AN ANALYSIS OF THE PREVENTIVE FUNCTION OF THE PENITENTIARY SYSTEM IN INTERNATIONAL LEGAL INSTRUMENTS AND THE ISSUES OF THEIR IMPLEMENTATION IN NATIONAL LEGISLATION

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Abstract: This scientific article scientifically analyzes the preventive function of the penitentiary system in international legal documents and discusses the issues of their implementation in national legislation. In addition, the advantages and disadvantages associated with the preventive function of the penitentiary system were discussed, in addition, scientific conclusions and sound proposals were developed on this issue, and the issues of their implementation in the national legal system were studied.
Keywords: execution of punishment, penitentiary system, preventive function, legal system, international law, international standards.

The dominant vector of harmonization of modern criminal-executive legislation lies in the plane of progressive trends in international law. Since the middle of the twentieth century, the international (primarily public) law has seen an escalation of humanitarian values and legal principles, which is also common in national law. However, these trends show an obvious priority of international law over the domestic law[1]. In this case, O.I. Tiunov noted that a wide range of states allows recognizing the existing international legal standards in the field of human rights as binding for themselves due to their optimal "minimum"[2].As it is correctly noted, "integration into the world community is possible provided further approximation of national legislation and law enforcement practice to international humanitarian standards"[3]. Consequently, the cultural enrichment of international law is ahead of the national one.

At the same time, it is the nature of the daily application of the norms of national law that makes it possible to speak of its higher educational impact in comparison with international law. In turn, the development of legal education is determined by the legal culture as the most important prerequisite for the formation of a law-based state and civil society. In the opinion of A.P. Pleshakov, legal education presupposes not only purposeful development of legal culture and specific normative and value imperatives, but also understanding of universal values[4].

In general, international penitentiary law can be presented as "a set of principles and norms regulating the legal status of convicts, establishing international standards and rules for the enforcement of various types of punishment, as well as regulating issues of international cooperation in the penitentiary sphere"[4]. Among the main sources of international penitentiary law can be identified:

– The Standard Minimum Rules for the Treatment of Prisoners of 1955;

– The European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders of 1964;

– European prison (prison) rules adopted by the resolution of the Committee of Ministers of the Council of Europe in 1973;

– Measures to guarantee the protection of the rights of those who are sentenced to death, approved by the resolution of the Economic and Social Council of the United Nations in 1984;

– United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), 1985;

– Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN General Assembly in 1988.

The core of this system of legal acts is the Standard Minimum Rules for the Treatment of Prisoners of 1955, which have received international recognition as acceptable practice in the penal system. This document expressly states that they do not have mandatory status in international law. Thus, Art. 1 of the said document declares that these rules "are only intended to state, on the basis of the generally accepted achievements of modern thought and taking into account the basic elements of the most satisfactory systems at the present time, what is usually considered correct from the point of view of principle and practice in the field of the treatment of prisoners and the management of correctional institutions".

The emergence of the norms of international penitentiary law inevitably led to the need for them to be strictly enforced, in order to maintain the standards that are accumulated in this sphere in the evolutionary development of humanistic values and pragmatic views. From a methodological perspective, the importance of compliance with the norms of international criminal-executive law is explained by the organic involvement of this sub-sector in international criminal law, one of the most promising areas of development is "the harmonization of rules on due process in the administration of international criminal justice applied by both international judicial bodies and national criminal justice authorities"[6].

The conditions for the application of the norms of the criminal-executive law (norms deriving from international legal acts) are contained in the norms of international law. The incorporation of such norms into national law, regardless of the way, does not change the character of the norm as a norm of international law, but only determines its operation in the domestic sphere, that is, obliges the national courts to apply the rule of international law, and individuals to execute it. It should be noted that, the content of the recipient rate does not change from this, since the very rule of international law (that is, the rule of behaviour) does not change, which also begins to act on the territory of the state.

Let's consider two ways of incorporating the norms of international law. The first is the reception (in the translation from the Latin receptio - the borrowing and adaptation of the social form that has arisen in another country to another legal system), this universal method is used to denote the precise reproduction in the domestic legal acts of the wording of international legal acts by the state adopting the norms of the national the right to fulfil international obligations.

The next way of fulfilling the requirement of international law is usually referred to as a reference when a state includes in its national law a norm (group of norms, a legal institution) referring to international law and authorizing the application of rules of an international treaty or custom for the regulation of specific national relations).

Sending is the use according to the order or the permission of the domestic law for the settlement of any internal relations of the rules established by international treaties or customs. The reference rule only authorizes the application of the norms of the "alien" legal system in the sphere of operation of this system of law. Practically referring to an international legal treaty is nothing more than a reference to the rules contained in it. The international legal rules themselves (for example, the Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders of 30 November 1964) should be interpreted in domestic relations on the basis and in accordance with generally recognized principles, international law and international practice. And in each case, the law enforcement official must express the agreed will of the states that precede the adoption of these rules.

