

JUVENILE JUSTICE: EXPERIENCE OF AZERBAIJAN AND OTHER COUNTRIES

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Abstract

Presently, with the continuing development of a rule-of-law state and creation of a civil society in the Republic of Azerbaijan, the implementation of requirements of Azerbaijan's Constitution and its other laws aimed at protecting life, health and human rights has acquired a special significance. The norms and rules set in international legal acts constitute the principles that form an approximate mechanism for implementation of juvenile justice.

Under the term "juvenile justice" we understand the whole system of state bodies that administer justice in relation to crimes among minors, control the correction and rehabilitation of adolescents who have problems with the law. In this article, the author argues that in the states where there is a standalone (autonomous) system of juvenile justice, the judicial proceedings relating to children have more clear specifics.

Keywords: *crime, Constitution, human rights, offenses, UN Convention, minors, international instruments, justice, children*

Presently, the Azerbaijani society is undergoing a renewal in all areas of its life, and with the continuing development of a rule-of-law state and creation of a civil society, the implementation of requirements of Azerbaijan's Constitution and its other laws aimed at protecting life, health and human rights has acquired a special significance. "Everyone has the right to protect his/her rights and freedoms using ways and means not prohibited by law ... The state shall guarantee the protection of rights and freedoms of everyone," says one of the fundamental requirements of the Constitution of the Republic of Azerbaijan [1, Article 26].

Combating crimes and offenses, which negatively impact the development of the society, has always been a focus of attention of the President of the Republic of Azerbaijan. The Decree on Measures to Enhance the Fight against Crime and Strengthen the Rule of Law of August 9, 1994 and the Decree on Measures to Ensure the Human and Citizen Freedoms of February 22, 1998, laid the foundations for a new policy to combat crimes and offenses.

The theory of law asserts that the concept of human rights should be viewed as an all-embracing category, combining supranational and universal requirements and standards of individual freedom. In this case, human rights are not a state legal or a concrete legal category, but a general social concept. Respecting human rights, which are bestowed at birth, is the fundamental goal of any civilized rule-of-law state that seeks to ensure the freedoms, safe living and well-being of its people. A person's human rights, along with his/her duties are an integral part of the society's life and activity as they are meant to ensure order, stability and qualitative change of the whole mankind. Here human rights apply to both men and women, and to children. Essentially, a society as well as its individual members live and develop under the same laws of life, starting their path from birth, continuing to childhood, adolescence and adulthood, and ending with an inevitable old age. As N.P. Meleshko notes, childhood is a very important phase in a person's life. A civilized society's actions must be based on the priority of preparing children for a full-fledged life in the society, developing their socially significant and creative activity, and nurturing high moral qualities and civisms in them. Childhood is a matter of continuation of the human race and a matter of shaping the personality of the society's future members [2, 287].

It is well known that developing the future generation's morality, culture, spirituality and its physical education are the main goals of any civilized society, since it is impossible to build a progressive rule-of-law state without worthy successors endowed with high morality and sense of justice. Spirituality is the most important part in upbringing a new person. Hence raising a comprehensively developed, conscious, moral and socially active person is of special concern for the state. The new person should be morally rich, brought up in the synthesis of national and universal moral and ethical values.

From the social and legal perspective human actions are a kind of social behavior in general, so, accordingly they obey the psychological laws inherent in any conscious act of an individual. A person is a spiritually free human being, whose freedom is possible only within the actual political and legal systems. A human is born as a biological being, but must leave this world as a person [3, 7]. The opinion that "a human being is naturally born free" causes much doubt, since such "freedom" is putative and invalid, and it acquires its validity, its "actual existence" only with the help of the law. So, obviously, even after having committed an offense, a child remains a child, and it is not possible to apply the same penalties to him/her as to adults. This is why there is the juvenile justice system, which incorporates state bodies, local self-government bodies, state and municipal institutions, officials, and non-governmental non-profit organizations that carry out actions aimed at implementing and securing the child rights, freedoms and legitimate interests based on the procedures set by the law [4, 323]. However, being one of the most vulnerable groups of the population, children are often victims of unscrupulous parents, officials and citizens, who violate their rights and freedoms with impunity, and the inability of children to defend their rights and legitimate interests on their own, and the inaccessibility of qualified lawyers and other professionals bring forth the need to find a reliable and effective mechanism for protecting the rights and legitimate interests of children. As recognized by the world community and enshrined in the UN Convention on the Rights of the Child, children as a special group, are at the same time a very significant part of the society, who need special mechanisms to protect their rights [5].

