

QUALIFICATION OF INVOLVEMENT OF A MINOR IN ANTI-SOCIAL BEHAVIOR

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Abstract: The article deals with the qualification of involving a minor in antisocial behavior. The author gives the concept of involving a minor in antisocial behavior, analyzes the elements of crimes that include antisocial behavior. At the same time, when analyzing the legislation in this area and the practice of its application, the researcher identified both gaps and excesses in the criminal law regulation of criminal law social relations, gave appropriate proposals on the qualification of this type of crime, which will allow the legislator, when adopting new edition of the current Criminal Code of Uzbekistan, take these factors into account.

Keywords: Criminal Code, qualifications, criminal liability, antisocial behavior, minor, involvement, crimes.

INTRODUCTION, LITERATURE REVIEW AND DISCUSSION

Starting to consider the qualifications of involving a minor in antisocial behavior, it is appropriate to define the very concept of qualifications. V.P. Kashepov believes that “the criminal legal assessment of the factual circumstances of the case established during the investigation and the legal fixation of the correspondence between the signs of a committed socially dangerous act and the signs of a specific corpus delicti, enshrined in the Special Part of the Criminal Code, is called the qualification of a crime” [1, p. 54].

Qualification of a crime is a logical and legal process carried out at all stages of the investigation and judicial review of a criminal case by authorized officials. The important socio-political and legal significance of the qualification of a crime is determined by the fact that as a result of this work the fact of the presence in a particular socially dangerous act of essential signs of a crime stipulated by law is established.

The qualification process consists of several stages: 1) establishing the factual circumstances that are signs of the corresponding corpus delicti; 2) the establishment of a criminal law norm in force at the time of the commission of a socially dangerous act; 3) the application of an appropriate article, part or paragraph of this norm or a combination of articles when committing a number of crimes; 4) a comparison of the factual circumstances established in the case and the selected criminal law in order to establish their conformity.

The implementation of this comparison is the most crucial stage of qualification and is carried out according to a certain methodology developed by the theory of criminal law and criminal procedure, approved by many years of judicial practice and the practice of the bodies of preliminary investigation and state prosecution. A methodically justified comparison involves the detection of all signs (both basic and additional) of a specific corpus delicti in a socially dangerous act, starting with the object and the objective side and ending with the establishment of the subject and subjective side.

The correct qualification of a crime has criminal law and criminal procedure consequences established by law. The conclusions of the qualification that there are signs of a corresponding crime in a particular act serve as the legal basis for bringing a person to criminal liability, applying procedural coercion measures, bringing charges, ordering a trial and punishment. Being the legal justification for criminal liability and punishment of the person who committed the crime, or release him from criminal liability and punishment, the qualification of the crime pursues the goal of implementing not only protective criminal law relations, but also related criminal procedural and criminal executive relations.

The correct criminal law qualification of involving a minor in antisocial behavior is ensured by the establishment of unlawful actions of the involving person, taking into account objective and

subjective signs. For involvement, “it is not necessary to state criminal consequences in the form, for example, of a teenager committing a crime, actually involving him in the antisocial actions specified in the law, persistent efforts by adults aimed at arousing the teenager’s desire, desire to commit a crime or an antisocial act” are sufficient [2, p. 27].

When qualifying the involvement of a minor in antisocial behavior, it should be borne in mind that involving a minor in antisocial behavior should be considered actions aimed at arousing the desire, desire of the minor to participate in the commission of one or more antisocial acts. Speaking about this, it is advisable to clarify that antisocial behavior includes those offenses as a result of which a minor begins to engage in behavior that the legislator does not yet regard as a crime or an administrative offense, but in accordance with the law or generally accepted rules of society in society is unacceptable. Such behavior includes: drinking alcohol and other drugs or substances that are not classified as narcotic or psychotropic, their analogues, but affecting the intellectual and volitional activity of a teenager, the use of narcotic drugs and psychotropic substances, the participation of adolescents in religious organizations, begging, etc. [3, p. 13].

Involvement of a minor in antisocial behavior involves all types of physical violence and mental impact on him. However, in judicial investigative practice, mistakes are made when the nature of the minor’s actions, manifested in his initiative to jointly carry out antisocial activities with an adult, is not established, or the nature and reasons for the adult appearing in juvenile groups united to engage in antisocial activities before joining such company. Such facts do not create grounds for attracting adults for involving a minor in antisocial behavior, which is quite correctly drawn attention in the literature [4, p. 39-40].

