

CRIMINAL LIABILITY OF MINORS IN LITHUANIA LIETUVAS NEPILNGADĪGO PERSONU KRIMINĀLATBILDĪBA

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Abstract. *The basic principles of criminal law applicable to juveniles were formed more than a century ago, and this area of law is constantly changing in an attempt to strike a balance between the protection of the rights of the offender and the public interest. As minors are the most vulnerable and affected group of individuals, they must be punished differently from adults. Although the basic regulations applied to juvenile offenders are the same as those applied to majors, Lithuanian law nevertheless provides features that alleviate or otherwise mitigate the situation of the accused persons who have not reached the age of majority at the time of the offence. However, do the exceptionally applied rules on the imposition of penalties on minors ensure the purpose of the sentence and are those sentences effective?*

Keywords: *criminal offence, juvenile, punishment, responsibility.*

Introduction

Minors are one of the most vulnerable groups in our society. The crimes and misdemeanors they commit are one of the biggest problems these days. At various stages in the development of society, delinquency has been tried for many years with the harshest punishments, but this has never been effective in achieving the goal of punishment. On the contrary, this has led to even greater resistance and re-offending. In the criminal law of Lithuania, the most advanced ideas have been implemented regarding the protection of the rights of juveniles under national laws. As there are often ambiguous opinions in society about less severe punishments for minors and the fact that juveniles were not mature when they committed offence, this topic has always been one of the most relevant in the field of law.

The aim is to reveal the application of criminal liability to minors in Lithuania.

The subject is the criminal liability of minors.

The problem is to identify whether the peculiarities of criminal liability for juveniles adequately fulfil the function of reformation in criminal matters and whether the goals of imposing less severe sentences are achieved.

The objectives are:

1. To disclose the status of a minor as a subject of a criminal offence.
2. To analyse the legal regulation of criminal liability applicable to minors.
3. To analyse the types and purpose of punishments and educational measures imposed on minors, as well as the practical aspects of immunity from criminal liability.

A minor as a subject of a criminal offence

The concept of a minor is used in law, however, in different branches of law the concept of a “minor” usually differs depending on the specific content of a particular branch of law, the specificity of which is determined by the object and subject of regulation of the branch of law. In general, Lithuanian law uses two concepts that go hand in hand: a minor and a juvenile. A minor is usually a person who has not reached the age of majority. The Collins Dictionary describes a minor as a child or young person who is not mature enough to be considered an adult (*Collins Dictionary, 2022*). A minor is similarly described in the Lithuanian dictionary, as it describes a minor as an adult who does not yet have all civil rights (*Gutauskas, n.d.*). The United Nations Convention on the Rights of the Child defines a minor as a person under the age of 18 unless law has recognized the age of majority (*Convention on the Rights of the Child, 1989*). Slightly differently, juveniles are defined by the Juvenile Justice Program, where in Article 6, Part 2 it is stated that juveniles is one of the most active and vulnerable groups in society, which is sufficiently sensitive to various socio-cultural, economic and political changes in society. Another description of the concept of “juvenile” is provided by Drakšas and Drakšienė, who state that “juvenile” includes all persons who have not reached the age of majority (18 years) but have reached the age from which they may be prosecuted. It should be noted that this description is most appropriate for criminal law. The concept of a minor is associated not only with the biological characteristics of a certain human age, but also with social, spiritual experiences, moral traits, and awareness. The concept of a minor

is usually equated with the concepts of a child or adolescent. In Chapter 11 of Article 2 of the Law of the Republic of Lithuania on the Fundamentals of the Protection of the Rights of the Child, the term “minor” is substituted by the synonymous term “child”, which in the provision, describes that “a child is a person under the age of 18, unless otherwise provided by the Law of the Republic of Lithuania on the Fundamentals of the Protection of the Rights of the Children. If a person’s age is unknown and there are reasons to believe that he or she is a minor, such a person is considered a child until the contrary is established” (*Lietuvos Respublikos vaiko teisių apsaugos pagrindų įstatymas, 1996*). The Law on Education of the Republic of Lithuania uses such terms as “pre-school children”, “school-age children”, “pupils”, which are also identified with the concept of “minor” (*Lietuvos Respublikos švietimo įstatymas, 2011*).

