

## O NIEKTÓRYCH TENDENCJACH POPELNIANYCH PRZESTĘPSTW W DZIEDZINIE WYKONYWANIA KAR W UKRAINIE

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**Streszczenie.** W artykule określono główne tendencje przestępczości, które ukształtowały się w systemie więziennictwa w Ukrainie we współczesnych warunkach, a także dokonano analizy jej podstawowych wskaźników z uwzględnieniem ich wpływu na stan utrzymania porządku i bezpieczeństwa w zakładach penitencjarnych oraz poziom skuteczności działań prewencyjnych.

**Słowa kluczowe:** stan, poziom, struktura, dynamika, przestępczość, personel kolonii karnej, kolonia, zapobieganie przestępczości, tendencje.

## ABOUT SOME TENDENCIES OF COMMITTING CRIMES IN THE FIELD OF EXECUTION OF PUNISHMENT OF UKRAINE

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**Abstract.** The article identifies the main tendencies of crime in the colonies of Ukraine in the current conditions, as well as analyzes its main indicators taking into account their influence on the state of law and order in the penal institutions and the level of effectiveness of preventive activities.

**Key words:** state, level, structure, dynamics, criminality, personnel of colonies, colony, prevention of crimes, tendencies.

## ПРО ДЕЯКІ ТЕНДЕНЦІЇ ВЧИНЕННЯ ЗЛОЧИНІВ У СФЕРІ ВИКОНАННЯ ПОКАРАНЬ УКРАЇНИ

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**Анотація.** В статті встановлено основні тенденції злочинності, що склалися у колоніях України у сучасних умовах, а також здійснено аналіз її основних показників з урахуванням їх впливу на стан правопорядку в зазначених установах виконання покарань та рівень ефективності запобіжної діяльності.

**Ключові слова:** стан, рівень, структура, динаміка, злочинність, персонал колоній, колонія, запобігання злочинам, тенденції.

**Formulation of the problem.** As practice shows, the crime of colony personnel is a volatile, socially dangerous phenomenon that requires constant, including ongoing, comprehensive monitoring, which enables the state and society as well as their institutions to have an idea of the scale and peculiarities of the manifestations of this type of crime in as a whole, in the system of organs and institutions of execution of punishment of our state. At the same time, monitoring (English monitoring, from the Latin monitor - a warning) (*Bulyko A. N., 2010, p. 371*) information on crimes committed by colony personnel is carried out by various subjects of research with the help of common for all measurements of quantitative and qualitative indicators of crime: the level of crime and its manifestations; the level of conviction; coefficients of crime; territorial and temporal prevalence of these crimes in the whole in the system of bodies and penal institutions; the nature and price of crime (*Golina V. V., Golovkina B. M., 2014, p. 56*). As AP Zakalyuk correctly pointed out, crime indicators are subject to measurement in order to get an idea of its size, the degree of variability, the likelihood and magnitude of the future manifestation, as well as for the development, in accordance with this, of substantive measures for the prevention and counteraction of criminal manifestations (*Zakalyuk A.P., 2007, p. 156*), which is important in the context of solving one of the tasks of this dissertation study, namely the development of scientifically grounded measures aimed at improving the legal mechanism for the prevention of crimes committed by colony personnel.

**State of research and statement of the main provisions.** The study of scientific literature shows that this type of crime and the criteria (indicators) of their measurement are a constant subject of research in the works of Bogatyrev I.G., Kolba O.G., Lopokha V.V., Lukashevich S.Yu., Martynenko O.A., Tarasov M.V. and other scholars (*Kovalenko V. V., 2011*) who, in particular, monitored the crimes committed by the personnel of penitentiary bodies and institutions during the period from 1991 to 2014 inclusive. In addition, in none of these scientific researches this problem has been studied comprehensively, and the subject of the investigation was either the unlawful aspects of the activities of the personnel of the penal institutions (*Bogatyreva O.I., 2009*), or the criminal behavior of the general staff of the PIs (*Zakharov V.P., Kolb O.G.,*

