Restorative Justice in the Russian Federation

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Abstract: The article reveals the possibilities of restorative justice in juvenile criminal cases. A brief survey of model juvenile courts in the Russian Federation is also made. The distinctive feature of these courts is based on the active use of elements of restorative justice, in particular mediation procedures aimed at concluding a mutually beneficial agreement between the parties (i.e. the victim and the juvenile offender). As a result of studying the criminal procedure legislation of some states of America, it was concluded that the provisions regulating the possibility of participation in restorative programs should be adopted and the restorative procedures should be regulated in the Russian criminal process.

Keywords: mediation, restorative justice, juvenile technologies, restorative programs.

1. Introduction

The application of restorative justice programs, including in the criminal process, is recommended by a number of international legal norms, especially in resolution of criminal cases against minors. In the Russian Federation attitude to juvenile justice is ambiguous. Restorative justice considers crime not only as a violation of the law, but primarily as a violation of the victim rights, and also that the crime was committed not so much against public order and the State, as against person. Restorative justice aims not only at punishing the offender and damage compensation caused to the crime victim, but also, to a certain extent, at the offender correction. It is generally recognized that the deprivation of liberty of the accused is not correct, and in many cases personality defects aggravates. Restorative justice allows to avoid such mistakes.

This article is devoted to the analyses of restorative justice paradigm, as well as the current practice of restorative justice programs in countries of Anglo-Saxon law, to identify positive experience and justify the proposals for the consolidation of restorative justice programs in criminal procedure of the Russian Federation. In the results was made the conclusion about the necessity of legislative consolidation of the possibility of the of restorative justice programs use in criminal procedure of the Russian Federation.
2. Submission

Currently there is a worldwide trend of humanization of criminal legislation and practice of its application. Western countries tend to move away from punitive, repressive criminal proceedings. The main direction of such States is restorative justice.

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Mediation in criminal proceedings is regulated by law in some states of America. In North Carolina there is program for mediation in district criminal court. This program provides mediation in the court and works as an alternative to judicial investigation, but not the criminal process as a whole. In North Carolina such program is enshrined in the norms of North Carolina General Statutes, and the Supreme court adopted Supreme Court Rules to enforce these norms. In addition to the above documents, in this state there are "Rules implementing mediation in matters pending in district criminal court." In accordance with these rules the court guided by inner conviction and by external factors may recommend to the parties to participate in this program.

After the case materials with the indictment document are received by the court, the district attorney (and sometimes the judge) shall inform the parties about the possibility of participation in the program of mediation. If the victim and the offender agree to participate in this program, mediation can be held directly at the courthouse. If the case involves several defendants or victims, at the court discretion, these persons can be united to participate in mediation.

The ideal result of mediation shall be mediated agreement which contains all the terms agreed upon by the parties. An obligatory condition is the written form of the agreement and signatures of both parties. In North Carolina this agreement enter into force as soon as it is signed by the parties. In Idaho, the mediated agreement was treated more seriously, and for entry into force it must be approved by the court (18.1(8)/12.1(8)).

For today, Victim-Offender Mediation program has spread beyond America and now successfully working in Canada, England and New Zealand and in other countries. Typically, the program is carried out by private non-profit or public organization, which work closely with local court. [3]

Nowadays there are alternatives to criminal prosecution in General and alternatives to judicial stages in criminal proceedings for juvenile in State of Illinois. The state's attorney determines the list of restorative justice programmes; he controls the Register of qualified mediators. The restorative justice programme itself is performed with strict confidentiality compliance. Ideally the mediation program must result in agreement with the offender, which contains the decision on prescribed conduct of juvenile and the term within which the conditions set by the agreement are to be met. Failure to comply with the agreement by the juvenile will be the ground for criminal proceedings resumption.

In the United States restorative justice shows good results. Not accidentally the application of restorative justice programs, including in the criminal process, is recommended by a number of international legal norms, especially in resolution of criminal cases against minors. In the Russian Federation attitude to juvenile justice is ambiguous.

The restorative justice programs have already been used in the Russian criminal process without violating of the Criminal Procedure Code of the Russian Federation norms and focusing on the norms of international law.
3. Important Information

In the Russian Federation in 2004 in Taganrog city in the Rostov region was created the first "model juvenile court". Model juvenile courts may be located in a separate building and can occupy space in the building of the city (or district) court. A distinctive feature of these vessels is the presence of separate premises for work of the psychologist and for the mediation – "mediation room". The courtroom in such courts are not equipped with bars, but equipped with special furniture such as semicircular table, behind which the participants including the judge sit in the process.

The special features of the emerging model of juvenile system in the Rostov region include the active use of the elements of restorative justice, which consists of the application of conciliatory procedures carried out with the mutual consent of the victim and the juvenile offender. [4] The juvenile technologies are also actively used.

