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The Unlawful Stalking of a Person

Stalking is one of the most pressing issues today – not only in criminal law, but also in other disciplines such as criminology, psychology, psychiatry, and sociology. Unlawful stalking has been defined, from its earliest scientific analysis, as a type of behavior that usually manifests itself in a form of unwanted behavior by the perpetrator that harasses the victim (Čėsnienė and Čėsna 2006, p.27), and as behavior that creates a sense of fear and danger. According to researchers, stalking is interference with another person's psyche by repeated acts of intimidation, forcing the person to experience constant stress, fear, insecurity, and loss of control over the situation, leading to negative consequences that affect not only the person's mental health but also their physical health, well-being and quality of life (Michailovič 2018, pp.86, 89). However, it is extremely difficult to provide a clearly formulated and valid definition of stalking, as the term can be applied to a wide range of behaviors (Michailovič 2018, p.86). It should be noted that there are also very graphic representations of stalking in the literature; these include the cat-and-mouse game, where the cat, chasing its victim, initially plays with it for a while, and the game is nothing more than the cat tormenting the victim until the mouse loses its life (MacFarlane 1997, p.37). This description is intended to precisely convey the sense of terror, fear, insecurity, and loss of control that the person being stalked experiences. Thus, as can be seen, stalking requires a balanced and therefore coherent approach to this social concept and its legal assessment.

Stalking as a Dangerous Form of Human Behavior and the Justification for Its Criminalization

In demonstrating the distinctiveness of stalking, the academic literature notes that while criminal offenses traditionally refer to a specific, dangerous act or omission of a person that harms, or at least threatens to harm, a value protected by criminal law, stalking can refer not only to criminal conduct, but also to a range of non-criminal conduct. It should be noted that stalking often consists of individual acts performed by a person. However, while these acts, in themselves or individually, may be regarded as not dangerous, and, therefore, not punishable, when viewed as a set of factors causing fear, anxiety, and insecurity to the victim, there is a necessity to treat them as criminal, and, therefore, subject to criminal responsibility (National Center for Victims of Crime, n.d.). After all, acts such

as sending flowers, texting, leaving messages (Mullen and Path 2002, p.293) or standing outside a workplace or home are not in themselves criminal, but this can change if they are related to the intention to make a person experience fear, insecurity, and loss of control. Of course, in the case of stalking, the commission of acts such as threats to kill, the disruption of health, the impairment of health, interference with physical liberty, the violation of a person's honor, and the violation of the inviolability of private life are also relevant. It is precisely because some forms of stalking have been criminalized as *delicta sui generis* that for a long time – even in the Western world – it was not seen as necessary to treat this criminal phenomenon as an independent criminal offense. It should be noted that in some of the above-mentioned categories, the application of criminal liability as a complete act is linked to the moment of causing damage to a value protected by criminal law, whereas the essence of the criminalization of stalking is to prevent the perpetrator's various behaviors that cause fear, anxiety and insecurity. It is worth noting that, according to the case law of the European Court of Human Rights (hereinafter – ECtHR), the abuse suffered by the victim, which may take the form of bodily harm and mental pressure, may be considered sufficiently serious to constitute inhuman treatment within the meaning of Article 3 of the European Convention on Human Rights, entitled "Prohibition of Torture" (*Talpis v. Italy* 2017). As stalking can be one of the expressions of domestic violence, it is relevant that, according to the case law of the ECtHR, depending on the seriousness of the offense and the risk of further offenses, the Convention may impose an obligation on the State to continue prosecuting domestic violence on the grounds of public interest, even if the victim drops their complaint. In such cases, it is necessary to consider the reasons for the victim's decision, the victim's situation (economic, psychological, and other aspects), and the possible unlawful influence of the perpetrator on the victim's decision (e.g., threats to kill or the use of mental violence, other forms of pressure). A particularly significant case for the development of the ECtHR's domestic violence jurisprudence was *Opuz v. Turkey* (2009), which almost set out these principles.

Scientific sources show that stalking was only criminalized as an independent offense at the end of the 20th century. However, this in no way implies that this phenomenon, in all its forms of expression, constitutes a new assessment of a person's deed. As Ilona Mikhailovich pointed out, stalking, although a new and rarely used word, is an excellent description of behavior that is as old as humanity itself (Michailovič 2018, p.87).

