

Act

of 6 June 1997

The Penal Code

GENERAL PART

Chapter I

Principles of penal liability

Article 1. § 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.

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

§ 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.

Article 2. Penal liability for an offence with criminal consequences committed by omission shall be incurred only by a person who had borne a legal, special duty to prevent such a consequence.

Article 3. Penalties and other measures provided for in this Code shall be applied with a view to humanitarian principles, particularly with the respect for human dignity.

Article 4. § 1. If at the time of adjudication the law in force is other than that in force at the time of the commission of the offence, the new law shall be applied. However, the former law should be applied if it is more lenient to the perpetrator.

§ 2. If, according to the new law, the act to which the sentence pertained is subject to a penalty whose upper limit is lower than the penalty imposed, this penalty shall be lowered to the upper limit of the statutory penalty provided for such an act in the new law.

§ 3. If, according to the new law, the act to which the sentence pertained, is no longer subject to penalty of imprisonment, such an enforceable penalty is commuted to a fine or to a restriction of liberty, assuming that one month deprivation of liberty is equivalent to 60 times the daily fine or two months restriction of liberty.

§ 4. If according to the new law the act to which the sentence pertained is no longer prohibited under penalty, the sentence shall be expunged by virtue of the law.

Article 5. The Polish penal law shall be applied to the perpetrator who committed a prohibited act within the territory of the Republic of Poland, or on a Polish vessel or aircraft, unless an international agreement to which the Republic of Poland is a party stipulates otherwise.

Article 6 § 1. A prohibited act shall be deemed to have been committed at the time when the perpetrator has acted or omitted to take an action which he was under obligation to perform.

§ 2. A prohibited act shall be deemed to have been committed at the place where the perpetrator has acted or has omitted an action which he was under obligation to perform, or where the criminal consequence has ensued or has been intended by the perpetrator to ensue.

Article 7. § 1. The offence is either a crime or a misdemeanour.

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

§ 3. 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.

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.

§ 2. A prohibited act is committed without intent when the perpetrator not having the intent to commit it, nevertheless does so because he is not careful in the manner required under the circumstances, although he should or could have foreseen the possibility of committing the prohibited act.

§ 3. The perpetrator shall be liable to a more severe liability which the law makes contingent on a certain consequence of a prohibited act, if he has and could have foreseen such a consequence.

Article 10. § 1. Whoever commits a prohibited act after having attained the age of 17 years shall be liable under the provisions of this Code.

§ 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.

§ 3. In the case specified in § 2, the penalty imposed may not exceed two-thirds of the statutory maximum penalty for the offence imputed to the perpetrator; the court may also apply an extraordinary mitigation of punishment.

§ 4. With regard to the perpetrator who commits a prohibited act after having attained 17 years of age but before having reached the age of 18 years, the court shall, instead of a penalty, adopt educational, therapeutic, or corrective measures prescribed for juveniles, if the circumstances of the case and the mental state of development of the perpetrator, his characteristics and personal situation warrant it.

Article 11. § 1. The same act may constitute only one offence.

§ 2. If an act has features specified in two or more provisions of penal law, the court shall sentence the perpetrator for one offence on the basis of all concurrent provisions.

§ 3. In the case specified in § 2 the court shall impose the penalty on the basis of the provision providing for the most severe penalty, which shall not prevent the court from imposing other measures provided for in law on the basis of all concurrent provisions.

Article 12. Two or more prohibited acts of conduct undertaken at short intervals with premeditated intent shall be regarded as one prohibited act; if the subject of the assault is a personal

interest, the condition for regarding many acts as a single prohibited act, is the specific identity of the injured.

Chapter II

Forms of Commission of an Offence

Article 13 § 1. Whoever with the intent to commit a prohibited act, directly attempts its commission through his conduct which, subsequently however does not take place, shall be held liable for an attempt.

§ 2. An attempt also occurs when the perpetrator is not himself aware of the fact that committing it is impossible because of the lack of a suitable object on which to perpetrate the prohibited act or because of the use of means not suitable for perpetrating this prohibited act.

Article 14 § 1. The court shall impose a penalty for an attempt within the limits of the penalty provided for the given offence.

§ 2. In the case specified in Article 13 § 2 the court may apply extraordinary mitigation of punishment or even renounce its imposition.

Article 15 § 1. Whoever has voluntarily abandoned the prohibited act or prevented the consequence shall not be subject to penalty for the attempt.

§ 2. The court may apply an extraordinary mitigation of punishment to a perpetrator who has voluntarily attempted to prevent the consequence which constituted a feature of the prohibited act.

Article 16. § 1. Preparation only occurs when the perpetrator, in order to commit a prohibited act, undertakes activities aimed at creating the conditions for effecting an act leading directly to commission of the prohibited act, particularly when, for this purpose, he enters into an arrangement with another person, acquires or makes ready the means, gathers information or concludes a plan of action.

§ 2. Preparation is subject to a penalty only when the law so provides.

Article 17. § 1. 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.

§ 2. The person to whom Article 15 § 1 applies shall not be liable to penalty for preparation.

Article 18. § 1. Not only the person who has committed a prohibited act himself or together and under arrangement with another person, but also a person who has directed the commission of a prohibited act by another person, or taken advantage of the subordination of another person to him, orders such a person to commit such a prohibited act, shall be liable for perpetration.

§ 2. Whoever, willing that another person should commit a prohibited act, induces the person to do so, shall be liable for instigating.

§ 3. Whoever, with an intent that another person should commit a prohibited act, facilitates by his behaviour the commission of the act, particularly by providing the instrument, means of transport, or giving

counsel or information, shall be liable for aiding and abetting. Furthermore, whoever, acting against a particular legal duty of preventing the prohibited act, facilitates its commission by another person through his omission, shall also be liable for aiding and abetting.

Article 19. § 1. The court shall impose the penalty for instigating, and aiding and abetting within the limits of the sanction provided in law for perpetrating.

§ 2. In imposing the penalty for aiding and abetting, the court may apply extraordinary mitigation of punishment.

Article 20. Each persons co-operating in the perpetration of a prohibited act shall be liable within the limits of his intent or a lack of it, irrespective of the liability of others co-operating in the perpetration.

Article 21. § 1. Circumstances pertaining to an individual, excluding or mitigating, or aggravating his criminal liability shall be taken into account only with regard to the person they pertain to.

§ 2. If an individual circumstance regarding the perpetrator, even if it is conducive only to aggravation of penalty, constitutes a feature of a prohibited act, the person co-operating shall be held liable under criminal law, for this prohibited act, when he knew about this circumstance, even though it did not pertain to himself.

§ 3. With regard to a person co-operating to whom the circumstance referred to under § 2 does not apply, the court may apply extraordinary mitigation of punishment.

Article 22. § 1. When the commission of an prohibited act was only attempted, the subject specified in Article 18 §§ 2 and 3 shall be liable as for an attempt.

