

mechanism will become available, which does not solve systemic problem and only places emphasis to the satisfaction granted to the victims of human right violations.

Literature

1. Democracy Index Georgia, Group of Independent Lawyers, Problem of Case Delay in Georgian Courts, 2023, https://democracyindex.ge/uploads_script/studies/tmp/phpB8XAL1.pdf (last accessed 03.02.2024)
2. ECHR Judgment - Schrader v. Georgia, March 11, 2021, complaint N15016/07
3. European Court of Human Rights, Guide on Article 13 of the European Convention on Human Rights Right to an effective remedy, 2022. https://www.echr.coe.int/documents/d/echr/guide_art_13_eng (last accessed 03.02.2024)

UDC 343(043.2)

Wala Krzysztof, PhD, Assistant Professor
at the Department of Criminal Law and Criminology,
Maria Curie-Skłodowska University in Lublin, Poland

CRIMINAL LIABILITY FOR PUBLIC INCITEMENT OR PRAISE TO COMMIT A CRIME IN POLISH CRIMINAL LAW

The offence of public incitement or praise to commit a crime is regulated by Article 255 of the Polish Criminal Code. Paragraph 1 specifies public incitement to commit a misdemeanour, paragraph 2 specifies public provocation to commit a felony and paragraph 3 specifies public praise to commit a crime (misdemeanour or felony). At the outset, it should be noted that only Article 255 of the Penal Code will be analysed. It should be emphasised that public incitement or praising of certain offences against peace, humanity and war crimes are separately penalised (Article 117 § 2, Article 126a of the Criminal Code) and constitute qualified types in relation to the generic types of offences under Article 255 of the Criminal Code (the qualifying circumstance in these cases is thus the type of offence to which the perpetrator publicly incites or publicly praises, while the penalty provides for imprisonment from 3 months to 5 years).

It should also be added that public incitement or praising the commission of an offence has the nature of an overpronounced act, which means that in some cases it constitutes a petty offence stipulated in Article 52a of the Code of Petty Offences, where the overpronouncing circumstance is the extent of the act or the effects of the perpetrator's behaviour, which for the existence of an offence cannot be significant. This issue, for voluminous reasons, is only signalled. It is aptly pointed out in the doctrine of criminal law that the

assessment of these elements will be influenced by many factors, such as the place and time of the act, the number of persons who are the recipients of the offender's behaviour, their reaction to the offender's actions, his behaviour at the time of the act and immediately thereafter, such assessment having to be made in concreto and not in the abstract [8, thesis 10].

Object of protection. The offence under Article 255 of the Criminal Code is located in Chapter XXXII of the Criminal Code entitled "Offences against Public Order". It is aptly pointed out in the doctrine of criminal law that incitement to commit an offence or praising it leads to anarchy in public life and thus poses a threat to the functioning of society, to the foundations on which the rule of law is based [1, thesis 4]. It must be added, however, that behaviour of this type may also threaten those legal goods which are harmed by offences which the perpetrator publicly incites to or publicly praises. It has been aptly noted in Polish jurisprudence, against the background of a factual situation involving public praise of the burning of the cottages where people of Roma origin lived, that the perpetrator, by committing this behaviour, also harmed property and human health and life [2].

Subject side. At the outset it should be noted that under Article 255 of the Criminal Code, public incitement to commit a criminal offence (in the case of incitement to a misdemeanour or fiscal offence, Article 255 § 1 of the Criminal Code is involved, and in the case of incitement to a felony, Article 255 § 2 of the Criminal Code), as well as public praise of the commission of a criminal offence (Article 255 § 3 of the Criminal Code) are criminalised. Crimes in the Polish legal system are divided into felonies and misdemeanours. A felony is a prohibited act punishable by imprisonment for a term of at least 3 years or by a more severe punishment (Article 7 § 2 of the Criminal Code), while a misdemeanour is a prohibited act punishable by a fine of more than 30 daily rates or more than PLN 5,000, a restriction of liberty penalty exceeding one month or a deprivation of liberty penalty exceeding one month (Article 7 § 3 of the Criminal Code). In addition, there are also so-called fiscal criminal offences (fiscal offences and fiscal petty offences). A fiscal offence is an act prohibited by the Fiscal Criminal Code under penalty of a daily fine, restriction of liberty or imprisonment (Art. 53 § 2 of the Fiscal Criminal Code). A fiscal petty offence is an act prohibited by the Code under the threat of a fine determined by an amount, if the amount of the public law receivable evaded or exposed to evasion or the value of the object of the act does not exceed five times the amount of the minimum remuneration at the time of its commission. Another offence is also a fiscal petty offence if the Code so provides (Article 53 § 3 of the Fiscal Criminal Code). Thus, outside the sphere of application of Article 255 of the Criminal Code is public incitement to or praise of the commission of an petty offence (including fiscal petty offences), as in the Polish legal system petty offences do not fall within the scope of the notion of "crime", constituting

a separate category of prohibited acts. Public incitement to commit an petty offence (including a fiscal petty offence) is therefore, as a rule, outside the scope of criminalisation (unless, due to the form of the perpetrator's behaviour, it would realise the elements of a prohibited act other than that codified in Article 255 of the Criminal Code - e.g. Article 51 of the Code of Petty Crimes, if the manner of such incitement violated e.g. public order, public peace or rest at night, and the behaviour would be qualified as a prank, which cannot be excluded).

