Children in legal procedures

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List of issues

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Introduction

The Republic of Poland has committed itself under a number of international legal instruments to attaching particular importance to the protection of children's rights. This commitment is all the more important in view of the involvement of thousands of children every day in legal procedures before courts or other authorised bodies. Children become parties to legal proceedings, very often without their will, as victims of offences committed to their detriment.

Since the last *Children Count* report was issued, the legislator has made some progress in protecting children's rights. In 2016, the Sexual Offenders Register (hereafter referred to as the Register; Act of 13 May 2016 on Counteracting the Threat of Sexual Offences [Dz.U. (Journal of Laws) 2020, item 152, consolidated text]) was introduced and an obligation was imposed on employers to first verify against the Register all those to be employed in activities related to the upbringing, education, leisure, treatment or care of minors.

In 2019, there has been a reform of the provisions of the Family and Guardianship Code (krio), in which the requirements for guardians ad litem representing children have been increased (Act of 16 May 2019 amending the Acts: Family and Guardianship Code and the Code of Civil Procedure [Dz.U. 2019, item 1146]). As of September 2019, a child who cannot be represented by his or her parents in legal procedures (due, for example, to the fact that the case concerns one of them or another child) is to be represented exclusively by a guardian ad litem who is a professional attorney (advocate or legal advisor).

Also in 2019, the State Commission for Investigating Acts Directed Against Sexual Freedom and Decency of Minors under 15 Years of Age was established (Act of 30 August 2019 on the State Commission for Investigating Acts Directed Against Sexual Freedom and Decency of Minors under 15 Years of Age [Dz.U. 2020, item 2219, consolidated text]), whose task is – in addition to keeping the Register of time-barred cases – to examine the way the justice system functions in response to offences of a sexual nature committed against children.

In practice, however, children remain invisible in procedures which, by definition, should be geared towards their protection. This is particularly worrying when it happens in cases that children in Poland are most often affected by, such as criminal non-support. Moreover, the potential of the Blue Card procedure, which seems to be the most adequate in the context of domestic violence (given the high statistics of corrective and educational measures) – despite a dozen years of its existence – still does not seem to be fully used. To date, many indirect preventive measures have not been implemented, such as the introduction of the Serious Case Review procedure into the Polish legal system, which the Empowering Children Foundation has been advocating for years (FDDS, 2019).

This chapter attempts to comprehensively describe the situation of children in Poland in terms of the legal conditions of their participation in criminal and civil cases, as well as in juvenile justice proceedings and the Blue Card procedure. The chapter presents statistics on offences against children – by both other children (minors) and adults, and analyses the issue of the social cost of crime victimisation. The functioning of the hearing of the child under civil procedure and the interview under the Code of Criminal Procedure is also discussed. The chapter concludes with a presentation of recommendations.

The child in criminal procedure

Definitions

The following are definitions of terms used in this chapter. They have been prepared on the basis of generally applicable legislation.

Child – human being below the age of 18 (Article 1 of the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989 [Dz.U. 1991 No. 120 item 526 as amended], Article 2 of the Act of 6 January 2000 on the Ombudsman for Children [Dz.U. 2020 item 141, consolidated text]).

Minor – a person under the age of 18, the opposite of an adult. It is a term used in civil law and associated with full capacity for acts in law, i.e. a characteristic granted by the law to a given subject that enables him or her to acquire rights and incur obligations independently and on his or her own behalf, i.e. to perform all legal acts considered permissible by the applicable system (Balwicka-Szczyrba and Sylwestrzak, 2022).

Juvenile – a person who is legally liable – previously (i.e. between 2015 and 2021, covered by this study), based on the provisions of the Juvenile Justice Act (the Juvenile Justice Act of 26 October 1982 [Dz.U. 2018, item 969 consolidated text]), now under the Juvenile Support and Rehabilitation Act (the Act of 9 June 2022 on the Juvenile Support and Rehabilitation [Dz.U. 2022, item 1700]) – for punishable acts (applicable to a person above 13 and below 17 years of age) or for demoralisation not constituting a criminal act (currently applicable to a person above 10 and below 18 years of age).

Young offender – an offender who, at the time of committing a prohibited act, has not attained 21 years of age or 24 years of age at the time of being tried before the first-instance court (Article 115 § 10 of the Act of 6 June 1997 – Penal Code [PC; Dz.U. 2022 item 1138, consolidated text]).

Offence – a prohibited act punishable under the law in force at the time of its commission, culpable and socially harmful to a degree greater than negligible. A person's conduct is an offence when it meets all the elements set forth in the criminal law (Article 1 PC). The fulfilment of the elements is assessed by the authority conducting preparatory proceedings (public prosecutor) at the stage of the decision to initiate and conduct proceedings and by the court at the stage of passing a sentence.

Punishable act by a minor – this term should be understood as the conduct of a minor that meets the elements of an offence, a fiscal offence, a petty offence or a petty fiscal offence (Article 1(2)(2) of the Act on the Juvenile Support and Rehabilitation).

Aggrieved party – either a natural or a legal person, whose legal interest was infringed or threatened by an offence (Article 49 of the Act of 6 June 1997 – Code of Criminal Procedure [CCP; Dz.U. 2022 item 1375, consolidated text]).

Legal interests – values that are essential to the existence of a society organised into a state and that are protected by legal means of coercion (e.g. human life and health, personal inviolability; Gruszecka, 2008).

Witness – in the factual sense, it is a person who has knowledge of the event and has information relevant to the case (Dudka, 2020). In the criminal procedure sense, it is a person who has been summoned to appear and testify (Article 177 CCP).

Perpetrator – a linguistic, rather than legal, concept meaning "the one who caused something, did something, was the cause of something" (Słownik Języka Polskiego PWN, 2022). It does not designate

a person's procedural status, only his or her relationship to the prohibited act.

Suspect – a person, with regard to whom a decision presenting charges was issued in the preparatory proceedings, or who was informed about the charges in connection with his or her interrogation (Article 71 § 1 CCP). From the moment of presenting charges, that person becomes a passive party to the preparatory proceedings which from there on proceed against that person. The suspect – like the accused – may, but need not, act actively in his or her defence.

Accused – a person against whom, following the preparatory proceedings in which he or she had the status of a suspect, an indictment is submitted to a court, a request for sentencing without trial or a request for a conditional discontinuation of proceedings is filed (Article 71 § 2 CCP).

Criminal liability – a legally regulated duty to incur liability for a prohibited act.

Juvenile liability for punishable acts – a procedure, different from criminal liability, which, under the provisions of the Juvenile Justice Act, takes place in relation to a juvenile whose conduct – if it was committed by a person over 17 years of age – would be considered an offence or a petty offence.

Offences against life and health – the offences set out in Chapter XIX (Articles 148–162) PC. They are designed to protect human health and life. These include neonaticide, homicide, inciting or assisting suicide and causing bodily harm.

Homicide – the offence stipulated in Article 148 PC. The object of protection is human life from birth to death. This offence may be committed by both action and omission and results in the death of a human.

Neonaticide – the offence stipulated in Article 149 PC. The object of protection is the life of the born child. This offence may be committed by both action and omission, and its effect is the death of a neonate. The offence may be committed by the mother under the influence of delivery, i.e. as a result of a set of psychophysical, psychological, physiological and social factors related to both delivery and the mother's life situation.

Exposure to danger – the offence stipulated in Article 160 PC. The object of protection is human life and health. This Article criminalises the exposure of a person to an imminent danger of loss of life or a grievous bodily harm. Exposure to danger may take the form of an action (active behaviour) and, in the case of perpetrators having the status of guarantor of the person's safety, who have a specific legal duty to prevent a negative effect from occurring, also the form of an omission.

Offences against sexual freedom and decency – offences set forth in Chapter XXV (Articles 197–204) PC. They are designed to protect the right of the individual to freely dispose of his or her sexual life and the freedom of the individual from coercion, violence and other unlawful behaviours in the area of sexual life. These offences include rape, sexual abuse, grooming, incest and child pornography.

Rape – the offence stipulated in Article 197 PC. Paragraph 3 thereof provides for aggravated types of rape, point 3 of which criminalises rape committed against a minor under the age of 15. The elements of this type of offence are realised by causing a minor under 15 years of age by force, unlawful threat or deceit to engage in a sexual intercourse or to submit themselves to, or to perform another sexual activity. Minors over 15 years of age enjoy the protection provided for in Article 197 § 1. § 2, § 3 (1) and (3) and § 4 PC.

Taking sexual advantage of vulnerability or diminished capacity – the offence stipulated in Article 198 PC. It criminalises causing a person to engage in a sexual intercourse, or to submit themselves to, or to perform another sexual activity by taking advantage of the vulnerability of another person, or their diminished capacity to recognise the significance of the act or ability to control their conduct, as a result of a mental disability or disorder. As a result of the state of vulnerability, the aggrieved party is incapable of expressing their will, and the perpetrator takes advantage of

the state of lack of free will in the sphere of sexual freedom by vulnerable or uncapable persons.