*Myronchuk S.M., 2007* ). That is why one of the peculiarities of this research and, at the same time, its task is to monitor crimes that took place in general in the field of execution of punishments and the subject of which were persons are from a number the personnel of State кримінально- of executive service of Ukraine. Another feature is that only the crimes committed by the specified category of subjects in the period from 2005 to 2017 were the subject of measurement. This approach was chosen on the basis of several factors, namely:

1. In June 2005, for the first time in the history of modern Ukraine, a special law "On the State Criminal Execution Service of Ukraine" (*About the State Criminal Execution Service of Ukraine, 2005* ) was adopted for all organs and institutions for the execution of sentences, which effectively secured not only the legal status of colony personnel but also determined the sole subject of the formation and implementation of penal policy. It was from that time that the activities of the SCSU of Ukraine began as an independent body of state executive power, with the corresponding structure and legal guarantees of activity. Therefore, it is important to determine the potential of these penitentiary institutions for the prevention of crimes, including among the staff of the colonies, as well as to substantiate the position of those scientists who either support the decision to abandon this status for penitentiary institutions (independent independent state body) or offer other options for determining the legal status of the staff of the SCSU of Ukraine (such as: for today these persons are acting as part of the Ministry of Justice of Ukraine).

2. The 12-year study period in question is sufficient for generalization and criminological forecasting and planning of activities to prevent crimes committed by colony personnel.

3. It was during this period that the most extensive reforms in the field of execution of sentences were being implemented, which, in fact, could not to some extent be reflected in the quantitative and qualitative indicators of crimes recorded by colony personnel.

4. Implementation of meaningful modifications in the execution of sentences in Ukraine in the current conditions (2014-2017) stipulates the need for scientific evaluation (expertise) of this activity and the definition of prospects and social consequences, in general, for Ukraine. In such a situation, statistical and other methods of processing various information about crimes committed by colony personnel are a kind of "guideline", "indicator" and "logical argument" regarding the fidelity or falsity of the implementation of reforms in the system of penitentiary organs and institutions, including issues of prevention of crimes, which are the key task of the law on criminal liability (Part 1 of Article 1 and Part 2 of Article 50 of the Criminal Code), as well as criminal-executive legislation of Ukraine (Part 1 of Article 1., Article 104 of the Criminal-Executive Code).

The first indicator characterizing crimes committed by colony personnel is the level of these socially dangerous acts.

In this work, under the level of this type of crime is understood as the fixed in absolute numbers the number of crimes and personnel from the staff of the colonies, which they have committed in general, according to the system of the DCAF of Ukraine, as well as separately from these GDPs in the period from 2005 to 2017 In particular, in 2005, the above-mentioned subjects committed 14 crimes, in 2006 - 14; in 2007 - 14; 2008 - 18; 2009 - 23; 2010 - 57 (*Kovalenko V. V., 2011, p. 52*); 2011 - 48; 2012 - 67;

2013 - 36; 2014 - 33 (*Lopoha V. V., 2016, p. 61-62*); 2015 - 94; 2016-102 (*On activities of the units of protection, supervision and fire safety of penitentiary institutions in 2016, 2017*); 2017 - 112 (*Data of the Department of the State Criminal Execution Service of Ukraine*). At the same time, in this case only the actual level of crimes committed during the specified period and registered in the Uniform Register of Pre-trial Investigations is conducted only because their latent component can not be established at the present time, as during the transfer of the Internal Affairs Department of Ukraine to the full jurisdiction of the Ministry of Justice Ukraine has access to the materials of official investigations carried out on the facts of the illegal behavior of the personnel of the organs and penitentiary institutions, for scientific research became practically impossible. Of course, in such circumstances, it is also extremely difficult to predict and plan activities for the prevention of crimes by these individuals and to use it more effectively in combating this type of crime of other subjects of prevention, which should become a separate object and subject of research at the dissertation level in the force of urgency and the application value of this problem.

