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**THE RIGHTS OF MINORS IN EDUCATIONAL INSTITUTIONS
OF A CLOSED TYPE**Viktoria F. Borisova (a)*, Olga A. Bakhareva (b), Natalya V. Dorodonova (c),
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Abstract

The article is devoted to the study of the shortcomings of the legal regulation of the placement of minors in special educational institutions of a closed type. The paper focuses on the uncertainty of the legal nature of the placement of minors in special educational institutions of a closed type. The authors state the intermediate position of the measure for the placement of minors in a special educational institution of a closed type between criminal punishment and compulsory educational measures. Depending on the category of minors placed in special educational institutions of a closed type, this measure can be considered an administrative or criminal procedure. The relevance of the application of this measure is due to the lack of uniform legal regulation of judicial procedure within the framework of the Code of Procedure. The study draws conclusions about the imbalance of public and private interests not in favor of the minor in court proceedings, the presence of a wide range of discretionary powers of the judge, insufficient regulation of the procedural status of the participants in the case and the lack of involvement in the participation of subjects that ensure the observance of the rights of minors. A number of violations of children's rights are caused by the problems of organizing the system of special educational institutions of a closed type. Based on foreign experience, the authors made relevant proposals to change the approach to placing minors in special educational institutions.

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1. Introduction

The relevance of this work is due to the need to implement the state criminal law policy aimed at reducing the crime rate among young people. Current criminal law policy of the Russian Federation is characterized by the tendency to humanization of juvenile crimes, connected to gradual transition from punitive to rehabilitative measures. In current conditions it is important to improve the legislation in the sphere of compulsory educational measures for minors, committed the crime, reform the system of special educational institutions of a closed type, improve the effectiveness of their activity taking into account the international standards of administration of justice in criminal cases, committed by minors and foreign experience in extra-judicial measures implementation to minors.

2. Problem Statement

The practice of placing minors in special educational institutions of a closed type is characterized by uncertainty of its legal nature in the system of compulsory educational measures, the lack of common interpretation of grounds, conditions and order of placing minors in special educational institutions of a closed type

Placing minors in special educational institutions of a closed type is the intermediate position between criminal punishment and compulsory educational measures. This measure can be administrative or criminal procedure, depending on the category of minors, placed in special educational institutions of a closed type (Smirnova et al. 2019). Articles 27, 28 of the Federal Law of June 24, 1999 establish the order of proceedings the cases about placing minors, who are not the subject to criminal prosecution, in special educational institutions of a closed type. Federal Law of the Russian Federation № 120 "On the basics of the system for the prevention of neglect and juvenile delinquency". This law does not give the full regulation of procedural status of involved parties, guarantees of minors' rights enforcement during the trial, the procedure of appeal of officials actions and judicial decree, issued during merits hearing. Observance of minors' rights requires greater guarantees because of special significance of such categories of cases.

3. Research Questions

Restriction of freedom is applied to children in the absence of responsibility at the state level for the illegal placement of minors in special educational institutions of a closed type. In its decree on June, 25, 2019, the European Court of Human Rights noted non-compliance with articles 5, 8 of the Convention for the Protection of Human Rights. The case "Blyudik v. the Russian Federation" (application № 46401/08), showed the violation of right to liberty and personal integrity of a minor. Claimant's daughter was illegally placed in a special institution of a closed type without prosecution, which led to family separation because the institution was 2500 km away from claimant's place and the correspondence was censored. Russian legislation does not provide for the damages by state authorities for making an unjust decision to place a minor in special educational institutions of a closed type.

Therefore, judicial review must be carried out with the maximum level of providing the minor with remedies for procedural protection, the legality and validity of the court decisions.

The provisions of Part 2 of Art. 92 of the Criminal Code of the Russian Federation serve as a source for the discretion of the court. According to them the judge has discretionary powers to determine the need for a minor in special conditions of education, as well as to establish the term of minor's stay in a special institution of a closed type (Zubenko, 2013). The discretionary powers are given to the court on the basis of Part 2 of Art. 28 of the Federal Law of June 24, 1999. Federal Law of the Russian Federation № 120 "On the basics of the system for the prevention of neglect and juvenile delinquency". It remains at the discretion of the judge to involve other persons in the proceedings (medical workers who examined the minor (Bevzyuk et al., 2013), social work specialists, psychologist, teacher, class teacher (Mityagin & Yashina, 2018). According to a Part 5 of Article 432 of the Russian Federation Code of Criminal Procedure convicted minor, his or her parents, a lawyer, a prosecutor, representatives of a special institution and juvenile affairs commission are mandatory trial participants.

The proposal, introduced by the Supreme Court of the Russian Federation, contains the norms, which regulate the procedure for considering this category of cases in the Administrative Procedure Code of the Russian Federation. The Federal Chamber of Advocates of the Russian Federation issued the legal position on Federal Bill no. 618625-7, where pointed out that it is impermissible to involve the juvenile affairs commission in trial participation at the court's discretion because it can aggravate the minor's situation. Definitely, any changes that reduce the guarantees of observance minors' rights in the trial are unacceptable.

