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АКТУАЛЬНІ ПРОБЛЕМИ ЗАХИСТУ ПРАВ ЛЮДИНИ, ЩО ПЕРЕБУВАЄ У КОНФЛІКТІ ЗІ ЗАКОНОМ В УКРАЇНІ

Анотація: Відповідно до статті 3 Конституції України: «Людина, її життя і здоров'я, честь і гідність, недоторканність і безпека визнаються в Україні найвищою соціальною цінністю». Такий підхід не є виключенням і вже давно відображений у законодавстві кожної демократичної та розвиненої європейської країни. Сьогодні права і свободи людини та їх гарантії визначають основний зміст і спрямованість дій держави, що повністю відповідає перед людиною за свою діяльність та має своїм головним обов'язком утвердження і забезпечення прав і свобод людини. Проте не зважаючи на усі зусилля з боку держав, у тому числі й України, щодо профілактики порушення прав людини і громадянина, їх кількість з кожним роком тільки зростає. Особливо гостро постає питання захисту вразливих верств населення, однією з яких є особи засуджені та узяті під варту. У статті робиться висновок про удосконалення інституту досудової доповіді, для призначення відповідного покарання. Доводиться потреба у постійному забезпеченні кваліфікованого соціального та психологічного супроводу засуджених, як під час заходів наглядової пробації так і на етапі пенітенціарної пробації. Наголошується на створенні системи патронажу над засудженими, що звільнилися умовно достроково протягом одного року після звільнення. Здійснення контролю за їх поведінкою, перевірка соціально побутових умов, психологічно та емоційного станів є важливими складовими у механізмі застосування апробаційних програм. Саме тому не викликає сумнівів актуальність проведення повного та ґрунтовного наукового дослідження питання захисту прав людини, що перебуває у конфлікті з законом, крізь призму кількісної та якісної складової скарг, що надійшли до компетентних органів української держави, з метою встановлення основних причин виникнення порушень, та забезпечення їх профілактики у майбутньому.

Ключові слова: робота з засудженими, альтернативні покарання, механізм попередження порушень, система патронажу, умови тримання засуджених.

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CURRENT ISSUES OF PROTECTION OF HUMAN RIGHTS IN CONFLICT WITH THE LAW IN UKRAINE

Abstract. According to Article 3 of the Constitution of Ukraine: "A person, their life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value". This approach is not exceptional and has long been reflected in the legislation of every democratic and developed European country. Nowadays, human rights and freedoms and their

guarantees determine the basic content and direction of state action, which is fully responsible to human for its activities and has its main duty to establish and ensure human rights and freedoms. However, despite all the efforts of states, including Ukraine, to prevent violations of human and civil rights, their number is growing every year. The issue of protection of vulnerable groups, one of which is convicted and taken into custody, is particularly acute. The study concludes on the improvement of the institution of pre-trial report, for the imposition of appropriate punishment. There is a need for constant provision of qualified social and psychological support for convicts, both during supervisory probation and at the stage of penitentiary probation. Emphasis is placed on the establishment of a system of patronage over convicts released on parole within one year after release. Monitoring their behaviour, checking social conditions, psychological and emotional states are important components in the mechanism of application of approbation programmes. That is why there is no doubt regarding the urgency of conducting a full and thorough scientific study of the protection of human rights in conflict with the law, through the lens of quantitative and qualitative components of complaints received by the competent authorities of the Ukrainian state in order to establish the main causes of violations and ensure their prevention in the future.

Keywords: work with convicts, alternative punishments, mechanism of prevention of violations, system of patronage, conditions of detention of convicts.

INTRODUCTION

The allegation that there is a violation of the rights of citizens in Ukraine, unfortunately, is not new or unfounded, and is confirmed by statistics from both governmental and international organisations. Thus, in 2019, Ukraine became one of the three leading countries violating the Convention on Human Rights. At the same time, the Strasbourg court found 86 violations of the European Convention on Human Rights in Ukraine. According to this indicator, Ukraine ranked third among the member states of the Council of Europe. The President of the European Court Guido Raimondi noted that Russia often did not abide by the international agreement – 238 times, the second place was taken by Turkey, where 140 violations of the Convention were registered. In Ukraine, violations of the "right to liberty and security" have been legally recognised 45 times. In particular, this applies to illegal detentions of citizens. In second place – unjustifiably long court proceedings – 41 decisions. The third place was taken by violations related to ineffective legal protection in national courts. In some decisions, the ECtHR found violations under several articles of the Convention.

