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Genesis and formation of juvenile courts in foreign countries

The purpose of this article is to explore the genesis and formation of juvenile courts in foreign countries, highlighting their historical development, foundational principles, and evolution over time. Utilizing a comparative methodology, the research examines legal frameworks, policy changes, and societal influences that have shaped juvenile justice systems in selected countries. The analysis includes a review of primary legal documents, historical records, and contemporary research to provide a comprehensive understanding of the factors contributing to the establishment and growth of juvenile courts. The results of the research reveal distinct patterns and commonalities in the formation of juvenile courts across different jurisdictions. Key findings indicate that the emergence of juvenile courts was often driven by a combination of social reform movements, changes in legal philosophy regarding youth crime, and the need to address juvenile delinquency with a rehabilitative rather than punitive approach. The conclusion underscores the significant contribution of this research by demonstrating how historical and socio-legal contexts have shaped juvenile justice systems worldwide. This article contributes to the broader understanding of juvenile justice by providing insights into the foundational principles that continue to influence contemporary juvenile court practices. Findings of the study emphasize the importance of historical context in shaping current juvenile justice policies and the ongoing need for reforms that prioritize the well-being and rehabilitation of young offenders.

Keywords: juvenile courts; mediation; juvenile justice; family court; judicial system; protection of minors.

Introduction

In recent decades, the institution of juvenile justice has been widely discussed worldwide, namely: what this institution represents, what are the consequences of its implementation in practice, what are the risks of such implementation, etc. To answer these and many other questions, it is primarily necessary to focus on analyzing the genesis of this institution, its development in foreign countries in order to identify the advantages and disadvantages in those countries where this institution has been functioning for a long period.

In our opinion, a historical-legal analysis of the development of juvenile justice in foreign countries will help to choose the most acceptable and effective option not only for combating juvenile delinquency but also for their civil legal protection.

Roman law, later legal acts of the Middle Ages, and especially the legislation of the XVIII-XIX centuries did not leave us any legal evidence that there were attempts to protect minors from harsh punishment for committed acts. In general, judicial protection of minors historically emerged in civil, not criminal law. In the Digests of Emperor Justinian (6th century AD), in book four, there is title IV "On persons who have not reached 25 years old". From the text of the edict, it is clear that the protection of persons under the age of 25 was carried out by their guardians, and it mainly concerned property transactions. Roman law has left us another evidence of state protection of children — the doctrine of parents patriae. The state was declared the ultimate guardian of the child. In the history of juvenile justice, it was declared more than once (for example, at the time of the creation of "children's courts" at the end of the XIX century and when doubts arose about the high efficiency of these courts — at the end of the XX century) [1; 29].

The Laws of the Twelve Tables of first formulated the principle of forgiving punishment. It applied mainly to minors and in some subsequent works interpreting the content of the mentioned laws, it was formulated as forgiveness justified by minority.

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The above-mentioned laws prescribed not to impose punishment under the following two conditions: 1) when the minor did not understand the nature of the criminal act; 2) when the criminal act itself was not completed. This principle was widespread for a long time in countries that adopted Roman law.

The absence of special legal protection for children and adolescents was characteristic of many legislative acts, for example, the "Mirror of the Swabians" (a collection of German laws of the 12th century), the "Carolina" (the criminal-procedural code of King Charles V, 16th century). And although they reflected the mentioned forgiveness of punishment, the laws themselves had reservations allowing to bypass this principle. Thus, in "Carolina", article CL-XXIX mentioned criminals who, due to their youth, are "deliberately deprived of mind". In relation to such persons, the law prescribed to "seek advice from knowledgeable people on how to act in accordance with all the circumstances of the case and whether to apply punishment". Therefore, the "knowledgeable people" (experts) decided whether to punish a minor or not. The so-called expert-judge played such a role even in later times, even in the adversarial process.

In the second half of the 18th century, there were already statistical data on the lack of special protection for children and adolescents in court during the execution of punishment. English lawyer P. King, studying crime in England for the period 1762–1782, found that the legal vulnerability of children held in prisons was, in his words, absolute. A significant portion of the prisoners consisted of boys of the youngest age and girls aged 10–13. They were all held together with adult convicts in one room [2; 8].

The absence of special legal protection for minors could be found in the laws of many countries in the early and even in the mid-19th century. Such laws were in force, for example, in the USA. They established equal criminal liability and punishment for children and adults, the same judicial procedure for all persons appearing before the court. Only in the mid-19th century in this country and in a number of other countries did laws begin to appear and special institutions were created, where the task was to provide elementary protection for children and adolescents at various stages of justice.

The second half of the 19th century marked a gradual but steady change in the traditional approach to juvenile offenders. In 1869, in Boston, courts were first organized specifically for juvenile cases, and the first experience of applying probation (educational supervision) to them was carried out, which subsequently became one of the most common and most effective methods of dealing with juvenile offenders.

