



Dr. Sylwia Gwoździewicz

*PhD; The Jacob of Paradyż University of Applied Sciences in
Gorzów Wielkopolski (Gorzów Wielkopolski, Poland)
sylwiagwozdziejewicz@gmail.com*

**THE MINORS IN PENAL SYSTEMS IN SELECTED COUNTRIES OF
THE EUROPEAN UNION**

**SYSTEM PRAWNY WOBEC OSOBY NIELETNIEJ W WYBRANYCH KRAJACH UNII
EUROPEJSKIEJ**

**ПРАВОВАЯ СИСТЕМА НЕСОВЕРШЕННОЛЕТНИХ В НЕКОТОРЫХ СТРАНАХ
ЕВРОПЕЙСКОГО СОЮЗА**

Abstracts

In foreign jurisdictions, various models of responsibility for juvenile offenses are adopted. In many countries, like Poland, entirely separate regulations in this field are adopted (England and Wales, Austria, Belgium, Czech Republic, France, Spain, Ireland, Germany, Scotland, Switzerland, Sweden). In other countries like (Slovakia, Belarus, Estonia, Greece to 2003, the Netherlands, Lithuania, Russia, Slovenia, Ukraine), there are specific rules of responsibility of minors included in criminal codes and codes of criminal proceedings. Different solutions in this regard are partly due to the different traditions of legal systems, and partly due to various axiomatic justifications formulated in these matters. Review of legislation on minority in selected European countries: Poland, Slovakia and the Czech Republic shows that in terms of the approach to the problem of minority in all legal systems, specific interaction of children and young people who come into conflict with the criminal law are included, as well as those that show signs of corruption, making their proper personal and social development threatened. Adoption of selected concepts of minors legislation, however, does not mean more or less severe approach to the liability of minors. Both discussed issues the theoretical and practical ones, are the subject of the deliberations beneath, their structure includes:

- 1. Problems of minors in the European countries*
- 2. Minors in Polish criminal justice system*
- 3. Minors' responsibility in Slovakian criminal justice system*
- 4. Czech criminal justice system in relation to a minor*

Keywords: *Polish criminal law, Slovakian criminal law, Czech Republic criminal law, proceedings in juvenile cases, resocialization.*

Streszczenie

W obcych europejskich systemach prawnych przyjmowane są różne modele

Dr. S. Gwoździewicz

odpowiedzialności nieletnich za czyny zabronione. W wielu krajach, podobnie jak w Polsce, wprowadza się zupełnie odrębne regulacje w tym zakresie (Anglia i Walia, Austria, Belgia, Czechy, Francja, Hiszpania, Irlandia, Niemcy, Szkocja, Szwajcaria, Szwecja). W innych państwach np. (Słowacja, Białoruś, Estonia, Grecja do roku 2003, Holandia, Litwa, Rosja, Słowenia, Ukraina) szczególne zasady odpowiedzialności nieletnich zamieszczone są w kodeksach karnych i kodeksach postępowania karnego. Różne rozwiązania w tym względzie wynikają po części z odmiennych tradycji poszczególnych systemów prawnych, a po części z różnych uzasadnień aksjologicznych formułowanych w tych kwestiach. Przegląd przepisów prawnych dotyczących nieletnich wybranych państw europejskich Polski, Słowacji i Republiki Czeskiej pokazuje, że w zakresie podejścia do problematyki nieletnich we wszystkich systemach prawnych, obejmuje się określonym oddziaływaniem zarówno dzieci i młodzież, które wchodzi w konflikt z prawem jak i te, które wykazują przejawy demoralizacji, przez co ich prawidłowy rozwój osobisty i społeczny jest zagrożony. Przyjęcie wybranej koncepcji prawodawstwa nieletnich nie przekłada się jednak w prosty sposób na surowsze bądź łagodniejsze podejście do odpowiedzialności nieletnich. Podjęte zagadnienia teoretyczne jak i praktyczne będą przedmiotem poniższych rozważań, których struktura obejmuje poniższe zagadnienia:

