Minimum Age of Criminal Liability of Children

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Accusing the perpetrator of criminal responsibility makes sense only if he understands the significance of his actions. Since it is a generally accepted fact that children are not capable of developing culpable responsibility until a certain age, practically every criminal law in the world sets an age limit up to which criminal responsibility cannot be attributed to a child. Until a certain age, the child is not mentally developed and mature enough to be able to understand the consequences of his behaviour, and thereby, he develops guilt in the criminal law sense, which deserves the criminal law repression of the state. The question remains, what should be the age up to which the child does not answer for committing a crime? In this chapter, the authors examine this question. At the same time, we wonder whether it is fair and just that a child who commits a serious crime, while being aware that his behaviour is evil (so he actually understands the consequences of his action), is not criminally responsible just because he has not yet reached the objectively set age in the Criminal Code.

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1 Introduction

The Convention on the Rights of the Child[1] protects minors and children and obliges the signatory countries to adapt their laws so that they fully respect children's rights and pursue their benefits. This is particularly important when children are victims of abuse, exploitation or neglect by adults. However, the question arises as to what level of protection minors and children may get or deserve when they are the perpetrators, and others are the victims of their behaviour. The question is highly relevant as Europe has recently seen an increase in atrocities committed by minors or even children (torture, gruesome murders, school shootings). The protection of the child offender in criminal proceedings thus takes on a whole new dimension, as the victims of the offence must also be considered, as well as the need for the State to re-educate such a deviant child, if not by forcibly placing them in suitable institutions.

Criminal law, in its ideal dogmatic form, treats the individual in a completely non-discriminatory manner. This means that the personal characteristics of the perpetrator or the victim, be it nationality, skin colour, gender, sexual orientation, religious belief or other, do not influence the criminal assessment of the offence, except in exceptional cases of special offences, the so-called *delicta propria*, which stipulate that they can only be committed by a person with special characteristics (e.g., only by a civil servant, a doctor, a soldier, someone who holds a managerial or controlling position in a company, etc.).[2] In the latter cases, the legislator's decision is justified by a specific additional societal interest or the value of the good that justifies a special regulation for a certain type of person (e.g. unjustified wiretapping or recording under Article 137 of the Slovenian Criminal Code (hereinafter: KZ-1) is certainly more serious when committed by an official person who abuses his position than when committed by an offender who has no official status and does not abuse his position).

Politically enforcing the distinction between perpetrators and victims according to their personal characteristics in criminal law only leads to more injustice. The consequence of the special privileged legal position of a particular group leads to

[1] Convention on the Rights of the Child, 1989.
[2] Roxin, 2006, pp. 306-310.

unjust discrimination against other groups and almost always creates systemic anomalies in the law itself.

The same is true when criminal law deals with minors and children. Even if the emotional side of the individual and parental intuition are activated when dealing with children, this should not be the guiding principle when drafting criminal law provisions. Emotional arguments and emotional legislation are not only completely untenable in the eyes of criminal law dogmatics. Still, they are often also unjust and completely wrong from the perspective of the law as a systemic whole.

However, criminal law cannot completely ignore the status and age of the child. In this respect, criminal law should regulate at least two areas in particular. The first area is the age at which a child can be subjected to criminal repression - i.e. the age of criminal liability. The second area concerns the age of the child or minor in relation to sexual acts and associated sexual offences.[3] The topic of this paper is the age of criminal liability of children. The authors will explain the orientations of the Convention on the Rights of the Child and the Council of Europe Guidelines on Child-Friendly Justice. We will discuss whether it is dogmatically justifiable to insist on an objective age limit of 14 years, as is the case in the Republic of Slovenia, when serious criminal offences have been committed by mature persons under the age of 14 who plan their acts and even check beforehand whether they will be held criminally liable for their actions. Do such mentally mature children really deserve to be outside of criminal repression? Or do only children, who are mentally immature and cannot distinguish between right and wrong, deserve such treatment? We want to point out at the outset that arguments in favour of lowering the age of criminal liability for children do not mean that the authors are arguing in favour of putting children in prison and taking severe repressive measures against them. The criminal treatment of a child can also mean a process of re-socialisation of the child and their placement in suitable professional institutions that re-educate or help them to become an acceptable member of society. Lowering the age of criminal liability for a child does not necessarily mean tightening an action of repression against the

