

Juvenile Justice and the Defense of the Rights of a Child in the Republic of Tajikistan

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Abstract—The article is devoted to the issues of the formation, present state and development of juvenile justice in the Republic of Tajikistan. Nowadays the juvenile justice system in the Republic of Tajikistan is in initiation stage. Nevertheless, there are a number of public authorities, focusing on the regulation of legal relations, where one of the parties is a juvenile. The legislation of the republic also does not have a separate law “On Juvenile Justice”, but some laws and Codes have a special focus – the protection of the rights of a child (Law of the Republic of Tajikistan “On Defense of the Rights of a Child”), or include special sections and chapters regulating relations with juveniles (Criminal Code, Criminal Procedure Code, Penal Code). The main problems of the defense of the rights of a child in the Republic of Tajikistan are determined, and recommendations to overcome them are given.

Keywords—juvenile justice; juvenile; the defense of the rights of a child ; law; legal system

I. INTRODUCTION

The Republic of Tajikistan is a relatively small country, with a population of over 8 million people. The peculiarity of the demographic composition of the population is that the majority of people are children and young people - 70% of the total number of people living in the territory, while the number of children under 18 is 49% [1]. It is predictable that the defense of the rights and interests of juveniles should be one of the priorities of the country. It was reflected in the Strategy of the State Youth Policy in the Republic of Tajikistan until 2020, focused on young citizens of the Republic of Tajikistan aged from 14 to 30 years, as well as the Program of reforming the justice system for children for the period of 2017-2021.

The period of childhood determines the increased vulnerability of an individual; he is not fully aware of the existing mechanisms of state legal protection and therefore he cannot use them. The importance of childhood is noted and supported by many authors. Due to this fact both state and

public institutions should contribute to the education of morality and the inclusion of a child in society [2].

At the same time, the degree of danger to which a child is exposed in society increases, as the increasing intensification of economic and social conditions, the legal nihilism of a considerable part of adult population can lead to a natural reaction of young generation — a shift to the negative side of moral values [3].

II. PROBLEM STATEMENT

Considering the issues of juvenile justice in the Republic of Tajikistan, it should be noted that the understanding of this conception in the CIS countries usually has a negative color, and the term “juvenile justice” has been fairly demonized. In addition, in modern legal literature, published in the post-Soviet space, there is still no uniform concept of juvenile justice. Existing views are mainly reduced to the understanding of juvenile justice in a broad and narrow sense.

It can be understood as a set of legal mechanisms, medical and social, psychological, pedagogical and rehabilitation, as well as other procedures and programs designed to ensure the most complete defense of the rights, freedoms and legitimate interests of juveniles, as well as those responsible for their education, implemented by the system of state and non-state bodies, institutions and organizations [4].

It also can be understood as a judicial system executing juvenile justice and having the tasks of judicial defense of the rights and legal interests of juveniles [5].

The analysis of the regulatory legal acts of the Republic of Tajikistan for the period from 2003 to 2017 allows concluding that the juvenile justice system in the Republic of Tajikistan is understood as a system aimed at the defense of the rights of juveniles in the judicial system, both in conflict with the law (offenders), and victims of crime. Such a conclusion can be

drawn from the National Action Plan for the Defense of the Rights and Interests of a Child for 2003-2010 [6].

According to the analysis of the “juvenile justice” section of the above mentioned plan, it can be stated that the justice system of the country does not fully comply with the Beijing Rules. There are no separate courts and specially trained judges and prosecutors for juvenile offenders, and law enforcement officials are not well aware of international standards for the treatment of juvenile offenders.

In addition, there is no separate legal act regulating the operation of juvenile justice in the country, and the norms of criminal and criminal procedure legislation need further improvement.

The opponents of juvenile justice claim that the creation of the state system responsible for children and family relations can destroy family. The supporters of this approach believe that the destruction of family will occur through interference in its activities and “denial of its fundamental values, including the right to choose methods of education, the right to choose a way of life”. However, in the current legislation of the Republic of Tajikistan there have long been norms that establish the possibility of interference in family activities. The main example of such interference may be the possibility of deprivation of parental rights, established by the Family (Domestic Relations) Code of the Republic of Tajikistan (Chapter 69).

