

# CRIMINAL LIABILITY FOR ACCEPTING A COMMISSION TO COMMIT MURDER

MARIKA JAROCKA \*

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## ABSTRACT

This article examines issues of criminal liability arising from the acceptance of a commission to commit murder, as provided for in Article 148a § 1 of the Polish Penal Code. The newly introduced offence has been justified as a means of strengthening the protection of human life at a stage preceding conduct that directly endangers it. However, the interpretation of its statutory elements gives rise to serious doubts as to the justification for its operation within the Polish legal order. The purpose of this study is to identify the principal deficiencies of the offence and to assess whether its incorporation into the Penal Code was justified. The analysis addresses, in particular, the omission of criminalisation in cases where the acceptance occurs without remuneration, the potential tension with the principle *cogitationis poenam nemo patitur*, and the difficulty of distinguishing remunerated acceptance of a commission to commit murder from preparation to commit murder. The conclusions support the view that the criminalisation of accepting a commission to commit murder should be reconsidered and, ultimately, repealed.

Keywords: murder, acceptance of a commission to commit murder, intent, criminalisation, preparation

## INTRODUCTION

The amendment of 7 July 2022<sup>1</sup> introduced significant changes to the Polish Penal Code,<sup>2</sup> substantially reshaping the chapter on offences against life and health. These modifications were not limited to increasing the severity of the penalties applicable

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\* LL.M., Nicolaus Copernicus University in Toruń (Poland), e-mail: m.jarocka@doktorant.umk.pl, ORCID: 0000-0003-0487-8761

<sup>1</sup> Act of 7 July 2022 amending the Act – Penal Code and Certain Other Acts (Journal of Laws 2022, item 2600, as amended).

<sup>2</sup> Act of 6 June 1997 – Penal Code (consolidated text: Journal of Laws 2024, item 17, as amended, hereinafter referred to as the ‘Penal Code’ or ‘PC’).



to murder in its basic form and in its aggravated variants. The legislature also introduced provisions criminalising conduct that poses a threat to life at an early and markedly remote preliminary stage of criminal activity. In this context, Article 148 § 5 PC was added, providing for criminal liability for preparation to commit murder. At the same time, Article 148a<sup>3</sup> PC was introduced, criminalising the acceptance of a commission to kill a human being in exchange for a pecuniary or personal benefit granted or promised (hereinafter: ‘accepting a commission to commit murder’). In pursuing a comprehensive reinforcement of criminal-law protection afforded to the highest-ranking legal interests, namely life and health, the legislature extended criminalisation both of preparation for murder and of conduct significantly preceding the commission of the offence.

This article provides a detailed analysis of the remunerated acceptance of a commission to commit murder, a novel solution in the Polish legal order. Notably, the proposal to introduce a new offence consisting in the acceptance of a commission to kill a human being in exchange for a pecuniary or personal benefit granted or promised had already appeared in the draft amendment to the Penal Code of 23 November 2006.<sup>4</sup> At that time, the introduction of a provision identical in wording was proposed, with the notable difference that the explanatory memorandum explicitly indicated that the purpose of criminalising such conduct was to support efforts to combat organised crime. In particular, it was argued that the provision was intended to

‘counteract the mechanisms underlying the proliferation of a specialised form of criminality oriented towards the commission of offences carried out under such commissions, by creating, through the criminalisation of conduct of a *sui generis* preparatory character, a valuable mechanism of preventive intervention in this area’.<sup>5</sup>

A further attempt to incorporate this offence into the Penal Code was made in 2019.<sup>6</sup> However, the amendment was subsequently declared unconstitutional by the Constitutional Tribunal.<sup>7</sup>

<sup>3</sup> See Article 148a PC:

‘§ 1. Whoever accepts a commission to kill a human being in exchange for a pecuniary or personal benefit granted or promised shall be subject to imprisonment for a term of 2 to 15 years.

§ 2. A person shall not be liable to punishment for the offence specified in § 1 if, prior to the initiation of criminal proceedings, he or she discloses to an authority competent to prosecute offences the person or persons who commissioned the killing and the essential circumstances of the act committed.’

<sup>4</sup> See R. Kokot, ‘Przestępstwo przyjęcia zlecenia zabójstwa (art. 148a § 1 k.k.) w ujęciu nowelizacji Kodeksu karnego z dnia 13 czerwca 2019 r.’, *Przegląd Prawa i Administracji*, 2020, Vol. CXXII, p. 276; K. Kwieciń, ‘Przestępstwo przyjęcia zlecenia zabójstwa (art. 148a § 1 k.k.) – “myślbrodnia” czy wypełnienie luki prawnej?’, *Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury*, 2024, No. 4, pp. 64–65.

<sup>5</sup> *Uzasadnienie projektu nowelizacji kodeksu karnego*, 23 November 2006, Sejm print No. 1756, pp. 71–72.

<sup>6</sup> *Projekt ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw*, 25 January 2019; <https://legislacja.rcl.gov.pl/docs//2/12320403/12565615/12565616/dokument378690.pdf> (accessed: 2 March 2025).

<sup>7</sup> Judgment of the Constitutional Tribunal of 14 July 2020, case no. Kp 1/19.

