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ISTOTA I UKIERUNKOWANIE WSPÓŁCZESNYCH POSZUKIWAŃ NAUKOWYCH W ZAKRESIE PYTAŃ ZASTOSOWANIA SIŁY FIZYCZNEJ, ŚRODKÓW SPECJALNYCH I BRONI WOBEC PRZESTĘPCÓW

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Streszczenie. Autor artykułu naukowego analizuje literaturę naukową i przepisy dotyczące treści działalności, związanej ze stosowaniem środków przymusu wobec skazanych, przebywających w miejscach pozbawienia wolności (aresztach śledczych i zakładach karnych typu zamkniętego) część 3 art. 11 Kodeksu karno-wykonawczego Ukrainy.

Autor wyróżnia kilka okresów formowania zasad prawnych i naukową refleksję na temat określonej problematyki. Jednak, jak wykazały wyniki danego badania, nawet w takiej sytuacji aktywacji badań naukowych, które mają zastosowanie do problemów stosowania środków przymusu wobec osób przetrzymywanych w miejscach pozbawienia wolności, nie miały miejsca - z reguły problemami tymi nadal zajmowali się specjaliści prawa administracyjnego i prawa karnego, przedmiotem wypracowania których nie była działalność personelu Państwowej Służby Penitencjarnej Ukrainy, ale funkcjonariuszy policji i innych organów ścigania.

Więc, przeprowadzona analiza stanu naukowych wypracowań, związanych z zastosowaniem wobec skazanych, pozbawionych wolności, środków wpływu fizycznego, jak również specjalnych środków i broni, a także analiza normatywno-prawnych źródeł na temat oznaczonej problematyki, przedstawiają podstawy do stwierdzenia, że dany temat badawczy jest kwestią pilną czasów dzisiejszych oraz ma charakter teoretyczny i stosowany, a zatem wymaga aktywacji naukowców w tym kierunku.

Słowa kluczowe: zakład wykonywania kar, personel, skazany, działalność penitencjarna.

THE ESSENCE AND FOCUS OF MODERN SCIENTIFIC INVESTIGATION CONCERNING THE ISSUES OF APPLICATION OF PHYSICAL FORCE, SPECIAL MEANS AND WEAPON TO OFFENDERS

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Abstract. The author of the scientific article analyzes of the scientific literature and regulatory and legal acts concerning the content of the activity, which is related to the application of preventive measures to convicted, who were held in places of deprivation of liberty (closed type Punishment execution institutions and Investigative isolation ward) p. 3 of the art. 11 of the Criminal executive code of Ukraine. The author provided an opportunity to distinguish several periods of formation of legal foundations and scientific opinion on the designated problematic. However, as the results of this study showed, in such a situation there was no intensification of scientific searches regarding the problems of applying restraint measures to persons, who were held in the places of deprivation of liberty – as a rule, administrative and criminal law professionals continued to address these issues, the subject of development of which was the activity not of the personnel of the State Criminal Executive Service of Ukraine, but of the employees of police and other law enforcement agencies. So, the analysis of the state of the scientific developments that are related to the application to convicts that are deprived of liberty, of the of the physical influence, special means and weapon, as well as studying of regulatory legal sources on the specified problematic give reason to argue that this research topic is an urgent issue of the present and is of theoretical and applied nature, and therefore requires the activation of scientists in this direction.

Key words: penal institution, personnel, condemned, criminal-executive activities.

СУТНІСТЬ І СПРЯМОВАНІСТЬ СУЧАСНИХ НАУКОВИХ ПОШУКІВ, ЩО СТОСУЮТЬСЯ ПИТАНЬ ЗАСТОСУВАННЯ ФІЗИЧНОЇ СИЛИ, СПЕЦІАЛЬНИХ ЗАСОБІВ І ЗБРОЇ ДО ПРАВОПОРУШНИКІВ

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Анотація. Автор наукової статі аналізує наукову літературу та нормативно-правові акти, що стосуються змісту діяльності, пов'язаної із застосуванням заходів вгамування до засуджених, які тримались у місцях