Methods and materials

For the purpose of a comprehensive study of the topic, we primarily used the comparative legal and hermeneutic methods. Undoubtedly, many general scientific methods were also applied in the course of this research, but among the specific scientific methods, the aforementioned methods were mainly used. The comparative legal method involves comparing legal concepts, phenomena, and processes of the same order and identifying similarities and differences between them, provided that the objects are comparable. Hermeneutics is understood as the method of interpreting legal terms and concepts, in the search for the meaning of legal texts, along with the study of the problems of multiple meanings.

Results and discussions

Establishment of the First Juvenile Courts.

The fundamental turning point came only at the very end of the 19th century and culminated in the creation of a special court for juveniles. This court was established on July 2, 1899, in Chicago, as it became clear that without special justice for juveniles, the fight against child and youth crime is doomed to failure, due to the unprecedented rise in juvenile crime at the end of the 19th century.

In England and Wales, since 1908, there has been a system of specialized courts for juveniles; however, the consideration of cases of crimes committed by juveniles was not within the jurisdiction of these courts, instead, they were heard by courts of general jurisdiction — the Royal Courts.

In Scotland, at the beginning of the 20th century, a special system of juvenile justice developed, which has an administrative rather than judicial character. Special commissions conducted "hearings on children's cases". A board composed of trained public representatives, after discussing the case with the parents, social workers, teachers, and the child, would make a decision on enforcement measures. This decision could be appealed to the court [3; 541].

At the very beginning of the existence of courts for juveniles, autonomous juvenile justice was created in the USA, Canada, Belgium, France, Greece, the Netherlands, Russia, Poland, Hungary, Egypt, Japan, Australia, New Zealand, and Switzerland.

In Germany, Austria, Spain, Portugal, and Switzerland, the functions of guardianship courts were combined with the functions of juvenile courts. Some countries opted to create specialized panels of judges for juvenile cases. This occurred in Ireland, Italy, Greece, and Japan [1; 48]. The national experiences of countries where juvenile courts began to function effectively and subsequently became prototypes for modern juvenile justice systems are of interest. However, it can be argued that the initial juvenile courts achieved their objectives. A significant contribution was made in the area of dealing with juveniles in the judicial process — courts treated children not as criminals, but as young individuals in need of assistance, approval, and guidance, focusing on the need to expose the antisocial nature of their actions.

In the mid-1970s, turbulent transformations of the classic and customary forms and objectives of juvenile justice began. Changes in juvenile justice occurred for reasons common to all countries where it existed, as well as for reasons that can be defined as national. Common factors included the rise and deterioration of juvenile crime statistics and the insufficient effectiveness in combating it. National reasons depended on the specific state of the justice system concerning juvenile offenders. Modernizing juvenile justice occurred in two directions: the family court as an integrated body of judicial protection of the rights and lawful interests of minors, and an administrative body for juvenile affairs, an alternative to the court.

The concept of the modern family court views it as a court of mixed, comprehensive jurisdiction — criminal, civil, and family. Changes in juvenile justice by replacing juvenile courts with family courts occurred only in few countries.

The concept of establishing a family court stems from the intention to address all issues related to juvenile offenders — often defined in relevant laws as requiring "care, control, and protection" — within the jurisdiction of a specialized judicial body. This body should address not only issues related to juvenile offenses but also those that arise in the judicial process regarding juvenile offenses (guardianship, custody, sanctions against parents, property disputes, etc.).

The listed issues did not comply with the competence of juvenile courts since they related to civil litigation. Therefore, in the process of modernizing juvenile justice, the question of replacing juvenile courts with courts of civil jurisdiction became relevant. Proposed projects for the reorganization of juvenile justice emphasized that juvenile courts cannot address many issues when it comes not to imposing punishment and other measures of enforcement on a juvenile offender, but to protecting the rights and lawful interests of children and adolescents. Thus, the idea of creating a family court emerged. Its model was the already functioning family courts in Japan and guardianship courts in Austria. In Japan, family courts were established in 1947-1948. Following Japan, transformations occurred in France, England, Belgium, Luxembourg, and the United States.

In general, the competence of the family court covers the following issues:

– crimes and offenses of minors;

– crimes committed by adults causing harm to minors;

– the entire complex of family law issues related to the protection of the rights and interests of minors, including supervision and guardianship of minors, education of school-age adolescents, improvement of family atmosphere, etc. [4; 212].

As for the existing family courts in other modern countries, it is possible to mention the dual system in the United States, where there are courts for juvenile cases and family courts, and experimental family courts in France.

