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Sociopolitical Perspectives

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ASHGATE

Published by
Ashgate Publishing Limited
Wey Court East
Union Road
Farnham
Surrey, GU9 7PT
England

Ashgate Publishing Company
110 Cherry Street
Suite 3-1
Burlington, VT 05401-3818
USA

www.ashgate.com

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

Buczkowski, Konrad.

Criminality and criminal justice in contemporary Poland : sociopolitical perspectives / by Konrad Buczkowski, Beata Czarnecka-Dzialuk, Witold Klaus, Anna Kossowska, Irena Rzeplińska, Paulina Wiktorska, Dagmara Woźniakowska-Fajst, Dobrochna Wójcik.
pages cm
Includes bibliographical references and index.
ISBN 978-1-4724-5184-2 (hardback) – ISBN 978-1-4724-5185-9 (ebook) – ISBN 978-1-4724-5186-6 (epub) 1. Crime–Poland. 2. Criminal justice, Administration of–Poland. I. Title.
HV7015.7.B83 2015
364.9438–dc 3

2014037345

ISBN 9781472451842 (hbk)
ISBN 9781472451859 (ebk – PDF)
ISBN 9781472451866 (ebk – ePUB)

MIX
Paper from responsible sources
FSC® C013985
FSC www.fsc.org

Printed in the United Kingdom by Henry Ling Limited,
at the Dorset Press, Dorchester, DT1 1HD

CRIMINALITY AND CRIMINAL JUSTICE IN CONTEMPORARY POLAND

This volume gives an excellent overview about crime and criminal justice from different aspects in Poland, the largest country in the region of the former Soviet Union. The authors present data about crime development in the last century and cover issues including social change, poverty and social exclusion on the one side, and the role of justice, the media, social perception of crime, and factors of international interest on the other.

Helmut Kury, University of Freiburg, Germany

Relations between social change and crime has been an important theme for criminology since the times of Emile Durkheim. In that respect experience of Central European countries after the fall of communist regimes in 1989 is something unique. This book offers comprehensive and in-depth pictures of crime and criminal justice in the largest country of the region, namely Poland. Highly acclaimed when published in Polish it becomes now available for broader readership. It should be an indispensable source for all those interested in the subject.

Krzysztof Krajewski, Jagiellonian University, Poland

This book provides a fresh perspective on the many facets of crime in Poland. Among many other factors, it looks at: crime over the space of a century; crime in different social systems; crime in a time of profound social change. Distinguished Polish criminologists draw a powerful picture of different aspects of crime in their country. Their analyses and views enrich our knowledge of crime in a part of Europe that has long been obscured.

Alenka Šelih, University of Ljubljana, Slovenia

This book provides an in-depth analysis of the crime situation in Poland during its different political eras. It reveals the factors that influence criminality, points out the changing faces of criminal policy and reviews the outcomes on further fields of criminological research. This fascinating study by outstanding Polish scholars, will show readers an image of the world of Polish criminality, and provide them with a complex understanding of the country's history, legal evolution and socio-political developments since the 1989 regime change.

Miklós Lévay, Eötvös Loránd University, Budapest and
The Constitutional Court of Hungary

This book provides a masterful equilibrium of theoretical and practical analysis of both causes of crime and the justice system's response in Poland. It is an excellent example of a holistic view on the determinants of crime within the context of political and social change in Poland and Central and Eastern Europe since the 1990s. The book represents a valuable study of cultural and political aspects of crime and criminal and penal policy in modern Europe, useful for decision makers, researchers and students.

Beata Gruszczyńska, University of Warsaw, Poland

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Dobrochna Wójcik is Professor of Law and Doctor of Psychology, and she worked for the Department of Criminology, Institute of Law Studies, Polish Academy of Sciences, from 1963 to 2007. Wójcik has worked at the Institute of Justice since 1992 and directed the Criminal Law and Criminology Section for several years. Research interests include juvenile criminality, aggression, examining victims of crime, and mediation issues. Wójcik co-founded the Group to Introduce Mediation in Poland, and is an academic consultant to the Polish Mediation Centre. She is a member of the Social Council for Alternative Methods of Solving Conflicts and Disputes at the Ministry of Justice and the Polish Society of Criminology.

