

STUDY OF THE IMPACT OF THE PRINCIPLES FORMED IN INTERNATIONAL HUMAN RIGHTS STANDARDS ON THE DEVELOPMENT OF THE PENITENTIARY SYSTEM IN UKRAINE

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Abstract: The article examines the process of the principles implementation from international human rights standards in the national penitentiary legislation and the practice of execution and serving of sentences in Ukraine and identifies the features of the criminal-executive system transformation into a penitentiary system. The influence of the implementation of the international standards of convicts' treatment on the development of criminal-executive legislation in the aspect of the integration of the current criminal-executive legislation of Ukraine into the standards of the European Union is investigated. The substantive essence of the criminal-executive legislation principles is determined and substantiated, based on the practice of their application and scientific analysis of the definitions used in the legislation.

Keywords: international standards, human rights, the penitentiary system, the rights of convicts

1 Introduction

Ukraine's foreign policy is aimed at integration into the European Union. This necessitates the implementation of the international treaties provisions, as well as compliance with international obligations to respect and protect universal human rights and freedoms, including those serving sentences. Since the principles of law, which are enshrined in criminal law, become the basis on which all activities for the execution of criminal penalties should be built, the essence of these principles is of scientific interest, remaining relevant in the modern doctrine of the criminal law of Ukraine. Among them the principle of the criminal-executive legislation, execution, and serving of punishments, fixed in Art. 5 of the Criminal-Executive Code of Ukraine (hereinafter – the CEC of Ukraine), as respect for human rights and freedoms. This principle is intended to ensure respect for the internationally recognized human rights and freedoms, humane treatment of convicts and to minimize the difference between living conditions in penitentiary institutions (hereinafter – PI) and at large.

The task of further reforming the criminal-executive system of Ukraine requires the introduction into national criminal-executive legislation and the practice of execution and serving of sentences due to the principles formed in international human rights standards.

This issue is now extremely relevant because in accordance with the requirements of the European Community in modern Ukraine is ongoing the process of criminal-executive system transformation into the penitentiary, taking into account the requirements of international human rights standards.

The principle of respect for human rights and freedoms, in addition to international documents in the field of human rights protection, is enshrined in international acts of a specialized nature. Among scholars of the criminal-executive law, they are called international standards of treatment of convicts (hereinafter – IST). Despite the enshrinement of the principle of respect for human rights and freedoms in criminal-executive legislation, there are a number of unresolved issues regarding it. In particular, the implementation of some provisions of

international standards of treatment of convicts in national law, because they are important not only for the science of criminal-executive law but also for the practice of execution of sentences.

2 Literature review

In the Ukrainian legal doctrine the issues of realization of the principles formed in the international standards on human rights and execution of punishments were investigated in the works of O. M. Dzhuzha (2001, 2002), V. A. Lyovochkin (2002), and others. In particular, theoretical and practical aspects, as well as problems of implementation of international standards of treatment of convicts and their impact on national legislation, theory, and practice of execution of sentences were studied by such scientists as M. I. Dziamulych (2020), A. P. Gel (2008), V. A. Lyovochkin (2002), T. V. Rudnyk (2010), O. B. Ptashynskyi (2002), A. H. Stepaniuk (2007), T. O. Shmatkovska (2020), I. S. Yakovets (2013) and others.

At the same time, a number of studies in this area were conducted before the adoption of the Criminal-Executive Code, and some studies were devoted exclusively to the implementation of the principles enshrined in modern national legislation without regard to international standards on these issues.

3 Material and methods

The purpose of the article is to study the impact of the principles formed in international standards on the development of criminal-executive legislation, in particular the study of international acts in the field of human rights and international standards of treatment of convicts to maximize their implementation and approximate current criminal-executive legislation of Ukraine. to the generally accepted standards of most European countries.

4 Result and discussion

International legal acts in the field of human rights protection play an important role in the legislation of Ukraine. In the future, this requires their implementation and a number of amendments to laws and regulations to ensure that national legislation (including criminal-executive as part of it) is in line with international obligations.