According to the provisions of the article, parents may be deprived of parental rights due to a number of circumstances stipulated in the article (non – payment of separate maintenance, refusal, without good reason, to take their child from maternity hospital or from other medical or educational institutions, social protection institutions, etc., abuse of parental rights, child abuse, chronic alcoholism or drug addiction, the commission of an intentional crime against the life or health of their children or spouse).

According to the logic of the opponents of interference in family, parents themselves have the right to choose methods of educational influence. And it is true, since the norms of juvenile justice should be applied only in cases where educational effect goes beyond the legal behavior, when it is capable of causing significant harm to the mental and physical state of a juvenile [7].

It is necessary to note that the solution level of the issues of decriminalization of juveniles in the current legislation is rather low: there is uncertainty and incompleteness of a number of norms aimed at the defense of the rights and legitimate interests of juveniles. Under these conditions, specific state bodies acquire special significance. Their activities include the defense of children rights, the prevention of juvenile criminality, the prevention of neglect and delinquency [8].

III. FINDINGS

In the Republic of Tajikistan, such bodies operate at all levels of public authority: at the level of state power and local self-government. Such bodies include the Human Rights

Defender of the Republic of Tajikistan (The Department for State Defense of the Rights of a Child); The Committee on Women and Family Affairs under the Government of the Republic of Tajikistan; Committee on Youth, Sport and Tourism Affairs under the Government of Tajikistan; The Commission on the Rights of a Child; The management of the organization of medical services for mothers, children and family planning of the Ministry of Health and Social Protection of the Population of the Republic of Tajikistan; The ministry of education and science of the Republic of Tajikistan.

The bodies aimed at the defense of the rights of juveniles in the Republic of Tajikistan should primarily include the Commission on the Rights of a Child, which occupy a special place among the subjects of the system for the prevention of neglect and juvenile delinquency. The Commission on the Rights of a Child is a permanent body implementing state policy to ensure the rights and interests of a child in order to implement the legislation of the Republic of Tajikistan, as well as the international legal obligations of the Republic of Tajikistan arising from the United Nations Convention on the Rights of a Child and other international treaties in the field of the defense of the rights of a child [9]. Talking about social workers, their activities should be aimed at providing social, psychological, legal assistance to juvenile offenders as a part of legal proceedings conducted in relation to juveniles [10].

Thus, nowadays in Tajikistan there is a whole group of government bodies at various levels whose competence includes regulation and solutions of problems of socialization of juveniles. At the same time, one of the main problems in this area is the lack of interaction between them, the lack of clarity in the distribution of competences in accordance with the branches and levels of power, duplication and overlap in activities.

In 1993, Tajikistan ratified the Convention on the Rights of a Child. The provisions of the Convention are reflected in a number of legal acts.

Currently, the Ministry of Justice of the Republic of Tajikistan has a Department for the Rights of a Child and Juvenile Justice, this department functions as a branch in the Office of International Legal Relations Management.

The following are the legislative bases for juvenile justice:

1. The Constitution of the Republic of Tajikistan, November 6, 1994 [11];
2. The Family Code of the Republic of Tajikistan, 13.11.1998;
 - 2.1. The provisions on Child Protective Services, dated January 25, 2017, No. 30 [12];
 - 2.1.1. The procedure of identification and recognition of children deprived of parental care, dated October 6, 2016, No. 419 [13];

3. Criminal Code of the Republic of Tajikistan, 21.05.1998 [14]

4. Code of Criminal Procedure of the Republic of Tajikistan, 03.12.2009 [15]

5. Penal Code of the Republic of Tajikistan, 06.08.2001. [16]

6. The Code of Administrative Offenses of the Republic of Tajikistan, December 31, 2008 [17]

7. The Code of Procedure on Administrative Offenses of the Republic of Tajikistan, July 22, 2013 [18]

8. The Law “On the Defense of the Rights of a Child” dated March 18, 2015, No. 1196 [19];

8.1. The Regulations on the Commissions for the Rights of a Child of January 25, 2017 No. 29 [20];

9. The Law “On the responsibility of parents for the education and upbringing of children”, dated August 2, 2011, No. 762 [21];

10. The Law of the Republic of Tajikistan “On the order and conditions of detention of suspects, accused and defendants”, dated June 28, 2011 No. 720 [22];

11. The program of reforming the juvenile justice system for 2017–2021 of 29.06.2017, No. 322 [23];

12. The Decree of the Government of the Republic of Tajikistan “On the Procedure for the Provision of Medical Services for Counseling in the Field of Reproductive Health to Juveniles and Young People, including Representatives of At-Risk Groups” dated November 28, 2015 No. 748 [24].

