

Michał Najman

University of Łódź, Poland

michalek5558@wp.eu

ORCID: 0000-0001-8207-8458

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The Object Protected by the Criminalization of Insult to a Human Corpse in Polish Law

Introduction

The problem of defining the object of protection under Article 262 of the Polish Criminal Code¹ has so far been repeatedly addressed in the literature.² In the Polish criminal legal order this problem is made particularly intricate by placing the crime of insulting a corpse in Chapter XXXII of the Criminal Code (Crimes against public order). This suggests that the object of protection of the crime in question is public order. Moreover, the construction of the crime poses problems of interpretation. The source of the problem derives from two paragraphs: the first, in which the criminal activity is insulting a corpse, and the second, where the characteristic on the part of the object

¹ Act of June 6, 1997 – Criminal Code (consolidated text: Journal of Laws 2022, item 1138, 1726, 1855, 2339, 2600, of 2023, item 289, 403, 818, 852).

² A. Rybak, *Prawnokarna ochrona godności zwłok człowieka*, "Palestra" 2014, No. 1–2, pp. 99–105; R. Stefański, *Przestępstwo znieważenia zwłok, prochów ludzkich lub grobu (art. 262 k.k.)*, "Prokuratura i Prawo" 2004, No. 10, pp. 19–28; J. Strauss, *Human Remains: Medicine, Death, and Desire in Nineteenth-century Paris*, New York 2012; M. Bernet, *O wątpliwych podstawach karalności tzw. nekrofilii właściwej w Polsce. Zarys stanowiska własnego na tle art. 262 k.k.* [in:] *Zbrodnia, kara, nadzieja. Wybrane niektóre rodzaje przestępstw, ich aspekty prawne i resocjalizacyjne*, eds. M.H. Kowalczyk, A. Kinas-Zalewska, Jastrzębie Zdrój 2012, pp. 105–116; *Prawo pogrzebowe: wybór źródeł*, eds. P. Borecki, M. Winiarczyk-Kossakowska, Warszawa 2012; Z. Ćwiąkalski, *Komentarz do art. 262 Kodeksu karnego* [in:] *Kodeks karny. Część szczególna. Tom II. Komentarz do art. 117–277 k.k.*, ed. A. Zoll, Warszawa 2013; T. Fedorszczak, *Przestępstwa przeciwko religii na ziemiach polskich w latach 1918–1998* [in:] *Prawo wyznaniowe. Przyszłość i teraźniejszość*, ed. J. Koredczuk, Wrocław 2008, pp. 67–94; T. Gardocka, *Czy zwłoki ludzkie są rzeczą i co z tego wynika?* [in:] *Non omnis moriar. Osobiste i majątkowe aspekty prawne śmierci człowieka: zagadnienia wybrane*, eds. J. Gołaczyński, J. Mazurkiewicz, J. Turłukowski, D. Karkut, Wrocław 2015, pp. 268–281; D. Gruszecka, *Komentarz do art. 262 Kodeksu karnego* [in:] *Kodeks karny. Część szczególna. Komentarz*, ed. J. Giezek, Warszawa 2014; A. Lach, *Komentarz do art. 262 Kodeksu karnego* [in:] *Kodeks karny. Komentarz*, ed. V. Konarska-Wrzošek, Warszawa 2016; P. Morciniec, *Ludzkie zwłoki jako obiekt badawczy: dowolność działań czy normowanie?*, "Diametros" 2009, No. 19, pp. 78–92; R. Paprzycki, *Czy bluźnierca jest przestępcą? Rozważania na temat znamienia "przedmiotu czci religijnej" przestępstwa obrazy uczuć religijnych – art. 196 k.k.*, "Palestra" 2008, No. 5–6, pp. 81–90; A. Wąsek, *W kwestii tzw. odmoralizowania prawa karnego*, "Studia Filozoficzne" 1985, No. 2–3, pp. 225–241.

is robbing a corpse. Further considerations will focus only on the object of the crime of insulting a corpse, so that described in Article 262 § 1 of the Criminal Code, insulting human ashes and the resting place of the deceased, will be ignored. This discussion is preceded by introductory remarks, which will present the other elements of the structure of the crime of insulting a corpse, i.e. the subject, the subjective side, and the objective side.³

The aim of the article is to point out the multiplicity of definitions of the object protected by the criminalization of insulting a corpse. This indicates that law and the values cultivated in society are more dynamic than immutable institutions⁴ and, as a result, the role of law-makers is not only to repeat established values but also to figure out new ones or to search for new justification for them that are more in accord with reality.⁵

The method used in this article is to analyze the literature and case law, so as systematize information regarding the understanding of the concept of the object of protection in Polish criminal law and its specification with regard to the crime of insulting a human corpse. I also present my own understanding of this matter. The first assumption of the analysis is that the criminal law or, more specifically, crimes (in the legal meaning) are made to protect some value, but that sometimes this value is elusive and hard to establish.⁶ The second assumption is that the same crime may protect a string of values at the same time.⁷ The third assumption is that the value (object of protection) can evolve in a historical process or be different in the same period of time in different countries.⁸ All the above assumptions find their justification in a comparative analysis of selected regulations of the crime of insulting a human corpse in different countries.

1. The crime of insulting a corpse – introductory remarks

According to Article 262 § 1 of the Penal Code, whoever insults a corpse, human ashes, or the resting place of a deceased person shall be subject to a fine, restriction of freedom, or imprisonment for up to two years.

The offense under Article 262 § 1 of the Penal Code can be committed by anyone (*delictum commune*). Currently, Polish law does not provide for individual types of the offense of insulting or robbing a corpse or grave within the meaning of the law, crimes that can be committed only by a specified group of people.

³ W. Wróbel, A. Zoll, *Polskie prawo karne. Część ogólna*, Kraków 2014, pp. 182–184.

⁴ J. Taylor, *Death, Posthumous Harm, and Bioethics*, New York 2012, p. 16.

⁵ F. Cameron, *Defamation survivability and the demise of the antique "actio personalis" doctrine*, "Columbia Law Review" 1983, No. 88, p. 1844.

⁶ J. Feinberg, *The Moral Limits of Criminal Law. Harm to Others*, New York 1984, p. 82.

⁷ W. Armstrong, *Nothing but Good of the Dead*, "ABA Journal" 1932, Vol. 18, No. 4, pp. 230–231; J. Callahan, *On Harming the Dead*, "Ethics" 1987, No. 97(2), p. 344.

⁸ D. Sperling, *Posthumous Interests. Legal and Ethical Perspectives*, New York 2008, pp. 35–38.

The criminal action is insulting a corpse. An “insult” has a dual function in the Criminal Code. It is either an independent type of crime (Article 216 of the Penal Code) or an executory activity of other crimes (Articles 133, 135, 136 § 3 and 4, 137, 196, 226,⁹ 257, 261, 262, 347, 350 of the Penal Code). In jurisprudence it is accepted that this concept must be interpreted uniformly.¹⁰ The Supreme Court, in its judgment of February 17, 1993 (III KRN 24/92¹¹), held that the term “insults” has the same meaning (and scope) in all laws in which it defines a criminal act. Following the generally accepted position that a type of crime characterized by the same elements as another type of crime (basic type) and that an additional modifying element is a modified type (qualified or privileged) for a crime of the basic type,¹² it should be assumed that the crime of insulting a corpse, human ashes, or the resting place of a deceased person is a qualified type of the crime of insult due to elements on the part of the object. The qualifying characteristic in the case of insult refers to the object of the executive action.¹³

The means of expression used by the perpetrator of insult are indifferent.¹⁴ Insult constitutes conduct that is derogatory to dignity, intended to humiliate and, thus, cause annoyance.¹⁵

Witold Kulesza points out that in order to determine the insulting nature of words, gestures, or actions directed against the insulted person, objective criteria should be adopted, because, as that author notes, the law protects the dignity of the insulted person in the name of other values than an individual, subjective opinion of oneself only.¹⁶ Admittedly, this author in the justification of his position does not cite the protection of the deceased, but of the mentally ill and minors;¹⁷ nevertheless, it should be assumed that it also applies in the case of the deceased, so the insult rendered to a corpse is objective in its nature.¹⁸ This view was confirmed by the Supreme

⁹ This article was declared unconstitutional by the Constitutional Tribunal in its judgment of October 11, 2006, P 3/06, Journal of Laws 2006 No. 190, item 1409.

