

# CRIME OF PERSUASION TO COMMIT OR ASSISTANCE IN THE COMMISSION OF SUICIDE UNDER ARTICLE 151 CC

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## 1. INTRODUCTION

It is common knowledge that contemporary criminal legislations have given up treating suicide as a punishable act in case of both effectively committed suicides and attempted ones.<sup>1</sup> In the context of committed suicide, it is obvious that punishment as a personal hardship that should be faced by a perpetrator is not possible because of the actual circumstances. According to M. Cieślak, attempted suicide impunity, which is common today, may lead to certain confusion as well as drawing inappropriate conclusions regarding the rightness of the current legal state. As the author writes: “Based on the principles of our legal system, a temptation to present the following justification might occur: attempted suicide is not a crime because as an expression of a human right to decide about one’s own life it is not a socially dangerous act. Due to the possible varied interpretation of the concept of social danger, this conclusion might also lead to the questioning of grounds for penalisation of persuasion to commit or assistance in the commission of suicide (...). However, the problem is that it would be absolutely false. It is grounded in a thesis that an individual has a right to freely decide about their life, which is highly controversial. It does not take into consideration the social aspect of existence and of human personality; it does not take into consideration (...) the fact that human life is the highest value for the individual but also a social value, i.e. a value for other people

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<sup>1</sup> M. Cieślak, [in:] I. Andrejew, L. Kubicki, J. Waszczyński (ed.), *System prawa karnego. O przestępstwach w szczególności* [Criminal law system: On crime in particular], Vol. IV, part 1, Ossolineum, Wrocław-Warszawa-Kraków-Gdańsk-Lódź 1985, p. 372.

and the whole society.”<sup>2</sup> The senselessness of an act of punishment in such a case and a conflict with the aim of punishment (both general and specific prevention) can be the best explanation for attempted suicide impunity.

On the one hand, the reason for a lack of criminalisation of suicidal attempts is an individual's, as an owner of this good, right to free and unlimited decisions about one's life. On the other hand, it is justified by criminal policy (especially by the utilitarian nature of a criminal penalty). And finally, it is rationalised with the use of humanitarian reasons.<sup>3</sup> In A. Zoll's opinion, the fact that a suicidal attempt is not a forbidden act does not mean that man has the right to make an attempt on his life. In the author's opinion, in case of such an attempt, although the suicide does not match the sanctioning norm under Article 148 §1 Criminal Code (CC), he commits an act violating a sanctioned norm to protect every human life (under Article 38 of the Constitution of the Republic of Poland). Treating a suicidal attempt as an illegal act, as A. Zoll writes, makes it possible to regard the behaviour of a person trying to foil the suicidal attempt as necessary self-defence which justifies the infringement of a suicide's freedom.<sup>4</sup> However, such interpretation is not convincing and, as it is rightly emphasised in the doctrine, the recognition that a suicidal attempt is an illegal act would mean that man has a duty (and not a right) to live.<sup>5</sup>

A question is raised what reasons made the legislator criminalise persuasion to commit and assistance in the commission of suicide (especially in the context of suicide and attempted suicide impunity). If we take into consideration a general construction of instigating and aiding and abetting in prohibited acts (laid down in Article 18 CC), there is no doubt; these types of acts are punishable because of penalisation of the commission of an act they lead to.<sup>6</sup> However, suicide is legally irrelevant behaviour. Thus, it is necessary to ask a question why the legislator, deciding to leave suicidal behaviour outside the area of criminalisation, does not do it in relation to persons cooperating with a suicide in the act of his/her self-destruction. As J. Malczewski rightly emphasises, a conclusion can be drawn from the principle of accessoriness binding in criminal law that instigating and aiding and abetting in the commission of an act that does not constitute a crime should not be treated as crime. However, since it is otherwise and there is a provision criminalising these types of behaviour, it is legitimate to imply that the legislator had different reasons than condemnation of suicide as such.<sup>7</sup> It can be deemed

<sup>2</sup> M. Cieślak, [in:] *System...* [System...], pp. 372–373.

<sup>3</sup> R. Kokot, *Z problematyki karalnego doprowadzenia do samobójstwa – uwagi na tle ustawowych znamion art. 151 k.k.* [Some issues of punishable causation of suicide – comments based on the statutory features under Article 151 CC], Part I, [in:] *Nowa kodyfikacja karna* [New Criminal Code], Vol. XXXV, AUWr No. 3670, Wrocław 2015, pp. 16–17.

<sup>4</sup> A. Zoll, [in:] A. Zoll (ed.), *Kodeks karny. Część szczególna* [Criminal Code: Special part], Vol. II: *Komentarz do art. 117–277 k.k.* [Commentary on Articles 117–221 CC], Wolters Kluwer, Warsaw 2013, p. 320.

<sup>5</sup> J. Giezek, [in:] J. Giezek (ed.), *Kodeks karny. Część szczególna. Komentarz* [Criminal Code: Special part. Commentary], Wolters Kluwer, Warsaw 2014, p. 193.

<sup>6</sup> J. Malczewski, *Problemy z prawną kwalifikacją lekarskiej pomocy do samobójstwa (art. 151 k.k.)* [Problems concerning legal classification of medical assistance in suicide (Article 151 CC)], *Prokuratura i Prawo* 11/ 2008, Warsaw, p. 26

<sup>7</sup> J. Malczewski, *Problemy...* [Problems...], p. 26.

(although it is a huge simplification) that a ban on encouraging and assisting in suicide aims mainly at preventing abuse, i.e. cases when an accomplice to suicide has immoral motives (e.g. to harm a victim or even benefit from his/her death).<sup>8</sup>

The fact that Polish criminal law does not stipulate suicide penalisation does not raise any controversies, and attempts to find other grounds for penalisation of a suicide who has survived attempted self-destruction (e.g. under Article 13 §1 CC in relation with Article 148 §1 CC, Article 156 CC, Article 157 CC or 160 CC), of course based on an assumption that other persons' rights have not been infringed, do not lead to positive results.<sup>9</sup> It is also doubtful if in case of attempted suicide the provisions of Article 145 §1(2) CC could be applicable (self-injury in order to avoid substitute military service) or Article 342 §1(1) CC (self-injury in order to avoid military service) because of the different aim that a person committing self-destruction has.<sup>10</sup> K. Burdziak is right when claiming that a perpetrator of attempted suicide deserves compassion and assistance, and initiation of criminal proceedings against them (and possible punishment) may only worsen their state and encourage them (and other potential suicides) to look for more efficient ways of killing themselves. These arguments, in the author's opinion, are also for giving up a possibility of treating attempted suicide even as a behaviour matching the features of some offences (e.g. Article 51 of Misdemeanour Code [MC]: breach of the peace, Article 140 MC: indecent incident).<sup>11</sup> This is a rational opinion because adoption of another conception might lead to hidden criminalisation of the phenomenon of suicide.<sup>12</sup> However, the above-mentioned considerations cannot be used to draw a conclusion that in every instance (regardless of circumstances, a suicide's *modus operandi* and its actual results) a suicide's act will be exempt from criminal liability. A series of crimes may be committed by a suicide in connection with their attempt at self-destruction. Such interpretation is necessary because otherwise an unsuccessful suicide would be granted specific immunity to prosecution for their acts, which might even lead to simulation of attempted suicide in order to remain unpunished for harming another person. It is not possible to list all (at least hypothetically) possible situations but a few examples can be indicated (of course based on an assumption that a suicide has survived an attempt at self-destruction):

- jumping from a height, a suicide falls on another person and causes his/her death or damage to health (liability under Article 155 CC: involuntary manslaughter)

<sup>8</sup> J. Malczewski, *Problemy...* [Problems...], p. 27.

<sup>9</sup> Compare interesting conclusions by K. Burdziak, *Samobójca czy zabójca? Kilka słów na temat statusu samobójcy w polskim prawie karnym* [A suicide or a killer? A few words on a suicide's status in the Polish criminal law], *Wojskowy Przegląd Prawniczy*, No. 4, Warsaw 2014, p. 130 ff.

