



THE CONCEPT OF "MINORITY" AND ITS CRIMINOLOGICAL SIGNIFICANCE

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ABSTRACT

In the article, the content and essence of the concepts of "minors" and "children", the importance of the mental, spiritual and volitional development of a person in determining adulthood and the procedure for determining the age of a minor, international declarations and conventions, current normative legal documents in the republic, and the opinions of scientists opinions, the legislation of developed foreign countries were analyzed, and proposals were developed on the definition of the concept of "minors" and the procedure for determining the age of a minor.

KEYWORDS

Crime, juvenile, children, mental, mental, voluntary, investigation, suspect, examination, Uzbekistan.

INTRODUCTION

In recent years, the law "On the prevention of delinquency and delinquency among minors" (2010), the President of the Republic of Uzbekistan "On additional measures to further strengthen the guarantees of children's rights" No.PQ-4296, "Protection of children's rights" Adoption of decisions PQ-4736 "On additional measures to improve the system" as well as by the decision of the President of

the Republic of Uzbekistan dated March 14, 2017 "On measures to further improve the system of crime prevention and combating crime" PQ-2833 " The approval of the "Regulation on Interdepartmental Commissions on Juvenile Affairs" shows that efforts to strengthen the rights of minors are being systematically implemented.

The concepts of "minors" or "children" are used in the same sense in relation to persons under 18 years of age in the above-mentioned normative documents. This creates the need to first clarify the concepts of "minor" and "child" from the point of view of special protection of the rights and interests of minors.

By the Uzbek people, the concept of "child" serves to express the concepts of newborn baby, child, son and daughter, offspring. Also, the concept of "child" is used in a figurative sense for a person who is older, but behaves like a child, thinks like a child. In addition, the concept of "child" is also used as a form of address by adults to young people .

The concept of "coming of age" is used in the following meanings:

- to grow up and reach adulthood;
- to reach a mature level in general, young and otherwise;
- to reach maturity in a certain work, activity .

It can be seen that the concept of "growing up" is a concept with a wider meaning than the concept of "child" and is used not only for people, but also for other objects. In our opinion, in the application of this concept to a person, it is appropriate to evaluate the fact that a person has reached a certain level of maturity as the main criterion. In this place, it is assumed that the level of maturity of a person includes other aspects related to his maturity along with the age criterion.

In this regard, the issue of whether or not to evaluate the age criterion as the main characteristic defining adulthood is a somewhat problematic issue. It should be noted that although the general age of adulthood is

18 years according to the Law on the Rights of the Child, each person's maturity period is different, and the level of maturity is also individual.

In our opinion, it would be wrong to treat every person who has reached the age of eighteen as an adult. Because in order to consider a person as an adult, he must reach a certain age, that is, he must be biologically and physically developed at a certain level, and he must also have certain mental, spiritual, and volitional abilities. Only in this case it is appropriate to consider him as an adult.

In this regard, sometimes problematic situations are encountered in the practice of judicial investigation. For example, although a person who has reached the age of 18 can understand the legal consequences of his actions, but does not have the intellectual, mental, and voluntary abilities of adults, forensic psychology and psychiatric examinations are appointed. The commission of experts conducts appropriate investigation and concludes that the person has some symptoms of mental disorder or is mildly mentally retarded, and even in this case, he has or does not have the ability to understand the nature of his actions and consciously control them. This conclusion means that this person may or may not be the subject of a crime, and is the basis for bringing him to criminal responsibility or applying coercive medical measures. But it remains unclear at what age level this person is according to his mental and spiritual development. His age is determined through his identity documents, and the real circumstances that have arisen are ignored. However, in such cases, it is necessary to appoint a comprehensive forensic psychological and psychiatric examination to determine the age of the person based on the level of development.

In the decision of the Plenum of the Supreme Court "On Jurisprudence in Cases of Juvenile Crimes" it is noted that in the event that there is information indicating the mental deficiency of the minor defendant, a comprehensive forensic psychiatric examination should be appointed to clarify the issue of whether or not the minor is lagging behind in mental development. done However, this issue is required to be resolved before the minor has the status of a defendant, that is, at the stage of investigation of the criminal case. Consequently, according to Article 361 of the Criminal Code of the Republic of Uzbekistan, the day, month and year of birth of the person being brought as an accused must be determined and indicated in the decision on involvement as an accused.