Thus, in interpreting the recipient norms, or the norms of international law, to which national law refers, it is necessary to take into account their international character and it is necessary to promote the uniformity of their application.

The term "sending" itself is a controversial term as a way to incorporate norms of international law, since internal law can only be sent to such an international norm that is recognized by the state in one form or another, acting as a national norm that fills the gaps of national law. In other words, even with the blanket (referential) way of incorporating the norms of international law, it is a matter of actually receiving (borrowing) their provisions by the national criminal-executive law.

In view of the fact that both reception and sending are essentially the same phenomenon - the incorporation of the international law, borrowed for the national legal system, it should only be about two technical ways of such incorporation of the norms of international law that, within the framework of the criminal executive law systems begin to operate regardless of how they were incorporated in their totality. These norms are a reciprocated right (in form and mode of action - national), and in essence (juridical nature, material sources) - international).

In this case, it becomes relevant to evaluate the concept of "source of legal norm" in two ways: 1) in the sense of a law-making decision and 2) in the sense of the actual location of the rules of law.

Bringing domestic criminal-executive legislation in line with international obligations is fundamentally possible in two main ways: 1) by creating, changing or repealing the norm of national law objectified in CECs, 2) and by creating a national law, objectified in at least two partial sources, one of which is an international treaty, and the other is a CEC. This is the so-called blanket formula, or a reference and a reciprocated right, which, when interpreted, also refers to the international legal system.

From this it follows that an international treaty under referential law making in national law should be recognized as a source of internal criminal-executive law.

That is, the sources of the standard should be recognized in the national law, which contains the blanket formula or recipient norms, and the international treaty in which the rule of conduct is set forth. Each of these acts is proposed to be called a partial source of a unified norm and, consequently, of criminal law.

The reform of the penitentiary system of Uzbekistan is one of the criteria for the democratic development of the country. The need for reform was primarily due to the fact that the criminal executive system was created and for a long time functioned as a machine for the repression and exploitation of prisoners. The penitentiary system is a huge network of institutions - colonies, pre-trial detention centres, prisons, and penitentiary inspectorates.

That is why the main direction of the reform is the reduction in the number of prisoners. At present, when the first results of the reduction in the number of prisoners, in particular those held in pre-trial detention centres, are obtained, further changes are possible that will bring the actual situation in the penitentiary system even closer to international and national standards.

It should be highlighted that, according to the provisions set forth in international legal standards, the decision to distribute (transfer, transfer) convicts between penal institutions should not create difficulties for convicts and their families. For the purposes **of social rehabilitation, convicts must be held in penitentiary institutions near their residence or at a distance as close as possible to them. The standards recommend "whenever possible to consult with convicted persons and fulfil their reasonable requirements".** Such consultations should be carried out before transfer to places of serving the sentence, while in pre-trial detention centres.

For example, countries of Scandinavian have a large number of small prisons, often with 100 inmates or fewer. In 2006, there were 86 in Sweden (total population 9.1 million), 47 in Norway (4.6 million) and 38 in Finland (5.4 million). The largest prison in the region, in Sweden, holds around 350 inmates. Given the extensive geographical areas of these countries, this form of prison organization allows most prisoners (unless they are maximum-security classify cation) to be fairly close to home and family[7].

This fits the ethos of Scandinavian prison management, which is one of normal, most clearly stated in the Finnish Sentences Enforcement Act 2002: ‘ … punishment is a mere loss of liberty. The enforcement of the sentence must be organized so that the sentence is only loss of liberty. Other restrictions can be used to the extent that the security of custody and the prison order require’. Core prison services such as health care are thus provided from community facilities, rather than the prison service, and reflect these rather than prison values. All Scandinavian prisons are run by the state – there has been no momentum for privatization.

Social distance within these prison systems seems relatively short, allowing prisoners to have direct input into prison governance: inmates in Swedish prisons have the right to meet and discuss issues of mutual interest and to present their views to the warden. In Norway, prisoners are included in the yearly ‘meeting in the mountains’, where prison policy is worked through and determined by all interested

parties. When it seemed likely that a proposal for a 1,000-bed prison in Oslo would go ahead in 2006, a meeting was held between senior civil servants, prison staff, academics and prisoners' groups, who successfully opposed it[8].

