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LEGAL REGULATION OF THE INSTITUTION FOR CHANGING DETENTION CONDITIONS OF PERSONS DEPRIVED OF LIBERTY AT THE INTERNATIONAL LEVEL

ПРАВОВОЕ РЕГУЛИРОВАНИЕ ИНСТИТУТА ИЗМЕНЕНИЯ УСЛОВИЙ СОДЕРЖАНИЯ ЛИЦ, ЛИШЕННЫХ СВОБОДЫ, НА МЕЖДУНАРОДНОМ УРОВНЕ

Abstract. The article analyzes international standards in the field of changing the conditions of detention of persons sentenced to imprisonment. Proposals are made to optimize the Institute for changing the conditions of serving a prison sentence in the Republic of Belarus at the present stage. The analysis of international legal standards on the treatment of convicted persons (prisoners) allowed the author to draw the following conclusions. At the present stage of development, the international legal system is an independent, stable set of documents regulating legal relations in the penitentiary sphere. International standards in the field of imprisonment execution is clearly oriented States around the world to broaden the use of the progressive system of punishment is based precisely on changes of detention conditions and correctional institutions based on the behavior of the convicted person while serving a punishment. At the same time, it is pointed out that it is necessary to create conditions for expanding contacts with the outside world of persons serving sentences and maintaining their socially useful connections. The application of certain normative provisions of international standards in the process of changing the conditions of serving a sentence of liberty deprivation contributes to the achievement of the goals of criminal liability. Despite the advisory nature of the main part of international documents, the compilation of best practices and clarification of individual issues contributes to a uniform approach in law enforcement activity. In order to improve the efficiency of the penal system of the Republic of Belarus, it is rational to move from the recommendatory nature of the considered international standards to their mandatory implementation in law enforcement. This approach will definitely not entail significant material costs for the state, and the achieved results will undoubtedly contribute to improving the effectiveness of social adaptation and reintegration of convicts into society, strengthening the rule of law in correctional institutions and humanizing conditions of detention. The obtained conclusions can be used for further implementation of the

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requirements of the Penal Code, as well as the Development Concept of organizations of the penitentiary system and medical and labor dispensaries of the Ministry of Internal Affairs of the Republic of Belarus.

Keywords: international standards, deprivation of liberty, convicted person, changes in the conditions of serving a sentence, the penal system, resocialization of convicts.

Аннотация. В статье осуществлен анализ международных стандартов в сфере изменения условий содержания осужденных к наказанию в виде лишения свободы. Вносятся предложения по оптимизации института изменения условий отбывания лишения свободы в Республики Беларусь на современном этапе. Анализ международно-правовых стандартов по вопросам обращения с осужденными (заклученными) позволил автору сделать следующие выводы. На современном этапе развития международная правовая система представляет собой самостоятельную, устойчивую совокупность документов, регламентирующих правоотношения в пенитенциарной сфере. Международные стандарты в сфере исполнения лишения свободы отчетливо ориентируют государства всего мира на расширение применения прогрессивной системы отбывания наказания, основывающейся именно на изменении условий содержания и вида исправительного учреждения исходя из поведения осужденного в период отбывания наказания. Одновременно указывается на необходимость создания условий для расширения контактов с внешним миром лиц, отбывающих наказания, и поддержания их социально полезных связей. Применение отдельных нормативных положений международных стандартов в процессе изменения условий отбывания наказания в виде лишения свободы способствует достижению целей уголовной ответственности. Несмотря на рекомендательный характер основной части международных документов, обобщение передовой практики и разъяснение отдельных вопросов способствует единообразному подходу в правоприменительной деятельности. В целях повышения эффективности функционирования уголовно-исполнительной системы Республики Беларусь рационально перейти от рекомендательного характера действия рассмотренных международных стандартов к их обязательной реализации в правоприменительной деятельности. Указанный подход определенно не повлечет за собой существенных материальных затрат для государства, а достигнутые при этом результаты, бесспорно, будут способствовать повышению эффективности социальной адаптации и реинтеграции осужденных в общество, укреплению правопорядка в исправительных учреждениях и гуманизации условий содержания. Полученные выводы могут быть использованы при дальнейшей реализации требований Уголовно-исполнительного кодекса, а также Концепции развития организаций уголовно-исполнительной системы и лечебно-трудовых профилакториев Министерства внутренних дел Республики Беларусь.