[3] This is primarily about determining the sexual maturity of the child, i.e. when he/she can validly consent to sexual intercourse and when sexual intercourse with a disproportionately older person is considered a paedophilic assault on a child, as well as the minor's capacity to consent to the production of pornographic images. Current age limit being 18 by all international standards, otherwise such material is considered child or underage pornography, which is prohibited under the Convention on Cybercrime and Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating sexual abuse and sexual exploitation of children and child pornography.

child, but can also mean an opportunity for the State to provide professional and medical treatment to an extremely problematic child at a time when it is most important - at the time when he or she commits a serious crime and when the re-education of such a child can be most successful. This is usually done through educational measures and, if necessary, by placing the child in a special institution - and, therefore, not by imposing a custodial sentence.[4]

2 Minimum age of Criminal Liability for Children

Holding the perpetrator criminally liable only makes sense if the perpetrator understands the significance of his behaviour. The offender must understand the nature of his act and the consequences of his behaviour, and he must also be able to manage, control and understand his behaviour. To prosecute a person who is unable to understand their behaviour would be entirely contrary to modern criminal law doctrine and the basic principles of sanctioning.[5]

Since it is common knowledge that children up to a certain age are incapable of developing criminal liability, virtually all criminal laws in the world have an age limit up to which a child cannot be held criminally liable.[6] The reason for this is that up to a certain age, a child is not sufficiently mentally developed and mature to understand the consequences of his behaviour and thus develop guilt in the criminal sense - i.e. an accusation of the reprehensibility of his behaviour that merits criminal repression by the State. Such a child is *doli incapax*, i.e. criminally incapable of guilt, because they neither understand the difference between right and wrong nor are able to comprehend the consequences that their behaviour has for others.[7] More problematic is the question of the age at which a child becomes criminally liable and whether this age should be determined by the law on an objective basis (the law determines the age at which a child becomes criminally liable) or whether the mental maturity of the child and thus its criminal liability should be determined in each individual case (i.e. a subjective, concrete assessment).[8]

[4] See also Gril, 2023, pp. 283-422.
[5] Yaffe, 2018, p. 66.
[6] McDiarmid, 2013, pp. 145-146.
[7] Urbas, 2000, p. 3.
[8] Šepec, 2021, p. 313.

The most dogmatically correct solution is to determine the age of criminal liability in each individual case. This is because the development of individuals can be very different, so some acquire the capacity for culpable thinking much earlier than others, i.e. before the age of 14, which is the legal age of criminal liability in Slovenia. No literature from the field of medicine and psychology concludes that all children are mentally mature and acquire the ability to distinguish right from wrong and to understand the meaning of their actions at the age of 14 (i.e. at midnight on the last day of their thirteenth year). This argument is reinforced by the fact that there is no consensus in comparative criminal law on the age at which a child becomes criminally competent. European countries set different age limits for the age of criminal liability: 13 years in France, 15 years in the Scandinavian countries (Sweden, Finland, Norway)[9], 12 years in the Netherlands, 14 years in Germany, Austria, Italy, Serbia, Croatia and Slovenia. Common law in England has set the limit at just seven years, after which the legislator raised it to ten years. Between the ages of ten and 14, however, there is only a presumption of culpable incompetence, which the prosecution can rebut if it can prove that the child has "*mischievous discretion*", i.e. the ability to distinguish between right and wrong.[10] It is clear from the above that the determination of the age of criminal maturity is a political issue that must be decided by the legislature in each country.

