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A Few Notes on Arousing a Well-Founded Fear as an Element of the Offence of Criminal Threat

Kilka uwag na temat wzbudzenia uzasadnionej obawy jako znamienia przestępstwa groźby karalnej

ABSTRACT

The paper is of a scientific and research nature. The aim is to analyse and assess the reasonableness of the changes made to Article 190 § 1 of the Polish Criminal Code, which were introduced by the Act of 7 July 2022 amending the Criminal Code and certain other acts. It consisted in raising the upper limit of penalty range (from two to three years of imprisonment) and replacing the phrase "to the detriment of the closest person" with the phrase "to the detriment of the person closest to that person". The most important in the context of the study was the introduction of the phrase "if the threat gives rise to a justified fear in the person to whom it is addressed or to whom it relates, that the threat will be fulfilled", instead of "if the threat gives rise to a well-founded fear in the person being threatened, that the threat will be fulfilled". For a proper understanding of the *ratio legis*, the analysis of the changes was preceded by remarks of a historical nature and pointing to doubts regarding the interpretation of the elements "threatened" and "gives rise to a justified fear in the person". Reference was also made to the procedure for prosecuting the offence of criminal threat (Article 12 § 4 of the Criminal Procedure Code), modified by the amendment of 7 July 2022. The basic research method used in the paper is formal-dogmatic analysis. The practice of applying the law is also taken into account using the analysis of judicial decisions.

Keywords: criminal offence; criminal threat; reasonable fear

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INTRODUCTION

The arousing of a well-founded fear of the fulfilment of the threat, which is one of the elements of the offence under Article 190 § 1 of the Polish Criminal Code (CC), has repeatedly been the subject of interest of both scholars in the field of criminal law[1] and the judiciary.[2]

In the context of the modification of the content of Article 190 § 1 CC, made by the Act of 7 July 2022[3] and its justification and proper understanding of its underlying *ratio legis*, the discussion should begin with a brief historical outline of the crime element covered by this study.[4]

HISTORICAL OUTLINE OF THE OFFENCE OF CRIMINAL THREAT (CRIMINAL CODES OF 1932 AND OF 1969)

The threat defined in Article 250 of the 1932 Criminal Code[5] was punishable where it could make raised concern in the affected person, and where there was also a probability that the threat would be fulfilled.[6] According to S. Glaser, whatever an intention would be on the part of the perpetrator to carry out the threat,

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[1] Among others, see W. Świda, *Prawo karne*, Warszawa 1978, p. 519; M. Filar, *Przestępstwo zgwałcenia w polskim prawie karnym*, Warszawa–Poznań 1974, p. 102; J. Śliwowski, *Prawo karne*, Warszawa 1979, p. 384; A. Spotowski, [in:] *System Prawa Karnego*, vol. 4, part 2: *O przestępstwach w szczególności*, Wrocław 1989, pp. 33–34; K. Nazar-Gutowska, *Groźba bezprawna w polskim prawie karnym*, Warszawa 2012, pp. 63–67; P. Daniluk, *Wzbudzenie w zagrożonym uzasadnionej obawy spełnienia groźby w konstrukcji groźby bezprawnej*, "Prokuratura i Prawo" 2018, no. 1, pp. 5–15.

[2] The following rulings may be mentioned as examples: judgment of the Supreme Court of 12 March 2025, II KK 514/24, Legalis no. 3201363; judgment of the Supreme Court of 5 March 2025, V KK 555/24, Legalis no. 3202815; decision of the Supreme Court of 18 April 2023, V KK 63/23, Legalis no. 3089815; judgment of the Supreme Court of 20 January 2021, V KK 373/19, Legalis no. 2584769; judgment of the Supreme Court of 20 January 2021, V KK 373/19, Legalis no. 2584769; decision of the Supreme Court of 5 December 2017, III KK 251/17, Legalis no. 1704945; judgment of the Supreme Court of 6 April 2017, V KK 372/16, Legalis no. 1598986; judgment of the Supreme Court of 24 June 2013, V KK 94/13, Legalis no. 737241; decision of the Supreme Court of 16 February 2010, V KK 351/09, Legalis no. 240717.

[3] Act of 7 July 2022 amending the Criminal Code and certain other acts (Journal of Laws 2022, item 2600).

[4] This allowed me to revise my previously expressed view. See K. Nazar, *Analiza ustawowych znamion przestępstwa groźby karalnej*, [in:] *Groźba w prawie karnym*, ed. M. Mozgawa, Warszawa 2024, pp. 79–98.