The actions that are today referred to as stalking, in its various forms of expression, are analyzed and referred to in different scientific contexts under different terms. For example, psychiatric science has dealt with erotomania, which

is the behavior of a person who has an obsessive desire to be in a relationship, usually a close one, with a well-known, prominent public figure. These stalkers constantly follow individuals with whom they are simply obsessed (MacFarlane 1997, pp.43, 44). It should be noted that the phenomenon of stalking has become more visible and audible due to actions normally directed against well-known, prominent persons in society. For this reason, the term "star/celebrity stalking" has been increasingly used (Fahnestock 1993, p.784). The phenomenon of stalking is, of course, not limited only to people who are well known in society – it is also very widespread among people who are normally in a close relationship (MacFarlane 1999a, p.201.). Depending on the relationship between the stalker and the stalked person, different types of stalking can be identified in the literature, such as the star stalking of known persons mentioned above, familial stalking (the stalking of persons who are in a close relationship or who have been in a close relationship), and the stalking of persons who are in an employment relationship (Fahnestock 1993, p.784). This is an exemplary distinction of stalking types that demonstrates how widespread this phenomenon is. Over the years, the term stalking has come to be used to refer to a wide range of actions by individuals which, in isolation, often do not even qualify as a violation of the law, but which cause the victim a sense of fear, anxiety, insecurity, and loss of privacy and control.

As regards the origins of the criminalization of stalking as an unlawful act, the murder of the actress Rebecca Shaeffer in 1989 was the basis for the criminal law in the State of California (United States of America). This was the first time in the history of the Western world that a criminal law had been enacted to prevent this criminal phenomenon (Mullen and Path 2002, p.274). Thus, it was the version of the criminal law adopted in this state (California Penal Code 646.9) that first criminalized stalking, defining a person who commits stalking as an individual who "willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family" (Blaauw *et al.* 2002, p.136).

This provision of the law eventually led the legislatures of the 49 other states to criminalize stalking by introducing their own norms. It should be emphasized that the stalking norms in different states have emphasized different types of unlawful and dangerous conduct. Interestingly, some definitions include the element of surveillance in the content of stalking, while others emphasize that stalking refers to the initiation and implementation of communication against a person's will, i.e., in the absence of the parties' mutual consent. Stalking is also often seen as "lying in wait" (MacFarlane, 1999a, p.48).

It should be noted that the diversity of definitions of stalking prompted the United States Department of Justice, in conjunction with the National Institute of Justice, to submit a document (the Model Anti-Stalking Code) to all US states a few years later (in 1993). The latter document not only laid down the basic guidelines for combating the crime of stalking, highlighting the dangerousness of the phenomenon and the multiplicity of its expressions, but also assisted in the criminalization of stalking, the drafting of the law, and the development and application of its coherence (Lamplugh and Infield 2003, p.860). It is important to note that this is one of the most important documents that laid the foundations for the development of criminal stalking policy.

Since the content of stalking reflects a variety of individual acts both within and outside the scope of the offense, the legal technique of this phenomenon, according to the authors of the Model Anti-Stalking Code, must be clear, allowing the determination of which acts, or the totality of acts, performed by a person are worthy of legal evaluation. An overly broad, vague and nebulous definition becomes the basis for restricting a person's freedom of expression, while an overly specific and defined concept opens up the possibility of leaving outside the scope of application of the law the actions of a person that are worthy (in terms of their dangerousness) of condemnation under criminal law. It should be underlined that the guidelines for the regulation of stalking formulated in the Model Anti-Stalking Code were based *inter alia* on an analysis of the case law of the Supreme Court of the United States of America, which guarantees the right of individuals to freedom of expression. The guarantee of freedom of expression and the protection of the individual against the perpetrator's actions that cause fear, anxiety and insecurity are identified as the two main criteria for the establishment of stalking, and both require mutual compatibility (National Institute of Justice 1993). It is the significant period of time that has passed since the initial identification of the dangerous social phenomenon under analysis that allows us to observe a change in the concept of stalking.

Indications of Stalking

The definitions of stalking in the legal texts are varied, but they all refer to premeditated, and therefore deliberate, repetitive acts of a person aimed at creating a sense of fear and insecurity. It is the latter two features, i.e., repetition and the creation of a sense of fear, that are considered to be the main criteria that distinguish stalking from other criminal offenses (Knight 2014, p.396).

