

Katarzyna Laskowska

University of Białystok

**THE SUBJECT OF CRIME
IN THE CONTEXT OF CRIMINAL RESPONSIBILITY
(on the basis of penal codes of Poland and Russia)**

The subject (perpetrator) is one of the obligatory elements of a crime. Actually, without his participation, a forbidden act cannot be committed. Criminal law defines the subject of a crime as the person who is able to bear criminal responsibility for the commission of forbidden acts stipulated by the penal code. Nevertheless, as the practice demonstrates, not every perpetrator bears criminal responsibility, because not everyone can bear it. It is, therefore, necessary to consider what characteristics determine the ability of the perpetrator to bear criminal responsibility, who stipulates these characteristics, and what is their scope.

This paper will analyze provisions of Polish and Russian criminal law (limited, for practical reasons, to penal codes). As both codes were enacted in a similar period, on the background of political, social, and economic changes (the Polish penal code was enacted in 1997 and the Russian one in 1996), this paper demonstrates and compares the characteristics of the subject of criminal responsibility that were adopted in each of these countries. Such a demonstration and comparison makes possible the effort to estimate the degree of repressiveness of the legal solutions that constitute the object of this analysis.

1. The subject of crime in the Polish penal code of 1997¹

It is necessary to notice, at the beginning of our discussion, that the characteristics of a subject of crime have not been defined in the Polish

¹ Kodeks karny [Penal code] – Act of 6 June 1997, Dziennik Ustaw [Journal of Laws], No. 88, item 553 (with changes).

penal code (PC) in one legal provision. They can be determined by analyzing several articles. Thus, article 1 of the PC stipulates that the subject of crime, able to bear criminal responsibility, is a natural person; article 10 of the PC stipulates that it is a person of certain age; article 31 of the PC stipulates that it is a person who is able in body and mind.

In commencing to analyze the characteristics of a subject of crime, one should state that currently in Poland criminal responsibility can be borne both by a natural person, and a so-called collective subject (legal persons and legal entities without juridical personality).

A collective subject bears criminal responsibility only under the principles set forth in the law of 28 October, 2002 on responsibility of collective subjects for committing acts under penalty.² At the same time, the penal code stipulates that only a **natural person**, or a human, can bear criminal responsibility.

Another characteristic of a subject of crime is his or her **age**. According to article 10, § 1, of the PC, criminal responsibility is borne by a person who has committed a forbidden act after reaching the age of 17 years. Such responsibility is a general responsibility. However, in article 10, § 2, of the PC, the legislator has provided for an exceptional responsibility of persons who have reached the age of 15 years at the time of perpetrating the forbidden act. Such persons bear responsibility in the case that they have: committed an attempt against the life of the President of the Republic of Poland (art. 134), a homicide (art. 148, § 1) and a homicide of the qualified type (art. 148, § 2, items 1, 2, 3), deliberately caused a grave detriment to health (art. 156, § 1 and 3), deliberately caused a generally perilous event, to include the qualifying consequences (art. 163, § 1 and 3), conducted a terrorist attack on a ship or aircraft (art. 166), deliberately caused a calamity, to include the qualifying consequences (art. 173, § 1 and 3), participated in a group rape (art. 197, § 3), taken a hostage, to include the qualifying consequences (art. 252, § 1 and 2), committed a robbery (art. 280). Such responsibility may take place when the circumstances of the case, the degree of the perpetrator's development, his or her qualities and conditions support it, and in particular when previously applied educational or correctional means have turned out to be ineffective. The word "may" used by the legislator means that the responsibility is optional, and is dependent on the court's judgment.

² Ustawa z dnia 28.10.2002 r. o odpowiedzialności podmiotów zbiorowych za czyny popełnione pod groźbą kary [Act of 28 October, 2002 on responsibility of group entities for committing acts subject to penalty], Dziennik Ustaw [Journal of Laws], No. 197, item 1661 (with changes).