It should be noted that after the Second World War, the process of forming the priority of human rights and freedoms began. Since then, the concept of the need for international cooperation in the field of universal respect and observance of human rights and fundamental freedoms has become widespread in the world (and their consolidation in a number of international documents. For example, the Universal Declaration of Human Rights, the UN Declaration on the Elimination of all Forms of Racial Discrimination, the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and others. (United Nations, 2006; United Nations, 1948; Council of Europe, 1950; Joseph and Castan, 2013; UNICEF, 1966). These international documents have been ratified by more than 100 countries, including Ukraine, which at that time was part of the Soviet Union.

The Universal Declaration of Human Rights is one of the first international human rights instruments adopted by the UN General Assembly. Its Preamble states that one of the tasks of the Universal Declaration is to respect and ensure human rights and freedoms. Therefore, it is reasonable to say that its norms have become universally recognized customary norms of international law, which determine international human rights standards that must be observed by all countries (Kupakin, 2010).

Universal (civilizational) principles of law are directly determined by the achieved level of human development and should act as a universal criterion for the formation of national legal systems. Legal principles are based on universal values. They are enshrined in international legal instruments and partly in the domestic legislation of individual states (Tsvik, 2009). International standards on the rights and freedoms of convicts contain both norms-principles and norms-recommendations. Norms-principles do not assume any deviations from them both in the legislation and in the activity of bodies and establishments of execution of punishments. This conclusion follows from Article 30 of the Universal Declaration of Human Rights and Article 5 of the International Covenant on Civil and Political Rights. Norms-principles are formulated in various international legal acts and cover all fundamental rights and freedoms of man and citizen. Norms-recommendations are not mandatory, although they are subject to maximum consideration during the development of new legislation (Shmarov, 1990).

In connection with the above, it is of both theoretical and practical interest to distinguish between norms-principles and norms-recommendations regarding the rights and freedoms of persons sentenced to imprisonment. Such a distinction, in our view, should be based on the fundamental human rights and freedoms proclaimed in the Universal Declaration of Human Rights United Nations, 1948, the Standard Minimum Rules for the Treatment of Prisoners (Clifford et al., 1972), and the International Covenant on Civil and Political Rights (Joseph, 2013), the International Covenant on Economic, Social and Cultural Rights (UNICEF, 1966), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Burgers, 1988), European Penitentiary Rules (Council of Europe, 2006).

These and some other acts proclaim the basic provisions on human rights (including convicts) and identify the most priority of them. The norms and principles contained in them are binding on states that have ratified these international instruments.

On the basis of the mentioned above and some other international legal documents on the treatment of convicts in Art. 5 of the Criminal Procedure Code of Ukraine formulated the principles of criminal-executive legislation, execution, and serving of sentences.

The principles formulated in the above article of the CEC of Ukraine provide an opportunity to understand that the system in the activities of penitentiary bodies and institutions objectively provides for its reflection through legal means, which best corresponds to the essence of the ongoing processes of execution in the practice of penitentiary staff systems (Stepaniuk, 2002).

Given the importance of the principles set out in Art. 5 of the Criminal Procedure Code of Ukraine, we focus on the very concept of the category "principle".

Thus, the principles of criminal-executive legislation are the main provisions, guiding ideas that express the views of the state and society and reflect the general direction and the most significant features of the Ukrainian state policy in the field of execution have a doctrinal expression and normative form of consolidation (Dzhuzha, 2002).

The peculiarity of the principles of the criminal-executive law, as well as other branches of law, is that they do not involve any exceptions to them. If any fundamental provision provides for exceptions to it, it ceases to be a principle and is reduced to the role of a simple rule from which conclusions can and should be drawn.

Consolidation of principles in criminal-executive legislation is the result of the development of the criminal-executive policy of our state, which reflects the achievements of national penitentiary science and experience of legal regulation of execution and serving of criminal punishments in foreign countries (Dzhuzha, 2001).

Article 5 of the CEC of Ukraine lists the principles on which the criminal-executive legislation of Ukraine is based, but does not disclose the essence of each of them. Therefore, the substantive side of each of them is revealed, based on many years of practice of their application and scientific analysis of terms used in legislation.

Due to the principles of criminal-executive legislation, internal coherence, and interconnection of legal norms and legal institutions of this branch, the purposefulness of law-enforcement decisions and practice of execution and serving of punishment is provided. Finally, the system of principles of criminal-executive law reflects the basic provisions of the treatment of convicts, which are enshrined in the relevant international instruments (Shmarov, 1990).