The objectively defined limits in the criminal laws of the individual countries, therefore, emphasise practical benefits rather than reflecting the personal maturity of children. In practice, it will not be too difficult to establish the actual age of the child at the time of the offence. Still, it can be quite challenging to establish the personal and mental maturity of the child in retrospect - i.e. how mature they were at the time the offence was committed. Another problem is that criminal law doctrine hardly deals with the age of criminal liability of children. Some textbooks omit the question of the age of criminal liability altogether.[11] Bavcon and colleagues, in their main criminal law book in the Slovenian legal space, devote an extensive fifth chapter to juvenile criminal law, which takes up almost a tenth of the entire book. As far as the age limit for criminal liability is concerned, they merely quote the legal text and State that "the law itself determines the age at which a minor may become the subject of an offence"[12], without further explaining why this particular

[9] Horder, 2019, p. 158.
[10] Siemester et al., 2016, p. 756.
[11] For example Novoselec & Bojanič, 2013; Jescheck & Weigend, 1996.
[12] Bavcon et al., 2014, p. 110.

age, as laid down in the law, is dogmatically justified. Article 40 of the Convention on the Rights of the Child deals with the child in criminal proceedings. The first paragraph of that article provides that States Parties shall recognise the right of every child accused of, charged with or recognised as having the capacity to commit a criminal offence to treatment consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and assumption of a constructive role in society.

According to the Article 40(2)(a), States Parties shall endeavour to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children who are accused, charged or recognised as having the capacity to commit criminal offences and, in particular, the establishment of a minimum age below which children are presumed to be incapable of committing criminal offences.

The Convention on the Rights of the Child, therefore, provides for special safeguards for children in criminal proceedings, including the establishment of an age below which children cannot be held criminally liable, but does not specify exactly what this age limit should be. It is, therefore, clearly left to the Contracting States to determine this limit. Although no age is specified, the Committee on the Rights of the Child recommends that the minimum age of criminal liability should not be below twelve years. However, this is the absolute minimum and should be revised upwards if possible.[13]

From a judicial perspective, an upgrade of the provisions of the Convention on the Rights of the Child is also based on the guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. They state in Article 23 that the minimum age for criminal liability must not be too low and should be set by law.[14] Again, the document does not tell us what this "too low" limit should be. In setting this minimum limit, we can refer to the judgment of the European Court of Human Rights in the case of *T and V v. United Kingdom*, in which the Court held that 10- and 11-year-old children are not capable of participating effectively in a criminal trial. The European Court of Human Rights problematised the ability of children of this

[13] CRC General Comment 10, 2007, paras. 30-35.
[14] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010, Article 23.

age to participate in discussions and found a violation of Article 6[15] of the European Convention on Human Rights (right to a fair trial).[16] The minimum age should, therefore, not be lower than 12 years. A similar interpretation can be found in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (hereinafter: The Beijing Rules)[17] (Rule 4). Rule 4 of the Beijing Rules recommends that the minimum age should not be set too low and should consider emotional, mental and intellectual maturity. In accordance with this rule, the Committee has recommended that States Parties should not set the minimum age too low. It can be concluded from these recommendations that the Committee considers a minimum age of criminal liability below 12 years to be internationally unacceptable. Article 24 of the Committee of Ministers' guidelines also stipulates that alternatives to court proceedings, such as mediation, diversion (from court proceedings) and alternative settlement of disputes, should be encouraged whenever it can best serve the best interests of the child. States are, therefore, encouraged to look for alternative ways of prosecuting children and not to set the age of criminal liability too low. While international documents and recommendations do not explicitly state the age at which a child can be held criminally liable, it is fairly generally recognised and recommended that this age should not be lower than 12 years.

2.1 Legislation in Slovenia

The Slovenian KZ-1 sets the objective age of criminal liability at 14 years. Article 21 of KZ-1 establishes an irrebuttable presumption that children under the age of 14 are *doli incapax* and cannot commit a criminal offence. The provision is dogmatically controversial, as the mental immaturity of the child generally excludes guilt but not the offence as such.[18] The limit is set purely objectively, which means that children are not criminally liable regardless of their actual mental maturity at the time the offence was committed. Even if the cognitive abilities of a child genius at the age of thirteen were already entirely at the level of an eighteen-year-old, and they were able to distinguish between right and wrong with complete clarity and were fully aware of the consequences of their conduct, such a child would still be criminally incompetent and could not be criminally sanctioned.

