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*“Don’t walk in front of me; I may not follow.
Don’t walk behind me; I may not lead.
Walk beside me and be my friend”¹*

Albert Camus

Physiological transformation in juveniles from adolescence to adulthood², namely, emotional, cognitive and physiological metamorphosis³ leads to deviation, and quite often, criminality. Albeit, factors provoking an adolescent to become a delinquent are rarely of a general nature – is not the family as a primary source of socialization⁴ playing a vital role in refining the adolescent as a decent society member? It is a question whether primary educational level⁵ either friend bunch⁶ give an example to juvenile and create inner self⁷ which provides adolescent’s compass direction in this or that way?

Key words: Deviation, delinquent, readdressing, juvenile, juvenile justice

1. Introduction

December 1, 2017 – Confrontation between two juveniles on Khorava street, Tbilisi resulted in a tragic murder. One of these two passed away on the same day, and another – the day after due to 12

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¹ Camus A., “Don’t walk in front of me; I may not follow. Don’t walk behind me; I may not lead. Walk beside me and be my friend”; see the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum, 17 November 2010, 7 <<https://rm.coe.int/16804b2cf3>> [04.06.2024].

² United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), General Assembly Resolution №45112, Adopted 14 December 1990, Article I.5 (e) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-juvenile-delinquency-riyadh>> [04.06.2024].

³ Richards K., What Makes Juvenile Offenders different from Adult Offernders? Trends & Issues in Crime and Criminal Justice no. 409., Canberra: Australian Institute of Criminology, 2011 <<https://www.aic.gov.au/publications/tandi/tandi409>>[04.06.2024].

⁴ United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), General Assembly Resolution №45112, Adopted 14 December 1990, Article IV.A (12) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-juvenile-delinquency-riyadh>> [04.06.2024].

⁵ Ibid, B.

⁶ Juvenile Crime, Juvenile Justice, National Research Council, Institute of Medicine, National Academies Press, Washington DC., 2001, 80-83 <<https://nap.nationalacademies.org/read/9747/chapter/5#67>> [04.06.2024].

⁷ Shalikashvili M., Criminology, 3rd Ed., Meridiani, Tbilisi, 2017, 34-35.

knife wounds.⁸ Accusation charged by the Prosecotor Office of Georgia⁹ has eventually determined the status of the juvenile performing a criminal act voluntarily or involuntarily – delinquent¹⁰, being in conflict with law or even perpetrator.¹¹ 3 years after that severe events, on 18th June 2020 one more youngster¹² became a victim of criminal act reminding state convicted juvenile statistics once again. Alongside duly performance of EU positive and negative obligations¹³ by the state the question – why – still remains unanswered. Accordingly, the article is dedicated to mainly prepare full and complete answer upon the raised question by enacting so-called Readressing Institute which represents ნინამდებარე novelty in Georgian legislative scope – the noted mechanism as stabilizator of juveniles' nature prone to criminality, will be analyzed and described by utilizing gramatical, historical, teleological, systematic or logical means of interpretation both at national as well as international level while acting as a preventive tool in regulating juvenile criminality. Meanwhile, any interested person will be able to research some statistics making the noted issues analyze and perceive in a way more simple manner.

2. Term – Juvenile – Person Acquired with Legislative Privileges

Diverse nature of society immanently implies existence of vulnerable subjects among the members – special attention is drafted to juvenile union¹⁴ as a group of permanent needs which have to be taken into account not equally but primerily¹⁵ while ruling over daily or special issues. The term juvenile in accordance with the national legistaliton means any person who has not attained the age of adolscence, in other words, from Georgian perspective, has not attained the age of 18¹⁶ – in this

⁸ Temporary Investigative Parliamentary Commission on Studying the Case of Murdering Two Juvelines on Khorava Street, Tbilisi, 17th December, 2017, Conclusion and Recommendations, Tbilisi, 5th September, 2018, 2, 13, [04.06.2024].

⁹ Web-page of General Prosecutor Office of Georgia, News, 11 January, 2024, <<https://pog.gov.ge/news/prokuraturis-mier-wardgenili-mtkicebulebebis-safuZvelze-daviT-saraliZis-ganzrax-damamZimebel-garem>> [04.06.2024].

¹⁰ United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), General Assembly Resolution №45112, Adopted 14 December 1990, Article I.5 (f) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-guidelines-prevention-juvenile-delinquency-riyadh>> [04.06.2024].

¹¹ Web-page of General Prosecutor Office of Georgia, News, 11 January, 2024, <<https://pog.gov.ge/news/prokuraturis-mier-wardgenili-mtkicebulebebis-safuZvelze-daviT-saraliZis-ganzrax-damamZimebel-garem>> [04.06.2024].

