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**LEGAL STATUS AND AUTHORITY OF JUVENILE
COMMISSIONS IN RUSSIA**

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Abstract

One of the main tasks of the system of Commissions for Minors and their Rights (hereinafter in the annotation – CM&R) is the protection of the rights and legitimate interests of minors throughout the Russian Federation. The powers of the CM&R include the possibility of filing certain petitions and materials with the court, as well as participating in the proceedings. The nature of such appeals and the need to be involved as a participant should establish the procedural status of the CM&R, the correct determination of which allows determining the scope of rights and obligations of the participant in the process. The legal status of the CM&R, taking into account the legal nature, is quite specific, which leads to a difference in the legal status depending on with whom the CM&R exercises its powers in cooperation. Particular problems arising in the course of their activities are highlighted by the CJA and PR: insufficient clarity on the issue of coordination of the activities of prevention entities, lack of legislative consolidation of the concept and forms of coordination activity of commissions, as well as a clear mechanism for the implementation of this authority, etc. The legislator's position on fixing the authority of the CM&R is not the best option because the transfer of disparate powers, which complicates the work of the law enforcer. It seems expedient to specify powers, including management and control tools, as well as grouping powers depending on the subject of interaction.

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Keywords: Authority, commissions for Minors and their Rights, execution, legal regulation, legal status



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1. Introduction

The most important element in the prevention of antisocial behavior of minors is the existing in Russia system of Commissions for Minors and their Rights, which is represented by a single two-level hierarchical structure. It includes commissions created by the highest executive bodies of state power of the constituent entities of the Russian Federation and carrying out activities on the territory of the constituent entities of the Russian Federation, as well as municipal (territorial) commissions for minors and the protection of their rights.

2. Problem Statement

It should be agreed with Il'gova (2009), who believes that today the place and role of commissions in the system of subjects of preventive activities is significantly underestimated, as well as serious improvement requires legal support for organizing the activities of the Commissions in the Russian Federation (Il'gova, 2009). Without diminishing the significance of the problem of the uncertainty of their legal status, it is worth noting also the lack of a clear legal mechanism for exercising the powers of commissions for minors and protecting their rights at the stage of execution of acts issued by them and the courts.

3. Research Questions

The main issue of the study is the adequacy of the amount of rights provided to the commissions for minors and protecting their rights for effective functioning when interacting with subjects. In particular, the issue of coordinating the activities of subjects of prevention was considered. It was revealed that the concept and forms of coordination activity of the commissions were not defined legally, there were no clear mechanisms for the implementation of this authority; there is no legislative obligation to create a full-time staff to support the work of commissions; there is no any procedure for the enforcement of compulsory educational measures in general or control over their implementation (as part of this procedure); and etc.

4. Purpose of the Study

Studying the legal status and powers of Commissions for Minors and their Rights at the stage of execution of acts issued by them and the courts to form an idea of the necessary scope of rights and obligations of the subject, depending on the legal situation.

5. Research Methods

The methodological basis of the study was the general provisions of the science of civil law, constitutional, civil procedure, administrative procedure and criminal procedure law. The study used the following methods of scientific knowledge: interdisciplinary, the ascent from abstract to concrete, comparative legal, historical method.

6. Findings

By its legal nature, commissions on juvenile affairs and the protection of their rights is a collegial body, a union of persons created by a regulatory act of an executive body of a subject or a local government body. The legal status of such a collegial body is therefore rather specific, since it is not a public authority, however, on behalf of the state it considers cases of administrative offenses and makes legally significant decisions on them.

According to the Federal Law of June 24, 1999 No. 120-FL “On the Basics of the System for the Prevention of Child Neglect and Juvenile Delinquency”, preventive work is carried out on the initiative and by decision of other institutions of the prevention system, in others - according to the decisions and instructions of CM&R. However, such decisions of the commission are not always enforced, and the reason, in our opinion, is not so much the lack of administrative responsibility for their non-enforcement at the federal level (since in some regions of Russia it is nevertheless provided for by the legislation of the subject), but the lack of organizational, managerial, personnel and financial opportunities and resources.

