

КРИМІНАЛЬНЕ ПРАВО ТА КРИМІНОЛОГІЯ

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FOREIGN EXPERIENCE OF PERFORMING PUNISHMENT IN THE FORM OF DEPRIVATION MINORS' LIBERTY FOR A DEFINITE PERIOD

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This article briefly describes the history of formation and development the criminal-executive institutions for minors, examines the features and shows the differences in the execution of punishment in the form of liberty deprivation for minors in different legal systems, discloses the structure of penal executive (penitentiary) institutions for minors in different states, especially highly developed Western European countries and the USA. Also, the article focuses on the legal regulation of the execution of sentences in the form of liberty deprivation for a certain period in different states and types of legal systems. In addition, the author draws attention to the link between criminal law enforcement and criminal law, especially in Japan and Iraq. The article also covers the involvement of minors in labor. In addition, on the basis of analysis the general theoretical positions and relevant literature, the author concludes that in countries with a customary system of law the use of sentences in the form of liberty deprivation for minors is very limited. The same applies to penitentiary systems in countries where Muslim law is spread.

Keywords: juvenile, penitentiary policy, legal system

Crime has long been an urgent problem, which caused great harm to the normal existence of society and the state development. Therefore, for many centuries, humanity has been struggling to resist this evil but constantly failing. Initially, the basis of the struggle were cruel punishments such as the death penalty, the principle of talion or blood revenge. However, later, at the age of the Middle Ages, new types of punishment (eg, imprisonment, placement of the perpetrator in the fortress) were gradually being introduced. And the terms of serving the sentence were the same for adults and juvenile offenders. As a rule, they were kept together. However, such a situation of juvenile convicts did not contribute to the effectiveness of punishment, even considering the psychological peculiarities (in particular, the lack of personality, moral instability, etc.) of such persons. Therefore, in some countries (Italy, Switzerland, Germany, France, England, etc.) during the XVIII century there were created special correctional facilities for children cared for by the church [13, c. 408].

Initially, this practice was unsuccessful. However, due to the gained experience, especially after World War II, it was possible to take into account mistakes and develop international standards for performing punishment in the form of deprivation minors' liberty for a certain period of time, which are targeted at modern penitentiary institutions for minors in many countries. However, each of the country has its own system of penalty institutions in the form of deprivation minors' liberty for a certain period of time

with different conditions for the detention of convicts. In many states, they are similar, but in some are very different. Moreover, it depends not only on the economic situation or cultural features of the state or historical factors, but also on the type of a particular state legal system. Therefore, a review of foreign experience to perform punishment in the form of deprivation of minors' liberty for a certain period of time will be made taking into account the state's belonging to a certain legal system.

In this regard, we first of all briefly mention the legal systems in modern states and their main differences, and then find out the particularities of serving a sentence in the form of deprivation minors' liberty for a certain period in different countries.

It is generally accepted to divide the legal systems into four types:

- 1) Continental (Romano-Germanic) legal system;
- 2) Anglo-Saxon (Anglo-American) legal system;
- 3) the legal system of the religious-communal type in which the Muslim legal family and religious-customary subtype of the legal system should be distinguished;
- 4) a mixed type of legal system. [4, c. 563–564; 5].

Thus, the basic issues of penitentiary policy in the states of the continental legal system are regulated by special laws. In some states, there is a separate codified legal act (for example, the German Federal Law "On Enforcement of Sentences in the form of Deprivation of Liberty, Remedies and Safeguarding Measures", which supplements the Federal Criminal Code of the Federal Republic of Germany), and in several other laws or Subordinate legal acts (particular, in France). In addition, in recent years France has established a penitentiary law based on jurisprudence, in particular decisions of national courts and the European Court of Human Rights [4, c. 15–19].

In accordance with the penitentiary legislation of the FRG, France, Slovakia and other countries of the Romano-Germanic legal family, the system of penitentiary institutions of these states includes institutions for juvenile, offenders separated from institutions in which adults are serving sentences.

