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# КОНСТИТУЦИЈАЛЫҚ ЖӘНЕ ХАЛЫҚАРАЛЫҚ ҚҰҚЫҚ КОНСТИТУЦИОННОЕ И МЕЖДУНАРОДНОЕ ПРАВО CONSTITUTIONAL AND INTERNATIONAL LAW

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## **Modernization problems of the Juvenile Justice System of the Republic of Kazakhstan**

The article concerning the problems of modernizing the existing structure of Juvenile Justice in order to expand their powers, taking into account the guarantees and obligations of the Government, as well as giving each of the authorities an independent legal status in order to ensure the best interests and rights of Child. The authors specify the task of developing new approaches in determining the directions of further development of the system of Juvenile authorities. The proper level of its elemental composition is important for the effectiveness of juvenile justice: the Juvenile Courts, the Juvenile Police, the Juvenile Prosecutor's Office, Social Services, the Juvenile Advocacy. It should be noted that in the Republic of Kazakhstan these services are different from the similar services in foreign countries in all aspects. Updating the problem of bringing the national legislation of the Republic of Kazakhstan in accordance with international standards. Suggest to implement the new Juvenile Legislation package, create a full-fledged complex of specialized Juvenile Justice authorities. Substantiate the necessity of taking measures on forming the sufficient budget for the reorganization and financing the activities of all system authorities. Also involve non-governmental investments in Government programs and projects on the social rehabilitation of minors. The authors are modeling a qualitatively new unified Juvenile Justice System focusing on the weakest link of this system — Social Service Institutions.

*Keywords:* minor, rights, legal status, justice, Juvenile Justice, Juvenile Court, Juvenile Prosecutor's Office, juvenile legal profession, Convention on the Rights of the Child, legislation, modernization

### *Introduction*

The UN Standard Minimum Rules for the Administration of Juvenile Justice define it as a special Justice System in which the specialized Court is the central element which closely interacting with Social Service authorities [1; 17].

The concept of legal policy for the period from 2010 to 2020 years determined the development of Juvenile Courts as the main vector in the judicial-legal system of the country [2]. The kazakhstani model of Juvenile Justice, is a complex form of justice with the preventive potential inherent in it, which has been formed over 10 years.

Among the current trends in the field of Juvenile Justice is the termination of a significant number of cases in Juvenile Courts through alternative means of resolving disputes, including the conclusion of a settlement agreement and mediation agreement. This practice minimizes the negative consequences of Juvenile Justice procedures.

It is a historical fact that the Juvenile Courts in Kazakhstan appeared first in the post-Soviet area. UNICEF and UNDP gave a positive assessment to the process of creating Juvenile Courts in the Republic —

in accordance with the conclusions of international experts, the Kazakhstan version of Juvenile Justice complies with the provisions of the UN in this area [3].

The specialized UN Committee following the periodic Report of the Republic of Kazakhstan on implementation the Convention on the Rights of the Child welcomed the measures taken in the Republic about Juvenile Courts work. Among the specific results of the Juvenile Courts work is the fact that since 2015 year three out of four educational colonies for minors have been closed in the Republic.

For the effectiveness of Juvenile Justice the following proper level of its elemental composition the following is important: the Juvenile Courts, the Juvenile Police, the Juvenile Prosecutor's Office, the Social Services, the Juvenile Advocacy. The interaction of the Juvenile Justice System with non-governmental and public organizations is important.

Current trends in the field of legal protection of the rights, freedoms and legitimate interests of minors, prevention of illegal behavior, socialization, social rehabilitation, education and the tasks facing its various levels of government require new approaches to determine the future development of the Juvenile Justice; mechanisms for organizing preventive work, targeted social assistance for children and family support in order to prevent their social isolation [4; 8].

#### *Materials and methods*

For analyzing the condition of Juvenile Justice of the Republic of Kazakhstan the following methods were used:

General scientific methods — analysis and synthesis, induction and deduction, modeling, formalization, logical;

Comparative legal, comparative analytical methods that allow to compare the domestic and international work methodology, organization and activity of Juvenile Justice authorities and the influence of Civil Society Institutions. In this context, use: functional comparison; regulatory comparison; problem comparison, conceptual comparison.

