

## Criminal Responsibility of a Juvenile in Relation to the Provisions of the Criminal Code

### Odpowiedzialność karna nieletniego w świetle przepisów kodeksu karnego

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**Abstract:** Under Polish criminal law, a juvenile is a person under the age of 17. In principle, such person would not be liable for the offence under the terms of the Criminal Code. The responsibility of juveniles is extensively regulated in the Act of 9th June 2022 on the Support and Rehabilitation of Juveniles. However, in specific cases, which are explicitly set out in the Criminal Code, a juvenile over the age of 15 or even 14 may be held criminally responsible. Whereby the treatment of a juvenile as an adult and the application of criminal responsibility to him/her requires, in addition to the commission of one of the strictly defined offences, that the circumstances of the case and the degree of development of the offender, his/her personal conditions as well as his/her personal characteristics should also support this. The sentence imposed on a juvenile offender may not exceed 2/3 of the upper limit of the statutory penalty range for the offence in question. The legislature, however, left it to the court's discretion whether it would be advisable to apply extraordinary mitigation in a particular case. Furthermore, a juvenile cannot be sentenced to life imprisonment.

**Keywords:** juveniles, criminal responsibility, educational measures, youth

**Abstrakt:** Nieletni na gruncie polskiego prawa karnego to osoba, która nie ukończyła 17 lat. Co do zasady nie będzie ona odpowiadała za popełnione przestępstwo na zasadach przewidzianych w kodeksie karnym. Odpowiedzialność nieletnich została szeroko uregulowana w ustawie z dnia 9 czerwca 2022 r. o wspieraniu i resocjalizacji nieletnich. Jednak w szczególnych przypadkach, wyraźnie określonych w kodeksie karnym, nieletni po ukończeniu 15 roku życia, a nawet 14 roku życia może ponieść odpowiedzialność karną. Przy czym potraktowanie nieletniego jak osoby dorosłej i zastosowanie wobec niego odpowiedzialności karnej wymaga, oprócz popełnienia jednego ze ściśle określonych przestępstw, aby przemawiały za tym także okoliczności sprawy oraz stopień rozwoju sprawcy, jego warunki i właściwości osobiste. Orzeczona nieletniemu sprawcy kara nie może przekroczyć 2/3 górnej granicy ustawowego zagrożenia za dany czyn. Jednocześnie ustawodawca pozostawił do oceny sądu, czy w konkretnym przypadku wskazane byłoby zastosowanie nadzwyczajnego złagodzenia kary. Ponadto wobec nieletniego nie można orzec kary dożywotniego pozbawienia wolności.

**Słowa kluczowe:** nieletni, odpowiedzialność karna, środki wychowawcze, młodzież



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## INTRODUCTION

This article seeks to synthesise the issue of juvenile criminal responsibility. This is because there are increasing reports of young offenders. Unfortunately, it is very common for children as young as 14

or 15 to commit serious crimes. Many times, these are crimes of high gravity. Therefore, this study is, in a way, a summary of the provisions of the Criminal Code, which indicate when and in which situations a young person will be able to be held criminally liable. From media reports, it is not uncommon to hear of violent behaviour by children and young people especially towards their peers or the elderly. Very often, footage of these violent acts is posted on social media by the offenders themselves or by observers of the incidents.

Can a juvenile incur criminal responsibility? Are parents or guardians responsible for a crime committed by a child aged 15? Can a juvenile offender be ordered by the court to take only educational or corrective measures? These are just some of the questions that arise when we begin to analyse the issue at hand, which will be answered below.

## 1. THE CONCEPT OF A JUVENILE

At the outset, it should be noted that the concept of juvenile is associated with the so-called difficult youth. It is generally accepted that a juvenile is a young person (children or adolescents) who is characterised by greater or lesser demoralisation. In addition, the public perception is that juvenile offenders are young offenders who commit offences. It is therefore a concept with a pejorative connotation. This is also mentioned in criminal law doctrine (Konarska-Wrzosek 2023, thesis 2).

