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Zhatkanbaeva A.E., Berdibaeva A.K.[2], Baimakhanova D.M.[3], Maria Riekkinen[4]

Doctor of Law, e-mail: Aizhan.Zhatkanbaeva@kaznu.kz
[2]Candidate of Legal Sciences, Associate Professor, e-mail: sheali@mail.ru
[3]professor, e-mail: dina_405@mail.ru
al-Farabi Kazakh National University, Kazakhstan, Almaty
[4]PhD doctor, associated professor ABO Akademia,
Finland, Turku,e-mail: mpimanov@abo.fi

THE INFLUENCE OF INTERNATIONAL EXPERIENCE ON THE FORMATION OF THE JUVENILE JUSTICE SYSTEM IN KAZAKHSTAN

This article analyzes the development of the material and procedural legislation of the Republic of Kazakhstan on the legal responsibility of minors and the impact on its development of the experience of a number of foreign countries and international legislation in general. The purpose of this work is to analyze the implementation in Kazakhstan of the international obligations assumed in the field of juvenile justice. In addition the research of problems of development of juvenile justice of Kazakhstan through a prism of research of positive and negative sides of the main types of world systems of juvenile justice and their introduction into domestic practice. During the writing the work, both general theoretical and scientific methods of cognition were used, specifically dialectical, comparative, legal, historical, formally dogmatic, specific legal and logical. The scientific and practical significance of the study lies in the results and conclusions. Increased scientific interest in the problem of juvenile justice is associated with ongoing reforms in this area. The work of the juvenile court system revealed a number of problems that extent coincided with the requirements of the international agreements signed by Kazakhstan. This is the provision of qualified medical, legal, psychological assistance during the investigation, serving a sentence, and in the process of socializing children and their adaptation. As a result, the article concludes that it is necessary to further implement international norms and their actual implementation at all stages of processes, as well as further improve the material norms of criminal, criminal procedure, administrative and family legislation. The article analyzes the main types of juvenile systems adopted with the world. Their positive and negative aspects are singled out, which allowed the authors to make practical suggestions on the development of the domestic model. The practical value of the article is the possibility of using the results obtained to improve the current legislation of the Republic of Kazakhstan and the rights of the child, as well as in law enforcement activities when bringing a minor to legal responsibility.

Key words: juvenile, juvenile justice, Beijing rules.

Жатқанбаева А.Е.[1], Бердибаева А.К.[2], Баймаханова Д.М.[3], Мария Риэккинен[4]

[1]заң ғылымдарының докторы, e-mail: Aizhan.Zhatkanbaeva@kaznu.kz
[2]з.ғ.к., e-mail: sheali@mail.ru
[3]профессор, e-mail: dina_405@mail.ru
әл-Фараби атындағы Қазақ ұлттық университеті, Қазақстан, Алматы қ.
[4]PhD докторы, аға оқытушы ABO Akademia,
Финляндия, e-mail: mpimanov@abo.fi

Қазақстандағы ювеналды әділет жүйесінің қалыптасуына халықаралық тәжірибенің әсері

Бұл мақалада кәмелет жасқа толмағандардың құқықтық жауапкершілігі туралы Қазақстан Республикасының процессуалдық және материалдық заңнамасына және оның дамуына бірқатар

шетмемлекеттер тәжірибесі мен халықаралық заңнаманың тұтастай алғандағы әсеріне талдау жасалынады. Жұмыстың мақсаты Қазақстандағы кәмелет жасқа толмағандарға қатысты сот әділдігін жүзеге асыру аясында міндеттілікке алынған халықаралық міндеттемелерді іске асырылуына талдау жасау болып отыр. Сондай-ақ, ювеналды әділеттің әлемдік жүйесінің басты түрлерінің оңды және теріс әсерін зерттеу арқылы Қазақстандағы ювеналды әділеттің даму мәселелерін зерттеу болып табылады. Жұмысты жазу барысында жалпы теориялық және танымның нақты ғылыми: диалектикалық, салыстырмалы-құқықтық, тарихи, формалды-догматикалық (арнайы құқықтық), нақты-құқықтық және қисынды әдістері қолданылады. Ювеналды әділетке деген жоғары қызығушылық бұл аяда болып жатқан созылмалы реформалармен байланысты болып отыр. Ювеналды соттар жүйесінің жұмысы Қазақстанның қол қойған халықаралық келісімдер талаптарына түспа түс келетін, шешуді қажет ететін мәселелерді анықтады, бұл тергеу барысында, жазасын өтеу барысында, сондай-ақ балаларды әлеуметтендіру барысында жоғары медициналық, құқықтық, психологиялық қызмет көрсетуден көрінеді. Нәтижесінде, мақалада халықаралық нормаларды одан әрі іске асырудың және ісжүргізудің барлық сатыларында орындау және де қылмысты, қылмыстық іс жүргізушілік, әкімшілік және отбасы заңнамалары нормаларын жетілдіру қажеттілігі туралы қорытынды жасалынды. Мақалада ювеналды жүйелердің әлемде қабылданған басты түрлеріне талдау жасалынды. Олардың оң және теріс аспектілерін бөліп көрсету арқылы авторлар отандық моделін дамытуға байланысты тәжірибелік ұсыныстар жасау мүмкіндігіне ие болды. Мақаланың тәжірибелік мәні алынған нәтижелерді Қазақстан Республикасының бала құқығы туралы күші жүріп тұрған заңнамасын жетілдіруге, сондай-ақ, кәмелет жасқа толмағандарды құқықтық жауапкершілікке тарту барысындағы құқыққолданушылық тәжірибеде пайдалануға болатындығында.

