

THE RIGHT OF PRISONERS TO SECURITY DURING MARTIAL STATE IN UKRAINE

ПРАВО ЗАСУДЖЕНИХ НА БЕЗПЕКУ ПІД ЧАС ВОЄННОГО СТАНУ В УКРАЇНІ

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The article is devoted to the criminal-legal problems of ensuring the right of convicts to security during martial law in Ukraine, the implementation of which contributes to the observance of the fundamental rights and freedoms of convicted persons.

It is proved that the right of convicts to security during martial law is one of the priority tasks of the system of execution of sentences in Ukraine. The implementation of such a task involves: arranging appropriate shelters on the territory of institutions for the execution of sentences; ensuring the evacuation of convicts, in particular, those who are in temporarily occupied territories, to safe places of serving sentences; establishing lawful communication between convicts and the administration of institutions for the execution of sentences; humane treatment of convicts and promoting the provision of their fundamental rights, freedoms and obligations.

It is noted that in accordance with the Constitution of Ukraine, convicted persons enjoy all human and civil rights, with the exception of restrictions that are determined by law and established by a court verdict. The Ukrainian system of execution of sentences has set the goal of actively implementing European standards and best practices of the civilized world in solving problems of security and humane treatment of prisoners.

It was emphasized that in order to preserve the life and health of convicted persons, it is important to properly carry out the procedure for their evacuation. The decision to evacuate persons serving sentences or being held in custody from territories close to combat zones to pre-trial detention and execution of sentences institutions located in safe regions is made jointly by the military command and the relevant military administrations.

It was emphasized that it is important not to allow any discrimination of convicts on the grounds of race, skin color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other grounds is prohibited. Such negative manifestations may provoke convicts to unlawful behavior, in particular, cooperation with collaborators. It is necessary to develop constructive relations between employees of penal institutions and convicts in order to prevent the latter from defecting to the enemy in the event of the capture of the institution.

Key words: convicted persons, security, human rights and freedoms, martial law, penal institutions, evacuation measures, non-discrimination.

Стаття присвячена кримінально-правовим проблемам забезпечення права засуджених на безпеку під час воєнного стану в Україні, реалізація якого сприяє дотриманню основних прав і свобод засуджених осіб.

Доведено, що право засуджених на безпеку під час воєнного стану є одним із першочергових завдань системи виконання покарань в Україні. Реалізація такого завдання передбачає: облаштування належних укриттів на території установ виконання покарання; забезпечення евакуації засуджених, зокрема, тих, що перебувають на тимчасово окупованих територіях, до безпечних місць відбудовання покарань; налагодження правомірної комунікації засуджених з адміністрацією установ виконання покарань; гуманне ставлення до засуджених та сприяння забезпеченню їх основних прав, свобод і обов'язків.

Зазначено, що відповідно до Конституції України, засуджені особи користуються всіма правами людини і громадянина, за винятком обмежень, які визначені законом і встановлені вироком суду. Українська система виконання покарань поставила за мету активне впровадження європейських стандартів і передового досвіду цивілізованого світу у вирішенні проблем безпеки і гуманного поводження з ув'язненими.

Наголошено, що для збереження життя і здоров'я засуджених осіб, важливо належним чином виконувати процедуру їх евакуації. Рішення щодо евакуації осіб, які відбудовують покарання або перебувають під вартою, з територій, наближених до зон бойових дій, до установ попереднього ув'язнення та виконання покарань, розташованих у безпечних регіонах, приймається спільно військовим командуванням та відповідними військовими адміністраціями.

Акцентовано увагу на тому, що важливо не допускати жодної дискримінації засуджених за ознаками раси, кольору шкіри, політичних, релігійних та інших переконань, статі, етнічного та соціального походження, майнового стану, місця проживання, за мовними або іншими ознаками забороняється. Такі негативні прояви можуть провокувати засуджених на неправомірну поведінку, зокрема, співпрацю з колаборантами. Необхідно розвивати конструктивні відносини між працівниками установ виконання покарань та засудженими з метою запобігання переходу останніх на бік ворога у разі захоплення установи.

Ключові слова: засуджені особи, безпека, права і свободи людини, воєнний стан, установи виконання покарань, евакуаційні заходи, недискримінація.