¹⁰ Judgment of the Court of Appeals in Lodz of January 17, 2013, II AKa 273/13, LEX No. 1294813, with a critical gloss: J. Kulesza, *Comment on the judgment of the Court of Appeal in Łódź of 17 January 2013, II AKa 273/13*, “Prokuratura i Prawo” 2014, No. 1, pp. 181–190.

¹¹ LEX No. 22114.

¹² T. Bojarski, *Odmiany podstawowych typów przestępstw w polskim prawie karnym*, Warszawa 1982, p. 20; W. Wolter, *Wykład prawa karnego. Część I*, Issue 1, Kraków 1970, p. 29; I. Andrejew, *Polskie prawo karne w zarysie*, Warszawa 1989, p. 112; L. Lernell, *Wykład prawa karnego. Część ogólna. Tom 1*, Warszawa 1969, p. 89; K. Buchała, *Odpowiedzialność za przestępstwa kwalifikowane przez następstwa czynu*, “Wojskowy Przegląd Prawniczy” 1972, No. 1, pp. 20–22.

¹³ T. Bojarski, *Odmiany podstawowych typów przestępstw...*, pp. 61–65.

¹⁴ J. Raglewski, *Komentarz do art. 216 Kodeksu karnego* [in:] *Kodeks karny. Część szczególna. Tom II...*; A. Lach, *Komentarz do art. 262...*; M. Mozgawa, *Komentarz do art. 262 k.k.* [in:] *Kodeks karny. Komentarz*, ed. *idem*, Warszawa 2015; D. Gruszecka, *Komentarz do art. 262...*; R. Stefański, *Przestępstwo znieważenia zwłok...*, p. 25.

¹⁵ R. Paprzycki, *Prawnokarna ochrona wolności sumienia i wyznania*, Warszawa 2015, p. 109.

¹⁶ W. Kulesza, *Zniesławienie i zniewaga. Ochrona czci i godności osobistej człowieka w polskim prawie karnym – zagadnienia podstawowe*, Warszawa 1984, pp. 169–172.

¹⁷ *Ibid.*, pp. 167–175.

¹⁸ *Prawo karne. Zagadnienia teorii i praktyki*, eds. D. Gajdus, A. Marek, Warszawa 1986, p. 325; J. Śliwowski, *Prawo karne*, Warszawa 1975, p. 439.

Court in the resolution of June 5, 2012 (SNO 26/12¹⁹), and the order of May 7, 2008 (III KK 234/07²⁰). In the case of insulting speech about a deceased person, and aimed at insulting the dignity of a living person, there is a concurrence of Articles 216 and 262 of the Criminal Code.²¹ The adoption of objective criteria in assessing the insulting nature of the offending act constitutes its formal nature.²²

It is relatively uniformly indicated that an insult can be committed only by action.²³ However, in the case of an insult under Article 262 § 1 of the Criminal Code, examples can be identified of liability by omission. Persons responsible for the security of cemeteries (e.g., cemetery manager, night watchman), by whose omission cemetery property was endangered, as a rule, cannot be held criminally liable under Article 262 § 1 of the Criminal Code in conjunction with Article 2 of the Criminal Code, unless their behavior was directed at insulting specific persons resting in the cemetery in question.

The offense of insult can only be committed intentionally, according to Article 8 of the Criminal Code. The question remains concerning the intent with which the perpetrator acts. In judicature and jurisprudence it is accepted that it is permissible to deliver an insult with both direct²⁴ and eventual intent.²⁵ This position is supported by the formal (non-effectual) nature of the insult.

¹⁹ LEX No. 1231618.

²⁰ LEX No. 444478.

²¹ M. Flemming, W. Kutzman, *Przestępstwa przeciwko porządkowi publicznemu*, Warszawa 1999, p. 108.

²² W. Kulesza, *Zniesławienie i zniewaga...*, p. 167; J. Raglewski, *Komentarz do art. 216...*; P. Hofmański, J. Satko, *Przestępstwa przeciwko czci i nietykalności cielesnej. Przegląd problematyki, orzecznictwo (SN 1918–2000), piśmiennictwo*, Kraków 2002, p. 46; A. Marek, *Kodeks karny. Komentarz*, Warszawa 2010, p. 487; B. Kunicka-Michalska, J. Wojciechowska, *Przestępstwa przeciwko wolności, przeciwko wolności sumienia i wyznania, przeciwko wolności seksualnej i obyczajności oraz przeciwko czci i nietykalności cielesnej. Komentarz*, Warszawa 2001, p. 314.

²³ J. Raglewski, *Komentarz do art. 216...*; B. Kunicka-Michalska, J. Wojciechowska, *Przestępstwa przeciwko wolności...*, p. 317; P. Hofmański, J. Satko, *Przestępstwa przeciwko czci...*, p. 48; A. Marek, *Kodeks karny. Komentarz...*, p. 480. Differently: R. Góral, *Kodeks karny. Praktyczny komentarz*, Warszawa 2002, p. 342.

²⁴ Resolution of the Supreme Court of October 29, 2012.

²⁵ T. Fedorszczak, *Przestępstwa przeciwko religii...*, pp. 88, 90; R. Krajewski, *Ochrona wolności sumienia i wyznania w świetle Kodeksu karnego z 1997 r.*, "Przełęcz Sądowy" 2008, No. 3, pp. 75–76; R. Paprzycki, *Prawnokarna analiza zjawiska satanizmu w Polsce*, Kraków 2002, p. 50; W. Janyga, *Przestępstwo obrazy uczuć religijnych w polskim prawie karnym w świetle współczesnego pojmowania wolności sumienia i wyznania*, Warszawa 2010, pp. 224–229; E. Kruczoń, *Przestępstwo obrazy uczuć religijnych*, "Prokuratura i Prawo" 2011, No. 2, p. 56; M. Filar, *Przestępstwa przeciwko wolności sumienia i wyznania* [in:] *Nowa kodyfikacja karna. Kodeks karny. Krótkie komentarze*, Issue 18, eds. *idem*, W. Radecki, Warszawa 1998, p. 105; *idem*, *Komentarz do art. 216 Kodeksu karnego* [in:] *Kodeks karny. Komentarz*, ed. *idem*, Warszawa 2016, p. 1324; R. Góral, *Kodeks karny. Praktyczny komentarz...*, p. 331; M. Makarska, *Przestępstwa przeciwko wolności sumienia i wyznania w kodeksie karnym z 1997 r.*, Lublin 2005, p. 164.

The object of the executive act²⁶ of insult under Article 262 § 1 of the Criminal Code is a human corpse, human ashes,²⁷ or the resting place of the deceased.²⁸

The term corpse has a legal definition. Bodies of deceased persons and stillborn children are considered corpses, regardless of the duration of pregnancy in the case of the latter.²⁹ The moment of death is defined as demise. According to Article 43 of the Act of December 5, 1996, on the Profession of Physician and Dentist,³⁰ a physician may determine death on the basis of personally performed examinations and findings.³¹ Human remains are not human corpses. The concept of human remains has a legal definition in § 8(1) of the Regulation of the Minister of Health of December 7, 2001, on the handling of human remains and remains.³² According to this paragraph, human remains are: ashes resulting from the burning of corpses; remains of corpses excavated when digging a grave or under other circumstances; and parts of the human body, detached from the whole.

2. The object of the crime of insulting a corpse

The object of the crime is a concept similar to the object of an attack and the object of protection.³³ It defines the legal good protected by specific criminal law provisions.³⁴

²⁶ A real world object on which the perpetrator's behavior is focused (B. Wróblewski, *Przedmiot przestępstwa, zamachu i ochrony w prawie karnym*, Wilno 1939, pp. 3–5).

²⁷ Human ashes are remains that, as a result of decomposition or cremation, can no longer be referred to as cadavers, i.e. bones and the remains of bones (A. Lach, *Komentarz do art. 262...*).

²⁸ A resting place is any place where the deceased is buried, regardless of whether it is in a cemetery or other public or private place, as well as anything connected with it (R. Stefański, *Przestępstwo znieważenia zwłok...*, p. 24). Currently, there is no legal definition of a grave in Polish law. The legal definition of a grave was contained in § 6 of the Regulation of the Ministers of Territorial Economy and Environmental Protection and Health and Social Welfare dated October 20, 1972, on the establishment of cemeteries, the keeping of cemetery books, and the burying of the dead, which expired in 2008 (Journal of Laws 1972 No. 47, item 299).