The interpretation of the statutory elements of the offence involving remunerated acceptance of a commission to commit murder gives rise to legitimate doubts as to the justification for its continued place in the Polish legal order. In light of these concerns, it appears warranted to examine the criminal-law foundations underlying the inclusion of this offence in the Polish legal order. Particular attention must be devoted to the potential infringement of the principle *cogitationis poenam nemo patitur*, to delineating the boundary between acceptance of a commission to commit murder and preparation for murder, and to the axiologically questionable exclusion of criminal liability in cases of non-remunerated or otherwise non-equivalent acceptance of such a commission.

## CHARACTERISTICS OF THE STATUTORY ELEMENTS

The debate concerning the justification for criminalising this particular type of prohibited act may reveal fundamental shortcomings in the adopted legislative solution. In order to articulate a clear position on this issue, the following analysis must begin with an examination of the statutory elements of the offence, thereby providing a structured and substantive introduction to the problem under consideration.

The generic legal interest protected by the provision is human life from birth until death. Formally, the provision is located within the chapter on offences against life and health, which indicates that life is the principal legally protected interest. According to M. Budyn-Kulik, however, the individual legal interest protected in this case is public order, which is infringed by conduct contrary to legal norms, social norms, and the principles governing social coexistence. She also emphasises the difficulty of determining which of the protected interests should be regarded as primary and which as secondary. The principal legally protected interest remains that which corresponds to the generic legal interest. It should therefore be identified as human life and health. Nevertheless, in the view expressed by the author, the provision has been improperly located within the structure of the Penal Code and, consequently, ought to be situated among offences against public order.<sup>8</sup> A situation may arise in which an individual undertakes to kill a person who has not yet been born, or even conceived. This would therefore be a case in which the commission to deprive a person of life is accepted in advance. The temporal distance inherent in such an arrangement significantly attenuates any immediate threat to the legal interest of human life. In this scenario, the potential endangerment of life remains abstract and remote, whereas public order is unquestionably infringed. In conclusion, this position is fully justified.

It is also worth noting that the statutory requirement that acceptance of a commission to commit murder must occur in exchange for a pecuniary or personal benefit further renders protection of the legal interest in human life contingent

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<sup>8</sup> M. Budyn-Kulik, in: Mozgawa M. (ed.), *Kodeks karny. Komentarz aktualizowany*, LEX/el., 2024, commentary on Article 148a, thesis 2.

upon the existence of such a benefit. This raises the question of which legal interest is, in reality, being protected by the provision. If, for example, a hypothetical 'philanthropic' killer were to accept the commission to commit murder without receiving or even being promised any pecuniary or personal benefit, the statutory elements of the offence would not be fulfilled. Consequently, criminal liability could not be attributed. As has rightly been observed, such normative differentiation gives rise to serious axiological concerns. The degree of danger posed to the legal interest at stake, namely human life, remains unchanged irrespective of whether acceptance of the commission to commit murder is accompanied by remuneration or any form of equivalence.<sup>9</sup>

The offence is a common offence of general applicability. Although it might appear at first glance that criminal liability would attach exclusively to the so-called 'commissioned perpetrator', in reality it may also be incurred by a non-professional perpetrator who undertakes to commit the killing under the commission in exchange for a pecuniary or personal benefit granted or promised.

Turning to the objective element of the offence, particular attention must be devoted to the conduct element defined as accepting a commission to kill a human being. The normative structure of the offence of remunerated acceptance of a commission to commit murder presupposes a specific type of bilateral arrangement between two parties. One party commissions the killing and, at the same time, provides or promises a pecuniary or personal benefit, while the other party either accepts or refuses the commission.<sup>10</sup> The manifestation of readiness to carry out the killing under the accepted commission may take various forms, including oral or written declarations, as well as conduct implying acceptance.<sup>11</sup> The term 'commission' is defined as 'an instruction to perform a task' or as 'an agreement whereby a person or institution undertakes to perform certain work'.<sup>12</sup> Acceptance must be voluntary; accordingly, no relationship of dependence is required between the person commissioning the killing and the person accepting the commission.<sup>13</sup>

Importantly, in every case acceptance of the commission must be directly correlated with a pecuniary or personal benefit, whether granted or merely promised. As rightly

<sup>9</sup> On this issue, see K. Wiak, 'Przyjęcie zlecenia zabójstwa', *Biuletyn Stowarzyszenia Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego*, 2024, Vol. 19, No. 21, p. 343.

<sup>10</sup> V. Konarska-Wrzosek, in: Lach A., Lachowski J., Oczkowski T., Zgoliński I., Ziółkowska A., Konarska-Wrzosek V. (eds), *Kodeks karny. Komentarz*, 4th ed., Warszawa, 2023, p. 859. It should be noted that more than one person may act on the side of the party commissioning the killing.

<sup>11</sup> *Ibidem*.

<sup>12</sup> *Słownik języka polskiego PWN*; <https://sjp.pwn.pl/slownik/zlecenie.html> (accessed: 2 March 2024). The use of the term 'zlecenie' (a term corresponding in civil law to a mandate commission) may, at first glance, lead to its erroneous interpretation from the perspective of civil law. It should be emphasised that the essence of the legal relationship regulated in the Civil Code differs fundamentally from the prohibited act defined in Article 148a § 1 PC; see R. Kokot, 'Przestępstwo przyjęcia zlecenia...', *op. cit.*, pp. 278–279.