A.A.Bazarov paid serious attention to this issue in his research work, and as a solution to the problem, the issue of determining the physical and mental state of the minor suspect, accused and defendant as a separate item among the cases in which it is necessary to appoint and conduct an expert examination provided for in Article 173 of the Criminal Code of the Republic of Uzbekistan proposed to enter .

N.A.Ramazonova recommended adding a new part to Article 548 of the Criminal Code of the Republic of Uzbekistan with the following content: it should be additionally checked whether the minor fully understood or was able to control the factual nature of his actions (inaction) or the level of social danger .

These authors' points are valid, but need some clarification. Also, there is a need to improve the legal norms regarding the analyzed issue. In order to solve this issue, a new norm on determining the age of a minor has been introduced into Chapter 60 of the Criminal Procedure Code it is desirable to regulate in detail the procedure of identification, the issues of

appointing a complex expertise in cases of psychological development lag.

When studying the legislation of foreign countries on the issues analyzed above, the Criminal Procedure Codes of the Republics of Russia , Ukraine , Belarus , Kazakhstan , Tajikistan , Turkmenistan , Kyrgyzstan , Moldavia , Azerbaijan , Armenia , as well as the People's Republic of China and the Federal Republic of Germany specify a certain age (18 years) of a person. reaching is considered as the main criterion for defining minors.

Some of them also focus on determining the state of mental and spiritual development of minors. For example, in the JPK of the Republics of the Russian Federation, Ukraine, Moldavia and Turkmenistan, if there is information that a minor is lagging behind in psychological development compared to his age, it is stipulated that he can fully understand the level and significance of social danger of his actions (inaction) or be able to control them. In the JPK of the Republic of Kazakhstan, a deeper approach to this issue is established, and it is determined that a psychological and psychiatric examination must be appointed in order to determine whether the minor suspect and the accused can understand and control the nature of their actions, as well as their mental health.

In addition, the procedural actions carried out in order to determine these cases in the JPKs of the Republics of Moldavia and Turkmenistan have also been clarified. In particular, for this purpose, it is necessary to interrogate parents, teachers, tutors and other persons with necessary information regarding this situation, study documents and conduct other investigative actions. In the Criminal Code of the Republic of Kazakhstan, it is provided that a psychological examination can be appointed in order to determine the mental, willful, spiritual development

of a minor, as well as other features specific to his psyche.

In our opinion, according to the results of the forensic psychiatric examination conducted to determine the age, it is appropriate to assess this category of persons as minors from a legal point of view, although they have reached the age of 18. Therefore, the issue of applying the legal norms applicable to minors is an urgent task.

Today, according to Article 547 of the Criminal Code, in practice, the norms regarding minors are applied only to those under the age of 18. According to him, the provisions specified in Chapter 60 of the Criminal Code are intended to be applied to the cases of crimes committed by persons who have not reached the age of eighteen before committing the crime. This norm in the Code states that 18-year-olds are general for minors, and when reaching this age, a person of normal development should have reached maturity in all respects. In our opinion, according to the general content of the norms of JPK, the task of determining the maturity level of older persons who are lagging behind in terms of mental and mental development and to what extent they are lagging behind their actual age is assigned to the persons responsible for conducting the case. However, there are no rules about this in any regulation of the Civil Code.

It is stated in Article 548 of the Criminal Code that the exact age (year, month, day of birth), personal characteristics and health conditions of the minor accused, as well as living and upbringing conditions, must be studied and proven. But this norm cannot fully cover the essence of the rule we are looking for. Therefore, there is a need to clearly define the concept of "minor" in the chapter of the Criminal Code of Criminal Procedure of the Juveniles.

In addition, the decision of the Plenum of the Supreme Court "On Jurisprudence in Cases of Juvenile Crimes" stipulates that the age of a minor should be determined through identity documents. Also, in this decision, the issues of determining the age of a person by the forensic examination were also touched upon. In particular, when the age of the defendant is determined by the forensic examination, the last day of the year determined by the experts is considered as his birthday, and when the age is determined by the minimum and maximum number of years, the court should start from the minimum age determined by the experts. But this provision is relevant for cases where the identity documents of the suspect are not available and it is not possible to determine his age in other ways. In addition, when determining the age of a person, forensic examination focuses on the level of biological and physical development. Studying the level of development of a person's mental, spiritual and volitional abilities does not fall within the scope of issues to be resolved by this expertise.

