

## **CRIME OF GENOCIDE IN THE POLISH PENAL LAW**

This paper discusses the crime of genocide, defined in criminal-law terms in Article 118 of the Polish Penal Code (hereinafter PC) [1]. The main aim of this study is to present the statutory elements (criteria) of this crime, as well as the means of penal response for committing it.

The term "genocide" was coined by Polish lawyer Rafał Lemkin and was first used in practice during the Nuremberg Trial. The regulation of the issue of genocide by the Polish legislature stems from the obligations arising from ratification of the Convention on the prevention and punishment of the crime of genocide [2], [3, p. 333]. The crime of genocide was introduced into the Polish PC as recently as in 1997, but this does not mean that it had not been punishable before. The penalization of this act was contained in the provisions concerning the protection of human life, health, freedom, dignity, family and care and other legal goods [4, p. 89].

The generically defined object protected against the crime of genocide under Article 118 PC is humanity, understood as the form of a certain group. The legislature distinguished groups based on racial, national or belief criteria. As regards the individually defined protected object, under §1 it is human life and health, and under § 2 it is the very existence and the right to have and care for offspring. The secondary protected object under § 1 is focused on freedom. It includes religious or political freedom. In addition, equality is also protected. By contrast, the secondary object under § 2 is human life and health [5, thesis 2 to Article 118].

As far as the object of the analysed crime is concerned, it should be stated that the acts contained in Article 118 PC are generally-defined perpetrator offences. This results from the fact that the perpetrator can be any person, as long as they have the capacity to be held criminally liable. However, it should be stressed that in this respect this capacity can be most attributed to people who hold leadership positions in a given country. It can be concluded that it is not only heads of state, but also influential politicians or military commanders [6, p. 35].

As far as the subjective aspects of the crime in question are concerned, it should be noted that the perpetrator is guided by a discriminatory motive, with the aim of destroying a specific group of people in whole or in part. Therefore, it should be stated that the acts specified in Article 118 PC are directional in nature: they can only be committed intentionally, with a direct intention [7, Nb. 5-6 to Article 118].

As regards the elements of the subjective side, it is first necessary to refer to the definitions of protected groups, established in the case law of the International Criminal Tribunal for Rwanda. A national group consists of persons whose membership in the group is related to a legal bond based on citizenship. An ethnic group consists of persons who have a common language, culture and tradition. A racial group is composed of individuals who share common physical characteristics. A political group includes individuals characterized by a common language, culture, history and the striving for political sovereignty or even the desire to form their own separate state. On the other hand, members of a religious group or a group with a particular worldview are linked by a common religion, beliefs, practices or rituals, or worldview doctrine [8, p. 691].

Pursuant to Article 118 PC, genocide is killing or causing a serious detriment to the health of a member of the group, creating living conditions threatening biological destruction of the group and applying means aimed at preventing births or forcible removal of children. Homicide and serious detriment to health must be understood in accordance with the elements of the offence referred to in Article 148 PC and, respectively, Article 156 PC. However, with regard to homicide, it is argued that causing a member of the protected group to commit suicide may also constitute a crime of genocide. On the other hand, serious detriment to health can also include derangement of mental health caused e.g. by torture, rape or coercion. Creating living conditions that threaten biological destruction involves depriving the members of the group of means necessary for their survival, e.g. food, drinking water or shelter. Birth detention is based on forced sterilization, forced abortion, prohibition of marriage or sex segregation. Forced removal of children is carried out using physical or mental violence [8, pp. 691-692].

As a rule, these offences can be committed both by acting and by omission, except for the forced removal of children, as it is only based on action. As for the time of committing genocide, it is widely accepted that it can be committed not only during war, but also in peacetime. These acts are crimes characterised by the occurrence of specific results, except for the act of creating living conditions that threaten biological destruction, which is of a formal nature (not characterised by its result) [8, pp. 692-693].

As regards the means of penal response, it should be noted that for the crime of genocide under Article 118 PC, only the penalty of imprisonment may be imposed. The acts under § 1 are punishable by the penalty of imprisonment for not less than 12 years, the penalty of imprisonment for 25 years, and the penalty of life imprisonment. At the same time, it should be kept in mind that the latter of the penalties may not be imposed against a perpetrator who at the time of committing the offence was under 18 years of age (Article 54§ 2 PC). On the other hand, acts under § 2 are punishable by the penalty of imprisonment for not less than 5 years or the penalty of imprisonment for

25 years. Moreover, when imposing penalties for the crime of genocide, the court should, in each case, also consider the imposing on the perpetrator of the penal measure contained in Article 39 PC, especially the deprivation of public rights or public announcement of the judgment [9, pp. 48-49].

It should also be borne in mind that, under Article 16 § 2, preparations to commit a criminal offence are punishable only if the law so provides and thus this is not the rule. The legislature regulated punishability of genocide in Article 126c § 1 PC. This offence is punishable by the minimum sentence of 3 years of imprisonment.

In conclusion, it should be stressed that both committing and preparing genocide constitute criminal offences. This is due to the lower limit of the statutory range of penalties, which in the case of felonies is at least 3 years of imprisonment (Article 7 § 2 PC). In the light of these notes, it must be held that the legislature rightfully distinguished genocide as a separate offence, given its particular importance and specificity.

#### *Literature*

1. Ustawa z dnia 6 czerwca 1997 r. - Kodeks karny, t.j. Dz.U. z 2021 r., poz. 2345, ze zm.

2. Convention on the Prevention and Punishment of the Crime of Genocide approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948; United Nations, Treaty Series, vol. 78, p. 277.

3. Marek A., *Kodeks karny. Komentarz*, Warszawa 2010.

4. Dróżdż D., Domagała P., *Zbrodnia ludobójstwa w polskim i międzynarodowym prawie karnym*, *Przedsiębiorczość i Zarządzanie* 2012, vol. XIII, part 3.

5. Budyn-Kulik M., [in:] *Kodeks karny. Komentarz aktualizowany*, ed. M. Mozgawa, LEX/el. 2022.

6. Giezek J., [in:] *Kodeks karny. Część szczególna. Komentarz*, ed. J. Giezek, Warszawa 2021.

7. Wiak K., [in:] *Kodeks karny. Komentarz*, ed. A. Grześkowiak, K. Wiak, Warszawa 2021.

8. Zgoliński I., [in:] *Kodeks karny. Komentarz*, ed. V. Konarska-Wrzošek, Warszawa 2020.

9. Szewczyk M., Rams M., [in:] *Kodeks karny. Część szczególna, vol. II, Komentarz do art. 117-211a*, ed. W. Wróbel, A. Zoll, Warszawa 2017.