

III. ЗАСТОСУВАННЯ ПОЗБАВЛЕННЯ ВОЛІ: ТЕОРІЯ І ПРАКТИКА

UDC 343.81

DOI 10.32755/sjcriminal.2021.02.078

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ANALYSIS OF THE STATE OF SCIENTIFIC RESEARCHES DEVOTED TO SENTENCE ENFORCEMENT IN THE FORM OF IMPRISONMENT CONCERNING JUVENILES IN UKRAINE AND EUROPEAN UNION MEMBER STATES

The state of scientific researches devoted to sentence enforcement in the form of imprisonment concerning juveniles in Ukraine and European Union member states is analyzed in the article. The range of issues that need further research in this area are identified. The necessity for further comprehensive comparative analysis of sentence enforcement in the form of imprisonment concerning juveniles in Ukraine and the European Union member states in order to develop scientifically substantiated proposals and recommendations for improving the national system of execution of this punishment for juveniles and sectoral legislation, based on positive European experience is substantiated.

Key words: *punishment, imprisonment, convicted juveniles, state of scientific researches, European Union.*

Target setting. Since such type of punishment as imprisonment emerged and its was applied to juveniles, there were constant discussions in academic community about its expediency that have not stopped. But research of sentence enforcement in the form of imprisonment concerning juveniles as an independent subject of scientists' consideration, is rarely identified in scientific papers. It is often considered together with imprisonment for adults.

Actual scientific researches and issues analysis. The issues of sentence enforcement in the form of imprisonment concerning juveniles was considered in the papers of many scholars, such as: K. A. Avtukhov, I. H. Bohatyrov, N. L. Berezovska, O. A. Hrytenko, O. I. Ivankov, O. H. Kolb, O. M. Lytvynov, Ye. S. Nazymko, M. S. Puzyrov,

M. V. Romanov, V. V. Stadnik, A. Kh. Stepaniuk, M. I. Khavroniuk, V. O. Chovhan, I. S. Yakovets, O. S. Yatsun et al.

In spite of the significant amount of scientific papers devoted to the outlined issues, many aspects still remain insufficiently studied. In particular, a comprehensive comparative analysis of sentence enforcement in the form of imprisonment concerning juveniles in Ukraine and European Union member states has not been conducted yet.

Purpose setting. The purpose of the article is to analyze the state of researching sentence enforcement in the form of imprisonment concerning juveniles in Ukraine and European Union member states, which will summarize the researches, conducted in this area and identify issues that need further studying.

The statement of basic materials. Among the scholars who have studied the issue of sentence enforcement in the form of imprisonment concerning juveniles, a key place belongs to V. V. Stadnik, who studied the socio-legal and organizational principles of execution of imprisonment for a certain term in relation to juveniles. In his thesis, he focused on studying the history of origin and development of the institution of sentence enforcement in the form of imprisonment for a certain period concerning juveniles in Ukraine and the disclosure of the legal nature of educational colonies. Also, mentioned scholar focused on studying of juveniles' legal status in educational colonies and serving their sentences in the form of imprisonment at the present stage of development of the Criminal and Executive System of Ukraine [1]. However, in his paper, only a part of one of the units is devoted to studying the experience of sentence enforcement in the form of imprisonment concerning juveniles in foreign countries. In addition, he explores the countries most of which are not the member states of the European Union.

The research of L. N. Berezovska was devoted to the punishment connected with the corrective labor influence applied to juveniles. In her thesis, the author revealed the origin and development of punishments related to the correctional labor influence applied to juveniles, and carried out the criminal law characterization of punishments in the form of community service, correctional labor, imprisonment for a term, and analyzed problematic aspects of the application of these types of punishments [2]. Analyzing this paper,

we can conclude that it is aimed at disclosing criminal rather than criminal and executive legislation, and that it does not contain a comparative analysis of the execution of sentences with the experience of foreign countries.

A comparative analysis of international legal standards in the field of ensuring the protection of convicts' rights and the norms of domestic criminal and executive legislation was conducted by O. I. Ivankov [3]. However, juveniles were not singled out as a separate subject of his research, but were considered only in the context of the general legal status of convicts. Also in the mentioned study, the main emphasis was placed on the protection of convicts' rights and their legal status, and not on the sentence enforcement. Therefore, it is necessary to mention the paper of O. M. Lytvynov and Ye. S. Nazymko "International and European standards of juvenile punishment", which explored the essence of international and European standards of juvenile punishment, as well as analyzed these standards as separate groups [4]. In their paper, the mentioned scholars concluded that international and European standards for the application of punishment to juveniles were based not so much on punishment as on socio-preventive, disciplinary, preventive, educational results of such measures as prohibition or restriction of certain actions of a juvenile offender, preventive measures, disciplinary measures, measures of public influence, educational measures, prevention, apology, compensation, supervision, treatment, implementation of community service, probation, social reintegration, etc. [4, p. 69].

