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ACTUAL ISSUES OF EXEMPTION FROM CRIMINAL LIABILITY OR PUNISHMENT OF MINORS IN SOME FOREIGN COUNTRIES

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Abstract
This article discusses the integration and enhancement of juvenile justice systems with a focus on legal reforms. It emphasizes the need to improve national legislation on juvenile offenders by adopting international best practices and probation measures. The study highlights that existing penalties, such as fines and community service, lack sufficient educational impact and fail to prevent recidivism effectively. It proposes incorporating probation measures to ensure more comprehensive rehabilitation and supervision. This approach involves collaboration with educational institutions, psychological support, and social services to foster law-abiding behavior and successful reintegration of juveniles. By integrating these measures into criminal legislation, the goal is to achieve a more effective response to juvenile crime, promote rehabilitation, and prevent future offenses, thereby enhancing the overall juvenile justice system.

Keywords: Probation, juvenile, legislation, rehabilitation, restorative justice, immunity, criminal liability, community service.

Introduction

It should be considered that it is impossible to improve the institution of exempting minors from criminal liability and punishment without referring to foreign institutions, particularly the legislation of France and Germany. Scholars study similar institutions in foreign legislation to identify the similarities and differences between international best practices and national legislation. A

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comparative legal study of the legislation of France and Germany allows for the legal evaluation of these institutions, consideration of positive experiences from foreign legal regulation, and improvement of national legislation.

The research revealed that the institution of accountability and immunity from punishment in France, as well as the criminal liability of minors, is regulated by the Ordinance on "Juvenile Delinquency" dated February 2, 1945. A review of this Ordinance shows that French law emphasizes educational measures for juvenile offenders. According to this document, criminal punishment for minors is considered a special measure and is intended to be less severe. The types of punishments applicable to minors include:

1) Establishing a supervised regime;
2) Compulsory community service;
3) Deferment of sentence with probation and imprisonment;
4) Imprisonment.

It should be noted that the French Penal Code does not specify an age for criminal responsibility. However, there is a provision that punishment may be imposed on persons over the age of 13 (Articles 122-8 of the Ordinance) [1]. This special normative document establishes a special legal regime for juvenile offenders, which is based on the presumption of criminal liability for individuals under the age of eighteen.

This institution is also noted in the criminal legislation of France. In France, a convict's "good behavior" is considered a key determining factor. The term of punishment imposed on the convict may be reduced by the judge, taking into account the opinion of the administration of the correctional institutions, in the following ways: each year, the imprisonment may be reduced by three months, or if the convict is sentenced to imprisonment for up to one year, it may be reduced by up to seven days each month.

In Germany, the first attempts to distinguish the institution of juvenile liability, as well as the age of criminal responsibility, and to differentiate the criminal liability of minors based on their specific characteristics occurred in the 18th-19th centuries. The age of criminal responsibility in German criminal law was established as 14 years in the 18th century. The norms concerning juvenile liability in Germany have been consistently developed with the aim of

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introducing new institutions and mechanisms to ensure the interests of juvenile offenders. The German legislator chose to differentiate these norms by establishing a special system of principles and goals for their application. Modern German law features a distinct juvenile criminal law (Jugendstrafrecht). In literature, individuals who are in a critical transition phase at the time of committing an offense, between childhood and adulthood, are described as "junge" subjects (Täter) [2]. This set of legal norms includes both substantive and procedural norms, primarily reflecting criminal and criminal-procedural laws. They apply to certain age categories:

a) Persons aged 14 to 18 years;

b) Under certain conditions, to persons aged 18 but under 21 years.

The source of the norms of juvenile criminal law is the general criminal legislation, namely the German Penal Code, as well as a special law, the Law on the Administration of Justice for Youth [3]. Article 87 of the Penal Code suggests prohibiting the imposition of punishment for minor or moderate crimes on juveniles if they can be corrected through the application of compulsory educational measures [4].

The main principles of juvenile criminal law are:

a) Focusing on the actor (subject) rather than the act, in contrast to the "adult" criminal law;

b) Paying attention to the existing problems in the upbringing of the subject, with punishments being linked not only to the severity of the act but also to preventive purposes, although punishment and education, as noted in literature, are distinctly different;

c) Being associated with various social prevention measures [5].

Conditional criminal liability for juveniles aged 14 to 18 is applied under Paragraph 3 of the Law on Juvenile Justice. According to this provision, a juvenile can be held criminally liable if, at the time of committing the act, they were sufficiently mature in their moral and ethical development to understand the illegality (Unrecht) of their actions and to act accordingly.

For juveniles who are not criminally liable under criminal law due to their age, a judge may apply measures similar to those taken by a family court judge. This provision is seen as a deviation from the general part of the Penal Code and

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suggests that juveniles are only conditionally capable of standing trial. This norm includes a special case for juveniles in relation to Paragraph 20 of the Penal Code, which excludes guilt (sanity) for juveniles only.

