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Chistyakov A. A., Naurzalieva S. M.**Чистяков А. А., Наурзалиева С. М.**CRIMINAL LIABILITY OF JUVENILES
IN THE REPUBLIC OF KAZAKHSTANУГОЛОВНАЯ ОТВЕТСТВЕННОСТЬ НЕСОВЕРШЕННОЛЕТНИХ
В РЕСПУБЛИКЕ КАЗАХСТАН

Abstract. The article reflects the study of juvenile delinquency in the Republic of Kazakhstan and their criminal responsibility. The scientific novelty of the research is that it was conducted on the basis of the new criminal legislation of the Republic of Kazakhstan in 2014. Therefore, the complex of issues, that were previously the subject of various studies in the light of modern realities and trends of criminal law policy of the Republic of Kazakhstan, has received a new interpretation and argumentation from the perspective of the latest opportunities for study. First, the new legislative structure for determining the basis of criminal liability (Article 4 of the Criminal code of the Republic of Kazakhstan) required a reinterpretation of the content of circumstances that lead to emergence of criminal liability among juveniles. Secondly, the legally updated content of grounds for criminal liability of juveniles in the Republic of Kazakhstan has led to an update of the quality of criminal law relations that arise between juvenile offenders and state bodies, which also need a new scientific reinterpretation. Third, the new legal concept of the basis of criminal liability presupposes the existence of a new, in relation to the previous, content of the basis for the implementation of criminal liability of juveniles. Finally, the new criminal legislation of the Republic of Kazakhstan, along with the previously existing one, has introduced new forms and types of implementation of criminal liability of juveniles, which need an updated scientific and legal analysis. Its results and conclusions, obtained personally by the author, can be regarded as having scientific novelty for the above reasons. In addition, on the basis of the theory and practice research of criminal responsibility among juveniles in the Republic of Kazakhstan, the paper formulated proposals for improving the criminal legislation of not only the Republic of Kazakhstan, but also the Russian Federation, which also have a novelty. The theoretical significance of the research is to increase and systematize knowledge about the criminal liability of juveniles due to the presence of a new basis of criminal responsibility that has not been previously developed by the Russian criminal law science. The results of scientific understanding of new forms and types of implementation of criminal liability of juveniles, introduced by the Criminal code of the Republic of Kazakhstan in 2014, such as the obligation

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to apologize to the victim and the establishment of probation control, have theoretical significance. The conclusions, suggestions and recommendations contained in this work enrich the scientific understanding of the features of criminal liability of juveniles in the Republic of Kazakhstan. The practical significance of the work is that the provisions and recommendations contained in it can be used both in the Republic of Kazakhstan and in the Russian Federation: in the process of standard-setting activities in improving the norms of Chapter 6 of the Criminal code of the Republic of Kazakhstan and the norms of Section V of Chapter 14 of the Criminal code of the Russian Federation; in the work of specialized inter-district courts for juveniles, considering cases against juveniles and assigning criminal penalties to them; by authorities and administration in the development of preventive measures.

Keywords: the Republic of Kazakhstan, juveniles, juvenile delinquency, criminal liability, grounds for criminal liability, juvenile justice, exemption from criminal liability and punishment.

Аннотация. В статье отражено исследование преступности несовершеннолетних в Республике Казахстан и их уголовной ответственности. Научная новизна исследования состоит в том, что оно проведено на базе нового уголовного законодательства Республики Казахстан 2014 г., а потому комплекс вопросов, ранее являвшихся предметом тех или иных исследований, в свете современных реалий и направлений уголовно-правовой политики Республики Казахстан получил новую интерпретацию и аргументацию с позиций новейших возможностей для изучения. Во-первых, новая законодательная конструкция определения основания уголовной ответственности (ст. 4 Уголовного кодекса Республики Казахстан) потребовала переосмысления содержательной стороны обстоятельств, влекущих возникновение уголовной ответственности несовершеннолетних. Во-вторых, законодательно обновленное содержание основания уголовной ответственности несовершеннолетних в Республике Казахстан повлекло обновление качества уголовно-правовых отношений, возникающих между несовершеннолетними нарушителями и государственными органами, что нуждается в новом научном переосмыслении. В-третьих, новое законодательное понятие основания уголовной ответственности предполагает наличие нового, по отношению к прежнему, содержания основания реализации уголовной ответственности несовершеннолетних. Наконец, новое уголовное законодательство Республики Казахстан, наряду с ранее существовавшим, ввело в действие новые формы и виды реализации уголовной ответственности несовершеннолетних, которые нуждаются в обновленном научно-правовом анализе. Его результаты и выводы, полученные лично автором, по вышеуказанным причинам могут быть расценены как обладающие научной новизной. Кроме того, на основе исследования вопросов теории и практики уголовной ответственности несовершеннолетних в Республике Казахстан в работе сформулированы предложения по совершенствованию уголовного законодательства не только Республики Казахстан, но и Российской Федерации, которые также обладают новизной. Теоретическая значимость исследования состоит в приращении и систематизации знаний об уголовной ответственности несовершеннолетних в силу наличия нового, ранее не разрабатываемого российской уголовно-правовой наукой, основания уголовной ответственности. Теоретической значимостью обладают результаты научного осмысления новых форм и видов реализации уголовной ответственности

