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Particularities of a subject of proving on criminal cases in respect of minors

Abstract: The most complete and correct classification of information about an identity of a suspect, accused minor is those, which covers the following data: 1) demographic information; 2) information that characterizes personal features of an individual, his/her psychological particularities: temperament, abilities, aptitudes, habits, skills; 3) information on environment of an offender, which in some extent impacts on formation of certain directness of person (condition of education in a family, school, influence of persons, to which an offender is contacted: relatives, friends); 4) information characterizing the results of interaction of an environment and person (attitude to a collective, work, study, orders, participation in public life).

Keywords: minor; subject of proving; pre-trial production; individual; characteristic; criminal case.

A subject of proving on criminal cases in respect of minors includes the circumstances, which are subject to be proven on every criminal case (Article 73 of the Code of Criminal Procedure of Russian Federation, hereinafter, the CCP of RF), and circumstances, which subject to be established on cases of minors enumerated in Article 421 of the CCP of RF. It is necessary to note that a notion ‘proving’ and ‘establishing’ in theory of criminal process are considered like synonyms [11, p. 47; 13, p. 295], which mean the process of cognition on criminal case. To establish means to prove or detect [8, p. 777].

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Construction, which has been chosen by a legislator for determination of a subject of proving on criminal cases in respect of minors, presupposes an itemization and concretization of common subject of proving, but not its replacement.

A.V. Pobedkin and V.P. Yashin say on the fact that specificity of proving subject on these cases can be manifested relating to any circumstance that subject to be proved (Article 73 of the CCP of RF). So, proving an event of crime it is necessary to make clear an opportunity to commit this deed by a minor with considering his/her physical and other abilities. Proving a guilty of a minor, one should keep in mind opportunity of presence of untypical motivation, more limited in compliance with adult the bounds of awareness by minor the characteristic and consequences of his actions, in some cases non-obviousness of the real role of a minor in preparation, commission, concealment of crime [9, p. 558].

V.G. Prosvirnin under a subject of proving on criminal cases of minors understands the system of circumstances to be determined, taking into account the characteristics of the socio-psychological features of this category of accused (defendants) and necessary for the proper resolution of criminal case and fulfillment of criminal proceedings [10, p. 10]. Its particularities determined with specificity of physical and socio-psychological qualities of an individual in adolescent age and the factors defining an age development of a person. Adjusted for these circumstances a subject of proving is corrected, itemized in the context of a concrete body of a crime.

In connection with the increase in the number of crimes committed by minors in an organized group, I.M. Belyakova suggests to supplement Article 421 of the CCP of RF with part 3 of the following content: “At presence of information testifying that crime committed by an organized group of minors, the following circumstances are subject to be determined:

- 1) stability - as a qualifying feature;



- 2) distribution of roles in a group;
- 3) presence of internal discipline in the group;
- 4) presence of a common monetary fund in a group;
- 5) orientation on an organization of crimes of adults' group" [2, p. 43].

In our opinion, there is no need in that. As P.B. Mikhailovskaya justly emphasized, "a subject of proving formulated in the law in general kind, it has been applied to all kinds of crimes. In order to concretize those circumstances, which should be established on that or other criminal case, it is necessary to apply to criminal law. Namely, the norms of criminal law formulate legally significant signs, which serve as guide for determination of a subject of proving on concrete criminal case" [14, p. 150]. In this case one may refer to Chapter 7 of the Criminal Code of Russian Federation (hereinafter, the CC of the RF) "Complicity in the Crime" and to the case law of the courts on this issue. For example, to the Decisions of Plenum of the Supreme Court of Russian Federation of 17 January 1997 no. 1 "On the practice of the courts applying legislation on liability for banditry", of 27 January 1999 no.1 "On judicial practice on cases of murder (Article 105 of the CC of RF)", of 27 December 2002 no. 29 "On judicial practice in cases of theft, robbery and plunder" [12, p. 259-261]. Consequently, above indicated circumstances have criminal legal directness and are established in all cases of crime's commission by an organized group.

The criminal procedure legislation focuses on a more thorough study of a minor's personality. In the study of an identity of a minor suspect, accused is usually distinguished four directions: criminal legal law, criminal procedure, criminalistical (mainly, tactical), and criminological.

Criminal legal direction of studying of data, which characterize of an identity of suspect or accused, is conducted for resolution of an issue on possibility to bring a person to criminal liability; for correct qualification of person's actions; for right application of the measures of criminal punishment.



