



## Measure Thy Cloth Ten Times (Arguments about Reducing the Age of Criminal Liability to 12 Years)

**ROBERT S. ABDULIN**

Kurgan State University, Kurgan, Russia, abrosem@yandex.ru

### Abstract

*Introduction:* the article is devoted to the problem of reducing the age of criminal liability to 12 years and the expediency of further initiating a reduction in the age threshold for bringing minors to criminal liability, as well as the need to introduce pedagogical disciplines and a deeper study of communicative psychology into university training programs for lawyers. In addition, according to the author of the article, when considering cases in courts of the first and appellate instances, in relation to minors, the institution of people's assessors should be returned to the legal field. *Purpose:* based on the study of proposals to reduce the age of criminal liability, to substantiate the prematurity of such legislative initiatives and the need to activate civil society to prevent juvenile delinquency. *Methods:* abstraction, induction, empirical analysis, logical reduction, general scientific and philosophical justification. *Conclusion:* some aspects of this work can be used in the preparation of educational plans for training lawyers, as well as in the activities of public associations for legal education and prevention of offenses among minors (youth parliaments and governments in the subjects of the Russian Federation, public chambers, etc.). A minor becomes the central element of scientific knowledge and legal communication. In this regard, primacy of a child in relation to the law is defended. Knowledge in the field of child pedagogy, psychology and legal conflict allows a judge, prosecutor, investigator and other employees of law enforcement agencies to perform their professional duties efficiently.

**Key words:** age; teenagers; liability; program; court; people's assessors.

5.1.4. Criminal law sciences.

**For citation:** Abdulin R.S. Measure thy cloth ten times (arguments about reducing the age of criminal liability to 12 years). *Penitentiary Science*, 2024, vol. 18, no. 3 (67), pp. 250–255. doi: 10.46741/2686-9764.2024.67.3.003.

### *Introduction*

Consideration of the research topic is associated with three independent, but closely related circumstances.

First, it is the author's position on the undesirability and even to some extent irrationality of further raising the issue of reducing the age of criminal liability to 12 years. Second, judges, prosecutors, investigators and other law enforcement officials, including the penitentiary system, should have deep knowledge not only in the professional field, but also in the field of pedagogy, psychology, legal conflict resolution studies. This will contribute to a holistic perception and assessment of teenager's actions who has committed an offense (crime) or is inclined to commit it. In this regard, it is necessary to include disciplines in the legal training curricula of such as juvenile justice and juvenile pedagogy, which consider the issues of parenting children with deviant behavior, underage, age-related features of adolescent personality development, problems of difficult upbringing, and issues of organizing family education. Third, the author's vision of the procedure for considering criminal cases on crimes committed by minors in the courts of first and appellate instances. Let us consider in more detail, taking into account the position of the author of this article and the opinions of a number of representatives of the scientific world and practical workers, related to proposals to lower the age of criminal liability.

In our opinion, we should put a final end to this issue and not raise it anymore. Having worked as an investigator, prosecutor and judge, the author respects the opinion of scientists, practitioners and legislators regarding this problem. However, it is impossible to agree with such views, arguments aimed at reducing the age of criminal liability of adolescents, since they (judgments), as a rule, violate the law of cause and effect. The problem under study requires serious reflection, in-depth criminological analysis, consideration of possible consequences in terms of the position of "not to harm". We all understand perfectly well that most events that happen to us have their own specific reason. This allows us to be aware of the consequences of our actions, to the point that when we implement them, we can get not the expected, but completely the opposite re-

sult. Thus, correct identification of the cause will largely affect the final result. This also concerns discussion of the problem of lowering the age threshold for bringing teenagers to criminal liability for committing serious and especially serious crimes. Instead of realizing and identifying the reasons for the commission of a crime by a minor, we mistakenly try to find a panacea for this in lowering the age and punishment, pushing the consequences of this step into the background. All proposals about lowering the age limit for the onset of criminal liability of adolescents are nothing more than the unwillingness, and sometimes the inability, of state and municipal bodies, public organizations, and civil society as a whole to closely address issues of preventing juvenile delinquency. It cannot be said that nothing is being done in this direction, but many of these events are so formal that they only cause great harm to their substantive side. Thus, instead of activating all civil society institutions in the Russian Federation, the necessity to reduce the age of criminal liability is once again being initiated. Just few people think about how important this is at the moment of the development of our society. As an example, let us turn to arguments of the adoption of the law "On Amendments to the Criminal Code of the Russian Federation and the Criminal Procedural Code of the Russian Federation on the issue of establishing criminal liability of minors from the age of twelve" in 2009 (deputies V.V. Zhirinovskii, S.V. Ivanov and M.S. Rokhmistrov). It follows from the explanatory note to the draft law that "cases of committing a criminal offense by persons aged 12–13 years are becoming increasingly widespread, especially in the form of intentionally causing death or serious harm to the health of citizens, as well as participating in terrorist acts. Annually, more than 300 thousand socially dangerous acts of minors are committed in the country, of them 100 thousand – by children under the age of 14, which exempts them from criminal liability. Taking into account the above, in the opinion of legislators, it may be quite reasonable to reduce the age of criminal liability in Russia for some serious and especially serious crimes to 12 years. If such a law were adopted, persons who had reached the age of twelve at the time of the commission of the crime could be criminally liable for committing twelve offences, including murder;