несовершеннолетних, введенных Уголовным кодексом Республики Казахстан 2014 г., таких как обязательство принести извинения потерпевшему и установление пробационного контроля. Содержащиеся в работе выводы, предложения и рекомендации обогащают научные представления об особенностях уголовной ответственности несовершеннолетних в Республике Казахстан. Практическая значимость работы заключается в том, что содержащиеся в ней положения и рекомендации могут быть использованы как в Республике Казахстан, так и в Российской Федерации: в процессе нормотворческой деятельности при совершенствовании норм гл. 6 Уголовного кодекса Республики Казахстан и норм разд. V гл. 14 Уголовного кодекса Российской Федерации; в работе специализированных межрайонных судов по делам несовершеннолетних при рассмотрении дел в отношении несовершеннолетних и назначении им уголовных наказаний; органами власти и управления при разработке мероприятий профилактического характера.

Ключевые слова: Республика Казахстан, несовершеннолетние, преступность несовершеннолетних, уголовная ответственность, основание уголовной ответственности, ювенальная юстиция, освобождение от уголовной ответственности и наказания.

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Introduction

The relevance of the research topic is determined by the fact that juveniles are a natural reserve of social development of any society, and their violation of the criminal law indicates the existing gaps in legal and moral education of the younger generation, insufficient conditions for the inclusion of young people in the life of society. The analysis of statistical indicators of juvenile delinquency, the prevalence of criminal offenses among persons of the youth age group, and the qualitative and quantitative characteristics of these phenomena can be regarded as predictive for the entire crime as a whole. It is no accident that reducing the level of juvenile delinquency is considered by the world community as the most important aspect of the fight against crime in society.

Today juvenile delinquency in the Republic of Kazakhstan acquires qualitatively new features due primarily to the adoption of the new Criminal code of the Republic of Kazakhstan (hereinafter – CC RK) and a course on the humanization of criminal policy concerning juveniles. For example, in the Republic of Kazakhstan in 2010 and 2011, 72 and 76 crimes out of every thousand were committed by juveniles or with their participation (in the Russian Federation for the same period, these figures were 65 and 63). By the end of 2014 (the last year of the previous CC RK), this figure fell to 40 criminal acts (in the Russian Federation for the same period – 54). For the period of the current CC RK (2015–2017), the considered indicators were 30, 28 and 27 crimes per thousand committed (in the Russian Federation – 52, 48, 44).

On the one hand, leading legal experts in Russia and Kazakhstan note the undoubted benefit and effectiveness of the new concept of criminal legislation of the Republic of Kazakhstan, which refers to some of the acts (previously referred to crimes) to criminal misdemeanors (Apenov, S. M. 2017; Golovko, L. V. 2017; Sarybekova, S. M. 2017). This circumstance, as mentioned above,

significantly affected the overall statistics and dynamics of juvenile crime in the Republic of Kazakhstan, since it is impossible to deny the obvious fact that a significant decrease in the quantitative and qualitative indicators of juvenile crime is a direct result of these qualitative changes in criminal policy in the Republic, associated with the introduction of new mechanisms for the implementation of criminal liability of juveniles.

On the other hand, according to the General Prosecutor's office of the Republic of Kazakhstan, about 2/3 of recidivists committed their first crime as teenagers (Ermuratov, D. 2014). In addition, according to the Head of the Department of the Penal system in Almaty, 20% of recidivists start their criminal career at a young age, and we speak about juveniles, who have served a sentence of imprisonment (Prokopenko, V. 2016). The adoption of the current CC RK in 2014 created a unique scientific and legal situation for researchers to analyze new, emerging criminal law relations in the field of countering juvenile delinquency. The situation is unique both from the point of view of criminal law theory and practice.

In the Russian Federation research on juvenile delinquency increased significantly between 2002 and 2013, but not in Kazakhstan's legal science. In ontological terms, the studied problem was considered mainly in connection with scientific developments of the general doctrine of criminal liability, which were carried out by A. I. Boytsov, N. M. Kropachev, A. N. Magomedov, L. M. Prozumentov, V. S. Prokhorov, Yu. E. Pudovochkin and others. In institutional terms, certain aspects of the problem of criminal liability of juveniles were studied in the works of such Russian and Kazakh scientists as E. Alaukhanov, E. A. Antonyan, Yu. M. Antonyan, T. K. Akimzhanov, Z. A. Astemirov, M. M. Babaev, K. A. Begaliev, S. B. Bimurzin, N. I. Vetrov, S. E. Vitsin, Ya. I. Gilinskiy, V. I. Gladkikh, A. I. Dolgova, V. D. Ermakov, A. E. Zhalinskiy, V. I. Ignatenko, K. E. Igoshev, S. M. Inshakov, E. I. Kairzhanov, I. I. Karpets, Yu. A. Kashuba, V. M. Kogan,

L. L. Kruglikov, M. S. Kruter, V. N. Kudryavtsev, A. I. Martsev, G. M. Min'kovskiy, S. S. Moldabaev, M. S. Narikbaev, N. I. Pikurov, V. A. Pleshakov, A. B. Sakharov, O. D. Sitkovskaya and others. The results of scientific research of these authors form the basis of modern teaching about the criminal liability of juveniles.