The principle of respect for human rights and freedoms is enshrined, in particular, in Art. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (obligation to respect human rights) (Council of Europe, 1950); Art. 2 of the International Covenant on Civil and Political Rights (each State party to this Covenant undertakes to respect and to ensure to all persons within its territory and jurisdiction the rights recognized in the present Covenant) (Joseph and Castan, 2013); The final act of the meeting on security and cooperation in Europe of August 1, 1975 (in Chapter VII «Respect for human rights and fundamental freedoms, including freedom of speech, conscience, religion, and belief») (OSCE, 1975) and others.

It should be noted that these international instruments also specify the general rights and freedoms of convicted persons that must be respected and ensured in the execution of criminal sentences and in the treatment of such persons: everyone has the right to life, liberty, and security of person; no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment; all persons deprived of their liberty have the right to humane treatment and respect for the inherent dignity of the human person. In the future, the principle of respect for human rights and freedoms, as noted earlier, was enshrined in IST, which means standards adopted at the international level as norms, principles, and recommendations in the field of execution of sentences and activities of penitentiary bodies and institutions (Golin and Stepaniuk, 2011). It should be emphasized that, despite the existence of standards for the treatment of convicts, the current criminal-executive legislation has not yet enshrined the term «treatment of convicts». This has been repeatedly pointed out by scholars of the criminal-executive law, in particular T. V. Rudnyk, who proposed to understand this term as a way or nature of applying to convicts various measures of influence, treatment in accordance with generally accepted rules (Rudnyk, 2010).

Without going into discussions, let's just say that this problem needs to be addressed. In addition, the content of the concept of "treatment of convicts" in national law should be defined. In our opinion, the enshrinement in law of this concept will contribute, in particular, to the indisputable respect for human rights and freedoms during the execution of sentences, as it will determine the limits of permissible behavior on the part of the penitentiary administration.

The IST developed and approved by the international community include Minimum standard rules for the treatment of prisoners (Clifford et al., 1972); Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations, 1975); Principles of medical ethics concerning the role of health workers, especially doctors, in protecting prisoners or detainees from torture and other cruel, inhuman or degrading treatment or punishment (United Nations, 1982); Basic principles of treatment of prisoners (United Nations, 1990a); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Burgers, 1988); Code of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations, 1988); European penitentiary (prison) rules (Council of Europe, 2006); Tokyo rules (United

Nations, 1990b), etc. In these documents, the defining idea is respect for human rights and freedoms in the execution of criminal sentences. For example, the Code of Principles for the Protection of All Persons Subject to Detention or Imprisonment in any way states that all persons who are subject to detention or imprisonment in any way have the right to humane treatment and respect for human dignity (Principle 1); in the interests of persons who are subject to detention or imprisonment in any way, any human rights recognized by the State in accordance with the law, conventions, rules, and customs shall not be restricted or diminished on the ground that those rights are not recognized or are recognized in a reduced amount in the specified Code of Principles (Principle 3); no person subjected to detention or imprisonment shall be subjected to torture or other inhuman or degrading treatment or punishment (Principle 6).

The Standard Minimum Rules for the Treatment of Prisoners in the General Rules section state that the minimum conditions considered by the United Nations are designed to protect prisoners from ill-treatment (Clifford et al., 1972). The Basic Principles for the Treatment of Prisoners state: All prisoners are respected because they have dignity and significance as human beings (Principle 1); with the exception of those restrictions which necessitate excessive imprisonment, all prisoners enjoy the human rights and fundamental freedoms set forth in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, rights and the Optional Protocol thereto, as well as other rights, set out in other United Nations Covenants (Principle 5) (United Nations, 1990b).

The Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states: any act that constitutes torture or other cruel, inhuman or degrading treatment or punishment, is an insult to human dignity and should be recognized as a violation of human rights and fundamental freedoms proclaimed by the Universal Declaration of Human Rights (Article 2); the training of law enforcement personnel and the training of other officials who may be responsible for persons deprived of their liberty should ensure that the situation is fully respected and that the prohibition of torture and other cruel, inhuman or degrading treatment is fully respected, treatment and punishment (Article 5) (United Nations, 1975).