Sexual abuse of a relationship of dependency or taking advantage of a critical situation – the offence stipulated in Article 199 PC. This Article sanctions three types of prohibited acts. The first type consists in causing another person to engage in a sexual intercourse or to submit themselves to, or to perform another sexual activity, by abusing a relationship of dependency or taking advantage of a critical situation of that person (§ 1). The aggravated types consist in committing the act specified in § 1 to the detriment of a minor (§ 2) or engaging in a sexual intercourse or another sexual activity with a minor or causing a minor to submit to or to perform same, by an abuse of trust or by giving or promising him or her a financial or personal benefit in exchange (§ 3).

Sexual abuse of a minor – the offence stipulated in Article 200 PC. Paragraph 1 provides for criminal liability for engaging in a sexual intercourse or another sexual activity with a minor under the age of 15, or causing the same to submit to or to perform such activity. It must be emphasised that the possible consent of a minor under 15 years of age is legally ineffective and does not lead to the exclusion of criminal liability of the perpetrator. This provision sets an absolute protection of minors under 15 years of age from any sexual activity. Paragraph 3 criminalises the presentation of pornographic content to a minor under the age of 15 or providing him or her with objects of such nature or disseminating pornographic material in a manner allowing such a minor to become familiar with it. Paragraph 4 prohibits the presentation to a minor under the age of 15 of a sexual activity for the purpose of obtaining by the perpetrator his or her own sexual gratification or that of another person. Paragraph 5 provides for liability for advertising or promoting the act of disseminating pornographic material in a manner allowing a minor under the age of 15 to become familiar with it.

Grooming – the offence stipulated in Article 200a PC. The aim of the perpetrator is to befriend and establish an emotional bond with a minor under 15 years of age in order to exploit this bond and lead to sexual activity. The perpetrator take advantage of the minor's incapacity to properly understand the situation or mislead him or her by depicting a false image of themselves. Paragraph 1 prohibits the establishment of contact via an information system or telecommunication network with a minor under the age of 15 with the purpose of committing the offence specified in Article 197 § 3 (2) or Article 200 PC, as well as the production or preservation of pornographic materials. Paragraph 2 prohibits offering a minor under the age of 15 to engage in a sexual intercourse, to submit to or to perform another sexual activity, or to participate in the creation or preservation of pornographic material.

Propagation of paedophilic behaviour – the offence stipulated in Article 200b PC. This provision prohibits the public propagation or approval of paedophilic behaviour. To propagate is to present the behaviour in question and to encourage it, and to approve means to formulate positive judgments with regard to the behaviour in question.

Incest – the offence stipulated in Article 201 PC. It consists in engaging in a sexual intercourse with an ascendant, descendant, or a person being an adoptee, adopter, brother or sister.

Pornography involving children – the offence stipulated in Article 202 PC. "Pornographic material is content inherent to an informational message, taking a material or dematerialised form, and is characterised by the fact that it depicts, in any form, authentic or only imagined manifestations of human sexual life in a dimension limited to physiological functions. The informational message may be recorded (fixed), e.g. in the form of a film, photographs, a book, an audio recording or not (live shows, a lecture)" (Warylewski 2011). The Article 202 PC implies the following prohibitions: publicly displaying pornographic material in such a manner that it is imposed upon a person against their wish; producing, recording, importing, storing or possessing for the purpose of disseminating,

distributing or presenting pornographic material involving a minor; recording pornographic material involving a minor; storing, possessing or procuring pornographic material involving a minor; producing, distributing, presenting, storing or possessing pornographic material presenting a produced or processed image of a minor involved in a sexual activity and participating in presentation of pornographic material involving a minor.

Forcing into prostitution – the offence stipulated in Article 203 PC. The object of protection is the sexual freedom of the person forced into prostitution. It is prohibited to cause another person to practice prostitution by force, unlawful threat or deceit, or by abusing a relationship of dependence or by taking advantage of a critical situation.

Inducing and facilitating prostitution – the offence stipulated in Article 204 PC. The object of protection is morality and the proper moral and physical development of a minor. Pursuant to § 1, punishable is the conduct of a perpetrator who, for the purpose of obtaining a financial benefit, induces another person to practice prostitution (proxenetism), or facilitates prostitution (procuring). Paragraph 2 refers to deriving material benefits from prostitution practiced by another person (pandering), and § 3 defines the aggravated type, i.e. pandering or procuring in relation to a minor (i.e. a person under 18 years of age).

Offences against family and guardianship – the offences stipulated in Chapter XXVI (Articles 206–211a) PC. Their objective is to protect the welfare and safety of family members, as well as the effectiveness of care for the vulnerable and helpless.

Maltreatment – the offence stipulated in Article 207 PC. In order for it to occur, it is not necessary to cause any specific effects (e.g. injuries to the aggrieved party). It is a formal offence – i.e. in order to commit it, it is sufficient for a behaviour to meet the criteria of maltreatment. Maltreatment is any activity of the perpetrator or failure to act (omission) amounting to the infliction of serious physical pain or severe moral suffering. Maltreatment is usually a collection of several behaviours which are in themselves examples of other offences. Behaviours amounting to maltreatment are usually extended in time. It can also be a one-off behaviour if it is characterised by a highly intensive intrusion into the interests of another person.

Inducing a minor to drink habitually – the offence stipulated in Article 208 PC. The provision is intended to protect young people from the habit of drinking alcohol which is dangerous to their physical and mental health and moral development. It is prohibited to causes a minor to drink habitually, by supplying him or her with alcoholic beverages, or by facilitating or inciting him or her to drink. The name of the offence in Polish implies a multiplicity of behaviours by the offender for its realisation. Pursuant to Article 46(1) of the Act on Upbringing in Sobriety, an alcoholic beverage is a product intended for consumption containing ethyl alcohol of agricultural origin in a concentration exceeding 0.5% by volume.

Criminal non support – the offence stipulated in Article 209 PC. The object of protection is the family and the institution of care, as well as the endeavour to secure the material basis of existence for the closest persons, whose rights in this respect derive from a court decision or the law. It is forbidden to evade compliance with an obligation to provide support whose amount has been specified in a court decision, a settlement agreement concluded before a court or another authority, or in another agreement, if the total outstanding amount due equals at least 3 periodic payments or if the payment of the outstanding amount other than a periodic payment is delayed by at least 3 months.

Abandonment – the offence stipulated in Article 210 PC. The provision protects the health and safety of a minor or a vulnerable person. It prohibits the abandonment of persons who are incapable of taking care of themselves and securing their interests on their own, and who require the assistance of others for this purpose. The perpetrator of the offence under Article 210 § 1 PC. can only be the person who is

obliged to provide care. The source of such an obligation may be a law, a court decision or an agreement.

Abduction – the offence stipulated in Article 211 PC. The provision criminalises the abduction or detention of a minor under the age of 15, or a person who is vulnerable because of his or her mental or physical condition, against the will of the person appointed to take care or supervise him or her. The parents of an abducted or detained child may commit this offence if parental authority has been taken away from them, suspended or restricted (Supreme Court resolution of 21 November 1979, VI KZP 15/79, OSNKW 1980/1-2, item 2). When parents exercise parental authority jointly and one of them, against the will of the other, takes or retains the child, the elements of abduction are not fulfilled.

Unlawful adoption arrangement – the offence stipulated in Article 211a PC. The provision protects the welfare of the child and public order expressed in the need to comply with the procedures prescribed by law. According to § 1, it is prohibited to arrange the adoption of children in violation of the provisions of the Family and Guardianship Code. Paragraph 2 provides for the prohibition of consenting to the adoption by persons vested with parental authority over a child: 1) for the purpose of obtaining a financial or personal benefit, while concealing that purpose before the court hearing an adoption case, and, in the case of a parent consenting to the adoption of a child in the future without identifying an adoptive parent – before the court accepting a statement granting such consent; and 2) without an adoption case being initiated.

Offences against liberty – the criminal law protects the most important aspects of human liberty. Offences against liberty are included in Chapter XXIII PC. These include unlawful deprivation of liberty, punishable threats, stalking and human trafficking.

Human trafficking – the offence stipulated in Article 189 PC. Human trafficking includes the recruitment, transport, supply, transfer, harbouring or receipt of a person, by means of violence or unlawful threats, abduction, deceit, misrepresentation or exploitation of a mistake or incapacity to comprehend the act, abuse of a position of dependence, exploitation of a critical situation or helplessness, giving or receiving financial or personal benefit or the promise thereof to a person vested with the care or supervision of another person, for the purpose of exploitation of that person, even with that person's consent, in particular in prostitution, pornography or other forms of sexual exploitation, in forced labour or services, begging, slavery or other forms of exploitation degrading human dignity or for the purpose of the procurement of cells, tissues or organs in breach of a law. If the perpetrator's conduct involves a minor, it constitutes human trafficking, even if the listed methods are not used.

