

CLASSIFICATION OF INTERNATIONAL LEGAL OBLIGATIONS ON THE RIGHTS AND FREEDOMS OF CONVICTS

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Annotation. In the modern science of international law and European law, insufficient attention is paid to the problem of protecting the rights and freedoms of convicts, their typology. Especially in the conditions of modern threats and challenges, there are numerous violations of various categories of the population, including the vulnerable, who are in the temporarily occupied territories. This causes the attention of scientists, as well as representatives of authorized authorities, to be drawn to certain theoretical and practical problems of protecting the rights and freedoms of convicts, their varieties, effective mechanisms of protection, restoration of violated rights.

Therefore, the purpose of the article is to analyze the existing doctrinal sources and relevant approaches, criteria for the classification of international legal obligations on the rights and freedoms of convicts, to highlight their special varieties, effective mechanisms for the protection of the rights and freedoms of convicts.

There are many types of international legal obligations on the rights and freedoms of convicts, as well as criteria and approaches to their classification. Along with international legal obligations, other related categories are used in the science and practice of international law – international legal mechanisms, international legal standards. Undoubtedly, they also concern the rights and freedoms of convicts, they are interacting but not identical concepts. The analyzed classification groups of international legal mechanisms, standards and obligations to ensure the rights and freedoms of convicts are based on established approaches to the typology of human rights and freedoms, existing international legal norms and principles in this field. At the same time, the penitentiary systems of specific states, including Ukraine, are characterized by specificities, features of national legislation, national penitentiary policy, institutional and other mechanisms.

Reports of international experts and monitoring measures demonstrate certain problems in the way of fulfilling international legal obligations regarding the rights and freedoms of convicts in Ukraine. Therefore, further systematic studies of the European penitentiary concept, the best foreign practices of compliance with such obligations, decisions of the ECtHR, the strengthening of a human-centered approach in the activities of penitentiary authorities, the functioning of an effective legal system that would protect human rights and freedoms regardless of the conditions in which she stays without being discriminated against, without additional restrictions caused by the fact of isolation.

Key words: human rights, Council of Europe, European Union law, rule of law, European standards, international standards, international organizations, United Nations, safety of convicts, rights and freedoms of convicts, respect and human dignity, penitentiary policy.

1. Introduction.

Despite the certain dynamics of international legal regulation in recent decades, issues of human rights protection do not lose their relevance, sometimes, on the contrary, they require the attention of the world community, certain international organizations and other subjects. The rights and freedoms of convicts are not an exception, along with other vulnerable categories of the population.

The issue of the protection of the rights and freedoms of convicts is actualized in the practice of individual states, and is exacerbated especially in periods of crises, conflicts, etc.

2. The purpose of the article is to analyze the existing doctrinal sources and relevant approaches, criteria for the classification of international legal obligations on the rights and freedoms of convicts, to distinguish their specific varieties, effective mechanisms for the protection of the rights and freedoms of convicts.

3. Analysis of recent research and publications.

Various aspects of convicted persons and ensuring their rights have become the subject of study by many scientists, for example, they are covered in the works of such authors as: Yu. Antonyan, S. Belikova, I. Bogatiryov, V. Kyrylyuk, O. Kolb, O. Krasnokutskyi, M. Mishchuk, O. Lysodyed, T. Nikolayenko, M. Romanov, O. Pochanska, N. Ryabikh, O. Steblynska, A. Stepaniuk, I. Yakovets, and others. That is, there is an obvious contribution to the scientific development in this field of representatives of the science of criminal law, to a lesser extent – criminal, constitutional and other branches of law. At the same time, international lawyers (B. Babin, N. Kaminska, S. Bilotskyi, V. Denisov, M. Hnatovskyi, A. Matsko, K. Smirnova, A. Fedorova, O. Shpakovich etc.), sometimes also learned constitutionalists, administrativeists, etc.

4. Review and discussion.

The importance of the development of legal anthropology, which accumulates national and international legal achievements in certain areas, the introduction of successful foreign practices into Ukrainian realities, and effective tools for ensuring the fulfillment of Ukraine's international legal obligations, has been repeatedly emphasized in foreign and Ukrainian doctrine. Thus, V. Zavalniuk notes that the main element of international standards in the anthropological dimension is man, the protection of his rights and freedoms. Incorporation of international treaties, the binding consent of which was granted by the Verkhovna Rada of Ukraine, into national legislation, and therefore, due to them, the strengthening of the role of normative-legal treaties among other legal sources of law; renewal of the meaning of legal customs; Ukraine's recognition of the jurisdiction of the European Court of Human Rights, the spread of the regulatory influence of its precedent practice on national legal relations; the phenomenon of legal positions generated by the decisions and conclusions of the Constitutional Court of Ukraine – testify to the need to rethink the category "system of sources of law" and an in-depth study of systemic connections between traditional and non-traditional sources of law. The current trend favors the expansion of direct access of individuals to international bodies. This is due to the strengthening of the desire to protect human rights with the help of international mechanisms. By itself, such access does not turn a person into a subject of international law, but only means that the parties to the relevant treaty undertake a mutual obligation to ensure this access with the legal and organizational means at their disposal. [1]

