A FORENSIC CONCEPTION OF CRIME'S ATTRIBUTES ON THE EXAMPLE OF CHOSEN CRIME DESCRIPTIONS IN THE POLISH PENAL CODE

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Annotation

The study will concern the issue of a criminological (or strictly criminal) interpretation in the Polish Penal Code of those selected elements of offences, usually concerning the object, which use terms such as: a firearm, a knife or another similarly dangerous tool, i.e. Article 223 of the Penal Code. – active assault on a public official, Article 280 § 2 of the Penal Code – qualified robbery.

The issues under scrutiny are:

- first to establish: *„In view of the postulate of definiteness of the crime, in those cases where there is a statutory definition in the system of law (e.g. firearms), are the elements to be understood strictly in accordance with this definition or can definitions developed by forensic science, as a rule broader than the statutory definition, be considered to be accepted?"*
- secondly, *„What is to be followed when assessing the elements not defined in the Act, is it more the judicial case law related to a specific provision or rather a forensic assessment?"*
- third: *„What are the main determinants of the term „similarly dangerous instrument" – do they derive primarily (exclusively?) from forensic analysis?"*

Finally, how to evaluate the second and third questions in the light of the postulate of definiteness of the crime. Whether a more precise definition of these elements should be postulated or whether this is not possible.

Keywords: forensic science, crime hallmarks, firearms, knife, other similarly dangerous instrument.

Introduction

Polish criminal law recognizes as one of its main principles the principle of definiteness of an offence[1], which is understood as such a description of an act in a criminal statute that allows one to undoubtedly distinguish a criminal act from an act that is indifferent from the point of view of criminal law on the basis of the very set of elements that are included in the relevant criminal provision. If a term used in a statute is repeated in several provisions, the criminal statute usually contains a definition of that term in a separate provision (in the Polish Penal Code[2], this is Art. 115, which currently contains 24 paragraphs). Full definiteness of a crime on the basis of its statutory attributes is a certain ideal state, which the legislator should strive for, but which will probably never be fully achieved.

The Polish Penal Law contains such descriptions of crimes, the attributes of which can be identified on the basis of premises developed by forensic science, either in the form of an accepted understanding of the words used, or forensic definitions of the designators of certain names. Both the understanding of words as well as the definitions of designations are formulated *ad hoc against the* background of specific facts, most often with the help of forensic experts, but sometimes also by judicial panels of higher courts.

By the term „forensic concept of the elements of an offence" we understand defining a certain part of the description of an offence not by statutory definitions (which the act does not contain in a given case), nor by the colloquial meaning of the words used in the statutory description of an act, but by the terms referring to a specific use of an object or specific features of the perpetrator's action, which are not indicated by the colloquial meaning of the word used in the description.

Sometimes recourse to the functional understanding goes further, clearly going beyond the definition of the subject matter contained in the statute.[3]

Definition of forensic science

In the Polish legal reality, the definition of forensic science is neither

1 See Gardocki, L., Gardocka, T. (2020). *Komentarz do Konstytucji RP*, art. 42, 43, 44, 46. 41 et seq.

2 Act of 6 June 1997. *Criminal Code,* uniform. U. of 2020, item 1444.

3 An example of this phenomenon is the so-called forensic concept of firearms, which is broader than the statutory definition of a weapon contained in Articles 4 and 5 and Article 7 of the Act of 21 May 1999 *on arms and ammunition,* uniform text in Dz. U. of 2020. *Journal of Laws.* item 955.

uniform (coherent), nor is there any agreement as to whether forensic science can be attributed the value of science. The oldest definition was formulated by Hans Gross, who said that *„it is an element of natural knowledge in criminal law: what it knows, what it proves and what it wants to detect, what it teaches and what it presents is based on a strict basis of observation.* The objects of its research – are the realities of criminal law in the broadest sense. He defined the reality of criminal law as man's appearance in criminal cases in various roles: criminal, witness, expert, investigating judge, as well as committing crimes (their causes, course and effects)". He defined the word „forensic science" as „(...) entering, according to its nature, where criminal law can teach nothing more. (...). Substantive criminal law defines crimes and the penalties imposed for them, procedural criminal law – the rules according to which crimes should be prosecuted; on the other hand, neither substantive criminal law nor the rules of criminal procedure can answer the question how crimes are committed, how it is investigated and established that a crime has been committed, what the perpetrator's motives were and what goals he or she wanted to achieve (...)"[4].

