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Tasks and Functions of the Subjects of Guaranteeing Rights of Persons Sentenced to Imprisonment in Ukraine

Завдання та функції суб'єктів забезпечення прав громадян, засуджених до позбавлення волі в Україні

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Written by:

Serhii Bortnyk⁴³<https://orcid.org/0000-0002-5281-6007>**Tatiana Korniakova**⁴⁴<https://orcid.org/0000-0001-5993-0745>**Kyrylo Muraviov**⁴⁵<https://orcid.org/0000-0002-4422-4116>**Olesia Marchenko**⁴⁶<https://orcid.org/0000-0002-3265-3597>

Abstract

The purpose of the article is to identify the entities of ensuring the rights of citizens sentenced to imprisonment in Ukraine, as well as to analyze their tasks and functions.

During the writing of the article, such methods of scientific knowledge as: comparative-legal, legal analysis, dialectical, system-structural, logic and legal method were used.

The main entities of ensuring and protection the rights of citizens sentenced to imprisonment in Ukraine are identified. It is stated that the protection of the rights and freedoms of persons sentenced to imprisonment is done through an extensive system of state and non-state entities whose activity is aimed at the implementation of state policy in this field. It is proposed to classify the entities of protection of human rights and citizens, in particular they are divided into two main groups, namely who: a) are endowed with relevant functions on behalf of the state; b) perform certain functions as civil society institutions. The basic tasks of such entities are analyzed and their functions are defined and systematized (content characterization is

Анотація

Мета статті полягає у визначенні суб'єктів забезпечення прав громадян, засуджених до позбавлення волі в Україні, а також аналізі їх завдань та функцій.

Під час написання статті були використані такі методи наукового пізнання, як: порівняльно-правовий, юридичного аналізу, діалектичний, системно-структурний та логіко-юридичний.

Встановлено основні суб'єкти забезпечення та захисту прав громадян, засуджених до позбавлення волі в Україні. Констатовано, що охорона прав і свобод осіб, засуджених до позбавлення волі, здійснюється за допомогою розгалуженої системи державних і недержавних суб'єктів, діяльність яких спрямована на впровадження державної політики в цій сфері. Запропоновано класифікацію суб'єктів захисту прав людини і громадянина, зокрема поділено їх на дві основні групи, а саме тих, які: а) наділені відповідними функціями від імені держави; б) здійснюють певні функції як інститути громадянського суспільства. Проаналізовано основні завдання таких суб'єктів, а також

⁴³ Doctor of Law, First Vice-Rector of Kharkiv National University of Internal Affairs

⁴⁴ Grand PhD in Juridical Sciences, Professor, Honored Lawyer of Ukraine, Head of the Department of Administrative and Criminal Law of Oles Honchar Dnipropetrovsk National University

⁴⁵ Doctor of Law, Associate Professor, Head of the Department of Administrative, Financial and Banking Law of the Educational-Scientific Institute of Law named after Prince Vladimir the Great, PJSC «Higher education institution «Interregional Academy of Personnel Management»

⁴⁶ Ph.D., Associate Professor at the Department of civil, labor and economic law of the Law faculty of Oles Honchar Dnipro National University

provided). All functions of the entities of ensuring the rights of persons sentenced to imprisonment are divided into basic (normative, security, control) and additional (educational, re-socialization, social protection, prevention). It is concluded that the legislative consolidation of the tasks and functions of such entities is a prerequisite for the establishment of an effective system of ensuring the rights and freedoms of convicted persons. Such a legal mechanism must comply with universally recognized international standards in the field of the protection of human rights and freedoms.

Key words: subjects of legal relations, classification of subjects of legal relations, administrative and legal guaranteeing, tasks and functions, sentenced to imprisonment, rights and freedoms, penitentiary system.