Therefore, the natural tendency of the development of international law is not only the regulation of various relations between states, but also the strengthening of the role of man. With the development of international law-making, the scope of human rights, freedoms and responsibilities will expand, as well as its importance and role in the international arena. The criminal enforcement system of Ukraine and the penitentiary policy are not exceptions, on the contrary, the results of their reform are indicators of the fulfillment of Ukraine's international legal obligations regarding the protection of convicts, their rights and freedoms, and the effective restoration of violated rights and freedoms. Therefore, there is an obvious need to anthropologize research in this area, to highlight the anthropocentric vector of relevant reforms, to harmonize with the European penitentiary concept and the national interests of Ukraine [2], to properly implement international legal standards at various levels.

Along with widespread studies of international and European standards, including those related to the treatment of convicts, protection of their rights, characteristics of their classification, we suggest drawing attention to such a category as international legal obligations in general, as well as rights and freedoms in particular convicts. In our opinion, international or European standards are not identical international legal obligations of the state. It seems that, regardless of the generally binding nature, certain standards acquire legal force for specific subjects through the legally established procedures for granting such consent. That is, on the basis of Art. 9 of the Constitution of Ukraine constitute obligations under international treaties of Ukraine, the consent of which has been granted by the Verkhovna Rada of Ukraine, which is part of the national legislation. [3]

However, it is common knowledge that such a parliamentary agreement does not apply to all international treaties of Ukraine, which raises questions about their legal force and the corresponding hierarchy. But these questions can be the subject of separate further scientific works.

M. Mishchuk and S. Belikova carried out a theoretical and legal analysis of international standards for the treatment and detention of convicts, identified issues related to the protection of the rights of such persons, ways of introducing the norms of international legal acts that enshrine human rights and freedoms into national legislation. Attention is focused on the minimum standards of treatment of prisoners, the European Penitentiary Rules, the Tokyo and Beijing Rules, since one of the areas of international law enforcement activity is the development and adoption of international legal acts that significantly affect the system of criminal punishment enforcement agencies. The main criterion for the implementation of these international legal acts was the observance of human rights in the context of the treatment of convicted persons in bodies and criminal enforcement institutions. In this regard, the criminal enforcement system faced the question of ensuring its effectiveness by directing activities in line with international standards and rules. The mentioned authors classify international legal standards into:

- general standards,
- standards of a special nature.

An analysis of these standard rules shows that they are intended to offer their recommendations for the creation in countries of minimum universally recognized humane conditions for the treatment and detention of persons deprived of their liberty in order to ensure respect for human dignity and comprehensive observance of human rights at all stages of criminal justice. [4]

It should be noted the approach according to which international standards for the treatment of convicts are norms, principles and recommendations accepted at the international level in the field of execution of punishments and the activities of bodies and institutions for the execution of punishments. On this basis, based on the concentrated experience of criminal enforcement practice, humanistic tendencies of the system of development of punishments, two types or groups of international standards for the treatment of convicts are distinguished:

firstly, there are standards related to the rules of treatment of persons who are deprived of liberty (Minimum standard rules for the treatment of prisoners, European prison rules);

secondly, these are the rules for the application of non-custodial measures. [5]

The Minimum Standard Rules for the Treatment of Prisoners and the European Prison Rules contain standards-recommendations, that is, the provisions formulated in these documents do not have binding legal force, which is explicitly stated in the introduction, where the status of these rules is determined [6-7]. Despite this, the standards for the treatment of prisoners [8-10] developed at the level of the United Nations and the Council of Europe are recognized by international organizations, governments and non-governmental organizations, and prison administrations.

The mentioned documents recognize that the criminal enforcement systems of individual countries have already achieved high standards and considerable experience. Both the Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules are intended only to offer their recommendations for the creation of minimum universally recognized humane conditions of

detention of prisoners, which would ensure respect for human dignity. However, these international documents are based on the fact that the standards of treatment of prisoners recommended by them cannot be achieved immediately everywhere and at the same time due to the different legal, social, economic and geographical conditions in the countries. The standards of treatment of convicts developed by the international community are only a guide for the administration of penal institutions in creating appropriate minimum conditions of humanity and respect. According to the degree of obligations arising from the implementation of international standards into national legislation, there are provisions that are mandatory for implementation in national criminal enforcement systems, and those that are considered as recommendations, for the implementation of which appropriate social economic prerequisites. [5]

