

PROCEDURAL-CRIMINAL CHARACTERISTICS OF JUVENILE CRIME

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Juvenile delinquency has always aroused some interest among researchers, as young people are a growing new generation, a generation in which many hope, and immoral and antisocial actions by young people suggest that parents, guardians, employees of educational institutions and other people who may be involved in the formation of a personality in one way or another pay little attention to the educational process. This article is dedicated to the problems of juvenile delinquency, the characteristics of criminal behavior being determined. In pursuit of this purpose and objectives, the author used the method of analyzing the subject of the article through the legislation of the Republic of Moldova, as well as examining the scientific opinions offered to the general public by publishing on web pages or in printed form various guides, articles, explanatory notes. A theoretical and legal analysis of the concepts of legal regulation of juvenile delinquency prevention in the implementation of the modern criminal policy of the Republic of Moldova is carried out in detail. The author highlights one of the factors of juvenile delinquency - family problems. Possible law enforcement issues are being considered, ways of resolving them are proposed in order to prevent crime. The objective factors for the fight against juvenile delinquency are indicated, - among them are the rapid increase in crime and delinquency among adolescents and the low efficiency of court decisions.

Keywords: adolescent, juvenile delinquency, criminal policy, family relations, deviant behavior.

CARACTERISTICI PROCESUAL-PENALE A DELINCVENȚEI JUVENILE

Delincvența juvenilă a provocat întotdeauna un anumit interes în rândul cercetătorilor, deoarece tineretul reprezintă o nouă generație în creștere, generație în care mulți își pun speranțele, iar comiterea unor acțiuni imorale și antisociale de către tineri sugerează că părinții, tutorii, angajații instituțiilor de învățământ și alte persoane care ar putea fi într-un fel sau altul implicate în formarea unei personalități, acordă puțină atenție procesului educațional. Prezentul articol este dedicat problemelor delincvenței juvenile, sunt determinate caracteristicile comportamentului infracțional. Urmărind acest scop și obiective, autorul a folosit metoda de analiză a subiectului articolului prin prisma legislației Republicii Moldova, precum și examinarea opiniilor științifice oferite publicului larg prin publicarea pe pagini web sau în formă tipărite a diverse ghiduri, articole, note explicative. Este efectuată în detaliu o analiză teoretică și juridică a conceptelor de reglementare juridică a prevenirii delincvenței juvenile în implementarea politicii penale moderne a Republicii Moldova. Autorul evidențiază unul dintre factorii delincvenței juvenile - problemele familiale. Sunt luate în considerare posibile probleme de aplicare a legii, sunt propuse modalități de soluționare a acestora în scopul prevenirii infracțiunilor. Sunt indicați factorii obiectivi pentru lupta împotriva delincvenței juvenile, - printre aceștia fiind creșterea rapidă a criminalității și delincvenței în rândul adolescenților și eficiența scăzută a activității instanțelor judecătorești.

Cuvinte-cheie: adolescent, delincvență juvenilă, politică penală, relații familiale, comportament deviant.

CARACTÉRISTIQUES PROCÉDURALES-PÉNALES DE LA DÉLINQUANCE JUVÉNILE

La délinquance juvénile a toujours suscité l'intérêt des chercheurs en raison de la jeunesse de la génération montante dans laquelle beaucoup de gens placent leurs espoirs, et la commission d'actes immoraux et le comportement des jeunes ont suggéré que les parents, les tuteurs, le personnel des établissements d'enseignement et toute autre personne qui pourrait être d'une manière ou d'une autre impliquée dans la formation d'un homme politique accorde peu d'attention au processus d'éducation. Cet article est consacré aux questions de la délinquance juvénile, les caractéristiques du comportement criminel sont déterminées. Poursuivant ce but et objectifs, l'auteur a utilisé la méthode d'analyse du sujet de l'article à travers la loi de la République de Moldova, ainsi que l'examen des opinions scientifiques offertes au grand public par la publication sur des pages Web ou sous forme imprimée de divers guides, articles, notes explicatives. Une analyse théorique et juridique des concepts de réglementation juridique de la prévention de la délinquance juvénile dans la mise en œuvre de la politique pénale moderne de la République de Moldova est réalisée en détail. L'auteur met en évidence l'un des facteurs de la délinquance juvénile - les problèmes familiaux. Les problèmes possibles d'application de la loi sont examinés, des moyens de les résoudre sont proposés dans le but de prévenir les crimes. Des facteurs objectifs de lutte contre la délinquance juvénile sont indiqués, parmi lesquels l'augmentation rapide de la criminalité et de la délinquance chez les adolescents et la faible efficacité des décisions de justice.

