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Problematic aspects of the serving of sentences by specific groups of convicted persons

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Abstract

The objective of the article was to analyze problematic aspects of the execution of the sentence by certain groups of prisoners. The research methodology includes hermeneutics, formal and logical method, dogmatic method, synergistic method, system method and generalization method. In the proceedings of the investigation, the terms «serving a sentence» and «serving a sentence» are revealed and their differences are determined. The bodies of execution of sentences and their classification are considered. It clarifies the opinions of scientists on the classification of convicts, provides legislative consolidation of groups of convicted on various grounds (age, sex, severity of crime, recidivism, recidivism, illness). Decisions of the European Court of Human Rights on improper detentions analyzed. The main problematic aspects of the execution of the sentence by certain groups of prisoners, such as men, women, minors and tuberculosis patients, are presented. In the practical signified investigation, they identify some problematic issues that arise during the serving of sentences by certain groups of prisoners.

Keywords: court decision; classification of convicts; penitentiary institution; social and educational impact; serving a sentence.

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Aspectos problemáticos del cumplimiento de las penas por grupos específicos de condenados

Resumen

El objetivo del artículo fue analizar aspectos problemáticos del cumplimiento de la pena por parte de determinados grupos de reclusos. La metodología de la investigación incluye la hermenéutica, el método formal y lógico, el método dogmático, el método sinérgico, el método de sistema y el método de generalización. En los resultados de la investigación se revelan los términos “cumplimiento de condena” y “ejecución de pena” y se determinan sus diferencias. Se consideran los cuerpos de ejecución de las penas y su clasificación. Se aclaran las opiniones de los científicos sobre la clasificación de los condenados, se proporciona la consolidación legislativa de grupos de condenados por diversos motivos (edad, sexo, gravedad del delito, reincidencia, reincidencia, enfermedad). Se analizan las decisiones del Tribunal europeo de derechos humanos sobre detenciones indebidas. Se presentan los principales aspectos problemáticos del cumplimiento de la pena por parte de determinados grupos de reclusos, como hombres, mujeres, menores y enfermos de tuberculosis. En el significado práctico de la investigación, se identifican algunas cuestiones problemáticas que surgen durante el cumplimiento de las penas por parte de determinados grupos de reclusos.

Palabras clave: sentencia judicial; clasificación de los condenados; institución penitenciaria; impacto social y educativo; cumpliendo una condena

Introduction

Recently, the issue of serving a sentence has been actively studied both by domestic and foreign scholars. Improving the institution of execution of imprisonment is due to the fact that the correct application of all elements of penitentiary policy will be the only way to motivate the lawful conduct of convicts while serving their sentences, as well as the development of such behavior after release.

But there are still problems. Difficult adaptation to the conditions and procedures in penal institutions, as well as a number of problematic issues that arise during serving a sentence, are a clear example of the fact that the system does not work in some situations. Negative attitude of the administration towards certain groups of convicts, non-provision of medical care or its untimely provision, lack of qualified psychologists, and, as a result, - fail to provide psychological assistance, avoidance of educational and social work and lack of basic sanitation.

The number of ECHR decisions on improper detention and violation of Article 3 of the Convention indicate the presence of problematic aspects that arise during the serving of sentences by certain groups of convicts, including men, women, minors, tuberculosis patients sentenced to life imprisonment, recidivists, etc.

Thus, the aim of the article is to reveal and analyze problematic aspects of serving a sentence by certain groups of convicts.

1. Methodology

The methodology of the article is based on general and special methods of scientific knowledge, the use of which is determined by the purpose, object, subject matter of the research.

The method of hermeneutics is used in the process of studying the texts of relevant legislative acts and the views of scientists on the classification of convicts and peculiarities of serving sentences by different groups.

The use of formal and logical method allows to analyze the norms of the current penal enforcement legislation and the practice of its application.

Dogmatic method is applied to study the terms “serving a sentence” and “execution of punishment”; logical method makes it possible to determine the difference between these concepts.

Synergetic method is useful in studying the ECHR judgments on improper detention and the breach of Article 3 of the Convention.

System and structural method allow to present the classification of different groups of convicts and penal institutions.

The method of generalization helps to draw relevant conclusions and suggestions.

2. Literature Review

The United Nations Standard Minimum Rules for the Treatment of Prisoners (UN Office on Drugs and Crime, 2015) along with other legal instruments, adopted by the UN on penitentiary issues, constitute the international law institution for the protection of the human rights of persons deprived of liberty as part of a single system of international law, the mechanism for its implementation, and also play a significant role in increasing respect for democratic rights and freedoms, in strengthening peace and democracy.