§ 2. When the commission of a prohibited act was not attempted, the court may apply extraordinary mitigation of punishment or even renounce the imposition of the penalty.

Article 23. § 1. A person co-operating in the perpetration of an prohibited act, who voluntarily prevented its perpetration shall not be liable for penalty.

§ 2. The court may apply extraordinary mitigation of punishment with regard to a person co-operating in perpetration, who voluntarily tried to prevent the perpetration thereof.

Article 24. Whoever incites another person to commit a prohibited act, in order to direct criminal proceedings towards such a person, shall be liable as for instigating; in this case Articles 22 and 23 shall not be applied.

Chapter III. **Exclusion of penal liability**

Article 25. § 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.

§ 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.

§ 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.

Article 26. § 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.

§ 2. Whoever rescues any interest protected by law under the circumstances defined in § 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.

§ 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.

§ 4. The provisions of § 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.

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

Article 27. § 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.

§ 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.

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

Article 28. § 1. 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.

§ 2. Whoever commits an offence in the justified but mistaken conviction that a circumstance has

occurred, which constitutes a feature of a prohibited act carrying a less severe penalty, shall be subject to criminal liability under the provision regarding the circumstance warranting this lesser liability.

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

Article 30. Whoever commits a prohibited act while being justifiably unaware of its unlawfulness, shall not commit an offence; if the mistake of the perpetrator is not justifiable, the court may apply an extraordinary mitigation of the penalty.

Article 31. § 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.

§ 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.

§ 3. The provisions of § 1 and 2 shall not be applied when the perpetrator has brought himself to a state of insobriety or intoxication, causing the exclusion or reduction of accountability which he has or could have foreseen.

Chapter IV. **Penalties**

Article 32. The penalties are:

- 1) fine,
- 2) restriction of liberty

- 3) deprivation of liberty,
- 4) deprivation of liberty for 25 years,
- 5) deprivation of liberty for life.

Article 33. § 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.

§ 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.

§ 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.

Article 34. § 1. Unless otherwise provided by law, the penalty of restriction of liberty shall be for not less than one month and not more than 12 months; it is imposed in terms of months.

§ 2. While serving the penalty of restriction of liberty, the sentenced person:

- 1) may not change his permanent place of residence without the permission of the court,
- 2) shall be obligated to perform work designated by the court,
- 3) shall be obligated to provide explanations regarding the progress of terms of serving the penalty.

Article 35. § 1. The obligation specified in Article 34 § 2 subsection 2 shall be to perform supervised work for 20 to 40 hours a month, without remuneration and for community purposes designated by the court, in a suitable establishment, health service or social welfare unit, organisation or institution conducting charity work or work for the purposes of a local community.

§ 2. With regard to an employee, the court may decide that, instead of the obligation specified in § 1, between 10 and 25% of the remuneration shall be deducted for the benefit of the State Treasury or for the community purpose so designated by the court; the sentenced person while undergoing this penalty may not terminate his employment without the permission of the court.

§ 3. After hearing the sentenced person's statement, the court shall determine the place, time, type and method of fulfilling the obligation of work, referred to in § 1.

Article 36. § 1. In imposing the penalty of restriction of liberty the court may place the sentenced person under the supervision of a probation officer [*kurator*] or a person of public trust, association, institution or community organisation whose statutory responsibilities include education, preventing public demoralisation or providing assistance to the sentenced persons.

§ 2. In imposing the penalty of restriction of liberty, the court may decide to impose on the sentenced person, the obligations specified in Article 72 § 1 subsections 2, 3 or 5, and § 2.

§ 3. Article 74 shall be applied accordingly.

Article 37. The penalty of deprivation of liberty listed in Article 32 subsection 3 shall be for no less than one month and not more than 15 years; it shall be imposed in years and months.

Article 38. § 1. If law provides for mitigation or an extraordinary enhancement of the statutory maximum penalty, in the case of the alternative prescription of penalties listed in Article 32 subsection 1 through 3, the mitigation or enhancement shall relate to each of these penalties.

§ 2. The extraordinarily enhanced penalty may not exceed 540 times the daily rates of fine, 18 months of restriction of liberty or 15 years of deprivation of liberty.

§ 3. 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.

Chapter V. Penal measures

Article 39. The penal measures are:

- 1) deprivation of public rights,
- 2) interdiction preventing the occupation of specific posts, the exercise of specific professions or to engage in specific economic activities,
- 3) interdiction on driving vehicles,
- 4) forfeiture of items,
- 5) obligation to redress the damage,
- 6) supplementary payment to the injured or for a public purpose,
- 7) pecuniary consideration,
- 8) making the sentence publicly known.

Article 40. § 1. The deprivation of civil [*public*] rights shall include the loss of the right to vote and to be elected to the legislature, professional or business self-governing bodies, the loss of the right to participate in the administration of justice, and interdiction to perform functions in state administration, local government and professional self-governing bodies; as well as the loss of military rank attained and demotion to the rank of private; the deprivation of civil rights also includes the loss of decorations, distinctions and honorary titles as well as the loss of the capacity of acquiring them during the period of the deprivation of rights.

§ 2. The court may decide on the deprivation of civil rights in the event of sentencing to the deprivation of liberty, for a period of not less than 3 years for an offence committed with motives deserving particular reprobation.

Article 41. § 1. If the perpetrator, at the time of committing the offence, has abused his post or

profession, or has shown that by his continuing in the present post or profession would threaten certain essential interests protected by law would be threatened, the court may decide on an interdiction preventing the occupation of specific posts or the exercise of specific professions.

§ 2. In the event that a perpetrator has been sentenced for an offence related to a certain economic activity, the court may decide on an interdiction to engage preventing the engaging in this activity, if further continuing thereof would threaten certain essential interests protected by law.

Article 42. § 1. In case of the sentencing of a person participating in traffic for an offence against the safety thereof, the court may decide on an interdiction from on driving specified types of vehicles, especially when the circumstances of the offence committed, indicate that driving a vehicle by this person would endanger public safety in traffic.

§ 2. If, at the time of the commission of an offence specified in §1, the perpetrator was in the state of inebriation or under the influence of narcotics or had fled from the scene of the event described in Article 173, 174 or 177, the court shall impose interdiction on driving any type of motorised vehicle, or specified type of motorised vehicles.

Article 43. §1. Unless otherwise provided for in law, the deprivation of civil rights and interdictions specified in Article 39 subsections 2 or 3 shall be imposed in terms of years for a period ranging from one to 10 years.

§ 2. The deprivation of rights or an interdiction imposed by the court shall take effect from the time the sentence becomes final and valid; the period for which they were imposed does not run during the serving of a penalty of deprivation of liberty, even if the latter has been imposed for another offence.

§ 3. When imposing the measure described in Article 42, the court imposes an obligation to surrender the relevant document (driving licence); the period for which the interdiction has been imposed shall not begin until this obligation has been met.