As noted in the literature, stalking, unlike other criminal offenses, requires an unlawful and dangerous repetitive mental impact, which justifies the seriousness

of the phenomenon and, therefore, the significant need for its criminalization. It should be pointed out that, as mentioned above, the content of stalking often consists not only of acts of a person that are regulated by criminal law, but also of acts that are not criminalized by law, and which become criminal stalking precisely because of their repetitive nature and when they are implemented against the will of a person. Repeated acts become the basis of prosecution with criminal liability (MacFarlane 1999b, p.364). It should be emphasized that a review of the regulation of stalking reveals differences not only between the acts that can be classified as forms of expression of stalking, but also between the minimum number of incidences of psychological impact that would allow the obligatory feature of stalking to be established, i.e., its repetition. It should also be noted that repetition usually refers to two or three unlawful and dangerous manifestations of a mental effect, although there are also provisions in the law requiring more than three instances of intimidating effects (Blaauw *et al.* 2002, p.137). It is this repeated exposure that forces a person to live in a constant or at least prolonged atmosphere of fear, anxiety and insecurity, which affects their health and, in particular, their mental health. The acts of stalking are systematic, which means that they are often prolonged. As studies have shown, the factors that contribute to feelings of fear and insecurity often last from a few weeks to a few months to several years (Blaauw *et al.* 2002, p.138). For example, the literature describes cases in which illegal acts of intimidation continued for 13 months, 24 months, 5 years or even 12 years (Blaauw *et al.* 2002, p.138). In assessing such a long period of mental coercion, it must also be remembered that the damage caused by prolonged mental coercion results in a disturbance to mental health. In many cases, this is also the cause of "physiological changes in the body, i.e., physical damage" (Čėsnienė and Čėsna 2006, p.29).

As discussed previously, acts of stalking vary widely in their many forms of expression and in the nature of their performance, ranging from acts that are not legally actionable, such as sending flowers or waiting outside someone's home or work, to acts that are within the scope of a criminal offense, such as threatening a person, collecting information that constitutes their private life, trespassing on private property, or disseminating information that is not true. However, irrespective of the expression of the acts carried out, what unites them all is not only their repetition, but also the creation of a sense of fear of possible harm to life, health, property, and the loss of a sense of security. An analysis of the literature reveals that the first provisions on stalking did not, in most cases, even specify the forms in which dangerous acts were to be expressed, only laconically stating that they were acts that endangered the safety, life or health of a person. In some

states, the risk of endangering property was even reflected in the stalking norms (National Institute of Justice 1993, p.35).

In addition to the above-mentioned identifying features of stalking, the literature also points to unpredictability as one of the additional characteristics of the phenomenon. According to researchers, the unpredictability of stalking only adds to the sense of fear and insecurity, thereby introducing additional tension into the victim's life (MacFarlane 1997, p. 43). As noted in victims' testimonies, the unpredictability of stalking leads to the victim's constant feelings of fear and insecurity. For example: "when he called every ten minutes, I was very angry, but when he didn't, I was worried that he was somewhere nearby, watching me." In this case, the stalker's actions were repeated "without any warning and without any clear reason" (MacFarlane 1997, p. 88). In order to understand the impact of such actions on the individual, it should be remembered that, according to psychological science, the fear of undefined consequences can be as strong as the fear of death.

Acts of stalking include not only the traditional surveillance and monitoring of a person, but also many other acts, such as: repeatedly sending emails, messages, or gifts; parking near work, home, or school (Lamplugh and Infield 2003, p.854); harassing via phone calls, especially at night; taking over social networking sites; posting information on social networks that is not true (Baum *et al.* 2009, p.1); ordering various items in the name of the person being stalked (usually in cyberspace); breaking into homes and moving items from one place to another, thereby making the victim aware of the presence of a stranger in the victim's home; taking items (especially underwear) from the home; going to the same public places at the same time as the person being stalked; or going through the rubbish discarded by the stalked person and taking some of it (Hall 1998, p.131). Practical examples also show that stalkers have been known to send their victims strands of hair or even a few teeth (Hall 1998, p.133). In other cases, the stalking took the form of: the killing of domestic animals, usually by poisoning them, and the abandonment of the dead animals outside the person's home (MacFarlane, 1997, p. 206); placing a mobile home in the vicinity of the stalked person's property and monitoring them with various technical devices such as binoculars (Melton 2007, p.354); and many other acts that lead to feelings of insecurity, fear, and a lack of control over one's life.

As is well known, when assessing the dangerousness of an act, and therefore the need for criminalization, the dangerous consequences that come as an accompanying result of the phenomenon are also taken into account. The consequences of stalking are not limited to a specific list of consequences, but instead are multifaceted in their nature. Stalking is a deterrent effect of a persistent nature which can fundamentally, or at least significantly, alter the life of the stalked person.