The Republic of Azerbaijan, as many other countries, is implementing projects on juvenile justice. The relatively new concept of juvenile justice, even as a term, has recently been adopted by the Azerbaijani society. This term originates from two Latin words: *juvenilis* (juvenile, young) and *iustitia* (justice, fairness). V.N.Tkachev [6] and K.V.Lisukova [7] note that nowadays there are two directions for development of the definition of juvenile justice – in the narrow and broad senses. In the narrow sense, juvenile justice is understood as the activity of a juvenile court, while in the broad sense it means the activity of all the bodies and institutions related to protection of the rights of minors, including the participation of civil society. Under such an unusual justice system, we understand the whole system of state bodies that administer justice in cases of crimes among minors, control the correction and rehabilitation of adolescents who have problems with the law.

Also, it should be noted that juvenile justice appeared a long time ago: the special attitude of society towards the persons below the age of adulthood was enshrined even in the laws of the Roman Empire. The Renaissance and the subsequent humanization of the law changed attitudes towards juvenile offenders: along with mitigation of punishment, a system of juvenile justice began to be formed, which included special law enforcement agencies, courts, prosecutors, lawyers, etc. So far, only several components of the juvenile justice system are developing in Azerbaijan, while the United States of America is considered a pioneer in the creation and promotion of the ideas of juvenile justice. Back in 1899, the first juvenile court was established in Chicago under the law of the State of Illinois on the abandoned, homeless and delinquent children and looking after them. Then, to deal with the cases of minors, a relatively new concept of delinquent was introduced, which is different from the concept of criminal, and the status of a minor offender became a subject of juvenile justice.

It should be noted that the following international documents, which were also ratified by the Republic of Azerbaijan, have had a significant impact on the formation of the principles of juvenile justice:

1) The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), adopted by General Assembly resolution 40/33 of November 29, 1985 [8];

2) The United Nations Convention on the Rights of the Child, adopted by General Assembly resolution 44/25 of November 20, 1989 [5];

3) The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113 of December 14, 1990 [9];

4) The *United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)*, adopted by General Assembly resolution 45/112 of December 14, 1990 [10];

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, also known as the Beijing Rules, is the first international legal instrument to set out the basic principles of juvenile justice. As a development of the ideas of the Beijing Rules, the UN Convention on the Rights of the Child was adopted on November 20, 1989. The Beijing Rules are in fact a universal international treaty establishing the basic civil, political, socioeconomic and cultural rights of children until they reach adulthood, as well as the obligations of states to respect and guarantee these rights.

This convention includes the following new human rights:

✓ for survival and development of the child (Article 6);

✓ for preserving the child's identity (Article 8);

✓ for the child deprived of liberty to maintain contact with his or her family (paragraph c, Article 37);

✓ for not taking a direct part in hostilities (Article 38);

✓ for physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts (Article 39).

The norms and rules set out in international legal instruments constitute the principles that shape an approximate mechanism for delivering juvenile justice. Recognized, concretized and supplemented by the national legislation of a particular country, these principles form a specific model of juvenile justice.

According to the second part of the Article 148 of the Constitution of the Republic of Azerbaijan, the international treaties, to which Azerbaijan is a party, are an integral part of the legislation system of the country [1]. Also, the Milli Mejlis (Parliament) of Azerbaijan, with a law of May 31, 2002, approved the Regulations on the Commission for Minors' Affairs and Protection of their Rights, while the *Law on Juvenile Homelessness and Delinquency Prevention* was adopted on May 24, 2005. In addition, the adoption of the Law on Social Protection of Children who *have lost* Parents and deprived of Parental Care on August 30, 1999 and other documents such as the 2014-2020 State Program for Improving Mother and Child Health, the Azerbaijani Family Strategy, the National Strategy for Children, and the Law on State Assistance to Large Families are of great importance in implementation of the constitutional norms related to children and their rights. In principle, juvenile justice was established in Azerbaijan in 2005, when the President of the Republic of Azerbaijan signed the law on prevention of child neglect and delinquency. To implement the law, UNICEF, the OSCE Mission in Azerbaijan, the Ministry of Internal Affairs of the Republic of Azerbaijan, together with the Azerbaijan NGO Alliance for Children's Rights and the Reliable Future organization, in 2007 established Azerbaijan's first rehabilitation center for minors who were previously involved in various offenses. In addition, Azerbaijan got its first juvenile law clinic. The Ministry of Justice of the Republic of Azerbaijan undertook the main burden in eliminating the problems faced in development of juvenile justice. One of the clearly visible results is the creation of two specialized judge teams (six judges) for juvenile justice in the Baku Court for Grave Crimes.

According to the information from the Penitentiary Service under the Ministry of Justice of the Republic of Azerbaijan, only 47 people are serving their sentences in the Baku correctional facility for minors. Not so long ago, the number of juvenile convicts serving their sentences in the aforementioned correctional facility was 200.

