



ACADEMICIA
**An International
 Multidisciplinary
 Research Journal**
 (Double Blind Refereed & Peer Reviewed Journal)



DOI: 10.5958/2249-7137.2021.01368.9

PECULIARITIES OF CRIMINAL PROCEEDINGS AGAINST JUVENILE DEFENDANTS

Dilzoda Sulaymanovna Dovudova*

*Senior Lecturer, PhD,
 Department of Ensuring Prosecutor's Powers in Courts,
 The Academy of the General Prosecutor's Office,
 UZBEKISTAN

ABSTRACT

This article examines the age of responsibility of juvenile defendants in national legislation and the issues of its improvement, a comparative analysis with the legal framework of other developed countries, the material and procedural framework of criminal proceedings, gaps in it, the circumstances that must be proved in the case of minors, the importance of determining the age of the subject, the need to determine the age of the defendant., the court should pay attention to the issues related to the grounds for the release of minors from responsibility and punishment, including the advantages in imposing a sentence against minors, its features, the importance of assigning a lighter sentence and a suspended sentence, the analysis of practical examples in this area., suggestions were made on positive and negative aspects and improvement of national legislation.

KEYWORDS: *Juveniles, Criminal Proceedings, Preliminary Investigation, Prosecutor, Court, Juvenile Delinquency, Age Limit, Birth Certificate, Antisocial Conduct, Preliminary Investigation, Significant Validity, Inquiry Officer, Juvenile Accuse, Aggravating Circumstances, Juvenile Liability, Compulsory Public Works, Correctional Work, Restraint Of Liberty, Imprisonment.*

INTRODUCTION

Criminal proceedings on juvenile delinquency is given as separate category in Section XIII (Chapter 60) of the Criminal Procedure Code of the Republic of Uzbekistan (hereinafter referred to as the CPC).

It should be emphasized that the procedure for hearing cases on juvenile delinquency is carried out in accordance with the general order of the trial, with the application of special rules.

The Order № 126 of the Prosecutor General of the Republic of Uzbekistan (November 27, 2015)“On further increase of efficiency of participation of the prosecutor in proceedings in criminal courts”¹ establishes the points to be taken into account by the prosecutor when considering cases on juvenile delinquency in court and assessing the lawfulness of the court decision.

Criminal proceedings on juvenile delinquency have some peculiarities. There are circumstances subject to further proving, as well as certain subjects who are required to participate in the case together with the juvenile. In addition, sentencing also needs specific approach.

Pursuant to the Article 17 of the Criminal Code of the Republic of Uzbekistan (hereinafter referred to as the Criminal Code), sane individuals who have reached the age of sixteen before the commission of a crime shall be found liable.

According to the Criminal Code the lowest age limit for criminal liability is the age of 13. For some offenses children aged 13 can be subject to criminal liability. In some cases criminal liability applies from the age of 14, and for some cases it applies from the age of 16.

International legal instruments do not stipulate the age of criminal liability, except for the rules that set the minimum level.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice – The Beijing Rules (paragraph 4) states that “In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”².

Correspondingly, the research on the criminal legislation of some countries revealed that the lowest age of criminal liability for juveniles is set as 14. For instance, Article 9 of the Criminal Code of the Republic of Korea specifies that the actions of persons under the age of fourteen shall not be grounds for liability³.

According to Article 20 of the Criminal Code of the Russian Federation⁴, Article 27 of the Criminal Code of the Republic of Belarus⁵, Article 15 of the Criminal Code of the Republic of Kazakhstan⁶, Article 17 of the Criminal Code of the Kyrgyz Republic⁷, Article 23 of the Criminal Code of the Republic of Tajikistan⁸, and Article 21 of the Criminal Code of the Republic of Moldova⁹ criminal liability is imposed on persons who have attained the age of sixteen at the time of commission of a crime, and the age of fourteen is established as the minimum age for liability.

Main part

Based on the afore-mentioned international standards and the legislation of developed countries, it is proposed to establish the minimum age of liability as 14 in the national Criminal Code.

Notably, according to Article 547 of the CPC of Uzbekistan, cases of crimes committed by persons under the age of eighteen by the moment of committing a crime shall be considered with application of a separate procedure in compliance with general rules.

Article 548 of the CPC of Uzbekistan stipulates the circumstances that are subject to proof in juvenile delinquency cases, according to which the following must be proved during interrogation, preliminary investigation and trial.

