

Probation, Parole and Penitentiary Law

Class 6

Case study



Academic year 2021/2022

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KATEDRA PRAWA KARNEGO WYKONAWCZEGO

Introduction

According to the Polish Penal Code.

Article 1

§1 Penal liability shall be incurred only by a person who commits an act prohibited under penalty, by a law in force at the time of its commission.

§ 2. A prohibited act whose social consequences is insignificant shall not constitute an offence.

§ 3. The perpetrator of an prohibited act does not commit an offence if guilt cannot be attributed to him at the time of the commission of the act.

Introduction

According to the Code of Criminal Procedure

Article 17. [Procedural conditions]

§ 1. The proceedings shall not be initiated and the following shall be opened when:

- 1) the act has not been committed or there is no sufficient data to justify the suspicion of committing it;
- 2) the act does not contain any statutory acts or the law states that the perpetrator is not committing a criminal offence;
- 3) the social harm of deed is negligible (insignificant)
- 4) the Act states that the perpetrator shall not be punished;
- 5) the accused died;
- 6) there has been an overdose of penal;
- 7) criminal proceedings concerning the same act of the same person have been legitimised or have been initiated before or before;
- 8) the perpetrator is not subject to the case-law of the Polish criminal courts;
- 9) the absence of a complaint of the authorized prosecutor;
- 10) the absence of a required permit to prosecute or an application for prosecution originating from a person entitled, unless the Act provides otherwise;
- 11) there is another circumstance excluding prosecuting.

§ 2. Until the moment of receipt of the application or the authorisation of the authority from which the law is subject to prosecution, the procedural authorities shall carry out only acts of urgency to secure the traces and the evidence, as well as the steps to clarify whether or not the application will be submitted or the authorisation will be issued.

§ 3. Failure to assign the fault of the perpetrator of the act does not exclude the procedure for the application of the protective measures.

Case study

- **40-years old** men was found dead **in an utility room on the end of the corridor in the old tenement house**
 - He had face wrapped/ covered **in the duct tape**
 - **It was packaging tape.**
 - Only his mouth and nose were wrapped with thinner layer
 - Neighbor discovered dead body (in the morning)
- and called the Police



► **Issue:** Suicide, or Murder?

Case study

- ▶ Imagine that you are a prosecutor and you have to decide whether it was suicide or murder.

Decision has influence on criminal liability

Suicide = Conditional discontinuation of criminal proceedings

There is no crime & perpetrator

Proceedings can not be initiated/launched

Murder = Proceedings can start normally

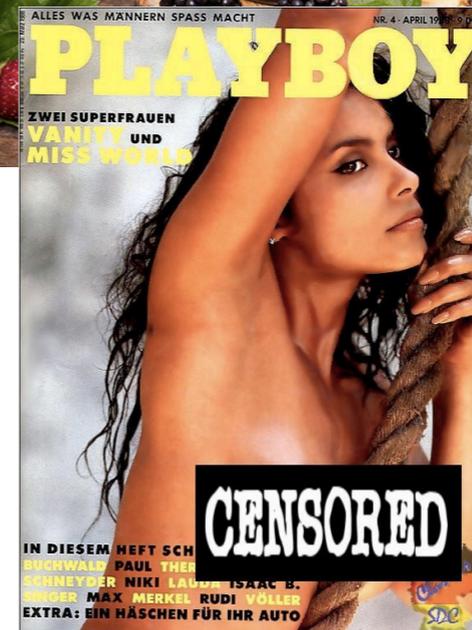
Prosecution office (with Police) will conduct investigation and look for a perpetrator (unknown perpetrator)

Prosecution office will press the charges (identified perpetrator)

Facts about the deceased

Following facts have been
established:

- 40-years old, single men (never married)
- Living with his mother only
- No close friends, unemployed
- His used to spend a lot of time in that room
- He used to store/keep in there his magazines (+18 for adults only)
- His mother used to store/ keep in there her preserves (glass jars with pickled vegetables, especially peppers)



preserves



Facts about the deceased

- ▶ He was found sitting on the chair and holding two glass jars with pickled peppers in his hands



Tenement houses



Utility room

(communal area for all residents)

- That house had one (utility) room on every floor
- Available for every resident - to store/keep some things



Facts about the room



Following facts have been established:

- The door was open
- The window was open
- Scissors and packaging tape were found on the windowsill
- The deceased was able to reach for scissors and packaging tape from that chair (with his hand)
- A stack of magazines was found under the chair.
- There were no fingerprints - except of his own.

An autopsy (performed 2 days after death)

Medical examination of a dead body:

- Blood alcohol concentration: 1.0 promille
- Body discovered 1 day after death
- There were no signs of the fight, no bruises
- No fingerprints either
- No biological traces (i.e. hair, blood, semen, skin fragments)
- There were digested peppers in his stomach
- His face was wrapped tightly

-When coroner removed the tape - he took off his skin

Under the nails of the victim of a sexual assault coroner may find trace amounts of skin (especially if the victim scratched the perpetrator), body fluids, hairs and fibers.

Coroners also identify food items found in the stomach of deceased persons when autopsies are performed

An autopsy (performed 2 days after death)

The cause of death
=
Strangling

- ▶ Strangling involves one or several mechanisms that interfere with the normal flow of oxygen into the brain
- ▶ **may be caused by someone's action. It may also be caused by an item wrapped**

This may be the result of:

- An act of violence
- An accident
- Suicide attempt
- Participation in activities with intentional strangulation

Issue

- ▶ Please decide whether it was a suicide or a murder.
- ▶ Join one of two teams. (Murder vs. Suicide)



(One group is for those who think described situation was a murder, the other one for those who are for the statement that it was a suicide)

Work in two groups.

- ▶ Discuss your ideas and write down all your statements/ arguments.
- ▶ What evidence points to murder / suicide?
- ▶ After that, please make a concluding argument.