

Placement in closed-type special educational institutions (CTSEI) as a complex legal institution

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Abstract. The purpose of this study is to examine the institute of coercive measures of educational influence from the perspective of the possibility of combining the criminal-law regulation and correctional influence exercised within the framework of other branches of law. The methodological basis is a longitudinal study of persons released from criminal punishment using compulsory measures of educational influence, the article analyzes the peculiarities of juvenile delinquency of a special category. The study is based on a full sample of juveniles held in closed-type special educational institutions in the Siberian Federal District (300 sentences in total) and on a sample of 100 sentences against persons subjected to the measures provided for by criminal law. The result of the study is that the regulation of coercive measures of educational influence by criminal law alone is clearly not enough; the disciplinary process requires more soft norms that would reflect the age characteristics of juveniles. The novelty of the study lies in the reasonable conclusion that such norms are contained in the administrative, civil, and family branches of law, which are involved in the subsidiary regulation of legal relations arising as a result of the release of a minor with the use of coercive measures of educational influence.

Keywords: child protection, family law, right to education, child welfare

1 Introduction

Adolescents who conflict with the law can often be corrected by other methods than adults due to their age. However, the repressive nature of the criminal law does not always have the possibility of applying variable methods of correction. Consequently, there must be comprehensive institutions to address this problem in Russian legal realities, which can be compared to the child protection system in the framework of juvenile justice abroad.

Consideration of any institute of criminal law as a complex should consider the possibility of subsidiary legal regulation of legal relations, which are the subject of criminal law, by other branches. The institution of compulsory measures of educational influence (in particular, the placement of a minor in a CTSEI), which is applied to minors when they are released from criminal punishment, can also be attributed to complex institutions of criminal law. When placing in CTSEI under Part 2 of Article 92 of the Criminal Code of

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the Russian Federation (CC RF), separate fragments of existing branches of law participate in legal regulation, which forms a qualitatively new legal space [1].

This is due to the fact that genetically the grounds for compulsory measures of educational influence (hereinafter referred to as CMEI), their application and the appointment belong to criminal law, and the procedure for implementation to administrative law, so this institution has a heterogeneous character. Although it has social integrity, due to the specifics of the category of persons subjected to these measures and the unity of tasks that face the norms of various industries involved in regulation [2], such tasks, in our case, are correction and prevention (i.e., reducing recidivism – concept of recidivism in the criminological sense.).

Criminal law methods are not always effective in the fight against crime. Recent studies strongly suggest that a significant reduction in the prevalence of delinquency among young people, observed since the early 1990s, is associated with decreased destructive communication (exclusion from the criminal environment) and a decrease in alcohol consumption [3]. The placement of minors in CTSEI meets both of these criteria, since the teenager is removed from the family, his negative social ties are severed.

Effective regulation of the norm is impossible without taking into account the age characteristics of minors. For example, early puberty increases the risk of juvenile delinquency [4]. We believe that biological factors, including puberty, should still be evaluated in conjunction with social factors, such as changes in body image perception, decreased parental supervision, decreased importance of parental authority, and the increased importance of communication with peers. Thus, psychosocial, family, and group changes accompanying sexual development are of great importance as determinants of adolescent crime. A similar opinion is shared by Bryanna Fox [5]. When studying the sentences against persons held in the CTSEI in the Siberian Federal District, we found that biological factors can be assessed to a greater extent through the susceptibility of groups of minors to a particular type of crime. Individual crime rates may increase or decrease depending on various environmental factors. The variability of juvenile delinquency and their age characteristics indicate the insufficiency of criminal law regulation.

2 Methods

Using longitudinal studies of persons released from criminal punishment with CMEI, the authors studied 400 sentences from 2014 to 2020. Based on them and official statistics on juvenile delinquency in <http://www.cdep.ru> and <http://crimestat.ru>, conclusions were drawn about the structural and essential features of juvenile delinquency, to which the CMEI was applied. The study presented in this paper is based on a continuous sample of minors held in the CTSEI of the Siberian Federal District (a total of 300 sentences), as well as on a sample of 100 sentences against persons who were subjected to the measures provided for in Part 1 of Article 92 of the CC RF.

3 Results

Placement in CTSEI is not only a type of exemption from criminal punishment but also an institution created specifically for a particular category of persons – minors – and performed by special educational institutions. Thus, the rules governing the educational process, particularly the law “On education in the Russian Federation” of 29.12.2012 No. 273-FZ, should be involved in applying the specified CMEI. This is evidenced by our research; the share of students of persons among minors who are released from punishment is higher than those who work (Table 1).

Table 1 The share of adolescent students among released from punishment

Research years	2014	2015	2016	2017	2018	2019	2020
in %	78.8%	75.4%	76.2%	79.8%	81.1%	80.2%	84.7%

While education, vocational training, and employment are among the critical pathways that practitioners should consider to ensure that children successfully transition from care to society [6], the environment to which the adolescent returns must also be taken into account. We believe that the implementation of the CMEI should also be associated with the impact on the family of a minor to provide him with access to education and control of educational activities after the end of the application of state measures. In this respect, the application of the CMEI is closely tied to the norms of family law.

