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CRIMINAL LIABILITY OF JUVENILES IN ANCIENT ROME

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Abstract

In 2022, the Act on the Support and Rehabilitation of Juveniles was enacted. It introduced new age limits determining the responsibility of minors for criminal acts. In the ongoing public debate on these regulations, legal-historical arguments have been lacking. The aim of this article is to present the principles of criminal responsibility in Roman law, with particular focus on juveniles. The research was carried out on preserved source material using the dogmatic method, which presupposes a logical-linguistic analysis of the source text, taking into account the principles of interpretation, and the historical-legal method, which serves to show the genesis and development of the institution in question. The analyses carried out show that, in Roman law, the perpetrator's awareness and understanding of the act committed were of greater importance for criminal responsibility than merely having automatically crossed a particular age threshold. The considerations presented are not only significant for the history of law, but also constitute a – hitherto neglected – voice in the discussion on the criminal responsibility of minors in contemporary Polish law.

Keywords: criminal responsibility, age, Roman law, juvenile

PRELIMINARY REMARKS

On 9 June 2022, the legislature adopted the Act on the Support and Rehabilitation of Juveniles (Journal of Laws 2022, item 1700), which replaced the previously applicable Act of 26 October 1982 on Proceedings in Juvenile Matters (Journal of Laws of 2018, item 969, and of 2022, item 1700). One of the many changes brought

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about by this Act was the introduction of new rules on juvenile liability, including the establishment of new age limits from which a juvenile may be held liable.

Under the provisions of the Act on the Support and Rehabilitation of Juveniles, the status of a juvenile is held by three different age groups of children and adolescents. In terms of demoralisation proceedings, the status of a juvenile is held by persons who display some manifestation of demoralisation after reaching the age of 10 and before reaching the age of majority. In the field of proceedings concerning a criminal act, the status of a juvenile is held by persons who have committed such an act between the ages of 13 and 17. In the field of the execution of educational measures, a therapeutic measure or a correctional measure, the status of a juvenile is held by persons in respect of whom the court has ordered such a measure, but no longer than until the day corresponding to the date of their 21st birthday, unless otherwise provided by law.[1]

Almost concurrently with the introduction of the new law regulating the responsibility of minors, on 7 July 2022, the Act amending the Penal Code and Certain Other Acts was passed (Journal of Laws of 13 December 2022, item 2600), by virtue of which the content of Article 10 of the Penal Code, providing for the age limits of criminal responsibility, was amended.

The rule that a person who commits an offence after reaching the age of 17 is liable under the terms of the Criminal Code has remained unchanged. However, the catalogue of offences for which a minor is criminally liable after reaching the age of 15 has been expanded. Thus, such a juvenile may be held liable under the principles set out in the Criminal Code if the circumstances of the case and the degree of development of the perpetrator, his or her personal characteristics and conditions support this, and, in particular, if the previously applied educational or corrective measures have proved ineffective, where he or she has committed a criminal act defined in Article 134, Article 148 § 1, 2 or 3, Article 156 § 1 or 3, Article 163 § 1 or 3, Article 166, Article 173 § 1 or 3, Article 197 § 1, 3, 4 or 5, Article 223 § 2, Article 252 § 1 or 2 and Article 280 of the Penal Code. A novelty has been the addition of a rule according to which a minor who, after reaching the age of 14 and before reaching the age of 15, commits a criminal act referred to in Article 148 § 2 or 3 of the Code of Criminal Procedure, may be held liable according to the rules set out in that Code if the circumstances of the case and the degree of development of the perpetrator, his or her personal characteristics and conditions support this, and there is a justified assumption that the application of educational or corrective measures is not capable of ensuring the rehabilitation of the minor. In addition, the rule on sentencing juvenile offenders has been modified, assuming that, where a juvenile has committed one of the most serious offences from the above catalogue, the sentence imposed may not exceed two thirds of the upper limit of the statutory penalty provided for the offence attributed to the offender, which is not punishable by life imprisonment. However, the court may apply extraordinary mitigation of punishment. The principle according to which, in relation to an offender who has

[1] V. Konarska-Wrzosek, 'Komentarz do art. 1', in: Górecki P., Kobes P., Konarska-Wrzosek V. (eds), *Wspieranie i resocjalizacja nieletnich. Komentarz*, Warszawa, LEX/el., 2023, Article 1, comment 1.

committed a misdemeanour after reaching the age of 17 but before reaching the age of 18, the court shall apply educational, therapeutic or correctional measures provided for minors instead of punishment, if the circumstances of the case and the degree of development of the offender, his or her characteristics and personal conditions support it, remains unchanged.

Even before the above-mentioned provisions came into force, there was a heated discussion at the draft law stage about the age limits to be applied to juvenile responsibility. Various ideas were put forward, and it was proposed that juvenile criminal responsibility be made dependent on different age limits.[2] Unfortunately, this discussion lacked historical-legal arguments. The circumstance that the history of law is a carrier of experience gained by predecessors who had to solve the same or similar problems was overlooked. Referring to historical arguments is not about copying previous solutions, because such an approach is obviously impossible, but about reaching for and benefiting from this experience. W. Uruszczak rightly pointed this out when he wrote that

> 'When revealing the past in the sphere of law, [the history of law] does so not out of idle curiosity, but always with the intention of passing on to contemporary and future generations the actual historical experience in the sphere of law and the consequences of its application in a specific place and time'.[3]

Leaving aside the legal-historical arguments, it seems as though the fact that the issue of juvenile responsibility has preoccupied lawyers for as long as the concept of a criminal act has existed, i.e. in fact since time immemorial, has been ignored. Nor has this issue been alien to Polish law.[4]

The attention of this study focuses on the principles of criminal responsibility in Roman law. The ancient Romans, like modern jurists, were concerned with the issue of a person's age and the imputability of responsibility for criminal acts. In the current discussion on the optimal model of juvenile criminal responsibility, their voice must also be taken into account. This is particularly so because Roman jurists did not see the law in systemic terms, but viewed it casuistically. Therefore, in the ongoing discussion, it is essential to understand the thought process and argumentation that Roman jurists adopted for their legal solutions.

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[2] For example: *Opinia Rzecznika Praw Obywatelskich do projektu ustawy o wspieraniu i resocjalizacji nieletnich (projekt z 20.07.2021 r.)*, No. KMP.022.1.2021.RK; *Opinia Biura Analiz Dokumentacji i Korespondencji Kancelarii Senatu do ustawy o wspieraniu i resocjalizacji nieletnich (druk senacki nr 741)*, No. OE-408; *Opinia Naczelnej Rady Adwokackiej do projektu ustawy o wspieraniu i resocjalizacji nieletnich*, No. NRA.145-U.1.2021.