²⁹ § 2 of the Regulation of the Minister of Health of December 7, 2001 on the handling of human remains and remains (Journal of Laws No. 153, item 1783).

³⁰ Journal of Laws 2005 No. 169, item 1411.

³¹ More: A. Szczęsna, *Wokół medycznej definicji śmierci* [in:] *Umierać bez lęku: wstęp do bioetyki kulturowej*, ed. K. Szewczyk, Warszawa–Łódź 1996, pp. 77–78; I. Ziemiński, *Zagadnienie śmierci w filozofii analitycznej*, Lublin 1999, p. 102; T. Kalita, *Śmierć mózgu jako granica prawnokarnej ochrony życia człowieka*, "Prokuratura i Prawo" 2016, No. 7–8, p. 44; P. Morciniec, *Legalny kanibalizm? Transplantacja organów pojedynczych: problem ustalenia kryterium śmierci* [in:] *Śmierć i wiara w życie pośmiertne w świetle nauk przyrodniczych i humanistycznych*, ed. M. Machinek, Olsztyn 2003, p. 203; A. Nestorowicz, *Śmierć mózgu, śmierć człowieka*, "Wiedza i Życie" 1996, No. 1, p. 16; K. Sobczak, A. Janaszczyk, *Kontrowersje wokół neurologicznego kryterium śmierci mózgu*, "Forum Medycyny Rodzinnej" 2012, No. 4, p. 190; A. Lewandowicz, *Kiedy nie umarł jeszcze człowiek?*, "Puls" 2012, No. 6–7, pp. 36–37.

³² Journal of Laws No. 153, item 1783.

³³ P. Kozłowska-Kalisz, *Ustawowe znamiona czynu zabronionego* [in:] *Prawo karne materialne. Część ogólna*, ed. M. Mozgawa, Warszawa 2016, p. 193.

³⁴ *Ibid.*

These terms can be used interchangeably.³⁵ A distinction can be made between the general, generic, and individual object of crime.³⁶ A legal good should be understood as a value that is highly important to the individual, as well as to society in general; that why it is subject to criminal law protection.³⁷ However, this does not mean that only the goods (values) specifically indicated by the legislator are legally protected.³⁸ The catalog of goods deserving protection, if it is assumed that there is such a thing at all, is not closed and expands as society develops.³⁹

Legal goods can be differentiated according to whether they have a simple or a complex structure. Simple goods are those that are the object of protection on one level of social functioning. Complex goods, on the other hand, are goods protected in more than one sphere of social relations. Examples of simple goods include life, health, or property. However, the vast majority of goods are complex in nature, such as peace, freedom, family, or economic turnover.⁴⁰ Sometimes a single act disrupts the normal functioning of society in so many spheres, and thus violates so many legal goods, that it is impossible to say unequivocally what constitutes the primary object of protection. Such is the case with insulting or robbing a corpse, human ashes, a grave, or other resting place of a deceased person.

2.1. General and generic object of the crime of insulting a corpse

The general object of protection is taken as common to all types of crimes: the totality of social relations in a given society protected by criminal law or the totality of values protected by the criminal legal system.⁴¹

The generic (statutory) object of the crime of insulting a corpse is public order. This concept does not have a legal definition. It serves both as an object of protection and as a statutory characteristic of certain crimes.⁴² The concept of public order can be understood as either narrow or broad.⁴³ In the first, it is identified with legal order, understood as "the state of undisturbed reign of legal order."⁴⁴ In turn, in the broad view, public order is often identified with security, social order, and public peace.⁴⁵ In defin-

³⁵ K. Buchała, *Prawo karne materialne*, Warszawa 1989, p. 199; I. Andrejew, *Polskie prawo karne...*, p. 163; T. Bojarski, *Polskie prawo karne. Zarys części ogólnej*, Warszawa 2012, p. 120.

³⁶ L. Gardocki, *Prawo karne*, Warszawa 2015, pp. 92–95.

³⁷ M. Cieślak, *Polskie prawo karne. Zarys systemowego ujęcia*, Warszawa 1995, p. 25.

³⁸ E. Partridge, *Posthumous Interests and Posthumous Respect*, "Ethics" 1981, No. 91(2), p. 256.

³⁹ D. Gruszecka, *Pojęcie dobra prawnego w prawie karnym*, "Wrocławskie Studia Erazmiańskie. Zeszyty Studenckie" 2008, No. 1, pp. 142–144.

⁴⁰ S. Tarapata, *Dobro prawne w strukturze przestępstwa. Analiza teoretyczna i dogmatyczna*, Warszawa 2016, pp. 100–121.

⁴¹ H.J. Hirsch, *W kwestii aktualnego stanu dyskusji o pojęciu dobra prawnego*, "Ruch Prawniczy, Ekonomiczny i Społeczny" 2002, No. 1, p. 6.

⁴² M. Flemming, W. Kutzman, *Przestępstwa...*, p. 9.

⁴³ J. Waszczyński, *System prawa karnego. Tom IV. O przestępstwach w szczególności*, Wrocław 1989, pp. 719–721.

⁴⁴ M. Flemming, W. Kutzman, *Przestępstwa...*, p. 10.

⁴⁵ See W. Kubala, *Ochrona porządku publicznego w polskim prawie karnym*, Warszawa 1983, p. 76; W. Makowski, *Prawo karne. O przestępstwach w szczególności*, Warszawa 1924, pp. 144–147.

ing the concept of public order, some authors emphasize the subjectivity of the concept by defining it as a state of mental equilibrium of social groups and collectivities.⁴⁶

A linguistic analysis of the title of Chapter XXXII of the Criminal Code prompts the conclusion that the concept of public order is the common and main object of protection of crimes under this chapter. However, one cannot agree with such a position. Every crime is directed against public order.⁴⁷ Based on studies conducted by Marian Flemming and Witold Kutzman, which indicate a tendency to reduce the number of crimes under the Criminal Codes of 1932, 1969, and 1997 (respectively: 40 articles, 19 articles, and 13 articles⁴⁸), it should be assumed that the Polish legislator in this particular case adopts a transcendental concept of legal good.⁴⁹ which cannot be clearly defined yet. This is the reason for the collective nature of Chapter XXXII of the Criminal Code.⁵⁰ The above-mentioned authors divide the crimes in Chapter XXXII into four groups (political, against the public order *sensu stricto*, against human freedom and dignity, and others). The offense of insulting a corpse is placed in the category of "other crimes that are difficult to reduce to a common denominator."⁵¹ With the above in mind, it is worth quoting some definitions of public order and comparing them with the understanding of the general object of protection indicated at the beginning of this article.

Jerzy Zaborowski states that public order, tranquility, and security are elements characteristic of a certain state, enabling the members of organized society to coexist and enabling society to develop undisturbed.⁵²

According to Stefan Glaser, public order is a state of security existing in society, a state of the undisturbed reign of legal order, and, from the subjective point of view, a state of public awareness of the existence of this state.⁵³

Władysław Kawka calls public order a set of norms (and not only legal ones) the observance of which determines the normal coexistence of human individuals in a state.⁵⁴

According to Stefan Bolesta, public order is a system of legal-public devices and social relations arising or forming in public places (i.e., in the open and in the place of public use, which can be used by all people) and social relations arising or developing in non-public places, and ensuring, in particular, the protection of life, health and property of citizens and social property.⁵⁵

⁴⁶ J. Waszczyński, *System prawa karnego...*, p. 719.

⁴⁷ W. Wolter, *Nauka o przestępstwie. Analiza prawnicza na podstawie przepisów części ogólnej kodeksu karnego z 1969 r.*, Warszawa 1973, p. 44.

⁴⁸ M. Flemming, W. Kutzman, *Przestępstwa...*, p. 13.

⁴⁹ D. Gruszecka, *Pojęcie dobra prawnego...*, p. 143.

⁵⁰ M. Kalitowski [in:] *Kodeks karny. Komentarz*, ed. M. Filar, Warszawa 2012, p. 1169.

⁵¹ M. Flemming, W. Kutzman, *Przestępstwa...*, pp. 15–17.

⁵² J. Zaborowski, *Prawne środki zapewnienia bezpieczeństwa i porządku publicznego*, Warszawa 1977, p. 7.

