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A. V. Borovyk, I. O. Kolb

PERSONAL SAFETY OF THE CONVICTS: THEORETICAL, LEGAL AND PRACTICAL BASES FOR PROVISION AND REALIZATION IN UKRAINE

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Borovyk A. V.

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The questions concerning the theoretical, legal and practical bases for provision and realization of the right of convicted persons for personal safety in Ukraine were considered as well as were established existing problems in this regard and identified the main ways, that aimed to eliminate them in the monograph.

The specified research study is designed for scientists, scientific and pedagogical workers, graduate students and students of the legal and humanitarian profile and practical workers of law enforcement officials.

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The list of conditional abbreviations

CLC – Corrective Labor Code of Ukraine

SDUES – State Department of Ukraine for the Execution of Sentences

DW – Disciplinary ward

SPSU – State Penal Service of Ukraine

SPiSU – State Penitentiary Service of Ukraine

CEC – Criminal Executive Code

CC – Criminal Code

CPC – Criminal Procedure Code

MIA – Ministry of Internal Affairs

OIA – Organ of internal affairs

UN – United Nations

OIA – Operative investigative activity

OIC – Operative investigative case

CTA – Cell-type accommodation

CE – Council of Europe

IW – Investigative ward

IES – Institutions of the Execution of Sentences

The introduction

In all spheres of legal regulation, including the execution of criminal sentences, fundamental constitutional principles, basing the relationship between a legal state and a person, should be developed and specified: Rule of law and legal law and strict subjugation to the right of all state bodies and officials, limitedness and legality of state power; the inseparability, inviolability and integrity of the right and freedoms of the individual; mutual liability of the state and person. Particular importance of these provisions is the activities of execution of criminal sentences in the form of deprivation of liberty since these sentences are carried out under a significant restriction of the rights of a citizen and the application of measures of state coercion against him.

In art. 3 of the Constitution of Ukraine is enshrined that a person, his life and health, honor and dignity, inviolability and safety are recognized in Ukraine as the highest social value, and the provision of human rights and freedoms is the main responsibility of the state. Similar provisions were reflected in the CEC of Ukraine (article 7). The right of convicts to personal safety and some elements of the mechanism for its implementation are defined in art. 10 of CEC of Ukraine, and legal guarantees are in the laws of Ukraine “On preliminary imprisonment”, “On provision the safety of persons involved in criminal

proceedings", CPC of Ukraine and in secondary laws and regulations of SPiSU.

Every year, persons serving sentences, in particular those involving deprivation of liberty, become victims of criminal encroachments on the part of other convicts and the personnel of correctional colonies. The specified is prompted by the fact that still neither at the legal nor the practical levels have created real guarantees of personal safety of the convicts while serving a sentence. As of 01.01.2018. in the 148 correctional colonies of Ukraine, almost 40 thousand convicts were serving sentences. In 2004–2013 more than 150 people were affected of crimes and other unlawful encroachments, who are deprived of liberty, as a result of inappropriate working conditions in the production of institutions of serving of sentences , were injured more than 1000 people, and same are owing to causing harm to oneself (by self-harm and attemptings suicide). There is a high level of illness and mortality among those, who serve sentences in correctional colonies. In 2014–2017, the specified trends have been preserved.

The category of "person safety" as a way of research direction in the science of correctional labor law and criminal-executive law is being studied recently. The need for such studies arose at the end 80's and at the beginning 90's of the last century, because the changes that took place in society, forced to look at the problem of legal regulation of human safety in a new way, including the person who has fallen into the field of criminal prosecution.

The theoretical basis of the research is the works of domestic and foreign scientists in the field of OIA and criminal-executive law, which are devoted to the problems of serving sentences by convicts in places of detention, in particular: V. A. Badyra, O. M. Bandurka, O. V. Batyuk, I. G. Bogatyryov, V. L. Groholskyi, T. A. Denysova, O. F. Dolzhenkov, F. K. Dumko, V. P. Zakharov, A. V. Kyrylyuk, I. P. Kozachenko, O. G. Kolb, Ye. V. Kurinnyi, Ye. D. Lukianchykov, V. O. Merkulova, D. Y. Nykyforchuk, M. A. Pogoretskyi, I. V. Servetskyi, A. Kh. Stepanyuk, V. M. Trubnykov, S. Ya. Farenyuk, M. Ye. Shumylo, I. S. Yakovets.

The methodological basis for the effective and comprehensive development of personal security problems is the research of scientists from criminal law and criminology: M. I. Bazhanov, L. V. Bagriy-Shakhmatov, O. V. Baulin, V. I. Borysov, V. O. Glushkov, V. V. Golina, I. M. Danshyn, O. V. Dzhuzha, A. P. Zakalyuk, A. F. Zelinskyi, M. Y. Korzhanskyi, O. M. Kostenko, P. S. Matyshevskyi, M. I. Melnyk, P. P. Mykhailenko, V. I. Osadchyi, A. V. Savchenko, V. P. Tykhyi, V. O. Tulyakov, I. K. Turkevych, Ye. V. Fesenko, P. L. Fris, O. N. Yarmysh, N. M. Yarmysh, S. S. Yatsenko.

The works of the aforementioned authors have important scientific and practical significance. However, there did not pay enough attention to ensuring the personal safety of convicts in correctional colonies, as well as to comprehensive study on the improvement of operational-search and other legal

and regulatory regarding the provision of human rights and citizen and the prevention of encroachments on the personal safety of convicts in the context of the reform of the SPiSU. The specified circumstances have led to the relevance and choice of the topic of this work.

Section 1

Theoretical and methodological approaches to the study of the meaning of personal safety of the convicts

1.1. The status of studies of the problems related to clarification of the meaning of personal safety of the convicts inthe science in Ukraine

The study and summarizing of scientific literature indicates that nowadays, both in Ukraine and abroad, there are practically no comprehensive works devoted to the fully and in-depth study of issues related to the provision of personal safety for convicts in correctional colonies, which had become an additional argument when choosing the theme of this study. The mentioned problem was studied in the frameworks of, first of all, criminal-executive law and criminology in the context of crimes prevention in places of deprivation of liberty (so-called "penitentiary criminality")[1] and only fragmentarily – in the area of OIA[2].

[1] Bibliohrafiia (kryminolohiia ta profilaktyka zlochyniv) dovid. [uporiad. V. V. Vasylevych, S. I. Minchenko, T. O. Siroman ta in.] ; za zah. red. O. M. Dzhuzhi. K. Atika, 2008. S. 280–284.

[2] Bohatyrov I. H. Operatyvno-rozshukova diialnist v ustanovakh vykonannia pokaran [monohr.]. I. H. Bohatyrov, O. M. Dzhuzha, M. P. Iltiai. D. Dnipropetr. un-t vnutr. sprav, 2009. S. 105–134.

In addition, the personal safety of convicts regarding the deprivation of liberty was a separate subject of scientific formulation in the works of scientists-viktimologs[1], as well as in educational and methodical editions on the course "Criminal-executive law of Ukraine"[2] and in similar foreign sources[3].

At the same time, the such problem in specified and other sources is based on the disclosure of:

a) the content of preventive activity related to the prevention of committing crimes by convicts regarding the deprivation of liberty[4], and only partly by the personnel of correctional colonies[5];

b) the provisions of the OIA in general in all the IES, including those relating to provision the right of

[1] Dzhuzha A. N. Problemi stanovlennia vyktymolohycheskoi profylaktyky v YTU (v pomoshch YTU). A. N. Dzhuzha, Э. A. Tsibulia. K. RYO KVSh MVD SSSR, 1975. S. 89–134.

[2] Kryminalno-vykonavche pravo Ukrainy pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.] ; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 212–216.

[3] Uholovno-yspolnytelnoe pravo Rossyy teoryia, zakonodatelstvo, mezhdunarodnie standarti, otechestvennaia praktyka kontsa KhIKh nachala KhKhI veka [ucheb. dlia vuzov] pod red. A. Y. Zubkova. [3-e yzd., pererab. y dop.]. M. Norma, 2005. S. 27–38.

[4] Lukashevych S. Yu. Kryminolohichna kharakterystyka ta poperedzhennia zlochynnosti zasudzhenykh u mistsiakh pozbavlennia voli dys. … kand. yuryd. nauk 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". Lukashevych Serhii Yuriiovych. Kh. KhNIuA im. Yaroslava Mudroho, 2001. 193 s.

[5] Sudova praktyka rozghliadu kryminalnykh sprav pro sluzhbovi zlochyny z oznakamy koruptsiinykh diian (statti 364, 365 ta 368 Kryminalnoho kodeksu Ukrainy), a takozh sprav pro administratyvnu vidpovidalnist za porushennia vymoh Zakonu Ukrainy vid 5 zhovt. 1995 r. "Pro borotbu z koruptsiieiu". Visnyk Verkhovnoho Sudu Ukrainy. 2009. № 7 (107). S. 24–32.

convicts to personal safety (in particular, in accordance with part 2, article 11 of the CEC of Ukraine, belong to: arrest houses; detention centres; special educational institutions – correctional colonies), but not the OIA itself in correctional colonies;

c) the content of criminal-executive activity (the process of execution and serving a sentence[1], but not activities, that related to operative investigative prevention of crimes, which are committed in correctional colonies (article 104 of the CEC of Ukraine provides for, in particular, the task of provision the safety of convicts, colony personnel and other persons);

d) monitoring results (continuous monitoring of any process)[2] on the observance of the rights of convicts and the prevention of torture (article 1 of the CEC of Ukraine) in places of deprivation of liberty carried out by international experts[3], Commissioner of the Verkhovna Rada of Ukraine on human rights[4] and social organizations of Ukraine[5];

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[1] Kryminalno-vykonavche pravo Ukrainy pidruch. [V. V. Holina, A. Kh. Stepaniuk, O. V. Lysodied ta in.] ; za red. V. V. Holiny i A. Kh. Stepaniuka. Kh. Pravo, 2011. S. 7–8.

[2] Velykyi tlumachnyi slovnyk ukrainskoi movy [uporiad. T. V. Kovalova]. Kh. Folio, 2005. S. 352.

[3] Vysnovok i rekomendatsii Komitetu OON proty katuvan Ukraina. Rozghliad dopovidei, podanykh derzhavnymy-uchasnytsiamy 21 lystopada 2001 roku Aspekt. Donetsk Donetskyi Memorial, 2002. № 1 (6). S. 27–28.

[4] Karpachova N. I. Stan dotrymannia ta zakhystu prav i svobod liudyny v Ukraini dopovid Upovnovazhenoho Verkhovnoi Rady Ukrainy z prav liudyny. Nina Ivanivna Karpachova, Upovnovazhenyi Verkhovnoi Rady Ukrainy z prav liudyny. K. Ombudsman Ukrainy, 2006. S. 278–308.

[5] Prava liudyny v Ukraini 2007 dopovid pravozakhysnykh orhanizatsii. za red. Ye. Zakharova, I. Rapp, V. Yavorskoho. Kh. Prava liudyny, 2008. S. 271–297.

e) the practices of the European Court of human rights (in particular, in the case "Koval v. Ukraine")[1];

f) the acts of reaction of prosecutors in accordance with art. 22 of CEC and the Law of Ukraine "On Prosecutor's Office"[2] on violation of the rights and lawful interests of convicts in correctional colonies[3];

g) the content of the subject of such a field of social activity and educational discipline, as "Safety of Life"[4];

h) problems of the participation of religious organizations in the penitentiary activity of Ukraine[5];

i) other aspects of the functioning of the convict in the conditions of the IES, in particular, the impact on him of a criminal subculture[6].

Some aspects of both the object and the subject of this study only in general terms have been considered in modern criminological sources, namely:

[1] Praktyka Yevropeiskoho sudu z prav liudyny. Rishennia. Komentari Ofitsiine vydannia Ministerstva yustytsii Ukrainy perekladiv rishen Yevropeiskoho sudu z prav liudyny. K. Yurinkom Inter, 2011. № 3 (04). S. 72–112.

[2] Pro prokuraturu. Zakon Ukrainy vid 5 lystop. 1991 r. № 1789–XII Vidomosti Verkhovnoi Rady Ukrainy. 1991. № 53. St. 793.

[3] Informatsiino-analitychnyi biuleten pro stan prokurorskoho nahliadu za doderzhanniam zakoniv pry vykonanni sudovykh rishen u kryminalnykh spravakh ta zastosuvanni inshykh prymusovykh zakhodiv za 12 misiatsiv 2011 roku. K. Heneralna prokuratura Ukrainy, 2012. S. 45–51.

[4] Zhelibo Ye. P. Bezpeka zhyttiediialnosti [pidruch.]. Ye. P. Zhelibo, V. V. Zatsarnyi. K. Karavela, 2006. 288 s.

[5] Puiko V. M. Pidhotovka maibutnikh sviashchennosluzhyteliv do vykonannia dushpastyrskoi misii v penitentsiarnykh ustanovakh. V. M. Puiko, M. O. Suprun. Trudy Kyivskoi dukhovnoi akademii. K. Ukr. pravoslavna tserkva, 2012. № 17. S. 313–318.

[6] Hrupy nehatyvnoi spriamovanosti v mistsiakh pozbavlennia voli problemy protydii [monohr.]. za zah. red. T. A. Denysovoi. Zaporizhzhia. Prosvita, 2012. S. 112–131.

– in the textbook "Prevention of crimes" by a general edition of O. M. Dzhuzha (2011)[1];

– in special monographs, in particular, A. P. Zakalyuk "The course of modern Ukrainian criminology" (in the book 2 "Criminological characteristic and prevention of the committing of certain types of crimes" – § 4, chapter 7 "Peculiarities of crime, who are located in places of deprivation of liberty, and preventing it" and chapter 3 "Corruption, its manifestations, bribery and other crimes in the field of service activity: criminological characteristic and prevention")[2]; in the monograph of V. M. Dryomin "Crime as a social practice: institutional theory of criminalization of society" (2009) (§ 2 of chapter 7 "Deinstitutionalization of the prison environment: from deprivation of liberty – to probation")[3]; in the monograph by Z. V. Zhuravska "Victimological bases of combating crime in places of deprivation of liberty" (2012) (subsection 2.1 "The analysis of crime in places of deprivation of liberty and victimological factors affecting it")[4] and etc.;

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[1] Profilaktyka zlochyniv: pidruch. [O. M. Dzhuzha, V. V. Vasylevych, O. F. Hida ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2011. S. 595–612.

[2] Zakaliuk A. P. Kurs suchasnoi ukrainskoi kryminolohii teoriia i praktyka [u 3 kn.]. Zakaliuk A. P. K. Vyd. dim "In Yure", 2007. Kn. 3. Praktychna kryminolohiia. S. 180–236; 294–310.

[3] Driomin V. N. Prestupnost kak sotsyalnaia praktyka ynstytutsyalnaia teoryia krymynalyzatsyy obshchestva: [monohr.]. V. N. Driomin. O. Yuryd. lyt., 2009. S. 466–485.

[4] Zhuravska Z. V. Viktymolohichni zasady borotby zi zlochynnistiu u mistsiakh pozbavlennia voli: [monohr.]. Zhuravska Z. V. Lutsk. PP Ivaniuk V. P., 2012. S. 35–53.

– in other criminological publications:

a) the educational manual "Criminological victimology" under the general editorship of O. M. Dzhuzha (2006) (theme 13 "Penitentiary aspects of criminological victimology")[1];

b) the interdisciplinary legal study "The victim of a crime" under the general editorship of Yu. V. Baulin and V. I. Borysov (2008)[2];

c) the educational manual "Protecting the rights of the victim of a crime" under the general editorship of A. Kh. Stepanyuk and O. G. Kolb (2012) (subsection 3.2 of section 3 "Basic directions of improvement of forms and means of protection of the victim of a crime in the criminal-executive law of Ukraine")[3];

d) the educational manual "The criminology" under the general editorship of professor O. M. Dzhuzha (2010) (theme 60 "Criminological characteristic of penitentiary crime")[4];

e) the educational manual "Victimological bases of combating with crimes, that committed in the institutions of the execution of sentences of Ukraine"

[1] Kryminolohichna viktymolohiia: navch. posib. [Moiseiev Ye. M., Dzhuzha O. M., Vasylevych V. V. ta in.] ; za zah. red. O. M. Dzhuzhi. K. Atika, 2006. S. 295–315.

[2] Poterpilyi vid zlochynu mizhdystsyplinarne pravove doslidzhennia. za zah. red. Yu. V. Baulina, V. I. Borysova. Kh. Vyd-vo Krossroud, 2008. 367 s.

[3] Zakhyst prav poterpiloho vid zlochynu v kryminalno-vykonavchomu pravi: [navch. posib.]. [V. V. Vasylevych, A. P. Hel, V. P. Zakharov ta in.]; za zah. red. A. Kh. Stepaniuka ta O. H. Kolba. Lutsk. PP Ivaniuk V. P., 2010. S. 123–137.

[4] Kryminolohiia: [navch. posib.]. [V. V. Vasylevych, O. H. Kolb, A. V. Kyryliuk ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 139–141.

under the general editorship of O. M. Dzhuzha and V. V. Kovalenko (2012)[1];

i) the educational methodical manual "The prevention of the impact of criminal subculture on juvenile convicts in special correctional institutions" (2011) (section 3 "The prevention of criminal subculture in special correctional institutions"[2];

f) the collective monograph "Modern criminal execution policy of Ukraine" (2008) (subsection 4.2 "Convicts to deprivation of liberty as objects of modern criminal execution policy of Ukraine"[3]) and etc.

Some aspects of the evolving problem are reflected in the work of the scientists of criminal procedural law. In particular, in the monograph "Conducting operative-search activities and investigative actions in places of deprivation of liberty" under the general editorship of V. L. Ortynskyi and O. G. Kolb (2010) (in subsections 1.3 "Contemporary policies in the field of combating crime: criminal execute and criminological aspects" and 3.1. "The main ways of implementing operative-search policy in places of deprivation of liberty"), in which certain elements of the subject of the said dissertation research has been

[1] Viktymolohichni zasady borotby zi zlochynamy, shcho vchyniaiutsia v ustanovakh vykonannia pokaran Ukrainy: navch. posib. [dlia stud. yuryd. navch. zakl.]. [Dzhuzha O. M., Kovalenko V. V., Kolb O. H. ta in.]; za zah. red. O. M. Dzhuzhi ta V. V. Kovalenka. Khmelnytskyi. KhmTsNP, 2012. 172 s.

[2] Zamula S. Yu. Profilaktyka vplyvu kryminalnoi subkultury na nepovnolitnikh zasudzhenykh u spetsialnykh vykhovnykh ustanovakh: navch.-metod. posib. S. Yu. Zamula. Bila Tserkva. DPtSU, 2011. S. 81–106.

[3] Suchasna kryminalno-vykonavcha polityka Ukrainy: [monohr.]. [2-he vyd. vypr. i pererobl.]. [Kolb O. H., Zakharov V. P., Kondratishyna V. V. ta in.]; za zah. red. O. H. Kolba. Lutsk. PP V. P. Ivaniuk, 2008. S. 122–130.

disclosed, which are connected with the provision of the right of convicts to personal safety[1].

The methodological basis for the research of the developed problem was the collective monograph "Criminological and operative-search bases of prevention of crimes and offenses committed by personnel of correctional colonies" (2011), in particular, section 3 "Criminological characteristic of crimes and offenses committed by personnel of correctional colonies"[2].

In addition, the general aspects of specified problem are reflected both in the domestic educational manuals on the course of the OIA: E. A. Didorenko, B. I. Baranenko, V. A. Glazkov, and etc. "Fundamentals of operative and investigative activity in Ukraine (concepts, principles, legal provision)" (2007) (theme 8 "Measures and means of operative and investigative activity")[3], and in foreign publications: "The theory of operative and investigative activity" under the general editorship of K. K. Goryainov, V. S. Ovchynskyi, G. K. Synilov (2007) (chapter 20

[1] Provadzhennia operatyvno-rozshukovykh zakhodiv i slidchykh dii u mistsiakh pozbavlennia voli: [monohr.]. [Ortynskyi V. L., Kolb O. H., Kozak V. P. ta in.]; za zah. red. V. L. Ortynskoho, O. H. Kolba. Khmelnytskyi. KhmTsNTEI, 2010. S. 36–42, 97–106.

[2] Kryminolohichni ta operatyvno-rozshukovi zasady zapobihannia zlochynam i pravoporushenniam, shcho vchyniaiutsia personalom vypravnykh kolonii: monohr. [V. V. Kovalenko, O. M. Dzhuzha, O. H. Kolb ta in.]; za zah. red. V. V. Kovalenka. K. Atika N, 2011. S. 50–112.

[3] Osnovi operatyvno-rozisknoi deiatelnosty v Ukrayne (poniatye, pryntsypi, pravovoe obespechenye): ucheb. posobye. [Dydorenko E. A., Baranenko B. Y., Hlazkov V. A. y dr.]. K. Tsentr ucheb. lyt., 2007. S. 117–131.

"Theory of operative and investigative prevention")[1], and also in the monograph of O. O. Lapin "Strategy for provision criminological safety of a person, society, state and its implementation" (2012)[2].

Some methodological bases by this research theme are also outlined in the International police encyclopedia, in particular volume 1[3].

Problems of provision the right of a person to safety are considered in the scientific developments of scientists in the field of OIA, namely: O. M. Bandurka, in particular, in the manual "Operative investigative activity. Part 1" (2002)[4]; B. I. Baranenko and etc "Problems of provision legality in the implementation of OIA" (2000)[5]; S. Yu. Vyedrov "Separate issues of interaction of law enforcement agencies in combating illicit drug trafficking in places of deprivation

[1] Teoryia operatyvno-rozisknoi deiatelnosty: [ucheb.]. pod red. K. K. Horiaynova, V. S. Ovchynskoho, H. K. Synylova. M. YNFRA–M, 2007. S. 586–613.

[2] Lapyn A. A. Stratehyia obespechenyia krymynolohycheskoi bezopasnosty lychnosty, obshchestva, hosudarstva y ee realyzatsyia orhanamy vnutrennykh del: [monohr.]. A. A. Lapyn ; pod obshch. red. S. Ya. Lebedeva. M. YuNYTY DANA; Zakon y pravo, 2012. S. 8–33.

[3] Mizhnarodna politseiska entsyklopediia u 10 t. vidp. red. Yu. I. Rymarenko, Ya. Yu. Kondratiev, V. Ya. Tatsii, Yu. S. Shemshuchenko. K. Kontsern "Vydavnychyi dim «In Yure»", 2003. S. 41–57.

[4] Bandurka O. M. Operatyvno-rozshukova diialnist: [pidruch.]. Ch. 1. Bandurka O. M. Kh. Vyd-vo nats. un-tu vnutr. sprav, 2002. 336 s.

[5] Baranenko B. I. Problemy zabezpechennia zakonnosti pry zdiisnenni ORD. B. I. Baranenko, V. D. Sushchenko, H. M. Biriukov. Problemy operatyvno-rozshukovoi diialnosti ta zabezpechennia prokurorskoho nahliadu. Luhansk. Luhan. derzh. un-t vnutr. sprav, 2000. S. 47–57.

of liberty" (2005)[1]; A. A. Galyuchenko "Problems of normative consolidation of tasks and functions of subjects of operative investigative activity" (2004)[2]; S. S. Grynenko "Features of legal regulation of operative and investigative activity" (2002)[3]; V. V. Dedyukhin "Formation and development of the organization of combating crime in correctional institutions" (1984)[4]; A. B. Dudayev "Educational and preventive measures counter drug addiction among convicts" (2002)[5]; G. O. Dusheiko "The role of business communication of the subjects of operative investigative activity with perpetrators" (2003)[6]; O. F. Dolzhenkov "Operative investigative activity:

[1] Vedrov S. Iu. Otdelnie voprosi vzaymodeistvyia pravookhranytelnikh orhanov v borbe s nezakonnim oborotom narkotykov v mestakh lyshenyia svobodi. S. Yu. Vedrov. Yurydycheskyi vestnyk. Vladymyr. VIuY FSYN Rossyy, 2005. № 1 (2). S. 17–26.

[2] Haliuchek A. A. Problemy normatyvnoho zakriplennia zavdan ta funktsii subiektiv operatyvno-rozshukovoi diialnosti. A. A. Haliuchek. Naukovyi visnyk yurydychnoi akademii MVS Ukrainy. 2004. № 32. S. 315–320.

[3] Hrynenko S. S. Osoblyvosti pravovoho rehuliuvannia operatyvno-rozshukovoi diialnosti. S. S. Hrynenko. Visnyk Akademii pravovykh nauk Ukrainy. 2002. № 3. S. 198–206.

[4] Dediukhyn V. V. Stanovlenye y razvytye orhanyzatsyy borbi s prestupnostiu v yspravytelno-trudovikh uchrezhdenyiakh: [ucheb. posobye]. V. V. Dediukhyn. M. Yuryd. lyt., 1984. 112 s.

[5] Dudaev A. B. Vospytatelno-profylaktycheskye meri protyvodeistvyia narkomanyy sredy osuzhdënnikh. A. B. Dudaev. Profylaktyka narkomanyy orhanyzatsyonnie y metodycheskye aspekti Ytohovie materyali mezhdunarodnoho proekta. [sost. Y. P. Rushchenko]. Kh. Fynart, 2002. S. 213–223.

[6] Dusheiko H. O. Rol dilovoho spilkuvannia subiektiv operatyvno-rozshukovoi diialnosti zi zlochyntsiamy. H. O. Dusheiko. Visnyk Zaporizkoho yurydychnoho instytutu. Zaporizhzhia, 2003. № 2. S. 11–18.

politics, strategy, tactics" (2004)[1]; V. P. Yevtushok "Problems of legal and regulatory of the OIA in Ukraine" (2003); O. A. Kravchenko "Modern problems of observance of constitutional rights of citizens in places of pre-trial detention and of deprivation of liberty" (2006)[2]; M. V. Korniyenko "The lawful restriction of constitutional human rights in the process of implementation of the OIA" (2005)[3]; M. A. Pogoretskyi "Operative and investigative measures: concepts and types" (2005)[4]; S. V. Polyovyi "Collection of methodological recommendations on the prevention of crimes in places of deprivation of liberty" (2006)[5]; A. F. Tkach "Observance of the constitutional rights and freedoms of citizens when conducting of the OIA" (2004)[6]; E. E. Tonkov "Strategy of the organization

[1] Dolzhenkov O. F. Operatyvno-rozshukova diialnist polityka, stratehiia, taktyka. O. F. Dolzhenkov. O. Yuryd. l-ra, 2004. S. 13–19.

[2] Kravchenko O. A. Suchasni problemy doderzhannia konstytutsiinykh prav hromadian u mistsiakh poperednoho uviaznennia ta pozbavlennia voli. O. A. Kravchenko. Pidnesennia do prava. Reformuvannia kryminalnoho ta kryminalno-vykonavchoho zakonodavstva holovnyi chynnyk korehuvannia polityky Ukrainy u sferi vykonannia kryminalnykh pokaran: zb. dop. ta tez. K. ZIDMU, 2006. S. 178–182.

[3] Korniienko M. V. Pravomirne obmezhennia konstytutsiinykh prav liudyny v protsesi zdiisnennia ORD. M. V. Korniienko. Derzhava i pravo. Spets. vypusk. K., 2005. S. 189–194.

[4] Pohoretskyi M. A. Operatyvno-rozshukovi zakhody poniattia i vydy. M. A. Pohoretskyi. Derzhavna bezpeka Ukrainy. 2005. № 1 (3). S. 62–67.

[5] Polovyi S. V. Zbirnyk metodychnykh rekomendatsii z profilaktyky zlochyniv u mistsiakh pozbavlennia voli. Polovyi S. V. K. Kyiv. nats. un-t vnutr. sprav, 2006. S. 36–42.

[6] Tkach A. F. Dotrymannia konstytutsiinykh prav i svobod hromadian pry provedenni ORD. A. F. Tkach. Osnovni napriamy reformuvannia OVS: materialy nauk.-prakt. konf. (Odesa, 14–15 zhovt. 2004 r). O. ODUVS, 2004. S. 212–217.

of combating drug addiction in places of deprivation of liberty" (2003)[1]; V. F. Usenko "Professionalism of operative apparatus and crime" (2000)[2] and etc.

Specified problem has not been developed properly in the dissertation researches, in particular, in specialty 12.00.09 – criminal process and criminalistic; forensic examination, operative investigative activity[3], including in modern conditions[4].

Some aspects of provision the personal safety of convicts in places of deprivation of liberty has been highlighted in the work of scientists in the field of criminal-executive law[5] in particular, in doctoral dissertations of A. Kh. Stepanyuk "Actual problems

[1] Tonkov E. E. Stratehiia orhanizatsii protydii narkomanii v mistsiakh pozbavlennia voli. E. E. Tonkov. Problemy rozkryttia ta rozsliduvannia zlochyniv, poviazanykh iz nezakonnym obihom narkotychnykh zasobiv, psykhotropnykh rechovyn, yikh analohiv ta prekursoriv materialy Vseukr. nauk.-prakt. konf. (Donetsk, 30 zhovt. 2003 r.). Donetsk. DIuI, 2004. S. 200–204.

[2] Usenko V. F. Profesionalizm operatyvnykh aparativ i zlochynnist. V. F. Usenko. Teoriia operatyvno-sluzhbovoi diialnosti pravookhoronnykh orhaniv. za hol. red. V. L. Rehulskoho. L. LIVS pry NAVS Ukrainy, 2000. S. 290–292.

[3] Dovidnyk pro avtoreferaty vykonanykh v Ukraini za 1991–2008 roky dysertatsii na zdobuttia naukovoho stupenia doktora i kandydata yurydychnykh nauk. uklad. V. K. Hryshchuk, B. O. Kyrys, O. F. Pasieka. Lviv LDUVS, 2009. S. 366–417.

[4] Natsionalna biblioteka Ukrainy im. V. I. Vernadskoho: dani pro avtoreferaty vykonanykh v Ukraini za 2009–2012 roky dysertatsii na zdobuttia naukovoho stupenia doktora i kandydata yurydychnykh nauk [Elektronnyi resurs]. Rezhym dostupu: http//irbis-nbuv.gov.uacgi-bin

[5] Dovidnyk pro avtoreferaty vykonanykh v Ukraini za 1991–2008 roky dysertatsii na zdobuttia naukovoho stupenia doktora i kandydata yurydychnykh nauk. uklad. V. K. Hryshchuk, B. O. Kyrys, O. F. Pasieka. Lviv LDUVS, 2009. S. 357–359.

of serving of sentences (essence and principles of criminal-executive activity: theoretical and legal research)"[1] and of O. G. Kolb "Institution for the serving of sentences as a crime prevention subject"[2], which became the methodological basis for conducting this research. In addition, certain aspects of the specified problem are described in the doctoral dissertations of M. M. Yatsyshyn[3] and of V. A. Lipkan[4], which are developed within the framework of other legal specialties[5].

Among the dissertation researches for obtaining a scientific degree of the candidate of legal sciences in the field of criminal-executive law in the context of the content of this scientific development, one can

[1] Stepaniuk A. Kh. Aktualni problemy vykonannia pokaran (sutnist ta pryntsypy kryminalno-vykonavchoi diialnosti teoretyko-pravove doslidzhennia): avtoref. dys. na zdobuttia nauk. stupenia doktora yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". A. Kh. Stepaniuk. Kh. KhNIuA im. Ya. Mudroho, 2002. 34 s.

[2] Kolb O. H. Ustanova vykonannia pokaran yak subiekt zapobihannia zlochynam: avtoref. dys. na zdobuttia nauk. stupenia doktora yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". O. H. Kolb. K. Kyiv. nats. un-t vnutr. sprav, 2007. 32 s.

[3] Yatsyshyn M. M. Istoryko-pravovi zasady kryminalno-vykonavchoi polityky Ukrainy: avtoref. dys. na zdobuttia nauk. stupenia doktora yuryd. nauk: spets. 12.00.01 "Teoriia i istoriia prava i derzhavy; istoriia vchennia pro pravo ta derzhavu". M. M. Yatsyshyn. K. Nats. akad. vnutr. sprav, 2010. 32 s.

[4] Lipkan V. A. Administratyvno-pravovi osnovy zabezpechennia natsionalnoi bezpeky Ukrainy: avtoref. dys. na zdobuttia nauk. stupenia doktora yuryd. nauk: spets. 12.00.07 "Administratyvne pravo i protses; finansove pravo; informatsiine pravo". V. A. Lipkan. K. Kyiv. nats. un-t vnutr. sprav, 2008. 34 s.

[5] Dovidnyk pro avtoreferaty vykonanykh v Ukraini za 1991–2008 roky dysertatsii na zdobuttia naukovoho stupenia doktora i kandydata yurydychnykh nauk. uklad. V. K. Hryshchuk, B. O. Kyrys, O. F. Pasieka. Lviv LDUVS, 2009. 472 s.

distinguish the work of V. A. Badyra "Correction of women sentenced to imprisonment as the purpose of punishment"[1]; V. A. Lyovochkin "Regulatory and organizational principles for provision the implementation in Ukraine of international standards on the rights and freedoms of convicts to imprisonment"[2]; O. B. Ptashynskyi "Legal problems of reforming the penitentiary system in Ukraine"[3]; O. V. Romanenko "The penitentiary function of a democratic rule of law and role of civil society in the mechanism for its implementation"[4]; M. V. Romanov "Legal regulation of enforcement measures applicable to persons, who are deprived of their liberty"[5]; I. S. Sergeev "Theore-

[1] Badyra V. A. Vypravlennia zhinok, zasudzhenykh do pozbavlennia voli, yak meta pokarannia: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". V. A. Badyra. L., 2006. 17 s.

[2] Lovochkin V. A. Normatyvno-pravovi ta orhanizatsiini zasady zabezpechennia realizatsii v Ukraini mizhnarodnykh standartiv z prav i svobod zasudzhenykh do pozbavlennia voli: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". V. A. Lovochkin. K. Nats. akad. vnutr. sprav Ukrainy, 2002. 18 s.

[3] Ptashynskyi O. B. Pravovi problemy reformuvannia penitentsiarnoi systemy v Ukraini: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". O. B. Ptashynskyi. K. In-t derzhavy i prava im. V. M. Koretskoho NAN Ukrainy, 2002. 18 s.

[4] Romanenko O. V. Penitentsiarna funktsiia demokratychnoi pravovoi derzhavy ta rol hromadianskoho suspilstva v mekhanizmi yii realizatsii: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". O. V. Romanenko. K. Nats. akad. vnutr. sprav Ukrainy, 2004. 19 s.

[5] Romanov M. V. Pravove rehuliuvannia zakhodiv stiahnennia, shcho zastosovuiutsia do osib, pozbavlenykh voli: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". M. V. Romanov. Kh. KhNIuA im. Ya. Mudroho, 2003. 20 s.

tical and practical questions of activity of the departments of the special integration of institutions of serving a sentence"[1]; Yu. A. Chebotaryova "Legal status of the convicts to deprive of their liberty"[2]; T. A. Shulezhko "Peculiarities of punish and educational influence on repeatedly convicted women deprived of their liberty, who are serving their sentence in penal institutions"[3]; I. S. Yakovets "Primary classification of convicts to deprive of their liberty and their distribution in penitentiary institutions"[4] and etc.

Among the dissertations of contemporaries that deserve attention, according to the content of the object and subject of this study, one can mention the following: Yu. V. Orel "Criminal liability for willful

[1] Serhieiev I. S. Teoretychni ta praktychni pytannia diialnosti viddiliv spetsialnoho obliku ustanov vykonannia pokarannia: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". I. S. Serhieiev. K. Nats. akad. vnutr. sprav Ukrainy, 2000. 17 s.

[2] Chebotarova Yu. A. Pravovyi status zasudzhenykh do pozbavlennia voli: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". Yu. A. Chebotarova. Kh. KhNIuA im. Ya. Mudroho, 2005. 22 s.

[3] Shulezhko T. A. Osoblyvosti karalno-vykhovnoho vplyvu na neodnorazovo sudymykh do pozbavlennia voli zhinok, yaki vidbuvaiut pokarannia u vypravno-trudovykh ustanovakh: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". T. A. Shulezhko. K. Ukr. akad. vnutr. sprav, 1996. 24 s.

