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PENITENTIARY CRIME AS A SOCIAL PHENOMENON INHERENT IN PLACES OF NON-FREEDOM IN UKRAINE

Abstract. Penitentiary crime as a social phenomenon inherent in places of non-freedom in Ukraine is described in the article. The opinions of foreign and domestic scientists on the concept of penitentiary crime are analyzed. Penitentiary crime in places of incarceration is identified according to the typology of the object of a criminal offense. The author's definition of penitentiary crime is formulated.

We have identified crime in places of non-freedom according to the typology of the object of a criminal offense committed in places of non-freedom, dividing it into the following groups: 1) penitentiary criminal offenses; 2) violent criminal offenses; 3) narcotic criminal offenses; 4) criminal offenses against property; 5) official and corruption offenses. All of them together characterize penitentiary crime.

Keywords: *crime, offense, convicted person, employee, institution, punishment*

Introduction. Ukraine is independent for 30 years and we are all standing in the way of developing a democratic state governed by the rule of law. Unfortunately, we can note that the criminal situation in the country is such that a person and his life have not become a priority of the state. Although, the state should provide the country with such a procedure for regulating legal relations that could protect a person, society and the state from criminal offenses.

One of the paradoxes of the national penitentiary system is that persons who are isolated from society for committing criminal offenses in order to correct them, resocialize them and prevent the commission of a new criminal offense, repeatedly violate the criminal law norm, again commit new criminal offenses, sometimes even of greater severity than those one for which they are serving a sentence.

Studying the criminological theory of penitentiary crime in places of non-freedom of Ukraine, we may to the conclude that its manifestations at all levels of the development of public relations were a destructive force for human life, its protection of rights and freedoms. Unfortunately, the country's state institutions, first of all law enforcement agencies, are not able to resist penitentiary crime, which by its actions threatens not only the authority of justice, but also the national security of Ukraine.

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Analysis of recent research and publications. The theoretical basis for the study of penitentiary crime as a social phenomenon inherent in places of non-freedom in Ukraine was the scientific works of domestic and foreign scientists representing various branches of scientific knowledge, such as: L. Bagria-Shakhmatov, A. Bogatyrev, O. Bogatyreva, V. Grischuk, T. Denisova, A. Juzha, A. Dolgova, A. Dudorov, O. Kolb, V. Kuznetsova, I. Kopotun, V. Kudryavtseva, O. Mikhaylik, S. Miroshnichenko, Yu. Okud, M. Puzyrev, A. Stepanyuk, B. Trubnikov, O. Shkuta and other researchers.

The purpose of this work is to study penitentiary crime as a social phenomenon inherent in places of non-freedom in Ukraine. Therefore, we set the task to analyze the impact of general crime on penitentiary crime in places of non-freedom in Ukraine, as well as to formulate its author's definition.

Formulation of the main material. Penitentiary crime is formed in the conditions of execution and serving of criminal sentences and its constant powerfully affects the human consciousness in places of non-freedom of the State Penitentiary Service of Ukraine. If someone thinks that penitentiary crime can be overcome by various forms and methods, they are deeply mistaken. C. Beccaria offered the theory of a "born Criminal", where he expressed his own opinion that there are people who are prone to committing a crime from birth (C. Beccaria, 2014, p. 222).

We should agree with this theory, moreover, the change in social formations, the scientific search for the prevention of penitentiary crime, have changed the views of criminologists, in general, on the problem of crime. Today, there are all reasons to say that biologically every person is prone to committing a criminal offense, and it is important to note that he commits it, it is another matter in what form.

In order to prove that penitentiary crime is a social phenomenon which is inherent in places of non – freedom in Ukraine, we will try to apply a comparative method of solving this problem. Without going into a scientific discussion with domestic and foreign theorists regarding the problems of crime, at first we conducted a certain cross-section of the scientific vision of crime in general. Thanks to this, we were able to express our own vision on the problem of committing a new criminal offense in places of non – freedom by persons serving sentences.

Firstly, there is such natural phenomenon as crime in society, and it is generated by people themselves in its various manifestations. According to the results of public opinion polls conducted in recent decades, people in many countries of the world put it in second or third place according to importance after economic problems (O. Juzha et al., 2020, p. 50). So in places of non-freedom there are persons who not only committed a criminal offense for the first time, but also those one who have a criminal record, are authorities in places of non-freedom, adhere to a certain subculture, and so on. Therefore, the commission of a new criminal offense on their part is not something extraordinary. This is their lifestyle and behavior.

