

INTERNATIONAL LEGAL ASPECTS OF THE IMPLEMENTATION OF DEPRIVATION OF LIBERTY AGAINST MINORS

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Abstract: The article discusses certain provisions of the norms of international law relating to key issues of execution and serving sentences in the form of deprivation of liberty by convicted juveniles in educational colonies. The characteristic of the international standards operating in the penitentiary sphere is given for the possible implementation of international norms in the legal system. Based on the results of the analysis, the author's conclusions are presented on the feasibility of implementing and streamlining certain provisions of international norms in the penitentiary legislation of Uzbekistan.

Keywords: minors, international acts, convicts, punishment, correctional facilities, educational colonies juvenile delinquent.

The process of reforming the penitentiary system in Uzbekistan today is far from complete. Analyzing the results of the reform of this system for the period from 2016 to the present, it is necessary to point out the systematic work carried out in the country to create legal acts that regulate certain issues of the execution and serving of criminal penalties and improve the observance of the rights and freedoms of convicts, the conditions for their detention ; on the optimization of correctional institutions and the application of alternative to imprisonment criminal penalties for criminals. The provisions of international acts relating to the penitentiary sphere, of course, are taken into account in the development and implementation of the penitentiary policy of the state.

However, despite the measures taken, certain requirements of international acts on the regulation of penitentiary legal relations have not received due attention and, as a result, normative consolidation in the penitentiary legislation. This fact confirms the need for further study, research, testing and implementation in the national legal system of international standards for the treatment of minors in places of deprivation of liberty.

The penitentiary legislation, in accordance with the provisions of the fundamental law of the country, establishes the dominant position of international norms, therefore, if an international treaty establishes other rules for the execution of sentences and the treatment of convicts than those provided for by the penitentiary legislation, then the rules of the international treaty are applied, as evidenced by the content article 4 of the Criminal Executive Code of Uzbekistan. At the same time, if the provisions of the norms of international law are included (perhaps slightly modified) in the content of the PEC, then this will contribute to better execution of

punishments, legal integration and, probably, will affect the level of offenses in educational colonies.

Currently, no state has developed a "universal" system of crime prevention, which could help reduce the level of criminal manifestations of citizens both in places of deprivation of liberty and beyond. That is why international experience is becoming important. Only in the conditions of consolidation of common efforts in the fight against crime is it possible to achieve the desired result.

In scientific circles, the illegal activities of convicts who have reached the age of majority are actively investigated. However, juvenile and child crime does not receive due attention. The difficulty is, in this case, the antisocial and illegal activities of underage citizens who commit crimes at an age when criminal liability is impossible. This fact requires that measures of educational influence be applied to them, but the fact that minors, due to their inherent emotional instability and immaturity, are actively gaining criminal experience during this period, is not taken into account. This is partly reflected in the provisions of international standards for the treatment of persons who have broken the law.

The problem of the dynamics of crimes committed by juveniles has recently caused increasing anxiety and concern among practitioners and in the scientific community [1, p. 7-10; 2, p. 17-19].

Particular attention is drawn to the existing cases of involvement of minors in the activities of organized groups or criminal communities of various kinds. That is why, at present, juvenile delinquency is a complex problem in society, which necessitates strict control and close attention from the public and various state bodies and structures [3, p. 12-14].

Modern trends in social development indicate that the legal status of a minor, guarantees of his fundamental rights and freedoms, including in the process of detention and in places of deprivation of liberty, must comply with the principles and norms of the Constitution, generally recognized principles and norms of international law, international contracts [4, p. 522-525]. This fact has a positive effect on the number of illegal acts committed by minors, causing the achievement of the goals of the penal legislation in relation to them, among which the correction and prevention of new criminal offenses are dominant. This is where the influence of international acts in the field of penitentiary legal relations on the penitentiary system can be traced.

For a clearer understanding of the phenomenon under consideration, we will characterize certain provisions of international standards that are reflected in the current legal system.

Thus, among the international acts regulating the execution of punishment in respect of juvenile convicts and their treatment, one should include:

1) The Standard Minimum Rules for the Treatment of Prisoners (hereinafter referred to as the Minimum Rules) [5]. Some provisions of paragraph 8 of the Minimum Rules are reflected in the separate detention of minors from adult convicts; in matters of material and household and economic support. However, as it seems, in order to implement S.p. 15-16 of the Minimum Rules, it is necessary to regulate in

more detail, in particular, the issues of personal hygiene of juvenile convicts, setting the maximum allowable length of hair on the head and face. This fact is confirmed by the established procedure for the effective implementation of the Minimum Rules, according to which all states must adopt these rules and translate them into national legislation;

2) Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) [6]. As rightly noted in paragraph 1.4, juvenile justice issues should become an integral part of the direction of the national development of the state. Placement of a minor in places of deprivation of liberty, in accordance with the requirements of the Beijing Rules, is allowed as a last resort, while the period should be minimal, regardless of the committed criminal act.

These provisions are used for illegal purposes by adult offenders, involving minors in the commission of crimes. The administration, in accordance with paragraph 26.6 of the Beijing Rules, must take measures aimed at avoiding the negative influence of adult offenders in a correctional institution. However, in the conditions of the penitentiary system, there are places where free contact between minors and adult convicts is possible - medical institutions where, for medical reasons, convicts are kept regardless of the type of colony from which they came;

3) UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) [7]. In the direction of the prevention of juvenile delinquency, this document occupies a leading position. It notes the leading position in the prevention of juvenile delinquency in the framework of the prevention of crime in society, as well as the possibility of educating minors in the spirit of humanistic views on social relations, which will avoid the commission of crimes. It is rightly noted that prevention among minors will be effective only with the efforts of the whole society, and not its individual subjects. At the same time, the subjects of prevention, as evidenced by Ch. 3 guidelines, all its levels must be qualified professionals.

