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International standards on the rights of convicted persons in places of imprisonment

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Vadym Pidgorodynskyi *
Vadym Tykhonenko **
Dmytro Tsekhan ***
Petro Kaminskyi ****
Serhii Kravchenko *****

Abstract

The relationship between crime and punishment has never been isolated. Under the influence of socio-economic, political, and cultural changes, metamorphoses of the institution of execution of punishments took place; in particular, the rights of convicts were liberalized. Therefore, it is necessary to analyze the historiography of this phenomenon in terms of international standards, as well as the peculiarities of their implementation. The work aims to characterize the implementation of international standards on the rights of prisoners in terms of historiography and legal regulation. The object of research is the norms of international law. The subject of the study is social relations that arise in the implementation of international standards on the rights of convicts in prisons. The research methods were dialectical, systemic, structural, formal-legal, historical-legal, methods of analysis, synthesis, induction, and deduction. As a result, international standards for the rights of prisoners serve as a model, an example of rational social relations in the penitentiary environment. Key aspects that should be universally taken into account by the governments of all countries are identified and described.

* Doctor of Legal Sciences, Assosiate Professor of Criminal law Department, Vice-rector for educational and innovative development and economic activity of National University «Odesa Law Academy». ORCID ID: https://orcid.org/0000-0001-8133-6486. Email: Vnp.odessa@gmail.com

** Ph. D., Associate Professor of Department of Forensics of National University «Odesa Law Academy». ORCID ID: https://orcid.org/0000-0002-6687-1576. Email: Vadimtykhonenko@ukr.net

*** Ph. D., Associate Professor of Department of Criminology and Criminal Enforcement Law of National University «Odesa Law Academy». ORCID ID: https://orcid.org/0000-0001-6503-6985. Email: dimatsekhan@gmail.com

**** Ph.D. candidate of Criminal law Department of National University «Odesa Law Academy». ORCID ID: https://orcid.org/0000-0001-7778-8279. Email: piligrimukrain@gmail.com

***** National University «Odesa Law Academy». ORCID ID: https://orcid.org/0000-0003-1453-4444. Email: Murineus@gmail.com

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Normas internacionales sobre los derechos de las personas condenadas en lugares de prisión

Resumen

La relación entre crimen y castigo nunca ha sido aislada. Bajo la influencia de cambios socioeconómicos, políticos y culturales, se produjeron metamorfosis de la institución de ejecución de los castigos; en particular, se liberalizaron los derechos de los condenados. Por tanto, es necesario analizar la historiografía de este fenómeno en términos de estándares internacionales, así como las peculiaridades de su implementación. El trabajo tiene como objetivo caracterizar la implementación de los estándares internacionales sobre los derechos de los presos en términos de historiografía y regulación legal. El objeto de la investigación son las normas del derecho internacional. El tema del estudio son las relaciones sociales que surgen en la implementación de estándares internacionales sobre los derechos de los condenados en las cárceles. Los métodos de investigación fueron dialéctico, sistémico, estructural, formal-legal, histórico-legal, métodos de análisis, síntesis, inducción y deducción. Como resultado, las normas internacionales sobre los derechos de los reclusos sirven como modelo, un ejemplo de relaciones sociales racionales en el entorno penitenciario. Se identifican y describen aspectos clave que deberían ser tomados en cuenta universalmente por los gobiernos de todos los países.

Palabras clave: derechos del recluso; derecho internacional; normas internacionales sobre derechos del recluso; derecho penal-ejecutivo; sistema penitenciario.

Introduction

The adoption of the Universal Declaration of Human Rights (hereinafter – Declaration) by the United Nations (hereinafter – UN) General Assembly at the Chaillot in Paris, on December 10, 1948, is the fundamental basis and starting point for the institution of international standards for ensuring the rights of prisoners. This international treaty states that all people are equal before the law and have an equal right to judicial protection, protection from discrimination and other unlawful encroachments, established the principle of the presumption of innocence, and a number of other important human rights and freedoms (Romanyuk and Chovgan, 2016).

In compliance with this document, the UN General Assembly adopted the International Covenant on Civil and Political Rights (1967) (hereinafter – the Covenant) and the International Covenant on Economic, Social and Cultural Rights in 1966, which entered into force in 1976. Art. 10 of the Covenant regulates that the main purpose of serving a sentence of persons sentenced to imprisonment is their correction and rehabilitation, as a result of which they may not be subject to restrictions that go beyond those to which they are sentenced by law (Romanyuk and Chovgan, 2016).

