Juvenile Justice – An overview of experimental projects in Russia

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The principles of juvenile justice

In June 1999 the 100th anniversary since the introduction of juvenile justice in the world was celebrated. To be more precise - 100 years after the “Illinois Juvenile Court Act” about abandoned, homeless and delinquent children and the care for them was enacted. On the basis of this law the first Juvenile Court was founded in Chicago. Back then the creation of this institution was a sensation in the judicial world. Scientists from various European countries, Australia, and South America came to the US in order to study the work experience of the Juvenile Court and returned with these ideas to their home countries. At the beginning of the 20th century speeches about this event were given on all continents and by 1915 autonomous systems for juvenile justice had already been introduced in Canada, Ireland, England and Wales, Germany, France, Belgium, Austria, Italy, Egypt, Australia and many other countries, among them Russia.

Unfortunately, it would not be adequate to celebrate this anniversary in Russia. Juvenile Justice existed for a very short period from 1910 until it was abolished in 1918.

Today the procedure which is applied in delinquent affairs of minor has several peculiarities compared to general criminal processes. In particular, the responsibility of minors is reduced (i.e. it is not possible to sentence them to more than 10 years of imprisonment, and instead of criminal punishment minors can be sentenced to coercive measures; they can only in "exceptional cases" be arrested.). Nevertheless, neither the Criminal Code of the Russian Federation, the Criminal Procedural Code of the RSFSR, nor the Criminal Procedural Code of the Russian Federation in the judicial practice distinguish between proceedings of minors and general justice in their normative bases and forms. Preliminary investigation and court proceedings of criminal cases of minors and norms of criminal laws affecting this group of people represent only exceptions to general procedures and norms. This fact is expressed even in the title of chapter 14 of the Criminal Code of the Russian Federation: "The peculiarities of the of criminal responsibility and punishment of minors". The logic of peculiarities of the procedural status of minors also applies to chapter 50 of the Criminal Procedural Code of the Russian Federation, which refers to the judicial order in cases of this category.

The first juvenile courts in the world were enacted together with the exclusive right to examine all cases in connection with minors (not only criminal cases). At the same time their work was supplemented by a set of principles which qualitatively distinguished this type of justice from the general criminal justice.

Which approach defines juvenile justice? First of all, activities in this area were originally founded on the understanding that the reasons for the illegal conduct of children stem from processes (or to be more precise the dysfunction) of their socialization. In the 1890s the Illinois Council for Public Welfare expressed this idea the following way:

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“A child that was brought up under conditions of neglect and vice and consequently turned into a beggar or a criminal, would likely become a parent of a criminal himself.”

Historians who studied the origins of juvenile justice in the US emphasized the same aspect –

"Americans were not looking for the reasons of a crime in the list of sins or inborn vices of a person. Explanations which emphasized sociological approaches became more common. The authors of these studies saw the reasons of a crime in the disintegration of family structures caused by the unstable way of life in America during the period of fast industrialization... The secular humanitarian character can be seen in the fact that... reformers drew attention to exterior social factors which had an impact on the child and tried to control these factors in order to prevent illegal behavior of the minor person."³

According to this understanding, the judicial authority is involved in the solution of tasks which courts did not decide before. These tasks included the socialization of young people and guaranteed that they would turn into law-abiding members of society. The juvenile court and judges operated on the bases that

1. Minor offenders were subject to care and guardianship.
2. The court controls this process.
3. "The court proceeding is regarded rather as a dispute over custody than as a criminal process."⁴

The judges and the counselors have become the main figures of the juvenile court. Thereby the judge is in charge of the counseling services. The famous Russian jurist Lublinsky pointed out that the duties of the counselor in charge included the following tasks.

"1. The examination, investigation of the condition and the environment of each child appearing in court.
2. Being present in court in order to provide information about the juvenile and support his or her interests.
3. The proceeding of single investigations on the instructions of the court.
4. Having guardianship over the minor person before and after the court proceedings."⁵

The juvenile judge based his opinion on the report of the responsible custodian and made the necessary legal decisions (e.g. taking the child out of a social environment which has a disastrous effect on the child or making decisions which have an impact on the parents' behavior or decisions that ensure the care of the children and so on). The work of the juvenile judge differed qualitatively from the work of a judge in a common criminal proceeding. The work of a juvenile judge was free of formalities and rituals of the common procedure which are unclear to the child, suggested informal contact and a confidential relationship between the judge and the child and the search for a special solution for each single case, based on the connection of the court to various social services.

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⁴ Lublinsky, P.I., Courts for Minors in America seen as educative and social centers, An educational guide, p. 98 (Люблиńskiй П.И. Суды для несовершеннолетних в Америке как воспитательные и социальные центры // Вестник воспитания. Кн.ИII, М.,1911. Стр. 98.)
⁵ Lublinsky, P.I., Courts for Minors in America seen as educative and social centers, An educational guide, part III, M. 1911, p. 102.
After analyzing the 100 years of the history of juvenile justice and generalizing its fundamental difference from adult criminal matters, the authors point to the following principles which they, despite all the differences of concrete models of juvenile jurisdiction in different countries, summarize under the term "Juvenile Justice".

1. Mainly a safeguard orientation.
2. Social saturation
3. Individualization of the court proceedings.

They also emphasize numerous other characteristics, like the above mentioned discretion, informal procedure, educative nature and others which are sometimes named among the principles.

The first principle points out the priority of the safeguard function of the jurisdiction of juvenile cases over the function of criminal prosecution and punishment. This includes a better legal protection of minors, as well as sometimes the desirable removing of minors from official criminal proceedings (paragraph 11, Beijing Rules).