[5] "Whoever threatens another person with committing a felony or misdemeanor to the detriment of that person and their relatives, if there is a probability of fulfilling the threat, and the threat may cause fear in the endangered person, shall be punished by imprisonment for up to 2 years or imprisonment for up to 2 years".

[6] Judgment of the Supreme Court of 6 December 1934, I K 844/34, OSN(K) 1935, no. 7, item 259.

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the condition for the action to be considered criminal was, in the objective terms, the probability of fulfilling the threat, and in subjective terms, the ability to cause fear in the threatened person.[7] On the other hand, according to J. Makarewicz, the probability of fulfilling the threat should be assessed in subjective terms – this offence was placed in the group of crimes against freedom, not those against life, and therefore it cannot be about objective probability (danger to life), but about subjective probability (as perceived by the threatened person).[8]

The arousing of a well-founded fear, introduced into the content of the provision of Article 166 of the 1969 Criminal Code, replaced the element, provided for in Article 250 of the 1932 Criminal Code of "probability of the fulfilment of the threat" and "possibility of raising fear".[9] In the explanatory memorandum of the Draft Criminal Code, it was noted that this change should be explained by the doubts referred to in the case law, resulting from the wording concerning the "probability of fulfilling the threat". On the other hand, the new wording allows us to conclude that it is the subjective sense of fear by the threatened person, and not the objective probability of the threat being fulfilled, that is relevant to this crime.[10]

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[7] S. Glaser, *Polskie prawo karne w zarysie*, Kraków 1933, p. 334.

[8] J. Makarewicz, *Kodeks karny z komentarzem*, Lwów 1932, p. 294. Similarly, among others, J. Peiper, *Komentarz do kodeksu karnego, prawa o wykroczeniach i przepisów wprowadzających obie te ustawy*, Kraków 1936, pp. 506–507; M. Siewierski, *Kodeks karny i prawo o wykroczeniach. Komentarz*, Warszawa 1958, pp. 343–344. A different position was presented by S. Śliwiński (*Prawo karne materialne. Część szczególna*, Warszawa 1948, p. 198), who considered the cited interpretation of the probability of fulfilment of the threat to be an interpretation *contra legem*, but necessary to achieve practical results.

[9] For more detail on this topic, see K. Nazar-Gutowska, *op. cit.*, p. 61 ff. Although the Draft Criminal Code of 1956 abandoned the wording of the "probability of fulfilling the threat", the element of "the possibility of evoking fear" remained. Moreover, the draft Code limited the content of the threat to crimes against life, health, freedom or property. The above-mentioned draft, in Article 141, stated: "Whoever threatens another person with committing a crime against the life, health, freedom or property of that person or his/her relatives, if the threat may give rise to a justified fear that it will be fulfilled, shall be subject to imprisonment for up to one year or correctional work or a fine of up to 5,000 Polish zloty". See *Projekt kodeksu karnego Polskiej Rzeczypospolitej Ludowej i przepisy wprowadzające*, Warszawa 1956, p. 39. An interesting solution was provided in the Draft Criminal Code of 1963, which stated in Article 259: § 1. Whoever threatens another person with committing a crime to their detriment or to the detriment of their close person shall be subject to imprisonment for up to two years or a fine. § 2. If the perpetrator, acting in agreement with another person, armed with a weapon or other dangerous instrument, or acting in other circumstances that are particularly likely to cause fear, threatens to commit an act of violence on the person, shall be subject to imprisonment for up to 3 years. § 3. For the offence specified in § 1 or § 2, no penalty more severe than that provided for the offence threatened by the perpetrator may be imposed. § 4. If the offence threatened to be committed by the perpetrator is prosecuted upon the request of the victim or by private prosecution, the offence specified in § 1 or 2 shall be prosecuted in the same manner. See *Projekt kodeksu karnego*, Warszawa 1963, p. 52.

[10] *Projekt kodeksu karnego oraz przepisów wprowadzających kodeks karny. Uzasadnienie*, Warszawa 1968, p. 140. According to Article 172 of the Draft Criminal Code of 1968, threatening another person with committing a crime to their detriment or to the detriment of their closest persons, if the threat causes the

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The second element concerning the possibility of raising fear, which implied that the fear did not have to arise in the threatened person in order for the perpetrator to be held liable, also entailed reservations. The threat was to be of such a kind that this reaction (fear) could arise, and this possibility had to be assessed from the point of view of the threatened person.[11] The difficulties were also aggravated by the lack of any indication that could clarify what criterion to adopt when assessing whether the threat could have raised fear or not. Making the liability dependent on whether the threat could have caused fear in the threatened person could in practice lead to the fact that the same threat in one case would constitute the basis for holding the perpetrator liable, and not in the other, depending on who was threatened – whether a person with high mental resilience, in whom the threat could not evoke fear, or a fearful person, in whom such a fear could have arisen.[12]