First, let's distinguish the general characteristics of mediation practices in Belgium and France:

The procedural basis for the development of mediation practice was the wide application of the institution of non-initiation of criminal prosecution (classement sans suite), not on an informal basis, but due to its inappropriateness [6]. According to Frieder Dunkel, it should be noted that alternative measures to criminal prosecution, including mediation, not only reduce the repressive nature of criminal law but also combat the negative consequences of neglecting serious crimes deserving of criminal punishment [7].

In this scheme, the prosecutor initiates the mediation procedure (conciliation) when deciding whether to initiate criminal prosecution. The final decision is made depending on the success or failure of the mediation (a contract serves as a criterion for this). Mediation is applied to a wide range of cases with minimal formal restrictions. In France, such restrictions do not exist at all. In Belgium, they may apply when it comes to crimes punishable by up to 20 years in prison.

Next, let's address the characteristics that distinguish the French form of mediation from the Belgian form, noting that the former is less formalized:

a) First of all, in both countries, the issue of who should be the neutral mediator attempting to reconcile the parties in a criminal dispute is resolved differently [8].

According to David Meyers, after many hesitations, France settled on a model of authorized mediation. Although the legislator did not provide any formal clarity on this in the text of the Code of Criminal Procedure, the prosecutor transfers the case to a "specialized" community organization not directly related to the criminal justice system for mediation. Details vary by region, but according to established practice, the prosecutor does not participate in the mediation process. He makes the final decision on the fate of the criminal case after receiving the materials from the community organization with conciliatory powers [9].

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In Belgium, the tasks of mediation are directly assigned to the prosecution (to avoid the "privatization" of criminal justice). To this end, a special position—the prosecutor's first deputy responsible for mediation (magistrat de liaison)—was introduced in the prosecution staff [10].

In France, the legislature does not formalize this institution, avoiding unnecessary "legalization" and "proceduralization" (except for certain aspects, such as the right of the parties to legal assistance) [11].

According to A. Kuhlman and H. Kuring, restorative justice offers a different approach to ensuring justice compared to the traditional court system. The court system relies on punitive measures and does not fully take into account the interests of the victim, while restorative justice aims to compensate for the harm caused by the crime, reintegrate the offender into society, and provide all parties involved (the offender, the victim, and the community) with the opportunity to participate directly in the justice process [12].

The advantages of restorative justice are also reflected in international standards. For example, the Lima Declaration on Restorative Justice with respect to Child Victims (2000) states that children who have participated in restorative justice programs have lower recidivism rates than other groups, and that traditional methods of the justice system emphasize punishment over compensation for harm caused and have not achieved significant success in changing attitudes towards criminal behavior [13].

The United Nations Economic and Social Council adopted "Basic Principles on the Use of Restorative Justice Programs in Criminal Matters" with a resolution dated July 24, 2002. This document outlines the advantages of restorative justice programs and establishes basic principles for their application [14].

These points are directly related to the model being formed in our country. This is because the infrastructure for juvenile social rehabilitation is just being established in Uzbekistan [15].

According to Henham [16], the main components of restorative justice include: early prevention of delinquency among juveniles; measures aimed at diverting offenders from the formal criminal justice system; the application of alternative measures, not only punitive, but primarily corrective, to juveniles; the use of imprisonment only as an exceptional measure and to the minimum extent

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possible; ensuring the right of juveniles to access legal assistance without any obstacles; and the widespread use of specialized rehabilitation and adaptation programs and technologies for juvenile offenders. While agreeing with the above points, it is important to remember another significant aspect. Alternative measures applied to a juvenile who has committed an offense or crime should be perceived by them as a necessary and inevitable consequence of their actions. W. Khalikulov also expressed well-founded views on this issue, stating that excessively lenient punishment can lead to irresponsibility in the offender [17]. Agreeing with this view, it can be said that excessively lenient punishment does not prevent the commission of crimes. In dealing with children who have committed offenses, it is essential to instill in them a sense of responsibility for their actions and to direct them towards understanding the consequences of their behavior.

Our national legislation also contains some elements of restorative justice with respect to minors. In particular, Articles 87-88 of the Criminal Code of Uzbekistan list coercive measures that can be applied to minors. Additionally, Article 66[1] of the Code outlines the procedure for exempting from criminal liability due to reconciliation. In both cases, elements of diverting the child in conflict with the law from justice can be seen, but when compared to the specific features of restorative justice, it can be observed that it has the following advantages:

The UN Committee on the Rights of the Child recommends that member states establish courts for juvenile matters, either as separate entities or within existing regional/district courts. If this task cannot be immediately accomplished, it is necessary to ensure the appointment of specialized judges for this category of cases (General Comment No. 93) [18]. The study of foreign experiences in the functioning of juvenile justice bodies and institutions shows that many countries around the world have specialized juvenile courts, and the forms of their establishment are very diverse. In most countries (Australia, Israel, Spain, Italy, Singapore, USA, France, Switzerland, and others) there are "autonomous" juvenile courts within the judiciary, which operate based on different principles than ordinary criminal courts [19].