Түйін сөздер: кәмелет жасқа толмағандар, ювеналды әділет, Пекин ережелері.

Жатканбаева А.Е.[1], Бердибаева А.К.[2], Баймаханова Д.М.[3], Мария Риэккинен[4]

[1]доктор юридических наук, e-mail: Aizhan.Zhatkanbaeva@kaznu.kz
[2]кандидат юридических наук, доцент, e-mail: sheali@mail.ru
[3]профессор, e-mail: dina_405@mail.ru
Казахский национальный университет имени аль-Фараби, Казахстан, г. Алматы
[4]PhD доктор, ABO Академия,
Финляндия, г. Турку, e-mail: mpimanov@abo.fi

Влияние международного опыта на формирование системы ювенальной юстиции в Казахстане

В данной статье проводится анализ развития материального и процессуального законодательств Республики Казахстан о юридической ответственности несовершеннолетних и влиянии на их развития опыта ряда зарубежных стран и международного законодательства в целом. Целью данной работы является анализ реализации в Казахстане взятых на себя международных обязательств в области отправления правосудия в отношении несовершеннолетних. А также исследование проблем развития ювенальной юстиции Казахстана через призму исследования положительных и отрицательных сторон основных видов мировых систем ювенальной юстиции и их внедрения в отечественную практику. При написании работы применялись как общетеоретические, так и конкретно научные методы познания, а именно диалектический, сравнительно-правовой, исторический, формально-догматический (специально-юридический), конкретно-правовой и логический. Научная и практическая значимость исследования заключается в полученных результатах и выводах. Повышенный научный интерес к проблеме ювенальной юстиции связан с продолжающимися реформами в данной области. Работа системы ювенальных судов выявила целый ряд проблем, которые в тои или иной степени совпали с требованиями международных соглашений, которые подписал Казахстан, это и оказание квалифицированной медицинской, правовой, психологической помощи в период следственных мероприятий, при отбытии наказаний, а также в процессе социализации детей и их адаптации. В итоге, в статье сделан вывод о необходимости дальнейшей имплементации международных норм и их фактического исполнения на всех этапах (стадиях) процессов, а также дальнейшего совершенствования материальных норм уголовного, уголовно-процессуального, административного и семейного законодательств. В статье проводится анализ основных видов ювенальных систем принятых с мире. Выделены их позитивные и негативные аспекты, что позволило авторам внести практические предложения по развитию отечественной модели. Практическое значение статьи заключается в возможности использования полученных результатов по совершенствованию действующего законодательства Республики Казахстан и правах ребенка, а также в правоприменительной деятельности при привлечении несовершеннолетнего к юридической ответственности.

Ключевые слова: несовершеннолетние, ювенальная юстиция, Пекинские правила.

Introduction

A number of independent states that emerged at the end of the twentieth century and took a direction to democratic, social and legal development, wishing to take a worthy place in the world system, actively joined the world process of ensuring, protecting and guaranteeing the political, economic and social rights of its citizens. Kazakhstan also actively joined in this process, adapting its domestic policy to international requirements and standards. This directly relates to the problems of protecting the rights of children and minors who have committed wrongful acts and who have been involved in criminal or administrative proceedings.

Normative acts, acting in the framework of modern international organizations and national legal systems, allocate minors as a special age group of people – carriers of special rights and duties. It is stipulated that the minor is one of the first to receive social and legal protection and assistance. The special status of minors actualizes legal studies of the specifics of the exercise of the rights of this category of persons. Problems of childhood, issues of ensuring the rights of minors are a priority both for the world community as a whole and for Kazakhstani society.

International relations on the protection of children's rights, including in the sphere we are analyzing, over the past 60 years have turned into multilateral, including multi-level actors: the state; international governmental organizations, non-governmental associations, international clubs (or para-organizations), integration associations, TNKs and their lobbying groups, as well as individual actors (donors and patrons of art).

The growing awareness of the special vulnerability of children by the world community and, as a consequence, the need to develop a political institution for the protection of the rights of the child, has led to the adoption of a whole range of international documents on the protection of the rights of the child. The turning point is the adoption of the 1989 UN Convention on the Rights of the Child, the implementation of which is provided by other agreements and protocols. Among them, documents aimed at ensuring the right of the minor to have access to justice have an important place.

Kazakhstan ratified more than 800 international treaties, 33 of which are universal multilateral in the field of human rights, including 7 – basic, defining the basic human rights and freedoms, for which the Republic submits periodic national reports to the UN.

The methodology of the study. In the course of the scientific and legal analysis and processing of its results, analysis and doctrinal interpretation of normative legal acts with the use of system-legal, historical, comparative legal, structural, logical-legal and legal-linguistic methods of scientific research were used.

The problems associated with the legal regulation of the rights of minors and their guarantees for access to justice in Kazakhstan in terms of compliance with international instruments ratified by the Republic of Kazakhstan were investigated on the basis of the main provisions:

– norms related to the consideration of the issues of the protection of the rights of adolescents in the process of obtaining the right to access to justice, enshrined in a number of international instruments of universal, regional and sub regional nature, as well as resolutions and decisions of the UN convention bodies;

– developed international legal mechanisms that ensure the realization of children's rights, including access to justice;

– a positive experience of the legislation of foreign countries in terms of ensuring the principle of equal access to justice and its implementation.

