

JAN KLUZA

THE BORDERLINE BETWEEN BULLYING AND STALKING, AND OTHER TYPES OF OFFENCES*

I. INTRODUCTION

The crime of stalking is defined in Article 190a of the Penal Code [*Kodeks karny*],¹ according to which a penalty of deprivation of liberty for up to 3 years is imposed on anyone who, 'by persistent harassment of another person or this person's immediate family member, induces in this person a sense of danger that is reasonable under the circumstances, or substantively violates this person's privacy'. Importantly, this crime was added to the Penal Code by an amendment introduced in 2011.² Meanwhile, since its adoption in 1971, Article 107 of the Code of Petty Offences [*Kodeks wykroczeń*]³ has stipulated an offence, commonly referred to as harassment or teasing [*dokuczenie*], according to which a person who bullies another, by maliciously misleading or disturbing them, shall be subject to the penalty of deprivation of liberty, or a fine of up to PLN1,500, or the penalty of reprimand. Apart from an amendment to the penalty designated for this offence, which resulted from the redenomination of the zloty, the content of this provision has not changed for almost 50 years.⁴

At first glance, there appears to be a great deal of similarity between the features of these two prohibited acts. It is noteworthy that the forms of behaviour classed as stalking has been increasing: from 38 convictions in 2011, to 908 in 2014.⁵ This entails that the way legislator has delimited the characteristics of the prohibited acts which constitute the criminal offence of stalking from those that constitute the petty offence of bullying is significant – both in terms of judicial practice and from the theoretical point of view. At the same time, however, it is necessary to point out that these classifications may overlap with those of other acts that are prohibited in the Penal Code, characterized by persistent harassment of the victim, such as making unlawful threats or subjecting a person to abuse.

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¹ The Act of 6 June 1997 — Penal Code [*Kodeks karny*], Journal of Laws of the Republic of Poland [JL RP] 1997 No. 88 item 553 (hereinafter, also: PC).

² The Act of 25 February 2011, On amendments to the Penal Code JL RP 2011, No. 381, item 72.

³ The Act of 20 May 1971 — Code of Petty Offences, consolidated text JL RP 2018, item 618 (hereinafter, also: CPO).

⁴ See the original wording of the provision: JL RP 1971, No. 12, item 114.

⁵ Ministerstwo Sprawiedliwości (2014): 169.

This justifies conducting a closer examination of the provisions criminalizing the conduct in question, with particular reference to whether those provisions relate to each other, and if so how, and where the borderline between them lies. This is particularly warranted given the recent tendency of the legislator to extend the application of criminal law norms to situations in which the social harmfulness of an act is not an essential element which justifies its classification as a crime, thereby marginalizing the significance of Petty Offences law. This can also apply to the offence specified in Article 107 CPO, in so far as social harmfulness is not taken into consideration when assessing the legal classification of a given behaviour. On the other hand, however, it must be acknowledged that, due to technological progress and ease of communication, the forms of behaviour that are referred to as stalking are increasing, as is the intensity of these activities.⁶

II. THE PETTY OFFENCE OF BULLYING

The offence described in Article 107 CPO is located in Chapter XII, entitled: ‘Offences against the Person’. The purpose of the provision is to protect ‘the person’s psychological peace, to prevent frustration, irritation and other forms of mental discomfort’.⁷ The characteristics of this act were described in a very evaluative way, because each of its elements was formulated in a vague manner – and this applies to both the purpose of the act of bullying, and the acts of malicious deception or maliciously causing anxiety. According to the *Słownik języka polskiego* [Dictionary of the Polish Language], bullying means: ‘consciously and intentionally causing someone pain; to annoy, harass, irritate, annoy; to make someone’s life harder’.⁸

The statute stipulates that the bullying must be malicious, which highlights the fact that the legislator was not focused on ordinary teasing, but rather on a kind of action that is reprehensible and unacceptable. In the common understanding of this word – and this is what should be taken into account when interpreting a prohibited act – bullying is socially acceptable when it takes the form of teasing, that is, if it occurs within customary boundaries, most often as a joke. Teasing is, for example, making fun of someone, in a way that this person finds unacceptable, but it nevertheless amuses others. However, Article 107 CPO concerns forms of behaviour that grossly exceed socially acceptable limits. Therefore, the Supreme Court rightly pointed out that ‘charging the accused with “maliciously” causing the victim’s anxiety is not identical with the characteristic of acting “with the aim of bullying”’.⁹

This position also finds justification in the text of the provision, since it is dominated by subjective characteristics, with clear emphasis on the perpe-

⁶ Siemiaszko (2010): 45–80; Mrozek, Golińska-Konecko (2015): 78.

