

READING Introduction to criminal law

Task 1. Read the text quickly then match these titles with the appropriate paragraphs.

- A) Exclusion of criminal responsibility
- B) The basic principles of criminal law
- C) The functions of criminal law

1.

The principle of humanitarianism means that an **offender** [ə'fendə] must be treated with respect, and his/her **dignity**⁽¹⁾ ['dɪgnɪti] as a human being maintained, at all stages of the application of criminal law.

The principle of **criminal liability** ['krɪmɪnəl 'laɪəbɪləti] for an act - only an act **committed**⁽²⁾ [kə'mɪtɪd] by a human being can become the basis of responsibility. Moreover, that act must be prohibited by a statute which was in effect at the time when the act was committed (this is specified by a Latin saying *nullum crimen sine lege* - without a law, there is no crime). This **entails**⁽³⁾ [ɪn'teɪlz] another principle - the law cannot be applied retrospectively (*lex retro non agit*). A person cannot take responsibility for an act which was not prohibited by a statute at the time it was committed.

In addition, the act has to be socially harmful (*nullum crimen sine periculo sociali*).

The principle of fault (or guilt) means that it is only possible to **attribute**⁽⁴⁾ [æ'trɪbjʊ:t] criminal responsibility for an act in cases where a **perpetrator** ['pɜ:pɪtɹetə] can be **blamed for**⁽⁵⁾ ['bleɪmd fə] what she or he has done (*nullum crimen sine culpa*) - the offender knew what kinds of activities were **lawful** ['lɔ:fəl] in those **circumstances**⁽⁶⁾ ['sɜ:kəmstæn'sɪz] and which of them were not, and although it was possible to act according to the law the offender chose to act against it.

A court - when finding somebody guilty of committing a crime - can sentence him/her to a **penalty** ['penəlti] or other **penal measure** ['penəl 'meʒə] which is **prescribed**⁽⁷⁾ [prɪ'skraɪbd] only by the criminal law (*nulla poena sine lege*).

There is another important principle to remember while **passing sentence**⁽⁸⁾ ['pɑ:sɪŋ ə 'sentəns]. The penalty (or other penal measure) should be **tailored**⁽⁹⁾ ['teɪləd] to the particular act and to the perpetrator. It must be as personal and individual as possible.

2.

Criminal law regulations - when used properly - are intended to give protection to those values which are important to society (such as life, health, security, family, ownership etc.). This can be achieved through the preventive effect of these provisions or through **judgments** ['dʒʌdʒmənts] passed by the court in criminal cases. Prevention may have **an impact**⁽¹⁾ [ən 'ɪmpækt] on a single offender as well as on society as a whole, in a way that **deters**⁽²⁾ [dɪ'tɜ:z] the committing of prohibited acts, or the offence in question, or encourages **compliance** [kəm'plaɪəns] with the law.

- (1) godność
- (2) popełnić
- (3) pociągać za sobą
- (4) przypisać
- (5) obwiniać
- (6) okoliczności
- (7) nakładać
- (8) wydawać wyrok
- (9) dostostowana

- (1) wpływ
- (2) odstraszać

Another aim of the criminal law is to **restore**⁽³⁾ [rɪ'stɔ:] the public sense of justice which has been affected by the crime.

There are also two other functions of the criminal law which are less well known. The first is to compensate the **victim** ['vɪktɪm] for **tangible**⁽⁴⁾ ['tændʒɪbəl] or intangible **damages** ['dæmɪdʒɪz] that have been caused as a result of the crime. This is called a compensatory function and it can be achieved using different measures.

The second function deals with guaranteeing human rights and individual freedom. Criminal law is a kind of restriction on the judicial or executive power in a state. On the other hand, it ensures that the rights and freedoms of citizens are not violated by an **arbitrary**⁽⁵⁾ ['ɑ:bɪtrəri] action of government. A human being is free to do whatever she or he wants unless it is prohibited by law. However, government agencies and public officials are allowed to do only the things which are prescribed by law. They cannot make arbitrary decisions.

3.

Criminal law also provides a list of circumstances which exclude the criminal responsibility of a **perpetrator** ['pɜ:pɪtɹetə] despite the fact that she or he has committed a prohibited act named in a statute. In other words, there is some sort of justification for the action performed. There are two groups of circumstances which **exclude**⁽¹⁾ [ɪks'klu:d] **criminal liability** ['krɪmɪnəl 'laɪəbɪləti]. The first of these **encompasses**⁽²⁾ [ɪn'kʌmpəsɪz] actions such as self-defence, acts of higher necessity, lawful experiment, medical procedures etc. The second group takes into account the age of the offender, acts committed in error and **incapacity** [ɪnkə'pæsəti]. In the latter case, the court cannot blame a **perpetrator** ['pɜ:pɪtɹetə] for their actions e.g. they are too young, it was a justifiable mistake or they suffer from a mental illness.

- (3) przywracać
- (4) materialne, namacalne
- (5) stroniczy, samowolny

- (1) wyłączać
- (2) obejmować

Task 2. How do you understand the following sentences - explain in your own words.

