PUBLIC CONTROL OVER THE OBSERVANCE OF THE RIGHTS AND FREEDOMS OF MINORS IN RUSSIA: THEORETICAL AND LEGAL ANALYSIS

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ABSTRACT
This article is devoted to the analysis of modern problems associated with the organization and implementation of public control over the observance of the rights, freedoms and legitimate interests of minors in the Russian Federation. The article has developed and justified a system of measures for the full organization and implementation of public control over the observance of the rights, freedoms and legitimate interests of minors in Russia.

Keywords: Public control. Legitimate interests. Russian Federation. Theoretical and legal analysis.

INTRODUCTION

The research of V.V. Grib, L.Y. Grudtsyna, O.V. Pishchulin, S.A. Avakyan, V.E. Chirkin and a number of other authors are devoted to the study of the formation and functioning of the Institute of public control in the Russian Federation. These works provide the basis for the analysis of the theoretical content of the institution of public control in Russia in relation to its social essence. However, the share of researches devoted to the analysis of modern problems associated with the organization and implementation of public control over the observance of the rights, freedoms and legitimate interests of minors in the Russian Federation is insignificant. In this regard, the main purpose of this research is a comprehensive study of modern problems related to the organization and implementation of public control over the observance of the rights, freedoms and legitimate interests of minors in Russia, and the subject of research is the regulatory framework for the formation and functioning of the institution of public control in the country, as well as scientific views on the problems and prospects for improving this institution of civil society in the Russian Federation.

METHODOLOGY

This article in the process of cognition of state-legal phenomena were used: a) General scientific methods (formal-logical, systemic, structural-functional, concrete-historical); b) General logical methods of theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc.); c) private scientific methods (technical and legal analysis, specification, interpretation, etc.) (ZALESNY; GONCHAROV, 2019; 2020).

RESUMEN

Este artículo está dedicado al análisis de los problemas modernos asociados con la organización e implementación del control público sobre la observancia de los derechos, libertades e intereses legítimos de los menores en la Federación Rusa. El artículo ha desarrollado y justificado un sistema de medidas para la plena organización e implementación del control público sobre la observancia de los derechos, libertades e intereses legítimos de los menores en Rusia. El artículo ha desarrollado y justificado un sistema de medidas para la plena organización e implementación del control público sobre la observancia de los derechos, libertades e intereses legítimos de los menores en Rusia.

PALABRAS-CLAVE:
Control público. Intereses legítimos. Federación Rusa. Análisis teórico y jurídico.

INTRODUÇÃO

O trabalho de V.V. Grib, L.Y. Grudtsyna, O.V. Pishchulin, S.A. Avakyan, V.E. Chirkin e um número de outros autores estão dedicados à estudo da formação e funcionamento do Instituto de controle público na Federación Russa. Esses trabalhos fornecem a base para o análise do conteúdo teórico da instituição de controle público na Rússia em relação a sua essência social. No entanto, a parte de trabalhos dedicados ao estudo de problemas modernos associados ao controle público observância dos direitos, liberdades e interesses legítimos de menores na Federación Russa é insuficiente. No entanto, a principal finalidade deste trabalho é um estudo abrangente de problemas modernos relacionados à organização e implementação do controle público observância dos direitos, liberdades e interesses legítimos de menores na Rússia, e o objeto de pesquisa é o quadro normativo para a formação e funcionamento da instituição de controle público no país, bem como perspectivas para melhorar esta instituição da sociedade civil na Federación Russa.
RESULTS

In accordance with the Constitution of the Russian Federation, the only source of power in the country and the holder of state sovereignty is its multinational people, exercising their power both directly (through a referendum and free elections), and through the activities of state authorities and local self-government (CONSTITUTION OF THE RUSSIAN FEDERATION, 1993).

At the same time, the people, delegating their authority to elected bodies of state power and local self-government, should have an effective mechanism for monitoring both public authorities and the proper performance by the latter of their duties, in order to avoid seizing power, or illegally appropriating authority by any authority, or its official.

The implementation of these constitutional principles of democracy and participation of citizens in managing the Affairs of the state needs a system of legal guarantees, the most important of which, according to some scientists, the Institute of public control (GRIB, 2013: 32-37; GONCHAROV, KOVALEVA, 2009: 72-75; OSETROV, 2018; GONCHAROV, SHALIN, 2013: 41-52). This civil society institution is a relatively young phenomenon in Russian law. Its institutionalization in Russia was carried out through the adoption of a number of Federal Laws, in particular, dated 04.04.2005 № 32-FL “On the Public Chamber of the Russian Federation”, dated 10.06.2008 № 76-FL “On public control over the enforcement of human rights in places of detention and on assistance to persons in places of forced detention” dated 21.07.2014 № 212-FL “On the Basics of Public Control in the Russian Federation”.

