

Analysis of the circumstances of criminal cases committed in sanatorium-resort areas

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Abstract. The presence of a variety of unique healing resources has made it possible to create a multifaceted system of sanatorium-resort treatment and recreation in Kyrgyzstan. The safety of treatment and recreation in places of resort and recreational status is of paramount importance, as they receive the most guests, being a business card. However, crimes are committed in such places as well. Evidence, being the core of criminal proceedings, serves as a mechanism for establishing the actual circumstances of the incident, the persons who committed the crime, the correct qualification of the deed and, as a result, the issuance of a lawful, reasonable and fair verdict. The article provides statistics compiled on the basis of the data of the country's law enforcement agencies, which shows the dynamics of the growth of crime of certain categories of persons.

Keywords: constitution, criminal proceedings, interrogation, law, children, conflict, crime, psychologist, lawyer.

1 Introduction

The Kyrgyz Republic has large reserves of natural healing factors, including natural mineral water, therapeutic mud, climate, landscape, significantly increasing the resort and recreational status of the republic [1].

The protracted economic crisis has given rise to many problems, among which is the decline in the standard of living of the population due to unemployment. Although, the Constitution of the Kyrgyz Republic proclaims that “1. Every child has the right to a standard of living adequate for his physical, mental, spiritual, moral and social development. 2. The principle of ensuring the best interests of the child is in force in the Kyrgyz Republic. 3. Responsibility for ensuring the living conditions necessary for the development of the child rests with each of the parents, guardians and trustees” (Article 27) [The Constitution of the Kyrgyz Republic. Adopted by referendum (popular vote) on April 11, 2021 (Put into effect by the Law of the Kyrgyz Republic of May 5, 2021)], in a difficult financial situation, many citizens of the country were forced to leave their families to immigrate to foreign countries. As a result, in the absence of both proper control over receiving school and other education, and full-fledged family education, many children

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were left homeless. If earlier the family and the school were engaged in the upbringing of children, today they are brought up by the street or the Internet.

Moreover, from generation to generation, the value orientation of young people has changed. This was influenced by the so-called "dashing - 90s", where criminal authorities began to be born on the territory of the collapsing USSR, leading organized criminal groups. Criminal authorities, figuratively speaking, performing "heroic" deeds, thereby became the idols of many representatives of the younger generation. Later, based on real facts, even films were made illustrating the lifestyles of individual crime bosses. For example, during the existence of the USSR, the so-called "censorship" operated, which forbade making and showing such films in cinemas and television in order to prevent a negative educational impact on the younger generation.

In our opinion, little has changed since then, since the younger generation in the post-Soviet space turned out to be a hostage to the above-mentioned objective social and social phenomena, which was accompanied by a decline in the moral foundations of society. Negative selection has also played a role in changing values among young people. A certain part of the population, including young people with the transition to market rails, was forced to learn the basics of commerce, doing business, which also became the object of illegal profit from the criminal environment.

2 Materials and Methods

Thus, the younger generation is faced with new challenges of the era of globalization, in which juvenile delinquency has taken its place. Based on the analysis of law enforcement agencies of the Kyrgyz Republic, it can be noted that juvenile delinquency is growing every year. Official statistics, compiled according to the country's law enforcement agencies, show that persons aged 14 to 17 were convicted by year: 2018 - 161; 2019 - 193; 2020 - 250; in 2021 - 262 [National Statistical Committee of the Kyrgyz Republic: <http://www.stat.kg/en/5.06.00.20>]. As for the number of identified persons who committed a crime at the age of 14-17 years, then 2019 - 1194, 2020 - 1031, 2021 - 1278 children 3]. For example, in 3 months of 2022, teenagers committed 321 crimes of various qualifications [Criminal Procedure Code of the Kyrgyz Republic: <https://svodka.akipress.org/news:17880652>].

Common types of crimes committed by children are theft, robbery, hooliganism, rape, etc. There are many cases of complicity of persons from 14 to 17 years old in murders.

In this regard, within the framework of this scientific article, I would like to draw attention to the issues of proof in criminal proceedings against children in conflict with the law. Evidence, being the core of criminal proceedings, serves as a mechanism for establishing the actual circumstances of the incident, the persons who committed the crime, the correct qualification of the deed, and as a result, the decision of a lawful, reasonable and fair sentence.