The essence of the second principle consists of the "wide application of non-judicial special knowledge in court proceedings of minors, the emphasis on the examination of the social conditions of the life of the minors appearing in court, the social and psychological characteristics of their personality." Social saturation is one of the most important peculiarities of a court proceeding in those countries which have a developed juvenile justice system. The application of non-judicial humanitarian knowledge and practice particularly ensure the realization of the third principle – the individualization. The court proceedings do not focus on the crime, but on the minor person. This is ensured by an elaborate humanitarian infrastructure of court activities – court social workers, probation services (educative supervision), psychological services, the newly introduced reconciliation services and others. When realizing the principle of individualization, which in fact includes the two latter principles, the juvenile judge cooperates with his "team". This circumstance is extremely important in order to understand the essence of juvenile justice in the context of the independence of judicial power. According the well-known expert E. B. Melnikova, the specific characteristics of juvenile justice bring about the loss of some exterior attributes of the judicial power, although this does not represent a loss of quality. It is simply a question of a "specific form" of judicial power "adapted for a specific legal subject - the minor person." The chairman of the Rostov regional court, where during the last two years a project to introduce a model of juvenile justice was implemented, defines this judicial form as follows –

"Juvenile Justice is a special system of justice whose central link – the specialized court – is closely cooperating with social services before the court trial and after the pronouncement of the court ruling. It is essential to ensure the protection of the minor's rights at each stage of the court proceeding." 

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7 Melnikova, p. 16.
8 Melnikova, p. 72.
9 Melnikova, p.22.
The first Russian juvenile court, whose work reflected this specific approach, was founded in 1910 in St. Petersburg. Subsequently, courts were opened in Moscow, Kiev, Odessa, Lubav, Riga, Tomsk, Saratov. Russia had its autonomous juvenile justice system, although it did not exist for a long time - it was abolished by a decree of the Russian Sovnarkom in 1918. It is wrong to say that the search for a specific way of reacting to offending behavior came to a halt. But on the whole, in the Soviet Union there existed no approach to crimes committed by minors which would have been characteristic for juvenile justice.

Some characteristics of the contemporary Russian practice of criminal cases of minors

In the current criminal justice, which aims to punish the guilty, means to socialize juvenile offenders are hardly existent.

E.g. correctional facilities. On September 1, 2000 there were 19, 100 minor offenders in detention facilities in Russia, 15 – 16, 000 were in pre-trial detention. Studies show that the imprisonment of juveniles destroys the mechanisms of socialization and turns into an obstacle on the way to a worthy life in society. The concentration of children of nearly the same age with uncompleted personality structures under the conditions of a closed correctional facility, in an environment where the only real authority is violence, causes an extreme cruelty, creating conditions which are unbearable for many inmates and turns them into disabled persons and criminals. This general view is supported by statistics about recidivals among the crimes committed by minors. The book written by the chairman of the Rostov regional court V. N. Tkachev presents interesting figures (of the Rostov region). According to the author, the dynamics from 1997 to 2000 show that the percentage of minors who served a prison sentence and had to be held responsible for committing a new crime is continually growing compared to the general masses of minors who had a former conviction which was still valid - from 31.6% in 1997 to 59.7% in 2000. At the same time recidival rates among those minors who had been sentenced to punishments not connected to isolation from society remain stable. Thus, compared to juveniles who remain in freedom after the ruling, juveniles who serve a sentence in a detention facility develop a much greater potential of criminal tendencies and experience which make them commit crimes repeatedly.

Judges are rarely making use of the complex of norms which are connected to the release from criminal responsibility in connection with correctional measures, active repentence, a change in the situation, and reconciliation with those affected by the crime. It is hardly worth looking for the reasons of this phenomenon in the 'accusatory bias' of the judges (attorneys, investigators). It is more likely that this is connected to a lack of an effective system of non-punitive reaction to the illegal conduct of juveniles, rehabilitation, psychological and service infrastructures which would be an effective counterbalance to repressive institutions. Today, if a judge sentences a juvenile to a suspended punishment, he can by no means be sure that he will not see him or her again on the docks tomorrow. But

11 For more details see: Melnikova, E.B. Indicated essay.
suspended penalties are the most common sanction against young offenders, since it involves at least some kind of restraining function compared to the release from criminal responsibility. The judge who is responsible for preventing the juvenile from further offending conduct and for the safety of society, depends on concrete legal and social institutions and not on abstract humanitarian ideals.

These circumstances are prompting the judge and law enforcement bodies who are caring about the fate of young people who landed on the docks to search for more effective ways of reacting to deviant and criminal conduct. Another factor of similar impact is the legislation.

Firstly, as far as legislation is concerned, the body of evidence in cases of minors is extended. In the course of the preliminary investigations and the hearing of a case of a minor person the responsible bodies are taking into account much more aspects than in a criminal proceeding of adults. In addition, the living conditions and the upbringing of the juvenile, the reasons and conditions which made him or her commit the crime, the level of psychological development and other personal peculiarities are to be considered (Art. 392, RSFSR Criminal Procedural Code, RF 421 Criminal Procedural Code). Secondly, it is legitimate to talk about the specifics of criminal responsibility of juveniles. Thus, in cases of minors who commit a crime of minor or medium gravity for the first time, criminal responsibility can be reduced or dismissed in connection with coercive and educative measures (art. 90, RF Criminal Code, art. 8, RSFSR Criminal Procedural Code, art. 427, 431 RF Criminal Procedural Code); as we can see, the dismissal of cases on these grounds affects a broader mass of offenders than the dismissal of cases in connection with reconciliation according to the RSFSR Criminal Procedural Code (art. 9). The RF Criminal Procedural Code (art.25) considerably extends the legal ground for dismissing cases in favor of reconciliation according to the RSFSR Criminal Procedural Code (art. 9). The RF Criminal Procedural Code (art.25) considerably extends the legal ground for dismissing cases in favor of reconciliation (we shall hope that the corresponding amendments will be made to the Criminal Code), but according to the RSFR Criminal Procedural Code, coercive and educative measures were seen as the main alternative to punishment. However, studies show that this concept exists more in theory than in practice.

Moreover, according to article 430 of the RF Criminal Procedural Code (401,2 RSFSR Criminal Procedural Code) the court is obliged to discuss the possibilities of a suspended conviction, imposing a penalty other than imprisonment and also the release from a penalty, when a correction can be achieved through other means (art. 92, RF Criminal Code). Consequently, when imposing the penalty the court acts in accordance with special norms according to which a number of circumstances have to be considered - the peculiarities of the personality of the minor depending on the age and the upbringing, the level of psychological development, other personal peculiarities, and also the influence of persons who are older than him (art. 89, RF Criminal Code). The official court practice in cases of minors guides the judges towards the limitation of repressive sanctions.

