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Some aspects of perfecting the system of penitentiary bodies and institutions

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Abstract

Recently, Ukrainian society has been undergoing essential reforms, which were dynamically changing during democratization and humanization, and did not leave the penitentiary institutions aside. The optimization of the penitentiary system itself started in 2017, which allowed obtaining legal and organizational tools for closing unnecessary penitentiary institutions. The purpose of this study was to investigate and analyse the aspects of optimization of the penitentiary system of Ukraine, which currently is one of the equally important social institutions that solves large-scale legal, economic, social, and psychological-pedagogical tasks. Presently, crime stays one of the issues in Ukraine. The study used the general dialectical research method and the formal logical method. The theoretical framework of this paper included the studies of scientists, which contributed to the comprehensive investigation of crime and the development of the mechanism for the proper functioning of the criminal executive system considering its modernization. The study examines the current state of national legislation on the activities of penitentiary institutions in Ukraine, their development concepts and the need to improve innovative technologies borrowed from foreign practices (USA, Great Britain, France) in the activities of penitentiary workers. Ways and proposals for their improvement were formulated. To date, Ukraine has still not fully resolved the problems regarding the mechanism for the protection of human rights in matters of optimization of the system of bodies and institutions for the execution of punishments

Keywords:

optimization activities; penitentiary system; financial and human resources; innovative technologies; cell-prison system; private prisons; penitentiary activities

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Introduction

Today, the world lives in a time of optimization. The term “optimization” refers to improving the mechanism of the penitentiary system and selecting all viable resources to improve results. The optimization began with the adoption in 2017 of the Resolution of the Cabinet of Ministers of Ukraine No. 396 “On the Procedure for Optimizing the Activities of Pre-Trial Detention Facilities, Penitentiary Institutions and Enterprises of Penitentiary Institutions”¹.

The penitentiary system aims not only to keep the criminal isolated, but also works towards their re-education, and subsequently their reintegration in society. Ukraine has taken a course to improve, modernize, and perfect the system of bodies of penitentiary institutions according to the standards of the European Union in many aspects of public relations, which requires bringing them in line with international requirements. During the reform of the penitentiary system, human and civil rights play an essential role in the application of international practices.

The penitentiary system should not only be an instrument of punishment, but also provide an opportunity for correction to individuals who have lost their way.

The system of penitentiary bodies and institutions still does not have a well-established mechanism for working in cooperation with other state bodies, which prevents them from achieving positive changes.

From the standpoint of perfecting the activity of the criminal justice system, it is no less important to introduce the improvement of the social education and programs that are applied to the convict for further re-socialization and prevention of subsequent crimes after serving the sentence. First of all, the system of penitentiary bodies and institutions requires improvement in work with probation bodies regarding the supervision of individuals serving sentences and their individual re-education program. Admittedly, international regulations concerning probation can greatly aid Ukraine (Bogatyreva, 2012, p. 117).

Employees of penitentiary bodies and institutions do not always properly inform individuals serving sentences about improving their living conditions (Fedoryshyn, 2014, p. 55). These measures will contribute to the re-socialization of convicts, specifically their mastery of a new profession.

This is indicative of the situation that has developed at the regulatory, legal, and practical levels in the field of sentence execution (Kostyantyn, 2016, p. 227).

The problem of re-socialization is rather complex and is a voluminous social legal issue (Kubrak, 2019, p. 248). The problems of perfecting the system of bodies and institutions serving sentences were investigated by well-known Ukrainian researchers who analysed

the mechanism, means, and ways to improve them. According to I.S. Yakovets (2013, p. 153), there is no unified regulated system for perfecting penitentiary bodies and institutions in Ukraine. According to R. O. Kolba (2020, p. 259), the legal system needs to improve the mechanism at the level of international requirements, considering all the principles of legality when practically implementing these improvements. I. Khrystych (2019, p. 108) noted that changes should be aimed specifically at the liquidation of the penitentiary service, placing responsibility for the execution of punishments on the Ministry of Justice and the probation authority. According to S.V. Zalyvko (2019, p. 84), the impact on the penitentiary system is exerted by society and the changes that occur specifically on the part of the state.