It is notable that the application of the above regulation may take place if the premises stipulated in it occur simultaneously.³ Consequently, the court has to analyze the circumstances of the case (e.g. how severe was the crime, what were the motives of the perpetrator, what was his role in the criminal cooperation),⁴ the perpetrator's level of development (intellectual, moral, and emotional development),⁵ his or her personal characteristics and conditions (age, personality, and degree of demoralization).⁶ A complete analysis of these premises by the court serves the purpose of determining whether guilt can be attributed to the perpetrator at the moment the act was committed. It is guilt that determines criminal responsibility (art. 1, § 3 of the PC).

The court may also take into consideration the fact that educational and correctional measures have been used towards the perpetrator before, and how effective they were. While the lack of such measures may certainly have a positive impact on the perpetrator's situation, their previous application may lead to a judgment calling for a more stringent penalty.

A 15 years old perpetrator of a forbidden act may, in accordance with Polish legislation, face a penalty that will not exceed 2/3-rds of the upper limit of statutory penalty associated with the perpetrator's purported crime. The court may also apply an extraordinary commutation of the sentence. Thus, the legislator has introduced a limitation on the penalization of an act committed by a minor. At the same time, the legislator has acknowledged that the principal directive that courts should use as a guidance in pronouncing a sentence towards such a perpetrator is the directive included in art. 54, § 1, of the PC, which stipulates the priority of the educational purpose of punishment. The legislator has also banished a life sentence towards a perpetrator who, at the moment of the crime, has not reached the age of 18 years (art. 54 § 2 of the PC).

Another mitigation of criminal responsibility of a minor has been provided for in art. 10, § 4, of the PC. This provision states that a perpetrator who has committed a crime after reaching the age of 17 and before reaching the age of 18 is subject to a court sentence imposing educational, medical

³ A. Wąsek, (in:) O. Górniok, S. Hoc, M. Kalitowski, S. M. Przyjemski, Z. Sienkiewicz, J. Szumski, L. Tyszkiewicz, A. Wąsek, *Kodeks karny. Komentarz* [Penal code. A commentary], T. 1, Art. 1–116, Gdańsk 2005, p. 142.

⁴ *Ibidem*, p. 144.

⁵ M. Budyn-Kulik, (in:) *Kodeks karny. Praktyczny komentarz* [Penal code. A practical commentary], ed. M. Mozgawa, Kraków 2006, p. 36.

⁶ R. Góral, *Kodeks karny. Praktyczny komentarz* [Penal code. A practical commentary], Warszawa 1998, p. 26.

or correctional means foreseen for minors, if the circumstances of the case and the degree of the perpetrator's development, his or her qualities and personal conditions support it.

The need to differentiate the responsibility is, according to R. Góral,⁷ related to the uneven intellectual development of minors, a different degree of their demoralization, and the required consideration for the severity of their crimes. The achievement of such an approach in Poland is served, besides the penal code, by the law of 26 October, 1982 on procedure in cases involving minors,⁸ which provides for pronouncing solely educational, medical, and correctional means in case of such perpetrators.

Poland's penal code includes one more category of a subject of crime related to his or her age: a juvenile. According to art. 115, § 10, of the PC, a juvenile is a perpetrator who, at the moment the criminal act was committed, had not reached the age of 21 years, and at the moment the sentence is issued in a particular instance, had not reached the age of 24 years. One has to conclude that this is a particular category of an adult perpetrator who, due to his age, is treated a little different, with more lenience. The premise of such a conclusion is in the provisions of art. 54, § 1, of the PC (which require the court to consider the educational aspects of a punishment in its sentence), and art. 60, § 1, of the PC (which provides for the possibility to apply an extraordinary commutation of sentence towards such a perpetrator).

The last matter to be analyzed is **accountability**, which constitutes another characteristic of a subject. At the beginning of this paper there is a statement that one of the conditions that make criminal responsibility possible is the perpetrator's accountability; consequently, only a person who is accountable (able in body and mind) can be the subject of a crime. The Polish penal code does not, however, include a definition of accountability. On the other hand, it defines the state of non-accountability by pointing at its reasons and consequences. Art. 31, § 1, of the PC states that non-accountability occurs when, due to a mental illness, a mental handicap, or another disorder of mental activities, the perpetrator cannot, at the moment of committing the deed, recognize its meaning or direct his or her own actions. The legislator concluded that a perpetrator acting in such a state does not commit a crime.