Speaking about the powers of the CM&R, we note that the legislator only lists them without grouping and systematizing them. Such fragmentation cannot have a positive effect on law enforcement (Kozhokar', 2018).

So Commissions for Minors and their Rights can exercise their powers in collaboration with:

- minors and their parents (legal representatives) (paragraph 4 of part 2 of article 11 120-FL “provide assistance in a domestic appliance”; paragraph 5 of part 2 of article 11 120-FL);
- by the court (Clause 2, Part 2, Article 11 120-FL “together with the relevant authorities or institutions prepare materials submitted to the court”);
- organizations engaged in educational activities (Clause 3, Part 2, Article 11 120-FL);
- state authorities of the constituent entity of the Russian Federation and (or) local governments (clause 6 of part 2 of article 11 120-FL);
- bodies and institutions of the system for the prevention of child neglect and juvenile delinquency (part 3 of article 11 120-FL);
- other bodies and organizations within the framework of the exercise of powers, which are provided for by the legislation of the Russian Federation and the legislation of the constituent entities of the Russian Federation (clause 7, part 2, article 11 120-FL).

Also in paragraph 1 of part 2 of Art. 11 120-FL provides a general authority, which commissions can fulfill when entering into relations with any of the above entities.

The legal status of the Commissions for Minors and their Rights, depending on the counterparty, will vary significantly. However, the legislation does not provide for detailed regulation of rights and obligations, not only in relation to a specific authority, but even in relation to a group of counterparties.

So, for example, when deciding on the need for specific preventive work in relation to a minor or his family, the commission gives instructions to carry it out to certain institutions. Often, without specifying the concretization of such a work or service, not to mention the fact that there are also no methods for carrying out such work, legal instruments for its implementation and clear results on their results. There are practically no managerial tools for choosing the form of such work, justification of its relevance.

All this necessitates the creation of a universal mechanism for planning, organizing and monitoring preventive activities. In our opinion, individual preventive work should be formalized by a resolution of the commission on an appropriate program that would contain a set of measures for individual preventive work, indicating specific deadlines, tasks, performers (appointment of a minor curator) and expected results.

In order to improve the quality of execution of decisions, we consider it appropriate to empower the higher commissions with departmental control authority in relation to lower ones, by analogy with the judicial control system, when higher instances verify the legality and validity of decisions made by lower courts, but only within the limits of consideration established by the draft law. As for the Government Commission of the Russian Federation, it is necessary to provide for such a power as the ability to give subordinate commissions explanations on the issues of law enforcement practice in order to ensure a uniform application of the legislation of the Russian Federation in this area.

A certain problem affecting the implementation of decisions of the Commissions for Minors and their Rights is insufficient clarity on the issue of coordination of the activities of prevention entities. Thus, Federal Law No. 120-FL obliges the authorities and institutions of the prevention system to immediately inform the prosecutor's office, the commission, guardianship and trusteeship authorities, social protection authorities, internal affairs bodies and others about the same circumstances related to a minor. In turn, this leads to duplication of response to the received information and a decrease in work efficiency (Pisarevskaya, 2019).

In addition, the concept and forms of coordination activity of the commissions are not legally defined; there are no clear mechanisms for the implementation of this authority. However, if there is legislative consolidation of the obligation to execute decisions of commissions by the subjects of the prevention system, there is no legal liability for failure to comply with these decisions.

It is difficult to see, not just the execution of the decisions of the commissions themselves, but also the enforcement of decisions on bringing to administrative responsibility (often fines) already in the framework of enforcement (Golubtsov, 2019; Melyukhanova, 2018). This is due to the social disadvantage of the people involved, often expressed in the absence of work, an immoral lifestyle. As a result, such administrative fines do not reach the goal of administrative punishment. One of the means to increase the efficiency of enforcement proceedings can just be the establishment of such types of punishment that can actually be executed, provided that through such a replacement the punishment for a specific unlawful act is achieved (Morkovskaya, 2013).