<sup>13</sup> M. Budyn-Kulik, in: Mozgawa M. (ed.), *Kodeks karny...*, *op. cit.*, commentary on Article 148a, thesis 4. It is worth adding, however, that where such a relationship exists and the person commissioning the killing exploits the dependence of the person accepting the commission, the issue of that party's criminal liability would be shaped in such a way that the person commissioning the killing could be held liable as an ordering perpetrator.

observed in the literature, situations in which both types of benefit occur cumulatively<sup>14</sup> should not be excluded. Pursuant to the statutory definition set out in Article 115 § 4 PC, a pecuniary or personal benefit is understood as a benefit 'for oneself or for another person'. A pecuniary benefit encompasses any benefit of an economic nature, intended to satisfy material needs. It may consist not only in an increase in assets but also in a reduction of liabilities, the avoidance or diminution of loss, or the elimination or avoidance of financial burdens.<sup>15</sup> The breadth of this concept permits a wide interpretation. A personal benefit, by contrast, refers to non-pecuniary advantages and may include any non-material gain that enhances the recipient's psychological or physical well-being.<sup>16</sup> As noted in the literature:

'The distinction between a pecuniary and a personal benefit is based on the criterion of the nature of the need satisfied. If a given advantage primarily fulfils a non-material need, it constitutes a personal benefit.'<sup>17</sup>

A promise of a benefit, in turn, should be understood as nothing more than an assurance given by the person commissioning the killing that the person accepting the commission will obtain a specific advantage.<sup>18</sup> It embodies a justified expectation that the promised benefit will be conferred at a later point in time. Accordingly, in every case there must be a direct nexus between acceptance of the commission to commit murder and the benefit in question. The benefit must be directly linked to that acceptance and connected exclusively with the commission itself, rather than constituting an independent or unrelated advantage.

Acceptance of a commission to commit murder may occur exclusively through an act; it appears logically sound to exclude omission in this context, since the very existence of the offence presupposes that the perpetrator must 'accept' the commission. It cannot be maintained that tacit acceptance of the commission, clearly inferred by the person commissioning the killing, would amount to conduct in the form of an omission. Even where acceptance is expressed implicitly, it nonetheless involves a manifestation of will directed outward and therefore assumes the character of an act. Accordingly, any acceptance of a commission accompanied by a pecuniary or personal benefit, or by a promise thereof, must be classified as active conduct<sup>19</sup> rather than as a failure to act.

Acceptance of a commission to commit murder represents an example of an offence of abstract endangerment of a legal interest. Such an offence does not require the creation of a concrete or direct danger to the protected legal interest, namely human

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<sup>14</sup> R. Kokot, 'Przestępstwo przyjęcia zlecenia...', op. cit., pp. 280–281.

<sup>15</sup> T. Oczkowski, in: Lach A., Lachowski J., Oczkowski T., Zgoliński I., Ziółkowska A., Konarska-Wrzosek V. (eds), *Kodeks karny. Komentarz*, 4th ed., Warszawa, 2023, commentary on Article 115, p. 681; see also order of the Supreme Court of 30 May 2017, case no. II KK 156/17, LEX No. 2298294; judgment of the Supreme Court of 16 January 2009, case no. IV KK 269/08, OSNwSK 2009, No. 1, item 173.

<sup>16</sup> R. Kokot, 'Przestępstwo przyjęcia zlecenia...', op. cit., p. 280.

<sup>17</sup> Judgment of the Court of Appeal in Lublin of 17 April 2007, case no. II AKa 81/07, LEX No. 314605.

<sup>18</sup> R. Kokot, 'Przestępstwo przyjęcia zlecenia...', op. cit., p. 280.

<sup>19</sup> See rightly, *ibidem*, p. 273.

life. The provision merely specifies a particular mode of conduct on the part of the perpetrator. It is not necessary to establish that the perpetrator has actually caused any real or specific risk<sup>20</sup> to the protected interest. In the course of doctrinal debate, it has also been emphasised that the construction of offences based on abstract endangerment does not extend so far as to permit unlawfulness to be grounded solely in the formation of an intention to infringe the legal interest protected by a given provision.<sup>21</sup>

Turning to the subjective elements of the offence, it may be stated unequivocally that it is an intentional offence under Polish criminal law.<sup>22</sup> In the literature, however, there is no consensus as to whether only direct intent is conceivable, or whether conditional intent may also suffice. M. Budyn-Kulik excludes the possibility of conditional intent on the part of the perpetrator, arguing that 'in their psychological attitude toward the act there is no room for uncertainty as whether, by making a particular decision, they are committing an offence, which is characteristic of conditional intent'.<sup>23</sup> V. Konarska-Wrzosek, by contrast, observes that the offence may also be committed with a *quasi*-conditional intent, in a situation where the perpetrator acts with direct intent solely with respect to acceptance of the commission to commit murder, while acting with conditional intent with regard to obtaining a specific benefit.<sup>24</sup> R. Kokot adopts the position that the perpetrator may act either with direct intent, when they 'want' to accept the commission to commit murder, or with conditional intent, when they 'reconciles themselves' to its acceptance and thereby accept the conditions presented by the person commissioning the killing. He further maintains that the intentional structure in this context is dichotomous. One may therefore distinguish intent with respect to the deprivation of human life and intent with respect to obtaining a benefit or a promise thereof. Accordingly, two configurations are conceivable. In the first, the perpetrator accepts the commission to commit murder and 'wants' the benefit or its promise, while merely 'reconciling themselves' to the killing of a human being, which constitutes a *sine qua non* condition for obtaining the benefit. In the second, the perpetrator 'wants' the death of the victim while merely 'reconciling themselves' to the receipt of certain benefits or their promise, which, as the author describes, provide only an 'added value'.<sup>25</sup>

<sup>20</sup> Ibidem, p. 284. The author advances the thesis that the placement of this provision appears inappropriate and that it would be more suitably located among offences concerning endangerment.