Introduction

The provision enshrined in the Art. 3 of the Constitution of Ukraine, according to which a person, his life and health, honor and dignity, integrity and security are recognized in Ukraine as the highest social value (CU, 1996), testifies both about the general desire of the state for the comprehensive protection of human and civil rights and freedoms, and about their direct recognition as the main activity of the modern Ukrainian state. The main human rights instruments, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, are treaties which are legally binding on all states which have ratified or acceded to them. Most of them contain references to the treatment of people who are deprived of their liberty (Coyle, Fair, 2018).

Provision of the realization and protection of the rights and freedoms of individuals in Ukraine is carried out through a number of state and non-state subjects whose activities are either directly aimed at achieving this goal, are the leading direction of their functioning, or are implemented indirectly in regard to the use of those or other general positions of authoritative and power and other powers. It should be noted separately in the general array of such subjects, those whose activities are aimed at guaranteeing the rights of citizens sentenced to imprisonment in Ukraine, to identify and analyze the peculiarities of their legal status.

визначено та систематизовано їх функції (надано характеристику змісту). Всі функції суб'єктів забезпечення прав осіб, засуджених до позбавлення волі, розділено на основні (нормотворчу, охоронну, контролю) та додаткові (виховну, ресоціалізації, соціального захисту, запобігання, профілактики). Зроблено висновок, що законодавче закріплення завдань та функцій таких суб'єктів є необхідною умовою для створення ефективної системи забезпечення прав і свобод засуджених осіб. Такий правовий механізм має відповідати загально визнаним міжнародним стандартам у сфері захисту прав і свобод людини.

Ключові слова: суб'єкт правовідносин, класифікація суб'єктів правовідносин, адміністративно-правове забезпечення, завдання та функції, засуджений до позбавлення волі, права і свободи, пенітенціарна система.

Analysis of the current state of the development of this issue indicates the lack of a unified approach to distinguish and classify the subjects of guaranteeing the rights of persons sentenced to imprisonment in Ukraine, as well as the lack of certainty of their tasks and functions, which makes the relevance of the study of this issue.

The objective of the article is to analyze the tasks and functions of the main subjects of guaranteeing the rights of citizens sentenced to imprisonment in Ukraine, which envisages the definition and classification of the main subjects of guaranteeing the rights of citizens sentenced to imprisonment, to establish the main tasks of these subjects' activities and the corresponding functions, characteristics of their content.

Theoretical framework

The theoretical basis was the scientific works of scientists in various fields of law, in particular, the general theory of state and law, administrative law and others. In particular, the scientists raised the issues raised in the article by such scientists as V. O. Anishchenko, D. N. Bakhrahk, R. M. Brewer, P. Cicero, A. Coyle, Y. A. Chebotaryova, O. Sh. Chomakhashvili, I. Danjuma, H. Fair, N. A. Heitzeg, J. Jacobson, N. V. Klyovan, I. M. Mykytas, R. Nordin, S. O. Patiuk, M. M. Rebalko, M. Sale, P. Scharff-Smith,

R. Y. Shay, O. F. Skakun, C. Heard,
I. M. Zubach and other.

The problems of respect for rights and legitimate interests of the citizens, who are in the places of imprisonment and whose complaints and letters come to the bodies of legislative and executive power are particularly acute. Citizens, deprived of their liberty, complain about the conditions of their detention in prisons, detention centers, torture and abuses by law enforcement officials. The world community constantly draws attention to the violation of the vital rights of people in Ukraine who are temporarily or permanently deprived of their liberty. Due to gross human rights violations, Ukraine is ranked fourth worldwide by the number of appeals to the European Court of Human Rights. There is a need to bring the state to a new level to ensure human and civil rights. There is much to be done at the legislative and organizational levels. The urgent task is to move to a more constructive and meaningful formation of a holistic law enforcement system in Ukraine. The existence of a high level of recidivism among those released from serving sentences (about 40%) indicates that the goal and task of criminal law cannot be achieved without the corresponding losses, as stipulated by the legislator. One of the circumstances that directly influences the growth and high level of recidivism is the imperfection of the legal norms that determine the legal status of prisoners serving imprisonment (Chebotaryova, 2005).

