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PRINCIPLES OF JUVENILE CRIMINAL LIABILITY – SELECTED ASPECTS

Introduction

The issue of the liability of underage offenders has been a subject of a number of controversies for years, both practical and theoretical. This multi-faceted issue has quite often been addressed in the literature by representatives of the doctrine of criminal law and has already received many valuable studies. It is a very complex issue because it is on the border between substantive criminal law and the law of minors. Piotr Kardas emphasises that the issue of the age beyond which a given person achieves the ability to bear criminal responsibility is one of the more difficult and complicated issues of repressive law³.

The identification of the term *minor* in the legal system is due to the necessity to treat differently perpetrators who have not exceeded the age limit justifying a penal response. Age is therefore very important from the point of view of criminal law, as it allows for a fundamental division of perpetrators into minors and adults. The application of this criterion is due to the fact that their culpability is shaped in a slightly different way. In principle, a person's maturity is linked to their age, although the adoption of a strict age limit for maturity is obviously of a symbolic nature.

It should be emphasised that the adoption of the division into juvenile and adult offenders and the related consequences are not only a matter of

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³ Kardas P, O podstawach odpowiedzialności nieletnich na zasadach określonych w Kodeksie karnym. Uwagi na tle sporów dotyczących wymierzania nieletniemu kary, [in:] Hofmański P, Waltoś S (Eds), W kręgu prawa nieletnich. Księga pamiątkowa ku czci Profesor Marianny Korcyl-Wolskiej. Warsaw, 2009, p. 90.

our legal system—such a division is commonly used in all contemporary legal systems, although the age thresholds have been defined in different ways⁴. Being underage results in very significant consequences at the level of criminal law. First of all, it should be stressed that one act will constitute the fundamental basis for holding an adult liable and another for a minor.

Prerequisites for the liability of minors under the rules of the Penal Code

The legislator uses the term *minors* in the Penal Code⁵ to define one of the categories of entities of criminal law responsibility, although he does not define this term. It can be concluded from the wording of the regulation that a minor is therefore a perpetrator who at the time of committing a punishable act has not reached the age of criminal responsibility, *i.e.* 17 years. It should be stressed that this rigid age limit only allows for the presumption⁶ that the subject is already mature enough to be attributed guilt, which is one of the basic premises for criminal responsibility.

Article 10(1) of the Penal Code provides for the rule that only a perpetrator who has reached the age of 17, *i.e.* an adult under criminal law, may be liable. However, as a rule, the basis for holding a young offender liable is the Act on juvenile delinquency proceedings.

However, this general rule has its limitations. Article 10(2) of the Penal Code provides for an exception to reduce the age of criminal liability. This regulation allows the rules of criminal liability provided in the Code of Criminal Procedure to be applied, although slightly modified, to the category of minor offenders between 15 and 17 years of age who have committed crimes of the gravest type, enumerated in this provision. These are the following prohibited acts:

— assassination of the President of the Republic of Poland (Article 134 of the Penal Code);

⁴ Smyczyński T, Szczególny status dzieci i młodzieży w prawie wewnętrznym i w prawie międzynarodowym, [in:] Smyczyński T (Ed.), *Konwencja o prawach dziecka. Analiza i wykładnia*. Poznań, 1999, p. 29. *See also*: Guzik-Makaruk E.M, *Czas popełnienia przestępstwa i wiek odpowiedzialności prawnokarnej w kodeksach karnych Republiki Federalnej Niemiec, Konfederacji Szwajcarskiej i Austrii*. *Białostockie Studia Prawnicze*, 2010, No. 7, pp. 165–180; Guzik-Makaruk E.M, Laskowska K, Szczygieł G.B, *Wiek odpowiedzialności prawnokarnej w ujęciu porównawczym (na przykładzie ustawodawstwa Polski, Rosji, Ukrainy, Niemiec, Szwajcarii i Austrii)*, [in:] Warylewski J (Ed.), *Czas i jego znaczenie w prawie karnym*. Gdańsk, 2010, pp. 371–392.

⁵ Ustawa z 6 czerwca 1997 — Kodeks karny (consolidated text, Dz.U., 2019, item 1950).

⁶ Guzik-Makaruk E.M, Wojewoda E, *Dziecko, nieletni, małoletni, młodociany, pełnoletni — podstawowe zagadnienia terminologiczne na tle systemu prawa*, [in:] Guzik-Makaruk E.M, Skrzypulec-Plinta V, Szamatowicz J (Eds), *Wybrane prawne i medyczne aspekty ginekologii dziecięcej*. Białystok, 2015, p. 34.