<sup>21</sup> On this issue, see J. Giezek, D. Gruszecka, K. Lipiński, *Opinia na temat ustawy z dnia 7 lipca 2022 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw (druk senacki nr 762)*, Warszawa, 2022, p. 72.

<sup>22</sup> A. Błachnio, in: Majewski J. (ed.), *Kodeks karny. Komentarz*, Warszawa, 2024, commentary on Article 148a, p. 842; R. Kokot, 'Komentarz do art. 148a', in: Stefański R.A. (ed.), *Kodeks karny. Komentarz*, 7th ed, Warszawa, 2025, Legalis, thesis 8; K. Wiak, 'Komentarz do art. 148a', in: Grześkowiak A., Wiak K. (eds.), *Kodeks karny. Komentarz*, 8th ed., Warszawa, 2024, Legalis, margin number 8; M. Budyn-Kulik, in: Mozgawa M. (ed.), *Kodeks karny...*, op. cit.

<sup>23</sup> M. Budyn-Kulik, in: Mozgawa M. (ed.), *Kodeks karny...*, op. cit.; see also M. Królikowski, R. Zawłocki (eds), *Kodeks karny. Część szczególna. Komentarz do artykułów 117–221*, Vol. I, 5th ed., Warszawa, 2023, Legalis, margin number 13; J. Karnat, in: Gadecki B. (ed.), *Kodeks karny. Art. 1–316. Komentarz* Warszawa, 2023, Legalis, margin number 4.

<sup>24</sup> V. Konarska-Wrzosek, in: Lach A., Lachowski J., Oczkowski T., Zgoliński I., Ziółkowska A., Konarska-Wrzosek V. (eds), *Kodeks karny...*, op. cit., commentary on Article 148a, p. 858.

<sup>25</sup> R. Kokot, 'Przestępstwo przyjęcia zlecenia...', op. cit., p. 281.

Though it may be accepted that a dichotomous conception of intent is possible with regard both to the acceptance of the commission to commit murder and to the obtaining of a benefit, it appears that acceptance of the commission itself may be accompanied only by direct intent, whereas conditional intent could relate solely to the perpetrator's acquisition of the benefit.

Furthermore, the exclusivity of direct intent is supported by the fact that acceptance of a commission represents a stage preceding preparation for murder, which itself requires the perpetrator to act with direct intent, more precisely, with direct intent of a specific character.<sup>26</sup> This would suggest that the same form of intent<sup>27</sup> is required of the perpetrator who accepts a commission to commit murder. Another issue worth considering is whether, within the framework of Article 148a § 1 PC, one could speak of intent of a specific character. Although the provision does not expressly state that the perpetrator must act for a particular purpose, the requirement of a link between the person commissioning the killing and the accepting party in the form of a pecuniary or personal benefit, or a promise thereof, might arguably indicate a certain purposive element on the part of the potential perpetrator.<sup>28</sup> However, it appears that no element has been expressly distinguished in this provision that would indicate a specific purpose guiding the perpetrator's conduct, in contrast to the offence of preparation to commit murder.<sup>29</sup> In addition, as rightly noted by R. Kokot, the regulation concerning the acceptance of a commission presents a case of an 'intention to form an intention' to commit the crime of murder. Such an intention, when stimulated by a benefit or the promise thereof,<sup>30</sup> independently fulfils the statutory elements of the offence.

## STATUTORY CLAUSE OF NON-PUNISHABILITY

Article 148a § 2 PC introduces a statutory clause of non-punishability. Pursuant to this provision, a perpetrator who has accepted a commission to commit murder is not punishable if, prior to the initiation of criminal proceedings, the perpetrator discloses to an authority competent to prosecute offences the identity of the person or persons commissioning the killing, as well as the material circumstances of the offence. Article 148a § 2, following the model of other provisions incorporating the institution of active repentance, was motivated by considerations of criminal policy.<sup>31</sup> The explanatory memorandum indicates that the clause was introduced in view of the specific nature of the offence, which entails a temporally extended threat

<sup>26</sup> K. Kwiecień, 'Przestępstwo przyjęcia zlecenia...', op. cit., p. 69.

<sup>27</sup> J. Karnat, 'Komentarz do art. 148a', in: Gadecki B. (ed.), *Kodeks karny. Art. 1–316. Komentarz*, Warszawa, 2023, margin number 4.

<sup>28</sup> On this issue, see K. Kwiecień, 'Przestępstwo przyjęcia zlecenia...', op. cit., p. 69.

<sup>29</sup> A. Barczak-Oplustil, M. Małecki, S. Tarapata, M. Iwański, *Populistyczna nowelizacja prawa karnego. Ustawa z dnia 7.07.2022 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw (druk senacki nr 762)*, Kraków, 19 July 2022; <https://kipk.pl/ekspertyzy/populistyczna-nowelizacja-prawa-karnego/> (accessed: 13 April 2026), pp. 30–31.

<sup>30</sup> R. Kokot, 'Przestępstwo przyjęcia zlecenia...', op. cit., p. 281.