- Availability of grounds for accusation and conviction (Article 82 of the CPC);
- Grounds for rehabilitation (Article 83 of the CPC);
- Grounds for termination of criminal prosecution without establishment of culpability (Article 84 of the CPC);
- The age of the juvenile: the day, month and year of birth;
- Peculiarities of personality and health condition of the juvenile;
- The juvenile's living and upbringing conditions;
- Availability of adult instigators or other accomplices.

In particular, in criminal proceedings, it is imperative to establish the age and identity of the juvenile. One should be mindful of the fact that a person is considered to have attained the age at which the criminal liability sets in, not on his birthday, but after the day on which that day falls, that is, from zero hours of the next day.

When the forensic medical examination establishes the age of the defendant, his birthday is considered the last day of the year named by the experts. When determining the age of the minimum and maximum number of years, the court should proceed from the minimum age of such a person established by the experts¹⁰.

Accordingly, attention should be paid to the presence in the case file of a photocopy of the birth certificate or passport of the juvenile. However, if it is established that there are no such documents in the case, it is imperative to eliminate such a shortcoming at the initiative of the court or the prosecutor.

If a crime is committed by a juvenile, who has not reached the age of recognition as the subject of that crime, Article 84 (part 1, item 7) of the CPC is applied. According to it, the criminal case shall be dismissed without establishment of culpability in commission of the offense on the grounds that the person has not reached the age of criminal liability by the moment of committing a crime.

Determining the age is as an important element of proof, as this helps to clarify the fact that the juvenile defendant can be the subject of a crime or not. And it should be noted that there are characteristics and limitations in imposing a penalty.

In addition, it is imperative to study the personality of the juvenile and the state of his health, his living and upbringing conditions.

According to A.A. Fedorova, in criminal proceedings against juvenile defendants, the court has to learn the psychological condition of a minor, his/her ability to fully realize the actual character of the crime committed, reasons for criminal conduct, lifestyle, family environment and its surroundings¹¹.

Provided there is evidence that the juvenile defendant is mentally ill, a comprehensive forensic examination should be ordered to clarify whether the juvenile is mentally retarded or not.

Besides, in accordance with the legislation, only persons who have reached the age of 18 and who have intentionally committed a crime may be prosecuted for inducing a juvenile in antisocial conduct.

Furthermore, it should be determined that an adult knew that s/he was engaging a juvenile in antisocial conducts through one's actions, or s/he allowed such an opinion in his/her mind. Providing an adult who induces a person in antisocial conduct and was unaware or unable to know that the induced person was juvenile, in that case s/he cannot be prosecuted under Article 127 of the Criminal Code.

For instance, Mr. M, who had previously been convicted, being a dangerous recidivist, together with criminal accomplices Mr. B, Mr. K and Mr. N induced a juvenile Mr. D in commission of a crime. Under previous criminal concert on 17.12.2017, at 9.30 pm, the group entered illegally entered an unnumbered house

of citizen Mr. A in the Dustlik mahalla of Yangiyul district. They stole a herd of sheep(total number 23), which costs of 20 millionsums.

The investigating body caught the criminals. Mr. M, Mr. B, Mr. K and Mr. N were charged under Article 127 (part 3) and Article 169 of the Criminal Code for involving a juvenile Mr. D in the crime of theft.

The juvenile Mr. D, who was questioned in the court investigation, stated that it was Mr. M and Mr. B who interested him to commit the crime of theft. He also stated that he did not know defendants Mr. K and Mr. N, that they did not involve him in the crime, that he saw them after the crime had been committed. Similarly, Mr. K and Mr. N also gave a similar testimony to the juvenile Mr. D.

The court found that defendants Mr. K and Mr. N's involvement in inducing a juvenile in a crime had not been proven, as they had not met the juvenile Mr. D before, that they lived in a different neighborhood, and that they had no any relationship with the juvenile, that they had seen the juvenile Mr. D after the commission of theft, but it was dark they did not realize that he was a juvenile.

Therefore, the court did not charge them under Article 127 (part 3) of the CC because they did not know that Mr. D was a juvenile.