<sup>10</sup> Compare: K. Burdziak, *Samobójca...* [A suicide...], pp. 133–135. J. Majewski rightly states that: "A soldier who attempting suicide, causes self-inflicted injury, does not commit a crime under Article 342 because he does not act to evade military service". J. Majewski, [in:] A. Zoll (ed.), *Kodeks karny. Część szczególna* [Criminal Code: Special part], Vol. III: *Komentarz do art. 278–363* [Commentary on Art. 278–363], Warsaw 2008, p. 989.

<sup>11</sup> K. Burdziak, *Samobójca...* [A suicide...], p. 139. Compare also: A. Wąsek, *Prawnokarna problematyka samobójstwa* [Criminal law aspects of suicide], Wydawnictwo Prawnicze, Warsaw 1982, p. 51.

<sup>12</sup> A. Wąsek, *Prawnokarna...* [Criminal law...], p. 51.

- ghter, Article 156 §2 CC: involuntary damage to health, or 157 §3 CC: involuntary causing medium detriment to health);
- driving a car, a suicide causes a traffic accident that inflicts injuries on another person as laid down in Article 157 §1 CC (Article 177 §1 CC) or causes death or severe detriment to health (Article 177 §2 CC), or causes a disaster in land traffic (Article 173 §2 CC), or brings about direct danger of a disaster in land traffic (Article 174 §2 CC), etc.;
  - driving a car with a close relation (who does not want to deprive oneself of life), a suicide deliberately causes a traffic accident in which that other person is killed (Article 148 §1 or in cumulative classification under Article 177 §2 CC);
  - a suicide attempts to kill himself/herself with the use of gas supplied to households in a multi-apartment building, where after some time the gas explodes to cause damage to property and even detriment to other people's health (possible classification, inter alia: Article 163 §2, Article 164 §2, Article 165 §2 CC);
  - a suicide makes a suicidal attempt by self-burning and causes a fire threatening the life or health of many people and danger of large-scale property loss (Article 163 §2 CC);
  - a suicide attempts to kill himself/herself with the use of illegally possessed firearms (liability under Article 263 §2 CC).

As indicated above, these are not all possible theoretical instances of an attempted suicide's criminal liability; literature indicates also a series of other possibilities (e.g. liability for the infringement of domestic peace, defamation or slander,<sup>13</sup> insult, possession and consumption of narcotic drugs, child abandonment<sup>14</sup>).

## 2. ANALYSIS OF STATUTORY FEATURES OF THE CRIME UNDER ARTICLE 151 CC

### 2.1.

It is commonly recognised in the doctrine that the subject of protection in case of the crime under Article 151 CC is human life.<sup>15</sup> It is sometimes added that it concerns life as value that constitutes social good, thus such that an individual as an owner

<sup>13</sup> In the context of farewell letters left.

<sup>14</sup> See: A. Wąsek, *Prawnokarna...* [Criminal law...], p. 51. Compare also comments by K. Daszkiewicz, *Przestępstwa przeciwko życiu i zdrowiu. Rozdział XIX kodeksu karnego. Komentarz* [Crime against life and health. Chapter XIX Criminal Code: Commentary], C.H. Beck, Warsaw 2000, p. 253.

<sup>15</sup> Compare inter alia: R. Kokot, [in:] R.A. Stefański (ed.), *Kodeks karny. Komentarz* [Criminal Code: Commentary], C.H. Beck, Warsaw 2015, p. 906; K. Wiak, [in:] A. Grześkowiak, K. Wiak (ed.), *Kodeks karny. Komentarz* [Criminal Code: Commentary], C.H. Beck, Warsaw 2015, p. 865; M. Budyn-Kulik, [in:] J. Warylewski (ed.), *System prawa karnego* [Criminal law system], Vol. 10, *Przestępstwa przeciwko dobrom indywidualnym* [Crime against individual good], C.H. Beck, Warsaw 2016, p. 147; M. Szwarczyk, [in:] T. Bojarski (ed.), *Kodeks karny. Komentarz* [Criminal Code: Commentary], Wolters Kluwer, Warsaw 2016, p. 410; U.K. Ćwiklicz, *Eutanazja a wspomaganie samobójstwo* [Euthanasia and supported suicide], *Przegląd Policyjny*, No. 3 (95), 2009, p. 145.

cannot freely decide about.<sup>16</sup> Such interpretation is sometimes criticised by stating that the fact that man has no right to freely decide about their own life because it is protected regardless of their will, should not mean that this freedom is exclusive to such an extent that it also eliminates rights to undertake any life-threatening self-destructive activities.<sup>17</sup> J. Malczewski has an interesting view on what subject to protection is within the analysed crime and states that the provision “intends to serve the protection of potential suicides against undesired and harmful influence of third parties.”<sup>18</sup> However, the most convincing is the opinion expressed by J. Giezek, who believes that the subject to protection under Article 151 CC is human life and freedom from destructive influence on how man decides about their life.<sup>19</sup>

## 2.2.

Article 151 CC defines a causative factor as “inducing person to make an attempt on their own life”, which can be done by persuasion or assistance. A question can be raised whether the terms persuasion and assistance reflect the terms of instigating and aiding and abetting laid down in Article 18 §2 and 3 CC. A view that seems to dominate the criminal law doctrine is that the interpretation of these terms should be based on the provisions on these non-causative forms of the phenomena.<sup>20</sup> Already on the grounds of the former Criminal Code (of 1969), this opinion was presented by inter alia J. Śliwowski,<sup>21</sup> W. Wolter<sup>22</sup> and M. Siewierski<sup>23</sup>. In the currently binding legal order, A. Zoll claims that: “there are no reasons for a different interpretation of the concepts of persuasion or assistance from that adopted in Article 18 §2 and 3 CC. The difference consists in the fact that due to a lack of penalisation of a suicidal attempt, the two forms of cooperation had to be specified as forms of implementing a specific prohibited act”.<sup>24</sup> In B. Michalski’s opinion, the provision of Article 151 CC “constitutes a norm of special nature because it classifies behaviour that in fact consists in instigating (persuasion) or aiding and abetting (assistance) in the commission of an act, which is not a crime itself (suicide), by another person”.<sup>25</sup>

<sup>16</sup> A. Zoll, [in:] A. Zoll (ed.), *Kodeks karny...* [Criminal Code...], p. 151. B. Michalski, [in:] A. Wąsek, R. Zawłocki (ed.), *Kodeks karny. Część szczególna* [Criminal Code: Special part], Vol. I: *Komentarz do art. 117–221* [Commentary on Articles 117–221], C.H. Beck, Warsaw 2010, p. 306.

<sup>17</sup> J. Giezek, [in:] J. Giezek (ed.), *Kodeks karny...* [Criminal Code...], p. 193. Compare also comments by J. Malczewski, *Problemy...* [Problems...], p. 26 ff.

<sup>18</sup> J. Malczewski, *Problemy...* [Problems...], p. 27.

<sup>19</sup> J. Giezek, [in:] J. Giezek (ed.), *Kodeks karny...* [Criminal Code...], p. 193.

<sup>20</sup> J. Kosonoga-Zygmunt, *Namowa i udzielenie pomocy do samobójstwa (art. 151 k.k.)* [Persuasion and assistance in suicide (Article 151 CC)], *Prokuratura i Prawo* 11/2015, Warsaw, p. 48.

<sup>21</sup> J. Śliwowski, *Prawo karne* [Criminal law], 2<sup>nd</sup> edition, Warsaw 1979, p. 356.

<sup>22</sup> W. Wolter, [in:] I. Andrejew, W. Świda, W. Wolter (ed.), *Kodeks karny z komentarzem* [Criminal Code with commentary], Wydawnictwo Prawnicze, Warsaw 1973, p. 448.

<sup>23</sup> M. Siewierski, [in:] J. Bafia, K. Mioduski, M. Siewierski (ed.), *Kodeks karny. Komentarz* [Criminal Code: Commentary], Wydawnictwo Prawnicze, Warsaw 1977, p. 391.

<sup>24</sup> A. Zoll, [in:] A. Zoll (ed.), *Kodeks karny...* [Criminal Code...], Vol. II, pp. 321–322.

<sup>25</sup> B. Michalski, [in:] A. Wąsek, R. Zawłocki (ed.), *Kodeks karny...* [Criminal Code...], Vol. I, Warsaw 2010, p. 306.