The above-mentioned international treaties laid the foundation for the legal status of prisoners, regulating the basic principles of treatment of convicts. For example, in accordance with Art. 5 of the Declaration and Art. 7 of the Covenant, no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment. All prisoners also have the right to humane treatment and respect, as required by Art. 10 of the Covenant.

In the context of our study, we must mention the cultural implication of international standards in the analyzed area. To best illustrate it, let us turn to the historiography of criticism and objections to the Universal Declaration of Human Rights (1948). In 1948, Saudi Arabia abstained from voting for the declaration, arguing that the treaty violated Sharia law. Pakistan at one time disagreed, signing the document, as did Turkey, Egypt, and Syria, which are currently the vast majority of Muslims (Langwith, 2008).

Evidence of a divided cultural perception of the declaration is that in 1982, Iran's representative to the UN, Saeed Rayaye-Khorassani, said the declaration was a "secular understanding of the Judeo-Christian tradition" that ran counter to Sharia Muslims' views on human rights. There were also opinions about the bias of the international act in favor of Western civilization (Hassan, 1995).

However, the prospect of using such cultural arguments is a matter of concern, as they may call into question the very nature of human freedom and choice, the protection of which is the goal of international treaties.

The purpose of the article is to study international standards for ensuring the rights of criminals in places of deprivation of liberty and identify their characteristic features in order to establish the specificity of their implementation in national legislation. The article will cover the legal, cultural, and historical aspects of the problem.

1. Methodology

For conducting this research, the following methods were used. The dialectical method has been used to portray the development of the institution of international standards on the rights of prisoners as a

process of quantitative and qualitative change, as well as to overcome the contradictions between past norms and the need to improve them.

Also, the systematic method made it possible to characterize the current limits of permissible behavior in the field of criminal executive law in their relationship with the norms of other legal institutions, including international and constitutional law.

The structural method has been useful for characterizing the construction of regulations governing international standards for the treatment of prisoners, as well as their division into structural units.

Moreover, the formal-legal method allowed the authors to analyze the meaning of legal norms in the field of international standards on the rights of convicts in places of imprisonment, to interpret them in terms of formal legal logic.

The method of deduction helps to study the relationship between changes at the international level and their implementation in the penitentiary system was traced.

In addition, using the historical-legal method, the genesis of the subject of research was characterized, its historiography was described, and the connection between historical events, which eventually led to the formation of a modern institute of international standards for the rights of prisoners, was depicted.

Besides, using the method of analysis, the constituent elements of legal norms were studied, the points of intersection of historical events were found, the meaning of historical processes, and the purpose of modern legal regulation in terms of ensuring international standards on the rights of convicts were characterized.

With the help of induction, the impact of negative phenomena in the field of execution of sentences on the adoption of international treaties governing the standards of the rights of convicts in places of imprisonment was studied.

The analysis of historical facts related to the international legal regulation of the execution of sentences and treatment of convicts (prisoners) was carried out, which served as a necessary basis for assessing and reassessing the compliance of legislation with the standards of civilized civil society, part of which is the penitentiary system, which respects human dignity, rights, and freedoms.

The theoretical-legal basis of the studied phenomenon was also considered and a description of the implementation of international standards in places of imprisonment was given.

2. Recent research and findings

Considering that the article analyzes a certain number of international normative legal acts, the authors decided to analyze the domestic doctrine and the countries of the post-Soviet space.

At different times, the subject of research was reflected in the works of such scientists as Lysoded (2008, 2014), Martynov (2005), Pochanska (2018), Stepanyuk and Yakovets (2007), Romanyuk and Chovgan (2016), Stepanyuk and Yakovets (2008), Yatsyshyn (2010a, 2010b).

In his publications, Lysoded (2008, 2014) thoroughly examines the correlation between national legislation and international standards of execution of punishments. The conclusions imply a positive nature of the changes and the very vector of development of penitentiary law.

Martynov (2005) devoted his attention to the study of the place of the Universal Declaration of Human Rights in the history of the development of international and national law. His works are characterized by an objective description of historical events, their impact on the development of legal regulation.

Morevoer, Pochanska (2018) gave a theoretical and legal substantiation of international penitentiary standards, analyzed their concepts, features, and functions.