Article 44. § 1. The court shall impose the forfeiture of items directly derived from an offence, unless they are subject to return to the injured person or to another entity.

§ 2. The court may decide on the forfeiture of the items which served or were designed for committing the offence unless they are subject to the return to another entity.

§ 3. The forfeiture described in § 2 shall not be applied if its imposition would not be commensurate with the severity of the offence committed, the court may impose a supplementary payment to the State Treasury.

§ 4. In the event that the perpetrator has intentionally prevented the possibility of imposing the forfeiture of items specified in §§ 1 or 2, the court may impose the obligation to pay a pecuniary equivalent of their value.

§ 5. In the event that the conviction has pertained to an offence of violating a prohibition of production, possession or dealing in or transporting specific items, the court may decide on the forfeiture thereof.

§ 6. If the items referred to in §§ 2 or 5 are not the property of the perpetrator, the forfeiture may be decided by the court only in the cases provided for in law; in the case of co-ownership, the decision shall cover only the forfeiture of the share owned by the perpetrator, or the obligation to pay a pecuniary equivalent of its value.

§ 7. Property which is the subject of forfeiture shall be transferred to the ownership of the State Treasury at the time the sentence becomes final and valid.

Article 45. In the case of sentencing the perpetrator referred to in Article 65, the court may decide on forfeiture of the material benefits gained, even indirectly, from the offence.

Article 46. § 1. In the case of conviction for causing death, serious detriment to health, disturbance to the functioning of a bodily organ or disturbance to health, an offence against safety in traffic or an offence against the environment, property or commerce, the court, upon a motion from the injured

person or from another person so entitled, shall impose the obligation to redress the damage caused, in whole or in part. The provision of civil law on statutes of limitation regarding claims and the possibility to adjudge an annuity, shall not be applied.

§ 2. Instead of the obligation referred to in § 1, the court may decide upon a supplementary payment to the injured, in order to compensate them for any serious detriment to health, disturbance to the functioning of a bodily organ or disturbance to health, or for any wrong suffered.

Article 47. § 1. In the case of conviction for an intentional offence against life or health, or for any other intentional offence which has resulted in the death of a person, serious detriment to health, disturbance to the functioning of a bodily organ or disturbance to health, the court may impose a supplementary payment for a designated purpose connected with health protection.

§ 2. In the case of conviction for an offence against the environment, the court may impose a supplementary payment for a purpose connected with environmental protection.

Article 48. § 1. The amount of the supplementary payment shall not exceed the lowest monthly salary at the time of deciding the case in the first instance by a multiple of ten.

§ 2. The supplementary payment described in Article 47 § 2 may be imposed on a multiple of between three and twenty times the lowest monthly salary at the time of deciding the case in the first instance.

Article 49. In renouncing the punishment, and also in the cases prescribed in by in law, the court may decide on pecuniary consideration as described in Article 39 subsection 7, for a designated community purpose; this consideration shall not exceed by a multiple of three the amount of the lowest monthly salary at the time of deciding the case in the first instance.

Article 50. In the cases prescribed by a law, the court may decide to make the sentencing

judgement public in the manner it has designated.

Article 51. The court, in deciding to deprive or restrict parental or guardianship rights in the event of an offence committed to the detriment of a minor or in co-operation with a minor, shall notify the competent family court.

Article 52. In the event of sentencing for an offence which brought material benefits to a natural or legal person or an organisational unit not possessing the status of a legal person, and committed by a perpetrator who acted on its behalf or in its interest, the court shall obligate the entity which acquired the material benefit, to return it in whole or in part to the benefit of the State Treasury; this shall not affect the material benefit subject to return to another entity.

Chapter VI. Principles of the imposition of penalty and penal means

Article 53. § 1. The court shall impose the penalty according to its own discretion, within the limits prescribed by law bearing in mind that its harshness should not exceed the degree of guilt, considering the level of social consequences of the act committed, and taking into account the preventive and educational objectives which the penalty has to attain with regard to the sentenced person, as well as the need to develop a legal conscience among the public.

§ 2. In imposing the penalty, the court shall above all take into account the motivation and the manner of conduct of the perpetrator, committing the offence together with a minor, the type and degree of transgression against obligations imposed on the perpetrator, the type and dimension of any adverse consequences of the offence, the characteristics and personal conditions of perpetrator, his way of life prior to the commission of the offence and his conduct thereafter, and particularly his efforts to redress the damage or to compensate the public perception of justice in another form. The court shall also consider the behaviour of the injured person.

§ 3. In imposing the penalty, the court shall also take into consideration the positive results of the mediation between the injured person and the perpetrator, or the settlement reached by them in the proceedings before the state prosecutor or the court.

Article 54. § 1. In imposing a penalty on a minor or a juvenile, the court shall first and foremost aim to educate the perpetrator.

§ 2. The penalty of the deprivation of liberty for life shall not be imposed on the perpetrator who was under 18 at the time of the commission of the offence.

Article 55. Circumstances affecting the imposition of the penalty shall be taken into consideration only with regard to the person to whom they pertain.

Article 56. The provisions of Article 53, Article 54 § 1 and Article 55 shall be applied accordingly, to the imposition of other means provided for in this code.

Article 57. § 1. In the event of the concurrence of several independent grounds for the extraordinary mitigation or enhancement of a penalty, the court may mitigate or enhance the penalty only once, considering jointly the concurrent grounds for mitigation or enhancement.

§ 2. In the event of the concurrence of the grounds for extraordinary mitigation and enhancement, the court may adopt an extraordinary mitigation or enhancement of the penalty.

Article 58. § 1. If the law provides for an option of the type of penalty, the court shall impose the penalty of deprivation of liberty without suspending execution thereof, only when no other penalty or penal measure would not serve the purpose thereof.

§ 2. No fine shall be imposed when the income of the perpetrator, his situation or potential to earn provide reasonable grounds for the supposition that the perpetrator would not honour the fine and that

enforcing the same by execution would not be possible.

§ 3. If the offence is subject to a penalty of a deprivation of liberty not exceeding 5 years, the court, instead of imposing this penalty may impose a fine or a penalty of restriction of liberty, particularly when it imposes a penal measure at the same time.

§ 4. The provision of § 3 does not apply to the perpetrator of an intentional misdemeanour who has previously been sentenced to a deprivation of liberty for a period of not less than 6 months without conditional suspension of its execution.

Article 59. If the offence is subject only to a penalty of a deprivation of liberty not exceeding 3 years or, alternatively, to the penalties specified in Article 32, sections 1 through 3, and the social consequences of the act are not great, the court may renounce the imposition of the penalty if it decides to impose a penal measure at the same time, and the purpose of such a penalty is thus served by the measure.

Article 60. §1. The court may apply an extraordinary mitigation of the penalty in the cases specified by law, as well as with respect to a juvenile if this is justified by objectives described in Article 54 § 1.

