



**Ivane Javakhishvili Tbilisi State University**  
**Faculty of Law**

# **Journal of Law**

**№1, 2020**



უნივერსიტეტის  
გამომცემლობა

## **Historical and Legal Aspects of the Origin and Development of Juvenile Justice (Comparative Analysis)**

*The following article discusses one of the most pressing issues in today's world – juvenile justice. The article discusses the history of the origins of juvenile justice, the stages of development, including issues related to juvenile court and on criminal liability of a minor in conflict with the law, current approaches and realities, both in the world and in Georgia. The article focuses on the best interests of the minor as the main principle of juvenile justice. The article also discusses the Juvenile Justice Code, as the first special law on juveniles in the Georgian legislature.*

**Key words:** *juvenile justice, history of juvenile justice, juvenile court, Juvenile Justice Code, a minor in conflict with the law.*

### **1. Introduction**

The world has long acknowledged that minors should be considered separately from adults. This approach has historically been formed. For example, the Norwegian Criminal Code of the 13<sup>th</sup> century states that "Adults can have both hands cut off for theft and children – only one."<sup>1</sup> Juvenile justice<sup>2</sup> was established as a humanitarian institute for the protection of the rights of children and adolescents in the orbit of justice, which considers, on the one hand, perpetrators of crimes and on the other hand, juvenile victims of crime and other criminogenic situations.<sup>3</sup>

Juvenile justice has gained relevance in our country especially in recent years. Significant political and socio-economic developments in Georgia have necessitated the establishment of an appropriate legislative framework in the field of juvenile justice. Our country, on the path to democracy, has set out to create and develop a system of juvenile justice in the country in order to bring it closer to international standards. The first attempt to do this is to adopt a special legislative act. While Georgia did not even have a juvenile justice reform strategy until 2009, radical changes took place in 2015. On June 12, the Parliament of Georgia adopted Juvenile Justice Code, which main part came into force on January 1, 2016.

The purpose of this article is to review the origins and development stages of juvenile justice in both legal and historical aspects. The subject of the research is covered on the example of Georgia as

---

\* Doctoral Student at Ivane Javakhishvili Tbilisi State University, Faculty of Law.

<sup>1</sup> *Independent Council of Advisors of the Parliament of Georgia, The United Nations Children's Fund, Juvenile Crimes Administration, Training Modules on Juvenile Crime Administration, Georgian Legislation and International Legal Mechanisms, Tbilisi, 2003, 119 (in Georgian).*

<sup>2</sup> Juvenile Justice is an internationally recognized term. The word "justice" is used in several senses. It is primarily defined as justice (as well as the judiciary, the judiciary system, etc.) (in Georgian).

<sup>3</sup> *Bokhashvili I., Benidze M., Juvenile Justice Issues (According the Current Procedural Law, the New Criminal Procedure Code and International Legal Acts), Journal of Law, № 2, 2009, 35 (in Georgian), Cited: Petrukhin I. L., Criminal Procedure Law of Russian Federation, 2007, 592 (in Russian).*

well as the world. A separate chapter in the article is devoted to juvenile court. Also, due attention is paid to the stages of juvenile sentencing in the national and international prism.

## **2. Origins and Stages of Development of Juvenile Justice**

The juvenile, due to his or her legal status, has always been, is and will be the center of attention of the state and society. As historical research shows, there was still a teaching in Roman law on juvenile justice, but later, in the inquisition justice, juvenile status was equated with adult and the torture, death penalty and other severe punishments for adults, were also used towards children.<sup>4</sup>

In one of the states in the United States, Massachusetts (where today is one of the most powerful law schools in the world at Harvard University), there was an ordinance according to which a minor under the age of 16 who did not obey his or her parents would be sentenced to death.<sup>5</sup> There was no alternative sentence to such misconduct. It was an absolute tribute to the authority of the parent and the desire for strict law to be enforced.<sup>6</sup>

Children and adolescents differ from adults in development, therefore, their justice should be more focused on rehabilitation. Previously it was less important to understand the individual needs of the juvenile and then take care of him or her. The reason for the juvenile's involvement in justice was the negligence and uncontrollability from his or her parents.<sup>7</sup> The child was perceived as a "reduced older person." Only in the 19<sup>th</sup> century was there talk of a child's full life, his or her personality, the importance of upbringing. The basis of children's and pedagogical psychology was laid in this century.<sup>8</sup>

The juvenile justice system was first established in the United States. The system aim was to release minors from violent and destructive justice and offer them the standards based on individual approaches. The main issue was that juvenile justice should be radically different from adult justice. The legal proceedings were informal, focusing on the minor and his or her needs and not on the actions he or she had taken. Acts committed by a minor in juvenile justice should not be considered as a crime. It should have been assessed as an offence. Consequently, the child was not criminal. He was a offender. According to the reformers, the child should not be sent to prison, but to a special school or juvenile correctional facility.<sup>9</sup> It should also be noted that, the above approaches are also considered by the Juvenile Justice Code. There is no criminal in the legislative act, but there is a person in conflict with the law. The use of the mentioned term implies that children who are accused of committing a

---

<sup>4</sup> *Jensen E. L., Metsger L. K., A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime, Journal of Crime and Delinquency, Vol. 40, 1994, 99.*

