Results of a Questionnaire Poll on the Effectiveness of Juvenile Punishments Conducted amongst Judges of Appellate Courts, and the Possibility to Use These Results in Legislative and Law Enforcement Activities

Iegor NAZIMKO,
Ph.D. in Law,
Senior Scientific Researcher,
Head of the Postgraduate Studies of the Donetsk Law Institute of the Ministry of Internal Affairs of Ukraine

On the basis of a questionnaire poll regarding the effectiveness of juvenile (minors') punishments conducted amongst judges, the scientific and practical recommendations to improve the current legislation in the proper area are revealed. The procedures for imposing punishment, the purposes of punishment and the problematic issues of releasing minors from serving punishment are considered. Advice on the improvement of law enforcement practices is given.

Keywords: **minor, punishment, judge, questionnaire poll, improvement**

The problems of punishment and the application of criminal sanctions to minors are always under the attention of the state, society and scientists. Since the Criminal Code of Ukraine (hereinafter, the CCU) came into force in 2001, more than a dozen dissertation researches have been devoted to these problems in order to resolve the ways and directions necessary for the improvement of legislation in the above-mentioned sphere. Despite that, the nature of juvenile justice has not radically changed. It is connected with the necessity of input from experts.

The proposed article focuses on the analysis of the results of a questionnaire poll regarding the effectiveness of juvenile (minors') punishments conducted amongst judges, and on the ways to improve current legislation in this sphere.

We must note that the questionnaire poll was conducted amongst representatives of the National School of Judges on 28 October 2013 [1]. The aim of the poll was to explore the opinion of respondents regarding the effectiveness of the imposition of punishment on minors.

In order to achieve that goal, there were the following prognostic tasks: 1) to discover the drawbacks of current legislation; 2) to work out recommendations to improve the quality of legislation concerning criminal liability, and to increase the efficiency of its application; 3) to confirm or deny the results of proper scientific research.

The respondents were represented by judges of the Trial Chambers of the Courts of Appeal of the Ukrainian regions, the cities of Kyiv and Sevastopol, and the Court of Appeals of the AR of Crimea. The reason for conducting the poll amongst these judges was their professionalism, competence, practical experience in the sphere of criminal justice applied to minors (more than 8 years old), generated position (point of view) and their own notions concerning the imposition of punishment on minors.

The questions in the questionnaire were put forth in a manner to avoid discrepancies, inconsistencies and the illogicality of the respondents' answers. If at the beginning of the questionnaire poll the respondent had confirmed or denied any position out of the criminal sphere in principle, that tendency should remain supported with certain answers. This contributed to the main idea of the questionnaire poll which was to make clear the objective opinion of a respondent experienced in the sphere of criminal justice applied to minors.

The first question in the questionnaire was: "What is your point of view on the changes of the process of imposing punishment on minors which have taken place in recent years?" In order to examine the professional opinion of judges regarding modern trends in the sphere of imposing punishment on minors, the variants of answers were not proposed. The majority of respondents (14 people, or 53.9%) considered that the punishments of minors had become more lenient (loyal, liberal, without imprisonment); the process of imposing punishment had become more human; the number of releases from punishment had sufficiently increased. Such answers were caused by the widespread practice of the humanization of criminal legislation as a whole, and, in particular, the provisions concerning the punishment of minors. 7 judges (26.9%) thought that the situation in that sphere had not changed recently, and 5 (19.2%) people noted that nowadays one could observe an excessive leniency or loyalty to minors that led to the repeated commission of and graver crimes.

The analysis of the answers to the first question allows for the assertion that the majority of judges think that the imposition of punishment on minors has become more human. However, some of them consider the excessive and ungrounded humanization of the present sphere with some professional caution and criticism.

The second question was aimed at defining the respondents' opinion regarding the development of the system of juvenile (minors') punishment.

Judges, in groups of 10 (or 38.5%), answered that it was necessary either to weaken the punitive measures or to keep them unchanged. 3 respondents (11.5%) proposed the combining of punitive measures with the upbringing of minors and their joining to some types of cooperation. 3 judges (11.5%) proposed the strengthening of punitive measures for minors.

The distribution of answers to that question confirmed the conclusion that minors, as a separate category of people, need special consideration regarding the legislative and other state bodies whilst imposing punishment.

The objective of the third question was to find out the opinion of judges regarding the aim of imposing punishment on minors. The importance of defining a professional point of view concerning that question is needed because of the fact that the aim is closely linked to the method of its

achievement within the targeted system. This means that the aim of punishment imposed on minors needs to be scientifically justified and practically accessible. Its achievement should rely on the most optimum methods.

15 judges (57.7%) answered that a minors' punishment needs to be aimed at their rehabilitation. 8 respondents (30.8%) noted that the objective of such punishment is specific prevention, whereas 3 judges (11.4%) mentioned common prevention. The peculiarity of that stage was the fact that 3 people noted the double task set forth for the punishment of minors which includes rehabilitation and special prevention. None of the responses set the punishment and combined all four components of the punishment's aim with regard to Article 50 of the CCU.

