

## **Course: Fundamentals of Criminal Law and Petty Offences Law**

**Field of Study:** Internal Security

**Form of classes and number of hours:** lecture 15 h, practical classes 30 h

**Number of ECTS credits:** 4

### **Learning outcomes:**

Student:

- Possesses in-depth knowledge of the field of study.
- Knows and understands the basic principles of criminal liability in the country and abroad.
- Possesses basic knowledge of the legal rules applicable to persons who do not comply with legal standards, including in administration.

Skills:

- Ability to identify and characterise the tasks of the state administration in the case of criminal behaviour.
- Ability to properly present own knowledge based on the learned legal rules.
- Ability to correctly use the legal regulations in the area of criminal law in order to solve specific legal situations.

Social competences

- Ability to expand and deepen own knowledge based on the knowledge of the functioning of the structures of state institutions and bodies.
- Ability to present own opinion by analysing legal events and make a critical assessment of it, proposing an appropriate solution.
- Ability to define priorities in the operation of the judiciary bodies and relevant public services.

### **Evaluation methods of the learning outcomes:**

Lecture: Single-choice test verifying knowledge presented during the lecture.

Practical classes: Oral exam and activity in the classroom, taking into account the attendance rate.

### **Subject matter of the classes:**

1. Getting to know the programme of the course, requirements, legal acts and literature, discussing the learning outcomes, ECTS scores and forms of passing the course.
2. The genesis of criminal law. The principle of the validity of the penal act.
3. The concept of crime. Elements of crime.
4. Fault. Circumstances excluding fault. Circumstances excluding unlawfulness. Forms of committing crimes: gradual forms, phenomenal forms.
5. Criminal damage, social harm and other basic concepts. Crime and misdemeanour. Types of penalties and penal measures in the Penal Code.
6. Formal and material crimes as criteria of crime assessment.
7. The concept of a misdemeanour. Elements of the misdemeanour. Forms of committing an misdemeanour and circumstances excluding liability for misdemeanours.
8. Types of penalties and penal measures in the Petty Offences' Code.

9. Similarities and differences between the regulations contained in the Penal Code and the Petty Offences' Code.
10. The concept of criminal law and its place in the legal system. Basic concepts of criminal law. International criminal law and international petty offences law.
11. Criminal damage, social harm and other basic concepts.
12. The genesis of the petty offences law. The principle of application of the petty offences law.
13. Elements of crime in the analysis of individual crimes and their legal assessment. Subject, object, subjective party and objective party of the crime. Crime-offence, individual crime – universal crime, material crime – formal crime, intentional crime – unintentional crime, privileged crime – qualified crime.
14. Responsibility in the area of crimes against peace and war crimes.
15. Offences against life and health as a problem for the security of public order.
16. Other types of offences.
17. Offences against public order and peace.
18. Signs of a prohibited act. Breakdown of hallmarks, structure of crime and offences.
19. Offences against safety of persons and property.
20. Offences against person. Offences against health.
21. Other Code Offences.
22. Warrant. Seizure.
23. Crimes and offences not covered by the code.

## References

### Books

Jasiński W., Kremens K., *Criminal Law in Poland*. Warszawa 2019.

*The criminal code. Kodeks karny*, tłum. N. Faulkner. Warszawa 2012.

### Websites

<https://www.legislationline.org/documents/section/criminal-codes/country/10/Poland/show>

[https://www.legislationline.org/download/id/7354/file/Poland\\_CC\\_1997\\_en.pdf](https://www.legislationline.org/download/id/7354/file/Poland_CC_1997_en.pdf)

[https://pdf.helion.pl/e\\_0ejr/e\\_0ejr.pdf](https://pdf.helion.pl/e_0ejr/e_0ejr.pdf)

## **Polish Criminal Law**

### WHAT IS CRIMINAL LAW?

1. The criminal law is a set of such legal norms which define what human act, understood as an act or omission, is a crime, on what principles is the liability for such an act borne, and what penalties or penal measures may be imposed for it.

### WHAT ARE THE SOURCES OF CRIMINAL LAW?

#### 2. Sources of criminal law:

- the Penal Code Act – of 6<sup>th</sup> June 1997. It consists of a general, special and military part.
- Petty Offences' Code Act – of 20<sup>th</sup> May 1971. It consists of a general and specific part.

#### AND...

3. The basic principles of criminal law are set out in the Constitution.

In addition, many penal provisions are scattered throughout many other legal acts, e.g. the Labour Code, the Road Traffic Code, etc.