As mentioned above, the elements that raised doubts under the 1932 Criminal Code were replaced by the wording that the threat "gives rise to a justified fear in the threatened person".[13] This approach no longer required the perpetrator to have the intention to fulfil the threat, nor did it provide for an objective danger of the threat being implemented. The condition for the act to be considered a criminal offence was to arouse a reasonable fear that the threat would be implemented.[14] This solution continues to be in force to this day and does not give rise to any interpretative doubts. For the offence under Article 190 § 1 CC to exist, it is sufficient to demonstrate that the threat subjectively (in the perception of the threatened person) caused fear of its fulfilment and to verify objectively (by a court) whether the threatened person could indeed perceive the threat in this way in the particular circumstances.

ANALYSIS OF THE APPROACH UNDER ARTICLE 190 § 1 CC OF 1997 BEFORE THE AMENDMENT OF 7 JULY 2022

The provision of Article 190 § 1 CC in the wording in force before the amendment of 7 July 2022 read that "Whoever threatens another person with committing a crime to that person's detriment or to the detriment of a closest person, if the threat

threatened person to reasonably fear that it will be carried out, was punishable by imprisonment for up to two years, restriction of liberty or a fine. See *Projekt kodeksu karnego oraz przepisów wprowadzających kodeks karny*, Warszawa 1968, p. 48. An identical wording had Article 162 of the Draft Criminal Code of 1966. See *Projekt kodeksu karnego. Część szczególna. Wprowadzenie*, Warszawa 1966, p. 15.

[11] K. Daszkiewicz-Paluszyńska, *Groźba w polskim prawie karnym*, Warszawa 1958, p. 63 ff.

[12] *Ibidem*, p. 63.

[13] See L. Hochberg, *Przestępstwa przeciwko życiu, wolności, obyczajności i czci według nowego kodeksu karnego*, Warszawa 1969, pp. 28–29.

[14] Judgment of the Supreme Court of 10 May 1972, I KR 74/72, LEX no. 21490; judgment of the Supreme Court of 26 January 1973, III KR 284/72, LEX no. 21544; judgment of the Supreme Court of 17 April 1997, II KKN 171/96, "Prokuratura i Prawo" 1997, no. 10, items 7–8 (insert).

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arouses a well-founded fear in the threatened person that it will be fulfilled, shall be punished with a fine, restriction of liberty or imprisonment for up to 2 years".

The addressee of the threat was a person threatened by the perpetrator that the latter commits a crime to the detriment of that person (e.g. X threatens to kill Y) or to the detriment of a person closest to the threatened person (e.g. X threatens to kill Y, the person closest to Y). Pursuant to this wording, it was assumed that "the victim of this offence may therefore only be the person to whom this threat is addressed and who, as a result of it, could directly or indirectly (through a closest person having been harmed) suffer damage".[15] Such narrowing down the element of the subject of the act may be doubtful, as there can be a situation that the threat did not raise fear in the immediate addressee of the threat (the person who was threatened), but did in the person closest to the threatened one, i.e. the person on whom the threat was to be implemented. In such a case, we can say of the offence only where the threat caused fear in Y (the person who was threatened), and if the fear was not caused in Y, but appeared in Z (the person closest to Y, on whom the threat was supposed to be implemented), it was only possible to classify this as an attempt to commit the crime. Such an interpretation restricted the criminal-law protection of a person who, despite not being directly threatened by the perpetrator, was to be the subject of the act covered by the threat. In my opinion, in a situation where the perpetrator threatened another person to commit a crime to the detriment of a closest person of the latter, both the direct addressee of the threat and the person closest to the direct addressee, on whom the threat was to be carried out, were threatened. According to the Polish Language Dictionary, a "threatened person" is the "one who is in danger".[16] If we adhere strictly to the linguistic interpretation, a person threatened by the perpetrator would be a person threatened with committing a crime to their detriment, and the threat arouses in that person the fear that the threat would be implemented. If the perpetrator threatened person X to commit a crime to the detriment of person Y (closest to person X), it would not be possible to assume in every case that X is a person in danger (the threat does not arouse fear in X, but does so in Y). In such a situation, X would be the person who is threatened by someone, while Y would be the person who is endangered. The teleological considerations speak for a broader understanding of the concept. The person actually endangered should also be considered as a threatened person,

[15] Judgment of the Supreme Court of 13 February 2008, IV KK 407/07, LEX no. 395069. Similar views were expressed by criminal law scholars. For example, M.M. Królikowski and A. Sakowicz ([in:] *Kodeks karny. Część szczególna*, vol. 1: *Komentarz do art. 117–221*, eds. M. Królikowski, R. Zawłocki, Legalis 2017) pointed out that "The object of an implementation action in the event of the offence of criminal threat may be a natural person against whom the threat is communicated". See also M. Mozgawa, [in:] *Kodeks karny. Komentarz*, ed. M. Mozgawa, Warszawa 2021, p. 636.

