

## THE SUBJECT OF CRIME: THE PROBLEM OF ESTABLISHING AGE LIMITS OF CRIMINAL RESPONSIBILITY

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### Abstract

**Purpose:** This article presents the authors' analysis of the problem of determining the subject of a crime as a legal concept, and defining the legal characteristics of a person who has committed a crime by features that are necessary for criminal responsibility (individual, age, and responsibility).

**Methodology:** The present study was based on a dialectic approach to the disclosure of legal phenomena using general scientific and private scientific methods. Considered the Convention on Rights of the Child 1989; International Covenant on Civil and Political Rights "in 1966; and UN Standard Minimum Rules for Administration of Juvenile Justice.

**Result:** It is noted that the theory of criminal law and criminal legislation of various legal systems, including Russia, associate criminal responsibility with the age of the subject of the crime. Based on the requirements of criminal law, the subject of a crime may not be any imputed person, but only having reached a certain age.

**Applications:** This research can be used for universities and students in law.

**Novelty/Originality:** In this research, the model of establishing age limits of criminal responsibility is presented in a comprehensive and complete manner.

**Keywords:** *criminal liability, the subject of crime, identity of the offender, age of criminal responsibility, responsibility.*

### INTRODUCTION

In modern conditions, the norms of international law have a decisive importance in the context of integrating domestic legislation into the world legal space [Zhilina, et al. 2018, p. 837-845]. The desire to unify the legislation and success of some countries in developing common sources of law for all greatly facilitates law enforcement as well as relations in many areas of public life.

Currently, one of the most complex and controversial issues in the national and international aspects is to determine the subject of crime, and its essential features and characteristics, which in turn, are reflected in the practice of combating crime, including transnational level.

Reaching the age of criminal responsibility of the person who committed the crime is the basis of bringing a certain person to criminal responsibility, both in Russia and in most foreign countries. However, in terms of the age of criminal responsibility, Russian criminal law differs from criminal law of foreign countries. In Russia, reaching the age established by criminal legislation is considered a condition of criminal responsibility; while in foreign countries, it is usually a question of not achieving a certain age established by law as a basis for excluding criminal responsibility [Cipriani, D. (2016)].

An analysis of domestic criminal legislation of individual foreign countries showed that the majority of European states recognize a natural person as the subject of an offense who has reached the age of criminal responsibility at the time of the crime, and is not suffering from any mental disorder or other mental illness that would deprive him of the ability to recognize or control his actions.

In the Russian legislation, the subject of crime is "a sane individual who has reached the age established by the Criminal Code". The concept of the subject of a crime means, first of all, "a set of features on the basis of which an individual who has committed a socially dangerous act is subject to the criminal liability. Such constant and universal signs are the responsibility and attainment of one person in a certain age" [Lakina, 2002, p. 37].

The problem of determining age is usually associated with the definition of its lower limit, and is revealed through the concepts of "minority" and "under the legal age". All this poses global challenges for the world community that require a reasonable solution [Stahn, C. (2001)].

The UN Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules) in 1985 in Art. 22 states that "a minor is a child or a young person who, under the existing legal system, may be brought to justice for an offense in a form that differs from the forms of responsibility applicable to an adult".

Thus, if we talk about the age in which the legislator connects the ability of the person who committed the crime to bear criminal responsibility, this feature of the subject of crime has always required a more complete understanding; not only from the standpoint of criminal law science, but also from those of close interaction with medicine, psychology, pedagogy and other sciences.

## RESEARCH METHOD

The present study was based on a dialectic approach to the disclosure of legal phenomena using general scientific (system, logical, analysis and synthesis) and private scientific methods. Considered the Convention on Rights of the Child 1989; International Covenant on Civil and Political Rights "in 1966; UN Standard Minimum Rules for Administration of Juvenile Justice" (Beijing Rules) 1985; the focus group consisted of texts of criminal legislation of some foreign countries, which were taken from base of the Center for Legal Assistance of National Library of Russia on "Legislation of the Leading Countries of the World" (<http://nlr.ru/lawcenter/ires/cat>).