In the guidelines for the penitentiary system, Romanyuk and Chovgan (2016) objectively explored the history of the formation and essence of international standards for the rights of prisoners. Moreover, the capacious characteristic of each document of the researched sphere was given.

Furthermore, Ryabykh (2016) gave a legal description of the implementation of international standards on the rights of prisoners. Thus, the synthesized approach outlines the mechanism of action, the content of legal norms, and international recommendations, including their reflection in national legislation.

In their scientific and practical commentary to the Criminal Executive Code of Ukraine (2004), Stepanyuk and Yakovets (2007) draw parallels between national law and international legal regulation of standards for ensuring the rights of prisoners. Thus, they focus on Art. 1 of the Criminal Executive Code of Ukraine, which distinguishes between the tasks and purpose of criminal-executive legislation, which in some way resonates with the European penitentiary rules.

In addition, Yatsyshyn (2010a, 2010b) paid attention to the question of the genesis of standards for serving sentences and the rights of persons sentenced to imprisonment both from the point of view of national law and from the standpoint of international historiography. In his works, the

scientist thoroughly analyzed all known aspects of the studied phenomena, outlined promising vectors of development.

Nevertheless, despite the presence of a large number of works devoted to the rights of convicts in places of deprivation of liberty, the influence of culture, the historical component, the legal system has not been sufficiently studied. That is why the article is aimed at studying these aspects in more detail.

3. Results of the study

The list of documents that regulate the rules of treatment of convicts is larger than it may seem at first glance. In particular, it includes more than 30 items, most of which are acts of recommendation, which, however, serve as a basis for the management of penitentiary institutions and their staff in interactions with prisoners. Only taking into account the interests of as many members of the human community as possible while adhering to clear rules and principles of coexistence can lead to the development of a full-fledged society and state (Shyshka *et al, 2020)*.

In 1957, the UN Economic and Social Council approved the Minimum Standard Rules for the Treatment of Prisoners. The very idea of introducing such a document belongs to the International Criminal and Penitentiary Commission, which prepared a collection of rules that were approved by the League of Nations in 1934. However, in 1951, this commission ceased to exist and was replaced by the UN (Juja, 2009). Thus, Resolution 663 CI (XXIV) of 31 July 1957 approved the Minimum Standard Rules. They reflect the main ideas and principles that states must adhere to in carrying out their penitentiary activities, as well as the minimum conditions to be provided by the penitentiary system, correctional facilities, and their staff, including the treatment of prisoners (Romanyuk and Chovgan, 2016).

Meanwhile, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) requires States parties to recognize torture as a crime, regardless of the grounds or conditions under which it is committed.

Continuing the theme of the work, it is worth paying attention to the so-called regional acts of legal regulation of the rights of prisoners. In this aspect, the branch of the championship is held by the Council of Europe – an international regional organization of European states, established in 1949 under the influence of the devastating effects of World War II. The goal of its activity was to spread democracy, deepen cooperation between European countries, and protect human rights and freedoms, the environment.

The Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) is correctly considered to be the

pearl of the Council of Europe law-making. It was signed by ten member states of the Council of Europe in the Italian capital on November 4, 1950. Both copies, in English and French, are recognized in the document as equally authentic.

On September 3, 1953, the Convention entered into force after ratification and deposit of 10 instruments by the signatories.

As a result of the Vienna Summit in 1993, it was decided to replace the European Commission of Human Rights and the European Court of Human Rights (hereinafter – ECHR), which were established after the entry into force of the 1954 and 1959 Conventions, respectively. The purpose of these bodies was to monitor the observance of the rights and freedoms guaranteed by the Convention. Thus, to ensure these tasks, a new body was created – the European Court of Human Rights, which replaced the previous two-component configuration. The new body of the Council of Europe, based in Strasbourg, France, began its work on 1 November 1998.

The rights and freedoms provided for in the Convention are aimed at ensuring the most important aspects of a person's life. In addition to such important rights as the right to life, liberty, inviolability, freedom of movement, freedom of speech, conscience, religion, etc., in the context of the study, we should mention the rights guaranteed by the ECHR as the right to a fair trial, prohibition of discrimination, torture, slavery and forced labor, inadmissibility of punishment without law.

