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Marek Kulik
Maria Curie-Skłodowska University in Lublin
marek.kulik@poczta.umcs.lublin.pl

Liability of Juveniles Under Article 10 § 2 of the Criminal Code for Various Forms of Criminal Cooperation. Part One

O odpowiedzialności nieletnich w warunkach określonych w art. 10 § 2 k.k. za różne postaci współdziałania przestępnego. Część pierwsza

SUMMARY

The entire study is devoted to the question of the imputability of criminal responsibility to a minor acting under the conditions set out in Article 10 § 2 of the Polish Criminal Code for acts committed in various phenomenal forms. In the first part of the study, the author presents four concepts existing in this field in Polish literature and basic arguments for each of them. He pointed to his own concept and justified it by referring to complicity and multiplicity.

Keywords: criminal responsibility of minors; complicity; multiple affairs

The question of holding a juvenile liable under Article 10 § 2 of the Polish Criminal Code (hereinafter referred to as CC) for prohibited acts committed in various embodiments of complicity is not subject to a consistent case-law. There are four different views that can be found in the literature on the subject. The author hereof quite recently formulated his opinion on the issue[1], nonetheless other

[1] M. Kulik, *Czy nieletni może odpowiadać karnie za niesprawcze formy współdziałania przestępnego oraz formy stadialne poprzedzające dokonanie?*, „Studia Prawnicze" 2016, nr 4, p. 135 ff.; *idem*, *Glosa do wyroku Trybunału Konstytucyjnego z dnia 17 lipca 2014 r. (SK 35/12), OTK-A 2014, nr 7, poz. 74*, „Studia Iuridica Lublinensia" 2015, nr 4, DOI: http://dx.doi.org/10.17951/sil.2015.24.4.175, p. 189.

positions, including those expressed afterwards[2], are worth consideration and have allowed the author to make his point more precise and clear-cut.

To begin with, it is worth outlining the views expressed in the scholarly literature on the subject. The approach to the problem differs depending on how we treat the embodiments of complicity: either we consider them forms of complicity or separate types of offence. If we adopt the first approach, the question of liability of a juvenile is simple. It entails the need to consider perpetration, incitement and abetting/aiding on a par[3], which means that committing an offence as specified in Article 10 § 2 of the CC refers to any stage of committing an offence or any form of complicity[4]. This does not need any further proof.

Nonetheless, the matter becomes more complex if we assume incitement and abetting/aiding as separate types. Andrzej Zoll states that Article 10 § 2 of the CC applies to perpetration forms of complicity (co-perpetration, directing the commission of offence and solicitation to commit an offence), but it is not applicable to incitement and abetting/aiding. An inciter and abettor/aider commit offences of different qualification and different set of statutory criteria than a perpetrator, which leads to a conclusion that a juvenile may be held liable under Article 10 § 2 of the CC for any form of perpetration but not for incitement and abetting/aiding[5].

Łukasz Pohl states that "the approach expressed in Article 10 § 2 of the CC determines that the juvenile may be held liable under the terms of the Criminal Code only if he or she commits a prohibited act set out in the article of the Special Part of the Code as specified in this provision"[6]. According to the author, Article 10 § 2 of the CC only refers to perpetration, more specifically: direct perpetration,

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[2] This regards mostly the paper by Ł. Pohl, *Zakres odpowiedzialności karnej nieletniego w Kodeksie karnym z 1997 r. (o konieczności pilnej zmiany art. 10 § 2 k.k. – problem form popełnienia czynu zabronionego)*, „Prawo w Działaniu" 2017, nr 30, p. 7 ff.

[3] Cf. J. Makarewicz, *Kodeks karny z komentarzem*, Lwów 1938, p. 128.

[4] See: A. Wąsek, [in:] O. Górniok, S. Hoc, M. Kalitowski, S.M. Przyjemski, Z. Sienkiewicz, J. Szumski, L. Tyszkiewicz, A. Wąsek, *Kodeks karny*, t. 1, Gdańsk 2005, p. 143; K. Daszkiewicz, *Kodeks karny z 1997 roku. Uwagi krytyczne*, Gdańsk 2001, p. 153; A. Marek, *Kodeks karny. Komentarz*, Warszawa 2010, pp. 45–46; M. Budyn-Kulik, [in:] *Kodeks karny. Komentarz*, red. M. Mozgawa, Warszawa 2017, p. 51.

[5] A. Zoll, [in:] *Kodeks karny. Część ogólna*, t. 1, cz. 1: *Komentarz do art. 1–52 k.k.*, red. W. Wróbel, A. Zoll, Warszawa 2016, p. 181. The view shared also by P. Kardas, [in:] *Kodeks karny. Część ogólna*, t. 1, cz. 1: *Komentarz do art. 1–52 k.k.*, p. 450; A. Walczak-Żochowska, [in:] *Kodeks karny. Część ogólna*, red. M. Królikowski, R. Zawłocki, t. 1, Warszawa 2010, p. 445.

[6] Ł. Pohl, *Zakres odpowiedzialności karnej nieletniego…*, p. 16. See also: *idem*, *Istota pomocnictwa w kodeksie karnym z 6 VI 1997 r.*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2000, nr 2, pp. 80–82; *idem*, *O (nie)możliwości pociągnięcia osoby nieletniej do odpowiedzialności karnej za tzw. niewykonawcze formy współdziałania przestępnego na gruncie kodeksu karnego z 1997 r.*, [in:] *Węzłowe problemy prawa karnego, kryminologii i polityki kryminalnej. Księga pamiątkowa ofiarowana Profesorowi Andrzejowi Markowi*, red. V. Konarska-Wrzosek, J. Lachowski, J. Wójcikiewicz, Warszawa 2010, p. 163.

hence, perpetration by a single individual and complicity[7]. Article 10 § 2 of the

