



Dysfunctions of family communication as an object of incrimination under the Criminal Code

Dysfunkcje komunikacji rodzinnej jako przedmiot inkryminacji na gruncie Kodeksu karnego¹

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Abstract: Communication—as the transmission of information (message) between people, is an essential element of family life. The interpersonality—the relationality of family communication and the systemicity—the functioning of the individual within the subsystems husband-wife, parent-child and child-child should be emphasized. The realities of everyday life, including the cohabitation of family members, imply the frequency, intensity and regularity of communication processes. Abnormal communication implies disruptions in the functioning of the family. An extreme manifestation of such disruptions will be the committing of criminal offences. The aim of the article is to identify and characterize the most important criminal-law aspects of family communication—from the perspective of substantive criminal law. Family communication may be an element of the causative activity of crimes under the Criminal Code. In particular, it is necessary to mention crimes against the family and custody: bigamy (article 206 of the Criminal Code), domestic violence (article 207 of the Criminal Code) and debauching a minor (article 208 of the Criminal Code), as well as a crime against life and health—euthanasia (article 150 of the Criminal Code). The subjects of proceedings will be: declarations of intent by people entering into a marriage (the crime of bigamy); threats, bullying and insults carried out by perpetrators of domestic violence; incitement of minors to consume alcohol (by parents or legal guardians), as well as demands and requests whose object is the will to end life (in the case of euthanasia). Criminally relevant is the context and the relationship of the communication participants—especially the husband (father) as sender in the husband-wife and parent-child communication process. The intensity, persistence and frequency of family communication processes, resulting from cohabitation and other life realities, affect the specificity of the incriminated actions. The analysis of family communication may influence the finding of the accused guilty or the legal qualification of the action. As an example, consider the problem of defining a communication as a request or demand when it is necessary to decide whether the crime of euthanasia has been committed.

Keywords: communication, criminal law, family

Abstrakt: Komunikacja – jako przekaz informacji (komunikatu) między ludźmi, jest istotnym elementem życia rodzinnego. Podkreślić należy interpersonalność – relacyjność komunikacji rodzinnej oraz systemowość – funkcjonowanie jednostki w ramach podsystemów: mąż – żona, rodzic – dziecko oraz dziecko – dziecko. Realia życia codziennego, w tym wspólne zamieszkiwanie członków rodziny, implikują częstotliwość, intensywność i regularność procesów komunikacyjnych. Komunikacja nieprawidłowa wiąże się z zakłóceniami funkcjonowania rodziny. Skrajnym przejawem takich zakłóceń – dysfunkcji, będzie popełnianie czynów zabronionych. Celem artykułu jest określenie i scharakteryzowanie najważniejszych prawno-karnych aspektów dysfunkcji komunikacji w rodzinie – z perspektywy prawa karnego materialnego. Komunikacja rodzinna może być elementem czynności sprawczej przestępstw na gruncie Kodeksu karnego. Wymienić należy w szczególności przestępstwa przeciwko rodzinie i opiece: bigamię (art. 206 k.k.), znęcanie się (art. 207 k.k.) i rozpijanie małoletniego (art. 208 k.k.), oraz przestępstwo przeciwko życiu i zdrowiu – zabójstwo eutanatyczne (art. 150 k.k.). Przedmiotem postępowań będą: oświadczenia woli osób wstępujących w związek małżeński (przestępstwo bigamii), groźby, zastraszanie i ubliżanie, realizowane przez sprawców znęcania się; naklanianie małoletnich do spożywania alkoholu (przez rodziców lub opiekunów prawnych), a także żądania i prośby, których przedmiotem jest wola zakończenia życia (w przypadku zabójstwa eutanatycznego). Istotny prawno-karnie jest kontekst oraz relacje nadawcy z odbiorcą – szczególnie mąż (ojciec) jako nadawca w procesie komunikacyjnym mąż – żona i rodzic – dziecko. Intensywność, trwałość i częstotliwość procesów komunikacji rodzinnej, wynikające ze wspólnego zamieszkiwania i innych realiów życiowych, wpływają na specyfikę inkryminowanych czynów. Analiza komunikacji rodzinnej może mieć wpływ na uznaniu oskarżonego za winnego lub na kwalifikację prawną czynu. Jako przykład należy wskazać problematykę określenia komunikatu jako żądania lub prośby w przypadku konieczności rozstrzygnięcia czy popełnione zostało zabójstwo eutanatyczne.