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In some countries, these powers are exercised by a special panel (composition) of the general court or by a special judge for juvenile matters (Germany, Greece, the Netherlands, Norway) [20].

There is a unique institution in the criminal legislation of foreign countries that involves reducing the term of imprisonment determined by the court. For example, in the United States (except for the state of California), the term of imprisonment assigned by the court can be adjusted based on the inmate's behavior. The term of punishment can be reduced through the inmate's "good behavior."

In the state of England, after the abolition of penal labor in 1948, the only form of punishment involving imprisonment that remained was incarceration, with a minimum term of one day and a maximum term of twenty-five years. Additionally, life imprisonment is also applied in England. An important point is that in England, the law does not specify the length of imprisonment for different levels of crime severity. For example, according to Uzbek legislation, a sentence of imprisonment for severe crimes can be imposed for a period ranging from five to ten years, but such regulations do not exist in England. As a result, in England, standard terms of punishment for various levels of crime severity have emerged in judicial practice. These are referred to as the "tariff system" in legal literature. However, judges may choose not to follow this tariff system, as it does not have a normative character.

The features of juvenile criminal liability in the Anglo-Saxon legal family include:

-Limiting the types of punishments;
-Reducing the amount and duration of fines imposed;
-Executing imprisonment sentences in educational colonies;
-Exempting from criminal liability with the application of coercive measures;
-Exempting the offender from punishment and placing juveniles in special educational institutions;
-Applying conditional early release from serving sentences for juveniles;
-Replacing the unserved part of the sentence with a lighter punishment if the juvenile exhibits conscientious behavior towards the established regime and work or study.

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Therefore, it is worth noting that juvenile individuals can be exempted from criminal liability and punishment based on the general grounds specified in the fifth section of the Criminal Code of the Republic of Uzbekistan, as well as on specific grounds applicable only to this category of persons. When applying the general types of exemptions from criminal liability and punishment to juveniles, we need to take into account the specific characteristics of involving juveniles in criminal liability.

In the Republic of Uzbekistan, with the Presidential Decree No. PQ-4006 dated November 7, 2018, "On Measures for the Radical Improvement of Criminal-Executive Legislation," the Probation Service was established under the General Directorate for Execution of Sentences, based on the Department for the Control of Execution of Non-Custodial Sentences of the Ministry of Internal Affairs' General Directorate for Crime Prevention and its regional branches.

The main tasks of the probation units are as follows:

To effectively organize the activities of the internal affairs bodies (MVD) in executing non-custodial sentences (fines, deprivation of certain rights, compulsory community service, corrective labor, etc.) in cooperation with other state bodies and organizations, as well as public structures.

To exercise effective control over the behavior of persons conditionally sentenced and those conditionally released early from serving their sentences.

To provide comprehensive practical assistance in the social adaptation and employment of those under supervision, as well as minors released from correctional institutions, including organizing events for their professional training.

To implement preventive measures to identify and prevent the risk of re-offending by those under supervision, studying their personality by compiling a socio-psychological profile [21].

Specifically, through this institution, additional obligations, prohibitions, and restrictions are established for minors conditionally released from punishment, thereby creating an effective and efficient mechanism for monitoring their behavior, encouraging rehabilitation, and helping them find their place in society. At the same time, if a minor offender conditionally released from punishment complies with all prohibitions and obligations and proves their

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rehabilitation through their behavior, some or all of these restrictions may be lifted by the court, or new obligations may be imposed.

The Probation Institute has been introduced in Kazakhstan as a coercive measure for minors and in Kyrgyzstan as a form of exemption from punishment. Articles 109-110 of the Kyrgyz Criminal Code stipulate exemption from punishment by applying probation control to a minor, and Article 110 defines the legal consequences of probation. According to it, in the case of a not-so-serious and/or serious crime, the court may decide to exempt the accused from serving the sentence, considering the accused's personality and other circumstances of the case. During the probation period, the court may fully or partially cancel the previously established probation obligations for a convicted minor aged fourteen to eighteen years. Probation control is established for a period of six months to one year [22].