⁷ Zbrojewska (2013).

⁸ Dunaj (1996): 184.

⁹ The Supreme Court judgment of 4 September 2013, III KK 275/13, Lex no. 1363022.

trator acting maliciously in order to cause annoyance.¹⁰ Among the objective characteristics, the legislator only refers to misleading the person or otherwise causing the person anxiety, which implies that the catalogue is open, provided that certain actions are deemed to be malicious and have been performed in order to cause annoyance. Anxiety covers various types of the perpetrator's behaviour that cause disturbance to mental well-being, by triggering annoyance, anger, distress, upset or irritability, and the causes of such behaviour may be, for example, making obscene or nuisance phone calls, and knocking on the door and running away¹¹ – in short, childish behaviour that is not appropriate for an adult. A creditor repeatedly knocking on a debtor's door and asking for a loan to be repaid does not constitute an offence, because the purpose of this action is not to annoy.¹² Paweł Daniluk points out omission can amount to maliciously causing annoyance, for example when the perpetrator is obliged to act, for example to clean the entire block of flats, but deliberately refrains from cleaning the area where the disliked victim lives, in order to make him or her angry, or when a person refuses to lower the volume of the music being played,¹³ when this is causing discomfort to others.

In the examples provided, the perpetrator will be held liable, pursuant to Articles 101, 102 and 51 § 1 CPO, or will incur administrative or civil liability on the basis of a contract. One has to agree that such offences may only be committed through the performance of acts, and not through omissions.¹⁴ Admittedly, the catalogue of disturbing behaviour is open, but from the example of deliberately misleading conduct provided by the legislator it can be concluded such offences require an executive act on the part of the perpetrator. This is the case both with regard to misleading someone, which requires conveying a certain amount of information, and with other means of causing anxiety, which can be caused by repetitive behaviour directed against the victim's mental well-being.

With regard to the petty offence stipulated in Article 107 CPO, an important issue is whether it is of a formal or substantive nature. In the doctrine, the prevailing view is that this petty offence does not have criminal consequences.¹⁵ However, one must not lose sight of the fact that the protective aim of this norm is the mental well-being of the person, and that therefore establishing that the characteristics of this petty offence have been fulfilled must, of necessity, require a violation of the person's peace of mind. Maliciously causing a person anxiety obviously requires arousing anxiety, alarm or fear.¹⁶ It is also clear that opening criminal proceedings against a perpetrator requires initiative on the part of the victim. It is difficult to imagine that the police would proceed in such cases if the act were not reported by a person who

¹⁰ Daniluk (2016): 732.

¹¹ Daniluk (2016).

¹² The Supreme Court judgment of 30 January 2013, III KK 213/12, Lex no. 1288694.

¹³ Daniluk (2016): 732–733.

¹⁴ Bojarski (2012): 175.

¹⁵ Daniluk (2016): 733; Zbrojewska (2013); Mozgawa (2009).

¹⁶ Bojarski (2016): 844.

felt aggrieved by such behaviour. Therefore, in view of the definition of a substantive petty offence – understood as causing an external effect in the world, that is, a change following the act of committing the offence¹⁷ – the creation of a state of anxiety or anger in the victim must clearly be viewed as the effect of the offence.

III. THE CRIMINAL OFFENCE OF STALKING

As was mentioned above, stalking was added to the Penal Code as a criminal offence in 2011. In a study on stalking conducted by the Ministry of Justice prior to this amendment, one in ten people of those surveyed claimed to have been a victim, with the most common forms of harassment being the spreading of rumours, unwanted contact, threats, blackmail, unsolicited e-mails and SMS messages, and obscene and nuisance phone calls.¹⁸ As to effects of these actions, the respondents claimed to have experienced serious mental disorders, fear, anxiety about leaving home, and panic attacks; and every ninth person had even had suicidal thoughts.¹⁹ The promoters of the bill, taking into account the results of the aforementioned study and an analysis of the relevant legislation of other countries, concluded that the forms of behaviour that can be classified as stalking undermine the constitutional values of freedom, dignity and honour, and that therefore it is particularly important to protect the victim by ensuring the offender does not have any contact with the victim.