Mots-clés: adolescent, délinquance juvénile, politique pénale, relations familiales, comportement déviant.

УГОЛОВНО-ПРОЦЕССУАЛЬНАЯ ХАРАКТЕРИСТИКА ПРЕСТУПНОСТИ НЕСОВЕРШЕННОЛЕТНИХ

Преступность несовершеннолетних всегда вызывала определенный интерес у исследователей, ведь молодежь – это новое подрастающее поколение, на которое многие возлагают надежды, а совершение молодыми людьми безнравственных и антисоциальных действий свидетельствует о том, что родители, опекуны, работники образовательных учреждений, другие лица, которые причастны к формированию человека как личности, уделяют мало внимания воспитанию. Данная статья посвящена проблемам преступности несовершеннолетних, определены особенности преступного поведения. Для достижения поставленной цели и задач автор использовал метод исследования предмета статьи сквозь призму законодательства Республики Молдова, а также анализ научных мнений, предлагаемых широкой общественности, путем публикации на веб-страницах или напечатанных материалов в виде руководств, статей, пояснительных записок. Подробно проводится теоретико-правовой анализ концепций правового регулирования профилактики преступности несовершеннолетних при реализации современной уголовной политики Республики Молдова. Особо выделяется один из факторов преступности несовершеннолетних – семейное неблагополучие. Рассмотрены возможные правоприменительные проблемы, предложены пути их решения в целях профилактики преступности. Указываются объективные факторы для борьбы с преступностью несовершеннолетних лиц – быстрый рост преступлений и правонарушений среди подростков и низкая эффективность деятельности судов по делам несовершеннолетних.

Ключевые слова: подросток, преступность несовершеннолетних, уголовная политика, семейные отношения, девиантное поведение.

Introduction

The relevance of the topic lies in the fact that juvenile delinquency has always aroused the interest of many scientists, both theorists

and practitioners. The reason is that the younger generation is a natural reserve for the socio-economic development of any country, and the commission of crimes by minors indi-

cates the existing shortcomings in education, the unformed conditions for their socialization, which makes it difficult to fully include a certain part of the younger generation in the life of society.

The practical importance of this article lies in the fact that the ideas and conclusions formulated in it can be used with the correct interpretation of the norms of criminal and criminal procedure legislation in the investigation and consideration of crimes among minors, and which can eliminate some ambiguities in the application of criminal rules in practice. and help effective understanding of specialized scientific literature, etc.

Approach methodology. To achieve the set goal and objectives, we will use the method of researching the subject of the article through the legislation of the Republic of Moldova, as well as the analysis of scientific opinions offered to the general public through publication. on web pages or on paper in the form of manuals, articles, explanatory notes.

Main ideas of the research

Speaking about juvenile delinquency, from the point of view of society, it should be noted that the crime of such persons should be considered from the point of view of an indicator of social well-being or disadvantage of society. Therefore, the global community considers the prevention of crimes among minors as an important factor in the prevention of crime in general [1].

Juvenile delinquency has always aroused a certain interest among researchers, because young people are the new rising generation, on which many place their hopes, but the commission of immoral and antisocial actions by young people suggests that parents, guardians, employees of educational institutions, and other persons who can somehow be involved in the formation of a human being as a person, pay little attention to their education.