Article 563 of the Criminal Procedure Code of the Republic of Uzbekistan states: "When passing a sentence on a minor defendant, the court must consider, apart from the issues mentioned in Article 457 of this Code, whether it is necessary to appoint a public educator for the minor if the minor is conditionally sentenced or sentenced to a non-custodial punishment." A citizen of the Republic of Uzbekistan who is at least 30 years old, has at least two years of experience working with minors, can positively influence minors through their life experience and moral qualities, and is willing to take on the responsibility of educating minors may be appointed as a public educator for minors, regardless of gender or marital status. For minor girls, a female public educator is appointed [23]. In most cases, the head of the neighborhood committee is appointed as the public educator. In our opinion, having the Juvenile Probation fully regulate this process would yield positive results. The probation service's support based on a clearly developed program for regulating the child's future life, education, work, and activities positively affects the child's protection from external influences and keeps them away from criminal behavior. The draft law "On Probation" has been developed, but these issues are not addressed in the draft law.

In some regions of the Russian Federation, probation services, including juvenile technologies, have shown good results [24]. In St. Petersburg, territorial departments of juvenile probation have been established based on public law

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enforcement "civilian oversight" [25] structures. Probation is a form of criminal supervision (criminal guardianship). This term, which originated in the West, refers to a legal system separate from the penitentiary service. Probation is aimed not only at supervising those sentenced to non-custodial punishments but also at providing social adaptation, social assistance, rehabilitation, including employment measures, housing assistance (e.g., the availability of special dormitories), and enrolling individuals in various psychological and court-appointed rehabilitation programs to prevent the recurrence of crimes.

In the Kyrgyz Republic, the Juvenile Probation Service operates within the Ministry of Justice and is implemented to ensure the rights and legitimate interests of minors, prevent recidivism, ensure the effectiveness of the psychological and pedagogical process, and their socialization and reintegration into society. The probation forms defined in the Kyrgyz Republic's "On Probation" law are applied to minors in compliance with the following principles of juvenile probation [26]:

1) Mandatory participation of parents, guardians, legal representatives, trustees, sponsors, authorized state bodies, and the public in protecting children in probation.

2) Psychological and pedagogical approaches in activities conducted with children, involving relevant specialists.

3) Specialization of probation authorities (officials) in working with children.

4) Implementing plan and program activities for child probation clients separately from other probation clients.

5) Ensuring access to social and legal services provided.

Juvenile probation aims at:

1) Resocialization and personal development.

2) Instilling life skills, law-abiding behavior, healthy lifestyles, generally accepted social values, and behavior norms in society.

3) Developing independence.

4) Enhancing the ability of families and society to assist children and prevent the risk of falling into difficult life situations.

5) Ensuring education.

6) Providing social housing and social assistance.

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The goals of juvenile probation in Ukraine, as stated in the "On Probation" law, additionally include:
-Preventing aggressive behavior.
-Motivating positive personal changes.
-Improving social relationships.
In the USA, probation for juveniles is of a restricted nature. Federal law stipulates that the probation period for individuals under the age of 18 can be extended until they turn 21. The court may impose the following obligations on an individual:
-Paying fines;
-Completing vocational training courses;
-Avoiding contact with certain individuals;
-Abstaining from alcohol and drug use;
-Undergoing a treatment program;
-Being under the supervision of the correctional bureau during nighttime hours;
-Promptly notifying the probation officer of any job changes, and so on. If these requirements are not met, the offender may be deprived of their freedom.
The introduction of this institution will significantly contribute to returning minors to a proper lifestyle more quickly, providing timely assistance with issues they face, preventing crime, and expanding the possibilities for applying the institution of conditional release from punishment.
The goal of probation is to establish probationary control over an individual's behavior through the application of probation measures, morally rehabilitating the individual and preventing the commission of new crimes [27]. Therefore, it is of great importance to integrate the probation institution into criminal legislation. Existing penalties, such as fines, compulsory community service, and corrective labor, though forms of punishment, lack sufficient measures to ensure the educational impact, prevent criminal activity, and prevent the convicted person or others from committing new crimes. For example, a fine does not have an educational nature, as it is often paid by the parents or guardians and is an economic form of punishment. The penalty of corrective labor involves only the withholding of a certain amount of wages and does not foresee additional restrictions. Compulsory community service involves work related to

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beautification for no more than two hours per day at certain locations and does not include additional educational or preventive measures.

Based on the above, there is a proposal to apply probation measures to individuals who have committed crimes, alongside penalties, to ensure that the punishment achieves its purpose and has an effective impact. Specifically, in cooperation with the Ministry of Public Education, measures will be introduced into the school practice aimed at instilling law-abiding behavior in minors under supervision, inculcating the foundations of morality and a healthy lifestyle; taking steps to involve minors who are planning to be released from correctional colonies in education; assigning mentors to minors at educational institutions; ensuring minors' participation in various sports sections, technical and other clubs; organizing psychological courses and assisting in the development of the child's psyche. This approach is based on the principles of fairness and humanity in substantive law, encouraging minors conditionally released early from serving their sentences to take the path of rehabilitation and ensuring their compliance with existing laws.

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