

The crime of robbery in Polish criminal law -selected issues

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September 7, 2023

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1. Introductory remarks

According to Article 280 § 1 KK [Kodeks Karny – Polish Penal Code, Act of 6 June 1997] who steals by using violence against a person or by threatening to use it immediately or making a person unconscious or defenseless, is punishable by imprisonment from 2 up to 12 years¹.

The crime of robbery referred to in Article 280 KK is equivalent to the crime described in Article 210² of the old Polish Penal Code from 1969. This type of offense belongs to the group of crimes against property. The crime of robbery was included as the basic type (Article 280 § 1 KK) and as the qualified type (Article 280 § 2 KK)³. Pursuant to Article 280 § 2 KK if the perpetrator of the robbery uses a firearm, knife or other similarly dangerous object or incapacitating agent or acts in any other way that directly threatens life or acts jointly with another person who uses such a weapon, object, means or method, is punishable by imprisonment for a period not shorter than 3 years⁴. The use of these

1 Art. 280 § 1:

„Kto kradnie, używając przemocy wobec osoby lub grożąc natychmiastowym jej użyciem albo doprowadzając człowieka do stanu nieprzytomności lub bezbronności, podlega karze pozbawienia wolności od lat 2 do 12”.

2 Art. 210:

„§ 1. Kto zabiera w celu przywłaszczenia mienie, używając lub grożąc natychmiastowym użyciem gwałtu na osobie albo doprowadzając człowieka do stanu nieprzytomności lub bezbronności, podlega karze pozbawienia wolności na czas nie krótszy od lat 3.

§ 1(1). W wypadku mniejszej wagi sprawca podlega karze pozbawienia wolności od 6 miesięcy do lat 5.

§ 2. Jeżeli sprawca rozboju posługuje się bronią palną lub innym niebezpiecznym narzędziem albo działa wspólnie z osobą, która posługuje się taką bronią lub takim narzędziem, podlega karze pozbawienia wolności na czas nie krótszy od lat 5 albo karze śmierci”.

3 I. Zgoliński, Art. 280 KK, *Komentarz*, LEX 2020; M. Dąbrowska-Kardas, P. Kardas, Art. 280 KK, *Komentarz*, LEX 2022.

4 Art. 280 § 2:

„Jeżeli sprawca rozboju posługuje się bronią palną, nożem lub innym podobnie niebezpiecznym

items and acting in a life-threatening manner or jointly with another person undertaking such behavior is a premise that determines so-called qualified robbery⁵.

2. Basic robbery

The active subject of the crime of robbery may be any natural person capable of bearing criminal liability⁶. According to the judgement of the Court of Appeal in Wrocław of 13 March 2019, the object of protection are ownership, possession, limited property rights and obligatory rights to things. Objects of protection are also personal rights such as life, health, freedom and inviolability⁷. In the judgement of 22 February 1996 the Court of Appeal in Katowice stated that in the case of a robbery, there are two objects of protection: the person and property⁸.

It should be recognized that the right to things constitutes so-called main object of protection. The minor object of protection are personal rights⁹. Robbery is a qualified form of theft. Its features include all the elements of theft, and it is distinguished from it by additional actions of the perpetrator towards the victim or another person¹⁰. An attack on a person is only means to achieve the goal of taking things for the purpose of appropriation. The perpetrator uses violence or threatens to use violence against a person in order to unlawfully take possession of an item and appropriate it. This must take place before or at the latest during the taking of the goods¹¹. Pursuant to the judgement of the Court of Appeal in Warszawa of 31 January 2022, if the perpetrator acts in the manner specified in Article 280 § 1 KK, only after taking the goods, the perpetrator is not responsible for the robbery¹². In the judgement of 21 March 2019 the Court of Appeal in Szczecin also stated

przedmiotem lub środkiem obezwładniającym albo działa w inny sposób bezpośrednio zagrażający życiu lub wspólnie z inną osobą, która posługuje się taką bronią, przedmiotem, środkiem lub sposobem, podlega karze pozbawienia wolności na czas nie krótszy od lat 3”.