[7] *Idem*, *O (nie)możliwości pociągnięcia osoby nieletniej do odpowiedzialności karnej…*, p. 163. When referring to this view, M. Kulik mistakenly wrote that Ł. Pohl had written about forms of perpetration, not forms of direct perpetration (M. Kulik, *Glosa do wyroku Trybunału Konstytucyjnego…*, p. 186), which was rightly pointed out by the latter (Ł. Pohl, *Zakres odpowiedzialności karnej nieletniego…*, pp. 13–14). Indeed, Ł. Pohl did not discuss all the forms of perpetration but only direct perpetration. This circumstance, though, has not been of key importance for the assessment of the difference between Pohl's and Kulik's views, especially since Pohl's opinion in this regard was correctly referred to by Kulik elsewhere (M. Kulik, *Czy nieletni może odpowiadać karnie…*, p. 135). However, when speaking about imprecision, it is worth noting that Pohl's view may only be valid if we consider incitement and aiding/abetting not forms of complicity but separate types of offence. Meanwhile, even the very title of Pohl's paper refers to forms of committing a prohibited act without specifying that this regards "so-called forms" ("on the need of urgent amendment of Article 10 § 2 of the CC – the problem of forms of committing a prohibited act […]"). On the other hand, Pohl writes in another paper about "so-called forms of complicity" (see: Ł. Pohl, *O (nie)możliwości pociągnięcia osoby nieletniej do odpowiedzialności karnej…*). The question is all the more interesting that Pohl, while supporting the view that incitement and abetting/aiding are not forms of committing but types of offence, is also of the opinion that the legislation in force will be correct if Article 10 § 2 of the CC refers to committing one of the prohibited acts specified in the provisions of the Special Part of the Criminal Code, or a "form of committing it" (see: *idem*, *O (nie)możliwości pociągnięcia osoby nieletniej do odpowiedzialności karnej…*, p. 163 ff.; *idem*, *Zakres odpowiedzialności karnej nieletniego…*, pp. 17–18). As an example, just due to the difference between the form and type of offence, Pohl's argument that Kulik's view is a development of the concept by A. Wąsek is not precise ([in:] O. Górniok, S. Hoc, M. Kalitowski, S.M. Przyjemski, Z. Sienkiewicz, J. Szumski, L. Tyszkiewicz, A. Wąsek, *op. cit.*, s. 280; Ł. Pohl, *Zakres odpowiedzialności karnej nieletniego…*, p. 13). This view, substantiated elsewhere than indicated by Pohl (M. Kulik, *Czy nieletni może odpowiadać karnie…*, p. 135 ff.) which probably explains this inaccuracy at least in part, is not a development, but a departure from Wąsek's views. For both Wąsek's and Kulik's views, the final result of the interpretation is similar, which could have misguided Pohl, but it cannot be overlooked that A. Wąsek supported the classical, J. Makarewicz's concept (A. Wąsek, [in:] O. Górniok, S. Hoc, M. Kalitowski, S.M. Przyjemski, Z. Sienkiewicz, J. Szumski, L. Tyszkiewicz, A. Wąsek, *op. cit.*, p. 249), while Kulik assumes that incitement and abetting/aiding are separate types (M. Kulik, *Czy nieletni może odpowiadać karnie…*, p. 137). Therefore, it cannot be said that the views of the latter are a development of the opinion of the former. The question of whether various embodiments of complicity are separate types or forms, and whether these views should be distinguished, is important for the resolution of a number of specific issues, not only those covered by this dispute. By way of example, we can refer to the problem of the subjective side of aiding through omission. The scholarly opinion in general noted that the fact that the wording of Article 18 § 3 of the CC contains a semicolon, which means that attributing the words "in intention" to the subjective side refers only to the part of the provision up to the semicolon inclusive, and, therefore, to other form of aiding than by omission (Ł. Pohl, *Strona podmiotowa pomocnictwa w kodeksie karnym z 1997 r. (o potrzebie nowelizacji art. 18 § 3 k.k.)*, „Państwo i Prawo" 2014, z. 7, p. 108). This is a valid argument. However, the conclusion that aiding through omission for a prohibited act defined as unintentional may also be unintentional (*ibidem*) would be justified if we assume that aiding is only a technical way to meet the criteria of the offence. Then – in the absence of a different statutory regulation – one should assume that it is about the subjective side resulting from the provision governing this unintentional type. However, it is different if abetting/aiding is considered a separate type. In such a case, the content preceding the semicolon is not applicable to aiding as specified in Article 18 § 3 of the CC after the aforementioned

CC refers to the provisions of the Special Part of the Criminal Code. On the other hand, neither of them refer to incitement, abetting and aiding, directing the commission of offence, or solicitation to commit an offence[8]. Since Article 10 § 2 of the CC states that a juvenile over 15 may be held criminally liable if he or she has committed one of the acts specified in the provision, then when decoding the norm contained in this provision, stating what a perpetrator above 15 and less than 17 years of age is prohibited to do, we only must refer to these provisions and nowhere else. According to Pohl, this leads to the conclusion that it is prohibited to act as

semicolon, and hence aiding through omission, but it is governed by the general rule of Article 8 of the CC, according to which all crimes are intentional, and misdemeanours are either intentional or unintentional if the law so provides. Since Article 18 § 3 of the CC does not refer to anything about the subjective side of abetting/aiding through omission, then abetting/aiding is intentional. The view expressed by Pohl would be justified under the classical, J. Makarewicz's theory but not under the theory which deems abetting/aiding a separate type. Meanwhile, the author declares himself as a supporter of the latter concept (*idem*, *O (nie)możliwości pociągnięcia osoby nieletniej do odpowiedzialności karnej…*, p. 172 ff.). It does not seem possible to save this interpretation by indicating that Article 20 of the CC allows for making unintentional aiding punishable (as claimed by M. Kowalewska-Łukuć, *Strona podmiotowa pomocnictwa przez zaniechanie (uwagi o statusie form przestępnego współdziałania w popełnieniu przestępstwa)*, „Państwo i Prawo" 2018, z. 1, p. 83), because the latter provision lacks any data allowing us to determine the subjective side based on it. It is not a statutory clause of inadvertence. It does not determine whether a given act can be committed intentionally or unintentionally; this is determined by the provision which creates a given type. Article 20 of the CC is clarificatory in nature (just like Article 21 of the CC) and it is intended to play just this role. M. Kowalewska-Łukuć states that, since the legislature introduced in Article 20 of the CC "the information about possible inadvertence on part of the accomplice", which refers to the perpetration forms for which Article 18 § 1 CC does not provide for anything about the subjective side, and which does not regard incitement and abetting/aiding to the extent in which Article 18 § 2 and 3 of the CC refer to intentionality, it may be consistently assumed that Article 20 of the CC admits to consider aiding through omission intentional (*ibidem*, p. 83). However, the point is that Article 8 of the CC makes it necessary to explicitly introduce the inadvertence clause in the legislation. It is difficult to consider Article 20 of the CC an evident clause of inadvertence, even when interpreted as the author does. Furthermore, this interpretation cannot be supported in the descriptive layer. It does not create the subjective side of the prohibited act, but only states that the subjective side of the offence attributed to one of accomplices does not affect the subjective side attributed to others. It does not provide for anything more, and extracting additional content therefrom constitutes a broad interpretation, in this particular case unfavourable for the perpetrator. That is why the interpretation adopted by Pohl in this respect cannot be defended by invoking the rule that no provision is redundant during interpretation (this is how K. Burdziak defends this interpretation in *Strona podmiotowa pomocnictwa przez zaniechanie (uwagi o art. 18 § 3 zd. 2 k.k.)*, „Państwo i Prawo" 2018, z. 1, p. 92, though eventually adopting another interpretation). Anyway, Pohl clearly assumes that Article 20 of the CC does not decide about the subjective side of offences committed in various forms of complicity (Ł. Pohl, *Strona podmiotowa pomocnictwa…*, p. 106). It is a correct opinion. This provision establishes the principle of individualisation and subjectification of liability but does not introduce the inadvertence clause where it is absent. Any other position constitutes a broad interpretation to the disadvantage of the perpetrator.