Ключевые слова: международные стандарты, лишение свободы, осужденный, изменение условий отбывания наказания, уголовно-исполнительная система, ресоциализация осужденных.

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The Republic of Belarus' membership in international organizations and participation in the development and adoption of international acts oblige it to bring its national legislation into line with the provisions of international conventions and treaties. The implementation of the provisions of international standards for the treatment of prisoners in the national legislation of the Republic of Belarus is carried out by taking these standards into account when forming various sources of penal law. Based on this, Article 3 of the Penal Code of the Republic of Belarus stipulates that penal legislation is based on generally recognized principles and norms of international law, international treaties relating to sentences execution and the treatment of convicted persons.

In jurisprudence, there are various types of international legal acts, the classification of which is based on certain criteria. In particular, international legal acts are divided into global and regional ones. Global standards are set by the United Nations, while regional standards are set by regional international organizations (for example, the Council of Europe). By specialization, international standards in this category are divided into general acts that are not intended specifically to regulate the treatment of prisoners, but contain separate standards related to the treatment of prisoners, and specialized acts that are intended to set out standards for the treatment of prisoners. According to the degree of obligation they are mandatory and recommendatory.

While further studying the issue of legal regulation of changes in the conditions of serving a prison sentence in international acts, we consider it appropriate to note that the International Pact on civil and political rights (hereinafter – the Pact) of 1966 can be considered as such. In particular, Part 3 of Article 10 of the Pact includes a provision providing for a regime for prisoners, the essential purpose of which is their correction and social reeducation. The content of this norm implies, among other things, the creation

of various conditions for serving a sentence of liberty deprivation by changing them.

The revised United Nations Standard Minimum rules for the treatment of prisoners (the Nelson Mandela Rules), adopted by General Assembly Resolution 70/175 on 17.12.2015, are rightly considered to be the Central international instrument for sentences execution. Their fundamental basis is the principle of equality of all before the law and the inadmissibility of discrimination, as previously stated in the Universal Declaration of human rights (Article 6).

Rule 4 of the Pact on civil and political rights defines the goals of incarceration, which are primarily to protect society from criminals and reduce recidivism. These goals can only be achieved if the term of imprisonment is used, as far as possible, to ensure that such persons are reintegrated into society after their release, so that they can lead a law-abiding and independent life (Uzhakhov, A. S. 2018, p. 171).

In addition, Rule 37 of the Pact provides for mandatory legal regulation of such aspects as the use of restrictions on conditions of detention as a disciplinary penalty or to maintain order and security. Значение данной нормы заключается в минимизации рисков, связанных с отсутствием правового регулирования алгоритмов действий сотрудников пенитенциарных учреждениях в определенных ситуациях.

Rule 68 of the Pact refers to the right of every prisoner to immediately notify their family or any other person designated as a contact person of their transfer to another facility. At the same time, prisoners, who are being transferred, should be protected as much as possible from prying eyes and all measures should be taken to protect them from insults, curiosity and other types of publicity. This argument shows that the international community is taking certain measures to regulate the process of changing the conditions of serving a sentence by transferring a prisoner from one correctional institution to another.

Continuing the analysis of the legal regulation of changes in the conditions of serving a prison sentence in international acts, it should be noted that, it is rational to consider the requirement of Rule 85 of the Pact, according to which it is desirable that before the end of the sentence, measures should be taken to gradually return the prisoner to life in society. This goal can be achieved by introducing a special regime for released persons, either in the institution or by releasing prisoners on probation, during which they still remain under supervision, provided that supervision is not assigned to the police authorities and is combined with effective social assistance.

