

Lyashuk A. V., Yuritsin A. E.

**ADMINISTRATIVE PROCEDURE FOR PUTTING A JUVENILE IN
TEMPORARY DETENTION CENTRE FOR JUVENILE OFFENDERS (TDCJO):
LEGAL REGULATION IMPROVEMENT ISSUES**

*Lyashuk Anna
Valer'evna,*

*Lecturer of the Chair of administrative
law and administrative activity of in-
ternal affairs bodies at Omsk Acad-
emy of the RF MIA, c.j.s. (PhD in law);*

*Yuritsin Andrei
Evgen'evich*

*Associate professor of the Chair of ad-
ministrative law and administrative
activity of internal affairs bodies at
Omsk Academy of RF MIA, c.j.s. (PhD
in law).*

The article deals with topical issues related to normative legal regulation and procedure of putting juvenile offenders in temporary detention center for juvenile offenders, substantiates proposals on improvement of legislation regulating the procedure of putting juvenile offenders in TDCJO.

Keywords: rights and freedoms of minors, forced isolation, state coercion, legal responsibility, special institutions, preventive work, custodial control, neglect, offences, administrative court procedure.

Issues of restriction on the rights and freedoms of juvenile offenders in carrying out forced isolation have always been important for both minors and law enforcers. Despite the fact that *minor non tenetur respondere durante minori aetati* (a minor is not considered responsible during his minority) there is a possibility in the Russian legislation of using coercive measures for restricting freedom of minors, provided that they have committed a socially dangerous or socially harmful deed. However, the application of such measures requires, in our view, a more thorough legal regulation, because it affects the rights and freedoms of persons with special legal status, does not have clear procedure and is ambiguously interpreted by law enforcers.

Status of minors in the Russian Federation predetermines special legal approach to them. This is due to the fact that because of the failure to reach the age of 18 minors are not fully delictual and cannot be responsible for their actions, be liable under the Russian legislation for committing illegal acts. If a minor “makes a false step”, makes a mistake it is necessary to apply measure of state coercion that are different from the ordinary measures for a general entity.

Minor age always assumed a differentiated approach to different categories of persons in relation to resolving the issue of their responsibility. Analysis of the legislation of foreign countries has demonstrated different approaches to the determination of the lower age limits of responsibility. Even in ancient Rome there was known *infantiae aetas proxima* – age that is the closest to infancy (from 7 to 10.5 years). A child could not be applied a penalty for an offence the birth until the end of this period. Before the 20th century delictual dispositive capacity came in Italy and Spain – from the age of 9; in Austria, Bulgaria, the Netherlands, Denmark, Russia – 10; in Germany, Hungary, Serbia, and Switzerland – 12; in Turkey – 13; in Norway – 16 years old [6, 7].

Now the age of delictual dispositive capacity abroad also implies differentiation. So, in England criminal responsibility comes from the age of 10, in France – 13, in Germany – 14 years. In Asia: in Philippines – 9, in India – 12 and in some cases – 7. Middle East: in Syria, Jordan – 7; in Israel – 9 [8, 172].

According to Islamic law a minor in the age group from 7 to 15 years old, just as a younger child, is not criminally responsible. Such a child may be sentenced to *ta'azir*, which is considered not as a punishment, but as a means of education and correcting bad behavior [10, 105]. Decision on the form *ta'azir* can be taken by an Imam and Qadi (judge). As noted by researchers, these forms can be a verbal reprimand or whip beat (in an appropriate quantity and quality measure) [9]. In addition, by decision of a judge such a minor can be transferred to a tutor, represented

both by his father and another trustee, or be put in an appropriate correctional facility or school.

Russian legislation, taking into account the age of a minor in the commission of acts containing signs of a criminal or administrative offence, stipulates, if need be, its putting in a special institution – temporary detention center for juvenile offenders under internal affairs bodies (hereinafter referred to as TDCJO). The essence of their activities is the protection of life and health of minors, as well as prevention of committing by them repeated socially dangerous acts and other offences. Educational aspect, designed to ensure correction of minors, goes to the fore here.

TDCJO is a specialized secure setting, which involves: isolation of adolescents, the presence of police officers in the role of tutors, regular individual preventive work, and strict regime of detention with a view to preventing the commission by them of repeated crimes or other offences. Operation of TDCJOs is currently regulated by the Federal Law “About the Basis of Prevention of Child Neglect and Juvenile Delinquency”, as well as by departmental acts [2; 4].

According to federal statistical data for 2012-2014, it is possible to state that, despite a slight decrease in total number of crimes, committed by minors in the specified period, the number of administrative of offenses committed by the specified category of persons and the number of minors placed in TDCJOs has increased. So, on the territory of the Russian Federation in 2012 minors committed 64,245 crimes 872,500 administrative offences, 13.6 thousand teenagers were placed in TDCJO; in 2013, minors committed 67,200 crimes, 876,300 administrative offences, 13.8 thousand teenagers were placed in TDCJO; in 2014 – 59,200 crimes, 879, 400 administrative offences, 14 thousand teenagers were placed in TDCJO [7]. Regional statistics confirms the general tendency [5]. Thus, in the Russian Federation annually about 14 thousand minors are placed in such centres.

