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BALANCING PRISONERS' INDIVIDUAL RIGHTS AND INSTITUTIONAL SECURITY: AN ANALYSIS IN THE CONTEXT OF FREEDOM OF EXPRESSION

Açar sözlər: ifadə azadlığı, məhbus hüquqları, institusional təhlükəsizlik, qanuni məqsəd, insan hüquqları.

Ключевые слова: свобода выражения мнений, права заключенных, институциональная безопасность, законная цель, права человека.

Keywords: freedom of expression, prisoner's rights, institutional security, legitimate aim, human rights.

The advancement of technology and enhancement of communication methods enable individuals to acquire and transmit information. The right to free speech is a fundamental political and individual liberty in a democracy. Numerous impediments hinder the realisation of this right within correctional facilities. The rights and liberties of incarcerated individuals hold a significant position within the global human rights framework.

The core problem is that correctional facilities regularly restrict inmates' rights to self-expression, access to information, and external

communication, citing institutional factors like as security, order, or control.

Article 19 of the Universal Declaration of Human Rights (UDHR, 1948) specifies that "everyone has the right to freedom of opinion and expression," which includes the right to seek, receive, and impart information and ideas through any means regardless of frontiers.

Article 10 of the European Convention on Human Rights (ECHR, 1950) guarantees this right but allows some constraints imposed by legislation, necessary in a democratic society for the maintenance of national security, public safety, and the rights of others.

Together, these rules provide the worldwide legal basis for freedom of expression. In principle, deprivation of liberty may only serve justifiable reasons for specific rights, but must not fully abolish a person's fundamental freedoms [4, p. 3].

Article 47 of the Constitution of the Republic of Azerbaijan guarantees the right to freedom of expression to all individuals. Nonetheless, it is acknowledged that this liberty must not infringe upon state and public security, nor human rights and freedoms [1, article 47].

Per Article 83.2 of the Criminal Enforcement Code of the Republic of Azerbaijan, all prisoner correspondence, with the exception of that with a defence attorney or other legally authorised individuals, may be censored by penitentiary administration to ensure security, prevent criminal activity, and maintain proper order in the execution of sentences [3, p. 7].

There are several purposes for restricting prisoners' freedom of speech in laws and decisions. This primarily serves to prevent criminal acts that should be punished [3, p. 9].

Legislation and resolutions that limit the right to free speech are primarily draughted by prisoners. The primary goal is to deter the committing of offences for which punishment is imposed. Prisoners' access to communication is restricted, which deters crime and violence. Third, it is crucial to uphold the inmates' basic human rights while implementing all these limitations.

The notion of "freedom from total exclusion" emphasises that incarceration should not fully alienate persons from society or from the human rights framework. According to the Nelson Mandela Rules (2015), prisoners should enjoy the rights and freedoms enjoyed by everyone, except for limits strictly needed by the very reality of their imprisonment. Also, according to the rules 1-5 of Nelson Mandela Rules no individual should be deprived of their fundamental human rights, regardless of legal violations or criminal liability [5].

Using Internet resources is one way to exercise freedom of expression. It makes sense that this right cannot be fully realized because censorship is applied in some nations even though inmates have access to the Internet. By guaranteeing security, the application of censorship preserves equilibrium.

Prisoners can write their opinions through the activity of the state and state bodies.

In *Yankov v. Bulgaria*, adjudicated by the ECHR, a disciplinary sentence was levied against

a prisoner. The basis for the penalty was that unfavourable writings regarding the court and penitentiary system were found in the prisoner's possession, although these notes were not publicised in the community. According to the European Court, inmates have the same rights to freedom of expression. Even if they are deprived their freedom, prisoners cannot be viewed as "persons excluded from the human rights system." According to the Court, "everyone, including prisoners, has the right to access and express their views on the activities of the state authorities in a democratic state" [6, p. 463].

The court determined that there had been a violation of his right to free speech.