[3] A. Zakrzewski, 'Czemu ma obecnie służyć historia prawa, co jej grozi?', *Miscellanea Historico-Iuridica*, 2011, Vol. X, p. 36, and cited therein: W. Uruszczak, 'Tradycja w historii prawa', *Zagadnienia Naukoznawstwa*, 2002, Vol. XXXVIII, No. 3 (153), p. 429.

[4] The analyses carried out show that particular approaches and legal solutions evolved; however, sometimes newly introduced legal acts contained references to those previously in force. For example, the Criminal Code of 1932 provided for the criminal liability of a minor who, after the age of 13 but before the age of 17, committed a criminal act with discernment, cf. E. Jurgielewicz-Delegacz, 'Ewolucja odpowiedzialności nieletnich na przestrzeni lat', *Studia Prawnoustrojowe*, 2019, No. 4, p. 185.

The aim of the present article is to examine how criminal responsibility was shaped in Roman law and what arguments determined the adoption of a certain age as the limit for incurring such responsibility. It is necessary to examine up to what age there could be no criminal responsibility, at what age such responsibility was conditional, and from when it was borne in full. In this way, or at least it is to be hoped, a Roman voice, of whose authority no one needs to be convinced, will be heard in the discussion of current legal solutions concerning the criminal responsibility of minors.

PRINCIPLES OF CRIMINAL LIABILITY IN ROMAN LAW

In Roman law, unlawful acts were generally divided into private (*delicta*), and public (*criminal*) acts.[5] Torts were seen as violations of the interests, most often property and personal interests, of private persons, and these cases were cognisable through the civil route, while criminal offences were regarded as acts dangerous to the order of the state and were cognisable through the criminal process. Over time, the Roman theory of torts led to their eventual systematisation and division into civil-law torts: *furtum* (theft), *rapina* (robbery), *damnum iniuria datum* (unlawful infliction of damage), *iniuria* (insult) and praetorian law torts: *dolus* (deceit), *metus* (unlawful threat), and *fraus creditorum* (acting to the detriment of creditors).[6]

The rules of Roman tort liability – in principle – also applied to criminal liability.[7] The basis for the attribution of this liability was the demonstration of the offender's intention. As reported by K. Amielańczyk,[8] in the case of liability for *crimina*, *voluntas*, i.e. precisely the intention to commit a criminal act, still identified with the archaic *sciens dolo malo*, that is, the perpetrator's fully conscious action as to both fact and law, was of significance. This shows that, in Roman law, the condition for a minor's responsibility was his or her understanding of the nature of the act committed. The research carried out shows that, in the extant source material on

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[5] On the distinction between private-law torts and public-law offences, cf. C. Cascione, 'Roman Delicts and Criminal Law: Theory and Practice', in: McGinn T.A. (ed.), *Obligations in Roman Law: Past, Present, and Future*, Ann Arbor, 2012, pp. 267–296; G. Longo, *Delictum e crimen*, Milano, 1976, p. 180; E. Albertario, *Delictum e crimen nel diritto romano-classico e nella legislazione giustinianea*, Milano, 1924, p. 74; F. Lucrezi, G. Mancini, *Crimina e delicta nel tardo antico. Atti del Seminario di Studi. Teramo, 19–20 gennaio 2001*, Milano, 2003, pp. 17 et seq. See also K. Amielańczyk, 'Vis – pomiędzy prawem rzymskich deliktów prywatnych a rzymskim prawem karnym publicznym', in: Słapek D., Łuć I. (eds), *Przemoc w świecie starożytnym: źródła, struktura, interpretacje*, Lublin, 2017, pp. 283–298. More recently, also historically, on the example of German law, cf. P. Hellwege, P. Wittig, 'Delictual and Criminal Liability in Germany', in: Dyson M. (ed.), *Comparing Tort and Crime: Learning from across and within Legal Systems*, Cambridge, 2015, pp. 123–172.

[6] On tort theory in Roman law, cf. B.W. Frier, *A Casebook on the Roman Law of Delict*, Oxford, 1989, p. 267; P. Birks, *The Roman Law of Obligations*, Oxford, 2014, pp. 158–258.

[7] M. Kuryłowicz, 'Odpowiedzialność "nieletnich" za czyny bezprawne w prawie rzymskim', in: Bojarski T. (ed.), *Postępowanie z nieletnimi*, Lublin, 1988, p. 13. See also G. Longo, *Delictum*…, op. cit., p. 175; J.A.C. Thomas, 'Delictal and Criminal Liability of the Young in Roman Law', in: Société Jean Bodin pour l'histoire comparative des institutions (ed.), *L'enfant. Recueils de la Société Jean Bodin pour l'histoire comparative des institutions*, Vol. XXXVIII, 1977, pp. 25–26.

[8] K. Amielańczyk, *Rzymskie prawo karne w reskryptach cesarza Hadriana*, Lublin, 2006, p. 134.

crimina responsibility, there was a preponderance of texts which used age categories, namely *infantes*, *impuberes* and *puberes*, defining children, immature persons and mature persons, rather than specific age limits.[9] These categories were initially not assigned strict age limits, and it was only in Justinian law, that is, from the sixth century AD, that specific numerical values were introduced, corresponding to the style of contemporary legislators. It was then accepted that children (*infantes*) were defined as persons up to the age of 7, immature (*impuberes*) as persons from 7 to 12 in the case of girls and to 14 in the case of boys, and mature (*puberes*), as those who had exceeded these limits.[10]

CRIMINAL LIABILITY OF CHILDREN (INFANTES) UNDER 7 YEARS OF AGE

Starting with the first of the basic age categories, that is, children (*infantes*), in view of the requirement of *voluntas* as a basis for liability for *crimina*, they were excluded from such liability.[11] This was mentioned by Modestinus in his commentary on the *lex Cornelia de sicariis et veneficis*, the law of Cornelius Sulla against knifemen and poisoners of 81 BC:[12]

> D. 48, 8, 12, Modestinus *libro octavo regularum*; *Infans vel furiosus si hominem occiderint, lege Cornelia non tenentur, cum alterum innocentia consilii tuetur, alterum fati infelicitas excusat.*

In the above opinion, the jurist expressed the view that children and the mentally ill were not criminally responsible for killing a human being under the law in question.[13] In the case of children, *innocentia consilii*, that is, innocence of intention, or thought, was in their favour. Modestinus therefore drew attention to the impossibility of attributing deliberate intention to children because of the insufficient capacity at that age to understand the legal meaning of their actions.[14] It is also worth noting that, in criminal law, the jurist referred to the rule, also developed in civil law, of treating children on an equal footing with the mentally ill, precisely because of their shared lack of capacity to understand the meaning of an act, whether tortious or prohibited, and legal actions (G. 3, 109; D. 44, 7, 1, 12–13; I. 3, 19, 10). This is also the view, in both tort and criminal liability of children, that has been endorsed in the literature.[15]

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[9] Cf. W. Rein, *Das Criminalrecht der Römer von Romulus bis auf Justinian. Ein Hülfsbuch zur Erklaerung der Classiker und der Rechtsquellen*, Leipzig, 1844, pp. 206–208.

