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INTERNATIONAL STANDARDS OF STATE PENAL POLICY

Abstract. The ***purpose of the article*** is to analyse international standards of state policy in the field of execution of criminal penalties and provide recommendations for the implementation of relevant positive experience of foreign countries in domestic legal practice.

Results. International standards of state penal policy are studied. Foreign experience in the organization and operation of penal institutions is analysed. The main measures for its implementation in Ukraine are defined. It is stressed that the implementation of European and international standards of the execution of criminal punishments should be carried out taking into account the domestic political, economic and social specificities of the state. In keeping with its policy of European integration, the government of Ukraine shall fulfil all the commitments made by influential European organizations and abide by the proclaimed penitentiary standards. It is noted that Ukraine already has positive changes in the reform of this field. The focus is on the positive experience of introducing paid cells in pre-trial detention centres, as well as on the need to further improve this field. It is established that the Ministry of Justice of Ukraine, in accordance with the tasks assigned to it, shall be directly responsible for the area of the execution of criminal punishments and for the system of detention and probation institutions. It is revealed that foreign countries practice institutional linkage between the judiciary and the penitentiary service. In Ukraine, the administrative system governing the execution of criminal punishments is imperfect and inefficient.

Conclusions. It is concluded that there are significant problems in the social, economic, political and legal development of the system of penal institutions in Ukraine today. Therefore, the review of international practice in implementing this policy in a number of highly developed countries allows highlighting the positive aspects of their experience to be taken into account in the further development of domestic penal policy.

Key words: international standards, public penal policy, Ministry of Justice of Ukraine, State Penitentiary Service of Ukraine.

1. Introduction

The reform of public administration and law enforcement has led to a restructuring of managerial (organizational) interrelations, both within the bodies and between the different public administrators. However, despite some recent measures to improve the penal framework for the execution of punishments, this field remains imperfect today and requires a study of positive foreign experience in the execution of criminal punishments as more progressive and effective.

An additional argument in this context is provided by the numerous decisions of the ECHR concerning complaints by convicted persons from Ukraine, which establish facts of torture, inhuman or degrading treatment had been inflicted by the administration of the closed penitentiary institutions in respect of persons serving sentences in the form of the deprivation of liberty for a certain period. In the context of globalization, the problem of serving sentences in the form of the deprivation of liberty for a certain period should be considered not only within one legal system, but also in comparison with penal legislation and its application in other countries, even if there are differences in the socio-economic and political development of each state.

The purpose of the article is to analyse international standards of state penal policy and to make recommendations for the introduction of positive experiences of foreign states.

It should be noted that the study of the international framework for the execution of criminal punishments and law enforcement functions by penal institutions have been studied by many domestic and foreign legal scholars, such as Ye.Yu. Barash, I.H. Bohatyrov, O.M. Dzhuzha, O.V. Lisitskov, O.B. Ptashynskyi, V.M. Trubnykov, V.H. Khyrnyi, D.V. Yahunov, and others. However, the analysis of international standards of state penal policy is still topical and remains to date insufficiently studied in view of the present needs.

2. International penitentiary regulations

According to V.H. Khyrnyi, numerous international conventions and agreements adopted by international (including European) organizations attest to the relevance of problems in the execution and serving of sentences in foreign countries (Khyrnyi, 2012, p. 78).

For example, the international legal framework governing the penitentiary service includes a number of laws and regulations, including the General Declaration of Human Rights, the International Convention for the Protection of Human Rights and Fundamental Freedoms, the Code of Conduct for Law Enforcement Officials, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, European Prison Rules, Standard Minimum Rules for the Treatment of Prisoners, the European Convention for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and others.

It should be noted that the main purpose of the above-mentioned international penal declarations, conventions, treaties, etc. is focused on the humanization of the penitentiary system, "mitigation" of serving sentences for convicts using the latest methods of influence and ensuring full respect for their rights and freedoms, opportunities for resocialization, learning, education, cultural development, proper living and sanitary conditions, etc.

In keeping with its policy of European integration, the Government of Ukraine shall fulfil all the commitments made by influential European organizations and abide by the proclaimed penitentiary standards.

The positive European experience can be adapted to Ukrainian realities, provided that the most effective legislative structures of the penitentiary systems in different states are carefully studied and used in the criminal and penitentiary law of Ukraine (Shkuta, 2016).