Today, special attention is paid to certain aspects of re-socialization, supervision, and preparation of prisoners for their return to society as full-fledged individuals.

The purpose of this study was to analyse the system of bodies and institutions serving sentences, as well as ways to improve them.

Materials and Methods

During the study, the authors used a system of philosophical and ideological, general scientific methods and special scientific principles. The principle of objectivity allowed the authors to understand that it is necessary to proceed not only from the issues of the current mechanism, but also to consider them in further transformations so that there are no problems in their practical application. Guided by the principle of completeness, some problematic aspects of perfecting the system of penitentiary bodies and institutions were investigated, the causes and their consequences were determined. The dialectical method helped analyse the theoretical and legal recommendations for improving the national policy regarding the penitentiary system. The comparative legal method allowed determining the further development and improvement of the existing mechanism of the system of penitentiary bodies and institutions. The modelling method helped note aspects of improving the penitentiary system and regulating the mechanism of the system of bodies and institutions serving sentences in Ukraine. The formal logical method provided insight into the concept of optimization of penitentiary institutions and the need to legislatively improve it. Using the system method, the authors investigated the positive changes in the reorganization and optimization of the system of penitentiary institutions in economic, political, and legal aspects.

The authors analysed socio-legal events, possible patterns and connections between them, which will further help assess the level of productivity and

¹Resolution of the Cabinet of Ministers of Ukraine No. 396 “On the Procedure for Optimizing the Activities of Pre-Trial Detention Facilities, Penitentiary Institutions and Enterprises of Penitentiary Institutions”. (2017, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/396-2017-п#Text>.

effectiveness of national legislation in the field of penal enforcement law, as well as differences of opinions and doubts that currently exist in states regarding the optimization of the system of penitentiary bodies and institutions. The theoretical basis of this study included the research of Ukrainian scientists who were investigating the stages of reorganization of the penitentiary system and the problems of their application. Based on the analysis results, it was indicated exactly what issues need to be solved in the penitentiary system. Methods of analysis, synthesis, induction, and deduction were also applied, which allowed building a logical research mechanism by including certain stages in optimizing penitentiary institutions: 1) a brief analysis and prospects for optimization of penitentiary institutions in Ukraine; 2) substantial improvements to regulations that will improve work towards reorganization; 3) the need to improve new means of humanization in criminal executive policy; 4) conceptual deficiencies in the criminal executive system.

Results and Discussion

Optimization of the system of penitentiary bodies and institutions. Throughout the entire period of formation of the criminal executive law, the structure of the penitentiary institutions has been improved and changed, introducing the humanistic paradigm of the development of the penitentiary system (Kutievov, 2019). Today, when in Ukraine, based on important state decisions, an active reforming of the criminal executive system is underway, a meaningful scientific analysis is needed, which would clarify the state of regulatory support for the execution of criminal punishment in the form of deprivation of liberty from the standpoint of the theory and history of the state and law with the definition of promising areas for the development of this process (Shevchenko & Biba, 2019).

Recently, the question has been raised about how the reform and optimization of the penitentiary system should take place, which thereby attracts attention and criticism from a society that does not fully understand the advantages of this reform. During the optimization of the criminal executive system, a considerable number of state employees was reduced, which is a negative factor in the reorganization, increasing the vector of unemployment in the state and resentment among the staff. It is also worth paying attention to the convicts themselves, who have problems with the change of conditions and place of serving their sentences. Since this is also a big shock for them and the consequences of adapting to new living conditions.

The changes that are taking place in the penitentiary system provide for improving the mechanism and programs to improve the efficiency of the work of penitentiary bodies and institutions. Considering the practice, then renaming the body, reducing the number of staff, reorganizing, or closing territorial offices without

an appropriate developed mechanism will not give the appropriate results or minimize the level of recidivism. In addition, when reorganizing the penitentiary system, an equally important aspect is the study of international legislation and the causes of conflicts that arise in the activities of the system of penitentiary bodies and institutions. The institution of private penitentiary institutions is widespread in the USA and Great Britain (Zavadska, 2018). For instance, in France, some prisons operate based on public-private partnership (certain services are delegated to private companies) (Ukrainian prisoners..., 2020). The state, for its part, can facilitate that private entrepreneurs can help in the construction of institutions, providing work for prisoners, as well as providing food products, etc.

