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PRZYBLIŻENIE KRAJOWYCH PRAKTYK ZATRUDNIENIA SKAZANYCH DO NORM MIĘDZYNARODOWYCH

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Adnotacja. Artykuł dotyczy kwestii niezgodności krajowych praktyk zatrudnienia osób skazanych z normami międzynarodowymi. Stwierdzono, że dziś polityka karna i wykonawcza Ukrainy nie jest w pełni ukierunkowana na utrzymanie umiejętności zawodowych skazanych, a tym bardziej na ich rozwój. Z tego powodu perspektywy zatrudnienia skazanych po zwolnieniu są raczej rozczarowujące. Dlatego konieczna jest jakościowa reforma tej sfery. Na podstawie analizowanego materiału autor doszedł do wniosku, że kompleksowe podejście jest niezbędne do rozwiązania problemu zatrudnienia. Zaproponowano potrójny model: zmiana mechanizmów ułatwiających zatrudnienie skazanym – zmiana nastawienia społeczeństwa do skazanych – poprawa koordynacji i współpracy między organami i instytucjami zaangażowanymi w przygotowanie skazanych do zwolnienia.

Słowa kluczowe: normy europejskie, skazany, pozbawienie wolności, przygotowanie do zwolnienia, zatrudnienie.

APPROXIMATION OF THE NATIONAL PRACTICE OF EMPLOYMENT OF CONVICTS TO EUROPEAN STANDARDS

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Abstract. The article is devoted to the issues of inconsistency of Ukrainian practice of employment of convicts with international standards. It is confirmed, that nowadays the penitentiary policy of Ukraine isn't totally aimed at supporting the convicts' professional skills and even more their developing. That's why the prospects of employment of convicted persons after release are quite disappointing. Therefore, a qualitative reform of this area is needed. Based on the analyzed materials, the author concluded, that solution of the problem of employment is needed a comprehensive approach. Threefold model was proposed: changing the mechanisms of assistance in employment of convicts – changing society's attitude to convicts – improving coordination and cooperation between participating bodies and institutions during preparing convicts for release.

Key words: European standards, convict, imprisonment, preparation for release, employment.

НАБЛИЖЕННЯ НАЦІОНАЛЬНОЇ ПРАКТИКИ ПРАЦЕВЛАШТУВАННЯ ЗАСУДЖЕНИХ ДО МІЖНАРОДНИХ СТАНДАРТІВ

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Анотація. Стаття присвячена питанням невідповідності національної практики працевлаштування засуджених міжнародним стандартам. Стверджується, що сьогодні кримінально-виконавча політика України не повною мірою спрямована на підтримку професійних навичок засуджених і тим паче на їх розвиток. Через це перспективи працевлаштування засуджених після звільнення досить невтішні. Тому необхідне якісне реформування цієї сфери. На підставі проаналізованого матеріалу автор дійшов висновку, що для вирішення проблеми зайнятості засуджених необхідний комплексний підхід. Запропоновано потрійну модель: зміна механізмів сприяння у працевлаштуванні засудженим – зміна ставлення суспільства до засуджених – поліпшення координації і співпраці між органами та установами, які беруть участь у підготовці засуджених до звільнення.

Ключові слова: європейські стандарти, засуджений, позбавлення волі, підготовка до звільнення, працевлаштування.

Introduction. The European Prison Rules (European penitentiary (prison) rules, 2006) require that the nature of the work provided to a prisoner, should as far as possible contribute to the maintenance or development of skills that will enable to the prisoner to earn a life after release. The organization and methods of work in correctional facilities should be as consistent as possible with the organization and methods of similar work in society in order to prepare prisoners for the conditions of normal professional life. However, today the penitentiary policy of Ukraine totally aimed at supporting the convicts' professional skills and even more their developing. That's why the prospects of employment of convicted persons after release are quite disappointing.

Despite the sufficient number of scholars' appeals to the issue of re-socialization and social adaptation of convicts, the issue of employment of convicts after release remains insufficiently covered. The separate direction of this process is researching and enforcing the European practice in this field.