M. Królikowski expresses a similar view: "The behaviour classified in the discussed provision has features typical of the description of the activities of instigating and aiding and abetting (...). In order to interpret these features, it is necessary to use the output of the doctrine and the judicature with regard to Article 18 §2 and 3 CC".<sup>26</sup>

Thus, it is necessary to take a closer look at how the contemporary criminal law doctrine interprets the meaning of the terms "persuasion" and "assistance" as features of the analysed type of a prohibited act. Let us start with an analysis of the concept of persuasion, which seems to cause more interpretative problems. According to A. Marek, "persuasion to commit suicide is nothing else than inducing a person to do something, which is the content of the activity of instigating".<sup>27</sup> As A. Wąsek claims, the scope of meaning of the terms "persuasion" [*namowa*] and "inducing" [*nakłanianie*] is the same.<sup>28</sup> K. Daszkiewicz is of a different opinion and believes that Article 151 CC (as well as the former wording of the provision) does not introduce the features of instigating but persuasion, and in the author's opinion, "this is not the same"<sup>29</sup>. According to L. Tyszkiewicz, "instigating [*podżeganie*] is described by the feature of the word 'to persuade' [*namawiać*] instead of 'to induce' [*nakłaniać*], which means that the scope of forms of instigating has been limited to the forms that are less intense".<sup>30</sup> Also P. Góralski believes that persuasion to suicide is a narrower term than inducing to commit a prohibited act.<sup>31</sup> K. Burdziak is convinced that the meaning of a verb "to induce" is broader than "to persuade".<sup>32</sup> Z. Gądzik argues as well that "persuasion to commit suicide is an act the meaning of which is narrower than in case of inducing (Article 18 §2 CC)".<sup>33</sup> However, we should agree with J. Kosonoga-Zygmunt, who believes that the representatives of the doctrine who claim that the meaning of persuasion and inducing is the same are right; the use of the term "persuasion" instead of "inducing" by the legislator results mainly from the linguistic reasons.<sup>34</sup> It must be reminded that according to the

<sup>26</sup> M. Królikowski, [in:] M. Królikowski, R. Zawłocki (ed.), *Kodeks karny. Część szczególna* [Criminal Code: Special part], Vol. I, *Komentarz. Art. 117–221* [Commentary. Articles 117–221], C.H. Beck, Warsaw 2013.

<sup>27</sup> A. Marek, *Kodeks karny. Komentarz* [Criminal Code: Commentary], Wolters Kluwer, Warsaw 2010, p. 378.

<sup>28</sup> A. Wąsek, *Prawnokarna...* [Criminal law...], p. 60.

<sup>29</sup> K. Daszkiewicz, *Przestępstwa...* [Crime...], p. 250.

<sup>30</sup> L. Tyszkiewicz, [in:] M. Filar (ed.), *Kodeks karny. Komentarz* [Criminal Code: Commentary], Wolters Kluwer, Warsaw 2014, p. 859.

<sup>31</sup> P. Góralski, *Pomoc i namowa do samobójstwa (art. 151 k.k.) w poglądach doktryny oraz danych statystycznych* [Assistance and persuasion to suicide (Article 151 CC) in the legal doctrine and statistics], [in:] L. Bogunia (ed.), *Nowa kodyfikacja prawa karnego* [New Criminal Code], Vol. XIII, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław 2003, p. 39. As the author claims, inducing to commit a prohibited act "may also have other verbal forms (e.g. insisting, promising benefits) as well as non-verbal (e.g. specific gestures influencing the addressee's decision-making processes). Persuasion is only action and inducing is possible also in the form of omission to act." (P. Góralski, *Pomoc...* [Assistance...], pp. 39–40).

<sup>32</sup> K. Burdziak, *Kierowanie wykonaniem samobójstwa i polecenie jego wykonania w polskim prawie karnym* [Managing the commission of suicide and ordering its commission under the Polish criminal law], *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, No. 4, 2014, p. 181.

<sup>33</sup> Z. Gądzik, *Prawnokarna ocena samobójstwa* [Assessment of suicide under criminal law], *Roczniki Nauk Prawnych*, Vol. XXII, No. 3, 2012, p. 140.

<sup>34</sup> J. Kosonoga-Zygmunt, *Namowa...* [Persuasion...], p. 50.

Polish Language Dictionary, the verb “to persuade” means: “to encourage someone to do something, to induce, to convince”;<sup>35</sup> thus, there are no rational arguments for awarding it the meaning that is different from that resulting from the grammatical interpretation. As M. Budyn-Kulik notes, it seems that the legislator used a different term in Article 18 §2 CC only in order to emphasise that Article 151 CC classifies a different intrinsic type of crime.<sup>36</sup>

Generally speaking, persuasion influences the intellectual as well as emotional sphere of another person and aims at triggering an intention to commit suicide.<sup>37</sup> M. Budyn-Kulik is a supporter of the broad interpretation of the term persuasion, which consists in inducing another person verbally or in another implicit way, e.g. a gesture; thus, it means any action that might influence a victim’s decision to attempt on his/her own life.<sup>38</sup> B. Michalski is of a similar opinion and allows a written form (apart from a verbal one) and adequate unambiguously understood gestures.<sup>39</sup> R. Kokot presents a different view and claims that only verbal persuasion is possible and all non-verbal incentives to commit suicide (e.g. gestures) are beyond the meaning of this feature. Acknowledging that although the grammatical interpretation (by referring to etymology) might lead to a conclusion that the fulfilment of the feature should be associated only with spoken words, the author rightly states that it is necessary to adopt a more rational interpretation from the point of view of a sanctioned norm laid down in this provision, including a written form of persuasion in this feature influencing a victim’s decision and leading to the commission of suicide.<sup>40</sup> On the other hand, K. Burdziak is of opinion that persuasion may be executed only by verbal influence on another person’s will. According to this author, it is difficult to imagine that an even most meaningful gesture or facial expression might trigger an intention to commit suicide.<sup>41</sup> Being for the identification of the scope of the concepts of persuasion and inducing, we share an opinion about a broad scope of the term persuasion covering not only verbal forms but also any other (written ones like short text messages, e-mails, and even explicit gestures), provided that they can effectively influence another person’s will and make him/her intend to attempt self-destruction. Although the classification of gestures in the persuasion category may be open to doubt, there are no rational contraindications to that (e.g. unambiguous gestures encouraging suicide made by a deaf person; gestures shown through a glass window or from a long distance when the voice is not heard or the message is produced in loud noise). Obviously, it can also happen that those gestures (encouraging suicide, e.g. shown to a person hesitating whether to jump from a tower block roof) may sometimes be recognised

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<sup>35</sup> <http://sjp.pl/namawia%C4%87>; M. Szymczak (ed.), *Słownik języka polskiego* [Polish Language Dictionary], Vol. 1, PWN, Warsaw 1984.

<sup>36</sup> M. Budyn-Kulik, [in:] J. Warylewski (ed.), *System...* [System...], p. 147.

<sup>37</sup> J. Kosonoga-Zygmunt, *Namowa...* [Persuasion...], p. 50.

<sup>38</sup> M. Budyn-Kulik, [in:] J. Warylewski (ed.), *System...* [System...], p. 148.

<sup>39</sup> B. Michalski, [in:] A. Wąsek, R. Zawłocki (ed.), *Kodeks karny...* [Criminal Code...], p. 307.

<sup>40</sup> R. Kokot, [in:] R.A. Stefański (ed.), *Kodeks karny...* [Criminal Code...], Warsaw 2015, p. 909.

<sup>41</sup> K. Burdziak, *Kierowanie...* [Managing...], pp. 180–181.

as assistance under Article 151 (because a victim has already intended to make a suicidal attempt).