The issues of implementation of criminal liability among juveniles are devoted to the development of Russian and Kazakh scientists, such as N. M. Abdirov, V. A. Andrienko, B. S. Beysenov, V. B. Borovikov, A. V. Brilliantov, D. B. Bugybay, I. M. Gal'perin, P. S. Dagel', S. G. Kelina, M. I. Kol'tsov, N. R. Kosevich, K. K. Kusnidenov, T. A. Lesnievski-Kostareva, I. I. Lesnichenko, V. V. Luneev, R. O. Orymbaev, E. F. Pobegaylo, Yu. E. Pudovochkin, A. I. Rarog, N. A. Selezneva, S. A. Styazhkina, V. N. Tkachev, I. V. Chernenko, A. I. Chernyshov, A. S. Chokmorova and works of other scientists.

Recent works include dissertations defended in the Russian Federation: A. A. Zor'kina «Negligent crimes of juveniles: criminal-legal and criminological aspects» (2016), K. Yu. Loginova «Property crime of juveniles and measures to prevent it» (2015), A. V. Davydenko «Differentiation of criminal liability of juveniles depending on age» (2013). It should be noted that in the Republic of Kazakhstan over the past 5 years (2013–2018), dissertations on this topic have not been defended. The latter include the dissertations of L. M. Karzhaubaeva «Juvenile Delinquency in the Republic of Kazakhstan» (2009), Musali Nuradel' «Problems of improving legislation on responsibility and individualization of punishment for juveniles» (2008), T. Zh. Atzhanova «Features of release of juveniles from criminal liability (under the legislation of the Republic of Kazakhstan and the Russian Federation)» (1998). At the same time certain aspects of the problem were touched upon by Kazakh scientists in the study of related issues (Abdirov, N. M. 2017; Kaybzhhanov, M. Zh. 2017). It can be stated that within the framework of existing

research, such problems as the current state of juvenile delinquency after the adoption of CC RK in 2014, the impact on its indicators of criminal responsibility grounds that differ from the previously existing legislative wording, and new forms of its implementation in relation to juveniles remain beyond the scope of scientific interest.

The object of the research is the social relations that are developing regarding the establishment and implementation of criminal liability of juveniles in the Republic of Kazakhstan.

The subject of the research is: legal norms regulating criminal liability and its implementation in relation to juveniles in the Republic of Kazakhstan; personality of a juvenile criminal offender; complex of reasons and conditions for committing criminal law violations by minors in the Republic of Kazakhstan; system of measures for general social, socio-criminological and legal prevention of criminal offenses committed by juveniles.

The purpose of the research is to analyze the criminological indicators and characteristics of juvenile delinquency in the Republic of Kazakhstan, the features of detention and forms of implementation of criminal liability of juveniles in modern conditions, as well as the development of theoretical provisions and practical recommendations aimed at effectively countering criminal offenses committed by juveniles in the Republic of Kazakhstan. The achievement of these goals determined the formulation and solution of the following tasks:

- to analyze the main criminological indicators of juvenile delinquency in the Republic of Kazakhstan;

- to consider the socio-demographic, criminal-legal and criminological features of the average juvenile, who has committed a criminal offense in the Republic of Kazakhstan, and make a criminological portrait of this juvenile delinquent;

- to determine the causes and conditions of juvenile delinquency in the Republic of

Kazakhstan and propose measures for its prevention;

- to conduct a legal analysis of the grounds for criminal liability of juveniles under the criminal law of the Republic of Kazakhstan;

- to consider the specifics of applying punishments to juvenile offenders in the Republic of Kazakhstan;

- to establish how effective the application of the main provisions of the Institute of exemption from criminal responsibility and punishment of juveniles in the Republic of Kazakhstan is in modern conditions;

- to develop and propose a set of organizational and legal measures to prevent juvenile delinquency in the Republic of Kazakhstan.

Materials and Methods

The methodological basis of the research is the dialectical method of cognition as a universal way of forming the worldview perception of legal phenomena. The application of the main method allowed us to consider juvenile delinquency in the Republic of Kazakhstan as a periodically changing socio-legal phenomenon, due to a complex of causes and conditions of social, political, economic, legal, psychological and pedagogical order, and not as a separate strictly legal phenomenon. Sociological and systematic methods of analysis were used to determine the features of criminological situation connected with juveniles in the Republic of Kazakhstan. In the study of the features of modern criminal legislation of the Republic of Kazakhstan formation, historical-legal and comparative-legal methods of cognition were used. The analysis of system-structural indicators of the basis of criminal liability of juveniles under CC RK required the use of a formal logical research method. The use of interviewing methods and expert assessment of the current criminal legislation of the Republic of Kazakhstan allowed identifying significant determinants that hinder its effectiveness and effective application.

