

# КРИМІНАЛЬНЕ ПРАВО ТА КРИМІНАЛЬНИЙ ПРОЦЕС

UDC 343.2

<https://doi.org/10.31548/law2021.03.016>

## ABOUT THE ISSUE OF PUNISHMENT FOR JUVENILES

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**Summary.** *The article is devoted to the analysis of the institute of criminal liability and punishment for minors under the Ukrainian legislation. Theoretical and practical features of sentencing for criminal offenses are examined and the main tendencies of sentencing at the present stage are determined. It is stated, that certain provisions of the Criminal Code of Ukraine on the sentencing of minors do not correspond to the worldwide practice of humanizing the punishment for juveniles. It is determined that the purpose of criminal punishment for minors is the process of education. Also, it is proved, that this goal should be confirmed in the current Penal Code. Attention is focused on the fact that the backbone of the state strategy on criminal law counteraction to juvenile delinquency should be a child-friendly system of juvenile justice.*

*The necessity of adding new types of punishment into Penal Code of Ukraine which would be applied only for young offenders is defined. Moreover, the expediency of forming a new system of punishment for juveniles, which would take into account more sophisticated and new educational measures is proved.*

*The peculiarities of imposing criminal punishment on minors according to the legislation of other foreign countries are clarified. It is shown that special penalties for minors, which are not connected with isolation, are provided by the criminal legislation of most European countries.*

**Keywords:** *juvenile, sentencing, criminal liability, sanity, punishment, delinquency, criminal law policy, humanism, condemnation, psychological features*

### ***Introduction.***

Ukraine as a democratic, social, law-based state in should focus on the principles of the rule of law, humanism, individualization of measures of a criminal nature during the implementation of criminal policy. Thus, the implementation of the principle of inevitability of criminal liability and punishment must undergo some changes. Nevertheless, socially dangerous act that contains features of a criminal offense cannot be unpunished. However, not every person who commits it should be punished. In certain cases, if we're just speaking about minors, state damnation will be an effective measure for reformation of a person and preventing him/her from committing new criminal offenses. That is why, the primary provisions of the criminal law policy of our state should provide, in particular, the mitigation of criminal liability and the possibility of the state to refrain from punitive measures against certain persons, namely minors.

Such measure in criminal law as the release of minors from punishment and its serving is becoming increasingly important in our country, because of the psychological peculiarities of people who have committed criminal offenses under the age of eighteen. Long-lasting application of this measure has proved that the availability of potential release from punishment and (or) its serving creates favorable conditions for accelerating the process of reformation and achieving the goals of criminal liability for minors.

According to the statistics of the State Judicial Administration of Ukraine, the level of recidivism among juveniles, for whom the types of release from punishment and (or) serving it have been ap-

plied, is low and stable in recent years.

The problem of juvenile delinquency and the development of effective types of punishment remains relevant for the world community, concerned about the search for both humane and efficient measures to prevent and combat this dangerous phenomenon.

### ***Analysis of recent research and publications.***

A holistic understanding of the essence of the institution of sentencing and serving in the context of criminal law has been studied in the works of a great variety of scholars such as: V.I. Arkov, Yu.V. Baulin, N.L. Berezovska, A.A. Berezovskyi, R.I. Briashchei, V.P. Herasymenko, V.V. Holina, O.P. Horokh, O.O. Horshenin, O.M. Dzhuzha, T.I. Dmytryshyna, O.O. Dudorov, Yu. I. Yemets, A.P. Zakaliuk etc.

There are some scholars in the foreign criminal law doctrine because of the most progressive ideas of the development of the institution of juvenile punishment. Namely: Antonia Zizak, Gabriel Chapman, Darren Carver, Janet Ainsworth. Some issues of formation and development of the institution of criminal liability and punishment of minors were studied by N.L. Berezovska, M.A. Bilokon, Ye.M. Vecherova, O.V. Dashchenko, Yu.V. Yehorova, Yu. I. Yemets, A.O. Klevstsov, etc.

At the same time, some issues of sentencing juveniles remained insufficiently studied or aren't examined at all. That is why, the relevance of this research is obvious.

***The purpose of the article*** is to conduct a scientific and theoretical analysis of the legislation regulating the sentencing of minors for committing criminal offenses.