Legal modeling method

On empirical level used a study of regulatory legal acts, other documents, printed publications, media publications, etc.

#### *Discussion*

In Kazakhstan working the Juvenile Police, the Juvenile Advocacy, a special assistant works in each regional Prosecutor's Office, Supervisor on providing the Rights of Minors in all spheres of life, and the institution of the Children's Ombudsman. Marking the positive trends of organizing of the Juvenile Justice System, it should be noted that these services are far from similar services in foreign countries in all respects: principles of formation, level of legal regulation, quantitative and qualitative composition of personnel, content of activities, level of financial and logistical support, remuneration, interaction level, etc.

Unfortunately today although the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) have been recognized but not ratified by Kazakhstan; UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines); The United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation Regarding Parental Responsibility and Measures to Protect Children on October 19, 1996, and others, while named documents specially formulated so that they can be applied under different legal systems and at the same time set some minimum standards for the treatment of juvenile offenders in any existing definition of a minor and in any system for the juvenile offenders treatment.

The current situation associated with the development process of creating a Juvenile Justice System in the Republic of Kazakhstan is characterized by the fact that the transformations are not only positive, but also negative. Scientists associate this fact with extreme decrease of functional capabilities of all the minors socialization institutions. Against the background of the financial crisis, the difficult socio-economic situation of the population and the collapse of traditional values, the family, educational institutions, youth and children's associations have lost their previous role in educating the younger generation, which negatively affects the state, specificity and dynamics of juvenile delinquency [5]. As evidenced by contemporary criminal statistics, juvenile delinquency is expressed by a large number of mercenary and mercenary-violent crimes committed by them. Worryingly the situation of increasing the number of murders and the spread of alcoholism, drug addiction, hooliganism among minors, the neglect of moral values and the respected historical traditions of society.

One of the main activities of Juvenile Justice should be the preventive measures, prevent and combat juvenile delinquency and educate the younger generation in the spirit of compliance with the current legislation requirements [6].

For complete ensure, protect and implement the rights, freedoms and legitimate interests of minors in the Republic of Kazakhstan it is necessary to further develop new political, socio-economic and legal measures that respond world the standarts.

In order to further legislative support for the Juvenile Policy of the Republic of Kazakhstan, it is necessary to form portfolio on juvenile legislation, including:

The National Strategy on Protection Rights of the Children;

A new concept of the Juvenile Policy of the Republic of Kazakhstan;

The Law of the Republic of Kazakhstan «On the State Juvenile Policy»;

The Law of the Republic of Kazakhstan «On the Juvenile Justice authorities»;

The Law of the Republic of Kazakhstan «On the Juvenile Courts (Judges);

The Law of the Republic of Kazakhstan «On the Juvenile Police»;

The Law of the Republic of Kazakhstan «On Social Services for the Protection the Rights and Freedoms of Minors»;

The Law of the Republic of Kazakhstan « On Protection the Children from Information Harmful to their Health and Development », etc.

Up to present moment there is no clear definition of the concept of Juvenile Justice and its elemental composition, and the place of this justice in the system of combating juvenile delinquency has not been determined. The legal status of minors will be guaranteed subject to the availability of a full-blooded system of specialized authorities and legal institutions ensuring the protection of the rights and freedoms of minors.

Modernization of the contemporary model of Juvenile Justice of the Republic of Kazakhstan should be accompanied by a perception of the most effective trends in the development of the system of foreign states Juvenile Authorities. This system should be represented by a complex of Juvenile Justice authorities:

The Central authority and territorial authorities of Juvenile Justice coordinating the activities of the entire Juvenile Justice System;

The Juvenile Courts;

The Juvenile Police;

The Juvenile Prosecutor's Office;

The Juvenile Adaptation Centers;

The Penitentiary System authorities of Juvenile Justice of the Republic of Kazakhstan;

Special educational organizations and educational organizations with a special regime for the maintenance of Juvenile Justice of the Republic of Kazakhstan;

The Social services for children and adolescents and other organizations subordinated to the Central authority of Juvenile Justice of the Republic of Kazakhstan, the commission for the protection of the rights of minors, etc.

