

Public order is a particular societal order.⁶⁰ It is an actually existing social relationship regulated by a series of legal and other norms, which are socially accepted, guaranteeing undisturbed and peaceful functioning of individuals within society. It encompasses all social relations regulated by law and other norms used in public space.⁶¹ Public order represents a certain desired state of public security, order, and peace that enables standard development of social life through compliance with the legal order in force and non-legal norms related to the provision of public order.⁶² It allows for the standard functioning of state and society, established by legal and non-legal norms. Public order implies compliance with legal, ethical, moral and religious norms, and principles of community life, leading to harmonisation of individuals and human communities.⁶³ In criminal law, the concept is accurately defined as "the

⁵² Pływaczewski, E., *Przestępstwo czynnej napaści na funkcjonariusza publicznego*, Toruń, 1985, p. 16.

⁵³ Osierda, A., 'Prawne aspekty...', op. cit., p. 91.

⁵⁴ Mroczo, F., 'Problemy bezpieczeństwa i porządku publicznego', *Zeszyty Naukowe Włbrzyskiej Wyższej Szkoły Zarządzania i Przedsiębiorczości. Refleksje społeczno-gospodarcze*, 2010, No. 14, p. 35.

⁵⁵ Bonisławska, B., 'Współczesne zagrożenia dla bezpieczeństwa publicznego', *Zeszyty Naukowe Wyższa Szkoła Ekonomii i Innowacji. Administracja*, 2012, No. 1, p. 115.

⁵⁶ Pieprzny, S., *Ochrona bezpieczeństwa i porządku publicznego w prawie administracyjnym*, Rzeszów, 2007, pp. 24–45.

⁵⁷ Pieprzny, S., *Policja. Organizacja i funkcjonowanie*, Wrocław, 2007, p. 27; Osierda, A., 'Prawne aspekty...', op. cit., p. 105.

⁵⁸ Osierda, A., 'Prawne aspekty...', op. cit., p. 99.

⁵⁹ Kijak, Z., 'Pojęcie ochrony porządku publicznego w ujęciu systemowym', *Zeszyty Naukowe Akademii Spraw Wewnętrznych*, 1987, No. 47.

⁶⁰ Pieprzny, S., *Ochrona bezpieczeństwa...*, op. cit., pp. 24–45.

⁶¹ Mroczo, F., 'Problemy bezpieczeństwa...', op. cit., p. 35.

⁶² Osierda, A., 'Prawne aspekty...', op. cit., p. 99.

⁶³ Ibidem, p. 106.

existing state of social relations and facilities ensuring security, peace and order in public places, regulated by legal norms and principles of community life".⁶⁴

According to doctrine, it is rightly assumed that pursuant to Article 231b § 1 CC, public security and public order are associated with the protection of values and interests that may not necessarily be found in public places but are oriented towards the common interest, i.e. the state and society's, as much as towards an individual's one.⁶⁵

SCOPE OF LEGAL PROTECTION FOR A PERSON ACTING IN INTERVENTION-RELATED SELF-DEFENCE

A person acting in intervention-related self-defence is entitled to the same legal protection as public officials, although they are not granted the status of a public official.⁶⁶ When the scope of protection is disputed, attention is drawn to the fact that the protection of public officials' goods is inherently linked to their role, as a perpetrator infringing upon a public official's goods also disrupts the proper functioning of the government administration bodies, other state bodies and local self-government. Therefore, expanded legal protection for a public official compared to a person without this status is based on different axiological premises.⁶⁷ Indeed, while an attack on an intervening person does not disrupt the functioning of the state or local government bodies, it should not hinder providing that person with the legal protection public officials are entitled to as they act for security or public order.

Special protection for an intervening person may involve holding their attacker liable for an offence laid down in Chapter XXIX Criminal Code, e.g. infringement of public official's bodily integrity (Article 222 § 1 CC), active attack on a public official (Article 223 §§ 1 and 2 CC), or another offence against a public official's good protected by law, even accidental, such as the killing of a public official (Article 148 § 3 CC). Insulting a public official (Article 226 § 1 CC) is not taken into account, as this act infringes upon the aggrieved's dignity and therefore, in line with Article 231b § 2 CC, the application of its § 1 is excluded. In this context, the view that Article 226 § 1 CC may also be applicable is erroneous.⁶⁸

Liability for this type of offence requires the aggressor's awareness that an intervening person is repelling their attack on someone else's good protected by law and protecting public security or order.⁶⁹

⁶⁴ Kubala, W., 'Porządek publiczny – analiza pojęcia', *Wojskowy Przegląd Prawniczy*, 1981, No. 3, p. 23; idem, 'Przedmiot ochrony przepisów dotyczących przestępstw przeciwko porządkowi publicznemu', *Ruch, Prawniczy, Ekonomiczny i Socjologiczny*, 1978, No. 2, p. 53.

⁶⁵ Palka, P., 'Przestępstwa przeciwko działalności instytucji...', op. cit., p. 43.

⁶⁶ Lachowski, J., in: Królikowski, W., Zawłocki, R. (eds), *Kodeks karny...*, Vol. II, 2017, op. cit., p. 183.

⁶⁷ Sakowicz, A., 'Opinia prawna ...', op. cit., pp. 4–5.

