

LIABILITY OF MINORS FOR PROHIBITED ACTS IN POLISH LAW

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Purpose: to describe the issue of liability of minors for acts prohibited under threat of punishment in Polish law. **Research methods:** the dogmatic-legal method was used (analysis of Polish normative acts), literature on the liability of minors for punishable acts was analysed, as well as statistical data relating to the research issue. **Results:** as a general rule, minors (i.e. persons who were under 17 years of age at the time of the act) are not criminally liable for acts that are punishable as crimes. The Polish Penal Code provides for exceptional criminal liability for certain crimes in the case of minors who were at least 15 or 14 years of age at the time of the act (Article 10 § 2 and 2a). On the other hand, minors are never criminally liable for acts prohibited as misdemeanours and fiscal offences (fiscal crimes or fiscal misdemeanours). Besides, minors who have committed an act punishable as a crime, a misdemeanour or a fiscal offence may be liable under the rules set out in the Act of 9 June 2022 on the Support and Resocialisation of Minors. The minor may then be subject to educational measures, a therapeutic measure and a corrective measure. **Discussion:** due to age restrictions, the range of crimes for which minors may be criminally liable, as well as other prerequisites for such liability provided for in Article 10 § 2 and 2a of the Polish Penal Code, minors are very rarely held criminally liable for acts prohibited as crimes. Minors who have committed a punishable act are mainly held liable in the family courts, but this is not criminal liability within the meaning of the Penal Code, the Misdemeanours Code and the Fiscal Penal Code. In general, the scale of minors' delinquency in Poland has significantly decreased in recent years.

Key words: liability of minors; punishable acts; Polish penal law; crime; misdemeanour; fiscal offence.

Statement of the problem, its relevance and the purpose of the article. In Polish law there are the following types of acts prohibited under threat of punishment: crimes, misdemeanours, fiscal crimes and fiscal misdemeanours (in Polish: *przestępstwa*, *wykroczenia*, *przestępstwa skarbowe*, *wyroczenia skarbowe*). The crimes are defined in the Penal Code of 1997 [1] and in other acts providing for criminal liability. The same situation applies to the misdemeanours. These are set out in the Misdemeanours Code of 1971 [2] and in other acts. In contrast, fiscal offences (fiscal crimes and fiscal misdemeanours) are defined exclusively in the Fiscal Penal Code of 1999 [3]. As a rule, criminal liability (i.e. under the rules set out in the PC, the MC

and the FPC) is incurred by persons who were at least 17 years of age at the time the prohibited act was committed (Article 10 § 1 of the PC, Article 8 of the MC and Article 5 § 1 of the FPC). A person under 17 years of age when committing a prohibited act is called a minor (in Polish: *nieletni*). Minors may exceptionally be criminally liable for crimes (under the rules set out in the PC), while their criminal liability for misdemeanours, fiscal crimes and fiscal misdemeanours is excluded. As a rule, a minor who committed an act prohibited under threat of punishment as a crime, misdemeanour, fiscal crime or fiscal misdemeanour (a punishable act – in Polish: *czyn karalny*) is liable under the rules set out in the Act of 9 June 2022 on the Support and Resocialisa-

tion of Minors [4]. However, this is not criminal liability under Polish law.

Legislation against the minors' delinquency is particularly important as it relates to people who are young enough that they can still (at least in theory) be shaped and educated. It is therefore important that these legal regulations are well thought out and that they allow for an adequate response to the commission of punishable acts by minors.

The minors' delinquency is of course not an exclusively Polish problem. It also occurs in Ukraine [5], and it is therefore worth familiarising the Ukrainian reader with Polish legal solutions for combating this type of social pathology. Perhaps the considerations contained in this article will prompt Ukrainian lawyers to assess the legal solutions provided in Ukraine through the prism of Polish regulations and possibly formulate postulates for changes in Ukrainian law with regard to reacting to punishable acts of minors.

