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Implementation of the Rights of Convicted Persons with Disabilities in Penal Institutions: Current Status and Challenges

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Abstract: Ensuring the rights of persons with disabilities is an essential element of contemporary legal development and reflects the overall level of respect for human dignity within the state. In the penitentiary context, this issue becomes even more significant, as inmates with disabilities represent one of the most vulnerable groups. The article examines the implementation of their rights in the Kazakh penitentiary system and analyzes national legislation and international standards, including the Convention on the Rights of Persons with Disabilities. Special attention is given to the availability and accessibility of medical care, social rehabilitation, a barrier-free environment, as well as opportunities for work and education. The study reviews domestic practices related to individualized support measures, probation and parole for inmates with disabilities, and examples of adapted infrastructure and equipment. The analysis reveals persistent systemic barriers, including physical obstacles, limited access to medical and rehabilitation services, insufficient regulation of staff responsibilities when assisting inmates with reduced mobility, and weak interagency coordination. A comparative assessment of foreign experience, particularly Japanese reforms, highlights additional areas for improvement. The article emphasizes the need for an integrated approach that includes enhancing the regulatory framework, developing adaptive infrastructure, formalizing care standards, and advancing staff training to ensure the protection of rights and the effective resocialization of inmates with disabilities.

Keywords: convicted persons, disability, execution of punishment, penitentiary system, accessible environment, resocialization, correctional institutions.

Жазасын өтеу жағдайында мүгедектігі бар сотталғандардың құқықтарын жүзеге асыру: қазіргі жағдайы және мәселелері

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Анната: Мүгедектігі бар адамдардың құқықтарын қорғау – қазіргі заманғы құқықтық дамудың маңызды құрамдас бөлігі және мемлекетте адамның қадір-қасиетіне деген құрмет деңгейін көрсететін негізгі өлшемдердің бірі. Осыған байланысты мүгедектігі бар сотталғандардың жағдайын зерттеу ерекше мәнге ие, себебі бұл санаттағы адамдар жазаны орындау жағдайында ең осал топтардың қатарына жатады. Мақалада олардың құқықтарын Қазақстанның пенитенциарлық жүйесінде іске асыру ерекшеліктері қарастырылып, қолданыстағы ұлттық заңнама мен халықаралық стандарттар, соның ішінде Мүгедек адамдардың құқықтары туралы Конвенция талданады. Медициналық көмектің қолжетімділігі, әлеуметтік қайта бейімдеу шараларының жүзеге асырылуы, кедергісіз ортаның қалыптасуы, сондай-ақ еңбек ету және білім алу мүмкіндіктерінің берілуі негізгі талдау нысаны ретінде көрсетілген. Қазақстанның тәжірибеде мүгедектігі бар адамдарға арналған жеке қолдау тетіктері, шартты түрде мерзімінен бұрын босату тәжірибесі, арнайы бейімделген орын-жайлар мен техникалық құралдарды ұйымдастыру мәселелері зерттеледі. Сонымен қатар жазасын өтеушілердің бейімделуіне әсер ететін жүйелі қызындықтар анықталды. Олардың қатарында инфрақұрылымдық кедергілер, медициналық және оңалту қызметтерінің жеткіліксіздігі, қозғалысы шектеулі тұлғаларға құтім көрсетуге жауапты персонал міндеттерінің нақты реттелмеуі, сондай-ақ мемлекеттік органдар арасындағы үйлесімділіктің әлсіздігі бар. Шетелдік тәжірибені, оның ішінде Жапониядағы реформаларды

салыстыру үлттық жүйені жетілдірудің жаңа бағыттарын айқындауға мүмкіндік береді. Зерттеу нәтижелері құқықтық реттеуді жаңғырту, инфрақұрылымды арнайы талаптарға бейімдеу және персонал даярлығын арттыруды қамтитын кешенді тәсілдің маңыздылығын көрсетті.

Түйін сөздер: сотталғандар, мүгедектік, жазаны орындау, пенитенциарлық жүйе, қолжетімді орта, әлеуметтендіру, түзеу мекемелері.

