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FORMATION AND DEVELOPMENT OF JUVENILE LAW IN EUROPE AND UKRAINE IN THE FIRST THIRD OF THE TWENTIETH CENTURY

This article studies establishment of juvenile courts in some European countries and Ukraine. Also the provisions of the constitutions of some European countries of the first third of the twentieth century concerning the rights of children and the consolidation of children's rights in sectoral legislation in Europe and Ukraine are examined. Experience of some European countries and Ukraine is summarized in the final conclusions and reader finds some recommendations for the Ukrainian legislators.

Keywords: juvenile law; rights of minors; juvenile court; juvenile justice; constitution.

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Формування і розвиток ювенального права в Європі та в Україні у першій третині XX століття

Статтю присвячено такому актуальному питанню, що протягом останніх десятиліть жваво обговорюється і в Україні, і в багатьох інших країнах світу, як побудова демократичної, соціальної та правової держави, розроблення теоретичних засад прискорення і оптимізації цього процесу. Акцентовано увагу на тому, що однією з визначальних рис правової держави є дотримання і захист прав людини, а особливо дітей як найбільш уразливого суб'єкта права. Окремо увагу приділено тому, що через певні події (збільшення випадків домашнього насильства, бойові і воєнні дії, теракти, підвищення рівня дитячого суїциду тощо) науковці, політики, державні і громадські діячі все частіше порушують питання стосовно сприйняття дитини як суб'єкта права, дотримання її прав і свобод, зрівняння прав дітей незалежно від статі, необхідності особливого ставлення до дитинства, утворення ювенальних судів тощо. На переконання авторки, кінець XIX – початок XX ст. можна визнати часом становлення і розвитку ювенального права, у тому числі й ювенальної юстиції.

Проаналізовано досвід створення судів для неповнолітніх в Австрії, Угорщині, Чехословацькій Республіці, Польщі й Україні. Вибір конкретних європейських країн ґрунтується на історичних

відносинах і зв'язках між ними й Україною. Так, західноукраїнські землі тривалий час входили до складу перелічених вище європейських країн.

Розглянуто положення конституцій указаних європейських країн першої третини XX ст., що стосуються прав дітей, а також їх закріплення в галузевому європейському й українському законодавствах. Узагальнивши досвід Австрії, Угорщини, Чехословацької Республіки, Польщі й України, авторка дає рекомендації щодо удосконалення приписів нормативно-правових актів із питань прав дитини і приведення їх у відповідність до європейських.

Ключові слова: ювенальне право; права неповнолітніх; ювенальний суд; ювенальна юстиція; конституція.

Introduction. In Ukraine, as in some other countries of the world, during the last decades the issues of building a democratic, social and constitutional state, developing the theoretical principles of acceleration and optimization of this process are actively being discussed. As is known, the constituent of the state of law is the observance and protection of human rights, and especially children as the most vulnerable subject. Case St., Creaney S., Deakin J. and Haines K. [5, p. 104] noted that the rise to prominence of diversion within contemporary youth justice practice offered hope for a reorientation of policy and practice towards the pursuance of children's rights, needs, quality of life and positive outcomes, subsuming any deleterious master status of "offender". In the context of the above, it should be added that due to certain events (increased cases of domestic violence, military actions, terrorist attacks, children's suicide, etc.), scientists, politicians, state and public figures are increasingly focusing on problems such as the perception of the child as the subject of law, observance of its rights and freedoms, equalization of children's rights regardless of gender, understanding of the need for a special attitude towards childhood, the formation of juvenile courts, etc. In view of this, the beginning of the twentieth century marked the establishment and development of juvenile law, including juvenile justice.

It is Eglantyne Jebb's name that is associated with the protection of children's rights at first third of the twentieth century. Today Eglantyne Jebb (1876–1928) is recognized as the founder of the Save the Children Fund in 1919 and as the author of the Declaration of the Rights of the Child in 1924 [22, p.1]. She was extremely worried about consequences of war, which would have effect on children's morality and future. That is why she decided to establish fund for children – the Save the Children Fund. After that the Save the Children International Union was founded in Geneva. Eglantyne Jebb had a huge support from many sides. Kerber-Ganse W. [13, p. 276] said in *Eglantyne Jebb – A Pioneer of the Convention on the Rights of the Child* that the most prominent had been Pope Benedict XV who inspired her to take this step. The Pope was also profoundly concerned about the moral situation that inevitably would affect children. Eglantyne Jebb also got support from the Archbishop of Canterbury. Both churchmen sent circulars to the members of their communities. The Pope strongly endorsed her objective of establishing an international organization, which would care for all children in need. Eglantyne Jebb understood, though, that it was needed to write basic requirements for children

protection in some document. The Declaration of the Rights of the Child [28] became that document and was adopted in 1924 by forty-nine member states of the League of Nations. This Declaration consisted with five articles that are not only about physical needs of children, but also about physical and mental health. As for children's delinquency it was secured that "the delinquent child must be reclaimed". It is at the end of XIX century and the beginning of XX century that the concept of juvenile justice appeared.

