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O NIEKTÓRYCH "RECEDYWACH" HISTORYCZNYCH WALKI Z PRZESTĘPCZOŚCIĄ PRZY WYKONYWANIU KAR NA UKRAINIE

Volodymyr Ortynskiy

*doktor habilitowany nauk prawnych, profesor, dyrektor Instytutu Prawa i Psychologii Uniwersytetu Narodowego "Politechnika Lwowska", (Lwów, Ukraina)
inpp.dept@lpnu.ua*

Roksolana Kolb

*magistrant Katedry Prawa Instytutu Wołyńskiego Instytut im. W. Łypyńskiego, Prywatna SA Wyższy Zakład Naukowy Międzyregionalna Akademia Zarządzania Personelem, (Łuck, Ukraina)
roksolanakolb@ukr.net*

Adnotacja. W artykule przeanalizowano zasady normatywno-prawne na podstawie których realizowano walkę z przestępczością na Ukrainie w tzw. czasach radzieckich. Wyznaczono cechy charakterystyczne danej działalności oraz wyznaczono zasady powstawania, funkcjonowania oraz rozwoju danego społecznie niebezpiecznego zjawiska w miejscach pozbawienie wolności.

Słowa kluczowe: walka z przestępczością; dziedzina wykonywania kar; skazany; personel organów wykonywania kary; miejsca pozbawienia wolności; zapobieganie przestępstw; zasady prawno-normatywne.

ABOUT SOME HISTORICAL "RELAPSES" OF FIGHT AGAINST CRIMINALITY IN THE FIELD OF IMPLEMENTATION OF PUNISHMENTS OF UKRAINE

Volodymyr Ortynskiy

Doctor of Law, Professor, Director of the Institute of Law and Psychology NU "Lviv Polytechnic" (L'viv, Ukraine)

Roksolana Kolb

Magistrate of the Law Department of Volyn institute them V. Lipinsky PRAT High School MAUP (Lutsk, Ukraine)

Abstract The article analyzes the legal and normative principles on the basis of which the fight against crime in Ukraine was carried out on the so-called Soviet day, defined the peculiarities of this activity and established the regularities of the emergence, functioning and development of this socially dangerous phenomenon in places of deprivation of liberty.

Key words: fight against crime; scope of punishment; condemned; personnel of penitentiary bodies and institutions; places of deprivation of liberty; crime prevention; regulatory framework.

ПРО ДЕЯКІ ІСТОРИЧНІ «РЕЦИДИВИ» БОРОТЬБИ ІЗ ЗЛОЧИННІСТЮ У СФЕРІ ВИКОНАННЯ ПОКАРАНЬ УКРАЇНИ

Володимир Ортинський

*доктор юридичних наук професор, директор інституту права та психології
НУ «Львівська політехніка», (Львів, Україна)*

Роксолана Колб

*магістрант кафедри права Волинського інституту ім. В. Липинського
ПРАТ ВНЗ МАУП, (Луцьк, Україна)*

Анотація. В статті здійснено аналіз нормативно-правових засад, на підставі яких здійснювалась боротьба із злочинністю в Україні у так звану радянську добу, визначені особливості цієї діяльності та встановлені закономірності виникнення, функціонування та розвитку даного суспільно-небезпечного явища у місцях позбавлення волі.

Ключові слова: боротьба із злочинністю; сфера виконання покарань; засуджений; персонал органів та установ виконання покарань; місця позбавлення волі; запобігання злочинам; нормативно-правові засади.