The literature widely refers to the harm caused, in particular, to a person's mental health, which manifests itself in varying degrees of mental disturbance, such as depression and panic attacks. Post-traumatic stress disorder, or even suicidal ideation, is often the result of prolonged feelings of anxiety, fear and insecurity caused by the actions of the stalker (Blaauw *et al.* 2002, pp.139–140). Of course, we cannot forget the direct impact on the person's physical health, which often manifests itself in physical ailments such as persistent headaches and heart and digestive problems. Insomnia, extreme sensitivity and fearfulness are directly related to the experience of being stalked (Hall 1998, p.135). Studies on the phenomenon of stalking point out that this crime often affects the most diverse areas of a person's life. In order to avoid a situation that frightens them, people often quit their jobs, drop out of school, and move not only from one neighborhood to another, but even, in many cases, from one city or state to another (Doris 1998, p.134). The testimonies of stalked persons reveal that some of them change not only their appearance, for example by dyeing their hair or changing their style of dress, but also, in many cases, their names, believing that in this way they would be able to hide from their stalker. Driving a vehicle, frequently changing mobile phone numbers, using additional security measures to protect oneself from the stalker's access to private property, and many other actions show a great deal of effort to avoid possible contact. Human beings are social creatures who value contact with and support from others, but victims of stalkers often reject any social life, thus living a more closed, somewhat more solitary life. Victims stress an increased distrust of people and a sense of loss of control over their lives. However, it should be noted that the negative impact on the quality of the person's life persists even after the persecutor's actions end. According to the victims, they continue to feel fear and insecurity for a long time, and, in some cases, every time they walk down the street they have to look around and make sure that the door of their house is locked. According to one victim of stalking, this fear was relieved by one factor only: the stalker's incarceration in prison and the knowledge that they would not return, at least for a while (Hall 1998, p.135). Interestingly, many studies also focus on the indirect damage caused by the stalker's actions, i.e., the cost of additional security for the home; the cost of damage to, or theft of, property; and the cost of the medical care required for the resulting health problems (Blaauw *et al.* 2002, p.153).

Types of Definitions of Stalking

Anti-stalking measures in various countries are based on two main models of regulating stalking. The first is the so-called *list method*, where the law specifically

lists the acts that constitute stalking. The Canadian and Japanese criminal laws provide legislative examples of this method. For example, the Canadian Criminal Code defines stalking as the repeated surveillance of a person, the repeated direct or indirect initiation of contact with a person against their will, and the surveillance of the home, workplace or any other place where the person being stalked is present. All of these acts are accompanied by the necessary condition of creating in the stalked person a feeling of fear or insecurity due to the actions of the stalker(s). The Japanese Criminal Code defines stalking as a somewhat broader list of acts by the stalker, including, in addition to the usual emphasis on surveillance, harassing phone calls, attempting to make contact with a person in various ways, and saying things that are aimed at possibly violating a person's honor, dignity or sexual integrity (Lamplugh and Infield 2003, p.861). As can be seen, some of the listed forms of expression of the dangerous acts of stalkers are quite broad in content. Nevertheless, the acts performed by a person must comply with the above lists of variations of the expression of stalking in order to establish the norm.

It should be noted that the list method is also subject to a fair amount of criticism. By listing possible forms of stalking, this method criminalizes only specific behaviors of a person, thus not giving the stalking norm the flexibility to respond to possible new manifestations of behavior causing insecurity and fear by the stalker. The actions performed by a person may not correspond to the forms of expression of dangerous conduct criminalized in the stalking disposition, thus leaving outside the scope of the law conduct of no less seriousness that is worthy of criminal legal condemnation. As is well known, the actions of stalkers are not static; they have a very broad dynamic, and this method excludes any possibility of identifying actions that do not specifically reflect the content of the stalking norm.

Another model that reflects the regulation of stalking is so-called *general prohibition*, where the definition of stalking does not include a specific list of the forms in which this dangerous act may be expressed, but only the main features that help to identify stalking from the range of other criminal offenses. One example of this model is the UK norm criminalizing this dangerous phenomenon. As is well known, Britain's fight against stalking gained momentum in 1997 with the Protection from Harassment Act. Although it did not formulate a specific definition of stalking, the Act refers to repeated behavior that causes anxiety, fear and insecurity, and introduces a criterion for assessing the impact of such behavior known as the "reasonable man" criterion. It is on the basis of this criterion that it is judged whether the impact on the person could actually have caused fear, insecurity and tension (Lamplugh and Infield 2003, p.863).

