

## KRYMINOLOGICZNY ASPEKT ZAPOBIEGANIA NANIESIENIA USZKODZEŃ CIELESNYCH OSOBOM ODBYWAJĄCYM KARĘ W POSTACI POZBAWIENIA WOLNOŚCI

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**Adnotacja.** Artykuł naukowy został poświęcony aktualnej problematyce dotyczącej zapobiegania naniesieniu uszkodzeń cielesnych osobom odbywającym karę w postaci pozbawienia wolności. Autor przeprowadza analizę literatury naukowej, periodyków, prawa międzynarodowego oraz krajowego prawa Ukrainy w celu opracowania rekomendacji dotyczących obniżenia poziomu naniesienia cielesnych uszkodzeń osobom odbywającym karę w postaci pozbawienia wolności. W artykule naukowym przeprowadza się analizę metod wykrycia czynników przestępczości w zakładach karnych i na tej podstawie autor opracowuje metody usunięcia, neutralizacji lub blokowania czynników przestępczości w zakładach karnych. Autor artykułu uważa za niezbędne, aby w zakładach naukowych MSW Ukrainy kształcących specjalistów do pracy w zakładach karnych, wykładać taką dyscyplinę naukową jak "Teoria konfliktologii penitencjarnej". Artykuł naukowy zawiera również propozycje autora dotyczące wprowadzenia konkretnych działań wpływających na obniżenie poziomu wyrządzenia uszkodzeń cielesnych osobom odbywającym karę w postaci pozbawienia wolności.

**Słowa kluczowe:** przestępstwo, kara, kryminologia, zdrowie, skazany, pozbawienie wolności.

## CRIMINOLOGICAL ASPECTS OF THE PREVENTION OF CAUSING BODILY HARM TO PERSONS, WHO SERVING SENTENCE IN THE FORM OF DEPRIVATION OF LIBERTY

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**The annotation.** The scientific article is devoted to the actual problem of the prevention of causing bodily harm to persons, who serving sentence in the form of deprivation of liberty. The author analyses scientific literature, periodicals, international legislation and national legislation of Ukraine, regarding making the recommendation to reduce the level of causing bodily harm to persons, who serving sentence of deprivation of liberty. In the provisions of the scientific article an analysis of methods for detecting the factors of crime in penal institutions is carried out, and on this basis, the author proposes methods of eliminating, neutralizing or blocking the factors of crime in the penal institutions. In addition, the author of the article considers necessary in educational institutions of the Ministry of Internal Affairs of Ukraine, who prepare specialists for work in the penal institutions, to teach such a discipline as «The theory of penitentiary conflict research». The scientific article also contains suggestions by the author regarding the introduction of clear measures that will affect the reducing the level of causing bodily harm to person, who serving sentence of deprivation of liberty.

**Keywords:** crime, sentence, criminology, health, convict, deprivation of liberty.

## КРИМІНОЛОГІЧНІ АСПЕКТИ ЗАПОБІГАННЯ ЗАПОДІЯННЯ ТІЛЕСНИХ УШКОДЖЕНЬ ОСОБАМ, ЯКІ ВІДБУВАЮТЬ ПОКАРАННЯ У ВИДІ ПОЗБАВЛЕННЯ ВОЛІ

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**Анотація.** Наукова стаття присвячена актуальній проблемі запобігання заподіяння тілесних ушкоджень особам, які відбувають покарання у виді позбавлення волі. Автор проводить аналіз наукової літератури, періодичних джерел, міжнародного законодавства та національного законодавства України, щодо вироблення рекомендації зниження рівня заподіяння тілесних ушкоджень особам, які відбувають

покарння у виді позбавлення волі. В положеннях наукової статті проводиться аналіз методів виявлення чинників злочинності в установах виконання покарань належать, та на цій основі автором пропонуються методи усунення, нейтралізації чи блокування факторів злочинності в установах виконання покарань. Також автор статті, вважає за необхідне у навчальних закладах МВС України, які готують спеціалістів для роботи в установах виконання покарань, необхідно викладати таку навчальну дисципліну як «Теорія пенітенціарної конфліктології». Наукова стаття також містить пропозиції автора щодо, запровадженні чітких мір які вплинуть на зниження рівня заподіяння тілесних ушкоджень особі, яка відбуває покарння у виді позбавлення волі.

