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## POLICIES AND PRACTICES THAT INCREASE THE DEGREE OF RISK TO CONVICTED WOMEN AND CAUSE PHYSICAL OR MORAL SUFFERING

**ABSTRACT.** Convicted women are a special category of persons detained in places of deprivation of Liberty. They have specific social, psychological, biological and other characteristics. This requires a special approach to the study of the personality of the convicted woman, as well as to explain their behavior in a different way than with men. In this regard, it is necessary to have a full understanding of the information of prisoners when personalizing the execution of punishment in relation to women, which at first glance is inadmissible not to take into account insignificant features. When examining the personality of a woman, various methods should be used to determine these or other qualities. At the same time, there are some signs or regularities that arise from a general idea of the conviction. Of course, there are exceptions to each rule, but in any case it is possible to create a certain portrait of a condemned woman. These characteristics should be taken into account when personalizing the execution of the sentence in the form of deprivation of Liberty. However, Penitentiary practice shows that the opposite situation is observed in places of deprivation of Liberty: adult women conscientiously adhere to the regime of punishment, do not initiate conflict situations and, unlike men, do not try to be a leader among prisoners. This applies especially to older women. Therefore, when personalizing the execution of the sentence, it is necessary to take into account their potential positive side menu and stimulate as much as possible. But in correctional colonies, mature and older women are much less likely than young people. The analysis of the experiment shows that the violation of the established rules of punishment accounts for a considerable amount of young-aged convicts. This fact has long been known and has received a fairly justified explanation. Young women are at the initial stage of independent life, experiencing a complex process of penitentiary worship, as a result of which they are characterized by selfishness, indifference to people and society, indifferent attitude to the law and the punishment regime.

**KEYWORDS:** deprivation of Liberty; convicted women; penitentiary practice; violence; gender factors; the Committee on the Prevention of torture; monitoring teams.

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Trends in the state and society are aimed at increasing the use of alternative forms of punishment for the humanization of the criminal punishment system, the essence of its implementation and deprivation of Liberty. Unfortunately, failure to comply with the provisions of the criminal law and the practice of exercising the rights and legitimate interests of women deprived of Liberty causes serious difficulties in the process of correctional labor, which is especially evident as a result of the influence of this type of punishment on convicted women. The problem of the legal status of women in places of deprivation of Liberty is not limited only to the theoretical legality of the existence of their characteristics and the need for further improvement of legislation in this area.

Violation of the rights and legitimate interests of women sentenced in places of deprivation of Liberty indicates the need to constantly develop, improve and strengthen their legal guarantees, which is one of the main types of these rights and guarantees-control measures for enterprises and bodies implementing the punishment. These cases indicate a timely study of the problem currently being faced and confirm the urgency of the chosen topic. At the same time, it is clear that the norms of the criminal-enforcement legislation, which are in force today, regulate the legal situation of women in places of deprivation of liberty, should be further improved. It should be noted that the need for the existence of the category of legal status allows not only to more fully emphasize the status of persons deprived of Liberty in the system of social relations and relations, but also to monitor the dynamics of development of these rights and duties of persons detained in correctional institutions, especially women sentenced to imprisonment.

The article's objective is based on a comprehensive analysis of the problems of normative regulation of the legal status of women deprived of Liberty, its independent development of a number of important legislative aspects, determination of the peculiarities of the implementation of rights and freedoms and duties.

After the arrest, the conviction was immediately recognized as one of the main defensive measures against torture and cruel treatment for a long time, ensuring contact with the family and the lawyer. Each convict has the right to inform his family or other close person about the place of his arrest and detention immediately after the arrest, either in person or through the head of the prison or through a police officer. International experience shows that women are especially vulnerable when they are placed in a prison.

Many women who are faced with the criminal justice system are either illiterate, or have received a low level of education, often do not know their rights. In many countries, there is a social stigma associated with female prisoners, which further increases their suffering. Therefore, special attention should be paid to the procedures for admission of women to penitentiary

institutions and the level of assistance provided to women at that time should be assessed impartially.

In this case, newly arrived convicts should be provided with the opportunity to contact their relatives, access to legal assistance; internal discipline rules, the regime of execution of punishment, information on where to apply for help if necessary should be delivered in the language they understand; and for foreign citizens, access to consular representatives should be provided. The perception of conviction is when the assessment of the risk and needs of conviction is carried out through individual assessment. During the admission of female prisoners, attention should also be paid to the implementation of risk assessment, taking into account gender specificity, in order to meet the specific needs of women during their imprisonment and thus reduce the negative impact of the arrest on their mental health and reintegration into society.