According to the decision¹² of the Yangiyul District Criminal Court dated 15.02.2018, Mr. M was found guilty under Article 169 (part 3, subparagraph 'a') and Article 127 (part 3) of the Criminal Code, Mr. B under Article 169 (part 2, subparagraphs 'b', 'c', 'd') of the Criminal Code and Article 127 (part 3), Mr. K, Mr. N and juvenile Mr. D were found guilty under Article 169 (part 2, subparagraphs 'b', 'c', 'd') of the Criminal Code and sentenced in accordance with the law.

What is more, according to Article 51 of the Criminal Code, it is mandatory that the defense attorney participate in the preliminary investigation and in criminal cases committed by juveniles in court. This rule applies even in the case of a juvenile's refusal to have a defense attorney (requirements of Article 52 of the CPC), and regardless of whether the accused has reached the age of adulthood (majority) by that time. This rule also applies to cases where a person is accused of crimes, one of which was committed by him/her under the age of 18, and the other after reaching the age of majority.

Failure to comply with the requirements of this procedural law is considered a serious violation of law on criminal procedure under Article 487 of the CPC, which is the basis for the annulment of the sentence.

In addition to this, as long as evidence is obtained in violation of the rights of the juvenile suspect, accused or defendant, it shall be found inadmissible.

With this in mind, the prosecutor participating in the case should pay particular attention to the fact that the right of defense of the juvenile accused is provided during the preliminary investigation and trial. The prosecutor is supposed to react firmly by protesting if their right to procedural protection is not ensured.

On top of that, it is mandatory that a legal representative participate in the proceedings on juvenile delinquency.

RESULTS AND DISCUSSIONS

The participation of a legal representative in the case shall be allowed from the moment of the first interrogation of a juvenile as a suspect or accused by the decision of the inquiry officer or investigator. When a legal representative is allowed to participate in the case, s/he shall be explained the rights provided for in Article 61 of this Code.

By a decision of an inquiry officer, investigator or a court ruling, the legal representative of a juvenile might be removed from participation in the case if there are grounds to believe that his/her actions may harm the interests of the juvenile. In this case, the protection of the interests of the juvenile is entrusted to another legal representative or representative of the guardianship and trusteeship body.

A.A. Fedorova proposed to supplement Article 428 of the Criminal Procedure Code of the Russian Federation with the norms that the absence of a legal representative may be grounds for termination of the criminal case, as well as if it is established that the legal representative did not come without reasonable excuse, the court concludes that his actions are evaluated as that s/he may not protect the interests of the juvenile, and the court should take measures to change the legal representative¹³.

In fact, A.A. Fedorova's views are of significant validity. It is known that the national procedural legislation establishes the rule of mandatory participation of the legal representative. However, the procedure for the absence of the legal representative, and its consequences for failure to appear are not regulated in the legislation.

As the legal representative of juvenile suspect, accused and defendant is a participant in the proceedings, this requires the regulation of all this procedural actions.

In this regard, in our opinion, Article 549 of the CPC should be supplemented with a norm that provides that the absence of a legal representative may be grounds for termination of the criminal case, as well as if it is established that the legal representative did not come without reasonable excuse, the court concludes that his actions are evaluated as that s/he may not protect the interests of the juvenile, and the court should take measures to change him/her (the legal representative).

A teacher or psychologist may participate in the questioning of juvenile accused on discretion of the investigator or prosecutor. With permission of the investigator, s/he may put questions to the accused, and, upon completion of the questioning, get familiarized with the official record and make comments concerning the accuracy and completeness of the entries made therein. These rights shall be expounded by the investigator to a teacher or psychologist before the questioning of juvenile, with the entry to this effect being made in the official record of questioning.

In considering juvenile delinquency cases, particular attention should be paid to the specifics of criminal liability of juveniles set out in Section VI (Articles 81-90) of the CC of Uzbekistan.

The prosecutor or defense counsel, when commenting on the imposition of a sentence on a juvenile, should consider the possibility of requesting a punishment unrelated to imprisonment, taking into account the nature and degree of social danger of the offense, information about such persons and mitigating and aggravating circumstances.

There are peculiarities of juvenile liability, fines, compulsory public works, correctional work, restraint of liberty, imprisonment shall not exceed the amount established by law. Juvenile delinquency is recognized as a mitigating circumstance.

For instance, a fine is imposed on a juvenile defendant in the amount of two to twenty times the minimum wage.

When sentencing a juvenile defendant, it is necessary to appoint a social educator for the juvenile in cases of conditional conviction, or penalty, not related to deprivation of liberty.