As to another indicator of crimes committed by the personnel of the State Penitentiary Service of Ukraine in the area of execution of sentences, - the level of convictions of these persons, - he, as established in the course of this study, almost completely reflects the level of this type of crime, given that the indicated subjects they perform them only alone or in complicity with the convicts, who in this case do not belong to the objects of statistical reporting in accordance with the forms of accounting and reporting established in normative legal acts for this category of crimes (*On the operation of international treaties on the territory of Ukraine ...1992*). At the same time, in the investigated period (2005-2017 gg.) The coefficient of the commission of crimes by the personnel of the colonies increased considerably, as well as its derivatives - the coefficient of criminal intensity and the coefficient of criminal activity (*Golina V. V., Golovkina B. M., 2014, p.p. 56-57*), taking into account that the number of convicts in Ukraine in comparison with 2005 (176.9 thousand people (*The state of justice in 2016, 2017*)), in particular, decreased by half in 2016 (86.7 thousand people) (*Trial practice, 2006*). At the same time, the tendency Concerning the reduction of the number of convicts in Ukraine, which has originated since the adoption of the Criminal Code of Ukraine in 2001, it has been preserved at the present time (in 2017 the number of persons prosecuted and convicted did not exceed the similar figures in 2016 (*Judicial statistics*)) At the same time, since 2005, there has been a steady increase in the number of personnel from the colony's staff, who commit an offense, so that if 14 people were convicted in 2005, then in 2010 - 102 (*On activities of the units of protection, supervision and fire safety of penitentiary institutions in 2016*) (a 7-fold increase). Even more disturbing is this statistics in terms of the ratio of criminal activity, given that according to the current Legislation on the service (work) in the DKVS of Ukraine is taken by persons, usually age of majority.

As established in the course of this study, the structure of crimes committed by colony personnel was almost unchanged in the period studied (2005-2017 gg.). In particular, in 2005, this structure was as follows: a) 9 crimes from the total number of registered crimes (only 14 for this year) were committed under Art. 368 of the Criminal Code of Ukraine "Obtaining a bribe" (for today - "Adoption of proposals, promises or reception of unlawful benefits by an official"); b) 3 crimes under Art. 307 of the Criminal Code "Illegal production, manufacture, acquisition, storage, transportation, forwarding or

