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RIGHTS OF CONVICTED MINORS: FEATURES OF PROVISION AND IMPLEMENTATION DURING MARTIAL STATE IN UKRAINE

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Humin O.M. Rights of convicted minors: features of ensuring and implementing them during martial law in Ukraine.

The article is devoted to the necessity of ensuring and implementing the rights of convicted minors during martial law in Ukraine, which is an important feature of a legal state and a democratic society.

It is found out that the features of the implementation of the rights of convicted minors during martial law in Ukraine are provided for by national and international regulatory legal acts, which emphasize the observance of the rights to education, security, respect for human dignity, the prevention of discrimination on any grounds and the creation of conditions for serving sentences for convicted persons with special needs. The necessity of compliance with the UN Standard Minimum Rules for the Treatment of Prisoners “Nelson Mandela Rules” is emphasized.

It is noted that in Ukraine, serving sentences by convicted minors is aimed at minimizing the differences between living at liberty and staying in correctional institutions, re-education, restoration and formation of lawful behavior, further resocialization based on the norms of law and public morality. Such an approach is a sign of a legal, democratic state and will contribute to the formation of law-abiding behavior of citizens in society.

It is emphasized that in Ukraine, convicted minors have all the rights and freedoms guaranteed by the Constitution of Ukraine, and they are also assigned a number of responsibilities. While serving a sentence by a minor, a number of his rights may be legally limited.

It is noted that it is important for convicted minors to ensure the right to education. This applies both to the direct acquisition of general secondary education and to the continuation of education if the person has stopped it at a certain level. Based on the legislation of Ukraine regulating the educational process, the features of general education and vocational training of prisoners are determined.

Attention is drawn to the fact that incentive measures are applied to convicted minors as a way of influencing the formation of lawful behavior: convicted persons may be granted permission to participate in cultural, entertainment and sports events held outside the educational colony, provided that they are accompanied by employees of the institution; they are also allowed to leave the territory of the colony accompanied by parents or other close relatives. Disciplinary sanctions are applied for improper behavior.

Key words: convicted juveniles, UN Standard Minimum Rules for the Treatment of Prisoners, incentives, disciplinary sanctions, correctional colonies, human rights and freedoms.

Гумін О.М. Права засуджених неповнолітніх: особливості забезпечення і реалізації під час воєнного стану в Україні.

Стаття присвячена необхідності забезпечення і реалізації прав засуджених неповнолітніх під час воєнного стану в Україні, що є важливим показником розвинутої правової держави і демократичного суспільства.

З'ясовано, що особливості реалізації прав засуджених неповнолітніх під час воєнного стану в Україні передбачаються загальнодержавними та міжнародними нормативно-правовими актами, в яких акцентовано увагу на дотриманні прав на освіту, безпеку, повагу до людської гідності,

на недопущенні дискримінації за будь-якими ознаками та створення умов відбування покарань засудженим з особливими потребами. Наголошується на необхідності дотримання мінімальних стандартних правилах ООН поводження із в'язнями «Правила Нельсона Мандели».

Зазначено, що в Україні відбування покарання засудженими неповнолітніми спрямоване на мінімізацію відмінностей між проживанням на волі та перебуванням у виправних установах, перевиховання, відновлення і формування правомірної поведінки, подальшої ресоціалізації на основі норм закону і суспільної моралі. Такий підхід є ознакою правової, демократичної держави і сприятиме формуванню законослухняної поведінки громадян у суспільстві.

Наголошено, що в Україні засуджені неповнолітні мають усі, гарантовані Конституцією України, права та свободи, а також на них покладено ряд обов'язків. Під час відбування покарання неповнолітньою особою, ряд її прав може законно обмежуватися.

Зазначено, що для засуджених неповнолітніх важливо забезпечити право на освіту. Це стоїть як безпосереднього здобуття загальної середньої освіти, так і продовження навчання, якщо особа припинила його на певному рівні. На основі законодавства України, що регламентує освітній процес визначаються особливості загальноосвітнього і професійно-технічного навчання засуджених до позбавлення волі.