intentional infliction of serious harm to health; theft committed by an organized group on a particularly large scale; robbery with qualifying signs; robbery and other serious and especially serious crimes. Nevertheless, even with such a rather serious argument, the State Duma Committee "Family, Women and Children" (former name) under the chairmanship of E.B. Mizulina recommended rejecting the project, which was done [1].

The idea of lowering the age of criminal prosecution for children from 14 to 12 years old was the subject of discussion in the Public Chamber of the Russian Federation on February 21, 2012. As a result, in early March of the same year, a member of the Committee of the State Duma of the Russian Federation on Constitutional Law and State Building, V. Ponevezhskii, reported on the preparation of a draft law to reduce the minimum age of criminal liability from 14 to 12 years. However, to the deep satisfaction of the author of the article, in this case everything remained at the level of discussion.

Once again, the issue of lowering the age of criminal liability to 12 years arose already in 2023. The initiator in this case was the State Duma Committee "Protection of the Family, Issues of Paternity, Maternity and Childhood" (current name) in connection with the murder of an 11-year-old schoolboy by his 13-year-old friend in Moscow and the statement by the chairman of the named committee N.A. Ostanina that "children grow up earlier. They commit crimes before they begin to realize themselves. We can't leave it all: school is not coping, parents are not coping. Fear of punishment is a good power. I still don't see any other solution". [2] At the same time, this statement did not have any other, more distinct and reasoned justification of the need to adopt a law on lowering the age threshold for bringing teenagers to criminal liability. Thus, this problem can be solved only by lowering the age of criminal liability in the hope that the fear of punishment will stop the commission of crimes. There are some contradictions in the words of N.A. Ostanina that do not allow reducing the age. For example, how can persons who "commit crimes before they begin to realize themselves" be prosecuted? A 12-year-old teenager may not realize public danger of the crime at the time of its commission. Part 3 of Article 20 of the Criminal Code

of the Russian Federation states that if a minor "during the commission of a socially dangerous act could not fully realize the actual nature and public danger of his/her actions (inaction) or direct them, he/she is not subject to criminal liability". Speaking about the fact that teenagers commit crimes before they begin to realize themselves, N.A. Ostanina quite correctly points out the need to achieve a certain social maturity of a teenager. According to E.G. Dozortseva, this becomes possible only with the development of self-awareness, a quality that allows teenagers to direct their actions, be aware of their actions and become a subject of legal relations [3].

Meanwhile, 15 years have passed since the issue of lowering the age of criminal liability for committing serious and especially serious crimes was first raised in Russia (2009), which makes it possible to assess the expediency of returning to the discussion of this problem. In the interview to Rossiiskaya Gazeta (Russian Newspaper) in 2023, the Chairman of the Investigative Committee of the Russian Federation A. Bastrykin said that in 2022 in relation to almost 4,700 minors, criminal cases were terminated since offenders were under the age of criminal liability. About 35% of those who committed a socially dangerous act before reaching the established age of criminal prosecution of minors were from well-off families, were not on preventive registration and committed a socially dangerous act for the first time. According to A. Bastrykin, teenagers aged 16–17 are still the most criminalized. Acts committed by children of this age that caused or entailed death, as well as serious harm to human health naturally cause a wide public response. However, the share of such children is less than 1%. Such facts are usually caused by careless behavior of teenagers or quarrels with other minors. It should be noted that A. Bastrykin, judging by media information, never raised the issue of lowering the age of criminal liability and warmed up public opinion in this direction, but, on the contrary, he as a scientist, teacher, and practitioner constantly emphasized the need to consolidate efforts of law enforcement agencies and increase effectiveness of prevention measures when working with adolescents [4].

