

A comparative review of civil and criminal liability of minors in Greek law

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The Different Purpose of Regulations on Civil and Criminal Liability of Minors

The criminal responsibility of minors is laid out in Articles 121-133 Penal Code (PC). In particular, according to Article 126 §§ 1 and 2 PC, as amended by Article 7 § 2 of Law 4322/2015, an offence committed by a minor aged between 8 and 15 years, is not attributable to him and can bring against him only reformatory or correctional/therapeutic measures. Since the completion of the 15th and up to the 18th year of age, the rule is still imposing reformatory or correctional/therapeutic measures, with the exception of application of Article 127 PC (as amended by Article 26 of Law 4356/2015), namely the imposition of detention in a special juvenile detention centre (JDC) (§ 3 of Article 126 PC, as it is in force following amendment by Article 25 of Law 4356/2015, in conjunction with Article 121 § 1 PC).

On the other hand, under civil law, the minor, since the completion of the 10th year and until the completion of the 14th year of age is held liable for his actions "... unless he acted without discernment (ability to distinguish)" (Code Civil 917 sect. a'). After the completion of the 14th year of age he is held fully liable; he may therefore be obliged to pay damages to the persons who have suffered harm from his wrongful acts (CC 914).

According to the above mentioned, the rules of criminal responsibility of a minor seem to be more favourable in relation to those of his civil liability for tortious acts. That diversification of age limits with re-

gard to liability is reasonable, if we consider the different purpose of each regulation: on the one hand the remedial purpose of civil liability and functional operation of compensation (relief for the person who has suffered harm from the person who caused it) and on the other hand the punitive-preventive purpose of criminal responsibility.¹

¹ See C. Christakakou-Fotiadi, 'The liability of the minor and persons supervising it in the law of torts', 2008, 63 footnote 83 and 66-67 (in Greek); M. Stathopoulos, *General Contract Law*, 2004, § 8 N° 7-8 (in Greek), who states that, since the purpose of civil liability is to protect the private interests of the victim by restoring the damage or offer satisfaction for it, the liability for compensation, while usually requiring fault by the tortfeasor, is normally indifferent to the degree of fault (exceptions provided for in CC Articles 300, 927, etc.); on the contrary, since the purpose of penal responsibility is the sanction against the perpetrator, fault is always necessary (intent and exceptionally negligence under Article 26 PC) and the degree of fault is critical for the criminal offence or the size of the penalty; same as P. Kornilakis, *Special Contract Law I*, 2nd edition, 2012, § 79 3. II N° 8-13 (in Greek), who adds that there are acts that are both torts and criminal offences, such as theft (PC 372), embezzlement (PC 375), fraudulent property damage (PC 381 § 1) etc., actions which are only torts (e.g. damage to another person's property by negligence) and actions which are only criminal offences (e.g. attempted murder, which caused no damage); on whether the final judgments of the criminal courts create a precedent or not to the civil courts, the author refers to CCP (Code of Civil Procedure) 250 and the CPP (Code of Penal Procedure) 63 et seq.; see also Ph. Doris, 'Liability issues from historic and law comparative perspective', *Chronicles of Private Law* 2007, 673, 679 (in Greek), who points out that "the obligation itself to compensate in key legal reasons of contractual, pre-contractual and tort liability is an adverse effect on the tortfeasor which is justified precisely as disapproval of his behaviour (objectively and subjectively) by the legal system. An unfavourable consequence is imposed on the tortfeasor, charging on him the burden of the loss of the victim, which is justified by the demerits that current law attributes to said tortious behaviour by the rules of Articles 330, 335 et seq., 362 et seq., 382 et seq., 914 and 919 and 197-198 CC. This is once more a form of civil sanction, in which it merely arises, as a quantitative limit, in most cases, the extent of the damage caused by the behaviour of the tortfeasor", but this does not mean, as the author notes just above, "[...] that the modern legislature is prevented from putting in some cases targets beyond the goal of simply restoring the damage suffered".

The Legislation on Civil and Criminal Liability of Minors in the Light of the Principle of Proportionality

The legislation on age limits of the civil liability of a minor constitutes an effort to weigh, combine and harmonise two opposing interests: on the one hand the minors' interests as persons who are in vulnerable and sensitive period of personality formation and on the other hand the interest of the victim for the harm suffered. The resolution of the clash between these two conflicting interests is not done in a uniform manner, but is based on differentiated solutions classified according to age, psychological and mental development of the minor and the specifics of the case (e.g. nature of the act). From the standpoint of constitutional law, Articles 916-918 CC crystallise the evaluative process of weighting two equivalent but opposing interests with constitutional coverage [the minor's interest, protected by Articles 2 § 1, 5 § 1 and 21 §§ 1 and 3 of the Constitution of Greece (CoG)], and also the interest of the victim, who have sustained material/moral damage, protected by Articles 2 § 1, 5 § 1² and 17³ CoG under the harmonising effect of the

² The issue of free development of one's personality (Article 5 § 1 CoG) covers all aspects of the human personality, i.e. both moral and economic, see A. Georgiades, *Property Law*, 2nd edition, 2010, § 1 n° 10 (in Greek).

³ The concept of ownership in Article 17 CoG, read in conjunction with Article 1 of the First Protocol of the European Convention on Human Rights and Article 17 of the Solemn Declaration of the Fundamental Rights Charter/Nice 07.12.2000 and in the light of the case law of the European Court of Human Rights and the European Court of Justice (for the concept of property/goods see the Marckx judgment of 13/06/1979, A, n° 31 par. 63 of the European Court of Human Rights and the European Court of Justice judgment of 13.12.1979, 44/1979), includes not only real rights, but all legally acquired goods, included in the concept of property, as a total of legal relationships that can be financially appraised, see Ioannina Administrative Court of 1st Instance 352/2002, NOMOS Legal database (in Greek). Moreover, according to Areios Pagos in Plenary Session 40/1998, NOMOS Legal database (in Greek), "[...] Article 1 of the First Protocol of the European Convention on Human Rights, ratified (together with the Convention) by Legislative Decree 53/1974, which has, in accordance with Article 28 § 1 of the CoG, increased power relatively to ordinary laws [...] enshrines respect for the property of the individual, who may

principle of proportionality (Article 25 § 1 sect. d' CoG).⁴ Specifically,

only be deprived of it for reasons of public interest. The concept of property includes not only real rights, but also all “pecuniary” rights and acquired “economic interests”. Thus contractual rights are covered and in particular claims recognized by a judgment or arbitration, or just born under the law, if there is a legitimate expectation, based on the current law in force until the court hearing, that they can be judicially satisfied [established case law of the European Court of Human Rights: *Pressos Compania Naviera SA etc. vs. Belgium* (A332): (1995) para. 28 et seq., *Pine Valley Development vs. Ireland* (A222) (1992) para. 51, etc.]. As such are considered, under the Greek law, claims for damages based on tort or compensation for moral damages (Articles 297, 298, 299, 57, 59, 932 CC)”.