But even such significant numbers are ambiguous compared to the actual number of cases pending before the European Court of Human Rights in which Ukraine is the defendant. Thus, in Strasbourg, Guido Raimondi said that as of January 1, 2019, the ECtHR was considering approximately 7,100 complaints, which is the fourth indicator among the member states of the Council of Europe. In the top three – Turkey (7,500), Russia (7,750), and Romania (9,900). A year ago, Ukraine was in first place by this indicator, then the Court was considering more than 18,000 complaints against it. However, such a sharp decline is due to the unprecedented decision in the case of *Burmych and Others v. Ukraine*, under which the ECtHR struck out more than 12,000 complaints against Ukraine on systematic non-compliance with national court decisions, referring them to the Committee of Ministers. Thus, the ECtHR did not improve its decision, but rather worsened the situation for those who turned to it for help. The situation in Ukraine currently remains unresolved, as thousands of citizens, having fallen

prey to Ukraine's breaches of its obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms regarding the failure to enforce judgments by national courts, appealed to the European Court of Human Rights with the last hope for justice. In turn, the Committee of Ministers of the Council of Europe, which oversees the implementation of ECtHR decisions, also does not in fact have an effective mechanism for resolving such issues, and all previous recommendations of this body have not been properly implemented. Therefore, nowadays one can only expect action from the authorities and hope that the decision of the Grand Chamber will become a wake-up call for urgent action. Thus, if one does not take into consideration the group "Burmych and Others", the number of other cases in the ECtHR has only grown [1].

This situation is very deplorable and requires swift action on the part of all stakeholders. Unfortunately, modern Ukrainian society approaches the consideration of complaints only from the inefficiency of the activities of certain bodies, without considering this issue on the merits. It is important not only to record violations and bring the perpetrators to justice, but also to establish the causes and conditions of such violations, assess their subjectivity or objectivity, and try to develop an effective mechanism for legislative prevention of such conditions in the future. Scholars such as A. Mowbray [2], J. Dute [3], and V. Veebel [4; 5], C. Altafin [6], Y. Orlov [7], A. Vilkova, E. Timofeeva [8], V. Todeschini [9], C. Nirala [10], and K. Onishi [11] are studying the relevance of the problem of protecting human rights in conflict with the law. However, nowadays the scientific development of this issue in the context of Ukraine is not carried out. Firstly, due to the closed nature of some data or the lack of a mechanism for their collection, which will not allow to draw the right conclusions. Secondly, because of the unwillingness to recognise the imperfections of the system, which in fact should be the first step towards solving this problem. Therefore, to introduce an effective mechanism for preventing human rights violations in Ukraine, it is necessary to develop an effective system of measures to prevent future human rights violations, in accordance with the requirements of society, world standards and current trends, based on consistent scientific research. This situation determines the relevance of the subject matter, and the results can be used not only to prevent violations in the future, but also to assess the law enforcement system of Ukraine and increase its efficiency, improve legislation, develop new preventive mechanisms, thereby promoting faster and more effective development of Ukraine as a legal and democratic state.

1. MATERIALS AND METHODS

In accordance with the set goals and objectives, the author used a set of both general and special methods of scientific cognition, the use of which allowed to comprehensively analyse the scope of issues related to the protection of human rights, especially for convicts as a separate, more vulnerable category. The study includes international treaties that define the general principles of sentencing, the Constitution of Ukraine, the Criminal Code of Ukraine, and the Criminal Law Enforcement Code of Ukraine¹, current laws and

¹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>; Criminal Code of Ukraine. (2001, April). Retrieved from

regulations, draft regulations governing relations in the field of enforcement and serving of criminal sentences through the lens of ensuring rights and freedoms of convicts and detainees, and the case law of the European Court of Human Rights. Methods of comparative law and documentary analysis were used to identify shortcomings in the legislation that guarantee the protection of the rights of convicts and detainees in comparison with the actual state of affairs. Separately, with the help of this method, the historical periods of legislative initiative and their implementation in modern realities were analysed.

Due to the statistical method, it was possible to process statistical data on the number of appeals for protection of violated rights by convicts, the impact of alternative punishments on crime trends was analysed and, based on statistics, the positive impact of modern technologies on correction and resocialisation was substantiated. The method of statistical analysis allowed to investigate the results of surveys and questionnaires for each section, to trace the relationship between statistics from diverse groups, such as the impact of ill-considered compensatory mechanism on crime, etc., and legal-comparative method allowed to compare them by certain criteria. The prognostic method was used to predict the legal regulation of this issue in the future. In addition, the method of legal forecasting was used, which formed the possibility of continuing the study of this subject based on previously obtained results, and as a consequence, the implementation of international norms and more effective enforcement of the rights of convicts and detainees.