It is not a secret that the international community often makes demands for respecting and protecting human rights higher than in our country, but since the relevant international agreement has been ratified by us, to abandon the fulfilment of obligations means violating international treaty. If the economic and social opportunities of Uzbekistan do not allow fulfilling contractual obligations (the Law "On International Treaties" prescribes mandatory ratification of treaties "establishing rules other than those provided for by law" (Article 15)), then, apparently, one should not accept them sign, join, ratify) or, if necessary, resort to the assistance of a reservation to this treaty. Thus, when ratifying an international treaty that affects human rights, any state can make a reservation that it does not assume responsibility for non-compliance or non-application of certain provisions of the treaty. Thus, the state exempts itself from the obligation to apply the law or rule specified in the international treaty in a certain way and in an appropriate amount, and, subject to a reservation, it has the right to reject complaints about violations of rights and freedoms directed by persons under the jurisdiction of that state.

It is important to achieve the implementation of precisely recognized international standards in the field of treatment of convicts in the practice of execution of criminal penalties, refusing from their unfounded declaration by the criminal executive legislation.

These progressive trends in the field of international and domestic law allow us to say that in the world of integrated law there appears a peculiar general legal state, the so-called threshold of legal awareness[9], which has universal significance and shows the generally recognized level of law based precisely on humanitarian values and legal principles. International law, fixing generally recognized principles in relevant norms, translates them into national legislation in normative and concentrated form, or demonstrates a certain sociocultural standard. Therefore, we can say with complete confidence that the influence of international law on national law, which is set by the processes of legal integration of legal systems, will lead to an increase in the importance of a human rights culture in the system of public relations. This phenomenon is one of those humanitarian and legal phenomena in which the essence of the harmonization of national law is revealed.

Criminal-executive law, which is part of the legal system, subject to the influence of international legal standards and rules, should also be subject to harmonization. At the same time, the criminal enforcement legislation did not immediately reflect the importance of the consistency of national legislation and practice of its application with generally recognized international standards. Thus, I.V. Vorontsova rightly notes that our "legislation and practice of its application are too slowly brought into line with European standards. First of all, this refers to the branch legislation"[10].

In particular, at the time of the adoption of the CEC (1997) in Part 3 of Art. 4 of this normative legal act indicated that the criminal enforcement legislation of the

Republic of Uzbekistan takes into account the international treaties of the Republic of Uzbekistan relating to the execution of punishments and the treatment of convicts. Thus, the legislator, in fact, only took note of the existence of international penitentiary standards and only to a certain extent brought them in line with the mechanism for the legal regulation of the execution and serving of criminal penalties, but was not obligated to observe them exactly.

However, following the way of harmonization of the criminal-executive law in the part of reflecting the objective pattern of interaction between international and domestic law, the legislator at the CEC enshrined the idea of the immutability of the primacy of international law over national legislation. Legally, the criminal-executive legislation and practice of its application are based on the Constitution, universally recognized principles and norms of international law.

This innovation reflects the postulate of the Constitution on the consolidation of universally recognized principles and norms of international law and international treaties in its legal system. The inclusion in the basis of the mechanism of legal regulation of criminal executive relations of universally recognized international values, contributes to the formation of the legal culture of participants in these relations, strengthens the need for the faithful performer to fulfil the country's international obligations in good faith, brings the practice of executing criminal penalties to progressive penitentiary patterns and activates the search for national interests and original ways of development criminally-executive right.

It should be noted that international standards for the treatment of convicts in fact represent not international agreements, but acts of international governmental organizations. Consequently, they do not need to be ratified and do not have binding legal force. The standards in question are generally of a recommendatory nature, which, as a rule, is reflected in their content. Not having an obligatory legal status in international law, they are widely recognized by the international community as rules reflecting the actual situation in the most progressive systems of treatment of convicts. At the same time, resolutions, both of the UN and of the Council of Europe, provide for monitoring the implementation of international standards in order to maintain their international prestige and political status.

However, if Uzbekistan joins an international document that sets standards for the treatment of convicts, accepts obligations for its implementation or, even more, ratifies it, it is necessary to consistently implement it. The implementation of international obligations in this case is a "matter of honour" for Uzbekistan; their non-fulfilment can significantly undermine the international political authority of the country and bring a significant harm to foreign policy interests.

There are several ways to influence the standards under consideration in the national criminal-executive legislation:

1) Ensuring the maximum openness of the legal framework for the enforcement of sentences;

2) The legal definition of the correlation of international standards and the criminal-executive legislation of the country;

3) The definition of the objectives and principles of penal legislation, as well as the impact on the national criminal-executive policy in general;

4) The use of international standards in the interpretation of criminal enforcement legislation.

Within the boundaries of these directions, there is a gradual harmonization of the penal enforcement legislation and the national practice of executing punishments.

