

CRIMINALISATION OF THE SO-CALLED FORCED MARRIAGE IN THE POLISH CRIMINAL LAW

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ABSTRACT

This article discusses the issue of so-called forced marriages, the criminalisation of which was introduced into Polish criminal legislation by the Act of 13 January 2023 amending the Code of Civil Procedure and some other acts. Introducing the provisions of Article 191b into the Criminal Code aims to fulfil the obligation arising from Article 37 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence of 11 May 2011 (Journal of Laws of 2015, item 961). In addition to outlining the statutory features of new types of crimes, the article addresses issues such as criminal liability, the concurrence of regulations, and the issue of the so-called cultural defence.

Keywords: Istanbul Convention, forced marriage, relationship corresponding to a marriage in the perpetrator's religious or cultural environment, violence, unlawful threat, abuse of the relationship of dependence, use of a critical situation, deception, cultural defence

1. INTRODUCTION

The subject covered in this article is the issue of so-called forced marriage, the criminalisation of which was introduced in Polish criminal legislation by the Act of 13 January 2023, amending the Code of Civil Procedure and some other acts¹ through the addition of Article 191b to the Criminal Code ('CC'). The amendment aims to strengthen the protection of individuals suffering from domestic violence and to align the law in force with the requirements of the Council of Europe

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¹ Journal of Laws of 2023, item 289.



Convention on Preventing and Combating Violence against Women and Domestic Violence, opened for signature in Istanbul on 11 May 2011.²

The Convention mandates the criminalisation of intentional conduct that forces an adult or a child to enter into a marriage (Article 37(1)) and luring an adult or a child to the territory of a Party State other than the one in which they reside, with the purpose of forcing this adult or child to enter into a marriage (Article 37(2)). 'Forcing' is used in the Convention in a broad sense, encompassing both physical and psychological influence.

A conventional requirement set forth in Article 41 includes the penalisation of intentional aiding and abetting in the commission of the offences referred to in Article 37 (Article 41(1)) and intentional attempts to commit the offences referred to in Article 37 (Article 41(2)). Article 42 of the Convention prohibits establishing domestic legal regulations that regard culture, custom, religion, tradition, or the so-called honour as justification for acts of violence covered by the Convention. Given that minors are often incited to commit such acts, thereby usually avoiding criminal liability, the Convention obliges Parties to take necessary legislative or other measures to ensure that incitement of a child by any person to commit any of the acts of violence covered in the Convention does not diminish the criminal liability of that person for the acts committed. The drafters of the Convention emphasise that a large number of offences listed in the Convention are usually committed within relationships between family members as well as by persons who are members of the victims' immediate social environment. Furthermore, pursuant to Article 43 of the Convention, all offences established in accordance with the Convention should apply irrespective of the nature of the relationship between victims and perpetrators (e.g., relationship between spouses or parents and children).

The solution consisting of separate criminalisation of a forced marriage, in a way that takes into account the specific characteristic of such an offence as well as the intentional misleading of an adult or a child to bring them to the territory of another country with the intention of forcing them to enter into a marriage, was recommended to Polish authorities by GREVIO.³ As outlined in the GREVIO report, although the Istanbul Convention does not require that the Parties establish separate provisions penalising every form of violence against women, it aims to support the Parties in creating a legal framework to ensure effective intervention and prosecution. At the same time, it was noted that in the absence of data on the incidence of forced marriages in Poland and the number of reports to social welfare services or law enforcement bodies, assessing the number of women who are or may be at risk of a forced marriage and determining the usefulness of general provisions of criminal law for prosecution and sentencing is difficult. Information provided to GREVIO by

² Journal of Laws of 2015, item 961, and of 2021, item 844, hereinafter referred to as 'Istanbul Convention'.

³ The Convention establishes a monitoring mechanism aimed at the assessment of the level of its implementation by the Parties. The monitoring mechanism is composed of two pillars: Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), a body of independent experts, and the Committee of the Parties, a political body composed of representatives of the Parties to the Convention.

civil society representatives suggests that forced and early marriages are practiced in some Roma communities. The problem may also affect women and children from migrant backgrounds. Owing to the need for a comprehensive approach, GREVIO strongly encourages Polish authorities to ensure that any criminal justice solution is accompanied by a comprehensive strategy for preventing and detecting this form of violence as well as by support for women and girls facing a forced marriage.⁴

At the stage of joining the Istanbul Convention, the Polish draftsmen emphasised that acts referred to in Article 37 of the Convention could be prosecuted in Poland in accordance with Article 191 CC (coercing someone into behaving in a certain way). In turn, luring may be classified as aiding and abetting in criminal coercion to certain conduct.⁵ On the other hand, in the justification of the governmental Bill amending Act: Code of Civil Procedure and some other acts (print No. 2615), it was stated that:

‘in the opinion of the draftsman, Article 191 CC does not contain all the elements of a crime under Article 37 of the Istanbul Convention. The Criminal Code does not provide for a separate offence of luring an adult or a child to the territory of a Party State or a state other than the one in which he or she resides for the purpose of forcing them to enter into a marriage.’ It should also be added that, as the explanatory report to the Convention suggests, the term ‘luring’ used in the provision means every type of behaviour that the perpetrator uses to tempt the aggrieved person to travel to another country, for example under a pretext or by inventing a reason such as visit to a sick family member. The intention must include the act of luring a person abroad as well as the purpose of forcing that person to enter into a marriage (paragraph 197). GREVIO also drew attention to this fact and recommended in the final evaluation report that the Polish authorities criminalise the intentional conduct of misleading an adult or a child in order to bring them to the territory of another country with the intention to force them to enter into a marriage, in accordance with Article 37(2) of the Istanbul Convention.⁶ For the above reasons, a new type of crime was introduced in Article 191b CC (Article 5(4)), which contains the features of the entire offence under Article 37 of the Convention.

However, the above statement raises doubts. As the Supreme Court notes in the opinion of 24 October 2022 on the governmental Bill amending Act: Code of Civil Procedure and some other acts (print No. 2615):

‘criminal law creates a certain logical system in which various forms of criminal phenomena, not only perpetration in the strict sense, are criminalised. As indicated in Article 18 § 3 CC, whoever, with the intention to make another person commit a prohibited act, facilitates its commission by his behaviour, is liable for aiding and abetting. Therefore, there should be no doubts that a person who lures another person to the territory of another country so that the main perpetrator can commit a prohibited act consisting, in fact, in entering into a forced marriage is such an entity. Therefore, the proposed regulation should be considered unnecessary due to the fact that it would not introduce additional criminalisation, but only expand the existing provisions.’⁷

⁴ GREVIO/Inf(2021)5 Polska, p. 80.

