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The problems of applying criminal enforcement legislation in institutions of mixed security in the light of human rights concepts

Failure to observe of legal interests in regard to convict, confined, is severe violation of human rights, that often remains unnoticeable and unstudied. And it, in spite of fact, that researches of the UNO about violations of rights and freedoms in regard to convict, marked that celled and detained, being in establishments of the mixed safety, subject to the higher risk of failure to observe of their legal interests, what practically all other in other types of establishments of the criminally-executive system of Kazakhstan. It is very difficult to make the complete and clear picture of distribution of violations in regard to the people had in custody. Nevertheless, there are reliable and solvent proofs that this category of persons, being in a police and in establishments of the pre-trial having in custody, subject to the substantial risk of violation of human rights, both in the developed and in developing countries. Some types of violations in such establishments are widely widespread, and on occasion is considered a norm. The set patterns, taking into account the wide sphere of their use of, are not exhaustive and within the framework of one article does not allow to overcome all varied spectrum of pressing questions of practice, but can serve as an eloquent example that a Criminally-executive code yet needs some additions and changes.

Keywords: conceptions of human rights, observance of human rights, rights and of freedom of convict, legal interests of detained, criminally-executive code, violations of human rights, detention facility, establishments of the criminally-executive system.

In the context of the modern world globalization, the emergence of new threats to peace and security, a fundamental change in the geopolitical correlation of forces, the development of modern concepts of human rights acquires special significance. Human rights become not only a guide in solving global problems, in overcoming the contradictions between different types of civilizations and cultures, between individualism and collectivism, freedom and equality, they become a very effective guarantor of peace and stability on our planet. And, despite the fact that there are significant differences between the Western (American) and non-Western (socialist and Muslim) concepts of human rights to this day (above all ideological and political plan), they contribute to the sustainable development of the modern world [1; 75]. Human rights today, after the collapse of all ideologies, have become the prevailing universal ideology. Accordingly, whatever differences of the theoretical and ideological plan exist, human rights can be characterized from the legal point of view as universally recognized and universally binding. In the modern world, the concepts of «peace» and «stability», «sustainable progressive development», «democracy» and «human rights» are inseparable. It is in this regard that we believe that the thesis that, ideally, the most complete provision and protection of human rights and freedoms is possible with a complex combination of approaches formed in the natural-legal and positive theories of law.

As for states that gained independence relatively recently and do not have historical traditions with respect to the supremacy of human rights, the ratio of approaches should be in favor of the natural-legal theory of law. After all, it forms the conceptual-category apparatus of human rights.

Modern national legal doctrines regard the individual as the highest national value, and ensuring its fundamental rights and freedoms in all spheres as one of the most important state tasks.

In addition to basic rights and freedoms, regional human rights documents provide the human right to compensation, name, justice, protection against abuse of power, the right to be free from violence and fear, to understanding and trust, freedom and protection from terrorism, petitions and response.

An important factor in the more active integration of the Republic of Kazakhstan into the world community was the renewal of Kazakhstan's criminal-executive legislation.

With the adoption in 1997 of the Criminal Executive Code of the Republic of Kazakhstan, one of the important stages in the reform of the legislation sector regulating the execution of criminal penalties has come to an end, the reform of the corrective labor law into a penitentiary system has been completed, which is one of the most important tools for countering criminality, especially in such extreme manifestation as a recidivist crime. This is the only industry that regulates the implementation of all criminal penalties provided by the Criminal Code of the Republic of Kazakhstan.

In 2014, a new version of the Criminal Executive Code of the Republic of Kazakhstan was adopted [2]. The adoption of the new code created conditions for wider use of sentences not related to deprivation of liberty, lowering the level of penitentiary and post-penitentiary relapse, social adaptation of convicts, as well as for forming a mechanism for public participation in the educational process conducted with the convict.