When analyzing the interaction of juvenile justice bodies of the Republic of Kazakhstan with public institutions, the following methods were applied:

1. Historical and legal analysis, allowing to consider the trajectory and progress of the development of the domestic mechanism for the protection of children's rights, including the juvenile justice of Kazakhstan;

2. Comparative-legal, comparative-analytical methods that allow comparing domestic and international methodology of work, organization, and activities of juvenile justice institutions and the influence of civil society institutions on it. In this context, a functional comparison is used; normative comparison; problem comparison, conceptual comparison;

3. Specific-sociological, assuming the collection, analysis, and processing of legal and other analytical information (official documents, materials of law enforcement agencies, materials of questioning);

4. Statistical method;

5. The linguistic method.

At the empirical level, the study of normative legal acts, other documents, printed publications, publication in the media, etc., is applied.

Discussion and literature review

The UN Congress on Combating Crime and the Treatment of Offenders have developed a number of important international acts on the protection of the rights of juvenile offenders during the administration of justice, serving sentences in places of deprivation of liberty, and measures to prevent juvenile delinquency. These are the UN Standard Minimum Rules for the Administration of Juvenile Justice of 1985 (known as the "Beijing Rules") and the 1990 UN Guidelines for the Prevention of Juvenile Delinquency and the UN Rules for the Protection of Juveniles Deprived of Their Liberty.

The Beijing Rules were created on the basis of the principles of the Universal Declaration of Human Rights (1948), the 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, in so far as they reflected the general principles for the protection of human rights, international documents. Accordingly, in the Beijing Rules, a significant role was played by the problems of creating decent living and upbringing conditions for young people and adolescents, which is regarded as an important means of early prevention of juvenile delinquency.

However, the Beijing Rules (commentary) draw attention to the fact that the provisions "are specifically formulated in such a way that they can be applied in various legal systems and, at the same time, set some minimum standards in dealing with juvenile offenders under any existing definition of the concept of a minor and under any system of treatment of a minor offender. "

The most important provisions of this document are:

a) the notion of a minor offender. They are those who, within the framework of the existing legal system, can be held accountable for an offense in a form that is different from the form of responsibility applicable to an adult; while the adolescent should be suspected of committing an offense or, as established, committed it (Article 2.2);

b) the concept of the so-called status crime (offense). It is a question of responsibility for misdemeanors, not punishable if they are committed by adults, but punishable when committed by minors (Article 3.1);

c) the age of criminal responsibility. In Art. 4.1 The Beijing Rules recommend that the lower limit of the age of criminal responsibility is not at too low an age level, "taking into account aspects of emotional, spiritual and intellectual maturity." A commentary to this recommendation is characteristic: if the age limit is set at too low a level or not at all, the concept of responsibility becomes meaningless. "Therefore," the commentary says, "efforts should be made to establish a reasonable lower age limit that could be applied internationally";

d) the objectives of juvenile justice. They, according to the Beijing Rules, are to ensure the well-being of the minor and ensure that any measures of influence on juvenile offenders are always commensurate with both the characteristics of their personality and the circumstances of the offense (Article 5.1). The second goal serves as a means of limiting the use of punitive sanctions against minors;

e) the amount of discretion in cases involving minors. It is known that the expansion of the discretionary powers of the court and other law enforcement agencies in relation to minors is a characteristic feature of the entire juvenile justice system. That is why in Art. 6.1-6.3 of the Rules, special needs of minors taken into account in exercising these discretionary powers are noted, as well as the importance of monitoring discretionary powers and the requirements for high qualification and training of persons using these powers. The latter two requirements are obviously a means of limiting the widespread and uncontrolled use of discretionary powers in cases of minors. Thus, the Rules attempt to overcome the conflict existing in the theory and practice of juvenile justice between the expansion and narrowing of discretionary judicial powers in cases of minors;

(e) Confidentiality in juvenile cases is assessed in the Beijing Rules as a guarantee "to avoid causing harm to a minor due to unnecessary publicity or damage to reputation" (Article 8.1). In Art. 8.2 emphasizes that in principle no information should be published that could lead to the identification of a minor offender. This rule, as is known, is not the same for all countries. There is a group of countries where national legislation provides for the opposite order – publicity with only small reservations and in the trial of cases of minors. It is this procedure that is provided for by the current criminal procedure legislation. In Beijing, however, an attempt is made to impart a universal character to the requirements of confidentiality, to regard it as an obligatory general principle of the entire trial of minors. This is confirmed not only by the general declaration of Art. 8.1 and 8.2, but also the prohibition of the access of "third parties" to the materials of cases of juvenile offenders, the use of these materials in cases of adult offenders (articles 21.1 and 21.2).

The second part of the Beijing Rules is devoted to the investigation and prosecution of juvenile

cases. This part of the international legal instrument under consideration is the most detailed. It covers:

– Detention of minors and all other contacts of the judge and other competent persons with minors. The general rules of the Habeas Corpus doctrine are clearly traced in the requirements of art. 10.1 – 10.3, which are known to be reflected in the UN Standard Minimum Rules for the Treatment of Prisoners adopted at the First United Nations Congress on the Prevention of Crime (Geneva, 1955);

– termination of the case of a minor in the pre-trial stage. The Beijing Rules (Article 11.1) recommend that "when examining cases of juvenile offenders, if possible, do not resort to official case analysis by the competent authority" (that is, the court or the competent administrative authority). Instead, any termination of the case of a minor and the transfer to a "community service" require the consent of the minor and/or his legal representatives.