<sup>5</sup> *Wiley B., The General Laws and Liberties of the Massachusetts Colony (1672) in Juvenile Offenders for a Thousand Years, New York, 1970, 318-319.*

<sup>6</sup> *Davis S. M., Children's Rights Under and the Law, Oxford University Press, England, 2011, 71.*

<sup>7</sup> *Schlossman S., Coalition for Juvenile Justice, DeKalb, Illinois, United States, 1998, 4.*

<sup>8</sup> *Chrisman O., Paidology the Science of the Child, The Historical Child, Richard G. Badger Gorham Press, Boston, 1920, 11.*

<sup>9</sup> *National Research Council and Institute of Medicine, Juvenile Crime, Juvenile Justice, The National Academies Press, Washington, DC, 2001, 154.*

crime should not be considered and treated as adults. This is due to children's limited intellectual abilities, psychological, emotional, moral and social development. There is also no prison in the legislative act, but there is a juvenile rehabilitation facility, which is a step forward and emphasizes the sharing of the basic principles of juvenile justice in Georgian legislation.

Significant reforms in juvenile justice took place in the 1980s. The states rejected the strict approach and punished and focused on the re-socialization and rehabilitation of minors.<sup>10</sup> Different laws have been enacted in all states of the United States regarding minors, but the approach was the same everywhere – to give preference to the minors' best interests and alternative measures.<sup>11</sup> The traditional juvenile justice model focuses on a convicted minor rehabilitation, balancing the needs of a victim, an offender and the community.<sup>12</sup> However, in practice the problem was to maintain a balance between social welfare and social control, that is, on the one hand, to focus on the best interests of the child, and on the other hand, to punish the juvenile and protect society from certain crimes. These contradictory views have changed over time and have come under the best interests of the child,<sup>13</sup> which has survived to this day. The first and one of the main goals of the Juvenile Justice Code is – to protect the best interests of the juvenile in the justice process.

Juvenile justice has developed rapidly in the early 20<sup>th</sup> century, in both the United States and Europe. Over the years, the institute has undergone a number of changes, however, the basic characterization has remained the same – Juvenile Justice – this is educational justice. Juvenile justice is mainly seen as a procedure of release from sentence, however, many countries, including the Juvenile Justice Code of Georgia, do not require release from sentence of a person in conflict with the law. The law does not prohibit the conducting of a criminal case, as well as a criminal liability in case of a crime, which ends an imposition of sentence and execution of it.

According to the Juvenile Justice Code, one of the purposes of the code is to re-socialise and rehabilitate minors who are in conflict with the law.<sup>14</sup> According to the same code, the objective of a sentence imposed on a minor is the re-socialisation and rehabilitation of the minor and the prevention of new crimes.<sup>15</sup> As we see, unlike the Criminal Code of Georgia, the Juvenile Justice Code refused to restore justice as the purpose of a sentence. The probable reason for this is that the restoration of justice is inextricably linked to the goal of retaliation, which is unacceptable in juvenile justice. This fact also significantly proves that the Juvenile Justice Code focuses on the perpetrator and not on the act committed, which is also an echo of the traditional juvenile justice model.

---

<sup>10</sup> *Torbet P., Szymanski L., Griffin P.*, Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, United States, 1998, 10.

<sup>11</sup> *Orsagh T., Chen J. R.*, The Effect of Time Served on Recidivism: An Interdisciplinary Theory, *Journal of Quantitative Criminology*, Vol. 4, № 2, 1988, 155.

<sup>12</sup> *Bazemore G., Umbreit M.*, Rethinking the Sanctioning Function in Juvenile Court: Retributive or Restorative Responses to Youth Crime, *Journal of Crime and Delinquency*, № 41(3), 1995, 299.

<sup>13</sup> *National Research Council and Institute of Medicine*, Juvenile Crime, Juvenile Justice, The National Academies Press, Washington, DC, 2001, 154.

<sup>14</sup> Juvenile Justice Code, 3708-IIS, 12/06/2015, Article 1(2).

<sup>15</sup> *Ibid*, Article 65.

### 3. Historical Excursion on Juvenile Court

The juvenile justice system center is a juvenile court.<sup>16</sup> At first, the term – “Juvenile Justice” was used as a synonym if juvenile court, however, over time the term has undergone a change, because justice may include other establishments expect the court, for example, the police, the prosecutor's office, the bar association, probation, juvenile detention centers and minors' prisons.<sup>17</sup>

The first juvenile court was established in 1899 in Chicago according the Illinois Juvenile Court Act.<sup>18</sup> The court administered justice to minors under the age of 16. It focused more on rehabilitation than on punishment. The court records, in order to reduce the stigma, were confidential. Under the law, minors must be separated from adults. The use of imprisonment direct children under the age of 12 was also prohibited. The law also provided informality in court proceedings.<sup>19</sup> The purpose of the court was to assist the juvenile in resolving family, social, or personal problems and to form a healthy, productive, and law-abiding person. A court should be a defender for a juvenile in conflict with the law, not as an enemy,<sup>20</sup> as it was in the previous system. Previously, adults and minors were treated equally, with the same approaches and punishments, including long-term imprisonment. They had the same rights and even served the sentence together.<sup>21</sup>

The idea of a juvenile court quickly spread. By 1925, the juvenile court existed in all states of the United States except Maine and Wyoming.<sup>22</sup> The establishment of the juvenile court was considered radical news at the time, but despite this practice, in addition to the United States, it soon found development in foreign countries: Great Britain (1905), Russia (1910), France and Belgium (1912), Spain (1918), the Netherlands (1912), Germany (1922) and Austria (1923).<sup>23</sup>

Already in the early 20<sup>th</sup> century, appeals to juvenile courts were significantly increased, both by law enforcement agencies and by parents and relatives of adolescents. As a result, the role and relevance of juvenile courts in the country has increased. The court sought to show compassion, trust and mutual understanding,<sup>24</sup> and not fear, intimidation and imprisonment, as it was before.<sup>25</sup> The establishment of juvenile court completely changed juvenile justice system, goals and principles.