Chapter 7 confirms the above information regarding the importance of enhancing the international exchange of data, experience and knowledge gained in the implementation of activities related to the prevention of juvenile delinquency;

4) Guidelines for child-friendly action in the criminal justice system [8]. Particular attention is paid in the document to the adoption in each country of procedural norms for juvenile cases, analysis and review of the quality of applicable norms in relation to minors, and the creation of juvenile courts. The issues raised are quite controversial in the context of the domestic legal system;

5) Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime [9]. This international act highlights the main areas of victimization of juvenile delinquency, since they can act not only as subjects of a crime, but also as an object of criminal encroachment by an adult, a minor, or a group of such persons. Chapter 12 regulates the issues of ensuring the safety of minors who are the objects of criminal attacks. The special status of minors, as well as a particularly vulnerable, in terms of victimization, position gives them the right, on the basis of Ch. 14, on the application of special preventive measures;

6) United Nations Rules for the Protection of Juveniles Deprived of their Liberty [10]. This international act partly repeats the provisions of the Beijing Rules, but it also has its own peculiarities. Thus, paragraph 29 provides for the possibility of participation of juvenile convicts together with positive adult convicts in special programs that have a corrective effect on them. As a kind of best practice, it is worth pointing out the provisions of paragraph 30 regarding the establishment of open correctional institutions for minors (security measures are absent or limited), which should be decentralized. To provide a high-quality and targeted corrective impact, the number of detainees should be minimal, and the institution itself should be small.

Items 63-65 should be included among the implemented provisions, according to which the use of physical force and means of restraint against minors is permitted in exceptional cases, but the use and carrying of weapons on the territory of an educational colony is prohibited;

7) United Nations Model Strategies and Practical Measures to Eliminate Violence against Children in Crime Prevention and Criminal Justice [11]. The provisions of this document testify to the specific directions in which the world community should follow - the prevention of child victimization should be recognized as a priority task in the field of crime prevention; juvenile violence against minors should be eliminated by special preventive measures. The areas of crime prevention developed by consolidating the common efforts of various countries should be unconditionally reflected in the national legislation of Russia on the basics of preventing the illegal behavior of minors.

Thus, the above norms are fundamental in relation to minors, the execution of punishment in respect of which is fixed by the PEC. Compliance with these provisions is the responsibility of the state.

Focusing on the activities of the penitentiary system, we note that international standards have a positive impact on its reform.

Practice shows that the characteristics of a minor, on the one hand, complicate work with convicts, as they dictate to the staff of the colony the requirements for taking into account the characteristic features of the personality of minors at a given age [12, p. 20-22]. However, on the other hand, the dynamics of the development of the personality of a minor allows us to speak about the success of the purposeful pedagogical work of personnel qualified in the field of adolescent pedagogy and psychology.

So, for example, the UN Rules concerning the protection of juveniles deprived of their liberty establish that the main criterion for dividing juveniles into different categories should be the provision of such conditions that would specifically meet the needs of convicts and ensure the protection of their physical, moral, mental integrity. The above requirement is contained, respectively, in the penal legislation.

According to the requirement of international documents, penitentiary institutions for juvenile convicts must meet all modern requirements in order to set them on the path of law-abiding behavior, instill a love for work and education, self-development, with a view to their further refusal from illegal activities. Today, it is

worth taking a different look at the places of detention and serving sentences for juvenile offenders, having set up work on their reorganization and improvement.

We believe that the basis for building a modern model of a penitentiary institution intended for juvenile offenders should include some principles contained in international standards, such as:

firstly, the separate maintenance of convicts, taking into account the severity of the illegal acts committed by them, the level of their public danger;

secondly, an integrated approach to the organization and implementation of systematic, high-quality and targeted social, psychological and educational work with convicts;

thirdly, the maintenance of convicts throughout the entire period of serving their sentences in one correctional institution, regardless of the age criteria of the offender, in order to provide continuous corrective action;

fourthly, the effect of the "social lift" in the process of correction of juvenile convicts [13, p. 10-12; 14, p. 58-61].

The implementation of these principles will make it possible to provide a qualitative educational effect within the framework of the general preventive function and in the process of executing punishment.

Article 3 of the Law of the Republic of Uzbekistan "On Basic Guarantees of the Rights of the Child" states that socially vulnerable children include those brought to criminal responsibility and those who are in institutions for the execution of punishment. This fact obliges the administration of the institution to apply to minors such forms of prevention as social adaptation and rehabilitation, which contributes to the acquisition of new and restoration of lost social ties and functions. Thus, the existence of the provisions of the norms of international standards in the system of national legislation is confirmed.

Among the main problems that need to be addressed within the institution are:

the prevalence of child abuse and violence against them (both on the part of employees of institutions, for example, when using physical force and special means, and on the part of convict peers),

low efficiency of preventive work (confirmed by the presence of a stable number of offenses committed annually and violations of the established procedure for serving sentences),

social exclusion of vulnerable categories of children (according to the current legislation, minors in places of deprivation of liberty are classified as "those in a difficult life situation", which increases their level of vulnerability),

lack of mechanisms to ensure the participation of children in public life (a rather difficult direction to implement due to the isolation of minors, but there is a way out by involving them in activities on the territory of the correctional institution).

Thus, in the context of the consolidation of the actions of the entire world community, an attempt is being made to organize the execution of sentences in the form of deprivation of liberty uniformly in all states.

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