The act specified in Article 190a § 1 PC is the persistent harassment of another person, which can take different forms, from telephone calls, sending text messages, invading the victim's privacy, stalking, or intruding.²⁰ The essence of persistence is 'a special psychological attitude, expressed by in relentless harassment, namely persisting in a kind of obstinacy, in spite of the requests of and warnings from the victim [...] to stop the conduct in question and, on the other hand, the extensive period of time during which the perpetrator engages in this activity'.²¹ When assessing the occurrence of persistence, it must be borne in mind that this circumstance is not uniform and must be considered in both objective and subjective terms,²² since Article 190a § 1 PC, alongside the victim's subjective perceptions, also specifies an objective criterion in the form of 'a sense of danger that is reasonable under the circumstances'. The Supreme Court rightly pointed out that: 'The subjective perception of the threat by the person should be balanced with

¹⁷ Bojarski (2012): 60.

¹⁸ Justification of the bill, print 3553, Sejm of the 6th term

¹⁹ Justification of the bill, print 3553, Sejm of the 6th term.

²⁰ Zoll (2017): 591–592.

²¹ The judgment of the Appeal Court in Wrocław of 19 February 2014, II AKa 18/14, Lex no. 1439334.

²² Staręga (2012): 194–195.

the knowledge, experience and the psychological reaction of the general public, and be made objective through approximating the sense of threat that would be felt by an average person in the circumstances in question, unless, of course, the perpetrator's actions have resulted in a specific effect'. Consequently, as the Supreme Court stated, 'activities limited to observing, filming and photographing the victims outside their property, and kept within the sphere of private documentation, thus not used to bring any measurable threat to the victims, do not fulfil the characteristics of the sense of threat outlined in Article 190a § 1 of the Penal Code. However, they may constitute a serious invasion of privacy'.²³ In another judgment, the Supreme Court also rightly noted that: 'For behaviour to be considered stalking, the harassment from the perpetrator must be persistent, and therefore consist in a tenacious and significant invasion of another person's privacy, and in inducing a reasonable sense of threat, considering the victim's circumstances. At the same time, the legislator does not require that the stalker's behaviour should consist of an element of aggression. Moreover, it is legally irrelevant, in terms of the subjective aspect of this crime, whether the perpetrator's act is caused by love, hatred, a desire to annoy the victim, malice, or a desire to take revenge'.²⁴ It is also pointed out that the persistence of an action is both subjective and objective in nature, meaning a negative form of behaviour that is repeated on numerous occasions over a specified period of time.²⁵ The legislator clearly states that the offence of stalking is effect-oriented, because in order to carry it out it is necessary for the perpetrator's action to result in a sense of threat or invasion of privacy. When assessing whether such circumstances exist, it is necessary to analyse whether an average person who is similar to the victim would have reacted in the same way in similar conditions.²⁶ On the other hand, a serious breach of privacy is objective in nature, since it is independent of the victim's feelings, which encompass two aspects, namely: deciding on one's image and conduct.²⁷

Just as with the petty offence specified in Article 107 CPO, doubts arise in the doctrine as to whether the criminal offence of stalking may be committed by omission. Marek Mozgawa expressed such a view, but he did not develop this line of thought.²⁸ Paulina Furman states that 'it is possible to imagine a situation in which someone is harassed by an unlawful state of affairs being maintained as a result of bad will, one which causes a sense of threat to the victim or violates his or her right to privacy – due to the perpetrator refraining from taking action that would end this state of affairs'.²⁹ However, this is an isolated view, the criticism of which is divided. In this regard, Andrzej Zoll's position seems apt, namely that it is difficult from the perspective of the effect

²³ The Supreme Court judgment of 29 March 2017, IV KK 413/16, Lex no. 2281268.

²⁴ The decision of the Supreme Court of 12 December 2013, III KK 417/13, Lex no. 1415121.

²⁵ Królikowski, Sakowicz (2017): 588.

²⁶ Królikowski, Sakowicz (2017): 589.

