

“Cruelty” as a qualified hallmark of the crime of murder and rape*

JOANNA BRZEZIŃSKA

Department of Substantive Criminal Law, University of Wrocław

1. Introduction

The process of defining a qualified hallmark occurring in the structure of crimes such as murder or rape that is “extreme cruelty”, undoubtedly requires the evaluation of the perpetrator’s behaviour, and furthermore, determining the extent of the cruelty committed, which, as it seems, particularly substantiates making a reference to the characteristics of the indicated term to the characteristics from a linguistic perspective. The concept of “cruelty” is sometimes referred to as “a tendency to abuse or torment someone”. It may be refined or innate; however, an essential feature of cruelty is its inhuman nature. A person exhibiting cruelty is someone who behaves mercilessly¹. Cruelty is synonymous with ruthless behaviour, which is demonstrated by the perpetrator’s sadistic acts, torturing their victims, and abusing them. Extremely violent, and often brutal, or even sadistic behaviour becomes a manifestation of cruelty². In turn the adjective “extreme” is defined as manifesting or characterised by something peculiar, as well as drawing attention, unique, special, un-

* The article is a result of research and was financed by the National Centre of Science. The research manager is J. Brzezińska (decision nr. DEC 2012/07/D/HS5/00605).

¹ *Słownik języka polskiego*, vol. II, Warszawa 1979, p. 508.

² *Słownik wyrazów bliskoznacznych*, ed. S. Skorupka, Warszawa 1984, p. 124.

common, but also extraordinary, specific or unusual³. Thus, “extreme cruelty” may manifest itself in unique bestiality, inhuman brutality, and even overwhelming sadism of the perpetrator’s behaviour.

However, there is no doubt that behaviour characterised by an extreme level of cruelty is generally understood as extremely negative and is naturally or even instinctively condemned by the community, within which this act is committed. Unfortunately, sociological studies show that cruelty, which is an inherent feature of many criminal offences (e.g. murder or rape) is becoming an increasingly more common manifestation of progressive brutalisation of life, and the accompanying aggression not only exceeds the level necessary to break the victim’s resistance, but it becomes simply a measure of satisfaction that the perpetrator derives by carrying out his or her pathological acts⁴. Thus, it appears that the legislator has decided to distinguish the behaviour, which is characterised by “extreme cruelty” not only in order to draw attention to extremely adverse manifestations of infringement of goods legally protected, but it also seeks stigmatization to the highest extent the crimes that have a socially detrimental effect.

2. “Extreme cruelty” and murder

By analysing the character of the constituent elements of the qualified crime of murder established in Article 148 § 2 of the Penal Code, it seems that among many crimes, the character of which does not cast any doubt (e.g. murder as a consequence of hostage taking, rape or robbery), there are also such crimes, the characteristics of which require a higher degree of involvement in the determination of their scope, due to the presence of the axiological aspect in their structure. “Extreme cruelty” undoubtedly remains the most symptomatic manifestation of this category of hallmarks. In the doctrine of criminal law, attention is drawn to the fact that difficulties caused by the interpretation of the indicated term

³ *Słownik języka polskiego*, vol. III, Warszawa 1979, p. 398; Z. Kurzowa, *Słownik synonimów polskich*, Warszawa 1998.

⁴ T. Hanausek, J. Leszczyński, *Kryminologiczne i kryminalistyczne problemy zabójstwa z łubieżności*, Warszawa 1995, p. 228.

become apparent on two planes: on the one hand, the legislator using the term “cruelty” requires that the perpetrator’s criminogenic activity must indicate that the committed murder bears a distinguished feature (it is cruel); on the other hand, the feature in question must be manifested with a certain intensity that reaches a particular level. In the analysed regulation, the gradation of cruelty becomes progressive; therefore the level of the victim’s suffering is intensified. Thus, the discussed form of the murder of the qualified type, through the emphasis on unique, excessive, atypical cruelty that dominates the perpetrator’s behaviour, becomes a particular form, because the hallmark of “extreme cruelty” makes this murder a particularly serious crime. Given that murder is always a criminal act having a severe detrimental effect, irrespective of the additional circumstances that accompany the murder (also irrespective of its forms), the case established in Article 148 § 2(1) of the Penal Code undoubtedly has a reprehensible character.

