

Imprisonment - evolution, actuality and perspectives

Review
UDC: 343.261

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Abstract

Regarding the types of society's response to criminality, legal theory recognizes some of them: expulsion, vengeance - blood feud, indemnity, retaliation - intimidation, humanism, and individualism. By evolving ways of society's response to criminality, the methods and tools that have influenced the improvement and advancement of countering criminality have changed.

The need for reforming the system of execution of imprisonment has always been evident and the same has emerged in the demand of idea makers and rulers, but also in practical penitentiary experience. In particular, it was required that the main purpose of the sentence was to improve, re-socialize and prepare prisoners for life in freedom.

The principle of individualization of the sentence has led to the need to classify and categorize the institutions for the execution of punishment

As a criminal sanction, the punishment of imprisonment is a type of punishment which can be enforced in state institutions in a manner regulated by law and in no other way.

The notion re-socialization and re-adapting did not yield the expected results. Alternative measures were imposed and found their place in the penal sanction system due to these two reasons: a) The notion of humanizing human relations between people makes the economic, social, political and civilization of contemporary society and b) the intention to build a justice system based on the principle of the rule of law and law that enable human rights and freedoms to be realized on the basis of principles of equality and non-discrimination on any basis.

Keywords: Imprisonment - evolution, actuality and perspectives.

1. Introduction

One of the most popular forms of punishment nowadays is the punishment of imprisonment and as such the punishment of imprisonment is a criminal sanction which is pronounced largely in relation to criminal sanctions. From the appearance of the first prison to the form that the prison sentence has today has undergone major changes, thus adapting to the various social and historical conditions through which they have passed. The punishment of imprisonment as a criminal sanction was introduced later but the concept of imprisonment is found early in the history of human society since the antiquity.

In ancient Rome, the Tullianum Prison was known, in which the persons awaiting trial were placed. This type of detention served to avoid the flight of suspected persons before the court's sentence

was pronounced and executed. Those suspects who were held in those prisons were subjected to corporal punishment, death sentences, or fine penalties.¹

In Europe from the XVI century to the 18th century, population movements from rural to urban areas began and so the concentration of a large number of people in the cities began, this situation led to an increase in the number of unemployed, alcoholic and wandering persons dangerous for certain environments. Such a situation was a factor that encouraged the rulers to take measures to protect society from such phenomena. Some European countries decided to set up special institutions to place this category of delinquents (stray dogs, beggars, alcoholics, prostitutes) who were forced to work and create work habits.²

London is known as the birthplace of the modern prison. A philosopher named Jeremy Bentham was against the death penalty and thus created a concept for a prison that would be used to keep prisoners as a form of punishment. Bentham designed plans for an object in which prisoners would stay for prolonged periods of time. His design aimed to ensure that the people who were shut down would never know whether they would be seen by the guards or not, which he would feel would allow the prison to save money. Since prisoners could not be sure of how many guards were present, Bentham reasoned, fewer officers should be hired to maintain peace. Finally, this prison was never built, but the concept of using prisons was created as a form of long-term punishment.³

2. Creation and evolution of the first prison institutions

As noted, imprisonment during his evolution has gone through two different stages, initially as a means of prevention and later as a means of punishment. During the pre-trial phase, it was first treated as a detention until the court was granted the second, and was secondly treated as an administrative measure imposed on troubled citizens, beggars, unemployed and prostitutes to avoid them from the threatening environment. The application of imprisonment as a measure of detention against persons who were required to pay fiscal or material obligations to the state or other persons is known until the time when they pay that obligation.⁴

Until this time, we do not yet find a real punishment of imprisonment and the same is presented later, but these established institutions served to protect society from criminality and above all it was the initial phase of creating penitentiary institutions that today find widespread in all countries. The situation in the first prisons has been severe; the care of the mass has been focused on severe sentences, so there was no reasonable concept for the work and lives of prisoners.⁵

3. Reasons for filing a prison sentence

The Philosophy of Enlightenment (Age of Reason) emphasized the importance of the individual. Following the French Revolution of 1789, which was based on the ideas of Enlightenment, Western European countries abolished torture as a form of punishment and stressed that punishment should be tailored to the crime of the individual. Instead of causing pain as a key

¹See First State Prison of Rome – Tullianumi, <http://www.romeacrosseurope.com/?p=1092#sthash.C9TEQiHR.dpbs>, on 13th of July, 2018

²Halili, fq. 45

³Historia e dënimit me burgim, <https://www.crimemuseum.org/crime-library/famous-prisons-incarceration/history-of-imprisonment/>, on 16th Jul. 2018