1. *Problematykę nieletnich w państwach europejskich.*
2. *Nieletni w polskim systemie karnym*
3. *Odpowiedzialność nieletnich w słowackim systemie karnym*
4. *Czeski system karny wobec nieletniego*

Keywords: *polskie prawo karne, słowackie prawo karne, czeskie prawo karne, postępowanie w sprawach nieletnich, resocjalizacja*

Аннотация

В европейских зарубежных правовых системах, принятых в различных моделях ответственности несовершеннолетних за совершенные преступления. Во многих странах, как и в Польше, действуют совершенно отдельные правила в этой связи (Англия и Уэльс, Австрия, Бельгия, Чехия, Франция, Испания, Ирландия, Германия, Шотландия, Швейцария, Швеция). В других странах, например, Словакия, Беларусь, Эстония, Греция, Нидерланды, Литва, Россия, Словения, Украина до 2003 г., специальные правила ответственности несовершеннолетних приведены в уголовных кодексах и уголовно-процессуальных кодексов. Различные решения в этой связи частично зависимы от традиций в различных правовых системах и давно аксиологически сформулированы. Обзор законодательства о несовершеннолетних по отдельным европейским странам, например Польше, Словакии и Чехии, показывает, что с точки зрения подхода к проблемам несовершеннолетних во всех правовых системах, включает в себя специфическое взаимодействие детей и молодых людей, которые приходят в конфликт с законом, и теми, кто проявляет признаки деморализация. Поэтому их правильное личностное и социальное развитие находится под угрозой. Принятие в выбранное законодательство понятия несовершеннолетних, однако, не приводит к строгому или более мягкому подходу к отчетности о несо-

вершеннолетних. Взятые теоретические и практические соображения будут исследоваться по следующим темам:

1. Проблема несовершеннолетних в европейских странах;
2. Несовершеннолетние в польской пенитенциарной системе;
3. Ответственность несовершеннолетних в Словацкой уголовно-исполнительной системе;
4. Чешские несовершеннолетние в уголовно-исполнительной системе.

Ключевые слова: польское уголовное право, уголовное право словацкое, чешское разбирательство уголовного права по делам несовершеннолетних, реабилитация.

1. Problems of minors in the European countries. V. Konarka-Wrzosek signifies that several European countries have their separate regulations concerning minors who violate legal-penal norms and separate concerning other signs of minors' demoralization (there are so called double-track systems), whereas the other countries regulate the problems of minors who commit punishable offences or showing other symptoms of demoralization, in one common legal act (these are so called one-track systems). There is also signified that in some (few) legal systems the range of punishable offences is wider among minors than in case of adults, because it includes the behaviours irrelevant to young age, which for adults they do not constitute the prohibited offences and do not result in negative legal consequences. However, independently on the system of proceedings with minors, either the one-track, or the double-track system – there is one particular, quite homogenous system of approaching to these two minors' groups. Especially characteristic for this approach is the respect of minors upbringing and counteracting their further delinquent or other types of demoralization – taking into consideration, first of all, the minors interest and avoiding stigmatization of young persons, and also undertaking the activities towards their quickest and fullest reintegration with a normally functioning society [V. Konarska – Wrzosek, 2013, s. 86].

Already in almost all the countries there is the obligatory equal age of minority, which upper limit is the same and is 18 years old. In case of lower limit of the minor age there are no equal standards. The age of 10 years old, as the lower limit of responsibility of juveniles is predicted in legal regulations in England, Wales,

Cyprus, Switzerland and in some countries from beyond Europe – among others Australia. The lower limit of age is predicted in Ireland (7 years) and Scotland (8 years), a little bit higher in Turkey (11 years), and in Holland (12 years), whereas significantly higher in Austria, Bulgaria, Estonia, Spain, Lichtenstein, Germany, Russia, Romania, Slovenia, Italy, Belarus, Lithuania, Latvia, Malta, Ukraine and Hungary (14 years), while in the Czech Republic, Denmark, Finland, Sweden and Iceland (15 years) [Wymiar sprawiedliwości, 2006].

