

Concept and Some of the Problems of Juvenile Law

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Концепция и некоторые проблемы ювенального право: Статья посвящена некоторым проблемам ювенального право, которые освещаются со стороны правового аспекта.

В юридической науке и практике правосудие по делам несовершеннолетних (ювенальная юстиция) традиционно оценивается с двух позиций: как инструмент борьбы с преступностью молодежи и подростков и как средство охраны прав и законных интересов несовершеннолетних, защиты их от неблагоприятных условий жизни и воспитания. Эти два подхода отражают содержание и цели ювенальной юстиции.

Ювенальная юстиция как правосудие по делам о несовершеннолетних конкретно должна решать вопрос об ответственности за совершенные проступки и правонарушения, т.е. о наказании либо иной компенсации.

Статья позволяет поставить вопрос о ювенальном праве как направлении научного исследования, научном поиске ответа на практическую потребность улучшения ситуации с детьми.

Ключевые слова: ювенальное право, права детей, несовершеннолетние, правосудья, защита прав детей.

The most significant changes in the justice system, manifested in the creation of specialized courts or expanding the scope of summary jurisdiction, arose in times of crisis and transitional periods for the society (for example, in the XIX-XX centuries. During the "Great Depression" in the U.S.). An example of departure from the "classic" version of the judicial establishment that became an independent system of juvenile courts is juvenile justice system.

Juvenile justice as the justice system was created in the United States. Such judicial institutions in different countries of the world, but as the founder of the juvenile justice system of courts and correctional institutions of the relevant subsidiary is considered to be America. The date of foundation of juvenile justice is considered to be 1899, when the Chicago (Ill.) and Denver (Colorado) created the first organs of juvenile justice - juvenile courts, subject only fix the problem of the convict. The founders of the juvenile justice system believed that juvenile offenders should be spared from criminal proceedings for adults as well as to serve the sentence in isolation from adult offenders.

Creating such a court was a recognition of the features of the legal status of juvenile offenders, the problem of origin of penalties which can best be resolved by the justice system different from that which applies to adult offenders. Analysis of recent scientific publications devoted to the protection of child rights, has identified a trend in the development of solutions to problems of a troubled situation of children in modern society. We are in the majority of them also about the history of creation, formation, development, problems of rehabilitation of juvenile courts in the world, that is, the juvenile justice system [1].

In legal science and practice of juvenile justice it has traditionally been evaluated from two perspectives: **as a tool to combat crime and youth and adolescents as a means of protection of legitimate rights and interests of minors to protect them from adverse living conditions and upbringing.** These two approaches reflect the content and purpose of the juvenile justice system. Since, in practice they are not divided among themselves, it results in a sense obliterating the distinction between the functions of judicial protection and the problems of fighting crime.

The main objective of this type of justice is to provide the most gentle informal procedure for the trial of the individual psyche and age characteristics of juveniles, as well as to implement a flexible system of criminal justice interventions, mostly non-custodial [2].

Juvenile justice, being a very complicated complex formation, is trying to develop various concepts and find different ways to influence the juvenile offender in his immediate

environment in order to preserve or rehabilitate his or her personality in the conscious of the inevitability of punishment for their deeds.

The principal feature of the test of education is also reflected in the compound legally organized system of state courts with personally-defined placement of children, resulting in a unique way of working with child offenders, whose influence was virtually rebuilt by the criminal justice system for juveniles.

According to E. B. Melnikova definition of juvenile justice: the "judicial system, which juvenile justice and has a problem: judicial protection of rights and legitimate interests of minors and prosecution of cases of juvenile crimes and offenses" [3].

Currently, in many states juvenile justice as an independent subsystem of the general justice is absent. However, you can talk about the scientific and practical implications of the concept of juvenile justice. This refers to the published methodology and practical training aids, reading of relevant lectures, conferences and workshops [4].

Juvenile justice as justice and juvenile should specifically address the question of responsibility for committing misdemeanors and offenses, i.e., of punishment or other compensation. Because justice - the kind of state efforts to review and resolution of various social conflicts related to actual or alleged violation of the law, the juvenile justice respectively rehabilitates already broken (or is it a violation assumed that does not change the fact) rights where a child is either victim or the accused [5].