¹² Web-page of General Prosecutor Office of Georgia, News, 16 March 2021, <<https://pog.gov.ge/news/sasamarTlom-giorgi-shaqarashvilis-jgufur-mkvllobashi-msjavrdebul-or-arasrulwlovans-sasjelis-saxiT-1>> [04.06.2024].

¹³ Guide to Article 2 of the European Convention of Human Rights, Rigot to Life, Prepared by the Registry, 31 December 2021, 8-9, 11 <https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf> [04.06.2024].

¹⁴ Global Issues, Youth, United Nations <<https://www.un.org/en/global-issues/youth>> [04.06.2024].

¹⁵ Children's Rights in Juvenile Justice, General Comment №10, Committee on the Rights of the Child, 15 January-2 February 2007, United Nations, CRC, 5, §10 <<https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>> [04.06.2024].

¹⁶ Georgial Law on Juvenile Justice Code, Article 3, Paragraph 1, Georgian Legislative Herald (12.06.2015) [29.05.2024];

regard, by concurring the general clause¹⁷ of the Code on the Rights of the Child, terms “juvenile” and “child” have the same essence thanks to adopting and entering the Code on the Rights of the Child. Even more – the Code implements the term of adolescent implying all persons from 10 to 18 years old¹⁸. Alongside with aging it is natural for any person to refine thinking skills and acquire it with logical patterns¹⁹ – neurobiological researches conducted by McArthur have proved several times that every average statistical person’s brain is fully developed at the age of 25 whereas frontal lobe of the brain is still developing in early 20s.²⁰ Consequently, immature frontal lobe in the prefrontal cortex triggers lackage of emotional control, impulses, cognitive and judgmental skills of the results stemming from the pressure under which the brain exists while passing the transitional period.²¹ Juveniles to whom the law shall play educational role²² specifically need social support based on diverse values to cope with life challenges and meet their interests, in which the state concurring with the idea of child-friendly justice is implied. In support of the above-mentioned idea, the child-friendly justice wave²³ that started in Georgia back in 2009 led to the introduction of the diversion program in November 2010,²⁴ and later, on June 12, 2015, the adoption of the Code of Juvenile Justice in the field of criminal law, which fully justifies taking care of the special needs of children standing alone with the challenges of today's reality.

Divorce, adoption, migration and violence are inherent features of society in which children are often trapped and feel completely vulnerable.²⁵ *“At times like this, it is most important to have a loyal friend who can listen, understand and make the right judgment, who has the courage to say directly when the child is not right and help him find a solution”*²⁶ – the above-mentioned words represent the basic credo of child-friendly justice. Justice imbued with this spirit should walk beside the child (minor) and not in front or behind him, as much as he should give the minor a hearty help and find the best solution for him.

The main goal of the legal act initiated by the Ministry of Justice in 2015 in the Georgian legislative space and subsequently adopted was the improvement of the domestic standard in the

¹⁷ Convention on the Rights of the Child, General Assembly Resolution 44/25, adopted 20 November 1989, United Nations, Article 1, Part I [04.06.2024].

¹⁸ Law of Georgia the Code on the Rights of the Child, Paragraph “b”, Article 3, Legislative Herald of Georgia (20.09.2019) [04.06.2024].

¹⁹ Ramsey A., Cognitive Development, December 2020 <<https://www.cincinnatichildrens.org/health/c/cognitive>> [04.06.2024].

²⁰ Adolescent Development & Competency, Juvenile Justice Guide Book for Legislators, National Conference of State Legislators, 4-5 <<https://www.ncsl.org/documents/cj/jjguidebook-adolescent.pdf>> [04.06.2024].

²¹ Ibid, 5.

²² Bobokhidze M. (Ed.), Lursmanashvili L. (Transl.), Handbook of European Law on the Rights of the Child, 2015, 165 (in Georgian).

²³ Child-friendly Justice, Legislation Research, UN Children’s Fund, 2017, 3 <<https://www.unicef.org/georgia/media/1481/file/Legislative%20Analysis%20GEO.pdf>> [04.06.2024].

²⁴ Vardanashvili U., Juvenile Justice, Diversion and Mediation Institute in Juvenile Justice, Tbilisi, 2018, 3-7 (in Georgian).

²⁵ Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum, 17 November 2010, 7 <<https://rm.coe.int/16804b2cf3>> [04.06.2024].

