

Ultimate Fact Distinctions in Criminal Cases Involving Juveniles in the Russian Federation and the Republic of Kazakhstan

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Abstract: The paper analyzes the ultimate fact distinctions in accordance with the criminal procedure legislation of the Republic of Kazakhstan and the Russian Federation. The evidence gathering issues against the guilty juveniles are investigated. The concept issues of the ultimate fact in cases involving juveniles are investigated. The theoretical and practical aspects of evidence gathering in cases involving juveniles and the importance of any given evidence for judicature are studied. The role of forensic experts in gathering the evidence, characterizing the level of mental development; the role of the psychologist in determining the degree of intellectual and volitional development; the importance of social services in the definition of the living conditions and education of the infant child are emphasized. The author presents his vision of evidence gathering issues characterizing the identification of a juvenile offender, including in particular those services which should facilitate the evidence gathering, as well as the way they should interact with the law enforcement authorities and the preliminary investigation offices. Furthermore, the author draws attention to the experience of foreign countries (Netherlands and the USA) regarding consideration of the personality characteristics of juveniles in the judicature. Based on the conducted research, certain changes are suggested to the criminally remedial regulations and normative legal acts in Russia and Kazakhstan, aimed at improving the effectiveness of the averment procedure and criminal justice against the juveniles.

Key words: Evidence • Proof • Juveniles • Mental development • Juveniles living conditions and education

INTRODUCTION

Identification of ultimate fact distinctions in criminal cases involving juveniles is essential to determine the guilt of a juvenile person, his social danger, to define the causes and conditions that impelled him to crime, as well as to protect their rights and legitimate interests. In addition, the correct approach in the gathering and evaluation of evidence against the juvenile's incriminating act is a guarantee of a fair trial and that is the main principle of criminal procedure (Standard Minimum Rules of the United Nations concerning the administration of juvenile justice (the Beijing Rules), November 29, 1985).

In order to inflict one of the criminal punishment types, it is necessary to gather all exculpatory evidence of the juvenile, as well as the evidence characterizing a juvenile personality. The range of measures to be applied to juvenile offenders is constantly expanding [1]. Therefore, to determine the type of sanction for the crime,

it is necessary to establish all the facts or circumstances of the case pertinent not only to crime, but to the juvenile offender as well.

The purpose of this publication is to analyze ultimate fact distinctions in juvenile criminal cases and to develop measures enabling more efficient evidence gathering when awarding judgment.

Ultimate Fact Concept in Criminal Cases Involving

Juveniles: Certain features that specify personal information of guilty person are inherent to ultimate fact in criminal cases involving juveniles [2]. Thus, the ultimate fact distinctions in criminal cases involving juveniles are highlighted in the Law of the Russian Federation (Art. 421 of the Criminal Procedure Code) and the Republic of Kazakhstan (Art. 481 of the CPC of Kazakhstan). According to Art. 481 of the Criminal Procedure Code of the Republic of Kazakhstan, the circumstances to be proven with respect to the criminal

cases involving juveniles include: the age of the juvenile (day, month and year of birth); juvenile living and upbringing conditions; the degree of intellectual, volitional and mental development of the juvenile and his character trait and temperament, needs and interests, as well as the influence of adults and other minors on juvenile [3]. In contrast to the legislation of Kazakhstan, the Criminal Procedure Law of the Russian Federation circumstantiates ultimate fact such as evidence testifying juvenile's "mental retardation not associated with a mental disorder". In case of juvenile's mental retardation, law requires to ascertain "whether a juvenile could be fully aware of the actual nature and social danger of his actions (inaction) or to control them", "as well as whether a juvenile has a disease, preventing his detention and training in special fostering custodial institution "[4].

Establishing the Age of a Juvenile Offender: According to p. 4.1 of the UN Standard Minimum Rules with respect to administration of Juvenile Justice ("The Beijing Rules") (1985), the lower limit for the age of criminal responsibility "should not be set on too" low "age level" and "the aspects of emotional, mental and intellectual maturity" should be taken into account [5]. The legislation of the Russian Federation [6] and the Republic of Kazakhstan [7] established for criminal responsibility a general age of 16 years. For certain grave and especially grave crimes criminal responsibility is established from 14 years. In these cases criminal proceedings are conducted in juvenile courts. In the U.S. particularly in the State of Utah, criminal cases are also addressed in the juvenile courts against the persons under 18 years [8].

Establishing the Age of the Juvenile Will Allow Us to Determine:

- Whether a juvenile has already reached the age set by criminal law for criminal responsibility.
- Whether at a time of the crime the person was actually at the age of juvenile.
- Whether there is a need in a teacher and a psychologist in commissioning legal proceedings against a juvenile. The legislation of the Russian Federation and the Republic of Kazakhstan provides for the mandatory presence of a teacher and a psychologist in commissioning legal proceedings against a person under 16.