Thus, in our opinion, juvenile justice, as it concludes, "completes" the pyramid of legal protection of minors (however, this does not negate its prevention component). The fact of the child protection should be based on legally enshrined rights and freedoms constitute the core of its legal status. Considering we are interested in any sphere of social relations in terms of its legal regulation must begin not with the criminal aspects of the protection or responsibility for violations in this area, which also determine the rules of law, and exploring the totality of regulations and certain rules of law, that is, entire array of legislation governing the specific social relations. When it comes to the subject of law, the nature and content of its legal status defined legal status, characterizes its position in relation to the state, its agencies, other persons.

In every state there is a considerable amount of legislative normative acts regulating the relations with minors. For example, the laws "On the Rights of the Child," "On Basic Guarantees of the Rights of the Child," "On commissions for minors and protection of their rights," "On the Commissioner for Human Rights of the Child" and so on.

As it is known in the Russian Federation, Armenia, Bulgaria, the situation of minors is regulated by norms of various branches of law, in particular, family and civil law, criminal law, etc. Given the complex nature of the child's status, the implementation of the fundamental rights and freedoms, and the institution of children's rights can pose the question of the formation of independent scientific direction, exploring the legal status of minors in all spheres of social relations, code-named juvenile (children's) rights.

The design of the legal regulation of relations with minors is available in the basement of the main provisions of the Constitution of the State and the institution of human rights and freedoms of citizens. Without loss, and stressing the crucial importance of raising a child in the family as the most natural environment for the formation of his physical, mental, and moral components, law-based system algorithm for developing management and education of children should be sought in the "legal field" state legislation.

Juvenile law requires investigation of a certain kind of social relations - relations, at least one of the parties is a child. These relationships are specific to their subject composition.

In this case, the subject of investigation will be:

- public relations arising in the implementation of the child as an independent subject of legal relations, or his legal representative, of its own subjective rights and freedoms and perform his legal duties;

- conditions and procedures for ensuring the proper status of a child, resolved to some extent the different branches of law in which the child as their party is opposed to adults;
- forms and procedures for the legal liability of minors, including those in the mainstream of the relations connected with - the establishment and operation of the juvenile justice system.

In general mass relations involving minors Juvenile Law interested in the relationship, requiring the direct legal effect by virtue of their being and the special social significance, which, due to an insufficient level of the age of the child is unable to protect their rights and legitimate interests as effectively as the other side of relationships - adult. The relations, subject to legal regulation, are the most important moments of life and activity of minors associated with the occurrence, implementation and termination of the most important rights and legitimate interests and responsibilities of the child, requiring clear legal regulation established by the Convention on the Rights of the Child and national legislation.

The object of study is not regarded as such a child, and the existing social relations in which he directly or indirectly (through legal representatives) involved. And these relationships allow us to understand the need to strengthen the special legal status of the child.

Currently, when discussing the problems of the younger generation the word "juvenile" is used quite often, not only in combination with "justice." Many questions are risen on definition of juvenile relations as "a democratically established mutual relations of young people, their organizations, institutions. This refers to those types of multi-faceted, species, form relationships, which forms a young community, generate the most demand in juvenile law [6].

What kind of connections are they and who established them? Friendship and affection - it is also reciprocal links. Juvenile Law plays the role of protector of democracy, protecting the system of juvenile control, protecting the interests of the subjects of juvenile-management process. As you can see, the term "juvenile", used as an accepted and well-known, on the one hand, it does not contain the necessary explanatory semantic component, but it indicates that this definition is firmly established in the lexicon of lawyers and politicians on the other hand.

Along with the debate on the subject of juvenile law is of interest and the appearance of Juvenology as "science, the knowledge of young people". **Juvenology is interdisciplinary integrated knowledge about the rise and growing up in a dialectical unity of human social, spiritual and biological principles, and shaping it as a full member of modern society** [7]. This range includes medicine, pedagogy, psychology, sociology, economics, history and other disciplines and research areas.