Słowa kluczowe: komunikacja, prawo karne, rodzina

¹ Artykuł w języku polskim: <https://www.stowarzyszeniefidesetratio.pl/fer/2023-2Panka.pdf>

Introduction

Communication can be understood as the transfer of information (message) in a relationship between individuals (Bejma, 2014). There are six main elements of the communication process: context (conditions of the communication process), participants (sender and recipient of the message), message (message between the sender and the recipient of a two-level nature: content and relation), channel (transmission route), noise (sources of transmission interference) and finally, feedback (recipient's reaction to the message) (Bejma, 2014; Filipiak, 2004). What is the association of the family communication with it? It is indicated that communication is an important element of family life and allows for building relationships between spouses, parents and children, and siblings. It is the interpersonal nature—the relationship between the sender and the recipient—that is indicated as the basic feature of family communication (Matyjas, 2017).

Other characteristics of family communication will be the intensity, durability, and frequency of personal interactions, occurring due to the context—especially the cohabitation of family members and their dependencies or emotional ties (Matyjas, 2017). The systemic nature of communication also needs to be emphasized—the functioning of the individual is subordinated to various interactions with family members. Subsystems can be distinguished: marital (husband–wife), parental (parent–child) and siblings (child–child), influencing each other (Harwas-Napierała, 2006), creating a hierarchy of values (Komorowska-Pudło, Sameluk, 2022).

One of the basic points of reference of the text is the sub-discipline referred to as family psychology, which deals with the study of interpersonal relations of people in consensual relationships, however, outstanding familiologists (e.g. de Barbaro, 1999; Braun-Galkowska, 2018; Ryś, 2020) point to the mainstream research and special consideration and emphasis on formal relationships, i.e. research on the basic social group/cell on which society is based, built as a result of marriage.² Within this sub-discipline,

there are many conceptualizations of the family, one of the most important for many years and also used in this text is the systemic and communication approach, which emphasizes “the spiritual unification of a small group of people gathered in a common home by acts of mutual help and care, based on belief in real or alleged biological connection, family and social tradition” (Jakubiec, 2011, p. 7). This approach draws attention to the importance of understanding the family in functional and axiological categories, it also recognizes the family in its relational and interpersonal dimension.³ Particular consideration was given here to the communication aspect of these interpersonal relations. Open, clear communication, enabling the proper course of information processes, is, as Barbara Harwas-Napierała points out, a key factor distinguishing “healthy families from those that show a significant degree of dysfunction” (Harwas-Napierała, 2006, p. 221). In the text, we will treat dysfunctions, similarly to Harwas-Napierała, as disturbances in the functioning of the family—in the communication aspect.

Barriers that hinder family communication include: ordering, commanding, and managing or persuading and moralizing (Matyjas, 2017). If difficulties in family communication are related to disturbances in the functioning of the family, then they are also associated with their extreme manifestation, i.e. committing acts prohibited under Polish criminal law. Dysfunctional processes—devoid of openness, containing communication barriers, of a strongly persuasive nature, can be criminalized by law as causative acts of crimes committed by means of language or utterances.

If family communication can be an element of the causative act of the crime, then family members will take part in the criminal trial. The family can be both a participant and an object of communication in the process. Family members—participants in the process—play specific roles and formulate statements as witnesses, accused or aggrieved. Law executors (judge,

2 The family is a basic value in Polish culture due to strong Christian and even pre-Christian tradition, as the patterns of Slavic culture indicate that it was an ancestral culture (“rodzina” – etymologically from the Polish word “ród”) (Pankalla, Kośnik, 2018).

3 An important integration and communication function is also played by family myths (cf. Pankalla, 2000).

defense lawyers, prosecutors) also participate in this communication. They communicate with family – but also about family. They make (and present in the form of statements in the courtroom) factual findings about family relationships, and sometimes even narratives about family crime (e.g. Cotterill, 2003; Weare, 2017).

