



JUVENILES SENTENCING OPTIONS

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Summary

It is argued that multiple track approach to minors in criminal justice system is the most comprehensive way of reducing crime. Types of sentencing options are shown. Suggestions how to improve Ukrainian legislation in order of minors responsibility diversification are done.

Key words: juvenile delinquency, sentencing, criminal penalty, coercive measures.

Аннотация

Аргументировано, что многоколейная система государственной реакции на преступность несовершеннолетних является наиболее утилитарным способом сокращения преступности подростков. Рассмотрены виды принудительного воздействия на несовершеннолетних в уголовном праве. Высказаны предложения по совершенствованию действующего законодательства Украины в целях диверсификации ответственности подростков.

Ключевые слова: преступность несовершеннолетних, назначение наказания, уголовное наказание, coercive measures.

Problem formulation. Recognizing juveniles as a specific social group that has a special legal status, giving them different from other groups volume of rights and responsibilities, we can not fail to recognize the past as a special subject and criminal relations, important for processes humanization of responsibility.

Justice of minors must take into consideration age, socio-psychological, psychophysical and other features of their development, including through: training of judges, prosecutors, attorneys and employees of services for children on issues of juvenile justice; provide minors access to legal aid; promoting restorative justice, including the introduction of mediation procedures as an effective means of voluntary reconciliation between the victim and the offender; promote the formation of a juvenile offender a sense of responsibility for their actions, encouraging him taking responsibility for correcting damage, as well as positive changes in his behavior; involve the community in conflict resolution, in case the active participation of the parties in the renewal of the relationship; and so on.

Statement of the basic material. However, the idea of liberalization and humanizing practice of law without differentiation approach to various categories of crimes and criminals do not correlate with criminal reality. Of particular importance in these areas lays the decision on the criminal responsibility and punishment of minors.

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volume of rights and responsibilities, we are trying to recognize them as special agents in criminal relations.

Juvenile delinquency has always been and remains legal problem that always attracts the attention of scientists and practitioners. Of particular importance for the prevention of crime and its prevention among juveniles with criminal procedure, including protective, measures applied to this category of persons, aimed at preventing crimes and simultaneous teens rehabilitation.

Problems of differentiation of criminal responsibility and punishment of minors individualization is eternally relevant. Criminal law and criminal law theory of various countries have tried and are trying to find optimal answers to the questions:

a) the person is subject to criminal relationships and be responsible for damage due to the age stage and level of intellect and will;

b) what are the limits of criminal liability will be most suitable and reasonable for different age groups (children, adolescents, youth); impact features psyche, its pathological deviations on sentencing.

Most materials of criminal cases show that age features of minors significantly affect the motivation of their actions. These features are: lack of experience; tendency to imitate; the impact on them of others, especially adults; desire to show himself independent and free from control efforts and care of parents, educators; specific interpretations of concepts such as courage, honesty, friendship; incorrect assessment of specific situations; underdevelopment

and sometimes complete lack of critical attitude to their deeds, deeds of others. These characteristics of adolescents must take into account investigators and judges, which has the responsibility to carry out the prosecution of minor crimes.

Largely contributing to the commission of crimes by minors such circumstances as lack of control by parents, lack of preventive measures in dealing with "difficult" teenagers, their unemployment, alcohol and drugs, family problems, unemployment of parents and lack of funds for keeping.

At present there are no uniform law regulations that govern this issue. However, there are rules on the administration of justice in respect of persons who are not reach 18 years. In particular, the order of proceedings in juvenile crimes is shown in Articles 484–502 of the new Criminal Procedural Code of Ukraine. In accordance with the provisions of these articles, assessing actions minors, courts have to consider the fact that generally minor in terms of intellectual and volitional development behind the adult experience they have is insufficient, and if there are shortcomings in education, they might improperly assess the specific situation and choose a course of conduct, err in the interpretation of the content of concepts such as courage, maturity, a model to follow.

During the pre-trial investigation and prosecution of criminal offenses committed by minors, except the circumstances provided by Article 91 CPC of Ukraine, we have to clear up:

– Full and comprehensive information on the identity of the minor, age, state of



health, and other social and psychological features of a person to consider when choosing an individualization of responsibility or educational measures. If data on mental retardation of the minor not connected with mental illness should also be of decision whether he could fully realize the significance of his actions and to what extent could control them;

- Attitude to juvenile committed the act;
- Living conditions and upbringing of a minor;
- The existence of adult instigators and other accomplices of a criminal offense.

In accordance with Article 22 of the Criminal Code of Ukraine persons who commit a crime from 14 to 16 years are subject to criminal liability, only for committing certain crimes are subject to criminal liability persons under the age of 14 years (the list of such crimes defined Part 2 of Article 22 of the Criminal Code).

General features of criminal procedure for juveniles determined by the provisions ch. 4 Article 14 of the International Covenant on Civil and Political Rights, according to which “regarding underage process should be such as to take account of their age and the desirability of their re-education” [1]. It means that we need:

- The presence of appropriate qualification persons engaged in juvenile criminal proceedings;
- Building up the proceedings providing and protecting interests of minors;
- privacy secure to avoid damage to minors through unnecessary publicity;
- Creation of specialized juvenile judges.

It has often been noted that the punitive approach does not work as a crime prevention measure, and indeed, tends to promote higher levels of recidivism particularly amongst young offenders. That is why the typical coercive measures under Ukrainian Criminal law that substitute penalty are:

- warning;
- transfer under supervision of parents or persons substituting them;
- obligation to compensate the damage caused to property;
- restrictions leisure;
- referral to special educational institutions, schools;
- referrals to vocational schools for social rehabilitation [2].

Sentencing options for juvenile crime at West can be classified into two basic categories: incarceration-related options and non-incarceration options.

Sentencing options involving some form of incarceration may include, but aren't limited to:

- Detention in Juvenile Hall;
- House Arrest;
- Secured Juvenile Facilities;
- Adult Jail;
- Placement.

Sentencing options for juvenile crime also involve alternative measures designed to keep the minor out of a jail facility. These are sometimes known as “*diversionary programs*” intended to “divert” the minor offender from the normal routes of juvenile criminal justice. Some of these non-incarceration sentencing options may include:

- Warnings;
- Community Service;
- Counseling;
- Electronic Monitoring;

Judges often have much discretion to prescribe sentencing options for a juvenile offender. This is to maximize the minor's rehabilitation in light of their individual circumstances. Sentencing options for juvenile crimes therefore allow the minor to be reintegrated back into the community [3].

Conclusions. Courts in sentencing minors must observe the principles of legality, fairness, reasonableness and individualization of punishment, bearing in mind that the purpose of the punishment of the convicted person is his correction, education and social rehabilitation. A minor age person who committed the crime (criminal offense) under Criminal Code of Ukraine art. 66 paragraph 3 of Part 1 is the fact that soften punishment. Depending on the specific circumstances of the criminal proceedings the courts must consider as soften punishment penalties and other circumstances, though not mentioned in the law, which reduce the degree of public danger of a crime or entity (eg, involving a minor in criminal activities by another person, reconciliation the victim). To clarify it we need to be more sophisticated in criminal proceedings. That is why we propose the first sentence of Article 97 of Ukrainian Criminal Code to formulate as follows: “Juveniles who first committed premeditated crime of minor or medium

gravity or careless who committed a crime can be exempted from criminal liability...” It will comply Ukrainian CC with the provisions of Art. 6 of the European Convention on Human Rights and Fundamental Freedoms and practice of minors humanization of responsibility at art 93 of the Republic of Moldova Criminal Code [4].

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