One of the powers of the commissions is to make decisions to eliminate the causes and conditions conducive to antisocial and illegal behavior (Banshchikova & Ageeva, 2014). Specific deadlines for the execution of such decisions and responsibility for their non-compliance are not provided for by law. It seems that the powers to bring to administrative responsibility the officials who committed violations, as well as those who did not comply with the resolution, should be vested with the prosecutor.

The problem that seriously impedes the enforcement of the decisions of the commissions and arises from their collegial nature is the lack of a legislative obligation to create a full-time staff to ensure the activities of the commissions. Often, departments or other structural units are created as part of the executive bodies of state power of subjects or bodies of local self-government, but this is a right, but not an

obligation of such bodies. The powers to ensure the activities of the commissions can be transferred to employees for whom this is not included in the main official duties. In addition, due to the lack of qualification requirements for employees supporting the activities of the commissions, the quality of the preparation of documents also suffers.

The Commissions for Minors and their Rights poses many tasks that are solved through various mechanisms. One of the most effective is the exercise of the power to consider cases of administrative offenses under the relevant articles (Articles 5.35, 5.36, 6.10, 6.23, 20.22 of the Administrative Code). Moreover, the implementation of this authority takes almost the entire time of the commission, which is unacceptable. Detailed regulation of any process / mechanism should contribute to the most clearly and fast work.

The need to establish a unified procedure for considering materials not related to cases of administrative offenses, and to fix measures of influence and the procedure for applying them to minors or their parents, legal representatives, for example, administrative regulations, but at the federal level, is obvious.

In disputes about who should be subject to juvenile affairs, one should be guided by the position of the Supreme Court of the Russian Federation (Review of judicial practice of the Supreme Court of the Russian Federation No. 1 (2018)), according to which most cases should remain under the jurisdiction of the Commissions for Minors and their Rights, but some issues such as placement of a minor in a special educational institution of a closed or open type (hereinafter referred to as SEICT or SEIOT), a Center for the temporary detention of minors offenders (hereinafter referred to as CTDMO) are considered by the courts.

Federal Law No. 120-FL provides for the powers of the Commission on Minor Affairs and the protection of their rights with regard to the preparation, together with the relevant authorities or institutions, of materials submitted to the court on issues related to the maintenance of minors in special educational institutions of a closed type (Smirnova et al., 2019). However, the power to prepare, together with the relevant authorities or institutions, the materials submitted to the court on issues related to serving sentences by convicted minors in educational colonies by a court sentence, Federal Law No. 120-FL is not provided.

The incompleteness of the legal regulation of Federal Law No. 120-FL leads to the fact that the commission's authority to protect and restore the rights and legitimate interests in relation to convicted minors is not realized in practice.

Another problem of enforcement is related to the implementation of compulsory educational measures, appointed by decision of the court to minors exempted from criminal liability. According to the Decree of the Plenum of the Supreme Court of the Russian Federation dated 01.02.2011 No. 1 "On judicial practice of applying the legislation governing the specifics of criminal liability and punishment of minors," the courts assign control over the enforcement of coercive educational measures appointed in accordance with article 90 of the Criminal Code of the Russian Federation on minor affairs and the protection of their rights. Despite the fact that the prosecutor's office insists on the execution of a court order by the commission, there is no legislative provision for any procedure for the enforcement of compulsory educational measures in general or for monitoring their implementation (as part of this procedure) (Karnozova, 2016). As we have already indicated above, the commissions do not have the necessary

resources by which it would be possible to exercise these powers. Since the commission is a collegial body, the only way out of this situation is for us to instruct the subjects of the prevention system or members of the commission who have such capabilities and are vested with appropriate powers by federal law (internal affairs bodies, the penal system, and other).