²⁷ Mozgawa (2016): 465.

²⁸ Mozgawa (2018).

²⁹ Furman (2012): 44.

of this crime, which takes the form of a sense of threat or invasion of privacy, to identify the perpetrator as the guarantor of the non-occurrence of an effect, on whom a special legal obligation of that kind would be imposed.³⁰

IV. THE ISSUE OF THE RELATIONSHIP BETWEEN BULLYING AND STALKING

The question of the relationship between the petty offence specified in Article 107 CPO and the criminal offence stipulated in Article 190a, § 1 PC has been raised in the doctrine and jurisprudence, however the considerations in this respect have usually been limited to a specific factual situation. It should be noted that this issue has not been addressed in great detail in the scholarly literature.

However, it is crucial to be able to determine whether the conduct in question should be described as a petty offence or a criminal offence, or, alternatively, as both. Since the legislator decided to regulate stalking as a separate type of prohibited act in the Penal Code, the legislator obviously considered the existing regulations on this issue to be insufficient, but also decided to leave the act described in Article 107 CPO classed as a petty offence. On the other hand, however, the doctrine adopts a very broad approach to stalking (or harassment), which encompasses emotional violence and, in principle, any unwanted interference in the person's psyche, thus there is a consensus that it is impossible to specify a closed catalogue of behaviour that can be referred to as stalking.³¹ In the explanatory memorandum to the draft bill, with regard to this issue it was pointed out that: 'persons undertaking actions which can be classed as stalking often show completely different intentions [other than the malicious aim of causing annoyance in case of an offence – J.K.], such as the desire to show adoration, admiration, or even "love", of course without taking into account real emotions or feelings of the wronged parties', and also that: 'Only within the framework of the second of these two characteristics [that is, the malicious aim of causing annoyance – TN] could we possibly speak of the person undertaking actions characteristic for the phenomenon described as stalking, but it should be noted that the offence in this form is of a formal nature and its fulfilment does not depend on the occurrence of any effect: actually misleading a person or causing the victim anxiety. It should also be emphasized that a perpetrator who maliciously disturbs another person might do so only once, whereas, as a rule, acts that are classed as stalking are usually repeated several times or many times'.

In terms of the borderline between bullying and stalking, the question arises as to whether it is possible for the perpetrator's act to fulfil the criteria of both the petty offence and the criminal offence, along the lines of an ideal

³⁰ Zoll (2017): 592.

³¹ Teleszewska (2014): 175–176.

concurrence as specified in Article 10 § 1 CPO. Zoll suggests that bullying encompasses many events that fall under the criminal offence specified in Article 190a PC, yet the characteristics of bullying are narrower than those pertaining to stalking, in terms of the social need for penalization.³² In contrast, Michał Królikowski and Andrzej Sakowicz point out that a single concurrence of a petty offence and a criminal offence is possible when the act consists of the persistent, malicious disturbance of a person which creates a sense of threat or significantly violates their privacy.³³ Mozgawa, on the other hand, points out that when the perpetrator's action bears the hallmarks of a petty offence but does not arouse a sense of threat in the victim, it is possible to consider the question of liability for attempted stalking when the perpetrator had such an intention.³⁴ Daniluk, in turn, notes that despite significant differences between the characteristics described in Article 190a § 1 PC and Article 107 CPO, in certain situations the characteristics of both these prohibited acts may be fulfilled, which, however, constitutes a negligible concurrence, on the basis of *lex consumens derogat legi consumptae*.³⁵ The above considerations lead to the conclusion that the prevailing view in this respect is that the conduct constituting bullying is absorbed by the criminal offence of stalking – and this has to be the accepted position.

