

## **MOTIVES DESERVING PARTICULAR CONDEMNATION AS A FACTOR CAUSING DETERIORATION OF THE ACCUSED'S LEGAL SITUATION IN POLISH LAW**

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**ABSTRACT:** *Article 148 of Polish Criminal Code contains aggravated offense in the form of murder for motives deserving particular condemnation (art. 148 § 2 point 3 of the Criminal Code), which is explained in literature as the case when the offender motives grossly deviate from accepted practices, which - taking into account that the killing, as such, is a serious violation of this pattern - clearly indicates the need of any additional element in the motivation of the perpetrator, and that the decision make murder makes a particularly reprehensible. Such is the will to kill a man at the request for a fee, to kill in order to seize the property of someone else (e.g. committed in its intention to murder the father or husband to take his fortune), planned the murder in order to get rid of those uncomfortable (e.g. rival to the desired position, in financial or personal matters), or to exert revenge on someone. The research indicates, that there are many kinds of behavior that may be considered by the Polish courts to have been made as a result of motives deserving special condemnation. The research is conducted as a part of study of the Department of Criminology and Criminal Justice (University of Warsaw, Institute of Social Prevention and Resocialization Department of Criminology and Criminal Justice) - research on 301 homicide offenders sentenced to life imprisonment.*

**KEYWORDS:** Murder, Life Imprisonment, Poland, Motive.

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### **INTRODUCTION**

A murder committed out of motives deserving particular condemnation is an aggravated form of murder set forth in Article 148 § 2 pt. 3 of the Criminal code. The Criminal code of 1969 did not foresee any aggravated forms of murder. Such a solution was only introduced in the Criminal code of 1997. The Code contained several forms of aggravated murder initially subject to the penalty of imprisonment for 12 years, 25 years of imprisonment or life imprisonment. The Act of 27 June 2005 increased this statutory punishment for aggravated murder to 25 years of imprisonment or life imprisonment. This change was heavily criticised. The Constitutional Tribunal in a judgment of 14 April 2009 pronounced this wording of Article 148 § 2 of the Criminal code to be in violation of the Polish Constitution. The judgment eliminated aggravated forms of murder from the Code for some time, and the grounds distinguishing particular types of aggravated murder (including murder committed for motives deserving particular condemnation) could only be treated as aggravating factors in determining punishment. It was only with the Act of 25 November 2010 amending the Criminal code and the Act on Police, which entered into force on 22 March 2011, that the aggravated forms of murder were reinstated into the system. Thus, an aggravated murder for motives deserving particular condemnation has functioned in the Polish law for 15 years.

### Definition of the Notion

The notion of “motives deserving particular condemnation” brings about numerous interpretational concerns. Neither “motives” nor “particular condemnation” have any legal definition, and the legislators refer in this respect to rules existing outside the Code. The two terms juxtaposed here come from psychology (“motives”) and ethics (“condemnation”, which in this case is additionally “particular”), but neither of those scientific fields provides definitions of these notions. According to case-law, the notion of “motives deserving particular condemnation” is a general (evaluative) category which is left for the judges to determine. The jurisprudence understands it as motives which are blatantly reprehensible, evoking in the society the reactions of outrage, condemnation or anger exceeding the threshold of “usual” condemnation of a crime (Judgment of the Appellate Court in Cracow of 16 January 2002, no. II Aka 308/01). Without a doubt determination of “motives deserving particular condemnation” reaches outside the boundaries of legal assessment, and relies on moral, ethical or customary judgment. The assessment of whether a factor aggravating murder comes into play each time requires the analysis of all the circumstances of a given case. Such an assessment should always be carried out *in concreto*. The legislators should not be expected to form a definition of this premise, nor should they be expected to provide – be that in a general manner – an exemplary catalogue of particularly reprehensible psychological experiences. This is because a negative assessment of the perpetrator’s psychological experiences cannot be carried out in the abstract, and any attempts to create a universal set of motives which would in each factual matrix constitute aggravating circumstances would not hold much sense. Even a selection of those motives which are commonly perceived as generally reprehensible (e.g. jealousy, hatred, revenge) is prone to be erroneous in the circumstances of a given case (see Daszkiewicz 2000, p. 71). Thus, an assessment of whether a crime was committed for “motives deserving particular condemnation” forms part of the judges’ independent assessment of the evidence gathered in a given case (see: Judgment of the Supreme Court of 2 December 1999, no. V KKN 477/99, *Prok. i Pr.* 2000, Vol. 6 (3); Judgment of the Appellate Court in Łodzi of 9 February 2006, no. II AKA 236/05, *Prok. i Pr.* 2007, Vol. 5 (40)).

