

Features of Legal Status of Juvenile Females Sentenced to Imprisonment: International Standards

The article is devoted analysis of international normative standards of fixing and implementing in the process of re-socialization of the legal status of juvenile of females sentenced to imprisonment. The necessity of the investigation of international legal norms for regulating the legal status both of women and juveniles caused by the specific (double) legal status of juvenile females convicts. Ukrainian legislation (primarily penal) should take greater account of international standards of treatment with juvenile females sentenced to imprisonment, which has a positive effect on national regulation of their legal status, and as a result on the organization of effective resocialization of designated category of persons in conditions of correctional facility.

Key words: legal status, juvenile female convicts, resocialization, international standards.

Presentation of the scientific problem. Normative fixing of legal status of sentenced persons which is a criterion of level of development of penal legislation, implementation of principles of justice and humanity is adjusted by Penal Code of Ukraine in detail, but lawmakers passed by juvenile females, as a specific category of persons that require special treatment taking into consideration the psychophysiological, age and other features.

Both in legislative level and in practice the legal status of juvenile females is not distinguished from the legal status of minors in general. The legal status of juvenile females is not tied to the legal status of women prisoners

Some rights of underage women sentenced to prison, serving a sentence in a juvenile correctional facility, relatively fixed in the native legislation by entrusting the duties on administration of corresponding institutions (for the right of separate maintenance from adult females and juvenile males sentenced to prison this category of prisoners is held in juvenile correctional facility).

According to the above circumstance, complicated task as to ensuring the efficiency of their social rehabilitation arise before administration of juvenile females correctional facility as well as before whole society.

At the present stage activity on issues related to the organization and legal regulation of execution of punishment as to persons sentenced to deprivation of freedom is realized taking into account universally recognized international legal standards, problems of usage in practice of which is acquiring a great scientific interest in our country. The need to study international legal norms regarding the regulation of the legal status of both women and minors caused by specific (double) legal status of juvenile females sentenced to imprisonment.

The aim of the article is an analysis of international standards as to regulatory consolidation and implementation in the process of resocialization of the legal status of juvenile females sentenced to imprisonment.

Analysis of research and publications. Some issues of regulatory consolidation and implementation of the legal status of juvenile females sentenced to imprisonment raised in the works written by M. L. Dobrynina, K. V. Dyadyun, V. D. Ermakov, Y. V. Zhulova, S. A. Gorkina, M. L. Kazakova etc.

Main content and justification of the study results. In accordance with international standards in the sphere of treatment with convicted persons the task of resocialization of offenders is considered as a priority. In particular, the European Prison Rules (revised version) focuses on re-socialization and individualization of this process and thereafter on differentiation of regimes of serving the sentence [1]. Resolution № 65/223 adopted by the UN General Assembly in 21.10.2010 in paragraph 15 highlights the need and importance of the inclusion of the strategy of resocialization of juvenile convicts in state policy in the sphere of criminal justice as to minors [2].

In the United Nations Rules which concern the protection of juveniles who are deprived of their liberty, adopted by Resolution 45/113 UN General Assembly in 14.12.1990 in paragraph 86, establishes that «...it is important for understanding the concept of resocialization that the resocialization should begin conceptually and in practice from the first days of the stay of convicted person in a correction facility... » [3].

According to the adopted «On Approval of the state target program of the penitentiary system modernization in 2013-2017» preferable direction of the state policy in the sphere of execution of sentences is the creation of conditions for correction and resocialization of convicted persons [4].

Without raising an issue of international standards priority for constitutional and other dispositions of national law, we note that support for the process of re-socialization of juvenile females in the juvenile correctional facility directly related to the sphere of human rights and should be agreed with international standards in this sphere. At the same time, in international documents juveniles' rights in general and rights of women, who serve the sentence in correctional institutions, are described sufficiently detailed, as well as peculiarities of the process of resocialization of juvenile female are fixed.

In international documents on human rights (the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the International Covenant on Economic, the Social and Cultural Rights, the Convention on Human Rights, etc.) in general outline the equality of rights establishes regardless of gender, respectively, women exercise the same rights as men. Thus, in general international documents unspecialized women's rights regardless of age (including minors) are equal with men's rights. To ensure the protection of women's rights at the international level special acts were adopted (the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, the Convention on the Elimination of All Forms of Discrimination against Women, etc.) which in addition reinforce the equal rights of women on a par with men in socio-economic relations. In this case, the legal status of women of all ages (including minors) is equal to the status of men.

As to the peculiarities of the process of resocialization of women sentenced to imprisonment, in accordance with international standards they are as follows:

1. According to Art. 26.4 of the Standard Minimum Rules relating to the implementation of Juvenile Justice (Beijing Rules) «... young women who are detained in a penal institution, should be given special attention with regard to their personal needs and problems» [5]. This disposition directs the state to take into consideration maximally the personal characteristics of juvenile females including care, defence, protection, assistance, treatment, training, etc.