However, under Polish criminal law, the concept of a juvenile should be defined quite differently. Although we do not find an explicit definition of juvenile in the Criminal Code, a juvenile is referred to as an offender of an offence who has not reached the age of 17. For the rule is that criminal responsibility is imposed on an offender who was at least 17 years old at the time of the commission of the offence (Nawrocki 2019, 85-95). In Article 10 of the Criminal Code, the legislator has introduced clear age limits, exceeding which makes it possible to incur criminal responsibility. From the above rule, the legislator has introduced three modifications. As the Supreme Court explains: “The first of these is that, exceptionally, an offender who has not reached the age of 17 but has reached the age of 15 and who has committed an act that fulfils the elements of one of the offences enumerated, may be held responsible in accordance with the principles set out in the Criminal Code if the circumstances of the case and the degree of development of the offender, his or her personal characteristics and conditions support this, and, in particular,

if previously applied educational or correctional measures have proved ineffective (Article 10 § 2 of Criminal Code). The second modification related to incurring responsibility according to the principles set out in the Criminal Code is set out in Article 10 § 4 of the Criminal Code, in which the legislator allowed – subject to the fulfilment of certain conditions – the possibility for an offender who committed an offence after the age of 17, but before the age of 18, to be held responsible on the basis of the Act on Juvenile Delinquency Proceedings” (Judgment of the Supreme Court 2023, III KK 666/22). The third modification did not enter into force until 1st October 2023 in connection with the amendment of the Criminal Code of 7th July 2022. This modification, similarly to the first one, also involves a lowering of the age of criminal responsibility; however, it only applies to the commission of felony murder by an offender who has reached the age of 14 but is under the age of 15. He or she may then be liable under the rules set out in the Criminal Code if the circumstances of the case and the level of his or her development, his or her characteristics and personal conditions support this and there is a reasonable suspicion that the application of only educational or corrective measures will not lead to the juvenile’s rehabilitation (Article 10 § 2a of the Criminal Code).

A definition of the concept of juvenile can also be derived from Article 1(1) of the Act of 9 June 2022 on the Support and Rehabilitation of Juveniles (Journal of Laws 2022, item 1700). The legislator has provided for three age groups of children and young people, depending on the subject and stage of the proceedings. In the event that a young person falls within one of the three subject-matter scopes, then he or she will have the status of a juvenile within the meaning of this Act. In accordance with the aforementioned provision, the regulations of the Act on the Support and Rehabilitation of Juveniles are applied with regard to; 1) proceedings in cases of demoralisation – to those who have reached the age of 10 and are not of age, 2) proceedings in cases of criminal offences – to those who have committed such an offence after the age of 13 but before the age of 17, 3) execution of educational measures, a therapeutic measure or a correctional measure – to those in respect of whom such measures have been imposed, but no longer than until the age of 21, unless otherwise provided by this Act.

As far as the second group is concerned, the age limit of 17 has been synchronised with the age provided for in Polish criminal law, from which the offender can be held criminally liable under the

general rules provided for in the Criminal Code, the Code of Petty Offences and the Penal and Fiscal Code. It is worth emphasising at the same time that it is only in the Criminal Code that the legislator has provided for exceptional cases when a young person can be held criminally responsible before the age of 17. Both the Code of Petty Offences and the Penal and Fiscal Code do not provide for any exception to hold juveniles criminally responsible, even if they commit a criminal or fiscal offence or a common offence. The responsibility provided for in the Juvenile Support and Rehabilitation Act, however, is not a criminal responsibility. The regulations provided for in this act and the system of measures applied indicate that the legislator was more concerned with education than with punishment. This is a range of issues somewhat removed from the main topic of this paper and which requires a separate analysis.