For those reasons, in order to say that someone committed murder for motives deserving particular condemnation it is not sufficient to establish that the motivation is reprehensible and deserves condemnation. It is necessary to establish that it deserves particular condemnation. It has to do with absolutely exceptional circumstances, departing from average and standard – even if reprehensible – motivations, evoking reactions of repulsion, causing strong social outrage, determining condemnation exceeding the boundaries of everyone’s average negative reactions (Judgment of the Appellate Court in Cracow of 4 December 2012, no. II Aka 213/12, LEX no. 1315607). It should be noted that the majority of homicides are connected with some form of evil which causes common social disapproval. This disapproval entails strong condemnation of the perpetrator due to the violation of a legal norm of such great importance, which constitutes a rationale behind the criminalisation of these types of behaviours at a basic level in the first place (Budyn 2000). An additional element radically increasing the reprehensible character of a particular behaviour should always be indicated at the stage when the existence of motives deserving particular condemnation is determined. The perpetrator’s behaviour should, therefore, be the result of motives which, considering the aim behind the homicide, blatantly depart from an already violated norm of behaviour, and which have to be properly described and justified in a court

ruling (Judgment of the Appellate Court in Cracow of 11 March 2004, no. II AKA 41/04, KZS 2004, Vol. 5 (25)).

### Case Law

Nevertheless, in case law, certain categories of motives recur as those which are considered to deserve particular condemnation. One of them is murder committed for financial gain. The courts note, at the same time, that motives deserving particular condemnation cannot be assumed to occur automatically in all cases when perpetrators display economic motivations. As such cases the courts consider, for example, murder in order to get money for entertainment (Judgment of the Appellate Court in Katowice of 10 November 2005, no. II AKA 298/05, *Prokuratura i Prawo*. 2006, Vol. 7-8 (23), killing a person at someone's order or for inheritance, killing a person who is a competitor for a desired position. But, not every homicide for economic reasons will deserve particular condemnation. It is impossible to consider condemnable a motivation of a parent who kills in the course of a robbery committed in order to obtain money for a life-saving surgery of their child (see Budyn 2000).

Another category of a motivation deserving particular condemnation is revenge. This is, in particular, the case in those situations when there is a glaring disproportion between the behaviour of the victim which caused the perpetrator's desire to pay back, and the character and consequences of the actual revenge. The reprehensibility of the motivation can be increased by the fact the act of revenge is not executed upon the person whose behaviour caused it, but on somebody else, for example a person close to the one who provoked the revenge. The Supreme Court discussed the essence of revenge in its decision of 29 May 2003 in which it stated: "The understanding of revenge should be threefold. It is, thus, a person's pursuit to pay for evil with another evil; an act executing this pursuit; and finally, an outcome which the perpetrator achieved as a result of their payback. Thus, the essence of revenge is such that, in principle, it leads to actions which are thought through, and not to sudden decisions connected with violent outbursts. A perpetrator who is motivated by revenge usually commits a crime not because they have been seized by a sudden emotional overflow, but because they found the right moment and the most convenient circumstances for carrying out the vengeful intention. Without a doubt, killing a child – a creature who cannot effectively protect oneself – deserves particular condemnation, especially when the perpetrator wanted to take revenge [on a different person than the actual victim]." However, the desire to take revenge will not always entail an aggravated form of murder. This, in particular, will not be the case when the act of revenge is rooted in a sense of profound hurt, which gives the act some form of social justification. This, in turn, neutralises its, in principle, negative reception. In this context, it does not seem justified to consider as deserving particular condemnation a motivation of a perpetrator who is the father of a victim who executes punishment on his child's killer (see Stefański 2015).