²⁶ Ibid.

context of minors, which would contribute to the creation of a flexible environment for the child during the period of conflict with the law. In order to achieve the mentioned goal, the scope of the above-mentioned code was extended not only to criminal actions, but also to acts of an administrative offense nature.²⁷ In addition, due to the hard-to-find distinction between older child and young adult, the Georgian legislature decided to extend the Code in several aspects not only to persons under 18, but also to persons between 18 and 21²⁸ – A similar approach is observed in European countries such as Serbia and Croatia, namely, article 3 of the Serbian Law on Juvenile Offenders and Juvenile Protection differentiates between the statuses of persons aged 14 to 16, 16 to 18 and 18 to 21 and refers to them as younger juvenile, elder juvenile (older juvenile delinquent) and young adult.²⁹ Almost a similar concept is shared by the “Law on Juvenile Courts” of Croatia, Article 2 of which calls a person between the ages of 14 and 18 in conflict with the law a minor, and a person between the ages of 18 and 21 a young adult.³⁰

However, as of 2015, the question of how state officials should act when the perpetrator of a criminal act was not 18 or 21 years old, but a minor under 14 years old, remained unanswered or to what extent does the state face the assumption of abuse of the liberal approach it has established? Is it possible for an adult, who is well aware of the preferential regime under Georgian legislation, to use a minor to commit specific criminal acts?³¹ The issue becomes even more intense when such a minor is not a person who has reached the age of 14, but a person under the age of 14, who may be a so-called minor at the same time “Street child” without any documentation, which automatically indicates the activation of the criminal justice mechanism in his favor in terms of determining the age of responsibility or be 13 years and 11 months of age, beyond which the covered adult intended to engage in a one-time or multiple illegal activity through him/her -at such a time, first of all, the action remains unpunished, and the child gets the feeling that his age excludes the criminalization of the action, which adds more color and charm to the continuation of the activity.

3. Deviation – an Immanent Prerequisite for a Criminal Act

Man – a political animal,³² as an important member of society³³, is a creature full of internal contradictions, which always strives for development, however, his mind, as a free biological being by

²⁷ Explanatory note on the Project of the Law of Georgia the Code of Juvenile Justice, 57 <<https://info.parliament.ge/file/1/BillReviewContent/68425>> [04.06.2024].

²⁸ Recommendation CM/Rec (2003)20 of the Committee of Ministers to member States concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, adopted by the Committee of Ministers (2003)), paragraph 11.

²⁹ See Serbia: Law of 2005 on Juvenile Criminal Offenders and Criminal Protection of Juveniles [Serbia], 2005 <<https://www.refworld.org/docid/4b56c9952.html>> [04.06.2024].

³⁰ Croatia the law on Juvenile Courts, Article 2 <http://www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation_Juvenile-Courts-Act.pdf> [04.06.2024].

³¹ *Gogua I.*, Juvenile Delinquency – Causes, Prevention, and the Ways of Rehabilitation, Penal Reform International, 23 June 2020 <<https://www.penalreform.org/blog/juvenile-delinquency-causes-prevention-and-the-ways-of/>> [04.06.2024].

³² *Metreveli V., Davitashvili G.*, Political and Legal Doctrine History (Lectures Course), Tbilisi, Meridiani, 1999, 41.

birth, never considers only a successful move on the path of development³⁴ – the choice of a person as an independent and at the same time dependent on society does not limit the nature of progress to an immanently positive character and gives him the freedom to act as he sees fit within his personal boundaries, among them – to develop himself for the worse³⁵, however, taking into account the principle *sic utere tuo ut alienum non laedas*. The issue is acute when a person begins to act in violation of the mentioned principle, especially if the subject of the problematic behavior is a minor.

When considering the question of obedience to the law, people are guided by internal, i.e. moral, and external, i.e. legitimacy measures³⁶ – A person obeys it without fear of punishment, as long as his personal view coincides with the justice considered beyond the grammatical wording of the law, And when obedience to the law is measured by the measure of legitimacy, obedience to it is based on the existing attitude towards the person who acts as the legislator and which has the moral right to direct people to right behavior in the form of accepted law.³⁷

Based on the specificity of the minor's level of development, it is difficult to judge whether the issue of his obedience to the law is determined by internal or moral or external or legitimacy –before reaching the age of adulthood, human consciousness undergoes changes in both the socio-emotional and cognitive control systems,³⁸ which is directly proportional to the vulnerable variable of behavior as an outward reflection of inner emotion.

The family environment is the primary starting point in the way of learning social relations for the child, who, based on adaptation to the mentioned environment, tries to get used to the outside world and establish himself in it.³⁹ The internal relational and emotional stability of the family determines the prosperity and stability of every state. Adolescents, until their biological, emotional or cognitive maturity, are characterized by a tendency to take risk-based actions⁴⁰ in every decision, which is due to their desire to receive the desired reward⁴¹ as soon as possible, and the lack of ability to foresee the long-term result does not only make him think about the unfortunate consequences, but even deprives him of the opportunity to consider it. At the mentioned time, a cardinally important restraining factor⁴² is the institution of the family, as a unity of adults – parents, with unlimited

³³ Aristotle, *Policy*, Part I, Tbilisi, 1995, 12-13.

