

CURRENT ISSUES IN JUVENILE JUSTICE

Gulnoza Yusupdzhanova Ilxomovna

*Lecturer of the Department "Prevention of offenses
and ensuring public safety" of the Specialized Branch of TSUL,*

E.mail:gyusupdjanova@mail.ru

ABSTRACT	KEYWORDS
<p>The article analyses the peculiarities of application of criminal punishment to juveniles. The need for special rules of liability in criminal law derives directly from the principles of justice and humanism. On the one hand, a child, due to his physical and mental immaturity, needs special protection and care, and therefore society cannot present him requirements equal to those imposed on persons of mature age. On the other hand, peculiarities of psychology of the juvenile allow better realization of the goals of criminal punishment by applying special, less severe punishments.</p>	<p>juvenile offenders, crime prevention, juvenile justice, criminal code, judicial practice.</p>

The prevention of juvenile delinquency currently continues to be one of the topical areas of state policy and one of the burning topics of concern to society. It is generally recognized in criminology that the prevention (prevention) of juvenile delinquency is a system of social management, which includes the objects of influence, its levels, measures and subjects of prevention activities.

According to statistical data, the crime rate in Uzbekistan increased in 2020 for the first time since 2017. The increase was 34.7%, including 2.1 times in Fergana region and 28.8% in Tashkent. Youth crime increased sharply, as did theft, fraud, hooliganism, premeditated murder, robbery and others.

Specifically, 188 crimes were committed by teenagers aged 13-15 in 2020, a 45.7% increase compared to 2019 (129).

Juvenile delinquency remains relevant and has significant characteristics that stem from the psychology of juveniles, the degree of their development and their ability to assess events realistically. Children and juveniles are the subjects most attracted to legal research in the fields of criminal law, criminal procedure and criminology. The main aim is to prevent juveniles from being subjected to conditions that worsen their situation compared to adults precisely because of their age-related maladaptation to life's extreme situations. In recent years, the issue of juvenile justice has become more pressing in the country, as evidenced by the growing interest of the State and society in it. Examples include the adoption of the Laws of the Republic of Uzbekistan "On Prevention of Child Offences and Neglect" and "On Guarantee of Child Rights" and the drafting of other legal and regulatory instruments in this area.

Criminal legislation lays down special conditions for determining the types of punishment to be imposed on minors, the imposition of penalties, their exemption from criminal liability and punishment, the calculation of the limitation period for criminal prosecution and the enforcement of sentences, and the expiry of criminal records.

Imposition of punishment is a key element in the process of criminal law protection of social relations.¹ Fair punishment is an important means in the fight against crime, to achieve the goals of correction of convicted minors.

The following main punishments can be applied to persons who committed crime when they were under the age of 18: fine; compulsory community service; correctional labour; restriction of liberty; deprivation of liberty (Article 81 of the Criminal Code of the Republic of Uzbekistan).

The aim of fair punishment for juveniles is to respect the "principle of proportionality". This principle is widely known as a means of limiting the use of punitive sanctions, expressed mainly in the use of the principle of retribution according to the gravity of the offence. The response to young offenders should be based not only on the gravity of the offence but also on the characteristics of the individual. The individual characteristics of the offender (e.g. social status, family situation, damage caused by the offender and other factors related to the offender's personality) should influence the proportionality of the response (e.g. taking into account the offender's desire to compensate for the damage caused to the victim or her or his desire to lead a full and useful life) as well as the influence of older persons. The influence of elders is to be understood as a negative influence that contributed to or led the juvenile to commit the crime. In addition, the court must take account of a minor's age as a mitigating circumstance in conjunction with other mitigating circumstances when sentencing him or her.

Among the mitigating circumstances, the fact that the offence was committed by a minor is primarily taken into account (art. 55 (p) of the Criminal Code). When discussing the imposition of punishment on a minor, the court proceeds from the fact that, instead of punishment, compulsory educational measures may be applied to such a person.