позбавлення волі (слідчі ізолятори та установи виконання покарань закритого типу) ч. 3 ст. 11 Кримінально виконавчого кодексу України. Автор виокремлює декілька періодів формування правових засад та наукової думки з означеної проблематики. Проте, як показали результати даного дослідження, і в такій ситуації активізації наукових пошуків, що стосувались би проблем застосування заходів вгамування до осіб, які тримались у місцях позбавлення волі, не відбулось – як правило, цими питаннями й надалі займались фахівці адміністративного та кримінального права, предметом розробки яких була діяльність не персоналу Державної кримінально-виконавчої служби України, а працівників міліції та інших правоохоронних органів. Отже, проведений аналіз стану наукових розробок, пов'язаних із застосуванням до засуджених, позбавлених волі, заходів фізичного впливу, спеціальних засобів і зброї, а також вивчення нормативно-правових джерел з означеної проблематики, дають підстави стверджувати, що дана тема дослідження є нагальним питанням сьогодення та носить теоретично-прикладний характер, а тому потребує активізації науковців у цьому напрямі.

Ключові слова: установа виконання покарань, персонал, засуджений, кримінально-виконавча діяльність.

Problem solving in general and its connection with important scientific or practical tasks. The carried out in the course of current study analysis of the scientific literature and regulatory and legal acts concerning the content of the activity, which is related to the application of preventive measures to convicted, who were held in places of deprivation of liberty (closed type IIW and CVU (p. 3 of the art. 11 of the CEC of Ukraine)), provided an opportunity to distinguish several periods of formation of legal foundations and scientific opinion on the designated problematic (historical criterion forms the basis its typology) *(Kolb I. O.,2019, p. 191-196)* namely:

1991-2003 – the period of regulation of criminal executive legal relations, including those that are one of elements of the subject matter of this scientific development, norms of the CLC of Ukraine that adopted in 1970 *(Vypravno-trudovogo kodeksu Ukrayinskoyi RSR, 1971).* In particular, three norms concerning the activity related to the application of preventive measures to convicted and imprisoned have been fixed in the section 13 'Security measures and reasons for application weapon' of the chapter II 'The order and conditions of execution of punishment in the way of imprisonment' of specified Code:

a) the art. 81 of the CLC 'The application of preventive measures to persons, who are imprisoned' (the following have been attributed by the legislature: the handcuffs, a straitjacket, the rubber truncheons, the tear-gas substances and other special means, which were discussed in the art. 14 of the Law of Ukraine 'On the police' *(Naukovo-praktychnyj komentar do Zakonu Ukrayiny «Pro miliciyu»1996)*, in particular, in the p. 1 of the art. 14 of the Law of Ukraine 'On the police' the following special means have been attributed, which were allowed to be used by police officers to offenders: 1) the handcuffs; 2) the rubber truncheons; 3) the straightjacket means; 4) the tear-gas substances; 5) the light and sound devices with distracting effect; 6) the devices for opening premises and forcibly stopping transport; 7) the water-cannons; 8) the armored vehicles and other special and vehicles; 9) the service dogs *(Naukovo-praktychnyj komentar do Zakonu Ukrayiny «Pro miliciyu»1996,* p. *100-101).*

In addition, as it follows from the content of the p. 3 of the art. 14 of the Law of Ukraine 'About the police', the full list of special means, as well as the rules for their application, were established by the Cabinet of Ministers of Ukraine on the conclusion of the Ministry of Health of Ukraine and the Prosecutor General's Office of Ukraine and were published in the mass media *(Naukovo-praktychnyj komentar do Zakonu Ukrayiny «Pro miliciyu»1996, p. 101).*