When it comes to jealousy, the problem is complex (see Pikulski 1991, p. 148). Jealousy is not an independent psychological process, in the sense that it is always based on another experience. It is possible to distinguish jealousy caused by ambition, love or greed. It is established that a murder motivated by jealousy is particularly condemnable when there is no love to justify it (see also Judgment of the Supreme Court of 16 November 1973, no. II KR 158/73, OSNKW 1974, Vol. 4 (63)).

The motivation of the perpetrator who committed murder for petty reasons, to act out, to take it out on a weaker person, without any real or presumed claims towards a person (Judgment

of the Appellate Court in Wrocław of 20 November 2013, no. II AKA 357/13, Legalis), or who kills a person “for fun” (Judgment of the Appellate Court in Cracow of 16 January 2002, no. II AKA 308/01, KZS 2002, Vol. 2 (32) is sufficient to be recognised as deserving particular condemnation.

It is rightfully established in case-law that a motivation deserving particular condemnation can take the form of unjustified and irrational contempt and reluctance towards another person, when their only source is the difference between the victim and the perpetrator, or when it is also connected to the victim’s social status, life situation and background (Judgment of the Appellate Court in Szczecin of 20 May 2008, no. II AKA 55/08, KZS 2009, Vol. 11 (57). This motivation can also take the form of justifying the murder with the need to eliminate the people perceived by the perpetrator to be “second rate.” (Judgment of the Appellate Court in Wrocław of 29 September 2004, no. II AKA 275/04, KZS 2005, Vol. 5 (53).

It is controversial to assess a murder when there is a lack of a clear motive. The Appellate Court in Katowice in its judgment of 29 January 2004 (Judgment of the Appellate Court in Katowice. II AKA 303/03, *Prok. i Pr.* 2005, Vol. 4 (11) stated that “acting without a reason, without a clear motive does not justify a claim that we have to do with an action taken for motives deserving particular condemnation. Without negating the possibility of a situation when the lack of a clear motive may precisely determine that the perpetrator’s behaviour resulted from a motivation deserving particular condemnation, it should be noted that each such situation requires taking into account the circumstances of a particular case and that these will be exceptional situations.” One should, however, distinguish actions taken without a conscious reason from actions taken “without any reason or for blatantly petty reasons” under circumstances similar to those set forth in the subjective aspect of the offence of hooliganism. In such a situation, taking into account the circumstances of a particular case, it would be justified to recognise a trivial motivation which accompanies an annihilation of a value so important as human life as a motivation deserving particular condemnation. Such an interpretation is also accepted in case law. In one of the judgements, the court ruled that there is no doubt that actions aiming at killing a person, even when they are not characterised with excessive cruelty, but when taken without a significant, clear motives, deserve particular stigmatisation as taken out of motives deserving particular condemnation. Contempt for the highest value which is human life expressed with a brutal behaviour, only in order to act out, or to gain admiration and peculiar recognition among friends, is a behaviour glaringly reprehensible, evoking social outrage (Judgment of the Appellate Court in Lublin of 26 July 2001, no. II AKA 94/01, *Prokuratura i Prawo* 2002, Vol. 1 (22).

Other motives indicted in case law and deserving particular condemnation include an attempt to evade responsibility connected with fatherhood (Decision of the Supreme Court of 10 August 2005, III KK 297/04, OSNwSK 2005, Vol. 1 (1513) or elimination of a witness whose testimony incriminates the perpetrators (Judgment of the Appellate Court in Lodz of 9 February 2006, II AKA 236/05, *Prokuratura i Prawo* 2007, Vol. 5 (42).

