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# RUSSIAN MODEL OF JUVENILE JUSTICE: DEVELOPMENT PROSPECTS

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### *Abstract*

The issues related to the implementation of juvenile technologies in the criminal process of the Russian Federation are considered. Various points of view on the essence of juvenile justice are highlighted and on its basis the author's definition is formulated. The principles of the existence of juvenile justice in the Russian Federation are analysed: justice in relation to juvenile offenders should be aimed at ensuring that the measures of influence applied to them provide the most individual approach to the investigation of the circumstances of the committed act and are commensurate with both the features of their personality and the circumstances of the committed act, ensured the re-socialization of minors, as well as the protection of the legitimate interests of victims. At the same time, juvenile justice should not deprive parents who conscientiously fulfil their parental responsibilities of the right to raise children and determine the priorities of family education, if the laws of the Russian Federation are not violated. The conclusion is substantiated that juvenile justice in the Russian Federation is necessary and should be built considering Russian traditions, the Russian mentality and family values and features of family relationship accepted in our society.

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## **1. Introduction**

The discussions revolved around juvenile justice in modern Russia are one of the most heated in their intensity. The discussion of the problem involved not only specialists, but also citizens, representatives of public organizations, and religious figures. We believe that the development of specialized restorative justice in criminal cases of crimes committed by minors is a completely reasonable and logical step. Juvenile justice is associated with a new model of criminal proceedings, which is based on the consideration of a minor who has come into conflict with the law, not as an object of punishment and influence by the state, but as an entity in need of protection and support. This approach allows to change the emphasis applied by the state to juvenile criminal liability to help the guilty in realizing the wrongfulness of his own act and the desire to correct its consequences.

## **2. Problem Statement**

United Nations General Assembly resolution 44/25 of November 20, 1989 adopted the Convention on the Rights of the Child, which is the fundamental international legal act in the field of ensuring the rights of children. The Russian Federation, having acceded to this Convention in 1990, expressed its intention to make the necessary efforts to create an environment that is comfortable and benevolent for the lives of children, including for those children who, for various reasons, have come into conflict with the law (Arpenteva, 2016). In this regard, a teenager who has committed a crime is considered less as a violator of the law, than as an object of increased legal protection on the part of the state and society, which on the other hand makes it important to study the use of alternatives to criminal liability and punishment for juvenile offenders, namely, measures of restorative justice.

According to the Ministry of Internal Affairs of the Russian Federation, 43,533 crimes (and it is 4% of all crimes investigated in 2018) were committed by minors themselves or with their complicity in 2018. Moreover, in some regions of Russia, this criminal rate is two times higher. So in the Nenets Autonomous District the proportion of juvenile crimes in 2018 amounted to 8.1%, in the Republic of Tuva and the Republic of Karelia 7.4% and 7.3%, respectively. This situation causes the Russian Federation quite a logical concern with the issues of crime prevention among minors.

Due to the relative prevalence of crimes committed by minors or in complicity with a minor in the structure of modern Russian crime, the issues of the formation and functioning of juvenile justice remain relevant.

## **3. Research Questions**

The subject of the research is the features of juvenile justice and the prospects for its development in the Russian Federation.

## **4. Purpose of the Study**

An attempt was made to summarize and analyse the results of scientific studies of Russian scientists on the formation and development of juvenile justice in the Russian Federation and abroad, to compare

them with the materials of the Russian judicial practice, and to formulate on this basis the prospects for improving juvenile technologies in the judicial procedure of the Russian Federation.

## **5. Research Methods**

The methodological basis of the study is the dialectical materialistic method as a universal method of cognition of social and legal phenomena. In the work of this research, comparative legal method, logical-legal method, sociological method, historical-comparative and statistical methods were also used. During the research, 100 minors who committed a crime in the Republic of Bashkortostan, as well as 100 students of secondary schools and colleges in Ufa were interviewed (control group).

## **6. Findings**

Since the USSR ratified the Convention on the Rights of the Child, the judicial system of our state has raised the issue of introducing juvenile technologies and restorative juvenile justice (Maskova, 2017).

