

Features of Criminal Liability of Juvenile Criminals: International Legal and Comparative Analysis

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Abstract: The relevance of the problem under study lies in the fact that the criminal liability of juvenile criminals is one of the most difficult areas of criminal law. Minors, given their physiological, mental, and social characteristics, are considered a separate category of criminals, being one of the most vulnerable segments of the population. Therefore, juvenile delinquency manifests itself not only in causing harm to public relations, the personality of the victim, but also directly to the minor, forming antisocial behaviour in the latter's mind. Considering the above, the problem of the specific features of the criminal liability of minors remains relevant today. The purpose of the study is to analyse the criminal liability of minors from an international legal standpoint, as well as to carry out a comparative analysis of the features of the regulation of criminal liability of minors in different countries of the world. To fully explore the subject matter of the study, a set of general scientific and special methods of cognition was used. In particular, the study used the methods of scientific knowledge, system analysis, scientific abstraction, generalisation, comparison, analysis and synthesis, grouping, formalisation, historical and logical analysis. For example, the leading method was the comparison method, which helped to compare the specific features of practice in other countries of the world in criminal liability of minors. The study analyses the features of the criminal liability of minors, in particular the minimum age of criminal liability, differences between countries in this regard, as well as general international standards.

Keywords: Children under the age of criminal liability, age of criminal liability, juvenile justice, punishment.

INTRODUCTION

Juvenile crime is a growing concern in the modern world, constituting “a serious problem as the perpetrators of crimes are minors – in fact, children who are just starting their adult life” (Korolchuk 2013). That is why, “minors are special participants in social life due to age characteristics, dynamic development of a model of psychological behaviour, and insufficient life experience. They require a particularly humane attitude on their way to becoming an adult citizen” (Ortynska 2015). At the same time, “the allocation of special provisions on the criminal responsibility of minors is conditioned by the principles of justice, humanism, economy of criminal repression” (Muncie 2005). Yu. Alexandrov (2017), analysing the psychology of adolescents from 11 to 14-15 years old, notes that “adolescents have highly developed self-confidence and self-esteem, there are imbalances in behaviour, sensitivity to the comments of others, sometimes harshness and rudeness, uncritical assessment of their actions and insufficient tenacity. Their desires often do

not correspond to real possibilities; therefore, they still have a tendency to fantasies and inventions” (Alexandrov 2017).

Notably, juvenile offenders are already becoming victims of circumstances due to many social factors, including poverty, psychological and physiological characteristics. In this regard, children require protection, and not further punishment. Therewith, separate, more loyal norms should be applied to them, which would also give a chance to reform and rehabilitate. At the end of the 20th century, the development of international provisions and human rights law influenced the juvenile justice systems. In particular, a number of international legal acts, both general and special, were created, which regulate the issues of the specific features of the juvenile criminal liability. It should also be noted that most of the special international acts in this area are so-called “soft law” acts and are non-regulatory for states.

Therefore, there is a big difference in how “juveniles” are held liable for criminal behaviour. There are various legal differences in countries regarding the criminal liability of adults and juveniles. Almost all countries have separate rules for offences committed

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by juveniles. Therewith, the legislation of different countries regarding the definition of a child, classification of crimes or imprisonment of juveniles varies significantly. Most often, the scholars studying the problems of child crime associate the concept of juvenile crime with the age characteristic of the perpetrator (Kostenko 2017). Therewith, the age of onset of criminal liability also significantly differs in various countries.

Children under the age of criminal liability are deprived of legal capacity. This means that they are not subject to criminal prosecution, they cannot be formally charged by the authorities with a crime, and they cannot be subject to any criminal procedure or measure. The significance of the minimum age of criminal liability is that it recognises that the child has reached the emotional, mental, and intellectual maturity to be held accountable for its actions. It should be noted that there are ongoing discussions in many countries about the “correct” age limits in the criminal justice system, and there are examples of both movements to raise age limits and to reduce them. Thus, although the Committee on the Rights of the Child has made a recommendation on the minimum age of criminal liability, which should be 14 years, at present it varies considerably from country to country. The study will compare the experience of Kazakhstan, Ukraine, the USA, the United Kingdom, and the Federal Republic of Germany on this matter.

