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ANALYSIS OF PROGRESSIVITY, NORMALITY AND RESPONSIBILITY PRINCIPLES IN THE PROGRESSIVE SYSTEM OF SERVING CRIMINAL SENTENCES IN THE FORM OF IMPRISONMENT

АНАЛИЗ ПРИНЦИПОВ ПРОГРЕССИВНОСТИ, НОРМАЛЬНОСТИ И ОТВЕТСТВЕННОСТИ В ПРОГРЕССИВНОЙ СИСТЕМЕ ОТБЫВАНИЯ УГОЛОВНЫХ НАКАЗАНИЙ В ВИДЕ ЛИШЕНИЯ СВОБОДЫ

Abstract. Ensuring the proper functioning of the progressive system of serving a criminal sentence in the form of deprivation of liberty is an urgent problem for the Republic of Moldova. The international recommendations in this area, as well as the practice of other states that apply the progressive system, in order to identify the most optimal solutions for its implementation are analyzed in the article. Special literature is studied, in which important studies is conducted on the role of sentences execution principles in achieving their goals. Recommendations for changing the existing regulatory framework are formulated. According to the results of the study, the author comes to the conclusion that although most of the principles reflected in the Penal Code of the Republic of Moldova are characteristic of a progressive system of serving sentences, their list is incomplete. International practice recognizes the important role of the principles of normality, responsibility and progressivity in a progressive system of serving a sentence of imprisonment. Therefore, in order to intensify the national correctional process and achieve more effective results in the execution of criminal penalties, it is necessary to expand the list of principles enshrined in the Penal Code of the Republic of Moldova and to create correctional mechanisms that correspond to their proper application.

Keywords: penitentiary institutions, principles, progressivity, the principle of “throughcare”, the principle of normality, risk assessment.

Аннотация. Обеспечение надлежащего функционирования прогрессивной системы отбывания уголовного наказания в виде лишения свободы является актуальной проблемой для Республики Молдова. В статье проанализированы меж-

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дународные рекомендации в данной области, а также практика других государств, применяющих прогрессивную систему, с целью выявления наиболее оптимальных решений при ее реализации. Изучена специальная литература, в которой проведены важные исследования роли принципов исполнения наказаний в достижении их целей. Сформулированы рекомендации по изменению существующей нормативной базы. По результатам проведенного исследования автор приходит к выводу о том, что хотя большинство принципов, отраженных в Исполнительном кодексе Республики Молдова, характерны для прогрессивной системы отбывания наказания, их список является неполным. Международная практика признает важную роль принципов нормальности, ответственности и прогрессивности в прогрессивной системе отбывания наказания в виде лишения свободы. Следовательно, для интенсификации национального исправительного процесса и достижения более эффективных результатов при исполнении уголовных наказаний необходимо расширить перечень принципов, закрепленных Исполнительным кодексом Республики Молдова, и создать исправительные механизмы, соответствующие их надлежащему применению.

Ключевые слова: пенитенциарные учреждения, принципы, прогрессивность, принцип «throughcare», принцип нормальности, оценка рисков.

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The study of the principles of penal law, taking into account their significance in the context of the application of various institutions, is an urgent task of the study. These principles define all law enforcement activities and establish the basic rules for the activities of personnel involved in the execution of criminal penalties. Each form of the enforcement process organization is characterized by special principles that depend on the form of the law enforcement process organization established by the legislator, and are intended to demonstrate the effectiveness of the chosen form. The principles of penal legislation are based on the norms of international law regarding prisoners, such as the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted in 2016, European Penitentiary Rules, adopted in 2006, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, adopted in 2002, The European Convention for the Protection of Human Rights, adopted in 1950. The principles enshrined in these acts establish the fundamental rights of persons sentenced to deprivation of liberty, which are enshrined in the legislation of the Republic of Moldova and must be respected in sentences execution (Florea, V. & Florea, L. 1999, pp. 12–13).

Taking into account the fact that in the Republic of Moldova the penal process is organized in the form of a quasi-progressive system, most of the principles are aimed at motivating convicted persons to abandon delinquent behavior by relaxing the established regime of sentence execution, depending on the course of sentence execution. The principles of the penal legislation of the Republic of Moldova are enshrined in Article 167 of the Penal Code. According to Part 1 of this article, the execution of sentences in criminal cases is based on the principles of normality, democracy, humanism, respect for the rights, freedoms and human dignity, equality of convicted persons before the law, differentiation, individualization and planning of serving criminal sentences, rational use of means of correcting convicted persons

and encouraging law-abiding behavior. The legislator of the Republic of Moldova has formulated an exhaustive list of principles of the penal legislation. National researchers demonstrate different approaches to the exhaustive nature of this list, since many social relations regulated by penal legislation cannot function effectively within the framework of the principles set out exhaustively in Article 167 of the Penal Code.

In Rec (2003) 23 of the Committee of Ministers of the Council of Europe on the management of the prison administration of prisoners sentenced to life and long sentences (Rule 2), six categories of principles are identified, the application of which is aimed at achieving the following priority objectives:

- penitentiary institutions should be safe places for prisoners, as well as for prison staff and visitors;
- the harmful effects of prolonged detention must be addressed;
- opportunities for the re-entry of convicted persons into society after their release from prison should be expanded.

All these goals, according to the Committee of Ministers of the Council of Europe, can only be achieved through the proper and effective application of the following principles: individualization of the execution of the sentence, normality, responsibility, safety and security, non-segregation and progressivity (Rules 3–9).

