Ivane Javakhishvili Tbilisi State University
Faculty of Law

Journal of Law

№1, 2019

უნივერსიტეტის
გამომცემლობა

UDC(უაკ) 34(051.2)
ს-216

Published by the decision of Ivane Javakhishvili Tbilisi State University Publishing Board

ISSN 2233-3746

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Individual Aspects of Regulating Substantive Criminal Law Issues of Juvenile Justice

The following article discusses the following individual aspects of regulating substantive criminal law issues according to the juvenile justice code: the importance of considering the best interests of juveniles in juvenile justice; legislative shortcomings that impede the realization of the best interests of juveniles; aims of juvenile punishment, their interaction and importance at the time of determining the form of sentence. The article also focuses on the importance of the principle of proportionality in juvenile justice, the necessity of considering the personalities of juvenile convicts, juvenile sentencing and legislative regulation of sentencing, and the rules of use and importance of restorative justice (diversion and mediation) in criminal juvenile justice oriented toward their correction and education.

Key words: *Juvenile justice, juvenile sentencing, the aims of juvenile sentencing, the principle of proportionality, the best interests of the juvenile, diversion and mediation.*

1. Introduction

Georgia adopted a new Juvenile Justice Code on June 12, 2015, which regulates the issues related to the implementation of juvenile justice. Before Georgia adopted the Juvenile Justice Code, the related matters were regulated by the Substantive Criminal Code of Georgia, in which a separate chapter was envisaged for the criminal responsibility of juveniles, in particular, for sentencing juveniles, the exemption from criminal responsibility and punishment, and criminal responsibility.

Since Georgia has adopted the Juvenile Justice Code, the code regulates not only substantive criminal issues but also issues related to procedural criminal law and sentence enforcement. However, the article will discuss those substantive criminal aspects of the Juvenile Justice Code, which are of particular interest not only because the study of juvenile justice does not have a long history in Georgia, but also because it can be the subject of a different interpretation.

2. Protection of the Best Interests of Juveniles

Under Article 1 of the Juvenile Justice Code, the purpose of the code is to protect the juvenile's best interests in the resocialization and rehabilitation process of the juvenile in conflict with the law. In addition, the purpose of the code is to protect the rights of juvenile victims and juvenile witnesses, prevent further victimization of juvenile victims and juvenile witnesses, prevent reoffending and preserve the law. The provision of the legislative code aims to protect the best interests of the juvenile, resocialization and rehabilitation of the juvenile in conflict with the law, which indicates the advantage

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of the juvenile's interest over the public interest. This is natural because the criminal sanction applied to a juvenile has an educational and correctional function, in contrast to the criminal sanction applied to an adult person, which aims at general prevention of crime and restoring justice besides resocialization of the convicted.

What are considered as the juvenile's best interests is explained in Article 3 of the Juvenile Justice Code, which implies that the juvenile's safety, well-being, health care, education, development, resocialization-rehabilitation and other interests, which are determined in accordance with international standards, individual characteristics and consideration of the opinion of the juvenile. The best interests of juveniles consider the change of the purpose of traditional justice, i.e., sentencing criminals for rehabilitation and restorative justice.[1] The priority of the best interests of the juvenile is considered to be a viable option for the use of mediation, a measure provided by the Juvenile Justice Code.

When talking about the protection of the best interests of the juvenile, the question arises as to whether there is any shortcoming in the Georgian legislation regarding the implementation of the best interests in justice. According to the opinions expressed in legal literature, the competitive criminal proceedings that the Criminal Code of Georgia provides do not contribute to the true interest of the juvenile since the above-mentioned procedural principle restricts the judge in asking questions on the ground of agreement by the parties and find evidence. The practice of plea bargaining is allowed by the Juvenile Justice Code of Georgia (for example, part 2 of Article 71 is also considered to be incompatible with the best interests of the juvenile).[2]

The application of plea bargaining in juvenile justice is unacceptable. In the criminal juvenile justice law of Germany, unlike the criminal law for adults, the use of plea bargaining is considered inadmissible. The German Juvenile Justice Code does not envisage legislative regulation of plea bargain. If the German criminal law is aware of the institution of plea bargain regarding an adult, this institution is treated as something uncommon in juvenile justice.[3]

3. The Purpose of Sentencing Juvenile Convicts

Article 65 of the Juvenile Justice Code of Georgia implies re-socialization, rehabilitation and prevention of crime as the purposes of sentencing juvenile convicts, while the code does not at all imply the restoration of justice. While sentencing juvenile convicts should predominantly serve an educational function, the question arises as to whether restoration of justice can be a purpose the sentence.

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1 *Hamilton K.,* Notes from the Textbook of Juvenile Justice Legal Reform, Children's Legal Center and United Nations Children's Fund ("UNICEF") (trans.), Tbilisi, 2011, 34 (in Georgian).

2 *Shalikashvili, M., Milanadze G.,* Juvenile Justice (Textbook), 2nd ed., Tbilisi, Freiburg, Strasbourg, 2016, 76-77 (in Georgian); *Shalikashvili M.,* Notes on the Juvenile Justice Code, "Journal of Criminology", № 1, 2016, 79 (in Georgian).

3 *Streng F.*, Jugendstrafrecht, 4 Aufl., Heidelberg, 2016, 121-122, §7 VII Rn. 241; *Ostendorf H., Drenkhahn K.,* Jugendstrafrecht, 9 Aufl., Baden-Baden, 2017, 64, II 5, Rn. 57.

Modern criminal law is preventive by nature and oriented toward prevention of crime and resocialization of the convicted, rather than toward the restoration of justice. However, restoration of justice is sometimes considered to be an important goal of sentencing adult convicts. However, the question arises as to whether restoration of justice is one of the goals of sentencing in juvenile criminal justice.

In the history of adult criminal justice, there have been cases where restoration of justice, rather than prevention of crime or resocialization of the convicted, was considered as a basis for legitimizing the sentence. For instance, in Germany, the National Socialists have been convicted a long time after committing criminal offences and reoffending by these individuals was not expected in the future. The conviction of the sentenced convicts here did not involve crime prevention and resocialization of the convicted; restoration of justice was the only legitimate basis for the use of punishment in this context.[4] However, in juvenile justice, it is impossible for restoration of justice to be named as the primary purpose of sentencing.

All the regulations in juvenile criminal law are based on the idea of a sentence having an educational function in order to prevent new offences. Juvenile criminal law is called educational criminal law for this reason, while the latter is referred to as the law of perpetrators, which is contrasted with the law of action.[5] Thus, in reference to adults, the law uses a sentence as punishment, while it is used for educational functions in reference to juveniles.[6]

Young people (adolescents) are at the stage of change of roles between childhood and adulthood. At the same time, being an adolescent is not just a status. The phase of adolescence has acquired the importance of an independent condition in modern times. In the phase of adolescence, people can easily find themselves in a field that makes the socialization process difficult. They must comply with existing social and legal order. These demands both the ability to test their own behavior and the rules that affect the adolescent and determine the action. The phase of adolescence is related to a certain level of status and behavioral instability that increases the potential to deviate from the determined rules of behavior, which is why the process of socialization is complicated and this condition is compulsory to take into consideration during the determination of sentence.[7]

When sentencing a juvenile, the preconditions for sentencing are necessary to be fulfilled. This also concerns responsibility. In other words, the need for correctional skills is essential. The risk of recidivism falls under this need. If there is a risk of recidivism, the use of appropriate sanctions is permitted for the purposes of upbringing. Otherwise, the process may be suspended if the threat is small.[8]

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4 *Roxin C.*, Strafrecht, Allgemeiner Teil, Band I, 4 Aufl., München, 2006, 88, §3 Rn. 44.
5 *Streng F.*, Jugendstrafrecht, 4 Aufl., Heidelberg, 2016, 9, §1, III, Rn. 15.
6 *Shalikashvili M., Mikanadze G.,* Juvenile Justice (Textbook), 2nd ed., Tbilisi, Freiburg, Strasbourg, 2016, 127 (in Georgian).
7 *Laubenthal K., Baier H., Nestler N.*, Jugendstrafrecht, 2 Aufl., Heidelberg, 2010, 2, §1, Rn. 3.
8 *Ostendorf H., Drenkhahn K.,* Jugendstrafrecht, 9 Aufl., Baden-Baden, 2017, 142, V 3, Rn. 175.

In legal literature, there exist arguments and counterarguments regarding the upbringing and educational functions of juvenile criminal justice. Pro-arguments include the existence of juvenile justice code and phrases such as "correction instead of punishment" and "correction through the punishment," used in juvenile criminal law.[9]

When using a punishment for juveniles, whether the sentence is guided by an educational and correctional standpoint depends on the crime committed. Sometimes a juvenile crime may be a result of the problems of juvenile development. In some cases, the main variable is the lack of upbringing.[10] It is therefore important to consider the determinant of the crime committed by the juvenile.

The violation of a norm by a young person is not often the expression of the lack of upbringing. However, correction is considered as the main principle of juvenile criminal law.[11] The educational view is considered to be the foremost purpose of juvenile justice when a juvenile is sentenced only due to the degree of the crime.[12] The Supreme Court of the Federal Republic of Germany pointed out in its decision about "educational primacy" as "the basis of all regulations of juvenile criminal law". In regard to the above mentioned, the upper limit of the sentence applied to the juvenile is also indicated.[13]

Despite the predominant importance of the educational standpoint in juvenile sentencing, it is considered inadmissible to violate the proportionality of punishment with regard to the accusation. This implies that the educational standpoint should be taken into consideration as long as the accusation does not exceed the upper threshold.[14] On the one hand, it is considered inadmissible to reduce the importance of education and correction to mere expediency, and on the other hand, the punishment's size cannot be resolved in educational terms if it is incompatible with the accusation.