Реализация прав осужденных с инвалидностью в условиях исполнения наказания: современное состояние и проблемы

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Аннотация: Защита прав лиц с инвалидностью является важным элементом современного правового развития и отражает общий уровень уважения к человеческому достоинству в государстве. В этой связи особое значение приобретает изучение положения осужденных с инвалидностью, поскольку эта категория лиц относится к наиболее уязвимым в условиях исполнения наказания. В статье рассматриваются особенности реализации их прав в казахстанской пенитенциарной системе, анализируются действующее законодательство и международные стандарты, включая Конвенцию о правах инвалидов. Особое внимание уделено вопросам доступности медицинской помощи, социальной реабилитации, созданию безбарьерной среды, а также обеспечению условий для трудовой и образовательной деятельности. На основе примеров отечественной практики рассмотрены меры индивидуальной поддержки, случаи условно-досрочного освобождения, организация специализированных помещений и адаптированного оборудования для лиц с ограниченными возможностями. Также выявлены системные барьеры, препятствующие полноценной адаптации осужденных: физические препятствия, ограниченный доступ к медицинским и реабилитационным услугам,

недостаточная регламентация обязанностей персонала по уходу за маломобильными заключенными и слабая ведомственная координация. Сравнительный анализ зарубежного опыта, прежде всего реформ в Японии, позволяет обозначить дополнительные направления развития. Статья подчеркивает необходимость комплексного подхода, включающего совершенствование нормативной базы, развитие адаптированной инфраструктуры, формализацию стандартов ухода и повышение квалификации персонала для обеспечения прав и успешной ресоциализации осужденных с инвалидностью.

Ключевые слова: осужденные, инвалидность, исполнение наказания, пенитенциарная система, доступная среда, ресоциализация, исправительные учреждения.

Introduction.

In the modern legal space of the Republic of Kazakhstan, safeguarding the rights of persons with disabilities is a priority area of state policy. The Constitution of the Republic of Kazakhstan enshrines the equality of all persons before the law, the inadmissibility of discrimination and the inviolability of human dignity, which serves as the basis for ensuring the rights of convicted persons with disabilities [1]. International standards, including the Convention on the Rights of Persons with Disabilities, ratified by the Law of the Republic of Kazakhstan dated February 20, 2015 [2], define the obligations of the state to create equal conditions for persons with physical, mental, intellectual and sensory impairments. According to Article 1 of the Social Code of the Republic of Kazakhstan, disability is understood as a long-term impairment of body functions, which causes restrictions in the daily activities of a person. [3]. These principles create the basis for the application of similar approaches in correctional institutions, ensuring the rights of inmates with disabilities, including access to medical care, social rehabilitation, and a barrier-free environment.

According to the definition of the World Program of Action concerning Disabled Persons, disability is any limitation or absence (as a result of a defect) of the ability to carry out a particular activity in a way or within such a framework that is considered normal for a person [4], [5, p. 26],

The study of the situation of convicted persons with disabilities in the penal system is particularly important. Such persons face many barriers – medical, physical, psychological and legal – which make it difficult for them to return to normal life. They require constant support in the physical, medical, psychological, legal and educational spheres. The creation of an effective mechanism for protecting the rights of convicts with disabilities and providing them with special conditions of detention requires a comprehensive approach. Consideration must be given to their physical and mental health, access to health care, safety and accessibility of the environment, as well as respect for legal safeguards against discrimination. Particular attention should be paid to the organization of labor, educational and social activities within correctional

institutions and to the identification of systemic obstacles that impede the full participation of these persons in the life of the institution.

The relevance of the study is justified by the fact that ensuring the full accessibility of the environment for convicts with disabilities remains one of the most problematic areas of the penitentiary system. Unresolved issues lead to serious consequences, which is emphasized in scientific research. For example, Y.M. Zaborovskaya rightly notes that the lack of special conditions in penal institutions reduces the social and labor activity of this category of inmates, negatively affects the level of their education, professional development and overall quality of life in isolation. Limited mobility and lack of necessary living conditions make it difficult for them to carry out their daily activities and prevent them from integrating into the life of the institution. The lack of accessibility of the environment, in turn, complicates resocialization after release and reduces the chances of a successful return to society. The attitude of others remains an important aspect: inattention to their needs on the part of staff and other prisoners increases social tension and exerts additional psychological pressure on people with disabilities. These circumstances indicate the need for systematic measures to create adapted conditions, develop comprehensive support and introduce specialized programs for convicts with disabilities [6].

According to Konvisar A.A. (2020), convicts with disabilities in Kazakhstan make up less than 5% of the total number of prisoners [7, p. 160]. However, this small number does not reduce the scale of the problem: a significant proportion of disabilities arise immediately after conviction or in the process of serving a sentence due to injuries, chronic diseases or poor living conditions. At the same time, only some institutions are equipped with affordable infrastructure, and special rehabilitation programs are limited.

