Problems of Implementing Restorative Mediation in Criminal Cases Involving Minors (Based on Materials from the Arkhangelsk Region)

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Abstract. The Arkhangelsk region is one of the entities in which rehabilitation programs in criminal cases involving juvenile crimes are implemented. An analysis of static data reflecting the conduct of conciliation procedures indicates a tendency towards a reduction in recovery programs that has been emerging since 2018, due to a departmental change in practice that focuses on the termination of criminal cases against minors with the use of coercive educational measures. The expansion of the practice of ending criminal prosecution in connection with the use of compulsory educational measures by reducing the implementation of rehabilitation technologies has led to a change in the quality structure of juvenile delinquency. The decrease in the number of juvenile repeat crimes that has been outlined since 2016 has given way to an increase in 2018. At the same time, the proportion of repeat crime in the application of conciliation procedures is 5.6%, and in the case of coercive educational measures 7.8%. The results of a survey of law enforcement officers (judges, investigators, investigators) indicate a diametrically opposite attitude to the introduction of mediation in criminal proceedings involving minors. Investigators and interrogators do not consider restorative technologies as a promising direction in the development of criminal justice. Judges, focusing on the fact that the use of restorative technologies contributes to redress, reduce conflict between the victim and the guilty, believe that mediation has significant preventive potential and, given the circumstances of a completely crime and the identity of the perpetrator, can be used not only in criminal cases of crimes minor and medium gravity crimes (as enshrined in the criminal law), but also for serious crimes.

Introduction

The presence of juvenile delinquency at all times served as an alarming sign for society, revealing the problem of the inability to provide the necessary conditions for the harmonious and comprehensive development of a young person. Combating juvenile delinquency is the most important task at the stage of preventive measures and the stage of ensuring response to a perfect tort, and for minors, the priority is not a punitive responsibility function, but an educational one.

In recent years, a number of strategic documents have been adopted in the Russian Federation that have defined a wide range of tasks—from neutralizing the criminal activity of minors, to improving the system for preventing crimes committed by persons under the age of eighteen. Among them are the Decree of the President of the Russian Federation dated May 29, 2017 No. 240 “On the Announcement of the Decade of a Childhood in the Russian Federation”, the Concept for the Development of the Prevention of Neglect and Juvenile Delinquency System for the Period until 2020, the Information Security Concept, the Fundamentals of the State Youth Policy of the Russian
Federation on period until 2025. These acts ensure the realization of the right of minors to “friendly justice”, determined by Decree of the President of the Russian Federation No. 761 of June 1, 2012, one of the directions of which is a restorative approach aimed at reconciling the offender and the victim in the framework of criminal prosecution.

Recognizing in general the need to build a juvenile justice system and apply the concept of “restorative justice”, the legislator does not determine the procedure, conditions, terms, subjective composition of mediation in criminal proceedings.

To date, a significant number of studies (L.I. Belyaeva, G.M. Minkovsky, Yu. E. Pudovkin, S.A. Borovikov and others) on the problems of combating juvenile delinquency have been carried out. The issues of applying alternative measures to teenagers who have violated the law are covered in fragments. The experience gained in the Arkhangelsk region in the implementation of pre-trial support for minors who have violated the law [1-3] laid the foundation for the introduction of rehabilitation programs in criminal juvenile justice aimed at creating a condition for reconciliation of the guilty and the victim, compensation for harm caused a crime.

The publication of the Federal Law of July 27, 2010 “On an Alternative Dispute Resolution Procedure with the Participation of a Mediator (mediation procedure)” establishes the mediation procedure in Russia to regulate disputes arising from civil, labor relations, commercial situations, based on the model of classical mediation. But this law does not solve the problem of resolving conflicts in the field of education, criminal cases [4]. Restorative mediation occupies an important place, it contributes to solving the problems of child socialization in the field of education and prevention of deviant behavior, the formation of law-abiding.

Scientific works L.M. Karnozova [5], Shumov K.A. [6], A.S. Vasilenko [7], A.A. Maksudov [8; 9], S. I. Kalashnikov[10], Kuri H., Ilchenko O.Yu. [11] reflect the study of the procedure, principles and standards of mediation, the characteristics of the institution of mediation and the possibilities of application. The widespread distribution and development is currently receiving restorative mediation in school reconciliation services [13-17].

The purpose of this study is to identify the problems that law enforcement officials face in criminal proceedings involving minors participating in mediation procedures.

Research Results and Discussion

Materials and Research Methods

When conducting the research, the criminal statistical method was used, consisting in studying the data of criminal statistics on juvenile delinquency (level and dynamics) and the questionnaire method.

