

Issues of Liability for Involving a Minor to Antisocial behavior and Crime in the Criminal Law of Some Foreign Countries

Miratdiyin Shamshetdinovich Najimov

Berdakh Karakalpak State University

Faculty of Law, Head of the Department of Criminal Law and Civil Law,

Candidate of jurisprudence, Docent, n.miratdin@karsu.uz

Abstract: In this scientific article the issues of liability in some foreign countries for the involving a minor to antisocial behavior and crime in criminal law are analyzed and examined.

Keywords: a minor, law, criminal law, liability, code, article, socially dangerous act, crimes against family, youth

Introduction

The differentiation of criminal responsibility means classification, categorization of responsibility caused by different criminal legal consequences, determined by the legislature based on the degree of public danger of the crime and the personality of the perpetrator. [1].

One of the most common ways of differentiating liability is the criteria used to classify a socially dangerous act as a crime, by which the legislature classifies the elements that constitute a crime and imposes appropriate penalties.

Article 127 of the Criminal Code of the Republic of Uzbekistan differentiates liability for involving a minor in the use of narcotic drugs or psychotropic substances. These actions are committed: a) by a person who has previously committed any crime related to the illicit trafficking of narcotic drugs or psychotropic substances; b) in relation to two or more minors; c) liability is differentiated if it is committed in educational institutions or other places where students conduct educational, sports or social events.

Methods and materials

The results of the differentiation of criminal liability are ensured by the differentiation of punishment. According to the results of the above differentiation, the first case is punishable by imprisonment from three to six months or three to five years, while the second case is punishable by five to ten years in prison.

Article 127 of the Criminal Code of the Republic of Uzbekistan partially differentiates liability for involving minors in crime. In this regard, there is an opportunity to further differentiate this norm in terms of improvement of criminal law and harmonization with public policy. In particular, in order to resolve this issue, it is necessary to refer to the views expressed in the legislation and theory of foreign countries. The Criminal Code of the Russian Federation provides for a number of elements that establishes criminal liability for involvement of a minor in a crime committed by a parent, teacher or other person who has a duty to bring up a minor; using force or threatening to use it; including the involvement of a minor in a criminal group or in the commission of serious or very serious crimes.

Part 2 of Article 150 of the Criminal Code of the Russian Federation strengthens the additional features that characterize the subject of the crime. Only persons who have an obligation to bring up a minor under this section may be prosecuted. The high social risk of involvement of these persons in juvenile delinquency in criminal law is explained not by their

family members or certain professional qualifications, but by the fact that the law assigns them important social functions to educate and educate the younger generation and they grossly violate it. Parents, adoptive parents, guardians and trustees may be considered the subject of a crime under Part 2 of Article 150 due to the obligation of upbringing imposed on them by law (Family Code). It should be noted that in this case, the responsibility of these individuals arises only when they involve their children or foster children in the crime.

The teachers and others are also responsible. A teacher is a person who is allowed by law to engage in education and upbringing and has sufficient knowledge and skills to do so, holding a specific position in an educational institution. Other persons responsible for upbringing are employees of educational and medical institutions, commissions on juvenile affairs of educational colonies.

Differentiation on the subjective criterion can be observed in the criminal legislation of Moldova, Belarus, Azerbaijan, Armenia, Turkmenistan, and Tajikistan. Of these, in the Russian Federation, Belarus, Armenia, Moldova, Turkmenistan, Tajikistan, there are both basic and additional types of punishment. The Criminal Code of Azerbaijan provides for only the main type of punishment for this crime - imprisonment.

Based on the above, the differentiation of liability for the involvement of a minor in a crime should be based on a subjective criterion, i.e. if the parents, adoptive parents, guardians, trustees, teachers and others responsible for education involve their dependents in the crime, it is advisable to introduce into the legislation the issue of imposing additional punishments in the form of deprivation of certain rights in addition to the main punishment. Because committing crimes against the interests of minors is not appropriate for them to remain as educators in the future.

Another criterion of differentiation in the Criminal Code of the Russian Federation focuses on the objective aspect of the crime, which provides for liability that differs from the general grounds for involving a juvenile in a crime by using or threatening to use violence. In this regard, according to L.D.Gaukhman, violence is understood only as physical violence [2]. L.V. Serdyuk also included the use of psychological (mental) violence in the context of violence, and emphasizes that it should be understood when violence is defined as the intentional and unlawful use of force by another person against a person (or a group of persons) against his or her will and causing him or her physical or mental harm, external pressure capable of limiting free expression and free will [3].

In our view, in criminal law two forms of violence can be distinguished: that is, mental and physical violence.

Psychological violence should be understood as the psychological effects which are related and unrelated to health disorders.