International context adds relevance to the problem. In many countries, reforms are underway to create an accessible environment in places of detention. For example, M. Shirasawa, Associate Professor at the Center for Higher Education Research for Persons with Disabilities at the University of Tsukuba points out the concept of recognition of "denial of reasonable accommodation" as discrimination. "Reasonable accommodation" refers to modifications and adjustments to ensure that persons with disabilities are able to participate in an activity or receive services that they would not otherwise receive because of their disability. Article 2 of the Convention states: 'Reasonable accommodation' means making necessary and appropriate modifications and adjustments, where necessary in a particular case, without imposing a disproportionate or unjustified burden, in order to ensure the realization or enjoyment by persons with disabilities on an equal basis with others of all human rights and fundamental freedoms." Reasonable accommodations include measures such as the availability of sign language interpreters at community events, captions in television and movies, and the construction of wheelchair ramps in shopping malls and restaurants. Refusal to provide such services will be considered discrimination. If we take a closer look at our daily lives, we can find many places where people with disabilities are excluded from participation on an equal basis with everyone else. In

Japan, the reform of the conditions of detention of disabled people was initiated by the analysis of cases of bullying and excessive punishment, which determined the need to provide convicted persons with special needs with separate adapted institutions [8]. International experience demonstrates that the successful integration of persons with disabilities into correctional processes requires an interdepartmental approach that includes medical, social and educational resources.

Materials and methods.

The study uses a combination of methods: formal legal analysis, comparative law, content analysis of literature, study of international documents (Convention on the Rights of Persons with Disabilities, Standard Minimum Rules for the Treatment of Prisoners – Nelson Mandela Rules [9]), as well as analysis of statistical data and law enforcement practices.

The purpose of the study is to review the legal support and actual conditions of detention of convicts with disabilities in the penitentiary system of the Republic of Kazakhstan and to offer recommendations for improving the regulatory framework and implementation practices.

Results and Discussion.

Effective re-socialization of convicts with disabilities largely depends on the conditions of their detention during the execution of their sentence. The legal, social, medical and psychological measures implemented in the institutions of the penal correction system form the prerequisites for the successful adaptation of such persons after release.

According to materials published on the official website of the Office of the Commissioner for Human Rights of the Republic of Kazakhstan, one of the priorities of the department is to monitor the observance of the rights of convicts and prevent cases of torture and ill-treatment. As part of this effort, regular visits are made to correctional facilities throughout the country. This year, seven correctional facilities in six regions were visited, with special attention paid to the conditions of detention of persons with disabilities. At the time of publication, there are 763 people with additional needs in the institutions of the penitentiary system, of which 732 are men and 31 are women. It is noted that the conditions of detention in many institutions do not yet fully comply with minimum international standards. Among the proposed measures is the creation of modern correctional facilities of mixed security, which will take into account the needs of various categories of convicts, including persons with disabilities, providing them with appropriate conditions of detention, an accessible environment, medical care and means of rehabilitation. This contributes to the further resocialization of convicts after release [10].

S. P. Shcherba rightly points to the presence of physical barriers in the institutions of the penitentiary system, emphasizing that "doorways and approaches to buildings are often not adapted for wheelchairs" [11, p. 167]. This conclusion shows that accessibility problems remain significant despite the ongoing modernization. In

this regard, it is important to analyze the measures that are already provided for in the national legislation and practice of the penal correction system in relation to convicts with disabilities.

As noted in one of the analytical materials, the Kazakh penitentiary system provides special support measures for convicts with disabilities. The legal regulation is supplemented by norms on medical support and conditions of detention, including Order No 530 on tuberculosis care, a list of diseases for exemption from punishment and the rules for medical examination. Even though the basic conditions for serving a sentence are general, an expanded list of housing benefits has been established for persons with disabilities, enshrined in the Decree of the Government of the Republic of Kazakhstan No1255. Adapted environments have been created in 58 institutions: with specially equipped bathrooms, ramps, handrails, specialized rooms and dormitories. Convicts are provided with means of rehabilitation – wheelchairs, canes, crutches, orthopedic shoes and prostheses. Medical commissions confirm the grounds for the early release of disabled persons of category I: this year alone, two convicts took advantage of this right. Often, disability is detected after placement in the institution. For example, in 2020, 23 people were recognized as disabled for the first time, and 47 were re-examined. There is also a practice of mutual assistance in institutions: convicts help disabled people in everyday life, which is taken into account as an incentive when considering the issue of parole. For those who have completely lost the ability to self-care, assistant caretakers are appointed, whose work is compensated. The Penal Correction System of the Ministry of Internal Affairs of the Republic of Kazakhstan has developed a project of a new barrier-free correctional institution: it provides for ramps, handrails and specialized premises, which should make up at least 2% of the living space. Land plots have already been allocated for the construction of such facilities in several regions, but the issue of financing remains open [12].