The Criminal Code of the Republic of Lithuania establishes such age groups as a preteen age (persons under 14 years of age) and the age of minority (persons from 14 to 18 years of age). The Criminal Code also proclaims Article 13, by which the age at which a person may be prosecuted is set, i. e. under the Criminal Code, persons who have reached the age of sixteen before committing a crime or criminal offence and, in exceptional cases for serious and very serious crimes (for murder, rape, serious harm to health, theft, sexual assault, extortion or destruction of property, etc.) are liable to punishment from the age of fourteen. It should be noted that a person who has not reached the age of fourteen at the time of the commission of a criminal offence might be subject to educational measures in accordance with the law (*Lietuvos Respublikos Baudžiamasis kodeksas, 2000*). In addition to age, accountability is also a very important element in bringing a minor to justice.

Thus, the status of a minor is enshrined in Lithuanian criminal law by various legal acts, both national and international, which not only help to properly punish, but also contribute to the defensive function in criminal proceedings, where the suspects or accused are juveniles.

Legal regulation of criminal liability of minors

Juvenile delinquency has existed in Lithuania for a long time and has its own history, but its constant quantitative and qualitative changes are a concern not only for lawyers, but also for society as a whole. Legal regulation is an important aspect, as juveniles can only be prosecuted based on approved and current legislation. The most important of them is the Constitution of the Republic of Lithuania. It is the underlying basis for all other remaining legal acts and other important laws, as no other document can contradict this most important act. Chapter XI of the Criminal Code of the Republic of Lithuania regulates the imposition of punishment on minors. The main peculiarities of the criminal liability of minors are enshrined in the Criminal Code in the following ways:

1. Establishing a narrower list of types of penalties for minors.
2. Taking into account the specificities of the imposition of these penalties.
3. The possibility of application of alternative educational measures.
4. Applying more lenient conditions for acquittal and punishment.
5. Reduced terms of conviction and others.

The implementation and enforcement of criminal law principles is crucial for the prosecution of minors. These principles are those of justice, humanism, and proportionality.

The principle of justice is one of the most important principles of criminal law. Laws, including criminal ones, symbolize justice, and this principle requires that the values (health, life, liberty, property, ownership, and others) are protected and defended by law. A fair punishment is a punishment that has been imposed with due regard to the gravity of the crime committed, the peculiarities of the crime committed, the subjective features (guilt, motives) of the delinquent, his or her personality and whether its imposition violates the law. Justice must not be confused with the severity or leniency of punishments. A cruel punishment can be right, and a gentle punishment can be wrong. This principle is therefore important because the implementation of the principle of justice can require a correctly applied sentence for a minor.

The principle of humanism - encourages the court to impose the lightest possible punishment on a minor, taking into account such factors as the severity of the crime, the personality of the offender. The principle of humanism is enshrined in Article 21 of the Constitution of the Republic of Lithuania (*Lietuvos Respublikos Konstitucija, 1992*). This provision states that a person may not be tortured, harmed, humiliated or treated cruelly, and that means nothing else than that criminal law must ensure humane treatment to all defendants.

The proportionality principle - this principle is one of the components of the principle of individualisation of responsibility. This principle means that the focus must be on wider educational measures to help the delinquent change his or her behaviour and thinking towards a more positive and affirmative outcome.

Hence, the analysis of the legal regulation of juvenile criminal liability shows that it is regulated sufficiently to

achieve the purposes of punishment. Nevertheless, statistics on juvenile delinquency shows that the balance between the enforcement of justice and the effective achievement of the purpose of punishment is still not found.