5 G. Łabuda, *Art. 280 KK, Komentarz*, LEX 2021; I. Zgoliński, *op. cit.*

6 G. Łabuda, *op. cit.*; M. Kulik, *Art. 280 KK, Komentarz*, LEX 2022.

7 Court of Appeal in Wrocław, 13 March 2019, II AKa 429/18.

8 Court of Appeal in Katowice, 22 February 1996, II AKr 385/95.

9 T. Tyburcy, *Z problematyki rozboju. „Przemoc wobec osoby” (art. 280 § 1 k.k.) a „gwałt na osobie” (art. 130 § 3 k.w.)*, *Studia Prawnicze. Rozprawy i Materiały*, 1 (22), 2018, p. 81; M. Dąbrowska-Kardas, P. Kardas, *op. cit.*

10 M. Dąbrowska-Kardas, P. Kardas, *op. cit.*

11 M. Dąbrowska-Kardas, P. Kardas, *op. cit.*; S. Gąsior, A. Klimas, *Wymuszenie rozbójnicze i rozbój – analiza znamion czynów zabronionych na tle statystyk sądowych*, *Probacja*, 4, 2018, p. 155; M. Woiński, *Przestępstwo z art. 257 k.k.*, *Instytut Wymiaru Sprawiedliwości*, Warszawa 2011, p. 20; I. Zgoliński, *op. cit.*

12 Court of Appeal in Warszawa, 31 January 2022, II AKa 19/21.

that this must take place before or during the taking of the goods¹³. Pursuant to the judgement of the Court of Appeal in Białystok of 14 February 2018, there must be a close connection between an attack on a person and an attack on property¹⁴.

The crime of theft is defined in Article 278 KK¹⁵. According to Article 278 § 1 KK who takes away someone else's thing for the purpose of appropriation, is punishable by imprisonment from 3 months to 5 years. In the same way as in the case of theft, the perpetrator of robbery deprives the person who has control over a thing and he takes control over the thing¹⁶. A thing - as an object of property, possession or other rights protected by Article 280 § 1 KK - should be understood in terms of civil law¹⁷. The definition of a thing is contained in Article 45 KC [Kodeks Cywilny – Polish Civil Code, Act of 23 April 1964]¹⁸. This definition of a thing is supplemented by the definition contained in Article 115 § 9 KK. Within the meaning of Article 115 § 9 KK, Polish or foreign money or other means of payment are also things¹⁹. The concept of a thing in criminal law is a broader concept than in civil law²⁰. As indicated by I. Zgoliński, information cannot be the object of robbery²¹.

In the judgement of 23 November 2018 the Court of Appeal in Gdańsk confirmed that robbery is a type of theft²². Robbery applies to all forms of theft as defined in Article 278 KK²³. Removal for appropriation is both picking up the item from the aggrieved party

13 Court of Appeal in Szczecin, 21 March 2019, II AKa 273/18.

14 Court of Appeal in Białystok, 14 February 2018, II AKa 232/17.

15 Art. 278:

„§ 1. Kto zabiera w celu przywłaszczenia cudzą rzecz ruchomą, podlega karze pozbawienia wolności od 3 miesięcy do lat 5.

§ 2. Tej samej karze podlega, kto bez zgody osoby uprawnionej uzyskuje cudzy program komputerowy w celu osiągnięcia korzyści majątkowej.

§ 3. W wypadku mniejszej wagi, sprawca podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do roku.

§ 4. Jeżeli kradzież popełniono na szkodę osoby najbliższej, ściganie następuje na wniosek pokrzywdzonego.

§ 5. Przepisy § 1, 3 i 4 stosuje się odpowiednio do kradzieży energii lub karty uprawniającej do podjęcia pieniędzy z automatu bankowego”.

16 M. Dąbrowska-Kardas, P. Kardas, *op. cit.*

17 I. Zgoliński, *op. cit.*

18 Art. 45:

„Rzeczami w rozumieniu niniejszego kodeksu są tylko przedmioty materialne”.

19 Art. 115 § 9:

„Rzeczą ruchomą lub przedmiotem jest także polski albo obcy pieniądz lub inny środek płatniczy, środek pieniężny zapisany na rachunku oraz dokument uprawniający do otrzymania sumy pieniężnej albo zawierający obowiązek wypłaty kapitału, odsetek, udziału w zyskach, albo stwierdzenie uczestnictwa w spółce”.

