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CRIMINAL OFFENCES COMMITTED IN IMPRISONMENTS OF THE STATE CRIMINAL EXECUTIVE SERVICE OF UKRAINE

Дмитро Колодчин. КРИМІНАЛЬНІ ПРАВОПОРУШЕННЯ, ЩО ВЧИНЯЮТЬСЯ В МІСЦЯХ ПОЗБАВЛЕННЯ ВОЛІ ДЕРЖАВНОЇ КРИМІНАЛЬНО-ВИКОНАВЧОЇ СЛУЖБИ УКРАЇНИ. У статті здійснено ґрунтовний аналіз видів кримінальних правопорушень, що вчиняються засудженими у місцях несвободи Державної кримінально-виконавчої служби України (ДКВС). Доведено, що вчинення засудженими у місцях несвободи кримінального правопорушення волі є не лише небезпечним посяганням на мету і завдання правосуддя та нормальну діяльність установ виконання покарань ДКВС України, а й перешкоджає досягненню мети покарання та насамперед його протидії та запобіганню.

До найбільш важливих теоретичних і практичних питань, які вплинули на судову і виконавчу практику та які нині потребують опрацювання і дослідження, автором віднесено вчинення засудженими у місцях несвободи Міністерства юстиції України таких резонансних кримінальних правопорушень, як: злісна непокора вимогам адміністрації установи виконання покарань; дії, що дезорганізують роботу установ виконання покарань; втеча з місця позбавлення волі або з-під варти. Найбільшу небезпеку у виправних колоніях України становлять кримінальні правопорушення, поєднані з нападом засуджених на особовий склад варти з метою усунення перешкод для здійснення задуму і заволодіння зброєю, яку вони використовують для збройного опору при подальшому їхньому затриманні, а також для вчинення нових злочинів.

Сформульовано авторське визначення кримінального правопорушення в місцях несвободи ДКВС України. Це передбачене кримінальним законом, суспільно-небезпечне діяння (дія або бездіяльність), вчинене спеціальним суб'єктом, в місцях несвободи ДКВС України і яке посягає на мету і завдання правосуддя та нормальну діяльність установ виконання покарань, а також перешкоджає досягненню мети покарання, виправлення і ресоціалізації засуджених.

Ключові слова: *кримінальне правопорушення, засуджений, персонал, місця несвободи, запобігання, виправна колонія.*

Relevance of the study. The problem of convicts committing criminal offenses in imprisonments of the State Criminal Executive Service of Ukraine (hereinafter – the SCES Ukraine) is not only a dangerous encroachment on the justice goal and task and on the normal operation of correctional institutions, it primarily prevents the achievement of the purpose of punishment, correction and resocialization of convicts.

Therefore, domestic penitentiary scholars are of the same opinion that a criminal offense committed in imprisonments is a certain type of criminal activity, both of convicts and of the personnel of correctional institutions, and therefore the government is forced to spend significant funds to combat and prevent this socially dangerous phenomenon. Unfortunately, as evidenced by the practice of the correctional institutions of the Ministry of Justice of Ukraine, the public danger of committing a criminal offense by convicts and a staff is very often combined with the commitment of other criminal offenses, in particular, the commitment of serious crimes against life and health of another convicted person or even of a correctional officer.

The above circumstances together indicate the need and possibility of consideration within the framework of a separate independent study of the concept and types of criminal offense committed by a special perpetrator in imprisonments of the SCES of Ukraine and has

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determined the relevance of this research paper. The scientific achievements of domestic and foreign scholars in the field of criminal and criminal executive law and criminology testify to a number of systematic provisions and conclusions that directly or indirectly relate to the concept and types of criminal offenses committed in imprisonments and make methodological prerequisites for its effective research in today's realities. Thus, the study of types of criminal offenses committed in imprisonments provides an opportunity to further deepen theoretical knowledge about them, their history and development, as well as to determine ways to improve regulatory and organizational-management support.

Recent publications review. The theoretical and practical basis of this scientific article was made by the research of well-known domestic and foreign specialists in criminal, criminal executive law and criminology, in particular Yu. Antonyan, Yu. Baulin, O. Bandurka, V. Bilous, A. Bohatyryov, I. Bohatyryov, Ye. Bodyul, V. Vasylets, V. Vasylevych, P. Vorobey, V. Hryshchuk, I. Helfand, A. Hetman, V. Holina, O. Dzhuzha, V. Dryomin, T. Denysova, V. Yemelyanov, O. Zhytniy, A. Zelinskyy, O. H. Kalman, I. Karpets, A. Kyrylyuk, O. Kostenko, O. Kulyk, O. Lemeshko, O. Lytvynov, O. Lytvak, S. Lukashevych, V. Makoviy, M. Melnyk, P. Mykhaylenko, V. Navrotskyi, V. Osadchyy, M. Panov, M. Puzyryov, A. Savchenko, V. Stashys, E. Streltsov, V. Tatsiy, V. Tykhyy, V. Trubnykov, P. Fris, S. Khalymon, Yu. Shemshuchenko, V. Shakun, S. Yatsenko and others.