Despite the legislator’s being more aware of the extraordinary, sometimes even verging on bestiality, perpetrator’s brutality and exemplification of this form of behaviour in Article 148 § 2 of the Penal Code, the analysed hallmark remains extremely unclear and inaccurate. It appears that there are at least three sources of the indicated problem.

First of all, the right reception and understanding of “extreme cruelty” requires making a reference to the judgment whether, and if so, to what extent, negative manifestations of the perpetrator’s behaviour have been fulfilled. At the stage of explaining the indicated doubt, there is a need to make a reference to ethical and social conditions⁵, and therefore to the axiological plane; these conditions can be taken into account only if two elements cumulatively occur: the evaluator determines the presence of cruelty in the offender’s behaviour, and furthermore, cruelty occurs to a certain extent (it reaches a particular level). It should be emphasized that the structure of the analysed hallmark of the crime is associated with the lack of a clear definition of its limits and, therefore, with their significant changeable nature⁶. The use of the judgmental hallmark in the structure of the crime of murder by indicating its degree unfortunately

⁵ I. Andrejew, *Podstawowe pojęcia nauki o przestępstwie*, Warszawa 1988, p. 221.

⁶ W. Wróbel, A. Zoll, *Polskie prawo karne. Część ogólna*, Kraków 2010, p. 183.

causes constant balancing on the plane of inaccuracies, and also contributes to the deepening of the process of “loosening” the meaning, which may relate to differences between the actual scope of the analysed term and its interpretation⁷.

Secondly, in the case of the crime of murder, the hallmark of “extreme cruelty” may constitute a synthesis of various elements, which need to be taken into account in the interpretation thereof; it takes a multi-faceted nature⁸. Among the most important, the following should be indicated:

1. the relationship aspect: physical or mental abuse of a person related to the murderer (the perpetrator–victim relationship that may occur between spouses, between children and parents or between siblings etc.); inflicting suffering upon the victim in front of his or her relatives⁹ (relationship: perpetrator–victim–victim’s family);

2. the aspect of the victim’s age: (child, an elderly person), physical condition (an infirm person, a woman in advanced pregnancy)¹⁰;

3. the aspect of the perpetrator’s characteristic: e.g. the perpetrator exhibits sadistic tendencies¹¹;

4. temporal aspect: the period in which suffering has been inflicted upon the victim (prolonged, in an unjustified manner, the length of the period of torturing the victim);

5. the aspect of the applied measures: specific substances used in order to inflict suffering;

6. the aspect of the perpetrator’s behaviour: a drastic type and way of inflicting suffering¹² and its intensity¹³ (the victim suffers grievously, but

⁷ I. Andrejew, op. cit., pp. 111–112; A. Marek, *Prawo karne*, Warszawa 2007, p. 98.

⁸ R. Kokot, *Zabójstwo kwalifikowane*, Wrocław 2001, p. 152; M. Leonieni, J. Leszczyński, ‘Szczególne okrucieństwo jako znamię przestępstwa zgwałcenia’, *Palestra*, 4, 1974, p. 29.

⁹ Judgment of the Court of Appeal in Lodz of 13 December 2001, II AKa 168/00; *Prokuratura i Prawo*, 7–8, 2002, p. 24.

¹⁰ Judgment of the Supreme Court of 25 September 1972, OSNKW, 12, item 201, 1972; Judgment of the Supreme Court of 12 February 1974, III KR 348/73, OSNPG, 7, item 78, 1974.

¹¹ W. Świda, *Prawo karne*, Warszawa 1989, p. 446.

¹² Judgment of the Court of Appeal in Lublin of 21 August 1997, II AKa 106/97, OSA, 7–8, item 36, 1998.

¹³ According to the Court of Appeal in Lublin: “The fact of setting the body on fire also gave evidence of the significant determination of the accused to take the victim’s life.

won’t die — torture is “dosed” in such a manner that it will not cause the victim’s immediate or premature death; torture is often highly sophisticated in nature, so that the victim’s death takes place gradually);

7. the aspect of the victim’s atypical suffering: suffering is most commonly inflicted in the form of excessive torment having a physical character, combined with the negative impact on the psyche of the tortured person¹⁴.

