

Anna Dziergawka<sup>1</sup>

## The juvenile criminal responsibility

### Abstract

*The purpose of the study is to assess the current legal status and the provisions of the Act of July 7, 2022 on the juvenile criminal responsibility. The author discusses the evolution of the juvenile responsibility starting from the Criminal Code of 1932. The study concerns the juvenile criminal responsibility in terms of their age, subject scope, punishment and procedure. In addition, the article addresses the issue of juvenile responsibility under the Act on the Support and Social Rehabilitation of Juveniles of 9 June 2022, and indicates the need to adapt this Act to the changes to the Criminal Code.*

### Key words

*Juvenile, the juvenile criminal responsibility, offense, punishment, normative changes.*

### 1. Introduction

As an introduction, it is necessary to define the term "juvenile", which was included in the Act on the Support and Social Rehabilitation of Juveniles of June 9, 2022<sup>2</sup> and has a pejorative connotation. The content of art. 1 paragraph 2 point 1 in connection with art. 1 paragraph 1 Act on the Support and Social Rehabilitation of Juveniles shows that there is no uniform definition of juveniles. The concept of a juvenile covers three groups of people, and these groups are not separable and often overlap. They can be persons from the age of 10

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<sup>1</sup> Dr Anna Dziergawka, Supreme Court judge, Warsaw, Poland, lecturer at the National School of Judiciary and Public Prosecution, ORCID: 0000-0002-5084-088X.

<sup>2</sup> Act of 9 June 2022 on the Support and Social Rehabilitation of Juveniles, (Journal of Laws 2022, item 1700).

to the age of majority in cases of demoralization and aged 13 to 17 in cases of criminal acts. A juvenile is also a person to whom an educational measure, a therapeutic measure or a corrective measure is applied, as a rule, not longer than until the age of 21.

It should be emphasized that the status of a juvenile acquired in connection with the commission of a criminal act before the age of 17 is remains in force, regardless of the time when the act was revealed<sup>3</sup>. Only the jurisdiction of the family court may be changed to the criminal court, which, however, will be able to adjudicate only educational, therapeutic or corrective measures currently provided for in the Act on Supporting and Social Rehabilitation of Juveniles in all cases of criminal acts committed as a juvenile.

Another issue is the definition of a child. In Polish criminal proceedings, as well as in the Criminal Code, there is no legal definition of the term "child" or "minor". Therefore, the definition contained in the Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989<sup>4</sup>, is of great importance. It clarifies that a child is any human being under the age of 18, unless under the law applicable to the child, they comes of age earlier. Also the content of Art. 10 § 1 of the Civil Code<sup>5</sup> indicates that an adult is a person who has reached the age of eighteen. At the same time, Art. 10 § 2 of the Civil Code specifies that when entering into marriage, a minor reaches the age of majority and does not lose it in the event of annulment of the marriage. Additionally, Art. 10 § 1 of the Family and Guardianship Code<sup>6</sup> states that a person who has not turned eighteen may not enter into marriage. However, for important reasons, the guardianship court may allow a woman who has reached the age of sixteen to marry, and the circumstances indicate that the marriage will be in accordance with the good of the family.

Due to the content of Art. 10 § 2 of the Civil Code, in Art. 1 paragraph 1 point 1 Act on the Support and Social Rehabilitation of Juveniles, the definition of the upper age limit for juvenils was changed by adopting the formula: "and they are not of age of consent" instead of:

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<sup>3</sup> Judgment of the Supreme Court of 1 June 2006, V KK 158/06, Lex No 146284.

<sup>4</sup> Convention on the Rights of the Child adopted by the United Nations General Assembly of November 20, 1989, Journal of Laws of 1991, No 120, item 526.

<sup>5</sup> The Civil Code Act of 23 April 1964 (consolidated text: Journal of Laws 2022, item 1360).

<sup>6</sup> The Family and Guardianship Code Act of 25 February 1964 (consolidated text: Journal of Laws 2020, item 1359).

"who have not turned 18". The purpose of the change in question is to exclude from the proceedings for demoralization those people who have age of consent in the light of the law, which applies to women who got married after the age of 16 and before the age of 18. At the same time, in Art. 1 paragraph 1 point 1 of the Act on the Support and Social Rehabilitation of Juveniles, as a new solution, a minimum age limit of 10 years was introduced<sup>7</sup>. Therefore, it is a statutory condition for conducting proceedings in cases of demoralization in relation to minors. In the previous legal status, the lower age limit was not set, which meant that proceedings for demoralization could be initiated against the youngest children.