Moving from normative provisions to real practice, it is important to note that individual cases demonstrate the effectiveness of individual rehabilitation programs. Thus, the example of conditional early release of a convict with a disability of category I in the East Kazakhstan region confirms the importance of a personalized approach. The convict was released by a court decision after serving more than half of the sentence. During his detention, he was provided with medical support and rehabilitation facilities, including a wheelchair, according to the individual rehabilitation program. Employees of the institution provided an explanation of his rights and obligations and escorted him to his place of detention. This case illustrates the real application of the rights of convicts with disabilities to early release and shows that individual support measures contribute to successful social adaptation after leaving a correctional institution [13].

At the same time, some practical cases show that the implementation of such measures is possible within the correctional institutions. In one of the correctional institutions of the Almaty region of the Republic of Kazakhstan, there is a practice of providing support to convicts with disabilities of the I category. Thus, a 62-year-old

inmate in a wheelchair is kept under constant supervision, and another convict is assigned to his care, which provides regular assistance and accompaniment. This special assistance is compensated by the social security authorities. The administration of the institution notes that care for prisoners with disabilities includes not only the creation of living conditions, but also the organization of comprehensive support with the participation of social services and local authorities. This practice is aimed at ensuring that convicts are not left alone with their challenges. It also demonstrates attention to human needs in the process of execution of punishment [14].

Nevertheless, the available data show that the described measures have not yet become widespread, and in general the situation is characterized by a number of unresolved organizational and infrastructural problems. An analysis of the available data shows that convicts with disabilities face numerous difficulties in correctional institutions in Kazakhstan: limited mobility, difficult access to sanitary facilities, lack of adapted infrastructure and limited access to specialized medical care. In some cases, the care of seriously ill or bedridden convicts is carried out by other prisoners, often on a voluntary basis. Since the number of disabled persons in penal correction institutions is small, separate premises or conditions are not always created for them, considering the specifics of their condition. At the same time, some correctional institutions are trying to compensate for the existing restrictions: they purchase wheelchairs, install ramps, provide supervision for medical workers and prescribe dietary food. However, the current legislation still does not contain detailed mechanisms for the implementation of the rights of convicts with disabilities: it is not determined who exactly is obliged to provide their support, and there are no legal conditions to stimulate such activities. Expert assessments emphasize the need for regulatory consolidation of support procedures, the creation of an adapted environment and the provision of qualified support for this category of convicts. In general, the lack of clear legal regulation leads to the transfer of part of the care functions to other prisoners. The formation of a normatively fixed mechanism of individual support in the penal correction system could significantly increase the level of protection of the rights of convicts with disabilities and ensure the proper quality of care [15].

As Kim correctly notes, despite their disability, convicts remain subjects of criminal liability and must be punished for the crimes committed. This highlights the need to strike a balance between the principles of humanity and the requirements of the law, while developing measures that both protect human rights and ensure the fair execution of punishment [15].

An analysis of sources shows that in Kazakhstani correctional institutions, convicts with severe disabilities face a lack of adapted conditions, specialized infrastructure and qualified support. As a result, care is often delegated to other prisoners. The introduction of a statutory mechanism for individual support or the appointment of a specific assistant could increase the effectiveness of the protection of the rights of this category of convicts, ensure proper care and create a basis for the use of mitigating measures. In this context, the definition of an "individual assistant" enshrined in Article 1 of the Social Code of the Republic of Kazakhstan deserves

attention: this is a person who provides services to accompany a person with a disability of the I category, who experiences difficulties in movement, as well as assisting in visiting facilities. Although the current legislation does not yet provide for the direct extension of the mechanism of individual assistants to penitentiary institutions, the availability of such a social service in national law makes it possible to discuss the possibility of normative consolidation and financing of similar functions within correctional institutions. This is especially important in cases where convicts perform the role of accompanying persons.