[10] W.J. Kosior, *Kategorie i granice wieku oraz ich znaczenie w rzymskim prawie prywatnym*, Rzeszów, 2022, pp. 77–124.

[11] J. Hillner, *Prison, Punishment and Penance in Late Antiquity*, Cambridge, 2015, p. 59.

[12] Cf. K. Amielańczyk, *Lex Cornelia de sicariis et veneficis: Ustawa Korneliusza Sulli przeciwko nożownikom i trucicielom 81 r. p.n.e.*, Lublin, 2011, pp. 222.

[13] A. Burdese, 'Sulla capacità intellettuale degli *impuberes* in diritto classico', *Archivio Giuridico*, 1956, Vol. 150, p. 27.

[14] M. Kuryłowicz, 'Odpowiedzialność "nieletnich"…', op. cit., p. 11.

[15] B. Perrin, 'La responsabilité délictuelle de l'impubère en droit romain classique', *Annales Universitatis Saraviensis*, 1954, No. 3, p. 244; J.M.T. Labuschagne, 'Strafregtelike aanspreeklikheid van kinders', *Journal of South African Law*, 1978, pp. 251 et seq.; A. Diaz Bialet, 'La imputabilidad

CRIMINAL LIABILITY OF IMMATURE PERSONS (IMPUBERES) AGED 7 TO 12 AND 14 YEARS

In the case of criminal liability of immature persons (*impuberes*), the same rules applied in practice as in the case of torts, with the difference that the individual existence of awareness of the act committed was no longer considered as often. In tort, immature persons were not treated uniformly, but in each case it had to be examined whether there was *capacitas*, that is, the capacity to understand the meaning of the tort, on their part. Hence, Roman legal practice made a division of immature persons into those *infantiae proximi*, who, although they had emerged from childhood, were still close to it and thus not liable for wrongful acts, and those *pubertati proximi*, who had not yet reached formal maturity but were very close to it in age. For tort liability of the latter, what mattered was whether they were aware of their actions and consequences at the time of the act, that is, whether they were *doli* / *iniuriae* / *culpae* / *capax*; if they were, then they were liable, whereas when it was proven that they did not have this awareness, they were exempted from such liability.[16] In the case of criminal law, on the other hand, we can identify sources that point to the general exclusion of the responsibility of immature persons and to the recognition that, as a rule, they lacked discernment and awareness of the offence they were committing, as well as sources which, however, required an individual assessment of each case and an examination of such awareness.[17]

In archaic law, immature persons were not liable for offences for which the main penalty was provided:[18]

> Tab. 8, 9; *Frugem quidem aratro quaesitam noctu pavisse ac secuisse puberi XII tabulis capital erat, suspensumque Cereri necari iubebant . . . . . ., impubem praetoris arbitratu verberari noxiamve duplionemve decerni.*

The passage quoted from the Law of the Twelve Tables refers to the offence of destroying agricultural crops, which in those days, when the early Roman economy was based on agriculture, was punishable by the highest possible penalty, namely death. In the case presented here, the act consisted in cutting down crops or grazing cattle in a cultivated field under cover of darkness. When the perpetrator was a mature person, the punishment was death by hanging. However, when the act was committed by an immature person, he could be sentenced, at the praetor's discretion, to flogging or could be held liable for damages.[19] An analysis of the

penal en el derecho romano', *Revista de la Sociedad Argentina de Derecho Romano*, 1954, Vol. 1, pp. 13–30.

16 On the tort liability of immature persons in Roman law, cf. W.J. Kosior, *Kategorie i granice*…, op. cit., pp. 346–356.

17 On the evolution of views on the criminal responsibility of immature persons, taking into account Roman solutions, cf. T. Crofts, *The Criminal Responsibility of Children and Young Persons: A Comparison of English and German Law*, Aldershot, 2002, pp. 93 et seq.

18 R. Świrgoń-Skok, 'Wiek a wymiar kary w rzymskim prawie karnym', *Annales Universitatis Mariae Curie-Sklodowska, sectio G*, 2024, Vol. 71, No. 3, pp. 110 et seq.

19 M. Zabłocka, J. Zabłocki, *Ustawa XII Tablic. Tekst. Tłumaczenie. Objaśnienia*, Warszawa, 2003, pp. 54–55.

text in question shows that an immature person could not be sentenced to the main punishment, i.e. he could not be held fully responsible for his act, but neither did he remain completely unpunished, since the law provided for the sanctions described in relation to him.[20] Their nature, especially the punishment of flogging, rather points to their educative and preventive purpose, which makes it possible to note that already in archaic law the necessity of taking into account the position of immature persons, who may not have been aware of the significance of their acts, was recognised.[21] It was therefore left to the discretion of the praetor to assess each case in which the offender was immature.

The issue in question was described more extensively in classical law by Ulpianus:

> D. 21, 1, 23, 2, Ulpianus libro primo ad edictum aedilium curulium; *Excipitur etiam ille, qui capitalem fraudem admisit. Capitalem fraudem admittere est tale aliquid delinquere, propter quod capite puniendus sit: veteres enim fraudem pro poena ponere solebant. Capitalem fraudem admisisse accipiemus dolo malo et per nequitiam: ceterum si quis errore, si quis casu fecerit, cessabit edictum. Unde Pomponius ait neque impuberem neque furiosum capitalem fraudem videri admisisse.*

In the quoted opinion, the jurist explained what an offence punishable by the main sanction was and what that sanction consisted of. He added that it involved the death penalty, which was imposed for certain crimes when they were committed with malice aforethought and out of wickedness (*dolo malo et per nequitiam*). He also pointed out that previously, a given crime was defined by reference to the penalty prescribed for it. In the last sentence of his opinion, the jurist referred to Pomponius' view, according to which immature persons and the mentally ill could not commit an offence punishable by a major penalty. The text thus drew attention to the intention to commit the crime, and yet intention is nothing more than the mental attitude of the perpetrator towards the act, linked to awareness of the act. By citing the opinion of Pomponius, the incapacity of immature persons to act with intent was highlighted, since, according to the assumption, there was a lack of discernment on their part as to the crime being committed. In addition, it is also noteworthy that Pomponius practically put an equal sign between immature persons and the mentally ill when it came to criminal responsibility, yet this approach was characteristic when talking about the culpability of a child. Equating immature persons with the mentally ill, and at the same time with children, could indicate that the question of intention and awareness of the meaning of the act was approached more rigorously in the case of crimes than in the case of torts.[22] Namely, it would indicate that immature age was

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[20] J.E. Gaughan, *Murder Was Not a Crime: Homicide and Power in the Roman Republic*, Austin, 2010, pp. 62–64.