According to O.M. Krevsun, Ukraine consistently and purposefully fulfils its obligations in respect of reforming the penitentiary system with a view to bringing the conditions of detention of convicted persons as close as possible to international standards and rules for the treatment of convicted persons. In recent years, as crime rates have increased significantly, problems of custodial sentences are under focus in foreign countries. For example, they are reflected in subordinate legal regulations, in scientific publications, in national and international debates, in the extensive discussion at scientific conferences and in the concerns of official bodies and entire society (Krevsun, 2016, p. 125).

According to Ye.Yu. Barash, a comparative analysis of foreign experience in implementing organizational and legal forms of administration enables to identify certain institutional models of penitentiary systems, depending on whether the penitentiary system belongs to one or another state agency:

1) the model wherein the penitentiary system is fully accountable to the Ministry of Internal Affairs or its equivalent;

2) the model wherein the penitentiary system is fully administered by the Ministry of Justice;

3) the model wherein the penitentiary system is under the unified Ministry of Justice and Internal Affairs (Police);

4) the model wherein the penitentiary system is under a separate state department, which is not subject to either the Ministry of Justice or the Ministry of Internal Affairs;

5) a mixed model wherein different types of punishment or procedural coercive measures are administered by different agencies (penal institutions, in which convicted persons are held, are under the Ministry of Justice, while pre-trial detention is under the Ministry of Internal Affairs) (Barash, 2012, p. 364).

This problem and task are also mentioned in Law of Ukraine № 2713-IV on the State Penitentiary Service of Ukraine of 23 June 2005, which, inter alia, underlines that in order to organize international cooperation in the execution of criminal punishments, the State Penitentiary Service of Ukraine cooperates with the relevant authorities of foreign states and international organizations on the basis of international agreements (Law of Ukraine "On the State Penitentiary Service", 2005).

The study reveals that the main international regulations on the activities of penal institutions and the treatment of convicts are European Prison Rules made by the CoE and United Nations Standard Minimum Rules for the Treatment of Prisoners adopted on 30 August 1955 (Law of Ukraine "On the State Penitentiary Service", 2005). They are recognized by the international community as

the basic instrument for making penal policy by legislatures, courts and prison administrations.

The Rules lay down the basic principles of the penitentiary system, namely: unconditional respect for the human rights of convicted persons, which remain with them except those deprived of or restricted by a court decision (Minimum standard rules for the treatment of prisoners, 1955). Emphasis is placed on the minimum need for such restrictions, the criterion thereof is to meet the main purpose of punishment, that is, to return the convicted person to full public life. This objective also requires conditions of detention similar to living in society. It is noted, however, that the violation of that principle could not be justified by a lack of resources. The penitentiary principles include a non-discriminatory approach, cooperation with social services and social organizations, independent monitoring and control of the activities of penal institutions. Personnel play a major role in achieving the objective of the penitentiary system, when they are carefully selected, trained and provided with working conditions.

Moreover, these legal sources have become indispensable for the interpretation of the international concept of the protection of human rights, which is a fundamental part of international human rights law. It should be borne in mind, however, that each country considers this problem in its own way. For example, S.V. Luchko, comparing some penitentiary systems of foreign countries, identifies typical features of their functioning, namely: all penitentiary systems are established for the purpose of isolating persons who have committed a crime from society; convicted persons in penal institutions are held in both solitary confinement and shared accommodation; the system of lighter solitary confinement has been established, which provided for the isolation of prisoners in cells, but allowed them to stay together in school and church (Luchko, 2012, p. 5).

3. Particularities of the world's penitentiary systems

Yu.O. Vreshch and A.O. Radchenko justify the relevance for Ukraine of international legal instruments adopted by the Council of Europe or its Parliamentary Assembly or Committee of Ministers classifying them into common instruments (Convention for the Protection of Human Rights and Fundamental Freedoms (1950)) and special ones (European Prison Rules (1987), Recommendation R (92) 16 of the Committee of Ministers to Member States on the European Rules on Community Sanctions and Measures, Recommendation Rec (2006) 13 of the Committee of Ministers to Member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse with an Explanatory Note, Recommendation Rec (2003) 22 of the Committee of Ministers to Member States on conditional release (parole) and others). Moreover, it is emphasized that the recommendatory nature of the vast majority of these standards cannot be invoked as grounds for ignoring or not considering them, since they play a decisive role in the system for the protection of human rights and fundamental freedoms, that the pursuit of such standards is an indicator of the civility of national penitentiary systems from the perspective of international law. However, the unconditional striving for implementation of European and international penitentiary standards shall be realised taking into account the national political, economic and social specificities of the state (Vreshch, Radchenko, 2019, p. 129).