It is known that physical violence is expressed in the infliction of blows, beatings, can also be tortured, inflicting varying degrees of bodily harm up to the onset of death and other violent acts. At the same time, such consequences, as well as the commission by a teenager of a crime, are not mandatory signs of the category of crimes in question. Consequently, cases involving a minor in antisocial behavior, accompanied by torture, causing bodily injuries of varying severity or resulting in the death of the victim, should be qualified according to the totality of crimes: for involvement in antisocial behavior and articles of the Criminal Code providing for liability for crimes against the person (depending on the actual consequences) or from the direction of intent).

Mental effects include coercion and persuasion. Under coercion, the psyche is affected by intimidation, threats of physical harm, disclosure of shameful information, as well as other actions that force a teenager to commit an antisocial act. In such cases, if the applied threats contain an independent corpus delicti, for example, the threat of murder or the use of violence, then the actions of an adult must qualify for the totality of crimes.

In the legal assessment of the actions of an adult to involve a minor in antisocial behavior, it is necessary that these actions purposefully affect the adolescent, arouse his desire, desire to commit a crime or other antisocial act. Consequently, a simple coincidence of the activities of an adult and a minor in time and place is not enough to state involvement. “A mandatory feature for these crimes is the manifestation of activity, initiative on the part of an adult” [5, p. 20] to commit an antisocial act by minors. Therefore, when the initiative to jointly carry out any antisocial actions comes from a minor, adults are not liable for involvement.

In order to correctly qualify the actions of an adult involving a minor in antisocial behavior, taking into account the increased social danger of these acts, it is necessary to establish not only the fact that minors committed specific antisocial behavior, but also to establish the adult's role in engaging in other antisocial actions.

There are frequent cases of involvement in antisocial behavior committed against two or more minors. This circumstance was reflected as a qualified species, provided for by paragraph "b" of Part 3 of Art. 127 of the Criminal Code. Qualification of the actions of an adult to involve two or more minors in antisocial behavior has its own characteristics. In particular, the qualifying attribute under consideration does not form, as it might seem at first glance, the repetition of crimes. The criminal law defines the repetition as the simultaneous commission of two or more crimes stipulated by the same part, article, and in cases specially indicated, by different articles of the Special part of

the Criminal Code, if a person has not been convicted of any of them (Article 32 of the Criminal Code) To qualify a crime on the basis of repetition, it is necessary that each act be independent. This symptom of repetition is very important in distinguishing repetitive from complex, complex, ongoing and continuing crimes. V. Vladimirov and G. Krivolapov rightly note that “the problem of the ratio of ongoing and repeated crimes acquires special relevance in cases where the sign of repetition (repeatability, systematicity, fishing) is prescribed by law as qualifying” [6, p. 9].

In accordance with Part 3 of Art. 32 of the Criminal Code, a crime consisting of a number of identical criminal acts, covered by a common intent and directed towards a common goal and constituting one continuous crime, is not recognized as repeated.

Continued offenses should be seen as a whole as a single independent crime. Consequently, an act recognized as continuing cannot be simultaneously recognized and qualified as a repeat offense. Clause “b” of the third part of the crime under consideration presupposes a unified composition of involvement of two or more minors, in which the determination of the presence of a common intent and orientation towards a common goal, that is, the simultaneous involvement of two or more adolescents in those named in the disposition, is crucial for the qualification Art. 127 CC types of antisocial behavior.

The objective side of any involvement can be acts in the form of an active action, expressed in the familiarization of a minor with an antisocial lifestyle that reproduces antisocial activities. In addition, the objective side of this crime can be characterized by optional features related to the time, place and method of committing the crime.

Carrying out a legal analysis, we determined that the subject of the crime is a sane individual who has reached 18 years of age. However, in paragraph "a" part 3 of Art. 127 of the Criminal Code provides for the responsibility of a special entity - a person who has previously committed any crime related to the illegal trafficking of narcotic drugs or psychotropic substances. This makes it necessary to establish the fact that an adult committed any crime stipulated by Chapter XIX of Section Six of the Special Part of the Criminal Code (Articles 270-276 of the Criminal Code). The qualifying attribute under consideration should be blamed even when the person had previously committed the involvement of a minor in the use of these drugs or substances (part 2 of article 127 of the Criminal Code). For this qualifying attribute, establishing the form of the multiplicity of crimes does not matter. It is important that there is a fact that the engaging party has previously committed any crime that constitutes the illicit trafficking of narcotic drugs or psychotropic substances, or involved the minor in their use, regardless of the fact of conviction for these acts.