At the same time, among the main factors hampering the practical implementation of international standards for the treatment of convicts, it is necessary to include low pay for convicts, insufficient protection of convicts from the negative influence of prison subculture, violation of the law in the activities of prison staff, weak aid effectiveness released from places of imprisonment and post-penitentiary adaptation[11]. Also, the implementation of international standards is complicated by the following circumstances:

1) Shortcomings in the provision of resources and financing;

2) The growth of crime, regularly accompanied by increased punitive claims of society and an increase in the number of prisoners;

3) The relative decline in the prestige of professional criminal executive activity and, accordingly, the decline in the quality of organizational and educational work;

4) The maintenance of prisoners mainly in the colonies, where the degree of social isolation is lower than in prison. As a result, the difference between "freedom" and "lack of freedom" is not as significant as during imprisonment, which reduces the corrective effect of punishment. In addition, the standards are mainly aimed at implementing the rules prescribed in them in relation to imprisonment, and not to the so-called colonial system.

It is important to note that the influence of international penitentiary standards on the practice of execution of criminal penalties, especially those related to imprisonment, affects not only the natural rights of convicts, the increase of their legal protection and security facilities, the professionalism of prison staff, but also the differentiation of regime requirements and the legal conditions for serving the sentence[12].

At the same time, this aspect of the functioning of the national criminal-executive system that needs reform, internal and international legal harmonization. In particular, considering the problem of implementing international standards in the field of human rights in the performance of life imprisonment, V.F. Tsepelev and E.N. Kazakova is rightly noted: "The rigid degree of isolation and social deprivation, the indefinite nature of punishment, the low degree of differentiation of the conditions of detention, the timing of transfer from one condition to the other ... show that the conditions of life for those sentenced to life do not fully correspond to life in society, their human dignity and contribute to their re-socialization"[13].

Developing this idea, the researchers come to the reasoned conclusion that a long period of changes in the conditions of serving punishment and high formal requirements for parole of this category of convicts, lead to the loss of socially adaptive behaviour skills, the loss of skills in socially approved behaviour, the

development of regression personality. Thus, "according to international documents, with regard to life imprisonment, the review of the sentence must be carried out after serving a term of imprisonment from eight to fourteen years and repeated at regular intervals"[14].

The need to take into account international penal norms and standards in solving intra-national issues of legal regulation of criminal-executive relations is determined by the emergence of such sub-sector of international criminal law as international penitentiary (penitentiary) law and, consequently, increasing the role and significance for the domestic criminal-executive system principles. According to A. Malinovsky, these principles include:

1) Protection of the rights of convicts;
2) Inadmissibility of torture, cruel and inhuman punishment;
3) Minimizing the use of the death penalty or refusing this punishment;
4) Humanism;
5) The control of institutions for the execution of punishment to public organizations for the protection of the rights of convicts and prisoners[15].

It seems that this list is not exhaustive. In particular, it could be supplemented with the principle of increasing the corrective effect of individual punishments and their system.

Thus, the conventional nature of the established natural human rights is the basis of the methodological comprehension of the harmonization of the criminal-executive legislation and the law of the Republic of Uzbekistan. Theoretical evaluation of the role of international penitentiary standards in solving known problems of the domestic criminal-executive system, demonstrates the priority of human rights as a universal universal value, allows us to develop the necessary semantic reference points and to consolidate historically approved forms of treatment with convicts.

Beyond a conceptual understanding of this circumstance, our country's penitentiary system runs the risk of remaining in the grip of spontaneous processes of blind borrowing of foreign and international legal standards and rules, continuous verification and experiments without the necessary semantic reference points and historically tested forms of treatment of convicts. Success in reforming the national penitentiary system and improving the penal enforcement legislation largely depend on the readiness of the legal science to retain the progressive achievements of the past and enrich them with the cultural and legal values of the present era.

International legal standards for the treatment of convicts are internationally accepted norms, principles and recommendations and areas for the enforcement of criminal penalties and the activities of penitentiary institutions and bodies. Standards concentrate the world experience of criminal-executive practice, and its humanistic tendencies. They have a special status among the norms of international justice in the field of crime prevention and combating crime, since they are mainly adopted and approved by the UN General Assembly, they form part of international human rights principles.

International legal standards are reflected in certain documents (agreements, regulations, covenants, conventions, treaties, declarations, rules, etc.) in the form of norms, principles and recommendations. The standards are not equivalent in their legal status, but they are united in the desire of the world community to coordinate policies, means and methods of dealing with convicts in the spirit of liberalization and humanization, as well as the priority of universal values, respect for human rights and the effectiveness of execution of punishment. All this became possible thanks to the strengthening, mutual trust and convergence of the legislations of various states.