⁵ See print No. 2515: *Rządowy projekt ustawy o ratyfikacji Konwencji Rady Europy o zapobieganiu i zwalczaniu przemocy wobec kobiet i przemocy domowej, sporządzonej w Stambule dnia 11 maja 2011 r.*

⁶ GREVIO Baseline Evaluation Report Poland, GREVIO/Inf(2021)5, Adopted by GREVIO on 23 June 2021, p. 64, www.coe.int/conventionviolence [accessed on 5 April 2024].

⁷ *Opinia SN z dnia 24.10.2022 r. do rządowego projektu ustawy o zmianie ustawy – Kodeks postępowania cywilnego oraz niektórych innych ustaw* (print No. 2615), <https://orka.sejm.gov.pl/Druki9ka.nsf/0/A88C237C1AF86014C12588EC00465263/%24File/2615-004.pdf> [accessed on 5 April 2024].

2. CHARACTERISTICS OF STATUTORY FEATURES

Article 191b § 1 CC stipulates criminal liability for causing a person to enter into a marriage within the meaning of the Polish legal system as well as to enter into relationships corresponding to a marriage in the perpetrator's religious or cultural environment. In turn, § 2 penalises the conduct consisting of persuading another person to leave the territory of the Republic of Poland for the purpose of committing the offence referred to in § 1.

For a full characterisation of the types of prohibited acts under Article 191b CC, a classical arrangement based on the traditional division of statutory features was adopted. Moreover, reference was made to such issues as criminal liability and the concurrence of provisions.

2.1. OBJECT OF PROTECTION

Article 191b was added to Chapter XXII, which groups offences against freedom. This solution deserves approval. It is assumed in the literature that the typical object of offences specified in this Chapter is freedom to make decisions, which may be violated by depriving another person of the ability to make decisions at all (e.g., deprivation of the possibility to move), or the aggrieved by force or threat is brought to make a certain decision in line with the will of the person using violence or threat.⁸ Freedom, perceived as a person's right, is subject to protection, as expressed in Article 31(1) of the Constitution of the Republic of Poland.⁹

Under Article 191b § 1 CC, the freedom to take a decision on entering into a marriage or a relationship corresponding to a marriage in a certain religious or cultural environment is an individual object of protection. The secondary object of protection may include freedom, bodily inviolability, and dignity, which are related to the multitude and variety of causative activities.¹⁰ In turn, Article 191b § 2 CC protects, first and foremost, a person's freedom to decide where the aggrieved person wants to stay. The additional object of protection is the same interest as in the case of Article 191b § 1 CC.¹¹

⁸ Zoll, A., *Komentarz do rozdziału XXIII, Nt 2*, in: Wróbel, W., Zoll, A. (eds), *Kodeks karny. Część szczególna. T. 2. Cz. 1. Komentarz do art. 117–211a*, Warszawa, 2017.

⁹ Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483, as amended.

¹⁰ See Królikowski, M., Sakowicz, A., *Komentarz do art. 191b KK, Nb 3*, in: Królikowski, M., Zawłocki, R. (eds), *Kodeks karny. Część szczególna. Komentarz do artykułów 117–221*, Vol. II, Warszawa, 2023.

¹¹ Lachowski, J., *Komentarz do art. 191(b), Nt 2*, in: Konarska-Wrzosek, V. (ed.), *Kodeks karny. Komentarz*, LEX/el. 2023.

2.2. PERPETRATOR OF A PROHIBITED ACT

The types of prohibited acts under Article 191b § 1 and § 2 CC are, in general, common crimes, i.e., they may be committed by anybody. With regard to the features: 'by violence, unlawful threat', 'taking advantage of a critical situation', as well as 'with the use of deception', they are common crimes. However, only the perpetrator who is in such a relationship can abuse the relationship of dependence. In this respect, the types of crimes under Article 191b § 1 and 2 CC are individual offences.

The legislator did not provide for the possibility of holding a minor criminally liable for committing these prohibited acts pursuant to Article 10 § 2 CC.

2.3. OBJECT OF A PROHIBITED ACT

The behaviour specified in Article 191b § 1 CC consists in causing another person to enter into a marriage or a relationship that corresponds to a marriage in the perpetrator's religious or cultural environment. The commission of a prohibited act must take place with the use of violence, unlawful threats or abuse of the relationship of dependence, or taking advantage of a critical situation. However, unlike in the case of the type under Article 191b § 2 CC, deception is not mentioned among modal features.

In turn, the type of a prohibited act specified in § 2 consists in persuading another person to leave the territory of the Republic of Poland with the use of deception or abuse of the relationship of dependence or a critical situation for the purpose of committing an offence under § 1.

2.3.1. CAUSATIVE ACTIVITY

In order to match the features of the type under Article 191b § 1 CC, the statute requires that another person be caused to enter into a marriage or a relationship that corresponds to a marriage in the perpetrator's religious or cultural environment.

In accordance with the dictionary definition, the Polish verb *doprowadzić* (to cause) means: 'be a cause of something, cause somebody to do something, cause something to happen, trigger something'. The verb *doprowadza* (causes) is classified as a functional-causative feature. It is used in the description of many offences¹² and indicates the need for a different result each time. Its use in Article 191b § 1 CC determines the causative nature of the offence in question.

One can speak about *doprowadzenie* (causing somebody to do something) referred to in Article 191b § 1 CC only when the perpetrator's conduct matching the features specified in the provision is a condition for entering a marriage or a relationship that corresponds to a marriage in the perpetrator's religious or cultural environment. There must be a causative and normative connection between the perpetrator's

¹² See, e.g., Article 124 § 1, Article 151, Article 153 § 1, Article 197 § 1–2, Article 198, Article 199 § 1–3, Article 200 § 1, Article 203, Article 281, Article 282 and Article 286 CC.

conduct and the act of entering a marriage or a relationship corresponding to a marriage in the perpetrator's religious or cultural environment.