20 M. Dąbrowska-Kardas, P. Kardas, *op. cit.*

21 I. Zgoliński, *op. cit.*

22 Court of Appeal in Gdańsk, 23 November 2018, II AKa 315/18.

23 M. Dąbrowska-Kardas, P. Kardas, *op. cit.*

by the perpetrator himself and picking it up from the aggrieved party who under the influence of threat gives the perpetrator the thing. Tearing the item out of the hands of the aggrieved party does not bear the characteristics of using violence against the person, as long as the behavior of the perpetrator does not violate the physical integrity of the victim²⁴. The Supreme Court expressed the analogous view in the judgement of 16 July 2002²⁵.

Due to the exhaustive enumeration of the behavior of the perpetrator leading to taking the possession of an item, any other course of action not mentioned in the provisions of Article 280 § 1 KK, is not sufficient to qualify it as robbery under Article 280 § 1 KK²⁶.

Article 280 § 1 KK includes the concept of violence. The violence must be used against the person, not against the thing²⁷. It is about so-called direct violence, i.e. violence directly affecting the person. The phrase “using violence against a person” should be interpreted broadly. It could be physical violence against the human body. It could be also physical force on the decision-making processes of the victim. The purpose is to force the victim to make a decision, expected by the perpetrator. Violation of bodily integrity can be considered a use of violence against a person²⁸. The Court of Appeal in Wrocław expressed the same view in the judgement of 30 September 2015²⁹. The violence does not have to be used directly against the victim³⁰. The purpose of the violence, however, must be to influence the person who has control over the thing, and thus the victim. The perpetrator may, inter alia, take action against the property security guard³¹.

The threat referred to in Article 280 § 1 KK must be directed at the immediate use of violence against a person, not necessarily against the victim³². The threat of immediate use of violence is so-called unlawful threat referred to in Article 115 § 12 KK³³. As indicated

24 G. Łabuda, *op. cit.*

25 Supreme Court, 16 July 2002, III KKN 329/01.

26 M. Dąbrowska-Kardas, P. Kardas, *op. cit.*

27 *Ibidem*.

28 G. Łabuda, *op. cit.*; M. Dąbrowska-Kardas, P. Kardas, *op. cit.*; M. Kulik, *op. cit.*

29 Court of Appeal in Wrocław, 30 September 2015, II AKa 214/15.

30 I. Zgoliński, *op. cit.*; E. M. Guzik-Makaruk, E. W. Pływaczewski, *Art. 280 KK, Komentarz*, LEX 2016; A. Bulandra, *Kierunki racjonalnej polityki zapobiegania przestępstwom z użyciem przemocy*, s. 194 https://ruj.uj.edu.pl/xmlui/bitstream/handle/item/41476/bulandra_kierunki_racjonalnej_polityki_zapobiegania_przestepstwom_2010.pdf [access: 7 October 2022].

31 M. Dąbrowska-Kardas, P. Kardas, *op. cit.*

32 G. Łabuda, *op. cit.*

33 Art. 115 § 12:

„Groźbą bezprawną jest zarówno groźba, o której mowa w art. 190, jak i groźba spowodowania postępowania karnego lub innego postępowania, w którym może zostać nałożona administracyjna kara

by M. Dąbrowska-Kardas and P. Kardas, the threat of Article 280 § 1 KK has to meet the characteristics of a punishable threat referred to in Article 190 KK³⁴. The threat must give the victim a well-founded fear that it will be fulfilled³⁵. The Court of Appeal in Wrocław expressed the same view in the judgement of 10 March 2015³⁶. The form of expressing the threat is not specified in Article 280 KK, so it does not have to be pronounced verbally by the perpetrator. It is sufficient that the threat results from the behavior of the perpetrator³⁷.

The state of unconsciousness referred to in Article 280 § 1 KK consists in a complete or significant limitation of perception of the outside world. The unconscious victim is deprived of the possibility of counteracting criminal activities³⁸. Causing a state of unconsciousness may consist, for example, drugging the victim or putting him to sleep. Making a person unconscious, within the meaning of Article 280 § 1 KK, is behavior that does not involve the use of violence against a person³⁹. The Court of Appeal in Kraków expressed the same view in the judgement of 26 March 1991⁴⁰. Making a person unconscious **is** also behavior that does not involve the use of a threat against the victim⁴¹. In the judgement of 7 April 1994 the Court of Appeal in Katowice stated that unconsciousness must be caused by the perpetrator as a consequence of his actions⁴².

