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## RETROSPECTIVE OF MINORS' RESPONSIBILITY

*The article examines historical approaches to juvenile responsibility for wrongdoing. The views of the Middle Ages philosophers who studied the causes of crime, their motives, defended the principles of individualization of punishment, noted that punishment should be preventive.*

*The creation of correctional facilities for children without parents, homeless, abandoned and juvenile offenders is considered in Europe. The responsibility of minors in the Russian Empire is investigated. The post-revolutionary period is considered.*

*The legislative changes introduced by the Criminal Code of 1960 of the Criminal Code of Ukraine in 2001, the adoption of the Law on Probation and the establishment of juvenile probation centers are characterized.*

**Key words:** minors, crimes, responsibility, history, educational institutions, educational activities, juvenile probation.

**Target setting.** Juvenile delinquency as an extremely dangerous social phenomenon has existed in all historical times and has been a constant problem of life for every nation and community. Society has always looked for ways to overcome this phenomenon, taking into account the physiological and age characteristics of juvenile offenders. Many scientific works are devoted to the development of preventive measures, the humanization of juvenile law, the creation of optimal social and pedagogical conditions for correcting and re-educating adolescents who are in conflict with the law, but not enough attention is paid to the historical analysis of juvenile offender liability.

**Actual scientific researches and issues analyses.** Analysis of recent research and publications. In their works the history of development of responsibility of minors was studied by famous lawyers, educators, psychologists: E. Hilmanov, V. Hlushkova, T. Honchar, K. Dolhopolov, L. Dubchak, Ya. Kvitka, S. Kyrenko, A. Klevtsov, N. Kovtun, N. Krestovska, N. Orlovska, T. Prykhodko, O. Severin, V. Tatsii, O. Fedoruk, H. Chechel, and others.

**Purpose setting.** The purpose of the article is to conduct a retrospective analysis of the development of approaches to the responsibility of juvenile offenders, to study the history of the creation of public and private institutions for the custody and upbringing of children in conflict with the law.

**Statement of basic materials.** The ideas of educating the younger generation in the spirit of compliance with the laws that existed in society were expressed in ancient times. It is worth mentioning that in the Ancient World philosophers tried to answer the question: why are minors committing crimes? What should be the responsibility for their offenses? How to educate such offenders?

The first attempts to identify trends and approaches in dealing with juvenile offenders were developed in the writings of ancient philosophers: Aristotle, Democritus, Confucius, Pythagoras, Plato, Socrates, Cicero.

Mints M., analyzing the sociology of criminal manifestations, leads the assertion of philosophical thoughts of eminent philosophers.

So, Plato tried to investigate the causes of the crimes, their motives. He argued for the principle of individualization of punishment, which, in his opinion, should be consistent not only with the nature of the perpetrator, but also with the motives of the perpetrator, to take into account manifestations of fraud, cruelty and youthful credulity. He committed the death penalty, noted the personal nature of the punishment, that is, it should not extend to the offender's offspring, even in cases of encroachment on the state system. It is also noteworthy that Plato did not associate charity and evil with the natural qualities of a person, but with his upbringing, he believed that punishment should not only be punished, but also brought up.

The great philosopher and teacher of Alexander the Great, Aristotle, believed that the punishment to which the juvenile offender

should be should be preventative in nature and should cause fear in others who embarked on the path of crime, and at the same time on all citizens of the state. In sentencing, Aristotle considered it advisable to take into account the circumstances of the crime and not punish for crimes committed in circumstances "beyond the ordinary forces of human nature", that is, legitimate behavior should not require manifestation of heroism, and suggested delinquency. He was firmly convinced that the offender becomes corrupted by his will, but his spirit must rule over the body and mind over instinct as master over the slave.

Roman speaker and lawyer Cicero considered as the most important source of crimes "unreasonable and greedy passions to external pleasures, with infinite recklessness to satisfaction of needs", and also hope for impunity. Hence the recognition of the importance of punishment, which pursues the goal of universal and private prevention, which ensures the safety of society.