The purpose of the article is to highlight the problems that hinder the successful approximation of the national practice of employment of convicts to European standards and outline on this basis the areas for improvement of the national legislation.

Main part.

Domestic realities and foreign experience in solving the problem of employment of convicts after release from prisons. The results of the sociological survey, conducted by the author (among 501 respondents of which were 297 convicts who are serving sentences of imprisonment and are in preparation for release, 88 persons – staff of penitentiary institutions involved in such training – 141 – staff of probation and 5 persons – employees of the employment center and former staff of the penitentiary), showed, that the problem of employment is at the top and is most painful for both convicts and staff of the penitentiary and probation authorities who prepare convicts for release. Based on personal observations of the survey and respondents' responses, the author concluded, that this is primarily because of the fact that current employment assistance mechanisms are not effective enough, coordination and cooperation between bodies and institutions that are training convicts, almost no pre-dismissal, most of the preparations for release have a formal character. However, it is necessary to mention, that Ukraine is doing active steps for correcting this situation. It is begun to solve this problem more actively by allowing convicts to negotiate contracts with both sole proprietors and legal entities (Order of the Ministry of Justice "On Approval of Amendments to the Instruction on Working Conditions and Wages of Persons Convicted to Restriction of Liberty and Imprisonment" № 2115/5 of June 19, 2020). This is a great step, because previously convicts can work only in enterprises, determined by the penitentiary administration and, as a rule, had worked nonofficial. Such changes will allow convicts not to lose skills during their stay in colony, and, as a result, their demanding on the labor market will increase, they will have more opportunities to find employment after release. However, only a seemingly small number of people can be employed in this way, as the attitude of society in general and employers in particular remains largely negative. And this needs to change! (Bilous, 2020: 7)

The European experience of employment of former convicts is undoubtedly noteworthy. For example, the program "See Potential" (Official site of the British government, 2020), which operates in the UK, involves more than a hundred well-known employers and demonstrates significant success in the employment of former convicts. Moreover, a special New Futures Network (NFN) has been set up in British prisons to implement this program, which is a specialized part of the prison service, which aims to ensure partnerships between prisons and employers. This allows employers to select staff while they are still in prison and, if it is necessary, train them in order to get a ready-made employee with the necessary working skills in a particular company.

Ukraine needs to introduce a similar nationwide program to encourage employers to openly hire former convicts. This program should be a prestigious one and every employer would want to participate in it, increasing in such way their ranking and awareness in the country. It is necessary to predict in this program the possibility of setting different benefits and possibly wage subsidies for such employers and enable them to determine the required contingent by selecting them at the stage of imprisonment. Knowing several companies in the regions that regularly employ former convicts, the author can say with confidence, that such companies are in every region of the country. A former convict shouldn't look for them. It is urgent to create a prestigious program to which the employers will want to join themselves and chances of former convicts to find a workplace will increase in such way.

However, in order to start changing something, it is necessarily to analyze a financial base. The expenditures of the State Budget of Ukraine in financing the State Penitentiary Service of Ukraine and probation authorities for 2017–2020 (Law of Ukraine "On the State Budget of Ukraine", 2017, 2018, 2019, 2020) are far from desirable. We can observe that every year some increasing of State Penitentiary Service of Ukraine and probation bodies' financing has taken place (table 1).

Table 1

Financing of the State Penitentiary Service of Ukraine and probation bodies for 2017–2020

Indicator	2017	2018	2019	2020
3601020 Execution of punishments by institutions and bodies of the State Penitentiary Service of Ukraine, thousand UAH	3 984 454,3	5 455 538,4	6 162 230, 7	6 946 230,7
Baseline growth rate,%	*	136,9	154,6	174,3
3601030 Ensuring the activities of probation bodies, thousand UAH	325 187,7	564 977,7	624 094,3	687 860,5
Baseline growth rate,%	*	173,7	191,9	211,5
The total size of the State budget, thousand UAH	841 402 834,3	991 930 698,4	1 093 021 713,2	1 270 137 100,3
Baseline growth rate,%	*	117,9	129,9	150,9