Thus, on February 27, 1991, the resolution of the Council of Ministers of the SSR № 49 approved The Rules for application of the special means for the protection of public order *(Pravyla zastosuvannya specialnykh zasobiv pry okhoroni gromadskogo poryadku, 1991),* which were effective until December 20, 2017, when the resolution of the Cabinet of Ministers of Ukraine № 1024 approved the List and the Rules of application of the special means by servicemen of the National Guard in the execution of official tasks *(Pro zatverdzhennya pereliku ta Pravyl zastosuvannya specialnykh zasobiv vijskovosluzhbovcyamy Nacionalnoyi gvardiyi pid chas vykonannya sluzhbovykh zavdan, 2017)*. The list of special means, which were allowed to be used by the identified subjects of law enforcement activity, was identified in the p. 12 of the chapter II of The Rules, which were approved by relevant the resolution of the Council of Ministers of the SSR in February 27, 1991, namely:

1) the personal protective equipment: helmets, (steel military, composite martial, 'Sphere', plastic protected hard hat), body armors; impact resistant and armored shields;

2) the rubber truncheons; the plastic truncheons of the type of 'Tonfa'; the handcuffs; the electroshock devices; the ammunitions and the devices of its domestic production, equipped with rubber or similar by its properties metallic projectiles with non-lethal action;

3) the manual gas grenades, as well as the ammunitions with gas grenades ('Cheremuha-1', 'Cheremuha-4', 'Cheremuha-5', 'Cheremuha-6', 'Cheremuha-7', 'Cheremuha-10', 'Cheremuha-12', 'Syren'-1', 'Syren'-2', 'Syren'-3'); the cartridges, the ammunitions, the grenades and other special means with the products of tear-gas and irritant effect on the basis of natural capsaicinoids, morpholine of pelargonic acid (MPA), orthochlorobenzolmalonitrile (CS) and substances of 'Algogen';

4) the means of provision of special operations: backpack apparatus 'Oblako'; light and sound grenade 'Zarya' and light and sound device 'Plamya'; ammunitions with rubber bullet 'Volna-R'; water-cannons; armored vehicles other vehicles, devices for forcibly stopping transport 'Yosh-M';

5) the devices for opening premises, which are captured by offenders: small-sized blasting devices "Klyuch" and "Impuls";

6) the service dogs *(Pravyla zastosuvannya specialnykh zasobiv pry okhoroni gromadskogo poryadku, 1991).*

As established in current study, the issue of application of the defined means of physical force and special means in the mentioned legal and regulatory acts, in general terms, were also regulated by PEI RIO *(Pravyla vnutrishnogo poryadku vypravno-trudovykh ustanov, 2000),* and weapons – also by the Martial statute of the Internal Troops *(Bojovyj statut Vnutrishnih vijsk, 1992)* and by the Law of Ukraine 'On Internal Troops of Ukraine' *(Pro Vnutrishni vijska Ukrayiny, 1992).* However, if to summarize the content of all the above-mentioned legal and regulatory sources, none of them fixed the provision about the fact, that physical force and special means are applied to offenders in exceptional circumstances, as, at that time, it was already defined in norms of international law on defined problematic.

In the art. 3 of the Code of the behavior of law enforcement officials, which was adopted by resolution № 34/169 Of the General Assembly of December 17, 1979, it was noted that the law enforcement officials are allowed to apply force only in cases of urgent necessity and to the extent that it required for the discharging their responsibilities *(Kislov O. I., 2017, p. 54).*

In turn, in the p. 33 of the International Standard Rules on the treatment of convicts, which were approved by the I Congress of the UN Congress on the prevention of crime and the treatment of convicts on 30.08.1955, the following dissertation was established: such instruments of restraint should not be used for punishment, as the handcuffs, the shackles, the straightjackets and the leashes. In addition, the shackles and the leashes are not allowed to be used as restraints. Other specified means can be used only in certain cases *(Minimalni standartni pravyla povodzhennya iz zasudzhenymy, 1955, p. 25).*

In this regard, as T. Snyder aptly remarked, if you carry a weapon, you should think. If you carry a weapon in public service, be blessed and saved by God. But remember, in the past, the evil was done with police and soldiers involved, who one day discovered that they were doing the not predicted by the rules things. Be ready to say 'no' *(Snajder T., 2017, p. 48-49).*

b) the art. 81-1 of the CLC 'The special regime in the places of deprivation of liberty', in which it were identified the grounds for establishment such a regime for convicts, and also in a veiled form – the principles of applying to these persons restraint measures from the side of not only PEI, but also of other law enforcement agencies, which were involved for provision the special regime in the places of deprivation of liberty.