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Introduction

Criminality has accompanied social life from its inception. It has appeared in every stage of the development of every society, whatever that society's organisation or form of government and in whatever historical epoch it has found itself. Despite having always been present, the concept of criminality has varied considerably in its extent. This variability relates to both the definition of criminal behaviour (specific acts that have been deemed prohibited) and the application of formal response mechanisms to unlawful conduct. Apart from acts 'conventionally' considered criminal (e.g. homicide, theft and fraud), new crimes and new ways of committing acts already specified by the criminal law as prohibited have emerged. These are related to technological changes and changes in the way society functions. The attitude of societies to conduct that has always existed is likewise subject to change. Hence societies are constantly criminalising, or, in some cases, decriminalising them.

Simply defining crime is a difficult and multi-faceted problem for the criminologist. The criminal law dogmatist, who uses the definition of crime in the provisions of the General Criminal Code, is not plagued with uncertainty. Criminologists, by contrast, pay heed to additional elements that help determine whether an act or omission is deemed a crime. These include the investigative and penal policies of the particular country, the level of development of civil society, and bonds between people (see Chapter 1, 'Criminality Today and Tomorrow: Structural Stability and Variability', by Dagmara Woźniakowska-Fajst).

Other factors have an impact on changing the composition of criminality, e.g. the social and political system of the given country, economic development, urbanisation and industrialisation, and changes in the structure of the population due to migration or age. These sorts of changes can be effected in an evolutionary manner and over a long period or they can occur suddenly as a result of rapid changes taking place in the particular society.

Poland has experienced a lot of pivotal watershed moments in the course of a history spanning more than a thousand years. The result of each may have been an amplification or attenuation of the scale of criminality in the country. This refers to every war, the period during which the country was partitioned, the regaining of independence etc. These were all periods that created new conditions under which society had to function and that were able to influence the differently specified norms that had to be protected by the state (see Chapter 2, 'The Status of Criminality in Poland since 1918', by Konrad Buczkowski).

The transformations taking place in criminality are connected with the general processes of social change that affect all societies. The influence that the processes of social change exert on criminality has long been a topic of sociological and criminological analyses, and features in older and contemporary criminological theories and survey analyses. The system transformation of 1989 brought changes to the incidence and nature of criminality, and to the way it was viewed by the public. The determinants of criminality in contemporary Poland can be analysed using the same factors as those invoked by criminologists in their descriptions of criminality in postmodern societies, i.e. social inequalities and exclusion, and cultural changes resulting from globalisation and the technical and information revolutions (see Chapter 3, 'Social Change and Criminality: Mutual Relationships, Determinants and Implications', by Anna Kossowska).

The belief persists in Polish society that poverty is linked with criminality. For many people, the relations between poverty and criminality appear to be obvious and even though they really are present, it is worth emphasising that poverty is not the main factor that drives people to commit crime. At the same time, society is afraid of the 'down and out' as a class. This is because they are only perceived as threatening people who make trouble. Consequently programmes ostensibly meant to assist this group have a de facto aim to control it as a dangerous population rather than to ensure that these people are given essential help and support (see Chapter 4, 'The Relationship between Poverty, Social Exclusion and Criminality', by Witold Klaus).

Social policy, appropriately implemented, and preventive activities undertaken as part of that policy, should prevent exclusion, and people already on (or outside) the margins of society should be included within

its framework. These activities should be very deliberately planned and draw from the example of other countries while making sure not to repeat their mistakes. Survey findings show that the only activities that have a positive effect in preventing criminality are those that are not restricted to simply supporting perpetrators or victims, but which are additionally accompanied by measures aimed at reducing income inequality and promoting social cohesion (see Chapter 5, 'Preventing Criminality: The Social Policy of Preventing Social Exclusion', by Witold Klaus).