2. RESULTS AND DISCUSSION

2.1 Analysis of factors related to human and civil rights violations

A study of human and civil rights violations in Ukraine was conducted by means of understanding the problematic issues of human rights violations in relation to one of the most vulnerable categories – convicts. According to the statistics of the Secretariat of the Ukrainian Parliament's Commissioner for Human Rights, as of mid-2019, 1,765 convicts had filed a complaint with the Commissioner alleging violations of their rights and freedoms. This figure is 7.5% of the total number of cases received by the Commissioner. More often than convicts, only representatives in the interests of the family turned to the Commissioner for the protection of violated rights – 1,787 persons and 2,007 pensioners. However, the total number of pensioners in Ukraine is 11.5 million, of which only 2,000 thousand applied to the Commissioner, and out of 57,000 thousand convicts 1,765 for comparison in percentage is 0.018% and 3.09% respectively. This suggests that it is often convicts who need protection of their rights and freedoms the most. This is caused by several other factors, the analysis and understanding of which will form the basis of this study [12].

Firstly, it is a negative and outdated legal legacy of the past, which is still present in the penitentiary system of Ukraine. As unfortunate as it may sound, the transformation of the vector of the purpose of punishment towards the correction of behaviour and resocialisation of convicts and the improvement and development of the probation

<https://zakon.rada.gov.ua/laws/show/2341-14#Text>; Criminal Law Enforcement Code of Ukraine. (2003, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1129-15#Text>

system in general, and especially the penitentiary system, is selective and too slow. Few Ukrainian citizens are aware that criminal law enforcement law and the policy of enforcement of punishments, including those not related to imprisonment and further rehabilitation of persons serving sentences, cease to be exclusively in the legal plane and the sphere of responsibility of executive bodies, which implement the national policy on the enforcement of punishments and probation, and shift towards the legal and social plane and become the responsibility of society as a whole. Therewith, in Ukrainian society, there is an increasing demand for punishment (punitive policy), the safe confinement of criminals behind high fences, without the desire to realise that after serving their sentence, they will return to society, and without proper correctional and rehabilitation work, effective penitentiary probation, support from local communities, they will not be prepared for law-abiding behaviour. And under the influence of life circumstances such as lack of housing, work, and livelihood, they will return to the only thing they know best – committing crimes.

The average citizen still believes that a convict can be corrected only through punishment, pain, and suffering. Therefore, there are constant disputes between the scientific community, civil society, and practitioners over fundamental issues. In the course of this study, carried out based on the Committee of the Verkhovna Rada of Ukraine on Matters of Legislative Support of Law Enforcement and the Ministry of Justice of Ukraine, in the working group on penitentiary reform, to study the feasibility of solving the issue of increasing the maximum penalty for imprisonment for particularly serious crimes, it was found that anti-humanist sentiments currently prevail in society. Upon answering the questions, the majority of respondents slightly distorted the notion of the purpose of punishment by putting punishment in itself in the first place (59.6%). In addition, according to them (almost 85% of respondents), it is achieved by placing a person in penitentiary institutions for as long as possible, which is not really the main purpose of punishment and is carried out solely to isolate socially dangerous elements until their resocialisation in order to ensure the security of society. 62.3% of respondents generally believe that the maximum limit of imprisonment for a certain period of 15 years established by the Criminal Code of Ukraine¹ is insufficient, not taking into account the global trend and repeated studies confirming that the longer a person is held imprisoned, the more difficult it becomes to maintain socially significant ties and return to a law-abiding lifestyle. In addition, even despite the active punitive policy of the state, the crime rate in Ukraine, especially recidivism, is constantly growing. Thus, analysing the data for almost 8 years (from 2005 to November 20, 2012), one can trace the following trend: in the period from 2005 to 2009, the level of crimes committed by persons who previously committed a crime was stable, and the share ranged from 24% to 26.6%. Since 2010, there has been a considerable increase in the level of these crimes: in 2010 – 96,830 offences (29.8%); in 2011 – 147,585 offences (46.2%); in 2012 – 138,310 offences (48.8%). If we compare 2005 and 2012, the absolute number of criminal offences has more than doubled. Since 2013, criminal statistics have been kept by the Prosecutor General's Office of Ukraine, whose official statistical reports do not contain

¹ Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>

information on the number of crimes and persons who had an unexpunged conviction or unresolved criminal record (i.e., recidivism in its legal sense) at the time of committing a new crimeinal offence, but only indicates the number of offences committed by persons who previously committed them: in 2013 – 62,625 (11.1%); in 2014 – 63,746 (12%); in 2015 – 58,242 (10.3%); in 2016 – 50,510 (8.5%); in 2017 – 60,509 (11.6%). Only in 2018, the overall crime rate decreased by 8%, and accordingly the level of recidivism, which is directly related to the increase in the use of alternative punishments and the active work of the probation service [13]. This situation encourages the improvement of the main vector of the national internal policy in the field of crime control – the criminal law enforcement policy of the state. It should be stable, which does not prevent it from undergoing certain changes in connection with the adjustment of the state and under the influence of other factors, the development of which is presented and the logical conclusion of which would be manifested in conceptual foundations of reforming the state penitentiary service and probation with the ways of their implementation.