At the same time, scientists and practitioners of the Russian Federation are very ambiguous and are quite skeptical about issues of juvenile justice.

Firstly, in criminal procedure science, conflicting opinions are expressed about the concept of juvenile justice. Secondly, its appropriateness and prospects for Russia are ambiguously assessed. Thirdly, many authors believe that a specialized juvenile justice system existed in Russia until 1917, so this should not be about the formation of a new institution that was not previously known to our legal system, but about its restoration with consideration of modern requirements and realities (Kiyashko, 2011). In this regard, pre-revolutionary, Soviet and modern periods of development of juvenile justice are distinguished (Shestakova, 2016).

Juvenile justice is a special branch of justice (Kolpakova & Rudakov, 2016). The term "juvenile justice" comes from the Latin words *juvenalis* - juvenile; *justitia* - justice, and refers to a system of institutions and organizations that administer justice in cases of offenses committed by minors.

However, in modern Russian jurisprudence this concept is considered very diverse: on the one hand, attempts are made to adapt the foreign understanding of juvenile justice, and on the other, attempts to formulate a definition of juvenile justice based on Russian realities and traditions.

Note that in the Russian Federation there is no legislatively fixed understanding of juvenile justice. So, the Federal Law of July 24, 1998 No. 124 (as amended on December 27, 2018) "On the Basic Guarantees of the Rights of the Child in the Russian Federation", in Article 1, discloses the basic concepts used in the protection of children's rights, but the term "juvenile justice" is not even mentioned in it. Similarly, the Federal Law "On the Basics of the System for the Prevention of Child Neglect and Juvenile Delinquency" dated June 24, 1999, No. 120, disclosing the concepts of child neglect, homelessness, and antisocial actions of minors, dispenses with juvenile justice or juvenile technology (Tetyuev, 2006).

However, attempts to create a specialized law on juvenile courts or juvenile justice in the Russian Federation have been repeatedly made.

So, in 1996, Melnikova and Vetrova developed a draft federal law "On juvenile justice in the Russian Federation" (p. 45). In 2006, Khananashvili and Autonomova developed a draft federal law "On the Basics of the Juvenile Justice System" (p. 28). The authors of these draft laws construe juvenile justice as "the

judicial system that administers juvenile justice, protects the rights and legitimate interests of minors and conducts the trial of cases of juvenile delinquency and crime" (Kolchurin & Chirva, 2014, p. 181). Both projects successfully passed two readings in the State Duma of the Russian Federation, but none of them became a law.

At the same time, in certain regions of the Russian Federation, juvenile technologies were introduced into the practice of courts on an experimental basis. This experiment was carried out in separate courts of the Rostov Region, the Perm Territory, the Tyumen Region, the Lipetsk Region, and the Republic of Bashkortostan.

The results of the experiment on the introduction of juvenile technologies were reflected in the Decree of the Presidium of the Council of Judges of the Russian Federation dated June 21, 2010 No. 228 "On the results of summarizing the information of the courts of the constituent entities of the Russian Federation on the use of juvenile technologies by courts of general jurisdiction". In particular, the Decree states that by 2010, courts of general jurisdiction in 52 constituent entities of the Russian Federation began to use juvenile technologies in their work.

We believe that the views on the concept of juvenile justice in the Russian criminal procedure science can be roughly classified into two groups.

Some authors consider juvenile justice in a broad sense, including in this concept not only the judiciary, but also other state and non-state organizations and institutions that address issues of protecting the rights and freedoms of minors. In particular A.V. Komarnitsky, O.V. Lukichev, M.B. Skvortsova, S.V. Tetyuev and some other scientists (Komarnitskiy, 2011; Lukichev & Skvortsova, 2006; Tetyuev, 2006).

E. B. Melnikova, G.N. Vetrova, (Goncharova, 2013; Melnikova & Vetrova, 1996) hold views to refer only specialized judicial bodies to juvenile justice.

We believe that juvenile justice is court of justice for minors. It involves specialized restorative judicial procedures in relation to a child who has come into conflict with the law, focused not on punishment, but on rehabilitation and assistance.