## 2. SUBJECT-MATTER LIMITATIONS OF JUVENILE CRIMINAL RESPONSIBILITY

In Article 10 § 2 of the Criminal Code, the legislator has provided for explicit subject-matter limitations on the criminal responsibility of a juvenile. It introduces an exhaustive list constituting a closed catalogue of offences. The list of offences for which a juvenile may be held criminally responsible is by no means as extensive. These include, for example, the attempt on the life of the President of the Republic of Poland, the offences of murder, rape, robbery, piracy, causing severe health impairment and its type qualified by the consequence of human death. On the other hand, Article 10 § 2a of the Criminal Code provides that a juvenile offender who has reached the age of 14 but has not reached the age of 15 will be able to incur criminal responsibility; however, this will only apply to the offence of felony murder.

The Supreme Court jurisprudence has established the view that: “trying and sentencing a juvenile defendant as an adult for an act that does not belong to the catalogue of offences in Article 10 § 2 of the Criminal Code, i.e. a judgment treating the juvenile offender as an ‘adult’ person within the meaning of Article 10 § 1 of the Criminal Code, grossly violates Article 10 § 1 of the Criminal Code and Article 1 § 1(2) of the Act on Juvenile Delinquency Proceedings of 26th October 1982 (...), if the offender has been given the punishment provided for in the Criminal Code, as he or she should be held responsible for such an act on the basis of the regulations provided for in the Juvenile Delinquency Proceedings Act” (Judgment of the Supreme Court 2022, IV KK 100/22; Judgment of the Supreme Court 2009, V KK 23/09; Judgment of the Supreme Court 2009, II KK 32/09). With the current criminal law in force from 1st

September 2022, instead of the Act on Juvenile Delinquency Proceedings we have the Juvenile Support and Rehabilitation Act, as mentioned above.

Therefore, it should be emphasised once again that any trial and conviction of a person as an adult, in a situation where his/her responsibility should be shaped according to the principles set out in the Juvenile Support and Rehabilitation Act, will be a misconduct of a clear and gross violation of the law.

### 3. OPTIONAL NATURE OF JUVENILE CRIMINAL RESPONSIBILITY

The legislator provided for the possibility of lowering the age of criminal responsibility to 15 years and allowed the provisions of the Criminal Code to be applied to the juvenile, i.e. to be treated like an adult offender. However, it is optional under certain conditions. The legislator provided for three prerequisites: the juvenile commits one of the enumerated offences, the age of the offender (i.e. reaching the age of 15) and the issue concerning the circumstances of the case, the degree of development of the offender and the assessment of his/her conditions and personal characteristics, which support his/her punishment (Budyn-Kulik 2024, thesis 6). As the Court of Appeal in Gdańsk observed, “The application of Article 10 § 2 of the Criminal Code to a juvenile involves the need to take into consideration the circumstances surrounding the case, the personal characteristics of the offender, i.e. the individualising features of the juvenile, in particular expressed in his/her level of mental development, intelligence quotient, degree of demoralisation and personal conditions, which should be demonstrated by psychiatric, psychological and personal cognitive examinations. The point is to demonstrate that, in the general perception, he/she does not deserve to be treated more favourably as a juvenile and that the fact that he/she should be held responsible as an adult is further supported by the revealed negative personality traits of the offender” (Judgment of the Court of Appeal in Gdańsk 2013, II AKa 245/12). So, ultimately, what should be taken into account when assessing the offender’s personal characteristics and conditions? In particular, the juvenile’s age, state of health, degree of mental and physical development, character traits, as well as behaviour and the causes and degree of demoralisation, the nature of the environment and the conditions of the juvenile’s upbringing. With that said, according to Magdalena Budyn-Kulik, personal conditions should not be assessed in terms of the juvenile’s environment, especially his or her family

relationships (Budyn-Kulik 2024, thesis 10). Andrzej Zoll, whose view is closer to mine, takes a different approach. This is because the environment in which a young person grows up shapes his or her world view and often influences his or her behaviour. The family and more generally the environment in which the juvenile is raised should be analysed by the court as the personal conditions of the offender. The degree of development of the offender, on the other hand, is a term that has to be assessed in the context of the intellectual, moral and emotional development of the offender, which will have a bearing on the juvenile's overall level of social maturity (Majewski 2024, thesis 18). Accordingly, the more mature the juvenile offender is, the more reasonable it will be to hold him or her criminally responsible, since a greater and better discernment can be expected of him or her (Lachowski 2023, thesis 12).