It should be pointed out that a person’s behaviour is usually influenced by various motives. Motivation can, therefore, have a complex nature. It is composed of dominating, accompanying and competing motives. This situation creates a need to identify the leading motive, the one in the foreground which has crucial importance. B. Michalski (2006, p.196) notes that in practice a posterior assessment of the psychological processes which influenced the perpetrator’s intention can be difficult. According to this author, the presence of a thus

constructed premise in the catalogue of elements aggravating murder can cause in the perpetrator a particularly strong tendency to cover the actual motivation of their crime. Revealing it, also as a result of guilty conscience or remorse, creates the risk that it will become the subject of the court's evaluation. If in such a situation it is assessed as deserving particular condemnation, the perpetrator's honesty can substantially exacerbate their legal situation. And this, in turn, may lead the perpetrator to reveal an untrue motivation in an attempt to secure a more lenient punishment. This may additionally complicate and prolong criminal proceedings due to the necessity to verify the perpetrator's explanation by conducting other evidence.

Some practitioners and representatives of the academia question the need for the existence of an aggravated murder claiming that the basic type of this crime gives a possibility to impose severe punishment in accordance with the guidelines on the imposition of punishment (Wąsek 1999, p. 14). Indeed, in the current legal framework, when it comes to the severity of punishment, the difference between the basic and aggravated forms of murder concerns solely the lower punishment threshold and the difference is only 4 years.

There are also opinions that a murder for motives deserving particular condemnation was introduced into the Criminal code as some sort of a "safety valve" to enable more severe qualification of a crime in situations when it does not fully fulfil the premises of other types of aggravated murder (see Budyn 2000, p. 42, also Kokot 1999, p. 88). It is impossible to agree with such a stance because the basic type of murder does allow for imposition of a severe punishment, including the most severe (life imprisonment) without the recall to an aggravated form of the crime.

It should, however, be assumed that the perpetrators of aggravated murders would most often receive the most severe punishment foreseen in Polish law. In the case of particularly cruel murders causing social condemnation, oftentimes only such punishment will satisfy the social sense of justice.

### **The Notion Of Motive**

Under the provisions determining aggravated forms of murder (including for motives deserving particular condemnation), Polish courts sentenced 223 persons to life imprisonment, of whom 63 were sentenced for murder committed for motives deserving particular condemnation.<sup>1</sup> Perpetrators sentenced under Article 148 § 2 pt. 3 of the Criminal code amount to 28 % of all persons sentenced to life imprisonment. The current research includes only those crimes which, on the day when they were committed, could have been considered an aggravated murder on the basis of current regulations. An almost two-year-long break in the operation of those regulations due to the above-mentioned judgement of the Constitutional Tribunal was also taken into account. Among the people sentenced for murder committed for motives deserving particular condemnation there were 2 women. However,

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<sup>1</sup> The current studies are part of the research project "Life imprisonment. Killer, his felony and punishment" conducted by the Department of Criminology and Criminal Justice, University of Warsaw. The results of these studies were also published in: A. Wilkowska-Płociennik Zabójstwo z motywacji zasługującej na szczególne potępienie (2017, p. 203-224) in A. Rzepliński, M. Ejchart-Dubois, M. Niełacznna „Dożywocie pozbawienie wolności, zabójca, jego zbrodnia i kara, Warszawa 2017, also M. Ejchart-Dubois, M. Niełacznna, A. Wilkowska-Płociennik The Right to Hope for Lifers: An Analysis of Court Judgements and Practice in Poland. In D. van Zyl Smit, C. Appleton (ed.) Life Imprisonment and Human Rights. Oxford and Portland Oregon 2016



considering that women constitute only 3 % of all people sentenced to life imprisonment, this number is statistically close to the number of sentenced women in general.