[16] *Zagrożony*, [in:] *Słownik języka polskiego*, https://sjp.pwn.pl/slowniki/zagrożony.html (access: 10.8.2025).

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including the person closest to the threatened person, naturally if they knew about the threat and the threat aroused fear about its fulfilment in that person. As aptly pointed out by K. Daszkiewicz-Paluszyńska, nothing prevents recognising the closest person as a victim as well, and this is justified by the fact that excluding that person from the circle of victims in such a situation would constitute an unjustified restriction of their rights in the proceedings.[17]

CHANGES IN THE CONTENT OF ARTICLE 190 § 1 CC OF 1997 MADE BY THE ACT OF 7 JULY 2022

The doubts pointed to above were removed by the Act of 7 July 2022,[18] which amended the wording of Article 190 § 1 CC as follows: "Whoever threatens another person with committing a crime to their detriment or to the detriment of a person closest to that person, if the threat causes the person to whom it was addressed or who is affected by it to have a reasonable fear that it will be carried out, shall be subject to imprisonment for up to 3 years".

Apart from increasing the upper limit of the penalty range (from two to three years of imprisonment) and replacing the phrase "to the detriment of a closest person" with "to the detriment of a person closest to that person", which in fact does not change anything, the phrase "if the threat gives rise to a well-founded fear in the person to whom it is addressed or to whom it relates, that the threat will be fulfilled" has been introduced instead of "if the threat gives rise to a well-founded fear in the person being threatened, that the threat will be fulfilled". The latter change is most significant in the context of the previously mentioned doubts regarding the understanding of the term "threatened person" and the arousing of a well-founded fear in that person.[19]

The explanatory memorandum to the draft Act indicates that "The draft Act expands the scope of the elements of the offence of criminal threat (Article 190 §1 CC), stating that the elements of this type will also be met if the threat arouses a reasonable fear that the threat will be fulfilled not in the person to whom it was addressed by the perpetrator, but in the person to whom the threat relates. It is about providing criminal-law protection to other persons who are not directly threatened

[17] See K. Daszkiewicz-Paluszyńska, *op. cit.*, pp. 82–83; M. Mozgawa, [in:] *System Prawa Karnego*, vol. 10: *Przestępstwa przeciwko dobrom indywidualnym*, ed. J. Warylewski, Warszawa 2016, p. 434. Cf. also judgment of the Supreme Court of 13 February 2008, IV KK 407/07, LEX no. 395069.

[18] Text of the Act of 7 July 2022 amending the Criminal Code and certain other acts, finally established after the rejection of the Senate's resolution rejecting the Act, https://orka.sejm.gov.pl/opinie9.nsf/nazwa/2024_u/$file/2024_u.pdf (access: 10.8.2025).

[19] Cf. M. Całkiewicz, *Groźba karalna po nowemu (jak poszerzać penalizację, by ją zawęzić)*, "Państwo i Prawo" 2024, no. 2, pp. 19–37.

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by the perpetrator, but the threat reaches them through another person, and the perpetrator intends that".[20]

The explanatory memorandum to the draft Act may suggest that the new wording of the provision refers to any kind of indirect threat, which is wrong. The phrase "if the threat gives rise to a well-founded fear in the person being threatened, that the threat will be fulfilled" refers to the first part of the provision, namely to the threat of committing an offence to the detriment of another person or to the detriment of a person closest to that person. Situations where the threat concerns committing a crime to the detriment of a closest person should be distinguished from an indirect threat, when the person affected by the threat is usually a stranger to the person who transmits the threat. The essence of an indirect threat is reaching through another person to the addressee (the person it concerns) and the intention or acceptance of the fact that it will arouse fear that the threat will be implemented. An indirect threat may give rise to criminal liability where there is an agreement between the threatening person and the person through whom the threat reaches the victim, or where the perpetrator, when informing a third party of the threat, at least expects that the threat reaches the victim and accepts this.[21] Of course, there are various possible scenarios, e.g. the perpetrator may threaten to commit a crime to the detriment of person X acting jointly and in agreement with person Y, who is the closest person to X, but it may also happen that the person transmitting the threat is not the closest person to the threatened person, e.g. the perpetrator declare to commit a crime to the detriment of person X in the presence of person Y, wishing or expecting and agreeing that this person will transmit it to X. It is undoubtedly not a case of committing the crime, but only an attempt at most, where Y does not transmit the threat to X or if the threat transmitted does not evoke in X the fear that it would be implemented. It is possible (more theoretically than practically) that in the presented situation, the threat would arouse the fear about its implementation only in person Y, who, according to the intention of the perpetrator, is solely an intermediary in transmitting it to person X, but it would not be relevant for the existence of the crime, as it is not a threat of committing a crime to the detriment of Y or to the detriment of a person closest to Y. It is rather exceptional when the threat addressed to a person who is not the closest person to the person concerned (only an intermediary in transmitting) arouses fear in the former that the threat will be implemented. Of course, it is still imaginable that this will happen, e.g.