The person who persuades does not have to have a direct contact with the person being persuaded; this can be done with the use of any other form of communication: a telephone call, a talk on the Internet (Skype, gadu-gadu, etc.), and correspondence (letters, short text messages, e-mails).<sup>42</sup> A suicide does not have to know the person who persuades or assists him/her; a perpetrator may remain anonymous for a suicide (e.g. providing information on the Internet). Both persuasion to and assistance in the commission of suicide must concern a definite person, even if the circle of addressees was abundant (e.g. members of a big sect encouraged by their guru to commit suicide).<sup>43</sup>

Calling for suicide that is not addressed to a definite person does not constitute persuasion, but sometimes it is raised in the doctrine that calling for suicide posted on the Internet blog or a social network service may be considered persuasion.<sup>44</sup> However, developing and publishing instruction, advice and hints on how to commit suicide as well as other content that may hypothetically facilitate the commission of suicide do not constitute persuasion and assistance if they are addressed to personally indefinite, anonymous circle of recipients.<sup>45</sup> We cannot speak of matching the statutory features of the crime under Article 151 CC in a situation when there is a call for suicide made in public (and it does not concern a definite person).<sup>46</sup> As it is stated in the doctrine, it is also not possible in such a case to recognise the features of a crime under Article 255 CC, because an act a perpetrator calls for is not illegal.<sup>47</sup>

Persuasion must be clear and unambiguous and its content cannot raise questions about a perpetrator's intention. As R. Kokot emphasises, "to recognise the matching features of persuasion to the commission of suicide, it is not sufficient to influence a person through emotional manipulation aimed at generating deep depression, breakdown or despair and, in consequence, 'suicidal thoughts'".<sup>48</sup> If a perpetrator's behaviour is taking the form of harassment or even abuse that result in the victim's suicide, it may be subject to liability under Article 190a §1 CC or 207 §3 CC (or possibly 352 §3 CC).

Persuasion referred to in Article 151 CC may be in the form of a request, a suggestion, a proposal, etc. On the other hand, the use of threat, blackmail, extortion or hypnosis – according to R. Kokot – goes beyond the scope of the criminal features.<sup>49</sup> In such cases, considering classification under Article 148 (§1 or 2) CC seems to be well grounded. Also A. Wąsek's opinion deserves attention. He claims that a perpetrator who has only seemingly participated in suicide – solely in order

<sup>42</sup> R. Kokot, [in:] R.A. Stefański (ed.), *Kodeks karny...* [Criminal Code...], p. 909; M. Budyn-Kulik, [in:] J. Warylewski (ed.), *System...* [System...], p. 148.

<sup>43</sup> R. Kokot, [in:] R.A. Stefański (ed.), *Kodeks karny...* [Criminal Code...], p. 910.

<sup>44</sup> M. Budyn-Kulik, [in:] J. Warylewski (ed.), *System...* [System...], p. 148

<sup>45</sup> M. Filar, *Lekarskie prawo karne* [Medical criminal law], Zakamycze, Kraków 2000, p. 335. P. Góralski, *Pomoc...* [Assistance...], p. 42.

<sup>46</sup> R. Kokot, [in:] R.A. Stefański (ed.), *Kodeks karny...* [Criminal Code...], p. 910.

<sup>47</sup> *Ibid.*

<sup>48</sup> R. Kokot, [in:] R.A. Stefański (ed.), *Kodeks karny...* [Criminal Code...], p. 909.

<sup>49</sup> *Ibid.*



to dispose of a victim with the use of his/her behaviour – should be liable for the commission of the crime under Article 150 or 151 CC and not for manslaughter under Article 148 CC. In the author's opinion, the fact that a perpetrator uses a ruse should be taken into consideration when administrating punishment.<sup>50</sup> One can have doubts whether this is a right stand. In such a case, classification under Article 151 does not seem well grounded and may be treated as specific "promotion" of a perpetrator for his/her inventiveness. One cannot exclude cases in which a perpetrator using a ruse has motives deserving special condemnation, which should lead to classification under Article 148 §2(3) CC. On the other hand, as far as the use of violence by a perpetrator is concerned, P. Góralski is right to say that it would be too far reaching to state that forcing a victim to commit suicide might be treated as an act subject to Article 151 CC. Although the interpretation of the term "to induce" [*doprowadzać*] does not exclude it (in comparison with the words "to assist" [*pomagać*] or "to persuade" [*namawiać*]), the performance of these activities with the use of force towards a potential suicide is doubtful.<sup>51</sup> However, the author does not suggest what the correct legal classification of the perpetrator's act in such a case should be (although, it seems Article 148 CC should be applied).

In case an intention to make an attempt on one's own life is not provoked by a perpetrator's persuasion but results from other reasons and the perpetrator with the use of persuasion only strengthens this intention in a potential suicide's psyche (e.g. providing the suicide with advice, tips and information or eliminating possible doubts), the perpetrator's behaviour does not constitute persuasion (under Article 151 CC) but is psychological assistance (matching the latter of the verb-related features of the crime under Article 151 CC).<sup>52</sup>

There is no uniformity in the doctrine concerning the assessment of a case of strengthening a given person's intention to commit suicide. In some authors' opinion, it can be treated as persuasion, especially when a potential suicide hesitates whether to perform an act of self-destruction (L. Peiper,<sup>53</sup> A. Wąsek,<sup>54</sup> M. Budyn-Kulik,<sup>55</sup> J. Giezek<sup>56</sup>). A similar interpretation of the feature of persuasion can also be found in the Supreme Court's rulings. In its ruling of 24 January 1967, the Supreme Court states that persuasion is "not only a perpetrator's activity aimed at evoking another person's will to perform an act but also any form of persuasion aimed at making another person not give up the intention (...), especially hurrying another person into performing a planned act (...), thus also any form of influence aimed at strengthening the will to commit a crime in another person's psyche".<sup>57</sup> It seems, however, not to be the proper interpretation. A perpetrator's behaviour consisting

<sup>50</sup> A. Wąsek, *Prawnokarna...* [Criminal law...], p. 109.

<sup>51</sup> P. Góralski, *Pomoc...* [Assistance...], p. 43.

<sup>52</sup> B. Michalski, [in:] A. Wąsek, R. Zawłocki (ed.), *Kodeks karny...* [Criminal Code...], pp. 307–308.

<sup>53</sup> L. Peiper, *Komentarz do kodeksu karnego* [Commentary on Criminal Code], Kraków 1936, p. 463.

<sup>54</sup> A. Wąsek, *Prawnokarna...* [Assessment of...], p. 61.

<sup>55</sup> M. Budyn-Kulik, [in:] J. Warylewski (ed.), *System...* [System...], p. 148.

<sup>56</sup> J. Giezek, [in:] J. Giezek (ed.), *Kodeks karny...* [Criminal Code...], p. 194.

<sup>57</sup> The Supreme Court ruling of 24 January 1967, file no. II KR 211/66, unpublished.

in strengthening a potential suicide's will should not be treated as persuasion but as psychological assistance in the commission of suicide.<sup>58</sup> This opinion rightly dominates the Polish doctrine (inter alia M. Cieślak,<sup>59</sup> B. Michalski,<sup>60</sup> A. Marek,<sup>61</sup> R. Kokot<sup>62</sup>). There is also another conception in the doctrine that is worth mentioning. According to it, in such a situation it is possible to use the concept of inefficient attempt in case a perpetrator does not know that a suicidal attempt has already been planned.<sup>63</sup>

Assistance in the commission of suicide, as a rule (although obviously with the suicidal attempt specificity taken into consideration), matches the formula of aiding and abetting laid down in Article 18 §3 CC,<sup>64</sup> thus it can consist in both action and omission in case the perpetrator does not fulfil his/her legal duty to prevent a suicidal attempt.<sup>65</sup> The perpetrator plays the role of a guarantor who has a special legal duty to prevent the consequence of an attempt on somebody's own life.<sup>66</sup> However, as K. Burdziak rightly notes, Article 151 CC refers to assistance and not to facilitation, which is laid down in Article 18 §3 CC.<sup>67</sup> In the author's opinion, although the analysed phrase should be described in the same way as aiding and abetting, it is necessary to clearly emphasise that assistance is to lead a person to an attempt on his/her own life (and hence, is to indirectly cause a suicidal attempt).<sup>68</sup> Thus, we cannot speak of the commission of the crime under Article 151 when facilitation finishes, because the activity must be effective. Therefore, unlike in case of persuasion, physical assistance (e.g. provision of poison) as well as psychological assistance (e.g. advice) cannot evoke an intention to commit suicide. However, it can help a victim enter the phase of trying to commit suicide. In case they turn out to constitute one of the factors that conditions the commission of suicide, there are grounds to recognise they match the features of misdemeanour under Article 151 CC.<sup>69</sup>

It is not important for legal classification whether assistance has resulted from a victim's inspiration or has been a perpetrator's own initiative (although this circumstance can undoubtedly influence the administration of punishment<sup>70</sup>). Unlike persuasion, which always precedes the intention to commit suicide (and is intellectual in nature), assistance (as a rule, but not exclusively) is physical in nature and may be given to a person who has already formed an intention to commit

<sup>58</sup> J. Kosonoga-Zygmunt, *Namowa...* [Persuasion...], p. 51.