³⁴ Decision №1/13/732 of the Constitutional Court of Georgia on the Case “Georgian citizen Givi Shanidze against Parliament of Georgia” dated 30.11.2017.

³⁵ Decision №1/4/592 of the Constitutional Court of Georgia on the Case “Georgian citizen Beka Tsikarishvili against Parliament of Georgia” dated 24.10.2015.

³⁶ Tyler T. R., *Procedural Fairness and Compliance with the Law*, Swiss Journal of Economics and Statistics, Vol. 133, (2/2), 1997, 219-220, <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.322.4235&rep=rep1&type=pdf>> [04.06.2024].

³⁷ Bjorgo T., *Crime Prevention, Comprehensive Approach*, Georgian-Norwegian Rule of Law Association, 2019, 46.

³⁸ Steinberg L., *Adolescent Development and Juvenile Justice*, Annual Review of Clinical Psychology, 2009, 5:459-85, 465-467.

³⁹ Shalikashvili M., *Criminology*, 3rd Ed., Meridiani, Tbilisi, 2017, 146.

⁴⁰ Steinberg L., *Adolescent Development and Juvenile Justice*, Annual Review of Clinical Psychology, 2009, 5:459-85, 469.

⁴¹ Ibid, 470.

⁴² Shalikashvili M., Mikanadze G., *Juvenile Justice*, 2nd Ed., Tbilisi, Freiburg, Strasbourg, 2016, 56-58.

resources for sharing past experience and advice⁴³ which plays an essential role in analyzing the instant and impulsive decision taken by the minor, however, what happens when the principle “every child has the right to grow up in a family environment”⁴⁴ is violated?

Ignoring the deviant behavior of a child under the age of 14 living in an imperfect family or living on the street without proper response on the part of the state gives rise to a reasonable assumption that the behavior will become delinquent,⁴⁵ what has been confirmed by relevant studies,⁴⁶ however, raising a child without parental supervision, which reduces its upbringing to a greater or lesser degree, does not a priori indicate the child becoming a delinquent.⁴⁷

The goal of the school, as the second most important step taken in the educational space, is to familiarize minors with the charm of the educational field, as well as to develop effective time management skills,⁴⁸ which is the basis for the perception of temporal feeling for a minor striving for a full-fledged membership in society, as the sooner a person in the process of development learns that “time is money”, the faster he will master the technique of spending time resources wisely.

In addition, the school can even be considered as a micro-model of the society, in which the minor learns communication skills with members distinguished by their individual characteristics and understands the negative sides of cognitive dissonance, becoming a person who implements a policy of acceptance of difference and diversification.

The Ministry of Education and Science of Georgia recently launched the “State Program for Monitoring the Identification of Out-of-School Teenagers”⁴⁹ which was approved by the Government of Georgia on September 10, 2020.⁵⁰ A study supported by the United Nations Children's Fund revealed that 10,404 adolescents between the ages of 6 and 16 have no educational history and are not registered in the education management information system. Therefore, it is unclear how and for what purpose the time of the mentioned teenagers, which should be associated with the presence of the majority of the day in the school as an educational institution, is spent.⁵¹

Accordingly, if a teenager is not at school during the time allotted for school, there is a high probability that his time resources will be spent on such deviant actions as, for example, bullying, other anti-social actions – begging-vagrancy, in the worst case – even crime.⁵²

⁴³ *Kherkheulidze I.*, Juvenile Crime and its Provoking Factors in Juvenile Justice Systems, *Journal of Law*, №2, 2012, 305-309.

⁴⁴ Explanatory note on the Project of the Law of Georgia the Code of Juvenile Justice, paragraph “a.a.a”, <<https://info.parliament.ge/file/1/BillReviewContent/214086?>> [04.06.2024].

⁴⁵ *Javakhishvili J., Makhashvili N.*, Juvenile Delinquency Prevention, Psycho-Social Service Experience, Tbilisi, 2011, 13-29.

⁴⁶ *Children Living and Working in the Streets of Georgia*, UN Children’s Fund, Tbilisi, 2018, 6<<https://shorturl.at/lpEJN>> [04.06.2024].

⁴⁷ *Shalikhashvili M.*, *Criminology*, 3rd Ed., Meridiani, Tbilisi, 2017, 147.

⁴⁸ *Shalikhashvili M., Mikanadze G.*, *Juvenile Justice*, 2nd Ed., Tbilisi, Freiburg, Strasbourg, 2016, 25-26.