Criteria for suitability, necessity and proportionality will be checked in the use of sanctions against the juvenile. According to the principle, which states that the correction is of primary importance, the answer should be given to the question whether the offence of a juvenile is an expression of obstruction in the process of studying the norm or it is a consequence of deviation in his/her normal development. There is a need for reaction with regard to the correction process when the violation in the process of learning is evident. Various educational programs are regarded as such reactions. On the second stage, the suitability of sanctions regarding the achievement of aims is checked.[15]

When it comes to juvenile penal law, the question arises whether juvenile punishment fulfils this function, when the sentence is not alleviated but becomes stricter. As relevant legal literature

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9 *Ostendorf H., Drenkhahn K.,* Jugendstrafrecht, 9 Aufl., Baden-Baden, 2017, 59, II 4, Rn. 51.

10 Ibid, 59, II 4, Rn. 52.

11 *Laubenthal K., Baier H., Nestler N.*, Jugendstrafrecht, 2 Aufl., Heidelberg, 2010, 2, §1, Rn. 4; *Diemer H., Schatz H., Sonnen B. -R.,* Jugendgerichtsgesetz, 7 Aufl., Heidelberg, 2015, 157, §17 Rn. 22; BGH GA, 1982, 554.

12 Strafverteidiger (StV), 1994, 599; Strafverteidiger (StV), 2001, 178.

13 BGHSt. 36, 42; BGH, NStZ 2002, 207.

14 *Eisenberg U*., Jugendgerichtsgesetz, 20 Aufl., München, 2018, 305, §17 Rn. 4.

15 *Meier B. -D., Rössner D., Trüg G., Wulf R.* (Hrsg.), Jugendgerichtsgesetz, 2 Aufl., Baden-Baden, 2014, 92, §5 Rn. 19-20.

points out, the disciplinary function can be justified even when the sentence becomes stricter.[16] The corrective view does not imply a specific measure of sentencing but the scope of the sentence in which a specific measure of punishment is determined to rejuvenate and rehabilitate the convicts.

Juvenile criminal law is an adequate preventive criminal law for juveniles which stresses on positive individual prevention with regulatory sanctions rather than on negative individual prevention by individual warning/intimidation. The goal of juvenile sentencing is the legal action, and the means to an end should be as effective as possible. In adult criminal law, it is traditionally called resocialization.[17]

Despite the fact that, in juvenile justice, sentencing and punishment bear a corrective function, punishment is still not divested of its repressive effect. Punishment should cause pain to the convicted because of his/her wrongdoings.[18]

In the case of adult or juvenile convicts, giving a sentence is interpreted as causing pain, [19&20] which is derived from the nature of the sentence and it remains unchanged for a convict of any age. The sentence itself is aimed at restricting the right of a convict, which is related to pain. Pain is not a purpose of punishment, but an immediate result.

Juvenile sentencing should first be oriented toward the convict and resocialization of the convict, which does not mean that the crime loses its significance. In juvenile criminal law, as indicated in legal literature, after the convict and his/her re-socialization, the punishment is oriented towards retaliation,[21] which means that retaliation is the second and not the primary purpose of the sentence. It should be said that, when talking about retribution by sentencing, we talk about just retribution that is different from naked revenge. That just retribution cannot be understood as naked revenge in juvenile criminal justice is evident from the fact that retribution is not considered as the primary purpose of a sentence. If retributions to be understood as naked revenge, resocialization of the convicted could not be named as the primary purpose of the sentence. In conditions of naked revenge, resocialization not only could not become the primary purpose of the sentence but also could not even be included in the purposes of the sentence.

It is true that juvenile justice is characterized as corrective criminal law, but it would be incorrect to justify its existence only by the corrective principle.[22] It is true that specialized individuals,

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16 *Ostendorf H., Drenkhahn K.,* Jugendstrafrecht, 9 Aufl., Baden-Baden, 2017, 59, II 4, Rn. 52.

17 Ibid, 60, II 4, Rn. 53.

18 *Schöch H.*, in: *Meier B. D., Rössner D., Schöch H.,* Jugendstrafrecht, 3 Aufl., München 2013, 215, §11 Rn 1.

19 *Albrecht P. -A.*, Spezialprävention angesichts neuer Tätergruppen, ZStW, 1985, 833; *Jescheck H. -H., Weigend Th.*, Lehrbuch des Strafrechts Allgemeiner Teil, 5 Aufl., Berlin, 1969, 65; *Kargl W.*, Friede durch Vergeltung, Über den Zusammenhang von Sache und Zweck im Strafbegriff, GA, 1998, 60-61; *Pawlik M.*, Person, Subjekt, Bürger, Zur Legitimation von Strafe, Berlin, 2004, 15.

20 *Christy N.,* The Limits of Pain, the Role of Punishment in Penitentiary Politics, 1st Georgian ed., Georgian-Norwegian Association of the Rule of Law, Tbilisi, 2017, 13 (in Georgian).

21 *Schöch H.*, in: *Meier B. D., Rössner D., Schöch H.,* Jugendstrafrecht, 3 Aufl., München, 2013, 217, §11 Rn. 5.

22 *Streng F.*, Jugendstrafrecht, 4 Aufl., Heidelberg, 2016, 9, §1 III Rn. 16.

such as prosecutors, judges and lawyers, are included in juvenile justice, but they are not educators.[23] In juvenile criminal law, education is understood as proportional prevention for young people.[24] To achieve this goal, it is necessary to select the juvenile's proportional strategy that responds to the needs of individual juvenile socialization.[25]

Juvenile criminal law, as genuine criminal law, plays a very important role in maintaining legal peace through strengthening the values and norms of society.[26]

Sentence for juvenile convicts is correctional, although it is not considered as a sufficient basis for legitimizing the sentence. As some of the authors indicate in relevant literature, the primary purpose of sentencing juvenile convicts is retribution and protection of society from new crimes. However, here it is meant to provide security and not general prevention.[27] If for some of the authors the issue correction is primary, for other authors redemption is primary.

According to the position established in German jurisprudence, correction and redemption are in line with each other, since the character of the convicted and the personality that is expressed in action are not only important for upbringing but also important to assess guilt. The aggravating circumstances of the sentence are not only important to determine the size of the sentence, but also to determine the need for upbringing.[28] According to this view, punishment in terms of upbringing brings the result only when it is proportional to the sentence.[29]

Whether the sentence for a juvenile serves a fair redemption of guilt is considered as controversial. If some authors do not exclude redemption of guilt from the purpose of imprisonment of the juvenile, the second part goes to the contrary conclusion and notes that, unlike in case of adults, the purpose of sentencing a juvenile is not a fair redemption of guilt.[30]

Despite the educational function of juvenile criminal law, guilt still plays an important role in determining the size of the sentence. Not only in adult criminal law but also in juvenile criminal law guilt is considered to be a prerequisite for criminal liability.[31] Guilt is not only the basis for punishment but also an important factor in determining the size of the sentence.[32] Age is taken into consideration, but is not limited in connection with guilt, together with other circumstances such as mental condition.

In assessing the circumstances to be considered while determining a sentence, the personality and behavior of the convicted will be taken into consideration. This indicates that determination of the

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23 *Laubenthal K., Baier H., Nestler N.,* Jugendstrafrecht, 2 Aufl., Heidelberg, 2010, 3, §1 Rn. 4.
24 Ibid, 3, §1 Rn. 5.
25 Ibid, 4, §1 Rn. 5.
26 *Streng F*., Jugendstrafrecht, 4 Aufl., Heidelberg, 2016, 9, §1, III, Rn. 16.
27 *Schöch H.*, in*: Meier B. -D., Rössner D., Schöch H.,* Jugendstrafrecht, 3 Aufl., München 2013, 215-216, §11 Rn. 1.
28 Strafverteidiger (StV), 2009, 93.
29 *Streng F*., Der Erziehungsgedanke im Jugendstrafrecht, ZStW 1994, 72.
30 *Meier B. -D., Rössner D., Trüg G., Wulf R.* (Hrsg.), Jugendgerichtsgesetz, 2 Aufl., Baden-Baden, 2014, 244, §18 Rn. 10.
31 Ibid, 63, §3 Rn. 1.
32 Ibid, 245, §18 Rn. 11.

degree of guilt involves the inner side of the action, for example, the motivation of crime and not the objective, which is an external event.[33]At the time of sentencing, it is also taken into consideration whether the person was in a state of diminished capacity as well as further actions committed after the crime, such as an attempt to correct the outcome. Some authors consider the unlawfulness of an act as much as it expresses the personality of the convicted and the degree of guilt.[34] Furthermore, in order to determine the degree of guilt, whether the convicted acted deliberately or out of negligence will be considered, which indicates the indirect significance of the action against the accused. If the action is of little significance that cannot be qualified as a crime, it will be impossible to justify guilt.[35] In criminal law, guilt means guilt in criminal activity. Guilt does not exist without the unlawfulness of the action. Unlawfulness is the prerequisite of guilt, which indicates the connection between an action and guilt.

