

соціальних, економічних, політичних та культурно-моральних протиріч пов'язаних із наркотизацією населення. Саме проведення державно-соціальної політики в даному напрямку є запорукою дієвої профілактики.

Спеціальна профілактика наркопорушень в мережі Інтернет являє собою локалізацію та нейтралізацію негативного впливу на однорідні соціальні відносини в суспільстві, створення підґрунтя для укріплення правосвідомої поведінки громадян, встановлення принципу законності та забезпечення безповоротності покарання за вчинене правопорушення.

Індивідуальна адміністративно-правова протидія незаконному обігу наркотичних речовин із використанням мережі Інтернет направлена на конкретну особу, яка використовує мережу для придбання наркотичних засобів, або обґрунтовано підозрюється в таких діях.

За результатами дослідження зроблено висновки:

1. З розвитком та доступністю використання мережі Інтернет виникла ціла система пропаганди нарко-культури, а також нові способи розповсюдження наркотичних речовин (так званих закладок).

2. Адміністративно-правова протидія незаконному обігу наркотичних речовин із використанням мережі Інтернет повинна здійснюватися на наступних рівнях: загальний, спеціальний та індивідуальний.

Ключові слова: наркотики; наркотичні речовини; протидія; інтернет; веб-ресурс.

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THE RIGHT OF CONVICTS TO HEALTH CARE

Abstract. The Article examines the application of imprisonment to persons, which restricts their ability to exercise a number of rights and freedoms, but the state undertakes to provide such persons with access to medical care and treatment. However, the procedure for exercising and ensuring the right to health care has its peculiarities due to the nature of criminal punishment in the form of imprisonment. Despite the great attention of scientists to the definition and legislative consolidation of human and civil rights and freedoms in Ukraine, the complexity of the task of administrative and legal support and establishing guarantees of the right to health of citizens sentenced to imprisonment requires more detailed study. The state of ensuring that convicts exercise their right to health care and adequate medical care has recently been extremely unfavourable. According to prosecutors, the main shortcomings in the organization of health care are insufficient staff, lack of necessary medicines and emergency medical care, untimely detection, diagnosis and prevention of diseases, especially chronic ones and inability to provide proper treatment in remand prisons.

The system of health care facilities that can provide medical care in general and special order should be specifically defined, as these aspects are rather chaotically regulated in the criminal-executive legislation. In addition, the main problem of the imperfect functioning of the program to guarantee the right of the convict to health care is the insufficient material and financial support of penitentiary institutions, as most of them are in extremely unsatisfactory condition and objectively unable to provide normal living conditions.

Keywords: ensuring, right to health, legal status, convict, administrative support, legal support, protection of public health, imprisonment in Ukraine.

Relevance of the study. One of the most crucial components of the social and economic rights and freedoms system of the citizens is the right to health care. Health care implies certain measures that are taken by the government bodies and local authorities, their

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officials, healthcare institutions, private entrepreneurs, medical and pharmaceutical employees, non-governmental organisations and citizens with the purpose of maintaining and restoring physical and psychological functions, adequate efficiency and social activity of people throughout their lives [3]. One important aspect of health care is administering medical aid to citizens. In the national legislation medical aid is defined as appropriate actions of trained healthcare professionals aimed at prevention, diagnosis, treatment and rehabilitation in connection with diseases, injuries, poisonings and health conditions as well as pregnancy and labour [2].

Recent publications review. Actual problems of the right of convicts to health care were discussed by such scientists, as: Bandurka O., Batyrhareyeva V., Dubovych O., Pochans'ka O., Dolan K., Wirtz A. Moazen B. and others.

The article's objective is to investigate the right of convicts to health care.

Discussion. The right to life is the most crucial and precious one of the rights and freedoms. Life is one of the main personal and social values of a person and should the person be deprived of it; they cease to exist. The right to life is inherent and integral. Without this right, all other rights don't matter. Therefore, the right to life has the maximum legal protection which is based on the Constitution of Ukraine. Such provisions are reflected in the Central Election Commission of Ukraine (CEC of Ukraine) (Article 7). The right of convicted persons to life and health care and certain elements of their implementation mechanism are defined in art. 10 of the Criminal Procedural Code (CPC) and legal guarantees are defined in the Law of Ukraine "About pre-trial detention", " About ensuring safety of persons participating in criminal proceedings", CPC and bylaws of the Ministry of Justice of Ukraine [4].

