

# Restriction Of The Rights Of Juveniles In The Criminal Code Of The Republic Of Azerbaijan As One Of The Problems In The Field Of Human Rights

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Key words: legislation, restrictions, juveniles, responsibility

hüquqlarının məhdudlaşdırılması sahəsində mövcud olan problemlərdən biri kimi araşdırılır.

## Abstract

The chapter XIV of the Criminal Code of Azerbaijan Republic dedicated to the criminal responsibility and the features of punishments which are applicable to the juveniles. As we know there are some restrictions and also discounts related to the rights of juveniles in the legislation of Azerbaijan, especially in the criminal code. In the article 84 of Criminal Code describes juvenile a person who is 14 years old, but not older than 18 years while committing a crime. In this case, a punishment can be defined or forced measures of educational influence can be applied to them (2). These punishments and forced measures of educational influence which applied to the juveniles committed a crime fitting to the "Minimum standards about implementation of juvenile justice" which adopted 29 November 1985 by General Assembly of United Nations (1).

Açar sözlər: qanunvericilik, məhdudiyətlər, yetkinlik yaşına çatmayan şəxslər, məsuliyyət

Ключевые слова: законодательство, ограничения, несовершеннолетние, ответственность

## РЕЗЮМЕ:

В этой статье рассматриваются альтернативные наказания для несовершеннолетних правонарушителей и другие проблемы в области нарушений прав человека и ограничение их прав в рамках проблемы прав человека в Уголовном кодексе Азербайджанской Республики.

In the 30 June 2008 year decision of Supreme Court of Azerbaijan Republic "Court practice about the issues of the delinquencies committed by juvenile offenders" stated that Courts when looking up to the crimes which committed by juveniles, they using very less a law norms, such as, punishment or forced measures of educational influence about juveniles who committed crimes which do not represent big public danger or less serious crimes in practice.

The article 85 of Criminal Code shows that there is a restriction about the punishments which are applicable to the juveniles. Just four types of punishments can be applied to them, these are, penalty, public works, corrective works and imprisonment in a certain time. Penalty can be imposed to juvenile's salary but for it it's important to have permanent or temporary work place to the juvenile.

## Xülasə:

Bu məqalədə yetkinlik yaşına çatmayan şəxslərə qarşı alternativ cəzaların tətbiqi, həmin şəxslərin formal sistemdən yayındırılması və hüquqlarının məhdudlaşdırılması sahəsində mövcud olan digər problemlər, Azərbaycan Respublikasının Cinayət məəcəlləsində insan

Another punishment for juvenile offenders is corrective works and when this punishment applied to them 5 to 20 percentages from their salaries' hold for the state. If the juvenile resolutely try not to agree with fulfilling the corrective work the part of this work which didn't fulfill replaced with imprisonment in a certain time, according to the article 49 of Criminal Code. It can be considered as a restriction of the rights of juvenile for a period of time (2).

The instruction about the imprisonment in a certain time shows that imprisonment cannot be more than 10 years and this is the consequence of the principle of humanity and justice. But there is no any direct instruction about the expectation of limits in repeatedly committed crimes, relapse of crimes and set of crimes in the case of appointing imprisonment punishment. This is one of the restrictions about the juvenile's rights in Criminal Code because if the limit of 10 years about juveniles overcome it can be against to the rights of juvenile offenders.

According to the article 86.2 of Criminal Code, it is important to define the circumstances mitigating punishment and circumstances aggravating punishment as a complex when determine a punishment for the juvenile offender. Defining the imprisonment punishment very important issue because it can be restriction of the rights of juvenile and court chose this punishment only when sure that it is important to isolate juvenile from society (2). Detention may be ordered for a number of different reasons, including concerns that a juvenile is a risk to him or herself and others, the need for a secure facility to hold a juvenile who is awaiting placement because most nations do not allow prison systems to keep juveniles in the general population.

United Nations Convention on the Rights of the Child which adopted in 1989 emphasizes that State Parties shall ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age. No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last

resort and for the shortest appropriate period of time. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age (4). In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances. Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Sometimes juveniles don't fulfill the forced measures of educational influences which applied to them, for instance, transferred under supervision juvenile break the law three times at least or despite the three times of warning not paying for damage. If juvenile who doesn't fulfill the forced measures of educational influences applied to him or her and break the law regularly, the state body apply petition against juvenile for cancelling the decision about releasing from criminal liability (3).

One of the forced measures of educational influences applied to juveniles is restriction of leisure time and establishment special requirements to behavior of the minor. Restriction of leisure time and establishment special requirements to behavior of the minor can provide an interdiction of visiting to certain places, as well as a certain forms of leisure, including management of a mechanical vehicle, restriction on living outside of the house after certain time of day, departure to other districts without a permission of the appropriate state body. On minor also can be assigned duty to continue education or to be employed with the help of the appropriate enforcement authority. Restriction of leisure time and establishment special requirements to behavior of the minor can provide, and other measures (5).