Initially, the responsibility of juvenile was fully regulated in the Criminal Code of 1932<sup>8</sup> and in the Criminal Code of 1969<sup>9</sup>. The emergence of juvenile law as a separate branch of Polish law can be associated with the enactment of the Act of 26 October 1982 on juvenile proceedings<sup>10</sup>, which entered into force on 13 May 1983. Up to that point, proceedings against juvenile offenders had been an integral part of criminal law and procedure. The possibility of educational and corrective intervention against a juvenile was limited to his commission of a prohibited act<sup>11</sup>.

In the current legal status, both juveniles committing criminal acts and juveniles showing other signs of demoralization are treated in a uniform manner on the basis of the same legal act. The above did not change after the entry into force on 1 September 2022 the Act on Supporting and Social Rehabilitation of Juveniles of 9 June 2022. However, the Act in question extended the catalog of punishable acts to include all crimes or fiscal crimes and all offenses or fiscal offenses (Article 1(2)(2)(b) of Act on the Support and Social Rehabilitation of Juveniles). Therefore, it can be concluded that the Polish system of

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<sup>7</sup> See J. Lorencka-Mierzwińska, Odpowiedzialność karna nieletnich w świetle ustawy o wspieraniu i resocjalizacji nieletnich, Komentarz praktyczny, LEX/el 2022, point 2.

<sup>8</sup> The Criminal Code Regulation of the President of the Republic of Poland of 11 July 1932 (Journal of Laws 1932, No 60, item 571).

<sup>9</sup> The Criminal Code Act of 19 April 1969 (consolidated text: Journal of Laws 1969, No 13, item 94).

<sup>10</sup> Journal of Laws 1982, No 35, item 228.

<sup>11</sup> T. Kaczmarek, Psychologiczne i ustawowe kryteria odróżniania nieletnich od dorosłych w polskim prawie karnym, NP 1990, No. 1–3, p. 16; M. Maćczyńska, Nowelizacja ustawy o postępowaniu w sprawach nieletnich – zagadnienia wybrane, Palestra 2016, No. 5, p. 31.

dealing with juveniles is one-track systems and has an educational, not penal character<sup>12</sup>.

On the other hand, the responsibility of juveniles for committing a prohibited act in Polish law is regulated in two ways. It is included both in the Act on Supporting and Social Rehabilitation of Juveniles, where a crime is treated as demoralization, and in the Penal Code. It is the juvenile criminal responsibility that is the subject of the author's further considerations.

The purpose of the article is to assess the current legal status and the provisions of the Act of July 7, 2022 on the juvenile criminal responsibility. The author discusses the evolution of juvenile responsibility, starting from the Criminal Code of 1932. The study concerns juvenile criminal liability in terms of their age, subject matter, punishment and procedure. The subject of the analysis will also be the *de lege ferenda* postulate related to the need to adapt the Act on the Support and Social Rehabilitation of Juveniles to the proposed changes in the Criminal Code.

## **2. The evolution of juvenile criminal responsibility**

According to the Criminal Code of 1932, the principle of criminal responsibility after the perpetrator turned 17 had no exceptions. According to Art. 69 of the Criminal Code of 1932, the following juveniles were not punishable:

- a juvenile who, before the age of 13, committed a prohibited act under the threat of punishment,
- a juvenile who, after the age of 13 and before the age of 17, committed such an act without discernment, i.e. has not reached such mental and moral development that he could recognize the meaning of the act and control his conduct. To these juveniles the court applied only educational measures namely: a warning, placing them under the supervision of their parents, current guardians or a special probation officer, or placing them in an educational institution. In the case of a juvenile who, after turning 13 and before turning 17, knowingly committed an act prohibited under penalty, the court could impose placement in a correctional facility (Article 70 of the Criminal Code of 1932). The juvenile remained in a correctional facility until the age of 21 (Article

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<sup>12</sup> A. Walczak-Żochowska, *Systemy postępowania z nieletnimi w państwach europejskich. Studium prawno-porównawcze*, Warszawa 1988, pp. 41–48.

72 of the Criminal Code of 1932). The institution of a correctional facility was not regarded as a punishment under the Criminal Code of 1932, but it was considered as a mean of social re-education, giving the possibility of rational upbringing of morally neglected individuals, in order to improve them and prepare them for an honest life<sup>13</sup>.

The Criminal Code of 1932 provided the possibility of adjudicating a juvenile who is over 13 years old but not yet 17 years old, subject to the penalty provided in the Act, with its extraordinary mitigation and without adjudicating additional penalties, if he has knowingly committed a prohibited act under the threat of punishment, and criminal proceedings were instituted after he turned 17, and placement in a correctional facility was no longer advisable (Article 76 of the Criminal Code of 1932). In accordance with the content of article 77 of the Criminal Code of 1932, if the person sentenced to be placed in a correctional facility turned 20 years old before the commencement of execution of the sentence, he was not placed in a correctional facility, but a penalty was imposed according to article 76 of the Criminal Code of 1932.