But the court has to have serious grounds in order to arrive at the conclusion that a correction of the convicted can be achieved without sustaining a penalty (part 1, art. 73, RF Criminal Code “Suspended Conviction”), but by imposing a penalty other than imprisonment.

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e.g. educative measures which release the juvenile from criminal responsibility or punishment (since the indicated “relaxations” which refer to minors is created within a system of criminal justice which traditionally aims at punishing the guilty and not at achieving welfare and resocialization of the accused – as recommended by international standards referring to the administration of justice and the course of law in respect of minors). The mentioned legal guidelines motivate the court to receive detailed and objective information about the accused minor, his or her environment and about the juvenile’s real chances of correction without applying punitive sanctions. For this purpose the body of evidence is extended. However, the number of people providing information about the juvenile is limited. In addition, the ways of receiving similar information are too formal, which does not even correspond to those humanitarian objectives proclaimed in the current Russian legislation. The judge does not have an adequate arsenal of means for the social and psychological examination of the minor person and his or her social situation – in order to do that it is necessary to go beyond judicial knowledge. However, there is no other person in the Russian criminal proceeding who could really do such kind of work (neither is this function introduced into the RF Criminal Code). Consequently, the inconsistency is at hand: The norms of the criminal and the criminal procedural legislation have actually left some space for a new, officially not defined position in criminal court proceedings of minors, but the legislator is not taking real steps to fill this space.

A number of norms of the criminal legislation do not take into account the age and the possible minority of the person who committed the crime.

This inconsistency is characteristic for the legislation and is reinforced by numerous conditions which represent essential parameters in the practice of law.

- There is no discretion in decision making of the judges, which makes it impossible to work on an individual basis with the juvenile. The number of situations when verdicts of not guilty are possible is strongly limited. In the judicial practice two types of guilty verdicts for minors are dominating – suspended conviction, which the child in many cases experiences as impunity, and punishment through imprisonment, an even more inefficient measure, since the deficits of socialization are only reinforced in a detention center.
- In the existing practice the possibility of dismissing a criminal case in favor of educative measures and the transfer to the supervision of various organizations is limited (the application of social and rehabilitation methods is strictly limited).
- The legal guarantee of public participation in the course of justice of minors is reduced to a minimum.
- Court and investigation bodies are suffering a shortage of crucial professionals (social workers, probation workers, curators and so on) evaluating the social situation and psychological characteristics of the minor person’s personality; the realization of rehabilitation and aid programs.

15 The number of questions which are to be taken into account when analyzing the personality, the living conditions and the upbringing of the juvenile, and also factors responsible for crimes, see E. B. Melnikova’s commentary on Art. 392 RSFSR Criminal Procedural Code (Commentary on the RSFSR Criminal and Procedural Code / edited by I. L. Petrukhin. M., 2000).
17 Such a measure is one of the Standard Minimum Rules for the Administration of Juvenile Justice. (Beijing Rules, see Art. 11.1).
On the other hand preventative institutions (the Commission for Issues of Minors, subdivisions for cases of minors in the bodies for interior affairs, organizations for the protection of the population, school pedagogues and psychologists, social workers and narcologists, lawyers and psychologists of municipal social organizations) have a minor status in the general preventive system and fight against crime among minors, e.g. criminal justice, but there are no mechanisms in order to take individual preventive measures.

The existing legal practice (the consequences corresponding to the clear-up rate, the task of the police to intimidate the population, the predominant habit to solve a case in a repressive way) prevents an agreement between criminal jurisdiction and various organizations which are helping to socialize the juvenile.

Hence, the system of general justice, in the framework of which criminal cases of minors are examined, can be very well described as a “fully manufactured car”, whose mechanism have lost their necessary flexibility and do not meet the specific needs of another age group.

Initiatives to create elements of juvenile justice in Russia

The lack of rehabilitation programs designed for minor offenders, the gap between legal guidelines and actual conditions indicated an area where in some regions in Russia there are currently being implemented experiments in the field of juvenile justice. In numerous Russian courts efforts in order to specialize the work of judges were supplemented by the introduction of social work and the figure of the social worker. Such experiments took place in two district courts in Moscow and three district courts in St. Petersburg between 1999 and 2001. In 2001 a project to create social services at court was started at all district courts in Rostov-on-Don. This activity was joined by the Saratov regional court. Not only in the media or on the internet, but also in specialized literature there was a considerable wave of publication which reflected the objectives and the first experience of creating juvenile justice in Russia. The UN development program (UNDP) played an important role in the financing and organizational support of these initiatives. In the Russian regions the program is implementing the project “Promoting the creation of justice in respect of minors”, which is directed at the introduction of international norms and regulations into the legal practice and the creation of juvenile justice.

The judges who are taking part in the pilot projects define the general objectives of the current regional project in a similar way. T.R. Zakharova, a federative judge at the Chermushkinsky Court in Moscow, writes: “During the proceedings of a criminal case the conditions of the crime are often in the center of attention. The information about the


young offender him or herself is minimal and insufficient. The social worker works with the young person, studies the personality, the living conditions and the upbringing of the minor. The social worker also finds out the reasons and conditions leading to the crime and helps to define the danger which the offense caused to the public and takes this into account when the judgement is delivered. Furthermore, the social worker suggests concrete rehabilitation programs for the juveniles, taking into account their individual peculiarities. “19

The judge of the Soviet district court in Rostov-on-Don, I. P. Bashtovaya, has a similar opinion: “The participation … of a social work expert in criminal court trials of minors is a realization of art.16 of the “Beijing Rules” according to which in any case, with the exception of minor offences, the environment and the living conditions of the minor and the circumstances under which the offence was committed are to be studied thoroughly before the responsible bodies take a final decision to achieve a reasonable court judgement. At the same time it is hard to overrate the role of the social worker. It is the social worker who is really able to help the juvenile, examine the living conditions, the conditions at school, his upbringing and can observe his behavior and the way he views the crime committed by him over a longer period of time…” 20

An example of the work of Cheremushkinsky court in Moscow. Two girls from another town (15 and 16 years old) were accused of car theft and were in pre-trial detention. Before committing the crime they were living… on the Khorvansky cemetery. This circumstance led to the imprisonment of the girls and could have become prevented them from receiving a suspended penalty. There are often children from other cities in pre-trial detention who are not able to lead a normal life in Moscow. In respect of these children the judge is interested in settling their future life in advance – make clear where the children return after leaving the court room, the relationship with their parents and so on. These information becomes especially import in the case of a “positive prognosis”, when the judge foresees on the judicial basis the possibility of releasing the child as a result of the court trial (e.g. in the case of amnesty or a suspended conviction), but it is quite difficult for the judge to receive this information.