The minimum age for minors placed in TDCJO is not legislatively enshrined. However, the analysis of the order of the Russian Ministry of Internal Affairs No. 839 shows the presence of the following age groups placed in a TDCJO: 1) 7-11 years, 2) 12-13 years, 3) 14-15 years, 4) 16 years and older. Practice shows that minors aged 11 and older are mainly put in these centers.

The main problem of adjudication on the placement of a minor in TDCJO is a gap in the legislation. The bottom line is that none of the codified normative procedural act enshrines procedure for placing in TDCJO. Despite the fact that the reason of putting a minor in TSVSNP is the commission by him of a crime or administrative offense, neither the Criminal Procedure Code, nor the Code on Administrative

Offences of the RF (hereinafter – CAO RF) contains provisions governing this procedure. It should be noted that even in the near future this problem will not find its solution. Thus, the Code of Administrative Court Procedure of the Russian Federation, entering into effect from September 15, 2015 [1], adopted to regulate the order of exercising administrative procedures that were previously scattered in different normative legal acts and had not a clear order of implementation, does not contain provisions concerning judicial review of issues of putting minors in TDCJO. It should be noted that the legislator has included in the Code of Administrative Court Procedure of the Russian Federation twelve procedures for proceedings on certain categories of cases, among which we can find proceedings on administrative cases relating to the placement of a foreign citizen, who is subject to deportation or readmission, in a special institution or extending the stay of a foreign citizen, who is subject to deportation or readmission, in a special institution (Chapter 28); proceedings on administrative cases relating to involuntary hospitalization a citizen in medical organization providing psychiatric care in stationary conditions, extending the period of involuntary hospitalization of a citizen or involuntary psychiatric examination of a citizen (Chapter 30); proceedings on administrative cases relating to involuntary hospitalization of a citizen in medical antituberculosis organization (chapter 31). Thus, in our view, the position of the legislator is not entirely logical, as the placing of a juvenile in TDCJO is of public, administrative nature and is exercised compulsorily in the same way as any other mentioned above procedures, but the issue remains open and the problem is unresolved.

Currently there is the position of the Constitutional Court of the Russian Federation on the placement of minors in TDCJO, which is set out in the ruling from May 14, 2013, which prescribes the resolution of the issue on temporary confinement of persons in TDCJO through civil court procedure [3]. However, this position is in doubt among specialists and law enforcer. As a rule, the placement of a minor in TDCJO is regarded as a combination of actions based on borrowing from various procedures that have only a distant resemblance to the civil process in its classic understanding.

Analysis of judicial practice shows that court itself considering a petition to place a minor in TDCJO, does not operate with the concepts “in accordance with the criminal law” or “under civil-law relations” and, in making a decision on such a petition, does not refer its jurisdiction to this or that branch of law.

Attention should be drawn to constant deficiencies both in the activity of internal affairs bodies in the sphere of work with minors on the issues of placing them in TDCJO them and in consideration of these issues by judges, who are also

not immune from possible mistakes. For example, by the decision of a judge, minor N. born in 1995 was placed in TDCJO. Taking this decision, the judge judged from the fact of commission of offense under paragraph “d” part 2, article 158 of the Criminal Code of the RF and probability of re-offending. However, the judge did not fully take into account the data that characterized the identity of the girl, who, according to the character rating, was hard-working, actively participated in social life of the class and school, and also that earlier N. had not been registered in the division of internal affairs, after carrying out preventive work with her she did not commit any other offenses. The judge’s ruling was overturned by the Chairman of the superior court.

Often high workload of a judge dealing with civil cases does not allow to understand the submitted by internal affairs authorities materials in respect of minors, and to make a legitimate and fair decision based on an objective, comprehensive and impartial study of the case materials.

Should be remembered that part 2 article 118 of the RF Constitution, which provides for a symbiosis of form and content, allocates administrative court procedure as an independent form. The procedure for placing minors in specialized centers is, in fact, a separate kind of administrative court procedure, since it involves a court decision on the issue of forced isolation of a teenager, restriction of his freedom, application of administrative coercive measures in compliance with a procedural form, which allows complete respect of his rights and legitimate interests.

The placement of a minor in TDCJO is currently regulated at the legislative by three articles of the FL “About the Basis of Prevention of Child Neglect and Juvenile Delinquency”. In our view, this is not enough because:

Firstly, when implementing this procedure the rights and freedoms of a minor are directly affected and the norms of the considered Law do not contain the necessary provisions, which would guarantee the rights of a minor involved in process;

Secondly, the Law specifies that the term for appeal is 10 days, while the Code of Administrative Court Procedure of the Russian Federation as a general term for filing an appeal provides for a 30-day period, which allows appropriate ensuring of the legitimate procedural rights and freedoms of a person.

