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The Court Practice of Imposing Fine towards Juvenile and Litigated Issue of Its Enforcement

Research and generalization of the court practice should shape those non-custodial punishments, which in reality will perform the main aim of the Juvenile Justice Code – protection of the best interests of child, their faces not to remain only as “unchanged monument carved into the stone”.

Keywords: *Juvenile Justice, Punishment, Fine, Court Practice.*

1. Introduction

Liberalization of the policy of the criminal justice, the important part of which is reform of Juvenile Justice, according to the international standards created the foundation to the Juvenile Justice Code.

Juvenile Justice Code (afterwards – JJC), granted the priority to the protection of the best interests of the person who is in conflict with the law, as a principle there was set priority of use of most light means and alternative measures.

According to the explanation of United Nations (UN) Committee on the Rights of the Child, special psychological and physical condition of underage minor, emotional and educational needs (*per se*) confirms less quality of its guiltiness and demands from the underage minors different approach. It means, that such kind of traditional aim of criminal justice, as it is, restoration of justice, repression/punishment should be replaced by aims of rehabilitation and restorative justice, which finally serves to the aim of security of the society.

In the articles 5.1 and 17.1(a) of the minimal standard rules (Pekin rules)¹ realization of juvenile justice there is underlined that, considering the best interests of child measure should be not only proportional to only gravity and circumstances of law violation, as well as, in case of use of the punishment it is obligatory to defend principle of proportionality.

By defending these demands, legislative changes experienced not only Juvenile Justice Code (JJC), as well as rule of their appointment and it touched also Juvenile Justice Code (JJC) 68th article. In particular, the court can appoint this punishment, only in case if underage minor has independent income from legal activity.

The adopted law improved the problem which was existing during the years, which was connected to the rule of appointment of the fine as punitive measure towards underage minor and principle of individualization of the punishment recognized in the criminal law.²

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¹ International Standards in Juvenile Justice Sphere, United Nations Children's Fund, 2011, 35-42, Adopted According to the UN Resolution 40/33 dated 29 November 1985 (in Georgian).

² *Shalikashvili M., Mikanadze G.*, Juvenile Justice (Manual), Tbilisi, Freiburg, Strasbourg, 2016, 129 (in Georgian).

The subject of the research of the current article is court practice of imposing of the fine towards underage minor as punishment. In spite of the fact that, their statistical indicator in comparison to previous years in significantly decreased,³ in certain cases court approaches on the use of this punishment is coming into controversy with ordinance of Juvenile Justice Code (JJC) 68th article and their main part is connected to the cases that ended with the plea agreement, which during the period of enforcement, according of the error of the law, can occur problem of changing the fine with other punishment.

2. Legislative Regulations of Use of the Fine Towards Underage Minor According to the Criminal Code of Georgia, Short Prehistory

Adopted on 22 July 1999 in Criminal Code of Georgia (afterwards – CCG), the separate door was given to criminal responsibility of underage minor and in the same door, according to 16th chapter together with other issues there was determined punishment of underage minors.

According to 83th article of Criminal Code of Georgia (edition of July 22, 1999), imposing of the fine as a punitive measure towards underage minor was possible only in case if he/she did have independent salary or property. So, enforcement of the punishment imposed towards underage minor can be directed towards salary from one side, which was income based on the legal labor activity, and from another side on the property, which underage minor might have received based on will, heritage or as gift and so forth.⁴

By change of 29 December 2006, from Criminal Code of Georgia 83th article there was removed existing record⁵ of appointment of fine as punitive measure and legislator worsening condition for that equaled underage minor to adult, because imposition of the fine was taking place according to legislative rule, which was considered in case of adult.

According to the same change, on 42th article there was added the 5¹th part of with the following context, in case if convicted was underage minor and insolvent, the court was imposing the payment of imposed fine to the parent, guardian or custodian.

The most high indicator of the use of appointed penalties, based on the common courts statistics, is declared exactly in this period. In particular, in 2009 the fine is used – on 102 underage minor; in 2010 – on 171 underage minor, in 2011 – on 70 underage minor.⁶

The change made in the law was many times criticized in the legal literature, that by adopting it there was violated universally recognized personal responsibility principle and the most important for underage minor, the aim of resocialization of punishment remained not achieved.⁷

³ See <<https://www.supremecourt.ge/files/upload-file/pdf/2020-weli-wigni-sisxli.pdf>> [25.08.2022].