[4] Yakovets I. S. Pervynna klasyfikatsiia zasudzhenykh do pozbavlennia voli ta yikh rozpodil v ustanovakh vykonannia pokaran: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". I. S. Yakovets. Kh. KhNIuA im. Yaroslava Mudroho, 2006. 20 s.

disobedience to the requirements the administration of the correctional institution"[1]; L. O. Nazarenko "Criminal liability for violation of the rules of administrative supervision"[2]; V. V. Ukrainets "Criminal liability for the creation of a criminal organization"[3]; V. V. Kondratishyna "Criminal-executive policy of Ukraine: formation and implementation"[4]; S. V. Tsaryuk "Criminal-executive characteristic of convicts, who are serving sentences in correctional colonies of maximum level of safety"[5]; R. I. Melnyk "Criminal legal characteristic of knowingly unlawful

[1] Orel Yu. V. Kryminalna vidpovidalnist za zlisnu nepokoru vymoham administratsii vypravnoi ustanovy: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". Yu. V. Orel. D. DDUVS, 2008. 20 s.

[2] Nazarenko D. O. Kryminalna vidpovidalnist za porushennia pravyl administratyvnoho nahliadu: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". D. O. Nazarenko. D. DDUVS, 2008. 20 s.

[3] Ukrainets V. V. Kryminalna vidpovidalnist za stvorennia zlochynnoi orhanizatsii: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo" V. V. Ukrainets. K. Akad. advokatury Ukrainy, 2009. 20 s.

[4] Kondratishyna V. V. Kryminalno-vykonavcha polityka Ukrainy formuvannia ta realizatsiia: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". V. V. Kondratishyna. Lviv LDUVS, 2009. 17 s.

[5] Tsariuk S. V. Kryminalno-vykonavcha kharakterystyka zasudzhenykh, yaki vidbuvaiut pokarannia u vypravnykh koloniiakh maksymalnoho rivnia bezpeky: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". S. V. Tsariuk. D. Dnipropetr. derzh. un-t vnutr. sprav, 2009. 20 s.

detention, being brought, arrest and imprisonment (article 371 of the CC of Ukraine)"[1]; M. O. Akimov "Criminal legal characteristic of taking hostages according to the legislation of Ukraine"[2]; A. S. Politov "Criminal legal characteristic of crimes against person's freedom according to the legislation of Ukraine"[3]; M. V. Syiploki "Criminal legal characteristic of criminal prosecution of a person known to be innocent"[4]; I. O. Moiseyev "Criminal legal Ukraine's jurisdiction over crimes committed abroad"[5]; L. V. Gusar "Necessary defense: criminological and criminal-

[1] Melnyk R. I. Kryminalno-pravova kharakterystyka zavidomo nezakonnoho zatrymannia, pryvodu, areshtu ta trymannia pid vartoiu (st. 371 KK Ukrainy): avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". R. I. Melnyk. K. Kyiv. nats. un-t im. T. Shevchenka, 2008. 20 s.

[2] Akimov M. O. Kryminalno-pravova kharakterystyka zakhoplennia zaruchnykiv za zakonodavstvom Ukrainy: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". M. O. Akimov. K. Kyiv. nats. un-t imeni Tarasa Shevchenka, 2009. 16 s.

[3] Politov A. S. Kryminalno-pravova kharakterystyka zlochyniv proty osoby za zakonodavstvakh Ukrainy: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". A. S. Politov. K. In-t derzhavy i prava im. V. M. Koretskoho NAN Ukrainy, 2007. 20 s.

[4] Syiploki M. V. Kryminalno-pravova kharakterystyka prytiahnennia zavidomo nevynnoho do kryminalnoi vidpovidalnosti: avtoref. dys. na zdobuttia nauk. stupenia doktora yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". M. V. Syiploki. K. Kyiv. nats. un-t vnutr. sprav, 2009. 20 s.

[5] Moiseiev O. I. Kryminalno-pravova yurysdyktsiia Ukrainy shchodo zlochyniv, vchynenykh za yii mezhamy: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". O. I. Moiseiev. Kh. KhNIuA im. Ya. Mudroho, 2007. 20 s.

legal aspects"[1]; G. S. Reznichenko "Peculiarities of execution and serving of sentence in the form of deprivation of liberty for convicted women"[2]; O. S. Yatsun "Peculiarities of criminal punishment of a juvenile"[3]; I. V. Zhuk "Forced medical measures and forced treatment in the criminal law of Ukraine"[4]; M. M. Knyga "Forced measures of a medical nature as a means of crime prevention"[5]; O. I. Alyoshyn "Provocation of a crime (criminal legal research)"[6]; O. L. Gurtovenko "Mental violence in the criminal

[1] Husar L. V. Neobkhidna oborona kryminolohichni ta pravovi aspekty: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". L. V. Husar. O. Odes. Nats. yuryd. akad., 2009. 17 s.

[2] Reznichenko H. S. Osoblyvosti vykonannia i vidbuvannia pokarannia u vydi pozbavlennia voli stosovno zasudzhenykh zhinok: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". H. S. Reznichenko. D. Dnipropetr. derzh. un-t vnutr. sprav, 2009. 18 s.

[3] Yatsun O. S. Osoblyvosti kryminalnoho pokarannia nepovnolitnikh: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo" O. S. Yatsun. L. Lviv. derzh. un-t vnutr. sprav, 2009. 18 s.

[4] Zhuk I. V. Prymusovi zakhody medychnoho kharakteru ta prymusove likuvannia u kryminalnomu pravi Ukrainy: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo" I. V. Zhuk. K. Kyiv. nats. un-t vnutr. sprav, 2009. 20 s.

[5] Knyha M. M. Prymusovi zakhody medychnoho kharakteru yak zasib poperedzhennia zlochynnosti: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". M. M. Knyha. D. Dnipropetr. derzh. un-t vnutr. sprav, 2009. 20 s.

[6] Aloshyn O. I. Provokatsiia zlochynu (kryminalno-pravove doslidzhennia): avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". O. I. Aloshyn. D. Dnipropetr. derzh. un-t vnutr. sprav, 2007. 19 s.

law of Ukraine"[1]; other works in the sphere of criminal-executive law, in particular those, that has been published in the collections of materials of scientific and practical conferences[2].

The strictly in the criminological aspect (of general, special-criminological and individual crime prevention) the specified problem is considered in the studies of scientists criminologists[3]. At the same time, the most approximate to the content of the theme of this work are the doctoral dissertations of V. V. Golina[4], O. M. Dzhuzha[5], O. M. Kostenko[6],

[1] Hurtovenko O. L. Psykhichne nasylstvo u kryminalnomu pravi Ukrainy: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". O. L. Hurtovenko. O. Odes. Nats. yuryd. akad., 2008. 17 s.

[2] Kopotun I. M. Realizatsiia prava zasudzhenykh na osobystu bezpeku. I. M. Kopotun. Kryminalno-vykonavchomu kodeksu Ukrainy 9 rokiv: materialy I mizhnar. nauk.-prakt. konf. (Kyiv, 28 lyst. 2012 r.). K. In-t kryminalno-vykonavchoi sluzhby, 2012. S. 41–45.

[3] Bibliohrafiia (kryminolohiia ta profilaktyka zlochyniv): dovid. [upo-riad.: V. V. Vasylevych, S. I. Minchenko, T. O. Siroman ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2008. S. 36–43.

[4] Holina V. V. Spetsialno-kryminolohichne poperedzhennia zlochyniv teoriia i praktyka: avtoref. dys. na zdobuttia nauk. stupenia doktora yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". V. V. Holina. Kh., 1994. 44 s.

[5] Dzhuzha O. M. Zapobihannia poshyrenniu SNIDu kryminolohichni ta kryminalno-pravovi problemy: avtoref. dys. na zdobuttia nauk. stupenia doktora yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". O. M. Dzhuzha. K. Ukr. akad. vnutr. sprav, 1996. 47 s.

[6] Kostenko O. M. Volia i svidomist zlochyntsia (doslidzhennia z zastosuvanniam pryntsypu naturalizmu): avtoref. dys. na zdobuttia nauk. stupenia doktora yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". O. M. Kostenko. K. Kyiv. nats. un-t im. T. Shevchenka, 1995. 46 s.

O. M. Lytvak[1], V. Kh. Lykholob[2], V. O. Tulyakov[3]; the candidate's dissertations of M. M. Klyuev[4], O. I. Pluzhnik[5], L. G. Kozlyuk[6], I. M. Gorbachova[7],

[1] Lytvak O. M. Derzhavnyi kontrol za zlochynnistiu (kryminolohichnyi aspekt): avtoref. dys. na zdobuttia nauk. stupenia doktora yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". O. M. Lytvak. Kh. KhNIuA im. Yaroslava Mudroho, 2002. 39 s.

[2] Lykholob V. H. Problemi эffektyvnosty pravoprymenytelnoi deiatelnosty orhanov vnutrennykh del v borbe s prestupnostiu (krymynolohycheskyi y teoretyko-pravovoi aspekt): avtoref. dys. na soyskanye uchenoi stepeny doktora yuryd. nauk: 12.00.08 "Krymynalnoe pravo y krymynolohyia; krymynalno-yspolnytelnoe pravo". V. H. Lykholob. K. Kyiv. nats. un-t im. T. Shevchenka, 1992. 41 s.

[3] Tuliakov V. O. Vchennia pro zhertvu zlochynu sotsialno-pravovi osnovy: avtoref. dys. na zdobuttia nauk. stupenia doktora yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". V. O. Tuliakov. O. Odes. Nats. yuryd. akad., 2001. 36 s.

[4] Kliuiev M. M. Kryminolohichni zasady prohramuvannia zapobihannia zlochynnosti: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". M. M. Kliuiev. K., 2008. 20 s.

[5] Pluzhnik O. I. Kryminalna vidpovidalnist za porushennia rezhymu vidbuvannia pokarannia u vypravnykh ustanovakh ta trymannia pid vartoiu: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". O. I. Pluzhnik. K. Nats. akad. vnutr. sprav, 2003. 19 s.

[6] Kozliuk L. H. Kryminolohichna kharakterystyka osobystosti zlochyntsia, yakyi vchynyv statevyi zlochyn shchodo nepovnolitnoho: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". L. H. Kozliuk. K. In-t derzhavy i prava im. V. M. Koretskoho NAN Ukrainy, 2009. 16 s.

[7] Horbachova I. M. Zakhody bezpeky v kryminalnomu pravi (porivnialno-pravovyi analiz): avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". I. M. Horbachova. O. Odes. Nats. yuryd. akad., 2008. 20 s.

T. A. Pavlenko[1], etc., as well as other scientific developments[2].

However, as illustrated by an analysis of these and other scientific sources, by a comprehensive study on the provision of personal safety of convicts in correctional colonies, in none of them was implemented, which led to the choice of this theme of development and its relevance, as well as was provided an opportunity to determine the object and subject of research and its purpose and tasks, which are reflected in the contents of sections and subdivisions of this dissertation.

1.2. The concept of personal safety of the convicts

In accordance with part 1 of art. 10 of the CEC of Ukraine, convicts have the right to personal safety. The consolidation of this right in the criminal-executive legislation of Ukraine was the result of the implementation of constitutional norms defining the rights, freedoms and duties of a person and a citizen (section 2 of the Constitution of Ukraine)[3], that is, has created one of the elements of the mechanism of

[1] Pavlenko T. A. Kontseptsiia kryminalno-pravovoi okhorony prava liudyny na zhyttia v Ukraini: avtoref. dys. na zdobuttia nauk. stupenia kand. kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". T. A. Pavlenko. L., 2008. 20 s.

[2] Kryminolohiia bibliohrafichnyi dovidnyk. [uporiad.: K. S. Bosak, S. F. Denysov, M. O. Yefimova; za zah. red. S. F. Denysova]. Zaporizhzhia. KPU, 2010. S. 344–351.

[3] Konstytutsiia Ukrainy zi zminamy. Kh. Pravo, 2012. 64 s.

legal regulation of this problem. However, there is still no meaningful definition of the concept of "the right of convicts to personal safety" in the CEC of Ukraine or in the Constitution of Ukraine, which is reason for the relevance of the consideration of this issue.

The right to personal safety is a fundamental right of human and citizen. In art. 3 of the Constitution of Ukraine is stated that human, his life and health, honor and dignity, inviolability and safety are recognized as the highest social value. The content of activity of the state, its organs and officials lie in protect and approve the specified value. In accordance with this, there is the right, that enshrined in art. 10 of the CEC of Ukraine, this right of convicts to personal safety is reasonably attributed the fundamental rights of persons serving criminal penalties by some scientists (A. Kh. Stepanyuk, I. Ya. Yakovets)[1].

In a broad sense, safety is the state of protection of vital important interests of a person, society and the state from external and internal threats[2].

In the doctrinal sources, the notion of "danger" is also used, which, in the opinion of Ye. P. Zhelibo, V. V. Zatsarnyi, at the same time as the concept of

[1] Kryminalno-vykonavchyi kodeks Ukrainy: nauk.-prakt. koment. A. Kh. Stepaniuk, I. S. Yakovets; za zah. red. A. Kh. Stepaniuka. Kh. Yurinkom Inter, 2005. S. 47.

[2] Mizhnarodna politseiska entsyklopediia: u 10 t. vidp. red.: Yu. I. Rymarenko, Ya. Yu. Kondratiev, V. Ya. Tatsii, Yu. S. Shemshuchenko. K. Kontsern "Vydavnychyi dim «In Yure»", 2003.

"safety", is the central notion in the life safety; they are used in various spheres of human activity[1]. There are several definitions of these concepts in science. Thus, O. F. Skakun and D. A. Bondarenko believe that the safety of a person is a state of protection of vital important interests and optimal (most favorable) life in certain concrete historical conditions[2].

Ya. Yu. Kondratiev argued that safety is the absence of an unacceptable risk, which is associated with the possibility of causing any damage to the life, health and property of citizens, the environment[3]. At the heart of specified definition is the definition of this concept, that is filed in the Rules of surveys, assessment of the technical condition and passportization of industrial buildings and structures, that are approved by the order of the State committee for construction, architecture and housing Policy of Ukraine and the State committee for observation and protection of labor of Ukraine dated November 27, 1997 № 32/288[4].

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[1] Zhelibo Ye. P. Bezpeka zhyttiediialnosti: [pidruch.]. Ye. P. Zhelibo, V. V. Zatsarnyi. K. Karavela, 2006. S. 25.

[2] Yurydycheskyi nauchno-praktycheskyi slovar-spravochnyk (osnovnie termyni y poniatyia). Skakun O. F., Bondarenko D. A ; pod obshch. red. O. F. Skakun. Kh. Espada, 2007. S. 26.

[3] Slovnyk spetsialnykh terminiv pravookhoronnoi diialnosti. za red. prof. Ya. Yu. Kondratieva. K. Nats. akad. vnutr. sprav Ukrainy, 2004. S. 50.

[4] Pravyla obstezhen, otsinky tekhnichnoho stanu ta pasportyzatsii vyrobnychykh budivel i sporud: zatv. nakazom Derzhavnoho komitetu budivnytstva, arkhitektury ta zhytlovoi polityky Ukrainy ta Derzhnahliadokhoronpratsi Ukrainy vid 27 lystop. 1997 r. № 32288 Ofitsiinyi visnyk Ukrainy. 1998. № 48.

V. Yu. Shepitko came to the conclusion that safety is a state of that someone or something is not in danger[1].

In the "Popular legal encyclopedia" the notion "safety" has been defined as the absence of an unacceptable risk associated with the possibility of causing any harm to the life, health and property of citizens, as well as to the environment; a complex of activities, as well as human and material resources, designed to prevent this harm; the state of protection of the population, of objects of the environment from danger in emergencies[2].

The "Short interpretative dictionary of the Ukrainian language" states that safety is a state of that someone or something is not in danger by nothing[1].

A similar definition of this concept is given in the "Short interpretative dictionary of the Ukrainian language" (A. Ivchenko)[3].

Safety is defined as a situation in which anyone is not is not at risk by any means by Russian interpretative dictionaries (I. L. Gorodetska, T. M. Popovtseva, etc.)[4].

This definition was proposed by S. I. Ozhegov in the "Dictionary of the Russian Language"[5].

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[1] Kryminalistyka: entsykl. slov. za zah. red. V. Yu. Shepitko. K. Vydav. dim "In Yure", 2001. S. 31.

[2] Populiarna yurydychna entsyklopediia. [V. K. Hizhevskyi, V. V. Holovchenko, V. S. Kovalskyi ta in.]. K. Yurinkom Inter, 2002. S. 40.

[3] Ivchenko A. Tlumachnyi slovnyk ukrainskoi movy. Ivchenko A. Kh. FOLIO, 2000. S. 27.

[4] Kratkyi tolkovii slovar russkoho yazika. Y. L. Horodetskaia, T. N. Popovtseva, M. N. Sudoplatova, T. A. Fomenko; pod obshch. red. V. V. Rozanovoi. [6-e yzd., ysprav.]. M. Rus. yaz., 1989. S. 14.

[5] Ozhehov S. Y. Slovar ruskoho yazyka. pod red. N. Yu. Shvedovoi. [18-e yzd., stereotyp.]. M. Rus. yaz., 1986. S. 38.

Authors of special literature, in particular the textbook "Safety of Life" (E. P. Zhelibo, V. V. Zatsarnyi), the concept of «safety» define as the degree of freedom from risk or the absence of unacceptable risk, which is associated with the possibility of causing any harm to human life and health under any conditions of existence[1].

The «International police encyclopedia» contains the following definition of this concept: 1) the state of protection of vital important interests of a person, society, state from internal and external threats; 2) the ability of an object, phenomenon or process to retain its essence, the main features, properties of destructive influence from other objects, phenomena or processes[2].

The same opinion is shared by the developers of the "Legal encyclopedia" (Yu. S. Shemshuchenko, F. G. Burchak, M. P. Zyablyuk, etc.)[3].

The Law of Ukraine "On the fundamentals of national safety" defines the concept of national safety, which is the ancestral concept of "safety", namely: it is the protection of vital important interests of a person and a citizen, a society and a state in which sustainable development of society is ensured, timely

[1] Zhelibo Ye. P. Bezpeka zhyttiediialnosti: [pidruch.]. Ye. P. Zhelibo, V. V. Zatsarnyi. K. Karavela, 2006. S. 25.

[2] Mizhnarodna politseiska entsyklopediia: [u 10 t. T. 4]. vidp. red.: Yu. I. Rymarenko, Ya. Yu. Kondratiev, V. Ya. Tatsii, Yu. S. Shemshuchenko. K. Kontsern "Vydavnychyi dim «In Yure»", 2006. S. 41.

[3] Yurydychna entsyklopediia: [v 6 t. T. 1]. red. kol.: Yu. S. Shemshuchenko, F. H. Burchak, M. P. Ziabliuk ta in.; za zah. red. Yu. S. Shemshuchenko. K. Ukr. entsykl., 1998. S. 207.

detection, prevention and neutralization of real and potential threats to national interests in the spheres of law-enforcement activity, in the event of negative tendencies towards the creation of potential or real threats to national interests[1].

The analysis of scientific and training sources on the course "Criminal-executive law of Ukraine" shows that the notion of "personal safety" is mainly considered through the meaningful expression in other branches of the law of the notion "safety". On the basis of this, various typological models for determining this legal category are used in science. Thus, V. A. Lipkan reasonably proved that for the better perception of the notion of "safety" it should be considered in the context of three differentiated groups, namely: a) normative-legal, which provides for the identification of directions for the definition of specified concept in the normative legal acts of Ukraine; b) doctrinal, in which the main directions of the definition of "safety" contained in the scientific literature are marked; c) encyclopedic, which outlines approaches to the clarification of the meaning of this concept, which are defined in encyclopedic sources and dictionaries[2]. In doing so, he expressed the normative-legal direction through the following formulas:

1) safety – no risk, threats and dangers. For example, security is defined as the absence of an unacceptable risk linked with the possibility of

[1] Pro osnovy natsionalnoi bezpeky Ukrainy Zakon Ukrainy vid 19 cherv. 2003 r. № 964–IV. Ofitsiinyi visnyk Ukrainy. 2003. № 29. St. 1433.

[2] Lipkan V. A. Administratyvno-pravove rehuliuvannia natsionalnoi bezpeky Ukrainy: [monohr.]. Lipkan V. A. K. TEKST, 2008. S. 12.

causing any damage to life, health and property of citizens, and the environment[1];

2) safety is the feature of a systems. In particular, the safety of a nuclear power plant is defined as the property of a nuclear power plant in the conditions of normal operation, violations of normal operation, emergency situations, etc. limit radiation exposure to personnel, the population and the environment by the established limits[2];

3) security is a state of protection from risks, threats and dangers. Thus, safety in emergencies is understood as the state of protection of the population, objects of the environment from danger in emergencies[3];

4) security is compliance with certain rules, parameters. For example, the safety of meat and eggs is determined by compliance with their veterinary and sanitary rules and regulations[4];

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[1] Pro zatverdzhennia ta vvedennia v diiu Polozhennia z pytan obstezhennia, otsinky, tekhnichnoho stanu, pasportyzatsii ta potochnoi ekspluatatsii budivel ta sporud u haluzi zviazku: nakaz Derzh. komitetu zviazku ta informatyzatsii Ukrainy vid 28 kvit. 2004 r. № 88 [Elektronnyi resurs]. Rezhym dostupu: http//zakon.nau.uadoc?code=v0088570–04

[2] Pro zatverdzhennia Zahalnykh polozhen zabezpechennia bezpeky atomnykh stantsii: nakaz Derzhavnoi administratsii yadernoho rehuliuvannia vid 9 hrud. 1999 r. № 63 Ofitsiinyi visnyk Ukrainy. 2000. № 11. St. 430.

[3] Pro zatverdzhennia Polozhennia pro provedennia planovo-poperedzhuvalnykh remontiv melioratyvnykh system i sporud: nakaz Derzhavnoho komitetu Ukrainy po vodnomu hospodarstvu vid 1 zhovt. 1999 r. № 151. Ofitsiinyi visnyk Ukrainy. 2003. № 16. St. 682.

[4] Pro zatverdzhennia Veterynarno-sanitarnykh pravyl dlia ptakhivnychykh hospodarstv i vymoh do yikh proektuvannia: nakaz Holovnoho derzhavnoho inspektora veterynarnoi medytsyny Ukrainy vid 3 lyp. 2001 r. № 53. Ofitsiinyi visnyk Ukrainy. 2001. № 28. St. 1281.

5) safety is a complex of activities. In particular, train traffic safety is understood as a complex of organizational and technical measures aimed at ensuring safe operation and keeping in the permanent serviceability railway structures, rail tracks, rolling stock, equipment, mechanisms and devices[1];

6) the concept of safety is determined by the formula of accepted harm[2]: safety is the state in which the risk of harm or damage is limited to the accepted level[3].

If we take for the methodological basis the definition of the concept of "safety", proposed by A. V. Lipkan and by other scientists in the normative legal group, and summarizing the legal sources on these issues in the field of criminal-executive activity of Ukraine, it should be noted, that in neither of them the definition of "the right of convicts to personal safety" was not given (as well as, in particular, the concept of "the right of personnel of IES to a personal safety"). In accordance with this, art. 10 of CEC of Ukraine "The right of convicts for personal safety" should be supplemented with a note of the following content: "The personal safity of a convict should be understood as the state of security of a person, who

[1] Pro zaliznychnyi transport: Zakon Ukrainy vid 17 serp. 2012 r. Vidomosti Verkhovnoi Rady Ukrainy. 1996. № 40. St. 1831.

[2] Lipkan V. A. Administratyvno-pravove rehuliuvannia natsionalnoi bezpeky Ukrainy: [monohr.]. Lipkan V. A. K. TEKST, 2008. S. 12–14.

[3] Pro zatverdzhennia Polozhennia pro nahliad za bezpekoiu polotiv pry orhanizatsii povitrianoho rukhu: nakaz Derzhavnoi sluzhby Ukrainy z nahliadu za zabezpechenniam bezpeky aviatsii vid 15 hrud. 2005 r. № 917. Ofitsiinyi visnyk Ukrainy. 2006. № 52. St. 3377.

is serving a punishment, that is imposed by a court, in an appropriate body or penitentiary institution, from risks, threats and dangers".

It is in this context, as V. A. Lipkan believes, the doctrinal group is formulated in terms of understanding the concept of "safety"[1], which also has several directions, namely:

The first of them is determined by the formula: safety – "the state of protection from …". Thus, A. I. Pozdnyakov, from the position of the axiological approach, defines safety as protection from the task of significant damage[2];

The representatives of the second direction determine security through its system properties. Thus, the participants of the International non-governmental research and educational organization "RAU-Corporation" in their concept consider safety as a system property, which allows developing under conditions of conflict, uncertainty of risk based on self-organization and management[3];

An authors of the third direction determine safety through an active formula of activity. In particular, experts of the Institute for social political studies of the Russian academy of sciences believe that secu-

[1] Lipkan V. A. Administratyvno-pravove rehuliuvannia natsionalnoi bezpeky Ukrainy: [monohr.]. Lipkan V. A. K. TEKST, 2008. S. 14.

[2] Pozdniakov A. Y. O poniatyinom apparate teoryy bezopasnosty (aksyolohycheskyi pokhod). A. Y. Pozdniakov. Bezopasnost. 2002. № 7–8. S. 190.

[3] Kontseptsyia obespechenyia bezopasnosty lychnosty, obshchestva, hosudarstva. Belaia knyha rossyiskykh spetssluzhb. M. Dukhovnoe nasledyie, 1996. S. 198–199.

rity is the activity of people, society and state, the world community of nations in identification, prevention, weaken, eliminating (eradication) and reflection of the dangers and threats that can destroy, to deprive the fundamental material and spiritual values, to cause unacceptable (unacceptably objectively and subjectively) harm, to close the path to survival and development[1];

The representatives of the fourth direction consider safety as the absence of any threats to the rights and freedoms of human, society and the state, to the basic interests and values of a sovereign nation state (V. Kovalskyi, O. Manachynskyi, Ye. Pronkin, etc.)[2]. This is the so-called apophatic direction of understanding specified concept[3];

The fifth direction is represented by those researchers who understand safety as a state (static) and the property (dynamics) of the social system (M. G. Arkhypov, K. A. Kuzmenko, A. S. Kryuchenkov[4], etc.);

The authors of the sixth direction understand safety (in the context of the content of the concept of "national safety") as a dynamic political and legal regime whose purpose is to ensure the safety of national interests from all kinds of threats, which is

[1] Serebriannykov V. Sotsyalnaia bezopasnost Rossyy. V. Serebriannykov, A. Khlopev. M. YSPYRAN, 1996. S. 16.

[2] Kovalskyi V. Natsionalni interesy zahrozy ta yikh neitralizatsiia. V. Kovalskyi, O. Monachynskyi, Ye. Pronkin. Viche. № 7. 1994. S. 57.

[3] Lipkan V. A. Administratyvno-pravove rehuliuvannia natsionalnoi bezpeky Ukrainy: [monohr.]. Lipkan V. A. K. TEKST, 2008. S. 15.

[4] Arkhypov M. H. Nauka o bezopasnosty nashe budushchee. Arkhypov M. H., Kuzmenko K. A., Kriuchenkov A. S. Ros. sledovatel. 2002. № 3. S. 34–39.

achieved through the targeted activity of state authorities and civil society institutions, in order to guarantee the human rights and fundamental freedoms, their progressive development and stability of the constitutional order[1].

As the study of the works of scientists of the criminal-executive direction in Ukraine showed, the doctrinal group of expression of the concept of "safety" has found its place in their scientific developments. Thus, A. Kh. Stepanyuk and I. S. Yaskovets in the first scientific and practical commentary into the CEC of Ukraine in 2005 understood the security to be a guarantee, a necessary condition for the life of the individual, which allows her to keep and increase her spiritual and material values[2].

Other authors (A. P. Gel) in the training manual "Criminal-executive law of Ukraine" (2008), without standing the concept of "safety", determined the essence of the right of convicts to personal safety and reproducing the requirements of part 2 of art. 10 of CEC of Ukraine[3].

In the scientific and practical commentary to the CEC of Ukraine (2008), O. V. Lysodyed used general

[1] Chuiko Z. D. Konstytutsiini osnovy natsionalnoi bezpeky Ukrainy: dys. … kand. yuryd. nauk: 12.00.02. Chuiko Z. D. Kh. Khark. nats. un-t vnutr. sprav, 2007. S. 28.

[2] Kryminalno-vykonavchyi kodeks Ukrainy: nauk.-prakt. koment. A. Kh. Stepaniuk, I. S. Yakovets; za zah. red. A. Kh. Stepaniuka. Kh. Yurinkom Inter, 2005. S. 47.

[3] Hel A. P. Kryminalno-vykonavche pravo Ukrainy: [navch. posib.]. [Hel A. P., Siemakov H. S., Yakovets I. S.]; za zah. red. A. Kh. Stepaniuka. K. Yurinkom Inter, 2008. S. 114.

doctrinal approach to the definition of «safety» with the interpretation of art. 10 of CEC, namely, this is the state of the protection of vital legitimate interests of the person from any external threat, while provision the security of the person is one of the main functions of the state[1].

O. M. Dzhuzha and O. I. Osaulenko in the textbook "Criminal-executive law of Ukraine" (2010) also formulated the concept of "personal safety of convicts": the protection of life, health, and other vital and socially important interests of this category of citizens guaranteed by international law and Ukrainian legislation, from harm, as well as the prevention of dangerous and threats, that occurring in the process of serving (executing) criminal sentences in the form of arrest, restraint of liberty, holding in a disciplinary battalion of servicemen or deprivation of liberty[2].

Subsequently, the scholars reflected the general doctrinal approaches developed according to the interpretation of art. 10 of CEC[3], or determined the direction of provision the right of convicts to personal safety. In particular, to the first they attributed the consolidation of this right in the legislation, and

[1] Naukovo-praktychnyi komentar Kryminalno-vykonavchoho kodeksu Ukrainy. [A. P. Hel, O. H. Kolb, V. O. Korchynskyi ta in.]; za zah. red. A. Kh. Stepaniuka. K. Yurinkom Inter, 2008. S. 48.

[2] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 212.

[3] Kryminalno-vykonavche pravo Ukrainy: pidruch. [V. V. Holina, A. Kh. Stepaniuk, O. V. Lysodied ta in.]; za red. V. V. Holiny i A. Kh. Stepaniuka. Kh. Pravo, 2011. S. 24.

to the second – the definition of the order its implementation[1].

Thus, summing up the definition of "safety" and "personal safety of convicts" formulated in science, it can be argued that the personal safety of prisoners of imprisonment should be understood as defined and guaranteed at the normative and law level, as well as secured by the law enforcement activities of officials and penal institutions and institutions and the protection of their rights and legitimate interests from various threats, that encroach upon their lives, health, honor and dignity, inviolability and other legitimate interests.

The encyclopedic direction of understanding the concept of "safety" is also characterized by certain approaches, among which, in particular, V. A. Lipkan provides such[2]:

1) the representatives of the first of them consider this concept through the apophatic formula: the absence of any threats and dangers[3];

2) the supporters of the second direction consider the concept of safety through the state of protection[4];

3) the authors of the third direction understand safety through the activity formula of taking certain measures. Thus, aviation security (as well as road

[1] Kryminalno-vykonavchyi kodeks Ukrainy: nauk.-prakt. koment. za zah. red. V. V. Kovalenka, A. Kh. Stepaniuka. K. Atika, 2012. S. 52.

[2] Lipkan V. A. Administratyvno-pravove rehuliuvannia natsionalnoi bezpeky Ukrainy: [monohr.]. Lipkan V. A. K. TEKST, 2008. S. 15–18.

[3] Dal V. Tolkovii slovar zhyvoho velykorusskoho yazyka. Dal V. M. Nauka, 1989. S. 67.

[4] Shemshuchenko Yu. S. Bezpeka natsionalna. Yu. S. Shemshuchenko. Yurydychna entsyklopediia: [v 6 t. T. 1]. K. Ukr. entsykl., 1998. S. 210–211.

safety, safety of work, safety of navigation, etc.), they consider the system of organizational and legal, economic, technical and other measures, that are aimed at creating safe and comfortable conditions for air traffic participants[1];

4) the scientists of the fourth direction define the concept of safety through a passive formula: observance of a certain state, determination of parameters. Thus, S. V. Lekaryev believes that safety is the ability of an subject, phenomenon or process to maintain its main characteristics, parameters, essence with current destructive influences from the part of other subjects, phenomena or processes[2];

5) the representatives of the fifth direction define the concept of safety as one of the functions. Thus, in the "Legal encyclopedia" it is stated that information safety of Ukraine is one of the types of national safety; an important function of the state[3].

At the same time, the analysis of scientific literature, including the criminal-executive law of Ukraine, showed that to this day in the encyclopedic direction, such concepts as "the right of convicts to personal safety", "personal safety of convicts to deprivation of liberty" have not been developed, and this, in turn, became an additional argumentation when choosing a theme of research.

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[1] Shemshuchenko Yu. S. Bezpeka natsionalna. Yu. S. Shemshuchenko. Yurydychna entsyklopediia: [v 6 t. T. 1]. K. Ukr. entsykl., 1998. S. 207–211.

[2] Lekariev S. V. Byznes y bezopasnost. S. V. Lekariev, V. A. Pork. Tolkovii termynolohycheskyi slovar. M. Yahuar, 1995. S. 51.

[3] Shemshuchenko Yu. S. Bezpeka natsionalna. Yu. S. Shemshuchenko. Yurydychna entsyklopediia: [v 6 t. T. 1]. K. Ukr. entsykl., 1998. S. 212.

Taking into account the above and other concepts[1], including those have been withdrawn by specialists in the field of criminal-executive law, including the author's vision of this problem, we can consider that the methodological basis in this direction has been created in a certain way and it should be taken into account that when publishing new encyclopaedic editions in Ukraine (until 1991 (proclamation of Ukraine's independence) in similar legal and other scientific sources there was no definition of "safety"). In particular, this term is absent in the "The Soviet encyclopedic dictionary" (1990)[2], "The great Soviet encyclopedia" (1950)[3], "The legal encyclopedic dictionary" (1984)[4] and other popular scientific editions. As V. A. Lipkan rightly pointed out, the classification of directions for defining the concept of «safety» provides an opportunity to conclude that there are the four main approaches used for the three groups, that have been analyzed in this work. They are the following: a) static (state of protection from…); b) apophatic (absence of threats and dangers); c) activity (system of measures aimed at creating certain

[1] Konfliktolohiia: slov. za zah. red. O. H. Kolba, A. I. Buimistera. Kyiv; Pereiaslav-Khmelnytskyi. KSV, 2012. 592 s.

[2] Sovetskyi entsyklopedycheskyi slovar. hl. red. A. M. Prokhorov. [yzd. 4-e, ysprav. y dop.]. M. Sov. entsykl., 1990. 1632 s.

[3] Bolshaia Sovetskaia Entsyklopedyia. hl. red. S. Y. Vavylov. [2-ie yzd.]. M. Hos. nauch. yzd-vo "Bolshaia Sovetskaia entsyklopedyia", 1950. T. 4B. 640 s.

[4] Yurydycheskyi əntsyklopedycheskyi slovar. hl. red. A. Ya. Sukharev. M. Sov. entsykl., 1984. 369 s.

conditions); d) passive (observance of certain parameters, etc.)[1].

Thus, the analysis of the concept of "safety" gives grounds for the following conclusions:

– firstly, the category "safety" is close to the "security" category. However, as correctly noted by Ye. P. Zhelibo and V. V. Zatsarnyi, if safety characterizes the state of objects or systems, security is their feature[2];

– secondly, safety is inextricably linked to danger, namely: each person is in danger and understands its definition in its own way;

Thirdly, as some scientists have substantiated it (Yu. I. Rymarenko, O. V. Kopan), the Institute of legal safety has two problems:

a) the legal protection of vital important interests of the person;

b) the protection of vital important interests of the person from the threats that arise in the field of legal relations[3].