In our country, international legal standards have entered the system of legislation and practice of the activities of institutions and bodies executing punishment, relatively recently. In the Soviet period, they were either not covered at all in the scientific literature, or were covered purely symbolically.

In connection with the proclamation by the Constitution of Uzbekistan of the priority of universally recognized principles and norms of international law in relation to national legislation, these principles and norms are directly embodied in the laws adopted. Criminal Execution Law (Article 3 of the CEC) takes into account international acts relating to the execution of penalties and the treatment of convicts. In the event of a conflict between the criminal executive law and the international treaties ratified by it, the latter apply.

The events that caused the renewal of the national criminal-executive legislation were the change in the criminal-executive policy, which took the direction to integrate our country into the world community within the UN framework. Uzbekistan has undertaken to consistently implement provisions in the law and practice of the enforcement of punishments relating to the protection of human and civil rights and freedoms.

The objective basis for the inclusion of international norms as an integral part of the national criminal legal system was the followings:

– the uniformity of crime in our country and other countries, regardless of the difference in economic, political and social conditions;

– the predominant coincidence of means and methods of combating crime, including criminal penalties;

– the commonality of the human essence and the "natural" rights of persons convicted of criminal penalties.

Thus, the generally recognized principles and norms of international standards have become a fundamental basis for the development of new criminal enforcement legislation in Uzbekistan, the renewal of governmental and departmental regulatory acts in the field of execution of punishment. Recognition and implementation of them in the national law have become a solid guarantee of observance of the rights of convicts, legality and humanity in the law enforcement activities of institutions and bodies executing punishment. In this connection, bringing such principles and norms to the attention of the personnel of these institutions and bodies contributes to the expansion of his professional outlook, to raising the level of legal culture, to a deeper understanding of the significance of his work.

By degree of generality, international standards are divided into universal and special. The former is contained in documents of a general nature, refer to human rights in general, and are not designed specifically to regulate the treatment of prisoners (only some of them are relevant to the treatment of convicts), the latter relate directly to the treatment of convicts in the process of execution of punishment.

General standards are presented in the universal international human rights instruments adopted by the United Nations and other international organizations. These include: the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the Convention № 29 on Forced or Compulsory Labour (1930), the Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the European Convention for the Prevention of Torture and Inhumanity or degrading treatment or punishment (1987) and others.

Standards of a special nature are contained in the following documents; The Standard Minimum Rules for the Treatment of Prisoners (1955), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), the Code of Conduct for Law Enforcement Officials (1979), the Principles of Medical Ethics relating to the Role of Workers in particular, doctors, in the protection of prisoners or detainees against torture and other cruel, inhuman or degrading treatment or punishment (1982), the European Prison Rules (1987), Measures to guarantee the protection of prisons to those who are facing the death penalty (1984), and others[16].

The most important international instrument developed within the framework of the United Nations is the Universal Declaration of Human Rights. In Art. 2 states that human rights and freedoms apply to everyone without exception. This fundamental position determines the fundamental basis of the legal status of persons in the field of criminal justice. Article 5 states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

Some provisions of the Declaration refer directly to persons convicted of criminal penalties and detained. Thus, Art. 9 states: "No one shall be subjected to arbitrary arrest, detention or exile".

In addition, the Declaration establishes a number of fundamental criminal procedural and criminal legal provisions, for example: every person has the right to be examined publicly and with all the requirements of justice by an independent and impartial court (Article 10), no one can be convicted of an act that at the time of its commission was not a crime under the law (Article 11), and etc.

Importance in determining the legal status of the convict is art. 29 of the Declaration, which prescribes that in the exercise of their rights and freedoms, every person, must be subjected to only such restrictions as are established by law solely for the purpose of ensuring recognition and respect for the rights and freedoms of others and meeting the just requirements of morality, public order and general well-being is reflected in the relevant norms of the Constitution.

Another universal international document that defines the rules for the treatment of prisoners is the International Pact on Civil and Political Rights[17]. Article 6 calls the right to life an inalienable right of every person. This right is protected by law. No one shall be arbitrarily deprived of life.

Article 7 states that no one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment. In particular, no person should be subjected to medical or scientific experiments without his free consent.

The document defines the right of each person to:

1) Freedom and personal inviolability. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law (Article 9.1).

2) Each arrested person is informed, at the time of arrest, of the reason for his arrest, and any charges against him are promptly reported (Article 6.2).

3) Every person arrested or detained on a criminal charge is promptly brought before a judge or other official, who is legally entitled to exercise judicial power and is entitled to trial within a reasonable time or to release. Detention awaiting there should not be a general rule, but exemption may be imposed depending on the representation of guarantees of appearance for trial at any other stage and, if necessary, the appearance for execution of the sentence (art. 9.3).