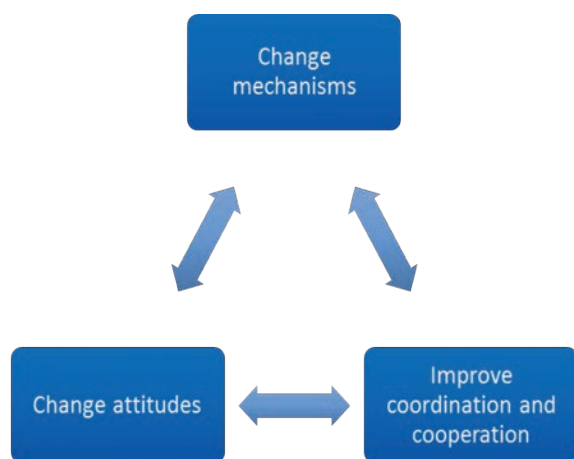


Fig. 1. Model of solving the problem of employment of convicts after release

The performance of state functions depends on the level of their funding and the efficiency of using of allocated funds. If a state doesn't want to follow the principle "who does not invest in prevention, invests in crime", it is necessary to increase financing in training convicts before their release. The level of recidivism in the country is largely depending on this (Batyrhareieva, 2009).

The analysis of the programs that have been in force (or are still in force) in regional and city councils showed, that these programs are a partial phenomenon at the local level, their funding is on a residual basis, as priorities are set in favor of other programs. It is a negative phenomenon, because according to Article 38 of the Law of Ukraine "On Local Self-Government in Ukraine" (Law of Ukraine "On Local Self-Government in Ukraine" № 280/97-BP of 21 May, 1997) particularly the local authorities should to ensure law, order, protection of rights, freedoms and legitimate interests of citizens and are responsible for ensuring proper condition protection of public order and crime prevention in the city, carrying out these functions with the bodies and institutions, whose activities are aimed

at preparing convicts for release from prisons and their social adaptation in future. As a result, most of such programs have been closed because of lack of funding. This situation needs to be remedied: the local governments should pass permanent programs to promote social adaptation of ex-convicts and ensure uninterrupted funding of such programs. Forming an offender with prosocial behavior should be the task not only of state bodies, but also of local governments and society as a whole (Iakovets, Bilous, 2019: 388).

In addition to changing the mechanisms of employment assistance, increasing funding and improving coordination between the bodies and institutions involved in the training of convicts for release, no less important is the change in society's attitude towards former convicts. We are talking about the humanization of society's attitude towards former convicts. Nowadays it has an aggressive character towards this category of persons, recognizing only the principle of inevitability of punishment for a crime. But punishment cannot last for a lifetime; it is limited by the term of punishment. A person who has served a prison term set by a court deserves the loyal attitude of society.

Conclusions. European standards set out guidelines for us, to which our penitentiary policy is not yet ready, but the path to which is being paved and is gaining momentum every day. The European practice in the sphere of convicts' employment can be useful in organization of the similar process in Ukraine.

The general scheme of this problem's solution can be proposed as a triune system complex (change mechanisms – change attitudes – improve coordination and cooperation) (Bilous, 2020: 9) (fig. 1).

The proposed triune system covers all the cornerstones of the imperfection of the current system of preparation of convicts for release and can be used as a basis for solving the problem of employment of convicts after release.

If we talk about the areas of improvement of domestic legislation in the direction of employment of convicts, we must first pay attention to the Resolution of the Cabinet of Ministers of Ukraine "On measures to ensure the activities of the State Penitentiary Service" № 653 of April 22, 1999 (13), which in 2020 included such changes: "Income from the employment of convicts consists of accruals on their wages or remuneration for the performance of works (services) in the amount of 25 percent and are included in the cost of products (works, services)". This means that companies that enter into contracts with convicts are required to pay an additional 25% to the accounts of penal colonies. It is considered that this norm is discriminatory, it does not meet European standards and calls into question the possibility of successful re-socialization of convicts, as it makes it almost impossible to involve non-state enterprises in correctional colonies that have the opportunity to employ such convicts. The proposal to abolish this norm is obvious, because in its presence neither the introduction of a national employment program for convicts nor the proposed three-tier system for solving the employment problem will be effective.