At the same time, juvenile justice, understood only as a system of specialized courts, is unlikely to be cogent (Lifanova, 2016). For the effective functioning of juvenile justice, not only the judiciary is needed. Other state structures play an important role, the purposes of which are also the identification, rehabilitation, re-education and socialization of juvenile offenders.

In accordance with paragraph 5.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), approved by UN General Assembly Resolution 40/33 on November 29, 1985, the juvenile justice system is primarily aimed at ensuring the welfare of a minor. If we proceed from this goal as fundamental for the formation of juvenile justice in Russia, then its priority tasks should be not only effective consideration by courts of cases of juvenile delinquency, but also the creation of a system of social control of their behavior and living conditions; as well as the creation of a system for the rehabilitation of minors who have violated the law.

The foregoing means that the juvenile justice system should include not only the judiciary, but also other public services that address issues of social control and rehabilitation of adolescents in conflict with the law, as well as assisting the court in conducting criminal trials involving juvenile defendants.

In this regard, a problem arises in the judicial practice of Russia regarding the issue of assisting the court in criminal cases of crimes committed by minors.

In accordance with Article 425 of the Code of Criminal Procedure of the Russian Federation in the interrogation of a minor suspect who has not reached the age of sixteen or has reached this age, but suffering from a mental disorder or development delay, the participation of a teacher or a psychologist is mandatory. This rule also existed in the Soviet criminal procedure law and continues to exist now. However, in fact, it does not work – court, interrogators, investigators do not receive real assistance in working with a minor suspect, accused or defendant. School teachers, social educators, school psychologists, invited to perform this procedural task, as a rule, do not understand what is required of them, do not have the minimum necessary knowledge about legal proceedings. Being invited to the investigator or to the court, they prefer to be silently present at the investigative and procedural actions, and, therefore, cannot render substantial assistance to the legal proceedings. In this regard, all discussions about a teacher and psychologist as defenders of the rights and legitimate interests of the minor have no real basis.

In order for the institute of teachers and psychologists to work and become fully effective, in our opinion, it is necessary to create a specialized psychological and pedagogical service, which, on the one hand, would be independent, and, on the other hand, would consist of employees with sufficient knowledge in the field of age-related pedagogy, psychology and jurisprudence.

Thus, juvenile justice in Russia should be considered as specialized justice for minors, included in the general judicial system, but aimed at achieving the specific goals of correcting juveniles who have committed a crime, their rehabilitation, as well as preventing them from committing new crimes. At the same time, the structure of juvenile justice bodies should include not only courts, but also services ensuring their normal functioning and effective implementation of their decisions, that is, aimed at ensuring judicial activity.

The ideas of juvenile justice in Russia met not only approval, but also caused very active criticism. The main thesis of opponents of juvenile justice is the opinion that the state and society should not interfere in family affairs, which contradicts the traditions and values that have developed in Russian society and can lead to their destruction.

In this regard, Goncharova (2013) justifiably points out the inadmissibility of leaning towards Western models of juvenile justice, for example, such as in France. This will lead to the destruction of the institution of the family, the discord in relations between children and parents. The right to independently determine the procedure for raising children should remain with the family, and the scope of family education should be limited by the legislation of the Russian Federation.

We agree that juvenile justice, based on unwarranted interference in family affairs and raising children, complicating the conflict between children and their parents, does not correspond to traditional Russian family values. Respect, love, trust, mutual assistance and mutual understanding – this is the basis of intra-family relations. At the same time, parents should be able to raise their children by accustoming them to work, familiarizing them with moral and religious rules adopted in the family, and the requirement of obedience or a request to do something for themselves and the family should not be perceived as a violation of the rights of a child and moreover, they should not become an excuse for taking a child out from a family.

However, if there are examples of misconduct in a family, systematic conflicts, violence against children, if alcoholism and drug addiction flourish, if a family cannot provide a child with a minimal standard of living due to such abuse, this can and should be considered as a basis for state intervention in family affairs. And such an intervention should not be assessed as an encroachment on traditional family values. Moreover, the legislation of the Russian Federation has always provided for the deprivation of parental rights, and no one has considered and does not consider this institution as unacceptable.