Formulation of the problem. According to the practice of punishment in the form of imprisonment for a certain period, one of the chronic problems throughout the period of Ukraine's independence (1991-2018 pp.) Is crime, which is connected with the malicious disobedience of the convicted to the requirements of administration of penitentiary institutions. At the same time, the quantitative and qualitative indicators of these crimes are almost unchanged annually, which indicates the stereotyping of approaches and the low level of preventive activities on the specified issues. Thus, in 1991, 70 perpetrators (in 1990 - 72) of crimes related to malicious disobedience to the requirements of the administration of penitentiary institutions were sentenced to 70 (from 1990 - 404) who were registered in the colonies of Ukraine (18.9% in the structure of crime (1990 - 17.9%)) [1, p. 8]. In 1992, the number of such crimes increased to 94 (12.4% in their total number (756)) [2, p. 12], and in 1993 - to 143 (18.0% in the structure of all registered offenses (784)) [2, p. 12]. In 1994-1995, these indicators did not change significantly, even with a decrease in the total number of executed in the colonies (respectively 616 and 517 crimes) [3, p. 15]. Since 1996, there has been a steady growth trend in the structure of crime, the proportion of malicious disobedience to the requirements of the administration of penitentiary institutions (226 crimes, or 43.6% (517)) [4, p. 24], which actually lasted until 2016, where the number of these socially dangerous acts decreased by 36.7% compared to 2015 (respectively 95 and 150 crimes) [5, p. 10]. In 2017-2018 gg. these trends have survived in full [6].

Thus, one should admit that in 1991-2018, one of the circumstances that adversely affected the efficiency of the correctional and resocialization process in penitentiary institutions [7], and in general, on the level of law and order in the field of the execution of sentences in Ukraine, was the commission crimes in the form of malicious disobedience of prisoners.

Another socially-dangerous consequence of this type of crime is that malicious disobedience to the requirements of the administration of penitentiary institutions is a priority determinant, which causes and determines the relapse of persons released from places of imprisonment [8].

Consequently, there is a complex current problem that needs to be solved, including at the theoretical level.

State of research. As the study of scientific literature on issues of historical "relapse" in the fight against crime in the field of the execution of sentences in Ukraine, such domestic scientists as O. M. Bandurka, E. Yu. Barash, V. S. Batyrgerayeva, Yu. V. Baulin, V. I. Borisov, I. G. Bohatyryov, V. V. Golina, B. M. Golovkin, V. K. Grischuk, T. A. Denisova, A. M. Dzhuzha, V. M. Dryomin, A.P. Zakalyuk, O.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.

In addition, the historical foundations of the functioning of the sphere of punishment (1918-1991) in the Soviet period have not been sufficiently studied, which became a decisive factor in the choice of the topic of this scientific article.

Statement of the main provisions. By the criterion of normative legal provision for combating the malicious disobedience of the administration of penitentiary institutions, this period can be divided into several historical stages, in particular:

1. The first falls on 1918-1924 gg. including when this issue was solved on the basis of departmental legal acts of the People's Commissariat of Justice of the Ukrainian Socialist Soviet Republic (USSR), namely: a) Temporary instruction "On deprivation of liberty as a measure of punishment and on the order of its serving" (1918); b) "Special provisions on persons held in custody" (1919); c) "Regulations on the general places of detention of the Russian Soviet Federative Socialist Republic" (1920), which also acted on the territory of Ukraine until the adoption of the Supreme Soviet of the Ukrainian SSR in 1925 [9, p. 10]; d) Guidelines on criminal law of the RSFSR on December 6, 1919, which entered into force on August 4, 1920, in the territory of the Ukrainian SSR [10, p. 341] et al. departmental regulatory and legal sources.

Peculiarity of formation of the normative-legal bases of fight against crime in the USSR of that period, including in the area of corrections, was the fact that they were prepared on the basis of Bolshevik Russia [11, p. 328]. At the same time, abolishing the Russian tsarist penal laws, the Bolshevik government allowed the judicial and law enforcement authorities, including the administration of penal institutions, in its sole discretion to interpret the provisions and make a decision on the merits, guided by the ideas of the "threat status" and "social danger of personality", which in practice led to numerous abuses [10, p. 339]. In particular, in accordance with the requirements of the above-mentioned regulatory-legal acts for the systematic violation of the regime of serving, unjustified refusal to work, failure to comply with the requirements of the administration of penal institutions and other violations of persons sentenced to imprisonment may continue the term of serving the punishment [9, p. 11].

2. The second stage of the struggle against the evil disobedience of convicts in penitentiary institutions dates from 1925-1953, that is, was associated with the repression of the Stalinist regime [10, p. 342-366].