To understand the concept of "safety" one of the key is the word "danger", the feeling of which in every person (in particular convicts) has a deeply individual character, which depends predominantly on: 1) the level of social and public development of the

[1] Lipkan V. A. Administratyvno-pravove rehuliuvannia natsionalnoi bezpeky Ukrainy: [monohr.]. Lipkan V. A. K. TEKST, 2008. S. 18.

[2] Zhelibo Ye. P. Bezpeka zhyttiediialnosti: [pidruch.]. Ye. P. Zhelibo, V. V. Zatsarnyi. K. Karavela, 2006. S. 25–26.

[3] Mizhnarodna politseiska entsyklopediia: [u 10 t. T. 3]. vidp. red.: Yu. I. Rymarenko, Ya. Yu. Kondratiev, V. Ya. Tatsii, Yu. S. Shemshuchenko. K. Kontsern "Vydavnychyi dim «In Yure»", 2006. S. 45–46.

person; 2) the situation and social order, which positively or negatively influences the world outlook of a person (citizen).

Summarizing all the above definitions of "danger", we can conclude that these phenomena, processes, objects, information and people may cause undesirable consequences and lead to deterioration of the state of health or death of a person, damage to the environment and objects of public activity[1].

As practice shows, the sources of danger are natural processes and phenomena, an industrial environment and human actions. In particular, given that a person constantly interacts with the environment and turns it, the environment affects the livelihoods of society, the danger objectively exists in space and time and is realized in the form of flows of energy, substances, information. In other words, the interaction of man with the environment is manifested in the presence of direct and inverse relationships. The consequence of this interaction can widely change – from positive to catastrophic, accompanied by the death of people and the destruction of components of the environment. Under these conditions, you may refer to a clear manifestation of the danger in the form of negative consequences occurring, as a rule, suddenly and are defined as the action of danger, according to scientists (Ye. P. Zhelibo, V. V. Zatsarnyi)[1].

The study of the practice of serving the sentences in Ukraine shows that, for the most part, the danger

[1] Zhelibo Ye. P. Bezpeka zhyttiediialnosti: [pidruch.]. Ye. P. Zhelibo, V. V. Zatsarnyi. K. Karavela, 2006. S. 26.

to the convicts is of a latent nature and becomes a real danger in the presence of the following conditions: a) the danger really exists; b) the convicted person is in the zone of danger action; c) the convict does not have effective remedies, does not use them, these means are ineffective[1].

For prisoners, above all, for persons held in the IES, due to the accumulation of danger carriers for other objects (citizens, society and the state as a whole) as a result of the accumulation in the isolated territory, the danger has potential character, covering all of the above conditions. This is due to the fact that the axiom of potential danger indicates that in any form of activity it is impossible to achieve absolute security, that is, any human activity is potentially dangerous[2]. In addition, by this axiom, all actions of people and all components of the living environment, in addition to positive properties and consequences, have the ability to create danger. Any new positive action is inevitably accompanied by the emergence of a new potential danger or group of dangers. That is why, even at the highest level of, in particular, technique, absolute eliminating of sources of danger is impossible. The task lies in the fact that only to minimize it.

So, summarizing the above and other approaches to defining the content of the terms "safety" and

[1] Pro diialnist pidrozdiliv okhorony, nahliadu i bezpeky kryminalno-vykonavchykh ustanov u 2007 rotsi: inform. biul. K. Derzh. departament Ukrainy z pytan vykonannia pokaran, 2008. S. 3–6.

[2] Zhelibo Ye. P. Bezpeka zhyttiediialnosti: [pidruch.]. Ye. P. Zhelibo, V. V. Zatsarnyi. K. Karavela, 2006. S. 27.

"danger", it can be stated that "*the right of convicts to personal safety" – is a measure of the possible behavior of the convict while serving a sentence, which has been defined at the normative-legal and personal levels as one which ensures the protection of vital important interests of a human and a citizen.*

Thus, systemically important elements, that constituting the content of this concept, are as follows:

1) this is a measure of the possible (permissible) conduct of the convict, that is his right. The universally recognized in the theory of criminal-executive law of Ukraine is the provision, that the right of a convict is a type and measure of his conduct during the serving of criminal sentence and the opportunity of using certain social benefits to meet personal needs, which are enshrined in the norms of the Constitution and other legislative acts[1]. According to A. Kh. Stepanyuk, in part 1 of art. 10 of CEC of Ukraine enshrined the right of a convicted person to have his personal safety, it is his general right as a human and a citizen[2]. This conclusion is based on the fact that, according to part 3 of art. 63 of the Constitution of Ukraine, the convict enjoys all human and citizen rights, with the exception of restrictions, that identified by law and established by a court judgment. In addition, since art. 3 of the Constitution of Ukraine, the general right of a person and a

[1] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 204.

[2] Kryminalno-vykonavchyi kodeks Ukrainy: nauk.-prakt. koment. za zah. red. V. V. Kovalenka, A. Kh. Stepaniuka. K. Atika, 2012. S. 52–55.

citizen to personal security is fixed, guided by the requirements of art. 10 of CEC of Ukraine, it should be recognized that the right of a convict of personal safety is a his general right which did not fall within the list of restrictions of rights determined to the convict on the basis of a court judgment and a law (article 532–540 of the CPC of Ukraine)[1];

2) this right can be used by a convict while serving a sentence. The universally recognized in the criminal-executive law of Ukraine is also the position on which the punishment is understood as the state of the convict provided with state coercion, which occurs after the verdict takes into legal force, and and consists in subordinating the behavior of the convict of the restriction of rights and freedoms, that are provided for in the CC of Ukraine by corresponding sentences[2]. In accordance with the requirements of art. 532–540 of the CPC of Ukraine, the verdict of the court becomes valid after the expiration of the time on filing an appeal, and the verdict of the appellate court – after the expiration of the deadline to file a cassation appeal, introduction a cassation submission, if it has not been made submissions, while the verdict is executed after its entry

[1] Kryminalnyi protsesualnyi kodeks Ukrainy: nauk.-prakt. koment.: [u 2 t. T. 1]. [Ie. M. Blazhivskyi, Yu. M. Hroshevyi, Yu. M. Domin ta in.]; za zah. red. V. Ya. Tatsiia, V. P. Pshonky, A. V. Portnova. Kh. Pravo, 2012. 664 s.

[2] Kostenko O. M. Volia i svidomist zlochyntsia (doslidzhennia z zastosuvanniam pryntsypu naturalizmu): avtoref. dys. na zdobuttia nauk. stupenia doktora yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". O. M. Kostenko. K. Kyiv. nats. un-t im. T. Shevchenka, 1995. S. 7.

into force. It is this sentence, as stated in art. 4 of CEC of Ukraine, and is the basis for serving a sentence to convicts.

The legal status (state) of the convict was defined in chapter 2 of the CEC of Ukraine and in other laws of Ukraine, in particular those which establish the procedure and conditions of the execution of a specific type of punishment[1];

3) the specified right of the convicts is determined at the regulatory and legal level. The right of convicts for personal safety is guaranteed by art. 3 of the Constitution of Ukraine and art. 10 of CEC of Ukraine, and the order of its ensuring – by special laws (in particular, "On ensuring the safety of persons, involved in criminal litigation"[2]), by art. 42 of CPC of Ukraine, by some norms of the CEC of Ukraine (articles 102–104), as well as by paragraph 89 of the Rules of the internal order of penitentiary institutions[3], by other subordinate legal and regulatory acts of the SPiSU[4];

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[1] Naukovo-praktychnyi komentar Kryminalno-vykonavchoho kodeksu Ukrainy. [A. P. Hel, O. H. Kolb, V. O. Korchynskyi ta in.]; za zah. red. A. Kh. Stepaniuka. K. Yurinkom Inter, 2008. S. 31–36.

[2] Pro zabezpechennia bezpeky osib, yaki berut uchast u kryminalnomu sudochynstvi: Zakon Ukrainy vid 23 hrud. 1993 r. № 3782 KhII. Vidomosti Verkhovnoi Rady Ukrainy. 1994. № 11. St. 51.

[3] Pravyla vnutrishnoho rozporiadku ustanov vykonannia pokaran zatv. nakazom DDUPVP vid 25 hrud. 2003 r. № 275. Ofitsiinyi visnyk Ukrainy. 2003. № 52. St. 2898.

[4] Instruktsiia pro poriadok zdiisnennia zakhodiv shchodo zabezpechennia bezpeky osib, yaki berut uchast u kryminalnomu sudochynstvi, v ustanovakh vykonannia pokaran i slidchykh izoliatorakh Derzhavnoi kryminalno-vykonavchoi sluzhby: zatv. nakazom DDUPVP vid 4 kvit. 2005 r. № 61 Ofitsiinyi visnyk Ukrainy. 2005. № 21. St. 1160. 10 cherv.

4) this right is provided by convicts at the personal level, that is, it is connected with the so-called victimology behavior of a person, which, as scientists have established (Ye. M. Moyseyev, O. M. Dzhuzha, V. V. Vasylevych, etc.), may be careless, risky, provocative, objectively dangerous for the victim himself, as a result of which it may lead to emergence of a criminal situation, and sometimes – to the committing of a crime[1];

5) the object of protection of the convict is his vital important interests as a human and a citizen. In accordance with part 1 of art. 7 of CEC of Ukraine, while executing and serving a sentence, the state protects only the lawful interests of the convicts, which from the positions of the content of the right to personal safety are important interests of a human and a citizen. In science, the legal interests of the convicts are their aspirations, which are enshrined in the legal norms of a concrete action on the possession of certain benefits, which are usually satisfied, according to the results of the evaluation of the behavior of convicts by officials of bodies of serving of sentences or by the administration of institutions of serving of sentences, by the prosecutor's office, by the court, etc.[2]

[1] Kryminolohichna viktymolohiia: navch. posib. [Moiseiev Ye. M., Dzhuzha O. M., Vasylevych V. V. ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2006. S. 62.

[2] Naukovo-praktychnyi komentar Kryminalno-vykonavchoho kodeksu Ukrainy. [A. P. Hel, O. H. Kolb, V. O. Korchynskyi ta in.]; za zah. red. A. Kh. Stepaniuka. K. Yurinkom Inter, 2008. S. 34.

Consequently, only in the presence of all of the listed systemic signs, the right of convicted persons to personal safety acquires the real content, and therefore this should be taken into account during the implementation of measures, that are related to the provision of the state and the person the specified right, in accordance with the fact of that the definition of the concept of "the right of convicts to personal safety" is important both from the positions of the theory of law and the practice of its implementation of the provision at normative legal and personal (victimological) levels. In view of the specified, it is necessary to supplement the art. of 10 of CEC "The right of convicts to personal safety" by a note in which to define this concept according to the algorithm, which is proposed, in particular, in this work.

Taking into account the defined conditions of the execution and serving of sentences in the form of deprivation of liberty, it can be argued that, the most fully and precisely the notion of "the right of convicts to personal safety" reflects the so-called activity approach of scientists to its definition, which was applied in this monograph.

The legal foundations of ensuring of the said right of convicts for deprivation of liberty in Ukraine is, in general, the content of this study. Each of the legal sources has been thoroughly analyzed and critically re-thought in light of the tasks of scientific development, as well as of ways to improve the existing legal basis on questions of providing of personal safety of person, who serve sentences in correctional colonies. In particular, the following are among the normative legal acts, it should be highlighted:

– the Constitution of Ukraine (articles 3, 21, 23, 63, etc.);

– the CEC of Ukraine (articles 1, 7, 8, 10, 104, 107, etc.);

– the CPC of Ukraine (article 42);

– the law of Ukraine "On pre-trial detention";

– the law of Ukraine "On ensuring the safety of persons who are participants in criminal proceedings";

– the law of Ukraine "On the State penal enforcement service of Ukraine";

– the regulations on the State penitentiary service of Ukraine;

– the rules of the internal work of institutions of serving of sentences;

– the instruction on ensuring the safety of persons who are participants of criminal proceedings; etc.

In order to resolve the problems identified in this subsection of the work, the following measures must be implemented:

1. To supplement art. 10 of CEC of Ukraine by a note in which to legislate the concept of "personal safety of convicts". The need for this is due to the following circumstances:

a) the need to expand the knowledge of the convicts and the personnel of the IES on these issues and the task to prevent any threats to them;

b) the extension of act of the precedent norms applicable to the concept of "safety" in other branches of law and in law regulations;

c) the results of the anonymous poll of convicts to deprivation of liberty and the personnel of the IES regarding the content of the specified problem. In

particular, only 9,13 % – "yes" and "partially" – 61,47 %, "no" – 29,4 % of respondent convicts responded the the question "Is understandable the contents of the right of convicts for personal safety to you?" (supplement 1, 2).

To a similar question, the responses of the personnel were distributed as follows: "yes" – 42,8 %; "partially" – 48,47 % and "no" – 7,73 % (supplement 3, 4).

2. To supplement art. 10-1 "Features of ensuring the right of convicts to personal safety for certain categories of individuals" of the CEC of Ukraine by the following content: "Given the gender, age, state of health and other individual characteristics of convicts, appropriate conditions (which ensures their right to personal safety) should be created in bodies and institutions of serving of sentences. The procedure for determining such conditions is regulated by the norms of the Special part of this Code".

The need for these additions is due to the following factors:

1) at the legislative level in the CEC of Ukraine the peculiarities of serving a sentence in the form of deprivation of liberty by convicted women and minors have been determined (chapter 21); the peculiarities of serving a sentence in colonies of different kinds (chapter 20); the execution of a sentence in the form of life imprisonment (chapter 22), etc. In addition, it is clearly established in the law that the separation of convicts to deprivation of liberty in correctional and educational colonies (article 92 of the CEC); the moving of convicts to deprivation of liberty (article 88 of the CEC); the transfer of priso-

ners to deprivation of liberty (article 101 of the CEC), etc., which take into account certain features of the maintenance of certain categories of convicts and which has not been carried out in the context of ensuring the personal safety of these persons;

2) as practice shows, the most vulnerable objects in IES are former minors who served their sentence in educational colonies (article 19), or regarding them, the court decided to replace the trial (article 75 of the Criminal Code of Ukraine) with real deprivation of liberty and sending them to correctional colony in accordance with art. 147 of CEC of Ukraine "Transfer of convicts from the educational colony to the correctional colony". In this regard, it need the correction art. 92 of CEC of Ukraine "The separation of convicts for deprivation of liberty in correctional and educational colonies", namely, part 3 of this article should be supplemented with the following phrase: "Persons who have been transferred from the educational institutions to the penal colony in accordance with the procedure established by this Code are isolated from other convicts, as well as are separated".

3. To supplement the CPC of Ukraine by art. 42-1 "Ensuring the safety of persons involved in criminal proceedings" and lay it out in the wording, which was specified in art. 52-1 of the CPC of Ukraine in 1961[1].

The need for such modification is conditioned by the following circumstances:

1) the provisions of art. 3 of the Constitution of Ukraine, which states that the state guarantees the

[1] Kryminalno-protsesualnyi kodeks Ukrainy. Vidomosti Verkhovnoi Rady Ukrainy RSR. K., 1961. № 2. St. 15.

protection of life and health, of honor and dignity, of inviolability and security of any person;

2) the requirements of part 4 of art. 10 of CEC of Ukraine, which defines one of the guarantees of ensuring the right of convicted persons for personal safety as participants in criminal proceedings (holding a convict in isolation from others);

3) the content of part 3 of art. 42, paragraph 5 of part 1 of art. 56, part 4 of art. 58, paragraph 8 of part 1 of art. 66 of CPC of Ukraine etc, which indicate that the suspect, the accused and other participants of criminal proceedings have the right to apply for safety of themselves, family members, close relatives, property, life, etc;

4) the provisions of paragraph 3 of part 6 of art. 206 of the CPC of Ukraine "General duties of a judge on the protection of human rights", in which it is indicated that the investigating judge is obliged to take the necessary measures to ensure the safety of a person in accordance with the legislation. However, this law does not establish such a duty for detectives and investigators, which is not logical according to the new rules for conducting criminal proceedings in Ukraine;

5) the other norms of the CPC of Ukraine, in particular part 1 of art. 220 "Consideration of petitions during pre-trial investigation", which should be combined with an the requirements of those normative legal acts, which regulate the issue of the safety of participants in criminal proceedings[1].

[1] Pro zabezpechennia bezpeky osib, yaki berut uchast u kryminalnomu sudochynstvi: Zakon Ukrainy vid 23 hrud. 1993 r. № 3782 KhII. Vidomosti Verkhovnoi Rady Ukrainy. 1994. № 11. St. 51.

1.3. The international legal and regulatory approaches on provision of personal safety of convicts

According to international organizations, that are monitoring (in engl. the monitoring - that, who warns, cautions against, counselor, consultant[1]) of the observance of human rights in places of deprivation of liberty, every year in Ukraine there are frequent cases of cruel, inhuman or degrading treatment by personnel of the SPSU against convicts[2]. In particular, the reports of the European Committee for the prevention of torture have been severely criticized for many aspects of the criminal-executive activities, and also has been noted that the unsatisfactory conditions for the convicts in places of detention, especially in IW, the overcrowding of places of pretrial detention, many other disadvantages related to the nutrition of prisoners, medical services, and the treatment of them by the personnel of the IES are all an element of such behavior that degrades the treatment of convicts[3].

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[1] Yurydychna entsyklopediia: [v 6 t. T. 3]. red. kol. Yu. S. Shemshuchenko (holova redkol.) ta in. K. Ukr. entsykl., 2001. S. 764.

[2] Preduprezhdenye pitok v Ukrayne: doklady Komyteta Soveta Evropi po preduprezhdenyiu pitok po ytoham vyzyta v Ukraynu delehatsyy Komyteta v 1998, 1999 y 2000 hh. y otveti Pravytelstva Ukrayni na ety dokladi. [2-e yzd., yspr. y dop.]. Donetsk. Donetskyi Memoryal, 2003. 252 s.

[3] Bushchenko A. P. Proty katuvan. Analiz vidpovidnosti ukrainskoho zakonodavstva ta praktyky standartam i rekomendatsiiam Yevropeiskoho komitetu zapobihannia katuvanniam ta zhorstkomu povodzhenniu. Bushchenko A. P. Kh. Prava liudyny; Kharkiv. pravozakhysna hrupa, 2005. S. 33.

One of the reasons for such conclusions was the failure or improper implementation by the leadership of the SPiSU and of territorial departments, as well as by the personnel of correctional colonies of a number of international normative legal acts in the sphere of official activity, including the sphere of criminal executive activity. These include, in particular, the followings:

1) the Universal declaration of human rights, its art. 3 states that every person has the right to personal integrity and art. 5 states that nobody should be subjected to torture or cruel, inhuman or degrading treatment or punishment[1]. The same provisions, in particular, are defined in part 3 of art. 50 of the CC of Ukraine and part 1 of art. 1, 10 of CEC of Ukraine;

2) international covenant on civil and political rights, which also is one of the priorities, recognized the right to personal integrity (article 9) and enshrined the principle of the activity of each state for the prevention of torture and inhuman or degrading treatment with convicts (article 7, 10, 11, etc.)[2]. A similar provision is reflected in art. 28 of the Constitution of Ukraine and in art. 5 of CEC, considering that, as a form of expression of social and moral freedom, the notion of dignity includes the human

[1] Zahalna deklaratsiia prav liudyny: Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 9.

[2] Mizhnarodnyi pakt pro hromadianski ta politychni prava: Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 13–23.

right to respect, the determination of his rights and unequivocally implies his awareness of duty and liability to society[1];

3) the Declaration on the rights and duties of Individuals, groups and bodies to encourage and protect generally accepted human rights and fundamental freedoms, in part 1 of art. 2 of which, it is stated that each state has a primary responsibility and duty to protect, encourage and exercise all human rights and fundamental freedoms, in particular by taking such measures as may be necessary to create all the necessary conditions in the social, economic and political, as well as in other areas and legal safeguards, that are necessary to ensure that all persons under its jurisdiction, individually and jointly with others, are able to enjoy all these rights and freedoms in practice[2];

4) a set of principles for the protection of all persons who are subjected to detention or imprisonment in any form, in the principles 1, 3, 4, 6, and etc. of which, it is determined that the legal mechanisms and guarantees for the implementation by these individuals the right to personal safety[3];

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[1] Filosofskyi slovnyk. K. Hol. red. URE, 1973. S. 82.

[2] Deklaratsyia o prave y obiazannosty otdelnikh lyts, hrupp y orhanov obshchestva pooshchriat y zashchyshchat obshchepryznannie prava cheloveka y osnovnie svobodi: Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 30.

[3] Zvid pryntsypiv zakhystu vsikh osib, shcho piddaiutsia zatrymanniu chy uviaznenniu u bud-yakii formi: Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 34–35.

5) the basic principles on the use of force and firearms by law enforcement officials, in paragraph 9 of the Special provisions of which, it is stated that these means are used only in cases of self-defense or protection of other persons from imminent death, or serious injury, or in order to prevent the committing of a particularly grave crime, etc.[1], which undoubtedly creates additional legal safeguards of provision the personal safety of convicts;

6) the code of conduct for officials in the maintenance of law and order, its art. stipulates that during the performance of their duties specified persons respect and protect human dignity, support and protect human rights in relation to all persons[2];

7) other international legal acts related to the regulation in the sphere of activity of serving of sentences[3].

At the same time, the legal sources directly related to the official activity of personnel of the correctional colonies are of primary importance. In particular, in art. 5 of the Code of Conduct for the officials in the maintenance of law and order states: "No

[1] Osnovnie pryntsypi prymenenyia syli y ohnestrelnoho oruzhyia dolzhnostnimy lytsamy po podderzhanyiu pravoporiadka: Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 43.

[2] Kodeks povedinky posadovykh osib u pidtrymanni pravoporiadku: Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 79.

[3] Pryntsypy efektyvnoho rozsliduvannia i dokumentatsii katuvan ta inshoho zhorstokoho, neliudskoho abo takoho, shcho prynyzhuie hidnist, povodzhennia abo pokarannia rekomendovani Rezoliutsiieiu Heneralnoi Asamblei OON vid 4 hrud. 2000 r. № 5589. Prava liudyny i profesiini standarty dlia pravookhoronnykh orhaniv v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 202–206.

official can exercise, incite or tolerate any action, which constitutes torture or other cruel, inhuman or degrading treatment or punishment, and no official can refer to the orders of the superiors or other exceptional circumstances such as: a state of war or a threat of war, a threat to national security, internal political instability or any other state of emergency, for justifying torture and other cruel, inhuman or degrading treatment or punishments". In art. 7 of the same Code states that officials in the enforcement of law and order do not commit any acts of corruption. They also completely impede such acts and fight with them; in art. 8 states that officials in the enforcement of law and order, respect the law and this Code. By using all their capabilities, they also prevent and comprehensively hinder any violation of this Code.

The rather relevant for finding out the content of the subject of this dissertation study are separate provisions of Special principles on the use of force and firearms by officials in which it has been determined that the activities of officials have an important social significance, which is why it should be maintained at the proper level and, if necessary, to improve the working conditions of these officials, because of that the threat to the life and security of officials should be seen as a threat to the stability of society as a whole, as well as the fact that these officials play an exclusive role in protecting human rights to life, freedom and safety, as is guaranteed by the Universal declaration of human rights and confirmed by the International covenant on civil and political rights.

In the plot of the Vienna declaration on crime and justice: answers to challenges in the 21st century, which was adopted on December 4, 2000 by the UN, on the recommendation of the Ecological and Social council, the attention of all states is focused on the fact that proper programs for crime preventing of crimes and rehabilitation are crucial for an effective crime control strategy, and also that such programs should take into account socio-economic factors, which may predetermine a person's greater inclination to commit a crime from the point of view of previously committed such acts and the probability of committing the said acts by a person.

In the same context, other international legal acts of human rights and citizen were formed, that constitutes a methodological basis both for the analysis of existing problems in domestic law-enforcement practice and for the development of scientifically grounded measures, which are aimed at improving the efficiency of activity to ensure the right of convicts to the personal safety in the correctional colonies of Ukraine. These include, in particular, the Principles of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment, that have been recommended by Resolution of General Assembly 55/89 of 4 December 2000[1].

[1] Pryntsypy efektyvnoho rozsliduvannia i dokumentatsii katuvan ta inshoho zhorstokoho, neliudskoho abo takoho, shcho prynyzhuie hidnist, povodzhennia abo pokarannia rekomendovani Rezoliutsiieiu Heneralnoi Asamblei OON vid 4 hrud. 2000 r. № 5589. Prava liudyny i profesiini standarty dlia pravookhoronnykh orhaniv v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 202–206.

In the specified context, the Council of Europe's legal and regulatory acts have also formulated. In particular, in the European convention on human rights (so-called "Rome convention"), adopted on November 4, 1950, the preamble states that the purpose of the Council of Europe is to achieve unity between its members and that one of the methods, which achieves this goal, is the observance and further exercise of rights and fundamental freedoms of human[1]. The mechanism for the implementation of specified principal is defined in the relevant articles of the Convention, namely: 1) in part 1 of art. 2, which states that no one can be deliberately deprived of life other than by the execution of a court judgment, which is rendered after confessing her guilty of committing a crime for which such punishment is provided by law; 2) art. 3 – no person shall be subjected to torture, inhuman or degrading treatment or punishment; 3) part 1 of art. 5 - every person has the right to liberty and personal integrity. No person can be deprived of liberty other than before the procedure, which is established by law; 4) art. 17 – nothing in this Convention may be construed as conferring any State, group or person the right to engage in any activity or to commit any action, which is aimed at elimination any rights and freedoms, that are set forth in this Convention or at limiting them to a greater extent than is provided for in the Convention, etc.

[1] Prava cheloveka y predvarytelnoe zakliuchenye: sbornyk mezhdunarodnikh standartov, kasaiushchykhsia predvarytelnoho zakliuchenyia. Kh. Konsum, 1997. 124 s.

Separate elements and guarantees of provision of personal safety of convicts in correctional colonies also contain documents of the World medical association, the main leitmotif of which is expressed as follows: "Currently, only the doctor can register the torturing. Doctors who work in the public service must deliberately confront the tendency of biased generalizations and assessments, which is typical of state institutions. The doctor should not be interested in the results of service or court proceedings. Only in this way the doctor can speak up for defense of the truth and fulfill his professional duty to provide medical care without becoming a defender of one or the other party"[1].

An analysis of scientific and practical sources of a given research topic shows that problems, that are associated with provision the right of convicts to personal safety in correctional colonies can be combined into three homogeneous groups:

1) those that are determined (bonds that include different functions and dependence: causing, mediation and conditioning)[2] by the objective disparity in the content of the terms and concepts used in domestic and international law;

[1] Pryntsypy efektyvnoho rozsliduvannia i dokumentatsii katuvan ta inshoho zhorstokoho, neliudskoho abo takoho, shcho prynyzhuie hidnist, povodzhennia abo pokarannia rekomendovani Rezoliutsiieiu Heneralnoi Asamblei OON vid 4 hrud. 2000 r. № 5589. Prava liudyny i profesiini standarty dlia pravookhoronnykh orhaniv v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 164–165.

[2] Zakaliuk A. P. Kurs suchasnoi ukrainskoi kryminolohii teoriia i praktyka: [u 3 kn.]. Zakaliuk A. P. K. Vyd. dim "In Yure", 2007. Kn. 1. Teoretychni zasady ta istoriia ukrainskoi kryminolohichnoi nauky. S. 191.

2) the lack of proper public control over the activities of correctional colonies due to the uncertainty in the legislation of Ukraine of the relevant legal mechanisms and guarantees of their implementation[1];

3) those circumstances, that are related to the regulation of public relations in the field of the prevention of offenses and crimes. This activity is regulated by the subordinated normative-legal acts, which, in accordance with the requirements of art. 63 of the Constitution of Ukraine on the introduction of restrictions on convicts only on the basis of the law, is contrary to the principle of legality, which provides for the activities of state authorities and their officials (in this case – the personnel of correctional colonies) only in the manner defined by the Constitution of Ukraine and art. 5 of CEC of Ukraine;

4) other circumstances, first and foremost, that are those related to the organization and implementation of the OIA and operative-search prevention of crimes and offenses by the units of internal safety in the system of the SPSU.

As for the first group of problems, it should be noted that in the analyzed and other international legal acts is not used the term "personal safety", as

[1] Khutorna S. V. Hromadskyi vplyv yak zasib vypravlennia i resotsializatsii zasudzhenykh u vypravnykh koloniiakh serednoho rivnia bezpeky. S. V. Khutorna. Derzhavna penitentsiarna sluzhba Ukrainy istoriia sohodennia ta perspektyvy rozvytku u svitli mizhnarodnykh penitentsiarnykh standartiv ta Kontseptsii derzhavnoi polityky u sferi reformuvannia Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy: materialy mizhnar. nauk.-prakt. konf. (Kyiv, 28–29 berez. 2013 r.). K. DPtS Ukrainy; VD "Dakor", 2013. S. 49–63.

in the domestic law (article 3 of the Constitution of Ukraine, article 10 of the CEC, article 47 of the CPC, etc.), but it is used the term "personal inviolability", which, in our opinion, can not be equated fully. In particular, under the inviolability in science understand the guarantee from any encroachment on the part of anyone[1]. At the same time, only the right of a convict of personal safety is enshrined in the current Ukrainian legislation, but the real mechanisms and guarantees of its implementation are not defined, which has become an additional argument in the choice of the theme of this dissertation study. This conclusion on this problem was made by other scientists[2].

Undoubtedly, making changes to art. 10 of CEC in this regard is obvious, taking into account the principle of priority of international legal norms[3], which is defined in the Law of Ukraine "On international treaties" and the decree of the president of Ukraine "On the plan of measures of carrying out the responsibilities and obligations of Ukraine stemming

[1] Ivchenko A. Tlumachnyi slovnyk ukrainskoi movy. Ivchenko A. Kh. FOLIO, 2000. S. 390.

[2] Kolb O. H. Pro zmist prava zasudzhenykh na osobystu bezpeku. O. H. Kolb, I. O. Kolb. Aktualni problemy kryminolohichnoi polityky v Ukraini: materialy mizhvuz. nauk.-teoret. konf. (Kyiv, 25 kvit. 2012 r.). K. Nats. akad. vnutr. sprav, 2012. S. 215–216.

[3] Kalchenko T. L. Reformuvannia kryminalno-vykonavchoi systemy vidpovidno do mizhnarodnykh penitentsiarnykh standartiv. T. L. Kalchenko. Derzhavna penitentsiarna sluzhba Ukrainy istoriia sohodennia ta perspektyvy rozvytku u svitli mizhnarodnykh penitentsiarnykh standartiv ta Kontseptsii derzhavnoi polityky u sferi reformuvannia Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy: materialy Mizhnar. nauk.-prakt. konf. (Kyiv, 28–29 berez. 2013 r.). K. DPtS Ukrainy; VD "Dakor", 2013. S. 121–124.

from its Membership in the Council of Europe" dated January 20, 2006 № 39/2006[1].

In turn, the content of the second group of problems is related not only to the lack of definition at the legal level of the concept of "public control in institutions of serving of sentences"[2], but also to the proper principles of its implementation[3]. In addition, as V. M. Trubnykov rightly notes, in the scientific literature, along with the term "control", there are such concepts as "monitoring", "controlling", etc., which only complicate the specified problem[4].

The problems of the third group largely arise from the fact that in a number of cases, social relations in the field of serving sentences are regulated not by normative and legal acts, which form the meaning of

[1] Pro Plan zakhodiv iz vykonannia oboviazkiv ta zoboviazan Ukrainy, shcho vyplyvaiut z yii chlenstva v Radi Yevropy: zatv. Ukazom Prezydenta Ukrainy vid 20 sich. 2006 r. № 392006. Ofitsiinyi visnyk Ukrainy. 2006. № 4. St. 143.

[2] Khutorna S. V. Hromadskyi vplyv yak zasib vypravlennia i resotsializatsii zasudzhenykh u vypravnykh koloniiakh serednoho rivnia bezpeky. S. V. Khutorna. Derzhavna penitentsiarna sluzhba Ukrainy istoriia sohodennia ta perspektyvy rozvytku u svitli mizhnarodnykh penitentsiarnykh standartiv ta Kontseptsii derzhavnoi polityky u sferi reformuvannia Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy: materialy Mizhnar. nauk.-prakt. konf. (Kyiv, 28–29 berez. 2013 r.). K. DPtS Ukrainy; VD "Dakor", 2013. S. 517–518.

[3] Konventsiia proty katuvan ta inshykh zhorstokykh neliudskykh, abo takykh, shcho prynyzhuiut hidnist vydiv povodzhennia i pokarannia. Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 8–23.

[4] Trubnykov V. M. Pravove rehuliuvannia kontroliu za osobamy, yaki perebuvaiut na obliku kryminalno-vykonavchoi inspektsii. V. M. Trubnykov. Naukovyi visnyk Instytutu kryminalno-vykonavchoi sluzhby. 2012. № 2 (2). S. 87–88.

the term "legislation"[1] and follow from part 2 of art. 19 and paragraph 12 of art. 92 of the Constitution of Ukraine, according to which state authorities (in particular, the SPSU) and local self-government bodies and their officials are obliged to act only on the basis, within the limits of authority and in the manner that are prescribed by the Constitution and laws of Ukraine[2].

The scientists (A. Kh. Stepanyuk and I. S. Yakovets) are paying attention to these groups of problems, reasonably considering that the system of criminal-executive legislation of Ukraine needs the harmonization and the refinement[3].

As for the fourth group of problems related to the implementation of international legal requirements in terms of ensuring personal integrity by the forces, forms and means of the OIA, their content and ways to solutions will be analyzed in a separate section of this dissertation.

However, let's consider some of them. In particular, the so-called operative and investigative control over the activity of personnel of correctional colonies deserves attention. The article 1 of the law of Ukraine "On operative and investigative activity" stipulates

[1] Rishennia Konstytutsiinoho Sudu Ukrainy "U spravi za konstytutsiinym zvernenniam Kyivskoi miskoi rady profesiinykh spilok shchodo ofitsiinoho tlumachennia chastyny tretoi statti 21 Kodeksu zakoniv pro pratsiu Ukrainy (sprava pro tlumachennia termina «zakonodavstvo»)". № 120-rp98 vid 9 lyp. 1998 r. Ofitsiinyi visnyk Ukrainy. 1998. № 32. St. 1209.

[2] Aktualni problemy konstytutsiinoho prava Ukrainy: [pidruch.]. za zah. red. A. Yu. Oliinyka. K. Vydav. dim "Skif", 2012. S. 138.

[3] Stepaniuk A. Kh. Systema kryminalno-vykonavchoho zakonodavstva potrebuie uzghodzhennia ta doopratsiuvannia. A. Kh. Stepaniuk, I. S. Yakovets. Problemy penitentsiarnoi teorii i praktyky. 2005. № 10. S. 302.

that the tasks of the OIA are to search for and fixation factual data about unlawful actions of individuals and groups, responsibility about which is provided by the CC of Ukraine, as well as obtaining information in the interests of the safety of citizens, society and the state.

In art. 104 of CEC of Ukraine one of the main tasks of the OIA is also the provision of the safety of convicts and the detection, prevention and disclosure of crimes committed in the colonies, as well as of violations of the established order of serving sentences, that is, by the form of art. 1 of the Law "On operative and investigative activity" and art. 104 of CEC are coincided. At the same time, the content of the terms that have been taken by the legislator has a restrictive (narrowed) character of the activity of correctional colonies, since it only concerns the provision of the safety of the convicts and not the prevention of torture, etc., which also constitutes the meaning of the concept of "inviolability", which is used in the norms of international law and relates only to the process of execution, and not the serving a sentence.

All this is due to the fact that failure of provision of the right of convicts to personal safety entails legal liability. As A. Kh. Stepanyuk and I. S. Yakovets established, the institute of legal safety includes two problems of legal protection of vital important interests of a person from the threats that arise in the field of legal relations[1]. Therefore, the provision of

[1] Stepaniuk A. Kh. Pro deiaki napriamy polityky Ukrainy shchodo reformuvannia kryminalno-vykonavchoi systemy (vykonannia oboviazkiv ta zoboviazan Ukrainy, shcho vyplyvaiut z yii chlenstva v Radi Yevropy). A. Kh. Stepaniuk, I. S. Yakovets. Kryminalne pravo Ukrainy. 2006. № 3. S. 26.

the personal safety of convicts takes place in two directions:

– the first is the consolidation of this right in the legislation (in particular, in article 10 of the CEC of Ukraine);

– the second is the determination of the order of its implementation (articles 10, 88, 93, etc. of the CEC of Ukraine) and of the corresponding legal guarantees of their application (including the responsibility of the personnel of the IES, including the capabilities of operational-search prevention of crimes, provision of this safety).