- basic type or aggravated types of murder, *i.e.*: murder with special cruelty, in connection with taking a hostage, rape or robbery, as a result of motivation deserving special condemnation, with the use of explosives, murder of several persons, after a previous final conviction for murder, and murder of a public official during or in connection with their official duties related to the protection of human security or public safety and order (Article 148 (1, 2 or 3) of the Penal Code);
- basic type of causing serious injury to health or the aggravated type with the consequence in the form of death [Article 156(1 or 3) of the Penal Code];
- basic type or aggravated one with the consequence in the form of death or causing dangerous incidents to the life or health of many people or property of great size (*i.e.* the value of which at the time of the act exceeds PLN 1,000,000), which are enumerated in the provision [Article 163(1 or 3)];
- piracy (Article 166 of the Penal Code);
- causing a catastrophe on the land or in the water or air traffic threatening the life or health of many people, or property of a large size in the basic or aggravated type with the consequence of human death or serious damage to the health of many people [Article 173(1 or 3) of the Penal Code];
- aggravated types of rape, *i.e.* group rape, of a minor under 15 years of age, of an ancestor, descendant, adoptive child, adoptive parent, brother or sister, and rape with special cruelty [Article 197(3 or 4) of the Penal Code];
- aggravated type of active assault on a public servant or a person assisting them resulting in serious damage to health or death [Article 223(2) of the Penal Code];
- taking a hostage in the basic and aggravated type by a modal circumstance in the form of special anguish [Article 252(1 and 2) of the Penal Code];
- mugging (Article 280 of the Penal Code).

In addition, the circumstances of the case, the degree of the offender's development, their characteristics and personal conditions, and in particular the fact that corrective and educational measures previously applied have proved to be ineffective, must be an argument in favour of holding a minor liable under the general rules.

It is worth pointing out that there are disputes in the dogma about the possibility of holding a minor accountable for one of the above enumerated prohibited acts in the case of forms of committing an offence, such as directing and ordering perpetration, inciting, and aiding and abetting the acts enumerated in this provision. Some representatives of the doctrine express the view that a juvenile directing or ordering offender, instigator and aider may be held liable under the rules set out in the Penal Code. This is supported by the fact that a crime can also be committed in the forms which are described in Article 18(1, 2 and 3) of the Penal Code⁷.

⁷ Among others in: Marek A, Kodeks karny. Komentarz. Warsaw, 2010, p. 134; Grześkowiak A, [in:] Grześkowiak A, Wiak K (Eds), Kodeks karny. Komentarz. War-

This position seems to be the most correct given the whole of the code's regulations. Its accuracy is clearly determined by the word 'allowed', which indicates the possibility of committing an act in any of the forms. Andrzej Marek rightly emphasises that despite the fact that such forms as incitement and aiding and abetting will usually not justify the application of responsibility on general principles, they cannot be excluded⁸.

Other authors state that in this case, such a minor cannot be held criminally responsible, arguing that the provisions of the special part typifying criminal behaviours enumerated in Article 10(2) of the Penal Code do not include behaviours such as directing, ordering, instigating and facilitating the execution of a criminal act⁹, which seems to be wrong. They point out that the basis for holding a person liable for the offences in question is the provision placed in the general part of the Penal Code, however, there is no reason to exclude its application to acts penalised in the provisions of the special part of the Penal Code, which are specified in Article 10(2) of the Penal Code. This concept would be justified only if such a provision was directly included in the Penal Code and such a demand has already appeared.

The last concept, outlined on the grounds of this issue, assumes the possibility to hold a minor liable under the Penal Code only in the case of ordering the execution of a prohibited act or directing its execution, while it does not allow such a possibility in the case of an instigator and an aider¹⁰. This position is based on the assumption that incitement and aiding and abetting constitute separate types of criminal acts, which cannot be accepted.

Taking into consideration the circumstances of the case, however, it is vague in nature and may be interpreted in different ways, given that the term has no statutory explanation. As Alicja Grześkowiak rightly points out, it poses a threat to the warrantee character of juvenile criminal law¹¹. In the interpretation of this term, as is stressed in the literature, one can take into account circumstances that influence the degree of social harmfulness of the act¹². Therefore, account should be taken, *inter alia*, of the

saw, 2014, p. 95; Wąsek A, Kulik M, [in:] Filar M (Ed.), Kodeks karny. Komentarz. Warsaw, 2014, p. 47.

⁸ Marek A, Kodeks..., *op. cit.*, p. 134.

⁹ Among others in: Pohl Ł, O (nie)możliwości pociągnięcia osoby nieletniej do odpowiedzialności karnej za tzw. niewykonawcze formy współdziałania przestępnego na gruncie kodeksu karnego z 1997, [in:] Konarska-Wrzosek V, Lachowski J, Wójcickiewicz J (Eds), Węzłowe problemy prawa karnego, kryminologii i polityki kryminalnej. Księga pamiątkowa ofiarowana Profesorowi Andrzejowi Markowi. Warsaw, 2010, pp. 163 ff.