Włodzimierz Gutekunst reduced the concept of forensic science to a theory of proving crimes, growing out of generalisations of forensic practice and achievements of natural and technical sciences[5] . In contrast, Brunon Hołyst claims that it is a science of methods of establishing the fact of a crime, the way it was committed, detecting the perpetrators and preventing crimes and other negative social phenomena[6] . According to Tadeusz Hanausk it is a science of tactical principles and methods as well as technical methods and means of recognising and detecting legally determined negative social phenomena, and in particular crimes and their perpetrators and proving the existence or lack of connection between persons and events, and also preventing crimes and other unfavourable but legally relevant phenomena. Forensic science also deals with strategies for the anticipation and future recognition and combating of these phenomena, in particular by preventing their origin and development [7].

Jan Widacki acknowledges that a strict delimitation of this discipline seems neither possible nor necessary. He claims that forensic science is an empirical science, and because of its aim – an applied science and it can be assumed that

4 Cf. inter alia Gross, H. (1898). *Kriminalistische Institute.* Vol. I, 108; Gutekunst, W. (1965). *Kryminalistyka, zarys systematycznego wykładu.* 4; Gutekunst, W. (1965). *Kryminalistyka.* 5; Gross, H. 91922). *Handbuch für Untersuchungsrichter als System der Kriminalistik. V*ol. I.

5 Cf. Gutekunst, W. *Forensic Science.* 7.

6 Cf. Holyst, B. (2018). *Kryminalistyka*. 20.

7 Cf. Hanausek, T. (1996). *Kryminalistyka, zarys wykładu*. 14.

in a general sense it includes all disciplines used in the broadly understood investigation (inquiry)[8].

Jan Sehn, in turn, defined forensic science as the knowledge of specific technical means and methods and their targeted use in evidence proceedings to establish objective truth, especially in the fight against crime[9].

The lack of unambiguous criteria for recognising forensic science as a science, and no less precise definition of its scope, stems from the fact that it is denied independence, denying the existence of its own methods of operation and claiming that it deals only with the adaptation of the achievements of various sciences, in particular the physical and natural sciences, for the needs of the criminal process. The aim of forensic science is unquestionably to learn about criminal methods, and consequently to develop investigative and preventive methods.

The techniques and methods used in forensic science are widely used in court trials, including criminal trials. Forensic science is also used to reconstruct the life appearance of historical figures, e.g. to reconstruct the appearance of a person who is believed to be Nicolaus Copernicus, Barbara Rakuszanka or Bolesław Chrobry[10]as well as to establish the time and mechanism of e.g. death of Polish officers in Katyn, Kharkiv and Miednoje.

Forensic science should be defined as the science of tactical principles and ways as well as technical methods and means of recognizing and detecting legally specified negative social phenomena, and in particular criminal events and their perpetrators, and proving the existence or lack of connection between these perpetrators and events. At the same time it should be divided into:

- general, goal-oriented application of general (generic) principles that can be adapted to any crime; and
- specific to particular types of crime, e.g. in the case of burglary we can talk about tactics (*modus operandi*) and techniques (e.g. the way the burglar forced the door).

The definitions of forensic science listed here omit an important aspect of formulating the elements of a crime in a statute. These elements must be provable in the ordinary course of litigation[11]. The most important field of knowledge that can be useful in determining the possibility of proof is forensic science,

8 *Kryminalistyka.* (1999). Widacki, J. (ed.). 4.