Termination of the case is possible at any stage of the decision (Article 11.2).

The most significant issues reflected in the third part of the Beijing Rules ("Decision-making and the choice of measures of influence"), we can consider the following:

– a competent authority competent to rule on the case. The court (tribunal), the council, the commission are referred to them as rules. Accordingly, when it comes to the court, it is meant that the sole judge is within the competence of the sole judge to decide (Article 14.1);

– on guidelines for the adjudication and selection of measures of influence. It is about the proportionality of the measure of influence not only with the circumstances of the case and the severity of the offense (the general rule of punishment), but also with the situation and needs of the minor himself (individualization of responsibility and punishment), as well as with the needs of society (general prevention) (p. "Article 17.1); the prohibition of the use of the death penalty and corporal punishment of a minor; on minimizing the restriction of personal freedom of a minor offender (Article 17.1-c and 1-e).

In Art. 18.1, which lists the measures that the authors of the Beijing Rules considered possible to recommend for their uniform application in the member countries of the international community. The Beijing Rules offer 8 groups of measures, defined by their common objectives: leadership and supervision; probation; compensation and restitution; restoration of damage by own labor, work for the benefit of the community; group therapy; other educational measures. The commentary to this article notes that all these measures are successfully applied in different legal systems. Typical in this general indication art. 18.1: The list of measures included in it is proposed to the "competent authority" "in order to ensure greater flexibility and avoid imprisonment whenever possible." The commentary to this article emphasizes that it does not refer to the requirements for personnel applying the measure of influence, because in some regions such personnel may not be. It is understood that the extensive system of special services for the application of measures of influence against minors is an arsenal of highly developed countries.

In the development of the general guiding principle of adjudication and the choice of the measure of influence, namely, minimizing the restriction of the individual's personal freedom in Art. 19.1 of the Beijing Rules, the following requirement is formulated: "The placement of a minor in any correctional institution should always be an extreme measure applied during the minimum necessary period." Note that this rule is the development of the resolution of the VI Congress of the United Nations on crime prevention, which stated in which cases it is permissible to place a minor in prison.

The application of the Standard Minimum Rules for Juvenile Justice was included in the so-called Milan Plan of Action adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The plan was approved by the UN General Assembly (resolution 40/33 of 29 November 1985, containing the Beijing Rules, 40/35 of 29 December 1985, on the development of standards for the prevention of juvenile delinquency and 40/36 of 29 November 1985 – about violence in the family).

The importance of the Beijing Rules for the further development of international and national aspects of juvenile justice was emphasized already in the Rules themselves. As stated in the UN General Assembly resolution of December 10, 1985, which approved the Beijing Rules, the General Assembly urges all relevant bodies of the UN system, in particular the regional commissions and specialized agencies, the UN institutes for the prevention of crime and the treatment of offenders, other intergovernmental and non-governmental organizations to cooperate with the Secretariat and take the necessary measures to ensure in their respective areas of special competence the agreements sustained action to implement the principles of the Beijing rules. I must say that there are not many international documents of the UN, where the problems of minors and, most importantly, justice for children, adolescents and youth would

be presented so broadly and comprehensively, and where the assessment of the importance of the implementation of the international instrument was emphasized so categorically.

It was from the end of 1985, following the long work of a significant number of scientists and practitioners in the field of criminal justice, that the Beijing Rules received a "right to exist" and began their journey within the international community. At that time, great hopes were placed on their implementation and continue to be entrusted to them. In the universality of international rules, a large reserve is seen to increase the effectiveness of all justice for minors.

It can be said that the Beijing Rules initiated the adoption of a number of international legal instruments relating to minors, in which a number of articles referring to the tasks and activities of juvenile justice. These are the UN Guidelines for the Prevention of Juvenile Delinquency (the UN Riyadh Principles of 1988) adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (were approved at the 68th plenary meeting of the 45th session of the UN General Assembly on December 14, 1990).

It was the Beijing demands that formed the basis for the development of modern juvenile and penitentiary systems in most countries of the world, including domestic ones.

United Nations Rules for the Protection of Juveniles Deprived of Their Liberty General Assembly resolution 45/113, which were adopted because the Assembly "is alarmed by the conditions and circumstances in which minors are deprived of their liberty throughout the world, Conscious that, as a result of the deprivation of liberty minors become extremely vulnerable to abuse, victimization and violation of their rights, Concerned that many systems do not distinguish between adults and imperfectly year-olds at various stages of the administration of justice and that therefore juveniles are held in prisons and correctional institutions together with adults "has left this document (The UN Standard Minimum Rules for the Treatment of Prisoners: 1).

This document regulates the most important aspects of juvenile detention in places of deprivation of liberty, which are recognized as "an extreme measure of impact and for the minimum necessary period of time. It should be limited to exceptional cases for the execution of a court verdict after conviction for the most dangerous types of offenses and with due regard to the attendant conditions and circumstances. The term of punishment must be determined by the judicial body, not excluding the possibility of his or her early release. "

In addition to the requirements for the conditions of juvenile detention, the analysis of the Rules makes it possible to single out the following aspects that are most important in our view:

1. the most rapid consideration of cases;

2. minors, whose cases have not yet been examined in court, should be kept separate from those already convicted of minors;

3. Minors should have the right to legal counseling and be able to apply for free legal aid when such assistance can be provided, and also communicate regularly with their lawyer. Such communication should ensure non-interference in privacy and confidentiality;

4. Where possible, minors should be given the opportunity to continue to work in paid employment or continue their studies or training, but they should not be required to do so. Their work, education or training should not lead to an extension of the period of detention;

5. minors should be allowed to receive and carry with them objects intended for leisure and recreation, if this does not contradict the interests of the administration of justice.