Methodology

Several research methods have been used while the time of writing the article. In particular, methods of scientific knowledge, such as comparative legal, the method of legal analysis, are used to the achieve comprehensiveness and objectivity of scientific research, validity and consistency of the conclusions formulated. In addition, the dialectic method of scientific knowledge was used, which allowed a general theoretical study of the legal mechanism to ensure the rights and freedoms of convicted persons. The systemic method made it possible to determine the main tasks and functions of the subjects of ensuring the rights and freedoms of convicted persons. The use of the logic and legal method has made it possible to prove the need to improve the work on identifying ways of improving both the legislative norms on the legal status of prisoners and the functions of the entities entrusted with the responsibility to ensure the rights of such persons.

Results and discussion

Human rights are universal standards that protect and safeguard all persons from severe mistreatments and abuses. The notion of human rights is grounded on the recognition that “all human beings are born free and equal in dignity and rights” and everyone is therefore “entitled to all rights and freedoms” contained in the human rights law. All the rights and freedoms guaranteed by the law can however, be subjected to a restriction according to other laws of the land. The respect and protection for the human rights of a person depend upon his status, whether he is an adult or a child; a prisoner or freeman; male or female. The prisoners are entitled to all their personal rights as well as personal dignity that are not temporarily taken away by the law or necessarily inconsistent with the circumstances in which they have been placed (Danjuma, Nordin, Sale, 2018, p. 38). Therefore, prison Condition is a most sparring subject which is being paid inadequate attention on inmates and impact of prison conditions on staffs (Naik, 2019, p. 288). A free citizen in a democratic society can demand a long list of rights, but what happens when a citizen is taken into state custody and locked in a cell? In the western world, this question has been the subject of intense debate over the last more than 200 years. In the pre-modern prisons of the sixteenth and seventeenth centuries prisoner rights were not a consideration, but in the eighteenth century, and in the spirit of the Enlightenment, a process of reform began and the use of torture, the death penalty and corporal punishment was criticized (Scharff-Smith, 2016).

The current explosion in criminalization and incarceration is unprecedented in size, scope, and negative consequences — both direct and collateral — for communities of color. These macro systems exist in relationality to the micro dynamics of living in the midst of police scrutiny, economic marginalization, and political disenfranchisement. Critical race theory is a guide for pedagogy and praxis in exploring the racist and classist foundations of current micro and macro injustices (Brewer, Heitzeg, 2008).

Imprisonment is simply a much more likely outcome in some countries than in others. The US is a well-known outlier, housing one fifth of the world’s prison population. In 2008 its prison rate (the number of prisoners per 100,000 of the population) peaked at 755. By contrast, in India the prison rate is 33 and in the Netherlands it is 61. There have been shocking changes over time, for example, in how readily you might be

sentenced to prison, how long for, and what conditions you'd face. Prisons have generally not kept pace with the ever-growing demand placed on them, making severe overcrowding and poor resourcing more common (Jacobson, Heard, Fair, 2017).

In June 2016, the Brazilian prison population reached 726,000 detainees, the third largest in the world. Of these, approximately 12% work, which corresponds to more than 96,000 people nationally. One-third of those convicted undertake work that acts to support the prison in activities such as cleaning and food preparation, most of them unpaid¹. Of the paid activities, the preponderant work is manual, requiring little or no technical qualification (Cicero, 2019).

The penitentiary system is a mechanism for calculating social losses that directly or indirectly participates in the reproduction of human capital in modern society. Therefore, the return of persons to society who are in conflict with the law – the prisoners is an important task for officers and personnel of penitentiary institutions first of all, since they are actively involved in the process of their re-socialization through establishment with the contingent (persons in conditions of non freedom) certain relationships that have a manifestation in communication, educational actions, social and psychological-pedagogical assistance, etc. The humane attitude to the contingent and the respect of human rights by the officers and personnel of the penitentiary institution is the key to creating a positive environment in conditions of non freedom for the re-orientation of the prisoner and the motivation to reeducate and change his/her life style in the future (Anishchenko, 2019, p. 80-81).

