

Передбачені законом тяжкі насильницькі злочини проти життя і здоров'я особи, маючи кримінально-правову природу спільність, за набором детермінуючих їх криміногенних явищ, а також структурою конфлікту в конкретній життєвій ситуації неоднакові. Девіантна особа взаємодіє, обмінюється енергією та інформацією з іншими соціальними групами, структурно входить до загальної системи суспільної організації, формується під впливом різних соціальних інститутів, процесів, соціальних фактів. Означене середовище впливає на свідомість і волю фізичних осіб, представників цієї спільноти, рівно як і останні через спосіб життя, сукупну діяльність, мотиваційні лінії і поведінкові програми визначають якісний зміст і зовнішню форму функціонування даного середовища.

Важливо розуміти, що зовнішні впливи лише опосередковано зумовлюють людську активність, оскільки заломлюються через свідомість й упорядковуються мисленням, стримуються вольовими зусиллями, співвідносяться із потребами та інтересами, ціннісними орієнтаціями людей, крізь призму яких можуть помітно викривлятися й модифікуватися у мотивації цілеспрямованої діяльності. Причинність насильницької злочинності як вид соціальної детермінації слід шукати у площині дефектів свідомості і волі девіантної молоді, бо, на наш погляд, безпосередня причинність кримінальної активності молодих людей має соціально-психологічне походження.

Ключові слова: *насильство, злочинність, злочин, покарання, детермінація, дефекти свідомості.*

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DOCTRINAL FRAMEWORK OF DEVELOPING A SAFE-ORIENTED DIMENSION OF THE FUNCTIONING OF PRISONS OF THE MINISTRY OF JUSTICE OF UKRAINE

Abstract. The author's analysis of the conceptual apparatus in the field of penitentiary security is carried out in the article. Author's definitions of such concepts as: "security in the penitentiary system", "danger in the process of execution / serving sentences in places of detention of the Ministry of Justice of Ukraine", "penitentiary threat", "personal security during execution / serving sentences", "right of convicts" for personal safety".

Keywords: *security, danger, threat, personal security, right of convicts to personal security.*

Relevance of the study. The current state of reform (development) of the penitentiary system of Ukraine [1], and the doctrine of domestic criminal executive (penitentiary) law [2; 3; 4; 5; 6; 7; 8] put new approaches to understanding the traditional categories to the practice of execution of punishments in this area. One of such categories is "security" in the penitentiary (penitentiary) sphere of legal relations.

Recent publications review. Within the framework of the criminal-executive

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development and criminological principles of security-oriented functioning of places of detention of the Ministry of Justice of Ukraine, it is important to understand the relevant conceptual apparatus. Some of the concepts have already been sufficiently developed by modern branch science (A. Bogatyrev, I. Bogatyrev, M. Gromov, B. Kazak, I. Kolb, O. Kolb, I. Kopotun, R. Pidvysotsky, I. Yakovets, etc.), and some need new approaches to their understanding, modernization or primary scientific substantiation.

The article's objective. The aim of the article is the author's analysis of the conceptual apparatus in the field of penitentiary security, designed to lay the foundation for security-oriented measurement of the functioning of places of detention of the Ministry of Justice of Ukraine.

Discussion. The need to develop appropriate principles is due to the dialectical relationship "danger – security". The use of the dialectical method gave rise to the connection between the categories of "security", "danger", "threat", "personal security", "right of convicts to personal security" in the context of developing criminal-executive and criminological principles of security-oriented functioning places of detention of the Ministry of Justice of Ukraine. Thus, based on the results of studying explanatory and special legal dictionaries, it should be noted that "security" in the penitentiary system should be understood as the state of protection of convicts, staff and others from dangers and threats during execution and serving sentences in prisons of the Ministry of Justice of Ukraine. It ultimately contributes to the goal of protecting the interests of the individual, society and the state. In addition to ensuring security in the process of execution/serving of sentences, the achievement of this goal, under Part 1 of Art. 1 of the Criminal Executive Code (CEC) of Ukraine (ie means of achieving it) helps to create conditions for correction and resocialization of convicts, prevention of new criminal offenses by convicts and others, as well as prevention of torture and inhuman or degrading treatment, treatment of convicts [9].

