

On the systematic construction of special correctional education for juveniles who have committed crimes

Zhenyi Si¹

School of Law, Guilin University of Electronic Technology, Guilin, China

Abstract: For the education and correction of juvenile delinquents, the provisions in the Law on the Prevention of Juvenile Delinquency are too broad, lack correct theoretical guidance and specific rule design, resulting in conflicts between administrative power and judicial power in special correctional education in practice, infringing on the legitimate rights and interests of minors. In terms of decision-making procedures, it is clarified that the people's courts are the decision-making organs specializing in correctional education; in the relief procedures, the obligation of participating organs to inform is strictly implemented, and a hearing system is added to protect minors' right to participate; and two-way reversal mechanisms between different handling measures are set up in enforcement procedures. the obligation to inform the participating organs is strictly enforced, and the hearing system is added to protect minors' right to participate; and in the enforcement procedures, a two-way reversal mechanism between different punishment measures is set up.

1. Introduction

For the education and correction of juvenile delinquents, the provisions in the Law on the Prevention of Juvenile Delinquency are too broad, lack correct theoretical guidance and specific rule design, resulting in conflicts between administrative power and judicial power in special correctional education in practice, infringing on the legitimate rights and interests of minors. In terms of decision-making procedures, it is clarified that the people's courts are the decision-making organs specializing in correctional education; in the relief procedures, and a hearing system is added to protect minors' right to participate.

2. Wrongdoers specialize in correcting the dilemma of education

In the face of the frequent occurrence of vicious juvenile criminal cases, which constantly impact the public conscience and arouse heated public opinion, the Criminal Law Amendment (11) abolished the custody and education system and replaced it with a special correctional education system as a non-criminal education and correction measure applicable to juveniles who have committed crimes[1]. Article 45 of the Law of the People's Republic of China stipulates the subject and procedure for making decisions on special correctional education, thus forming a dual regulation model of "punishment" and "protective punishment" in the treatment of juvenile delinquents.

2.1. Ambiguity of internal rules

Article 45 of the Law on the Prevention of Juvenile Delinquency stipulates that "with the assessment and consent of the Special Education Steering Committee, the administrative department of education in conjunction with the public security organ may decide to provide special correctional education". In the process of education and correction, minors have strong plasticity so that minors' attitude of repentance, personal danger, possibility of reoffending and other factors are constantly changing, and the types of education and correction required at different stages are different[2]. General specialized education and special correctional education have their own emphasis on compulsory, punitive, and educational aspects, and the application of special correctional education alone is prone to excessive punishment, and the application of special education alone may punish improper crimes. Therefore, only by setting up a dynamic and changeable cohesion mechanism between different educational and correctional measures can the lawful rights and interests of juvenile offenders be effectively protected, and the goal of "education first, punishment secondary" can be achieved.

2.2. External program confusion

Judging from the literal meaning of article 45 of the Law on the Prevention of Juvenile Delinquency, the special education steering committee only has the right to

¹ 18317029680@163.com

evaluate whether special correctional education is applicable, while the decision-making power is exercised jointly by the education administrative department and the public security organ[3]. One of the reasons for the abolition of the custody and re-education system is that it is completely dominated by the public security organs in terms of procedures, lacks a neutral judicial judgment, and makes it difficult to ensure the legitimate rights and interests of juveniles who have committed crimes, and various procedures have become the product of formalism. If we only understand it from a formal point of view, the current regulations on the specialized correctional education system seem to continue the operational logic of the administrativeization of custody and education, but only change the leading organ from the public security organ to the education administrative department, and do not fundamentally eliminate the problems existing in the custody and education system. Therefore, in the subsequent construction of the system, it is necessary to clarify the decision-making organs of specialized correctional education and the respective roles of each participating organ in the decision-making process, and take the establishment of the Specialized Education Steering Committee as an opportunity to establish a judicialized decision-making procedure for specialized correctional education.

However, according to the provisions of articles 43, 44 and 45 of the "Law on the Prevention of Juvenile Delinquency", the decision-making procedures and enforcement venues of the two are identical.

3. Wrongdoers specialize in correcting the causes of educational dilemmas

3.1. Unclear distinction between similar measures

The ambiguity of the internal rules of the education and correction system for delinquent minors is mainly reflected in the unclear boundary and nature of the general specialized education and special correctional education and the original custody and education system[4]. At present, the academic and practical circles have not yet formed a clear understanding of the nature and boundary between specialized correctional education and ordinary specialized education, because the similar terminology used by the two at the legislative level does not reflect the essential characteristics of different systems, the difference between specialized education and special correctional education is only two words, and the word "correction" cannot reflect the difference in nature between the two.