When examining family communication in criminal law, two perspectives can be adopted: substantive law and procedural law. The aim of the article is an attempt to define and characterize the most important criminal law aspects of dysfunction of family communication – taking the perspective of substantive law. Substantive criminal law, as Gardocki points out, is a field of law that defines, among others, acts that are crimes and the rules of criminal liability (including penalties, punitive measures, and security measures) (Gardocki, 2019). In the article, particular emphasis will be placed on the incrimination of family communication dysfunctions (especially in the subsystems: husband–wife and parent–child) on the basis of the Act of June 6, 1997 – the Criminal Code.⁴

1. Dysfunctions of family communication – offences against family and care

Family communication can be an element of the causative act of many crimes. The Criminal Code has a separate chapter XXVI – “Offences against the family and care”, subordinated to the family as a protected good. The chapter lists the following crimes: bigamy (Article 206 of the Criminal Code), maltreatment (Article 207 of the Criminal Code), inducing a minor to drink habitually (Article 208 of the Criminal Code), evading the duty of alimony (Article 209 of the Criminal Code), abandonment (Article 210 of the Criminal Code), abduction (Article 211 of the Criminal Code), unlawful adoption arrangement (Article 211a of the Criminal Code). Communication as an important element of causative act may occur in particular in the case of: bigamy, maltreatment, inducing a minor to drink habitually.

1.1. Bigamy

The crime of bigamy is defined in Article 206 of the Criminal Code: “Whoever enters into marriage despite being married is subject to a fine, restriction of liberty or imprisonment for up to 2 years.” The doctrine indicates that the purpose of the criminal law prohibition of bigamy is to protect the family: “Marriage (...) legally concluded between a man and a woman gives the basis (...) to initiate an independent, separate link of the social structure, which is the family. (...) the legislator, protecting the mere fact of the legality of entering into a marriage protects the initiation of a family unit” (Hypś, 2023a; Tobis, 1980). Bigamy is known as a crime committed by speech, consisting in making declarations of will to enter into marriage (Demenko, 2021).

The communication aspect of causative act is as follows. In the process of communication there are participants who are both senders and recipients of messages. These are two individuals who want to get married (a man and a woman), as well as a civil registrar or a clergyman. The individual nature of the crime implies the fact that at least one of the participants wishing to get married is, at the time of the communication process, in a valid marriage with another person (under Polish law). An element of the context may be, for example, the place of the communication process (registry office – in the case of a civil marriage, or a Catholic church or the seat of another religious association – in the case of a concordat marriage).

Two participants submit declarations of will to enter into marriage. The time of committing a crime is the moment of making declarations of will – that is, the transmission of messages with a causative (performative) function, causing a change in the legal status and at the same time a criminal effect – the conclusion of marriage. Bigamy is a one-time (one-second) crime (Hypś, 2023a) – the process of communication (transmission of messages – making declarations of will) is penalized, and not the ongoing state of marriage. A bigamous (second) marriage entails legal effects and functions until it is annulled (Hypś, 2023a).

⁴ Act of June 6, 1997 – the Criminal Code [Kodeks karny] (i.e. Journal of Laws of 2022, item 1138) – hereinafter the following will be used: abbreviated name – the Criminal Code.

1.2. Maltreatment

The crime of maltreatment, defined in Article 207 of the Criminal Code, is considered the basic instrument for combating domestic violence (Hypś, 2023b). The complex subject of protection includes the family, its proper functioning and upbringing of young people, and depending on the form of the act, also freedom and honor, as well as human life and health (Kosonoga, 2023). The Supreme Court emphasized that the crime affects the whole family, hindering or even preventing its development.⁵ Art. 207 § 1 of the Criminal Code specifies that: “Whoever physically or mentally maltreats the closest person or another person in a permanent or temporary relationship of dependence on the perpetrator, is subject to the penalty of imprisonment from 3 months to 5 years.” The specificity of the subject side of maltreatment means “usually a behavior consisting of single or multi-type single actions violating various goods and systematically repeated”.⁶

Family communication can be an element of the causative act of maltreatment in the mental dimension. The indicated basic features of family communication—intensity, durability, frequency of personal interactions—also characterize the subject matter of the crime. Cohabitation or close contact between the perpetrator and the victim are factors that enable frequent, multiple, cyclical communication processes. Participants in the communication process will be, in particular, spouses and children. Messages sent by the perpetrators to the victims (often—by the spouse (father) to the wife and children) contain many barriers that block proper communication and have a negative impact on the recipient. Communication barriers such as warnings, reprimands, and threats seem to be important (Matyjas, 2017). Messages sent by the perpetrators to the victims occur together with the following incriminated behaviors: repeatedly shouting at the victim, directing vulgar words and

calling names;⁷ insulting, ridiculing and insulting;⁸ threats of crime or abandonment, showing contempt, disregard, intimidation, brawling, arousing fear of death (Kosonoga, 2023); threatening to use a knife.⁹

