

ТЕНДЕНЦИИ РАЗВИТИЯ ОТЧЕТСВЕННОГО ЗАКОНОДАТЕЛЬСТВА О НАКАЗАНИИ НЕСОВЕРШЕННОЛЕТНИХ

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Резюме: Развитие законодательства обуславливается развитием общества и всегда включено в непрерывный исторический процесс. В этой связи законодателям при изменении нормативной базы определенного института или отрасли права необходимо рассматривать общий контекст, сформировавшийся в результате последовательного развития как норм, регулирующих общественные отношения, так и самих этих отношений. Однако для восприятия исторического контекста необходимо сжать его до определенных тенденций, которые бесспорно проявляются на всех этапах. В настоящей статье рассматриваются основные тенденции развития отечественного законодательства о наказании несовершеннолетних. Цель настоящего исследования: изучить тенденции в развитии и формировании этой области российского права. Авторами были изучены нормативные акты начиная с середины восемнадцатого века. В рамках исследования были обнаружены общие закономерности, определяющие развитие отечественного законодательства о наказании несовершеннолетних, которые проявляются на всех его стадиях. В результате сформулированы шесть трендов, которые могут помочь в совершенствовании законодательства по вопросам наказания несовершеннолетних. Опираясь на полученные в ходе исследования тренды, можно сформулировать основные направления развития отечественного законодательства о наказании несовершеннолетних в будущем, а также выделить основные положения существующего законодательства, нуждающиеся в коррекции.

Ключевые слова: законодательство, правовое регулирование, наказание несовершеннолетних, преступность несовершеннолетних, история государства и права, исторический обзор.

BRIEF HISTORICAL REVIEW OF THE LEGAL REGULATION OF JUVENILE DELINQUENCY

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Abstract

The development of legislation is conditioned by the development of society and it is always included in the continuous historical process. In this regard, when legislators change the regulatory framework of a certain institution or branch of law, they need to consider the background formed as a result of the consistent development of both the norms regulating social relations and these relations themselves. However, in order to

perceive the historical context, it is necessary to compress it to certain trends, which undoubtedly appear at all stages. The article deals with the trends in developing of minors' punishment legislation. The goal of the conducted research is to study the trends in developing of this sphere in Russian law. The authors studied legislative acts that have been published since the middle of the 18th century. They tried to find the common features at all the stages of Russian law history. As a result, the paper reveals six general trends in developing of minors' punishment legislation. Knowing these trends the legislators can improve Russian law in this respect.

Key words: legislation, legal regulation, minors' punishment, juvenile delinquency, history of state and law, historical review.

The problem of the legal regulation of juvenile delinquency is not new. The scientists in this sphere have been discussing it since the beginning of the nineteenth century. For example, a Russian lawyer Alexander Kistyakovsky published his research devoted to young criminals' punishment in 1878. He wrote, that at that moment two special monographs and many articles in local scientific magazines devoted to this problem were published [1: I]. Nevertheless, Russian law was not perfect in this respect then and it is not perfect now. As two hundred years ago, this area of law still needs to be improved.

The world is changing all the time, and the society is changing, too. That is why we should bring up new ideas in all spheres of human activities, especially in our legislation. However, everybody will agree that before changing something, before determining the future of things and processes, we should learn their background. It is necessary because without knowing our history we can ruin everything good that was built before.

The main goal of the conducted research was to study the trends in developing of minors' punishment legislation. Achieving this goal will help legislators to understand the main directions in developing of juvenile law and make right decisions in the future.

In this research we used the following historical methods: the method of periodization, descriptive method and the method of comparative analysis.

We can find a lot of books like "Domostroy", "Honest mirror of Youth", "The Charter of the Lutsk brotherhood" and so on, which provide the rules of punishing children. However, these books are only masterpieces of literature and their regulations did not influence Russian law. That is why we did not take them into consideration during this analysis. Our focus is only on legal acts.

During this research, six general trends in developing minors' punishment legislation have been detected:

1. The systematization of legislation.
2. The developing of legislation.
3. Defining age of a criminal as an independent criterion.
4. Changing punishment purposes.
5. The main accents on offsetting.

6. Appearance of special institutions.

Let's characterize each of them.

1. The systematization of legislation.

The legislators did not pay attention to the minors until the eighteenth century. We can find only separate notes about them, but there was not any system. There were not any mentions about young criminals before the seventeenth century. A Russian historian of law Vladimirov-Budanov wrote, that despite it, the age was one of the criteria to appoint punishment [2: 321-322]. Russian Code of 1497 may prove this thought. According to one of the articles, minors did not have to take part in judicial duel [3: 41]. Nevertheless, none of these notes about juveniles created a real system.

Then, in 1742 and 1765, two decrees appeared. These acts created a base for the future system of the legal regulation of juvenile delinquency. They determined the age of juveniles to be punished and kinds of punishment allowed to be used. After this period, we observe an active development of the system. For example, in Soviet time, a special part of Criminal Code was devoted to the juvenile delinquency [4: Unit 8].