[15] *T and V v United Kingdom*, case no. 24888/94, 16 December 1999.
[16] European Convention on Human Rights, 1950, Article 6.
[17] United Nations Standard Minimum Rules for the Administration of Juvenile Justice (hereinafter: The Beijing Rules) (1985) General Assembly A/RES/40/33.
[18] More detailed in Šepec, 2021, p. 315-316.

The reason why the legislator decided in favour of the age of 14 is based on a historical tradition. This limit was already set when the Criminal Code of the Kingdom of SHS was adopted in 1929.[19] The same limit is also applied in the neighbouring countries of Croatia, Austria and Italy. The previous Criminal Code (KZ-94) also contained a similar provision. Still, it was defined in terms of sanctions and was dogmatically more correct in this respect, as it did not exclude the entire offence. The former Criminal Code provided in Article 71 that no criminal sanctions should be imposed on a minor who was under 14 years of age at the time of the commission of the offence (child).

There is no excessive ambition to analyse the best dogmatic approach to the age of criminal liability for children in the European context. However, it will be highly problematic to provide a convincing answer as to why criminal law should not deal with a 13-year-old, who is fully aware of his actions, researches criminal legislation online and after finding out he cannot be held criminally liable for his actions, commits an intentional and planned serious offence, simply because the code sets the objective age for criminal liability at 14 years.

Some recent cases in Europe and also in Slovenia show why the minimum age limit of 14 years is at least questionable.

3 Review of Recent Cases

3.1 Cases from Germany

Last March, the murder of a 12-year-old girl in Germany came to light.[20] The murder was committed by her 12 and 13-year-old classmates, who presumably acted out of jealousy. The perpetrators had planned the murder in advance and prepared the necessary accessories. The 12-year-old perpetrator had read the German Criminal code to find out at what age the perpetrator could not be prosecuted due to being a minor. The two perpetrators had lured the victim into the forest and initially tried to suffocate her with a plastic bag. When they failed to do so, the 13-year-old held the victim down so that she could not defend herself, while the 12-year-old stabbed her 75 times with a nail file. After the attack, the two peers pushed the victim down an

[19] Bele, 2001, pp. 411-415.
[20] N. Š., 2023c.

embankment, where the girl bled to death from the stab wounds. As the girl was not at home and a search operation was launched for her, the girls uploaded a video to social media asking for help in the search, followed by a video of them joking and having fun. After their arrest, the girls initially denied the offence but later confessed to it due to inconsistencies in their stories.

One month after the murder, Germany was shocked by the torture of a 13-year-old girl, in which six minors were involved.[21] For hours, a group of teenagers between the ages of 12 and 17 beat the victim on the head and nose, poured drinks over her and threw cigarette ash at her. The whole incident was broadcast on social media via a smartphone, and the victim could be seen on the video crying desperately, breathing in panic and begging for calm. The perpetrators pretended to help the victim in front of passers-by, but later continued the torture.

In the same month, the body of a 10-year-old girl was found in a child and youth welfare centre in Upper Franconia, Bavaria.[22] The girl had been placed there because of domestic violence. However, she did not receive the promised rest because she became the victim of her 11-year-old flatmate. The girl was found naked and unresponsive in the morning. The investigation revealed that a 25-year-old man from the area had broken in through the bathroom window of the facility, committed a burglary, stumbled upon the 10-year-old girl, sexually assaulted her and escaped. A fight later broke out between the 10-year-old girl and her 11-year-old roommate, resulting in his murdering her.

3.2 Shooting Spree in Serbia

In Belgrade, a 13-year-old boy went on a killing spree in a primary school in May 2023. When the children returned to school after the May holidays, the history lesson was interrupted by gunshots. As he did not feel socially accepted, the perpetrator decided to organise a shooting spree during which eight of his classmates and a school security guard closed their eyes forever.[23] The investigation later revealed that the teenage perpetrator had planned his offence a month in advance. He had drawn up a plan for entering and leaving the school, the points at which he had to change

[21] N. Š., 2023b.
[22] N. Š., 2023a.
[23] D. L., M. P. & T. H., 2023.