There are studies in which the legal science is proposed to introduce a new concept of "youth right" to legislate terms such as "danger to the moral development", "morally dangerous spectacle," "dangerous source of moral influence," "public places with limited access ". In our opinion, in this situation it would be better to submit the legal concept of "youth", which is very difficult, since it is obviously of sociological nature.

Certainly, the concept of juvenile law is known jurists not only because of the etymology of words and the Roman law. Experience in child protection, available abroad, where the development of juvenile law issues is in parallel with research in the field of juvenile justice, currently are being studied in detail by lawyers, human rights defenders and social workers. Of course, this must take into account differences in legal systems of [8].

Thus, children's right (child law) in England has been developed in the second half of XX century, due to increasing public attention to human rights in general, the recognition of the interests and needs of each family member.

The first paper that proves the recognition of child rights in the other branches of English law, was the work of Clarke Hall and Morrison, "The law relating to children and adolescents," published in 1934 [9]. While in conventional textbooks on jurisprudence the concept then became widely used by academic recognition of children's right was only in the 70-ies of XX century.

The main piece of legislation has consolidated most of the earlier adopted laws on child rights - the Children Act 1989 (Children Act 1989), which governs child care, support for family welfare, child protection from the state, increase parental responsibility for the proper upbringing of their children.

According to British lawyers, experts in the field of family law, child law formation is fast enough [10]. Important laws adopted in recent years are: the Law on Human Fertilisation and Embryology Authority in 1990, the Law on the content of the child in 1991, Child Protection Act 1999, Act on child support, pensions and social security in 2000, the Adoption Act and Children 2002.

It has been suggested that the development of children's rights due to increased state intervention in the family, as in the case of abuse of rights of the child's parents no one but the state can protect him. The state is interested in the welfare of all citizens, including children [11].

Despite the fact that in English law there is no definition of child rights, the scope of its regulation will include questions of substantive law (adoption, child rights and powers of state authorities with respect to minors, the development of new technologies in the field of human reproduction, regulation of financial and property issues in divorce, etc., the responsibility of parents in case of abuse of their parental rights), and issues of procedural law, in particular, the representation of children in judicial proceedings. Children's right, according to S. Concretely - a recognized authority in the field of English family law - is increasingly becoming a specialized field of practice [12].

In the U.S., the rights of children are given enough attention, but there is no Juvenile Code [13]. In China, the rights of children are recorded as a separate line in the basic law of the state. Thus, Article 46 of the Constitution of the PRC states the obligation to contribute to the full moral, intellectual and physical development of children and adolescents.

All this allows you to put the issue of juvenile law as the direction of scientific research, scientific search for the answer on the practical need to improve the situation of children. For its further formation must ripen certain economic, political, social and legal environment that will allow children to take the problem in the state and the legal concept of development of the country as a worthy place.

The relationship of the legal status of the child and its legal protection, implementation and enforcement which are possible under certain legal models, assumes a particular jurisdiction and rules of procedure. And such a model has already been created and successfully operates in the developed democratic states [14]. There is need for legislative consolidation of juvenile justice to indicate a problem if the possible discrepancy between the minor and his legal representative exists. On the one hand, the current legislation reflects increased legal protection of minors in court by the law of double representation of the interests of a minor - a lawyer and legal representative. On the other hand, it should be noted in this case, the dual nature of the procedural provisions of the legal representative (protection of minors and their own), which requires a more precise fix of the priority of the interests of a minor in law. The introduction of juvenile justice requires not only great financial cost, how much will power and organizational efforts within the justice system. As regards the establishment of social technologies, it will ensure social saturation working with children. In that aspect, a significant role for the formation of the joint, and software-oriented activities of governmental and nongovernmental agencies.

And, finally, to optimize the protection of the rights and freedoms of minors set forth in legal acts of state, will be important to form a unified juvenile justice system because it has a comprehensive inter-sectoral jurisdiction, in the end:

- use the process of reforming the national legal system foreign experience of juvenile justice, developing humanistic tendencies in law;
- in the administration of juvenile justice to abandon repressive standards of thinking, given the nature of the recovery and social richness of juvenile justice as its main characteristics.

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