⁴⁹ The Ministry of Education and Science of Georgia, 15.03.2021, <<https://mes.gov.ge/content.php?id=11912&lang=geo>> [04.06.2024].

⁵⁰ Resolution №573 of the Government of Georgia, *Legislative Herald of Georgia*, 10.09.2020 <<https://matsne.gov.ge/ka/document/view/4992004?publication=0>> [04.06.2024].

⁵¹ *Shalikhashvili M.*, *Criminology*, 3rd Ed., Meridiani, Tbilisi, 2017, 147-148.

⁵² Temporary Investigative Parliamentary Commission on Studying the Case of Murdering Two Juveniles on Khorava Street, Tbilisi, 17th December, 2017, Conclusion and Recommendations, Tbilisi, 5th September, 2018.

Regarding the above issue, based on the analysis of all three levels of prevention, the Decree of the President of Georgia №235 “on the Approval of the Strategy for the Prevention of Juvenile Crime” expresses an interesting opinion, according to which the school, as an educational institution, takes an advanced place in terms of the implementation of the first and second level prevention measures.⁵³

4. Result of Deviant Behavior – Liability in Criminal Law

The question of the minimum age of criminal responsibility is an integral part of human history and varies according to cultural or local beliefs in every time or era.⁵⁴

The so-called Article 4 of the “Beijing Rules” advises countries with the institution of a minimum age of criminal responsibility to take into account a person's level of emotional, mental and intellectual development when setting the minimum threshold for juveniles.

The degree to which the child lives up to the moral and psychological aspects required of him is a valuable factor in determining his responsibility.

In addition, in each specific case, the level of insight and understanding of each individual must be taken into account, which is the basis for imposing responsibility for essentially anti-social actions.⁵⁵

The concept of the minimum age of criminal responsibility is recognized by the legislation of both Georgia and many other countries, in particular, the Georgian Code of Juvenile Justice considers it to be 14 years⁵⁶ (for administrative violations – 16 years,⁵⁷ and for civil liability – 10 years⁵⁸) While, for example, in Great Britain, namely in England, Wales⁵⁹ and Northern Ireland⁶⁰ 10 years is considered as such. Scotland has a different approach to this issue, namely, under sections 41 and 41A(1)-(2) of the Criminal Procedure (Scotland) Act, no child under the age of 8 can be held criminally responsible and no child under the age of 12 shall be prosecuted, and no child of the age of 12 or over shall be prosecuted if he committed the punishable act while under the age of 12.⁶¹ Accordingly, on the example of Scotland, it can be said that the minimum age of criminal responsibility and the minimum age of criminal prosecution are different from each other, which gives

⁵³ Decree №235 of the President of Georgia on Approving Juvenile Crime Prevention Strategy, Legislative Herald of Georgia, (22.03.2012) [24.06.2024].

⁵⁴ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), Article 4 Age of Criminal Responsibility and Commentary, <<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/beijingrules.pdf>> [04.06.2024].

⁵⁵ Ibid.

⁵⁶ Law of Georgia “Juvenile Justice Code”, paragraph 1, Article 3, Legislative Herald of Georgia (12.06.2015) [04.06.2024].

⁵⁷ Ibid.

⁵⁸ Law of Georgia “Civil Code of Georgia”, paragraph 1, Article 994, Legislative Herald of Georgia (26.06.1997) [04.06.2024].

⁵⁹ Children and Young Persons’ Act, 1933, Section 50 <<https://www.legislation.gov.uk/ukpga/Geo5/23-24/12/commentary-c6086411>> [04.06.2024].

⁶⁰ The Criminal Justice (Children) (Northern Ireland) Order, Section 45, 1998 <https://www.legislation.gov.uk/nisi/1998/1504/article/45> [04.06.2024].

⁶¹ Criminal Procedure (Scotland) Act, Section 41 and 41A(1)-(2), 1995 <<https://www.legislation.gov.uk/ukpga/1995/46/contents>> [04.06.2024].

the opportunity to record actions carried out between the ages of 8 and 12 in the child's personal data in the form of a criminal record.