1. The law cannot be applied retrospectively.
2. You cannot punish a person for an act for which no penalty is stipulated.
3. The penalty (or other penal measure) should be as personal and individual as possible.
4. Criminal law compensates for damage that has been caused as a result of the crime.
5. Government agencies and public officials are allowed to do only those things which are prescribed by law.

Task 3. Match the following definitions with the words (in bold) from the text above - not all words in bold are used.

- a) a person who performs a crime (n.) -, (two words)
- b) lack of physical or intellectual power or of natural or legal qualifications (n.) -
- c) the state of being legally obliged and responsible (n.) -
- d) one who is harmed or killed by another (n.) -
- e) instrument (n.) -

VOCABULARY WORK *Punishment*

Task 1. Read the introduction on the punishment:

The Polish Penal Code of 1997 contains an extensive catalogue of sanctions. The non-custodial penalties are a fine and a restriction of liberty (similar to community service in some other countries). Then there are also stricter penalties which isolate a criminal from society. This group includes a custodial sentence (up to 15 years), a separate penalty of 25 years of imprisonment and lifetime imprisonment. There is no capital punishment in the Polish criminal law system. By contrast, the catalogue of penal measures is much broader and includes:

- deprivation of public rights;
- a ban on taking certain posts, specific professions or engaging in certain economic activities;
- a ban on entering certain places, contacting certain persons or leaving a specified place;
- a ban on driving motor vehicles;
- forfeiture, an obligation to redress the damage, supplementary payment to the injured party or for a public purpose, pecuniary consideration and making the sentence publicly known.

The Polish Penal Code also contains preventive measures. These are applied in cases where the offender is not fully liable for the act due to her or his mental state, or the act was committed under the influence of drugs or alcohol. However, the person has committed an offence which is very serious and it is very likely that they will commit an offence again.

forfeiture (n.) [fə'fi:tʃə]
redress (v.) [rɪ'dres]

loss
 to compensate for wrong or loss

Task 2. Match the following types of punishment with the descriptions below.

dożywocie	warunkowe zawieszenie wykonania kary	zwolnić	grzywna
	przedterminowe warunkowe zwolnienie	prace społeczne	
kara pozbawienia wolności	zakaz prowadzenia pojazdów		kara śmierci

1. Release from prison on parole.
2. An unpaid service for the benefit of the public that is performed by lawbreakers.
3. A prohibition to drive a car or officially marking the person's driving licence in a way, which means that the person has broken the law.
4. Capital punishment.
5. A sentence of imprisonment until death.
6. Putting someone in prison.
7. Under the supervision of an officer.
8. A sum of money to pay.
9. A punishment imposed only if you commit a further crime.

Then find their English equivalents in the glued words below.

The death penalty driving ban endorsement life imprisonment acquit put on probation imprisonment
 fine community service suspended sentence

READING & LISTENING

Introduction to criminal procedure

Task 1. TRACK 14. Read the lecture on Criminal Procedure and predict the missing words. Then listen to the lecture and check your answers.

Today's lecture is a general introduction to criminal procedure in Poland. First of all, let's start with the sources of the law on criminal proceedings. They are: the Code of Criminal Procedure of 6th June 1997, the Constitution of 1997 and the European Convention of Human Rights of 1950 and, after Poland's 1) a..... to the European Union, above all, the framework decisions of the European Council and other acts of the Union law.

The Law of Criminal Proceedings, contained in the 1997 Code of Criminal Procedure, is divided into a general part and a specific part. The general part of the Code (also known as the static part), determines the basic 2) i..... involved in proceedings: proceeding principles, proceeding circumstances, a court, parties, solicitors and agents, evidence and **coercive means**⁽¹⁾. The specific part contains those regulations concerning the course of the process: proceedings before the court of first 3) i....., appeal proceedings, extraordinary 4) a..... means, as well as specific proceedings, proceedings in criminal cases in international relations, legal expenses and criminal proceedings in cases under military jurisdiction.

The basic principle of proceedings (sometimes considered the objective of the process) has traditionally been the principle of material truth, or the 5) l..... duty (resting upon all the agencies involved) to base all **outcomes**⁽²⁾ of proceedings on the true establishment of facts. In addition, the principle of a fair 6) t..... (as defined by Article 6 of the European Convention on Human Rights) which considers not only the rights of the defendant but also the 7) v..... of a crime, has become equally important.

The basic principle determining the legal position of the defendant (included both in the Penal Code and the Constitution) is the presumption of innocence which requires the **defendant**⁽³⁾ to be regarded as innocent until his 8) g..... is determined by the final judgment of a court, and the right to defence - enabling the defendant to answer charges either personally or through a legal counsel. Basically, the defendant may receive the aid of a defence counsel (in the event of lack of financial resources, at the state's expense), and sometimes, because of the defendant or the nature of the case, the participation of the defence counsel is obligatory. The participation of a public 9) p..... in a criminal trial stems from **mandatory**⁽⁴⁾ prosecution i.e. the legal responsibility of **instigating**⁽⁵⁾ the prosecution of all public **accusatorial**⁽⁶⁾ crimes) as well as the principle of accusatorial procedure (the court institutes the proceedings upon application by an authorised prosecutor). Courts judge on the basis of the principle of discretion and pass their verdicts according to that principle after a public and adversarial trial. The legal procedure is a two-instance procedure.