⁶⁸ Lachowski, J., in: Królikowski, W., Zawłocki, R. (eds), *Kodeks karny...*, Vol. II, 2017, op. cit., p. 184.

⁶⁹ Zontek, W., in: Wróbel, W., *Nowelizacja...*, op. cit., p. 838.

EXCLUSION OF INTERVENTION-RELATED SELF-DEFENCE

Enhanced legal protection, in line with Article 231b § 2 CC, is not applicable to a person meeting the conditions laid down in Article 231b § 1 CC when *verba legis* “an act committed by a perpetrator of an attack targeting an intervening person infringes their reverence or dignity”. “The aim of this regulation, as indicated in the explanatory memorandum for the 2010 Amendment bill, is to rationally narrow the scope of protection for persons engaging in intervention-related self-defence, compared to the protection afforded to public officials when a perpetrator’s conduct infringes only one or both goods jointly, thus in particular when it is only an insult but a perpetrator has not breached bodily integrity of the intervening person, and thus has not caused them any health-related”.⁷⁰

The specific actions negating this legal protection are defined by identifying the goods of the protected individual. Thus, it is clear that this refers to acts specified in the provisions of Chapter XXVIII Criminal Code “Offences against reverence and bodily integrity”, although not exclusively. They could also be acts where reverence or dignity of this person is a primary (closer, direct) object of protection, or where this good is a secondary (additional, further, indirect) object of protection.

The doctrine correctly posits that exclusion can sometimes serve the interest of the intervening person who, in case of such a minor infringement of his goods, may prefer to avoid initiating criminal proceedings, which entails an obligation to participate in these proceedings.⁷¹

RELATIONSHIP BETWEEN ARTICLE 231B § 1 AND ARTICLE 217A CC

Infringing on bodily integrity under the conditions laid down in Article 231b § 1 CC constitutes an offence under Article 222 § 1 CC. Article 217a CC criminalises physically assaulting or infringing on the bodily integrity of a person who intervenes to protect safety of people, public security or order. This raises a question about the relationship between these provisions. The *remits* of both provisions mutually exclude each other due to their special nature. If an intervening person’s bodily integrity is infringed in the course of repelling a direct unlawful attack on someone else’s good protected by law, i.e. while acting within the limits of self-defence to protect public security or order, the aggressor is liable for an offence under Article 222 § 1 in conjunction with Article 231b § 1 CC. However, if an intervening person exceeds the limits of necessary defence but acts to protect public security and order, and the aggressor infringes on their bodily integrity, the act aligns with the characteristics of an offence under Article 217a CC.⁷² The opinion that there is a cumulative concurrence of provisions under Articles 222 or 223 and 217a CC is misguided.⁷³

⁷⁰ *Uzasadnienie rządowego projektu...*, op. cit., p. 4.

⁷¹ Giezek, J., in: Giezek, J. (ed.), *Kodeks karny...*, op. cit., p. 889.

⁷² Zontek, W., in: Wróbel, W. (ed.), *Nowelizacja...*, op. cit., p. 840.

⁷³ Szwarczyk, M., in: Bojarski, T. (ed.), *Kodeks karny...*, op. cit., p. 688.

CONCLUSIONS

1. The Act of 20 February 2015 amending Criminal Code Act and Certain Other Acts transferred the entire content of Article 25 §§ 4 and 5 to Chapter XXIX of the Criminal Code, placing it in a new Article 231b § 1 and 2 CC. This provision ensures that a person acting in self-defence, repelling an attack on someone else's goods protected by law, while simultaneously protecting public security or order, receives the same legal protection as a public official (intervention-related self-defence).
2. This legislative action is appropriate; the former placement of the regulation under Article 25 CC was incorrect as it deals with a countertype of self-defence and exceeding its limits, regulating the issue of criminal liability of a person repelling an attack, and not the criminal liability of a perpetrator of an attack.
3. Despite the fact that the content of Article 25 §§ 4 and 5 was transferred to Article 231b §§ 1 and 2 CC, the essence of the regulation remains unchanged. It continues to be intervention-related self-defence, as its normative content remains the same, and its placement in the chapter retaining provisions specifying offences against the operations of the state and local government bodies emphasises the scope of the legal protection for an intervening person should they become subject to a criminal act in the course of their intervention.
4. It is entirely justified to ensure protection for an intervening person, as they act to protect public security or order. Thus they deserve this protections and have the right to expect that the state will react appropriately in case their goods are infringed or endangered during intervention.
5. A person acting in self-defence and repelling an attack on someone else's good protected by law and protecting public security or order is entitled to special legal protection. However, an attack cannot target the intervening person's good protected by law.
6. Special legal protection of a person acting in intervention-related self-defence means they are entitled to the same level of protection as a public official. A perpetrator of an attack on this person could face criminal liability for such actions as infringing a public official's bodily integrity (Article 222 § 1 CC), actively attacking a public official (Article 223 § 1 and 2 CC), or committing another offence that, even incidentally, harms a public official's good, such as the killing of a public official (Article 148 § 3 CC). Insulting a public official (Article 226 § 1 CC) is not taken into account, as this act infringes only on the dignity of the aggrieved, and as per Article 231b § 2 CC, such protection is not applicable when a perpetrator's act targeted at a person repelling an attack infringes solely on the dignity of that person.

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