Individual security in the context of serving a prison sentence – the European dimension

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***Abstract*— This paper examines the issue of individual security in the context of serving a prison sentence from a European perspective. The aim of this paper is to assess how European human rights standards, including the case law of the European Court of Human Rights and the guidelines of the Committee for the Prevention of Torture (CPT), impact the physical, psychological, and social safety of persons deprived of their liberty. The paper identifies the main research problem – the tension between protecting society and respecting the rights and dignity of prisoners – and formulates hypotheses regarding both the effectiveness of European standards and the difficulties of implementing them in various prison systems. Methodologically, the article is based on an analysis of international and European law documents, so-called soft law acts, ECtHR case law, and CPT reports, supplemented by comparative methods and content analysis. The research findings indicate that European standards significantly improve the level of individual security, while emphasizingthe need to maintain a balance between protecting society, rehabilitating prisoners, and respecting their dignity.**

Keywords— individual safety, deprivation of liberty, rehabilitation, CPT (Committee for the Prevention of Torture), European Court of Human Rights, European standards, human rights.

I. INTRODUCTION

Several mechanisms have been established in Europe and around the world to monitor detention conditions in prisons and other types of closed facilities (e.g., psychiatric hospitals and immigration detention centers). Such mechanisms are intended to prevent torture and ill-treatment of detainees, and more generally, to review detention conditions at any time (European Convention, 1987). In particular, the 1987 Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment created a monitoring mechanism – the European Committee of the same name (CPT), which is authorized to visit any place within the jurisdiction of the Contracting Parties where persons are deprived of their liberty by a public authority (D. Gajdus and B. Brodowska, 1998, pp. 32–38). The CPT is a mechanism for preventing torture and inhumane treatment. It monitors both the active conduct of law enforcement agencies, collecting allegations of violence and abuse, and the actual state of prisons and other detention facilities, verifying whether they meet the standards developed by the CPT itself over time. All EU member states are parties to the convention and are therefore subject to its monitoring mechanism (M.A. Nowicki, 2006, pp. 15–24). Furthermore, the European Prison Rules recommend the inspection of prisons by both government agencies and independent bodies (M. Płatek, 2008, pp. 3–6). The establishment of the CPT and its role in monitoring detention conditions set a pattern in the international legal arena. Consequently, in 2002, the Optional Protocol to the UN Convention against Torture was adopted, creating a similar monitoring mechanism through regular visits to detention centers. The Optional Protocol requires States Parties to establish, designate, or maintain at the national level one or more visiting bodies for the prevention of torture – National Preventive Mechanisms (NPMs). Most EU Member States are parties to the Optional Protocol and have therefore established NPMs (J. Murdoch, 2006, pp. 41–46).

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The research objective of this article is to analyze the concept of personal security in the execution of a prison sentence in light of European standards. The work therefore aims to demonstrate how the concept of personal security has been shaped by the case law of the European Court of Human Rights and the practice of the CPT, and how it influences the national prison systems of European Union Member States.

The research question is how European human rights standards influence the security of individuals during the execution of a prison sentence while simultaneously enabling the effective implementation of the goals of punishment, including rehabilitation. Based on this problem, the following research hypotheses were formulated:

1) European human rights standards, particularly those stemming from the case law of the ECtHR and the recommendations of the CPT, effectively contribute to improving the level of individual security in prisons.
2) However, the implementation of these standards encounters difficulties resulting from the diversity of legal traditions and penitentiary systems in the Member States.
3) Protecting individual security in the context of serving a prison sentence is only possible by maintaining a balance between prevention, rehabilitation, and respect for human dignity.

From a methodological perspective, the article is based on a theoretical-dogmatic approach, including an analysis of international and European law, so-called soft law documents, and the case law of the European Court of Human Rights. This is complemented by a comparative method, allowing for a comparison of selected solutions applied in European countries, as well as a content analysis method used to evaluate reports of the CPT and other bodies monitoring compliance with human rights in detention. The work focuses on the fact that individual security is not a category opposed to public security, but its inherent element, determining the humane and lawful nature of the execution of a prison sentence in the European legal order.