A suitably applied social policy is not the only thing that can have an effect on changes in the dynamics of criminality. Criminal policy and the associated concept of punishment are just as important. The system of punishing perpetrators of crimes is one of the most important aspects of the social fabric and should therefore be treated in a multifaceted and holistic manner. The concept of criminal punishment can be understood as a consequence of social solidarity combined with various interdependencies between individuals striving to ensure mutual safety and order. Punishment is simultaneously a tool of power and dominion, a certain technique to exercise supervision and control over the observance of generally approved rules and principles. It is a peculiar expression of social sensitivity, punitiveness and tolerance. Finally, it is a certain form of compulsory social assistance offered to, or forced on, individuals who refuse to behave in a socially acceptable manner (see Chapter 6, 'Justice and Its Many Faces', by Beata Czarnecka-Dzialuk and Paulina Wiktorska).

Penal policy, understood as what the courts do in order to counteract and curb criminality through applying the provisions of the criminal law, is expressed as many and diverse theoretical concepts. An analysis of the statistical data on the penalties that have been imposed allows certain conclusions to be drawn on penal policy as applied in Poland during the period of social change at the turn of the twenty-first century. These conclusions, however, only make it possible to sketch an outline of the modern conceptions of resolving the social issues associated with criminality (see Chapter 7, 'Controlling Criminality', by Irena Rzeplińska and Paulina Wiktorska).

The suspended sentence was the most frequently imposed penalty in Poland during the first decade of the twenty-first century. We can therefore speak of a 'controlled freedom' that is inseparably linked with the institutions of probation and which is executed by court-appointed probation officers, who specialise in rehabilitating offenders. Whether and to what extent probation is effective, and whether it really constitutes an alternative to incarceration, however, are debatable (see Chapter 8, 'Supervised Freedom', by Dobrochna Wójcik).

The problem is that increasingly more people see the criminal law as the best remedy for social problems, which obviously include criminality. This is partly because the functioning of modern societies relies on access to various kinds of information in which the world is depicted in a simplistic, black-and-white manner that contributes to a feeling of being under threat. These fears related to criminality are very often unfounded and are merely a reflection of the anxieties associated with social changes and uncertainty about the future. For this reason, it is easy for various groupings, especially politicians, to substitute anxiety about criminality for real fears. The main slogans of political parties tap into this kind of anxiety. Once these parties come to power they make these slogans a reality by increasing the severity of the provisions of the criminal law, often out of all proportion with the actual level of criminality (see Chapter 9, 'The Social Perception of Criminality', by Witold Klaus, Irena Rzeplińska and Dagmara Woźniakowska-Fajst).

The mass media, by depicting criminality in a selective manner, plays a major role in shaping this simplified picture of social reality, which is connected with greater punitiveness and an acceptance of authoritarian means of control. The media often focus exclusively on brutal, sensational incidents and scandalous examples of gross negligence on the part of the justice system. As a result, the public has a mistaken view about the extent and composition of criminality, as well as the risk of victimisation (see Chapter 10, 'Criminality and the Media', by Dagmara Woźniakowska-Fajst).

This book attempts to fill a gap in the Polish criminological literature by analysing modern criminality, its causes and the various responses to it from different points of view. For this reason, the focus is on the problem of criminality in Poland with a consideration of the broad comparative background (theoretical concepts, research conducted abroad etc.).

The idea for this compilation was adopted by a team of writers who work at the Faculty of Criminology, Institute of Law Studies, Polish Academy of Sciences. This allowed for a broad look at criminality as a social phenomenon. We are aware that this is our subjective point of view and do not hold ourselves out as only

delivering valid conclusions. We have attempted to take a comprehensive look at criminality as an ingredient of every modern society. And while it is an undesirable ingredient, it cannot be completely eradicated from social life. This does not mean, however, that it is completely impossible to supervise and monitor. We treat this publication as a contribution to the debate on the problem of criminality and how the social and penal policy of the state should control it.