4) Everyone who is deprived of his liberty by arrest or detention shall have the right to have his case heard in court, so that that court may decide without delay on the lawfulness of his detention and order his release if the detention is unlawful (Article 9.4).

5) Everyone who has been a victim of unlawful arrest or detention shall be entitled to compensation with enforceable force (art. 9.5).

Of special practical interest is Art. 10 of the Pact:

1) All persons deprived of their liberty have the right to humane treatment and respect for the inherent dignity of the human person;

2) a) The defendants, in cases where there are no exceptional circumstances, are segregated from the convicts and they are presented with a separate regime corresponding to their status of non-convicted persons;

b) the accused juveniles are separated from adults and delivered to the court as soon as possible to make a decision;

3) The penitentiary system provides a regime for prisoners whose essential purpose is to correct them and social re-education. Juvenile offenders are separated from adults and granted a regime appropriate to their age and legal status.

It should be highlighted that all the provisions of this article are reflected in the current criminal-executive legislation and are implemented in the activities of the penitentiary system of the country.

In 1975, the UN General Assembly adopted by consensus the Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 1 defines torture as: "any act by which a person intentionally causes severe pain or suffering, physical or mental, on the part of an official or at his instigation in order to obtain from him or a third person information

or confessions, punishment for his actions that he committed or committed suspected or intimidated by him or others".

However, this definition does not include "pain or suffering that occurs only as a result of legal sanctions, or caused by chance".

Article 5 of the Declaration reads: "The training of law enforcement personnel and the training of other officials who can be held accountable for persons deprived of their liberty must ensure that the prohibition of torture and other cruel, inhuman and degrading treatment types of treatment and punishment".

The most numerous categories of persons in relation to whom a lawful reduction in the scope of personal rights is permitted is convicts serving sentences in penal institutions. In addition, personal rights may be limited to mentally ill persons under compulsory treatment; detained in criminal procedural and administrative order; restriction is also possible in times of emergency, wartime (however, these cases are beyond our research).

The validity of certain restrictions of such important rights for a person is not subject to doubt, since the preservation of the rule of law is impossible without the compulsory establishment of socially dangerous persons in institutions for the execution of punishment. However, restrictions on the possession and use of various goods during the execution of a sentence in the form of imprisonment cannot be arbitrary; they must be based on legal norms, which together constitute a special institution.

The purpose of the restrictions applied to convicts is not the same. Some directly express the content of a particular criminal punishment. Other restrictions may stem from the need to involve convicts in non-punitive corrective (labour-correctional) treatment. Still others are mainly aimed at depriving or limiting the factual capacity of the convict to commit a new crime.

The nature and extent of these restrictions are very important; they decisively regulate the implementation of natural human rights in places of imprisonment. Let us also note that it is legal restrictions that reveal the essence of punishment. Until recently, the sources of restrictions on the rights and freedoms of man and citizen in the execution (serving) of punishment and the implementation of another measure of criminal liability were:

– laws of general legal and special nature;

– by-laws, incl. departmental normative acts issued for the purpose of concretizing the law and in accordance with it;

– court verdict or other judicial decision;

– conditions of the regime of serving punishment, established by law and corresponding by-laws.

It seems to us that consideration of restrictions on the rights of persons deprived of their liberty can be carried out through an analysis of relevant legal norms and principles of their regulation in the following legal documents: 1) international legal acts on human rights; 2) The Constitution of the Republic of Uzbekistan; 3) criminal legislation; 4) the criminal-executive legislation; 5) The UN Standard Minimum Rules for the Treatment of Prisoners; 6) other legal acts. This

scheme seems to be the most optimal; it involves examining the limitations of human rights in places of imprisonment consistently from general legal principles to special ones.

The majority of international documents have a similar content, including restrictions on the proclaimed rights. Thus, in Article 29 of the Universal Declaration of Human Rights, restrictions are established "solely for the purpose of ensuring the proper recognition of the rights and freedoms of others and meeting the just requirements of morality, public order and general welfare in a democratic society". In the Covenant on Civil and Political Rights (Article 12), the restrictions are somehow larger. Here we are also talking about the protection of state security, health and morality of the population. The Covenant on Economic, Social and Cultural Rights (art. 4) states that a State can impose restrictions only as far as it is compatible with their nature. The European Convention (Article 18) emphasizes that restrictions should not be applied for purposes other than those for which they are provided.

Here it is necessary to note the followings:

Firstly, international legal documents, proclaiming life and freedom as the highest values (in all lists they invariably stand in the first place), at the same time they allow the lawful deprivation of Life and deprivation (restriction) of freedom.

Secondly, with regard to those serving sentences in prisons, nothing is said about the possibility of limiting their personal immunity, from which it can be concluded that this issue should be resolved by national legislation.