---

<sup>16</sup> Moore M. H., Wakeling S., *Juvenile Justice: Shoring Up the Foundations*, Crime and Justice: A Review of Research, Vol. 22, The University of Chicago Press, Chicago, 1997, 260.

<sup>17</sup> Rosenheim M. K., Zimring F. E., Tanenhaus D. S., *A Century of Juvenile Justice*, Chicago, Illinois, United States, 1983, 18.

<sup>18</sup> Lou H. H., *Juvenile Courts in the United States*, Chicago, Illinois, United States, 1927, 14.

<sup>19</sup> Mack J. W., *The Juvenile Court*, Harvard Law Review, Vol. 23, № 2, 1909, 111.

<sup>20</sup> Cintron L. A., *Rehabilitating the Juvenile Court System: Limiting Juvenile Transfers to Adult Criminal Court*, Northwestern University Law Review, Vol. 90, 1996, 1262.

<sup>21</sup> Larsen K. L., *With Liberty and Juvenile Justice for All: Extending the Right to a Jury Trial to the Juvenile Courts*, William Mitchell Law Review, Vol. 20, 1994, 5-6.

<sup>22</sup> Schlossman S., Sedlak M., *The Chicago Area Project Revisited*, Journal of Crime and Delinquency, Vol. 29, 1983, 400.

<sup>23</sup> *Independent Council of Advisors of the Parliament of Georgia, The United Nations Children's Fund, Juvenile Crimes Administration, Training Modules on Juvenile Crime Administration, Georgian Legislation and International Legal Mechanisms*, Tbilisi, 2003, 120 (in Georgian).

<sup>24</sup> Schlossman S., Sedlak M., *The Chicago Area Project Revisited*, Journal of Crime and Delinquency, Vol. 29, 1983, 411.

From the 1910s, the criticism of the fairness and efficiency of the juvenile court has began. Part of the critics accused the court of informality, excessive generosity and improper attention to the process. They did not like to treat all the children in court equally – those who committed the crime and those who did nothing, which did not give the proper result.<sup>26</sup> Unlike an adult, a juvenile's case could have ended in such a way that there had been no oral hearing, the convict had not had the opportunity to use his or her right to protection or even been properly informed about his or her charges.<sup>27</sup>

Significant changes in juvenile justice have taken place in the mid of 20<sup>th</sup> century, which is related to three decisions of Supreme Court of the United States. The decisions determined procedural formalities in juvenile justice and established the mandatory rights of a minor in conflict with the law. Precedent law is the source of law in the United States.

The first case was *Kent v. United States*, in which a court denied a juvenile Moris Kent to consider his case, because the previous instance court considered his case without an oral hearing and his lawyer did not have access to the information on which the court's decision was based. The juvenile was in the worst situation at the time. He could not use rights that could be used in an adult court because his case was considered by a juvenile court where these rights were not allowed to be used.<sup>28</sup>

The second case, which was considered by the Supreme Court of the United States a year later, was *Gault v. United States*. This decision further demanded to the court to protect the rights of minors. 15 years old Gerald Gault was sentenced to life in prison for an indefinite period of time. His action was that he made an obscene phone call, for which the maximum penalty for adults was a fine of 50\$ or imprisonment for 2 months. Almost all procedural disorders took place in this case: the juvenile was detained by the police, who did not inform the parents about it during the whole night; The case was heard in the juvenile court the next day. Witnesses were not called to the trial; The process was not recorded; The juvenile had no lawyer,<sup>29</sup> etc. By this decision of the Supreme Court, minors were given the right to receive information about the charges against them, to have a lawyer, to invite witnesses, as well as to question the witnesses of the prosecution, to receive a record of court hearing and to appeal any judge's decision.<sup>30</sup>

In 1970, the Supreme Court of the United States established a "standard of beyond reasonable doubt" in juvenile justice by the case *In re Winship*, which is about 11 years old Samuel Winship. A minor in conflict with the law must be found guilty by the combination of agreed evidences beyond reasonable doubt.<sup>31</sup>

---

<sup>25</sup> Schlossman S., Love and the American Delinquent, Journal of Juvenile Family Court, Vol. 28, 1977, 63.

<sup>26</sup> Difonzo J. H., Parental Responsibility for Juvenile Crime, Vol. 80, №1, 2001, 4.

<sup>27</sup> Dawson R. O., The Future of Juvenile Justice: Is It Time to Abolish the System, Journal of Criminal Law and Criminology, Vol. 81, 1990, 141.

<sup>28</sup> *Kent v. United States*, (1966), 383 US 541.