¹⁰ Among others in: Walczak-Żochowska A, [in:] Stefański R.A (Ed.), Kodeks karny. Komentarz. Warsaw, 2015, p. 170; Kardas P, [in:] Zoll A (Ed.), Kodeks karny. Część ogólna. Komentarz. Tom I. Warsaw, 2007, pp. 316 and 366.

¹¹ Grześkowiak A, [in:] Grześkowiak A, Wiak K (Eds), Kodeks..., *op. cit.*, p. 96.

¹² *Ibid.*, p. 96; Walczak-Żochowska A, [in:] Stefański R.A (Ed.), Kodeks..., *op. cit.*, p. 171.

type and nature of the goods infringed, the extent of the damage caused or possible to occur, the motivation of the perpetrator and the form of intent. It is worth quoting a fragment of the Supreme Court judgement of September 9, 1971, formulated under the Penal Code of 1969, in which it was noted that the possibility of holding a minor liable under the general rules will be possible when the circumstances of the case will be 'so drastic that, in the general opinion, the perpetrator does not deserve to be held liable under the special rules provided for minors, but under the general rules'¹³.

Another of the prerequisites on which the responsibility of an underage person under Article 10(2) of the Penal Code depends is the degree of the perpetrator's development. Therefore, the adjudicating authority is obliged to assess the level of development of the minor at all times. The aim is to examine whether the offender is mature enough to understand the meaning of their act, can manage their conduct in a proper way, and is aware of its unlawfulness¹⁴. Andrzej Gaberle stated that the degree of development 'is essential to determine whether the regulatory mechanisms developed within the system of cognitive structures (personalities), the formation of which is significantly influenced by social experience (the so-called higher mechanisms), allow for socially compatible control of the motivational and emotional sphere, based on biological predispositions and experiences from the first years of life. A finding that the perpetrator has not developed the regulatory mechanisms required for a given age, allowing him/her to behave in accordance with general (and not only in a minor's environment) accepted social expectations, is essential for the assessment of the degree of demoralisation, which should be treated as one of the criteria for the application of Article 10(2)¹⁵.

With regard to the question of personal conditions and characteristics, it would be appropriate to examine the personality of the minor and to carry out in-depth and personalised examinations. Alicja Grześkowiak rightly points out such auxiliary criteria as: age, level of development, degree of internalisation of social and moral values, state of health, and family and social conditions¹⁶. The Supreme Court also expressed this line of thinking in one of its judgements. It emphasised that 'determining, in the course of preparatory proceedings, complete data about a minor, especially concerning their health, degree of mental and physical development, character traits, as well as behaviour and causes and degree of demoralisation, and the character of the environment and conditions of their upbringing, is one of the basic duties of the authority conducting proceedings, because the lack of such data makes it impossible to is-

¹³ Wyrok SN z 9 września 1971, Ref. No. I KR 125/71, OSNPG 1971, No. 11, item 196.

¹⁴ Grześkowiak A, [in:] Grześkowiak A, Wiak K (Eds), *Kodeks...*, *op. cit.*, p. 96.

¹⁵ Gaberle A, Korcyl-Wolska M, *Komentarz do ustawy o postępowaniu w sprawach nieletnich*. Gdańsk, 2002, p. 50 [as cited in:] Walczak-Żochowska A, [in:] Stefański R.A (Ed.), *Kodeks...*, *op. cit.*, p. 171.

¹⁶ Grześkowiak, [in:] Grześkowiak A, Wiak K (Ed.), *Kodeks...*, *op. cit.*, p. 96.

sue a proper decision on the selection of an appropriate educational or corrective measure or the appropriate form of punishment [...]'¹⁷.

However, the ineffectiveness of the educational and corrective measures applied so far in relation to such a perpetrator is an optional premise, which clearly results from the content of this provision. There is also no doubt that the previous application of such measures to a demoralised minor or a minor who is a perpetrator of a punishable act, will speak for its responsibility under Article 10(2) of the Penal Code.

Rules on the punishment of underage offenders

A statutory reduction of the penalty is also provided for in relation to underage offenders. The explanatory memorandum to the draft of the current penal code states that 'the introduction of a reduced age limit reflects the principle that the penalty must not exceed its severity of guilt'¹⁸, arguing that the guilt is always limited to a certain extent due to the immaturity of such a minor¹⁹. The penalty imposed on a minor cannot therefore exceed 2/3 of the upper limit of the statutory punishment for the committed offence, which is described in Article 10(3) of the Penal Code.