The theoretical basis of the research is the provisions of the General theory of law, as well as the works of specialists in the field of branch sciences (criminal, penal law, criminology, juvenile psychology, age psychology, pedagogy and sociology). We speak about such well-deserved Russian and Kazakh authorities as G. A. Avanesov, E. O. Alaukhanov, A. I. Alekseev, M. M. Babaev, Yu. K. Babanskiy, A. T. Bayseitova, G. N. Borzenkov, I. Sh. Borchashvili, L. A. Bukalerova, B. V. Volzhenkin, S. I. Dement'eva, T. T. Dubinina, A. E. Zhalinskiy, G. I. Zabryanskiy, A. I. Zubkov, K. E. Igoshev, V. V. Karlov, S. G. Kelina, A. B. Kiryukhin, L. R. Klebanov, M. I. Kovalev, A. P. Kozlov, A. I. Korobeev, P. V. Korobov, N. R. Kosevich, L. L. Kruglikov, N. F. Kuznetsova, V. P. Malkov, G. M. Min'kovskiy, A. S. Mikhlin, A. V. Naumov, E. A. Ongarbaev, V. M. Pozdnyak, L. M. Prozumentov, S. M. Rakhmetov, M. V. Remizov, A. I. Svinkin, A. B. Skakov, S. A. Styazhkina, K. A. Sych, A. M. Tashmagambetov, V. N. Tkachev, V. D. Filimonov, O. V. Filimonov, A. A. Chistyakov and others.

The use of these methods allowed to achieve the following results: the main criminological indicators of juvenile delinquency in the Republic of Kazakhstan are determined; a typological portrait of a juvenile criminal in the Republic of Kazakhstan is compiled; the main causes and conditions of juvenile delinquency in the Republic of Kazakhstan in modern conditions are identified, measures for the prevention of juvenile delinquency that meet the needs of the present time are proposed. As a result of the conducted research, a set of legally significant signs and characteristics of the grounds for criminal liability of juveniles under the current criminal law of the Republic of Kazakhstan is established; features of punishments application and release from criminal liability of juvenile offenders in the Republic of Kazakhstan are revealed.

The normative basis of the research is international legal acts on the issues of respect for the rights and interests of juveniles when they are brought to criminal responsibility

and punishment, as well as in the execution of punishment and the application of other measures of a criminal nature to them, including: UN standard minimum rules for the administration of juvenile justice (Beijing rules), UN guidelines for the prevention of juvenile delinquency (Riyadh guidelines), UN Rules for the protection of juveniles deprived of their liberty. The main results of the work are the result of the analysis of provisions of the Constitution of the Republic of Kazakhstan, Criminal (2014), Criminal procedure (2014), Penal (2014), Civil (1994), Family (2011) and Labor (2015) codes of the Republic of Kazakhstan. The legal concept of work is based on the Constitution of the Russian Federation, Criminal (1996) and Penal (1997) codes of the Russian Federation and other normative legal acts regulating relations connected with the control of juvenile behavior, prevention of offences in the youth environment.

The empirical base of the study includes: data from sample studies on the state and dynamics of juvenile delinquency in the Republic of Kazakhstan for 2010–2018, obtained from the Committee on legal statistics and special records of the General Prosecutor's office of the Republic of Kazakhstan; materials of the published practice of the Supreme Court of the Republic of Kazakhstan; decisions on criminal cases of inter-district specialized juvenile courts for 2013–2018 (Astana, Akmola, Atyrau, Zhambyl, West Kazakhstan regions of the Republic of Kazakhstan); results of empirical researches conducted personally by the author in the period from 2010 to 2018.

The study analyzed judicial practice in criminal cases of juveniles in the Republic of Kazakhstan for 2013–2018, the materials of which were selected by random sampling in 10 regions of the Republic of Kazakhstan (197 cases were studied in 19 specialized juvenile courts).

In the period from 2014 to 2018, the author conducted a survey of students in 10–11 grades of secondary schools in Uralsk, Aktyubinsk, Taraz (152 people), as well as a

survey and interviewing judges of specialized inter-district courts for minors, employees of the Prosecutor's office, district inspectors for minors, investigators and interrogators of internal Affairs bodies of the Republic of Kazakhstan (76 people). Teachers of the cycle of criminal law disciplines of L. N. Gumilyov Eurasian National University, M. S. Narikbayev KAZGUU University, and M. Utemisov West Kazakhstan State University were involved as experts, as well as judges of regional, district and city courts of Astana, Akmola, Atyrau, Zhambyl, West Kazakhstan regions of the Republic of Kazakhstan, and law enforcement officers of these territorial entities (294 people).

For comparison, the author used data from the Main information and analytical center of the Ministry of Internal Affairs of Russia and the Judicial Department of the Supreme Court of the Russian Federation on the state and dynamics of juvenile delinquency in the Russian Federation for 2010 – the first half of 2018.

