



Legal Status Of The Prisoner

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ABSTRACT

This article analyzes the institution of transfer of prisoners to serve their sentences in the States of their nationality, which is one of the directions of international cooperation in criminal matters. The author extensively reveals the relationship between the directions of international cooperation in criminal matters. In addition, put forward proposals for amendments and additions to the national legislation. Moreover, it is considered the necessity of improving of mechanism of international cooperation in criminal cases, bilateral agreements and cooperation of states in regional and universal levels.

KEYWORDS

International Cooperation, Crime, Transfer, Prisoners, International Treaty.

INTRODUCTION

The main participant in the transferring of prisoners is the prisoner himself, who has applied for transfer to a state of which he is a citizen to continue serving his sentence.

It should be borne in mind that the prisoner's request must be proven that he must continue serving his sentence in the country of his

citizenship (use of his native language in order to maintain or restore socially useful ties, serving a sentence in a familiar socio-cultural environment, having a place of residence in their own country and so on).

Although the legal status of prisoners in the transferring process is not specified in national

law, they are defined in bilateral or multilateral international agreements and their rights and obligations are reflected.

For example, under the Agreement between the Republic of Uzbekistan and Turkmenistan on the transferring of prisoners sentenced to imprisonment for continuation of sentence, signed on 25th February of 2009, a “imprisoned person” – is a person imprisoned by a court of one of the Contracting Parties (article 1, paragraph 1, part v) and “the state of execution” – is the contracting party to which the person sentenced to imprisonment is transferred to continue serving the sentence (article 1, paragraph 1, part b).

These rules mean that they are regulated as an institution of transfer in the field of international cooperation in criminal proceedings between states.

In addition, it can be stated that the legal status of prisoners is based on the principle of ensuring the rights and freedoms and legitimate interests of prisoners, as set out in the UN Model Agreement “On the transferring of foreign prisoners”.

According to the principle, during the transferring process, prisoners are guaranteed not to have cruel, inhuman or degrading treatment or punishment, and are fully informed of the possibility of transferring to the state of their citizenship or permanent residence and its legal consequences[1].

In order to determine the legal status of prisoners, it is expedient to pay special attention to their rights. We should pay attention to the fact that the legal status of the transferred prisoner should be considered as

an integral part of the legal status of the prisoners.

Firstly, the researchers rightly argue that at the time the sentence is announced, the court must explain that the prisoner has the right to apply to continue serving his sentence in his home country[2]. We would like to add the point that these rights and legal consequences should also be explained by the representatives of the penitentiary institution or body.

This rule is reflected generally in the “Minimal standard rules for the treatment of prisoners”. According to this document, after the prisoner is admitted to a penitentiary institution, each prisoner should be provided with the written information about the disciplinary rules of the institution, in addition to the permitted ways of obtaining information and complaining, as well as his rights and obligations and all other issues that allow him to adapt to living conditions (and illiterate prisoners should be informed orally)[3].

Such rules are also enshrined in the legislation of foreign countries, mainly CIS countries. If we consider the experience of European countries, we see that the convention “On the transferring of prisoners” generated by European Council in 1983 is a universal document regulating the transfer of prisoners. The convention also provides that a prisoner must be consulted by the state in general that he/she may continue to serve his/her sentence in his/her home country. This implies that a prisoner cannot be extradited to his or her state without his or her consent[4].

It is also useful to study the practice of the German Federation. Because during the trial,

the local judge asks the prisoner a few clarifying questions, stating that he has rights for a number of actions. In particular, the prisoner is informed that he may use the defense procedure in any case and that he will be allowed to express his opinion on the innocent act or to say nothing about it.

Most importantly, the judge determines from the prisoner whether he agrees or disagrees with the transferring to his state in order to continue serving the sentence, and for what reasons he may be transferred. The prisoner is informed of the legal consequences of his consent to be extradited and that it is not revoked. All this is recorded in the judge's statement[5].

In the legislation of our country, along with the rights of prisoners, the right to information is defined in relevant articles. This information is mainly about the procedure and conditions of serving the sentence, about their rights and obligations, and does not mean that at the time of sentencing or during the sentence, the prisoner has the right to apply to continue serving the sentence in his home country[7].

Therefore, it is also suggested to include in Article 9 of the Criminal Procedure Code, which reflects the basic rights of prisoners that a prisoner who is a foreign citizen (stateless person permanently residing abroad) has the right to continue his sentence in his home country and a rule that this right should be explained.

It should be noted that this process is regulated by national legislation, unless it is agreed in bilateral agreements signed by states.

As a logical continuation of this, in order to harmonize other articles of the Code, it is necessary to include in Article 54 the following norm:

Foreign citizens sentenced to imprisonment in penitentiary institutions of the Republic of Uzbekistan may be sent to a country of citizenship or permanent place of residence (if there are stateless persons) to serve the sentence by the General Prosecutor of the Republic of Uzbekistan on the principle of interaction with the competent authorities and officials of a foreign state in accordance with international agreements or the Code of Criminal Procedure of the Republic of Uzbekistan[7].