<sup>29</sup> See also on this issue. Salduz v. Turkey, [2008], ECHR, №36391/02, §59; Adamkiewicz przeciwko Polsce, [2010], ECHR, № 54729/00, §49, European Court of Human Rights Found a Violation of Article 6 of European Convention on Human Rights (Right to a Fair Trial) in Cases Where Juveniles', Who Were Not Given the Right to Use a Attorney's Service, Confessional Testimony Were Used as Evidence.

<sup>30</sup> *Gault v. United States* (1967), 387 US 1.

<sup>31</sup> *In re Winship*, (1970), 397 US 358.

The Supreme Court of the United States has delivered several decisions in this period which contributed to the establishment of juveniles' rights. The principle of prohibition of the "double sentence" has emerged in juvenile justice by case *Breed v. Jones*, in which the court clarified that a person should not be tried for the same act as a minor and later in adulthood. The court acknowledged that the juvenile's case is a criminal and not a social welfare case.<sup>32</sup> Nevertheless, juveniles were still not given full access to criminal procedural rights. In the case of *McKeiver v. Pennsylvania* the Court clarified that juveniles have no right to use the jury trial, which is a restriction of their procedural rights.<sup>33</sup> Judges consider many cases and have some ideas about the evidences or the parties, and jurors are focused on only one case, so it may be better that juries consider juvenile's case. Also, jurors review the case as a group and make a decision that may also be positive for the juvenile.<sup>34</sup> After this decision, the juveniles were allowed to use the jury trial.

From the day of its establishment, the juvenile court has also considered cases that were not a crime but a "bad behavior." In particular, actions such as running away from home, missing school, drinking alcohol in public places or engaging in prostitution. The court sentenced them to take appropriate corrective measure (for example, they could be placed in psychiatric, drug, and alcohol treatment facilities by court order). These children were minors who were out of control and needed help, a reference that they would not become criminals in the future.<sup>35</sup>

The juvenile court also considered administrative offenses. In the 1960s, many states revised the code of Administrative Offenses and repealed some of the offenses, while those who committed them were referred to in other terms instead of offenders, as well as juveniles who needed supervision and control. Accordingly, in 1974, the United States Congress passed the Law on the Prevention of Juvenile Justice and Crime. Also established the State Department of the same name, which was governed by this law. The law applied to both persons in conflict with the law and to minors with "bad behavior." In the early 1980's, the number of such minors decrease significantly.<sup>36</sup> In the same year, an amendment to the law was made, according to which anyone who disobeyed a court order would be sentenced to imprisonment. With the amendment of the same law of 1988, the medical and prison facilities for minors and adults were separated.<sup>37</sup>

The establishment of special courts and detention facilities for juveniles was part of the reforms of the Progressive Era.<sup>38</sup> The treatment of minors, as well as that of adult criminals, is exaggerated. The main reason for establish a juvenile court is to prevent children from becoming criminals.<sup>39</sup>

---

<sup>32</sup> *Breed v. Jones*, (1975), 421 US 519.

<sup>33</sup> *McKeiver v. Pennsylvania*, (1971), 403 US 528.

<sup>34</sup> *Feld B. C.*, *Criminalizing the American Juvenile Court*, Crime and Justice, Minnesota, United States, 1993, 66.

<sup>35</sup> *Krisberg B., Schwartz I.*, *Rethinking Juvenile Justice*, Journal of Crime and Delinquency, Vol. 41, 1983, 350.

<sup>36</sup> *Krisberg B., Schwartz I.*, *Rethinking Juvenile Justice*, Journal of Crime and Delinquency, Vol. 41, 1983, 350.

<sup>37</sup> *Schwartz B.*, *Psychology of Learning and Behavior*, United States, 1989, 103.

<sup>38</sup> *Schlossman S., Sedlak M.*, *The Chicago Area Project Revisited*, Journal of Crime and Delinquency, Vol. 29, 1983, 399.

<sup>39</sup> *Waters M. V.*, *Parents on Probation*, New York: New Republic Company, 1927, 21.

Consequently, one of the main goals of juvenile justice from the beginning was to prevent crime. Unfortunately, due to resources or other reasons, we have never had a juvenile court in Georgia.

#### **4. Historical Excursion on Juvenile Sentences**

A sentence is a method of social control that determines the maximum of individual freedom within the legal framework established in different areas.<sup>40</sup> The main purpose of criminal punishment is to establish a certain standard of conduct and to impose punitive measures for violating these rules.<sup>41</sup>

Juvenile justice legislation should include norms where should point clearly that the principle of the best interests applies to any decision. In addition, the legislation should state that the principle the best interests of minors applies to all aspects of juvenile justice and all actions to be taken within it,<sup>42</sup> including sentences. Initially, juvenile sentences were not subject to the principles of juvenile justice. In particular, in the United States before the beginning of the 19<sup>th</sup> century, criminal liability was introduced from the age of 7, so that they could be sentenced to any punishment, including imprisonment and the death penalty.<sup>43</sup>

Sentences should be divided into two groups according to their form and content. In particular, sentences that restrict or detain a convict's liberty (house arrest, restriction of liberty, life imprisonment) and sentences that are not related to restriction or deprivation of liberty of a convict (fine, deprivation of the right to work, community service).<sup>44</sup> Imprisonment is usually considered the most severe sanction. In the United States in 1996, 18% of juvenile offenders (320,900 cases) were serving sentences in a detention facility. The types of crimes for which juveniles were serving sentences were mostly violent,<sup>45</sup> as well as against property and drugs.<sup>46</sup> There were no alternative punishments, the existence of which is directly related to proper criminal policy. Without alternative punishments, juvenile justice can not acquire the humanitarian character necessary for a democratic state. Punishment in a penitentiary institution further encouraged juveniles to commit crimes. That is why the the necessity of existence of alternative sentences become a plan.