<sup>59</sup> M. Cieślak, [in:] *System...* [System...], p. 378.

<sup>60</sup> B. Michalski, [in:] A. Wąsek, R. Zawłocki (ed.), *Kodeks karny...* [Criminal Code...], pp. 307–308.

<sup>61</sup> A. Marek, *Kodeks karny...* [Criminal Code...], p. 378.

<sup>62</sup> R. Kokot, [in:] *Kodeks*, p. 909.

<sup>63</sup> R. Kokot, *Z problematyki...* [Some issues...], part I, p. 25.

<sup>64</sup> R. Kokot, *Z problematyki...* [Some issues...], Part II, [in:] *Nowa kodyfikacja karna* [New Criminal Code], Vol. XXXVI, AUWr No. 3680, Wrocław 2015, p. 29.

<sup>65</sup> P. Góralski, *Prawne i społeczne aspekty eutanazji* [Legal and social aspects of euthanasia], Libron, Kraków 2008, p. 277; R. Kokot, [in:] R.A. Stefański (ed.), *Kodeks karny...* [Criminal Code...], p. 909.

<sup>66</sup> J. Giezek, [in:] J. Giezek (ed.), *Kodeks karny...* [Criminal Code...], p. 194.

<sup>67</sup> K. Burdziak, *Kierowanie...* [Managing...], p. 181.

<sup>68</sup> *Ibid.*, p. 182.

<sup>69</sup> *Ibid.*

<sup>70</sup> R. Kokot, *Z problematyki...* [Some issues...], part I, p. 29.

suicide.<sup>71</sup> The essence of aiding and abetting consists in facilitating another person's implementation of an intention to commit suicide (e.g. by supplying firearms, poison or another object that will be used to commit suicide as well as advice, tips or strengthening a suicidal intention<sup>72</sup>). Psychical assistance – in compliance with the interpretation of the Supreme Court – should be understood as “assistance given mainly in a verbal form by contrast to aiding and abetting that is in the form of action. However, this assistance does not only consist in advice and hints facilitating the commission of a crime but also in such perpetrator's behaviour that in especially convincing way manifests total solidarity with the perpetrator's intention and may in some situations create an atmosphere in which the direct perpetrator's intention develops, matures and strengthens the perpetrator in the already made decision (...).”<sup>73</sup> According to J. Giezek, by contrast to aiding and abetting (as laid down in Article 18 §3 CC) which may take place also in the course of the commission of a prohibited act, assistance (as understood in Article 151 CC) must take place before suicide is committed. As the author writes, if a perpetrator assisted another person in the course of his/her commission of suicide, he/she would lead (also in a purely causative sense) to undertake such an act and thus, the result laid down in Article 151 CC could not be attributed to him/her (because at the moment of giving assistance the result would have been achieved).<sup>74</sup> However, this opinion should be deemed incorrect. There are no obstacles to strengthen a victim's suicidal decision in the course of its fulfilment in the face of his/her hesitation (giving psychical assistance this way) or to provide a victim with means or tools to efficiently commit suicide in the course of a suicidal attempt being made (with no expected effect in the form of death).

It must be emphasised that not every instance of persuasion and not every act of assistance in the commission of suicide complies with statutory features of the crime under Article 151 CC. In accordance with this provision, behaviour is a causative factor only if it has “so intense influence on another person that it can be recognised as one that meets the requirements leading to the commission of suicide”.<sup>75</sup> It must be highlighted that in accordance with the linguistic interpretation, the verb “to lead” means: “to be a cause of something, to make someone do something, to cause something, to provoke something”.<sup>76</sup> Thus, it does not raise any doubts that not

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<sup>71</sup> H. Popławski, *Doprowadzenie do samobójstwa* [Leading to suicide], *Patologia Społeczna – Zapobieganie*, Vol. X, 1981, p. 57.

<sup>72</sup> According to A. Mazurek, “Intellectual assistance in the commission of suicide may be demonstrated by giving advice, hints or information about an efficient method of self-destruction to a person who has already decided to commit suicide. For example, a perpetrator explains it to a victim how to obtain poison or which substances used in an appropriate way are most efficient, etc. A. Mazurek, *Odpowiedzialność karna za podżeganie lub pomocnictwo do samobójstwa oraz doprowadzenie do zamachu samobójczego* [Criminal liability for instigation or assistance in suicide and leading to a suicidal attempt], *Wojskowy Przegląd Prawniczy* No. 1, Warsaw 1980, p. 69.

<sup>73</sup> The Supreme Court ruling of 9 August 1973, I KR 178/73, OSNKW 1974, Vol. 3, item 43.

<sup>74</sup> J. Giezek, [in:] J. Giezek (ed.), *Kodeks karny...* [Criminal Code...], p. 194.

<sup>75</sup> R. Kokot, *Z problematyki...* [Some issues...], part I, p. 23.

<sup>76</sup> As M. Budyn-Kulik notes: “in this understanding of the word, a person may be led to suicide by persuasion. On the other hand, in a situation where a causative action consists in assistance, a victim (a future suicide) has already taken a decision on a suicidal attempt, thus

every type of persuasion and not every kind of assistance can be recognised as one matching the features of the analysed crime; only these types can be regarded as such which may be called “persuasion leading to attempt on one’s own life” or “assistance leading to an attempt on one’s own life”. It is emphasised in the doctrine that a perpetrator’s behaviour in a causative sense must be a condition for suicide as without this persuasion or without this assistance, suicide would not be committed; the attribution of a result may take place only when the perpetrator’s behaviour is of basic importance and decisive.<sup>77</sup>

The crime under Article 151 CC is substantive in nature. Its features include an effect understood not only as another person’s death but a suicidal attempt regardless of its result.<sup>78</sup> Thus, in case of committed suicide (resulting in death), not only damage to the good such as life constitutes the commission, but also exposure to damage in case of attempted suicide (when a suicidal attempt does not cause direct threat of death).<sup>79</sup> Obviously, general liability for the attempted crime under Article 151 CC can be taken into consideration. It will take place in a situation when persuasion does not evoke a victim’s intention to commit suicide as well as when such intention has occurred but a victim’s behaviour has not entered the stage of making an attempt.<sup>80</sup> An attempt may be both efficient and inefficient, and – what seems to be obvious – inefficiency must occur on the part of a perpetrator (i.e. a person leading to the commission of suicide), not on the part of a person led to the commission of suicide. For example, persuasion to the commission of suicide performed in a language that another person does not understand or providing that person with a suicidal substance that is not poisonous should be recognised as inefficient.<sup>81</sup>

There is a series of interpretational problems connected with the issue of the object of performing activity in case of the crime under Article 151 CC. It is considered that only a person capable of taking decisions independently (in case of persuasion) or a person who has already – consciously – made such a decision (in case of assistance) can be this object. It is quite commonly assumed in the doctrine that a person incapable of recognising the significance of an act and managing his/her activities because of age or psychological condition cannot be the object of the performing activity in this crime (and there is a belief that in such cases classification under Article 148 CC is substantiated).<sup>82</sup> Already based on the Criminal Code of 1932, S. Śliwiński suggested that a decision on the commission of suicide should be a decision made by a person who disposes of his/her own volition; thus, it cannot be a decision made by a person who cannot recognise the significance of his/her

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he/she cannot be led to that. The legislator, in order to be succinct, used one verb to describe the feature. It seems that it would be more appropriate to use two verbs to describe the perpetrator’s behaviour: someone who leads by persuasion or assists” (M. Budyn-Kulik, [in:] J. Warylewski (ed.), *System...* [System...], p. 149).

