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TRENDS IN THE PRACTICAL IMPLEMENTATION OF CRIMINAL RESPONSIBILITY OF JUVENILES ACCORDING TO THE CRIMINAL LAW OF LITHUANIA

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Annotation. *The author of the article continues his research in the area of criminal responsibility of juveniles as it pertains to the Criminal Law of Lithuania. The article focuses on practical aspects of the implementation of the Special Provisions of the Criminal Responsibility of Juveniles according to the Criminal Code of the Republic of Lithuania.*

The article analyses criminal cases and court rulings of various criminal courts in Lithuania. The author presents an analysis of legal regulations important in creating an appropriate system of juvenile responsibility, including principles of current criminal policy towards juveniles and discloses the most prominent trends. The major part of the article is dedicated to the analysis of suspension of sentence of juveniles, release of juveniles from criminal responsibility, and aspects of imposing educational measures. The author attempts to evaluate the rulings of courts in theoretical terms and determine the intent of the lawmaker as established in the Criminal Law.

Keywords: *juveniles, juvenile offenders, criminal responsibility of juveniles, special provisions of criminal responsibility of juveniles.*

Introduction

Court practice on the basis of new criminal laws is gradually gaining momentum. Important signs have appeared in the implementation of special provisions of criminal responsibility of juveniles that serve as indicators of the effectiveness of the provisions of law and the court's ability to use the law as a suitable instrument of social regulation. Purposeful criminal policy is the materialization of the lawmaker's efforts. The sentences of courts and the measures of criminal impact set therein determine the quality of practical criminal policy. The lack of theoretical reasoning on existing criminal policies towards juveniles requires a systematic analysis of the laws and thorough examination of court decisions.

The purpose of the article is a critical assessment of the practical criminal policy towards juveniles. The article analyses provisions of law and corresponding court rulings as to whether they fulfil the legislator's intent towards criminal policy of juveniles. As criminal policy initiatives are introduced by the legislator, they sometimes lack appropriate theoretical basis. Empirical analysis of criminal cases allows for an understanding of whether the lawmaker's intent is implemented in the way the original ideas were designed. Examples from various juvenile criminal cases could provide valuable ideas for improvement of the law and legal implementation policies.

1. The Basis of Criminal Responsibility of Juveniles in the Criminal Law of Lithuania

Evaluation of a juvenile offender's act under the terms of Criminal Law presents particular difficulties and need for special approaches with regard to the age of the offender, his social status, the social circumstances behind the act, and various other aspects of high importance. The genesis of delinquent behaviour is conditioned by various social factors. The problem of juvenile delinquency is becoming more complicated and universal.¹ Legal evaluation of juvenile criminal acts is considered an area of a high importance as it might lead to increased social problems in the future. While the evaluation process itself presents particular difficulties, the legal and social framework is still under development and needs much improvement. Because of historical reasons, the criminal jurisdiction of juveniles is an area of reform in Lithuania. As one of the major factors contributing to legal evaluation of delinquent behaviour, this area is in need of many improvements related to the Criminal Code and other legal acts.

Current trends of Lithuanian Criminal Law are largely based on the traditions set forth by the law of the Soviet era. The current definition of juvenile criminal responsibility is rather new and is designed on the so-called justice-oriented approach as opposed to welfare-based systems commonly known in many Western countries.² While there

1 *Juvenile Delinquency*. World Youth Report, 2003, p. 190.

2 Malby, S. *Juvenile Justice and the United Nations Survey on Crime trends and Criminal Justice Systems*.

are different scholarly opinions on the basics of the Lithuanian system,³ obvious similarities with models of retributive character systems of post-Soviet countries do exist. The evaluation of juvenile offences is largely an area of Criminal Law with other social mechanisms working only in support of the Criminal Law system. Existing research on this subject shows that this model is far from properly developed.⁴ Currently and in the nearest future, the main purpose of this system will be related to the appropriate implementation of the Criminal Law and various norms of punitive character set forth in the law. Proper implementation of fair procedural rights and punishment proportionate to the act committed are also areas of high priority. Lithuania, as a former socialist country has some specific features in its system of juvenile criminal responsibility. The most common are: two cut-off minimum ages for criminal responsibility—14 years for specific serious crimes and 16 years for other crimes,⁵ special rules on the imposition of punishment, special regulations related to release from criminal responsibility and punishment, and certain educational measures. Notwithstanding the real punitive capacities of the current system, it has obvious drawbacks, such as premature criminogenic influence on behalf of state justice system, possible stigmatization, negative effects on the juvenile's future life, shortcomings in the formation of adequate social relations, and other adverse outcomes.