[21] Cf. M.F. Cursi, 'La formazione delle obbligazioni "ex delicto"', *Revue internationale des droits de l'antiquité*, 2011, No. 58, p. 144.

[22] Y. Rivière, 'La délinquance juvénile dans l'Empire romain', in: Bardet J.-P., Luc J.-N., Robin-Romero I., Rollet C. (eds), *Lorsque l'enfant grandit: entre dépendance et autonomie*, Paris, 2003, p. 854.

considered in criminal cases as a circumstance that, in principle, already excluded the perpetrator's responsibility.[23]

Paulus wrote in a similar way about the criminal responsibility of immature persons:

> D. 48, 10, 22, pr., Paulus libro singulari ad senatus consultum Libonianum; *Impuberem in hoc edictum incidere dicendum non est, quoniam falsi crimine vix possit teneri, cum dolus malus in eam aetatem non cadit.*

In this case, a jurist commenting on a resolution of the *senatus consultum Libonianum* of 46 BC, which, among other things, criminalised the offence of will forgery, pointed out that immature persons were not liable under this act, since at their age bad intention (*dolus malus*) did not occur.[24]

Ulpianus wrote equally categorically about the exclusion of criminal liability of immature persons when discussing the crime of desecration of a tomb:[25]

> D. 47, 12, 3, 1, Ulpianus libro 25 ad edictum praetoris; *Prima verba ostendunt eum demum ex hoc plecti, qui dolo malo violavit. Si igitur dolus absit, cessabit eiusdem. Personae igitur doli non capaces, ut admodum impuberes, item omnes, qui non animo violandi accedunt, excusati sunt.*

In describing the offence of malicious desecration of a grave, the jurist held that those who were unable to understand that the act was prohibited, or malicious, were not criminally liable, and it was immature persons who were given as an example here. As if by definition, he acknowledged that immature persons lacked such awareness.

An analogous consideration of the criminal liability of immature persons is found in imperial legislation dedicated to the offence of coin counterfeiting:

> CTh. 9, 21, 4, 1, Idem a. Helpidio; *Viduas autem ac pupillos speciali dignos indulgentia credidimus, ut viduae nec in proximo constitutae domo sua vel possessione careant, si nulla aput ipsas tam gravis conscientiae noxa resideat, pupilli vero etiam si conscii fuerint, nullum sustineant detrimentum, quia aetas eorum, si tamen fuerint impuberes, quid videat ignorat.*

In the above-mentioned constitution of Emperor Constantine of 321, the consideration concerned the criminal failure to report the commission of the crime of coin forgery. It specified that immature persons who became aware of the counterfeiting of coins did not incur such liability, because their age meant that they were unable to understand what they had seen. In this case, it was once again indicated that immature persons were not aware of the significance of the crime, and hence were excluded from criminal liability.[26] This imperial decree was subsequently incorporated into the Justinian Code (C. 9, 24, 1, 6).

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[23] J. Hillner, *Prison, Punishment*…, op. cit., pp. 59–60.

[24] B. Albanese, 'Sul senatoconsulto Liboniano', *Annali del Seminario Giuridico di Palermo*, 1976, Vol. 36, pp. 288 et seq.

[25] Cf. M. Jońca, *Przestępstwo znieważenia grobu w rzymskim prawie karnym*, Lublin, 2013, p. 466; K. Mokrzewska, 'Profanacja grobu w prawie rzymskim', in: Braniewicz O., Kowalczyk P. (eds), *Aspekty społeczno-prawne rozwoju antycznego Rzymu*, Toruń, 2014, pp. 43–53.

[26] O.F. Robinson, *The Criminal Law of Ancient Rome*, Baltimore, 1995, p. 88.

An analysis of the source material presented above shows that immature age, in principle, already constituted a circumstance excluding the criminal liability of the offender. In particular, in the case of *crimina*, it was no longer necessary to consider so frequently whether the immature person was *pubertati proximus* and possibly *doli capax*; rather, immature persons were generally considered not yet capable of discernment, which excluded them from criminal responsibility. This was also the position taken by M. Kuryłowicz.[27] A slightly different opinion was presented by K. Amielańczyk,[28] who stated that there was no full consensus among jurists as to the age limit of criminal responsibility for particular *crimina*, which makes legitimate the view that *leges iudiciorum publicorum*, or even the general *lex Iulia iudiciorum publicorum*, did not contain a provision indicating such an age, and that the subjection of a perpetrator who committed a criminal act to judgment was decided in each case, taking into account the individual mental development of the defendant.

However, the principle according to which immature persons were not criminally liable because of their age was not absolute, as pointed out in the Digest:

> D. 50, 17, 108, Paulus libro quarto ad edictum; *Fere in omnibus poenalibus iudiciis et aetati et imprudentiae succurritur.*

In the quoted text, Paulus expressed the view that in almost all criminal cases, age and inadvertence spoke in favour of the offenders, which literally came to their aid (*succurritur*). It is significant that the jurist himself stressed that this applied to almost (*fere*) all cases, which already indicates that there were exceptions to this rule.[29] Such exceptions included liability for *crimen maiestatis*, i.e. crimes against the majesty of the state.[30]

One such exception, which needs to be discussed at greater length, arose for an offence regulated under the *senatus consultum Silanianum* of 10 AD, that is, a resolution providing for collective liability for all slaves who, at the time their master was murdered, were staying with him in the same house or in his immediate vicinity and did not attempt to rescue him at the risk of their own lives.[31] In principle, slaves were sentenced to death under this resolution subject, however, to an exception for immature slaves:

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[27] M. Kuryłowicz, 'Odpowiedzialność "nieletnich"…', op. cit., pp. 13–14.

[28] K. Amielańczyk, *Rzymskie prawo karne*…, op. cit., p. 135. See also J. Misztal-Konecka, *Incestum w prawie rzymskim*, Lublin, 2007, p. 98.

[29] M. Kuryłowicz, 'Odpowiedzialność "nieletnich"…', op. cit., p. 14; A.M. Rabello, 'The Responsibility of Minors in Jewish Criminal Law (Biblical and Talmudic Period and Notes of Comparison with Roman Law)', *Acta Juridica*, 1977, pp. 309 et seq.

[30] On Roman legislation on *crimen maiestatis*, see P. Kołodko, *Ustawodawstwo rzymskie w sprawach karnych. Od ustawy XII tablic do dyktatury Sulli*, Białystok, 2012, pp. 187–219.

