

POLAND

Act of 6 June 1997

The Penal Code

(Journal of Laws of the Republic of Poland of 20 July 2018)

GENERAL PART

Chapter I

Principles of penal liability

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.

(...)

Article 5. The Polish penal law shall be applied to the perpetrator who committed a prohibited act within the territory of the Republic of Poland, or on a Polish vessel or aircraft, unless an international agreement to which the Republic of Poland is a party stipulates otherwise.

(...)

Article 7. § 1. The offence is either a crime or a misdemeanour.

§ 2. The crime is a prohibited act subject to imprisonment of not less than 3 years or to a more severe penalty.

§ 3. A misdemeanour is a prohibited act subject to a fine upper than 30 times the daily fine, restriction of liberty or deprivation of liberty not exceeding one month.

(...)

Chapter II

Forms of Commission of an Offence

Article 14. § 1. The court shall impose a penalty for an attempt within the limits of the penalty provided for the given offence.

(...)

Article 16. § 1. Preparation only occurs when the perpetrator, in order to commit a prohibited act, undertakes activities aimed at creating the conditions for effecting an act leading directly to commission of the prohibited act, particularly when, for this purpose, he enters into an arrangement with another person, acquires or makes ready the means, gathers information or concludes a plan of action.

§ 2. Preparation is subject to a penalty only when the law so provides.

(...)

Article 19. § 1. The court shall impose the penalty for instigating, and aiding and abetting within the limits of the sanction provided in law for perpetrating.

(...)

Chapter IV

Penalties

Article 32. The penalties are:

- 1) fine,
- 2) restriction of liberty,
- 3) deprivation of liberty,
- 4) deprivation of liberty for 25 years,
- 5) deprivation of liberty for life.

(...)

Chapter XI Statutes of limitation

Article 105. § 1. The provisions of Articles 101 through 103 shall not be applied to crimes against peace, crimes against humanity or war crimes.

(...)

Chapter XIII Liability for offences committed abroad

Article 109. The Polish penal law shall be applied to Polish citizens who have committed an offence abroad.

Article 110. § 1. The Polish penal law shall be applied to aliens who have committed abroad an offence against the interests of the Republic of Poland, a Polish citizen, a Polish legal person or a Polish organisational unit not having legal personality and to aliens who have committed abroad a terrorist offence.

§ 2. The Polish penal law shall be applied to aliens in the case of the commission abroad an offence other than listed in § 1, if, under the Polish penal law, such an offence is subject to a penalty exceeding 2 years of deprivation of liberty, and the perpetrator remains within the territory of the Republic of Poland and no decision on his extradition has been taken.

Article 111. § 1. The requirement for liability for an act committed abroad is that an act is likewise recognised as an offence by a law in force in the place of its commission.

§ 2. If there are differences between the Polish penal law and the law in force in the place of commission, the court may take these differences into account in favour of the perpetrator.

§ 3. The condition provided for in § 1 shall not be applied neither to the Polish public official, performing his duties abroad, has committed an offence in connection with his functions, nor to a person who committed an offence in a place beyond the jurisdiction of any state authority.

Article 112. Notwithstanding the provisions in force in the place of the commission of the offence the Polish penal law shall be applied to a Polish citizen or an alien in case of the commission of:

- 1) an offence against the internal or external security of the Republic of Poland;
- 2) an offence against Polish offices or public officials and offence of swindling Polish public official or other person entitled on the basis of Polish law to produce a document out of authentication of untruth;
- 3) an offence against essential economic interests of Poland
- 4) an offence of false deposition or false statement, opinion or translation, use of document certifying the identity of another person, certifying untruth or false document - made before a Polish office.
- 5) an offence from which any material benefit has been obtained, even indirectly, within the territory of the Republic of Poland.

Article 113. Notwithstanding the provisions binding in the place of committing an offence, the Polish Penal law shall be applied to a Polish national and an alien, whose surrender has not been decided if such an alien has committed an offence abroad and the Republic of Poland is obliged to prosecute such crime under an international treaty or if an offence committed by such an alien is specified in the Rome Statute of the International Criminal Court, drawn up in Rome on 17 July 1998 (Journal of Laws of 2003, No. 78, pos. 708).

(...)

Chapter XIV Explanation of terms of the law

Article 115. § 1. A prohibited act is a behaviour displaying the characteristics specified in the penal law as unlawful.
(...)

SPECIAL PART

Chapter XVI

Offences against peace, and humanity, and war crimes

Article 117. § 1. Whoever initiates or wages a war of aggression shall be subject to the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

§ 2. repealed.