§ 2. The court may also apply an extraordinary mitigation of the penalty in particularly justified cases when even the lowest penalty stipulated for the offence in question would be incommensurate, and particularly:

- 1) if the injured person and the perpetrator have been reconciled, the damage incurred has been repaired, or the injured person and the perpetrator have agreed as to the manner of reparation for the damage,
- 2) taking into consideration the attitude of the perpetrator, particularly if he attempted to repair the damage or prevent the damage from occurring,

- 3) if a perpetrator of an unintentional offence or someone close to him has suffered a major detriment in connection with the offence committed.

§ 3. The court shall be applied an extraordinary mitigation of the penalty or may even conditionally suspend the execution of the penalty, with respect to a perpetrator who, co-operating with others in the commission of an offence, reveals information pertaining to the persons involved therein or essential circumstances thereof, to the agency responsible for its prosecution.

§ 4. Upon a motion from the state prosecutor, the court may apply an extraordinary mitigation of the penalty or even conditionally suspend the execution of the penalty with respect to a perpetrator, who, irrespective of any explanation provided in his case, revealed and presented to the agency responsible for prosecution, essential circumstances, not previously known to that agency, of an offence subject to a penalty exceeding 5 years deprivation of liberty.

§ 5. In the cases referred to in § 3 and 4, the court, in imposing the penalty of deprivation of liberty for up to 5 years, may conditionally suspend the execution of the penalty for a probation period of up to 10 years, if it recognises that, in spite of not serving the penalty, the perpetrator would not commit the offence again; the provisions of Articles 71 through 76 shall be applied accordingly.

§ 6. The extraordinary mitigation of a penalty shall consist in the imposition of a penalty below the lower statutory level, or the imposition of a penalty of lesser severity, in accordance with the following principles:

- 1) if the act in question constitutes a crime, the court shall impose a penalty of not less than one-third of the lower statutory level;
- 2) if the act in question constitutes a misdemeanour, and the lower statutory level of the penalty is not less than one year's deprivation of liberty, the court shall impose either a fine, the penalty of restriction of liberty or deprivation of liberty;

- 3) if the act in question constitutes a misdemeanour, and the lower statutory level of penalty is less than one year's deprivation of liberty, the court shall impose either a fine or the penalty of restriction of liberty.

§ 7. If the act in question is subject, alternatively, to the penalties specified in Article 32 sections 1 through 3, the extraordinary mitigation of a penalty shall consist in renouncing the imposition of the penalty, and the imposition of a penal measure as specified in Article 39 sections 2 through 8; the provision of Article 61 § 2 shall not be applied.

Article 61. § 1. The court may renounce the imposition of a penalty in the cases specified by law or in the case provided for in Article 60 § 3, particularly if the role of the perpetrator in the commission of the act was of secondary importance, and the information transmitted has helped to prevent the commission of another offence.

§ 2. Renouncing from the imposition of penalty, the court may refrain from adjudging a penal measure, even if adjudging it were mandatory.

Article 62. Upon deciding to impose a penalty of deprivation of liberty, the court may determine the kind and type of penal institution where the sentenced person is to serve the term and to stipulate the therapeutic methods for serving the term of deprivation of liberty.

Article 63. §1. The period of an actual deprivation of liberty in a given case, rounded to a full number of days, shall be credited to the penalty of deprivation of liberty, with one day of actual deprivation of liberty equalling one day of the penalty of deprivation of liberty, or two days of the penalty of restriction of liberty, or two daily rates of a fine.

§ 2. The actual period of preventive measures of the corresponding kinds, as specified in Article 276 of the Code of criminal procedure, shall be credited against the imposed measures specified in Article

39 sections 2 and 3 of this Code.

CHAPTER VIII

Relapse into crime

Article 64. §1. If a perpetrator sentenced to the penalty of deprivation of liberty for an offence committed with intent, during the 5 year period after having served at least 6 months of the penalty, commits an intentional offence similar to the offence for which he had been sentenced, the court may impose the penalty of deprivation of liberty, prescribed for the offence committed, within the statutory limits, up to the highest statutory penalty further increased by a half.

§2. If a perpetrator previously sentenced in under the conditions specified in §1, who has served the total of at least one year's deprivation of liberty and in the period of 5 years after the serving of the last penalty in full or in part, again commits an intentional offence against life or health, or rape, robbery, housebreaking or burglary, or other offence against property, committed with the use of violence or the threat of violence, the court shall impose the penalty of deprivation of liberty, prescribed for the offence committed, exceeding the lower statutory limit, or may impose a penalty up to the highest statutory penalty further increased by a half.

§ 3. The raising of the highest statutory penalty under § 1 or 2 shall not be applied to crimes.

Article 65. The provisions regarding the level of the penalty, penal measures and the measures connected with the placing the perpetrator under probation envisaged with respect to the perpetrator referred to in Article 64 § 2, shall be also applied to the perpetrator who made commission of offences his

permanent source of income, or who commits offences acting in an organised group or in an association whose purpose is to commit offences.

Chapter VIII. **Measures connected with the placing the perpetrator under probation**

Article 66. § 1. The court may conditionally discontinue the criminal proceedings if the guilt and social consequences of the act are not significant, the circumstances of its commission do not raise doubts, and the attitude of the perpetrator not previously penalised for an intentional offence, his personal characteristics and his way of life to date provide reasonable grounds for the assumption that even in the event of the discontinuance of the proceedings, he will observe the legal order and particularly that he will not commit an offence.

§ 2. Conditional discontinuance shall not be applied to the perpetrator of an offence for which the statutory penalty exceeds 3 years deprivation of liberty.

§ 3. In the event that the injured party has been reconciled with the perpetrator, the perpetrator has redressed the damage or the injured party and the perpetrator have agreed on the method of redressing the damage, the conditional discontinuance may be applied to a perpetrator of an offence for which the statutory penalty does not exceed 5 years deprivation of liberty.

Article 67. § 1. The conditional discontinuance shall be made for the term of probation which is between one and two years, which shall run from the date the judgement becomes valid and final.

§ 2. In discontinuing conditionally the criminal proceedings, the court may, in the probation

period, place the perpetrator under the supervision of a probation officer or a person of public trust, association, or community organisation whose activities include educational care, preventing the demoralisation of or providing assistance to sentenced persons.

§ 3. In discontinuing conditionally the criminal proceedings, the court shall require the perpetrator to redress in whole or in part the damage, and may impose on him the obligation specified in Article 72 § 1 sections 1-3 or 5, and also adjudicate a pecuniary consideration as specified in Article 39 section 7, and an interdiction on driving a vehicle as specified in Article 39 section 3, for a period of up to 2 years.

§ 4. The provision of Article 74 shall be applied accordingly.

Article 68. § 1. The court shall resume the criminal proceedings, if the perpetrator has during the probation period committed an intentional offence, for which he has been validly and finally sentenced.