---

<sup>40</sup> *Haney C.*, Reforming Punishment, Psychological Limits to the Pains of Imprisonment, American Psychological Association Washington, DC, 2006, 32.

<sup>41</sup> *Hart H. L. A.*, The Presidential Address: Prolegomenon to the Principles of Punishment, Journal of Proceedings of the Aristotelian Society, New Series, Vol. 60, Oxford University Press, England, 1960, 21.

<sup>42</sup> *Hamilton C.*, Guidance for Legislative Reform on Juvenile Justice, *The United Nations Children's Fund (Trans.)*, Tbilisi, 2015, 35 (in Georgian).

<sup>43</sup> *Schlossman S., Sedlak M.*, The Chicago Area Project Revisited, Journal of Crime and Delinquency, Vol. 29, 1983, 399.

<sup>44</sup> See Also *KherKheulidze I.*, Community Service – One of the Best Agents for the Re-socialization of Juvenile Offenders Among Non-custodial Sentences (Comparative Analysis of the Criminal Approach of Georgia and the United States), Journal of Justice and Law, № 2(29), 2011, 119 (in Georgian).

<sup>45</sup> *Soringer W. D., Roberts R. A., Brownell P., Torrente M., Lippman P. D. A., Deitch M.*, A Brief Historical Overview of Juvenile Justice and Juvenile Delinquency, United States, 2006, 10.

<sup>46</sup> *National Research Council and Institute of Medicine*, Juvenile Crime, Juvenile Justice, The National Academies Press, Washington, DC, 2001, 186.



At the initiative of the “Annie E. Casey” Foundation,<sup>47</sup> in 1992, the United States began working on alternatives to juvenile detention. The grant was awarded to several states,<sup>48</sup> on the condition that instead of better organizing and expanding penitentiary institutions, the money would be spent on the introduction of new alternative sanctions. The project has been going on for years and was finally evaluated in 2000. According to the assessment, alternative sentences have significantly reduced the number of detention facilities, so that the increase in crime has not taken place.<sup>49</sup> Alternative sanctions were: community service, medical care, compensation, commitment to stay at home or elsewhere, monitoring school attendance, general behavioral supervision, passing a therapeutic course, communicating with a senior friend, etc.<sup>50</sup>

The new juvenile sanctions were based on the needs of the offender and focused on the well-being of the child.<sup>51</sup> It was so-called "Proportional punishments", whose philosophy focuses on the perpetrator.<sup>52</sup> The main purpose of the sentences was to rehabilitate the offender. Over time, legislative changes have removed penalties for rehabilitation purposes. A sentence became based on a crime, not a criminal. The sentence based on the crime is aimed at retaliation.<sup>53</sup> In response of this, in some states of the United States, were spreaded so-called "Mixed (combined) sentences", which meant that a juvenile would be imposed to a sentence in a juvenile correctional facility, however, another sentence would be imposed, which was intended for an adult. The execution of the second sentence was suspended until the juvenile served the first sentence, and if he did successfully, the second sentence would be revoked.

Supporters of this system noted that by this a minor should get rid of the severe punishment in case of a particularly serious crime, but opponents noted that this system contradicted the essence of juvenile justice. The use of adult sentences led to procedural and legal violations.<sup>54</sup> In most states, the system of mixed sentences was in force, however, in some states a judge could impose a sentence on a minor which was only for a minor or only for an adult.<sup>55</sup>

---

<sup>47</sup> One of the Most Famous and Powerful Charitable Foundations of Child Welfare System in the United States (in Georgian).

<sup>48</sup> Cook County, Illinois (Chicago); Milwaukee County, Wisconsin; Multnomah County, Oregon (Portland); New York City; and Sacramento County, California.

<sup>49</sup> *Kendrick M.*, Reducing Disproportionate Minority Contact in the Juvenile Justice System: Promising Practices, Aggression and Violent Behavior, United States, 2007, 145.

<sup>50</sup> *Mallett Ch. A.*, Predicting Juvenile Delinquency: The Nexus of Childhood Maltreatment, Depression and Bipolar Disorder, *Journal of Criminal Behaviour and Mental Health*, 19(4), 2009, 66.

<sup>51</sup> *Torbet P.*, State Responses to Serious and Violent Juvenile Crime, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, United States, 1996, 12.

<sup>52</sup> *Christy N.*, The Limits of Pain, the Role of Punishment in Penitentiary Politics, *Bakhtadze U. (Trans.), Shalikhvili M., Giorgadze G. (ed.)*, 1<sup>st</sup> Ed., Tbilisi, 2017, 64 (in Georgian).

<sup>53</sup> *Torbet P., Szumanski L., Griffin P.*, Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, United States, 1998, 11.

<sup>54</sup> *Feld B. C.*, Abolish the Juvenile Court: Youthfulness, Criminal Responsibility and Sentencing Policy, *Journal of Criminal Law and Criminology*, Chicago, United States, 1997, 100.