Furthermore, the institution of private prisons operates in several European countries such as the United Kingdom, France, and it has also gained considerable development in the United States. Borrowing such practices would positively contribute to improving the system of penitentiary bodies and institutions in Ukraine. As for determining the effectiveness of private prisons, I. P. Melnychenko (2016) identified the following advantages: the cost of prisoners' stay is considerably lower than in state prisons; the national economy is improving due to the payment of the corresponding tax for the functioning of private prisons; employment is generated for the population due to the creation of private prisons. Ukraine also does not have an improved mechanism that would allow interacting with European countries, which prevents certain positive changes in the criminal executive system.

It should also be emphasized that success in perfecting the system of penitentiary authorities and institutions requires the support and participation of the state, both legislatively, to regulate the mechanism for applying their norms, and financially.

Aspects of improving the penitentiary system and regulating the mechanism of the system of bodies and institutions serving sentences in Ukraine. Today, Ukraine ranks one of the first countries in terms of mistreatment in places of deprivation of liberty, which is an impetus for changes in the mechanism of the penitentiary system. Speaking of the mistreatment in prisons, it predominantly refers to poor medical care for individuals serving sentences and suffering from serious infectious diseases, unqualified medical workers, as well as poor funding, which leads to low-quality medical equipment. Consequently, it increases the death rate among persons serving sentences due to an imperfect mechanism and poor funding on the part of the state. As noted by L.I. Olefir (2015), the reorganization of the criminal-executive inspectorate into a probation body allows individuals released from serving sentences to choose an alternative serving of sentences and establish a mechanism for their socialization in society. The authors of this paper cannot but agree that the

optimization of the criminal executive system and its interaction with the probation authority contributes to this category of individuals' reintegration into society and helps in improving everyday life. This step of optimization of penitentiary institutions is the right one and brings the penitentiary system closer to the humanization of people's rights and freedoms. Since while serving a sentence in places of deprivation of liberty, there are changes in the perception of temporary segments of life, namely there is a deficit in the meaningfulness of each of them and a loss of meaning in life.

According to D.V. Yagunov (2011), alternative sanctions are a forced step taken by the state to effectively reduce funds for the maintenance of penitentiary institutions and the number of employees. Today, the issue of alternatives and optimization of punishment in the criminal executive system and the correctness of its implementation has become rather relevant. Not a single state, by punishing an individual and thereby sending them to serve their sentence in a penitentiary institution, has solved the issues or problems that exist in society. Therefore, we cannot but support the opinion that thanks to alternative sanctions, it is possible to reduce the number of financial expenditures of the state for the maintenance of penitentiary institutions and for the remuneration of a considerable number of employees.

According to M.H. Verbenskyi (2004), the management of the penitentiary system is an exceptional form and practice that requires a regulated mechanism to ensure the high-quality implementation of the tasks set for the execution of sentences that the penitentiary system sets for itself. Thus, the penitentiary system should be considered as a comprehensive mechanism that is aimed at improving the current legislation while choosing the most acceptable option to achieve satisfactory results, considering the current conditions. According to I.S. Yakovets (2014), among the main methods used for optimization, it is advisable to distinguish the following groups: a) economic; b) organizational and administrative; c) socio-psychological; d) legal. Notably, today the methods and groups that are still not fully improved need to be perfected legislatively. Absence of diagnostic centres that could, thanks to a qualified specialist (psychologist, doctor), analyse individuals serving a sentence, draft individual programs to improve their behaviour and provide conclusions on the changes that occurred during this program for further existence in society.

Development and improvement of the existing mechanism of the penitentiary system. The process of management in bodies and institutions for the execution of punishments requires high qualifications and an understanding of the features associated with the specifics of the criminal executive sphere. The optimization of the penitentiary system is an integral part

of the reorganization, and in no case should it fade into the background. Due to the optimization of the penitentiary system, the problem of organizing a high-quality solution of criminal punishments will be solved. There is also a need to improve the algorithm of actions during the constant reorganization of the State Penitentiary System, considering the following aspects: 1) improvement of the penitentiary system in terms of innovations and technologies by cooperating with foreign partners; 2) raising awareness of the work of full-time personnel in the conditions of reorganization and optimization of the penitentiary system; 3) take measures to increase the level of public confidence in the work of the penitentiary system; 4) a sequence of actions that will help avoid recidivism and inconsistency in compliance with European standards.