§ 2. The court may resume the criminal proceedings if the perpetrator during the probation period flagrantly breaches the legal order, and in particular if he committed an offence other than that specified in § 1, evades supervision, does not perform the obligations or penal measure imposed or if he does not fulfil the settlement concluded with the injured person.

§ 3. The court may resume the criminal proceedings if, after the decision on the conditional discontinuance was rendered but before it became valid and final, the perpetrator flagrantly breached the legal order, and in particular if he committed an offence within that time.

§ 4. The criminal proceedings conditionally discontinued may not be resumed any later than 6 months after the expiration of the probation period.

Article 69. § 1. The court may conditionally suspend the execution of a penalty of deprivation of liberty of up to 2 years or execution of a fine adjudicated as a one-off penalty, if it is regarded as sufficient

to attain the objectives of the penalty with respect to the perpetrator, and particularly to prevent him from relapsing into crime.

§ 2. In suspending the execution of a penalty, the court shall primarily take into consideration the attitude of the perpetrator, his personal characteristics and conditions, his way of life to-date and his conduct after the commission of the offence.

§ 3. Suspension of the execution of the penalty shall not be applied to the perpetrator as specified in Article 64 § 2, unless there is an exceptional case justified by extraordinary circumstances; suspension of the execution of the penalty specified in Article 60 § 3 through 5 shall not be applied to the perpetrator as specified in Article 64 § 2.

Article 70. § 1. Suspension of the execution of a penalty shall be granted for a probation period, which runs from the time the sentence becomes valid and final and is for:

- 1) from 2 to 5 years - in the case of a conditional suspension of the execution of a penalty of deprivation of liberty,
- 2) from one year to 3 years - in the case of a conditional suspension of the execution of a fine or a penalty of restriction of liberty.

§ 2. In the case of the conditional suspension of the execution of a penalty with respect to a perpetrator who is a young offender or the one specified in Article 64 § 2, the probation period is from 3 to 5 years.

Article 71. § 1. In suspending the execution of a penalty, the court may impose a fine of up to 180 times the daily rate, if its imposition is not provided for on another basis. In suspending the execution of a penalty of restriction of liberty, the court may impose a fine of up to 90 times the daily rate.

§ 2. In the event of ordering the execution of the penalty of the deprivation or restriction of liberty, the fine adjudicated under § 1 shall not be subject to execution; the penalty of deprivation or restriction of liberty shall be reduced by the number of days equal to the number of daily fines paid, rounded up to the nearest full day.

Article 72. § 1. In suspending the execution of a penalty, the court may obligate the sentenced person :

- 1) to inform the court of the probation officer about the progress of the probation period,
- 2) to apologise to the injured person,
- 3) to carry out a duty incumbent upon him in order to provide support for another person,
- 4) to perform remunerated work, to pursue an educational activity or train himself for an occupation,
- 5) to refrain from abusing alcohol or using narcotics,
- 6) to submit to medical treatment, particularly drug withdrawal or rehabilitation programmes,
- 7) to refrain from frequenting specified community circles or places,
- 8) to engage in other appropriate conduct in the probation period, if it may prevent the commission of a further offence.

§ 2. The court may obligate the perpetrator to redress the damage in whole or in part, unless it has adjudicated a penal measure as specified in Article 39 section 5, or a payment of consideration as specified in Article 39 section 7.

Article 73. § 1. In suspending the execution of a penalty, the court may, in the probation period, place the perpetrator under the supervision of a probation officer or a person of public trust, association, or community organisation whose activities include educational care, preventing the demoralisation of or providing assistance to sentenced persons.

§ 2. The placing under supervision is mandatory with respect to a young perpetrator of an intentional offence, and with respect to the perpetrator specified in Article 64 § 2.

Article 74. § 1. The time and manner of execution of the imposed obligations, specified in Article 72 shall be determined by the court after hearing from the sentenced person; the imposition of the obligation specified in Article 72 § 1 section 6 shall require the additional consent from the sentenced person.

§2. If educational or general care considerations warrant this, the court may, during the probation period, institute, extend or modify the obligations imposed on a person sentenced to a deprivation of liberty with a conditional suspension of its execution, as mentioned in Article 72 § 1 sections 3 through 8, or release him from these obligations (except the obligation specified in Article 72 § 2), and likewise either place the sentenced person under supervision or release him from the aforesaid.

Article 75. § 1. The court shall order the execution of the penalty, if the sentenced person during the probation period, committed an intentional offence similar to the previous one, for which he has been validly and finally sentenced for a penalty of deprivation of liberty.

§2. The court may order the execution of the penalty, if the sentenced person in the probation period flagrantly breached the legal order, and, in particular, if he committed an offence other than that specified in §1, has not paid the fine, has evaded supervision, or failed to fulfil the obligations or penal measures imposed.

§ 3. The court may order the execution of the penalty if, after the sentencing decision was rendered but before it became valid and final, the perpetrator flagrantly breached the legal order, and in particular if he committed an offence within that time.

§ 4. The order to execute the penalty may not be issued any later than 6 months after the end of the probation period.

Article 76. § 1. The sentence shall be expunged by virtue of law 6 months from the termination of the probation period.

§ 2. If a fine or a penal measure were imposed upon the sentenced person, the expunction of the sentence may not occur before the execution, remission or prescription thereof; this shall not be applied to the penal measure specified in Article 39 section 5.

Article 77. § 1. The court may conditionally release a person sentenced to the penalty of deprivation of liberty from serving the balance of the penalty, only when his attitude, personal characteristics and situation, his way of life prior to the commission of the offence, the circumstances thereof, as well as his conduct after the commission of the offence, and while serving the penalty, justify the assumption that the perpetrator will after release respect the legal order, and in particular that he will not re-offend.

§ 2. In particularly justified cases the court, in imposing the penalty of deprivation of liberty, may determine more rigorous restrictions to prevent the possibility of him benefiting from the conditional release other than those specified in Article 78.

Article 78. § 1. The sentenced person may be conditionally released after serving at least half of the sentence, albeit with a minimum of 6 months.

§ 2. The sentenced person specified in Article 64 § 1 may be conditionally released after serving two-thirds of the sentence, and the sentenced person specified in Article 64 § 2, after serving three-quarters of the sentence; the conditional release may not occur before the lapse of one year.

§ 3. The person sentenced to 25 years of deprivation of liberty may be conditionally released after serving 15 years of the sentence, and the person sentenced to deprivation of liberty for life, after serving 25 years of the sentence.

Article 79. § 1. The provisions of Article 78 § 1 and 2 shall be applied accordingly to a sum of two

or more penalties not amenable to an aggregate penalty, which the sentenced person has to serve as subsequent terms; the provision of Article 78 § 2 shall be applied if even one of the offences has been committed in the conditions specified in Article 64.

§ 2. Notwithstanding the conditions specified in Article 78 § 1 or 2, the sentenced person may be conditionally released after serving 15 years deprivation of liberty.