Thirdly, the provisions on "respect for dignity" need to be clarified. For example, in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, torture refers to any act that causes severe pain or suffering, whether physical or mental (Article 1). The same rule states "this definition does not include pain or suffering, which arises only as a result of legal sanctions or is caused by them accidentally".

The criminal executive policy finds its expression (and reflection) primarily in the principles of the relevant branch of law. The system of principles of the criminal-executive law reflects primarily the principles of treatment of convicts, which are fixed in international legal acts. In the case of convicts, this refers to the Standard Minimum Rules for the Treatment of Prisoners; The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); The UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules); The UN Rules for the Protection of Juveniles Deprived of Their Liberty; European Prison Rules and others.

Formation of the national system of principles of criminal-executive policy has its own genesis. The liquidation of Soviet statehood significantly influenced the structure and content of the system of principles of criminal-executive policy. The general legal principles included now legality, democracy, humanism; interbranch - social justice, the inevitability of the execution of punishment; branch - equality of convicts before the law, differentiation and individualization of the execution of punishment, combining the execution of all types of punishment with corrective action, public participation in the execution of punishment and correction of convicts.

Most of the recommendations of international governmental and public organizations on the implementation of punishment and treatment of juvenile convicts are implemented in domestic legislation.

The guidelines consider the actions of young people who do not conform to generally accepted social norms and values, in connection with the process of their growth. As adults grow older, the behaviour of most individuals changes spontaneously.

These principles have been adopted by the national criminal enforcement legislation, especially with regard to minors sentenced to imprisonment. First of all, it is about establishing ordinary, facilitated, strict and preferential conditions for the serving of punishment in educational colonies. The Institute of preferential conditions has an exceptional character in the national penitentiary history and is intended only for minors. For convicts in educational colonies, higher standards of nutrition and living space are envisaged, clothing and bedding are provided to them free of charge and improved housing and living conditions are created. Involvement of persons serving sentences in educational colonies is regulated by the legislation on work of minors. Workers convicted minors are entitled to annual paid leave from 18 to 24 days.

The principle of equality of convicts forms the basis for the legal status of convicts. However, the equality of convicts before the law does not mean equality of conditions for serving a sentence. They are differentiated according to a number of signs: age, sex, and state of health, type of punishment, nature and degree of public danger of the crime committed, and also the identity of convicts and their behaviour.

For juvenile convicts, this means the opportunity to stay in preferential conditions of detention and stay in educational colonies when they reach adulthood.

The implementation of the analysed principle with respect to, for example, minors or convicted women often does not achieve its goal. The Penal Enforcement Code contains norms that establish the inequality of convicts. The categories of convicts are singled out, where general rules do not apply (convicted persons with especially dangerous recidivism, sentenced to life imprisonment, sentenced to serving imprisonment in prison, convicted foreign citizens and stateless persons, convicted women, and juvenile convicts).

As noted by R.A. Müllerson, "an increasing number of issues traditionally included in the number of internal affairs of the state are becoming the object of international regulation. It also means that human rights can no longer be determined solely by the nature and level of development of this particular society, which is increasingly influenced by their unified human civilization"[18].

The Constitution (Article 15) stipulates a provision according to which if an international treaty of the Republic of Uzbekistan establishes other rules than prescribed by law, the rules of the international treaty are applied. A similar rule is enshrined in the Code of Criminal Procedure. According to the meaning of these norms, as noted in the scientific literature, the generally recognized principles and norms of international law are those recognized by the majority of states[19]. These

universally recognized principles and norms of international law are directly applicable.

At the same time, the Basic Law does not contain a definition and does not fix the list of universally recognized principles and norms of international law. There is no such definition and such a list in international law as well.

There is no unequivocal opinion among scientists. Some scholars believe that the universally recognized principles of international law are contained in the UN Charter, the covenants on human rights and citizenship, in the documents of the OSCE, other international structures[20]. Others refer to the generally recognized principles and norms of international law such principles and norms that are recognized and act in the form of an international convention or an international custom recognized by civilized nations or a judicial decision adopted by an international court in a case involving one of the parties in the state[21].

The Plenum of the Supreme Court has not brought certainty, having determined that universally recognized principles and norms of international law are enshrined in international covenants, conventions and other documents, in particular the Universal Declaration of Human Rights, the International Pact on Civil and Political Rights, the International Pact on Economic, Social, Cultural rights[22], in the documents of the UN and its specialized agencies, in international treaties, in the Convention for the Protection of Human Rights and Fundamental Freedoms and in their Protocols[23].