The system of penalties and educational measures for minors and the legal aspects of immunity from criminal liability

Punishment is the most severe measure of coercion imposed by the state, and its imposition can also affect a person's future and have an impact on his or her career and personal life, as the imposition of punishment gives rise to a conviction. However, the law not only provides for the punishment of a juvenile who has committed a criminal offense, but he or she may also be released from criminal liability, or he or she may be subjected to educational measures.

The Criminal Law provides for the general purpose of both educational measures and punishments:

- 1) to ensure that the liability corresponds to the age and social maturity as established by the Criminal Code of the Republic of Lithuania;
- 2) to limit custodial sentences and increase the possibilities of applying educational measures to minors;
- 3) to help a juvenile to adjust his or her lifestyle and conduct by combining punishment for the committed criminal offence with the development of his or her personality;
- 4) to deter a person from committing new criminal offences (*Švedas et al., 2020*).

It should be noted that the terms of the sentence of juveniles convicted of intentional crimes should be halved after serving the sentence or after release from the sentence.

Juveniles living in the Republic of Lithuania are prone to crime, but the criminal jurisdiction is fighting it rapidly and has achieved positive results over a period of several years. According to the data of the Official Statistics Portal, juveniles committed 1,708 criminal offences (including 1,482 crimes and 226 criminal offences) in 2020; in 2019, there were slightly more of them - 1,717 criminal offences, of which 1,526 crimes and 1,919 criminal offences (*Oficialiosios Statistikos Portalas, 2022*).

For comparison, in the seven-year period from 2013 until 2020, the highest number of juvenile delinquencies committed took place in 2014. There were as many as 3,386 criminal offences, of which 3,053 were crimes and 333 criminal offences. Looking back to an even earlier period, in 2004, minors committed 5,021 criminal offences; in 2005 - 4,308 criminal offences; in 2010 – 3,260 criminal offences (*Oficialiosios Statistikos Portalas, 2022*). However, efforts have always been made to find the possibilities to avoid conviction for the first-time offender.

The criminal law provides the grounds on which a minor may be released from criminal liability, namely:

- 1) the victim has been apologised and fully or partially compensated by the juvenile delinquent by his or her work or money or they have eliminated the property damage caused; *or*
- 2) the offender has been subject to diminished responsibility; *or*
- 3) has pleaded guilty and regrets having committed a criminal offence or there are other grounds for believing that the minor will comply with the law and will not commit any new criminal offences (*Lietuvos Respublikos Baudžiamasis kodeksas, 2000*).

Exemption from liability may result in an educational measure.

Under the Criminal Code of the Republic of Lithuania, “a measure of educational effect is a measure of coercion imposed by a court, which restricts certain rights or obligations of juveniles who have committed a criminal offence.” These measures are usually aimed at educating a minor, helping to change his or her conduct, by helping to re-socialise and integrate into society. Educational measures for minors between the ages of 14 and 18 shall be imposed only by the court of law and only for such illegal acts that were prohibited at the time of the commission of the criminal offence. The following types of educational measures are provided for under the Criminal Law:

- 1) a warning;
- 2) the compensation for pecuniary damage or its elimination;
- 3) free public work;
- 4) transfer to the education and supervision of parents or other natural or legal persons who take care of children;
- 5) restriction of behaviour;
- 6) transfer to a special educational institution” (*Lietuvos Respublikos Baudžiamasis kodeksas, 2000*).

The measure of educational effect is not a punishment, but it is intended to improve the behaviour of a young offender, with the possibility of helping the person to socialize. There are cases, however, when a minor fails to comply with the educational measures imposed on him or her, in that case the court shall issue a written formal warning to the minor at least twice and warn him or her. If the juvenile does not respond to the warnings, the court of law may change the educational measure to another, except for handing over to a special institution. A minor fails to carry out educational measures in the following cases: when he or she fails to perform his or her obligations, fails to comply

with the court obligations, disregards a court warning for the commission of new criminal offences, and disregards the court prohibitions.