Among the persons to whom the studied CMEI was applied, the share of those who committed a crime in a state of intoxication (drug, alcohol, toxic) is traditionally high (Table 2).

Table 2 Share of juveniles

Research years	2014	2015	2016	2017	2018	2019	2020
in %	15.2%	15.0%	15.0%	13.6%	12.6%	11.8%	13.6%

Adolescents who have come into conflict with the law traditionally show a higher level of dependence associated with the use of psychoactive substances. In the legal literature, the use of psychoactive substances is often considered in relation to mental disorders and the presence of uncontrolled impulsive behavior, taking into account childhood mental injuries [7].

Thus, the restriction of CMEI only within the framework of criminal law, without considering the need for medical care, psychological assistance, and solving social problems, significantly reduces the effectiveness of this institution.

4 Discussion

As our research shows, the most important social role for minors (including those who committed a crime) is their status as students. It is “correctional education” (the kind of education that teenagers receive while in isolation – including when placed in CTSEI in Russia) that allows instilling a positive attitude to school, education, and social norms when minors return after graduation from a special educational institution. However, it should be noted that studies show the dependence of the microclimate in the school and the indicators of successful re-socialization of a juvenile delinquent [8].

School attendance and work are invariably associated with positive outcomes for juvenile delinquents returning to society, and they are the means of correction and the primary tool of rehabilitation. Assigned to the CTSEI, in addition to the duty of training, the functions of re-socialization, and correction of minors, the legislator attaches a slightly different meaning to the educational function. To implement the above-mentioned orientation of the CTSEI, their legal regulation is carried out not only at the level of the Russian Federation but also at the level of its subjects.

Another significant factor influencing anti-social behavior in adolescents is the presence of mental abnormalities [9]. Our research has also shown that there are both healthy adolescents and those with mental abnormalities among the pupils at CTSEI (the analogue of safe residential institutions). In total, in 2020, the share of such minors among the

studied students of the CTSEI of the Siberian Federal District was 16.7%. The largest share (75%) among such persons falls on minors with a socialized behavior disorder. Therefore, it is not possible to talk about the legal basis for the implementation of CMEI without considering the legislation, medical, psychological, and psychiatric care. These legislative acts allow to properly organize the process of re-socialization of persons with special needs.

The level of recidivism among individuals, which is significantly different from that observed in a similar category after serving a real sentence, as well as other types of release from criminal punishment, designed without taking into account the age characteristics of adolescents, allows speaking about the CMEI as a complex institution [10].

Thus, during all the years of the study, the recidivism rate after placement in the CTSEI ranged from 9 to 11%, while after serving the most popular measure – probation – it sometimes reached 69-70%. A similar level of relapse is recorded in the studies of other scientists (e.g., [11-13]). According to some authors, the reduction of recidivism is seen as the main goal of applying measures against young offenders [14]. The author points out the actual dependence of the continuation of antisocial behavior in adult life when this behavior began in early childhood. The solution to this problem is seen in the fact that the provision of psychological assistance, hospital treatment, and training of adolescents is adapted to the specific risks and needs of minors. In determining the risk of recidivism, factors that increase the social danger of an individual are also important in predicting crime, with the presence of a criminal record being one of the most influential components [15]. It is worth noting that individuals surrounded by a variety of criminogenic factors, including in several areas (e.g., attitudes towards themselves, with peers, or in the family) are more likely to engage in antisocial behavior, as shown by a 2-year analysis of two relevant groups: the group of criminals with fewer factors observed in certain areas and the above-mentioned group of adolescents with polycriminogenic development factors [14].

5 Conclusion

CMEI assigned to minors upon release from criminal punishment is a complex legal phenomenon. Having all the features of a criminal law institution, particularly the consolidation of the norm and the grounds for its application in the CC RF, the process of implementing the norm itself lies outside the framework of criminal law. The peculiarity of CMEI is that, despite the criminal-legal nature of the grounds for its application, the measures themselves do not act as material carriers of criminal responsibility since they are devoid of a punitive nature, do not express censure, and are aimed at the re-socialization of minors. When applying CMEI, society and the state refuse to punish, taking into account any factors, such as minors and the possibility of rapid correction; therefore, the norms of other industries are included in implementing CMEI. Compulsory measures of educational influence in their content are not legal restrictions but expand the state's ability to integrate minors who have committed crimes into society.

The logical question arises as to how the implementation of coercive measures of educational influence is regulated since this is evident outside the scope of criminal law regulation. Therefore, the implementation of CMEI, in particular, placement in CTSEI, is not possible without the implementation of the norms of the family, administrative, and civil legislation.

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