After being placed in a prison, the convicted medical examination is an integral part of the policy aimed at determining the facts of torture and cruel treatment by representatives of law enforcement agencies and other structures to bring the guilty persons to responsibility and provide necessary assistance and support to the victims of such acts. If complaints about sexual harassment and other forms of violence are not resolved, it is more likely that violence in places of deprivation of Liberty will remain hidden from government agencies, which leads to the fact that women are more vulnerable to such acts of violence.

It is necessary to monitor whether the admission female convicted medical examination involves a thorough examination to determine the cases of sexual violence and other forms of violence that a woman may be exposed to before entering the prison. In particular, if a woman wants to undergo a medical examination by a convicted female doctor, it is necessary to check whether there are female doctors in the state of the enterprise who will conduct these examinations. If this is not possible and contrary to the wishes of the female convict, the presence of the female employee during the examination should be checked if the medical examination was conducted by a male doctor.

It is important to conduct a medical examination, including female prisoners, to identify the presence of diseases and to prepare treatment courses based on each woman's specific medical needs in order to protect and support women's physical and mental health during detention. When prisoners enter the prison, the policy and practice of medical examinations should be taken into account and whether they take into account the specific health needs of women, and if necessary, recommendations should be made to improve the quality and range of such medical examinations.

After entering the prison, the female prisoner medical examination is carried out to determine the woman's reproductive health history, the presence of sexually transmitted diseases and the cases of sexual violence that the woman was exposed to before entering the prison, and in no case should be confused

with the virginity tests of women conducted for completely different purposes in some countries. Virginity tests are a form of discrimination against women and are perceived as a form of violence against female prisoners<sup>1</sup>. This practice should be strictly prohibited.

In countries where such experience exists, monitoring organizations should include a review of legislation and practice on virginity verification in their preventive activities and make appropriate recommendations to prohibit this practice. In December 2011, the Cairo court issued a decision prohibiting the conduct of virginity tests for women detained in the country's military prisons. The decision was made on the basis of the case of the protester who was arrested during the protest action held at the perversion Square. According to human rights organizations, mandatory virginity checks were used by the Egyptian army against female prisoners as punishment<sup>2</sup>.

In the minimum standard rules of treatment with prisoners, the need to keep men and women in separate institutions, if possible, or at least in completely separate buildings to protect women from sexual harassment and violence is clearly indicated. In order to protect girl prisoners from sexual violence and other forms of violence, adult female sex prisoners should be kept separate from adult women<sup>3</sup>. Some countries have begun to apply the practice of allowing limited contact between male and female prisoners, based on their careful selection of prisoners and under the strict supervision of prison officers.

This practice can help bring prison conditions closer to normal living conditions and allow female prisoners to choose a wider prison program<sup>4</sup>. However, such measures can only be carried out with the consent of the female convict and only in cases where the prison director can properly select the convicts and provide the necessary control and guarantee the safety of the female convict.

In San Pedro-Sula City prison, a small number of convicted women are not kept apart from men. There is a slight connection between men and women, and men are in female chambers. Women do not want to be placed separately from male prisoners, as they earn by selling them food while visiting Men<sup>5</sup>. An employee of the office noted that women are not subjected to sexual harassment by men, since the general coordinator obeys the rules. But this explanation is doubtful.

<sup>1</sup> С Бабурин, А Чирков, 'Системогенез стрессовой адаптации осужденных' (2018) 1 Психопедагогика в правоохранительных органах 72.

<sup>2</sup> W Sack, J Seidler, 'Should children visit their parents in prison?' [1978] 2 (3) Law and Human Behaviour.

<sup>3</sup> A Aliyev, E Aliyev, A Maharramov, A Mammadov, F Guseynova, European law. The textbook (Sun-B 2016) 713.

<sup>4</sup> Минимальные стандартные правила обращения с заключенными, приняты на первом Конгрессе ООН по предупреждению преступности и обращению с правонарушителями 30 августа 1955 г. Международная защита прав и свобод человека. Сборник документов (Юрид лит 1990) 301–10.

<sup>5</sup> Department of Health. Our healthier nation <[www.archive.officialdocuments.co.uk/document/doh/ohnation/title.htm](http://www.archive.officialdocuments.co.uk/document/doh/ohnation/title.htm)> (accessed: 23.10.2021).

