



PEOPIL

Pan European Organisation of Personal Injury Lawyers

LIABILITY OF MINORS

A Turkish, Polish, Czech and Austrian perspective

PANEL

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Questions

- 1 At what age does civil liability and criminal responsibility begin?
- 2 How is the civil liability of minors structured in your jurisdiction?
- 3 How does your legal system define the duty to supervise a minor?
- 4 Can it happen that no one is liable for damage caused by a minor?
- 5 Can any authority intervene in proceedings, in or out of court, concerning damage caused by a minor?
- 6 Which types of cases do you deal with most often, in particular with regard to sport, schools and other institutions?
- 7 What hurdles arise in enforcement?
- 8 What other difficulties do you encounter in cases of damage caused by minors?



QUESTION 1

At what age does liability begin?

TURKEY	POLAND	CZECH REPUBLIC	AUSTRIA
No fixed age (civil) liability turns on the capacity of discernment Civil basis Arts. 13 and 16(2) TMK (Civil Code); Art. 49 TBK (Obligations). A child with the capacity of discernment is personally liable. Criminal basis Art. 31 TCK (Criminal Code) • under 12: no liability • 12 to 15: depends on the capacity to perceive the act and control one's conduct • 15 to 18: liable, with a reduced sentence 2026: the judge may disapply the age reduction for intentional homicide and certain aggravated injuries.	13 years (civil) 17 years (criminal) Civil basis No liability below 13 (Art. 426 CC), without exception. Above 13 liability is not automatic: the court may still find the minor incapable of recognising the meaning of the act and controlling his conduct (Arts. 425 and 426 CC). Criminal basis 17; exceptionally 15 for a closed list of serious offences and 14 for aggravated murder. Act on the Support and Rehabilitation of Juveniles: demoralisation proceedings from 10, punishable acts from 13 to 17, before the family court.	13 years (civil) 15 years (criminal) the threshold of 13 was introduced in 2021 Civil basis §§ 2920 and 2921 of the Civil Code (Act No. 89/2012 Sb.), as amended by Act No. 192/2021 Sb. Criminal basis § 25 of the Criminal Code (Act No. 40/2009 Sb.); Juvenile Justice Act (Act No. 218/2003 Sb.)	14 years old for civil as well as criminal liability Civil basis §§ 21(2) and 176 ABGB (Austrian General Civil Code) Criminal basis § 4 JGG (Youth Courts Act)



Structure of civil liability of minors



TURKEY

Liability follows the capacity of discernment, not a fixed age

Arts. 16(2) TMK and 49 TBK

1

Child with the capacity of discernment

Liable for his own tortious act (Arts. 16(2) TMK, 49 TBK). As a rule the compensation is paid from the child's own assets.

2

Child without that capacity

No fault-based liability arises. Where equity so requires, the judge may nonetheless order the child to compensate the damage (Art. 65 TBK).

3

Parents and recourse

Where the parents are also liable they may be named as co-defendants; another liable party who has paid may seek recourse against the child (Arts. 61 and 62 TBK).

Procedure: the claim may be brought against the child, who is represented by his legal representative (Art. 52 HMK).



Structure of civil liability of minors



POLAND

A fixed threshold of 13, then a capacity test

Arts. 425 to 428 of the Civil Code

1

Under 13: absolute immunity

The child can never be liable. Liability may fall on the supervisor, for the supervisor's own fault, who escapes it by proving adequate supervision or that the damage would have occurred anyway.

2

13 to 18: conditional liability

The court decides whether the child was capable of recognising the meaning of the act and controlling his conduct. Supervisors may be liable in parallel where they failed in supervision.

3

The equity safety valve (Art. 428 CC)

Where the tortfeasor is not liable by reason of age or condition and no supervisor can be reached, the injured party may claim redress from the tortfeasor himself if a comparison of means shows that the principles of community life so require.

An asymmetry of protection: a child under 13 is fully immune as a tortfeasor, yet the same conduct may still reduce its own damages for contributory conduct (Art. 362 CC).



Structure of civil liability of minors



CZECH REPUBLIC

Age-based system under §§ 2920 and 2921 of the Civil Code

A fixed threshold of 13 years, introduced by Act No. 192/2021 Sb.

1

Child under 13 (§ 2920(3))

The damage is borne by whoever neglected proper supervision. The child pays only if the damage did not result from neglected supervision and the act was of the nature of an intentional criminal offence, or if equity so requires.

2

Minor aged 13 or over (§ 2920(1))

Liable where capable of controlling the conduct and appreciating its consequences, and liable in any event to a victim who refrained from defending himself out of consideration for the child.