According to the position of the German Supreme Court, it is true that the guilt of the convicted takes only the second place after the correctional approach in cases of juvenile sentencing. However, it does not mean that the unlawfulness of the action remains unconsidered. Guilt cannot be measured abstractly. The degree of guilt is determined in connection with the action. With regard to juveniles in reference to the level of their development and their personality type, they should be examined against the lawfulness and unlawfulness of their actions. Thus, a sentence that is proportionate to guilt will not be in contradiction with regards to the correctional approach.[36]

In general, proportionality of guilt with the sentence represents the upper limit of the sentence, which cannot be transgressed. The prohibition of disproportionate sentencing is derived from the constitutional principle of the responsibility of convict. Some authors claim that the above-mentioned requirement is also derived from the corrective standpoint, because a disproportionate sentence is unfair and prevents corrective upbringing, rather than making it possible.[37] The above-mentioned opinion contradicts the standpoint according to which the corrective function in juvenile criminal cases is primary and justifies sentencing of the juvenile on the bases of corrective standpoint. This view is based on the arguments which claim that a juvenile sentence is still a criminal sentence. Therefore, the standpoint of lawful sentencing in case crime cannot be considered unforeseen.[38] It is true that reparation of justice is not comparable with other priorities of juvenile justice, but the goal still retains certain importance in juvenile criminal justice.

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33 BGHSt 15, 226; NStZ 1996, 496; *Schaffstein F., Beulke W., Swoboda S.*, Jugendstrafrecht, Eine systematische Darstellung, 15 Aufl., Stuttgart, 2014, 170-171, §22 Rn. 455.

34 *Meier B. -D., Rössner D., Trüg G., Wulf R.* (Hrsg.), Jugendgerichtsgesetz, 2 Aufl., Baden-Baden, 2014, 245-246, §18 Rn. 11.

35 *Schaffstein F., Beulke W., Swoboda S.*, Jugendstrafrecht, Eine systematische Darstellung, 15 Aufl., Stuttgart, 2014, 171, §22 Rn. 455.

36 BGH GA, 1982, 554.

37 *Brunner R., Dölling D.*, Jugendgerichtsgesetz, Kommentar, 13 Aufl., Berlin, Boston, 2018, 185-186, §18 Rn. 13.

38 See: *Schaffstein F., Beulke W., Swoboda S.*, Jugendstrafrecht, Eine systematische Darstellung, 15 Aufl., Stuttgart, 2014, 172, §22 Rn. 458.

With regard to the criminal liability of juvenile convicts, the state, maturity, failure and ability to control the actions of a juvenile will be considered. The juvenile must be held accountable for being adult enough to understand the wrongfulness of the act and act accordingly.[39] Consequently, the responsibility of juveniles requires a certain degree of maturity, which enables them to understand that certain acts are prohibited and act accordingly in relation to such prohibitions.[40]

When a convicted person is deprived of his/her liberty, the harmful consequences of this sentence (restriction of liberty) must have a correctional effect on the convicted person.[41] If the execution of punishment excludes the correctional effect, it violates the dignity of the convicted.[42] The sentence of a juvenile is aimed at correction, but the need for punishment for a juvenile must be determined by the degree of the crime.[43] If punishment is not necessary due to the nature of the crime, despite the crime committed, a sentence should not be used if the perpetrator is a juvenile.

Sentencing juvenile convicts can serve as a preventive goal, but first of all, it is private prevention. The fact that private prevention is a legitimate aim of the sentence of a juvenile convict is indicated in the Juvenile Justice Code, where the punishment is aimed at resocializing the convicted. The resocialization of the convicted is an aspect of private prevention.[44] As for the general warning, it is closely related to the restoration of justice. Restoration of justice is a prerequisite for general prevention. Where juvenile crime retaliation is considered as a secondary goal, it is clear what role general prevention plays in juvenile criminal law.

As it is known, general prevention is divided into negative and positive general prevention. Negative general prevention or deterrence plays no role in determining the size of the sentence for a juvenile and setting a sentence since it does not protect the interests of the juvenile.[45]

The argument states that, according to the followers of the mentioned position, the interpretation of the meaning of guilt, where guilt is defined as a personal condemnation of unlawfulness, does not allow for the consideration of negative general prevention standpoint. The above-mentioned argument is used with regards to the unacceptability of considering the general preventive standpoint in cases of sentencing of juveniles.[46]

By the 1952 German Supreme Court decision, guilt is condemnation. The perpetrator is condemned through the sentence, for he/she did not act lawfully when he/she decided in favor of wrongdoing, even though he/she could act lawfully. The content of the indictment is that the person seeks free, responsible and moral self-determination and, thus, has the ability to act or not act against the law.[47]

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39 *Meier B. -D., Rössner D., Trüg G., Wulf R.* (Hrsg.), Jugendgerichtsgesetz, 2 Aufl., Baden-Baden, 2014, 64, §3 Rn. 2.

40 Ibid, 2014, 65, §3 Rn. 7.

41 *Schöch H.*, in: *Meier B. -D., Rössner D., Schöch H.,* Jugendstrafrecht, 3 Aufl., München, 2013, 215-216, §11 Rn. 1.

42 Ibid, 217, §11 Rn. 4.

43 Ibid, 217, §11 Rn. 5.

44 *Roxin C.*, Strafrecht, Allgemeiner Teil, Band I, 4 Aufl., München, 2006, 75, §3 Rn. 13.

45 BGHSt 15, 226; *Eisenberg U.*, Jugendgerichtsgesetz, 20 Aufl., München, 2018, 305, §17 Rn. 5.

46 *Diemer H., Schatz H., Sonnen B. -R.*, Jugendgerichtsgesetz, 7 Aufl., Heidelberg, 2015, 157, §17 Rn. 22.

47 *Streng F.*, Schuld, Vergeltung, Generalprävention, ZStW, 1980, 639.

If the sentence represents personal condemnation, the determination of the degree of guilt and sentencing shall be based on the circumstances underlying the basis for personal condemnation. Such circumstances are associated only with the culprit, and not with the general public.

The concept of guilt and its content represents a controversial issue in criminal law literature. The definition of guilt, which explains guilt as a personal condemnation, is not supported by everyone. Some authors claim that not guilt, but the punishment is the condemnation while guilt is just the ground for condemnation.[48] However, the controversy related to the concept of guilt does not preclude the opinion that the negative general prevention approach shall not represent the circumstance while sentencing a juvenile.

While the consideration of negative general prevention is refused in cases of juvenile sentencing, in the opinion of one group of authors, it is permissible to consider the positive general standpoint. A sentence caused by guilt includes positive general preventive components. The sentence also serves supra-individual purposes. The sentence has a mechanical impact on the stability of the norm. As long as there is a requirement for a juvenile sentence for fair redemption or restoration of justice, punishment will always be automatically connected not only to special preventive criminal improvement but also with a positive general aspect.[49]

According to the positive general preventive standpoint, juvenile sentencing is linked to the consolidation of the public's conscience. In the case of juvenile sentencing, the irrelevancy of negative general prevention is based on the inconsistency with the criminal law especially oriented towards prevention, with the aim of deterring the society.[50]

The second group of authors and the German Federal Court do not consider juvenile sentence only as negative, but also as positive general prevention. It is enough to take into account that the punishment of juveniles has a reflexive influence on the logic of those around them. A juvenile who has violated a legal norm is subject to prosecution.[51]

Although juvenile justice is correctional, sometimes educational standpoint does not play any role. In this context, there are cases where trafficking of juveniles takes place in order to commit a crime that is envisaged in the criminal code. The same applies to cases where crimes were committed during juvenile years and sentencing after several decades have passed can only dissocialize a well-socialized citizen, for instance, border guard cases.[52]

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48 *Gamkrelidze O.,* The Concept of Criminal Punishment, "German-Georgian Criminal Electronic Journal", № 1, 2016, 6-7 (in Georgian).

49 *Schaffstein F., Beulke W., Swoboda S.,* Jugendstrafrecht, Eine systematische Darstellung, 15 Aufl., Stuttgart, 2014, 173, §22 Rn. 460.

50 *Schöch H.*, in: *Meier B. -D., Rössner D., Schöch H.,* Jugendstrafrecht, 3 Aufl., München, 2013, 221, §11 II, Rn. 13; *Meier B. -D., Rössner D., Trüg G., Wulf R.* (Hrsg.), Jugendgerichtsgesetz, 2 Aufl., Baden-Baden, 2014, 244, §18 Rn. 9.

51 *Mtchedlishvili-Hädrich K.,* Sanctions in Juvenile Criminal Law According to the German Legislation, in the collection: *Lekveishvili M., Shalikashvili M.* (ed.), The Problems of Compulsory Punishment and Educational Nature of Juvenile Sentence, Tbilisi, 2011, 246 (in Georgian).

52 *Streng F.*, Jugendstrafrecht, 4 Aufl., Heidelberg, 2016, 10, §1 III Rn. 16.

The main purpose of a juvenile sentence is the redemption of guilt, but it does not exclude the restoration of justice as a secondary goal. Resocialization of the convict is intended not only for juvenile convicted persons but also for adult convicts. The resocialization of a convicted person is a principle of constitutional significance, which is based on the principle of legal state.

