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APPROACHES TO THE CONCEPT OF EXEMPTION FROM LIABILITY OR PENALTY WITH THE APPLICATION OF COMPULSORY MEASURES

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Abstract

This article highlights the content of approaches to the concept of exemption from liability or penalty with the application of compulsory measures to minors. Also compulsory measures are considered as a system of criminal-legal measures and measures of state compulsion. However, the peculiarities of compulsory measures are explained. Foreign experience of application of compulsory measures to minors is analyzed.

KEYWORDS: Legal literature, concept, approaches, exemption from liability, penalty, compulsory measures, Criminal Code, public-legal assessment, other legal measures, security measures.

INTRODUCTION

Legal literature presents various approaches to the understanding of compulsory measures and their content. One perspective on compulsory measures is a system of criminal law measures that the court applies to young offenders with the intention of accomplishing the objectives of criminal punishment by utilizing the best possible blend of pedagogical impact and state methods of state coercion.

Compulsory measures, on the other hand, are regarded as state coercive measures mandated by the criminal law and are used to juveniles convicted of crimes of low social risk and non-severe crimes where their correction is achievable without criminal liability or penalty (punishment).

Compulsory measures are characterized by the following:

Article 87 of the Criminal Code states that compulsory measures can only be used against minors who have committed a crime;

compulsory measures are a form of state coercion that can only be implemented on behalf of the state and are the outcome of a public-legal assessment of the act as criminal;

the content of compulsory measures indicates that they are educational in character. Their goal is to correct the juvenile offender by using a combination of pedagogical pressure and persuasion techniques. Persuasion is the first factor used to influence the minor during the

implementation of these measures, as it conveys to him or her the negative assessment of the conduct and the inadmissibility of continuing socially dangerous behavior;

compulsory measures consist in restricting the rights and freedoms of a minor due to the nature of their coercive effect, and such restriction is allowed when setting special requirements for the minor's behavior;

compulsory measures are included in other measures of criminal-legal nature. The second part of Article 2 of the Criminal Code stipulates that the Code determines grounds and principles of liability, socially dangerous acts to be recognized as crimes, as well as establish penalties and other legal measures of legal influence that may be applied to persons, who committed socially dangerous acts. 'Other legal measures' in this context refer to compulsory measures;

according to its legal nature, coercive measures are an alternative measure to punishment, and the alternative nature of these measures is manifested in the content of the obligations and restrictions imposed on the minor and their difference from punishment. In addition, it is also manifested in the court's discretion, that is, it is manifested in making a decision on sentencing, imposing a penalty or exempting a minor from criminal liability or punishment;

the alternative of compulsory measures to punishment implies a shift in response to juvenile delinquency from coercion to education.

However, the current legislation does not specify the definition of compulsory measures applied to minors. Different authors have expressed different opinions on the concept of compulsory measures applied to minors.

A.Magomedova came to the conclusion that: "compulsory educational measures are state compulsory measures applied by the court and have a corrective and educational effect on a minor who has committed a less serious, moderate and serious crime, which are not considered criminal penalty (punishment) (or are not subject to criminal punishment) and are imposed during the release from criminal liability or penalty

(punishment) for the purpose of its correction as well as the prevention of new crimes"[1]. Of course, here it is necessary to take into account that the author made this proposal based on Russian criminal law. In his opinion, the system of compulsory measures of an educational nature is significantly different from the system of criminal sanctions due to the shift of the center of gravity to the educational means rather than the punitive ones. Compulsory measures are strictly personal in nature; can only be appointed by the court on behalf of the state; performance is mandatory; according to its content, it is considered educational and aimed at the social adjustment of adolescents.

Persuasion and, if required, coercion are two methods that can be used to upbringing minors, according to I.N. Tyurina. The analysis of the current legislation shows that young offenders are increasingly being raised under compulsory circumstances.

She notes that "Other forms of education other than coercion have demonstrated their ineffectiveness. But it is understood as certain disciplinary-pedagogical means applied to minors who, due to the psychological characteristics of the person, still have the opportunity to change their behavior in the direction approved by society"[2].

Understanding and analyzing the essence of mandatory educational impact measures as a separate criminal-legal institution implies an understanding of their legal nature and relationship with other institutions of criminal law - criminal liability and penalty (punishment).

The state's criminal-legal response to juvenile offenses can take the shape of mandatory educational effect measures. This is explained by the fact that the studied measures are combined in criminal legal norms. However, the process of bringing a minor to criminal accountability is essentially repeated in the process of assigning mandatory educational measures, from the start of a criminal prosecution to the issuance of a court decision.

Since compulsory measures are used against minors for committing crimes and are not

classified as a form of penalty (punishment) under Article 43 of the Criminal Code, they are, in our opinion, a manifestation of criminal liability because they are used alongside other forms of influence that are not criminal in nature.