The basis of the general the principles of EU law are the priority of the rights of the individual, enshrined in the European Convention, which takes into account the constitutional traditions of European countries (Kharytonov *et al*., 2019).

At the same time, the ECHR establishes the right of member states to restrict rights and freedoms on various legitimate grounds, as explicitly stated in the text of the document. However, under no circumstances can a person's right to life, the prohibition of torture, slavery, or the inadmissibility of the retroactive effect of the law be violated.

On September 11, 1997, the Convention entered into force for Ukraine. In this way, our state has committed itself to bring its legislation in line with international standards. However, there were difficulties, as in 1999 the Parliamentary Assembly of the Council of Europe almost terminated Ukraine's membership. However, after inspecting the situation on the ground in October 1999, the parliamentary commissioners concluded that there were no grounds for imposing such sanctions.

In terms of regional international standards, the European Penitentiary Rules should also be mentioned. The Committee of Ministers of the Council of Europe adopted a resolution in 1973 recommending that the governments

of the member states of the Council of Europe be guided in drafting new legislation and practice by the principles set out in the Standard Minimum Rules for the Treatment of Prisoners (1957) and report to the Secretary of the Council on the implementation and development of these principles. Thus, on 12 February 1987, the European Penitentiary Rules were adopted, consisting of 108 articles combining the Preamble, the substantive part, and the explanatory note. In 2006, the code was updated (European Penitentiary Rules, 2006).

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which entered into force in February 1989, was also adopted to comply with international standards on the rights of prisoners. It is based on the 1984 Convention against Torture and provides for the functioning of a specialized body, the European Committee for the Prevention of Torture, which is responsible for profile monitoring and control.

It is also worth mentioning that there are recommendations on the treatment of prisoners adopted by international non-governmental organizations such as Amnesty International (2020), the Howard League for Penal Reform (2020), the International Criminal and Penitentiary Foundation (2020), the Salvation Army and others (2020).

As for the theoretical basis of the study, it can be argued that in the scientific community there is some consensus on the basic features of the concept of international standards for convicts, despite the personal views of scientists on this issue, which is quite natural for the research process. Therefore, international standards of treatment of convicts (prisoners) to imprisonment are proposed to be defined as a set of internationally accepted relevant principles, conventions, recommendations and norms, standards of organization of various spheres of activity of penitentiary institutions (Olefir *et al*, 2016).

Minimum standard rules for the treatment of prisoners define the main essence of punishment as imprisonment (Trubnykov and Shinkaryov, 2008).

Some researchers note that there should be no significant difference that can affect the perception of convicts of socialization inside and outside the prison, as this may have negative consequences in the process of social reintegration (Kolb *et al*, 2016).

The UN Standard Minimum Rules state that the management of correctional facilities must be carried out firmly and decisively, however, within the law and with only the necessary coercive measures. Emphasis is also placed on the separate detention of prisoners, in respect of which European penitentiary rules allow for derogations. UN General Assembly Resolution 45/111 of 14 December 1990, "Basic Principles for the

Treatment of Prisoners", emphasizes the abolition of solitary confinement as a punishment and the restriction of its use (European Penitentiary Regulations: Annex to Recommendation No R (2006)2).

International norms also pay attention to the organization of the life of convicts. In this context, keeping convicts in solitary confinement is considered undesirable, and separate detention of different categories of convicts, on the contrary, is approved as recommended (Analysis of the compliance of the Criminal Enforcement Code of Ukraine with European standards and recommendations of the European Committee for the Prevention of Torture and Ill-Treatment, 2007). It is also noted that the isolation of a convicted person should be used as a last resort when all other measures do not help to correct his / her behavior.

A necessary condition for further re-socialization is to ensure that the sentence is served as close as possible to the place of residence of the convicted person or his family. The relevant recommendation is contained in paragraph 17.1 of the European Prison Rules. Recommendation Rec (2003) 23 of the Committee of Ministers of the Council of Europe also states that "convicts should be placed with a high degree of probability in prisons close to the places where their families live or in the surrounding areas" (Key Council of Europe Conventions and Recommendations, n.d.).

Convicts have the right to regular visits under supervision, the right to correspondence, to information from newspapers, magazines, local penitentiary publications, radio, and other sources under the control of the administration of the penitentiary institution (Trubnykov and Shynkaryov, 2008). European penitentiary rules emphasize the importance of inseparable connection with the outside world as a condition for successful re-education of convicts, their further social reintegration.