⁴ *Tkesheliadze G., Natchkebia G.*, General Part of Criminal Justice, Collective of Authors, Tbilisi, 2004, 352 (in Georgian).

⁵ 83th Article to be Developed According the Following Edition: “Article 83. Fine “Minimal Amount of the Fine Appointed for Underage Minor is Five Daily Compensation and Maximal – Two Hundred Daily Compensation. While Collection of the Punishment the Amount Shouldn’t be More than Four Hundred Daily Compensation.” About the Making of the Changes and Additions in Criminal Code of Georgia, 29/12/2006, <<https://www.matsne.gov.ge/ka/document/view/22468?publication=0>> [01.08.2022].

⁶ <<https://www.supremecourt.ge/files/upload-file/pdf/2020-weli-wigni-sisxli.pdf>> [27.08.2022].

“Getting introduced to the court practice showed that, the judge while use of 5¹th part of 42th article of Criminal Code of Georgia doesn’t clarify that issue, how insolvent underage minor’s parent, guardian or custodian is and does it mean that deciding this issue in such way will bring family of underage minor is extreme social situation, which in its turn, will support one to commit of the new crime and making innocent persons as victims.⁸

On the disputed norm the Constitutional Court of Georgia explained that, imposition of the fine on parent (guardian, custodian) which was imposed on the underage minor, at the same time was not equal to imposition of criminal liability on the parent (guardian, custodian).⁹

Professor O. Gamkrelidze dedicated article to the same decision and marked – 5¹th part of 42th article of Criminal Code of Georgia was opening the way to the use of the court unfair punishment.¹⁰ The punishment should touch personally only that person, who committed crime and can’t be extended on that person, who didn’t deserve it.¹¹

Together with adopting of Juvenile Justice Code, there was removed disputed norm of appointing of the fine,¹² which was importantly influenced by not only the criticism expressed by the well-educated law specialists, but also, by guidelines of existing legislative reform in the frame of justice code of underage minors.¹³

3. Juvenile Justice Code (JJC) 68th Article, Fine

Fine, is first non-custodial punishment measure in Juvenile Justice Code (JJC) system, which can be imposed to the underage minor only in the case, if he/she has independent income from legal activity. While appointing the fine towards underage minor, minimal amount determined according to the Criminal Code of Georgia becomes half. Fine towards underage minor can be appointed also as additional punishment.

⁷ *Lekveishvili M.*, Individualization of the Punishment, as Important Principle of Imposition of the Punishment, Tendencies of Liberalization of the Legislation of the Criminal Justice in Georgia, Tbilisi, 2016, 277 (in Georgian).

⁸ *Shakikashvili M., Mikanadze G.*, Juvenile Justice (Manual), 2nd ed., Tbilisi, Freiburg, Strasbourg, 2016, 130-131 (in Georgian).

⁹ The Decision № 3/2/416 of Constitutional Court of Georgia dated 11 July 2011 (in Georgian).

¹⁰ *Gamkrelidze O.*, Punishment Fair and Punishment Unfair, “The Life and the Law”, № 1, 2016, 5-6 (in Georgian).

¹¹ *Gamkrelidze O.*, Problems of Criminal Justice, Tome III, Tbilisi, 2013, 46 (in Georgian).

¹² The Law of Georgia About Making Changes in the Criminal Code of Georgia, 3714-III/12/06/2015.

¹³ “Many States Impose Fine to the Parents in that Case, When Child has No Possibility to Pay. This Practice Generally is Discussed as Unsuitable with the Best Interests of Child, Because with that the Parent can Feel Less Desire for Active Partnership in the Process of Social Reintegration of Child.” *Hamilton K.*, Guideline References of The Legislative Reform of Juvenile Justice, (“Unicef”), Tbilisi, 2011, 109-110. On The Same Issue in the Juvenile Literature They Consider That, When it Comes To The Committed Crime by the Underage Minors, Fine and Deprivation of the Liberty Should Be Used as the Last Measure, Because has Repeated Character (Relapse) and Doesn’t Serve to Resocialization–Rehabilitation of Underage Minor. See *Junger-Tas J., Decker S.*, International Handbook of Juvenile, New York, 2006, 263; *Feierman J., Naomi G., Emily H., Jaymes F.*, The High Cost of Fines and Fees in the Juvenile Justice System, Juvenile Law Center, Philadelphia, 2016, 18.