[8] *Idem*, *Zakres odpowiedzialności karnej nieletniego…*, p. 137.

specifically set out there, such as, for example, killing a human being or taking a property with the use of violence or by threatening the immediate use thereof, or by causing a person to become unconscious or helpless. This is stated by the provisions referred to in Article 10 § 2 of the CC. These provisions do not contain any reference to "persuading someone to kill", "facilitating the killing", "directing the killing" or "soliciting to kill", but the behaviour described as "whoever kills". This may form the ground to hold the view that a juvenile is not liable for other embodiments of complicity than direct perpetration[9]. The author proposes to amend Article 10 § 2 of the CC by introducing a regulation according to which criminal liability may be imposed on a juvenile who, having attained the age of 15, commits a prohibited act that falls under one of the provisions listed in Article 10 § 2 of the CC or an act constituting a form of committing it[10].

The issue is perceived differently by Marek Kulik, who, as a supporter of the concept of perpetration, incitement and abetting/aiding as types of prohibited act, considers possible to hold a juvenile under Article 10 § 2 of the CC liable for various forms of perpetration, incitement and abetting/aiding. This author, while sharing the view that Article 10 § 2 of the CC does not directly point to incitement and abetting/aiding, writes that the provision does not point to perpetration either[11]. While agreeing that Article 10 § 2 of the CC only refers to the provisions of the Special Part of the Code[12], it can be considered that none of these provisions describes in full the prohibited conduct. Article 10 § 2 of the CC refers to the provisions of the Special Part, regardless of how the criteria of prohibited acts are supplemented

[9] And also for other stages of committing a crime than accomplishment. See: M. Kulik, *Czy nieletni może odpowiadać karnie…*, p. 135.

[10] Ł. Pohl, *O (nie)możliwości pociągnięcia osoby nieletniej do odpowiedzialności karnej…*, p. 163 ff.; *idem*, *Zakres odpowiedzialności karnej nieletniego…*, pp. 17–18. This wording raises doubts insofar as when we assume that various embodiments of complicity in committing a prohibited act are simply its forms, this regulation would not be necessary. After all, the idea behind the concept of forms of complicity is that they constitute a technical manner of how the statutory criteria of the offence are fulfilled. Therefore, it would be sufficient to refer in Article 10 § 2 of the CC to the provisions of the Special Part of the Code. Indeed, the provisions on embodiments of complicity are contained in the Chapter *Forms of Commission of an Offence*, nonetheless, it does not seem that the location of a given regulation in this particular chapter of the Criminal Code can define the nature of a given institution as a form or type. It is the shape of the regulation which decides. Therefore, even after enacting a regulation which meets well the author's expectations, one could defend the view that amended Article 10 § 2 of the CC does not apply to directing the commission of offence, solicitation to commit a crime, incitement and aiding/abetting. It would only make clear that it concerns the pre-accomplishment stage forms.

[11] M. Kulik, *Glosa do wyroku Trybunału Konstytucyjnego…*, p. 189; *idem*, *Czy nieletni może odpowiadać karnie…*, p. 135.

[12] Ł. Pohl, *O (nie)możliwości pociągnięcia osoby nieletniej do odpowiedzialności karnej…*, p. 175.

not only by Article 18 § 2 and § 3 of the CC, but also by Article18 § 1 of the CC[13]. This conclusion has faced objections from Pohl, stating that if it were as claimed by Kulik, it would mean that nothing is prohibited in the provisions of the Special Part of the Criminal Code. This would obviously deprive the concept of validity because it is impossible to imagine a normative statement devoid of normative content[14]. Such an argument has led the cited author to the conclusion that Kulik contradicts himself, writing that "the provisions of the Special Part of the Criminal Code prohibit the conduct specified therein. If so, it is impossible to claim – as previously held by the author – that the descriptive layer does not contain, using the language of the cited author, a reference to any perpetration forms"[15]. The problem is, however, that Kulik did not "hold" this view, first attributed to him by Pohl and then falsified by that author[16]. The fact that the descriptive layer of the provision lacks specification of perpetration forms does not mean that there is no such indication in the normative layer. Since the provision lists the provisions of the Special Part of the Code, without indicating whether the prohibited acts are qualified on the basis of these provisions in conjunction with Article 18 § 1, 2 or 3 of the CC, this may mean that it points to acts qualified under the provisions of the Special Part, irrespective of which provision establishing an embodiment of complicity is contained in the qualification. The absence of indication of the non-perpetration forms and perpetration forms does not mean that the provisions of the Special Part do not contain normative content, but that Article 10 § 2 of the CC deals with all the types built on the basis of Article 18 § 1, 2 or 3 of the CC in conjunction with one of the provisions of the Special Part listed in the text of the former provision. This view is also expressed by Kulik in the paper cited by Pohl[17], and developed elsewhere[18].

Further on, the arguments by Pohl come down to a determination which provision is central within the analysed arrangement[19], and how, in relation to particular embodiments of complicity (types), the expressions contained in provisions forming types of prohibited acts contained in the special part are supplemented with

[13] M. Kulik, *Czy nieletni może odpowiadać karnie…*, p. 136.

[14] Ł. Pohl, *Zakres odpowiedzialności karnej nieletniego…*, p. 14.

[15] *Ibidem*.