§ 3. Whoever publicly calls for initiating a war of aggression or publicly approves the initiation or conducting such war shall be subject to the punishment of the deprivation of liberty from 3 months to 5 years.

Article 118. § 1. Whoever, acting with an intent to destroy in full or in part, any ethnic, racial, political or religious group, or a group with a different perspective on life, commits homicide or causes a serious detriment to the health of a person belonging to such a group, shall be subject to the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

§ 2. Whoever, with the intent specified under § 1, creates, for persons belonging to such a group, living conditions threatening its biological destruction, applies means aimed at preventing births within this group, or forcibly removes children from the persons constituting it, shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years.

§ 3. repealed.

Article 118a. § 1. Whoever taking part in massive attack or at least in one of recurring attacks addressed against a segment of population undertaken for the execution or support of the state policy or an organisation:

- 1) perpetrates homicide,
- 2) causes severe damage to human's health,
- 3) creates living conditions that are hazardous to biological existence for persons being part of the population, particularly by depriving them from access to food or medical care for the purpose of extermination of such people

shall be subject to the deprivation of liberty for a minimum term of 12 years or the penalty of the deprivation of liberty for 25 years or for life sentence.

§ 2. Whoever taking part in massive attack or at least in one of recurring attacks addressed against a segment of population undertaken for the execution or support of the state policy or an organisation:

- 1) enslaves another individual or maintains such status,
- 2) deprives another individual of liberty for more than 7 days, exceptionally tormenting such individual,
- 3) inflicts torture or imposes cruelty or inhuman treatment,
- 4) commits rape or inflicts violence or uses unlawful threat or commits an offence against sexual latitude,
- 5) uses violence or unlawful threat, forcibly makes woman pregnant for the purpose of influencing the ethnic structure of a segment of population or committing other grave breach of international law,
- 6) deprives an individual of liberty and refuses to provide information regarding another individual or such individual's whereabouts or provides untrue information regarding such individual or such individual's whereabouts with an intention to deprive such individual of legal aid for a longer period of time,

shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years or the penalty of the deprivation of liberty for 25 years.

§ 3. Whoever taking part in massive attack or at least in one of recurring attacks addressed against a segment of population undertaken for the execution or support of the state policy or an organisation:

- 1) violating international law forces expulsion of individuals from the area in which they are lawfully present,
 - 2) uses severe persecution against any segment of population for reasons that are recognised as impermissible under international law, specifically for political, racial, national, ethnic, cultural or religious reasons or persecution of non-denominational or non-religious groups or gender-related persecution causing the deprivation of basic rights,
- shall be subject to the deprivation of liberty for a minimum term of 3 years.

Article 119. § 1. Whoever uses violence or makes unlawful threat towards a group of person or a particular individual because or their national, ethnic, political or religious affiliation, or because of their lack of religious beliefs,

shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§ 2. repealed.

Article 120. Whoever uses a means of mass extermination prohibited by international law, shall be subject to the penalty of the deprivation of liberty for a minimum term of 10 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

Article 121. § 1. Whoever, violating the prohibition contained in international law or in internal law, manufactures, amasses, purchases, trades, stores, carries or dispatches the means of mass extermination or means of warfare, or undertakes research aimed at the manufacture or usage of such means,

shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

§ 2. The same punishment shall be imposed on anyone, who allows the commission of the act specified under § 1.

Article 122. § 1. Whoever, during hostilities, attacks a locality or undefended object, sanitary zone, demilitarized or neutralized zone or uses other means of warfare prohibited under international law,

shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years or the penalty of the deprivation of liberty for 25 years.

§ 2. The same punishment shall be imposed on anyone, who, in the course of warfare, uses a means of warfare prohibited by international law.

Article 123. § 1. Whoever, in violation of international law, commits the homicide of

- 1) persons who surrendered, laid down their arms or lacked any means of defence,
- 2) the wounded, sick, shipwrecked persons, medical personnel or clergy,
- 3) prisoners of war,
- 4) civilians in an occupied area, annexed or under warfare, or other persons who are protected by international law during warfare,

shall be subject to the penalty of the deprivation of liberty for a minimum term of 12 years, the penalty of deprivation of liberty for 25 years or the penalty of deprivation of liberty for life.

