

UZBEKISTAN-GERMANY: PECULIARITIES OF JUVENILE LIABILITY AND THE SYSTEM OF PUNISHMENT

Akmalov Hamid

Karakalpak state university named after Berdakh

***Summary:** in this article, the Criminal Law of the Republic of Uzbekistan reflects the system of punishment assigned to minors, the rules of sentencing, cases of exemption from liability and punishment. The criminal law of the Republic of Uzbekistan and the Federal Republic of Germany also touches on the peculiarities of juvenile liability, the system of punishment and some similarities and differences between them.*

***Keywords:** criminal law, juvenile delinquency, fine, compulsory public works, correctional work, Parole, Parole, juvenile Commission, StGB(German penal code), Jugendstrafrecht (GFR juvenile penal law), Jugendamt (Commission on juvenile cases in GFR), fine, compulsory public works, correctional work, restriction of freedom, imprisonment, educational measures, disciplinary punishment, imprisonment.*

***Rezyume:** Mazkur maqolada O'zbekiston Respublikasi Jinoyat qonunida voyaga yetmaganlarga nisbatan tayinlanadigan jazo tizimi, jazo tayinlash qoidalari, javobgarlikdan va jazodan ozod qilish holatlari aks ettirilgan. Shuningdek, O'zbekiston Respublikasi va Germaniya Federativ Respublikasi jinoyat qonunida voyaga yetmaganlar javobgarligining o'ziga xos xususiyatlari, jazo tizimi va ular orasidagi ba'zi o'xshashlik va farqlarga to'xtalib o'tilgan.*

***Kalit so'zlar:** Jinoyat qonuni, voyaga yetmaganlar, jarima, majburiy jamoat ishlari, axloq tuzatish ishlari, ozodlikdan cheklash, ozodlikdan mahrum qilish, voyaga yetmaganlar komissiyasi, StGB (Germaniya jinoyat kodeksi),*

Jugendstrafrecht (GFR voyaga yetmaganlar jinoyat qonuni), Jugendamt (GFRda voyaga yetmaganlar ishlari bo'yicha komissiya), jarima, majburiy jamoat ishlari, axloq tuzatish ishlari, ozodlikni cheklash, ozodlikdan mahrum qilish, tarbiyaviy chora-tadbirlar, intizomiy jazo, qamoqqa olish.

Резюме: В данной статье отражена система наказаний, устанавливаемых уголовным законодательством Республики Узбекистан в отношении несовершеннолетних, правила назначения наказания, обстоятельства освобождения от ответственности и наказания. Также в уголовном законодательстве Республики Узбекистан и Федеративной Республики Германия затронуты особенности ответственности несовершеннолетних, система наказаний и некоторые сходства и различия между ними.

Ключевые слова: Уголовный закон, несовершеннолетние, штраф, обязательные общественные работы, исправительные работы, ограничение свободы, лишение свободы, комиссия по делам несовершеннолетних, СтГБ (Уголовный кодекс Германии), Jugendstrafrecht (уголовный закон ФРГ по делам несовершеннолетних), Jugendamt (комиссия по делам несовершеннолетних в ФРГ), воспитательные мероприятия, дисциплинарное наказание, заключение под стражу.

INTRODUCTION.

Based on the humanitarian and justice principles of the Criminal Law of the Republic of Uzbekistan, chapter XV-XVI of the sixth section of the Criminal Code [1] defines the “characteristics of juvenile liability”. These chapters cover the system of punishment imposed on minors, the rules of sentencing, the cases of exemption from liability, punishment. We know that even though under the former Union there was sufficient emphasis on preventing and combating juvenile delinquency, the norms in criminal law aimed at preventing such delinquency had not been given in a

separate section, as in our current code, until then, once systematized. While the norms outlined in it include general provisions of criminal liability, it is indicated that the types of punishment for them are greatly improved when a crime is committed by minors, the court expresses to them the degree of mental development of a teenager in the assignment of punishment, living conditions and upbringing, health, the reasons for the crime he committed, people of, such cases are an example of the practical application of the humanitarian principle outlined in Article 7 of the Criminal Code.