In this case, considering the considerable difficulties of getting into real contact with a juvenile in pre-trial detention, the judge was interested in receiving information as orientation and ensured the possibility of a brief talk between the social worker and the accused in court. In the course of the talk the court was informed about the existence of adults and their addresses. They also talked about the living conditions, plans for the future, their desire to attend school or work. Furthermore, the social worker searched for relatives and acquaintances who are able to support the adolescent (in order to meet them the social worker even had to travel to different towns and cities). And the efforts paid off - the girls received a suspended penalty and were released free. The judge knew that the juveniles were not released on the streets and that most likely they would not return to the docks the next day.

(Ювенальная юстиция: правовые и технологические аспекты. Сб. / Под ред. О.В. Зыкова, Н.Л. Хананашвили. М., 2000. С.119.)

This way the participants of these experiments (judges, attorneys and the public) regard the social worker (the social service) as a reliable source of information and as a person who is able to ensure the real effect of non-punitive reaction of the state towards the child's conduct (within the limits of legal sanctions) at the expense of rehabilitation programs or the contact to adults, which is essential to the child and has a positive educative effect. According to many judges, non-punitive measures (e.g. the widely applied suspended conviction) do otherwise not have any corrective effects when they do not include any social work or rehabilitation.

Due to concrete cases of the work of judges and social workers described in literature and the commentaries made by initiators and practitioners we can add another reason for the introduction of the social worker into the judicial system – the social protection of the child appearing in court.

Hence, at the trial of K., born in 1983 (accused according to Art. 207, RF Criminal Code) was stated that the accused was a social orphan. She lived in an orphanage afterwards was sent to a professional school. In the course of the investigation the social worker explained that the moment she entered the professional school, she was not any more under the care of a guardian. Since K. finished the course ahead of time, in the course of a year no organization had guardianship of the girl, although she had turned to the administration of the Oktyabrsky Region, where her parents had lost the parental rights. The girl did not work anywhere, was experiencing a conflict with her brother, who had an apartment, and lived illegally in the dorm of the professional school. In the course of the trial the social worker appeared as an expert witness and in particular pointed to the above mentioned facts and emphasizing that correction was possible without imprisonment. The judge sentenced the girl to a suspended conviction. The judge pronounced an intermediate ruling addressed to the bodies of guardianship and pointed to the necessity to deal with the juvenile’s fate. Furthermore, the social worker made sure that social obligations of the state were fulfilled (guardianship, accommodation and others).21

This example from Rostov-on-Don fully corresponds to the general rulings, stated by the chairman of the court of the cases of minors of the St. Petersburg city court, N. K. Shilov: “The analysis of the reasons for crimes committed by minors in St. Petersburg shows that the basic reasons for these crimes can be found in the lack of an effective system of early prevention of offences committed by minors and the missing protection of children who are left without care.”22 Furthermore, Nikolay Kirillovich writes that the introduction of juvenile justice in St. Petersburg pursues “the aim of eliminating all the deficits in the social protection of minors in the criminal prosecution in order to determine the reasons and the conditions which caused the minors to commit crimes, and, moreover, tries to eliminate these reasons.”23

The work of the social worker at court differs in the various pilot projects, but it is also possible to make out common characteristics.

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22 N. K. Shilov, p.15 (Н.К.Шилов, Указ. соч. Стр. 15)
23 N. K. Shilov, p.15 (Н.К.Шилов, Указ. соч. Стр. 15)
The social worker is person who received a special training. Before the trial the social worker visits the family where the minor person lives on the order of the judge. He or she gets into contact with the minor person and the parents (relatives, guardians) and finds out about the living conditions of the minor person and family problems. It is of crucial importance that the social worker also visits the school the minor person attends and gets to know the teachers. On the whole, the social work before the judicial proceedings is aimed to diagnose the social situation of the child and to find out personal characteristics. The social worker’s crucial task - informing the court about the social conditions and the personality of the child – assumes that the social worker is equipped with a methodic which enables him or her to make sure that the gathered information is reliable and adequately interpreted. A thorough report is made on the basis of the results of the investigation (where information about the child is provided and sources of their origins are indicated) and handed over to the judge. The social worker can be heard in the court proceedings as a witness who has information about the minor person’s personality and the social situation. When the social worker is gathering information about the child he initiates into a trustful contact with the child and thus often has a positive influence on the conditions and helps the minor person to solve concrete problems - finding a job, a school or a place to stay and so on. Thus the social worker works as a link between the child (or the child’s family on the whole) and other social institutions. In other words, the rehabilitation and resocialization of the child begins already before the court hearing.

As the experience gained by the St. Petersburg city court and the Rostov regional court shows, the practice of including a social worker in the work of the judge offers the opportunity to create a specialized state social service for minors who are being sued. At present such a service exists in the St. Petersburg administration. The creation of a social service within the administration of the Judicial Department at the RF Supreme Court in the Rostov region is being negotiated with the Judicial Department of the RF Supreme Court.

Such coinciding approach of pilot projects in Moscow, St. Petersburg and Rostov-on-Don is not accidental. It shows that ideas of a new institution – a juvenile justice system in Russia – have begun to take shape. It is important to become aware of this process at a stage when pilot projects are implemented and legislation is developed, since what we today include into the conception of these projects, will assume a new status tomorrow and after approving and spreading will become a part of the regular practice which defines the appearance of Russian justice and society in general.