Today in Ukraine, all efforts of the state and society are aimed at preserving statehood, independence and sovereignty, as well as at maximum ensuring the rights and freedoms of man and citizen. Also, during martial law, it is important to pay attention to the issues of security of all categories of the population, including convicted persons.

According to the Constitution of Ukraine, convicted persons enjoy all human and civil rights, with the exception of restrictions defined by law and established by a court verdict. No one may be arrested or detained except by a reasoned court decision and only on the grounds and in accordance with the procedure established by law. Everyone has the right to respect for his dignity. No one may be subjected to torture, cruel, inhuman or degrading treatment or torture. The law determines that certain constitutional rights of convicted persons may be limited [1].

During martial law in Ukraine, the rights of all citizens are legally partially restricted, therefore, in order to ensure secu-

urity, the rights of convicted persons may also be additionally restricted.

It should be noted that the legislation of Ukraine clearly defines the legal status of a convicted person and provides a list of his rights and obligations. The reform of the system of execution of sentences, which began before the full-scale Russian invasion of Ukraine, was aimed at strengthening control over the observance of the rights of convicted persons and improving the conditions of serving sentences.

In general, the Ukrainian system of execution of sentences set the goal of actively implementing European standards and best practices of the civilized world in solving security problems and humane treatment of prisoners.

The Criminal and Executive Code of Ukraine in Art. 8 defines the basic rights of convicts, which, in particular, include: the right to humane treatment, the right to appeal to the administration of penal institutions, to health care, social security, receiving transfers, paid work, freedom of religion,

appeal to the court, receiving copies of documents from personal files [2].

O. Shkuta notes that “the right of a convict to safety in places of detention under martial law is a system of guarantees regulated by relevant legislation and provided by the administration and staff of the penal institution and a mechanism for the implementation of the rights, freedoms and legitimate interests of a convict sentenced to deprivation of liberty under martial law” [3, p. 38].

Unfortunately, today one can hear statements that prisoners themselves chose their path in wartime conditions, more attention should be paid to law-abiding citizens, not offenders. We cannot adhere to this position, because the rule of law guarantees the provision of basic human rights to all citizens without exception. With this approach, one can justify the thesis that the strongest survives and not provide assistance to the sick.

We are forced to state the fact that the war reality has worsened the lives of all citizens. Problems have also become more acute in penal institutions.

O. Vdovychnyk includes the deterioration of the conditions of detention of convicts in Ukraine due to constant shelling, threats of capture, lack of shelters, destruction of infrastructure, loss of communication with personnel and detainees in temporarily occupied territories as issues of security for convicts in Ukraine. During constant and prolonged air raids on the territory of Ukraine, it is simply impossible to transfer all persons to shelters. Not all institutions and institutions where citizens of Ukraine are held have been evacuated, and they continue to be in temporarily occupied territories, territories controlled by the aggressor, or in close proximity to the front line [4].

The legislation of Ukraine defines the mechanism for conducting, in the event of the introduction of the legal regime of martial law, the mandatory evacuation of detained persons, suspects, accused persons, to whom a preventive measure of detention has been applied, convicted persons (military personnel) serving such sentences as arrest, restriction of liberty, deprivation of liberty for a certain period of time and life imprisonment, who are in temporary detention centers, pre-trial detention centers, institutions for the execution of sentences, guardhouses and disciplinary battalions, as well as persons who are in special wards of health care institutions and rooms for temporarily detained military personnel of the Armed Forces located in areas close to areas where hostilities are taking place, to the appropriate institutions for pre-trial detention and execution of sentences located in safe areas [5].

We agree that during military operations, the primary security issue is to ensure the evacuation of prisoners. It is important that places of deprivation of liberty are maximally equipped with places for shelter. If there are no such special places, it is necessary to organize the evacuation of prisoners to safe places (basements).

The decision to evacuate persons serving sentences or being held in custody from territories close to combat zones to pre-trial detention and execution facilities located in safe regions is made jointly by the military command and the relevant military administrations.