The statutory result consists in causing another person to enter a marriage or a relationship corresponding to marriage in the perpetrator's religious or cultural environment. Therefore, the offence is committed the moment a marriage or a relationship referred to in this provision is actually entered into. In the event the perpetrator intends to achieve such a result but fails to achieve it, we deal with an attempt.

A monogamous marriage between a man and a woman is the form of marriage recognised in the Polish legislation (Article 1 § 1 of the Family and Guardianship Code ('FGC')). Article 18 of the Constitution of the Republic of Poland also defines marriage as a union of a man and a woman. A person who is married cannot enter into another marriage (Article 13 § 1 FGC).

In accordance with Article 191b CC, however, it concerns not only a legally regulated marriage but any relationship that corresponds to a marriage, but at the same time is permissible in the light of a specific religion or in a given cultural environment. The Polish legislator decided to go beyond the scope of Article 37 of the Istanbul Convention, the regulations of which apply only to forced marriages and not to relationships 'corresponding to them' based on specific criteria. The concept of 'a relationship corresponding to a marriage within the perpetrator's religious or cultural environment' is not easy to define and does not facilitate the interpretation of Article 191b CC, as already noted in the literature.¹³ Criminal liability in light of this provision depends not only on the regulation of the institution of marriage in the Polish legal system, but also on religious and cultural customs.¹⁴ A same-sex partnership may also be considered a relationship 'corresponding to a marriage in the perpetrator's religious or cultural environment.' In the light of Polish law, such a relationship cannot be recognised as a marriage, although it seems that in the context of the features of Article 191b CC, it matches the features of 'a relationship corresponding to a marriage in the perpetrator's religious or cultural environment.'¹⁵

In accordance with Article 191b § 1 CC, the identity of a person using violence, unlawful threat or abuse of the relationship of dependence, or taking advantage of a critical situation for the purpose of causing someone to enter a marriage and a person who enters into a marriage with the aggrieved is not required.

It should be noted that Article 32 of the Convention imposes an obligation to take necessary legislative or other measures to ensure that marriages concluded under force may be voided, annulled, or dissolved without imposing undue financial or administrative burden on the victim. These provisions of the Convention align with the solution provided in Article 15 § 1 FGC, i.e., marriage annulment. It is possible to annul a marriage concluded by a person who, for any reason, was in a state excluding conscious expression of their will; under the influence of a mistake as to the identity of the other party; as well as under the influence of unlawful

¹³ Mozgawa, M., *Komentarz do art. 191(b), Nt 3*, in: Budyn-Kulik, M., Kozłowska-Kalisz, P., Kulik, M., Mozgawa, M. (eds), *Kodeks karny. Komentarz aktualizowany*, LEX/el. 2023.

¹⁴ Thus Lachowski, J., *Komentarz do art. 191(b), Nt 9*, in: *Kodeks karny. Komentarz...*, op. cit.

¹⁵ For a similar stance see: Mozgawa, M., *Komentarz do art. 191(b), Nt 3*, in: *Kodeks karny. Komentarz aktualizowany...*, op. cit.

threat from the other party or a third person, if the circumstances indicate that the person making a declaration could have feared that they or another person was in serious personal danger. Therefore, the circumstances referred to in Article 191b § 1 CC in which a marriage is concluded do not make it voidable *ab initio*. A spouse who made a defective declaration may request the annulment of a marriage. One cannot request the annulment of a marriage after six months from the end of the state that excluded conscious expression of will, from the detection of a mistake or from the end of the fear caused by unlawful threat; and in any case, after three years from the conclusion of a marriage. A prosecutor may also instigate a lawsuit to annul a marriage and determine whether it does or does not exist (Article 22 FGC).

The type of prohibited act under Article 191b § 2 CC consists in persuading another person to leave the territory of the Republic of Poland with the use of deception or abuse of the relationship of dependence or taking advantage of a critical situation with the purpose of committing the crime referred to in § 1 herein. In accordance with the content of the implemented Article 37(2) of the Istanbul Convention, 'Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of luring an adult or a child to the territory of a Party or a State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage is criminalised.' As it was indicated above, in this provision, 'luring' means any conduct by which the perpetrator tempts the aggrieved person to travel to another country.

Taking into account linguistic aspects, the use of the verb *nakłaniać* (to induce, persuade) by the Polish legislator is fully understandable. Inducing/persuading is understood as influencing the will of another person in order to prompt them to take a specific action or to omit to take it.¹⁶ In accordance with Article 191b § 2 CC, it concerns a decision to leave the territory of the Republic of Poland. This activity of inducing must be directed at an individual person.

Interpretation of the functional feature under Article 191b § 2 CC should be made in accordance with the applicable provision of Article 37(2) of the Convention, which quotes 'luring' and gives this conduct a formal character. It seems that despite the traditional understanding of 'luring' as a functional and consequential feature, it should be assumed that the prohibited act under Article 191b § 2 CC constitutes an ineffective (formal) offence. In order to match the features of a prohibited act, it is not necessary to prompt a persuaded person to leave the territory of the Republic of Poland,¹⁷ nor to actually change his or her place of residence.

Article 191b § 2 CC is applied only in a situation when the aggrieved is staying in the territory of the Republic of Poland at the time the offence is committed. However, the scope of criminalisation does not cover a situation in which such

¹⁶ See, e.g., judgement of the Appellate Court in Kraków of 8 July 1999, II aKa 121/99, KZS 1999, No. 8–9, item 37.

¹⁷ See Królikowski, M., Sakowicz, A., *Komentarz do art. 191b KK, Nb 11*, in: *Kodeks karny. Część szczególna...*, op. cit.; Lachowski, J., *Komentarz do art. 191(b), Nt 9*, in: *Kodeks karny. Komentarz...*, op. cit.

a person is abroad, e.g., on holiday.¹⁸ It should be admitted that the analysed provision concerning the place of residence of the aggrieved person was defined too narrowly in comparison to the implemented Article 37(2) of the Istanbul Convention.

2.3.2. MODAL FEATURES

Each of the above-mentioned modal features referred to in Article 191b CC defining the manner of influencing the aggrieved person generates a series of interpretational problems that have long been raised in the literature and in case law. The features appear in the descriptions of many types of prohibited acts. Due to the framework of the present study, their characteristics will be limited to basic issues relevant for the correct interpretation of Article 191b CC.