The defenselessness referred to in Article 280 § 1 KK is a situation in which the victim is unable to resist due to lack of strength or freedom of movement. The state of defenselessness differs from the state of unconsciousness. Defenseless person has the ability to perceive the reality and is aware. Thus, all unconsciousness is defenselessness, but not all defenselessness is unconsciousness. The behavior of the perpetrator, who makes a person defenseless, does not have to involve the use of violence against a

pieniężna, jak również rozgłoszenia wiadomości uwłaczającej czci zagrożonego lub jego osoby najbliższej; nie stanowi groźby zapowiedź spowodowania postępowania karnego lub innego postępowania, w którym może zostać nałożona administracyjna kara pieniężna, jeżeli ma ona jedynie na celu ochronę prawa naruszonego przestępstwem lub zachowaniem zagrożonym administracyjną karą pieniężną”.

34 Art. 190:

„§ 1. Kto grozi innej osobie popełnieniem przestępstwa na jej szkodę lub szkodę osoby najbliższej, jeżeli groźba wzbudza w zagrożonym uzasadnioną obawę, że będzie spełniona, podlega grzywnie, karze ograniczenia wolności albo pozbawienia wolności do lat 2.

§ 2. Ściganie następuje na wniosek pokrzywdzonego”.

35 M. Dąbrowska-Kardas, P. Kardas, *op. cit.*

36 Court of Appeal in Wrocław, 10 March 2015, II AKa 43/15.

37 S. Gąsior, A. Klimas, *op. cit.*, s. 156; A. Bulandra, *op. cit.*, s. 195

38 M. Szwarczyk, *Art. 280 KK, Komentarz*, LEX 2016; M. Dąbrowska-Kardas, P. Kardas, *op. cit.*

39 M. Kulik, *op. cit.*; E. M. Guzik-Makaruk, E. W. Pływaczewski, *op. cit.*

40 Court of Appeal in Kraków, 26 March 1991, II AKa 9/91.

41 I. Zgołiński, *op. cit.*; M. Szwarczyk, *op. cit.*

42 Court of Appeal in Katowice, 7 April 1994, II AKr 67/94.

person and does not have to involve the threat⁴³. The state of defenselessness can have various reasons. It may result from the physical strength of the perpetrator⁴⁴. It may result also from the number of attackers⁴⁵. The state of defenselessness must be caused by the perpetrator, be a consequence of his actions⁴⁶. In the judgement of 20 December 2016 the Court of Appeal in Warszawa stated that the paralyzing fear resulting from the behavior of the perpetrator is not the state of defenselessness⁴⁷. Pursuant to the judgement of the Supreme Court of 13 October 2016 the subjective feeling of the victim is not enough to recognize that the victim is defenseless referred to in Article 280 § 2 KK⁴⁸.

3. Qualified robbery

The qualified type of robbery is regulated in Article 280 § 2 KK. As indicated above, the perpetrator of the robbery uses a firearm, knife or other similarly dangerous object or incapacitating agent or acts in any other way that directly threatens life or acts jointly with another person who uses such a weapon, object, means or method, bears criminal liability for qualified robbery. The list of methods of action of the perpetrator included in Article 280 § 2 KK is exhaustive⁴⁹. The Court of Appeal in Wrocław expressed the same view in the judgement of 26 November 2014⁵⁰.

The definition of firearm is included in Article 7 of the Weapons and Ammunition Act of May 21 May 1999⁵¹. It is impossible to give a precise definition of similarly dangerous

43 M. Dąbrowska-Kardas, P. Kardas, *op. cit.*; M. Szwarczyk, *op. cit.*; G. Łabuda, *op. cit.*

44 G. Łabuda, *op. cit.*

45 S. Gąsior, A. Klimas, *op. cit.*, p. 156; M. Dąbrowska-Kardas, P. Kardas, *op. cit.*

46 I. Zgoliński, *op. cit.*; M. Dąbrowska-Kardas, P. Kardas, *op. cit.*

47 Court of Appeal in Warszawa, 20 December 2016, II AKa 355/16.

48 Supreme Court, 13 October 2016, II KK 164/16.

49 M. Dąbrowska-Kardas, P. Kardas, *op. cit.*; G. Łabuda, *op. cit.*

50 Court of Appeal in Wrocław, 26 November 2014, II AKa 287/14.

51 Art. 7:

„1. W rozumieniu ustawy bronią palną jest każda przenośna broń lufowa, która miota, jest przeznaczona do miotania lub może być przystosowana do miotania jednego lub większej liczby pocisków lub substancji w wyniku działania materiału miotającego.