On 1 January 1970, the Criminal Code of 1969 entered into force. The Code adopted the rule that only people who committed a prohibited act after the age of 17 were liable under the rules set out in this act (Article 9 § 1 of the Criminal Code from 1969). However, an exception to this rule has been introduced, consisting in the possibility of applying criminal liability in certain cases in relation to juveniles who have reached the age of 16 at the time of committing the act (Article 9 § 2 of the Criminal Code of 1969). As Z. Sienkiewicz points out, in the opinion of project promoters, educational or corrective measures often turned out to be inadequate for juveniles who committed the most serious crimes and at the same time showed a serious degree of demoralization<sup>14</sup>.

According to Art. 9 § 2 of the Criminal Code of 1969, a juvenile could be prosecuted if, after reaching the age of 16, he committed the following acts:

- crime against life,
- the crime of rape,
- crime of robbery,

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<sup>13</sup> Por. E. Jurgielewicz-Delegacz, *Ewolucja odpowiedzialności nieletnich na przestrzeni lat*, *Studia Prawnoustrojowe UWM* 2019, No. 44, p. 174.

<sup>14</sup> Z. Sienkiewicz, (in:) *Nauka o karze. Sądowy wymiar kar. System Prawa Karnego*, tom 5, ed. T. Kaczmarek, Warszawa 2015, p. 372, cited after E. Jurgielewicz-Delegacz, *Ewolucja odpowiedzialności nieletnich na przestrzeni lat...*, *op. cit.*, p. 177.

- crime against public safety,
- deliberately causing grievous bodily injury or serious health disorder.

The legislator did not precisely specify each prohibited act, which could give rise to many difficulties in interpretation.

An additional condition for responsibility under the rules set out in the Criminal Code of 1969 were the circumstances of the case as well as the characteristics and personal conditions of the perpetrator, which justify this, especially when the previously applied educational or corrective measures turned out to be ineffective.

It is worth pointing out that pursuant to Art. 57 § 1 of the Criminal Code of 1969, the court could apply extraordinary mitigation of punishment in relation to a juvenile responsible under Art. 9 § 2 of the Criminal Code of 1969, and in particularly justified cases also in relation to a juvenile delinquent. Pursuant to Art. 51 of the Criminal Code of 1969, when imposing a penalty on a juvenile delinquent, the court was primarily guided by the need to educate the convict, teach him a profession and introduce him to the observance of the legal order. Whereas, according to the content of Art. 120 § 4 of the Criminal Code of 1969, a juvenile delinquent was a offender who was under 21 at the time of sentencing.

In art. 9 § 3 of the Criminal Code of 1969 stipulated that in relation to a perpetrator who committed a crime after turning 17 and before turning 18, the court, instead of punishment, applied educational or corrective measures provided for juveniles, if justified by the circumstances of the case and the characteristics and perpetrator's personal conditions.

In the Criminal Code of 1997<sup>15</sup>, which entered into force on 1 September 1998, the legislator regulating the issue of criminal responsibility, maintained the upper age limit of 17 years for juveniles. At the same time, pursuant to art. 10 § 2 of the Criminal Code, the exception was extended both in terms of age, which was set at 15, and in terms of the category of acts committed by juveniles. In turn, the Act of 7 July 2022<sup>16</sup> provides for an additional lowering of the age of a juvenile to 14, subject to the fulfillment of specific conditions, which will be addressed later in the discussion.

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<sup>15</sup> The Criminal Code Act of 6 June 1997 (Journal of Laws 2020, item 1138).

<sup>16</sup> Journal of Law 2022, item 2600, which is expected to enter into force on 1 October 2023.

### 3. The age of criminal responsibility

According to Art. 10 § 1 of the Criminal Code, the principle of incurring criminal responsibility is the commission of a prohibited act by a person who has reached the age of 17. Being a juvenile is a circumstance excluding guilt. The age of the offender is determined using Art. 112 of the Civil Code<sup>17</sup>, which states that a natural person ends a certain age at the beginning of the last day. In the case of committing part of the prohibited act after reaching the age of 17, the perpetrator may be criminally responsible only for those behaviors that he committed after reaching this age, which also applies to a continuous act<sup>18</sup>, unless these are acts specified in Art. 10 § 2 of the Criminal Code<sup>19</sup>. Similarly, one prohibited act composed of several behaviors should be assessed, which may apply to burglary, where the perpetrator may only be responsible for ordinary theft, if the act of overcoming the obstacle took place before the age of 17<sup>20</sup>. The behavior of the offender that took place before the age of 17 may not affect his responsibility for the crime committed after the age of 17.