[31] K. Amielańczyk, 'Głos cesarza Hadriana w sprawie *s.c. Silanianum*', *Zeszyty Prawnicze*, 2006, Vol. 6, No. 1, p. 11. See also F. Benedek, *A Senatus Consultum Silanianum*, Budapest, 1963, pp. 5 et seq.; F. D'Ippolito, 'Una presunta disposizione del S.C. Silanianum', in: Guarino A., *Synteleia Arangio-Ruiz*, Vol. II, Napoli, 1964, pp. 717 et seq. A different year of this resolution is indicated by L. Hermann, who states that it was passed in 57 AD, cf. L. Hermann, 'La genèse du *senatus consultum Silanianum*', *Revue internationale des droits de l'antiquité*, 1952, Vol. 1, p. 495. However, this position has been criticised by E. Volterra – cf. M. Zabłocka, 'Polityka dynastii julijsko-klaudyjskiej wobec wyzwoleń i wyzwoleńców', *Prawo Kanoniczne*, 1984, Vol. 27, No. 1–2, p. 234, footnote 42.

D. 29, 5, 1, 32, Ulpianus libro 50 ad edictum; *Impubes servus vel ancilla nondum viripotens non in eadem causa erunt: aetas enim excusationem meretur.*

In the passage quoted above, Ulpianus, commenting on the principles of criminal responsibility under this resolution, pointed out that an immature slave and a female slave who was still incapable of having offspring, and therefore immature, were in a different situation, since their young age was a circumstance justifying their omission.[32] Such slaves were not sentenced to death, nor were they subject to torture during interrogation related to the crime.[33] The above passage, as it were, fits in with the general tendency described earlier to exclude the criminal responsibility of immature persons simply because of their age. However, such privileged treatment was not absolute, as we learn from the following opinion by Maecianus:

D. 29, 5, 14, Maecianus libro 11 de publicis iudiciis; *Excipiuntur senatus consulto Silaniano impuberes servi. Trebius autem Germanus legatus etiam de impubere sumi iussit supplicium et tamen non sine ratione: nam is puer nec multum a puberi aetate aberat et ad pedes domini cubuerat cum occideretur nec postea caedem eius prodiderat. Ut enim opem ferre eum non potuisse constabat, ita silentium praestitisse etiam postea certum erat, et his dumtaxat impuberibus senatus consulto parci credebat, qui tantum sub eodem tecto fuissent: qui vero ministri vel participes caedis fuissent et eius aetatis, quamquam nondum puberis, ut rei intellectum capere possent, his non magis in caede domini quam in ulla alia causa parci oportere.*

The jurist pointed out in his opening words that the *senatus consultum Silanianum* was not applied to immature slaves.[34] He thus confirmed that they were protected from collective liability resulting from the application of this resolution by their age.[35] However, he followed this statement by citing an example where the *legatus* Trebius Germanus[36] decided to impose the death penalty on an immature boy on the basis of this *senatus consultum.* He went on to add that this boy was of an age close to maturity, since he was not far short of it, and, moreover, at the time his master was killed, he was asleep at his feet and did not move to help him; moreover, after the event, he remained silent.[37] The text also states that those slaves who assisted or participated in the murder of their master were liable on the basis of the resolution in question, even when they were still immature but could grasp the meaning of the act.[38] The interpretation of this text says a great deal about the rules of criminal responsibility

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[32] Cf. O.F. Robinson, 'Slaves and the Criminal Law', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung*, 1981, Vol. 98, No. 1, p. 234.

[33] A. Berger, *Jugendschutz und Jugend-Besserung. Material und Abhandlungen, vorwiegend strafrechtlichen Charakters unter weitgehender Berücksichtigung des Auslandes und der Geschichte*, 2 Teile, Leipzig, 1897, p. 12. See also E. Loska, 'Kilka uwag na temat zeznań niewolników w procesie karnym', *Zeszyty Naukowe KUL*, 2017, Vol. 60, No. 3, pp. 449–463.

[34] Cf. F. D'Ippolito, 'Una presunta…', op. cit., p. 719.

[35] E. Loska, 'Obowiązek niewolników obrony swojego właściciela', *Zeszyty Prawnicze*, 2004, Vol. 4, No. 1, p. 47.

[36] Cf. A.R. Birley, 'A New Governor of Britain (20 August 127): L. Trebius Germanus', *Zeitschrift für Papyrologie und Epigraphik*, 1999, Vol. 124, pp. 243–248.

[37] Cf. A. Lebigre, *Quelques aspects de la responsabilité pénale en droit romain classique*, Paris, 1967, p. 52.

[38] R.A. Bauman, *Crime and Punishment in Ancient Rome*, London, New York, 1996, p. 116.

for immature persons. Thus, at the beginning, the general rule was cited that the resolution of the *s.c. Silanianum* did not cover immature persons, while further on an exception to this rule is indicated, whereby a boy who had not yet reached formal maturity was nevertheless sentenced to death. Maecianus, relying on this state of facts, seems to have approved of this decision, because he meticulously explained it with reference to the law of the time. Namely, he considered that this boy was close to the age of maturity and did not react in any way when his master was literally killed in his presence; moreover, he did not inform anyone about it afterwards. The jurist seems to have treated such behaviour as a form of aiding and abetting by omission, as he considered that immature persons who were not far from maturity were liable if they assisted or participated in the murder of their master. He also specified that remaining close to maturity meant that such persons could have been aware of the significance of the crime.[39] In this case, therefore, the jurist saw the criminal liability of immature persons on analogous principles to those that applied to tort liability, that is, two conditions had to be met for it to arise. The first was proximity of age to formal maturity and the second was awareness of the meaning of the act.[40]

At this point it must be underlined, following M. Kuryłowicz,[41] that the above-described case of sentencing an immature boy to death must have been a high-profile and exceptional case, since Maecianus even cited the name of the Roman official who ordered the execution. Thus, although the slave in question, being immature, was generally excluded from criminal responsibility and indeed could not have prevented the murder, in the situation described, he was nevertheless regarded as a conscious participant in the crime. In his opinion, the jurist made an attempt to generalise the prerequisites for the criminal liability of immature persons, stating that not only in the case under discussion, but in other cases as well, immature persons should be liable for the crimes committed if they were accessories or accomplices and, at the same time, their age, although immature, indicated their ability to understand the meaning of the act. It was therefore in such situations that it was permissible to deviate from the general rules excluding immature persons from criminal responsibility.[42]

The fact that the age of immaturity did not completely absolve one from criminal responsibility may also be indicated by the following constitution of 294:

> C. 9, 16, 5, Imperatores Diocletianus, Maximianus; *Si quis te reum Corneliae legis de sicariis fecerit, innocentia purgari crimen, non adulta aetate defendi convenit.*

Above, we find the content of the imperial command that, if a particular person was accused on the basis of the *lex Cornelia de sicariis*, he should have undertaken to defend himself and prove his innocence, and not justify his behaviour on the grounds that he had not yet reached the age of adulthood. The term *adulta aetate*

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[39] A. Burdese, 'Sulla capacità intellettuale…', op. cit., p. 31.