2.3.2.1. VIOLENCE

Violence is a feature of many offences listed in the current Criminal Code. It should be pointed out that the linguistic contexts in which the Criminal Code uses the term ‘violence’ differ in the Polish language, e.g., *zastosowanie przemocy* (single use of violence) (Article 115 § 3 CC, Article 115 § 22 (1) CC)), *stosowanie przemocy* (repeated use of violence) (Article 118a § 2 (5) CC, Article 119 § 1 CC, Article 191 § 1 CC), *używanie przemocy* (resorting to violence) (Article 191a § 1 CC). In Article 191b § 1 CC a phrase *przemocą (...) doprowadza* ((who) by violence (...) causes) is used.

The concept of violence has not been defined by statute; and determination of its meaning has been left to the doctrine and the judiciary. It should be noted that in common parlance ‘violence’ means: ‘force that outweighs someone’s force; physical advantage used for unlawful acts against someone; unlawfully imposed power, domination; unlawful acts with the use of coercion; an outrage’;¹⁹ as well as ‘the advantage, usually physical, used to impose one’s will on someone or to force something on someone; power illegally imposed on someone, an outrage’.²⁰

Referring to the systemic interpretation, one should indicate a legal definition of ‘domestic violence’ laid down in Article 2(1)(1) of the Act of 29 July 2005 on Counteracting Domestic Violence.²¹ Violence is also defined in international legal documents. The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, done in Istanbul on 11 May 2011, formulates the following definitions: ‘violence against women’ is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (Article 3(a)); ‘domestic violence’ shall mean all acts of physical, sexual,

¹⁸ Cf. the opinion of the Ombudsman of 1 December 2021 on the Bill of 7 October 2021 amending Act: Code of Civil Procedure and some other acts, <https://bip.brpo.gov.pl/pl/content/rpo-przemoc-domowa-lepsza-ochrona-ms-opinia> [accessed on 5 April 2024].

¹⁹ Szymczak, M. (ed.), *Słownik języka polskiego PWN*, Vol. II, Warszawa, 1979, p. 986.

²⁰ Dubisz, S., *Wielki Słownik Języka Polskiego PWN*, Vol. III, Warszawa, 2018, p. 1076.

²¹ Consolidated text: Journal of Laws of 2021, item 1249, as amended.

psychological or economic violence that occur within the family or domestic unit (...) (Article 3(b)). In turn, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime,²² in paragraph 18 defines violence in a family as violence which could cover physical, sexual, psychological or economic violence and could result in physical, mental or emotional harm or economic loss.

In accordance with the Criminal Code provisions, the legislator clearly distinguishes certain types of violence, which is important for determining the scope of designates of the feature. In Article 191b § 1 CC, the legislator uses the term 'violence' and not, for example, 'violence against a person'²³ or 'violence other than violence against a person'.

The concept of 'violence against a person' is understood as the use of physical force targeted directly at a person, which is immanently associated with the violation of at least this person's bodily inviolability; therefore, it can only consist of direct physical influence on a person and does not include indirect influence (the so-called indirect violence) through dealing with a thing.²⁴ Violence against a person means only direct physical influence on a person, which prevents or breaks resistance or influences the formation of his will through the use of physical pain.²⁵

In turn, 'violence other than violence against a person' is indicated in Article 115 § 9a CC in relation to a particularly aggravated type of larceny. In the literature, it is pointed out that violence other than violence against a person is indirect, taking the form of influence on the aggrieved through physical force targeted at an object or animal. In the provision, the legislator indicated situations in which a perpetrator physically exerts influence on objects to exert influence on the human psyche, i.e., uses violence against things.²⁶

In accordance with Article 191b § 1 CC, the legislator did not decide to limit violence to a specific type, which makes it possible to use the term in its broad sense, in accordance with the meaning given to it in the literature and case law.²⁷

Among many definitional concepts, one should distinguish T. Hanausek's view that violence is influence with the use of physical means that, by preventing or breaking the resistance of the coerced person, are intended to prevent the formation or execution of their will decision or, by exerting pressure on their motivational processes with the use of currently caused affliction, set these decisions in the

²² OJ L 315, 14.11.2012, p. 57.

²³ The legislator clearly distinguishes the concept of violence from violence against a person in the Criminal Code. Violence is referred to in e.g.: Article 64 § 2, Article 115 § 3 and 22, Article 118a § 2 (4) and (5), Article 124 § 1, Article 127 § 1, Article 128 § 1 and 3, Article 197 § 1, Article 202 § 3 CC; and violence against a person is referred to in: Article 72 § 1b, Article 75 § 1a, Article 119 § 1, Article 191 § 1, Article 191a § 1, Article 280, Article 281 CC.

²⁴ See the Supreme Court resolution of 10 December 1998, I KZP 22/98, *Orzecznictwo Sądów Polskich*, 1999 No. 2, item 39 with glosses by: Zoll, A., *Orzecznictwo Sądów Polskich*, 1999, No. 5, pp. 242–244; Cieślak, W., *Przegląd Sejmowy*, 1999, No. 10, pp. 141–145; Kulesza, J., *Palestra*, 1999, No. 5–6, pp. 191–193.

²⁵ Gardocki, L., *Prawo karne*, Warszawa, 1998, p. 299.

²⁶ See Daniluk, P., in: Stefański, R.A. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2023, p. 805.

²⁷ For more on the concept of violence in the doctrine of criminal law and case law see Romańczuk-Grącka, M., *Pojęcie i funkcje przymusu psychicznego w prawie karnym*, Warszawa, 2020.

direction desired by the perpetrator.²⁸ This definition indicates the basic feature of violence in the form of influence with the use of physical means, i.e., such that can directly cause an objective change, either in the coerced person or in his environment.