However, it should be noted that this model of regulating stalking has also been the subject of criticism. The main reasons for this are that the definition of the content of the Act is too abstract, which opens up the possibility of considering many acts of a person as stalking.

The British Protection from Harassment Act defines stalking as repeated, dangerous acts by a person that cause fear of violence or acts that, by reason of the danger, anxiety or distress they cause, lead to changes in everyday life. In order to show this phenomenon in as much detail as possible, the law even contains a list of representative acts that constitute stalking, such as following a person, contacting or at least attempting to contact a person by any possible means, sending messages, publishing true or false information about a person, sending messages on behalf of the person being stalked, standing in the vicinity of the person being pursued in a public or private environment, trespassing on the person's private property, or surveillance of the person (Protection from Harassment Act 1997).

Thus, although different countries choose different models for the criminalization of stalking, they all demonstrate a clear intent to use national laws to prevent deliberate, repeated exposure to feelings of fear, anxiety and insecurity, which first and foremost have a negative impact on a person's mental health, but in many cases also cause a change in their physical state, limiting the person's ability to exercise their discretion. The problem of establishing criminal responsibility and a coherent approach to stalking can also be addressed from another perspective. If the legislator decides to criminalize this negative social phenomenon as an independent criminal offense (crime), the question arises as to whether such an idea can be implemented through a special norm or through a general norm dealing with unlawful mental violence. This analysis is discussed in the following section in the context of the regulation established in Lithuania.

The Regulation of Stalking Actions in Lithuania

In Lithuania, stalking was regulated as an independent criminal offense on 14 October 2021, when the Criminal Code (2000; hereinafter – the CC) was supplemented by Article 148[1] on "Unlawful stalking." Prior to the introduction of this formulation, legal scientists had expressed concern that not all acts of stalking were subject to proper legal evaluation. Researchers had pointed out with great concern that, under the previous regulation, only certain forms of stalking entailed criminal liability for a person, their norms being found in chapters of the CC such as "Crimes endangering human health life," "Crimes against human health," "Crimes against human liberty," and "Crimes and misdemeanours against property, property rights, and property interests." Particular

attention was paid to the qualification of Article 145 of the CC, i.e., "Threatening to murder or cause a severe health impairment to a person or terrorisation of a person," which criminalizes the offense of terrorizing a person with the threat to bomb, set fire to, or commit any other act dangerous to life, health, or property, or of systematically threatening a person by means of mental coercion. However, when interpreting the application of this qualified norm, researchers also noted that this article is focused on the protection of life and health, and that criminal liability should only be imposed for the threatening acts of the stalker that express a threat to life or health. Meanwhile, other acts carried out by the stalker, such as constant calling, writing insulting but non-threatening messages, or standing outside the house, were not regarded as criminal, and therefore were not subject to a reasonable legal assessment (Čėsnienė and Čėsna 2006, p.27). It is to be considered that such statements are nothing more than examples of insufficient insight into the practical interpretation of the element of systematic intimidation contained in Article 145(2) of the CC, and indicate the lack of a coherent approach to the act of stalking and its forms of expression. The case law demonstrating the practical applicability of systemic intimidation makes it possible to see a wide variety of expressions of the behavior of the person to be assessed under Article 145(2) of the CC. It should be noted that these acts performed by a person do not necessarily reflect a direct threat to life or health. The actions carried out by individuals which are especially referred to in the scientific literature as stalking – following, surveillance, writing emails, messages, loitering at work or at home, etc. (Michailovič 2018, p.86) – have been subjected to criminal legal assessment on the basis of the systematic intimidation element. The Supreme Court of Lithuania has long emphasized that "systemic intimidation may take the form not only of threats, but also of other acts that cause fear, anxiety and insecurity, such as repeated insults, intimidation, harassment, open surveillance, frightening night-time calls, or immoral SMS messages" (Ruling of 15 June 2010 of the Supreme Court of Lithuania in criminal case No. 2K-341/2010). The element of systemic intimidation is not only related to the specific actions performed by a person, as the main criterion for assessing a person's actions is the nature of the effect, which in this case is aimed at causing stress, anxiety, insecurity, and the fear that further actions or omissions will lead to certain negative consequences (Ruling of the Regional Court of Šiauliai of 11 July 2014 in criminal case No. 1A-717-116-2014). Thus, mental violence, in the context of systemic intimidation, does not only take the form of threats to kill or to cause bodily harm, but is also a process of intimidation by means of other acts of intimidation, such as the infliction of a feeling of fear on the other person

(Ruling of the Supreme Court of Lithuania of January 12, 2016 in criminal case No. 2K-65-648/2016).

