



AMBASADA
RZECZYPOSPOLITEJ POLSKIEJ
w HADZE

EMBASSY
OF THE REPUBLIC OF POLAND
in THE HAGUE

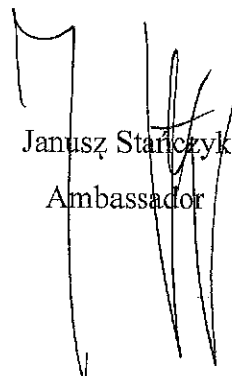
Alexanderstraat 25
2514 JM Den Haag
tel: 070- 79 90 100
fax: 070-79 90 137
e-mail: ambhaga@polamb.nl

HL-A-40-197/10

The Hague, 2 November 2010

Mr. Renan Villacis
Director of the Secretariat
of the Assembly of States Parties
The International Criminal Court
The Hague

With reference to the Secretariat's note of 9 August 2010, Ref. ICC-ASP/9/SP/PA/21, requesting information referred to in paragraph 6 subparagraph h) of the Action Plan for achieving universality and full implementation of the Rome Statute, adopted by the Assembly of States Parties on 1 December 2006, attached please find relevant information pertaining to Poland.


Janusz Starczyk
Ambassador

Poland

Information relevant to promotion of the ratification and full implementation of the Rome Statute of the International Criminal Court as required by the Resolution ICC-ASP/5/Res.3 of the Assembly of States Parties – *Action Plan for achieving universality and full implementation of the Rome Statute*

By the initiative of Ministry of Justice a novelization of Polish Penal Code has been adopted on 20 May 2010. The purpose of the novelization is to reflect in Polish law the crimes stipulated by the Rome Statute of the International Criminal Court. Introduced amendments supplement already existing provisions, especially by adding Article 118 a in Chapter XVI of Polish Penal Code which constitutes a full catalogue of *crimes against humanity*, by introducing new kinds of *war crimes* in Article 124 and Article 125 of the Code and in the scope of Chapter XXX which broadens catalogue of crimes against Polish law by adding to the catalogue crimes committed against international criminal courts.

The new act came into force on 2 September 2010.

Excerpts from Penal Code

Chapter XIII. Liability for offences committed abroad

Article 113. Notwithstanding regulations in force in the place of commission of the offence, the Polish penal law shall be applied to a Polish citizen or an alien, with respect to whom no decision on extradition has been taken, in the case of the commission abroad of an offence which the Republic of Poland is obligated to prosecute under international agreements **or an offence established under the Rome Statute of the International Criminal Court adopted in Rome 17 July 1998.**

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

§ 3. Whoever publicly incites to initiate a war of aggression or publicly praises the initiating or waging a war of aggression shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 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. Whoever makes preparation to commit the offence specified under § 1 or 2, shall be subject to the penalty of the deprivation of liberty for a minimum term of 3 years.

Art. 118a. § 1. Whoever, taking part in a mass attack, or at least in one of a series of attacks directed against group of persons, launched in order to implement or support a State or organizational policy:

- 1) commits homicide,
- 2) causes a serious detriment to the health of a person,
- 3) inflicts on persons belonging to part of population, living conditions threatening their biological existence, in particular by depriving them of access to food and medicine, calculated to bring about their destruction,

shall be subject to the penalty of 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, taking part in a mass attack, or at least in one of a series of attacks directed against group of persons, launched in order to implement or support a State or organizational policy:

- 1) causes the state of enslavement of a person or maintains him or her in such state,
- 2) deprives a person of liberty for a period exceeding 7 days or in particular torment,
- 3) employs torture or subjects a person to cruel or inhumane treatment,
- 4) commits rape or, using violence, unlawful threat or deceit, otherwise violates sexual freedom of a person,
- 5) using violence or unlawful threat, makes a woman pregnant with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law,
- 6) deprives a person of liberty and refuses to give information on his or her fate or whereabouts, or gives untrue information on his or her fate or whereabouts, with the intention of removing that person from the protection of the law for a prolonged period of time,

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

§ 3. Whoever, taking part in a mass attack, or at least in one of a series of attacks directed against group of persons, launched in order to implement or support a State or organizational policy:

- 1) in violation of international law, forces persons to change their lawful place of residence,
- 2) seriously persecutes group of persons on grounds recognized as impermissible under international law, in particular on political, racial, national, ethnic,

cultural, religious, ideological, gender grounds or because of religious indifference, causing deprivation of fundamental rights,

shall be subject to the penalty of deprivation of liberty for a minimum term of 3 years.

Article 119. § 1. Whoever uses violence or makes unlawful threat towards a group of persons or a particular individual because of 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.

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, in the course of warfare, attack an non-defended locality or a facility, hospital, demilitarized or neutralized zones or uses any other methods of warfare prohibited by international law,

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.

§ 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 takes 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

Art. 124. § 1. Whoever, in violation of international law, compels persons referred to in Article 123 § 1 to serve in the hostile armed forces **or to take part in the operations of war directed against their own country**, inflicts corporal punishment, **causes such persons – using violence, unlawful threat or deceit – to engage in sexual relationship or to submit themselves to other sexual act or to carry out such act, commits outrages upon personal dignity, in particular degrading and humiliating treatment, deprives them of liberty,** deprives them of the right to independent and impartial trial, or restricts the right of those persons to defense in criminal proceedings, **declares abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party,**

shall be subject to the penalty of deprivation of liberty for the minimum term of 3 years.