<sup>55</sup> *Redding R. E.*, The Effects of Adjudicating and Sentencing Juveniles as Adults: Research and Policy Implications, *Youth Violence and Juvenile Justice*, United States, 2003, 137.

Mandatory minimum sentences have been imposed since 1992. For example, a juvenile under the age of 14 should have been sentenced to at least 15 years in prison for murder. In addition, the United States allowed the use of the death penalty for juveniles in 23 states. Moreover, in 1989, the United States Constitutional Court upheld the death penalty for a minor over the age of 16.<sup>56</sup> This practice was condemned by the Convention on the Rights of the Child, adopted in the same year and found to be quite the opposite - no child can be put to death.

One of the main drawbacks of juvenile justice was that it could not adequately punish juveniles. According to the study, at least 63% of convicts were sentenced to imprisonment.<sup>57</sup> The Convention on the Rights of the Child also condemned this practice. Imprisonment is allowed only as an extreme measure for the shortest possible time. The Convention on the Rights of the Child has been the main focus of the world for countries to reject time-consuming, brutal punishments in juvenile justice and to start thinking and working on humanitarian sanctions. The Juvenile Justice Code provides alternative sentences of imprisonment. In addition, the code does not allow the restriction of liberty for a minor if it is possible to achieve the purpose set by law by using a lighter measure. Imprisonment is allowed only as an extreme measure, which should be used for as short a time as possible and subject to regular revision.<sup>58</sup>

## **5. History of Juvenile Justice in Georgian Criminal Law**

There were special norms for juveniles in Georgian criminal law for a long time, but they were quite rare and illiberal. There was no special normative act regulating juvenile justice in the legislation, which would unite the specific rules on the participation of minors in the justice process and would simplify their perception. Nevertheless, Georgian criminal law still provided for different norms from adulthood for juvenile delinquency.

The Criminal Code of the Soviet Socialist Republic of Georgia, adopted in 1960 and enacted on March 1, 1961, recognized the notion of a minor. Under the code, criminal liability began at the age of 16, only for specific offenses listed in the same legislative act (murder, premeditated bodily harm, rape, theft, possession of a firearm, ammunition or explosive, etc.).<sup>59</sup> One of the manifestations of the special approach to juveniles should be that the legislative act provided for the means of avoiding the use of punishment, such as apologizing to the victim, warning, reprimand, etc.<sup>60</sup> According to the same code, the death penalty did not apply to minors, and the size of imprisonment could be a maximum of 10 years.<sup>61</sup> The code also recognized the possibility of early release, a conditional

---

<sup>56</sup> *Torbet P.*, State Responses to Serious and Violent Juvenile Crime, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, United States, 1996, 14.

<sup>57</sup> *Kinder K., Harland J., Wilkin A., Wakefield A.*, Three to Remember: Strategies for Disaffected Pupils, The National Foundation for Educational Research, England, 1995, 73.

<sup>58</sup> Juvenile Justice Code, 3708-IIIb, 12/06/2015, Article 9.

<sup>59</sup> Criminal Code of Soviet Socialist Republic of Georgia, the Bulletin of the Supreme Council of the Soviet Socialist Republic of Georgia, №1, Art. 10, 30/12/1960 (Annulled, 01/06/2000), Article 12.

<sup>60</sup> *Ibid*, Article 64.

<sup>61</sup> *Ibid*, Articles 25-26.

sentence and the ability to change the sentence into a lighter sentence.<sup>62</sup> The sentence was aimed not only at punishing the offender, but also at bringing him up, stimulating respect for labor, strict enforcement of laws, respect for common rules of life, crime prevention, in particular, article 22 of the Criminal Code of the Soviet Socialist Republic of Georgia - "Punishment is not only a punishment for the crime committed, but also aims to correct and re-educate convicts in the spirit of honest attitude towards labor, strict observance of laws, respect for common rules of life. Also should be avoided of new crimes by both convicts and others."<sup>63</sup>

Also, it is important to note in a positive light that the purpose of punishment was not physical suffering or humiliation of human dignity. The norms of the code accurately reflected the wishes of the government of that time. In particular, it was far more important for the state to have an honest citizen who would be involved in public life than a criminal who would sit in jail, be at the expense of the state and not bring benefits to the welfare state.

The Criminal Code of Georgia, adopted in 1999, which came into force on June 1, 2000, already provided for a separate criminal liability for a minor. A minor was a person under the age of 14 to 18 who could have been sentenced or given educational coercive measure.<sup>64</sup> According to the first version of the legislative act, the types of punishment were: fine, deprivation of the right to work, community service, remedial work, strict isolation from society and imprisonment.<sup>65</sup> Juvenile who has committed a minor offense for the first time, the court could release from criminal liability if it is considered that a correction was appropriate educational coercive measures,<sup>66</sup> which are the following: a warning, to be given supervision, imposition of damages, behavior restriction, to be placed in a special educational or medical-educational institution.<sup>67</sup> The code also provided for exemption from sentence and parole.<sup>68</sup> It should be noted that during the sentencing of a juvenile, along with the general principles of sentencing, the conditions of his or her life and upbringing, the level of mental development, health condition, other personal characteristics, the influence of an older person on him were taken into account.<sup>69</sup>

Even before the adoption of the Juvenile Justice Code, Georgian criminal law did not leave juveniles unattended. The norms in the discussed legislative acts, in accordance with the time, reflect the care and special approach towards minors. At least for the time being, we have a kind attitude towards adults. In a time of repressive, strict rule of law, where human rights have been less protected, the existence of special norms for minors can already be considered a special case.