"Incitement" is to be understood as encouraging, inciting, inducing the will to commit a crime. It is aptly pointed out that incitement does not have to take place in some solemn, ceremonial form, nor does it have to be accompanied by legal or ethical, national or party motives for which to submit to incitement [3, p. 15]. Incitement differs in this respect from the construction of abetting as a phenomenal form of committing a criminal act in that it is not directed at a specific person or a concretised group of persons, but at a certain group of unspecified persons and often even unknown to the perpetrator [4, thesis 3].

As far as "praise" is concerned, it is to be understood as any statement in which the offender glorifies, praises, deems the offence worthy of imitation or justification, whereby praise may refer to an already committed offence, but also to an unprosecuted offence or even an unattempted offence [4, thesis 5]. The form of the praise is irrelevant, it is only important that it is apparent from the offender's behaviour that the commission of the offence is right and deserves a positive assessment or approval [3, p. 17]. It is aptly pointed out in the doctrine that praise may be expressed directly or indirectly, e.g. by glorifying the perpetrator of a particular offence for having committed it [3, p. 17]. It should be emphasised that in the case of praising a crime, whether it is a felony or a misdemeanour, the perpetrator's behaviour is qualified under Article 255 § 3 of the Criminal Code, and thus, in contrast to incitement to commit a crime, the legislator does not differentiate criminal liability in this respect from the status of the praised crime. It is argued in the doctrine that praising a fiscal offence does not realise the elements of the offence under Article 255 § 3 of the Criminal Code, as the elements use the term "offence" to the exclusion of the term "fiscal offence", which, as is aptly pointed out, demonstrates the inconsistency of the legislator [4, thesis 5].

For the fulfilment of the elements of the generic types of offences under Article 255 of the Criminal Code, it is necessary that the incitement or praise of the offence is public. It can be assumed that a public action occurs when it is or can be perceived by a larger number of persons, whereby the possibility of being perceived by other persons must be objective and real, and its assessment consists jointly of circumstances related to the place, time and manner of behaviour of the perpetrator [5, pp. 133-134].

All the generic types of offences set out in Article 255 of the Criminal Code are formal in nature, i.e. no result is necessary for their fulfilment [6, thesis 10]. They can only be committed in the form of an action.

Subject of the offence. All the generic types of offences set out in Article 255 of the Criminal Code are common offences, which means that their perpetrator may be any person capable of bearing criminal responsibility.

Subjective side. Each of the offences in question is intentional in nature and can only be committed in the form of direct intent (*dolus directus*). In the context of incitement, it has rightly been pointed out in jurisprudence that this is due to the fact that incitement amounts to influencing the psyche of other, unspecified persons by calling on them or encouraging them in various ways to commit an offence, which determines precisely the need for direct intent [7].

Statutory threat of punishment. The offence of public incitement to commit a misdemeanour or fiscal offence is punishable by a fine, restriction of liberty or imprisonment for up to 2 years (Article 255 § 1 of the Criminal Code). In the case of public incitement to commit a felony, the legislator provides for a penalty of imprisonment of up to 3 years (Article 255 § 2 of the Criminal Code), while in the case of public praise of the commission of a crime, the sanction includes a fine of up to 180 daily rates, restriction of liberty or imprisonment of up to 1 year. All the generic types of offences under Article 255 of the Criminal Code thus have the status of misdemeanours, while the statutory threat of punishment indicates a rather low - in the legislator's general assessment - degree of their social harmfulness. In the event of conviction, it is also possible to apply penal measures. As it seems, the measures that may come into play include a ban on practising a profession (when the perpetrator has committed an offence in connection with practising a profession - e.g. a journalist inciting listeners during a broadcast to commit a crime) or a ban on entering mass events (e.g. when the perpetrator, during a football match being a mass event, through a megaphone incites other supporters to clash with the police). The application of a penal measure in the form of publicising the sentence cannot be excluded either, if the court deems it appropriate in view of the social impact of the conviction.

Statistics. The police statistics on offences found under Article 255 of the Criminal Code are quite interesting (it covers a total of three generic types of offences under Article 255 of the Criminal Code). While initially (between 1999 and 2009) this number was basically negligible (from 1 to 16 offences ascertained annually), in the following years it increased slightly, however it was still not significant as it remained at the level of several dozen offences ascertained annually (the highest number in 2018 - 57 offences ascertained). Quite a significant increase occurred in 2019 when 169 such offences were ascertained, which is quite a sharp increase compared to previous years. The year 2020 sees a drop in this number to 128, which is still well above the

average of previous years [9]. As far as final convictions are concerned, they are dominated by fines, but there are also convictions for restriction of liberty or even imprisonment. For example, in 2020, there were 8 final convictions under Article 255 § 1 of the Criminal Code (in 6 cases it was a fine, and in 2 cases it was a restriction of liberty sentence), 23 final convictions under Article 255 § 2 of the Criminal Code (in 12 cases it was a fine, in 6 cases it was a restriction of liberty penalty, and in 5 cases it was imprisonment, in 4 cases with suspended sentence) and 6 final convictions under Article 255, § 3 of the Criminal Code (in 4 cases it was a fine, in 1 - restriction of liberty penalty and in 1 - imprisonment penalty with conditional suspension of its execution) [10].