⁴ According to the principle of proportionality, which stems from the principle of the rule of law and by the very nature of fundamental rights and permeates the entire interior system of the CC, restrictions imposed by the legislature or the administration to the exercise of individual (and social) rights should be limited by their suitability (according to the Council of State restrictions should be connected to the purpose intended under the law), necessity (search for the most lenient among means equivalent in efficacy) and proportionality *stricto sensu*, in relation to the effects desired (the aim – legal good – promoted must not be disproportionate to the severity of impact on individual constitutional guarantees). Therefore, there must be a proportionate delimitation among the constitutionally protected conflicting rights, a mutual restriction weighting each right in *concreto* and the one right should be limited only to the extent that is necessary for the existence of the other, so that they can both develop their scope in the best possible way (see C.-W. Canaris, ‘Grundrechtswirkungen und Verhältnismäßigkeitsprinzip in der richterlichen Anwendung und Fortbildung des Privatrechts’, *JuS* 1989, 161, 163 under 4, who states that “... einerseits darf der Schutz nicht hinter dem verfassungsrechtlich gebotenen Minimum zuruckbleiben, andererseits darf er nicht ‘ubermäßig’, dh mehr als erforderlich und verhältnismäßig, in die Grundrechte des anderen Privatrechtssubjekts eingreifen”). See also E. Beis, ‘The principle of proportionality – from public to civil and administrative procedural and private law’, *Diki* 30 (1999), 483-486 (in Greek) on the principle of the harmonisation of conflicting rights under constitutional protection. On the implementation of the principle of proportionality in the context of private law see Ph. Doris, ‘The importance of the principle of proportionality on conflicting rights in property law’, in *Genethlion of Apostolos S. Georgiades*, Vol. I, 2006, pp. 249-277 (in Greek); *id.*, ‘The principle of proportionality in the scope of private law relations and especially in civil law’, in *Honorary Volume of the Council of State for its 75 years*, pp. 229-249 (in Greek); *id.*, ‘The principle of pro-

as to the civil liability of the minor, he is not considered liable, unless he has completed the 10th year of age, as he has not yet the maturity to evaluate the importance and seriousness of his behaviour. Only exceptionally is a minor under 10 years of age able to distinguish the just or unjust character of his actions, either because he has gained increased experiences of the trading life due to his early entry in the production process, or because he has an IQ much higher than the average representative of his age (this of course does not mean that that minor has necessarily increased social maturity). Even in these exceptional cases,

portionality in the case law of the civil courts', *Human Rights Review – Issue Out of Series*, III/2005, pp. 25-39 (in Greek); I. Sontis, *Obligatory Easements by Law in the Civil Code* (CC p1012-1017, 1028-1031), 1981, pp. 81-88 (in Greek); F. Nikolaou, 'Acquisition in good faith of ownership of stolen or lost movables sold in a market' (CC 1039 sect. b'), *Civil Law Applications* 2014, 822, 823-825 (in Greek); *id.*, 'Bona fide acquisition of ownership of a movable', 2014, 35-41 (in Greek); cf. also J. Hager, 'Verkehrsschutz durch redlichen Erwerb', 1990, *Kapitel 2., § 3 Die ("Dritt-") 'Wirkung der Grundrechte, insbesondere des Art. 14 GG, für bürgerlich-rechtliche Gesetze'*, 9-46 and especially V., 40-46. On the principle of proportionality in execution, see P. Gesiou-Faltsi, 'The principle of proportionality in execution', *Greek Justice* 32 (1991), 280-300 (in Greek). On the principle of proportionality in public law see P. Dagtoglou, *Constitutional Law, Human Rights*, Vol.e I, 2nd edition, 2005, N° 308-315 (in Greek); A. Gerontas, 'The principle of proportionality in German public law', *The Constitution*, 1983, 20-30 (in Greek); E. Beis, *ibid.*, 467-498, referring to the principle of proportionality in the procedural and private law; V. Skouris, 'The constitutional principle of proportionality and legislative restrictions of professional freedom (observations in Judgment 2112/1984 Council of State)', *Greek Justice* 28 (1987), 773-778 (in Greek); I. Dimitrakopoulos, note in Judgment 2245/1999 CoS, *Human Rights* 7/2000, 731-741 (in Greek). In case-law see Areios Pagos 102/2004, *Chronicles of Private Law* D/2004, 990-992; AP 27/2004, *Nomiko Vima* 53 (2005), 84-87; AP 10/2003, *Nomiko Vima* 51 (2003), 1410-1413; AP 17/2001, *Greek Justice* 43 (2002), 74-75; CoS 2112/1984, *Greek Justice* 26 (1985), 130-132; AP 93/2004, *Chronicles of Private Law* D/2004, 420-422; AP 36/2002, *Nomiko Vima* 51 (2003), 856-858; CoS 392/93, *The Constitution*, 1994, 150-157; AP 804/2002, *Greek Justice* 44 (2003), 985-987; AP 253-4/2000, *Greek Justice* 41 (2000), 1000-1001; AP 899/2001, *Nomiko Vima* 50 (2002), 977; AP 20/2000, *Greek Justice* 42 (2001), 55; AP 782/79, *The Constitution*, 1999, 642-646; AP 81/2004, *Nomiko Vima* 52 (2004), 1384-1387; AP 26/2003, *Greek Justice* 44 (2003), 1263-1269 (all in Greek).

the minor will not be held liable for damages for the harm caused, pursuant to CC 916, for the reason that his particular skills or abilities that exceed the level of the average representative of his age may not be to his detriment.⁵ This legislative option in CC 916 is an effective means of minor protection from the Damocles sword of early responsibility, which would drastically restrict his life choices, as soon as he crossed the threshold of adulthood.⁶ The fact that a minor under 10 years of age is not considered by the legislature as accountable, in the light of the findings of psychiatry and psychology concerning developmental stages of the minor, does not mean that the injured party will be left unprotected, since there can be activated either the imputability of supervising the minor (CC 923 in combination with CC 914 and possibly with CC 932 [to award compensation for moral damage⁷]) or the “responsibility on grounds of fairness” of the minor to pay reasonable compensation to the injured party (CC 918) following assessment of the situation of the parties, provided that the damage may not be otherwise relieved (e.g.. by an insurance company or by the minor’s supervisor).

The minor aged between 10 and 14 years is considered accountable and liable to compensate the damage caused, unless he proves that due to his psychological-mental growth and maturity was unable to recognize the unjust nature of his act (CC 917 sect.a’). The above legislative choice is an attempt to harmonise the two conflicting interests (on the

⁵ About the fact that under civil liability there is no negligence, even if the tortfeasor, due to special skills, had the ability to foresee the illegal result, when the average person could not foresee it, see among others, A. Georgiades, *Contract Law, General Part*, 1999, § 23 n° 21 (in Greek); M. Stathopoulos, *ibid.*, § 6 n° 60; S. Koumanis, in *Brief Interpretation of the Civil Code I*, 2010, Article 330 n° 18 (in Greek).

⁶ Cf. *Draft Common Frame of Reference (DCFR)*, Vol. 4, edited by Christian von Bar and Eric Clive, 2009, VI.-3: 103, Comments D., 3425, where the minor’s liability starts at age of 7 (VI.-3:103:(2) a person under seven years of age is not accountable for causing damage intentionally or negligently).