The foundation for the current Criminal Law system of juveniles was laid down in the process of designing the new Criminal Code⁶ of Lithuania in 2000, which came into effect on 1 May 2003.⁷ Until then, special legal regulations on the responsibility of juveniles did not exist. Only a few provisions regarding the age of an offender (14 and 16 years), limits on punishment and some procedural requirements (e.g., special requirements for interrogations of juveniles, obligatory presence of defence lawyers) were set within criminal jurisdiction and employed by the investigative authorities and courts. Some specific measures that existed during the Soviet era, such as commissions on the affairs of minors, became outdated, and were dismantled in the early nineties, after restoring Lithuanian independence. These inefficient and rather ideological institutions were not replaced by any proper system for juvenile affairs. In fact, the system of juvenile criminal responsibility was inadequate and mostly under-developed until the implementation of modern judicial trends set forth in the Criminal Code of 2000. Such

European institute for crime prevention and control, affiliated with the United Nations. Crime and Criminal Justice Systems in Europe and North America 1995-2004. HEUNI, Helsinki, 2008, p. 121.

- 3 Drakšienė, A.; Drakšas, V. *Nepilnamečių baudžiamoji atsakomybė* [Drakšienė, A.; Drakšas, R. The Criminal Responsibility of Minors]. Vadovėlis. Antroji pataisyta ir papildyta laida. Vilnius, 2008, p. 105, 127.
- 4 Uscila, R. Atkuriamojo teisingumo koncepcija, jo modeliai nepilnamečių justicijoje [Uscila, R. The Concept of Restorative Justice, its Models in the Jurisdiction of Minors] *Nepilnamečių justicija Lietuvoje: teorija ir praktika*. Metodinis leidinys. Vilnius, 2007, p. 46.
- 5 Malby, S., p. 122.
- 6 Drakšienė, A. *Nepilnamečių baudžiamoji atsakomybė Lietuvos Respublikos baudžiamojame kodekse projekte*. [Drakšienė, A. The Criminal Responsibility of Minors in the Project for the Criminal Code of the Republic of Lithuania] *Teisė*. 1998, 32: 32.
- 7 Lietuvos Respublikos baudžiamasis kodeksas. *Valstybės žinios*. 2000, Nr. 89-2741; 2009, Nr. 87-3663 [Republic of Lithuanian Criminal Code. *Official Gazette*. 2000, No. 89-2741; 2009, No. 87-3663].

new trends were largely determined by international standards, actions of international organizations and ratification of pertinent treaties.⁸

It is widely acknowledged both internationally and nationally that the desired outcome of a criminal evaluation of a juvenile delinquent should lead to an undamaged personality with net positive social effect. The entire system must be designed with the interests of the child as the primary consideration.⁹ The Criminal Law introduces two contradictory ideas: a desire to remedy the character of the child and a desire to implement appropriate punishment or even to restore justice. This contradiction functions as a conceptual obstruction not easily overcome by Lithuanian lawmakers. Criminal Law and criminal procedures without other significant social measures—education, occupation, leisure, care—cannot achieve the purpose set forth within the law—to prevent persons from committing criminal acts, debar them from committing new criminal acts, influence them so they would obey the laws, change their way of life, or even correct them. An analysis of the regulations of the Criminal Code (CC) reveals that some of these regulations are far too ideological because they overreach the area they are supposed to regulate. Denoting the aims of the special provisions of juvenile criminal responsibility, the law declares (in article 80) its aims to combine punishment with personal improvement and education. The implementation of such aims is extremely complicated given the limited scope of the Criminal Law. Overemphasizing the special provisions of juvenile criminal responsibility is not the right approach. From the perspective of positive outcomes, the acting authorities implementing special provisions of juvenile criminal responsibility should orient their efforts to avoid negative effects on the juvenile. The criminal act of a young person should not be addressed in a way that could lead to a vicious circle of criminality—beginning with one criminal offence, leading to improper treatment of the individual, further negative social circumstances and resulting in new criminal acts.