⁷ Ibidem, p. 26.

⁸ Ustawa o postępowaniu w sprawach nieletnich z dnia 26.10.1982 r. [Act on procedure in cases involving minors of 26 October, 1982], Dziennik Ustaw [Journal of Laws], No. 35, item 228 (with changes).

Polish law assumes a mixed method to define the notion of non-accountability. As noticed by L. Gardocki,⁹ it is based, on the one hand, on indicating the mental state of the perpetrator (inability to recognize the meaning of the deed or to direct his or her own behavior), and on the other hand, on indicating the biological and psychiatric reasons for such a situation (a mental illness, a mental handicap, or other mental disorders). One should note that a mental illness is to be defined as a disorder of mental functions of a man (e.g. paranoia, schizophrenia, cyclophrenia, psychoses), as a mental handicap, i.e. limited mental capacity of a person (e.g. as a result of genetic illnesses, brain defect in fetus), as other mental disorders, i.e. biological disorders in a human body (e.g. poisoning, intoxication with narcotics).¹⁰

On the other hand, the inability to recognize the meaning of one's own actions means, in the legal sense, that it is a forbidden act, and in the factual sense that the perpetrator cannot tell the difference between good and evil. The inability to direct one's own actions means a lack of ability to decide on a certain behavior.¹¹

The consequence of adopting such a method of determining non-accountability is that in every given case, in order to conclude the presence of such non-accountability, one has to indicate the simultaneous occurrence of one of the reasons stipulated in art. 32, § 1, of the PC, and at least one of the consequences to the mental state.

In order to conclude lack of responsibility, it is also important that the non-accountability occur at the moment the act is committed. This moment, as stated in art. 6, § 1, of the PC, is the moment when the perpetrator acted or failed to perform an act that he was obligated to perform. The consequence of finding the perpetrator to be non-accountable at the moment of committing an act, is that he or she is released from responsibility due to lack of guilt. Nevertheless, the perpetrator may be subject to security measures (e.g. may be placed in a mental institution or an addiction treatment facility).¹²

Art. 31, § 2, of the PC identifies an intermediate state between full accountability and non-accountability. Its reasons are the same as in the case of non-accountability, but the consequences are different. In this case the medical conditions stipulated in art. 32 § 1 of the PC result not in

⁹ L. Gardocki, *Prawo karne* [Criminal law], Warszawa 2004, p. 131.

¹⁰ M. Budyn-Kulik, *op. cit.*, p. 87.

¹¹ *Ibidem*, p. 87.

¹² M. Dietrich, B. Namysłowska-Gabrysiak, *Prawo karne – część ogólna* [Criminal law – the general part], Warszawa 2003, p. 124.

cancellation, but in limitation, to a large extent, of the ability to recognize the meaning of the action or to direct one's actions. Consequently, such a state does not result in an elimination of guilt, but it limits its degree.¹³ Thus, the perpetrator who acts in a state of limited accountability does commit a crime (unlike the perpetrator who is non-accountable), but his guilt is diminished.¹⁴ The court can apply an extraordinary commutation of sentence in the case of such a perpetrator.

Another matter that ought to be discussed at this moment in the discussion is the criminal responsibility of persons who commit crimes in the state of drunkenness or intoxication with other substances. Such criminal responsibility is regulated by art. 31, § 3, of the PC, which states that the perpetrator who is drunk or intoxicated is subject to general principles on responsibility, which are the same as for a person who is fully accountable. Such a concept of responsibility has been adopted due to the fact that such perpetrator has introduced himself into the state of intoxication (by willingly and deliberately consuming alcohol or other intoxicating substances) and has expected, or could expect, that by getting into that state he or she will induce his own non-accountability or a significant limitation of accountability. At the same time, he or she does not have to expect to commit a crime. This provision is not applied in cases of perpetrators who commit crimes in the state of pathological drunkenness, i.e. in a state that results in cancellation of awareness after drinking even a small quantity of alcohol due to physical or mental exhaustion of the person.

