



## Research Article

# SOME FEATURES OF RELEASE OF MINORS FROM LIABILITY OR PUNISHMENT

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## ABSTRACT

The article deals with special legal norms that regulate the features of the grounds for the release of a special subject of a crime - a minor from criminal liability and punishment. The legislation puts such subjects under special protection and provides more alternatives to criminal punishment. These provisions have their own characteristics and in the order of implementation. This article characterizes the main provisions of the institutions of exemption from criminal liability and punishment. As well as the goals and purpose of these institutions, in relation to minors.

## KEYWORDS

Criminal law, minors, compulsory measures of educational influence, criminal liability, punishment.

## INTRODUCTION

Due to the fact that about 40% of the population of our republic are minors, and they are the heirs of tomorrow, the protection of the rights and legitimate interests of minors in our country has been raised to the level of state policy during the years of

independence. Today, in addition to measures to educate minors so that they become comprehensively developed people, ensure their social protection, encourage talented youth, consistent work is being



carried out to correct the morality of minors who have committed crimes and guide them on the true path.

In particular, in 2001, the adoption of the law “On Amendments and Additions to the Criminal, Criminal Procedure Codes and the Code of Administrative Responsibility of the Republic of Uzbekistan in connection with the liberalization of criminal penalties” acquired great social and political significance.

Currently, only minors who have committed grave and especially grave crimes are sentenced to imprisonment, all other categories of crimes are sentenced to punishments not related to deprivation of liberty[1]. If we turn to the data, the number of crimes committed by minors has decreased by 58.70% over the past five years. However, in 2020 this figure increased to 53.5%, and in 2021 to 56.6%. These indicators show that it is important to prevent juveniles from committing recidivism, to apply to them other criminal law measures that are not related to deprivation of liberty, and instead of other punishments.

The Decree of the President of the Republic of Uzbekistan “On measures to radically improve the system of criminal and criminal procedure legislation”[2] (05.14.2018), as a consistent continuation of the reforms, set the task of developing a new version of the Criminal and Criminal Procedure Code of the Republic of Uzbekistan.

We believe that in the current situation, when work is underway on new drafts of the Criminal, Criminal Procedure and Administrative Codes of the Republic of Uzbekistan, the following changes in the new edition of the Criminal Code of the Republic of Uzbekistan, the elimination of existing shortcomings and conflicts

between the norms on the issue of criminal liability of minors should be taken into account.

Section VI of the Criminal Code of the Republic of Uzbekistan “Peculiarities of responsibility of minors” determines the penalties that can be applied to minors, their maximum size, term, conditions for exemption from liability, types of punishment. Article 81 of the Code contains a list of criminal penalties, which include a fine, compulsory work, corrective labor, restriction of liberty and imprisonment. In accordance with articles 50, 51 of the Criminal Code of the Republic of Uzbekistan, minors cannot be sentenced to long-term or life imprisonment.

Among the punishments imposed on minors, correctional labor that is not related to the complete separation of a person from society differs from other types of criminal punishment.

Article 83 of the Criminal Code of the Republic of Uzbekistan provides that correctional labor is assigned only to minors who are able to work at the place of work, and if the offender does not work anywhere, then in other places at the place of residence, determined by the bodies supervising the execution of this punishment, from one month to one year.

In the criminal legislation of Belarus [3], Turkmenistan[4] and Tajikistan[5] from the CIS countries, correctional punishments for minors are provided only when they reach the age of 16. It is advisable to clearly define the age (sixteen years) for the application of correctional punishment to minors in the Criminal Law of the Republic of Uzbekistan.

Punishment in the form of corrective labor imposed on minors differs from this type of punishment applied to adults by a shorter term. For example, the maximum sentence of correctional labor for juveniles is one year,

and for adults it is three years. This indicates that the punishment provided for minors is determined in accordance with the principles of humanity and justice.

Article 46 of the Criminal Code of the Republic of Uzbekistan provides that when a corrective punishment is imposed on an adult, from 10 to 30 percent of the person's salary is withheld from the state's income, and in Article 83 of this Code, when this punishment is imposed on minors, the amount of wages subject to deduction from the state's income is determined on a universal basis. This is inconsistent with the principle of delimitation of criminal liability and punishment.