Therefore, it is appropriate to refer to foreign experience in this context. So, in foreign criminology, the theory according to which a prison is considered as a "school of crime" is called the theory of differential association theory. Its founders and followers are such American criminologists as Edwin Sutherland and Donald Cressy (E. Sutherland, & D. Cressey, 1966). The theory of differentiated communication has determined the development of scientific thought of American criminologists and other scientists dealing with the problem of crime. Moreover, now this theory is the most common in western criminology, judging by the number of journal articles which talk about how it is tested, analyzed and developed (E. Sutherland, & D. Cressey, 1966, p. 7).

The existence of these problems in a comparative context puts on the agenda of not only national, but also foreign science the need to introduce innovative methods of preventing penitentiary crime. Particularly, according to F. Potier, director of the

National School of prison staff of France, it is advisable to introduce the study of criminological programs in French universities in order to help solve a number of problems in the prisons sphere. In addition, as the French penitentiary experience shows, this European country has tested “non-standard” methods which help overcome the criminogenic qualities of the convicted person’s face. Thus, those convicted persons of violent crimes, or persons who are prone to violence while serving their sentences (“violent inmates”) are involved in a special program in which they work to tame wild horses, which ultimately teaches them to control themselves (P. Pottier, 2015).

Secondly, the change of one social formation to another, the creation of knocking obstacles in the form of social and economic vices, crime acquires new transformational processes. So the foreign scientist N. Kuznetsova studying the causes and conditions of crime characterized it such way – it is a relatively massive, historically changing social, having a criminal-legal character, a phenomenon of class society, consisting of the entire set of crimes committed in a certain state in a certain period of time (P. Pottier, 2015, p. 173).

Today, in criminological science, you can count more than ten author’s definitions of crime, each of which corresponds to the subject and object of crime. As for the concept of penitentiary crime, domestic scientists note it as a criminal offense committed by those one sentenced to imprisonment, and who encroach on the established procedure for the execution/serving of this sentence (O. Juzha et al., 2020, p. 548).

Thirdly, the state, level, dynamics, geography of crime, its qualitative indicators are influenced by negative social phenomena (in criminology they are called background phenomena), which are dangerous, because they feed and interact with crime. Among such negative social phenomena, it is worth highlighting: drug addiction, prostitution, alcoholism, sexual promiscuity, the spread of sexually transmitted diseases and Aids, vagrancy, and so on.

At the same time, according to some domestic scientists, negative social phenomena should also include the harmful anti-legal policy of the state, leading to general impoverishment of the population, being in a constant stressful state, the survival of the individual and his family members, lack of care or ostentatious care for the underprivileged. Victims of such policies become vulnerable categories of citizens and can become victims of committing a criminal offense (A. Babenko et al., 2018, p. 127).

It is important to note that places of non-freedom, unfortunately, do not exclude the commission of such negative social phenomena as drug addiction, alcoholism, sexual promiscuity, the spread of sexually transmitted diseases and aids, the carrying of prohibited items, and so on. At the same time, over the past five years, there has been a tendency to increase the level of penitentiary crime in places of non-freedom. Among the most common criminal offenses committed in places of non-freedom, it is worth highlighting: penitentiary criminal offenses which are provided for (articles 391, 392, 393 of the Criminal Code of Ukraine); criminal offenses in the sphere of drug trafficking; criminal offenses in the sphere of property (Article 185 of the Criminal Code of Ukraine is particularly highlighted).

Our study of penitentiary crime in places of non-freedom (2016-2020) showed that the above-mentioned criminal offenses are most often committed by convicts on working days (70 %); in residential areas of institutions (8.6 %); in industrial areas (3.6 %); in disciplinary insulator, chamber-type premises (27.3 %), at night (17 %), which indicates a difficult operational and official situation in institutions for the execution of criminal sentences.

According to the data of the Ministry of Justice of Ukraine, according to the results of the work of bodies and institutions for the execution of sentences in 2017, the most criminogenic are Correctional colonies of medium security, where persons who have already served a sentence of imprisonment are held. By the

way, more part of criminal offenses is committed at night in these colonies and on working days of the week in residential areas (Ministry of Justice, 2017, p. 7).