## RESULTS AND DISCUSSION

International law does not establish limits of the age of criminal responsibility, due to the diversity of approaches to its definition in the national legal systems of states. The analysis of domestic criminal legislation of individual foreign countries also indicates the lack of uniformity in the matter of establishing the minimum age of criminal responsibility. In various states, this age ranges from 7 to 18 years. In France, there is still no fixed age nor upper or lower limit of criminal responsibility. In this regard, in each case, the court appoints an examination to ascertain whether the accused has reached the age of responsibility or not [Graditzky, T. \(1999\)](#).

On one hand, this situation does not contradict Beijing Rules of 1985, according to which "in legal systems recognizing concept of the age of criminal responsibility for minors, the lower limit of this age should not be set at a too low age level, taking into account the aspects of emotional, spiritual and intellectual maturity (clause 4.1)", and the provisions of the UN Convention on the Rights of the Child, which contains a recommendation to "establish a minimum age for children below which they are considered incapable of violating criminal legislation (part 3 of article 40)".

The European Court of Human Rights noted in its Resolution of 15.06.2004, the "Case" of S.C. against the United Kingdom that "a statement about the existence of criminal responsibility for an eleven-years-old child or the conduct of a trial on charges of committing a crime does not in itself constitute a violation of provisions of the European Convention on Human Rights and Fundamental Freedoms, as long as he or she is capable of effectively participating in the judicial process".

On the other hand, raising the question of determining the minimum age of criminal responsibility depending on concepts of a particular society at a certain period of time about bad and good, criminal infestation of minors and established cultural and legal traditions, the legal regime of criminal responsibility, elements of crime and effect of "the principle of understanding", as well as judicial discretion can lead to arbitrariness and violation of the principle of equality of citizens before the law.

It is not by chance that many modern researchers speak about the need to reform the norms that determine the minimum age of criminal responsibility. At the same time, opposite trends are noted as: "in states where a very low age of criminal responsibility operates, constant criticism from academics, law enforcers, and the society, encourages lawmakers to raise the lower limit; and, conversely, in states with relatively high age limits for criminal liability, the minimum age of criminal responsibility is considered to be low" [[Koltsov, 2009](#); [Manso & Silva, 2018](#)].

Such a situation was caused, apparently, by the fact that the age of the offender is a kind of social status, denoting a person's recognized ability to act as an active participant in legal relations in society.

It is not by chance, and we have already indicated this. The UN Standard Minimum Rules for the Administration of Juvenile Justice, as a universal criterion of a person's age-ability for guilty responsibility, calls him emotionally, spiritually and intellectually mature (paragraph 4 of the Beijing Rules). Any rigid age limits that determine the moment of a person's becoming criminally responsible, are essentially legal fiction and do not take into account the individual characteristics of development of a particular human personality [[Ngirwa & Ally, 2018](#)].

In fact, the maturation of the individuals does not occur simultaneously (say, on the day of the 14th or 16th anniversary) and the actual level of mental development of adolescents of the same age can vary significantly. Therefore, it would be a great simplification to approach the question of the criminal responsibility of minors with only one "calendar-age" measure. The key parameter for determining the minimum age of criminal responsibility should theoretically be a psychological criterion that characterizes the degree of development of the child. However, in practice, this criterion can hardly be considered leading, since differences in the minimum age limits of criminal responsibility in the national criminal laws, even taking into account the peculiarities of different cultures, as well as the development levels of individual states, cannot be explained only by difference in the development of children.

In India, criminal responsibility for the commission of certain types of crimes (murder and other serious violent crimes) is established from the age of seven [Arsanjani, M. H. \(1999\)](#).

It should be noted that the criminal codes of Spain and Netherlands are unique exceptions in the form of establishing criminal responsibility depending on age. First, Part 1 of Art. 20 of the Spanish Penal Code states that "persons under the age of eighteen years are not subject to the criminal liability". Secondly, part 2 of this article continues that "if a person who has not reached the specified age commits a crime, he will be liable under the law of criminal responsibility of minors". The inconvenience, which is connected with citizens and law enforcers regarding the reference of the Spanish Penal Code to a separate law on the criminal responsibility of minors, was eliminated by Dutch legislators, through placing such provisions in the Criminal Code. So, Art. 77 of "Special Provisions for Minors" establishes application of this section to persons who have reached the age of twelve years, but who have not yet turned eighteen at the time when the criminal offense was committed.