LITERATURE REVIEW

In recent years, crimes committed by juveniles have attracted more and more attention from the international academic community. Therewith, the system of punishment for juveniles who have committed a crime is also being considered. Such scholars as J. Muncie (2005), P. Reichel (2016) and others have studied the issues of international standards of criminal responsibility of minors. For example, J. Muncie (2005) notes the following: “Juvenile justice is becoming more and more globalised under the influence of international conventions, but at the same time it is becoming more localised due to national, regional, and local differences” (Muncie, 2005). Studying the issue of international standards for the administration of juvenile justice in the world, P. Reichel (2016) fairly noted as follows: “Unfortunately, the successful implementation of international standards in some national legal and judicial systems has not been fully achieved, but progress is evident. Despite the achievement of international consensus

and its anchorage in important and universally recognised international agreements, the implementation of indicators and procedures to ensure juvenile justice has been delayed” (Reichel 2016).

At the dissertation level, the subject of criminal liability of minors in the Republic of Kazakhstan was considered by S.M. Naurzalieva (2018). In her article, she proposed the concept of criminal liability of juveniles in the Republic of Kazakhstan, which means the obligation of a person who has committed a criminal offence between the ages of 14 to 18 years, to give an account for their actions and to suffer adverse consequences in this regard in the form established by law (Naurzalieva 2018). One should also agree with the views of A. Pavlovskaya (2013), who argued that “for the normal functioning of the justice system in cases of criminal prosecution of juveniles, it should include consideration of the age characteristics of the juvenile; legal guarantees for the protection of the rights and legitimate interests of juveniles; completeness of individual socio-psychological research of the personality of a juvenile; selection of individual measures of influence and their implementation. Therewith, to fulfil the principle of individualisation of criminal punishment and considering the age characteristics of juveniles, bringing them to justice requires detailed legislative consolidation” (Pavlovskaya 2013). A. Brown and A. Charles (2019) investigated the issue of the minimum age of criminal liability in England and Wales. In their writings, they supported the need to reform the minimum age of criminal liability in line with international standards and criticised the 10-year threshold for criminal prosecution for juveniles (Brown and Charles 2019). Therewith, the issue of criminal liability of juvenile offenders is still relevant and requires decision-making.

MATERIALS AND METHODS

The study of the criminal liability of juveniles was performed in a phased manner. Initially, the study analysed what international standards prescribe with regard to the criminal liability of juveniles. It further identified relevant legislation and research on juvenile criminal liability in national justice systems in five countries, namely the Republic of Kazakhstan, Ukraine, the United States, the United Kingdom, and the Federal Republic of Germany. Based on the study of the above, a comparative analysis of the practice of different countries in relation to this subject was carried out, as well as the compliance or non-compliance of national legislation with international standards. At the end,

general conclusions were drawn, as well as perspectives and recommendations regarding criminal liability of juveniles.

To conduct the study, a number of methods were applied, including various materials. Notably, the methodology of this paper constitutes a multiple case study of five countries, namely the Republic of Kazakhstan, Ukraine, the United States, the United Kingdom, and the Federal Republic of Germany. The choice of these countries is caused by the possibility of a more in-depth study of the differences within such different countries. The study involved mainly analysis of material from both primary and secondary sources. Primary sources include laws, regulations, and rules, as well as conventions and treaties. These primary sources were critical in determining the conformity of national legislation. Furthermore, the study also analysed the relevant provisions of various reports of the Committee on the Rights of the Child. Also, to better understand international standards on the criminal liability of juveniles, references have been made to other relevant international reports. The study used materials such as textbooks, scientific articles, legal encyclopaedias, seminar materials, and official websites. Thus, in the study, facts were collected, concepts, judgments were analysed, and conclusions were drawn. In the process of this study, previous scientific concepts were correlated with new ones.