The court may also apply extraordinary leniency towards such a perpetrator. It should be emphasised that taking advantage of this benefit is not dependent in this case on the conditions for its application being met. The Court of Appeal in Katowice in the judgement of 21 April 2005 indicated that this solution cannot, however, be applied automatically—'Each time, it should be assessed whether it is supported by the reasons specified in Article 54(1) of the Penal Code, and these do not eliminate the rules on the penalty as specified in Article 53 of the Penal Code. Only educational considerations come first among the directives listed in this provision. The degree of demoralisation of a minor or a juvenile delinquent, their lifestyle before committing the crime and behaviour after committing the crime must be important prerequisites for determining the proper penalty'²⁰.

In the case of a sentence passed down to a minor, the directive on the educational purpose of the sentence, which is contained in Article 54(1) of the Criminal Code, will be of paramount importance. Therefore, the legislator puts emphasis on individual prevention in the case of such an offender²¹. However, the application of this regulation in practice must not lead to the imposition of penalties disproportionate to the degree of guilt

¹⁷ Wyrok SN z 24 czerwca 1983, Ref. No. III KZ 87/83, OSN 1983, No. 12, item 93.

¹⁸ Uzasadnienie rządowego projektu kodeksu karnego z 1997 r. *Electronic source*: [http://orka.sejm.gov.pl/Druki5ka.nsf/0/C1CA93E0F503AF82C12572EC00267570/\\$file/1756-uzasadnienie.doc](http://orka.sejm.gov.pl/Druki5ka.nsf/0/C1CA93E0F503AF82C12572EC00267570/$file/1756-uzasadnienie.doc), accessed: 21.07.2020.

¹⁹ *Ibid.*

²⁰ Wyrok SA w Katowicach z 21 kwietnia 2005, Ref. No. II AKa 114/05, OSA w Katowicach 2005, No. 3, item 7.

²¹ Walczak-Żochowska A, [in:] Stefański R.A (Ed.), *Kodeks...*, *op.cit.*, p. 174.

and social harm caused by the act committed. The fact that the sentence imposed should, above all, be fair cannot be ignored²².

The regulation referred to above is strongly correlated with the regulation of § 2 of the same provision, which prohibits the imposition of the penalty of life imprisonment on a perpetrator who is under 18 years of age. At this point, there are doubts about the limit of the highest penalty that can be imposed on a minor. In the doctrine, disputes arise as to whether the highest penalty that can be imposed by a court on a minor is 15 or 25 years' imprisonment. Without an in-depth analysis of this issue, it would be appropriate to support the view expressed by the majority of representatives of the criminal law and take the position that it is a penalty of 25 years' imprisonment. The regulation contained in Article 38(3) of the Penal Code should be used here. According to this provision, if the Act provides for the lowering of the upper limit of the statutory punishment, the penalty imposed for an offence punishable by life imprisonment shall not exceed 25 years' imprisonment. This position is also presented in the Judicature. The Supreme Court indicated in its verdict of September 22, 1999 that the prohibition described in Article 54(2) of the Penal Code 'does not exclude the imposition of 25 years' imprisonment on a minor held liable for an offence punishable by such a penalty under Article 10(2) of the Penal Code'²³. In its decision of 18 December 2012, the Supreme Court indicated that 'In essence, the provision of Article 10(3) of the Penal Code stipulates that, in the case of perpetrators who are minors at the time of the act, and who exceptionally bear criminal responsibility under Article 10(2) of the Penal Code, the penalty should be imposed in the amount of 2/3 of the upper limit of the statutory punishment. However, according to the established opinion of the Supreme Court, when it comes to juvenile offenders, the requirement provided for in Article 10(3) of the Penal Code, according to which the penalty cannot exceed two thirds of the upper limit of the punishment, must be referring to the penalty of life imprisonment for murder and not the penalty of 25 years' imprisonment. Likewise, the prohibition contained in Article 54(2) of the Penal Code to sentence a perpetrator, who at the time of committing the offence was under 18 years of age, to life imprisonment, does not exclude the infliction of the penalty of 25 years of imprisonment on a minor held liable for an offence under Article 10(2) of the Penal Code'²⁴.

Principles of juvenile liability under the Act on juvenile delinquency

Comprehensive regulations on dealing with minors are included in the Act on juvenile delinquency²⁵. In legal doctrine, there are opinions that

²² Marek A, Kodeks..., *op. cit.*, p. 183.

²³ Wyrok SN z 22 października 1999, Ref. No. III KKN 195/99, OSNKW 1999, No. 11-12, item 73.

