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TÍTULO: Algunos aspectos de la ejecución del castigo penal contra menores.

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RESUMEN: El artículo analiza la regulación de la corrección de los condenados como uno de los objetivos prioritarios de la legislación penal-ejecutiva de la Federación de Rusia. Los autores analizan la ejecución de ciertos tipos de castigos sin aislamiento de la sociedad en relación con los menores condenados y su efectividad para lograr los objetivos establecidos por el legislador. Se concluye, que dado que las medidas no relacionadas con la privación de libertad se están convirtiendo gradualmente en una alternativa real al encarcelamiento, sería aconsejable destacar en la legislación ejecutiva penal los detalles de su implementación en relación con los condenados juveniles.

PALABRAS CLAVES: convicto juvenil, castigo sin aislamiento de la sociedad, encarcelamiento, colonia educativa, corrección de convictos.

TITLE: Some aspects of performance of criminal punishment against minors.

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ABSTRACT: The article discusses the regulation of the correction of convicts as one of the priority objectives of the criminal-executive legislation of the Russian Federation. The authors analyze the execution of certain types of punishments without isolation from society in relation to juvenile convicts and their effectiveness in achieving the goals set by the legislator. It is concluded, that given that measures not related to deprivation of liberty are gradually becoming a real alternative to imprisonment, it would be advisable to highlight in the criminal executive legislation the specifics of their implementation in relation to juvenile convicts.

KEY WORDS: juvenile convict, punishment without isolation from society, imprisonment, educational colony, correction of convicts.

INTRODUCTION.

In the criminal-executive legislation of the Russian Federation, the priority objective of the criminal-executive system is the correction of convicts. Her achievement is possible by applying to convicts the remedies listed in part 2 of article 9 of the Criminal Executive Code of the Russian Federation (hereinafter - the Criminal Procedure Code of the Russian Federation): the established procedure for the execution and serving of sentences (regime); educational work; socially useful work; general education; professional education; social impact. However, in law and in practice, not all remedies are applied to convicts, especially those serving sentences that are not related to isolation from society.

DEVELOPMENT.

Research methodology.

In the process of cognition of state-legal phenomena were used:

- a) General scientific methods (formal-logical, systemic, structural-functional, concrete-historical).
- b) General logical methods of theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc.).
- c) Private scientific methods (technical and legal analysis, specification, interpretation, etc.)

[Komarov S.A. (2019), p. 32].

Study results.

In accordance with the penal legislation of the Russian Federation, the regime creates the conditions for the use of other means of correction of convicts.

In modern legal literature, authors say about the regime, include in it all means of influence on the convict constituting coercion in the execution of punishment [1, p. 484]; for example, highlighting such means of ensuring the regime as protection, supervision, preventive measures, security, and taking them beyond its borders, the authors, defining the regime as an order of serving (execution) of punishment, include all compulsory elements of imprisonment as punishment in this definition, including the indicated funds, as provided for in Art. 82 of the Criminal Procedure Code of the Russian Federation, the requirements of the regime are considered by them as its content [2, p. 138-142].

The regime is a means of correction of convicts applied to all categories serving criminal sentences. In addition to him, virtually no remedy is common to persons convicted to imprisonment and alternative forms of punishment.

The involvement of convicts in labor is of great importance in achieving the goal of correction, and their duty to work is enshrined in Art. 103 of the Penal Code of the Russian Federation in the execution of imprisonment. However, at present, for a number of objective reasons, this obligation is rather a legitimate interest (in this connection, an analysis of foreign experience in this field is interesting [3, p. 547-556; 4, p. 97-102]).

There are real problems with the employment of prisoners due to lack of jobs, the almost complete absence of government orders for the production of correctional facilities, and extremely low wages. In addition, in penal colonies where males are serving their sentences, there are still refusals to go to work for people who adhere to the traditions of the criminal subculture. At the same time, in the execution of certain types of punishments that are not related to isolation from society (for example, a fine, deprivation of the right to occupy certain positions or engage in certain activities), convicts are not actually involved in labor.

A similar situation arises in the implementation of such means of correction of convicts as obtaining general education or vocational training. The use of the indicated correction tools is possible only for certain categories of persons sentenced to deprivation of liberty: general education is compulsory for persons under the age of 30, and all able-bodied men under 60 and women under 55 without primary vocational education are required to receive professional education. In the execution of sentences alternative to imprisonment, convicts are not required to undergo training. Therefore, the use of these remedies is not carried out in full.

It is equally important to conduct educational work with convicts, the main means of which are defined incentive measures and penalties. According to Art. 113 of the Penal Code of the Russian Federation, as an incentive for good behavior, a conscientious attitude to work, training, and active participation in educational events, the following measures can be applied to convicts: gratitude; rewarding a gift; cash bonus; permission to receive an additional package or transfer; providing an

additional short or long date; permission to additionally spend money in the amount of up to one thousand five hundred rubles for the purchase of food and basic necessities; an increase in the walking time for convicts held in strict conditions of serving sentences in penal colonies and prisons up to three hours a day for up to one month early withdrawal of previously imposed recovery.

Penalties for violation of the established procedure for serving a sentence are indicated in Art. 115 of the Penal Code of the Russian Federation. These include: reprimand; disciplinary fine of up to two hundred rubles; the placement of convicts in correctional colonies or prisons in a punishment cell for up to 15 days; the transfer of convicted men who are malicious violators of the established procedure for serving sentences contained in correctional colonies of general and strict regimes to cell-type rooms, and in correctional colonies of special regime to solitary confinement for up to six months; the transfer of convicted men who are malicious violators of the established procedure for serving the sentence to the unified cell-type premises for up to one year; transfer of convicted women who are malicious violators of the established procedure for serving the sentence to the cell premises for up to three months.