The peculiarity of this stage is that it began with the adoption in October 1925 of the first Correctional Labor Code (CLC) of the UkrSSR, in which certain legal principles were established to combat the malicious disobedience of convicts in places of deprivation of liberty [12, p. 30-31]. In particular, all persons sentenced to imprisonment, depending on the degree of social danger, were divided into three categories. At the same time, belonging to this or another category was, first of all, the basis for sending a convicted person to a correctional institution of a certain type. The first, most dangerous category, were sentenced to imprisonment with strict isolation. The second belonged to persons from the working class who committed crimes because of their class habits, views and interests, which the court did not recognize as possible to condemn to strict isolation, as well as professional criminals. The third category included all other convicts (Article 42 of the CLC USSR) [13, p. 67].

Another feature that stage was that in order to strengthen criminal repression at-Union (USSR) levels of 25 February 1927 was adopted several criminal acts:

a) The provisions of the crimes of the state, which determined two groups of state crimes, counter-revolutionary and dangerous crimes against public order, which by analogy equated and crimes vchynalys in prison (mass unrest, actions that disrupt the work of correctional institutions; an armed attack on the protection of these institutions [10, p. 351];

b) Regulations on war crimes, whose subjects were recognized and persons from the staff of correctional facilities [10, p. 351].

Although the 1925 VTK USSR was amended in 1928-33, 1935, 1939 and 1949, the new VTK, unlike the VTK of the RSFSR, which came into force in August 1933, was not adopted in Ukraine. , since the main legal source at that time was the legislation of the USSR [13, p. 72]. In particular, in the late 20's and early 30's of the 20th century, the punitive policy of the USSR, with the exception of the criminal education, undergone significant changes, which were primarily related to the decision of the Central All-Union Commission (CEC) and the Council of National Commissioners (RNK) of the USSR November 6, 1929 "On Amendments to Articles 13, 18, 22 and 38 of the Basic Principles of the Criminal Legislation of the Union of Soviet Socialist Republics and the Union Republics" which were directly related to the strengthening of the fight against crime in places of deprivation of liberty, namely: according to the said resolution, deprivation the will was performed at ypravno labor camps (ITL) in remote areas of the USSR for a period of 3 years to 10 years. At the same time, this type of criminal punishment had two types: a) execution of the punishment was carried out in general places of imprisonment for up to 3 years - in correctional labor colonies; b) another - in a labor camp (VTT) with a term of imprisonment of more than three years [13, p. 72].

3. The third stage of combating the malicious disobedience of the convicted to the requirements of the administration of penitentiaries in Ukraine is closely linked to the so-called "Khrushchev thaw" (1953-1960).

A feature of this historical time in the life of Ukraine that he acted in a situation where, after the death of Stalin, a group of reformers led by Nikita Khrushchev came to power in the USSR. At the same time, the changes in the legal and organizational

nature did not go beyond the scope and scope of the execution of sentences [10, p. 365-366]. As I. Y. Boyko remarked in this connection, the general tendency of the development of criminal legislation in the 50's Twentieth century there was a certain limitation of the use of criminal repression, narrowing the range of acts considered crimes, mitigating responsibility for certain types of crimes that did not have a great public danger [10, p. 305]. At the same time, the process of de-Stalinisation in the USSR not only led to narrowing the scope of criminal responsibility, but was accompanied by the creation of commissions for reviewing cases of convicts in 1934-1953 gg. rehabilitation of innocent convicts (justification, renewal of a good name or reputation of an unjustly accused or convicted person), abolition of emergency laws and regulations aimed at combating "enemies of the people", etc. [10, p. 366]. The same commission in April-May 1954 checked the work of the Labor Expeditionary Camps (VTT) and correctional labor colonies, the results of which had been prepared by the report of the Government of the USSR [13, p. 76], in which, in particular: a) the position was supported for the transfer in January 1954 of a correctional system from subordination to the Ministry of Justice of Ukraine to the jurisdiction of the Ministry of Internal Affairs of the USSR [13, p. 76]; b) substantiated the need for improvement of the penal and labor laws of the USSR [13, p. 76-77].

As a result, in July 1954, the Council of Ministers of the USSR approved the regulations on corrective labor camps and colonies of the MVD of the USSR, according to which introduced a new classification of prisoners according to which, in correctional labour colonies were sent for punishment, namely: 1) persons sentenced to deprivation of liberty for a term up to three years; 2) persons convicted for the first time in job, business and other particularly dangerous crimes; 3) persons transferred from children's labour colonies for minors for further punishment [13, p. 77].