This norm should reflect the procedure of extraditing prisoners to serve their sentence, including the fact that persons sentenced to deprivation of liberty may be sent not only by the administration of the remand prison to serve their sentences, but also by the fact that prisoners may be sent to their countries to continue their sentences. If we pay attention to the proposed rule, it briefly outlines the mechanism of transferring of prisoners, the main focus of which is that the prisoner has the right reflected in Article 9.

This mechanism is included in the legislation of many foreign and CIS countries. In particular, in Article 88 of the Criminal Procedure Code of the Republic of Kazakhstan such procedure is provided.

We believe that it is not enough that such rules are reflected only in international agreements. This is because states do not always have mutually agreed agreements. In such cases, they cooperate on the principle of reciprocity.

We know that according to the principle of reciprocity, the required documents, conditions and bases are implemented in accordance with national legislation. Therefore, in national legislation, it is necessary to clarify the relationship between international agreements and national norms, as well as the regulation of relations between the Republic of Uzbekistan and a state that has not signed an agreement on transferring of prisoners.

This, at the same time, leads to follow and adjust with the norms of the convention “On the transferring of persons sentenced to imprisonment” (Article 2) and in terms of the supremacy of international law norms outlined in the Constitution of the Republic of Uzbekistan and Article 4 of the Criminal Procedure Code.

Secondly, in the preparation process to the court session, there is a need for a formal translation of the procedural and other documents into the language of the case, which the prisoner understands. The inability of the administration of a penitentiary institution to provide a qualified interpreter creates additional difficulties in the process of extraditing a prisoner and deprives him of appropriate procedural guarantees.

Typically, foreign prisoners face barriers in language and religious. Language problem is one of the most serious problems faced by foreign prisoners. According to the survey, only 3.3% of respondents believe that the language barrier should be taken into account as one of the main criteria in extraditing to another state.

In accordance with the criminal procedure and criminal law legislation of the states and the rules of the model UN agreements, for foreign prisoners who do not know the language of criminal proceedings, stateless persons, as well as those who wish to apply with proposals, statements and complaints, it must be ensured that penitentiary institution provides this opportunity by a qualified interpreter[8].

In the legislation of our country it is mentioned that the translation into the language of the person sentenced to imprisonment should be provided by the penitentiary institution or body[9]. The legislations of the CIS countries have similar rules (Article 8 of the Criminal Code of Ukraine, Article 12 of the Criminal Code of the Russian Federation, Article 10 of the Criminal Code of Kazakhstan). But we can see the opposite in the German state. Under the German law, if an interpreter works for a non-German-speaking prisoner in court proceedings and in a penitentiary institution, the costs are compensated by the prisoner (Article 464 of the German Code of Criminal Procedure)[10].

It should be noted that German law uses special terminology in the regulation of transferring and transfer of criminals. These include simplified transferring, temporary transferring, transferring, delivery, and transit.[11] All of these terms imply the same issue in terms of content, but because they have different meanings, they require the use of a qualified interpreter[12].

As a result of the above analysis, the following conclusions can be drawn. The petition of the prisoner (his legal representative or lawyer) of transferring to the competent authorities of a foreign state and other necessary documents

must be translated into the language of the state of his citizenship or permanent residence. The response to the request of the competent authorities of a foreign state to grant or deny the possibility of transferring must also be translated into a language known to the prisoner.

All of these are, of course, the procedural rights of prisoners at the stage of resolving issues related to the execution of a judgment of a foreign state court. In this regard, the rights and obligations of the prisoner to be transferred at different stages of the institution under consideration should be clearly stated in the legislation. The prisoner should have the right to review the materials submitted to the court at various stages (not only at the court session), including translation of them or using the services of an interpreter.

Therefore, in order to prevent the isolation of foreign prisoners, in different countries, it is established to provide the use of interpreter services not only during the court session, but also at any other time when serious questions may arise. Moreover, the visit of other citizens living nearby who can voluntarily help the prisoner to overcome the feeling of loneliness can also have great benefit[13].

Thirdly, in the Criminal Procedure Code of the Republic of Uzbekistan, the issues such as notifying their close relatives in the process of transferring prisoners to another state to continue serving their sentence, or inform the foreign state when the prisoner who was sentenced in accordance with an international agreement finishes his statement or any action taken against him are not reflected.

It is known that under national law, families of prisoners must be notified of their departure and arrival to serve their sentences. The administration of the penitentiary institution shall notify the court of the verdict within three days from the date of imprisonment, as well as the family of the prisoner, indicating the address of the institution and the prisoner's right to correspondence, meetings, parcels, telephone conversations. (CPC, Article 55).