The European Penitentiary Rules (Council of Europe, 2006) is a version of the European minimum standard rules for the treatment of prisoners, adapted to modern priorities and values of civilized society. They were approved by the Committee of Ministers of the Council of Europe on 12 November 1987 and recommended to the Member States of the Council of Europe for implementation in their legislation and practical activities. The rules do not have the status of international legal instrument, but are recognized internationally as affirming the progressive understanding of the penitentiary system as a holistic social organization and the mechanism of its service to the interests of the society and the State.

Among modern researchers who consider the issue of serving sentences by convicts, we propose to pay attention to Reznichenko (2009). In the Thesis “Peculiarities of fulfillment and serving punishment in the kind of imprisonment by convicted women” the author considers the peculiarities of the impact of punishment on the identity of women, the order and conditions of detention of convicted women, the peculiarities of execution and serving a sentence for convicted pregnant women, etc.

We can also name Tavolzhanskyi (2015), who in his monograph “Social and educational work with convicts” considers theoretical foundations for the organization and procedure for social and educational work with convicts. The researcher states that at present the level of legal regulation of social and educational work with convicts does not correspond to its understanding and practical application. Social and educational work is aimed at correcting prisoners; it is a complex activity that includes social assistance to convicts, providing psychological, pedagogical, economic, legal and informational assistance, which contributes to the ability to exist independently during and after serving the sentence. release.

Stadnik (2017) in his dissertation research “Execution of penalty as deprivation of freedom in regard to juvenile delinquents” analyzes the activities of educational colonies to implement a set of measures aimed at correction and resocialization of minors, and also points out that despite all this is clearly expressed punitive function. in the conditions of detention of minors.

Vasylyk (2021) devoted his work “Criminal-executive principles of imprisonment for a definite term” to a comprehensive analysis of the content and features of criminal-executive principles of punishment, and revealed the world’s best practices in ensuring the execution of imprisonment.

Razgildiev and Nasirov (2019) investigated the concept of “serving a sentence by convicts”, described the difference between the definitions of serving the sentence and execution of punishment and justified their aim.

Prymachenko *et al.* (2021) presented the psychological profile of juvenile convict, as the authors state that the level of crime among young

people has increased lately, which necessitates the improvement of the methods of education and correction of these persons in penal institutions.

However, these works did not fully address the issue of some problematic issues that arise during the serving a sentence by certain groups of convicts.

3. Results and Discussion

Social, cultural and economic factors, the development of civil society and the state as a whole, as well as international standards of treatment of convicts are taken into account in the serving of sentences. According to Article 5 of the Penal Enforcement Code of Ukraine (Law of Ukraine No. 1129-IV, 2003), execution and serving of sentences are based on the principles of inevitability of execution and serving of sentences, legality, justice, humanism, democracy, equality of convicts, respect for human rights and freedoms, mutual responsibility of the State and a convict, differentiation and individualization, execution of punishments, rational application of coercive measures and stimulation of law-abiding behavior, combination of punishment with corrective influence, public participation in the activities of bodies and institutions of execution of punishments in cases provided by law. Thus, the conditions of serving a sentence are based on national legislation in force during execution and serving sentence, taking into account international legal acts.

The legislator uses the concept of serving a sentence along with the term “execution of punishment”, but does not provide its definition. These terms refer to a single process of punishing convicts, but they apply to different actors.

Thus, the execution of a sentence is the functioning of authorized bodies, which are obliged to implement certain legal restrictions provided by a particular type of punishment for a crime in their activities, ensure the exercise of the rights of the convicted person and the performance of his or her duties throughout the term of imprisonment. The serving of sentence, on the other hand, refers to convicted persons, who, on the basis of a court sentence, must perform their duties under the law for a specified period of time (Shablysty, 2018).

Thus, the basis for execution and serving of a sentence is a court judgment that has entered into force, other court decisions, as well as the Law of Ukraine on Amnesty and Pardon (Article 4 of the Law of Ukraine No. 1129-IV, 2003). That is, punishment is a measure of State coercion and its implementation is entrusted to government agencies and institutions. Penal institutions are: the central executive body that implements the State policy in the area of execution of criminal penalties and probation, its territorial administrative bodies, authorized by probation authorities.

Penitentiary institutions in Ukraine are detention homes, penal institutions, special educational establishments (educational colonies), and remand centers. It should be noted that penitentiary institutions are divided into open penitentiary institutions (correctional centers) and closed penitentiary institutions (correctional colonies). Correctional colonies are split into colonies of minimum, medium and maximum levels of security. In cases established by law, the execution of criminal punishments is also carried out by the bodies of the State executive service, military units, guards, disciplinary battalions.