Their achievements contain a number of systematic provisions and conclusions that directly or indirectly relate to criminal offenses committed by convicts in imprisonments and make methodological prerequisites for an effective study of the mentioned issues. The specified circumstances, as well as the need for further development of theoretical issues and practical recommendations regarding the study of criminal offenses committed by convicts in imprisonments, require a comprehensive understanding and adequate scientific interpretation and testify to the relevance of the chosen topic of this scientific article.

The article's objective is to investigate the criminal offences committed in imprisonments of the state criminal executive service of Ukraine.

Discussion. Among the most important theoretical and practical issues that have influenced judicial and executive practice and that currently require elaboration and research, we include the commitment of such high-profile criminal offenses by convicts in imprisonment of the Ministry of Justice of Ukraine as: "Malicious disobedience to the requirements of the administration of correctional institutions" (Article 391 of the Criminal Code (hereinafter – CC of Ukraine); "Actions that disorganize the work of correctional institutions" (Article 392 of the CC of Ukraine); "Escape from a place of imprisonment or from custody" (Article 393 of the CC of Ukraine) [1].

Among the types of criminal offenses listed above, which are committed in imprisonment of the SCES of Ukraine, in particular, by convicts, there is Art. 391 of the CC of Ukraine, the socio-legal conditionality of which, according to domestic scholar K. Bondareva, is that criminal liability for malicious disobedience to the requirements of the administration of a correctional institution is an effective preventive measure that contributes to the maintenance of proper law and order in correctional institutions and plays an important role in the organization of the use of basic means of correction and resocialization of convicts, as well as in the prevention of new criminal offenses among them [2, p. 11].

By the way, the study of the criminal offense provided for in Art. 391 of the CC of Ukraine, in foreign countries has shown that the legislation of the most developed countries of the world (United States of America, Great Britain, France, Germany, Japan) lacks a criminal article on malicious disobedience to the requirements of the administration of penal institutions. This is due to the fact that in the penitentiary institutions of these countries there is such a system of prevention of the commitment of criminal offenses, in which malicious disobedience to the requirements of the administration of these institutions is impossible.

At the same time, the study of malicious disobedience to the requirements of the administration of penal institutions shows that the criminal codes of the Republic of Kazakhstan, the Republic of Moldova, and the Republic of Uzbekistan contain articles related to malicious disobedience to the requirements of the administration of the said institutions.

Therefore, ambiguous approaches to Art. 391 of the CC of Ukraine in foreign countries, gives us reason to pay attention to the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine" (regarding the elimination of the corruption scheme in the penitentiary system by removing Article 391 of the CC of Ukraine) reg. No. 2079 dated September 6, 2019.

By the way, this draft law цфі proposed to remove Art. 391 of the CC of Ukraine "Malicious disobedience to the requirements of the administration of a correctional instution", as well as a reference to the specified article in Art. 140 of the Criminal and Executive Code (hereinafter – CEC) of Ukraine. We also draw attention to the fact that this is not the first attempt to remove Art. 391 of the CC of Ukraine. Previous attempts for various reasons did not receive legislative implementation. Let us recall draft law No. 2708 "On Amendments to Certain Legislative Acts of Ukraine" (regarding liability for malicious disobedience to the requirements of the administration of a correctional institution)" dated April 23, 2015 and Draft Law No. 9228 "On Amendments to Certain Legislative Acts of Ukraine" (regarding the removal Article 391 of the CC of Ukraine) dated October 19, 2018.

Sharing the opinion of the initiators of the draft law that the current version of Art. 391 of the CC of Ukraine is characterized by the presence of a number of conceptual shortcomings (corruption risks; inconsistency with the provisions of the Criminal Procedure Code; the need to exclude from the provisions of Article 391 of the Criminal Code of Ukraine such forms of socially dangerous behavior of convicts as other opposition to the administration in the legal exercise of its functions, etc.), we note that the exclusion of Art. 391 from the structure of the CC of Ukraine may lead to the specified negative consequences.