There have been various opinions among practitioners and scholars about the need to distinguish the liability of minors separately in law for many years, which was reflected in the Criminal Code of 1994. In relation to the liability of minors, various opinions have been expressed in the subject of criminal law, arguing that the significance of the guilty person is not less than the nature and level of social danger of the crime committed.

Persons who have reached the age of sixteen in accordance with Article 17 of the Criminal Code are liable under general rules and taking into account the features provided for in section six of the Criminal Code. When I studied and analyzed the Criminal Code, I found that a special part of the code, 224 norms, established liability for minors.

A minor is defined as a person who has reached the age of sixteen before committing a crime, but has not reached the age of eighteen. Under the general rule, Sane persons who have reached the age of sixteen are considered to have reached the age of the criminal subject. For some crimes, the subject's age is set at fourteen years.

The penalties specified in Article 81 of the Criminal Code of the Republic of Uzbekistan are a strict list of types of punishment that can be imposed on minors. In this article, the punishment system is arranged from light to heavy, i.e.:

- 1) fine;
- 2) compulsory public works;
- 3) correctional work;

- 4) restriction of freedom;
- 5) deprivation of Liberty.

Penalty is a penalty for minors, in accordance with Article 82 of the Criminal Code, from twice to twenty times the amount of the base calculation. At the appointment of this punishment, the court takes into account the fact that a minor has independent income, salary or property. If the culprit evades payment of the fine within six months of its appointment, the court replaces the amount of the unpaid fine with correctional work. A fine of twice the amount of the base calculation is calculated equal to one month of correctional work.

Compulsory public works (article 821 JK)-appointed for a period of sixty to two hundred and forty hours in relation to working minors only. Compulsory public works should not harm the health and spiritual development of minors, nor disrupt the reading process. The period for the execution of compulsory public works should not exceed two hours a day for six months, unless otherwise specified in the law, and in the event of non-convict-dependent circumstances, no more than two hours a day in a fan of up to a year.

Correctional work (Article 83 JK) is a punitive measure in which a convicted person is subjected to forced labor for a period established by a court verdict and charged a certain amount of interest in favor of the state from his salary. Correctional work applies only to working persons. Labor competence is the ability of an individual to work. As a general rule, an individual is considered to be able to work after reaching the age of sixteen. This type of punishment is appointed for a period of one month to one year. The term of the sentence includes rest, a holiday, as well as the days when the convicted person was sick.

Restriction of Liberty (Article 84 JK) is a term of six months to two years as a basic punishment for juvenile convicts.

Deprivation of Liberty (Article 85 JC) is a term of six months to ten years for minors.

Deprivation of Liberty refers to persons between the ages of fourteen and sixteen at the time of committing a crime:

For a serious crime-up to six years;

For a serious crime – a term of up to ten years.

Deprivation of Liberty in relation to persons between sixteen and eighteen years of age at the time of committing a crime:

For a serious crime-up to seven years;

For a serious crime – a term of up to ten years.

A sentence of imprisonment shall not be imposed on persons who have committed a crime of no greater social risk or who have committed a crime of lesser severity than intentional.

In accordance with paragraph 12 of the plenum of the Supreme Court of the Republic of Uzbekistan of February 3, 2006 “on the practice of imposing punishment for crimes by the courts”, when imposing punishment on minors, the courts are obliged to take into account the features established in articles 81-90 of CC [2].

In addition to the circumstances provided for by Article 54 of the CC [3] during the appointment of penalties for minors, in each specific case, as well as the level of its development, living conditions and upbringing, health, including the level of mental development, motives for committing a crime, information about the negative impact of older persons on its behavior, other circumstances affecting its personality should be identified and assessed.

Even if a person who committed a crime before the age of eighteen has reached the age of majority at the time of the trial of the case, the penalty or amount assigned to him cannot exceed the maximum period and amounts established in articles 82-85 of CC [4].