Releasing from punishment of the minor is shown in the article 89 of present Criminal Code. The minor condemned for commitment of a crime, which do not represent big public danger or less serious crime, can be

released from punishment with application of forced measures of the educational influence provided article 87.2 of the present Criminal Code (2). The Court can release from punishment a minor condemned commitment less serious crime if recognizes, that a purposes of punishment can be achieved only by his premise in the educational or medical-disciplinary establishment provided for such purposes. The term of stay of the minor in the provided establishments cannot exceed the maximal term of the punishment provided by the present Criminal Code for a crime accomplished by him. When the juvenile send to the closed educational or medical-disciplinary establishment the time period of juvenile for holding there defined for three reasons, first is completion social rehabilitation, second is providing them general education and vocational training for allowing them labor activity, third is happening changing in their personality and life position.

Releasing from punishment the juveniles who committed a crime and placing them to the closed educational or medical-disciplinary establishment generally is forced measures of educational influence by nature. But not including these measures to the forced measures of educational influence explaining with having them the features of restriction freedom (6).

Our legislation, especially Criminal Code is improving day by day and conforming to the European standards. The main improvement in this area is Council of Europe Strategy 2016-2021. The strategy submitted the main protecting mechanisms children in the context of deprivation of liberty. Under the United Nations Convention on the Rights of the Child, deprivation of liberty must be used as a measure of last resort and for the shortest appropriate period of time. Council of Europe member States will be supported in avoiding and preventing deprivation of liberty and criminalization of children through measures such as extension of diversion and preparation for reintegration (7). Material conditions and detention regimes should be improved in line with Council of Europe standards. Support will be provided to member States in implementing the European Rules for juvenile offenders subject to sanctions or measures. The Council of Europe will promote the implementation

of the Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment regarding the protection of children deprived of liberty from ill-treatment and violence, follow-up to the recommendations of the report on violence in institutions for juvenile offenders and develop practical guidance for monitoring places of deprivation of liberty for children. It will consider addressing the situation of children whose parents are detained. The Council of Europe is ready to support, as appropriate and within its mandate, the UN Global Study on Children Deprived of Liberty, notably as far as the European region is concerned. State parties should take steps to decrease the number of children deprived of liberty and improve deprivation of liberty conditions.

In 2005, as part of the shadow reporting procedures to the UN Committee on the Rights of the Child the NGO Alliance conducted its first research study. This report shows that in general the situation remains the same and that problems and gaps in the juvenile justice system are apparent in all regions and in the system as a whole. The problems do not appear to be due to the incapability of individuals working within the institutions. Rather, the authorities are not determined to fulfill their responsibilities under the existing national legislation and international obligations of Azerbaijan. During the observations different gaps in legislation were found which cause the restriction of the rights of juveniles (8).

Commissions on minors are one of the main institutions which play a big role in the protection of the rights of juveniles and try to fight against the violence against children. But it is important to state that there are strict problems related to this Commissions which cause restrictions in juveniles rights and criminal responsibility. According to the law, Commissions on minors can look up to the issues of juveniles who committed crimes which do not represent a public danger or less serious crimes and impose alternative sanctions for them. But observations showed that Commissions of minors didn't look to these issues at last 2 or 3 years. Also these Commissions have rights to apply to the Pardon Commissions next to President of Azerbaijan Republic relating to the juvenile's issues. But there are no any applications to the Pardon Commissions about

the children 14-18 years old who suspended to the imprisonment sentence. As well as, these Commissions didn't have the regularly meetings and discussions with the juvenile offenders and these are also a big restrictions in their rights. According to the law, Commission on minors have right to apply to the business entities or non-governmental organizations for the education, finding the job, improvement of the child, integration, social rehabilitation of juveniles. But in practice they never applied for these purposes.

During the observations another problem showed itself which directly restrict the rights of juveniles, so, there are no separately police detention centers for juvenile offenders. There are no separately cameras for juvenile offenders and this is a big problem in this area. Also time period which given to the juvenile offenders is very short approximately 5-10 minutes in some police detention centers (9).

In investigatory isolators the main problems are keeping child offenders together with adult offenders, lacking in resources organizing the education. There are open and closed special educational correctional institutions. In practice in our legislation two different institutions have first is Mardakan settlement special education institution (for 8-18 years old boys) and second is Guba district special education institution (11-18 years old boys) (10).

One of the important and constitutional right of person also juvenile offender is right to fair trial as well as it covers right to defense and in our legislation state provide free legal aid for accused but practice shows that juvenile offenders use aid of attorney play formal character.

Generally significant restrictions in our criminal legislation are highlighted and we saw that discretion about juvenile offenders in criminal proceedings belongs to police and special police inspectors in juvenile offenders' issues exist. In some European countries discretion belongs to the prosecutor, for instance, in France, Belgium, Norway, Germany and etc. Generally in our Criminal Code have a problem with alternative sanctions which cause restriction of juveniles' rights and it is very important to use diversion for juvenile offenders. Diversion is an act which tended to divert the children conflict with law from formal

process.

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