In the penitentiary institutions of the continental type of the legal system, the progressive system of serving a sentence is used (changing the conditions of serving a sentence depending on the behavior of the convicted person, his attitude towards work, education, punishment, etc.), the work of convicts is organized, as well as vocational and general education. In addition, in Germany, if sentenced to 18 months of imprisonment; he is entitled to leave; there are no restrictions on the acting of religious ceremonies in prisons, and a system of disciplinary influence measures on convicts, promotion measures, special security measures is provided for maintaining the relevant regime of detention; the system of social rehabilitation of convicts is quite clear, much attention is paid to the process of social adaptation of the released prisoners [8, c. 241]. In other words, considerable attention, especially in France and in Germany, is given to the re-socialization of persons serving sentences of imprisonment for minors.

The administration of the penitentiary system in the states of the Romano-Germanic legal system is conditioned by the form of the state system. Thus, in the unitary states, it is centralized, without the participation of local authorities in this process, and in federal – the authorities of federal entities (states, lands, republics, etc.) also take part in this. Moreover, the system of execution of sentences in continental Europe is chiefly managed by the ministry (minister) of justice, despite the fact that the execution of punishment is carried out by a specially created body. Thus, the administration of penitentiary institutions in France is carried out by the Directorate of Penitentiary Administration as part of the Ministry of Justice. The director is appointed by the decree of the republic president on the submission of the Minister of Justice [12, c. 21].

The Russian Penitentiary system has a similar system of punishment, where the Federal Penitentiary Service (FPS) of Russia operates for this purpose. At the same time, the control of conditionally sentenced and conditionally released persons is carried out by the criminal executive authorities of the Federal Security Service of Russia. For the effective operation of penitentiary bodies and institutions in the Russian Federation, a methodology for evaluating the activities of territorial units of the Federal State Service of Internal Affairs of Russia has been developed and approved [14, c. 134].

At the same time, the prison system in Slovakia is rather specific, since it consists of the Corps of the Protection of Penitentiary Institutions and the Judiciary of the Slovak Republic – an armed formation deals with the organization of execution of sentences, arrests, protection of objects of the system of execution of punishment, ensuring the protection of order in the organs of justice. Among other things, it includes: Directorate-General, penitentiary institutions for minors, medical institution for accused and convicted persons. The Directorate General controls the activities of the penitentiary institutions and is subordinated to the Ministry of Justice of the Slovak Republic [14, c. 136].

For the work, the personnel of the Corps Protection Prison and Institutions of Justice of the Slovak Republic is initially carried out an adaptation period, then basic training, followed by training personnel for obtaining the appropriate professional qualifications [14, c. 137].

At the same time, the solving legal regulation of penitentiary bodies activities and institutions in Germany falls within the competence of land (Landern) [8, c. 241]. Thus, it follows from the foregoing that, in spite of the state's membership in one legal family, the procedure and conditions for the execution and serving of sentences in the form of deprivation minors' liberty for a certain period are different, not only as sources of legal regulation. Although the common features are still there. In particular, in all states of this type there are separate penitentiary systems that are part of the system of executive power, but the level of their independence is different. Prior to that, penitentiary institutions are generally subordinated to the ministry (minister) of a particular state.

Representatives of the Anglo-Saxon type of legal system are the United States and the United Kingdom of Great Britain and Northern Ireland. However, we will look at the peculiarities of sentencing in the form of deprivation of liberty for a certain period for juveniles not in the United Kingdom as a whole, but only in England, since Scotland and Northern Ireland have a certain degree of autonomy in this matter (henceforth. – *M. K.*) and in Wales the same punishment system is functioning as in England. Moreover, in these parts of the kingdom (Scotland and Northern Ireland) there is a mixed legal system – along with laws, there is a common law, doctrine and customs. Therefore, we can take England and the United States as a model countries of the Anglo-Saxon type.