So, the 1st part of 68th article of Juvenile Justice Code (JJC) determines the basics of the appointing of the fine, and 2nd part of the same article defines minimal limit of the punishment to appoint, which considering 42th article of Criminal Code of Georgia is 1000 GEL, and if sanction of the Criminal Code considers as punishment deprivation of the liberty till three years term, minimal amount of the fine is 250 GEL.

There should be said that, in spite of existing draft of law,¹⁴ while making changes in the Juvenile Code, as well as in the Criminal Code of Georgia, there was not considered proposals of determining of the upper limit of the fine.

In the professional circles there is expressed opinion that, while appointing of the fine determining their amount can contain threat from the judges to show willfulness¹⁵ and the problem is connected not only to the upper limit of the fine, but also, is spread on that case, if it will be appointed as additional punishment as well, because according to the Criminal Code of Georgia is not clarified in which case and together with which punishments it can be used.

The punishment, as negative reaction of the state on the guilty action, should be normatively determined by the legislator, and in case of violation of criminal norm determined sanction should be able to be predictable for the addressee.¹⁶ The principle of determinism of the norm comes from the legal state principle given in the constitution, it has connection to the 5th section of the 42nd article of the constitution and is part of the sphere protected by this right.¹⁷ The legislator is obliged, to maximally clearly determine to the judge the frames, in which he/she should act¹⁸ and to give possibility to correctly use it.¹⁹ At the same time, addressee of the norm should be able to clearly understand its content, he/she to act according to the demand of the norm and what is main issue to leave sense of legal security.²⁰

Accordingly, the state should provide that, proposed legislation, (the part of which is punitive system) to be in compliance to the convention of children's right, as well as with universally recognized principles and standards of international law.²¹

General basics of appointing of the punishment towards underage minor is based on two main regulations, best interests of underage minor and individual approach.

The best interest of underage minor is guideline principle of Juvenile Justice Code and means security, well-being, protection of health, education, development, resocialization-rehabilitation of the underage minor.

¹⁴ The Project of The Law of Georgia – “The Criminal Code Of Georgia” About Making of The Changes-30/06/2014.

¹⁵ *Tskitishvili T.*, Report on The Conference: “Criminal Justice Sanctions And Imposition Of The Punishment” – 12-13 May 2017, Tbilisi, German-Georgian Criminal Justice Journal, 84.

¹⁶ *Schwabe*, Decisions of Federal Constitutional Court of Germany, *Chachanidze E. (trans.), Kublashvili K., Ninidze T., Loladze B., Eremadze K. (eds.)*, 2011, 370-371 (in Georgian).

¹⁷ The Decision № 2/2/516,542 Dated 14 May 2013 of The Constitutional Court of Georgia (in Georgian).

¹⁸ The Decision № 1/2/384 Dated 2 July 2007 of The Constitutional Court of Georgia (in Georgian).

¹⁹ The Decision № 1/3/407 Dated 26 December 2007 of the Constitutional Court of Georgia (in Georgian).

²⁰ *Izoria L.*, Comment of the Constitution of Georgia, Second Chapter Citizenship of Georgia, The Main Rights and Freedoms of Human, Tbilisi, 2013, 26 (in Georgian).

²¹ *Ivanidze M.*, Juvenile and Its Best Interests, Analysis of Legislation of Juveniles and Court Practice, *Todua N., Ivanidze M. (eds.)*, Tbilisi, 2017, 11 (in Georgian).

The best interest of underage minor, which should be defined in each individual case, demands from the person who manages the process, that on every stage of law proceedings, while making any kind of decision towards underage minor to show special attention and to consider such kind of individual characteristics, as they are: age, level of development, life and upbringing conditions, education, health condition, family situation and other circumstances, which is giving possibility to determine characteristics and his/her needs.²²

Preparation of individual report,²³ towards the person who is in conflict with the law, is made through social worker of Probation National Agency.

Considering the individual characteristics, which are obligatory while appointing of the punishment, is kind of guideline, underage minor to be imposed that type and extent of the punishment, which will be fit to his/her best interests, because according to 50th article of the model law about Juvenile Justice, the aim of the punishment imposed towards underage minor is rehabilitation of the person and his/her reintegration into the society.²⁴

As there was mentioned above, use of the fine as type of the punishment is conditional and its appointment is possible only in that case, if person who is in conflict with the law has independent income from legal activity.