That is why one of the tasks of the OIA, that are defined in art. 104 of CEC of Ukraine, there should be activity of operational units of correctional colonies not only for provision personal safety, but also the prevention of torture and other forms of inhuman treatment of convicts. But this is possible only if the legislator determines the task of detecting violations of the established order not only serving, but also the sentence. Such a conclusion follows, in particular, from the contents of the terms "serving" and "execution" of the sentence. In particular, the serving of sentence in science is understood as to be ensured the legal status of a convict by state coercion and the status occurs after the sentence legally entered into force and it lies in subordinate the behavior of the convict by the restriction of the rights and freedoms, that are provided for in the CC of Ukraine[1].

[1] Kryminalno-vykonavche pravo: pidruch. [dlia stud. yuryd. spets. vyshch. navch. zakl.]. za red. A. Kh. Stepaniuka. Kh. Pravo, 2006. S. 6–7.

In its turn, the execution of the punishment consists in the application by the personnel of correctional colonies of state coercive against the convict, that is, in the procedure of limiting their rights and freedoms, which are the content of punishments, defined by the CC of Ukraine. That is why (and this is proved by practice) the object of criminal-executive activity is a two-track process of execution – serving a sentence[1].

Thus, the changes in the content of operative-search prevention of crimes and offenses in correctional colonies are objectively predetermined. As the scientists rightly point out, competent, skilful, based on the law the application of operational-search facilities by operational officials, of transparent and covertt measures and methods will provide an opportunity to more fully identify, verify, and evaluate facts and individuals, which constitute operational interest; more promptly and purposefully interfering with the course of events in order to prevent crimes that are going to prepare and commit; to detect and detain criminals; to identify and maintain evidence that are relevant to criminal proceedings[2].

At the same time, according to the classification of international legal acts by scholars[3], it should be

[1] Kryminalno-vykonavche pravo: pidruch. [dlia stud. yuryd. spets. vyshch. navch. zakl.]. za red. A. Kh. Stepaniuka. Kh. Pravo, 2006. S. 6.

[2] Provadzhennia operatyvno-rozshukovykh zakhodiv i slidchykh dii u mistsiakh pozbavlennia voli: [monohr.]. [Ortynskyi V. L., Kolb O. H., Kozak V. P. ta in.]; za zah. red. V. L. Ortynskoho, O. H. Kolba. Khmelnytskyi. KhmTsNTEI, 2010. S. 141–142.

[3] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 316–322.

noted, that a significant part of these sources does not have binding legal force within the limits of international law and, in particular, in Ukraine. However, recognizing the significant influence and authority of international acts on practice and the theory of serving of sentences, one can conclude that they can become the moral principles that will form the basis of action for the reform of the SPSU[1] and eventually the turning it into a penitentiary system[2], in particular, by creating a probation service (supplement F.3), which would ensure the personal safety of former convicts, who has been released from the IES.

In this regard, the experience of other states in this area is interesting in designated problem. At the same time, the legislations of foreign countries are gradually brought in line with the requirements of norms of international law, although there are certain obstacles to the implementation of international rules and standards for treatment of convicts, including those related to the provision of their personal safety, that may include: lack of sufficient state funding, overcrowding of the IES, insufficient number of personnel of the colonies and low level of their professional readiness, etc.[3] In addition, the imple-

[1] Pravovi osnovy diialnosti personalu Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy: nauk.-metod. posib. uporiad. I. Yakovets. K. Palyvoda A.V., 2011. 232 s.

[2] Lisitskov O. V. Pro zdobutky ta problemni pytannia v roboti Derzhavnoi penitentsiarnoi sluzhby Ukrainy. O. V. Lisitskov. Formuvannia penitentsiarnoi systemy Ukrainy problemy sohodennia: nauk.-prakt. konf. (Odesa, 25 trav. 2012 r.). O. Upravlinnia DPtSU v Odeskii oblasti, 2012. S. 7.

[3] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 345.

mentation of international standards is, to varying degrees, complicated by all countries almost: an economic downturn and related with it limitation of material and financial resources constraints; an increase in the level of crime, accompanied by an increase in "punitive claims" and an increase in the number of convicts; an increase in the level of drug addiction and HIV/AIDS; an aggravation of cross-national and inter-ethnic conflicts; the deterioration of relations between convicts and personnel of the IES, the fall in the prestige of professional criminal-executive activity[1].

As foreign researchers rightly consider, probably, no system of serving of sentences can fully meet at least to minimal requirements, which are set out in the Minimum standard rules, and some of them are far from even this[2]. In addition, as Yu. A. Alfyorov rightly pointed out, the question of preventing torture and latent violence in places of deprivation of liberty is relevant to all states to some extent. the providing the convicts with paid work, legal protection, and providing them with social and rehabilitation assistance after their release[3]. That is why, in the CEC of the Russian Federation (part 4 of article 3),

[1] Uholovno-yspolnytelnoe pravo Rossyy teoryia, zakonodatelstvo, mezhdunarodnie standarti, otechestvennaia praktyka kontsa XIX nachala XX veka: [ucheb. dlia vuzov]. pod red. A. Y. Zubkova. [3-e yzd., pererab. y dop.]. M. Norma, 2005. S. 683.

[2] MaKing Standards Work. An International Handbook on Good Prison Practice. Penal Reform International. 1996. № 24. C. 20–21.

[3] Alferov Yu. A. Mezhdunarodnii penytentsyarnii opit y eho realyzatsyia v sovremennikh uslovyiakh. Yu. A. Alferov. Penal Reform International. 1996. № 24. C. 18.

contains a provision about that the recommendations (declarations) of international organizations of the issues of the execution of sentences and treatment of convicts is implemented in the criminal-executive legislation of Russia of in the presence of the necessary economic and social opportunities[1].

In turn, in part 2 of art. 3 of the CEC of the Republic of Belarus is stated that if an international treaty of the Republic of Belarus establishes other rules for the execution of punishment and treatment of convicted persons, than those are provided by the criminal-executive legislation of the Republic of Belarus, then the rules of the international treaty are applied directly, except when the international treaty implies that the application of such norms requires the adoption of the domestic act[2].

At the same time, the Concept of legal policy of the Republic of Kazakhstan suggests that criminal legislation should take into account the definition of primary and inalienable of human rights and freedoms as the highest social values protected by law[3]. At the same time, as the scientists rightly point out (M. V. Paliy, E. N. Begaliyev, Ye. S. Nazymko, etc.), the historical experience and practice prove that criminal penalties and their system are in close interrelation and interaction with specific conditions and

[1] Uholovno-yspolnytelskyi kodeks Rossyiskoi Federatsyy. M. Omeha-L, 2012. 91 s.

[2] Uholovno-yspolnytelskyi kodeks Respublyky Belarus. Mynsk. Natsyonalnii tsentr ynformatsyy Respublyky Belarus, 2000. 144 s.

[3] Kontseptsyia pravovoi polytyky Respublyky Kazakhstan. Almati. Zhety Zharhi, 2002. S. 45.

an era, with the general principles of life of society, with its social and political order, with moral and ethical and legal views, with customs and habits, as well as with ideological stereotypes that exist in society[1].

In the context of the changes proposed in this work to the current criminal-executive legislation of Ukraine regarding the improvement of the mechanism of provision the personal safety of convicts, who were translated into correctional colonies from educational colonies, the experience of some foreign countries deserves the attention. Thus, in Romania, the current legislation provides that juveniles aged 14–18 are responsible for their actions before an educational institution or enterprise and only on condition of committing grave crimes, and in exceptional cases, the case is considered by the court, which can send them to an educational labour school for a term of 2 to 5 years. And only in the case of the commission of a murder by persons aged 18 to 21 years, they may be imprisoned[2].

In Germany, imprisonment and disciplinary arrest for minors and the systems of their trusteeship education are separated by one another, that is, if a decision on imprisonment or a disciplinary arrest was

[1] Palyi M. V. Poniatyia, pryznaky, systema y nakazanyia po uholovnomu zakonodatelstvu Ukrayni y Respublyky Kazakhstan: ucheb. posobye. [Palyi M. V., Behalyev E. N., Nazimko E. S. y dr.]; pod red. V. N. Besschasnoho. K. KNT,2009. S. 5.

[2] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 347.

taken by a juvenile court, then about trusteeship education – the trusteeship courts of social assistance.

In France, sentences for minors are imposed only by juvenile courts, which may apply penalties and measures of safety (measures of special protection). These measures are applied in the order of civil justice to minors, who have not committed a crime yet, but are in danger status. At the same time, these measures do not differ significantly from imprisonment and for the most part are implemented in the IES and in the trust educational refuge within the time period, that is determined by the court, the duration of which depends on the degree of re-socialization of minors.

Similar procedures, with certain features, are foreseen in England, where the juvenile detention may be extended or reduced by the Ministry of the interior, and in Hungary, where the questions about the specified terms are relied on by the Pedagogical Councils of the IES.

In turn, in the USA, there are private IES for minors, which are kept by public and religious organizations, which is very important in view of provision the personal safety of convicts[1].

All these and other positive points in the legislation and in the practical activity of foreign countries, without doubt, should be taken into account, with taking measures on the formation and implementa-

[1] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 346–348.

tion criminal-executive policy of Ukraine[1]. How in this context, researchers note, despite the fact that current criminal-executive legislation of Ukraine, in most cases, meets international standards, the actual conditions for the keeping of convicts in the IES have significant divergences with international standards of treatment and the keeping of convicts, including issues, that are related to the provision of their personal safety[2]. Thus, it is worth recognizing that a rather complex and lengthy process of reforming the SPSU is ahead, changing priorities in criminal-enforcement policy so that conditions for the holding of convicts not only prevent them from committing new crimes and criminal infringements on other convicts, restrain their degradation, as well as meet the requirements of modernity, including the international legal character, for provision their personal safety.

The specified conclusion is based not only on the positive successes received in this direction abroad, but also on the results of an anonymous survey of convicts sentenced to imprisonment and the person-

[1] Kolomiiets N. V. Zasoby realizatsii kryminalno-vykonavchoi polityky. N. V. Kolomiiets. Kryminalno-vykonavchomu kodeksu Ukrainy 9 rokiv: materialy I Mizhnar. nauk.-prakt. konf. (Kyiv, 28 lystop. 2012 r.). K. Instytut kryminalno-vykonavchoi sluzhby, 2012. S. 41.

[2] Kuzhakhar V. S. Vzhyttia orhanizatsiino-praktychnykh zakhodiv do pryvedennia u vidpovidnist z vymohamy chynnoho zakonodavstva ta mizhnarodnykh standartiv umov trymannia osib v ustanovakh poperednoho uviaznennia ta vykonannia pokaran. V. S. Kuzhakhar. Derzhavna penitentsiarna sluzhba Ukrainy istoriia sohodennia ta perspektyvy rozvytku u svitli mizhnarodnykh penitentsiarnykh standartiv ta Kontseptsii derzhavnoi polityky u sferi reformuvannia Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy: materialy Mizhnar. nauk.-prakt. konf. (Kyiv, 28–29 berez. 2013 r.). K. DPtS Ukrainy; VD “Dakor”, 2013. S. 208–209.

nel of some IES of Ukraine. In particular, the question "Are you familiar with other legal and regulatory sources on issues that are connected with the right of convicts to personal safety?" (it was about international legal acts), 12,67 % of those polled among number of convicts answered "no" (supplement 1, 2).

Among the personnel of the IES on this question, the answers were distributed as follows: "no" – 3,47 % of respondents and "partially" – 32,13 % (supplement 3, 4).

In order to address these and other problems that are set forth in this section of the dissertation, it is necessary to implement the following measures:

1. To make the following changes and additions to art. 10 of CEC of Ukraine:

1) in the title of the article, replace "personal security" with "personal integrity" and present it in the new name "The right of convicts to personal integrity";

2) to make similar changes to p. 1 of this article and to put it in the following wording: "Convicts have the right to personal safety".

Such modification is conditional on the content of international legal acts on these issues and on the need to harmonize the current legislation of Ukraine with these sources[1]. In addition, in part 1 of art. 3 of the Constitution of Ukraine to the highest social values are included both security and integrity.

[1] Barabash Yu. H. Konstytutsiina polityka Ukrainy u sferi implementatsii mizhnarodnykh standartiv prav liudyny. Yu. H. Barabash. Problemy zakonnosti: Resp. mizhvidom. nauk. zb. vidp. red. V. Ya. Tatsii. Kh. Nats. yuryd. akad. Ukrainy, 2009. Vyp. 100. S. 82.

2. Part 4 of art. 7 of CEC of Ukraine "Fundamentals of legal status of convicts" should be supplemented at the end of the sentence by the following phrase: "as well as international treaties of Ukraine, the consent to necessity of which has been given by the Verkhovna Rada of Ukraine" to put it in the following wording: "The legal status of convicts is determined by the laws of Ukraine, as well as by this Code, in accordance with the procedure and conditions for the execution and serving of a particular type of punishment, as well as by international treaties of Ukraine, the consent to which has been given by the Verkhovna Rada of Ukraine".

The need for modification of this article of the CEC of Ukraine is due to the following circumstances:

– the requirements of art. 9 of the Constitution of Ukraine, which states that such international treaties are part of the national legislation of Ukraine;

– the content of art. 2 of CEC of Ukraine, according to which current international treaties, the consent to which has been given by the Verkhovna Rada of Ukraine, are classified as sources of criminal-executive legislation of Ukraine;

– the international obligations of Ukraine, which it has taken upon accession to the relevant international organizations (UN, CE, etc.)[1].

3. An article 2 of the CEC of Ukraine should be supplemented by the part 2 with following content: "The recommendations (declarations) of internatio-

[1] Pro Plan zakhodiv iz vykonannia oboviazkiv ta zoboviazan Ukrainy, shcho vyplyvaiut z yii chlenstva v Radi Yevropy: zatv. Ukazom Prezydenta Ukrainy vid 20 sich. 2006 r. № 392006. Ofitsiinyi visnyk Ukrainy. 2006. № 4. St. 143.

nal organizations on the issues of the execution of sentences and treatment of convicts are implemented in the criminal-executive legislation of Ukraine in the presence of the necessary financial, economic, material and other social opportunities".

In particular, such modification is resulted from:

– the real state of ensuring the activity of the SPSU, on the functioning of which annually allocates only up to 50 % of the appropriations from the envisaged in the state budget, and in some periods – even less[1], that in view of the declared in the law of the rights of the convicts and of the guarantees of their implementation in practice, is to some extent immoral. That is why it is necessary to contribute to the CEC of Ukraine the proposed part 2 of art. 2;

– the modern crisis phenomena in the financial and economic activity of all countries of the world and Ukraine in particular, in the conditions of which the corresponding budget allocations, first of all, are directed at satisfaction of priority and urgent social tasks[2];

– the content of part 2 of art. 102 of CEC of Ukraine "The regime in the colonies and its main

[1] Sydorenko S. M. Shliakhy realizatsii Kontseptsii derzhavnoi polityky u sferi reformuvannia DKVS Ukrainy na suchasnomu etapi. S. M. Sydorenko. Derzhavna penitentsiarna sluzhba Ukrainy istoriia sohodennia ta perspektyvy rozvytku u svitli mizhnarodnykh penitentsiarnykh standartiv ta Kontseptsii derzhavnoi polityky u sferi reformuvannia Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy: materialy Mizhnar. nauk-prakt. konf. (Kyiv, 28–29 berez. 2013 r.). K. DPtS Ukrainy; VD "Dakor", 2013. S. 6.

[2] Alisov Ye. O. Do pytannia pro realizatsiiu osnovnoi funktsii Natsionalnoho banku Ukrainy v umovakh svitovoi ekonomichnoi kryzy. Ye. O. Alisov. Problemy zakonnosti. 2009. № 187. S. 277.

requirements", according to which the regime in the colonies should minimize the difference between living conditions in the colony and in freedom, that should contribute to increasing the responsibility of convicts for their behavior and awareness of human dignity[1].

The conclusions to the section 1

1. Despite a large number of scientific works, that are devoted to the issues of execution and serving of sentences in the form of deprivation of liberty and, in particular, to the problems connected with provision the right of convicts to personal safety, need an in-depth and comprehensive development of such issues in the designated problem:

– the meaning of the concept of personal safety of convicts and its system-forming features;

– the ratio of domestic and international legal acts on the specified theme of research and the task of their harmonization among themselves;

– other aspects that make up the content of subject matter and the tasks of this scientific development (current state of provision, characteristic features and methods of commiting of encroachments on the personal safety of convicts in correctional colonies; features and classification of convicts belonging to the risk groups of probable victims of criminal encroachments in correctional colonies, etc.).

[1] Naukovo-praktychnyi komentar Kryminalno-vykonavchoho kodeksu Ukrainy. [I. H. Bohatyrov, O. M. Dzhuzha, O. I. Bohatyrova, Ye. M. Bodiul ta in.]; za zah. red. I. H. Bohatyrova. K. Atika, 2010. S. 223.

2. Although the terms of "personal safety" and "personal danger" are antonyms[1], these categories are paired, that is, without finding out the meaning of both concepts it is difficult to derive from them the basic one. The approach and the results of the analysis of specified concepts that are applied in this work made it possible to formulate the author's definition of the concept of «he right of convicts to personal safety», which should be understood as the measure of possible behavior of the convict while serving a sentence, which is defined at the normative-legal and personal levels as one which ensures the protection of vital important interests of a person and a citizen. In this case, the system-forming features defining the content of this concept are follows: 1) this is a measure of the possible (permitted) behavior of the convicted person, that is his right; 2) this right can be used by a convict while serving a sentence; 3) the specified right of the convicts is determined at the regulatory-legal level; 4) this right is provided by convicts also at the personal level, that is, it is connected with the so-called victimal behavior of the person; 5) the object of protection of the convict are his vital important interests as of a person and a citizen.

According to this, it must be noted, that the definition of "the right of convicts to personal safety" is important both from the point of view of the theory of law and the practice of its implementation

[1] Slovnyk inshomovnykh sliv. za red. O. S. Melnychuka. K. HRURE, 1977. S. 58.

and provision at the normative-legal and personal (victimological) levels.

3. The commitments of Ukraine, which it has assumed upon entering into various international organizations, and adopted on the basis of it the relevant normative legal acts on the harmonization of the norms of domestic and international law determine the necessity of solving various contradictions, including those related to ensuring the right of convicts to personal safety. It is established that in the international legal acts the term "personal integrity" is used, which, according to its etymological content, is broader than the concept of "personal safety". An additional argument in this regard are the provisions of part 1 of art. 3 of the Constitution of Ukraine, in which it concerns not only safety, but also integrity as the highest social values.

The necessity of modification of art. of 10 CEC of Ukraine is justified, namely the statement in the new title and in the version "The right of convicts to personal integrity".

Section 2

The meaning, features and characteristics of unlawful encroachments on personal safety of the convicts in Ukraine

2.1. The present status (2004–2017), specific signs and characteristic signs and methods of committing encroachment on personal safety of convicts regarding the deprivation of liberty in Ukraine

In the context of the research of this problem, it is undoubtedly important to find out the content of such concepts as criminal-legal and criminological characteristic of encroachments. This will enable not only to establish the essence of existing problems, but also to propose the most effective and rational scientifically grounded ways of their solution.

Despite the fact that scientific and educational-methodical publications often use the term "criminal-legal characteristic of a crime"[1], but in none of them this notion is not formulated. In addition, it is mostly identified with terms such as "legal analysis of the

[1] Ostapenko L. A. Kryminalno-pravova kharakterystyka umysnykh vbyvstv pry pomiakshuiuchykh obstavynakh (statti 116, 117, 118 KK Ukrainy): avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". L. A. Ostapenko. K., 2003. S. 8–9.

crime"[1] or "analysis of objective and subjective features of a certain crime"[2] or "theoretical and methodological principles for the investigation of crime"[3] etc.

Of course, in such circumstances, it is rather difficult to choose the right direction of coverage of the criminal legal features of criminal encroachments on the personal safety of convicts in correctional colonies, the moreб that neither at the monographic[4] nor the dissertational levels[5] the issue of the concept and content of the criminal-legal characteristic of crimes in Ukraine have not been investigated. In the scientific sources refer only to the methodological foundations of the study of the Special part of the CC of Ukraine[6].

Given that the definition of the content and phasing of the concept of "criminal-legal characteristic

[1] Bludylina M. Ye. Yurydychnyi analiz obiektyvnoi storony skladu zlochynu na stadii porushennia kryminalnoi spravy. M. Ye. Bludylina. Visnyk Akademii advokatury Ukrainy. 2000. № 17. S. 171.

[2] Korzhanskyi M. Y. Klasyfikatsiia zlochyniv: [navch. posib.]. Korzhanskyi M. Y. K. Atika, 2001. S. 71–76.

[3] Kuznetsov V. V. Kryminalno-pravova okhorona hromadskoho poriadku ta moralnosti v ukrainskomu vymiri: [monohr.]. Kuznetsov V. V. K. Interservis, 2012. S. 152–153.

[4] Kryminolohiia bibliohrafichnyi dovidnyk. [uporiad.: K. S. Bosak, S. F. Denysov, M. O. Yefimova; za zah. red. S. F. Denysova]. Zaporizhzhia: KPU, 2010. 488 s.

[5] Natsionalna biblioteka Ukrainy im. V. I. Vernadskoho: dani pro avtoreferaty vykonanykh v Ukraini za 2009–2012 roky dysertatsii na zdobuttia naukovoho stupenia doktora i kandydata yurydychnykh nauk [Elektronnyi resurs]. Rezhym dostupu: http//irbis-nbuv.gov.uacgi-bin

[6] Panov M. I. Metodolohichni zasady doslidzhennia problem Osoblyvoi chastyny Kryminalnoho prava. M. I. Panov, N. O. Hutorova. Problemy zakonnosti: Resp. mizhvidom. nauk. zb. vidp. red. V. Ya. Tatsii. Kh. Nats. yuryd. akad. Ukrainy, 2009. Vyp. 100. S. 15–16.

of the crime" have not been belonged to the objectives of this study, the clarification of specified signs has been carried out through another notion – the criminological characteristic of the crime, which is thoroughly elucidated in the scientific literature[1] and includes all the basic elements and criminal-legal characteristics of the crime.

In the broadest sense, the criminological characteristic reflects the generalized manifestations of the criminal-legal phenomenon[2]. In the narrow one - it is stable information about the level, structure, dynamics and geography of criminal acts, as well as about the persons who commit them, namely, the new information about the true state of the phenomenon, complete and accurate knowledge about it for an effective and scientifically sound fight against specific crimes[3].

Taking into account the specified scientific approaches and last researches on the mentioned problem[4], "the criminological characteristic of encroachments on the personal safety of convicts of depriva-

[1] Lukash A. S. Zgvaltuvannia kryminolohichna kharakterystyka, determinatsiia ta poperedzhennia: [monohr.]. za red. V. V. Holiny. Kh. Pravo, 2008. S. 4–29.

[2] Kosenko S. Poniattia kryminalnoi kharakterystyky statevykh zlochyniv shchodo nepovnolitnikh. S. Kosenko. Pidpryiemnytstvo, hospodarstvo i pravo. 2003. № 5. S. 104–105.

[3] Vasylevych V. V. Poniattia kryminolohichnoi kharakterystyky nasylnytskykh zlochyniv. V. V. Vasylevych. Pravo Ukrainy. 1997. № 12. S. 83.

[4] Dzhuzha A. O. Zapobihannia zlochynam proty statevoi nedotorkanosti dytyny: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". A. O. Dzhuzha. Kh. Khark. nats. un-t vnutr. sprav, 2012. S. 9–10.

tion of liberty in Ukraine" should be understood as information about the level, structure, dynamics and geography of crimes that affect the right of convicts to personal safety and about those persons who carry them out.

As practice shows, until now, there are no proper mechanisms and guarantees of provision, which is the specified in art. 10 of CEC of Ukraine, the rights of persons serving sentences, on personal safety. As a result, every year the convicts become objects of criminal encroachments on the part of other persons who are being held in the IES and with the participation of the personnel of the SPSU[1].

Summarizing the scientific literature, we can conclude that the most closely related to the current problems of the specified theme of the research are the scientific developments of O. G. Kolb[2], Z. V. Zhuravska[3], V. V. Shchenderyk[4] and some others authors

[1] Informatsiino-analitychni materialy pro stan doderzhannia zakonnosti pry vykonanni sudovykh rishen u kryminalnykh spravakh, a takozh pry zastosuvanni inshykh zakhodiv prymusovoho kharakteru, poviazanykh z obmezhenniam osobystoi svobody hromadian, za 9 misiatsiv 2012 roku. K. Heneralna prokuratura Ukrainy, 2012. S. 4.

[2] Kolb O. H. Ustanova vykonannia pokaran yak subiekt zapobihannia zlochynam: dys. … doktora yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". Kolb Oleksandr Hryhorovych. K., 2007. 513 s.

[3] Zhuravska Z. V. Viktymolohichni zasady borotby zi zlochynnistiu u mistsiakh pozbavlennia voli: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". Z. V. Zhuravska. K. Nats. akad. vnutr. sprav, 2010. 20 s.

[4] Shemshuchenko Yu. S. Bezpeka natsionalna. Yu. S. Shemshuchenko. Yurydychna entsyklopediia: [v 6 t. T. 1]. K. Ukr. entsykl., 1998. 870 s.

who have been analyzed the crime in general and in the IES in particular. At the same time, the latest statistical and other informations on the state of provision the rights of convicts for personal safety, including official surveys and analysis of the content of the identified issues, cover the period only until 2010[1]. Thus, the obvious and actual task is to develop it not only taking into account the dynamics and trends of the development of crime in the IES in the period, which has not been studied (2011–2017), but also in line with the current capabilities in this context of the OIA, in connection with the adoption of the new CPC of Ukraine[2]. In particular, in accordance with the requirements of art. 104 of CEC, one of the main tasks of the OIA in the IES is the provision the safety of the convicts. At the same time, as A. Kh. Stepanyuk rightly pointed out, the protection of the rights of convicts for personal safety in the specified form is carried out as transparently, but also secretly, by operational units of authorized to it of state bodies within their powers through conducting operational-search activities aimed at the protection of life and health of persons serving sentences in the form of deprivation of liberty[3].

Given the specified and other features, the analysis of the problems, that have been defined in

[1] Profilaktyka zlochyniv: pidruch. [O. M. Dzhuzha, V. V. Vasylevych, O. F. Hida ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2011. S. 561–612.

[2] Zakon Ukrainy "Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy u zviazku z pryiniattiam Kryminalnoho protsesualnoho kodeksu Ukrainy" stanom na 25 trav. 2012 r. K. Alerta, 2012. 304 s.

[3] Kryminalno-vykonavchyi kodeks Ukrainy: nauk.-prakt. koment. za zah. red. V. V. Kovalenka, A. Kh. Stepaniuka. K. Atika, 2012. S. 315–316.

this work as a subject of research was carried out in the following planes:

1) through the study of the environment in which the convicts to deprivation of liberty function and carry out their vital activity;

2) by the way of studying specific criminal cases instituted for a certain period (year) upon encroachment on the life and health of persons who were serving the punishment in the IES;

3) with taking into account other circumstances that contributed to the committing of crimes against the convicts in the IES (victimological behavior of victims of crime, latency, improper performance of official duties by the personnel of the SPSU, etc.).

As shown by the study of archival statistical and other sources (2006–2016), the qualitative composition of the convicts, who are kept in the IES, in spite of the humanization of the criminal liability law[1], has not changed significantly[2] and has this look (environment in which convicts are serving sentences to deprivation of liberty): the total number of convicts – 117426 thousand people; 17,1 thousand people – they are convicted of intentional murder, including 8,5 thousand convicts who has been committed murder with aggravating circumstances (article 67 of the

[1] Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo humanizatsii vidpovidalnosti za pravoporushennia u sferi hospodarskoi diialnosti vid 1 cherv. 2012 r. № 4025–17. Ofitsiinyi visnyk Ukrainy. 2011. № 98. S. 35–70.

[2] Pro diialnist pidrozdiliv okhorony, nahliadu i bezpeky kryminalno-vykonavchykh ustanov u 2011 rotsi: inform. biul. K. Derzhavna penitentsiarna sluzhba Ukrainy, 2011. S. 3–7.

CC of Ukraine) (21 % of the total number of convicts in the IES); 9,9 thousand people – for intentional grave bodily harm (12 % in the structure of all convicts); 29,2 thousand people – for robbery, looting and extortion (36 % in the total number of convicts); 2,3 thousand people – for rape (3 %); 34 persons – for taking hostages (less than 1 %); 21,8 thousand people – convicts for crimes in the sphere of illegal circulation of narcotic drugs, psychotropic substances, their analogues or precursors, and other crimes against health of population (28 %)[1].

According to the time-bounds of deprivation of liberty, that has been determined by the courts, the convicts in the IES are distributed as follows: a) under to 1 year inclusive – 1530 persons; b) from 1 year to 2 years – 5859 persons; c) from 2 to 3 years – 14372 persons; d) from 3 to 5 years – 39632 persons; e) from 5 to 8 years – 31228 persons; f) from 8 to 10 years - 10651 persons; g) from 10 to 15 years – 10699 persons; h) more than 15 years – 1890 persons; i) life imprisonment – 1778 persons.

At the same time, as it is established by scientists, on the preventive lists of the IES there are almost 9 thousand convicts, which is 7,5 % of the total number[2], and another 60 % of those convicted are those who are in a depressed state; 30 % – in a

[1] Zahalna kharakterystyka Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy (stanom na 25 kvit. 2013 r.). K. DPtS Ukrainy, 2013. S. 6–10.

[2] Pro diialnist pidrozdiliv okhorony, nahliadu i bezpeky kryminalno-vykonavchykh ustanov u 2011 rotsi: inform. biul. K. Derzhavna penitentsiarna sluzhba Ukrainy, 2011. S. 3–4.

state of increased aggression, 10 % – in the limiting state[1].

In this regard, there are such interesting data about the subjects of crimes, who commit socially dangerous encroachments on the lives and health of convicts, namely – those who:

1) were not in the preventive lists of IES – 70–80 % in the structure of crimes;

2) belonged to the category of perpetrators of the established order of serving a sentence, who had two or more disciplinary sanctions, but were not recognized as persistent perpetrators, since they did not fall under the force of art. 133 of CEC of Ukraine for formal grounds on these issues;

3) convicted to forced treatment (article 96 of the CC) – 3 thousand, among of which 811 – are chronic alcoholics, and 2497 persons – are chronic drug addicts[2].

The structure of crimes, that are committed against convicts in the IES is almost unchanged annually. In particular, if in 2006 there were 411 crimes registered, two of which – based on part 1 of art. 122 of CC "Intentional medium bodily harm" (0,7 % in the structure of all crimes) and one under part 1 of art. 121 of the CC "Intentional grave bodily

[1] Kalashnyk N. H. Reformuvannia penitentsiarnoi systemy Ukrainy. za zah. red. N. H. Kalashnyk. Praktyka vykonannia alternatyvnykh pokaran Inform. biul. K. DDUPVP, 2008. № 2. S. 9–10.

[2] Provadzhennia operatyvno-rozshukovykh zakhodiv i slidchykh dii u mistsiakh pozbavlennia voli: [monohr.]. [Ortynskyi V. L., Kolb O. H., Kozak V. P. ta in.]; za zah. red. V. L. Ortynskoho, O. H. Kolba. Khmelnytskyi. KhmTsNTEI, 2010. S. 19–20.

harm"[1], then in 2012 406 crimes were committed, including 5, that are related to the encroachment upon the lives and health of convicts in the IES. In doing so, it was prevented about 11 thousand crimes[2]. These indicators have not changed significantly either in 2013–2017[3].

In 2009, there were 422 criminal manifestations in the IES, including 3 intentional murders of convicts (part 1 of article 115 of the CC); 2 intentional moderate bodily harms of these individuals[4]. In 2010, there were registered 1 premeditated murder of convicts and 1 intentional moderate bodily harm in the IES[4]. In 2011, there occurred an increase in the level of crime in general and regarding the convicts in the IES, in particular, namely: under the part 1 of art. 115 of the CC were initiated 4 criminal cases and 3 – under the art. 122 of the CC[5].

In 2012, out of the total number of crimes (406), 5 crimes were committed against the lives and health of convicts[6]. In the I quarter of 2013, overall were

[1] Pro diialnist pidrozdiliv okhorony, nahliadu i bezpeky kryminalno-vykonavchykh ustanov u 2007 rotsi: inform. biul. K. Derzh. departament Ukrainy z pytan vykonannia pokaran, 2008. S. 2.

[2] Zahalna kharakterystyka Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy (stanom na 25 kvit. 2013 r.). K. DPtS Ukrainy, 2013. S. 3–4.

[3] Pro diialnist pidrozdiliv okhorony, nahliadu i bezpeky kryminalno-vykonavchykh ustanov u 2012 rotsi inform. biul. K. Derzh. departament Ukrainy z pytan vykonannia pokaran, 2012. S. 3–4.

[4] Pro diialnist pidrozdiliv okhorony, nahliadu i bezpeky kryminalno-vykonavchykh ustanov u 2010 rotsi inform. biul. K. DPtSU, 2011. S. 3–4.

[5] Pro diialnist pidrozdiliv okhorony, nahliadu i bezpeky kryminalno-vykonavchykh ustanov u 2011 rotsi inform. biul. K. DPtSU, 2011. S. 5.

[6] Zahalna kharakterystyka Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy (stanom na 25 kvit. 2013 r.). K. DPtS Ukrainy, 2013. S. 3–4.

committed 76 crimes, 1 of them was committed against the life and health of convicts[1].

As for other so-called criminogenomic determinants of criminal manifestations[2] with regard to convicts in the IES, then in this context one should be distinguished the followings:

1) the participation in criminal activity against persons serving sentences in the form of deprivation of liberty, against the personnel of SPSU, on the part of which there are socially dangerous encroachments on the life and health of the convicts (intentional murder, including with aggravating circumstances; causing intentional bodily harms, including those that led to the victim's death; torture): annually from 2 to 4 crimes[3];

2) the miscalculations of the personnel of the IES, which is related to operative and investigative prevention of crimes against convicts to deprivation of liberty[4];

3) the influence of the authorities of the criminal environment on other convicts. So, only in 2012, there were 2900 persons in the preventive lists of the IES, including 4 are so-called "thieves in the law",

[1] Zahalna kharakterystyka Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy (stanom na 25 kvit. 2013 r.). K. DPtS Ukrainy, 2013. S. 3–4.

[2] Holina V. V. Kryminolohichni ta kryminalno-pravovi problemy borotby z bandytyzmom. Sotsialno-pravove ta kryminolohichne doslidzhennia. Holina V. V. Kh. Rehion-inform, 2004. S. 11–12.

[3] Right there. S. 50–61.

[4] Zakharov V. P. Orhanizatsiia indyvidualnoho zapobihannia zlochynam u kryminalno-vykonavchii ustanovi: [monohr.]. Zakharov V. P., Kolb O. H., Myronchuk S. M., Milishchuk L. I. [2-he vyd., pererobl. i dopov.]. Lutsk. PP Ivaniuk V. P., 2007. S. 276.

75 "authorities" of the criminal environment and 151 leaders of organized crime groups[1];

4) the presence in the IES of a high number of prohibited items in the using of convicts. In particular, a considerable amount of money (more than 40 thousand UAH); alcoholic drinks and pruno (up to 15 liters); narcotic substances (more than 600 g); more than 6 thousand mobile phones; about 1,5 thousand barbed-cutting items, etc.[2]; are annually withdrawn from channels of penetration into protected objects, and directly from convicts;

5) the unlawful or reckless or hasty application of special means and physical force against convicts (article 106 of the CC) (in general over one year more than 1200 cases happen in the IES)[3];

6) other criminogenically significant circumstances, which are described in detail in the scientific literature[4] and in the reviews of the SPiSU[5].