The creation of a specialized juvenile court system, a discussion on the appropriateness and effectiveness of which has been ongoing for a long time (Spesivov, 2015), would be a certain help in solving the existing problems of judicial proceedings on minors.

For world practice this is not an innovation. So, in the Republic of Kazakhstan today there are 19 minor courts with a staff of 57 judges. Their jurisdiction includes criminal cases of crimes committed by minors, and criminal cases of crimes that violate the rights of minors, as well as civil and administrative cases (How juvenile courts work in Kazakhstan, 2020).

In Poland, the law of October 26, 1982 on Judicial Proceedings with Minors is in force, which takes precedence over other laws and includes substantive and procedural law, regulating the criminal or administrative liability of minors. The law establishes the priority of the rehabilitation approach, allowing when considering cases involving minors to the court at any stage to transfer the case to a mediator (intermediary), whose report is taken into account when making a judicial decision (Sharanov et al., 2019).

A specialized minor justice system, represented by courts for minors, exists in Canada. An important feature of the Canadian model is the endowment of a judge not only with the function of administering justice, but also with a social worker.

The practice of creating special juvenile courts for Russia is not new. The first juvenile court was in 1910 in St. Petersburg. An independent normative act regulating the activities of such courts was not adopted, therefore, in their work they were based on the Law on the responsibility of minors and minors, adopted on June 2, 1897. The founders laid down the idea of the possibility of re-educating the child as the basis for the creation of the court. The ideas of retaliation and punishment were completely ruled out.

The most important component of juvenile justice was the organization of custody of minors (Manova & Spesivov, 2017). The trustees collected for the court information of a social nature about the child's family, his living conditions, and also the trustees found out the reasons that contributed to the commission of the crime in order to eliminate them and protect the child (Borisevich, 2015).

As the "creator of Russian juvenile justice" wrote in his works, Professor Lublinsky (1923):

Minor's courts were the result of a long and deeply rooted need for this movement, aimed at improving the physical and moral condition of adolescents, street children and those who had fallen into crime. They are based on the idea of creating a special center that is familiar with the characteristics of childhood and the principles of pedagogy. (p. 162)

After 1917, such courts ceased to function.

Thus, based on the positive world experience of individual countries and the historical practice of Russia on the functioning of courts for minors, the creation of a specialized juvenile justice system seems quite possible.

7. Conclusion

Since the adoption of the current Federal Law No. 120 – FL, many changes and additions have been made to it. At the same time, during the analysis of the legal status and powers of the Commissions for Minors and their Rights, a number of problems were identified, including the imperfection of legislative regulation.

The legal status of the commission on juvenile affairs and the protection of their rights, depending on who it interacts with its powers, vary significantly. The regulation of rights and obligations not only in relation to a specific authority, but even in relation to a group of counterparties can have a positive effect on the practice of implementing the competencies of the commission.

Turning to the identified particular problems, we note:

- in order to improve the quality of execution of decisions, it is advisable to give higher commissions the authority for departmental control in relation to lower ones, by analogy with the judicial control system;

- the powers to bring to administrative responsibility the officials who committed violations, as well as those who did not comply with the resolution, should be vested with the prosecutor;

- it is necessary to establish a unified procedural procedure for considering materials not related to cases of administrative offenses, and to establish measures of influence and the procedure for applying them to minors or their parents, legal representatives, for example, administrative regulations, but at the federal level;

- one of the means of increasing the efficiency of enforcement proceedings in the context of the execution of administrative punishments of minors, their parents (legal representatives) can be the establishment of such types of punishments that can actually be executed (provided that through such a replacement the punishment for a specific unlawful act is achieved) ;

- to exercise the power to protect and restore the rights and legitimate interests of convicted minors, entrust the implementation of appropriate control or individual preventive measures to the subjects of the prevention system or members of the commission possessing such capabilities and endowed with relevant powers by virtue of federal law (law enforcement bodies, criminal executive system, etc.);

- to work out an option for the implementation of juvenile justice would be the creation of a specialized system of juvenile courts.

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