Since the rights and freedoms of man and citizen are in accordance with Part 1 of Art. 1 of the Constitution of the Republic of Kazakhstan are the highest socio-political value, then part 2 of Art. 2 of the Criminal Executive Code of the Republic of Kazakhstan (hereinafter - the CEC of the RK), as one of the tasks of the criminal-executive legislation, allocates protection of the rights, freedoms and legitimate interests of convicts. Questions on the permissible limits of restrictions on civil rights and freedoms of persons serving a criminal sentence are of primary importance for the science of Kazakhstan's criminal-executive law and are explored in the framework of the doctrine of the legal status of convicts, on the observance of their rights and freedoms.

An essential feature of a democratic nature criminal legislation is the care of a person who, although violated the law, still remains a citizen of society, of the state, a member of the production team, and the family.

In the new Criminal Executive Code, the issue of the rights of convicts, ensuring their personal safety in the process of serving their sentences, has been raised to the proper level, legally fixed as one of the ways to monitor the activities of penitentiary institutions and bodies - the right of convicts to be treated [3].

However, the results of the analysis of the criminal executive law testify the inconsistency of some of its provisions with the requirements of the Constitution of the Republic of Kazakhstan.

Persons sentenced to deprivation of liberty may be left in the remand center or prison permanently, with their consent, for the term of serving the sentence for the performance of maintenance work or temporarily, if necessary, the conduct of investigative activities as a witness, victim, suspect (accused), if necessary participation in the judicial proceedings in the case of a crime committed by another person, as well as in the case of bringing a convicted person to criminal liability in another case, if in respect of he was elected to get a preventive measure in the form of detention.

The abandonment of prisoners sentenced to imprisonment in a PDC or a prison for the performance of maintenance work is conditioned, first, by the characteristics of the contingent of persons held in these institutions; secondly, the inability to bring prisoners into custody and to serve convicts serving sentences in prison. It is impossible to involve convicts serving sentences in a prison where persons who committed particularly serious crimes are kept, as well as convicts transferred to prison for violating the established order of serving punishment in correctional colonies of general, strict and special regimes.

To perform this kind of work in the correctional institutions mentioned above, only those convicts who are:

1) sentenced to deprivation of liberty, had not previously been deprived of liberty;

2) sentenced to serve a sentence of imprisonment in correctional colonies of the general regime;

3) agreed in writing to stay in these institutions for the performance of maintenance work;

4) prior to the entry of the sentence into force, they were kept in the remand prison in which they remain for the performance of maintenance work;

5) characterized positively because of their behavior.

Prisoners have the right to apply to the court. In accordance with Art. 13 of the Constitution of the Republic of Kazakhstan, everyone is guaranteed judicial protection of his rights and freedoms. Decisions and actions (or inaction) of state bodies, public associations and officials can be appealed in court.

So, on the basis of Part 6 of Art. 92 CECs, convicts can be transferred to institutions of mixed security (remand center) to maintain law and order.

In practice, the transfer is carried out in an out-of-court procedure by the MIS Committee of the Ministry of Internal Affairs of the Republic of Kazakhstan, while the time limit for holding prisoners is not limited by any time frame.

If Article 68 of the earlier acting CEC RK provided that this category of persons is subject to the conditions established for the correctional colony of the type that was appointed by the court, according to Part 7, Art. 92 new CECs of the RK, the conditions of detention are unified.

Convicts transferred to mixed security institutions to ensure law and order in institutions are not entitled to long visits and receipt of parcels. The number of short visits is limited to two during the year, the monthly spending of funds is not more than 2 MCI.

These conditions are the most stringent, in comparison with other types of correctional facilities.

The pretrial detention centers of the republic contain persons convicted of serving their sentences in the colonies of the general, strict and special regimes. Even those institutions of emergency security (prisons) that are kept in strict conditions, convicts have the right for three short visits and receiving a parcel. All other categories of convicts are entitled to long visits.

The decision of the executive body on the content of convicts in local areas actually substitutes judicial acts in the part of the designated type of correctional facility and contradicts article 75 of the Constitution of the Republic of Kazakhstan on the administration of justice in the Republic of Kazakhstan only by the court.

Moreover, the issues of changing the type of the penal system institution, appointed by conviction to a person sentenced to deprivation of liberty, under cl. 4 p. 1 Art. 476 of the CEC RK also fall within the competence of the court.