[16] Thus, it is pointless to say that the view expressed by Kulik can be "challenged in the field of functional interpretation by using non-textual interpretative directives referring to the assumptions of a rational lawmaker. It is so because it is impossible to assume that the product of a rational legislature, and, thus, a text which is normative by definition, would be deprived of any normative content" (*idem*, *Zakres odpowiedzialności karnej nieletniego…*, p. 14). Such a view could indeed be contested if it had been actually expressed, which was not the case though.

[17] M. Kulik, *Glosa do wyroku Trybunału Konstytucyjnego…*, p. 189.

[18] *Idem*, *Czy nieletni może odpowiadać karnie…*, p. 139 ff.

[19] About this subject see also: *ibidem*, p. 139.

expressions in individual sections of Article 18[20]. Undoubtedly, this is an essential issue[21] and, therefore, an attempt should be made to verify it in detail.

Article 10 § 2 of the CC directly refers only to the provisions of the Special Part of the Criminal Code. If one assumes that each of them fully describes only perpetration[22], or only direct perpetration[23], there would indeed be no grounds to believe that a juvenile may be held liable for incitement and abetting/aiding.

Pohl points out that "the provision of the Special Part of the Criminal Code, which obviously plays a criminalizing function, contains – and it is absolutely indisputable – only a determination of the conduct underlying the prohibited act qualified as direct perpetration"[24]. This assumption is worth analysing, as the categorical statement that the provision of the Special Part deals only with direct perpetration and nothing else, can be subject to discussion. Indeed – none of these provisions explicitly prohibits incitement, abetting/aiding, directing the commission of offence and solicitation to commit an offence. This may lead to the conclusion that it only deals with perpetration by a single individual and complicity, and, therefore, for direct forms of perpetration. However, it is worth looking at these embodiments in detail. Without any doubts, it can be stated that the provisions contain no mention about incitement and aiding, since they do not contain any regulation about the liability of those who persuade others to commit the offence or facilitate the commission thereof. Likewise, the text of the provision lacks any explicit indication of directing the commission of a prohibited act by another person, or soliciting another person (using the fact of his or her addiction) to commit such an act[25]. On the contrary, direct perpetration involves

[20] Ł. Pohl, *Zakres odpowiedzialności karnej nieletniego…*, pp. 14–15.

[21] On the other hand, the claim that "the criteria of prohibited acts are never supplemented, as the interpreter is neither a text-making entity nor a law-maker" (*ibidem*, p. 14) is, in a sense, taking the words of another author out of context. Nobody thinks that the interpreter constructs a type based on his own decision, thus creating a legal text. The point is that the statutory criteria of a prohibited act in a provision of the Special Part of the Criminal Code cannot be retraced only on the basis of this provision. It is necessary to take into account the criteria derived from the General Part (e.g. subject, subjective side), and in the purely praxeological sense, their inclusion takes place through a mental operation that can be (perhaps with some simplification, but in a comprehensible manner) added to the statutory criteria of the offence resulting from the provisions of the Special Part with the criteria derived from the provisions of the General Part. It seems that it is about what Pohl describes as complementing "norm-making (legal) expressions", and additionally explains that he is referring to "expressions which – due to the unambiguity of syntactic elements of the legal norm not yet obtained in the process of interpretation – are only prospective legal norms" (*ibidem*).

[22] This view is supported also by A. Zoll, *op. cit.*, p. 181; P. Kardas, [in:] *Kodeks karny. Część ogólna*, t. 1, cz. 1: *Komentarz do art. 1–52 k.k.*, p. 450.

[23] Ł. Pohl, *O (nie)możliwości pociągnięcia osoby nieletniej do odpowiedzialności karnej…*, p. 163.

[24] *Idem*, *Zakres odpowiedzialności karnej nieletniego…*, p. 15.

[25] It is another issue whether, adopting a slightly different point of view such as that presented by A. Zoll, is it impossible to deduce these criteria from the provision. This subject shall be discussed closer below.

the direct performance of the conduct as specified in the statutory definition set out in the Special Part. This view is considered by Pohl as "absolutely indisputable"[26] and derived from Wojciech Patryas' concept, by stating, following the author, that:

> […] the kind of an act committed by the individual is determined by the situation that individual created thereby. So, X committed the act C when he or she created the situation C. The situation becomes the act of a given individual once created by the individual […]. In brief, the fact that the individual performed the act is only determined by the result that he or she has achieved[27].

The author of these words could, without even being a supporter of this concept, conclude the problem by stating that he has started with different methodological assumptions, and does not have to feel bound by the meanings of terms as understood by other participants in the discourse. He has also shared Ryszard Dębski's view that the result-based concept of the notion of act is not of great utility as to the matter under analysis, since not only the perpetrators – whether direct or non-direct – but also the inciter and aider/abettor can be considered perpetrators of "their acts"[28]. Nevertheless, if the created situation at issue is understood broadly, and, therefore, not only as a result of conduct, but also as an action taken[29], he does not see the need to contest it, because within the matter being analysed the adoption of this or another concept of act is not decisive. When accepting the final definition of act, one could say that incitement and aiding/abetting, as well as directing the commission of offence and solicitation to commit an offence, as unfit to evoke this situation, are typified in the General Part, and the provisions of the Special Part of

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[26] Ł. Pohl, *Zakres odpowiedzialności karnej nieletniego…*, p. 15. The use of such opinions hinders the academic discussion in an argumentative academic tone, and it even discourages taking that discussion, since one of its participants qualifies his own questionable claims as "absolutely indisputable" and someone else's as "completely wrong" (*ibidem*, p. 12) or as "obviously completely wrong" (*ibidem*, p. 14) while, in fact, these opinions concern the contentious issues raised in the literature. This study is not intended to be a polemic with the views of Pohl, but the presentation of my own position. However, if this were to be a polemic, in a strict sense, the author had to state that his idea of which standards the polemic should comply with would prevent him from exchanging views with such an adversary.

[27] W. Patryas, *Interpretacja karnistyczna. Studium metodologiczne*, Poznań 1988, p. 14; Ł. Pohl, *Zakres odpowiedzialności karnej nieletniego…*, p. 9.