In addition to the Criminal Code, some special regulations also apply to juveniles. The Law of the Republic of Lithuania on Minimal and Average Care of the Child¹⁰ (in effect since 1 January 2008) foresees a significant system of legal measures for child care. From the standpoint of criminal responsibility, it is extremely important that the law addresses the concerns of children who commit criminal acts prior to legal age of responsibility. The law declares that measures of minimal and average care could be imposed on the child that has not reached the age set forth in the Criminal Code of the

8 The most important international treaties regarding juveniles should be mentioned: The United Nations Convention on the Rights of the Child; United Nations Guidelines for the Prevention of Juvenile Delinquency; United Nations Standard Minimum Rules for the Administration of Juvenile Justice United Nations Rules for the Protection of Juveniles Deprived of their Liberty; United Nations Guidelines for Action on Children in the Criminal Justice System. Sakalauskas, G. Tarptautiniai standartai nepilnamečių justicijoje [Sakalauskas, G. International Standards in Juvenile Law]. *Nepilnamečių justicija Lietuvoje: teorija ir praktika*. Metodinis leidinys. Vilnius, 2007, p. 27.

9 United Nations Committee on the Rights of the Child. Report on the Ninth Session, May-June 1995. UN Doc. CRC/C/43, Annex VII, 64.

10 Lietuvos Respublikos vaiko minimalios ir vidutinės priežiūros įstatymas. *Valstybės žinios*. 2007, Nr. 80-3214. [Republic of Lithuanian Law on Minimal and Average Care of the Child. *Official Gazette*. 2007, No. 80-3214].

Republic of Lithuania who commits an act with the marks of a criminal act or criminal offence. The law also elaborates the system of implementing special procedures for transferring of a delinquent child to special educational houses, a system that was practically non-existent until the implementation of this law. Most importantly, the law prescribes the procedural side of how to implement such measures. We may predict that such a law should fill the gap, even if in limited capacity, within the system of juvenile responsibility. The provisions create opportunities for the prosecutor's office to direct a delinquent child to special institutions without the harmful effects of criminal investigation at a very early stage, thus avoiding premature criminogenic influence by criminal justice institutions and early convictions. A review of actual criminal cases shows that there are examples where the absence of the necessary legal age meant that under-age delinquents were not dealt with properly or their social circumstances were not addressed.

The need for a well-designed and functioning system remains. Such a system of the juvenile responsibility should not be based on proper criminal jurisdiction and prosecution, as many in Lithuania still think. Other positive social models, such as restraint from prosecution, mediation, models of restorative justice should be employed.¹¹ Specialized juvenile courts, which are absent at the moment, should be established to deal with juvenile cases specifically, with an emphasis on the delinquent.¹²

2. Court Practice: Sentence Suspension, Release from Criminal Responsibility and Educational Measures

The model of criminal responsibility of juveniles is being implemented by the courts rather gradually since the introduction of a new system in 2003. Initial drawbacks will hopefully be alleviated by reasonable court decisions in the future. Many criminal cases present significant challenges to the current juvenile criminal policy. There are obvious and usually undesirable inconsistencies in court decisions which could be resolved by policy makers and courts of justice.

One of the most significant reactions to criminal offenses committed by juveniles is the suspension of sentence. Another important measure is release from criminal responsibility. Therefore, Articles 93 and 94 of the Criminal Code are of utmost importance in examining criminal cases. The majority of juveniles who commit criminal acts for the first time are released from criminal responsibility on the grounds of Article 94 of the Criminal Code. Subsequent criminal acts lead to the more severe, though still lenient court decision of suspension of sentence for the juvenile; and only then, subsequent criminal deeds by the same juvenile may lead to a real conviction and imprisonment.