In accordance with the classification of motives described by J. K. Gierowski (1989, p. 95) who distinguished 4 groups based on the dominating motive, namely economic, sexual, delusional and emotional (which has 3 subgroups –revenge, perceived suffered harm, feeling of anxiety and danger), it should be stated that the economic motive was the most common dominating motive among the examined group of perpetrators. It was displayed by 39 people. The second group consisted of perpetrators who committed murder out of sexual motives – 8 persons, and emotional motives, but the motive of revenge was dominant in this group – 6 persons. Then there were perpetrators who attempted to solve their life problems by getting rid of a persons, in each case a spouse (3 persons). The perpetrators who, at first glance, committed the crime without a motive, or out of motives completely incomprehensible to the court, constituted a very specific group (7 persons). This group can also include people who killed for fun, to satisfy their curiosity of what it is like to kill, or for other reasons incomprehensible for an average person. In the examined sample, there were no murders committed for delusional motives. It should be noted that in the case of a group, the motives of co-perpetrators were similar, which however was not a rule. There were cases where each of the perpetrators had a different motive. There were also instances when it was difficult to select one leading motive because the perpetrator had several motivations which held similar importance. In the case of multiple victims, the perpetrators were not always motivated by the same reasons in the case of each victim either.

However, it is not the perpetrator's motive itself, but those of its elements which, in the court's assessment, evoke particular repulsion and social condemnation that deserve in this case particular attention.

When it comes to economic motives, it should be emphasized that oftentimes the sheer fact of killing a person for financial gain was enough for the courts to recognize it as committed for motives deserving particular condemnation. This is particularly the case, when the perpetrator killed to gain a relatively small financial benefit, or when he spent the means obtained as a result of the crime for entertainment. Other reprehensible motives include killing a person upon someone's order, killing children in the course of a robbery, extortion of insurance money from the life insurance policy of a relative, gang execution on a businessperson who did not want to pay forced tribute. It was not so much the economic motive which determined the assessment of a crime as committed for motives deserving particular condemnation, but the manner in which the crime was committed. It had to do with actions which, through their intensity and recurrence, caused additional physical and psychological suffering to the victim. Examples would include a fiercely brutal way of forcing victims to reveal where the money is hidden, significantly exceeding the circumstances typified in the aggravated type of robbery or situations when the accused could have taken the property of the victim without killing him or her. In each of those judgments, the courts emphasized that the perpetrators expressed enormous contempt for human life, since in order to achieve an often relatively small financial benefit they decided to deprive a person of their life. This has particular significance in relation to serial killers who have made killing their source of income. The following quote from the oral motives of a judgment illustrates this particular condemnation: "When [the accused] talks about killing, it's as if he was talking about going to work. As if he did not see the boundary between good and evil. He talks about murders without emotion, as if he was talking about killing flies, and not people." A special circumstance which caused particular

condemnation of the motivation was also the fact that the perpetrator killed in order to evade responsibility for robbery.

A similar circumstance was decisive in considering the perpetrator's act an aggravated murder in the case of sexual motives, when the perpetrator killed so that the victim did not report rape. When it comes to crimes committed out of sexual motives, the motive for the action itself in conjunction with an exceptionally heinous manner in which the crime was committed constituted a ground to consider it as perpetrated for motives deserving particular condemnation. It should be mentioned that in the examined sample, the crimes committed for sexual motives were very brutal and cruel. The victims suffered beyond measure. These were often rapes of children, or gang or repeated rapes. The description of acts itself is repulsive and condemnation of these types of acts does not have to be particularly justified, which the courts did not usually do either. They limited themselves to pointing out those elements of the act and the perpetrator's motivation which were particularly reprehensible and to stating that such an act should be considered as committed for motives deserving particular condemnation.

Emotional motives usually concerned revenge, which in itself is in principle treated as deserving particular condemnation in case law. Among the elements which decided on this particular condemnation of a motivation was killing the child of a former partner or setting fire to the house occupied by a spouse and, as a result, killing both the spouse and her father. Yet another category concerns murders of spouses who became boring for the perpetrators. By killing them, the perpetrator decided to solve this life difficulty. Other motives of emotional nature concern murders of homeless people. The perpetrators were motivated by contempt for these people, whom they considered "second rate." Among emotional motives, there was also a desire to impress the leaders of a gang or prove one's aptitude to be included among the members of the gang. A murder of parents committed "in anger" was a particularly drastic example of a homicide for emotional motives. The court thus described the perpetrator's modus operandi: "The circumstances connected to the murder of the mother are particularly terrifying. The accused killed her with premeditation, with precise calculation. He showed exceptional intensity of bad will and tenacity in his pursuit of the criminal goal, chasing the running, terrified, helpless, older woman on a bike for a couple of hundred meters. What brutality, cruelty and ruthlessness he showed, throwing her onto the ground and hitting precisely with a knife – stab after stab in the chest of his crying mother who was desperately trying to protect herself. It was an execution. It should be emphasised that both those crimes against the closest relatives were committed by the accused in the space of a mere couple of minutes. He killed his father in rage, as he himself admitted. And he killed his mother because she was a witness of the first crime. The significance of such motivation is unambiguous. Finally, it is impossible not to note that directly after committing those crimes, the accused went to meet his girlfriend and invited her home. He was calm, natural, as if nothing had happened. Such behaviour cannot be explained by the propensity of the accused to suppress his emotions, which the expert psychiatrists and psychologist talk about."