Secondly, the reform and reorganisation of both the approach to the execution of punishment and the service as a whole requires the legislator to radically change the system of existing legislation: bringing it into line with international standards, its systematisation, unification. At present, the legislation of Ukraine contains outdated provisions and concepts, there are legal conflicts on a number of issues, and some issues are not regulated at all.

The legislator attempted to address these issues in the process of constant reform of the penitentiary service; therefore, it is proposed to pay attention to the stages of reforming the penitentiary system based on targeted programmes and/or the concept of reforming (developing) the system, including the following programmes, adopted since the early 1990s: "Priority measures to ensure the life support in correctional labour institutions and medical and labour dispensaries in the transition to market relations, approved by the resolution No. 22 of the Council of Ministers of the Ukrainian SSR of February 5, 1991"¹; "The main directions of reforming the penitentiary system in the Ukrainian SSR, approved by the resolution No. 88 of the Council of Ministers of the USSR of July 11, 1991"²; "The programme for bringing the conditions of detention of convicts serving sentences in places of deprivation of liberty, as well as persons held in pre-trial detention centres and medical and labour dispensaries, in accordance with international standards, approved by the Resolution of Cabinet of Ministers of Ukraine No. 31 dated January 26, 1994"³; "Priority measures to ensure the activities of the penitentiary system and state support for its further reform, approved by the resolution of the Cabinet of Ministers of Ukraine No. 73 of January 18, 2000"; "Programme to

¹ Resolution No 22 "On priority measures to ensure the viability of correctional facilities and medical and occupational health centers in the transition to market relations". (1991, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/22-91-п#Text>

² Resolution No 88 "On the main directions of reform of the penitentiary system in the Ukrainian SSR". (1991, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/88a-91-п#Text>

³ Resolution No 31 "On the Program of bringing the conditions of detention of convicts serving sentences in places of imprisonment, as well as persons held in pre-trial detention centers and medical-labor prophylactics, in accordance with international standards". (1994, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/31-94-п#Text>.

strengthen the material base of bodies and institutions of the penitentiary system for 2000-2004, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 986 of June 20, 2000"¹; "Programme for further reform and state support of the penitentiary system for 2002-2005, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 167 of February 15, 2002"²; "Concept of reforming the State Penitentiary Service of Ukraine (approved by the Decree of the President of Ukraine No. 401 of April 25, 2008)"³; "National programme to improve the conditions of detention of convicts and detainees for 2006-2010, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 1090 dated August 3, 2006"⁴.

However, all these programme documents were not supported economically, as a result of which they were implemented only partially, mainly at the expense of the internal reserves of the penitentiary system or remained non-performed. In particular, according to the National Audit Office, the last of the mentioned national programmes was financed only by 6% of the need. In pursuance of the Concept of National Policy in the Sphere of Reforming the State Penitentiary Service of Ukraine (approved by the Decree of the President of Ukraine No. 631 of November 8, 2012), the Cabinet of Ministers of Ukraine No. 345 of April 29, 2013⁵ approved the National Target Programme for Reforming the State Penitentiary Service for 2013–2017 with a projected amount of funding amounting to 6 billion UAH. However, the Government of Ukraine prematurely terminated the implementation of this programme due to the need to save budget funds (Resolution of the Cabinet of Ministers of Ukraine No. 71 of March 5, 2014⁶). As a result of the amendments to the Law of Ukraine "On the State Penitentiary Service of Ukraine"⁷ made in 2016, the Minister of Justice of Ukraine actually became the "chief penitentiary servant" in the country. The structural subdivisions that managed and ensured the activities of penitentiary bodies and institutions "dissolved" in the central office of the Ministry, which led to an imbalance in the management system of the department. Proceeding from this, the Ministry of Justice of Ukraine initiated the preparation of a new Concept of reforming (development) of the penitentiary system of Ukraine, which was approved by the Resolution of the Cabinet of Ministers of Ukraine

¹ Resolution No 986 "On measures to strengthen the material base of bodies and institutions of the penitentiary system for 2000-2004". (2000, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/986-2000-п#Text>