When a crime is committed as an accomplice, the role of the minor in the group at the time of preparation and commission of the crime, as well as in hiding traces of the crime and use of valuables obtained by criminal means shall be clarified. Commission by a minor of a crime without accomplices requires increased attention of the court to the gravity of the consequences and the behaviour of the perpetrator both before and after the crime was committed.

In specifying the penalties for a juvenile organiser, instigator or perpetrator of a crime, the question of the type of punishment and the possibility of influencing the behaviour of the juvenile without the use of imprisonment must be discussed if the crime is not classified as a grave or especially grave one.

When deciding on the type of punishment to be imposed on a juvenile, the court must discuss whether to impose a milder punishment than provided by law (Article 57 of the Criminal Code), to replace the punishment with a milder one (Article 90 of the Criminal Code) and to impose a suspended sentence (Article 27 of the Criminal Code). In our opinion, the court must motivate in its verdict both the limits of application of these measures of liberalisation of punishment and refusal to apply them.

Analysis of court practice shows that when sentencing in cases involving offences committed by juveniles, judges take into account their age, depending on the severity of the offence, and fairly reduce the length of the sentence. While we consider this positive experience to be appropriate, we note that

¹ Rustambayev M.Kh. Commentary to the Criminal Code. The General Part. T.:TSUL, 2004. p.446.

this practice deserves to be incorporated into criminal law. It would be advisable to provide in the General Part of the Criminal Code for the inadmissibility of imposing the maximum penalty on juveniles, reducing their size and terms by, say, at least 25% lower than in the case of adults who have committed similar offences.

In formulating a programme for the development of juvenile justice in Uzbekistan it must be borne in mind that in science and practice there is no single definition of this concept. However, an unambiguous definition of this concept is of fundamental importance, since it determines the form in which the relevant institution is constructed.

To date, the most common definitions of juvenile justice are as follows:

- 1) a system of special judicial proceedings on cases of offences committed by juveniles who have committed criminal offences and have reached the age of criminal responsibility;
- 2) a system of norms and institutions related to the child as a subject of offences, regardless of his/her age and category of offences
- (3) A system that includes not only the relevant legislation, but also a set of public and other bodies and organizations whose purpose is to protect the rights and legitimate interests of minors; the administration of juvenile justice; and the response to juvenile offences.

In drafting the country's criminal and criminal procedural legislation concerning juveniles. The legislation in force therefore generally reflects the correct approaches to the establishment of a juvenile justice system in the country. But time has shown that the procedural legislation needs to be refined in order to give maximum detail to the legal procedure in juvenile cases.

First of all, the following legal ideas should be reflected in the laws: 1) a juvenile brought before the court is considered a special subject; 2) both the individual characteristics of the child and the region where he or she lives must be taken into account; 3) along with legal measures, programmes aimed at social correction of juveniles, carried out by special services of social workers under the courts, must be actively used.

At the moment there is an educator and a psychologist involved in the process whose purpose is to assist the authority conducting criminal proceedings in proving the case. A minor is "assisted" by a defence lawyer who does not always have knowledge of child psychology and does not adapt his or her functions to the situation.

The legislation as a whole reflects the correct approaches to the creation of a juvenile justice system in the country in line with modern international standards of its organisation and functioning. But time has shown that the procedural legislation needs to be refined to maximise the detail of the legal procedure in juvenile cases and to further implement the principles of juvenile justice.

In determining the penalty, the court takes into account the nature and degree of danger to society of the offence committed, the motives for the offence, the nature and extent of the harm caused, the identity of the perpetrator, the circumstances mitigating and aggravating responsibility, and the reasons for the offence.

The nature of the public danger depends in the first place on the object of the crime. However, when the crime is committed by a juvenile, it is necessary to find out to what extent the juvenile was aware of the value of the object. Juveniles are not always able to fully and correctly understand the various aspects and elements of social relations protected by law; often in their opinion, they encroach on a less valuable object in comparison with its actual importance.