According to the authors, the legislation regulating the activities of juvenile justice needs to be reformed.

In particular, it is necessary to establish legislative requirements for the presence of special education or qualifications when appointing judges to consider cases of juveniles. Currently, the cases involving juveniles are considered by the deputy chairmen of a court, this requirement was established at the Supreme Court level; however, it is advisable to make the relevant requirements at the level of the legislative power, for example, by the amendment of the Chapter №44 of the Code of Criminal Procedure with the article “Juvenile Justice Judges”.

Within the framework of structures involved in the administration of juvenile justice or related activities, it is advisable to develop legal acts regulating the procedure and mechanisms for identifying the suicidal behavior of adolescents and young people in conflict with law.

As a positive example, it should be noted that in the course of the program for reforming juvenile justice for 2010-2015, the courts rooms for juveniles of the Firdavsi, Sino, Shohmansur, Ismoil Somoni districts of Dushanbe, Khujand, Kulyab, Kurgan-Tyube and Isfara were reconstructed.

With the support of UNICEF, seven child-friendly offices in district courts were created. 4 of them are equipped with technology for recording and broadcasting conversations with a child. Special judges were appointed in at least 23 courts of the republic in order to consider cases of juveniles.

For the first time a full-time psychologist was introduced in juvenile prison.

IV. RESULTS AND DISCUSSION

The formation of a juvenile justice system in the Republic of Tajikistan requires changes in the following directions:

- It is necessary to develop special instructions for dealing with juveniles in conflict with law.

- It is necessary to introduce changes to Penal Code of the Republic of Tajikistan, which prohibits the placement of a juvenile in a disciplinary detention center, by excluding from the punishment measure applied to those sentenced to imprisonment in juvenile correctional facility (Chapter №144 of Penal Code of RT)

- It is necessary to amend the Law “On the procedure and conditions of detention of suspects, accused and defendants” (Chapter 34), which prohibit the joint detention of adults and juvenile offenders;

- It is necessary to amend Chapter №44 of the Code of Criminal Procedure with Article №434.1 “Judges dealing with cases involving juveniles”. This amendment would have special requirements for judges involved in the consideration of cases concerning juveniles, expressed in the presence of extensive work experience and skills to work with them.

The main problems of juvenile justice in Tajikistan include the following aspects:

- There is no effective coordination mechanism in the juvenile justice system;

- There is no mechanism for collecting statistics on children who are witnesses or victims of crimes and violence;

- There are no specially trained inspectors or prosecutors investigating cases involving children [25].

- The terms of detention and interrogation of juveniles need to be reduced.

- There is no specified order and no deadlines for notifying parents and legal representatives of a child about the fact of detention;

- The existing criminal-executive legislation needs to be amended, so, on the basis of the existing provisions of national legislation, juvenile and adult offenders who are detained may be held together, which is unacceptable and contrary to paragraph 13.4 of the Beijing Rules.

Moreover, a juvenile offender may be placed in a disciplinary detention center. In addition, there are no rules

that allow an independent medical examination of juvenile prisoners to identify torture and ill-treatment;

- Educational measures specified in the Criminal Code need to be reviewed and expanded;

- Not all the courts and investigative bodies dispose friendly rooms for interrogation of juveniles;

- There is a shortage of social workers, teachers, and psychologists working with children in juvenile justice system;

- Nowadays there is no special body that would study the living conditions, psychosocial and other characteristics of juveniles subject to criminal prosecution, rendering assistance in obtaining education, employment, social, medical and other assistance;