[28] R. Dębski, *Recenzja monografii Łukasza Pohla „Struktura normy sankcjonowanej w prawie karnym. Zagadnienia ogólne", Wydawnictwo UAM, Poznań 2007, ss. 293*, „Prokuratura i Prawo" 2010, nr 12, p. 157. J. Makarewicz (*op. cit.*, p. 129) put it in a similar way. This stipulation becomes even more valid if we bear in mind that incitement and aiding/abetting are not forms of act, but separate acts. Cf. in detail, P. Kardas, [in:] *Kodeks karny. Część ogólna*, t. 1, cz. 1: *Komentarz do art. 1–52 k.k.*, p. 367.

[29] For example, a given individual caused the situation, referred by W. Patryas, when that individual accomplished the act of killing a human being. Cf. Ł. Pohl, *Zakres odpowiedzialności karnej nieletniego…*, p. 9. In detail, *idem*, [in:] *System Prawa Karnego*, t. 3: *Nauka o zasadach odpowiedzialności*, red. R. Dębski, Warszawa 2013, p. 209 ff.

the Criminal Code mentioned in Article 10 § 2 of the CC do not include incitement, aiding/abetting[30] and non-direct perpetration[31]. On the other hand, if we disregard a particular concept of act, the assumptions of the presented opinion could be accepted if we were to assume that the provisions of the Special Part typify a certain conduct, while the inciter and aider/abettor do not follow the direct perpetration conduct described therein[32]. According to Pohl:

> […] for the sanctioned norms prohibiting the execution of a prohibited act, and thus prohibiting it to be committed in the form of direct perpetration, the central provision, and, therefore, a provision containing such norms, is a relevant provision of the Special Part of the Penal Code, which plays the criminalizing function[33].

Thus, a provision of the Special Part, in the opinion of Pohl, directly typifies perpetration by single individual and complicity, as it refers to the conduct that constitute the fulfillment of statutory criteria of both forms of offence. This is because, using the author's language, it is a special provision that has a criminalizing function in relation to direct perpetration.

However, does it play this function independently? In this regard, it may be instructive to analyse proper complicity, i.e. a complicity where not all the statutory criteria of the act committed jointly and in concert are fulfilled by particular perpetrators. Each of them meets only some of these criteria, and their fulfillment takes place only as a result of combining the conduct of particular accomplices[34]. In finding out about what each of the accomplices committed, and focusing only on the content of the provision of the Special Part of the Criminal Code, we would have to come to the conclusion that none of them met the criteria of the prohibited act defined therein[35]. As rightly noted by Piotr Kardas, only in the case of perpetration committed by a single individual or parallel complicity, the fulfillment of criteria is tantamount to the commission of an act understood as an independent fulfillment

[30] *Idem*, *Zakres odpowiedzialności karnej nieletniego…*, p. 10; A. Zoll, *op. cit.*, p. 181; P. Kardas, [in:] *Kodeks karny. Część ogólna*, t. 1, cz. 1: *Komentarz do art. 1–52 k.k.*, p. 450; A. Walczak-Żochowska, *op. cit.*, p. 445.

[31] Ł. Pohl, *Zakres odpowiedzialności karnej nieletniego…*, p. 12.

[32] Such an approach means that resolving the problem does not require referring to the concept of act, which – due to the conventional character of the concept itself – may be disputable.

[33] Ł. Pohl, *Zakres odpowiedzialności karnej nieletniego…*, p. 15.

[34] According to J. Makarewicz (*op. cit.*, p. 129), an act can be the outcome of cooperation between several perpetrators, although none of them has implemented the whole definition of the act on his own. See: L. Tyszkiewicz, *Współdziałanie przestępne i główne pojęcia z nim związane w polskim prawie karnym*, Poznań 1964, p. 113; A. Wąsek, *Współsprawstwo w polskim prawie karnym*, Warszawa 1978, pp. 36–37; P. Kardas, [in:] *Kodeks karny. Część ogólna*, t. 1, cz. 1: *Komentarz do art. 1–52 k.k.*, p. 392. The latter author uses a slightly different conceptual framework.

[35] Naturally, this does not include a situation where some accomplices committed proper complicity while others committed parallel perpetration.

of a set of statutory criteria defined in the statutory provision which creates the type. In other cases, involving not only directing the commission of offence and solicitation to commit an offence, but also actual complicity, the perpetrator would fail to fulfill this set by himself[36]. Therefore, it cannot be said that for all forms of direct perpetration, a provision of the Special Part itself determines the shape of the prohibited conduct.

But one can go even further. If, as some authors do, including the author thereof himself[37], we follow the concept of significance of the role as a factor delimiting the boundary between aiding/abetting and complicity, we will face a situation where the particular perpetrator does not meet the criterion of activity at all, while still being an accomplice[38]. If we adopt this concept, it is not possible to accept the view that, as regards complicity, a provision of the Special Part itself determines the scope of criminalization. However, when we reject this concept, we must face the fact that for proper complicity, we attribute the liability to someone who has not personally fulfilled all the criteria of the offence set out in a provision of the Special Part. This is because, as far as proper complicity is concerned, this provision does not delineate the scope of criminalization all by itself[39], but does it in conjunction with the

[36] P. Kardas, *Sprawstwo kierownicze i polecające – wykonawcze czy niewykonawcze postaci sprawstwa?*, „Przegląd Sądowy" 2006, nr 5, p. 75 ff.; *idem*, *Teoretyczne podstawy odpowiedzialności karnej za przestępne współdziałanie*, Kraków 2001, pp. 464–466. This author is absolutely right in that most of the provisions of the Special Part concerns perpetration by a single individual (*ibidem*, p. 464). Cf. also: J. Giezek, [in:] *Kodeks karny. Część ogólna. Komentarz*, red. J. Giezek, Warszawa 2012, p. 144; A. Liszewska, *Współdziałanie przestępne w polskim prawie karnym. Analiza dogmatyczna*, Łódź 2004, p. 43; M. Kulik, *Czy nieletni może odpowiadać karnie…*, p. 138. The fact that an accomplice may only fulfill the statutory criteria of an act in part is discussed by R. Dębski, *O teoretycznych podstawach regulacji współdziałania przestępnego w kodeksie karnym z 1997 r.*, „Studia Prawno-Ekonomiczne" 1998, t. 58, p. 122. It is not new that this issue raises doubts. A. Liszewska provides an overview of the literature on the subject in *Współdziałanie…* (*op. cit.*, p. 26). Therefore, the claim that a provision of the Special Part of the Code alone typifies each direct perpetration does not seem to be absolutely indisputable (Ł. Pohl, *Zakres odpowiedzialności karnej nieletniego…*, p. 15).