Therefore, if stalking 'absorbs' bullying, then there must be a relation of incorporation between these prohibited acts. As a result, there is a negligible concurrence between the criminal offence stipulated in Article 190a § 1 PC and the petty offence under Article 107 CPO, which will exclude simultaneous liability for the criminal and petty offences. Only Królikowski allows for the possibility of the simultaneous concurrence of both these provisions, which, however, has to be rejected due to the fact that the component elements of Article 190a § 1 PC bring about more extensive effects than those of the petty offence of Article 107 CPO. The essence of stalking in such factual states is that it is characterized by a higher degree of criminal unlawfulness in comparison to a petty offence, which, as Zoll rightly points out,³⁶ justifies the position that one act 'absorbs' the features of the other act. However, as the Supreme Court pointed out: 'The ideal concurrence of a petty offence with a criminal offence referred to in Article 10 §1 of Code of Petty Offences occurs when an element defining the prohibited behaviour does not belong to the elements of the criminal offence, which makes it look as if it exceeds the elements of the criminal offence, and at the same time this element is punishable as a petty offence. In such a case, this element cannot be absorbed by the characteristics of the relevant criminal offence precisely because this element does not belong to these characteristics at all'.³⁷ As regards the possible concurrence of bullying

³² Zoll (2017): 590.

³³ Królikowski, Sakowicz (2017): 593.

³⁴ Mozgawa (2016): 464.

³⁵ Daniluk (2016): 734.

³⁶ Zoll (2013): 288.

³⁷ The *Supreme Court judgment* of 18 May 2017, IV KK 447/16, Lex no. 2306382.

with stalking, this issue needs to be clarified due to the possible overlapping of common characteristics.

However, this will only be the case if the effect of causing a threat or significant invasion of privacy is caused by bullying. It is clear that in such situations, the perpetrator must firstly not only act with the intent of directly annoying the victim, but must be aware that their conduct will inevitably upset the victim or significantly affect their privacy and, secondly, the perpetrator must desire to achieve just this aim. In this case, bullying will be a form of stalking. However, this will not constitute a perfect concurrence of the petty offence with the criminal offence, since there is no occurrence of the situation referred to above, that is, none of the elements of the act constituting stalking exceeds the characteristics of the act described in Article 190a, § 1 PC. In this case, bullying is an executive act which also constitutes persistent harassment. It is in this regard that the borderline between one prohibited act and another is relevant. There may be situations in which the perpetrator, intending to perform an act having the characteristics of the criminal offence stipulated in Article 190a § 1 PC, does not actually achieve this because their behaviour cannot objectively arouse the feeling of danger. When analysing this phenomenon, important guidelines are provided by the case-law on stalking. In particular, the case-law focuses on the duration of the perpetrator's behaviour and the manner in which they acted. Obviously, the longer the duration, and the more deeply it interferes with the privacy of the victim, the more the behaviour will be determined as stalking, rather than bullying.

It is possible, however, that the victim's susceptibility to a sense of threat will determine a different assessment of a given form of behaviour, and both personal considerations and objective criteria must be taken into account when assessing the characteristics of the act.³⁸ In the opinion to the draft bill, Mozgawa also points out that the motivation of the perpetrator will also be a criterion differentiating stalking from bullying, because 'the application of Article 107 may be considered when assessing a perpetrator who persecutes their victim because of revenge, reluctance or even hatred; whereas it will not be possible if the perpetrator was motivated by a deep (though perhaps pathological and unrequited) love for the victim'.³⁹ Also, when the perpetrator's action is clearly aimed at bullying the injured party, but the perpetrator does not predict that his or her action may lead to a significant violation of privacy and does not intend this, it is impossible to categorize their actions as stalking in such a case.⁴⁰ The legislator explicitly mentions 'harassment' in Article 190 §1 PC, which is understood as 'continuous harassment, afflicting, disturbing (something) someone; teasing someone, not giving them a moment's peace'.⁴¹

Following Dagmara Woźniakowską-Fajst, attention should be paid to the English-language pedigree of the colloquial definition of the crime described

³⁸ Szęlegiewicz (2013): 67–68.

³⁹ Mozgawa (2010): 4.

⁴⁰ Szczucki (2013): 25.

⁴¹ Dubisz (2003): 1095.