2. Minors in Polish criminal justice system. Polish legal act about minors cases proceedings, where the subject of regulation are both children and teenagers who commit punishable offences and manifest other symptoms of demoralization, is due to the worldwide current of minors proceedings, additionally, to a large extent, it is done in the consolidated way, though not entirely, because adjudicating the most severe means to send a minor to a young offenders' institution, is reserved exclusively for the offenders (at the age of 13-17 years) of punishable offences predicted in the legal act – crimes, taxation offences or several offences from the Penal Code (art.10) [Legal law about juvenile, 1982]. However, Polish legislator predicts the possibility of adjudicating the criminal penalties towards minors, but only towards those who are criminally demoralized (art.10§2p.c.) [Legal Law, 1997]. Polish system gives the opportunity of adjudicating (art.10§2 and §3p.c.) the penal responsibility in relation to a minor offender of a series punishable offence, who was 15 years old at the moment of that act, on the basis of regulations defined in the penal code, if the previous educational or

corrective means were not efficient.

Minority and non-age are linked with the child-teenage age, which characteristic feature is that the human being is immature, so differentiating the legal statuses dependently on the branch of law is not understandable. Rational and consequent influence on children and teenagers is impossible. Within the area of criminal law children and teenagers are treated as adults and responsible at the age of 17 (exceptionally at 15), and within the other areas of social life and law they are treated as immature, not having full rights and obliged to obey their parents, protectors, teachers and other subjects which can make decisions for them and intervene in their lives at least till the age of 18 years old. This inconsistency of statuses of seventeen years old persons is also defined in art.1§1u.p.n., which indicates the possibility of using the regulations of legal law within preventing and fighting with demoralization a year longer i.e. till the age of 18. Differentiating the upper limits of the age of minority depends if the basis of initiating the proceedings, according to l.j.p., is committing the punishable offence or demonstrating the symptoms of demoralization, is it conjugated with differentiated lower minority threshold of age, which requires 13 years old in case of initiating proceedings because of punishable offence, and in case of counteracting the demoralization the age is not defined, which means that it can refer to even small children [V. Konarska – Wrzosek, 2013, s. 87-88].

3. Minors' responsibility in Slovakian criminal justice system. Problems of minors committing the punishable offences or signaling the symptoms of demoralization, are regulated in Slovakian legislation in one legal act. Therefore, Slovakia implemented the other one-track system, different than in Poland or the Czech Republic.

Chapter four of Slovakian penal code refers to detailed resolutions of prosecuting the minors, part one regulates minors' responsibility (§22,§94,and §95 of Slovakian p.c.) [Zákon č. 300/2005] and specifies the age of minors' criminal responsibility. The lowest limit of juvenile age is 14 years old, and the upper one is 18. A

minor who is not 14 years old at the moment of committing the punishable offence is not liable to criminal responsibility. The legislator signified that a person, who is not 15 years old at the moment of committing sexual abusing offence, is not responsible for it. The lack of particular resolutions in chapter four means that, the rest of the penal code regulations are applied in relation to minors. A minor, younger than 15 years old at the moment of committing a punishable offence, who has not reached the enough level of intellectual and moral maturity to recognize illegality of his/her behaviour and to control his/her action is not criminally responsible for it. The offence, which features are indicated in this code, is not the delinquency, if its harmfulness is small and it is committed by a minor.

Slovakian legislator predicts different cases of abandonment of punishing (§97-98 p.c. of Slovakia). The predicted punishments are: compulsory work, financial penalty, forfeiture of property, prohibition of activities, expulsion (from a year till five years) and penalty of imprisonment, and the decision of protective or educating means. They are so called treatment means and protective reeducation means, e.g. resocialization institution, foster care, among others, if a minor who commits small offences shows symptoms of repentance and his/her personality indicates improvement of behaviour and potent further socialization and the correct process of self-education. The law court can also cancel the punishment against a minor committing small offences if it is recognized that the resocialization would be a more efficient means than the punishment towards a minor.