Therefore, the correct solution should not be the decriminalization of malicious disobedience to the legal requirements of the administration of the correctional institution, but the improvement of the rule that provides for criminal liability for it in order to make it more effective and substantiated in practice and eliminate the risk of corruption. Therefore, we suggest that the national legislator, taking into account the latest theoretical achievements of criminal-legal science and modern realities of social and legal practice, should consider the criminal offense stipulated in Art. 391 of the CC of Ukraine as a misdemeanor.

The next type of criminal offense is actions that disorganize the operation of correctional institutions (Article 392 of the CC of Ukraine). The social danger of actions that disorganize the operation of correctional institutions is determined by the fact that they seriously interfere with the normal operation of imprisonments, the achievement of the goals of punishment, and in some cases may lead to other serious consequences (murders, bodily harm, mass riots). According to the national researcher A. Tkachenko, actions that disorganize the operation of imprisonments, hinder the strengthening of the regime of detention of convicts, their involvement in socially useful work, conducting social and educational work and training with them, cause damage to all means of correction and resocialization of convicts [3, p. 9].

Therefore, this criminal offense damages all means of correction and resocialization of convicts. It hinders the strengthening of the regime of detention of convicts, their involvement in socially useful work, social-educational work and training with them. In addition, these actions cause serious damage to the self-employed organizations of convicts.

The greatest danger in the correctional colonies of Ukraine, according to the national scholar I. Bohatyryov, is criminal offenses combined with an attack by convicts on the guard personnel with the aim of removing obstacles to the implementation of the plan and taking possession of weapons that they use for armed resistance during their subsequent detention, and as well as for committing new crimes [4, p. 27].

It is worth emphasizing that the prerequisite for the criminalization of socially dangerous acts is, first of all, the needs of society to combat such acts by criminal legal means. These needs arise when actions that begin to pose a serious public danger, become sufficiently widespread in society, or there is a real possibility of increasing their number under certain conditions, as well as when they are ineffectively combated by other, less repressive measures and methods.

It is also worth noting that the public danger of the criminal offense stipulated in Art. 392 of the CC of Ukraine, is determined by a number of factors, including: the threat of use of violence against the convict or correctional officer. Commitment such actions in the correctional institution can cause not only a violation of their normal activities and significantly complicate the operational situation, but also make a negative atmosphere among the convicts themselves, question the ability of the correctional administration to ensure the safety of the convicts and the correctional staff.

The next type of criminal offense is escaping from an imprisonment or from custody (Article 393 of the CC of Ukraine). By the way, the criminalization of crime in correctional institution has always put before the government the need for criminal-legal regulation to ensure the implementation of the order and conditions for convicts to serve the sentence by imprisonment. And therefore, establishing criminal liability for escaping from an imprisonment

or from custody, the legislator takes into account many circumstances that form the prerequisites for such a decision.

These prerequisites, according to the national scholar O. Nekrasov, forming a certain system, are interconnected and mutually conditioned. At the same time, their difference in the conditioning mechanism is obvious, which undoubtedly affects the legislative consolidation, legal nature and punishment for crimes that encroach on the established order of sentence serving in the form of imprisonment [5, p. 13].

Therefore, despite the relatively small statistical indicators of the prevalence of escapes from imprisonments or from custody during the period of the development of the legal state in general and the reforming of the SCES of Ukraine in particular, the legislative regulation of criminal liability for encroachment on the normal operations of correctional institutions and institutions of pre-trial detention, to achieve the goal of criminal executive legislation [6], as well as the aim of pre-trial detention [7] is of particular importance.

Therefore, escapes from imprisonments or from custody, as a rule, encroach on a set of social relations, which gave researchers a reason to talk about the so-called "multi-object crimes". In our opinion, the position of I. Kopotun in this context is of interest, since crimes that lead to emergency situations in correctional institutions (and escapes from them) that cause damage or threaten to cause real harm to those social relations, which go beyond the scope of one generic object within the general object.

That is, as this expert notes, the above-mentioned criminal offenses committed in imprisonments of the SCES of Ukraine not only violate the legal procedure for the administration of justice and safe conditions for staff and convicts, the life of the correctional colony, but also public safety, public order, property relations, authority of state power bodies, etc. The essence of these criminal manifestations is that they are defined a priori by criminal-legal science as a multiplicity of crimes [8, p. 113-114].

It is also worth supporting the position of the Ukrainian penitentiary scientist I. Bohatyryov, who explains the social danger of escapes from correctional institutions by the following factors: as a result of committing an escape, the principle of the inevitability of punishment is violated; the very fact of escape has a negative effect on other convicts, as well as on criminals who are at large, giving rise to the former hope of evading punishment, and the latter – a feeling of impunity for the crimes committed; the public danger of escapes also increases due to the fact that convicts who have escaped are in an illegal situation, obtain funds for their existence through crime, and in some cases involve other people, especially young people, in criminal activities [9, p. 442].