Some female prisoners were given clear instructions on how to answer questions, and it seemed obvious that they did not want to discuss certain topics, she said the female corps was separated from the male corps: the road to the female corps passed through a locked metal door<sup>6</sup>. This door was protected by a green shaped male conviction. In practice, members of the delegation observed that this prison guard, along with other men (including the brigade), entered the women's Corps several times without any warning. Thus, participants in monitoring groups should check not only whether the female corps is separated from the male corps, but whether this separation is observed in practice. Instead of limiting the contacts of prison officers between men and women, on the contrary, it is necessary to assess the possibility that this contact will occur, and even facilitate it.

Female prisoners are at risk of sexual violence if male employees are involved in controlling women, especially if male employees have direct contact with female prisoners when performing their duties<sup>7</sup>. Such actions include, at best, following them when women are in their corps, bath or toilet, going into women's rooms when women are in Kayin and, at worst, demanding or regular rape instead of eating from female prisoners. Female divisions should be managed by a responsible female employee officer, and only female prison officers should be responsible for overseeing women in prison, male officers should not be allowed into female prisons at all.

However, sometimes due to the lack of female employees, this rule is not applicable in all countries, as it is considered favorable in some cases for the purpose of ensuring equal employment opportunities and in other cases for helping to bring the prison conditions of mixed prison as close as possible to normal life<sup>8</sup>. In a small number of countries, this approach had some implications in terms of "breaking" conditions in women's prisons.

However, the success of this approach depends more on having adequate staff with adequate training and training, strict adherence to safety measures, efficient staffing and independent research to file and resolve complaints.

In societies where the norm does not meet the desired criteria (i.e. where a culture of discrimination and gender-based violence reigns), human rights violations in prisons are widespread and limited funding and human resources do not allow prison staff to undergo adequate training, the risks associated with the above approach are extremely high and can have devastating consequences for prisoners. For example, cases of rape, including sexual violence committed by male employees, have been repeatedly documented in US prisons where mixed staff work.

<sup>6</sup> М Дебольский, И Матвеева, 'Суицидальное поведение осужденных, подозреваемых и обвиняемых в местах лишения свободы' (2013) 3 Психология и право.

<sup>7</sup> Вопросы охраны здоровья в исправительных учреждениях: Руководство ВОЗ по основным моментам охраны здоровья в местах лишения свободы (Европейское региональное бюро ВОЗ 2007) 19.

<sup>8</sup> Г Строева, 'Самоисправление осужденных' (2011) 4 Вектор науки ТГУ.

It should also be taken into account that female prisoners may be subjected to violence by female employees. Therefore, prisoners are needed only in prisons where they are controlled by female employees to protect women prisoners from violence. Monitoring teams should pay special attention to the training and preparation of all female prison staff, as well as the availability of independent and confidential information for filing and resolving convictions.

Women who complain of violence in prison should be evaluated whether they receive the necessary defense, support and psychological assistance, and their complaints should be investigated by independent bodies<sup>9</sup>.

The conduct of such research should include a review of prison laws and, where possible, practice.

The application of mechanical restriction means against convicts is a rather sensitive issue. The application of restriction means is perceived by all convicts as humiliation of dignity, and the unreasonable or excessive application of restriction means is a violation of the demand for respectful treatment to convicts.

In some countries, in contrast to the recommendations of doctors who oppose the use of condoms to women during childbirth, means of delivery to the hospital, gynecological examinations and restriction against pregnant women during childbirth are used. The Committee on the Prevention of torture noted that, the Committee on the Prevention of torture is faced with the fact that at certain times pregnant women are handcuffed or otherwise chained to beds (or other furniture) in women's diseases<sup>10</sup>. This is completely unacceptable and should undoubtedly be regarded as an inhuman or degrading treatment.

It is possible and necessary to find other ways to ensure compliance with safety requirements. Attention should be paid to the practice of introducing restrictive drugs against convicted women, especially before childbirth, during childbirth and immediately after childbirth, when the introduction of restrictive drugs against these female groups is strictly prohibited<sup>11</sup>.

In some countries, women are arrested for protection against gender-based violence. Such cases include women who are subjected to coercion and who, if they decide to testify, are at risk of holding a sofa by a person or his relatives, as well as women who violate strict cultural or religious rules, who may eventually become victims of "honor killings". In other countries, imprisonment can be used as a protection measure for victims of trafficking in human beings. In principle, the application of the prison sentence as a defensive

<sup>9</sup> Б Спасенников, А Смирнов, 'Исправление осужденных мужчин в процессе исполнения длительных сроков лишения свободы' (2009) 8 Вестник института: преступление, наказание, исправление.