As Zainetdinova A. rightly points out “juvenile delinquency should be perceived as a social-legal, relatively massive phenomenon, including a set of socially dangerous actions, carried out during a specific period of time in a specific territory, which are not limited by criminal legislation.” The concept of juvenile delinquency is an aggregation of offences committed by juveniles aged 14 to 18 [2]. Andronake A. states that “juvenile delinquency is a phenomenon that includes a multiplicity of violations of generally recognized social norms committed by persons under the age of 18 criminal violations” [3]. According to. Pashkin K, “juvenile delinquency deforms the personal formation of the juvenile delinquent himself, thereby contributing to the continuation of his/her criminal activity” [4].

Sharing these scientific views and based on the available scientific developments related to the subject of study, it is possible to conclude that despite the scientific research of the issue, the difficulties and problems of juvenile delinquency have not lost their relevance and significance, therefore, they urgently require further development and reflection in the criteria for the renewal of the legislation of the Republic of Moldova and the formation of society.

In addition, with a view to eliminating one of the grounds contributing to the commission of crimes by minors, the legislation of the Republic of Moldova establishes a certain obligation of persons whose circumstances include the performance of maintenance duties, education and training of minors.

Thus, parents, guardians or persons replacing them have every chance of being held accountable for committing violations of the law related to failure to fulfill the direct duties of maintaining, bringing up and educating a minor.

The norm of the article 60 part (2) of the Code of the Republic of Moldova “on

the offense”, specifically indicates that the failure or improper fulfillment by parents, guardians or persons replacing them of the obligation to support, bring up and educate the child, which entailed the commission of a socially dangerous act by him/her, entails the imposition of a fine in the amount of 9 to 18 conventional units or the imposition of punishment in the form of unpaid work in favor of society for a period of 40 to 60 hours [5].

As Prozumentov L. notes, “the study of the crime of persons who have not reached the age of majority as an independent section in the scientific literature should be called transitional. This is due to the fact that the age from 14 to 18 years is considered the transition from adolescence to adulthood, maturation, both physical and moral, the acquisition of a certain amount of knowledge and abilities that are important for inclusion in adult life and readiness to perform “adult” functions” [6].

However, with regard to juvenile delinquency, it should be pointed out that the legal system of the Republic of Moldova allocates two subgroups to the general group of minors, which are distinguished from the content of the legislation in force.

The first group includes persons under 14 years of age who are not criminally responsible because they cannot be considered sane, they are not considered to have the full capacity to distinguish between good and evil or to be aware of the gravity of the act.

This may be the main reason for considering minors from the group represented as persons in a difficult situation for whom public and social assistance can be applied exclusively.

The second subgroup includes persons from 14 to 16 years old who are brought to criminal responsibility in a differentiated manner.

A person who has not reached the age of majority and who has reached the age of 14-16 has the opportunity to be prosecuted for committing crimes provided for by the Criminal Code of the Republic of Moldova, in particular: part (2) of Art. 21; Art. 145, 147, 151; part (2) Art. 152; Art. 164; Parts (2) and (3) Art. 166; Art. 171, 172, 175, 186-188; part (2) - (6) art. 189; part (2) - (5) Art. 190; part (2) - (4) art. 192; Parts (2) and (3) Art. 192¹; part (4) art. 196; part (2) Art. 197; part (3) Art. 212; s. b) para. (4) art. 217; para. (3) let. b) and d), para. (4) Art. 217¹; let. a) and b) part (3) Art. 217³; Art. 217⁴; part (2), art. 217⁶; Art. 260, 268, 270, 271; Art. 275, 280, 281, 283 - 286; parts (2) and (3) Art. 287; part (2) Art. 288; part (2) Art. 290; part (2) Art. 292; part (2) Art. 317; Art. 342 [3].

When compiling the list of crimes specified in part (2) article 21 of the Criminal Code of the Republic of Moldova, the legislator took into account the high degree of public danger, the obviousness or accessibility of awareness by minors at an early age, the intentional nature of guilt in the commission of crimes (for example, theft, deliberate destruction or damage to property, hooliganism) [7].