bullet points, and a sketch of each classroom. He also had a list of priority targets and a list of classmates he wanted to kill.[24] After carrying out his plan, the perpetrator called the police in the schoolyard, confessed to the crime, had no regrets and repeatedly stated that he would do it again. The investigation also revealed that the boy had made sure before the rampage that he was not of criminal age, where he could be held liable for the offence under Serbian law.[25]

3.3 T and V v. the United Kingdom

One of the most brutal examples of crimes committed by children is the murder of two-year-old James Burgler in England in February 1993. He was abducted by Jon Venables and Robert Thompson, who were ten years old at the time, in a shopping centre where he was staying with his mother. As James cried, passers-by stopped, and the two boys pretended he was their little brother. They then took their victim to the railway tracks where they beat and tortured him by throwing bricks and stones at him and putting batteries in his mouth. They mutilated him by throwing a 10kg railway track at him, causing the two-year-old to suffer ten skull fractures. The pathologist found 42 injuries at autopsy and was unable to determine which injury was fatal, but he died before the train hit him.[26] Both boys were tried in ordinary criminal proceedings and convicted of murder and kidnapping. They received an indeterminate sentence ("Her Majesty's pleasure") instead of a life sentence, which an English court cannot impose on anyone under the age of 18.[27]

The European Court of Human Rights also dealt with the case and found no violation of Article 3 of the (prohibition of torture) and no violation of Article 5 of the European Convention on Human Rights (right to liberty and security). In principle, the European Court of Human Rights did not criticise the criminal prosecution of the two children or the sanctions imposed on them by the national Court. However, the European Court of Human Rights found a violation of Article 6 of the European Convention on Human Rights (right to a fair trial), as everyone must be guaranteed the right to a fair trial. The European Court of Human Rights questioned whether the 10- and 11-year-old children could effectively participate in the trial at all, considering the fact that the trial was held in public, the children were

[24] D. L., 2023.
[25] Čulum, 2023.
[26] Sommerlad, 2023.
[27] *T and V v United Kingdom*, case no. 24888/94, 16 December 1999.

separated from their parents, and the trial took place in a large courtroom full of angry spectators, creating an extremely hostile environment for the defendants. All of this affected the defendants and their ability to follow the evidence and make their own statements.[28] The European Court of Human Rights, therefore, problematised the two children's ability to participate in a criminal trial effectively.

3.4 Cases from Slovenia

A year ago, social networks were flooded with footage showing a group of primary school girls beating up their peer on the roof of a shopping centre in Celje.[29] The perpetrators first slapped the victim in the face, followed by kicks, scratches and blows to the head. A group of children of the same age, who witnessed and filmed the beatings, supported the offence, and threw tomatoes and eggs at the victim. The publication of the footage on the internet led to the footage being leaked to the police and the media, which in turn led to further threats being made to the victim about what would happen to her if any of the perpetrators were punished.

A recent incident confirms the alarming situation among increasingly mature young people at a primary school in Brežice.[30] In the early hours of the morning, the perpetrator entered the 9th-grade class and hit his fellow pupil. When the victim retreated, the perpetrator pushed him and caused the injured boy to hit his head on the edge of the desk, causing further injuries. The wounded boy managed to escape to the headmistress's office, from where he was taken to the hospital, and his condition remained poor for several days. The boy had a fractured skull and a cut on his forehead and under his eye. The perpetrator returned to the school premises a few hours after the attack and threatened other pupils, provoking the two police officers, who arrived later and accused them of being in no position to do anything to them. While there were several violent incidents at the school, the incidents escalated to the point where children no longer dared to cross the school threshold.

[28] *T and V v United Kingom*, case no. 24888/94, 16 December 1999.
[29] Kodba, 2023.
[30] K. K. & M. S., 2024.