At the same time, the latter were guided in their activity by both the norms of the CLC and their own regulatory and legal acts, which determined its legal status (by the Laws of Ukraine 'On the police', 'On the Internal Troops', 'The statute of the combat service of the Internal Troops'; etc.). Such a peculiar 'split' and dualistic (from Germ. dualistich, from Gr. dualis - dual; forked) *(Buliko A. N. 2010, p. 211)* fulfilling their functional responsibilities under the conditions of the PEI, as it was shown by practice, quite often led to extraordinary events in the places of deprivation of liberty *(Kopotun I.M., 2013, p. 15).*

In particular, in 1991, namely the specified unprofessional actions of the staff of the PEI led to a group refusal of prisoners to work and to eat in correctional colonies of the PEI of Vinnytsia, Dnipropetrovsk, Kyiv and other regions (only 10 regions of Ukraine and 12 correctional colonies) *(Nekotorie pokazately deyatelnosty uchrezhdenyj ugolovno-yspolnytelnoj systemi MVD Ukrayni v 1991 godu, 1992, p. 2).* At the same time, this tendency became decisive throughout defined period in this work (1991-2003).

Thus, in 1999, 6 persons of the personnel of the service supervisory and security of the Ukrainian PEI, due to unprofessional actions and inability to communicate with the convicts, were assaulted from the side of the latter and got bodily harms *(Kopotun I.M., 2013, p. 20).*

As D. O. Nikolenko aptly remarked in this regard, the paradigm of 'violent governance' as an integral part of our culture, of our mentality is manifested in the character of thinking regarding the research of means necessary punishment those, who behavior is different from the imagine 'norm', from the model of obedient and submissive performer *(Nykolenko D.O., 1997, p. 57);*

c) the art. 82 of the CLC 'The grounds for the application of weapon', in which was established that in the way of committing by person, who is deprived of liberty, assault or other wilful act that directly threatens the lives of workers of correctional colonies or other persons, as well as in the event of an escape from custody, as an exceptional measure, the application of weapon is allowed, provided that other measures cannot stop the specified actions. The application of weapon is not allowed in the accident of women and minors' escape.

In this regard, it must be acknowledged that in the art. 82 of the CLC of Ukraine it was reflected two important moments, which should be taken into account when improving the current criminal executive legislation on the designated problematic, namely:

a) in the CLC, unlike the CEC, the special (separate) norm was fixed, regarding the grounds for application of weapons against convicts, considering that the units of supervision and security that are in direct contact with these persons, and the specified grounds in the law (the art. 81 of the CLC and the p. 1 of the art. 106 of the CEC) fully corresponded with the content of the activities of namely specified members of personnel of the PEI;

b) in the specified legal norm, the phrase "as an exceptional means" is used, which is not in the CEC of Ukraine (in particular, in the art. 105, 106).

An additional argument in this regard is the criminal executive practice on the specified issues (1991-2018), namely: during this period no weapon was used against the convicts in secured areas of the PEI. At the same time, this remedy was only used when attempting to escape these persons from places of deprivation of liberty.

So, February 13, 1998 at 4:10 am in the IIW №1 of Dnipropetrovsk region, dismantling the wall of the camera along the slant of the window opening, which was without bars, through the main fence near the CP for vehicles, convicted to exceptional penalty S. and P. escaped and were detained on the same day, and convicted K. was detained at the crime scene by the way of application of weapon by the personnel of the IIW and inflicting the gunshot wound against last *(Operatyvno-sluzhbova i vyrobnycho gospodarska diyalnist organiv ta ustanov vykonannya pokaran Ukrayiny u 1998 r., 1999, p. 20).*

Another peculiarity of the analyzed period in this monograph (1991-2003) was that the functions of security and supervision of convicts in the PEI were carried out by the relevant units of the Internal Troops of the MIA of Ukraine, and the administration of the PEI dealt only with the issue of correctional and labor influence on convicts and with the prevention of their offenses and crimes *(Kolb I.O., Kolb O.G., 2018, p. 137-145).*