1) Article 42 (2) of the Constitution: 'Only a person who has committed an act prohibited by a statute in force at the moment of commission thereof, and which is subject to a penalty, shall be held criminally responsible. This principle shall not prevent punishment of any act which, at the moment of its commission, constituted an offence within the meaning of international law.'

**2. Anyone against whom criminal proceedings have been brought shall have the right to defence at all stages of such proceedings. He may, in particular, choose counsel or avail himself – in accordance with principles specified by statute – of counsel appointed by the court'.**

2) Article 42 (3) of the Constitution: 'Everyone shall be presumed innocent of a charge until his guilt is determined by the final judgment of a court'.

3) Article 43 of the Constitution: 'There shall be no statute of limitation regarding war crimes and crimes against humanity'.

4) Article 44 of the Constitution: 'The statute of limitation regarding actions connected with offences committed by, or by order of, public officials and which have not been prosecuted for political reasons, shall be extended for the period during which such reasons existed'.

5) Article 46 of the Constitution: 'Property may be forfeited only in cases specified by statute, and only by virtue of a final judgment of a court'.

The Constitution indicates who is the subject to criminal liability, which we will talk about in the next lectures.

3A. Time when the crime was committed.

**Article 6(1). The prohibited act shall be deemed to have been committed at the time when the perpetrator acted or failed to act to which he was obliged.**

3B. the principle of territoriality

Article 5 of the Penal Code. The Polish criminal law applies to the perpetrator who committed the prohibited act on the territory of the Republic of Poland, as well as on a Polish ship or aircraft, unless an international agreement to which the Republic of Poland is a party provides otherwise.

#### 4. WHAT IS CRIMINAL ACT?

Article 1 of the Penal Code

Section 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.

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

Section 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.

5. Article 1 (1) expresses the principle of specificity of the crime, Article 1 (2) – the principle of social harm of a criminal act, and Article 1 (3) – the principle of guilt

#### 6. WHAT IS A PROHIBITED ACT?

1) an offense under penalty – the definition of a prohibited act is in Article 115 (1) of the Penal Code: **'A prohibited act is a behaviour displaying the characteristics specified in the penal law as unlawful'**.

It is forbidden to act with the features specified in the criminal law. This behaviour includes an act or an inaction.

It can only be forbidden by statute, not by an act of a lower level.

7. Offences are divided into crimes and misdemeanors. They are distinguished by the amount of the penalty provided in the act. The deed comes from man.

2) the act must be culpable,

3) the act must be socially harmful to a greater than negligible degree

#### 8. WHAT IS FAULT?

Fault:

- one of the elements of the crime is fault,
- is the perpetrator's mental health right to the committed act.

#### 9. WHAT IS DIFFERENT BETWEEN CRIME AND MISDEMEANOUR?

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

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

We pay attention to the impending penalty, not imposed,

**Article 8. A crime may be committed only with intent; the misdemeanour may also be committed without intent, if the law so stipulates.**

**Article 9(1). A prohibited act is committed with intent when the perpetrator has the will to commit it, that is when he is willing to commit or foreseeing the possibility of perpetrating it, he accepts it.**

Thus, not all offences are punished in cases of committing a prohibited act unintentionally.

As part of inadvertence, the following are distinguished: recklessness – groundless supposition that a prohibited act will be avoided and carelessness – the perpetrator does not provide for the possibility of committing a crime, although he should and could have foreseen.

## 10. ELEMENTS OF CRIMINAL ACTS

Statutory hallmarks:

- a set of features forming the outline of the crime by A. Marek,
- relate to the subject, object, subjective party, and objective party.

Subject – we determine who committed the crime and whether it can be committed by anyone or a person who meets certain criteria

**Article 10 of the Code: ‘Whoever commits a prohibited act after having attained the age of 17 years shall be liable under the provisions of this Code.**

**Section 2. A juvenile, who after attaining the age of 15 years shall commit the prohibited act specified in the following: Article 134, Article 148(1, 2 or 3), Article 156 (1 or 3), Article 163 (1 or 3), Article 166, Article 173 (1 or 3), Article 197 (3), Article 252 (1 or 2) and in Article 280, may be liable under the provisions specified in this Code, if the circumstances of the case and the mental state of development of the perpetrator, his characteristics and personal situation warrant it, and especially when previously applied educational or corrective measures have proved ineffective.’**

Object – what kind of crime do we include in it and what interest was attacked (or what interest we protect)

Subjective party – we determine whether there is a fault

Subjective party – objective party: external behaviour of the perpetrator, form, circumstances of the commission of the act, effect:

- material crime: the effect is one of the features of a prohibited act, that is to say that we are talking about a crime when the effect took place
- formal crime: producing an effect is not mandatory, regardless of whether the effect has already occurred, it is liable for the act

## 11. EXCLUDING CIRCUMSTANCES

### 1/ ERROR RELATING TO CIRCUMSTANCES:

Mr. Kowalski went outside the shop and instead of getting on his bike, he got on the identical red bike of Mr. Nowak. Can he be charged with theft?