4 Solution 1: Lowering the Age Limit of Criminal Liability

The cases discussed illustrate the problem of an objective approach to the age of criminal liability. This is evident in cases where criminally liable individuals, who are aware of their wicked conduct and the consequences that their conduct will cause, sometimes even study criminal law and decide to act after being informed that they will not be subject to criminal law repression, commit a serious crime for which they cannot be held criminally liable according to the letter of the law. In such cases, victims and their family members are left without any legal protection and are left in the lurch by the criminal law. The above problem can be seen as collateral damage of an objective approach to the age of criminal liability. We maintain the view that the age of 14 is still the most appropriate age for most cases and that certain exceptions, where offenders are actually culpable below that age, are "swept under the carpet". On the contrary, we try to find a fairer and dogmatically more convincing legal regime. For the latter, two possible solutions are offered, the first of which is to lower the age of criminal liability.

The omission of criminal prosecution of a 13-year-old who plans a heinous crime, checks the criminal law beforehand to make sure they will not be sanctioned for committing the crime, and then carries it out does not seem very convincing, both professionally and politically. It is undeniable that such an individual, despite his young age, was able to understand the significance of his conduct and form a sense of guilt towards the crime. An objective assessment of the age of criminal liability in such cases is not appropriate from the point of view of justice for the victims of these crimes. There are no convincing and valid arguments as to why criminal justice should not judge such cases on a subjective level - i.e. whether a particular individual, despite his young age, was able to understand the meaning of his act and to form a sense of guilt towards his conduct. Such children do not deserve such privilege, as they are, in fact, on a personal and mature level, not children anymore. Slovenian legislators should start thinking about prosecuting individuals who mature in personality before the age of 14. The solution could be to amend Article 21 of the Slovenian KZ-1 and lower the minimum age limit to twelve. The complete abolition of the objective age limit and leaving the subjective assessment of a child's culpability in each specific case to the courts seems too radical for the Slovenian criminal justice system. This measure could lead to a significant increase in the prosecution of minor crimes committed by children (petty shoplifting, minor injuries in fights, etc.). It

would, therefore, make sense for the criminal justice system to deal with mature individuals over twelve years old only in cases of more serious crimes (e.g., those where a prison sentence of eight years or more is threatened). The latter could be addressed by amending the procedural legislation (the Criminal Procedure Act[31]) to allow the public prosecutor an opportunity mechanism not to prosecute offences with a sentence of less than eight years' imprisonment committed by children aged between twelve and 14.

Alternatively, we could adopt the English model, where for ages between twelve and 14, there would only be a presumption of culpable incapacity, which the prosecution could rebut if it could prove that the child was culpably competent at the time of the offence, and therefore able to distinguish between right and wrong.[32] Given that the English approach is not consistent with our criminal law doctrine (we do not have a specific preliminary procedure for determining whether someone can be the subject of a criminal proceeding), the first solution seems much more sensible.

Sceptics of the proposed solution will point out that if there is a serious case involving an 11-year-old as the perpetrator, we will reconsider lowering the age limit again. Hence, such changes to the law are not desirable. In the defence of the proposed solution, we would argue the following. The minimum age limit of twelve is relatively safe, as in practice, there will be very few (if any) cases where children under the age of twelve will already be of full maturity. The right to a fair trial has already been highlighted in the case of *T and V v. the United Kingdom*[33] and Article 23 of the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice should also be considered. It will be challenging to argue that a person under the age of twelve can effectively defend themselves and participate in criminal proceedings. Such a child is often not capable of debating in a legal trial.

This solution, therefore, requires a two-stage assessment of the criminal liability of children. In the first stage, the age of criminal liability is lowered to twelve years, whereby the child is only prosecuted for serious offences (e.g., those punishable by a prison sentence of eight years or more) and not for less serious offences due to the opportunism of the public prosecutor. However, if the child commits an offence for

[31] Zakon o kazenskem postopku (ZKP), Article 161.
[32] Siemester et al., 2016, p. 756.
[33] *T and V v. United Kingdom,* case no. 24888/94, 16 December 1999.

which they can be prosecuted under the legislation, we move to the second stage. In the second stage, the Court determines in the criminal proceedings in each case whether the child in question was capable of recognising the meaning of their actions and whether they were, therefore, culpable. If the Court finds that this is not the case, the child can still be acquitted, as guilt cannot be invoked as the last essential element of the offence.