The authors
Warsaw, July 2014

Chapter 1
Criminality Today and Tomorrow: Structural Stability and Variability

Dagmara Woźniakowska-Fajst

There is a generally held view that crime is a certain identifiable form of conduct that can be defined by law and which is recognised as not conforming to the conventional behavioural model of a given culture. Governments therefore take steps to discourage individuals from engaging in such conduct and punish actions defined as criminal through the application of sanctions of various kinds. But that is where the consensus ends. Governments may well deem specific actions criminal but they are driven by different imperatives. Criminal law systems are based on religious and cultural systems as well as on different interpretations of morality (Ram 2012, pp. 23–4). There is no single definition of crime in the criminal law, let alone in criminology. An exhaustive look at just what is meant by criminality would seem warranted in a book devoted to its various contemporary contexts. What factors decide whether a specific action is deemed criminal? What would the constituent components of a definition of crime look like? Who decides which actions are to be subject to penalty and on what basis? And finally, why is the concept of crime subject to continuous change?

At this point, a criminologist would ask what, in that case, constituted the substance of a crime. Who decides what actions are to be included in criminal legislation? Why are some actions crimes and others merely petty offences? And where is the line to be drawn? Why is everybody not criminally liable to the same extent?

The sources of this 'substance of crime' have always been specified differently depending on time and place. In the canonistic doctrine (i.e. based on canon law) that prevailed in Europe until the seventeenth century, crime was understood as being identical to sin and as disobedience to the will of God. During the period of absolutism that followed, crime was seen as inimical to the wellbeing of society. The theory of natural law held that crime was incompatible with the laws of nature and detrimental to society and its citizens. Kant said that crime was a violation of moral law, while according to Hegel it was 'an intentional deviation of the will of the individual from the universal law' (Andrejew 1988, p. 59).

If we look at the issue of crime from an historical perspective, we can see that the principles of criminal liability have varied considerably. The idea of society having a general welfare could not have been conceived until some sort of state structures had been set up. It was statehood that gave rise to the problem of crime. But only those few actions intended to harm the interests of the authorities qualified as public crimes and only these were prosecuted by the state. The vast majority of crimes were considered private and the burden of prosecuting them lay entirely with the aggrieved party or his/her family.

The Criminal Code currently in force[1] does not have a clear-cut definition of crime, although it frequently makes use of the concept. The definition cited at the beginning of this chapter is theoretical and clearly follows directly from the rules formulated in the Code. The Criminal Code, however, defines a prohibited act as follows: 'A prohibited act is any conduct with features defined by the criminal law' (Art. 115 § 1). This is a broader concept than crime. Prohibited acts can be subdivided into petty offences, summary offences and indictable offences. Only the last two qualify as crimes; petty offences are not formally crimes and, as such, are subject to a lower degree of criminal liability. This type of classification has a tradition going back many centuries.

During the Middle Ages, crimes were distinguished from transgressions, although the criteria for this division varied considerably (e.g. the extent of the damage or injury and/or the nature of the penalty) (Sójka-Zielińska 2009, p. 153). This division has been strongly criticised in modern times (Andrejew 1988, p. 67).

1 Criminal Code of 6 June 1997, Journal of Laws 1997 No. 88, Pos. 553.

Despite these reservations, many European countries maintain this classification of crimes as being either serious or minor, e.g. the Austrian model classifies one group of petty offences as the most minor crimes and another as administrative infringements that are not regarded as crimes and which are adjudicated by the Administrative Courts (Bojarski and Radecki 2006, p. 5). This, however, is not the only model, e.g. petty offences are considered crimes in France, where crimes are classified as petty offences, summary offences and indictable offences depending on their gravity (Bojarski and Radecki 2006, pp. 5–6). Petty offences are not seen as being essentially different from crimes in Poland (Bojarski 2009, p. 56). It has to be conceded, then, that the nineteenth-century prison reformers were correct when they spoke of assigning acts to specific categories on a purely formal basis. This is because there are no clear-cut rules, and any general prerequisites, e.g. the harm to society resulting from the act, have been interpreted differently at different times. For this reason, some summary offences were automatically made petty offences in Poland in 1966.[2] Larceny, conversion, receiving stolen goods and damaging property were among the offences that were decriminalised. These same kinds of acts can be found in the Criminal Code, the only difference being the value of the property constituting the object of the crime. In any case, this value is flexible and subject to fairly arbitrary changes. Stealing property to the value of 400 PLN, for example, is a petty offence at the time of writing (2014) and is punishable by fine, community sentence or arrest for up to 30 days. Anything above that amount is a crime and is punishable by three months' to five years' imprisonment. This makes a huge difference to the perpetrator.