Акцентовано увагу на тому, що до засуджених неповнолітніх застосовуються заходи заохочення як спосіб впливу на формування правомірної поведінки: дозвіл на участь у культурно-видовищних та спортивних заходах, що проводяться поза межами виховної колонії, за умови супроводу працівників установи; також допускається можливість виходу за територію колонії у супроводі батьків або інших близьких родичів. За неналежну поведінку застосовуються дисциплінарні стягнення.

Ключові слова: засуджені неповнолітні, мінімальні стандартні правила ООН поводження із в'язнями, заохочення, дисциплінарні стягнення, виховні колонії, права та свободи людини.

Problem statement. Reforms in the system of execution of sentences, initiated in Ukraine before the full-scale invasion of Russia, are aimed not only at improving material support, but also at introducing innovative methods and ways of correction of convicts. The principles of the priority of human rights, respect for human dignity have become the basis for improving the penitentiary system.

The problem of observance and realization of the rights of convicted minors deserves special attention. An important priority task is the maximum correction of such persons on the basis of the formation of a fully developed personality with legitimate value convictions.

The purpose of the article is to deepen the study of the features of ensuring and implementing the rights of convicted minors during martial law in Ukraine.

The status of the development of this issue. The issues of rights and freedoms of convicted persons, in particular, minors, have always been the subject of discussion among scholars and practitioners in the field of criminal procedure and criminal enforcement law.

Today, approaches to the specifics of the implementation of the rights of convicted minors during martial law in Ukraine are being actively reconsidered and improved. The following scholars paid attention to this issue: O. Vysotska, V. Vorozhbit-Gorbatyuk, Yu. Kernyakevych-Tanasiychuk, O. Kolb, O. Osadko, L. Olefir and others.

The scientific conceptual ideas of these researchers are the basis for the development of a system for protecting the rights of convicted minors in conditions of wartime realities and their maximum resocialization.

Presentation of the main material. Ukrainian society cares about future generations, making efforts to ensure that young people adhere to lawful behavior. Of course, in any society there are manifestations of unlawful behavior, illegal acts, in particular, among minors.

According to the legislation of Ukraine, the state respects and protects the rights, freedoms and legitimate interests of convicts, provides the necessary conditions for their correction and resocialization, social and legal protection and their personal safety.

The Criminal Procedure Code of Ukraine states that a minor is a minor, as well as a child aged fourteen to eighteen years [1].

It should be noted that in our country, convicted minors have all the rights and freedoms guaranteed by the Constitution of Ukraine, and they are also assigned a number of responsibilities. While serving a sentence, a number of their rights may be legally restricted.

Ukraine has approved a Strategy for Reforming the Penitentiary System for the Period Until 2026, which recognizes as a priority: 1) creating appropriate conditions for the detention of convicted persons and persons taken into custody; 2) creating an effective system for preventing and combating torture, cruel, inhuman or degrading treatment or punishment; 3) ensuring the right to health care and medical assistance, social protection in penal institutions and pre-trial detention centers [2].

The strategy covers all aspects of a person's life and development and is aimed at ensuring a full-fledged life of a person.

It is important for convicted minors to ensure the right to education. This applies to both direct acquisition of general secondary education and continuation of education if the person has stopped it at a certain level.

Based on the legislation of Ukraine regulating the educational process, the features of general education and vocational training of convicted persons are determined.

In colonies, accessibility and free acquisition of complete general secondary education are ensured for convicts.

Convicts who seek to improve their level of general education, regardless of age, are provided with conditions for independent study, and are also provided with access to education in general education institutions operating in colonies. Such educational institutions are created on the initiative of local executive authorities and self-government bodies in accordance with the existing need, as well as on condition of ensuring the appropriate material and technical base, methodological support and pedagogical staff in accordance with the procedure determined by the Cabinet of Ministers of Ukraine.

Secondary general education schools of I–III levels operate in correctional colonies, where convicts can study. Students of such schools are provided with textbooks, notebooks and necessary writing utensils free of charge [1].

