

## **O NIEKTÓRYCH PRAWNO-NORMATYWNYCH ZASADACH WALKI Z PRZESTĘPCZOŚCIĄ PRZY WYKONYWANIU KAR NA UKRAINIE**

***Oleksii Humin***

*doktor habilitowany nauk prawnych, profesor, kierownik Katedry Prawa Karnego i Procesu Uniwersytetu Narodowego "Politechnika Lwowska" (Lwów, Ukraina)*

***Duchyminska Lesia***

*Kierownik Zarządu Audytem Wewnętrznym oraz Kontroli Finansowej Głównego Urzędu Funduszu Emerytalnego Ukrainy w Obwodzie Wołyńskim (Łuck, Ukraina)  
lesya5@meta.ua*

**Adnotacja.** W artykule przeanalizowano normatywno-prawne źródła walki z przestępczością w instytucjach wykonywania kary na Ukrainie oraz wydajność ich zastosowania w praktyce, a także wyznaczono główne zagadnienia problematyczne, które powinny zostać zbadane na poziomie naukowym.

**Słowa kluczowe:** przestępczość; miejsca pozbawienia wolności; skazani; instytucja wykonywania kar; wydajność; zasady prawno-normatywne; zapobieganie przestępstw.

## **ABOUT SOME REGULATORY LEGAL FRAMEWORK OF THE FIGHT AGAINST CRIME IN THE SPHERE OF EXECUTION OF PUNISHMENTS**

***Alexei Humin***

*Doctor of Law, Professor  
Head of the Department of Criminal Law and Process  
NU "Lviv Polytechnic"(Lviv, Ukraine)*

***Lesia Duchiminskaya***

*Head of Internal Audit Department and financial control of the main  
Management of the Pension Fund of Ukraine in the Volyn region (Lutsk, Ukraine)*

**The annotation.** The article analyzes regulatory legal sources on the issues of combating crime in penal institutions of Ukraine and the effectiveness of their application in practice, as well as identifies the main problem issues to be studied at the scientific level.

**Key words:** crime; places of deprivation of liberty; condemned; penal institution; efficiency; legal framework; crime prevention.

## **ПРО ДЕЯКІ НОРМАТИВНО-ПРАВОВІ ЗАСАДИ БОРОТЬБИ ІЗ ЗЛОЧИННІСТЮ У СФЕРІ ВИКОНАННЯ ПОКАРАНЬ**

***Олексій Гумін***

*доктор юридичних наук, професор, завідувач кафедри кримінального права та процесу НУ «Львівська політехніка», (Львів, Україна)*

***Леся Дучимінська***

*начальник управління внутрішнього аудиту та фінансового контролю головного управління Пенсійного фонду України у Волинській області, (Луцьк, Україна)*

**Анотація.** В статті здійснено аналіз нормативно-правових джерел з питань боротьби із злочинністю в установах виконання покарань України та ефективності їх

застосування на практиці, а також встановлені основні проблемні питання що підлягають вивченню на науковому рівні.

**Ключові слова:** злочинність; місця позбавлення волі; засуджений; установа виконання покарань; ефективність; нормативно-правові засади; запобігання злочинам.

**Formulation of the problem.** Analyzing the statistics on the state of crime in the organs and penitentiary institutions of Ukraine, it was found that almost half of them fell into disrepute with the requirements of the administration of the Ministry of Health (Article 391 of the Criminal Code of Ukraine).

Thus, an idea emerged and the subject of this research was formed, given that statistics on the prevention of crime are not available at the level of a specific institution for the enforcement of sentences (hereinafter - ES), or in general, according to the system of the State Criminal Execution Service of Ukraine (hereinafter - SCES) as the regulatory legal acts on statistics, this issue is still not regulated [1].

On the basis of study of dissertations and scientific publications, that touched the problems of prevention of malicious disobedience convict of administration of establishments of implementation of punishments in 1991-2017, and also normatively-legal acts that behaved to adjusting of the marked range of problems, an aim and task of this research are set forth.

On the basis of the generalization of these empirical materials and the processing of survey questionnaires of various respondents related to the selected subjects of the study, and the study of archival criminal proceedings under Art. 391 of the Criminal Code of Ukraine, working hypotheses concerning the results of this research were put forward. At the same time, it should be noted that the scientific search was carried out with the permission of the interterritorial directorates of the Internal Affairs Department of the Ministry of Justice of Ukraine in the Ministry of Justice, located in the Volyn, Kyiv, Rivne and Kharkiv regions, and covered practically all the regions of our state.