In the context of finding out the real state of provision the personal safety of convicts in correctional colonies, information about the so-called criminological background phenomena is important. They are

[1] Zahalna kharakterystyka Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy (stanom na 1 trav. 2012 r.). K. DPtS Ukrainy, 2012. S. 27.

[2] Pro diialnist pidrozdiliv okhorony, nahliadu i bezpeky kryminalno-vykonavchykh ustanov u 2010 rotsi: inform. biul. K. DPtSU, 2011. S. 77.

[3] Pro diialnist pidrozdiliv okhorony, nahliadu i bezpeky kryminalno-vykonavchykh ustanov u 2011 rotsi: inform. biul. K. DPtSU, 2011. S. 24–25.

[4] Pryshko I. Pro deiaki aspekty sotsialnoi pryrody zlochynnoi subkultury zasudzhenykh. I. Pryshko. Visnyk prokuratury. 2012. № 10 (136). S. 88–93.

[5] Zahalna kharakterystyka Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy (stanom na 1 trav. 2012 r.). K. DPtS Ukrainy, 2012. 105 s.

in a dialectical relationship with criminal encroachments on the specified object of legal protection[1], among which are the following: the suicide cases among persons serving sentences in the form of deprivation of liberty; violations of safety, which resulted in injury or other serious consequences for a person[2]; various diseases and mortality rate among convicts, etc. In particular, according to the General Prosecutor's Office, only in 2011, in the SPSU were registered 808 deaths of convicts and the remanded in custody (in 2010 – 764[3]. The specified trend continued in 2012[4] and in 2013–2017. In addition, nine suicides were committed in 2011 (all in IW)[5].

A similar situation has been observed in the IES and IW of Ukraine since 1991. So, even in the Main

[1] Kryminolohiia: pidruch. [dlia stud. vyshch. navch. zakl.]. za zah. red. O. M. Dzhuzhi. K. Yurinkom Inter, 2002. S. 322–323.

[2] Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy. [4-te vyd., pererobl. ta dopov.]. za zah. red. S. S. Yatsenko. K. A.S.K., 2006. S. 570.

[3] Informatsiino-analitychnyi biuleten pro stan prokurorskoho nahliadu za doderzhanniam zakoniv pry vykonanni sudovykh rishen u kryminalnykh spravakh ta zastosuvanni inshykh prymusovykh zakhodiv za 12 misiatsiv 2011 roku. K. Heneralna prokuratura Ukrainy, 2012. S. 58–59.

[4] Sydorenko S. M. Shliakhy realizatsii Kontseptsii derzhavnoi polityky u sferi reformuvannia DKVS Ukrainy na suchasnomu etapi. S. M. Sydorenko. Derzhavna penitentsiarna sluzhba Ukrainy istoriia sohodennia ta perspektyvy rozvytku u svitli mizhnarodnykh penitentsiarnykh standartiv ta Kontseptsii derzhavnoi polityky u sferi reformuvannia Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy: materialy Mizhnar. nauk-prakt. konf. (Kyiv, 28–29 berez. 2013 r.). K. DPtS Ukrainy; VD "Dakor", 2013. S. 5–13.

[5] Informatsiino-analitychnyi biuleten pro stan prokurorskoho nahliadu za doderzhanniam zakoniv pry vykonanni sudovykh rishen u kryminalnykh spravakh ta zastosuvanni inshykh prymusovykh zakhodiv za 12 misiatsiv 2011 roku. K. Heneralna prokuratura Ukrainy, 2012. S. 59.

directions of the reform of the criminal-executive system in the Ukrainian Soviet Socialist Republic it was noted, that conditions of detention of prisoners and convicts do not meet international standards[1]. This is evidenced in particular by the number of suicides among convicts and detainees in custody, namely: in 1992 – 65; 1993 – 72; 1994 – 66; 1995 – 69[2]; 1996 – 18; 1997 – 10[3]; 1998 – 56[4]; 1999 – 45[5]. The situation did not change significantly in the 2000s. So, only in 2004–2013, more than 300 convicts and detainees in custody committed suicide, namely: (2004 – 41; 2005 – 44; 2006 – 401; 2007 – 44; 2008 – 54[6], 2009 – 27; 2010 – 24; 2011 – 26; 2012 – 21; the I quarter of 2013 – 3[7]).

[1] Osnovnyie napravlenyia reformi uholovno-yspolnytelnoi systemi v Ukraynskoi SSR utv. Postanovlenyem Kabyneta Mynystrov USSR ot 11 yiulia 1991 h. K. HUYN MVD USSR, 1991. S. 2.

[2] Operatyvno-sluzhbova i vyrobnycho-hospodarska diialnist ustanov kryminalno-vykonavchoi systemy u 1995 rotsi: Inform. biul. K. Holovne upravlinnia vykonannia pokaran MVS Ukrainy, 1996. № 16. S. 30.

[3] Operatyvno-sluzhbova i vyrobnycho-hospodarska diialnist ustanov kryminalno-vykonavchoi systemy u 1997 rotsi: Inform. biul. K. Holovne upravlinnia vykonannia pokaran MVS Ukrainy, 1998. № 20. S. 51.

[4] Operatyvno-sluzhbova i vyrobnycho-hospodarska diialnist ustanov kryminalno-vykonavchoi systemy u 1998 rotsi: Inform. biul. K. DDUPVP, 1999. № 2. S. 29.

[5] Operatyvno-sluzhbova i vyrobnycho-hospodarska diialnist ustanov kryminalno-vykonavchoi systemy u 1999 rotsi: Inform. biul. K. DDUPVP, 2000. № 4. S. 24.

[6] Holyna V. V. Prestupnost mnohoobrazye poniatyi y predmetnaia sushchnost yavlenyia. Holyna V. V. Problemy zakonnosti: Resp. mizhvidom. nauk. zb. vidp. red. V. Ya. Tatsii. Kh. Nats. yuryd. akad. Ukrainy, 2009. Vyp. 100. S. 279.

[7] Zahalna kharakterystyka Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy (stanom na 25 kvit. 2013 r.). K. DPtS Ukrainy, 2013. S. 26–29.

Every year, there happen cases of occupational injuries in the IES and other grave consequences among convicts to deprivation of liberty (starting in 1999[1], the number of occupational accidents is over 100, and with fatal consequences – more than 10 annually)[2]. In addition, the number of convicts who have been infected with tuberculosis (more than 3 thousand persons) and with other serious diseases – dermato-venereal, somatic, psychic and others (more than 5 thousand persons)[3] is increasing every year in the IES and the IW.

All this, along with criminal encroachments, undoubtedly reduces the level of the safety of convicts' staying in the IES and IW. That is why during an anonymous poll of persons, who are held in the specified places of deprivation of liberty, the question "Do you feel the safety of your staying in places of deprivation of liberty?" was answered by 89,87 % – "no" and 8,4 % – "partially", and only 1,73 – "yes" (the supplements 1, 2, 5, 6). In this regard, the answers to the question "Is the right of the convicts for deprivation of liberty to personal safety in the penal institutions of Ukraine properly ensured?" of the personnel of the IES (IW) are disturbing. The ans-

[1] Operatyvno-sluzhbova i vyrobnycho-hospodarska diialnist ustanov kryminalno-vykonavchoi systemy u 1999 rotsi: Inform. biul. K. DDUPVP, 2000. № 4. S. 75.

[2] Zahalna kharakterystyka Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy (stanom na 25 kvit. 2013 r.). K. DPtS Ukrainy, 2013. S. 48–49.

[3] Karpachova N. I. Zabezpechennia prav i svobod liudyny v penitentsiarnykh zakladakh. N. I. Karpachova. Stan dotrymannia ta zakhystu prav i svobod liudyny v Ukraini: dopovid Upovnovazhenoho Verkhovnoi Rady Ukrainy z prav liudyny. K., 2004. S. 295.

wers were distributed as follows: "no" – 30,87 % of the polled persons; "partially" – 21,6 %; "yes" – 47,53 % (the supplements 3, 4).

Thus, it should be noted that the subjective right of convicts to deprivation of liberty to personal safety may be violated in various forms and depending on the types of their life in the IES, and, accordingly, should have several organizational levels of provision, including OIA, by the way of establishing guarantees and duly fulfilling certain responsibilities (first of all, for operational units) the personnel of the SPSU.

As O. M. Dzhuzha and O. I. Osaulenko rightly believe, specified right has a certain specificity, which is determined, first of all, by the social and legal status of the convicts, by the specific of the criminal-executive system and by the peculiarity of the forms of provision of the right of personal safety for these persons, which are diverse and have legislative consolidation in the basic norms and institutes of criminal-executive law[1]. At the same time, the analysis of the current criminal-executive legislation of Ukraine gives grounds to approve, that at the legislative level the following measures of provision personal safety of the convicts to deprivation of liberty are enshrined: 1) the supervision of convicts (article 102 of the CEC); 2) the disciplinary measures, that are applicable to convicts (article 132 of the CEC); 3) the measures of social and educational influence on convicts

[1] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 212.

(chapter 19 of the CEC) (articles 123–137); 4) the measures, that are carried out by the framework of the OIA (article 104 of the CEC); 5) the safety measures in the correctional colony (chapter 16 of the CEC); 6) the moving of convicts to a safe place (articles 10, 93, 100, 101 of the CEC); 7) the measures of a medical nature, that are aimed at provision the health protection of convicts (part 1 of article 8 of the CEC, art. 116, 117 of the CEC); 8) other measures, that are provided in art. 10 of the CEC and in other laws (article 36, 38, 39, etc. of the CC of Ukraine, articles 12–16 of the Law of Ukraine "On the militia", etc.).

2.2. The forms and means of provision the personal safety of convicts and the basic violations of the right of these persons to safety

According to the analysis of the criminal-executive legislation of Ukraine and the practice of its application, the provision of the personal safety of the convicts takes place in three directions, namely by the way: 1) the consolidation of the specified right in the legislation; 2) the definition of the order of its realization on the legal level[1]; 3) the realization of this right by convicts in practice[2].

[1] Kryminalno-vykonavchyi kodeks Ukrainy: nauk.-prakt. koment. A. Kh. Stepaniuk, I. S. Yakovets; za zah. red. A. Kh. Stepaniuka. Kh. Yurinkom Inter, 2005. S. 47–48.

[2] Karpachova N. I. Zabezpechennia prav i svobod liudyny v penitentsiarnykh zakladakh. N. I. Karpachova. Stan dotrymannia ta zakhystu prav i svobod liudyny v Ukraini: dopovid Upovnovazhenoho Verkhovnoi Rady Ukrainy z prav liudyny. K., 2004. S. 293–295.

At the same time, each of the above-mentioned directions is realized through certain legal forms (in scientific sources, the form is understood as the external manifestation of any phenomenon, that is associated with its essence, content)[1].

In accordance with the literal contents of art. 10 of the CEC of Ukraine, the following forms of provision the right of convicts to personal safety can be distinguished: a) the moving of convicts to a safe place; b) the implementation of other measures for elimination of danger; c) the resolving the issue of the place of further serving a sentences of convicts; d) the provision safety of convicts in connection with their participation in criminal proceedings.

At the same time, as scientists have rightly noticed (A. P. Gel, G. S. Semakov, I. S. Yakovets), the latter form is a special form of implementation of the specified right by convicts, since it is not related to the process of serving a sentence, and consequently, with the results of the impact on the person of the main means of correction and resocialization, but are the consequences of her participation in criminal proceedings in one or other role[2].

As for the contents of the first form – the moving of convicts to a safe place, as the results of the study

[1] Karpachova N. I. Zabezpechennia prav i svobod liudyny v penitentsiarnykh zakladakh. N. I. Karpachova. Stan dotrymannia ta zakhystu prav i svobod liudyny v Ukraini: dopovid Upovnovazhenoho Verkhovnoi Rady Ukrainy z prav liudyny. K., 2004. S. 278–308.

[2] Hel A. P. Kryminalno-vykonavche pravo Ukrainy: [navch. posib.]. [Hel A. P., Siemakov H. S., Yakovets I. S.]; za zah. red. A. Kh. Stepaniuka. K. Yurinkom Inter, 2008. S. 115.

showed, when it is implemented in practice, a number of problems arise because of irregularity of many significant moments by legal and regulatory acts of Ukraine. In particular, in part 2 of art. 10 of the CEC states, that the administration of the IES takes measures of moving the convicted person to a safe place, however, neither at the legislative nor at the departmental levels of the concept of "a safe place" is not formulated. And this, in turn, reduces the level of efficiency of the activity of the personnel of the IES of doing this task and reduces the possibility of provision of safe living conditions for convicts in places of deprivation of liberty. At the same time, according to the literal contents of paragraph 89 of the Rules of the internal order of penitentiary institutions, then to the safe places in the IES should include: a private cell CTA, the IW and the punishment cell.

In turn, scientists give the so-called extended interpretation[1] the concept of "a safe place", attaching to it (O. V. Lysosyed) any free room of the IES, the access to which is restricted or prohibited for conflict parties, other convicts or personnel of the institution (residential premises of another department or other section, rooms of reception area, free CTA, DW, etc.)[2]. In our opinion, such an approach is more justified, and therefore it would be better to

[1] Skakun O. F. Teoriia derzhavy i prava: [pidruch.]. Skakun O. F.; per. z ros. Kh. Konsum, 2001. S. 411.

[2] Naukovo-praktychnyi komentar Kryminalno-vykonavchoho kodeksu Ukrainy. [A. P. Hel, O. H. Kolb, V. O. Korchynskyi ta in.]; za zah. red. A. Kh. Stepaniuka. K. Yurinkom Inter, 2008. S. 49.

consolidate it in paragraph 89 of the specified Rules and in the note to the article 10 of the CEC of Ukraine. In addition, in the science of criminal executive law, the very concept of "safe place" is derived, under which in the IES it is necessary to understand the premises, which is specially equipped for these purposes, the cameras of the DW, the punishment cells, etc.[1]

Of interest in this context is the approach, which is set in paragraph 173 of the Rules of the internal order of penitentiary institutions of the Russian Federation, which states that, in addition to other premises, for this purpose cameras DW, the CTA or the punishment cell may be used[2]. In addition, in contrast to similar Rules of Ukraine, in these Rules is excluded a special section XXI «The moving of the convict to a safe place», in which a procedure for resolving the issue of provision the personal safety of convicts is provided[2] and the safety should be taken into account in the current legislation and by-laws of Ukraine.

So, summing up the above, one can formulate the following definition of the concept "a safe place in the IES": it is any free or specially equipped room, including a private cell of a DW, a CTA or a punishment cell, the access to which is restricted or for-

[1] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 215.

[2] Pravyla vnutrenneho rasporiadka yzoliatorov vremennoho soderzhanyia, sledstvennikh yzoliatorov, yspravytelnikh uchrezhdenyi y vospytatelnikh kolonyi. Novosybyrsk. Syb. unyv. yzd-vo, 2011. S. 74.

bidden for conflict parties, other convicts or colony personnel without special permission and which fully ensures the personal safety of the convict, who, according to the law, turned for help.

In this case, free premises should be understood as any service space, which is isolated from convicts (the quarantine room in the medical unit; the room for detainees in the reception area; the office space of personnel of the IES, etc.), the access to which is prohibited for convicts (and in some cases – of the personnel of the colony). The equipment of such premises is carried out in accordance with the requirements of section II of the specified Rules. Unlike the previous one, a special room is equipped in such a way, in order to provide safe living conditions for convicts in it, as well as safe working conditions (service) for IES personnel. Such, in particular, include separate chambers of the DW, the CTA and the punishment cell, referred to in paragraph 89 of the Rules.

The relevance of the designated problem and the need for a solution at the legal and regulatory level are evidenced by the results of the anonymous poll conducted both for convicts to deprivation of liberty and for the personnel of the IES. So, to the question: "What are the most dangerous places of residence for convicts in the IES?", 34,47 % convicts gave the answer – the DW; 28,8 % – the CTA; 16,27 % – the working area; 9,8 % – the residential zona; 1,27 % – the medical unit; 7,67 % – the investigative ward; 1,73 % – other places (the supplements 1, 2). In turn, the personnel of the IES to the question: "Do you

consider the current conditions for the convicts in the colonies to be the sources of encroachments on their personal safety?", 17 % respondents gave the answer "yes", "partly" – 47,93 % and "no" – 47,93 % (the supplements 3, 4).

As the practice shows, ambiguous for understanding both by the convicts and the personnel of the IES is the concept "Danger of life and health", which is used in part 2 of art. 10 of CEC and in paragraph 89 of the Rules. In the scientific literature such a danger is considered a set of conditions and factors that create the possible (the damage, which is provided for the convicts and can be carried out only under certain circumstances) or obvious (real causing damage) danger to their vital important interests[1].

In judicial practice, for example, in paragraph 2 of the Resolution of the Plenum of the Supreme Court of Ukraine "On judicial practice in cases about necessary defense" of April 26, 2012, № 1 is stated, that in clarifying the presence of a threat, it is necessary to take into account the behavior of the assailant, in particular the direction of intent, the intensity and nature of his actions, which give the reason to perceive the threat as a real to person, who is being protected[2]. In turn, in paragraph 4 of the Resolution

[1] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 213–214.

[2] Pro sudovu praktyku u spravakh pro neobkhidnu oboronu: Postanova Plenumu Verkhovnoho Sudu Ukrainy u kryminalnykh spravakh vid 26 kvit. 2002 r. № 1. Postanovy Plenumu Verkhovnoho Sudu Ukrainy u kryminalnykh spravakh. [3-tie vyd., zmin. i dop.]. K. Vydav. dim "Skif", 2008. S. 236.

of the Plenum of the Supreme Court of Ukraine "On judicial practice in cases of crimes connected with violation of the regime of serving sentences in places of deprivation of liberty" of March 26, 1993 No. 2 was provided an interpretation of yet another method of committing a threat for the lives and health of the convicts – the terrorization of the convicts who have entered on the path of correction, which should be understood as the application of violence or threat of violence in order to force them to abandon a conscientious attitude to work, an adhering to the rules of the regime, etc.[1]

In other doctrinal sources it is noted that the danger (encroachment on the life and health of the person) must be valid, real and such that exists objectively, and not only in the imagination of a person who asked for protection[2]. As O. O. Kvaksha and V. V. Anishchuk reasonably concluded, the imaginary defense – is defense against the imaginary, but in reality against not an existing encroachment[3], which is very important in the view of determining the reality of the danger to the life and health of the

[1] Pro sudovu praktyku v spravakh pro zlochyny, poviazani z porushenniamy rezhymu vidbuvannia pokarannia v mistsiakh pozbavlennia voli: Postanova Plenumu Verkhovnoho Sudu Ukrainy vid 26 berez. 1993 r. № 2. Postanovy Plenumu Verkhovnoho Sudu Ukrainy u kryminalnykh spravakh. [3-tie vyd., zmin. i dop.]. K. Vydav. dim "Skif", 2009. S. 182.

[2] Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy. [4-te vyd., pererobl. ta dopov.]. za zah. red. S. S. Yatsenko. K. A.S.K., 2006. S. 79–80.

[3] Kvasha O. O. Uiavna oborona kryminolohichno-pravova kvalifikatsiia ta vidpovidalnist: [monohr.]. O. O. Kvasha, V. V. Anishchuk. Lutsk. Vezha Druk, 2012. S. 51.

convicts, who have the right to apply with a request to provide their personal safety. In this case, according to the literal meaning of part 2 of art. 10 of CEC of Ukraine, the application form may be arbitrary and have oral or written nature. An additional argument in this regard is the provisions of part 3 of art. 5 of the Law of Ukraine "On appeal of citizens", in which are defined the requirements for appeals, one of which are an applications[1], as well as art. 8, 107, 113 and other of CEC of Ukraine and paragraphs 43, 45 of the Rules of the internal order of penitentiary institutions.

On the basis of the above, it should be noted that paragraph 89 of the said Rules "Provision the right of convicts to personal safety" should be supplemented with part 3, in which to lay out the above provisions regarding the content of the "a safe place", "the danger to the life and health of the convict", as well as other essential system-forming features that constitute the content of this right of the convicts, and which are defined in part 2 of art. 10 of CEC of Ukraine. In particular, in this paragraph of the Rules it should also be noted that an official of a penitentiary body or institution, in accordance with the requirements of part 1 of art. 14 of the Law of Ukraine "On the State penal service of Ukraine", should be understood the personnel of the SPSU, namely: the rank-and-file and superior personnel; the specialists who do not have special ranks, and other

[1] Pro zvernennia hromadian: Zakon Ukrainy vid 2 zhovt. 1996 r. № 39396-VR. Vidomosti Verkhovnoi Rady Ukrainy. 1996. № 47. St. 256.

employees who work under employment contracts in the SPSU. It should be noted that from the duty of provision the rights of convicts for personal safety, none of the categories of personnel of the SPSU is not exempted, and in cases where such actions are not carried out, is liable in accordance with the law, depending on the socially dangerous consequences, including by art. 135 "The leaving in a danger" and art. 367 "The neglect of service" of the CC of Ukraine. In addition, in accordance with the requirements of art. 214 of CPC "The beginning of pre-trial investigation", the relevant officials from the number of personnel of the SPSU are obliged to enter information on the committing of a criminal offense, which are set forth in the statement of the convict to the Unified Register of pre-trial investigations and to initiate an investigation[1]. If, however, the unlawful acts, according to the information set out in the statement of the convict, are committed by the employees of the penitentiary institution, after the registration of the application in the Uniform Register of pre-trial investigations, the criminal proceedings shall be made through the apportionment between the relevant bodies.

Another problem that significantly affects the level of effectiveness of provision the right of convicts to personal safety is the inconsistency of the provisions of paragraph 89 of the Rules of the inter-

[1] Bohatyrov I. H. Metodychni rekomendatsii shchodo zastosuvannia Kryminalnoho protsesualnoho kodeksu Ukrainy orhanamy i ustanovamy, shcho nalezhat do sfery upravlinnia Derzhavnoi penitentsiarnoi sluzhby Ukrainy. Bohatyrov I. H., Puzyrov M. S. K. DPtS Ukrainy, 2012. S. 12.

nal order of penitentiary institutions with the content of art. 10 of CEC of Ukraine, namely: if in the law the right to personal safety is granted to all persons without exception, but in the Rules – only to the convicts who do not allow a violation of the regime. The specified departmental voluntarism (from the Latin voluntarius – dependent on the will)[1] is a consequence of gross violation of such general sectoral principles of law as the rule of law and legality, which are enshrined in art. 8, 19 of the Constitution of Ukraine and art. 5 of CEC[2]. In paragraph 2 of the resolution of the Plenum of the Supreme Court of Ukraine "On the application of the Constitution of Ukraine in the administration of justice" of November 1, 1996 № 9 states: since the Constitution of Ukraine, as defined in its art. 8, has the highest legal force and its norms are norms of direct action, the courts, when considering specific cases, should assess the content of any law or other legal act in terms of its compliance with the Constitution and in all cases, should apply the Constitution as an act of direct action[3].

Accordingly, it is expedient to amend paragraph 89 of the Rules of the internal order of penitentiary

[1] Slovnyk inshomovnykh sliv. za red. O. S. Melnychuka. K. HRURE, 1977. S. 131.

[2] Stepaniuk A. F. Rol pryntsypov uholovno-yspolnytelnoho prava v formyrovanyy zakonodatelstva. A. F. Stepaniuk. Vesi Femydi. 2000. № 3 (5). S. 81.

[3] Pro zastosuvannia Konstytutsii Ukrainy pry zdiisnenni pravosuddia: Postanova Plenumu Verkhovnoho Sudu Ukrainy vid 1 lystop. 1996 r. № 9. Postanovy Plenumu Verkhovnoho Sudu Ukrainy u kryminalnykh spravakh. [3-tie vyd., zmin. i dop.]. K. Vydav. dim "Skif", 2009. S. 201.

institutions and to coordinate its content with the provisions of art. 10 of CEC o f Ukraine regarding determining the conditions for moving the convict to a safe place without any limitation of his rights, in particular, of related to the violation or not violation the regime of detention in the IES by latter.

In the context of the clarification of the social legal nature of specified problem of the research, as scientists (O. M. Dzhuzha, O. I. Osaulenko) have established, in practice, there are quite frequent cases when the convicted person does not apply to the administration of the colony for certain circumstances (for example, the relying on own efforts, the help of other convicts or in an effort not to undermine his imagine authority in the IES) with the application about the emergence of a danger of his life and health[1]. In this case, the officials of the IES, guided by the requirements of art. 10 of CEC, are obliged to identify such a danger in the implementation of appropriate measures, including the OIA. That is why it would be logical to complement art. 10 of CEC with the part 6, in which to oblige the personnel of the bodies and the IES to identify the sources of danger that threaten the life and health of the convict while serving the sentence. This approach is based on the fact that in art. 104 of CEC "Operative and investigative activity in colonies" to the operational units of the IES is assigned the task of provision the safety of

[1] Kryminalno-vykonavche pravo Ukrainy : pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 215.

the convicts. A similar task is enshrined in the Law of Ukraine "On operative and investigative activity".

An additional argument in this context is the results of studying the practice, obtained during the study, namely: it is established that there are many reasons for occurrence of threats for the personal safety of convicts in the IES (personal dislike, conflict, claims for payment of a debt that arises from a lose in gamble, controversy related to a criminal past, etc.). At the same time, their nature for the realization of the right to personal safety, as it was rightly noted by O. M. Dzhuzha and O. I. Osaulenko, is irrelevant, the main thing is the emergence of a threat to the life and health of a specific convict[1].

Therefore, only in solving the existing problems described in this work, such a form of provision the right of convicts to personal safety like the moving of convicted persons to a safe place will be maximally effective and logical, in view of the special importance of those social values of the convict (in particular, his life and health), that are violated by various socially dangerous sources in IES.

As the results of this study showed, not less unresolved issues are also characteristic of another form of provision the right of convicts to personal safety, which is specified in art. 10 of CEC, namely, on the implementation of other measures for the elimination of danger. So, to this day, at the level of

[1] Kryminalno-vykonavche pravo Ukrainy : pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 214.

no one law or other legal act, including the SPiSU, such measures are defined, and this, in turn, strengthens the subjective basis when making decision on this issue by the personnel of the IES and sometimes leads to arbitrariness, official negligence and other unlawful actions by these persons[1]. This is evidenced not only by the judicial practice[2], but also the results of an anonymous poll of convicts, who to the question "Whose actions are most dangerous for your personal safety?" gave the answer, that from the personnel of he IES (71,13 % respondents), and only 10 % – from another persons and 18,87 % – from convicts (the supplements 1, 2). At the same time, the answers of personnel of the IES to the question "Did you encroach on the personal safety of convicts to deprivation of liberty in connection with your activity?" were distributed as follows: "partly" – 32,47 %; "yes" – 6,4 %; "no" – 61,13 % (the supplements 3, 4).

Thus, in accordance with the fact that the list of other measures to be carried out by any official of the IES to provide the safety of the convict, who applied with such an application, in part 2 of art. 10 of CEC of Ukraine is not defined, the colony personnel is forced to exercise them at their discretion, taking into account the state of the actual criminogenic

[1] Problemy zabezpechennia prav zasudzhenykh u kryminalno-vykonavchii systemi Ukrainy. [V. A. Badyra, A. P. Hel, I. S. Yakovets ta in.]; za zah. red. Ye. Yu. Zakharova. Kh. Prava liudyny, 2009. S. 9–12.

[2] Pro sudovu praktyku u spravakh pro perevyshchennia vlady abo sluzhbovykh povnovazhen: Postanova Plenumu Verkhovnoho Sudu Ukrainy vid 26 hrud. 2003 r. № 15. Postanovy Plenumu Verkhovnoho Sudu Ukrainy u kryminalnykh spravakh. K. Vydav. dim "Skif", 2009. S. 387–392.

situation in the institution, the categories of convicts, who serving sentences in the form of deprivation of liberty, and other specific circumstances. This, in particular, as the practice shows, may be the isolation of convicts who pose a threat, the bringing them to different types of legal liability, moving conflicting parties to other IES, etc.[1] Of course, such situations should be reflected in a separate Instruction of the SPiSU, analogous to such that regulates the issues of provision the safety of persons, who involved in criminal proceedings (Order of the SPiSU dated April 4, 2005 № 61)[2]. Especially since according to part 2 of art. 19 of the Constitution of Ukraine and art. 5 of CEC, the personnel of the IES should act only in the manner defined by the Constitution and laws of Ukraine.

Another problem, which is in dialectical connection with others, that were discussed, is a provision the personal safety of convicts by the way of moving them to another IES. Its content consists in the fact that in the normative legal acts that regulate the order of moving the convicts from one colony to another, there is a number of contradictions and gaps. This applies, first of all, to the list of exceptional circumstances that impede the further stay of the convict in a correctional or educational colony. This

[1] Naukovo-praktychnyi komentar Kryminalno-vykonavchoho kodeksu Ukrainy. [A. P. Hel, O. H. Kolb, V. O. Korchynskyi ta in.]; za zah. red. A. Kh. Stepaniuka. K. Yurinkom Inter, 2008. S. 50.

[2] Korniienko M. V. Pravomirne obmezhennia konstytutsiinykh prav liudyny v protsesi zdiisnennia ORD. M. V. Korniienko. Derzhava i pravo. Spets. vypusk. K., 2005. S. 189–194.

question has not been resolved at the legislative level. In particular, in part 2 of art. 93 of CEC "Serving of the entire period of sentence in one correctional or educational colony by convicts" was used the term "in exceptional cases" by the legislator, it is possible to move the convict to another colony, but no clarification has been provided for these cases.

In this context the situation is also complicated by the provisions of part 2 of art. 93 of CEC of Ukraine, which states that the procedure for the moving of convicts is determined by the legal regulatory acts of the central body of the executive power on the questions of execution of sentences. These, as established during this dissertation study, include: 1) Instruction on the order of distribution, referral and moving for serving the sentence of persons convicted to deprivation of liberty[1]; 2) Regulations on the commission on questions of distribution, referral and moving for serving the sentence of persons convicted to deprivation of liberty[2]; 3) Regulations on the Appellate Commission of the SPiSU on the issues of distribution, referral and moving for serving the sentence of persons convicted to deprivation of li-

[1] Instruktsiia pro poriadok rozpodilu, napravlennia ta perevedennia dlia vidbuvannia pokarannia osib, zasudzhenykh do pozbavlennia voli: zatv. nakazom DDUVP vid 16 hrud. 2003 r. № 261. Kryminalno-vykonavche zakonodavstvo Ukrainy. Kryminalno-vykonavchyi kodeks Ukrainy. Normatyvno-pravovi akty. uporiad. V. S. Kovalskyi, Yu. M. Khakhuda. K. Yurinkom Inter, 2005. S. 340–356.

[2] Kontseptsyia obespechenyia bezopasnosty lychnosty, obshchestva, hosudarstva. Belaia knyha rossyiskykh spetssluzhb. M. Dukhovnoe nasledye, 1996. S. 357–362.

berty[1]; 4) Rules of the internal order of penitentiary institutions (paragraphs 85, 86, etc.); 5) others[2].

However, in none of them it has identified a list of exceptional circumstances, which may be the basis for the moving of convicts to other IES, which is given to the discretion of the administration of the IES and the commissions of the issues of the distribution, referral and moving of convicts to another colonies. At the same time, in legal sources of the time of the USSR and before the adoption of the CEC of Ukraine in July 2003, certain features of this notion in the law were determined. In particular, in part 2 of art. 17 of the Fundamentals of corrective and labor legislation of the Union of Soviet Socialist Republics and Union Republics, it was stated that, the moving of a convict for further serving a sentence from one colony to another of the same type of regime or from one prison to another is allowed in the case of his illness or of a substantial change in the volume or nature of the work performed by the convict, as well as in the presence of other exceptional circumstances that prevent further keeping of a convicted person in a given colony or prison[3]. A

[1] Polozhennia pro Apeliatsiinu komisiiu DPtSU z pytan rozpodilu, napravlennia ta perevedennia dlia vidbuvannia pokarannia osib, zasudzhenykh do pozbavlennia voli: zatv. nakazom DDUVP vid 16 hrud. 2003 r. № 261. Kryminalno-vykonavche zakonodavstvo Ukrainy. Kryminalno-vykonavchyi kodeks Ukrainy. Normatyvno-pravovi akty. uporiad. V. S. Kovalskyi, Yu. M. Khakhuda. K. Yurinkom Inter, 2005. S. 360–362.

[2] Kryminalno-vykonavchyi kodeks Ukrainy: nauk.-prakt. koment. A. Kh. Stepaniuk, I. S. Yakovets; za zah. red. A. Kh. Stepaniuka. Kh. Yurinkom Inter, 2005. S. 10–15.

[3] Osnovi yspravytelno-trudovoho zakonodatelstva Soiuza SSR y Soiuznikh Respublyk. K novoi zhyzny. M. MVD SSSR, 1969. № 9. S. 2–18.

similar content of the concept of "exceptional circumstances" was enshrined in part 2 of art. 22 of CLC of Ukraine in 1971[1].

Certain attempt to interpret the concept of "exceptional circumstances" was carried out by the authors of the commentary to the CLC of the Russian Soviet Federative Socialist Republic in 1979, explaining, in particular, art. 19 of this Code as follow: "the exceptional circumstances that prevent further keeping in a given colony or prison should be understood, for example, as the behavior of the convict, which makes impossible his staying in this environment due to the vicious needs of the convict. Exceptional circumstances may also be expressed in the need for a convict to be moved to another colony or prison in order to facilitate the disclosure of a new crime"[2].

Some elements of specified notion are defined in part 2 of art. 72 of CEC of Belarus: in the case of illness and in the reorganization or liquidation of the IES[3], as well as in part 2 of art. 81 of CEC of the Russian Federation, to which the legislator included the cases of illness of the convicted person, provision of his personal safety, the reorganization or liquidation of the IES[4].

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[1] Pro zatverdzhennia Vypravno-trudovoho kodeksu Ukrainskoi RSR: Zakon Ukrainskoi RSR vid 23 hrud. 1970 r. № 3325-07. Vidomosti Verkhovnoi Rady Ukrainskoi RSR. 1971. № 1. St. 6.

[2] Kommentaryi k Yspravytelno-trudovomu kodeksu RSFSR. pod red. y s predysl. N. P. Malshakova. [2-e yzd., pererab. y dop.]. M. Yuryd. lyt., 1979. S. 47.

[3] Uholovno-yspolnytelskyi kodeks Respublyky Belarus. Mynsk. Natsyonalnii tsentr ynformatsyy Respublyky Belarus, 2000. 144 s.

[4] Uholovno-yspolnytelskyi kodeks Rossyiskoi Federatsyy. M. Omeha-L, 2012. 91 s.

At the same time, in doctrinal sources of Ukraine can also find separate approaches to the definition of the content of the concept of "exceptional circumstances". In particular, A. Kh. Stepanyuk and I. S. Yakovets in the scientific and practical comment to the CEC of Ukraine (2005) under the above circumstances understand the behavior of the convict, which makes it impossible for him to stay in this environment due to his negative tendencies, as well as provision the personal safety of the convict or convicts (one, who is moved to another IES or those, who stay); the moving to another institution in order to facilitate the disclosure of a crime; an avoidance of other extraordinary circumstances in an institution, etc.[1] One of these circumstances is, in particular, the participation of a person in a criminal proceeding. In paragraph 4 of the resolution of the Plenum of the Supreme Court of Ukraine "On the application of the law providing for state protection of judges, court employees and law enforcement bodies and persons involved in the proceedings" of June 18, 1999 № 10 stated: in the case of availability of a written or oral application of a person who is entitled to state protection, in the case of availability of a threat to the life, health, house and property of this person or of his close relatives, the head of the court or the court, in proceedings of which there is the case, is required

[1] Kryminalno-vykonavchyi kodeks Ukrainy: nauk.-prakt. koment. A. Kh. Stepaniuk, I. S. Yakovets; za zah. red. A. Kh. Stepaniuka. Kh. Yurinkom Inter, 2005. S. 300.

to adopt a resolution (decree) on the application of safety measures[1].

In the scientific and practical comments of the CEC of Ukraine (2008), exceptional circumstances include the avoidance of other extraordinary circumstances in the colony (group disobedience, mass riots and natural disaster, epidemics)[2].