5 Solution 2: Criminal Liability of the Parents

As an alternative solution for a fairer and dogmatically more convincing legal system, the authors offer the solution of criminal liability for the parents. If children are not criminally liable, could their parents be held liable for the committed offences? Is it not the parents who are liable for the offence committed by their child due to their inadequate parenting? The solution could, therefore, be to prosecute the parents. This solution would not go in the direction of strict liability of parents in the sense of Article 142 of the Code of Obligations (hereinafter: OZ), as this solution would have too many negative effects on the rule of law and the fairness of proceedings in criminal law. Is there another way to establish parental liability in criminal law?

A look at Slovenian criminal law tells us that certain offences in the KZ-1 can be attributed to parents if their child commits a serious offence. If the child is neglected, Article 192 of the KZ-1 (Neglect and cruel treatment of a minor) comes into play for the parents if they commit violence against the child Article 191 (Domestic violence), if the child commits an offence with the parents' firearms Article 307 of the KZ-1 (Unauthorised manufacture and trafficking in weapons or explosives) could apply, and so on.[34] In Serbia, for example, the prosecutor's indictment for a 13-year-old's shooting in a school calls for a 12-year prison sentence for the father, who is charged with endangering the general public for teaching his son to shoot and for failing to properly secure the weapon that his son has used in the shooting. For the mother, the public prosecutor is seeking a two-and-a-half-year prison sentence for illegal possession of a firearm.

[34] Kazenski zakonik (KZ-1), Articles 191, 192 and 307.

Those mentioned above and similar offences in Slovenian KZ-1 are punishable with low prison sentences, but in reality, they are just workarounds that do not address the real problem. That is, poor parenting, condoning the child's deviant behaviour, neglecting the child, and failing to seek professional help, all of which ultimately lead to the terrible consequences of the child's actions. The child's crime is largely the result of the upbringing by the parents, who have neglected the child by neglecting his development. The child's crime is the result of the parents' (mis)behaviour. A legal sense of justice, therefore, calls for more serious criminal treatment and stricter sanctions for parents when their children commit serious criminal offences.

The solution can be found in the already established general dogma of criminal law - namely, the liability of parents as perpetrators and guarantors for the actions of their children. The guarantor's duty exists between the guarantor and the goods that the guarantor is obliged to protect, or towards the source of danger that is within the guarantor's sphere of influence.[35] Thus, the duty to protect family members is one of the typical forms of establishing a guarantor's duty, in the context of which parents are obliged to protect their children from external dangers and, at the same time, to protect others from dangers that their child may cause them.[36] Parents who deliberately starve their child to death are not only liable to prosecution for the offence under Article 192 (neglect of a minor and cruel treatment) or Article 193 of the KZ-1 (breach of family duties), which carries relatively light sentences of up to three or two years' imprisonment, but also for manslaughter under Article 115 or even murder by deception under Article 116(1) of the KZ-1, which carries a minimum sentence of 15 years' imprisonment.[37] By willfully (or negligently) neglecting their duty of supervision over the welfare of their child, the parents have effectively caused the child's death, so it is only appropriate to hold them liable for that death. The same logic can be applied to the liability of parents when their child commits a serious offence against their peers (specific grievous bodily harm, manslaughter, murder, torture, etc.). Suppose the child's crime is due to the parents' failure to fulfil their duty of care (in the form of inadequate parenting, lack of supervision and remediation of deviant behaviour and patterns). In that case, it is only reasonable and fair to hold them liable for their child's crime as well. Through

[35] Bavcon et at., 2014, p. 165.
[36] Novoselec & Karakaš, 2021, p. 258.
[37] Kazenski zakonik (KZ-1), Articles 192s, 193, 115 and 116.

their legally deviant conduct, the parents have actually contributed to the commission of an offence by their child, who is otherwise criminally incapable.

In this case, the parents are only liable for their own inaction. It must be proven that the child committed the offence precisely because of their poor parenting and inaction, lacking the behaviour one would expect from a caring parent. This is not strict criminal liability because parents who cannot be blamed are not held criminally liable - for example, a father who has no contact with his child and fails to parent the child or parents who sought professional medical help for their child when they noticed deviant behaviour and tried to "cure" it but were unsuccessful.