The “Criminal Law Code” of Turkey is largely based on the doctrine of guilt, in particular, the minimum age of criminal responsibility is set at 12 years, however, from 12 to 15 years includes criminal responsibility and excludes it if the person did not have the ability to understand the legal nature and consequences of the act or to control his own action at the time of the alleged commission of the act.⁶² In addition, for persons aged 15 and above, as well as for persons under 12 years of age, it is possible to use the so-called child-friendly “Separate Security Measures”. According to Articles 1 and 3 of the Organic Law of Spain “On the Criminal Liability of Minors”, a person over the age of 14 is considered a responsible subject for criminal law purposes, however, for a criminal act committed by a person under the age of 14, it is possible to apply measures for the protection of minors, which are provided by the Spanish Civil Code and other acts.⁶³

The reservation of the Georgian Criminal Procedural Legislation related to the mandatory nature⁶⁴ of the initiation of the investigation applies, among other things, to minor members of society, whose age, in some cases, is below 14 years, however, the existence of Article 33 of the Criminal Code immanently excludes not only the implementation of the sanctioning mechanism and the occurrence of the extreme result – the reduction of the punishment, but also the continuation of criminal prosecution and accusations against them, in a way, from the point of view of so-called “age-crime curve theory”,⁶⁵ age, as a measure of the path to adulthood, plays a major role, among other things, in modifying a person's propensity for crime. The main characteristics of the “age-crime curve” are the same for almost all crimes, although there are exceptions, for example, in the form of the 8-year-old boy who, on August 22, 2013, fascinated by the imitation of a violent game recorded on his cell phone, took the life of 78-year-old Marie Smuser.⁶⁶ The second argument against the above-mentioned theory is the story of the murder of James Patrick Bulger, which resulted in the accusation of two 10-year-old children and the adjustment of the status of the perpetrator.⁶⁷

The conclusion of the temporary investigative commission prepared by the Parliament about the murder on Khorava Street also speaks about the propensity for violent actions among minors according to which, in 2015-2018, the facts of verbal and physical abuse among students of educational institutions increased significantly throughout the country.

⁶² Criminal Code, Turkey, Article 31 (26.09.2004) <<https://www.legislationline.org/documents/action/popup/id/6872/preview>> [04.06.2024].

⁶³ Organic Law 5/2000, of January 12, regulating the criminal responsibility of minors, Article 1, Article 3, <https://noticias.juridicas.com/base_datos/Penal/lo5-2000.t1.html#a3> [04.06.2024].

⁶⁴ Law of Georgia “Criminal Procedure Code of Georgia”, Article 100, Legislative Herald of Georgia (09.10.2009) [04.06.2024].

⁶⁵ Rocque M., Posick C., Justin Hoyle J., Age and Crime, Major Reference Works, Wiley Online Library, 2 October 2015, 2-4 <<https://onlinelibrary.wiley.com/doi/epdf/10.1002/9781118519639.wbecpx275>> [04.06.2024].

⁶⁶ Ibid, 1

⁶⁷ Tapper J., James Bulger Murder, The Guardian, 7 March 2021, <https://www.theguardian.com/uk-news/2021/mar/07/i-shouldnt-have-let-go-of-him-the-pain-of-james-bulgers-mother-28-years-on> [04.06.2024].

5. Referral Mechanism as one of the Ways to Solve the Problem

In 2014, the institute established in foreign practice entered the Georgian reality when, for the first time, under the “2019-2020 action plan for the reform of the criminal justice system”,⁶⁸ the inter-departmental coordination council⁶⁹ for the reform of the criminal justice system created by the resolution No. 316 of the Government of Georgia on May 1, 2014 set out to improve juvenile justice and tailor it to the best interests of the juvenile child, in particular, the government's 2019-2020 program determined the modernization of the juvenile system in terms of prevention by making changes to a number of legislative acts.⁷⁰ In this direction, quite active steps were taken and already in 2018 it was planned to make changes⁷¹ to the law of Georgia “On Execution of Non-custodial Sentences and Probation”, which was finally realized at the end of 2019 – not only the name change, the law took into account the existence of a body that would ensure the management and control of antisocial (criminal) behavior by persons under the age of 14 (Juvenile Referral Center).⁷² In addition, the Law of Georgia “On General Education”⁷³ and “Administrative Procedural Code”⁷⁴ were saturated with a number of innovations, among the articles of which there were provisions on the Juvenile Referral Center.

The situation before the establishment of the Referral Institute created many difficulties for the representatives of law enforcement agencies, in particular, before 2019, in the case of committing a criminal act by a minor due to not having formally reached the criminal legal age, the entity conducting criminal prosecution was limited to issuing a resolution not to initiate criminal prosecution and to terminate the investigation⁷⁵ for a person under the age of 14, leaving a child in material conflict with the law without a number of help or benefits: in fact, the fundamental problems that led to the implementation of criminal actions by a subject under the age of 14 were not analyzed, which also excluded even thinking about the planning and implementation of individual preventive measures.⁷⁶

Ultimately, the reform wave of the criminal justice system in 2020 was followed by the launch of the Juvenile Referral Center. Additionally, among the state institutions involved in the referral process, the Ministry of Internal Affairs, also the Prosecutor's Office of Georgia together with other

⁶⁸ Governmental Programme, 2019-2020, September 2019, 13 [04.06.2024].