These crimes in their overwhelming majority are associated with an encroachment on life or well-being, on the freedom and sexual freedom of the individual, on property and other possessions.

A minor between the ages of 14 and 16 is criminally liable for the commission of those listed in part (2) of article 21 of the Criminal Code of the Republic of Moldova, crimes not only as their perpetrator, but also as an accomplice, and not only for committing a completed crime (or complicity in such a crime), but for attempting an extremely serious, especially serious, serious and medium-gravity crime, as well as for preparation for an extremely grave, especially grave, grave crime [8].

Minors who have reached the age of 14-18 are held criminally liable if it is confirmed that they were sane at the time of the crime. If it is established that a minor suffers from mental retardation, which is not associated with a psychological illness, it is also necessary to establish whether he/she was aware of the gravity of the act committed. Responsibility consists in the ability of a person during the commission of a crime to think over and realize his/her actions (inaction) and manage them [3].

The Criminal Code of the Republic of Moldova, establishing the criminal responsibility of minors, tries to ignore arbitrariness, as a result of which it takes into account many factors.

For this, it should be noted that only those minors who have legal personality are subject to criminal liability. And criminal legal personality appears with the achievement of such a value of the formation of the personality, in which the minor understands the legal and moral demands of the country and society for their own actions and manage their own actions.

Based on the indicated judgments, the concept of juvenile delinquency should be understood as a social and legal, relatively mass phenomenon, including a set of acts not placed by criminal law, committed during a specific period of time in a certain territory by persons aged 14 to 18 years. Due to the fact that the qualitative characteristics of juvenile delinquency are distinguished from the characteristics of "adult" delinquency by age characteristics, its essence, the grounds for its occurrence, measures for its prevention and its variability depending on time.

That is, juvenile delinquency is considered the result of the behavior of a specific group of persons under the age of 14 to 18 years, who, by their own illegal behavior, do not comply with the legal norms and social values of society, thereby harming it.

The criminal law nature of juvenile delinquency is determined by the Criminal Code of the Republic of Moldova.

The criminal law nature of crime is an objective phenomenon, since the criminal law prohibition arises from the need of society to combat those behaviors of offenders that harm it.

Also, it should be noted that juvenile delinquency is a global phenomenon. This suggests that this type of crime is not reduced to a single fact of committing a criminally punishable act, but is represented by a number of criminals aged 14 to 18 years. Individual excesses cannot be declared criminal by the legislator, because the criminal law norm is designed for multiple use and affects human behavior, which is in the nature of a fact, that is, the likelihood of repetition in the future. This is a symptom of juvenile delinquency, characteristic of all crimes, including those that are committed by minors occasionally, but pose an overestimated threat to society.

Juvenile delinquency is relatively widespread, as it is considered a social pathology, that is, a deviation from generally accepted behavior in society [9].

It is appropriate to ask the question, and what, in fact, causes juvenile delinquency? The reasons for the emergence of this type of crime are many, among them stands out: the complexity of family education, modern children are accelerating, developing at an accelerated rate, which complicates the process of their upbringing, parents and guardians do not have time to keep up with their level of development; young people's underemployment: when talking about rural areas, where young people have nowhere to put themselves into practice, there is no place for additional education, as opposed to urban areas, which are likely to do so, but because of their disinterest or lack of access to funds from parents, guardians to pay for such classes remain without

additional education and with a large amount of free time; reduced educational influence of adults, on the grounds of living a large number of out-of-town in rented apartments; unfavourable situation in the family, difficult life situation, negative example from adults often “push” young people to a criminally punishable act, the use of alcoholic beverages, easy access to narcotic and psychotropic drugs are also prerequisites for the commission of criminal acts by minors.

The list of grounds on which criminal acts are committed by minors is many, but each young person has their own.

In addition to the above features and grounds for juvenile delinquency, it should be noted such a feature as the method of committing a crime by minors. As a rule, the method of committing a crime is primitive. When choosing a method of committing a crime, juveniles operate with skills, habits, imitation of movie characters, and psychological characteristics.