In Georgia, juvenile justice was transformed in 2015 with the adoption of the Juvenile Justice Code, the main part of which came into force on January 1, 2016. The Juvenile Justice Code establishes special criminal and administrative liability for juveniles and the administration of juvenile

---

<sup>62</sup> Criminal Code of Soviet Socialist Republic of Georgia, the Bulletin of the Supreme Council of the Soviet Socialist Republic of Georgia, №1, Art. 10, 30/12/1960 (Annulled, 01/06/2000), Article 55.

<sup>63</sup> Ibid, Article 22.

<sup>64</sup> Criminal Code of Georgia, 2287, 22/07/1999, Article 81.

<sup>65</sup> Ibid, Article 82.

<sup>66</sup> Ibid, Article 90.

<sup>67</sup> Ibid, Article, 91.

<sup>68</sup> Ibid, Articles 97-98.

<sup>69</sup> Ibid, Article 89.

offenses, peculiarities of criminal proceedings, special rules for the execution of sentences and other measures. According to the new code, the juvenile justice process is conducted only by specialized persons. Despite all the above, this field still needs to be perfected in the Georgian reality, at least with the existence of the Juvenile Court, in connection with which history has not been reviewed in the article, because it has never been in Georgia. However, it should be noted that a special legislative act has taken the juvenile justice of Georgia to a new level. The Juvenile Justice Code is indeed an achievement of the Georgian legislative space, which raises a number of issues in a new way and in accordance with international standards.

## **6. Conclusion**

Recognition of a child as a subject of rights in the world happened a long time ago, which should be treated with dignity and respect. In all developed or developing countries, the notion has been established that a minor needs a special approach, especially if we are dealing with a minor who is in conflict with the law. In almost all developed countries there is a specialized legislative act for juveniles in conflict with the law. Fortunately, Georgia is among these countries today.

Although Georgian criminal law has not neglected juveniles in the past, the adoption of the Juvenile Justice Code in 2015 was a truly progressive step. The state has shown its will to pay more attention to the child, to the new generation that is actually the future of the country. The state, on the example of international law and progressive countries, has committed itself to developing and bringing juvenile justice to a new level.

Juvenile justice is currently a developing field in Georgia, shaped by the experience of countries and the gradual better understanding of what works effectively and what does not. Legislative, executive, and judicial bodies must commit themselves to establishing, strengthening, or expanding the institutions and programs necessary for successful implementation. The state should pay due attention to both the principles of traditional juvenile justice and new approaches. In addition, it is necessary for there to be a juvenile court in the country that is focused on enforcing justice for juveniles in conflict with the law.

Georgia has long chosen the European path, and therefore it is necessary to continue to take consistent steps in our country to bring national legal bases, policies and measures in line with international standards. The legislature must repeatedly reaffirm its commitment to the promotion of juvenile justice in Georgia and reaffirm the country's aspirations and commitment to universally recognized democratic principles.

### **Bibliography:**

1. Criminal Code of Soviet Socialist Republic of Georgia, the Bulletin of the Supreme Council of the Soviet Socialist Republic of Georgia, № 1, Art. 10, 30/12/1960 (Annulled, 01/06/2000).
2. Criminal Code of Georgia, 2287, 22/07/1999.
3. Juvenile Justice Code, 3708-IIS, 12/06/2015.