Considering the dynamics of modern reformation processes, M.S. Puzyriov (2017) derived the following definition of private penitentiary institutions – it is a type of penitentiary institution inherent in foreign criminal executive law, the main feature of which is that the state concludes contracts with private institutions to take control of the management of the penitentiary institution, or to execute its certain aspects in the psychological, medical, or educational work. Therefore, considering the penitentiary system and the speed of changes in reforms that must follow international standards, it should be emphasized that this is not a simple process that requires significant efforts, which lie in the regulation and interaction of all levels of public administration. Furthermore, one should note the financial costs of constant reforms, which also adversely affect the state.

Based on the study of foreign practices, T. Poltavets (2019) concluded that a suitable alternative for Ukraine is the introduction of private prisons. Furthermore, the researcher believed that by attracting private enterprises in this way, the state would reduce the cost of keeping a penitentiary institution. Notably, according to Item 88 of the European Prison Rules, which apply to the territory of Ukraine, the European Penitentiary Rules, which establish uniform standards for the detention of convicts in penitentiary institutions, must apply in private penitentiary institutions¹. These rules are very often violated in penitentiary institutions.

V.V. Myna (2011) highlights the ways of correction of convicts in the study "Correcting the convict as the purpose of punishment through the lens of the philosophy of law".

Each of the above-mentioned institutions should function to protect the interests of the individual, society, and the state, promote the preservation and restoration of socially useful ties by convicts through the mechanisms available in the current legislation, ensure the re-socialization and adaptation of the convicted

¹Committee of Ministers of the Council of Europe. "Recommendation No. R (87) 3 to Member States on the European Prison Rules". (1987, February). Retrieved from https://zakon.rada.gov.ua/laws/show/994_a15#Text.

individual by correcting and contributing to their psychological and pedagogical influence, create conditions for cooperation between private and public partnerships and implement measures to prevent convicts and staff from committing criminal offences in places of deprivation of liberty (Bogatyrev, 2018). An equally principal factor that needs to be regulated legislatively when optimizing the penitentiary system is the assistance to individuals who have served sentences in providing them with housing and education, which will provide an opportunity for further adaptation and communication in society. Many people have problems with employment, which also need to be resolved at the state level. Psychological influence is also important in adapting the convicted individual to society, which is often cruel towards them. In perfecting the penitentiary system, every aspect needs to be improved to complete the goals set and achieve positive results.

Theoretical and legal recommendations for improving the national policy in the penitentiary system. Today, the penitentiary system directs its efforts to improve its work in the social legal direction so that persons who have served their sentences can adapt to society as full-fledged individuals (Pavlov, 2016). Notably, the management process in penitentiary bodies and institutions requires high qualification and understanding of the specific features of the criminal executive sphere (Buzyrnyi, 2019).

Yu.V. Kerniakovych-Tanasiichuk (2002) positively believed that the liquidation of penitentiary institutions would badly influence the employees and the convicts themselves. A negative factor should also be considered the instability and constant reforms that are taking place in the penitentiary system, which lead to considerable financial costs on the part of the state for its material and technical support. These reforms require a more detailed study of whether the already existing changes will help achieve satisfactory results and will not be even more costly for the state. According to O.V. Tavalzhanskyi & O.A. Protsenko (2021), the purpose of punishment is to correct an individual so that they can become a full-fledged accepted member of society and accept them in return with all their rules of cohabitation. Therewith, it should be noted and emphasized that when perfecting the penitentiary system, it should be about individuals who are and are not related to isolation from society.

Having analysed the scientific doctrine of research and reform of the penitentiary system, their ways to perfect the penitentiary system, the greatest need is to understand the very purpose and tasks that can be

achieved by improving its current mechanism and the conditions of the society in which it will operate.