The age of a person should be determined in records based on the birth certificate, passport, proof of identity, etc. In case identity proofing documents are unavailable, forensic inquiry should be appointed [9] to determine the age of the guilty person.

Living Conditions and Upbringing of a Juvenile Person:

In order to provide fair and lawful extension of a judgment with respect to a juvenile, the court must pay attention to the living conditions and education of a young offender.

Establishment of juvenile's life conditions and upbringing is required for a comprehensive study of the physical and mental condition of a teenager, his intellectual and moral development level, his character trait. All this is necessary to establish the motive of the crime, to take preventive measures against commission of other crimes and the determination of responsibility of parents (or legal representatives) [10].

In Russia, Kazakhstan and in any other state "certain family factors" can serve as a risk indicator for juvenile (single-parent families, physical abuse, ignorance on the part of stepmother or stepfather, child's mother of father) [11]. In the U.S. Supreme Court has overturned a number of the lower courts convictions, pronounced without consideration, or excluding evidence, describing the juvenile's personality (mental retardation, physical violence against him, homelessness, etc.) [12].

Thus, in the Netherlands, as a part of the study of motives that incited juveniles to commit crimes, the researchers came to the conclusion that one of the common causes of teenage crime was living in poor districts, the lack of parental due attention and continuous conflicts with parents [13].

Therefore the circumstances concerning juvenile's living conditions and education can both characterize the child and also act as mitigating circumstances in some cases, because the unfavorable environment around the child, bringing him up in a single-parent family or in an orphanage, or sometimes by unconscientious parents often push children to crime.

Materials about the children' living conditions and education, as it seems to author, should be gathered by social services during the preliminary investigation based on the investigator's order. Social service provider, in turn, checking the living conditions of the infant child, talking to his parents, legal representatives and tutors should make a report on the living conditions and upbringing of the child, taking into account the

characteristics given to him at the places of child's residence and education. Thus, social services should work in close cooperation with the police agencies and the court, as it is practiced in Western countries [14].

Finding and clarification of the above mentioned circumstances by a court will allow trial both to approach fairly criminal sentencing and contribute to identification of the conditions and causes that impelled juvenile to crime, as well as to develop preventive measures.

The Degree of Intellectual, Volitional and Mental Development, Character Trait and Temperament, Needs and Interests of a Juvenile: The degree of intellectual, volitional and mental development, character trait and temperament of an infant child can be determined by a psychologist or forensic psychological inspection and in extraordinary circumstances - by comprehensive forensic psychological examination.

In the Netherlands, juvenile courts annually sent 1,700 young people for forensic psychiatric and psychological examination, inquiring the experts to explain the role played by a mental disorder or mental retardation in juvenile crime [15]. Therefore, it would be good if we could apply this practice and get the experts to take part in analyzing the mental development of each juvenile offender.

The forensic expert should provide the court with accurate information about the juvenile identity in order to give an opportunity to a judge to make a legal decision, using the evidence and relying on the opinion of experts in psychology [16].

In case of availability of the mental retardation signs, the expert should give a detailed report containing the answers to the following questions: cause of mental retardation, whether a juvenile is able to think logically and whether he could fully realize the actual nature and social danger of his actions (inaction) at a time of committed crime; whether he is aware that the criminal prosecution is implemented against him; whether he understands the implications arising from the criminal prosecution; and how his mental development contributed to the commission of a crime.

All these facts contribute to the study of intellectual and volitional development of a juvenile, who has committed a criminal act [17].

At the same time it should be noted that "mental health" has both broad and narrow definition, involving problems of suicide, psychosis, a serious or general

mental disease, drug abuse and sexual risk. In this connection, the expert must consider all these factors when preparing the report on the juvenile's mental development or health in order the court could make the proper judgment [18].

In case of mental illness, excluding the responsibility of a juvenile at the time of the offense, the court must release the offender from criminal liability involving the application of medical measures. If the case of responsibility is not excluded, the court must explore in detail both the conclusion of a psychologist or psychiatrist, as well as the evidence of legal representatives, school teachers, supervising teacher, neighbors and friends to establish a complete picture of the infant child's personality and analyze the reasons impelled him to commit the crime. Undoubtedly, mental retardation, the ability of a person to be influenced by peer group pressure, lack of personal opinion and logical thinking should be considered as attenuating circumstances.

CONCLUSIONS

It should be noted that the legislation of the Russian Federation and the Republic of Kazakhstan in terms of the ultimate fact distinctions in criminal cases involving juveniles are identical. In both countries the lawmaker distinguishes the age of the juvenile (day, month and year of birth), his living and upbringing conditions, juvenile's degree of intellectual, volitional and mental development and character trait and temperament, juvenile's needs and interests, as well as the influence of adults and other minors on juvenile as the circumstances to be proven with respect to the criminal cases [3].