## **Results.**

Problems of differentiation of criminal liability and individualization of punishment of minors are very actual. Criminal law and the theory of criminal law of different countries have tried and are trying to find optimal solutions. Ukraine's integration into the international community is impossible without fully bringing national legislation in accordance to generally accepted international standards in the sphere of juvenile justice, as well as implementation of the most effective forms, methods, measures and tools used in world practice in preventing and combating juvenile behavior.

Each state, which is taking care for its juveniles, especially those who have committed a criminal offense, aims to implement the provisions of international law in the field of justice. In particular, in Europe and the USA special laws, procedures, bodies and institutions have been created that are directly related to juveniles who have committed a criminal offense. There is a fixed minimum age in the provisions of the criminal law of different countries below which children are considered incapable of violating criminal law. Moreover, there's some differentiation of criminal liability depending on age, severity of socially dangerous acts and personal traits of minors. During the sentencing, a great attention is paid in order to protect juveniles from criminal influence, thus, application of imprisonment to such category is minimized and an alternative to this type of punishment is used (Burdin, 2004).

Punishment is one of the means of implementing the criminal policy of the state. Punishment, on the one hand, as a measure of state coercion, is applied by

the court to a convicted person and consists in restrictions of rights and freedoms, and on the other hand, is established by the state in favor of society to achieve a positive result.

Criminal liability of minors and the practice of sentencing them is realized through the application of the main provisions of the criminal law policy of Ukraine in this area, which is formed on the basis of a special approach to the implementation of criminal liability to this category of offenders. Analysis of the current state of national and world criminal policy shows that its defining feature is the humanization of criminal repression against such a «specific» subject of criminal law relations. Currently, a minor, as a «specific» subject of criminal law relations is considered in a number of international acts. Therefore, these are the standard UN rules on the administration of juvenile justice (the Beijing Rules) and other international legal instruments under which a juvenile may, within the existing legal system, be prosecuted in a form different from the form of liability applied to an adult. (Bohatyrov, 2004).

The course of the humanization of criminal repression against minors in Ukraine is indicated by statistics data, which show a gradual decrease during 2015–2019 in the number of people convicted of criminal offenses under the age of minors. Thus, in 2019, 47.6 % less than in 2015, adolescents aged 14 to 18 were convicted; their portion among all convicted also decreased from 4.8 % to 3.4 %. Every second juvenile was convicted of committing serious and especially serious criminal offenses. However, almost every third teenager committed a criminal offense by a group of people (Kaznacheieva, 2013).

The current criminal legislation pro-

vides certain peculiarities of criminal liability and punishment for minors. Analysis of the norms of the Penal Code allows us to conclude that these peculiarities are declarative in nature because there is no mechanism for their implementation. It should be noted that a number of criminal law rules are formulated without taking into account the legal status of minors in other areas of law. At the same time, the list of punishments applied to juveniles in relation to adults is significantly limited. According to Article 98 of the Penal Code of Ukraine to minors as the main punishment can be applied only a fine, community service, arrest and imprisonment for a specified period, and as additional – a fine and deprivation of the right to hold certain positions or engage in certain activities. According to Part 1 of Article 99 of the Penal Code, the fine is applied only to minors who have independent income, own funds or property that can be levied. However, there are a not big amount of juveniles who have officially independent income and their own funds, so, to our point of view, this type of punishment is not effective and is rarely used. Punishments such as community service and correctional labor have also been significantly reduced. According to Article 100 of the Penal Code, these types of punishment can be imposed only on minors aged 16 to 18 years. Article 101 of the Penal Code states that such form as the arrest provides keeping minor in a solitary confinement in special facilities and can be applied only to minors who have reached the age of sixteen at the time of sentencing (Dmytryshyna, 2012). Thus, the list of types of punishment that can be applied to a juvenile should be recognized as limited, which does not comply with the provisions of the UN Standard

Minimum Rules. In accordance with paragraph 5.1 of the Beijing Rules, measures that should be taken into account to influence minors must consider not only the severity of the offense committed by him/her, but also the personal traits of the offender. The person who has committed a criminal offense must be sentenced to the punishment that's sufficient to correct him/her and prevent from committing new crimes.

Analyzing the statistics of the last five years on the imposing of the main types of punishment for minors, it should be noted that there is a positive tendency towards the use of non-custodial sentences. Thus, the largest number of convicted juveniles was fined by the courts as the main punishment. Their ratio during 2015–2019 averaged 24.6 % of all convicted people for all crimes.