Beyond the questions of social protection and rehabilitation

The ideas of social rehabilitation and social protection, existing in pilot projects in order to create elements of juvenile justice, are doubtlessly very important since they recognize the value of each child and eliminate indifference in respect of the misery of children (even if they have turned into offenders). From our point of view, these ideas have to be included into the practice of the developing Russian juvenile justice for another reason. They correspond to the complex of reasons and circumstances which cause a crime and which police and courts are confronted with. Indeed, criminologists have found out that the percentage of minors who do not have a regular income, do not work or study is rising considerably among those minors
who committed a crime. According to the figures of Y. I. Gilinskiy about Russia in general\textsuperscript{24}, this increase is considerable – from 23\% in 1991 to 42.9\% in 1998. It is possible that in cases when desocialization and crime cause the juvenile a growing number of problems concerning the place where he or she lives, every day life, financial problems and family problems which cause a feeling of disillusion and hopelessness, it is impossible to do without social protection and assistance.

At the same time we need to remember that there are also broad masses of minors who committed a crime and attend school or have a job and have a more or less stable material living conditions and a social status. The reasons of illegal conduct are not that much need or the appearance of social orphans, but the dysfunction of social institutions (like schools, families, and other services), the moral and general immaturity of the juveniles. Here it is also very important to apply other non-punitive ideas and approaches which ensure positive socialization and the prevention of crimes. This is even more important, since today the traditional approach of juvenile justice, which combines social assistance and rehabilitation, has number of deficits and has become criticized all over the world. This criticism emphasizes that rehabilitation programs offer only advantages to the criminals and demands hardly anything of them in return. Gordon Bazemore, a US scientist, explains this line of criticism the following way:

"Despite of its inadequacy punishment is, according to society, somehow connected to the crime. At the same time the approach toward individual treatment is exclusively connected to, directed at the needs of the offender. For the majority of the population programs implementing individual treatment in the area of juvenile justice do offer only advantages for the offender and ask nothing or only very little in return. The idea of individual treatment hardly involves efforts to make the offender aware of the harm done to someone and has to undertake concrete measures to repair the damage, redress one's wrong and answer to the consequences connected to the damage caused by the crime."\textsuperscript{25}

In order to mature and socialize successfully, it is better if the adolescent is not regarded as a passive receiver of social services, but as a person who is responsible for the situation he or she created, a person whose behavior has an impact on the normalization of the victim's condition and the compensation of the damage and, finally his or her own relation to society.

The second idea which supplements the approach of rehabilitation of the bodies and experts of juvenile justice is connected to the acknowledgement of informal social control – the involvement of the family and the juveniles environment in the correction of his or her behavior.

"Attachment to the environment and a certain obligation to it are powerful important regulators. Indeed, the more a young person is attached to his or her environment (family, school and peers), the more easily he or she agrees to fulfill the norms which are set by this


\textsuperscript{25} Bazemore, G., Three Paradigms for Juvenile Justice, in Justice in cases of minors. Perspectives of development", 1\textsuperscript{st} edition, Moscow 1999., p. 72. (Бейзмор Г. Три парадигмы ювенальной юстиции. В сб. «Правосудие по делам несовершеннолетних. Перспективы развития». Выпуск 1, М, 1999. Стр.72.)
environment. The more the young person is attached to his or her environment, the more easily he or she puts up with the imposed restrictions and accepts them. In a nutshell, restrictions (rules) in the form of laws and social norms will be observed, adopted and accepted. At this point we can talk about accepted values, self-control and the skill to keep under control his or her wishes. A well-socialized individual (a person who fulfills the acquired social role, has consolidated his or her “I” and is attached to his or her environment) is provided with means which he needs to resist crime. Most adolescents gradually develop these mechanisms. However, problems experienced in the family, at school, or with peers can disturb the normal functioning of regulation mechanisms...”

In this context in the work with the juvenile emphasis is laid on reconciliation methods which are to normalize the relationship of the juvenile with his or her family. These methods allow to include the closer social environment of the juvenile and activate this potential for a constructive and responsible participation in the life and maturing of the child.

We can regard these ideas as practically realized, since they were tried and applied by scientists of the Center for Legal and Judicial Reform at the Chermushkinsky regional court in Moscow between 1999 and 2001 on the basis of the program for restorative justice.

**Restorative programs – the prevention of future crimes and responsibility for committed crimes**

The concept of restorative justice (further - RJ ) and, more generally, the restorative approach, is employed as a set of methods and procedures which are applied in cases of offence, in a conflict, when acts of violence or offencings were involved. In other words, in those cases when human relationships suffer jealousy and revenge, and do no longer provide mutual understanding. RJ aims to repair these situations as far as that is possible, to normalize the relationship and to promote reconciliation. Without the help of the persons involved in a crime, without the establishment of trust and dialogue, without repentence and reconciliation it is not possible to break the circle of violence neither in the families nor at school, at work, or in the streets.27

*Victim-offender mediation* has become the most classical and most widely known RJ program. Its essence is the reconciliation procedure – the organization of meetings between the victim and the offender “face to face” in order to discuss the consequences of the crime and decide how to eliminate or neutralize them. Such a program is carried through with the voluntary agreement of both sides, under the precondition that the offender accepts his or her responsibility for the crime and is willing to repair the situation (which a mediator finds out in a talk beforehand). During such meetings each party has the opportunity to state their views and the coordinator helps to

- achieve mutual understanding in respect of the crime, the reasons leading to the crime and the consequences for the victim.

- discuss and formulate the compensation of the damage.
- formulate plans to change the behavior of the participants leading to the crime.

The reconciliation meeting is organized and held by a neutral person (a mediator, commonly referred to as coordinator) who creates preconditions for a constructive dialogue and a mutually acceptable agreement. The agreement on damages and the plans about how to change the way of life and the behavior of the participants leading to the crime, is laid down in the reconciliation contract.

Similar programs are necessary to
- solve the criminal situation by actively including the victim and the offender, and also their relatives;
- guarantee a relatively fast compensation of the harm of the victim;
- express the feelings of the participants, eliminate negative psychological conditions and release from the roles of the victim and the cold-blooded criminal
- turn a conflict between people into a constructive process to solve their problems.
- reform the offender, make him or her aware of the responsibility for the crimes he or she committed.

Attached to the article the reader finds an example of the practice of the Moscow center for Legal and Judicial Reform which illustrates some typical characteristics of restorative programs – remidying the victims and normalizing the relationship of both sides, analyzing the reasons and conditions leading to the crime, combining restorative programs and rehabilitation and social work.