⁶⁹ Resolution №316 of the Government of Georgia on “Composition and Approval of the Statute of the Inter-agency Coordination Council Implementing the Reform of the Criminal Justice System”, Legislative Herald of Georgia (01.05.2014) [04.06.2024].

⁷⁰ Explanatory note to law project on making changes to “the Procedure for Enforcing Non-Custodial Sentences and Probation”, Parliament of Georgia, <<https://info.parliament.ge/file/1/BillReviewContent/225896>> [04.06.2024].

⁷¹ Ibid, 1.

⁷² Ibid, 4-6.

⁷³ Law of Georgia on “General Education”, X² Chapter, Legislative Herald of Georgia (08.04.2005).

⁷⁴ Law of Georgia “Administrative Procedure Code”, VII⁹ Chapter, Legislative Herald of Georgia (23.07.1999) [04.06.2024].

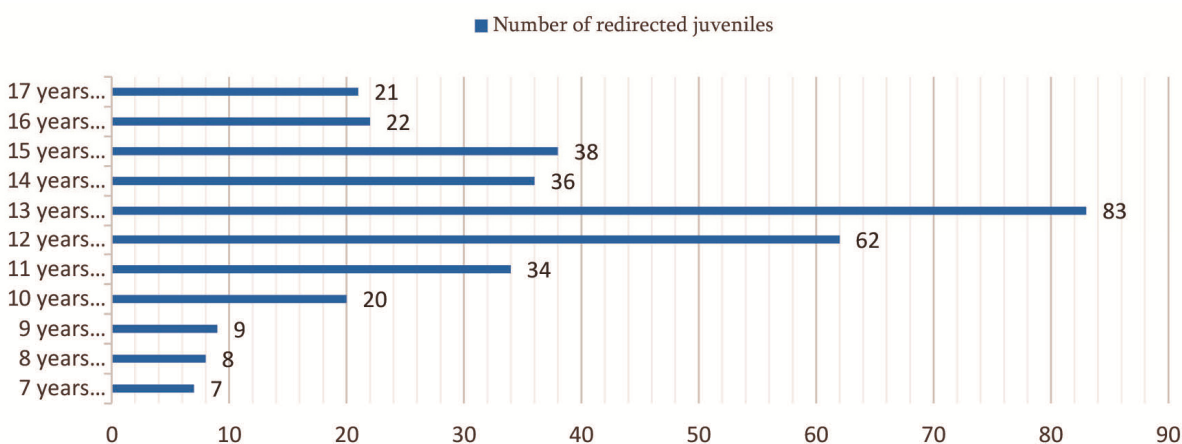
⁷⁵ Law of Georgia “Criminal Procedure Code”, Article 105, Paragraph 2, Legislative Herald of Georgia (09.10.2009) [04.06.2024].

⁷⁶ Juvenile Justice, General Prosecutor's Office of Georgia, 2020, 41-42.

bodies provided for by the resolution.⁷⁷ One of the law enforcement agencies, the Prosecutor's Office, developed the “Operational Instruction of the Prosecutor's Office of Georgia in Referral Procedures for Minors with Difficult Behavior”, which was approved on May 6, 2020 by the order of the Prosecutor General of Georgia No. 52-G.

According to the resolution, it is difficult behavior that, first of all, may endanger the safety, well-being of the minor, his harmonious and social development, and subsequently – the safety, well-being and/or order of other people. The definition of the concept, for comparative purposes, reflects the content of the definition established by the National Health Service, according to which a person's behavior is difficult if it endangers himself or the people around him or worsens the quality of life.⁷⁸ According to the resolution, difficult behavior can be manifested in the consumption of narcotic drugs/alcohol by a minor, his involvement in anti-social, illegal activities, gambling, various types of violent actions.⁷⁹ The resolution itself refers to children between the ages of 7 and 18 as minors, of whom, according to the grammatical interpretation of the law, the referral mechanism is used in extreme cases, and minors between 10 and 18 years of age are subject to the mentioned institution without any problems.⁸⁰

Sending a juvenile to a referral facility, which serves a limited group of people and includes children between the ages of 10 and 18, is considered a last resort for managing challenging behavior. Since the launch of the Juvenile Referral Center (January 1, 2020) to date (April 12, 2023), 340 cases have been referred to the center, of which 75 cases were referred due to challenging behavior. As for the subjects carrying out the actions contemplated by the redirected cases, their age pyramid looks as follows:



⁷⁷ Resolution №681 of the Government of Georgia on “Approving Rule of Readressing Juveniles”, Article 3, Legislative Herald of Georgia (31.12.2019) [11.06.2024].