According to L. Gardocki,¹⁵ applying general principles of responsibility towards drunk or intoxicated perpetrators is a deviation from the rules of determining guilt. However, the rationale behind such a deviation is the need to protect the society from such perpetrators, as well as the lack of acceptance for such perpetrators being exempt from punishment.

Before the conclusion of the discussion of characteristics of a subject of crime that are applied in Polish law, one ought to briefly mention that the subject who demonstrates the above mentioned characteristics is called a general subject (which in the penal code is expressed by the pronoun "who"), while the subject who has other, additional characteristics, is called an individual subject. Such additional characteristics may be the deciding factors in determining if a crime has occurred at all (e.g. only a soldier can be guilty of a desertion) or influence the identification of

¹³ M. Budyn-Kulik, *op. cit.*, p. 88.

¹⁴ A. Wąsek, *op. cit.*, p. 412.

¹⁵ L. Gardocki, *op. cit.*, p. 134.

a crime as a privileged type or a qualified type, which in turn influences the possible punishment and the sentencing. E.g. a mother (an individual subject) who kills a newborn baby at the time of delivery, under the impact of its course, faces a more lenient sentence than that due in case of a murder.

2. The subject of a crime in the Russian penal code of 1996¹⁶

The characteristics of the subject of crime have been defined in the penal code of the Russian Federation (PC RF) of 1996 in chapter 4 of division II titled, “Persons who are subject to criminal responsibility”. They are listed in art. 19 of the PC RF, which says that “only a person who is accountable, and who has reached the age specified in this Code is subject to criminal responsibility”. Consequently, this provision means that the characteristics of the subject of a crime are: accountability, being a natural person, and having a certain age. These characteristics constitute the obligatory characteristics of a subject of any crime.

Such approach means that the Russian legislator links criminal responsibility with a person’s ability to recognize his or her actions and to direct them. A lack in the perpetrator of one of these elements excludes his or her criminal responsibility.

The Russian criminal code considers only a natural person, or a human, i.e. a rational creature who has free will, as a subject of a crime. This means that neither animals nor objects can be considered as perpetrators of a crime. According to Russian lawyers,¹⁷ such an approach fully fulfills the tasks of criminal law, its principles, the notion of a crime, and the purposes of a punishment defined in the law itself. Art. 11–13 of the PC RF specify that a subject of a crime is a citizen of the Russian Federation, a foreigner, or a person without citizenship.

Consequently, in accordance with the classical criminal law principle of individual responsibility that the Russian law incorporates, the penal code does not allow for a legal person to be a perpetrator of crime. Although during the works leading to the enactment of the current penal code, the inclusion of this category of persons as subjects of criminal responsi-

¹⁶ *Ugolovnyj kodeks Rossijskoj Federacii s 13 06 1996 g.* [Penal code of the Russian Federation of 13 June, 1996], “Rossijskaja Gazeta” [The Russian gazette] 1996, 113–115.

¹⁷ L. V. Inogamovaja, V. S. Komissarov, A. I. Rarog, ed., *Rossijskoje ugovnoe pravo. Obščaja čast’* [Russian criminal law. General part], Sankt Petersburg 2006, p. 193.

lity was considered, but ultimately such a provision of law was dismissed. The responsibility of such entities was regulated in civil and administrative law.

Another characteristic of a subject of crime is his or her age. The Russian legislator, in determining the age at which criminal responsibility becomes possible, used the psychological criterion. The age limit was linked to the level of intellectual development of the individual, his or her ability to comprehend the nature and social impact of the act, to evaluate the act, and on the ability to realize his or her needs in accordance with social norms. The legislator concluded that the ability to recognize the surrounding world, its appraisal, the ability to make a choice between various motives occurs in line with a person's biological and social development, at the moment when a certain level of legal awareness is in place. Therefore, criminal responsibility should be effective once a person reaches a certain age.¹⁸