<sup>31</sup> *Ibidem*, p. 289.

to the protected legal interest, and with the aim of encouraging the perpetrator to refrain from undertaking acts bringing them closer to the completion of the killing contemplated under the accepted commission.<sup>32</sup>

Unlike the institution of active repentance provided for in Article 17 § 1 PC, the regulation introduced in Article 148a § 2 does not require the perpetrator to act voluntarily when deciding to abandon their previously formed intent. Particular emphasis was placed in the explanatory memorandum on the fact that this solution

‘is intended to motivate the perpetrator to refrain from pursuing the intent to commit murder, irrespective of the circumstances that may have prompted such a decision, since, given the importance of the protected legal interest, preventing its violation is of paramount importance’.<sup>33</sup>

As a consequence, even involuntary conduct on the part of a person who has accepted a commission to commit murder does not deprive them of the possibility of benefiting from the clause of non-punishability set out in Article 148a § 2 PC. In light of the prolonged nature of the perpetrator’s conduct and the temporally extended threat to the protected legal interest, as highlighted by the drafters, it is legitimate to question whether privileging the perpetrator by dispensing with the requirement of voluntariness is justified. Arguably, the less restrictive conditions of this form of active repentance are counterbalanced by the requirement, expressly formulated in the provision, to disclose the identity of the person commissioning the killing and other material circumstances of the offence. It was further noted that

‘Article 17 of the Penal Code applies to all offences, including those of a low degree of social harmfulness, and therefore does not provide for the aforementioned conditions, whereas Article 148a § 2 applies exclusively to an intentional offence against the most valuable personal legal interest – life – and it is therefore necessary to prevent its violation through the commissioning of a killing by another person, a purpose served by the disclosure of the person commissioning the killing and other material circumstances of the offence.’<sup>34</sup>

## RATIO LEGIS OF THE STATUTORY DEFINITION OF THE OFFENCE OF ACCEPTING A COMMISSION TO COMMIT MURDER

The introduction of a separate statutory offence of accepting a commission to commit murder was intended to significantly reinforce the protection of human life. In the explanatory memorandum to the amendment of 7 July 2022, it was stated that the absence of such a provision should be regarded as a legal gap, particularly in light of the high degree of social harmfulness<sup>35</sup> attributed to this conduct. The drafters further emphasised that

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<sup>32</sup> *Uzasadnienie projektu ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw*, 22 February 2022, p. 60.

<sup>33</sup> *Ibidem*, p. 60–61.

<sup>34</sup> *Ibidem*.

<sup>35</sup> *Ibidem*, p. 58.

'The proposal to criminalise this conduct serves to supplement the punishability of preparation to commit murder; the comparable degree of social harmfulness of accepting a commission to commit murder justifies the adoption of an analogous statutory penalty of two to fifteen years' imprisonment.'<sup>36</sup>

Thus, the creation of this offence formed part of a broader legislative tendency aimed at strengthening the protection of human life.

It was also stated that 'the social harmfulness of this act does not lie in the decision to commit murder as such, but in a certain agreement concluded with another person in this respect'.<sup>37</sup> This agreement is intended to be clearly distinguished from preparation, since the person commissioning the killing does not intend to commit the murder in the form of co-perpetration. Accordingly, the 'agreement' in question must be explicitly separated from the agreement referred to in Article 16 § 1 PC. The explanatory memorandum further pointed to the necessity of including acceptance of a commission within the catalogue of prohibited acts in view of the 'introduction of punishability for entering into an agreement for the purpose of committing an offence'. The newly defined offence was thus presented as merely a complement to the criminal-law protection of life, correlated with the introduction of punishability for preparation to commit murder.<sup>38</sup> The need to reinforce the protection of life in this context, however, appears highly questionable: first, in light of the remote nature of the threat involved, and second, because the provision penalises only remunerated acceptance of a commission, leaving unpaid cases outside the scope of criminal liability.

The introduction of criminal liability for acceptance of a commission to commit murder was intended to prevent a potential danger to the legal interest of human life. It appears, however, that the legislative intervention in this instance is markedly remote from any actual threat, which at this stage remains purely abstract. It is rightly argued that such an extension may infringe the principle of proportionality, according to which it is necessary in each case to demonstrate the need for criminalisation within a given scope (Article 31(3) of the Constitution of the Republic of Poland).<sup>39</sup>

At this point, it is appropriate to reflect upon the justification for criminalising the acceptance of a commission to commit murder. J. Kulesza observes that

'It is impermissible to criminalise conduct that bears some connection to behaviour of a highly socially dangerous character, yet whose link to the potential violation or endangerment of a legal interest appears excessively remote.'<sup>40</sup>

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<sup>36</sup> Ibidem; attention should also be drawn to the sanction, which has been formulated identically both in the case of preparation for murder and in the case of accepting a commission to commit murder. Given that accepting such a commission represents a stage preceding preparation, the sanction would appear, in this instance, to warrant a more lenient form.

<sup>37</sup> Ibidem, p. 59.

<sup>38</sup> *Uzasadnienie projektu ustawy...*, op. cit., p. 59.

<sup>39</sup> K. Wiak, 'Przyjęcie zlecenia...', op. cit., p. 341.

<sup>40</sup> J. Kulesza, 'Zarys teorii kryminalizacji', *Prokuratura i Prawo*, 2014, No. 11–12, p. 105.