Sufficient also was the number of persons involved in the anonymous poll - 514 sentenced to imprisonment and 433 persons from the staff of the ES. At the same time, the number of questions posed for respondents not only corresponded to the number and content of the research objectives defined in this thesis, but also covered issues related to the general knowledge of respondents about the subject of this study (types of crime prevention, the content of malicious disobedience, foreign experience on the identified issues; and so on).

The study of scientific works on preventive activities in the field of execution of sentences, as well as the results of research methods used in this work, allowed to generalize and document the overall results of this study.

On this basis, we can state that the results obtained in the course of this study can be implemented in various spheres of social activity (law-making, practical and educational process).

**State of research.** In science, the issue is not new. For a long time, the following domestic scientists have been actively working on the solution of this problem: O. M. Bandurka, E. Yu. Barash, V. S. Batygerayeva, Yu. V. Baulin, V. I. Borisov, I. G. Bogatyrev, V. V. Golina, B. M. Golovkin, V. K. Grischuk, T. A. Denisova, A. M. Dzhuzha, V. M. Dremin, A. P. Zakalyuk, A. G. Kolb, I. M. Kopotun, V. Ya. Konopelsky, A. M. Litvak, A. M. Litvinov, A. M. Martynenko, V. O. Merkulova, AA Muzika, Yu. V. Orlov, A. V. Savchenko, A. H. Stepanyuk, E. L. Streltsov, V. O. Tulyakov, V. M. Trubnikov, P. L. Fris, V. B. Kharchenko, V. I. Shakun, I. S. Yakovets and others.

In foreign doctrinal sources, in this context, the scientific developments of I. L. Averbakh, D. T. Amurtayeva, Yu. M. Antonyan, M. M. Babayev, Yu D. D. Bluvshitejn, I. V. Brizganov, and I. M. Galperina, G. O. Hurricane, A. I. Zubkova, L. A. Ignat'eva, K. E. Igosheva, A. A. Ivanova, I. I. Karpets, D. D. Kovalchuk, D. O. Clark, R. R. Cotterela, V. M. Kudryavtseva, M. P. Melent'ev, A. E. Natasheva, S. V. Polubinsky, A. F. Sizio, M. O. Struchkova, M. Ye. Steveniceks, F. R. Sundukova, Yu. M. Tkachevsky, B. S. Utjevsky, M. M. Foucault, D. D. Hughes, A. A. Hartmann, V. B. Shabanova, M. D. Shargorodsky, I. V. Shmarov, and others.

**Statement of the main provisions.** As established in the course of this study, the current period of formation and development of the legal and regulatory framework for combating the malicious disobedience of convicts in places of deprivation of liberty can be divided into several stages, namely:

a) 1991-1999 p.: the period of finding bodies and penal institutions in the system of the Ministry of Internal Affairs of Ukraine and the influence of the latter on the formation of criminal-law principles of combating crime. In particular, indicators for combating malicious disobedience to the requirements of the administration of the PIs were among the priority indicators in the field of execution of sentences [2, p. 180-181];

b) 1999-2010 - the stage of independent functioning of penitentiary bodies and institutions in the system of state executive bodies.

This period began with the Presidential Decree of March 12, 1999 "On the withdrawal of the State Department of Ukraine for the execution of sentences on subordination of the Ministry of Internal Affairs of Ukraine" [3] and ended with the adoption of another Decree of the President of Ukraine of December 9, 2010 "On the optimization of the system of central bodies executive power" [4], according to which DDU PVP partially lost its independence and coordinated its activities through the Minister of Justice of Ukraine.

Between these time intervals, as shown by the results of this study, a number of legal acts were adopted in Ukraine aimed at improving the scope of the execution of sentences, including the issue of combating malicious disobedience of prisoners in the Ministry of Health. In particular, such should include:

1) the introduction of significant changes labour code of Ukraine in 1970, according to which, on the one hand, certain elements of international standards for the treatment of convicts were fixed [5, p. 335-342], and, on the other hand, by intensifying the struggle against the disgraceful disobedience of prisoners in places of imprisonment (if in 1991, in the structure of crime, malicious disobedience to the requirements of the administration of the administrative departments amounted to 9% (out of all 800 registered crimes, under Article 183-3 of the Criminal Code 72 criminal cases were initiated) [6, pp. 8], then in 1999 - 60% (correspondingly, out of 429 of all committed crimes, 258 accounted for Article 183-3 of the Criminal Code) [7, pp. 11-13] ;

2) the adoption in April 2001 of the new Criminal Code of Ukraine, in which malicious disobedience to the requirements of the administration of the ES, as a crime, was enshrined in Art. 391 of the Criminal Code [8];

3) the adoption in July 2003 of a new CPC, which substantially changed the procedure for execution and serving the sentence, and introduced into circulation in a separate article the notion of "maladjustment of the established order of serving a sentence", which provided for disciplinary liability [9], which was important from Review of the application in practice Art. 391 of the Criminal Code, which, both in the

title and in the disposition, remained in the wording of 2001, namely, malicious disobedience to the requirements of the administration of the correctional institution.