It is in the institution of evidentiary law that there are rules that require a special approach in the disclosure and investigation of crimes committed with the participation of children. State bodies, officials conducting criminal proceedings, when proving, must take into account a whole range of factors related to the age and mentality of this participant in the process. It is no coincidence that we have the current "Children's Code of the Kyrgyz Republic", which contains the idea of development in the country, juvenile justice [1], i.e. justice for children, which means "a system of measures for children in conflict with the law, as well as victims and witnesses in criminal cases, which includes issues of crime prevention, administration of justice, social rehabilitation and integration, taking into account gender and age, mental, physical and mental features of their development.

Moreover, this Code provides for a program of diversion from justice. So, according to Art. 5 of the Code of the Kyrgyz Republic on Children “the program for diversion from justice, - is, - a program to prevent the initiation of legal proceedings against minors, aimed at promoting the rehabilitation and social reintegration of the child in order to prevent re-offending.” At the same time, the rights and legitimate interests of the opposite side, that is, the persons affected by the criminal encroachment of the above participants in the process, must be ensured.

So, according to Part 1 of Art. 458 of the Code of Criminal Procedure of the Kyrgyz Republic In pre-trial proceedings and trial in cases of crimes committed by children, along with proving the circumstances listed in Article 81 of this Code, it is necessary to find out: 1) the age of the child (day, month, year of birth); 2) living conditions and upbringing of the child; 3) the degree of intellectual, volitional and mental development, features of character and temperament, needs and interests; 4) the presence or absence of influence on the child by adults and accomplices.

The course of further criminal proceedings depends on the exact determination of the child's age. This means that the legislator requires the bodies and officials conducting the proceedings to clearly establish the date, month and year of the child's birth. In our opinion, the most important is the specific definition of the lower age limit, since it is necessary to clarify, first of all, the issue of recognizing a person as a subject of a crime. If we turn to the Convention on the Rights of the Child of November 20, 1989 [2], here, the establishment of the lower limit of the criminally punishable age of the child is left to the discretion of the participating States (Article 40.3). The Beijing Rules point to the inadmissibility of excessively lowering the criminal age for children, since they are not yet recognized as intellectually, spiritually and emotionally immature (clause 4.1).

The minimum limit of the criminally punishable age of children in foreign countries is determined in different ways. There are countries where the criminal age starts at 7 years (for example, Jordan, Bangladesh), and in some countries criminal liability is brought only at the age of 18 (for example, Panama, Mexico). The establishment of the minimum age for bringing children to criminal responsibility depends on the foundations of society, the geographical, historical and cultural characteristics of a particular country and, of course, on the place and role of minors in this society.

When determining the minimum criminal age, it is necessary for the legislator to take into account the child's ability to withstand, endure the upcoming moral, psychological and other measures, tests associated with a whole range of legal restrictions [2, p. 29]. In addition, children who have come into conflict with the law must be aware and understand why such a fate befell them.

In some countries, there is no legislative regulation of the minimum age of criminal responsibility. Hypothetically, it is possible, regardless of age, to bring children to legal responsibility. Although, an objective, real definition of the age of criminal responsibility, sometimes goes beyond the possibilities of jurisprudence, since the law in this case will need the achievements of other branches of science. Therefore, the issues of criminal procedural capacity in different countries are solved differently.

At the present stage, determining the age of a child is not particularly difficult. The primary document confirming the date of birth is a birth certificate, with the help of which it will be possible to establish the age of a child who has come into conflict with the law. Therefore, the investigator, first of all, when establishing the identity, requires the presentation of a birth certificate (metrics) or a passport. Copies of these documents are attached to the materials of the criminal case. If there are no such documents, then the investigator needs to find out the place of birth of the child, and then you should contact the relevant authorities, institutions to send copies of them.

In the absence of such documents in this institution, it is necessary to apply to the registry office for the issuance of an extract from the book certified by them (or request Form No. 1). In the absence of data and in the registry office. In the absence of documents proving the date of birth of the child, or damage, dilapidation of the certificate form, illegibility of the text, in the absence of the possibility of restoring the records, there are doubts about the authenticity, then in this case, in order to determine the age of the child, the investigator must issue a decision on the appointment of a judicial - medical expertise.

This requirement is also provided for in the Code of Criminal Procedure of the Kyrgyz Republic, and in particular, paragraph 5, part 2, art. 178 contains one such grounds for the appointment of an examination on a mandatory basis, such as "the age of the suspect, the accused, the victim, if this is important for the criminal case, and there are no documents confirming his age, or they are in doubt."