In the doctrine, coercion (in the context of violence used by the perpetrator) is divided into absolute and compulsive. It is pointed out that violence may take the form of *vis absoluta* (absolute coercion) or *vis compulsiva* (relative coercion).²⁹ The former pertains to efforts to violate the ability to make will decisions or to implement such decisions. When the perpetrator uses *vis compulsiva*, they take advantage of the aggrieved person's ability to consciously shape his or her will based on the analysis of factors affecting that person. The use of this ability consists in the imposition by the perpetrator of motives that cause the coerced person to make a decision in accordance with the perpetrator's wishes.³⁰ Such a broad interpretation of violence is approved in case law.³¹

The object targeted constitutes an important criterion of violence. Violence referred to in Article 191b CC may directly target the aggrieved person but also adopt an indirect form: through an object or a third person. In the latter case, the object of influence is the aggrieved person's environment, i.e., third persons and the surrounding things, provided that this way the perpetrator wants to exert influence on the aggrieved person's conduct and the extent of affliction justifies the assumption that he is under coercion. The Supreme Court's view formulated based on the feature of violence laid down in Article 167 § 1 CC of 1969 maintains topicality. According to its judgment, violence means:

'a physical act in a broad sense that is targeted either directly at the aggrieved, obligating them to submit to the will of the perpetrator and behave in a certain way, or at an object owned by the aggrieved which limits the will of the aggrieved person in the field of possessing this item, disposing of it, or using it'.³²

²⁸ See Hanausek, T., *Przemoc jako forma działania przestępnego*, Kraków, 1966, p. 65. For more on the issue of this feature see, inter alia: Bigoszewski, T., 'Przemoc jako znamię strony przedmiotowej', *Czasopismo Prawa Karnego i Nauk Penalnych*, 1997, No. 2, p. 19 et seq.; Wawrowski, J., 'Przestępstwa z użyciem przemocy – przemoc a przemoc wobec osoby', *Przegląd Sejmowy*, 2007, No. 6, p. 121 et seq.; Wysocki, M., 'Przemoc wobec osoby w rozumieniu art. 191 k.k.', *Prokuratura i Prawo*, 1999, No. 3, p. 60 et seq.

²⁹ Cf. the Supreme Court judgement of 6 September 1994, II KRN 159/94, OSNK, 1994, No. 9–10, item 61; Spotowski, A., in: Andrejew, I., Kubicki, L., Waszczyński, J. (eds), *System Prawa Karnego. O przestępstwach w szczególności*, Vol. 4, Part 2, Wrocław–Warszawa–Kraków–Gdańsk–Łódź, 1989, p. 42.

³⁰ Hanausek, T., *Przemoc jako forma...*, op. cit., p. 104 et seq.; cf. Warylewski, J., *Przestępstwa przeciwko wolności seksualnej i obyczajności. Rozdział XXV Kodeksu karnego. Komentarz*, Warszawa, 2001, p. 33.

³¹ See the Supreme Court judgements: of 12 August 1974 – Rw 403/74, OSNKW, 1974, Issue I, item 216; of 16 January 1976 – VI KZP 36/75, OSNPG, 1976, Issue 3, item 2; the Supreme Court resolutions: of 27 April 1994, I KZP 8/94, OSNKW, 1994, Issue 5–6, item 28; of 24 June 1994 – I KZP 13/94, OSNKW, 1994, Issue 7–8, item 42; of 18 November 1997 – I KZP 31; 97, OSNKW 1998, Issue I-2, item 2.

³² The Supreme Court judgement of 12 August 1974, Rw 403/74, OSNKW, 1974, No. 11, item 216.

Violence referred to in Article 191 § 1 CC may also be targeted at third persons, e.g., persons in such a relationship with the aggrieved that an attack against them affects the aggrieved,³³ although this does not have to be a person closest to them.

2.3.2.2. UNLAWFUL THREAT

An unlawful threat is another method of acting by the perpetrator. The feature of an unlawful threat is defined in Article 115 § 12 CC. It encompasses not only a threat specified in Article 190 § 1 CC (punishable threat) but also a threat of causing criminal proceedings or other proceedings in which an administrative fine may be imposed, as well as spreading a message dishonouring the person at risk or their closest relative. Therefore, within the meaning of this provision, an unlawful threat covers three types of threats: (1) a threat of committing an offence to the detriment of the person at risk or a person closest to them (Article 190 CC); (2) a threat of causing a criminal proceeding; (3) a threat of spreading a message dishonouring the person at risk or one closest to them. However, the announcement of instigating a criminal proceeding or another proceeding in which an administrative fine may be imposed is not a threat if it is aimed only at protecting the right infringed by an offence or conduct carrying an administrative penalty of a fine.

It seems that there are no normative reasons for adopting a different interpretation of this feature in light of a crime under Article 191b § 1 CC.

The essence of an unlawful threat consists in exerting strong psychological pressure on the victim to force them to behave in the way desired by the perpetrator. It is an influence on the psyche of another person by predicting harm to the person at risk by the threatening person or another person whose behaviour is under their influence.

It is rightly pointed out in the doctrine that an unlawful threat is a form of compulsive pressure on the victim's decision-making process aimed at forcing them to take a specific action, to refrain from doing something, or to endure the threat of violation of their rights protected by law. A threat, similarly to violence, is a means of coercion, and as such plays a major role in shaping a coercive situation through psychological influence. A threat is therefore a specific means of *vis compulsive* in the form of psychological coercion.³⁴

2.3.2.3. RELATIONSHIP OF DEPENDENCE

'The abuse of the relationship of dependence' is also one of the features of the analysed offences under Article 191 §§ 1 and 2 CC. The relationship of dependence means 'a legal or actual relationship that gives one person an opportunity to exert certain direct or indirect influence on another person's fate and legal, social and economic situation'.³⁵ The essence of the relationship of dependence consists in the fact that dependent persons remain in this relationship with the perpetrator,

³³ Judgement of the Appellate Court in Katowice of 26 March 1998, II AKa 8/98, OSA, 1998, No. 11–12, item 66.

³⁴ Romańczuk-Gracka, M., *Pojęcie i funkcje...*, op. cit., p. 187.