Therefore, it is unclear why the state of protection of convicts and staff is not enshrined in this list. Therefore, although at the doctrinal level, we propose to resolve this issue by setting out Part 1 of Art. 1 of the CEC of Ukraine in the following wording: "1. Criminal-executive legislation of Ukraine regulates the procedure and conditions of execution and serving of criminal punishments to protect the interests of the individual, society and the state by creating conditions for security of convicts, staff of penitentiaries and other persons, correction and resocialization of convicts, prevention of new criminal offenses both convicts and others, as well as the prevention of torture and inhuman or degrading treatment of convicts".

In turn, the "danger" in the execution/serving of sentences in places of detention of the Ministry of Justice of Ukraine is represented by some factors, the elimination (through anti-criminogenic influence) which ideally results - the state of penitentiary security. Among the factors of penitentiary danger, based on the results of scientific and empirical (including author's) research, we include such as:

- violence among convicts, staff and in different variations the interaction of such categories;
- stratification of convicts within the unspoken norms of criminal (prison) subculture, which can cause such latent forms of violence as psychological, economic, sexual;
- penitentiary crime, the "crown" of which in the context of penitentiary danger is violent crime in places of detention;
- various forms of abuse of staff of penitentiary institutions concerning convicts, which is manifested in all four forms of penitentiary violence - physical, psychological, economic, sexual;
- non-violent illegal actions of penitentiary staff, often related to corruption, resulting in various types of the latent both penitentiary and post-penitentiary threats to the penitentiary system and society and the state as a whole. In this case, the local danger (the level of penitentiary institutions) grows into a sectoral (level of the penitentiary system), and then – the national (national level) as a result of the impact on the state, dynamics, trends and structure of recidivism (post-penitentiary) crime.

It should be noted that the close connection of penitentiary security with public security (ie the connection of sectoral and national levels) is noted by both Ukrainian [10] and foreign [11, p. 5; 12, p. 4-10] scientists.

Thus, "danger" is the main system-forming property of "security". Therefore, in a broad sense, "security" is seen as a state in which: a) there is no danger; b) there is no danger because there is protection from it. In this case, it is customary to talk about the means and measures to

ensure the security of the individual, society and the state. It should be noted that the concept of understanding "security" as "protection from danger" is prevalent in modern domestic and foreign science. However, not the only one.

Opponents of this view argue that the category of "security" implies the presence of danger, and therefore security exists only when there is no danger at all. That is, according to B. Kazak, this is a state when danger is completely excluded [13, p. 15].

We believe that both positions deserve the right to exist both in theory and in practice. However, concerning the penitentiary system, due to the criminogenic composition of convicts, we consider it appropriate to consider penitentiary security as a state of protection from penitentiary dangers. Thus, one of the main signs of danger is the possibility of harm to the interests protected by law. That is, depending on the object and scope of the danger is present in the personal, material, environmental and other spheres of social life. The development of more or less objectively existing dangers can create one or another threat - the next element in the chain of concepts we study.

Starting with the analysis of the concept of "threat" in the penitentiary system, we note that it is closely related to the concept of "danger", but is not identical to it. These two seemingly identical concepts are static-dynamic, in which danger is a static phenomenon and a threat is dynamic. We will also pay attention to such moments.

First, it can be said that a threat is a real danger when, for example, a convict has a plan to commit violence against another convict or staff of a penitentiary institution. Secondly, different penitentiary threats have different degrees of danger, depending on the severity of the planned crime, the situation, means, tools and other aspects of the crime, and so on. Therefore, it is necessary to define "penitentiary threat" as realized at a certain stage (preparation, attempted penitentiary crime, or other manifestations of illegal behavior during execution/serving a sentence) the possibility of harming legally protected interests, which has, compared to an objectively existing danger, formal expression and transfer to the sphere of a potential victim of such a threat.

Consideration of penitentiary danger and penitentiary threat is not an end in itself. In any case, it is important to clarify these issues to achieve a socially significant goal. This goal is to ensure "personal security" in the implementation of criminal enforcement policy. The study of special scientific sources did not make it possible to find a universal definition of this term. Thus, some scholars equate the concept of "security" with "personal security", although the former has a broader socio-legal nature and extends not only to the personal sphere, but also to production, operational, economic, and ultimately national.

In turn, the explanatory dictionary of the Ukrainian language offers the following meanings of the adjective "personal": 1) one that is the property of a particular individual, belongs to him; personal; 2) which directly relates to a person related to him; which expresses the characteristic features, the inner essence of a person; 3) which is carried out directly, without third parties; which is carried out by someone on their own behalf [14, p. 504].

According to the results of the study, we can define "personal safety" during the execution/serving of punishment as a state of protection of life and health, honor and dignity, inviolability of convicts, staff of penitentiary institutions and other persons from potential and perceived threats and dangers due to the specifics of the functioning of the penitentiary system.