In accordance with the decision of the Constitutional Court of Germany, the constitutional requirement of the re-socialization of the convicted corresponds to the legitimacy of a society in which human dignity is at the center, and to the obligation of the principle of a social state. The prisoner should be given the opportunity to return to the society after serving the sentence. The state is obliged to take all legislative measures that are appropriate and necessary to achieve this goal.[53] The duration of deprivation of liberty as a punishment is important for the resocialization of the convicted. This issue is more important for juvenile convicts. In this regard, it is worth mentioning the decision of the Supreme Court of Germany, which states that it is important to consider before sentencing the impact of the sentence on the convicted from the special preventive standpoint of resocialization. Therefore, the type and size of sentence should be determined so as the achievement of the purpose of resocialization remains possible. When a juvenile convict is sentenced to a very long term of imprisonment, there is a threat that, because of the lack of personal liability in the society, it will be hard for the convict to achieve the goal of returning to the society again. The following concerns juvenile convicted persons who have not had a chance of positive development before. When the expectation of returning to society decreases, the resocialization of the convicted becomes harder to achieve.[54]

4. The Principle of Proportionality in Juvenile Justice

Chapter 2 of Juvenile Justice Code is based on the principles that are provided for juvenile justice. The following are the best interests of juveniles: prohibition of discrimination; harmonious development of a juvenile; proportionality; the priority of the most lightweight and alternate measure; imprisonment as an extreme event; juvenile participation in juvenile justice process; prohibition of delaying juvenile justice process shortly after the conviction of juvenile; the private life of a juvenile; individual approach to juvenile; and free legal aid. One of the principles listed here is the principle of proportionality. Under Article 7 of the code, "The measure applied to a juvenile in conflict with the law shall be proportionate to the action committed and must be consistent with his/her personality, age, educational, social and other needs."

The juvenile's penalty, which is inconsistent with the redemption of the offense, violates the principle of proportionality. But, according to U. Eisenberg, if there is disproportion between the quality of the guilt and the need for correction, the juvenile sentence as a response is not used, for example, theft of a low-value item. The severity of the crime constitutes the basis for justifying the sentence of

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[53] Entscheidungen des Bundesverfassungsgerichts (BVerfGE), 45. Band, 1978, 238-239; *Ostendorf H., Drenkhahn K.,* Jugendstrafrecht, 9 Aufl., Baden-Baden, 2017, 61, II 4, Rn. 54.

[54] StV, 2003, 222.

juvenile convicted persons, but the punishment, which excludes the necessary disciplinary development, is considered inadmissible.[55]

Protection of the principle of proportionality in juvenile justice requires that a penalty is imposed on the individual basis, i.e., individualization principle.[56]

The preventive aim of individual justice of juvenile is that criminal response towards juveniles' actions should be directed only to the person of the defendant/convict, and that is why criminal justice of juveniles is criminal justice of convicts. In general prevention terms, influence on others is negated. Even if the quality of guilt can justify the sentence of juveniles, the punishment measure should be individualized. Since the act determines the scope of punishment in parallel, juvenile criminal justice is called criminal law of "action" and "convicts".[57]

The principle of proportionality cannot be implemented without the principle of individualization, which requires the consideration of severity of the offense, quality of guilt and the needs of juvenile convicts.

Proportional punishment of the convicted person in the first place implies the punishment of the action in proportion to its severity, which guarantees that the convicted will not be punished by a disproportionately severe punishment. In German criminal law, there are some crimes distinguished for which imposition of punishment is considered as unreasonable for juveniles. Small thefts, damaging someone's property without aggravating circumstances, which represents a crime against property, are considered as such crimes. In this case, using punishment against the juvenile is considered as unreasonable.[58] In the case of negligent offenses, considering the quality of the guilt, using the penalty for juvenile convicted persons shall only be considered in exceptional cases.[59]

Under juvenile criminal law, during imposition of punishment on a juvenile, as noted earlier, the severity of the action and the punishment take backseat, and the focus is on the convicted person and his/her resocialization.

Proportionality means compatibility of not only the upper limit of the punishment, but also the lower limit of an action. Therefore, in terms of proportional punishment, unreasonably severe as well as unreasonably light punishment is excluded. But the question arises whether the issue should be solved differently when it comes to juvenile. While the case concerns a juvenile, proportional punishment is important for the exclusion and avoidance of a strict penalty, not in the sense that the use of light penalty must be excluded. If unreasonably strict punishment violates the right of a convict and represents an incompatible violation of the right of a convict, it may not be used in case of use of a too light punishment for the convict.

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55 *Eisenberg U.*, Jugendgerichtsgesetz, 20 Aufl., München, 2018, 318, §17 Rn. 25.

56 *Hamilton K.*, Guidelines for Legislative Reform of Juvenile Justice, Georgian Translation, Children's Legal Center and United Nations Children's Fund (UNICEF), 2011, 101 (in Georgian).

57 *Ostendorf H., Drenkhahn K.,* Jugendstrafrecht, 9 Aufl., Baden-Baden, 2017, 63, II 5, Rn. 56.

58 *Eisenberg U.*, Jugendgerichtsgesetz, 20 Aufl., München, 2018, 319, §17 Rn. 27.

59 *Meier B. -D., Rössner D., Trüg G., Wulf R.* (Hrsg.), Jugendgerichtsgesetz, 2 Aufl., Baden-Baden, 2014, 239, §17 Rn. 32.

If the primary goal of juvenile sentence is educational, the question arises, what is the basis for proportionality of short-term imprisonment? In what case can the use of short-term imprisonment in an educational viewpoint, and therefore proportionality of the sentence, be justified? A short-term imprisonment is proportionate when it is necessary to influence the convicted and protect the law.[60]

When it comes to proportional punishment, it does not mean a precise, specific measure of the sentence, but that penalty size should be approximate. Proportional sentence represents proportional to the convicted person's guilt, but proportional sentence of guilt does not imply a specific measure of an absolute sentence. Guilt is not a specific unit of sentence, but the lower and upper bound of the penalty, which gives the judge a chance to determine the size of a specific sentence.

The proportionality of a sentence may be determined by the exclusion of non-proportionality. Punishment incompatible with the severity of the crime is not proportionate. According[61] to the Constitutional Court of Georgia and in the views expressed in literature on constitutional law,[62] the non-proportionality of a sentence does not represent a simple inconsistency with the offence, but a rough, obvious discrepancy.

The juvenile's sentence should be fit the crime and necessary to avoid it.[63] Consideration of this requirement is of great importance to the principle of proportionality, because fitness and necessity are the structural elements of the given principle.

5. Determining the Convict-Oriented Sentence Instead of Act-Oriented Sentence

There are different opinions in criminal law literature on the importance of considering the personality of a convict during the imposition of a sentence. According to one theory, known as the proportionate doctrine of criminal action, the personality of the convict should not be considered when imposing a sentence. Because, according to this theory, taking into account the personality of the convict makes the conviction process non-transparent.[64] Therefore, the doctrine is oriented on action (unrighteousness) and its severity. However, under Article 7 of Juvenile Justice Code, it is necessary to consider the personality of the convicted person for the imposition of a penalty, which implies that the sentence should be proportionate not only in view of the severity of the action but also proportionate to the acting person.

It is true that modern criminal law, on the one hand, is a law of action, which means that the criminal is punished for committed actions and not for personal qualities, views and moods. On the other hand, the personality of the convict is also important when determining the sentence. The age of

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60 *Kaiser G., Schöch H., Kinzig J.,* Kriminologie, Jugendstrafrecht, Strafvollzug, 8 Aufl., München, 2015, 160.

61 Decision of 24 October 2015 of the Constitutional Court of Georgia, № 1/4/592, para. 25 and 38.

62 *Gotsiridze E.,* in the book: *Turava P.* (ed.), Commentary of the Constitution of Georgia, Chapter II. Georgian Citizenship. Human Rights and Freedoms, Tbilisi, 2013, 125 (in Georgian).

63 *Streng F.*, Jugendstrafrecht, 4 Aufl., Heidelberg, 2016, 210, §12 II Rn. 429.

64 See *Meier B. -D.*, Strafrechtliche Sanktionen, 4 Aufl., Berlin, Heidelberg, 2015, 170.

the convict represents the factor related to the personality of the convict. The personality of the convicted person and especially age are of essential importance when dealing with a juvenile.

In juvenile justice, the sentence is primarily oriented on the convicted and only later on the action.[65] Apart from the criminal energy and severity of the crime, juvenile criminal law also considers the personal development and social condition of the juvenile, for which the chances of stabilization and crime-free future are important.[66] In this case, consideration of social condition of the convict does not mean violation of the principle of equality before the law. It is important to consider the social condition, because it gives us the chance of possible determination of future stable life of the convict. In case the convict is socially vulnerable, and the convict's social condition and economic poverty are related to the criminal action, there is a mitigating circumstance of the guilt. On the other hand, the mentioned circumstances, from the preventive point of view, present the possibility of aggravation of the punishment, as due to the social condition of the convict the chance of repeating the crime exists. All of this demonstrates how important it is to take into consideration the social condition of the juvenile convicted person. Considering the personality of the convicted person is also important in criminal justice of adults,[67] but it is of special importance to juveniles.

Although the determination of juvenile justice is based on the personality of the convict, the severity of the offense is considered dominant in the German judicial practice of juveniles. One of the most noteworthy issues related to the topic of discussion is the issue of stricter punishment in case of repeatedly committing crimes. It is arguable that a stricter punishment is based on previous convictions and thus increasing the degree of guilt.[68] But in this connection, it is important that punishment for repeat offense does not reflect the educational approach, on which juvenile justice is based on.[69]

It is not accidental that, under Article 12 § 1 of the Juvenile Justice Code, the previous conviction of the juvenile is considered as annulled as soon as the sentence is served, which must be justified by the best interests of the juvenile. However, it should be mentioned here that the given preference does not apply if the juvenile still commits a crime.

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65 *Schöch H.*, in: *Meier B. -D., Rössner D., Schöch H.*, Jugendstrafrecht, 3 Aufl., München, 2013, 217, §11 Rn. 5

66 *Streng F.*, Jugendstrafrecht, 4 Aufl., Heidelberg, 2016, 223-224, §12 III Rn. 453.

67 Human personality and responsibility are the bases for the inner unity of crime and punishment according to Professor *Guram Natchkebia*. See *Natchkebia G.*, Problem of Inner Unity of Crime and Punishment, in the collection: Mzia Lekveishvili — 85, Anniversary Collection, Tbilisi, 2014, 19 (in Georgian).