3

Supervisor, jointly and severally (§ 2921(1))

Whoever neglected proper supervision is liable together with a minor aged 13 or over; where the minor is not liable, the supervisor alone bears the damage.

Equity is the safety net throughout: § 2920(2), § 2920(3) and § 2921(2).



Structure of civil liability of minors



AUSTRIA

Multi-tier civil liability system under §§ 1308–1310 civil code (ABGB)

Statutory sequence

1

Provocation (§ 1308 ABGB)

If the injured party actively provoked or initiated the child's hazardous reaction, the injured party must bear the damages entirely alone.

2

Supervisor liability (§ 1309 ABGB)

The parents, educators or legal guardians are liable if they culpably breached their duty of supervision.

3

Subsidiary liability on grounds of equity (§ 1310 ABGB)

The exceptional direct liability of a child is based on equity considerations according to three criteria.



Structure of civil liability of minors



AUSTRIA

Subsidiary liability on grounds of equity (§ 1310 ABGB)

If the injured party cannot secure compensation from the supervisors (§ 1309) and did not provoke the incident (§ 1308), the court may **exceptionally** impose direct full or partial liability on a child under 14 on grounds of **equity**.

The court weighs three criteria

1.

Quasi-fault

Did the child exceptionally possess the individual maturity to understand the wrongfulness of the act at that particular moment?

2.

Forbearance of defence

Did the injured party refrain from self-defence out of consideration for the child?

3.

Financial capacity

Who can bear the loss more easily? Under established case law a valid private liability or household insurance policy counts among the child's assets and can establish liability up to the sum insured.



The duty to supervise a minor



TURKEY

The principal provision is **Art. 369 TMK**: the head of the household may be held liable for damage caused by a minor.

Liability of the head of the household

Art. 369 TMK attaches liability to the person who heads the household in which the minor lives.

Exoneration

By proving that the necessary care and supervision were exercised, or that the damage would have occurred even if they had been.

Others who may be liable

Nurseries and day-care centres, private schools, teachers and the operators of institutions.

Public schools

Where the fault is connected with the performance of official duties, the claim must as a rule be brought against the relevant public administration (Arts. 125 and 129(5) of the Constitution; Art. 13 of Act No. 657).



The duty to supervise a minor



POLAND

Art. 427 CC imposes fault-based liability for the supervisor's own conduct (*culpa in custodiendo*), not vicarious liability for the child's act.

Sources of the duty

Statute (parents, teachers); a decision of an authority (legal guardian); contract (childminders, nurses, coaches); and actual continuous care in fact (extended family, friends).

Burden of proof

Art. 427 presumes both fault in supervision and the causal link, although the doctrine still requires the claimant to indicate the wrongful act or omission.

Rebuttal

The supervisor rebuts the presumptions by proving adequate supervision, or that the damage would have occurred even with careful supervision.

Minors over 13

Where the minor is liable in his own right, Art. 427 does not apply. The parents are then assessed under Art. 415 and the claimant must prove a specific omission.



The duty to supervise a minor



CZECH REPUBLIC

Czech law knows no separate definition of supervision. It works with the single concept of **proper supervision** (náležitý dohled) and asks whether it was neglected.

Fault-based, not strict

The supervisor answers for neglecting proper supervision (§ 2921), not for the minor's conduct as such.

Standard of care

Judged by the child's age and maturity, the foreseeability of the risk and the dangerousness of the situation. Permanent physical presence is not required.

Who owes the duty

Parents within their parental responsibility (§ 858), and anyone to whom the child is entrusted: schools, kindergartens, sports clubs and temporary carers.

Joint and several liability

Where a minor aged 13 or over is liable and supervision was neglected, the minor and the supervisor are liable jointly and severally (§ 2921(1)).



The duty to supervise a minor



AUSTRIA

Supervision is framed under **§ 1309 ABGB** as a fault-based liability of the guardian, not as strict liability for the minor's behaviour.

The core standard

Supervisors (parents, teachers, day-care centers, ...) are liable only for their own negligence in failing to supervise.

Standard of care

The required intensity depends on the child's age, maturity and past behaviour, and adapts to how dangerous the situation is.

Independence rule

The courts do not overstretch the duty because children must learn independence. Continuous eye contact is not required for older children.

Burden of proof

First, the injured party must prove that a breach occurred; the supervisor may then prove that he or she was not at fault.



Can no one be liable for the damage?

