

HUMAN RIGHTS BEHIND BARS: LEGAL CONSIDERATIONS AND SOCIETAL REFLECTIONS

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Human rights lie at the core of the European penal culture (Snacken, 2006; Van Zyl Smit and Snacken, 2009; Drenkhahn et al., 2014). Various recommendations and regulations – among which the European Prison Rules (EPR) and the European Court of Human Rights (ECtHR) case law play a key role – establish clear norms for treating prisoners with respect for their human rights and recognition of their human dignity (Jungar-Tas, 2006; Van Zyl Smit, 2006; Cliquennois and Snacken, 2017). The view that prisoners “have equal status and values rather than being considered second-class citizens” (Easton, 2011, p. 8) is thus promoted in Europe, in line with the broader perspective on imprisonment as a measure of last resort, aiming to support prisoners reintegration into society.

A growing socio-legal literature documents the developments of this “European framework of human rights-based prison standards” (Van Zyl Smit, 2006, p. 108); Van Zyl Smit and Snacken, 2009) and its influence on national prison reforms (Livingstone, 2000; Van Zyl Smit and Snacken, 2009; Easton, 2013; Cliquennois and Snacken, 2017). However, most of these studies focus only on a limited group of countries from Western Europe; therefore, the understanding of how the “domestic socialization” into European prison norms (Risse and Sikkink, 1999) occurs throughout the continent remains rather uneven.

A step towards filling this gap was taken through the international conference “Human rights in prisons: theory, research and policy” held in Bucharest in September 2017. The conference was organized with a twofold aim in mind. First, it intended to disseminate the results of a research project focused on prisoners’ rights in the understudied context of post-communist Romania¹. The progress made

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by Romania with respect to internalizing the European prison norms was presented on three main levels: a) legislative i.e., the degree of alignment of the current Romanian prison law with the European norms and principles as they are specified in the European Prison Rules (Pricopie and Thiemann, 2017); b) monitoring mechanisms i.e., the “voice” of the CPT as expressed in its reports on Romania following the visits conducted in the period between 1995 and 2014 (Décarpes, 2017); and c) prisoners and prison staff’ perceptions (Dâmboeanu et al., 2017). Second, starting from the findings in the particular context of Romania, the conference aimed to further the debates on several challenging issues raised in the academic literature: To what extent other states have been implementing the European norms and humanizing prison condition? Which role do the European monitoring and judicial mechanisms play in this regard? How efficient are the instruments of the monitoring bodies and how can they be improved? How prisoners and prison staff perceive human rights in prison and, could their perceptions offer a balanced perspective over the practice of human rights in prison?

European scholars in sociology, criminology and penal law from Belgium, Bulgaria, Czech Republic, Germany, Italy, Netherlands, Poland, and UK – as well as representative members of the Romanian prison system joined the conference to try to find together answers to all these questions.

This special issue entitled “Human rights behind bars: legal considerations and societal reflections” includes five of the papers presented at this conference. The topics they approached are among the most intensely discussed in the current literature on human rights in prisons, and provides both theoretical insights and concrete examples from well-researched European countries (e.g. Germany, Belgium) and countries that have received less academic attention (e.g. Italy, Bulgaria).

In the first paper, Dirk Van Zyl Smit discusses the concept of social rehabilitation as a basic human right of prisoners. Developed in Europe under the influence of the ECtHR jurisprudence, this view is opposed to the “authoritarian and paternalistic” perspective on rehabilitation (Rotman, 1986, p. 1026) promoted in the U.S. under the punitive movement enforcing indeterminate sentences. Based on key-concepts such as agency, autonomy and social responsibility, the right to rehabilitation “requires not only education and therapy, but also a non-destructive prison environment [...] being consistent with the drive towards the full restoration of the civil and political rights of citizenship after release” (*ibid*, p. 1027). Dirk Van Zyl Smit examines the emergence of this right in the European prison law as well as in several domestic legal contexts (Germany and Italy), while paying particular attention to life-sentenced prisoners.

perceptions on different types of prisoners’ rights most commonly violated in Romanian prisons, the contexts in which these violations occur, and the consequences of these violations for prisoners wellbeing and prison management.

Helmut Kury extends the discussion about rehabilitation by pointing out the challenges it faces in the context of the current debates about immigration and terrorism. The focus is on Germany, one of the fewest countries across Europe which actually listed prisoners' right to resocialization among the constitutionally guaranteed rights (Morgenstern, 2011, p. 21). Still, as Kury shows, the recent flows of refugees fuelled public fears about terrorism and crime and subsequently led to more punitive penal responses especially toward foreign offenders. For instance, despite the evidence that they commit less serious offences than German prisoners, foreign offenders are more often sentenced to prison (Kury, this issue, p. 25). At institutional (prison) level, the author further argues, rehabilitation is no more than a utopia for foreign prisoners due to language barriers and limited opportunities for treatment.

Gaëtan Cliquennois shifts the attention to the impact of the European monitoring and judicial mechanisms on prison reforms in Belgium and France. Specifically, he looks at the changes CPT and the ECtHR brought on three main aspects. First, he documents their positive influence on the development of prisons physical infrastructure, psychiatric facilities and structures focused on suicide prevention. Second, he highlights the changes at the level of prison staff: a shift in the professional background of prison governors from social sciences to law, the extension of prison litigation services, and the staff' training in human-rights law. Third, Cliquennois notes the limited impact of the ECtHR on the adoption of domestic remedies for those prisoners whose rights were violated.

The influence of the ECtHR is further addressed by Francesca Graziani with reference to the problem of prison overcrowding in Italy. She discussed the reforms adopted by the Italian government following the application of the pilot judgement procedure in *Torreggiani* case. As in Belgium and France, a substantial impact of the ECtHR decision in Italy is considered to be, on the one hand, on the development of prison infrastructure (e.g. the construction of new facilities, the reorganization of the existing ones and the increase use of open regimes) and, on the other hand, on the use of alternatives to detention. However, the author shows that Italy, different than the other two countries, adopted preventive and compensatory remedies for violations of prisoners' human rights were adopted, although their application remain rather limited (Graziani, this issue, p. 59–60). Special considerations are additionally given to the situation of two vulnerable categories of prisoners who are more prone to experience human rights violations: foreign prisoners who may be transferred to inhumane and degrading prison regimes in the home countries (p. 60–61), and pre-trial detainees who spend excessive periods of time in prison due to the long duration of criminal proceedings (p. 61–62).

Last but not least, Dimitar Markov introduces a new tool for monitoring the practice of human rights in prisons, namely The Prison Conditions Monitoring

Index (PCMI). This tool is built on the existing instruments, and incorporates a set of indicators and sub-indicators drawn from the international and European prison standards. Still, what does make it unique, Dimitar Markov argues, is that it provides “a more operational and managerial perspective” (Markov and Doichinova, 2015, p. 8), “helping thus prison administrations to identify problems and find solutions” (p. 69). The results obtained after the administration of this instrument in 2014 and 2015, in eleven Bulgarian prisons are presented in the paper.

Overall, this special issue provide important “legal considerations and societal reflections” on key issues emergent in the literature on human rights in prisons across Europe, successfully continuing the series of thematic issues dedicated to this topic (see, for instance, Josine Junger-Tas (Ed.) (2006), *The Respect of Human Rights of Prisoners in Europe. European Journal of Criminal Policy and Research* or Gaëtan Cliquennois & Sonia Snacken (Eds.) (2017). *European and United Nations monitoring of penal and prison policies as a source of an inverted panopticon? Crime, Law and Social Change*).

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