

## PROBLEMS OF MINORS' CRIMINAL PROCEEDINGS IN GERMANY AND RUSSIA

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### Abstract

The article is devoted to the main features of juvenile justice in Germany and Russia. The authors emphasize significant differences in the criminal proceedings of these countries. First, in Germany special courts for minors have been established and are successfully operating for a long time; in Russia, unfortunately, there are no such courts in place yet. Second, Germany has taken the path of re-education of juvenile offenders, while Russia has not yet fully implemented such measures. In Germany, for example, proceedings against minors are regulated by a special act, called Juvenile Justice Act ("Jugendgerichtsgesetz"). The first part of this act formulates two fundamental provisions of the law – the age category subject to special criminal proceedings and the purpose of such proceedings. The purpose of this act is to prevent the reoffending of persons between 14 and 21 years old. At the same time, educational measures constitute the main foundation of the Juvenile Justice. Besides, the present article raises a very important issue of the psychological state of minor offenders. The authors are in favour of replacing criminal prosecution against minors with educational measures in some cases both in Germany and Russia. Such measures as the work of social services in Germany, as well as their interaction with the family of the offender are considered by the authors as a positive trend. Analyzing the juvenile justice in Germany, we can conclude that the doctrine assessed the German legal system in a positive way. Therefore, it seems possible to develop this institution in Russia.

**Keywords:** Criminal proceeding, juvenile justice, minors, offenders.

## 1 INTRODUCCION

Juvenile criminal proceedings are a very controversial legal institution. On the one hand, by establishing norms and rules regulating the relationships between parents and children, the functions of the law enforcement agencies in relation to minors and other social relationships involving minors, the State takes care of future generations, fulfils its social function and even, in some way, its protective function.

On the other hand, there are many gaps in the legislation of different countries, caused by the excessively wide scope of juvenile legislation, because even the laws can contain different types of mistakes.

In this article the authors consider certain trends in the field of juvenile criminal proceedings of such countries as Germany and Russia.

## 2 PARTICULARITIES OF THE LEGAL FRAMEWORK OF JUVENILE CRIMINAL PROCEEDINGS IN GERMANY AND RUSSIA

In German legal literature the complex of special rules governing legal relations involving minors is

commonly referred to as juvenile law. For instance, one of the components of German juvenile law is juvenile criminal procedure, which combines both substantive and procedural regulations.

For quite a long time, discussions on juvenile justice or juvenile law have been conducted in Russia; in particular, the debate focused on the creation, first of all, of special courts for minors. Some statements on this topic continue to appear nowadays. However, so far the proponents of the creation of special courts for minors cannot assert that they have won the debate. The solution of this problem requires a lot of preparatory work. This may include improving legislation on minors as well as training special staff. In particular, in our opinion, judges should not only have a legal background, but also have sufficient knowledge of juvenile psychology.

## **2.1 Specific Legal Framework for Juvenile Criminal Proceedings in Germany**

The main provisions of German juvenile criminal procedure are contained in the Juvenile Justice Act. This Act does not constitute the only source of juvenile criminal procedure law in this country. The relationships involving minors are also governed by the general provisions of German law, but only to the extent that such provisions do not contradict the Juvenile Justice Act or to the extent that the given relationship is not regulated by this Act.

The Basic Law for the Federal Republic of Germany ("Grundgesetz für die Bundesrepublik Deutschland"), adopted on 23 May 1949, defines childcare as the right and the primary duty of the parents, and the control of its implementation as the duty of the State itself (Malakov, 2012, p. 164-245), i.e., this statute enshrines the right of the State to education ("Erziehungsgedanke"). The presence of such norm in the Basic Law demonstrates that the protection of minors is one of the priorities for Germany. Indeed, paragraph 10 of the German Criminal Code ("Strafgesetzbuch"), one of the earliest criminal codes in Europe, which has undergone hundreds of changes since its adoption, refers to the special federal law governing the criminal status of young people and teenagers, namely the Juvenile Justice Act ("Jugendgerichtsgesetz"), entered into force on October 1, 1953.