- Rendering social, legal and other assistance to the extent determined by the individual program of social and legal assistance to correct behavior of an individual in order to prevent him from committing new criminal offenses; a similar probation service for juvenile offenders;

- Up to the present moment no research has been conducted on the effectiveness of the work of psychologists in juvenile justice system;

In order to overcome the existing problems, it is possible to give the following recommendations:

- To create a social service under the commissions on the rights of a child in the cities and districts of the republic;

- To train social workers, teachers and psychologists to work with children in juvenile justice system;

- To develop a coordination mechanism in juvenile justice system;

- To include in the system of collecting statistics, the data on children who are witnesses or victims of crimes and violence;

- To develop special instructions for the treatment of juveniles (both offenders and victims) and conduct training for persons involved in law enforcement (employees of juvenile and youth crime prevention service, investigators, prosecutors);

- To review and amend Criminal and Penal Codes, the regulations of the periods of detention and interrogation of juveniles; a detained child must be interrogated within 12 hours, and the period of detention of a child in the relevant bodies is reduced from 72 hours to 24 hours. It is also necessary to establish the duty of law enforcement agencies to immediately notify parents and legal representatives of a child about the fact of detention;

- To amend Penal Code of the Republic of Tajikistan, this prohibits the placement of a juvenile in a disciplinary detention center; to establish the obligation of an independent medical examination for signs of violence, torture and ill-

treatment against them. Also it is necessary to make amendments to the Law “On the procedure and conditions of detention of suspects, accused and defendants”, which prohibit the joint detention of adults and juvenile offenders;

- To supplement Part №2 of Chapter №89 of Criminal Code of the Republic of Tajikistan (exemption from criminal liability with the use of compulsory educational measures), such as - sending children to the center of additional education and other rehabilitation centers;

- To create friendly rooms for interrogation of juveniles in all courts;

- It is necessary to conduct education and training of social workers, teachers and psychologists on activities in the context of juvenile justice system;

- To develop plans and conduct training on the rights of a child for law enforcement, penitentiary, lawyers and judges;

- To explore the possibility of creating a probation service for child offenders;

- To study the role and effectiveness of psychologists in juvenile justice system;

- To consider the need for the introduction of juvenile justice officer in the staff of the execution of criminal penalties.

V. CONCLUSION

Thus, it is possible to conclude that juvenile justice in the Republic of Tajikistan is still at the initial stage, but the prospects for its development suggest that this direction in Tajikistan has all the prerequisites for the successful functioning in the future. The implementation of the above mentioned measures will ensure the defense of the rights and freedoms of juveniles in the Republic of Tajikistan at a higher level.

The study revealed a number of problems affecting the defense of the rights and legitimate interests of juveniles. These problems are associated both with aspects of lawmaking nature and with the difficulties of staffing bodies responsible for the defense of the rights of juveniles. Another direction of work with juveniles is their social security. These activities require certain economic and material resources. At the same time, subsidies for juveniles and young people, the development of juvenile justice system, ensuring adequate defense of the rights and interests of juveniles, will increase the civic potential of the younger generation and educate the generation aimed at the development of the country and society, raising living standards and ensuring democracy.

A juvenile whose rights are infringed, or not properly secured, is an easy target for members of criminal community or people with an antisocial orientation. The lack of faith in law, as a consequence of the violation of the rights of a child, leads to such a negative consequence as the spread of the ideology of legal nihilism.

The findings of the study can present the basis for reforming the legislative and institutional mechanisms aimed at the defense of the rights and legal interests of juveniles.