II. Penitentiary law

In recent years, the goal of criminal rehabilitation has become one of the most important elements of European criminal policy. However, European legal texts lack a clear definition of this concept, leaving the responsibility for clarifying its meaning to supranational courts. This section analyzes the case law of the European Court of Human Rights and the Court of Justice of the European Union (L. Petrażycki, 1959, pp. 13–17).

Over the past few decades, the idea that punishment must serve the rehabilitation of criminals has been criticized. By the early 1980s, skepticism was so profound that some commentators even predicted that rehabilitation as a penal strategy would soon be a thing of the past. Yet, against all odds, the concept of rehabilitation has survived to this day and continues to play a key role in academic and political debates on punishment. Moreover, the goal of offender rehabilitation continues to inspire and guide the work of many criminal justice professionals worldwide, along with their commitment to implementing therapies and programs (A. Tobis, 1978, pp. 16–19).

Against this backdrop, the goal of rehabilitation has become increasingly important in Europe in recent years. Recent analyses of European Court of Human Rights (ECtHR) and European Union law have convincingly demonstrated that rehabilitation can now be considered one of the most important features of European criminal policy. However, little attention has been paid to an in-depth analysis of the meaning of this concept at the European level and its implications for national law and policy (S. Snacken and D. Van Zyl-Smit, 2008, pp. 43–51).

From a historical perspective, four different forms of offender rehabilitation can be distinguished in the early and late modern penal systems. The first approach, which views rehabilitation as "reform" and "penance," is typically associated with early penal systems (for example, the Auburn model, which combined hard labor and solitary confinement). More recent approaches include a correctional model based on compulsory therapeutic interventions aimed at "healing" offenders, and a less controversial, social science-inspired, resettlement-oriented approach, also known as "resocialization." Finally, criminological research and practice have recently led to the proposal to conceptualize rehabilitation as an individual right, independent of any utilitarian considerations or criminal policy issues.

Providing a definition of rehabilitation at the European level can also prove challenging due to the wide variety of legal and penological traditions existing in Member States. For example, the way in which the ideal of rehabilitation is expressed in national law varies from country to country, often reflecting diverse conceptualizations of this principle and profound differences in its legal and practical implementation (J. Śliwowski, 1978, pp. 71–80).

Norms and principles for the treatment of persons deprived of their liberty have been developed in both European and international contexts. International soft law instruments include, among others, the Standard Minimum Rules for the Treatment of Prisoners – first adopted in 1955 and updated in 2015 under the new name "Nelson Mandela Rules" – and the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty (1955 Standard Minimum Rules for the Treatment of Prisoners). The European Prison Rules, first adopted in 1987 and revised in 2006, are a set of recommendations of the Council of Europe's Committee of Ministers. They are not binding as such, but have been endorsed by the Council of Europe and in several EU documents. They are supplemented by an official Commentary. The starting point of these recommendations is that no one should be deprived of their liberty except as a last resort and in accordance with a procedure prescribed by law. Restrictions imposed on prisoners must be limited to those strictly necessary and proportionate, and detention must be managed to facilitate the reintegration of prisoners.

The rules contain detailed provisions, firstly, regarding conditions of detention, such as:

1) allocation and accommodation (including the requirement to separate untried prisoners from convicted prisoners, men from women, and young adults from the elderly);
2) hygiene;
3) clothing and bedding;
4) nutrition;
5) legal advice;
6) contact with the outside world;
7) work (always fairly remunerated);
8) exercise and recreation;
9) education;
10) freedom of thought, conscience, and religion (T. Szymanowski, 2006, pp. 14–28).