Seneca, a Roman philosopher and political figure, a writer like Plato, believed that punishment should seek both the correction of the guilty and the security of society through preventive influence on its other members [4, p. 87–89].

In various historical epochs, the state, regardless of socio-economic formation, has struggled with the phenomenon of child crime, studying the nature of the personality of the juvenile offender, involving the church, society, issuing special laws aimed at overcoming crime; Determined the degree of punishment of a minor (expulsion, expulsion, bail, fines, imprisonment and even the use of the death penalty, etc.).

Exploring the problem of juvenile responsibility, it should be noted that Confucius, Pythagoras, Plato, and Socrates argued that the traditional punishment should be replaced by correct education. And Democritus stated that human behavior should be based on a sense of obligation, not a fear of punishment, so punishment should be based on the principle of sufficiency and expediency [6].

In the Renaissance, philosophical ideas aimed at preventing crime dominated as one of the main elements of its eradication. This position was expressed in their writings by Thomas More, Tomazo Campanella, Bacon.

At the XVIII century, the rapid development of the doctrine of crime and its response began. Locke, Helvetius, Holbach, Diderot, Bentham, and other philosophers have also written about the causes of crime and measures to combat it, noting the social disorder of society and the need to prevent crime. In his work, *Crime and Punishment*, Beckaria noted that the purpose of punishment was not to torture or torment a person, but to prevent the perpetrator from harming society again and to keep others from committing the same thing.

At the end of XVIII beginning of XIX century many. European countries are experiencing correctional facilities for children left without parents, homeless, abandoned, and juvenile offenders. Later, differentiation of offenders into children and adolescents arises, and over time the issue of creating special juvenile correctional shelters arises. The first such institution was opened in Florence (Italy) - it was a home for abandoned and vicious children. In the second half of the eighteenth century. In Switzerland, well-known educator humanist I. Pestalozzi organized a "Poorer Institution", which brought together children from poor families and orphans. Collecting these children, the educator believed that physical labor in spinning and weaving workshops, on the farm and in parallel teaching them literacy and treatment would "teach them to live humanly" and protect them from neglect and begging [10, p. 22].

In France in the early XIX century the Mettreese Colony (1839) was established, in which there was a "House of Parental Corrections", which accommodated pedagogically neglected children whom parents could no longer cope with. These children have not committed any wrongdoing, but have been prone to it. After working with such children, which included mental and physical development, religious education, they returned to their families [7].

At the end of the XIX century. a "Care Society" was opened in Paris to deal with "morally neglected" children deprived of parental care (poor and homeless), potential criminals. Medical examinations were carried out here, they showed aptitudes and abilities. The "completely spoiled" were sent to penitentiary institutions, ill ones - to the hospital, pedagogically neglected - to orphanages and charitable institutions.

In England, the Corrections and Care Union was set up to provide shelter for the homeless in which they received their primary education and handicrafts. The Union took care of the employment of young people leaving the asylum, which was important for preventing and overcoming unlawful behavior and preventing offenses [10, p. 23].

The "School of the Abandoners", founded by Lord Schaeffsbury, also took care of the homeless minor, gave them education and taught crafts. The patronage of these children was carried out through charity work of both the state and the public.

In the second half of the XIX century. in England, along with the educational complex-colony for juveniles Stepney House (1867), a maritime school for "difficult" teenagers was created by Dr. T. Bernard in Norfolk, where the means of prevention and pedagogical influence on the illegal behavior of teenagers is maritime discipline and maritime discipline [9].

In Germany, public institutions for "particularly difficult" children, pedagogically neglected adolescents and offenders existed closed Hagenau establishments in Alsace, with children between the ages of 8 and 14 and boys between 14 and 21 years old. At the same time, teenage offenders made up only a third of the entire contingent, and the rest were children who were adopted at the request of their parents or of families where their parents were deprived of parental rights [10, p. 24].

In Zellendorf, there was the Am-Urban Institute for the Abandoned Children, founded in 1824. The facility housed children ages 6-16, who were also grouped in groups of 15 people. Each group had its own tutor. For the re-education of children, they used work that allowed them to acquire certain professional skills, provided them with primary education, formed hygienic on-the-go and healthy lifestyle skills (physical exercises), nurtured a sense of cheerfulness, aesthetic perception of the world [7].