9 Czeczot, Z., Tomaszewski, T. (1996). *Kryminalistyka ogólna*. 15.

10 See, for example: Zajdel, D. (2006). Was that what Copernicus looked like? *Problemy Kryminalistyki,* 251, 39 et seq.; Widacki, J. (1988). *Detektywi na tropach zagadek historii.*

11 See: Gardocki, L. (1990). *Zagadnienia teorii kryminalizacji.* 150 et seq.

which is a synthesis of various sciences, primarily natural and technical, that are applied in the criminal process.

The evidentiary function of forensic science.

It is not disputable that certain functions are associated with forensic science. Here we mean the exploratory, detecting, evidential, or securing function. Due to the framework of this text, we should only focus on the evidential function. This is because it aims to undertake activities and actions which are aimed at gathering material that will be of evidential nature in a criminal trial, i.e. it will allow to draw specific trial conclusions. While realizing this function within the framework of forensic science we have to move within the sphere of a criminal process (evidence law), regulated by procedural regulations[12].

Thus this proving (the very process of proving) is directly connected in a criminal trial with evidence, materials provided and interpreted by forensic science. Actions of an evidential nature must have forensic methods that are linked to the principles of forensic tactics or techniques. This evidence and its acquisition cannot raise doubts as to its legality, correctness of its acquisition, etc. On the other hand, any doubts at this stage will cause ambiguities which will serve to undermine the correctness of the execution of evidentiary actions in general, and in turn, using the principle of the presumption of innocence, will be presented as those which must be disregarded in sentencing. Therefore, the criminal trial establishes the framework of what is allowed (how far one can go in terms of gathering evidence), and forensic science in a way provides an answer as to how a given activity should be carried out.

Cutting off forensic science from the criminal procedure is therefore impossible. Nowadays, J. Sehn's statement that *some authors' attempts to cut off forensic science from the criminal process and build an impenetrable wall between them are* even more valid[13]. P. Girdwoyń is right that *forensic science without a trial would be only an interdisciplinary natural-humanistic science, if one could speak of its independence at all, while a trial without modern forensic science could easily become a set of rules of conduct in a criminal case in which*

[12] For example: Chapter 29 of the Criminal Procedure Code. „Searching for the accused and the appointment letter" contains guidelines for the appointment letter, but does not specify the practical aspect of searching for the accused. In addition, it should be noted that the criminal process aims to guarantee civil rights and ensure the objectivity of evidence, while forensic science focuses on the general objectives of the Code of Criminal Procedure (mainly obtaining evidence, securing it and presenting it at trial).

[13] Sehn, J. (1958). Forensic science and procedural law. *New Law*, 6, 35.

the final verdict of guilt or lack thereof would be made on the basis of judicial truth and legal theory of evidence. The two disciplines complement each other harmoniously[14].

There is a different correlation with substantive criminal law, which defines a framework for forensic science by determining what (what actions?) constitute a crime. Though there are known cases in which forensic science goes beyond the framework of substantive criminal law, e. g. forensic prophylaxis. The results of forensic science take into account the methods of criminal activity, which makes it possible to introduce or verify criminal sanctions. Thus, substantive criminal law sanctions the competence of forensic science, indicates the rules. Criminalistics adapts the achievements of other sciences, which is a factor in achieving the goals of criminal legislation.

Within the scope of statutory definition of the elements of particular types of crimes, the criminal legislator consciously uses undefined terms and uses them in a meaning different from the colloquial one, accepting or even expecting that criminalistics will define the meaning of the terms appearing in the Criminal Act.

Substantive criminal law oscillates around finding an answer to the question: where can the methods used in forensic science as well as the provisions of procedural criminal law be applied?

The results of forensic research allow us to deepen our knowledge of crime, in particular the methods used by criminals, and as a consequence, the science of criminal law may come up with new concepts regarding the facts of individual crimes, or to determine the appropriate penal sanctions.

Forensic definition of statutory attributes in the provisions of the special part of the Polish Penal Code on the basis of selected verbally defined attributes

In the statutory description of a qualified robbery offence the Penal Code uses the word „**uses** a dangerous instrument" to describe the executive act. (Art. 280 § 2 of the Penal Code). The provision defining the criminal offence of infringing upon an officer's physical integrity uses the words „**using a** firearm, knife or another similarly dangerous instrument" to describe the executive act.