In addition, in imposing a punishment related to deprivation of liberty on juvenile offenders, the law sets out certain restrictions and privileges.

For example, a sentence of long-term and life imprisonment may not be imposed on a person who has committed a crime under the age of eighteen.

For the juveniles who committed a crime with insignificant social danger, committed unintended offence, committed intentional less serious crime, punishment in the form of imprisonment shall be imposed.

It should be emphasized that the court may impose a punishment in the form of imprisonment only in cases where it is not possible to rehabilitate the offender without segregation from society. At the same time, the verdict must substantiate the court's conclusion.

When imposing a sentence of imprisonment on a minor, the application of Article 85 of the CC is sufficient and no additional application of Article 57 of the CC is required. Except in cases of imposition of other less severe punishments on the defendant, which are not provided for in the article of the special part of the Criminal Code in which s/he was found guilty.

For example, a juvenile Mr. N (born on 02.03.2000) on 11.12.2017 at about 22:00, being drunk, in order to intentionally inflict bodily harm to his elderly grandmother Ms. M (born on 01.01.1935) who lived with him, went to his place of residence (43 Qadirlik Street, Birlik mahalla, Qibray district, Tashkent region). Knowing that Ms. M was in a weak condition, hit her with his hands on different parts of her head, causing severe bodily injury. As a result, Ms. M died at the intensive care unit of Qibray District Central Hospital.

According to the decision of the Qibray District Criminal Court, Mr. N was found guilty under Article 104 (part 3, sub-paragraph 'd') of the Criminal Code and sentenced to 6 years in prison.

Thus, although the sanction of Article 104 (part 3, sub-paragraph 'd') of the Criminal Code provides for imprisonment of 8 to 10 years, when imposing a sentence on a juvenile defendant Mr. N (17 years old), a sentence of up to 7 years imprisonment may be imposed in accordance with Article 85 (part 3, sub-paragraph 'b') of the Criminal Code¹⁴.

When sentencing a juvenile in the form of imprisonment or correctional labor, the court, if there are grounds and conditions provided for in Article 72 of this Code, may apply a suspended sentence (conditional sentence). Accordingly, the application of Article 72 of the CC in sentencing in criminal cases committed by minors should be thoroughly and comprehensively considered by the courts.

In practice, juveniles are often given a suspended sentence and a probation period for serious and very serious crimes, depending on the consequences of their actions and the circumstances of the case.

Therefore, at a time when the prosecutor or defense counsel is asking for the application of Article 72 of the CC to juveniles, the purpose of educating the defendant should be clearly stated that specific obligations will be imposed on him/her during the probation period (completion of study, employment, etc.).

In addition, the attending prosecutor must consider the issue of release from liability or punishment towards the juvenile defendant by applying compulsory measures, taking into account the degree of social danger of the crime committed and the mitigating circumstances identified in the case.

Pursuant to Article 87 of the Criminal Code, a juvenile who has committed a crime of insignificant social danger for the first time may be relieved from liability, if, taking into account the nature of the act committed, the personality of the perpetrator and other circumstances of the case, it is found that his reformation can be achieved without the application of punishment, with the transfer of materials to the Inter-agency Commission on Juvenile Affairs.

A juvenile who has committed a less serious crime for the first time, which is punishable by imprisonment for a term not exceeding five years, or who has repeatedly committed a crime of insignificant social danger, providing there are grounds provided for in the first part of this article, the court must consider the issue of discharge from punishment and application of compulsory measures against the juvenile defendant.

The prosecutor expresses opinion on the compulsory measures specified in Article 88 of the Criminal Code, that is, on the obligation to apologize to the victim in the form prescribed by the court, on the obligation to cover, to pay by labor or to eliminate the damage caused to a person who has reached the age of sixteen at his own expense, on the placement of a juvenile in a special educational institution. And the court shall decide on the release from punishment and the application of compulsory measures without imposing a punishment.

For instance, juvenile Mr. D living at the address: flat 15, apartment 27 U. Nosir Street, Bekabad city, on November 29, 2017, at 09.30 am, illegally entered flat 13, apartment 26, U. Nosir Street, Bekabad city, through the window. Juvenile Mr. D stole 13 thousand sums (it was on the table)

sums and 650 thousand sums (from the closet) in cash, which belonged to Mr. T, the owner of the apartment and 3 keys hanged at the entrance of the apartment.

As a result of the theft, Mr. T suffered material damage in the amount of 663 thousand soums.