So, first of all, we note that the main source of law in the Anglo-American legal system is a precedent. However, in England, a significant role also plays a common law, customs and statute law (laws passed by the parliament). This was also reflected in the legal regulation of the penitentiary system of the United Kingdom of Great Britain and Northern Ireland. Thus, the activities of the penitentiary institutions of England (as well as Wales) are governed by a set of precedents, norms of criminal, criminal procedure and penitentiary law, a special law «On Prisons» – 1952 and several other laws, as well as the Prison Rules, which have found their logical continuation and supplementing the relevant instructions and orders issued by Her Majesty's Prison Service [9, c. 195–196].

Formally, the work of the penitentiary system in England is managed by the Interior Minister, who is legally responsible for «general control» over the prison system and has the right to «act and issue instructions» necessary for this. In fact, virtually all affairs related to the execution of sentences are administered by the Her Majesty's Prison

Service, a multi-level organizational structure that allows operational control over all elements of the system [2, c. 23; 9, c. 196].

In addition, in the organizational and managerial mechanism for the execution of sentences in England there are managers of women's prisons and a juvenile prison manager who perform similar functions, taking into account the specifics of their correctional institutions subordinate to them [9, c. 196].

British prisons maintain strict rules and rigorous security measures [9, c. 195].

So, the main features of the penitentiary system in England are lack of a single codified act in the field of execution of sentences, which, however, does not interfere with the continuous process of improving the conditions for serving sentences in the prisons of England, maintaining security and order; the existence of a parallel prison management system – managers – for minors and women.

In England, considerable attention is paid to improving the conditions for serving sentences in prisons. This process always begins with the consideration of such issues as: 1) clarification that includes ill-treatment (which of the measures applied to the convicted are cruel, inhumane), solitary confinement, deterrence; 2) remedies: reviews, complaints procedures, disciplinary offenses, magazines, delineation of various categories of prisoners; 3) material conditions: food, lighting and ventilation, personal hygiene, sanitary conditions, clothes and bedding, overcrowding of the chambers; 4) modes and classes: contacts with the outside world, outdoor walks, education, free time, religion, useful work; 5) medical care: obtaining medical care, medical care for women, transmissible diseases, medical personnel, 6) personnel of the institution of serving a sentence: general provisions, staff training [14, c. 135].

The penitentiary system in the United States differs from the penitentiary system in England. First of all, the difference lies in the fact that the activities of federal prisons are regulated by special legislation: the norms of the section «Prison and Prisoners», chapter XVII «Codified Criminal and Criminal Procedural Law.» [9, c. 194].

Secondly, for minors convicted in the United States of America, special penitentiary institutions - reformists, or educational schools run by the Federal Ministry of Justice and the State Penitentiary Administration – have been created [14, c. 135]. All questions related to the prison are decided by the governor, who creates a governor's commission of eight people, being ordinary citizens of the state, to solve the issue of conditional-advance release. The decision of the commission is final and can not be appealed, all interested persons can learn about it [9, c. 194].

In the case of Scotland and Northern Ireland as representatives of a mixed type of legal system, the Scottish Executive and Northern Ireland Office, respectively, are administered by the Scottish Executive Officer, rather than by the Interior Minister of England (as in Wales). In fact, the execution of sentences in these countries is dealt with by the relevant prison services of Northern Ireland and Scotland.

The execution of juvenile delinquency in Muslim countries (for example, in Iraq, Saudi Arabia, the United Arab Emirates) has its own peculiarities. First of all, by examining their legal system, it is immediately apparent that the states of this subtype of legal system are distinguished by the fact that Islam plays an essential role in their right. It is precisely this, in our opinion, and it is worth paying attention when considering the peculiarities of serving sentences in the form of deprivation of minors' liberty for a certain period. Let's consider this on the example of Iraq.