Bibliography:

1. Європейські пенітенціарні (в'язничні) правила : Рекомендація № R (2006)2 Комітету Міністрів держав-учасниць. URL: https://zakon.rada.gov.ua/laws/show/994_032?fbclid=IwAR3iQYBXYcoFYHLOTq3Gjc7A_IztEs2TQDtEX5iJvPthDele0Xw4G67rY#n553 (дата звернення: 10.11.2020).
2. Про затвердження Змін до Інструкції про умови праці та заробітну плату засуджених до обмеження волі та позбавлення волі : Наказ Мін'юсту від 19 червня 2020 р. № 2115/5. URL: <https://zakon.rada.gov.ua/laws/show/z0554-20#Text> (дата звернення: 10.11.2020).
3. Білоус К.С. Працевлаштування засуджених після звільнення з місць позбавлення волі як одна з умов успішної ресоціалізації. *Закон і обов'язок*. 2020. № 29. С. 7. URL: https://kvs.gov.ua/wp-content/uploads/2020/09/Zakon-i-obovyazok_29.pdf?fbclid=IwAR1KJDa4-00jEiockS-wMt9nmnnI8iBtxeaz05M87ovCx-EtRHmkH50Y_2U (дата звернення: 10.11.2020).
4. Офіційний сайт уряду Великобританії. URL: <https://offenderemployment.campaign.gov.uk/> (дата звернення: 10.11.2020).

5. Про Державний бюджет України на 2017 рік : Закон України від. 21 грудня 2016 р. № 1801-VIII. URL: <https://zakon.rada.gov.ua/laws/show/1801-19#Text> (дата звернення: 10.11.2020).
6. Про Державний бюджет України на 2018 рік : Закон України від 7 грудня 2017 р. № 2246-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2246-19#Text> (дата звернення: 10.11.2020).
7. Про Державний бюджет України на 2019 рік : Закон України від 23 листопада 2018 р. № 2629-VIII. URL: <https://zakon.rada.gov.ua/laws/show/2629-19#Text> (дата звернення: 10.11.2020).
8. Про Державний бюджет України на 2020 рік : Закон України від 14 листопада 2019 р. № 294-IX. URL: <https://zakon.rada.gov.ua/laws/show/294-20#Text> (дата звернення: 10.11.2020).
9. Батиргарєєва В.С. Рецидивна злочинність в Україні: соціально-правові та кримінологічні проблеми : монографія. Харків : Право, 2009. 576 с.
10. Про місцеве самоврядування в Україні : Закон України від 21 травня 1997 р. № 280/97-ВР. URL: <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80> (дата звернення: 10.11.2020).
11. Яковець І.С., Білоус К.С. Допомога у соціальній адаптації особам, звільненим з місць позбавлення волі (регіональний аспект). *Актуальні проблеми протидії злочинності* : матеріали наук. конф. за результатами роботи фахівців НДІ вивчення проблем злочинності ім. акад. В.В. Сташиса НАПрН України за фундаментальними темами у 2019 р., м. Харків, 23 грудня 2019 р. Харків : Право, 2019. С. 383–388.
12. Білоус К.С. Проблема працевлаштування засуджених після звільнення з тюрми. *Встановлення позитивних взаємин із правопорушником як принцип пробації* : матеріали наук-практ. онлайн-«круглого столу», м. Харків, 18 грудня 2020 р. Харків : Право, 2020. С. 7–10.
13. Про заходи щодо діяльності Державної кримінально-виконавчої служби : Постанова Кабінету Міністрів України від 22 квітня 1999 р. № 653. URL: <https://zakon.rada.gov.ua/laws/show/653-99-%D0%BF#Text> (дата звернення: 10.11.2020).