4. The fourth stage of the development of the legal and regulatory framework for combating the malicious disobedience of convicts in places of deprivation of liberty falls on 1961-1982 gg. and it is associated with the adoption in Ukraine of new QC and QCP, as well as other regulatory acts related to this issue.

As I. I. Boyko correctly noted on this occasion, in the early 60's of the twentieth century. in the Ukrainian Socialist Republic there was a tendency to strengthen the criminal-law coercion of the management of society, and the Criminal Law had a repressive nature [10, p. 374]. In particular, according to the Criminal Code of the USSR in 1969, the most widespread criminal punishment was imprisonment, which was seen as a universal means of attaining the purpose of punishment. However, this approach has led to overcrowding of correctional and labor institutions, which, for reasons of objective nature, did not fully ensure the fulfillment of their functions of correction and re-education of convicts [10, p. 377], which undoubtedly influenced the effectiveness of preventing disobedience to the administration of penitentiary institutions and ultimately became one of the grounds for the introduction in 1983 of personal responsibility for the commission of the crime.

A similar punitive-repressive nature of the content was adopted and adopted in December 1970, the Correctional-Labor Code of the RSFSR [14]. So, in accordance with the requirements of Art. 47 WTC, in accordance with the established article. The CCP 410, the convicted persons who violently violated the regime's requirements, were transferred, in particular, from a correctional-labor colony to a prison for up to 3 years, and juvenile convicts - from educational labor colonies of the general regime - to the

educational and labor colony of the strengthened regime. At the same time, in Part 2 of this article, the Supreme Court of the Republic of Tajikistan, under the malicious violation of the sentences imposed by the sentencing regime, meant a very wide range of offenses (from their failure to comply with the lawful requirements of the administration to execute more than 3 other violations of the punishment regime during the year). In addition, in Art. 67 VTK for violating the regime of serving sentences for convicts provided for the application of such a penalty as the transfer of convicted persons held in correctional labor colonies of general, enhanced and strict regime to rooms of the chamber type (PCT) for a term up to six months, and those, who served punishment in colonies of a special regime - in single cells for up to one year.

5. The fifth stage (1983-1991 gg) development of legal sources concerning the fight against malicious disobedience of convicts to the requirements of the administration of the ITA, in particular, with the introduction of the criminal code of the Ukrainian SSR article 183-3 "Malicious disobedience to requirements of administration of correctional labor institutions" [15]. Its revision had the following form: "Malignant disobedience to lawful demands of the administration of the labor Agency or other counteraction to the administration in carrying out its functions by a person serving a sentence in places of deprivation of liberty, if that person for violation of the requirements of the mode of punishment has undergone in the course of the year recovered in the form of translation in cell-type premises (solitary confinement), or transferred to prison, suffered by deprivation of liberty for a term up to three years. The article of the criminal code and also had the second part as follows: "the same actions committed by an especially dangerous recidivist or by a person convicted of a felony, is punishable by deprivation of liberty for a term of one to five years [15]. According to the requirements of article 12 of OTK USSR, imprisonment as a form of punishment, performed in the labor and educational-labour colonies and prisons.

One of the conditions that contributed to including the addition of the CC of Art. 183-3 "Misuse of disobedience to the requirements of the administration of the corrective labor institution" was, inter alia, that the practical application of the new penal and labor law revealed a number of its shortcomings, as well as the fact that in the early 80's of the twentieth century there was a significant social -Political, economic and legal changes in the USSR. Thus, with the death of L. Brezhnev ended not only the "era of developed socialism," but also a period of stagnation (the English stauropigion - to make stationary stagnation) [16, p. 545] of the Soviet political system, which was increasingly resorting to repressive methods of managing society and the state, including the sphere of execution of sentences, taking on a scholastic-logical postulate on the complete elimination of crime in the USSR [17, p. 13-14].

Conclusion. This approach, as stated in the course of special studies, has led to the fact that willful disobedience of convicts in places of deprivation of liberty "fought" planning method: annually, these figures should not be smaller for the previous period [18, p. 45]. In this case, contrary to the content of article 183-3 of the criminal code, namely the criminal prosecution of actual malicious violators of the mode of punishment among the subjects of this crime only 65, 5 people supported the criminal traditions, as 14 % of prisoners were serving sentences for the first time [19, p. 2].