In scientific and practical comment to the CEC of Ukraine (2010), its authors under one of specified circumstances consider the prevention of emergency situations in the colony[3]. A similar approach to the solution of this problem is enshrined in the scientific and practical comment of the CEC of Ukraine (2012)[4].

At the same time, in other contemporary educational and methodological publications of Ukraine the meaning of "exceptional circumstances that impede the further serving sentences of a convict in a certain IES" is not interpreted[5]. This question has

[1] Pro zastosuvannia zakonodavstva, shcho peredbachaie derzhavnyi zakhyst suddiv, pratsivnykiv sudu i pravookhoronnykh orhaniv ta osib, yaki berut uchast u sudochynstvi: Postanova Plenumu Verkhovnoho Sudu Ukrainy vid 18 cherv. 1999 r. № 10. Postanovy Plenumu Verkhovnoho Sudu Ukrainy v kryminalnykh spravakh. uporiad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. K. PALYVODA A.V., 2011. S. 167.

[2] Naukovo-praktychnyi komentar Kryminalno-vykonavchoho kodeksu Ukrainy. [A. P. Hel, O. H. Kolb, V. O. Korchynskyi ta in.]; za zah. red. A. Kh. Stepaniuka. K. Yurinkom Inter, 2008. S. 272.

[3] Naukovo-praktychnyi komentar Kryminalno-vykonavchoho kodeksu Ukrainy. [I. H. Bohatyrov, O. M. Dzhuzha, O. I. Bohatyrova, Ye. M. Bodiul ta in.]; za zah. red. I. H. Bohatyrova. K. Atika, 2010. S. 211.

[4] Kryminalno-vykonavchyi kodeks Ukrainy: nauk.-prakt. koment. za zah. red. V. V. Kovalenka, A. Kh. Stepaniuka. K. Atika, 2012. S. 275.

[5] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 634–653.

not been developed in contemporary foreign publications[1].

According to the results of this and other special studies on questions of the safety of person, society and the state[2], in practice, various difficulties arise, that are related to the correct application of normative legal acts, which are aimed at provision the right of convicts to personal safety. In particular, the convicts in the IES answered the question "Do you consider, that everything has been done at the legislative level for provision the right of convicts to personal safety?" as follow: "no" – stated 74,53 % respondents; "partly" – 17,53 %; "yes" – 7,93 % (the supplements 1, 2). In turn, the interviewed persons from the number of personnel of the IES to the question "Is it worth making changes to the legislation of Ukraine on personal safety of convicts?" gave the answer: "yes" – 18,6 %; "partly" – 54,07 %; "no" – 27,33 % (the supplements 3, 4).

On the basis of the foregoing it is worth noting that the consolidation in the current criminal-executive legislation of Ukraine of the notion of "exceptional circumstances that impede the further stay of the convict in the IES" is a fully obvious, logical and actual issue.

The another form of provision the right of convicts to personal safety, that is specified in art. 10 of

[1] Uholovno-yspolnytelnoe pravo Rossyy: [ucheb.]. pod red. V. Y. Selyverstova.[6-e yzd., pererab. y dop.]. M. Norma YNFRA, 2012. S. 308–312.

[2] Babaev M. M. Teoretycheskye y prykladnie problemi obespechenyia krymynolohycheskoi bezopasnosty. M. M. Babaev, V. A. Pleshakov. Uholovnaia polytyka y problemi bezopasnosty hosudarstva: tr. Akad. M. Akad. upravlenyia MVD Rossyy, 1998. S. 34–42.

CEC of Ukraine – provision of such a right in connection with their participation in criminal proceedings (chapter 3 of the CPC of Ukraine), has certain features[1], problems[2] and discussion moments[3].

First of all, it should be noted that in the current CPC of Ukraine are not enshrined the legal guarantees and mechanisms for the implementation of specified right, unlike the CPC in 1961, in art. 52-1 of which these issues were completely regulated. At the same time, in the new CPC, only in a fragmented manner, without any notes, says about the right to provide the personal safety of individual participants in criminal proceedings: the suspect, the accused (paragraph 12 of part 3 of article 42 of the CPC); the justified and convicted (part 3 of article 43 of the CPC); the legal representative of the suspect, the accused (part 5 of article 44 of the CPC) and others. In addition, in connection with the adoption of the new CPC, the provisions of the Law of Ukraine "On provision the safety of persons involved in criminal

[1] Anysymkov V. M. Osobennosty obespechenyia bezopasnosty, poriadka yspolnenyia y otbivanyia nakazanyia v YTU. V. M. Anysymkov, V. S. Epaneshnykov. Ufa. UVSh MVD RF, 1996. S. 24–32.

[2] Selyverstov V. Y. Zakonnie ynteresi, kak ǝlement pravovoho statusa lyts, otbivaiushchykh nakazanye v vyde lyshenyia svobodi. V. Y. Selyverstov. Pravovoe y metodycheskoe obespechenye yspolnenyia nakazanyi: sb. nauch. tr. M. Yzd-vo VNYY MVD RF, 1994. S. 11–13.

[3] Kolb O. H. Pro deiaki problemy realizatsii zasudzhenymy svoikh prav i zakonnykh interesiv. O. H. Kolb, A. I. Hrushytskyi. Formuvannia penitentsiarnoi systemy Ukrainy problemy sohodennia: nauk.-prakt. konf. (Odesa, 25 trav. 2012 r.). O., 2012. S. 57–60.

proceedings"[1] need to be substantially refined and need the relevant instruction of the SPiSU on these issues[2]. It is not about formal regularization of these normative legal acts in accordance with the content of the CPC (for example, the replacement in the text of the word "legal proceedings" to "the proceedings", as follows from the content of article 2 of the CPC), but about a thorough change of the legislator's approach to solving the problems of personal safety of participants in criminal proceedings[3]. In particular, in the CPC of Ukraine is identified as participants in the proceedings not only the suspect, the accused (art. 42), and convicted (art. 43), who as an object of protection in art. 2 of the above law is absent. At the same time, certain elements of the legal mechanism for the protection of such a category of persons are foreseen by the current CEC of Ukraine. So, in art. 90 of this Code states that in accordance with the procedure established by the CPC of Ukraine, the convict may be temporarily left in the IW or moved

[1] Pro zabezpechennia bezpeky osib, yaki berut uchast u kryminalnomu sudochynstvi: Zakon Ukrainy vid 23 hrud. 1993 r. № 3782 XII. Vidomosti Verkhovnoi Rady Ukrainy. 1994. № 11. St. 51.

[2] Instruktsiia pro poriadok zdiisnennia zakhodiv shchodo zabezpechennia bezpeky osib, yaki berut uchast u kryminalnomu sudochynstvi, v ustanovakh vykonannia pokaran i slidchykh izoliatorakh Derzhavnoi kryminalno-vykonavchoi sluzhby: zatv. nakazom DDUPVP vid 4 kvit. 2005 r. № 61. Ofitsiinyi visnyk Ukrainy. 2005. № 21. St. 1160. 10 cherv.

[3] Kolb I. O. Pro zmist mekhanizmu zabezpechennia prava zasudzhenykh na osobystu bezpeku. I. O. Kolb. Formuvannia penitentsiarnoi systemy Ukrainy problemy sohodennia: nauk.-prakt. konf., m. Odesa, 25 trav. 2012 r. O., 2012. S. 53.

from an arrest house, a correctional center, a disciplinary battalion or a colony to the IW, if necessary, performance investigative actions in the case of a crime, that committed by another person or this person, for which she was not convicted, or due to the proceedings in court[1].

According to the content of part 4 of art. 10 of CEC of Ukraine, needs to be changed the part 1 of art. 7 of the Law of Ukraine "On provision the safety of persons, who take a part in criminal proceedings", namely: this norm should be supplemented by measures such as the isolated keeping a person and his moving to another institution of the serving of sentences, as well as the moving of the convict to a safe place (part 3 of article 10 of the CEC). Similar changes should be made to art. 19 of this Law "Provision the security of persons, who are located in institutions of the execution of sentences or investigative wards or in places with special regime of keeping". At the same time, the development of measures to provision the personal safety of convicts who are participants in criminal proceedings, is impossible without changing such norms of the CEC of Ukraine that regulate the specified issue, including those that are closely linked to the content of other forms of provision of personal safety of convicts in the IES, as

[1] Kolb I. O. Shchodo napriamkiv, form i zasobiv zabezpechennia prava zasudzhenykh na osobystu bezpeku. I. O. Kolb, V. V. Lopokha. Priorytetni napriamy rozvytku zakonodavstva Ukrainy: materialy Mizhnar. nauk.-prakt. konf., m. Zaporizhzhia, 10–11 lystop. 2011 r. Zaporizhzhia. Zaporizka miska hromadska orhanizatsiia "Istyna", 2011. Ch. 3. S. 75.

that were discussed above. As the scientists rightly point out (O. M. Dzhuzha, O. I. Osaulenko), such a right of convicts may exist in various forms and, accordingly, have several organizational levels of provision[1].

In addition, this problem should be considered not only in the context of personal safety, but also at the higher level, which is proposed by A. A. Lapin, namely, as a criminological safety[2]. This conclusion can be reached, taking into account, in particular, the results of the analysis carried out in this study on the content of the criminal-executive legislation of Ukraine on the issues of provision the personal safety of those convict in the IES.

Consequently, if we take as a basis the external expression of the right of convicts to personal safety, as stated in art. 10 of CEC of Ukraine, then the form of the realization of such a right by persons serving a sentence in accordance with a court verdict or are parties to a criminal proceeding, should be understood to be the legal consolidation of the said right in the normative legal acts, which regulate issues arising from the content of the legal status of convicts and participants in criminal proceedings and are carried out by means and directions specified by the law.

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[1] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 212.

[2] Lapyn A. A. Stratehyia obespechenyia krymynolohycheskoi bezopasnosty lychnosty, obshchestva, hosudarstva y ee realyzatsyia orhanamy vnutrennykh del: [monohr.]. A. A. Lapyn ; pod obshch. red. S. Ya. Lebedeva. M. YuNYTY DANA; Zakon y pravo, 2012. S. 17–22.

Thus, the content of the concept of "the form of realization of the right to personal safety by convicts or persons who are participants in criminal proceedings" constitutes such systemic features.

1. The subjects of realization of this right are both convicts and persons who are participants in criminal proceedings. In accordance with the requirements of the current criminal procedural law of Ukraine (article 43 of the CPC), a person, who has been convicted by a court, is considered a convict[1]. After entering the said sentence into legal force (article 532 of CPC) and, according to the content of art. of 4 CEC of Ukraine, the administration of the IW should provide the personal safety of a person in the first case, in the second case – the corresponding IES (article 11 of CEC)[2].

As for other participants in the criminal proceedings (according to chapter 3 of the CPC - suspected, accused, acquitted, convicted, defender, victim, lawful representatives of these persons, etc.), then provision their safety is carried out in accordance with the procedure specified in the CPC and in the special law of Ukraine "On provision the safety of persons, who are involved in criminal proceedings"[3], and as regards

[1] Kryminalnyi protsesualnyi kodeks Ukrainy: nauk.-prakt. koment.: [u 2 t. T. 1]. [Ie. M. Blazhivskyi, Yu. M. Hroshevyi, Yu. M. Domin ta in.]; za zah. red. V. Ya. Tatsiia, V. P. Pshonky, A. V. Portnova. Kh. Pravo, 2012. S. 152–153.

[2] Kryminalno-vykonavchyi kodeks Ukrainy: nauk.-prakt. koment. za zah. red. V. V. Kovalenka, A. Kh. Stepaniuka. K. Atika, 2012. S. 26–29.

[3] Pro zabezpechennia bezpeky osib, yaki berut uchast u kryminalnomu sudochynstvi: Zakon Ukrainy vid 23 hrud. 1993 r. № 3782 XII. Vidomosti Verkhovnoi Rady Ukrainy. 1994. № 11. St. 51.

prisoners in custody and convicts - also in accordance with the requirements of the Instruction on the procedure for taking measures to provide the safety of persons, who are involved in criminal proceedings, in the institutions of the criminal-executive system, which was approved by the order of the SPSU on April 4, 2005 № 61[1].

2. Legal provision of the said right of convicts. In science, legal provision is understood as a set of legal rules, that regulating legal relations and the legal status of persons[2].

In the context of the above-mentioned theme of study, in addition to the above-mentioned legal sources on the issues of provision the personal safety of convicts, to their totality include the Rules of the internal order of penitentiary institutions, in paragraph 89 of which certain measures in this direction are defined[3].

The generally accepted among scientists is the conclusion that the right of a person is an opportunity provided by law to have, use and dispose of social benefits and values[4], as well as to enjoy the basic

[1] Instruktsiia pro poriadok zdiisnennia zakhodiv shchodo zabezpechennia bezpeky osib, yaki berut uchast u kryminalnomu sudochynstvi, v ustanovakh vykonannia pokaran i slidchykh izoliatorakh Derzhavnoi kryminalno-vykonavchoi sluzhby: zatv. nakazom DDUPVP vid 4 kvit. 2005 r. № 61. Ofitsiinyi visnyk Ukrainy. 2005. № 21. St. 1160. 10 cherv.

[2] Skakun O. F. Teoriia derzhavy i prava: [pidruch.]. Skakun O. F.; per. z ros. Kh. Konsum, 2001. S. 127.

[3] Pravyla vnutrishnoho rozporiadku ustanov vykonannia pokaran: zatv. nakazom DDUPVP vid 25 hrud. 2003 r. № 275. Ofitsiinyi visnyk Ukrainy. 2003. № 52. St. 2898.

[4] Sazhyn V. L. Zdorove y bolezny zakliuchennikh. V. L. Sazhyn, V. K. Yurev. SPb. Lan, 1999. 112 s. ("Myr medytsyni").

freedoms within the limits set by the law[1]. One should agree with the statement of O. V. Lysodyed that the right of a convict is a possibility, which is enshrined by the law and guaranteed by the state, of a certain behavior of convict to use certain social benefits, which is ensured by the legal responsibilities of persons of the bodies and the IES and other subjects of legal relations that arise in this[2].

3. Fixing the rights of convicts in normative legal acts. In the dictionaries under the normative act understand that, which defines the norm, rules, etc. of something[3]. According to the content of the notion "the form of realization of the right of convicts to personal safety", it should be noted that at present, at a normative level, the procedure and guarantees for the use of such right by specified category of persons. At the same time, the main normative act that establishes the content of this concept is the Constitution of Ukraine (article 3), as well as the laws that were discussed when characterizing other system-forming features. At the same time, the peculiarity of this sign is that, as stated in part 2 of art. 22 of the Constitution of Ukraine, constitutional rights and freedoms are guaranteed and can not be abolished. In this context, as it was right concluded by O. M. Dzhuzha, it should be admitted that by the

[1] Pravo Vikipediia Vilna entsyklopediia [Elektronnyi resurs]. Rezhym dostupu: http//uk.wikipedia.orgwikiPravo

[2] Kryminalno-vykonavche pravo: pidruch. [dlia stud. yuryd. spets. vyshch. navch. zakl.]. za red. A. Kh. Stepaniuka. Kh. Pravo, 2006. S. 21.

[3] Velykyi tlumachnyi slovnyk ukrainskoi movy. [uporiad. T. V. Kovalova]. Kh. Folio, 2005. S. 405.

form of providing and expressing in the legal norm the right of convicts to personal safety belongs to the general rights of an individual, a person and a citizen[1].

4. The issues, that are related to the legal status of convicts and participants in criminal proceedings.

In the science of criminal executive law, the legal status of convicts is understood as the set of the rights, legitimate interests and duties, which is based on the general status of citizens of Ukraine and is enshrined in normative legal acts of various branches of law[2]. In other words, according to O. V. Lysodyed, the content of the legal status of convicts consists of such elements: 1) subjective rights; 2) legitimate interests; 3) legal duties[3].

The legal status of the participants in criminal proceedings is defined in the CPC of Ukraine with respect to each subject (suspect, accused, defender, witness, etc.) (chapter 3 of the CPC).

5. The specified right is exercised by means and directions specified in the law. According to the "The dictionary of the Ukrainian language" under the "means" is understood that, which serves as an instrument in any action[4]. In this case, the means of

[1] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 199–200.

[2] Kryminalno-vykonavchyi kodeks Ukrainy: nauk.-prakt. koment. za zah. red. V. V. Kovalenka, A. Kh. Stepaniuka. K. Atika, 2012. S. 37.

[3] Kryminalno-vykonavche pravo Ukrainy: pidruch. [V. V. Holina, A. Kh. Stepaniuk, O. V. Lysodied ta in.]; za red. V. V. Holiny i A. Kh. Stepaniuka. Kh. Pravo, 2011. S. 20.

[4] Tlumachnyi slovnyk ukrainskoi movy [Elektronnyi resurs]. Rezhym dostupu: http//uktdic.appspot.com?q=forma

expressing the right of convicts for personal safety are normative legal acts, in which are defined the content of this right and guarantees of its implementation.

The main directions of realization of the right of convicts for personal safety are established in the current criminal-executive legislation of Ukraine and the Law of Ukraine "On provision the safety of persons, who are involved in criminal proceedings".

Thus, only in the presence of all the above signs of the concept of "the form of realization of the right to personal safety by convicts or persons who are participants in criminal proceedings" acquires its completed content. At the same time, as established during the research, the procedure for provision this right of the convicts, except for the latest form (provision personal safety of participants in criminal proceedings), doesn't have the clear legislative consolidation. This issue is regulated by subordinate normative legal acts, in particular the Rules of the internal order of penitentiary institutions[1]. The specified circumstance does not create real mechanisms aimed at provision the personal safety of the convicts and also, as scientists rightly point out (O. G. Kolb, V. P. Zaharov, S. M. Myronchuk and etc.), negatively affects the state of implementation of the principle of legality, which is a priority in the activities of state authorities (in particular, the IES) and their

[1] Pravyla vnutrishnoho rozporiadku ustanov vykonannia pokaran: zatv. nakazom DDUPVP vid 25 hrud. 2003 r. № 275. Ofitsiinyi visnyk Ukrainy. 2003. № 52. St. 2898.

officials (article 19 of the Constitution of Ukraine, article 5 of the CEC, etc.)[1]. In addition, as practice shows, this circumstance supportes as one of the determinants of the committing of crimes as by convicts[2], but also by the personnel of the SPSU[3].

Based on the above, in our opinion, it would be worth solving this issue at the legislative level, in particular by introducing to the CEC the provisions governing the order of provision of the right of the convicts, which are provided for by the Rules of the internal order of penitentiary institutions. Thus, in paragraph 89 of these Rules it is indicated that in case of danger to the life and health of the convicted person, in relation to which, according to the law, in connection with his participation in criminal proceedings, a decision was taken on the application of security measures, the need to protect him from the execution of other convicts or following an application by of the convict with the request to provide personal safety, if he did not commit a violation of

[1] Zakharov V. P. Orhanizatsiia indyvidualnoho zapobihannia zlochynam u kryminalno-vykonavchii ustanovi: [monohr.]. Zakharov V. P., Kolb O. H., Myronchuk S. M., Milishchuk L. I. [2-he vyd., pererobl. i dopov.]. Lutsk. PP Ivaniuk V. P., 2007. S. 16–17.

[2] Kalchenko T. L. Shchodo vdoskonalennia kryminalno-pravovoho zakhystu rezhymu ta bezpeky v ustanovakh vykonannia pokaran. T. L. Kalchenko. Teoretychni ta praktychni problemy udoskonalennia diialnosti kryminalno-vykonavchoi systemy Ukrainy: materialy Vseukr. nauk.-prakt. konf. (4 trav. 2011 r.). K. Nats. akad. vnutr. sprav, 2011. S. 136–137.

[3] Kryminolohichni ta operatyvno-rozshukovi zasady zapobihannia zlochynam i pravoporushenniam, shcho vchyniaiutsia personalom vypravnykh kolonii: monohr. [V. V. Kovalenko, O. M. Dzhuzha, O. H. Kolb ta in.]; za zah. red. V. V. Kovalenka. K. Atika N, 2011. S. 61–93.

the regime, as well as the isolation of the convict at the time of the preparation of the necessary materials for his moving to another institution, based on the motivated regulation of the head of the institution, allowed to keep him in a separate cell, the CTA, DW and a punishment cell on the general grounds before the completion of the inspection, elimination of danger, the final resolution of the conflict or receipt of resolution of the moving, but not more than 30 days. In view of this, it would be logical to supplement the CEC of Ukraine by this norm.

Another problem that negatively affects the state of provision the personal safety of convicts is that the procedure for the moving of convicts to another institution is governed not by legislative acts (laws, resolutions of the Verkhovna Rada, decrees of the President and resolutions of the Cabinet of Ministers of Ukraine)[1], but by departmental normative legal acts, in particular the Instruction on the procedure for the distribution, referral and moving of persons convicted to deprivation of liberty, which was approved by the relevant order of the SDUES[2]. Such an

[1] Rishennia Konstytutsiinoho Sudu Ukrainy "U spravi za konstytutsiinym zvernenniam Kyivskoi miskoi rady profesiinykh spilok shchodo ofitsiinoho tlumachennia chastyny tretoi statti 21 Kodeksu zakoniv pro pratsiu Ukrainy (sprava pro tlumachennia termina «zakonodavstvo»)" № 12–rp98 vid 9 lyp. 1998 r. Ofitsiinyi visnyk Ukrainy. 1998. № 32. St. 1209.

[2] Instruktsiia pro poriadok rozpodilu, napravlennia ta perevedennia dlia vidbuvannia pokarannia osib, zasudzhenykh do pozbavlennia voli: zatv. nakazom DDUVP vid 16 hrud. 2003 r. № 261. Kryminalno-vykonavche zakonodavstvo Ukrainy. Kryminalno-vykonavchyi kodeks Ukrainy. Normatyvno-pravovi akty. uporiad. V. S. Kovalskyi, Yu. M. Khakhuda. K. Yurinkom Inter, 2005. S. 340–356.

approach, as practice shows, often leads to a variety of abuses from the side of the personnel of the IES and does not allow to provide safe conditions for serving sentences by convicts in full. As scholars rightly note, the legal uncertainty of the grounds for the moving of convicts creates preconditions for abuses and violations of human rights, as well as worsens the situation of convicts by the constant moving of them from one colony to another[1]. Therefore, it would be logical to approve the specified Instruction by the decision of the Cabinet of Ministers of Ukraine.

2.3. The classification and social and legal features of probable victims of criminal encroachments on personal safety of the convicts

In science, under the classification (from lat. *Classis* – "discharge, group" and *fecere* – "to do") understands the scientific method, consisting in the division of the entire plurality of investigated objects and in their subsequent grouping, that based on any sign[2]. In turn, as P. Rabinovych correctly noted, the classification, in particular, of basic human rights, becomes of practical importance during the development of the Constitution and other laws of any state,

[1] Problemy zabezpechennia prav zasudzhenykh u kryminalno-vykonavchii systemi Ukrainy. [V. A. Badyra, A. P. Hel, I. S. Yakovets ta in.]; za zah. red. Ye. Yu. Zakharova. Kh. Prava liudyny, 2009. S. 58.

[2] Konfliktolohiia: slov. za zah. red. O. H. Kolba, A. I. Buimistera. Kyiv; Pereiaslav-Khmelnytskyi. KSV, 2012. S. 188.

including Ukraine[1]. Concerning the classification of convicts, who may be potential victims of criminal encroachments in the IES, then it is implemented both by scientists and practitioners, taking into account different criteria, however, the final (basic) form has not yet been acquired, which is an additional argument in determining the such task of this study. In addition, the specified theme is relevant in the context of solving problems associated with the development of criteria for the effectiveness of the activity of IES[2].

It can be noted that the problems of classifying of convicts to deprivation of liberty are considered by various subjects of their analysis at the following levels: a) doctrinal – as an object of study[3] and dissertation research[4]; b) crime victimization – as a victim

[1] Rabynovych P. Klasyfikatsiia osnovnykh prav liudyny. P. Rabynovych. Mizhnarodna politseiska entsyklopediia: [u 10 t.]. vidp. red. Yu. I. Rymarenko, Ya. Yu. Kondratiev, V. Ya. Tatsii, Yu. S. Shemshuchenko. K. Kontsern "Vydavnychyi dim «In Yure»", 2005. S. 383.

[2] Bohatyrov I. H. Aktualni problemy rozroblennia kryteriiv efektyvnosti diialnosti penitentsiarnykh ustanov Ukrainy. I. H. Bohatyrov. Kryminalno-vykonavchomu kodeksu Ukrainy 9 rokiv: materialy I Mizhnar. nauk.-prakt. konf. (Kyiv, 28 lyst. 2012 r.). K. In-t kryminalno-vykonavchoi sluzhby, 2012. S. 24–25.

[3] Kovalenko V. Problemi sovershenstvovanyia klassyfykatsyy lyts, otbivaiushchykh nakazanyia v yspravytelno-trudovikh uchrezhdenyiakh: sb. st. V. Kovalenko; pod red. K. Sh. Sadreeva. Kazan. Yzd-vo Kazan. hos. un-ta, 1994. S. 122.

[4] Yakovets I. S. Pervynna klasyfikatsiia zasudzhenykh do pozbavlennia voli ta yikh rozpodil v ustanovy vykonannia pokaran: dys. … kand. yuryd. nauk: spets. 12.00.08. Yakovets I. S. Kh. KhNIuA im. Yaroslava Mudroho, 2006. 226 s.

of crime[1]; c) normative-legal – as a means of regulating the relevant criminal-executive legal relations[2]; d) practical – as a form of implementation of the criminal-executive policy of Ukraine[3]; e) international legal – as a result of the application of the corporatist method of knowledge of legal phenomena and processes[4].

As shown by the study of doctrinal sources of criminal-executive direction, the position of I. S. Yakovets[5] is the most closely approached to the development of questions of the classification of convicts. At the same time, as A. Kh. Stepanyuk noticed, in her works, further development was gotten by the problems of the essence, goals, subjects, criteria and first principles of implementation of the initial classification of convicts, and by a mechanism for the protection of the rights of such persons[6]. In the same

[1] Kryminolohichna viktymolohiia: navch. posib. [Moiseiev Ye. M., Dzhuzha O. M., Vasylevych V. V. ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2006. S. 47–51.

[2] Uholovno-yspolnytelnoe pravo: [ucheb. dlia yuryd. vuzov]. pod red. V. Y. Sylvestrova. [6-e yzd., yspr., dop.]. M. Yurysprundentsyia, 2007. S. 67–69.

[3] Novosad Yu. O. Operatyvno-rozshukovi zasady zapobihannia zlochynam, shcho vchyniaiutsia personalom vypravnykh kolonii. Visnyk Lvivskoho derzhavnoho universytetu vnutrishnikh sprav. L. LDUVS, 2010. № 2. S. 121-128.

[4] Orlov Yu. Metod porivnialnoho analizu: kryminolohichnyi dovidnyk. Orlov Yu.; za zah. red. O. M. Bandurky, O. M. Dzhuzhi, O. M. Lytvynova. Kh. Disa Plius, 2013. S. 232–233.

[5] Yakovets I. S. Pervynna klasyfikatsiia zasudzhenykh do pozbavlennia voli ta yikh rozpodil v ustanovy vykonannia pokaran: [monohr.]. Yakovets I. S. Kh. Krossroud, 2006. 208 s.

[6] Stepaniuk A. Kh. Peredmova. A. Kh. Stepaniuk. Yakovets I. S. Pervynna klasyfikatsiia zasudzhenykh do pozbavlennia voli ta yikh rozpodil v ustanovy vykonannia pokaran: [monohr.]. Kh. Krossroud, 2006. S. 7.

context, the scientific developments of Ye. K. Voishvyllo deserve attention, who argued that the general purpose of classifying convicts to deprivation of liberty is to provide the differentiation of the serving a sentence, in particular, the correct and identical application of criminal-executive institutions that help to realize such a purpose of punishment, as penalty for different according to their characteristics of groups of convicts[1]. By this purpose, the sign of classification must be not only general, but also the most significant. In this sense, as some scientists reasonably believe, it is necessary to be based on the division of real signs into the main and derivative. At the same time, the main ones are those that define all the other (except for random, caused by external circumstances) and constitute the foundation of a qualitative specificity of existing objects in general, the essence of objects of the corresponding quality[2]. The criterion for the primary classification of convicts to deprivation of liberty should be united, that is the allocation of all categories of convicts should be based on one criterion[1].

In turn, the identity of the number of members of the scope of the classification concept regarding the classification of convicts to deprivation of liberty provides:

First, all categories (classes) of convicts must necessarily have all the essential features that create

[1] Voishvyllo E. K. Poniatye. Voishvyllo E. K. M. Yzd-vo MHU, 1967. S. 156.

[2] Yakovets I. S. Pervynna klasyfikatsiia zasudzhenykh do pozbavlennia voli ta yikh rozpodil v ustanovy vykonannia pokaran: [monohr.]. Yakovets I. S. Kh. Krossroud, 2006. S. 24.

the plurality "the convicts to deprivation of liberty". In other words, to which group is not belonged a specific convict to deprivation of liberty, he is within the scope of the general concept of "the convicts to deprivation of liberty" with all their characteristic properties. So, if the general concept of a convict to deprivation of liberty implies the presence of the guilty verdict, for which the person was sentenced to a specific punishment, then for each convict (regardless of category), the existence of this procedural act is logical[1];

Secondly, the classification of such convicts should cover all persons who have signs of a general notion "the convict to deprivation of liberty". In addition, as reasonably proved by V. V. Pankratov, all special forms of classification objects must be found in it[2], in accordance with the fact that any classification creates a general presentation of the classified object and its classes. That is why, in the studied classification, as correctly noted by I. S. Yakovets, all convicts to such punishment and all their categories should be covered[1].

On the basis of specified and other material basis[3], I. S. Yakovets proposed the following types of classification of the convicts to deprivation of liberty:

[1] Yakovets I. S. Pervynna klasyfikatsiia zasudzhenykh do pozbavlennia voli ta yikh rozpodil v ustanovy vykonannia pokaran: [monohr.]. Yakovets I. S. Kh. Krossroud, 2006. S. 25.

[2] Pankratov V. V. Metodolohyia y metodyka krymynolohycheskykh yssledovanyi. Pankratov V. V. M. Yuryd. lyt., 1972. S. 18.

[3] Trubnykov V. M. Uholovno-yspolnytelnoe pravo Ukrayni: [ucheb.]. Trubnykov V. M., Fylonov V. P., Frolov A. Y. Donetsk. Donetskyi yn-t vnutr. del, 1999. S. 324.

1) for provision an appropriate level of punitive influence (primary classification); 2) for creating favorable conditions regarding the application of educational measures (secondary classification)[1].

So, according the opinion of I. S. Yakovets and some other scholars (G. F. Khokhryakov), in the conditions of execution of a punishment in the form of deprivation of liberty, the classification of these convicts, on the one hand, provides the implementation of coercive measures that establish the content of punishment, but on the other hand - educational effect on convicts, that is, this punishment reflects the public danger of the act, and his execution is considered as the beginning of a new life for the convict, since has a purpose of correcting and preventing the committing of a new crime. That is why the educational activity should take into account, first of all, not the signs of an act, but the qualities of a person (the subject of a crime), and vice versa[2].

Undoubtedly, the specified doctrinal level may form the basis of the classification of convicts, who belong to the risk groups of probable victims of criminal encroachments in correctional colonies. At the same time, this approach can not be fully applied in

[1] Yakovets I. S. Pervynna klasyfikatsiia zasudzhenykh do pozbavlennia voli ta yikh rozpodil v ustanovy vykonannia pokaran: [monohr.]. Yakovets I. S. Kh. Krossroud, 2006. S. 42.

[2] Khokhriakov H. F. Lychnost v uslovyiakh yzoliatsyy ot obshchestva Znachenye sotsyalno-psykholohycheskykh zakonomernostei povedenyia dlia dostyzhenyia tselei yspolnenyia nakazanyia, yspravlenyia y perevospytanyia osuzhdennikh v YTU. Khokhriakov H. F., Holubev V. P., Kudriakov Yu. N. M. Yzd-vo VNYY MVD SSSR, 1983. S. 9.

the dissertation study. Such a conclusion is based on certain arguments.

1. Despite the fact that the content of both primary and secondary classification of convicts to deprivation of liberty provides for the application to these persons of basic measures of correction and resocialization, that are defined in the law (article 6 of the CEC), namely the purposeful impact on the person, the resolution of the task regarding the provision personal safety in this classification and in the content of specified means is not provided.

2. The proposed by I. S. Yakovets and other scholars, classification of convicts to deprivation of liberty[1] has a clearly defined object, subject, basis and procedure[2], which, in turn, are different from the classification of convicts belonging to the risk groups of potential victims of crimes in the IES.

3. The mechanism of classification of convicts to deprivation of liberty is directed, first of all, to the implementation of legally certain tasks, as the provision of punishment (part 2 of article 50 of the CC of Ukraine), as well as provision of procedure and conditions for the execution and serving of punishment in correctional colonies (part 1 of article 1 of the CEC of Ukraine). At the same time, the classification of

[1] Bryllyantov A. V. Dyfferentsyatsyia nakazanyia uholovno-pravovie y uholovno-yspolnytelnie problemi: dys… doktora yuryd. nauk.: spets. 12.00.08 "Krymynalnoe pravo y krymynolohyia; krymynalno-yspolnytelnoe pravo". Aleksandr Vladymyrovych Bryllyantov. M., 1998. S. 286–325.

[2] Yakovets I. S. Pervynna klasyfikatsiia zasudzhenykh do pozbavlennia voli ta yikh rozpodil v ustanovy vykonannia pokaran: [monohr.]. Yakovets I. S. Kh. Krossroud, 2006. S. 43–68.

convicts as potential victims of crime in places of deprivation of liberty is directed at the realization of other tasks, that are defined in the current criminal-executive legislation of Ukraine, namely: the preventing the committing of new crimes both by convicts and other persons, as well as the prevention of torture and inhuman or degrading treatment with convicts (part 1 of article 1 of the CEC of Ukraine).

4. Classification of convicts to deprivation of liberty is carried out according to criteria, which are different from those are applicable when classification them as victims of crimes in the IES. In this regard, the appropriate for solving problems, which are related to the classification of convicts as probable victims of crimes in places of deprivation of liberty, is their division (the typology) as victims of crimes at the victimological level. In particular, from the point of view of the theory of roles, in science victims of crimes are divided into: a) persons who understand or not understand their position because of different circumstances (for example, as a result of strong emotional anxiety[1], intoxicated state (alcohol, narcotic, toxic, etc.)[2], state of insanity[3] or state

[1] Burdin V. M. Osudnist ta neosudnist (kryminalno-pravove doslidzhennia): [monohr.]. V. M. Burdin. Lviv. Lviv. nats. un-t im. Ivana Franka, 2010. S. 306–328.

[2] Tahantsev N. S. Kurs russkoho uholovnoho prava. Chast obshchaia. Tahantsev N. S. SPb., 1874. Kn. 1. S. 138.

[3] Sytkovskaia O. D. Psykholohycheskyi kommentaryi k Uholovnomu kodeksu Rossyiskoi Federatsyy. O. D. Sytkovskaia. Akademyia Heneralnoi Prokuraturi Rossyiskoi Federatsyy. M. Yurydycheskaia fyrma “Kontrakt”, Volters Kluver, 2009. S. 6.

of reduced sanity[1], etc.); b) sustainable persons who were objects of a one-time criminal encroachment; c) victims of crimes with a hidden role, which they begin to "play" in advance of committing a crime because of their provocative personal qualities, status and behavior (homosexuals, bisexuals, persons without a certain place of residence, etc.); d) victims of crimes with an open role – persons with an open provocative behavior, which results in encroachments on this object of legal protection, etc.[2]

At the same time, the classification of victims of crimes in the IES was carried out by scientists-victimologists (O. M. Dzuzha, A. V. Kyrylyuk) according to the following criteria:

a) depending on the socio-demographic and social status of the person:

– victims on the personal (physical) level, namely: convicts; personnel of the IES; other persons (senior officials of the SPSU, prosecutors, judges, lawyers, medical workers of territorial health authorities, officers of the OrIA etc.);

– victims at the level of the social community – an integrated community of personnel of the IES (all departments of the institution); the IES as a legal entity and as a community of physical persons (people); the SPS as a system of bodies and the IES in general;

[1] Antonian Yu. M. Prestupnost y psykhycheskye anomalyy. Yu. M. Antonian, S. V. Borodyn. M. Nauka, 1987. S. 11.