Article 28 (1) of the Penal Code. Whoever commits an act while being in error as to a circumstance constituting a feature of an prohibited act, shall not intentionally commit an offence. The legislator does not say that he does not commit an offence at all. It says that he does not commit it intentionally. Which means that the perpetrator could be held liable under an article that deals with an offence committed unintentionally.

But theft can only be committed intentionally, so Mr. Kowalski will not commit a crime at all.

To sum up: the error must concern circumstances that constitute a feature of the prohibited act, it must be significant, it excludes intentionality.

### 2/ LACK OF AWARENESS OF ILLEGALITY:

The way how Kowalski steals is like a tree being fell by a storm in the forest, unaware that it is an offence.

Article 30 of the Penal Code: 'Whoever, at the time of the commission of a prohibited act, was incapable of recognising its significance or controlling his conduct because of a mental disease, mental deficiency or other mental disturbance, shall not commit an offence'.

### 3/ ERROR RELATING TO CIRCUMSTANCES EXCLUDING LIABILITY

Article 29 of the Penal Code. Whoever commits a prohibited act in the justified but mistaken conviction that a circumstance has occurred which excludes unlawfulness or fault, shall not commit an offence; if the mistake of the perpetrator is not justifiable, the court may apply extraordinary mitigation of the penalty.

### 4/ INSANITY

Article 31 of the Penal Code Section 1. Whoever, at the time of the commission of a prohibited act, was incapable of recognising its significance or controlling his conduct because of a mental disease, mental deficiency or other mental disturbance, shall not commit an offence.

Section 2. If at the time of the commission of an offence the ability to recognise the significance of the act or to control one's conduct was diminished to a significant extent, the court may apply an extraordinary mitigation of the penalty.

## 12. WHAT ARE CIRCUMSTANCES EXCLUDING JUSTICE:

### 1/ NECESSARY DEFENSE

#### **Article 25.**

**Section 1. Whoever in necessary defence repels a direct illegal attack on any interest protected by law, shall not be deemed to have committed an offence.**

**Section 2. In the event that the limits of necessary defence have been exceeded, in particular when the perpetrator has used a means of defence disproportionate to the danger of the attack, the court may apply extraordinary mitigation of the penalty and even renounce its imposition.**

**Section 3. The court shall renounce the imposition of the punishment if exceeding the limits of necessary defence resulted from fright or emotional distress, as justified by the circumstances of the attack.**

Exceeding the limits of necessary defense:

1) excessive, excesses, exceeded mean defense in relation to the situation where it was possible to use less dangerous means that were equally effective to repel an attack, e.g. shooting in the head instead of in the legs,

### 2/ STATE OF NECESSARY DEFENCE

**Article 26. Section 1. Whoever acts with the purpose of averting an immediate danger threatening any interest protected by law, if the danger cannot otherwise be avoided but the interest sacrificed has a lower value than that of the interest rescued, he shall be deemed to have not committed an offence.**

**Section 2. Whoever rescues any interest protected by law under the circumstances defined in Section 1, or sacrifices an interest which does not represent a value manifestly greater than the interest being rescued, he shall also be deemed to have not committed an offence.**

**Section 3. In the event that the limits of necessary defence have been exceeded, the court may apply an extraordinary mitigation of the penalty or even renounce its imposition.**

**Section 4. The provisions of Section 2 shall not be applied when the perpetrator sacrifices an interest which he has a special duty to protect even by exposing himself to personal danger.**

**Section 5. The provisions of Section 1 through 3 shall be applied accordingly when only one of the obligations borne by the perpetrator can be fulfilled**

### 3/ EXPERIMENT

**Article 27. Section 1. Whoever acts with the purpose of conducting a cognitive, medical, technical or economic experiment, shall not commit an offence when the expected benefit is of an essential cognitive, medical or economic importance, and the expectation of these benefits, their purposefulness and the way of conducting the experiment are justified according to the present state of knowledge.**

**Section 2. An experiment is inadmissible without the consent of a participant subject thereto, duly informed of the expected benefits and the danger of adverse effects and of the probability of their occurrence, as well as of the possibility of withdrawing one's participation in the experiments at any stage thereof.**

**Section 3. The principles and conditions for admitting experiments shall be provided for in law.**

### 13. STAGE FORMS OF COMMITTING AN OFFENCE

a) Intention – is the idea of committing an offence.

b) Preparation – preparation takes place only when the perpetrator, in order to commit the prohibited act, undertakes activities aimed at creating conditions for the undertaking of an act aimed directly at committing it, in particular, for this purpose, he enters into an agreement with another person, obtains or adopts measures, collects information or prepares an action plan.