The Order of the Ministry of Justice of Ukraine No. 2865/5 “On Optimization of Penitentiary Institutions” dated September 13, 2017 defined 13 state penitentiary institutions to be temporarily shut down¹. During the government meeting, the First Deputy Minister of Justice of Ukraine N. Sevostianova noted that “to save budget funds, we propose to temporarily shut down 13 institutions that are filled from 8% to 44%. This decision will save more than UAH 70 million of budget funds” (In search of the optimal..., 2020). Since the maintenance of a large number of institutions with poor logistical support and non-compliance with the requirements for the detention of convicts per European Prison Rules will contribute to reducing financial costs and thereby take a step towards creating favourable conditions in the penitentiary system.

The Decree of the Cabinet of Ministers No. 1153-r “On the Approval of the Penitentiary System Reform Strategy” dated December 16, 2022 for the period until 2026 and the approval of the operational plan for its implementation in 2022-2024² states that today many results have been achieved in the optimization of the penitentiary system, namely: 1) new bodies and institutions were formed, specifically the Department for the Execution of Criminal Punishments as an interregional territorial body of the Ministry of Justice with the status of a legal entity under public law, state institutions “Probation Centre”, “General Directorate of the State Criminal Executive Service of Ukraine”, “Healthcare Centre of the State Criminal Executive Service of Ukraine”³; 2) creation of a Unified Register for Individuals serving sentences or in custody; 3) the system of penitentiary bodies and institutions, including their enterprises, has been optimized; 4) repair works were carried out in penitentiary institutions for better detention of individuals serving sentences; 5) improvement and adjustment of the supply of food products, as well as expansion of their quantity to be kept; 6) improving the conditions for access to social networks; 7) monitoring systems are partially operational. Evidently, the reforms to optimize the system of penitentiary bodies and institutions are successful and effective, especially in a clear understanding of their mechanism of application in the State Criminal Executive System of Ukraine.

The need to choose the optimal number of penitentiary institutions for the execution of punishment is also determined by the norm of the Law of Ukraine “On the Staffing of the State Criminal Enforcement Service of

¹The Ministry of Justice approved the list of prisons that will be temporarily shut down. (2017, September). Retrieved from https://zn.ua/ukr/UKRAINE/min-yust-zatverdiv-perelik-tyurem-yaki-budut-zakonservovani-255218_.html.

²Decree of the Cabinet of Ministers No. 1153-r. “On The Approval of the Penitentiary System Reform Strategy” for the period until 2026 and approval of the operational plan for its implementation in 2022-2024. (2022, December). Retrieved from <https://www.kmu.gov.ua/npas/pro-skhvalennia-stratehii-reformuvannia-penitentsiarnoi-systemy-na-period-do-2026-roku-ta-zatverdzhennia-operatsiinoho-planu-ii-realizatsii-u-20222024-rokakh-s1153-161222>.

³Ibidem, 2022.

Ukraine”¹. Thus, according to Item 2 of the specified regulation, it is indicated that the total number of personnel who ensures the operation of penitentiary institutions is determined in the amount of 33 percent of the number of individuals serving their sentences.

The problematic aspects of the penitentiary system are as follows: 1) regulations do not correspond to the conditions of today; 2) the full-time staff is much larger than the number of people serving sentences. Management activity defines strategic and operational goals, areas for perfecting and improving the work of penitentiary institutions, methods, and measures to influence the behaviour of convicts, approaches to re-socialization, etc. (Nagorny, 2022).

The study of the above-mentioned scientists once again allows confirming the effective changes that are taking place in the penitentiary system, as well as drawing attention to the problems and reasons for their imperfection in implementation. The scientific doctrine for the State Criminal Executive Service serves as the basis in developing and improving the mechanism for optimizing the penitentiary system; it is important and will further contribute to the improvement of existing regulations and their correct interpretation. It is also worth noting that the introduction of private prisons, which operate in foreign countries to improve the economy and reduce the cost of maintaining institutions, may be a suitable alternative to optimize the penitentiary system of Ukraine.