In the Germany, justice is represented in each Land by the Ministry or Department of Justice, and at the federal level by the Federal Ministry of Justice. The judicial authorities are responsible for supervising the work of the general and specialised courts and for providing logistical and human resources for judicial institutions. In addition, both at the Federal and Länder levels, the judiciary supervises the activities of the advocacy and the notary. In the Federal Republic of Germany, the prosecutors of the Land Courts are under the jurisdiction of the Länder Ministries of Justice. The Federal Prosecutor-General of the Germany is attached to the Federal Court and is under the authority of the Federal Ministry of Justice. However, the prosecution system is decentralised and the Prosecutor-General cannot give guidance to the Länder Prosecutors (Sukharev, 2001, pp. 174–175).

In France, the Minister of Justice plays a leading role in justice. He is ex officio a member of the Superior Council of Magistracy and is the Vice-President of that institution. The Superior Council of Magistracy is headed by the President of France, who, in his absence, is replaced by the Minister of Justice. Prosecutors are structurally under the guidance and control of senior officials and are subordinate to the Minister of Justice (Medvedchuk, Kostytskyi, 1999, p. 14). The French Ministry of Justice is also responsible for the penitentiary system. It is the Ministry of Justice that is responsible for this system, both in terms of personnel and in terms of methodology and logistics. Moreover, the Ministry of Justice plays a leading role in the drafting and drawing of relevant conclusions in respect of judicial organization, substantive law and procedure (Fedkovych, 2007, p. 54).

The United States has also made a significant contribution to the development of the world's penitentiary idea and system. The U.S. penitentiary system consists of prisons, which are divided into federal, state, and local municipal or district prisons. The activities of federal prisons are regulated by special legislation: provisions of the Section "Prison and prisoners", Chapter XVII "Codified criminal and criminal procedure legislation". Federal and state prisons fall into four categories: high security, medium security, low security, minimum security. Local prisons hold persons who have been remanded in custody as well as convicted persons who have been sentenced by the court to short terms of imprisonment. Special penal institutions, reformatory or, in other words, training school, have been set up for juvenile offenders. The most common punishments in the United States are fines, imprisonment and probation. It should be noted that there is no "prosecutor supervision" in the USA. All prison-related matters are decided by the Governor. He appoints a Governor's Commission composed of eight ordinary citizens of the state. It is up to the Commission to decide on the question of conditional release, their decision is final and not subject to appeal, and it is open to all those who wish to joint it (Chomakhashvili, Mykytas, 2011).

An interesting innovation in the United States is that, in order to reduce the burden on the country's budget, the privatization of prisons and the massive construction of private prisons have begun. Companies that own and operate prisons, camps, detention centres or restitution centres sign a contract with the federal, state or district governments. They undertake to maintain a certain number of prisoners in accordance with state standards, ensuring an appropriate level of security. For each prisoner, the management company receives a guaranteed sum of money from the budget. The advantages of these institutions are that there are no strikes, unemployment or other problems connected with employment. In these establishments, 100% of all military helmets, flak jackets, shirts, trousers, tents, backpacks and flasks are made. In addition to military equipment and uniforms, prisoners produce 98% of the installation equipment market, 36% of household appliances, 30% of headphones, microphones, megaphones and 21% of office furniture, as well as aviation and medical equipment and much more. Prisoners even train guide dogs for the blind (Kovalev, Sheremeteva, 2013).

In our opinion, this experience is quite useful for Ukraine in the future to relieve not only the budget of the country but also citizens from paying tax on the maintenance and financing of prisons. For example, the first steps towards reforming the penitentiary system in our state are the introduction of paid cells in pre-trial detention centres. Paid pre-trial detention centres have been operating in Ukraine since May 2020. For example, the cost of accommodation in a cell in Kyiv depends on the period for which payment is made: UAH 2,000 per day, UAH 8,000 per week and UAH 12,000 per month. UAH 2,000 per day. The money that comes from the paid cells goes to the refurbishment of free ones. This innovation has been immediately welcomed and has created a real a resonance. According to the Ministry of Justice of Ukraine, since the establishment of paid cells in pre-trial detention centres, the total budget has exceeded UAH 2.2 million.

Therefore, it is necessary for Ukraine to continue along these lines, which will considerably improve the situation of penal bodies and institutions and to a certain extent improve the conditions of detention of convicted persons.