TURKEY	POLAND	CZECH REPUBLIC	AUSTRIA
Yes, this is possible there is no general state fund covering damage caused by children No one is liable where all of the following apply: • the child lacks the capacity of discernment • Art. 65 TBK (equity) is not applied • the head of the household succeeds with the defence under Art. 369 TMK Depending on the case a school, nursery, public authority or insurer may still be liable.	Yes all three conditions must coincide The victim bears the loss where: • the child is under 13, or older but without the capacity to understand his conduct • no supervisor is liable, supervision having been proper or the damage unavoidable • Art. 428 CC is unavailable: no insurance and no significant disparity of means in favour of the minor	Yes, but only rarely the equity tests leave only a narrow gap The victim bears the loss where all of the following apply: • the child is under 13 years old • proper supervision was not neglected • the act was not of the nature of an intentional criminal offence • equity justifies liability neither of the child (§ 2920(3)) nor of the parent (§ 2921(2))	Yes, this can happen. The injured party must bear the damages alone (casum sentit dominus) if: • The child is under 14 years old, • the supervisors are blameless and • the criteria for equity liability under § 1310 ABGB are not met.



Authorities involved



TURKEY

A specialised juvenile justice system, on the criminal side

Juvenile courts

Juvenile courts and juvenile high criminal courts have jurisdiction (Arts. 25 and 26 ÇKK, the Children Protection Law).

Juvenile bureaus and social workers

Take part in the proceedings alongside the court.

Psychologists and pedagogues

The child's statement is taken by them, or in their presence.

Social inquiry report

Art. 35 ÇKK.

Child Monitoring Centres

These exist, but serve primarily child victims, in particular victims of sexual abuse.



Authorities involved



POLAND

The family court stands behind every claim involving a minor

- Family court, guardianship function** Important matters concerning a minor require prior court consent. This covers claims brought on the minor's behalf and settlements concluded for him.
- Court-appointed guardian (kurator)** Represents the minor where the parents cannot act, in particular on a conflict of interests.
- Social welfare authorities** Step in where the incident discloses concerns about the child's family situation.
- Family court, juvenile proceedings** Where the conduct may indicate demoralisation. Educational or correctional measures follow, possibly including an order to repair the damage.

Note on juvenile proceedings: the injured party is not a party to them. He may only apply to initiate them, present his evidence before they start, and be present at the hearing.



Authorities involved



CZECH REPUBLIC

Four bodies and one insurer shape every claim involving a minor

Legal representatives	The parents represent the child in legal acts for which the child lacks capacity (§ 892(1) of the Civil Code).
Consent of the court	The parents need the court's consent for acts concerning the child's property unless the matter is routine or of negligible value (§ 898(1)); § 898(2) lists the acts that always require it.
Guardian on conflict of interest	Where a conflict of interest may arise between parent and child, or between children of the same parents, the court appoints a guardian (§ 892(3)).
Authority for the social and legal protection of children	OSPOD, under Act No. 359/1999 Sb., takes part in proceedings concerning the child and is commonly the guardian appointed by the court.
Liability insurers	Cover for damage caused by ordinary civil activity is usually part of the parents' household policy. It is not compulsory, but in practice insurers settle most claims.

On the criminal side: a child under 15 is not criminally liable (§ 25 of the Criminal Code), but the juvenile court may impose measures under the Juvenile Justice Act (Act No. 218/2003 Sb.).



Authorities involved



AUSTRIA

Several bodies protect the minor and manage claims in and out of court:

Legal representatives

Usually the parents, who must represent the minor in all legal matters.

Guardianship court

Must approve any act or decision concerning the subject matter of the dispute, settlements, admissions of liability and waivers, including waiver of the right of appeal.

Conflict curator

Kollisionskurator, appointed by the court where a conflict of interest arises between parents and child.

Child and Youth Welfare Office

Acts as statutory guardian where parental custody is compromised.

Private liability insurers

The most important actors out of court. Cover is typically included in the parents' household insurance policy and insurers handle and settle the vast majority of claims.



Types of cases most often encountered

TURKEY	POLAND	CZECH REPUBLIC	AUSTRIA
Peer violence Fights between children and the bodily injury they cause.	Road traffic accidents Minors on bicycles and electric scooters.	Schools and kindergartens Injuries during lessons, breaks and school trips, where the institution's duty of supervision is in issue.	Traffic accidents Children stepping into traffic or riding bicycles carelessly.
Dangerous objects and fire Throwing dangerous objects, and harm caused with flammable substances.	Few reach final judgment The initial assessment often shows that, despite considerable effort, fair compensation is unlikely to be obtained.	Sport and leisure Injuries in clubs, on ski slopes and at summer camps.	Sports injuries Collisions during skiing or summer outdoor sports.
Bicycles Injury to persons and damage to property caused while riding a bicycle.		Traffic Children as cyclists and pedestrians, often with apportionment under § 2918 of the Civil Code.	Playground scuffles Injuries caused by throwing stones or sticks, or by physical fighting.
Damage to property Damage to the property of others generally.		Damage to property Fire damage and damage to buildings and vehicles.	Playing with fire Arson or accidental fire damage to buildings.