Thus, the penitentiary law of Iraq consists of the Constitution, criminal law, custom, jurisprudence and resolutions of the Council of the Revolutionary Command and the People's Council, which for centuries formed under the influence of the Islam legal

concepts [5, c. 8]. As a result, criminal-law requirements are inextricably linked with religious and moral ones. Muslim law does not know the clear distinction between secular and spiritual functions, aimed at preserving the unity of the spiritual and secular power, religion and the state [10, c. 9].

Criminal liability of minors is determined by the severity of their crime. However, in Art. 67 of the Iraqi Criminal Code it is recommended to give preference to a warning and an exploratory conversation with parents or guardians about the use of punishment. At the same time, if the court finds this level of punishment insufficient, the child may be sent to a special school for a period from six months to three years [1, c. 129]. According to the Law «On the Welfare of Minors» in 1983, the criminal conviction of a minor (imprisonment for a certain term – MK) can be applied to a person aged seven to eighteen (adolescence) [1, c. 129].

The enforcement of criminal court decisions rests with the Penitentiary Service of Iraq [1, c. 129].

Thus, we can confidently assert that in Iraq, which belongs to a Muslim legal family, the execution of a sentence imprisonment for a certain period, albeit under the influence of continental and Anglo-American law, continues to exist under the influence of the Islam concepts. Yet, the parents of a minor offender play a significant role in this process (in particular, conversation with them has the advantage over the actual use of punishment) at school, which is not noticeable in other states of legal system.

Despite this, a few words need to be said about the penitentiary systems of Japan and Norway, which are distinguished from other systems.

Thus, in the second half of the 19th century, a criminal law and penitentiary law of the Western standard was created in Japan [14, c. 137]. Like the laws of other states, the Law of Japan «On Minors» (Part 1, Article 58) provides for the possibility of conditional release of a minor, and the priority measures for correction in prisons in Japan which is the labor of prisoners [14, c. 137]. Despite this, the characteristic feature of the Japanese penitentiary system is the classification of the convicts [11, c. 180–181]. All those sentenced to imprisonment first go to the classification centers, whereby they can be sent to penitentiary institutions, in particular, for persons under the age of 20 [14, c. 137]. The penitentiary institutions of Japan, which are serving a sentence of imprisonment for minors, include educational (schools for the training of minors) and correctional facilities (separate prisons for minors). Punishment in the form of imprisonment for minors occurs either in a special way appointed to a penitentiary institution, or in a specially designated part of the penitentiary institution, or in an institution designated for detention. In these institutions, the juvenile can be until he reaches the age of 26 years [11, c. 178–179, c. 182].

The prison policy of Norway aims to ensure that the prison does not look like a prison. For this reason, for example, in the «Halden Fengsel» prison, the caretakers go without weapons, dine regularly with prisoners and engage in sports together with them. Moreover, half of the supervisors are women, since, according to the prison authorities, this reduces the aggressiveness of prisoners [3, c. 23].

Minors, convicted in the prisons of Norway, are few and they are kept in separate centers for juvenile offenders in adult prisons [3, c. 41].

Regarding states with a religious-community type of legal system, the execution of juvenile imprisonment also has certain features compared to those mentioned above. In particular, we note that the list of such states includes India, the countries of the Far East and a number of African states in which the spread of Islam has not been spread. So, despite the existence of legislation passed by parliament or government of these states, the inhabitants of the countries adhere to those rules that are spread in their community, community, tribe or other community. And among the system of punishment for crimes

there is a beating with sharps or sticks, stoning or the principle of a tallion or blood revenge [7]. At the same time, deprivation of liberty for a certain period is not actually applied.

Based on the above, we can conclude:

First, the common feature of penitentiary systems of states with different legal systems is that they are created and operate in accordance with the law or the system of laws. It all depends on the state system, since in the unitary states, this issue is regulated by one law, and in the federations – federal law and legislation of the federation subject.

Secondly, in all states, where punishment is imposed in the form of deprivation of minors' liberty for a certain term, the latter serve him in specialized institutions, separate from adults.