From criminal responsibility at the age of 17, the legislator introduced two derogations. The first concerns the possibility of bringing to criminal responsibility a perpetrator who, after reaching the age of 15, commits a prohibited act specified in Art. 134, art. 148 § 1, 2 or 3, art. 156 § 1 or 3, art. 163 § 1 or 3, art. 166, art. 173 § 1 or 3, art. 197 § 3 or 4, art. 223 § 2, art. 252 § 1 or 2 and in art. 280 of the Criminal Code. Such person may be responsible under the rules set out in the Criminal Code, if the circumstances of the case and the degree of development of the offender, his characteristics and personal conditions justify it, and in particular if the previously applied educational or corrective measures turned out to be ineffective (Article 10 § 2 of the Criminal Code).

The second derogation from this principle consists in the possibility for the court to apply to the offender who has reached the age of 17, but before the age of 18, instead of punishment – educational, therapeutic or corrective measures provided for juveniles, if the circumstances of the case and the degree of personal development of the

<sup>17</sup> The Civil Code Act of 23 April 1964. (Journal of Laws 2022, item 1360).

<sup>18</sup> Judgment of the Supreme Court of 17 June 2014, II KK 24/14, LEX No. 1483950.

<sup>19</sup> T. Bojarski, (in:) E. Kruk, E. Skrętowicz, *Postępowanie w sprawach nieletnich. Komentarz*, Warszawa 2016, p. 52.

<sup>20</sup> J. Lachowski, (in:) *Kodeks karny. Komentarz*, wyd. III, WKP 2020, komentarz do art. 10 teza 5, LEX.

perpetrator, his characteristics and personal conditions justify it (Article 10 § 4 of the Criminal Code).

The Act of 7 July 2022 provides for an additional reduction in the age of the juvenile. It adds Art. 10 § 2a of the Criminal Code, which states that a juvenile may be criminally responsible after reaching the age of 14. Such responsibility will be possible if the following conditions are met jointly:

- 1) a juvenile after turning 14 and before turning 15 has committed a prohibited act specified in Art. 148 § 2 or 3 of the Criminal Code;
- 2) the circumstances of the case and the degree of development of the perpetrator, his characteristics and personal conditions support it;
- 3) there is a reasonable assumption that the use of educational or corrective measures is not able to ensure social rehabilitation of the juvenile.

In addition, the aforementioned act extends the possibility of punishing juvenile offenders who have reached the age of 15, pursuant to Art. 10 § 2 of the Criminal Code, for basic rape and rape qualified by the consequence in the form of the victim's death (Article 197 § 1 and 5 of the Criminal Code). A crime qualified under Art. 197 § 5 of the Criminal Code will be introduced for the first time by the Act of 7 July 2022.

#### **4. The range of juvenile criminal responsibility**

According to Art. 10 § 2 of the Criminal Code, prohibited acts for which a juvenile after the age of 15 may be held criminally responsible are:

- attempt on the life of the President of the Republic of Poland (Article 134 of the Criminal Code),
- homicide in the basic type and qualified varieties (Article 148 § 1, 2 or 3 of the Criminal Code),
- deliberately causing grievous bodily harm (Article 156 § 1 or 3 of the Criminal Code),
- deliberately causing generally dangerous events (Article 163 § 1 or 3 of the Criminal Code),
- water or air piracy (Article 166 of the Criminal Code),
- deliberately causing a traffic disaster (Article 173 § 1 or 3 of the Criminal Code),
- gang rape of a minor under the age of 15, incest or with particular cruelty (Article 197 § 3 or 4 of the Criminal Code),

- active assault on a public official or a person assisting him with the effect of serious damage to health (Article 223 § 2 of the Criminal Code),
- taking or holding a hostage or making preparations for this act (Article 252 § 1 or 2 of the Criminal Code),
- robbery (Article 280 of the Criminal Code).

Enumeration from Art. 10 § 2 of the Criminal Code is exhaustive and cannot be interpreted extensively. The above-mentioned acts can also be committed in stages in the form of an attempt or performance, as well as in any form of criminal cooperation, such as: complicity, managerial perpetration, recommending perpetration, instigation or aiding<sup>21</sup>. In a situation where the perpetrator after turning 15 years of age committed one of the acts described in Art. 10 § 2 of the Criminal Code and, additionally, this act exhausted the characteristics of another act which was not indicated in Art. 10 § 2 of the Criminal Code is responsible only for the act listed in art. 10 § 2 of the Criminal Code. The provision remaining in the cumulative legal classification of the act should be omitted, otherwise the exception described in the commented provision would be extended inadmissibly. This provision is optional, and therefore the fulfillment of the conditions set out there does not mean that a juvenile who has turned 15 at the time of the act will be criminally responsible.