As an example of the communication aspect in the crime of maltreatment, there is a case conducted by the District Court in Łódź. The judgment describes the regularity and multiple messages sent by the perpetrator to the victim—wife: “Being under the influence of alcohol, the accused did not control his actions at all, systematically initiating domestic fights, during which he insulted the victim, addressing her words commonly considered offensive. In the same tone, he accused her of marital infidelity, criticized her appearance using offensive and hurtful epithets, drove his wife out of the house, claiming that everything belonged to him. The above-mentioned forms of his incriminated actions, in an objective assessment, constituted a significant ailment for the victim, causing mental suffering, which the complainant did not deny.”¹⁰

1.3. Inducing a minor to drink habitually

Penalizing the crime of inducing a minor to drink habitually (Article 208 of the Criminal Code) is aimed at protecting the proper development of young people – which, as indicated in the literature on the subject, involves protecting the proper functioning of the family, especially its care and educational function (Hypś, 2023c). Minors remain under the care of their parents or legal guardians, who should follow certain standards during the upbringing process—e.g. ensure children are free from addictive substances. The offense is defined as follows in the Criminal Code: “Whoever makes a minor drunk by providing them with an alcoholic beverage, facilitating their consumption or persuading them to consume such a beverage, is subject to a fine, the penalty of restriction of liberty or imprisonment for up to 2 years.” The Supreme Court pointed out

5 Judgment of the Supreme Court of December 2, 1974, I KRN 33/74, OSNKW 1975, No. 3–4, item 38.

6 Judgment of the Supreme Court of October 24, 2000, WA 37/00, Legalis.

7 Judgment of the Court of Appeal in Katowice of October 25, 2019, II AKa 455/19, OSAKat 2020, No. 2, item 11.

8 Judgment of the District Court for Warszawa-Mokotów in Warsaw of October 30, 2019, III K 721/17 (non-final judgment).

9 Decision of the District Court in Oleśnica of May 19, 2014, Case No. I Ns 283/14.

10 Judgment of the District Court in Łódź of December 4, 2018, V Ka 1044/18.

that although it is possible to fulfill the hallmarks of an act by a single action by the perpetrator, it seems obvious that multiple actions will most often be required.¹¹ Therefore, the causative act of the crime of drunkenness of a minor will (usually) have a multi-act character.

The communication aspect of the causative act will concern in particular persuading a minor to consume alcohol. As in the case of the crime of maltreatment, the intensity, durability, and regularity of personal interactions in family communication favor the execution of this crime by the perpetrator. The crime is common in nature, i.e. it may be committed by any person who does not have to be a family member of the aggrieved minor. The context of the communication process (cohabitation, regular contacts) means that drinking is often done by the child's parent or guardian. Therefore, the participants in the communication process will be the perpetrator (e.g. a parent) and the aggrieved minor.

The message conveyed by the perpetrator (persuading as an element of the subject side) is intended to perform the persuasive function. Anna Demenko points out that: "the range of behaviors that can be considered as persuasion is extremely wide, because the form of persuasion can be any—it can be both a word and a gesture, or any other action, which, however, will be recognized as a certain message (...) the context and the relationship between the sender and the recipient are crucial" (Demenko, 2021). The doctrine also indicates that persuasion affects the will of a minor child: "towards breaking his mental resistance and persuading or inducing their conviction to drink alcohol" (Hypś, 2023c). It can take the form of "persuasion, request, encouragement, command, as well as coercion (...)" (Hypś, 2023c). Once again, the crime can be referred to the category of barriers in family communication. In the communication process of "persuading", there may be, for example, barriers: ordering, commanding, managing; persuading, preaching, moralizing; or dictating a solution, making suggestions, giving advice (see: Matyjas, 2017).

2. Dysfunctions of family communication – the crime of euthanatic homicide

An example of a code crime from another chapter, in the case of which family communication may be an important element of the causative act, will be a crime against life and health—euthanatic homicide (euthanasia) (Article 150 of the Criminal Code). It is indicated that the subject of protection in this case is primarily human life—which, as an inalienable value, it is independent even of the will of the holder (Kokot, 2023). Art. 151 §1 of the Criminal Code states: "Whoever kills an individual at their request and under the influence of sympathy for them, is punishable by imprisonment from 3 months to 5 years." Privileging euthanatic homicide over the crime of homicide under Art. 148 of the Criminal Code results from the situation in which the perpetrator found themselves. Compassion for the person who demands the act—for example, being in a state of serious illness—can cause the perpetrator to decide to fulfill their will—especially if it is a family member. This kind of conflict of values can occur especially when the perpetrator has a close relationship with the victim. It is indicated that the emergence of compassion (as a motive for murder) will be significantly influenced by the quality of the emotional bond resulting from the kinship relationship (Kokot, 2023).