In light of this, it may be concluded that the introduction of criminal liability for accepting a commission to commit murder at such an early stage appears premature. One may also concur with the view expressed by M. Małecki that

'Shifting the criminal-law response to the remote foreground of protection of a legal interest entails various risks from the perspective of the principles governing a state based on the rule of law.'<sup>41</sup>

## RELATIONSHIP BETWEEN THE ACCEPTANCE OF A COMMISSION AND PREPARATION TO COMMIT MURDER

Acceptance of a commission to commit murder, as a newly defined offence intended to protect life at a very early, remote pre-executory stage, is designed to establish the foundations for safeguarding human life before actions genuinely threatening it are undertaken. The manner in which this offence has been structured indicates that it does not fulfil the conditions required for classifying such conduct as preparatory acts in the form of entering into an agreement with a view to the joint perpetration of an offence.<sup>42</sup> The legislature expressly determined that

'The acceptance of a commission to commit murder does not fall within the legal framework of preparation to commit murder, as it does not amount to an agreement to commit a prohibited act within the meaning of Article 16 § 1 PC (since such an agreement does not presuppose that the person commissioning the killing will act as a direct perpetrator).'<sup>43</sup>

Evidently, a clear distinction is drawn between accepting a commission to commit murder and preparing for its commission. This is further confirmed by one of the previously mentioned objectives underlying the introduction of criminal liability for remunerated acceptance of such a commission, namely the supplementation of the punishability of preparation to commit murder.

It may be observed that, within the adopted structure of the stages of an offence, the legislature has created a phase preceding preparation, intended to extend beyond the non-punishable realm of mere thought, yet without leading to conduct that could be classified as preparation.

Consideration must, however, be given to whether this assumption fully justifies the conclusion that acceptance of a commission to commit murder does not fall within the boundaries of preparation. The reasoning advanced in the explanatory memorandum refers only to preparation in its personal form, while disregarding the broader range of acts that may fall within the preparatory phase. The definitional scope of preparation, as set out in Article 16 § 1 PC, is limited to the most typical

<sup>41</sup> M. Małecki, *Przygotowanie do przestępstwa. Analiza dogmatyczna*, Warszawa, 2016, pp. 16–17, cited in D. Bek, 'Karalność przygotowania do zabójstwa', *Krytyka Prawa. Niezależne studia nad prawem*, 2020, Vol. 12, No. 4, p. 36.

<sup>42</sup> V. Konarska-Wrzosek, in: Lach A., Lachowski J., Oczkowski T., Zgoliński I., Ziółkowska A., Konarska-Wrzosek V. (eds), *Kodeks karny...*, op. cit., p. 858.

<sup>43</sup> *Uzasadnienie projektu ustawy...*, op. cit., pp. 58–59.

preparatory forms, which permits a degree of interpretative flexibility.<sup>44</sup> It must be acknowledged that acceptance of a commission to commit murder may be accompanied by discussions of the criminal plan or the acquisition of detailed information about the intended victim. The perpetrator may undertake acts designed to enable or facilitate the planned killing, for example, by accepting a pecuniary benefit intended to cover part of the anticipated costs associated with carrying out the commission. Such conduct may already be classified as preparation to commit murder.

Thus, it may be argued that, in many cases, acceptance of a commission will be accompanied by acts which, in substance, correspond to preparation and may accordingly be classified as preparation to commit murder. In certain instances, however, the conduct of the person accepting the commission will not fulfil the statutory elements of preparation as defined in Article 148 § 5 PC. There is no doubt that acceptance may occur tacitly; where this is combined with the absence of any acts aimed at creating conditions for undertaking conduct directly leading to the commission of the offence, the perpetrator will not enter the phase of punishable preparation and will merely remain at the level of passive acceptance of the proposal. This assumption gives rise to a further fundamental difficulty and a serious objection to the existing regulation of remunerated acceptance of a commission to commit murder in Polish law. The question must therefore be asked whether tacit acceptance of a commission to commit murder amounts merely to an unexpressed intention and, consequently, whether its criminalisation infringes the principle *cogitationis poenam nemo patitur*.<sup>45</sup>

The boundary between the newly defined offence of accepting a commission to commit murder and preparation to commit murder proves difficult to delineate. One may readily envisage a range of behaviours that already fall within the scope of preparation. *A contrario*, there will also be situations in which the conduct of the person accepting the commission does not correspond to preparation within the meaning of Article 16 § 1 PC. In such cases, however, one is confronted with the issue of imposing criminal liability for the mere thought formed by the individual.<sup>46</sup>

A distinction must therefore be drawn between two situations. In the first, the person accepting the commission simultaneously undertakes acts that already amount to preparation to commit murder within the meaning of Article 148 § 5 PC. In the second, the person expresses consent to the commission, yet this is not accompanied by any activity on their part – nothing that would bring them closer to the actual realisation of the intended killing.<sup>47</sup> It may be noted that acceptance of the

<sup>44</sup> See D. Bek, 'Karałość przygotowania...', op. cit., p. 44.

<sup>45</sup> On this issue, see *ibidem*, pp. 44–45; A. Barczak-Oplustil, W. Górowski, M. Iwański, M. Małecki, W. Zontek, S. Tarapata, W. Wróbel, *Opinia do uchwały Senatu Rzeczypospolitej Polskiej z dnia 24 maja 2019 r. w sprawie ustawy o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw, uchwalonej przez Sejm Rzeczypospolitej Polskiej na 81. posiedzeniu w dniu 16 maja 2019 r.*, 9 June 2019, thesis 36, pp. 61–62; [https://kipk.pl/wp-content/uploads/2021/08/opinia2\\_nowelizacja2019.pdf](https://kipk.pl/wp-content/uploads/2021/08/opinia2_nowelizacja2019.pdf) (accessed: 13 April 2026).