As a result, including until 1999 (complete redeployment of the SPRDU from the subordination of the MIA of Ukraine and transfer of functions of security and supervision from the SPRDU to its PEI on the places *(Pro vyvedennya Derzhavnogo departamentu Ukrayiny z pytan vykonannya pokaran z pidporyadkuvannya MVS Ukrayiny, 1999)*, wrongful and hasty (instead of verbal resolution of conflict) the application of physical force and special means to convicts, deprived of liberty, as a rule, it was associated with the activities of officials of the Internal Troops of the MIA of Ukraine, the legal bases of which were defined in the Military Statute of these military formations *(Bojovyj statut Vnutrishnih vijsk, 1992)* and only indirectly in the CLC of Ukraine *(Kopotun I.M., 2013, p. 39).*

As established in the course of this scientific search, special in this period (1991-2003) were research in this problematic, which were mainly done only by police

and other law enforcement agencies, given, that by 1998 (the time of creation of the SPRDU *(Pro utvorennya Derzhavnogo departamentu Ukrayiny z pytan vykonannya pokaran, 1998)* authorities and the PEI were part of the system of units of the MIA of Ukraine.

In this regard, scientists of administrative law and criminal law have worked particularly active in developing issues related to the application of means of physical influence, special means and weapon to convicts, deprived of liberty, (in the context of the content of such circumstances that preclude crime action, as the necessary defense and detention of the offende *(Kvasha O. O., Andrusyak G. M. 2016).*

Thus, in 1985, P.P. Andrushko formulated the content and types of circumstances that exclude public danger and wrongfulness of action *(Andrushko P.P. 1985, p. 67-71)* in his works, in particular, the legal nature and importance of the execution of the order and the performance of professional functions (1987) *(Andrushko P.P. 1987.),* that at that time it was important to consider the methodological foundations of the activity, which, among other things, is related to the application of restraint means to convicts in the places of deprivation of liberty.

Significant contribution to the development and justification of the legal grounds relating, in particular, to circumstance such as the detention of a perpetrator, which, in its turn, involves the application of means of physical influence, special means and the weapon, was made by M.I. Bazhanov, justified setting out these issues in the relevant educational and methodological manuals on the course 'Criminal Law of Ukraine' *(Bazhanov M.Y., 1992).*

At that time, Yu. V. Baulin received analogical results on the specified issue, who defended his dissertation in 1991 and received a scientific doctoral degree in Law on theme 'Criminal law problems of the doctrine of circumstances that preclude crime (public danger and wrongfulness) action' (the specialty 12.00.08: criminal law and criminology; criminal executive law) *(Baulyn Yu.V., 1991).*

The works of K. O. Goryslavsky, who investigated the content and essence of human rights guarantees for self-protection of life and health (2003) *(Goryslavskyj K.O. 2003),* were interesting and theoretically and practically significant in this context, as well as of G.O. Zavgorodnya and L.I. Ilkovets, who(1992) found out the social and legal content of the right to necessary defense at the doctrinal level *(Zavgorodnya G., 1992).*

In addition, the results of an anonymous survey testify to the relevance and necessity of holding the scientific research on the specified problematic, which is hold among the personnel of the PEI and convicts that are deprived of liberty. Thus, to the question 'Is the problem of the measures of the physical influence, special means and weapon to convicts relevant for today?' the persons from the personnel of the SCES of Ukraine gave the following answers: yes – 1477 (73% of 2016 interviewed respondents); no – 18 (1%); partially – 521 (26%). In turn, the convicts answered this question as follows: yes – 1287 (63% of 2016 interviewed respondents); no – 100 (6%); partially – 629 (31%) (the supplements A, B, C, C1).

As a conclusion so, the analysis of the state of the scientific developments that are related to the application to convicts that are deprived of liberty, of the of the physical influence, special means and weapon, as well as studying of regulatory legal sources on the specified problematic give reason to argue that this research topic is an urgent issue of the present and is of theoretical and applied nature, and therefore requires the activation of scientists in this direction.

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