A set of general scientific and special methods of cognition were used to cover the subject matter of the study. In particular, the study employed methods of scientific knowledge, system analysis, scientific abstraction, generalisation, comparison, analysis and synthesis, grouping, formalisation, historical and logical analysis, the method of comparison. Notably, the leading method in the study was the comparative analysis method. It helped compare the specific features of the practice of other countries of the world in criminal liability of juveniles, and also to reveal how the problems of juveniles are regulated in different countries. Information and knowledge gained from the experiences of different countries can be used as a basis for the adoption, adaptation, and development of new relevant provisions. In turn, the historical-logical method helped to consider the objective process of the development of international standards in the sphere of juvenile liability, while reproducing the historical process of development in its chronological sequence.

The study also used the dialectical method. With its help, new results were found. Thus, in the study, the

previously created theoretical knowledge in the field of criminal liability of juveniles was transformed. Furthermore, new modifications of existing knowledge were developed through the systematic addition of new theoretical provisions. The induction method, as well as the deduction method, became important methods that were used in the research. Based on the knowledge about international standards of criminal liability of juveniles in general, it was suggested that the national legislation of the countries in this area complies with international standards. With the help of the deductive method, conclusions were drawn from other scientific articles, the truth of which has already been established by other domestic and foreign scholars in criminal liability of juveniles. Also, to comprehensively study them, the study used the method of systems analysis, which helped to highlight the main features of criminal liability of juveniles.

RESULTS AND DISCUSSION

As O. Krukevich (2017) notes: “the world community in international acts (conventions, declarations, resolutions) formulated a universal principle of priority protection of the rights and interests of juveniles. The essence of this principle is to impose on the state the liability to ensure the priority protection of the rights and interests of children in the implementation of internal social and criminal policy” (Krukevich 2017). One should also agree with the views of O. Smaglyuk (2015), who noted that “international legal principles and provisions enshrine the special status of a juvenile, including one who has violated the law, and requires a more loyal, in comparison with adults, treatment of all states that have accepted the relevant obligations” (Smaglyuk 2015).

Notably, the legal definition of “a juvenile” is not consolidated at the universal level. Although the concept of “child” is contained in the 1989 UN Convention on the Protection of the Rights of Children and usually means a person under 18 years of age. Also, a “child” is usually considered incapable of committing a wilful criminal act. “Juveniles” deserve special consideration and protection, often in separate courts. Furthermore, the concept of “a youngster” is also highlighted, which also needs a more loyal attitude towards them. Indeed, the physical, mental, social, and spiritual conditions of juveniles are significantly different from adults (Baimakhanov *et al.*, 2018). Moreover, the problem is aggravated by social inequality, poverty, violence against children in families, and the vulnerability of orphans, which significantly increases

the possibility of juvenile crime. That is why the attitude towards juveniles should be much more loyal than towards adults. In a broad meaning, the criminal liability of juveniles can mean a set of measures of responsibility that are applied to juveniles who have committed a crime, the process of educating such persons aimed at preventing juveniles from committing offences, considering the principle of priority protection of the rights and interests of juveniles.

In view of the above, different countries have developed specific legal provisions that differentiate the position of children and young people in the general criminal justice system. In particular, they include rules governing the minimum age of criminal responsibility, together with rules governing specialised institutions such as children's courts and juvenile detention centres. Notably, children of almost any age can break the law, but it is still controversial at what age they should first face the possibility of being prosecuted for alleged crimes. Thus, the minimum age of criminal responsibility is the age below which children are legally considered incapable of violating criminal law. Children who commit a crime below this minimum age cannot be criminally liable (General Comment No. 24... 2007). Thus, this provision helps terminate the criminalisation of juveniles. Currently, there is a wide range of minimum ages of criminal liability in the national legislation of countries around the world, which ranges from 7 to 16 years. However, it should also be noted that in its general comment No. 10, the Committee on the Rights of the Child concludes that "the minimum age of criminal responsibility below 12 years is considered by the Committee as unacceptable at the international level" (General comment No. 10... 2007).