It is worth mentioning the monograph of Ye. S. Nazymko "Foreign experience in criminal and legal regulation of the institution of juvenile punishment". This paper considers the methodological principles and importance of applying the comparative method for the development of criminal law regulation of juvenile punishment and analyzes the features of criminal law regulation of juvenile punishment in some countries of the continental legal family, common law family, religious legal family, Far East and the socialist legal family [5]. Also noteworthy is the monograph written by O. M. Lytvynov, Ye. S. Nazymko and T. I. Ponomarov "Formation and development of the juvenile penal policy of the Republic of

Poland”, which examined the formation of the juvenile penal policy of the Republic of Poland, provided a criminal description of the main provisions on the implementation of juvenile policy in the Republic of Poland, analyzed the current problems of juvenile justice and conducted a comparative study of certain areas of Polish and Ukrainian juvenile penal policy [6]. The mentioned monographs are of great methodological and empirical value for our study, but our analysis of these papers suggests that they are aimed at disclosing criminal rather than criminal enforcement legislation, and as for the last of these papers, it covers a narrow geography, because it compares Ukraine with only one state - the Republic of Poland.

A significant contribution to the study of this issue was made by M. S. Puzyrov in his monograph “Comparative analysis of sentence enforcement in the form of imprisonment for a certain term in Ukraine and foreign countries”, in which he summarized the problems of execution of imprisonment for a certain period in foreign countries and compared it with the same practice in Ukraine. The scholar conducted a comparative analysis of the execution of imprisonment for a certain period in the Romano-Germanic, Anglo-American, Scandinavian legal families and Ukraine, on the basis of which reasonable proposals were made in order to improve national criminal and executive law [7]. Analyzing this paper, it can be noted that in it juvenile convicts are not singled out as a separate subject of study, which does not allow trace the main trends in the execution of imprisonment in relation to this category of convicts. The author also uses a different approach to comparison, namely geographical rather than functional. However, despite this, the mentioned paper is used as an important methodological and empirical basis of our study.

It is necessary to pay attention to the comparative legal researches conducted in doctoral theses of M. I. Khavroniuk doctoral dissertations “Criminal legislation of Ukraine and other states of continental Europe: comparative analysis, problems of harmonization” [8] and A. V. Savchenko “Comparative analysis of the criminal legislation of Ukraine and the federal criminal legislation of the United States of America” [9]. These papers are a fundamental methodological basis for comparative legal research. However, they are more aimed at disclosing criminal rather than

criminal enforcement legislation. Also in these papers juvenile convicts are not singled out as a separate subject of research. If we talk about A. V. Savchenko's doctoral thesis, its geographical boundaries do not cover the member states of the European Union.

Ukrainian scholars have also made a significant contribution to reforming the penitentiary system and respecting convicts' rights. One of the key studies in this area is the monograph "Convicts' rights and legitimate interests in conditions of reforming the State Criminal and Executive Service of Ukraine", written by a team of scholars (A. Kh. Stepaniuk, O. H. Kolb, I. S. Yakovets, A. P. Hel, O. V. Lysodied, K. A. Avtukhov, O. I. Opanasenkov). The monograph is devoted to the study of theoretical and practical issues of realization of convicts' rights and legitimate interests in conditions of reforming the State Criminal and Executive Service of Ukraine. Along with the study of general theoretical issues of the rights of convicts to imprisonment, the theory and practice of realization by convicts of the right to legal aid, personal security, education, work, suffrage, medical and family rights were also considered [10]. It should be noted the wpaper of K. A. Avtukhov, A. P. Hel, M. V. Romanov, V. O. Chovhan and I. S. Yakovets "Respect for human rights in the Penitentiary System of Ukraine", in which the authors carried out a comprehensive study of the main institutions of criminal executive law, emphasizing the convicts' rights, their definition, compliance and mechanisms for ensuring and implementing [11]. The analysis of the above-mentioned papers gives grounds to conclude that despite their completeness and undeniable value, they are mostly aimed at disclosing convicts' rights and reforming the penitentiary system as a whole, without taking into account the peculiarities of imprisonment by convicted juveniles.

The historical aspect of the development of penal institutions in Ukraine is successfully revealed in the monographs of I. H. Bohatyrov and O. I. Bohatyrova "State Criminal and Executive Service of Ukraine (history and modernity)", in which the formation and development of the penitentiary system of Ukraine in different historical periods is considered and the socio-legal purpose of penitentiary bodies and institutions is revealed for the first time [12].