sale of narcotic drugs, psychotropic substances or their analogues"; c) 1 crime under Art. 364 of the Criminal Code "Abuse of power or official position"; d) 1 crime under Art. 365 of the Criminal Code "Excess of authority or official authority"; e) 1 crime under Art. 190 Criminal Code "Fraud"; d) 1 crime under Art. 369 of the Criminal Code «Giving a bribe» (for today - «Offer, promise or provision of unlawful benefit to the official»); e) 1 crime under Art. 127 KK "Torture"; There is 1 offense under Part 2 of Art. 115 of the Criminal Code "Intentional Murder"; g) 1 crime under Art. 367 of the Criminal Code "Service Negligence"; c) 1 crime under Art. 309 of the Criminal Code "Illegal production, manufacture, acquisition, storage, transportation or transfer of narcotic drugs, psychotropic substances or their analogues without the purpose of marketing" (*Kovalenko V. V., 2011, p.p. 52-53*). In the same year, the staff of the colonies was also committed a crime that does not apply to the execution of punishment, namely - in part 2 of Art. 286 of the Criminal Code "Violation of rules of road safety or operation of transport by persons who control a vehicle" (*Kovalenko V. V., 2011, p. 52*). In 2006-2010, (*V. V. Kovalenko, 2011, p.p.52-55*) and in 2011-2014 (*Lopoha V. V., 2016, p.p.61-63*) the structure of crimes committed by the personnel of the colonies did not significantly change, with a significant increase in all other indicators of this type of crime (crime rate and its coefficients). The structure of these crimes, which took place on the part of the personnel of the colonies in 2015-2017, is also indicative in this context. (*On activities of the units of protection, supervision and fire safety of penitentiary institutions in 2016, 2017* ). Thus, out of 102 crimes committed by the personnel of the colonies in 2016 (9 crimes less than, or 8.0%, than in 2015), corruption crimes accounted for 39.0% (40 criminal proceedings), namely: 1) 25 crimes (24 , 0% in the structure of all crimes registered with the personnel of the bodies and penal institutions in 2016) - under Art. 368 of the Criminal Code «Adoption of proposals, promises or reception of unlawful benefits by an official»; 2) 7 crimes (7.0%) - according to Art. 191 of the Criminal Code «Assignment, misappropriation or seizure of property by way of abuse of official position»; 3) 5 crimes (5.0%) - according to Art. 364 of the Criminal Code "Abuse of power or official position"; 4) 3 crimes (3.0%) - according to Art. 369-2 of the CC "Abuse of influence" (*On activities of the units of protection, supervision and fire safety of penitentiary institutions in 2016, 2017, p.12-13*). In addition, in 2016, the abovementioned persons committed the following crimes, whose objects of encroachment were the sphere of execution of punishments: a) 46 crimes (45.0%) related to the illicit trafficking of narcotic drugs, psychotropic substances, their analogues or precursors ( Section XIII Special Part of the CC) - under Art. Art. 307, 309 of the Criminal Code; b) 7 crimes (7.0%) - according to Art. 365 of the Criminal Code "Excess of authority or official authority by an employee of a law-enforcement agency"; c) 4 crimes (4.0%) - according to Art. 382 of the Criminal Code "Failure to execute a court decision" (*On activities of the units of protection, supervision and fire safety of penitentiary institutions in 2016, 2017, p.13*). Thus, in comparison with the basic (2005) period, all indicators of crime, including its dynamics, increased in geometric progression (several times) in 2016. The same trend has taken place in the dynamics of crimes committed by the personnel of the colonies in 2005-2016, if the chain method of measuring these crimes is applied (comparison of years - the next level with the previous one) (*Golina V. V., Golovkina B. M., 2014, p. 60*).

Regarding the "geography" of crimes that were registered by colony personnel during the period under investigation, their territorial prevalence also remains unchanged, namely: most of them are committed in the Donetsk, Dnipropetrovsk and

Zaporizhzhia regions (Kovalenko V. V., 2011, p.p.216-248), and in 2016 their number also increased in the Kirovograd region (*On activities of the units of protection, supervision and fire safety of penitentiary institutions in 2016, 2017, p.12*). If we analyze this indicator from the perspective of the "topography" of crime (Kovalenko V. V., 2011, p.p.61-62), then the staff of the correctional colonies of the middle security level makes the most of the crimes (part 2 of Article 18 of the Criminal Code) - and this is logical, given that these criminal -institutions of the closed type employ the largest number of staff of the Internal Affairs Department of Ukraine, as well as the majority of convicted persons serving sentences (*About activity of units of guarding, supervision and safety of criminal executive institutions in 2015, 2016, p.4*).