Rule 95 of the Pact provides for changing the conditions of serving a sentence in the direction of improving the legal situation based on the positive behavior of the prisoner. At the same time, it is specified that the application of benefits should be systematic, develop different methods of treatment depending on the category of prisoner and aim to promote good behavior, develop a sense of responsibility, instill in them an interest in their upbringing and cooperation with the institution's administration (Svinin, E. V. 2019, p. 149). Based on this, it can be concluded that the international document under consideration implies the creation of a mechanism for changing the degree of legal restrictions applied, depending on the behavior of the convicted person, being as an effective incentive to lawful behavior, thereby motivating the useful activity of the convicted person.

Thus, the Pact is a key international standard in the field of administration of justice, which determines the optimal strategy for the functioning of the penitentiary system developed by the world community, taking into account modern scientific and practical achievements. These Rules pay considerable attention to the issues of regulation and procedure for changing the conditions of serving a sentence. A number of states, guided by the Pact, successfully socialize former criminals, while achieving significant results. In the Republic of Belarus, this direction is just

beginning to develop. At the same time, there is no doubt that it needs to be further improved. We believe that this will help reduce the level of crime in the country, increase the degree of protection of citizens from criminal attacks, and improve the legal culture of the population.

We consider it appropriate to analyze the institution of changing the conditions of a prison sentence serving, which is enshrined in the UN Standard Minimum rules for the administration of juvenile justice (the Beijing Rules). The significance of this document is determined by the fact that juvenile justice is an integral part of the national development mechanism of each country within the framework of comprehensive social justice, while contributing to the protection of youth and the maintenance of law and order in the state.

In accordance with Paragraph 29.1 of the Beijing rules, efforts must be made to use intermediate forms of work with prisoners, such as transfer to a low-security correctional facility, foster houses, day-care centers, and other similar appropriate forms that can contribute to the proper reintegration of minors into society. In this regard, the importance of custody after release from a correctional facility should not be underestimated. In this case, the need to create a network of institutions of an intermediate type is emphasized.

Evidence of the importance of the Institute for changing the conditions of juvenile convicts detention is the results of a dissertation study by E. Y. Biryukova, who analyzed the mechanism of social adaptation of minors in preferential conditions of serving sentences. According to her point of view, the creation of social rehabilitation sites in juvenile colonies (centers) with the organization of teenagers' living in conditions of semi-freedom allows, on the one hand, to consolidate the results of treatment and continue this work under the supervision of the administration, and with another – to provide a systematic return of the convict to life in society, and promote its labour and household arrangement after release from punishment (Biryukova, E. Yu. 2012, p. 174).

In addition, the author emphasizes the need to develop a variety of institutions and services designed to meet the various needs of young offenders returning to society, and to provide guidance and structural support as an important measure for their successful reintegration. The implementation of such tasks is aimed at creating an optimal system for gradually changing the degree of restrictions applied to convicted persons, taking into account the results of their correction.

At the same time, speaking about regional international acts that affect changes in the conditions of detention of convicts, as well as taking into account the possible prospects for the Republic of Belarus to join the Council of Europe, it seems appropriate to analyze the provisions of the European Prison Rules (hereinafter – EPR) amended on 11.01.2006, adopted by the decision of the 952nd meeting of the Committee of Ministers of the Council of Europe.

Based on Rule 17.2 of the EPR, when changing the type of correctional facility, the requirements for continuing criminal investigations and ensuring security should be taken into account, as well as the need to create an appropriate regime for all prisoners. In this regard, before the transfer of a convicted person, it is rational to study his opinion about the transfer from one penitentiary institution to another. This approach, we believe, will in the future create prerequisites for the restoration of socially useful relationships with close relatives and other persons, and will undoubtedly increase the effectiveness of the results of correction. At the same time, this is consistent with the norm set out in Rule 24.5 of the EPR, which implies that prison staff should, if possible, provide assistance to prisoners in order to maintain contact with the outside world.