⁴Halili, p. 84

⁵Osmani, p.126, II

element of correction, the idea of changing the individual became the main goal.⁶ The proponents of humanism (Tomas Mor, Hugo Grocius, Jean Jacques Russo, John Houard, Charlton Montesquieu, Caesar Becher) in their works cast ideas on the change of the penitentiary system and prisons and strongly opposed the application of corporal punishment and degrading-moral punishment. But the most important of their ideas was the replacement of physical punishment, torture, degradation with a deprivation of liberty, at the same time this was a factor that prompted the punishment of imprisonment. Their ideas failed to be realized in the period of feudalism, but the great influx followed the French Revolution of 1789. After RBF was issued a large number of laws which provided for the sentence of deprivation of liberty as a sanction for many offenses for which a death penalty or physical punishment was previously imposed. There were also some principles of justice that were established today as the principle of legality (*nullumcrimen, nulapoena sine lege*) and the principle of equality before the law. Human rights and freedoms, the right to life, the right to property, the right to freedom of thought and circulation, and the right to liberty, proclaimed as values of the new society, and as such should be of great importance to be protected by law.⁷ Such assessment of the physical and moral integrity allowed for the idea of avoiding the death penalty and physical torture and replacing them with a prison sentence. Another reason that prompted the creation of imprisonment was the workforce of convicted persons and the interest of bourgeois society to capitalize. Persons being sentenced at the same time presented labor force, and the power over these people had no interest in pronouncing a death sentence, but sentenced them to jail and then used them as manpower. This need was borne also by the rapid development of the industrial revolution and the need for cheap labor force. Thus, convicted persons being involved in various public works or various enterprises compensated for the harm caused to society. There are also known cases of the use of prisoners by imprisonment in the industry without compensation for their work. This commitment was described as a negative part of the detention system and was criticized as rude and inhumane.⁸

4. Penitentiary-Correctional Institutions in RNM

The principle of the individualization of the sentence has led to the need to classify and categorize the institutions for the execution of imprisonment sentences that are adapted to the needs for the purpose of re-education and re-socialization. Punitive institutions are divided into different categories: general and special institutions; institutions and prisons; by age they are divided into correctional and educational; by gender in institutions for women and men; according to the region are divided into local, regional, republican and federal; according to the degree of security in the open, semi-open and closed.⁹

The organization of the institutions in which the enforcement of the imprisonment sentence in the Republic of North Macedonia is enforced is regulated by the Law on Execution of Sanctions. The prison sentence in RM is executed in correctional punishment institutions. Penitentiary institutions appear in the capacity of a legal person and their funding is provided through the state budget - the Sanctions Execution Directory (Article 18 LES). As a criminal sanction, the punishment of

⁶History of punishment, <https://www.encyclopedia.com/reference/encyclopedias-almanacs-transcripts-and-maps/history-corrections-punishment-prevention-or-rehabilitation>, on 16th July, 2018

⁷Halili, p. 84-85

⁸Halili, p. 86

⁹Osmani, p. 32-34, I

imprisonment is a type of punishment which can be enforced in state institutions in a manner regulated by law and in no other way.

According to the same law (Article 19) Punitive-Correctional Institutions may be punitive-correctional houses and prisons. In Macedonia, such institutions are counted as: the Idrizovo Penitentiary-Correctional House with an open ward in Veles; Penitentiary-Correctional House in Stip; Open Struggle Correctional House in Struga; Monastery Prison; Kumanovo Prison with open ward at Kriva Palanka; Ohrid Prison; Prilep Prison; Skopje Prison; Strumica prison; Tetovo Prison; In the Republic of Macedonia there are two correctional and correctional institutions in Tetovo and Skopje.¹⁰

5. Alternative measures include imprisonment sentences

Alternative measures are the product of the idea that imprisonment is the ultimate alternative. They are an expression of the modern tendency for restrictive punishment of punishment and the treatment and reintegration of offenders outside the prison. The basis of punishment should be an alternative solution and the focus of criminal policy should be oriented from repression and state shrinking, social prevention and community resource use. Executives in such a way will be sanctioned by applying less repressive means and involving the direct community in the treatment of prisoners. Theoretically and practically, this trend is a response to frequent jail sentences and the introduction of new social crime control methods and techniques, as in some western legislation that are increasingly seeking search for new alternative measures.¹¹

Alternative measures were presented as a result of criticisms of convictions and especially of prison sentences as the most common practice of punishment. Empirically, it has been proved that the re-socialization of convicts in the artificially created prison facilities does not produce results. The notion of social re-socialization and re-enactment did not yield the expected results. The thesis was confirmed: "The bigger the smaller the limitations are the opportunities for re-socialization." This also stems from the fact that criminal conviction repetition is growing steadily in all countries of the world. In the US prisons are 75% repetitive and in North Macedonia this percentage is 40 to 45. Hence, the idea that new solutions should be found to reduce criminality. Alternative measures were imposed and found their place in the penal sanction system due to these two reasons:

1. The notion of humanizing relationships between people makes the economic, social, political and civilization development of contemporary society.
2. The intention to build a justice system based on the rule of law and the rule of law that enable human rights and freedoms to be realized on the basis of principles of equality and non-discrimination on any basis.¹²

The system of alternative measures cannot be implemented successfully without the adequate existence of justice and punishment. All of these are experimented and proven in several systems of timing of justice and punishment. Insists on the implementation of sanctions that contain elements of substitution and avoidance of imprisonment. The sanctions applied in freedom showed positive results and great effect in the fight against criminality.

¹⁰See Article 19 of the Law on Execution of Sanctions (Official Gazette No. 2, 09.01.2006)

¹¹Buzharovska, Gordana, *Alternative Detention*, Skopje 2003, p. 47

¹²Strategy for the Implementation of Alternative Measures, Skopje, 2004, p.8

Criticisms of imprisonment are increasingly powerful by pointing out the shortcomings and weaknesses that have left prison sentences in the short or long term, and especially in high-security jail terms and measures.

The Republic of North Macedonia took a new step before the new task to accept and implement the Council of Europe documents which try to solve problems related to the prevention of criminality and the taking of measures against perpetrators of pornographic pornography at the same time bring novelty in the policy of criminality and punishment. Our country faced a difficult time to build a sentence system that would include alternative measures.

Such bodies have an important place in the process of introducing normative elections. It is about some kind of social organs with enhanced powers and new powers like prosecution and punishment, but also in relation to enforcing and enforcing sanctions. These relationships and methods of action are new relationships between social bodies, the police and the judiciary must acquire a legal form through the respective legal norms that require changes to the law with crust regulating punitive procedures, organizing trials and prosecutions.¹³

6. Advantage of applying alternative measures

In order to fulfil the purpose of the punishment, respectively the attainment of special and general prevention as well as the prevention of the dangers and adverse effects of the prison sentence, it is necessary for an action to be taken by the prison institutions. Forms of institutional response, re-socialization, reintegration into harmony and the restitution of harm done are placed in the system of alternative measures that represent sanctions that are implemented in the community itself. Those measures represent a human and civic way in certain criminal behaviours. They do not represent escape from the punishment of the responsible perpetrator in the criminal offense but represent the avoidance of imprisonment and the return of the perpetrator to the environment where he has made the damage directly to compensate him. They act in such a way that convicted man returns to the environment in the lyrical under control and oversight of his behaviours or by making an obligation by developing his responsibility for the benefit of the community but also the community to avoid the pressure that affects that behaviours.¹⁴

7. Conclusions

The imprisonment sentence is one of the main penalties of the criminal sanction system and together with the fine are the penalties that mostly apply in practice from the totality of the penalties. The beginnings of the enforcement of the prison sentence lie early in the history of human society. However, the way of enforcing the sentence of deprivation of liberty is implemented in various forms and completely inconsistent with today's forms of imprisonment execution.

- The main benefit of the imprisonment sentence has been the replacement of death sentences and sentences of physical torture that have been largely enforced until the commencement of the imprisonment.

¹³ Strategy for the Implementation of Alternative Measures, Skopje, 2004, p.11

¹⁴ Saiti, p. 41

- Re-socialization is the principle that changed the character of the imprisonment sentence, the system of institutions that are competent for the execution of imprisonment and has given importance to the perpetrator's personality and forbidding the treatment of convicts in the same way. As a consequence of this principle today, in the institutions of execution of the punishment of imprisonment, division and classification of convicts is done within the institution as well as the division of institutions into different types of specialized treatment for the convicts of different categories.

- The implementation of alternative measures has a wide range of positive effects that follow them. They are also penalties that remove the negative effects of serving imprisonment in penitentiary institutions such as: isolating the perpetrator from the positive influences of society, isolating and detaching from work and professional engagement, interrupting family ties, interrupting moral and social values, the labeling and degradation of the perpetrator's personality, the impact of so-called "prison infection", which implies taking negative habits from staying in the common environment with other perpetrators of criminal offenses and the possibility of constant communication with them, overcrowding of prisons shows failure to provide minimum conditions to be guaranteed by the institution for the enforcement of imprisonment and non-realization of the fundamental freedoms and rights of prisoners, the high costs of the state for holding prison facilities, the execution of imprisonment sentences.

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