The rules contain requirements for the administration of places of deprivation of liberty, namely their reporting, documentation, the provision of conditions for their stay, the provision of education, medical services, the realization of the right to religion, rest, communication and official treatment, special attention should be paid to the personnel requirements for places of deprivation freedom.

These Rules also formed the basis for the improvement of the modern penitentiary system.

In general, it should be noted that the international community has developed a certain standard of treatment of minors who committed unlawful acts. This standard absorbed the most democratic and humane beginnings.

The introduction of these standards into the domestic system of justice (the first stage) took almost 10 years of the life of Kazakhstan society and showed serious positive results, the analysis of which will be carried out in the following sections.

Critical analysis of Anglo-American, Continental and Scandinavian juvenile justice models: positive and negative aspects

The system of juvenile justice is an aggregate of state bodies, i.e. bodies of local government

and self-government, officials, non-governmental non-profit organizations that carry out "legitimate" actions aimed at implementing and securing the rights, freedoms, and interests of the minor.

Juvenile Justice (Juvenile Justice – in translation from English juvenile justice) in the modern sense has a fairly long and interesting history. Yuvenaly in ancient Rome called the festival in honor of the goddess of youth.

Currently, the juvenile justice system includes not only various institutions of society, but also a broad structure of bodies and organizations covering all aspects (profiles) of this problem. Control and supervision of this area for many states are made at the national level.

Juvenile justice as a social institution began to develop more than a century ago. Late XIX-early XX century. are commemorated by the fact that an unprecedented growth in child crime has occurred. This was the first impetus for the application of justice in relation to minors. Such a specialized court first appeared in the state of Illinois (USA) in 1989.

For the consideration of cases of minors, a new concept was introduced: "guilty", "delinquent" (English delinquent), different from the concept of "criminal" (English criminal). In addition, found the consolidation of the status of a minor offender, who became a subject of juvenile justice. Next came the rapid spread of juvenile courts, as in Amerika; and beyond. By 1931 a juvenile court existed already in 30 countries.

To date, several models of juvenile justice have developed in the world; Anglo-American, Continental, Scandinavian.

Each of these models has its own specifics. Interest in the analysis of these models is growing due to, for example, that post-Soviet countries whose level of development calls for the need to pay close attention to the problems of juvenile delinquency and to protect the interests of minors who have committed unlawful acts while developing their own model analyze the existing ones and try to attach them for its own reality.

Let's consider each of these models:

Anglo-American model, operating in the UK and USA, Canada and Australia.

The emergence and development of the idea of courts for minors were largely influenced by the activities of the English courts of justice, which already in the XVII-XVIII centuries. cases for the protection and guardianship of children. In 1908 in the UK for the first time in the history of legal regulation of the situation of minors, the Children's Law is adopted. To some extent, this law was a harbinger of the adoption in 1959 of the Declaration of the Rights of the Child in 1989.

The United States is the country that made the first official contribution to the creation of juvenile justice. So, in 1824 in New York the first reformatory for children was created with the purpose to protect them from joint maintenance in prisons with adult criminals. In 1831 the law of the State of Illinois pre-examined that the punishment of minors for certain types of crimes should be different from that of adults. In 1869 in Boston (Massachusetts) for the first time were organized meetings of the court specifically for the consideration of cases of non-adults, and also the first experience of applying the probation regime (educational supervision) to them, which later became one of the most widespread and, according to the Americans, the most effective methods of dealing with juvenile offenders. The federal law of the United States already contained an order to consider cases of minors under the age of 16 separate from cases of adult criminals.

In his thesis "Juvenile justice in the United States, England and Russia XIX-XX century: Historical and legal analysis" Russian scientist NN. Shtykova identifies the following positive features of the juvenile justice of the Anglo-Saxon model:

1. The main differences between the juvenile justice system and the criminal and civil justice system are expressed in the aims and principles of the activities of the first juvenile courts, and in establishing the competence of these courts in relation to two categories of subjects: juvenile offenders and minors left without care, and with respect to adults, violated the rights and legal interests of minors;

2. The simplicity of the trial in the first juvenile courts in the United States and in England was characterized by the rejection of a strictly formalized procedural order of cases. The basis of the proceedings was the informal conversation of a judge with a minor (whether he was already an offender or simply a person left without parental care);

3. The basic idea of the doctrine of "paternal care" of American juvenile justice is the provision on the need for state intervention in the interests of the minor in his life and the life of his family. The categorical apparatus of this doctrine includes the concept of a minor offender, the concept of a disobedient child and a child left without parental care. The American juvenile justice has developed four categories of juvenile delinquencies: "statutory offenses", "traffic offenses", "criminal offenses" and "serious or serious criminal offenses". Fundamental ideas of the American doctrine of

"fatherly care" were reflected both in the juvenile codes of the states, and in the federal laws adopted in the field of juvenile justice and the prevention of juvenile delinquency. Fundamental ideas of the doctrine of "fatherly care" in the United States are the sole consideration of cases of minors, the non-recognition of juvenile criminal responsibility, the duty of the society to identify the causes of criminal behavior of a minor and correct them, the "medical" approach to the problem of juvenile delinquency, the guardianship, rehabilitation and rehabilitation of minors, "Justly deserved" when imposing punishments for a teenager to commit serious and violent crimes .