Conclusion. The legitimacy of the criminalisation of public incitement or praising the commission of a crime does not raise any doubts, as such behaviour may result (indirectly) in the actual commission of such a crime by a person or may be an encouragement for further criminal activity, and thus not only pose a threat to public order, but also constitutes an abstract exposure to danger of legal goods affected by the type of crime publicly incited to or praised by the perpetrator. The statutory form of offences under Article 255 of the Criminal Code does not raise major doubts, while quite significant doubts are raised by the catching criterion in the form of the extent or consequences of the offence, which cannot be significant for the adoption of legal qualification under Article 52a of the Code of Petty Offences. A certain shortcoming is also the lack of criminalisation of public praise of a fiscal offence. On the other hand, it does not seem reasonable to possibly extend the sphere of criminalisation also to public incitement or praise of the commission of an petty offence.

Literature

1. Ćwiakalski Z. [w:] Kodeks karny. Część szczególna. Tom II. Część II. Komentarz do art. art. 212-277d, red. W. Wróbel, A. Zoll, Warszawa 2017, art. 255.
2. Wyrok SA we Wrocławiu z 12.06.2014 r., II AKa 149/14, LEX nr 1489200.
3. Stefański R.A. Przestępstwo publicznego nawoływania do popełnienia przestępstwa (art. 255 k.k.), Prokuratura i Prawo 2006, nr 1.
4. Mozgawa M. [w:] M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik, M. Mozgawa, Kodeks karny. Komentarz aktualizowany, LEX/el. 2024, art. 255.
5. Wala K. Wykroczenie nieobyczajnego wybryku na tle pozostałych wykroczeń przeciwko obyczajności publicznej, Warszawa 2019.
6. Gruszecka D. [w:] Kodeks karny. Część szczególna. Komentarz, red. J. Giezek, Warszawa 2021, art. 255.
7. Wyrok SN z 17.03.1999 r., IV KKN 464/98, LEX nr 1400159.
8. Mozgawa M. [w:] M. Budyn-Kulik, P. Kozłowska-Kalisz, M. Kulik, M. Mozgawa, Kodeks wykroczeń. Komentarz, wyd. II, Warszawa 2009, art. 52(a).
9. Nawoływanie do przestępstwa (art. 255). URL: <https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-13/63612>, Nawolywanie-do-przestepstwa-art-255.html

UDC 343.222+ 343.3/.7 (043.2)

Poniatowski Piotr, PhD., Assistant Professor
at the Department of Criminal Law and Criminology,
Maria Curie-Skłodowska University in Lublin, Poland

CRIMINAL LIABILITY FOR UNINTENDED CONSEQUENCES OF A CRIMINAL ACT IN THE POLISH PENAL CODE

The Polish Penal Code of 1997 [1] provides in the special part for types of offences which are punished more severely (compared to the so-called basic types, where the statutory penal threat reflects the average degree of social harmfulness of a given type of behaviour) due to the consequences of the prohibited act unintended by the perpetrator. This consequence is a change in the external world that results from the prohibited act committed by the perpetrator (the so-called initial act) [2, p. 9; 3, p. 102]. The consequence must be causally linked to the “initial act” and must be objectively imputable to the perpetrator of that act [4, p. 122].

The “initial act” is an act prohibited as a criminal offence within the meaning of the Polish Penal Code [4, p. 126] (in Polish criminal law *sensu largo* prohibited acts under penalty include, in addition to criminal offences, petty offences, fiscal offences and fiscal petty offences). The prohibited act from which the consequence arises may have the character of a so-called formal offence (i.e. one whose statutory feature is not an effect and whose commission depends on the perpetrator’s undertaking a specific behaviour) or a so-called material (effect) offence (i.e. one whose statutory features include an effect whose occurrence determines the completion of the offence. The “initial act” may be committed intentionally (with intent – Article 9 § 1 of the PC) or unintentionally (Article 9 § 2 of the PC).

According to Article 9 § 3 of the PC, the perpetrator is subject to aggravated liability, which the law makes dependent on a specific consequence of the prohibited act, if he foresaw or could have foreseen this consequence. The phrase: “foresaw or could have foreseen” is also used in Article 9 § 2 of the PC, which indicates when a prohibited act is committed unintentionally. Accordingly, the majority of representatives of the doctrine of Polish criminal law assume that the consequences referred to in Article 9 § 3 of the PC must be unintended. Therefore, it is pointed out that Article 9 § 3 of the PC refers to intentional-unintentional and unintentional-unintentional offences (scheme: “initial act” – consequence). However, it should be emphasised that the Penal