From the point of view of criminology, the cases where there was no particular motive, or where the motive was impossible to accept or comprehend by an average person were particularly interesting. This includes killing a person solely to check what it is like to kill. The need to particularly condemn the motivation of such a crime does not require any

commentary and does not raise any doubts. Reprehensibility of the acts can only be properly understood after acquainting oneself with the rationales to judgments:

“The motivation of the perpetrators also deserves condemnation. They committed both murders without any particular reason. They were curious what it is like to kill a person. In the case of K.S.’s murder, [the perpetrators] wanted to see how a knife cuts into the human body, so they each stabbed the victim in the stomach with a knife, and [one of the perpetrators] tried to also stab him in the heart and take out his eye. They wanted to have exciting experiences.”

“The main motive of their actions was curiosity, the desire to experience what it feels like to kill another man. It should be emphasised that the accused knew that I.P. was asleep and under the influence of alcohol. The accused could have, therefore, searched the flat of the victim, sparing her life. The need to satisfy their curiosity, the desire to hear the “cracking” of the spine expressed by the perpetrators turned out to be stronger.”

It should also be noted that in one of those cases, a murder of a random, young girl who was thrown out of a train was a gift from friends for the 18<sup>th</sup> birthday of one of the perpetrators.

As an example of another completely incomprehensible motivation, one can recall a murder of a friend of the perpetrator’s girlfriend. He killed the woman because he did not want his girlfriend to go abroad with her for the New Year’s Eve, he wanted her to stay with him. The murder was planned and premeditated.

## **CASES IN WHICH THE COURT DID NOT SPECIFY THE MOTIVE**

The most interesting are those cases in which the courts did not find any motive, but whose cruelty and viciousness remains for long in the memory of people who had acquainted themselves with the evidentiary material.

The first case is a murder of three children whose remains were kept by their parent in their flat in plastic barrels in their flat. In the course of proceedings, it was impossible to establish the motive for those murders. The judge providing the rationale for the judgment thus referred to the motivation of the perpetrators and their actions: “I am not able to comprehend how one can live for several years with an awareness that nearby in plastic barrels there are the remains of my own murdered children. I cannot comprehend this as a judge, as a human being and as a father. You do not deserve to call yourselves parents – a mother or a father. You are simply criminals who murdered their own children without a reason. The only thing you deserve is being called murderers who killed their own children! There were no, absolutely no reasons, pardon the obvious, to kill your own children. What reason? Perhaps only one. You simply did not love them! This is all I can say in this case because, to tell you the truth, I am lost for words. This is so terrifying, that a wound will probably remain in my psyche and in the psyche of other people who have observed this trial. The accused treated their children as things, as redundant baggage. The testimony of the oldest daughter who survived because she inconspicuously spat out the poison is terrifying when she says that, while serving valium to her, her parents explained to her that they would all meet in heaven. Let me make a personal aside here: the children surely are in heaven, but for the accused there is a place waiting on the opposite pole.”



