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BOOK REVIEW BY TOM VANDER BEKEN «THE ROLE OF PRISON IN EUROPE. TRAVELLING IN THE FOOTSTEPS OF JOHN HOWARD»*

Today, by showing resilience and determination, Ukraine confirms its European choice not only by political decisions, but also on the battlefield, where it fights back against the world's largest empire encroaching on its sovereignty.

In such circumstances, it is especially important to find out all the peculiarities and trends inherent in the European way of life. In this regard, the field of penal enforcement and penitentiary policy in Europe should not be an exception.

For this reason alone, the book under review deserves close attention.

In 'The Role of Prison in Europe. Travelling in the Footsteps of John Howard' attempts to analyse what role the prison plays in Europe, what is the purpose of prisons, what is expected of them and how prison policy is expected to develop in European countries.

In Ukraine this sphere of social relations has always been problematic. Since independence, there have been constant attempts to reform the penal system. Unfortunately, it must be recognised that more than 30 years of reforms have not led to serious changes. Due to the presence of systemic human rights violations in the execution of criminal sentences against Ukraine, the ECtHR adopted a pilot judgement, which found structural violations in the penitentiary system of Ukraine.

The issues discussed in this book can help to understand the basic ideas and principles of European penitentiary systems and to understand the solutions that are needed to reform and optimise the penal system in Ukraine.

But this is not the only topic addressed by the author of the book. The second theme of the book concerns the study of John Howard's legacy. Howard was a British philanthropist who devoted his life

to studying the conditions of convicts in prisons in Europe. He was also interested in epidemic diseases, which he studied through visits to medical centres and prisons. He ended his life in the city of Kherson, just as he was on another research trip to medical institutions².

Perhaps the second theme of the book can be described as inspiring. It is because of it that Tom Vanderbekken has done the work of studying prison systems in Europe, analysing their state, organisation and trends. His idea was to try to follow the path of John Howard and also to study the state of affairs in the penitentiaries of some European countries. Following this path, Tom Vanderbekken, on the basis of the information gathered, attempted to understand the purpose of these institutions, how penal sanctions are executed in different countries, what efforts are made to achieve the set goals, what problems and obstacles arise on the way to their achievement.

At the same time, Tom wanted to find out more about John Howard himself and his motivations for undertaking his long and gruelling journeys across Europe in what was a rather bizarre endeavour for the time – the study of prison conditions. After all, he was a pioneer in this field and his efforts were not in vain. His reviews laid the groundwork for the humanisation of prison conditions and influenced the awareness of the goals that are pursued in the execution of sentences today.

As we can see, the aim of the work is very ambitious and the bar set is high. The book being presented is structured in an unusual way. The author notes that in his research he has endeavored to follow in the footsteps of John Howard. To this end, he visited a number of penitentiaries in several European countries. He visited prisons in Great Britain, Norway,

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² John Howard <<https://www.britannica.com/biography/John-Howard-British-philanthropist-and-social-reformer>>

the Netherlands, France, Italy and... Azerbaijan. Of course, Howard had not been to Azerbaijan. His journey ended, as mentioned above, in Kherson. The author did not manage to visit Ukraine. But he did visit penitentiary institutions of the post-Soviet countries for 'purity of experiment'.

Of course, it is impossible to enter the same river twice and therefore John Howard's experience was not repeated literally. It does not need to be. The book is of great value not only because it considers the penitentiary systems of different countries in comparison. But also because it is the result of an 'outsider's perspective'. Tom Vanderbekken is a professor from Belgium and none of the systems he examined are 'native' to him. Therefore, his opinions and assessments have no 'correction' for local contextual knowledge. At the same time, the author is a criminologist and a specialist in prison law with extensive research experience. This allows him to look at things soberly and knowledgeably and makes his conclusions and inferences very valuable.

The book is written in a light language and at the same time remains scholarly. It has a lively reflection of the author, which is undoubtedly the most valuable thing in science, and which is so scarce in today's humanitarian circles

The book is in a sense a testimony to the fact that the execution of sentences in all countries remains an open question. It is a very painful issue and one that one does not want to deal with.

There are several approaches to the issue of prisons and their role:

1. Pragmatic – British – where the main issue is how to use those who have committed an offence effectively so that they do no harm and do good. Hence the solutions related to privatisation, labour use of convicts. In these algorithms there is no task to respect the rights and interests of convicts. They are just cheap labour or just energy to be diverted. The British approach is to punish, isolate and utilise.

By the way, Ukraine is also gravitating towards a similar model.

2. Humanistic (probably, the name is not too good, but it most accurately describes this approach) – Western European – an algorithm based on finding a balance between the interests of society, as a system that gave rise to crime, and the criminal, as a subject with the 'obligation' to be a criminal. Hence the attempts to respect the rights of convicts at the same time orienting them to the fact that they

should integrate into society, but in a different role (humanitarian role-playing).

Searching for answers to questions about reintegration, reorientation, 'soft' isolation, and control

3. Northern – Scandinavian – an algorithm based on the need to join forces to survive in the harsh conditions of the north. The last phrase is, of course, metaphorical. But the impression of their penitentiary system is exactly that. Everything that is created and functions in their prisons is made with a clear and specific purpose and is subordinated to a single plan.

