

## Aiding and Abetting in Suicide Among Children and Adolescents Namowa lub udzielenie pomocy do samobójstwa wśród dzieci i młodzieży

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**Abstract:** An increasing number of children and young people are committing suicide. Very often this occurs as a result of persuasion or with the provision of aid by peers. The purpose of this article is to introduce and explain the most important issues related to the offence under Article 151 of the Criminal Code. The perpetrator of the criminal act in question leads another person to take his or her own life. At the same time, it is not necessary for death to occur. The mere taking of actions directly aimed at suicide is sufficient.

Persuasion involves inducing another person to take his or her own life. The persuasion should be explicit in oral or written form. Providing assistance, on the other hand, may consist of providing a measure, giving advice or guidance.

**Keywords:** suicide, persuasion, providing aid, young people

**Abstrakt:** Coraz więcej dzieci i młodzieży popełnia samobójstwo. Bardzo często dochodzi do tego na skutek namowy lub przy udzieleniu pomocy przez rówieśników. Celem artykułu jest przybliżenie i wyjaśnienie najważniejszych zagadnień związanych z przestępstwem, o którym mowa w art. 151 kodeksu karnego. Sprawca czynu zabronionego omawianego przestępstwa doprowadza drugą osobę do targnięcia się na swoje życie. Przy czym nie jest konieczne, aby nastąpiła śmierć. Wystarczy samo podjęcie działań bezpośrednio zmierzających do samobójstwa. Namowa polega na nakłanianiu innej osoby do targnięcia się na własne życie. Namowa powinna być wyraźna w formie ustnej lub pisemnej. Natomiast udzielenie pomocy może polegać na udostępnieniu środków, udzieleniu rady lub wskazówki.

**Słowa kluczowe:** samobójstwo, namowa, udzielenie pomocy, młodzież



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## INTRODUCTION

This article is aimed at providing a synthetic account of the criminal offence of leading another person to take his or her own life by means of persuasion or aiding. The offence is typified in Article 151 of the Criminal Code, as one of the offences against life and health. Suicide is a huge social and legal issue. According to statistics from the World Health Organisation, more than 700,000 people around the world take their own lives every year. Communications presented by the WHO state that every 40 seconds someone commits suicide, while every three seconds someone attempts suicide. Furthermore, WHO data demonstrates that suicide is the fourth most common cause of death among 15-29-year-olds (World Health Organisation 2023). According to statistics from the National Police Headquarters, the number of people involved in suicides in Poland between 2017 and 2022 is steadily increasing (from 11139 – 2017 to 14520 – 2022) (National Police Headquarters 2023). The reasons for committing suicide are varied, often resulting from mental illness and disorders. Other factors that influence the decision to commit suicide include occupational problems, lack of acceptance from the environment, lack of life prospects. Police statistics also indicate that the greatest increase and percentage of suicide attacks is among children and young people. For example: 1) for the 7-12 age group, the number of people involved in suicides in 2017 was 28, while in 2022 it was 85; 2) for the 13-18 age group, the number of people involved in suicide attacks in 2017 was 702, while in 2022 it was 2008; 3) for the 19-24 age group, the number of people involved in suicide in 2017 was 1143, while in 2022 it was 1699; 4) for the 50-54 age group, the number of people involved in suicides in 2017 was 796, while in 2022 it was 893; 5) for the 60-64 age group, the number of people involved in suicides in 2017 was 759, while in 2022 it was 767.

This article, which provides only a brief characterisation of the crime, is also intended to highlight the wider social problem of influencing and interfering in the lives of others. Nowadays, especially among young people, we can see how much influence peers have on their life. Unfortunately, the environment often has a destructive influence. Sometimes all it takes is one word or so-called “friendly advice” for a young person to decide to commit suicide. Therefore, in order to prevent the commission of an offence under Article 151 of the Criminal Code, particularly among young people, it would be advisable to provide information about it in various forms not only to avoid possible criminal responsibility, but also to prevent such situations from occurring at all.

The last major amendment to the Criminal Code, despite the introduction of a new criminal policy consisting, in particular, of an increase in the threat of punishment for perpetrators of offences against life and health, did not include a change in the criminal sanction of the offence under Article 151. Increasing the penalty imposed on the perpetrator who, by his or her behaviour, causes a person to take his or her own life, could have the effect of reducing the discussed crime and protecting the important social value of human life and health.