Case study



TURKEY

Wood thrown into a child's eye

Yargıtay 2. HD, E. 2017/2764, K. 2017/11656

Facts A five-year-old child threw a piece of wood into another child's eye.

Issue The liability of the parents under Art. 369 TMK.

Yargıtay

The decision was reversed

The Supreme Court held that the contributory fault of the injured child also had to be examined.



Collision between two bicycles

Facts. A mother walks along a residential access road, usually free of traffic, with her three-year-old daughter, who rides a small three-wheeled bicycle. A girl of around 13 rides carelessly into the child, causing an open fracture of the lower leg, major surgery and long-term complications.

Difficulties

- The girl's exact age at the moment of the collision is unknown.
- It is unclear whether a child of that age should be supervised at all while cycling on a residential road.
- Even had the parents been present, it is unclear that they could have prevented the collision.
- A motion to initiate juvenile proceedings has been filed, but the injured party is not a party to them by operation of law.



A scuffle during a physical education lesson

Supreme Court, 20 September 2022, 21 Cdo 447/2022

Facts

During a game of dodgeball the ball rolled under the staircase and the teacher left the gym to fetch it. In her absence a ten-year-old boy ran at a classmate he had been quarrelling with; in the scuffle that followed he fell and broke his forearm.

Legal basis

The school is strictly liable for damage sustained by pupils during teaching. Where its own breach is only one of several causes, it cannot exonerate itself entirely.

Supreme Court

The claim is justified in the extent of 70 %

The school had to secure supervision for the whole lesson under its own safety rules, and the teacher's presence could have prevented the scuffle: 40 %. Both boys breached the school rules to the same degree: 30 % each.

Only the injured boy's own share is deducted from his claim, so the school answers for the remaining 70 %, including the share attributable to his classmate.



Case study



AUSTRIA

Collision between a minor skier and a snowmobile driver

Facts:

A 10-year-old girl did not ski with due care and attention while a snowmobile driver was passing. The girl was injured. She sued the ski resort operator and the snowmobile driver.

Supreme Court
3Ob232/12g:

Liability apportioned 50:50

A 10-year-old girl is expected to know the FIS Rules, to ski within her field of vision and not to jump over a blind hilltop.

The snowmobile driver had to wait another half hour for his trip until the slopes were empty.

The Supreme Court pointed out that the **contributory negligence of the minor** girl was already given **less weight** and if she had been an adult, her proportion of fault would have been given greater weight.



Hurdles in enforcement

TURKEY	POLAND	CZECH REPUBLIC	AUSTRIA
Capacity of discernment Establishing whether the child had it at the time of the incident. Who bears liability The child, the parents, the school, the nursery, the public administration or the insurer. The child has no assets Enforcement against the parents is possible only where they are independently liable. Turning 18 does not extinguish the debt; it changes only representation. Service and parties Service of process, proper constitution of the parties, parents living abroad, and interpreter issues for foreign children. Recourse between liable parties: Art. 62 TBK.	Children rarely hold assets And in serious injury cases even liable parents may lack the resources to satisfy the award. Redress in juvenile proceedings It is disputed whether it is an ordinary enforcement title; in practice it is enforced by fining the parents. Assessing the claim at the outset Even with a child over 13 the case may end in a finding that he lacked capacity, which cannot be reliably predicted when the case is taken on.	Proving neglect of supervision Most cases turn on this one fact-heavy question, and institutions argue that permanent supervision cannot be required. The child has no assets An award against the minor is often unenforceable, and there is no direct claim against the parents. Equity is discretionary Liability under §§ 2920(2), 2920(3) and 2921(2) turns on the court's view of both parties' assets. Procedure and insurance Court consent (§ 898) and a conflict guardian (§ 892(3)) slow settlement; liability cover is not compulsory.	Subsidiarity of equity liability This means that the injured party bears the burden of proof with respect to blameless supervisors and not having taken any initiative. Insurance There is no direct right of action against the insurance company in sports cases. The insured amount is sometimes not very high and may be insufficient to cover severe damages. Difficult prognosis Due to the discretionary decisions of the courts, case-by-case rulings make the prognosis difficult. Procedural obstacles Guardianship court approval is required. First, it must be proven that there is no liability under §§ 1308 and 1309 ABGB. Therefore, proceedings could be more expensive and protracted.



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Thank you for your attention



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