[20] Text of the Act of 7 July 2022 amending the Criminal Code…

[21] In this respect, the statement of the Supreme Court from the first years of the 1932 Criminal Code in force remains valid, in which the view was expressed that "the fact that the threat has not been made directly to the endangered person, but to a third party, is irrelevant to the existence of the crime under Article 250 of the Criminal Code, as it is sufficient that the threatener foresaw that the threat would come to the attention of the victim and agreed to it". See judgment of the Supreme Court of 17 October 1938, I K 2602/37, OSN(K) 1939, no. 6, item 129.

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where that person is fearful, not psychically resilient, but it will not matter in the context of commission of the crime. Moreover, it is not sufficient for the existence of a criminal threat to solely evoke the fear that the threat will be implemented. This fear must be well-founded. Thus, in addition to the subjective feelings of the person to whom the threat was addressed but whom it does not concern, an objective assessment of such a threat is relevant. The well-founded fear, in the structure of Article 190 § 1 CC, is a component that allows capturing and verifying whether the subjective feeling of the victim's fear about the implementation of the threat had objective (reasonable) grounds.[22] The situation when the threat is a means of forcing a specific behaviour, e.g. the perpetrator threatens person X that he/she will kill X's friend if X does not pay the perpetrator a certain sum (although not being a typical example of an indirect threat), should be assessed differently.

In view of the above, one may have doubts as to the correctness of the statement expressed by J. Lachowski that "Following the amendment of 7 July 2022, the criteria of the crime under Article 190 § 1 CC may be met by an offender who shouts threats in front of an empty residential building to its inhabitants, with these threats being heard by the neighbours, not their addressees. It follows from the wording of this provision that the object of the implementing action is also the person to whom the threat relates".[23] Of course, the object of the implementation action is the person to whom the threat relates, but also the one who is the closest person to the person to whom the threat was addressed. In the example presented above, the threat was not addressed to the neighbours who heard it, nor did it concern the persons closest to them (unless there were persons among those neighbours who met the criteria set out in Article 115 § 11 CC).[24] Elements of the crime under Article 190 § 1 CC could be met in this case (in the form of an indirect threat) if the neighbours who have heard the threats passed them on to the persons concerned (and in whom they aroused fear), and the perpetrator wanted or at least expected that the threat would reach them, and he/she accepted this. Otherwise, it is not the case of committing a crime under Article 190 § 1 CC, and there may only be liability for the attempt (inept, as it seems,

[22] See judgment of the Supreme Court of 6 April 2017, V KK 372/16, Legalis no. 1598986; judgment of the Supreme Court of 20 January 2021, V KK 373/19, Legalis no. 2584769.

[23] J. Lachowski, [in:] *Kodeks karny. Komentarz*, ed. V. Konarska-Wrzosek, Warszawa 2023, p. 1014. Cf. judgment of the Supreme Court of 13 February 2008, IV KK 407/07, LEX no. 395069.

[24] In this context, the view expressed by the District Court in Gliwice is not entirely correct, as it is pointed out that "As regards the crime under Article 190 § 1 of the Criminal Code, a situation is fully conceivable and at the same time considerable where the perpetrator threatens a specific person with causing harm to a third party – a person close or closest to the threatened person [or even to a person who is a complete stranger – emphasis added by K.N.] in order to evoke concern about that person in the addressee, and therefore a justified fear of the fulfilment of the threat. This does not change the fact that it is the original addressee of the threat who remains the endangered of the crime and the statutory elements of the offence in question are fully met" (judgment of the District Court in Gliwice of 23 April 2019, VI Ka 1136/18, Legalis no. 2276508).

