

INTERNATIONAL LEGAL STANDARDS OF JUVENILE LAW

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ABSTRACT

In the article the author analyses the international documents that contain basic valid norms which regulate legal relations concerning children. Political and economic problems of juvenile justice implementation have been investigated by many scientists. The attention has been paid to the definition of the age which is the reason for minor's assuming criminal responsibility. Different classic models of juvenile justice (anglo-american, continental and scandinavian) are analyzed by the author in this article. A special attention in the article is paid to the legal and alternative measures (three levels of such measures) for minors' prevention from committing crimes. These problems have been researched and analyzed in the article.

Key words: norms of law, the Minimum Standard Rules of the United Nations Organization, Convention on the Rights of a Child, offence, minors, crime prevention, the levels of prevention, juvenile justice, juvenile delinquency, detention, models of the court for juvenile delinquents.

In the conditions of modern development of Ukraine a special attention is paid to the problems of the protection of human's rights and freedoms and especially to the protection of minors' rights, freedoms and

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legal interests as to a special strategic potential of the country which is aimed for the further development.

Juvenile justice and connected with it crime prevention and the conditions of detention are regulated in the international legal documents in provisions, the character of which has no analogy in the sphere of children's rights protection.

International standards of the juvenile justice have existed for many decades. The principles of separating the imprisoned minors from adults in detention centres are provided in *the Minimum Standard Rules of Treatment with Prisoners* (1955)¹.

International Covenant on Civil and Political Rights 1966 converted these provisions into "strict law", therefore forbade to pronounce the death sentence for crimes, committed by the persons under 18 (part III art. 6, p. 5)². The Covenant provides with guarantees applied to all people who appear before the court or are under arrest, for example, "minors' age and the desirability to assist for their re-education should be taken into consideration in the procedure for minors" (art. 14, p. 4)³.

Let's consider the documents that include basic valid norms which immediately concern children⁴:

¹ Збірник нормативно-правових актів у сфері захисту прав дітей / Представництво Дитячого фонду ООН (ЮНІСЕФ) в Україні, Державний Комітет України у справах сім'ї та молоді, Центр «Розвиток демократії», Інформаційно-методичний центр «Дебати», Жіночий Консорціум України/. – К.: РА «Прем'єр Медіа», 2003. – 318 с. – С.15-47.

² Збірник нормативно-правових актів у сфері захисту прав дітей / Представництво Дитячого фонду ООН (ЮНІСЕФ) в Україні, Державний Комітет України у справах сім'ї та молоді, Центр «Розвиток демократії», Інформаційно-методичний центр «Дебати», Жіночий Консорціум України/. – К.: РА «Прем'єр Медіа», 2003. – 318 с. – С. 168-207.

³ Збірник нормативно-правових актів у сфері захисту прав дітей / Представництво Дитячого фонду ООН (ЮНІСЕФ) в Україні, Державний Комітет України у справах сім'ї та молоді, Центр «Розвиток демократії», Інформаційно-методичний центр «Дебати», Жіночий Консорціум України/. – К.: РА «Прем'єр Медіа», 2003. – 318 с. – С.56-72.

⁴ Збірник нормативно-правових актів у сфері захисту прав дітей / Представництво Дитячого фонду ООН (ЮНІСЕФ) в Україні, Державний Комітет України у справах сім'ї та молоді, Центр «Розвиток демократії», Інформаційно-

1985	the Minimum Standard Rules of the United Nations Organization, which concern administration of justice for minors (Beijing rules);
1989	Convention on the Rights of the Child (which by the end of 1997 had been ratified by all countries, except for the USA and Somalia);
1990	Rules of the United Nations Organization, which concern the protection of minors, deprived of freedom
1990	Leading principles of the United Nations Organization for crime prevention among minors;
1997	Leading principles concerning actions in the interests of children in the system of criminal justice (Vienna leading principles).

International society pays great attention to the juvenile justice on the theoretical level, but in fact, rights, norms and principles of the juvenile justice are regularly neglected and violated in many countries of the world. This fact is stated in the materials of the General Assembly of the United Nations Organization connected with the adoption of “Beijing rules”, in which it is said that “though in our time the achievement of such standards may seem difficult, taking into consideration existing social, economic, cultural, political and legal conditions, nevertheless, their achievement is foreseen as political minimum”⁵.