Punishable threat – the offence stipulated in Article 190 PC. The object of protection is the liberty of a person understood as the freedom from the fear of committing a crime to his or her detriment or to the detriment of his or her closest persons. A threat may take an explicit or implicit form. A threat may be made by word, gesture or other behaviour which is intended by the threatener to be understood as a threat to commit an offence and may in fact be so understood.

Stalking – the offence stipulated in Article 190 PC. The object of protection is the freedom from the feeling of threat and from the intrusion of others into the sphere of privacy of a person. Pursuant to § 1, it is prohibited to persistently harass another person or another person's family or household member, i.e. to undertake actions which create in a given person a justified sense

of danger, humiliation or anguish or significantly violate the person's privacy. The perpetrator may engage in behaviour such as phone calls, text messages, e-mail contacts, intruding, soliciting at home, watching or imposing themselves with gifts. Pursuant to § 2, it is prohibited to personate another person or to use his or her image or other personal data on the basis of which that person is publicly identifiable, for the purpose of causing property or personal damage.

Recording a naked person's image without consent – the offence stipulated in Article 191a PC. It describes two types of prohibited acts. The first type involves recording the image of a naked person or a person engaged in a sexual activity, using violence, unlawful threat or deceit. Type two is the distribution of the image of a naked person or a person engaged in a sexual activity without his or her consent.

Victimisation

Adult perpetrators

Offences by adults against children show uneven dynamics. Most cases, counted in thousands, concern criminal non-support and maltreatment. Particularly noteworthy are cases under Article 207 § 1 PC, since, as practice shows (Burdziej et al., 2022), a child aggrieved by maltreatment goes unnoticed by the justice system. Despite the separation in 2017 of § 1a within Article 207 PC. concerning maltreatment of a person who is vulnerable because of his or her age (with an increased criminal sanction), this norm remains practically unused, as highlighted by the Court Watch Foundation (Burdziej et al., 2022) in its report. In the cases studied thereunder, children were often not even identified as aggrieved by maltreatment, although they lived together with the aggrieved adult and the perpetrator.

It is noteworthy that the number of criminal cases ending in a conviction in which children were identified as aggrieved by maltreatment is almost four times smaller compared to the number of cases pending under the Blue Card procedure in which children were identified as potentially aggrieved by domestic violence.

The other offences against children observed in significant numbers are acts against sexual freedom (in particular sexual intercourse with a person under 15 years of age). Cases involving traffic accidents, punishable threats and offences against property with the use of force (armed robbery) count in hundreds.

Table 1 shows both acts that have been designated by the legislator as those that can only be committed against a minor and the age of the aggrieved party is one of the elements of the act explicitly stated in the legislation, and other offences committed against minors, the number of which is significant each year.

Table 1. Number of minors aggrieved in cases involving selected offences with a conviction at first instance

Type of prohibited act		Years					
		2016	2017	2018	2019	2020	2021
148 § 1 PC (homicide)		11	17	15	11	16	14
149 PC (infanticide)		1	0	1	0	1	1
177 § 1 PC (causing an accident)		219	260	266	268	222	206
190 PC (punishable threat)		265	244	245	299	244	274
190a § 1 PC (stalking)		65	69	64	77	82	96
197 § 1 PC (rape)		49	65	47	36	48	54
197 § 3 PC (aggravated rape)		111	120	98	124	88	100
199 PC (sexual abuse of a relationship of dependency or taking advantage of a critical situation)		11	14	19	28	14	17
200 PC (sexual abuse of a minor)	200 § 1 PC	636	699	607	614	590	652
	200 § 2 PC	13	4	3	9	0	1
	200 § 3 PC	39	48	61	56	40	80
	200 § 4 PC	43	45	43	42	58	19
	200 § 5 PC	0	0	0	0	0	0
200a PC (grooming)	200a § 1 PC	16	13	14	17	16	27
	200a § 2 PC	58	91	77	82	56	63
201 PC (incest)		2	2	3	6	3	14
202 PC (child pornography)	202 § 3 PC	11	13	12	9	9	26
	202 § 4 PC	9	12	20	13	8	11
	202 § 4a PC	14	15	72	44	25	28
	202 § 4b PC	9	8	1	0	1	0
207 PC (maltreatment)	207 § 1 PC	3,656	3,943	3,403	3,214	3,028	3,580
208 PC (inducing a minor to drink habitually)		38	42	55	69	74	56
209 PC (criminal non-support)	209 § 1 PC	8,475	8,240	45,526	48,195	21,425	14,405
	209 § 1a PC	–	–	–	–	13,665	19,978
278 § 1 PC (theft)		35	57	40	67	52	80
280 § 1 PC (armed robbery)		140	116	89	94	70	76
286 PC (fraud)		54	42	56	99	42	91

Source: Own analysis based on data provided by the Ministry of Justice.

Children tried as adults

Pursuant to the Criminal Code, criminal liability may be incurred by persons who were over the age of 17 at the time of committing the prohibited act (Article 10 § 1 PC) and therefore remain children in the sense of the legislation. In exceptional cases, a child from the age of 15 who has violated specific

provisions of the criminal law[1] may be criminally liable on the same terms as an adult (Article 10 § 2 PC). However, their liability is modified in comparison to that of an adult person – it is distinguished by the obligation of the court to apply a lower maximum sentence[2], as well as by its optionality. It depends on the court's assessment whether a minor over 15 years of age will incur criminal liability. The court will only try a juvenile as an adult if it considers that their degree of maturity indicated that they understood the social significance of their act.

Over the past 5 years, the number of children tried under Article 10 § 2 PC has remained low, never exceeding 10 per year. Juveniles have been tried and convicted overwhelmingly for acts against the life, health and sexual freedom of the aggrieved parties (Table 2).

Table 2. Number of persons from the age of 15 sentenced on the basis of Article 10 § 2 PC between 2016 and 2021 per type of act

Type of prohibited act	Years					
	2016	2017	2018	2019	2020	2021
Article 134 PC	–	–	–	–	–	–
Article 148 § 1 PC	2	–	–	–	1	1
Article 148 § 2 PC	1	1	1	–	2	–
Article 148 § 3 PC	1	–	–	–	–	–
Article 156 § 1 i 3 PC	–	–	–	1	–	–
Article 163 § 1 i 3 PC	–	–	–	–	–	–
Article 166 § 1 PC	–	–	–	–	–	–
Article 173 § 3 PC	–	–	–	–	–	–
Article 197 § 3 PC	2	1	1	1	1	1
Article 252 PC	–	–	–	–	–	–
Article 280 § 2 PC	3	2	2	1	3	–
TOTAL	9	4	4	3	7	2

Source: Own analysis based on data provided by the Ministry of Justice.

As can be seen from Table 2, it is rare to find cases in which both the severity of the offence committed and the developmental stage of the juvenile offenders support trying them as adults. In no year did their number exceed 10. There is no data on whether these offences were committed against minors or on the possible family relationship between the aggrieved party and the perpetrator.

1 The criminal liability of minors from the age of 15 applies only to very serious offences such as homicide (Article 148 PC), grievous bodily harm (Article 156 § 1 PC), rape jointly with another person against a minor or a close person (Article 197 § 3 (1–3) PC), rape with particular cruelty (Article 197 § 4 PC).

2 Article 10 § 3 PC: "[...] the sentence imposed may not exceed two-thirds of the statutory maximum sentence prescribed for the offence imputed to the offender; the court may also apply an extraordinary mitigation of penalty".

Juveniles

Children – with the exceptions indicated above – shall be deemed incapable of committing an offence because no guilt can be attributed to them. This is because the legislator recognises that below a certain age a person is not mature enough to be required to behave in a certain way under the threat of criminal liability. Such a person is incapable of recognising the meaning of his or her act and directing his or her conduct (Wróbel and Zoll, 2016), even though in individual cases the degree of maturity of the child would indicate a full understanding of the criminal law meaning of the behaviour in question. The exclusion of criminal liability does not mean that children do not bear legal responsibility for their conduct. This responsibility during the period covered by this study was regulated in the Juvenile Justice Act of 26 October 1982, but 2022 saw the adoption of new legislation in this regard. Currently, the issue of legal responsibility of minors is regulated by the Act of 9 June 2022 on the Juvenile Support and Rehabilitation[3].

Under the current legislation, juvenile proceedings take place before the family court and are closed to the public. The overriding principle of both the previous and new rules was and is the welfare of the juvenile. The proceedings were not and still are not aimed at inflicting punishment, but seek to bring about "favourable changes in the juvenile's personality and conduct and aiming, where necessary, at the proper fulfilment by the parents or guardian of their obligations towards the juvenile, taking into account the public interest" (Article 3 (1) of the Juvenile Justice Act). In the new act, the purpose of the proceedings is framed in the same way (Article 3 of the Juvenile Support and Rehabilitation Act). According to the provisions of both the previous and the new acts, the aggrieved is not a party to the proceedings, but the new legislation gives the aggrieved party more rights, such as the possibility to submit evidence requests (Article 58(2) of the Act on the Juvenile Support and Rehabilitation) and to ask questions at the hearing during the taking of this evidence (Article 69(5) thereof).