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References

- [1]. Statistical digest "Population of the Republic of Tajikistan for January the 1st, 2018", Agency on Statistics, 2018.
- [2]. N. Meleshko, "Juvenile justice in the Russian Federation", Criminological problems of development. SPb. Publishing house of R. Aslanov "Legal Center Press", 2006, p. 45.
- [3]. E.B. Melnikova, G.N. Vetrova, "The draft law "On juvenile justice in the Russian Federation", Human Rights Defender, 1996, No. 2, p. 54.
- [4]. Juvenile Justice Issues: Almanac. No. 3. Moscow, 2001, p. 34.
- [5]. A.R. Gabuev, "Juvenile justice: the theoretical and legal aspect", Management consulting, 2014, p. 46.
- [6]. National Action Plan for the Defense of the Rights and Interests of a Child for 2003-2010. Approved by Resolution of the Government of the Republic of Tajikistan of July 4, 2003 No. 309, p. 7.
- [7]. S.V. Yarovaya, "Juvenile Courts: Pros and Cons", Lawyer. 2003. No. 11 (31), p. 76.
- [8]. Yu.E. Pudovochkin, "Juvenile criminal law: concept, structure, sources", Journal of Russian law, 2002, No. 3, p. 81.
- [9]. Regulation on the Commission on the Rights of the Child of August 1, 2008 No. 377. [Electronic resource]. Retrieved from: <http://mmk.tj/ru/legislation/legislation-base/2011>
- [10]. V.Yu. Koshcheev, "Juvenile justice as a means of protecting the rights of minors", The role of law in modern society: achievements and prospects: materials of the international scientific-practical conference dedicated to the 20th anniversary of the Constitution of the Republic of Tatarstan - Dushanbe, 2014, p. 31.
- [11]. Constitution of the Republic of Tajikistan. Dushanbe: Irfon, 1994, p. 83.
- [12]. Family Code of the Republic of Tajikistan. [Electronic resource]. Retrieved from: http://www.adlia.tj/show_doc.fwx?rgn=805&conttype=2&login=yes
- [13]. Regulations on Child Protective Services, dated January 25, 2017, No. 30. [Electronic resource]. Retrieved from: http://www.adlia.tj/show_doc.fwx?rgn=128509&conttype=2
- [14]. The procedure for identifying and recognition of children deprived of parental care, October 6, 2016, No. 419. [Electronic resource]. Retrieved from: http://www.adlia.tj/show_doc.fwx?rgn=127845&conttype=5
- [15]. Criminal Code of the Republic of Tajikistan. [Electronic resource]. Retrieved from: http://base.spininform.ru/show_doc.fwx?rgn=2324
- [16]. The Code of Criminal Procedure of the Republic of Tajikistan. [Electronic resource]. Retrieved from: http://base.spininform.ru/show_doc.fwx?rgn=30692
- [17]. The Penal Code of the Republic of Tatarstan, [Electronic resource]. Retrieved from: http://online.zakon.kz/Document/?doc_id=30586704&mode=p
- [18]. RT Code of Administrative Offenses, December 31, 2008. [Electronic resource]. Retrieved from: http://base.spininform.ru/show_doc.fwx?rgn=26352
- [19]. Code of Procedure on Administrative Offenses of the Republic of Tajikistan, 07.22.2013. [Electronic resource]. Retrieved from: http://base.spininform.ru/show_doc.fwx?rgn=61772
- [20]. Law "On Defense of the Rights of a Child" dated March 18, 2015, No. 1196. [Electronic resource]. Retrieved from: http://base.spininform.ru/show_doc.fwx?rgn=74545
- [21]. Regulations on the Commissions for the Rights of a Child of January 25, 2017 No. 29. [Electronic resource]. Retrieved from: http://www.adlia.tj/show_doc.fwx?Rgn=128504
- [22]. Law "On the responsibility of parents for the education and upbringing of children" dated August 2, 2011, No. 762. [Electronic resource]. Retrieved from: http://base.spininform.ru/show_doc.fwx?rgn=46582
- [23]. Law of the Republic of Tajikistan "On the procedure and conditions of detention of suspects, accused and defendants", dated June 28, 2011 No. 720. [Electronic resource]. Retrieved from: http://base.spininform.ru/show_doc.fwx?rgn=46062
- [24]. The program of reforming the juvenile justice system for 2017–2021 of 29.06.2017, No. 322. [Electronic resource]. Retrieved from: http://www.adlia.tj/show_doc.fwx?Rgn=129679
- [25]. Decree of the Government of the Republic of Tajikistan "On the Procedure for Providing Medical Services for Counseling in the Field of Reproductive Health to Minors and Young People, including Representatives of At-Risk Groups" dated November 28, 2015 No. 748. [Electronic resource]. Retrieved from: http://base.spininform.ru/show_doc.fwx?rgn=81471