Also, in this decision of the Plenum of the Supreme Court, it was noted that in order to clarify the issue of the minor's retardation in mental development, a comprehensive forensic psychiatric examination should be appointed, thereby obtaining answers to questions about his mental development, to what extent he is behind his age, and the level of mental retardation provided. Unfortunately, due to the existence of a number of problems related to the appointment of this type of expertise and the implementation of expert research, in most cases, the implementation of this requirement is not ensured by the officials responsible for conducting the case. This situation is associated with the following main problems:

First, as a result of the appointment of an inpatient forensic psychiatric examination, the criminal case remains at the disposal of experts for 1 month to study and give a conclusion. During this time, problems arise in the matter of conducting investigative actions.

Secondly, in most cases, it is necessary to carry out inpatient examinations of this type in the Republican psychiatric hospital. Coming to this center from remote regions of the republic creates some difficulties.

Thirdly, there is a high probability that other participants in the criminal case (victims, witnesses) will go on a long-term trip outside the territory of the republic during the examination period.

The criminological importance of determining their age, level of mental and spiritual development in the investigation of juvenile crimes is as follows:

- on the basis of these features, a description of the mechanism of the crime is made, the investigation situation is assessed and procedural actions are planned;
- selection of the place, time and tactical methods used for direct communication with a minor, such as interrogation, face-to-face and identification, affects the processes of determining the scope of the participants involved in them;
- the correct assessment of the causes of the committed crimes and the enabling conditions, taken into account when determining the appropriate tasks for their elimination;
- attention is paid to the application of procedural coercive measures, including the selection of a precautionary measure.

Also, since the system of actions to determine a person's age, level of mental and spiritual development is not directly defined by the law, the tactical recommendations developed in the science of criminalistics are important in this regard.

Based on the above, it is possible to propose directions for improving the legal norms and investigative practice related to the rights of minors in the following areas:

First, it is necessary to define the concept of "minor" in the JPK. This definition should be taken from Article 547 of the Criminal Code of Ukraine and this article should be rewritten as follows: "Minors shall mean persons under the age of 18, as well as persons under the age of 18 who are lagging behind their age in terms of mental, spiritual and voluntary development."

Secondly, it is appropriate to supplement the Criminal Code with Article 548¹ "Determining the age of a minor" and include the following provisions in it:

The age of a minor is determined by means of documents confirming his identity, or in the absence of them, by the testimony of close relatives, reliable documents or examination.

If there is a doubt that the psychological development of a minor is behind in relation to his age, the level of psychological development behind by the appointment of a complex expertise, whether this condition is related to his mental disorder or mental illness, his appropriate age for mental development, as well as the level of social danger of his actions (inaction) and it must be determined that he can fully understand the importance or manage them.

A person is considered to have reached the age of criminal liability starting from the zero hour of the day following the day of his birth.

When the age of a minor is determined by conducting an expert examination, the last day of the year determined by the experts is considered as his birthday. When age is determined by the minimum and maximum number of years, it is derived from the minimum age.

In addition, it is necessary to establish a commission of experts in each regional center that can conduct this type of expertise and provide a clear conclusion, and take measures to regularly improve their qualifications.

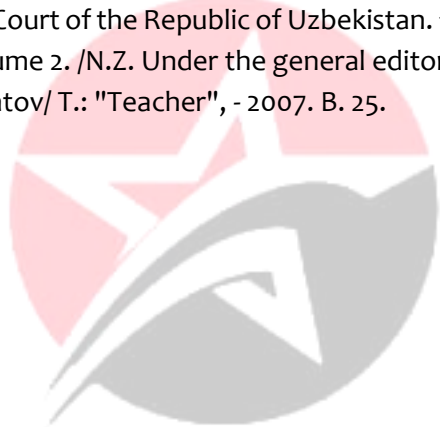
There is no doubt that the improvement of the criminal-procedural legislation and investigative practice in these directions will make a significant contribution to the effectiveness of the work aimed at protecting the rights and freedoms of minors and ensuring their interests.

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