Forensic medicine determines the age of a person in an anatomical and physiological way, that is, based on the development of organs and tissues of the human body, from the period of conception to the moment of research. According to forensic medicine, "at the age of up to one year, it can be established with an accuracy of 1-1.5 months, in children and adolescents (up to 12-17 years old) - with an accuracy of 2-3 years" [Forensic age determination: <https://studfile.net/preview/7401050/page:3>]. In this situation, the person will be recognized as having reached the age specified in the expert opinion on December 31 of the same year. Thus, the constitutional provision of the presumption of innocence extends to him, where "any doubts about guilt are interpreted in favor of the accused" (part 2 of article 57 of the Constitution of the Kyrgyz Republic).

No less important circumstance to be proved is the conditions of life and upbringing of the child (clause 2, part 1, article 458 of the Criminal Procedure Code of the Kyrgyz Republic), since it has a significant impact on the development of the psyche and other personality traits and qualities.

Officials handling criminal proceedings involving children in conflict with the law should carefully examine the family from a welfare standpoint. After all, legal and non-legal norms together state that primary education is entrusted to parents. So, part 3 of Art. 27 of the Constitution of the Kyrgyz Republic states that "Responsibility for ensuring the conditions of life necessary for the development of the child rests with each of the parents, guardians and trustees."

In the process of raising children, parents should deal with the moral, spiritual, physical, mental and cultural development of children, as well as instill in the child a healthy lifestyle. Otherwise, this family can be classified as dysfunctional. In turn, dysfunctional families are divided into such types as problematic, crisis, asocial, immoral, and also antisocial [Which families are considered dysfunctional. And how does the state protect children from such families: <https://journal.tinkoff.ru/guide/troubled-family/#one>]. A dysfunctional family faces two serious problems: 1. Economic; 2. Psychological.

3 Results

Economic problems are partially disclosed by us at the beginning of our study. As for psychological problems, in some cases the child grows up in emotional, psychological or physical isolation, while suffering from loneliness, and in another case, the child grows up among an adult noisy company, where they systematically drink alcohol associated with other entertainment events. Often such events are accompanied by quarrels, mutual insults, fights and other unpleasant phenomena.

A child brought up in such an environment, not having received proper parental, proper upbringing, will be vulnerable to a criminal environment. In addition, educational

institutions (schools, gymnasiums, lyceums, colleges and higher educational institutions) play a huge role in the upbringing of children.

Therefore, in the process of proving, first of all, it is necessary to pay attention to the factor - the family, where the personality of the child is formed from the childhood period. It should be noted that each family has its own traditions, rituals, customs, as well as a certain value orientation, which over the years are instilled in the psychology of family members. According to these data, the child develops a certain pattern of behavior, manner of communication, interpersonal relationships, and perhaps this stereotype will accompany him all his life [3, p. 53].

Thus, from the moment of birth, the responsibility for the health, upbringing, and material support for the child is borne by the family in the person of the parents [4, p. 175; 5, p. 119]. Moreover, the family is an irreplaceable and unique institution, where the most interesting, responsible and unique period of a person's life takes place [6, p. 19; 5, p. 62]. I.S. Kona believes that in practice, it is the living conditions that determine the socio-psychological act of behavior of adolescents and young men [7, p. 75]. Some authors point to the family as a factor forming the criminal psychology of adolescents [8, p. 66]. Unscrupulous performance of their functions by the family leads to the destabilization of family relations [9, p. 45]. N.I. Gukovskaya noted the special importance of proving the circumstances related to the living conditions and upbringing of adolescents in pre-trial proceedings [10, p. 7]. The living conditions and upbringing of a child are subject to establishment by the same methods and means as in other circumstances. Nevertheless, I would like to remind you that the bodies and officials conducting criminal proceedings in clarifying the circumstances related to family foundations should take into account the following constitutional provision: "No one is obliged to testify and testify against himself, his spouse and close relatives" (Part 5 of Article 57 of the Constitution of the Kyrgyz Republic).

The fact is that in accordance with Part 1 of Article 465 of the Criminal Procedure Code of the Kyrgyz Republic, "The legal representative of the child participates in pre-trial proceedings in cases of crimes committed by children."