Roberts A. R. [24, p.11] defined juvenile justice as the agencies and institutions whose primary responsibility was handling juvenile offenders. These agencies and their programs concern themselves with delinquent youths and with those children and youths labeled incorrigible, truant, or runaway. Juvenile justice focuses on the needs of the millions youths who are taken into custody, diverted into special programs or processed through the juvenile court and adjudicated, and placed on probation, referred to a community-based day treatment program, or placed in a group home or a secure facility. The juvenile justice process usually involves the formal agencies and procedures developed to handle those children and youths suspected or accused of violating their state's juvenile code. The juvenile justice agencies are police and sheriff's department's youth or juvenile aid divisions, juvenile and family courts, and community-based and institutional juvenile correctional facilities. Carrie J. Petrucci and H. Ted Rubin [4, p. 250] affirmed that the previous century had seen considerable change in the structure and intent of the children's court. The court began as an informal process based on a social welfare model, emphasizing the best interests of the child.

The article will consider the main changes in the field of rights and freedoms of the child in the first third of the twentieth century in some European countries (Austria, Hungary, Czechoslovak Republic and Poland) and Ukraine. The choice of particular European countries is basing on historical relations of Ukraine and these countries. As it well known, some Ukrainian lands were part of these European countries for a long time.

The **aim** of the article is to analyzing formation and development of juvenile law in some European countries and Ukraine in the first third of the twentieth century, summarizing experience of some European countries and Ukraine and giving some recommendations for the Ukrainian legislators in reforming juvenile law in Ukraine.

The **subject** of the research is formation and development of juvenile law in some European countries and Ukraine in the first third of the twentieth century. Some aspects of this theme were studied by Ukrainian and foreign scientists. For example, the main provisions of juvenile law and juvenile justice were considered by J. Carrie, St. Case, S. Creaney, J. Deakin, K. Haines, W. Kerber-Ganse, L. Mahood, H. E. Párkányi, Petrucci, A. R. Roberts, A. M. Rubasheva, T. Rubin etc. Features of the legal status of minors in particular countries were the subject of research of K. Bruckmüller, S. Diblíková, Z. Karabec, N. Krestovska, J. Kuklík, D. Kusa, V. M. Levitanskii, P.I. Lublenskii, I. Lukas, A. M. Nurse, S. Schumann, B. Stando-Kawecka, J. Vlach, P. Zeman etc. Provisions of Constitutions of some

European countries were studied by M. Calda, St. Gorove, M. Illner, K. Lachmayer, P. Swianiewicz etc.

Features of the development of juvenile law in some European countries

Following the legislation of the western countries, the legislation of the Austro-Hungarian Empire was gradually modernized, namely the Penal Code. Although, the introduction of dualism in 1867 (the dualistic monarchy) led to the emergence of certain problems, since it meant that Austrian laws spread to Czech lands (contrary to the traditions and customs of the dominant nation), and Hungarian – to Slovak. It lasted several years after the creation of the Czechoslovak Republic [17, p. 225].

The establishment of the juvenile law and juvenile justice in European countries including the Austro-Hungarian Empire dates back to the beginning of twenties century. Párkányi E. [23, p. 225] said that one of the most influential works of this period's German-Austrian legal theory had been Franz von Liszt's Marburg Programme. Von Liszt distinguished 'occasional', 'corrigible' and 'non-corrigible' offenders, identifying juveniles as being vulnerable by nature and their criminality as a result of deprivation, but having the potential to become 'corrected'. The theory underpinned the validity of the child-saving idea and the need for the protection of juvenile delinquents beyond the existing age limits of criminal responsibility. The establishment of the distinct juvenile jurisdictions in the Austro-Hungarian Empire was stimulated by this theory. However, in the Austro-Hungarian Empire were two separate legal systems (as it was said above): the territory of the Kingdom of Hungary was under the Hungarian laws, while the Czech and the Slovenian territories were under the Austrian laws. All work on the creation of specialized courts and procedures, the creation of legal institutions and correctional institutions involved in the education of minors was carried out before the First World War. Nevertheless, the war didn't interrupt formation and development of juvenile law and juvenile justice in these countries. We will consider about that below.