Apart from mediating programs there are also other forms of regenerative programs applied in the world. Most well-known are the following programs –

- “Justice circles”. These programs are based on the traditions of native Americans and are mostly used in Canada.
- “Family conferencing”. The origins of the family conferences go back to New Zealand. The program is based on traditions of the Maori.

The peculiarities of the two latter programs lie in the systematic involvement, integration of reconciliation meetings of representatives of the local communities and the closer social environment of both sides.

Today, restorative programs are used in various regions of the world (Europe, North America, Australia, New Zealand, and South Africa). Standards and norms of the supranational level (recommendations of the European Council, the European Union and the UN adopted between 1999 and 2001) reflect the importance the restorative approach is attributed all over the world.  

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It is important to make clear that the term “restorative justice” does not define a
different, unofficial justice, but an approach which can be realized within the current national
legislation, also within the Russian legislation, an approach whose realization is only possible
through the participation of the law-enforcement bodies and the court.29 It is essential that
executive bodies are cooperating with the organizations that carry out restorative programs
and the social workers (services).

In Europe reconciliation and mediating procedures are most widely applied in the
criminal justice of Norway, Finland, Germany, Austria, Belgium, France, England, and
Poland. In the criminal process this practice can assume various forms and have different
legal foundations.30

Firstly, the procedure of mediation is laid down in the juvenile justice legislation of the
country - this is the case in Austria, Germany, Finland, and Poland. In this case the procedure
is launched by the national prosecutor or a judge and represents an alternative to the court
proceedings. In Austria and Germany the mediation programs are organized within the
probation services, which are part of the juvenile justice system and are carried out by
professional mediators. In Finland programs are organized by the municipal organs and are
part of the general social services and are carried out by volunteers. Here the volunteer model
is commonly used to organize mediation.

Secondly, mediation between the victim and the adult offender can be laid down in the
Criminal Procedural Code (Austria, France, Belgium, Finland, Poland) and/or the Criminal
Code (Germany, Finland, Poland). Most often the state prosecutor initiates the program and
introduces the program to the case according to his responsibilities. The prosecutor takes
further steps taking into account the achieved results. One of the consequences is often
suspended conviction. In France priority is given to volunteer work within restorative
programs. These programs are organized by non-governmental organizations.

In Norway mediation programs are realized on the grounds of a separate, special
“mediation law” which applies to adults and minors. Mediation programs are organized the
same way as in Finland – basing on social facilities of the local government bodies.

The Center for Legal and Judicial Reform is the first organization in Russia which
professionally developed methodics for restorative justice programs, also applying to criminal
cases of minor persons. This circumstance had an impact on the contents of the pilot project to
introduce elements of juvenile justice in Moscow. Our pilot project is based on the partnership
between a non-governmental and non-commercial organization and the court. We found it
very important not only to introduce the social worker in order to assist the court, but also to
supplement social work with restorative programs integrating the victim, his or her relatives,
the accused and their relatives.

Speaking about the model of organization, which makes such activities possible, the
current Russian legislation allows to develop cooperation mechanism between the court and

29 See L. Karnosova, R. Maksudov, M. Fliamer, Restorative Justice: Ideas and perspectives for Russia, Russian
Justice, №11, 2000. (См. Л.Карнозова, Р.Максудов, М.Флямер Восстановительное правосудие: идеи и перспективы
для России // Российская юстиция, №11, 2000)
30 For more details see Ayrtsen, I., Activities in the field of restorative justice in Europe, Conference Papers,
Guidelines for restorative justice №3, 2001 (practice review), Moscow 2001. (Более подробно см. Айртсен И.
Деятельность в области восстановительного правосудия в Европе. Материалы к докладу. // Вестник
восстановительной юстиции №3, 2001 (обзор практики). Москва, 2001)
bodies or facilities preventing insufficient supervision and offences of minors and turns social facilities into the base to organize social work and restorative justice programs for criminal cases of minors. The Commissions for Issues of minors and the Protection of the rights of minors is to play an important role in the organization of this work. In those areas, where projects and social work are financed in budget competitions, the receivers of a social grant can carry through social and restorative programs for criminal cases of minors on the basis of these financial means.

In the period between 1999 and 2001 programs for cases of minors were carried through by the members of the Center in the Tagansky and the Akademichesky district in the city of Moscow.

We developed three versions how to include reconciliation procedures into a criminal proceeding. The first version is applied during investigation. The investigators of the cases of minors hand over information about the action, deed and the participants of the crime to the LJRCenter in order to start a reconciliation program. The results of the program (a reconciliation contract and documents demanding its fulfillment) are added to the case material during the preliminary investigation or at court. According to the second version a reconciliation program for the victim and the accused is carried out when the case has already entered court. At this stage we get into contact with a judge (Cheremushkinsky court in Moscow) who specializes on juvenile cases. According to the third version, a partnership with the prosecutor has to be established. Here the reconciliation procedures are included into the official court trial as soon as the prosecutor makes his accusative statement. In all three versions a program can be introduced into a case, not depending on the gravity of the crime, if the accused minor at least to some extend admits his or her guilt and if there is a person who can be regarded as a victim. Here we did not work with cases connected to organized crime, serial murders, rape and those cases, where the accused was arrested. Reconciliation programs also work perfectly well in those cases when the victim is not a real person, but a judicial person (shop thefts, vandalism, theft of non-ferrous metal).

In practice law-enforcement bodies most often applied reconciliation programs in connection with robbery (art. 161, RF Criminal Code) and theft (art. 158, RF Criminal Code). Since in all these cases the accused were groups of two or three juveniles or an adult was an accomplice to the crime (which is typical), they were accused of serious offence. In these cases reconciliation can only be a legal consequence according to the RF Criminal Code, if it is recognized as a mitigating circumstance (paragraph “k”, part 1, p. 61). It is well-known that the RSFSR Criminal Procedural Code provides the possibility to dismiss a criminal case in connection with reconciliation of the parties only in criminal cases of minor gravity, if a person committed a crime for the first time (art 9 RSFSR Criminal Procedural Code). In our work with the court there was only one case when the juvenile was accused of a crime of minor gravity (part 1, art. 213 RF Criminal Code). In our work with the court there was only one case when the juvenile was accused of a crime of minor gravity (part 1, art. 213 RF Criminal Code). In our work with the court there was only one case when the juvenile was accused of a crime of minor gravity (part 1, art. 213 RF Criminal Code). According to the results of the program the court decided to dismiss the criminal case in favor of the reconciliation of the parties on the basis of a reconciliation contract and a declaration of the victim. We draw attention to the fact that the new Criminal Procedural Code of the Russian Federation essentially extends the possibility to dismiss criminal cases in favor of reconciliation in article 25. This includes also cases of medium gravity, which shows the intention of the legislator to expand the legal ground towards non-punitive ways of settling criminal cases.