Special provisions apply to foreign prisoners, detained women and children, as well as infants (who may only be in prison with a parent if it is in their best interest).

The rules also contain specific sections on health. The final two chapters provide special guarantees for untried prisoners in pretrial detention and describe a special regime for convicted prisoners, the aim of which must be to enable them to lead responsible and crime-free lives through individualized sentence plans, which may include elements such as work and education.

CPT Standards: Over time, the Committee for the Prevention of Torture has developed very detailed standards regarding conditions of detention and good practices aimed at reducing the risk of prisoners being subjected to torture or other degrading treatment. Some guidelines specifically address overcrowding, as this is a very common problem in European prisons, leading to negative consequences for prisoners' privacy, health care, and security (CPT, 2003). The CPT has therefore established a precise minimum amount of space that each prisoner must have access to in their cell. According to the CPT, the minimum standard for personal living space in penitentiary facilities is: 6 m² of living space (plus sanitary facilities) for a single-person cell or 4 m² per inmate (plus fully partitioned sanitary facilities) in a multi-person cell; in addition, cell walls must be at least 2 m apart, and the ceiling at least 2.5 m from the floor. However, these standards are intended to be an absolute minimum: in the same report, the CPT encourages host states, especially when building new prisons, to comply with the desired standards (at least 10 m² for a cell accommodating two prisoners, 14 m² for a cell accommodating three prisoners, etc.) (N. Pawłowska, 2007, pp. 17–27).

The CPT also published its general standards, which emerged from its visits and annual reports. These include guidelines applicable not only to prisons but also to initial police arrests and other pretrial detention centers. Regarding prison conditions, the CPT has developed standards aimed at, among other things, reducing the risk of inter-prisoner violence, reducing the risk of ill-treatment in high-security facilities, and ensuring access to natural light and fresh air. Furthermore, the standards specifically address solitary confinement and the negative effects it can have on an individual's health, as well as the problems arising from the use of large-capacity cells, which the CPT is highly critical of (due to its impact on prisoners' privacy and the increased risk of inter-prisoner violence). The standards also include a set of recommendations for access to high-quality healthcare equivalent to that of citizens outside prison, including preventative medicine and measures to prevent the spread of infectious diseases. The standards also address the specific situation of life prisoners and other long-term prisoners, minors, and women (K.L.J. Brittani and A. McNeal, 2016, pp. 395–399).

The European Court of Human Rights has developed its case law regarding solitary confinement primarily based on Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) – the prohibition of degrading and inhuman treatment or punishment, often based on standards set by the CPT (T. Szymanowski, 2006, pp. 21–27). According to the Court, violations of Article 3 may result not only from positive acts of abuse and violence by state authorities against prisoners, but also from the imposition of degrading conditions of detention or from a lack of action in the face of allegations of prisoner ill-treatment. The situation of prisoners in overcrowded, dilapidated prison facilities with insufficient living space and insufficient privacy may be considered a violation of Article 3. 3, regardless of the fact that the authorities never intended to humiliate prisoners. According to the Court's case law, a violation of Article 3 must be assessed on a case-by-case basis: thus, cells offering each occupant less than 3 m² of personal living space give rise to a strong (though still rebuttable) presumption of violation, but even living space exceeding this threshold may be considered insufficient, taking into account all other relevant factors. Public authorities may also be held liable for ill-treatment by other prisoners – in such cases, the authorities have an obligation to ensure the physical and mental integrity and well-being of prisoners (C.R. South and L. Wood, 2006, pp. 490–501).

Furthermore, the Court emphasized that prisoners continue to enjoy all fundamental rights and freedoms guaranteed by the Convention, with the exception of the right to liberty. Therefore, they continue to enjoy the rights to family life, to marry, to freedom of expression, to practice their religion, to have access to a lawyer or a court, and to respect for correspondence. Any restrictions on these rights must be justified, although such justification can be found in security considerations, in particular the prevention of crime and disorder, which inevitably flow from the circumstances of detention (M.A. Nowacki, 2002, pp. 61–72).