Diblíková S., Karabec Z., Vlach J. and Zeman P. [10, p. 6] in *Criminal Justice System in the Czech Republic* studied criminal justice system in details beginning with a short history of the issue. The Czechoslovak Republic became an independent state on 28th October 1918 after the break-up of Austria-Hungary. The new state of Czechoslovakia was established on the monarchy's ruins, comprising the Bohemian Crownlands, Slovakia, and Ruthenia (sub-Carpathian Ukraine) [12, p. 506]. After the state was founded, the foremost priority was to determine which laws would come into force in Czechoslovakia. It was decided to adopt more or less fully the legislation that had been in force in the former Austro-Hungarian Empire, which the Czechoslovak Republic Act No. 11/1918 Coll. (the so-called Reception Act) expressed by stating that its purpose was "to preserve continuity of the existing rule of law with the new situation, so as to ensure a smooth transition to the life of the new state". As far as criminal substantive law was concerned, the result of the Reception Act was that, in the Czechoslovak Republic, the Austrian Criminal Code on Crimes, Transgressions and Misdemeanours of 1852, in the wording of later amendments and supplements, the Hungarian Criminal Code of 1878 and the

Misdemeanours Act of 1889 remained in force; Hungarian legislation applied only to Slovakia, not to the Czech Lands [10, p. 6].

Kuklнk J. [16, p. 107] agreed that the new Czechoslovak state had intended to unify law for its whole territory by preparing a new Criminal Code. However, only partial reforms were carried out. For example, in 1931 an Act regulating criminal proceedings against juveniles was passed, introducing, for the first time in Czech history, special provisions for such types of trial, along with establishing so-called youth courts.

Up to the Second World War, several drafts and outlines were prepared of a new Czechoslovak Criminal Code but overall codification of the new criminal law did not take place. Criminal legislation was somewhat ambiguous due to the validity of two criminal codes in the Czechoslovak Republic, and the situation became more unclear with the progressive adopting of further laws pertaining to criminal law. Examples include the Republic Protection Act No. 50/1923 Coll., the Bribery and Official Secrets Violation Act No. 178/1924 Coll. And the Forced Labour Camps and Police Supervision Act No. 102/1929 Coll. The importance of the Juvenile Criminal Judiciary Act No. 48/1931 Coll. should be noted, which for its time was a very modern piece of legislation based on a series of progressive opinions on the treatment of juvenile offenders and the methods for their re-education. The act introduced the term "juvenile" meaning a person between 14 and 18 years of age. Younger persons were not criminally liable for their actions. Juvenile criminal cases were tried by specially trained judges together with lay judges, comprising so-called panels of judges for juveniles [10, p. 6].

The Hungarian Penal Code was passed in 1880 and was significantly amended in 1908. These amendments formed the backbone for criminal proceedings against minors, as they stipulated that youth could receive special sentencing reductions and that judges could employ small modifications of normal criminal proceedings. In 1913, a separate legal article on criminal proceedings against minors was passed, thereby introducing juvenile courts in each royal district. The courts decided that sentences could take the form of incarceration, a fine, or a corrective reeducative measure [17, p. 297].

As for Austria, the philosophy of the legislation was that young juveniles required correction (i.e., education and guidance) rather than punishment [2, p. 30]. The juvenile court law of July 18, 1928 (went into effect January 1, 1929) applied if a minor (child under 14 years of age) or a juvenile (person between 14 and 18 years of age) committed a punishable action. If a punishable action was committed by minor or juvenile, which was reported to the juvenile court, there were rigorous investigations made regarding his physical and mental qualities. These investigations were made by probation officers. Probation work included the making suggestions of the most appropriate correctional measure and the supervision of the probation and the parole of juveniles.

According to the Penal Code minors were not punishable, that's why only educational measures could be applied for them. If a juvenile committed a crime

he was not deemed responsible for it if for special reasons he was not mature enough to be aware of the unrightfulness of his doing or to act in accordance with his knowledge. As for responsible juveniles, they were ordinarily submitted to punishment and educational treatment. However, they could not be sentenced to death or to penal servitude. The heaviest penalty for them was rigorous imprisonment. Instead of lifelong imprisonment, confinement had to be limited to 10 years at the maximum. The maximum of temporary imprisonment was 5 years [21, p. 702–703].