Thirdly, the legislator did not specify either the source or the limits of the killer’s cruelty, nor does he use any measure that would make it possible to estimate or determine, according to which factors such estimates could be created, so that they could fulfil the scope of Article 148 § 2(1), and not, for instance, Article 148 § 1 of the Penal Code. It should be noted that there is no objectified or universal “scale of cruelty”¹⁵ (in the form of adequate quantifiers), which would allow for the determination of the level of the said feature¹⁶. This circumstance also creates some difficulties in the precise distinction between the basic type from its modified form, because there is doubt up until the form of the murder remains “basic”, and at what point the perpetrator’s behaviour is characteristic of extreme cruelty to the extent that it becomes regarded as its modified form. At the same time it seems indisputable that the presence of signs of judgmental hallmarks will not be eliminated from the structure of criminal provisions, although it poses a risk of the occurrence of arbitrary normative decisions.

In addition, the victim suffered injuries in the form of fractured ribs, which could be the consequence of kicking or pressure exerted by the knees on the victim’s chest. All of these circumstances, in addition to the physical characteristics of the victim (an 87 year-old infirm woman) lead to the conclusion that the actions of the accused were characterised by ‘extreme cruelty’; see Judgment of the Court of Appeal in Lublin of 19 September 2002, II AKa 182/02, *Prokuratura i Prawo*, 3, item 27, 2003; B. Michalski [in:] *Kodeks karny. Część szczegółowa*, vol. I, ed. A. Wąsek, Warszawa 2006, pp. 178–179.

¹⁴ In one of the judgments, the Court of Appeal in Katowice stated that extreme cruelty “involves the infliction of specific (physical or mental) suffering upon the victim, i.e. that which satisfies the perpetrator’s intention to kill the victim and significantly go beyond what is necessary in the circumstances to carry out that intention”; see Judgment of the Court of Appeal in Katowice, 11 July 2002, II AKa 215/02, KZS, 4, item 57, 2002.

¹⁵ B. Michalski, op. cit., p. 179.

¹⁶ R. Kokot [in:] *Wybrane zagadnienia reformy prawa karnego*, ed. Z. Sienkiewicz, Wrocław 1997, p. 45.

Unfortunately, the interpretation of the hallmark of “extreme cruelty” made in jurisprudence creates new doubts, because there is no clearly defined direction for the interpretation of the problematic hallmark. Taking into account the opinions presented in the judgments of the courts of appeal, it should be concluded that extreme cruelty takes place when the victim experiences extreme suffering due to their specific nature and intensity¹⁷. The essence of particularly extreme suffering can be expressed both in drastic “violations” of physical integrity (torture inflicted before death so that death does not occur immediately) as well as mental integrity (torture inflicted in front of the victim’s relatives, “mock execution”)¹⁸, and therefore it is a consequence of both the perpetrator’s criminogenic activity of an objective nature (*modus operandi*) and the expression of his or her subjective attitude, manifested by the intention to kill the victim. In addition, according to the judgments of courts of appeal, extreme cruelty will be complemented only if the suffering inflicted upon the victim exceeds the level necessary to take away his or her life, and therefore it is excessive, when the victim suffers anguish “that goes beyond any need and reactions”¹⁹. Therefore, this manner of killing could be determined as a “total excess of suffering going above the need to achieve a deadly result”²⁰.

Meanwhile, taking into account the position of the Supreme Court, it appears that the interpretation of the analysed hallmark definitely has its limits. In the decision of 31 May 2007, it was agreed that “an act of extreme cruelty within the meaning of Article 148 § 2(1) of the Penal Code should also include the behaviour that is aimed at a person incapable of experiencing psychological distress (e.g. an unconscious

¹⁷ Judgment of the Court of Appeal in Katowice, 11 July 2002, II AKa 215/02, KZS, 4, item 57, 2002.

¹⁸ Judgment of the Court of Appeal in Lodz of 13 December 2001, II AKa 168/00, *Prokuratura i Prawo*, 7–8, 2002, p. 24.