The environment, the transfer of free time, as well as the information space also have a negative impact on the child. A child left without control or isolated from family members begins to look for an environment of communication outside the family hearth. Thus, there is an opportunity to join a "limited community", where it is possible that a teenager will feel comfortable, and most importantly, freely dispose of time [9, p. 75; 11, p. 63]. Such a community can easily involve such a child in various criminal activities. As a rule, any community has its own leader. Some authors note the presence of imitation properties in children, through which their socialization proceeds, instilling rules of behavior, communication, etc. [10, p. 24]. In most cases, children are attracted to such a community by sympathy for the leader and his members. Having joined such a community, a teenager undergoes a kind of adaptation by getting to know the leader, members, as well as studying the established rules of permissible and forbidden nature. After passing the test, after a while, the teenager imperceptibly becomes, figuratively speaking, one of them. This will be evidenced by speech, behavior, gestures, facial expressions, etc. having secured the trust of the leader and members of this community, group, a teenager may take a certain place and get a certain role. Of course, in such a community, a teenager still needs to clearly master their hierarchy of government and subordination. In most cases, strict obedience to the leader and protection of his honor, dignity, reputation, etc. are preached in such communities.

All of the above is the result of the lack of control on the part of the family, institutions that are entrusted with the educational function of adolescents [12].

It is worth agreeing with A.I. Dolgova, who notes that in criminal-oriented groups, adolescents absorb peculiar antisocial ideas that serve as the basis for further implementation of criminal plans [13, p.17].

By many scientists, teenagers who have become members of criminal groups and communities are recognized as having fallen under criminogenic deformation [14, p. 47; 15, p. 18; 16, p. 76]. The trade of criminal groups includes obtaining money illegally, resolving a conflict situation through the use of threats, violence, blackmail. In practice, the leaders of criminal groups are previously convicted. There is no way to do without the use of tobacco, alcohol, drugs. A teenager who has fallen into such an environment from an early age is already deprived of a healthy lifestyle [17, p.18]. Many teenagers see tobacco smoking and alcohol consumption as the way to adulthood. In order to meet such needs, many teenagers enter into a criminal path, committing theft, robbery, fraud, extortion, etc.

4 Discussion

It should be noted that the so-called "school racket" is widespread in the country, where high school students forcibly force the younger classes to collect money in the so-called "school community". In 2023, the Ombudsman Institute, together with the League of Defenders of Children's Rights, compiled a report on the results of monitoring the observance of the rights of girls from gender-based violence and the protection of schoolchildren from offenses and crimes in Naryn with the technical support of the Program Office of the United Nations Office on Drugs and Crime in Kyrgyzstan, the United Nations and the European Union "Ray of Light". The report says that "school racketeering is a mass phenomenon in Naryn. At the same time, 17.6% of respondents encounter it daily. The school racket is committed mainly by high school students

Therefore, education plays a special role in the formation of the personality of adolescents. Thus, according to Article 46 of the Constitution of the Kyrgyz Republic "1. Everyone has the right to education. 2. Basic general education is mandatory." This means that the child should study at school, get a general education, and this is his inalienable, natural right. At least three functions are assigned to each educational institution: educational, educational-methodical and, of course, educational function. The performance of all these functions is primarily assigned to teachers, educators. School education should be perceived as a continuation, an addition to family education. On weekdays, the child spends most of his time in school. Many authors see the education crisis as a factor in the growth of child crime [16, p. 11; 18, p. 46]. It is the school that faces difficult-to-educate teenagers. Ignoring, indifferent attitude of the teaching staff of the school to violations of discipline and order by students, as well as the lack of proper control by the management, often leads to the above-mentioned deplorable results. The inculcation of such categories as legal awareness, legal culture, legal education should begin with the school family [19, p. 21]. At least schoolchildren starting from the 7th grade need to spend class hours where they need to explain to students the concept of misconduct, the difference between misconduct and crime and, of course, punishment for what they have done. It is advisable to invite law enforcement officers to such events, as they will be able to explain to schoolchildren in an accessible form using live examples from everyday practical activities. It is also necessary to conduct widespread meetings and conversations of employees with difficult-to-educate students. Omissions of educational institutions in this direction.

Based on the characteristics of the personality of a child who is suspected or accused of committing a crime, the investigator can involve him in certain investigative actions, but it

is necessary to observe additional procedural guarantees and take into account the specifics of the evidence.

According to V.L. Vasiliev, knowledge of the psychological and other personality characteristics of a particular teenager will serve as the basis not only for the qualitative solution of the problems of proof, but also become a prerequisite for the implementation of the educational function of persons in conflict with the law [18, p. 125]. One can agree with this position of the author, although knowledge of the psychological characteristics of a teenager is not enough, since a teenager can behave differently in different situations. Therefore, the investigator needs a comprehensive approach in this matter.