11 Uscila, R., p. 60.

12 Pakštaitis, L. Nepilnamečių baudžiamosios atsakomybės ypatumai Baudžiamajame kodekse, jų taikymo bei tobulinimo problemos [Pakštaitis, L. Characteristics of Juvenile Criminal Responsibility in the Criminal Code, Problems of their Applications and Improvement]. *Nepilnamečių justicija Lietuvoje: teorija ir praktika*. Metodinis leidinys. Vilnius, 2007, p. 46.

The suspension of sentence for the juvenile is one of the most important factors in modern criminal policy. While it is characterized by a limited degree of punitive measure, it is still considered effective, as the convicted person is faced with the fear of punishment. Even though the punishment is not executed in this case, various restrictions to the convicted juvenile apply. As a measure of Criminal Law, the suspension of sentence for a juvenile was well known in the pre-war period of Lithuanian jurisdiction. It was deemed that the sentence itself without its execution would be adequate warning for the juvenile given that the juvenile meets the requirements established by the law and the court.¹³ In the current Criminal Law of Lithuania, suspension of sentence for the juvenile in criminal cases is widely applied, and in most cases it has the desired effect. While no reliable statistical data on recidivism exists, some suggest that only a small percentage of juveniles repeat criminal acts following a suspension of sentence. On the negative side, there is widespread opinion among judges and prosecutors that the suspension of sentence for a juvenile is not completely effective as it does not directly affect the juvenile. Poor clearance of criminal acts by the law enforcement agencies also leads to unsatisfactory results as the defendants do not feel the real force of the law. Cost effectiveness should also be mentioned as a positive factor in a very budget-limited law enforcement atmosphere. According to the opinion presented by justices of local municipalities, suspension of the sentence for a convicted juvenile is perceived as too lenient a measure to be taken seriously; even the opinion of “getting nothing” sometimes persists in the court room. Here is a representative example of such a case. V. K., R. J., S. R., A. Ž. were convicted for attempted theft and received ten, six, and three months of imprisonment, respectively. However, on the basis of Article 92 parts 1 and 2, the suspension of a sentence of one year was applied.¹⁴

In many cases, the suspension of sentence is not applied when the juvenile has previous convictions, regardless of the criminal act. For example, R. K. was convicted for committing a crime listed in Article 180 (robbery) of the Criminal Code for a term of one year and three months of imprisonment. Even though he filed a complaint on the severity of the conviction, the Appeal court decided that such a conviction is suitable for a repeated criminal act against personal property.¹⁵ Interestingly, in this case and many similar ones, the court’s motivation listed in the sentence reads as follows: “the criminal deed is committed not for the first time; [the offender] has been previously convicted for property crimes and the new crime has been committed only four months after committing the first crime, <...> the crimes show systematic character <...> the measures applied had no positive effect, the character of the person is negative; circumstances listed above point out that positive conclusions were not drawn by the defendant J. J., <...> a real sentence of imprisonment should be imposed as there are no grounds to conclude

13 Drakšienė, A.; Drakšas, R. p. 352.

14 Vilniaus 2-ojo apylinkės teismo baudžiamoji byla Nr. N1-504-369/05 [2nd district court of Vilnius, criminal case No. N1-504-369/05].

15 Klaipėdos apygardos teismo baudžiamoji byla Nr. 1A-264-174/2007 [Klaipėda regional court, criminal case No. 1A-264-174/2007].

that the goals of punishment will be achieved without the execution of the sentence”¹⁶. On the other hand, in some cases the suspension of sentence is applied even though the data of the case show no grounds for such a decision. The decision to apply suspension of sentence is sometimes doubtful from the theoretical point of view, especially when numerous criminal acts have been committed by the same individual or same gang of juveniles. For example, D. T., among others, had been convicted for nine criminal acts of theft and desecration of a tomb, but the sentence was suspended.¹⁷ The nature of the criminal acts committed by juveniles varies and the evaluation of such acts requires special attention. For example, in one case two juveniles, E. J. and A.G., both 16, were convicted for a rather peculiar act: in February 2007, on the second storey of a building on Algirdo street in Vilnius, they hung a third juvenile, L. S., 15, by her feet from the balcony and after a while let her fall to the ground. Various bodily injuries were inflicted, including a broken nose with deformations, concussion, and a bite wound on the tongue, some of them leading to permanent disabilities. A. G. was convicted for this act and a suspension of sentence for the term of one year was applied.¹⁸

