

RESEARCH ARTICLE

Peculiarities of The Detention of Juvenile Suspects: National and International Standards of Protection

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Abstract

This article examines the procedural specifics of applying detention as a measure of procedural compulsion to juvenile suspects. Drawing on the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, and specialized United Nations instruments — the Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules"), the Rules for the Protection of Juveniles Deprived of their Liberty ("Havana Rules"), and the Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Guidelines") — the article identifies international standards for protecting children during detention and compares them against the Criminal Procedure Code of the Republic of Uzbekistan. It is found that, despite certain positive developments (the mandatory participation of defense counsel from the moment of actual detention, the mandatory involvement of a psychologist and/or educator in the questioning of minor victims and witnesses, and the introduction of the institution of the investigating judge), national legislation does not establish reduced or otherwise age-differentiated periods of detention and does not provide for the separate custody of minors from adults at the initial stage of detention. Proposals are formulated for eliminating the gaps identified.

KEY WORDS

Detention; juveniles; measures of procedural compulsion; criminal procedure; Republic of Uzbekistan; children's rights; juvenile justice; international standards.

INTRODUCTION

Detention is among the most intensive measures of procedural compulsion in terms of its restrictive effect on rights, since it is applied within the shortest possible time after signs of a crime are discovered, often before the person's involvement has been fully verified, and entails the immediate and complete deprivation of freedom of movement. When the person subjected to this measure is a minor — an individual whose personality, owing to age-related, psychological, and social characteristics, requires heightened legal protection — the procedural costs of an erroneous or disproportionate application of this measure increase many times over.

The relevance of addressing this issue stems, on the one hand, from the international community's sustained attention to matters of juvenile justice, and, on the other hand, from the ongoing reform of the national criminal procedure legislation of the Republic of Uzbekistan, including with respect to judicial oversight of pre-trial proceedings. The purpose of this article is to determine the extent to which Uzbekistan's current legislation on the detention of minors corresponds to international standards, and to identify specific directions for its improvement.

The methodological basis of the study consists of the

comparative-legal, formal-legal, and systemic methods, applied to the analysis of the texts of international instruments, national criminal procedure legislation, and the case law of the European Court of Human Rights, used as a comparative — rather than binding for Uzbekistan — point of reference for interpreting the content of standards for the treatment of minors deprived of liberty.

Article 37 of the Convention on the Rights of the Child establishes three interrelated requirements directly applicable to the institution of detention: first, the arrest, detention, or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time; second, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so; third, the child shall be guaranteed the right to prompt access to legal assistance and the right to challenge the legality of the deprivation of liberty before a court, with a prompt decision. Article 40 of the Convention supplements this list with fair-trial guarantees applicable to children in conflict with the law, including the presumption of innocence and the right to have the matter promptly determined by a competent authority.

The UN Committee on the Rights of the Child, in General Comment No. 24 (2019) on children's rights in the child justice system, elaborated on these provisions, recommending that States parties establish maximum periods of police detention for detained minors that are substantially shorter than the corresponding periods for adults, and ensure the prompt — as a general rule, immediate — notification of parents or another legal representative of the fact of a child's detention.

The ICCPR establishes general guarantees applicable to any detained person: the right to be promptly informed of the reasons for detention, the right to be brought promptly before a judge, and the right to have the lawfulness of the detention reviewed by a court. Specifically applicable to minors is the requirement of Article 10(2)(b) that accused juveniles be segregated from adults and brought as speedily as possible for adjudication, as well as the requirement of Article 14(4) that procedure in respect of juveniles take account of their age and the desirability of promoting their rehabilitation.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules, 1985) provide that, upon the arrest of a minor, the parents or guardian must be notified immediately, or, where this is not possible, within the shortest possible time thereafter; the

question of release must be considered without delay by a judge or other competent authority. Rule 13 establishes the principle that pre-trial detention shall be used only as a measure of last resort and for the shortest possible period of time, and that juveniles under detention shall be kept separate from adults.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules, 1990) establish the right of a minor to effective legal assistance and to appeal the lawfulness of the detention, as well as the requirement that unconvicted juveniles be kept separate from convicted ones.

The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines, 1990) orient States toward minimizing formal intervention in respect of children and prioritizing measures alternative to deprivation of liberty.

The Criminal Procedure Code of the Republic of Uzbekistan establishes general fundamental grounds applicable to the detention of any person: legality (Article 11), respect for the honor and dignity of the individual and the prohibition of torture and other cruel treatment (Article 17), the protection of citizens' rights and freedoms, and the rule that arrest or detention in custody is permitted only on the basis of a court decision (Article 18). Detention itself — as distinct from pre-trial custody — is carried out by an inquiry officer or investigator without prior judicial sanction, but within a maximum period of forty-eight hours; a motion to extend the period of detention up to forty-eight hours is examined by an investigating judge, an institution that was introduced into national legislation relatively recently and represents a positive step toward strengthening judicial oversight of pre-trial proceedings as a whole.

It is significant that these norms are of a general nature and are addressed to any suspect regardless of age: the law does not single out the minor as a subject for whom the maximum period of detention should be reduced or for whom an independent, expedited procedure of judicial review should be established.