For considering the labor as legal activity of the underage minor, is necessary to get introduced to existing international standards of juvenile labor, the most part of which is ratified by the Parliament of Georgia and their main principles are expressed in Labour Law Code.

According to the international standards, different content have terms “economic activity of children” and “labor of children”. The labor of children is term with negative meaning and expresses such kind of activity of children, which is undesirable and needs eradication. When economic activity of children, is possible, in some cases to be encouraged. In particular, economic activity, which doesn’t make negative influence on their health and personal development, can contain such kind activity, as they are – helping parents at home and in family business, which doesn’t damage physical health and development of child;

Such kind of type of activity, often measure of child’s personal development, producing additional natural abilities, to receive experience and earning “pocket money”.²⁵

Concerning the employment of underage minor according to the law there are determined the restrictions and it is connected, as to the age, as well as type of the job. The existing aims protection of underage minors in that point of view, that labor/physical load not to influence negatively on their

²² Explanatory Note on the Project of the Law of Georgia “On Juvenile Justice Code”.

²³ Common Order № 132/№ 95/№ 23, Dated 15 March 2016 of the Minister of Justice of Georgia, Minister of Internal Affairs of Georgia and the Minister of Penitentiary and Probation of Georgia, Determination of Methodology, Rule and Standard of Preparation of the Individual Assessment Report № 1 Appendix (in Georgian).

²⁴ Model Law About Justice of Juvenile Who Are in Conflict with Law, United Nations Office on Drugs and Crime (UNODC), 2013.

²⁵ Special Report of the Public Defender, Tbilisi, <<https://www.unicef.org/georgia/media/6006/file/PDO%20report-Child%20Labour.pdf>> [01.08.2022] (in Georgian).

health, growing-development and also, in parallel to the employment to have enough time to receive education.²⁶

According to 10th article of the code of laws of labor of Georgia, labor capability of natural person arises since 16 years old age. Before 16 years age labor capability of underage minor arises by consent of his/her legal representative or guardian/custodian organ, if labor relations are not against interests of underage minor, doesn't cause damage to his/her moral, physical and mental development and doesn't restrict his/her obligatory right and possibility to receive primary and basic education. Consent of legal representative or guardian/custodian organ remains into the power also towards subsequent labor relations of similar character.

The labor agreement can be conducted with underage minor who is till 14 years old only on the activity which are in the sphere of sports, art and culture, also for the performance of the work connected to advertising. There is prohibited conducting labor agreement which is connected to the work linked with gambling business, night entertainment facilities, which is connected to manufacturing of erotic and pornographic production, transportation and realization of pharmaceutic and toxic substances. Also it is prohibited conducting labor agreement with underage minor for the performance of works lined to harmful and dangerous work.

The service of labor inspection has right, to conduct state supervision and monitoring to the companies that employ persons under 18 years old, if the age of the employee is in coincidence with the standards determined by the law and are working conditions contain increased risk.²⁷ Violation of the demands indicated above causes liability according to 170th article of the Administrative Offences Code of Georgia.

Considering the existing regulations, indicator of legal employment is low, which directly proportionally expressed on the percentage indicator of appointing fine towards underage minor as punitive measure.

Professor M. Shalikashvili considers that, on the background of high unemployment in the country, when for adult persons is tough to find long term job, it is impossible to demand from underage minor, he/she to have independent income, based on which he/she will pay fine. In case of such kind of demand it is possible not to be able to use fine as type of the punishment.²⁸ At the same time he explains that, as source of independent income of underage minor can be considered pocket money given by the parents, because under independent income mentioned in the first part of 68th article of Juvenile Justice Code is not meant only particular sum earned from particular independent work/job realized by underage minor.²⁹

It is interesting what kind of approaches the court has concerning the same issue?

²⁶ Ibid.

²⁷ Order № 01-126/N of the Minister of IDPS From the Occupied Territories, Labor, Health and Social Protection of Georgia, 30/11/2020.

²⁸ *Shalikashvili M., Mikanadze G., Juvenile Justice (Guideline)*, 2nd ed., Tbilisi, Freiburg, Strasbourg, 2016, 131 (in Georgian).

²⁹ Ibid.