Demoralisation cases

Juveniles under 18 years of age (with no minimum age limit) may be liable for demoralisation. In the previous legal state, there was no minimum limit of liability for demoralisation. The concept of demoralisation includes the commission of a prohibited act. In practice, liability for such acts under the demoralisation procedure applied to children under the age of 13. The new Act on the Juvenile Support and Rehabilitation sets the limit of liability for demoralisation at the juvenile's completion of 10 years of age. (Article 1(1)(1) of the Act on the Juvenile Support and Rehabilitation).

There is no definition of demoralisation in both the previous and new legislation – the legislation only lists its manifestations[4]. Some (Kruk et al., 2016) argue that in practice the term is unambiguous and means various manifestations of social maladjustment.

The number of juveniles liable for manifestations of demoralisation in 2015–2019 is shown in Table 3.

3 The Act of 9 June 2022 on the Juvenile Support and Rehabilitation entered into force on 1 September 2022. The proceedings described in this study took place between 2015 and 2021 that is only under the previous legislation.

4 Article 4(1) of the Juvenile Justice Act lists as examples of demoralisation, among others, "violating the principles of social co-existence, committing a prohibited act, systematically evading compulsory education or vocational training, using alcohol or other substances for the purpose of intoxication, practising fornication, vagrancy, participation in criminal groups". Whereas Article 4(1) of the Act on the Juvenile Support and Rehabilitation treats as demoralisation "in particular, committing a prohibited act, violating the principles of social co-existence, evading compulsory education or training, using alcohol, intoxicants, psychotropic substances, their precursors, substitutes or new psychoactive substances, hereinafter referred to as ‚psychoactive substance', practising fornication".

Table 3. Total number of final rulings in demoralisation cases issued in 2015–2019, by gender

	Years				
	2015	2016	2017	2018	2019
Total	14,599	15,189	13,371	14,414	13,805
Boys	9,767	10,177	8,999	9,655	9,277
Girls	4,832	5,012	4,372	4,759	4,528

Source: Own analysis based on data from the Statistical Database of the Judiciary (https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/).

Juveniles liable for prohibited acts

Children between the ages of 13 and 17 during the period covered by this study were legally liable for the commission of prohibited acts under the Juvenile Justice Act, the procedure for prohibited acts. Reaching the aforementioned age did not exclude liability for demoralisation. Juveniles of this age could also be tried for manifestations of demoralisation, as long as their conduct did not constitute punishable acts. Under both the previous legislation and the new Act, placement in a correctional institution could only be imposed on juveniles who had committed punishable acts. A punishable act under the previously applicable legislation was understood as commission of an offence or a fiscal offence or one of the petty offences listed therein[5].

The Committee on the Rights of the Child, in its conclusions following Poland's submission of its periodic report on compliance with the Convention on the Rights of the Child (Children Rights Committee, 2021), indicates that the provisions of Polish law on the legal liability of juveniles are contrary to the Convention on the Rights of the Child, as the limit of criminal liability should be absolutely set at 18 years of age and the limit of juvenile liability at 15 years of age.

Furthermore, as the Committee on the Rights of the Child points out in its report, petty offences should be removed from the list of acts for which juveniles can be held liable. The Committee also calls for the exclusion of juveniles from being listed in the Sexual Offenders Register.

The number of juveniles tried for the commission of selected prohibited acts in 2015–2019 is summarised in Table 4, which shows the acts that have been designated by the legislator as those that can only be committed against a minor and the age of the aggrieved party is one of the elements of the act explicitly stated in the legislation, and other serious acts that have been committed against minors. The analysis of the data shows that against other children, juveniles most frequently commit criminal acts involving violence (causing medium and slight bodily harm, fight and beating, battery, maltreatment, armed robbery and theft by extortion), but not leading in most cases to death or grievous bodily harm. The proportion of acts of a sexual nature is significant – particularly sexual intercourse with a person under 15 years of age, which may, however, result from adolescents entering into peer relationships and engaging in intercourses in which one or both parties are below the so-called age of consent, set at 15 years of age (Article 200 § 1 PC). There is also a noticeable number of rulings concerning punishable threats and recording and distributing of the image of a naked person committed against a minor. The nature of these acts supports the idea that they may relate to peer victimisation. The question remains about the prevention of such acts – through education and appropriate response – within the system of education. For years, the Empowering Children Foundation has been promoting the introduction of child safeguarding policies in educational institutions, i.e. internal procedures regulating, among other things, how to deal with peer abuse.

Out of the total number of children aged 13–17 (1,107,564 while the total number of children in Poland

5 Article 1(2) of the Juvenile Justice Act:
Whenever the Act refers to:
[...]
2) "punishable act" – it shall mean an act prohibited by law as:
a) an offence or a fiscal offence, or
b) a petty offence specified in Articles 50a, 51, 69, 74, 76, 85, 87, 119, 122, 124, 133 or 143 of the Code of Petty Offences.

is 7,288,409 [Główny Urząd Statystyczny, 2021]), the so-called juvenile delinquency accounts for less than 1% of cases, as there have been less than 10,000 rulings per year for several years.

It is worth noting also that from the analysis of the statistical data it transpires that boys predominate among juvenile offenders.

Table 4 omits some acts, the share of which in the so-called juvenile delinquency to the detriment of other children is small and fluctuates between a few and a dozen cases per year. The inclusion of these acts would have excessively complicated the data, compromising a clear presentation of the phenomenon. Comprehensive data on juvenile rulings can be found in the Statistical Database of the Judiciary.

Table 4. Number of final rulings in criminal cases, taking into account selected types of acts

Type of prohibited act		Years				
		2015	2016	2017	2018	2019
149 PC (infanticide)		–	–	–	–	–
148 § 1 PC (homicide) – aggrieved minor		–	–	–	1	–
151 PC (assisting suicide) – aggrieved minor		1	–	1	1	2
156 PC (grievous bodily harm) – aggrieved minor	156 § 1 (1) PC	3	9	4	4	2
	156 § 1 (2) PC	1	1	1	1	–
157 § 1 PC (medium bodily harm) – aggrieved minor		123	173	163	110	80
157 § 2 PC (slight bodily harm) – aggrieved minor		107	160	156	105	59
158 § 1 PC (fight and beating) – aggrieved minor		183	288	213	1,821	113
160 § 1 PC (exposure to danger) – aggrieved minor		12	15	16	7	71
190 § 1 PC (punishable threats) – aggrieved minor		100	137	139	95	67
191a § 1 PC (recording a naked person's image without consent) – aggrieved minor		15	19	49	25	26
197 PC (rape) – aggrieved minor under 15	197 § 1 PC	1	–	1	–	–
	197 § 2 PC	4	6	–	–	–
	197 § 3 (1) PC	1	1	–	1	–
	197 § 3 (2) PC	10	8	4	10	8
199 § 2 PC (sexual abuse of a relationship of dependency or taking advantage of a critical situation)		–	–	–	–	–
199 § 3 PC (sexual abuse of trust or giving a benefit)		–	–	–	–	–
200 PC (sexual abuse of a minor under 15)	202 § 3 PC	140	153	125	115	125
	202 § 4 PC	1	–	4	1	–
	202 § 4a PC	6	19	17	25	21
	202 § 4b PC	–	–	–	–	–

Type of prohibited act		Years				
		2015	2016	2017	2018	2019
200a PC (grooming)	200a § 1 PC	–	4	4	1	4
	200a § 2 PC	4	19	19	16	11
200b PC (propagation of paedophilic behaviour)		–	–	1	1	1
202 PC (child pornography)	202 § 3 PC	15	19	67	37	54
	202 § 4 PC	–	8	4	3	2
	202 § 4a PC	13	9	13	15	14
	202 § 4b PC	–	6	14	6	13
202 PC (child pornography)	204 § 3 PC	–	–	–	–	–
	204 § 3 read with § 1 PC	–	–	–	–	–
202 PC (child pornography)	207§ 1 PC (aggrieved minor)	55	89	59	25	35
	207§ 1a PC	–	–	–	7	6
208 PC (inducing a minor to drink habitually)		9	7	6	10	11
217 § 1 PC (battery) – aggrieved minor		109	145	120	78	70
280 § 1 PC (armed robbery) – aggrieved minor		78	69	75	28	34
282 PC (theft by extortion) – aggrieved minor		54	65	52	32	34

Source: Own analysis based on data from the Statistical Database of the Judiciary (https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/).

Table 5. Total number of final rulings in criminal cases issued in 2015–2019 by gender

	Years				
	2015	2016	2017	2018	2019
Total	12,237	11,355	9,657	9,754	8,920
Boys	9,617	8,735	7,367	7,491	6,681
Girls	2,620	2,620	2,290	2,263	2,239

Source: Own analysis based on data from the Statistical Database of the Judiciary (https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/).

