

Yagunov D. V.
PhD in Public Administration,
MSSc in Criminal Justice, Associate Professor

THE TRANSFORMATION OF THE CONCEPT OF FREEDOM IN THE PANOPTIC SOCIETY

Summary. The article is focused on the problem of modern social control through the prism of criminal law practices in the beginning of the XXI century. The main problem of the article is to study the balance between the categories of "security" and "fighting crime" on one side and "human rights" and "freedom" - on the other.

Keywords: freedom, panopticism, social control, criminal law, the protection of society against crime.

From the beginning of the XIX century incarceration is seen as one of pillars of a system of criminal law measures of any national state, when the Prison as a social institution occupied an important place in the mechanism of social control. Adding probation and parole to the criminal justice system in the middle of the XIX century shaped a new type penalty which is typical for any modern national state.

Imprisonment obtained the status of the strictest penalty because of natural features and consequences, using the terminology of Michael Foucault, of these "complete and austere institutions". The Prison became a symbol of the worst criminal and social consequences of committed crime, no matter which goals of punishment were proclaimed in the criminal code ("just desserts", deterrence, rehabilitation, and insulation) separately or in their combination.

The Prison as a traditional social institution with this philosophical and legal justification shaped in the beginning of the XIX century developed until about the end of XX century. Beginning of a new Millennium was concerned with the transition to the Prison as an institution with its new goals and functions.

At first glance, this situation was strange and controversial.

On the one hand, everyone sees negative aspects and consequences of imprisonment in any form (both as a preventive measure and a punishment). Almost everyone points out a zero potential for rehabilitation in the Prison. Traditional Prison became an object of the anti-prison company organized by international organizations, academics, human rights activists, humanists and politicians.

At the same time penal landscape was filled with a movement for "alternative sanctions and measures". Establishing of the probation services and adopting of relevant criminal legislation became almost an obsession in the criminal justice reform in every contemporary state, which is especially evident in Eastern Europe and the former Soviet states (Ukraine, by the way, is not an exception in this context). The same could be said about "juvenile justice", "restorative justice" and "mediation".

On the other hand, the beginning of the XXI century brought to the Prison success, which the Prison could not even dream of at the time of its birth. During XIX - XX centuries "correctional" Prison, trying to be really correctional, suffered fiasco with impressive regularity and stability certainly. The essence of this defeat was brilliantly captured by Foucault, who pointed out that "this monotonous criticism of Prison was concerned with a fact that the Prison could not correct criminals. At the same time, the Prison loses its punitive nature trying to be correctional" [1, 268].

In the end of the XX century, the Prison, being "surrounded" with community punishments and movements for "reducing the use of imprisonment", won a brilliant victory over their opponents. The irony of the situation is not so much that "correctional" Prison is no seen to be "correctional" so much that the Prison stopped being "ashamed" of what it had never been correctional.

The Prison strengthened its position because it "agreed" with no shame that it was always "bad" in principle, taking into account the many negative consequences of its operation. At the same time the Prison expanded its influence in society far beyond prison walls. Carceral power became more invisible and soulful (for example, growing incarceration rates in the majority of contemporary countries is important but not the only indicator of this trend).

It is important to stress out that widely discussed "community sanctions and measures" did not become in fact humanistic-oriented alternative to incarceration. In fact, they unwittingly acquired the status of a qualitatively new disciplinary project. Intensification of probation orders towards increasing

the degree and scope of prohibitions, duties, obligations and conditions that rely on “probation clients” means that most criminals in “free” society instead being placed under the traditional probation supervision with some additional restrictions were bounded with semi-institutional programs. In addition, the “clients” of socially oriented probation services have become “dangerous persons”, whose risks should be managed”.

It is necessary to point out that birth of the modern, “correctional” Prison was characterized by several trends including: 1) the development of a specialized state machine control; 2) the growing differentiation of deviants with the addition to them new “knowledge” and relevant “experts” in these “spheres of knowledge”; 3) increasing segregation of deviants in specialized “institutions”.

Nowadays we can talk about absolutely different philosophical principles of penal policy. In this context I would like to emphasize the following.

Previously we talked about few categories of criminals. Today their classification became broader due to large number of ‘intermediate states’ where every new category is filled with new “knowledge” from the new “experts”. As a result, contemporary Prison is increasingly distancing from its “correctional” form.

Instead of a single group of “criminals”, new groups of “criminals”, “deviants”, “pedophiles”, “sexual predators”, “persons with suspicious behavior”, “persons with deviant behavior” and other persons appeared.

It is very difficult to provide the definitions of mentioned above categories within the Classical school of criminal law but, nevertheless, mentioned above categories began to be used in criminal legislation of contemporary states which population became much more concerned with issues of “the safer society”.

After this introduction we should formulate a thesis which is very important for this research: the Prison was (and continue to be) a micro-model of our Society where “Freedom” is a fundamental category. Therefore, changes in nature, role and functions of the Prison are a significant indicator of changes in the Society and views on the nature of category of Freedom.

In other words, deep transformation of the nature of imprisonment as an important social function demands rethinking the category of Freedom that could be seen as a measure of social health.