In order to complete the guarantee on Protection the Rights of Children in the Republic of Kazakhstan, it is necessary to develop and implement the National Strategy on Protection the Rights and Interests of Children. By legislation the National Strategy on Protection the Rights of Children should be taken into account the General Order of the UN Committee on the Rights of the Child No. 5 in order to outline the obligations to develop the General Implementation Measures, the General Comment No. 14 on the child's right to give priority to the best interests (Art.3. to. 1 of the Convention). The agenda item establishes undeniable obligation of the Government, in other words being the direct-use provision of law (it does not need the adoption of relevant laws), and it can be invoked in courts [7].

There is long-felt need to make arrangements to reorganize the existing structure of Juvenile Justice in order to expand its powers, taking into account the guarantees and obligations of the Government, as well as giving each of the authorities the independent legal status in order to ensure the best interests and rights of the child. Thus, it is necessary to create a qualitatively new and unified Juvenile Justice System, focusing attention on the weakest link of this system — Social Service Institutions. In current period becoming actual the problem of legislative regulation of the creation and activities of non-government sector entities which are providing the Special Social Services: the legal form of activities, standards of Special Social Services, etc.

One of the reason for the ineffectiveness of the Juvenile Justice System is the organizational gaps of special training for Juvenile Lawyers, Prosecutors, and Investigators. The National Strategy on Protection the

Rights of Children should include provisions for a qualitatively new educational model of training paradigm for all services of the Juvenile Justice System.

The current situation requires the resumption and development of the Juvenile Justice Plan in average, and the strengthening of mechanisms for implementation of legislation consistent with the Convention on the Rights of the Child and its optional protocols, including through the introduction of penalties for violations of children's rights and raising the awareness of judges, law enforcement officers and children on their rights under the Convention and its optional protocols in particular.

These measures will strengthen the stability of society, reduce tensions among minors, and allow society to actively influence the processes taking place in their circles. When the health, safety, morality, rights, freedoms and legitimate interests of minors are in danger, or grossly violated, Juvenile Services are the essential force that should take an active part in their elimination and the creation of normal conditions necessary for the further full activity of minors.

Marking the positive sights in the process of bringing the national legislation of the Republic of Kazakhstan in line with international standards, international and national experts identify problems of the adequacy of the implementation of legislation and recommend firstly develop detailed strategies for implementing legislative reforms [8]. In this connection it seems necessary to carry out institutional reforms:

To make fully compliant with the Paris Principles the Ombudsman for the Rights of the Child Institution, to establish the Ombudsman for the Rights of the Child in regions, the capital and cities of republican significance;

To make compliant with international standards and effective examples of the law-enforcement practice of foreign states the Juvenile Police Institutions, the Juvenile Prosecutor's Office, the Juvenile Legal profession, the probation service, special educational organizations for children with deviant behavior, institutions for the maintenance of minors sentenced to imprisonment;

To make compliant with the requirements of Article 18 of the OPCAT and the Paris Principles the model of financing the activities of the National Preventive Mechanism and reimbursement of expenses of individual members, allowing the NPM to have financial independence;

To make the Probation Institute compliant with international standards in the context of legislative regulation of the status of social services;

Take measures to improve the status and ensure the independence of the PMC.

In the contemporary period the problem of the modernization of the marriage and family legislation is actualized, which is the basis on protection the rights and interests of children, parents and the family as a whole, regulates disputes arising from marriage and family relations [9]. One of the most difficult modern problems in organizing the activities of Juvenile Justice in the Republic of Kazakhstan, requiring a conceptual approach and revolutionary transformations, is the modernization of the legal regulation of social services designed to accompany a minor who is in conflict with the law. In order to ensure compliance with international standards and the best foreign experience, the following measures should be taken: Social Services for minors should be organized on a systematic basis with targeted Government funding, with a Social Service structure developed with a mandatory presence of a lawyer, a psychologist, a social worker and a doctor; improve the system of professional training and retraining, advanced training of specialists working in the field of protecting the rights of children — social teachers, psychologists, employees of guardianship and trusteeship authorities. The activities of the Commissioner for Child Rights on a voluntary basis, freelance psychologists of Juvenile Courts and other similar examples without adequate funding of Social Services and the remuneration of their employees are a priori doomed to failure and, in fact, are unsuccessful attempts to approach world standards.