Analysis of statistics. It should be pointed out that the scale of minors' delinquency in Poland has significantly decreased in recent years. In 2007, there were 27,790 final judgements in cases of minors' punishable acts, while in 2020, there were only 7,015 such judgements (these are cases decided on the basis of the act on proceedings with minors). In 2020 3,563 rulings (51%) concerned acts punishable as crimes and misdemeanors against property (including, among others, 1,853 cases of misdemeanor so-called ordinary theft and misappropriation of someone else's movable property – Article 119 of the MC, 535 cases of crime and misdemeanor destroying, damaging and making unusable another's movable property – Article 288 of the PC and Article 124 of the MC, 426 cases of crime so-called ordinary theft – Article 278 of the PC, 262 cases of theft with burglary – Article 279 of the PC, and 213 cases of robbery – Article 280 of the PC), 1,664 rulings (24%) concerned acts punishable as crimes against life and health (including, among others, 453 cases of causing health damage – Article 156 and 157 of the PC, and 339 cases of taking part in a fight or beating – Article 158 and 159 of the PC), 831 rulings (12%) concerned acts punishable as crimes under the Act of 29 July 2005 on Counteracting Drug Addiction [6] (including, among others, 594 cases of illegal drug posses-

sion – Article 62 of this Act), 576 rulings (8%) concerned acts punishable as crimes against freedom (including, among others, 256 cases of criminal threats – Article 190 of the PC, and 145 cases of stalking – Article 190a § 1 of the PC), and 266 rulings (4%) concerned acts punishable as crimes against sexual freedom and decency (including, among others, 111 cases of sexual intercourse with a minor under 15 years of age – Article 200 § 1 of the PC) [7]. The criminal liability of minors (under the rules set out in the PC), on the other hand, is marginal. Between 2004 and 2019, a total of 1,058 minors were convicted of crimes (the most in 2019 – 189 persons and the least in 2008 – 9 persons) [8].

Liability under the rules set out in the Act of 9 June 2022 on the Support and Resocialisation of Minors. As mentioned above, as a rule, a minor who committed an act prohibited under threat of punishment as a crime, misdemeanor, fiscal crime or fiscal misdemeanor is liable under the rules set out in the Act of 9 June 2022 on the Support and Resocialisation of Minors. Such prohibited acts are called punishable acts by the ASRM (Article 1(2)(2)). Proceedings for punishable acts are conducted in cases of persons who have committed such an act after the age of 13 but before the age of 17 (Article 1(1)(2) of the ASRM). Younger minors (but not younger than 10 years of age) who have committed a punishable act may be subject to demoralisation proceedings (Article 1(1)(1) of the ASRM) [9].

The minor's welfare should be the primary consideration in the case of the minor, aiming at achieving favourable changes in the minor's personality and behaviour and aiming, where necessary, at the proper fulfilment by the parents or guardian of their obligations towards the minor, taking into account the public interest (Article 3(1) of the ASRM). In the proceedings with the minor, the characteristics and personal conditions of the minor shall be taken into account, in particular age, health condition, level of mental and physical development, character traits and family situation of the minor, upbringing conditions and nature of the environment, causes and degree of demoralisation, including the type of prohibited act, as well as the manner and circumstances of its commission and

the type of punishable act, as well as the manner and circumstances of its commission (Article 3(2) of the ASRM).

The minor may be subject to educational measures, a therapeutic measure and a corrective measure (Article 6 of the ASRM). The educational measures include, among others, obliging a minor to behave in a certain way (e.g. to repair the damage caused), supervision by a probation officer, forfeiture of objects deriving from a prohibited act, forfeiture of objects which were used or intended to be used in committing a prohibited act, placement in a youth or district educational centre (Article 7 of the ASRM). A therapeutic measure is a placement in a therapeutic institution where psychiatric or addiction treatment services are provided to minors (Article 8 of the ASRM). The family court may order a therapeutic measure if the minor is found to have a mental illness or other mental disorder, or an addiction (Article 17 of the ASRM). A correctional measure is placement in a correctional institution (in Polish: *zakład poprawczy*) (Article 9 of the ASRM). The latter measure is the most severe type of measure envisaged for minors due to the specific organisation and rules of correctional institutions [10].

The family court may order the placement in a district educational centre (in Polish: *okręgowy ośrodek wychowawczy*) of a minor who has committed a punishable act fulfilling the statutory elements of a crime or a fiscal crime, if this is supported by the degree of demoralisation of the minor and the nature of the punishable act, the manner and circumstances of its commission, especially when other educational measures have proved ineffective or do not promise the resocialisation of the minor (Article 14(1) of the ASRM). In a particularly justified case, the family court may order the placement in a district educational centre of a minor who has committed a punishable act fulfilling the statutory elements of a misdemeanor or a fiscal misdemeanor, if this is supported by the degree of demoralisation of the minor and the nature of the punishable act, the manner and circumstances of its commission, including in particular the hooligan nature of the punishable act, acting in a manner deserving particular condemnation, acting under the influence of a psychoactive substance, committing the pun-

ishable act to the detriment of a helpless, disabled, sick or elderly person, in particular when other educational measures have proved ineffective or do not promise the resocialisation of the minor (Article 14(2) of the ASRM).