As for domestic approaches to re-education of minors, the first mention of the responsibility of minors is found in the territory of Kievan Rus in the collection of ancient Russian law. In the early feudal state, childhood was not perceived as a value, and children were considered to be only family members and had no personality of

their own. Therefore, juvenile delinquency was considered a family problem. The preferred type of punishment was corporal punishment.

In tsarist Russia, the first foster homes for homeless and abandoned newborns appeared in Peter I's time. With the adoption of the Military Article in 1715, which governed liability for war crimes, minors act as a special subject of criminal responsibility. The Decree of Catherine II stated that persons under the age of 17 should be brought to the Senate to determine the extent of their guilt, and juveniles of 10-15 years who committed crimes were punished with harshness [3].

The next stage in the development of juvenile criminal law was the adoption in the Russian Empire of the Criminal and Correctional Penalties of 1845, which set the age of criminal responsibility from 10 years, and the court was obliged to establish: "with understanding" or "without understanding" acted a minor, aged 10 to 14 years. Depending on their age, the seriousness of the crime and the form of guilt, the minors could be transferred to parental education, sent to hard labor, correctional facilities, and could be sent to the monastery for correction. In the second half of the nineteenth century. In Moscow, at the Simon Monastery, a correctional school was opened, headed by young talented teacher M. Rukavishnikov [1].

In 1871, under the leadership of A Gerd, the first school for the hard-to-educate was organized, the St. Petersburg Agricultural Colony for Offenders. educational work in which it was based on the principles of humanism and respect for the individual, which radically distinguished it from similar correctional institutions in Western Europe. Increasingly well-known educators, doctors, biologists, and public figures are paying attention to the peculiarities of physiological and psychological development of juvenile offenders, as a rule, the presence of mental disorders and the need for a special approach to punishment, and involve the church and society in their upbringing.

In the Criminal Code, the Russian Empires of 1903 divided 3 age categories of minors: 10–14 years, 14–17 years, 17–21 years, and established the possibility, depending on the gravity of the crime, for the first two categories of substitution of appropriate punishment by forced education or its mitigation. Later, children's courts were created

in 1910, and in practice, such a measure of influence as the "transfer to responsible supervision" by the caregiver was introduced. Only an experienced teacher could act as a guardian in court [2, p. 16].

After the October Revolution of 1917, the humanization of criminal influence on minors took place: the jurisdiction of general courts and imprisonment for persons under the age of 17 were abolished, as it was believed that imprisonment did not fulfill the purpose of serving sentences: no more corrected, no more sentenced persons it spoiled them morally. A significant number of juvenile offenders have been released from prison. This refusal to prosecute juveniles has led to a sharp rise in crime. On the basis of the Decree of January 14, 1918, commissions were created for minors who had a medical and psychological orientation.

Agricultural colonies were being set up to house 18-year-olds, up to 21 years of age. At the same time, juvenile delinquent offenders with multiple convictions created labor communes that recruited prisoners on a voluntary basis.

Since 1921, following the adoption of the "Regulations on Minor Offenders", by court order, they have been placed in correctional homes (but not more than 20 years old). Later, they were reorganized into factory apprenticeship schools, in which persons aged 15 to 18 were serving their sentences. Later, the age of juvenile responsibility was reduced to 12 years, the list of crimes for which they were sent to correctional facilities was expanded, and the types of juvenile institutions were identified: isolation facilities, labor colonies, and distribution facilities.

For the first time in pedagogical practice, mass re-education of offender children in the labor colony named after A.G. M. Gorky, who was near Poltava and in the children's commune them. FE Dzerzhinsky (1920–1928) of the suburbs of Kharkiv was held by an outstanding teacher, writer, public figure AS Makarenko, developing the theory and methodology of upbringing in the collective and the theory of family upbringing [5].