It should be made clear at this point that, in order to apply the disposition of Article 10 § 2 of the Criminal Code, it is not a necessary prerequisite to have previously applied educational or correctional measures to this case. The absence of the offender's criminal history does not deprive the court of the possibility of using the legal regulation in question. On the other hand, the previously unsuccessful application of educational or correctional measures is undoubtedly an argument in favour of applying criminal responsibility to this juvenile offender. According to the Court of Appeal in Warsaw: "Referring directly to the disposition of Article 10 § 2 of the Criminal Code, it is appropriate to recall that the responsibility of a juvenile under the principles set out in the Criminal Code may take place if the circumstances of the case and the degree of development of the offender as well as his/her personal characteristics and conditions support this, and in particular if the previously applied educational or corrective measures have proved ineffective. This implies that a condition for the application of Article 10 § 2 of the Criminal Code is not the prior application of educational or correctional measures to the offender." (Judgment of the Court of Appeal in Warsaw 2017, II AKa 193/17). A reasonable assumption is that since the previous milder treatment of the juvenile, i.e. with educational measures, did not have a positive rehabilitation effect and the juvenile offender committed the offence again, he/she should be treated as an adult and punished in accordance with the conditions provided for in the Criminal Code.

The Court of Appeals in Katowice, in a case involving the beating of homeless persons by juveniles acting with particular cruelty and as a result of motivation deserving particular condemnation, held

that the juvenile offender should be liable as an adult, and therefore that there were grounds for applying Article 10 § 2 of the Criminal Code to such person. As is clear from the justification of the judgment: “This was supported by the drastic circumstances of the case, the personal characteristics of the offender, i.e. the personal characteristics of the juvenile, in particular expressed in his level of mental development, high intelligence quotient, high degree of demoralisation, and personal conditions, as confirmed by the psychiatric, psychological and personal cognitive examinations carried out. In other words, the juvenile’s conduct was so drastic that the general perception is that he does not deserve to be treated more leniently as a juvenile and that he should be held responsible as an adult is further supported by the revealed negative personality traits of the offender. This refers mainly to the identified features of the defendant’s abnormal personality manifested, inter alia, by a lack of control of his own aggression and a tendency to impulsive behaviour.” (Judgment of the Court of Appeal in Katowice 2006, II AKa 224/06).

#### 4. MEASURE OF PENALTY FOR A JUVENILE

The legislator prescribes that the juvenile’s punishment should be governed primarily by educational considerations. Holding a juvenile criminally responsible requires attention to his or her young age, which is a circumstance that detracts from the degree of culpability due to inexperience and immaturity. However, each case must be considered on its own merits and, despite the young age of the offender, an assessment of other criteria may in turn support a finding of a high degree of culpability (Piaczyńska 2012, 52). At the same time, Article 10 § 3 and 4 of the Criminal Code limits both the type of punishment that can be imposed on a juvenile and its amount. Furthermore, some specific directives for its assessment and broader possibilities for extraordinary mitigation than in the case of an adult offender are set out.