[40] Cf. T. Mommsen, *Römisches Strafrecht*, Leipzig, 1899, p. 76; S. Solazzi, 'Qui infanti proximi sunt', *Labeo*, 1955, No. 1, p. 17.

[41] M. Kuryłowicz, 'Odpowiedzialność "nieletnich"…', op. cit., p. 15.

[42] Ibidem, pp. 15–16; see also A. Burdese,'Sulla capacità intellettuale…', op. cit., p. 39.

used in the text is equivalent to maturity (*pubertas*).[43] Hence, it must be assumed that the above passage referred to immature persons. Its interpretation shows that immature persons were subject to criminal liability for acts criminalised by the *lex Cornelia de sicariis* and should not hide behind their immaturity, but were obliged to undertake their defence on general principles.

Summarising the analysis carried out concerning the criminal liability of immature persons, it may be noted that, somewhat differently from tort liability, age generally protected against incurring such liability. However, this rule was not absolute, as exceptions to it were provided for, where the immature offender bore full criminal responsibility if he was close to the age of maturity and if he could understand the meaning of the act committed.

CRIMINAL LIABILITY OF ADULTS (PUBERES) OVER 12 AND 14 YEARS OF AGE

Turning at this point to the issue relating to the criminal responsibility of *puberes*, it should be noted that this was no longer in doubt, and this was the case from archaic law onwards. As indicated in the previously quoted passages from the Law of the Twelve Tables (Tab. 8, 9; Tab. 8, 14), *puberes* were responsible for the crimes described therein and incurred the highest possible penalty, that is, the death penalty. Even in later law, this principle did not change. Moreover, even mature persons under the age of 25, who enjoyed special protection under private law, could not invoke their age in criminal law.[44] Above all, they were precluded from making use of the institution of *restitutio in integrum* (i.e. restoration) under criminal law in order to protect themselves from liability:

> D. 4, 4, 37, 1, Tryphoninus libro tertio disputationum; *(…) minor annis viginti quinque non meretur in integrum restitutionem (…).*

The above opinion was expressed by Tryphoninus when discussing the law on punishment for the crime of adultery. He indicated that mature persons under 25 years of age could not invoke the benefit of restoration if they had committed this offence.[45]

In general, *puberes minores XXV annis* could not justify their age if they committed a crime, as the following passages also indicate:

> Paul. 1, 9, 1; *Minor viginti et quinque annorum si aliquod flagitium admiserit, quod ad publicam coercitionem spectet, ob hoc in integrum restitui non potest.*
> Interpr. Paul. sent. 1, 9, 1; *Minores aetate, si crimina graviora commiserint, per aetatem se non poterunt excusare.*

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[43] W.J. Kosior, *Kategorie i granice wieku…*, op. cit., p. 115.

[44] A. Laingui, *La responsabilité pénale dans l'ancien droit: XVIe–XVIIIe siècle*, Paris, 1970, p. 231.

[45] B. Perrin, 'La responsabilité pénale du mineur de vingt-cinq ans en droit romain', in: Chevallier R. (ed.), *Mélanges d'archéologie et d'histoire offerts à André Piganiol*, Vol. 3, Paris, 1966, pp. 1455 et seq.

These texts show quite unambiguously that mature persons under the age of 25, if they committed a more serious crime, that is, one for which there was a public-law penalty, could not justify themselves by reference to their age.[46]

Analogous provisions can be found in imperial legislation:

> C. 2, 34, 1, Imperatores Severus, Antoninus; *In criminibus quidem aetatis suffragio minores non iuvantur (…).*

The content of the constitution of 200 stipulated that *minores*, i.e. mature persons who had not yet attained the age of 25, could not rely on their age in the case of offences as a circumstance that would exclude their criminal responsibility. This view was based on the fact that, in principle, formally mature persons (*puberes*) were liable, and therefore the question of whether the offender was a mature person under or over 25 was not relevant in criminal law.

However, despite such clear indications, the analysis of the source material carried out led to the discovery of a text that described an offence for which only those who had already reached the age of 25 could be held responsible:

> C. 6, 35, 6, Imperator Alexander Severus; *Minoribus quinque et viginti annis heredibus non obesse crimen inultae mortis placuit.*

The quoted passage from the Imperial Constitution of 229 refers to the act referred to as *crimen inultae mortis*, the crime of failing to avenge death.[47] In the era of the Severan dynasty, indirectly based on the solutions adopted in the *senatus consultum Silanianum*, criminal responsibility was envisaged for heirs whose father had been murdered and who, contrary to their honourable duty, failed to avenge his death.[48] The consequence of such behaviour was the unworthiness of such heirs to inherit and the forfeiture of the inheritance to the state treasury.[49] As indicated in the text above, those under the age of 25 could not be prosecuted for this offence. However, there is no information on the reasons for this exclusion from liability. In my opinion, this may be considered through the prism of the sanction provided for this offence. Indeed, for failing to avenge the father's death, the heirs were typically liable by losing their right to the inheritance. Thus, the consequences were governed exclusively by private law and, more specifically, by the law of succession. Since this sanction was of a private-law nature, it may have been considered that the general view of the vulnerability of persons under 25 should apply in such a case, as it was on the basis of *ius privatum* that persons of this age enjoyed special protection and

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[46] Cf. G. Cervenca, 'Note in tema di responsabilità penale del "minor XXV annis"', *Sodalitas. Scritti in onore di A. Guarino*, 1984, Vol. 6, pp. 2739 et seq.

[47] Cf. A. Berger, *Encyclopedic Dictionary of Roman Law*, Philadelphia, 1953, p. 516, s.v. 'inulta mors'.

[48] E. Flaig, *Ritualisierte Politik: Zeichen, Gesten und Herrschaft im Alten Rom*, Göttingen, 2004, p. 149.

[49] W.V. Harris, 'The Roman Version', in: Faris S.B., Lundeen L.E. (eds), *Ten Years of the Agnes Kirsopp Lake Michels Lectures at Bryn Mawr College*, Bryn Mawr, 2006, pp. 56–57. See also D. 29, 5, 9 and D. 37, 14, 23, pr.

assistance from the magistracy. With this position, we would also have to assume that *crimen inultae mortis* was a mixed act. On the one hand, it was a criminal-law offence, as indicated by the term *crimen*, while on the other hand, the sanctions had effects only under private law.