The Supreme Court of Lithuania views systemic intimidation as the nature of the intimidation process, in which the actions performed are not to be viewed as random or isolated, but rather as forming a chain of criminal behavior. In its judgment of 20 March 2018, the Court noted that "the source of fear, anxiety and insecurity was not only the constant calls and threatening messages to the spouse, but also the defendant's stalking, breaking into the house, sitting in the car and following her home, passing it, using an acoustic alarm, sending obscene and indecent, abusive, threatening and intimidating messages to the letterbox, inserting an envelope containing cut-up family photographs, an angel figurine and metal money." Thus, in the totality of these acts, the implementation of systemic intimidation was established (Ruling of the Supreme Court of Lithuania of March 20, 2018 in criminal case No. 2K-90-689/2018).

Other rulings in which the Supreme Court of Lithuania recognized repeated acts of various intimidating natures as indicating systematic intimidation causing a feeling of insecurity can be observed. These behaviors include:

> informing police officers nine times by telephone and once by a statement, eleven times by contacting officials of the Children's Rights Protection Division, once by contacting the municipality […], and twice by contacting the […] Heat Networks about noise, drunkenness, neglect of minor children and violations of their rights in the […] family […] increase in the size of her apartment, the unauthorised installation of premises using district heating and the non-payment of heating fees for her apartment. […] As a result of such false reports by the convicted person about violations, the apartment of victim […] was systematically and unjustifiably visited by officials of various authorities. […] The victims […] felt great tension, stress, fear, insecurity and anxiety as a result of the constant checks. The prolonged stalking […] had a direct impact on the mental state and health of the victim […] who developed temporary, moderate […] mood disorders (Ruling of the Supreme Court of Lithuania of 24 May 2016 in criminal case No. 2K-186-746/2016).

Thus, the above examples of case law demonstrate that the norm of systemic intimidation does not consist solely of a threat, the content of which clearly reflects the risk of a threat to a person's health, life, or safety. In the application of the norm of systemic intimidation, criminal liability is associated with a set of acts of various expressions that cause fear, insecurity, and uncertainty to a person. A person's actions, taken in isolation, may not represent a direct or indirect threat to another person's health or life, or may even be of a non-criminal nature, but when viewed as a whole, their intimidating nature must be recognized. These acts constitute a chain of unlawful and dangerous conduct, creating an

atmosphere of insecurity and uncertainty. The repetitive and intimidating nature of them makes it possible to establish mental violence in the context of systemic intimidation. Notwithstanding the fact that systemic intimidation consists of the acts of a person in a wide variety of forms, the repetitive totality of all of them has the effect of adversely affecting another person's mental health. Therefore, it is considered that the actions carried out by a person constitute the unlawful stalking of a human being and, prior to the introduction of the new norm, were subject to legal assessment on the basis of systemic intimidation as a *delicta sui generis*.

It should be noted that during the process of drafting the legal provision on unlawful stalking as an independent act, various opinions were expressed on the need for this norm to be enshrined in the criminal law. Those opposed to the new formulation argued that the systematic intimidation enshrined in Article 145(2) of the CC encompasses acts that constitute possible forms of expression of stalking as a possible form of the unlawful and dangerous act proposed for criminalization. They based this opinion on the case law of the Supreme Court of Lithuania, which interprets the composition of systematic intimidation (Public Governance Group 2020).

In contrast, those who saw the need to regulate stalking argued to the contrary, suggesting that acts of stalking are not prevented unless they involve a "high degree of seriousness," which would be consistent with the elements of terrorizing or systematically intimidating a person under Article 145(2) of the CC. Thus, according to these authors, only some of the acts of stalking were subject to legal assessment under the elements of human terrorization or systematic intimidation, while the others, which did not constitute a "high intensity of the offence," were not subject to legal assessment. It should be noted that the representatives of this position did not provide a more detailed explanation as to what constitutes "high intensity" (Human Rights Monitoring Institute 2019). In this respect, it is worth noting that coherent legislation in the field of criminal law should ensure that there is as minimum a conflict of legal norms as possible. However, the introduction of the unlawful stalking provision in the CC has created a competition between several legal norms that is not easily resolvable.