³⁵ The Supreme Court expressed such an opinion on numerous occasions. See, e.g., judgement of 29 May 1933, Zb.O., 1933, item 155; in accordance with the CC in force see, e.g., the

and that a conflict with him threatens their economic and non-economic interests. Therefore, dependent persons must avoid entering into a conflict with the person on whom they depend. Dependent persons must be aware of the need to submit to the demands or wishes of the person on whom they depend.³⁶

In accordance with Article 207 CC, the Supreme Court assumed that

‘the relationship of dependence on the perpetrator occurs when the aggrieved persons are not able to voluntarily oppose the mistreatment and endure it for fear of deterioration of their current living conditions (loss of job, means of maintenance or accommodation, separation, or breakup of sexual life). This kind of relationship may exist by the force of law (...) or an agreement (...). It may also result from an actual situation giving the perpetrator an opportunity to mistreat the victim with the use of the advantage provided by their financial, personal, or emotional bonds. Living together may create the relationship of dependence.’³⁷

The relationship of dependence always signifies the existence of a specific relationship between the perpetrator and the aggrieved person. The essence of this relationship lies in the real possibility of influencing the aggrieved persons’ motivations and decisions, which allows him to direct their further conduct. The relationship of dependence may result from family relationships and all those that entail a certain element of authority, on the one hand, or dependence, on the other hand.³⁸

In Article 191b CC, unlike in Article 207 § 1 CC characterising mistreatment, the legislator did not specifically state that it is ‘a permanent or temporary relationship of dependence on the perpetrator.’ Based on Article 207 CC, it is argued that the relationship of dependence cannot be a mere temporary relationship. The requirement of permanence or transience presupposes a certain longer period of its existence. Thus, a short-term accidental situational bond is excluded.³⁹

Therefore, based on Article 191b CC, it should be assumed that the relationship of dependence could be permanent (constant) or transient in nature. However, an occasional relationship or one determined by the situation would also be sufficient, although in the context of the types of crime analysed, such situations will be rather rare.

Article 191b CC will be applicable not only when there is a legal relationship of dependence resulting from the law or contract, but also when specific actual circumstances create such a situation in which the features of dependence of the aggrieved person on the perpetrator are evident,⁴⁰ and this dependence may vary

Supreme Court ruling of 18 December 2008, V KK 304/08, OSNwSK, 2008, No. 1, item 2691; the Supreme Court ruling of 17 September 2014, V KK 130/14, Legalis No. 1092074.

³⁶ See the Supreme Court judgement of 6 May 2014, V KK 358/13, *Prokuratura i Prawo*, supplement, 2014, No. 9, item 2, p. 5.

³⁷ The Supreme Court ruling of 29 January 2019, IV KK 752/18, Legalis No. 1872596.

³⁸ See the Supreme Court judgement of 4 March 2009, III KK 348/08, *Prokuratura i Prawo*, supplement, 2009, No. 9, item 8; the Supreme Court judgement of 31 March 2020, II CSK 124/19, LEX No. 2978466.

³⁹ See Falandysz, L., ‘Przestępstwa przeciwko rodzinie’, in: Lernell, L., Krukowski, A., *Prawo karne. Część szczególna. Wybrane zagadnienia*, Warszawa, 1969, p. 76; Tobis, A., *Główne przestępstwa przeciwko rodzinie. Charakterystyka prawna i skuteczność kary pozbawienia wolności*, Poznań, 1980, p. 52.

⁴⁰ See the Supreme Court judgement of 8 May 1972, III KR 53/72, OSNPG, 1972, No. 7, item 153.

in nature (financial, personal, or moral). There are no obstacles to assuming that it may be a temporary relationship if it results in dependence and influences the shaping of the aggrieved person's fate. The relationship of dependence should exist at the latest when the perpetrator starts this behaviour, but there is no requirement for it to have existed earlier.

Moreover, the perpetrator must abuse the relationship of dependence. The mere act of commencing certain behaviour towards persons in the relationship of dependence is not sufficient to assign liability under Article 191b § 1 or § 2 CC. It is still necessary that the perpetrator has abused the dependence; and the fact of abuse does not emerge from the very nature of the relationship between the perpetrator and the aggrieved person.⁴¹ The abuse of the relationship of dependence includes the perpetrator's conscious use of this relationship as an element of pressure on the aggrieved person's psyche. In the case of the type of a prohibited act under Article 191b § 1 CC, it causes the aggrieved person to agree to enter into a marriage or a union corresponding to a marriage in the perpetrator's religious or cultural environment; and in the case of the type of offence under Article 191b § 2 CC, it causes the person to leave the territory of the Republic of Poland.

2.3.2.4 CRITICAL SITUATION

The feature of 'critical situation' appears in the legal definition of the codified term 'trafficking in human beings' (Article 115 § 22 (5) CC), and the description of the offences of causing another person to engage in sexual conduct (Article 199 § 1 CC), and causing someone to work as a prostitute (Article 203 CC). It is related to the feature of 'the state of necessity' appearing only in Article 304 § 1 CC, which criminalises usury. The perpetrator concludes a contract 'taking advantage of the state of necessity in which another natural or legal person, or an organisational unit without legal personality finds themselves'.

In case law, 'the state of necessity' is understood as an objective state of threat of significant affliction; and it does not matter whether it results from the aggrieved persons' carelessness (the so-called culpable threat of insolvency), or from factors completely beyond their control (e.g., serious illness).⁴² It must be so unfavourable that it poses a direct threat of great suffering (e.g., in the case of a natural person: the inability to satisfy the basic life needs of oneself and the family, loss of home, etc.). The essence of 'the state of necessity' is also the necessity to obtain a benefit to improve the situation and the inability to reverse the unfavourable situation in any way other than by concluding an agreement imposing a disproportionate benefit.⁴³

It should be recognised *in abstracto* that a 'critical situation' is more difficult than 'the state of necessity', and since the legislator used different terms, they cannot be equated. A critical situation is one that is very challenging and difficult to bear. It

⁴¹ Cf. the Supreme Court judgement of 4 March 2009, III KK 348/08, KZS, 2009, No. 9, item 35, pp. 22–23.

⁴² See the Supreme Court ruling of 31 October 1966, Rw 904/66, OSNKW, 1967, No. 1, item 6.

⁴³ See the judgement of the Appellate Court in Katowice of 28 August 2014, II AKA 240/14, KZS 2015 No. 2, item 53.

signifies a particularly serious situation in which the aggrieved persons are at risk of serious (significant) personal or financial loss. In accordance with Article 199 CC, it is assumed that critical situation is a state in which a person is at risk of suffering a specific damage, and appropriate behaviour by the perpetrator is able to prevent this danger. The essence of this danger is a threat to the aggrieved person's personal or property rights;⁴⁴ the affliction threatening the person aggrieved as a result of the critical situation must be aggravated, and qualified in nature. Even when the Criminal Code of 1932 was in force, L. Peiper indicated that the 'critical situation' should not be understood as such a situation in which the life and health of the victim depends on the perpetrator's interference; it is sufficient that the perpetrator's assistance (e.g., granting a loan, grace for debt payment) will free a given person from unpleasant consequences, e.g., a given person is at risk of severe financial or moral damage, loss of position, inability to meet his or her immediate needs or the needs of the closest persons, etc. However, it is not required that given persons be unconditionally unable to obtain help from elsewhere, i.e., they have reached a dead end.⁴⁵