Article 80. § 1. In case of conditional release, the portion of the penalty which remains to be served constitutes a probation period, which may not, however, be less than 2 or longer than 5 years.

§ 2. If the sentenced person is the person specified in Article 64 § 2, the probation period may not be shorter than 3 years.

§ 3. In a case of the conditional release of a person sentenced to deprivation of liberty for life, the probation period shall be 10 years.

Article 81. In case of revocation of the conditional release, the sentenced person may not again be conditionally released before the lapse of one year from the date of committing him to the penal institution, and in case of the penalty of deprivation of liberty for life, before the lapse of 5 years.

Article 82. If in the probation period and in the course of the following 6 months, the conditional release has not been revoked, the sentence shall be considered to have been served at the time of the conditional release.

Article 83. A person sentenced to a penalty of limitation of liberty who has completed at least half of the adjudged penalty, respected the legal order, performed diligently the work ordered by the court, and fulfilled the obligations imposed upon him, may be relieved by the court from the rest of the penalty,

considering it as executed.

Article 84. § 1. The court may, after half of the period for which the penal measures specified in Article 39 sections 1 through 3 were imposed, consider them executed, if the sentenced person has respected the legal order and he has been subjected to the penal measure for at least one year.

§ 2. The provision of § 1 shall not be applied if the penal measure specified in Article 39 section 3 has been adjudicated under Article 42 § 2.

CHAPTER IX

Concurrence of offences and aggregation of penalties and penal measures

Article 85. If the perpetrator committed two or more offences, before the first, even not yet valid judgement was rendered with regard to any of these offences, and for which basic penalties of the same kind were imposed, the court shall impose an aggregate penalty taking as a basis the separate penalties imposed for the offences which are so aggregated.

Article 86. § 1. The court shall impose an aggregate penalty within the highest limit of the penalties imposed for individual offences, but which do not exceed 540 times the daily fine, 18 months restriction of liberty or 15 years of deprivation of liberty; the aggregated penalty of fine specified in Article 71 § 1 may not exceed 180 times the daily fine if it is connected with a suspension of the execution of a penalty of deprivation of liberty, and may not exceed 90 times the daily fine if it is associated with a suspension of the execution of a penalty of restriction of liberty.

§ 2. In imposing an aggregate fine, the court shall determine *de novo* the value of the daily fine, based on the recommendations specified in Article 33 § 3; the level of daily fines may not, however, exceed the previously determined amount thereof.

§ 3. In imposing an aggregate penalty of restriction of liberty, the court shall determine *de novo* the amount of supervised unremunerated work for community purposes, or the amount of deductions, when applying Article 35; the obligations specified in Article 36 § 2 shall be applied even if it was adjudicated for only one of the concurrent offences.

Article 87. In the case of sentencing for the concurrent offences to the penalties of deprivation of liberty and restriction of liberty, the court shall impose an aggregate penalty, assuming that one month's restriction of liberty is equal to 15 days deprivation of liberty.

Article 88. If the most severe penalty imposed for one of the concurrent offences is the penalty of 25 years of deprivation of liberty or deprivation of liberty for life, this penalty is imposed as the aggregate penalty; in the case of the aggregation of two or more penalties of 25 years of deprivation of liberty, the court may impose the penalty of deprivation of liberty for life as the aggregate penalty.

Article 89. § 1. In the case of sentencing for concurrent offences to the penalties of deprivation of liberty, restriction of liberty or fine with or without a conditional suspension of execution, the court may conditionally suspend the execution of the aggregate penalty if the conditions specified in Article 69 are met.

§ 2. In imposing an aggregate penalty of deprivation of liberty or restriction of liberty with a conditional suspension of their execution, the court may impose a fine as specified in Article 71 § 1, even if it has not been imposed for the concurrent offences.

§ 3. In the case of the concurrence of judgements on probation periods, the court imposes this period and associated obligations *de novo*.

Article 90. §1. The penal measures and preventive measures including well as supervision are applicable even if they were imposed with regard to only one of the concurrent offences.

§2. In the case of sentencing for the concurrent offences to the deprivation of civil rights or imposing interdictions of a particular kind, the court shall be applied accordingly, the provisions concerning aggregate penalties.

Article 91. § 1. If the perpetrator had committed, in a similar manner, two or more offences before the first sentence was rendered even though not yet valid final, regarding to any of these offences, the court shall impose one penalty on the basis of the provision whose attributes each of these offences meet, up to the upper statutory limit increased by a half.

§ 2. If the perpetrator, in the conditions specified in Article 85, commits two or more of a series of offences specified in § 1, or a series of offences plus yet another offence, the court shall impose an aggregate penalty, applying the relevant provisions of this Chapter.

§ 3. If the perpetrator has been sentenced to two or more sentences for the offences belonging to a series of offences as specified in § 1, the penalty imposed in an aggregate sentence may not exceed the higher limit of the statutory penalty further increased by half as stipulated in the provisions, whose attributes each of these offences meet.

Article 92. That the separate penalties imposed for the offences in a series or concurrent offences

have already been satisfied, in whole or part, is no impediment to the imposition of an aggregate penalty, the provision of Article 72 § .2 shall be applied accordingly.

Chapter X. **Preventive Measures**

Article 93. The court may impose a preventive measure provided for in this Chapter, which involves committing to a closed medical institution only when necessary to prevent repeated offending, by the perpetrator, of a prohibited act connected with mental disease, mental impairment or addiction to alcohol or other narcotic drugs. Before imposing such a measure the court shall hear from psychiatrists and a psychologist.

Article 94. § 1. If the perpetrator has committed a prohibited act of significant harm to the community, in a state of irresponsibility as specified in Article 31 §1, and that there is a high probability that he will commit such an act again, the court shall commit him to a suitable psychiatric institution.

§ 2. The duration of the stay in the institution shall not be fixed in advance; the court shall decide on the release of the perpetrator from the institution if his stay there is no longer deemed necessary.

§ 3. The court may again decide on committing a perpetrator as specified in § 1 to a suitable psychiatric institution if it is advisable in the light of the circumstances specified in § 1 or Article 93; the order may not be issued later than 5 years after the release from the institution.

Article 95. §1. In sentencing a perpetrator to a penalty of deprivation of liberty without a conditional suspension of its execution, for an offence committed in a state of diminished accountability as specified in Article 31 §2, the court may order his commitment to a penal institution where special medical treatment or rehabilitation measures can be applied.

§ 2. If it is advisable in the light of the effects of medical treatment or rehabilitation, the court may conditionally release the perpetrator as specified in § 1, sentenced to the penalty of a deprivation of liberty not exceeding 3 years, under conditions specified in Articles 77 through 82, without restriction resulting from Article 78 § 1 or 2; the supervision shall be then mandatory.