When we compare the Polish and Slovakian legislators, the law court works according to the main rule of the welfare of a minor and the will to his/her quick return to the expected, socially accepted norms and rules. This prerequisite determines the legislator to implement the regulation (§105Slovakian p.c.), if a person is 12 years old but not 13, and he/she committed the offence, which is punishable, according to the code, to lifelong imprisonment, the law court within the proceedings can adjudicate the protective educational means, on application of

public prosecutor. The law court can also decide in the same way, if it is needed to protect the education of a person younger than 14 years old.

The Slovakian legislator implemented the rules of imprisonment punishing (§117 Slovakian p.c.). In case of the imprisonment punishment for young offenders, the conditions of imprisonment predicted in the legal act should be diminished by half, and maximum limit of this imprisonment diminish does not have to be higher than seven years, and the minimum limit of imprisonment is two years. Additionally, the law court can adjudicate the punishment of absolute imprisonment for a minor, on condition that, taking into consideration the circumstances of the case, the young offender personality and the earlier punishments, did not bring the achievement of purposes, within the legal act. In case when a young offender committed particularly serious crime, and that had high importance for the society (the dishonorable way of committing the offence, or because of negative and irreparable results), the law court can sentence the minor to the imprisonment of 7 to 15 years [E. Burda, J. Čentěš, J. Kolesár, J. Záhora, 2011, p.1608]

4. Czech criminal justice system in relation to a minor. The Czech Republic, like Poland, in its legislature implemented a double-track system regarding the proceedings in relation to minors. *The legal act of 25th June 2003* about the responsibility for minors' illegal offences and about the jurisdiction in relation to minors and about the changes in several legal acts [Zákon o soudnictví ve věcech mládeže č. 218/2003 Sb.] , defines the prerequisites for minors' responsibility for illegal offences defined in penal code, means adjudicated for such illegal offences, proceedings and minors' jurisdiction.

The proceedings about the illegal offences committed by minors (children younger than 15 years old and minors at the age of 15-18) is carried out in such a way that the person who committed punishable offence, would stop committing these kinds of acts and could adapt to the society according to his/her abilities, intellectual development and that the person would be able to understand the damages caused

by his/her illegal acts. The proceedings has to be carry on in a way to achieve preventing and limiting commitment of illegal offences. The Czech Republic legislator defines the age of criminal responsibility and gives explanations of basic notions related to minors.

A child younger than 15 years old is a person who is not 15 at the moment of committing the punishable offence, however, an adolescent is somebody who is 15, but not 18, at the moment of committing the offence. According to the legal act mentioned above, the illegal deed is the offence, crime or the other punishable deed. Within the proceedings related to minors the legislator predicts: the educational means, preventing means, penal means, also the means applied to children – younger than fifteen years old. Juvenile court can apply the juvenile means, only in case if the other proper means of proceedings and preventing means, (particularly these improving the social relationships and leading to prevent the illegal offences) do not bring the realization of educational and improving purposes. Juvenile court within its proceedings takes into consideration the juvenile age, state of health, intelligent and psychical development so that a person's further development would not be threatened. The proceedings should be carried on in such the way to lead to prevent committing further illegal offences. The organs active in the juvenile proceedings are obliged to cooperate with proper organs of social-legal children prevention. During the proceedings carried on according to the regulations of the legal act mentioned above, the personal details and the privacy of a person should be protected, so that the juvenile would be prevented against harmful influences, respecting the rule of presumption of innocence.

If the legal act does not stated something else, the Penal Code is applied to adjudicate the offences committed by a minor. The legislator established the means applied towards minors: educational means, preventive means, penal means. If a minor committed the illegal offence because he/she does not know the legal regulations, because of the age, intellectual maturity, circumstances where he/she lived, the juvenile court can abandon of adjudicating the penal

means (on condition that there is a guarantee of juvenile behavior improvement and a person who gives such the guarantee has the real educational influence on the minor). The juvenile court can abandon of applying the penal means and can reprimand the minor or can transfer the proceedings to the statutory representative, the school, or school institution executing the preventing means (tutorial institutions) at the place of living. In such the case, the juvenile court consults with the school or tutorial institution.

