

O NIEKTÓRYCH TREŚCIOWYCH ELEMENTACH KOMPLEKSOWEGO ORAZ INDYWIDUALNEGO PLANOWANIA PRZEDSIĘWZIĘĆ W ZAKRESIE ZAPOBIEGANIA PRZESTĘPSTW W ZAKŁADACH KARNYCH

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Adnotacja. W artykule rozpatrzono zagadnienie związane z realizacją przedsięwzięć związanych z kompleksowym oraz indywidualnym planowaniem działalności w zakresie zapobiegania przestępstwom w zakładach karnych na Ukrainie, a także wyznaczono problematykę oraz opracowano naukowo uzasadnione kierunki ich merytorycznego rozwiązania.

Słowa kluczowe: planowanie kompleksowe; planowanie indywidualne; zapobieganie przestępstw; zakład karny; personel; działalność karno-wykonawcza.

ON ANY LEGAL ASPECTS OF VICTIMOLOGRAPHIC PREVENTION OF CRIME IN THE INSTITUTIONS OF COMPLETION OF PENALTIES

Abstract. The article analyzes the legal principles of activities related to victim logical prevention of crimes in penitentiary institutions identifies problem issues in the identified subject of research and develops scientifically substantiated ways of their solution in essence.

Key words: complex planning; individual planning; crime prevention; penal institution; personnel; condemned; criminal-executive activities.

ПРО ДЕЯКІ ЗМІСТОВНІ ЕЛЕМЕНТИ КОМПЛЕКСНОГО ТА ІНДИВІДУАЛЬНОГО ПЛАНУВАННЯ ЗАХОДІВ ПО ЗАПОБІГАННЮ ЗЛОЧИНАМ В УСТАНОВАХ ВИКОНАННЯ ПОКАРАНЬ

Анотація. В статті розглянуті питання, пов'язані із організацією та реалізацією заходів комплексного та індивідуального планування діяльності по запобіганню злочинам в установах виконання покарань України, а також визначені проблеми та розроблені науково обгрунтовані шляхи щодо їх вирішення по суті.

Ключові слова: комплексне планування; індивідуальне планування; запобігання злочинам; установа виконання покарань; персонал; засуджений; кримінально-виконавча діяльність.

The problem statement. As practice shows, one of the determinants of committing crimes in institutions of the execution of sentences (IES) is the victim-like behavior of a certain category of convicts. The study of the qualitative composition of the latter showed that the following persons are with the biggest level of victimization in the places of deprivation of liberty:

- a) the so-called «authority» of the criminal environment;
- b) the hard-core violators of the established order of serving sentences in the IES (art. 133 of the CEC of Ukraine);
- c) the convicts who cooperate with the administration of the IES;
- d) the persons who have become on the path of correction;
- e) the convicts who are belong to persons with a low informal status;
- f) the psychopaths and other such categories of convicts;
- g) the convicts who are prone to escape, to attack on representatives of the administration of the colonies and other persons;
- h) the convicts for banditry, «killer» (murder on orders), for crimes in the area of the circulation of narcotic, psychotropic and potent substances.

The experience of combating crime in the IES, including the capabilities of operative and investigative activity (OIA), testifies that in the mechanism of criminal behavior the personal qualities of such convicts are of great importance, since for the most part only they have become victims of crimes. Therefore, the main task of victimological prevention is to change the existing view on the practice of combating crime in the IES, in particular, on the organization of measures of preventing it, the recognition of its an important means of counteracting the specified phenomenon. At the same time, the victim of the crime must be in the spotlight of this type of preventing crimes. It should be considered not only in the formal legal sense (procedural - according to the CPC of Ukraine), but also in the context of its real role in the mechanism of the crime. As the results of this study have shown, in one case, any convict may become a victim of a crime, without making any effort on own part (so-called «oppressed» convicts - due to their special status: personnel of the colony - in cases of wilful disobedience of the convicts to their legal requirements, etc.); but in the other - he becomes a victim of a crime, provoking him by own behavior (losing in cards, as a result of the insult of another convict, refusal to adhere to «theft» traditions, etc.). The situations in the relationship between the perpetrator and the victim at the moment of committing the crime are the most diverse between diametrically opposite possible provisions.

Thus, it should be recognized that there is a complex applied problem that needs to be resolved, including at the scientific level. The specified circumstances have determined the theme of this scientific article, as well as have led to the choice of its main task – on the basis of the analysis of legal foundations of activity that is related to victimological prevention of crimes in the IES, to develop scientifically grounded measures regarding the improving the legal mechanism and practice of the identified problem.