Article 96. § 1. In imposing a penalty of deprivation of liberty without a conditional suspension of its execution, for an offence connected with an addiction to alcohol or a narcotic drug, the court may decide to commit the perpetrator to a closed medical institution for withdrawal treatment, if there is a high probability of him committing another offence connected with his addiction.

§ 2. The measure specified in § 1 shall not be imposed if the perpetrator was sentenced to the penalty of deprivation of liberty exceeding 2 years.

§ 3. The duration of the stay in the closed withdrawal treatment institution shall not be fixed in advance, it may, however, not be for less than 3 months or for more than 2 years. The court shall decide on the release from the institution on the basis of the results of the treatment, having heard the opinion from the person conducting the treatment.

§ 4. The duration of stay of the perpetrator in the institution as specified in § 1 shall be credited to the penalty.

Article 97. § 1. Depending on the progress in the treatment of the perpetrator specified in Article 96 § 1, the court may send him, for a probation period lasting from 6 months to 2 years, for outpatient treatment or to a rehabilitation programme in a rehabilitation/treatment facility. At the same time the court may place him under the supervision of a probation officer or a person of public trust, public institution or community organisation whose responsibilities include educational care, preventing the demoralisation of

or providing to the sentenced persons.

§ 2. The court may again order placing the perpetrator in the closed withdrawal treatment institution or in a penal institution, if the perpetrator under probation, evaded treatment or rehabilitation, committed an offence or flagrantly breached the legal order or breached the by-rules of the treatment/rehabilitation facility.

§ 3. If in the probation period and in the course of the following 6 months, no order on the placement of the sentenced person again in a closed withdrawal treatment institution or a penal institution has been issued, the penalty shall be considered to have been served at the lapse of the probation period.

Article 98. If it is advisable in the light of the effects of the treatment specified in Article 96 § 3, the court shall conditionally release the sentenced person from the serving of the balance of the sentence, under the conditions specified in Articles 77 through 82, without restriction resulting from Article 78 § 1 or 2; the supervision shall be then mandatory.

Article 99. §1. If the perpetrator has committed the prohibited act in a state of irresponsibility as specified in Article 31 §1, the court may apply, as preventive measures, the interdictions specified in Article 39, sections 2 or 3, if it is deemed necessary for the protection of public order, and the forfeiture provided for in Article 39 section 4.

§2. The interdictions specified in § 1 shall be adjudged without specifying the period of time; the court shall decide on the lifting on the interdiction, if the reasons for the imposition thereof are no longer applicable.

Article 100. If the social consequences of the act are insignificant, and also, in case of the

conditional discontinuance of the proceedings, or upon ascertaining that a circumstance exists excluding a penalty for the perpetrator of the prohibited act, the court may apply the forfeiture provided for in Article 39 section 4.

Chapter XI. Statutes of limitation

Article 101. §1. The amenability to a penalty for an offence ceases, if from the time of the commission thereof the following number of years have elapsed:

- 1) 30 - when the act constitutes a crime of homicide;
- 2) 20 - when the act constitutes other crime
- 3) 10 - when the act constitutes a misdemeanour subject to the penalty of deprivation of liberty exceeding 3 years;
- 4) 5 - when the act is subject to the penalty of deprivation of liberty which not exceeding 3 years;
- 5) 3 - when the act is subject to the penalty of restriction of liberty or a fine.

§ 2. The amenability to a penalty for an offence prosecuted by way of a private charge ceases after the expiration of one year, from the date on which the injured person learnt of the identity of the perpetrator of the offence and not later, however, than after the expiration of 3 years from the time of its commission.

§ 3. If in the cases provided for in § 1 or 2, the commission depends on the occurrence of a consequence specified in the law, the time of limitation shall run from the date when this consequence has ensued.

Article 102. If in the period provided for in Article 101 proceedings against a person have been instituted, the amenability to an penalty for the offence ceases after the expiration of 5 years from the end of that period.

Article 103. § 1. A penalty may not be executed if, from the time when the judgement has become final and valid, the following number of years have elapsed:

- 1) 30 - in case of a sentence to a penalty of deprivation of liberty for a period exceeding 5 years or to a more severe penalty;
- 2) 15 - in case of a sentence to a penalty of deprivation of liberty not exceeding 5 years;
- 3) 10 - in case of a sentence to another penalty.

§ 2. The provision of § 1 section 3 shall be applied accordingly to the penal measures specified in Article 39 sections 1 through 4 and 6 and 7; the provision of § 1 section 2 shall be applied accordingly to the penal measure specified in Article 39 section 5.

Article 104. § 1. The period of limitation does not run, if a provision of law does not permit the criminal proceedings to be instituted or to continue; this however, does not apply to the lack of a motion or a private charge.

§ 2. The period of limitation regarding the offences specified in Article 144, Article 145 § 2 or 3, Article 338 § 1 or 2 and in Article 339 shall run from the date of performing the obligation, or from the date on which the obligation ceased to be borne.

Article 105. § 1. The provisions of Articles 101 through 103 shall not be applied to crimes against peace, crimes against humanity or war crimes.

§ 2. The provisions of Articles 101 through 103 shall not be applied either to the intentional offence of: homicide, inflicting serious bodily harm, causing serious detriment to health or deprivation of liberty connected with particular torture, perpetrated by a public official in connection with the performance of official duties.

Chapter XII. **Expunction of the sentence**

Article 106. From the moment of its expunction, the sentence is considered non-existent; the record of the sentence is deleted from the register of sentenced persons.

Article 107. § 1. In the event of sentencing to the penalty of deprivation of liberty as specified in Article 32 section 3 or the penalty of deprivation of liberty for 25 years, the expunction of the sentence shall take place by virtue of law, after the expiration of 10 years from the execution or remission or from the time its execution is barred by the statute of limitation.

§ 2. The court may on a motion of the sentenced person, order the expunction of the sentence after the expiration of 5 years, if the sentenced person during this period has respected the legal order, and the imposed penalty of deprivation of liberty did not exceed 3 years.

§ 3. In the event of sentencing to a penalty of deprivation of liberty for life, the expunction of the sentence shall take place by virtue of law, after the expiration of 10 years from the execution or remission or from the time its execution is barred by the statute of limitation.

§ 4. In the event of sentencing to a fine or a penalty of restriction of liberty, the expunction of the sentence shall take place by virtue of law, after the expiration of 5 years from the execution or remission

of the penalty or from the time its execution is barred by the statute of limitation; on a motion from the sentenced person the court may order the expunction of the sentence after only 3 years.

§ 5. In the event of the imposition of the penalty being renounced, the expunction of the sentence shall take place by virtue of law, after the expiration of one year from the date of the final and valid sentence.

§ 6. If a penal measure was imposed, the expunction of the sentence may not take place before its execution, remission or before the time its execution is barred by the statute of limitation, subject to Article 76 § 2.