Results

The object of criminological analysis after the introduction of the current CC RK in 2015 is not only crimes and the persons who committed them, but also acts that are not related to crimes, but are criminal misdemeanors. The main proportion of crimes committed by juveniles in the Republic of Kazakhstan is medium-gravity crimes. In 2017, of the total number of criminal offenses committed by minors, 83% were criminal offenses against property (for comparison: in 2016 – 82%, in 2015 – 80%, in 2014 – 82%, in 2013 – 81%, in 2012 – 84%, in 2010 – 85%). Data for the first half of 2018 indicates that this trend continues (81.7%). The trend of a constant increase in the number of intentional infliction of moderate harm to health (from 33 in 2010 to 63 in 2017, that is, almost 2 times), as well as repeated juvenile delinquency (from 97 in 2012 to 460 in 2017) against the background of a general decrease in juvenile delinquency in the Republic of Kazakhstan is considered dangerous.

On the other hand, the introduction of the new CC RK, designed to implement a two-vector approach to the definition of criminal offenses, significantly affected the quantitative indicators of crime, as a number of acts that were previously classified as crimes, passed into the category of criminal misdemeanors.

Socio-economic stability and state policy aimed at humanizing criminal justice in relation to juveniles is the most significant determinant that reduces the level of juvenile delinquency in the Republic of Kazakhstan. At the same time, it should be borne in mind that analyzing indicators of juvenile delinquency, only data on investigated crimes and identified persons are officially provided. A full analysis of the state and characteristics of juvenile delinquency in the Republic of Kazakhstan in the context of comparing it with general crime and determining the specific weight is possible only if there are relevant statistical data provided by the Committee on legal statistics and special records of the Prosecutor General's office of the Republic of Kazakhstan, and these indicators are not mandatory.

The classification of juvenile offenders developed by the authors, taking into account their personality and attitude to existing criminal law prohibitions, allowed to clarify the criminological characteristics of four types of juvenile offenders: a random, unstable, negative and malicious offender. It is established that over the past 10 years, there are serious changes not for the better in the emotional and volitional sphere of juveniles living in the Republic of Kazakhstan and who have committed criminal offenses: the influence and authority of older people have been further weakened, and old traditions and customs have been reinterpreted and violated under the influence of globalization processes.

In the Russian Federation, the proportion of juveniles who committed crimes in the period from 2010 to 2017 decreased by 2.1% (from 6.5% to 4.4%). But at the same time, the total number of persons who committed crimes also decreased (from 2010 to 2017,

it decreased by 12.96%). This is despite the fact that the number of crimes registered in Russia for the specified period decreased by 21.7%, and the number of registered crimes committed by juveniles decreased by 42.34%. In the Republic of Kazakhstan, this indicator increased by 27.03% over the same period. In addition, there is a constant instability in these indicators, caused by the fact that since 2011 the Republic has implemented a set of measures aimed at combating the concealment of crimes, then the introduction of a new system of electronic monitoring and accounting of committed criminal offenses, and since 2015 – new accounting rules with a two-stage categorization of criminal offenses.

The author has compiled a criminological portrait of a juvenile who has committed a criminal offense in the Republic of Kazakhstan. This is usually a citizen of the Republic of Kazakhstan (99.2%), a male teenager (94.31%) who has committed a mercenary crime (theft, fraud, robbery, illegal possession of a car or other vehicle without the purpose of theft, extortion (81.19%), less often – hooliganism (5.69%)), at the age of 16–17 years (70%). In the vast majority of cases, such juveniles study at school or college, less often – in general education schools, even less often – in higher education, but they do not have basic general or secondary vocational education (58%). Such juveniles usually study without interest, and there is no internal motivation for diligent training and good discipline. Often a juvenile offender is characterized by a negative attitude to the learning process (40% did not study or work anywhere). This is a resident of the city (60%) who is not married in accordance with the law (98.8%), does not have a permanent, temporary or part-time job, an independent permanent source of income (97.4%); is brought up, as a rule, in a single-parent family with a low level of material and financial well-being. A juvenile does not attend sports clubs; differs among peers in aggressive, asocial behavior; rarely commits crimes (criminal offenses) in a state of alcoholism (3%), drug or toxicological

intoxication (0.2%); previously, as a rule, before committing an offense, a juvenile was not brought to criminal responsibility (94.6%) and was not on record in law enforcement agencies (68.7%). The main factors motivating minors in the Republic of Kazakhstan to commit criminal offenses are mainly selfish or hooligan motives.

We have identified the following objective reasons and conditions for the commission of criminal offenses by juveniles in the Republic of Kazakhstan (a random sample was made in 10 regions of the Republic in specialized juvenile courts, where 197 cases were analyzed in the proceedings of courts in 2013–2017):

- negative impact of the family (68% of the total number of analyzed cases);
- incitement by close associates (friends, acquaintances, classmates, etc.), including adults (32%).