² Resolution No 167 "On approval of the program of further reform and state support of the penitentiary system for 2002-2005". (2002, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/167-2002-п#Text>

³ Decree of The President of Ukraine "On the Concept of Reforming the State Penitentiary Service of Ukraine" (2008, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/401/2008#Text>

⁴ Resolution No. 1090 "On approval of the state program for improving the conditions of detention of convicts and detainees for 2006-2010". (2006, August). Retrieved from <https://zakon.rada.gov.ua/laws/show/1090-2006-п#Text>

⁵ Resolution No 345 "On approval of the State target program for reforming the State Penitentiary Service for 2013-2017". (2013, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/345-2013-п#Text>

⁶ Resolution No 71 "Some issues of optimization of state target programs and national projects, budget savings and recognition as repealed of some acts of the Cabinet of Ministers of Ukraine". (2014, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/71-2014-п#Text>

⁷ Law of Ukraine No 2713-IV "On the State Penitentiary Service of Ukraine". (2005, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/2713-15#Text>

No. 654-r dated September 13, 2017¹ (but at the same time the Concept of national policy in the field of reforming the State Penitentiary Service of Ukraine, approved by the Decree of the President of Ukraine No. 631 dated November 8, 2012² remained in force). In accordance with the content of this concept, the Resolution of the Cabinet of Ministers of Ukraine No. 709 dated September 13, 2017³ approved the decision to establish the Administration of the State Penitentiary Service of Ukraine as an interregional territorial body of the Ministry of Justice of the highest level, which again concentrates powers to organise protection and regime, criminal intelligence operations of law enforcement bodies, penitentiary institutions, pre-trial detention centres, and the probation service, which deals with the implementation of non-custodial sentences and post-adaptation of released persons [14]. And in accordance with the latest innovations, the Resolution of the Cabinet of Ministers of Ukraine No. 20 dated 24.01.2020⁴ liquidated the Administration of the State Criminal Law Enforcement Service of Ukraine and established a legal entity under public law interregional territorial body of the Ministry of Justice – Department for the Enforcement of Criminal Sentences, which further emphasises the ephemerality and inconsistency of reforms. Processes of optimisation (conservation and liquidation) of penitentiary institutions are constantly underway, which is not effective.

Today's optimisation is conditioned by a decrease in the number of convicts. Thus, in 2010, there were 154,027 convicts; in 2011 – 54,029; in 2012 – 147,112; in 2013 – 126,935; in 2014 – 73,431; in 2015 – 69,997; in 2016 – 60,399; in 2017 – 57,100, but this optimisation does not correspond to modern realities. Instead, it creates additional costs for the conservation process, for the transfer of convicts, eliminates human resources, and is based solely on the present without taking into account the future, that the number of convicts may increase, and the recovery process is much more complex and lengthier than the liquidation process. Special attention should be paid to the omitted principle of territoriality when determining the place of punishment, which is relevant in the international arena. For example, the European Penitentiary (Prison) Rules in Recommendation Rec(2003)23⁵ state that those sentenced to deprivation of liberty should be accommodated, as far as possible, in penal institutions located close to the places where their families or close relatives live. At present, Ukraine exercises a completely different practice, which can be illustrated by the case of the European Court

¹ Order No 654-r “On approval of the Concept of reforming (development) of the penitentiary system of Ukraine”. (2017, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/654-2017-p#Text>

² Decree of the President of Ukraine “On the Concept of State Policy in the Sphere of Reforming the State Penitentiary Service of Ukraine”. (2017, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/631/2012#Text>

³ Resolution No 709 “On the establishment of an interregional territorial body of the Ministry of Justice for the execution of criminal penalties”. (2017, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/709-2017-ri#Text>

⁴ Resolution No 20 “Some issues of territorial bodies of the Ministry of Justice”. (2020, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/20-2020-ri#Text>

⁵ Recommendation N Rec (2003) 23 of the Committee of Ministers of the Council of Europe to member states “On the implementation of the execution of life sentences and other long terms of imprisonment by administrations of places of deprivation of liberty”. (2003). Retrieved from https://zakon.rada.gov.ua/laws/show/994_848

of Human Rights "*Vintman v. Ukraine*", which declared unlawful the transfer of a convict to a colony located about 700 kilometres from his place of residence, and subsequent transfer to an even more remote colony, located about 1,000 kilometres away [15].

Thirdly, the Ukrainian legislation in no way enshrines the possibility, and most importantly the urgent need for full digitalisation of the penitentiary system, the introduction of the latest information technologies and technical means. Full digitalisation of bodies and institutions of the State Penitentiary Service of Ukraine and probation is required not only technically, but also as a means of resocialisation of the convict, and especially to maintain the latter's contact with the outside world, the opportunity to study or even work by means specified below.