International Standards

International standards for the protection of children's rights began to actively form after the Second World War within the framework of various universal and regional organisations. This study analyses the activities of the United Nations, as a universal organisation that protects the rights of children, and also partially sets standards in criminal liability of juveniles. The general rule prohibiting the imposition of a budget sentence on juvenile offenders under the age of 18 is contained in the 1966 International Covenant on Civil and Political Rights (1966). Therewith, a more expanded list of provisions regarding the criminal liability of juveniles contains a global treaty adopted within the UN, which sets

standards in protecting the rights of children, namely, the 1989 Convention on the Rights of the Child. It is mandatory for all participating states. It also stresses the need for special guarantees and adequate legal protection for children. It is necessary to highlight the main provisions that relate to the criminal liability of juveniles. In particular, these include the prohibition of the death sentence; life imprisonment; encouraging extrajudicial action against juvenile offenders; the establishment of the minimum age from which criminal liability for juveniles is possible; arrest, detention, or imprisonment of a child must be in accordance with the law and should only be used as a last resort and for the shortest appropriate period of time (United Nations Convention... 1989).

Compliance with the Convention on the Rights of the Child is monitored by the International Committee on the Rights of the Child, which is based in Geneva and to which all countries must submit reports 2 years after ratification and every 5 years thereafter. Notably, the Committee has developed a "General Comment" which has established a minimum age of criminal liability consistent with the Convention. Thus, according to General Comment No. 24 of 2019: "States Parties are encouraged to take note of recent scientific discoveries and accordingly increase the minimum age to 14 years. Furthermore, developmental and neuroscience research has shown that adolescent brains continue to mature even after adolescence, influencing certain types of decision-making. Therefore, the Committee expresses its gratitude to States Parties that have a higher minimum age, such as 15 or 16, and urges States Parties not to lower the minimum age of criminal responsibility under any circumstances" (United Nations Committee... 2019). For a long time, in special UN treaties, the issue of criminal liability of juveniles was not raised. Thus, in 1955, at the First UN Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva, the Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules... 1955) were adopted. This document also did not contain provisions that would regulate relations with juveniles.

It was only in 1985 that by the resolution 40/33 the General Assembly adopted the UN Standard Minimum Rules for the Administration of Juvenile Justice, the so-called Beijing Rules. These rules are advisory and optional, being a document of the so-called "soft law". However, the Beijing Rules require member states to strive to promote the well-being of juveniles (United Nations Standard... 1985). Later, in 1990, the UN

General Assembly Resolution 45/113 adopted the UN Rules for the Protection of Juveniles Deprived of their Liberty. They state that the deprivation of liberty of a juvenile should be a last resort for the minimum necessary period and should be limited to exceptional cases (United Nations Rules... 1990). Among the international acts on the treatment of juveniles, a certain role belongs to the UN Guidelines for the Prevention of Juvenile Delinquency, also known as the Riyadh Guidelines of 1990 (United Nations Guidelines... 1990). They provide detailed guidance for national planning for the prevention of juvenile crime.

The Republic of Kazakhstan

Notably, in 2014 a new Criminal Code was adopted in the Republic of Kazakhstan, since that time several reforms have been carried out regarding criminal liability of juveniles. The age of the person who committed a socially dangerous act constitutes an important and inalienable sign of the subject of a crime. This is the most important factor in the mechanism of the liability of juveniles. Thus, according to Article 15 of the Criminal Code, the minimum age of criminal responsibility in the Republic of Kazakhstan is sixteen years. However, children who have reached the age of 14 are criminally liable if they commit one of the 30 crimes referred to in Article 15(2), which includes, inter alia, murder, rape, sexual abuse, kidnapping, theft, robbery, extortion, terrorism, vandalism, theft, and extortion of narcotic drugs or psychotropic substances, etc. (Criminal Code of the Republic of Kazakhstan 2014). To date, the annual decrease in crimes committed by juveniles in the Republic of Kazakhstan is decreasing by an average of 6%, and in 2019 by 9% (There is a decrease... 2019). Such indicators are the result of the reforms carried out in the Republic of Kazakhstan. In particular, the reform was aimed at protecting children and bringing national practices in line with international standards. Positive reforms contributed to the adoption of a new legal framework, limiting pre-trial detention of juveniles, replacing criminal liability with alternative corrective treatment, providing support and assistance to child victims and witnesses of crimes (UNICEF 2014).