²⁴ Wyrok SN z 18 grudnia 2012, Ref. No. III KK 289/12, LEX No. 1232290

²⁵ Ustawa z 26 października 1982 o postępowaniu w sprawach nieletnich (consolidated text, Dz.U., 2018, item 969; hereinafter: u.p.n.).

the abovementioned act is not a criminal law act. Due to the fact that it does not use terms such as ‘criminal liability’, ‘guilt’, ‘punishment’ or even ‘responsibility of a minor’, which we undoubtedly encounter in the Polish Criminal Code. The legislator’s failure to use the aforementioned terminology may lead to the conclusion that the application of its regulations will not constitute a liability at all²⁶. However, the doctrine of criminal law emphasises that in reality, on the basis of this legislation, there is a ‘peculiar’ prosecution of the minor perpetrator of a criminal act.²⁷

In Article 1(2)(1) in conjunction with § 1 of the Act on juvenile delinquency, the concept of a minor is defined. Three categories of minors have been distinguished on the basis of this Act, based on their age and the reason for their interest. However, Article 2 of the Act distinguishes two prerequisites for taking actions provided for in the Act, namely, a minor demonstrating signs of demoralisation or committing a criminal act.

First of all, therefore, a minor is a person under the age of 18, to whom the provisions of the law on combating and preventing demoralisation apply. Demoralisation, in general, is a form of social maladjustment²⁸. As Violetta Konarska-Wrzosek points out, demoralisation ‘is a state resulting from a process that has been going on for a certain period of time, characterised by the existence of unfavourable changes in both the personality and behaviour of the minor, of an intensified and relatively permanent nature, manifesting itself externally in the failure to respect the norms and rules of conduct in force in social life’, which apply to these very people²⁹. It is considered to be a state of personality characterised by a negative attitude towards social expectations resulting from the social roles attributed to a minor³⁰.

Examples of manifestations of demoralisation justifying interference in the life of such an individual are listed in Article 4(1) of the Act on juvenile delinquency. These include: violation of the principles of social coexistence, committing a prohibited act, systematic evasion of compulsory education or vocational training, use of alcohol or other means to become intoxicated, causing disorder, vagrancy, and participation in criminal groups.

Secondly, a minor within the meaning of this Act is a person who committed a criminal act after the age of 13 and before the age of 17. As far as the term ‘criminal act’ is concerned, it is defined in Article 1(2)(2) of the Act on juvenile delinquency. It should be stressed that this term is not the

²⁶ Kaczmarek T, Psychologiczne i ustawowe kryteria odróżniania nieletnich od dorosłych w polskim prawie karnym. *Nowe Prawo*, 1990, No. 13, p. 16.

²⁷ Wąsek A, Kodeks karny. Komentarz. Gdańsk, 1999, p. 129.

²⁸ Bojarski T, [in:] Bojarski T, Kruk E, Skrętowicz E (Eds), Ustawa o postępowaniu w sprawach nieletnich. Komentarz. Warsaw, 2014, p. 58.

²⁹ Konarska-Wrzosek V, Prawny system postępowania z nieletnimi. Warsaw, 2013, p. 137 oraz Konarska-Wrzosek V, Projektowane zmiany w zakresie postępowania z nieletnimi w Polsce. *Państwo i Prawo*, 2011, No. 4, p. 20.

³⁰ Haak-Trzuskawska A, Haak H, Ustawa o postępowaniu w sprawach nieletnich. Komentarz. Warsaw, 2015, p. 13.

same as the term 'criminal act' used by the Polish Criminal Code. Therefore, on the basis of this legal act, it is an act that fulfils the elements of an offence, a fiscal offence, or the enumerated offences, *i.e.*:

- possession of a knife, machete or other similarly dangerous object in a public place, if the circumstances of possession indicate an intention to use it for the purpose of committing a crime, as well as possession of such objects or pyrotechnic articles during the passage of an organised group of participants in a mass event (Article 50a of the Code of Minor Offences)³¹;
- disturbing the peace, public order, night-time rest or causing disturbance in a public place (Article 51 of the Code of Minor Offences);
- deliberately destroying, damaging, removing or otherwise rendering ineffective marks affixed by a state authority in order to establish the identity of an object, close it down, or subject it to a regulation of authority (Article 69 of the Code of Minor Offences);
- destroying, damaging, removing or rendering illegible signs or inscriptions warning of a danger to human life or health or a fence or other devices to prevent such danger (Article 74 of the Code of Minor Offences);
- throwing stones or other objects at a motor vehicle in motion (Article 76 of the Code of Minor Offences);
- arbitrary positioning, destroying, damaging, removing, activating or deactivating a sign, signal or warning or protection device, or altering their position, covering them up or rendering them invisible (Article 85 of the Code of Minor Offences);
- driving a motor vehicle on the land, in the water or in air traffic in a state after using alcohol or a similar means (Article 87 of the Code of Minor Offences);
- theft or appropriation of someone else's movable property whose value does not exceed PLN 500 (Article 119 of the Code of Minor Offences);
- fencing of property, the value of which does not exceed PLN 500 (Article 122 of the Code of Minor Offences);
- intentional destruction, damaging another person's property or making it unusable, if the damage does not exceed PLN 500 (Article 124 of the Code of Minor Offences);
- the purchase for resale for profit of admission tickets to artistic, entertainment or sporting events or the sale of such tickets for profit (Article 133 of the Code of Minor Offences);
- hindering or preventing the use, mischievously or prankishly, of equipment intended for public use (Article 143 of the Code of Minor Offences).

