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THE OFFENCE OF USING UNACCEPTABLE WAYS OR MEANS OF FIGHTING IN POLISH CRIMINAL LAW

Article 122 § 1 of the Polish Criminal Code of 1997 describes the offence of attacking during military operations an undefended locality or object, a sanitary, demilitarized or neutralized zone or using another method of fighting prohibited by international law, while § 2 describes the offence of using a means of combat prohibited by international law during military operations.

The protected value of Article 122 of the Criminal Code, as doctrine indicates, is the legal order protected by international law [2, p. 474]. It should be pointed out that the regulation also protects the life and health of civilians who are in facilities and places subject to attack, medical personnel, including patients in the sanitary area, as well as the life and health of all persons in the demilitarized or neutralized zone [3, p. 39]. Article 122 of the Criminal Code also covers all non-military property located in the above-mentioned places [4, p. 938].

The actus reus of the offense under Article 122 §1 of the Criminal Code consists in the attack of the places listed in the regulation or in the use of a method of fighting prohibited by international law. The provision applies only to attacks carried out during hostilities within the framework of international or internal armed conflict [3, p. 39]. The following places are listed in the regulation: **an undefended locality or facility**, located near or inside the zone of military operations, which may be occupied by opposing forces, the stationing of military units is forbidden in these places, as well as the storage of resources needed for combat, and neither can they be used to carry out any activities by both the military and the civilian population [5, p. 67; 6, p. 707], **a sanitary zone**, which is a separate area, aimed at protecting the wounded, sick and medical personnel staying in it from an attack or the consequences of war [7, p. 340; 5, p. 68], **demilitarized zone**, i.e. an area on the border between two parties to a conflict in which, under international law or an agreement between the parties, hostilities on the part of the troops as well as civilians to the detriment of the enemy are prohibited [7, p. 340], and **a neutralized zone**, where it is forbidden to perform and prepare hostilities by persons in it, but the presence of armed forces is possible there, as well as the existence of military infrastructure [5, p. 68; 1, s. 475]. The second form of forbidden activity indicated in Article 122 §1 of the Criminal Code concerns the use of a method of struggle prohibited by international law, e.g. the use of perfidious, barbaric or cruel methods such as poisoning drinking water, the use of human shields,

etc [6, p. 707].

The actus reus of Article 122 §2 of the Criminal Code consists in the use of means of combat prohibited by international law. These measures include: chemical, bacteriological and nuclear weapons. It is also forbidden to use dum-dum missiles and anti-personnel mines that can injure civilians even after the cessation of hostilities [8, p. 337]. The use of poison or poisoned weapons as well as expanding projectiles are also prohibited [3, p. 40].

The above prohibitions were formulated in international legislation e.g.: the provisions of the Hague Conventions and the Hague Regulations of 1907, the Geneva Conventions of 1949, the Hague Convention of 1954. They provide for the legal regulation of rules and rights related to the conduct of war, the protection of civilians or cultural goods. These issues are also regulated by international agreements, common law norms, judgments and opinions of the International Court of Justice in The Hague [2, p. 475].

The discussed offence is of a formal nature and consists in the action of the perpetrator in the form of an attack on a prohibited target or the use of a prohibited method or means of combat [5, p. 69]. In the case of an act under § 2, it is also possible to commit this offence by omission [2, p. 475].

The offence under Article 122 of the Criminal Code is a common offence, i.e. it can be committed by any person capable of incurring criminal liability [5, p. 67]. In the case of the discussed provision, the offence may be committed by any person taking part in the hostilities. This applies to legal soldiers as well as illegal so-called mercenaries, although mainly the provision applies to soldiers at all command levels [9, p. 37]. The perpetrator in accordance with Articles 1 and 2 of the Hague Regulations may also be a civil person [10, p. 42].

The offence of Article 122 of the Criminal Code in both its types can only be committed intentionally, both in the form of *dolus directus* and *dolus eventualis* [4, p. 939]. When determining the *mens rea*, attention should also be paid to the circumstances of the hostilities. According to the Supreme Court, during a war there may be a situation in which, due to the dynamic development of events and the hierarchical command structure, a soldier may not know that he is using a means of combat against, for example, an undefended object [1].

Article 122 CC may be in real concurrence with the provisions of Article 120 CC (use of mass extermination measures), Article 125 CC (attack on property or cultural goods) [5, p. 69], as well as with the provisions describing offences against life and health, e.g. 148 CC (murder), 156 CC (serious bodily injury), as well as Article 288 CC (destruction of property) and Article 108 of the Act of 23 July 2003 on the protection of monuments and care of monuments [2, p. 475]. Article 122 may remain in real concurrence with Article 123 CC (an attempt on the life or health of prisoners of war or civilians) [10, p. 42].

In the case of both offences under Article 122 of the Criminal Code the punishment is imprisonment for a period of 5 to 15 years of imprisonment or

25 years of imprisonment [6, p. 708]. In addition, in the case of this offence, there are grounds for the court to also impose the penal measure of deprivation of public rights. This is a public complaint crime [10, p. 42].

Literature

1. Judgment of the Supreme Court - Military Chamber of 14 March 2012, WA 39/11, Legalis nr 966521.
2. Budyn-Kulik M., [in:] *Kodeks karny. Komentarz*, ed. M. Mozgawa, Warszawa 2021.
3. Gardocki L., [in:] *System Prawa Karnego*, vol. 8, *Przestępstwa przeciwko państwu i dobrom zbiorowym*, ed. L. Gardocki, Warszawa 2018.
4. Wiak K., [in:] *Kodeks karny. Komentarz*, vol. 7, ed. A. Grześkowiak, K. Wiak, Warszawa 2021.
5. Lipiński K., [in:] *Kodeks karny. Część szczególna. Komentarz*, ed. J. Giezek, Warszawa 2021.
6. Zgoliński I., [in:] *Kodeks karny. Komentarz*, ed. V. Konarska-Wrzošek, Warszawa 2020.
7. Szwarczyk M., [in:] *Kodeks karny. Komentarz*, ed. T. Bojarski, Warszawa 2016.
8. Marek A., *Kodeks karny. Komentarz*, Warszawa 2010.
9. Flemming M., Wojciechowska J., [in:] *Kodeks karny. Część szczególna. Komentarz do artykułów 117–221*, vol. 1, ed. A. Wąsek, R. Zawłocki, Warszawa 2010.
10. Kłaczyńska N., [in:] *Kodeks karny. Część szczególna. Komentarz*, ed. J. Giezek, Warszawa 2014.

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THE INTERNATIONAL CRIMINAL COURT AS A REFLECTION OF THE PURPOSE OF INTERNATIONAL CRIMINAL JUSTICE

The international judiciary plays a key role by settling legal disputes between subjects of international law (States) and between States and other entities [1]. Its main goal is to achieve justice, prevent impunity for the perpetrators of some of the most serious crimes, strive to reconcile the disputing parties and, consequently, deter the commission of crimes [2].

Throughout the twentieth century, and in fact since the end of the Second World War, the international community has made many efforts to solve the problem of the impossibility of enforcing the individual criminal responsibility of those who have committed the most serious crimes of international dimension, i.e. war crimes, genocide or crimes against humanity. The solution