Thus, the Austrian and Hungarian criminal legislation changed for the better, as juvenile delinquency as well as their punishment for the crimes committed was liberalized. In general the establishment of special courts positively influenced the development of juvenile law in the territory of Austria-Hungary. The other issues of juvenile justice in this state will be considered below in detail in the study of the development of juvenile courts in the territory of the Ukrainian lands that were part of Austria-Hungary.

Another country, which we want to explore, is Poland. The partition of Polish territory, divided among Russia, Prussia (later Germany), and the Austrian Habsburg Empire in the nineteenth century, created a challenge for the unification of the country after Polish independence in 1918 [27, p. 481]. After Poland regained independence, that it was a matter of great urgency to unify both the penal and civil law. During the process of drafting penal code it was decided that youths who had broken the law should not be treated as "little adults", so they should not receive the same penalties as adult offenders. As a result, the Penal Code of 1932 had a separate chapter on juveniles which introduced a separate system of juvenile justice.

According to s. 69 (1) of the 1932 Penal Code a juvenile was a person who had committed an offence before having reached 17 years of age. Juveniles who had committed an offence before his/her 13th birthday could not be accountable for their illegal actions. As a result, only educational measures might be imposed that ranged from reprimand through the supervision of parents, guardians, or a probation officer to placement in an educational institution. The same measures were imposed on juveniles who had committed an offence after the 13th birthday, but before the 17th, provided that they were not competent to understand the nature of the act and direct their behavior. Under s. 70 of the 1932 Penal Code, juveniles aged 13–16 who had committed an offence, while having been able to understand the nature of the act and direct their behavior should be sentenced to placement in a house of correction. It was possible, however, to impose educational measures on such juveniles as well, if the court found placing them in a house of correction useless on the basis of the circumstances of the offence, the juvenile's characters or condition of his/her life and environment.

Juveniles placed in a house of correction under the Penal Code of 1932 could be release earlier. Section 73 (1) of the Code gave courts the authority to suspend conditionally the execution of the placement of a juvenile in a house of correction

provided that the crime committed was not punished by the death penalty or life imprisonment in the case of adult perpetrators [26, p. 351–352].

Separate juvenile courts were set up in some of the biggest cities of Poland after independence. Also The Code of Penal Procedure of 1928 stipulated separate proceedings in juvenile cases. However the number of juvenile courts in Poland before World War II was quite small.

Constitutions of some European countries at the beginning of the XX century

The studying of the European constitutions in this article would be started with the Constitution of the Czechoslovak Republic. Calda M. [3] said that the experience with the Austrian rule of law and a degree of democratic control had given the citizens of Czechoslovakia a more favorable starting position in 1918 for a democratic development in the interwar period than to most countries in Central and Eastern Europe. Another, equally important but often underestimated factor, was the contribution of the United States to the formation of Czechoslovakia and American experience of the first Czechoslovak president and the new state's founding founder, Thomas G. Masaryk. The Constitution of the Czechoslovak Republic [29] was adopted on February 29 in 1920. Kuklнk J. [16, p. 101] noted that the debates had been held over explicitly guaranteeing social rights in the Constitution; however, in the end, only marriage and family had been proclaimed to be under the special protection of the law. Article 126 of the Constitutional Charter stated that marriage, family and maternity was under special protection of the law. In our view, the indication of the protection of maternity indirectly means the protection of childhood. Taking into account that the fundamental laws of most of the neighboring countries of the Czechoslovakia did not provide for such rules, we could confidently conclude that the article under consideration of the Constitution of the Czechoslovak Republic was progressive.

Next we will consider the Austrian Constitution [1] of November 10, 1920. A major political divide between the conservatives and socialists in the 1920s meant that it was not possible to create a new set of fundamental rights in the Constitution. Instead, the old State Basic Law from 1867 was adopted, which granted civil liberties to the citizens [18, p. 1272]. In Chapter 1 of article 7 it enshrined the provision about equality of all federal citizens before the law. Privileges based on birth, sex, property status, class or religions were excluded. As we see in this Constitution rights of the child weren't given much attention.