References:

1. Ievropeiski penitentsiarni (viaznychni) pravyla (Rekomendatsiia № R (2006)2 Komitetu Ministriv derzhav-uchasnyts). URL: https://zakon.rada.gov.ua/laws/show/994_032?fbclid=IwAR3iQYBXYcoFYHLOTq3Gjc7A_IztEs2TQDtEX5iJvPthDele0Xw4G67lrY#n553 [in Ukrainian].
2. Nakaz Miniustu “Pro zatverdzhennia Zmin do Instruksii pro umovy pratsi ta zarobitnu platu zasudzhenykh do obmezhenia voli ta pozbavlenia voli” № 2115/5 vid 19.06.2020 r. URL: <https://zakon.rada.gov.ua/laws/show/z0554-20#Text> [in Ukrainian].
3. Bilous, K.S. (2020). Pratsvlashtuvannia zasudzhenykh pislia zvilnennia z mistv pozbavlenia voli yak odna z umov uspishnoi resotsializatsii [Employment of convicts after release from prisons as one of the conditions for successful re-socialization]. *Zakon i obov'язok*, Vyp. 29. P. 7. URL: https://kvs.gov.ua/wp-content/uploads/2020/09/Zakon-i-obov'язok_29.pdf?fbclid=IwAR1KJDa4-00jEiockS-wMt9nmmml8iBtxeaz05M87ovCx-EtRHmkH50Y_2U [in Ukrainian].
4. Ofitsiyniy sayt Kabinetu Ministriv Velikoyi Britaniyi. URL: <https://offenderemployment.campaign.gov.uk/> [in Ukrainian].
5. Zakon Ukrainy “Pro Derzhavnyi biudzhzet Ukrainy na 2017 rik”. URL: <https://zakon.rada.gov.ua/laws/show/1801-19#Text> [in Ukrainian].
6. Zakon Ukrainy “Pro Derzhavnyi biudzhzet Ukrainy na 2018 rik”. URL: <https://zakon.rada.gov.ua/laws/show/2246-19#Text> [in Ukrainian].
7. Zakon Ukrainy “Pro Derzhavnyi biudzhzet Ukrainy na 2019 rik”. URL: <https://zakon.rada.gov.ua/laws/show/2629-19#Text> [in Ukrainian].
8. Zakon Ukrainy “Pro Derzhavnyi biudzhzet Ukrainy na 2020 rik”. URL: <https://zakon.rada.gov.ua/laws/show/294-20#Text> [in Ukrainian].
9. Batoryhareieva, V.S. (2009). Retsydyvna zlochynnist v Ukraini: sotsialno-pravovi ta kryminolohichni problemy [Recidivism in Ukraine: socio-legal and criminological problems]. Kharkiv: Pravo, 2009. 576 p. [in Ukrainian].
10. Zakon Ukrainy “Pro mistseve samovriadvannia v Ukraini” № 280/97-VR vid 21 travnia 1997 roku. URL: <https://zakon.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80> [in Ukrainian].
11. Iakovets, I.S., Bilous, K.S. Dopomoha u sotsialnii adaptatsii osobam, zvilnenym z mistv pozbavlenia voli (rehionalnyi aspekt) [Assistance in social adaptation of persons released from prisons (regional aspect)]. *Aktualni problemy protydivii zlochynnosti* : materialy nauk. konf. za rezultatamy roboty fakhivtsiv NDI vyvch. problem zlochynnosti im. akad. V.V. Stashysa NAPrN Ukrainy za fundamental. temamy u 2019 r. Kharkiv : Pravo. P. 383–388. [in Ukrainian].
12. Bilous, K.S. (2020). Problema pratsvlashtuvannia zasudzhenykh pislia zvilnennia z tiurny [The problem of employment of convicted persons after release from prison]. *Vstanovlennia pozytyvnykh vzaiemyn iz pravoporushnykom yak pryntsyup probatsii* : materialy nauk-prakt. onlain – “kruhloho stolu”. (m. Kharkiv, 18 hrudnia 2020 r.). Kharkiv : Pravo. P. 7–10. [in Ukrainian];
13. Postanova Kabinetu Ministriv Ukrainy “Pro zakhody shchodo diialnosti Derzhavnoi kryminalno-vykonavchoi sluzhby” № 653 vid 22 kvitnia 1999 r. URL: <https://zakon.rada.gov.ua/laws/show/653-99-%D0%BF#Text> (data zvernennia 10.11.2020) [in Ukrainian].