Taking mentioned above into account, we can say that contemporary penal practices are characterized with several things:

1) radical re-orientation of national penal systems from “offender rehabilitation” to “risk management of dangerous persons”;

2) replacing the Classical principles of criminal law with Positivist ones;

3) distribution and the practical implementation of neo-Positivist ideas deprived of their anthropological component, with the restoration of the category of “habitual” or “dangerous” offender.

Mentioned above aspects are concerned with some trends that can be formulated as follows:

1. The crisis of the rehabilitation ideal led to total revision of the goals of punishment due to creation of a large vacuum that was previously filled with rehabilitation. A question of famous American scientist and sociologist Robert Martinson “What works?” which was put on the agenda at the beginning of the 1970s, which led to the collapse of the rehabilitation foundation of the “correctional” prison, seems to be no longer relevant. During a half of a century the Western states build their penal policies and implement penal practices considering the crisis of the rehabilitation ideal (which post-Soviet science stubbornly did not see or do not want to see).

2. Due to numerous social and political processes mentioned above rehabilitation vacuum was filled with purely utilitarian ideas associated with punitive notions that “prison shall work”. Today, however, we should ask another question: “To whom and in whose interests shall prisons work?”. And this “work”, especially related to the implementation into the legislation of many modern states the category of incapacitation, which necessitates a radical revision of goals of punishment.

3. A new concept and its practical implementation relate to the prison not as a “public institution that restrict freedom of movement of an inmate within a certain space” [2, 4], but also to other elements of penal system and the criminal justice system in general. Imprisonment involves not only prisons but also probation, parole and other elements of the criminal justice system. It leads to situation where probation services become affiliates of the Prison in the “free” society with relevant philosophical justification for their activities.

The Prison of the Postmodern Age obtained the status of a qualitatively new disciplinary project. Being illegitimate, it acquired the maximum influence. Being under pressure from community punishments and anti-prison movements the Prison used their potential. The Prison transformed the concept of probation and other non-institutional applications of the criminal justice system into the Prisons’ affiliates. And the problem is that it is extremely difficult to determine the scope and direction of such enrichment. Carceral society requires a comprehensive panoptic control for each member. Therefore, interested global actors gratefully

accept this deprivation of penal systems of their social orientation.

Mentioned above aspects, coupled with features of social relations of modern globalized society, obviously lead to increasing costs of Freedom.

At one time the Jeremy Bentham's Panopticon became a model of any disciplinary mechanism, which claimed to have to be the perfect. Thanks to Michel Foucault the Panopticon became a model of modern government itself. Previously this allegory seemed to be more or less fantastic. Nowadays, panoptic power is almost "yesterday" because the Society accepted the panoptical idea long ago. Nowadays it is already preoccupied with panopticism.

Therefore, there is an absolutely natural question: how can we describe the Freedom of the Postmodern society if a total prison or other disciplinary carceral device serves as the model of this society?

Transparency and convenience of the Space has always been a sign of rational order. Converting transparency of the space on the target, which should be systematically reached, meant a shift to the New Time. Modernization served as a condition of making the world much more transparent and infinitely convenient for the Power. In the field of penal policy this meant the attack on the traditional idea of Freedom. If we are talking about freedom of persons involved into the sphere of criminal justice, this attack was much more serious and sharp.

Max Weber once emphasized that the challenges facing modern society require new types of bureaucratic institutions that could perform certain tasks efficiently and on the basis of coordination. Nowadays, all characteristics of new bureaucratic institutions, which Weber wrote about, are embodied in current national criminal justice systems with their hierarchical structures, distribution functions and tasks impersonality, development of new control technologies and targeted collecting of personal information.

In the field of modern penal practices transition from "Social Work" to "Safer Society" due to "managing the risks of criminals" fully compliant the demands of the "Comfortable Space". Therefore, rehabilitation as a traditional goal of punishment with its practical implementation shaped within the classical school of criminal law, has become too inconvenient for the Postmodern Prison [3, 207-212].

Invasion of the bureaucracy to the realm of social work, which took place in the Western countries still in the 1980s, with the justification that "nothing works in the field of rehabilitation of offenders", meant attempts to make the scope of work with criminals formally transparent and effectively controlled. An obvious conflict between a

social worker and a bureaucrat was finished with a victory of the latter.

The modern "Freedom" is associated with suspicion on others, hostility to outsiders and demands that outsiders should not be allowed enter the city borders. The modern "Freedom" is also associated with a thing, which Bauman defined as "hysterical concern issues of law and rule of law" [4, 70].

The city that once appeared for the safety of residents who were hiding behind the walls, nowadays more associated with fear and danger that should be managed and controlled. As a result, the Danger in the Panoptical society is managed and controlled with redrawing of the Space.

In the context of the traditional notion of the Prison as a model of the Society we can add that factor of fear that Bauman point out, is fully reflected in the ideas of "Nothing works" of Robert Martinson and his followers [5, 28-30]. The popularity of the idea of "closed" or "protected spaces" can be considered a reflection of the idea of the "safer society" which prominently place is occupied with non-Freedom.