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due to the lack of an object suitable for being a victim of an offence).[25] Moreover, as J. Lachowski stated, the person to whom the threat is directed must be in a state allowing that person to properly understand the content of the message from the perpetrator. Therefore, it cannot be an infant or a foreigner who does not speak[26] Polish (unless the perpetrator's gestures show the intention of threatening to commit a crime).[27] This caveat applies not only to the person to whom the threat relates but also to the person to whom the threat has been communicated. Otherwise, it would be impossible to transmit the threat to the person it relates to.

To sum up, the object of the implementation action provided for in Article 190 § 1 CC is the person to whom the threat was communicated, while this person does not have to be the same as the person on whom the threat is to be implemented (to whom it relates), but must be the person closest to the former (the person to whom the threat was communicated). The addressee of the threat cannot be a juridical person, as it is not capable of perceiving endangerment if the content of the threat does not indicate a danger to natural persons representing that juridical person.[28] As noted by M. Mozgawa, the statement that the object of the act in the case of the offence in question is the human psyche raises doubts. It is difficult to consider that the human psyche constitutes the material substrate of the attack. It cannot exist detached from the human being, and it is on the human being that the criminal behaviour focuses.[29]

The offence of criminal threat is a crime determined by its effect. Its effect is to evoke in the person to whom the threat is communicated or in the person to whom it relates a well-founded fear that it will be carried out.

The threat may concern the commission of a crime to the detriment of a person to whom the perpetrator directly threatens, i.e. the person to whom the threat is addressed and to whom it relates, e.g. X threatens to kill Y, which arouses in Y a well-founded fear that the threat will be fulfilled. It may also be that the threat was about committing a crime to the detriment of a person closest to the immediate addressee, e.g. X threatens to kill Z (the person closest to Y). In this event, the following cases are possible, in which:

1) a well-founded fear arises both in the direct addressee of the threat (person Y to whom the threat was communicated) and in the person closest to him/her (person Z to whom the threat relates);

[25] Cf. judgment of the Court of Appeal in Lublin of 27 November 2003, II AKa 338/03, OSA 2005, no. 6, item 39.

[26] The phrase "or does not understand Polish" should be added.

[27] J. Lachowski, *op. cit.*, p. 1014.

[28] L. Peiper, *op. cit.*, p. 506.

[29] See M. Mozgawa, [in:] *Kodeks karny. Komentarz*, ed. M. Mozgawa, Warszawa 2023, pp. 719–720.

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2) the well-founded fear will arise only in the direct addressee of the threat (person Y to whom the threat was addressed), and will not appear in the person closest to him/her (person Z to whom the threat relates);
3) the well-founded fear will arise only in the person (Z to whom the threat relates) to the immediate addressee of the threat (the person Y to whom the threat was communicated).

In the current legal situation, the emergence of a well-founded fear in even one of the persons referred to in the provision (the person to whom the threat was communicated or the person to whom the threat relates) will imply criminal liability. Therefore, for the offence to be committed, it is sufficient that the threat only arouses a well-founded fear in the person who transmits it (to whom it has been communicated), who is the person closest to the person the threat relates to.[30]

CONCLUSIONS

The analysis of the new wording of Article 190 § 1 CC leads to the conclusion that the amendment was right. Until then (before the amendment in question, as already indicated) it could not be said, due to the phrase "if the threat gives rise to a well-founded fear in the threatened person that it will be implemented", that the elements of the crime were met in a situation where the threat evoked a well-founded fear of its fulfilment in the person to whom it related, and did not evoke it in the person to whom it was communicated (being the person closest to the former). According to the new wording of the provision, such a situation will constitute the basis for criminal liability. Thus, it is sufficient that the threat arouses fear in the person it relates to, although it will not appear in the person to whom it was communicated. Sometimes relationships between relatives are of a kind that the person to whom the perpetrator communicates the threat does not perceive it as a threat to the detriment of the closest person, with whom he/she remains in bad relations, e.g. conflicted siblings, fighting for an inheritance. In such a situation, it was justified to provide criminal-law protection and to grant the rights of the victim to a person who was not directly threaten the perpetrator, but who was to be the object of perpetrator's criminal act. On the other hand, the concept of "the closest person" in the context of relations and bonds between persons who are not, however, closest within the meaning of the legal definition, as defined in Article 115 § 11 CC, remains an issue which is still not noticeable for the legislature.[31] Under the law currently in force, relatives in

[30] See a different approach in K. Wala, [in:] *Kodeks karny. Komentarz*, ed. J. Kulesza, Warszawa 2025, p. 454.

[31] "The closest person is a spouse, ascendant, descendant, sibling, relative by affinity in the same line or degree, a person in an adoptive relationship and their spouse, as well as a person in a cohabiting relationship".