<sup>77</sup> R. Kokot, *Z problematyki...* [Some issues...], part I, p. 23.

<sup>78</sup> M. Budyn-Kulik, [in:] J. Warylewski (ed.), *System...* [System...], p. 150. A. Mazurek, *Odpowiedzialność...* [Criminal liability...], p. 69.

<sup>79</sup> R. Kokot, *Z problematyki...* [Some issues...], part I, p. 24.

<sup>80</sup> A. Mazurek, *Odpowiedzialność...* [Criminal liability...], p. 69.

<sup>81</sup> R. Kokot, *Z problematyki...* [Some issues...], part I, p. 25.

<sup>82</sup> Compare: M. Budyn-Kulik, [in:] J. Warylewski (ed.), *System...* [System...], p. 150.

act and manage his/her activities (in particular, it cannot be a decision made by a person who is underage, *non compos mentis* or acting in error<sup>83</sup>). W. Wolter<sup>84</sup> presented a similar opinion when the Criminal Code of 1969 was still in force. Based on the current Criminal Code, it is also a quite commonly adopted conception. A. Zoll,<sup>85</sup> M. Budyn-Kulik,<sup>86</sup> M. Królikowski,<sup>87</sup> L. Tyszkiewicz<sup>88</sup> and A. Wąsek<sup>89</sup>, among others, represent this standpoint. For example, according to A. Zoll, in case of the crime under Article 151 CC, “a minor (everyone under the age of 16, see Article 32 of Act of 5 December 1996 on the professions of a physician and a dentist) and a person who because of psychical disorders cannot recognise the significance of undertaken action is not (...) the object of the performed activity. Persuasion of a minor or a handicapped person, or giving them assistance leading to suicide should be classified as the commission of the crime under Article 148 §1 (or possibly, if features are matched, under Article 148 §2 CC).”<sup>90</sup> According to M. Królikowski, “the object of the performed activity is a person capable of recognising the significance of an act of suicide. In case of influencing a minor under the age of 16 (...) or a person who cannot manage his/her activities or recognise the significance of his/her act, the act – because of the features of the person and increased dependence on the instigator’s or assistant’s influence – should be treated as the commission of the crime laid down in Article 148 §1 CC (or possibly 148 §2 CC).”<sup>91</sup> A. Wąsek analyses the issue in detail and points out that there are six possible solutions,<sup>92</sup> however, he supports an opinion that only a major can give efficient consent to the loss of a legal good.<sup>93</sup> A similar opinion, like in the majority of the doctrine, is held in the judicial decisions, which can be exemplified by the ruling of the Court of Appeal in Gdańsk of 13 November 2009,<sup>94</sup> (“A person who is persuaded or assisted in the commission of a suicidal attempt must, due to their psychical features, be able to fully recognise the significance of the act and manage their activities. If they lack

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<sup>83</sup> S. Śliwiński, *Udział w czynnie osoby atakującej swoje własne dobro* [Participation in an act performed by a person against their own good], *Demokratyczny Przegląd Prawniczy*, No. 9, 1948, p. 48.

<sup>84</sup> W. Wolter, [in:] I. Andrejew, W. Świda, W. Wolter (ed.), *Kodeks karny...* [Criminal Code...], p. 448.

<sup>85</sup> A. Zoll, [in:] A. Zoll (ed.), *Kodeks karny...* [Criminal Code...], p. 323.

<sup>86</sup> M. Budyn-Kulik, [in:] J. Warylewski (ed.), *System...* [System...], p. 150.

<sup>87</sup> M. Królikowski, [in:] M. Królikowski, R. Zawłocki (ed.), *Kodeks karny...* [Criminal Code...], p. 232.

<sup>88</sup> L. Tyszkiewicz, [in:] M. Filar (ed.), *Kodeks karny...* [Criminal Code...], Warsaw 2014, p. 859.

<sup>89</sup> A. Wąsek, *Prawnokarna...* [Criminal law...], pp. 73–74.

<sup>90</sup> A. Zoll, [in:] A. Zoll (ed.), *Kodeks karny...* [Criminal Code...], p. 323.

<sup>91</sup> M. Królikowski, [in:] M. Królikowski, R. Zawłocki (ed.), *Kodeks karny...* [Criminal Code...], p. 232.

<sup>92</sup> A. Wąsek points out the following solutions: (1) to treat this kind of act, regardless of a victim’s age, as crime under Article 151 CC, or classify it as manslaughter where (2) a victim was under 13 years of age, (3) under 13 and between 13 and 17 years of age but acted without full recognition, (4) under 15 years of age, (5) under 17 years of age, (6) under 18 years of age. A. Wąsek, *Prawnokarna...* [Criminal law...], pp. 73–76.

<sup>93</sup> A. Wąsek, *Prawnokarna...* [Criminal law...], pp. 73–74.

<sup>94</sup> File no. II Aka 276/09, Prokuratura i Prawo 2011, No. 9, item 30, Annex.

such recognition (child, *non compos mentis*), the perpetrator's act can be recognised as the crime under Article 148 CC").

An opinion different from the above-presented (prevailing) one is worth mentioning, too. According to K. Burdziak, leading a person to a self-destructive activity where he/she is incapable of recognising the significance of the undertaken act or is in error as far as this significance recognition is concerned should be classified in accordance with Article 151 CC.<sup>95</sup> The author broadly argues his stand noticing, however, that this classification is not a fully satisfactory solution. Thus, it is necessary to appropriately amend the analysed provision. He refers to a very interesting proposal *de lege ferenda*<sup>96</sup> made by Ł. Pohl, who suggests that it is reasonable to amend Article 151 by adding an adequate paragraph laying down a ban on leading such persons to make attempts on their own life and stipulating similar punishment.<sup>97</sup>

### 2.3.

The crime classified in Article 151 CC is common in nature. In case it is committed via action, anyone can commit it. However, only a person who has a special legal duty to prevent a result may commit omission matching statutory features of the crime (Article 2 CC); in this case the crime is individual in nature.

Matching statutory features of a crime under Article 151 CC may take place not only in the form of single perpetration but also co-perpetration (and of course multi-perpetration). What raises doubts, however, is a possibility of committing this prohibited act as non-executive perpetration (managerial and recommending). According to A. Zoll, managerial and recommending perpetration should be classified as manslaughter under Article 148 §1 or 2 CC.<sup>98</sup> It seems that the basic argument in this field might be the fact that the level of social harm, e.g. of recommending perpetration – as a rule (if it can be stated *in abstracto*) – is bigger than e.g. of persuasion to commit suicide. It seems, however, that this opinion, although logically substantiated, raises considerable doubts in the normative sense and cannot be accepted.<sup>99</sup> There is no conflict of opinion, however, with regard to the fact that the analysed issue is not unambiguous and the statutory approach to the crime can raise doubts. Worth

<sup>95</sup> K. Burdziak, *Przedmiot czynności wykonawczej przestępstwa z art. 151 kodeksu karnego* [The object of an executive act of the crime under Article 151 CC], *Zeszyty Naukowe Uniwersytetu Szczecińskiego, Acta Iuridica Stetinensis* 10, No. 861, 2015, p. 14 ff.

<sup>96</sup> K. Burdziak, *Przedmiot...* [The object...], p. 28.

<sup>97</sup> Ł. Pohl, *Kierowanie wykonaniem samobójstwa i polecenie jego wykonania w polskim prawie karnym (analiza de lege lata i postulaty de lege ferenda)* [Managing the commission of suicide and ordering its commission in the Polish criminal law (comments *de lege lata* and proposals *de lege ferenda*)], [in:] A. Michalska-Warias, I. Nowikowski, J. Piórkowska-Fliieger (ed.), *Teoretyczne i praktyczne problemy współczesnego prawa karnego. Księga jubileuszowa dedykowana profesorowi Tadeuszowi Bojarskiemu* [Theoretical and practical problems of the contemporary criminal law. Professor Tadeusz Bojarski jubilee book], Wydawnictwo UMCS, Lublin 2011, p. 529.