Another country that included in its constitution the rules on the protection of children's rights was Poland. The Constitution of the Polish Republic [6] was adopted on March 17, 1921. Based on the principles of Western democratic government, the Constitution of 1921 continued to operate as the fundamental charter throughout the greater part of the inter-war period. It was not until 1935 that an actual revision took place in the form of a new constitution superseding the old one [11, p.261]. This document regulated many legal relationships, one of which was the child: family, labor, educational, etc. For instance, article 94 enshrined the duty of citizens to bring up their children as righteous citizens of the mother country,

and to secure to them at least elementary education and in article 118 stipulated that within the limits of the elementary school, instruction is compulsory for all citizens of the state. "Teaching in state and self-government schools is gratuitous. The state will insure to pupils who are exceptionally able, but not well-to-do, scholarships for their maintenance in secondary and academic schools (art. 119). Instruction in religion is compulsory for all pupils in every educational institution, the curriculum of which includes instruction of youth under eighteen years of age, if the institution is maintained wholly or in part by the state, or by self-government bodies (art. 120)." Children without sufficient parental care, neglected with respect to education were not overlooked by the Constitution. Also it was pointed that "children have the right to state care and aid within the limits to be determined by statute. Parents may not be deprived of authority over their children except by judicial decision. Special statutes determine the protection of motherhood (art. 103)". As for child labor, the Constitution enshrined that "children under fifteen years of age may not be wage-earners, neither may women be employed at night, or young laborers be employed in industries detrimental to their health (art. 103)". From the analysis of the Polish constitution, it could be concluded that it paid great attention to the development of children as conscious citizens, their education and work.

Formation and development of juvenile law in Ukraine

Turning to the consideration of the issue of the formation and development of juvenile law in Ukraine, first of all we should point out that our state was not independent for a long time since the Ukrainian lands were part of the neighboring countries. At the beginning of the twentieth century Ukrainian lands were part of the Russian and Austro-Hungarian empires.

The judicial system on the territory of Ukraine that was a part of Russian Empire was formed in 1864 during the implementation of judicial reform in the Russian Empire and was based on bourgeois principles. It allowed the juvenile law of Ukraine to evolve, and the normative block of judicial reform in 1864, that concerned the organization and competence of justices of the peace courts, laid the foundations for the activity of juvenile courts in Ukraine. The justice of the peace was called on to help resolve the legal conflict, to correct its negative consequences, which fully met the tasks of juvenile justice. Thus, one of the legal acts that governed juvenile courts in the Ukrainian lands that were part of the Russian Empire was the Law "On Educational and Correctional Institutions for Minors" of April 19, 1909, which defined the grounds for being placed in these institutions children under investigation and accused children, homeless, children of beggars and vagrants [15, p. 116].

The first juvenile courts in Ukraine appeared already at the beginning of the twentieth century. They were established in Kharkiv, Kiev, Odesa, Ekaterinoslav and Nikolaev until 1915 [19, p.6]. Such courts were created by the decision of local self-government bodies (city duma and district zemstvos) and were financed at the expense of the city budget. Functions of a juvenile judge were performed by a specially appointed justice of the peace [15, p.115], that is, the juvenile court

was a single person. At the same time, the elected nature of the post of the justice of the peace gave the opportunity to elect persons who enjoyed the confidence of the population and had the appropriate training for this post. Therefore, the judges on juvenile cases became doctors, educators. Furthermore, probation officers were invited as assistants to judges and they were paid at the expense of the city budget. They were given a free hand to investigate cases and to take care, trusteeship and maintain supervision. In juvenile cases there were no publicity, no formal prosecution or protection (except in some cases), the procedures and forms of the court were greatly simplified, therefore the consideration often reduced to a simple conversation between a judge and a minor with the active participation of the probation officer. A judge could use a considerable amount of means of influence on a minor, of which, in particular, often (in 70% of cases), tutorial supervision was used. In the case of appeal proceedings against minors, they were considered at a special section of the general sessions preferably with observance of special rules of proceeding. However, they had not find a reflection (due to incomplete recognition) of a medical and pedagogical point of view, and as a result, in the most severe cases (strong child deficiency), they were not yet sufficiently equipped to be able to influence such juvenile remedial and educational means [20, p. 170–171].

So, as we see, the creation of juvenile justice on the Ukrainian lands that were part of the Russian Empire did not have a centralized character. After the revolution of 1917 juvenile courts were liquidated, and instead of them commissions on juvenile delinquency were established.