⁷ A. Georgiades, *ibid.*, 1999, § 62 n° 53; G. Georgiades, in *Brief Interpretation of the Civil Code I*, Article 923 n° 17 (in Greek); AP 1598/2001, *Legal Data Bank of Athens Bar Association “Isocrates”* (in Greek).

one hand of the minor and, on the other, of the victim). Therefore, the minor having the ability to distinguish is liable to compensate the damage caused, but may not be able to satisfy the claim of the injured party due to lack of personal property. In this case the injured party will not remain unprotected, as the regulatory scope of Article 923 CC is activated and the person supervising the minor (under the law or by contract) is required to compensate the injured third party by the wrongdoing of the supervised minor. Indeed, CC 923 inserts rebuttable presumptions to protect the injured third party a) that the supervisor intentionally neglected the duty of supervision and b) that there is a causal link between the culpable neglect of supervision and the damage caused. The supervisor is hence considered liable to pay damages, unless he rebuts with contrary evidence any of the two mentioned presumptions, since the events associated with proper or not exercise of supervision are easier to be proven by the supervisor, rather than the victim, as belonging to the sphere of influence of the former.⁸ However, even when the minor of 10-14 years of age, who, having the ability to distinguish, causes harm to a third party, possesses personal property, then reduced compensation can be adjudicated by the court, if judged, based on the circumstances (slight negligence of the minor causing particularly large damage/insurance coverage of the damage), that the sentence of the minor to full compensation would ruin him financially when entering the adult life (in view of the good faith [CC 288] and the principle of fairness deriving from it [in the light of Articles 21 §§ 1 and 3, 5 § 1, 2 § 1 and 25 § 1 sect. d' CoG]).⁹

It is also worth noting that if the minor of 10-14 years of age, having the ability to distinguish, is sentenced to pay compensation to the victim, he has the right to lodge a claim against his supervisor because he

⁸ P. Kornilakis, *ibid.*, § 91 3 I n° 1; A. Georgiades, *ibid.*, 1999, § 62 n° 42-44; G. Georgiades, *ibid.*, Article 923 n° 1-2; M. Stathopoulos, *ibid.*, § 15 n° 89-90; AP 422/2008, *Chronicles of Private Law* 2008, 785 with comments by C. Christakakou (in Greek).

⁹ See P. Kornilakis, *ibid.*, § 87 6 II n° 19; see also in detail C. Christakakou-Fotiadi, *ibid.*, 69-92 with extensive argument.

intentionally neglected the obligation of supervision, either on the basis of the family law provisions that establish the obligation of supervision (CC 1531, 1632) or the CC 914 or the CC 335 et seq., 380 et seq. (breach of contract), should the obligation of supervision arises from a contract.¹⁰

Subsequently, in the case of lack of accountability of the minor, CC 918 takes care for the injured and, on the grounds of fairness,¹¹ provides for the possibility of sentence of the unaccountable minor to pay reasonable compensation to the victim, provided that the loss of the latter cannot be covered elsewhere for legal or real reasons (by the supervisor of CC 923 or by an insurance company). The above regulation of CC 918 cannot be considered highly inequitable and inflexible for the unaccountable minor, firstly because the court makes the determination of compensation, taking into account all conditions of committing the act (e.g. the severity of the act and the type of harm, the mental state of the tortfeasor, possible contributory negligence and future loss of the victim) and after comparing the financial status of the parties¹²;

¹⁰ About protection of the supervised against damage incurred due to neglect of supervision, see P. Kornilakis, *ibid.*, § 92 3 I n° 2; A. Georgiades, *ibid.*, 1999, § 62 n° 44; G. Georgiades, *ibid.*, Article 923 n° 4; AP 422/2008, *Chronicles of Private Law* 2008, 785 with comments by C. Christakakou (in Greek).

¹¹ M. Stathopoulos, *ibid.*, § 6 n° 21; A. Georgiades, in CC Georgiades / Stathopoulos, Vol. Fourth: *Special Contract Law* (continued), 1982, Article 918 n° 1 and *id.*, *ibid.*, 1999, § 60, n° 48; G. Georgiades, *ibid.*, Article 918 n° 1; Ph. Doris, *ibid.*, in Honorary Volume of the Council of State for its 75 years, 229, 248-249; C. Christakakou-Fotiadi *ibid.*, 101-103, 106, 110 and 134 in one; I. Spyridakis, 'The offence in CC 914, theoretical considerations and practical applications', 1999, n° 48.1 in conjunction with 48.2 (e) (in Greek); P. Vafeiadou, 'Award of "fair compensation" to the victim in the event of non-attribution of the act to the tortfeasor' (Article 918 CC), *Civil Law Applications* 2014, 841 (in Greek); M. Georgiadou, in CC I. Karakostas, *Special Contract Law* (Articles 741-946), Vol. sixth, 2009, Article 918 n° 2 and footnote 3 (in Greek); see also Athens Appellate Court 6858/2006, *Nomiko Vima* 2007, 1136 and *Case Law Archive* 2007, 210 (in Greek).

¹² On the conditions of application of CC 918 see C. Christakakou-Fotiadi *ibid.*, 103-129 II. 1. Tort and 2. The damage cannot be covered from elsewhere and 132-133 under IV. Reasonable compensation; M. Stathopoulos, *ibid.*, § 6 n° 21; A. Geor-

secondly, because the judgment of the court on the “reasonableness” of the compensation awarded is subject to an appeal, since it is vague legal concept.¹³

Finally, the minor who completed the 14th year of age is considered fully accountable (CC 917 e contrario) and liable to pay full compensation to the injured. The above legislative choice is based on the consideration that it is rare for a minor aged 14 or more to have no ability to distinguish the unjust nature of his act. If a mismatch between the age and maturity/adaptability/social integration of the minor is found, then the possibility of a mental disorder (e.g. mental retardation) should be examined and according to Article 915 § 1 CC the minor could be judged as unaccountable. The unrestricted tortious liability of a 14-year old or older minor is compensated for and improved by the aspect¹⁴ according to which the in concreto right of the injured party for full compensation may become abusive when there are specific circumstances (especially large damage due to minor’s slight negligent behaviour, the restoration of which could financially weaken the minor, and there is insurance cover of the damage by a third party), which militate in favour of limiting the adjudicated compensation or full acquittal of the accountable minor (and adult tortfeasor) in view of good faith (CC 288) and in particular the principle of fairness deriving from it (in the light of Articles 21 §§ 1 and 3, 5 § 1, 2 § 1 and 25 § 1 sect. d’ CoG) and in derogation from the principle “all or nothing” which governs the law of compensation.

giades *ibid.*, 1982, Article 918 n° 10-13 and 16-18; *id.*, *ibid.*, 1999, § 60, n° 49-50; G. Georgiades, *ibid.*, Article 918 n° 2-6 and 16-17; P. Filios, *Contract Law*, Special part, Vol. 2, 6th edition, 2009, § 170^a B (in Greek); I. Spyridakis, *ibid.*, n° 48.2 (a) to (f); P. Vafeiadou, *ibid.*, 841-845; M. Georgiadou, *ibid.*, Article 918 n° 5, 7, 10; AP 1446/2009 with comments by C. Christakakou, *Chronicles of Private Law* 2010, 342 (in Greek); Athens Appellate Court 8261/2007, *Greek Justice* 2008, 821 (in Greek).