In connection with the abovementioned act, an act fulfilling the elements of the other offences articulated in the Code of Offences will not be a punishable act. It should be noted, however, that a fact of a minor committing an act fulfilling the characteristics of an offence which is not included in the abovementioned catalogue may constitute a basis for

³¹ Ustawa z 20 maja 1971 — Kodeks wykroczeń (consolidated text, Dz.U., 2013, item 482; hereinafter: k.w.).

applying to him/her the provisions of the described act, if this behaviour is considered a sign of demoralisation. In the study of criminal law, the legislator's attempt to identify the offences for which minors are responsible has rightly been criticised. At this point, we should certainly agree with the doctrine's demands that the concept of a punishable act be extended to all offences codified in the Code of Offences.

The third category of minors, on the other hand, includes persons towards whom educational or corrective measures are taken, but no longer than until they reach the age of 21. These are the measures referred to in Articles 6, 11(1) and 12 of the Act on Juvenile delinquency.

Principle of the best interests of the child in juvenile delinquency proceedings

The guiding principle determining the treatment of minors is the principle of the welfare of the child. The primary role of this procedure is no longer, as in the case of criminal proceedings, to achieve a state of justice through the use of repression, but to help minors; to achieve the goal of rehabilitation and education³². In Article 3(1) of the Act on juvenile delinquency, the legislator explicitly pointed out that it is necessary to strive for beneficial changes in the personality and behaviour of a minor. The term 'good of the minor' is not defined in the Act, however, it has been explained in detail in the science of criminal law and the judiciary. As Violetta Konarska-Wrzosek points out, the aim here is to bring about a beneficial change in the system of values of a minor, and his/her attitude to life, not only in relation to other people, but also in relation to himself/herself³³. If necessary, and in accordance with the assumption made in this principle, the proper performance of the obligations imposed on parents or guardians with regard to a minor should also be pursued³⁴. The Supreme Court has also expressed itself similarly on the welfare of minors in one of its rulings. The judgement of 18 September 1984 indicated that the concept of 'the well-being of the minor' should be interpreted as 'the formation of his/ her normal personality, in accordance with social standards of conduct which are fully in the interest of society and as such constitute the best interests of the minor'³⁵.

The legislator, in Art. 3(2) of the Act on juvenile delinquency, indicated that in dealing with a minor, the following are taken into account: age, state of health, degree of mental and physical development, character traits, as well as behaviour, causes and degree of demoralisation, and the

³² Bojarski T, [in:] Bojarski, Kruk E, Skrętowicz E (Eds), *Ustawa...*, *op. cit.*, p. 50.

³³ Konarska-Wrzosek V, [in:] Górecki P, Konarska-Wrzosek V, *Postępowanie w sprawach nieletnich. Komentarz*. Warsaw, 2015, p. 45.

³⁴ Giezek J, *Komentarz do art. 10 kk. [w:] tenże (red.), Kodeks karny. Część ogólna. Komentarz*. Warsaw, 2012, p. 76.

³⁵ Wyrok SN z 18 września 1984, Ref. No. III KR 237/84, OSNPG 1985, No. 2, item 29.

nature of the environment and conditions of the minor's upbringing. This solution stems from the fact that, in order to achieve this overriding objective, which determines the treatment of minors, that is to say, the welfare of the minor, a number of attributes that characterise this individualised entity must be taken into account. In order to achieve this, it is therefore necessary to carry out in-depth personal examination.

Age is a particularly important premise, as the same behaviour will be assessed differently, taking this criterion into account. There are two more reasons for age, namely physical and mental development. As far as the health of minors is concerned, the state of their mental health must be examined in the first place, in order to be able to determine that they can recognise the importance of their conduct, or obey an injunction or prohibition under the law. The question of character analysis means examining their characteristics, which not only manifest themselves in their relations with other members of society, but are also noticeable in their perception of themselves and their conduct. Behaviour, as an external element, should be assessed in terms of its correctness or inaccuracy, repeatability, permanence and the need to change it. It is also very important to identify the causes of demoralisation, as they may have various origins, and may result from both environmental influences and inherent characteristics³⁶.