Over the last five years, the number of cases in which the courts have imposed fines has increased. Thus, if in 2015 this type of criminal punishment was applied to 19.7 % of convicted people, in 2019 this amount has increased to 30.4 % (Kaznacheieva, 2013).

It should be mentioned, that special punishments for minors that are not related to isolation are provided by the criminal law of most European countries. For example, the fundamental principle of juvenile criminal law in Germany is the educational idea where the main purpose of criminal law measures applicable to minors is special (individual) prevention. The purpose of such educational impact is to deter minors from committing a crime in the future. Thus, in this country there are social training courses that provide opportunities for minors to rehabilitate, to re-evaluate their behavior in general. In Germany, arrest is used as a last resort. In Croatia, one of the main remedial

measures of a recommendatory or preventive nature is a warning by a court. The court warns the person that in case of committing a crime, the person will face with more severe punishment. So that, the juvenile system of the Republic of Croatia has a number of corrective measures, which provide the humanistic gradual strengthening of corrective measures. Under the Polish Criminal Code, there are a number of measures of educational impact on minors used by family courts: reprimand; special supervision of the child by parents, participation in trainings, attending educational programs, etc. (Nazymko, 2018). The age characteristics of juveniles, the specifics of the crimes they commit indicate the need to develop such measures of punishment, in which the emphasis is shifted from punitive to educational and preventive aspects (Zasudzhenni mistsevyimy zahalnymy ..., 2015–2019).

All in all, we agree with scholars who propose to supplement the provisions of the Penal Code of Ukraine with new types of punishment, which would be designed only for juvenile offenders. Perhaps, using the positive experience of foreign countries, it will be good to form a separate system of punishment leaning on more sophisticated and new educational measures, which will affect the internal attitude of minors to their crimes.

### ***Conclusions and prospects.***

According to the study, some provisions of the Penal Code of Ukraine concerning the sentencing of minors do not correspond to the world practice of humanizing the punishment for minors. In order to improve the institution of sentencing minors, to our point of view, the best idea will be to add new articles that

would regulate the sentencing. We believe that educational process is the main purpose of criminal punishment for juveniles, so it is necessary that this purpose should be reflected in the current Penal Code.

We support those scholars who state that there is a dire need to revise the sanctions of the articles of the Special Part of the Penal Code for their compliance with the requirements for punishments that can be applied to minors (Dmytryshyna, 2012).

Also, there's a need to add new punishments into the Penal Code, which would be applied only for juvenile offenders. It will be good to make up a separate system of punishments, leaning onto more sophisticated and modern measures of an educational nature, which, firstly, will affect the internal attitude of minors to their criminal offenses and define them in a special law on criminal liability and punishment of minors.

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**С.С. Ковальова & Н.Г. Соколовська (2021). ДО ПИТАННЯ ПРИЗНАЧЕННЯ ПОКАРАННЯ НЕПОВНОЛІТНІМ.** *Law. Human. Environment*, 12(3): 131-136.  
<https://doi.org/10.31548/law2021.03.016>

**Анотація.** Стаття присвячена дослідженню інституту кримінальної відповідальності та призначення покарання неповнолітнім за законодавством України. Досліджено теоретичні та практичні особливості призначення покарання неповнолітнім за вчинення кримінальних правопорушень та визначено основні тенденції призначення покарання.

Встановлено, що окремі положення Кримінального кодексу України, з питань призначення покарання неповнолітнім, не відповідають світовій практиці гуманізації покарання неповнолітніх. Визначено, що метою кримінального покарання неповнолітніх є процес виховання, доведено, що ця мета має дістати своє законодавче закріплення в чинному ККУ. Зосереджено увагу, що основою державної стратегії кримінально-правової протидії правопорушенням неповнолітніх повинна стати дружня дітям система ювенальної юстиції.

Встановлена необхідність доповнення КК України новими видами покараннями, які були б розраховані тільки на неповнолітніх злочинців, доведена доцільність формування нової системи покарань для неповнолітніх, яка врахувала б більш модернізовані та новітні заходи виховного характеру.

З'ясовано особливості призначення кримінального покарання неповнолітнім за законодавством окремих зарубіжних країн.

Обґрунтовано, що спеціальні покарання для неповнолітніх, які не пов'язані з ізоляцією, передбачаються кримінальним законодавством більшості європейських держав.

**Ключові слова:** неповнолітній, призначення покарання, кримінальна відповідальність, осудність, покарання, злочинність, кримінально-правова політика, гуманізм, осуд, психологічні властивості

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