A critical situation does not have to result from a specific interpersonal relationship, but it can also stem from an incident. Unlike the relationship of dependence, which is an interpersonal relationship resulting from the functions or social roles performed, a critical situation may be an unfavourable set of circumstances independent of interpersonal relationships.⁴⁶ The reasons behind a critical situation may differ and result from an accidental event (e.g., fire, sudden death of a person providing maintenance), unemployment, health problems, heavy indebtedness, and insolvency.⁴⁷

Taking advantage of this condition is a conscious use of the situation by the perpetrator who makes the release of the aggrieved persons from their critical situation (in other words, the elimination of the real danger threatening the legal interests of the aggrieved) dependent on entering into a marriage or a relationship corresponding to a marriage in the perpetrator's religious or cultural environment.

Based on Article 170 CC of 1969 (fornication with a dependent person), an opinion was expressed that in the case of the analysed means of criminal activity in the form of abuse of the relationship of dependence or taking advantage of a critical situation, the perpetrator employs the instrument of compulsive coercion, influencing victims' will decisions through their awareness of the possibility of suffering specific affliction. This mechanism is identical to the mechanism of threat and violence in the form of *vis compulsiva*, with the only difference that in the *vis compulsiva* case a victim is in the state of necessity resulting from threat and violence, while in the analysed case it results from dependence or a critical situation exploited by the perpetrator.⁴⁸

⁴⁴ Hypś, S., in: Grześkowiak, A., Wiak, K. (eds), *Kodeks karny. Komentarz*, Warszawa, 2015, p. 995.

⁴⁵ Peiper, L., *Komentarz do Kodeksu karnego i prawa o wykroczeniach*, Kraków, 1936, p. 426.

⁴⁶ Thus, rightly, Hypś, S., in: *Kodeks karny. Komentarz...*, op. cit., p. 995.

⁴⁷ Konarska-Wrzosek, V., 'Komentarz do art. 199, teza 7', in: Lach, A., Lachowski, J., Oczkowski, T., Zgoliński, I., Ziółkowska, A., Konarska-Wrzosek, V. (eds), *Kodeks karny. Komentarz*, Warszawa, 2020.

⁴⁸ Filar, M., in: Andrejew, I., Kubicki, L., Waszczyński, J. (eds), *System Prawa Karnego...*, op. cit., p. 186.

It is unanimously indicated in the literature that the relationship of dependence as well as a critical situation must objectively exist. It is emphasised that it is necessary to take into account the aggrieved persons' individual life situation, in particular their earning possibilities.⁴⁹ In this context, doubts are raised regarding evaluation of the situation in which such a relationship of dependence or critical situation does not actually occur, but the perpetrator created an erroneous belief in the victim's psyche that they exist or consciously exploited such a belief. It seems that such conduct does not match the features of the prohibited act under Article 191b § 1 CC. This is because it consists in causing a person to enter into a marriage by deception, and this type of conduct is not mentioned in Article 191b § 1 CC. It does not exhaust the features of the offence under Article 191 CC, either. However, the situation should be evaluated differently in the case of conduct consisting in luring the aggrieved person to leave the territory of the Republic of Poland. In this situation, deception is one of the methods of exerting influence used by the perpetrator.

2.3.2.5. DECEPTION

The features of abuse of the relationship of dependence and the use of a critical situation should be interpreted identically in accordance with Article 191b § 2 CC. However, unlike § 1, § 2 provides for the penalisation of the perpetrator's conduct with 'the use of deception', too.

In substantive criminal law, deception functions as a feature describing several offences. It is specified as a way of the perpetrator's behaviour, *inter alia*, in the case of: Article 118a § 2 (4), Article 124 § 1, Article 143 § 1–2, Article 145 § 1 (2)(a), Article 153 § 1, Article 166 § 1–3, Article 191a § 1 and Article 197 § 1 CC

Deception, unlike violence or threats, is not considered a means of coercion because it does not induce a state of coercion. The perpetrator employs it to cause the aggrieved person to give consent, which would not be forthcoming in a different situation, *i.e.*, without deception, or to prevent the aggrieved party from expressing a refusal to give consent.⁵⁰ The criterion of fear is highlighted in doctrine as a tool to distinguish deception from a threat. K. Daszkiewicz-Paluszyńska rightly draws attention to the fact that in the case of 'deception', the aggrieved is convinced of the perpetrator's honest intentions and, therefore, does not experience fear as in the case of a threat, where the person threatened is aware of the potential danger and the fact of being coerced. In the case of deception, there is no element of coercion.⁵¹

The immanent feature of deception is misleading another person or taking advantage of a mistake that the aggrieved person has already made.⁵²

Supreme Court judgements have expressed the view that misleading means the perpetrator, through his insidious actions, causes another person to adopt an

⁴⁹ See, *e.g.*, in accordance with Article 199 CC of 1997, Warylewski, J., in: Wasek, A. (ed.), *Kodeks karny. Część szczególna. T. I. Komentarz*, Warszawa, 2004, p. 852.

⁵⁰ Warylewski, J., in: Warylewski, J. (ed.), *System Prawa Karnego, Przestępstwa przeciwko dobrom indywidualnym*, Vol. 10, Warszawa, 2016, pp. 691–693.

⁵¹ Daszkiewicz-Paluszyńska, K., *Groźba w polskim prawie karnym*, Warszawa, 1958, pp. 129–130.

⁵² See the Supreme Court judgement of 4 March 2009, IV KK 339/08, KZS, 2009, No. 6, item 23.

erroneous impression of the actual state of things, while the exploitation of the error consists in the perpetrator's use of the already existing aggrieved person's opinions or ideas that do not reflect reality.⁵³

2.4. FEATURES OF THE PERPETRATOR

The offence classified in Article 191b § 1 CC is deliberate and may only be committed with direct intention.⁵⁴ According to the commonly adopted view on the offence characterised by the feature of aim, special form of action (e.g., extraordinary cruelty) or the use of specific means (e.g., use of violence) are always committed with direct intention. In this case, the direct intention results from the type of means used by the perpetrator.