As for national legislation, according to domestic and foreign analysts, the subjective rights of all convicts set out in Art. 7 and 8 of the CEC, to a greater extent, meet international standards on this issue (Human Rights in Ukraine. Information portal of the Kharkiv Human Rights group, 2007). And although international acts do not define the very concept of the legal status of convicts, the objectives of respecting the subjective rights of these persons, in particular, mentioned in paragraphs 56, 66 of the Minimum Standard Rules for the Treatment of Prisoners, are fully compatible with those approved by the Ukrainian penitentiary legislation (Stepanyuk, 2005; Stepanyuk and Yakovets, 2007).

Is should be born in mind that according to the Criminal Executive Code of Ukraine, convicts have the right to visit (Article 110), telephone conversations without limiting their number under the control of the administration (Article 110), receiving parcels (Article 112), correspondence (Article 113) without restrictions, short trips outside the colonies (Article

111), receipt or purchase at their own expense of literature, stationery, possession of not more than 10 copies of books or magazines and newspapers in unlimited quantities (Article 109).

However, there is a view that the main difference between the European and post-Soviet paradigms of the penitentiary system can be described as an awareness of punishment, or more simply – as the degree of its dehumanization. Thus, the unequivocal stigmatization of a person sentenced to imprisonment and dehumanization, "impersonal" treatment are still obstacles to effective reform of the penitentiary sector, because this stereotype exists not only in the penitentiary environment but also at the level of legal culture, the mentality of the whole society (Romanov, 2006).

Thus, international institutions reserve the right to state the concept of standards of treatment of prisoners with the content of restrictions, however, defining the limits of such intervention to respect the principles of humanity and respect for human rights and freedoms.

Conclusion

Thus, in the process of bringing legislation into line with international norms begins (which is currently taking place in many countries), the legislator should consider the following aspects.

1. Concerning the genesis of the institute of international standards on the rights of persons sentenced to imprisonment it should be sum up, that International standards for the rights of prisoners date back to the adoption of the Universal Declaration of Human Rights in 1948. The rapid development of this legal institution occurred in the second half of the 20th century. The main documents were adopted mainly under the auspices of the UN and the Council of Europe. The main international legal instruments that contain standards on the rights of prisoners are: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Minimum Standard Rules for the Treatment of Prisoners, Convention for the Protection of Human Rights and Fundamental Freedoms, European Penitentiary Rules.
2. Regarding the theoretical-legal aspects of international standards on the rights of prisoners it should be stated that the standard rules for the treatment of prisoners adopted by the United Nations and the Council of Europe are not intended to create conditions under which they will be binding on other countries against their will. Rather, they serve as a model, an example of rational social relations in the penitentiary

environment. However, signed international legal treaties are binding based on their ratification. International standards for the treatment of prisoners constitute an appropriate institution of legal regulation, which includes ideas, norms, principles, and recommendations, which are designed to ensure respect for human rights, respect for human dignity, rights and freedoms in prison. Appropriate desirable methods of treatment of convicts, conditions of their detention and management of penitentiary institutions serve as a guide in formulating the corresponding acts of national legislation. Respect for human dignity and human rights is a fundamental principle that unites all such documents, both mandatory and recommendatory.

3. Regarding the implementation of international standards in places of imprisonment into legislation of different countries it should be concluded that the peculiarities of the implementation have various aspects such as ensuring appropriate conditions for serving a sentence, the right to correspondence, medical care and services, communication, work, social security, humane treatment, respect for one's dignity, rights, and freedoms. The goal pursued by the implementation of the rules of treatment and detention of prisoners can be described as the successful re-socialization of prisoners. Respect for the dignity, rights and freedoms of prisoners is the guiding principle for this.

Thus, in carrying out their teleological function, the limits of permissible behavior to prisoners approved by the international community are aimed at:

- establishing the minimum necessary principles for the treatment of prisoners, the conditions of their detention, and the management of the penitentiary system.
- encouraging the prison administration to take action under modern principles of humanity and justice.
- improving the professional skills of correctional officers.
- establishing of objective criteria for assessing the state of observance of human rights in penitentiary institutions, real compliance with the standards of detention of prisoners in places of imprisonment.

Thus, these key aspects must be taken into account by the legislatures of different countries, while simultaneously analyzing the absence of cultural and historical contradictions in a particular country.

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