<sup>46</sup> A. Barczak-Oplustil, W. Górowski, M. Iwański, M. Małecki, W. Zontek, S. Tarapata, W. Wróbel, *Opinia do uchwały...*, op. cit., thesis 36, pp. 61–62; on this subject, see also D. Bek, 'Karałość przygotowania...', op. cit., pp. 44–45.

<sup>47</sup> See A. Barczak-Oplustil, M. Małecki, S. Tarapata, M. Iwański, *Populistyczna nowelizacja...*, op. cit., pp. 28–31.

commission, where followed at a later stage by preparation to commit murder, would give rise to an apparent concurrence of offences. By entering into the subsequent, externally manifested phase, the perpetrator fulfils a further form of the offence. The acceptance of the commission would thus constitute an antecedent act that is consumed by the later preparatory conduct, which absorbs the elements of the offence defined in Article 148a § 1 PC.<sup>48</sup> In such a configuration, criminal liability would ultimately attach to conduct that represents only a potential endangerment, the remoteness of which appears particularly pronounced.

## EVALUATION OF THE REGULATION CONCERNING THE ACCEPTANCE OF A COMMISSION TO COMMIT MURDER

An analysis of the statutory elements leads to the conclusion that, in the case of accepting a commission to commit murder, the protected legal interest assumes a relative character. Criminal liability attaches only to a person who accepts the commission in exchange for a pecuniary or personal benefit, or the promise of such a benefit. Cases in which a potential perpetrator accepts a proposal to commit murder without receiving, or being promised, any benefit remain outside the scope of criminal-law evaluation. This provides a significant argument when assessing the legitimacy of maintaining this offence within the Polish legal order, particularly in light of the legislature's declared objective of protecting the most valuable legal interest – human life – at a remote preliminary stage. Although it may be acknowledged that such conduct will most often be accompanied by remuneration, it does not appear justified to adopt a dualistic approach in situations where the same legal interest may be endangered in each case. The legislative rationale of reinforcing the protection of life therefore appears unconvincing. It should also be noted that the placement of this offence within the chapter on offences against life and health gives rise to further doubts.

A fundamental objection concerns the potential infringement of the prohibition against punishing mere thoughts.<sup>49</sup> A number of authors, expressing their concerns with respect to the offence under discussion, have emphasised that the provision penalises the thought present in the perpetrator's mind – namely, the very intention to commit murder.<sup>50</sup> It must be recalled that an unexpressed thought<sup>51</sup> as such does not constitute an act within the meaning of criminal law. In the explanatory memorandum to the amendment, it was stated that

<sup>48</sup> See R. Kokot, 'Przestępstwo przyjęcia zlecenia...', op. cit., p. 287; R. Kokot, 'Komentarz do art. 148a', in: Stefański R.A., op. cit.

<sup>49</sup> See M. Florczak-Wątor, A. Grabowski (eds), *Argumenty i rozumowania prawnicze w konstytucyjnym państwie prawa Komentarz*, Kraków, 2021, pp. 1113–1119.

<sup>50</sup> In the course of the debate, the acceptance of a commission to commit murder began to be described as a 'thought crime', see J. Giezek, D. Gruszecka, K. Lipiński, *Opinia na temat ustawy...*, op. cit., pp. 72–73.

<sup>51</sup> J. Giezek, 'Formy stadialne popełnienia czynu zabronionego w polskim prawie karnym', *Annales Universitatis Mariae Curie-Skłodowska*, 2013, Vol. LX, No. 2, p. 42.

'The introduction of criminalisation of the acceptance of a commission to commit murder cannot be equated with punishability for the intent to commit murder, which the bill does not provide for. The acceptance of a commission to commit murder brings about a change in the external world, controlled by the will of the individual, and thus fulfils the definition of an act as understood in criminal law. That change consists in the person accepting the commission informing the person commissioning the killing thereof, thereby manifesting readiness to carry out the killing, which is necessary to fulfil the statutory elements of this offence.'<sup>52</sup>

However, it is difficult to infer the precise nature of the act from the wording of the provision as drafted. Situations may arise in which the commission is accepted passively, without the perpetrator clearly externalising approval of the proposal. The provision does not specify the conditions necessary for recognising conduct as amounting to acceptance of a commission; as previously noted, acceptance may occur implicitly. If, therefore, the person accepting the commission does not do so explicitly and does not undertake any acts that could be classified as preparation to commit murder, they would nonetheless incur criminal liability solely for the intention formed. In such circumstances, what appears to be punishable is the very readiness to carry out the commissioned killing – more precisely, the formation of intent to commit that act in exchange for a specific benefit or the promise thereof. Therefore, the conclusion that the principle *cogitationis poenam nemo patitur* is infringed seems justified.