In Art. 20 of the PC RF, the legislator stipulated two age limits that constitute a basis for criminal responsibility. In principle, persons who have reached the age of 16 at the time the crime is committed face criminal responsibility (art. 20, item 1, PC RF); except for responsibility of persons who have reached the age of 14 (art. 20, item 2, PC RF).¹⁹ Article 20, item 2, of the PC RF states that a minor who, at the moment of committing a crime, has reached the age of 14, is subject to criminal responsibility for: committing a homicide (art. 105), deliberately causing a grave bodily injury (art. 111), deliberately causing a medium bodily injury (art. 112), kidnapping a person (art. 126), rape (art. 131), committing sexual acts using violence (art. 132), theft (art. 158), plunder (art. 161), robbery (art. 162), extortion (art. 163), illegal seizure of a car or another means of transportation without the purpose of appropriation (art. 166), deliberately destroying or damaging property in aggravating circumstances (art. 167, item 2), terrorism (art. 205), taking a hostage (art. 206), false notification of an act of terrorism (art. 207), hooliganism in incriminating circumstances (art. 213, item 2), vandalism (art. 214), theft or extortion of weapons, ammunition and explosive materials (art. 226), theft or extortion of intoxicating or psychotropic substances (art. 229), and incapacitating means of transportation

¹⁸ N. I. Vietrov, J. I. Liapunov, ed., *Ugolovnoje pravo. Chast' obshchaya. Chast' osobennaya* [Criminal law. General part, Specific part], Moskva 2007, p. 122.

¹⁹ One ought to notice that these regulations are in conflict with the UN Convention on Children's Rights, ratified by Russia in 1990, which says that a child is considered a person below the age of 18 years. Consequently, bringing 14 years old children to responsibility testifies to the high restrictiveness of these provisions.

or roads (art. 267). The legislator has concluded that the nature of these crimes, their danger to the society, and the fact of deliberate commission, are adequately understandable for 14 years old persons.

However, this does not mean that minors bear responsibility on the same level as adults. In sentencing the court takes into consideration the principle of humanism, as well as regulations concerning sentencing in cases involving minors, the course of serving the sentence, the ability to release them from criminal responsibility.²⁰ The issue of criminal responsibility of minors is regulated in the general part of the PC RF, in chapter V “Criminal responsibility of minors”.²¹

Moreover, in art. 20, item 3, of the PC RF, the legislator provides for the release of a minor from responsibility despite reaching the age of criminal responsibility in situations where, as a result of a delay in his or her mental development, nor related to a mental disorder, he or she is unable to fully realize the actual nature and the threat to the society caused by his or her actions (or omissions) or to direct his or her actions.²² Thus, the above mentioned provision, called the age non-accountability, excludes criminal responsibility of minors.

Because the age of a perpetrator of a crime is determined at the time the crime is committed, the exact date of the person’s birth (day, month, year) is important with respect to his or her criminal responsibility. Practical questions in this matter are answered in point 7 of the Statement of the Plenary Assembly of the Supreme Court of the Russian Federation of 14 February, 2000 No. 7 “On court practice in cases involving criminal acts committed by minors”.²³ It states that “a person is considered to have reached the age where the criminal responsibility starts, not starting on the day of birth, but after twenty four hours which starts the next day, i.e. starting at 12.00 AM”.

The Russian penal code does not provide for a category of a juvenile perpetrator.

²⁰ L. V. Inogamova, V. S. Komissarov, A. I. Rarog, op. cit., p. 200–201.

²¹ You will find more on this subject (in:) M. Filar, *Nowy kodeks karny Federacji Rosyjskiej. Kary i zasady wymiaru* [New penal code of the Russian Federation. Punishments and the principles of sentencing], “Prokuratura i Prawo” 1997, No. 7–8, p. 69–70; M. Melezini, *Odpowiedzialność nieletnich w świetle kodeksu karnego Federacji Rosyjskiej* [Responsibility of minors in the light of the penal code of the Russian Federation], “Przegląd Prawa Karnego” 20 (2000), p. 38–46.

²² N. I. Vietrov, J. I. Liapunov, op. cit., p. 123.

²³ *O sudiębnoj praktike po dielam o priestupljenijach niesoviersholetnich* [On judiciary practice in cases involving crimes committed by minors], “Biulletien Vierkhovnovo Suda RF” [The bulletin of the Supreme Court] 2000, No. 4, p. 10.