Fourthly, the state policy in the field of countering and preventing crime against the background of public changes requires updating the criminal law block of legislation. First of all, society needs a new and, most importantly, effective law on criminal liability, as well as the adoption of a new penitentiary law.

At the same time, the study of this problem has shown, if scientists in the field of criminal law are working powerfully on the new law on criminal liability, the Ministry of Justice of Ukraine as the legal successor of the State Penitentiary Service of Ukraine for the entire period of existence of the Criminal executive code of Ukraine (2004-2021) has made so many changes and additions to it that in the general aggregate gave rise to total haphazardness, ambiguity of interpretation of its norms and created significant obstacles in the practical activities of bodies and institutions of execution of sentences.

Moreover, constant changes and additions to the criminal executive legislation of Ukraine indicate the lack of a proper theoretical base and modern scientific methodology for understanding the social essence of criminal executive legal relations and the formation of its system, the subjects of which are, on the one hand, the state through its institutions, and, on the other hand, prisoners and convicts. So penitentiary crime is a special type of crime, so it is inherent only in those criminal offenses which are committed by convicted persons while serving a sentence. Otherwise, the commission of criminal offenses by a person who has not received a court verdict cannot be considered as penitentiary crimes. Because penitentiary crime is a special type of crime, so it is inherent only in those criminal offenses which are committed by convicted persons while serving a sentence. Otherwise, the commission of criminal offenses by a person who has not received a court verdict cannot be considered as penitentiary crimes.

Fifthly, crime in places of non-freedom is considered by national scientists as the most socially dangerous act, because it is committed in strict isolation, previously convicted person, under the supervision and control of personnel. Recently conducted applied studies in the field of crime prevention in places of non-freedom have shown that there is no single point of view on the type of such crime among national and foreign scientists.

In particular, foreign scientists V. Kudryavtsev and V. Eminov believe that crime in places of non-freedom is a part of recidivism, which is characteristic of penitentiary institutions (1995, p. 421). Ukrainian scientist O. Juzha believes that crime in places of non-freedom is the so-called "penitentiary recidivism", which provides for the commission of a new criminal offense by persons serving a sentence in the form of imprisonment (2004, p. 134).

Another Ukrainian scientist Yu. Orel considers crime in places of non-freedom as penitentiary crime, which is a component of crime in general and recidivism in particular, and which is characterized by a specific place of committing a criminal offense, its peculiar subject and expressed by its orientation against other convicts or the staff of the penitentiary institution (2016, p. 140).

This position is supported by domestic scientists in the field of penitentiary science I. Bogatyrev, M. Puzyrev, who consider crime in places of non-freedom as penitentiary crime. They note that it is a type of recidivism and collectively combines criminal acts related to the process of execution and serving sentences, has its own patterns, quantitative characteristics and in this regard requires specific state and public anti-criminal measures of influence (2012, p. 170).

Modern research has also established that the problem of recidivism is relevant both for the countries of the world as a whole and for Ukraine in particular. At the same time, recidivism exists due to its subject composition, that is, recidivists. It is important to note that the relevance of considering the relevant categories is explained by the following circumstances:

1) public danger, which is characterized by the repeated commission of criminal offenses by the same persons after serving the sentence (or in the process of serving the sentence, that is, after the fact of conviction) for a criminal offense committed for the first time. In other words, there is a possibility of repeated harm to values taken under the protection of the law on criminal liability, such as life, health, property, etc.;

2) the fact of committing a recidivist indicates that an effective punitive, correctional and preventive effect was not carried out on the person of the recidivist (so the goal of special prevention was not achieved), which, firstly, indicates the need to increase attention to the relevant subject on the part of authorized subjects, and secondly, the development of additional measures for general social and special criminological prevention of recidivism. Considering these features, a system of penitentiary institutions (correctional colonies) has been built in Ukraine, taking into account the corresponding categories of convicts for persons of both sexes: both men and women (S. Khalymon et al., 2021).