It seems that juvenile justice should have as its goal the protection of a minor, for whatever reason, who finds himself in a difficult life situation. It's no secret that there are times when children need to be protected from their own parents. The juvenile justice system should deal with these issues. At the same time, questions regarding the competence of representatives of juvenile justice, their rights and obligations, as well as the grounds for applying juvenile technologies and appealing against decisions made should be resolved at the legislative level. Thus, the debate about the appropriateness of juvenile justice is inherently reduced to the study of the issue of its powers. Since a certain specialization of investigators and judges investigating cases of crimes committed by minors has existed in Russia since the Soviet period and was not disputed by practitioners or scientists.

Another argument of opponents of the establishment of juvenile justice in the Russian Federation is the conclusion that the unreasonable expansion of children's rights, which consists in promoting children's misbehaviour under the guise of protecting their rights, will lead to an increase in uncontrollability, deviant behavior and psychopathologies, and, ultimately, to an increase in juvenile delinquency (Timoshina, 2012).

Indeed, raising a child is a complex psychological process that requires consistent exposure to the child and is based not only on praise, but also on comments and prohibitions (Chetyan & Danielyan, 2017). Parenting presupposes both respect for the rights of a child and training a child to fulfill his duties. Requirements of parents for tidying up their own things, toys and clothes, for cleaning in their room, and for the high-quality performance of the lessons set at the school cannot be regarded negatively. Harmonious personal development is possible only through a combination of the rights and duties of a minor.

In accordance with the Constitution of the Russian Federation, motherhood and childhood and the family are protected by the state and taking care of children and their upbringing is an equal right and duty of parents. Consequently, juvenile justice should be built on respect for this constitutional principle and recognition of the right of parents to raise children, independently determining the priorities of this upbringing.

That is why we believe that juvenile justice in Russia should be based on compliance with two fundamental provisions.

1. Minors who have committed a crime require a special psychological and pedagogical approach. In accordance with Art. 43 of the Criminal Code of the Russian Federation, punishment is assigned, *inter alia*, to correct the convicted person. The effective implementation of this goal in relation to juvenile delinquents is possible only if the age characteristics of young men and women are taken into account when they are brought to justice and sentenced to criminal penalties. This is consistent with the position of the Supreme Court of the Russian Federation which indicated in paragraph 3 of the Decree of February 1, 2011 No. 1 "On judicial practice of the application of legislation regulating the specifics of criminal responsibility and punishment of juveniles" that "Justice in relation to juvenile offenders should be aimed at ensuring that

the measures of influence applied to them provide the most individual approach to the study of the circumstances of the committed act and are commensurate with both features their identity and the circumstances of the offense, help to prevent extremist illegal actions and crimes among minors, ensure their re-socialization, as well as the protection of the legitimate interests of victims» Preyskurantova, 2017, p. 93).

2. Juvenile justice should not deprive parents, who conscientiously fulfill their parental responsibilities, the right to determine the priorities of family education, if this does not violate the laws of the Russian Federation. The intervention of juvenile justice in family affairs must comply with the principles of reasonableness and justice, and under no circumstances should harm a child or moral suffering.

In the consideration of the foregoing basic provisions, we believe that juvenile justice in the Russian Federation is necessary, especially since certain steps in this direction have already been taken. However, juvenile justice should be built considering Russian traditions, the Russian mentality and family values and characteristics of family relationship accepted in our multinational society.

This conclusion is fully confirmed by the results of opinion polls. So, according to Radnaeva (2015) the need for the provision of specialized juvenile justice was noted by the vast majority - 60.2% of respondents. It is interesting that the largest share of positive answers was received in a group of teachers (80%), namely, people who, because of their professional responsibilities, work with adolescents and understand their age specificity well. Another 36% of respondents spoke out in favor of improving justice in the framework of general legal proceedings with the specialization of judges and their assistants (Radnaeva, 2015).

These findings are consistent with the results of our study. So, out of 100 interviewed minors who committed a crime, 76% said that criminal cases involving crimes of persons under the age of 18 should be considered by specialized courts. This was agreed by 64% of respondents of the control group.