Tbilisi City Court, in the verdict³⁰ dated September 5, 2019, 31 as bases to use fine towards underage minor indicated that, he/she did have personal cash savings from the money which was given by the parents.

The same should be said on the verdict of Tbilisi City Court dated 30 May 2019,³¹ where the judge as legal basis to use fine indicated that, underage minor did have independent income from the financial assistance of the refugee.

In spite of the scarce decisions there can be said that, common approaches have theoreticians and practicing lawyers. Existing record of 68th article of Juvenile Justice Code, indifferent from 83th article of Criminal Code of Georgia (which as prerequisite of appointing of the punishment together with the property, was discussing only independent income received from the salary), is giving possibility to appoint the fine in those cases also, when an underage minor has received income from economic activity, which is not in accordance with demands determined by the Juvenile Justice Code, as well as by international standards.

4. The Court Practice (2017-2022) of Using Towards Underage Minor Fine

According to the verdict of Tbilisi City Court,³² (the plea agreement was approved on the stage of essential discussion of the case) the underage minor as type of the punishment according to 1st part of 181th article of Criminal Code of Georgia was imposed fine in amount of 1000 GEL. In the decision the court explained that, while appointing of the punishment considered by plea agreement took into consideration individual characteristics of the person who is in conflict with the law, as well as prerequisite of using of the fine, that he/she had independent income from legal activity, was working as operator in one of the parks.

According to the verdict of Tbilisi City Court,³³ (the plea agreement was approved on the first session of representation of accused person) underage minor according to 2nd part of 260th article of Criminal Code of Georgia as punishment was imposed fine in amount of 3000 GEL.

The court decision in the part of justification of the punishment doesn't contain information if underage minor had independent income source from legal activity. According to Juvenile Justice Code 27th article 4th part "b" subsection and 1st part of 75th article, while appointing of the punishment it is obligatory the judge to consider individual assessment report and the law doesn't consider exception while approval of the plea agreement.

In spite of appointed punishment, which is more light than sanction of the same article – deprivation of the freedom with 5 years term (active edition of 2015), form and the size of the punishment imposed towards underage minor is against to the ordinance of 68th article of Juvenile Justice Code, also, general principles of Juvenile Justice, that size of the punishment used towards underage minor who is in conflict with law, should be proportionate to the action committed and should be in coincidence with his/her age, educational, social and other kind of needs.

³⁰ Verdict of Tbilisi City Court dated 5 September 2019, Case № 1/3955-19 (in Georgian).

³¹ Verdict of Tbilisi City Court dated 30 May 2019, Case № /1328-19 (in Georgian).

³² Verdict of Tbilisi City Court dated 24 April, 2017, Case № 1/104-17 (in Georgian).

³³ Verdict of Tbilisi City Court dated 20 October 2017, Case № 1/4365 -17 (in Georgian).

We meet the same problems in the verdict³⁴ of Tbilisi City Court, according to which on the first representation session of accused person there was approved plea agreement and underage minor as form of the punishment according to 376th article of Criminal Code of Georgia was imposed fine in amount of 1000 (one thousand) GEL. In the given case the court decision doesn't contain information if underage minor did have independent income.

On the stage of essential discussion of the case there was approved plea agreement and according to the verdict³⁵ of Tbilisi City Court during commitment of the crime underage minor based on Criminal Code of Georgia 19th, 344th article 2nd part "a" subsection as type of the punishment was imposed fine in amount of 1000 GEL by using Juvenile Justice Code 68th article and Criminal Code of Georgia 55th article.

The court indicated in the decision that, while appointing of the punishment took into the consideration the fact that, accused person did have personal cash savings in amount of 500 US Dollars.

According to the verdict³⁶ of Tbilisi City Court (the plea agreement was approved on the session of first representation of accused person), underage minor based on Criminal Code of Georgia 177th article 3rd part "a" subsection as type of the punishment was defined fine in amount of 500 GEL.

According Criminal Code of Georgia 59th article 4th part, the punishment appointed by last verdict absorbed, equal punishment appointed by Zugdidi Regional Court dated 23 September 2019 and finally, underage minor as punishment was imposed fine in amount of 500 GEL.

In spite of the fact that, based on the plea agreement towards underage minor there was used more light punishment, than it was considered by 177th article 3rd part "a" subsection, there didn't exist legal basics of appointment of the fine and the doubt about existence of independent income, is backed up previous non enforced decision on the same punishment.