⁵³ S. Glaser, *Polskie prawo karne w zarysie*, Kraków 1933, p. 355.

⁵⁴ W. Kawka, *Policja w ujęciu historycznym i współczesnym*, Wilno 1939, pp. 67–69.

⁵⁵ S. Bolesta, *Pozycja prawna MO w systemie organów PRL*, Warszawa 1972, p. 118; *idem*, *Charakter i zakres prawny działalności Milicji*, "Zeszyty Naukowe ASW" 1975, No. 9, pp. 135–151.

According to Włodzimierz Kubala, public order is the state of social relations and devices desirable from the point of view of the interests of the state, ensuring the proper functioning of the apparatus of government and management, and guaranteeing security and tranquility in places open to the public. This state is regulated by legal norms and principles of social coexistence.⁵⁶

Jerzy Zaborowski defines public order as a state of facts within the state, regulated by "legal and extra-legal norms [...] the observance of which enables the normal coexistence of individuals in the state organization."⁵⁷

Zdzisław Kijak describes public order as a desirable state of facts within the state, regulated by legal norms and rules of social coexistence, the observance of which enables normal collective coexistence in a specific place and time.⁵⁸

Comparing the definitions of public order and the general object of protection indicated above, it can be stated that they are identical to such an extent that it seems permissible to put an equal sign between them. Thus, it is justified to state that in the case of crimes under Chapter XXXII of the Criminal Code, the generic object of protection is the general object of protection, and the generic object is not specified. Thus, it should be agreed that in a given chapter of the Criminal Code we are dealing with a number of individual objects of protection.⁵⁹

It is worth noting the historical context of the inclusion of Chapter XXXII in the current Criminal Code. Most of the crimes in a given chapter can be assigned an object of protection that is abstract enough, but at the same time specific enough that this allows them to be placed in other parts of the law, or, if the object of protection is characterized by a special peculiarity, to create a separate chapter for them in a special part of the Penal Code.

In the case of insulting a corpse, it is difficult to agree with the claim that the behavior criminalized in Article 262 of the Criminal Code is just a violation of public order, so legally relevant that it should be punishable mainly for this reason. This crime is so individualized that in some legislations a chapter in the criminal law is separately devoted to it.⁶⁰ Leaving aside the redundancy of Chapter XXXII of the Criminal Code and the possibility of locating its individual crimes in other chapters, it is necessary, following Władysław Wolter and Lech Gardocki,⁶¹ to consider public order as a general

⁵⁶ W. Kubala, *Porządek publiczny jako rodzajowy przedmiot ochrony przepisów prawa karnego*, "Palestra" 1981, Vol. 25, No. 7–9, p. 56.

⁵⁷ J. Zaborowski, *Administracyjno-prawne ujęcie pojęć "bezpieczeństwo publiczne" i "porządek publiczny". Niektóre uwagi w świetle unormowań prawnych 1983–1984*, "Zeszyty Naukowe ASW" 1985, No. 41, p. 130.

⁵⁸ Z. Kijak, *Pojęcie ochrony porządku publicznego w ujęciu systemowym*, "Zeszyty Naukowe ASW" 1987, No. 47.

⁵⁹ A. Marek, *Kodeks karny. Komentarz...*, p. 485; *Kodeks karny. Komentarz*, ed. V. Konarska-Wrzošek, Warszawa 2016; *Kodeks karny. Komentarz*, ed. M. Mozgawa...

⁶⁰ Cf. South Korea Criminal Code from 1953, <http://www.refworld.org/docid/3f49e3ed4.html> [accessed: 2023.06.30]; Japan Criminal Code, <http://www.cas.go.jp/seisaku/hourei/data/PC.pdf> [accessed: 2023.06.30].

⁶¹ W. Wolter, *Nauka...*, p. 44; L. Gardocki, *Prawo karne...*, p. 92.

object of protection that is protected regardless of its location in a special part, and therefore to assume that in the case of the crime of Article 262 of the Criminal Code, the generic object of protection is human reputation, which, incidentally, is indicated in the literature as an object of protection, but as an individual object of protection.⁶² However, it should be accepted that reputation is a generic object of protection, since it is a manifestation of the protection of human dignity. Human dignity is an absolute axiom and it does not expire even after the death of a person.⁶³ Thus, teleologically, it seems reasonable to understand the generic object of protection as something that follows directly from the supreme value, which here is human dignity. It is also worth noting that the reputation of a deceased person is not subject to civil protection as a legal good,⁶⁴ as this would be flawed by the construction of 24 of the Civil Code. Therefore, a *de lege ferenda* postulate should be made that the behavior criminalized in Article 262 of the Criminal Code should be placed in Chapter XXVII of the Criminal Code, that is among crimes against reputation and bodily integrity.

Recapitulating the above considerations, the generic object of protection of the crime under Article 262 of the Criminal Code should be taken as reputation. Respect for any person is his/her constitutional right to be free from a feeling of humiliation and does not expire after his/her death,⁶⁵ but due to the impossibility of defending one's good name after death,⁶⁶ the legislator rightly criminalizes behavior that violates the reputation of a dead person,⁶⁷ which seems justified and meets the test of proportionality.⁶⁸

2.2. The individual object of the crime of insulting a corpse

There are many different opinions regarding the determination of the individual object of protection of the crime of insulting a corpse in the Polish criminal legal order. The individual object is indicated thus:

- 1) veneration for the deceased,⁶⁹
- 2) protecting the human corpse and resting place against profanation,⁷⁰

⁶² A. Lach, *Komentarz do art. 262...*; M. Mozgawa, *Komentarz do art. 262...*; Z. Cwiąkowski, *Komentarz do art. 262...*

⁶³ Judgment of the Constitutional Court of October 5, 2015, K12/14, Journal of Laws of 2015, item 1633.

⁶⁴ The worship of the deceased is protected. For more: P. Księżak, *Komentarz do art. 23 Kodeksu cywilnego* [in:] *Kodeks cywilny. Komentarz. Część ogólna*, eds. *idem*, M. Pyziak-Szafnicka, Warszawa 2014.

⁶⁵ R. Belliotti, *Do Dead Human Beings Have Rights?*, "Personalist" 1979, No. 60, p. 201.

⁶⁶ S. Winter, *Against Posthumous Rights*, "Journal of Applied Philosophy" 2010, No. 27(2), p. 186.

⁶⁷ K. Smolensky, *Rights of the dead*, "Hofstra Law Review" 2009, No. 37(3), p. 774.

⁶⁸ Judgment of the Constitutional Tribunal of October 11, 2006, P3/06, Journal of Laws 2006 No. 190, item 1409; judgment of the Constitutional Tribunal of October 30, 2006, P10/06, Journal of Laws 2006 No. 202, item 1492.

⁶⁹ L. Peiper, *Komentarz do kodeksu karnego*, Kraków 1936, p. 360; R. Stefański, *Przestępstwo znieważenia zwłok...*, pp. 21–22.

⁷⁰ Judgment of Supreme Court of May 20, 1948, ZO 1949, item 36.2.

- 3) the inviolability of objects found with the dead and the material inviolability of the resting place of the corpse,⁷¹
- 4) affection for the deceased, expressed in respect for the corpse, human ashes, and resting places,⁷²
- 5) the institution of the mourning rite,⁷³
- 6) the honor, respect, and peace due to the deceased and their eternal resting place,⁷⁴
- 7) the feelings of people related to the deceased, especially those close to the deceased,⁷⁵
- 8) human dignity,⁷⁶
- 9) respect for human corpses and their place of burial and the protection of reverence towards them and their loved ones,⁷⁷
- 10) respect and reverence for the remains of the deceased and their resting places; and further the protection of the feelings of those close to the deceased and possible religious feelings,⁷⁸
- 11) respect for corpses, human ashes, and resting places.⁷⁹

To determine the object of protection of the crime of insulting a corpse, it is important to determine the reason for its criminalization.⁸⁰ However, it is impossible to agree with the statement of Juliusz Makarewicz,⁸¹ supported by Ryszard Stefański,⁸² among others, that respect for the corpse lies in connection with the cult of the deceased, and not with respect for the human body. This position violates the protection of the feelings of non-believers or those who do not practice the cult of the dead. There is no legal obligation to worship the deceased. The belief that the memory of the deceased must be respected is only culturally based, and therefore should not be the basis for criminalizing behavior that violates it. The obligation to worship the deceased is not a legal norm. No one can be forced to cultivate the memory of the deceased, much less be forced to remember the deceased at all.⁸³ The cult of deceased is a moral norm; so it cannot be an independent basis for criminalization.⁸⁴

⁷¹ J. Śliwowski, *Prawo karne...*, p. 438.