4. The central category of the English juvenile justice and its doctrine of "care, protection and control" is the category of "the needs of minors in care, protection and control," which defines the boundaries of the guardianship proceedings in the juvenile court. In the process of consideration of the case, such techniques as collegiality of juvenile cases, encouraging the child to communicate with his parents in court, the use of understandable words familiar to minors, as well as the desire to reduce criminal proceedings by substituting for guardianship, including in criminal cases .

5. The activities of various charitable organizations were of particular importance for the establishment of juvenile justice in the United States and Great Britain. The social movement, represented by the Relief Council and the Chicago Patronage Association for Minors, initiated the adoption of the law establishing the first juvenile court in history of justice in 1899 (Shtykova N.N., 2001: 2).

The preventive system of the Anglo-Saxon juvenile system is to prevent a teenager from "getting in trouble," to prevent problems that contribute to the criminalization of adolescent behavior. How prevention methods work: the youth inclusion program (YIP) for people from 8 to 17 years old, which gives the young person the opportunity to raise the educational level, gain new skills and help with the choice of professor; the concept of reconciliation of an adolescent with a victim, compensation for damage, mechanisms of "restorative justice", "seminal conferences", involving joint discussion by family members of juvenile delinquents and their victims of the question of an adequate form of smoothing guilt, compensation for harm caused.

The American criminal trial of juvenile cases is substantially simplified and expeditious.

The juvenile trial in England and Wales is governed by the rules set forth in the Children and Young Persons Act of 1933. According to the 1933 Act, all cases of minors aged 10 to 17 years (subject to the amendment of the Increase Act 1968 age of criminal responsibility), with the exception of murder cases, are dealt with by juvenile courts (magistrates' courts) in summary proceedings, as well as minor offenses such as vagrancy, violations of school law, shoots from to and gambling, etc. In addition, it should be noted that the specialization of courts for minors was their exclusive jurisdiction over children and adolescents. As a rule, the court for minors exercised its powers with respect to two categories of subjects:

– children who committed unlawful acts or who are in unfavorable for their health and morality conditions (in the USA this applies to children and adolescents aged 16-19, in England to 16 and in Russia to 17 years);

– parents and persons who replace them, for failure to perform or improper performance of their duties, cruel treatment of children, as well as other adult persons involving minors in committing offenses or contributing to their similar actions.

The court proceedings in the juvenile court include the following three stages:

– Call to the judge, his conversation with the minor, the decision of the judge regarding the further movement of the case or its termination and the release of the adolescent from a judicial or non-judicial procedure;

– The actual proceedings are conducted by a single judge or a panel of judges; sentencing;

– enforcement of the sentence, where the role of the court is in the implementation of judicial supervision (at this stage, the court's leading role, its activity) also remains.

Thus, in the American court for minors, the stages mentioned above have the following content:

– The initial actions of the court, which are expressed in the examination of materials, selection (sifting) or referring them to the competence of the court, in resolving the issue of detention or pre-trial detention (arrest), in studying the "case" prior to the administrative hearing;

– application for the hearing of the case, registration of relevant documents;

– Hearing of a decision on the case;

– hearing of court orders.

Each stage of the process in the American juvenile court decides whether to lead a teenager to a formal process or to withdraw it from judicial and even non-judicial procedures.

Under the English Law of 1984 on police and criminal evidence, a constable may arrest a minor if there are the following grounds:

– if the surname of the minor is unknown, and the constable cannot establish it;

– if the constable has reasonable grounds for doubting that the surname given to the minor is his own surname;

– if he is not satisfied with the address specified by the minor;

– if the constable has reasonable grounds to believe that the arrest is necessary to prevent further unlawful actions of the minor;

– If the constable has reasonable grounds to believe that the arrest of this minor will protect children or other vulnerable persons.

Typical for the English court for minors is a large role in the process of the clerk – "the master of the whole judicial process." It is the clerk that sets the tone for the court session-formal or informal, offering it to the participants in the process, controlling the flow of information used by the court (for example, reports prepared for the court and distributed to magistrates).

Traditionally, the probation service plays an important role in the activities of the English court for minors, which is typical for the American "children's" court. However, unlike the American criminal trial for minors, where the probation service begins already at the initial contacts of the judge with minors, in the modern English process, it is increasingly being squeezed out by local bodies of the social service, to which the court and addresses its instructions.

The doctrine of "paternal care" of US juvenile justice, and the doctrine of "care, protection, and control" for juvenile juvenile justice in England influenced the formation and development in these countries of a network of social services for the rehabilitation and reintegration of children and adolescents in need of help from the state. In most states of the modern US, the system of juvenile justice is independent of the "adult" justice system. In most states, it is administered by a social service, namely the Social Services Agency in 23 states and the family and children service in 6 states. In 11 states, the juvenile justice system is under the control of the adult justice system.