A change in the paradigm of penitentiary crime in places of non-freedom in connection with the Resolution of the Cabinet of Ministers of Ukraine no. 343 (2016). Unfortunately, the transfer of the State Penitentiary Service of Ukraine to the subordination of the Ministry of Justice of Ukraine did not show the positive result which society expected. Nothing new hasn't been created for the last five years, except for the complete dismantling of the penitentiary service, the state has incredibly weakened its influence on organized crime and recidivism, thereby creating the ground for penitentiary crime. Taking this into account, Ukrainian scientist A. Bogatyrev in the process of conducting a study of crime among convicts in places of non-freedom noted that he had established cases when convicts did not want to be released from places of non-freedom, explaining that no one expects them, except for unemployment, homeless, destitute in freedom, and therefore they calmly go to commit a new criminal offense (2019, p. 97). By the way, such cases are also confirmed by the results of a poll of personnel of penitentiary institutions. So, crime in places of non-freedom can reach such proportions that we can say about the systemic crisis in the activities of bodies and institutions of execution of sentences, about their inability to ensure personal safety of both convicts and personnel of places of non-freedom.

The most dangerous thing is that over the past two years, mass disobedience of convicts has taken place in State Penitentiary institutions. In particular, during 2019, the facts of mass disobedience were commented on April 28, 2019 in the state institution "Cherkasskaya correctional colony" (no. 62), individuals who were held in the colony showed group disobedience to the legal requirements of the administration, committed an attack and inflicted injuries of varying severity on employees of the institution. One of the injured employees of the institution was admitted to the hospital in serious condition. About 30 convicts participated in the incident. On May 27, 2019, in the state institution "Pivdenna correctional colony (51)", while transporting 6 convicts from the colony to other institutions, led by the so-called "watchers", other convicts showed group disobedience to the legal requirements of the administration, attacked and inflicted injuries of varying severity on 7 employees of the institution, set fire to the fire truck, the duty station and the library of the institution. On June 5, 2019, in the Pyatikhatskaya correctional colony (no. 122), a group of convicts refused to comply with the colony's daily routine, namely, to go out for an evening check. In response to comments on this issue from the colony administration, they incited other convicts to group disobedience, called for not going to the canteen and non-compliance with other measures provided for in the daily routine. In the local section of the Department, convicts set fire to mattresses, clothes of the established sample, bedside tables, and demanded that the administration weaken the regime of detention (2019, p. 13).

The above facts of group disobedience of convicts confirm our hypothesis

that the operational situation in places of non-freedom is quite tense. Among the reasons for this condition are the following ones:

- influence on crime in places of non-freedom of organized criminal groups located outside Penitentiary institutions;
- the presence of serious shortcomings and contradictions in the activities of the administration of the penitentiary institution seriously affects the criminal motivation of the convicted person and encourages him to commit a new criminal offense in places of non-freedom;
- non-compliance with the current legislation with the conditions of serving a sentence, in particular, it applies to the norms of living space, rules of sanitation and hygiene, catering, medical care, etc. The convicted person must be sure that the state respects his rights and freedoms, honor and dignity, and helps him to embark on the path of correction and re-socialization;
- the presence of illegal connections of convicts with the staff, especially in carrying prohibited items and substances, which give rise to the commission of corruption acts, abuse of official position among the staff, etc.;
- the use of various types of torture by the staff of penitentiary institutions to convicts causes a negative reaction by convicted persons, so they are forced to take extreme measures to protect their rights and freedoms;
- the lack of scientifically based applied researches of problems of crime prevention in places of non-freedom in the administration of penitentiary institutions, scientific and practical recommendations, educational and methodological literature on these issues, in our opinion, limits the legal opportunities of personnel of places of non-freedom to use them at preventive work with convicts who are prone to committing a new criminal offense in places of non-freedom.

Summing up the conducted research of penitentiary crime as a social phenomenon inherent in places of non-freedom in Ukraine, we can say that this crime, having its own determinants, shows the imperfection of assigning such a type of punishment as imprisonment for a certain period of time to persons who have committed a criminal offense. At the same time, it shows insufficient professionalism on the part of employees of penitentiary institutions in working with convicts, as well as their professional deformity, which requires constant monitoring by the Ministry of Justice of Ukraine.

Conclusions and prospects: the segment of the studied material presented in this article allowed us to record the following conclusions. First, we have identified crime in places of non-freedom according to the typology of the object of a criminal offense committed in places of non-freedom, dividing it into the following groups: 1) penitentiary criminal offenses; 2) violent criminal offenses; 3) narcotic criminal offenses; 4) criminal offenses against property; 5) official and corruption offenses. All of them together characterize penitentiary crime.

Secondly, we have proposed the following author's definition of penitentiary crime as a social phenomenon which is inherent in places of non-freedom in Ukraine-this is a certain group of criminal offenses committed by a special subject, during the period of serving a sentence, only in places of non-freedom, characterized by a specific public danger, aimed at undermining the authority of justice and the administration of penitentiary institutions.