- (1) **środki przymusu**
- (2) **wynik, rezultat**
- (3) **oskarżony**
- (4) **obowiązkowy**
- (5) **wszczynać**
- (6) **skargowy**

The Polish judiciary system adopted a mixed model in criminal cases: basically investigative and secret **preliminary**⁽⁷⁾ proceedings are followed by a public and adversarial trial. The preliminary 10) p..... are conducted personally by a public prosecutor (investigation) or under his supervision (enquiry), and the evidence gathered may form the basis for the court's judgment in the first-instance trial. Both in the investigation and the enquiry the defendant and the victim are the 11) p..... and to some extent they are both entitled to participate in the proceedings, to have access to the case files and to appeal against the decisions of the prosecution agencies. In the preliminary hearing the court decides on the most important **impingements**⁽⁸⁾ on the citizen's rights (e.g. executive detention or wire-tapping), considers any complaints about the actions of the police and the public prosecutor's office and, sometimes, interrogates 12) w..... (above all juvenile victims of sexual crimes or domestic violence).

A first-instance hearing is public and adversarial but, contrary to the *common law* system, it is the court's responsibility to enquire *ex officio* into the material truth. The 13) v..... of the first-instance court may be appealed against, and the valid verdicts of appeal courts may be further appealed against at the Supreme Court. One is also entitled to appeal against valid court judgments through an application to instigate *de novo* proceedings, to be considered by a 14) c..... of a higher instance.

The Polish criminal procedure is familiar with **consensual**⁽⁹⁾ methods of completing criminal proceedings (inspired in Europe by American *plea bargaining*): a conviction without a court 15) h..... as well as a voluntary submission to punishment at the trial. In connection with the wide application of these institutions (in almost half of all criminal cases) and with the dominating influence of the evidence examined during the preliminary proceedings on the verdict, this implies a **diminishing**⁽¹⁰⁾ role for the first-instance hearing.

- (7) **wstępny, przygotowawczy**
- (8) **oddziaływanie**
- (9) **ugodowy**
- (10) **malejąca**

Task 2. Read and listen to the lecture again and answer the questions:

1. What are the sources of the Law on Criminal Procedure?
2. Is the course of the process regulated by the general or specific part of the Law on Criminal Proceedings?
3. How many principles for the proceedings are listed in paragraph 3? What are they?
4. What do you understand by the term: the presumption of innocence?
5. What are the preliminary hearings like?

READING & VOCABULARY WORK

IN COURT

In Poland both the district courts and the regional courts, hear criminal cases in the first instance. The district court is for minor offences, such as theft or drunken driving etc. and the regional court is for more serious offences such as **murder** ['mɜːdə]. At a trial, the accused or defendant stands in the dock and both the prosecutor and the accused (or his lawyer) can **question** ['kwɛstʃən] witnesses who have to say what they have seen or know. Witnesses are informed of criminal liability for telling lies (perverting the course of justice). If they do not tell the truth, they can be accused of perjury. There are usually two lawyers in the courtroom One is known as **Counsel for the Defence** ['kaʊn'səl fə ðə dɪ'fɛn's] who speaks for the defendant, and the other as **Counsel** ['kaʊn'səl] **for the Prosecution** (Prosecutor). The Prosecutor has to prove that the person accused has really committed the crime. The **judge** ['dʒʌdʒ] (or judges) sits facing the defendant and wears a special gown and chain bearing the Polish emblem – an eagle. The judge may be accompanied by two lay judges. Together they decide on the guilt of the accused person. If they find the accused guilty, they decide the punishment or **sentence**, ['sentəns] as it is called. If the person is innocent, he or she is acquitted, which means that he or she is released immediately and is free to go home. If the person is guilty, he/she could be given one of five punishments stipulated in the Polish Penal Code.

Some words in English can be used as both nouns and verbs. Read the definitions for the following words from the text. Which of the two definitions was used in the context?

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|-------------------------|--|
| a) murder (n.) | the killing of a human being by another human being |
| murder (v.) | to kill (another human) unlawfully |
| b) question (n.) | a difficult matter; a problem |
| question (v.) | to examine, to interrogate |
| c) counsel (n.) | a lawyer engaged in conducting cases in court |
| counsel (v.) | to give advice or guidance to |
| d) judge (n.) | a public official who hears and decides cases brought before a court of law. |
| judge (v.) | to form an opinion or evaluation |
| e) sentence (n.) | an opinion, judgment, or decision |
| sentence (v.) | to pronounce sentence on (a convicted person) in a court of law |