2. In Art. 23 of the Standard Minimum Rules for the Treatment of Prisoners states that women's institutions should have special lodging for the care both of pregnant women and lying-in women. A necessary condition is to ensure delivery in normal conditions (in a specialized hospital). Since this disposition doesn't refers to the woman's age, we believe that the abovementioned rights of women (to give birth and receive appropriate care) apply also to juvenile females sentenced to imprisonment.

3. Art. 53 of the Standard Minimum Rules for the Treatment of Prisoners establishes disposition that male co-workers have the right to get the access to the women's department only when accompanied by female co-workers. Care and supervision for women who are in a penal institution should be entrusted only with female staff. However, this fact should not preclude male co-workers, including doctors and teachers to perform their duties in prisons for women.

We consider it necessary to dwell on peculiarities of treatment with minors sentenced to imprisonment and on their legal status, right vested in international acts: in Art. 26.2 of the Standard Minimum Rules relating to the implementation of Juvenile Justice (Beijing Rules) states that imprisonment should be distributed under conditions and circumstances which ensure the compliance of the rights of minors. Juveniles in correctional facilities must be provided with care, protection and assistance – social, psychological, medical, physical, and assistance in the field of education and professional training regarding their age, gender, personality and interests of their full development [5]; according to Art. 26.3 of the Standard Minimum Rules relating to the administration of justice for juveniles – minors in correctional facilities should be separate from adults. On arrival at the correctional facility – each minor must receive a copy of rules of conduct within the institution and a written description of their rights and responsibilities in clear language with the address of agencies to which complaints can be sent and addresses of public and private institutions or organizations which provide legal assistance.

For those juveniles who are illiterate or can not read in the appropriate language, this information is notified in the form which provides its complete understanding. In Art. 30 states that minors should be kept only under conditions that fully take into account their particular needs, status and special requirements according to their age, personality, gender, mental and physical condition.

Art. 9 of the Standard Minimum Rules for the Treatment of Prisoners also takes into consideration the psychophysiological characteristics and points that «... it is desirable for persons sentenced to imprisonment to have separate chamber or room. If a such placement for some reasons is not possible, it is necessary to ensure abidance of people together in one room in accordance with their psychological compatibility». The main

criterion of separation of juveniles, deprived of freedom, into various categories should be provided by such approach that best corresponds to the specific needs of each individual and ensure the protection of the physical, mental and moral integrity and well-being [5].

The Standard Minimum Rules for the Treatment of Prisoners indicates the consideration of the specific age and psychological characteristics of convicted persons when providing medical supervision in a penal institution.

According to Art. 62 medical service of correctional facility should identify all the physical and mental diseases or defects that could preclude from resocialization of a convicted person and must see to recovery. On this purpose correctional institutions should provide necessary medical, surgical and psychiatric services. In particular, in Art. 15 requirement as to the presence of an qualified medical worker, experienced in Psychiatry, in a correctional institution personnel, is vested [6].

In the sphere of resocialization of juveniles sentenced to imprisonment dispositions of Art. 12 of the Rules of the United Nations concerning the Protection of Juveniles Deprived of their Liberty are important. These dispositions point to the need of usage in a resocialization process and due to the interests of prisoners of effective measures and programs that will promote their health, self-esteem, education of sense of responsibility and will encourage the formation of such opinions and skills that will help in their successful reintegration into society.

Mentioned disposition complements Art. 27 of abovementioned international document, which indicates the need to held an interviews with every minor and prepare psychological and social report after arrival at the correctional institution as soon as possible. Program of resocialization is being made on the basis of this report.

These programs of resocialization under Art. 54 must include measures to prevent drug and alcohol abuse. Within the context of the content of the process of resocialization Art. 61 is crucial. The article states that «... it is necessary to pay attention of the prisoners on that they remain to be the members of a society, despite the temporary isolation». In this regard, it is necessary to engage public organizations in the process of resocialization.

In each penal institution social workers, who would be involved in maintaining and strengthening of useful social ties of convicted person with society, should work. Particular attention should be paid to the maintenance and strengthening of relationships between convicted person and his/her family when they are desired and serve the interests of both parties (Art. 79).

From the beginning of serving the sentence it is worth to think about the future that waits for convicted after his release. In this regard, it is necessary to maintain and strengthen relationships with persons or organizations that are outside the walls of institutions and are able to protect the interests of his family and promote his inclusion into society after release (p. 80). Art. 64 focuses on the need of functioning of corresponding services that would help to engage convicts in social life after release from correctional institutions.

In the organization of the process of resocialization in terms of correctional facility dispositions, which are vested in the Rules relating to the Protection of Juveniles Deprived of their Liberty, are valuable. Under these dispositions it is necessary to use all means to ensure proper connection between minors and outside world, which is the most important for training the minors before returning to the society, especially:

- Juveniles should be allowed to communicate with their families, friends and other persons or reputable organizations that, to leave the correctional facility for a visit to their home and family and to receive special permissions to leave the correctional facility for educational reason, for professional training and other important reasons.

- Every juvenile should have the right to regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unlimited communication with the family and the defender.

