

International Standards of Penitentiary Activity: Impact on the Development of the Penitentiary Activity of the CIS Countries

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Abstract: Overcrowding in prisons is a common problem that affects many countries. It is difficult to define this term because there is no single internationally accepted standard. This article presents a comparative study of international standards for the activities of doctors in penitentiary institutions as an integral part of international standards of penitentiary activity. The authors investigated the methods and the degree of their impact on the penitentiary legislation of the Russian Federation and other CIS countries. The conclusion is drawn about the positive role of such standards in improving the national penitentiary legislation in order to increase the level of medical care for prisoners.

Keywords: Penitentiary legislation, doctor, medical care, prisoner, criminal law.

INTRODUCTION

All over the world, doctors, taking the oath of Hippocrates, must treat any person no matter who he/she is or wherever he/she is, including prisoners. At the same time, such medical care has certain geographical, economic, social, legal features, etc., that is, it depends on the realities in a particular state.

All this strengthens the role of international legal acts that contribute to the settlement of human rights issues, the fight against crime and the treatment of prisoners.

Since the rights, obligations, and legitimate interests of these persons have a significant difference from the legal status of persons who have never come into conflict with criminal law, their implementation should be constantly monitored by state bodies, which is carried out, inter alia, by observing the requirements of relevant international standards by doctors in penitentiary institutions that are reflected also in constitutional norms (Utkin, 1998; Utkin, 2016; Hildayanti, & Alie, 2016).

The current variability of scientific views on the content and effectiveness of such standards (Baffoe-Bonnie *et al.*, 2019; Barry *et al.*, 2010; Chen *et al.*, 2019; Einat *et al.*, 2015; Scarlet *et al.*, 2019; Singh, *et al.*, 2018). Requires a systematic analysis and understanding of the degree of influence exerted on the

development of the penitentiary systems of individual states, including the Russian Federation and other CIS countries.

METHODS

The research used the provisions of dialectics, general scientific, special and particular methods. In the course of the study, private scientific methods were also used: historical-legal, formal-legal, formal-logical, systemic, and comparative.

The immeasurable troubles and destruction caused to mankind by the World War (1939-1945) led to the realization of the importance of observing and protecting the human rights and freedoms in all spheres of life, the development of their global standards. Quite quickly (since the late 1940s) such standards were enshrined in the Universal Declaration of Human Rights (hereinafter referred to as the Declaration) (<https://www.un.org>) and the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) (<https://www.unhcr.org>) adopted under the auspices of the UN. Under their influence, the fundamental provisions on the protection of human rights and freedoms were approved in regional international legal acts. For example, in Europe, the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) was adopted (<https://www.echr.coe.int>).

Despite the advisory nature of the provisions of these documents, they served as a solid basis for setting standards for the treatment of prisoners,

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including in the provision of medical care. Evidence of this Art. 5 of Declaration and Art. 3 of the Convention containing a ban on cruel, inhuman or degrading treatment, torture. They were revoiced in Art. 7 of the Covenant, which does not allow a person to be involved in medical or scientific experiments without his/her free consent, as well as the rule of Art. 10, which stated that “all persons deprived of their liberty have the right to humane treatment and respect for the inherent dignity of the person”.

Further specification of these provisions (the second half-end of the 80s of the XX century) was even more focused on the activities of doctors of penitentiary institutions, and was embodied in the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (<https://www.ohchr.org>), as well as other similar acts (<https://www.coe.int>).

A little later, the UN adopted the Code of Principles for the Protection of All Persons under any Form of Detention or Imprisonment (<https://www.ohchr.org>), as well as the Basic Principles for the Treatment of Prisoners (<https://www.un.org>).

Paragraph 9 of the last document for the first time secured the right of prisoners to use the available medical care in the country, without discrimination on the basis of their legal status.

The following international standards covering various aspects of prisoner health care emerged in the 2000s. These include the European Prison Rules (<https://search.coe.int>) (hereinafter referred to as the EPR), as well as the UN Standard Minimum Rules for the Treatment of Prisoners (the so-called Nelson Mandela Rules, hereinafter referred to as NMR) (<https://undocs.org>).