A dictionary of Polish language defines the basic meaning of the verb „posługwać się – posłużyć się" as: „to use something as a means to obtain or

[14] Girdwoyń, P. (1996). Kryminalistyka a proces karny. Mutual relation of sciences. *Problemy Współczesnej Kryminalistyki*, vol. I, 148.

achieve some goal, as an aid in some activity". Whereas the meaning of the word „use" is defined by the same dictionary as: „to use something, to apply something [15]as a means, a tool" [16]. The dictionary definition is therefore identical for both words, the meaning of one of them is defined by the other: to use is to employ, while to use is to employ something.

The interpretation of the use of a specific verb in the elements of crimes in the Polish Penal Code has been interpreted in numerous decisions of the Supreme Court. This case law is based primarily on expert opinions, not on linguistic interpretation, which shows that the meaning of these words is the same. Thus, the Court of Appeals in Katowice[17] differentiates the meaning of the words „uses" and „uses" as follows: „Unlike the term ‚uses', contained, inter alia, in Article 159 of the Criminal Code. the term „uses" is very broad. It covers all such behaviors which, from the objective point of view, are connected with the assailant's possession of a knife or other dangerous instrument and with – at least – presenting it to the victim, and from the subjective point of view are aimed at intimidation. It is not necessary to establish that the perpetrators of a robbery threatened, in a more or less direct and explicit manner, to use the tool in their possession, since such a threat stems from the very fact of having the tool at their disposal in circumstances which may lead to its use at any time.

Similarly, the Court of Appeals in Białystok[18] stated that „the scope of the term „makes use of" used in article 280 § 2 of the Penal Code, which constitutes an element of the aggravated form of robbery, covers any manipulation with an object listed in this provision, i.e. a firearm, knife or another similarly dangerous object, so even just presenting such an object by the perpetrator. which constitutes an element of the aggravated form of robbery offence covers all manipulation with an object mentioned in this provision, i.e. a firearm, knife or other similarly dangerous object, so even only the presentation of such an object by the perpetrator of a robbery to the victim, provided that such a demonstration is undertaken in order to arouse fear of its use in the victim and to induce in his mind a feeling (state) of defencelessness".

The Court of Appeals in Warsaw[19] states that „'handling' a knife means not

15 *Dictionary of Polish Language.* (1979). Ed. Szymczak, M. Vol. II, 839.

16 *Dictionary of Polish Language.* (1979). Ed. Szymczak, M. Vol. III, 644.

17 Judgment of the Court of Appeals in Katowice of 22 June 1995. II Akr 195/95, OSA 1997 nr 2, item 7, 8.

18 Judgment of the Court of Appeal in Białystok of 9 October 2003. II AKa 266/03, OSA 2004 No 8, item 59.

19 Judgment of the Court of Appeal in Warsaw of 28 September 2016. , II AKa 117/16, Legalis nr 1564437.

only using it, but also threatening with it in the form of demonstrating readiness to use it to overcome the victim's resistance."

The Supreme Court [20]states that „the use of the verb „makes use of" should be understood as the intentional demonstration of a dangerous instrument: showing it to the victim or touching him in order to make him aware of a real danger posed by the perpetrator of a robbery who has this object at his disposal and to put him in a state of defencelessness. In another ruling, it [21]generally states that „the scope of the term ‚uses' (...) includes any manipulation with a dangerous instrument, including the presentation of such an instrument by the perpetrator of a robbery to the victim in order to arouse in him the fear of its use and induce in his mind a feeling of defencelessness."

The Court of Appeal in Łódź[22], while differentiating the meaning of the words „uses" and „makes use of", recognizes that the concept of making use is narrower than making use. Use „must be characterized by dynamics, it must be a harassing behavior, aimed at realizing an active assault on an officer on duty."