A weighty argument in favor of the inexpediency of lowering the age threshold for crimi-

nal prosecution to 12 years is also the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, (The Beijing Rules), adopted by General Assembly resolution 40/33 of 29 November 1985 at the 96th plenary meeting of the UN General Assembly, where paragraph 4.1 states the following: "In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity". The research of Russian scientists also contains a direct indication that criminal liability is based on a person's ability to consciously self-regulate. So, A.A. Fedonkina notes that such an ability as the function of a developed personality is normally formed by the end of the adolescent age period, covering the period from 11–12 to 14–15 years, which makes it possible to consider the legal establishment of current age limits of criminal responsibility sufficiently justified [5].

It is not difficult legally to reduce the age of criminal liability to 12 years. However, the adoption of such a law would mean the failure of both state and civil society institutions. The chosen formula "fear of punishment is a good force" to some extent indicates misunderstanding of the consequences of criminal prosecution from the age in question and is counterproductive. Punishing a 12–13-year-old teenager for committing a crime does not mean ridding society of the problem under study. With this approach, it is quite possible that after some time someone from the representatives of legislative bodies, government officials, citizens will again raise the issue of lowering the age of criminal responsibility already to 10–11 years. Moreover, arguments about reducing the age of criminal responsibility of adolescents to 10 years old can already be heard in the mass media.

Punitive measures will never solve this problem. We share the point of view of A. Vasil'evskii, who notes that "the essence of the dispute about the minimum age of criminal responsibility is determined by the attitude to responsibility itself and its filling with specific content. If responsibility and punishment are only a punishment, then the minimum age of responsibility can be lowered, and if this is only a means of protecting society from criminal encroach-

ments, then society should educate teenagers, and not punish them" [6].

In a civilized society, there should be one choice – education, and if necessary, re-education of children (minors). Today we will hide them, isolate them and, as some think, scare them with this, but tomorrow they will be released from places of detention, angry at their family, society, and the whole world and ready to commit crimes consciously. To prevent this, it is necessary not to reduce the age of criminal responsibility for adolescents, but to use the functionality of a wide range of organizations for preventing offenses among minors, the subjects of which are fixed by the Federal Law No. 120-FZ of June 24, 1999 "On the fundamentals of the system for preventing neglect and juvenile delinquency". They are commissions for minors; social protection agencies; special institutions for those in need of social rehabilitation; educational institutions; youth, sports and culture institutions, various youth associations; healthcare institutions; internal affairs bodies and penitentiary institutions. Meanwhile, this is clearly not a complete list of subjects that should deal with the prevention of crimes among adolescents. These should necessarily include state and representative (legislative) authorities, human rights commissioners, local self-government bodies, officials and other bodies related to ensuring the rights, freedoms and legitimate interests of children.

Efficiency of officials (investigators, prosecutors, judges) in conducting high-quality investigation of criminal cases and considering these cases in court is a problem, the consideration of which is no less important in connection with the topic under study. Unfortunately, in the judicial and prosecutorial community, as well as among investigators and other law enforcement officials, there is an opinion that having a legal education is enough to be competent in matters of pedagogy and psychology of underage students. However, few people think about the fact that in order to build communication with teenagers, special knowledge and mastery of psychological influence on minors are necessary. Forms and methods of work applied to adult offenders will not have the desired effect on adolescents. Modern investigators, prosecutors, and judges, especially when working with materials on crimes committed by

minors, should be a model of psychological maturity and know forms and techniques of psychological influence on offenders. Undoubtedly, these officials should have a sufficient level of knowledge in juvenile pedagogy and legal conflictology and understand individual characteristics of adolescents who have violated the law. Building relationships with parents and other legal representatives is also a very important component in the work of the investigator, prosecutor and judge. It would be better to start developing psychological and pedagogical competence during the study at university. The legal training curriculum should include psychological and pedagogical disciplines on the study of fundamentals of general, social and correctional pedagogy (juvenile pedagogy), general psychology and psychology of deviant behavior. The knowledge gained at university will help graduates, as they gain practical experience, to work with underage offenders. At the same time, another aspect of psychological and pedagogical competence of law enforcement officials is worth mentioning: in practice, they quite often have to meet with students (in schools, secondary and higher educational institutions) and their parents. They should not only be professionally competent, but also able to forecast the psychological situation in the team and hold a meeting in the form of a discussion platform, while broadcasting their psychological and pedagogical knowledge.