With regard to ensuring the right to defense, Uzbek legislation contains norms that generally correspond to international standards. Defense counsel is admitted to participate in a case at any stage of the proceedings, and, in the event of a person's detention, from the moment of the actual restriction of his or her right to freedom of movement, which substantively

corresponds to the principle formulated by the European Court of Human Rights in *Salduz*. The participation of defense counsel is mandatory in all cases involving minors, and waiver of counsel is not permitted in this category of cases. A suspect, including a minor, has the right to a telephone call or to notify a lawyer or a close relative of the detention and place of custody, and is also entitled to demand that questioning be conducted no later than twenty-four hours after detention.

In 2021, Article 121 of the Criminal Procedure Code was supplemented with provisions requiring the mandatory participation of a psychologist and/or educator in the questioning of a minor witness or victim, alongside his or her legal representative or an adult close relative, and limiting the total duration of such questioning to four hours per day. This amendment represents a significant step toward implementing international standards for the questioning of children; however, its scope is textually limited to the procedural status of witness and victim. A symmetrical guarantee — the mandatory participation of a psychologist or educator in the questioning of a minor suspect conducted immediately after detention — is not expressed with the same degree of certainty in the text of the Code, which creates a risk of unequal protection of children's procedural rights depending on their procedural role rather than on age as such.

According to an independent analysis of law-enforcement practice, the Criminal Procedure Code does not distinguish between minor and adult detainees with respect to the conditions of custody: following detention, minor suspects and accused persons are initially placed in temporary detention facilities on a general basis, and, after a sanction for pre-trial custody is obtained, are transferred to pre-trial detention centers. Specialized institutions — general- and enhanced-regime educational colonies — are provided for by the Penal Enforcement Code of the Republic of Uzbekistan only for minors against whom a conviction has already been rendered, that is, at the stage of sentence execution rather than at the stage of initial detention. The Law of the Republic of Uzbekistan "On Guarantees of the Rights of the Child" establishes the principle of the priority consideration of the child's best interests as a general framework norm, but does not contain procedural specification with respect to the regime of custody of minors directly at the detention stage.

The comparison undertaken makes it possible to identify, on the one hand, elements of national regulation that substantively correspond to international standards, and, on

the other hand, persistent gaps requiring legislative remedy.

The Beijing Rules and General Comment No. 24 proceed from the premise that the period of detention of a minor should be markedly shorter than the corresponding period for an adult, since the very category of the "shortest appropriate period of time" used in Article 37 of the Convention on the Rights of the Child presupposes age-based differentiation. The current maximum detention period of forty-eight hours established by Uzbek legislation is applied uniformly to all suspects regardless of age. Formally, this does not constitute a violation of Uzbekistan's international obligations arising from the ICCPR, since the latter does not establish specific time limits; however, it does not correspond to the spirit of the specialized approach embedded in the dedicated UN instruments on juvenile justice.

The mandatory participation of a psychologist or educator provided for by Article 121 of the Criminal Procedure Code extends to the questioning of a minor witness and victim, but is not expressed with the same degree of certainty with respect to the questioning of a minor suspect immediately after detention — that is, precisely at the moment which, according to the case law of the European Court of Human Rights in *Salduz*, is most vulnerable in terms of the risk of psychological pressure and self-incrimination. The age-based criterion of a child's psychological vulnerability does not depend on his or her procedural role, which renders this asymmetry of guarantees substantively unjustified.

The requirement of separate custody of minors from adults, established by Article 37(c) of the Convention on the Rights of the Child, Article 10(2)(b) of the ICCPR, and Rule 13.4 of the Beijing Rules, is institutionally secured in Uzbek legislation only at the sentence-execution stage — with respect to educational colonies. At the stage of detention and custody in temporary detention facilities, a specialized regime of separate custody for minors is not normatively detailed, which creates risks analogous to those established by the European Court of Human Rights in *Güveç* — the risk of a child being held together with adults in conditions that do not take into account his or her age-related and psychological characteristics.

The suspect's right to a telephone call or to notify a lawyer or a close relative of the detention (Article 48, Part 1, of the Code of Criminal Procedure) is formulated as a right of the detainee himself, the exercise of which depends on his own initiative. The international standard established by Rule 10.1 of the Beijing Rules proceeds from a different logic — from the

obligation of the competent authority to notify the parents or legal representative of the child of the fact of his or her detention immediately and on its own initiative. The current version of Uzbek law does not contain a separate provision directly imposing such an affirmative duty on the inquiry officer or investigator specifically with respect to a detained minor.

The analysis conducted shows that the legislation of the Republic of Uzbekistan has in recent years demonstrated consistent movement toward strengthening the procedural guarantees of individual rights during detention — the introduction of the institution of the investigating judge, the expansion of the right to defense counsel, and the inclusion of psychological and pedagogical guarantees for the questioning of minor witnesses and victims. At the same time, with respect to the measure of procedural compulsion itself — the detention of a minor suspect — national regulation retains an age-neutral character precisely where international standards require a specialized approach: with regard to the maximum period of detention, the provision of psychological support during questioning, and separate custody from adults. Eliminating the gaps identified appears to be a necessary condition for bringing national legislation fully into conformity with the obligations arising from the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights.

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