¹⁹ Judgment of the Court of Appeal in Katowice, 19 April 2001, II AKa 80/01, KZS, 7–8, item 67, 2001; Judgment of the Court of Appeal in Lodz of 13 December 2001, II AKa 168/00, *Prokuratura i Prawo*, 7–8, item 24, 2002; Judgment of the Court of Appeal in Krakow of 12 September 2002, II AKa 220/02, KZS, 10, item 53, 2002.

²⁰ Judgment of the Court of Appeal in Lublin of 19 September 2002, II AKa 182/02, KZS, 4, item 56, 2003.

person, remaining in deep alcoholic or narcotic intoxication) due to the perpetrator’s degrading comments and sometimes incapable of feeling physical suffering, the infliction of which was the perpetrator’s goal²¹”. It should be noted then that in the said judgment, the Supreme Court attempted to draw attention to the potential patterns of the perpetrator’s behaviour, which may lead to the materialization of the hallmarks of “extreme cruelty”, even if the victim does not have awareness of the occurrence of such hallmarks, even if he or she remains their passive recipient. The intention of the Supreme Court to take into account the overall criminogenic activity in the assessment of the perpetrator’s behaviour is clearly outlined; therefore, it is stressed that the findings of fact on the basis of criminal law should not be interpreted in a restrictive manner, because it is necessary not only to take into account the implementing elements in the perpetrator’s behaviour, but rather the whole of the findings both in objective and subjective terms of the act, and in respect of the criminal offence also the unambiguous definition of the crime which has been committed²². It seems that this is the reason for such a strict aspiration of the Supreme Court to determine all manifestations of the perpetrator’s behaviour and his or her mental attitude towards the implemented crime, because the very precise analysis makes it possible to determine whether the perpetrator’s behaviour, at the moment of committing the murder, would qualify the characteristic of “extreme cruelty”.

3. “Extreme cruelty” and rape

In the set of hallmarks of the crime of rape, established in Article 197 of the Penal Code, “extreme cruelty” arouses controversy. Rape, which — by its very nature — constitutes the most severe violation of both the physical and mental sphere of a person, that is detrimental to his or her

²¹ Judgment of the Supreme Court of 31 May 2007, III KK 31/07, OSNKW, 7–8, item 59, 2007.

²² Judgment of the Court of Appeal in Warsaw of 14 May 2002, II AKa 141/02, KZS, 12, item 58, 2002.

sexual freedom, is dramatically intensified by the particularly cruel behaviour of the perpetrator²³. The Penal Code contains no definition of the indicated term probably mainly because the legislator chose not to set the limits within which this cruelty is to be contained. Without a doubt, however, in order to achieve the accumulation of the progression of the qualified type of the crime of rape, the legislator decided to emphasize the particularly criminogenic behaviour of the perpetrator by drawing attention to its unusually drastic nature, which is reflected in the use of cruelty manifested to the particular extent in the set characterising the constituent elements of the crime of rape²⁴. The presented perspective of the hallmark implies at least two consequences: firstly, the degree of reprehensibility of the behaviour of the particularly cruel perpetrator is clearly much higher than his or her activity in the course of implementing the constituent elements of rape in the basic type; in addition, determination of the behaviour itself, which exceeds the usual limits of cruelty, stems from conviction of the exceptional brutality and even bestiality evident in the perpetrator's behaviour, and the effects of which can be clearly identified in the victim's experience (physical, mental or physical and mental)²⁵. It is emphasized that a rape bearing a particular charge of cruelty produces in the victim primarily an extreme feeling of indignity and humiliation; the perpetrator, in turn, fulfils the qualified hallmark, if his or her behaviour is extremely cruel, atypical, or accumulated, or because of the intensity of the inflicted suffering or the period of inflicting cruelty (long-term)²⁶. It is worth noting that

²³ J. Warylewski [in:] *Kodeks karny. Część szczególna*, vol. I. *Commentary to Article 117–221*, ed. A. Wąsek, Warszawa 2006, p. 844; Judgment of the Supreme Court of 9 April 2001, II KKN 349/98, OSNKW, 7–8, item 53, 2001.

²⁴ T. Stępień, K. Stępień, *Przestępstwo zgwałcenia w świetle orzecznictwa*, Białsko-Biała 2000, p. 29; J. Warylewski, *Przestępstwa seksualne*, Gdańsk 2001, p. 97.