Thirdly, in the states of the religious-communal subtype of legal systems, punishment is not used in the form of deprivation of liberty, even if it is provided for by the current legislation, which is conditioned by the fact that the population adheres not to laws, but to customs or religious norms.

And, finally, the last feature of punishment in the form of minors' imprisonment for a certain period, which we will allocate, is different from conditions for serving a sentence in other states. Moreover, the penitentiary systems of Japan and Norway deserve special attention here, where the following conditions for serving a sentence are created, so that the juvenile convict does not feel the negative influence of punishment and does not want to commit crimes in future.

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ЗАРУБІЖНИЙ ДОСВІД ВИКОНАННЯ ПОКАРАННЯ У ВИДІ ПОЗБАВЛЕННЯ ВОЛІ НА ПЕВНИЙ СТРОК ЩОДО НЕПОВНОЛІТНІХ

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Описано історію становлення і розвитку кримінально-виконавчих установ для неповнолітніх, розглянуто особливості та показано відмінності виконання покарання у виді позбавлення волі щодо неповнолітніх у різних правових системах, розкрито структуру кримінально-виконавчих (пенітенціарних) закладів для неповнолітніх у різних державах, особливо у високорозвинених західноєвропейських країнах і у США. Також у статті звернуто увагу на правове регулювання виконання покарання у виді позбавлення волі на певний строк у різних державах і типах правових систем. Автор, окрім того, зосередився на зв'язку між кримінально-виконавчим і кримінальним законодавством, особливо це стосується Японії та Іраку. Не залишено поза увагою і залучення неповнолітніх до праці. Крім того, на підставі аналізу загальнотеоретичних положень і відповідної літератури автор доходить висновку, що у державах зі звичаєвою системою права застосування покарання у виді позбавлення волі щодо неповнолітніх дуже обмежено. Те саме стосується пенітенціарних систем у державах, де поширене мусульманське право.

Розповідаючи історію виникнення і розвитку пенітенціарних установ для неповнолітніх за кордоном, наголошено на труднощах, які спіткали засновників перших установ для неповнолітніх злочинців. Зокрема, спочатку не було диференціації покарань щодо неповнолітніх і дорослих. Так само, як і не було впроваджено роздільне тримання дорослих і неповнолітніх засуджених, не враховувалися психологічні особливості неповнолітніх осіб тощо. Проте, автор звернув увагу на те, що, незважаючи на всі невдачі, умови відбування покарання у виді позбавлення волі на певний строк щодо неповнолітніх постійно поліпшувалися, структура пенітенціарних установ вдосконалювалася, а відповідне законодавство розвивалося, що призвело до створення міжнародних правових норм (стандартів).

Аналізуючи порядок і умови виконання та відбування покарання у виді позбавлення волі на певний строк щодо неповнолітніх в інших державах, автор зазначив також і особливості правового регулювання у кожній з розглядуваних держав. Зокрема, у цій статті зазначено, що воно залежить не тільки від типу правової системи у певній державі, а й від форми державного устрою та форми правління тощо.

Окремо у цій статті виділено порядок і умови виконання та відбування покарання у виді позбавлення волі на певний строк щодо неповнолітніх у Норвегії, Словаччині і в Японії. Не оминув автор і специфічну пенітенціарну систему Сполучених Штатів Америки. Зокрема, наголосив на тому, що поряд із державними кримінально-виконавчими установами для неповнолітніх, які засуджені до позбавлення волі на певний строк, діють аналогічні приватні заклади.

Висловлено сподівання, що кращі досягнення зарубіжного досвіду виконання покарання у виді позбавлення волі на певний строк щодо неповнолітніх буде враховано під час реформування української пенітенціарної системи.

Ключові слова: виконання покарання у виді позбавлення волі щодо неповнолітніх; пенітенціарна установа (заклад); управління системою виконання покарань; правова система.