Public danger of the criminal offense stipulated in art. 392 of the CC of Ukraine, is especially large, because it is committed by persons who have already been convicted for crimes (mostly serious and especially serious ones) and are serving their sentences. The increased social danger of recurrent crime, compared to primary crime, has been repeatedly pointed out in the legal literature.

Since it is the degree of disorganization of the work of the correctional institution of the SCES of Ukraine that describes the public danger of this type of criminal offense, we determine it on the basis of some objective data, in particular: it is the use of violence by convicts or the threat of its use against representatives of the administration, or the terrorizing of convicts who have become correction path; as well as the duration of violation of the order established in the correctional colony by both the guilty party and other convicts, which is expressed in forced refusal from work, disruption of production tasks, withdrawal from amateur organizations of convicts due to fear of further reprisals, etc.

Conclusions. The above made it possible to formulate the author's definition of a criminal offense committed in imprisonment of the SCES of Ukraine. This is a socially dangerous act (action or inaction) stipulated in the criminal legislation, committed by a special perpetrator, in places of imprisonment of the SCES of Ukraine and which encroaches on the goal and task of justice and the normal operation of correctional institutions, as well as hinders the achievement of the goal of punishment, correction and resocialization of convicts.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The article provides a thorough analysis of the types of criminal offenses committed by convicts in places of detention of the State Criminal Enforcement Service of Ukraine (SCSU). It has been proven that the commission of a criminal offense of free will by convicts in places of deprivation of liberty is not only a dangerous encroachment on the goal and task of justice and the normal operation of the penal institutions of the State Security Service of Ukraine, but also prevents the achievement of the goal of punishment and, above all, its counteraction and prevention.

Among the most important theoretical and practical issues that have influenced judicial and executive practice and that currently require elaboration and research, the author includes such high-profile criminal offenses as: malicious disobedience to the requirements of the administration of the penal institution; actions that disorganize the work of penal institutions; escape from the place of deprivation of liberty or from custody. The greatest danger in the correctional colonies of Ukraine is criminal offenses combined with an attack by convicts on the guards in order to remove obstacles to the implementation of the plan and to take possession of weapons, which they use for armed resistance during their subsequent detention, as well as to commit new crimes.

The author’s definition of a criminal offense in places of deprivation of liberty of the State Security Service of Ukraine is formulated. This is a socially dangerous act (action or inaction), committed by a special subject, in places of deprivation of liberty of the State Security Service of Ukraine and which encroaches on the goal and task of justice and the normal operation of institutions for the execution of punishments, as well as prevents the achievement of the goal of punishment, correction and resocialization of convicts.

Keywords: *criminal offense, convict, staff, places of imprisonment, prevention, correctional colony.*

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LEGAL REGULATION AND MECHANISMS FOR COMPENSATION FOR DAMAGE CAUSED BY A CRIME UNDER LEGISLATION OF THE REPUBLIC OF MOLDOVA

Наталія Паустовська, Дмитро Попушной. ПРАВОВЕ РЕГУЛЮВАННЯ ТА МЕХАНІЗМИ ВІДШКОДУВАННЯ ЗАПОДІЯНОЇ ЗЛОЧИНОМ ШКОДИ ЗА ЗАКОНОДАВСТВОМ РЕСПУБЛІКИ МОЛДОВА. У статті йдеться про сучасні особливості правового регулювання та механізми відшкодування заподіяної злочином шкоди за молдовським законодавством. Відновлення порушених злочином прав і законних інтересів, зокрема шляхом відшкодування заподіяної злочином шкоди, – одне із найважливіших завдань кримінального судочинства. Однак, суть проблеми полягає навіть не так у тому, що права цієї категорії не передбачені в чинному законодавстві, а в тому, що реалізація цих прав насправді часто пов’язана із безліччю труднощів. 29 липня 2016 р. в Республіці Молдова було прийнято Закон про реабілітацію жертв злочинів. Положення цього закону націлені на створення законодавчої бази для забезпечення мінімальних умов реабілітації потерпілих від злочинів осіб, захисту та забезпечення дотримання їхніх прав та законних інтересів, а також регулює категорії потерпілих від злочинів осіб, на які поширюються його положення, механізми захисту та реабілітації жертв злочинів, порядок та умови надання державою фінансової компенсації завданої злочином шкоди.

Потерпілі від торгівлі людьми та від насильства в сім’ї користуються допомогою на умовах

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