[2] Kryminolohichna viktymolohiia: navch. posib. [Moiseiev Ye. M., Dzhuzha O. M., Vasylevych V. V. ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2006. S. 47–51.

b) depending on the socio-legal characteristic of the victim of the crime, that is his properties to act as the object of criminal encroachments or his failure to substantially resist such socially dangerous acts:

– officially recognized victims of crimes in the IES (persons included in official statistics and reporting; persons regarding which the personnel of the IES and other authorized persons carry out a socio-legal reaction to their protection and organization of preventive measures in this direction). In this case, individuals who became victims for the first time, and "relapsing victims" are distinguished;

– latent victims of the crime in the IES and their varieties, namely: the specified persons on their own keep confidential information about the criminal acts committed against them; victims who can not bring to official bodies or officials information about committing criminal acts against them; the presence of victims of crimes in the IES is hidden by the relevant officials as a specific colony, and by other persons, in particular, of the higher administrative structures of the SPiSU;

c) depending on victimization as the ability to facilitate criminal actions, that is, the presence of a "victimological deformation" that may occur on:

– the personal (physical) level, which provides for a set of qualities of a person and his social status (static characteristic of the qualities of victim and dynamic-role characteristic during the interaction). In doing so, it can be both positive and negative;

– the social level, where the scientists distinguish such signs as "professional victimization", impersonal

victimization and victimization as a property, which is conditioned by the fulfillment of social functions that forms a specific relationship, which contribute to criminal behavior in the IES[1].

Consequently, summing up the qualification characteristics of victims of crimes in IES, it should be recognized that they can form the basis for the qualifications of convicts, which was determined by one of the tasks of the dissertation research, taking into account a number of common objects, features and signs that are included in the content of qualification of individuals, who are serving sentences in the form of deprivation of liberty at the victimological level. At the same time, there are distinctive elements and characteristics that serve as additional arguments of the execution of the qualification of convicts, which belong to the group of risk of possible victims of criminal encroachments in correctional colonies, namely:

1) unlike the measures of victimological prevention, the measures of safety are applied in relation to a specified person who appealed for the protection of his life and health;

2) if the legal ground of provision the personal safety of convicts in the IES is the statement of the person about the source of danger and the need to protect his rights, then this ground when taking measures of victimological prevention is other information about the convict also (the status of a person

[1] Kryminolohichna viktymolohiia: navch. posib. [Moiseiev Ye. M., Dzhuzha O. M., Vasylevych V. V. ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2006. S. 305–306.

in the community of convicts; the results of forecasting and processing of media sources)[1]; about the means, that have been used during the conduct of covert investigative activities[2]; about the results of realization of the coordinating and supervisory functions by the prosecutor's bodies[3] and etc.;

3) the organization and realization of measures to provide the right to personal safety of convicts in correctional colonies are defined in the law and departmental normative legal acts. At the same time, victimological prevention in the IES has only scientifically recommendatory nature[4] and is regulated only by subordinary normative legal acts[5];

4) the purpose and task of victimological prevention is to prevent the committing of criminal and

[1] Analitychna robota v operatyvno-rozshukovii diialnosti: [navch.-prakt. posib.]. Nykyforchuk D. Y., Busol O. Yu, Biriukov H. M. K. Nats. un-t DPS Ukrainy, 2012. S. 54–70.

[2] Nehlasni slidchi (rozshukovi) dii: [kurs lektsii]. D. Y. Nykyforchuk, S. I. Nikolaiuk, O. I. Kozachenko ta in.; za zah. red. D. Y. Nykyforchuka. K. Nats. akad. vnutr. sprav, 2012. S. 4–8.

[3] Koniuk A. V. Realyzatsyia orhanamy prokuraturi koordynyruiushchykh y nadzornikh funktsyi v oblasty protyvodeistvyia korruptsyy (sostoianye y puty sovershenstvovanyia). A. V. Koniuk. Problemi sovershenstvovanyia pravookhranytelnoi deiatelnosty v oblasty protyvodeistvyia prestupnosty y korruptsyy: materyali mezhdunar. nauch.-prakt. konf., Mynsk, 22 dek. 2011 h. Mynsk. BHUFK, 2012. S. 4–8.

[4] Ryvman D. V. Krymynalnaia vyktymolohyia. Ryvman D. V. SPb. Pyter, 2002. 304 s.

[5] Instruktsiia pro poriadok formuvannia, vedennia ta vykorystannia operatyvno-rozshukovoho i daktyloskopichnoho obliku v orhanakh vnutrishnikh sprav ta orhanakh (ustanovakh) kryminalno-vykonavchoi systemy Ukrainy: zatv. spilnym nakazom MVS Ukrainy ta DDUPVP vid 23 serp. 2002 r. № 823188. Ofitsiinyi visnyk Ukrainy. 2002. № 37. St. 1762. 27 veres.

other unlawful encroachments regarding the potential victims in the IES, the behavior and status of which in the community of convicts has provocative-static nature, but a real threat to their lives and health has not yet come. Unlike these objects of protection, the convicts, who applied for protection against criminal encroachments, in accordance with the requirements of part 2 of art. 10 of the CEC, are clearly identified persons, and the threat to them has real nature;

5) according to the contents of article 10 of the CEC of Ukraine, the object of protection of convicts as probable victims is their right to personal safety, and the object of victimological prophylaxis is not only the right of the person (as a measure of possible behavior, which is defined in the normative legal acts), but also his status in the environment of convicts, behavior in the certain situations, etc., that is, in the latter case, the objects of protection are wider and more unpredictable (unformalized in terms of the requirements and content of the law), than in such situations, that are referred in article 10 of CEC of Ukraine.

In the context of the content of the problems related to the classification of convicts to deprivation of liberty as probable victims in the IES, attracts the attention the legal and regulatory level of their division into groups, classes, etc., that is reflected in the current criminal-executive legislation of Ukraine. In particular, in art. 92 of the CEC of Ukraine is defined the main criteria for the separation of convicts to deprivation of liberty in the correctional and educa-

tional colonies, and in other norms of this Code is defined the peculiarities of serving a sentence in the structural sites of the IES (articles 94–99), in the colonies of different types (art. 138–140), as well as peculiarities of serving sentences in the form of deprivation of liberty by convicted women and minors, etc. At the same time, in the Instruction of the SPiSU on the distribution of convicts in the IES[1] introduced additional classification criteria for these persons, which do not correlate with the content of the CEC of Ukraine (for example, five groups of adult convicts who are kept in correctional colonies), as well as I. S. Yakovets made a correct conclusion, testify to the excess of powers of this Central body of the state executive authority on the execution of questions of sentences and the violation of the principle of legality (part 2 of article 19 of the Constitution of Ukraine, article 5 of the CEC of Ukraine)[2].

Accordingly to this, it is unlikely that the specified criteria for classifying convicts as probable victims in the IES can be applied, taking into account their contradiction with similar criteria that were applied by the legislator. At the same time abuse and excess of authority by personnel of the SPSU are

[1] Instruktsiia pro poriadok rozpodilu, napravlennia ta perevedennia dlia vidbuvannia pokarannia osib, zasudzhenykh do pozbavlennia voli zatv. nakazom DDUVP vid 16 hrud. 2003 r. № 261. Kryminalno-vykonavche zakonodavstvo Ukrainy. Kryminalno-vykonavchyi kodeks Ukrainy. Normatyvno-pravovi akty. uporiad. V. S. Kovalskyi, Yu. M. Khakhuda. K. Yurinkom Inter, 2005. S. 340–356.

[2] Yakovets I. S. Pervynna klasyfikatsiia zasudzhenykh do pozbavlennia voli ta yikh rozpodil v ustanovy vykonannia pokaran: [monohr.]. Yakovets I. S. Kh. Krossroud, 2006. S. 94.

recognized by the courts as in Ukraine[1], as well as in the European court of human rights[2], as one of the main determinants of a criminal encroachments against a person, who is convicted in places of deprivation of liberty, even despite the competition of their decisions in the domestic legal space[3]. This problem fully concerns this type of legal classification of convicts as their division into groups in the OIA, taking into account the peculiarities of its implementation in places of deprivation of liberty in the conditions of reforming the criminal procedural legislation of Ukraine[4].

As the results of the study of the activities of the personnel of the IES on the classification of the convicts to deprivation of liberty showed, certain posi-

[1] Kryminolohichni ta operatyvno-rozshukovi zasady zapobihannia zlochynam i pravoporushenniam, shcho vchyniaiutsia personalom vypravnykh kolonii: monohr. [V. V. Kovalenko, O. M. Dzhuzha, O. H. Kolb ta in.]; za zah. red. V. V. Kovalenka. K. Atika N, 2011. S. 214–345.

[2] Karpachova N. I. Stan dotrymannia Ukrainoiu Yevropeiskykh standartiv z prav i svobod liudyny spetsialna dopovid Upovnovazhenoho Verkhovnoi Rady Ukrainy z prav liudyny z nahody 60-richchia Konventsii pro zakhyst prav liudyny i osnovopolozhnykh svobod. Karpachova N. I. K., 2010. S. 35–42.

[3] Komarov V. V. Rishennia Yevropeiskoho sudu z prav liudyny ta Konstytutsiinoho Sudu Ukrainy problema konkurentsii. V. V. Komarov. Problemy zakonnosti: Resp. mizhvidom. nauk. zb. vidp. red. V. Ya. Tatsii. Kh. Nats. yuryd. akad. Ukrainy, 2009. Vyp. 100. S. 31–41.

[4] Kolb O. H. Shchodo zmistu poniattia operatyvno-rozshukovoho zapobihannia zlochynam i pravoporushenniam, shcho vchyniaiutsia personalom vypravnykh kolonii, ta yoho zmist. O. H. Kolb. Teoretychni ta praktychni problemy udoskonalennia diialnosti kryminalno-vykonavchoi systemy Ukrainy: materialy Vseukr. nauk.-prakt. konf. (Kyiv, 4 trav. 2011 r.). K. Nats. akad. vnutr. sprav, 2011. S. 14–16.

tive moments and contradictions have a practical level of their division into certain groups, categories, objects, etc. In particular, none normative legal acts of the SPiSU, in addition to the guidelines for the organization of the OIA in the organs, institutions and the IW of the criminal-executive system[1], does not determine the criteria for classification of persons, who are serving sentences, as of probable victims of crimes, – in these legal sources it is about only the general (non-personified) objects of preventive accounting. An example of such an approach can be the Rules of the internal order of penitentiary institutions, in part 4 of paragraph 57 of which it is stated that detection and the order to preventive accounting of convicts, who have committed the offense or are going to commit it, is carried out by operational employees by the way of a thorough study of the personal files of convicts, of checking information about their behavior in temporary keeping isolators, IW etc., of the journal of violations of the regime, of the reports of reception – delivery of duties, of medical data, of the viewing correspondence, as well as of the information of the employees of the social psychological service and the department of supervision and safety[2].

[1] Nakaz DDUPVP vid 11.03.2009 № 44 "Pro zatverdzhennia Polozhennia pro poriadok rozsliduvannia ta vedennia obliku avarii i neshchasnykh vypadkiv na vyrobnytstvi, shcho stalysia z osobamy, yaki trymaiutsia v ustanovakh vykonannia pokaran ta slidchykh izoliatorakh" [Elektronnyi resurs]. Rezhym dostupu: http//zakon0.rada.gov.ualawsshowz0305-09

[2] Pravyla vnutrishnoho rozporiadku ustanov vykonannia pokaran: zatv. nakazom DDUPVP vid 25 hrud. 2003 r. № 275. Ofitsiinyi visnyk Ukrainy. 2003. № 52. St. 2898.

According to the content of this normative legal act, it is worth to register to preventive accounting of practically every one of the convicts to deprivation of liberty in the IES, taking into account, in particular, that, according to the data of SPiSU, the number of offenses per one person is two to three incidents a year[1]. However, as practice has shown, to 7 % of convicts from their total number in a particular correctional colony is situated in specified accounting in the IES[2]. At the same time, according to data that are obtained as a result of numerous scientific studies, criminal encroachment against other convicts and violations of the established procedure of serving in the IES (up to two cases annually) were committed precisely by those who were not situated in preventive accounting of organs and IES and did not belong to the number of persistent violators[3] (three or more violations).

The practical approach to solving the specified problem involves placing to the specified accounting of the following categories of convicts to deprivation of liberty:

a) persistent violators of the established order of serving sentence (article 133 of CEC); b) persons,

[1] Pro diialnist pidrozdiliv okhorony, nahliadu i bezpeky kryminalno-vykonavchykh ustanov u 2012 rotsi: inform. biul. K. Derzh. departament Ukrainy z pytan vykonannia pokaran, 2012.

[2] Zahalna kharakterystyka Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy (stanom na 25 kvit. 2013 r.). K. DPtS Ukrainy, 2013. 118 s.

[3] Zapobihannia pravoporushenniam u mistsiakh pozbavlennia voli: [navch. posib.]. [2-he vyd., dopov. i vypr.]. [V. L. Ortynskyi, O. H. Kolb, V. P. Zakharov ta in.]; za zah. red. V. L. Ortynskoho ta O. H. Kolba. Lutsk. PP Ivaniuk V. P., 2010. S. 193–194.

who are inclined to escape (article 393 of the CC); c) convicts, who are inclined to attack and seize hostages (article 147 of the CC); d) persons, who are inclined to suicide (self-harm); e) convicts, who are inclined to make weapons or explosives (article 263 of the CC); f) organizers of gambling with material interest; g) persons, who are prone to the use and distribution of drugs[1].

In addition, on operational preventive accounting in each IES are situated: so-called "thieves in the law"; other authorities of the criminal environment; killers (persons who have committed a murder-for-hire)[2]; members of organized crime formations, etc.[3] In a certain period, preventive accounting in IES also included persons, who were convicted of banditry; persons, who are inclined to same-sex acts; convicts, for whom the death penalty through clemency has been replaced by deprivation of liberty for a certain period, etc.[4]

[1] Pro diialnist pidrozdiliv okhorony, nahliadu i bezpeky kryminalno-vykonavchykh ustanov u 2012 rotsi: inform. biul. K. DPtS Ukrainy, 2013. S. 3–4.

[2] Operatyvno-sluzhbova i vyrobnycho-hospodarska diialnist ustanov kryminalno-vykonavchoi systemy u 1997 rotsi: Inform. biul. K. Holovne upravlinnia vykonannia pokaran MVS Ukrainy, 1998. № 20. S. 278.

[3] Nakaz DDUPVP vid 11.03.2009 № 44 "Pro zatverdzhennia Polozhennia pro poriadok rozsliduvannia ta vedennia obliku avarii i neshchasnykh vypadkiv na vyrobnytstvi, shcho stalysia z osobamy, yaki trymaiutsia v ustanovakh vykonannia pokaran ta slidchykh izoliatorakh" [Elektronnyi resurs]. Rezhym dostupu: http//zakon0.rada.gov.ualawsshowz0305-09

[4] Operatyvno-sluzhbova i vyrobnycho-hospodarska diialnist ustanov kryminalno-vykonavchoi systemy u 1998 rotsi Inform. biul. K. DDUPVP, 1999. № 2. S. 68.

Consequently, summarizing the results of the analysis of the classification of convicts at the practical level, it should be acknowledged that in general such an approach can also be applied to doing the tasks of this scientific development. At the same time, there are a number of problems that prevent the use of specified methodology in full when implementation of classification convicts as probable victims of crimes, that are referred to in art. 10 of the CEC, namely: a) firstly, at the practical level there are no such criteria for which the convicted persons are divided into certain groups and placed in the IES in the preventive accounting; b) secondly, the placement of the convicted person on preventive accounting involves the probability of his unlawful conduct in the future, namely the threat to life and health are continued in time and has no signs of reality, except, of course, cases of committing sudden crimes in a state of violent emotion, or intent, which arose suddenly or as a result of a conflict situation, etc. At the same time, the danger to life and health of persons in the cases, that are specified in art. 10 of CEC, is real and inevitable, and that's why the actions of the personnel of the IES, in contrast to the first situation, have a completely different character; c) thirdly, despite the provided in the departmental regulatory acts the certain organization and procedure for carrying out activity on prevention of violations in the IES, its content does not provide for the identification of the such category of convicts who are objects of legal protection in accordance with the requirements of art. 10 of CEC; d) as in the first case – the

fulfillment of tasks regarding the prevention of crimes (article 1 of the CEC), and in the second – the provision of personal safety of convicts (article 10 of the CEC), a clear legal mechanism and corresponding guarantees of the provision of their personal safety in the IES have not yet been established, which necessitates the classification of convicts as probable victims on another methodological basis. An additional argument in this regard is the results of an anonymous poll of convicts and personnel of the IES. In particular, the question "Does the personnel of institutions of the execution of sentences do enough to provide your personal safety?" 50,93 % of the polled answered that "no", 43,40 % – "partially" and only 5,67 % of respondents – "yes" (the supplements 1, 2). In turn, the responses of the personnel of the IES to the question "Is the right of the convicts to be deprived of liberty for personal safety in the institutions of the execution of sentences of Ukraine properly ensured?" were distributed as follows: "yes" – 47,53 % of polled persons; "no" – 30,87 % ; "partially" – 21,6 % (the supplements 3, 4).

At the same time, it should be noted that the practical and other levels of classification of convicts to deprivation of liberty, of which it was discussed, have the right to exist the such, which were tested in practice and having certain significant positive points, which can be used as a basis for the division of persons serving sentences in correctional colonies, on probable victims of crimes in accordance with Art. 10 of CEC of Ukraine. In the context of the above, important are the international legal criteria for the

division of convicts into certain groups, criteria, classes, etc.[1] In particular, the provisions of part 2 "Conditions of prison sentence" of the European penitentiary rules, in which are enshrined certain criteria for the division of convicts and detainees in custody. Thus, in accordance with paragraph 17,1 of these Rules, when distributing the specified persons to different penal institutions or choise the regime of detention, account shall be taken of: the legal status of the convict (detained in custody), which is determined by a court or by law (imprisoned or convicted, convicted for the first time or recidivist; convicted to short-term deprivation of liberty); special requirements of correctional influence; health status; sex and age. In addition, the European penal rules indicate that: a) men and women are usually holding separately, although they may jointly participate in the organized activity, which is included in the approved for them the program of corrective impact (paragraph 18,1); b) the detained, as a rule, are holding separate from convicted persons, except in cases of their consent to staying together or to participate in useful activity (paragraph 18,1); c) young detained or convicts are holding in conditions that protect them from harmful effects and take into account the needs of their age (paragraph 18,1). In doing so, the purpose of the primary and repeat classification of convicts and detained in custody is as follows: 1) the

[1] Liovochkin V. Mezhdunarodnye standarty soderzhanyia zakliuchennykh y penytentsyarnaia systema Ukrayniy. V. Liovochkin. Systema yspolnenyia nakazanyi v Ukrayne y standarti Soveta Evropi: materyaly rehyon. semynara. Donetsk. Donetskyi Memoryal, 2000. S. 42–45.

separation of persons who, as a result of their criminal past or individual properties, should be isolated from other persons as well as those, who may adversely affect other convicts (detained); 2) the placement of the specified categories of persons in such a way as to facilitate correctional influence and their social rehabilitation, in so doing, taking into account the requirements of management and safety[1].

Other international legal acts contain a similar classification. In particular, this approach, as well as the specific purpose of classification and individualization, are enshrined in paragraphs 67–69 of part II of the Minimum standard rules for the treatment of convicts, namely: distribution of convicts in a category that would facilitate the work with them, which is aimed at returning them to life in society (subparagraph "c", paragraph 67)[2].

Separate elements of the classification of convicts are reflected in paragraphs 2, 4, 7 of the annex to the Basic principles of treatment with convicts[3] and in some other international legal sources[4], as well as in

[1] Ievropeiski penitentsiarni pravyla: Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 234.

[2] Minimalni standartni pravyla povodzhennia iz zasudzhenymy: Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 69.

[3] Osnovni pryntsypy povodzhennia iz zasudzhenymy: Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 77.

[4] Maltyiskaia deklaratsyia otnosytelno obiavyvshykh holodovku pryniata 43-y Vsemyrnoi medytsynskoi assambleei. Malta, noiabr, 1991 h.: Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 292–293.

the practice of activity of the organs and IES of Russian Federation (article 80 of the CEC)[1], the Republic of Belarus (article 71 of the CEC)[2], the Republic of Kazakhstan[3], and others[4]. At the same time, in the context of our study, the peculiarities of the international legal classification of detained[5] and some judgments of the European court of human rights on a designated problem (Matushevsky and Matushevska against Ukraine)[6] are of interest. In particular, in the judgment of October 19, 2006, in the case of "Koval against Ukraine", the specified Court noted that, in detention of this person in the IW of the and departments in the regions of Ukraine in Zhytomyr region, the administration of this place of pre-trial detention violated the art. 3 of the Convention for the protection of human rights and fundamental freedoms, namely: regarding inhuman and degrading treatment, in connection with the not providing proper medical care and inappropriate

[1] Uholovno-yspolnytelskyi kodeks Rossyiskoi Federatsyy. M. Omeha-L, 2012. 91 s.

[2] Uholovno-yspolnytelskyi kodeks Respublyky Belarus. Mynsk. Natsyonalnii tsentr ynformatsyy Respublyky Belarus, 2000. 144 s.

[3] Kontseptsyia pravovoi polytyky Respublyky Kazakhstan. Almati. Zhety Zharhi, 2002. 56 s.

[4] Bohatyrov I. H. Porivnialne kryminalno-vykonavche pravo: [navch. posib.]. [Bohatyrov I. H., Kopotun I. M., Puzyrov M. S.]; za zah. red. I. H. Bohatyrova. K. In-t kryminalno-vykonavchoi sluzhby, 2013. S. 89–102.

[5] Prava cheloveka y predvarytelnoe zakliuchenye: sbornyk mezhdunarodnikh standartov, kasaiushchykhsia predvarytelnoho zakliuchenyia. Kh. Konsum, 1997. S. 13–24.

[6] Ohliad rishen Yevropeiskoho sudu z prav liudyny. Donetsk. Donetskyi Memorial, 2011. S. 4–6.

conditions for the applicant's detention during pre-trial detention[1].

Consequently, summing up all the levels of classification of convicts, as well as detained, and taking them as a methodological basis for the classification of persons as probable victims of crimes, according to art. 10 of CEC of Ukraine, we can offer such a division into groups and classes:

1. On the legal grounds, that defined in the law: a) persons, who were serving a sentence in the form of deprivation of liberty in the IES or in the IW (article 89 of the CEC – detention in the IW of convicts to deprivation of liberty for work in general services) – part 2 of the art 10 of the CEC; b) persons who are detained in a IES (IW) and regarding whom, in accordance with the law, in connection with their participation in criminal proceedings, was made a decision to apply measures of safety (part 4 of article 10 of the CEC and the Law of Ukraine "On provision the safety of persons, who are involved in criminal proceedings").

2. Regarding the direct object of the encroachment: a) persons regarding whom there arose a danger to their lives (execution from the side of other convicts or participants in criminal proceedings, personnel of the IES, etc.); b) persons regarding whom there arose a danger to their health (the detention together with patients with an open form of tuber-

[1] Praktyka Yevropeiskoho sudu z prav liudyny. Rishennia. Komentari. K. M-vo yustytsii Ukrainy, 2012. № 6 (08). S. 71–111.

culosis; convicts having HIV/AIDS or mental disorders, etc., whose number increases annually)[1].

3. Concerning the source of danger: a) persons who are threatened by other convicts (first of all, those who are detained together in the IES or the IW); b) convicts, the danger to life and health of which is constituted by other persons (close relatives, participants in criminal proceedings, victims of crime and their friends, etc.); c) persons, the subject of danger for which, is the personnel of the IES (the IW).

4. By the form of personal safety: a) persons, who are isolated from other convicts (paragraph 1 of part 4 of article 10 of the CEC); b) persons, who are transferred to a safe place (part 3 of article 10 of the CEC); c) persons, who are transferred to another IES (paragraph 2 of part 4 of article 10 of the CEC); d) persons regarding whom other measures are taken to eliminate danger (part 3 of article 10 of the CEC).

5. According to the subjects of decision-making regarding the personal safety of convicts: a) officials of body or of a penitentiary institution (the SPiSU, territorial administrations of the SPiSU) (part 2 of article 10 of the CEC); b) officials of the IES (the IW) (any persons who have the status of personnel of the SPSU (article 14 of the Law of Ukraine "On the State Penal Service of Ukraine") – part 2 of article 10 of the CEC); c) investigator (part 1 of article 216 of the

[1] Zhuk I. V. Do problemy zabezpechennia zdiisnennia prymusovoho likuvannia osib, khvorykh na tuberkuloz. I. V. Zhuk. Pravovi reformy v Ukraini realii sohodennia. Ch. 1: materialy IV Vseukr. nauk.-teoret. konf., Kyiv, 11 zhovt. 2012 r. K. Nats. akad. vnutr. sprav, 2012. S. 99.

CPC – investigators of OrIA); d) the prosecutor (article 36 of the CPC – as a prosecuting party and prosecutor, who carries out prosecutorial supervision of the execution of criminal penalties (article 22 of the CEC); e) a court or a judge (article 31 of the CPC, article 3 of the Law of Ukraine "On provision the safety of persons involved in criminal proceedings").

6. As to the source of information regarding the danger that has arisen for the lives and health of the convicts in the IES and IW: a) persons who have applied to the officials of the IES (the IW) or other officials with a statement (oral or written) on this subject; b) persons, the real threat regarding whom was established by operational units (article 5 of the Law of Ukraine "On operative and investigation activity").

7. Concerning subjects of danger creating: a) persons who, through their provocative behavior, provoked a source of danger regarding themselves (conflict of interests, provocative behavior, informal status in the environment of convicts, etc.); b) persons in respect of whom the encroachment was the result of the intention of another person, which arose suddenly; c) persons in respect of whom encroachment arose as a result of a coincidence of circumstances (decoding the secret source; the failure of operational development; other miscalculations in the OIA)[1].

[1] Savchenko A. V. Mizhnarodnyi dosvid vykorystannia ahentury pravookhoronnymy orhanamy derzhav Yevropy ta SShA: [posib.]. [Savchenko A. V., Matviichuk V. V., Nykyforchuk D. Y.]; za zah. red. Ya. Yu. Kondratieva. K. Nats. akad. vnutr. sprav Ukrainy, 2004. S. 5–8.

The mentioned approach to the classification and its criteria in the context of the solution of the scientific task, that is indicated in this dissertation, first of all, is due to peculiarities of social relations, which consist in the event of occurrence of a danger to the life and health of convicts, who are serving a sentences in the IES, to which should be included the followings:

1) these relations are one of the types of criminal-executive legal relations, and therefore fully reflect those features that are characteristic for these relationships in general[1]; they should be taken into account when developing and improving the legal mechanism for provision the personal safety of convicts to deprivation of liberty;

2) these relations have a dualistic legal nature of origin, that is, they arise both from the norms of the criminal-executive legislation of Ukraine, and from other branches of law, in particular criminal procedural, and therefore it is necessary to apply the systemic principle[2] when forming such legal norms, that are aimed at solving the problems, which have been identified in the dissertation research;

3) the objects constituting the content of these legal relations are only the life and health of the convicts to deprivation of liberty, and not all the rights and legitimate interests of these persons enshrined in

[1] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 139–140.

[2] Skakun O. F. Teoriia derzhavy i prava: [pidruch.]. Skakun O. F.; per. z ros. Kh. Konsum, 2001. S. 295.

the criminal-executive legislation of Ukraine[1], although in practice this does not exclude the protection and other objects of life of the person (honor, dignity, inviolability, etc.);

4) officials, who are obliged to provide in the IES the personal safety of convicts, being as subjects of these legal relations are divided into: a) those who accept applications from persons, whose life and health are in danger; b) those who decide on the application of measures of safety; c) those who directly provide personal safety;

5) the content of these legal relations consists only of the mutual rights and obligations of those subjects that are directly related to provision the personal safety of those convicts who have applied for the protection of the violated right;

6) taking into account the reality of the danger that arises for the life and health of convicts to deprivation of liberty, an official of the body or the IES is obliged to make emergency, immediate, urgent measures to provide the right of convicts to personal safety.

It was these features that were used in our work in classifying probable victims of crimes in the IES, the right to personal safety of which is enshrined in art. 10 of CEC of Ukraine. Of course, in science, taking into account the dynamics of the development of legislation on personal safety issues, other variants and criteria for classification of probable victims of

[1] Kryminalno-vykonavchyi kodeks Ukrainy: nauk.-prakt. koment. za zah. red. V. V. Kovalenka, A. Kh. Stepaniuka. K. Atika, 2012. S. 36–39.

crimes can be proposed[1]. At the same time, we can conclude that any division of the whole into certain parts has a practical aspect, allows you to analyze and identify the least-regulated elements by norms of law and to improve the legal mechanism for the protection of the most vulnerable objects of criminal encroachments, which undoubtedly include probable victims, referred to in art. 10 of the CEC of Ukraine. According to the analysis and existing problems, which are related to the classification of convicts to deprivation of liberty, it is necessary to carry out the following measures regarding the essence of the identified scientific theme of research, namely:

1. To change the title of article 92 of the CEC of Ukraine, to supplement by the phrase "and its purpose" at the end of the sentence and present it in a new wording: "The separate detention of convicts to deprivation of liberty in correctional and educational colonies and its purpose".

2. In accordance with this, the part 1 of art. 92 of CEC of Ukraine should be amended and presented in the following wording: "The purpose of separate detention of convicts to deprivation of liberty is to provide their personal safety and fulfill tasks regarding correction and re-socialization of these persons". Such modification is conditioned by, in particular:

a) the need for harmonization of domestic criminal-executive legislation with the norms of interna-

[1] Annoshchenkova S. V. Uholovno-pravovoe uchenye o poterpevshem. S. V. Anashchenkova; otv. red. N. A. Lopashenko. M. Volters Kluver, 2006. S. 190–197.

tional law, in particular with the requirements specified in the Minimum standard rules for the treatment of convicts, European penitentiary rules, the Basic principles for the treatment of convicts, etc., in which the purpose of the classification of these persons has a clear normative consolidation;

b) a system approach to streamlining the norms of the CEC of Ukraine, namely, in the law, only the general objective of the criminal-executive legislation of Ukraine (article 1 of the CEC of Ukraine) is defined, which only fragmentarily reflects the content of the classification of the convicts to deprivation of liberty and does not explain the practical basis and the need for such their division;

c) specified supplement will provide an opportunity to fill the basic means of correction and resocialization of convicts by the real content, that is referred to in art. 6 of CEC of Ukraine, as well as will organically combine two processes of influence on the convict and the results of changes that occur in his personality – the process of correction and the process of re-socialization.

3. Taking into account the new edition of part 1 of art. 92 of CEC of Ukraine should change the numbering of other parts of this article of the law.

4. The article 10 of the CEC "The right of convicts for personal safety" should be supplemented by part 6 of the following content: "In the same manner, the personal safety of convicts is provided, the source of danger to life and health of which was established as a result of operative-investigative activity or connected with the forced feeding of convicts in accor-

dance with the provisions of this Code". The above approach is based on the necessity:

a) corresponding of the contents of art. 104 of the CEC "Operative and investigative activity in correctional colonies", in which defines such a task as provision the safety of convicts, art. 1 of the Law of Ukraine "On operative investigative activity" and art. 10 of the CEC, that guaranteeing the person's right to personal safety;

b) the prevention of torture and inhuman or degrading treatment of convicts (part 1 of art. 1 of the CEC), that is usually in cases of group disobedience, refusals of convicts from food and in other similar cases[1];

c) the prevention of deviation from serving a sentence in the form of deprivation of liberty, pressure on personnel of the IES in order to obtain unlawful benefits and privileges, combating to the administration of the penal colony by malicious disobedience to demands from the side of convicts, who, in particular, stated their refusal to eat (part 3 of article 116 of the CEC of Ukraine).

5. In accordance with the content of the principle of differentiation and individualization of the serving sentences (article 5 of the CEC of Ukraine), art. 3 of the Constitution of Ukraine and part 1 of art. 10 of the CEC of Ukraine, in which the right of convicts to personal safety is enshrined, it is necessary to make

[1] Kondratiev Ya. Yu. Orhanizatsiia i poriadok provedennia sekretnykh operatsii spetsialnymy ahentamy proty orhanizovanoi zlochynnosti v SShA: [posib.]. Kondratiev Ya. Yu., Nykyforchuk D. Y., Piasetskyi A. I. K. Nats. akad. vnutr. sprav Ukrainy, 2004. S. 25–26.

changes to part 1 of art. 104 of CEC "Operative and investigative activity in the colonies", namely, the phrase "the provision safety of convicts, personnel of colonies and other persons" must be supplemented with the word "personal" and to put it in the following wording: "the provision personal safety of convicts, personnel of colonies and other persons".

2.4. The role and place of the personnel of places of deprivation of liberty in the mechanism of criminal encroachments on personal safety of the convicts

According to the practice of serving sentences, annually from side of the personnel of correctional colonies are registered a significant number of offenses and crimes, that are related to their official activities[1]. So, only in 2012, staff of correctional colonies were allowed 82 cases of unofficial ties with convicts (ie such misconducts that contradict the requirements of normative legal acts, that regulating their official activity)[2]. In addition, there had been the committing of crimes and corruption actions by the personnel of these colonies (18 criminal cases). As some experts in the sphere of criminal-executive activity rightly point out, such phenomena have become systematic and negatively affect the state of

[1] Prava liudyny v Ukraini 2009 Dopovid pravozakhysnykh orhanizatsii. za red. Ye. Zakharova, I. Rapp, V. Yavorskoho. Kh. Prava liudyny, 2008. S. 277.

[2] Zahalna kharakterystyka Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy (stanom na 25 kvit. 2013 r.). K. DPtS Ukrainy, 2013. S. 13.

law and order in colonies[1]. At the same time, crimes and offenses committed by the side of the personnel of the SPSU were registered both before 2001 (the time when the new CC of Ukraine was adopted) and in next years[2].

Given this and in connection with the need to develop scientifically grounded measures, that aimed at counteracting specified phenomena and provision the personal safety of convicts in the IES, the chosen theme became one of the elements of the subject of this dissertation study.

According to historical sources, the need to rethink the role of law enforcement bodies in society, including organs and IES, have led to the global processes of the 60s of the last century, when corruption, abuse of power and other offenses of persons, which have been representing the interests of the state have confirmed that the "law in action" may differ significantly from "the law in the books". The activity of specified bodies of state were included in the list of immediate criminological problems[3].

In conditions where the SPiSU, in accordance with the legal status, has become equivalent body,

[1] Koshynets V. V. Pidsumky roboty Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy. Koshynets V. V. Praktyka vykonannia alternatyvnykh pokaran: Inform. biul. za zah. red. N. H. Kalashnyk. K. DDUPVP, 2008. № 2. S. 5.

[2] Dani Derzhavnoi penitentsiarnoi sluzhby Ukrainy za 2012 rik [Elektronnyi resurs]. Rezhym dostupu: htt//pzakon1.rada.gov.uaegi-binlaw smain.egi

[3] Martynenko O. A. Kryminolohiia zlochynnosti v orhanakh vnutrishnikh sprav. O. A. Martynenko. Pravo Ukrainy. 2005. № 4. S. 42.

which is autonomous from other state bodies[1] and received the appropriate normative providing, attention to it has only intensified, first of all, in the context of the modification of measures, that aimed at combating the negative phenomena and processes taking place among the personnel of correctional colonies. As stated about it in the preamble of the resolution of the Plenum of the Supreme Court of Ukraine "On judicial practice in cases of abuse of power or official powers" dated December 26, 2003 № 15, this crime is dangerous because it is committed in the sphere of official activity and encroach on the rights, which are protected by the law, and interests of individual citizens, legal entities, state and public interests[2]. In doing so, the object of legal protection is the legal rights and interests of convicts, whose legal status is defined in part 3 of art. 63 of the Constitution of Ukraine, chapter 2 of the CEC of Ukraine and other regulatory legal acts[3].