The last document is most indicative because, considering the experience gained, it sets out in detail the global standards for the provision of medical care in prisons and, above all, the activities of their doctors (paragraphs 24-35 “Health care”; 45-47; 76 and 78 “Institutional staff”; 79; 109-110 “Prisoners with mental illness and/or serious health condition”). An important novelty, which is reflected in the NMR, is the formulation of ethical standards for the professional activities of doctors of penitentiary institutions (part 1, par. 32).

As for the EPR, par. 43.1. proclaims that “The doctor takes care of the physical and mental health of the prisoners and examines, in conditions and with

frequency, consistent with public health standards in the society, all sick prisoners, all those who seek medical help with malaise or trauma, and any prisoner who is specially paid attention to”.

RESULTS AND DISCUSSION

In the Russian Federation and other CIS countries, international legal standards for the activities of doctors in penitentiary institutions have been included in the system of national laws and the sphere of practical activity of such institutions since the beginning of the 1990s.

However, despite the consideration in the norms of domestic penitentiary legislation (part 1, article 3) of the primacy of the universally recognized principles and norms of international law enshrined in the Constitution of the Russian Federation with respect to national law (part 4, article 15), of direct law-enforcement significance the activities of doctors of penitentiary institutions have neither NMR nor EPR standards. Their value is advisory and evaluative. A similar provision is formed in the legislation of other CIS countries: Armenia, Belarus, Kazakhstan, Kyrgyzstan, Uzbekistan, Turkmenistan, Ukraine, Azerbaijan, and Tajikistan.

We should note that, despite the evaluative role of these standards, their significance for the development of medical care in penitentiary institutions is significant. In support of this statement, we refer to the opinion of one of the relevant Russian researchers V.A. Utkin, noting that “a detailed familiarization with these standards makes it possible to better understand the achieved level of domestic criminal-executive practice, criminal-executive legislation, directions and prospects for their improvement” (Utkin, 1998), including in medical care provided in penitentiary institutions.

In this regard, the scientist proposed a number of elements (10) that make up the impact of international standards of the work of prisons on national penitentiary legislation and the practice of its application. These include information, stimulating, political, guaranteeing, evaluative elements, etc. (Utkin, 2016).

The most significant, in our opinion, are the first two elements. The value of the information element follows from the specifics of the activity of the penitentiary system of any state, the main feature of which is closed nature of information for the external environment and

a weak perception of external influence by state institutions. The exception is not even the governments of states, courts, the medical community and civil society. The reason for this lies in the fact that, as already noted, most international standards for the work of doctors in prisons are advisory in nature.

At the same time, all of these structures must have a clear understanding of the modern approaches of the world community to the necessary and desired rules for the treatment of prisoners and the provision of medical care to them in order to assess how the real situation in the penitentiary institutions of a particular country meets the requirements of international standards.

The information element is closely interrelated with the stimulating element since its task is to determine the directions and prospects for improving the national penitentiary legislation and the practice of its application. Moreover, international standards reflect methods, samples and algorithms for solving specific problems associated with the professional activities of medical personnel in prisons.

Next, we consider the most probable way the international standards for the work of doctors in prisons can influence the penitentiary legislation of the Russian Federation and other CIS countries. It is the generally recognized way of implementing the norms of international law in the Russian legislation and the legislation of other countries.

Leaving out the debate about whether to consider the ratification of international treaties as the main form of implementation, let's say that it results in the borrowing of categories of international law and the transformation of national legislation, as a result of which the subjects the norm is addressed to act in accordance with the provisions of these categories.

Modern legal literature operates various terms to indicate methods of implementation, however, it seems reasonable to single out the following: transformation (adaptation), incorporation, reception, and reference.

We shall consider the content of these methods, depending on the degree of "activity" of their use by the legislators of the Russian Federation and other CIS countries in policy making. To this end, we will identify the compliance of the norms of the penitentiary legislation of these entities mainly with the provisions of the EPR and NMR, as the most comprehensive documents, which by date of their adoption are closest to today.