Further we find it reasonable to conduct a detailed analysis of the models and the history of the development of family courts in France, Germany, Japan, and other foreign countries.

Legal Regulation of the Juvenile Courts in France.

The beginning of the formation of juvenile justice in France is considered to be the Criminal Code of 1791, amended in 1810, which led to a revision of views on the child, who had been perceived in law as a "young adult". This concerns the appearance of elements of exemption from punishment for juvenile offenders or mitigation of their punishment within the framework of the general judicial system. The principle of "discernment", formulated during debates in the National Assembly in 1791, determined the structure of criminal justice for minors for the next one and a half centuries. This principle was reflected in the provisions of the Criminal Code of 1791 in Section V (Articles 1–4) "Influence of the age of convicts on the nature and duration of punishment": discernment is a fundamental condition for bringing a minor to criminal responsibility; if it is established that the defendant, who has not reached the age of 16, acted without discernment, he is acquitted; if it is established that the defendant, aged between 13 and 16, acted with discernment, the punishment is imposed in a mitigated form compared to an adult offender (for example, instead of the death penalty, he will be sentenced to 20 years of imprisonment in a in a correctional institution). In case of acquittal, a juvenile offender is

subjected to an educational measure, which is considered not as punishment but as a compulsory measure capable of correcting his behavior.

As for the serving of sentences by minors together with adult offenders, at first, separate premises were created in prisons for containing juvenile offenders, but from the 1830s, the idea of their reeducation rather than just punishment began to develop [5; 27].

In the second half of the 19th century, a broad international movement began for the creation of specialized justice for minors. It was during this time that the widely known "American model" gained popularity, and its symbol — the first juvenile court, opened in Chicago in 1899.

In 1912, an international congress on childhood issues held in Paris was the first to address juvenile justice problems. By that time, specialized juvenile courts existed in several countries: in the USA, they were established in 26 out of 46 states, in Germany in 1908, and after the creation of the first court, their number reached approximately 200 within four years (Congrès international des tribunaux pour enfants, 1912) [6]. The congress participants formulated the following principles of juvenile justice in a resolution:

– Juvenile offenders should not be subject to criminal prosecution on general grounds.

– Special requirements should be imposed on juvenile judges (ability to communicate with children, empathy towards them, knowledge in the field of social, pedagogical, and psychological sciences).

– Interaction of judicial bodies with the probation service.

– Conducting investigations into the circumstances of the offense accompanied by the collection and recording of social, psychological, and medical information about the juvenile offender, the confidentiality of which must be ensured.

– Minimization of the use of coercive measures against minors.

– In the absence of specialized juvenile jurisdiction, joint hearings on cases involving minors should be avoided.

– Taking necessary measures in the interests of children subjected to abuse (Congrès international des tribunaux pour enfants, 1912).

By the law of July 22, 1912, France established a court for children for the first time [7]. The "Law on Juvenile Courts and Conditional Early Release" established a classification of minors into three age groups (up to 13 years, 13–16 years, and 16–18 years) in order to differentiate the measures applied based on age. A minor under the age of 13 was considered lacking "understanding" and therefore not subject to liability. Only educational measures could be taken against them. Henceforth, juvenile offenders began to be subject not only to punitive measures but also to educational ones.

The Ordinance of February 2, 1945, regulated criminal justice concerning minors for over 70 years (Ordonnance No. 45-174, 1945) [8]. Significant changes were made to it over time, with scholars and practitioners recognizing the need to modernize the text without questioning its fundamental principles. The first principle of the above-mentioned Ordinance was the idea of the necessity of specialized justice: criminal cases where minors are charged with committing a crime or offense are not transferred to general criminal courts but are only heard in juvenile courts or courts for minors. The second principle emphasized the preference for educational measures. Article 2 of the Ordinance provided that the juvenile court could take protective, assistance, supervision, and educational measures at its discretion. The above-mentioned Ordinance defined the sequence of measures: first, educational measures, then, if necessary, an educational sanction, and finally, punishment as a last resort. The third principle involved a deep study of the personality of the juvenile offender, as well as their social and family situation. Another important principle was the mitigation of criminal liability: minors cannot be punished as severely as adults. For example, a minor older than 13 cannot be sentenced to imprisonment exceeding half the sentence imposed on an adult offender (Ordonnance No. 45-174, 1945) [8].

Thus, the juvenile justice system in its modern form was established in France by the Juvenile Delinquency Ordinance of February 2, 1945, the adoption of which marked the end of a long period of experiments, leading to the development, recognition, and subsequent legal formalization of the idea of the special social status of minors and, consequently, the necessity to provide them with special forms of judicial treatment, differing both in substance and form from treatment of adults [9].