All these allow us to conclude that legislation of minors' punishment was becoming more systematized and well organized at that time.

2. The developing of legislation.

It is interesting to note, that the first attempts to regulate juvenile delinquency were made to eliminate the gaps in the law system. For example, decree of 1742 was passed only because of the real criminal case, when a little girl killed two of her friends and the judges did not know which rules they could use to make a fair decision [5: 642]. The norms about punishment of minors were placed in remarks and commentaries to the laws.

Then the minors' punishment law was transformed into independent, unique sphere of legislation with its own purposes, methods and regulations. A list of legal acts that appeared after the eighteenth century is very long. For example, decree "About Judging of juvenile criminals" (1833), "Children's shelters Regulation" (1838), law "About infant and minor criminals" (1897), decree "About juvenile cases commissions" (1918) etc.

It means that the number of legal acts devoted to minors' punishment was increasing. Due to this, that sphere of legal regulation was becoming well developed, as it is now.

3. Defining age of a criminal as an independent criterion.

At the beginning of the history of Russian law, the legislators treated crimes committed by young people like those committed by mentally ill.

"New articles about robberies, murders and stealing" published in 1669 had a special notice about young criminals: "if somebody younger than seven years old or mentally disabled one kills another man, he won't be pleaded guilty and won't be punished" [6: 793].

Then, decree of 1742 established the age of criminals as an independent criterion that was not connected with any mental illness. According to this act, young criminals could be punished if they were older than seventeen years old [5: 643].

Nowadays, as in Soviet time, any mental illness is one basis to ease punishment or even cancel it and the age is another one. Today the age of criminal responsibility in Russia is sixteen years old [7: art. 20, art. 87], but for some categories of crimes – fourteen years old [7: art. 20].

4. Changing punishment purposes.

When the first regulations of juvenile delinquency appeared, the main purpose of punishment was just social justice. Nobody thought about the personality of a young criminal, about the conditions of his life. Punishment of that time was violent and had a penal character.

Alexander Kistyakovsky wrote, "...the punishment did not express concerns about young offenders. They were abandoned to their fate and then committed new crimes, which led them to the most severe executions" [1: 4].

In the middle of the nineteenth century, new era of minors' punishments began, at that time new kinds of them appeared. The Regulation of criminal and correctional punishments, published in 1864, introduced detention of juveniles in correctional facilities [8: 47-48]. Thus, the government tried to correct young people's behavior rather than punish them.

In Soviet Union, the main purpose of juvenile punishment was to change their mind for good, make them obey the laws [9: art. 10]. At the beginning of new era of Russian history, legislators tried to cancel all the punishments for minors. Bolsheviks wanted to use only correctional facilities. This approach survived despite its fail. Soviet Criminal Code of 1958 had a regulation that young criminals, who committed crimes of little gravity even if they are eighteen years old, had to undergo only correctional procedures.

The principles of correction of young criminals are used in modern Russian Criminal Code.

5. The main accents on offsetting.

This trend is closely linked with the previous one. Until the middle of the nineteenth century, the government was interested only in punishment of minors. The purposes have been changed, and the focus of interest, has moved, too.

In comparison with the previous centuries, the government is interested in the personality of every young criminal now. It can be seen from the general meaning of the legislation.

Nowadays state authorities do not pay so much attention to social justice. Everybody is sure that social justice is possible in case when a young criminal changes for good.

6. Appearance of special institutions.

At the beginning all minors' cases were considered in common courts. Young criminals served their sentences in prisons and institutions for the elder people. This procedure had its disadvantages.

For example, little criminals learnt criminal wisdom there. A majority of young prisoners were returning to prisons, because they knew only how to kill and steal, but not how to follow the rules. In addition, judges did not know a lot about minors' punishments and could not make a fair decision.

At the beginning of the twentieth century, special juvenile courts were founded [10]. A little bit earlier, the first specialized prisons and shelters were opened, too. These were special, independent institutions only for juveniles.

Unfortunately, all these institutions were closed in Russia after the revolution in 1917 [10]. Nowadays there are special correction facilities for the young criminals again in Russia, but there are not any specialized courts.

To sum up, the mentioned trends are observable at all the stages of Russian law history. Consideration of these trends will help to make predictions about changing legal regulations of juvenile delinquency in the future.

As a result, we can make the following forecasts:

- Evidently, the process of minors' punishment humanization will continue. Laws and enforcement of law practice will become more personally-oriented and will consider all the peculiarities of young criminals.
- All the rules concerning juvenile delinquency maybe transformed into a specific segment of criminal law. We can also predict the appearance of the system of specialized institutions, that will contain not only correctional facilities but special courts, too, as it used to be in Russian Empire;
- Potentially, the system of correctional facilities may reach its purpose and become a real tool for making young criminals law-obedient citizens again.

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