Ukraine

Analysis of the criminal legislation of Ukraine indicates that the experience of Ukraine in criminal liability of juveniles coincides in a certain way with the experience of the Republic of Kazakhstan. According to Article 22 of the 2001 Criminal Code of Ukraine, as a

rule, any person who has committed a criminal offence from the age of 16 can be held liable for a criminal offence. Persons who have committed a number of particularly serious offences can be prosecuted from the age of 14. These offences are predominantly violent, but also include some property offences. O. Skok (2016) notes as follows: "the Criminal Code of Ukraine regulates the specifics of criminal liability and punishment of juveniles in a separate section. This is conditioned by the fact that the application of measures of criminal liability is the most severe type of legal liability in relation to this category of persons. Therefore, it is necessary to investigate the socio-psychological characteristics of the individual, the assessment of the risks of committing a second crime, the age and psychological characteristics of the juvenile" (Skok 2016).

Federal Republic of Germany (FRG)

The age for prosecution of juveniles in Germany is not determined by the Criminal Code of the Federal Republic of Germany, but by the 1953 Administration of Juvenile Justice Act. Therewith, the Criminal Code of the Federal Republic of Germany establishes only the provision according to which a person who at the time of the commission of the act has not reached the age of 14 is recognised as insane. The criminal legislation of the Federal Republic of Germany distinguishes, depending on age and the related possibility of bringing to criminal liability, three categories of persons: a) juveniles under 14 years of age, which cannot be brought to criminal liability; b) juveniles from 14 to 17 years old, the possibility of prosecution of which depends on whether the person crime was aware of the unlawfulness of their act at the time of its commission due to their mental and moral maturity; c) the third age category is "young people" at the age of 18 to 20 years, which after the reform of 1953 were also transferred to the jurisdiction of the juvenile courts (van Krieken 2004; Shchegel 2013). Notably, the German juvenile justice system makes provision for the creation of specialised juvenile courts as well as juvenile prosecutors. Special juvenile judges are at the local court. In case of a more serious violation, the prosecutor brings charges in the juvenile court of the local court, which is composed of one professional and two lay assessors. Only the most serious cases (murder, manslaughter, sex offences against juveniles and some other very exceptional cases) are referred to the juvenile ward of the district court (three professional and two lay assessors) (Pruin 2006).

The United States of America

When the first children's courts were created in the United States in the 1930s, they were widely recognised as a progressive system serving the best interests of the child. However, after a notable spike in juvenile delinquency statistics in the 1980s and 1990s, opinion changed dramatically in a more punitive direction. This was accompanied by legal reforms that increased the severity of sentences available to juvenile courts and lowered the age threshold for juveniles who can face adult criminal justice. The United States did not immediately sign the UN Convention on the Rights of the Child, which prohibited the death penalty for juveniles. Thus, 19 juvenile offenders were executed in the United States between 1990 and 2005. (Young, Greer and Church 2020). At present, in the United States there are also several problems in the area of juvenile criminal liability. For example, US law permits life imprisonment without parole; the hearing is carried out in adult courts; furthermore, the country also does not have a clear minimum age of criminal liability (Campaign for Youth Justice 2007; Youth in Adult Jails in America 2007).

United Kingdom

The minimum age of criminal liability in the United Kingdom is extremely low, being one of the lowest in Europe. Thus, the United Kingdom provides a special legislation that governs relations with juveniles. Under section 50 of the Children and Young Persons Act 1933 of the Parliament of the United Kingdom of Great Britain and Northern Ireland, as amended in 2008 (Law "Children and Young Persons" 1933), the age of criminal liability is ten years. This means that, for example, physical assault or theft of property by a child cannot lead to a felony charge. Thus, children under the age of 10 cannot be arrested or charged with a crime. Children between 10 and 17 years old can be arrested and prosecuted if they commit a crime. However, they are treated differently from adults and are sent to special safe centres for young people, not to adult prisons. Young people aged 18 are considered adults by law, but if sent to prison, they will be sent to a place where they are held from 18 to 25 years, not to an adult prison. Therewith, the UN Committee on the Rights of the Child has repeatedly called on England and Wales to raise the lower minimum criminal liability to 12 years (Committee on the rights of the child 2008). In turn, Scotland has different legislation regarding the age from which minors can be prosecuted. Under section 41 of the 1995 Law on Criminal Procedure

(Law "Criminal Procedure" 1995), no child under the age of eight can be convicted of any criminal offence, and no person under the age of 12 can be held criminally liable for a crime.