In the similar resolution about the adoption of the Rules of the UNO which concerns imprisoned minors’ protection, it is clearly stated, that General Assembly “worries about the conditions and circumstances of the minors’ detention in the whole world”.⁶ Then both resolutions appeal to member-countries to allocate necessary means for successful execution of every document.

Standards in the sphere of juvenile justice strengthen economic, social, and cultural rights, which must be guaranteed for a juvenile convict: for

методичний центр «Дебати», Жіночий Консорціум України/. – К.: РА «Прем’єр Медіа», 2003. – 318 с. – С.254-276.

⁵ Конвенція ООН про права дитини. Правове положення неповнолітніх в Україні. Збірник нормативних актів./Уклад. Ройтер В.П., Євко В.Ю. – Х.: Еспада, 2002.,- 567с. – С.21.

⁶ Ювенальна юстиція і ювенальні суди в українському судочинстві: Посібник для тренінгів. Кн.ІІ. – К.: Кобза, 2005.- 165 с. – С.47-54.

example, supplying with clothes and food, access to education and medical treatment. The state is responsible for holding these rights.⁷

However, most true norms that regulate the sphere of juvenile justice are based on general civil rights taken from International Covenant on Civil and Political Rights. Therefore the warning to the article 4 of “the Convention on rights of a child”⁸ cannot be applied to them: “Countries-participants take all necessary legislative, administrative and other measures to enforce rights recognized in this Convention. As for economic, social, and cultural rights Countries-participants take such measures in maximum ranges of available resources and, if it is necessary, within international cooperation.”

The question of execution of juvenile justice standards (though they are based on civil rights of adults) is not only the problem of policy, but it is also the problem of resource allocation. To forbid death sentence for crimes committed by persons under 18, it is necessary to adopt the decision not connected with large financial expenses. On the other hand, to create an absolutely new developed general national system of courts on minors' cases, it is necessary to use considerable resources to enforce true obligations considering economic, social, and cultural rights.⁹

International legal documents do not contain a distinct norm about minor's age that is the reason for his involvement into criminal responsibility, if he has committed a crime. “Convention only obliges countries-participants to establish “the minimum age, if the age is lower than it is, children are viewed as disable to violate the criminal law” (art. 40.3)¹⁰. “Beijing rules” include an extra principle: “the lower limit of such

⁷ Преступление и наказание в Англии, США, Франции, ФРГ, Японии. Общая часть / Отв. Ред. Н. Ф. Кузнецова. – М., 1991. – 288 с. – С.112-138.

⁸ Збірник нормативно-правових актів у сфері захисту прав дітей / Представництво Дитячого фонду ООН (ЮНІСЕФ) в Україні, Державний Комітет України у справах сім'ї та молоді, Центр «Розвиток демократії», Інформаційно-методичний центр «Дебати», Жіночий Консорціум України/. – К.: РА «Прем'єр Медіа», 2003. – 318 с. – С.15-27.

⁹ Мельникова Э.Б. Ювенальная юстиция: Проблемы уголовного права, уголовного процесса и криминологии. Учеб. пособие.– 2-е изд., испр., доп. – М.: Дело. 2001. – 272 с. – (Сер. «Российское право: теория и практика»).– С.97-120.

¹⁰ Збірник нормативно-правових актів у сфері захисту прав дітей / Представництво Дитячого фонду ООН (ЮНІСЕФ) в Україні, Державний Комітет

age cannot be fixed on too low age level, taking into consideration aspects of emotional, spiritual and intellectual maturity” (point 4.1).¹¹ It shows that indicators of medical and sociopsychological investigations but not traditions or demands of society ought to be taken into consideration in establishing the minimum age.

It is very difficult to get distinct data about the minimum age established in various countries, because sometimes such “age” implies a different age. In other words, the official minimum age of calling to criminal responsibility appears higher than the age when the minor may come across the system of justice.

Different age of the criminal responsibility¹² in different countries:

England – 10 – 17 years.

Ireland – 10 -12 years¹³ (made higher in 2006)

The USA – 16 years.¹⁴

Finland – 15 years.

France – 13 years (but children at the age from 10 to 12 years can also be taken to the juvenile court, though the judge can take only measures of educational character or supervision¹⁵).

України у справах сім’ї та молоді, Центр «Розвиток демократії», Інформаційно-методичний центр «Дебати», Жіночий Консорціум України/. – К.: РА «Прем’єр Медіа», 2003. – 318 с. – С.15-27.