The juvenile court can abandon of applying the penal means towards a minor only in case when the minor committed the offence being in the state resulting of psychical defect and the court would apply the preventing treatment, which would guarantee the minor's improvement better than applying the penal means [S.Ćmiel, 2011, p. 32].

Moreover, the juvenile court can conditionally abandon of applying the penal means, if it is considered necessary to follow the minor's behaviour for some time. In case of conditional abandon of applying the penal means the law court defines the probation period for one year. At the same time the court can apply the preventing or tutorial means leading to minor's correct life, it can also apply the duty to repair the damages or to give back the benefit gained by groundless enrichment. At particular circumstances, towards or an individual person or case, the juvenile court can give up the conditional abandon of applying the penal means because the reason to apply the penal means is terminated and it can appoint the supervision, if it was not decided so far, it can extraordinarily prolong the probation period, however not longer than

for one year, or it can apply the tutorial means did not applied so far and defined in §15 to §20 [Zákon o soudnictví ve věcech mládeže č. 218/2003 Sb.]

Conclusions. The criminal responsibility of minors in Poland is established at the age of 17 years old, although the Convention about the children's rights predicts the "child" status for a person who is not 18 years old, and the international organizations recommendations tend to establish the criminal responsibility from the age of 18 (e.g. XIX Congress AIDP in September 2004). Almost in all the countries where the unlimited criminal responsibility starts at the age of 18, the proceedings towards the juveniles under this age is the particular criminal proceedings, but in Poland a minor under 17 years old (apart from the exceptions 15 years old – art.10§2 p.c.) is the subject of tutorial proceedings.

The juvenile proceedings system in Poland, the Czech Republic, or Slovakia requires not only proper penal means, but mainly properly functioning juvenile resocialization system tending to achieve the stable changes in negative attitudes and behaviors facing the globalization and new threats. The juveniles should have shown the behaviours good for them and convincing them that with some effort it is possible to achieve some purposes and intentions.

We should remember that the negative attitude of minors towards the reality and the compulsory norms in each society often results in the minor opinion about impossible satisfactory life, self-realization at normal accepted rules at each element of our contemporary life.

Bibliography:

1. E. Burda, J. Čentěš, J. Kolesár, J. Záhora a kol. (2011) *Trestný zákon : osobitná část* . Komentár II. diel. I. vydanie, C. H. Beck. Praha. - (Komentované zákony).
2. S. Ćmiel, Cyberbullying Legislation in Poland and Selected EU Countries [in] *Procedia - Social and Behavioral Sciences* 2013, Volume 109, 8 January 2014. <http://dx.doi.org/10.1016/j.sbspro.2013.12.416> (odsłona w dniu 30.06.2015 r).
3. V. Konarska – Wrzosek (2013), *Postępowanie nieletnich w Polsce – ocena obowiązujących rozwiązań materalnoprawnych i kierunki ewentualnych zmian*; [in] *Probacja*. Quarterly no. I/2013, Publishing House Ministry of Justice. Warsaw.
4. *Ustawa o postępowaniu w sprawach nieletnich z dnia 26 października 1982* (Dz. U. z 2010 r., Nr 33, poz. 178).

**The Jacob of Paradyż University of Applied Sciences in Gorzów
Wielkopolski (Gorzów Wielkopolski, Poland)**

5. Ustawa z dnia 06 czerwca 1997 r. Kodeks karny (Dz. U. z 2012 r. poz. 611).
6. Wymiar sprawiedliwości wobec nieletnich w wybranych krajach (2006), Instytut Wymiaru Sprawiedliwości, Warszawa.
7. Zákon č.300/2005 Z.z. Trestný zákon - v znení neskorších prepisov.
8. Zákon o soudnictví ve věcech mládeže č. 218/2003 Sb.