Y. Kernyakevych-Tanasiychuk notes that “given the examples of international legislation, the education of convicts serving sentences of imprisonment in Ukraine should be made mandatory, in particular, general secondary education should be mandatory.” [3, c. 106].

The educational process for convicted minors is important, because, as a rule, most of such convicts do not have a sufficient level of knowledge, form their life position on unlawful examples and are unable to realize the need for socio-cultural self-realization.

Convicted minors are subject to incentive and penalty measures as a way of influencing the formation of lawful behavior.

Regarding incentive measures applied to convicted minors, for conscientious behavior and attitude to work and study, active participation in the work of amateur organizations and educational activities, convicted minors may be subject to the following incentive measures, in addition to general measures: convicts may be granted permission to participate in cultural, entertainment and sports events held outside the educational colony, provided that they are accompanied by employees of the institution; the possibility of leaving the territory of the colony accompanied by parents or other close relatives is also allowed.

The duration of such outings is determined by the head of the colony, but cannot exceed eight hours. At the same time, attending events that take place after 8:00 p.m. outside the colony is not allowed.

Certain disciplinary measures may be applied to convicted minors in case of violation of the established rules or conditions of serving their sentence. These measures include: warning, reprimand, severe reprimand, cancellation of improved conditions of detention, as well as placement in a disciplinary isolator for a period of up to five days, with or without the possibility of attending school or work.

The right to apply incentives and penalties is not only reserved for colony officials, but also for senior educators and educators. In particular, a senior educator may apply the following types of incentives and penalties: gratitude, early removal of a penalty previously imposed by him or the educator, warning and reprimand [1].

It is important that the disciplinary sanction corresponds to the gravity of the offense. Sanctions should encourage the minor to behave lawfully, and not form the belief that he is being treated in a biased manner.

Often, convicted minors reach the age of majority in a correctional colony, and the legislation regulates the change in their legal status.

When the convict reaches 18 years of age, he is transferred from the correctional colony. Then he will serve his sentence in a correctional colony with a minimum level of security and general conditions of detention.

The issue of such a transfer is decided by the central state body responsible for the execution of criminal sentences. This requires a decision of the pedagogical council and a submission from the head of the correctional colony, which must be coordinated with the children's service.

An important aspect is that, under certain circumstances, the legislator allows convicts who have reached the age of eighteen to remain in correctional colonies.

In order to consolidate the results of correction and complete their education (general education or vocational training), convicts who have already reached the age of 18 may remain in a correctional colony. This is possible until the end of their sentence, but up to a maximum of 22 years. The decision to extend their stay is made by the pedagogical council and approved by a resolution of the warden of the colony, which must be approved by the children's service. The same conditions of serving a sentence, food standards and material and household support apply to these adult convicts as to minors. However, their working conditions are determined in accordance with labor legislation [1].

We emphasize the importance of public participation in the correction and resocialization of convicted minors, when in order to increase the efficiency of the activities of educational colonies and ensure social protection of convicts, trustee boards are formed. These boards include representatives of state authorities, local governments and public organizations. The main tasks of trustee boards include: assisting the colony administration in organizing training and education, strengthening the material and technical base, public monitoring of compliance with human rights, as well as assistance in resolving social issues and adapting released persons to work and everyday life. The organization and activities of the trustee board are determined by the relevant regulation, which is approved by the Cabinet of Ministers of Ukraine [1].

Also, in correctional colonies, parental committees can be created at the departments of the social and psychological service. The purpose of their creation is to provide assistance to the colony administration in the process of re-education and social adaptation of minors.

It should be emphasized that during martial law in Ukraine, the issue of the safety of convicts, in particular, minors, is important. In correctional colonies, it is necessary to create conditions so that during air raids, convicts are in safe places, shelters. It is necessary to equip shelters on the territory of the correctional colony according to the norms and standards for convicted minors.

It is important to adhere to the principles of respect for human dignity and human rights, as well as international standards for the treatment of prisoners.