The Ordinance of December 23, 1958, "On the Protection of Children and Adolescents at Risk", amended articles 375–382 of the Civil Code of France and empowered the juvenile judge to take any protective and educational measures concerning minors up to the age of 21 whose "health, safety, morality, or education are in danger" (Ordonnance No. 58-1301, 1958) [10].

Regarding the reform of the juvenile justice system in France, the Law of March 23, 2019, No. 2019-222 "On the Development and Reform of the Judicial System for the Period 2018–2022" included an article authorizing the government to reform criminal legislation applicable to minors. In particular, the following tasks were set: simplification and acceleration of legal proceedings; strengthening educational impact on minors until a verdict is sentenced, especially concerning juvenile recidivists; regulation of the procedure for compensating damage.

The adoption in 2019 and the entry into force on September 30, 2021, of the Code of Juvenile Criminal Justice marked the end of a lengthy process of modernizing the legal foundations of criminal justice for juvenile offenders in France (Code de la justice pénale des mineurs, 2019) [11].

This Code eliminates the category of educational sanctions and now distinguishes only two educational measures that can be applied by the juvenile judge: judicial warning and judicial educational measure.

The judicial educational measure consists of a set of obligations and prohibitions that the juvenile judge can modify at any time:

– Integration module (daycare, placement in a boarding school or an educational institution);

– Compensation module (direct compensation obligations (to the victim), indirect compensation for damage (in the interests of society));

– Health module (providing necessary medical care, placement in a medical institution);

– Placement module (determining the place of residence).

The Code of September 30, 2021 (Code de la justice pénale des mineurs, 2019) [11], replacing the famous French Ordinance of February 2, 1945 (Ordonnance No. 45-174, 1945) [8], was adopted with a dual aim: to judge "better" and "faster". This historic reform has been criticized by some experts who considered it too "repressive".

Legal Regulation of the Juvenile Courts in Germany.

German legal experience in the field of juvenile justice is particularly interesting for the following reasons:

– The existence of a fairly progressive restorative juvenile justice system in Germany;

– A long historical development of juvenile justice in Germany since 1532 (with the Law on Courts for Minors adopted in 1923).

– The first specialized courts for minors in Germany emerged in 1907-1908, and by 1910, special juvenile courts were established in almost all major cities (Frankfurt, Cologne, Breslau, Berlin, Stuttgart, etc.).

In Germany, as in most continental countries, jurisdiction over cases involving minors was initially assigned to specialized courts regardless of the severity of the offense, while in common law countries, such courts only handled minor and moderate cases, with serious crimes falling under the jurisdiction of general courts. The concept of juvenile justice was developed in Germany in 1923 and reflected two aspects: reducing the responsibility of adolescents and selective application of sanctions to them.

Since 1953, Germany has had a law on courts for minors, which defines the main provisions of criminal proceedings concerning minors, based on international standards for dealing with this category of offenders. In Germany, minors in terms of criminal law are considered young offenders who were 14 years old at the time of the offense but have not yet reached the age of 21.

It is correct that differentiation by age criteria is made not only in determining criminal liability for minors but also in applying procedural measures to them. Juvenile courts in Germany are not separate judicial bodies but specialized departments within the general criminal courts system. However, they form a system with all the signs of independence, including a special composition and jurisdiction, their own legal basis, and special principles of judicial procedure. One of the peculiarities of juvenile justice proceedings in Germany is a deeply individualized approach to adolescents, which is expressed in specific actions of the judge to establish contact with the minor, methods of investigating case circumstances, the language of judicial proceedings understandable to the minor, involvement in studying the personality of non-legal specialized institutions [12; 61]. At all stages of investigation and trial proceedings, information about the adolescent's personality, collected by a special socio-psychological service, plays an important role, and this service, based on its activities, provides a report to the prosecutor and the police, actively interacts with juvenile courts. Such a symbiosis is regarded as essential because the primary goal of juvenile justice is the reintegration of young individuals, who may be subject to punishment, into a crime-free life, while also instilling in them the necessary skills and abilities. [13]. In other words, the aim is not retribution but preventing recidivism by compensating for deficiencies in the indi-

vidual's socialization. Accordingly, criminal and criminal procedural law regarding juveniles provides for auxiliary, supportive, and protective measures.

The experience of Germany in refraining from formal sentencing in juvenile cases (at the pre-trial and trial stages at the initiative of the prosecutor), actively utilizing deferred prosecution in the form of probation, and the so-called diversion (from Latin *diversio* — deviation, diversion) seems quite effective. The latter measure is increasingly applied in juvenile procedural practice and involves terminating proceedings even in cases where there are sufficient grounds, from the perspective of the prosecution or the court, to bring charges or render a guilty verdict. Interestingly, Germany has a Forgiveness Day when 95 % of cases involving juveniles are terminated. The effectiveness of diversion has been analyzed in terms of the recidivism rate among those who received a guilty verdict and those for whom proceedings were terminated. The percentage was roughly the same [13], confirming the thesis of the interchangeability of measures when it comes to crimes of minors and moderate severity and suggesting the possibility of foregoing the most punitive and repressive forms of responding to juvenile crimes [14; 65].