First of all, it is worth noting that suicide does not constitute a crime under Polish criminal law. It cannot be considered as granting the right to commit suicide

or as legal neutrality regarding such behaviour. Nevertheless, the legislator did not establish punishment for making an attempt against one's own life. The question has to be asked: why, then, if suicide itself does not constitute an act punishable by law, does the legislator prohibit third parties from interacting with persons committing suicide? Why did the legislator introduce a *sui generis* offence and impose a punishment for complicity in suicide?

## 1. SUBJECT OF PROTECTION

The subject of protection in the case of the crime in question is human life, which is a supreme and priceless value. According to A. Zoll, this regulation protects life as a value constituting a social good and thus which is not at the free disposal of the holder of this good. The individual right to life does not fully explain the justification for the protection of life. However, a highly important aspect of such protection is the value of life as a social good, not just one which belongs individually to a person. Therefore, the possessor of this good does not have the right to dispose of it freely (Zoll 2017, 4). Bearing in mind the author's arguments above, it should be emphasised that the perpetrator will be liable for the offence under Article 151 of the Criminal Code, despite the fact that the suicide will not lead to deprivation of life. Yet, it is enough to simply take one's life which is already a contradiction to the order to protect every human life. It should be emphasised that even if suicide is not a crime as such under Polish criminal law, it does not mean that a person has the right to take his/her own life, as such an act is in breach of a constitutional norm. According to Article 38 of the Constitution of Poland: "The Republic of Poland shall ensure legal protection of the life of every human being." J. Giezek, on the other hand, further points out that, in addition, freedom from exerting a destructive influence on the way a person disposes of his or her life will also be subject of protection (Giezek 2021, 3).

In the doctrine, one can also encounter the view that Article 151 of the Criminal Code serves the purpose of protecting potential suicide victims from the unwanted and harmful influence of third parties. This is supported by the location of Article 151 in the chapter of offences against life and health. Accordingly, complicity in suicide (aiding and persuasion) should be regarded as a special kind of attempt against another person's life. As P. Konieczniak points out, "The criminalisation of assisted suicide can be justified by the desire to remove third parties from influencing the suicide rather than by condemning suicide itself. The prohibition on supporting another in suicide is thus simply intended to make people not support others in suicide (...). And why do we not want suicide to be influenced by third parties? This is because the suicidal person – rationally or not – makes and executes a decision of his or her own on a matter that is fundamental to him or her in life. His/her intentions are clear: for reasons he/she subjectively considers important (he/she may be wrong at most), he/she wants to stop living. The aider's intentions can be most varied. The perpetrator himself/herself cannot abuse suicide; the presence of an aide can potentially lead to abuse" (Konieczniak 1999, 75). So, following the above

arguments, it can be assumed that the prohibition of soliciting and assisting suicide is aimed at preventing abuse, i.e., situations where a person who is complicit in the suicide of another person, does so for very low motives, in order to harm that person and his family or to gain a material benefit from his/her death.

## 2. PERPETRATOR

Under Article 151 of the Criminal Code, the perpetrator of an act which involves persuasion or aiding in the form of action, can be any person performing such an act. To that extent, it will therefore be a *delicta communia*. On the other hand, if assistance is given by way of omission, it will be an individual offence. This is because then the criminal offense can be committed only by the person who has a legal special duty to prevent the effect of another person from taking his/her own life (Karnat 2020, 3).

## 3. VICTIM

The causative act consists of leading a person to take his/her own life by persuasion or assistance. It might therefore appear that we are dealing here with incitement and accessory to an offence. Nothing could be further from the truth, the terms are not the same. The offence under Article 151 of the Criminal Code boils down to the perpetrator's behaviour in driving a person to suicide, which does not actually constitute a criminal act in itself. Therefore, the provisions of the general part of the Criminal Code regarding the criminal liability of the abettor and the aider would not work in this case (Giezek 2021, 6).