Along with this, there is also a classification of convicts. Struchkov (1985) characterizes the classification of convicts as the activity, in the process of which convicts are divided into categories (groups) on the basis of statutory requirements. According to him, the classification of convicts is necessary to prevent the influence of a negative group of persons on those who are characterized positively.

Shmarov and Melentiev (1971) understand under the classification of convicts their division into relatively homogeneous groups (categories) depending on the degree of public danger, correction and other factors.

We agree with the views of scientists, because the main task of the classification of convicts is to create special conditions for the differentiation of the punitive educational process, aimed at different categories of persons.

For example, adults, as well as minors who have reached the age of 16 at the time of sentencing and who have been convicted of criminal offenses are kept in detention facilities. Conscripts, military personnel under contract, officers performing military service are serving sentences in the disciplinary battalion. Persons serving a fixed term of imprisonment and life imprisonment are kept in correctional colonies.

The legislator clearly establishes the types of correctional colonies, in which different groups of people serve their sentences. For example, the persons sentenced to deprivation of liberty for crimes committed through negligence or minor crimes for the first time or persons transferred from minimum security colonies with general conditions of detention and medium security colonies serve sentence in minimum security correctional facility with facilitated conditions. Men sentenced for the first time to imprisonment for minor crimes, women convicted of minor, serious and especially serious crimes, convicts transferred from young offenders' institutions are serving their sentences in minimum security penal colonies with general conditions of detention;

women sentenced to life imprisonment; women who have been sentenced to death or life imprisonment by pardon or amnesty; men sentenced for the first time to imprisonment for serious and especially serious crimes; men who have previously served a sentence of imprisonment; men convicted

of intentional misconduct while serving a sentence of imprisonment; prisoners transferred from maximum security colonies may also serve their sentences in the medium security sector of this type of correctional colony;

men sentenced to life imprisonment may also serve their sentences in the sector of maximum security of a correctional colony of this type;

men sentenced to life imprisonment; men whose life sentence has been replaced by life imprisonment; men who have been sentenced to death or life imprisonment by pardon or amnesty; men convicted of intentional especially serious crimes; men convicted of committing an intentional serious or especially serious crime while serving a sentence of imprisonment; men transferred from medium security colonies, etc. may serve their sentences in correctional colonies of maximum security;

convicted juveniles serve their sentences in educational colonies; persons with tuberculosis are kept separate from other prisoners.

Thus, we presented the classification of convicts according to gender, age, gravity of the crime and other circumstances that affect the conditions of serving the sentence.

According to Article 92 of the Law of Ukraine No. 1129-IV, separate detention of men, women, minors and adults has been established in the colonies. The following types of convicts are also held separately: sentenced to life imprisonment; convicts whose life sentence has been replaced by life imprisonment; convicts whose death penalty or life imprisonment has been commuted to pardon or amnesty; convicted of a crime under Part 5, Art. 255 (“Establishment, direction and participation in a criminal association or criminal organization”), Art. 255-1 (“Identification or dissemination of criminal influence”), Art. 255-2 (“Organizing, facilitating or participating in a criminal assembly”) of the Criminal Code of Ukraine (Law of Ukraine No. 2341-III, 2001). Those sentenced to imprisonment for the first time are held separately from former prisoners.

Men sentenced for the first time to imprisonment for crimes committed through negligence, as well as convicts who have previously worked in the courts, prosecutors’ offices, the judiciary, law enforcement agencies, and persons, who have practiced law (at their own request) are held separately.

The conditions for serving a sentence by the above-mentioned groups of convicts are enshrined in the Criminal Executive Code of Ukraine (Law of Ukraine No. 1129-IV, 2003); Order of the Ministry of Justice of Ukraine No. 680/5, 2017; Order of the Ministry of Justice of Ukraine No. 2823/5, 2018; Order of the Ministry of Justice of Ukraine and Ministry of Health of Ukraine No. 1348/5/572, 2014; Order of the State department for the enforcement of sentences No. 33, 2000., etc.

Among the international instruments governing the regime and conditions of imprisonment are the United Nations Standard Minimum Rules for the Treatment of Prisoners (UN Office on Drugs and Crime, 2015) and the European Penitentiary Rules (Council of Europe, 2006).

The urgency of issues and problems of serving a sentence have always attracted the attention of scholars and the public. This concerned the conditions of serving a sentence, the attitude of the administration of institutions to certain groups of convicts, failure to provide medical and psychological assistance in a timely manner, lack of educational, social work, etc.