Victimisation cost

Being aggrieved by an offence has many different types of effects in the life of a child. One of the primary ones is the financial damage that can occur when a child is aggrieved by an offence both directly and indirectly, i.e. when he or she loses one of his or her breadwinners (parent, legal guardian) as a result of the offence.

Damage is understood as a detriment to the aggrieved party's legal interests suffered against his or her will. It is divided into financial damage and non-financial damage, i.e. harm (Balwicka-Szczyrba and Sylwestrzak, 2022).

The award of damages or compensation can take place in both criminal[6] (except for the award of a pension) and civil[7] (except for the award of a pension) and civil[8].

The legislation provides for the extension of the statute of limitations for a minor's claims to two years from the age of majority, irrespective of the start of the limitation period.

The Ministry of Justice does not collect data to determine how many minors have received damages or compensation in the last five years and what these amounts were.

Where it is not possible to obtain from the perpetrator or from other sources, including insurance or social assistance, coverage for lost earnings, other means of subsistence or medical and rehabilitation costs, it is possible to obtain state compensation for certain prohibited acts, even when the perpetrator(s) of the act have not been identified (Act of 7 July 2005 on State Compensation to Victims of Certain Prohibited Acts [Dz.U. 2016, item 325 consolidated text]). Compensation is available only to an aggrieved party who has suffered a grievous bodily harm, a physical injury or impairment to health lasting longer than 7 days, or to the next-of-kin if the aggrieved party has suffered death as a result of the offence. A next-of-kin is, inter alia, a descendant of the deceased aggrieved party or their adoptee. Compensation is awarded in a limited amount, up to PLN 25,000, unless the aggrieved party has died, in which case it is up to PLN 60,000. Compensation is awarded by district courts at the request of the aggrieved party or the public prosecutor.

Table 6. State compensation decisions made by district courts between 2016 and 2021

Year	Received	Processed							Number of cases processed in which compensation was awarded	Number of cases processed in which compensation was awarded
		total	of which							
			upheld in full or in part	dismissed	returned	rejected	discontinued	other solutions		
2016	100	90	35	18	17	3	4	13	28	197,024
2017	79	86	33	15	18	3	2	15	27	369,694
2018	111	91	34	21	20	2	1	13	34	331,925
2019	117	121	25	27	43	1	4	21	25	378,929
2020	55	75	21	19	19	1	2	13	21	243,995
2021	56	52	21	13	7	2	2	7	21	283,895

Source: Information of the Ministry of Justice.

6 The basis for the award of damages and compensation in criminal proceedings is Article 46 PC, which contains a directive for the criminal court to apply the civil law provisions, with the express exclusion of the application of provisions on the possibility of awarding a pension.

7 Article 444 of the Act of 23 April 1964 – Civil Code (kc; Dz.U. 2020 item 1740 as amended, consolidated text) with regard to damages for personal injury to compensate for any costs incurred in this respect, Article 445 kc with regard to compensation for harm, and Article 446 §2 kc with regard to claims by a person entitled to support for the provision of maintenance in the event of the death of the person obliged to provide it.

8 Although in civil proceedings there is a principle that a civil court is bound by findings made in a conviction, this does not apply to findings of an acquittal. This means that in the case of an acquittal, it is possible to seek damages from the perpetrator before a civil court – Resolution of the Supreme Court (legal principle) of 28.04.1983, III CZP 14/83, OSNC 1983, No. 11, item 168.

The Ministry of Justice does not collect accurate statistics to determine how many minors have received state compensation and in what amount. The small annual number of rulings on state compensation leads to a conclusion that it is possible that no minor has received it.

In the proceedings described in this subsection, the aggrieved is child directly or indirectly represented by a legal representative, unless there is an exception justifying the appointment of a guardian ad litem in the case (more on guardians ad litem and the conditions for their appointment in the following subsections).

A topic that has been neglected in both Polish and European studies, but is quite extensively present in foreign discourse, particularly in the US, is the issue of estimating the social costs of individuals' adverse experiences during childhood. Being exposed in childhood to factors such as domestic violence, among others, has an impact on the entire adult life of the person affected. In particular, it triggers psychiatric disorders and related somatic conditions, increasing the propensity to engage in health-risky behaviours, such as addictions, and consequently – shortening lives. The estimated annual societal cost of adverse childhood experiences for Europe is approximately 581 billion US dollars per year (PLN 2,591,184,470,000), or 2.5% of the gross domestic product of the continent's countries. In Poland, the estimate is US$ 14.9 billion, or PLN 66,452,063,000, which makes about 2.5 % of the country's GDP (Hughes et al., 2021).

There are no detailed Polish studies in this area.

Interviewing the aggrieved minor

Article 185a CCP concerning the so-called friendly interviewing of aggrieved minors was introduced into the Polish legal order by the Act of 10 January 2003 amending the Acts: the Code of Criminal Procedure, the Introductory provisions of the Code of Criminal Procedure, the Act on the Crown Witness and the Act on the Protection of Classified Information (Dz.U. 2003, No. 17, item 155). The protection of an aggrieved minor from the point of view of the objective scope of the indicated provision concerned only offences against sexual freedom and decency. The subjective scope was limited to aggrieved parties who were under 15 years of age at the time of the act. In the course of subsequent amendments[9], the subject and object of protection specified in Article 185a CCP have been extended.

Pursuant to the 2005 amendment, the interviewing under Article 185a CCP was also extended to minors aggrieved by offences against the family and guardianship. The subjective scope was extended to aggrieved minors who were under 15 years of age at the time of the interview. By virtue of the 2013 amendment, which entered into force on 27 January 2014, the legislator in Article 185a § 4 CCP also provided protection for aggrieved minors who have reached the age of 15. Interviewing of minors aged 15–18 is carried out in the so-called friendly mode when there is a fear that an interview under other conditions could have a negative impact on the minor's mental state. Following the 2013 amendment, an interview upon conditions defined in Article 185a CCP is carried out when a minor is aggrieved by an act stipulated in Chapters: XXIII (offences against liberty), XXV (offences against sexual freedom and decency) and XXVI (offences against family and guardianship) and in the case of offences committed with the use of violence or unlawful threats.

9 Pursuant to the Act of 3 June 2005 amending the Act – the Code of Criminal Procedure (Dz.U. 2005, No. 141, item 1181, hereinafter: the 2005 amendment), and the Act of 13 June 2013 amending the Acts: the Penal Code and the Code of Criminal Procedure (Dz.U. 2013, item 849, hereinafter: the 2013 amendment).

Pursuant to Article 185b § 1 CCP, in cases of offences committed with the use of violence or unlawful threats or defined in Chapters XXV and XXVI of the Penal Code, a witness who is under 15 years of age at the time of testifying may be subject to an interview under the conditions specified in Article 185a § 1–3, if his or her testimony may be of vital importance to the case.

The interviewing of a minor in the so-called protective mode takes place in a court session with the active participation of an expert psychologist (Kosior, 2010). It is an evidence procedure under the exclusive competence of the court (Trocha, 2011). The public prosecutor, defence counsel and the aggrieved party's attorney have the right to participate in the interview. A person referred to in Article 51 § 2 CCP or an adult indicated by the aggrieved party also has the right to be present, if this does not limit the freedom of speech of the testifying person. The interview should take place without delay, no later than within 14 days of the receipt of the request. The indicated deadline is intended to reduce the tension suffered by the aggrieved party in connection with waiting for the procedure and, as a result, reduce their traumatic experiences (Mierzwińska-Lorencka, 2011).

The technical conditions of the interview are set forth in Article 185d CCP and in the Regulation of the Minister of Justice of 28 September 2020 on the Manner of Preparation of the Interviews Conducted under Articles 185a-185c of the Code of Criminal Procedure (Dz.U. 2020.1691).

According to the current legislation, a minor shall be interviewed under the so-called protective procedure and only if his or her testimony is material to the outcome of the case. When the premise of the materiality of the testimony is not fulfilled, the interviewing of the minor should be abandoned (Świecki, 2020). As a rule, there shall be a single interview. The legislator has provided for only two exceptions to this rule. An interview may be repeated when new circumstances previously unknown come to light or when requested by the accused who had no defence counsel during the first interview. In the doctrine, it is emphasised that relevant circumstances are those that arise from further evidence carried out and that are expected to lead to the establishment of the perpetrator or the circumstances of the event (Grzegorczyk, 2014). Much more doubtful is the second premise that can constitute the basis for repeated interview. In line with the viewpoint taking into account the interests of the aggrieved minor, the request of the accused who did not have a defence counsel during the first interview should be assessed in view of prerequisites set out in Article 170 § 1 CCP (Dudka, 2020). This viewpoint balances the interests of the minor and the accused, and also implements the concept of preventing secondary victimisation and aggravating the negative consequences of the offence by causing the minor mental suffering associated with participation in the interview (Koper, 2019). According to a different view, a repeated interview of the minor is necessary when requested by the accused who did not have a defence counsel during the first interview, and the court's refusal thereto would be a violation of the rules of procedure significantly affecting the outcome of the case, which constitutes a relative ground of appeal (Łakomy, 2016).