3.2. Lack of theoretical guidance

The deep cause of the confusion of the external procedures of juveniles is the lack of correct theoretical guidance. There is also a problem of unclear norms in criminal proceedings, but this is due to the inherent limitation of the abstraction of legal texts, and the lack of norms can be

filled through legal interpretation through the guidance of basic principles. However, the Law on the Prevention of Juvenile Delinquency does not formulate the corresponding basic principles for special education and special correctional education for juvenile delinquents, and because of the gap between departmental laws and the special nature of juvenile justice, it cannot be directly nested in the basic principles of the Criminal Procedure Law. Based on this, it is necessary to formulate special principles for the education and correction of juveniles who have committed crimes, so as to provide theoretical guidance for subsequent education and correction practice.

3.3. Lack of relevant supporting procedures

Whether it is general specialized education as a means of administrative education or special correctional education that can restrict personal freedom, a complete procedural structure and necessary institutional constraints are required, of course, the improvement of this procedure needs to be based on clarifying special education and special correctional education. The confusion and roughness of the relief channels are also manifestations of the incomplete structure of the program[5]. For juveniles who have committed crimes undergoing specialized education and specialized correctional education, the construction of remedial channels such as litigation, reconsideration, and appeals is a protection of rights that cannot be ignored, and it is also an indispensable procedural oversight for the reasonableness of educational corrections decisions.

4. The system of special corrections and education for juveniles who have committed crimes has been improved

4.1. The theoretical basis of specialized correctional education

4.1.1 Formulate basic principles for education and correction.

The basic principle is the fundamental guarantee for handling problems in the process of carrying out special education and conducting special correctional education, and it is also the fundamental guidance that specialized schools need to follow. With the principle of maximizing the interests of minors as the core, combined with the principles of classification and grading, judicial supervision, etc., to fill the gap in the current basic theory in the field of education and correction of juvenile delinquents.

Both the principles of juvenile justice in national law and the Convention on the Rights of the Child, which China has signed, emphasize that juvenile delinquency cases should be dealt with the best interests of minors as a priority, which is the basic requirement of restorative juvenile justice.

At present, the decision-making procedures for education and correction under the Law on the Prevention of Juvenile Delinquency do not fully protect the rights of minors, and restrict minors' right to participate in specialized correctional education that has the attribute of restricting personal freedom[6]. Based on the immature physical and mental condition of minors and the theory of social responsibility, minors should have more litigation rights. At present, however, the right of participation of delinquent minors in the process of making decisions on correctional education is even less than that of adult defendants in criminal proceedings. In addition, in the subsequent construction of specialized schools, the principle of maximizing the interests of minors should be used as a guide, and the protection of the rights of juveniles who have committed crimes should be detailed in the detailed rules for running schools.

4.1.2 The principle of judicial supervision.

Judicial supervision is a guarantee principle for the exercise of the discretion of the Steering Committee for Special Education and the supervision of the educational and correctional work carried out by specialized schools. Compared with criminal punishment and administrative punishment, special correctional education is more likely to infringe on the rights and interests of minors due to the lack of a clear period, and the implementation of special correctional education needs to be evaluated by the special education steering committee before making a decision, whether it is the decision-making power of the education administrative department or the evaluation power of the special education steering committee, which needs to be restricted through judicial supervision. The previously abolished custody and re-education system has been widely criticized for its lack of participation in a neutral judiciary, and the accuracy of the judiciary's determination of facts and application of law is indispensable for the education administration and public security organs to make reasonable decisions.

4.2.The judicial nature of specialized correctional education

Behind the many difficulties faced by the education and correction of juvenile delinquents, the deep-seated reason is confusion about the nature of specialized education and special correctional education. Although some scholars pay attention to the attribute value of specialized correctional education and propose "the unity of justice and education", it does not solve the conflict between different attributes.

The judicial nature of specialized correctional education is different from the administrative nature of specialized education. From the legislative level, the special correctional education system is not a new one, but a reform and improvement on the basis of the original custody and education system, which naturally inherits the institutional status of the custody and education system, and is one of the non-criminal judicial measures. In addition, from a practical point of view, the judicial nature

of special correctional education is more conducive to supervising the rationality of decisions and the legitimacy of the means used in the implementation process, and also provides a theoretical basis for the intervention of judicial organs such as people's procuratorates and people's courts[7]. Clarifying the judicial nature of specialized correctional education is conducive to determining the decision-making organ for the application of specialized correctional education, and also helps to programmatically guarantee the right to participate of juveniles who have committed crimes and their guardians.

5.Improve the procedures for special correctional education

5.1.Decide on the procedure

The difference in the nature of specialized education and special correctional education determines the difference in the decision-making procedures and responsible subjects of the two, otherwise it will inevitably lead to a conflict between administrative power and judicial power. Proceeding from the interpretation of the context, the word "together" indicates that the education administrative department is the leader, the public security organ is the participant, and the entire decision-making process should be led by the education administrative department.