²⁵ In the judgment of 13 April 1978, the Supreme Court ruled: "The perpetrator's extreme cruelty aimed to coerce another person to submit to the act of fornication can be expressed not only in the physical, but also mental and impact on the person"; see Judgment of the Supreme Court of 13 April 1978, II KR 52/78, OSNKW, 12, item 145, 1978.

²⁶ J. Warylewski, *Przestępstwa przeciwko wolności seksualnej i obyczajności*, [in:] *System prawa karnego*, vol. 10. *Przestępstwa przeciwko dobrom indywidualnym*, Warszawa 2012, p. 661; Judgment of the Supreme Court of 30 May 1995, III KRN 31/95, *Prokuratura i Prawo*, 10, item 7, 1995.

some categories of victims, due to their particular psychophysical predispositions (e.g. young age — a child, disability — an elderly person, personal situation — a pregnant woman)²⁷ are particularly vulnerable to the revision of the hallmark of “extreme cruelty”, even if they are only subjected to conventional means of coercing to a sexual act, or the forms of its implementation. Individual characteristics of the victim, such as immaturity or senility, contribute to regarding the attack as particularly brutal, or even inhumane²⁸. One ruling of the Court of Appeal in Katowice states: “Rape of an immature person (a child) may be regarded as particularly cruel, especially when the perpetrator — aware of the consequences in the form of mental shock or damage to the victim’s sexual organs — realizes his or her intention with a vengeance”²⁹.

The introduction of the requirement of grading the cruelty focuses the assessment of the perpetrator’s behaviour on finding elements in him excessively and extremely (but always clearly) cruel; any presumption of the intensity of cruelty is excluded, because the analysed hallmark, although it takes the form of assessment, cannot in fact pose any doubt as to the question of its occurrence. However, the doctrine emphasizes that distinguishing extreme cruelty from “plain” cruelty is very difficult and can lead to some arbitrariness in the evaluation of the actual situation, the more that every crime of rape is accompanied by a certain amount of the perpetrator’s cruelty (which is incorporated in the characteristics of the behaviour that fulfils the hallmarks of the said crime)³⁰.

²⁷ Judgment of the Supreme Court of 4 October 1983, IV KR 197/83 OSNPG, 4, item, 1985; Judgment of the Supreme Court of 14 November 1984, V KRN 371/84, OSNPG, 7, item 101, 1985.

²⁸ A. Zoll, *Kodeks karny. Część szczególna. Komentarz*, vol. II, Warszawa 2008, p. 609; Judgment of the Supreme Court of 27 June 1997, WA 16/97, OSNKW, 11–12, item 97, 1997, with a note by M. Filar, OSP, 5, item 96, 1998.

²⁹ Judgment of the Court of Appeal in Katowice of 2 June 2011, II AKa 142/1, Legalis.

³⁰ The judgment of the Supreme Court of 20 July 1995, Akr 191/95, *Prokuratura i Prawo*, 2–3, item 17, 1996; A. Michalska-Warias, ‘Ustawowe znamiona przestępstwa zgwałcenia’, [in:] *Przestępstwo zgwałcenia*, ed. M. Mozgawa, Warszawa 2012, p. 53; J. Warylewski, *Przestępstwa przeciwko...*, p. 662.

The greatest difficulty in defining the essence of the described hallmark of the crime of rape, consists in identifying the set of criteria allowing for considering its occurrence. The interpretation of “extreme cruelty”, which has repeatedly been made both in the doctrine and case law, made it possible to distinguish the following positions:

1) defining “extreme cruelty” from the perspective of the effects that the rape committed in this way has on the victim not only in the form of inflicted physical suffering, but also often, extremely negative psychological problems (e.g. a mental illness)³¹.

2) the term “extreme cruelty” is revised upon exceeding the proportion between the intensity of the perpetrator’s violence and the victim’s resistance³². The doctrine emphasizes that this approach is not correct, above all, because if the victim does not defend fiercely, then any form of the perpetrator’s activity, even one that would not seem drastic, or brutal, could be regarded as extremely cruel, but if the victim manifested a high degree of determination and defended with great efficiency, then even violent or drastic measures or methods of coercion would not be considered as particularly cruel, because they would be proportionate to the victim’s manifestations of resistance³³.