On the other hand, with regard to the most severe measure envisaged for minors, the family court may order the placement in a correctional institution of a minor who has committed a punishable act that fulfils the statutory elements of a crime or of a fiscal crime, if this is supported by the high degree of demoralisation of the minor and the nature of the punishable act, the manner and circumstances of its commission, especially when educational measures have proved ineffective or do not promise the resocialisation of the minor (Article 15(1) of the ASRM). The court, wishing to isolate the minor from his or her previous environment, may choose between placement in a district educational centre or placement in a correctional institution, whereby when the minor shows a high degree of demoralisation and the case is serious a correctional measure is justified. It should be added at this point that if a minor commits an attempt on the life of the President of the Republic of Poland (Article 134 of the PC), basic and aggravated homicide (Article 148 § 1, 2 or 3 of the PC), intentional causing severe health damage (Article 156 § 1 or 3 of the PC), intentional causing of a commonly dangerous incident (Article 163 § 1 or 3 of the PC), malicious or forcible seizure of control of a ship or aircraft or of a public means of land transport (Article 166 of the PC), intentional causing of a traffic disaster (Article 173 § 1 or 3 of the PC), rape (Article 197 § 1, 1a, 3, 4 or 5 of the PC), active assault on a public official resulting in severe health damage (Article 223 § 2 of the PC), taking or holding of a hostage (Article 252 § 1 or 2 of the PC) or robbery (Article 280 of the PC), the family court is obliged to order the placement of the minor in a correctional institution (Article 15(2) of the ASRM). Exceptionally, in the latter case, the family court may order an educational measure against the minor if the manner and circumstances of committing the punishable act, the minor's characteristics and personal conditions, as well as the minor's attitude and behaviour justify the assumption that the educational measure will be effective or promises

the resocialisation of the minor (Article 15(3) of the ASRM). With regard to the minor referred to in Article 15 (2), in a particularly justified case, if it is supported by a very high degree of demoralisation of the minor, the nature of the punishable act, the manner and circumstances of its commission, the characteristics and personal conditions of the minor, his/her attitude and behaviour and the course of his/her resocialisation process to date, when ordering the placement of the minor in a correctional institution, the family court may: 1) threaten to prolong the execution of the correctional measure after the minor has reached the age of 21, but no longer than until the minor has reached the age of 24; 2) order that the correctional measure will be executed after the minor has reached the age of 21, until the minor has reached a certain age, but no longer than until the minor has reached the age of 24. This is an important regulation because as a general rule, the measures provided for in the ASRM are executed until the minor has reached the age of 21 years (Article 1(1)(3) of the ASRM).

Exceptional criminal liability of a minor. According to Article 10 § 2 of the PC, a minor who, after reaching the age of 15, commits a prohibited act referred to in Article 134 (attempt on the life of the President of the Republic of Poland), Article 148 § 1, 2 or 3 (basic and aggravated homicide), Article 156 § 1 or 3 (intentional causing severe health damage), Article 163 § 1 or 3 (intentional causing of a commonly dangerous incident), Article 166 (malicious or forcible seizure of control of a ship or aircraft or of a public means of land transport), Article 173 § 1 or 3 (intentional causing of a traffic disaster), Article 197 § 1, 1a, 3, 4 or 5 (rape), Article 223 § 2 (active assault on a public official resulting in severe health damage), Article 252 § 1 or 2 (taking or holding of a hostage) or Article 280 (robbery) of the PC may be held liable in accordance with the rules set out in this Code if the circumstances of the case and the degree of development of the perpetrator, his/her personal characteristics and personal conditions support this, in particular if previously applied educational or corrective measures (provided for in the ASRM) have proved ineffective. On the other hand, pursuant to Article 10 § 2a of the PC, a minor who, after reaching the age of 14 and before reaching the age of 15,

commits a prohibited act referred to in Article 148 § 2 or 3 of the PC (aggravated homicide), may be held liable in accordance with the rules set out in this Code if the circumstances of the case and the degree of development of the perpetrator, his/her personal characteristics and conditions support this and there is a reasonable suspicion that the application of educational or corrective measures (provided for in the ASRM) is not capable of ensuring the resocialisation of a minor. Minors are not criminally liable for crimes other than those indicated (e.g. for unintentional causing of death, causing medium or slight health damage, taking part in a fight or beating, even with fatal outcome, theft with burglary, drug-related crimes). It should be noted that holding a minor criminally liable is optional and depends on the court's discretion.