Petty offences, however, can also be upgraded to crimes. Driving a vehicle while under the influence of alcohol was a petty offence until 2000. As this type of behaviour was fairly common, all the more so as it enjoyed a great deal of social approval, the legislature decided to make it more serious by criminalising it, i.e. by upgrading it from a petty offence to a crime and substantially increasing the penalty (CC Art. 178a).[3]

Whether something is a crime is also relative with regard to the perpetrator. For the same or a very similar act, one person will be penalised, another will bear a partial or reduced liability, and yet another will not be liable at all. It all depends on *who* the perpetrator is, i.e. his/her age, judgement, mental condition and sanity at the time of committing the act. These are objective conditions that the court takes into account, along with any issues shielding the actions of some perpetrators from the justice system. There is more on this below.

Criminal liability for an action in respect of the perpetrator appears to have varied considerably at different times in history. The family, and sometimes even the neighbours, of the perpetrator were held collectively liable in early mediaeval Europe and householders were long held liable for the crimes of household members under their authority. Moreover, every person who participated in a crime was given the same punishment, regardless of the nature and extent of his/her participation (Sójka-Zielińska 2009, pp. 146–7). That men and women were equally aware of their actions, and that culpability for committing prohibited acts could therefore be ascribed to women, was first recognised in the late Middle Ages. Men and women were made equally criminally liable on the basis of this major turnaround in thinking (Sójka-Zielińska 2009, p. 160). Juveniles were treated more leniently, as they could not be credited with the same degree of culpability as adults. There was no upper age limit but awareness and intellectual development were taken into account (Sójka-Zielińska 2009, p. 160). Mental illness was an extenuating circumstance that mitigated liability in some fourteenth-century cases (Sójka-Zielińska 2009, p. 168).

In addition to 'forbidden act' and 'crime', is the concept of 'punishable act'. This is defined in the Act on Proceedings Involving Juveniles (1982).[4] A 'punishable act' is any crime, fiscal offence or petty offence enumerated in the Act and committed by a person 13 years and above but under the age of 17.

Juveniles form a special category. An act that satisfies the definition of a crime will not, as a general rule, be recognised as such in their case. Whether a given act formally qualifies as a crime therefore depends on the characteristics of the perpetrator as well. As mentioned above, the perpetrator's maturity and awareness of what he/she has done were taken into consideration in the past. The legislature currently applies an arbitrarily fixed age limit to determine whether the perpetrator is a juvenile or has to answer the charge(s) as an adult. Some legislatures acknowledge that children below a certain age limit cannot be made to answer for committing

2 Act on Delegating Petty Offences to the Penal and Administrative Jurisdiction (1966), Journal of Laws 1966 No. 34, Pos. 152.