1a. W rozumieniu ustawy za dający się przystosować do miotania jednego lub większej liczby pocisków lub substancji w wyniku działania materiału miotającego uznaje się przedmiot, który ze względu na swoją budowę lub materiał, z którego jest wykonany, może być łatwo przerobiony w celu miotania.

2. W rozumieniu ustawy bronią palną sygnałową jest urządzenie wielokrotnego użycia, które w wyniku działania sprężonych gazów, powstających na skutek spalania materiału miotającego, jest zdolne do wystrzelenia z lufy o kalibrze nie mniejszym niż 25 mm substancji w postaci ładunku pirotechnicznego celem wywołania efektu wizualnego lub akustycznego.

3. W rozumieniu ustawy bronią palną alarmową jest urządzenie wielokrotnego użycia, które w wyniku działania sprężonych gazów, powstających na skutek spalania materiału miotającego, wywołuje efekt akustyczny, a wystrzelona z lufy lub elementu ją zastępującego substancja razi cel na odległość nie

object referred to in Article 280 § 2 KK⁵². As indicated by M. Dąbrowska-Kardas and P. Kardas, the object must be objectively dangerous. Even regular use may result in immediate danger to life or health⁵³. The Court of Appeal in Poznań expressed the same opinion in the judgement of 19 December 2017⁵⁴. The view that the method of use determines the danger of an object is criticized. From this point of view, any object can be dangerous⁵⁵. In jurisprudence is accepted that a baseball bat⁵⁶, a knuckle duster⁵⁷, a dangerous breed of dog⁵⁸, a board with a nail⁵⁹, a crowbar⁶⁰, a hammer⁶¹, an axe⁶², a broken bottle⁶³, a hot clothes iron⁶⁴ are similarly dangerous objects referred to in Article 280 § 2 KK⁶⁵. In the judgement of 25 March 2021 the Court of Appeal in Warszawa excludes the possibility of recognizing as such an object a piece of brick⁶⁶. Pursuant to the judgement of the Court of Appeal in Katowice of 30 March 2000, a brick is similarly dangerous object referred to in Article 280 § 2 KK⁶⁷. In the judgement of 25 March 2021 the Court of Appeal in Warszawa excludes the possibility of recognizing as dangerous object an electric cable⁶⁸. Pursuant to the judgement of the Court of Appeal in Katowice of 29 September 2011, electric wire cable connected to electric power source is similarly dangerous object referred to in Article 280 § 2 KK⁶⁹. Using of the dangerous object requires not only possession, but the object should at least be presented⁷⁰.

In the judgement of 25 March 2021 the Court of Appeal in Warszawa stated that the fact that the perpetrator took out the knife and threatened the aggrieved party with it when

większą niż 1 metr".

52 G. Łabuda, *op. cit.*; A. P. Szajna, „Inny podobnie niebezpieczny przedmiot” jako instrumenta sceleris w świetle przepisów części szczególnej Kodeksu karnego, *Studia Prawnoustrojowe*, 52, 2021, *passim*.

53 M. Dąbrowska-Kardas, P. Kardas, *op. cit.*

54 Court of Appeal in Poznań, 19 December 2017, II AKa 244/17.

55 P. Wiatrowski, *Znamiona rozboju kwalifikowanego*, *Prokuratura i Prawo*, 4, 2007, pp. 87-88; M. Dąbrowska-Kardas, P. Kardas, *op. cit.*