In the Ukrainian lands that were part of the Austro-Hungarian Empire situation with establishment of juvenile justice was different. Thus, the Ministry of Justice of Austria created juvenile courts by circular on October 21, 1908 [25, p. 284]. In big cities there were separate criminal and trusteeships courts. In the criminal court, all juvenile delinquency cases had to concentrate in the hands of one specially appointed judge for that purpose. In those courts, which simultaneously functioned both as criminal and as trusteeship, crimes committed by minors were considered by trusteeship judge regardless of jurisdiction. The second instance for juvenile courts was the youth senate. Both the juvenile court and the youth senate should be placed in separate from other institutions premises [15, p. 122–123]. However, Austrian juvenile justice had certain negative aspects. In particular, due to the existence of two types of courts (criminal and trusteeship), different types of measures were used to the minors, moreover sometimes they were inappropriate. Thus, a criminal judge could only use criminal-legal measures to a minor, while a trusteeship judge was also an educator, that is, the practice of using education instead of punishment could not be fully applied.

In 1919 the Ukrainian SSR was formed, in which the regulation of the rights, freedoms of children and their protection became centralized. The juvenile policy of those days was aimed to overcome the consequences of the famine and counteracting homelessness, as children suffered greatly from certain events, namely the First

World War, the liberation struggle, the epidemics of typhus and Spanish influenza, the famine of 1921. Under the laws of the Ukrainian SSR the concept of "parental authority" was abolished, and adoption was prohibited, which was explained by the desire to prevent any exploitation of the child in the form of adoption and the abolition of inheritance. For the first time in Ukraine extramarital children and children born in marriage were equated in the rights by the Code of Laws on Family, Care, Marriage and Civil Procedure Act of the Ukrainian SSR in 1926 [14, p. 79]. One of the most progressive innovations was that the parental rights were exercised solely for the benefit of children in the direction and within the limits of the goals of the state and the state's task of raising and protecting children's health (article 21). The Code stipulated that parents were obligated to take care of minors, their health and physical development, and the direction of their education, which corresponded to the goals and objectives of the state in relation to nurturing, education and preparation for socially useful labor (article 16). Parents were obliged to "defend the personal and property interests of minors and to represent them in all cases and occasions" (article 17). In addition, for the first time this Act provided for the possibility of depriving parental rights of motives for improper performance of parental authority (article 25). Another innovation was the introduction into the Soviet Ukrainian legislation of the institute of adoption.

Provisions of juvenile law were also presented in the acts of labor legislation. In 1921 the general age of hiring was determined and legally fixed. It was 16 years, in exceptional cases or as a result of the acute need for employment younger people were accepted, but only with the permission of the Labor Inspectorate by the decision of the commission on juvenile affairs. The General Labor Code of 1922 contained 25 articles on minors and adolescents. It also established a single age for hiring as 16 years, younger children had the right to be hired only in exceptional cases. Overnight and overtime work were prohibited, and the leave for minors was twice longer than for adults. It should be noted that these progressive norms did not apply to all working children, because their vast majority was engaged in agriculture, which was considered extremely far from labor legislation.

In the departments of social education, special units of public assistance – children's social inspectorates were started by the Resolution of the People's Commissariat of Education of the USSR in 1920. They were entrusted with identifying children who needed help; participation in measures to combat homelessness and juvenile delinquency, in particular preventive; involvement of the general population in work in this area [15, p. 130–131].

The decree of the Rada of People's Commissariat of the Russian SFSR on January 18, 1918 [7] stipulated that "cases of minors of both sexes under 17 years old who were involved in socially dangerous acts should be conducted by a commission on juvenile delinquency". This commission was administered by the People's Commissariat of Public Awareness and included the representation of three departments: social work, education and justice. A compulsory member of the commission was a doctor. Some scholars argue that the commission on juvenile

delinquency did not have real levers to counter juvenile crime, so this agency was clearly unsuccessful [15, p. 131].

On March 4, 1920 a decree "On affairs of minors accused of socially dangerous acts" was approved by the decree of the commission on juvenile delinquency of the Russian SFSR due to replace the Decree of 1918 [8, p. 28–29]. Article 2 of this Decree determined that minors were persons of both sexes under the age of 18. The commission on juvenile delinquency was handed over to the People's Commissariat of Education. It could apply the following measures to minors:

– explanations, comments, suggestions;
– appointment to work or study;
– leaving for home;
– placement in the orphanage;
– placement in the orphanage for a morally defective or a medical institution of the People's Commissariat of Education;
– bonding to relatives;
– probation under tutor-supervisor [15, p. 131–132].