The legal mechanism for guaranting the rights of citizens sentenced to imprisonment in Ukraine is the system of state authorities, local self-government agencies, public associations and organizations, as well as persons with relevant tasks, functions and administrative powers in this field of activity. The analysis of the content and nature of the activities of the main subjects of guaranteeing the rights of citizens sentenced to imprisonment makes it possible to determine the following general groups:

- 1) national subjects – Verkhovna Rada of Ukraine, President of Ukraine, Cabinet of Ministers of Ukraine, central executive authorities, courts;
- 2) law enforcement (prosecutor's office, police, National Guard of Ukraine and other state agencies, whose status is

defined by by-laws) and controlling subjects (which have control powers, but do not belong to law enforcement agencies – state inspections, services, agencies and other controlling agencies), in particular, departmental ones – Ministry of Justice of Ukraine, agencies of the State Penal Service of Ukraine (Regulation on the MJU, 2014; On the State CEU, 2005);

- 3) local executive authorities and self-government agencies – regional and district state administrations, departments and divisions of central authorities, local self-government agencies (Law of Ukraine, 1997);
- 4) public subjects, including specialized ones, that control the conditions of detention of convicts – monitoring committees, public councils, non-governmental human rights organizations, public associations, individuals (Resolution of the CMU, 2004; Resolution of the CMU, 2010).

The basis of the administrative and legal status of the subjects guaranteeing the rights of citizens sentenced to imprisonment are the tasks and functions of their activity. According to modern scholars, any activity in any legal field must have its clearly defined tasks (Patiuk, 2013, p. 95), which are usually understood in the field of administrative and legal science as the provision of a certain social need, which is specified in regulations, statutes and other administrative acts in the list of functions and powers of the respective subject of administrative law (Bakhrakh, 1996, p. 27).

The analysis of the current legislation of Ukraine makes it possible to ascertain that the main purpose of the activity of a number of state and non-state subjects is the implementation of the state policy on human rights protection, the legal bases of which are defined, first of all, in the Constitution and laws of Ukraine. Ensuring the realization and protection of the rights and freedoms of persons sentenced to imprisonment in Ukraine is carried out by means of an extensive system of state and non-state subjects, whose activities are either directly aimed at achieving this purpose, are the leading direction of their functioning, or are implemented indirectly in relation to the use of certain general positions, authoritative and power and other powers, constituting a certain legal mechanism for guaranteeing human rights in Ukraine. However, it should be noted that, at the level of modern administrative law science as well as at

the level of the current legislation, the tasks and functions of these subjects have not, unfortunately, been properly considered and properly assigned. Thus, O. Skakun notes that the main task of the mechanism of social and legal protection of human rights is «protection, security, restoration of violated rights, as well as the formation of the general and legal culture of the population» (Skakun, 2001, p. 160). M. Rebalko, analyzing the tasks of the system of state agencies and organizations in the sphere of execution of sentences, determines their main purpose as the implementation of the state penal policy and the reform of the penal system in accordance with the requirements of international penitentiary standards and modern world standards in the field of human rights (Rebalko, 2008, p. 9).

The main tasks of public administration in this field in the most general form are outlined in the Art. 3 of the Constitution of Ukraine, as well as in other provisions of the Basic Law of Ukraine, which determine the basics of a person's constitutional status, and analysis of the norms of the Penal Code makes it possible to determine that the main purpose of the state policy, which regulates the procedure and conditions of execution and serving the criminal sentences in order to protect the interests of individuals, society and the state, establishes the conditions for correcting and re-socializing the convicted, preventing the commission of new crimes by the convicts and prevention of torture and inhuman or degrading treatment of prisoners, based on the observance of human and civil rights and international prison standards (Penal Code of Ukraine, 2003). According to the main task of the state penal policy, the legislation also defines other tasks aimed at achieving the goals of the state penal policy, which constitute the content of the state administration in the sphere of ensuring the rights of convicted persons in Ukraine. Among them we should highlight: a) determining the legal status of convicts, guarantees of protection of their rights, legitimate interests and obligations; b) determining the procedure for applying measures of influence to the sentenced persons in order to correct and prevent a-social behavior; c) supervision and control over the execution of criminal penalties, public participation in this process; d) determining the principles of execution of criminal penalties, regulation of the procedure and conditions of execution and serving of criminal penalties, etc.