The object of physical violence may be the inviolability of the body or health, and it is possible to distinguish several types of physical violence depending on the degree of harm to health. However, the concept of mental violence isn't defined explicitly in the current criminal law. Today, in the Criminal Code the primary emphasis on violence is physical violence.

There is no general agreement on this issue in the literatures. According to S.V.Borodin, violence used in the involvement of a juvenile in a crime should be understood as non-life-threatening violence that poses a threat to health and life, as well as minor damage to health [4].

According to A.N.Ignatov, the same situation is manifested in violence, beatings, binding, confinement, etc. [5].

According to Yu.E.Pudovochkin, the use of violence or the threat of violence against a minor implies the use of various forms of violence against the victim, which are not recognized as a crime by law, as well as the threat of murder or serious injury to health, which does not require special assessment, insults, slander. In his view, inflicting grievous, moderate, or minor bodily injury (both intentional and negligent), negligent homicide, and torture always require additional qualification [6].

In our opinion, none of the proposed recommendations can be fully accepted in practice. This is because it is against the rules to qualify the crime committed by force. These rules are elaborated and described in detail in R.D.Sharapov's research work [7]. Based on them, we can propose the following rules of qualification for criminal prosecution:

Since violence is always an intentional act, its sign should not include the physical consequences of negligence caused by the use or threat of use of force. Involvement in such cases should be considered as a set of crimes, including crimes committed through negligence against the health of the person.

A sign of violence can never cover intentional homicide, so involvement in a homicide-related crime should always be considered as a set of crimes.

The sign of violence includes minor bodily injury, physical pain, as well as incapacitation, without additional assessment, and therefore does not require a separate article to qualify for a crime committed with this level of violence.

In other cases of moderate or severe injury to health, the degree of physical violence affects, firstly, the severity of the sanction imposed for the offense and, secondly, the form of the offense in relation to the injury to health.

In the criminal codes of Turkmenistan and Tajikistan, the use of force or threat of use of a minor to commit a crime is equal with a rule established by the Criminal Code of the Russian Federation.

The Moldovan Criminal Code provides another measure of differentiation with the use or threat of use of force, which is a criterion for differentiation, the involvement of a juvenile in an organized criminal group or criminal activity is shown on the same level, and provides the same sanctions for them. The Criminal Code of the Republic of Azerbaijan stipulates the same norm, but it does not provide for the involvement of a minor in criminal activity and organized crime, and only provides for the criteria of differentiation by involving a juvenile in a criminal group.

The Criminal Code of the Republic of Armenia equates the differentiation according to the objective characteristics, i.e. the involvement of a juvenile in a crime with the use of force or the threat of violence, with the differentiation of the involvement of two or more people in a crime on the basis of the object of the crime.

In matters qualifying the involvement of a juvenile in the commission of a crime by force or under the threat of its use, it should be noted that when the crime is committed by a parent or other person entrusted with the functions of parenting, the act should be qualified by the analyzed part of the article. This is because, according to the general theoretical approach, a special qualifying mark covers the social risk envisaged in the part requiring additional qualification. Involvement of a juvenile in a crime with the use or threat of use of force is reflected in the Criminal Code of the Republic of Belarus with the first criterion of differentiation of liability, i.e. a subjective criterion in the same part, and the same sanctions are imposed on both.

In practice, this criterion of differentiation raises the need to discuss another issue, namely,

the criminality of acts committed by a minor under the forcible influence of an adult. It is known that coercion is the enforcement of a person to force another person to commit an act against his will [9], so this situation can serve as a basis for excluding the criminality of the act. In this case, if the coercion has an irresistible character or there is a possibility of certain harm in the event of resistance, the coerced person shall not be held liable as the real perpetrator [10]. A person involved in a juvenile offense may also be released from criminal liability even if he committed his actions as a last resort and caused damage.

Another qualifying component of the Russian Criminal Code, that is, another criterion for differentiation, is the involvement of a juvenile in the commission of a criminal group or a serious or very serious crime. Analyzing this character, S.V. Borodin argues that a juvenile may be qualified by this section when he or she is involved in a group, organization, or association with which he or she has previously conspired, and in any case emphasizes that the criminal group had been formed at the time of the juvenile's involvement. According to A.N. Ignatov, a minor can be involved in a group that has already been formed or in a criminal group that is now being formed [12].

The concept of a criminal group is not fully disclosed in the Criminal Code, and this requires the study of theoretical views on the subject. A number of researchers have proposed to exclude the concept of a criminal group in the text of Part 4 of Article 150 of the Criminal Code of the Russian Federation. In particular, according to N. Egorova, the law should provide for the involvement of a minor not in a criminal group, but in the form of participation listed in Article 34 of the Criminal Code of the Russian Federation [13]. S.Sh. Akhmedova suggests a comment that reveals the content of the criminal group, while retaining the concept. In this case, the author expressed it as follows: the involvement of a minor or a juvenile in a criminal group should be understood as the involvement in groups with the characteristics specified in Article 35 of the Criminal Code, as well as in gangs.