According to the verdict³⁷ of Tbilisi City Court (the plea agreement was approved on the first representation session of accused person), during commitment of the crime underage minor according to Criminal Code of Georgia 126th article 1st part "b" section as type of the punishment was imposed fine in amount of 1000 GEL.

From the verdict there is clarified while appointing type and size of the punishment what judge decision was based on and did underage minor have independent income or not. In spite of the fact that, before making of the verdict the person in conflict with the law became of the full legal age, he committed crime during the period of being underage minor and the court was obliged to be guided by ordinance of Juvenile Justice Code 2nd part 2nd article. In particular, towards that person, who during commitment crime was underage minor and after he/she became of the full legal age, there is being used material-legal norms of Juvenile Justice Code and norms of Criminal Procedure Code of Georgia.

Also, for the crime considered according to Criminal Code of Georgia 126th article 1st part "b" subsection there is defined deprivation of the liberty till 2 years and in this case minimal amount of the fine instead of 1000 GEL is 250 GEL.

³⁴ Verdict of Tbilisi City Court dated 04 December 2018, Case № 1/5369 -18 (in Georgian).

³⁵ Ibid.

³⁶ Verdict of Tbilisi City Court dated 11 November 2019, Case № 1/5355 -19 (in Georgian).

³⁷ Verdict of Tbilisi City Court dated 11 June 2021, Case № 1/2600 -21 (in Georgian).

According to the verdict³⁸ of Tbilisi City Court (the plea agreement was approved on the first session of representation of accused person), underage minor based on Criminal Code of Georgia 177th article first part as type of the punishment was imposed fine in amount of 1000 GEL.

In the given case there are not clarified recommendations issued from the verdict by individual assessment report and if underage minor did have independent income, which is necessary prerequisite of appointment of the fine.

Accordingly, there is violated ordinance not only of Juvenile Justice Code 68th article 1st part, but as well as ordinance of 2nd part of the same article, because amount of the fine to be appointed towards underage minor considering sanction of Criminal Code of Georgia 177th article first part is 250 GEL.

According to the verdict³⁹ of Tbilisi City Court dated 19 April 2022, underage minor as type of the punishment based on Criminal Code of Georgia 126th article 1st part “b” subsection was imposed fine in amount of 500 (five hundred) GEL. He/she him/herself according to the 2nd part of Juvenile Justice Code 68th article 2nd part was made it half imposed punishment and finally was determined the fine in amount of 250 GEL.

The court while appointing of the punishment indicated that, considered characteristics indicated in individual assessment report and the fact that, person who is in conflict with law, who was employed in the private sector, did have source of independent income and existing information was confirmed with bank extract.

If we will summarize above discussed decisions we will see that, problem of appointing the fine is connected to the plea agreement approved on the first representation court session and while their approval, by the court doesn't take place clarifying the fact if underage minor has or not independent income. The same should be said on the size of the used punishment, which comes into the controversy with Juvenile Justice Code 68th article 2nd part, as well as with demands of Juvenile Justice Code.

Many researches were dedicated to the use of the plea agreement in Georgia, where there is discussed practical, as well as legislative errors of this institute.⁴⁰ they consider that, Georgian model of the plea agreement formally grants the court discretion to confirm or neglect the motion of the plea agreement conducted by the prosecutor and not to be able to essentially participate in the determination of the conditions of the plea agreement.⁴¹

³⁸ Verdict of Tbilisi City Court dated 18 February 2022, Case № 1/675 -22 (in Georgian).

³⁹ Verdict of Tbilisi City Court dated 19 April 2022, Case № 1/3161-21 (in Georgian).

⁴⁰ The Research Prepared by the Working Group of the Coalition for Independent and Transparent Justice, which is Connected to the Use of the Plea Agreement in Georgia and Underlines that, “In Most Cases the Plea Agreement is Conducted with the Aim of Implementation of Fast Justice and Personal Characteristics of the Convicted Person, Among them Family Condition, Previous Convictions, Age, Education, Considering of which is Necessary while Determining the Punishment, which is Possible to Represent Basics of Decrease of the Size of the Punishment is Neglected”, (in Georgian). <http://coalition.ge/files/coalition_criminal_law_wg_research_geo_9th_forum..pdf> [01.09.2022].