Taking into account the need to isolate the convicts who adversely affect the operational-regime situation, they must be transferred to the institutions of mixed security on the basis of a judicial act.

In view of the foregoing, it seems appropriate to add paragraph 1 of Part 6 of Art. 92 CEC PK after the words «... maintaining law and order» with the words «on the basis of a court order».

There are also problems associated with law enforcement practice.

Thus, Resolution No. 1255 of the Government of the Republic of Kazakhstan on November 28, 2014 provides for convicts who are engaged directly in hot shops and heavy work, as well as with harmful working conditions, which are referred to work with hazardous working conditions as an additional dietary provision.

However, in fact, the branches of the Enbek, which are employed in the boiler houses, are not provided with the whole list of additional food in the form of 100 gr. bread and 5 gr. margarine.

There is a shortage of clothing allowances for the special contingent in correctional institutions of the Republic.

In the requirements violation of the Decree of the Government of the Republic of Kazakhstan No. 1255 on 28.11.2014 «On the approval of natural norms of nutrition and welfare of suspects, accused, convicted ...» in some institutions, out of 19 provided items an average of 15 pieces of clothing are issued.

Sports trousers, sports shoes, slippers, felt boots are not given out. Whereas in warehouses, in part, this clothing allowance is available. For example, in one of the institutions of the Republic of Kazakhstan, 130 pieces of sports leotards are stored in a warehouse, but no items of this clothing have been issued to convicts.

A similar situation is typical for all institutions of Kazakhstan. The arguments of the administration of correctional institutions about the risks of tension among the special contingent in the event of the delivery of clothing allowances to individual convicts are unreasonable and in conflict with the requirements of the law.

At the present time, in conjunction with the Department of the Correctional System, the question of the further use of things that have not expired terms handed over by convicts to the warehouse due to release has been under consideration.

An example is the experience of the Russian Federation. According to paragraph 3 of the Order of the Ministry of Justice of Russia dated December 3, 2013, No. 216 «On approval of clothing allowance for convicts sentenced to deprivation of liberty and persons held in pre-trial detention centers», with the consent of convicts and persons held in pretrial detention centers, they may be issued second-hand garments suitable for further use.

In 2016, Committee of the Correctional System the limit of institutions filling downwards. But there was no significant reduction in the prison population. Financing from the budget occurs, proceeding from a limit of fill ability of establishment. In this connection, the material and everyday security of convicts is deteriorating. The administrations of institutions are forced to come out of the situation by saving money, which negatively affects the conditions of detention and medical care [4].

In general, the experts of the United Nations note the importance of developing issues of humanization of criminal law and emphasize their commitment to the use of effective ways of working on public control and monitoring the observance of the rights of persons sentenced to deprivation of liberty.

In recent years, international standards for the treatment of convicts and issues of their implementation have been widely and more objectively reflected in the theory of criminally-executive law, occupy a proper place in the educational literature.

Ultimately, this contributes to the formation of public opinion and new professional consciousness of the employees of the penal-executive system.

From a legal point of view, there are two possible ways to implement international norms, in particular human rights norms, in the criminal-executive system. The first is their direct action along with the norms of national legislation. The second is the harmonization of domestic legal acts with them.

Unlike international covenants and conventions, specialized international documents on the treatment of convicted persons (the Stockholm Protocol, the Standard Minimum Rules for the Treatment of Prisoners, the Beijing Rules, the Tokyo Rules, the European Prison Rules, etc.) are not international agreements, but acts of international governmental organizations. They do not need to be ratified; they do not have such a binding legal force and all the more «self-fulfillment».

Observance of the convicts' rights is the most priority direction of the penitentiary policy. Depriving a citizen of freedom is not grounds for belittling his rights and legitimate interests; the Constitution of the Republic of Kazakhstan guarantees the right to protection for every citizen regardless of gender, race, nationality, and whether or not criminal record is present.

