

**Situation of initiation and investigation of a criminal case  
on crimes of minors not reached the age of criminal responsibility**

**Abstract:** It is considered the situation of initiation and investigations of a criminal case on crimes of minors not reached the age of criminal responsibility.

It is given recommendations on the use of preventive measures.

Proposals are given to changes and amendments to the law on minors.

**Keywords:** situation, the age of criminal responsibility, a minor, temporary isolation center, commission.

In the aspect of our study is considered two types of situations: a) when a person committed a crime (a minor who has not reached the age of criminal responsibility) is known, and b) when a person committed a crime is unknown, and a criminal case is initiated and an investigation begins in non-obviousness conditions.

In turn, these situations can be divided according to the severity of a committed crime.

In the first case it is possible, but not desirable, and, under certain circumstances, is illegitimate, the rejection to initiate a criminal case, and the second one, it is necessarily for beginning of a production of the criminal prosecution in connection with initiation of criminal case on the fact of a grave or especially grave crime.

An assertion of the illegitimacy of refusal to institute criminal proceedings based on the fact that in a case of committing by a minor a serious or especially serious crime is a subject to the mandatory establishment of circumstances which cannot be

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determined without conduct investigative action. For example, a level of development or possibility to assess adequately his actions cannot be found out without a production of the psychological evaluation, and an expertise can be assigned only on initiated criminal case.

In both cases, the main problem with which investigator may encounter is the lack of provisions in the law on the application of measures of procedural coercion against minors not reached the age of criminal responsibility. Moreover, a legislation does not provide for other measures that could be effectively applied in respect of a minor in order to prevent his illegal behavior or evasion of investigation and trial.

According to Article 154 Criminal Procedure Code, preventive measures can be applied only in respect of a suspect or accused (5, p. 166-167). However, if a minor has not reached age of criminal responsibility then it is not possible to give him a status of suspect or accused.

According to the Law of Azerbaijan Republic “On Prevention of homelessness and juvenile delinquency”, its subjects are internal affairs bodies, in which operate specialized police structures, including centers for temporary isolation of minors (1, p. 8-9).

Article 18 of the Law is stated that temporary isolation centers of minors in the bodies of internal affairs: a) provide reception and temporary hold during a day of minors in order to protect life, health of juvenile and not committing by them re-offending; b) conduct individual preventive work with juveniles in temporary isolation center, as well as determine the causes and circumstances which create the conditions for performing an illegal act, and inform the relevant authorities; c) transporting of minors in special educational institutions of closed type, and within its powers are taking other steps to place juveniles in these institutions.

According to Articles 18.2 and 18.3 of the Law, by a decision of court in the centers are placed the following categories of minors: a) who are directed in special educational institutions of closed type on decision of the court; b) who are pending of consideration by the court an issue on placing them in special educational institution

of closed type; c) who left without permission special educational institution of closed type; d) minors, committed a crime and reached of established by the criminal legislation of Azerbaijan Republic the age limit for criminal responsibility, in cases of necessity to protect their life, health, and prevention of the recurrence of a socially dangerous act, including a determination of their residence or their identity; e) juveniles who committed offenses which are the basis of application of administrative punishment and accordance with law of Administrative Offences of the Republic of Azerbaijan reached the age limit for the imposition of administrative sanctions, in the case of determination their identity or place of residence (1, p. 9).

According to Article 20.5 of the Law, by court order the minors, in respect of which is started production in sending them special educational institution of closed type, are transmitted under the control of their parents or other legal representatives, and the minors detained in children's homes, boarding schools, or other institutions for children - under the control of administration of these institutions. In accordance with court decision, the minors aged 14, their parents or other legal representatives who are deviating to appear in court, can be forced brought to a court by the bodies of internal affairs.

According to Article 20.6 of the Law, in considering by court of an application for direction to a special educational institution of closed type, to a court decision a juvenile can be sent in minor's temporary isolation center for up to 30 days at the following reasons: a) in case of danger to life and health of a minor; b) to prevent repeated commission a socially dangerous act; c) in case of absence to a minor place of residence or stay; d) in case of repeated evasion by a minor to appear in court or a medical examination, under which is understood to re-failure to appear in court or medical examination without good reason or his escape from the place of residence (1, p. 10).

Thus, from the above it is clear that law does not provide a detention for a juvenile in the center for temporary isolation in the period of investigation and

especially during pre-investigatory examination, and it eliminates the possibility of preventing illegal behavior or evasion on an investigation and trial.

Staying of minor in the center of temporary isolation is essentially a deprivation of freedom and therefore, recommendations in this part shall comply with the full range of human rights in general and the rights of minors (children) - in particular.

According to United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) adopted by General Assembly resolution 40/33 of 29 November 1985, the juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence (article 5.1).