68 In criminal law literature there are many different opinions expressed about previously convicted persons. If, according to one view, it increases the level of *mens rea*, in the second view, it increases the degree of guilt. The viewpoint, according to which the previous conviction is to be considered as a condition relating to the past life of the convicted, which does not determine the quality of *mens rea* or guilt, although must be considered at the time of imposition of the sentence, may help to determine the measure of sentence that will be preventive.Therefore, the circumstances that can be considered during the imposition of a sentence may be divided into three groups: the circumstances surrounding the *mens rea*, guilt and personality of the convict. However, some of the circumstances related to the personality of the convict may determine the quality of the guilt as well, for example, the age of the convicted person.

69 *Streng F.*, Jugendstrafrecht, 4 Aufl., Heidelberg, 2016, 225, §12 III Rn. 455.

During imposition of the sentence or making decisions against him/her, the necessity to consider the juvenile's personality is derived from the best interests of the juvenile, which represents the fundamental principle of juvenile justice.[70]

6. Deprivation of Liberty as the Last Resort

As it is known, criminal justice is the ultimate way or *ultima ratio* to fight against crime for the state. Consequently, criminal punishments are also considered to be state coercive measures, which are used in extreme cases when it is impossible to achieve a goal other than by imposing a sentence. Although sentencing is generally considered to be a sanction to be used in extreme cases, the requirements for the use of deprivation of liberty are even stricter because it restricts the freedom of the convicted person the most. When the matter concerns a juvenile, in the best interests of the juvenile, the possibility of using the sentence in the form of deprivation of liberty is even more restricted. Therefore, the Juvenile Code of Justice (Article 9) considers the deprivation of liberty as a special event by the legislature, which should be used only in case of extreme events. The only use of deprivation of liberty and short-term imprisonment as ultimate measures is derived from Article 37(paragraph b) of the Convention on the Rights of the Child and Section 2 of the Havana Rules.

In juvenile criminal law, sentence can be considered as the ultimate legal outcome, when the use of another measure is not sufficient or the quality of the crime reaches a level where the use of other measures is ineffective.[71] According to German criminal law, during the imposition of the sentence on a juvenile, the bad habits of the juvenile, which should be characterized not only at the time of committing the offense but also after committing the crime and at the time of hearing the case, must also be considered. What can be considered as bad habits and when it is considered that a person has bad habits is a matter of dispute in literature. Using bad habits as one of the grounds for the determination of a sentence causes a critical assessment that this represents branding of the convicted person and recognizing him as a "defective person".[72]

Priority for less severe punishments is derived from the principle of economic effectiveness of the crime as well. Using a punishment is expensive for the state.[73] Therefore, the savings of the state budget is also ensured by less severe punishments.

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70 *Hamilton K.,* Guidelines for Legislative Reform of Juvenile Justice, Georgian Translation, Children's Legal Center and United Nations Children's Fund (UNICEF), 2011, 35 (in Georgian).

71 *Schaffstein F., Beulke W., Swoboda S.*, Jugendstrafrecht, Eine systematische Darstellung, 15 Aufl., Stuttgart, 2014, 165, §22 Rn. 440; *Streng F.*, Jugendstrafrecht, 4 Aufl., Heidelberg, 2016, 207, §12 II Rn. 424.

72 *Mtchedlishvili-Hädrich K.*, Sanctions in Juvenile Criminal Law According to the German Legislation, in the collection: *Lekveishvili M., Shalikashvili M*. (ed.), Problems of Compensation of Juvenile Punishment and Correctional Coercion, Tbilisi, 2011, 243-244 (in Georgian).

73 *Lekveishvili M.,* Punishment and Specifics of Sentence of Juveniles, in the collection: *Lekveishvili M., Shalikashvili M.* (ed.), Problems of Imprisonment for Torture and Correctional Coercion, Tbilisi, 2011, 35 (in Georgian*); Gamkrelidze O.,* Criminal Problems, III Vol., Tbilisi, 2013, 111-112 (in Georgian).

7. Individual Approach to Juveniles

Under the Juvenile Justice Code, the individual approach is a new practice introduced in the juvenile justice system. It involves making a decision using an individual assessment report, which involves taking into consideration individual characteristics such as age, level of development, conditions of life, upbringing and development, education, health status, family situation and other circumstances. This will enable the assessment of the nature and behavior of a juvenile and the identification of his/her needs. Individual assessment determines the risk of committing a crime or administrative offense by a juvenile and the measures recommended for the adequate development of the juvenile and facilitation of their integration into society. The preparation and consideration of an individual assessment report is required at the following stages of criminal proceedings: a) determination of a diversion measure; b) sentencing; c) individual planning of a custodial sentence; d) execution of a non-custodial sentence; and e) consideration of the issue of release on parole. By a resolution of the prosecutor, an individual assessment report may also be prepared and considered at the stage of deciding on the exercise of other discretionary powers. An individual assessment report shall be prepared by the National Agency of Execution of Non-Custodial Sentences and Probation, a legal entity under public law under the Ministry of Corrections of Georgia. The individual assessment report may be prepared in other cases under a prosecutor's decision at the stage of deciding on using discretionary powers. (Juvenile Justice Code, Article 27).

As mentioned above, age is one of the circumstances that should be taken into consideration during the decision-making process as the law imposes the obligation to treat juvenile convicts differently; the minority status of the convict is a kind of ground for limiting his/her conviction (accusation). For example, the term of deprivation of liberty for juveniles aged 14 to 16 years is reduced by 1/3. And the term of the final sentence shall not exceed 10 years. The term of deprivation of liberty for juveniles aged 16 to 18 years is reduced by 1/4. The term of the final sentence shall not exceed 12 years.

The above-mentioned rule of imprisonment for juveniles is valid regardless of whether there are mitigating or aggravating circumstances.[74] The mentioned rule applies even in the case of sentencing in combination of offenses and judgments.[75]

According to the individual assessment report, a convict's life, upbringing, development conditions, education and family situation is taken into consideration while sentencing. Based on the above circumstances, socialization of a juvenile convict can be correctly evaluated. It is important to take into account the level of socialization of a convict for the purpose of his/her resocialization. The type and size of the penalty shall be determined according to the mentioned circumstances.

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[74] *Todua N.,* Some Disputed Issues of Juvenile Sentence, in the book: *Todua N., Ivanidze M.* (ed.), Analysis of Juvenile Law and Court Practice, Tbilisi, 2017, 121 (in Georgian).

[75] Ibid, 114-117.

8. Punishment of Juvenile Offenders

The Juvenile Justice Code envisages the following types of sentencing: a) fine; b) house arrest; c) the deprivation of a right to carry out an activity; d) community service; e) restriction of liberty; and f) fixed-term imprisonment.[76] Unlike adult convicts, juvenile convicts are not sentenced with the penalties such as community service, deprivation of the right to hold public office and life imprisonment. The fact that the deprivation of the right to hold public office does not apply to juveniles is obvious, as a young person cannot be appointed to public office or local self-government body, which excludes the use of this sentence. Community service is a form of punishment that will be executed at the workplace by deduction of wages and if the person lacks the ability to occupy a position due to his/her age, community service is also excluded. The material criminal code envisaged community service for juvenile convicted persons, but it was later abolished as a form of sentence applied to juveniles. As for the prohibition of life imprisonment of the juveniles, it is derived from the principle of proportionality. Life imprisonment is a strict form of punishment and its usage against juveniles would breach the constitutional principle of resocialization of the convict. Lifetime imprisonment under the material criminal code is provided for particularly severe offenses where a person has full liability. As for the juvenile, he/she is not considered to be a person with full liabilities. A juvenile convict is not held fully liable for a crime and decreasing the upper margin of the deprivation of liberty to 12 years for 16 to 18-year-old convicts and to 10 years for 14 to 18-year-old juveniles derives from this.

Deprivation of liberty used for juveniles is different from sentencing used for adults. Deprivation of liberty towards juvenile convicted persons is aimed at educating them, though it is not a fixed measure. It should also be taken into consideration that the use of sentence is based on *mens rea*. Thus, a full replacement of the law of the action by the law of perpetrator is impossible.[77] Despite the fact that criminal justice of juveniles is primarily criminal law of the acting person, at the same time, it remains criminal law of the action. If the convicted person's fault is an important factor to be considered while sentencing, it means that the action taken by the convicted person is essential for sentencing. There is no *mens rea* without an action. Guilt condemnation means condemnation due to the action taken and not because of the personal characteristics of the convicted person.

Because juvenile criminal justice is based on the educational approach and the correctional characteristics of a penalty for the juvenile, the question of whether the terms of imprisonment, imposed by the Juvenile Justice Code, are justifiable arises. Maximum period of imprisonment that can be imposed on a juvenile for the purpose of education is arguable. In particular, if deprivation of liberty for more than 5 years is appropriate for a juvenile, whether it gives the opportunity to have a correctional influence on the convict is arguable. According to one of the opinions, imposing a term of

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[76] The deprivation of liberty is one of the genuine criminal punishments for juvenile convicts to be considered in the criminal justice of German juveniles. See *Schaffstein F., Beulke W., Swoboda S.*, Jugendstrafrecht, Eine systematische Darstellung, 15 Aufl., Stuttgart, 2014, 165, §22 Rn. 440.