In each case, a distinction is thus necessary between a situation in which the perpetrator explicitly accepts the commission to commit murder, simultaneously obtaining a benefit or the promise thereof, and one in which the person accepting the commission does so implicitly, without externalising readiness to carry out the commissioned killing. It is rightly observed that this offence will often be accompanied by negotiations or by the perpetrator's obtaining specific information about the potential victim. One may therefore accept that an unequivocal acceptance of the commission, typically combined with additional activity on the part of the person accepting it, will constitute an act within the meaning of criminal law, that is, externally manifested conduct controlled by the will of the individual. In such a case, however, taking into account those additional activities – such as gathering information, presenting a plan of action, or receiving payment to cover the necessary costs – the conduct may already be classified as preparation to commit murder within the meaning of Article 148 § 5 PC. It seems that only exceptionally would the mere acceptance of the commission, clearly and externally communicated to the person commissioning the killing, occur in isolation. Finally, with regard to tacit acceptance that is not communicated in any manner, it must be acknowledged that, in such circumstances, liability is effectively imposed for the thought formed.

Given that, in the majority of cases, acceptance of a commission will be accompanied by acts that correspond in scope to preparation, the provision appears redundant in so far as preparation to commit murder has likewise been rendered punishable.

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<sup>52</sup> *Uzasadnienie projektu ustawy...*, op. cit., p. 59.

Furthermore, once the statutory elements of accepting a commission to commit murder are fulfilled, the offence is complete. This, in turn, raises the question of an even further extension of criminal-law intervention, since within the system of stages of an offence one might also envisage liability for an attempt to accept a commission to commit murder. It is therefore necessary to consider when liability for attempt would arise.<sup>53</sup> In such a case, criminal responsibility would attach to a person who, with the intent to accept the commission, directly proceeds towards its acceptance, which ultimately does not occur. Attempt could encompass all acts preceding acceptance of the commission that are centred on negotiations concerning specific conditions, including, *inter alia*, the pecuniary or personal benefit offered or expected, or the promise thereof. However, identifying the initial moment of attempt proves problematic. Completion of the offence would occur at the moment of unequivocal acceptance of the commission. Attempt would therefore arise in any situation in which the person commissioning the killing and the prospective perpetrator engage in discussions before the latter definitively agrees to accept the commission. It would not appear necessary for the parties ultimately to reach an understanding. Thus, where the person accepting the commission refuses to undertake the killing due to dissatisfaction with the remuneration offered, an attempt to accept a commission to commit murder would nevertheless have occurred. Any negotiations conducted prior to acceptance of the lethal proposal would represent a stage directly preceding its completion. It must also be acknowledged that attempt would arise where a 'prospective perpetrator', having obtained information that a person is prepared to commission a killing, signals readiness to accept the proposal.<sup>54</sup>

## CONCLUSION

The legitimacy of criminalising the acceptance of a commission to commit murder appears doubtful for several reasons. It may be stated that, under Article 148a § 1 PC, what is punishable is the communication of readiness to carry out a killing, and therefore the very decision to deprive a person of life in exchange for a pecuniary or personal benefit granted, or the promise of receiving such a benefit. Thus, what is ultimately penalised is merely the intention to commit murder.<sup>55</sup>

The offence of accepting a commission to commit murder in fact represents a stage preceding preparation, which, according to the legislative design, was intended to complement the system by ensuring full criminal-law protection of the legal interest of human life. It appears that, by introducing a new offence consisting in the acceptance of a commission, the legislature has distinguished an additional

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<sup>53</sup> On this issue, see K. Wiak, 'Przyjęcie zlecenia zabójstwa...', *op. cit.*, pp. 340–341; R. Kokot, 'Przestępstwo przyjęcia zlecenia...', *op. cit.*, pp. 285–286; J. Giezek, D. Gruszecka and K. Lipiński, *Opinia na temat ustawy...*, *op. cit.*, Warszawa, 2022, p. 73.

<sup>54</sup> See rightly R. Kokot, 'Przestępstwo przyjęcia zlecenia...', *op. cit.*, p. 273.

<sup>55</sup> *Ibidem*, p. 277; A. Tomczyk, 'Kierunki zmian Kodeksu karnego na tle 25 lat jego obowiązywania', *Studia Prawnoustrojowe*, 2024, No. 64, p. 312.

stage in the progression of the offence, one situated prior to preparation: a preparatory phase.

The reason for the prohibition to encompass only those commissions accompanied by remuneration or some form of equivalence remains unclear. This leads to a paradoxical situation in which, if the perpetrator receives no gratification or even promise thereof, their conduct does not fulfil the statutory elements of the offence defined in Article 148a § 1 PC. Although it may be assumed that acceptance of such a commission will typically be motivated by some form of benefit, it does not appear justified that the legal interest of human life should, at this stage, be subject to such differentiation. This creates difficulties both in determining the protected legal interest – which in this context becomes relativised – and in assessing the perpetrator's intent. The perpetrator is not required to act for the purpose of obtaining a pecuniary or personal benefit, yet this element must nonetheless be reflected in their mental state, since in the absence of remuneration or its promise no criminal liability arises.

It is not easy to identify unequivocally the principal protected legal interest. In light of the aforementioned circumstances – including cases in which the potential victim has not yet been born – one may be compelled to conclude that public order should be regarded as the primary protected interest. This conclusion is further supported by the fact that the threat to human life at the stage of accepting a commission to commit murder is, in reality, excessively remote.

The introduction of the regulation under discussion was intended to fill a legislative gap. However, it does not appear that this objective has been achieved, or that there is a genuine need to criminalise conduct at a stage significantly preceding interference with the legal interest in the form of human life. Thus, it should be stated that the analysis of the aspects presented allows one to conclude that the idea of penalising the acceptance of a commission to commit murder in the Polish legal order should be abandoned.

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