The issue of re-interviewing an aggrieved minor at the request of the accused who did not have defence counsel during the first interview raises discrepancies in the case law of the Supreme Court (SN). According to the position presented in its older rulings (Supreme Court judgment of 1 February 2008, V KK 231/07, Supreme Court judgment of 22 January 2009, V KK 216/08, Supreme Court judgment of 16 March 2011, III KK 278/10), the request of the accused who did not have a defence counsel during the first interview should be satisfied. The request is absolute in nature and the re-interviewing should take place regardless of the assessment of other circumstances, including the mental state of the aggrieved minor. The mere submission of the request, even without a justification and a proof of evidence, obliges the court to conduct a second interview. The court's prerogative is only to examine whether the accused actually did not have an appointed defence counsel during the first interview. This position is based on the assumption that to do otherwise would constitute a violation of the accused's right to defence. However, in more recent rulings of the Supreme Court (Supreme Court judgment of 16 March 2011, III KK

278/10, Supreme Court judgment of 7 November 2018, II KK 83/18, Supreme Court judgment of 27 September 2016, V KK 246/16, Supreme Court judgment of 4 April 2018, III KK 362/17), the Supreme Court presents a view that the submission of a request for the re-interviewing of a witness does not imply the necessity of interviewing the witness again, because – like any evidentiary motion – this demand is subject to assessment in view of Article 170 CCP. This position is based on the assumption that the purpose of the regulation contained in Article 185a CCP is primarily to protect the aggrieved minor. The Supreme Court rightly points out that the provision of Article 185a CCP is a norm of a guaranteeing nature, but its functioning is not related to securing the procedural interests of the accused, but to the necessity to protect the psyche of aggrieved minors and prevent their secondary victimisation (Supreme Court judgment of 20 January 2016, III KK 187/15).

Statistics collected by the Ministry of Justice show that the number of minors interviewed under Articles 185a and 185b CCP is increasing. In 2016, 7,731 protective interviews of aggrieved minors were held in district courts, while in 2021 the number reached 9,490. An increase in the number of protective interviews was also recorded for minor witnesses. In 2016, there were 1,895 such interviews in district courts, while in 2021, the number of interviews of minor witnesses increased to 2,138. An increase in the number of interviews was also recorded for regional courts. In 2016, they held 7,731 interviews under Article 185a CCP and 1,895 interviews under Article 185b CCP. Whereas, in 2021, there were 9,490 interviews under Article 185a CCP and 2,138 interviews under Article 185b CCP. In line with the increase in the number of interviews, the number of repeat interviews in both district and regional courts has also risen (Tables 7 and 8).

Table 7. Interviews under Articles 185a and 185b CCP in district courts in 2016–2021

Year	Interview under Article	Total number	Re-interviewing		
			more than once because relevant circumstances have come to light, the clarification of which required a new interview	upon request of the suspect / accused who had no defence counsel at the time of the first interview	together
2016	185a CCP	7,731	76	71	147
	185b CCP	1,895	11	22	33
2017	185a CCP	8,802	72	71	143
	185b CCP	1,958	7	36	43
2018	185a CCP	8,687	60	67	127
	185b CCP	2,122	4	24	28
2019	185a CCP	9,745	42	68	110
	185b CCP	2,436	8	22	30
2020	185a CCP	8,454	38	4	42
	185b CCP	1,933	95	32	127
2021	185a CCP	9,490	66	99	165
	185b CCP	2,138	15	53	68

Source: Own analysis based on data provided by the Ministry of Justice.

Table 8. Interviews under Articles 185a and 185b CCP in regional courts in 2016–2021

Year	Interview under Article	Total number	Re-interviewing		
			more than once because relevant circumstances have come to light, the clarification of which required a new interview	upon request of the suspect / accused who had no defence counsel at the time of the first interview	together
2016	185a CCP	157	7	5	12
	185b CCP	58	0	3	3
2017	185a CCP	170	5	11	16
	185b CCP	62	0	2	2
2018	185a CCP	168	6	10	16
	185b CCP	89	2	6	8
2019	185a CCP	156	4	7	11
	185b CCP	136	2	16	18
2020	185a CCP	147	10	12	22
	185b CCP	68	2	9	11
2021	185a CCP	181	11	6	17
	185b CCP	75	2	4	6

Source: Own analysis based on data provided by the Ministry of Justice.

Pursuant to Article 185d § 1 CCP, interviews under the procedure referred to in Articles 185a-185c shall be conducted in adequately adapted rooms at the seat of the court or outside of it, and according to the Regulation of the Minister of Justice of 28 September 2020 on the Manner of Preparation of the Interviews Conducted under Articles 185a-185c of the Code of Criminal Procedure, the interview room may be located at the seat of the court or outside of the court, in particular in the premises of the public prosecutor's office, the police, a state or local government institution or an entity whose tasks include assistance to minors or victims of rape, or in the premises of another entity, provided that it has an interview room meeting the conditions set out in that regulation.

Data collected by the Ministry of Justice shows that in 2016, 5,165 interviews under Article 185a and 1,220 interviews under Article 185b CCP were held in courts. In the same year, 1,775 interviews under Article 185a and 452 interviews under Article 185b CCP took place out of courts. In the following years, at least 70% of the interviews took place in court (Tables 9 and 10).

Table 9. Interviews under Articles 185a and 185b CCP in district courts and out of courts in 2016–2021

Year	Interviews under Article	Total number	Held in courts	Held out of courts
2016	185a CCP	7,731	5,165	1,775
	185b CCP	1,895	1,220	452
2017	185a CCP	8,802	6,162	1,371
	185b CCP	1,958	1,751	371
2018	185a CCP	8,687	6,299	1,493
	185b CCP	2,122	1,492	396
2019	185a CCP	9,745	7,212	1,639
	185b CCP	2,436	1,731	453
2020	185a CCP	8,454	5,956	1,176
	185b CCP	1,933	1,352	305
2021	185a CCP	9,490	6,963	1,542
	185b CCP	2,138	1,162	274

Source: Own analysis based on data provided by the Ministry of Justice.

Table 10. Interviews under Articles 185a and 185b CCP in regional courts and out of courts in 2016–2021

Year	Interviews under Article	Total number	Held in courts	Held out of courts
2016	185a CCP	157	102	41
	185b CCP	58	49	9
2017	185a CCP	170	85	60
	185b CCP	62	40	15
2018	185a CCP	168	107	47
	185b CCP	89	65	18
2019	185a CCP	156	118	33
	185b CCP	136	113	18
2020	185a CCP	147	103	29
	185b CCP	68	52	6
2021	185a CCP	181	140	27
	185b CCP	75	60	6

Source: Own analysis based on data provided by the Ministry of Justice.

The conditions to be fulfilled by the room intended for the interviewing are set out in the Regulation of the Minister of Justice of 28 September 2020 on the Manner of Preparation of the Interviews Conducted under Articles 185a-185c of the Code of Criminal Procedure. The place where the meeting with the child should take place is called a child-friendly interview room. In fact it consists of two rooms – an interview room and a technical one. Adjacent to the interview room, there should be a separate waiting room and a toilet.

The waiting room is usually the first place where the child will be invited while waiting for the interview. In this room, the minor should be given the opportunity to spend time actively. The child should feel comfortable there and have access to books, magazines, colouring books and crayons. There should always be drinking water and tissues available.

The design and equipment of an interview room should meet certain criteria:

- It is suited to the age of the child being interviewed, providing a comfortable, stable place to sit;
- It allows the witness to feel safe and intimate in the interaction and promotes freedom of expression;
- It fosters the minor's ability to concentrate attention and to mobilise memory while giving evidence.

The interview of a child should obligatorily be recorded with video and audio recording equipment.

Data collected by the Ministry of Justice shows that in 2016 there were a total of 258 child-friendly interview rooms in district and regional courts. Their number reached a peak (306) in 2020 and dropped the following year to 300 (Table 11).

Table 11. Child-friendly interview rooms in district and regional courts in 2016–2021

Year	Interview rooms in district courts	Interview rooms in regional courts	Total
2016	241	17	258
2017	257	22	279
2018	267	26	293
2019	267	28	295
2020	275	31	306
2021	271	29	300

Source: Own analysis based on data provided by the Ministry of Justice.