The text of the National Human Rights Strategy and the Action Plan approved on its basis up to

2020 stated that the tasks of protecting human rights and freedoms, along with other priority tasks (in particular, strengthening national security, overcoming the economic crisis, reforming public administration, etc.) remains the main responsibility of the state and directly determines the content and orientation of the activity of state authorities, in particular in such areas as: a) ensuring the compliance with international standards for the protection of the right to life, conditions of detention and treatment of persons in places where they are compulsorily detained in accordance with the law; b) creation of an effective system for the protection of the right to liberty and personal security; c) creation of an effective system for counteracting tortures, cruel, inhuman or degrading treatment or punishment; d) ensuring judicial control over the legality of deprivation of liberty of persons, etc. (Decree of the President of Ukraine, 2015).

One of the most important elements of administrative and legal status of the subject of legal relations is its functions. Functions as an element of the structure of administrative and legal status, can be defined as a set of actions implemented in certain directions, aimed at achieving the intended purpose of their activity and fulfillment of the tasks set before them. It should be emphasized that the subject of legal relations because of own functions reveals the content and purpose (Zubach, 2014, p. 179). All subjects of the realization and protection of human and civil rights can be divided into those who are endowed with relevant functions on behalf of the state and those who exercise certain functions as civil society institutions. In the general array of their functions we should distinguish independent (the main, for sake of which, these subjects are created) and auxiliary (additional, aimed at creating the proper conditions for the implementation of basic functions) (Shay, 2014, p. 99).

The rule-making function, which serves as the basis for the activity of all participants of legal relations in this field should be, first of all, noted among the main functions of the subjects of guaranteeing the rights of persons sentenced to imprisonment in Ukraine. Subjects of rule-making in the sphere of guaranteeing the rights of persons sentenced to imprisonment in Ukraine should include the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, ministries, the State Department of Ukraine for Execution of Sentences, local executive authorities and self-government agencies.

The main functions of the subjects of guaranteeing the rights of persons sentenced to imprisonment in Ukraine include the security (human rights) function. This function determines the directions of the activity of subjects of guaranteeing the rights of sentenced persons; it is the basis of the state strategy in the sphere of execution of sentences and the necessary basis for specifying other functions that may arise in the course of the activity of subjects of protecting the rights and legitimate interests of persons sentenced to imprisonment (in particular, functions of control, interaction, etc.). The security (human rights) function may be represented as a specific activity of the respective subjects, which is manifested in the creation of the necessary conditions to use the protection of the rights and freedoms by the person provided by the law. Courts, agencies of the penal service of Ukraine, authorized persons of law enforcement agencies, special state agencies and institutions of punishment execution, representatives of administrations of correctional institutions are the subjects of the security function in the sphere of guaranteeing the rights of persons sentenced to imprisonment in Ukraine.

One of the main functions, which is not absorbed by others and is not auxiliary, but, on the contrary, unites others, actively influencing them and correcting their content, is the control function, which consists in «analyzing and comparing the actual state of affairs with the requirements that set before the system, search for deviations from the set tasks and finding out the reasons for these deviations, evaluating the activity and development of the system» (Mykytas, Chomakhashvili, 2013, p. 199). The content of the control function in the sphere of guaranteeing the rights of persons sentenced to imprisonment in Ukraine constitutes control over the observance of the requirements of the legislation on the execution and serving of criminal penalties in terms of the implementation, protection of human and civil rights in institutions of the penitentiary system. Depending on the subject exercising control functions, we may distinguish such basic types of control as state control (parliamentary, governmental, judicial) and public control. The main subjects of control in the sphere of guaranteeing the rights of persons sentenced to imprisonment in Ukraine are the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, courts, prosecutor's office, law enforcement agencies, agencies of state penal service, as well as various associations of

citizens, supervisory commissions, human rights organizations, etc.