Most states' criminal law sets a minimum age limit for criminalizing minors. The UN General Assembly of 1989 adopted the Convention on the rights of the child, which includes a number of norms for the protection of the rights of children and minors who have entered the criminal path. The convention sets a minimum term for

criminalizing minors. But in a number of states, this can be even less than the age limit is set. For example, in Irish criminal law, the age of a criminal subject is set at seven years, in the Netherlands at twelve years, in Japan at thirteen years. The qualification and punishment system for crimes committed by minors also varies in different countries. A number of foreign developed countries have become clear in particular during the study of the Criminal Law (StGB) of the Federal Republic of Germany-that the crimes of minors in Germany are qualified under the same criminal law (StGB) as the crimes of adults, but have several characteristics of their own:

1. The juvenile delinquency law (Jugendstrafrecht) [5] does not list criminal offenses, but specifies sanctions and principles for their use against minors, and applies to children and adolescents between the ages of fourteen and twenty-one who have committed criminal offenses in Germany;

2. Minors under the age of fourteen do not have jurisdiction in Germany, but the guardianship authority under the court may apply measures aimed at preventing a minor from repeating a criminal offense in the future;

3. The age limits set by the German juvenile delinquency law (Jugendstrafrecht) are decisive for setting criminal penalties.

4. According to the Jugendgerichtsgesetz (law on minors), minors are children between the ages of fourteen and eighteen and adolescents between the ages of eighteen and twenty-one;

5. Penalties for minors are much lighter than penalties for adults, and measures of an educational nature are also provided;

6. Minors may also be subject to criminal penalties under the juvenile delinquency law and adult delinquency law (StGB). The decisive thing here is the level of individual development of a minor. If a teenager is developed as an adult, criminal punishment is established under the StGB (adult criminal law), Jugendstrafrecht (juvenile criminal law) applies only to adolescents with developmental delay. As a rule, in such cases, representatives of the Office of

Juvenile Affairs (Jugendamt) make recommendations to the court to apply their assessment and type of punishment to the person of the accused.

7. If there is a minor military officer who committed a criminal offense, special rules apply to him.

When imposing criminal penalties on minors:

- a) rules apply for educational purposes;
- b) the main session of the court passes behind closed doors;
- (c) a hearing may be heard by a court of people's counsel or by a jury of professional judges.

Types of punishment that can be imposed on minors:

- 1) Educational Measures;
- 2) disciplinary punishment(fine, social work);
- 3) imprisonment.

Educational measures are the mildest form of punishment and include, for example, participation in crimes against aggression.

Disciplinary punishment is a means of preventing incarceration and helps minors understand the crime they commit. Disciplinary punishment tools can be repairing damaged objects, asking the victim for personal forgiveness, performing fines and social work. For example, a court may set social hours for juvenile offenders for causing theft or minor bodily harm.

Incarceration is the most severe form of punishment, and is applied as a last resort to minors if the interests of protecting society demand (e.g., if the offender has a detrimental tendency). A child can be imprisoned for a period of 6 to 5 years, and a teenager up to 10 years. The determination of the particular severity of murders and crimes is an exception to the general rule. In this case, a minor can be sentenced to up to 15 years of imprisonment.

CONCLUSION

While a comparative analysis of the Criminal Law of many developed foreign countries, in particular the Federal Republic of Germany, we note that the penalties

assigned to them are important in protecting the rights and freedoms, interests of minors, in preventing the commission of crimes by minors.