Criminal liability at the age of 7 is allowed in Ireland. At the same time, the criminal law of Ireland remains un-codified, and the country has both old English criminal laws and new Irish laws.

Also, one of the lowest age limits for criminal liability is in countries that have been affected by the Anglo-Saxon legal system. Under English law, any individual can be held criminally liable, including an English citizen, a foreigner, and a stateless person. The exceptions are persons who are exempt from the criminal responsibility because of their position: sovereign (king or queen), ambassadors and persons who are members of the official staff of a foreign embassy. Minority, under the English law, is usually associated with a lack of will, which can serve as a reason for excluding criminal responsibility. Criminal legislation distinguishes between three groups of minors as: young children under the age of 10 years, children aged from 10 to 14 years, and adolescents aged from 14 to 17 years (when sentencing, they are equal to young people aged 17 to 21 years).

Somewhat higher, is the age limit of criminal responsibility in Israel, where it is necessary that at the time of the crime the perpetrator reaches the age of 12 years [Vest, H. \(2010\)](#).

The Turkish Penal Code also establishes that "a person who is under the age of 12 at the time of committing a crime cannot be prosecuted and punished". But, in addition, there is a reservation due to the fact that at the age of twelve to eighteen years old, the criminal capacity may vary depending on the mental development of the child. In accordance with the Criminal Code, children from eleven to fifteen years may also be held criminally liable if it is established that they are capable of reasonable judgments, but the amount of punishment in relation to those is reduced. For children aged from fifteen to eighteen, it is not necessary to establish a test of reasoning ability during criminal prosecution [[Ameen, et al. 2018](#); [Muhina, et al. 2016](#)].

Under German criminal law, the subject of a criminal act is a natural person who has reached the age of fourteen and is sane. The age of commencement of criminal responsibility is contained in the Law on "The Administration of Juvenile Justice" (dated 04.08.1953 of the Criminal Code of the Federal Republic of Germany) and includes the only prescription that the insane is the one who, when committed, has not yet reached fourteen years old [Epstein, R. A. \(1996\)](#).

But the Swedish Penal Code states that "no punishment can be imposed on a person who committed a crime before the age of fifteen". Similarly, but more briefly, the legislator of Denmark and Finland put it as follows: "Acts committed by children under 15 years old are not punishable" [Streib, V. L. \(1983\)](#).

Thus, criminal law regulation of the age limit of responsibility is based on the fact that this threshold for the legislator is a symbol of reaching the level of intellectual, volitional, and personal maturity in the sphere of relations regulated by criminal law. The question of intellectual maturity of the individual correlates the characteristics of another inalienable characteristic of the subject of crime, i.e. his sanity [Crofts, T. \(2009\)](#).

A detailed analysis of the criminal laws of foreign countries showed that in some countries, both in the past and present, issues related to the commission of a crime in an insane state by a person are not clearly defined by the legislator, or are not solved at all, and this is of fundamental importance for criminal liability and punishment [Feld, B. C. \(1997\)](#).

## FINDINGS

An analysis of foreign criminal law approaches made it possible to conclude that under the influence of the negative development of juvenile delinquency in the last decade, legislation and practice of western countries have deviated from a protective, defensive trend. The process of determining minimum age limit for criminal responsibility is subordinated to the goal of strengthening public security, in connection with which there is an increase in the punishability of committing particularly serious crimes, crimes under the conditions of recidivism, and organized forms of criminal activity. But pursuing the interests of the society to ensure stability and safety of its functioning, it is necessary to strictly adhere to the principles of protection of individual rights. In view of the foregoing, the minimum age of criminal responsibility should not be fixed at a low level of personality development [Storgaard, A. \(2005\)](#).

It should be noted that, along with a variety of key problems in criminal law, rules on the subject of the crime are of paramount importance, since they are closely connected with many institutions of criminal law that need to be improved. In turn, the consideration of various aspects of the theory of the subject of a crime makes it possible to determine general, theoretical, and practical approaches in its further study [Robison, S. M. \(1966\)](#).

The problems of age and responsibility of criminal, taking into account the fundamental changes in the existing criminal legislation and practice of its application, dictate the urgent need for their comprehensive study not only by legal scholars but also by the representatives of other sciences and specialists in the various fields of knowledge.

### CONFLICT OF INTEREST

The author confirms that the data do not contain any conflict of interest.

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