[37] A. Wąsek, *Współsprawstwo…*, p. 116 i n.; *idem*, [in:] O. Górniok, S. Hoc, M. Kalitowski, S. M. Przyjemski, Z. Sienkiewicz, J. Szumski, L. Tyszkiewicz, A. Wąsek, *op. cit.*, p. 268; A. Marek, A. Zoll, [in:] K. Buchała, A. Zoll, *Kodeks karny. Część ogólna. Komentarz*, Kraków 1998, p. 173 ff.

[38] As rightly put by P. Kardas, events which fall into the category defined as making a significant contribution to the commission of a prohibited act but not involving the fulfillment of even one of its statutory criteria raise doubts when we adopt the formal-objective theory. See: P. Kardas, [w:] *Kodeks karny. Część ogólna*, t. 1, cz. 1: *Komentarz do art. 1–52 k.k.*, p. 395. They lead the author to express his doubts whether it is reasonable to use this construct (*ibidem*, pp. 398–399). Considering the assumptions adopted by the author, his views are coherent, nevertheless, one may also build a coherent construct by contesting them, and supporting the position presented here, that the fulfillment of the statutory criteria of a prohibited act does not necessarily mean that these criteria must be actually fulfilled by the perpetrator himself.

[39] This is rightly concluded by P. Kardas (*Sprawstwo kierownicze i polecające…*, p. 75).

provision of Article 18 § 1 of the CC[40]. Why is the liability attributed to individual accomplices in the case of proper complicity? This is due to the fact they acted jointly and in concert. It is widely accepted that each of them should be held liable not only for what he or she did personally, but also for what the other accomplices did, provided that it was done jointly and in concert[41]. For proper complicity, only the assumption that the scope of criminalization is delineated also by Article 18 § 1 of the CC allows us to state that we are dealing with perpetration. However, since this is the case, it cannot be claimed that, as far as complicity is concerned, we deal with a conduct that was only described in a provision of the Special Part. As regards the matter analysed here, it should be stated that the provisions of the Special Part, referred to in Article 10 § 2 of the CC, do not include incitement, aiding/abetting, directing the commission of offence and solicitation to commit an offence, but proper complicity either. One should limit oneself to the position that they only cover perpetration by a single individual and parallel perpetration.

In view of the above, one can defend the position that the provisions of the Special Part referred to in Article 10 § 2 of the CC only apply to perpetration by a single individual and parallel perpetration. Further in the study, it will be discussed whether such a view can be contested or not. For now, it is worth considering what this means for the issues being analysed at this stage.

As the provisions of the Special Part do not refer to complicity, is it possible that among the accomplices only those bear liability under the terms of Article 10 § 2 of the CC, who personally fulfill the criteria specified in one of the provisions of the Special Part indicated therein? This would mean that a juvenile could, under the terms set out in Article 10 § 2 of the CC, be held liable for the conduct committed as a parallel perpetration, but he could not be held liable for acts committed as proper complicity. It would be a situation contrary to the assumption of the rationality of the legislature[42]. It would also lead to a very interesting paradox. Indeed, it may happen that in a specific arrangement of facts some of the accomplices will act as proper accomplices, while some as parallel perpetrators. If the requirements set out in Article 10 § 2 of the CC were fulfilled to all of them, then some of them – despite an identical legal and factual situation – could be held criminally liable, while some not. Once again, it is necessary to emphasize the contradiction between the interpretation being analysed and the assumption about the rationality of the

[40] See the detailed reasoning by P. Kardas (*Teoretyczne podstawy odpowiedzialności karnej…*, pp. 464–466).

[41] See: A. Wąsek, [in:] O. Górniok, S. Hoc, M. Kalitowski, S. M. Przyjemski, Z. Sienkiewicz, J. Szumski, L. Tyszkiewicz, A. Wąsek, *op. cit.*, p. 251; L. Tyszkiewicz, *Problemy współdziałania przestępnego de lege ferenda*, „Palestra" 1990, nr 1, p. 59; P. Kardas, [in:] *Kodeks karny. Część ogólna*, t. 1, cz. 1: *Komentarz do art. 1–52 k.k.*, p. 383 ff.; *idem*, *Teoretyczne podstawy odpowiedzialności karnej…*, p. 463.

[42] To learn more about the rationality of the legislature in legal interpretation, see: Ł. Pohl, *Zakres odpowiedzialności karnej nieletniego…*, p. 14.

legislature, thus adding another objection: such an interpretation would have to be considered unconstitutional. It seems that accomplices and parallel perpetrators in the situation being analysed would be in an identical legal and factual situation while being treated differently. It is worth recalling that even if the result of the interpretation seems to be clear, but its effect would lead to negating of one of the basic values attributed to the legislature[43], this result should be modified so as to ensure the axiological cohesion[44]. This is even more true when we keep in mind that essentially this is not abandoning textual interpretation, but it is a choice between various thereof. This issue will be discussed further. Meanwhile, it should be concluded that the provision of the Special Part does not cover proper complicity, since not all such accomplices meet these criteria personally by themselves, and some cannot be attributed the fulfillment of such criteria without taking into account the element of acting jointly and in concert resulting from Article 18 § 1 of the CC. If, on the other hand, we assume that the provision of the Special Part applies without the need to take into account the content of Article 18 § 1 of the CC to perpetration by a single individual and parallel perpetration, the result of the interpretation would be irrational[45].

These objections may only be avoided by stating that for proper complicity the scope of prohibited conduct is delineated not only by the provision of the Special Part, but also by Article 18 § 1 of the CC. Only then each of the accomplices can be attributed with what others have done. This, however, invalidates the original assumption that for direct perpetration, the provision of the Special Part itself determines the scope of criminalization. Moreover, finding out that also for proper complicity, similarly to directing the commission of offence and solicitation to commit an offence, Article 18 § 1 of the CC plays an important role in determining which conduct is prohibited poses another difficulty. Article 18 § 1 of the CC in its part concerning complicity does not contain any restrictions. It does not mention that it only concerns proper complicity. It applies simply to complicity. It would be strange if a provision regarding proper complicity played a role of liability co-determinant, while not playing that role with regard to parallel perpetration.

These inconveniences would be neutralised only partially by rejecting the substantive-objective theory in the form of significance of the role and by relying on the

[43] In this case, it would be the constitutional principle of equality before the law.