56 Court of Appeal in Kraków, 14 January 1999, II AKa 210/98.

57 Court of Appeal in Wrocław, 23 August 2018, II AKa 178/18.

58 Court of Appeal in Lublin, 2 October 1995, II AKr 204/95.

59 Court of Appeal in Lublin, 8 March 2004, II AKa 36/04.

60 Court of Appeal in Katowice, 23 May 2002, II AKa 94/02.

61 Court of Appeal in Wrocław, 6 October 2014, II AKa 235/14.

62 Court of Appeal in Katowice, 31 October 2012, II AKa 314/12.

63 Court of Appeal in Katowice, 16 February 2006, II AKa 15/06.

64 Court of Appeal in Katowice, 25 June 2015, II AKa 192/15.

65 G. Łabuda, *op. cit.*

66 Court of Appeal in Gdańsk, 5 May 1999, II AKa 109/99.

67 Court of Appeal in Katowice, 30 March 2000, II AKa 4/00.

68 Court of Appeal in Lublin, 5 October 2004, II AKa 252/04.

69 Court of Appeal in Katowice, 29 September 2011, II AKa 352/11.

70 M. Dąbrowska-Kardas, P. Kardas, *op. cit.*

he refused to issue the money, is sufficient for accepting liability under Article 280 § 2 KK⁷¹. Pursuant to the judgement of the Court of Appeal in Białystok of 13 May 2021, to confirm that the perpetrator used a knife, it is enough to show the knife to the victim in order to persuade him to hand over the property⁷². In the judgement of 17 October 2019 the Court of Appeal in Katowice also stated that it is enough that the perpetrator only shows the knife to the victim in order to persuade him to hand over his property. How the knife is used can only affect the amount of the penalty⁷³. The Court of Appeal in Warszawa expressed the same view in the judgement of 29 October 2018⁷⁴. Pursuant to the judgement of the Court of Appeal in Kraków of 14 August 2018, the use of a knife for a purpose other than forcing the aggrieved party does not constitute a crime under Article 280 § 2 KK⁷⁵.

Incapacitating agents referred to in Article 280 § 2 KK are all kinds of chemical or pharmacological agents that have the ability to influence mental processes, that cause paralysis, limitation or disability of movement⁷⁶. In the judgement of 13 October 2016 the Court of Appeal in Szczecin stated that the incapacitating agent must be objectively dangerous⁷⁷.

Acting in any other way that directly threatens life within the meaning of Article 280 § 2 KK is behavior that do not involve the use of a firearm, knife or other similarly dangerous object or incapacitating agent. It is determined by the circumstances of a case. There is no satisfactory definition of such acting⁷⁸.

Acting jointly with another person in accordance with the provisions included in Article 280 § 2 KK require only one of the perpetrators to act such way. The responsibility of each perpetrator depends on the circumstances of a case⁷⁹. The difference between complicity in a crime within the meaning of Article 18 § 1 KK⁸⁰ and the acting jointly is that complicity requires agreement concluded between the perpetrators⁸¹. In the judgement of

71 Court of Appeal in Warszawa, 25 March 2022, II AKa 403/20.

72 Court of Appeal in Białystok, 13 May 2021, II AKa 67/21.

73 Court of Appeal in Katowice, 17 October 2019, II AKa 362/19.

74 Court of Appeal in Warszawa, 29 October 2018, II AKa 248/18.

75 Court of Appeal in Kraków, 14 August 2018, II AKa 169/18.

76 M. Dąbrowska-Kardas, P. Kardas, *op. cit.*

77 Court of Appeal in Szczecin, 13 October 2016, II AKa 139/16.

78 G. Łabuda, *op. cit.*; M. Szwarczyk, *op. cit.*

79 M. Dąbrowska-Kardas, P. Kardas, *op. cit.*

80 Art. 18 § 1:

„Odpowiada za sprawstwo nie tylko ten, kto wykonuje czyn zabroniony sam albo wspólnie i w porozumieniu z inną osobą, ale także ten, kto kieruje wykonaniem czynu zabronionego przez inną osobę lub wykorzystując uzależnienie innej osoby od siebie, poleca jej wykonanie takiego czynu”.

81 G. Łabuda, *op. cit.*

11 November 2018 the Court of Appeal in Warszawa stated that it is not necessary for the perpetrators acting jointly to agree in advance that they will commit crimes with the use of dangerous tools⁸². Pursuant to the judgement of the Supreme Court of 18 June 2020, the mere presence of people, other than the perpetrator, who acted in agreement with him, but did not fulfill any of the conditions of the robbery, is a circumstance that strengthens the threat to the victim and may make them responsible for the robbery⁸³. The Court of Appeal in Katowice expressed the analogous view in the judgement of 8 October 2018⁸⁴. The judgement of the Court of Appeal In Katowice of 15 November 2018 that relates to Article 280 § 2 KK is also important. According to to the judgement of Court of Appeal In Katowice, it is enough for the liability under Article 280 § 2 KK that the perpetrator who does not use a knife on his own knows that another perpetrator uses such an object⁸⁵. Pursuant to the judgement of the Court of Appeal in Wrocław of 14 November 2018, for the existence of the crime under Article 280 § 2 KK the intention of the perpetrator to steal the property must arise at the latest during the use of violence against the aggrieved party⁸⁶. In the judgement of 18 May 2017 the Court of Appeal in Szczecin stated that for the crime under Article 280 KK it does not matter which of the perpetrators takes the items⁸⁷. In the judgement of 22 December 2017 the Court of Appeal in Warszawa confirmed that for the liability under Article 280 KK, it does not matter which of the perpetrators takes the items physically or which of them benefits from the crime⁸⁸. The Court of Appeal in Szczecin expressed the analogous view in the judgement of 19 December 2016⁸⁹.