T. Walsh (2004, p. 41) considers that the following practical principles of the correctional process, ensuring the prevention of recidivism, are successfully applied in a progressive system of punishment:

- smooth transition of prisoners from prison to the community or so-called throughcare – the principle that provides for the management of cases for each prisoner;
- provision of post-penitentiary assistance;
- application of social adaptation programs;
- gradual release based on individual sentence planning, evaluation and classification of convicted persons;

– a specific approach to the needs.

In the international literature, the principle of “throughcare” is increasingly attracting the attention of scientists. The essence of this principle is that criminals receive smooth and coordinated assistance to integrate into society and prevent reoffending. Ongoing care is defined as the continuous, coordinated and integrated management of offenders from the time they come into contact with correctional services until they are successfully reintegrated into society (MacDonald, M. & Weilandt, C., 2012, p. 3). This principle can be linked to the principle of progressive execution, which is widely used in the progressive system of execution. The principle of progressivity is defined by some authors as a progressive movement in the penitentiary system from restrictive to less restrictive conditions, when the prisoner can spend a significant part of his time in society (Van Zyl Smit, D. & Appleton, C. 2019, p. 209). Other authors believe that this principle implies a gradual transition from detention to release from custody (Anderson, Y. A. & Groning, L. 2016).

According to the European Court of Human Rights, in recent years there is a tendency, clearly demonstrated by the legal instruments of the Council of Europe, to pay more attention to reintegration. This goal is reinforced by the development of the principle of progressivity, which implies that the prisoner should gradually move within the prison system from the initial stage of detention, which emphasizes punishment and payment for the committed act, to the later stages of punishment, where priority should be given to preparing for release. The possibility of such a development is crucial for both prisoners and prison staff for the proper management of the penitentiary institution. This progress motivates and encourages a convict to engage in prosocial behavior and ensures a deeper relationship between convicts and a staff, which contributes to the strengthening of dynamic security. According to A. Hoidahl (2018), the principle of progressivity is based on the belief that if

the prison system is more isolated and with a higher level of security, it will be more difficult for the convicted person to successfully return to freedom. Consequently, during the period of detention, convicted persons should be given the opportunity to reduce the appropriate level of security, depending on their behavior.

Thus, the principle of progressivity can be considered as the basis of a progressive system of sentences execution and, in our opinion, should be enshrined in the national penal legislation in order to determine the progressive orientation of the correctional process, individually and gradually adapt all correctional tools to achieve the planned goal. However, the separate application of the principle of progressivity will not give the expected effect, since its essence is to combine all the mechanisms and tools of correction to achieve the goal of criminal punishment, instilling in society confidence in the success of the penal process at the expense of educational results.

Another principle applied in the progressive system of serving sentences in the form of imprisonment is the principle of normality. In the Norwegian correctional system, this principle is very widely used and assumes the following. The penalty is only a restriction of freedom in conditions under which the court has not imposed any other restrictions. Consequently, the convicted person has the same rights as the rest of the population. No one may serve a sentence of imprisonment in more severe conditions than it is necessary as a measure for the public security. Prisoners should be included in the security regime with the least restrictions, according to an individual assessment. During detention, the life of prisoners should be as similar as possible to life “outside”. In fact, this principle includes most of the principles of national penal legislation, but in the Norwegian formula they form a complete set of complex guidelines for the application of the most appropriate re-education measures, adapted to the individual needs of each convicted person, strengthening

mutual relations between prison staff and prisoners. In our opinion, it is advisable to include this principle in the national penal law of Moldova with its proper regulation in the secondary regulatory framework.

According to German law (Articles 71 and 81 of the German Federal Law on the Execution of Detention and Imprisonment Imposed for the Purpose of Correction and Prevention), the principle of responsibility, which is expressed in the vast majority of educational tools, is of fundamental importance in the application of the institutions of a progressive system of punishment. This principle assumes that the convicted person, as far as possible, should be able to organize and resolve their personal affairs and bear their responsibility for their ordering and resolution. It is necessary to awaken and develop the conscience of the convicted person responsible for the orderly coexistence in the penitentiary institution. As in Germany, the Danish penal system is based on the principle of personal responsibility of the prisoner, and all correctional activities must be organized in such a way that the convicted person has the opportunity to develop a sense of responsibility, respect and self-confidence, as well as to be motivated to choose a life without crime (Kamerman, J. 1998, p. 106).

Planning of serving a criminal sentence in the form of liberty deprivation involves creating prerequisites for the development of convicts' skills to be responsible for solving their own problems, but does not contribute to the formation of these skills due to the lack of appropriate legal mechanisms, which suppresses the intentions of prison staff to form a responsible and prosocial person. We believe that the list of special principles applied in a progressive system of serving sentences in the form of deprivation of liberty can be expanded by the principles enshrined in international recommendations, namely: the principles of normality, responsibility and progressivity. These three principles can contribute to the development of a national progressive system and create prerequisites for improving the

motivational mechanisms currently available in the arsenal of prison staff. We also believe that it is important to comprehensively apply all the principles that are characteristic of a progressive system of serving criminal sentences in the form of liberty deprivation, without highlighting the main or secondary principles. Moreover, the non-application or improper application of one principle can cause a chain negative effect, which is expressed in the disruption of the entire correctional process and, as a result, in the commission of new crimes by a released person.

Conclusions

Although most of the principles reflected in the Penal Code of the Republic of Moldova are characteristic of a progressive system of serving sentences, we consider this list incomplete. International practice recognizes the important role of the principles of normality, responsibility and progressivity in a progressive system of serving a sentence of imprisonment. Therefore, in order to intensify the national correctional process and achieve more effective results in the execution of criminal penalties, it is necessary to expand the list of principles enshrined in the Penal Code of the Republic of Moldova and to create correctional mechanisms that correspond to their proper application.

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