In the context of improving the legal regulation of the implementation the rights of minors in conflict with the law, it is necessary:

To determine an exhaustive list of the grounds for sending minors to special educational organizations; to study the issue of the future fate of a minor at the end of a special educational organization;

Take measures to develop standards for the provision of special Social Services to minors in conflict with the law;

To develop and adopt a special program for the employment of minors in a difficult life situation or released from prison (with sufficient funding for the program);

To develop a legal mechanism for the provision of psychological, educational, medical and social, legal assistance to minors who find themselves in a difficult life situation, who have returned from special educational organizations and educational organizations with special regime.

*Results*

Taking into account evidence of the lack of properly financing all services of the Juvenile Justice System, the Government should take measures to form an adequate budget for the reorganization and financing all authorities of the system, as well as to attract non-government investments in the state programs and projects for the social rehabilitation of citizens. In the Republic of Kazakhstan, a relatively small number of non-governmental organizations are involved in the work of special educational organizations, while often non-governmental organizations have projects to support such institutions, and can conduct ongoing training seminars for children [10]. Developing partnerships with socially-oriented non-profit organizations, public associations and other civil society institutions in providing support to adolescents in conflict with the law will allow involving a wide range of participants in activities for the benefit of children, pooling common resources to solve problems in practical work. In this context, it is necessary to take measures aimed at creating an open market for social services. The effectiveness of these measures should be ensured both by the activity of social services and by the mechanism of public control through the introduction of NPM tools.

All structural elements of the Juvenile Justice System (Police, Prosecutor's Office, Court, Social Services) should be guided and take into account the best interests of the child. It is especially important to ensure the participation of psychologists and social workers: specialists should from the moment of arrest and initiation of criminal proceedings against a minor at the pre-trial investigation stage, conduct a psychological study of the child, find out the causes of the crime, living environment, environment; to provide support for a minor from the time of the interview as a suspect until the end of the case in Court by a qualified psychologist; in Juvenile Courts it is necessary to introduce staffing units — psychologists, so that the judge can rely on the opinion of a psychologist when deciding on criminal liability, then follow the decision on the criminal case to determine the fate of the child, especially for the use of conditional early release from punishment. The strategy should provide the elimination of the gap in kazakhstani legislation regarding the legal regulation of the status of the psychological service — organizations that conduct psychological research do not have a single regulatory framework that allows them to conduct research in accordance with uniform standards, and therefore it is necessary to formally approve a uniform methodology for research by various organizations and individuals. It is important to decide on the introduction of mandatory pre-trial mediation for all cases involving a child, with the obligation to take into account the views of the child when concluding a mediation agreement [11].

In addition, recommended to exclude the age limit for the expression of a child's opinion, which is also provided by the Article 62 of the Code «On Marriage (Matrimony) and the Family» in accordance with international practice and the recommendations of the UN Committee on the Rights of the Child.

In the course of the present study, difficulties arise in studying the statistics of offenses and other indicators of the activities of all services of the Juvenile Justice System due to the lack of a single statistical database in the Republic. In this context, it is necessary to develop common standards for the formation and maintenance of a statistical database in order to ensure reliable statistical information and common indicators for assessing the best interests of children and non-discrimination of their rights.

For effective cooperation of the Government with the Civil Society Institutions, it is necessary to create an organizational and legal basis for the activities of non-governmental organizations and volunteers to accompany the released convicts.

Probation Officers badly needed psychologists help, educators, and social workers. Due to this reasonable to introduce amendments with the Correctional Code of the Republic of Kazakhstan on imposing the Probation authorities and their staff the responsibility to monitor the behavior of minors who have been imposed compulsory educational measures by the Court, as well as other standards in order to improve the effectiveness of the educational services on probation minors probation services. Also it is necessary to provide a set of measures for the protection and rehabilitation the victims of crime, the introduction of elements of re-socialization in relation to minors who have served their sentences in places of isolation from society.