Regarding the various forms of guilt, it should be borne in mind that even in premeditated crimes the intention may differ in terms of the degree of awareness of the guilty person of his actions, the degree of anticipation of consequences, the time of occurrence of the intention (direct and indirect, premeditated and suddenly arisen, etc.). In most crimes committed by juveniles, intent is poorer in content than in adults.

It is even more difficult to assess the subjective side of an imprudent crime committed by a juvenile. So, committing a crime on carelessness, it is difficult for a minor to foresee the possibility of socially dangerous consequences, and if he/she does foresee it, often exaggerating his/her possibilities, presumptuously reckons on prevention of these consequences. Similarly, in the crimes committed by teenagers on negligence, the subjective criterion is rather often weakly expressed, i.e. the ability of the teenager on his individual qualities (incomplete intellectual development, feature of mentality, insufficiency of life experience, incomplete education, etc.) to foresee onset of dangerous consequences is reduced.

Regarding the consideration of mitigating and aggravating circumstances, it must first be borne in mind that in the criminal assessment of a juvenile offence, each mitigating circumstance increases liability less than is the case in similar conditions in adult cases. This is explained by the fact that in every juvenile case any of the mitigating circumstances is already a combination of at least two mitigating factors, where the second is juvenile².

In cases involving offences committed by adolescents, the most common mitigating circumstances are sincere repentance and active assistance in solving the crime; the commission of the crime due to difficult personal, family and other circumstances; and the commission of the crime under the influence of threat or coercion or other dependence. The latter occurs when adolescents are lured into criminal activity by their parents or persons acting in their stead or by their direct supervisors.

When individualising the responsibility and punishment of juveniles, the assessment of aggravating circumstances should be very carefully considered. Thus, the involvement of a juvenile in a crime committed by prior conspiracy or by an organised group should not always be regarded as an aggravating circumstance when the juvenile is involved in the crime by adults and has taken a minor part in the crime.

It is important to establish that the young person is fully aware of the significance of his or her actions and that he or she is able to direct them. If there is evidence of mental retardation in a juvenile defendant, the degree of mental retardation and whether he or she was fully aware of the significance of his or her actions and was able to direct them should be determined. Where necessary, an expertise in child and adolescent psychology (psychologist, pedagogue) should be carried out and the questions may be submitted to a psychiatric expert.

The comprehensive forensic psychological and psychiatric examination of a juvenile defendant is one of the most difficult types of examination, as it requires the application of special knowledge not only in general, medical and social psychology, but also in such disciplines as child and adolescent psychology and pathopsychology.

If a juvenile defendant is found to have a mental disorder which limits his capacity to fully understand the actual nature and public danger of his acts or to direct them in the commission of an offence, he is still liable to criminal prosecution. However, mental disorder is taken into account by the court in

² O.M. Dementyev, O.P. Kopylova, "Problems of age of criminal responsibility" 2010, Tambov. P.31

determining punishment and may also serve as grounds for imposing compulsory measures of a medical nature (article 94 of the Criminal Code).

Court practice shows that one of the criminogenic factors is the juveniles' living in single-parent families. The poor living conditions and upbringing of a juvenile, as well as the influence of the adults who involved the juvenile in the commission of a crime, can only mitigate his responsibility.

Thus, we can say that the peculiarities of assignment of punishment to a minor, established by the criminal law, are aimed at in-depth analysis of the circumstances of the committed crime, data on the personality of the perpetrator, his role in the commission of the crime. This contributes to the imposition of fair punishment to the minor in order to try to prevent him/her from committing new crimes³.

In view of the aims of the social response to a juvenile offence, it should be noted that these aims are purely utilitarian, the best way to respond is to apply special measures and educational measures. Special attention should be paid to the fact that reasonable punishment enables a juvenile who has committed an offence to regain his or her social status in the best possible way.

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³ O.M. Dementiev, O.P. Kopylova "Problems of age of criminal responsibility" 2010, Tambov. P.31.