Given the decision of the tasks of this study and the development of scientifically grounded measures aimed at improving the legal mechanism for preventing crimes committed by staff of penal colonies, the price of this type of crime is its price (Golina V. V., Golovkina B. M., 2014, p.p. 62-63). As it was established during this study, more or less the result of the commission of these crimes involves indirect or indirect damage in the form of: a) additional costs from the estimates of the colonies related to the search of convicts who escaped from places of deprivation of service as a result of official negligence personnel of the colonies, causing damage to the life and health of the convicted persons as a result of murder, torture, bodily harm, etc .; b) undermine the authority of public authorities, since any crime committed by the personnel of the colonies causes a great public resonance (resonance - that gives a response, an echo) (Bulyko A. N., 2010, p. 493), and also often becomes one of conditions for committing crimes by convicts in the form of mass disobedience; actions that disrupt the administration of penitentiary institutions and other emergencies (*About the approval of the State Program on the implementation of the principles of state anti-corruption policy in Ukraine (Anticorruption Strategy) for 2015-2017*); c) the destabilization of a certain period of law and order in these penitentiary institutions and the introduction, in this regard, of the special conditions regime (Article 105 of the Criminal Code), which, in its turn, limits the possibilities for the realization of individual rights and freedoms both as convicted persons and the staff of the colonies at this time; d) reduction of image (image - image, representation, sample) (Bulyko A. N., 2010, p. 225) and the prestige of work (service) in these bodies and penitentiary institutions, which in all countries of the world in society is not so high, which, in turn, increases the problems of staffing the colony personnel by the corresponding personnel.

No less direct and indirect damage (as criteria of the "price" of crime) (Golina V. V., Golovkina B. M., 2014, p.62) are also responsible for cases of corruption and other offenses committed by staff of the colonies (non-criminal nature). So, if in 2005 different types of legal responsibility for committing corruption and other offenses were brought 42 persons from the staff of the colonies (Kovalenko V. V., 2011, p.p.217-248), then in 2010 (the last period of independent functioning in the system of law-enforcement and other bodies of state power of the DKVS of Ukraine) - 93 persons (Kovalenko V. V., 2011, p.p.322-345), that is, for the specified 5-year period there has been a tendency to increase the number of corruption and other offenses by the personnel of the colonies. The same tendencies persisted in 2011-2014 (*About the activity of the units of guarding, supervising and security of criminal executive agencies in 2014, 2015, p.p. 7-8*). At the same time, in 2016, compared to 2015, there was a significant reduction in the number of cases of bringing the personnel of the colonies to



court from the court to administrative liability, as a significant part of offenses in connection with the introduction of amendments and additions to the Criminal Code of Ukraine (*About introduction of amendments and additions to some normative legal acts on issues of execution of criminal penalties, 2012*) was transferred to the sphere of regulation of criminal law (from 16 in 2015 to 5 in 2016, or 69.0%) (*On activities of the units of protection, supervision and fire safety of penitentiary institutions in 2016, 2017, p. 14*).

**Conclusion.** Thus, the monitoring of the quantitative and qualitative indicators of the measurement of crimes committed by the personnel of the colonies in 2005-2017 made it possible to draw the following conclusion on the merits, namely: despite the various changes and additions introduced in the current criminal- the executive legislation of Ukraine during the specified period, as well as various reforms in the field of execution of sentences (Decrees of the President of Ukraine dated April 25, 2008 №401 / 2008 "On the Concept of Reform of the State Criminal Execution Service of Ukraine" and dated November 8, 2012, No. 63 1/2012 "On the Concept of State Policy in the Field of Reforming the State Criminal Execution Service of Ukraine"; the Resolution of the Cabinet of Ministers of Ukraine dated May 18, 2016 No. 348 "On the Elimination of Territorial Bodies of the State Penitentiary Service of Ukraine and the Formation of Territorial Bodies of the Ministry of Justice"; Resolution of the Cabinet of Ministers of Ukraine dated 17.09.2017 "On the Concept of Reform (Development) of the Penitentiary System of Ukraine"); etc.), crime as a socially dangerous and punitive act in the personnel of the colonies remains one of the most significant problems that not only reduces the level and efficiency of the execution of sentences but also serves as a very productive determinant that facilitates the commission of crimes by convicts and the development of recurrent crime, in general, in Ukraine.

Therefore, it is worth noting that traditional means, methods and forms in the future can not carry out preventive activities with regard to the mentioned objects of prevention, these efforts are ineffective and energy-intensive in terms of the price of crime, which was discussed in this scientific article.

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