The questionnaire was attended by 100 law enforcement officers (11 investigators, 27 investigators and 62 judges (37 justices of the peace, 25 federal judges), who carry out professional activities in the Arkhangelsk region of Russia. These officers review criminal case materials involving minors, including. For a comparative analysis of the effectiveness of the application of the mediation procedure, all law enforcement agencies were divided into two groups: judges (62 people) and investigators (38 people).

The author’s developed questionnaire aimed at analyzing positive experiences and identifying problems that law enforcement officers face in criminal proceedings involving minors participating in mediation procedures included 16 questions:
1. Do you know that mediation in criminal cases is being implemented in our region?
2. How do you understand the purpose of mediation?
3. How often did you contact the mediation service with a request? (indicate how many times)
4. How satisfied were you with the result? (100% scale)
5. Does the implementation of the reconciliation program save the costs of criminal repression?
6. Does a reconciliation program help restore rights violated by crime?
7. Does meditation contribute to public awareness of the dangers of their actions, repentance of their deeds?
8. What measures do you think are more effective (if the perpetrator commits a crime of small and medium gravity): measures of state coercion (criminal punishment, conditional conviction, exemption from criminal liability, application of compulsory educational measures to minors, judicial fine) or mediation?
9. Do you think it is advisable to mediate in criminal cases instituted for serious or especially serious crimes? In relation to persons who have been repeatedly prosecuted.
10. In what categories of criminal cases is mediation most effective?
11. Do you use mediation technology on your own (without a mediator)?
12. What are the obstacles to the promotion and development of the mediation program in your municipality?
13. What is the current level of interaction with the mediation of the territorial reconciliation service?
14. In your opinion, how points can mediation as a technology be considered effective?
15. What are the pros and cons of mediation you can highlight?
16. What additional measures need to be taken to develop the mediation process in our region?

For statistical analysis of the survey data, descriptive statistics and Pearson $X^2$ contingency tables were used. Statistical data processing was performed using the SPSS 23.00 software package.

**Research Results**

Over the past 5 years, in the Arkhangelsk region there has been an official decrease in teenage crime by 11.5%, while its qualitative characteristics are negatively changing. The average annual share of grave and especially grave crimes is more than 40%, the proportion of repeat crimes is about 30%. Under these conditions, the search for measures of state response to juvenile delinquency does not lose relevance. Since 2009, in Arkhangelsk, experience has been gained in implementing pre-trial support for minors who have violated the law [18, p. 9-12], which served as the basis for the introduction of rehabilitation programs into the practice of juvenile criminal justice.

The analysis of static data reflecting the conduct of conciliation procedures in criminal cases involving minors indicates that the positive dynamics of the implementation of rehabilitation programs outlined in 2014 have changed dramatically in 2017. So, in 2014, the territorial reconciliation services received 307 requests for mediation, in 2017 - 401, and in 2018 - 291.

The indicated dynamics is due to objective reasons related to the reduction of juvenile delinquency in the Arkhangelsk region for the analyzed period (for crimes - by 11.5%, for individuals by 7.3%). However, the survey conducted during the study revealed subjective factors. Thus, investigators and interrogators associate the reduction in applications for mediation with a departmental change in law enforcement practice. The direction of the Ministry of Internal Affairs of Russia to the subordinate administrations of the constituent entities of the Russian Federation of September 18, 2018 No. 1/10689 “On the Enforcement of the Use of Part 1 of Article 427 of the Code of Criminal Procedure of the Russian Federation”, which directs the preliminary investigation bodies to terminate criminal cases of juvenile crimes in connection with the use of coercive educational measures. Considering that the criminal law enshrines similar conditions (commission of a crime of small or medium gravity) of exemption from criminal liability in connection with the use of the victim (Article 76 of the Criminal Code of the Russian Federation) and in connection with the use of coercive educational measures (Article 90 of the Criminal Code of the Russian Federation), employees of the investigation and inquiry, guided by a departmental act, began to give preference to Art. 90 of the Criminal Code.

An analysis of the data of criminal statistics allows us to conclude that the expansion of the practice of ending criminal prosecution in connection with the use of compulsory educational measures by reducing the implementation of recovery technologies has led to a change in the
The decrease in the number of repeated crimes of minors that has been outlined since 2016 in 2018 has been replaced by growth. At the same time, the proportion of repeated crime in the application of conciliation procedures is 5.6%, and in the case of coercive educational measures - 7.8%.