1. Introduction of a centralised for all penitentiary institutions Internet network for monitoring the movement of convicts (system "electronic bracelet – server"), IP-phones, electronic plastic cards for convicts, and staff with different levels of access, chest video recorders, etc. All this will help improve the process of general management of the State Criminal Law Enforcement Service of Ukraine. Introduction of a unified system of internal and external electronic document management.

2. Continuation of modernisation of engineering infrastructure and engineering and technical means of protection, introduction of modern technologies to ensure the safety of convicts and staff, prevention of crimes in prisons and video monitoring, creation of automated information and telecommunication systems, introduction of a common electronic database of convicts.

3. Increasing the possibility of contacts of prisoners convicted with the outside world, if it does not violate their legitimate interests and rights and does not contradict progressive international law, not only through direct contact, but for example, as additional forms, to conduct online meetings with relatives and friends, if they do not have the opportunity to come on a date in person. In this aspect, Ukraine is a fairly progressive state, making amendments to Article 110 of the Penal Code in 2014, allowing convicts to use the global Internet, including Skype to communicate with the outside world (mainly relatives and friends). A year after the adoption of this rule, the right to use the global Internet had already been enjoyed by more than 2,300 convicts [16]. Unfortunately, to date, official statistics on this issue have not been published anywhere. However, according to statistics summarised by the Institute of Criminal Law Enforcement Service from April 2017 by Order of the Deputy Minister of Justice of Ukraine No. 109/23/32-17 dated 14.04.2017, at the end of 2017, the number of convicts who used the Internet amounted to 31,544 persons, and as of the end of October 2018 – 23,009 persons. In this state of affairs, positive changes in the process of re-socialisation of convicts who had access to the Internet were noted by both employees of institutions and the convicts themselves. And in some European countries today, there is even a practice of re-socialisation through the convicts' conduct of their personal blogs under the supervision of the administration or broadcasting videos that do not contain negative content and comply with moral standards (such as a dance flash mob of 1,500 Philippine convicts in memory of Michael Jackson), and as a result change the negative attitude towards convicts by society for the better [17].

2.2 Analysis of the legislation on prevention of violation of the rights and freedoms of convicts

However, the main issue that needs to be addressed today is to reconsider the introduction of a law that could prevent violations of the rights and freedoms of convicts. This was to be the Law of Ukraine "On Preventive and Compensatory Measures in Connection with Torture, Inhumane or Degrading Treatment or Punishment of Convicts and Detainees, and Introduction of the Institution of Penitentiary Judges"¹, the draft of which was submitted for consideration to the Verkhovna Rada of Ukraine in July 2016, but at the end of 2017 it was withdrawn from consideration without replacement or at least the possibility of reconsideration after amendments and modifications. This draft law was designed to establish preventive and compensatory measures in connection with torture, inhumane or degrading treatment or punishment of convicted and detained persons, as well as to establish the subjects and procedures for taking such measures as in the leading European countries such as Spain, France, Poland, etc. The very need for appropriate preventive and compensatory measures in Ukraine is required by its obligations to the United Nations and the Council of Europe. However, the draft was withdrawn from consideration and it is extremely difficult to answer when it will be able to attract the attention of the legislator again. Between 2012 and the first half of 2019, the European Court of Human Rights issued 79 final judgments on violations of the rights of convicts and detainees, for which Ukraine must pay the applicants monetary compensation (reimbursement) totalling 1,467,727 EUR.

Instead, the legislator, under the guise of a compensatory mechanism, adopted the infamous Savchenko Law, which, on the one hand, by recalculating the period of detention in a pre-trial detention centre, would compensate the persons for the suffering they experienced during the pre-trial investigation in unsatisfactory conditions of detention in the detention centre. On the other hand, the Law of Ukraine "On amendments to the Criminal Code of Ukraine regarding the improvement of the procedure for the court's admission of the term of preliminary detention to the term of punishment"² (in the media it is called "the Savchenko Law", according to the name of the author – MP Nadiia Savchenko) entered into force on 24.12.2015.