in Article 190a § 1 PC, namely that the term ‘stalking’ derives from the verb ‘stalk’, meaning: ‘to follow a person or animal quietly in order to catch and attack or kill them’.⁴² In English legal terminology, stalking is defined as: ‘A form of harassment generally comprised of repeated persistent following with no legitimate reason and with the intention of harming, or so as to arouse anxiety or fear of harm in the person being followed’⁴³ or ‘The offense of following or loitering near another, often surreptitiously, with the purpose of annoying or harassing that person’.⁴⁴ These definitions are narrower than the Polish regulation of this crime, which consists of the two vague concepts of ‘persistence’ and ‘harassment’, with the latter element of the definition constituting the executive act, which indicates the manner in which the perpetrator acts. This entails that stalking is a qualified form of harassment, at least in one of its forms, because harassment can be committed not only by teasing or bullying. Even before the 2011 amendment had been passed, Woźniakowska-Fajst pointed out that the provision of Article 107 CPO could apply to legally ‘indifferent’ forms of stalking activity that have a slightly different purpose from classically understood stalking.⁴⁵ Therefore, she views harassment as a mild form of stalking, which can be accepted, but as long as this is taken to mean stalking in a broad sense, detached from the understanding expressed in the Code. From this it follows that in the Polish legal order, forms of behaviour corresponding to stalking were broken down into two prohibited acts within a specific category of divided acts, while the value underlying this division is the intensity of the perpetrator’s act and the extent of the effects caused. It is worth noting that, for example, German legislation clearly indicates when the perpetrator’s behaviour is punishable: the German Penal Code stipulates that this behaviour must last for at least 1 month and include at least 10 instances of this behaviour on the part of the perpetrator.⁴⁶

In practice, it should be noted that the criteria of bullying and persistent harassment can be fulfilled by the same acts. These often take the form of unwanted text messages and telephone calls. In such cases, in addition to the issue of their duration and effect constituting a threat or a breach of privacy, the content of these messages will undoubtedly be crucial. While in the case of stalking, especially over time, messages or other forms of contact that are relatively mild take on an aggressive form, with the frequent use threats, accusations, or insults, the situation is somewhat different with bullying. Generally speaking, therefore, it can be said that between the petty offence of Article 107 CPO and the criminal offence specified in Article 190 § 1 PC there is an area of crossover, because the characteristics of both these acts can be instantiated in the same way, to some extent. In this common area, stalking constitutes a qualified form of bullying, and it absorbs the instantiation of

⁴² Woźniakowska-Fajst (2009b): 175; Longman Dictionary of Contemporary English (1995): 1395.

⁴³ Wild (2006): 243.

⁴⁴ Garner (2004): 1440.

⁴⁵ Woźniakowska-Fajst (2009a): 28–29.

⁴⁶ Zob. Woźniakowska-Fajst (2013): 195.

the petty offence on the basis of a negligible concurrence, without the need to refer to the construction of Article 10 § 1 CPO. One cannot ignore the fact that Article 107 CPO also specifies the characteristic of misleading a person, which is not a feature of the category of stalking, while not all forms of persistent harassment will constitute the intention to maliciously cause anxiety, such as, for example, spreading rumours about the victim among other people.

V. BULLYING AND OTHER TYPES OF PROHIBITED ACTS

On the basis of the Penal Code, forms of behaviour that fulfil the criteria of the petty offence specified in Article 107 CPO may also be the referents of other offences than stalking. It should be noted that until the provisions specifying the crime of stalking came into force in 2011, the forms of behaviour referred to in these provisions had mainly been treated as fitting within the categories associated with the crime of maltreatment. However, it should be borne in mind that maltreatment can only be committed against an immediate family member or another person being in a permanent or temporary relation of dependence to the perpetrator (Article 207 § 1 PC), or against a person who is helpless due to this person's age, mental or physical condition (Article 207 § 1a PC). With regard to the possible concurrence of bullying and stalking, the form of psychological harassment will be crucial. The essence of this crime is 'systematic repetition of behaviour consisting of single or multiple individual acts affecting different goods, for example the integrity of the body, personal dignity'.⁴⁷ Psychological harassment is constituted by psychological abuse, for example, by insulting, ridiculing, scaring and humiliating, which is associated with inflicting severe mental pain on the victim.⁴⁸ *Prima facie* there are no elements of harassment or bullying in such executive acts, although these prohibited acts are directed against the mental well-being of the victim. The Supreme Court expressed this in a decision of 23 August 2017, in which it stated that: 'bringing strange women to a common home, who stay there for the night, can be regarded as a specific form of bullying for wives and daughters'.⁴⁹ Without going into the details of the facts underlying the decision in this case, it should be added that the Court aptly articulated its justification of its position that such actions of the perpetrator 'can be considered as a form of special bullying for the victims'. Consequently, it can be concluded that bullying, or maliciously causing anxiety, can be classed as a form psychological harassment, if it is associated with the abuse of the victim, and is characterized by a much greater intensity of action, and at the same time the perpetrator acts not only in order to bully, but also at least by accepting the fact that their actions will cause the victim mental pain, humiliation or harm.