Article 108. If the perpetrator has been sentenced for two or more offences which were not concurrent, and if the sentenced person, after the commencement, but before the expiration of the period required for the expunction of a sentence has committed an offence, only a simultaneous expunction of all the sentences shall be permitted.

Chapter XIII. Liability for offences committed abroad

Article 109. The Polish penal law shall be applied to Polish citizens who have committed an offence abroad.

Article 110. § 1. The Polish penal law shall be applied to aliens who have committed abroad an offence against the interests of the Republic of Poland, a Polish citizen, a Polish legal person or a Polish organisational unit not having the status of a legal person.

§ 2. The Polish penal law shall be applied to aliens in the case of the commission abroad of an

offence other than listed in § 1, if, under the Polish penal law, such an offence is subject to a penalty exceeding 2 years of deprivation of liberty, and the perpetrator remains within the territory of the Republic of Poland and where no decision on his extradition has been taken.

Article 111. § 1. The liability for an act committed abroad is, however, subject to the condition that the liability for such an act is likewise recognised as an offence, by a law in force in the place of its commission.

§2. If there are differences between the Polish penal law and the law in force in the place of commission, the court may take these differences into account in favour in the perpetrator.

§ 3. The condition provided for in § 1 shall not be applied to the Polish public official who, while performing his duties abroad has committed an offence there in connection with performing his functions, nor to a person who committed an offence in a place not under the jurisdiction of any state authority.

Article 112. Notwithstanding the provisions in force in the place of the commission of the offence the Polish penal law shall be applied to a Polish citizen or an alien in case of the commission of:

- 1) an offence against the internal or external security of the Republic of Poland;
- 2) an offence against Polish offices or public officials;
- 3) an offence against essential economic interests of Poland
- 4) an offence of false deposition made before a Polish office.

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.

Article 114. § 1. A sentencing judgement rendered abroad shall not bar criminal proceedings for

the same offence from being instituted before a Polish court.

§ 2. The court shall credit to the penalty, imposed the period of deprivation of liberty actually served abroad and the penalty there executed, taking into consideration the differences between these penalties.

§ 3. The provision of § 1 shall not apply when a sentencing judgement rendered abroad has been transferred to be executed within the territory of the Republic of Poland, and also when the judgement rendered abroad regarded an offence, with regard to which either a transfer of the prosecution or extradition from the territory of the Republic of Poland has occurred.

§ 4. If a Polish citizen validly and finally sentenced by a court in a foreign country, has been transferred to execute the sentence within the territory of the Republic of Poland, the court shall determine, under Polish law, the legal classification of the act, and the penalty to be executed or any other penal measure provided for in this Act; the basis for determination of the penalty or other measure subject to execution shall be provided by the sentencing judgement rendered by a court of a foreign country, the penalty prescribed for such an act under Polish law, the period of actual deprivation of liberty abroad, the penalty or other measure executed there, and the differences between these penalties considered to the favour of the sentenced person.

Chapter XIV. **Explanation of terms of the law**

Article 115. § 1. A prohibited act is a behaviour displaying the characteristics specified in the penal law as unlawful.

§ 2. In assessing the level of social consequences of an act, the court shall take into account the type and nature of the infringed interest, the dimension of the damage caused or anticipated damage, the method and circumstances of perpetrating the act, the importance of the duties breached by the perpetrator, as well as the form of intent and motivation of the perpetrator, the type of precautionary rules

breached and the degree of the transgression.

§ 3. Similar offences are offences of the same type; the offences committed with the use of violence or with the threat of its use, or the offences committed with an intent to secure financial or material benefits shall be regarded as similar offences.

§ 4. The financial benefit is the benefit for:

- 1) the person himself;
- 2) another natural or legal person;
- 3) an organisational unit not having the status of a legal person;
- 4) a group of persons pursuing an organised criminal activity.

§ 5. Property of considerable value means the property whose value at the time of the commission of a prohibited act, exceeds two hundred times the level of the lowest monthly salary.

§ 6. Property of great value means the property whose value at the time of the commission of a prohibited act, exceeds one thousand times the level of the lowest monthly salary.

§ 7. The provisions of § 5 and 6 shall be applied also to the expressions; "considerable damage" and "damage of great dimensions".

§ 8. The lowest salary is the lowest salary of workers determined on the basis of the Labour Code.

§ 9. A movable item or chattel is also Polish or foreign currency or other means of payment and a document which entitles one to a sum of money or includes the obligation to pay principal, or interest, share in the profits or a declaration of participation in a company [or partnership].

§ 10. A juvenile is a perpetrator who, at the time of the commission of a prohibited act has not reached the age of 21 years and has not reached the age of 24 years at the time of the trial in the first-instance court.

§ 11. A next of kin is a spouse, an ascendant, descendant, brother or sister, relative by marriage in the same line or degree, a person being an adopted relation, as well as his spouse, and also a person actually living in co-habitation.

§ 12. An illegal threat is both a threat mentioned in Article 190, and also a threat to cause the institution of criminal proceedings, or to disseminate derogatory information concerning the person threatened or his next of kin. A declaration that the institution of criminal proceedings will be effected if made solely with the purpose of protecting the legal right violated by the offence, shall not constitute a threat.

§ 13. A public official is:

- 1) the President of the Republic of Poland;
- 2) a deputy to the Sejm, a senator, a councillor;
- 3) a judge, a lay-judge, a state prosecutor, a notary public, a court executive officer [*komornik*], a professional court probation officer, a person adjudicating in cases of contraventions or in disciplinary authorities operating in pursuance of a law;
- 4) a person who is an employee in a state administration, other state authority or local government, except when he performs only service-type work, and also other persons to the extent in which they are authorised to render administrative decisions;
- 5) a person who is an employee of a state auditing and inspection authority or of a local government auditing and inspection authority, except when he performs only service-type work;
- 6) a person who occupies a managerial post in another state institution;
- 7) an official of an authority responsible for the protection of public security or an official of the State Prison Service;
- 8) a person performing active military service;

§ 14. A document is any object or record on a computer data carrier to which is attached a specified right, or which in connection with the subject of its content, constitutes evidence of a right, a legal relationship or a circumstance which may have legal significance.

§ 15. For the purposes of this Code, a permanent rig on the continental shelf shall be regarded as a sea vessel.

§ 16. For the purposes of this Code, the state of insobriety is when:

- 1) the alcohol content in the blood exceeds 0.5 per mille or leads to the concentration exceeding this level;
- 2) the alcohol content in 1 dm³ of the exhaled air exceeds 0.25 mg or results in the concentration exceeding this level.

§ 17. A soldier is a person performing active military service.

§ 18. An order is a command to undertake or refrain from taking a specified action issued officially to a soldier by his superior or an authorised soldier of a superior rank.

Chapter XV. **Relation to special laws**

Article 116. The provisions of the General Part of this Code shall be applied to offences defined in other laws providing for penal liability, unless those laws specifically exclude the application of these provisions.