Another characteristic of a subject of crime is **accountability**. The Russian law specifies that only an accountable (able in body and mind) person can be the subject of a crime. However, the PC RF does not provide a precise definition of the notion of accountability. Nevertheless, it defines non-accountability, in art. 21 of the PC RF, as a state in which a person “could not realize the actual nature and the danger to the society posed by his or her actions (omissions) or to direct them, due to a chronic mental disorder, a temporary mental disorder, a mental handicap or another pathological mental state”. The consequence of actions (omissions) in such a state is exemption from criminal responsibility.

This definition indicates that the legislator has characterized the state of non-accountability by two criteria. One of them constitutes a basis for determining the biological pathological state of the body, which consists in:

- a chronic mental disorder, characterized by a long duration and frequency of pathological states (e.g. schizophrenia, epilepsy, manic-depressive psychosis),
- a temporary mental disorder (e.g. pathological drunkenness, alcoholic psychoses),
- mental handicap (oligophreny, imbecility, idiocy).

The second criterion characterizes the mental state of the person at the moment the crime is being committed. It is such a level of intellect that makes it impossible to realize the actual nature and the danger to the society posed by one’s actions (omissions), as well as an element of will which makes it impossible to direct one’s actions. This criterion is called legal or psychological.²⁴

In order to conclude a state of non-accountability it is necessary to determine, through psychiatric expert examinations ordered by the court, the presence in a person of one form of a mental disorder. The conclusion of a mental disorder in a perpetrator of a crime testifies to the lack of one characteristic required of a subject of crime. Consequently, actions conducted by a person who cannot, due to a pathology, realize the nature of his or her actions or to direct them, ought not to be considered as criminal, and such a person is not subject to a punishment. Consequently, according to the provisions of law, such a person does not commit a crime and does not bear criminal responsibility.²⁵ On the other hand, on the basis of art. 21

²⁴ V. M. Liebediev (ed.), *Kommentarij k ugovnomu kodeksu Rossijskoj Federacii* [Commentary to the penal code of the Russian Federation], Moskva 2007, p. 60.

²⁵ M. P. Zhuravliov, S. I. Nikulin (ed.), *Ugolovnoje pravo. Obshchaya i osobiennaya chastj* [Criminal law. The general and the specific part], Moskva 2007, p. 103.

item 2 of the PC RF the court may apply towards this person the means of coercion of medical nature stipulated in the PC RF.

At this moment we should mention the issue of criminal responsibility of persons with a mental disorder which does not eliminate accountability. This is how the Russian law describes limited accountability. According to art. 22, item 1, of the PC RF, “an accountable person who, at the moment of committing the crime, due to a mental disorder, could not fully realize the actual nature and the threat to the society posed by his or her actions (omissions) or direct them, is subject to criminal responsibility”. This means that the legislator has identified limited accountability not as a state between accountability and non-accountability, but as a part (manifestation) of accountability.²⁶ Thus, the legislator has provided for a full criminal responsibility in such cases.

On the other hand, according to art. 22 item 2 of the PC RF, acting in a state of limited accountability should be taken into consideration by the court at sentencing and may constitute a basis for applying measures of coercion of medical nature.

At this stage of the analysis it is necessary to present a regulation concerning the responsibility of a drunk or intoxicated perpetrator of a crime. This regulation demonstrates that the Russian penal code does not release a person from responsibility for crimes committed by him or her in a state of intoxication that resulted from consumption of alcohol, narcotics or other intoxicating substances. What this means is that such a person is responsible on the basis of general principles. Consequently, a state of intoxication is not considered at all by the legislator in the aspect of non-accountability. The legislator concludes that intoxication with alcohol or narcotics does not constitute a mental illness, although consumption of such substances may cause pathological conditions (e.g. drug craving or delirium tremens).²⁷ Such a solution should be considered as rightful, especially in a country where the proportion of crimes committed under influence of alcohol to the total number of crimes amounts to approximately 30%.²⁸

In contrast to the above considerations, the legislator treats differently the commitment of crimes in the state of pathological intoxication. It may occur, for instance, as a result of severe stress, a physical or mental

²⁶ A. I. Chuchayev (ed.), *Postateyniy kommentariy k ugolovnomu kodeksu Rossijskoj Federacii* [Detailed commentary to the penal code of the Russian Federation], Moskva 2005, p. 38.