[44] As rightly put by Ł. Pohl, *Prawo karne. Wykład części ogólnej*, Warszawa 2012, pp. 77–78. Similarly: resolution of the Supreme Court of 29 October 2012 (I KZP 15/12), OSNKW 2012, No. 11, Item 111; M. Zieliński, *Koncepcja derywacyjna wykładni prawa w orzecznictwie Izby Karnej i Izby Wojskowej Sądu Najwyższego*, [in:] *Zagadnienia prawa dowodowego*, red. J. Godyń, M. Hudzik, L.K. Paprzycki, Warszawa 2011, p. 117.

[45] Below, we will attempt to answer the question whether perpetration by a single individual (and also parallel perpetration, in part not covered by the above reasoning) is completely described by the provision of the Special Part. It seems that one can defend the view contrary to this.

formal-objective theory, according to which the accomplice is the one who, jointly and in concert with others, personally fulfills the statutory criteria of an act[46]. In this case, those who did not themselves fulfill even a single criterion, but whose role in committing the whole act was important, they would not be perpetrators but aiders. However, this does not change the assessment of proper complicity. Since the proper accomplice is the one who personally fulfills even one statutory criterion[47], it is impossible to ignore the fact that he does not fulfill the statutory criteria as they are set out in the provision. He meets some of these criteria, sometimes only one. Although he did not personally fulfilled all the statutory criteria, he is widely regarded an accomplice. This is because the cooperation he established with another accomplice (accomplices) involves committing jointly the entire offence. This cooperation is a criterion of the offence committed by him, as it results from the content of Article 18 § 1 of the CC. For acts committed as proper complicity, it is not possible to limit the description of conduct of the direct perpetrator to the criteria specified in the special provision. Adhering to the assumption that Article 10 § 2 of the CC deals with the conduct described simply in the Special Part and, at the same time, claiming that the provisions of Special Part listed in this Article cover any direct perpetration is also unreasonable in view of the formal and objective concept of complicity.

It will be the same in terms of the subjective concept of complicity, based on the fact of undertaking a conduct with the intent to accomplish it (*cum animo auctoris*)[48]. The most difficult thing in this case is to justify the assumption that direct perpetration is only the conduct described in a provision of the Special Part, since the accomplice is the one who considers himself an accomplice.

The most favourable in terms of a possible defence of this assumption is the formal-objective concept. However, even with this concept, the above-mentioned difficulties associated with proper complicity cannot be avoided.

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[46] To support such a concept one should face the problems that may be doubtful in view of the presented assumptions. It is about the issue of proper complicity and – as it will be discussed below – indirect perpetration. The remarks by Pohl (*Zakres odpowiedzialności karnej nieletniego…*, p. 13 and 16) refer to direct perpetration, however, without taking into account the issue of proper complicity. The extensive quote from Kardas, published on p. 16 of Pohl's study (*Teoretyczne podstawy odpowiedzialności karnej…*, pp. 428–430) referring to perpetration by a single individual, may form a ground supporting the views of Pohl, but it would be more interesting to refer to the reasoning on complicity contained in the same Kardas' work, which suggests – and what should be approved – that neither the provision of the Special Part nor the provision of Article 18 § 1, sentence 2, of the Criminal Code alone are a basis of liability for complicity (*ibidem*, p. 465).

[47] Let us assume here – on a preliminary basis, as the author hereof declares himself a supporter of the substantive-objective concept – that proper complicity will be assessed according to formal and objective criteria.

[48] This was a view by J. Szwacha, *Z problematyki współdziałania przestępnego*, „Nowe Prawo" 1970, nr 12, p. 1276. With all necessary adjustments, assumptions of the above-mentioned theories should be referred to various mixed concepts.

Above, it was assumed that the assumption that Article 10 § 2 of the CC only concerns the provisions of the Special Part, which means that only direct perpetration is at stake, cannot be maintained in terms of proper complicity. However, it is worth considering perpetration by a single individual as well as the parallel perpetration, which does not differ from perpetration by a single individual in terms of activity criterion.

A number of the following observations may apply to both parallel perpetration and perpetration by a single individual. We should, however, begin with the one which only concerns parallel perpetration. Andrzej Spotowski expressed a view once that complicity does not include parallel perpetration, as in such a case each of the collaborators, by their behaviour, fully meets the statutory criteria of the prohibited act. It is unnecessary to use the construct of complicity in order to hold each of the parallel perpetrators liable for the deed whose statutory criteria they concurrently met[49]. This claim was rightly criticized by Andrzej Wąsek, who pointed to a constitutive element of concerted action in the construction of any complicity, including parallel perpetration. It is precisely the existence of concerted action that makes it possible for each of the accomplices to, for example, theft, to be held liable for taking the whole of the property stolen, and not the part assigned to him[50]. This statement is crucial for the problem being analysed. After all, it is possible that, as part of parallel perpetration, accomplices acting in concert would take items worth PLN 300 each. If we assume that the statutory description of the conduct attributed to a parallel perpetrator is contained only in the provision of the Special Part, it should be concluded that none of the accomplices in the above example has personally met the statutory criteria of the act prohibited by Article 278 § 1 or 2 of the CC. After all, neither of them took, in order to appropriate, a thing with a value exceeding the threshold defined in Article 119 of the Code of Petty Offences. If they have exceeded it jointly, acting jointly and in concert, the possibility of recognizing that by doing so they violated the prohibition contained in Article 278 of the CC it does not result solely from that provision, but from that provision in conjunction with Article 18 § 1 of the CC. Only the conclusion that they took certain properties by acting jointly and in concert allows considering their value in total[51]. Therefore,

[49] A. Spotowski, *Próba rozgraniczenia form zjawiskowych przestępstwa w nowym k.k.*, „Palestra" 1972, nr 2, p. 44. See also: K. Buchała, *Przestępstwa w komunikacji drogowej*, Warszawa 1961, pp. 140–143. Comments by A. Spotowski and K. Buchała certainly refer to parallel perpetration, not co-incidental parallel perpetration (which is not complicity). Wąsek (*Współsprawstwo…*, p. 37) rightly points to the fact that these concepts used to be confused.

[50] *Ibidem*, p. 45.

[51] Unless they meet the activity criterion for the whole. If we adopt the view that this applies to a personally committed act qualified solely under the Special Part, it should be considered that two perpetrators who take a TV set and a DVD player for the purpose of appropriation, steal them in complicity only when they carry them simultaneously, jointly (e.g. by placing the DVD player

also in some cases of parallel perpetration, only the application of Article 18 § 1 of the CC allows us to decode the norm violated by each perpetrator. All the more, it should be accepted that it is not true to say with regard to complicity that the Special Part provision alone defines the prohibited conduct.

