PROCEDURAL RIGHTS OF JUVENILE OFFENDERS BEFORE SOVIET COURTS AND COMMISSIONS FOR JUVENILE AFFAIRS

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In recent years numerous scholars have described the procedural rights accorded criminal defendants in the Soviet Union. It is important to remember, however, that Soviet law subjects certain types of offenders to sanctions which are considered to be non-criminal, and which, therefore, are imposed without many of the procedural guarantees found in the Soviet Codes of Criminal Procedure. For example, a wide array of culpable acts fall under the heading of “administrative violations”, the commission of which may be punished by fines, corrective labor, confiscation of property, deprivation of a right, or short-term administrative arrest. Similarly, persons who commit certain petty offenses may be brought before comrades’ courts rather than be subject to criminal trial.

Nowhere is this dichotomous nature of procedural rights more apparent than in the Soviet juvenile justice system. Depending on their age and the nature of their delinquent activity, youthful offenders in the Soviet Union are subject to the jurisdiction of either the criminal courts, or of special bodies known as commissions for juvenile affairs (komissii po delam nesovershennoletnikh). Whereas the courts accord juvenile defendants all the usual procedural rights of the Soviet criminal justice system (plus some additional rights), commissions for juvenile affairs are characterized by informal, unstructured proceedings which offer comparatively little protection for the interests of the accused.

What makes the procedural dichotomy most interesting in the juvenile crime context is the clear element of unequal treatment of people in similar positions. Persons subject to administrative liability or to trial by comrades’ courts have generally committed less serious offenses entailing minor sanctions. It is thus somewhat understandable that they should not be granted the same degree of procedural rights as criminal defendants. As will be described below, however, the Soviet juvenile justice system allows the possibility that youths who have committed similar offenses and who may be subject to identical sanctions will be accorded vastly different procedural guarantees.
1. Background: History and General Structure of the Soviet Juvenile Justice System

The concept of special, extrajudicial disposition of cases of juvenile offenders was an early foundation of Soviet justice. A decree of 14 January 1918 established juvenile commissions (komissii o nesovershennoletnikh) under the auspices of the education authorities of local soviets. These commissions, composed of doctors, jurists, and representatives of educational authorities and the public, were charged with hearing cases of offenders up to the age of 17. The sanctions which the commissions imposed were "those dictated by medical, psychiatrical, and educational theory rather than the rules of law". During the 1920s the details of the system changed (for example, age limits varied and commissions were empowered to refer more serious cases to the courts), but the general notion of special treatment for juvenile offenders persisted.

The process of collectivization left "a huge army of homeless children... roaming around the Soviet Union". As delinquency increased to epidemic proportions the regime turned to drastic measures of control. In 1935 the juvenile commissions were abolished and all offenders of at least 14 years of age (12 years for some serious crimes) were made subject to criminal prosecution. For a few years thereafter youthful offenders could have their cases heard in special juvenile divisions of the people's courts, but in 1938 these too were abolished, and for the next generation Soviet law abandoned the concept of special disposition of juvenile criminal cases.

In the late 1950s two developments provided impetus for the revival of some kind of juvenile commissions. First, the 1958 Principles of Criminal Legislation of the USSR and the Union Republics raised the age of criminal responsibility and introduced the possibility of applying to juvenile offenders non-criminal sanctions in the form of "compulsory measures of an educational character" (prinuditel'nye mery vospitatel'nogo kharaktera) (discussed below). "In connection with this it became necessary to create organs which would organize the work of crime prevention among juveniles and which would apply to them measures of social influence".

The second impetus to the revival of juvenile commissions came in February 1959, when the XXI Congress of the Communist Party of the Soviet Union called for greater public participation in the building of communism. In the legal sphere this policy heralded an emphasis on increased popular participation in the judicial process, and led to the publication of three draft laws; 1) a "Law on Increasing the Role of the Public in Combatting Violations of Soviet Laws and the Rules of Socialist Society", 2) a model Statute on Comrades' Courts, and 3) a model Statute on Commissions for Juvenile Affairs. The various union republics adopted the Statute on Commissions for Juvenile Affairs in 1961-1962. Thus, since the early 1960s Soviet law has again provided for special, extra-judicial disposition of cases of juvenile offenders.