Thirdly, the transfer to the Ministry of Justice of the state criminal service of Ukraine gave rise to insufficient state control over places of non-freedom and, as a consequence, penitentiary crime poses a serious danger to the state, hindering the achievement of the goals of punishment, correction and re-socialization of convicts. Another conclusion is quite obvious : the punitive system, types and system of punishments is such one, which society wants it to be.

Fourth, own position is justified that the dismantling of the penitentiary service of Ukraine carried out by the Ministry of Justice of Ukraine for five years, unfortunately, did not stabilize the operational situation and the status of law and

order in places of non-freedom. A proposal is being made to remove the current State Penitentiary Service of Ukraine from the subordination of the Ministry of Justice of Ukraine, providing for the creation of an independent central executive authority.

Conflict of Interest and other Ethics Statements

The author declare no conflict of interest.

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ПЕНІТЕНЦІАРНА ЗЛОЧИННІСТЬ ЯК СОЦІАЛЬНЕ ЯВИЩЕ, ЩО ПРИТАМАННЕ МІСЦЯМ НЕСВОБОДИ В УКРАЇНІ

Анотація. У статті розкрито пенітенціарна злочинність як соціальне явище, що притаманне місцям несвободи в Україні. По-перше, автор виділив злочин у місцях несвободи за типологією об'єкта кримінального правопорушення, вчиненого в місцях несвободи, поділивши його на такі групи: 1) пенітенціарні кримінальні правопорушення; 2) насильницькі кримінальні правопорушення; 3) наркотичні кримінальні правопорушення; 4) кримінальні правопорушення проти власності; 5) службові та корупційні правопорушення. Усі вони разом характеризують пенітенціарну злочинність. По-друге, запропоновано таке авторське визначення пенітенціарної злочинності як соціального явища, яке притаманне місцям несвободи в Україні – це певна група кримінальних правопорушень, вчинених спеціальним суб'єктом під час відбування покарання лише в місцях несвободи, що характеризуються конкретною суспільною небезпекою, спрямованих на піддрив авторитету правосуддя та управління пенітенціарними установами. По-третє, наголошено, що передача до Міністерства юстиції Державної кримінальної служби України призвела до недостатнього державного контролю за місцями несвободи, і, як наслідок, пенітенціарна злочинність становить серйозну небезпеку для держави, перешкоджаючи досягненню поставлених цілей. По-четверте, обґрунтовано

власну позицію стосовно того, що демонтаж пенітенціарної служби України протягом п'яти років, який проводив Міністерство юстиції України, на жаль, не стабілізував оперативну обстановку та стан правопорядку в місцях несвободи. Вноситься пропозиція вивести діючу Державну пенітенціарну службу України з підпорядкування Міністерству юстиції України, передбачивши створення самостійного центрального органу виконавчої влади.

Ключові слова: злочинність, правопорушення, засуджений, працівник, установа, покарання

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LIQUIDATION OF MULTI-APARTMENT BUILDING CO-OWNER ASSOCIATION UNDER THE COURT DECISION

Abstract. The article examines the grounds, the procedure for liquidating a multi-apartment building co-owner association (MABCOA) under the court decision. The strategic (the need to adapt national law to EU law) and regulatory (substantive and procedural) measurements of the feasibility of improving the legal mechanism for liquidating the MABCOA under the court decision are indicated. A classification of rules regarding the grounds and order of such liquidation into causal and procedural ones is proposed. The markers for resolving the dispute on the liquidation in the MABCOA have been concretized: will the claim be satisfied before the restoration of the rights and legitimate interests of the co-owner in the MABCOA?; will there be any court interference in the activities of the MABCOA?; will the satisfaction of the claim not violate the rights and legitimate interests of other participants in the MABCOA? The signs of violations during the creation of the MABCOA as grounds for its elimination have been clarified: such violations must be of a significant, collective nature, and they cannot be eliminated in the current activities of the MABCOA. The expediency of introducing class action lawsuits into the national system is reasoned since evidence of the fact of collective violation of the rights of co-owners of a multi-apartment building during the creation of the MABCOA is possible only if a particular community of co-owners of a multi-apartment building is provided with a legal opportunity to go to court since the conflict is based on the issue of the same-type violation of the rights of such co-owners. It is proposed to enshrine the guarantees of voluntary execution of a court

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