Yatsun O. S. considered criminal punishments applied to juveniles in his study “Peculiarities of juvenile criminal punishment”. In this thesis, the author considered the system of punishments applied to juveniles, and their difference from the general system of punishment and from the system of coercive measures of an educational nature. The named researcher revealed the peculiarities of sentencing juveniles in accordance with the criminal legislation of Ukraine and the prospects for the development of the system of punishments applied to juveniles [13]. The issue of sentencing a juvenile was considered in T. I. Dmytryshyna’s Ph.D. thesis “Imposition of punishment to juveniles in modern conditions”. This research develops an analysis of international principles of sentencing juveniles, analyzes the genesis and current state of sentencing juveniles in some foreign countries belonging to the family of continental law, Anglo-Saxon and customary legal families, families of Muslim and mixed types, and issues and trends in the application of the main types of punishment to juveniles [14]. Analyzing these studies, we can say that they are more aimed at disclosing criminal rather than criminal and executive legislation, and consider all types of criminal penalties applied to juveniles, and therefore such a type of punishment as imprisonment is given not enough attention.

Conclusions. After analyzing the state of scientific researches in the field of sentence enforcement in the form of imprisonment concerning juveniles in Ukraine and European Union member states, we can conclude that sentence enforcement in the form of imprisonment concerning juveniles as an independent subject of scientists’ consideration, is rarely identified in scientific papers. It is often considered together with imprisonment for adults and within the framework of criminal law rather than criminal enforcement researches. Among those criminal enforcement researches aimed directly at disclosing the issue of sentence enforcement in the form of imprisonment concerning juveniles, most consider only national law without examining the experience of foreign states in this area. These circumstances lead to our further comprehensive comparative analysis of sentence enforcement in the form of imprisonment concerning juveniles in Ukraine and European Union member states in order to develop scientifically substantiated proposals and

recommendations for improving the national executive system towards juveniles and sectoral legislation taking into account the positive European experience.

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АНАЛІЗ СТАНУ НАУКОВИХ ДОСЛІДЖЕНЬ ВИКОНАННЯ ПОКАРАННЯ У ВИДІ ПОЗБАВЛЕННЯ ВОЛІ СТОСОВНО НЕПОВНОЛІТНІХ В УКРАЇНІ ТА ДЕРЖАВАХ-ЧЛЕНАХ ЄВРОПЕЙСЬКОГО СОЮЗУ

У статті проведено аналіз стану наукових досліджень виконання покарання у виді позбавлення волі стосовно неповнолітніх в Україні та державах-членах Європейського Союзу. Узагальнено праці вчених у зазначеній сфері та виокремлено коло питань, які потребують подальшого дослідження. Визначено, що серед українських науковців, які досліджували питання виконання покарання у виді позбавлення волі стосовно неповнолітніх, ключове місце належить В. В. Стадніку, який проаналізував соціально-правові та організаційні засади виконання покарання у виді позбавлення волі на певний строк стосовно неповнолітніх. Зазначено, що у своєму дисертаційному дослідженні поіменованний учений зробив основний акцент на дослідженні історії виникнення та розвитку інституту виконання покарання у виді позбавлення волі на певний строк щодо неповнолітніх в Україні та розкритті особливостей правової природи виховних колоній, однак питанням вивчення досвіду іноземних держав у сфері виконання покарання у виді позбавлення волі стосовно неповнолітніх було присвячено недостатньо уваги.

Проаналізовано праці й інших науковців, які здійснили вагомий внесок у дослідження питань, що стосуються виконання покарання у виді позбавлення волі стосовно неповнолітніх, таких як: К. А. Автухова, І. Г. Богатирьова, Н. Л. Березовської, О. М. Литвинова, Є. С. Назимка, М. С. Пузирьова, М. В. Романова, А. Х. Степанюка, М. І. Хавронюка, І. С. Яковець та інших, що несуть безсумнівну емпіричну та методологічну цінність для подальших досліджень з означеної проблематики.

Обґрунтовано необхідність проведення в подальшому комплексного порівняльного аналізу виконання покарання у виді позбавлення волі стосовно неповнолітніх в Україні та державах-членах Європейського Союзу з метою розроблення науково обґрунтованих пропозицій і рекомендацій щодо вдосконалення національної системи виконання цього покарання стосовно неповнолітніх та галузевого законодавства з урахуванням позитивного європейського досвіду.

Ключові слова: покарання, позбавлення волі, засуджені неповнолітні, стан наукових досліджень, Європейський Союз.