Firstly, a juvenile offender cannot be sentenced to life imprisonment. Secondly, in the event of a decision under Article 10 § 2 of the Criminal Code, in the case of a juvenile, the penalty may not exceed two-thirds of the upper limit of the statutory penalty range for the offence in question. Thus, taking into consideration that the current custodial sentence, according to Article 37 of the Criminal Code, has a maximum duration of 30 years, it will not be possible for a juvenile to have a custodial sentence of more than 20 years. However, as pointed out in the academic doctrine, due to the way this provision is

formulated, considerations regarding the possibility of imposing a sentence of 30 years' imprisonment on a juvenile are valid *mutatis mutandis*. As was the case for the 25-year prison sentence, this possibility still exists today. For the legislator has only explicitly provided for the prohibition of imposing life imprisonment on a juvenile. Furthermore, one must also bear in mind Article 38(3) of the Criminal Code, which would be an unreasonable provision if one were to take a different view. Therefore, a juvenile can be given a sentence of 30 years' imprisonment should it be imposed for an offence punishable by life imprisonment (Budyn-Kulik 2024, thesis 14). In one of its judgments, the Supreme Court expressed the view that the prohibition in Article 54 § 2 of the Criminal Code of imposing life imprisonment on an offender who was under 18 years of age at the time of committing the offence does not preclude the imposition of 25 years' imprisonment on a juvenile – who is responsible under the terms of Article 10 § 2 of the Criminal Code for an offence punishable by such a punishment. Therefore, assuming that the upper limit of the statutory penalty range is determined exclusively by the provisions of the special part or sanctions formulated in the penal provisions of other laws, the obligation arising from Article 10 § 3 of the Criminal Code to impose on a juvenile a penalty not exceeding two thirds of the statutory penalty range should be referred to the penalty of life imprisonment and not to the penalty of 25 years' imprisonment (Judgement of Supreme Court 1999, III KKN 195/99). In the current state of the law, a sentence of 25 years' imprisonment is no longer in the catalogue of penalties. However, the same principle should be translated into the penalties that are possible today, thus a maximum sentence of 30 years' imprisonment. The Supreme Court explained the issue similarly in its decision of 4th May 2005: “The upper limit of the statutory penalty range is determined exclusively by the provisions of the special part of the Criminal Code or other laws. The obligation provided for to impose on juveniles a sentence not exceeding two-thirds of the statutory penalty range is therefore to be referred to life imprisonment and not to a sentence of 25 years' imprisonment.” (Supreme Court Order 2005, II KK 454/04).

Moreover, the legislator has provided that the court may also apply extraordinary mitigation of punishment. At the same time, the punishment of a juvenile pursuant to Article 10 § 2 and § 2a of the Criminal Code constitutes an independent basis for extraordinary mitigation of punishment, regardless of the occurrence of any other grounds provided for this institution.



As rightly observed by the Court of Appeal in Warsaw: “The penalty imposed on the defendant should take into account his/her age, if he/she was 16 years old at the time of the offence and was liable in the present trial under Article 10 § 2 of the Criminal Code. In such a situation, the very imposition of absolute imprisonment sentences instead of corrective and educational measures increases the severity of the punishment.” (Judgment of the Court of Appeal in Warsaw 2013, II AKa 295/13).

It is also worth mentioning at this point that there is an exception to the principle of criminal responsibility after the age of 17. The legislator has provided in Article 10 § 4 of the Criminal Code for the possibility of applying educational, therapeutic and correctional measures to a juvenile. This is because, as a general rule, the court should impose a penalty, but, having regard to this provision, it may depart from this if certain conditions are met. This regulation will only apply if the offender commits the offence after reaching the age of 17 but before reaching the age of 18. However, this should be supported by the circumstances of the case, the level of development of the offender, his/her personal characteristics and conditions. Most often, positive character traits of the young offender and the absence of aggressive or violent behaviour are taken into account (Supreme Court Order 2018, V KK 486/18). As stated by the Supreme Court: “The age of the offender is only a prerequisite for preliminary considerations as to the applicability of upbringing or correctional measures, the prerequisites being the exceptional circumstances of both the act itself and, for example, its accidental nature, temporary failure to overcome temptation, being drawn into the act by other persons, a secondary role in its commission, etc., as well as the exceptionally positive character traits and behaviour of the offender himself, indicating the absence of his deep demoralisation” (Supreme Court Order 2007, IV KK 459/06).