We have found that the participants of criminal conflict positively react to the proposal to make use of a reconciliation procedure in order to find a way out of the current situation. It is interesting to see that the most important reasons for many parents of victims to participate
in reconciliation meetings is to correct the conduct of the accused and to spare them from a correctional facility. The possibility to express one's feelings tremendously improved the attitude of the participants to one another, to themselves and to the situation. Animosity gave way to a constructive dialogue. An interested and careful discussion of the question what to do in order to prevent a reoffence made may children become more aware of their own problems and chart a way of solution.

All this work would not have been possible if the proposals of the Center for Legal and Judicial Reform to introduce reconciliation into criminal cases had not been supported by the prosecutor general of the Russian Federation, the leading regional law-enforcement bodies and the court. Since June 1999 we carried through about eighty rehabilitation programs in two regions of Moscow.

The professional qualifications of the coordinator make restorative practice possible. The core of restorative work in a criminal situation consists of a complex of techniques which generally speaking can be regarded as techniques of neutral mediation, involving the abilities to refrain from stating their own "right" opinion, empathetically listen to people and help them to speak out, activate the participating parties and create the preconditions for a dialogue and prepare the participants to take responsibility for the result (the agreement and future relation). The implementation of a program of restorative justice is not social work with the accused, but a different kind of work, a different position. Compared to pilot projects in other regions of Russia, in the Moscow pilot project there was not only a social worker cooperating with the judge, but also a coordinator of the RJ program.

The structure of values and terms which the coordinator uses as orientation is of essential importance. E.g., in the relation "victim – offender" the term responsibility is essential in order to understand the rehabilitation program. There is a distinction made between the responsibility imposed by the Criminal legislation (where responsibility is regarded as punishment imposed on the offender by the state) and active responsibility, which is based on the offender’s understanding of the consequences of the crime (offence) assuming his own efforts in order to repair the consequences of the deed (compensation, apologies, …). The coordinator works according to the rule that the rehabilitation program does not aim at the impunity or protection from criminal punishment of the offender nor does the program intend to ease the position of the victim. The goal of the program is to develop active responsibility. This also represents the essential difference between the coordinator of the restorative program and the advocate.

During the work with the offender’s social environment, the family, it is very important to distinguish between "stigmatizing" and "reintegrative shaming". Another important idea is that moral regulation is the most important function of the family and the environment of the juvenile.31 Indeed, rehabilitation programs try to make use of society’s moral reproach and reprimand to the offender in order to raise a feeling of shame and use it as a factor correcting deviant conduct. This kind of work is difficult, since the formal criminal conviction is connected to apportioning of blame, signs of ostracizing and shame and often turns into a stigmatization of the offender, if not the conduct is considered vicious, but the offender himself. As a reaction to the stigmatization the juvenile feels that he is treated unfair

and has problems with his self-esteem. Due to the resulting estrangement, the stigmatized juvenile might align with other ostracized juveniles in order to receive support and preserve his self-esteem. This way deviant and criminal groups form and become bigger.

The meetings of the participants of the restorative justice programs are a way of discussing and condemning what happened. But here two factors prevent that the condemnation of the offender turns into a stigmatization of the offender – first, participants who reproach the offender for the crime, and the form of communication by itself. Firstly, the relatives of the offender agree with the victims on the fact that the juveniles displayed wrong behavior, which they condemn, but they also know about positive attributes of their child and thus can support the juvenile to improve the situation. Secondly, the coordinator does not allow any offending statements, maintains a respectful form, helps the participants to express their feelings in a constructive way and leads the course of the discussion. Hereby, “reintegrative shaming” represents a reaction of the offender to the moral reproaches and indignation. At the same time the offender understands the problem and finds his place in society among normal, law-abiding people.

The preventative effect of restorative programs involves the consolidation of the family and family relations of the minor and encourages adults to influence the juvenile and cope with his or her behavior (described as informal social control by criminologists).

Relatives and the close environment of the minor person are analyzing the reasons for the crime and are offering their help to correct the situation and change the conduct of their son (daughter) or relation. The emotional dynamics have a preventative effect, since parents and relatives feel guilty in respect of the victim and tell their child how ashamed they feel and how painful it is for them to take part in the process. Moreover, in every RJ program there is a social worker who develops a rehabilitation program together with both parties and offers in extra programs to use local social and rehabilitation centers, take part in training and rehabilitation programs. The social worker reports the results of the program – compensation of the damage and , and the design and fulfillment of a rehabilitation program – to the court.

APPENDIX (a description of a RJ program, based on the report of the leader of the program and the social worker)

The story of an offence

February, 21 2001 Mikhail M. and Aleksandr Y., both aged 17, were walking along an abandoned street in the Yasenevo region. Mikhail had a bruise on his left eye. Besides, as a consequence of a fight a few years before, he had lost the sight of one eye. In front of them were Yulya M. and Kostya N., aged thirteen. They were laughing and talking loudly. Mikhail decided that they were laughing at them and hit Yulya. She fell down. He had not realized that Yulya was a girl (Yulya was wearing jeans and a jacket), Aleksandr continued to beat her up. Aleksandr started to hit Kostya. As a result, Yulya and Kostya suffered physical injuries (neither life nor health threatening). Aleksandr and Mikhail were accused according to art. 213, part 2, paragraph a, RF Criminal Code.

The workers of the Center organized a reconciliation program for the parties on the bases of the information given by the Cheremushkinsky court. The reconciliation meeting took place on May, 31 2001.
The participants of the reconciliation program

The accused – Mikhail Aleksandrovich M. (17), Aleksandr Aleksandrovich Y. (17). Aleksandr Y.’s legal representative – Anna Ionasovna. M. lives at his grandmother’s place, he does not have any parents. His grandmother could not attend the meeting, refused to attend the meeting, arguing that she was too busy.