[77] *Schaffstein F., Beulke W., Swoboda S.*, Jugendstrafrecht, Eine systematische Darstellung, 15 Aufl., Stuttgart, 2014, 166-167, §22 Rn. 442.

imprisonment for more than 5 years for a juvenile contradicts the correctional approach.[78] It should also be noted here that, in general, deprivation of liberty for a 14-15-year-old juvenile is not considered to be a constructive life-supporting method.[79]

When a juvenile convicted person is to be sentenced to deprivation of liberty and harmful consequences that threaten the upbringing are expected, the lower margin of the sentence for a juvenile convict shall be defined in compliance with the quality of *mens rea*. Charging the penalty, under the lower limit due to the degree of the guilt is considered as unacceptable, as according to the same opinion, otherwise, the purpose of a fair redemption of guilt would remain unreachable.[80] This opinion is controversial as the material criminal code and the Juvenile Justice Code of Georgia allow the possibility of a more lenient sentence than envisaged by the law. As a rule, the legislature determines the upper and lower margins so that *mens rea a*s a measure, together with the unrighteousness of the action, is considered. However, the legislature cannot take into consideration everything in advance. There may be such mitigating circumstances on the side of the convicted person that cannot be anticipated in advance. Thus, granting a judge the right to impose a more lenient sentence is very important. However, this does not mean that the judge should not take into consideration the unrighteousness of the action, nature of *mens rea* and personality of the convicted person. The decision of imposing a lighter sentence than provided by the law shall be made by taking the given circumstances into consideration.

When sentencing a juvenile, the time passed from the moment of committing a crime to the moment of making a decision shall be taken into consideration. The mentioned factor is also important when sentencing an adult, but it is granted a particular importance in case of juveniles, because they are at the stage of development, undergoing significant changes in living conditions in a short time. The requirement for a reasonable time to be processed is derived from Article 6.1 of the European Convention on Human Rights. Delaying the process leads to a violation of the mentioned requirement.[81]

It has been previously possible to apply fine, deprivation of the right to work, community service and imprisonment to juvenile offenders under the Criminal Code. However, the legislative regulation of the use of fine used to be different. The Criminal Code allowed the application of fine even if the juvenile offender was insolvent. In such case, the parents of the juvenile offender were supposed to pay the fine. A constitutional claim was filed in the Constitutional Court of Georgia concerning the constitutionality of this legislative regulation. The applicant considered that the impugned legislative regulation was unconstitutional because of the inconsistency with the principle of culpability. The Constitutional Court of Georgia ruled out the unconstitutionality of the impugned provision. The court opined that there was no violation of the principle of culpability because the juvenile offender was declared guilty, he/she was the one who committed the crime and not his parents; the juvenile was convicted

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78 NStZ 1996, 496.

79 *Schaffstein F., Beulke W., Swoboda S.*, Jugendstrafrecht, Eine systematische Darstellung, 15 Aufl., Stuttgart, 2014, 167, §22 Rn. 443.

80 *Meier B. -D., Rössner D., Trüg G., Wulf R.* (Hrsg.), Jugendgerichtsgesetz, 2 Aufl., Baden-Baden, 2014, 249, §18 Rn. 20.

81 Ibid, 250, §18 Rn. 24.

not his/her parent.[82] The above-mentioned judgment of the Constitutional Court of Georgia has led to a number of controversial views in the legal community. One group of lawyers criticized the decision of the Constitutional Court and noted that the Constitutional Court justified the application of unfair sentencing.[83] Despite the judgment of the Constitutional Court, the legislation has been changed since and, under the Juvenile Justice Code, it is only allowed to impose fine on a juvenile when the juvenile offender has an independent income from a legal activity (Article 68). Such a solution of the issue is acceptable and fully compatible with the fundamental principles of criminal law.

The rule of imposing fine on the parents of the juvenile convict is envisaged by the legislation of other countries, which is not positively assessed by experts, since parents' desire to participate in the social reintegration process and active partnership of the minor could disappear. Furthermore, it is considered to be incompatible with the best interest of the juvenile.[84]

Fine as a punishment to be imposed on a juvenile offender can be assessed critically as the law does not define the maximum amount of fine that gives rise to a problem in terms of interpretation of the norm. Interpretation of the norm is an important principle that is based on the principle of the rule of law and essential for ensuring the legal stability of the country. The state's reaction to the offence should be foreseeable for the recipient of the norm, which is a necessary precondition for strengthening the confidence of the population towards justice.[85]

In the legal literature concerning the fine to be imposed on juvenile offenders, doubts are expressed in terms of achieving the goal of reintegration of a convict. The skeptical views expressed are often related to minors' restricted financial means.[86]

As noted above, the Juvenile Justice Code of Georgia permits the application of community service as one of the penalties to be imposed on juvenile offenders. Juveniles may be employed in community service for a period of 40 up to 300 hours. However, according to an opinion expressed in legal doctrine, the imposition of community service of 300 hours is contrary to the constitutional principle of proportionality, since the estimated amount of community service does not leave the juvenile convict free time for studying.[87]

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82 Decision of 11 July 2011 of the Constitutional Court of Georgia, № 3/2/416. Concerning the same issue, also see *Kopaleishvili M.,* Does the Action Provided by Para. 5^1 of the Article 42 of the Criminal Code of Georgia Involve Criminal Responsibility of a Parent, Journal of Law, № 1, 2013, 295-306.

83 *Gamkrelidze O.,* Fair and Unfair Punishment, "Life and Law", № 1, 2016, 3-8 (in Georgian).

84 *Hamilton K.,* Guidelines for Legislative Reform of Juvenile Justice, Georgian translation, Children's Legal Center and United Nations Children's Fund ("UNICEF"), 2011, 109 (in Georgian).

85 *Schwabe I.,* Decisions of the Federal Constitutional Court of Germany, *Chachanidze E.* (trans.), Tbilisi, 373 (in Georgian); *Izoria L.*, Modern State, Modern Administration. Tbilisi, 2009, 200 (in Georgian); *Shalikashvili M.,* Notes on the Juvenile Justice Code, "Journal of Criminology", № 1, 2016, 83-84 (in Georgian).

86 *Hamilton K.,* Guidelines for Legislative Reform of Juvenile Justice, Georgian translation, Children's Legal Center and United Nations Children's Fund ("UNICEF"), 2011, 109 (in Georgian).

87 *Ostendorf H., Drenkhahn K.,* Jugendstrafrecht, 9 Aufl., Baden-Baden, 2017, 143, IV 3, Rn. 178; *Shalikashvili M., Mikanadze G.,* Juvenile Justice (Textbook), 2nd ed, Tbilisi, Freiburg, Strasbourg, 2016, 82 (in Georgian).

In juvenile justice and criminal law, the introduction of home arrest as a sentence is an innovation. The Georgian legislation did not take into account the above-mentioned type of sentence. Home arrest was initially envisaged by the Juvenile Justice Code of Georgia, which was enacted in 2016 and has been applied to adults since January 2018.

Home arrest is distinguished from other forms of sentencing in that it is being executed at home and the convict is obliged to stay at home for a fixed period of time during a day. Home arrest is only applied to the offenders convicted for a less serious crime so that its enforcement does not interfere with paid work or education. Electronic surveillance systems may be used to control the complying with the obligation imposed on a convict during the detention. However, by the decision of the National Probation Agency, it may not be used.

Article 70 of the Juvenile Justice Code envisages deprivation of the right to work as one of the alternative penalties. In general, the employment of a convict helps in the process of the resocialisation of the convict. Deprivation of the right to work however entails the opposite. Therefore, the question arises as to the objective of deprivation of the right to work. The objective of crime prevention could be the answer.

When sentencing a person to deprivation of the right to work, it should be taken into account that its use should not cause the convicted unnecessary financial and social problems for the convicted person.[88]

When sentencing the juvenile, it should be taken into consideration whether a particular sentence reduces the risk of reoffending[89] and preference should be given to that type of sentence, which reduces the risk of recidivism.

9. Principal and Additional Penalties

Penalties envisaged for juvenile offenders are divided into principal and additional penalties. Imprisonment can be appointed only as a principal punishment, while other types of sentence can be classified in both groups, principal and additional penalties. From additional penalties, only community work sentence can be assigned as an additional punishment, even if it is not prescribed by the respective article of the Criminal Code of Georgia. (Article 71, Part 5, the Juvenile Justice Code). Such references are not given concerning additional penalties; this means that imposition of an additional penalty is only possible when it is envisaged under the private part of the article of the Juvenile Justice Code. This is very important for the protection of the principle of proportionality and excludes the threat of a disproportionate sentence for the convict.

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88 *Shalikashvili M., Mikanadze, G.,* Juvenile Justice (Textbook), 2nd ed., Tbilisi, Freiburg, Strasbourg, 2016, 140-141 (in Georgian).

89 *Ivanidze, M.,* Juvenile and His Best Interests, in the book: *Todua N., Ivanidze M.* (ed.), Analysis of Juvenile Legislation and Legal Practice, Tbilisi, 2017, 40 (in Georgian).

10. Penalties for Juvenile Offenders

In cases of juvenile sentencing, the judge must envisage the best interests of the juvenile and the individual assessment report. The Juvenile Justice Code provides the possibility of imposing one or more duties on the convict under Article 45 of the code along with the sentence. However, the judge must take into consideration the mental and physical abilities of the convict in order to be able to perform the obligation imposed on the convict. The electronic supervision mechanism is used in the process of non-custodial sentence, the terms and conditions of which are determined by the order of the Minister of Justice.