¹³ See G. Georgiades, *ibid.*, Article 918 n° 22; P. Vafeiadou, *ibid.*, 841, 846; P. Kornilakis, *ibid.*, § 87 n° 20.

¹⁴ C. Christakakou-Fotiadi, *ibid.*, 69-92 with extensive arguments and 92-96 specifically for the 14-year old minor and adult tortfeasor; P. Kornilakis, *ibid.*, § 87 n° 19.

Then, in respect to the criminal responsibility of the minor, the existence of a special chapter – 8th – for minors in the general part of the PC (Articles 121-133) indicates the intention of the criminal legislature for separate and specific treatment of them, different and more lenient than that of adult offenders and motivated by the principle of proportionality (just as happens with the legislation on civil liability for tortious conduct of the minor).¹⁵ The purpose of provisions on criminal

¹⁵ N. Courakis, 'Law of delinquent minors': in the cusp of *Criminal Law and Criminology*, 2004, 243 (in Greek), where among the key features of the legal model it is indicated that the penalties should in principle be proportionate to the offence committed, meaning that they may not be heavier than the contravention itself (Article 25 § 1 CoG); they may, however, be more lenient if this is necessary in view of the particular situation of the offender and the need for social reintegration; Ch. Dimopoulos & K. Kosmatos, *Law of Minors, Theory and Practice*, 2nd edition, 2010, 57 (in Greek); M. Margaritis & A. Margariti, *Penal Code Interpretation – Application*, 3rd edition, 2014, Article 122 n° 2, 6, 18 and Article 127 n° 11 (in Greek); C. D. Spinellis, *Greek Law of Minors Offenders and Victims*, 1992, 41 (in Greek); A. Pitsela, *The Criminal Treatment of Juvenile Delinquency*, 7th edition, 2013, 69-70, 83, 192-193, 269 and 665 (in Greek), indicating that measures which are appropriate, necessary and effective from the pedagogical point of view, nevertheless they are disproportionate in relation to the offence are not legitimate (principle of proportionality of the penal response to the offender's and crime's conditions); *Introductory Report of Law 3189/2003*, Article 122 PC; *Explanatory Report of Law 3860/2010*; *Explanatory Report of Law 4322/2015*, Article 2. The fact that the interests and welfare of the minor, in line with the principle of proportionality, should be the guiding principles in determining and imposing sanctions in minors law is strongly expressed by the international legal order, such as Rule 5 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as "The Beijing Rules", which were adopted by the UN General Assembly on 29.11.1985 (Resolution 40/33); Article 40 § 4 of the UN Convention on the Rights of the Child provides for treatment of children (persons < 18 years old) which ensures their well-being and is proportionate to their circumstances and the offence; Article 1.1-1 of the UN Model Law on Juvenile Justice 1997 says that "[...] the juvenile justice system must seek the well-being of the young person and must ensure that the reactions of the authorities are in proportion to the circumstances of both the young person and the offence"; along the same line, the Opinion of the European Economic and Social Committee on "the prevention of juvenile delinquency, ways of dealing with it and

responsibility of the minor is the selection of the in concreto more suitable, necessary (i.e. the most lenient possible) and *stricto sensu* proportionate measure (less possible intervention in the personal freedom and personality of the inflicted party), which, by the way of personalised treatment and parallel evaluation of the offender's personality and its action conditions, will serve the purpose of education of the minor offender (instead of punishment).¹⁶ Within this spirit of special (or individual) prevention, education and protection of minors from the adverse effects of deprivation of their freedom, the penal legislator provides only imposing reformatory or correctional/therapeutic measures for minors aged up to 15 years and even prioritises non-institutional reformatory or correctional/therapeutic measures instead of placing the minors in an institution of treatment. For minors who have completed the 15th year of age, priority is given to the imposition of reformatory or correctional/therapeutic measures against punishment; detention of minors in a juvenile detention centre (JDC) is only exceptionally imposed in case the conditions imposing detention stated in Article 127 PC in conjunction with Article 126 § 3 PC¹⁷ are met. Law n° 3189/2003

the role of juvenile justice in the European Union" (2006/C 110/13) under 2.3., which states that "[...] Judicial and punitive measures or responses must always be based on the principles of lawfulness, the presumption of innocence, the right to defence, a scrupulously fair hearing, respect for privacy, proportionality and flexibility. Both the judicial procedure itself, and the choice of measure, as well as its subsequent implementation, should be underpinned by the principle of the best interest of the child", <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52006IE0414>; on the principle of proportionality see also above footnote 4.

¹⁶ N. Courakis, *ibid.*, 2; Ch. Dimopoulos/K. Kosmatos, *ibid.*, 57; C. D. Spinellis, *ibid.*, 38-39; A. Pitsela, *ibid.*, 68-72, 187.

¹⁷ See N. Courakis, *ibid.*, 244, according to whom "[...] detention should remain, in accordance with the principle of subsidiarity, the last resort ("ultima ratio") dealing with juvenile delinquency, i.e. it should only be imposed in serious cases of infringement and/or "hardcore"/recidivist offenders of a certain age (e.g. 15-16 years). Even then sentencing should be governed by the principle of education, concentrating on offering to minors educational, training and working positions. Extra-institutional measures, such as fines, should be preferred, and in particular measures of a community nature, which can strengthen the sense of the offender's

enriched the reformatory and correctional/therapeutic measures, imposed at the discretion of the court to better address the minor offender (such measures is the promotion of community service, mediation/conciliation between the perpetrator and victim through the Minors Probation Service for the apology of the minor to the victim and

(and his parents') accountability to society, such as community service and victim compensation in the spirit of restorative justice"; see also *id.*, Newer European developments in juvenile delinquency law, Poinikos Logos 2001, 301, 307 (in Greek); Ch. Dimopoulos/K. Kosmatos, *ibid.*, 47, 58; M. Margaritis & A. Margariti, *ibid.*, Article 121 n° 8 and Article 122 n° 2; C.D. Spinellis, *ibid.*, 38; A. Pitsela also suggests that the detention in a JDC should be imposed as a last resort (*ultima ratio*, *ultimum refugium*, last resort, *letztes Mittel*) and that the special preventive purpose of penal correction can be achieved only when the enforcement is necessary, *ibid.*, 57, 78, 171, 173, 210, 259-260 (and 208-283 in detail for reformatory or correctional/therapeutic measures and detention in a JDC); see also Introductory Report of Law 3189/2003, Article 123 PC, which states that "[...] the placement of the minor in a special therapeutic institution should be imposed as a last resort, when the placement of the minor under the responsible supervision (custody) of parents or a probation officer or the attendance at a counselling therapeutic programme are not sufficient to address the problem of the minor"; see also *Explanatory Report of Law 3860/2010* and *Explanatory Report of Law 4322/2015*, in which the aim is to limit the detention of juvenile offenders only to very severe crimes, which, had they been committed by an adult, would be punished as felonies by life imprisonment, on the model of promotion of non-custodial measures in order to limit the negative effects that accompany the confinement, such as social marginalisation; likewise the *Explanatory Report of Law 4356/2015*, in which the imposition of institutional reformatory measure of placement in an institution of treatment (Article 122 § 1 case ib' of PC) is limited to cases of acts, that would be felonies, had they been committed by an adult, choice consistent both with the principle of the use of criminal law as *ultimum refugium* and other directions and requirements arising from Article 37 case b' of Law 2101/1992, which ratified the UN Convention on the Rights of the Child ["The arrest, detention or imprisonment of a child (person <18 years old) shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time"]; see finally, Article 127 § 1 sect. b' PC, in which detention in a JDC may (as a last resort) be applied to a minor who has attained the age of 15, if after having been placed in an institution of treatment, committed a crime which would have been a felony, had it been committed by an adult.