Similarly, in commentaries to the Penal Code, commentators distinguish between the notion of using and the notion of enjoyment, considering enjoyment to be a broader notion[23].

The above mentioned court decisions clearly show, that verbs, which according to the Polish language dictionary basically mean the same thing, when used as substantive elements of crimes are understood differently. The use of one or the other in the description of the elements is conscious, while proving the existence of a specific verb element varies. Using does not require using, it may be limited to demonstrating the possession of a specific object for a specific purpose. The object does not have to be used as an instrument of an executive act in order for the notion of „using" to be realised.

In order to recognise that the perpetrator met the requirements of the aggravated type of robbery it is enough to „use a firearm, knife or another similarly dangerous object", whereas in order to ascribe the aggravated type of active assault on a public servant it is necessary for the perpetrator to use a firearm, knife or another similarly dangerous object. He used a firearm, knife or other similarly dangerous object as an instrument of an executive act not only to

20 Verdict of the Supreme Court of 12 November 1985 IV KR 274/85, OSNKW 1986 nr 9-10, pos. 78.

21 Verdict of the Supreme Court of 18 April 1984 II KR 73/84, OSNKW 1984 no 9-10, item 91.

22 Judgement of Court of Appeal in Łódź of 9 May 2001. II Aka 79/01, Prok. i Pr. 2002 no 9, pos. 21.

23 See: Kulik , M. (2017). *Penal Code. Commentary.* Scientific ed. Mozgawa, M. 874.

make the officer feel helpless.

Forensic definition of statutory attributes in the provisions of the special part of the Polish Penal Code, on examples of selected statutory attributes of the object side

The provisions of the special part of the Polish Penal Code use descriptive, vague terms in the description of the object of some crimes. An example is the term „similarly dangerous object" which appears in several statutory descriptions. An example of object description in this way is the crime of aggravated robbery (Art. 280 § 2 of the Penal Code), where the phrase „uses a firearm, knife or other **similarly dangerous object**" is used. Also in Article 223 of the Penal Code, which penalizes active assault on a public official, we find the following definition of the object side: „using a firearm, knife or other similarly **dangerous object."** An identical term appears in the description of the qualified type of the offence of brawl (Art. 159 CC).

The previous Polish Penal Code of 1969 [24]used the term „dangerous instrument" in analogous contexts[25]. The Supreme Court found the terms „dangerous object" and „dangerous instrument" to be unambiguous. This is one of many examples of legislative practice, devoid of any justification, where an existing term is replaced by another for unknown reasons and then it is claimed that it means the same thing[26].

Turning to the analysis of the statutory term „similarly dangerous object", we should begin by stating that it should be dangerous in a similar way to a firearm or a knife and in the light of Art. 280 § 2 of the Penal Code – aggravated robbery – such an object should be used, while in the light of Art. 159 of the Penal Code – aggravated type of brawl – it should be used, similarly to an active assault on a public official (Art. 223 of the Penal Code). Jurisprudence has tried to explain the difference between using something and employing something in the previous part of the article.

Clarifying what is an object similarly dangerous to a firearm or a knife is

[24] Act of 19 April 1969. Criminal Code. *Journal of Laws*, No. 13, item 94.

[25] E. g. Article 159 of the Penal Code 1969: Whoever, taking part in a fight or beating of a man, uses a firearm, knife or other dangerous instrument shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 5 years. And Article 210 concerning the qualified type of robbery: If the perpetrator of a robbery uses a firearm or other dangerous instrument or acts jointly with a person who uses such a weapon or such an instrument, he shall be subject to the penalty of deprivation of liberty for a term not shorter than 5 years or the penalty of death.

[26] Judgment of the Supreme Court of 10 April 1971, Rw 319/71, OSNKW 1971 no 10, item 160.

even more difficult in judicial decisions. Defining an object that is similarly dangerous to a firearm or a knife must consist of indicating that its use or handling may cause similar effects on the life or health of the victim as the use or handling of a firearm or knife. It may cause and not did, because in order for the qualified type to exist, it is not necessary to have an effect in the form of actual bodily injury.