The problem of humane approach cannot be solved by legislation modernization, as it is necessary to change the system of special institutions for minor offenders. The current system of special educational institutions of a closed type has strict hierarchy and does not imply the alternative application of educational measures, despite the fact that it is modern trend in penal system in the world practice (Brovkina et al., 2019).

In addition, the following circumstances significantly reduce the effectiveness of the use of educational measures:

- evasion of internal affairs bodies from bringing minors to criminal responsibility. This is the reason for the formation of the idea of impunity among teenagers, and as a consequence, the repetition offenses;
- absence of juvenile courts, and as a consequence, materials examination, conducted by lower courts oriented towards “adult” justice with appropriate experience in imposing punishment for a crime committed;
- insufficient activity of bodies and institutions of the system of prevention of neglect and juvenile delinquency in decision-making and preparation of materials for sending children to special educational institutions of a closed type;
- lack of an agreed legal framework and guidelines for sending minors from one region to another for placement in special educational institutions of a closed type;
- lack of opportunities for the rehabilitation of some categories of offenders and a small number of closed special institutions for minors with developmental disabilities;

- weak material and technical base of special educational institutions of a closed type;
- insufficient educational and medical staffing level of special educational institutions (On expanding the network ..., 2001).
- low capacity of special educational institutions of a closed type;
- the absence of a mechanism for judicial control over the execution of judicial acts on the application of measures of educational influence in the form of placing minors in special educational institutions of a closed type.

As organizational, legal and economic measures aimed at solving the above mentioned problems at the national level, it is recommended:

- expanding the list of minors sent to special educational institutions of a closed type;
- introduction of new specialization of judges focused on the administration of juvenile justice;
- bringing the proceedings on the placement of minors in special educational institutions of a closed type in accordance with national and international standards;
- improvement of legal norms governing the procedure for the application of compulsory measures of educational influence, as well as the procedure for placing juvenile offenders in special educational institutions of a closed type;
- creation of resource centers on the basis of special educational institutions;
- advanced training of managers, teachers, psychologists of special educational institutions of a closed type;
- organization of control over the execution by minors of an alternative to criminal punishment in the form of placement in special educational institutions of a closed type.
- strengthening of control over persons who have returned from special educational institutions of a closed type.

The analysis of the document, regulating sentencing of minors in Canada, Sweden, France and the research of the educational institutions system allows pointing out the provisions that can be integrated into the Russian practice of applying educational measures in relation to minors:

- individualization of application of educational work measures;
- the creation of the special body for legal remedy, given to minors (by analogy with Youth Justice Committee in France and Alternative Youth Justice Organization in Canada);
- multistage educational institutions for minor offenders, differentiated by the amount of placed children and their age, by the degree of severity of the supervision, by the degree of necessity to restrict freedom;
- creation of public organizations responsible for the application of extra-judicial measures against minor offenders, providing advice to children and their families;
- voluntary service of a minor offender as remedy;
- probation service creation.
- application of pre-trial against a minor;
- active application of extrajudicial disciplinary measures against minors;
- division of the term of placement of minors in rehabilitation centers for stay in the center and outside it;

- greater guarantees of minors' legal protection during the criminal and disciplinary measures proceedings.

One of the most effective ways to increase the efficiency of placing minors in educational institutions as a measure of educational impact is to improve the network of these educational institutions. From an organizational and economic point of view, it is possible to consider several models of specialized educational institutions:

- transfer the whole special educational institutions system to the jurisdiction of the subjects of the Russian Federation;
- a system of specialized educational institutions operating on the basis of federal and regional co-financing
- organization of the activities of specialized educational institutions within the framework of public-private partnerships.

The first model has its drawbacks due to unequal funding of educational institutions by regions and decentralization of management of the specialized educational institutions the system.

The second model of co-financing has the right to exist, since it will expand the network of regional specialized educational institutions, as well as increase the number of places in them, subject to the inclusion of relevant activities in the state program.

The third model assumes the involvement of partner organizations, the formation of network interaction between participants in public-private partnerships in order to solve the problems of attracting funding and improving the quality of implemented rehabilitation programs, methodological support and advanced training of the teaching staff of specialized educational institutions, strengthening contact between parents, institutions, project partners. Contracts or administrative agreements are considered as the most acceptable form of implementation of public-private partnership in the field of the models of specialized educational institutions.

4. Purpose of the Study

The purpose of the research is to study the legal regulation of the procedure for placing minors in special educational institutions of a closed type, develop measures for modernization of special educational institutions of a closed type taking into account foreign experience.

5. Research Methods

The research is based on general scientific methods of analysis, synthesis, generalization, prediction as well as comparative legal and formal logical methods. Comparative law method is highly effective and is the basis for the analysis of foreign legislation, which regulates judicial and extra-judicial sanctions against minors.

6. Findings

As a result of the study, it was concluded that it is necessary to introduce a juvenile justice system; expand extra-judicial educational sanctions against minors; improve legal protection of minors in cases where educational sanctions are applied.

7. Conclusion

The observance of minors' rights during the process of placing a minor in special educational institutions of a closed type primarily depends on the statutory order of proceedings such categories of cases taking into account private and public interest. Affordable and professional help, psychological assistance, mandatory participation of the trial by the juvenile crime prevention bodies must be guaranteed to the minor.

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