Negative features of the Anglo-American model are:

1. The speed and promptness of cases in the courts of the Anglo-American juvenile justice system often leads to a relapse of the offense, and more serious. But the speed of the trial also has its negative side: a real possibility of violation of human rights, incompleteness of investigation, gaps in evidence, doubts about the sources of their receipt (Zaderius, 2017: 3);

2. The same applies to liberal measures of punishment applied to minors. Although there is another opinion, M. Danilova also stresses that "Judges of Great Britain are given a wide range of sanctions applicable to youth: starting from curfews, warnings and educational conversations and ending with the appointment of socially useful (unpaid) works (from 16-17 years) and imprisonment in a penal colony. It should be recognized that the latest, most stringent measures have the least rehabilitation effect, the percentage of relapses after them is much higher. In 2009, a new law was passed, giving offenders the opportunity to reimburse the victims of the crime. In addition, the judges must now justify the non-use of alternative measures to deprivation of liberty, if such an opportunity existed. Already five years after the beginning of the reforms it was noted that the innovations represent a qualitatively new model for the provision of public services, work with offenders is now much more effective, the level of relapses has significantly decreased. One of the facts supporting this was the closure of three correctional institutions for juvenile offenders» (Danilova, 2017: 4).

3. Entanglement of the jurisdiction of juvenile courts.

The continental model is based on the legal systems of Germany, France, Belgium, Romania, Poland and a number of other European countries. criminal responsibility comes in 13 years. An important aspect of this system is that the judge "leads" a teenager from the very first occurrence of a difficult situation. Therefore, the judge is always well acquainted with the history of the teenager and his family, knows how to help a given family or teenager. Under such a system, the judge combines the functions of "formal justice" and, in part, with the social worker. More effective are the methods of preventive impact on the child, which the judge has. In addition, extra-judicial measures are applied to minors; sending a minor (with his consent) to participate in a social program or social service in the community, an official warning.

Juvenile courts were created following the example of the USA in Belgium in 1912, France in 1914, Greece in 1924, and a number of other countries.

The main principles of the continental juvenile system are:

1. The principle of the preference of educational measures before punitive (punitive) measures. Orienting the juvenile justice system to the educational component contributes to the protection of the rights and interests of the minor,

its re-socialization, and therefore corresponds to the objectives of the special prevention;

2. A deep acquaintance with psychology, with the personality of a minor offender. A judge makes a verdict only on the condition of a thorough, thorough, thorough study of the personality of a minor criminal, while a "social investigation" with the compilation of a special file is a prerequisite. Moreover, such a study judge can conduct himself, but mostly instructs his probation service officials who use the help of psychologists, psychiatrists, education specialists (Tretyakova, 2016: 5). That is, it is the specialization of judges who deal solely with cases of minors;

3. the systematic nature of the various bodies and services coordinated by the juvenile court;

4. Mobility in determining the type, content, and nature of educational measures applied to a minor;

5. Presence of preventive potential of juvenile delinquency, including in the form of special prevention.

One of the measures to influence a teenager appointed by a court may be a visit to a so-called curatorial center, for example, in Poland, there are 300 such centers. The curator's work includes several directions: compiling a report on the identity of the adolescent and the situation in the family (the curator visits the family, talks with the adolescent and members of his family), containing an analysis of the situation and recommendations for assistance or educational measures (in 90% of cases the judge follows the recommendations of the curator) ; monitoring of the behavior of the child (the supervisor visits seven, the school, the work place of the teenager and regularly reports to the judge); implementation of a coordination link between various structures – school, family, social service, police, medical institutions (for example, the curator can send the child to the center of psychological diagnostics). In a number of countries, a reconciliation procedure has been introduced. The court decides whether this or that case should be directed to a reconciliation program. In this procedure, the mediator (a person not dependent on judicial and law enforcement bodies) takes part and both sides are present – the minor who committed the illegal act and the victim. Then, the reconciliation agreement goes to court: if the court agrees with him, the case ends, if not, the judge proposes his decision (Chuvilev A., 1998: 6).

I would like to dwell on one more specificity of the continental model, namely, on the experience of Germany, where the policy of refusing criminal prosecution is adopted. This direction is associated with the concept of "sabotage". The essence of this concept is to abandon the formal criminal process by applying informal alternatives to it, involving a lack of lengthy procedures and a formal trial (Zhalinsky, 2004: 7). Sabotage belongs to one of the directions of liberal criminal policy and is focused, first of all, not on reaction, but on prevention. Sabotage helps to avoid stigmatization (in the process of recognizing a person guilty, stigmatization occurs and in the public environment he acquires a new status – "criminal", in addition, communication with other persons serving punishment takes place in an atmosphere of antisocial behavior and contributes to the formation of appropriate attitudes and outlook) (Pergataya, 1998: 8).

To negative aspects of this system, the researchers also note – the registration of the growth of juvenile delinquency, many researchers of the law of Austria, Germany attribute this to excessive weakening of responsibility, but several other specialists say that this system will not show interrelated processes and fruits of work only after a generation (Moldavanov, Chebykina, 2014: 9).

– the existence of the principle of prevention of criminal behavior, when children under the age of six can fall into the risk group of criminal behavior, which becomes the source of stigmatization of children at the earliest stages of development, for example, in New Zealand.

– Isolation of juvenile justice from criminal justice (Contini, Fabri, Sigismondi, 2004: 10).