4. Final remarks

The crime of robbery was included in Article 280 KK as the basic type (Article 280 § 1 KK) and as the qualified type (Article 280 § 2 KK). In addition, in Polish law there is so-called privileged robbery. The privileged type of robbery is regulated in Article 283 KK. In the case of a minor, the perpetrator of crime under Article 280 § 1 KK is punishable by

82 Court of Appeal in Warszawa, 11 November 2018, II AKa 160/18.

83 Supreme Court, 18 June 2020, II KK 321/19.

84 Court of Appeal in Katowice, 8 October 2018, II AKa 96/18.

85 Court of Appeal In Katowice, 15 November 2018, II AKa 398/18.

86 Court of Appeal in Wrocław, 14 November 2018, II AKa 338/18.

87 Court of Appeal in Szczecin, 18 May 2017, II AKa 45/17.

88 Court of Appeal in Warszawa, 22 December 2017, II AKa 395/17.

89 Court of Appeal in Szczecin, 19 December 2016, II AKa 190/16.

imprisonment from 3 months to 5 years⁹⁰. Article 283 KK does not refer to an offense under Article 280 § 2 KK. The possibility of recognizing a robbery as crime under Article 283 KK depends on the circumstances of a case. Pursuant to the judgement of the Court of Appeal in Wrocław of 29 September 2010, the degree of social harmfulness of an act is the basic criterion to consider the act as a minor accident⁹¹. In the judgement of 30 October 2015 the Supreme Court stated that a minor accident occurs when the features of the crime are characterized by low social harmfulness, and the perpetrator is not dangerous enough for society to be subject to the usual penalty for the committed crime⁹². The court, when convicting the perpetrator of privileged robbery, can order a term of imprisonment with conditional suspension of execution. According to Article 69 § 1 KK the court may conditionally suspend the execution of the imprisonment not exceeding 1 year⁹³.

Abstract:

The paper focuses on the analysis of regulations referred to a robbery in Polish law. In Polish Penal Code there are three types of a robbery: a basic robbery (Article 280 § 1), a qualified robbery (Article 280 § 2) and a privileged robbery (Article 283). The features of these crimes and legal consequences of these crimes are presented based on the jurisprudence of Polish courts.

Key words:

Polish penal law, Polish Criminal Code, robbery victims, theft victims, Polish judges

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90 Art. 283:

„W wypadku mniejszej wagi, sprawca czynu określonego w art. 279 § 1, art. 280 § 1 lub w art. 281 lub 282, podlega karze pozbawienia wolności od 3 miesięcy do lat 5”.

91 Court of Appeal in Wrocław, 29 September 2010, II AKa 270/10.

92 Supreme Court, 30 October 1996, IV KK 235/15.

93 Art. 69 KK:

„§ 1. Sąd może warunkowo zawiesić wykonanie kary pozbawienia wolności orzeczonej w wymiarze nieprzekraczającym roku, jeżeli sprawca w czasie popełnienia przestępstwa nie był skazany na karę pozbawienia wolności i jest to wystarczające dla osiągnięcia wobec niego celów kary, a w szczególności zapobieżenia powrotowi do przestępstwa.

§ 2. Zawieszając wykonanie kary, sąd bierze pod uwagę przede wszystkim postawę sprawcy, jego właściwości i warunki osobiste, dotychczasowy sposób życia oraz zachowanie się po popełnieniu przestępstwa”.

Szwarczyk M, *Art. 280 KK, Komentarz*, LEX 2016.

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Supreme Court, 13 October 2016, II KK 164/16.

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Supreme Court, 16 July 2002, III KKN 329/01.

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Court of Appeal in Gdańsk, 5 May 1999, II AKa 109/99.

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