Persons sentenced to imprisonment are provided medical aid by a series of medical and sanitary, and preventive medical measures as well as combining free and paid forms of medical aid, provided for in the Law of Ukraine. However, despite the great number of statutory documents which constitute the regulatory foundation for ensuring the right to health care of the convicted persons, as of today, the state of organizing medical aid and providing convicted persons with medical aid are unsatisfactory as the quality of the medical aid provided to the convicted citizens is at a very low level, there is severe shortage of funds, equipment, medicine and qualified staff and the medical professionals remain dependent on the management of the prisons and custodial facilities [1].

Penitentiary institutions ensure sanitary and hygienic anti-epidemic rules are followed. The healthcare institutions of the penitentiary institutions of Ukraine, whose structure includes psychiatric and infection wards, have a regime which allows the isolation of patients as well as substantial supervision over the convicts' behaviour. Preventive medical examination is performed once a year in penitentiary institutions, aimed at detecting and preventing the spread of infections, parasitogenic, somatic and mental illnesses. The right to life includes the whole set of human rights in total, but doesn't fully repeat any of them individually. The right to life means not only refusing from a war, forbidding the homicide or death penalty, but also providing decent living conditions crucial for the person's proper development. Unlike all other types of rights, the right to life is a determining condition which is the foundation for the person's dignity which guarantees the sanctity of the person's physical existence as a human life is viewed as a whole and nondivisible value which is not to be limited [6].

The right to life is ensured by a number of constitutional guarantees. Among them, one of the main guarantees of the right to life is the healthcare system, its constant development, the advances of medicine, improving the supply of medicine, improvement of the system of providing sanitary and anti-epidemic welfare. As far as medical aid is concerned, the right to protection should not be viewed only as sustaining physiological existence of a person, but also the quality of life, the person's internal (psychological) and external (material) state; whether they feel like a fully functional member of society, how socially active they are; the stage of society's adaptation to accepting people with physical or mental [7]. National governmental and local governmental bodies are obliged to use comprehensive measures aimed at improving the quality of people's lives. It is important to keep in mind that even a person, that relies on life support equipment for sustaining their physical existence, is entitled to medical and social aid of the highest quality available. A human life is physiological and psychological functioning of the whole body. Both a free person and a convicted person have equal rights to life, health care and to receiving medical aid. And constant violation of the rights of convicts (providing medical care of insufficient quality), especially of those with mental disorders and other serious medical conditions, is a direct violation of the rights of convicts, as they have the

same rights to health care and quality medical aid as free persons [3].

At the same time, one of the key aspects of the legal status of a person, including convicted persons, can be considered the right to medical aid. The study of the correlation between the right to life and the right to medical aid is adequately supported in terms of medical law [2]. At the beginning of the XXI century, ensuring respect for fundamental human rights and freedoms has become an integral part of the development of a civilized society. A state can only really be considered lawful if it respects the priority of human and civil rights and freedoms. Ukraine, having chosen the path of democratic transformation and integration into the world community, has made a commitment to comply with the provisions of ratified statutory acts [4]. In the past, our state was characterized as having a clear prioritization of the interests of society and the state over the rights, freedoms and legitimate interests of individuals. In terms of medicine, testaments of this were the total numbers of cases, hospital bed occupancy, formulation of the concept of public health, and so on. The indicators and content of an individual's state of health were of bigger interest to a small circle of researchers rather than reflected the real state of affairs regarding the state's care for its citizens. The reality of the law's priority suggests that particular attention should be paid to the status, provision and protection of patients' rights. Nowadays, it is getting clear that receiving medical care is one of the aspects of ensuring the human right to life. In this regard, it seems appropriate at the medical and legal level to comprehensively analyze the origin and ensuring the right to life, as well as to study the issue of medical aid as a means of ensuring the right to life. It is crucial for being able to propose certain ways of improving the legal foundation in the field of health care regarding the protection of patients' rights at the sectoral level [5].