Another premise for the juvenile's responsibility under the rules set out in the Criminal Code is the fact that the circumstances of the case and the degree of development of the offender, his personal characteristics and conditions are to justify this, in particular if the previously applied educational or corrective measures turned out to be ineffective.

The concept of the circumstances of the case has a broader scope than the circumstances of the act. These are circumstances indicating, among others, the degree of demoralization of the perpetrator, the motives for committing the act, the manner of its commission, activity and role in the criminal group<sup>22</sup>. Since the criminal liability of a juvenile

<sup>21</sup> See i.a.: P. Górecki, V. Konarska-Wrzosek, (in:) P. Górecki, V. Konarska-Wrzosek, komentarz do niektórych przepisów Kodeksu karnego, (in:) Ustawa o postępowaniu w sprawach nieletnich. Komentarz, wyd. II, WKP 2019, komentarz do art. 10, teza 5, LEX; J. Lachowski, (in:) Kodeks karny. Komentarz, wyd. III, WKP 2020, komentarz do art. 10 teza 8, LEX; differently A. ZoII, (in:) Kodeks karny. Część ogólna, t. 1, Komentarz do art. 1–52, ed. W. Wróbel, A. ZoII, Warszawa 2016, p. 181.

<sup>22</sup> Judgment of the Supreme Court of 21 December 1981, I KR 287/81, OSNPG 1982, No. 2, item 90.

is exceptional, only the accumulation of circumstances aggravating the minor may justify the application of the provision of Art. 10 § 2 of the Criminal Code<sup>23</sup>.

The degree of development of the perpetrator concerns both his physical and mental development and their mutual relations<sup>24</sup>. The more mature the perpetrator is, the more can be expected from him, also in terms of the possibility of prosecuting him. It is primarily about reaching such a degree of maturity by the perpetrator that he is able to recognize the social significance of the act he commits<sup>25</sup>.

The perpetrator's characteristics concern his age, level of mental and physical development, health, character traits, attitude to important social values, interests, degree of demoralization. By personal conditions should be understood the environment in which the juvenile resides. These conditions concern the demoralizing influence of the family, living conditions in the family, housing and material situation, the degree of meeting the needs of the juvenile, the environment of co-workers<sup>26</sup>. The jurisprudence has rightly indicated that determining the properties and personal conditions is one of the basic duties of the authority conducting the proceedings<sup>27</sup>. At the same time, these circumstances concern the possibility of imposing a penalty pursuant to Art. 10 § 2 of the Criminal Code, and not only its dimension.

Another condition is the ineffectiveness of the applied educational and corrective measures. The use of educational and corrective measures is not a necessary condition for bringing a juvenile to criminal responsibility under the provision of Art. 10 § 2 of the Criminal Code<sup>28</sup>. On the other hand, even if the applied measures proved ineffective, this is not a sufficient reason to hold the juvenile criminally responsible. The reasons for

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<sup>23</sup> V. Konarska-Wrzosek, *Prawny system postępowania z nieletnimi w Polsce*, Warszawa 2013, p. 122–123.

<sup>24</sup> *Ibid.*

<sup>25</sup> A. Dziergawka, *Komentarz do art. 25, (in:) Ustawa o wspieraniu i resocjalizacji nieletnich. Komentarz...*, *op. cit.*, p. 173, No 7.

<sup>26</sup> A. Dziergawka, *Komentarz do art. 25, (in:) Ustawa o wspieraniu i resocjalizacji nieletnich. Komentarz...*, *op. cit.*, p. 173, No 8.

<sup>27</sup> Decision of the Supreme Court of 24 June 1983, III KZ 87/83, OSNKW 1983, No. 12, item 97; judgment of SA in Wrocław of 6 November 2012, II AKa 311/12, LEX No. 1238670.

<sup>28</sup> V. Konarska-Wrzosek, *Prawny system postępowania z nieletnimi w Polsce...*, *op. cit.*, p. 125; judgment of SA in Gdańsk of 15 June 2000, II AKa 149/00, LEX No. 1680963.

ineffectiveness may be different, not always dependent on the perpetrator, and these reasons should be investigated and assessed.