⁷² *Prawo karne w zarysie. Część szczegółowa*, ed. J. Waszczyński, Łódź 1981, pp. 148–149.

⁷³ *Prawo karne. Zagadnienia teorii i praktyki...*, p. 352.

⁷⁴ Z. Ćwiąkański, *Komentarz do art. 262...*

⁷⁵ R. Góral, *Kodeks karny. Praktyczny komentarz...*, p. 423.

⁷⁶ A. Rybak, *Prawnokarna ochrona...*, p. 100.

⁷⁷ *Kodeks karny. Komentarz. Tom II*, ed. A. Wąsek, Warszawa 2004, p. 380.

⁷⁸ D. Gruszecka, *Komentarz do art. 262...*

⁷⁹ A. Lach, *Komentarz do art. 262...*

⁸⁰ R. Stefański, *Przestępstwo znieważenia zwłok...*, p. 21.

⁸¹ J. Makarewicz, *Kodeks karny z komentarzem*, Lwów 1932, p. 265.

⁸² R. Stefański, *Przestępstwo znieważenia zwłok...*, p. 21.

⁸³ More about *Memory Law*: S. Löytömäki, *Law and the Politics of Memory. Confronting the Past*, Cheshire 2014.

⁸⁴ A. Wąsek, *Prawo karne – minimum moralności*, "Annales UMCS. Sectio G" 1984, Vol. 31, No. 3, p. 50. Cf. L. Gardocki, *Zagadnienia teorii kryminalizacji*, Warszawa 1990, p. 171; A. Wąsek, *W kwestii...*; R. Pa-przycki, *Prawnokarna ochrona...*, p. 109.

As Stefański emphasizes, respect for the corpse stems from humanity and dignity,⁸⁵ However, this author fails to note that these are not the same concepts, which, in turn, is pointed out by Witold Kulesza.⁸⁶ Humanity is a set of specific characteristics of the human species.⁸⁷ These are such elements of the anatomical and morphological structure of a being that allow it to be considered human. They also include non-material qualities, such as the ability to think abstractly. Dignity does not exist materially. The concept is conventional in nature. It is assumed that it cannot be defined, but it is an inalienable attribute of every human being and at the same time a source of other values.⁸⁸ It is emphasized that a person has dignity just by virtue of being human.⁸⁹ However, Stefański wrongly highlights that the act under Article 262 of the Penal Code does not directly harm human dignity, but does so indirectly.⁹⁰ Since dignity is the source of other values,⁹¹ it *prima facie* follows that the violation of these values directly harms dignity and only indirectly harms other goods, not the other way around. This reasoning is supported, among other things, by the structure of the Criminal Code of France, in which the crime of insulting a corpse is one of the crimes against dignity.⁹² However, since dignity is the source of all personal goods, it seems unnecessary to identify it in every case as an object of criminal protection. It cannot be assumed that it is not subject to protection under Article 262 of the Criminal Code. I agree with Agnieszka Rybak about the object of protection of a corpse from insult, but with several reservations. Her view is supported by the Judgment of the Court of Appeal in Kraków of September 7, 2000, II Aka 126/00,⁹³ in which the court emphasized the lack of identity of legally protected goods in the case of murder and the concealment of a corpse. Agreeing with the thesis of this ruling, Rybak writes: "This is because the perpetrator attacks different protected goods: with one of the acts, human life, and with the other, the reputation of and respect towards the dead, which precludes the adoption of an apparent concurrence of crimes." This view deserves approval, but it is not consistent with the earlier statement, establishing dignity as the object of protection of insulting a corpse. After all, it is dignity that is the source of both the right to life and the right to honor (reputation) after death; so according to Rybak's understanding there would be a unity of the legally protected good. However, Rybak also points

⁸⁵ R. Stefański, *Przestępstwo znieważenia zwłok...*, p. 21.

⁸⁶ W. Kulesza, *Zniesławienie i zniewaga...*, p. 165.

⁸⁷ J.D. Buller, *Adapting Minds: Evolutionary Psychology and The Persistent Quest for Human Nature*, Cambridge 2005, p. 428.

⁸⁸ D. Shultziner, *Human Dignity – Functions and Meanings*, "Global Jurist Topics" 2003, No. 3, pp. 1–21.

⁸⁹ L. Peiper, *Komentarz do kodeksu karnego...*, p. 360; Z.J. Zdybicka, *Wolność religijna fundamentem ludzkiej wolności*, "Człowiek w Kulturze. Prawa Człowieka" 1998, No. 11, p. 129.

⁹⁰ R. Stefański, *Przestępstwo znieważenia zwłok...*, p. 21.

⁹¹ I. Zgoliński, *Zniesławienie w polskim prawie karnym*, Warszawa 2013, p. 22. Dignity is not to be defined as self-esteem. Dignity is an autonomous concept in relation to self-esteem. Self-esteem and reputation derive from personal dignity (H.J. Hirsch, *Ehre und Beleidigung*, Heidelberg 1967, p. 101; K. Schmid, *Freiheit der Meinungsäußerung und strafrechtlicher Ehrenschtz*, Tübingen 1972, p. 51).

⁹² Criminal Code of France, https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070719/ [accessed: 2023.06.30].

⁹³ KZS 2000, No. 9, item 34.

to the honor and respect due to the deceased as an object of protection, but this is inconsistent with her argumentation.

Therefore, dignity is a value that is directly violated in any violation of legal goods closely related to a person, including insulting a corpse or grave, but as the source of these goods, it seems unnecessary to point to it as a legally protected good in every single case. Therefore, the assertion that respect and honor for the corpse derive from dignity, but that this does not mean that it is subject to protection, is unacceptable.⁹⁴

3. Comparison with other European regulations

Crimes of which the object of the executive action is a human corpse are not a homogeneous group. With regard to the object of protection of the crimes in question (both main and collateral), they are divided into the following groups:

- 1) crimes against the honor (reputation) and physical integrity of the corpse,
- 2) crimes against the place of rest,
- 3) crimes of taking property from a corpse or resting place,
- 4) crimes of a sexual nature,
- 5) crimes of a medical nature,
- 6) crimes of a religious nature,
- 7) criminal-procedural crimes,
- 8) administrative crimes.⁹⁵

The heterogeneity of definition of the object of protection of the crime of insulting a corpse is also visible in European legislation. As in the Polish legislation, the verbal elements suggest a different individual object of protection from the statutory one.

In the Albanian regulation, the statutory object of protection is morality and dignity, while the criminal act is desecration (*desacration*), which suggests that religious feelings and respect for places considered sacred are also protected.⁹⁶

Similarly, despite the designation of public order as the statutory object of protection, behavior that violates religious sentiments and respect for places of worship is indicated as the criminal action. This is noted in the Danish regulation (“whoever violates the sanctity of cemeteries”),⁹⁷ the Swiss regulation (“whoever seriously [*in roher Weise*] desecrates [*verunehrt*] the resting place of the deceased, or maliciously disrupts

⁹⁴ Cf. L. Manteuffel, *Etyczne aspekty transplantacji serca* [in:] *Krąg życia i śmierci. Moralne problemy medycyny współczesnej*, ed. Z. Szawarski, Warszawa 1987, pp. 298–299. Differently: R. Stefański, *Przestępstwo znieważenia zwłok...*, pp. 21–22.

⁹⁵ M. Najman, *Determinants of the Object of Protection of the Crime of Desecration of a Corpse and a Grave and Defamation of a Deceased Person*, “Krytyka Prawa. Niezależne Studia nad Prawem” 2021, Vol. 13, No. 3, p. 242.

⁹⁶ Criminal Code of Albania, <https://www.legislationline.org/documents/section/criminal-codes/country/47/Albania/show> [accessed: 2023.06.28].

⁹⁷ Criminal Code of Denmark, https://legislationline.org/sites/default/files/documents/39/Denmark_Criminal_Code_am2005_en.pdf [accessed: 2023.06.28].