The results of the questionnaire, presented in Figure 1, indicate that investigators, unlike judges, consider state coercion measures more effective than rehabilitative mediation.

Moreover, as can be seen from the data in Figure 2, investigators have a misunderstanding of mediation as a technology, due to the fact that they independently, without involving specially trained presenter of recovery programs, have the methods to carry out this procedure.

The results of the questionnaire made it possible to identify a negative attitude towards the implementation of the mediation procedure on the part of the investigation and inquiry staff. Narrowly defining the content of mediation as reconciliation of the guilty and the victim, compensation for damage caused by the crime, entailing the cessation of criminal prosecution on the basis of Art. 76 of the Criminal Code, the majority (52.6%) of the questioned employees of the preliminary investigation bodies are sure that they are able to reconcile the participants in a criminal conflict without an intermediary, whose participation, in their opinion, only prolongs the time of the
criminal case. Referring to those cases when the mediation did not have the desired effect and stop the criminal prosecution under Art. 76 of the Criminal Code of the Russian Federation failed, investigators and interrogators do not consider recovery technologies as an effective means of resolving criminal conflicts. Giving preference to measures of state coercion (criminal punishment, conditional conviction, compulsory educational measures), the employees of the preliminary investigation bodies indicate (in questionnaires) the facts of the formal conduct of mediation, which entails the formation of a sense of impunity for teenagers that defines a repeated criminal act.

Law enforcement officials also explain the episodic use of restorative technologies by the lack of an appropriate legal framework, which is the foundation of criminal proceedings, and also indicate the reluctance of participants in a criminal conflict to participate in negotiations. Citing as an example criminal cases initiated by cases of embezzlement by teenagers from shops (one of the most common crimes committed by minors), law enforcement officials note that representatives of the victims (employees of relevant trade organizations), without a personal interest, refuse to participate in the procedure reconciliation, considering it an extra waste of time. In this kind of case, the representatives of the victim were initially opposed to the adolescent-offender (because constant thefts in stores entail shortages that store employees have to cover at their own expense), insisting on full compensation for the damage and severe punishment.

The possibility of mediation in such criminal cases directly depends on the clarification to the participants of the criminal proceedings of the content of the restorative technology, which (with a narrow understanding and negative attitude from the law enforcement officers to this procedure) in practice comes down to a formal statement of the corresponding rights to the accused and the victim.

Such a cautious, and in some cases negative attitude to the new procedure on the part of the investigating and inquiry bodies may be caused, on the one hand, by the accusatory bias formed over the years of service (and among the respondents more than 80% of the employees serve more than 8 years), and on the other—lack of motivation to introduce new technologies. Being interested in the rapid collection, verification and assessment of evidence in a criminal case, investigators and interrogators give preference to the established scheme, which does not fit repeated mediator meetings with participants in a criminal conflict.

Unlike the staff of investigative and inquiry bodies, judges not only more broadly determine the content of mediation, focusing on the fact that the use of restorative technologies helps to compensate for damage, reduce conflict between the victim and the guilty, carries a significant preventive potential, but also considers mediation as a promising area for the development of criminal justice.

Noting in the questionnaires that the need for mediation depends not only on the category and nature of the crime, but on the identity of the perpetrator and the actual circumstances of the criminal offense, the judges allow the implementation of restorative technologies in criminal cases of serious and especially serious crimes, paying attention to that, in accordance with current legislation, the corresponding form of post-criminal behavior of the guilty person can be taken into account as a mitigating punishment circumstance, which, together with other mitigating circumstances, may be the basis for a significant mitigation of the state response.

Judges do not see as a serious obstacle to the implementation of reconstruction technologies the absence of norms in the Code of Criminal Procedure of the Russian Federation that regulate the conduct of the relevant procedure, indicating the urgent need for legal regulation of mediator status, the absence of strict rules for mediation creates the conditions for compromise between participants in the criminal process.
Table 1. Advantages and disadvantages of using restorative mediation from the position of investigators and judges (%).