It is necessary to clarify the articles edition of the Criminal Code of the Republic of Kazakhstan and the Code of the Republic of Kazakhstan on Administrative offences concerning punishment for failure to perform or improper performance of duties on bringing up and (or) protecting the rights and legal interests of a minor, to supplement the Code of the Republic of Kazakhstan on Administrative Offences on punishment for non-fulfillment or improper fulfillment of obligations to educate and (or) protect the rights and legitimate interests of a minor; to supplement the Code of Administrative Offenses of the Republic of Kazakhstan with an article on punishment for non-compliance with the requirement to report information on the fact of viola-

tion of the rights and legal interests of a minor; to supplement the Criminal Procedure Code of the Republic of Kazakhstan with an article on supervising the Juvenile Court over the execution of punishment and compulsory educational measures; the Civil Procedure Code the Court supervision over the execution of a decision on an application to place a minor in a special educational organization or organization with a special regime.

The Model Regulation «On commissions for minors and the protection of their rights» requires specific tasks for the commission: ensuring the protection of the rights, freedoms and legitimate interests of minors; organization of work to prevent neglect, homelessness and delinquency of minors; consideration of cases of minors, including cases of various offenses committed by minors; control over the conditions of detention and educational work with minors in institutions of educational and correctional nature; coordination of the work of all bodies, institutions and organizations dealing with the problems of minors.

It is necessary to reconsider the organization of the activities of the Commissions for the Protection of Minors and protect their rights, starting with the formation of Commissions for the Protection of Minors — to work in commissions should be involved on an ongoing basis specialists in the field of jurisprudence, psychology, management, sociology, etc.

It is necessary to provide the Law «On the prevention of juvenile delinquency and the prevention of child neglect and homelessness» an exhaustive list of the reasons for sending minors to special educational institutions.

It is necessary to take measures to clarify the functions of the Juvenile Adaptation Center and create on their basis (or with them) adaptation and rehabilitation centers for minors who are in conflict with the law and who will more effectively contribute the goal of restorative justice, providing this category of minors with comprehensive social, psychological, pedagogical, medical, legal and other types of assistance, as well as programs for their parents.

The institutions of the Juvenile Prosecutor's Office and the Juvenile Advocacy of the Republic of Kazakhstan in the context of the Juvenile Policy should be brought into line with international standards on a number of parameters: legal regulation, personnel policy, logistics, training prosecutors in the field of juvenile justice, ensuring interaction with authorities in the system of organs juvenile justice. Bar Associations need to provide financial support to the Government material and technical equipment, training (specialization) of lawyers and social psychologists, the introduction of new staff units for the head of the consultation, psychologists, the system of labor remuneration.

The problem of organizing of Juvenile Legal Advice Centers has not yet lost its relevance. It is relevant to take measures to resolve organizational issues related to personnel policy, coordination of its activities with Law Enforcement authorities, the Prosecutor's Office, The Juvenile Courts, Government authorities and Public Organizations dealing with the problems of minors; in the special training of lawyers specializing in juvenile cases. It is necessary to organize work on keeping statistics on cases of minors, cases accepted by lawyers for other consultations, law firms, lawyers engaged in individual activities, as well as lawyers providing representation services. It is advisable to legislatively regulate the issue of specialization of the legal practice of Juvenile Legal Advice.

A comprehensive solution to problems in the field of improving the Juvenile Justice authorities in the Republic of Kazakhstan is possible on the basis of increasing the efficiency of their activities.

Legislative regulation of the legal status of the child in the modern information space does not provide effective protection of children from information harmful to their health, moral and spiritual development, their information security. Currently, the regulation of the protection and protection of the rights of children in the information sphere is carried out by uncoordinated legal acts and does not cover all types of information products and its public distribution channels. Rather tough standards internationally adopted in this area, including those related to the most massive forms of handling potentially harmful information distributed through cinema, audio, audiovisual products, open access telecommunication networks (Internet, mobile communication), electronic and computer games, The national legislation of the Republic of Kazakhstan has not yet found a consistent implementation.

### *Conclusion*

Consequently nowadays the main directions for improving the Juvenile Justice System in accordance with the national strategy of the Republic of Kazakhstan are:

- gradual reform and modernization of the current legislation of the Republic of Kazakhstan on legal regulation of the Juvenile Justice social relations on the basis of international standards and fundamental principles of international law about the rights of minors;
- create an effective regulatory framework for the activities of Juvenile Justice authorities based on the principles of legal certainty and predictability and proportionality of restrictions;
- reform Governmental and Social Institutions on ensuring and protecting the rights and freedoms of the Child in Juvenile Justice System in order to bring them in one level with the international obligations of the Republic of Kazakhstan and improve the foreign practice to increase their effectiveness;
- create the effective legal remedies and procedures governing the relationship between the Government and Human based on internationally recognized concepts and principles of international law about the Rights of Minors;
- promote legal education and the formation of a legal culture based on respect for Human dignity and the priority of ensuring and protecting the rights and freedoms of minors in the Republic of Kazakhstan.