<sup>98</sup> A. Zoll, [in:] A. Zoll (ed.), *Kodeks karny...* [Criminal Code...], p. 322

<sup>99</sup> M. Budyn-Kulik, [in:] J. Warylewski (ed.), *System...* [System...], p. 151, R. Kokot, *Z problematyki...* [Some issues...], part II, p. 31.

quoting is L. Pohl's accurate observation that in case of managing the commission of suicide and recommendation of its commission we do not deal with relative treatment of punishable prohibited behaviour because suicide is not a punishable prohibited act, and this means that stating that managing the commission of suicide and recommendation of suicide commission are forms of criminal co-operation is erroneous. The author rightly claims that it is easier to prove that managing the commission of suicide is one of the ways of assisting a person in an attempt on his/her own life (and recommendation of the commission of suicide is a form of persuasion) than to prove that this management (and recommendation) constitutes the behaviour that kills a person (which results in liability under Article 148 CC).<sup>100</sup> As a consequence, L. Pohl rightly supports the opinion that managing the commission of suicide and recommendation of its commission constitute the perpetrator's behaviour that matches the features specified in Article 151 CC. However, noticing the weaknesses of this solution (mainly in the context of a sanction inadequate to the significance of the act), the author formulates proposals *de lege ferenda* aimed at solving the occurring problems. The first proposal is to raise the maximum punishment limit laid down in Article 151 CC (up to 10 years), which would better meet the requirement of penal response to making another person kill himself/herself by managing the commission of suicide or recommending its commission. The second one, more appropriate in my opinion, recommends adding two paragraphs to Article 151 CC, which would give managing of the commission of suicide and recommendation of its commission (as forms of making another person kill himself/herself) a status of separate punishable prohibited acts carrying one to ten years' imprisonment.<sup>101</sup>

Statutory features of a crime in non-causative forms (instigating and aiding and abetting) may be implemented following general rules. Thus, it may be both instigating persuasion to make an attempt on one's own life as well as instigating assistance and also aiding and abetting in persuasion or assistance in the commission of suicide.<sup>102</sup> Certainly, there may be a thought about the so-called chain instigation and aiding and abetting in the above-mentioned cases, which however – because of the causative nature of persuasion and assistance – is normatively unjustified.<sup>103</sup>

## 2.4.

The doctrine seems to be dominated by a view that the crime under Article 151 CC in the form of persuasion may be committed only with a direct intention and in case of assistance with both direct and potential intention.<sup>104</sup> K. Buchała's isolated

<sup>100</sup> Ł. Pohl, *Kierowanie...* [Managing...], p. 527.

<sup>101</sup> Ł. Pohl, *Kierowanie...* [Managing...], pp. 528–529.

<sup>102</sup> For instance, X persuades another person (Y) to persuade Z to commit suicide or assist Z in the course of suicide. As X wants Y to convince Z (or assist Z in suicide), he facilitates this persuasion, e.g. organising Y and Z meeting. M. Budyn-Kulik, [in:] J. Warylewski (ed.), *System...* [System...], p. 151.

<sup>103</sup> R. Kokot, *Z problematyki...* [Some issues...], part II, p. 33.

<sup>104</sup> J. Śliwowski, *Prawo karne...* [Criminal law], Warsaw 1979, p. 356; M. Cieślak, [in:] *System...* [System...], p. 378; W. Wolter, [in:] *Kodeks karny...* [Criminal Code...], p. 448; M. Budyn-

(and inaccurate) opinion is worth mentioning. He believes that “due to the phrase ‘by rendering assistance induces’ the crime can be committed only with direct intention”.<sup>105</sup>

Some doubts are raised in the doctrine with regard to the possibility of the occurrence of a potential intention in case of persuasion of another person to make an attempt on his/her own life. The arguments pointed out by A. Wąsek are worth mentioning. He believes that the term “persuasion” (in the same way as “inducing”) does not encode purposefulness of a perpetrator’s action. If persuasion were to be connected only with direct intention, statutory limitation of the subject of inducing to direct intention would be useless.<sup>106</sup> If the legislator did not predict that persuasion is also possible with potential intention, the limitation of the scope of criminalisation to direct intention would be unjustified. Thus, it is justified to state that the term “persuasion” (corresponding to “inducing”) does not give grounds either to adopt interpretation limiting the possibility of committing the crime under Article 151 (in the form of persuasion) only to direct intention. A. Wąsek’s arguments are convincing. Undoubtedly, the term “persuasion” does not hint intention and it is not difficult to imagine instances of persuasion in which someone wants another person to have an intention or do something, as well as situations in which a person persuading only agrees on the effects of his/her persuasion. J. Kosonoga-Zygmunt shares A. Wąsek’s opinion<sup>107</sup> and, it seems, so does P. Góralski.<sup>108</sup>

Neither motive nor aim belongs to statutory features of the crime classified in Article 151 CC. As it is rightly noticed in the doctrine, however, culpability of this crime commission differs depending on whether a perpetrator has had noble or ill motives.<sup>109</sup> A situation in which the perpetrator makes a person kill himself/herself with the use of assistance resulting from the victim’s request because this perpetrator feels sorry for the victim is an interesting issue causing some interpretational problems. It is not an invented, purely hypothetical situation because it can be encountered in the judicial practice.<sup>110</sup> There are three attitudes toward this matter in the doctrine:

- 1) According to some lawyers, a perpetrator’s act is not punishable in such a case (based on the interpretation of the provisions of Articles 151 and 150, it is legally neutral). The argumentation is as follows: if in case of mercy killing (an act, which is more socially dangerous than the act under Article 151 CC) it is possible to drop prosecution and the legislator does not lay down this possibility

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-Kulik, [in:] J. Warylewski (ed.), *System...* [System...], p. 151; A. Zoll, [in:] *Kodeks karny...* [Criminal Code...], p. 324; A. Marek, *Kodeks karny...* [Criminal Code...], p. 378; M. Królikowski, [in:] M. Królikowski, R. Zawłocki (ed.), *Kodeks karny...* [Criminal Code...], p. 233; R. Kokot, [in:] R.A. Stefański (ed.), *Kodeks karny...* [Criminal Code...], p. 911.

<sup>105</sup> K. Buchała, *Prawo karne materialne* [Substantive criminal law], II edition, PWN, Warsaw 1989, p. 620.

<sup>106</sup> Article 18 §2 CC: “Whoever, willing that another person should commit a prohibited act, induces the person to do so, shall be liable for instigating”.

<sup>107</sup> J. Kosonoga-Zygmunt, *Namowa...* [Persuasion...], p. 52.

<sup>108</sup> P. Góralski, *Pomoc...* [Assistance...], p. 40.

<sup>109</sup> A. Wąsek, *Prawnokarna...* [Criminal law...], p. 63.

<sup>110</sup> Case No. II K 139/09 SO w Koszalinie.



in case of Article 151 CC, using logical interpretation (*argumentum a minori ad maius*) one should draw a conclusion that assistance in the commission of suicide (implemented on demand and because of sympathy for a victim) is not subject to liability at all;<sup>111</sup>

- 2) According to other authors, assistance in the commission of suicide on demand and because of sympathy is in fact mercy killing and as such should be prosecuted based on Article 150 CC;<sup>112</sup>
- 3) The third group of authors believe that even in case of demand and sympathy on the part of a person assisting in suicide, the classification based on Article 151 CC is justified.<sup>113</sup>

The third option presented above should be considered appropriate. Thus, the classification under Article 151 is justified in such a case, and the fact that the act is on demand and compassion motivated will undoubtedly constitute circumstances influencing the administration of penalty (and may lead to extraordinary mitigation of the punishment). As A. Wąsek writes, when a perpetrator motivated by compassion provides poison for a terminally ill relative suffering from terrible pain, he/she deserves clemency and the act (classified under Article 151 CC), in the author's opinion, deserves more leniency than euthanasia.<sup>114</sup> As far as the first of the above-mentioned stands is concerned (undoubtedly the most advantageous for a perpetrator), worth mentioning is P. Góralski's right opinion that "one cannot *de lege lata* assume non-culpability of euthanasia-related assistance in the commission of suicide based on the fact that a perpetrator's act is less socially dangerous than mercy killing".<sup>115</sup>

Unintentional making another person commit suicide does not match the features of the crime under Article 151 CC. However, Article 155 CC may be taken into consideration.<sup>116</sup>

### 3. PUNISHMENT

The crime under Article 151 CC carries a penalty of three months' to five years' imprisonment. It is worth mentioning that, in comparison to the sanction for a misdemeanour laid down in the Criminal Code of 1969, the minimum penalty has been halved. If the sentence does not exceed one year's imprisonment, its execution may be conditionally suspended. It is possible to apply the provision of Article 37a CC

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<sup>111</sup> K. Poklewski-Koziełł, *Postrzeżenie eutanazji prawnicze – medyczne – etyczne* [Legal, medical and ethical perception of euthanasia], Państwo i Prawo No. 12, Warsaw 1988, p. 97.