According to the Lithuanian Criminal Law, a punishment is a measure of state coercion imposed on a person who, by a court decision, has committed a crime or criminal offence. The purpose of sentence is to punish a person, i.e. to apply certain sanctions aimed at regulating or otherwise altering the conduct of an adult or a minor. According to V. Piesliakas “A sentence is the punishment of a person. A punishment is the essence of sentence” (*Piesliakas, 2009*). In the Lithuanian doctrine of criminal law, the term “sentence” is interpreted in two ways, as some authors believe that a sentence is equated with justice, while other authors argue that a sentence is simply a punishment of a person for the purpose of proportionate remuneration and a punishment for a criminal offense.

The punishment imposed on a minor will always be less severe than the punishment imposed on an adult.

The penalties imposed by the court of law on minors are regulated by Part 1 of Article 90 of the Criminal Code, and these are:

- 1) public work (they may not be allocated for more than 240 hours);
- 2) a fine (from 5 to 50 MLS - *minimum life standard*);
- 3) restriction of liberty;
- 4) detention (from 5 to 45 days);
- 5) term imprisonment (shall not exceed 10 years), (*Lietuvos Respublikos Baudžiamasis kodeksas, 2000*).

Juveniles can only be sentenced to a limited term of imprisonment, as the law does not provide for the rule that juveniles may be sentenced to an indefinite term “for life”. Statistically, the most common is a custodial sentence. In 2020, 171 juveniles were convicted by it, in 2019 – 211 and in 2018 - 313 minors (*Oficialiosios Statistikos Portalas, 2022*). It should be emphasized that the principle of justice and the individualisation of punishment shall be guaranteed in the purpose of punishment.

Conclusions

1. The Code of Criminal Procedure of the Republic of Lithuania stipulates the norm that a minor is a natural person who has not reached the age of eighteen at the time of the performance of the act. The most important precondition for the application of a juvenile’s criminal liability is responsibility, because only the fully responsible individual shall be required to behave lawfully and understand why one or another rule is imperative.
2. The legal framework governing the criminal liability of juveniles is very clear, but statistics on juvenile delinquency shows that a balance between the administration of justice and the effective achievement of the goal of punishment has not been found yet.
3. Minors are subject to very similar penalties as adults, but much more lenient. Courts also often take into account the fact that a minor regrets having committed a criminal offence, and may, for that reason alone, impose a lesser punishment as provided by law. Punishment of minors must be a measure of last resort, in the case when it is not possible to achieve the objective of criminal responsibility in any other way.
4. When imposing a sentence, it is necessary to take into consideration not only the seriousness of the crime, but also the personality of the person who committed the crime. In the case law practice, the measures of education and criminal effect imposed are selected by taking into account the minor’s personality and the severity and seriousness of the committed criminal offence.

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Kopsavilkums

Raksta pirmajā daļā tiek atklāts nepilngadīgā kā noziedzīga nodarījuma subjekta statuss. Šajā teorētiskajā daļā ir izklāstīts dažādu autoru piedāvātais nepilngadīgā jēdziens. Tas arī nodrošina juridiskos aspektus pēc dažiem gadiem un par to, par kādiem nodarījumiem nepilngadīgais var tikt saukts pie atbildības. Minēts arī cits kritērijs nepilngadīgajam kā noziedzīga nodarījuma subjektam.

Raksta otrajā daļā aplūkots tiesiskais regulējums, kas atklāj nepilngadīgo kriminālatbildības tiesiskos aspektus. Tiek pieminētas nacionālās un starptautiskās tiesības, kas regulē nepilngadīgā saukšanu pie atbildības un kriminālprocesa organizēšanu pret nepilngadīgo.

Pētījuma pēdējā daļa ir veltīta kriminālatbildības piemērošanai. Tiek atklāts jautājums par to, kāda ir nepilngadīgo kriminālatbildības sistēma Lietuvā. Argumentācijā tiek izmantoti Lietuvas oficiālās statistikas dati par nepilngadīgo personu izdarītajiem noziedzīgiem nodarījumiem.