A minor can only be held criminally liable if guilt can be attributed to him at the time of the act (see Article 1 § 3 of the PC). It must therefore be determined whether the perpetrator's degree of development and his/her personal characteristics and conditions make it possible to conclude that the perpetrator is capable of being attributed guilt [11]. The general prerequisite for criminal liability is that the perpetrator is capable of recognising the meaning of the act and of directing his/her behaviour. The younger the minor is, the lower his/her degree of maturity to recognise the moral and legal meaning of the act [12].

«Circumstances of the case» as referred to in Article 10 § 2 and 3 of the PC means the manner in which the act was committed (e.g. drastic), the motivation of the perpetrator (e.g. deserving of condemnation), the role in the criminal complicity (e.g. dominant) [13]. The «degree of development of the perpetrator» is to be understood as the degree of both physical and mental development, as well as the mutual relationship between the one and the other; the more mature the perpetrator is, the more can be expected of him, and therefore the more legitimate it may be to hold him criminally liable [14]. Whereas, when assessing the perpetrator's 'personal characteristics and conditions', it is necessary to take into account the perpetrator's state of health and age, as well as the characteristics of the perpetrator's personality (the degree to which it has

been formed), character, established ways of reacting to stress and difficult situations [15].

Minors may be held criminally liable irrespective of the phenomenal form in which they committed the prohibited act. Liability is therefore possible for single perpetration, co-perpetration, perpetration by order, perpetration by direction, incitement and aiding and abetting (see Article 18 § 1–3 of the PC) [16]. However, this issue is controversial in the penal law literature [17]. For example, A. Zoll rejects the possibility of a minor's liability for inciting and aiding and abetting a crime [18]. In turn, Ł. Pohl excludes the application of Article 10 § 2 of the PC not only in the case of incitement and aiding and abetting of a crime, but also in a situation where a minor was a perpetrator by order or a perpetrator by direction [19]. It is assumed in the literature that a minor may be criminally liable for the stages of a crime that do not constitute completion (an attempt – Article 13 of the PC, and a preparation, which is only punishable under Polish law when the law so provides – Article 16 of the PC) [20]. However, there are also differing views in this area [21].

In the case where a minor is criminally liable for a crime under Article 134, Article 148 § 1, 2 or 3 or Article 156 § 1 or 3 of the PC, the court may apply extraordinary mitigation of penalty, i.e. impose a penalty below the lower limit of the statutory threat, but not lower than one-third of this lower limit (Article 10 § 3 sentence 2 and Article 60 § 6 point 2 of the PC). Furthermore, in the case referred to in Article 10 § 2 of the PC, the penalty imposed may not exceed two-thirds of the upper limit of the statutory threat provided for the crime attributed to the perpetrator, which is not penalised with life imprisonment (Article 10 § 3 sentence 1 of the PC). Of the crimes indicated in Article 10 § 2 of the PC, this restriction applies to the prohibited acts set out in Article 156 § 1, Article 163 § 1 and 3, Article 166, Article 173 § 1 and 3, Article 197 § 1, 1a and 3, Article 223 § 2, Article 252 § 1 and 2, and Article 280 of the PC, as the other provisions provide for life imprisonment.

In general, when imposing a sentence on a minor, the court's main consideration is to educate the perpetrator (Article 54 § 1 of the PC). The educational objective of punishment requires recognition