Such responses provide us with the opportunity to make conclusions regarding the necessity of the legal recognition of the aim of juvenile (minor's) punishment which is their rehabilitation. Other 'common aims of punishment' should be considered as an essence of punishment (the execution) or as positive social and psychological consequences of imposing punishment on minors (common and special preventions). Similar results were obtained during previous researches [*Nazimko*, 2012: 682-683].

The answers to the next question – "In general, do you think it is possible to reach the aim of rehabilitating juvenile criminals in modern conditions?" – sharpened the problems of understanding the effectiveness of implementation of the criminal and executive laws in regards to juvenile punishment. 24 judges (92.3%) pointed out that the aim concerned could be reached partially, and only 2 respondents (7.7%) answered that it could be attained in full. Such answers are primarily caused by the imperfection of legislation and the minimum effectiveness of its application both in the criminal legislative and the criminal and executive areas.

The fifth question aimed at solving the problems of achieving the rehabilitation of minors was formulated as follows: "What is your point of view regarding the possibility of reaching the goal of rehabilitating minors?"

There were no variants of answers proposed to the respondents, and consequently, the formulations differed in all of the responses. They were collected into two groups. 21 respondents (80.8%) pointed out that it is possible to reach the aim of rehabilitation when the punishment realization procedure is improved (by means of changing the milieu of minors and their involvement into community services and social programmes, forming positive social contacts amongst them, elaborating rehabilitation courses, stimulating and rendering psychological assistance, the advanced studying of a minor's personality, developing conscious, legitimate behaviour, etc.).

5 answers of the respondents (19.2%) were summarized as follows: "By means of a national preventive programme". As the judges answered that rehabilitation could be reached through the changes of a community's attitude to juvenile criminals; the strengthening of the role of family and school in the upbringing process; the expansion of extra-curricular establishments (sports, musicals, etc.); the prohibition of violent propaganda on TV; the increasing of the responsibility for selling tobacco products and alcoholic beverages to minors; the conducting of explanatory work at schools.

The answers received demonstrate that juvenile punishment depends not only on the common cultural and social factors but also on the proper organization and improvement of the procedure of the realization of punishment.

Question № 6 concerned the factors of influence under which judges select the kind and measure of punishment for juvenile criminals. 22 respondents (84.7%) answered that in imposing a punishment the court considers the personality of a culprit and the social significance of the crime. 8 judges (30.8%) also mentioned that when imposing a punishment they consider the aim and the motive of the crime. Only 2 people said that the judges also consider other factors.

With regard to the provisions of Article 103 of the CCU, imposing punishment on a juvenile, the court, in addition to the circumstances provided by Articles 65 to 67 of the CCU, considers his/her living conditions and upbringing, the impact of adults, the level of development and other peculiarities of his/her personality. Article 65 of the CCU states the common grounds for the imposition of punishment.

As is apparent, a judges' understanding of the factors that impact the selection of the kind and measure of punishment imposed on a minor does not fully correspond to the directions of the development of juvenile penology, as well as to the guarantees of imposing a just punishment. This state of affairs is caused both by subjective factors and by the fact that those common grounds regarding the imposition of punishment are not unified. That is why, it is necessary to improve current legislation regarding the imposition of punishment on minors and to increase the effectiveness of its application.

The seventh question – "What do you think? Is it necessary to differentiate the liability of people under 18 and those from 18 to 21?" – was aimed at clearing up the necessity of amendments of and additions to the CCU, as well as at confirming the results of some scientific researches [*Nazimko*, 2013a: 168]. With regard to different social and psycho-physical factors, we believe that criminal law needs to divide youths into the following groups: from 14 to 16 years old; from 16 to 18 years old; from 18 to 21 years old. Thereafter, it is necessary to differentiate the measures of criminal and law impact, including punishment, for each group. Our opinion has been supported by 16 respondents (61.5%). 10 judges (38.5%) answered that there is no such a problem. As we can see, the majority supports our proposals. Though, the rate of our supporters could have been larger if we had conducted the explanatory work before the questionnaire poll.

The next question was formulated as follows: "What is your point of view as to the effectiveness of releasing minors from punishment with a period of probation?" It brought to light something paradoxical. 18 judges stated that the effectiveness of releasing minors from punishment with a period of probation is average (16 respondents, or 61.5%) or even minimal (2 persons, or 7.7%). Only 8 judges (30.8%) noted that this kind of release from punishment is efficient. However, the practice of juvenile justice testifies that the release of minors from punishment with a period of probation is the most widespread measure of putting them under criminal and law influence. It is confirmed with statistical data and scientific research [*Gerasymchuk*, 2012: 1]. So, if the majority of judges consider that measure to be ineffective the next question arises: are the processes of humanization of the criminal liability not too politicized?

The ninth question – "What do you think about the adequacy of the obligations a court may impose on a minor whilst releasing him/her from punishment with a period of probation?" – was a logical continuation of the previous. Only 1 person (12.5% of the group) amongst 8 respondents, thought that this kind of release of juveniles was efficient, and answered that all the obligations are expedient and fully ensure rehabilitation. 5 other respondents from this group (62.5%) said that those obligations are functional, and 1 person (12.5%) noted that they did not correspond to their purpose. The other 18 people, who doubt the effectiveness of this kind of release from punishment, answered that the above-mentioned obligations are not efficient.