The issues systematization of observance of the rights and legitimate interests of persons serving sentences, the main methods and methods for their compliance, the problems of improving the legislation on the legal status of convicted persons can provide serious assistance in observing the rights and legitimate interests of convicted prisoners and detainees.

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Б.А. Аманжолова

Аралас қауіпсіздікті қамтамасыз ету мекемелерінде адам құқықтарын қорғау тұжырымдамалары аясында қылмыстық-атқару заңнамасын қолдану мәселелері

Бас бостандығынан айырылғандардың, сотталғандардың заңды мүдделерінің сақталмауы адам құқықтарын қатаң бұзу болып табылады, бұл жиі елеусіз және зерттелмей қалады. Сотталғандардың құқықтары мен бостандықтарының бұзылуы жөніндегі БҰҰ зерттеулерінің деректеріне қарамастан, қауіпсіздігі аралас мекемелердегі қамаудағы адамдар мен ұсталғандардың Қазақстанның басқа қылмыстық-атқару жүйесі мекемелерінің басқа да түрлерінде жазасын өтеп жатқандарға қарағанда, олардың заңды мүдделерінің сақталмау қауіпі аса жоғары болып келеді. Қамауда ұсталған адамдардың заңды мүдделерінің бұзылуы жөнінде құқықбұзушылықтар туралы толық және нақты тұжырым жасау өте қиынға соғады. Дегенмен, аталған тұлғалар категориясы полицияда және сотқа дейінгі қамауда ұстау мекемелерінде болғанда, дамыған, сондай-ақ дамушы елдерде де адам құқықтарының бұзылуының елеулі қауіпіне ұшырайды. Мұндай мекемелерде құқық бұзушылықтар кең таралған, ал кейбір жағдайларда ол қалыпты болып табылады. Аталған мысалдар құқыққолданушымен оларды қолданудың кең саласын есепке ала отырып, бір мақала шеңберінде тәжірибенің өзекті сұрақтары әртүрлілігінің шоғырын қамту мүмкін емес, бірақ Қылмыстық атқару кодексіне кейбір өзгертулер мен толықтырулар енгізуге әлі де қажет екеніне дәлелді мысал бола алады.

Кілт сөздер: адам құқықтарының тұжырымдамасы, адам құқықтарының сақталуы, сотталғандардың құқықтары мен бостандықтары, қамауда ұсталғандардың заңды мүдделері, қылмыстық-атқару кодексі, адам құқықтарының бұзылуы, тергеу оқшаулау орны, қылмыстық-атқару жүйесінің мекемелері.

Б.А. Аманжолова

Проблемы применения уголовно-исполнительного законодательства в учреждениях смешанной безопасности в свете концепций прав человека

Несоблюдение законных интересов в отношении осужденных, лишенных свободы, является серьезным нарушением прав человека, которое часто остается незаметным, к тому же неизученным. И это несмотря на тот факт, что в исследованиях ООН о нарушениях прав и свобод в отношении осужденных отмечено, что заключенные и задержанные, находящиеся в учреждениях смешанной безопасности, подвержены более высокому риску несоблюдения их законных интересов, чем практически все остальные в других видах учреждений уголовно-исполнительной системы Казахстана. Очень сложно составить полную и четкую картину распространения нарушений в отношении людей, содержащихся под стражей. Тем не менее существуют надежные и состоятельные доказательства того, что данная категория лиц, находясь в полиции и в учреждениях досудебного содержания под стражей, подвержена существенному риску нарушения прав человека как в развитых, так и в развивающихся странах. Некоторые виды нарушений в одних учреждениях широко распространены, а в других считаются нормой. Данные примеры, учитывая широкую сферу их использования правоприменителем, не являются исчерпывающими и в рамках одной статьи не позволяют охватить весь многообразный спектр актуальных вопросов практики, но могут служить красноречивым примером того, что Уголовно-исполнительный кодекс еще нуждается в некоторых дополнениях и изменениях.

Ключевые слова: концепции прав человека, соблюдение прав человека, права и свободы осужденных, законные интересы задержанных, уголовно-исполнительный кодекс, нарушения прав человека, следственный изолятор, учреждения уголовно-исполнительной системы.

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