Surely, preliminary investigation agencies and arms of the court can not cope up with the gathering of above mentioned evidence all alone and thus arrive at a fair and legal decision. Therefore, it would be appropriate to entrust the facts such as living conditions and education of the juvenile, the influence of adults and other minors on juvenile, etc. to social services and to make a corresponding change in the regulatory legal acts. It is necessary to provide respective articles (art. 421 of the Criminal Procedure Code of the Russian Federation and art. 481 of the Republic of Kazakhstan) with provision of law obliging preliminary investigation agencies to send the inquires to social services on each criminal case against a juvenile requesting them for information on the

living conditions and education of the accused juvenile, as well as influence on him of others persons. At the same time, the law should include the provision, indicating the need for sending a decree on imposing the forensic psychological and if necessary, the comprehensive psychological and psychiatric examination of a juvenile perpetrator for establishing his mental development and a degree of intellectual, volitional and mental development, the character trait and temperament of the accused child.

Thus, the proposed amendments to the law would allow the courts to study thoroughly the identity of a juvenile defendant and adopt a proper court decision to the criminal case.

REFERENCES

1. Mears, Daniel, P. Joshua C. Cochran, Sarah J. Greenman, Avinash S. Bhati and Mark A. Greenwald, November-December 2011. Evidence on the Effectiveness of Juvenile Court Sanctions. *Journal of Criminal Justice*, 39(6): 509-520.
2. Guskova, A.P., 2002. Theoretical and Practical Aspects of Establishing the Identity of the Accused in the Russian Criminal Proceedings. Textbook, 2nd Edn. Moscow: Yurist, pp: 57.
3. The Criminal Procedure Code of the Republic of Kazakhstan dated December 13, 1997 as of 29.01.2013. www.zakon.kz.
4. The Criminal Procedure Code of the Russian Federation dated 18.12.2001, No. 174-FZ, as amended on 30.12.2012. www.pravo.gov.ru.
5. UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (1985). www.un.org.
6. The Criminal Code of the Russian Federation dated 13.06.1996, No. 63-FZ, as amended on 30.12.2012. www.pravo.gov.ru.
7. The Criminal Code of the Republic of Kazakhstan dated July 16, 1997 as amended on 08.01.2013. www.zakon.kz.
8. Utah's Juvenile Courts Published December. Utah State courts. 2003 by The Administrative Office of the Courts. www.utcourts.gov/courts.
9. Lugovtsova, S.A., 2004. Features of the trial of criminal cases against juveniles. Thesis of Candidate of Jurisprudence. St. Petersburg, pp: 77.
10. Koludárova, O.P., 2011. Living Conditions and Education of Neglected Child as a fact to be Proved in Criminal Cases. *Bulletin of Udmurt University*, 1: 135.
11. Myers, Diane, M. and Anne F. Farrell, October 2008. Reclaiming Lost Opportunities: Applying Public Health Models in Juvenile Justice. *Children and Youth Services Review*, 30(10): 1159-1177.
12. Mallett, C.A., February 2013. Juvenile Life without the Possibility of Parole: Constitutional but Complicated. *Children and Youth Services Review*. Available Online, pp: 4.
13. Horstkötter, Dorothee, Ron Berghmans, Corine de Ruiter, Anja Krumeich, Guido and de Wert, July-August 2012. "We are Also Normal Humans, You Know?" Views and Attitudes of Juvenile Delinquents on Antisocial Behavior, Neurobiology and Prevention. *International Journal of Law and Psychiatry*, 35(4): 289-297.
14. O'Mahony, David and Ronan Deazley, 2000. Juvenile Crime and Justice. Crown Copyright, pp: 39-40.
15. Duits, Nils, Theo A.H. Doreleijers, Wim van den Brink, June-July 2008. Assessment of Violence Risk in Youth for Juvenile Court: Relevant Factors for Clinical Judgment. *International Journal of Law and Psychiatry*, 31(3): 236-240.
16. Freckelton, Ian S.C., September-December 2012. Expert Evidence by Mental Health Professionals: The Communication Challenge Posed by Evidence about Autism Spectrum Disorder, Brain Injuries and Huntington's Disease. *International Journal of Law and Psychiatry*, 35(5-6): 372-379.
17. Lugovtsova, S.A., 2004. Features of the Trial of Criminal Cases against Juveniles. Thesis of Candidate of Jurisprudence. St. Petersburg, pp: 83.
18. Heaston, Curtis, Michael Jenuwine, Diane N. Walsh and Gene Griffin. Mental Health Assessment of Minors in the Juvenile Justice System. <http://law.wustl.edu/Journal/11/p141Jenuwinebookpages.pdf>.