**Article 17 of the Penal Code: 'Whoever voluntarily abandoned preparation, and particularly, when he destroyed the prepared means or prevented them from being utilised in the future shall not be subject to penalty. In the case of entering an arrangement with another person in order to commit a prohibited act, whoever undertook an essential endeavour aimed at preventing the commission of the prohibited act, shall not be subject to penalty'.**

c) Attempt – Person responsible for an attempt, who, with the intention to commit a prohibited act, directly aims to commit a prohibited act by his behaviour, which, however, does not take place.

Section 2 Attempting also occurs when the perpetrator does not realise that it is impossible due to the lack of an object suitable for committing a prohibited act on him or due to the use of an agent unsuitable for the commission of a prohibited act.

The court imposes a penalty for an attempt within the limits of the risk provided for by the offence.

d) Accomplishment.

### 14. PHENOMENIC FORMS OF AN OFFENCE

**ABETTER** – a person responsible for inciting others, wanting another person to commit a prohibited act, urges him to do so.

**AIDER** – a person responsible for aiding others, with the intention of another person to commit a prohibited act, facilitates its commission with his behaviour, in particular by providing a tool, a means of transport, giving advice or information; a person who acts in the contrary to the specific legal obligation to prevent the commission of a prohibited act, facilitates its commission by its omission, is also responsible for aiding.

PERPETRATION

COMPLICITY

PRINCIPAL – a person leading a criminal group

ACCESSORY – a person who forces someone else to commit a crime using his dependence on himself

## 15. FINES AND PENALTIES

The penalties include:

1) fine –

**Article 33. Section 1. A fine shall be imposed in terms of daily rates defining the number of daily rates to be levied and the amount of each rate; unless otherwise provided by law, the lowest number of daily rates shall be 10, and the highest shall be 360.**

**Section 2. The court may also impose a fine also in addition to the penalty of deprivation of liberty as specified in Article 32 subsection 3, if the perpetrator has committed the act in order to gain material benefit or when he has gained such benefit.**

**Section 3. In setting the daily rate, the court shall consider the income of the perpetrator, his personal situation, family situation, property relationships and his earning capacity; the daily rate may not be lower than 10 Polish zlotys or higher than 2000 Polish zlotys.**

2) restriction of liberty – The penalty of restriction of liberty consists in the obligation to perform unpaid, supervised community work – for 20 to 40 hours a month (for community purposes designated by the court, in a suitable establishment, e.g. health service unit or social welfare unit, organisation or institution conducting charity work or work for the purposes of a local community); or consists in deducting from 10% to 25% of remuneration for work on a monthly basis for a community purpose indicated by the court.

3) imprisonment – the shortest lasts 1 month, and the longest 15 years; it is imposed in months and years.

**Article 37. The penalty of deprivation of liberty shall be for no less than one month and not more than 15 years; it shall be imposed in years and months.**

4) 25 years of imprisonment;

5) life sentence.

If law provides for mitigation of the maximum statutory penalty, the penalty imposed for an offence carrying the penalty of deprivation of liberty for life may not exceed 25 years, and for an offence carrying the penalty of deprivation of liberty for 25 years may not exceed 15 years.

Penal measures are additional burdens for the convict, which allow the severity of the punishment to be individualised for the particular convict. They are related to the committed offence. They include:

1) deprivation of public rights;

2) ban on occupying a specific position, performing a specific profession or conducting a specific business activity;

2a) ban on activities related to the upbringing, treatment, education or care of minors;

2b) ban on staying in specific environments or places, contacting specific people, approaching specific people or leaving a specific place of stay without the consent of the court;

2c) ban on entry to a mass event;

2d) ban on access to casinos and participation in gambling;

2e) order to periodically leave the premises occupied jointly with the aggrieved party;



- 3) driving ban;
- 7) making cash donation;
- 8) making the judgment public.

Lecturer:

**Grzegorz Chmielewski, PhD**

e-mail address: [grzegorz.chmielewski@pwsz.nysa.pl](mailto:grzegorz.chmielewski@pwsz.nysa.pl)