§ 2. **The same penalty shall be imposed on anyone who, in violation of international law, delays the repatriation of prisoners of war or civilians, transfers, causes displacement or deportation of civilian population, conscripts or enlists into the armed forces persons under the age of 18 years, or actually uses such persons in hostilities.**

Art. 125. § 1. Whoever, in a territory which is occupied, taken over or affected by military operations, in violation of international law, destroys, damages, removes or appropriates **property** or items of cultural heritage,

shall be subject to the penalty of deprivation of liberty for the term of between one year to 10 years.

§ 2. If the act involves **property** of substantial value or an item of particular importance for cultural heritage, the perpetrator shall be subject to the penalty of deprivation of liberty for the 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.

Art. 126a. Anyone who publicly incites others to the commission of an act referred to in art. 118, 118a, 119 § 1, art. 120-125, or publicly commends the commission of an act referred to in the those provisions,

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

Art. 126b. § 1. Whoever, failing to exercise due control, allows the commission of an act referred to in art. 117 § 3, art. 118, 118a, 119 § 1, art. 120-126a by a person remaining under his or her actual authority or control,

shall be subject to the penalty as specified in those provisions.

§ 2. Where the perpetrator acts unintentionally, he or she shall be subject to the penalty of deprivation of liberty for the term of between 3 months and 5 years.

Chapter XXX. Offences against the Administration of Justice

Article 232. Whoever, by using violence or an illegal threat influences the official functions of a court of justice shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

§ 2. The same penalty shall be imposed on the perpetrator of an offence referred to in § 1 committed to the detriment of the international criminal tribunal or an organ thereof operating under an international agreement to which the Republic of Poland is a party, or established by an international organization constituted under an agreement ratified by the Republic of Poland.

Article 233. § 1. Whoever, in giving testimony which is to serve as evidence in court proceedings or other proceedings conducted on the basis of a law, gives false testimony or conceals the truth

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

§ 2. The prerequisite to this liability is that the person obtaining the testimony, acting within his competence, shall have warned the person testifying of the penal liability for false testimony or obtained a relevant pledge from the latter.

§ 3. Whoever, being unaware of the right to refuse testimony or answer to questions, gives false testimony because of fear of penal liability threatening himself or his next of kin, shall not be liable to the penalty.

§ 4. Whoever, acting as an expert, expert witness or translator, provides a false opinion or translation to be used as in proceedings specified in § 1

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

§ 5. The court may apply an extraordinary mitigation of the penalty, or even waive its imposition if:

- 1) the false testimony, opinion or translation concerns circumstances which cannot affect the outcome of the case,
- 2) the perpetrator voluntarily corrects the false testimony, opinion or translation before even a decision which is not final and valid has been rendered in the case.

§ 6. The provisions of § 1-3 and 5 shall be applied accordingly to a person providing a false statement if a provision of a law provides for the possibility of obtaining a statement under the threat of penal liability.

Article 234. Whoever, before an agency responsible for prosecuting or judging offences, contraventions or disciplinary transgressions, falsely accuses another person of committing an offence, a contravention or a disciplinary transgression

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

Article 235. Whoever, by fabricating false evidence or by other deceitful measures, directs a prosecution against a specific person for an offence, a contravention or a disciplinary transgression or undertakes such measures in the course of proceedings,

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

Article 236. § 1. Whoever conceals evidence of the innocence of a person suspected of committing an offence, a contravention or a disciplinary transgression, shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.

§ 2. Whoever conceals evidence of innocence because of fear of penal liability threatening himself or his next of kin, shall not be subjected to a penalty.

Article 237. The provisions of Article 233 § 5 section 2 shall be applied accordingly to the offences specified in Article 234, Article 235 and in Article 236 § 1.

(...)

Article 239. § 1. Whoever obstructs or frustrates a penal proceedings by aiding a perpetrator to evade penal liability, and especially whoever hides the perpetrator, or obliterates physical evidence of the offence or undergoes a penalty for a sentenced person

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

§ 2. Whoever hides a person who is his next of kin, shall not be subject to a penalty.

§ 3. The court may apply an extraordinary mitigation of the penalty and even waive its imposition if the perpetrator has rendered assistance to a person who is his next of kin, or acted on account of fear of a penal liability threatening himself or his next of kin.

(...)

Article 245. Whoever uses violence or unlawful threat with a purpose of influencing a witness, expert witness, translator prosecutor or the accused or consequently breaches personal inviolability of such a person

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

Article 246. A public official or anyone acting under his orders for the purpose of obtaining specific testimony, explanations, information or a statement, uses force, unlawful threat, or otherwise torments another person either physically or psychologically

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

Art. 247a. The provisions of art. 233-237 and art. 239, 245 and 246 shall apply accordingly in respect of an act committed in connection with proceedings before the international criminal tribunal or an organ thereof operating under an international agreement to which the Republic of Poland is a party or established by an international organization constituted under an agreement ratified by the Republic of Poland.