The Juvenile Justice Code (Article 76) permits to impose on juvenile offenders a more lenient sentence than envisaged under the law. This is possible if there was no conviction in the past, and there is a combination of mitigating circumstances that make it easier to impose a more lenient sentence than envisaged by the law. In the present legislative provision, it is noteworthy that the Juvenile Justice Code does not require a plea bargain between the parties to impose a more lenient sentence than envisaged by the law, unlike the Criminal Code (Article 55), which imposes a more lenient sentence than envisaged by the law only in cases of plea bargain between the parties. The fact that the Juvenile Justice Code does not require a plea bargain agreement between the parties for imposing of a more lenient sentence than envisaged by the law is welcomed, as the plea-bargaining party is guided by public interests. This does not allow considering the convict's best interests.

However, it is hardly possible to say that Article 76 of the Juvenile Justice Code fully provides the possibility to resolve the issue. As for imposing a more lenient sentence under the provisions of this article, it is a necessary condition that the offender must not be condemned in the conviction and there must necessarily be the unity of mitigating circumstances. Juvenile offenders are not subject to Article 55 of the Criminal Code of Georgia. If we do not take into consideration the plea bargain agreement between the parties, the Criminal Code is more liberally resolved to impose a more lenient sentence than prescribed by the Juvenile Justice Code. It is particularly noteworthy that there is a requirement for juveniles not to have a conviction in the past, in order to be more leniently sentenced than the law provides.

The above-mentioned requirement seems even more incorrect, considering that Article 12 of the Juvenile Justice Code requires the juvenile's conviction to be annulled immediately after serving a sentence. It turns out that record is extinguished when sentence is served, but the crime, of which one was convicted, will still be a hindrance to a more lenient sentence. This legislative regulation takes a more unjust look, given that it only applies to minors. It turns out that, in this case, the legislation treats minors more strictly. Apart from this, we should take into consideration the fact that when the Juvenile Justice Code excludes the possibility of imposing a more lenient sentence for a juvenile convict than it is envisaged by the law, it does not take into account the nature of the past conviction (deliberate or non-deliberate, violent or non-violent).

Article 76 of the Juvenile Justice Code, which states that the judge may impose on a minor a sentence which is less than the minimum provided by law or a more lenient sentence if no judgment of conviction has been delivered against the minor in the past, is considered to be unconstitutional be-

cause of the discrepancy between the norm and the personal development of the convicted, since the above-mentioned norm does not allow the juvenile to develop freely.[90] The discriminatory and outdated criminalization prevents the use of humane legislation against the juvenile, which is inconsistent with the juvenile's true interests.

While sentencing juvenile offenders, the court shall consider the defendant's ability to develop as well as reintegrate into the society,[91] the level of education, health condition, environment and circumstances of the offence, perception of crime by the minor,[92] criminal behavior after committing the crime and the possible impact of the sentence on the convict.[93] The relevant circumstances in case of sentencing are the following: offenders confessing to the crime, effective repentance, and attempt to pay damages and starting a job.[94]

The juvenile's sentence should be determined in a way that the necessary corrective and educational effect is possible. However, the prerequisite priority of correctional perspective on juvenile imprisonment should not be understood in a manner that the correctional and educational effects are the only goals that can be taken into account when applying the sentence. It is also necessary to take into account the fair redemption of guilt and the positive general preventive aspect of sentencing.[95]

Even though the correctional view of juvenile sentencing is crucial and essential, it cannot justify the degree of the sentence that exceeds the upper limit of a juvenile's offence. That is why the juvenile should not be subject to a penalty that goes beyond the upper limit of sentence.[96]

11. The Goal of Sentencing Juvenile Offenders

For the argumentative justification of a sentence, guilt redemption is considered as the scope of measurement of charging the penalty. However, determination of the degree of guilt in case of juvenile offence is based on the correctional aspect and the best interests of the juvenile, which is considered the dominant principle of justifying the sentence.[97]

The perceived theory of sentencing in juvenile justice is considered to be a theory of legal aid, which allows prevention within the scope of repression, which implies the correction and educational measures in the scope of guilt redemption.[98]

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90 *Shalikashvili, M.,* Notes on the Juvenile Justice Code, "Journal of Criminology", N 1, 2016, 86 (in Georgian).

91 *Eisenberg U.,* Jugendgerichtsgesetz, 19 Aufl., München, 2017, 1257, §106 Rn. 6.

92 *Hamilton K.,* Guidelines for Legislative Reform of Juvenile Justice, Georgian translation, Children's Legal Center and United Nations Children's Fund ("UNICEF"), 2011, 102 (in Georgian).

93 *Meier B. -D., Rössner D., Trüg G., Wulf R.* (Hrsg.), Jugendgerichtsgesetz, 2 Aufl., Baden-Baden, 2014, 248, §18 Rn. 16.

94 Ibid, 248, Rn. 18.

95 *Schaffstein F., Beulke W., Swoboda S.,* Jugendstrafrecht, Eine systematische Darstellung, 15 Aufl., Stuttgart, 2014, 178, §22 Rn. 472.

96 Ibid, 179, §22 Rn. 474.

97 *Streng F.,* Jugendstrafrecht, 4 Aufl., Heidelberg, 2016, 225, §12 IV Rn. 455.

98 Ibid, 222, §12 IV Rn. 450.

It is considered to be a controversial issue in juvenile justice, whether it is justified to increase the penalty from the general preventive standpoint. According to one opinion expressed in Georgian legal literature, the penalty for juvenile offenders should not only affect the convicts but other juveniles who are inclined to commit a crime. The designated sentence contains a deterring effect and therefore serves not only private but also for general prevention.[99]

According to the opinion of the German Supreme Court, which represents the prevailing viewpoint, and also according to a viewpoint shared in the Georgian legal literature, tightening of the sentence is considered to be inadmissible for the purpose of deterring the public.[100] The tightening of the sentence for the purposes of deterring the public is more unacceptable in juvenile law, since the main principle of the juvenile legislation implies the avoidance of punishment that has the effect of dehumanization.[101]

12. The Age of Convict as a Ground for Incomplete Charging of Criminal Offence

The juvenile age of the prisoner represents a mitigating circumstance, in particular, if a convict is less than 21 years of age.[102] However, some authors consider the age to be a mitigating circumstance only in cases of minor offenders that are under the age of 18.[103] Nevertheless, it should be right to consider age as a mitigating circumstance not only for minors but also for young people. This is derived from the Juvenile Justice Code of Georgia, which applies not only to minors but also to young persons under the age of 21 (Article 2 of the Juvenile Justice Code).

The lesser the age of the convict, the lesser one may be held responsible. For example, from the standpoint of mental and moral maturity, a person who has reached the age of 14 is less responsible for his/her action than that of a 17 or 20 years-old.[104] This is related to the limited awareness and limited control over own actions, which does not exclude the possibility of different behavior but reduces its probability. Furthermore, the younger the convict, the greater is the possibility of influence on him/her by other people, since the psychology of the juvenile is not fully formed.

The Supreme Court of Georgia rightly considers the juvenile age of the convicted to be a mitigating circumstance, which is necessary to take into consideration in order to achieve the goal of resocialization.[105]

The Juvenile Justice Code, that allows the young age of the convicted person to be taken into consideration during sentencing, solves the matters relating to juveniles in a much more humane way than the Criminal Code in relation to adults.

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99 *Vardzelashvili S.,* The Goals of Sentence, Tbilisi, 2016, 269-170 (in Georgian).

100 *Streng F.,* Jugendstrafrecht, 4 Aufl., Heidelberg, 2016, 222-223, §12 IV Rn. 451; *Shalikashvili M., Mikanadze G.*, Juvenile Justice (Textbook), 2nd ed., Tbilisi, Freiburg, Strasbourg, 2016, 126 (in Georgian).

101 *Streng F.,* Jugendstrafrecht, 4 Aufl., Heidelberg, 2016, 222-223, §12 IV Rn. 451.

102 BGH StV, 1995, 584.

103 *Gotua Z.,* Criminal Law, General Part, Punishment, Tbilisi, 2001, 40 (in Georgian).

104 *Schöch H., in: Meier B. -D., Rössner D., Schöch H.,* Jugendstrafrecht, 3 Aufl., München, 2013, 224, §11 II, Rn. 18.

105 Decisions of the Supreme Court of Georgia, N 4, Tbilisi, 2005, 46 (in Georgian).

Taking into account the young age of the convict during sentencing is derived from the fact that at young age, especially in juvenile years, a person is not fully formed yet. It is easy to psychologically influence a young person and because of the young age the person may not have a full understanding of the consequences of his/her action.[106] The above-mentioned represents the basis for reducing the sentence of juvenile offenders due to age. Age of a convict is directly related to the level of his/her development, which is a significant circumstance to consider when applying a sentence.

13. Exemption from Criminal Responsibility for Juveniles

The Juvenile Justice Code provides the grounds for exempting a person from criminal responsibility. These are due to period of limitation, diminished responsibility, diversion and mediation.

Exemption from responsibility due to the expiry of the limitation period is related to the definite timeframes that are differentiated by the severity of the offence committed. It is noteworthy that the framework within which the limitation period is determined is different for adults and juveniles. For example, if six years is the limitation period for adults in case of a less serious offence, the term for juveniles is set at three years, i.e., half of the term determined for adults. If limitation period from the time of a serious offence committed by an adult is ten years, it is only five for juveniles.

The Criminal Code provides for the expiration of the limitation period not only from criminal responsibility but also for exemption from punishment. If the limitation periods relating to the release of responsibility are calculated from the moment when the crime was committed, the terms of exemption from the penalty shall be counted from the moment of sentencing the convict by a court.

As it was already said, diminished responsibility may present the basis for the exemption of the juvenile from criminal responsibility (Article 37 of Juvenile Justice Code) while the Criminal Code indicates the possibility of only mitigating the sentence on the basis of diminished responsibility for adults (Article 35). The same circumstance in the Juvenile Justice Code represents one of the bases for the exemption of a juvenile from criminal responsibility.