According to the content of Art. 10 § 2a of the Criminal Code, the basic condition for the possibility of accepting criminal responsibility of a juvenile after the age of 14, and before the age of 15, is that he has committed a serious homicide, as defined in Art. 148 § 2 or 3 of the Criminal Code. This murder concerns the killing of a person (§ 2):

- with particular cruelty,
- in connection with hostage-taking, rape or robbery,
- as a result of a motivation deserving particular condemnation,
- with the use of explosives,

and also (§ 3):

- to kill more than one person with one act,
- a previous final conviction for homicide,
- the perpetrator of the murder of a public official committed during or in connection with the performance of his official duties related to the protection of people's safety or the protection of public safety or order.

Moreover, Art. 10 § 2a of the Criminal Code provides for an additional condition in the form of a justified assumption that the use of educational or correctional measures is not able to ensure social rehabilitation of the juvenile. This is a clear reference to the content of Art. 6 of the Act on the Support and Social Rehabilitation of Juveniles, which states that "a juvenile may be punished only in the cases specified in the Act, if other measures are not able to ensure the juvenile's social rehabilitation". This condition therefore applies to all imposed penalties. However, contrary to the content of Art. 10 § 2 of the Criminal Code, Art. 10 § 2a of the Criminal Code does not require the use of educational and correctional measures to be ineffective.

In the justification for the bill, the legislator indicates that in the population of people who have turned 14 but have not turned 15, there may be people who have reached such a level of psycho-social development that they are aware of the committed act of homicide, and therefore can be prosecuted for it to criminal responsibility<sup>29</sup>.

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<sup>29</sup> J. Poboča, Psychiatryczne i medyczne uwarunkowania ustalenia minimalnego wieku odpowiedzialności karnej, opinion of 17. November 2021, ordered by the Ministry of Justice, explanations to the draft law, p. 7.

## 5. Penalty

The legislator modifies the range of the juvenile's responsibility, limiting both the types of punishment that can be imposed and its amount. According to Art. 10 § 3 of the Criminal Code, the imposed penalty may not exceed two-thirds of the upper limit of the statutory penalty provided for the crime attributed to the perpetrator. The court may also apply extraordinary leniency. From the content of art. 54 § 2 of the Criminal Code additionally states that a person who has not reached the age of 18 may not be sentenced to life imprisonment.

There are doubts about the possibility of imposing a penalty of 25 years imprisonment, which, according to Art. 38 § 3 of the Criminal Code may not exceed 20 years. However, if the provision of Art. 10 § 2 of the Criminal Code prohibits the imposition of a penalty above 2/3 of the upper limit of the statutory threat, it is necessary to reduce the penalty of 25 years of imprisonment to the maximum penalty of 16 years and 8 months of imprisonment. However, if a sentence of 25 years' imprisonment appears as an alternative to life imprisonment, it may be imposed<sup>30</sup>.

As indicated by the Art. 54 § 1 of the Criminal Code, when imposing a penalty on a or a juvenile delinquent, juvenile, the court is primarily guided by the need to educate the perpetrator. According to Art. 115 § 10 of the Criminal Code, a juvenile delinquent is a offender who at the time of committing the prohibited act was under 21 years old and at the time of adjudication in the first instance was 24 years old. Correct interpretation of Art. 54 § 1 of the Criminal Code does not justify the resignation from the statutory directives on the imposition of penalties indicated in Art. 53 of the Criminal Code, and only puts educational considerations in the first place. Therefore, age and educational considerations do not constitute a separate, independent premise for the imposition of a penalty, but only a reference point for further assessment. At the same time, they must be juxtaposed with other subjective and objective circumstances relevant to the sentencing. At the same time, significant premises in determining the penalty should be the degree of demoralization, lifestyle conducted before committing the crime, behavior after committing it, motives and manner of acting. These factors may prevail to such an extent that it will be justified to

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<sup>30</sup> Judgment of the Supreme Court of 22 September 1999, III KKN 195/99, OSNKW 1999/11–12, item 73; decision of the Supreme Court of 4 May 2005, II KK 454/04, LEX No. 149647; J. Lachowski, (in:) V. Konarska-Wrzošek (red.), *Kodeks karny. Komentarz*, Warszawa 2018, p. 91.

impose a penalty on a juvenile within the upper limits of the statutory threat. Article content 54 § 1 of the Criminal Code does not constitute an order to treat the perpetrator more leniently due to his age<sup>31</sup>.