According to article 4 of the above-mentioned Decree affairs of minors aged 14 to 18 years were transferred to the People's Court, if the commission on juvenile delinquency found it impossible to apply medical and pedagogical measures to them.

This regulatory legal act was almost completely duplicated by the Decree of the Council of People's Commissars of the Ukrainian SSR "On the responsibility of minors" of June 12, 1920 [9, p. 177–179]. In particular, in accordance with this Decree, it was foreseen to establish interagency central and local commissions on juvenile delinquency, determine their composition and competence. In 1921 by Decree of the All-Ukrainian Central Executive Committee "On Measures to Combat Childhood Unconsciousness" the powers of the commission on juvenile delinquency were supplemented with the duty to consider and resolve cases of neglect, to take care of children recognized as neglected, which meant appointment of supervision, placement in educational institutions, and also to bring to the responsibility of parents and guardians who did not properly fulfill their duties, because of their fault the children remained unattended [15, p. 132]. Thus, Ukraine also made positive changes to the legislation in relation to children. However, it should be added that, on the one hand, the very fact of the creation of juvenile courts (which, unfortunately, took place for a rather short time and of course should be considered a drawback), could be regarded as a positive, even innovative, moment in the development of juvenile justice in Ukraine. On the other hand, the fact that the norms of juvenile law found their consolidation in other areas allowed to outline unconditionally favorable trends.

Conclusions. Consequently, the development of juvenile law and juvenile justice in some European countries and Ukraine in the last years of nineteenth century and the beginning of the twentieth century were interconnected processes. The establishment of the first juvenile courts in the world was very important for the affirmation of the rights and freedoms of children, because through their activities

it became possible to re-evaluate the behavior of children and review the nature of child offenses, which allowed liberalization of juvenile justice. As a result, the forms of legal proceedings, the types and terms of punishment, as well as the role and responsibility of parents for the offenses of their children, changed. Besides that, awareness of the peculiarities of human development at the stage of childhood and the need for proper parental care and supervision of the child, but not control, began to come. Such transformations in the philosophy of value attitude towards childhood were reflected in the formation of juvenile courts, as well as in the constitutions of the leading countries of the world in the first quarter of the twentieth century, which justifiably recognized as one of the most progressive constitutions of their time regarding the protection of the rights of children. It is arguable that the provisions of the constitutions the Czechoslovak, Polish and Austrian republics influenced the formation of a value attitude towards childhood, and their consolidation was a significant step forward in the protection of childhood, because of this, the child gradually ceased to be the subject of legal relationships, but became their subject. Moreover, the boundless power of parents over their children was eliminated, but their obligation to educate and develop their children appeared.

It is worth noting individually that the consolidation of the rights and freedoms of children in Ukraine, the development of juvenile justice in Ukrainian lands dates back to the beginning of the twentieth century, that is, during the same historical period as in other leading countries of the world. This process was more progressive in those Ukrainian lands that were part of European countries. In Ukraine, there also were positive changes in the legislation, namely in the family and labor. This example shows that Ukraine accumulated some historical experience in the field of children's rights and freedoms, and the advances and achievements of neighboring European countries should become a model and an indicator of democratic change in the state. It is strongly recommended to create child friendly justice system in Ukraine. Nowadays in Ukraine does not exist an integral justice system for children in conflict with the law as it was in analyzed European countries at the first third of twentieth century.

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Формирование и развитие ювенального права в Европе и в Украине в первой трети XX века

Исследуется опыт создания судов для несовершеннолетних в Австрии, Венгрии, Чехословацкой Республике, Польше и Украине. Выбор конкретных европейских стран основывается на исторических отношениях и связях между ними и Украиной. Так, западноукраинские земли длительное время входили в состав вышеперечисленных европейских стран. Рассматривается положения конституций указанных европейских стран первой трети XX века, касающиеся прав детей, а также их закрепление в отраслевом европейском и украинском законодательстве. В результате обобщения опыта Австрии, Венгрии, Чехословацкой Республики, Польши и Украины даны рекомендации по совершенствованию предписаний нормативно-правовых актов по вопросам прав ребенка и приведения их в соответствие с европейскими.

Ключевые слова: ювенальное право; права несовершеннолетних; ювенальный суд; ювенальная юстиция; конституция.

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