The indicated promotions and penalties are applicable only to those sentenced to deprivation of liberty, whereas when performing alternative types of punishments, the list of persons to whom these methods of educational influence can be applied is limited to those sentenced to restriction of liberty and forced labor.

In our opinion, the lack of regulation on the application of incentive measures and penalties for persons sentenced to punishments that are not related to isolation from society negatively affects the correction process and requires amendments to existing Russian legislation. It seems appropriate to specify the procedure for the implementation of educational work, in particular, the grounds for application and the list of incentives and penalties for convicts of alternative forms of punishment.

A special category of offenders are persons under the age of majority. Juvenile delinquency as a special social phenomenon is a rather serious problem for the entire world community. Countering it, criminal liability is everywhere an important direction in the fight against the criminal behavior of any citizens, including those under the age of majority.

Serious attention to this problem is given by representatives of intergovernmental bodies not only at the domestic, but also at the global level. This, in turn, finds expression in the adoption by the latter of the relevant documents (referred to as acts, standards) in this area, which are mandatory or recommendatory in nature.

We consider it possible to include: the Declaration of the Rights of the Child of 1959, the Convention on the Rights of the Child of 1989, the United Nations Standard Minimum Rules (hereinafter - the UN) for the administration of juvenile justice (Beijing Rules) 1985, the UN Rules, Concerning the Treatment of Female Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) 2010, United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) 1990 and others.

A similar approach is caused, in our opinion, by the following circumstances. First, the psychological and physiological characteristics of the analyzed category of offenders determine the specific order of appointment and execution of any criminal law measures against them. Secondly, the constant increase in repeat crime among juvenile convicts indicates the possibility of miscalculations in law enforcement practice and casts doubt on the effectiveness of the punishment imposed and its execution in practice.

Currently, in the Russian Federation, punishments not related to their isolation from society, as well as imprisonment, can be applied to juvenile convicts. In accordance with Part 1 of Art. 88 of the Criminal Code of the Russian Federation (hereinafter - the Criminal Code of the Russian Federation) to penalties not related to isolation from society, applicable to minors, include: fine,

deprivation of the right to engage in certain activities, compulsory labor, correctional labor and restriction of liberty. For this age group of convicts, deprivation of liberty with serving a sentence is possible.

Before each of the listed punishments in accordance with Part 1 Art. 1 of the Penal Code of the Russian Federation has the same goals: correction of convicts and preventing the commission of crimes by both convicted and other persons. Consequently, the goal of correction of juvenile convicts can only be achieved if the socio-biological characteristics of this group of persons are fully taken into account in the process of executing sentences. In this regard, the Russian legislator defines a special procedure for the execution of juvenile sentences. This is expressed primarily in the fact that minors are serving deprivation of liberty in an educational colony, that is, separately from adult prisoners. In addition, the legislator singles out a separate chapter 17 in the Penal Code of the Russian Federation, which defines the specifics of the execution of sentences of imprisonment in educational colonies.

At the same time, they are practically not allocated any specific features in the execution of juvenile sentenced sentences that are not related to their isolation from society, although they are very actively appointed by the courts. So, according to the statistics of the Judicial Department under the Supreme Court of the Russian Federation, minors were punished without isolation from society more often than imprisonment: in 2012, 2.2 times; 2013 - at 2.3; 2014 - at 1.8; 2015 - at 1.6; 2016 - at 2.2; 2017 - at 2.1; in 2018 - 2.1 [5]. The practice of applying criminal punishments in foreign countries follows a similar path.

In our opinion, the need to expand the practice of applying punishments by courts without isolating minors from society is due to the following factors. Firstly, it is the prevention of even the minimum “criminal infection” of minors in places of pre-trial detention and imprisonment; secondly, the exclusion of the possibility of weakening or loss of minor socially useful

relationships; thirdly, the correction of the convicted person in the case of applying punishment to him that is not related to isolation from society is carried out in a “free” society.

At the same time, the problematic issues of the execution of sentences that arise in practical activities without isolating juvenile convicts from society negatively affect its effectiveness; for example, on the basis of Part 1 of Art. 25 of the Criminal Code of the Russian Federation, convicts are serving compulsory work at facilities defined by local authorities in agreement with the criminal-executive inspection, but in the area of the minor’s place of residence.

In the absence of a base enterprise (organization) for serving the compulsory work at the place of residence of the convicted person, the inspection will be forced to send him to another facility that may not be in the area of his place of residence, even though it is closest to him. Consequently, the appearance of such a convicted person for serving compulsory labor can be hampered by adverse weather conditions, an undeveloped transport system between sparsely populated villages and villages, as was previously pointed out by other researchers [6, p. 204]. In addition to the above, it is also worth noting that many juvenile convicts serving sentences are from low-income and single-parent families, as a result of which they do not have sufficient financial resources to pay for travel to the place of serving the sentence.

CONCLUSIONS.

Summing up the above, we note that the correction of any category of convicts, including minors, directly depends on the effective execution of the sentence imposed on him. In respect of juvenile convicts, it is important to take into account their socio-biological characteristics not only in the execution of sentences of imprisonment, but also in the execution of sentences not related to their isolation from society.

Considering that measures not related to deprivation of liberty are gradually becoming a real alternative to imprisonment, it would be advisable to highlight in the penal legislation the specifics of their implementation in relation to juvenile convicts. To some extent, this will circumvent the problematic issues that arise today when executing sentences without isolating minors from society. In general, the specification of the use of remedies is relevant in relation to convicts serving sentences not related with isolation from society.

Conflict of interest.

The authors confirm the absence of a conflict of interest.

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