Discussion

In our opinion, these definitions do not fully cover all cases of involvement of a minor in a criminal group. The concept of criminal group should encompass any form of group structure known to criminal law. First of all, these groups are mentioned in the relevant article of the Criminal Code in which participation is formed. However, it should be noted that it is not possible to engage in a group of individuals without prior agreement, as the involvement itself requires a certain agreement. If an adult influences and conspires with a minor, his or her actions should not be construed as involving the juvenile in the group by prior collusion. Because in this case, the juvenile is involved in the commission of an organized crime as an accomplice or perpetrator, and the group is formed only with his participation. The involvement of a juvenile in a crime may be qualified by this part if there is a prior agreement between at least two persons at the time of the crime, whether or not the juvenile has retained the status of a group. A criminal group is considered an organized group and criminal association in any case.

In addition to the criminal groups listed in the article of the Criminal Code, the formation of an organized armed group, as well as its leadership or participation in it, the formation of a criminal organization, the formation of extremist, separatist, fundamentalist or other prohibited organizations which encroach on the rights of citizens and personality, leading and participating in them is also a manifestation of a criminal group.

The Criminal Code of the Republic of Armenia stipulates the involvement of a minor in

the activities of an organized group or criminal association, not a criminal group, as described above in the analysis of the criminal legislation of the Russian Federation.

It is no coincidence that the Criminal Code of the Russian Federation defines the involvement in the commission of serious and very serious crimes as another criterion of differentiation, because these crimes are characterized by their high social risk. The need to include this criterion of differentiation of responsibility for the involvement of a minor in a crime is explained by the high level of social risk of serious and very serious crimes.

In conclusion, the study of the criminal - legal, criminological aspects of juvenile delinquency, as well as the involvement of minors in antisocial behavior, and the theoretical and practical issues of liability for these crimes, a comparative analysis of foreign laws in this area allowed drawing the following conclusions. :

The results of the criminal-legal and criminological study of Article 127 of the Criminal Code of the Republic of Uzbekistan:

The place of crimes of involving a minor in antisocial behavior and crime in the criminal law differs from the previous Criminal Code. In particular, this crime was given in the 1959 Criminal Code in the chapter "Crimes against public order and public safety" (Chapter 10, Article 218 of the Criminal Code), but it was provided for in the chapter "Crimes against the family, youth and morals" of the Criminal Code of the Republic of Uzbekistan due to the inclusion of crimes against the person at the adoption of the current criminal law. In this regard, the object of these crimes is the social relations related to the normal development of youth.

According to the results of the study of criminal-legal and criminological cases of juvenile delinquency and criminal offenses, the type of involvement of a juvenile in antisocial behavior (part 1 of Article 127 of the CC) did not occur in court practice. Involvement of a minor in the use of narcotic drugs or psychotropic substances (Part 2 of Article 127 of the Criminal Code) occurs in court practice, and it turned out that this type of crime is committed in a total of 14% of cases under Article 127 of the Criminal Code of the Republic of Uzbekistan. The type of involvement of a minor in a crime (Article 127, part 3 of the Criminal Code) is common in court practice, and it is known that this type of crime is committed in 86% of cases under Article 127 of the Criminal Code of the Republic of Uzbekistan.

The highest incidence of involving a minor in a crime in a separate study is 13% for involving in the crimes has less social danger, 76% for less serious crimes, 9% for serious crimes and 2% for very serious crimes. There are main reasons for the high incidence of less serious crimes and it was found that committing crimes by a group of individuals with prior conspiracy of involving a minor in a crime was due to the qualification in aggravating circumstances.

The most common crimes involved in juvenile delinquency were robbery, fraud, and theft. When these crimes were investigated, it was found that cases of involvement in serious and very serious crimes were committed due to cases in which the involvement of juveniles in a crime was qualified as organized crime.

A study of the subjects of crime in juvenile delinquency showed that there was not much difference in the age of the juvenile between the offenders. In particular, it was found that in most cases, the age of minors was 16-17 years, and the age of those who involved them in crime was 18-22 years.