Now the comments jointly regarding perpetration by a single individual and parallel perpetration. Kardas writes that:

> […] at the level of the sanctioned norm defining the content and scope of the prohibition/precept expressed by a given type of offence included in the Special Part of the penal legislation, the fact that Article 18 § 1 of the CC *in principio* contains the statutory definition of perpetration by a single individual does not seem to play a greater role. The sanctioned norm, though, can be read directly from the content of the relevant provision of the Special Part, defining the statutory criteria of a given typical offence. The sanctioned norm contained in it expresses the prohibition/precept of a particular behaviour, the trespass of which is the first condition of criminal liability. By combining the relevant provision of the Special Part with Article 18 § 1 of the CC *in principio* and submitting both elements of the legal text to interpretation, we do not change the course of the process of interpretation of the sanctioned norm in any way. As a result of it, regardless of whether the interpretation is carried out only based on a Special Section provision or on the basis of the Special Part provision and Article 18 § 1 CC *in principio*, we get in each case the same elements that characterize the sphere of prohibition/precept. For perpetration by a single individual, the prohibition/precept of a particular behaviour is fully determined by the relevant Special Part provision, and the existence of a statutory definition of perpetration by a single individual does not play any role in this perspective.

And then:

> For perpetration by a single individual, the basis of liability, namely the prohibition/precept expressed in the provision of criminal law is specified in the most typical and standard manner only by specifying the criteria of the type of the prohibited act. From the point of view of the sanctioned norm, the definition of perpetration by a single individual could be not included in the Act at all. […] the notion of perpetration contained therein comes down to stressing that the perpetrator is the one who commits the offence himself. Even without this provision, it is known that perpetration involves the fulfillment by the conduct of a given person of all the criteria defining the type. In other words, the very wording of the provisions of the Special Part concerning the form of perpetration by a single individual seems to fulfill in its entirety the function of defining the conditions on which liability for the perpetration of the offence described in it is dependent[52].

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on the TV set). If one of them took the TV set while the other the DVD player, each of them would commit (if this were considered to be the conduct described only in the provision of the Special Part of the Criminal Code, namely Article 278 of the CC) only the theft of the item he physically took.

[52] P. Kardas, *Teoretyczne podstawy odpowiedzialności karnej…*, pp. 428–430. The author draws a number of conclusions. First of all, he rightly argues that it is not true that the provision of Article 18 § 1 of the CC *in principio* is empty. Among the effects of the existence thereof indicated by the author, he points to the fact that, according to Kardas, its existence determines the narrow definition of perpetration (*ibidem*, pp. 432–433). While sharing this view, I would like to stress that, in my opinion, the point is not only that the legislature is inclined to the formal-objective concept with regard to perpetration by a single individual (it seems to be so, however, it does not change the fact that in

This statement, fully accepted by Pohl[53], can be supplemented, taking temporarily the perspective adopted by this author, in such a way that the prohibition set out in the Special Part of the Criminal Code is, in a given case, delineated in conjunction with the content of some provisions of the General Part, such as Articles 8 and 9 of the CC. The first one indicates what is the subjective side of acts prohibited in the provisions in which the special provision does not specify this subjective side, the second gives the content to the subjective side, including the one clearly indicated in the text of the provision of the Special Part, and § 3 thereof sets out the subjective side of the act aggravated due to its consequences. I share the view that the subjective side is part of the prohibition (or, using the terminology adopted on the basis of the concept of coupled norms: an element of the sanctioned norm)[54]. While keeping in mind the functions played by the General Part of the Criminal Code with respect to particular types, it should be remembered that the scope of statutory criteria of particular types is determined not only by the statutory description of a prohibited act in the Special Part, but also by the use of applicable institutions of the General Part. Thus, for example, we know that the provision "Whoever destroys, damages or renders unfit for use an item belonging to someone else" (Article 288 § 1 of the Criminal Code) prohibits deliberate destruction, damage or making someone else's property unfit for use, and does not prohibit doing this unintentionally[55]. This is obvious, but still worth noting, because if we take the position that the description of direct perpetration results from a provision of the Special Part, such a statement alone makes it possible to say that it is not possible in full. Often only after taking into account Articles 8 and 9 of the Criminal Code, it can be determined whether is it intentional or unintentional. If the very mention of criteria points to intent or unintentionality, it is necessary to take into account the relevant statutory definition.

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relation to other forms of perpetration one can defend the view that the legislature seems to depart from this concept, as perceived by P. Kardas, [in:] *Kodeks karny. Część ogólna*, t. 1, cz. 1: *Komentarz do art. 1–52 k.k.*, p. 379 ff.). It seems that this narrowing approach towards the notion of perpetration means excluding from its scope everything what, without being directing the commission of offence, solicitation to commit, complicity (or possibly incitement and aiding/abetting), is the accomplishment of the criteria not personally by the perpetrator himself. Kardas' view is generally accepted by A. Liszewska (*op. cit.*, p. 34), although she doubts whether the provision at issue determines the adoption by the Polish Criminal Code the narrow definition of perpetration. The author provided inspiring comments on perpetration of inadvertent acts and non-proper incitement and aiding in an unintentional act (*ibidem*, pp. 34–35).

[53] Ł. Pohl, *Zakres odpowiedzialności karnej nieletniego…*, p. 16.

[54] The opinion is shared by *idem*, *Struktura normy sankcjonowanej w prawie karnym*, Poznań 2007, p. 111.

[55] Moreover, the mere statement resulting from Article 8 of the CC that it is about intentional conduct, does not suffice though. Only after we take the content of Article 9 of the CC into account, we know what this intentionality is about.

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STRESZCZENIE

Opracowanie jest poświęcone kwestii możliwości przypisania odpowiedzialności karnej nieletniemu działającemu w warunkach określonych w art. 10 § 2 k.k. za czyny popełnione w różnych postaciach zjawiskowych. W pierwszej części autor prezentuje cztery koncepcje istniejące w tym zakresie w polskiej literaturze i podstawowe argumenty przemawiające za każdą z nich. Wskazuje też własną koncepcję i uzasadnia ją, odwołując się do współsprawstwa i wielosprawstwa.

Słowa kluczowe: odpowiedzialność karna nieletnich; współsprawstwo; wielosprawstwo