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### Қазақстан Республикасының ювеналды әділет жүйесін модернизациялау мәселелері

Мақалада мемлекеттің кепілдіктері мен міндеттемелерін ескере отырып, олардың өкілеттіктерін кеңейту мақсатында, ювеналды әділет жүйесінің құрылымын модернизациялау мәселесі, сондай-ақ балалардың мүдделері мен құқықтарын қамтамасыз ету мақсатында әрбір органдарға дербес құқықтық мәртебе беру жүйесі қарастырылған. Авторлар ювеналды органдар жүйесін одан әрі дамыту тәсілдерін анықтаудың жаңа амалдарын келтірген. Ювеналды әділеттің тиімділігі үшін оның элементтік құрамы: ювеналды соттар, ювеналды полиция, ювеналды прокурорлар, әлеуметтік қызметтер, ювеналды адвокатура тиісті деңгейде болуы маңызды. Қазақстан Республикасындағы бұл қызметтер шег елдердегі ұқсас қызметтермен салыстырғанда барлық жағынан әлдеқайда алыс екендігі аталып өтілді. Қазақстан Республикасының ұлттық заңнамасын халықаралық стандарттарға сәйкестендіру мәселесі өзекті болып табылады. Жаңа ювеналды заңнамалар пакетін қабылдау, ювеналды әділет органдарының мамандандырылған толыққанды кешенін құру ұсынылды. Жүйенің барлық органдарының қызметін қайта ұйымдастыру және қаржыландыру үшін жеткілікті бюджет қалыптастыру жөнінде шаралар қабылдау, сондай-ақ кәмелетке толмағандардың мемлекеттік әлеуметтік оңалту бағдарламаларына және жобаларына мемлекеттік емес инвестицияларды тарту

кажеттілігі негізделді. Авторлар сапалы, бірыңғай ювеналды әділет жүйесін модельдеді, бұл жүйенің әлсіз буыны — элеуметтік қызмет көрсету институттарына назар аударды.

*Кілт сөздер:* кәмелетке толмағандардың құқықтары, құқықтық мәртебе, сот төрелігі, ювеналды юстиция, ювеналды сот, ювеналды прокуратура, ювеналды юриспруденция, бала құқығы туралы конвенция, заңнама, модернизациялау.

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## Проблемы модернизации системы ювенальной юстиции Республики Казахстан

В статье проанализирована проблема модернизации существующей структуры ювенальной юстиции с целью расширения их полномочий с учетом гарантий и обязательств государства, а также придания каждому из органов системы самостоятельного правового статуса с целью наилучшего обеспечения интересов и прав ребенка. Авторы ставят задачу выработки новых подходов в определении направлений дальнейшего развития системы ювенальных органов. Для эффективности ювенальной юстиции важное значение имеет должный уровень ее элементного состава: ювенальных судов, ювенальной полиции, ювенальной прокуратуры, социальных служб, ювенальной адвокатуры. Отмечено, что названные службы в Республике Казахстан далеки от аналогичных служб зарубежных странах по всем параметрам. Актуализирована проблема приведения национального законодательства Республики Казахстан в соответствие с международными стандартами. Предложены принятие пакета нового ювенального законодательства, создание полноценного комплекса специализированных органов ювенальной юстиции. Обоснована необходимость принятия мер для формирования достаточного бюджета, реорганизации и финансирования деятельности всех органов системы, а также привлечения государственных инвестиций в государственные программы и проекты по социальной реабилитации несовершеннолетних. Авторами смоделирована качественно новая, единая система ювенальной юстиции, акцентировано внимание на наиболее слабом звене данной системы — учреждениях социальной службы.

*Ключевые слова:* несовершеннолетний, права, правовой статус, правосудие, ювенальная юстиция, ювенальный суд, ювенальная прокуратура, ювенальная адвокатура, Конвенция о правах ребенка, законодательство, модернизация.

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