Another significant decision in cases involving juveniles is release from criminal responsibility. This option is significant in punishing, correction, and influence on the personality. The courts are guided to apply the institute of release from criminal responsibility of juveniles in any case suitable for such decision. The Supreme Court has ruled that courts should decide if there is a possibility to apply release from responsibility on a case by case basis.¹⁹ However, release from criminal responsibility of juveniles is only an option and not an obligation. Thus, the specific circumstances in each criminal case are of utmost importance and should be the main grounds for such decision.²⁰

In most situations, the courts follow the guidance outlined by the Supreme Court. Release from criminal responsibility is applied in many cases with intentional criminal acts. There are, however, exceptions. Some acts are committed by negligence. In other cases, more than one criminal act is committed. For example, one court presents this motivation: “The juvenile E. B. committed light and not very serious criminal acts, he is on trial for the first time, he has not committed any other violations, lives with his mother; thus, taking into consideration his age, the court comes to a conclusion that there is reasonable grounds to conclude that he will adhere to the law in the future and will not

16 Panevėžio miesto apylinkės teismo baudžiamoji byla Nr. N1-130-581/2008 [Panevėžys city district court, criminal case No. N1-130-581/2008].

17 Pakruojo apylinkės teismo baudžiamoji byla Nr. N1-197-284/2007 [Pakruojis district court, criminal case No. N1-197-284/2007].

18 Vilniaus apygardos teismo baudžiamoji byla Nr. 1A-1099/2007 [Vilnius regional court, criminal case No. 1A-1099/2007].

19 Lietuvos Aukščiausiojo Teismo 2001 m. birželio 15 d. nutarimas Nr. 30 „Dėl teismų praktikos atleidžiant nepilnamečius nuo baudžiamosios atsakomybės“. *Teismų praktika*. 2001, 15 [Supreme Court of Lithuania, 15 June 2001 decision No. 30 “Regarding release of juvenile offenders from criminal responsibility“. Court Practice, 2001(15)].

20 Lietuvos Aukščiausiojo Teismo baudžiamoji byla Nr. 2K-66/2004 [Supreme Court of Lithuania, criminal case No. 2K-66/2004].

commit any criminal acts, and the court rules to release him from criminal responsibility and the criminal case is dismissed.²¹

As mentioned above, the law establishes release from criminal responsibility as a matter of court discretion. However, not only simple criminal acts may lead to release from responsibility. Some more grievous acts may lead to release as well. For example, a group of three juvenile offenders, A. M., E. A. L. M. were tried in court for robbery and extortion according to Article 180 of the Criminal Code. E. A. and L. M. were released from criminal responsibility on the grounds of Article 93 part 1 section 3 of the Criminal Code.²²

There are numerous more complicated situations where a decision of one court is followed by an opposite decision by an appeal court. It is not easy to ascertain why courts reach different decisions in similar situations. However, from the theoretical point of view, it is important to find some criteria for such differentiation. Here are some typical examples of this kind. D. B. had been convicted for violation of public order (Article 284 of the CC) and the punishment of restriction of liberty for the duration of ten months was imposed. Following a complaint by the convicted person, the appeal court reversed the decision and released the juvenile from responsibility, which it followed with the justification that the juvenile committed the crime for the first time, admitted his guilt, regretted his act, and there were no aggravating circumstances in his act.²³ The release from criminal responsibility should be followed by appropriate educational interventions. There should not be situations where the release from responsibility leads to no responsibility at all.²⁴ In such cases, juveniles are released from responsibility with no appropriate interventions except the supervision of parental guidance, which appears to be rather formal. In other cases, the release from responsibility has been followed by a decision to impose measures of compensation for the real damage of the criminal act in the amount of 40,000 litas over the course of five years and an imposed obligation to continue work.