According to Part 5 of Article 32 of the Constitution of the Russian Federation, Russian citizens are granted the right to participate in the administration of justice. These provisions of the Constitution of the Russian Federation are developed in Article 8 of the Federal Constitutional Law No. 1-FKZ of December 31, 1996 "On the Judicial System of the Russian Federation", which stipulates that citizens of the Russian Federation participate in the administration of justice as jurors, people's and arbitration assessors. Thus, the maximum level of interaction between citizens and the judiciary is approved. Along with the establishment of the institute of jurors, abolished during the formation of the Soviet state in 1917, the courts of general jurisdiction continue to administer justice with the participation of the time-tested institute of people's assessors. At the same time, there was a derogatory review of this institution in the 1991

Judicial Reform Concept, "the court was and remains a purely state body of justice, whose essence is slightly camouflaged by silent popular observers". In Soviet times, people's assessors were called "noddles". At the same time, the 1991 Judicial Reform Concept described advantages of the institution of jurors. All this predetermined a further fate of the participation of people's assessors in the administration of justice. It should also be noted that the Federal Law No. 37-FZ "On People's Assessors of Federal Courts of General Jurisdiction in the Russian Federation" on January 2, 2000 was adopted. Three years later, the provisions of the said law became invalid in terms of civil proceedings, and from January 1, 2004 – in terms of criminal proceedings.

Let us answer the question, why we dwell in such detail on the fate of such a legal phenomenon as the institution of people's assessors? We have repeatedly raised the question of the return of this institution to the legal field [7], since the exclusion of the institution of people's assessors from Article 8 of the Federal Constitutional Law No. 1 of December 31, 1996-FKZ "On the Judicial System of the Russian Federation" deprives a significant part of the population of their constitutional right to administration of justice. Second, the return of the institution of people's assessors, but only in a different qualitative composition, can provide invaluable assistance in the consideration of criminal cases against minors. Participation of people's assessors (teachers and psychologists) in the court session together with a professional judge will certainly improve the quality of the cases under consideration. This procedure should be extended to both courts of first instance and appellate instances.

Summing up, humanization of the criminal law has been recently widely discussed. Meanwhile, proposals to reduce the age of criminal liability for children to the age of 12 indicate the opposite, since humanization should primarily reflect not only a decrease in the repressiveness of criminal law, but also activation of state and non-state structures for the prevention of offenses and crimes, including among minors. The severity of the state towards its younger generation and the cult of the ideology "fear of punishment is a good force" is a destructive ideology. In this regard, we would like to see

fundamental changes in the work with minors will affect the state of law and order both in the on the prevention of offenses, which, of course, regions and in the country as a whole.

## REFERENCES

1. *Zakon o snizhenii vozrasta otvetstvennosti do 12 let mogut vnesti v GD* [The law on reducing the age of responsibility to 12 years may be amended by the State Duma]. Available at: [https://rapsinews.ru/legislation\\_news/20120301/260746103.html](https://rapsinews.ru/legislation_news/20120301/260746103.html) (accessed June 25, 2024).
2. *V Gosdume predlozhili snizit' vozrast ugovovnoi otvetstvennosti do 12 let* [The State Duma proposed to reduce the age of criminal responsibility to 12 years]. Available at: <https://woman.rambler.ru/children/51129606-v-gosdume-predlozhili-snizit-vozrast-ugovovnoy-otvetstvennosti-do-12-let> accessed June 25, 2024).
3. Dozortseva E.G., Fedonkina A.A. Psychological characteristics of juvenile offenders with personal immaturity. *Psikhologicheskaya nauka i obrazovanie = Psychological Science and Education*, 2013, no. 3, pp. 234–243. (In Russ.).
4. *Interv'yu predsedatelya Sledstvennogo komiteta "Rossiiskoi gazete" 31 maya 2023 g.* [Interview of the Chairman of the Investigative Committee to Rossiiskaya Gazeta on May 31, 2023] Available at: <https://news.myseldon.com/ru/news/index/285081739> (accessed June 25, 2024).
5. Fedonkina A.A. The ability of juvenile offenders with personal immaturity to consciously guide their actions. *Psikhologiya i pravo = Psychology and Law*, 2016, vol. 6, no. 3, pp. 178–192. (In Russ.).
6. Vasil'evskii A. Age as a condition of criminal responsibility. *Zakonnost' = Legality*, 2000, no. 11, pp. 23–25. (In Russ.).
7. Abdulin R.S. Institute of People's Assessors: "One splashed a child with water". *Arbitrazhnyi i grazhdanskii protsess = Arbitration and Civil Procedure*, 2024, no. 3, pp. 49–54. (In Russ.).

## INFORMATION ABOUT THE AUTHOR

**ROBERT S. ABDULIN** – Doctor of Sciences (Law), Candidate of Sciences (Pedagogy), Associate Professor, Retired Judge of the Kurgan Regional Court, Honored Lawyer of the Russian Federation, Head of the Department of Criminal Law of the Institute of Economics and Law of the Kurgan State University, Kurgan, Russia, abrosem@yandex.ru

*Received June 28, 2024*