Persuasion consists of inducing another person to take his or her own life. Different views can be found in the doctrine on the interpretation of the term "persuasion". Some authors assume that persuasion referred to in Article 151 of the Criminal Code is narrower in scope than the inducement that characterises abetting in Article 18 § 2 of the Criminal Code. According to these authors, persuasion to suicide is limited to verbal influence only. Outside the scope of the meaning of this signifier are any non-verbal encouragements to take his or her own life, e.g., gestures (Daszkiewicz 2000, 250-251; Kokot 2021, 23). However, one has to agree with a slightly broader view of persuasion in verbal form, but also in written form. The words do not necessarily have to be spoken verbally, but they can be expressed in the form of a letter, email or text message. Written inducement can be equated with a verbal form of direct inducement. The authors rightly assume that a mere gesture cannot constitute an inducement to suicide, except in sign language (Karnat 2020, 7). Inducement can therefore be a suggestion, advice, proposal, request or recommendation. The Inducement should be expressed in a clear and unambiguous manner (Kaszowicz 2018, 53). Its form and content must not raise any doubts about the perpetrator's intentions. In order to accept the realisation of the sign of persuasion to suicide, it is not sufficient to influence the victim by means of emotional manipulation aimed at creating a state of deep depression, breakdown or despair, and consequently "suicidal thoughts". If such behaviour takes the form of

bullying resulting in the victim's life-threatening behaviour, liability under Article 207 § 3 of the Criminal Code may come into play (Kokot 2021, 26).

However, in the literature, one can also encounter a view that the concept of persuasion from Article 151 of the Criminal Code is in its meaning the same as the concept of inducement from Article 18 § 2 of the Criminal Code (Wąsek 1982, 60-61; Kosonoga-Zygmunt 2015, 50; Zoll 2017, 6). Magdalena Budyn-Kulik clearly advocates a broader meaning of persuasion and argues that persuasion of another person can be not only verbal, but also implicit, such as a gesture or any other action that may influence the decision to attempt suicide (Budyn-Kulik 2022, 3). The concept of persuasion in Article 151 of the Criminal Code is still differently interpreted by Leon Tyszkiewicz, who argues that, unlike inducement, it is a less intense form of abetting. Tyszkiewicz contends that this excludes threat, the use of which in relation to bringing a person to suicide should be considered as commission or attempted murder (Tyszkiewicz 2016, 3). There is no doubt that persuasion within the meaning of Article 151 of the Criminal Code may take the form of a request, suggestion, advice, proposal, recommendation. What is questionable is the classification of behaviour involving blackmail, extortion or giving orders. Will we then be dealing with inducement to suicide or will it be directing the commission of a prohibited act? Accepting the latter solution, however, would be difficult to agree with, due to the fact that, after all, on the part of the executor (person performing suicide) who has taken his/her own life, we are not dealing with a criminal act (Giezek 2021, 8).

Inducement consists in persuading another person to take his or her own life, i.e., by influencing his or her psyche, intellectual and emotional spheres in such a way as to induce an intention to commit suicide. It leaves no doubt that persuasion will occur when the persuaded person did not have the intention to take his or her own life at all and only began to have such an intention as a result of the perpetrator's actions. Accordingly, in this situation, the perpetrator's behaviour was inspirational to the victim. In the doctrine, however, there is no unanimous position on whether it will be persuasion within the meaning of Article 151 of the Criminal Code if the persuaded person only considered the possibility of suicide but hesitated and decided to take his/her life as a result of persuasion by the perpetrator. According to some authors, reaffirming someone's suicidal intention will also constitute persuasion. Persuasion must be directed at a specific, individualised person, even if the perpetrator will not know the identity of the would-be suicide (Wąsek 1982, 61; Karnat 2020, 7).

In a judgment, the Appeal Court in Katowice noted and distinguished between abetting murder and inducement to suicide. According to the Court: "The intention and *modus operandi* of the perpetrator instigating the murder of the victim is different, and different actions accompany inducement to commit suicide, already aimed directly at the person who would deprive himself/herself of life. In the first case, two separate offences would be committed, remaining in real concurrence with each other, and not one act qualified cumulatively under Article 148 § 1 KK and Article 151 KK in connection with Article 11 § 2 KK – as in the second case." (Judgment of the Appeal Court in Katowice 2013, II AKa 279/13).

Providing assistance, on the other hand, may consist of providing a measure or tool, advice or guidance. It formally corresponds to the elements of accessory in Article 18 § 3 of the Criminal Code. This characteristic may also be exhausted by forbearance, i.e., by not preventing the suicide. In this case, the perpetrator can only be the guarantor of the prevention of the consequence. The causative act of providing assistance may precede the victim's attempt against his/her own life but may also be undertaken simultaneously with the suicide attempt on his/her own life and continue until the moment of death. In fact, for the existence of the offence in question, it is irrelevant whether the person committing suicide is aware that they are being aided (Karnat 2020, 8).