The practical significance of such a measure is confirmed by specific cases: for example, in the West Kazakhstan region, a convict with a disability of category III was initially housed on the fourth floor of the building without an elevator, which created significant difficulties in his movement. At the request of the Office of the Commissioner for Human Rights, the administration moved him to the first floor. This example emphasizes the need to comply with the accessibility standards provided for by the standard draft of the penal correction system, as well as Article 7 of the Law "On Social Protection of Persons with Disabilities" and the provisions of Articles 14 and 17 of the Constitution of the Republic of Kazakhstan on the inviolability of dignity [16].

As noted by the scholar K. Rakhimberdin, the rights of convicts in the Republic of Kazakhstan, including the right to life, health care, education, work, maintenance of social ties and access to justice, are preserved for all categories of prisoners and are limited only in terms of freedom. This provision equally applies to vulnerable groups – women, minors and convicts with disabilities. At the same time, in relation to persons with disabilities, it is necessary to consider their specific needs, which involves the creation of a barrier-free environment, access to specialized medical care and the provision of social support. Thus, the general principles of observance of the rights of convicts, which K. Rakhimberdin talks about, form the legal basis for the development of additional guarantees aimed at the protection and re-socialization of convicts with disabilities [17]. However, the implementation of these principles requires considering the real penitentiary situation and the specifics of the category of disabled convicts themselves.

A.A. Konvisar emphasizes that most persons with disabilities are recognized as such even before detention, but some receive disability status while serving their sentence for various reasons – from congenital and early diseases to injuries, including those received in the institutions of the Penal Correction System of the Republic of Kazakhstan. Disabled convicts may have various types of impairments (vision, hearing, amputations, chronic diseases) and are sometimes grouped together in correctional facilities. They are provided with medical care in special hospitals and medical wards, which require additional conditions of detention and significant resources. When working with the elderly and disabled, it is important to consider a variety of factors such as their health conditions, professional skills, mental state and social ties. The main task is to maintain activity, use positive life experience and minimize the impact of age and functional limitations. Labor activities are voluntary

for men over 60 years old, women over 55 years old and disabled people of categories I-II, taking into account individual capabilities and benefits provided for by law. Attention is also given to leisure activities and preparation for release: paperwork, filing for pensions, diagnosing of diseases, housing assistance. The infirm and disabled who are unable to get home on their own are accompanied by medical workers. However, in practice, many are faced with the fact that upon their release their government provided housing is occupied by other persons, which indicates gaps in legislation and insufficient effectiveness of social protection mechanisms [7, p. 158].

Comparing the situation in Kazakhstan with foreign practice, it is important to note that reforming the conditions of detention of convicts with disabilities is a global trend. For example, Japan is also currently undergoing large-scale reforms aimed at protecting the rights of prisoners with disabilities. According to Yuko Shiota, a representative of the Center for Prisoners' Rights, people with disabilities often face harassment and punishment from other convicts due to the slow pace of movement and difficulties in completing tasks. In this regard, Japanese experts believe that it is justified to single out such persons as a separate category to prevent discrimination. The Ministry of Justice of Japan, represented by Minister Keisuke Suzuki, emphasizes that the new policy is focused on reducing recidivism, and preparations for the implementation of reforms are already underway in all correctional institutions of the country [18].

The analysis shows that, despite the existence of legislative guarantees and positive changes in the penitentiary system of the Republic of Kazakhstan, the rights of convicts with disabilities are not fully realized. The main problems are related to the insufficient regulatory framework, the lack of coordination of departmental acts, poor coordination between the authorities and the lack of professional training of personnel. Limitations are manifested in access to medical care, participation in educational and labor programs, lack of an adapted environment, social isolation and lack of psychological and social programs, as well as insufficient attention from staff.

Addressing these challenges requires a comprehensive approach that includes infrastructure upgrades, regulatory improvements, social and health support programs, employee development, and monitoring. Only the systematic implementation of these measures will ensure the rights of convicts with disabilities, increase their level of social integration and bring national practice closer to international standards in the field of human rights [19, p.25].

The study of this problem indicates the need for a comprehensive reform aimed at improving the legal status of convicts with disabilities. Despite the existing regulatory framework, its practical implementation in the institutions of the penal correction system remains incomplete: there are still restrictions in terms of access to medical, educational and social services, there is no adapted environment, and the staff is insufficiently trained to work with this category of convicts. To eliminate these problems, it is necessary to adopt special legal regulations, modernize infrastructure, introduce comprehensive programs of medical and social support, and improve the professional training of employees. Only the comprehensive application of these

measures will make it possible to create conditions that meet international standards and principles of humanism, improve respect for human rights and bring the national practice of the penal correction system closer to international requirements.

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