The murder of a three-year-old boy, a son of the perpetrator's partner is equally shocking. The perpetrator abused the boy for three days in front of his mother who did not protest. Beating the child, kicking him and suffocating, the accused wanted to release his aggression. He caused extensive injuries, including an internal haemorrhage and kidney failure, which in turn lead to the boy's death. Referring to the motivation of this crime, the court stated: "It is hard to imagine a greater tragedy and nightmare of this three and a half years old boy. [The boy] was beaten for three days by a strong and healthy man, in front of his own mother and with her permission. All those days, day by day, [the accused] systematically inflicted unimaginable suffering upon this child, massacring his tiny, vulnerable body. For three days, he was acting out his frustration, anger, aggression justified by nothing. The reason for such behaviour was that the boy [...] during dinner eaten together did not call "pee-pee". Undoubtedly, the motives of the perpetrator deserve particular condemnation. One can risk a statement that the perpetrator's behaviour was motivated by the desire to satisfy his sadistic tendencies. The fact that the accused executed his intention to inflict physical suffering on the boy and was killing him systematically for a period of three days was particularly reprehensible. For such a long time, there came no reflexion which would provoke him to refrain from battering his partner's son. [...] With his behaviour, the accused showed that humanity is foreign to him. As an individual, he is fully deprived of any human impulses. Acting the way he did towards a three years old child, he forgot that he was a human being, that he lived among men where there obtained certain criteria of behaviour."

The last case concerning a murder out of unexplained motives, which was classified as a murder committed for motives deserving particular condemnation is a murder of the grandmother of the accused, a randomly encountered little boy and an attempted murder of the boy's mother. The accused first killed his grandmother, later strangled the 13 months old boy and attempted to murder his mother. He was also accused of a couple of robberies, and – in a separate trial – a murder of a shop assistant in the course of a robbery (he spent the money obtained this way on drugs). His grandmother was his first victim. He went to her on the way fishing. The woman was happy, she served tea and gave him 20 zlotys. At one point, the boy got up, came to the armchair where the woman was sat, took a scarf that was lying on the head of the armchair, tied it around the woman's neck and simply strangled her. "I undressed my grandma because I wanted them to think that it was some sort of a pervert," he stated. When leaving, he also took four gold rings off her fingers, and later sold them in the pawnshop. Three months later in the park he met a woman walking with a small son. He asked her for the way and they talked for a while when he suddenly punched her in the face with his fist with such force that she fell onto the ground. He then started beating, kicking and strangling her. Her son began to cry and this enraged the perpetrator, so he killed the boy. Referring to the motivation for those murders, the court stated: "The accused was charged, among others, with aggravated forms of murder. Such categorisation is a demand from the legislator to punish perpetrators of particularly repulsive and cruel crimes with more severe punishment. At the same time, the accumulation of aggravating factors has to have an influence on the severity of punishment. A murder of one's grandmother has to be treated as particularly repulsive due to the kinship between the victim and the perpetrator, so not only because it is a violation of legal norms, but because it also breaches the fundamental moral norms. A murder of a one year old witness, completely vulnerable, who in no way put the accused in danger (e.g. of recognising him as the perpetrator) constitutes another factor in determining the punishment, sufficient to state that the punishment should, first and foremost, eliminate [the accused] from the society."

While analysing the factors which the courts took into account when determining punishment in the examined sample, it should be noted that the perpetrator's motivation, which in the court's assessment deserved particular condemnation, was in principle the main incriminating factor, having influence on the severity of punishment, in this case the most severe punishment in Polish law, namely life imprisonment. Additionally, the courts indicated such factors as the perpetrator's high level of demoralisation, lack of remorse, criminal record, and cruelty.

## CONCLUSION

Careful scrutiny of rationales to judgments justifies a statement that in the examined cases the classification of the committed acts as murders for motives deserving particular condemnation under Article 148 § 2 pt. 3 of the Criminal code allows for a more precise indication of the full extent of the criminal lawlessness of those acts. It is impossible to agree that a basic type of murder ("Who kills a man...") would be sufficient. Indeed, the available punishment in both cases (basic and aggravated) is similar, however it is not the severity of punishment that is so important here, but the legally foreseen opportunity to condemn the acts most repulsive and shocking to the society. For these reasons, the existence of an aggravated murder in the Polish Criminal code is fully justified.

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