The main principles of the German juvenile justice system include:

– Priority of alternative sanctions (minimal intervention);
– Priority of mediation and restorative justice;
– Priority of educational community sanctions;
– Detention as a last resort (for the shortest possible term from 6 months to 5–10 years);
– Even in the most serious cases, the case cannot be heard in adult courts;
– Juvenile court jurisdiction includes cases involving individuals aged 14 to 17 and those aged 18 to 21;
– Children (up to 14 years), adolescents (from 14 to 17 years), and young adults (from 18 to 21 years) have the right to support and education, as well as protection of their personal development by social authorities.

The German juvenile justice system incorporates substantive and procedural legal provisions that take into account the age-specific characteristics of offenders. As for the types of legal consequences for juvenile offenders in Germany, they include educational measures, coercive measures, as well as correctional and safety measures.

Educational measures include obligations such as: obeying instructions regarding place of residence; living with a family or in a social institution; attending school or work; being under the supervision of a designated person; participating in social training courses; reconciling with the victim; avoiding certain individuals or places of entertainment; participating in traffic rules education.

Given the open nature of the above-mentioned list, it can be concluded that the legislator grants juvenile judges broad powers and allows room for the judicial discretion in resolving many issues. Coercive measures, for which German law does not provide a legal definition, include warnings; obligations such as making restitution for damage caused by the crime; apologizing to the victim in person; performing community service; paying a sum of money to a socially useful institution; arrest: during free time (utilizing free time from work and education); for a short term (2–4 days); for a longer term (1–4 weeks).

Correctional and safety measures include: placement in a psychiatric clinic; placement in a treatment facility for compulsory treatment for alcoholism or drug addiction; supervision of behavior; revocation of driving privileges; deprivation of liberty (however, this measure is not a priority in Germany. Deprivation of liberty is applied only in the most extreme cases when intervention through alternative measures is deemed ineffective) [15].

Analysis of the list of legal consequences for juvenile offenders makes it possible to conclude that the German juvenile justice system is quite progressive. Its leading principles include the presence of an "educational idea", orientation towards the personality of the offender, and a flexible system of sanctions. Studying the development of the juvenile justice system in Germany, as well as considering modern conditions, including economic conditions, provides significant experience for improving legislation and judicial practice in cases involving juveniles in other countries.

Nevertheless, it is important to understand that the German model, like any other, requires adaptation to specific conditions and the establishment of appropriate infrastructure. In practice, there are several obstacles that may be characteristic of certain countries, such as resistance to changes in approaches to juvenile offenders, lack of a unified concept of juvenile justice reform, lack of uniformity in legal regulation, as well as insufficiently qualified personnel.

Legal Regulation of Juvenile Courts in Japan.

The Japanese approach to juvenile justice views it as separate from criminal proceedings. The main documents laying down the legal basis of juvenile justice in Japan are the 1947 Child Welfare Act and the 1948 Juvenile Act, which have been amended numerous times since their adoption. Japan operates a successful system of special family courts. For instance, within the family court, there is a section for medical and psychiatric consultation, with attached social workers. Their status is equivalent to that of probation officers in English and American justice systems [4]. A notable feature of Japanese family courts is that all cases are handled based on social investigation rules. This means that the primary focus is not on punishment but on the protection of juveniles who have come into conflict with the law or found themselves in challenging life circumstances [16; 60].

Cases involving children may be considered under criminal proceedings only if the child is at least 16 years old or has committed a particularly serious offense that warrants lifelong imprisonment or the death penalty. Children who commit offenses cannot be detained, as this sanction is replaced with educational measures and rehabilitation. Additionally, when courts handle cases involving children, the principle of transparency does not apply. Justice in such cases is conducted confidentially, within closed proceedings. However, since 2000, an exception to this rule has been made, allowing victims to attend proceedings.

Before juvenile cases are considered, probation services prepare reports for family courts, detailing all circumstances of the case. Similar practices exist in the UK, where such reports are prepared by interagency commissions. As research shows, more than 50 % of juvenile cases in Japan never even reach the hearing stage. This is because, for achieving the necessary educational effect, pretrial detention is considered sufficient. In other situations, punishments may include directing children to specialized correctional educational institutions or various support centers.

As analyzed by researchers from Kyoto University, the number of offenses committed by children in Japan is increasing rapidly, with their severity also escalating. Consequently, Japanese legislation is trending towards more open judicial proceedings for cases involving juveniles and the use of punitive measures against such offenders. These changes aim to minimize juvenile delinquency, restore social justice, rehabilitate offenders, and prevent further criminal activity [17; 73].