14. Diversion and Mediation in Juvenile Justice

The Juvenile Justice Code envisages the use of restorative justice for juvenile offenders, such as diversion and mediation if it ensures resocialization and rehabilitation of juvenile offenders and serves in preventing reoffending. Diversion occurs when the objective of the penalty is achieved without a sentence. The fact that diversion is used to achieve the same objectives a penalty derives from Article 38 of the Juvenile Justice Code, determining the objectives of diversion.

According to one of the opinions expressed in relevant legal literature, we cannot determine that diversion has the same goal as a sentence. The commentator is attempting to explain it by saying that

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[106] *Gotua Z.,* Criminal Law, General Part, Punishment, Tbilisi, 2001, 40 (in Georgian).

diversion and sentence interfere with different intensities in human rights and freedoms.[107] This view is not well-grounded. The fact that diversion and punishment are connected to the interference of various intensities in human rights and freedoms does not mean that these measures should necessarily serve different objectives. The types of sentencing are also related to the interference of various intensities in human rights, but it does not arise from that they serve different objectives. The idea that diversion and sentencing may serve the same purpose is represented by the following circumstance: diversion is an alternate measure of punishment and can be a sentence as well; the diversion measure is used against the offender.

There exists a possibility of diversion in the case of a less severe and serious offence (Article 38 of Juvenile Justice Code). Diversion is an alternate measure of punishment and makes criminal justice more humane,[108] since it is directed not at the past but at the future. Restorative justice programs are considered as an efficient way to reduce crime and manage its recurrence.[109]

When we talk about using the institution of restorative justice for achieving the purpose of sentencing for juveniles, we mean resocialization and rehabilitation of the convict, prevention rather than restoration of justice. Since the Juvenile Justice Code does not take into account the objective of penalty and diversion, mediation measures are not directed towards the implementation of this goal. Although according to one of the views expressed in legal literature, mediation provides the possibility of restoration of justice, since in this respect restoration of justice does not always entail a compulsory repressive measure;[110] this view should be considered controversial. Restoration of justice is not limited to the resolution of conflict between the parties only. Restoration of justice implies the right to retaliate for the crime committed. This requires the punishment of the perpetrator and excludes the measures of diversion and mediation.

It is only possible to use the measure of diversion when the juvenile has committed a less severe or serious offence. Criminal prosecution does not start, or an ongoing prosecution does not stop, during the period of diversion, that is decided by the prosecutor. Decision about diversion can be taken even after the proceedings in court.

Under the Juvenile Justice Code, When the prosecutor makes a decision to apply diversion, or the court reviews the case on the application of diversion on its own motion or based on a reasoned motion of a party, account shall be taken of the best interests of the minor, the nature and gravity of

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107 *Shalikashvili M., Mikanadze, G.,* Juvenile Justice (Textbook), 2nd ed., Tbilisi, Freiburg, Strasbourg, 2016, 94-95 (in Georgian).

108 *Tumanishvili G.,* Restorative Justice and the Perspective of Its Development in Georgia, in the collection: *Turava M.* (ed.), The Science of Criminal Law in the Process of European Development, the Collection of Scientific Symposium of Criminal Law, Tbilisi, 2013, 258 (in Georgian).

109 *Hamilton K.,* Guidelines for Legislative Reform of Juvenile Justice, Georgian translation, Children's Legal Center and United Nations Children's Fund ("UNICEF"), 2011, 104 (in Georgian); *Shalikashvili M., Mikanadze G.,* Juvenile Justice (Textbook), 2nd ed., Tbilisi, Freiburg, Strasbourg, 2016, 91-92 (in Georgian).

110 *Tumanishvili G.,* Restorative Justice and the Perspective of Its Development in Georgia, in the collection: *Turava M.* (ed.), The Science of Criminal Law in the Process of European Development, the Collection of Scientific Symposium of Criminal Law, Tbilisi, 2013, 263 (in Georgian).

the offence, the age of the minor, the degree of guilt, the expected punishment, any injury or damage caused by the minor, the preventive effect of criminal prosecution, the behavior after the commission of the crime, any previous crimes and the individual assessment report. Considering the circumstances mentioned above, imposing diversion is only possible in cases, when: the minor has no previous convictions; the minor confesses to the crime; there is no public interest in initiating criminal prosecution or continuing an already initiated criminal prosecution; and the minor and his/her legal representative have given an informed written consent to the application of diversion. The public prosecutor shall be responsible for the execution of the criminal prosecution or the decision on rejection of it in accordance with the general part of the Guidelines for Criminal Justice Policy.[111]

A diversion measure may impose on a minor the obligations, such as to start or resume study in an educational institution, start working, participate in medical treatment programs and spend leisure time in a specific manner. Diversion may also impose on a minor the obligation of fulfilling other obligations that will facilitate their resocialization and rehabilitation and prevent them from committing a crime in future.

The Juvenile Justice Code provides more stringent grounds for diversion regarding juveniles than the Criminal Procedure Code of Georgia regarding adults. In particular, the following grounds are necessary for the application of diversion: a) absence of criminal record; b) absence of past application of diversion; and c) confession to the offence. Such requirements do not apply to adult convicts, which puts juveniles in an unequal position in relation to adults.[112]

The grounds for refusing diversion can be the degree of guilt, when the use of the diversion measure regarding the degree of guilt is in contradiction with the perceptions of the society about justice, so that the fact of using a diversion measure becomes unbearable.[113]

In relation with the diversion of the juvenile from the sentence, the injustice of the action should also be taken into consideration. However, it is crucial to consider not the abstract severity of the action, but the injustice of the particular action. One group of authors discusses the gravity of a crime in close contact with the gravity of an action and if the gravity of the action is weak, then the severity of the guilt is excluded. Consequently, the injustice committed in particular cases represents the basis for determination of the degree of culpability.[114] On the other hand, the objective injustice of an action alone is considered insufficient to justify the degree of culpability; the personality of the offender should also be considered.[115]

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111 *Akubardia I.,* On the Development of the Institution of Diversion, in the collection: Guram Natchkebia — 75, anniversary collection, Tbilisi, 2016, 61 (in Georgian).

112 Ibid, 69-70.

113 *Schaffstein F., Beulke W., Swoboda S., Jugendstrafrecht,* Eine systematische Darstellung, 15 Aufl., Stuttgart, 2014, 171, §22 Rn. 457; *Meier B. -D., Rössner D., Trüg G., Wulf R.* (Hrsg.), Jugendgerichtsgesetz, 2 Aufl., Baden-Baden, 2014, 233, §17 Rn. 22; *Schöch H.,* in: *Meier B. -D., Rössner D., Schöch H.,* Jugendstrafrecht, 3 Aufl., München, 2013, 220-221, §11 II, Rn. 12.

114 *Meier B. -D., Rössner D., Trüg G., Wulf R.* (Hrsg.), Jugendgerichtsgesetz, 2 Aufl., Baden-Baden, 2014, 234, §17 Rn. 24.

115 Ibid, 234, §17 Rn. 25.

Although one group of authors supports the determination of the degree of culpability on the basis of the severity of a crime, the above-mentioned opinion could seem controversial in relation to the prohibition of double assessment principle. Double assessment is divided into prohibited and permitted double assessments, which means that double assessment is not always prohibited and is sometimes permitted. However, if we always assess the degree of culpability on the basis of the severity of a crime, soon we will come to the conclusion that double assessment does not exist. But, it is noteworthy to mention regarding this principle that it is not regarded as a functional principle in juvenile justice law.[116]

Diversion from penalty can be inadmissible, for example, in the cases of murder and intentional criminal offence resulting in a deadly outcome during criminal offences such as rape, robbery and kidnappings. According to a view expressed in German legal literature, apart from considering the degree of objective of justice while imposing a sentence, the court should also take into consideration the degree of personal responsibility. In such a case, the injustice is not evaluated independently, but along with the personal circumstances that indicate the connection of the offender with a criminal action.[117] When rejecting diversion and applying a sentence, legal virtue, against which the offence has been committed, will be also considered.[118] The above-mentioned crimes illustrate exactly the cases in which juvenile offenders will be sentenced.

15. Conclusion

In conclusion, it can be said that by adopting the Juvenile Justice Code, Georgia has taken a step towards a more liberal approach with regard to juveniles. It is primarily meant to give priority to the restoration of justice rather than punishment, which represents humanization of penal law. It is also important that the Juvenile Justice Code should focus on the objective of resocialization and reintegration so that juvenile justice is more corrective and educational than punitive. However, this branch of justice remains to be the domain that does not exclude repression when it is impossible to achieve sentencing objectives by non-punitive measures.

While recent reforms in Georgia concerning juvenile justice can be assessed positively in many areas, there are still gaps in legislation, which require further legislative regulation. For instance, it concerns imposition of more lenient sentences on juveniles which requires the existence of several requirements cumulatively; legislative regulation regarding juvenile diversion, which puts juveniles in a more difficult situation than adults; and the use of plea bargain institution in juvenile justice, which contradicts the juvenile's best interests.

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116 Ibid, 242, §18 Rn. 2.

117 *Schöch H.,* in: *Meier B. -D., Rössner D., Schöch H.,* Jugendstrafrecht, 3 Aufl., München, 2013, 220-221, §11 II, Rn. 12.

118 *Mtchedlishvili-Hädrich K.,* Sanctions in Juvenile Criminal Law According to the German Legislation, in the collection: *Lekveishvili M., Shalikashvili M.* (ed.), The Problems of Compulsory Punishment and Educational Nature of Juvenile Sentence, Tbilisi, 2011, 244 (in Georgian).

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