In the Russian Federation, special attention has always been paid to the education of the younger generation, the fight against juvenile delinquency, wrongdoings, homelessness, alcoholism and other negative manifestations.

We believe that by now in the Russian Federation there are quite certain positively proven elements of juvenile justice.

So, since the times of the USSR, the specialization of judges and investigators involved in the investigation and judicial examination of crimes committed by minors or in complicity with a minor has existed and was considered justified in the Russian Federation.

Back in 1964, the Plenum of the Supreme Court of the USSR in one of its decisions indicated the need for specialization of judges considering criminal cases of juvenile crimes, motivating this with personality characteristics of juvenile suspects, accused and defendants. At that time in the USSR, juvenile courts and juvenile justice were not mentioned, but experts understood the need of considering criminal cases of juvenile crimes as cases of a special category very well. In 2000, the need for specialization of juvenile judges was established by the Decree "On Judicial Practice in Juvenile Affairs" of the Plenum of the Supreme Court of the Russian Federation.

As can be seen from the historical experience of Russia, criminal cases of this category have always been considered as the most complex, sensitive tasks, and entrusted to the most experienced judges and

investigators with skills in working with adolescents, knowledge of the features of their age-related psychology and pedagogy.

This approach in the Russian Federation survived to this day. As follows from paragraph 4 of the Decree of the Plenum of the Supreme Court of the Russian Federation of February 1, 2011 No. 1 “On judicial practice of applying the legislation governing the specifics of criminal liability and punishment of minors,” criminal cases against minors in the courts of both the first and second instances should be considered the most experienced judges. For these purposes, the Supreme Court of the Russian Federation recommends constantly improving the professional qualifications of judges considering cases of juvenile crimes, increasing their personal responsibility for fulfilling the requirements of legality, validity, fairness and motivation of a court decision. At the same time, it is stipulated that the specialization of juvenile judges means the need to ensure their professional competence through training and retraining not only in law, but also in pedagogy, sociology, adolescent psychology, criminology, victimology, juvenile technologies used in the framework of procedural legislation. In this regard, the courts are encouraged to introduce modern methods of individual preventive work with accused minors and minor defendants.

We believe that the specialization of judges, investigators and other law enforcement officials should be maintained based on continuous improvement of knowledge and skills in working with children and adolescents. The specialization of juvenile judges is, of course, not yet juvenile justice, but an important step towards its construction.

Another important point for understanding the peculiarities of the formation of juvenile justice in Russia is the fact that the Russian Federation already has its own national system for protecting the rights of children and helping minors in difficult situations or in conflict with the law. Within the framework of this system, justice bodies also work. “The rights of children in Russia today are protected by a large number of state bodies and public organizations. These include: the Commissioner for the Rights of the Child, the Commission on Juvenile Affairs and the Protection of Their Rights, guardianship authorities, courts, the prosecutor's office, the Ministry of the Interior, the Federal Penitentiary Service, the Ministry of Education, the Ministry of Health and Social Development, various committees, public human rights organizations and others ”(Timoshina, 2012, p. 88).

The specifics of this situation are that in the Russian Federation the bodies protecting the rights of children are not only very diverse, but also not united in any single structure, and are not subordinate to only one agency. Each state body is involved in solving a specific aspect of the problem, and sometimes has separate controlling or oversight functions in relation to other bodies. This system has evolved over many decades, tested by practice, and sufficiently meets the needs of the state. On the one hand, such a system is very complex, unmanageable and at times contradictory. But, from another point of view, one cannot disagree with the opinion that it “makes sense, since it ensures the independence of these bodies and promotes a certain mutual control over the activities of each of them” (Timoshina, 2012, p. 90).

## **7. Conclusion**

Thus, juvenile justice in Russia should be considered as specialized system of justice for minors, included in the general judicial system, but aimed at achieving the specific goals of correcting juveniles who have committed a crime, their rehabilitation, as well as preventing them from committing new crimes.



Certain elements of juvenile justice in Russia already exist, although they are not expressly defined as such. In fact, there is no need to build a radically new system of government bodies. What we need to do is to improve the existing system of government bodies aimed at prevention, identification, disclosure, investigation and judicial review of juvenile crimes.

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