| Advantages of using reductive mediation | Judges | Investigators | Disadvantages of using reductive mediation | Judges | Investigators |
|---------------------------------------|--------|--------------|------------------------------------------|--------|--------------|
| No advantages                         | 8,1    | 0            | No disadvantages                         | 22,6   | 3,7          |
| Termination of prosecution            | 6,5    | 0            | Lack of rules governing this activity     | 6,5    | 3,7          |
| Reconciliation of the parties         | 14,5   | 22,2         | Rarely brings results                     | 4,8    | 22,2         |
| Individual educational impact, crime prevention | 8,1    | 0            | Possible impunity                         | 6,5    | 0            |
| Decreased penal system problems      | 6,5    | 3,7          | Not always effective                     | 1,6    | 0            |
| Contributes to redress                | 1,6    | 11,1         | Extension of criminal cases              | 6,5    | 3,7          |
| Simplicity                            | 0      | 3,7          | Useless spending money                    | 1,6    | 0            |
| Voluntary participation               | 0      | 3,7          | Generates new crimes                      | 0      | 0            |
| All listed pluses                     | 14,5   | 0            | Few highly professional mediators         | 0      | 3,7          |
| Difficult to answer                   | 40,3   | 55,6         | Often parents take responsibility, try to make amends | 0      | 3,7          |
|                                       |        |              | There is no desire to undergo the procedure | 0      | 7,4          |
|                                       |        |              | The culprit is not always aware of his misconduct | 0      | 7,4          |
|                                       |        |              | Do not go beyond the decision of mediation | 0      | 3,7          |
|                                       |        |              | Difficult to answer                       | 50,0   | 40,7         |

Note for a comparative analysis of the advantages of using reductive mediation: X2 = 30.278 at p = 0.035
Note for a comparative analysis of the disadvantages of the use of restorative mediation: X2 = 64.339 at p <0.001

According to the data of table 1, the main advantages of restorative mediation are noted by all respondents as reconciliation of the parties, reduction of the problems of the penal system. At the same time, investigators and inquest as an advantage also noted the possibility of redress, and judges - the termination of criminal prosecution.

The majority of investigators and inquiries cite the frequent lack of real results as the main minus of mediation. Judges, in most cases, do not note significant shortcomings of the procedure.

Considering the conciliation procedures as a promising area of criminal proceedings, especially in criminal cases of juvenile crimes, which due to age immaturity often not only do not realize the severity of harm caused by a criminal act, the definition of which is not only property damage, but also does not predict all possible the negative consequences of a criminal act for themselves, the judges note that the wider use of mediation:

—create the conditions for optimizing the judicial burden;
—will help reduce conflict in society and the formation of socially approved behavior;
—reduce the criminal activity of adolescents, who, as a result of the applied recovery technologies, should be aware of the severity and degree of danger of a criminal act;
—will allow to unload the penitentiary system;
—to reduce government spending on the maintenance of the law enforcement system.

Among the factors restraining the use of mediation in criminal cases, judges (in questionnaires) identified:
—poor awareness of citizens about the possibility of mediation in the framework of criminal proceedings;
—formal clarification to participants in a criminal conflict of the possibility of using recovery technologies;
—delays by law enforcement authorities in the filing of applications for mediation (in these cases, participants in a criminal conflict often manage to reconcile themselves with the help of parents and teachers, and therefore refuse to participate in programs);
—insufficient number of qualified mediators (in some areas mediation is not possible due to the lack of appropriate services);
—the absence in the Code of Criminal Procedure of the Russian Federation of rules governing the implementation of the relevant procedure, and the legal status of the mediator, the content of the mediation agreement.
The Results Discussion

Summing up, it can be stated that the successful implementation of the juvenile criminal reconciliation procedure in the Arkhangelsk region has convincingly proved the possibility of introducing into the imperative sphere of criminal proceedings certain measures to develop child-friendly justice in the absence of its legislative regulation. We are completely in solidarity with the opinions of the authors [19, p. 2-24]; [20, p. 14-17]; [21, p. 2-8], who believe that the result of the procedure is the creation of conditions for the full development and socialization of adolescents involved in criminal law conflicts, as well as the introduction into practice of mechanisms to restore the rights of victims of unlawful actions by minors. This provision is confirmed by the results of surveys of mediators who note the need for this procedure not only in relation to the adolescent who has violated the law, but also in relation to the victim, especially in criminal cases related to an attack on health safety. Most of the victims (especially minors) who are anxious about a criminal assault cannot independently reduce their anxiety.

Conclusion

Thus, the results of a survey of law enforcement officers (judges, investigators, investigators) indicate a diametrically opposite attitude to the introduction of mediation in criminal proceedings involving minors. Investigators and interrogators do not consider restorative technologies as a promising direction in the development of criminal justice. Judges, focusing on the fact that the use of restorative technologies contributes to redress, reduce conflict between the victim and the guilty, believe that mediation has significant preventive potential and, given the circumstances of a completely crime and the identity of the perpetrator, can be used not only in criminal cases of crimes minor and medium gravity crimes (as enshrined in the criminal law), but also for serious crimes.

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