This is not a linguistic determination, but a determination that the object (tool) used may be (is) similarly dangerous to human life or health as a firearm or knife. Certain similarities are obvious. It does not take an expert to determine that a bayonet or a white weapon is similarly dangerous to a knife. In judicial decisions, in view of such a vague formulation, we find many examples of reliance on forensic expertise regarding dangerous objects whose dangerousness is supposed to be similar to firearms and knives. The rulings thus concern the recognition of a dangerous object similar to a firearm and a knife:

- table legs of 70 cm in length and 4.5 cm in diameter turned entirely from solid hardwood, with bolts and table box elements attached; [27]
- a wooden board 107 cm long with a 5 cm long nail driven in, the sharp end sticking out of the board; [28]
- a metal chisel, approximately 66,6 cm long, with a sharp point, is an object which must be regarded as similarly dangerous to a knife. The resemblance arises directly from the physical characteristics of the chisel – for it is an object made of metal, is quite heavy and has a sharp point so that it can perform its cutting function; [29]
- back under the 1969 Penal Code, a knuckleduster or something that could be used similarly to a knuckleduster was considered a dangerous tool, but at that time the Penal Law did not require the tool to be similarly dangerous to a firearm or knife; [30]
- on the contrary, in 2008, in the new legal status, the Court of Appeal in Katowice held that: 'Not every knuckle-duster constitutes a dangerous object and it is the assessment of its individual, objective features (physical characteristics) which decides *in* such a case, made *in concreto, and* which

[27] The judgment of the Court of Appeal in Wrocław of 21 March 2012, II AKa 33/12, OSAWr 2013 no. 2, item 285, Prok. i Pr. 2013 no. 9, item 25.

[28] Judgment of the Court of Appeal in Lublin of 8 March 2004. II AKa 36/04, KZS 2004, no 10, item 26.

[29] Judgment of the Court of Appeals in Katowice of 16 September 2004. II AKa 275/04, LEX nr 154978.

[30] Judgment of the Court of Appeal in Gdańsk of 19 December 1996. II AKa 344/96), Legalis no. 287129.

must indicate that using it *in an* 'ordinary' way poses a similar threat to the life or health of the person attacked, as the use of a knife or a firearm. Although its handle is made of plastic, the Regional Court rightly stated that the determining factor as to the dangerous character of the knuckle-duster in question is the metal, broken knife blade attached to the handle, over 2 cm long. It is obvious that the possible use of such an object, due to the preserved surface of the blade, creates a threat analogous to the use of a knife by exploiting its "natural", i.e. cutting properties[31].

- also under the Criminal Code 1969, the Supreme Court tried to formulate a general definition of a dangerous object in the judgment of the Criminal Chamber of 14 May 1976 (Rw 179/76), stating that "A dangerous object (...) means only such a movable object which due to its properties (size and weight) may be actively used by the perpetrator. The term does not therefore include immovable objects (e.g. a floor, wall, rock) which can only be used by the perpetrator in a passive manner[32].
- on 2 October 1995 the Court of Appeal in Lublin (ref. II Akr 204/95) stated that "the statutory meaning defined by the general term "uses (...) another dangerous instrument" also includes dog brushing against the victim when it results in an attack by a dog whose external characteristics are not good enough.using (...) another dangerous instrument" also includes brushing a victim with a dog, when it results in an attack by a dog whose exterior (large, strong build) and interior (aggression, implacability) properties cause a real threat to health or even life of the victim and the intention of the perpetrator was to use a dog as an instrument to overpower the attacked person in order to seize his/her property[33].

On the other hand, there are several court decisions indicating things that cannot be considered similarly dangerous items to firearms and knives. Thus:

- with regard to the iron, the court stated that *„one might be tempted to consider an iron connected to electricity and heated to a sufficiently high temperature to cause severe and extensive burns to the body as another dangerous object, but an iron that is not connected to a source of electricity certainly does not have these characteristics. Its mere use, merely as*

31 Judgment of the Court of Appeal in Katowice of 21 November 2008 II AKa 314/09, KZS 2009 no. 3, item 52.

32 OSPiKA 1976 no. 11 item 212.

33 OSA 1995 No 10, item 41.

an instrument for striking, will never cause such injury as a firearm or a knife"[34].