Therefore, the interpersonality (relationality) of the family communication process may play a key role in making the decision to perform a causative act. The participants in the communication process will be: the victim (demanding to deprive them of life) and the perpetrator (driven by compassion). It is indicated that the victim's message should be verbal—oral or written (Kokot, 2023). The channel (method of communication) may be: direct or telephone conversation, written message, letter or e-mail.

In order for the hallmarks of the act to be fulfilled, the victim's message should be regarded as a demand, characterized by categorical and

¹¹ Judgment of the Supreme Court of 14 March 2007, IV KK 472/06, OSNwSK 2007, No. 1, item 621.

one-sidedness.¹² Therefore, the strongly persuasive function of the message will be implemented—“a demand, unlike consent or even a request of the aggrieved party, contains an element of pressure on the psyche of its addressee”,¹³ and is close to an order or command (Kokot, 2023). Categorizing the victim’s message as a demand or request has an impact on the legal classification of the act—for example, on recognizing the act not as euthanatic homicide, and as murder under Art. 148 of the Criminal Code, subject to a higher penalty. It seems that clearly defining the victim’s message as a demand or request is a difficult task and may require the appointment of a linguistic expert in many criminal cases.

A clear distinction between a request and a demand was made in the case conducted by the Court of Appeal in Białystok. The court found that the victim repeatedly expressed her will to die and sent a message to her husband—but “only” in the form of a request, not a demand: “The fact is that the victim was determined to take her life and asked the defendant with such a request. This does not mean, however, that every will to die expressed by the victim may be considered such a “demand” within the meaning of Art. 150 § 1 of the Criminal Code (...). The will of suicide was repeatedly expressed by the victim to the accused and was accepted by him. They agreed to commit suicide together. Together, they wrote farewell letters to A. G.’s son, the neighbors—the Ł. married couple, and to the police, and agreed on how to kill the aggrieved. However, it should be stated, and this results from the court’s findings, including the explanations of the accused (...), that these were only expressed “requests” of the victim to deprive her of her life, which, according to the Court of Appeal, were not “demands” referred to in Art. 150 § 1 of the Criminal Code (...).¹⁴

Conclusions

Family communication is the subject of substantive criminal law. The Criminal Code contains crimes closely related to the specificity of dysfunctional communication in the family. The communication aspect is incriminated in the case of crimes against the family and guardianship, such as: bigamy (Article 206 of the Criminal Code), maltreatment (Article 207 of the Criminal Code) and inducing a minor to drink habitually (Article 208 of the Criminal Code). Family communication may also affect the causative act of crimes with a different subject of protection—for example, euthanatic homicide (euthanasia), affecting a person’s life. The subject of criminal proceedings is, in particular, declarations of will of persons entering into marriage and messages performing a persuasive function—threats, inducements, requests, demands.

It is worth noting that the key features of family communication—relationality, intensity, durability, and frequency of interactions—are also the features of causative acts of socially harmful crimes affecting the family: maltreatment and inducing a minor to drink habitually. Two important, criminal law aspects of dysfunctional family communication should be distinguished here: the context and the relationship between the sender and the recipient in the husband-wife and parent-child subsystems. It is the processes of communication between spouses and between parents and children, as well as cohabitation, close contact and the specificity of life and emotional ties that lead to the indicated prohibited acts in the family. The analysis of family communication in criminal proceedings may also determine whether the accused is found guilty or the legal qualification of the act. As an example, the issue of defining a message as a demand or a request should be pointed out. The court’s decision in such a case may affect the qualification of the act as homicide or euthanasia homicide, and thus the punishment.

12 Judgment of the Court of Appeal in Kraków of 13 May 2014, II AKa 72/14, KZS 2014, No. 9, item 41.

13 Judgment of the Court of Appeal in Wrocław of December 19, 2014, II AKa 267/14, KZS 2015, No. 6, item 89.

14 Judgment of the Court of Appeal in Białystok of March 21, 2018, II AKa 21/18, Legalis.

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