The problem of poor conditions during the detention stage and poor medical care in Ukrainian penitentiary institutions are "a structural problem and it needs to be addressed immediately, as it leads, among other things, to the spread of various diseases and, as a result, deaths and suicides". Admittedly, the low quality and poor quality of medical aid in the penitentiary institutions entails a number of serious consequences, since the persons sentenced to imprisonment, have no access to timely and qualified medical care, it directly leads to an increase in the number of cases and to an increase in mortality rate [6]. Thus, as of January 1, 2020, 88 people in penitentiary institutions died from: AIDS - 22; cardiovascular diseases - 21; tuberculosis - 9; central nervous system diseases - 7; diseases of the digestive system - 3; malignant tumors - 9; respiratory diseases - 8; limb injuries - 1; injuries - 1; suicides - 5; accidents - 2. Apart from these, the number of tuberculosis patients registered in penitentiary institutions accounted for 1923 people, HIV - 4876 people [5].

The key factors that impact the mortality of prisoners are insufficient funding and poor equipment of medical facilities (nearly 70 percent of which is outdated or technically worn out), medicines and lack of qualified personnel, which ultimately leads to poor quality, and in some cases to failure to provide medical care completely. The most common demerits of administering medical aid to convicts include [7]:

- Lack of doctors and other medical professionals at medical units of penitentiary institutions;
- Underequipped medical facilities with lack of medicine;
- Unsatisfactory organization level of administering medical aid to prisoners (absence of hospitals, infection isolation wards, isolation wards for people with mental disorders, etc.);
- Insufficient level of examination of prisoners for HIV infection and provision of medical care to HIV / AIDS patients;
- Lack of measures regarding additional diagnostics of diseases, apart from general mandatory and X-ray examinations;
- Insufficient awareness of the institutions' staff about the provisions and requirements of the international human rights law, standards of treating prisoners, discrepancy between the medical records and the requirements of current legislation, etc. [2].

Protection of the right to medical care for persons in detention, in difficult conditions and convicts serving a sentence. Nearly 90% of convicts suffer from various diseases, approximately 30% suffer from socially significant diseases (unofficial statistics are much higher). With the current funding, the right to medical care in the appropriate amount and quality only exists on paper. This is confirmed by the deaths of convicts who did not receive timely and quality medical care [5]. Therefore, there are problems, and the state basically does not take any measures to eliminate them. Legal precedents of the European Court of Human Rights is constantly expanding and does not exclude Ukraine's violation of its obligations

under the European Convention for the Protection of Human Rights and Fundamental Freedoms in terms of violation of Article 3 of the 1950 Convention.

It is the duty of the State under Article 3 of the ECHR to create appropriate conditions to ensure that persons in pre-trial detention facilities and penitentiary institutions had access to quality and timely medical care. In particular, Ukraine should provide regular and systematic monitoring, detailed records on the state of health and treatment of prisoners during detention, create conditions necessary for appropriate treatment, supply of medicines, provide medical institutions with qualified professionals and diagnostic equipment for solving issues at an early stage or creating proper conditions for a rapid response. Current situation is unacceptable for the democratic, legal and social state that Ukraine has proclaimed to be in accordance with the Constitution of Ukraine, and, clearly, requires rapid and fundamental changes [5].

Thus, the current state of the convicts' rights to health care, taking into account a number of social, economic and legal factors, remains only declared in statutory acts, which in practice is only exhibited in occasional medical examinations and diagnostics of diseases, because to actually be implemented, this right of persons must comply with the state's obligation to ensure its implementation. However, national legislation is normally limited to establishing general medical rules for convicts that are declared yet cannot be complied with. At the same time, the legislation of Ukraine does not establish any effective mechanisms for exercising the right to health care, nor the responsibility of officials for improper medical care for convicts and for causing harm to the convicts' health. For instance, the Penitentiary Enforcement Code contains a provision according to which every convict has the right to seek advice and treatment from institutions that provide paid medical services, but the relevant regime prohibitions and restrictions due to the nature of criminal punishment do not actually allow convicted citizens to exercise this right. The right of a person sentenced to imprisonment to freely choose a doctor and the medical institution in which they wish to receive treatment also remains only declared on paper, as today Ukraine virtually has no mechanism for providing the convicted with doctors from outside the penitentiary system, even at their own expense.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