**Ключові слова:** злочин, покарання, кримінологія, здоров'я, засуджений, позбавлення волі.

A problem statement in general and its connection with important scientific or practical tasks. It should be noted, according to official data, Ukraine occupies one of the leading places in the world by the share of persons, who serving sentence of deprivation of liberty. The relative number of convicts in Ukraine per 100 thousand of population is approximately 405-410 people. By this indicator, our state is second only to the USA (710), Russia (700), Belarus (505), Kazakhstan (475) and Kyrgyzstan (420) (Ostrobets K.M., 2004, p. 55-60). In Ukraine, there are 12 active remand centres and 17 penal institutions with the function of the RC of institutions of the State Department for the serving of sentences, in which, in the places of deprivation of liberty of the Ukrainian criminal-executive system, which are controlled by the Ukrainian authorities, that is, without the institutions of Crimea and the occupied part of Donetsk and Luhansk regions, according to data reported by the «Donetsk Memorial» to the Ministry of Justice of Ukraine (hereinafter - the MJ), as of 01.01.2018, 57100 people were kept (the letter of MJ without number and date, here and further in brackets - as of 01.01.2017, 60399 people). During the year, the number of people in places of deprivation of liberty decreased by 3229 people (9 598 people), or by – 5,46% (– 13,71%).

In our opinion, the dynamics of the number of persons in the institutions of the criminal-executive system of Ukraine for the period from 01.01.2005 to 01.01.2018 without taking into account the institutions of the Autonomous Republic of Crimea and the occupied part of the Donetsk and Luhansk regions, is rather relevant.

Table 1

Years	The total number of persons in the institutions of the criminal-executive service	Change in the number of persons in the institutions of the criminal-executive service in % to the previous year
01.01.2005	188 465	- 1,68
01.01.2009	145 946	- 2,65
01.01.2010	147 716	+ 1,21
01.01.2011	154 027	+ 4,27
01.01.2012	154 029	+ 0,001%
01.01.2013	147 112	- 4,49%
01.01.2014	126 937	- 13,71%
01.01.2015	73 431 (89 тис.*)	- 42,15% (-30%*)
01.01.2016	69 997 (80 тис.*)	- 4,68% (- 10%*)
01.01.2017	60 399	-13,17%
01.01.2018	57 100	- 5,46%

The number of prisoners per 100 thousand of population for Ukraine is 135 (142). It has been calculated based on the population of Ukraine, which, according to assessment of the State service of statistics of Ukraine, as of December 1, 2017 amounted to 42 403 thousand citizens - without taking

into account the Crimea.

Under arrest in 12 active remand centres and 17 penal institutions with a function of the RC (yesterday's RC – autom.) as of 01.01.2018 17587 people (16368 people a year ago) were held, including 958 women (924 women a year ago) and 133 juveniles (159 people). Thus, for the year, the number of persons held in custody increased by 1219 persons (in the previous year it decreased by 247 persons), or by +7,45% (-1,5%). (The criminal-executive system of Ukraine in 2017, 2018). These statistic data indicate the need for scientific research and practical measures aimed at preventing crime in the penal institutions.

An analysis of recent research and publications, which began the solving of this problem, the allocation of previously unsolved parts of the general problem. The theoretical basis of this article is the works of Ukrainian scientists in the field of criminology, namely: V.A. Badyra, I.G. Bogatyryov, O.I. Bagatyryova, T.A. Denysova, O.M. Dzuzha, Z.V. Zhuravska, O.G. Kolb, V.Ya. Konopelskyi, I.M. Kopotun, Ye.D. Lukyanchikov, V.A. Lyovochkin, S.Yu. Lukashevych, I.B. Medytskyi, V.O. Markulova, G.O. Radov, V.M. Synyov, A.Kh. Stepanyuk, V.M. Trubnikov, S.Ya. Farenjuk, I.S. Yakovvts, etc. However, let's note that the analysis of the scientific works of the specified and other authors on the problem of criminological prevention of causing bodily harm to convicts testifies to insufficient level of theoretical elaboration of separate issues, related to the proper provision of the rights of convicts and the prevention of harassment of life and health in the process of serving sentences.