The state of the study. The results of the study of scientific literature show that such scientists are developing quite productive and active the issues, which concern victimological prevention of crimes, including the IES, as: O.M. Bandurka, V.I. Borysov, V.V. Vasylevych, V.V. Golina, B.M. Golovkin, L.M. Davydenko, O.M. Dzhuzha, V.M. Dryomin, O.G. Kolb, O.M. Lytvak, Ye.M. Moiseyev, V.O. Tulyakov, etc.

At the same time, in today conditions of reforming the sphere of execution of punishments of Ukraine, these problems are prioritized, and therefore should be provided with scientifically substantiated recommendations, proposals, developments,

etc., which has become decisive when choosing an object of study in this scientific article.

The outline of the main provisions. The study of the causal mechanism of the subjects of criminal behavior in the IES made it possible to identify such victimological situations, which resulted in the committing crimes:

1) the common living of diametrically opposed to a criminal hierarchy of persons – so-called «authorities» and of persons with low informal status, which gave rise to systematic bullying of the latter ones, the insults of their human dignity and honor, etc., and but ultimately – the committing crimes against them;

2) the unsatisfactory control of the personnel of the IES for the behavior of the convicts at night time, when the functions of oversight are carried out only by a small number of junior inspectors of the oversight service, which appear episodically in residential and work spaces in order to check visually the presence of the total number of convicts on places;

3) the shortcomings in operative services' activity, which untimely reveal conflicts among convicts and inadequately react to sources of the potential danger;

4) the contemplative and sometimes conciliatory position of colony personnel regarding the existence of so-called «subcultures» among convicts, which generates such crimes as actions that disorganize the work of the IES», «the creation of a criminal organization, » etc.;

5) the ineffective organization for combating the manifestations of organized crime in the IES, which leads to cases of wilful disobedience to the representatives of the administration, which in the crime structure deter the precedence of the yearly and constitute the overwhelming majority.

The analysis of criminal-executive legislation and departmental regulations of the SPSU of Ukraine showed that they did not fully created the proper mechanisms for the protection of persons who are carriers of victim behavior. So, by enshrining in art. 10 of the CEC of Ukraine the right of convicts to personal safety, the legislator in this Code has not provided for other logical measures essentially. For example, the art. 92 of the CEC of Ukraine «The separation of convicts to deprivation of liberty in correctional and educational colonies», in which there is no norm, which would allow the administration of the IES to separate the above-mentioned categories of convicts with high victimization from others, namely: the hard-core violators, the criminal authorities, persons with low informal status, etc. therefore, the introduction of additions to this article of the CEC of Ukraine is objectively caused by the necessity in the context of the tasks of prevention new criminal manifestations from the side of convicts.

In the same direction, the requirements of art. 94 of the CEC of Ukraine «Structural sections of correctional and educational colonies» should be reviewed, particularly, taking into account the problems associated with the protection of life and health of people with low informal status. As a rule, the latter for the purpose of self-preservation of the personality are forced to act in conditions of necessary defense (to be protected from beatings of other convicts, etc.), but according to the rules of the criminal «subculture», as peculiar «exiles» of this community are obliged to be taken the blame for conflicts with other convicts oneself. That is why most from the specified category of persons belong to the willful violators of the regime, and therefore, automatically from the diagnostic and distribution section falls into the enhanced control section, in which they stay with those convicts who deliberately take the path of

disobedience to the administration of the IES and thus create their own kind of criminal «career» (so-called «authorities», «thieves in the law», etc.). Therefore, in order to prevent crimes against potential victims, it is necessary to change part 2 of art. 97 of the CEC of Ukraine, and to set out it in a new wording, namely: «In the section of enhanced control in correctional colonies at all levels of security, convicts are held in rooms of a chamber type, taking into account the requirements of isolation that are stipulated by art. 92 and 94 of this Code».

According to the criteria of international experts on the issues of prevention of torture, the facts of bullying of convicts among themselves belong to the list of those, which qualify as bullying. Thus, in paragraphs 26-27 of the Report of the Government of Ukraine of the European Committee for the prevention of torture, based on the results of the visit on July 15-23, 1999, the attention was drawn to the problems of treatment of convicts – of homosexuals [1, p. 111-112]. As has been stated in the report, these convicts are subject to various forms of discrimination – they are not allowed to sit at the same table with other persons, they are obliged to use other utensils, forced to clean up the accommodation, to sleep in the special places near the entrance. At the same time, the Committee assumed that «it is possible that the administration of the colony knows about this situation». According to official investigation materials and numerous scientific studies, the personnel of the IES knows about such phenomena, but does not take all necessary measures to protect the rights of the specified category of convicts, as provided for in art. 10 of the CEC of Ukraine. Thus, the problem exists, and therefore the role of victimological prevention in its solution is obvious. By the way, the specified phenomenon and tasks regarding its neutralization (blocking, eliminating) have global nature for the entire world community. As stated in the materials of the International conference on the reform of criminal sentences, held April 13-17, 1999 in London, violations of human rights, the violence and corruption have been widely disseminated in places of deprivation of liberty [2, p. 6].