#### CONCLUSION

The commission of criminal acts by children and adolescents is a serious social problem that is not unique to Poland. It has a direct impact on the sense of security especially in the environment where these crimes are committed. Unfortunately, these phenomena often occur in places that should, in principle, be free of such incidents, such as school. Nevertheless, it is necessary to try to prevent and counteract such phenomena. In a situation where a juvenile offender has already committed an offence, the first step (with due regard to the law) should be to apply educational measures that offer a chance of

rehabilitation. Raising the age limit for juveniles to be criminally responsible is not capable of effectively tackling crime among children and adolescents.

On the other hand, it is possible that in some cases, if the juvenile young offender knew the penalty for committing a particular offence, he or she might have refrained from committing it. Therefore, better education among children and young people would be welcomed. In my personal opinion, in some cases the young person is not fully aware of what he or she is facing, what kind of criminal responsibility or only the application of an educational measure in the form of, for example, probation or guardianship supervision, or possibly placement in an educational centre.

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#### REFERENCES:

- Budyn-Kulik, Magdalena. 2024. "Commentary on Article 10." In *Criminal Code. Commentary*, edited by Marek Mozgawa, thesis 6, 10, 14. Lex.
- Konarska-Wrzosek, Violetta. 2023. "Commentary on Article 1." In *Juvenile support and re-socialisation. Commentary*, edited by Violetta Konarska-Wrzosek, thesis 2. Lex.
- Lachowski, Jerzy. 2023. "Commentary on Article 10." In *Criminal Code. Commentary*, edited by Violetta Konarska-Wrzosek, thesis 12. Lex.
- Majewski, Jarosław. 2024. "Commentary on Article 10." In *Criminal Code. Commentary*, edited by Jarosław Majewski, thesis 18. Lex.
- Nawrocki, Mariusz. 2019. "O sposobie ustalania dolnej granicy wieku odpowiedzialności karnej." *Państwo i Prawo* 9: 85-95.
- Piaczyńska, Anna. 2012. "Kryteria stopniowania winy." *Prokuratura i Prawo* 9: 50-67.
- Order of the Supreme Court of 4 May 2005, ref. no. II KK 454/04, Lex no. 149647.
- Order of the Supreme Court of 23 January 2007, ref. no. IV KK 459/06, Lex no. 310245.
- Order of the Supreme Court of 28th November 2018, file ref. No. V KK 486/18, Lex No. 2585998.
- Act of 6th June 1997 Criminal Code, Journal of Laws 2024, item 17, as amended.
- Act of 9th June 2022 on the Support and Rehabilitation of Juveniles, Journal of Laws of 2022, item 1700, as amended.
- Judgment of the Court of Appeal in Katowice of 27th September 2006, file ref. No. II AKa 224/06, Lex No. 217115.
- Judgment of the Court of Appeal in Gdańsk of 27th September 2012, file ref. No. II AKa 245/12, Lex No. 1246618.
- Judgment of the Court of Appeal in Warsaw of 18th October 2013, file ref. No. II AKa 295/13, Lex No. 1396978.
- Judgment of the Court of Appeal in Warsaw of 4th October 2017, file ref. No. II AKa 193/17, Lex No. 2376949.

Judgment of the Supreme Court of 22nd September 1999, file ref. No. III KKN 195/99, Lex No. 38323.

Judgment of the Supreme Court of 9th March 2009, file ref. No. II KK 32/09, Lex No. 491308.

Judgment of the Supreme Court of 25th March 2009, file ref. No. V KK 23/09, Lex No. 491149.

Judgment of the Supreme Court of 11th May 2022, file ref. No. IV KK 100/22, Lex No. 3436587.

Judgment of the Supreme Court of 12th April 2023, file ref. No. III KK 666/22, Lex No. 3569406.