⁴¹ *Gvenetadze N.*, The Plea Agreement of Georgia Legislative Analysis, in Symposium Collected Articles: Criminal Justice Science in the Process of Common European Development, Tbilisi, 2013, 232 (in Georgian).

The active legislation can't create firm guarantees for the fact that, defense party to be able to implement effective protection of the interests of accused person.⁴² True interest of the underage minor who is in conflict with the law is incompatible with institute of the plea agreement while implementation of the underage minor's justice.⁴³

There should be noted that, Juvenile Justice Code 27th article 4th part b) section is applies also on the punishment to be appointed while plea agreement and defending this demand is granted the special importance while using fine towards underage minor, because not considering the individual assessment report towards person who is on conflict with the law, which also contains information about labor activity of underage minor, is possible to give rise to the problems of dispel of previous convictions, as well as its changing with other punishment.

5. Disputed Issue of Enforcement of the Fine according to Juvenile Justice Code (77th Article 6th Part)

According to the 2nd article of "b" section of the law of Georgia About Enforcement Proceedings, the basics of the beginning of enforcement proceedings is guilty verdict of the court that came into the legal power on the criminal case about imposition of the fine as punishment or/and deprivation of the property.

According to the same law, executor is obliged based on the enforcement paper issued by the court not later than 5 days from the beginning of the enforcement proceedings, to inform to the debtor that, in case of not performance of the demand voluntarily which contains 7 days term, the person will be subject to enforcement.

Based on the order № 234 dated 28 December 2009 of the Minister of Justice of Georgia there is approved rule of the proceedings of the debtor's registry, according to which, towards those natural persons who missed the term defined by the law for voluntary enforcement of the payment of money, based on the information provided by the executor takes place their registration in debtor's registry.

In different from the rule of enforcement of non-custodial punishments and 8th article of the law of Georgia about probation, which together with Juvenile Justice Code 77th article 3rd and 5th parts is obligation of the Probation Bureau, to address with the submission to the court about change of non-custodial punishments with other punishment, based on the law of Georgia About Enforcement Proceedings, Enforcement Bureau doesn't have such kind of authority⁴⁴ and record of Juvenile Justice Code 77th article 6th part – "Enforcement National Bureau is authorized in case of avoiding the payment of the fine by underage minor based on the submission to address to the court, and in 2 weeks

⁴² Using of the Plea Agreement in Georgia (in Georgian).

⁴³ *Shalikashvili M., Mikanadze G., Juvenile Justice (Guideline), 2nd ed., Tbilisi, Freiburg, Strasbourg, 2016, 77 (in Georgian).*

⁴⁴ Active Edition of the Law of Georgia "About Enforcement Proceedings" Doesn't Consider Authorization of Enforcement National Bureau to Apply to the Court with the Demand to Change Non-Custodial Punishment – Fine with Other Punishment Appointed Based on the Verdict, Letter № 64046, 31/08/2022 of Ministry of Justice of Georgia to Enforcement National Bureau (in Georgian).

term after filing of the submission the court issues the decision about leaving the fine without change or its alteration,” has the formal character.

The best interest of underage minor, which is basics of the principles of Juvenile Justice Code, is expressed in the rule of dispelling of the previous convictions.

According to Juvenile Justice Code 12th article 1st part, previous convictions of underage minor is considered as dispelled upon serving the punishment, but while suspended sentence – upon expiry of probationary period.

Humanistic approach of the legislator about immediate dispelling of the previous convictions serves to the rehabilitation of underage minor, aim of resocialization and supports his/her harmonic development.

In spite of existing relief, if underage minor avoided payment of the money that was imposed as fine and as such there can be considered that case also when while making of the plea agreement with the aim to receive more light punishment agreed on the conditions, towards him/her enforcement bureau can't enter the court with the submission about changing of the fine with other punishment, because doesn't have such kind of authority and according to the error of the law underage minor stays as convicted person, which will make influence against his/her interest, while defining of criminal justice liability and crime qualification, also while appointing of the punishment.

Considering the mentioned above there occurs need that, the law of Georgia “About Enforcement Proceedings” to come into the compliance with Juvenile Justice Code 77th article 6th part.

6. Conclusion

Research of the underage minor court practice gives possibility of identification and assessment of legislative and practical errors, how material-legal and procedure norms used towards underage minor in the law proceedings are in compliance with the demands determined according to Juvenile Justice Code, as well as, international standards.

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