On the subjective side, the composition of the crime in question involves intent. Therefore, to correctly qualify a crime, it is necessary to establish whether an adult was aware or admitted that by his actions he involved a minor in antisocial activities. At the same time, it should be assumed that criminal liability arises both on condition that the adult is aware of the minor age of the person involved, and in cases where, according to the circumstances of the case, he could and should have foreseen this. In accordance with paragraph 7 of the Decree of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 21 dated September 15, 2000 “On Judicial Practice in Juvenile Crimes,” the courts should “... establish whether the adult was aware of or admitted that he was involving the minor in the commission of the crime. If the adult did not know or could not know about the minority of the person involved in the commission of the crime, he cannot be held accountable under article 127 of the Criminal Code” [7].

If there is evidence of the mental retardation of the minor defendant, a comprehensive judicial psychological examination is appointed to decide whether the minor is lagging behind in mental development, which finds out the degree of mental retardation of the minor, whether he could fully recognize the significance of his actions and to what extent to supervise by them. In necessary cases, in order to establish the circumstances specified in Article 548 of the Code of Criminal Procedure, the case must be examined by experts in the field of child and youth psychology (psychologist, teacher) or these questions can be put to the permission of an expert psychiatrist.

These issues can be put to the resolution of a commission of experts, and the question of the

degree of mental retardation of a minor whose intellectual development is not appropriate for age must be raised.

In this regard, another question arises about establishing the lower age limit of infancy, in which we can talk about the victim in relation to the crimes under consideration, which is of practical importance for solving the issue of criminal liability of an adult. According to A.S. Yakubov, such a lower limit is 11-12 years [4, p. 37]. In general, this position is acceptable, but significantly outdated, because it does not take into account the modern realities of the development of information technology, the earlier socialization of adolescents. Therefore, if we talk about involving a minor in antisocial behavior in general, then, in our opinion, the lower limit of infancy should be reduced to the level of 6-7 years.

Disposition h. 1 Article 127 of the Criminal Code has administrative prejudice, which leads to criminal liability for involving a minor in the use of alcoholic beverages, substances or drugs that are not narcotic or psychotropic and their analogues, but affecting intellectual-volitional activity, only after bringing the guilty person to administrative responsibility earlier under art. 188 CoAO of the Republic of Uzbekistan. Repeated commission of these actions within one year after bringing to administrative responsibility, qualifies as a criminal offense under Part 1 of Art. 127 of the Criminal Code.

The statistics of administrative practice for involving a minor in antisocial behavior testify to their insignificance and cover the entire set of antisocial behavior, which is assessed by the legislator as an administrative offense (114 administrative cases were considered in 2016, 134 in 2017, and 485 in 2019, in 2018 - 485, 2019 year - 104).

A comparison of administrative practice with the data of criminal statistics on the application of norms with administrative prejudice shows a very low efficiency of the latter. In essence, these are norms with “dead” warning potential. Therefore, we believe that in relation to all types of involvement in antisocial behavior provided for in the criminal law, it is advisable to abandon administrative prejudice. More precisely, from the standpoint of the legislative technique and the functions of the criminal law, to operate with criminal law categories, which have undoubtedly great potential for preventative effectiveness, in comparison with the administrative impact. At the same time, the significance and expediency of the initial preventive effect on persons who came into conflict with the law, by measures not related to criminal liability, should not be diminished. Therefore, in the criminal law it is necessary to provide for the basis of its application a sign of “repeated” involvement in antisocial behavior. Firstly, this will exclude from the sphere of criminal law relations cases of the established one-time involvement of a minor in antisocial behavior that are subject to administrative influence. Secondly, this will not allow avoiding criminal liability for persons who have committed the secondary (repeated) involvement of a minor in antisocial behavior, if no administrative measures have been applied to them for the first time. Thirdly, this also will not allow avoiding criminal liability for the participants, to whom, although administrative measures were applied, the secondary involvement was committed after the expiration of the one-year period of their application.

Summing up, it should be noted that as a result of the study, we found that the involvement of a minor in antisocial behavior in all cases encroaches on social relations that ensure the normal moral, spiritual, as well as physical development of the minor. The protection of this category of public relations, including from criminal offenses, is now acquiring special significance.

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