Thus, given the content, legal form, as well as the need to normatively consolidate the detailed procedure for placing a juvenile offender in TDCJO, it is necessary to include it as a separate kind of proceedings on administrative cases in the Code of Administrative Court Procedure of the Russian Federation.

References:

1. Code of Administrative Court Procedure of the Russian Federation No. 21-FL from March 8, 2015 [Kodeks administrativnogo sudoproizvodstva Rossiiskoi Federatsii ot 8 marta 2015 g. № 21-FZ]. *Rossiiskaya gazeta – Russian Newspaper*, May 11, 2015.
2. Federal Law No. 120-FL from June 24, 1999 “About the Basis of Prevention of Child Neglect and Juvenile Delinquency” (as amended by the Federal Law No. 489-FL from December 31, 2014) [Federal’nyi zakon ot 24 iyunya 1999 g. № 120-FZ «Ob osnovakh sistemy profilaktiki beznadzornosti i pravonarushenii nesovershennoletnikh» (v red. Federal’nogo zakona ot 31 dekabrya 2014 g. № 489-FZ)]. *Rossiiskaya gazeta – Russian Newspaper*, June 30, 1999.
3. Ruling of the Constitutional Court of the Russian Federation No. 690-O from May 14, 2013 “On refusal to accept for consideration the complaint of Nazarmamadov Didor Gulmamadovich concerning violation of his constitutional rights by subparagraph 6 paragraph 2 article 22 and paragraph 3 article 30 of the Federal Law “About the Basis of Prevention of Child Neglect and Juvenile Delinquency”” [Opredelenie Konstitutsionnogo Suda Rossiiskoi Federatsii ot 14 maya 2013 g. № 690-O «Ob otkaze v prinyatii k rassmotreniyu zhaloby Nazarmamadova Didora Gulmamadovicha na narushenie ego konstitutsionnykh prav podpunktom 6 punkta 2 stat’i 22 i punktom 3 stat’i 30 Federal’nogo zakona «Ob osnovakh sistemy profilaktiki beznadzornosti i pravonarushenii nesovershennoletnikh»»]. *Konsul’tant Plus. Professional version* [Electronic resource], Moscow: 2015.
4. Order of the Ministry of Internal Affairs of Russia No. 839 from September 1, 2012 “On Improving the Activity of Temporary Detention Centers for Juvenile Offenders” [Prikaz MVD Rossii ot 1 sentyabrya 2012 g. № 839 «O sovershenstvovanii deyatel’nosti tsentrov vremennogo sodержaniya dlya nesovershennoletnikh pravonarushitelei»]. *Rossiiskaya gazeta – Russian Newspaper*, December 17, 2012.
5. *Speech by the Chief of the Directorate of the MIA of Russia for Omsk Region Police Lieutenant General Yu. I. Tomchak at the Legislative Assembly of Omsk Region on the issue: “On the Work of the Police in 2014”* [Vystuplenie nachal’nika UMVD Rossii po Omskoi oblasti general-leitenanta politsii Yu.I. Tomchaka na Zakonodatel’nom Sobranii Omskoi oblasti po voprosu: «O rabote politsii v 2014 godu»]. Available at : https://55.mvd.ru/Dejatelnost/Otcheti_dolzhnostnih_lit/Otchet_nachalnika_UMVD_Rossii_po_Omskoj (accessed : 14.03.15).

6. Gurevich S.A. *Responsibility of Young Offenders under the Russian Legislation* [Otvetstvennost' yunyh prestupnikov po russkomu zakonodatel'stvu]. Moscow: 1912.

7. *Report on the results and main directions of activity of the Ministry of Internal Affairs of the Russian Federation in 2014* [Doklad o rezul'tatakh i osnovnykh napravleniyakh deyatelnosti Ministerstva vnutrennikh del Rossiiskoi Federatsii v 2014 godu]. Available at : https://mvd.ru/Deljatelnost/results/annual_reports (accessed : 10.03.15).

8. Ignatov A. N., Krasikov Yu. A. *Course of the Russian Criminal Law. Vol. 1. General Part* [Kurs rossiiskogo ugolovnogo prava. T. 1. Obshchaya chast']. Moscow: 2001.

9. Markuntsov S. A. Awareness of Criminal-law Prohibitions in the Structure of Criminal Responsibility of Minors [Osoznanie ugolovno-pravovykh zapretov v strukture ugolovnoi otvetstvennosti nesovershennoletnikh]. Under edition of A. E. Zhalinskii. *Konsul'tant Plus. Professional version* [Electronic resource], Moscow: 2015.

10. Safi A. M. Criminal Responsibility of Juvenile Offenders under the Islamic Legislation [Ugolovnaya otvetstvennost' nesovershennoletnikh pravonarushitelei po islamskomu zakonodatel'stvu]. *Aspirant i soiskatel' – Graduate Student and Applicant*, 2003, no. 6.