However, this norm only involves the process by which a imprisoned person acquires the status of a prisoner after the court has passes a sentence. The issue of notifying the families of persons serving a sentence in a foreign state at the time of transferring to the country of citizenship was not mentioned.

Nevertheless, this rule is also enshrined in international agreements and the practice of states, and is defined as fundamental rights of prisoners.

For example, in the bilateral Agreement "On the transferring of prisoners" between Uzbekistan and the United Arab Emirates, it is mentioned that the State executing the sentence must notify the State which issued the sentence of its execution. According to the agreement, countries should remind of the expiration of the sentence, the escape of prisoner before the expiration of the sentence, at the request of the sentencing state, execution of serving of the part of the verdict (Article 14).

A similar rule is provided in the CIS convention "On the transferring of persons sentenced to imprisonment"[14] signed in 1998 and in the "Minimum standard rules for the treatment of prisoners"[15] and in the Articles 14 and 15 of

European Convention “On the transferring of prisoners”[16].

The results of the analysis showed that in the process of transferring prisoners we can see that the issue of informing the close relatives of the prisoner, his legal representative and the sending state about his condition is mainly applied to prisoners with mental disorders.

It is known that in the Criminal procedure Code and the Criminal executive code of the Republic of Uzbekistan the issues of execution of persons sentenced to imprisonment and transferring of persons with mental illness for compulsory medical treatment in the country of citizenship are not regulated.

At the national level, this issue is retained only by the decision of the Cabinet of Ministers on regulations of the procedure for issue and acceptance by the Republic of Uzbekistan for compulsory treatment of persons with mentally disorder[17] for the purpose of ensuring implementation of obligations of the Republic of Uzbekistan of the rules of the convention “On compulsory treatment of persons with mental disorders” (Moscow, March 28, 1997) and other international agreements in this area.

The rules of this regulation are in accordance with the provisions of the convention “On compulsory treatment of persons with mental disorders” signed in 1997, the procedure of granting and receiving persons with mental disorders by the Republic of Uzbekistan for compulsory treatment is enlightened in detail. However, not all provisions of this convention are fully reflected, creating gaps in national legislation.

Particularly, in Article 10 of the Convention it is mentioned that if, after a person has been subjected to compulsory treatment, the judgment of the Contracting Party has been revoked and a new investigation or trial is envisaged, a copy of the decision, criminal case file and other necessary documents sent to the Contracting Party which has accepted to settle the matter of execution. In addition, if the judgment is changed, the Contracting Party to which it is admitted shall immediately notify the Contracting Party which has accepted that person for compulsory treatment.

In addition to this, according to the conclusion of the medical commission, if there is a need to cancel or change the compulsory medical measures taking into account the change in the mental state of the compulsorily treated person, the court of Contracting Party or the court in the place of compulsory treatment of Contracting Party may make an appropriate decision. There is a provision that the other Contracting Party shall be notified of the decision in a written form.

These rules are not defined in the legislation of our country and are common in practice. But the lack of a legal basis also raises a number of problems (application of the principle of reciprocity).

In the Criminal executive code of the Republic of Uzbekistan also stipulates the basic rights of prisoners to serve their sentences and to transfer mentally ill and mentally ill persons to apply compulsory medical treatment in the country of their nationality, issues of informing a foreign state about any action taken against a person sentenced to imprisonment under an international agreement reflection in national legislation leads to compliance with the norms

of international law and the observance of such rules as the Constitution of the Republic of Uzbekistan, the supremacy of international law established by Article 4 of the CEC.

In this regard, in order to bring the following rules in line with international law, it is proposed to amend and supplement the relevant articles of the Criminal executive code of the Republic of Uzbekistan.

In particular, it is expedient to supplement the rule to the articles 170, 173, 188 and 194 that “in the event of the death of a transferred prisoner”, “when the transferred prisoner finishes his sentence”, “when a patient escapes or dies”, “when compulsory medical measures are applied to a transferred prisoner”, the Ministry of Internal Affairs shall notify the Prosecutor General’s Office of the Republic of Uzbekistan in accordance with the procedure established by international agreements and then notify the competent authority of the foreign state in accordance with the law. Articles 170, 173, 188, and 194,

As a result of the analysis of the legal status of the prisoner, we must conclude that the main emphasis should be on the rights and obligations of the prisoner in the process of serving his sentence in a foreign state and extraditing him to the country of citizenship. Because, in general, the national legislation of the states takes into account the principles and norms of international law concerning the execution of sentences and the treatment of prisoners. Accordingly, it forms the national legislation without contradicting international agreements.

In most countries, the legal status of prisoners is determined by criminal executive law. But we

have focused on the legal status of prisoners being transferred to a state of citizenship in order to continue serving their sentences. In this regard, at the stage of instituting proceedings on the transferring of a prisoner, it is necessary to refer to both criminal procedure and criminal executive legislation, as well as international standards.

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