In 2007, amendments to the Juvenile Act were made, tightening the approach to juveniles: harsher penalties were established for those committing serious crimes; the age of criminal responsibility in exceptional cases for particularly serious crimes was lowered to 12 years old; in case of recidivism, offenders are sent to correctional institutions rather than specialized educational institutions as before; the police were granted the right to conduct searches and seize evidence in criminal cases involving children under 14.

However, the basic approaches to overcoming juvenile delinquency remain intact. The Juvenile Act states that the specificities of responsibility for offenses by juveniles are predetermined by their limited understanding of law, age-related psychological characteristics, and incomplete socialization. When applying educational measures or imposing punishments, courts are obliged to investigate the juvenile's past, personality, environment, and circumstances of the offense.

As noted by Japanese researcher A. Ogawa, in recent decades, there have been significant changes in the nature of juvenile offenses, especially in serious cases: offenses have become more violent and serious; aggression among juveniles has become more common; even when juveniles commit offenses, they may not realize their criminality; motivations for offenses have changed (from poverty-driven in the post-war period to "because it's fun" nowadays); some parents have lost authority in the family, and teachers have lost control over discipline in schools [18].

Even when a minor commits a crime, Japanese juvenile justice, based on principles of humanism and compassion, seeks primarily to provide education and rehabilitation and avoids punitive measures, as adolescents are still in the midst of physical and mental development. They retain a flexible character, highly susceptible to influence. It is important not to forget the goal of juvenile justice: upbringing and rehabilitation based on ensuring the well-being of children. It should not be punitive. However, it is undeniable that there are still a small number of juveniles for whom the application of conventional educational and protective measures is impractical, especially in cases of serious crimes. Therefore, while the importance of applying educational and rehabilitation measures in "ordinary" cases should not be forgotten, in a limited number of serious cases, the application of stricter measures is inevitable for the protection of society.

Review of Approaches to the Institute of Juvenile Justice in Foreign Countries.

Further we consider it necessary to briefly review the issue regarding approaches to punishing juveniles in other foreign countries. In the United Kingdom in 1993-1994, a series of legislative acts were introduced that toughened measures for juvenile offenders and doubled the maximum term of imprisonment in correctional institutions. The results of such legislation were so negative that they became one of the reasons for subsequent

reforms carried out by the Labor Party. Under the new system, all juvenile offenders were classified into groups depending on the severity of the offense, repeat offenses, and the prognosis for the adolescent's future socialization.

The main emphasis in the juvenile justice system was placed on crime prevention. The enforcement of the law was entrusted to interdepartmental commissions for working with juvenile offenders. Currently, there are 156 commissions in England and Wales, indicating the diversity of needs and behavioral models of juveniles. Those commissions work together with social workers, municipal service teachers, probation inspectors, police officers, as well as psychiatrists and child psychologists. Judges in the UK have a wide range of sanctions available for youth: starting from curfews, warnings, and counseling sessions, to imposing community service (unpaid) and imprisonment in correctional institutions (from age 16-17). It should be acknowledged that the latter, more stringent measures, have the least rehabilitative effect, with a significantly higher percentage of recidivism after them.

In 2009, a new law was introduced allowing offenders to compensate victims for the harm caused. Additionally, judges are now required to justify the decision not to use alternatives to imprisonment if such options are available. Five years after the start of the reforms, it was noted that the innovations represent a qualitatively new model of providing state services, work with offenders is now much more effective, and the recidivism rate has significantly decreased. One of the facts confirming this was the closure of three correctional institutions for juvenile offenders.

In European countries, the juvenile justice system is broadly similar to that in England. An interesting feature is the possibility of mediation, reconciling the victim with the offender. In the case of reconciliation, it is possible to withdraw the offense from the criminal justice system and completely terminate criminal proceedings without applying sanctions.

In England, Ireland, and the Netherlands, such a decision is made by the police, while in Germany, it is made by the public prosecutor. Moreover, the public prosecutor or judge may suspend the proceedings, during which the adolescent can perform restitution work, after which the case will be closed.

In Scotland, Bulgaria, and Estonia, juvenile offenders may be referred to social services, where decisions on the application of educational measures are made. Various sanctions may be applied in court, similar to those in England, with priority given to measures with the greatest educational value. The issue of imposing fines on juveniles is ambiguous since teenagers usually do not earn money.

In some countries, such as Belgium, Bulgaria, Croatia, Italy, Scotland, Serbia, and Spain, the imposition of fines is not practiced. In Finland, the amount of the fine is comparable to pocket money that a teenager may have (Integration of Juvenile Offenders into Society, 2011) [19].