The evacuation procedure is implemented by: – establishing zones of active combat operations and determining safe regions suitable for the temporary placement of the specified persons; – including evacuation measures in civil protection plans valid for a special period; – organizing a notification system about the start of evacuation actions; – creating temporary coordination structures in authorized bodies; – provision of special transport (rail or road) equipped for the transportation of such persons; – provision of escort during transportation; – organization of the evacuation management process; – guaranteeing proper material and household support for evacuees [5].

The general management and coordination of evacuation measures are carried out by the military command.

In the pre-trial detention and execution of sentences institutions themselves, preparation for evacuation and its implementation are entrusted to the administrations of these institutions. They, in particular, are responsible for organizing the transfer of persons under the protection of the relevant units, their reception and subsequent placement in new places of detention.

Evacuated persons are sent to institutions that meet the required detention regime and are located in safe areas. The conditions of detention, provision and placement of evacuated persons are carried out in accordance with current legislation and subordinate regulations.

Y. Kernyakevych-Tanasiychuk determines the list of measures that must be taken to ensure the safety of convicted persons and staff of penal institutions: it is planned to arrange specialized shelters and storage facilities in penal institutions to protect convicts and staff during shelling and bombing. It is also planned to improve the mechanisms for the prompt and effective evacuation of persons serving sentences. Particular emphasis is placed on intensifying measures to return convicts from temporarily occupied territories to regions controlled by Ukraine, including through the creation of humanitarian corridors to meet the needs of institutions that have fallen under the control of the occupying forces. Among the important areas is also the development of constructive relations between employees of penal institutions and convicts in order to prevent the latter from defecting to the enemy in the event of the capture of the institution. In addition, the administrations of the institutions are carrying out measures with personnel aimed at preventing manifestations of collaborationism or cooperation with the occupying authorities [6, p. 114].

It is important not to allow any discrimination of convicts on the grounds of race, skin color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other grounds is prohibited. Such negative manifestations may provoke convicts to engage in unlawful behavior, in particular, cooperation with collaborators.

It should be noted that during martial law, security issues remain relevant not only in the face of threats of military action. It is important that the security of prisoners is not violated by other persons serving sentences or employees of penal institutions.

According to the Criminal Enforcement Code of Ukraine, in a situation where there is a real threat to the life or health of convicts serving sentences in the form of arrest, restriction of liberty, detention in a disciplinary battalion for military personnel or deprivation of liberty, they have the right to file an appeal with any authorized person of the body or institution for the execution of sentences with a request to guarantee their personal safety. In such a case, the official is obliged to immediately take appropriate measures to protect the convict [2].

The current problem remains the observance of the rights of persons sentenced to deprivation of liberty who are in temporarily occupied territories. Due to the peculiarities of the legal regime, these convicts find themselves in a particularly vulnerable position, since they are unable to leave the dangerous territory on their own. As a result, they often become objects of external influence and are used by the occupying forces to achieve their own goals.

In the context of active hostilities and the lack of systematic access to penal institutions by international human rights organizations, it is currently difficult to provide accurate statistics on the number and nature of violations of the rights of prisoners in the occupied territories [7, p. 15].

The issue of security in penal institutions and pre-trial detention centers is addressed in the Strategy

for Reforming the Penitentiary System for the Period Until 2026 and the Approval of the Operational Plan for Its Implementation in 2022–2024, which states that the strategic goal is to develop and implement effective innovative solutions aimed at improving the level of law and order and security in the penitentiary system. Particular attention is paid to reducing the number of offenses and emergencies, as well as transforming relations between personnel of penal institutions and prisoners based on the principles of mutual respect, legal awareness, and adherence to the rule of law [8].

Today, for the proper functioning of the penal system, it is important to continue the reforms initiated by 2022. Such

a practice will contribute to the proper provision of the legal status of the individual.

Thus, it can be stated that the right of convicts to security during martial law is one of the priority tasks of the penal system in Ukraine. The implementation of such a task involves: arranging appropriate shelters on the territory of penal institutions; ensuring the evacuation of convicts, in particular those who are in temporarily occupied territories, to safe places of serving sentences; establishing lawful communication between convicts and the administration of penal institutions; humane treatment of convicts and assistance in ensuring their fundamental rights, freedoms and obligations.

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