And although this institution of civil society has more than half a century of history in the person of the institute of public control in the USSR, it is fundamentally different from the latter. So, the people's control covered not only the organization and activities of public authorities, but also the practical activities of any enterprises, institutions, organizations. And although the institute of public control had (in contrast to the institute of public control) great power powers, but its capabilities were limited by the omnipotence of party control (GONCHAROV, 2019: 169-185; GONCHAROV; ZALESNY, POYARKOV, 2020: 878-899). This requires further development and improvement of the legislation governing it.

The organization and functioning of the institute of public control in Russia faces numerous problems, the most important of which is the problem of determining the concept and list of objects of public control. This problem is the subject of close discussion in the domestic educational and scientific literature (PISHCHULIN, 2014: 108-110; GRIB, 2016: 154-160; GONCHAROV, 2019: 28-36). The Federal Law “On the Foundations of Public Control in the Russian Federation” does not define the concept of the object of public control and does not fix their exhaustive list. However, an analysis of Articles 1 and 2 of the aforementioned Federal Law shows that public authorities and local governments, as well as activities, acts and decisions made by state and municipal organizations, other bodies and organizations implementing in accordance with Federal Laws, act as objects of public separate credentials. A large number of types of activities of state authorities and local self-government, as well as types of public relations, are withdrawn from the subject of legal regulation of the above Federal Law (for example, activities related to the maintenance of orphans and children left without parental care). By decision of the legislator, public control in relation to these types of activities and public relations is subject to regulation by individual Federal laws.

An analysis of Federal legislation in the field of public control showed the lack of a full legal framework for organizing and exercising public control over the observance of the rights, freedoms and legitimate interests of minors in the Russian Federation.

Firstly, the Federal law “On the Basics of Public Control in the Russian Federation” does not fix the possibility of exercising public control over the observance of the rights, freedoms and legitimate interests of minors in the Russian Federation. And the possibility of carrying out measures of public control over activities in the field of the maintenance of orphans and children left without parental care, mentioned in Part 2 of Article 2, is linked to the need to adopt an appropriate federal law, which has not yet been developed. At the same time, in 2013-2018 alone, law enforcement authorities initiated more than 3.4 thousand criminal cases related to the commission of crimes against orphans and children left without parental care (ALESHCHENKO, 2019: 80-81).
These crimes were committed both by employees of organizations in which this category of minors was
detained, and by adult members of families in which children were transferred by guardianship authorities.
Moreover, in relation to children who were adopted by Russian citizens (only in 2018 - more than 12.2 thousand),
(LEBEDEV, 2020), and even more so by foreign citizens, the possibility of even state control (by guardianship
authorities) is minimized. And without proper public control over the fate of minors, it is impossible to ensure
that their rights, freedoms and legitimate interests are respected.

Secondly, the current legislation does not provide for the possibility of exercising control over the activities
of state, municipal and private organizations and institutions in the field of education, health, physical education
and sports, etc. regarding the observance by them of the rights, freedoms and legitimate interests of minor
citizens. At the same time, the media regularly report the facts of crimes and offenses related to the violation
of the rights, freedoms and legitimate interests of minors, when they were in these organizations and institutions
(only cases with mass (more than 3) poisoning, the death of children in 2013-2018, more than 30 were recorded).
(ALESHCHENKO, 2019).

Thirdly, the Federal Law "On public control over ensuring human rights in places of forced detention and on
assistance to people in places of forced detention" does not contain additional measures to ensure the rights,
freedoms and legitimate interests of minor citizens in places of forced detention. At the same time, according
to the Federal Penitentiary Service of Russia at the end of 2018, only 1310 convicts were in
educational colonies for minors. (OFFICIAL WEBSITE OF THE FEDERAL PENITENTIARY SERVISSE, 2020).

**CONCLUSIONS**

It seems that for the full organization and implementation of public control over the observance of the rights,
freedoms and legitimate interests of minors in the Russian Federation, a system of measures should be
developed and implemented:

1) Make amendments and additions to the Federal Law of 21.07.2014 N° 212-FL "On the Basics of Public
Control in the Russian Federation": a) regarding the consolidation of the concept of objects of public
control and a detailed definition of their list; b) by including in Part 2 of Article 2 the possibility of
exercising, on the basis of a separate Federal Law, public control over the observance of the rights,
freedoms and legitimate interests of minors in the Russian Federation.