3 Schedule to the Act to Change the Criminal Code, Journal of Laws No. 48, Pos. 548.

4 Act on Proceedings Involving Juveniles (1982), Journal of Laws 2002 No. 11, Pos. 109.

a prohibited action, e.g. a person who has committed an action and who is 14 years and over but under the age of 18 is considered a juvenile in Hungary, Germany and Russia, whereas a juvenile is a person between the ages of 10 and 18 in England and Wales (Woźniakowska-Fajst 2010, p. 20). Moreover, many European countries have special rules for criminal proceedings involving juveniles (Gaberle 2006, p. 175). In Poland, the term 'juvenile' refers to three age groups, there is no fixed lower limit for liability, and a punishable act can be committed by a person between the ages of 13 and 17, although every so often the necessity of lowering the age limit for criminal liability is raised, especially in the case of the most serious crimes. On the other hand, the Criminal Code (Art. 10 § 3) provides for educational measures in lieu of a penalty for 17-year-olds. Accepting an artificially specified age limit is obviously more convenient from the standpoint of the judiciary as it frees the judge from having to go through all the minutiae of establishing the maturity of the perpetrator on a case by case basis. There are, however, various classifications to determine age distribution and establish criteria to distinguish particular phases in psychologically different ways. Arbitrarily defining a juvenile as someone under the age of 17 and an adult as someone 18 years and above is difficult to defend from a psychological standpoint (Domachowski 2005, p. 69).

If a prohibited act of a criminal nature is not in fact a crime when committed by a juvenile, then what is it? This mostly depends on the age of the perpetrator. If he/she has not yet turned 13, then Polish law confines the act to one involving depravity. The indications of depravity are enumerated, e.g. in the Act on Proceedings Involving Minors (1982), and one of them is the commission of a prohibited act. Educational measures can be applied to the perpetrator. In the case of a person who has turned 13, however, a criminal act is involved. For practical purposes, this is not a significant difference. Apart from educational measures, juveniles can be sent to youth detention centres as a corrective measure.

There is, however, one exception to the rule that a juvenile cannot commit a crime, viz. in the case of a very serious crime (e.g. homicide, causing serious health damage, armed robbery, aggravated sexual assault and rape), a perpetrator aged 15 years and over has the same liability as an adult (CC Art. 10 § 2). This provision raises all sorts of questions. In particular, Andrzej Gaberle has pointed out that according to Art. 10, the maturity of the perpetrator has to be recognised before any culpability can be imputed to him/her.

It has to be acknowledged, however, that given what is known about human development, a person who has not yet turned 17 achieves physical, emotional and social maturity in a sporadic manner (Gaberle 2006, pp. 178–9). Gaberle (2006, pp. 181–2) plainly states that 'the seriousness of the act committed by the juvenile is generally manifest proof of his immaturity as it clearly expresses his inability to comprehend the social consequences of his actions'. The legislature might have accepted the premise that a juvenile perpetrator should bear a lesser degree of culpability than an adult perpetrator and consequently imposed lesser penalties (Hałas 2006, p. 116), but research shows that juveniles charged under the Criminal Code (Art. 10 § 2) are punished severely. The courts have even sentenced 15- and 16-year-olds to 10–20 years' imprisonment (Rzeplińska 2007, p. 518).

The definition of crime also contains the concept of an illegal act. An act that ostensibly has all the elements of a crime will nevertheless not be a crime if it complies with the law on the basis of other regulations (Gardocki 2008, p. 111). These situations include lawful defence (i.e. the defence of legally protected interests from direct attack), necessity (forfeiting one good to protect another), acting under authorisation or obligation (e.g. a police officer using force to arrest a suspect), and innovation risk (e.g. conducting medical experiments to test a new drug).

Apart from the justifications laid out in the Criminal Code and several statutes, criminal law doctrine describes a few extra-statutory justifications. The very existence of these is further evidence that the word 'crime' is anything but unequivocal.

Extra-statutory justifications must, however, have some sort of authority in law, as their admissibility cannot be left to the sole discretion of the prosecutor or the judge when raised in a particular case. They are actually defined on the basis of an interpretation that draws on the principle of negligible social consequences. Customs and sporting risks are accepted as extra-statutory justifications.

One issue that always crops up is that boxing is a sport that people can engage in legally. In fact, it has its own official rules and is even an Olympic discipline. So long as the 'perpetrator' observes the rules of the sport, however, breaking noses and other bones, damaging internal organs, causing contusions and inflicting other serious injuries are not criminal acts. *Vale tudo* bouts, on the other hand, are considered illegal and

anyone participating in one is subject to criminal liability.[5] The sporting risks justification has no application here. Pretty much the same goes for customs. The interpretation of what behaviour is acceptable is subject to constant change. The Polish custom of pouring buckets of water over people on Easter Monday (Śmigus-Dingus) can now be considered a justification so long as those who take part are known to each other and the doused person expresses consent. If, however, these conditions are not met, it can be considered harm to somebody's bodily inviolability (CC Art. 217).