Obligation to report offences

On the 17th of July 2017, the Act of 23 March 2017 amending the Acts: the Penal Code, the Juvenile Justice Act and the Code of Criminal Procedure, entered into force. The work on this amendment was initiated by the President of the Republic of Poland and the Ombudsman for Children within the System Analysis Team operating at the Chancellery of the President of the Republic of Poland. The justification of the bill of 23 March 2017 makes it clear that the legislator's aim was to "increase the level of protection of minors, with particular attention to minors under 15 years of age, as well as those who are vulnerable due to their mental or physical condition" (Sejm RP, 2016, p. 5). Failure to comply with the obligation to report an offence stipulated in Article 240 PC gives rise to criminal law consequences. This duty to report has the nature of a legal obligation, and for its non-fulfilment the legislator has provided a sanction of imprisonment for a maximum term of 3 years.

The list of prohibited acts added to Article 240 PC by the Act of 23 March 2017 includes prohibited acts directly profiled to protect minors under the age of 15 (Articles 200, 197 § 3 (2) PC), or those oriented to provide protection against the most severe forms of physical or sexual violence without restriction as to the age of the aggrieved party (Articles 156, 197 § 3 (1) and (3), 197 § 4 and 198 PC).

It follows from Article 240 PC that the legal obligation to report a punishable preparation or attempt, or a commission of a prohibited act listed therein, to a law enforcement authority is imposed on anyone who has reliable information concerning the same. The obligation to report applies to the commission of prohibited acts and to intermediary stages, i.e. punishable preparation and attempt.

It is worth adding that Article 304 CCP provides for the obligation to report offences prosecuted *ex officio*. The citizen's duty (Article 304 § 1 CCP) is incumbent on every citizen and has the character of a moral, ethical obligation. This provision is considered to be the so-called *lex imperfecta* (unfinished law), as its violation is not subject to any criminal sanction (Szewczyk et al., 2020). Article 304 § 2 CCP indicates that public and local government institutions that, in connection with their activities, learn of the perpetration of an offence prosecuted *ex officio* are obliged to immediately report the same to the public prosecutor or the police. The indicated obligation is incumbent on the person in charge of the institution concerned or authorised to represent it. With regard to persons having the status of a public official, failure to comply with this instruction may constitute a breach of official duty and lead to criminal liability under Article 231 PC (Drajewicz, 2020).

Data collected by the Ministry of Justice shows that before the amendment of Article 240, the number of final rulings was 19 in 2016, and in 2017 – seven. After the amendment, this number did not exceed 13. It is not clear from the data collected what acts they refered to and whether the rulings concerned acts covered by Article 240 PC before or after the amendment. However, despite extending the scope of Article 240 to cover more acts, no increase in the number of final rulings has been observed (Table 12).

Table 12. Number of final rulings under Article 240 § 1 in 2016–2021

	Years					
	2016	2017	2018	2019	2020	2021
Number of final rulings under Article 240 § 1 PC	19	7	10	5	13	5

Source: Own analysis based on data provided by the Ministry of Justice.

Representation of an aggrieved minor in the course of criminal proceedings

Pursuant to Article 51 § 2 CCP, if the aggrieved party is a minor, his or her rights are executed by his or her legal representative or by a person, under whose permanent care the aggrieved party remains. Pursuant to Article 98 § 2(2) of the Family and Guardianship Code (FGC), a parent may not represent a child in legal actions between the child and one of the parents or his or her spouse, unless the legal action consists in a gratuitous donation for the benefit of the child or if it concerns means of subsistence and support due to the child from the other parent. A guardian ad litem may be appointed to represent the child. This may be an attorney-at-law or legal advisor who demonstrates special knowledge of matters relating to the child, knowledge of the same or a similar case to the one in which representation of the child is required, or who has completed training on the principles of child representation, the rights or needs of the child (art. 99^1 § 1 FGC).

The legislator has imposed on the guardian ad litem obligation to provide information to the child and the parent who does not participate in the proceedings. The guardian ad litem representing the child in proceedings before a court or other state authority shall provide to the parent of the child who does not participate in the proceedings, at the parent's request, in writing or by means of electronic communication, information necessary for the proper exercise of parental authority concerning the course of the proceedings and the actions taken thereunder, if this is not contrary to the child's best interests. The guardian ad litem shall obtain from that parent information about the child, his or her health, family situation and environment to the extent necessary for the proper representation of the child (Article 992 FGC). The guardian ad litem may also request information about the child from bodies or institutions as well as social associations and organisations to which the child belongs or which provide assistance to the child. When the child's cognitive development, state of health and degree of maturity allow it, the guardian ad litem shall establish contact with the child and inform him or her about the actions taken, the course of the proceedings and the manner of their completion, as well as the consequences of the actions taken for the child's legal situation, in a manner that is understandable and adapted to the child's level of development.

There is no data on the number of cases in which a guardian ad litem has been appointed for a child aggrieved by an offence.

Children in the Blue Card procedure

Since 2010 (the Act of 29 July 2005 on Counteracting Domestic Violence [Dz.U. 2021, item 1249 consolidated text]), in the Polish legal order there has been the Blue Card procedure, the aim of which is to respond to cases of domestic violence, especially those which cannot be qualified as maltreatment under Article 207 PC.

Domestic violence within the meaning of the Act on Counteracting Domestic Violence is distinguished from maltreatment by the gradation of the severity of the perpetrator's behaviour towards the aggrieved party. The concept of maltreatment implies behaviour of a high intensity of intrusion into legal interests (life, health of the person affected by violence, but also into the protection of the family). Some of the behaviours constituting domestic violence within the meaning of the above-mentioned Act also overlap in scope with certain other offences under the Penal Code prosecuted *ex officio* (e.g. grievous bodily harm – Article 156 § 1), as well as with those subject to prosecution on motion (punishable threat – Article 190 § 1) or on a private indictment (insult – Article 216 § 1, battery – Article 217 § 1).

Domestic violence, within the meaning of the Act on Counteracting Domestic Violence, is a single or repeated behaviour, constituting an action or omission (failure to take action, action that the offender should have taken, e.g. depriving the child of a meal), intentional (deliberate), violating the legal interests of persons subjected to the behaviour of the perpetrator. In the definition of violence, the legislator indicated its exemplary effects, which include exposing the person subjected to violence to the danger of loss of life, health, violation of dignity, bodily integrity, liberty, including sexual freedom, causing damage to physical or mental health, causing suffering and moral harm to the persons affected.

The preamble to the Act on Counteracting Domestic Violence emphasises that domestic violence (hereinafter also interchangeably family violence) violates fundamental human rights. This corresponds to the obligations of the Republic of Poland under international law[10].

The aim of the Blue Card procedure is to prevent domestic violence by:

- diagnosing the problem of domestic violence;
- taking action in the environment threatened by domestic violence;
- initiating interventions in the environment affected by domestic violence;
- disseminating information on institutions, persons and possibilities of providing assistance in the local environment.

It is a procedure based on voluntary cooperation with the family, motivating the perpetrator to change his or her behaviour and ensuring the safety and assistance of those affected by violence. The procedure does not provide for sanctions for non-cooperation.

The Blue Card procedure comes as a reaction to domestic violence as defined by the Act on Counteracting Domestic Violence. It consists in filling in the Blue Card – A (NK-A) form by a representative of one of the services involved in the procedure, namely:

- organisational units of social assistance,
- municipal committees for solving alcohol problem,
- police,
- education,
- health care.

The procedure is initiated (Article 9d(4) of the Act on Counteracting Domestic Violence) whenever there is a reasonable suspicion of violence against family members or as a result of a report made by a family member. Intervention (initiation of the procedure) does not require the consent of the person subjected to violence nor of the person suspected of violence.

Once the NK-A form has been completed, it is forwarded to the leader of the interdisciplinary team (composed of representatives of the services involved in the procedure), who forwards the form to the interdisciplinary team, which takes action. Actions may include:

- diagnosis of the family situation – the person suspected to be affected by domestic violence and (separately) the person suspected of domestic violence are invited to the team meeting;
- drawing-up an individual assistance plan;
- intervening when the safety of the person affected by violence is at risk, including taking a child out of the family (Article 12a of the Act on Counteracting Domestic Violence).

Domestic violence perpetrators are subjected to corrective-educational interventions and measures stipulated by the law to prevent them from contacting the aggrieved parties.

It should be pointed out that the number of completed NK-A forms has remained at a similar level for years. The total number of Blue Cards oscillates around 100,000 per year and most of them are filled out by the police.

The participation of health care institutions in the procedure is marginal, although their representatives are the professionals with whom a child has the most frequent contact in the first years of life.

There is no qualitative data on the training of health care professionals in preventing, recognising and responding to cases of domestic violence. Between 2016 and 2020, in each annual report on the implementation of the National Programme for Counteracting Domestic Violence for the years 2014–2020, the Ministry of Health only reported the total number of those trained in medical, nursing and midwifery specialties and the number of students in these specialties. The Ministry equates the number of people who have completed these training courses (including specialty trainings) with the number

10 The Convention on the Rights of the Child and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, drawn up in Istanbul on 11 May 2011. (Dz.U. 2015, item 961 as amended), and the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 18 December 1979 (Dz.U. 1982, No. 10, item 71).

of people who have actual knowledge about preventing and responding to domestic violence, and also refers to the training standards for these courses, without specifying whether these issues fall within one or several separate courses, how many hours are devoted to these issues, whether there is an evaluation of the quality of training in this area and, if so, how it is carried out.