The employees of the probation service, the Youth Policy Department of Astana, the Regional government, the Specialized inter-district court for juveniles in Astana, the Education Department of Astana and the Center for adaptation of juveniles in Astana (49 people) identified the following reasons for committing criminal offenses by juveniles: physiological maturation (4.8%); self-affirmation in society (22.1%); lack of interest in education (10.6%); desire to imitate criminal authorities (3.8%); low spiritual and moral education (58.7%).

According to the opinion of 142 law enforcement officers and 152 students surveyed in 2016–2017 as part of an independent study, the general conditions that contribute to the commission of criminal violations by juveniles in the Republic of Kazakhstan (in order of significance) are: lack of a proper support system in society for those released from prison (38.2%); insufficient standard of living (25%).

With the introduction of the new CC RK in 2015, which expanded the application of educational measures to juvenile offenders, the preventive role of commissions for the protection of the rights of juveniles and the placement of children and adolescents has

significantly increased. The number of cases considered at their meetings has increased significantly.

Currently, there are 214 such commissions in Kazakhstan: 14 at the regional level, 39 at the city level, and 161 at the district level. The Commission on juvenile affairs and protection of their rights is a consultative and advisory body under the Government of the Republic of Kazakhstan. The main issues to be resolved at meetings of the Interdepartmental Commission on juvenile affairs and protection of their rights under the Government of the Republic of Kazakhstan are: organization of placement of orphaned children and children left without parental care in families, foster care and search for other alternative forms; analysis of cases of juveniles, who committed illegal acts; analysis of cases of minors who found themselves in a difficult situation, assistance in their socialization and rehabilitation; review of cases against parents (legal representatives) who, for certain reasons, do not fulfill their responsibilities for the upbringing and education of their juvenile children; search for optimal forms of employment for juveniles released from penitentiary institutions and special educational organizations.

In order to control juvenile delinquency in the Republic and form a unified state policy in this area, a set of measures for the prevention of juvenile delinquency is proposed. In this regard, it is necessary to adopt the Concept of countering juvenile delinquency in the Republic of Kazakhstan, which should include:

- measures to restore the authority of the family and family values as a historically proven institution of prevention. To do this, it is necessary to conduct a number of measures to place social advertising on TV channels during broadcasts of youth talk shows, youth song contests, contests of young talents, etc. This section also includes suggestions for creating socially significant sites and spam with the slogan «Family – nation – Kazakhstan», «Family is your support and help», etc.;

– monitoring positive trends in deterring juvenile delinquency. According to our research, the majority of teenagers who committed criminal offenses were under the influence of criminal romance. Many of them are not able to define socially significant evaluative concepts of good and evil, moral and immoral. Of course, regular monitoring and identification of positive trends that present in the adolescent environment will allow for unobtrusive, but persistent propaganda of the attractiveness of socially positive behavior, the prestige of unapproachable behavior;

– public control over the content and quality of information received through the media, social networks and the Internet. Such control can be carried out with the involvement of religious figures, councils of elders, social movements and associations similar to the All-Russian national front;

– strengthening patriotic and religious education. First of all, we speak about calculating the amount of funding and financing of regional programs for patriotic education of young people («Children of Kazakhstan», «Youth of Kazakhstan», «Lend a helping hand», etc.). The system of patriotic education of minors in the Republic of Kazakhstan should include: the work of relevant state structures and structures of local self-government bodies; normative-legal framework for patriotic activities and a set of measures for patriotic education of citizens of Kazakhstan; promotion of patriotism in the mass media, including municipal ones; formation of scientific, theoretical and methodological foundations for patriotic education of young people;

– organization of leisure activities for juveniles in their free time and during the vacation period. Existing programs have shown their effectiveness in restraining juvenile delinquency. However, in order to increase their effectiveness, the situation must be constantly monitored by both the public and representatives of state and municipal authorities.

In contrast to Article 1 of CC RK of 1997, Article 1 of new CC RK states that the only, but not exclusive, source of criminal law is CC RK. This means that any laws that provide for criminal liability can be applied on the territory of the Republic only after they are included in the CC RK. On the other hand, ratified international treaties have more legal force than the provisions of CC RK (Part 3 of Article 1 of CC RK). In addition, Part 2 of Article 1 of CC RK proclaims that the normative decisions of the Constitutional Council and the Supreme Court of the Republic of Kazakhstan are an integral part of the criminal.

When developing the current CC RK, the legislator took into account the main provisions and principles of international legal acts. First of all, this applies to the concept of «juvenile». In the norms of Kazakh customary law, there was already such a concept as the age at which criminal responsibility begins. It was usually determined from the age of 15. Juvenile offenders under the age of 15 were not brought to trial, but on completely different grounds than the inability to give an account of their actions.

From the moment of Kazakhstan's entry into the Russian Empire until the October revolution of 1917, the norms of customary criminal law were applied in Kazakhstan, which include «the Bright path of Kasym Khan», «the Ancient path of Yessim Khan», «Seven laws of Khan of Tauke» and others.

The third session of the CEC of Kazakhstan, taking into account the social conditions of nomadic peoples and the level of legal awareness of workers, established special conditions for criminal prosecution of Kazakh juveniles. Persons at the age of 14 to 18 were classified as juveniles.