The Plenum of the Supreme Court gave explanations on what needs to be understood under the generally recognized principles and norms of international law[22], pointing out that the universally recognized principles of international law should be understood as the fundamental peremptory norms of international law accepted and recognized by the international community of states in general, deviation from which is unacceptable. Under the generally recognized rule of international law, in the opinion of the Plenum of the Supreme Court, one should understand the rule of conduct accepted and recognized by the international community of states as a whole as legally binding. We believe that this explanation did not bring sufficient clarity to the law enforcer.

Meanwhile, the inclusion of universally recognized principles and norms of international law in the legal system by the Constitution obliges all public authorities to follow these norms and principles. This rule applies, in particular, to the bodies and officials conducting preliminary investigation and justice.

Especially significant is the application of universally recognized principles and norms of international law in conditions when the practice of applying citizens for international judicial protection of their rights and freedoms is becoming more widespread. This dictates the urgent need to create a mechanism for the implementation of universally recognized principles and norms of international law at the domestic level.

The absence of a formalized definition of the concept of universally recognized principles and norms of international law and their list presents great difficulties for practitioners who have traditionally become accustomed to being guided solely by

national branch legislation[25], and leads to uncertainty in practice in what documents the universally recognized principles and norms of international law are formulated, whether the positions of the European Court of Human Rights, as set out in the decisions on specific cases, the application of the provisions of the Convention, as found in the judgments of the European Court, in criminal proceedings. The definitions of the norms of international law do not have legal certainty. It is not conducive to the application of universally recognized principles and norms of international law that they are not officially translated into the state language.

It has been repeatedly noted in the literature that the application of universally recognized principles and norms of international law presents great difficulties for practitioners who have traditionally become accustomed to being guided solely by national branch legislation.

So, for example, V.Volzhenkina, as the main reasons preventing the bodies conducting preliminary investigation and the judges of the generally recognized principles and norms of international law, called such as:

• Absence of a formalized definition of the concept of universally recognized principles and norms of international law and their list in the Constitution and other legislative documents;

• The compulsion of officials to apply not a specific procedural rule that is generally binding, but arbitrarily established for the case in question about a situation;

• The incompatibility of precedents in criminal proceedings with the established procedure of proceedings in a case that ensures lawfulness and the rule of law in accordance with the requirements of the criminal process;

• The lack of authority, in accordance with the Constitution, for the court and the investigating authorities to introduce changes and additions to the criminal procedural legislation[24].

As for the following of the rules and principles of international law by the judges, we did not find a single verdict testifying to the direct application of the norms of international law when studying criminal cases examined by judges, judges of regional and district courts in criminal cases.

At the same time, there are cases when, when the court considers an application for election as a measure of restraint, detention, prolongation of the term of detention, consideration of complaints about actions (inaction), as well as decisions of the body of inquiry, the investigator, the prosecutor, participants in the trial (usually lawyers), presenting international legal arguments, encourage the court to review and assess the circumstances of the case in the light of the norms of international law. In this case, when motivating its decision, the court, as a rule, when the positions of the party to the trial, supported by the generally recognized principles and norms of international law, are supported, refers to these norms. Thus, courts, if they apply universally recognized principles and norms of international law, only as an additional argument to the criminal procedure norms.

The CPC does not determine and to what extent these principles and norms of international law can be applied in criminal proceedings. At the same time, it should be noted that universally recognized principles and norms of international law that

establish universal standards of the rights and interests of the individual determine the level below which the state cannot go down and, as a result, can participate in various ways, in regulating those or other social relations. As to the priority of ratified international treaties in comparison with national laws, in the sphere of criminal justice, in our opinion, speech can only be about the regulation of legal relations in the field of human rights.

Despite the assurances of scientists in the literature, that a significant part of the norms of international law, is self-executing and capable of directly regulating criminal procedural relations[5], we believe that the absence of a single interpretation and the uncertainty of the concept of universally recognized principles and norms of international law on the one hand exclude the possibility of practical application of these principles and norms, since they are not formulated, but on the other - they allow the expansion or narrowing of their list, their arbitrary interpretation and, as a consequence, violation of the rights and legitimate interests of participants in criminal proceedings. In order to be directly applicable, the norms of international law must have a sufficiently specific content capable of generating rights and obligations of participants in legal relations.

At the same time, L.B. Alekseeva believes that the principles and norms of international law in themselves cannot be included in the national legislation, that their concretization is necessary both at the constitutional level and at the level of branch legislation[25]. To do this, they need to be clearly articulated in the Constitution and the current criminal enforcement legislation. In addition, universally recognized principles and norms of international law should be applied, as included in the Constitution and in the sectoral legislation, in accordance with the purposes and principles of the criminal procedural law the procedure established by the criminal procedural legislation of the Republic of Uzbekistan.

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