We consider the transformation of the law, that is, the adaptation of domestic to international law, to be a priority way of implementing international standards for the work of prison doctors in the legislation of Russia and other CIS countries. The specificity of such a process with respect to the Russian Federation and other CIS member countries is that it is carried out both in the form of expansion and clarification of the provisions of international standards in national legislation, and in their narrowing.

This method is illustrated by consolidation of a ban on any actions on convicts related to research in various pharmaceutical fields, improving methods of medical diagnosis, prevention and treatment of diseases in part 3 of article 12 of the Criminal Code of the Russian Federation. These bans are similar to the prohibitions contained in the recommendations of international standards (par. 32.1 of NMR and par. 48.1 of the EPR). At the same time, in the Law of the Russian Federation No. 323-FZ dated 21.11.2011 "On the Basics of Protecting the Health of Citizens in the Russian Federation (<http://www.consultant.ru>), the list of prohibited activities, along with those listed in the Penitentiary Code of the Russian Federation, also includes "tests of specialized medical food products, medical devices, and disinfectants". There is an expansion and clarification of the relevant provisions of NMR and EPR.

The same method of implementation should include a medical examination of prisoners during their admission to a penitentiary institution. A review of the regulation of this procedure testifies to its similarity in most criminal executive codes of the CIS countries (<http://online.zakon.kz>) with the doctor's algorithms set forth in NMR, namely par. 30, obliging him/her to consult each prisoner, talk with him/her and examine him/her as soon as possible after admission.

In terms of the most accurate compliance with the provisions of NMR, the Executive Code of the Republic of Moldova should be highlighted, the norms of which fully comply with NMR. However, the similar Codes of Turkmenistan, Kazakhstan and Kyrgyzstan reflect the recommendations of the NMR for the admission of convicts to the institution only partially. As for the penitentiary legislation of the rest of the CIS countries, including the Russian Federation, the regulation of the participation of doctors in the admission of convicts is enshrined in by-laws and regulations, however in a greater scope than in NMR.

The method following the transformation is incorporation, that is, the direct application of international law to the laws of the Russian Federation and other CIS countries. As already noted, part 1 of Art. 3 of the Penitentiary Code of the Russian Federation establishes that "the criminal-executive legislation of the Russian Federation and the practice of its application are based on... generally recognized principles and norms of international law and international treaties of the Russian Federation, which are an integral part of the legal system of the Russian Federation". Standards similar in content are found in the relevant legislation of Armenia, Belarus, and Tajikistan.

Following incorporation, according to the degree of involvement in the legislative process, a reference follows. The Penitentiary Code of the Russian Federation, as well as the codes of other CIS countries, provide a rule referring to international rules and standards and authorizing their application. In Russia, these are the provisions of Part 2 of Art. 3 of the Penitentiary Code of the Russian Federation: "If other rules of the execution of sentences and treatment of convicts are established by an international treaty of the Russian Federation than provided for by the criminal-executive legislation of the Russian Federation, then the rules of the international treaty shall apply".

The least common method of implementation should include a reception, which should be understood as an exact reproduction of the wording of international legal acts in internal ones. From this point of view, among all the penitentiary codes of the CIS countries, the Executive Code of the Republic of Moldova maximally meets the recommendations of NMR and EPR in penitentiary medical care since its structure has almost completely incorporated the structure of these standards, as well as other international acts. The next, in terms of proximity thereto, is the Criminal Executive Code of Turkmenistan.

We could continue an effective analysis of the results of the implementation of international standards for the work of doctors of penitentiary institutions in the penitentiary legislation of the Russian Federation and other CIS countries, but it is limited by the scope of this article.

CONCLUSION

Increasing awareness about the issue in the international community and prison administrations and

above all, assigning specific economic resources, are key elements in preventing this deficit in social welfare. The impact of the provisions of international standards for the work of doctors in penitentiary institutions on the national penitentiary legislation of the CIS countries shows a steady, positive progress, leads to their convergence in order to create appropriate conditions for the effective protection of the health of prisoners, providing them with health care at the level of state medical standards considering the legal culture, legal values and traditions of these countries, and their economic opportunities.

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