[*böswillig stört*] or desecrates a funeral procession or funeral ceremony”),⁹⁸ the Russian regulation (“insults on the bodies of the dead or damage, destruction or desecration of burial sites, gravestones or cemetery buildings intended for funeral ceremonies or memorial ceremonies”),⁹⁹ and the Icelandic regulation (“the same punishment applies to whoever acts unworthily with objects belonging to churches or intended for church ceremonies”).¹⁰⁰

Swedish legislation, on the other hand, identifies public order as the statutory object of protection, but the executive actions indicate a violation of administrative regulations (“whoever, without permission [*obehörigen*], exhumes [*flyttar*], [...] opens a grave or otherwise damages or destroys a coffin, urn, grave, other resting place of the deceased or a gravestone”).¹⁰¹ The Dutch regulation is similar (“any person who intentionally prevents lawful access to a cemetery or crematorium or the lawful transportation of a corpse to a cemetery or crematorium; any person who intentionally violates [*graf schendt*] a grave or intentionally and unlawfully destroys or damages a monument erected in a cemetery [*enig op een begraafplaats opgericht gedenkteken*]; any person who intentionally and unlawfully exhumes [*opgraaft*] or takes [*wegneemt*] a human corpse or transfers [*verplaatst*] or transports [*vervoert*] it”),¹⁰² as it is in the Croatian regulation (“whoever, without authorization, exhumes [*iskopa*], digs up [*prekopa*], demolishes [*razruši*], destroys [*ošteti*] or otherwise grossly desecrates [*grubo oskvrne*], a grave, burial site or monument to the dead”), and in the Finnish regulation (“whoever unlawfully opens a grave or removes a body or part thereof, a coffin or a buried urn from it”).¹⁰³

On the other hand, German legislation is different, as it identifies religion and world-view as the statutory object of protection [*Straftaten, welche sich auf Religion und Weltanschauung beziehen*], while the executive act consists in a violation of administrative regulations (“whoever unlawfully takes the body or parts of the body of a deceased person, a stillborn fetus or parts thereof, or the ashes of a deceased person from the custody of a person entitled to it”).¹⁰⁴ It is the same in Lithuanian legislation (“whoever unlawfully takes away the remains of a deceased person or parts thereof; whoever

⁹⁸ Criminal Code of Switzerland, <https://www.admin.ch/opc/en/classified-compilation/19370083/201903010000/311.0.pdf> [accessed: 2023.06.28].

⁹⁹ Criminal Code of Russia, <https://www.legislationline.org/documents/section/criminal-codes/country/7/Russian%20Federation/show> [accessed: 2023.06.28].

¹⁰⁰ Criminal Code of Iceland, https://www.government.is/library/Files/General_Penal_Code_sept.-2015.pdf [accessed: 2023.06.28].

¹⁰¹ Criminal Code of Sweden, <https://www.legislationline.org/documents/section/criminal-codes/country/1/Sweden/show> [accessed: 2023.06.30].

¹⁰² Criminal Code of Netherland, https://sherloc.unodc.org/res/cld/document/nld/1881/penal-code-of-the-netherlands_html/Netherlands_Penal_Code_1881_as_amd_2014.pdf [accessed: 2023.06.30].

¹⁰³ Criminal Code of Croatia, https://legislationline.org/sites/default/files/documents/3b/Croatia_Criminal_Code_2011_en.pdf [accessed: 2023.06.30].

¹⁰⁴ Criminal Code of Germany, <https://www.gesetze-im-internet.de/stgb/index.html> [accessed: 2023.06.30].

unlawfully digs up [atkasė] a grave")¹⁰⁵ and in Austrian legislation ("whoever unlawfully removes [wegschafft] a corpse or parts of a corpse or ashes of a deceased person from a grave, monument or other resting place, or improperly handles [mißhandelt] a corpse, parts thereof, ashes of a deceased person or a grave").¹⁰⁶

The Spanish regulation is somewhat different. In it the statutory objects of protection are freedom of conscience, religious feelings, and respect for the dead while the formulation of a perpetrator's actions clearly indicate that the object of protection is the honor (reputation) of the deceased ("whoever disrespecting [faltando al respeto] the memory of the dead, destroys graves or tombs [sepulcros o sepulturas], desecrates corpses or ashes or, with intent to humiliate, destroys, alters or damages funerary urns, cemeteries, shrines, and tombstones").¹⁰⁷

Conclusions

As indicated, the generic object of protection against insult to a corpse is the reputation of a human being, which does not cease after death.¹⁰⁸ In turn, the reputation of the deceased should be considered an individual object of protection.¹⁰⁹ This is a special type of reputation that requires public law protection. First of all, the deceased cannot defend his/her personal rights on his/her own. Second, not every deceased person has relatives who can defend his/her honor. Thirdly, honor (reputation) is an attribute of every person, regardless of his or her deeds during life or religion.¹¹⁰ It seems unnecessary to introduce an additional concept of respect for the corpse as an object of protection, since it remains essentially the same as the concept of honor. It should

¹⁰⁵ Criminal Code of Lithuania, <http://www.uwm.edu.pl/kpkm/uploads/files/litewski-kodeks-karny.pdf> [accessed: 2023.06.30].

¹⁰⁶ Criminal Code of Austria, <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/93674/109612/F467747936/AUT93674%20Ger.pdf> [accessed: 2023.06.30].

¹⁰⁷ Criminal Code of Spain, https://legislationline.org/sites/default/files/documents/32/Spain_CC_am2013_en.pdf [accessed: 2023.06.30], <https://wipolex.wipo.int/en/text/415252> [accessed: 2023.06.30].

¹⁰⁸ R. Belliotti, *Do Dead Human Beings...*, p. 201; D. Hacker, *The rights of the dead through the prism of Israeli succession disputes*, "International Journal of Law in Context" 2015, No. 1(03), pp. 42–43; J. Feinberg, *The Moral Limits...*, p. 83; *idem*, *Harm and Self-Interest* [in:] *idem*, *Rights, Justice, and the Bounds of Liberty: Essays in Social Philosophy*, Princeton 1980, pp. 65–66; K. Smolensky, *Rights of the dead...*, pp. 763–804.

¹⁰⁹ See: Judgment of the Regional Court of Warsaw dated February 9, 2021, III C 657/19, LEX No. 3169942. The court held that "by asserting the protection of a personal good in the form of the cult of memory of a deceased person, respect for a person's personal goods (e.g., honor, image, privacy) after his or her death can also be ensured," as amended by the judgment of the Court of Appeals in Warsaw on August 16, 2021, I ACa 300/21 (https://oko.press/images/2021/10/Wyrok_I_ACa_300_21.pdf [accessed: 2023.05.04]).

¹¹⁰ K. Smolensky, *Rights of the dead...*, p. 782. Differently: I. Zgoliński, *Zniesławienie...*, p. 94.

be noted, however, that it is a matter of the honor of a specific deceased person or a specific resting place of a deceased person, and not the dead in general.¹¹¹

The positions stating the cult of the deceased, feelings of relatives or religious feelings as the (primary) individual object of protection of the crime of insulting a corpse should be rejected. This would significantly violate the religious feelings of non-believers, and, thus, the constitutional principle of equality before the law.¹¹² A collateral and possible object of protection may be religious feelings,¹¹³ but this cannot be the main argument to justify posthumous protection of the human body.