3) the co-defining aspect of the perpetrator’s “extremely cruel” behaviour is his or her unique intention (*dolus directus coloratus*); often in the perpetrator’s intention, not only the desire for sexual intercourse with the victim is revised, but it is also determined by other motives (e.g. the desire to inflict pain or the desire to humiliate the victim)³⁴.

³¹ This position was explicitly criticized by M. Filar, stressing that it is not acceptable, since the legislator, in the construction of the provision, used the phrase “the perpetrator acts” and therefore it directly highlights the methods, and not the effects, of the perpetrator’s behaviour; see Judgment of the Supreme Court of 5 March 1974, III KR 399/73, OSNKW, 6, 1974, with a critical note by M. Filar, *Państwo i Prawo*, 2, 1975, pp. 173–175; Judgment of the Supreme Court of 28 May 1979, II KR 125/79, unpubl.; M. Filar, *Przestępstwo zgwałcenia w polskim prawie karnym*, Warszawa-Poznań 1974, p. 123.

³² Judgment of the Supreme Court of 9 April 1971, 1971 IV KR 33/71, Supreme Court Bulletin SN, 6, 1971; Judgment of the Supreme Court of 3 December 1962 Rw 1101/62, OSN, 133, 1963.

³³ T. Stępień, K. Stępień, *Przestępstwo...*, p. 30.

³⁴ Judgment of the Supreme Court of 9 April 1971, IV KR 170/71, Supreme Court Bulletin, 12, 1971.

4) “extreme cruelty” in the perpetrator’s behaviour should be viewed from the perspective of the method (cruel, brutal and disgusting) and the type of the perpetrator’s actions (e.g. different manifestations of violence, threat or deception, the goal of which is to break or overcome the victim’s resistance)³⁵.

5) “extreme cruelty” is characteristic of the perpetrator’s behaviour when it relates to the special categories of victims that have specific characteristics (e.g. age — a child or an elderly person, or psychophysical condition — disability)³⁶.

It seems that the best way of interpreting the hallmark of “extreme cruelty” is the cumulative consideration of all the above-mentioned circumstances. This position is undoubtedly exemplified by one of the judgments of the Supreme Court of 21 December 1972, which expressed its view, according to which:

Acting with extreme cruelty is the hallmark of a qualified form of rape. It should be assumed that cruelty consists in the infliction of more significant problems, having both a physical and moral nature. The criterion of “extreme cruelty” introduced in the act indicates that it is not about any case of causing these problems. Therefore, this criterion should not be perceived too wide, but it should not only be limited to the situation, when the offender used violence much more intense than would be sufficient to overcome the victim’s resistance. It will be right to determine extreme cruelty when the perpetrator’s acts are aimed at overcoming the resistance, but he also inflicts upon the victim very severe suffering and damages her health or other personal goods (e.g. strangulation, burning, hitting her head against the wall, kicking, knocking out teeth). [...] Extreme cruelty may also be expressed in the extremely heinous manner of committing the act. Extreme cruelty can be finally manifested in inflicting moral suffering with high intensity (e.g. abusing the victim’s child or a threat of such abuse or rape in the presence of close relatives, such as husband, fiancé, parents, children). Acting with extreme cruelty can be, depending on the findings of fact, attributed to one, some or all of the participants of the rape³⁷.

³⁵ Judgment of the Court of Appeal in Lublin, II AKa 106/97, OSA, 7–8, item 36, 1998; Judgment of the Supreme Court of 28 May 1979, II KR 125/79, unpubl.; Judgment of the Supreme Court of 17 December 1970, IV KR 199/70, *Gaz. Sąd. i Penit.*, 9, 1971.

³⁶ The indicated condition is noted by J. Warylewski, who emphasizes that the European Court of Human Rights requires it to be taken into account when assessing the degree of the perpetrator’s cruelty; see J. Warylewski, *System prawa karnego...*, p. 665; idem, *Przestępstwa seksualne...*, pp. 99–100.