At this point, it is also worth mentioning an offence for which, in principle, only formally mature persons could be held responsible, as indicated by the sources:

> D. 48, 5, 37 (36), Papinianus libro tertio quaestionum; *Si minor annis adulterium commiserit, lege Iulia tenetur, quoniam tale crimen post pubertatem incipit.*

It was pointed out above that if a minor committed the crime of adultery, then he should have been liable, since under the *lex Iulia de adulteriis coërcendis* such a crime could be committed after maturity.[50] The use of the phrase *minor annis* suggests that Papinianus was faced with the task of answering the question whether persons under 25 years of age were capable of incurring liability under this law (*minores annis* / *aetate* defined persons of that age). Not only did the jurist answer in the affirmative, but he also emphasised that criminal liability was incurred by formally mature persons.

The following text also confirms that the subject of the crime of adultery could only be a mature person:

> D. 48, 5, 39 (38), 4, Papinianus libro 36 quaestionum; *(…) cum alias adulterii crimen, quod pubertate delinquitur (…).*

In the passage quoted above, we again read that *adulterium* could generally only be committed by persons of mature age.[51] Interpreting, therefore, *a contrario*, the two opinions of Papinianus presented above, we come to the conclusion that immature persons were incapable of committing this offence.[52] This criminal act, when committed by a person before maturity, was not punishable.[53]

However, there was an exception to this rule, which was introduced more than two hundred years after the enactment of the *lex Iulia de adulteriis coërcendis*. Namely, the law itself was adopted on the initiative of Octavian Augustus in 17 or 18 BC and protected marriage (*iustum matrimonium*) from unacceptable sexual behaviour. In the case of women, an *iniusta nupta* could be the subject of an offence according to the Julian law, provided that she had reached the age of 12, which was precisely due to the principle that immature persons were not criminally liable under this act.[54] The association of responsibility for *adulterium* with the age limit of 12 years was due to the restrictive approach to the age of marriage for women. If a girl married below this age, she did not carry the title of *legitima uxor* and was not recognised

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[50] Cf. O.F. Robinson, *The Criminal Law of Ancient Rome*, Baltimore, 1995, pp. 58 et seq.

[51] Cf. S. Puliatti, 'D. 48.5.39 (26 quaest.) e la problematica dell'incesto nell'elaborazione dottrinale di Papiniano', *Studi Parmensi*, 1997, No. 43, pp. 153 et seq.

[52] See also D. Stolarek, *Adultera w świetle lex Iulia de adulteriis coërcendis*, Lublin, 2012, p. 78.

[53] Ibidem, p. 115.

[54] D. Stolarek, 'Ustawa julijska o karaniu za cudzołóstwa – 5 tytuł 48 księgi Digestów. Tekst – tłumaczenie – komentarz', *Zeszyty Prawnicze*, 2014, Vol. 14, No. 4, p. 217.

as a wife.[55] Thus, from the enactment of this law, only women who had reached the age of 12, that is, who were formally mature and thus capable of marriage, could be held criminally liable under it. This state of affairs changed in the second century AD, when an exception was made to the principle of non-responsibility of immature persons, as evidenced by the following texts:

> D. 48, 5, 14 (13), 8, Ulpianus libro secundo de adulteriis; *Si minor duodecim annis in domum deducta adulterium commiserit, mox apud eum aetatem excesserit coeperitque esse uxor, non poterit iure viri accusari ex eo adulterio, quod ante aetatem nupta commisit, sed vel quasi sponsa poterit accusari ex rescripto divi Severi, quod supra relatum est.*

The passage indicates that a girl who had not yet reached the age of 12, but who nevertheless married and was introduced into her husband's house and then committed infidelity, could not be held responsible for her act under the *lex Iulia de adulteriis coërcendis*, because she was not considered a wife in the eyes of the law and thus could not violate the institution of marriage.[56] However, in the last sentence of this text, it is mentioned that such a girl could be prosecuted under the rules applicable to fiancées on the basis of a rescript of Emperor Septimius Severus. The content and scope of this rescript are specified in the following text:

> D. 48, 5, 14 (13), 3, Ulpianus libro secundo de adulteriis; *Divi Severus et Antoninus rescripserunt etiam in sponsa hoc idem vindicandum, quia neque matrimonium qualecumque nec spem matrimonii violare permittitur.*

As Ulpianus explained, the act in question was actually issued by the emperors Septimius Severus and his son Caracalla. On its basis, it was considered that a bride was to be treated in the same way as a wife committing *adulterium*, since the purpose of the Julian law was not only to protect the institution of marriage, but also the hope of its future conclusion. As a consequence of this, an immature girl given in marriage could be accused of adultery according to the imperial rescript as if she were a fiancée (*quasi sponsa*).[57] The rescript issued by the aforementioned emperors did not refer directly to adultery committed by an immature girl who had been introduced into her husband's house, but generally to brides who committed adultery.[58] A girl under 12 years of age who was married to a man and introduced into his house was not considered a wife, but at most jurists allowed for the existence of a fiancée bond between such a girl and a man, provided that the betrothal had been made. Hence, the aforementioned rescript provided for such girls to be liable under the rules applicable to fiancées.

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[55] See also T.A.J. McGinn, 'Concubinage and the *Lex Iulia* on Adultery', *Transactions of the American Philological Association*, 1991, Vol. 121, p. 349.

[56] Cf. T. Mommsen, *Römisches Strafrecht*…, op. cit., p. 697.

[57] The term *quasi sponsa* indicates that the girl described by these words was more than just a bride, since she was introduced into her husband's house (*deductio in domum mariti*), cf. G. Rizzelli, *Lex Iulia de adulteriis: studi sulla disciplina di adulterium, lenocinium, stuprum*, Lecce, 1997, p. 201. On *deductio* in Roman law, see Z. Benincasa, '"Deductio in domum mariti" a zawarcie "iustum matrimonium"', *Zeszyty Prawnicze*, 2013, Vol. 13, No. 2, pp. 7 et seq.

[58] D. Stolarek, 'Ustawa julijska…', op. cit., p. 222.

An analysis of these cited texts shows that *the lex Iulia de adulteriis coërcendis*, from its enactment in 17 or 18 BC, provided for criminal liability only for mature persons (*puberes*). This situation changed between 198 and 211 AD, that is, during the joint reigns of the emperors Septimius Severus and Caracalla, when they extended liability to girls under 12 years of age by a rescript they issued.[59] As D. Stolarek rightly pointed out,[60] the rescript in question should be regarded as a departure from the accepted principle, as there are no source references indicating a general lowering of the age of criminal responsibility in the case of *adulterium*.