As mentioned above, despite the conditions of social harm being clearly set out in the Criminal Code, prosecutors and judges are given a lot of leeway in how they interpret them. In any case, this doctrine has not withstood the test of time due to changing customs and a new understanding of what conduct is acceptable and what should be prohibited outright. A good example of this is castigating minors, which was a justification until recently (Gardocki 2008, pp. 129–31). To put it bluntly, this concerned the issue of whether a parent or guardian could hit a child. Proponents of this justification even worked out an elaborate set of rules. According to them, hitting a child does not constitute battery when it is done by a parent or legal guardian for an allegedly educational purpose and does not exceed a certain limit of intensity. Despite the obvious absurdity of this sort of reasoning and despite the fact that the doctrine never recognised it, some criminal law experts argued for its existence. All these questions were rendered moot when Art. 96^1 was inserted into the Family and Guardianship Code in 2010. This plainly states that 'No person exercising parental authority over, or otherwise having care or custody of, a minor shall administer corporal punishment'.[6]

The Polish criminal law system is structured in such a way as to make the individual guilt of the perpetrator the basis of criminal liability (Marek 2010b, p. 5). Whether culpability for committing a crime (intentionally or unintentionally) can be ascribed to the perpetrator in a given case therefore mostly depends on whether crime and perpetrator liability are applicable. The perpetrator's degree of liability is also connected with the applicable penalty. This is because the appropriate and just response to the act should directly correspond with the degree of culpability.

Proving that a particular individual committed an act is not sufficient to have that act considered a crime. The key question is whether the act was the result of a decision on the part of the perpetrator and whether that decision was made through an exercise of free choice. The constitutional principle of justice requires the state to 'configure the foundations of criminal liability so as to exclude the application of repressive punishment to a person who was unable to avoid committing the act in which that liability lies' (Wróbel and Zoll 2010, p. 322). Before a perpetrator can formally be culpable of anything, he/she must have reached the age specified in the penal act (i.e. 17 or 15 in special cases). The material circumstances are those that prove that the perpetrator was capable of recognising the significance of his/her act and of making a free decision as to which act or omission he/she would undertake. A perpetrator who is not sufficiently mature mentally to recognise the significance of what he/she has done or who was non compos mentis at the time he/she acted, might therefore not be culpable, especially if the act was committed in circumstances that prevented him/her from making a free decision (e.g. threats, blackmail, fear or orders) (Wróbel and Zoll 2010, pp. 328–30). The criminal law also makes use of the concepts of wilful misconduct (a prohibited act qualifies as wilful misconduct when 'the perpetrator intends to commit it, i.e. when he/she either wants to commit it or can foresee the possibility of its being committed and is agreeable thereto' [CC Art. 9 § 1]) and unintentional misconduct ('when the perpetrator does not intend to commit it [i.e. the act] but nevertheless does so through failure to exercise due care in the circumstances, even though he/she foresaw or could have foreseen the possibility of committing the act' [CC Art. 9 § 2]). In other words, some conduct can also be punishable when the perpetrator demonstrates a certain lack of care in his/her actions, even though his/her level of maturity and intellectual development indicate that he/she should have assessed the consequences of his/her actions otherwise. There is a presumption in Polish law that the perpetrator is capable of understanding the significance of his/her actions. This presumption can only be rebutted by demonstrating that there were subjective circumstances that ruled out any possibility of a genuine understanding of the significance of the act (Wróbel 2006, p. 664).

5 *Vale tudo*, which originated in Brazil in the 1920s, is a combat sport with very few rules that is not officially acknowledged as a sport.

6 Family and Guardianship Code (1964), Journal of Laws 2012, Pos. 788.