Shmidt V.R. in his study "Integration of adolescents in conflict with the law: foreign experience" directly indicates that "The inability to incorporate juvenile justice into the sphere of law and social assistance becomes an important risk. And juvenile justice should be built into the existing contexts of criminal justice and social assistance. The creation of specialized institutions and services that distinguish convicts from other vulnerable groups and which differ from other services increases the risk of discrimination (both positive and negative) of convicts. Likewise, the fence of juvenile justice from criminal reduces the transparency of the system, and if criminal justice retains the priority of restrictive measures, then the risk of reaction also increases in the area of juvenile justice – a return to strict measures against minors. This is exactly what happened in the United States, the Netherlands and now occurs in France – although each of these countries finds its way to overcome the crisis of the justice system.

The greatest dispute and negative reaction are caused by the experience of the Scandinavian countries, who developed their own juvenile policy.

Modern juvenile justice has deep roots in the traditions of the Scandinavian countries, especially Sweden. After the adoption in 1979, for the first time in the world, of a law that not only banned but criminalized the punishment of children, juvenile justice developed rapidly, becoming an influential and all-pervasive state institution with huge administrative and financial resources. And the Scandinavian model of juvenile justice began to be offered to the rest of the world as exemplary (Countries of Scandinavia: The other side of juvenile justice, 2018: 11).

Principles of Scandinavian Juvenile Justice:

– the value of the personality of the minor who appeared before the court;

– active use in the juvenile court process of data on minors received by the court from specialized auxiliary legal institutions (services, bodies);

– Strengthening the guard function of the court in relation to the minor (increased judicial protection of the minor as a victim, witness, defendant, convicted, etc. by closing the court session in all cases of crimes of minors or criminal infringements on them, reducing the punishment on the fact minorities;

– preference for coercive measures of educational means;

– special training for juvenile judges;

– a special simplified (informal) procedure for legal proceedings in respect of minors;

– availability of a system of specialized support services.

Adolescents under 15 years of age are not subject to criminal liability, and crimes of young people from 15 to 18 years are considered by ordinary courts, guided by the relaxed legislation. Persons under the age of 18 cannot be sent to prisons, they are placed in a closed educational house. The essence of juvenile justice here lies in the very strong role of the social worker and his active participation in the investigation and trial of a minor. In addition, work to prevent crimes among children and adolescents is conducted not only by the forces of schools, social services but also by the police.

It is the Scandinavian model of juvenile justice that is currently being severely criticized, as some of its elements are taken up by the social services of other countries, and especially of European countries. Human rights activists emphasize: “Modern juvenile justice has deep roots in the traditions of the Scandinavian countries, especially Sweden. After the adoption in 1979, for the first time in the world, of a law that not only banned but criminalized the punishment of children, juvenile justice developed rapidly, becoming an influential and all-pervasive state institution with huge administrative and financial resources. And the Scandinavian model of juvenile justice began to be offered to the rest of the world as exemplary. Beginning as a good cause of protecting children from violence by some negligent parents, the juvenile justice system has created problems that many human rights activists, lawyers, psychologists and educators are now raising “ exemplary (Countries of Scandinavia: The other side of juvenile justice, 2018: 11).

Any of the above systems of juvenile justice is based on national traditions and is determined by the prevailing circumstances. The development of these systems is dictated by the need to protect the rights of minors. But at the same time, each continent has gone its own way of development, which once again proves the existence of a large number of solutions to the problem of juvenile delinquency. Each of these systems has its advantages and disadvantages, the analysis of which allows us to take them into account, to develop the most appropriate model, using the right tools.

The necessary methodologies to be applied in the domestic model of emerging juvenile justice include:

1. the principle of the preference of educational measures before punitive (punitive) measures;

2. availability of preventive capacity of juvenile delinquency;

3. special training for juvenile judges;

4. the systemic nature of the various bodies and services coordinated by the juvenile court.

The analysis allows us to come to the following conclusions:

1. The world community has developed a set of norms and standards aimed at protecting children, including children confronted in the legal system by virtue of their unlawful actions, as well as victims and witnesses of crimes. These norms are mainly aimed at creating conditions conducive to the very possibility of the commission of illegal acts by minors. The whole mechanism of juvenile justice is devoted to this goal, which covers the whole range of social relations: educational, educational, psycho-consultative, control and supervisory, law enforcement, law enforcement, judicial, quasi-judicial, penitentiary, protective, individually-accompanying and others.

2. In the world practice there are several models of juvenile justice, each of which has its advantages and disadvantages. At the same time, Kazakhstan’s choice of the continental model of juvenile justice was determined mainly by a large number of

progressive examples of the organization of this type of activity, in particular:

A) The specialization of courts dealing with cases involving minors;

C) Priority of alternative punishments;

C) Graduation of offenses depending on the severity of the act;

D) The existence of the probation institute;

E) Mediation in criminal and civil cases.

The acquaintance with the positive foreign experience and the application of its separate components has already enabled and will allow our state to improve the processes of democracy and contribute to the reduction of juvenile delinquency and to the qualitative improvement of the situation of children in general.

3. In the world community, there is an ambiguous attitude to the norms of international law in the design of national systems of juvenile justice. However, as shown by the generally accepted standards of criminal justice contained in the norms of international law, they are increasingly being implemented into national law and somehow formulate a national criminal procedure for minors.

The implementation of the norms of international law on the prevention of juvenile delinquency and the protection of minors deprived of their liberty was one of the factors contributing to the comprehensive reform of criminal, criminal procedural and criminal enforcement legislation of the Republic of Kazakhstan, which was aimed at decriminalization and liberalization of responsibility.

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