Educational and corrective measures for minors

In accordance with the regulation of Article 5 of the Act on juvenile delinquency, three types of measures may be applied to minors, namely essential educational and corrective measures, in the form of placement of a minor in a correctional institution, and—in exceptional situations—a criminal measure consisting in the imposition of a criminal penalty on a minor. This provision constructs a specific directive on the application to a minor of a criminal sentence³⁷. The legislator allows the imposition of a penalty only in the cases provided for by law and only on the condition that other measures are not capable of ensuring the rehabilitation of such a person.

The measures affecting minors are listed in Article 6 of the Act on the Protection of Minors. Such a measure undoubtedly makes it possible to individualise the treatment of a minor. These measures differ in the degree of interference in the life of such an individual. Among them, we can distinguish measures of a strictly educational, caring, and educational and preventive character³⁸. The educational measures that are at the disposal of the family court are listed below:

— warning;

³⁶ Konarska-Wrzosek V, [in:] Górecki P, Konarska-Wrzosek V (Eds), *Postępowanie...*, *op. cit.*, pp. 47–48.

³⁷ *Ibid*, p. 60.

³⁸ Bojarski T, [in:] Bojarski T, Kruk E, Skrętowicz E (Eds), *Ustawa...*, *op. cit.*, p. 62.

- an obligation to take specific action, in particular to remedy the damage caused, to carry out specific work or services for the benefit of the victim or the local community, to apologise to the victim, to undertake education or work, to participate in appropriate educational, therapeutic or training activities, to refrain from being in certain environments or places, or to refrain from using alcohol or any other substance to become intoxicated;
- to establish supervision by the parents or guardian in charge;
- to establish supervision by a youth organisation or other social organisation, workplace or trustworthy person providing a guarantee for a minor;
- the application of guardian supervision;
- referral to a guardianship centre, as well as to a social organisation or institutions working with minors of an educational, therapeutic or training nature, after prior consultation with that organisation or institution;
- a driving ban;
- confiscation of the goods obtained in connection with the commission of a criminal act;
- a decision on placement in a youth education centre or in a foster family that has completed a training course preparing for the care of minors;
- the application of other measures restricted in this Act to the jurisdiction of the family court, as well as the application of measures provided for in the Family and Guardianship Code, with the exception of placement with a foster relative, a non-professional foster family, in a family orphanage, a day-care centre, a care and educational institution, and a regional care and therapeutic institution.

The indicated educational measures may be applied to minors who have committed a criminal act as well as minors who have been found to be demoralised. It should be noted that not all measures may be applied after the age of majority. In accordance with Article 73(1) of the Act on juvenile delinquency, some measures cease to be applied upon reaching the age of 18 by virtue of the law; these are: obligation to conduct a specific proceeding, supervision by a responsible parent or guardian, referral to a guardianship centre, social organisation or institution dealing with work with minor, ban on driving, forfeiture, placement in a youth care centre, with a professional foster family who has completed a training course preparing for the care of a minor, a therapeutic entity not being an entrepreneur, and a social welfare home. The remaining measures are discontinued at the age of 21. It is worth mentioning that the implementation of measures judged under Article 10(4) of the Criminal Code and Article 5(2) of the Fiscal Penal Code³⁹ also stops at the moment of reaching 21 years of age.

At this point, attention should be drawn to the measure dealt with in Article 6(3) of the Act on juvenile delinquency. Supervision of the responsible parent(s) or guardian(s) is a measure that is relatively often decided

³⁹ Ustawa z 10 września 1999 — Kodeks karny skarbowy (consolidated text, Dz.U., 2020, item 19).

by the courts. It consists in the imposition by the court on one of the indicated entities of an obligation of increased control and care of such a minor, as well as increased care for the appropriate socialisation by such an entity. However, the very name of this measure may raise doubts. The term 'responsible supervision of parents or a guardian' allows one to infer that the supervision by these entities carried out without a court ruling is therefore irresponsible and it is only the court that can oblige parents or a guardian to take responsible care of the children in their custody. There is therefore a contradiction here, because the very concept of supervision is linked to responsibility. The essence of this measure is to intensify the educational and control activities for the children. A ruling on this measure will therefore only be admissible if the court finds that the parents or guardian have so far performed their duties improperly. The name of this institution should therefore reflect its essence and the assumptions made by the legislator when introducing it into the catalogue of Article 6 of the Act on juvenile delinquency.

However, as regards placement in the correctional facility, which is dealt with in Article 6(10) of the Act on juvenile delinquency, it is the only corrective measure provided for in that Act. The application of this measure by the court is of an optional nature. It is undoubtedly the most ailing measure, as it is insulated and its application is linked to a change in the environment of the minor's present existence.