The experience of the Netherlands is equally useful for the Ukrainian penitentiary system, where prisons are rightly recognized as institutions with the most modern means of protection and psychiatric rehabilitation of convicts in Europe. In particular, the Dutch penitentiary system is managed by the National Agency of Correctional Institutions (NACI). It is important to stress that the main current objective of the NACI sector is to modernize the Dutch penitentiary service in order to save money and reduce recidivism (the target is to reduce recidivism to 10% by 2020) through quality preparation for release and the involvement of more partners, such as municipalities, probation services, various public organizations, corporations and social services, etc. The use of modern electronic equipment, electronic bracelets and directions in TBS institutions (for persons with mental disabilities), used in the Netherlands, may become the latest practice for Ukraine (Bohunov, 2011).

An international legal analysis of the organization of the judiciary (as in the United States of America, France and the Federal Republic of Germany) shows that there is no uniform universal model of judicial organization in foreign countries. Each state has its own judicial system, depending on its legal system and state structure. At the same time, despite the different organizational structure of the judicial bodies and units of each of these countries, one common feature is the existence of two main systems of administration of justice: centralised (at the level of the Ministry of Justice) and decentralised (at the level of regional bodies and units of justice) (Mykultsia, 2012, p. 171).

The main tasks of the Ministry of Justice in the field of the execution of punishments are

to ensure making of public policy on the execution of criminal punishments and probation; to establish a system of supervisory, social, educational and preventive measures for convicted persons and persons taken into custody; to monitor the observance of human and civil rights and the requirements of the penal law, the exercise of the legitimate rights and interests of convicted and remand prisoners (Resolution of the Cabinet of Ministers of Ukraine "On approval of the Regulation on the Ministry of Justice of Ukraine", 2014).

Therefore, the Ministry of Justice, in accordance with the tasks assigned to it, shall be directly responsible for the area of the execution of criminal punishments and for the system of detention and probation institutions.

Therefore, an analysis of foreign experience in the operation of the system of penal bodies and institutions reveals that foreign states practice institutional linkage between the judiciary and the penitentiary service. In Ukraine, the administrative system governing the execution of criminal punishments in Ukraine is imperfect and inefficient.

4. Conclusions

Therefore, an analysis of foreign experience in the execution of punishments makes it possible to argue that there are significant problems in the social and economic, political and legal development of the system of penal bodies and institutions in Ukraine today. Therefore, the review of international practice in implementing this policy in a number of highly developed countries enables to highlight the positive aspects of their experience to be taken into account in the further development of domestic penal policy.

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МІЖНАРОДНІ СТАНДАРТИ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ ВИКОНАННЯ КРИМІНАЛЬНИХ ПОКАРАНЬ

Анотація. ***Метою статті*** є здійснення аналізу міжнародних стандартів державної політики у сфері виконання кримінальних покарань та надання рекомендацій щодо впровадження відповідного позитивного досвіду іноземних держав у вітчизняну юридичну практику.

Результати. Досліджено міжнародні стандарти державної політики у сфері виконання кримінальних покарань. Проаналізовано зарубіжний досвід організації та діяльності установ виконання кримінальних покарань, визначено основні заходи щодо його впровадження в Україні. Наголошено на тому, що імплементація європейських і міжнародних стандартів у сфері виконання кримінальних покарань має бути реалізована з урахуванням національної політичної, економічної та соціальної специфіки нашої держави. Тримаючи курс на європейську інтеграцію, уряд України має виконати всі зобов'язання, які висувають впливові організації Європи, і дотримуватися проголошених пенітенціарних стандартів. Зазначено, що в Україні вже спостерігаються позитивні зміни до реформування розглядуваної сфери. Виділено позитивний досвід упровадження платних тюрем у слідчих ізоляторах та наголошено на необхідності подальшого вдосконалення цієї сфери. Визначено, що Міністерство юстиції України, відповідно до покладених на нього завдань, має безпосередньо нести відповідальність за напрям виконання кримінальних покарань, систему установ тримання осіб під вартою та пробації. З'ясовано, що в іноземних державах досить поширена практика організаційного зв'язку юстиції та служби виконання покарань. Натомість в Україні адміністративна система управління сферою виконання покарань є недосконалою та малоефективною.

Висновки. Констатовано, що сьогодні в Україні простежуються суттєві проблеми в питаннях соціально-економічного та політико-правового розвитку системи органів та установ виконання покарань. Унаслідок узагальнення міжнародної практики здійснення вказаної політики в низці високорозвинених країн вважаємо за доцільне виокремити позитивні моменти їхнього досвіду, які надалі повинні бути враховані у процесі вдосконалення вітчизняної політики у сфері виконання покарань.

Ключові слова: міжнародні стандарти, державна політика у сфері виконання покарань, Міністерство юстиції України, Державна кримінально-виконавча служба України.

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