4. *Bazemore G., Umbreit M.*, Rethinking the Sanctioning Function in Juvenile Court: Retributive or Restorative Responses to Youth Crime, *Journal of Crime and Delinquency*, № 41(3), 1995, 299.
5. *Bokhashvili I., Benidze M.*, Juvenile Justice Issues (According the Current Procedural Law, the New Criminal Procedure Code and International Legal Acts), “*Journal of Law*”, № 2, 2009, 35 (in Georgian).
6. *Chrisman O.*, *Paidology the Science of the Child, The Historical Child*, Richard G. Badger Gorham Press, Boston, 1920, 11.
7. *Christy N.*, The Limits of Pain, the Role of Punishment in Penitentiary Politics, *Bakhtadze U. (Trans.), Shalikhvili M., Giorgadze G. (eds.)*, 1<sup>st</sup> ed., Tbilisi, 2017, 64 (in Georgian).
8. *Cintron L. A.*, Rehabilitating the Juvenile Court System: Limiting Juvenile Transfers to Adult Criminal Court, *Northwestern University Law Review*, Vol. 90, Chicago, United States, 1996, 1262.
9. *Davis S. M.*, *Children's Rights Under and the Law*, Oxford University Press, England, 2011, 71.
10. *Dawson R. O.*, The Future of Juvenile Justice: Is It Time to Abolish the System, *Journal of Criminal Law and Criminology*, Vol. 81, Chicago, United States, 1990, 141.
11. *Difonzo J. H.*, Parental Responsibility for Juvenile Crime, Vol. 80, № 1, 2001, 4.
12. *Feld B. C.*, Criminalizing the American Juvenile Court, *Crime and Justice*, Minnesota, United States, 1993, 66.
13. *Feld B. C.*, Abolish the Juvenile Court: Youthfulness, Criminal Responsibility and Sentencing Policy, *Journal of Criminal Law and Criminology*, Chicago, United States, 1997, 100.
14. *Hamilton C.*, Guidance for Legislative Reform on Juvenile Justice, *The United Nations Children's Fund (Trans.)*, Tbilisi, 2015, 35 (in Georgian).
15. *Haney C.*, Reforming Punishment, Psychological Limits to the Pains of Imprisonment, American Psychological Association Washington, DC, 2006, 32.
16. *Hart H. L. A.*, The Presidential Address: Prolegomenon to the Principles of Punishment, *Journal of Proceedings of the Aristotelian Society, New Series*, Vol. 60, 1960, 21.
17. *Independent Council of Advisors of the Parliament of Georgia, The United Nations Children's Fund*, Juvenile Crimes Administration, Training Modules on Juvenile Crime Administration, Georgian Legislation and International Legal Mechanisms, Tbilisi, 2003, 119, 120 (in Georgian).
18. *Jensen E. L., Metsger L. K.*, A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime, *Journal of Crime and Delinquency*, Vol. 40, 1994, 99.
19. *Kendrick M.*, Reducing Disproportionate Minority Contact in the Juvenile Justice System: Promising Practices, Aggression and Violent Behavior, United States, 2007, 145.
20. *Kinder K., Harland J., Wilkin A., Wakefield A.*, Three to Remember: Strategies for Disaffected Pupils, The National Foundation for Educational Research, England, 1995, 73.
21. *Krisberg B., Schwartz I.*, Rethinking Juvenile Justice, *Journal of Crime and Delinquency*, Vol. 41, United States, 1983, 350.
22. *KherKheulidze I.*, Community Service – One of the Best Agents for the Re-socialization of Juvenile Offenders Among Non-custodial Sentences (Comparative Analysis of the Criminal Approach of Georgia and the United States), *Journal “Justice and Law”*, № 2(29), 2011, 119 (in Georgian).
23. *Larsen K. L.*, With Liberty and Juvenile Justice for All: Extending the Right to a Jury Trial to the Juvenile Courts, *William Mitchell Law Review*, Vol. 20, 1994, 5-6.
24. *Lou H. H.*, *Juvenile Courts in the United States*, Chicago, Illinois, United States, 1927, 14.

25. Mack J. W., The Juvenile Court, Harvard Law Review, Vol. 23, № 2, 1909, 111.
26. Mallett Ch. A., Predicting Juvenile Delinquency: The Nexus of Childhood Maltreatment, Depression and Bipolar Disorder, Journal of Criminal Behaviour and Mental Health, 19(4), 2009, 66.
27. Moore M. H., Wakeling S., Juvenile Justice: Shoring Up the Foundations, Crime and Justice: A Review of Research, Vol. 22, 1997, 260.
28. National Research Council and Institute of Medicine, Juvenile Crime, Juvenile Justice, The National Academies Press, Washington, DC, 2001, 154, 186.
29. Orsagh T., Chen J. R., The Effect of Time Served on Recidivism: An Interdisciplinary Theory, Journal of Quantitative Criminology, Vol. 4, № 2, 1988, 155.
30. Redding R. E., The Effects of Adjudicating and Sentencing Juveniles as Adults: Research and Policy Implications, Youth Violence and Juvenile Justice, United States, 2003, 137.
31. Rosenheim M. K., Zimring F. E., Tanenhaus D. S., A Century of Juvenile Justice, Chicago, Illinois, United States, 1983, 18.
32. Schlossman S., Coalition for Juvenile Justice, DeKalb, Illinois, United States, 1998, 4.
33. Schlossman S., Sedlak M., The Chicago Area Project Revisited, Journal of Crime and Delinquency, Vol. 29, United States, 1983, 399, 400, 411
34. Schlossman S., Love and the American Delinquent, Journal of Juvenile Family Court, Vol. 28, The University of Chicago Press, 1977, 63.
35. Soringer W. D., Roberts R. A., Brownell P., Torrente M., Lippman P. D. A., Deitch M., A Brief Historical Overview of Juvenile Justice and Juvenile Delinquency, United States, 2006, 10.
36. Schwartz B., Psychology of Learning and Behavior, United States, 1989, 103.
37. Torbet P., State Responses to Serious and Violent Juvenile Crime, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, United States, 1996, 12, 14.
38. Torbet P., Szymanski L., Griffin P., Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, United States, 1998, 10, 11.
39. Waters M. V., Parents on Probation, New York: New Republic Company, 1927, 21.
40. Wiley B., The General Laws and Liberties of the Massachusetts Colony (1672) in Juvenile Offenders for a Thousand Years, New York, 1970, 318-319.
41. Adamkiewicz przeciwko Polsce, [2010], ECHR, №54729/00, §49.
42. Salduz v. Turkey, [2008], ECHR, №36391/02, §59.
43. Breed v. Jones, (1975), 421 US 519.
44. McKeiver v. Pennsylvania, (1971), 403 US 528.
45. In re Winship, (1970), 397 US 358.
46. Gault v. United States, (1967), 387 US 1.
47. Kent v. United States, (1966), 383 US 541.