In most countries of the world, as in Azerbaijan, the age of majority is 18, while in some other countries minors are the persons who have not reached 15, 17, 20 or 21 years of age. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted December 14, 1990, are based on the provision that the deprivation of a minor's liberty should be applied as a last resort. The Rules are aimed at setting the United Nations minimum standards for the protection of minors deprived of their liberty in accordance with human rights and fundamental freedoms. The United Nations Guidelines for the Prevention of Juvenile Delinquency, also known as the Riyadh Guidelines, *set activities for the prevention of crime among young people*. The Riyadh Guidelines are applied in the framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) [11, 10, 14].

In the Beijing Rules of November 29, 1985, the age of majority is set at 18 or above, with a reservation that unless another age is set by each national legal system (8). Each national legislation sets the principles of juvenile justice by concretizing or supplementing international principles, as well as by establishing its own principles of juvenile justice. In the states that have a standalone (autonomous) juvenile justice system, the judicial proceedings relating to *children* have more clear specifics. In such countries, as a rule, the principles of juvenile justice are enshrined in special laws. For example, Germany has a law on the administration of juvenile justice, adopted on August 4, 1953 [12, 49]. In the states that have no standalone system of juvenile justice and no corresponding legal framework (in our case, in the Republic of Azerbaijan), the specifics of judicial proceedings relating to *children* and the principles of juvenile justice are discernible in the peculiarities of the court proceedings. For example, in Azerbaijan, the criminal proceedings relating to minors are regulated by the norms set in the Special Chapter of the Code of Criminal Procedure of the Republic of Azerbaijan of July 14, 2000, which is titled as "Proceedings Concerning Minors" (articles 428-435) [13].

Among the European countries, England was the first to establish a separate juvenile court in 1905. At present, along with England most of the European countries, for example, Germany, Sweden, France have standalone juvenile courts not connected with the system of general jurisdiction courts. In some other European countries, for example, in Ireland, Italy, and Switzerland the general jurisdiction courts have specialized teams authorized to deal with the cases relating to minors. To date, there are several different models of juvenile justice, conventionally called Continental, Scandinavian and Anglo-Saxon.

In France, the juvenile court includes three types of courts different in composition and category of the criminal cases considered (a single judge for juvenile cases, a board of judges, and a jury for juvenile cases). The juvenile justice system in France has a special educational service. This educational service, which is a psychological and pedagogical organization, implements patronage of children in danger, juvenile delinquents, and young adults (18 to 21 years of age). The educational service of the juvenile justice system in France is an effective resource for implementation of youth policy strategies, promoting a conflict-free integration of young people into the modern society, working closely with families. Training of educators for the educational service of the French juvenile justice is carried out by the pedagogical education system. France has accumulated extensive experience in the training of educators (juvenile educators) for the educational service of the juvenile justice system.

Meanwhile, in Poland, the church has played a major role in creating a system for helping orphans and delinquents, and implementing a special regime for their upbringing. Italy was the first European country where the church initiated a special institution for juvenile offenders.

It is worth noting that in the Commonwealth of Independent States (CIS) the attitude towards adoption of a standalone law on juvenile justice is ambiguous. For example, the Republic of Kazakhstan has juvenile courts, which are the first specialized courts for the cases of minors in the history of the Kazakh justice system. At the moment, Kazakhstan is the only country in the post-Soviet area that has juvenile courts and where a system of juvenile justice has widely spread with 19 juvenile courts operating there.

Meanwhile, in the Code of the Kyrgyz Republic on Children, dated July 10, 2012, the 11th chapter is devoted to juvenile justice (articles 86-102), that is, the term “juvenile justice” is officially used in the articles of this chapter. The Article 86 of the Code, titled “The Notion of Juvenile Justice”, states: “Juvenile justice denotes a system of measures for children in conflict with the law, which includes crime prevention, administration of justice, rehabilitation and social reintegration, taking into account gender, age, intelligence, physical and mental characteristics of their development [14].

In the Russian Federation, which has usually played the role of a generator of ideas in the post-Soviet area, work is underway to implement a juvenile justice project (as well as in Belarus and Ukraine). Despite the fact that there is no a standalone law on juvenile justice (although its draft was prepared long ago, in 1999), in April 2000, the parliamentary hearings in the State Duma of the Russian Federation, discussed the drafts of the “Fundamentals of Legislation on Juvenile Justice in the Russian Federation” and the “Federal Constitutional Law on Amending the Federal Constitutional Law on the Judiciary of the Russian Federation”. However, to date these laws have not been adopted.