Typically, release from criminal responsibility is not applied in the case of a repeat crime.²⁵ As the Supreme Court has ruled, if a juvenile offender commits more than one criminal act and is under prosecution for all of them, there is no grounds for the court to entertain that the crime has been committed for the first time.²⁶ There are other uncommon situations where the release from responsibility is not applied as the juvenile

21 Kauno apylinkės teismo baudžiamoji byla Nr. 1-46-456/2007 [Kaunas district court, criminal case No. 1-46-456/2007].

22 Šiaulių apylinkės teismo baudžiamoji byla Nr. 1-50-776/2007 [Šiauliai district court, criminal case Nr. 1-50-776/2007].

23 Panevėžio apylinkės teismo baudžiamoji byla Nr. 1A-271-366-007-59 [Panevėžys district court, criminal case No. 1A-271-366-007-59].

24 Jonavos apylinkės teismo baudžiamoji byla Nr. 1-61-598/2007 [Jonava district court, criminal case No. 1-61-598/2007]; Trakų rajono apylinkės teismo baudžiamoji byla Nr. N1-13-213/2008 [Trakai region district court, criminal case No. N1-13-213/2008].

25 Lietuvos Aukščiausiojo Teismo baudžiamoji byla Nr. 2K-473/2007 [Supreme Court of Lithuania, criminal case No. 2K-473/2007].

26 Lietuvos Aukščiausiojo Teismo baudžiamoji byla Nr. 2K-543/2006 [Supreme Court of Lithuania, criminal case No. 2K-543/2006].

defendant has not shown regret for his act, even though it might have a very formal character in some cases,²⁷ or in others cases, if the juvenile defendant has not confessed his guilt.²⁸

The release of a juvenile from criminal responsibility on the grounds of Article 93 of the Criminal Code is sometimes related to other grounds for release from responsibility provided by the law, such as when the person becomes harmless due to changed circumstances (Article 36) or on the grounds of conciliation between the offender and the victim (Article 38). From the theoretical perspective of Criminal Law, release from criminal responsibility of juveniles is unique and should not be confused with common grounds for release from responsibility. The release of juveniles from responsibility is characterized by unique and beneficial features targeting the needs of juvenile evaluation with emphasis on age and social status. This position is supported by court decisions with some exceptions. For example, juveniles A. J., Z. J., R. P., and E. R. were convicted for various criminal acts against property and by decision of the court were released from criminal responsibility on the grounds of becoming harmless due to changed circumstances (Article 36). This decision was appealed by the prosecutor as it did not fulfill the requirements of law. As the convicted persons were juveniles, the grounds for release had to meet the regulations applicable to special juvenile provisions and not on any other general grounds.²⁹ The Supreme Court ruled: “The court of first instance, in releasing the juveniles from responsibility according to regulations prescribed by Article 38 of the Criminal Code, applied the law improperly as it followed regulation not suitable for juveniles. The board of the Supreme Court concludes that the sentence of the court of first instance is to be changed and the juveniles are to be released from responsibility on the grounds of Article 93 of the Criminal Code”.³⁰ There is one case with quite the opposite ruling: having no grounds to release a juvenile from responsibility based on special regulations, the court ruled that in special cases the court might use general grounds for release from responsibility.³¹ Special regulations should be followed every time when dealing with a juvenile offender.

Based on regulations, the release of a person from responsibility should be followed by educational interventions. Article 82 of the CC provides such measures: warning, compensation of real damage or elimination of such damage; public works of educative character; transfer of the juvenile to parental supervision or supervision by persons appointed for the supervision; restriction of actions and behavior; transfer of the juvenile to a special establishment. The court may impose no more than three measures which

27 Lietuvos Aukščiausiojo Teismo baudžiamoji byla Nr. 2K-216/2007 [Supreme Court of Lithuania, criminal case No. 2K-216/2007].