⁴⁷ Jodłowski, Szewczyk (2017): 861.

⁴⁸ Jodłowski, Szewczyk (2017): 861.

⁴⁹ The decision of the Supreme Court of 2 August 2017, II KK 133/17, Lex no. 2342157.

The view expressed by Marek Bojarski also needs to be highlighted:⁵⁰ he recalls the judgment of the District Court in Ruda Śląska, which stated that: ‘Utterances such as “look after your brats better”, “put bars on the windows of the house”, “I’ll soon put you in prison”, “I’ll show you, I’ll sort you out”, or “I’ll knock you off the stool”, do not express anything specific, constitute an indefinite threat and can only be assessed as causing anxiety, which implies the acceptance of the characteristics specified in Article 107 of the Code of Petty Offences. The use of the aforementioned utterances was undoubtedly aimed at bullying the victim, and the behaviour of the accused was malicious’.⁵¹ This position leads to the conclusion that the concurrence of the petty offence stipulated in Article 107 CPO with the criminal offence specified in Article 190a § 1 PC is possible in situations where the offense takes the form of making unlawful threats. It seems that the boundary between the petty offence and the criminal offence will be determined by how real these threats actually are, and by their intensity. In this case, the essence of the petty offence would be the groundlessness of those threats, which cannot give rise to a reasonable sense of danger and which have been uttered more than once. If it were an event that was completely unique, it would be difficult to talk about the perpetrator causing disturbance to the victim’s mental well-being.

VI. CONCLUSION

Summing up the above considerations, it can be concluded that an act that fulfils the criteria of the petty offence under Article 107 CPO may also constitute criminal behaviour under the Penal Code, in particular stalking (Article 190a § 1 PC), but also maltreatment (Article 207 § 1 PC). At the same time, it cannot be ruled out that on the basis of other crimes the characteristics of the petty offence of bullying may be absorbed within the characteristics of a criminal offence. With this in mind, it should be assumed that, first of all, in order to determine whether a given form of behaviour should be classified as a petty offence or a criminal offence, it is necessary to determine whether it also involves other elements of the crime apart from the executive act, provided that other elements also need to be fulfilled for the recognition of a given prohibited act. Another issue related to this – since it is necessary to determine the degree of intensity of the perpetrator’s impact on the mental well-being of the victim – of whether, in addition to being malicious, the perpetrator’s behaviour causes the victim psychological torment, or another type of mental discomfort.

Generally, it should be assumed that the crime of stalking constitutes a qualified form of bullying if the malicious act of the perpetrator is accompa-

⁵⁰ Bojarski (2016): 843.

⁵¹ The judgment of the Regional Court in Środa Śląska of 17 December 2013, II K 84/13, *Legalis* no. 924725.

nied by a violation of the victim's privacy or causes them anxiety. However, not every executive act of bullying will coincide with the linguistic specifications of the offence of stalking, therefore it should be assumed that between the features of both of these prohibited acts there will be a relationship of crossover, because an act which fits within the relatively wide range of behaviour fulfilling the characteristics of the petty offence may also constitute a criminal offence under Article 190a § 1 PC. This scope also intersects with regard to the criminal offence of maltreatment, however, due to the different protective aim behind this provision of criminal law, the scope seems to be much smaller. In the case of other possible concurrences of this petty offence with criminal offences, this scope will be further reduced.

Jan Kluza

Jagiellonian University in Kraków

jan.kluza@student.uj.edu.pl

<https://orcid.org/0000-0002-0929-6093>

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THE BORDERLINE BETWEEN BULLYING AND STALKING, AND OTHER TYPES OF OFFENCES

Summary

The article presents issues associated with determining the relationship between the petty offences specified in Article 107 of the Code of Petty Offences and the criminal offence of stalking from Article 190a § 1 of the Penal Code, and other types of crimes characterized by the violation of the psychological well-being of the victim. These acts intersect each other, and the borderline between them is determined primarily by the intensity of the perpetrator's actions.

Keywords: harassment; malice; stalking; bullying