§ 2. Whoever, in violation of international law, causes the persons specified under § 1 to suffer serious detriment to health, subjects such persons to torture, cruel or inhumane treatment, makes them even with their consent the objects of cognitive experiments, , uses their presence to protect a certain area or facility, or armed units from warfare, or keeps such persons as hostages shall be subject to the penalty of the deprivation of liberty for a minimum term of 5 years or the penalty of deprivation of liberty for 25 years

Article 124. § 1. Whoever violating international law compels individuals mentioned in Article 123 § 1 to serve in the hostile armed forces or compels the nationals of the hostile party to take part in the operations of war directed against their own country, inflicts corporal punishment, compels such individuals to maintaining sexual relationships, enforces to submit to other sexual acts or to perform such act with the use of violence or unlawful threat or deceit, commits outrages against personal dignity, specifically by humiliating and degrading treatment, deprives such individuals of liberty, deprives of the ability to exercise unbiased, independent judgement by the court or restricts such

individuals' right to self-defence in penal proceedings, announces that rights or claims of the nationals of the hostile party are terminated, suspended or inadmissible before the court, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

§ 2. Whoever, violating international law, delays the repatriation of prisoners of war or civilian individuals, commits displacement, forcible transfer of population or deportation of civilian people, incorporates, recruits to armed forces persons under 18 years of age or actually uses such persons in hostilities shall be subject to the same penalty as mentioned in § 1.

Article 125. § 1. Whoever in the occupied or seized territory or in a territory in the course of warfare commits destruction of property, appropriation or seizure of the enemy's property or cultural goods, shall be subject to the penalty of the deprivation of liberty from one to 10 years.

§ 2. In the event that the act applies to a property of a considerable value or goods of particular importance to culture, the perpetrator shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

Article 126. § 1. Whoever, in the course of warfare, illegally uses the emblem of the Red Cross or Red Crescent, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

§ 2. The same punishment shall be imposed on anyone, who, in the course of warfare, illegally uses protective emblems for items of cultural heritage or other emblems protected under international law, or uses a national flag or the military markings of the enemy, neutral country or an international organisation or commission.

Article 126a. Whoever publicly calls for the commission of an act specified in Article 118, 118a, 119 § 1, Articles 120-125 or publicly approves an act specified in the above-mentioned provisions, shall be subject to the penalty of the deprivation of liberty for a term of between 3 months to 5 years.

Article 126b. § 1. Whoever, failing to perform a duty of proper supervision allows a person remaining under his actual power or control to commit an act specified in Article 117 § 3, Article 118, 118a, 119 § 1, Article 120-126a, shall be subject to a penalty specified in the above-mentioned provisions.

§ 2. If the perpetrator acts unintentionally, he shall be subject to the deprivation of liberty for a term of between 3 months to 5 years.

Article 126c. § 1. Whoever makes preparation to commit the offence specified under Article 117, Article 118 or Article 120, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

§ 2. Whoever makes preparation to commit the offence specified under Article 118a § 1 or § 2, Article 122 or Article 123, shall be subject to the penalty of the deprivation of liberty for a term of between one year to 10 years.

§ 3. Whoever makes preparation to commit the offence specified under Article 124 § 1 or Article 125, shall be subject to the penalty of the deprivation of liberty for a term up to 3 years.

(...)

MILITARY PART

Chapter XXXVIII

General Provisions Regarding Soldiers

Article 318. A soldier who commits a prohibited act in obeying an order, shall be deemed to have not committed an offence, unless, in obeying the order, he intentionally commits an offence.

(...)

Chapter XL

Offences against the Rules of Military Discipline

Article 343. § 1. A soldier who fails or refuses to execute an order, or executes it in a manner not consistent with its content

shall be subject to the penalty of military custody or the penalty of deprivation of liberty for up to 3 years.

§ 2. If the perpetrator of the act specified in § 1 acts jointly with other soldiers or in front of an assembly of soldiers, or if the consequence of the act specified in § 1 is a significant damage to property or any other significant damage, the perpetrator

shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

§ 3. A soldier who enters an agreement with other soldiers with the purpose of committing a prohibited act specified in § 1 or 2,

shall be subject to the penalty of restriction of liberty, military custody or the penalty of deprivation of liberty for up to 2 years.

§ 4. The prosecution of the offence specified in § 1 or 3 shall occur upon a motion from the commanding officer of the unit.

Article 344. § 1. A soldier who refuses to obey an order which compels him to commit an offence, or who does not obey such an order, shall be deemed to have not committed an offence specified in Article 343.

§ 2. In the case of executing an order referred to in § 1, in a manner not consistent with its content, with the purpose of reducing any harmful effects of the act, the court may apply an extraordinary mitigation of the penalty or even renounce its imposition.

(...)