¹¹ Збірник нормативно-правових актів у сфері захисту прав дітей / Представництво Дитячого фонду ООН (ЮНІСЕФ) в Україні, Державний Комітет України у справах сім’ї та молоді, Центр «Розвиток демократії», Інформаційно-методичний центр «Дебати», Жіночий Консорціум України/. – К.: РА «Прем’єр Медіа», 2003. – 318 с. – С.57-63.

¹² Збірник нормативно-правових актів у сфері захисту прав дітей / Представництво Дитячого фонду ООН (ЮНІСЕФ) в Україні, Державний Комітет України у справах сім’ї та молоді, Центр «Розвиток демократії», Інформаційно-методичний центр «Дебати», Жіночий Консорціум України/. – К.: РА «Прем’єр Медіа», 2003. – 318 с. – С.57-63.

¹³ Ювенальна юстиція і ювенальні суди в українському судочинстві: Посібник для тренінгів. Кн.ІІ. – К.: Кобза, 2005.- 165 с. – С. 65.

¹⁴ Преступление и наказание в Англии, США, Франции, ФРГ, Японии. /отв. ред. Н. Ф. Кузнецова. – М. : Юридическая литература, 1991. -288с – С.150-162.

¹⁵ Преступление и наказание в Англии, США, Франции, ФРГ, Японии. /отв. ред. Н. Ф. Кузнецова. – М. : Юридическая литература, 1991. -288с. – С.150-162.

Germany – 14 years.

Japan – 14 years.

A large amount of countries make attempts to find special ways to omit “unnecessary contacts of a child or teenager with the court system”. It especially refers to offenders blamed for a crime for the first time and who confessed it.¹⁶ Alternative measures may include such proceedings not in court but made by some other bodies.

The simplest alternative measure is a warning of an offender by police. In this case policemen independently or having consulted with a family and a social worker make a decision not to charge a child with committing a crime, but to warn the child about the consequences of his behaviour and to let him understand that next time his actions will lead him to the court.¹⁷

Today there are some examples of bodies which substitute formal courts and have powers to consider cases of minors who committed not very serious offences and confessed in committing them. The most developed approach is efficient and thorough inspection made by the social worker before trying the case in court. In this case, the social worker analyzes the possibility of the positive effect of organizational measures which do not have penal functions before a trial in court. A good example of such approach is a programme of the local public organization “The Centre of Legal Help” in cooperation with public social service and court.

In Scotland a so called “Children’s Hearing” exists. In fact it allows children under 18 who committed offences (except for serious crimes) to avoid the contact with formal system of justice (it is mainly directed for measures not connected with detention). New Zealand initiative concerning children of 10-13 years old is based on the similar grounding. It is a system of family counselling used in case the number, character and scale of committed by a child offences cause serious worries about his future.

In 1991 in Australia rather efficient “Programme of warning of minors” has been created, according to it police directs the cases of

¹⁶ Ювенальна юстиція і ювенальні суди в українському судочинстві: Посібник для тренінгів. Кн.ІІ. – К.: Кобза, 2005.- 165 с. – С.45.

¹⁷ Мельникова Э.Б. Ювенальная юстиция: Проблемы уголовного права, уголовного процесса и криминологии. Учеб. пособие.– 2-е изд., испр., доп. – М.: Дело. 2001. – 272 с. – (Сер. «Российское право: теория и практика»). . – С.187.

most under-age offenders for investigation with the help of mediators, where victims, the offender and his parents, social workers and workers of law enforcement agencies are present. The coordinator helps all the participants of the proceeding to agree on the solution of the problem and compensation for damages, registers the following measures for providing its fulfillment¹⁸.

With the same aim attention is paid to the renewal of traditional methods of the solution of conflicts between an offender and a victim together with following the principles of juvenile justice. For example, in Philippines the system of mediation exists and it is directed for a friendly regulation of a conflict by means of maximum use of the system of administration of justice in society. A social worker acts as a mediator from the side of a juvenile offender, who can be offered bail to his parents or to a responsible member of a community under observation of the Department of social security and development. The system of social security functions in the countries of Latin America¹⁹.

Of course, we should not think, that the use of traditional approaches automatically guarantees positive results. These traditions not always correspond to “Convention”.

In “Leading principles” several levels of measures for the prevention of juvenile crimes are defined:

- the first level of prevention – combined measures for satisfying social justice and equality of opportunities;
- the second level of prevention – measures for giving help to children from the groups of the increased risk, for example those, whose parents have special difficulties or neglect their parental duties;
- the third level of prevention includes measures that allow to avoid unnecessary contact with the formal system of justice, and also measures for prevention of repeated offences²⁰.