Consequently, the understanding of victim as a mass phenomenon and as a way of behavior and actions of certain persons, who cause an increased interest in themselves from the side of other convicts, prejudices the use of real needs and opportunities for the organization of effective victimological prevention in the IES. Therefore, as well as the traditional prevention of criminal behavior, this type of crimes prevention in the IES, having a complex structure, should be carried out by the maximum number of subjects both at the internal and external levels, in various forms, in the early and immediate stages and manifestations of victim behavior and in view of the properties of the personality of potential victims. However, on this path, as practice shows, there are a number of objective obstacles. As A.I. Dolgova correctly concluded, the main problem is its information support in the implementation of this activity [3, p. 378]. In particular, the analysis of the Law of Ukraine «On information» (hereinafter - the Law), showing that to the circumstances, which create certain difficulties for the staff of the IES in the implementation of victimological prevention, namely:

a) any individuals, including convicts, are not objects of information relations, but such, according to the art. 6 of this Law, is only documented or publicly declared information about events and phenomena (but not about persons), namely the information activity has allegedly impersonal and meaningless nature, and hence, is chaotic and unsystematic;

b) among a set of documented or publicly declared information, which constitute the field of information, the individuals are not called (art. 17 of the Law): it is only about «... relatively independent spheres of life and activity of society and the state»;

c) the collection of personal data is not provided in the such type of information such as administrative information (article 19 of the Law);

d) the content of personal information, that is, a set of documented or publicly declared personal data that specified in art. 21 of the Law, provides only personal nature data: nationality, education, marital status, state of health, as well as address, date and place of birth. In this case, it is prohibited to collect information about a person without her prior consent, except in cases, that are stipulated by the legislation. At the same time, in the practical activity of the IES, it is this aspect of information activity regarding convicts with increased victim behavior raises the most number of problems. Right, in art. 91 of the CEC of Ukraine, which determines the procedure for adoption of convicts to deprivation of liberty in the IES, it is not foreseen the collection information about a person at the level of his socio-psychological, volitional and other important properties, which could be consolidated in part 3 of this article as a phrase: «... and other information, that characterizing the convict and creating safe conditions for his maintenance in places of deprivation of liberty». This provision is not enshrined in the Rules of the internal order of the IES of Ukraine «The adoption of convicts in institutions of the execution of sentences», which was intended to detail the content of art. 91 of the CEC of Ukraine.

Certain possibilities for solving the aforementioned problem are specified in paragraph 5 of part 2 of art. 18 of the Law of Ukraine «On the State penal service of Ukraine», which states the following: «Officials and officers of penitentiary institutions and investigative isolation units have the right to receive information, materials and other assistance necessary for the fulfillment of assigned tasks freely from enterprises, institutions and organizations irrespective of their forms of ownership and associations of citizens» [4]. However, the universality of this norm, the vagueness and some anonymity of the content (without taking into account the requirements of article 32 of the Constitution of Ukraine and the Law of Ukraine «On information») does not fully allow the administration of the IES to receive information on convicts in the proposed context.

Separate elements of victimological prevention of crimes are specified in paragraph 57 of the Rules of the internal order of the IES, according to which operational officers of colonies are obliged to detect and set on prevention list of convicts, who have committed the offense or intend to commit it, through a thorough study of the personal data of convicts, verification of information regarding their behavior in various state institutions, etc.

As the results of this study show up, to the formalized form-questionnaire about the convict, which is envisaged by the list of documents that are concentrated in his personal file, insertion a paragraph, which would include an answer to the question of his special status in the environment of convicts, for example: «How does person refer to the traditions that exist in prison life and what place does he take there?». In this case, the amended and discussed above norms of the CEC of Ukraine on the separation of convicts for deprivation of liberty materialize, victimological prevention of crimes in the IES will be filled with specific content and the appropriate conditions for the implementation of OIA regarding a specific person will be created.

The conclusion. Consequently, given that victimological prevention is organic part of the fight against crime in the IES, it requires the attention of practitioners and scientists as an element of crime prevention in general. However, without legislative resolution of the issues of separation of various categories of prisoners in the IES, which would ensure not only the individual application of correction and re-socialization measures, but also the personal safety of those convicts during serving the sentence, it is difficult and problematic to carry out effective victimological prevention of crimes. As is known, the art. 3 of the Constitution of Ukraine and the art. 10 of the CEC of Ukraine, which ensures the right of convicts to personal safety, are the conceptual basis for the implementation of such activity.

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