The well-known Norwegian 'waiting lists', consisting of those who are waiting to serve their sentences in prison while at liberty, indicate just how seriously Scandinavians take penitentiary scenarios. By the way, in Ukraine, for example, it would be not only impossible because all convicts would not 'wait' for their terms, but also because such 'waiting lists' violate the legally established principles of inevitability and timeliness of punishment for a crime. Indeed, if a person waits for the execution of a sentence, say, for a year, without committing new crimes, maybe it is not worth talking about serving time? A person has already realised his misdemeanour and that is enough. But on the other hand, the question is quite reasonable: would he have realised his misdemeanour if there was no need to go to prison?

But even this somewhat free classification does not help to get a final answer to the question: why do we need prison and punishment?

The book is excellent in that it demonstrates that prisons cannot disappear, and that they probably should not be abolished. Also that there is not and cannot be a single goal and idea of punishment. What is important is the diversity of approaches, conditions and goals of punishment. Yes, of course, it often leads to additional suffering. But it seems to me not an idle question: are there additional sufferings? With what and how can they be measured? A harsh word is enough for one person, while ten years in prison is not enough for another. In short, pluralism, diversity and colourfulness are acceptable.

I would like to make another hypothesis. In connection with the problem of understanding the purpose and meaning of prisons, I recall a discussion that arose after the Second World War in the field of international humanitarian and criminal law. Its instigator was the lawyer and scholar of international criminal law, Hersch Lauterpacht¹. The main point

¹ Hersch Lauterpacht < https://de.wikipedia.org/wiki/Hersch_Lauterpacht >

of contention that has arisen in this debate is the 'clarification' of the fact that a state cannot dispose of the lives of its subjects or citizens, cannot infringe on the lives of other civilians, and therefore must respect the rights of these people. And even in times of war or other conflicts. This basic idea now seems important because it overturned the earlier approach to civilians, citizens and subjects, which had been the basis of all forms of government, that the state could dispose of such people without any restrictions and at its own discretion, since they were its property.

Where is the parallel to be drawn? The systems of punishment that existed at the time of the events of the Second World War have changed little since then. We can reasonably assume that the idea of a person's 'belonging' to the state underpinned the system of all punishments, the definition of punishment, and so on. In other words, punishment in its essence is one of the types of 'deciding the fate' of a subject, a citizen who dared to commit a crime, to go against the existing way and order of life. Accordingly, the state, as the only thing that 'gives life' to a citizen gets the right to decide what to do with such a negligent subject. What follows are variations on the same theme, which do not change its essence.

The debate has been resolved by recognising the fact that the state cannot dispose of the lives of citizens and subjects. That is, the power of the state must be limited to some limits. This is where the idea of human rights (Universal Declaration, etc.) enters the scene. And the paradigmatic approach has changed since then. But, it seems, not in all spheres of social relations. The issue of punishments, their execution, the existence of prisons and the solution of other 'penitentiary' issues remained on the same positions. But they are now based on a new legal paradigm

This, it seems to me, means that we will constantly be hard pressed to find an answer to the question of why prison is necessary, using modern 'yardsticks'. These approaches seem incompatible. Those who cannot dispose of the lives of citizens cannot do so, including in the form of punishments that deprive them of what the state has not granted, namely freedom, let alone life.

Further, if we 'extend' the idea of the impossibility to dispose of the lives of citizens, we will have to recognise that the state is obliged to find a form of punishment that does not claim human life, but

deprives a person of what the state has granted him. Or else: having retained the old form of chastisement, the state is obliged to fill it with a new content corresponding to the 'new' standards.

Or, we must recognise that there has been no change in the legal paradigm and then the purposes of punishment can remain the same.

However, the example of the Netherlands can be seen as evidence that there has been a real legal paradigm shift in that country and that the claim on the lives of citizens and subjects has gone out of favour (at least for a while).

Of course this is just a thought, but there is a rational grain in it that helps to nuance the irrational in the idea of punishment

The book read has given an opportunity to formulate some trends that can be traced in the material studied by the author:

1. The determination of the purpose and methods of execution of punishments depend on the 'mores' of this or that society.

2. In most cases, countries that gravitate towards imperialism, domination and suppression are characterised by harsher punitive policies

3. There is no unified vision of the goals of punishment. In most cases there are two approaches in defining the purpose of punishment – pragmatic (re-socialisation, use of convicts' labour, earning money for prisons); punitive (isolation, protection of society, repayment for crime). Often they are combined, but the dominance of one or the other approach remains.

The lack of a unified understanding of the purpose of punishment may indicate that punishment is a phenomenon that can be attributed to a 'need' of society. Such a need is to some extent irrational.

Perhaps it follows from this that we should not talk about European standards in defining the purpose of punishment. There are almost as many such standards as there are countries in Europe and it is simply impossible to meet all these standards

This book is very useful for penitentiary law specialists. It can give an impetus to Ukraine's own approach to penal enforcement and penitentiary policy development.

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