The instability of child psychology causes sufficient difficulty for investigators in studying the identity of a child who has come into conflict with the law, since most of them are due to age. Thus, in the course of proving at the investigation, it is necessary to carefully study not only the external manifestation of the behavior of adolescents, but also the internal mental parameters of illegal actions. Moreover, each specific criminal case requires an individual approach. When establishing circumstances related to the identity of a teenager, confirmation by evidence is required. The establishment of circumstances also depends on the severity of the crime committed and, of course, on the personal characteristics of the teenager.

If a serious crime has been committed by a group of persons, then in this case, the investigator needs to study the identity of each and establish the roles of each teenager in this incriminated act.

In this case, it is important to clarify such issues as the place of a teenager in a criminal group, and then to establish a specific role in the commission of a crime by a group of persons. The most common method of proof is the conduct of investigative actions, and in particular interrogations during which the investigator receives the testimony of a suspect or accused child. When receiving a child's testimony, it is necessary to comply with a number of procedural guarantees enshrined in the criminal procedure legislation. However, general rules such as clarifying the relationship between the members of the group also apply to the children being interrogated.

In order to obtain reliable information from the interrogated child, the investigator must knowingly study his personal characteristics, since the social profile, psyche, character and even temperament may indicate the optimal way to cooperate with the interrogated investigation. In addition, having comprehensively studied the personality of the attracted child, it is possible to prepare a corresponding

5 Conclusion

Summarizing the above, I would like to note that the investigator, in the course of proving the identity of a child who has come into conflict with the law, must adhere to a certain algorithm.

Taking into account the peculiarities of the personality of a child in conflict with the law, when proving at the investigation, attention should be paid to the following data:

- Demographic data.
- Medical and biological data, including genetic (abuse of alcohol by parents, identification of mental abnormalities in parents, severe pregnancy, childbirth, etc.).
- Social portrait of a teenager (family atmosphere, parental status, quantitative composition of the family, school performance, relationship of a teenager with classmates, teachers, activity or passivity in 4. Personal characteristics of the teenager(character, temperament, motivation, value orientation, degree of self-esteem, etc.).

Most scientists who have devoted their works to the study of child crime pay attention to the establishment of the following data:

- data on the family of a child in conflict with the law. What is the composition of the family, that is, whether there are both parents, how many brothers and sisters, whether they live together, their work, place of study, etc.
- if the parents are divorced, what is the reason, the relationship of the child with the other parent;
- find out the degree of parental control and supervision of the child;
- the financial situation of the family.

Questions to be clarified in educational and other institutions:

- attitude to the educational process (to study in primary or senior grade, attendance and grades in academic disciplines, relationship with teachers and students of the school, sports, etc.);
- the degree of upbringing of the child (moral and ethical behavior of the child);
- compliance or lag of the child's mental and mental development;
- to identify the reasons for the child's skipping lessons, and in particular

If a teenager combines study and work, then the investigator should find out:

- type of work activity;
- from what grade did the child start working;
- the reason for early employment;
- how much is the child's earnings and where is it spent;
- the presence of penalties in view of violations of labor discipline.

We believe that in each case, when investigating a criminal case involving children, regardless of the severity of the crime committed by them, it is necessary to ensure compliance with additional guarantees. Thus, Part 2 of Article 462 of the Criminal Procedure Code of the Kyrgyz Republic states: "The interrogation of a child as a suspect, accused is carried out in the presence of a lawyer, a legal representative, and, if necessary, an employee of the authorized state body for the protection of children, a psychologist, a teacher, who have the right to ask questions to the interrogated, and at the end of the interrogation – to get acquainted with the protocol and make comments about the correctness and completeness of the recording of testimony." We are alarmed by the phrase "and if necessary", that is, the participation of a psychologist in the interrogation is left to the discretion of the investigator, whereas we believe that the participation of a child psychologist is mandatory, both in the interrogation itself and before it. Any investigative action for a child who has come into conflict with the law, due to age and other above-mentioned circumstances, causes stress, an anxious emotional state, anxiety, etc. Therefore, the interrogation should be preceded by a conversation of the child with a child psychologist to determine his psychological, emotional state. Even the majority of adults summoned for questioning are in a stressful state, and children are even more vulnerable as much as possible.

In this regard, we consider it expedient and necessary to add the word "psychologist" to the second paragraph after the word "legal representative" of the Criminal Procedure Code of the Kyrgyz Republic, and to state in the following wording: "The interrogation of a child as a suspect, accused is carried out in the presence of a lawyer, legal representative, psychologist, and, if necessary, an employee of the authorized state child protection authority, a psychologist, a teacher who have the right to ask questions to the interrogated, and at the end of the interrogation – to get acquainted with the protocol and make comments on the correctness and completeness of the recording of testimony."

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