According to the Concept of State Policy in the Sphere of Reforming the State Penitentiary Service of Ukraine (Order of the President of Ukraine No. 631/2012, 2012), improving the conditions of detention of convicts should be achieved by improving the organization of nutrition, detention conditions, enhancement the quality of medical care, improving the organization of social, educational and psychological work. etc. But are they really being realized?

Thus, the European Court of Human Rights in the case of Dykusarenko v. Ukraine of 09 April 2020 (applications N^o7218 / 19 and 17854/19, 2020) found a violation of Article 3 of the Convention due to inadequate conditions of detention of the applicant in the Dnipro Penitentiary Institution N^o4. This was manifested in the absence or poor quality of bed linen, lack of toiletries, lack or insufficiency of food, lack or insufficiency of electric lighting, lack or limited access to showers, lack of privacy for toilets, low quality drinking water, mold and dirt in the cell.

The Court was guided in its decision by the principles established by the case-law on inadequate conditions of detention, in particular by the judgment in the case of “Muršić v. Croatia” (Application N^o 7334/13, 2013), which found that serious lack of space in prison cells is considered a very influential factor and could constitute a violation.

The ECHR judgment in case of Bilyy v. Ukraine (applications N^o 11356/17 and 45420/19) of 13 January 2022 found a violation of Article 3 of the Convention due to the inadequate conditions of the complainant’s detention in Kyiv detention facility. This was manifested in the absence of fresh air, insufficient sleeping space, the cell was infested with parasites / rodents, lack or poor quality of bed linen, lack of privacy when using the toilet, lack of toilets, mold and dirt in the cell, lack or limited access to hot water, lack or limited access to showers, overcrowding, passive smoking, poor quality food.

Thus, we can see that the problematic aspects of the conditions of detention, nutrition and personal hygiene of convicted men still remain relevant, despite the implementation of the Concept (Order of the President of Ukraine No. 631/2012, 2012).

The next group of convicts are people with tuberculosis. Among the rights of convicts provided by the Order of the Ministry of Justice of Ukraine No. 2823/5 are the right to receiving medical care and treatment, including paid ones. Characteristics to be considered in assessing the compatibility of a person's health and conditions of detention are the medical condition of the convict, the adequacy of medical care provided in the conditions of detention and the appropriateness of detention in view of health (case *Mouisel v. France*, Application No. 67263/01, 2003).

Thus, in the case of *Melnik v. Ukraine* (application no. 72286/01, 2006) the ECHR found that "the applicant had been diagnosed with tuberculosis almost two and a half months after he first complained of intermittent shortness of breath and mucous cough. The Court considers that the inaccuracy of the previous diagnosis confirms the applicant's complaints about the inadequacy of the medical care provided, the short-term detection of the disease or the failure to isolate the applicant and provide him with adequate and timely treatment.

The Court also found that upon arrival at Penitentiary Institution No. 316/83 the applicant had not been examined by a doctor for possible tuberculosis. After the diagnosis, he was transferred to a special institution, but long-term treatment for tuberculosis led to side effects – visual impairment and dizziness. Hygiene and sanitation conditions, given the concentration of prisoners, could also have worsened the applicant's health. Thus, the Court finds the violation of Article 3 of the Convention due to overcrowding, inadequate medical treatment and unsatisfactory sanitary conditions of the penitentiary institution.

According to the Procedure for providing medical care to convicts (Order of the Ministry of Justice of Ukraine and Ministry of Health of Ukraine No. 1348/5/572, 2014), preventive medical examination is performed once a year in penal institutions in order to detect and prevent the spread of infectious, parasitic diseases, detection of somatic and mental diseases among convicts.

If the convict has expressed a desire to visit a doctor, he (she) can sign up for an outpatient appointment. Outpatient reception of convicts is carried out by a medical worker every day at the hours determined by the head of the medical unit (paramedic station) in agreement with the administration.

The medical officer, along with the staff of the regular penitentiary institution's shift, verifies daily the general state of health of convicted persons when visiting cells in disciplinary isolators, cell-type rooms, solitary confinement cells, solitary confinement cells, pre-trial detention centers, correctional colony-type (sector) cells of the maximum-security level. If the convicted person complains about the state of health, the medical worker makes appropriate appointments or enrolls the convicts for outpatient

reception. Outpatient reception is carried out by a doctor in specially equipped offices in the abovementioned premises by prior appointment made by a medical worker, in the absence of a medical worker – the staff of the regular shift of the penitentiary institution.