non-judicial settlement of the consequences of the act, the victim's compensation, the minor's attendance vocational schools or traffic education courses, counselling programme in case the minor offender demonstrates serious mental or physical problems) and even introduced the possibility of combining more, non-custodial, measures for optimal effect (prevention and care for social reintegration of the minor), so as to reduce cases of minors' deprivation of liberty either in the form of measures or in the form of JDC.¹⁸

¹⁸ *Introductory Report of Law 3189/2003, Articles 122-123 PC; N. Courakis, ibid., 2004, 244, 281-291 (in detail about the content of reformatory and correctional/therapeutic measures) and 318-319; id., ibid., Poinikos Logos 2001, 301, 306-307; M. Margaritis & A. Margariti, ibid., Introductory notes to Articles 121-133, n° 9 and in detail about the content of reformatory and correctional/therapeutic measures Article 122 N° 5-19, Article 123 n° 3-13. See also the Opinion of the European Economic and Social Committee on 'The prevention of juvenile delinquency, ways of dealing with juvenile delinquency and the role of juvenile justice in the European Union' (2006/C 110/13) under 3.2.1.-3.3.1. and 4.3-4.5, in which basic principle of the responsibility model, established under international treaties, including UN Standards Minimum Rules for the Administration of Juvenile Justice or "The Beijing Rules" of 1985, the UN Guidelines for the prevention of juvenile delinquency or "Riyadh guidelines" of 1990, the UN Rules for the protection of juveniles deprived of their liberty in 1990, the Recommendation n° R (87) 20 of the Committee of the Council of European Ministers to Member States on social reactions to juvenile delinquency, and, the UN Convention on the Rights of the Child approved by the UN General Assembly on November 20, 1989, (Articles 37 and 40), is the reduction to a minimum of measures or punishments that deprive young people of their liberty, by restricting these to exceptional cases and by making the disciplinary response more flexible and diverse with adaptable measures that can be tailored to the circumstances of the minor, in line with the conditions and progress made in treatment or in the application of the measure. The responsibility model works in conjunction with the model of restorative justice and rehabilitation, which is oriented to non-punitive sanctions (e.g. community service, compensation and reparation, mediation between the minor and the victim, practical training, special treatment for drug addiction and alcoholism), i.e. measures with minimum stigmatising character, with higher pedagogical value and of lesser repressive nature. Details about new trends in juvenile law and mainly about the combination of the "welfare" and "legal" standard, as reflected in the major transnational texts for ju-*

The reformatory or correctional/therapeutic measures are not imposed indefinitely (Article 125 PC: automatic cessation of reformatory measures upon completion of the 18th year of age of the minor or extension, with special reasoned judgment of the court, at most up to 21 years of age of the minor/permissible extension of correctional / therapeutic measures after the 18th year, following an opinion by a specialised team of doctors, psychologists and social workers, up to a maximum of 21 years of age of the minor) and their suitability is checked at regular intervals and at the latest after one year from the enforcement (Article 124 § 4 PC), as there is need for continuous monitoring of the minor offender, to check the progress of the degree of repentance and the possibility of integration in society as a creative and responsible member.¹⁹ The nature of reformatory and correctional / therapeutic measures is based on their obvious necessity, given that the reason of their existence ceases, if proven unnecessary (moreover, for that reason, it is possible to remove or replace them by Article 124 §§ 1-3 PC).²⁰ The principle of proportionality requires a demarcated implementation of reformatory and correctional/therapeutic measures based on the personality of the minor offender, the commission conditions and severity of the act, so that these measures are not rendered pedagogically ineffective.²¹

venile offenders, see N. Courakis, *ibid.*, 2004, 253-266 and by *id.*, 'Juvenile law and human rights, past and newest trends in Greece and abroad', Contribution to the 42nd International Seminar of Criminology (Athens 18-22.12.1989), Proceedings of the Seminar entitled 'The deprivation of liberty in the criminal system and human rights', Athens: Nomiki Vivliothiki, 1991, 406-410 (with French summary) and <http://courakis.gr/>; see also A. Pitsela, *ibid.*, 11-23 on international law for the protection of childhood and youth.

¹⁹ See *Introductory Report of Law 3189/2003*, Article 124 PC; M. Margaritis & A. Margariti, *ibid.*, Article 122 n° 3, Article 124 n° 1 and n° 5.

²⁰ A. Pitsela, *ibid.*, 205.

²¹ A. Pitsela, *ibid.*, 202-203. See also Article 128 PC, which provides in case of fault from minor, among all reformatory measures under Article 122 § 1 PC, only the imposition of reprimand, the minor's assignment under the responsible custody of parents or guardians, and the attendance at specific traffic education

Moreover, the court decision on the detention of the minor in a JDC should specify the time limit and contain specific and detailed reasoning on why reformatory or correctional/therapeutic measures appear insufficient in this case, taking account, where necessary, of the special conditions of committing the act and the minor's personality (Article 127 PC in conjunction with Article 54 PC).²² The penal correction of the minor should be imposed only when necessary (Article 126 § 3 PC), i.e. additional socio-psychological effects²³ are expected by the imposition thereof. Otherwise, it should be examined if the same objective can be achieved with a less onerous sanction, together with less intervention in the life of a minor.

Finally, it is worth noting that, apart from the criminal treatment of juvenile offenders, the criminal trial of the latter shows particularities, compared to that of adults (e.g. adjudication of juvenile crimes by juvenile courts [Article 96 § 3 CoG in conjunction with Article 113 CPP], failure to apply the principle of publicity in the minor trial (in camera trial and non-publication of the judgment), report from the Minors Probation Service on the personality of the minor before the introduction of the case in court [Article 239 CPP], limited power of *res judicata* because of the possibility of change, removal or replacement of meas-

courses.