- a wooden meat cleaver and a hydraulic wrench cannot be considered dangerous objects within the meaning of Article 280 § 2 of the Penal Code. These objects, by their nature – construction, shape are not dangerous within the meaning of the criminal law, which requires that danger be measured by reference to the characteristics of a firearm and a knife, i.e. objects with naturally, radically dangerous characteristics[35].
- an air gun does not constitute another similarly dangerous object to a firearm or knife within the meaning of Article 159 of the Code of Criminal Procedure because it does not have the characteristics typical of this type of tool[36].

The above review of rulings by Polish appellate courts and the Supreme Court clearly shows that the term in question has a clear forensic character. The courts do not even try to create a general term, but focus on a casuistic consideration of individual cases, in which the objects used by perpetrators of qualified types of crimes do or do not meet, in the opinion of experts, the characteristics required by the criminal statute, i. e. dangerousness similar to firearms and knives.

EKSPERTINĖ NUSIKALTIMO POŽYMIŲ SAMPRATA, PASIRINKTŲ NUSIKALTIMO APRAŠYMŲ PAVYZDŽIU LENKIJOS BAUDŽIAMAJAME KODEKSE

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Santrauka

Straipsnyje pristatomas tyrimas, kuriame nagrinėjama Lenkijos baudžiamąjame kodekse vartojamos terminijos problema – ypač susijusios su konkrečių

[34] Judgment of the Court of Appeal in Katowice of 1 August 2013. , II AKa 236/13, ASAKat 2013 no. 4, item 12, Prok. i Pr. 2014 no. 7-8, item 26.

[35] Judgment of the Court of Appeal in Warsaw of 17 July 2014. , II AKa 133/14, Legalis no. 1092699.

[36] Judgment of the Court of Appeal in Wrocław of 9 October 2019. , II AKa 143/1, KZS 2020 no. 5, item 59.

straipsnių sudėčių aiškinimu ir vėliau inkriminavimu, kaip antai šaunamasis ginklas, peilis ar kitas panašiai pavojingas įrankis, t. y. Baudžiamojo kodekso 223 straipsnis – tyčinis valstybės pareigūno užpuolimas, Baudžiamojo kodekso 280 straipsnio 2 dalis – kvalifikuotas plėšimas.

Nagrinėjami aspektai yra šie:

- pirmiausia nustatyti: Atsižvelgiant į nusikaltimo apibrėžtumo postulatą, tais atvejais, kai teisės sistemoje yra įstatyminis apibrėžimas (pvz., šaunamieji ginklai), ar elementai turi būti suprantami griežtai pagal šį apibrėžimą, ar gali būti naudojami teismo ekspertizės parengti apibrėžimai, kaip taisyklė, platesni nei įstatyminis apibrėžimas?
- antra, „Kuo reikia vadovautis vertinant Įstatyme neapibrėžtus elementus, ar tai labiau teismų praktikos, susijusios su konkrečios nuostatos taikymu, ar veikiau teismo ekspertizės aiškinimo sritis?
- trečia: „Kokie pagrindiniai terminą „panašiai pavojingi instrumentai" lemiantys veiksniai – ar jie pirmiausia (išimtinai) kyla iš teismo ekspertizės?

Galiausiai, kaip vertinti antrąjį ir trečiąjį klausimus, atsižvelgiant į nusikaltimo apibrėžtumo postulatą. Ar reikėtų įteisinti tikslesnį šių elementų apibrėžimą, ar tai neįmanoma.

Raktiniai žodžiai: teismo ekspertizė, nusikaltimų sudėties požymiai, šaunamieji ginklai, peilis, kitas panašiai pavojingas instrumentas.