The Penitentiary Service of Ukraine previously informed Transparency International Ukraine, which has only general data on the number of convicts released from prisons due to these changes in the law. Thus, according to the Penitentiary Service of Ukraine, from December 26, 2015 to June 3, 2016, 6,420 people were released from prison. At the same time, 38,933 convicts were sentenced to imprisonment. But government agencies declined to elaborate – to date, it was not known how many were released under the Savchenko Law for murder, rape, or other crimes. Relevant information is not provided by the Judicial Administration, the Prosecutor General's Office, or the Penitentiary Service. Transparency International Ukraine and the First

¹ Draft Law of Ukraine "On Preventive and Compensatory Measures in Relation to Torture, Inhuman or Degrading Treatment or Punishment of Convicts and Detainees and the Introduction of the Institution of Penitentiary Judges". (2016). Retrieved from <https://ips.ligazakon.net/document/XH3T400Q>

² Law Of Ukraine "On Amendments to the Criminal Code of Ukraine to Improve the Procedure for Enrollment by a Court of the Term of Pre-Trial Imprisonment". (2015, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/838-19#Text>

Instance website obtained this data through their own analysis of the court register. The study covers the period from December 2015 through August 2016. According to the data obtained, during this time about 900 people were released who were convicted of premeditated murder (Article 115 of the Criminal Code of Ukraine¹), premeditated murder in a state of great emotional distress (Article 116 of the Criminal Code of Ukraine), premeditated murder of the mother of her new-born child, premeditated murder in excess of the necessary self-defence (Article 118 of the Criminal Code of Ukraine). According to the verdicts, the average term of imprisonment for these persons was about 11 years (10 years and 10 months). After the recalculation, their time behind bars decreased on average by almost two years (1 year and 8 months). According to the Ministry of Justice of Ukraine, 10% of persons released under the Savchenko Law committed a new crime and returned to prison less than a year after release, and in 2016, compared to the year before last, robberies increased by 20% [18]. Therefore, the legislator should pay more attention to the development of a truly compensatory mechanism, rather than be influenced by criminal subcultures and only imitate this kind of legislative initiative. Most of the convicts' complaints are related to poor conditions of detention, inadequate quality of food and medical care.

An example is the case of *Honcharuk Vitalii Pavlovych v. Ukraine*. During the transfer between the colonies, the applicant was not provided with antiretroviral therapy (ART) for about 4 months without justification or good reason. This violated his right to adequate medical care. A complaint under Article 3 of the Convention has already been lodged with the ECtHR, which has already been registered with the Court. Although in this case it is exceedingly difficult to prove the negative impact of a break in ART on the applicant's health, the issue will be more complex, as the problem of ART discontinuation is common and systemic. Although there are enough medicines in the country, in the case of uncommon ART regimens they have to be specially ordered to places of imprisonment. If the ART regimen is common, the breaks can only be explained by the negligence of doctors. "The result of the review of this complaint in the ECtHR should result in amendments to the legislation regarding the inadmissibility of interruption of ART and strengthening the responsibility of officials and doctors for unjustified failure to provide ART to convicts and detainees," said Mykhailo Tarakhkalo, director of the Strategic Affairs Centre at Ukrainian Helsinki Human Rights Union.

Considering the remarks of the ECtHR and other international partners in Ukraine, the reform of medical care of the State Criminal Law Enforcement Service of Ukraine was launched. Thus, by the Order of the Government No. 684-r of September 13, 2017², a new State Institution "Health Centre of the State Criminal Law Enforcement Service of Ukraine" was established. Such a reform allowed to remove the sphere of medical care for convicts from the subordination of the State Criminal Law Enforcement Service of Ukraine, which would allow to avoid conflicts or, on the contrary, corrupt relations between the administration of the colony and medical workers. In addition, other positive developments have taken place since the reform, such as for the first time in the history

¹ Criminal Codex of Ukraine. (2001). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>

² Order No 684-r "On the establishment of the state institution 'Health Center of the State Penitentiary Service of Ukraine'". (2017, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/684-2017-p#Text>

of the penitentiary system with the assistance of the Administration of the State Criminal Law Enforcement Service of Ukraine, the USAID regional mission in Ukraine, which finances the PATH "For Life" project, the International Committee of the Red Cross in Ukraine, Non-Budgetary Fund "Coalition of HIV Service Organisations", the Public Health Alliance ICF, the FREE ZONE NGO, and the Public Health Centre of the Ministry of Health of Ukraine, the implementation of a pilot project on the introduction of substitution maintenance therapy in penitentiary institutions began based on the Buchanska penal colony. Fruitful work continues with the international organisation "Pompidou Group", which is one of the world leaders in the fight against drug addiction.

In addition, in 2018, purchases of medicines and medical equipment for the total amount of 295 million UAH were made. Aid received from international non-governmental partners amounted to 19 million UAH. The main donors of such aid were the Global Fund, the PATH organisation (USAID project "For Life"), and the International Committee of the Red Cross. Laboratory equipment, emergency medical care equipment for the diagnosis and treatment of cardiovascular diseases were received, medical personnel were trained, and medicines for the treatment of socially dangerous infections were provided by international partners. All this makes it possible in 2019-2020 to fully provide convicts with treatment for tuberculosis, HIV/AIDS, and to start selection for the treatment of patients with viral hepatitis C. The coverage of persons receiving regular antiretroviral therapy is 83%, which exceeds the indicators of the Ministry of Health of Ukraine for 2018 by 14%. Patients are separately provided with drugs for the treatment of tuberculosis at the level of 100%. Rapid tests were purchased to diagnose viral hepatitis C and B, which for the first time in the history of Ukraine will allow to test the penitentiary population [19].