Since the introduction of the Fundamentals of criminal legislation of the USSR and the Union republics (1958), Part 1 of Article 10 of the Criminal code of the Kazakh SSR in 1959 established the 16-year age of criminal responsibility. However, Part 2 of this Article contained an addition and clarification to the general rule, according to which responsibility

began at the age of 14 only for the commission of a strictly defined range of serious crimes. This list of crimes included mainly intended crimes. The exception was involuntary manslaughter. This rule regarding the age of criminal responsibility existed until the first Criminal code of the Republic of Kazakhstan was brought into force in 1997, which took as a basis many provisions of the Model Criminal code for the CIS member States. The General age of criminal responsibility is set at the age of 16, and for the most dangerous intentional crimes specified in CC RK, responsibility began at the age of 14.

In the current CC RK, minors who are subject to the norms of the criminal legislation of the Republic of Kazakhstan are recognized as persons who were 14 years old at the time of crime commission, but not 18 years (Article 80 CC RK).

According to article 4 of the CC RK, the only basis for criminal liability is the Commission of a criminal offense, i.e. an act that contains all the elements of a crime or criminal misdemeanor included in CC RK. These provisions apply equally to both adult and juvenile offenders. However, there is no doubt that persons who have committed a criminal offense as juveniles need a special approach from the legislator.

The Republic of Kazakhstan joined the UN International Convention on the rights of the child on August 12, 1994. The international project «juvenile justice in Kazakhstan» was implemented in the Republic in 2003–2006 in order to humanize the criminal policy towards juveniles. As part of this project, in accordance with the decree of the head of state adopted on 23.08.2007, the first experimental juvenile courts were established in the cities of Astana and Almaty. Taking into account the positive experience, the decree of the President of the Republic of Kazakhstan adopted on 19.08.2008 approved the Concept of development of the juvenile justice system in the Republic of Kazakhstan for 2009–2011, which determined that the juvenile court is the most important part of the juvenile justice system. The Republic of

Kazakhstan (the only country in Central Asia) has 19 successfully functioning juvenile courts.

However, after adoption of the current CC RK, the main form of implementation of criminal liability among juveniles in the Republic of Kazakhstan still remains punishment. The implementation of criminal liability of juveniles occurs through the application to them of the main provisions of juvenile criminal law policy in the field of crime prevention. It is a process of implementation of activities by the legislative, judicial and executive authorities of the Republic of Kazakhstan to counter criminal offenses by juveniles, their containment, detection, suppression and prevention.

Out of the total list of punishments (11 types) contained in the current CC RK, only six types of punishments can be imposed on juveniles by courts of general jurisdiction or juvenile courts: deprivation of the right to engage in certain activities, fine, correctional labor, community service, restriction of liberty, imprisonment.

Special measures of a criminal legal nature, applicable only to juveniles, according to Part 1 of Article 84 CC RK are compulsory measures of educational influence, which include: 1) warning; 2) transfer to the supervision of parents or persons replacing them, or a specialized state body; 3) assignment of the duty to make amends for the caused harm; 4) restriction of leisure and establishment of special requirements for the behavior of a juvenile; 5) placement in an educational organization with a special regime of detention; 6) assignment of the obligation to apologize to the victim; 7) establishment of probation control.

The warning consists in explaining to a juvenile, who has committed a minor crime, the meaning of the harm that he has caused by his act, as well as the consequences of this crime recidivism provided for by CC RK. Transfer to supervision consists in assigning to parents or persons who replace them, or to a specialized state body the responsibility for educational influence on juveniles and control over their behavior. The obligation to make

amends for the caused harm is assigned, taking into account the property status and work skills of juveniles.

Among the significant innovations of Article 84 in CC RK 2014, in contrast to CC RK 1997, should be noted the introduction of probation control, which the court establishes under the rules of Part 2 of Article 44 in CC RK «Restriction of liberty» for the entire term of imprisonment, and juveniles – for a period of 6 months to 1 year (Part 3 of Article 63 in CC RK), and it is carried out by an authorized state body. Probation control includes the execution of the following duties by a convicted person: not to change their permanent place of residence, work or study without notifying the authorized state body that monitors the behavior of the convicted person; not to visit certain places; to undergo treatment for alcoholism, drug addiction, substance abuse, sexually transmitted diseases; to provide financial support to the family; and other duties that help to correct the convicted person and prevent them from committing new criminal offenses.

Discussion

Based on results of the research, under the criminal responsibility of juveniles in the Republic of Kazakhstan we propose to understand the obligation of a person, who has committed a criminal offense at the age of 14 to 18 years, to give an account for their actions and suffer adverse consequences in this regard in the form prescribed by law. And the basis for criminal liability is considered to be a legally defined material and legal circumstance in the form of an act, containing all the elements of a criminal offense.