Therefore, we should agree with Bauman that the main strategy for survival in the modern metropolis is not unity, but isolation from one another: "The agenda is not the question, whether you like your neighbor or not. Stay away as far as possible, and you do not have to meet this dilemma" [4, 72].

We can make a certain analogy and say that in the context of penal policy as the agenda no longer is the question whether it is possible to rehabilitate the offender. Moreover, the agenda is not the question whether it is possible to protect respectable citizens from the criminal.

The main question is the process of securing in itself. Direct the criminal justice system in this direction – and you will not meet this dilemma. Therefore, we can argue about the withdrawal of national criminal justice systems from the idea of rehabilitation of criminals as unnecessary and inconvenient in today's global development.

Panopticon as a control mechanism was concerned with staying of a Person within a particular institution against the will of this Person. The use of the panoptical institution as a model of modern society allows making conclusions about changes of the nature of this phenomenon. It is very strange to say but modern society is a voluntary panoptical world. And its voluntariness is based on the initiatives of the supervised Persons to be involved to an even greater concentration of supervision in their daily lives.

This is not about only about databases with information about the Persons and their lives, as Bauman wrote. It is also about the criminal

justice system, which could be hardly associated with voluntary involvement of the people.

A bright example of this is the situation, which was recently highlighted in the German media. The police service of the German Land of Hanover began to use a famous social network Facebook to collect information on criminals and their subsequent arrest. The police service created a network group whose members became anonymous citizens who reported to the police of any wrongdoing committed by their neighbors, friends, colleagues or just strangers, and any expression of their "unlawful" or "strange" behaviour. There is a whole group of so-called "police friends" in the amount of more than 23 thousand persons. It is interesting to say that these practices are not for the elderly, over 70% of "police friends" at the age of 35 [6].

Thus, we can conclude that the modern social control needs much more than it could be itself. It demands external resources for its normal functioning which are provided on the voluntary basis by citizens: "Safety" in exchange for "Freedom".

Making collusions to this article we would like to point out the following moments:

1. Previously the Prison was a micro-model of the society where "Freedom" was one of the most important categories.

2. Freedom has the same value in the Postmodern society. However, the Postmodern society has changed significantly. Thus, the idea of Freedom changed as well to a large extent.

3. Changes of the nature, role and functions of the Prison under the influence of numerous socio-economic processes could be seen as an indicator of changes in the society and views on the nature of the above categories.

4. Nowadays, we have a diametrically opposite situation: no longer is the Prison a model of Society, but the Society is a model of the Prison.

5. In the XVIII century the Prison was seen as "the last resort" among the criminal law measures. In the middle of the XIX century it became the "the first resort". At the end of the 1960s the Prison received the status of "last resort" again. Today we are witnesses of a trend where the Prison is returning on the first place.

6. Moreover, today is not enough to talk about "carceral society". There is further trans-carceration, the boundaries of which are extremely difficult to determine.

7. Therefore, the "title" of the most fundamental category for the modern social development goes "Freedom" to "non-Freedom".

Sources

1. Foucault, M. Discipline and Punish : The Birth of the Prison / M. Foucault. — Penguin Books, 1991.

2. Пионтковский, А. Тюремное дело. Его предмет, содержание, задачи и значение / А. Пионтковский. — О., 1892.

3. Ягунов Д. Пенітенціарна система Англії та Уельсу: перехід від виконання покарань до менеджменту у галузі виконання покарань / Д. Ягунов // Актуальні проблеми політики. Зб. наук. пр. — Одеса: Фенікс, 2008.

4. Бауман З. Глобалізація. Последствия для человека и общества / З. Бауман. — М., 2004.

5. Ягунов Д. В. «Криза реабілітаційного ідеалу» в наукових працях Роберта Мартінсона та їх значення для формування сучасної пенальної політики / Д. В. Ягунов // Південноукраїнський правничий часопис. — 2010. — №4.

6. German police force looks to Facebook to solve crimes [Електронний ресурс]. Режим доступу — <http://sg.news.yahoo.com/german-police-force-looks-facebook-solve-crimes-135921242.html>

Ягунов Д.В. Трансформація поняття свободи в паноптичному суспільстві. — Стаття.

Анотація. Стаття присвячена дослідженню проблеми сучасного соціального контролю через призму кримінально-правових практик початку ХХІ сторіччя. Головною проблемою статті є дослідження балансу між категоріями «забезпечення безпеки» і «боротьба зі злочинністю» з одного боку і «права людини» з другого.

Ключові слова: свобода, паноптизм, соціальний контроль, кримінальне право, захист суспільства від злочинності.

Ягунов Д.В. Трансформація поняття свободи в паноптическом обществе. — Статья.

Аннотация. Статья посвящена исследованию проблемы современного социального контроля через призму уголовно-правовых практик начала ХХІ столетия. Главной проблемой статьи является исследование баланса между категориями «обеспечение безопасности» и «борьба с преступностью» с одной стороны и «права человека» и «свобода» - с другой.

Ключевые слова: свобода, паноптизм, социальный контроль, уголовное право, защита общества от преступности.