## **2.2 The Absence of Specific Legal Framework for Juvenile Criminal Proceedings in Russia**

The legislation of the Russian Federation does not contain a separate law that would regulate criminal proceedings involving minors. The main provisions of criminal proceedings against minors in Russia are set out in the Code of Criminal Procedure of the Russian Federation. Chapter 50 of the Code of Criminal Procedure of the Russian Federation is devoted to criminal proceedings involving minors. The Criminal Code of the Russian Federation, Chapter 14, establishes specific requirements for criminal liability of minors and indicates the need to comply with these requirements. This is mostly due to the fact that minors should be held accountable for illegal acts and receive a fair punishment.

One of the principles of criminal liability is the imminence of prosecution of a person who has committed a crime. At the same time, the criminal legislation of the Russian Federation establishes certain grounds under which a person shall be exempt from criminal liability. This institution of criminal law should be regarded as a special policy pursued by the state to individualize criminal responsibility, consistent with the principle of humanism in modern society. By establishing appropriate grounds for exemption from criminal liability in the Criminal Code of the Russian Federation, the State thus differentiates criminal liability by taking into account the circumstances of the committed offence, the identity of the offender and other circumstances.

## **3 EDUCATIONAL MEASURES AS A WAY TO IMPROVE THE LEGAL FRAMEWORK FOR JUVENILE CRIMINAL PROCEEDINGS IN RUSSIA BASED ON THE GERMAN MODEL**

In Germany, as opposed to Russian legislation, educational measures are given a special place in the juvenile law. Educational measures include, for example, establishing different kinds of injunctions. Injunctions are the requirements and prohibitions that affect the lifestyle of a minor and thus contribute to his education. Unacceptable requirements cannot be applied to the minor's lifestyle. The judge may, inter alia, impose the following obligations on a minor:

1. To follow the regulations that apply to the place of residence;
2. Live in a family or family home;
3. To have a place of study or work;

4. To perform certain types of work;
5. To remain under the custody and supervision of a certain person (officially appointed assistant);
6. To take a social training course;
7. To strive to achieve reconciliation with the victims;
8. To avoid contact with certain persons or visits to bars or entertainment facilities;
9. To take a mandatory course of traffic regulations.

The judge may, with the consent of the officially appointed assistant and of the legal representative, order the minor to receive remedial treatment from a specialist or in a specialized rehabilitation center.

Imprisonment is the strictest criminal sanction in German juvenile law. This sanction is only applied if it is not possible to influence the person by other means, if there are not enough measures regulating the education or punishment of the offender.

The work of social services as well as the interaction of these services with the family of the offender is, in our opinion, a positive aspect of German criminal procedure. It should be noted that the development of this trend in Russia should become a priority.

#### **4 CONCLUSION**

Thus, our analysis of the juvenile criminal proceedings in Germany and Russia, in particular of the aforementioned provisions, permits to conclude that it has the following features, that have been fairly mentioned in the doctrine.

First, the institute of juvenile criminal proceedings focuses on social education, concern for generations and ongoing socialization rather than revenge and punishment.

Second, the German legislative authorities have established special rules exclusively regulating the behaviour and procedure with regard to minors, have identified unique methods and compulsory educational measures.

Third, the judiciary is complemented by special authorities specializing exclusively in the field of juvenile justice, which allows to approach all problems in the most professional and comprehensive manner.

Fourth, special supervisory and monitoring authorities are created, and judges receive special supervisory and social functions (including compulsory education) aimed at the integration (or reintegration) of an individual into society.

Fifth, the German institute of juvenile justice is one of the first and most advanced in the world in its continuous development and improvement.

Finally, further improvements should be made to Russian legislation on criminal proceedings involving minors.

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