¹⁸ Пилипчук П.П. На шляху до ювенальної юстиції. / Відновне правосуддя в Україні./ № 1-2 (1-2) – К.:Український Центр Порозуміння, 2005. – С.87-95.

¹⁹ Люблинский П. И. Суды для несовершеннолетних в Америке как воспитательные и социальные центры. – СПб.: Сенатская типография, 1911 ... М.: Юрид. лит., 1991. 495 с.- С.28.

²⁰ Симонов И. Развитие системы альтернативных наказаний // Преступление и наказание. –М.:2007. № 9. – С. 26–28.

In the rule 1.3 of “Beijing Rules” it is stated about the necessity of “*positive measures, that imply total mobilization of all possible resources, including family, volunteers, and other groups of society, and also schools and other public institutions, with the aim of assisting to the minor’s welfare and lessening the necessity to interfere legally ...*”.²¹

Nowadays there are many different types of courts for juvenile delinquents. We have paid our attention to the three classic models of such courts: anglo-american, continental and scandinavian.

Anglo-american model of the court for juvenile delinquents is present in such countries as Great Britain, Canada and Netherland. According to this model juvenile delinquent incurs responsibility, he is criminally liable for committed by him crime and the court adjudges the appropriate punishment. A special attention in this model is paid to the to the legal and alternative measures for minors’ prevention from committing crimes, which is held by different institutions. The courts for juvenile delinquents hear only the cases-misdemeanors. (For a misdemeanor the penalty is a prison term of one year or less). All the other cases, that are felonies, (the maximum penalty for a felony is a term of more than one year) are heard by the courts of general jurisdiction. On the other hand the anglo-american model is characterized by the extended system of the measures of criminal influence on the juvenile delinquent which depends greatly on the age of the juvenile delinquent. For example, children that committed the crime under the age 10-14 are tried by juvenile courts and their punishment is connected with probation, with juvenile delinquent’s residence in a special Center under the supervision of the probator-worker during a certain period of time.²²

The *Scandinavian model* (Sweden) is characterized by the idea of reconstructive justice with educative measures concerning the juvenile

²¹ Збірник нормативно-правових актів у сфері захисту прав дітей / Представництво Дитячого фонду ООН (ЮНІСЕФ) в Україні, Державний Комітет України у справах сім’ї та молоді, Центр «Розвиток демократії», Інформаційно-методичний центр «Дебати», Жіночий Консорціум України/. – К.: РА «Прем’єр Медіа», 2003. – 318 с. – С.15-27.

²² Люблинский П. И. Суды для несовершеннолетних в Америке как воспитательные и социальные центры. – СПб.: Сенатская типография, 1911 ... М.: Юрид. лит., 1991. 495 с. – С.28

delinquents: the main role belong to the social worker, children under 15 cannot be charged with a criminal offence, juvenile offenders between 15 and 18 are very rarely punished by imprisonment.²³

Continental model of the juvenile justice exists in such countries as France, Belgium and Germany. The main conception of continental model provide for commuted punishment for juvenile delinquents and a very small per cent of penalties for juvenile delinquents connected with imprisonment. The main person in the continental juvenile justice is a judge who fulfils the role of the judge and the role of a social worker.²⁴ In these countries all the crimes committed juvenile delinquents are tried (heard) in the specialized juvenile courts and can't be tried by the courts of general jurisdiction.

Different models of juvenile justice are learned by Ukrainian lawyers and scientists on the theoretical level but in practice juvenile justice do not exist in independent Ukraine. Having analyzed these models we came to conclusion that the French continental model with some amendments is the most appropriate to the legal system of our country.

The policy in the sphere of juvenile justice – is not the policy, if it does not imply prevention. Preventive measures are difficult to implement in vacuum. A large part of preventive activity – is programmes on the level of local communities, which do not influence outer factors, that create or make groundings for juvenile crimes. The absence of an effective prevention of juvenile crimes lowers the chances for the creation of the system of juvenile justice in the country.

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²³ Пилипчук П.П. На шляху до ювенальної юстиції. / Відновне правосуддя в Україні. / № 1-2 (1-2) – К.: Український Центр Порозуміння, 2005. – С.87-95.

²⁴ Ювенальна юстиція і ювенальні суди в українському судочинстві: Посібник для тренінгів. Кн.ІІ. – К.: Кобза, 2005.- 165 с. – С.33.

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