Often, juveniles commit crimes in a group, which gives them more conviction in the act and confidence in actions. A teenager feels even more confident when committing a crime in complicity with an adult [9].

Another distinctive element of the commission of a crime by minors is the choice of the instrument of crime. Due to their inexperience, juvenile offenders use simple tools for committing a crime - legs, hands when inflicting bodily harm, kitchen knives, sticks, improvised materials, etc.

The next distinguishing feature of juvenile delinquency is the concealment of traces of the committed crime from parents, guardians or persons replacing them.

Analyzing this issue, Kanevsky L., rightly notes, “juvenile offenders, as a rule, try to hide the committed crime by destroying the means and instruments of crime, hiding, donating or selling stolen goods” [9].

Juveniles get rid of stolen property quickly, offering it for sale near the committed crime at reduced rates. As a rule, they commit theft in groups, together with their peers [3].

Practice shows that the most common crimes committed by minors are thefts, which differ in the variety of methods of their commission, the number of participants, the amount of harm, etc. The bulk of thefts are committed against private property. As a rule, small items, easily sold and used (sweets, drinks, cigarettes) and, of course, money are stolen.

In their own deeds (methods of committing), juvenile offenders show a large amount of imagination and ingenuity, penetrate places that are hard to reach for “adult” criminals, less often use tools and devices specific to professional burglars, improvise and use means and methods found by chance (at the crime scene), do not show much concern to hide the traces of the crime, which allows faster disclosure of such crimes. If they are found at the crime scene, they usually run away.

Ignoring the use of simple methods of committing crimes and the use of primitive tools, there is an increased unsolved crime committed by minors.

In order to combat and reduce the number of crimes committed by minors, it is necessary to take responsibility for taking appropriate measures to prevent juvenile delinquency at an early age, just at an early age a young person is most susceptible to both positive and negative impacts. First of all, this responsibility should fall on the shoulders of parents, guardians, and also on educational and medical institutions, public associations and law enforcement agencies [2].

Thus, it should be noted that juvenile delinquency is a structural element of general crime.

In the presented context, the opinion of the author Prozumentov L. is preferred: “juvenile delinquency contains the characteristics inherent in crime in general: a bad impact on society, relative prevalence and prohibition by criminal law, historical variability and social conditioning. Any of the listed characteristics is refracted through age-related features” [6].

An important point in the formation of a minor as a person, as an individual, interest in their upbringing is the specificity of proceedings in juvenile cases.

Thus, the proceedings in the category of cases under consideration have specifics, due to the characteristics of the subject – his/her physical, intellectual and mental development. In this regard, the Criminal Procedure Code of the Republic of Moldova, along with general requirements, imposes additional requirements on this form of legal proceedings.

In juvenile proceedings, a comprehensive study of interrelated problems is taken into account: the prerequisites for the commission of a crime, the process of formation of criminal behavior, the effectiveness of coercive and preventive measures. The difference from other forms of court proceedings in this model of court administration is due to the special status of the defendant, the widening of the range of subjects of the process, procedural complexity, and the strengthening of the procedural rights of the defendant and his legal representatives.

According to article 290, part 2 of the Code of Criminal Procedure of the Republic of Moldova, in cases in which there are arrested persons or minors, shall be considered as a matter of urgency and priority, and in accordance with article 345, part 1 of the Code of Criminal Procedure of the Republic of Moldova, the preliminary sitting on cases in which juvenile defendants or arrested persons are charged shall be held in an urgent and priority order.

Participation in the trial of a lawyer in cases of a minor is mandatory (article 69 of the Code of Criminal Procedure of the Republic of Moldova). Consequently, the failure to appear in court of the defense counsel requires either his/her replacement (with the consent of the defendant and his/her legal representatives), or the adjournment of the case [10].

The participation of a legal representative of a minor suspect, accused, defendant in criminal proceedings is mandatory, except for the case provided by law (article 480 of the Code of Criminal Procedure of the Republic of Moldova).