This is while, a special training course, called Juvenile Law, was introduced in the law faculties of many higher educational institutions in the Russian Federation. Juvenile Law is an emerging branch of law with a special subject – legal relations involving the minors. The aforementioned training course focuses on juvenile justice and there juvenile justice is understood as an independent legal institute. Meanwhile, the Russian scholar K.I.Smelovtsev justifiably suggests the following definition of juvenile justice: “Juvenile justice is a system that forms a set of legal mechanisms, medical-social, psychological-pedagogical and rehabilitation procedures and programs, designed to ensure the protection of rights, freedoms and the legitimate interests of minors, as well as persons responsible for their upbringing, and implemented by states and non-state bodies, institutions and organizations” [15, 27].

Juvenile justice, as a form of administration of justice, differs from the general justice (general criminal law and general civil law) for its specific principles – increased legal protection of the rights and interests of minors (due to the peculiarities of the subject under consideration, i.e. the peculiarities of the mental processes of the minors).

Unfortunately, today only internal affairs bodies deal with the prevention of juvenile delinquency. This is while many foreign and domestic experts believe that prevention is primarily the job of the family, schools, public and religious organizations, i.e. the institutions of civil society. Family is the backbone of a society – a human being is shaped as a person in his/her own family. Family, especially in the early stages of personality formation, plays a crucial role in the crime prevention. It is a kind of micro-state with its own system of upbringing, persuasion and punishment, and prevention of antisocial behavior.

Although we traditionally call the family “a state within a state”, it cannot be completely isolated from the impact of positive and negative processes occurring in the society. And the family itself is quite capable of influencing the processes in the society. The society itself should be interested in the positive impact of the family on its development. The more material, cultural and other opportunities are created for the normal functioning of the family, the higher will be the level of crime prevention. Experience shows that in those societies where there is a cult of

family, parents and children, there is a lower crime rate. Of course, the family, as an executor of crime prevention, successfully operates with the state via well-established interaction – through the local preventive and law enforcement authorities, educational and children’s institutions.

It seems that the main burden in legal upbringing should lie on the targeted, consistent and systematic legal education, which starts at the high school. It is even possible that this process should start from the kindergartens, where the children are taught what is good, what is bad, what can be done and what cannot be done. However, the full legal education should be carried out at the school, and the single program for the legal education of young students should cover all actions taken by the state bodies, public organizations and educational institutions with an aim to nurture high legal culture and lawful active behavior in adolescents and young people. Of course, any legal training course should contain materials that familiarize students with the basics of constitutional law, the legal status of an individual, and the special rights of young students. But priority needs be given to training in the use of rights, the ability to live fully in the world of rights and duties, and the ability to use the rights and duties in specific life situations.

Ideally, our schools should give the society a spiritually rich personality, oriented to universal human values, with a developed sense of political and moral responsibility. Now, we must admit that the schools by keeping their previous quality continue to shape lack of initiative, social apathy, and disrespect for the law. The foundation of this state of affairs was laid back in Soviet times, “when the feminization of the school pedagogical corps, among other results, led to the nomination of girls to all the ‘responsible’ public positions in the Pioneer and Komsomol organizations and school self-government: ‘girls are more obedient and more effective’” [16, 114]. The current state of affairs is not very different from the Soviet period, with the same conditions for the suppression of the male students’ desire for search and self-approval. “After all, a man can be raised only if he actively absorbs ‘male’ social roles: leadership, responsibility, care for the ‘weak’ females, solving collective tasks, etc.” [16, 114]. In our country, gender equality is ensured for women and men in all areas of social life. However, this does not mean denying that traditionally burden of household, upbringing of children fall upon women. The moral formation of adolescent girls also differs from the education of boys in a number of aspects.

Juvenile justice is designed to ensure that the juvenile offender is not punished, but re-educated, i.e., measures alternative to imprisonment are a priority here. This concept in itself is sound: after all, a teenager, especially a child, is not fully able to take responsibility for his/her actions. Therefore, for what was done, a juvenile offender for the beginning deserves not so much a punishment, as a strict inculcation. We believe that it is advisable, using the positive experience of other countries that have a standalone system of juvenile justice, to adopt – using the international juvenile justice principles - the Law of the Republic of Azerbaijan on the Administration of Juvenile Justice, with a provision on establishment of standalone juvenile courts. Because the activity of autonomous juvenile courts, unlike other bodies, is aimed at both protecting and restoring the rights of the child, and preventing new crimes and punishing the perpetrators.

Perhaps, in every country juvenile justice is still far from a national conceptual framework that could be considered as optimal. This especially applies to law enforcement. The experience of someone else cannot be blindly copied. The experience of someone else is not the only right path, although at the same time, it is not a path to the unknown. In creating their own systems of juvenile justice, young states, including Azerbaijan, need, in our view, to rely very much on their own legal achievements, cultural and historical experience, ignoring which is fraught with great dangers.

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