²⁷ M. P. Zhuravliov, S. I. Nikulin, op. cit., p. 105.

²⁸ J. I. Gilinskij, *Deviantologija* [Science of deviations], Sankt Petersburg 2004, p. 306.

weakening of the human body, even after consuming a small amount of alcohol. Such intoxication is considered to be a manifestation of a temporary mental disorder which precludes accountability and thus releases the person from criminal responsibility.²⁹

At the conclusion of this discussion, it is necessary to mention that the characteristics of the subject of crime discussed above are obligatory. Besides these, Russian criminal law also distinguishes optional characteristics of a subject of crime. A subject who does possess such additional characteristics is called a special subject. The criteria necessary to distinguish such a subject are: the legal and professional status of the individual and his or her demographic characteristics. These are the deciding factors to determine if a crime has occurred (e.g. only an official can commit an official or business counterfeit) or to qualify the criminal act as an act of a certain type (e.g. as the qualified type of a crime consisting in smuggling of goods by an official who took advantage of his official position).³⁰

The discussion of characteristics of a subject of crime that substantiate his criminal responsibility in accordance with the Polish and the Russian penal code, allows us to make the following conclusions.

The penal codes of both countries provide for similar characteristics of a subject of crime. Nevertheless, while the Russian code stipulates them in a particular legal provision (although, as commentators of penal codes say, for the first time in the history of Russian law), in the Polish code these characteristics have to be deduced from several articles.

The penal codes of both countries conclude that only a natural person is subject to criminal responsibility. One should note that the discussion on punishing legal persons (group entities) that has been going on for many years, has led to the enactment of a relevant law in Poland, while in Russia such an effort has not come to fruition. Nevertheless, this discussion is continuing, because that country needs such solutions, too.

The two penal codes take a different standing on the age of criminal responsibility of a subject of crime. Both statutes have a basic age limit (17 years in Poland and 16 years in Russia) and an exceptional age limit (15 years in Poland and 14 years in Russia), but the actual age is set differently in both countries. For the purpose of exceptional responsibility, both penal codes have finite catalogues of crimes that result in criminal responsibility. One has to conclude that, both with respect to age and the number of crimes, the Russian code is more restrictive.

²⁹ N. I. Vietrov, S. I. Liapunov, *op. cit.*, p. 128.

³⁰ M. P. Zhuravliov, S. I. Nikulin, *op. cit.*, p. 104–105.

One should also note that Poland, besides the provisions of the penal code, also has regulations included in the act of 1982 on the procedure in cases involving minors, which allow for treating minor offenders in a different, more lenient fashion. On the other hand, the Russian law only provides for responsibility in accordance with the penal code, which frequently results in severe punishment, including nearly all corrective measures (except for the death penalty). Still, the same code provides more possibilities to release a minor perpetrator from criminal responsibility by applying towards him the principle of the so-called age non-accountability. It is, therefore, important that in both countries the (young) age of perpetrators has an impact on decreasing or limiting the amenability to punishment.

Moreover, one has to state that in Poland proper shaping of minors' responsibility is done through both the criminal court system and the minor court system; the latter does not exist in Russia. Therefore, one can conclude that judging minors in the court system for adults provides for possibilities for very stringent treatment of minors, without understanding of their situation conditioned by their age.³¹

Both penal codes stipulate that only accountable persons bear criminal responsibility. For the purpose of responsibility, this group includes also persons who are drunk or intoxicated with narcotics. What differentiates the two countries is the way that persons with limited accountability are treated.

To summarize, the penal codes of Poland and Russia correctly define the characteristics of a subject that influence his or her criminal responsibility, while realizing both the protective and the guarantee functions. The differences in scope and methods of regulating the matter result from the penal policy of those countries and the practice of the administration of justice.

³¹ The need to create a court system for minors was indicated, among others, by V. N. Kudriavcev, V. J. Eminov (ed.), *Kriminologija* [Criminology], Moskva 2005, p. 494.