The EPR also focuses on respect for the human dignity of convicts when changing the conditions of detention (Rule 18.1): compliance with the minimum room size per convict and the established temperature regime. In addition,

Rule 18.8 provides for separate placement of certain categories of prisoners in the process of changing the conditions of serving a prison sentence by transferring them from one correctional institution to another. In this regard, Rule 49 of the EPR is of great interest, according to which the prison administration, regardless of the type of correctional facility and the regime established in it, is required to introduce internal regulations, taking into account the provision of prisoners with detention conditions that ensure human dignity.

Important is Rule 51.5, according to which the level of severity of the regime should be reviewed on a regular basis throughout the entire period of serving the sentence, and the prospects of being transferred to improved conditions of detention are a significant prerequisite for a lawful behavior of the convicted person.

Continuing the analysis of the EPR, it seems appropriate to note that Rule 103.6 considers as an integral element of the general regime for persons deprived of their liberty, the system of dismissal from penitentiary institutions. This rule builds on the ideas contained in the more detailed recommendation no. R 82 (16) of the Committee of Ministers regarding the recognition of the importance of prison vacations as a means of facilitating social reintegration. In addition, Rule 103.7 indicates that a comprehensive plan to change the detention conditions of convicted persons by providing them with regular vacations is part of the general regime of detention.

In our opinion, it is rational to include this norm as an additional provision of the individual correctional program provided for in the Instruction on the procedure for organizing and conducting educational work with those sentenced to penalties of arrest and imprisonment, approved by the Order of the MIA of the Republic of Belarus No. 572 of December 30, 2016.

Of practical interest is Rule 104.1 of the EPR, which establishes the use of different types of penitentiary institutions or the

creation of separate sections on the territory of the institution for specific categories of prisoners. (Savushkin, S. M. 2013, p. 259). In this regard, the process of drawing up and regularly reviewing individual plans for serving sentences by prisoners should be regulated at the legislative level. We recommend taking into account the opinion of employees from the administration of the institution who directly worked with the convict (heads of detachments, operational workers, inspectors of the security department, psychologists) in the process of carrying out this activity.

The above suggests that the EPR has a positive impact on the development of the Penal legislation of the Republic of Belarus in general and on the differentiation of persons sentenced to imprisonment in particular. Moreover, the implementation of certain standards of the EPR will contribute to the implementation of the Development Concept of the penal system's organizations, medical and labor dispensaries of the MIA of the Republic of Belarus.

Undoubtedly, the analysis of international legal standards on the treatment of convicts (prisoners) allows us to come to the conclusion that at the present stage of development, the international legal system is an independent, stable set of documents regulating legal relations in the penitentiary sphere. These provisions do not cover all the issues related to changing the conditions of serving a sentence of imprisonment. However, their further research will undoubtedly be of significant importance both in scientific and practical terms.

Thus, having analyzed the international penitentiary standards and summarizing the study of the issue of fixing the institution of changing the conditions of serving a sentence in the form of imprisonment in them, we believe it is possible to formulate the following conclusions.

1. International standards in the field of imprisonment execution is clearly oriented states around the world to broaden the use of the progressive system of punishment, which is based precisely on changed conditions of

detention and correctional institutions, based on the behavior of the convicted person while serving a punishment. At the same time, it is pointed out that it is necessary to create conditions for expanding contacts with the outside world for persons serving sentences and maintaining their socially useful connections.

2. The application of certain normative provisions of international standards in the process of changing the conditions of serving a sentence of imprisonment contributes to the achievement of the goals of criminal liability. Despite the advisory nature of the main part of international documents, the compilation of best practices and clarification of individual issues contributes to a uniform approach in law enforcement activity.

3. In order to improve the efficiency of the penal system of Belarus, it is rational to move from the recommendatory nature of the international standards considered to their mandatory implementation in law enforcement activity. This approach will definitely not entail significant material costs for the state, and the achieved results will undoubtedly contribute to improving the effectiveness of social adaptation and reintegration of convicts into society, strengthening the rule of law in correctional institutions and humanizing conditions of detention.

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