In article 7.1 of the Rules is stated, that basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

In Commentary to article 11 is said, that diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence). In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner. As stated in article 11.2 “diversion may be used at any point of decision-making-by the police, the prosecution or other agencies such as the courts, tribunals, boards or councils. It may be exercised by one authority or several or all authorities, according

to the rules and policies of the respective systems and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.” Rule 11.3 stresses the important requirement of securing the consent of the young offender (or the parent or guardian) to the recommended diversionary measure(s). (Diversion to community service without such consent would contradict the Abolition of Forced Labour Convention.) However, this consent should not be left unchallengeable, since it might sometimes be given out of sheer desperation on the part of the juvenile. The rule underlines that care should be taken to minimize the potential for coercion and intimidation at all levels in the diversion process. Juveniles should not feel pressured (for example in order to avoid court appearance) or be pressured into consenting to diversion programmes. Thus, it is advocated that provision should be made for an objective appraisal of the appropriateness of dispositions involving young offenders by a “competent authority upon application”. (The “competent authority”, may be different from that referred to in rule 14.). In rule 1.4 is recommended “the provision of viable alternatives to juvenile justice processing in the form of community-based diversion”. It is specially recommended programmes that “involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed (for example first offence, the act having been committed under peer pressure, etc.)”.

According to article 13 of the Rules “detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home. Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations. Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate

part of an institution also holding adults. While in custody, juveniles shall receive care, protection and all necessary individual assistance - social, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality” (3, p. 21-32).

However, all the foregoing concerns to juveniles, reached the age of criminal responsibility, and it indirectly concerns the issue that we are considering.

In connection with the foregoing, it is highly relevant issue of preventive measures (as in the procedural aspect and the practical, which should be interconnected and interdependent) in relation for minors not reached the age of criminal responsibility, in order to cease their wrongful behavior and implementing measures re-education.

Consider a situation, taken from the practice.

A minor A., 12 years old, at night in the absence of a father doused with petrol a bedroom of stepmother, lit it and locked the door from outside. A victim, received severe burns, jumped out from the second floor, broke both his legs, but she survived. Hearing of this, the minor said that any case he “kills off her...” and before as he once again will pour out on her petrol, he will hit her by the ax on a head”. Similar threats the juvenile adolescent voiced against his father and grandmother. It is natural that such a statement that was repeated several times in the presence of the investigator, father and teachers obliged to make a decision on preventive measures. Therefore according to a statement of an investigator and prosecutor's statement and by court order a juvenile A. was placed for 30 days in a temporary isolation center. Later, in the same order an isolation period due to the necessity of the examination was extended for another 30 days.

Actually, an investigator, prosecutor and court violated of provisions of the Code of Criminal Procedure and the Law “On prevention homelessness and juvenile delinquency”, but it seems that in the described situation they did everything possible and necessary. It was not possible to convey a minor under the control of his parents (father and grandmother) and it was dangerous to limit only police surveillance. It

was not possible organize a living of policemen in a family of A., to oblige them to accompany him to school and to be present on his classes.

Resolution of this situation is seen only in the changes and amendments of relevant provisions of the Criminal Procedure Code, the Law “On Prevention of homelessness and juvenile delinquency” and “Regulation on Commission on minors and protection of their rights” (4, p.1-8).

In particular, it seems necessary to supplement the Criminal Procedure Code with provision allowing during a preliminary investigation at petition of an investigator, statement of a prosecutor and court order at obligatory participation of the representative of the minor in face of a lawyer, a placing of a juvenile not attained the age of criminal responsibility at the center for temporary isolation for one month (30 days).

It should be taking into account that according to the presumption of innocence, a minor will remain so until a court decision, provided under article 435.1 of the CCP. In addition, in order to reduce the time from the initiation of criminal proceedings and sending it to the court, it is necessary to include an activity of the Commission on minors and protection of their rights in investigation process from the beginning and availability of the subject i.e. a juvenile. The issue of sending it to the court for placement a minor in special educational institution to leave for joint consideration by an investigator, prosecutor and the Commission at the obligatory presence of relevant conclusions of the experts-psychologists. Today, according to article 435.1.2 CCP this issue is resolved by the Commission on minors and protection of their rights, whose activity at the absence of relevant professionals leaves much to be desired.

It should be noted that there is another opinion on this issue in the Azerbaijani juridical literature. So, L.V. Mehdiyeva suggests supplementing article 154 Criminal Procedure Code with provisions allowing for the transfer under police surveillance of juveniles not reached the age of criminal responsibility and under police surveillance

she understands the center for temporary isolation of internal affairs bodies (2, p. 99-101).

This proposal deserves attention since is the sole on the post-Soviet space, affecting this important issue. So, in 2003, at the Moscow Academy of the Russian MIA L.V. Chentsova defended her Ph.D. thesis on the theme “Features of criminal procedural production for juveniles, not subjects of criminal responsibility”. However, she did not affect any of the considered by us issues (6, p. 50-72). It is true, in Section 2.5, the author makes concludes that “with respect to persons who are not subject to criminal responsibility it is possible to apply preventive measures, including arrest, if the opportunity and necessity of its application supported by the case materials. For this purpose, it should be adopted an appropriate norm in CCP”, but outlined opinion has no arguments (6, p. 129). Proposal of L.V. Chentsova is clearly and fairly, but it requires reviewing all basic provisions of the Criminal Procedure Code.

From our viewpoint, it should be entered in the CPC the provisions (separate section) on a special production of criminal proceedings against minors not reached the age of criminal responsibility the same as subject to coercive medical measures against persons who have committed a crime in a state of insanity. In this case, it will be possible to solve the issues of procedural coercion, and issues of ensuring the rights of minors and issues of evidence.

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