of the perpetrator's personality, environmental conditions, degree of demoralisation and susceptibility to education, as well as the danger he presents to the legal order. Minor status does not always justify a lenient punishment. The accumulation of negative features, in particular profound demoralisation and ineffectiveness of previously applied educational or corrective measures, combined with the high degree of social harmfulness of the committed act, may support the imposition of an absolute imprisonment sentence on a minor [22]. In one of the rulings, the Polish Supreme Court indicated that the normative sense of the provision of Article 54 § 1 of the PC comes down to establishing the primacy of the educational objective of punishment in a situation of possible conflict with the other sentencing directives set out in Article 53 of the PC. This primacy does not mean that the other objectives of punishment should be disregarded in the assessment of punishment. However, they can only be pursued to the extent that they do not oppose or limit the attainment of the educational objective of punishment. For this reason, it is not possible to impose a more severe punishment than that which would result from the primacy of the educational objective, on the basis, for example, of a particularly high degree of social harmfulness of the act [23]. It should be added, that life imprisonment shall not be imposed on a perpetrator under 18 years of age at the time of committing the crime (Article 54 § 2 of the PC). The most severe sentence that can be imposed on a minor is 30 years' imprisonment.

Conclusions. As mentioned above, as a general rule, minors are not criminally liable for acts that are punishable as crimes (Article 10 § 1 of the PC). The Polish Penal Code provides for exceptional criminal liability for certain crimes in the case of minors who were at least 15 or 14 years of age at the time of the act (Article 10 § 2 and 2a of the PC). On the other hand, minors are never criminally liable for acts prohibited as misdemeanours and fiscal offences (Article 8 of the MC and Article 5 § 1 of the FPC). Besides, minors who have committed an act punishable as a crime, a misdemeanour or a fiscal offence may be liable under the rules set out in the Act of 9 June 2022 on the Support and Resocialisation of Minors. It should be emphasised that due to age restrictions, the range of crimes for

which minors may be criminally liable, as well as other prerequisites for such liability provided for in Article 10 § 2 and 2a of the PC, minors are very rarely held criminally liable for acts prohibited as crimes. Minors who have committed a punishable act are mainly held liable in the family courts, but this is not criminal liability within the meaning of the Penal Code, the Misdemeanours Code and the Fiscal Penal Code. However, it should be noted that some of the measures applied to minors under the Act on the Support and Resocialisation of Minors are very harsh, and placement in a correctional institution even resembles in many respects a penalty of imprisonment imposed under the Penal Code.

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Пьотр Понятовський

ВІДПОВІДАЛЬНІСТЬ НЕПОВНОЛІТНІХ ЗА ЗАБОРОНЕНІ ДІЇ ПОЛЬСЬКИМ ЗАКОНОДАВСТВОМ

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Мета: охарактеризувати питання відповідальності неповнолітніх за діяння, заборонені під загрозою покарання, у польському праві. **Методи дослідження:** використано догматико-юридичний метод (аналіз польських нормативних актів), проаналізовано літературу з питань відповідальності неповнолітніх за карані діяння, а також статистичні дані, що стосуються досліджуваного питання. **Результати:** за загальним правилом, неповнолітні (тобто особи, яким на момент вчинення діяння не виповнилося 17 років) не несуть кримінальної відповідальності за діяння, які караються як злочини. Кримінальний кодекс Польщі передбачає виняткову кримінальну відповідальність за певні злочини для неповнолітніх, яким на момент вчинення діяння виповнилося щонайменше 15 або 14 років (стаття 10 § 2 і 2a). З іншого боку, неповнолітні ніколи не несуть кримінальної відповідальності за діяння, заборонені як проступки та фінансові правопорушення (фінансові злочини або фінансові проступки). Крім того, неповнолітні, які вчинили діяння, що карається як злочин, проступок або фінансове правопорушення, можуть нести відповідальність відповідно до правил, викладених у Законі від 9 червня 2022 року «Про підтримку та ресоціалізацію неповнолітніх». До неповнолітнього можуть бути застосовані виховні, терапевтичні та виправні заходи. **Обговорення:** через вікові обмеження, коло злочинів, за які неповнолітні можуть нести кримінальну відповідальність, а також інші передумови для такої відповідальності, передбачені ст. 10 § 2 і 2a Кримінального кодексу Польщі, неповнолітні дуже рідко притягуються до кримінальної відповідальності за діяння, заборонені як злочини. Неповнолітні, які вчинили карані діяння, в основному притягуються до відповідальності в сімейних судах, але це не є кримінальною відповідальністю в розумінні Кримінального кодексу, Кодексу про проступки та Кримінально-виконавчого кодексу. Загалом, масштаби злочинності серед неповнолітніх у Польщі за останні роки значно зменшилися.

Ключові слова: відповідальність неповнолітніх; карані діяння; кримінальне право Польщі; злочин; проступок; податкове правопорушення.

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