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CRIMINAL LIABILITY FOR THE INTERNATIONAL CRIME OF AGGRESSION UNDER THE POLISH PENAL CODE

Crimes against peace, humanity and war crimes are acts of the highest degree of social harmfulness, which is reflected in the heaviest penalties and the international interest in prosecuting their perpetrators. These three groups of crimes have emerged through a long and painful historical process with the aim of protecting the universal values of universal peace and the right of people to live in peace. The disturbance of these fundamental rights nullifies the satisfaction of all other needs of life by individuals as well as societies or nations. A crucial moment in the development of international criminal law was the Nuremberg trials against the main war criminals of the German Reich during World War II, held before the International Military Tribunal. Article IV of the Court's Statute distinguished, as we know it today, the division into crimes against peace, war crimes and crimes against humanity. However, they required more precise and clear formulation which resulted in further development of these principles and standards. Solutions on the grounds of international law give rise to the necessity to regulate the issue of responsibility for these crimes in domestic law, resulting, inter alia, in the inclusion of a catalog of crimes within the jurisdiction of the International Criminal Court into Polish substantive criminal law.

Currently in the Polish legal order, the issues of crimes against peace, against humanity and war crimes are regulated by Chapter XVI of the Criminal Code, which opens the special part of the Code. This indicates the undoubted importance of these regulations. This chapter begins with Article 117, which criminalizes the initiation or conduct of war, the so-called crime of aggression, as well as public incitement or praise of this crime, in other words, war propaganda. For the purpose of this article, the crime of Article 117 § 1 known as the crime of aggression will be briefly outlined.

The analysis of the elements of the offence under Article 117 § 1 should begin with the definition of the term "aggression war". The Polish legislator has not provided a legal definition of this term. It is a concept in international law, shaped by a number of acts of this rank. The most current definition of the crime of aggression was introduced in 2010 in the provision of Article 8bis of the Statute of the International Criminal Court, according to which it is defined as planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations. It is worth emphasizing that in accordance with the UN Charter, a defensive war aimed at repelling armed aggression on the part of another state as well as collective preventive or repressive action, or the armed struggle of colonial peoples for liberation from colonial rule does not constitute an aggression. Moreover, armed conflicts of an internal character such as civil war or separatist movements are excluded from the concept of an aggression war.

The object side of the crime under Article 117 § 1 is characterized by the operative elements "initiate" or "conduct". The former is understood as the taking of armed action, which may include attacking the territory of a foreign state without observance of any formalities regardless of the planned scope and purpose of the action. Some representatives of the doctrine indicate that this term should also be understood as a formal declaration of war against another state, but as J. Giezek seems to rightly point out, the mere political declaration of a war does not have to be the same as the start of an armed conflict in the form of an armed attack against the sovereignty, territorial integrity or political independence of another state. Waging an aggression war, on the other hand, is the continuation of armed aggression through both political leadership and the direction of military operations.

There are also divergences in the doctrine regarding the subjective side, namely whether the crime under Article 117 is an individual or a common crime. There should be no doubt that this crime is a universal one, whose perpetrator may be anyone who initiates or conducts an aggression war. Admittedly, in reality, the subject of this crime can only be persons who, in accordance with Article 8bis of the ICC Statute, will be able to effectively control and direct the political or military activity of the state. However, the

individualisation of the subject of the crime is not determined by the competence of individuals to implement the temporal characteristic, which in fact is sometimes possessed by a limited circle of persons. In fact it is the characteristic of the subject, distinguished by the legislator in the typification of the prohibited act. There is no doubt, however, that the crime under article 117 is an intentional crime with direct intent, punishable by imprisonment of not less than 12 years, 25 years of imprisonment or life imprisonment. It is the most severe penalty provided by the Polish Penal Code.

Within the scope of applicability of the Polish Criminal Code in terms of place, in the case of Article 117 § 1, the principle of universal repression contained in Article 113 will apply. This provision provides application of the Polish Criminal Law in case of committing abroad one of the crimes prosecuted under the obligations arising from international agreements or the offences contained in the Rome Statute of the ICC. This is important because the obligation to prosecute crimes against the interests of humanity, including crimes of aggression, does not depend on the nationality of the perpetrator or the place where the crime was committed. Nevertheless, the obligation to prosecute under Article 113 of the Criminal Code only exists if the perpetrator, who is located in Poland, has not been ordered to surrender to another state.

Also noteworthy is the exclusion of the application of the statute of limitations on punishment and execution of punishment in relation to the crime in question. In accordance with Article 43 of the Constitution of the Republic of Poland, war crimes and crimes against humanity are not subject to statute of limitations. Article 105 § 1 of the Penal Code expands the catalog of crimes excluded from the institution of the statute of limitations by adding to them crimes against peace, which include the crime of aggression. The main act of international law to which Poland is a party and which expressis verbis expresses the exclusion of the statute of limitations for crimes of aggression is the ICC Statute, which in Article 29, states that crimes within the jurisdiction of the Court are not subject to statute of limitations.

The catalog of the above presented institutions provided in Polish criminal law indicates the exceptional importance and interest of the state in the prosecution of the perpetrators of crimes of aggression, as one of the *delicta iuris gentium*. This is the result of embedding the typification of this type of crime in international law, as due to the gravity of their species, their prosecution and punishment is a common task of the international community.

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СОЦІАЛЬНІ МЕРЕЖІ ЯК ОБ'ЄКТ КРИМІНАЛІСТИЧНОГО ДОСЛІДЖЕННЯ

У сучасних умовах глобального розвитку соціально-економічного та суспільного життя спостерігається стрімке зростання злочинності, поширюються її кордони, вдосконалюються способи вчинення «традиційних» злочинів та з'являються нові форми кримінальної активності. Для ефективного вирішення проблем, які є результатом окреслених тенденцій, необхідним вбачається розробка якісно нового підходу до організації і тактики розслідування злочинів.

У зв'язку зі стрімким поширенням соціальних мереж як форми інтернет-комунікації у суспільстві, виникає проблема розробки єдиного підходу до визначення та розуміння даного явища, що сприятиме належному правовому забезпеченню їх розвитку та функціонуванню [1].

Поняття «соціальні мережі» має міждисциплінарний характер, адже зазначена категорія є об'єктом дослідження різних наукових напрямків: соціології, антропології, географії, соціолінгвістики, біології, психології та ін. Та початком досліджень соціальних мереж прийнято вважати 1930-ті роки, коли американський психолог Якоб Леві Морено опублікував низку робіт із соціометрії, присвячену міжособистісним та міжгруповим відносинам [2].

У зв'язку з розвитком новітніх інформаційних технологій, вдосконаленням та ускладненням технічних засобів передачі інформації перед правоохоронними органами постають нові завдання, вирішення яких можливе лише завдяки розробці методів та засобів отримання та використання інформації за допомогою відповідних технологій, в тому