Literature

- Andrejew I., *Polskie prawo karne w zarysie*, Warszawa 1989.
- Armstrong W., *Nothing but Good of the Dead*, "ABA Journal" 1932, Vol. 18, No. 4.
- Belliotti R., *Do Dead Human Beings Have Rights?*, "Personalist" 1979, No. 60.
- Bernet M., *O wątpliwych podstawach karalności tzw. nekrofilii właściwej w Polsce. Zarys stanowiska własnego na tle art. 262 k.k.* [in:] *Zbrodnia, kara, nadzieja. Wybrane niektóre rodzaje przestępstw, ich aspekty prawne i resocjalizacyjne*, eds. M.H. Kowalczyk, A. Kinas-Zalewska, Jastrzębie Zdrój 2012.
- Bojarski T., *Odmiany podstawowych typów przestępstw w polskim prawie karnym*, Warszawa 1982.
- Bojarski T., *Polskie prawo karne. Zarys części ogólnej*, Warszawa 2012.
- Bolesta S., *Charakter i zakres prawny działalności Milicji*, "Zeszyty Naukowe ASW" 1975, No. 9.
- Bolesta S., *Pozycja prawna MO w systemie organów PRL*, Warszawa 1972.
- Buchała K., *Odpowiedzialność za przestępstwa kwalifikowane przez następstwa czynu*, "Wojskowy Przegląd Prawniczy" 1972, No. 1.
- Buchała K., *Prawo karne materialne*, Warszawa 1989.
- Buller J.D., *Adapting Minds: Evolutionary Psychology and The Persistent Quest for Human Nature*, Cambridge 2005.
- Callahan J., *On Harming the Dead*, "Ethics" 1987, No. 97(2).
- Cameron F., *Defamation survivability and the demise of the antique "actio personalis" doctrine*, "Columbia Law Review" 1983, No. 88.
- Cieślak M., *Polskie prawo karne. Zarys systemowego ujęcia*, Warszawa 1995.
- Ćwiąkański Z., *Komentarz do art. 262 Kodeksu karnego* [in:] *Kodeks karny. Część szczególna. Tom II. Komentarz do art. 117–277 k.k.*, ed. A. Zoll, Warszawa 2013.
- Fedorszczak T., *Przestępstwa przeciwko religii na ziemiach polskich w latach 1918–1998* [in:] *Prawo wyznaniowe. Przeszłość i teraźniejszość*, ed. J. Koredczuk, Wrocław 2008.
- Feinberg J., *Harm and Self-Interest* [in:] *idem, Rights, Justice, and the Bounds of Liberty: Essays in Social Philosophy*, Princeton 1980.
- Feinberg J., *The Moral Limits of Criminal Law. Harm to Others*, New York 1984.
- Filar M., *Komentarz do art. 216 Kodeksu karnego* [in:] *Kodeks karny. Komentarz*, ed. *idem*, Warszawa 2016.

¹¹¹ W. Makowski, *Prawo karne...*, p. 423.

¹¹² Z. Mirgos, *Przestępstwa przeciwko uczuciom religijnym w polskim kodeksie karnym z 1932 r.*, "Wojskowy Przegląd Prawniczy" 1982, No. 37, p. 196.

¹¹³ D. Gruszecka, *Komentarz do art. 262...*

- Filar M., *Przestępstwa przeciwko wolności sumienia i wyznania* [in:] *Nowa kodyfikacja karna. Kodeks karny. Krótkie komentarze*, Issue 18, eds. *idem*, W. Radecki, Warszawa 1998.
- Flemming M., Kutzman W., *Przestępstwa przeciwko porządkowi publicznemu*, Warszawa 1999.
- Gardocka T., *Czy zwłoki ludzkie są rzeczą i co z tego wynika?* [in:] *Non omnis moriar. Osobiste i majątkowe aspekty prawne śmierci człowieka: zagadnienia wybrane*, eds. J. Gołaczyński, J. Mazurkiewicz, J. Turłukowski, D. Karkut, Wrocław 2015.
- Gardocki L., *Prawo karne*, Warszawa 2015.
- Gardocki L., *Zagadnienia teorii kryminalizacji*, Warszawa 1990.
- Glaser S., *Polskie prawo karne w zarysie*, Kraków 1933.
- Góral R., *Kodeks karny. Praktyczny komentarz*, Warszawa 2002.
- Gruszecka D., *Komentarz do art. 262 Kodeksu karnego* [in:] *Kodeks karny. Część szczególna. Komentarz*, ed. J. Giezek, Warszawa 2014.
- Gruszecka D., *Pojęcie dobra prawnego w prawie karnym*, "Wrocławskie Studia Erazmiańskie. Zeszyty Studenckie" 2008, No. 1.
- Hacker D., *The rights of the dead through the prism of Israeli succession disputes*, "International Journal of Law in Context" 2015, No. 1(03).
- Hirsch H.J., *Ehre und Beleidigung*, Heidelberg 1967.
- Hirsch H.J., *W kwestii aktualnego stanu dyskusji o pojęciu dobra prawnego*, "Ruch Prawniczy, Ekonomiczny i Społeczny" 2002, No. 1.
- Hofmański P., Satko J., *Przestępstwa przeciwko czci i nietykalności cielesnej. Przegląd problematyki, orzecznictwo (SN 1918–2000), piśmiennictwo*, Kraków 2002.
- Janyga W., *Przestępstwo obrazy uczuć religijnych w polskim prawie karnym w świetle współczesnego pojmowania wolności sumienia i wyznania*, Warszawa 2010.
- Kalita T., *Śmierć mózgu jako granica prawnokarnej ochrony życia człowieka*, "Prokuratura i Prawo" 2016, No. 7–8.
- Kalitowski M. [in:] *Kodeks karny. Komentarz*, ed. M. Filar, Warszawa 2012.
- Kawka W., *Policja w ujęciu historycznym i współczesnym*, Wilno 1939.
- Kijak Z., *Pojęcie ochrony porządku publicznego w ujęciu systemowym*, "Zeszyty Naukowe ASW" 1987, No. 47.
- Kodeks karny. Komentarz*, ed. M. Mozgawa, Warszawa 2015.
- Kodeks karny. Komentarz*, ed. V. Konarska-Wrzošek, Warszawa 2016.
- Kodeks karny. Komentarz. Tom II*, ed. A. Wąsek, Warszawa 2004.
- Kozłowska-Kalisz P., *Ustawowe znamiona czynu zabronionego* [in:] *Prawo karne materialne. Część ogólna*, ed. M. Mozgawa, Warszawa 2016.
- Krajewski R., *Ochrona wolności sumienia i wyznania w świetle Kodeksu karnego z 1997 r.*, "Przegląd Sądowy" 2008, No. 3.
- Kruczoń E., *Przestępstwo obrazy uczuć religijnych*, "Prokuratura i Prawo" 2011, No. 2.
- Książak P., *Komentarz do art. 23 Kodeksu cywilnego* [in:] *Kodeks cywilny. Komentarz. Część ogólna*, eds. *idem*, M. Pyziak-Szafnicka, Warszawa 2014.
- Kubala W., *Ochrona porządku publicznego w polskim prawie karnym*, Warszawa 1983.
- Kubala W., *Porządek publiczny jako rodzajowy przedmiot ochrony przepisów prawa karnego*, "Palestra" 1981, Vol. 25, No. 7–9.
- Kulesza J., *Glosa do wyroku Sądu Apelacyjnego w Łodzi z dnia 17 stycznia 2013 r., sygn. II Aka 273/13*, "Prokuratura i Prawo" 2014, No. 1.
- Kulesza W., *Zniesławienie i zniewaga. Ochrona czci i godności osobistej człowieka w polskim prawie karnym – zagadnienia podstawowe*, Warszawa 1984.