The type of prohibited act under Article 191b § 2 CC may only be committed with direct (targeted) intention. In this case, it is necessary to prove that, when persuading, the perpetrator's intention was to lead to a marriage referred to in Article 191b § 1 CC in the way indicated in the provision.

3. CRIMINAL LIABILITY

The types of prohibited acts under Article 191b CC constitute offences carrying an identical penalty in the form of deprivation of liberty for a period from three months to five years. It is puzzling why the legislator decided to equalise the penalty for the type under § 1 with the type under § 2. It seems that persuading another person to leave the territory of the Republic of Poland for the purpose of committing the offence referred to in Article 191b § 1 CC constitutes *de facto* an act preparatory in nature, which should be reflected in the statutory penalty.

De lege lata, the statutory penalty does not exclude the possibility of applying the benefits resulting from Articles 37a or 37b CC or the conditional discontinuation of a proceeding (Article 66 § 1 CC).

Offences under Article 191b CC are subject to public prosecution, i.e. prosecuted *ex officio*.

4. STAGE AND CIRCUMSTANCE RELATED FORMS

The Polish construction of circumstance and stage related forms fully implements the requirement for the criminalisation of aiding and abetting the commission of gender-based offences referred to in Article 41 of the Convention, including those under Article 37, as well as attempts to commit them.

⁵³ Thus the Supreme Court in the judgement of 27 October 1986, II KR 134/86, OSNPG, 1987, No. 7, item 80.

⁵⁴ For a different approach see: Lachowski, J., who assumes that also with oblique intent; Lachowski, J., *Komentarz do art. 191(b), Nt 11*, in: *Kodeks karny. Komentarz...*, op. cit.

5. ISSUE OF CULTURAL DEFENCE⁵⁵

Additionally, it should be pointed out that Article 42 of the Convention prohibits the domestic law from recognising cultural, religious and social norms, tradition, or the so-called honour as justification for acts of violence. In accordance with this provision,

'Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called honour shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.'

This directly results in an obligation to exclude the possibility of referring in particular to cultural differences, and thus excludes the effectiveness of the so-called cultural defence in the event of an offence of a forced marriage.

The Polish legal system meets the standards set out in Article 42 of the Convention. In Polish legislation, there are no regulations that would allow culture, custom, religion, tradition, or the so-called honour to justify the commission of acts of violence. In Polish literature, there is a view expressed that there is no reason to completely exclude and not take into account cultural defence in the case of voluntary marriages, e.g., Roma ones.⁵⁶

⁵⁵ The strategy of *cultural defence*, although of Anglo-Saxon provenance, has been recently observed also in the continental system, and is becoming a helpful instrument in defence of ethnic minorities. *Cultural defence* assumes that a person coming from a cultural minority in which the manifestations of the norms of its culture are seen in everyday behaviour should not be recognised to be fully responsible for his/her act infringing the law of the country of residence if this act is in compliance with the obligations of this culture. *Cultural defence* is defined as situations in which a law enforcement body takes (or does not take) into account the fact that some specific cultural norms that considerably differ from general social standards are obligatory in a certain social group. Therefore, the necessary elements that must occur when this instrument is referred to are: (1) membership of the cultural minority (of both the victim and the perpetrator; actual bonds with the group); (2) functioning of a model of behaviour within this minority, which is fully accepted by the members of the given community but is in conflict with the state law; (3) influence of the model on the behaviour of an individual. For more see Zajadło, J., *Fascynujące ścieżki filozofii prawa*, Warszawa, 2008, pp. 69–72; for more on the issue see Zajadło, J., 'Uniwersalizm praw człowieka w konstytucji – bezpieczne i niebezpieczne relatywizacje', *Przegląd Sejmowy*, 2007, No. 4, p. 99 et seq.; Sykuna, S., Zajadło, J., 'Kontrowersje wokół tzw. obrony przez kulturę – okoliczność wyłączająca winę, okoliczność łagodząca czy nadużycie prawa do obrony', *Przegląd Sejmowy*, 2007, No. 6, p. 27; Sitarz, O., 'Culture defence a polskie prawo karne', *Archiwum Kryminologii*, 2008, Vol. 29–30, p. 647; Wojciechowski, B., *Interkulturowe prawo karne. Filozoficzne podstawy karania w wielokulturowych społeczeństwach demokratycznych*, Toruń, 2009, p. 369; Dudek, M., 'Czy każda kultura zasługuje na obronę? Kilka wątpliwości dotyczących *cultural defence* i prawa karnego w dobie multikulturalizmu', *Archiwum Filozofii Prawa i Filozofii Społecznej*, 2011, No. 2(3), pp. 47–60; Kleczkowska, A., 'Rola *cultural defence* w wymiarze sprawiedliwości karnej', *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, 2012, Issue 2, pp. 71–84. See Kleczkowska, A., 'Rola *cultural defence*...', op. cit., p. 71 et seq.

⁵⁶ Zalewski, W., *Komentarz do art. 42*, in: Bieńkowska, E., Mazowiecka, L. (eds), *Konwencja o zapobieganiu i zwalczaniu przemocy wobec kobiet i przemocy domowej*, Warszawa, 2016.

6. CONCURRENCE OF PROVISIONS

There is no cumulative legal classification of Article 191b CC with Article 190 CC or Article 191 CC. However, typical concurrence may occur if the violence used by the perpetrator results in detriment to the health of the aggrieved. Then, there is a cumulative legal classification under Article 191b CC with relevant provisions concerning offences, e.g., under Articles 156 and 157 CC.

In the event the perpetrator ill-treats or harasses the victim for the purpose of making that person enter into a marriage, it is justified to apply a cumulative classification under Article 207 § 1–2 CC (ill-treatment) or Article 190a § 1 CC (harassment).

If the perpetrator uses violence against objects to cause another person to enter into a marriage and as a result damages an object, there is a typical concurrence of provisions of Article 191b with Article 288 § 1 or § 2. If the perpetrator directs violence against the victim's animal, it is possible to consider cumulative classification under Article 191b § 1 or § 2 in conjunction with Article 35(1) or (2) of the Act of 21 August 1997 on the Protection of Animals.^{57,58}

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⁵⁷ Consolidated text, Journal of laws of 2023, item 1580, as amended.

⁵⁸ Thus, rightly, Mozgawa, M., *Komentarz do art. 191(b), Nt. 9*, in: *Kodeks karny. Komentarz aktualizowany...*, op. cit.

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