2) Adopt the Federal Law "On Public Control over Ensuring the Rights, Freedoms and Legal Interests of
Minors in the Russian Federation".

This Federal Law should provide for the possibility of exercising public control over the observance of the rights,
freedoms and legitimate interests of minors in Russia in the activities of: a) state, municipal and private
institutions of general education, vocational education, additional education, as well as vocational training, at all
levels and subtypes provided for in Article 10 of the Federal Law dated 29.12.2012 N° 273-FL "On Education in the
Russian Federation" (ON EDUCATION IN THE RUSSIAN FEDERATION, 2012); b) state, municipal and private
institutions and organizations of all forms of ownership in which minor citizens of the country are undergoing
treatment, including spa treatment; c) children and youth sports and sports facilities and organizations of all
forms of ownership.

3) To amend the Federal Law dated 10.06.2008 N° 76-FL “On Public Control over the Ensuring of Human
Rights in the Place of Forced Detention and on Assistance to Persons in the Place of Forced Detention",
supplementing it with a special chapter on the organization and implementation of public control for
ensuring the rights of minor citizens in places of forced detention and for promoting this category of
persons in places of forced detention.

This chapter should detail the types of forms, methods and measures of public control in the firsts to further
protect the rights, freedoms and legitimate interests of minor citizens in places of detention. For example, it is
necessary to oblige members of compulsory public commissions to carry out public control activities related to
visits to places of detention of minors at least once a quarter.

4) Adopt the Federal Law "On Public Control of Activities Related to the Maintenance of Orphans and
Children Left Without Parental Care", which must fix the possibility of implementing public control
measures both in relation to organizations where these categories of minors and bodies are contained guardianship and trusteeship to which they are subject.

This Federal Law should determine the extent to which citizens of the Russian Federation exercise their constitutional right to public control by setting out in detail the powers of the system of subjects of public control in organizing and conducting public control activities regarding activities related to the maintenance of orphans and children left without parental care. Particular attention should be paid to the forms and procedures for the implementation of these public control measures, having developed and securing special forms of public control measures (in addition to those mentioned in the Federal Law dated 21.07.2014 № 212-FL “On the Basics of Public Control in the Russian Federation”).

As an alternative to solving the problem of improving the legal regulation of public control over activities related to the maintenance of orphans and children left without parental care, you cannot adopt a separate federal law on these issues, but supplement the existing legislation regulating the organization and functioning of the guardianship system and trusteeship of the Russian Federation, for example, in Federal Law dated 24.04.2008 № 48 FL “On Guardianship and Trusteeship” (ABOUT GUARDIANSHIP AND GUARDIANSHIP, 2008), corresponding to separate sections (chapters, articles) in which it is necessary to fix the limits of exercising public control in relation to organizations where orphans and children left without parental care are kept, as well as guardianship and trusteeship bodies to which they are subject, the scope of powers of subjects of public control, list of forms and procedure for implementing public control measures.

Similar changes should be made in the relevant regional laws, for example, the Law of the Krasnodar Region dated 29.12.2007 № 1370-KL “On the Organization and Implementation of Guardianship and Trusteeship Activities in the Krasnodar Region”, which regulates the organization and implementation of activities in trusteeship and trusteeship in Krasnodar Region (ABOUT THE ORGANIZATION AND IMPLEMENTATION OF ACTIVITIES ON GUARDIANSHIP, 2007).

5) To fix in the legislation of Russia specific measures of legal responsibility (criminal, administrative, disciplinary) of officials of state authorities and local self-government, as well as state, municipal and private institutions, enterprises and organizations of all forms of ownership, for opposing the legitimate activities of representatives of public control entities in the last exercise of public control over the observance of the rights, freedoms and legitimate interests of minors in the Russian Federation in the activities of the above public authorities, as well as enterprises, institutions and organizations.

These measures will allow, on the one hand, to create a mechanism of comprehensive public control over the observance of the rights, freedoms and legitimate interests of minors in Russia, ensuring, according to some authors, the balance of participation of the authorities and civil society in this process (GONCHAROV, POYARKOV, 2015: 19-25; GRIB, 2011: 10-11), and, on the other hand, strengthen the implementation of the principles of legality and responsibility by public authorities, as well as enterprises, institutions and organizations whose activities are related to minors. In addition, the tightening of the mechanism of public control over the observance of the rights, freedoms and legitimate interests of minors in our country will have a beneficial effect on reducing social tension in society (GONCHAROV, SHALIN 2018: 41-52; GONCHAROV, ZALESNY, BALASHENKO, VASILEVICH, PUKHOV, 2020: 93-106), and will create barriers to the full exploitation of children (GORBENKO, 2019: 164-169).

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