Criminal procedure direction of studying of an identity of a minor is necessary for production of well-founded procedural regime (conduct of investigative actions, choosing of the measures of procedural coercion etc.).

Criminalistical direction of studying of data, which characterize an identity of a minor, is conducted with purpose to put forward accurate investigative versions, establishing all episodes on criminal case and all accomplices of accused, and also for justified choice of tactical techniques during production of some investigative actions.

Criminological studying of an identity of suspected or accused minor directed on establishing of characteristic features, particularities of an identity of a specific criminal; his criminogenic interests and motivations, which gave rise to appropriate criminal behaviour. This is important for creation the best foundations and methods of individual prevention.

“It should be established and consequently is subjected to be proved the circumstances, - wrote M.S. Strogovich, - characterizing an identity of a criminal, as it is significant for correct resolution of a case, in order a court would be known what an accused is...” [13, p. 356].

Thus, an identity of suspected or accused minor presents itself necessary and complicated object of studying in course of preliminary investigation.

From standpoint of the both the theory and practice seem that more full and right classification of information on an identity of suspected or accused minor is those, which cover the following data: 1) demographic information; 2) information that characterizes personal features of an individual, his/her psychological particularities: temperament, abilities, aptitudes, habits, skills; 3) information on environment of an offender, which in some extent impacts on formation of certain directness of person (condition of education in a family, school, influence of persons, to which an offender is contacted: relatives, friends); 4) information



characterizing the results of interaction of an environment and person (attitude to a collective, work, study, orders, participation in public life).

Authors of the draft law “On Juvenile Justice in Russian Federation” classify a list of circumstances that need to be clarified when establishing the living and upbringing conditions of a minor, into three groups:

1) situation and relationships in a family: a composition of family, material living conditions, an educational level of its members, relationship between adult family members, relationship between adults and children, presence of conflict situations, forms of leisure in family, etc .;

2) situation and psychological climate in an educational institution, enterprise, firm or organization where a minor is studying or working, his attitude to study or work, relationships in a collective;

3) circumstances that characterize links and pastime of a minor outside home or work: involving in various formal and informal groups and associations, a nature of communication in these groups, the forms of spending free time [6, p. 306].

Particular attention should be given to clarifying the living and upbringing conditions of minors. N.I. Gukovskaya noted an importance of establishing this circumstance: “A thorough and comprehensive study of an adolescent’s identity and conditions of his life and upbringing is necessary not only for revealing the circumstances that contribute to the commission of crimes, but also for a correct solution of the future fate of a minor. Only having a certain set of information, an investigator, in particular, is able to decide: whether it is necessary to send a case about a teenager to a court or can be confined with educational measures [3, p. 7].

In order to establish this circumstance, as a rule, the following are demanded: characteristics from an educational institution, from work and residence, certificates from specialized police unit for juvenile affairs, materials of the commission on affairs of minors and protection of their rights, a certificate of



criminal record, certificates from the narcological and psycho-neurological dispensaries. In addition, in order to establish this circumstance in full, it is necessary to interrogate parents, neighbors, teachers, and also to put into practice inspections of the premises where a minor lives, with purpose of examining the living conditions and drawing up an appropriate document (inspection record) for attaching to a criminal case.

Among the documents containing important information about the living conditions and upbringing of minors, as well as other personality characteristics, a special place is occupied by his personal records. These include diaries, letters, including notebooks, etc. These documents fall into the attention of an investigator, the investigator as a result of the search, inspection, are submitted by the minors themselves, their relatives and other persons. All of these records, among other things, acquire significance for establishing adolescents' acquaintanceships and connections.

Elucidation of the conditions of life and upbringing presupposes the collection of information and the time from which a minor was registered with bodies of internal affairs; which, when and by whom measures were taken in connection with the commission of an offense, how the adolescent reacted to these measures. To do this, it is necessary to obtain the relevant detailed information about his behavior from the inspector of the MAP of the Internal Affairs Directorate, which carried out control over him.

The specified actions during the investigation are carried out in single instance.

Demanding by an inquiry officer, investigator of the characteristics of a minor from the place of residence turns into a mere formality. In the characteristics we studied from the place of residence, it is usually indicated that the teenager lives with his family and no complaints have been received. And, unfortunately, there are a lot of such examples. In our opinion, in order to improve the quality of the



characterizing material that comes to the adolescent in the requests, it makes sense to list the questions to which inquiry officers and investigators would like to receive an answer.

V.G. Bayakhchev, A.B. Savkin, A.V. Kharchikov made an accent to an opportunity of studying the living conditions of a minor through sending by an investigator to officers of MAP of some instruction to examine the conditions of living and upbringing of a adolescent [1, p. 18-19]. The same opinion is also kept by I.M. Belyakova [2, p. 67-68].