According to the Concept (Order of the President of Ukraine No. 631/2012, 2012), improving the quality of medical care should be achieved by improving the quality of medical care for detainees and convicts suffering from tuberculosis, HIV/AIDS and other socially dangerous diseases by arranging sections of pre-trial detention centers for detainees with tuberculosis in anti-tuberculosis institutions, development of the infrastructure of health care institutions of the State Penitentiary Service of Ukraine.

However, as we can see, the established rules are not always followed, which in turn leads to the violation of the general health of convicts, dysfunction of organs, the emergence of pathologies and serious diseases.

Regarding serving of a sentence by convicted women, the key factor here is socio-educational or socio-psychological work. In this regard, Sarycheva (2017) notes that the work of the social pedagogue, who, above all, must objectively assess the individual characteristics of convicted women, is also important. Along with the psychologist, the social pedagogue should observe not only the actor – the woman, but also her environment in places of imprisonment.

In this case, attention should also be paid to those women, who have children under the age of three or pregnant women, as the process of serving a sentence and all the consequences of such punishment have a devastating impact on this category of convicts. As a result, the negative impact of places of detention is reflected on children.

Social and educational work is a purposeful activity of the personnel of penitentiary agencies and institutions, as well as other social institutions to achieve the goal of correction and re-socialization of convicts (Article 123 of the Law of Ukraine No. 1129-IV, 2003). The urgency of such work is due to the fact that women, serving a sentence, is a vulnerable group due to their social status, and the problems of adaptation to the order and conditions of serving a sentence have their own specifics.

But can we say that social and educational work solves the problem of adapting to the order and conditions of serving a sentence? Of course not. A woman is more emotional by nature. When she enters a penitentiary institution, especially for the first time, she experiences psycho-emotional stress, she is more vulnerable to the influence of other “authoritative” convicts, as a result of which she retains all acquired antisocial habits and beliefs after the release. We believe that it is extremely important to conduct psychological work with convicted women, which will help them to adapt to all existing conditions and procedures.

Analyzing the procedure for serving sentences by juvenile offenders, we noted that profile of emotional experiences arising from the conditions under which sentences are served, the environment and attitude of the administration is more pronounced in juveniles than in adults (men and women). Thus, at the beginning of serving a sentence (up to 6 months) there is an increase in emotions such as anxiety, fear, aggression, depression, loss of meaning in life, hopelessness, feelings of loneliness, etc. in minors.

Some of these psychosocial states accompany the child throughout the sentence. In order to acquire a certain “status” in the colony, a minor may claim that he or she has a criminal record, offenses that he did not commit, serious “ties” to the outside world, etc. Given the attitude of the administration of the institution, other convicts, their subjective attitude to life circumstances, the juvenile may incorrectly assess the measures of educational influence applied to him (her).

This may be expressed in violation of the rules of the procedure established by the regime or assistance to the administration in certain matters. Psychologically, this can be expressed in frequent changes in behavior, mood, reflection, reconsideration of the views and so on.

According to Ohnieva and Ohnieva (2011), corrective work with persons serving sentences, finding and applying new forms and methods of influence to correct them, are more effective ways to prevent recidivism than the regular supervision after release. Education is a priority, since the main goal of the State is to eliminate infantilism, legal nihilism, legal ignorance among convicts. We support this view of scientists, and believe that the involvement of a qualified psychologist is an important factor in working with minors. To listen to a child, to help him (her) learn how to distinguish his (her) state, to change attitudes to the situation, to have a hard time together – all these are necessary elements in working with juvenile delinquents who need to find an adult ally.

Conclusion

Thus, among the problematic aspects of serving sentences by certain groups of convicts are the following:

1. Men – lack or poor quality of bed linen, insufficient food, lack of privacy for toilets, mold and dirt in the cell, lack of access to shower and hot water, etc.
2. Patients with tuberculosis – inadequate medical treatment, untimely treatment, failure to provide isolation, unsatisfactory sanitary conditions that cause deterioration of health, etc.

3. Women and minors – inefficient social and educational work, failure to provide or untimely provision of psychological assistance.

Taking into account international recommendations and current legislation, we believe that the following will help to improve the conditions and procedures for serving sentences:

1. Introduction of medical and preventive measures, with which the state of health of the convicted person can be quickly ascertained, taking measures for proper treatment, while improving housing and sanitation conditions.
2. Implementation of re-socialization measures that will help to adapt to the conditions of the penitentiary institution and restore its social status after release.
3. Adoption of rehabilitation programs taking into account the psychodynamics of convicts at different stages of serving a sentence, as well as mandatory psychological assistance.

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