The auxiliary (additional) functions of the subjects of guaranteeing the rights of persons sentenced to imprisonment in Ukraine include the function of assistance to correction (educational function), the function of re-socialization of prisoners, the function of social protection and prevention of offenses, etc. Thus, the Criminal Code of Ukraine provides, in particular, the need to apply measures of correction and re-socialization to persons who serve sentences of imprisonment for a definite term.

As N. Klyovan emphasizes, the functions of correction and re-socialization represent the legal basis for the realization of the whole complex of means of educational and preventive influence on the convicts, since the process of correction is of compulsory nature (Klyovan, 2009, p. 336). Provision of the necessary conditions for the correction and re-socialization of convicts is one of the functions of state power that is implemented through appropriate mechanisms of regulatory influence. Associations of citizens and mass media, religious and charitable organizations, individuals may also assist to relevant state authorities and penal institutions for correcting the prisoners and conducting social and educational work. Therefore, the subjects of regulatory influence, whose function is to correct and re-socialize persons sentenced to imprisonment in Ukraine, are: central and local executive authorities implementing the state policy in the field of social policy, migration, health care, education; Internal Affairs Agencies; agencies of the state penal service of Ukraine; social services for the families, children and youth, labor and social protection agencies, public employment services, other state and public institutions, whose functions directly or indirectly relate to the correction and re-socialization of prisoners.

The social protection function aimed at social adaptation of persons serving sentences of imprisonment for a definite period of time, provides measures on social patronage and service of prisoners, as well as social support and control over the behavior of prisoners, the subject of their realization are agencies of labor and social protection of the population; public employment services; centers for social services for families, children and youth; Internal Affairs Agencies; executive authorities implementing the state policy in the areas of migration, health care, education (at the stage when convicts are in

prisons), interacting with penitentiary institutions and penal inspections, etc.

One of the auxiliary functions of the subjects of guaranteeing the rights of persons sentenced to imprisonment in Ukraine is also the function of preventing the commission of new criminal offenses by convicts, as well as preventing torture and inhuman or degrading treatment of prisoners under the Art. 1 of the Penal Code of Ukraine. Preventive function in prisons is realized by isolation of convicts from society and simultaneous separate detention of different categories of convicts for maximum protection from harmful influence; constant supervision over them; accurate and steady performance of their duties; view correspondence; implementation of enforcement and security measures, etc. (Klyovan, 2009, p. 336). The subjects of the implementation of the preventive function in the sphere of guaranteeing the rights of persons sentenced to imprisonment in Ukraine should include agencies of the state penal service of Ukraine, institutions of execution of punishments, local authorities and their executive structures, which are responsible for the state of law and order under the jurisdiction. territories, Internal Affairs Agencies, social rehabilitation centers, public associations directly created for this activity, as well as other government agencies, organizations and NGOs that can deal with prevention work along with their basic functions.

Conclusions

The content and orientation of the activities of the main subjects of guaranteeing the rights of persons sentenced to imprisonment in Ukraine are determined by their main tasks, which include protection, security of interests of convicted persons, restoration of violated rights, creation of conditions for correction and re-socialization of prisoners, as well as prevention of committing new crimes by convicts through the establishment of an effective system of guaranteeing the rights and freedoms of convicted persons, which would meet the basic requirements of international penitentiary standards and the norms of the modern world human rights documents. Specification of the established tasks of the main subjects of guaranteeing the rights of persons sentenced to imprisonment in Ukraine occurs through their functions, which are defined as normatively regulated and provision of organizationally established directions of activity, aimed at achieving the main purpose of their activity and fulfillment of the tasks set before them. The main

(independent) functions of the subjects of guaranteeing the rights of persons sentenced to imprisonment in Ukraine include the function of rule-making, security function and control function; the auxiliary (additional) include – the function of promotion of correction (educational function), the function of re-socialization of prisoners, the function of social protection and prevention of offenses, etc.

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