References:

1. Newsletter. Kiev: GUIN of the Ministry of Internal Affairs of Ukraine, 1992. 28 p.
2. Operative-service and production and economic activity of the institutions of the criminal-executive system for 1993: Informational bulletin. Kiev: GUIN of the Ministry of Internal Affairs of Ukraine, 1994. №10. 88 p.
3. Operational and production and economic activity of the institutions of the criminal-executive system in 1995: Newsletter. Kyiv: GUPP of the Ministry of Internal Affairs of Ukraine, 1996. No. 16. 98 p.
4. Operational and production and economic activity of the institutions of the criminal-executive system in 1997: Newsletter. Kyiv: GVVP of the Ministry of Internal Affairs of Ukraine, 1998. No. 20. 113 p.
5. On the state of law and order, isolation and supervision, activities of the units of protection, fire safety and paramilitary formations of the State Criminal-Enforcement Service of Ukraine in 2016: Newsletter. Kyiv: Department of Internal Affairs of the Ministry of Justice of Ukraine, 2017. 34 p.
6. Chernyshov D. About some problems in reforming the scope of punishment // Source: Internet edition for 2018.
7. Yakovets I.S. Theoretical and applied measures of optimization of the process of execution of criminal penalties: monograph. Kharkiv: Right, 2013. 392 p.
8. Batygerayev VS Criminological Principles for the Prevention of Recurrent Crime in Ukraine .: Diss. doc. lawyer Sciences / 12.00.08. Kharkiv: National lawyer acad. them J.Mudry, 2010. 588 p.
9. Orel Yu.V. Criminal liability for malicious disobedience to the requirements of the administration of the correctional institution: diss. ... kund .. law. Sciences: 12.00.08. Kharkiv, 2008. 210 p.
10. Boyko I.Y. Criminal penalties in Ukraine (IX - XX centuries): teaching. manual. Lviv: LNU them. Ivan Franko, 2013. 408 pp.
11. History of the State and Law of Ukraine: Textbook / AS Tchaikovsky (director of Aut Cols), V.I.Batymenko, L.O. Zaytsev, O.L. Kopylenko et al .: ed. AS Tchaikovsky Kyiv: Yurinkom Inter, 2003. 512 p.
12. Bondareva K.V. Disgraceful disobedience to the requirements of the administration of the penitentiary institution: criminal and criminal-executive characteristics: diss. ... kund .. law. Sciences: 12.00.08. Kyiv: EVA, 2018. - 289 pp.
13. Gel AP, Semakov G.S., Yakovets I.S. Ukraine's Criminal Execution Law: Teach. Guide / Ed. Prof. AH. Stepanyuk Kyiv: Yurik Inter, 2008. 624 p.
14. Mikhailenko P.P. Essays on the history of criminal legislation of the Ukrainian SSR. Kyiv: Acad. Sciences of the USSR, 1959. 440 p.
15. On introduction of additions to the Criminal Code of the Ukrainian SSR: Decree of the Presidium of the Supreme Soviet of the Ukrainian SSR dated September 23, 1983, No. 5855-X // Bulletin of the Supreme Soviet of the Ukrainian SSR. 1983. No. 40. P. 807.
16. Bulyko AN Great Dictionary of Foreign Languages. 35 thousand words. Izd. 3rd, pererab., Corrected. Moscow: Martin, 2010. 704 p.
17. Fris P. L. Policies in the field of combating crime (general issues) // Policy in the field of combating crime in Ukraine: theoretical and applied problems. : monograph / for collections. Ed. prof. PL Frice and prof. VB Kharchenko. Ivano-Frankivsk - Kharkiv. : View of the Carpathian Mountains. nats un named after V. Stefanik, 2016. p. 10 - 24.
18. Victimological principles of the fight against crime in places of deprivation of liberty. : monograph / Z.V. Zhurovskaya Lutsk: PP Ivanyuk VP, 2012. 168 p.
19. On the effectiveness of the use of correctional institutions in Article 391 of the Criminal Code of Ukraine: review. Kyiv: DDU PVP, 2002. No. 5/2029 / JI6. May 23.19.