- Every minor has the right to communicate in writing or by telephone with any person of his/her choice in the absence of legal restrictions and to receive needed help for the practical exercise of this right. Every juvenile should have the right to receive correspondence.

- Every juvenile should have the right to receive visits from a qualified representative of any religion of his/her choice as well as the right not to participate in religious services and freely to decline a religious education, religious teachings or a sermon.

- Juveniles should be given the opportunity to be regularly informed about world events, read newspapers, magazines and other publications, to have access to television programs and films, as well as meet with representatives of the organizations in which they are interested.

- Every correctional facility shall provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it. Mentioned norm completes Art. 40 of the Standard Minimum Rules for the Treatment of Prisoners, according to which «each institution shall have a library available to all categories of prisoners which will be adequately stocked with both instructional and recreational books. All prisoners should be encouraged to use the library» [6].

Summary. Thus, the general dispositions of international legal standards of treatment with juvenile convicts and female convicts are exercised to juvenile female convicts, namely the Standard Minimum Rules of the United Nations concerning the Administration of Juvenile Justice (Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), the Convention on the Elimination of all Forms of Discrimination against Women, the European Prison Rules, The United Nations Convention on the Rights of the Child, etc. Also the general dispositions of the Standard Minimum Rules for the Treatment of Prisoners, as indicated in Art. 27.1 of the Standard Minimum Rules relating to the administration of justice for juveniles are fully extended on the juvenile female convicts.

Thus, at the international level the legal status of juvenile females sentenced to imprisonment is higher than in Ukraine, is based equally on the legal status of juveniles and women who are in conditions of deprivation of freedom. Obviously, the versatility of the dispositions of international acts orient states, including Ukraine, to the maximum differentiated approach to different categories of prisoners. Then prisoners, including juvenile females, acquire the number of rights and legitimate interests, that may be implemented in the process of resocialization.

In this context, the Ukrainian legislation (primarily penal) should take greater account of international standards of treatment with juvenile females sentenced to imprisonment, which has a positive effect on national regulation of their legal status, and as a result on the organization of effective resocialization of designated category of persons in conditions of correctional facility.

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Карпінська Н. Особливості правового статусу неповнолітніх жінок, засуджених до позбавлення волі: міжнародні стандарти. В статті здійснено аналіз міжнародних стандартів щодо нормативного закріплення та реалізації в процесі ресоціалізації правового статусу неповнолітніх осіб жіночої статі засуджених до позбавлення волі. На сучасному етапі діяльність щодо вирішення проблем, пов'язаних з організацією та правовим регулюванням виконання покарання щодо засуджених до позбавлення волі осіб здійснюється з урахуванням загальноновизнаних міжнародно-правових стандартів, проблеми застосування яких на практиці набувають великого наукового інтересу в нашій державі. На міжнародному рівні правовий статус неповнолітніх жінок, засуджених до позбавлення волі, більш захищений, ніж у праві України. Універсальність норм міжнародних актів орієнтує держави, в тому числі Україну, до максимальної диференціації підходу до різних категорій ув'язнених. Тоді ув'язнені, зокрема, неповнолітні жінки, отримують визнання ряду прав і законних інтересів, які можуть бути реалізовані в процесі ресоціалізації. У цьому контексті, українське законодавство (в першу чергу, кримінальне) повинне більшою мірою враховувати міжнародні стандарти поведінки з неповнолітніми жінками, засудженими до позбавлення волі, що чинитиме позитивний вплив на національне регулювання їх правового статусу, і в результаті на організацію ефективної ресоціалізації цієї категорії осіб, в умовах виправної установи.

Ключові слова: правовий статус, неповнолітні особи жіночої статі, ресоціалізація, міжнародні стандарти.

Карпинская Н. Особенности правового статуса несовершеннолетних женщин, осужденных к лишению свободы: международные стандарты. В статье проведен анализ международных стандартов нормативного закрепления и реализации в процессе ресоциализации правового статуса несовершеннолетних лиц женского пола, осужденных к лишению свободы. На современном этапе деятельность по решению проблем, связанных с организацией и правовым регулированием исполнения наказания в отношении осужденных к лишению свободы лиц осуществляется с учетом общепризнанных международно-правовых стандартов, проблемы применения которых на практике приобретает большой научный интерес в нашем государстве. На международном уровне правовой статус несовершеннолетних женщин, осужденных к лишению свободы, более защищен, чем в праве Украины. Универсальность норм международных актов ориентирует государства, в том числе Украину, к максимальной дифференциации подхода к различным категориям заключенных. Тогда заключенные, в том числе несовершеннолетние женщины, получают признание ряда прав и законных интересов, которые могут быть реализованы в процессе ресоциализации. В этом контексте украинское законодательство (в первую очередь, уголовное) должно в большей степени учитывать международные стандарты обращения с несовершеннолетними женщинами, осужденными к лишению свободы, которое оказывает положительное влияние на национальное регулирование их правового статуса, и в результате на организацию эффективной ресоциализации этой категории лиц в условиях исправительного учреждения.

Ключевые слова: правовой статус, несовершеннолетние лица женского пола, ресоциализация, международные стандарты.