Presently, it is also worth highlighting the special attention of the society and the not entirely positive feedback towards the state regarding the management of private prisons, which emphasize the loss of control over the observance of law and order. However, the system of private prisons can be justified and the advantages of private prisons are as follows: 1) a positive impact on the national economy; 2) ensuring the relief of the penitentiary system; 3) provision of high-quality and appropriate social conditions for persons serving prison sentences (food, medical care, educational development, and organization of labour). For this, the state needs to choose the right vector to improve the mechanism by which it will eliminate the gaps in the legislation that exist today. The results of optimization of the system of bodies and institutions for the execution of sentences in the state penitentiary system of Ukraine are crucial, first of all, for persons serving sentences and their further

reintegration into society. Changes will also, to some extent, change human values and rights, which are very often violated. Therefore, the specified body must be improved according to European Prison Rules and integrate foreign practices in certain aspects of perfecting the penitentiary system, namely the practice of the private prison system.

Conclusions

To summarize, the penitentiary system is currently undergoing a stage of reforms that require improving its legal mechanisms and modernizing the regulatory framework. In Ukraine, despite the implemented set of reforms, there are still certain inconsistencies and shortcomings in the practice of applying measures to perfect the penitentiary system. Promising areas in optimizing the activities of the State Criminal Executive Service are as follows: improvement of the regulatory framework; the activities of the penitentiary institutions and enterprises are optimized through their liquidation, restructuring, and reorganization of the penitentiary system; improvement of the mechanism for work and interaction with probation authorities; improvement of medical care for individuals serving their sentences in penitentiary institutions; improvement of material and technical support, which plays an important role in the penitentiary system; ensuring better control over the exercise of the rights of individuals detained in penitentiary institutions. It is necessary to determine the principal model of the penitentiary system and only then implement reform it. Proceeding from the positive results already achieved, one of the priority and urgent issues facing the penitentiary system of Ukraine, from the author’s perspective, is the problem of optimizing the financial and human resources of penitentiary institutions. At the same time, the effectiveness of the criminal executive policy should be emphasized in the interaction of society with the state. Today, to improve and optimize the penitentiary system, proposals for the introduction of private prisons are of interest. Thus, Ukraine has taken considerable steps towards optimizing penitentiary institutions, despite the reforms that are not fully regulated by the state. At the same time, the legislative level of reforming the penitentiary system is only the tip of the iceberg, which should include concepts in solving these problems.

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¹Law of Ukraine No. 1254-VI. “On the Staffing of State Criminal Executive Service of Ukraine”. (2009, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/1526-14#Text>.

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Окремі аспекти оптимізації системи органів та установ виконання покарань

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Анотація

Упродовж останніх років в українському суспільстві відбуваються численні реформування, означені динамічними змінами в процесах демократизації та гуманізації, що позначилося, серед іншого, на системі установ виконання покарань. Власне процес оптимізації кримінально-виконавчої системи, розпочатий 2017 року, дав змогу отримати правові й організаційні інструменти щодо закриття непотрібних кримінально-виконавчих установ. Метою статті є дослідження й аналіз аспектів оптимізації кримінально-виконавчої системи України, що на сьогодні є одним з важливих соціальних інститутів, який виконує важливі завдання правового, економічного, соціального та психолого-педагогічного характеру, адже в сучасних реаліях злочинність залишається однією з найбільш актуальних проблем. У дослідженні використано формально-логічний і загальний діалектичний метод дослідження. Теоретичне підґрунтя публікації становлять праці науковців, що сприяло всебічному дослідженню негативного явища та розробленню механізму функціонування в умовах сьогодення в окремих аспектах оптимізації кримінально-виконавчої системи. Досліджено сучасний стан національного законодавства щодо діяльності установ виконання покарань в Україні, їх концепції розвитку та необхідності щодо втілення інноваційних технологій досвіду (США, Великої Британії, Франції) у роботу фахівців із засудженими. Сформульовано пропозиції щодо їх удосконалення. Зауважено, що наразі в Україні остаточно не вирішено питання стосовно механізму захисту прав людини в питаннях оптимізації системи органів та установ виконання покарань

Ключові слова:

оптимізаційна діяльність; пенітенціарна система; фінансові та людські ресурси; інноваційні технології; камерно-тюремна система; приватні в'язниці; виконання покарань