³⁷ Guidelines of justice and judicial practice in cases of rape crimes (Article 168 of the Penal Code), resolution of the combined Criminal and Military Chambers of the

According to the definition applicable in the doctrine of criminal law, rape with extreme cruelty is considered an offence during which the perpetrator — in order to satisfy his sexual drive — uses ruthless methods in his actions, with particular emphasis on coercive measures having a brutal, sadistic, and often perverse character, and the intensity of which usually exceeds the victim's resistance, leading to a variety of negative consequences (disability, bodily harm, moral suffering, humiliation, deprivation of dignity)³⁸. The indicated definition clearly allows one to express the belief that the interpretation of the hallmark of “extreme cruelty” requires consideration of at least several aspects, among which the following should be noted: the perpetrator's method of action, the degree of intensity of violence against the victim, and the consequences that the perpetrator's behaviour has on the victim's physical and mental condition. Therefore, it seems that only a comprehensive consideration of the various above-mentioned factors that determine the perpetrator's activity, and determine (in view of their accumulation) the occurrence of a high degree of brutalisation in the manifested behaviour, can certainly suggest the committed crime as a qualified form of the crime of rape. It seems that it is also the safest method (accumulation of evidence), which allows one to clarify this so difficult to interpret evaluative hallmark, because not only does it take into account all manifestations (ways, means, methods, consequences) of the perpetrator's bestiality, but also their implications for the victim, who becomes their “addressee”.

4. Conclusions

In conclusion, it should be noted that the essence of the hallmark of “extreme cruelty” both for the crime of murder and rape is expressed in the evaluative aspect. In order to revise the qualifying hallmark, it must be first determined whether the perpetrator's behaviour can be con-

Supreme Court of 21 December 1972, (IV KZP 64/72), OSN, 2–3, item 18, section III, subsection 3, 1973.

³⁸ K. Stępień, ‘Szczególne okrucieństwo jako znamię kwalifikowanego typu przestępstwa zgwałcenia (Article 197 § 3 of the Penal Code)’, *Przegląd Sądowy*, 10, 2000, p. 17.

sidered as cruel, and then whether this cruelty has reached in concreto the specific level of intensity.

It should be noted that in the assessment of the hallmarks of the object of the crime of murder and rape, for which the result of the perpetrator’s behaviour remains the most symptomatic, some differences can be pointed out, because the “areas” of the functioning of “extreme cruelty” extend differently with respect to the specified crimes. In the case of murder, the relationship between “extreme cruelty” and its consequence takes the form of a single layer — cruelty having an atypical intensity level that characterises the perpetrator is determined solely from the perspective of injuries sustained by the victim (wounds, blows, marks on the victim’s body), but this time without the victim’s active participation (victim’s passivity). In the case of the crime of rape, the relationship between the qualified hallmark and the consequence takes the form of a dual layer, because the intensity of the perpetrator’s cruelty can be determined not only on the basis of the assessment of the physical injuries suffered by the victim, but also by taking into account the victim’s psychological suffering, which can be actively recounted by the victim.

Difficulties in interpretation regarding the analyzed evaluative hallmark, which “extreme cruelty” undoubtedly remains, justify the conclusion concerning the need of its eclectic interpretation, because only all forms of the perpetrator’s behaviour (ways, means, methods, consequences, period of inflicting suffering, victim’s status) taken into account, for both the crimes of murder and rape with “extreme cruelty”, will contribute to the fully reliable and comprehensive assessment of the crime committed by the perpetrator.

Summary

This article is dedicated to the determination of the nature and intensity with which the attribute of the “particular cruelty” can manifest itself in the design of the aggravated crimes of homicide and rape. The analysis of the indicated attribute undoubtedly constitutes numerous difficulties in the interpretation of the doctrine of criminal law, which relate, in particular, to the right assessment in terms of the intensity of its occurrence towards the victim. In order for the murder or rape to retain its aggravated nature, the perpetrator’s behaviour must demonstrate not only average, but atypically reprehensible, or even bestial cruelty. In this context, the only method that allows the presentation of

an in-depth characteristics of the indicated attribute is taking into account all forms of the perpetrator's behaviour, the attributes of the aggravated crime of murder or rape in the qualified type that accompany the implementation phase (methods, means, effects, period of inflicting suffering, victim's status).

Keywords: "particular cruelty", aggravated crimes, homicide, rape.