The main share of crimes (not criminal offenses) committed by juveniles in the Republic of Kazakhstan is medium-gravity crimes. At the same time, the share of crimes that encroach on property is on average about 80% of the total number of all crimes committed by minors in the Republic of Kazakhstan. Most often, the objects of these crimes are cell phones or cash.

The most significant determinant that reduces the level of juvenile delinquency in the Republic of Kazakhstan is not only the hard painstaking work of the Prosecutor's office and the Ministry of Internal Affairs to streamline statistical reporting and registration of criminal offenses, identify and eliminate the facts of concealment of these offenses, but also effective state socio-economic stability and state policy aimed at humanizing criminal justice in relation to juveniles.

Despite the annual increase in the number of adult offenders, the number of juvenile offenders in the Republic of Kazakhstan is decreasing every year. During 2010–2017, the percentage of juvenile delinquents has always been no more than 7%. This is primarily due to the reduction in the number of minors in the Republic of Kazakhstan and the introduction of a new Criminal code designed to implement a two-vector approach to the definition of criminal offenses. It is the humanization of the criminal law approach, which takes into account the peculiarities of the legal status of offenders under the age of 18, which allowed law enforcement agencies of the Republic of Kazakhstan to significantly reduce the level of juvenile crime in the Republic. However, it should be borne in mind that official statistics do not take into account all criminal offenses that were committed on the territory of the Republic, but only for the crimes investigated and identified persons, which in turn makes it difficult to conduct a full and comprehensive analysis of the state and characteristics of juvenile delinquency in the Republic of Kazakhstan.

Changes in the criminal legislation of the Republic of Kazakhstan with the adoption of the current Code have significantly changed the vector of criminal policy. The assumptions of a number of scientists about the possible increase in the number of criminal offenses due to the inclusion in the basis of criminal liability along with crimes and criminal misdemeanors have not been confirmed. On the contrary, even changes in pre-existing ideological foundations

and significant stratification of the population based on material wealth did not lead to an increase in this indicator due to a well-thought-out criminal policy and a humane approach to juvenile offenders. However, after the adoption of the current CC RK, the main form of implementation of criminal responsibility of juveniles in the Republic of Kazakhstan still remains punishment. The implementation of criminal responsibility of minors is carried out by applying to them the main provisions of juvenile criminal law policy in the field of crime prevention. Implementation of criminal responsibility of juveniles is a process of implementation of activities by the legislative, judicial and executive authorities of the Republic of Kazakhstan to counteract criminal offenses on the part of minors, their containment, detection, suppression and prevention.

Quantitative and qualitative characteristics and indicators of modern juvenile delinquency in Kazakhstan are determined not only by socio-economic, but also political and legal factors. In particular, the decrease in the number of criminal offenses committed by juveniles was influenced by demographic changes in the country, changes in the criminal legislation of the Republic and the course towards the humanization of juvenile criminal policy.

The main causes of juvenile delinquency in the Republic of Kazakhstan are:

a) features of mental influence (media, mass media, etc.) and psychological impact on the consciousness of Kazakh society, which weaken previously existing family and social traditions;

b) social stratification with the presence of bipolar antagonisms: low purchasing power – on the one hand, and a constant supply of brand elements of adolescent «culture»; low social level of the family;

c) negative influence of family members, established family lifestyle;

d) parents' antisocial lifestyle;

e) lack of adult supervision;

f) negative environment in which a teenager lives;

g) unemployment and lack of leisure in their free time.

The most significant area of juvenile delinquency prevention in the Republic of Kazakhstan is the formation of a unified state policy in this area. For this purpose, it is proposed to adopt the Concept of countering juvenile delinquency in the Republic of Kazakhstan.

The main directions of criminal law policy in relation to persons, who have committed criminal offenses under the age of eighteen years, should be considered as following: continuing the course of further humanization of criminal legislation to counteract criminal offenses of juveniles; measures of an educational nature in relation to minors who have committed criminal offenses or for the first time crimes of non-grave or medium gravity should become the main form of implementation of criminal responsibility; in relation to juveniles, committing crimes, the main form of implementation of criminal responsibility should be criminal legal enforcement measures that are not connected with isolation from society; in the course of criminal prosecution of juvenile offenders, the criminal justice authorities are obliged to provide juveniles with all the legal benefits guaranteed by the UN Convention on the rights of the child.

After the introduction of juvenile courts, the consideration of cases of juveniles has significantly accelerated, which has a positive impact on the protection of juveniles' basic rights of. Moreover, it is established that the number of cases, in which criminal prosecution is terminated due to the use of educational measures and bringing opposing parties together, has increased. Taking into account the productive international experience and positive trends in the criminal policy of the Republic of Kazakhstan in reducing the indicators of criminal offenses among juveniles, it is proposed to consider activities of juvenile courts as a promising component of juvenile criminal policy of the Russian Federation. At the same time, it should be noted that the

criminal law has a special place in the fight against crime, and this fully applies to juvenile delinquency. Mistakes in law-making or in law enforcement in relation to minors are a special social danger, as they negatively affect the prevention and suppression of criminal offenses, and this leads to the formation of a stable orientation of juvenile offenders to further commit these acts.

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