Regarding family court models, the Family Division of the High Court of England is of particular interest from the perspective of protecting the rights and interests of juvenile individuals. Its competence is extremely broad in all matters related to family and children. This court can act as both a court of first instance and an appellate court within its jurisdiction. The cases heard by this court as a court of first instance include divorce, adoption, guardianship, and custody matters.

In Austria, guardianship courts, adopted as a model of family court, extend their jurisdiction to minors up to the age of 21. Guardianship courts apply educational measures to offenders and protective measures to individuals in need of protection. Guardianship courts also address conflicts between parents when they disagree with recommendations regarding the upbringing of children provided by the Childhood Bureau. Juvenile offenses are within the jurisdiction of existing juvenile courts in Austria. However, in cities like Vienna and Graz, these courts are combined with guardianship courts, resulting in shared jurisdiction for the merged courts.

The mixed jurisdiction court, whose primary model is the family court, could not fully replace the juvenile court. Firstly, it was difficult to include the main issues of traditional juvenile court jurisdiction — criminal responsibility and punishment of minors for crimes — within the competence of the family court. While the juvenile court struggled with civil jurisdiction issues, the family court couldn't overcome the barrier of criminal proceedings, especially for serious crimes. The consequence of these difficulties was the slow spread of family courts, their inclination towards civil jurisdiction, and the retention of courts for juveniles.

Administrative bodies for juvenile affairs, alternative to the court, have been established in several countries. Their competence, tasks, and procedural activities are determined by regulatory, predominantly departmental acts. Laws usually specify the cases and categories of cases in which the intervention of administrative non-judicial bodies instead of judicial intervention in juvenile affairs is possible, who decides on this issue, and what forms such non-judicial intervention takes.

Non-judicial bodies alternative to the court owns all the characteristics of a legal institution with corresponding legal nature and functions. The establishment of alternative bodies was associated with dissatisfaction with the effectiveness of juvenile justice. Alternative intervention consists of the possibility to choose an administrative non-judicial body instead of the court, including cases where the court itself may perform such a function by law. The second option is the possibility of using the function of an administrative body alongside the functions of the court within the judicial process. In this case, the functions of the administrative body cannot be considered alternative to judicial activity since they do not replace justice but only complement it. However, classifying this activity as alternative has its grounds. It should not be forgotten that in some countries, such alternative has gained legal right to exist within juvenile justice framework and yields the expected results.

The competence of administrative bodies authorized to intervene in juvenile affairs instead of the court primarily lies in the legal protection of children and adolescents. In some countries, there are special preventive-protection bodies intended for the prevention of juvenile offenses. These bodies include special committees for juvenile affairs: youth protection committees in Belgium; commissions for the social welfare of children and adolescents in Scandinavian countries (Denmark, Norway, Sweden) and Finland.

The Scandinavian model of the activity of welfare committees involves not replacing the juvenile court with such a committee but rather dividing their jurisdiction over the range of cases they consider. In all other cases, the option always involves the possibility of choosing between judicial and non-judicial intervention for a given case [4].

The comparison between the functions and tasks of the listed administrative bodies, which are empowered by law to intervene as an alternative to the court, demonstrates both significant similarities and substantial differences.

The similarity in tasks and functions of the listed alternative bodies includes the following:

– They are all legally authorized to intervene, not only to protect the rights and lawful interests of minors, but also in cases involving juvenile offenses.

– They all carry out common preventive tasks in combating offenses and in eliminating unfavorable living and upbringing conditions for adolescents.

– They include individuals whose professions are related to issues of child and adolescent upbringing, as well as the protection of their rights and interests; representatives of the community.

– Overall, the procedure for handling cases in these bodies, where juvenile offenses or offenses against them are concerned, is regulated by law or other legal acts.

Conclusions

Thus, it can be concluded that the European juvenile justice system has generally proven to be effective, attentive to the rights of the child and the value of their personality, and sufficiently flexible in terms of sanctions applied to juvenile offenders. However, the legal space in Europe is characterized by diversity and distinctive features of each specific country.

In our opinion, particular attention should be paid to the preference for educational measures over punishment, a deep understanding of the psychology and personality of a minor, and the specialization of judges who deal exclusively with juvenile cases.

Among the principles of juvenile justice, special attention should be paid to education and rehabilitation since the practice of foreign countries shows that punitive measures do not reduce the number of repeat offenses. In our view, punitive measures should only be applied to a limited number of offenses committed by juveniles.

Nowadays, the Singaporean judicial system is one of the most progressive and high-tech, which significantly contributes to the efficiency of handling various categories of cases, including family matters. The merits of the Singaporean judicial system include the mandatory use of mediation procedures in resolving family disputes, adherence to the principles of creating proper conditions for children's upbringing, promoting the protection and rehabilitation of children and their reintegration into society, and the use of the latest scientific and technological advancements to simplify and ensure access to justice for every citizen, ultimately aiming to fulfill not only the social function of justice, but also the social function of the state as a whole.