<sup>10</sup> J Arditti, J Lambert-Shute, K Joest, 'Saturday Morning at the Jail: Implications of Incarceration for Families and Children' (2003) 5 Family Relations.

<sup>11</sup> *Embodiment of international conventions in national legislation as a participant of the Republic of Azerbaijan* (Suleymanova E ed, Eve 2003) 57.

measure is not the right solution in such cases, since this practice punishes the victim or potential victim and offers only a short-term solution to the complex problem, if there are no other measures.

In some countries, women are under long-term arrest for defensive purposes. In Jordan, women can be arrested up to 14 years because they are at risk of being victims of the “honour killings”<sup>12</sup>. The best option to ensure that these women are protected would be to place them in a shelter or a safe house, which is temporarily managed by independent organizations or social services, if they wanted to.

Unfortunately, the demand for such shelters surpasses the offer, as a result of which some women are temporarily placed in separate buildings of Prisons for protection<sup>13</sup>. In some countries, taking into account the need for the introduction of such protective measures and the additional risks posed by such measures for women, temporary measures related to the arrest of a woman for the purpose of protection should be applied only if necessary and at the request of the woman herself.

Such protective measures are not carried out contrary to the will of the woman herself. In the long term, States are responsible for the development and readiness of comprehensive legal, political and administrative measures to ensure the protection of women from violence and to prevent re-victimization, there should no longer be any need for extreme measures of protection such as arrest<sup>14</sup>. In countries where this practice exists, monitoring groups can play a leading role in identifying these women, especially those women who have been in prison for a long time, reviewing their circumstances and developing other measures to ensure their defence.

This may include establishing relationships with NGOs and women’s organizations that manage women’s shelters, developing recommendations to change concrete legislative acts that allow offenders to evade responsibility and, as a result, force their victims to seek protection<sup>15</sup>.

Girls are one of the most vulnerable groups of convicts by age, gender and number. Most prison systems in the world do not provide specific policies and programs to meet specific needs, including defense needs<sup>16</sup>. There have been serious cases of violence against prisoners by male employees of the mixed collective in the prisons of juvenile women, which underscore the sensitivity of the group of prisoners. Girls can also be bullied by adult female prisoners and female co-workers.

<sup>12</sup> Д Жуков, *Биологические основы поведения. Гуморальные механизмы: учебник* (Юридический центр Пресс 2004) 458.

<sup>13</sup> K Agayeva, *Ethics and Gender: an analysis of socio-moral behavior* (Legal literature 2007) 143–8.

<sup>14</sup> J Gunn, A Maden, M Swinton, *Treatment needs of prisoners with psychiatric disorders* (BMJ 1991) 337–40.

<sup>15</sup> L Birmingham, D Mason, D Grubin, *Prevalence of mental disorder in remand prisoners consecutive case study* (BMJ 1996) 312.

<sup>16</sup> И Осинский, Н Романова, Л Шиллер, *Женщина в тюрьме: научное издание* (ЧитГУ 2004) 121.

The director of prisons must take steps to meet the needs of the juvenile female prisoners<sup>17</sup>. Monitoring groups should assess whether special measures have been implemented to ensure that girls are protected from cruel treatment and torture.

These measures include: keeping girls in buildings completely separate from minor's places of detention and adult prisoners of both sexes; supervision of girls by specially selected female employees who have received the necessary training; ensuring adequate supervision by other inmates or co-workers to prevent violence against prisoners of this group; ensuring access to confidential and efficient complaints.

Conclusions. In many countries, victims of trafficking in persons are sentenced to imprisonment on charges of prostitution, illegal entry into the country, unauthorized residence in the country or work without a work permit.

This occurs in contravention of the requirements of international conventions in which states undertake to protect victims of trafficking in Persons and to prevent them from becoming victims again. These women are especially vulnerable in prison conditions because they have a past as a sex worker and as a result face biased approaches by other inmates and prison staff. Sex workers who are not victims of human trafficking are subjected to the same discrimination for the same reasons.

The sensitivity of victims of trafficking in human beings increases because they are citizens of a foreign country and in many cases they do not know the language of the country.

Lack of social contacts and inability to communicate with others contribute more to their isolation. As a result, it is more difficult for them to understand the rules and laws of both the official and the unwritten place of detention, which increases the risk of coercion and violence, including sexual violence of the convicted group<sup>18</sup>. Alternatives to arrest, including the provision of safe homes and other measures to victims or potential victims, especially children, are necessary.