There has been a slight, steady decrease of a few per cent in the number of NK-A forms drawn up. The reason for this is not clear. The unequivocal negative assessment of the phenomenon of domestic violence on the part of society (Burdziej et al., 2022), the progressive decrease in acceptance of the use of corporal punishment against children (Centrum Badania Opinii Społecznej, 2019; Włodarczyk, 2017) goes hand in hand with the observed routine of services and institutions in the treatment of violence cases (Burdziej et al., 2022).

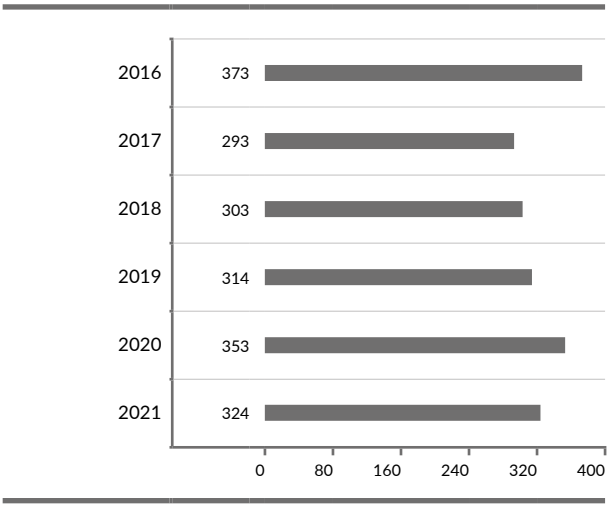
The most frequently recorded type of violence under the procedure was psychological violence. In 2021, 70,611 cases of psychological violence, 50,002 cases of physical violence, 1,548 cases of economic violence, 1,048 cases of sexual violence and 18,200 cases of other types were recorded. Detailed information is presented in the chapter on child abuse.

The annual total number of children suspected of being affected by domestic violence under the Blue Card procedure has remained below 15,000 over the past 5 years, ranging from 14,223 in 2016 to 11,129 in 2021.

In the practice of implementing the Blue Card procedure, minors are also identified as suspects of domestic violence. Over the past 5 years, the number of minors suspected of domestic violence has been flat – below 400, with a one-time drop below 300 (in 2017). The group of minors suspected of domestic violence is made predominantly of boys (figure).

The child is not actively involved in the Blue Card procedure – he or she is not heard or informed about the procedure or its outcome. However, a child may report domestic violence on their own. In such a case, actions with regard to the child (that is, in practice, filling in the NK-A form) should be undertaken in the presence of a psychologist, and in the case where the suspected

Figure. Minors suspected of domestic violence



Source: Own analysis based on annual reports (of 2016–2021) on the implementation of the National Programme for Counteracting Domestic Violence in the years 2014–2020.

perpetrators of violence are parents or caregivers, also in the presence of an adult next-of-kin (Regulation of the Council of Ministers of 13 September 2011 on the "Blue Card" procedure and "Blue Card" form templates [Dz.U. 2011 No. 209, item 1245]).

The Supreme Audit Office (NIK; 2015), in its report on assisting people affected by domestic violence, pointed to the need for reform of the family violence prevention system, in particular the need to quickly isolate the perpetrator from the aggrieved parties in order to stop the violence. At the time of the publication of the NIK report, there was an increasing trend in the use of a preventive measure in the form of an order prohibiting the perpetrator to stay in the apartment occupied jointly with the aggrieved party, but this procedure was still insufficient to ensure the safety of the aggrieved parties.

Between 2016 and 2020, the courts ordered this preventive measure in a small but increasing number of cases (Table 13). This measure was similarly applied in preparatory proceedings.

The demands for changes to improve the situation of aggrieved parties are slowly being implemented. As of December 2020, police officers have been given a new power to improve their efforts to ensure the safety of a person affected by domestic violence (Kotowski, 2021).

Table 13. Number of first-time rulings on the application of a preventive measure in the form of an order to leave the premises occupied jointly with the aggrieved party (Article 275a § 1 CCP)

Issuing authority	2016	2017	2018	2019	2020	2021
court	1,868	2,251	2,353	2,695	2,673	3,806
public prosecutor	2,965	3,668	3,776	4,497	4,912	5,694

Source: Own analysis based on annual reports (of 2016–2021) on the implementation of the National Programme for Counteracting Domestic Violence in the years 2014–2020.

During an intervention or on the basis of a report, a police officer assesses the risk to human life and health and can issue to the perpetrator an order to leave the jointly occupied premises or a restraining order. Both orders may be issued jointly or separately (e.g. only a restraining order when the perpetrator just visits the family and does not live in the apartment) and are also immediately enforceable (Police Act of 6 April 1990 [Dz.U. 2021, item 1882 as amended, consolidated text]).

In December 2020, 232 orders of both types were issued, and in 2021 – 3,531 (Rojek-Socha, 2022).

Another measure of intervention in a situation of imminent danger to a child's life or health due to family violence is the possibility of taking the child away from his or her family by a social worker carrying out their official duties and placing with another non-cohabiting relative, in a foster family or in a residential care facility (Article 12a of the Act on Counteracting Domestic Violence). In 2021, the number of children taken away under Article 12a was 1,335, including 660 boys and 675 girls.

Participation of the child in civil procedure – hearing

According to the European Convention on the Exercise of Children's Rights, drawn up in Strasbourg on 25 January 1996, the child has the right to be informed and to express his or her views in the proceedings. In accordance with Article 3 of the Convention, a child, considered by internal law as having sufficient understanding, in the case of proceedings before a judicial authority affecting him or her, shall be granted, and shall be entitled to request, the following rights:

1. to receive all relevant information;
2. to be consulted and express his or her views;
3. to be informed of the possible consequences of compliance with these views and the possible consequences of any decision.

In Polish legislation, the expression of this principle is the child's right to be heard. Pursuant to Article 216^1 of the Code of Civil Procedure, the court in cases involving a minor shall hear the minor if his or her mental development, health condition and maturity so permit. The hearing shall take place outside the courtroom. Depending on the circumstances, mental development, health condition and maturity of the minor, the court shall take into consideration the minor's opinion and reasonable wishes

Article 576 § 2 Code of Civil Procedure indicates that the court in cases involving the person or property of a child, the court shall hear the child if his or her mental development, health condition and maturity so permit, taking into consideration, if possible, the child's reasonable wishes. A minor shall be heard outside a courtroom.

It is recommended that a hearing be held, in particular in cases for:

- parental authority,
- the relationship with the child's legal guardian,
- contact with the child,
- divorce or separation,
- adoption or dissolution of adoption,
- transfer within different forms or termination of foster care,
- surrender of a child from an unauthorised person.

The hearing shall be conducted by the judge without the presence of the parties to the proceedings. The participation of an expert psychologist is possible at

the hearing, in particular when the child is under 10 years of age, has a health or developmental issue or there is a risk that the hearing might cause disruption to the child's functioning.

There is no data on the actual number of children's hearings and the category of cases in which they are held. Research conducted by the Institute of Justice shows that 506 judges (80.3% of those surveyed) indicated that hearing the child facilitates an accurate decision. The opposite view was presented by 32 judges (5.1% of those surveyed). The majority of the judges participating in the survey, i.e. 544 (86.3%), assessed that the hearings they conducted were held in a child-friendly format. According to the judges, the friendliness of the hearing is evidenced by the manner in which the conversation with the child is conducted. The hearing should be conducted with respect for confidentiality, the dignity of the child, taking into account the child's decisions and considering the child's needs, e.g. when the child wants to stop or end the conversation. The judges also paid attention to the room in which the hearing is conducted. They pointed to so-called "friendly rooms", also used for interviewing children in criminal cases, and judges' offices among the places that ensure the friendliness of the hearing. They considered the ways in which the child is addressed and questions asked, the tone of voice and the order in which topics are discussed to be relevant (Cieśliński, 2017).

Summary

In recent years, a number of changes have been introduced in Polish legislation that may help to better protect children and their rights when participating in legal procedures. Unfortunately, the practice of applying the law deviates from its literal provisions. The potential of the existing provisions is not fully used and they still do not create a coherent system of child protection or a consistent procedure for identifying risks. The available official statistics of children victimised by offences or violence certainly do not fully reflect the scale of the phenomenon.

There is also a lack of monitoring and evaluation of the effectiveness of the newly introduced solutions, and some of the recommendations that the UN Committee on the Rights of the Child has been addressing to Poland for years have not been implemented. There is still much to be done to ensure that the child in legal procedures is subjectively treated and all his or her rights are fully executed. The last section of this report provides detailed guidance on the recommended directions of change that could improve this situation.

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