Returning to the considerations devoted to the criminal responsibility of mature persons, it must be added that, despite the fundamental view that they were fully responsible for their actions, their age could still be taken into account when determining their punishment.[61] Such a view is found, for example, in Tryphoninus commenting on the law on punishment for the crime of adultery:

> D. 4, 4, 37, 1, Tryphoninus libro tertio disputationum; *(…) minor annis viginti quinque non meretur in integrum restitutionem, utique atrocioribus, nisi quatenus interdum miseratio aetatis ad mediocrem poenam iudicem produxerit. Sed ut ad legis Iuliae de adulteriis coërcendis praecepta veniamus, utique nulla deprecatio adulterii poenae est, si se minor annis adulterum fateatur.*

In his introduction, the jurist recalled that, for this offence, mature persons, even if they were under the age of 25, could not benefit from restitution to the previous state, but could only hope that the judge would take their age into account when determining their sentence.[62] However, when a minor admitted to having committed the alleged crime of adultery, there could be no pardon or mitigation of punishment. B. Łapicki[63] pointed here to the term *miseratio aetatis*, used in the sense of pity, which played the role of a legislative motive and justified the mitigation of punishment for persons under 25 years of age.

Similar conclusions can be drawn from the analysis of the following texts:

> D. 48, 13, 7 (6), Ulpianus libro septimo de officio proconsulis; *Sacrilegii poenam debebit proconsul pro qualitate personae proque rei condicione et temporis et aetatis et sexus vel severius vel clementius statuere. (…).*

In the above case, Ulpianus indicated that, when imposing the penalty for sacrilege, it had to be measured taking into account the status of the offender, the circumstances and time of the offence and the age or sex of the offender. Thus, the jurist acknowledged that age was relevant to the penalty.[64]

Analogous conclusions may be drawn from Callistratus' opinion:

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[59] L.E. Caldwell, *Roman Girlhood and the Fashioning of Femininity*, Cambridge, 2015, p. 121.

[60] D. Stolarek, *Adultera w świetle…*, op. cit., p. 114, footnote 34.

[61] See T. Mommsen, *Römisches Strafrecht…*, op. cit., p. 1042.

[62] J.A.C. Thomas, 'Delictal and Criminal Liability…', op. cit., p. 31.

[63] B. Łapicki, *O spadkobiercach ideologii rzymskiej: okres chrystianizacji Cesarstwa Rzymskiego*, Łódź, 1962, p. 281.

[64] Cf. W. Krenkel, *Naturalia non turpia: Sex and Gender in Ancient Greece and Rome*, Hildesheim, 2006, p. 522.

D. 47, 21, 2, Callistratus libro tertio de cognitionibus; *Divus Hadrianus in haec verba rescripsit: 'Quin pessimum factum sit eorum, qui terminos finium causa positos propulerunt, dubitari non potest. De poena tamen modus ex condicione personae et mente facientis magis statui potest: nam si splendidiores personae sunt, quae convincuntur, non dubie occupandorum alienorum finium causa id admiserunt, et possunt in tempus, ut cuiusque patiatur aetas, relegari, id est si iuvenior, in longius, si senior, recisius. (…).*

Here, the jurist cited Emperor Hadrian's rescript on the offence of removing boundary marks (*terminus motus*),[65] according to which the punishment for this act should have been imposed according to the status of the offender and intention. He went on to add that when the penalty of banishment was imposed, its length should depend on the age of the offender, namely a younger offender should have been banished for a longer period and an older offender for a shorter period.[66] As K. Amielańczyk pointed out,[67] when punishing this crime, the age of the offender, for humanitarian reasons, was a mitigating circumstance. This principle was later reiterated in the body of Mosaic and Roman law.[68]

CONCLUSION

The research carried out on the surviving source material shows that, in Roman law, the issue of age and criminal responsibility was a frequent subject of discussion among jurists and in various regulations.

The basic and primary condition for being held criminally liable was to show that the perpetrator acted with the intent to commit a criminal act, which meant that he was aware of both the factual sphere, that is, the actions he undertook, and the legal sphere, that is, the unlawfulness of his conduct. In other words, he must have been aware of the nature of his act and its consequences.

This is why Roman law initially did not introduce rigid age limits, the crossing of which would absolutely entail criminal responsibility. In this view, responsibility was linked to three phases of a person's life: childhood, immaturity and maturity. *Infantes*, that is, children, were not criminally responsible. Immature persons (*impuberes*) were generally not subject to such liability either, but in exceptional situations where they were *pubertati proximi*, that is, closer to maturity, they were liable on general principles, just like mature persons. Finally, those included in the *puberes* group, that is, the mature, bore criminal responsibility to the full extent.

It was not until the sixth century AD that the categories mentioned were combined with specific age limits, which clearly translated into the principle of

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[65] On the protection of boundary signs in ancient Rome, cf. R. Świrgoń-Skok, '*Crimen termini moti*. Ochrona znaków granicznych w państwie rzymskim', in: Dębiński A., Kowalski H., Kuryłowicz M. (eds), *Salus rei publicae suprema lex. Ochrona interesów państwa w prawie karnym starożytnej Grecji i Rzymu*, Lublin, 2007, pp. 325–337.

[66] M. Vinci, *Fines regere. Il regolamento dei confini dall'età arcaica a Giustiniano*, Milano, 2004, p. 54.

[67] K. Amielańczyk, *Rzymskie prawo karne*…, op. cit., p. 128.

[68] Cf. Coll. 13, 3, 2.

criminal responsibility. Thus, persons up to the age of 7 were considered to be exempt from criminal responsibility as children. Immature persons were included between the ages of 7 and 12 for girls and 14 for boys. Generally, persons of this age were not criminally liable, except that if they were close to the age of maturity and could comprehend the meaning of their act, they were then liable under normal conditions. Women over the age of 12 and men over the age of 14 were considered mature and were liable to the full extent of the law.

Relating the considerations carried out to the ground of Polish law and the ongoing discussion on the age for holding a minor responsible for criminal acts, the guiding idea of Roman jurists should be stressed. Criminal responsibility should not automatically be determined by a specific age, but by *voluntas*, that is, the perpetrator's general understanding of the meaning of the act and his or her awareness of its nature and illegality. Roman law first relied on this principle for several centuries, from the eighth century BC to the sixth century AD, and it was only after gaining such experience that it was decided to assign specific age limits to vague categories. Therefore, following the example of Roman law, it should be postulated that legal reforms relating to the age limits of criminal responsibility and discussions on them should be based on the experience of judicial practice, which, after all, is based on the resolution of specific cases and is closest in character to Roman casuistry, and that the limits of juvenile responsibility should then be established.

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