Article 243 of the Labor Code of the Republic of Uzbekistan states that, based on the norm on the payment of wages for a reduced working day for workers under the age of eighteen, the work of students working at enterprises in their free time is paid based on hours worked or depending on output[6]. Therefore, when imposing correctional sentences on minors, taking into account the fact that their wages are usually less than those of adults, it is reasonable and logical to strictly define in the law the limit of the amount to be withheld in favor of state income in the amount of 10% to 20% of the monthly wage.

In view of the foregoing, we propose to amend paragraph 1 of Article 83 of the Criminal Code of the Republic of Uzbekistan in the following order:

- 1) Corrective labor is applied only to able-bodied minors who have reached the age of 16 at the place of work, and if the perpetrator does not work - in other places determined by the bodies in charge of the execution of this punishment in the area of his residence, for a period of one month to one year

with deduction from 10% to 20% of wages to the state.

- 2) We consider it necessary to include in the Criminal Code of the Republic of Uzbekistan a separate article providing for the purposes of sentencing minors, based on the study of the criminal law of a number of foreign countries that regulate issues taken into account when individualizing punishment and sentencing minors. The following new version is proposed:

"The punishment of minors should be aimed at the goals of their moral correction and education. If it is not possible to achieve these goals through the use of lighter penalties, more severe penalties should be imposed."

According to the norm specified in part 5 of article 86 of the Criminal Code of the Republic of Uzbekistan, when sentencing a minor in the form of imprisonment or correctional labor, the court may apply a conditional sentence.

In order to apply a conditional sentence to minors on the basis of this provision, one must refer to article 72 of the Criminal Code, but the provisions provided for by this article apply to adults, that is, persons over eighteen years of age.

The issue of applying conditional sentence to minors is provided for by the chapter "Punishment and its appointment" (Article 86) of the General Part of the Criminal Code "Peculiarities of responsibility of minors". However, conditional sentence is a type of release from punishment by its legal nature[7]. Therefore, it is advisable to single out the institution of conditional sentence for minors in a separate article in the above-mentioned section "Release from liability or punishment."

We consider it permissible to dwell on one more important aspect of the release of minors who have committed crimes from responsibility and punishment.

Article 87 of the Criminal Code of the Republic of Uzbekistan provides for the following provisions:

“A minor who has committed a crime for the first time that does not pose a great public danger may be released from liability with the transfer of materials for consideration by the interdepartmental commission on juvenile affairs, if, taking into account the nature of the committed act, the identity of the perpetrator and other circumstances of the case, his correction is possible without the application of punishment.

With regard to a minor who has committed a less serious crime for the first time, for which a punishment of imprisonment for a term of not more than five years is provided, or who has repeatedly committed a crime that does not pose a great public danger, if there are grounds provided for in part one of this article, the court is obliged to discuss the question of his release from punishment and the application of coercive measures.

In the event of a significant lag in the age development of a minor, depriving him of the ability to fully realize the significance of the committed act, the court is obliged to discuss the issue of the expediency of applying coercive measures instead of punishment.

We will express the following opinions regarding this provision, provided for by parts 1-2 of Article 87 of the Criminal Code of the Republic of Uzbekistan:

- 1) Article 87 of the Criminal Code of the Republic of Uzbekistan is entitled "Exemption from liability or punishment with the use of coercive measures."  
If we compare the title of Article 87 of the Criminal Code of the Republic of Uzbekistan and its

provisions of part 1, then logically, according to the title of Article 87 of the Criminal Code, coercive measures can be applied under part 1 of this article, but the use of coercive measures is not indicated in part 4 of article 85 of the Criminal Code;

- 2) In part 2 of Article 87 of the Criminal Code of the Republic of Uzbekistan, the sentence "who committed a less serious crime, for which a penalty of imprisonment for a term of no more than five years is provided for," is incorrectly used, since in part 4 of Article 85 of the Criminal Code it is established that "persons who committed crimes at a minor age that do not pose a great public danger, crimes committed by negligence, or intentional less serious crimes, the penalty in the form of imprisonment is not imposed" and the provisions provided for in part 4 of Article 85 of the Criminal Code of the Republic of Uzbekistan and part 2 of article 87 of the Criminal Code contradict each other;
- 3) The sentence "a minor who has repeatedly committed a crime that does not pose a great public danger" provided for in part 2 of Article 87 of the Criminal Code of the Republic of Uzbekistan is inappropriately applied, since part 1 of Article 32 of the Criminal Code of the Republic of Uzbekistan says:

"Repetition is recognized as the simultaneous commission of two or more crimes provided for by the same part, article, and in cases specifically specified in this Code, and by different articles of the Special Part, for none of which the person was convicted. Both completed crimes and punishable preparations or attempts to commit crimes, as well as crimes committed in complicity, are recognized as repeated."