According to article 484 of the Code of Criminal Procedure of the Republic of Moldova, at the request of the defense counsel and the legal representative of the minor defendant, the court, after hearing the opinions of the parties, has the right to remove the minor defendant from the courtroom by its decision during the investigation of circumstances that can negatively affect the minor.

In accordance with article 485 of the Code of Criminal Procedure of the Republic of Moldova, when passing a sentence in a case against a minor, the court, along with the issues specified in article 385 of the Code of Criminal Procedure of the Republic of Moldova, should consider the possibility of releasing the minor from criminal punishment in accordance with article 93 of the Criminal Code of the Republic of Moldova or his probation in accordance with article 90 of the Criminal Code of the Republic of Moldova [11].

In the case of the release of a minor from criminal punishment with his/her placement in a special educational institution or to a medical and educational institution as well as with the use of compulsory measures of an educational nature, provided for in article 104 of the Criminal Code of the Republic of

Moldova, the court notifies the relevant specialized state body and entrusts it with monitoring the juvenile offender's behaviour.

An important defect of the new model of juvenile criminal justice is the weakening of support services that support the court in their social rehabilitation. We are talking about social educators (institutions similar to the American probation service) [12].

It is important to note that the laws of various states contain a set of special rules providing for the need to protect minors from the fact that the judicial procedure does not create circumstances for them that worsen their situation compared to adults. Precisely because of their age non-adaptation to extreme life situations. Therefore, the model of legal proceedings when considering cases of juvenile crimes should be humanized as much as possible.

In recent years, projects for the reorganization of juvenile courts have begun to appear in a number of European states. Thus, in the UK, several projects appeared, one of which proposed to eliminate the juvenile courts and instead create a system of family courts with broad jurisdiction, including civil law issues related to guardianship, custody, sanctions against parents, etc. In another project, it was proposed that the system of Scandinavian Committees for the Welfare of Adolescents to be used as a model for the reorganization of juvenile courts.

In Belgium, a recent youth protection law takes into account the creation of local youth protection committees, which largely encroach on the jurisdiction of juvenile courts.

This situation is not accidental. Here, apparently, two objective factors are at work: the rapid growth of crimes and offenses among adolescents and the low efficiency of the work of juvenile courts. This forces us to find more effective and flexible means in the fight against the growing youth crime. The choice is not accidental - a family court or a

welfare committee, which means, first of all, a departure from judicial forms of regulating the behavior of adolescents, which do not give a serious educational effect. In addition, new organizations provide for the possibility of considering a much wider range of issues related to the life and upbringing of adolescents than juvenile courts [13].

In this regard, it is essential to outline the need to create a specialized juvenile court in the Republic of Moldova.

Juvenile courts could differ in the following features: consideration of juvenile cases by a single judge; the requirement that the judge has knowledge of child psychology; the inadmissibility of a formal trial and a formal accusation of a crime; a simplified judicial procedure, which basically boiled down to a conversation between a judge and a teenager with the participation of a trustee; predominant use as a measure of influence of guardian supervision. Currently, the legislation on the judiciary of the Republic of Moldova does not have the corresponding norms defining the judicial system in juvenile cases.

Conclusions

While acknowledging the results of the study, it is potentially possible to state that, after the declaration of independence, the Republic of Moldova has adopted a number of laws and ratified a number of international instruments that improve the situation of minors in conflict with the law.

Thus, the criminal legislation of the Republic of Moldova, adhering to the above-mentioned principle, provided for the general age of criminal responsibility from 16 years and only for certain crimes specified in article part 2, article 21 of the Criminal Code of the Republic of Moldova, criminal responsibility begins from the age of 14.

Despite the special approach of the legislator to persons under the age of 18, juvenile

delinquency continues to be widespread, and is considered a social pathology with specific features characteristic of this particular type of crime. To eliminate the objective consequences of the fight against juvenile delinquency, it is necessary that the work of the law enforcement system, parents, guardians and civil society be aimed at protecting, socializing minors who are prone to committing crimes or who have committed crimes, but to this day in the Republic of Moldova such a task is a problem for her permission.

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