The Court also applied the new "pilot judgment" procedure in cases concerning conditions of detention in some State Parties: in particular, such judgments concerned the prison systems of Russia, Italy, Bulgaria, and Hungary, as well as a psychiatric detention center in Belgium. All these cases resulted from situations of general overcrowding, leading to a lack of personal space, a lack of privacy when using sanitary facilities, and limited access to outdoor spaces or showers. Therefore, the Court found that the findings indicated the existence of structural and systemic problems, the resolution of which required comprehensive action by the State authorities (M. Coldefy, 2012, p. 5).

Another pilot ruling on conditions of detention concerns prisoners' right to vote. Other relevant standards and principles:

The Council of Europe's Committee of Ministers has adopted numerous recommendations concerning the situation of prisoners and, more generally, the execution of criminal sentences. Among the most significant are:

1) the Council of Europe Rules on Probation, which examine the concept of probation and the variety of probation measures available in the States Parties and include recommendations on the establishment and proper functioning of judicial supervision bodies; the European Rules on Juvenile Offenders Subject to Sanctions or Measures, which aim to protect the rights and safety of juvenile offenders and promote their well-being;
2) the Recommendation on the Use of Pre-Trial Detention, the Conditions of Detention and the Provision of Guarantees against Abuse, which examines issues arising from pre-trial detention;
3) the Recommendation on Foreign Nationals; the European Code of Ethics for Prison Service;
4) the Recommendation on European Rules on Community Sanctions and Measures; 5) Guidelines for prison and probation services on radicalization and violent extremism. All relevant recommendations are available on the Council of Europe website.

III. Rules for the execution of isolation sanctions

In 2014, there were over half a million prisoners in prisons across the EU, including both those serving a final sentence and those accused of a crime. Prison living conditions are regulated by numerous laws and guidelines: from constitutional provisions to national criminal and penitentiary laws, and principles of international law. Relevant human rights law includes, in particular, provisions protecting the right to personal liberty and explaining the grounds on which it may be restricted (e.g., Article 5 ECHR; Article 6 EU Charter of Fundamental Rights) and provisions prohibiting torture and other forms of inhuman and degrading treatment or punishment (Article 3 ECHR; Article 4 EU Charter). These principles, as interpreted by the relevant courts, explain the grounds on which deprivation of liberty may be based and the standards that conditions of detention must meet. The European Court of Human Rights (ECtHR) has ruled in numerous cases that poor detention conditions may constitute a violation of Article 10 of the Charter. 3 ECHR (B. Stańdo-Kawecka, 1998, pp. 143–163).

Both fundamental rights standards and widely accepted principles of criminal justice lead to the conclusion that imprisonment should only be used as a last resort, in response to serious crimes (since it entails the deprivation of the fundamental right to liberty), and especially when it involves pretrial detention (S. Walczak, 1972, pp. 107–115). Pretrial detention following a conviction is generally accepted to serve the social reintegration of a convicted person, thus helping to prevent reoffending. Pretrial detention, on the other hand, should only be used exceptionally, with full respect for the right to be presumed innocent until proven guilty (Article 48 of the EU Charter; Article 6 ECHR). However, it is still largely imposed in the Member States, with over 20% of the total prison population in 2014 consisting of persons held in pre-trial detention. (Convention for the Protection of Human Rights and Fundamental Freedoms, 1950).