Ensuring the security of the staff of penitentiary institutions and personal security is possible due to dynamic security, which is characterized by the development of positive relationships with convicts, their employment, established trusting relationships with them and effective communication that allows staff to be confidential among the convicts.

The next concept among the above is "the right of convicts to personal security." It is the most voluminous due to its legislative enshrinement in Art. 10 of the Criminal Enforcement Code of Ukraine. Although not normatively defined, we consider it necessary to provide an author's definition of "the right of convicts to personal safety" – a set of state-guaranteed in the face of officials of penitentiary institutions (through the definition of many obligations of staff) powers of convicts in the absence of danger, as well as to protect their lives and health from various forms of violence and other dangers to life and health while serving/serving a sentence of arrest, restriction of liberty, detention in a disciplinary battalion of servicemen or imprisonment.

Highlighting among the priorities of personal safety of life and health of a person, as indicated in this definition, in Art. 10 of the Criminal Enforcement Code of Ukraine, is confirmed by the empirical results of the study. Yes, to the question "Indicate what do you

associate the concept of "personal safety of convicts "with?" 97% of the practitioners we surveyed indicated that there was no danger to life and health.

At the same time, the legislator correctly defined in Part 1 of Art. 1 of the Criminal Enforcement Code of Ukraine the subject of criminal-executive legal regulation (the dual process of execution and serving of sentence) and paid attention to consolidating only the "right of convicts to personal safety" (Article 10 of the Criminal Enforcement Code of Ukraine), "forgetting" punishment. It is appropriate to emphasize that the relevant issue is not regulated in the Law of Ukraine "On the State Penitentiary Service of Ukraine".

Therefore, in order to reconcile the interests of the two subjects of the process of execution/serving of sentences, adhering to those defined in Art. 5 of the Criminal Enforcement Code of Ukraine principles, as justice and mutual responsibility of the state and the convict, we consider it appropriate to legislate the mechanism of realization of the right of personnel of bodies and institutions of execution of punishments for personal safety.

Conclusion. Thus, we conclude that the mechanism of personal safety of convicts as a comprehensive institution for preventing violence in places of detention of the Ministry of Justice of Ukraine is an institutional entity that includes a system of international and national regulations, special subjects, forms and methods of their activities on ensuring the right of convicts to personal safety.

It is important to realize that the subjects of personal safety of convicts are not only the staff of penitentiary institutions of the Ministry of Justice of Ukraine but also international institutions (members of the European Committee for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment), other officials of the Ukrainian state (the Commissioner for Human Rights of the Verkhovna Rada of Ukraine or specially authorized representatives, as well as other persons specified in Part 1 of Article 24 of the Criminal Enforcement Code of Ukraine), lawyers or specialists in law, as well as the public figures (supervisory commissions, boards of trustees, public associations, mass media, religious and charitable organizations, individuals). It is also impossible to reject cases of self-defense of a convict in cases provided by law (for example, the right of a person to self-defense, to act in a state of extreme necessity). The main requirement in all cases is the use of statutory rights and the performance of certain duties by both convicts and staff and others.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ДОКТРИНАЛЬНІ ЗАСАДИ РОЗРОБЛЕННЯ БЕЗПЕКООРІЄНТОВАНОГО ВИМІРУ
ФУНКЦІОНУВАННЯ МІСЦЬ НЕСВОБОДИ МІНІСТЕРСТВА ЮСТИЦІЇ УКРАЇНИ

Анотація. У статті проведено авторський аналіз понятійного апарату у сфері пенітенціарної безпеки, покликаний закласти фундамент для безпекоорієнтованого виміру функціонування місць несвободи Міністерства юстиції України.

Зазначено, що необхідність розроблення відповідних засад зумовлена діалектичним взаємозв'язком «небезпека – безпека». Використання діалектичного методу дало підставу через призму наведених понять визначити зв'язок між категоріями «безпека», «небезпека», «загроза», «особиста безпека», «право засуджених на особисту безпеку» у контексті розроблення кримінально-виконавчих і кримінологічних засад безпекоорієнтованого функціонування місць несвободи Міністерства юстиції України.

Визначено, що під «безпекою» в пенітенціарній системі варто розуміти стан захищеності засуджених, персоналу, інших осіб від небезпек та загроз під час виконання та відбування покарань у місцях несвободи Міністерства юстиції України, що в підсумку сприяє досягненню мети захисту інтересів особи, суспільства і держави.