Such responses from judges gives us reasons to assert that the list of obligations to be imposed on a minor whilst releasing him/her from punishment with a period of probation should be revised and updated.

This conclusion is confirmed by the answers to the following question: "Is it necessary to extend the list of obligations which may be imposed on a minor by a court whilst releasing him/her from punishment with a period of probation?" 25 respondents (96.2%) answered that the list concerned needs an extension. Only 1 person (3.8%) noted that the list is effective in general.

The answers concerning the extension of that list were predicted [*Nazimko*, 2013b: 17]. Owing to that, the judges were asked about their propositions to increase the number

of duties in the legislation. 3 people (11.5%) mentioned that the list of duties represented in Article 76 of the CCU is to be extended, 11 people (42.2%) proposed that the Section 15th of the General Part of the CCU should include a separate article concerning such duties. 12 people (46.2%) supported the proposition of adopting a separate law regarding the punishment of minors in Ukraine. It is obvious that the judges consider the idea of the unification of the penal legislation applied to minors to be very up-to-date. This idea is reasonable enough. For instance, the German legislation also contains separate laws concerning the punishment of minors.

The next question concerned the most effective punishment to be chosen by judges. 4 people answered that the most effective kind of juvenile punishment is imprisonment and arrest. However, the respondents emphasized that the arrest of a minor should be short-term in order to employ to him/her a 'shock therapy'.

13 people (50%) noted that the most effective kind of punishment is the restraint of liberty. But this kind of punishment is not imposed on minors very often. In contrast to it, the other kind of criminal and law impact, that is the release from punishment with the period of probation, covers an amount of 68% out of all convicted minors. So, it is natural that 8 judges (30.8%) interpret that kind of impact as a kind of punishment and are convinced of its effectiveness.

The answers to this question testify that Ukrainian legislation does not foresee an effective punishment of minors and the mechanisms are not efficient [*Konovalova*, 2012: 14].

Answering the question "Does the existing system of juvenile punishment need improvement?" all 26 judges (100%) agreed that it needs to be extended to a more effective application of punishments. To reach that aim, they also proposed the following ways: a) to amend the law with other, alternative sanctions; b) to introduce the practice of probation. Such professional unanimity and propositions of judges should be taken into account during the processes of lawmaking, and revising and adopting the Law of Ukraine 'On Probation'.

The next question – "Do you expect the rehabilitation of minors whilst taking decisions regarding their placement in disciplinary colonies?" – also identified some problems concerning the punishment of minors. It turned out that 12 judges (almost 50%) do not expect the rehabilitation of a minor during a period of imprisonment but yet they still decide to use that kind of punishment. It is clear that the reason for such answers is the fact that some minors commit crimes systematically, even with particular cruelty, etc. But some of the answers have proved the minimum efficiency of this kind of punishment. It has confirmed that the methods of juvenile punishments needs to be revised.

Another question aimed at considering the effectiveness of another kind of juvenile punishment that is the fine. Only 7 respondents (34.6%) think that it is effective. The rest of them (19 people, or 65.4%) answered that this kind of punishment is not liable.

It is worth stressing that such kinds of juvenile punishment should be modified to provide reimbursement for the harm done by the juvenile and not by means of their parents, or to be replaced with community service. The mechanism applied today of fining juveniles is not effective.

The last question in the questionnaire was formulated as follows: "What problems regarding juvenile punishment remain unresolved and require solutions?" The answers of the judges can be sorted out into the next headings:

a) A formal approach to the choice of juvenile punishment;

b) The inefficient upbringing of minors during the period of the execution of the punishment;

c) The impossibility of personalizing the punishment of a minor because of the limited varieties of punishments used;

d) The absence of real control over a minor during the period of probation.

The results of the questionnaire poll allow us to conclude that:

1) Juveniles as a separate category of people need the special attention of the legislative and other state bodies which impose punishment on them;

2) It is necessary to be careful and critical in the case of the humanization of juvenile punishments so that they are neither redundant nor groundless;

3) The achievement of the aim of juvenile punishment depends on common cultural and social factors, as well as on the proper organization and improvement of its realization;

4) It is necessary to provide that rehabilitation is the only aim of juvenile punishment at the legislative level;

5) A separate legislative provision to provide common principles of imposing punishment on minors due to the fact that these principles are not unified, needs to be elaborated;

6) It is necessary to differentiate the kinds of juvenile punishments in accordance with the following age groups: from 14 to 16 years old; from 16 to 18 years old; from 18 to 21 years old;

7) Either the CCU or the methodological recommendations should ensure an individual approach to the choice of a minors' punishment;

8) The list of duties which are imposed on a minor when he/she is released from a punishment with a period of probation should be reviewed and updated;

9) The system of juvenile punishment needs to be expanded by means of amending the law by other, alternative sanctions; or introducing the practice of probation;

10) The possibility of working out the Draft Law of Ukraine 'On Probation' needs to be discussed by scientists and the proper experts.

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