The significant reduction in recidivism of juveniles shows the effectiveness of juvenile technologies.

The juvenile technologies at the regional level create conditions for the organization of truly effective juvenile justice system in the Russian Federation. In order to improve the efficiency and quality of juvenile justice it is necessary to adopt measures to ensure uniformity of judicial practice of juvenile technologies application, to develop mechanisms for cooperation of courts with the authorities in the system of neglect and minors offenses prevention, and legislation in this area..."

The juvenile technologies is a special organization of justice for minors in conflict with the criminal law, based on a comprehensive awareness of minors age features, on application of special rehabilitation programs (methods, techniques) eliminating further possible illegal behavior of minors.

Conducting conciliation restorative justice procedures, as well as private court order (individual juvenile rehabilitation plan is issued in this way in Russia) are the elements of juvenile technologies.

In the case of the restorative justice programmes use in the framework of juvenile technologies, the pre-trial stages remain unchanged. After receiving information about the crime and its verification, the criminal case are started, if there are reason and grounds for it. Then preliminary investigation is conducted, and criminal case is directed to trial.

But the normal course of proceedings can be changed in the court. Due to the absence of legislative consolidation of restorative programs (which are an integral part of juvenile technologies) the court has no clear algorithm of these practices applying to minors, therefore, every court has its traditional procedure features. But generally the in application practice of restorative programs (as part of juvenile technologies) can be revealed the certain common sequence of actions.

As a rule, in courts where juvenile technologies are applied there are created position of judges assistant with functions of the social worker (or with the functions of the social teacher) who works together with judges to deal exclusively the cases of minors.

When criminal case is sent to the court to court the assistants form the "The card of social-psychological support", which lists all available data about the minors identity. If there is no such a position, the court charges to compile a report on the identity or card of social support to any prevention system specialist (usually a psychologist or a social worker of social security).

The map is entered with the data which were got in the course of conversation with a teenager, his parents, the identity information obtained from the Minors Commission, the school, neighbors, from in the test conducted with minors.[2, p.83]

The card or report on identity is not proof in accordance with the Criminal Procedure Code of the Russian Federation, but contained information is examined by the court in the proceedings. Often the drafters of this document are involved to interrogation as a specialist. Thus, the information contained in the card, acquires probative value, and the card itself (or report) is attached to the case materials.
Then the judge assistant directs the necessary materials (application for mediation, card of social support, etc.) in the Municipal service of reconciliation and the Commission of Minors and Protection of their Rights. Simultaneously, the assistant sends information letters to the victim and the accused or their legal representatives. It is reported in this letter that the court received a criminal case, is cooperating with the mediation service (Mediation Commission, etc.). This is done in order to help the parties to come to a compensation of the caused damage agreement. The parties have to be notified in the letter that the employees of the mediation service offer to host the meeting of the parties. In some regions such letter sent to the parties signed by the Chairman of the district court.

If the parties agree on conciliation meeting, mediation service officer (leading officer) analyzes all available information and chooses the type of mediation program. Then there are held the preliminary meetings, one of which should ideally end with the agreement conclusion. Then, the leading officer makes a report on the results of the mediation program and sends it to the court and to the Commission of Minors and Protection of their Rights. The court must receive this report no later than 3 days before trial.[1, 10]

Describing the practice of restorative programs in the Russian criminal process, we consider the ideal model where the parties agree to the mediation meeting. But it happens not always. It should be noted that from time to time, the mediator is faced with such a problem, for example, when the offender sincerely wants to participate in mediation, to make amends for the damage and reconcile with the victim, that is not necessarily motivated by a desire to avoid criminal liability, but the victim categorically refuses to participate in mediation.

No matter who conducts the conciliation meeting, in any case all the records gets to the judge. It is worth noting that even if the parties have reconciled and the accused compensated the damages, the trial can not be avoided. Thus, it does not violate the principle of justice only by the court.

According to existing practice, the judgment may include an individual rehabilitation plan of definite minor (there is similarity with the New Zealand family conferences, which resulted in a mandatory component of the offender plan of action to remedy approved by the court), which is adopted in the form of a private court order (part 4 of Article 29 of the Criminal Procedure Code of the Russian Federation,) as a basis of individual preventive work with juvenile authorities and services of prevention of child neglect and minors offenses (individual program of rehabilitation of minors in accordance with article 6 of the Federal Law from June 24, 1999 N 120-FZ "Bases of Prevention System of Neglect and Minors Offenses ").

Thus, the restorative justice programs of juvenile organically integrated into the American criminal proceedings. Restorative justice shows good results. This positive experience should be replicated. Restorative justice programmes should be regulated in the criminal procedure code of the Russian Federation.

4. References