As the Court of Appeal in Gdansk rightly noted: "A person who is persuaded or aided to take his/her own life must, due to his/her mental characteristics, be able to recognise fully the meaning of the act and to direct his/her conduct. Lacking such recognition (a child, a mentally disabled person), the perpetrator's act may be considered an offence under Article 148 of the Criminal Code." (Judgment of the Court of Appeal in Gdańsk 2009, II AKa 276/09).

The offence of inciting and aiding suicide is a substantive crime. Therefore, the effect required for its accomplishment is to cause a person to take his or her own life. However, it is not necessary that the death of the victim takes place. The offence under Article 151 of the Criminal Code is committed already at the stage of taking action directly aimed at suicide. In the event that a person who has been persuaded or aided to commit suicide does not attempt suicide, the perpetrator is liable for making the attempt (Giezek 2021, 11-12).

#### 4. PERPETRATOR

The offence in question can only be committed intentionally. However, given that the offence involves the attempt to take one's own life through inducement or assistance, the form of intent will vary. In the case where a suicide attempt occurs as a result of persuasion of another person, we can only speak of direct intent. This is because one cannot persuade "someone to do something" while not wanting the person to do it. In contrast, in the case of providing aid, this offence can be committed with both direct and conceivable intent (Zoll 2017, 14; Giezek 2021, 13).

#### 5. CRIMINAL SANCTION

The offence under Article 151 of the Criminal Code is a misdemeanour punishable by imprisonment from three months to five years. The legislator did not provide for a possible exceptional mitigation or waiver of punishment for a perpetrator who, for example, provides aid towards suicide at the request of the victim and under the influence of compassion for the victim due to being in a terminal state and suffering. Such a possibility is provided for under Article 150 § 2 of the Criminal Code. Therefore, the question arises whether, in imposing

a criminal sanction on the perpetrator, in the case of an offence under Article 151, the court could possibly make use of the possibility referred to in Article 37a of the Criminal Code (i.e., impose, instead of imprisonment, a restriction of liberty sentence or a fine) (Konarska-Wrzosek 2020, 9). Article 19(2) of the Criminal Code does not apply to the punishment of a person aiding to suicide, and – for both perpetrative forms provided for in Article 151 – Article 22 of the Criminal Code does not apply. On the other hand, in the case of an attempt to commit an offence under Article 151, the regulations relating to either abandoning the attempt or preventing the effect apply, in accordance with Article 15 of the Criminal Code (Królikowski 2023, 21).

On the basis of Article 40(2) of the Criminal Code, when the leading to suicide was caused by a motivation deserving particular condemnation and the perpetrator has been given a sentence of imprisonment of not less than three years, a punitive measure of deprivation of public rights may be imposed. The offence in question is prosecuted *ex officio*.

## CONCLUSION

The offence in question is not easy to identify. However, the criminal sanction should act as a repellent to potential perpetrators. It would therefore be advisable to increase the penalty and punitive measures. Furthermore, it is worth considering whether, in view of the significant and very dynamic development of the Web, to introduce a possible amendment to Article 151 of the Criminal Code covering new forms of persuasion or aiding suicide via the Internet (Gawliński and Zero 2021, 129). Nowadays, young people and even children are experiencing more and more mental health problems. Numerous mental disorders result in just a “little spark” in the form of even a small and “seemingly innocent” persuasion for a person, to make an attempt against his or her own life. Young people in particular are susceptible to the suggestions of others. Therefore, it may be protective against the increasing number of suicide attempts to increase criminal liability against those who, by persuasions or accessory, lead to suicide.

The questions presented in the introduction have been addressed in the above discussion. Finally, it is worth reiterating that the legislator has not provided for punishment for suicides, which it does not condemn. Nonetheless, it is forbidden for third parties to be complicit in the suicide. This is due, for example, to the possibly reprehensible motives of those who aid and abet suicide. A person who persuades or provides aid does not want to be held responsible for the criminal offence of murder, yet he or she expects that the person will himself or herself cause his or her own death and that the perpetrator will ultimately benefit from it. Despite the fact that this is one of the criminal offences against life and health and that, according to statistics, suicide attempts are plentiful, the case law in this area is not sufficiently extensive.

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