The formulation of goal and objectives of research. The goal of the article is to highlight the results of its own empirical research of methodological aspects of the use of knowledge of the science of criminology regarding the prevention of causing bodily harm to persons, who serving sentence of deprivation of liberty and developing proposals for improving practical provisions of the prevention of causing bodily harm to persons, who serving sentence of deprivation of liberty.

The presentation of main material. Let's note that on average, up to 500 crimes are registered annually in the institutions of the Department of issues of the serving of sentences, in addition, it is necessary to take into account the considerable latency of certain types of crimes (beatings, torture, hooliganism). Attention should also be drawn to the fact that a significant part of the persons who served the sentence subsequently returns to the unlawful activity. All these moments undeniably testify to the importance of the task of preventing criminal manifestations in the institutions of the penitentiary system of Ukraine.

Analysing the scientific literature, periodicals, we conclude that, based on the strategic directions of the fight against crime in Ukraine determined by the higher authorities of Ukraine and decisions of the Ministry of Internal Affairs and of the State Criminal Executive Service (further SCES) of Ukraine, in all parts of the system of serving sentences, an integrated approach must be developed to prevention of crimes among persons, who serving sentences and regarding persons, who serving sentences. The prevention of crime in these places is part of the preventive efforts of the whole society regarding combating criminal manifestations and above all aggressive crime. The higher the level of violence in the country, the more brutality exists in conflicts between individuals and social groups, the higher and the more dangerous this level is in correctional institutions. That's why we agree with I.B. Medytskyi, that the solution of urgent social problems and contradictions, increasing the efficiency of education and the implementation of the ideology of non-violence along with the increase in the material well-being of our citizens is the such basis on which work should be based on the prevention of violence, where it would not have a place. Eradication of violence among convicts is a rather ephemeral task, as well as is the elimination of crime. However, efforts seem to be real, that are being made to reduce its level, bring it to the monitored limits, as well as reduce the number of the gravest crimes against the individual (Medytskyi I.B., 2008, p. 231). Measures of general prevention in places of deprivation of liberty can be divided into: methods for detection and methods for eliminating, neutralizing and blocking criminogenic factors (O.M. Dzuzha, P.P. Mykhailenko, O.G. Kulyk, 2001, p. 480).

The methods of detecting the factors of crime in penal institutions include: first, verification of the work of the administration by the higher authorities of the State Criminal Executive Service of

Ukraine for issues of the serving sentences and the prosecutor's office. Functions of control over the activity of the PI are assigned to the central and regional apparatuses of the control of the SCES of Ukraine;

secondly, the detection of criminal zones in the PI, where crimes are the most often committed, typical for all institutions the shortcomings in work, which facilitate the committing of crimes by convicts; quantitative and qualitative changes in the contingent of convicts; criminal subculture in each institution.

It is necessary to agree with scientists, who consider, that the methods of elimination, neutralization or blocking of crime factors in the PI include:

First, the technical re-equipment of the institutions, because the technical imperfection of protective alarm system, engineer technical equipment, systems of round-the-clock surveillance of convicts, lack of necessary equipment for checking parcels and transfers, care of vehicle, of trains – all this moments also contribute to the committing crimes by convicts;

Second, the institutions stuffed by highly skilled personnel. For posts should be selected the employees by competitive selection, including the possible application of a probationary period during which candidates will be checked for fairness, impartial treatment with prisoners, level of readiness for work and their level of professionalism;

Third, the use of complex operational measures with the involvement of all forces and means to control the criminal zones in correctional institutions, where most often and in a certain period there appear typical negative phenomena that contribute to the emergence and development of intense interpersonal (group) conflicts or of the special mental state of convicts who are at risk of committing crimes;

