

CIRCUMSTANCES SUBJECT TO PROOF IN CASES OF JUVENILES (COMPARATIVE-LEGAL ANALYZE OF NATIONAL AND FOREIGN LEGISLATION)

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<http://dx.doi.org/10.26739/2573-5616-2018-3-1-5>

Abstract: It should be mentioned that the criminal procedure legislation of most countries fixes the rules regarding the circumstances to be proved in criminal cases. Due to psycho-physiological peculiarities and in order to protect the rights and interests of juveniles, the legislator also establishes additional circumstances that are subject to proof in cases of juveniles, on which not only the outcome of the investigation process or the judicial trial, but also the life of the juvenile offender depends.

The current trend indicates the consolidation in the criminal procedure codes of different countries of such circumstances as the age of the juvenile accused, the personality and health status of the juvenile, the conditions of his life and upbringing, the presence or absence of adult instigators and other accomplices. To further deepen research in this field, the author compares the criminal procedure legislation of Uzbekistan, the Russian Federation, the Federal Republic of Germany, the People's Republic of China, Armenia, Kyrgyzstan, Bulgaria, Azerbaijan, Kazakhstan, Turkmenistan, Tajikistan, Moldova, Georgia, Ukraine, Latvia and Belarus.

At the same time, the scientific and theoretical approaches of such authors as A.G.Fillipov, R.S.Belkin, V.P.Lavrov, T.V.Averyanova, A.F.Volynsky, Yu.G.Korukhov, E.R.Rossiyskaya, G.A.Abdumazhidov, A.B.Kulakhmetov, B.Nuriddinov on these issues. Based on the results of the research, the author developed scientifically proved proposals and recommendations on improving national legislation.

Key words: juveniles, circumstances subject to proof, criminal procedure, crime.

The differentiation of the conduct of investigative actions for juveniles is conditioned by the need for additional protection of the legitimate rights and interests of children due to their psychophysiological features of development. This rule is recognized both in international and national regulations, in particular, the Convention on the Rights of the Child of 20 November 1989 provides for the importance of establishing separate rules and conditions for children. In the Republic of Uzbekistan, the legislator also differentiates the legal regulation of issues of criminal responsibility of juveniles, establishing additional legal and procedural guarantees for them. In particular, the Criminal Procedure Code of the

Republic of Uzbekistan, adopted on September 22, 1994, establishes the need to prove, in addition to the main circumstances, additional circumstances in cases of juveniles. To such circumstances, according to Article 548 of the Criminal Procedure Code of the Republic of Uzbekistan, the exact age of the juvenile accused (day, month, year of birth), the personality and health status of the juvenile, the conditions of his life and upbringing, the presence or absence of adult instigators and other accomplices are included.

Analyzing the theoretical approaches to the study of the circumstances to be proved in cases of juveniles, it should be noted that G.A.Abdumadzhidov[1] and A.B.Kulakhmetov[2] do not see the need to study the personality traits and the state of health of the juvenile, on the contrary, the study of the cause and the conditions preceding the commission by a juvenile crime, is important, according to the authors. Thus, G.A.Abdumadzhidov believes that if the juvenile's mental retardation is established, it should be established that the juvenile understands his actions at the time the crime was committed, for this purpose parents, teachers, guardians of the juvenile are interrogated[3].

In the opinion of A.Kulakhmetov, in order to determine the social status of a juvenile, it is considered expedient to study: 1) information about the parents of a juvenile; 2) if the juvenile is without a parent or guardian, the reasons for this; 3) if the family is inferior, how this affected the spiritual development of the juvenile; 4) if a juvenile is or was brought up in an orphanage, a boarding school, for what reasons and how this situation affected the life and upbringing of a juvenile[4].

B.Nuriddinov supplements the list of circumstances that are subject to proof, provided by the criminal procedural legislation of the Republic of Uzbekistan, such circumstances as information about parents or guardians, financial status, connections, leisure activities, the interests of the juvenile; how he behaves at home and in society; in what circles and unions are listed; the offenses he committed before committing a crime; what measures were taken in relation to him and the results of these measures; if a juvenile does not study and does not work, their reasons; the circumstances that led to the formation of antisocial behavior and skills in juvenile; the reasons for the commission of the crime and the circumstances preceding the commission; information about the physical, intellectual and mental development, the character and behavior of the juvenile; harm; moral damage caused to a juvenile by improper education[5].

Analyzing the works of A.G.Fillipov[6], T.V.Averyanova, R.S.Belkin, Y.G.Korukhov, E.R.Rossiyskaya[6], one can come to the conclusion that it is necessary to study the following circumstances in cases of juveniles: 1) the age of the juvenile (day, month and year of birth); 2) the living

and upbringing conditions of the juvenile; 3) the level of psychological development and other circumstances of the individual; 4) the influence of adult instigators on committing a crime to juveniles; 5) if the presence of mental retardation in a juvenile who is not associated with a mental disorder is detected, could the juvenile realize the social danger of his actions or the actual nature of the crime.