Meeting of the accused and their legal representatives prior to the reconciliation meeting

At the meeting beforehand it turned out that the parents of the accused had already made attempts in order to the juveniles’ fault towards the victims. The legal representatives of the offenders had already paid an amount of money demanded by the victim to compensate material and moral damage. The juveniles had made formal excuses, apologized formally. But at the same time everybody understood that these apologies had not been honest, besides, as result of this contact, the victims had made them angry.

In the course of the talk, meeting, the social worker understood that they were angry with the victims, because they had gone to the police and put their future at risk, at jeopardy. Although Aleksandr was worried because he had beaten a girl. Mikhail said, that he had been participating in fights since he was 8 years old and that he repeatedly had suffered serious injuries, but not once had reported this to the police, but solved these problems according to the methods common in their environment. Moreover, smaller and younger children often turned out more cruel in those groups.

However, Mikhail tried to present himself as a 13-year old child for whom this kind of situation was uncommon. He understood why Kostya had the impression that he had been kicked for a long time and he also understood that he needed to apologize to him.

The juveniles and their representatives agreed to make a first step, talk to the victims, try to understand them and really apologized to them.

Meeting of the victims prior to the reconciliation meeting

At the beginning the parents of the victims said that they found it necessary to have a reconciliation meeting exclusively to try and help the offenders out of the current situation. But when the leaders of the program directly turned to Yulya and Kostya, it turned out that the children had quite a lot of questions for the offenders, are deeply offended and are feeling uncomfortable remembering the situation. They do not feel safe when they are outside. Together with the coordinators the victims came to the conclusion that a reconciliation meeting was necessary for the themselves to receive the answers to their questions and to try to resolve their psychological problems which appeared as a result of the incident.
Peculiarities of the organization and results of the reconciliation meeting

1st stage of the meeting – setting the conditions
At the beginning of the reconciliation meeting the coordinators asked the legal representatives to take seats a bit apart from the children and enter the discussion only with the leader. As a result the space was organized that way that the basic circle consisted of the children and the leaders, but all (including the parents) could see each other. Each victim was seated in front of his or her offender. The coordinator explained the rules of the meeting (participation on a voluntary basis, no interruptions, no offending statements, confidentiality, and the possibility of a separate talk with the coordinator). All agreed on the rules.

2nd stage of the meeting – telling the situation and the consequences
Yulya was asked to begin to tell the story. She said that she was beaten without any reason, and that she is worried, because anybody can just like that, without any reason, attack someone and beat him.

Aleksandr said that had had the impression that Yulya and Kostya had been laughing because of Mikhail’s bruise under his eye. Coming from behind, he had not seen that Yulya was a girl and realized that just in the end.

Kostya said that he was thinking that Mikhail just took the anger and aggression which he was experiencing even before the incident out on them. But Mikhail said that he had not been angry or aggressive. He started the fight after Aleksandr, partly out of solidarity, partly because he had many complexes because of his appearance and because he was also thinking that they were laughing at him.

After they had finally found out what had started the fight, the leaders of the meeting asked the offenders what they experienced after everything had happened.

The children said that already a few minutes after the fight they were feeling ashamed. The thing was that they did not face any resistance. They felt that – whether they had been laughing on them or not – they had beaten up two kids who were considerably weaker than them. Moreover, one of them turned out to be a girl. But they had not expected that they could be reported to the police, because this was not common in their social environment.

Kostya’s mother wanted to ask a question and asked, whether they had told their parents about what had happened. It turned out that they had not. Even Aleksandr, who had a very confidential relationship with his mother, had not told anything. He was fearing that she would respect him no longer, after finding out that her son beat up a girl. But they had talked about it with friends. Their friends did not approve of their behavior, some of them even condemned it.

Afterwards all four children talked about their feelings during and after the incident. Kostya and Yulya said that before the event they had not taken part in any quarrels, for this reason, they felt quite strongly about what happened.
3rd stage of the meeting – making excuses

After all questions had been discussed the children apologized to “their” victim. Yulya and Kostya said that they could understand them, that they forgave them and were not angry at them. Furthermore, the group discussed alternative ways of behavior in similar situation. Mikhail and Aleksandr said that this situation had made think about many things and that they would always remember it in similar cases. They said that they tried to correct, improve their behavior.

4th stage of the meeting – what triggered the situation

The participants paid special attention to the fact that Mikhail’s behavior is connected to his lack of self-confidence, his need to use force and aggression, which might be connected to the trauma of losing his eye. The arrived at the conclusion that Mikhail should try to overcome this insecurity. The social worker suggested Mikhail to go to a psychologist. The suggestion was accepted and included into the reconciliation contract.

The social worker talked about Mikhail's special, extraordinary situation – he does not attend school and does not work and in this context she asked

5th stage of the meeting – conclusion

Afterwards the participants were asked to tell in which way they had gained from the meeting. Everybody, including the parents, said that they could understand one another. They also said that even though they will remember the situation for a long time, they were feeling better now, after understanding forgiving one another and after being forgiven. The victims were really concerned that Mikhail and Aleksandr might be imprisoned. They wanted to testify for them in court.

At the end of the meeting they concluded and signed the reconciliation contract.

Fulfilling the reconciliation contract and rehabilitation programs

Thanks to the social worker's help Mikhail met the secretary of the local Commission for the Affaires of Minors. The secretary suggested to get Mikhail's school documents and enroll him at a professional school where they took him after 8th grade. Furthermore, the secretary suggested him to work in Moscow during the summer planting trees.

Mikhail also accepted psychological help. According to the results of the examination, diagnostics, Mikhail's aggressive behavior worked as a mechanism of self-protection, psychological mechanism, minimized his self-confidence/maximized his insecurity and his feeling of inferiority. This is not as much connected to the trauma of his eye, but to a psychological trauma dating back to his early childhood as a result of unfortunate family relations. The suppressed hatred towards his father, and a feeling of helplessness which he experienced during his childhood led to an inadequate self-appraisal and turned into the psychologist's focus of work. At court the juveniles received amnesty upon the petition of the lawyer.