It should be kept in mind that a survey of the living and upbringing conditions of a minor is, as rule, conducted through a survey of the home, so we believe that it is necessary to give instructions for conducting a survey with the preparation of an inspection record. According to Part 5 of Article 177 of the CCP of RF, a house may be inspected only with the consent of the persons residing in it or on the basis of a court decision. It is logical to point out in the inspection record of the living and upbringing conditions of a minor that the persons residing in this home do not object to carry out this procedural action. In practice, inquiry officers and investigators use this method of studying the living and upbringing conditions of a teenager very seldom. The study of criminal cases conducted by us confirmed this - only 25% of criminal cases contained these instructions.

Conducting inspection of the living and upbringing conditions of a minor makes it possible to draw up a general idea of him, to determine the range of possible witnesses, during interrogation of which it will be possible to find out other circumstances characterizing the minor, to decide questions about what investigative actions need to be carried out and in what sequence.

According to P.I. Gukovskaya, A.I. Dolgova and G.M. Minkovsky, “an issue on the mental and physical health of a minor deserves careful attention” [4, p. 28]. To do this, it is necessary to find out the diseases and injuries suffered by a teenager. Establishing of the physical health of a minor suspect or accused helps to



choose the most expedient preventive measure, and also makes it possible to determine the possibility of a teenager to commit a certain act.

Undoubtedly, in criminal cases in respect of minors, it is important to establish a level of his mental development and other characteristics of his personality (clause 2, part 1, Article 421 of the CCP of RF). Bringing a minor to criminal liability depends on a level of his mental development. So, according to Part 3 of Article 27 of the CCP of RF, if a level of mental development of a minor at the age of 15 actually corresponds to the level of development of a minor at the age of 12, then a criminal prosecution against him is subject to termination, since he will not be a subject of crime due to the fact that he could not fully to realize the actual nature and social danger of his actions (inaction) and to manage them at the time of crime's commission.

According to V.V. Nagayev, a term 'mental development' is more common notion and presupposes clarification of intellectual and personal development of a person [7, p. 150-151]. Therefore the requirement to establish a mental condition of a minor will be meant necessity to study the both intellectual and personal development.

This provision meets in full the Beijing Rules, which enshrined the provision on clarification of the level of intellectual, volitional and mental development.

CCP of RSFSR of 1960 indicated the necessity to make clear whether had adults instigators and other accomplices of crime that committed by an adolescent. Criminal legal literature paid attention on the fact that at presence of common signs these notions do not coincide, sometimes the actions of adult have a body of involving in criminal activity, but is not contained the signs of complicity in crime [5, p. 366]. Wording of this norm has changed in the CCP of RF (cl. 3 of p. 1 of Article 412 of the CCP of RF).

A.V. Pobedkin and V.P. Yashin justly note that impact of elder persons is a wider notion then complicity in crime. In this connection alteration of the norm



wording by a legislator is presented by him to be right. Adults can negatively influence a minor not only through complicity in a specific crime. The identification and suppression of cases of involving of minors in committing a crime and antisocial actions is one of the tasks of activity for prevention of juvenile delinquency [15, p. 216]. In cases when an adolescent commits a crime at the suggestion of an adult, this person may be held accountable to liability for involvement of a minor into crime commission (Article 150 of the CC of RF) [2, p. 559-560].

This notion corresponds to the content of part 1 of Article 89 of the CC of RF, which prescribes at imposing a punishment on minors apart from other circumstances also take into account the influence of elder persons on him.

Criminal case in respect of a minor who participated in commission of a crime with an adult is separated in sever production in an order established by Article 154 of the CCP of RF (Article 422 of the CCP of RF). However, it is not always justified to separate a criminal case on this formal basis. There are a lot of such criminal cases, and their separation, independent investigation of one case on the charge of a minor, and the other on the accusation of an adult negatively affects the thoroughness, completeness and objectivity of the investigation. It should be indicated that for most of them in respect of adult accused, is decided an issue to bring him an additional charge under Article 150 of the CCP of RF- for involving a minor in crime's commission, and it cannot be avoided a conducting interrogations, confrontations with participation of a minor defendant. In addition, at formal separation of criminal cases, a minor accused will twice take part in a court: in his case - as a defendant and in the case of an adult accomplice - as a witness. Therefore, in our opinion, separation of a criminal case against a minor accused should be carried out on general grounds.



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