²² See *Explanatory Report of Law 3860/2010*; N. Courakis, *ibid.*, 2004, 290; A. Pitsela, *ibid.*, 69; M. Margaritis & A. Margariti, *ibid.*, Article 127 n° 7 and 12, which states that the provision of Article 239 § 2 sect. b' and c' CPP should be given special attention where the investigating magistrate must make special inquiry on the health, moral and mental situation, previous life, family conditions and generally the minor's environment, assigning the need to collect relevant information on a Minors Probation Officer. Article 54 PC shows that the treatment of the minor is proportional to his personality and needs but in relation to the severity of the sentence (A. Pitsela, *ibid.*, 70), which defines the duration of the restriction in a JDC based on the severity of the offences committed (6 months-5 years, if the law threatens imprisonment up to 10 years for the act committed / 2 years-10 years, if the threatened punishment is life imprisonment or temporary imprisonment exceeding 10 years).

²³ A. Pitsela, *ibid.*, 269.

ures imposed against minor offenders [notwithstanding Article 57 CPP]).²⁴

The Intellectual and Volitional Element (Discernment and Compliance Capability): Approaches and Divergences of Minors' Civil and Criminal Liability

Contrary to what applies under PC, CC originally based legal accountability on the individual's capacity to distinguish between the just or unjust nature of the act (intellectual element) and not on whether he can comply with his perception of the just or unjust nature of the act (volitional element).²⁵ Nevertheless, as developments eventu-

²⁴ For the specificities of criminal proceedings against minors see detail N. Courakis, *ibid.*, 2004, 291-316; A. Pitsela, *ibid.*, 360-400; Ch. Dimopoulos & K. Kosmatos, *ibid.*, 49-50. Further see Article 45A CPP, which deals with non prosecution of a minor offender (with or without imposing extra-institutional correctional measures) in the case of a committed fault or misdemeanour (if the act was committed by an adult), and provided that the prosecution is not necessary to prevent the minor from committing new crimes (required is the prior hearing of the minor) [subsidiarity principle of formal procedure]; Article 242 CPP, concerning non-compliance with the procedure in flagrante delicto for offences committed by minors; Article 282 § 2 sect. b' and c' and § 6 CPP on restrictive conditions ordered for minors and on the provisional detention of a juvenile defendant who has completed the 15th year of age, if the act for which he is accused is rape committed against a person younger than 15 years or punishable by the law with life imprisonment (the detention may in no case exceed six months); Article 340 § 1 sect. c' CPP, which provides that the Minors judge shall mandatorily appoint defence counsel to the accused minor who has no lawyer when he is accused of an act, which if committed by an adult, would be a felony; Article 489 § 1 d' and e' CPP on the possibility to appeal against a decision of a single member and three-member Juvenile Court, by which the minor was sentenced to detention in a JDC or reformatory or correctional/therapeutic measures were imposed on him or against the decision of a single member or three-member Juvenile Court, by which the minor, who during the perpetration of the act had completed the 15th year and was tried after reaching 18 years of age, was sentenced under Article 130 PC in a custodial sentence.

²⁵ M. Stathopoulos, *ibid.*, § 6 n° 9; C. Christakakou-Fotiadi, *ibid.*, 7.

ated, CC approached PC²⁶ resulting in giving importance both to the intellectual and the volitional element, so that anyone, who does not have the ability to “perceive” and/or “conform”,²⁷ be judged not legally liable. Examples of this approach are the cases of mental illness that eliminate accountability. Under civil liability not legally liable is “... whoever (the regulatory scope of the provision includes both the minor and the adult) damaged another without being aware of his actions or while on psychological or mental disorder that decisively restricted the function of his judgment and²⁸ will” (CC 915 § 1, as replaced by Article 20 of Law 2447/1996). In the context of criminal responsibility Article 34 PC provides that “the offender shall not be held responsible for the offence if, when committing it, due to serious mental disturbance or disturbance of consciousness, he lacked the ability to perceive the injustice of his act or to act according to his perception of wrongdoing”. The psychological or mental disorder [e.g. psychosis (such as schizophrenia or paranoia), bipolar disorder (manic depressive), impulse control disorders (e.g. kleptomania, pyromania, intermittent explosive disorder), mental retardation] should mean that the perpetrator (adult or minor) cannot perceive the unjust nature of his act or is unable to comply (to volitionally discipline his behaviour) with the above per-

²⁶ See thoughts of C. Christakakou-Fotiadi, *ibid.*, 62-68 on the question of harmonisation of Greek civil and criminal law on minors liability issues, as well as thoughts of L. Kuhlen, ‘Strafrechtliche Grenzen der zivilrechtlichen Deliktshaftung Minderjähriger?’, *JZ* 1990, 273 et seq. on the issue of the delimitation of civil tort (assessment and targets) with criminal responsibility terms, however under German law.

²⁷ M. Stathopoulos, *ibid.*, § 6 n° 9; C. Christakakou-Fotiadi, *ibid.*, 7-8.

²⁸ See M. Stathopoulos, *ibid.*, § 6 N° 17 and G. Georgiades, *ibid.*, Article 915 n° 7, who indicate that the link “and” in the phrase “... decisively restricting the function of his judgment and will” of § 1 of Article 915 CC is not used with an additive, but with disjunctive meaning, which expressly follows from the Introductory Report of the Law 2447/1996 (published in the volume by I. Deliyannis (ed.), *The Activities of Legislative Drafting Committee for the Reform of the Institutions of Adoption and Guardianship II*, 1996, 127 (“... limiting the function either of the will or the judgment of the individual at issue”).

ception.²⁹ The legislature, in the interests of legal certainty, is not satis-

²⁹ For the concept of disturbance of consciousness and mental or psychological disorder in civil law see A. Georgiades, *ibid.*, 1982, Article 915 n° 4-6; M. Stathopoulos, *ibid.*, § 6 n° 16; P. Filios, *ibid.*, § 170 C I 1; G. Georgiades, *ibid.*, Article 915 n° 5; M. Georgiadou, *ibid.*, Article 915 n° 6; Thessaloniki Appellate Court 570/2006, *Armenopoulos* 2008, 600 (in Greek); Patras Appellate Court 203/2003, *Achaiki Nomologia* 2004, 628 (in Greek). For the serious disturbance of mental capacity or consciousness in criminal law see N. Androulakis, *Criminal Law, General Part, I. Theory of Crime*, 2006, § 23 B 3-5, 487-495 (in Greek); A. Charalambakis, *Penal Code Interpretation Per Article*, Vol. 1 (Articles 1-234), 2nd edition, 2014, Article 34 N° 3-9 (in Greek); M. Margaritis & A. Margariti, *ibid.*, Article 34 N° 3-9; A. Konstantinidis, 'Issues of disturbance of mental capacity or consciousness and their legal assessment', *Criminal Chronicles* 2008, 193 (in Greek); AP 1650/2008, Legal database NOMOS; AP 792/2008, Legal database NOMOS; AP 1498/2007, Legal database NOMOS; AP 623/2006, *Penal Chronicles* 2007, 141; AP 759/2004, *Penal Chronicles* 2005, 503 with comments K. Vathiotis; AP 1935/2001, Legal database NOMOS; AP 1549/2000 with observations N. Dimitratos; Mixed Judge and Jury Court of Xanthi 9/2005, Legal database NOMOS Council of Areios Pagos 1487/2004, with consenting opinion of the Prosecutor A. Fakos, *Penal Chronicles* 2005, 620; Council of Athens Appellate Court 135/2001 with consenting opinion of the Appeals Prosecutor S. Mantakiozidis, Legal database NOMOS; Council of Misdemeanours of Xanthi 22/2009 with consenting opinion of the Prosecutor D. Lambridis, Legal database NOMOS; Council of Misdemeanours of Rhodes 24/2007 with consenting opinion of the Prosecutor S. Manolis, Legal database NOMOS; Council of Misdemeanours of Heraklion 207/2005, *Penal Chronicles* 2007, 538 with consenting opinion of the Prosecutor N. Markakis (all in Greek). It is doubtful whether neuroses may be included in mental disorders that strongly restrict the function of judgment or the will in the sense of CC 915 § 1, as they are not connected with loss of reality control. The neurotic person is aware of the situation and has sufficient capacity to adapt to the environment in which he lives and interacts, in the same time not losing his contact with reality or having delusions and hallucinations, as opposed to the person suffering from psychosis. For the characteristics of neurotic and psychotic disorder see Kaplan & Sadock's, *Handbook of Clinical Psychiatry*, 3rd edition, 2004, 30; see also N. Androulakis, *ibid.*, § 23 B 3, 490, according to whom "distinctive feature of neurosis, which [...] is defined as abnormal mental development of the individual, are the abnormal reactions to experiences or disturbances in processing of experiences (e.g. paranoid reactions, possibly leading to "primitive", "explosive" "malfunctioning" acts). All this, in heavy form and, one might say, by