28 Vilniaus apygardos teismo baudžiamoji byla Nr. 1 A-314/2006 [Vilnius regional court, criminal case No. 1 A-314/2006].

29 Vilniaus apygardos teismo baudžiamoji byla Nr. 1A-229/2007 [Vilnius regional court, criminal case No. 1A-229/2007].

30 Lietuvos Aukščiausiojo Teismo baudžiamoji byla Nr. 2K-559/2006 [Supreme Court of Lithuania, criminal case No. 2K-559/2006].

31 Klaipėdos apylinkės teismo baudžiamoji byla Nr. 1A-190-107/2007 [Klaipėda district court, criminal case No. 1A-190-107/2007].

have to be compatible. Such measures were designed to combine punitive and educative elements.³² It is widely acknowledged by law enforcement officers and judges that such measures are too abstract and may not have the intended effect. Some of them are only declarative and with a lack of executive institutions and officers they tend to bring no desirable effect. Many of the aforesaid measures are imposed by the courts, yet their real effect is not easily established. The most common measure in criminal cases is the restriction of actions and behavior of a juvenile offender. There are exceptions, since courts tend to apply as many measures as possible. In one criminal case, a juvenile offender M. C. was released from criminal responsibility for committing a crime prescribed in Article 178 of the CC (theft). The court decided to apply the following measures: issue a warning, transfer him to his parents to supervise and educate him until he reaches the legal age of 18, and to restrict his actions and behavior for twelve months; and during this time to oblige him to continue his studies, obtain some knowledge on the responsibility for theft and robbery, ban him from communicating with G. L.; and make clear that failure to follow these measures may result in having these measures replaced with other, more severe ones.³³

In some cases, measures are not implemented because of the juvenile's refusal. In the absence of such measures or upon refusal to follow them, release from responsibility loses its social weight. However, without special legal provisions, nothing can be done by the court or the prosecutor. A juvenile offender may refuse to get involved in public works of educative nature; such work can only be carried out with his or her consent.³⁴ In some criminal cases, no measures are imposed on juveniles released from responsibility. Such situations may be considered deficient from the perspective of law and theory, but they do exist.³⁵

Based on our review of court practice in juvenile cases, we may present some practical suggestions. While the court is free to decide on what is in the best interests of juvenile offenders, the most desirable result may be achieved by combining the best measures on a case by case basis. The preservation of the interests of a juvenile and concurrent establishment of law and order within society is the main goal. In assessing the personality of a juvenile, it is important to take into consideration the traits common to every juvenile/young offender. There are three groups of traits of utmost importance for the court. Assessing the personality of a juvenile, close attention should be paid to the features indicating one's life and actions before the criminal act, during the criminal act, and after the criminal act. The first group of traits may help assess the quality of the juvenile offender's life—education, work or both, the type of job, the opinions of co-workers, work ethics, the nature and duration of work relationships, whether the job

32 Drakšienė, A.; Drakšas, R., p. 148–149.

33 Vilniaus rajono apylinkės teismo baudžiamoji byla Nr. N-1-432-269/2005 [Vilnius district municipal court, criminal case No. N-1-432-269/2005].

34 Kauno apygardos teismo baudžiamoji byla Nr. 1A-744-317 [Kaunas regional court, criminal case No. 1A-744-317].

35 Šiaulių apygardos teismo baudžiamoji byla Nr. 1A-338-332/2007 [Šiauliai regional court, criminal case No. 1A-338-332/2007].

ensures his/her livelihood, and personal characteristics exhibited in the work place. Important information on the personality of the offender may also be gleaned from personal actions in the course of committing the crime—the type of intent in committing the act, complicity, character of criminal actions, the duration of the criminal act, whether the act was cynical or greedy, and the type of criminal gain obtained. Also important are the actions of the person after the criminal act—were there attempts to conceal the crime, attempts to report the crime to law enforcement. The social context and the individual personality must be examined regardless of the type of crime and specificities of the case. An informal, targeted approach should be used when dealing with juvenile offenders.