Suggestions for improving the criminal law:

Exclusion of parts 1-2 of Article 127 of the Criminal Code of the Republic of Uzbekistan, including the actions of involving a minor in begging, alcohol consumption, consumption of

drugs and substances that are not considered narcotic or psychotropic, but affect the human mind, provided for in part 1 of Article 127 are suggested to transfer to the "Involvement of a minor in antisocial behavior " given in the Article 188 of the Code of Administrative Responsibility of the Republic of Uzbekistan. This can help to define liability according to the social risk of the proposal. The crime of involving a minor in the consumption of narcotic drugs or psychotropic substances under Part 2 of Article 127 of the Criminal Code of the Republic of Uzbekistan is proposed to transfer to the "involvement in the use of narcotic drugs or psychotropic substances" under Article 274 as an aggravating type of liability. In this case, we believe that the crime will fall into place. (The law project is described in the appendix)

Renaming the Article 127 of the Criminal Code of the Republic of Uzbekistan, i.e. "Involvement of a juvenile in a crime" and compiling this article into 4 parts: involvement in a crime with a less social danger, a less serious crime, a serious crime, a very serious crime is proposed to divide separately. (The law project is described in the appendix)

Conclusion

Although in the criminal cases we investigated, the perpetrator was prosecuted for inciting a juvenile to commit a crime, despite the existence of criminal-legal and procedural grounds, the case file did not record a procedural document recognizing the juvenile as a victim of the crime. In this regard, the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On judicial practice in cases of juvenile delinquency" dated September 15, 2000 No. 21 proposes to establish a norm that registers a minor as a victim. (The law project is described in the appendix).

References

1. Lesnievski - Kostareva T.A. Differenciatsiya ugolovnoy otvetstvennosti: teoriya i zakonodatelnaya praktika (Differentiation of criminal responsibility: theory and legislative practice). M., 1998-p 52
2. Gaukhman L.D. Nasilie kak sredstvo soversheniya prestupleniya (Violence as a means of committing a crime). M., 1995. - p.75
3. Serdyuk L.V. Nasilie: ugolovno-pravovoe and kriminologicheskoe issledovanie (Violence: Criminal Law and Criminological Research). M., 2002.-p.22.
4. Novoe ugolovnoe pravo Rossii. Osobennaya chast'. Uchebnoe posobie / Pod red. N.F. Kuznetsovoy. (New criminal law of Russia. The special part. Textbook / Ed. N.F. Kuznetsova). M., 1996. - p.94,78.
5. Ignatov A.N. Prestupleniya protiv sem'i i nesovershennoletnix // Kommentariy k Ugolovnomu Kodeksu Rossiyskoy Federatsii / Pod red. Yu.I.Skuratova, V.M. Lebedeva (Crimes against family and minors // Commentary to the Criminal Code of the Russian Federation / Ed. Yu.I. Skuratova, V.M. Lebedev). M., 1996. - p.321.
6. Pudovochkin Yu.E. Otvetstvennost za prestupleniya protiv nesovershennoletnix po rossiyskomu ugolovnomu pravu (Responsibility for crimes against minors under Russian criminal law). SPb., 2002. - p.116-117.
7. Sharapov R.D. Fizicheskoe nasilie v ugolovno prave (Physical violence in criminal law). SPb., 2001.— p.274-289.
8. Kalukin V.V. Fizicheskoe i psikhicheskoe prinuzhdenie v ugolovno prave (Physical and mental coercion in criminal law). Stavropol, 2001 –S.21

9. Blinnikov V.A. Obstoyatelstva, isklyuchayushchie prestupnost deyaniya v ugovnom prave Rossii (Circumstances excluding the criminality of an act in the criminal law of Russia.). Stavropol, 2001.-S.166.
10. Novoe ugovnoe pravo Rossii. Osobennaya chast. Uchebnoe posobie / Pod red. N.F. Kuznetsovoy. (New criminal law in Russia. The special part. Textbook / Ed. N.F. Kuznetsova)M., 1996. - S.94,78.
11. Ignatov A.N. Prestupleniya protiv sem'i i nesovershennoletnix // Kommentariy k Ugolovnomu Kodeksu Rossiyskoy Federatsii / Pod red. Yu.I.Skuratova, V.M. Lebedeva (Crimes against family and minors // Commentary to the Criminal Code of the Russian Federation / Ed. Yu.I. Skuratova, V.M. Lebedev). M., 1996. - p.321.
12. Egorova N.Ponyatiya "prestupnaya gruppa" i "gruppovoe prestuplenie" // (The concepts of "criminal group" and "group crime" // Zakonnost.1999.№2
13. Akhmedova S.Sh. Otvetstvennost za vovlechenie maloletnix i nesovershennoletnix v antiobshchestvennyuyu deyatel'nost: ugovno - pravovye i kriminologicheskie problem (Responsibility for involving minors and minors in antisocial activities: criminal - legal and criminological problems). Abstract dis. cand.jurid.sc. Volgograd, 2001. –p.27.
14. Shamshetdinovich, Najimov Amanlik. Changes in the socio-political vocabulary of karakalpak language Journal of Critical Reviews. ISSN- 2394-5125 Vol 7, Issue 11, 2020. P 3040-3045.