fied by the mere medical diagnosis of mental disorder, but further requires that the decisive restriction of the judgment or will of the offender be considered as a symptom of this disorder.³⁰ The judge with the help of expert scientists adjudicates *in concreto*, whether or not these two elements above apply.³¹

Civil and penal law provisions are alike with regard to the above. The difference lies in the proof of lack of accountability: in civil law, the person alleging lack of liability for compensation, because he was not accountable for the commission of the act, has the burden of proof of his allegation;³² in penal law, the court is obliged *ex officio* to deal with the issue of the offender's lack of responsibility, when faced with such important data resulting from the process, as well as when the defendant himself rebuts his accountability by invoking such important data; if the court cannot rise above the resulting doubts, it must find that the defendant is not responsible ("in dubio pro reo").³³

Usually the intellectual and volitional element (the ability to distinguish and conformability) connect, interact and affect each other. If the

way of exception, may be of interest in view of Article 34".

³⁰ A. Georgiades, *ibid.*, 1982, Article 915 n° 5-7; *id.*, *ibid.*, 1999, § 23, n° 10; M. Stathopoulos, *ibid.*, § 6 n° 18; G. Georgiades, *ibid.*, Article 915 n° 6-7; M. Georgiadou, *ibid.*, Article 915 n° 6-7; Larissa Appellate Court 541/2006, Greek Justice 2007, 518 (in Greek); Multi-member Athens Court of 1st Instance 1728/2010, Legal database NOMOS (in Greek); N. Androulakis, *ibid.*, § 23 B 1-6, 485-499; M. Margaritis & A. Margariti, *ibid.*, Article 34 n° 1-2, 10-11; A. Charalampakis, *ibid.*, Article 34 n° 2, 10-12; A. Konstantinidis, *ibid.*, 193; AP 759/2004, Penal Chronicles 2005, 503 with comments K. Vathiotis (in Greek); Council of Misdemeanours of Heraklion 207/2005 with consenting opinion of the Prosecutor N. Markakis, *Penal Chronicles* 2007, 538 (in Greek).

³¹ A. Georgiades, *ibid.*, 1982, Article 915 n° 5; M. Stathopoulos, *ibid.*, § 6 n° 18; G. Georgiades, *ibid.*, Article 915 n° 8; M. Georgiadou, *ibid.*, Article 915 n° 7; A. Konstantinidis, *ibid.*, 193.

³² A. Georgiades, *ibid.*, 1982, Article 915 n° 11; C. Christakakou-Fotiadi, *ibid.*, 8; P. Kornilakis, *ibid.*, § 87 n° 13; P. Filios, *ibid.*, § 170 A; I. Spyridakis, *ibid.*, n° 27.3 footnote 3; G. Georgiades, *ibid.*, Article 915 n°. 11; Patras Appellate Court 203/2003, Achaiki Nomologia 2004, 628 (in Greek).

³³ N. Androulakis, *ibid.*, § 23 B 7, 499; A. Konstantinidis, *ibid.*, 193.

sufferer (adult or minor) from mental or psychological disorder lacks the perception of the unjust character of the act, it is pointless to examine the volitional or not compliance of his acts to this affected perception,³⁴ i.e. when someone is in an acute psychotic episode, both above-mentioned elements malfunction (intellectual and volitional), so that their separate examination is meaningless. However, there are cases of mental disorders, which do not affect the patient's perception regarding the just or unjust nature of his actions, but only the compliance capacity with this perception. Such are the mental disorders associated with loss of impulse control, such as kleptomania, pyromania or intermittent explosive disorder (the sufferer from the latter impulse control disorder has the ability to distinguish the demerits of several distinct acts of violence or damage which he commits, because of uncontrollable rage and explosions of impulsive aggression).³⁵

Article 917 sect. a' CC deviates from Articles 915 § 1 CC and 34 PC with regard to the adoption of the volitional element as an essential criterion for liability; in said article, the only criterion of a 10-14 years old minor's liability remains the mental element (the ability to distinguish the just or unjust nature of his actions).³⁶ Both the establishment of the

³⁴ See N. Androulakis, *ibid.*, § 23 B 6, 497 footnote 52.

³⁵ For impulse control disorders see in detail Kaplan & Sadock's, *ibid.*, 280.

³⁶ But the view is also supported (M. Stathopoulos, *ibid.*, § 6 n° 14-15; C. Christakou-Fotiadi, *ibid.*, 41-43, 58-59, 68-69, 88-89 under a, 91 a, 97-98 and in detail for the arguments of the view with many references to the literature and case law, Greek and foreign, 41-69 under 2. The concept of discernment and 3. The systematic and teleological approach to the problem; see also Comments by *id.*, in the AP 1410/2006, *Chronicles of Private Law* 2007, 32) that CC 917 would be completed, apart from the criterion of the ability to distinguish, also with the capacity to comply, so that the 10-14 years old minor be considered not liable, not only when he was not able to perceive ("... acted without discernment ...") the unjust nature of his act, but also when he did not have the ability to comply with this perception [by analogy implementation of CC 331 and 915 (legal analogy)]. This solution can, according to that view, lead to better protection of the minor's interest and systematically align with CC 331 and 915 § 1 (as in force after its amendment by Article 20 of Law 2447/1996), under which, in the case of mental and psychological health,

specific age limits for minor liability and the fact that, for the affirmation of liability of a minor between 10-14 years of age, only the ability to distinguish is necessary, as illuminated by the individual characteristics of his mouldable personality (psycho-mental development, experience and awareness of trading practice, maturity in general) provide a sufficiently protective framework for the minor, based on solid and safe criteria and not in unstable and fluid ones, such as strength of will or resistance power.³⁷

The adoption of the ability to distinguish as the sole criterion of liability of a minor between 10-14 years of age under CC 917 sect. a' is a legislative option focused on balancing two opposing interests: the interests of a minor tortfeasor of 10-14 years old being in a phase of development and formation of his personality as well as the interests of the injured-victim of the minor's tortious action,³⁸ so that any of the two above interests, is not disproportionately affected.