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collateral consanguinity and affinity, e.g. uncle with nephew or niece (even if these people were actually brought up by the threatened person and connected by strong emotional[32]), or fiancée not living together with her fiancé (despite obvious ties) are not considered the closest persons. The threat to kill a child that is in the care of a nanny (who is very closely related to the child), if the woman does not behave in the way desired by the perpetrator (the child is not a closest person for the woman, and the crime would be committed to child's detriment) also remains outside the scope of statutory elements of the offence of criminal threat. It is aptly stated by scholars in the field that such narrowing of the subjective scope is not right,[33] as "the emotional relationship between the victim and the endangered person (which is also a source of psychological pressure that the perpetrator exerts on the addressee of the threat) may go beyond the subjective limits specified in Article 115 § 11 of the Criminal Code. Nevertheless, it can significantly affect the motivational processes in the victim, which justifies penalisation also in this area".[34] M. Mozgawa presents two ways to resolve this issue. The first is an amendment to the provision of Article 115 § 11 CC, extending the subjective scope of the concept of the closest person, and the second is a return to the concept adopted under the 1932 Criminal Code, where reference was made not to the closest person, but to a close person. However, adopting the second solution would require a statutory definition of the concept of a close person, which is not an easy task.[35] The author rightly proposes that this definition could include all those persons who are listed in Article 115 § 11 CC, as well as other persons who are not in a relationship of kinship or affinity (or through a shared life), but are in a strong emotional relationship with each other.[36]

Finally, it should be noted that the amendment to the criminal legislation of 7 July 2022 (amending the current wording of Article 190 § 1 CC) also modified the procedure for prosecuting the offence of criminal threat, which until now was a classic example of a crime prosecuted conditionally upon request. In Article 12 § 4 of the Criminal Procedure Code, the legislature introduced a kind of novelty when it comes to the current practice of prosecuting the offence of criminal threat. If the conditions listed in the said provision are met, it is possible to initiate and conduct proceedings despite the lack of filing a request for prosecution. According to Article 12 § 4 of the Criminal Procedure Code, "In a case of the offence under Article 190 § 1 CC, proceedings may be initiated and conducted despite the failure to file a request for prosecution, if there is a high probability that the failure to file the request results

[32] K. Nazar-Gutowska, *op. cit.*, pp. 72–73.

[33] M. Mozgawa, *Kilka uwag na temat groźby bezprawnej (zagadnienia podstawowe)*, [in:] *Groźba w prawie karnym…*, p. 222.

[34] K. Kmąk, *Wybrane problemy związane z definicją groźby bezprawnej (art. 115 § 12 Kodeksu karnego)*, "Prawo w Działaniu. Sprawy Karne" 2022, no. 51, p. 119.

[35] M. Mozgawa, *Kilka uwag…*, p. 222.

[36] *Ibidem*, pp. 222–223.

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from the victim's fear of retaliation or if this initiation is necessary for the sake of public interest. In such a case, the proceedings shall be conducted *ex officio* until the conclusion with a final ruling". The legitimacy of the solution introduced may be assessed differently and deserves a broader discussion and a separate study.[37] Only to mention certain doubts, attention is drawn to several problematic issues concerning this regulation, i.e. limitation of the application of the provision to a single offence prosecuted upon request, unclear prerequisites for the application of the provision,[38] lack of indication of the authority entitled to make a decision on its application, and unspecified form of the decision.[39]

It seems that the introduction of the new institution of conditional mode of prosecution upon request has not been a well-thought-out idea. Many authors point to the lack of rationale behind this change; there are no arguments for the addition of Article 12 § 4 of the Criminal Procedure Code to the Polish legal order.[40] Furthermore, it is unclear why the legislature decided to introduce this institution only with regard to the offence of criminal threat. It would be reasonable to consider extending the solution adopted in Article 12 § 4 of the Criminal Procedure Code to all offences prosecuted on request. For other offences prosecuted upon request, failure to file a request may also be due to fear of retaliation or may be justified by

[37] For more detail on the problems related to Article 12 § 4 of the Criminal Procedure Code, see K. Kwiecień, *Tryb ścigania przestępstwa groźby karalnej (art. 190 § 1 k.k.) w świetle nowelizacji prawa karnego z dnia 7 lipca 2022 r.*, "Prokuratura i Prawo" 2024, no. 4, pp. 46–60; J. Kluza, *Prowadzenie postępowania z urzędu mimo braku wniosku o ściganie w sprawie o przestępstwo z art. 190 § 1 k.k. na podstawie art. 12 § 4 k.p.k.*, "Przegląd Prawa Publicznego" 2023, no. 6, pp. 69–78; M. Błotnicki, P. Palichleb, *Tryb ścigania przestępstwa groźby karalnej*, [in:] *Groźba w prawie karnym…*, pp. 153–171.