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits torture, according to which there are no exceptional circumstances, state of war or threat of war, internal political instability or any another state of emergency, an order from a superior or state authority cannot be an excuse for torture (Article 2) (Burgers, 1988). The Code of Conduct for Law Enforcement Officials contains the following provision: in the performance of their duties, the relevant officials respect and protect human dignity and protect the human rights of all persons (Article 2) (Mueller, 1978). The European Penitentiary Rules state that the treatment of all persons deprived of their liberty must respect their human rights (Part I, Principle 1) (Council of Europe, 2006).

The main international regulations governing the activities of the penitentiary system and the treatment of convicts are the European Penitentiary Rules and the Minimum Standard Rules for the Treatment of Prisoners. They are recognized as a source document for the formation of policy in the field of execution of punishments by the legislature, courts, and prison administrations and have acquired a special status among international criminal procedure instruments (Yakovets, 2013). Domestic scholars in the field of criminal-executive law A. H. Stepaniuk (2007) and I. S. Yakovets (2013) emphasize that the consolidation of these provisions in SMEs has a significant impact on national law, as well as the theory and practice of execution of sentences, and point out that the Universal Declaration human rights, IST and national legislation are correlated as general, special and separate (individual) (Stepaniuk, 2007).

V. A. Lyovochkin (2002) rightly emphasized that international legal documents on the rights and freedoms of convicts affect the formation of criminal-executive legislation of Ukraine. O. B. Ptashynskiy (2002) also supports this point of view and other scholars who believe that standards of treatment of convicts developed by the international community are the result of their cooperation; in the future, they will best ensure human rights and freedoms in the field of execution and serving of criminal sentences (Ptashynskiy, 2002). According to A. H. Stepaniuk and I. S. Yakovets, the consolidation of these provisions on respect for human rights and freedoms is important for law enforcement activities, as they become binding and such objective and subjective characteristics as normative, stability, indisputability, and inadmissibility of deviation from them, even as an exception (Stepaniuk, 2007). The authors rightly believe that in the activities of penitentiary bodies and institutions it is necessary to create such conditions under which the principles of criminal-executive legislation should not be just a declaration, a formal opportunity.

5 Conclusion

International standards on human rights and treatment of convicts indicate the universal human rights and freedoms of convicts, which should be respected by the penitentiary administration during the execution of sentences, namely: the right to life and health; freedom and personal integrity; no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment; all persons deprived of their liberty have the right to humane treatment and respect for the inherent dignity of the human person, as well as to appropriate conditions of detention. This means that while serving a sentence, the state must create such conditions of detention for convicts that would ensure humanity, human dignity, and honor, respect for rights and freedoms, which will bring the criminal law of Ukraine closer to the generally accepted standards of most European countries.

The analyzed international acts indicate that not all provisions regarding respect for human rights and freedoms during the execution of sentences, enshrined in the current legislation of Ukraine, comply with IST. Some of them, although formally meeting such standards, in the practice of national institutions in the field of execution of sentences is only declarative, as not all of them can be implemented and implemented due to the existence of legal, economic, social factors, as well as prejudice against convicts by the administration of the penitentiary.

Creating appropriate conditions in the penitentiary, quality, and adequate nutrition, the provision of qualified and timely medical care and treatment is very important during the serving of sentences and requires adequate funding from the state, which, unfortunately, is insufficient. But no less important is the polite attitude of the penitentiary administration towards the convicts. In this case, the humane treatment of convicts does not require financial investment from the state but depends solely on the administration of the penitentiary. Therefore, in carrying out its activities, it must be aware that the convicted person is a person, and treat him as a person. This is the manifestation of humanism because although such a person made a mistake, not only the family but also society and the state are waiting for his return as a law-abiding citizen.

The full implementation of the principles makes the process of execution and serving a sentence fair, consistent with the legal awareness and morals of the citizens of our society. This is a very important provision, because excessive cruelty, as well as excessive leniency in the execution of a criminal sentence, is an injustice in the presence of which the achievement of the goals of the execution of the sentence becomes problematic.

We believe that adherence to the principles of criminal enforcement legislation, formed in international human rights standards, contributes to the success of all work on the correction of convicts and the functioning of the penitentiary system in Ukraine as an important component of civil society.

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