References

1. Analysis of the state of ensuring isolation, surveillance and security in penitentiary institutions for 12 months of 2008. Information letter. Government Department of Ukraine for Enforcement of Sentences. No. 1314, 12. Mar. 21 p. [in Ukr].
2. Bandurka O. M., About power and crime. 2012, Kharkiv: Zolota mylya., 32 p. [in Ukr].
3. Batoryhareyeva V. S. Criminological characteristics and preventing crime committed by homeless people in Ukraine: a monograph; Batoryhareyeva V. S., O. V. Dubovych; National Academy of Legal Sciences of Ukraine, Research institute in studying crime related issues Research institute named in honor of Stashys V. V. Kharkiv: Pravo. 2015. 198 p. [in Ukr].
4. International Statistical Classification of Diseases and Corresponding Health Conditions, 10th Edition (ICD-10), revision as of 2016; URL: <http://apps.who.int/classifications/icd10/browse/2016/en>
5. Pochans'ka O. S. Administrative and legal protection of the rights of citizens sentenced to imprisonment in Ukraine written by a doctor of juridical science specialized in.: 12.00.07 administrative law and procedure; finance law; information law Pochans'ka O.S; Kharkiv National University of Internal Affairs, Ukrainian Ministry of Internal Affairs; research adviser Barash Ye. Yu. Sumy: SumDU, 2020. 495 p. [in Ukr].
6. Annual Crime Report by the Council of Europe; URL: <http://wp.unil.ch/space> (data extracted on: 04.09.2021)
7. Dolan K., Wirtz A. L, Moazen B. et al. Global burden of HIV, viral hepatitis, and tuberculosis in prisoners and detainees. *Lancet*. 2016. Pp. 1089–1102.

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ПРАВО ЗАСУДЖЕНИХ НА ОХОРОНУ ЗДОРОВ'Я

Анотація. Стаття розглядає питання застосування до осіб позбавлення волі, що обмежує їх можливість реалізації низки прав і свобод, але держава зобов'язується забезпечити таким особам доступ до медичної допомоги та лікування. Проте порядок реалізації та забезпечення права на охорону здоров'я має свої особливості, зумовлені характером кримінального покарання у виді позбавлення волі. Незважаючи на велику увагу науковців до визначення та

законодавчого закріплення прав і свобод людини і громадянина в Україні, складність завдання адміністративно-правового забезпечення та встановлення гарантій права на здоров'я громадян, засуджених до позбавлення волі, потребує більш детального вивчення. Стан забезпечення реалізації засудженими свого права на охорону здоров'я та належне медичне обслуговування останнім часом був вкрай несприятливим. Основними недоліками в організації охорони здоров'я, на думку прокурорів, є нестача кадрів, відсутність необхідних медикаментів та невідкладної медичної допомоги, несвоєчасне виявлення, діагностика та профілактика захворювань, особливо хронічних, а також неможливість забезпечити належне лікування в слідчих ізоляторах. Конкретно слід визначити систему закладів охорони здоров'я, які можуть надавати медичну допомогу загального та спеціального порядку, оскільки ці аспекти досить хаотично врегульовані у кримінально-виконавчому законодавстві. Крім того, основною проблемою недосконалості функціонування програми гарантування права засудженого на охорону здоров'я є недостатнє матеріальне та фінансове забезпечення установ виконання покарань, оскільки більшість із них перебувають у вкрай незадовільному стані та об'єктивно не можуть забезпечити нормальне життя. умови.

Ключові слова: *забезпечення, право на здоров'я, правовий статус, засуджений, адміністративне забезпечення правового забезпечення, охорона здоров'я населення, позбавлення волі в Україні.*

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FACTORS RELATED TO CRIMINAL OFFENSES AGAINST SEXUAL FREEDOM AND SEXUAL INTEGRITY OF A PERSON IN UKRAINE (EMPIRICAL RESEARCH)

Abstract. The article deals with the current state of crimes against sexual freedom and sexual integrity of a person in Ukraine. The perception of factors related to crimes against sexual freedom and sexual integrity of a person and some moments in social life, which are closely related to the sexual sphere of relationships by young people, is analyzed. The research is based on the results of the poll of youth aged 18 to 25 years.

Keywords: *current state of crime, sexual freedom, sexual integrity, rape, sexual violence, culture of sexual relations.*

Relevance of the study. At the present stage, Ukraine is undergoing radical changes in socio-economic, political and other spheres of society. However, at the same time, there is a decline in living standards of a certain part of the population, the destruction of moral ideals, which has an extremely negative impact on the formation of consciousness of modern society. Of particular concern is the fact that these serious negative changes are manifested in the consciousness and stereotypes of sexual behavior in society, the deformation of sexual morality as one of the spheres of human life. Satisfaction of sexual needs is increasingly carried out in illegal ways.

Sexual freedom and sexual integrity are inalienable natural rights of the individual. The sexual integrity of any person is protected by the state, and encroachment on it and on a

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