In a general conclusion based on the information cited above, we can see a number of similarities and differences in the penal system applied to minors in the Criminal Law of the Republic of Uzbekistan and the Criminal Law of the Federal Republic of Germany (StGB). The Criminal Law of the Republic of Uzbekistan uses five types of punishment for minors, while the Federal Republic of Germany uses three types of punishment. Referring to the differences in the penal system, where the Criminal Law of the Republic of Uzbekistan specifically states the penalty of fines against minors, we can see that in the Criminal Law of the GFR minors, the fine is included as a component of the type of “disciplinary punishment”. In addition, another noticeable difference is that paragraph 3 of the plenum of the Supreme Court of the Republic of Uzbekistan No. 21 of September 15, 2000 [6] on the judicial practice of juvenile delinquency”, according to Article 51 of the Code of Criminal Procedure [7] the participation of a lawyer in criminal cases committed by minors during the period of inquiry, preliminary investigative actions and In cases where a defender is required to participate, any evidence determined without his participation is not of legal force. During the study of the Criminal Code of the Federal Republic of Germany (StGB) and the juvenile criminal law (Jugendstrafrecht) it was observed that this norm does not exist for minors. To dwell on the similarity aspect, the case of juvenile crimes in both countries will be seen in a closed court session. In accordance with Article 37 of the Convention on the rights of the child, it is established that penalties such as death and life imprisonment for minors cannot be applied. This norm in the convention is studied, both countries are embodied in criminal law.

Emphasizing another different aspect, the German Criminal Code also includes signs that are characteristic of the age of a criminal subject. For example, according to Article 19 of the Code, “a person who has not reached the age of 14 at the time of committing a crime has been found to have acted without guilt”. This norm is important for qualification and clearly determines the age of the subject of the crime.

So, for any crime in Germany, a person can be criminally liable from the age of 14. Unlike the German Criminal Code, the age of the subject is defined in three different age categories according to the “liability of individuals” established in Article 17 of the Criminal Code of our country. According to the first part of this article, the total subject age is set at sixteen years. In addition, this article also specifies substances in which the subject of the crime is fourteen years old and substances in which he is eighteen years old.

As a proposal for information and research in the scientific article, I would like to note the following. I think it will be appropriate to revise and change the age of the criminal subject, which is established in the Criminal Code of the Republic of Uzbekistan. For example, for JK Article 97 (intentional homicide), the age of the crime subject is set at fourteen years. In this norm, I express as a proposal to establish the age of the subject as sixteen years. Because a fourteen-year-old minor does not fully realize and consciously feel his actions and the behavior he is doing in this situation. Examples of this type can be cited with other articles in the Criminal Code. For crimes committed against minors, responsibility should be strengthened more strongly. For example, in relation to pedophile criminals. It is a saying that if crimes of a pedophile type are committed against underage girls and the punishment system is not strengthened further, these cases will increase even more and cause many negative consequences. We all witness that many of these crimes are still being committed today. Turning a blind eye to such disgusting situations or not further strengthening the penal system can then lay the groundwork for the increasing number of these crimes.

It is every society’s duty to minors to create the necessary conditions for the physical, mental, social development of children. Juvenile delinquency in a certain sense represents the failure of the above obligations by society. And the restoration of justice is primarily expressed in the re-education of minors. To make a final conclusion, we will witness in the article that in both countries studied underage liability, there are reliefs and justice in the imposition of penalties on minors.

References:

1. Criminal Code of the Republic of Uzbekistan; <https://lex.uz/docs/111453>.
2. Decree of the plenum of the Supreme Court of the Republic of Uzbekistan No. 1 of February 3. 2006 “on the practice of judicial punishment for crimes”; <https://lex.uz/docs/1455976>.
3. Конвенция о правах ребенка; <https://lex.uz/docs/2595909>.
4. Criminal Code in the version published on 13 November 1998 (Federal Law Gazette I, p. 3322), as last amended by Article 2 of the Act of 22 November 2021 (Federal Law Gazette I, p. 4906); https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html
5. Federal Republic of Germany juvenile criminal law (Jugendstrafrecht); <https://www.uni-potsdam.de/de/rechtskunde-online/rechtsgebiete/strafrecht/jugendstrafrecht>
6. Order of the plenum of the Supreme Court of the Republic of Uzbekistan No. 21 of September 15, 2000 “on judicial practice in cases of crimes of minors”; <https://lex.uz/ru/docs/1449720>.
7. O‘zbekiston Respublikasining Jinoyat-protsessual kodeksi (Criminal Procedure Code of the Republic of Uzbekistan). URL: <http://lex.uz/docs/111460>.