Conclusions

Special provisions of criminal responsibility for juveniles are designed on the so-called justice-oriented approach as implemented by the courts. The implementation is rather successful; however, it still lacks much-needed additional support on the legal basis.

While all regulations in the Criminal Code regarding juveniles are significant, the most important practical aspects are the suspension of sentence for juveniles, release of juveniles from criminal responsibility, and imposition of educational measures. According to court practice, release from criminal responsibility is applied in the majority of cases of juveniles who commit criminal acts for the first time.

An analysis of educational measures shows that some of them lack specific content, and are thus not applied by the courts. The most common measure in criminal cases is the restriction of actions and behavior.

The study reveals a tendency of balanced application of the regulations of the Criminal Code, though some discrepancies do occur. Various courts across Lithuania tend to follow the recommendations and rulings of the Supreme Court that concern juvenile jurisdiction.

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PRAKTINIO NEPILNAMEČIŲ BAUDŽIAMOSIOS ATSAKOMYBĖS NUOSTATŲ ĮGYVENDINIMO TENDENCIJOS LIETUVOS BAUDŽIAMOJOJE TEISĖJE

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Santrauka. Straipsnio autorius nagrinėja nepilnamečių baudžiamosios atsakomybės ypatumų, numatytų Lietuvos Respublikos baudžiamajame kodekse, klausimus. Straipsnyje toliau plėtojamos ankstesniuose straipsniuose iškeltos idėjos apie nepilnamečių baudžiamosios atsakomybės specifinius bruožus, numatytus Baudžiamame kodekse, akcentuojant praktinį jų taikymą baudžiamosiose bylose. Straipsnio tikslai – trumpai aptarti įstatymų leidybos naujoves, susijusias su nepilnamečių nusikalstamų veikų vertinimu, apžvelgti teismų

praktikos formavimąsi nepilnamečių baudžiamosiose bylose, nurodant praktinius teigiamo ir neigiamo pritaikymo aspektus.

Didelis dėmesys straipsnyje skiriamas bausmės vykdymo atidėjimui, nepilnamečių atleidimui nuo baudžiamosios atsakomybės bei auklėjamojo poveikio priemonių parinkimo ir skyrimo klausimams. Straipsnio autorius analizuoja įvairių instancijų atskirų Lietuvos teismų baudžiamąsias bylas, teismų nuosprendžius ir nutartis; bando patikrinti, ar įstatymų leidėjo pozicija, įtvirtinta 2000 m. Baudžiamajame kodekse, pasitvirtina, yra praktiškai pritaikoma ir rezultatyvi kriminalinės justicijos požiūriu; kokių pasitaiko teismų praktikos nevienodumų bei trūkumų. Straipsnyje nagrinėjama, kodėl panašiose bylose vienais atvejais skiriama atlikti bausmės vykdymą, kitais – neskiriama, kodėl pasitaiko, kad įstatymų nuostatos traktuojamos nevienodai. Praktiniu požiūriu labai aktualus nepilnamečių atleidimo nuo baudžiamosios atsakomybės klausimas, nagrinėjamas vertinant teismų motyvaciją, santykį su Baudžiamąjo kodekso keliamais reikalavimais. Straipsnyje bandoma gilintis į auklėjamųjų priemonių sistemos efektyvumą, atskirų priemonių skyrimą atleidžiant asmenis nuo baudžiamosios atsakomybės, šių priemonių parinkimą bei motyvavimą teismų nuosprendžiuose bei nutartyse dėl jų pasirinkimo.

Baigiant pateikiami teisėsaugai ir teismų praktikai reikšmingi teoriniai siūlymai sprendžiant nepilnamečių atsakomybės problemas. Teismams siūlomas detalus ir išsamus nusikalstusiojo asmenybės vertinimas, atsižvelgiant į detalius požymius, apibūdinančius nusikalstamą veiką bei socialinę aplinką, kurioje nepilnametis gyveno iki šios veikos ir po jos padarymo.

Reikšminiai žodžiai: *nepilnamečiai, nepilnamečių baudžiamoji atsakomybė, nepilnamečių baudžiamosios atsakomybės ypatumai.*

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