According to Art. 10 § 3 of the Criminal Code, after the amendment provided for by the Act from 7 July 2022, in the cases specified in Art. 10 § 2 and 2a of the Criminal Code, the court may apply extraordinary leniency. On the other hand, in the case specified in Art. 10 § 2 of the Criminal Code, the imposed penalty may not exceed two-thirds of the upper limit of the statutory threat provided for the crime attributed to the perpetrator, if it is not punishable by life imprisonment. If the law provides lowering the upper limit of the statutory threat, the penalty imposed for an offense punishable by life imprisonment may not exceed 30 years of imprisonment (Article 38 § 3 of the Criminal Code). Therefore, a juvenile who commits an act under Art. 148 § 2 or 3 of the Criminal Code, after reaching the age of 14 may be punished a maximum penalty of 30 years of imprisonment.

## 6. The juvenile criminal responsibility procedure

As a general rule, juvenile proceedings are heard in the Family Divisions of the District Courts (referred to as “Family Courts”) (Section 23 of the Act on the Support and Social Rehabilitation of Juveniles). According to Art. 25 of the Act on the Support and Social Rehabilitation of Juveniles, if there are grounds for holding a minor accountable on the terms set out in Art. 10 § 2 of the Criminal Code, the case is heard by the competent court according to the provisions of the Code of Criminal Procedure.

The jurisdiction of the district court in the first instance is defined in Art. 24 § 1 of the Code of Criminal Procedure<sup>32</sup>, and of the circuit court in Art. 25 § 1 of the Code of Criminal Procedure. Most of the cases indicated in Art. 10 § 2 of the Criminal Code is subject to the jurisdiction of the regional court, with the exception of acts described in Art. 223 § 2 and Art. 280 § 1 of the Criminal Code.

As indicated by the Art. 67 paragraph 1 of the Act on Supporting and Social Rehabilitation of Juvenils, if in the course of the proceedings there are circumstances that may justify holding the juvenile accountable on the terms set out in Art. 10 § 2 of the Criminal Code, the family court decides to transfer the case to the prosecutor. From the

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<sup>31</sup> Decision of the Supreme Court of 26 February 2020, V KK 382/19, Legalis.

<sup>32</sup> The Code of Criminal Procedure Act of 6 June 1997 (consolidated text: Journal of Laws 2022, item 1375, as amended).

moment the case is transferred to the prosecutor, the proceedings are conducted in accordance with the provisions of the Code of Criminal Procedure. In the event of disclosure of new circumstances indicating that there are no grounds for holding a minor accountable on the terms set out in Art. 10 § 2 of the Criminal Code, the prosecutor transfers the case to the family court (Article 67(3) of the Act on the Support and Social Rehabilitation of Juveniles). If the punishable act committed by a minor is related to the act of an adult, the prosecutor excludes the juvenile's case and transfers it to the Family Court (Section 26(1) of the Act on the Support and Social Rehabilitation of Juveniles). If a joint examination of the case is necessary, the prosecutor transfers the case with the indictment to the court having jurisdiction under the provisions of the Code of Criminal Procedure, which adjudicates on the juvenile in compliance with the provisions of the Act on the Support and Social Rehabilitation of Juveniles (Article 26(4) of the Act on the Support and Social Rehabilitation of Juveniles).

In connection with the content of the Act of 7 July 2022, according to which from 1 October 2023, Art. 10 § 2a of the Criminal Code, it is necessary to supplement the content of Art. 25 and Art. 67 paragraph 1 and 3 of the Act on Supporting and Social Rehabilitation of Juvenils by the provision of Art. 10 § 2a of the Criminal Code<sup>33</sup>. In the Act of July 7, 2022, the legislator omitted the need to adapt the Act on the support and social rehabilitation of juvenils to the proposed amendments to the Criminal Code. According to Art. 25 of the Act on the Support and Social Rehabilitation of Juveniles, if there are grounds for holding a juvenile accountable on the terms set out in Art. 10 § 2 of the Criminal Code, the case is heard by the competent court according to the provisions of the Code of Criminal Procedure. Therefore, this provision does not apply to the acts specified in Art. 10 § 2a of the Criminal Code. Under the amended legal status, it is not possible for the prosecutor's office to conduct criminal proceedings against a juvenile who has reached the age of 14 in the scope of an act penalized in Art. 10 § 2a of the Criminal Code, the Family Court has no grounds to transfer pursuant to Art. 67 paragraph 1 Act on the Support and Social Rehabilitation of Juveniles, the case of such a juvenile to the prosecutor's office, which may result in a criminal indictment against the juvenile. Also, the prosecutor's office is not able to transfer the case to the

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<sup>33</sup> A. Dziergawka, Komentarz do art. 25, (in:) Ustawa o wspieraniu i resocjalizacji nieletnich. Komentarz..., *op. cit.*, p. 175, No 17.

family court, according to Art. 67 paragraph 1 Act on the Support and Social Rehabilitation of Juveniles. As a result, without the postulated normative change, the provision of art. 10 § 2a of the Criminal Code will not have any practical application due to the existing legal loophole.