The grounds for its application are listed in Article 10 of the Act on juvenile delinquency. It may be applied only to a minor offender, *i.e.* a minor between 13 and 17 years of age. Moreover, it can be applied only if it is supported by a high degree of demoralisation of the minor, as well as the circumstances and nature of the act, and if other educational measures have proven ineffective or do not promise rehabilitation of the minor.

Criteria can be used to establish a high degree of demoralisation, such as the manner in which an act is committed, which indicates ruthlessness, insensitivity to suffering and harm, motive, intent, premeditation, intent to obtain material benefit, and revenge⁴⁰.

It is also worth pointing out that Article 11(1) of the Act on juvenile delinquency and disability provides for conditional suspension of the execution of this measure, if the properties and personal conditions and the environment of the perpetrator, as well as the circumstances and nature of the act, justify the assumption that educational goals will be achieved despite the failure to place the minor in a correctional institution. The probationary period in this case shall be between one and three years, during which time educational measures shall be applied to the minor. However, if during the probationary period, the conduct of such a person indicates his/her further demoralisation, or he/she refuses to fulfil the duties or supervision imposed by the court, the conditional suspension may be revoked. If, on the other hand, during the probationary period and within 3

⁴⁰ Bojarski T [in:] Bojarski T, Kruk E, Skrętowicz E (Eds), *Ustawa...*, *op. cit.*, p. 55.

months of the end of the probationary period, the conditional suspension has not been revoked, the placement in a correctional institution shall be deemed not to have taken place.

In addition to the measures provided for in Article 6 of the Act on juvenile delinquency, the legislator allows the application of therapeutic and educational measures to a specific category of minors. The catalogue of these measures is contained in Article 12 of the Act on juvenile delinquency, and they include: placement in a psychiatric hospital, another appropriate treatment centre, a youth education centre or a social welfare home. The therapeutic and educational measures may be used by the court in relation to minors who have been diagnosed with a mental handicap, mental illness, other mental disturbance, addictive use of alcohol, or other measures for intoxication. They may be performed until the age of 18, as provided for in Article 73(1) of the Act on juvenile delinquency. The application of measures consisting in placing such an entity in an appropriate institution is primarily aimed at its treatment and therapy, while in the case of deeply disabled minors, it is aimed at providing them with specialised care⁴¹. It is also worth pointing out that, as in the case of placement in a correctional institution, the legislator has provided for an absolute and relative form of this measure.

In addition to the abovementioned measures, under Article 32j(1) of the Act on juvenile delinquency, the family court has been authorised to refer the case of a minor, after obtaining his/her consent, to the school which he/she attends or to the youth, sports, cultural and educational organisation or other social organisation to which he/she belongs, provided that it considers that the educational measures available to the school or organisation concerned are sufficient.

Conclusion

In conclusion, it should be noted that the model for dealing with minors is a rational one. The rules, manner and mode of dealing with such individuals differ significantly from those governing the treatment of fully mature and formed persons. This results from the adoption of the maximum subjectivisation of an individual's responsibility adjusted to the level of his or her mental development.

In the Polish legal system, special solutions have been developed which determine the treatment of immature persons, which are contained in the Act on juvenile delinquency. It has already been emphasised in the preamble to the Act on juvenile delinquency that the basic aim of the treatment of minors is to prevent demoralisation and crime among such persons, to ensure the return to normal existence of persons who act contrary to legal norms and principles of social coexistence, and to strengthen

⁴¹ Konarska-Wrzošek V, [in:] Górecki P, Konarska-Wrzošek V (Eds), *Postępowanie...*, *op. cit.*, p. 113.

the caring and educational role and the sense of responsibility of families for bringing up minors. The solutions applied to minors are aimed at ensuring their proper development. They are intended to prevent their stigmatisation and social exclusion.

Code solutions are therefore of secondary importance and are only applied in exceptional cases. Polish legislation has provided for a number of specific measures to be applied to people who have not exceeded the contractual age limit. These are not, as in the case of adults, repressive in nature, but are primarily aimed at the rehabilitation and upbringing of people who are not yet fully developed. There is no doubt that applying the rules of adult offenders' liability to juvenile offenders could affect their proper development.

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Summary: The study concerns the principles of juvenile criminal liability. The model of dealing with minors is a rational one. The rules, manner and procedure of dealing with such persons differ significantly from the principles of adult responsibility. Solutions applied to minors are aimed at ensuring their proper development. They are to counteract their stigmatisation and social exclusion. The criminal liability of young perpetrators has given rise to a number of practical and theoretical controversies for many years. First of all, it should be emphasised that one legal act will hold an adult liable, and another, a minor.