Fourth, the establishment of a clear exchange of information between the various units of the institution and of the system as a whole about criminal leaders and their groups in order to timely prevention of this category of persons;

Fifth, not allowing of overcrowding in the PI. The overcrowding of places of deprivation of liberty by convicts, that more than a limit exacerbates of the issue of their placement and increasing the level of conflict. As A.P. Zakalyuk notes, on average 15-35% of persons are held more than seats availability in these institutions (Zakalyuk A.P., 2007, p. 712);

Sixth, the increase of discipline of personnel of institutions, promotion of their promotion and dismissal of employees from the PI who do not correspond to their posts;

Seventh, the creation of separate detachments from the number of persistent perpetrators of the regime, who serving sentences;

Eighth, the separation of a group that creates a source of voltage, the putting it into a composition of convict, which can prevent conflicts (Medytskyi I.B., 2008, p. 231).

We believe that precisely the prevention of causing bodily harm among convicted persons is possible on condition of the purposeful training of employees of correctional institutes in ways and methods for the detection, learning and resolution of conflicts among convicts. For this purpose, in educational institutions of the Ministry of Internal Affairs of Ukraine, which train specialists for work in penal institutions, it is necessary to teach such a discipline as «The theory of penitentiary conflict research».

In our opinion, it is worth the basic methods of resolving conflict situations, which lead to causing bodily harm to persons, who serving sentence of deprivation of liberty:

- 1) To reorient the convicts for a peaceful way of solution to the conflict;
- 2) To restrain the parties of the conflict under the threat of coercion;
- 3) to separate the rival subjects by the way of relocation of them to another detachment, to a punishment cell, cell-type accommodation, etc.

The prevention of violent actions regarding causing bodily harm should be aimed at reducing intergroup voltage, taking into account the following basic provisions:

- 1) It is necessary to create, as far as possible, identical conditions in all spheres of life for convicts who have different status. The administration must assume the function of protecting fairness,

which is needed in places of deprivation of liberty;

2) to identify a group of convicts who are potential sources of negative influence and aggressive actions. To keep these groups under constant control, including so-called executors, who carry out punitive functions and are a certain executive authority, through which the majority of violent actions in the PI are committed;

3) to promptly identify participants in conflicts, to analyze their psychological peculiarities and to seek solutions to conflict situations without resorting to violent actions;

4) to provide psychological support to persons arriving at the PI, especially during being in quarantine, timely to block informal contacts with negatively oriented convicts.

It is worth noting that quite rarely in the scientific literature we meet measures of prevention of causing bodily harms to person, who serving sentence of deprivation of liberty, it allows us to propose a number of following measures, namely:

1) the modernization of the legislative framework in this matter. The adoption of the Criminal-Executive Code of Ukraine, adopted on July 11, 2003, was of great importance in the process of reforming the criminal-executive legislation. It came into force on January 1, 2004. The Code regulates issues of supervision and control over the execution of criminal penalties, of educational effect on convicts to deprivation of liberty, serving sentences in different kinds of colonies, which is the basis of counteracting crime in places of deprivation of liberty;

2) bringing the current legislation into conformity with international acts such as the Universal declaration of human rights (1948), Minimum standard rules for the treatment of prisoners (1955), European prison rules (1997), as well as various departmental normative acts;

3) the humanization of the regime of retention of convicts;

4) the treatment of diseases of medical and psychological etymology. A significant number of convicts are sick with various somatic and mental illnesses (tuberculosis, AIDS, stomach ulcers and other gastric diseases, neurotic deviations, alcoholism, mental anomalies, etc.). These deviations and illness complicate the serving of sentence, impede the adequate assessment of specific life situations, the measures of corrective and labor nature;

5) the involvement of representatives of religious denominations in this case, since the Church and religion, with their precepts of non-violence, mercy and forgiveness, can do a great deal to mitigate prison practices, to form a fundamentally different attitude towards aggression as a way of solving life conflicts;

6) the empowerment of of the investigating authorities to the administration of the PI.