While prison conditions are primarily the responsibility of Member States, the European Union also has reasons to address them, as explained by the European Commission in its 2011 Green Paper, the 2010 Stockholm Programme, and numerous European Parliament resolutions. In order to promote mutual trust, judicial cooperation, and the proper functioning of mutual recognition instruments in the area of criminal law (Article 82 TFEU), it is essential to ensure satisfactory detention conditions in all Member States. As the Commission and Parliament have clearly stated, and as explored in several recent studies, without mutual trust in the area of detention, the EU's mutual recognition instruments related to imprisonment will not function properly. In particular, national prison conditions may affect the application of the Framework Decisions on the European Arrest Warrant (EAW); on the Transfer of Prisoners; on the Mutual Recognition of Probation Orders and Alternative Sanctions; and on the European Supervision Order. If prison conditions are deemed inhuman or degrading, arrest warrants and transfers of prisoners to a Member State may not be executed, as this may constitute a violation of the ECHR and the EU Charter (Charter of Fundamental Rights of the European Union, 2000).

IV. Alternative ways of executing isolation sanctions

The use of non-custodial alternatives to imprisonment is important both as a means of reducing prison overcrowding and as a tool to facilitate the social reintegration of convicted individuals, thus reducing recidivism.

However, research appears to indicate that such positive effects only occur when the use of alternatives to detention is part of a broader strategy of reforming the criminal justice system, including decriminalization – the mere introduction of alternatives can actually have the opposite effect. An alternative to pre-trial detention can be prescribed by law as a reference punishment for an offense, as an alternative to imprisonment, which the judge can impose at their discretion, or as a substitute for imprisonment. Alternatives are considered particularly appropriate for certain groups of detainees for whom imprisonment is considered particularly harmful, including children, drug users, the mentally ill, and women (G.B. Szczygieł, 2010, pp. 206–209).

Recommendations have been developed for the initial introduction of alternatives. For them to function properly, social support is essential, for example, by emphasizing their reduced costs and rehabilitative effect compared to imprisonment. Furthermore, they must be appropriately designed and targeted; the judiciary must be fully involved in their design and implementation, and their implementation must be ensured by establishing an appropriate oversight infrastructure.

A recent FRA study on criminal detention and alternative measures examined the alternative measures currently available in EU Member States, both to pre-trial and post-trial detention. Commonly used measures include movement restrictions, social benefits, and communication restrictions or removal orders. The European Prison Observatory also published a study examining existing alternatives to prison and best practices related to their implementation in eight EU Member States. The main finding of the study is that the use of social sanctions is increasing, but these sanctions are less focused on rehabilitation and individual support, and are focused on providing greater control (A. Maculan, D. Ronco, and F. Vianello, 2014). The identified good practices include:

1) diverting individuals with mental health or substance abuse problems from prison (for example, by replacing detention for certain behaviors with therapeutic treatment or deferring sentencing to allow for treatment);
2) extended probation,
3) broader reforms aimed at decriminalizing or reducing sentences for certain behaviors.

Regarding pre-trial detention and its alternatives, Fair Trials International recently conducted a study to examine this issue in member states. Although the findings are concerning, as the organization concludes that prison practice in many member states across Europe clearly favors imprisonment, it also highlights several good practices in some countries, including cell phone monitoring or the regular provision of independent reports confirming that pre-trial detention is not warranted. Specific good practices were analyzed in ten country reports included in the study.

V. CONCLUSIONS

Another study conducted by the European Prison Observatory (EOW) examined the actual use of alternatives to detention and their impact on reducing prison populations. The study considered the Council of Europe Prison Principles and analyzed national practices in light of these principles. The EOW concluded that, with some notable exceptions, there is no clear link between the increasing use of alternatives to imprisonment and a reduction in prison populations. However, although based on limited data for only two Member States (Italy and Latvia), the study also indicates a reduced recidivism rate among those subjected to alternative sanctions compared to those sentenced to full prison sentences. This finding indicates the positive impact of alternatives on reducing prison overcrowding by reducing the negative impact of imprisonment.

Empirical studies also highlight the importance of interventions aimed at helping prisoners find employment and repair damaged family relationships. This is because improving social relationships is particularly important in reducing reoffending rates. This research seems to indicate a need to recalibrate the services offered during probation so that they are well adapted to help offenders reintegrate.

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