According to case law, systematic intimidation (Art. 145(2) of the CC) is interpreted as the repeated infliction of a feeling of fear, anxiety, or insecurity (Ruling of the Supreme Court of Lithuania of October 30, 2018 in criminal case No. 2K-269-895/2018). Thus, the element of the high intensity of the offense may be linked to repeated acts of a person with intimidating content. At the same time, however, it should be noted that the new norm of unlawful stalking of a person is also linked to the systematic nature of the acts, which are repetitive. It is

also important to note that case law examples show that systematic intimidation refers to a repeated act of an intimidating nature by a person which is not limited to a specific form of expression, nor is it linked solely to the risk of threatening a person's life or health (Ruling of the Supreme Court of Lithuania of November 20, 2018 in criminal case No. 2K-346-942/2018).

Consequently, on the basis of concrete examples of case law, it is easy to refute the claims made by the proponents of stalking as an independent act regarding the limited possibility of the legal assessment of the actions of the stalker in the case of the criminal offense of stalking, where the CC provides for the constituent part of the offense of systemic intimidation (Art. 145(2) of the CC) but not a criminal offense that is defined by stalking.

As already mentioned, stalking as an independent criminal offense was, however, introduced on October 14, 2021 with the addition of the new Article 148[1] on "Unlawful stalking of a person" to the chapter on "Crimes against human liberty" of the CC. The norm of unlawful stalking declares that

Whoever, against the express will of a person, without lawful grounds, systematically persecutes that person, if as a result of that persecution the victim has been forced to change his or her place of residence or work or educational institution, or if any other negative impact on the victim's social life or on the victim's emotional state has occurred, commits a criminal offense and is liable to a fine, or to a penalty of public works or a fine, or to restriction of liberty, or to imprisonment.

It should be noted that the legislator's decision to introduce the new norm of unlawful stalking in the chapter of the CC entitled "Crimes against human liberty" has given rise to further debate. The purpose of this chapter is to ensure the protection of liberty as the main legal good infringed by a criminal offense. As a dangerous act, stalking, by its very nature, involves a wide range of personal acts, which are presumably aimed primarily at creating fear, anxiety, and insecurity. Nightly phone calls, non-threatening text messages, standing outside a person's home or work, deliberately appearing in public places (Čėsnienė and Čėsna 2006, p.27), and many other acts all create a feeling of fear and insecurity.

Therefore, if the actions taken by a person are intended to have a negative impact on another person's psyche, it is the victim's mental health, not their liberty, that is the value that is primarily at stake in such actions. Of course, it is also necessary to talk about the restriction of the freedom of will when the stalker's actions force a person to change or at least adjust their decisions – for example, by taking a different route, adjusting their agenda, changing the time or place of their rest, or abandoning their usual pattern of behavior, many of which are often even necessary. However, it seems that the restriction of will should be seen as a

violation of an ancillary value, not a violation of the core value. The new norm of stalking should have been included in the "Crimes endangering human health and life" chapter, and not in the "Crimes against human liberty" chapter.

The jurisprudence of the Constitutional Court emphasizes that in a democratic state governed by the rule of law, the legislator is not only obliged to prohibit acts that cause substantial damage to the interests of individuals, society, or the State or that threaten to cause such damage, but also, while ensuring the implementation of the principle of justice, to establish just and adequate penalties for the violation of the law (Ruling of the Constitutional Court of Lithuania of June 10, 2003). In this respect, it is therefore relevant to assess the new norm of unlawful stalking in the CC.

The legislator has given the new offense of stalking, as a *delicta sui generis*, the status of a misdemeanor, with the possibility of community service, a fine, a restriction of liberty, or an arrest. According to the CC, a misdemeanor is considered to be a less serious type of criminal offense compared to the category of a crime. A person may not be sentenced to imprisonment for the commission of a misdemeanor, and, if sentenced, they have no criminal record going forward (Articles 12, 55 of the CC). It should be remembered that in order to justify the need to criminalize a phenomenon, and therefore to assess the respective act performed by a person, the main criteria determining the dangerousness of the act are usually used. These criteria include the significance of the value which is endangered by the act, the real damage which is caused by the act, the significance of the forms of expression of the act, as well as the peculiarities of the forms, the nature of their features, and the negative consequences they produce.