⁷⁸ How to Deal with Challengin Behaviuor in Adults? NHS <<https://www.nhs.uk/conditions/social-care-and-support-guide/practical-tips-if-you-care-for-someone/how-to-deal-with-challenging-behaviour-in-adults/>> (15.03.2021) [04.06.2024].

⁷⁹ Resolution №681 of the Government of Georgia on “Approving Rule of Readressing Juveniles”, Article 2, Paragraph 2, Legislative Herald of Georgia (31.12.2019)

⁸⁰ Ibid, Article 1, Paragraph 4.

In addition, the number of minors between the ages of 7 and 18 whose actions contain signs of a crime considered by the private part of the Criminal Code is 233, complex behavior – 75, and both characteristics – 32. As statistical data show, most cases of referral to the referral center are related to actions taken by 12-13-year-olds, which is noteworthy to the extent that these persons have not yet reached the age of criminal liability. Therefore, the classical approach of criminal law cannot be applied to them, even using the benefit provided by the Juvenile Justice Code.

For comparative legal purposes, the Georgian version of the referral may be compared to the regulations applicable to persons under the age of criminal law in Great Britain, namely: in England and Wales, in case of criminal acts committed by persons under the age of 10, the so-called Institutions of Local Child Curfew and Child Safety Order: The first of these involves local police prohibiting a child from being in public places between 9pm and 6am, unless accompanied by a parent. This measure may last up to 90 days. As for the Child Safety Order, it is used if a minor commits a criminal act or violates the requirements of the Local Child Curfew.⁸¹ In such cases, the child is placed under the supervision of the Youth Offending Team, which is part of the local council and is independent of the police and courts.⁸² The main task of the Young Offenders Team is to stand by the minors when they are in conflict with the law. Also, they participate in the planning and implementation of various preventive measures.⁸³

As of September 1, 2020, the function of the referral institution was performed by Public School №15 of Samtredia⁸⁴, the so-called Boarding school, however, it was closed soon and currently no institution fulfills the function of the institution anymore.

In the future, multi-sector work has been started to create a semi-open institution, so that the legal mechanism applicable to the persons transferred to the institution can be practically implemented.

6. Conclusion

Finally, as much as it is impossible for a society to exist without crime,⁸⁵ it is so impossible to aim to create an ideal world with a parallel consideration of human nature.

Crime and its associated institution – punishment will attract the attention of humanity many times in the future, which will not exclude the relevance of the research subject, but on the contrary, will add more clarity and truth to it.

⁸¹ Young People and the Law, the United Kingdom, Gov.UK., <<https://www.gov.uk/child-under-10-breaks-law>> [04.06.2024].

⁸² Youth Offending Teams, the United Kingdom, Gov.UK., <<https://www.gov.uk/youth-offending-team>> [04.06.2024].

⁸³ Ibid. comp. Scottish Approach Young People and the Law, Scotland <<https://www.mygov.scot/young-people-police>> [04.06.2024]; Children's Hearing Scotland, <<https://www.chscotland.gov.uk/about-us/>> [04.06.2024];

⁸⁴ Resolution №681 of the Government of Georgia on “Approving Rule of Readressing Juveniles”, Article 15, Paragraog 1, Legislative Herald of Georgia (31.12.2019) [04.06.2024].

⁸⁵ *Shalikashvili M.*, Criminology, 3rd Ed., Meridiani, Tbilisi, 2017, 93.

The main goal of the present paper was to walk the path to the above-mentioned truth when considering the interests of minors in the field of criminal law.

Taking into account the age, level of development and characteristics of a person, subjects under 18 years of age are considered in the vulnerable category of society, which makes it possible to anticipate and adapt with meticulous accuracy the actions of any person towards them or with their participation. Primary units of socialization in the outside world, such as family, school and friendship circle, have the greatest influence on the child as the so-called. On making the “object of special observation” a full-fledged member of the society and forming it as a person.

Taking into account all of the above, to the question posed in the paper, who can be considered a “faithful friend of a minor”, one of the answers is the institution of referral, with its innovative spirit and still developing nature.

The consistent sharing of the best international experience demonstrates the goodness and positive impact of the multifaceted programs and tools operating within the framework of referral in the aspect of children's return to society.

In addition, the referral institute represents the responsible choice of every member of society (teachers, parents, bailiffs, etc.) to actively contribute to the peaceful and thoughtful resolution of naturally occurring disagreements in the living environment.

In a future perspective, referral may turn out to be the moral law that shapes each person's beliefs about what is good and what is bad, adding a touch of wonder and admiration to every step taken toward worthy membership in society – especially when its addressee is a small member of a large society, a minor.

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