In the event that victims of trafficking in persons or sex workers are detained for any reason, the supervisory authorities should take steps to ensure that they are protected from cruel treatment and torture, as well as from gender-based violence. Those who do not speak the most commonly used language at the place of detention should be provided with an interpreter and all information on the place of detention, rules of stay, rights and duties should be given to them in the language they know. talk. The same applies to the use of independent complaints.

<sup>17</sup> A Aliyev, *Human rights: textbook* (Nurlar 2019) 210–7.

<sup>18</sup> С Бабури, Э Зауторова, 'Работа пенитенциарного педагога-психолога с негативными эмоциональными состояниями осужденных в местах лишения свободы' [2016] 4 (67) Психопедагогика в правоохранительных органах.



The number of female prisoners with mental problems exceeds the number of male prisoners<sup>19</sup>. Domestic violence, physical and sexual violence, which the woman is exposed to, give an impetus to the development of such problems. Arrest leads to the emergence of new mental health problems and aggravation of existing problems, especially if the special needs of the female convict are not met and their relationship with the family is violated.

In addition, women with mental disorders are often kept in tougher conditions than necessary, as their special needs can be perceived as increased risk, and such consequences can further worsen their mental health situations. Women with mental or mental disorders are at increased risk of violence because they can not protect themselves, they do not understand that certain behavioral boundaries are violated, and complaints are not taken seriously.

Women in the psychiatric dispensary also face the same risks. The monitoring groups should check whether the provisions on female prisoners with mental health problems have been met and make sure that necessary support is provided to the prisoners of this category and that the employees are sensitive to their situation<sup>20</sup>.

This includes a comprehensive assessment of a woman's mental health and individual needs after inclusion, and an overview of psychiatric treatment and rehabilitation programs that take into account individual, gender factors and stress. Female prisoners with mental health problems should be kept under minimum strict conditions and in no case should be placed in isolation<sup>21</sup>.

When punishing women with mental health problems, alternative punishments that are not related to deprivation of liberty should be preferred, as far as possible to prevent the negative impact of prison on their psyche.

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ПОЛІТИКИ ТА ПРАКТИКИ, ЯКІ ПІДВИЩУЮТЬ СТУПІНЬ РИЗИКУ  
ДЛЯ ЗАСУДЖЕНИХ ЖІНОК І ЗАВДАЮТЬ ФІЗИЧНИХ  
АБО МОРАЛЬНИХ СТРАЖДАНЬ

АНОТАЦІЯ. Особливою категорією осіб, які утримуються у місцях позбавлення волі, є засуджені жінки. Вони мають специфічні соціальні, психологічні, біологічні та інші особливості. Це вимагає особливого підходу до вивчення особистості засудженої жінки, а також до пояснення її поведінки інакше, ніж у чоловіка. У зв'язку з цим при персоналізації виконання покарання щодо жінок необхідно мати повне розуміння інформації ув'язнених, що на перший погляд неприпустимо, не враховуючи незначні особливості. При обстеженні особистості жінки слід використовувати різні методи визначення тих чи інших якостей. Водночас є певні ознаки чи закономірності, які впливають із загального уявлення про засудження. Звичайно, із кожного правила є винятки, але в будь-якому випадку можна створити певний

портрет засудженої жінки. Ці характеристики слід враховувати при персоналізації виконання покарання у виді позбавлення волі. Проте практика виконання покарань свідчить, що в місцях позбавлення волі спостерігається протилежна ситуація: дорослі жінки сумлінно дотримуються режиму покарання, не ініціюють конфліктних ситуацій і, на відміну від чоловіків, не намагаються бути лідером серед ув'язнених. Особливо це стосується жінок старшого віку. Тому при персоналізації виконання вироку необхідно враховувати їх потенційні позитивні сторони та максимально стимулювати. Але у виправних колоніях зрілі та старші жінки потрапляють набагато рідше, ніж молоді. Аналіз експерименту показує, що на порушення встановлених правил покарання припадає значна кількість засуджених молодого віку. Цей факт давно відомий і отримав досить виправдане пояснення. Молоді жінки перебувають на початковому етапі самостійного життя, переживають складний процес пенітенціарного культу, внаслідок чого для них характерні егоїзм, байдужість до людей і суспільства, байдуже ставлення до закону та режиму покарання.

Ключові слова: позбавлення волі; засуджені жінки; пенітенціарна практика; насильство; гендерні фактори; Комітет із запобігання катуванням; моніторингові групи.