Although specialized correctional education is carried out in specialized schools, "judiciality" is its essential attribute, and the decision on specialized correctional education cannot be separated from the participation of judicial organs. According to Article 37 of the Constitution of the People's Republic of China, personal freedom is a basic right of citizens, and restrictions on personal freedom need to be approved or decided by the people's procuratorate or decided by the people's court. Obviously, the people's courts, as neutral adjudication organs, as decision-making organs specializing in correctional education, are more conducive to protecting the rights and interests of juveniles who have committed crimes.

In the early stage of investigation, the public security organs are to take the lead, and after the investigation is completed, the relevant materials are transferred to the special education steering committee for assessment, and cases that qualify for special education are handed over to the administrative departments of education for decision according to the degree of crime, and cases that qualify for special correctional education are handed over to the people's courts for decision, and the procuratorial organs participate in and supervise the entire process, and if there is a situation that harms the lawful rights and interests of minors or illegally performs their duties, the procuratorial organs shall promptly submit corrective opinions. As a result, a decision-making mechanism for education and corrections between public security organs, procuratorial organs, people's courts, and special education steering committees has been formed.

5.2. Relief Procedures

Article 49 of the Law on the Prevention of Juvenile Delinquency stipulates that those who are dissatisfied with education and corrections may file an administrative reconsideration or administrative lawsuit, which is an *ex post facto* relief after the decision on education and correction has been made, and there is no procedure for remedy in the event of special correctional education.

On the one hand, all participating organs shall earnestly perform their obligation to inform. The content of the notification includes, but is not limited to, information on what disciplinary measures may be applied to them, what legal consequences the measures will entail, and what rights they enjoy throughout the proceedings. Due to minors' lack of cognitive ability and immature physical and mental development, a system for the presence of appropriate adults shall be introduced when performing the obligation to inform to help minors express their opinions and protect their rights.

On the other hand, the participation of juvenile offenders should be increased, and hearing-based procedures should be set up for decision-making participation in specialized correctional education decisions[8]. The establishment of hearing procedures is conducive to the people's courts and specialized education steering committees directly hearing the opinions of all parties, and at the same time fully protecting the right of participation of juveniles who have committed crimes and their guardians, facilitating minors and their guardians to directly express their opinions to the decision-making organs, and facilitating the decision-making organs to explain the law and reasoning to the minors and their guardians.

5.3. Execute the procedure

Due the lack of a circulation mechanism between different measures for education and corrections, the education and correction work of juvenile offenders has always faced the dual dilemma of "one punishment is given" and "one is released". Because minors are highly malleable, and in the course of education and corrections, their mental development, personal dangerousness, and remorse attitudes are constantly changing, and the isolated application of a certain correctional measure is not conducive to the return of minors to society, so a circulation mechanism between different measures should be established. For juveniles who are initially physically more dangerous in conflict with the law, when their physical dangerousness is reduced to the level of a delinquent minor after receiving criminal or non-criminal punishment measures, the means of education and corrections shall be promptly adjusted, from criminal punishment to specialized corrections education, and from specialized corrections education to ordinary specialized education. When the correctional methods of specialized education are insufficient to educate and rehabilitate minors, they are to be transferred back to specialized correctional education or even reinstated to criminal punishment through legal procedures. Therefore, a two-

way circulation mechanism for education and correction should be established.

6. Conclusion

As a non-criminal punishment measure, special correctional education takes education to save juveniles who have committed crimes as the fundamental goal, and ultimately helps juveniles who have committed crimes to return to society, and in the whole process, it is necessary to play a role in education and punishment, and also pay attention to protecting the legitimate rights and interests of minors. It can be seen from the two newly revised laws on the protection of minors that China attaches great importance to the protection of the rights of minors, and I believe that after unremitting study and exploration, a perfect special correctional education system will eventually be formulated.

References

1. Claire mdiarimid.(2013)an age of complexity:children and criminal responsibility in law.youth justice.
2. Wu,Y.(2022) Study on graded intervention mechanism of delinquent minors. *Crime study*,05:23-34.
3. Martha grace Duncan.(2002)So young and untender:Remorseless children and the expectation of the law.*Columbia law review*,06:1491-1493.
4. Liu,Z.(2021) Reflection and improvement on the treatment of delinquent minors under the misdemeanor criminal policy.*Journal of Henan University (Social Science Edition)*,05:36-40.
5. Gordon Bazemore,(1996)Three paradigms for juvenile justice,In burt galaway and joe Hudson(eds.),*Restorative justice:international perspectives*,Monsey,NY:criminal jusrice press.
6. Zhou,H.(2022) Construction of graded intervention mechanism of juvenile delinquency behavior in our country. *Research on juvenile delinquency*,02:107-118.
7. Liu,Y.(2021) New development of juvenile criminal judicial protection towards multi-dimensional concept and system innovation. *Yunnan social sciences*,01:82.
8. Gao,Y.(2014) The reform of American juvenile Court and the control of juvenile delinquency. *Hebei Journal of Law*,32(12):149-160.