At the same time, according to the Criminal-Executive Code, such institutions were absent (according to Article 11 of this Code). Instead, they created ES, which, in their turn, were divided into open-ended criminal institutions (correctional centers) and closed-type (correctional colonies), as well as educational colonies [10, p. 53-57], that is, contrary to the requirements of Part 4 of Art. 3 of the Criminal Code in this case Art. 391 of this Code was applied by analogy.

In this regard, one more noteworthy fact is that changes to this issue were not made in the special resolution of the Plenum of the Supreme Court of Ukraine of March 26, 1993, No. 8 "On judicial practice in cases of offenses related to violations the regime of serving sentences in places of deprivation of liberty "[11, p. 109-116];

4) adoption of other normative legal acts pertaining to the sphere of execution of sentences (the Law of Ukraine "On the State Criminal Execution Service of Ukraine" [12] and their new edition [13; 14], etc.);

c) the third stage of the formation of the legal and regulatory framework for combating the disgraceful disobedience of the convicted persons within the limits of imprisonment falls for 2011-2017, that is, they are related to full compliance in 2012 [15] of penitentiary bodies and institutions to the Ministry of Justice of Ukraine.

However, as established in the course of this study, a significant impact on the state of application in practice Art. 391 of the Criminal Code did not take place. In particular, if in 2011 this crime in the overall structure of crime in the administrative staff of Ukraine was 34% [16, p. 3], then in 2016 - 32% [17, p. 1]. And this is despite the fact that in April 2014 the Law of Ukraine "On bringing the conditions of detention of prisoners to European standards" was adopted and in the new wording (the phrase "correctional institutions" was replaced with "the penitentiary institution") was set forth in Art. 391 of the Criminal Code;

d) the fourth stage of the formation and implementation of normative legal acts aimed at combating the disobedient disobedience of the administration of the UVP began in September 2017 with the adoption by the Cabinet of Ministers of Ukraine of the Concept of Reform (Development) of the Ukrainian Penitentiary System and continues to this day.

But this document (source of law) also does not say anything about preventive activities aimed at preventing malicious disobedience of prisoners of imprisonment administration, which is an additional argument regarding the relevance and practical significance of the topic of the study chosen in this paper.

If, in general, to generalize all the theoretical approaches that have been developed to solve this problem, then it is possible to distinguish two directions which have been formed and continue to develop on the doctrinal level, namely:

1. Scientists who are proposing to intensify correctional and labor repressions against violent violators of the regime of serving sentences in the form of imprisonment (VI I. Gorobtsov, O. S. Mikhlin, I. S. Noy, etc.) and substantiated the necessity of introducing a special norm in Criminal Code, which would criminalize the malicious disobedience of the administration of the Ministry of Social Security and Labor (O. L. Remenson, Yu. V. Orel, K. Bondareva, etc.).

2. Scientists who deny the position of the first scientists and propose to increase the effectiveness of social and educational work with convicted prisoners (O. S. Natashev, S. V. Boldyrev, I. S. Yakovets, etc.).

**Conclusion.** Along with this, as it was established in the course of this study, neither the first group nor the second group of scientists raised the issue of preventing malicious disobedience to the requirements of the administration of the ES in their development, which led to the adoption of a final decision on the topic, the purpose and objectives of the scientific search. Moreover, the methodological basis for this was created, as at the legislative level (Part 1 of the Criminal Code, Part 1 of Article 1 of the Criminal Code, Article 1 of the Law of Ukraine "On Operational and Investigative Activity", etc.), and on the doctrinal level (in particular, in works by O. G. Kolba, O. M. Dzhuzhi, V. P. Zakharova, etc.).

At the same time, it should be noted that the issue of preventing malicious disobedience to the requirements of the administration of the Ministry of the Interior was only partially considered in those works that directly concerned this issue, namely: O. Pluzhnik "Criminal liability for violation of the punishment regime in penal colonies and detention in custody "(2003), Yu.V. Orla" Criminal liability for malicious disobedience to the requirements of the administration of the correctional institution "(2008), KV Bondareva" Malicious disobedience to the requirements of the administration of the institution of execution of punishment: criminal o-legal and criminological characteristics "(2018) and others.

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