O. Krasnokutsky formulated classification groups into which international legal mechanisms for ensuring the rights of convicts are divided. We are talking about relatively homogeneous sets of legal means, which are characterized by characteristics that coincide and are aimed at creating the most favorable conditions for the realization of the status opportunities of the convicted. That is, he highlights:

- 1) mechanisms-recommendations, the foundations of which are established by international acts and which require careful definition of implementation procedures at the national regulatory level;
- 2) mechanisms-procedures that are directly defined by international normative acts and establish the procedure for implementation, provision or protection of the corresponding right or set of rights;
- 3) mechanisms-organs, the mandatory creation of which at the national level is imperatively provided for by the international legal act for the member states of the relevant act;
- 4) mechanisms-organs that are created by an international legal act and that represent a special international body that has the authority to consider cases related to the protection of the rights of a convicted person. [11]

The mentioned author also notes that a number of directions for the formation of mechanisms for ensuring the rights of convicts have historically developed: – the direction of defining norms that require careful determination of the procedure for ensuring this or that right at the national level; – direct determination of the procedure for implementation, provision or protection of the relevant right or set of rights by the international act itself; – the imperative obligation of the member states of the relevant conventions or agreements to create at the national level specially authorized bodies whose competence includes guardianship of the rights of convicts, their provision and protection; – creation of a special international body that has the authority to consider cases related to the protection of the rights of a convicted person. [11]

Along with this, the study of scientific works and international documents, the practice of their implementation also allows to classify the studied international legal obligations according to the spheres of life, vital needs of the convicts. For example, in this context it is possible to distinguish international legal obligations to:

- ensure the health care of convicts, for timely provision of medical assistance, proper treatment;
- regulate and ensure the right of convicts to education;
- regarding the regulation and provision of work and rest for convicts;
- respect for honor and dignity, not allowing harsh, inhumane or humiliating types of punishment for disciplinary offenses to be applied to them;
- free access to information related to his rights and responsibilities, clarification of the procedure for submitting complaints about the actions (inaction) of correctional facility employees to higher authorities;
- immediately inform his family members about his imprisonment or transfer to another institution;
- access to premises for the care of pregnant women and women in labor;

- regarding the regulation and provision of electoral rights of convicts;
- the payment of compensations in connection with a disability received at work or an occupational disease;
- satisfy their religious needs, etc.

This list is, of course, non-exhaustive. The approach regarding the classification of international standards and obligations regarding the rights and freedoms of those sentenced to deprivation of liberty into four groups appears to be universal:

standards and obligations regarding the organization of the regime of serving punishment in places of deprivation of liberty;

standards and obligations regarding work organization and professional training of those sentenced to imprisonment;

standards and obligations regarding the organization of educational work with such convicts;

standards and obligations regarding the organization of microsocioal conditions of serving a sentence in the form of deprivation of liberty.

Attention should be paid to the problems of the effectiveness of mechanisms for the protection of the rights and freedoms of convicts, both conventional, control, and institutional, in the way of fulfilling international legal obligations on the rights and freedoms of convicts. Yes, the role of national institutions (the Commissioner of the Verkhovna Rada of Ukraine for human rights, courts, justice bodies, law enforcement bodies, mediation, human rights organizations), as well as international organizations and bodies (the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment, the European Court of Human Rights, monitoring commissions, guardianship boards, etc.). International control is not limited only to checks, inspections, proper implementation of the compliance of regulatory legal acts with existing standards, but constitutes a complex activity of its subjects based on generally recognized principles and norms of modern international law regarding the creation by them of bodies to verify compliance by states with international legal obligations agreements, taking measures for their implementation, in particular, organizational and informational, technical, material and financial support, explanations, decision-making, recommendations regarding the fulfillment of international legal obligations, etc. All this requires support for reforming the penitentiary system of Ukraine, improving the national penitentiary policy of Ukraine, and intensifying cooperation with authorized international partners.

5. Conclusions.

As we can see, there are many types of international legal obligations on the rights and freedoms of convicts, as well as criteria and approaches to their classification. Along with international legal obligations, other related categories are used in the science and practice of international law – international legal mechanisms, international legal standards. Undoubtedly, they also concern the rights and freedoms of convicts, they are interacting but not identical concepts.

The analyzed classification groups of international legal mechanisms, standards and obligations to ensure the rights and freedoms of convicts are based on established approaches to the typology of human rights and freedoms, existing international legal norms and principles in this field. At the same time, the penitentiary systems of specific states, including Ukraine, are characterized by specificities, features of national legislation, national penitentiary policy, institutional and other mechanisms.

Reports of international experts and monitoring measures demonstrate certain problems in the way of fulfilling international legal obligations regarding the rights and freedoms of convicts in Ukraine. Therefore, further systematic studies of the European penitentiary concept, the best foreign practices of compliance with such obligations, decisions of the ECtHR, the strengthening of a human-centered approach in the activities of penitentiary authorities, the functioning of an effective legal system that

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