In April this year, a US court in Michigan found Jennifer Crumbley, the mother of a son who killed four classmates in a shooting rampage in 2021, guilty of involuntary *manslaughter*.[38] The parents bought a gun and took their 15-year-old son to a shooting range to learn how to shoot. The prosecution's indictment sought to establish the parents' direct liability for the killing. It put forward the following arguments: 1) knowledge of the deterioration of their child's mental health (the child had sent several messages to his mother mentioning that devils and ghosts were in the house and had repeatedly asked her for help, but his mother had only laughed at him), 2) the purchase of a gun and its inadequate care, 3) the mother's failure to respond to a call from the school on the day of the shooting informing her of her child's poor mental State and suggesting she take him into treatment (at school he drew a picture of a gun, people being killed and notes asking for help). This case comes very close to the criminal liability of parents as perpetrators and guarantors for the actions of their children.

6 Conclusion

The insistence on the objectively fixed age of criminal liability of 14 years, even if the juvenile perpetrator is already mentally mature and of criminal age, means that a horribly planned and premeditated crime (mass murder at school, torture and brutal beatings of a peer, even with fatal consequences) remains without a perpetrator and prosecution. The victims of such crimes remain without any legal security and without justice for the perpetrators who have harmed them. The rule of law and

[38] Levenson & Valle, 2024.

criminal law fail the victims and deny their subjectivity as victims of a serious offence. By failing to prosecute the perpetrator, the State sends the message to the victims of a criminal offence that they are not worthy of criminal protection for the harm they have suffered. In the absence of a legal remedy, the State is also not in a position to take measures against the juvenile offender to prevent him from repeating the offence. Such a criminal justice approach is unacceptable; therefore, we propose two possible solutions.

The first is to lower the age of criminal liability in Article 21 of the Slovenian KZ-1 to twelve. However, in order to avoid excessive prosecution of petty crime, it makes sense to provide the public prosecutor's office with an optional mechanism in procedural legislation not to prosecute offences with a custodial sentence of less than eight years committed by children between the ages of twelve and 14. We are, therefore, dealing with a two-stage assessment of the criminal liability of children. In the first stage, the age of criminal liability is lowered to twelve years, and the child is only held liable for more serious offences (e.g., those punishable by imprisonment of eight years or more) and not for less serious offences, which is due to the opportunism of the public prosecutor. However, if the child commits an offence for which they can be prosecuted under the legislation, we go to the second instance. In the second instance, the criminal Court examines in each individual case whether the child in question was really capable of recognising the meaning of his actions and whether the child was therefore culpable. If it is found that this is not the case, the child can still be acquitted, as guilt, as the last essential element of the offence, cannot be proved.

The second solution is possible within the framework of the already established general dogma of criminal law - namely, the liability of parents as perpetrators and guarantors for the actions of their children. Suppose the child's offence is attributable to the parent's failure to fulfil their duty as guarantors (in the form of inadequate parenting, failure to monitor and eliminate deviant behaviour and patterns, and failure to seek professional help). In that case, it is only reasonable and fair to attribute their child's offence to them as well. Through their legally deviant conduct, the parents have effectively contributed to the commission of an offence by their otherwise non-culpable child.

Readers of this chapter will wonder whether lowering the minimum age of criminal liability of children who have committed a criminal offence would not increase criminal repression. First of all, it should be pointed out that the criminal treatment of a child can also mean a process of re-socialisation of the child and their placement in appropriate professional institutions that re-educate the child or help them to become a regular member of society. The lower age of criminal liability of the child, therefore, does not necessarily mean a tightening of State repression against the child but can also mean an opportunity for the State to provide professional and medical treatment to an extremely problematic child at a time when it is most important - at the time when he or she commits a serious crime and when the re-education of such a child can be most successful. This is usually done through educational measures and, if necessary, by placing the child in a specialised institution - and therefore, not by imposing a custodial sentence. In the end, lowering the minimum age of criminal liability can be for the benefit of the child when the latter is provided with special institutional care and where the parents have failed in the education and socialisation of their child.

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