In accordance with this provision, a minor who has repeatedly committed a crime of minor public danger





is liable under the more severe part of the corresponding article of the Special Part of the Criminal Code of the Republic of Uzbekistan;

- 4) The phrase "if there are grounds provided for in part one of this Article" provided for in part 2 of Article 87 of the Criminal Code of the Republic of Uzbekistan is used inappropriately, because part 1 of Article 87 of the Criminal Code states that in order to release a minor from responsibility, a crime with a small public danger must be committed for the first time, but in part 2 of this article it is determined that a crime of a small public danger the danger is repeated, that is, committed by a minor two or more times. The provisions of part 1-2 of Article 87 of the Criminal Code of the Republic of Uzbekistan show that they are incompatible with each other.

Based on the above circumstances, we believe that the following proposals should be made to the Criminal Code.

- 1) it is advisable to change the title of Article 87 of the Criminal Code of the Republic of Uzbekistan to "Grounds and conditions for exemption from liability or punishment" instead of "Exemption from liability or punishment with the use of coercive measures";
- 2) delete the phrase "for the first time committed a less serious crime, for which a penalty of imprisonment for a term not exceeding five years, or" from part 2 of Article 87 of the Criminal Code of the Republic of Uzbekistan;
- 3) replace the phrase "a minor who has committed a crime for the first time that does not pose a great public danger" provided for in part 2 of Article 87 with "a minor who has committed crimes of small public danger provided for in various articles of the Special Part of this Code, if, taking into account the

nature of the committed act, the identity of the perpetrator and other circumstances of the case, his correction is possible without the use of punishment";

- 4) In part 2 of article 87 of the Criminal Code of the Republic of Uzbekistan, the words "if there are grounds provided for in part one of this article" shall be deleted.

When imposing punishment on minors, mitigating circumstances should not be taken into account. The reason for this is that all the features of minors are taken into account in Chapter XV of the Criminal Code of the Republic of Uzbekistan when individualizing the punishments imposed on them, and it is illegal to take this situation into account twice when sentencing.

According to the Law of the Republic of Uzbekistan dated September 30, 2005 "On Amendments to the Criminal Code of the Republic of Uzbekistan", part 2 of Article 87 of the Criminal Code of the Republic of Uzbekistan has been amended. According to him, the word "three" in part 2 of Article 87 of the Criminal Code of the Republic of Uzbekistan was replaced by the word "five". The rule on the release of minors from punishment with the use of coercive measures is of great importance in ensuring the principle of humanity and resolving the issue of responsibility of minors. In this regard, it is advisable to release from punishment a minor who has repeatedly committed a crime that does not pose a great public danger or who has committed a less serious crime for the first time.

Changing the title of Article 88 of the Criminal Code of the Republic of Uzbekistan to "Measures of coercive educational influence" and the publication of this article in the following new edition will provide the court with the opportunity to apply compulsory measures of educational influence, releasing minors who have committed a less serious crime or a crime



that does not pose a great public danger from punishment:

Article 88. Coercive measures of educational influence.

The court may apply the following compulsory measures of educational influence to minors:

- a) Warning;
- b) Transfer under the control of parents or persons replacing them, or a special state body;
- c) Imposing the obligation to apologize to the victim;
- d) Assignment of the obligation to eliminate the damage caused;
- e) Limit the rest time and impose special requirements on the behavior of a minor;
- f) Placement in a specialized educational institution.

The correct and uniform application of compulsory measures of educational influence would be served by the inclusion in the Criminal Code of the Republic of Uzbekistan of article 881, which defines the content and timing of the application of compulsory measures of educational influence.

We believe that a separate article 901 should be included in the Criminal Code of the Republic of Uzbekistan in order to clearly define the terms of liability or release from punishment due to the expiration of the period of prosecution or punishment. Determining the terms of completion of the conviction in a separate article and their difference from those of adults makes it possible to ensure the rights and interests of minors. The establishment in a separate article of the completion of the terms of a criminal record, and their differences from adults, make it possible to ensure the uniform provision of the rights and interests of minors.

In conclusion, it should be said that the adoption of the above proposals would contribute to the improvement

of the norms providing for the release of minors from responsibility and punishment in the draft Criminal Code.

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