## 7. Conclusions

Concluding the considerations, it is worth noting that in the legal status introduced by the legislator under the Act of 7 July 2022, there is a situation of extreme discrepancies.

On the one hand, the act on the support and social rehabilitation of juveniles increases the age of children who can be subjected to any educational and corrective measures to 10 years. According to this act, it becomes pointless to conduct proceedings for demoralization in relation to an individual who is not yet able to fully understand the meaning of moral norms and the reprehensibility of the actions taken. Upbringing should be done using other methods. Therefore, the enactment of the lower limit of juveniles is intended to protect children up to 10 years of age against stigmatization, which is associated with the initiation of proceedings against a juvenile. At this point, the psychosocial development and level of maturity of the juvenile should be considered, as well as the possibility of recognizing the meaning of the act and distinguishing between good and wrong. The Act also does not provide for any criminal reaction against juveniles who have committed a criminal act under the age of 17.

On the other hand, the legislator, under the Act of 7 July 2022, introduced Art. 10 § 2a of the Criminal Code, which lowers the age limit of a juvenile to 14, when he may be held criminally responsible for up to 30 years in prison.

Judging juvenile offenders of the most serious crimes, one cannot omit the still valid words of Halina Spionek that "difficult once and criminal children did not become so because they were endowed with hereditary bad instincts or were born abnormal, but because they were improperly brought up"<sup>34</sup>. Similarly, Janusz Korczak stated that "man is not born a criminal or an angel. Upbringing makes him a dirty or radiant being"<sup>35</sup>.

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<sup>34</sup> H. Spionek, *Trudności wychowawcze a przestępczość nieletnich*, Wrocław 1956, p. 146, own translation.

<sup>35</sup> J. Korczak, *Pisma wybrane*, Warszawa 1978, p. 11, own translation.

Therefore, there is no basis for evaluating a child's behavior in isolation from his upbringing<sup>36</sup>.

Since we assume that the upbringing process determines the child and his actions, it must be consistently recognized that the same child after the age of 14 cannot be fully responsible for the crime. As Janusz Korczak rightly pointed out, the responsibility of a child for a crime becomes a responsibility that rests on parents, educators and the whole society, and therefore "on us for the moral content and happiness of those who will replace us in the life arena"<sup>37</sup>.

According to Art. 72 paragraph 1 of the Constitution, the Republic of Poland ensures the protection of children's rights, while public authorities protect children against violence, cruelty, exploitation and demoralization. It is difficult to assume that serving a long-term prison sentence with other offenders will lead a 14-year-old child to his social rehabilitation. It is also impossible to state categorically that other educational and corrective measures are not able to ensure social rehabilitation of such child. The range of the issues raised requires avoiding penal populism and following the fundamental directive of dealing with juveniles in the best interests of the child<sup>38</sup>.

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<sup>36</sup> A. Dziergawka, *Odpowiedzialność odszkodowawcza rodziców za ich dziecko*, *Consilium Iuridicum* 2023, No 5, p. 69.

<sup>37</sup> J. Korczak, ..., *op. cit.*, p. 10–11, own translation.

<sup>38</sup> Judgment of the Supreme Court of 1 June 2006, V KK 158/06, LEX No. 188369; A. Dziergawka, *Normatywny i praktyczny aspekt mediacji w sprawach nieletnich*, *Probacja* 2020, No 1, p. 49.

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## **Odpowiedzialność karna nieletnich**

### **Streszczenie**

*Celem opracowania jest ocena obowiązującego obecnie stanu prawnego oraz unormowań ustawy z dnia 7 lipca 2022 roku, dotyczących odpowiedzialności karnej nieletnich. Autorka omawia ewolucję odpowiedzialności nieletnich, poczynwszy od kodeksu karnego z 1932 roku. Opracowanie dotyczy odpowiedzialności karnej nieletnich w aspekcie ich wieku, zakresu przedmiotowego, wymiaru kary i trybu postępowania. Dodatkowo w artykule poruszono problematykę odpowiedzialności nieletnich na podstawie ustawy o wspieraniu i resocjalizacji nieletnich z dnia 9 czerwca 2022 r. oraz wskazano na konieczność dostosowania tej ustawy do zmian kodeksu karnego.*

### **Słowa kluczowe**

*Nieletni, odpowiedzialność karna nieletnich, przestępstwo, kara, zmiany normatywne.*