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Д. Оспанова, С. Мороз, А. Ниязова

Шетелдердегі кәмелетке толмағандардың істері жөніндегі соттың генезисі мен құрылуы

Мақаланың мақсаты — шетелдердегі кәмелетке толмағандардың істері жөніндегі соттардың генезисі мен қалыптасуын зерттеу, олардың тарихи дамуын, іргелі принциптері мен уақыт бойынша эволюциясын атап көрсету. Салыстырмалы әдістемені пайдалана отырып, авторлар әртүрлі елдердегі кәмелетке толмағандарға қатысты әділет жүйесін қалыптастырған құқықтық базаны, саясаттағы өзгерістерді және әлеуметтік әсерлерді зерттейді. Талдауда кәмелетке толмағандардың істері бойынша соттардың құрылуы мен дамуына ықпал ететін факторларды жан-жақты түсіну үшін негізгі құқықтық құжаттар, тарихи жазбалар мен қазіргі заманғы зерттеулер қарастырылған. Зерттеу нәтижелері әртүрлі юрисдикцияларда кәмелетке толмағандардың істері жөніндегі соттардың қалыптасуының әртүрлі заңдылықтары мен ортақ белгілерін көрсетеді. Негізгі қорытындыда кәмелетке толмағандар істері жөніндегі соттардың пайда болуы көбінесе әлеуметтік реформалар қозғалысының, жастар арасындағы қылмысқа қатысты құқықтық философияның өзгеруінің және кәмелетке толмағандар арасындағы қылмысты жазалаудың орнына оңалту тәсілі арқылы шешу қажеттілігінің үйлесімімен байланысты екенін айқындайды. Қорытындыда тарихи және әлеуметтік-құқықтық контексте дүниежүзіндегі кәмелетке толмағандарға қатысты сот төрелігі жүйесін қалай қалыптастырғанын көрсету арқылы осы зерттеудің елеулі үлесі зерделенген. Мақала кәмелетке толмағандарға қатысты сот төрелігінің қазіргі заманғы тәжірибесіне әсер етуді жалғастыратын негізгі қағидалар туралы ақпарат беру арқылы кәмелетке толмағандарға қатысты сот төрелігін кеңірек түсінуге ықпал етеді. Зерттеу нәтижелерінде кәмелетке толмағандарға қатысты әділет саласындағы қазіргі саясатты қалыптастырудағы тарихи контекстің маңыздылығы және кәмелетке толмаған құқық бұзушылардың әл-ауқаты мен оңалту мәселелеріне басымдық беретін реформалардың тұрақты қажеттілігі сипатталған.

Кілт сөздер: кәмелетке толмағандардың істері жөніндегі соттар, медиация, ювеналды әділет, отбасылық сот, сот жүйесі, кәмелетке толмағандарды қорғау.

Д. Оспанова, С. Мороз, А. Ниязова

Генезис и формирование ювенальных судов в зарубежных странах

Целью данной статьи является изучение генезиса и формирования ювенальных судов в зарубежных странах, с акцентом на их историческое развитие, основополагающие принципы и эволюцию с течением времени. Используя сравнительную методологию, исследователи анализируют правовое регулирование, изменения политики и общественные влияния, которые сформировали систему ювенальной юстиции в разных странах. Анализ включает обзор основных юридических документов, исторических записей и современных исследований, обеспечивая всестороннее понимание факторов, способствующих созданию и развитию ювенальных судов. Результаты исследования выявляют различные закономерности и общие черты в формировании ювенальных судов в различных юрисдикциях. Основные выводы указывают на то, что возникновение ювенальных судов часто было обусловлено сочетанием движений за социальные реформы, изменениями в правовой философии в отношении молодежной преступности и необходимостью решение проблемы преступности среди несовершеннолетних с помощью реабилитационного, а не карательного подхода. В заключение подчеркивается значительный вклад данного исследования, демонстрирующего, как исторические и социально-правовые контексты сформировали систему ювенальной юстиции во всем мире. Эта статья вносит вклад в более широкое понимание ювенальной юстиции, предоставляя информацию об основополагающих принципах, которые продолжают влиять на современную практику ювенальных судов. Результаты исследования подчеркивают важность исторического контекста в формировании текущей политики ювенальной юстиции и постоянную необходимость реформ, ориентированных на благополучие и реабилитацию несовершеннолетних правонарушителей.

Ключевые слова: ювенальные суды, медиация, ювенальная юстиция, семейный суд, судебная система, защита несовершеннолетних.

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