У свою чергу, «небезпека» у процесі виконання/відбування покарань в місцях несвободи Міністерства юстиції України представлена низкою факторів, усунення (шляхом антикриміногенного впливу) яких в ідеалі має свій результат – стан пенітенціарної убезпеченості (забезпечення безпеки).

Зроблено висновок, що «небезпека» виступає головною системоутворюючою властивістю «безпеки». Тому в широкому розумінні «безпека» розглядається як стан, при якому: а) відсутня небезпека; б) не загрожує небезпека, тому що від неї є захист. У такому разі прийнято говорити про засоби й заходи забезпечення безпеки особи, суспільства і держави. Стосовно пенітенціарної системи, в силу криміногенного складу засуджених, запропоновано розглядати пенітенціарну безпеку саме як стан захищеності від пенітенціарних небезпек.

Аналіз поняття «загроза» в пенітенціарній системі надав підстави констатувати, що воно тісно співвідноситься із поняттям «небезпека», проте не є тотожним йому. Ці два поняття перебувають у зв'язку «статика – динаміка», за яким небезпека є статичним явищем, а загроза – динамічним.

Також звернено увагу на таке: по-перше, загроза є реальною небезпекою, коли, наприклад, у засудженого сформувався задум на вчинення насильства щодо іншого засудженого або персоналу установи виконання покарань; по-друге, різні пенітенціарні загрози мають різні ступені небезпеки, що залежать від тяжкості злочину, що планується, обстановки, засобів, знарядь та інших аспектів вчинюваного злочину тощо.

Визначено «пенітенціарну загрозу» як реалізовану на певній стадії (готування, замах на пенітенціарний злочин, або інші вияви протиправної поведінки під час виконання/відбування покарання) можливість заподіяння шкоди охоронюваним законом інтересам, що має, порівняно з об'єктивно існуючою небезпекою, формальне вираження й перенесення на сферу потенційної жертви такої загрози.

Запропоновано визначення «особистої безпеки» під час виконання/відбування покарання – це стан захищеності життя і здоров'я, честі та гідності, недоторканності засуджених, персоналу органів і установ виконання покарань та інших осіб від потенційних та уявних загроз і небезпек, зумовлених специфікою функціонування кримінально-виконавчої системи.

Наведено авторське визначення поняття «право засуджених на особисту безпеку» – це сукупність гарантованих державою в особі посадових осіб органів і установ виконання покарань (через визначення низки зобов'язань з боку персоналу) правомочностей засуджених на життєдіяльність в умовах відсутності небезпеки, а також на захист їх життя і здоров'я від різних форм насильства та інших небезпек життю і здоров'ю при виконанні/відбуванні покарання у виді арешту, обмеження волі, тримання в дисциплінарному батальйоні військовослужбовців або позбавлення волі.

Ключові слова: безпека, небезпека, загроза, особиста безпека, право засуджених на особисту безпеку.

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SOME ISSUES OF CRIMINOLOGICAL CHARACTERISTICS OF FEMALE CRIME IN UKRAINE

Abstract. Some components of the criminological characteristics of women's crime and its place in the structure of general crime have been studied. It was found that over the last five years, despite the fact that the total number of convicts is gradually decreasing, the share of women among all persons convicted of criminal offenses remains in the ratio of men to 1 to 7, remaining at the level of 11-12%.

Among the criminal offenses committed by women, the most common are traditionally such illegal encroachments on property as theft (in 2020 - 53.7% of the total number of convicted women). In second place are criminally illegal acts related to the illegal production, manufacture, acquisition, storage, transportation or transfer of narcotic drugs, psychotropic substances or their analogues without the purpose of sale. And such criminal acts as fraud and misappropriation, embezzlement or seizure of another's property by an official abusing his official position are characterized by a fairly high proportion of their commission by women.

Keywords: criminological characteristics, female crime, structure of female crime.

Relevance of the study. For criminology, the characteristics of the offender is one of the most important issues that requires constant attention. Because the development of appropriate and effective measures to prevent any type of criminal offense must take into account the specific features, properties and qualities that distinguish criminals from law-abiding citizens. And it is the generalized criminological characteristics of certain types and categories of criminals allows to identify their specific features and qualities that contribute to the commission of criminal offenses, to identify criminogenic groups, as well as to predict the criminal behavior of individuals [1, p. 42]. In this context, it will be important to consider individual characteristics of crime among women as part of general crime. Because "a woman

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