Therefore, the state's response to a minor's crime may take the shape of criminal liability, which is demonstrated by the use of compulsory measures against the minor. Therefore, using compulsory measures on juveniles is a particular kind of criminal liability.

O.A. Anfyorova demonstrates compulsory measures applied to minors as a special form of exemption from accountability. According to her, "when released from criminal liability, a person is found guilty of the committed act. Otherwise, the exemption from criminal liability will lose its meaning. According to Article 8 of the Criminal Code, in order to exempt a person from criminal liability, the basis of which is the commission of an act containing all the elements of a crime, a decision must be taken by the body (subject) that has given the right to release a person who has violated the state criminal law from the legally unfavorable consequences (and as a result, from punishment) of criminal behavior, such as an official charge"[3].

According to the aforementioned, compulsory measures can be assessed as state-imposed measures used to improve moral behavior in minors who have committed crimes but do not qualify as criminal punishment.

Analysis of the legislation of other jurisdictions revealed that varied strategies are used when applying coercive measures on minors. E.V. Povodova specifically displayed the following as a foreign experience:[4]

There are no laws requiring compulsory education for minors in Spain, Denmark, Norway, Australia, Argentina, the Republic of Korea, Japan, or the Netherlands. In these countries, the criminal liability of minors is carried out on general grounds and in general forms based on the principles of individualization for subjects of all age groups.

The use of coercive measures against minors as a form of security measure in France regulated by non-criminal legislation.

According to German criminal law, educational influence on a minor who is guilty of committing a crime is not part of the issues to be resolved by criminal legal means and is not always the subject of court proceedings.

Educational measures applied to minors are presented differently in the criminal legislation of different countries:

a) as security measures, they are applied to minors who do not have the characteristics of a criminal subject or who are not subject to criminal liability: Turkish Criminal Code (Article 53 and Part 2 of Article 58); Criminal Code of Sweden (Chapter 31, Article 1), Criminal Code of the Republic of San Marino (Articles 124, 128 and 131).

b) as a form of state guardianship or enhanced home (family) control, which are specified in the Criminal Code of the People's Republic of China (Part 4 of Article 17). Persons under the age of criminal liability are subject to home measures or state education. According to the Bulgarian Civil Code (Part 2 of Article 32), educational measures of the same quality are applied to minors under the age of criminal liability (up to 14 years of age).

c) as a form of implementation of criminal liability, compulsory educational measures are mentioned in the Polish Criminal Code. According to this, when someone between the ages of 17 and 18 commits a minor offense, the court may substitute educational measures for punishment as a means of enforcing criminal liability. They are given therapy, education, or corrective measures in place of punishment (paragraph 4 of Article 10). Educational measures are given criminal-legal importance under the Swiss Criminal Code.

Measures of educational influence used to juveniles as criminal-legal coercive measures are part of the laws of "close" foreign nations, including the Criminal Code of Russian Federation.

For example, according to the Criminal Code of the Republic of Tajikistan (Article 89), the use of compulsory measures of an educational nature is considered a form of release of minors from criminal liability. Pursuant to the Criminal Code of the Republic of Latvia (Part 2 of Article 59 and Article 66), it is a special type of exemption from

punishment for minors. The criminal codes of Republic of Estonia (Article 10), Republic of Moldova (Part 2 of Article 54, Article 93), Republic of Kyrgyzstan (Articles 83, 85), Georgia (Articles 90-97), Republic of Azerbaijan (88, 89 -articles), and Ukraine (Articles 97 and 105) consider the compulsory measures in two contexts: a) as special types of discharge /exemption from criminal liability, b) as exemption from penalty (punishment).

Under the Criminal Code of the Republic of Belarus, compulsory educational measures are accepted as a criminal-legal coercive measure that takes the place of punishment.

Based on the analysis of legislation and literature, the following author's definition of compulsory measures against minors was developed:

"Compulsory measures applied to minors are measures with non-criminal impact applied by the court against a minor who commits a first-time crime with a low social risk and not a serious crime".

Criminal legal norms, which include provisions on the release of minors from criminal responsibility or penalty with the use of compulsory measures, as well as the issues related to criminal-procedural norms corresponding to them are important in observing the rights and legal interests of the minor as a person. Exemption from criminal liability or punishment in connection with the application of compulsory measures should be appropriate when not only there is no need to apply a criminal punishment, but also when there are no grounds for other types of such exemption (grounds provided for in Articles 64-76 of the Criminal Code).

Therefore, since the exemption from liability provided for in Part One of Article 87 of the Criminal Code does not correspond to the types of exemption from liability provided for in Articles 64-68 of the Criminal Code, it would be correct to assess the special type of exemption from liability of minors (as provided for in Part One of Article 87 of the Criminal Code) as other measures of legal influence provided for in Article 2 of the Criminal Code. In this regard, it is proposed to supplement

Article 87 of the Criminal Code with Part One of the following content:

"Minors who have committed a crime may be released from liability without the application of punishment and other criminal-legal measures".

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