The convicts' right to free speech was completely safeguarded by the European Court's ruling in this case. The human rights system recognizes the rights of inmates, just like it does for everyone else, according to this ruling.

On December 21, 2023, the Turkish Constitutional Court Plenary ruled that the right to freedom of expression. The problem was that, even though there was no official prohibition or confiscation order in place, books were no longer being provided to prisoners in a number of correctional facilities. Books that had previously been distributed to inmates were even reclaimed in certain instances. The applicants contended that their freedom was unlawfully restricted by the denial of access to these books. The Court concluded that prison officials had not adequately justified their choices. Additionally, there were no formal guidelines or standards in place to guarantee impartial and non-arbitrary choices about prisoners' access to non-periodical magazines. The Court went on to say that although security and incarceration concerns may legitimately support some limitations on what inmates can read, these limitations must be specified by legislation. The Court came to the conclusion that the lack of a transparent and uniform process for choosing and supplying books and non-

periodical media in jails constituted a breach of the right to free speech [7].

This case demonstrates the need for special attention from the government and prison facilities. The penitentiary's internal discipline policies should dictate the range of literature that inmates are permitted to read.

Our national legislation guarantees that inmates can access information from books, magazines, and newspapers through the humanitarian concept. Article 86 of the Republic of Azerbaijan's Criminal Enforcement Code permits convicts to buy books and writing supplies, as well as to subscribe to periodicals and newspapers. Prisoners are authorised to retain up to ten volumes of books or periodicals, and the number of packages or banderols allowed does not include the acquired literature. Publications that encourage violence, terrorism, extremism, war, or cruelty, as well as those that stir racial, religious, or national hatred or include pornographic material, are forbidden to obtain, possess, subscribe

to, or disseminate. These clauses seek to strike a compromise between the preservation of public decency and prison security and the right to free speech [2, p. 70].

Therefore, it can be concluded from analysing experience around the world that justifications such as maintaining public order and avoiding crime are usually used to justify restrictions on inmates' freedom of expression.

Our National statute guarantees prisoners' access to information via journals and books. In the contemporary period, as all aspects have transitioned to digital formats, legislation could mandate that convicts access material online in PDF format under regulated and filtered settings.

These arguments are sound in light of the modern concept of statehood. Random or generalised choices violate the modern penal principle, which views prisoners as citizens with rights even while they are serving their sentences. Consequently, it is necessary to propose changes to our laws in this regard.

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**MƏHKUMLARIN FƏRDİ HÜQUQLARININ VƏ İNSTİTUSIONAL TƏHLÜKƏSİZLİYİN
BALANSLAŞDIRILMASI: İFADƏ AZADLIĞI KONTEKSTİNDƏ TƏHLİL**

XÜLASƏ

Bu məqalədə islah müəssisələrində məhbusların ifadə azadlığının nə dərəcədə müdafiə olunduğunu, bu hüququn qorunmasında daxili və beynəlxalq qanunvericiliyin rolunu və bu məsələ ilə bağlı Avropa İnsan Hüquqları Məhkəməsinin və digər xarici ölkələrin məhkəmələrinin presedentlərini, xarici dövlətlərin idarəetmə sistemində məhbusların hüquqlarının təmin edilməsi prosesi təhlil edilmişdir.

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**БАЛАНС МЕЖДУ ИНДИВИДУАЛЬНЫМИ ПРАВАМИ ЗАКЛЮЧЕННЫХ И ИНСТИТУЦИОНАЛЬНОЙ
БЕЗОПАСНОСТЬЮ: АНАЛИЗ В КОНТЕКСТЕ СВОБОДЫ ВЫРАЖЕНИЯ МНЕНИЙ**

РЕЗЮМЕ

В данной статье анализируется степень защиты свободы выражения мнения заключенных в исправительных учреждениях, роль национального и международного законодательства в защите этого права, прецеденты Европейского суда по правам человека и других иностранных судов по этому вопросу, а также процесс обеспечения прав заключенных в системах управления иностранных государств.

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