A.F.Volynsky and V.P. Lavrov from the above-mentioned circumstances emphasize the importance of studying the living and upbringing conditions of a juvenile. To achieve this goal, in the opinion of the authors, it is necessary to study the material condition of the family, the existence of a separate property or means for the juvenile, the characteristics of the parents (education, workplace, moral qualities, relations between themselves and children, the level of performance of duties in the educational process, the relationship of children to parents)[7].

G.M.Minkovsky gives a broader list, which includes: a) the exact age of the juvenile at the time of the crime (day, month, year of birth); b) characteristics of parents; c) the relationship of the juvenile with the world around him and the circle of acquaintances and friends of the juvenile; d) the attitude of the juvenile to study; e) the fact of the commission of a previous crime or an offense; e) the physical condition and habits of the juvenile; g) the pastime of the juvenile; h) the reasons for the commission of the crime and the circumstances preceding the commission of the crime[8].

A.G.Fillipov, A.F.Volynsky, V.P.Lavrov, G.M.Minkovsky consider the reasons for the commission of the crime and the circumstances preceding the commission of this crime as the main circumstances to be proved. Regarding this issue from the point of view of national legislation, it should be noted that Article 548 of the Code of Criminal Procedure does not provide for the investigation of the reason for the commission of a crime as circumstances that are to be proved. In the explanations of the Plenum of the Supreme Court of the Republic of Uzbekistan it is established that the judges are obliged to study the reasons for the commission of the crime and the circumstances preceding the commission of this crime in the process of examining the cases of juveniles in the courts and take measures to eradicate these reasons[9]. However, judicial clarifications, i.e. precedents, are not mandatory, but recommendatory in the Republic of Uzbekistan. Proceeding from this, we consider it not sufficient to consolidate this circumstance in the explanations of the Supreme Court of the Republic of Uzbekistan and we consider it necessary to consider them as circumstances that must be proved in cases of juveniles stipulated in Article 548 of the Criminal Procedure Code of the Republic of Uzbekistan.

The study of the criminal procedure legislation of foreign states shows the presence of both general and distinctive features. Thus, according to Article 440 of the Code of Criminal Procedure of Armenia, the age (day, month, year of birth), living and upbringing conditions, health and development status of a juvenile should be studied in juvenile cases[10].

In accordance with Article 421 of the Code of Criminal Procedure of the Russian Federation, not only in the process of examining the cases of juveniles, but also during the investigation, the age, day, month and year of birth of the juvenile, the living and upbringing conditions, the level of mental development and personality characteristics of the juvenile, the influence of adults incitement to a juvenile. In addition, the fact of awareness of the factual nature or social danger of one's actions (inactivity) is also studied in addition to the fact that the juvenile is not mentally retarded, not connected with his incapacity[11]. These provisions are also enshrined in article 392 of the Criminal Procedure Code of Kyrgyzstan[12] and article 387 of the criminal procedure legislation of Bulgaria[13].

Similar provisions with Uzbekistan are enshrined in the criminal procedure legislation of Azerbaijan[14] and Kazakhstan[15]. In contrast to our criminal procedure system, the CCP of some countries, in addition to the above circumstances, consider the methods and reasons for the commission of a crime as mandatory circumstances of investigation by investigators, prosecutors and judges. In particular, article 508 of the Criminal Procedure Code of Turkmenistan[16], article 90 of the Code of Criminal Procedure of Tajikistan[17], article 475 of the Code of Criminal Procedure of Moldova[18], article 320 of the Criminal Procedure Code of Georgia[19] stipulate the need to study the cause of the crime and the circumstances preceding the commission.

It should be especially noted that the legislator of countries such as Ukraine[20], Latvia[21], Belarus[22], Germany[24], the People's Republic of China[25] does not consider it expedient to fix the circumstances in the criminal procedural laws, the circumstances to be proved in cases of juveniles. This trend, in our opinion, leads to the examination of cases of juveniles in the general context of crime and leads to psychological and physiological trauma.

Proceeding from the foregoing and taking into account the high urgency of the fight against juvenile delinquency, careful study of the circumstances of the affairs of juveniles will positively affect the qualifications of the investigator / prosecutor / judge, timely and full disclosure of the crime. This, in turn, will positively respond to the future of the juvenile. In this regard, we are invited to supplement article 548 of the Criminal Procedure Code of the Republic of Uzbekistan with paragraph 4)1 "the reasons for the commission of the crime to juveniles and the circumstances preceding

the commission." At the same time, we recommend a thorough study of the psychology of the juvenile in order to identify mental retardation or another anomaly not related to incapacity, which did not allow understanding or controlling their actions (inaction).

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