During the preliminary investigation, a total of 663000 soums and the keys to the apartment were seized as material evidence from Mr. D in the presence of attesting witnesses.

During the trial, taking into account that Mr. D was a juvenile, that he fully compensated for the damage, that he reconciled with the victim, that he was a schoolboy, and there was a positive description from his place of residence, these were considered mitigating circumstances under Article 55 of the CC. And the court found that there were no aggravating circumstances under Article 56 of the CC.

The court found Mr. D guilty of committing an offense under Article 169 (part 2, 'g') of the Criminal Code. And according to Article 87 of the Criminal Code he was released from punishment with the application of compulsory measures. He was obliged under Article 88 of the Criminal Code to apologize to the victim Mr. T in public¹⁵.

According to Article 90 of the Criminal Code of Russian Federation, a juvenile who has committed a crime of small or average gravity for the first time may be relieved from criminal responsibility if it is found that his reformation can be achieved by applying compulsory measures of educational influence¹⁶.

The law also provides that a juvenile who has committed a serious crime may be released from punishment if it is sufficient to educate him by placing him in a closed special educational institution¹⁷.

We can see that in the procedural legislation of the Russian Federation, there is no limit to the application of exemption from liability or punishment in respect of a juvenile defendant.

However, national legislation sets certain limits on the discharge of a juvenile accused or defendant from liability or punishment by the application of compulsory measures. In particular, exempting from liability or punishment is applied (to juvenile accused or defendant) in respect of a person who has committed a less serious crime for the first time, which is punishable by imprisonment for a term not exceeding five years, or in relation to a person who has repeatedly committed a crime of insignificant social danger. As regards a juvenile who has committed a serious crime, there is also no provision for exemption from punishment for them.

CONCLUSION

From our point of view, the application of exemption from liability or punishment to a juvenile who has committed a crime will serve their future better upbringing, to prevent them from re-offending, and most importantly protects them from the criminal environment.

For this reason, it is not appropriate to limit the grounds for applying the exemption from liability or punishment in the CC.

Thus, in the proceedings of juvenile defendants considered in court, prosecutors should identify the causes of the crime, and express an opinion on the issuance of a private ruling to eliminate those causes.

The correct application of substantive and procedural laws ensures that the punishment against the perpetrators is lawful and fair. Likewise, the court and the prosecutor are also responsible for the fair imposition of the sentence.

To conclude, it should be emphasized that further improvement of the mechanism of criminal proceedings regarding the juveniles under the Criminal Procedure Code and the Criminal Code of the Republic of Uzbekistan could be another guarantee of protection of their rights and legitimate interests.

REFERENCES

1. The order of the Prosecutor General of the Republic of Uzbekistan from November 27, 2015 of No. 126 "About further increase of efficiency of participation of the prosecutor in criminal cases" Item 10
2. https://www.un.org/ru/documents/decl_conv/conventions/beijing_rules.shtml (Date of appeal 04/11/2021)
3. <https://vseokoree.com/vse-o-koree/zakony-i-normativnye-pravovye-akty/ugolovnyj-kodeks-respubliki-koreya>
4. <http://docs.cntd.ru/document/9017477>
5. https://nrm.uz/contentf?doc=433171_ugolovnyy_kodeks_respubliki_belarus
6. <https://zakon.uchet.kz/rus/docs/K1400000226>
7. http://fmc.uz/legisl.php?id=k_ug_4
8. http://base.spinform.ru/show_doc.fwx?rgn=2324
9. <http://lex.justice.md/ru/331268/>
10. Paragraph 5 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated September 15, 2000 No. 21 "On judicial proceedings in juvenile delinquency", dated 26.11.2021
11. A.A. Fedorova. Some features of the consideration of cases by the court of first instance with the participation of underage defendants. Bulletin of the University of the Prosecutor's Office of the Russian Federation No. 1 (81) 2021, p. 64.
12. The verdict of the Yangiyul district court on criminal cases dated 15.02.2018.
13. 1Database of verdicts of the Tashkent Regional Criminal Court in 2018.
14. "The Criminal Code of the Russian Federation" dated 13.06.1996 N 63-FZ (as amended on 05/04/2021, as amended on 08/04/2021), Art. 90, http://www.consultant.ru/document/cons_doc_LAW_10699/a675a4ea8c67cda1c933cf0db7fd539cceb d8af6/