In the modern world, states have begun to look for a solution to the problem of increasing child crime. Therewith, the fight against juvenile delinquency is one of the most important aspects of the process of eradicating crime in society. To prevent criminal liability of juveniles, it is necessary to pay more attention to criminal law activities, the main content of which should be educational work, prevention of juvenile delinquency, elimination of the causes and conditions conducive to juvenile delinquency. Juvenile delinquency has significant features that are determined by their psychology, the degree of development, the ability to realistically assess the events that are taking place (Kretsul 2016). Notably, many of the children involved in the criminal justice system come from disadvantaged families, including such characteristics as poverty, homelessness, exclusion from education, abuse and neglect, drug and alcohol problems, disabilities, and mental health problems. These aspects can cause more serious problems among young people who are physically, emotionally, and socially more susceptible to them. Many of these problems are exacerbated by psychosocial immaturity and susceptibility to peer pressure. Therefore, considering the physical and mental differences between children and adults, states adopt separate rules as protective measures for juveniles who have committed a crime.

Analysing international standards in this area, it should be noted that the 1989 Convention on the Rights of the Child is the most important international treaty regarding the protection of the rights of juveniles, and is a legally binding document. It prohibits the execution and torture of children under the age of 18. Notably, rules for the treatment of juvenile offenders are also contained in the Beijing Rules and the Riyadh Guidelines. Unfortunately, in some countries there are significant problems in the area of juvenile criminal liability. In particular, in the United States, children and adolescents are held in adult correctional facilities. This exposes children and adolescents to serious violations of their rights and, moreover, they lose the special protection they should have in the criminal system. Furthermore, a comparison of age criteria for the onset of criminal liability of juveniles under the legislation of foreign countries helped to conclude that mental and

biological characteristics of age affect the development of criminal liability. The position of the countries that have set the age of 14 for criminal liability is insufficiently substantiated, since juveniles aged 7-13, considering the level of their psychophysical development, are incapable of predicting the social nature of their actions. Also, when improving the provisions of criminal law, it is necessary to factor in such characteristics as immaturity of thinking; lack of social experience; instability of the psyche; increased emotionality; increased suggestibility of juveniles.

Furthermore, juveniles are held in adult correctional facilities in some parts of the world. Such a measure reduces the likelihood of subsequent reintegration of juveniles into society. Moreover, in places where juveniles are forced to live with adult criminals, there is a high risk of violence, bullying, extortion, and even torture of juveniles. This practice is unacceptable and requires urgent revision. It is also necessary to revise the threshold of criminal liability for juveniles and raise it in some countries to 14 years, according to international recommendations. Furthermore, at the international level, there is no single special international act binding on the criminal liability of juveniles. Considering the vulnerability of children, as well as their psychological, physiological, and biological characteristics, it would be necessary to develop this document at the international level.

CONCLUSIONS

Thus, the study proposes a definition of the criminal liability of juveniles in a broad meaning, by which the author understands a set of measures of liability that are applied to juveniles who have committed a crime, the process of educating such persons aimed at preventing juveniles from committing offences, taking into account the principle of priority protection of the rights and interests of juveniles. When a crime is committed by juveniles, it becomes necessary, on the one hand, to maintain a balance between maintaining public safety, and, on the other hand, to respect the rights of the child. With this in mind, it is important to separate the concept of liability from the concept of criminalisation of juveniles. In turn, there should be more widespread punishments aimed at correcting, teaching, and preventing the commission of new crimes by juveniles. For this, it is necessary to pay more attention to such types of responsibility of juveniles as community service, attending special training and educational programmes.

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