In 1960, the Criminal Code fixed at the legislative level two types of punishments applicable to minors: imprisonment and correctional labor without deprivation of liberty. Substantial changes in the law on prosecution, imposition and serving of sentences occurred after the

adoption of the Criminal Code on April 5, 2001. For the first time, the entire section on "Features of Juvenile Criminal Responsibility" is devoted to the regulation of the punishment of minors. It regulates the procedure and conditions of sentencing. The main types of punishments and additional punishments were also applied to minors.

It should be noted that in recent years the number of juveniles in correctional facilities has decreased dramatically. This is due to new approaches to combating juvenile delinquency, which are being implemented with the adoption of the Law of Ukraine on Probation. The advantage of probation for minors is that they are re-socialized and corrected in the community, without isolation from society, separation from the family, which prevents the traumatic impact that the minors were subjected to while in detention. Juvenile Centers set up in the Probation Service provide an individualized approach to the provision of rehabilitation services, as well as implement social and educational activities to change criminal thinking and re-socialization.

**Conclusions.** Analyzing the historical stages and approaches to the responsibility of minors, we can draw the following conclusions:

- child crime is a constant problem in every society;
- for a long time, the problems of the offenses of children and adolescents, their upbringing and re-education were mainly taken care of by public figures, doctors, retired military personnel and teachers;
- only a minimum age of criminal responsibility was established over time, which was associated with the physiological process of being aware of, managing and understanding their actions and the dangers of their actions;
- the humanization of the legislation has led to the restriction and mitigation of the responsibility of minors, the use of social-educational and psychological-pedagogical approaches.
- an important step in the fight against juvenile delinquency was the adoption of the Law of Ukraine "On Probation" and the introduction of social-educational measures that provide an individual approach to the provision of rehabilitation services and include a number of social-educational measures.

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## **РЕТРОСПЕКТИВА ВІДПОВІДАЛЬНОСТІ НЕПОВНОЛІТНІХ**

*У статті розглянуто історичні підходи до відповідальності неповнолітніх за протиправні діяння. Досліджено погляди філософів Середньовіччя Арістотеля, Демокріта, Конфуція, Піфагора, Платона, Сократа та ін., які вивчали причини вчинення злочинів, їх мотиви, відстоювали принципи індивідуалізації покарання, зауважували на тому, що покарання повинно мати профілактичний характер.*

*Розглянуто створення в країнах Європи виправних закладів для дітей, які залишились без батьків, безпритульних, занедбаних, а також неповнолітніх злочинців: Заклад для бідних (Італія), Меттрейська колонія, Товариство піклування (Франція), Союз виправлення та піклування, Шкільний союз обідранців (Англія), державні заклади для «особливо важких» дітей (Німеччина) та ін. Проаналізовано наступний етап розвитку кримінального законодавства щодо неповнолітніх – прийняття у Російській імперії Уложення про покарання кримінальні та виправні 1845 року, відповідно до якого залежно від віку, тяжкості злочину та форми вини неповнолітні могли передаватись на виховання батькам, направлялись на каторжні роботи, у виправно-виховні установи, могли бути віддані на виправлення в монастирі. Пізніше у 1715 р. з прийняттям Військового артикулу неповнолітні виступають як спеціальний суб'єкт криміна-*

льної відповідальності. Розглянуто післяреволюційний період, який характеризувався гуманізацією заходів кримінального впливу на неповнолітніх, створення комісії для неповнолітніх, створення трудових будинків, трудових колоній та дитячих комун.

Охарактеризовано зміни в законодавстві, які впроваджено Кримінальним кодексом у 1960 року та закріплено 2 види покарань, що застосовувались до неповнолітніх: позбавлення волі і виправні роботи без позбавлення волі; прийняття Кримінального кодексу України 2001 року, в якому вперше цілий розділ «Особливості кримінальної відповідальності неповнолітніх» присвячено врегулюванню призначення покарань неповнолітнім. Розглянуто наступний прогресивний етап у питанні відповідальності неповнолітніх – прийняття Закону України «Про пробацію» та створення центрів ювенальної пробації.

**Ключові слова:** неповнолітні, злочини, відповідальність, історія, виховні установи, виховні заходи, ювенальна пробація.