Therefore, when looking at the criminalization of stalking as a separate norm, the question of whether the legislator has actually sufficiently assessed the seriousness of this offense by making it a misdemeanor arises. It should be recalled that stalking is primarily concerned with the repeated acts of the stalker that cause a feeling of fear, anxiety, and insecurity. These actions endanger one of the most important values protected by criminal law, i.e., the health and freedom of the individual. The stalker's actions, which last for a certain period of time, lead to a person living in a constant atmosphere of fear, insecurity, and uncertainty, which undoubtedly causes real damage to their mental and, ultimately, physical health. As a result of the continued intimidating nature of the stalker's actions, victims are diagnosed with mental health problems of varying severity, such as depression, panic attacks, and various physical health problems including heart problems, headaches, circulatory problems, and digestive disorders (Spitzberg and Cupach 2006, p.74). Stalking also causes indirect damage to the victim. This refers to the harm suffered by the individual as a result of reduced or even

interrupted social contact, changed or substantially altered life patterns in order to avoid or at least limit possible encounters with the stalker, and the loss suffered when incurring the need to rebuild a deteriorated sense of well-being (Sheridan *et al.* 2003, p.153). Therefore, it is considered that – taking into account the multifaceted nature of the forms of expression of stalking as a criminal offense, its repetitive nature and the different consequences it produces for a person – the legislator did not sufficiently assess the seriousness of this offense when giving it the status of a misdemeanor.

The norm of systemic intimidation, which is set out in the qualified norm of threatening to murder or cause a severe health impairment to a person (Art. 145(2) of the CC), falls into the category of a less serious crime, with the only penalty being up to 4 years of imprisonment. It should be noted that an analysis of the CC shows that, as a rule, the legislator establishes not only the penalty of imprisonment, but also alternative penalties to imprisonment for the commission of less serious crimes. The norm of systemic intimidation refers only to the only punishment to be imposed, i.e., imprisonment. It is believed that such a sanction reflects a proper assessment of the danger of systemic intimidation, in contrast to punishments for the unlawful stalking of a person.

The newly adopted norm of unlawful stalking therefore gives rise to further debate – not only as to its necessity in the context of the preexisting norm of systematic intimidation in criminal law, but also as to the very legal construction that is used in the formulation of the elements of the offense and the penalties that may be imposed for the realization of it. The amendment of the CC with the offense of unlawful stalking has created a competition between the general (Article 145 of CC) and the special (Article 148-1 of CC) provisions. This lack of coherence has led to the special provision providing for lenient criminal responsibility, despite the contrary intention of the legislator. In conclusion, the new norm of unlawful stalking has not brought coherence to the assessment of repeated acts of intimidation. On the contrary, it has raised one of the greatest challenges in the practical application of the norms: identifying the criteria for distinguishing between cases of systemic intimidation and those of unlawful stalking.

Interim Findings

The term "stalking" refers to a wide variety of expressions of a person's behavior, which makes it difficult to provide a clear definition of this criminal phenomenon. However, despite the challenges faced by individual states in formulating their own definitions of stalking, the coherent approach that has been reached

allows stalking to be seen as a repetitive act of a person that is intimidating in nature, disturbing, and unsettling. It is the repetitive nature of the acts carried out, which are geared toward creating a sense of fear and insecurity, that is considered to be the main identifying feature of stalking. The repeated actions of the stalker force the victim to live in a constant atmosphere of anxiety, which has a negative impact on their mental health in particular, but often also on their physical health.

A coherent approach to stalking is necessary not only to better understand its nature, but also in the application of criminal responsibility. Unlawful acts of stalking are usually regulated by separate norms in national criminal laws, with the names of the norms specifically referring to unlawful stalking. However, acts constituting the content of unlawful stalking may render a person criminally responsible, even if the offense specifically referred to by that name does not exist in the criminal law. The norm of systemic intimidation (Art. 145(2) of the CC) applied in Lithuanian case law is an excellent example of this. Systematic intimidation includes all repeated acts of a person that cause fear, anxiety, insecurity, and uncertainty. Thus, even before the new independent stalking norm was introduced, acts of stalking in Lithuania were subject to criminal liability as systematic intimidation. The criminal offense defined as stalking did not exist in the CC, but this did not affect the legal assessment of repeated acts of an intimidating nature in any way. The practical application of the new offense of unlawful stalking will have to identify the criteria that will enable this offense to be distinguished from the offense of systematic intimidation.

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Challenges, Discussions And/Or Solutions

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