[38] For more detail, see K. Kwiecień, *op. cit.*, pp. 51–55; J. Sobczak, *Czy w polskim prawie karnym procesowym jest miejsce na nowy warunkowy tryb wnioskowy ścigania przestępstwa wprowadzony w art. 12 § 4 k.p.k.*, "Acta Iuris Stetinensis" 2024, no. 4, pp. 125–126.

[39] For more detail, see J. Karaźniewicz, *Wnioskowy tryb ścigania w świetle nowelizacji Kodeksu postępowania karnego z 7 lipca 2022 r.*, "Acta Iuris Stetinensis" 2025, no. 2, pp. 21–35.

[40] As in, e.g., M. Błotnicki, P. Palichleb, *op. cit.*, p. 157 ff.; J. Kluza, *op. cit.*, p. 73. The author writes, among other things, about the lack of public consultation on the provision and points to the need to refer to studies presenting the frequency of discontinuation of proceedings concerning the offence of criminal threat due to the victim withdrawing their request for prosecution. K. Kwiecień (*op. cit.*, p. 51) points out that "The reasons for this state of affairs can be found in the stage at which the commented regulation was introduced into the draft Act. This did not happen until the draft was submitted to the Sejm, and therefore the commented provision was not the subject of earlier legislative work. However, it seems that such legislative changes, in particular those introducing mechanisms unknown to existing legal solutions, should be preceded by widespread consultations with both practitioners and the academic community dealing with criminal procedural issues". Similarly, J. Karaźniewicz, *op. cit.*, pp. 24–25. Critically assessing the lack of justification for such a fundamental change as the introduction of a new type of conditional prosecution upon request, J. Sobczak (*op. cit.*, p. 125) states that "This raises concerns that the change is kind of instrumental use of the law, rather than a genuine desire to protect the interests of the victim". Cf. C. Kulesza, *Komentarz do art. 12*, [in:] *Kodeks postępowania karnego. Komentarz*, ed. K. Dudka, LEX/el. 2023, thesis 19.

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the public interest.[41] It is therefore incomprehensible why victims of other offences prosecuted upon request were not covered by the same protection. An example is the offence of coercive behaviour, defined in Article 191 § 1 CC, which consists in forcing, by means of violence or unlawful threat, a person to perform a specific action, to refrain from an action or to endure an action. In the case of using threats to force the victim to a specific behaviour, victim's fear may be greater than in a situation where the threat does not entail additional negative consequences (e.g. X threatens Y that he/she will kill Y, and X threatens Y that he/she will kill Y if the latter does not behave in the manner desired by the person making the threat).

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[41] M. Mozgawa, [in:] *Kodeks karny…*, 2023, p. 723.

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ABSTRAKT

Artykuł ma charakter naukowo-badawczy. Celem jest analiza i ocena zasadności zmian dokonanych w treści art. 190 § 1 k.k., które zostały wprowadzone ustawą z dnia 7 lipca 2022 r. o zmianie ustawy – Kodeks karny oraz niektórych innych ustaw. Polegały one na zwiększeniu górnej granicy zagrożenia karnego (z dwóch na trzy lata pozbawienia wolności) oraz zastąpieniu sformułowania „na szkodę osoby najbliższej" zwrotem „na szkodę osoby dla niej najbliższej". Największe znaczenie w kontekście przedmiotowego opracowania miało wprowadzenie określenia „jeżeli groźba wzbudza w osobie, do której została skierowana lub której dotyczy, uzasadnioną obawę, że będzie spełniona", zamiast „jeżeli groźba wzbudza w zagrożonym uzasadnioną obawę, że będzie spełniona". Dla właściwego zrozumienia *ratio legis* ustawodawcy analiza dokonanych zmian poprzedzona została uwagami natury historycznej oraz wskazaniem wątpliwości odnośnie do interpretacji znamienia „zagrożony" i „wzbudzenia w nim uzasadnionej obawy". Odniesiono się także do zmodyfikowanego nowelizacją z dnia 7 lipca 2022 r. trybu ścigania przestępstwa groźby karalnej (art. 12 § 4 k.p.k.). Podstawową metodą badawczą zastosowaną w artykule jest analiza formalno-dogmatyczna. Uwzględniono również praktykę stosowania prawa, posługując się analizą orzecznictwa sądowego.

Słowa kluczowe: przestępstwo; groźba karalna; uzasadniona obawa