Furthermore, the addition of the volitional element ("conformability") next to the mental element ("discernment") as an additional criterion for liability within CC 917 sect. a' could not lead to substantially better protection of minors between 10-14 years of age, since this criterion would lead to problematic cases under it. Conformability is a concept interpreted in the specific context of CC 915 § 1, i.e. it may be enlightened as to its content in relation to the element of mental or psychological disorder under CC 915 § 1 and by using the findings of the psychology and psychiatry. Lack of compliance capacity, that is inability of the perpetrator to comply with his perception of just or unjust nature of his act, particularly associated with loss of impulse control

both the intellectual and the volitional element were adopted as criteria of affirmation of liability.

³⁷ As regards the justification of the legislative choice of CC, see M. Stathopoulos, *ibid.*, § 6 n° 14.

³⁸ The injured person may, as the minor tortfeasor, come to a difficult financial situation due to induced loss [e.g. disability or deformity (CC 931)], see on C. Christakakou-Fotiadi, *ibid.* 84, footnote 135.

(e.g. kleptomania, pyromania, intermittent explosive disorder³⁹) and is therefore subject to the cases of mental disorders decisively excluding the operation of the will in the sense of CC 915 § 1. But also the repeated and persistent actions of the 10-14 years old minor, violating the rules of law and the legal interests protected by them [i.e. intimidation, threats or terrorising others, personal injury by body to body fights or by using weapons, violence against animals, wallet or stores thefts, robberies, arson and premeditated damaging of another's property, burglaries, frauds, forgeries] may constitute conduct disorder⁴⁰ (evidenced by submission in court of a relevant expert opinion, namely mental disorder subject to CC 915 § 1 which will result in the exclusion of the minor's liability [just as it is the case when the minor suffers from a mental disorder (e.g. mental retardation), which leads to the patient's inability to distinguish the just or unjust nature of his act].

Furthermore, if the inability of the 10-14 years old minor to comply, was to be considered as a reason for exclusion of liability within CC 917 sect. a', full compensation of the victim might become unsafe (and thus jeopardise the realisation of objective of tort provisions) in the case of school bullying⁴¹ whereas each minor who would exercise violence (verbal, psychological, physical, sexual, via Internet) against classmates, would invoke lack of liability, because he acted without conformability.

It is a fact that adolescence, as a developmental stage, is characterised by large scale physical changes and strong impulses, loss of con-

³⁹ See on Kaplan & Sadock's, *ibid.*, 280.

⁴⁰ For the diagnostic criteria of conduct disorder see detail Kaplan & Sadock's, *ibid.*, 383; see also G. Papadatos, Mental and learning difficulties of children and adolescents, 2010, 131-132 (in Greek). Individuals with conduct disorder show little remorse or empathy and little care about the feelings and thoughts of others, tend to see hostile intentions on the incentives of others and tend to engage in risky behaviours. See in detail L. Wilmshurst, *Developmental Psychopathology*, 2011, 338-342 (in Greek).

⁴¹ For types of school violence and the possibilities of addressing them, see in detail N. Courakis, *Penal Chronicles* 2009, 865.

trol, identity search even by engaging in risky behaviours, development of addictions or occurrence of mental disorders (e.g. eating disorders, depression), difficulty in using experience in order to make correct decisions, and difficulty in controlling reactions.⁴² However, using “conformability” as a reason for exclusion of liability would on the one hand lead to disconnection of a minor’s unlawful actions from civil liability and on the other hand discredit the virtues of self-control, restraint, self-discipline, which the minor can show even within this sensitive developmental phase by controlling his reactions and consciously refraining from attack on other legal interests. A minor offender, being in the sensitive period of adolescence with its physical and psychological changes, can experience very easily overwhelming emotion into a quarrel or on the game, but that does not mean he cannot retain control of his actions. This emotional state of the adolescent is not a condition precluding liability, as is the case of disturbance of consciousness (e.g. due to exhaustion, hypnosis, panic) or mental disorder under CC 915 § 1, where the person lacks the ability to control himself. For this reason, equalisation of the absence of the ability to comply within CC 917 sect. a’ and CC 915 § 1, as to their legal consequences, would not appear plausible.

Summary – Conclusions

The legislative establishment of age limits, conditions and legal consequences of the civil and criminal liability of minors under Greek law, is based on the different purposes of these two forms of liability and the different function of compensation in relation to that of punishment. Despite some differences, the legislation on civil and criminal liability of the minor mostly converge than diverge from one another. Both legislations are inspired by the constitutionally guaranteed principle of proportionality (Article 25 § 1 sect. d’ CoG). In addition, the

⁴² For physical, but also psychological and psychosocial changes that accompany the transition of puberty, and its cognitive developmental characteristics, see detail *I. N. Paraskevopoulos, Developmental Psychology, Vol 4, 1985, 11-20* (in Greek); *N. Courakis, ibid., 2004, 42-47*.

age of adulthood (the minor comes of age with the completion of the 18th year) is the same both in civil and in penal law; the difference is that the minor tortfeasor is deemed as fully accountable and liable to compensation just as he completes the 14th year of age, while he is held criminally responsible just as he completes the 15th year of age. Furthermore, legislation on civil and penal liability is similar as to the criteria for liability in the case of mental disorders of adult or juvenile offenders. Deviations from these rules (e.g. liability of 10-14 years old minor to compensate the victim, if he acted with distinction) are reasonable in the context of both the rehabilitative purpose of tort law and the balancing role of the principle of proportionality. Even when civil liability has been tightened for the minor in comparison with the corresponding criminal responsibility, measures that improve the position of the minor are provided, e.g. the responsibility of the minor's supervisor (CC 923) or the conditional reduction of compensation payable (or even exemption of minors from payment), by resorting to the requirement of good faith (CC 288) and the principle of fairness deriving from it, in the light of Articles 21 §§ 1 and 3, 5 § 1, 2 § 1 and 25 § 1 sect. d' CoG.

Abbreviations

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| <i>AP</i> | Areios Pagos: The Supreme Civil and Criminal Court of Greece |
| <i>CC</i> | Civil Code |
| <i>CCP</i> | Code of Civil Procedure |
| <i>CoG</i> | Constitution of Greece |
| <i>CoS</i> | Council of State: The Supreme Administrative Court of Greece |
| <i>CPP</i> | Code of Penal Procedure |
| <i>ibid.</i> | <i>ibidem</i> |
| <i>id.</i> | <i>idem</i> |
| <i>PC</i> | Penal Code |