In view of the above, a number of conclusions can be drawn, the consideration of which will allow to solve, or at least come closer to solving the outlined problems.

To prevent violations of human rights and promote the protection of human rights, especially those in conflict with the law in Ukraine, a number of measures should be taken, in particular:

- ensure adequate funding of the bodies and institutions of the State Criminal Law Enforcement Service of Ukraine and develop a proper scheme for the use of these funds;
- optimise the organisational and managerial structure of the State Penitentiary Service of Ukraine by creating modern multifunctional penitentiary institutions with block detention and a gradual transition to cell detention (except for minimum security institutions with facilitated detention conditions given the agricultural nature of the latter and the specifics of their management) based on the model of "dynamic security";
- eliminate high-security, medium-, and maximum-security penal colonies because they have not lived up to their purpose and are hardly used by prison administrations;
- improve the conditions of detention of convicts and detainees;
- create conditions of detention of convicts, aimed at individualising the serving of punishment and encouraging law-abiding behaviour (providing, depending on the behaviour and attitude towards labour, open short-term visits, individual use of TV and other appliances).
- change the existing system of serving a sentence where the differentiation of serving a sentence in places of imprisonment has been eliminated;

- involve the community, volunteers, social educators, coaches, etc. in the implementation of certain tasks related to the process of execution of sentences and the activities of the probation service; establish cooperation with local communities, subjects of social patronage, public, religious and non-governmental organisations in order to provide probation subjects with qualified assistance, work and housing after release;
- improve the healthcare systems of convicts and detainees, improve the quality of medical care;
- improve the prison management system and change the approach to production;
- reorganise the systems of professional training of convicts taking into account not only the interests of production of penitentiary institutions themselves, but also those of the labour market, as well as possible employment and continuing education after release;
- introduce the institution of a penitentiary judge to hear cases involving convicts only;
- introduce institutions of mediation and restorative justice that would promote the development of the convict's law-abiding behaviour, stimulate a life position that meets social norms, based on the restoration, preservation, and development of socially useful qualities and relationships, including with victims of crime, for further adaptation to independent living out of prison without the use of imprisonment;
- create a state fund to compensate victims of crimes in accordance with court rulings.

CONCLUSIONS

This study established the need to ensure the development and active implementation of alternative types of punishment that are not related to imprisonment, since the criminal subculture that a person meets while serving a sentence of imprisonment constitutes one of the main determinants that contributes to the becoming and development of a criminal and professional crime as the most dangerous manifestation. This is confirmed by the results of the study of professional crime because the connection with the criminal environment is carried out through it.

Notably, the places of imprisonment hold all the prerequisites for the creation, development, and maintenance of professional crime. In correctional colonies, criminals are grouped according to different criteria: common interests and views, acquaintances, connections out of prison, etc. The question "Do you think that places of imprisonment can help "improve your criminal skills?" was answered by the majority of respondents in the affirmative (76%), and only 24% of respondents gave a negative answer. Thus, the question "While serving your sentence, did you meet with elements of the criminal subculture in places of imprisonment (prison "residence registration", stratification of people, etc.)?" most respondents (66%) answered in the affirmative, and 34% – in the negative. The question "From whom did you first receive information about the norms and rules of the criminal subculture?" the vast majority of respondents (50%) answered that they first received such information in places of imprisonment, from convicts (when they first served their sentences); 18% of respondents stated that they received this information for the first time in a pre-trial detention centre (temporary containment cell); 22% of people answered that they received it for the first time from acquaintances, friends, and family members who were out of prison (mostly from those who had

previously served their sentences); 4% of people answered that they received the above information for the first time from TV shows and movie series; 2% of respondents stated that they received it for the first time from police officers, and 3.7% of respondents said they did not remember where they first received such information [20].

The author of this study also concluded on the necessity of improving the institution of pre-trial report for the imposition of appropriate punishment; provision of constant and qualified social and psychological support for convicts, both during supervisory probation and at the stage of penitentiary probation; establishment of a system of patronage over convicts released on parole within one year after release; monitoring behaviour of convicts, checking social conditions, psychological and emotional states; establishing an effective mechanism for applying approbation programmes.

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