It is precisely on the reduction of the level of causing of bodily harm to a person serving a sentence in the form of deprivation of liberty, and the following preventive measures may affect:

1) the correct selection of the range of persons in cells; constant supervision over them;

2) the involvement in work in correctional institutions of experienced psychologists and sociologists;

3) the development of the autonomy of convicts;

4) the liquidation of active factions;

5) the true information about the state of correctional institutions, their production, economic and other possibilities.

«The prevention of crime in the places of deprivation of liberty, – A.I. Aleksyeyev considers. – in many respects it depends on the improvement of the moral atmosphere, in particular the reduction of the aggressive tone in the whole society ... The creation of a civilized environment of serving sentence, ensuring its maximum possible preventive action ... is paramount» (Alekseev A.Y. 1980, p. 149).

It should be noted that at present the quality of general prevention of crimes among convicts does not meet public needs, since one of the main tasks of criminal and criminal-executive law is not fulfilled – to prevent the committing new crimes by convicts. Penitentiary bodies usually carry out this type of prevention and other state bodies and representatives of the public carry out insufficient.

Theoretically, the Criminal-executive Code of Ukraine provides for the possibility of public participation in the correction and re-socialization of convicts (article 25), but in practice the main

forms of public participation need the perseverance, knowledge of the real life of convicts, relationships with the administration of correctional institutions.

A separate department on the serving sentences has been established in Ukraine and this circumstance dictates the urgent need to involve local authorities and management to this case, especially with regard to issues of logistical, sanitary provision, nutrition, public service and the further employment of convicts.

In our opinion, one should not forget about the individual prophylactic influence, which should be carried out taking into account the typological independence of a particular individual. Typological approach in many respects facilitates such an influence: if in the process of working with a specific convict, who may be on the path of correction, his affiliation to a certain type of personality is revealed, this will allow relatively quick get to know his individual characteristics and, depending on this, will make preventive work with them. The means of individual prevention of causing bodily harms to persons who are serving sentence in the PI are:

- 1) the study of personality of convicts: the analysis of criminal and personal cases, postal items; the survey of people who know well the convict; the observation over his environment; the testing;
- 2) the accounting of convicts with deviations in behavior; keeping card files (alphabetical, by types of violations, etc.); computer accounting, which includes all basic personal data;
- 3) the methods of monitoring the behavior of convicts who are registered: the control with the help of operative-search devices; the repeated examination within a certain time by the same methods; the care, search, censorship of correspondence, check of parcels, transfers and other regime measures; the survey of convicts and personnel of the PI.

Individual crime prevention among convicts also includes methods for changing personal qualities (self-education, etc.) and methods for optimization of relationships in places of deprivation of liberty (group psychotherapy, rational distribution of convicts for detachments, etc.).

We agree with those scientists who believe that one of the important measures of individual prevention is the creation of a so-called archival data bank about people who are on preventive registers. These data can be used both in the PI and at liberty, passing the relevant information to the territorial bodies of internal affairs. The latter, in turn, during arrest, persons should immediately send to the PI all information about those who were on the preventive register in the law enforcement agencies (Medytskyi I.B., 2008, p. 231).

In order to increase the effectiveness of individual prevention of causing the bodily harms among convicts, it should be remembered that the goal of individual prevention of crimes in general and the causing bodily harms in particular should be to change the motivational sphere as the basis of correcting of their consciousness and behavior. Individual prevention of crimes should be based not only and not so on legal measures, but on general educational events (achievements of various branches of science, especially psychology, psychiatry) and on universal values of culture. The process of prevention itself must be continuous, purposeful and dynamic. In this process, it is extremely necessary to use not only the internal capabilities of the PI but also external ones (parents of convicts, their relatives, socially useful connections of the convict, the public, charitable foundations, etc.).

As a conclusion let's note that, crime in places of deprivation of liberty in general and causing bodily harm to a person serving a sentence in the form of deprivation of liberty in particular, has its own regularities and, as it already has been noted, can not be completely eradicated in the near future. The maximum possible in combating it is to reduce its level to an acceptable level, the retention it through the constant use of all measures of prevention of crime in their unity and interconnection, which will be able to put the actual situation of the penitentiary system of Ukraine on a qualitatively new stage.

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