- Kunicka-Michalska B., Wojciechowska J., *Przestępstwa przeciwko wolności, przeciwko wolności sumienia i wyznania, przeciwko wolności seksualnej i obyczajności oraz przeciwko czci i nietykalności cielesnej. Komentarz*, Warszawa 2001.
- Lach A., *Komentarz do art. 262 Kodeksu karnego* [in:] *Kodeks karny. Komentarz*, ed. V. Konarska-Wrzosek, Warszawa 2016.
- Lernell L., *Wykład prawa karnego. Część ogólna. Tom 1*, Warszawa 1969.
- Lewandowicz A., *Kiedy nie umarł jeszcze człowiek?*, "Puls" 2012, No. 6–7.
- Löytömäki S., *Law and the Politics of Memory. Confronting the Past*, Cheshire 2014.
- Makarewicz J., *Kodeks karny z komentarzem*, Lwów 1932.
- Makarska M., *Przestępstwa przeciwko wolności sumienia i wyznania w kodeksie karnym z 1997 r.*, Lublin 2005.
- Makowski W., *Prawo karne. O przestępstwach w szczególności*, Warszawa 1924.
- Manteuffel L., *Etyczne aspekty transplantacji serca* [in:] *W kręgu życia i śmierci. Moralne problemy medycyny współczesnej*, ed. Z. Szawarski, Warszawa 1987.
- Marek A., *Kodeks karny. Komentarz*, Warszawa 2010.
- Mirgos Z., *Przestępstwa przeciwko uczuciom religijnym w polskim kodeksie karnym z 1932 r.*, "Wojсковy Przegląd Prawniczy" 1982, No. 37.
- Morciniec P., *Legalny kanibalizm? Transplantacja organów pojedynczych: problem ustalenia kryterium śmierci* [in:] *Śmierć i wiara w życie pośmiertne w świetle nauk przyrodniczych i humanistycznych*, ed. M. Machinek, Olsztyn 2003.
- Morciniec P., *Ludzkie zwłoki jako obiekt badawczy: dowolność działań czy normowanie?*, "Diamenty" 2009, No. 19.
- Mozgawa M., *Komentarz do art. 262 KK* [in:] *Kodeks karny. Komentarz*, ed. idem, Warszawa 2015.
- Najman M., *Determinants of the Object of Protection of the Crime of Desecration of a Corpse and a Grave and Defamation of a Deceased Person*, "Krytyka Prawa. Niezależne Studia nad Prawem" 2021, Vol. 13, No. 3.
- Nestorowicz A., *Śmierć mózgu, śmierć człowieka*, "Wiedza i Życie" 1996, No. 1.
- Paprzycki R., *Czy bluźnierca jest przestępcą? Rozważania na temat znamienia "przedmiotu czci religijnej" przestępstwa obrazy uczuć religijnych – art. 196 k.k.*, "Palestra" 2008, No. 5–6.
- Paprzycki R., *Prawnokarna analiza zjawiska satanizmu w Polsce*, Kraków 2002.
- Paprzycki R., *Prawnokarna ochrona wolności sumienia i wyznania*, Warszawa 2015.
- Partridge E., *Posthumous Interests and Posthumous Respect*, "Ethics" 1981, No. 91(2).
- Peiper L., *Komentarz do kodeksu karnego*, Kraków 1936.
- Prawo karne. Zagadnienia teorii i praktyki*, eds. D. Gajdus, A. Marek, Warszawa 1986.
- Prawo karne w zarysie. Część szczególna*, ed. J. Waszczyński, Łódź 1981.
- Prawo pogrzebowe: wybór źródeł*, eds. P. Borecki, M. Winiarczyk-Kossakowska, Warszawa 2012.
- Raglewski J., *Komentarz do art. 216 Kodeksu karnego* [in:] *Kodeks karny. Część szczególna. Tom II. Komentarz do art. 117–277 k.k.*, ed. A. Zoll, Warszawa 2013.
- Rybak A., *Prawnokarna ochrona godności zwłok człowieka*, "Palestra" 2014, No. 1–2.
- Schmid K., *Freiheit der Meinungsäußerung und strafrechtlicher Ehrenschtutz*, Tübingen 1972.
- Shultziner D., *Human Dignity – Functions and Meanings*, "Global Jurist Topics" 2003, No. 3.
- Smolensky K., *Rights of the dead*, "Hofstra Law Review" 2009, No. 37(3).
- Sobczak K., Janaszczuk A., *Kontrowersje wokół neurologicznego kryterium śmierci mózgu*, "Forum Medycyny Rodzinnej" 2012, No. 4.
- Sperling D., *Posthumous Interests. Legal and Ethical Perspectives*, New York 2008.

- Stefański R., *Przestępstwo znieważenia zwłok, prochów ludzkich lub grobu (art. 262 k.k.)*, "Prokuratura i Prawo" 2004, No. 10.
- Strauss J., *Human Remains: Medicine, Death, and Desire in Nineteenth-century Paris*, New York 2012.
- Szczęsna A., *Wokół medycznej definicji śmierci [in:] Umierać bez lęku: wstęp do bioetyki kulturowej*, ed. K. Szewczyk, Warszawa–Łódź 1996.
- Śliwowski J., *Prawo karne*, Warszawa 1975.
- Tarapata S., *Dobro prawne w strukturze przestępstwa. Analiza teoretyczna i dogmatyczna*, Warszawa 2016.
- Taylor J., *Death, Posthumous Harm, and Bioethics*, New York 2012.
- Waszczyński J., *System prawa karnego. Tom IV. O przestępstwach w szczególności*, Wrocław 1989.
- Wąsek A., *Prawo karne – minimum moralności*, "Annales UMCS. Sectio G" 1984, Vol. 31, No. 3.
- Wąsek A., *W kwestii tzw. odmoralizowania prawa karnego*, "Studia Filozoficzne" 1985, No. 2–3.
- Winter S., *Against Posthumous Rights*, "Journal of Applied Philosophy" 2010, No. 27(2).
- Wolter W., *Nauka o przestępstwie. Analiza prawnicza na podstawie przepisów części ogólnej kodeksu karnego z 1969 r.*, Warszawa 1973.
- Wolter W., *Wykład prawa karnego. Część I*, Issue 1, Kraków 1970.
- Wróbel W., Zoll A., *Polskie prawo karne. Część ogólna*, Kraków 2014.
- Wróblewski B., *Przedmiot przestępstwa, zamachu i ochrony w prawie karnym*, Wilno 1939.
- Zaborowski J., *Administracyjno-prawne ujęcie pojęć "bezpieczeństwo publiczne" i "porządek publiczny". Niektóre uwagi w świetle unormowań prawnych 1983–1984*, "Zeszyty Naukowe ASW" 1985, No. 41.
- Zaborowski J., *Prawne środki zapewnienia bezpieczeństwa i porządku publicznego*, Warszawa 1977.
- Zdybicka Z.J., *Wolność religijna fundamentem ludzkiej wolności*, "Człowiek w Kulturze. Prawa Człowieka" 1998, No. 11.
- Zgoliński I., *Zniesławienie w polskim prawie karnym*, Warszawa 2013.
- Ziemiński I., *Zagadnienie śmierci w filozofii analitycznej*, Lublin 1999.

Summary

Michał Najman

The Object Protected by the Criminalization of Insult to a Human Corpse in Polish Law

The insult of a human corpse is one of the oldest crimes. The guarantee of the inviolability of a human body after death, as well as the cult of the deceased are considered a precursors of religious faith. In the early periods of social development, the protection of corpses and burial sites stemmed from the prevailing religious beliefs among community members. Hence, in legal orders, it was religion, religious feelings, worship of the deceased, and others that were the main objects protected by the criminalization of insulting a corpse. To date, such a position remains popular and widely accepted. However, with the progress of civilization, more attention is beginning to be paid to the fact that the legal protection of human corpses is independent of religion. The purpose of the article is to point out the multiplicity of definitions of the object protected by the criminalization of insulting a corpse and thereby make the reader aware that

both the law and the values cultivated in society are dynamic institutions. This will make lawyers aware that their activity should not only focus on passive acceptance and repetition of the established truths and values, but also prompt them to figure out new ones or to search for new justifications that are more suitable in the current reality.

Keywords: insult, corpse, protection, criminalization.

Streszczenie

Michał Najman

Przedmiot przestępstwa znieważenia zwłok w prawie polskim

Przestępstwo znieważenia zwłok jest jednym z najstarszych przestępstw. Gwarancja nienaruszalności ciała człowieka po jego śmierci, a także kult zmarłych są uznawane za paragenезę wiary. W początkowych okresach rozwoju społecznego ochrona zwłok i miejsc wiecznego spoczynku wynikała z panujących wśród członków społeczności przekonań religijnych. Stąd też w porządkach prawnych jako przedmiot przestępstwa znieważenia zwłok wskazywano właśnie religię, uczucia religijne, kult zmarłych itp. Do chwili obecnej stanowisko takie cieszy się popularnością i powszechną akceptacją. Jednak wraz z postępem cywilizacyjnym zaczyna się coraz częściej zwracać uwagę na fakt, że prawna ochrona zwłok ludzkich jest niezależna od uwarunkowań wyznaniowych. Celem artykułu jest wskazanie na wielość określeń przedmiotu przestępstwa znieważenia zwłok i tym samym uświadomienie, że zarówno prawo, jak i wartości kultywowane w społeczeństwie są instytucjami dynamicznymi co do ich treści. Ma to uświadomić przedstawicieli doktryny, że ich aktywność nie tylko powinna skupiać się na biernej akceptacji i powtarzaniu zastanych prawd i wartości, lecz również wskazywać nowe bądź też poszukiwać ich nowego, bardziej przystającego do rzeczywistości uzasadnienia.

Słowa kluczowe: znieważenie, zwłoki, przedmiot przestępstwa.