International standards for the treatment of prisoners are developed to solve problems related to working with convicts and prisoners in general, as well as for their resocialization. These norms are differentiated depending on the category of subjects of rights protection. In particular, there are separate standards for minors, enshrined in such documents as the Declaration of the Rights of the Child, the UN Convention on the Rights of the Child and its Optional Protocols, the UN Guiding Principles on the Prevention of Juvenile Delinquency, and the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). The latter, in particular, emphasize the need to create in each national legal system a comprehensive set of laws, rules and regulations that would directly concern juvenile offenders, as well as the institutions and bodies responsible for administering justice in relation to them [4].

Scientists note that these rules establish minimum requirements for the protection of prisoners' rights, which the United Nations considers necessary to ensure respect and humanity in the penitentiary system. This is an integral part of international human rights standards. Therefore, prisons are obliged to create conditions that prevent discrimination against prisoners, eliminate threats to their life, health and personal integrity, and also ensure the protection of the rights of staff [5, p. 553].

Therefore, we will emphasize the specifics of the use of physical restraint, special means and weapons against convicted minors.

It is prohibited to use physical restraint, special means and weapons against this category of convicts, except in cases of group or armed attack by them that threatens the life and health of the prison staff or other persons, or armed resistance [1].

We will emphasize the need to comply with the UN Standard Minimum Rules for the Treatment of Prisoners. These are the so-called "Nelson Mandela Rules", named in honor of the public figure who spent 27 years of his life behind bars.

Five basic principles can be identified that underlie the Mandela Rules:

1. All prisoners should be treated with respect, taking into account their dignity and value as people. No prisoner shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment;

all prisoners shall be protected from it; no circumstances may justify it. The protection and safety of prisoners, staff and visitors shall be ensured at all times.

2. The rules shall be applied impartially. There shall be no discrimination on any ground. The religious beliefs and morals of prisoners shall be respected. In order to give practical effect to the principle of non-discrimination, prison administrations shall take into account the individual needs of prisoners, in particular those most vulnerable to prison conditions. Measures shall be taken to protect and promote the rights of prisoners with special needs. Such measures shall not be considered discriminatory.

3. Imprisonment and other measures which result in the isolation of persons from the outside world create suffering for those persons, because they are deprived of their right to self-determination through deprivation of liberty. The penitentiary system should therefore not increase their suffering.

4. The objectives of imprisonment are to protect society from crime and to reduce the number of recidivisms. These objectives can only be achieved if the period of imprisonment is used to ensure, as far as possible, the reintegration of such persons into society after release, so that they can lead a law-abiding life and earn their own living. To this end, the prison administration and other competent authorities should offer the person education, vocational training and employment, as well as other forms of appropriate and available assistance, including correctional, moral, spiritual, social, health and sports assistance. All such programmes, activities and services should be provided on the basis of an individual approach to the needs of prisoners.

5. The prison regime should seek to minimize any differences between prison life and life in the community that result in prisoners being held less accountable or having less respect for their human dignity. Prison administrations should make all reasonable accommodation and adjustment arrangements to ensure that prisoners with physical, mental or other disabilities have full access to prison life on an equal basis [6; 7].

For convicted minors, it is important to create such conditions of stay in colonies that will maximally contribute to the correction of the minor, and also help not to lose touch with society. After serving their sentence, the authorized bodies should maximally contribute to the resocialization of such persons in order to maintain them as full members of society.

Conclusions. Thus, the specifics of the implementation of the rights of convicted minors during martial law in Ukraine are provided for by national and international regulatory legal acts, which focus on observing the rights to education, security, respect for human dignity, on preventing discrimination on any grounds and creating conditions for serving sentences for convicted persons with special needs.

In Ukraine, serving sentences by convicted minors is aimed at minimizing the differences between living at liberty and staying in correctional institutions, re-education, restoration and formation of lawful behavior, further resocialization based on the norms of law and public morality. Such an approach is a sign of a legal, democratic state and will contribute to the formation of law-abiding behavior of citizens in society.

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