<sup>112</sup> K. Daszkiewicz, *Przestępstwa...* [Crime...], p. 236. According to this author, if an act lacked the features of demand and compassion, the right classification would be under Article 151 CC.

<sup>113</sup> J. Warylewski, *W sprawie karnoprawnego postrzeżenia eutanazji* [On criminal and legal perception of euthanasia], Państwo i Prawo No. 3, Warsaw 1999, p. 76; P. Góralski, *Pomoc...* [Assistance...], p. 45.

<sup>114</sup> A. Wąsek, *Prawnokarna...* [Criminal law...], p. 63.

<sup>115</sup> P. Góralski, *Pomoc...* [Assistance...], p. 45.

<sup>116</sup> M. Budyn-Kulik, [in:] J. Warylewski (ed.), *System...* [System...], p. 151.

(“If the law provides for a penalty not exceeding eight years’ imprisonment, the penalty may be exchanged into a fine or deprivation of liberty (non-custodial punishment) laid down in Article 34 §1a (1), (2) or (4)”) as well as the so-called mixed punishment (Article 37b CC). It is also possible to conditionally discontinue the proceedings against the perpetrator of the crime referred to in Article 151 CC, obviously provided that conditions laid down in Article 66 §1 CC are fulfilled. In some cases, there may be grounds for the extraordinary mitigation of the punishment (Article 60 §2 CC), however, it is not possible to drop its administration (due to the content of Article 59 CC).

In case of conviction for the crime referred to in Article 151 CC, a court may impose penal measures, e.g. deprivation of public rights (in case of not less than three years’ imprisonment sentence for a crime committed for motives that deserve special condemnation), interdiction of holding specific posts or performing specific professions (Article 41 §1 CC), and making the sentence publicly known (Article 50 CC). There is also a possibility of imposing an obligation to redress the damage or compensate for the wrong suffered (Article 46 CC), other compensatory damages (Article 47 §1 CC) or sometimes forfeiture of items (Article 44 CC).

Article 19 §2 CC (extraordinary mitigation of the punishment for aiding and abetting) is not applicable to the administration of a penalty for assistance in suicide; and Article 22 CC (concerning mitigated liability of an instigator and an assistant in case the prohibited act has only been attempted and in case it has not been attempted) is not applicable to the two causative forms referred to in Article 151 CC. On the other hand, in a situation when the prohibited act referred to in Article 151 CC has been attempted, regulations concerning abandonment of an attempt or preventing a consequence (Article 15 CC) are applicable.<sup>117</sup> Thus, a perpetrator who persuades another person to suicide or assists him shall not be subject to penalty for the attempt if he/she voluntarily prevents an attempt on that person’s life (Article 15 §1 CC); in case his/her behaviour proves to be inefficient, a court may apply an extraordinary mitigation of punishment (Article 15 §2 CC). However, a situation in which a perpetrator has failed to voluntarily prevent a suicidal attempt but voluntarily (and efficiently) has prevented the commission of suicide is still controversial and hard to assess. As A. Wąsek rightly claims, it seems that Article 15 §1 CC should be applied in order to “promote voluntary action that has eventually protected a victim against death”. On the other hand, in a situation in which a perpetrator’s behaviour proves to be inefficient, there might be grounds for an extraordinary mitigation of punishment (Article 15 §2 CC).<sup>118</sup> Of course, the above-mentioned privileges should be ruled out in case of a perpetrator who intentionally lets a victim make an attempt on their own life in order to save them later.<sup>119</sup>

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<sup>117</sup> A. Zoll, [in:] A. Zoll (ed.), *Kodeks karny...* [Criminal Code...], p. 325.

<sup>118</sup> A. Wąsek, *Prawnokarna...* [Criminal law...], p. 64.

<sup>119</sup> *Ibid.*

#### 4. CONCLUSIONS

The number of suicidal attempts resulting in death in Poland is very high (6,165 in 2014). The number of proceedings initiated regarding the crime under Article 151 CC is also considerable (3,535 cases in 2014). In most suicide cases criminal proceedings are initiated in order to verify circumstances matching the statutory features specified in Article 151 CC and to determine whether a person's act of a suicidal attempt has resulted from his/her individual decision or has been a result of persuasion or assistance offered by another person. The number of crimes reported under Article 151 CC accounts for a fraction of one per cent of all proceedings (e.g. 0.006% in 2014) and only a few cases are sent to court. According to the conviction statistics provided by the Ministry of Justice, 23 valid sentences under Article 151 CC were issued in Poland in the period from 1 September 1998 till 31 December 2015. This small number of convictions cannot, however, lead to a conclusion that the maintenance of Article 151 in the Criminal Code is purposeless. Quite the opposite, it must be stated that the presence of this provision is absolutely justified, although *de lege ferenda* proposals that are suggested with regard to the wording of the provision are worth considering.

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## CRIME OF PERSUASION TO COMMIT OR ASSISTANCE IN THE COMMISSION OF SUICIDE (ARTICLE 151 CC)

### Summary

A specific causative type, i.e. persuasion to and assistance in the commission of suicide, is classified in Article 151 CC. Human life and freedom from exerting destructive influence on the way in which man decides about their life in a social aspect are subject to protection against the discussed misdemeanour. Article 151 CC specifies a causative act as “making a person attempt on their own life” but this influence may be exerted with the use of persuasion or assistance. The crime may be committed through an act, when it consists in persuasion (this form may be only an action), as well as through omission, when it consists in assistance in suicide. The misdemeanour under Article 151 CC is a common and substantive crime. The consequence consists in a victim’s suicidal attempt that does not have to result in death. The objective aspect of the analysed crime is intentional in nature; it may be committed in two intentional forms. A misdemeanour under Article 151 CC carries a penalty of three months’ to five years’ imprisonment.

Key words: suicide, attempt on one’s own life, persuasion and assistance in the commission of suicide, features of the crime, substantive criminal law

## PRZESTĘPSTWO NAMOWY LUB UDZIELENIA POMOCY DO SAMOBÓJSTWA (ART. 151 K.K.)

### Streszczenie

W art. 151 k.k. stypizowany został swoisty typ sprawczy, czyli namawianie i udzielenie pomocy do samobójstwa. Przedmiotem ochrony omawianego występku jest życie człowieka, jak również jego wolność od wywierania destrukcyjnego wpływu na sposób, w jaki człowiek będzie swym życiem dysponować w aspekcie społecznym. Art. 151 k.k. określa czynność sprawczą jako „doprowadzenie człowieka do targnięcia się na własne życie”, przy czym owo doprowadzenie może być zrealizowane bądź namową bądź też poprzez udzielenie pomocy. Przepięstwo to może zostać popełnione zarówno przez działanie, gdy polega na doprowadzeniu namową (w tej postaci może to być wyłącznie działanie); jak i przez zaniechanie, gdy polega na udzieleniu pomocy do samobójstwa. Występek z art. 151 k.k. jest przestępstwem powszechnym i materialnym. Skutek polega na podjęciu przez pokrzywdzonego próby samobójczej, która nie musi jednak prowadzić do śmierci pokrzywdzonego. Strona podmiotowa analizowanego przestępstwa charakteryzuje się umyślnością: może zostać ono popełnione w obu postaciach zamiaru. Występek z art. 151 k.k. zagrożony jest karą pozbawienia wolności od trzech miesięcy do pięciu lat.

Słowa kluczowe: samobójstwo, targnięcie się na życie, namawianie i pomoc do samobójstwa, znamiona przestępstwa, prawo karne materialne