According to the results of research conducted by scientists[4], the deviation of behavior of personnel of

[1] Pro vyvedennia Derzhavnoho departamentu Ukrainy z pytan vykonannia pokaran z pidporiadkuvannia MVS Ukrainy: Ukaz Prezydenta Ukrainy vid 12 berez. 1999 r. № 24899. Ofitsiinyi visnyk Ukrainy. 1999. № 11. St. 24.

[2] Pro sudovu praktyku u spravakh pro perevyshchennia vlady abo sluzhbovykh povnovazhen: Postanova Plenumu Verkhovnoho Sudu Ukrainy vid 26 hrud. 2003 r. № 15. Postanovy Plenumu Verkhovnoho Sudu Ukrainy u kryminalnykh spravakh. K. Vydav. dim "Skif", 2009. S. 388.

[3] Kryminalno-vykonavche zakonodavstvo Ukrainy. Kryminalno-vykonavchyi kodeks Ukrainy: normatyvno-pravovi akty. uporiad. V. S. Kovalskyi, Yu. M. Khakhuda. K. Yurinkom Inter, 2005. 432 s.

[4] Kryminolohichni ta operatyvno-rozshukovi zasady zapobihannia zlochynam i pravoporushenniam, shcho vchyniaiutsia personalom vypravnykh kolonii: monohr. [V. V. Kovalenko, O. M. Dzhuzha, O. H. Kolb ta in.]; za zah. red. V. V. Kovalenka. K. Atika N, 2011. S. 46–56.

the IES from the normatively defined conditions of performance of official duties are as follows:

1) manifest themselves in the form of crimes. At the same time, as noted by A. P. Zakalyuk, these crimes have a number of peculiarities, in particular, have a wide scope of finding immediate objects of encroachment of convicts and, accordingly, committing crimes against them[1];

2) are expressed through acts of corruption, the number of which in recent years (2001–2012) has almost doubled, with the factdespite the fact, in general, among other law enforcement officers, the number of such manifestations during this period remained at the same level. In particular, if in 2001 in the structure of persons, who were brought to administrative liability (members of the armed forces and other military formations, including the SPSU), the personnel of the IES amounted to 8,6 % (2000 – 3,7 %)[2], then in 2012 – 9,4 %[3], in the first half of 2013 – 6,5 %[4];

3) are implemented through the commission of disciplinary misconducts, the number of which in

[1] Zakaliuk A. P. Kurs suchasnoi ukrainskoi kryminolohii teoriia i praktyka: [u 3 kn.]. Zakaliuk A. P. K. Vyd. dim "In Yure", 2007. Kn. 2. Kryminolohichna kharakterystyka ta zapobihannia vchynenniu okremykh vydiv zlochyniv. S. 265.

[2] Analiz roboty sudiv zahalnoi yurysdyktsii v 2001 r. za danymy sudovoi statystyky. Visnyk Verkhovnoho Sudu Ukrainy. 2002. № 4 (32). S. 24.

[3] Dani Derzhavnoi penitentsiarnoi sluzhby Ukrainy za 2012 rik [Elektronnyi resurs]. Rezhym dostupu. http//zakon1.rada.gov.uaegi-binlaws main.egi

[4] Zahalna kharakterystyka Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy (stanom na 25 kvit. 2013 r.). K. DPtS Ukrainy, 2013. S. 8.

recent years, especially in 2000–2012, also significantly increased. So, if in 2000 in the disciplinary order was punished 7593 employees of the SPSU[1], then in 2012 – about 10 thousand[2], in 2013 – 7826 people[3], 2014 – 6533 people, 2015 – 8002 people, 2016 – 8015 people, 2017 – 6997 people.

To determine the trends in development of the crimes, that committed by the personnel of correctional colonies in relation to the convicts to deprivation of liberty, as well as the clarification of their structure, dynamics and quantitative and qualitative indicators, was analyzed the state of these crimes during 2005–2012, and in relation to corruption acts – 2000–2012. In particular, for the specified period, 196 crimes and 658 acts of corruption were committed by the personnel of the correctional colonies of the SPSU. Over the years it looked like this:

1) the number of crimes: in 2005 – 14; in 2006 – 14; 2007 – 14; 2008 – 18; 2009 – 23; 2010 – 57[4],

[1] Kryminolohichni ta operatyvno-rozshukovi zasady zapobihannia zlochynam i pravoporushenniam, shcho vchyniaiutsia personalom vypravnykh kolonii: monohr. [V. V. Kovalenko, O. M. Dzhuzha, O. H. Kolb ta in.]; za zah. red. V. V. Kovalenka. K. Atika N, 2011. S. 284.

[2] Dani Derzhavnoi penitentsiarnoi sluzhby Ukrainy za 2012 rik [Elektronnyi resurs]. Rezhym dostupu: http//zakon1.rada.gov.uaegi-binlaws main.egi

[3] Zahalna kharakterystyka Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy (stanom na 25 kvit. 2013 r.). K. DPtS Ukrainy, 2013. S. 7–8.

[4] Kryminolohichni ta operatyvno-rozshukovi zasady zapobihannia zlochynam i pravoporushenniam, shcho vchyniaiutsia personalom vypravnykh kolonii: monohr. [V. V. Kovalenko, O. M. Dzhuzha, O. H. Kolb ta in.]; za zah. red. V. V. Kovalenka. K. Atika N, 2011. S. 52.

2011 – 27; 2012 – 29[1]; 2013 – 23, 2014 – 31, 2015 – 33, 2016 – 34, I half-year 2017 – 17.

2) the number of corrupt acts: in 2000 – 51; 2001 – 32; 2002 – 25; 2003 – 20; 2004 – 29; 2005 – 42; 2006 – 54; 2007 – 57; 2008 – 79; 2009 – 82; 2010 – 93[2]; 2011 – 58; 2012 – 36[1], 2013 – 42, 2014 – 37, 2015 – 40, 2016 – 48, 2017 – 49.

Consequently, since 2008 there has been a clear tendency for an annual increase in the number of crimes committed by personnel of correctional colonies, and since 2005 – and corruption acts.

In the structure of committed crimes, the most significant part are such as receiving a bribe, abuse of office and crimes in the area of circulation of narcotic drugs and psychotropic substances and their analogues and precursors. In recent years (2008–2017), the total number of registered crimes, that were committed by personnel of correctional colonies and in general, the number of crimes, that were committed in the IES has increased, that is, the negative tendency of their development and functioning in the conditions of the execution process is observed – the serving of a sentence in the form of deprivation of liberty. Of particular concern is the fact that annually there are some criminal manifestations of the

[1] Dani Derzhavnoi penitentsiarnoi sluzhby Ukrainy za 2012 rik [Elektronnyi resurs]. Rezhym dostupu: http//zakon1.rada.gov.uaegi-binlaws main.egi

[2] Kryminolohichni ta operatyvno-rozshukovi zasady zapobihannia zlochynam i pravoporushenniam, shcho vchyniaiutsia personalom vypravnykh kolonii: monohr. [V. V. Kovalenko, O. M. Dzhuzha, O. H. Kolb ta in.]; za zah. red. V. V. Kovalenka. K. Atika N, 2011. S. 60–61.

personnel of the correctional colony on the person convicted (section 2 of the Special part of the CC of Ukraine "Crimes against a person": intentional murders, including with aggravating circumstances; causing intentional bodily harm, including those that led to the death of the victim; torture, etc.).

According to the subjects of crime, they have the following characteristic: 1) younger commanding staff – 89 people; 2) average commanding staff – 58 people; 3) the senior commanding staff – 30 people; 4) freelance staff – 14 people; 5) civil servants – 0 people. Total (2005–2012) – 191 people.

In addition, in the structure of crimes, the younger commanding staff has a priority place (45 % of all staff members who committed crimes in correctional colonies). At the same time, if in 2005 the number of crimes, that were committed by this category of persons, was the smallest in the structure of the subjects of the crimes, which were committed by the personnel of correctional colonies, then in 2012 – has increased tenfold. In general, an increase in the number of crimes, that were committed by these representatives of correctional colony personnel has been observed since 2007.

The specific gravity of the average commanding staff in the structure of crimes is 35 % of their total number. At the same time, the increase in the number of specified category of persons in this structure began in 2008. In particular, comparing with 2005, in 2016 – the growth was five times.

Another component in the structure of crimes belongs to the senior commanding staff (20 %). On

average, the specified category of correctional colony personnel commits up to five crimes annually. Some decrease in the number of committed crimes took place in 2007–2008, but there were no crimes recorded in general in 2012. However, comparing with 2005, the number of crimes, that were committed by senior commanding staff in 2010 increased by 1,5 times[1].

In the structure of personnel from the number of correctional colonies that committed corruption acts, the following types of offenders can be distinguished: 1) younger commanding staff – 302 people; 2) average commanding staff – 130 people; 3) the senior commanding staff – 51 people; 4) civil servants – 7 people. Total (2005–2012) – 490 people.

Thus, in this structure, the specific gravity of persons from the number of younger commanding staff is predominant and constitutes 64 % from all representatives of correctional colony personnel who committed acts of corruption.

The central place in the structure of corrupt officials also belongs to the average commanding staff (25 % from the total number of persons who committed corrupt acts). At the same time, the number of specified category of offenders in this structure is constant – 16 people. However, in 2012, compared to 2005, the number of such persons in the general structure has increased by 1,2 times.

[1] Kryminolohichni ta operatyvno-rozshukovi zasady zapobihannia zlochynam i pravoporushenniam, shcho vchyniaiutsia personalom vypravnykh kolonii: monohr. [V. V. Kovalenko, O. M. Dzhuzha, O. H. Kolb ta in.]; za zah. red. V. V. Kovalenka. K. Atika N, 2011. S. 59–60.

It is also worrying that both in the structure of crimes (20 %) and in the structure of corruption acts (10,9 %), that was committed by a personnel of correctional colonies, the specific gravity of the senior commanding staff is predominant, that is, those persons who have organizational and administrative functions in the IES and, by their official duties, must directly combat with the said unlawful phenomena and processes, including realization of measures to provide the personal safety of the convicts. At the same time, the number of such persons annually in the correctional colony is constant – up to 8 people[1].

The such situation is a matter of concern to convicts, who, in particular, to the question "Which of the representatives of the personnel of the IES give the greatest danger for the convicts?", among the potential sources of danger called the directors of the colonies (5,73 % in the general structure of the interviewed persons) (supplements 1, 2, 5, 6).

As it was established during the research, the main immediate determinants that lead to the committing of crimes by personnel of correctional colonies and reduce the level of provision personal safety of convicts in the IES, include:

1. As N. Korpachova noted, the absence in the SPiSU proper organization of educational work with personnel, which requires urgent review of moral and material incentives of his interest in the results of

[1] Kryminolohichni ta operatyvno-rozshukovi zasady zapobihannia zlochynam i pravoporushenniam, shcho vchyniaiutsia personalom vypravnykh kolonii: monohr. [V. V. Kovalenko, O. M. Dzhuzha, O. H. Kolb ta in.]; za zah. red. V. V. Kovalenka. K. Atika N, 2011. S. 61.

his work, raising the level of competence and awareness of the personnel of the authorities and the IES about international standards in the field of the practical maintenance of human rights[1]. At the same time, according to V. M. Synyov, the uniqueness of the penitentiary case requires such specialists that would effectively solve the main task of the system – the re-socialization of convicts[2].

2. Increasing the efficiency of work of personnel in correctional colonies requires investment. Without them, on condition of using only the coercion method, the personnel of the SPSU often use a fast, efficient, low-cost, but inhumane method of execution of criminal punishment – unlawful violence against convicts and this is just one of the consequences of his social insecurity and determinants of crime in the IES[3].

Interesting, in this connection, are the results of a study, that was conducted in 2007 by scientists on the status of the protection of the rights, fundamental freedoms and social guarantees of OrIA employees in Ukraine. In particular, by the way of the questionnaire was examined the respondents' attitudes towards the use of unlawful violence (which is often the case among personnel of the SPSU) against con-

[1] Karpachova N. I. Zabezpechennia prav i svobod liudyny v penitentsiarnykh zakladakh. N. I. Karpachova. Stan dotrymannia ta zakhystu prav i svobod liudyny v Ukraini: dopovid Upovnovazhenoho Verkhovnoi Rady Ukrainy z prav liudyny. K., 2004. S. 284.

[2] Synov V. M. Pidhotovka spetsialistiv dlia penitentsiarnoi systemy. V. M. Synov. Problemy penitentsiarnoi teorii i praktyky. 1996. № 1. S. 19.

[3] Pokarannia ta yoho karalno-vypravnyi vplyv na zasudzhenykh, kolyshnikh spivrobitnykiv pravookhoronnykh orhaniv: [monohr.]. za zah. red. T. A. Denysovoi. Zaporizhzhia. Prosvita, 2011. S. 44–63.

victs, suspects and accused, as well as an estimates for the prevalence of such facts in the activities of the OrIA. Overall, 6,1 % of respondents indicated that the practice of unlawful violence has spread in the activities of the Ukrainian police; 22,8 % – probably common; 47,8 % – probably not common; 24,1 % – not common.

At the same time, the estimation of the prevalence of unlawful violence in the activity of the police by the population of Ukraine was significantly different from the assessment of such facts by police officers. Thus, 28 % of the population noted that illegal violence is very widespread in the activity of the OrIA of Ukraine; 33 % – probably common; 8 % – probably not common; 6 % – not common; 25 % – it is difficult to answer the question[1].

There were no such complex and thorough researches among the personnel of the SPSU until now, with the exception of some, which were discussed in paragraph 1.1 of this work[2], therefore, conclusions about the indicated activity of police officers can be considered relative and such that only to a certain extent can occur among employees of bodies and IES. At the same time, this unsystematic results of the study of the social psychological state of the per-

[1] Stan zakhyshchenosti prav, osnovnykh svobod i sotsialnykh harantii pratsivnykiv OVS Ukrainy analitychnyi zvit za rezultatamy sotsiolohichnoho doslidzhennia. [Iu. L. Bilousov, D. O. Kozbin, Yu. O. Sviezhentseva ta in.]; za red. K. B. Levchenko. K., 2008. S. 126–127.

[2] Kryminolohichni ta operatyvno-rozshukovi zasady zapobihannia zlochynam i pravoporushenniam, shcho vchyniaiutsia personalom vypravnykh kolonii: monohr. [V. V. Kovalenko, O. M. Dzhuzha, O. H. Kolb ta in.]; za zah. red. V. V. Kovalenka. K. Atika N, 2011. 368 s. tabl.

sonnel of the SPSU, that were carried out by various subjects of the study, can not reflect the real situation regarding the mentioned problem due to the specific nature of the legal nature and peculiarities of operative and service activities of the personnel of the bodies and IES, including on the issues of provision the personal safety of convicts. At the same time, the results of the held monitoring of the activities of the personnel of the SPSU[1] are of concern and need more active scientists' research of problems, which are related to the selection, education and use of persons, who are involved in the work (service) in the bodies and IES. These are, in particular, the results of a survey, that conducted by the way of questionnaire of former convicts by the public organization "Donetskyi Memorial" in Ukraine. The 92 people were interviewed, including: a) 19 persons (21 %), from the moment of the exemption of which from the IES have passed no more than a month; b) 10 persons (11 %) – from one to three months; c) 22 persons (24 %) – from three to six months; d) 29 persons (32 %) – had been free more than six months; e) 10 persons (11 %) – have been waiting for exemption from the IES.

The question, how often from the side of the SPSU personnel was used a force or there were threats of using it against the respondents, 46 persons (50 %) answered – "sometimes". Personally 28 respondents (30 %) have never been subjected to unjustified use of force and have not received threats of using it.

[1] Prava liudyny v mistsiakh pozbavlennia voli. Praktyka monitorynhu na Pivdni Ukrainy. O. OOBF "Za maibutnie bez SNIDU", 2009. 93 s.

Almost the same ratio was observed in the answers to the question, whether the questioned persons were witnesses of unjustified use of force to other convicts: from time to time this happened with 48 questioned persons (52 %), and 20 persons (22 %) have never been witnesses of such unlawful actions by the personnel of the IES. However, 18 persons (20 %) from number of the respondents personally felt unjustified use of force "very often" and 23 respondents (25 %) have never been witnesses of it often using against another convicts[1].

At the same time, given that the majority of respondents (about 90 %) during the survey were already exempted from the IES, it is necessary to recognize the results of the conducted poll most close to objective as possible, given that the former convicts had the opportunity to answer the questions without fear, pressure, etc. from the personnel of the SPSU. This information should be taken into account when organizing and implementing the activities of the administration of the bodies and the IES on the prevention of offenses and crimes against convicts and provision their personal safety.

3. Inadequate funding for bodies and IES from the State budget of Ukraine. In particular, only in 2000–2012 the SPSU was financed within the limits of 25–45 % from the regulatory requirements[2].

[1] Dotrymannia prav uviaznenykh v Ukraini u 2005 rotsi. Aspekt Informatsiinyi biuleten. Donetsk. Donetskyi Memorial, 2005. S. 20.

[2] Penitentsiarni ustanovy Ukrainy (teoretyko-pravove doslidzhennia) naukove vydannia (troma movamy). Ivan Bohatyrov. K., 2013. S. 42–51.

As a result, the status of recruitment of posts in correctional colonies and quantitative and qualitative indicators of personnel significantly deteriorated, despite the fact that the Law of Ukraine "On the general structure and number of the State penal service of Ukraine" of March 2, 2000 determined the total number of personnel of the SPSU in a ratio of 33 % of the total number of persons, who are held in the IES[1]. In addition, according to this Law, the staffing level af personnel should be amounted to only 61 thousand 735 posts in 2012, at the same time, this rate actually amounted to only 46555 persons (75,4 % from the needs)[2].

As it is established, the recruitment of posts in the bodies and the IES is only 72–75 % from the staffing need annually[3].

4. By specialty and qualification, the personnel of the SPSU, which directly has to and is able to perform the specified in art. 1 of CEC of Ukraine tasks (correction and resocialization of convicts), amount only 41,7 % (lawyers – 27,6 %, teachers – 11,8 %, psychologists – 2,3 %). Another category of personnel, which is involved in the serving sentences, can

[1] Pro zahalnu strukturu i chyselnist Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy: Zakon Ukrainy vid 2 berez. 2000 r. Ofitsiinyi visnyk Ukrainy. 2000. № 13. St. 504.

[2] Dani Derzhavnoi penitentsiarnoi sluzhby Ukrainy za 2012 rik [Elektronnyi resurs]. Rezhym dostupu: http//zakon1.rada.gov.uaegi-binlaws main.egi

[3] Kryminolohichni ta operatyvno-rozshukovi zasady zapobihannia zlochynam i pravoporushenniam, shcho vchyniaiutsia personalom vypravnykh kolonii: monohr. [V. V. Kovalenko, O. M. Dzhuzha, O. H. Kolb ta in.]; za zah. red. V. V. Kovalenka. K. Atika N, 2011. S. 92.

be attributed to the support staff (engineers, economists, doctors, etc.). In particular, persons who have special ranks in the general structure of the personnel of the SPSU, amount only 26 %[1].

Therefore, the problem is evident, which was constantly confirmed by the leadership of the SPiSU, namely: observance of constitutional rights and freedoms in places of deprivation of liberty can provide only specially trained and socially protected personnel, about which repeatedly pointed out by the experts of the CE[2]. In European penitentiary rules in this regard, in particular, it is noted that the administration of the IES should carefully select personnel in the recruitment or further appointment all employees. In doing so, special attention should be paid to their integrity, humanity, professional level of preparation and personal suitability for work (paragraph 77)[3].

This approach has been justified by the domestic science for a long time[4], however, in practice it has not been fully implemented in practice to this day. In

[1] Informatsiino-analitychnyi biuleten pro stan prokurorskoho nahliadu za doderzhanniam zakoniv pro vykonannia sudovykh rishen u kryminalnykh spravakh ta pry zastosuvanni inshykh prymusovykh zakhodiv za 12 misiatsiv 2012 roku. K. Heneralna prokuratura Ukrainy, 2013. S. 7–8.

[2] Koshynets V. V. Pidsumky roboty Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy. Koshynets V. V. Praktyka vykonannia alternatyvnykh pokaran: Inform. biul. za zah. red. N. H. Kalashnyk. K. DDUPVP, 2008. № 2. S. 5.

[3] Ievropeiski penitentsiarni pravyla: Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 232–266.

[4] Synov V. M. Kontseptsiia kadrovoho zabezpechennia diialnosti penitentsiarnoi systemy. V. M. Synov, M. V. Klymov. Problemy penitentsiarnoi teorii i praktyky. 1997. № 2 S. 70–85.

this connection, it is also worth agreeing with G. P. Shchedrovytskyi, who reasonably believes that in order to carry out practical educational activity or to form a new system of correction and education, it is necessary to have a project of the future product of this system – a correct and comprehensive description of a person[1]. That is why, as noted by M. V. Klimov, in situations of correction and education of subjects of such special spheres of activity as penitentiary and law enforcement, the urgency of the definition of scientifically grounded pedagogical project increases. In doing so, the pedagogical product of the departmental system of education and correction raises the quality of the future projected personnel[2].

Thus, by summarizing the views, that were proposed by academics and practitioners on the content of the activity of personnel of correctional colonies, which is related to provision the personal safety of convicts in correctional colonies, such persons can be differentiated into three categories:

a) persons who directly perform operative service tasks, with clearly defined functions (protection, oversight, etc. – in the absence of guidance and coordination functions); that is, an instructional performance type of activity, which is aimed at fulfilling this task;

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[1] Shchedrovytskyi H. P. Systema pedahohycheskykh yssledovanyi (metodolohycheskyi analyz). H. P. Shchedrovytskyi. Pedahohyka y lohyka. M., 1993. S. 90.

[2] Klymov V. M. Personal ustanov vykonannia pokaran yak predmet naukovo-pedahohichnoho doslidzhennia. V. M. Klymov. Problemy penitentsiarnoi teorii i praktyky. 2001. № 6. S. 345.

b) persons, who performs the same functions but related to the organization and coordination of acts of subordinate personnel – this is a reproductive type of activity of personnel in this direction;

c) persons, who performs functions of senior and higher managerial staff at the level of a productive type of such activity[1].

In our opinion, the specified approach will provide an opportunity:

– to increase the level of individual liability of the personnel of correctional colonies in order to provision the personal safety of convicts;

– to use more effectively of the forces and means of the OIA, first of all, in the field of operative and investigative prevention, at stages of preparation (article 14 of the CC of Ukraine) and an attempt to commit crimes (article 15 of the CC) and during the immediate implementation by the personnel of correctional colonies of measures, that aimed at provision the personal safety of convicts;

– to improve the practice, including judicial, counter crime in correctional colonies.

In order to solve the problems, that are defined in this subsection of dissertation, the following measures must be taken:

1. The CEC of Ukraine must be supplemented by chapter 4-1 "Personnel of bodies and penal institutions" and to put it in the following wording:

[1] Synov V. M. Kontseptsiia kadrovoho zabezpechennia diialnosti penitentsiarnoi systemy. V. M. Synov, M. V. Klymov. Problemy penitentsiarnoi teorii i praktyky. 1997. № 2. S. 81.

Article 21-1. Fundamentals of the legal status of personnel of bodies and penal institutions

The legal status of the personnel of the bodies and penal institutions and requirements to it are determined by a special law.

Article 21-2. Liability of the personnel of bodies and penal institutions

1. In cases of inhuman or degrading treatment with the convicts, the personnel of the bodies and penal institutions should be dismissed from the service (work) and brought to the appropriate form of legal liability.

2. Repeated acceptance to the service (work) of persons, who specified in part one of this article, is not allowed.

Article 21-3. Relationships of the personnel of bodies and penal institutions

1. The relationships between the personnel of the bodies and penal institutions are based on strict adherence to the law and other principles of the criminal-executive legislation of Ukraine, execution and serving of punishment.

2. Personnel of bodies and penal institutions are strictly forbidden to enter into non-service relationships with convicts and their relatives that are not caused by the interests of the service, and also to use their services.

3. The personnel of bodies and penal institutions appeals to the convicts on “vous” and calls them “convict” or “citizen” and a surname, and in educational colonies – as “you” or “pupil” and by name.

The convicts appeals to the personnel on "vous", call them by name and middle name or "citizen" and by the rank or their official capacity.

The need of this changing is due to the following circumstances:

– firstly, the content and structure of criminal-executive relations, the main subjects of which are the personnel of the bodies and IES and convicts[1]. In doing so, if the legal status of the latter is clearly specified in the law (articles 7–10 of chapter 2 of the CEC), then the first in the current CEC is not specified. There is a paradoxical situation: specific convicts serve sentences, the individual and general status of whom is regulated at the normative regulatory level, but anonymous bodies and the IES serve sentences and not the relevant officials of the state;

– secondly, the systemic principle of constructing legal norms[2], which implies consistency and interconnectivity as the generally binding rules of conduct, as well as other norms, which are included in the normative legal act in the form of changes and additions;

– thirdly, international legal acts on issues of the serving sentences have rules, which define the content of activity and the legal status of both convicts and personnel of bodies and IES[3];

[1] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 137–145.

[2] Skakun O. F. Teoriia derzhavy i prava: [pidruch.]. Skakun O. F.; per. z ros. Kh. Konsum, 2001. S. 499–501.

[3] Ievropeiski penitentsiarni pravyla: Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 232–266.

– fourthly, international legal practice (CEC, laws, etc.) has the very structure that provides for the role and place in criminal-executive relations of the two above-mentioned subjects[1].

2. To make changes and additions to the Law of Ukraine "On the State Penal Service of Ukraine of Ukraine", namely:

2.1. The first sentence of part 1 of art. 16 of the Law should be supplemented by the following phrases:

2. Make changes and additions to the Law of Ukraine "On the State Criminal Executive Service of Ukraine", in the most: "…as well as the requirements of international legal acts on the issues of serving sentences, the consent of which was given by the Verkhovna Rada of Ukraine", as well as – "not to abuse and go beyond the limits of official authority provided by the law» and to put it in the following wording: "The personnel of the SPSU of Ukraine is obliged to comply strictly with the laws of Ukraine, as well as the requirements of international legal acts on issues of the serving sentences, the consent of which was given by the Verkhovna Rada of Ukraine, to adhere to the norms of professional ethics, to treat humanely to the convicts and persons, who are taken into custody, not to abuse and to go beyond the limits of the official authority provided by the law".

The need for such a modification is due to: requirements of art. 9 of the Constitution of Ukraine, in

[1] Bohatyrov I. H. Porivnialne kryminalno-vykonavche pravo: [navch. posib.]. [Bohatyrov I. H., Kopotun I. M., Puzyrov M. S.]; za zah. red. I. H. Bohatyrova. K. In-t kryminalno-vykonavchoi sluzhby, 2013. 140 s.

which international legal acts are referred to the sources of national legislation; the content of the Law of Ukraine "On international treaties", which defines the priority of ratified international legal acts on the territory of Ukraine; judicial practice regarding the criminal cases on issues of excess of authority or official authority[1].

2.2. The second sentence of art. 17 of this Law should be supplemented by a phrase "including abroad or with the involvement of foreign specialists" and to put it in the following wording: "For this purpose, the SPSU of Ukraine may create appropriate educational institutions, as well as organize training of specialists in other educational institutions on a contractual basis, including abroad or with the involvement of foreign specialists".

The specified modification legalizes, respectively, those activity that is carried out in Ukraine for a long time and is associated with the involvement of international experts[2] and other specialists in raising the skills of the personnel of SPSU in the form of:

– monitoring of observance of human rights and freedoms in the IES of Ukraine and publication of

[1] Pro sudovu praktyku u spravakh pro perevyshchennia vlady abo sluzhbovykh povnovazhen: Postanova Plenumu Verkhovnoho Sudu Ukrainy vid 26 hrud. 2003 r. № 15. Postanovy Plenumu Verkhovnoho Sudu Ukrainy u kryminalnykh spravakh. K. Vydav. dim "Skif", 2009. S. 387–392.

[2] Plakhotniuk N. V. Mizhnarodne pravo shchodo zapobihannia nenalezhnoho povodzhennia z liudynoiu. N. V. Plakhotniuk. Teoretychni ta praktychni problemy udoskonalennia diialnosti kryminalno-vykonavchoi systemy Ukrainy: materialy Vseukr. nauk.-prakt. konf. (4 trav. 2011 r.). K. Nats. akad. vnutr. sprav. 2011. S. 140–143.

relevant methodological[1] and other manuals[2], as well as collections of training materials[3];

– visits of representatives of the SPSU abroad for the study of foreign experience[4];

– creation of funds for assistance in carrying out reforms in the criminal-executive system of Ukraine, as well as institutions – models for the serving sentences[5] etc.

The conclusions to the section 2

1. As the results of the analysis of the current state (2004–2017) of provision the personal safety of convicts in correctional colonies show, the situation, which has emerged, to some extent, reflects the content of the regularities of the committing and the development of unlawful encroachments on individuals, who serving sentences in the form of depri-

[1] Obshchestvennii kontrol v Ukrayne y Rossyy. Obshchestvennii kontrol v mestakh prynudytelnoho soderzhanyia obmen opitom: sb. materyalov kruhloho stola, h. Sviatohorsk, Ukrayna, 20–21 marta 2011 h. Donetsk. Donetskyi Memoryal, 2011. 66 s.

[2] Provedennia monitorynhu prav i svobod liudyny v ustanovakh penitentsiarnoi systemy Ukrainy: metod. posib. O. A. Martynenko. K. KIM, 2007. 224 s.

[3] Pidvyshchennia profesiinoi kompetentnosti personalu SIZO: materialy treninhu. K. Shveitsarsko-ukrainskyi proekt "Pidtrymka penitentsiarnoi reformy v Ukraini", 2010. 62 s.

[4] Zahalna kharakterystyka Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy (stanom na 25 kvit. 2013 r.). K. DPtS Ukrainy, 2013. S. 116.

[5] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 379–389.

vation of liberty, that have occurred in previous years (1991–2003) and which were subject to legal assessment by the personnel of the IES and the court, and also were the subject of scientific developments both in Ukraine and abroad. At the same time, it is established the peculiarities of the current state of the identified problem, which are connected, first of all, with the change in the qualitative composition of the convicts (its deterioration and concentration in the IES of the most socially dangerous persons), wider use in the criminal activity of achievements in the field of information technologies, which creates additional threats to the personal safety of convicts, in particular, in taking measures to provision of the integrity of their lives and health, transferring to a safe place, to the same correctional colony, in which the specified person is serving a sentence, and by the way of moving him to another IES, as well as participation in the creation of dangerous conditions for the life of the convicts in the places of of deprivation of liberty by the personnel of correctional colonies. In this context, the most vulnerable are those persons, who are kept in educational colonies and who, after reaching adulthood, are transferred to correctional colonies, the specific gravity of whom in the structure of victims of crimes in the IES is quite significant.

Within the existing legal mechanism, it is impossible to provide the proper personal safety of the convicts in the correctional colonies of Ukraine. On the basis of this, a number of scientific and practical tools, that aimed at improving the status of activity of the personnel of the IES on these issues at the

legal, organizational, and material-technical levels were developed and proposed, the part from which have been reflected in the law-making and law-enforcement sphere, as well as in the educational and methodological process of accompaniment of the solution of this problem in practice.

2. Despite the diversity of the forms and means, that are identified in the law, of provision the personal safety of convicts in the correctional colonies of Ukraine, as evidenced by the results of the study, the effectiveness of their implementation in modern conditions is restrained by a number of circumstances, namely:

– the lack of proper practice of responding to statements and reports of a threat to the life and health of convicts in accordance with the requirements of the new CPC of Ukraine, the procedure of integration and registration of which is rather complicated (article 214) and not effective enough in the conditions of the IES, considering the need of the urgency of taking measures to provide the personal safety of a person, who is applying with the application for protection of his life and health;

– inadequate funding from the State Budget of Ukraine of the activity of SPSU, which is related to provision the personal safety of convicts, in particular, regarding their moving to other IES, in connection with this, the level of latency increases to the solution of this problem in the area of practical possibilities of the administration of the correctional colony;

– lack of departmental Instruction for provision personal safety of convicts who are not participants

in criminal proceedings (part 2 of article 10 of the CEC of Ukraine); as well as the discrepancy between the provisions of the Law of Ukraine "On provision the safety of persons, who are involved in criminal proceedings" and the provisions of the current CPC of Ukraine both by the form (use of terms and procedures that do not correspond to each other) and by content, which is due, in particular, to the absence in the CPC of a special section or chapter, that is devoted to the issues of procedural provision the personal safety of convicts.

In accordance with the existing problems, a scientifically based algorithm for solving them by legal forms and means is proposed.

3. Taking into account the urgency and practical need for solving tasks, that are related to the improvement of the legal mechanism for provision the personal safety of convicts in the correctional colonies of Ukraine, the author has developed and scientifically substantiated the classification of convicts, who are belonging to probable victims of criminal encroachments in the specified IES. At the same time, it was based on those practical and theoretical approaches that were reflected in the implementation of the classification of convicts, who are allocated to the IES after they are sent for serving the sentence in the form of deprivation of liberty, as well as the avowed typology of crime victims, which is developed by scientists in penitentiary criminology.

At the same time, the classification of convicts as probable victims of crime is proposed, which is conditioned by the peculiarities of the division of these

persons into the respective groups, taking into account, first of all, their status, that is defined by law (article 10 of the CEC of Ukraine): 1) convicts who are not participants in criminal proceedings; 2) persons belonging to such a category of potential victims in the IES. Other criteria that were applied in the implementation of the classification, made it possible to distinguish from these groups of convicts relevant subgroups of practical direction and with a well-defined problem, which needs special attention from the side of personnel of the IES and the primary decision at the normative regulatory level. The author has developed and scientifically substantiated ways to increase the effectiveness of the legal mechanism for provision the personal safety of convicts in the correctional colonies of Ukraine in this direction.

4. An analysis of the determinants, that are related to the violation of the personal safety of convicts in the IES of Ukraine, gave the opportunity to distinguish the main of them – abuse of office by the personnel of correctional colonies, without neutralization, blocking, the elimination of which is difficult and problematic increase the level of protection of vital values of persons, who are serving sentences in the form of deprivation of liberty. In addition, a significant specific gravity of senior management at the level of middle and senior commanding staff in the structure of offenses and crimes, which infringe upon the lives and health of convicts in correctional colonies, necessitates modifications as criteria for selection, training and professional development of the personnel of the SPSU, and the legal

principles of its activities, as well as the content of criminal executive policy in this direction with the reorientation of its components to address specific problems, which are related to provision the constitutional rights and legal interests of convicts, the main of which are their life and health.

Taking into account the content of this problem, an attempt was made to resolve it by the way of introducing changes and additions to the CEC of Ukraine, that are aimed at countering offenses and crimes, which are committed by personnel of correctional colonies.

Section 3

Main ways for improvement of the activity on provision of personal safety of convicts in Ukraine

3.1. The main regulatory and legal means for provision the personal safety of convicts and ways to increase their effectiveness in Ukraine

Violation of this question in this work and namely in the above formulation is a necessary condition for the elaboration and substantiation of proposals, that are aimed at improving the content of operative investigative policy and the activity of the operational divisions of the SPSU, in particular, regarding the provision of the right of convicts to deprivation of liberty for personal safety. In view of the fact, that there are no fundamental scientific works, which are devoted to the implementation of this policy in the conditions of the IES, and there are ongoing discussions among scientists on specified probem, the defining of this issue as a separate task in our study is quite logical.

Practice shows that with the adoption of the Law of Ukraine "On operative investigative activity"[1] and

[1] Pro operatyvno-rozshukovu diialnist: Zakon Ukrainy vid 18 liut. 1992 r. Vidomosti Verkhovnoi Rady Ukrainy. 1992. – № 22. St. 303.

the CEC of Ukraine (article 104 "Operative investigative activity in the colonies") and the entrenchment in these normative legal acts of the legal and organizational basis of the implementation of the OIA by the operational units of the IES, the said activity in correctional colonies became legitimate and became an important means of realization of operative investigative policy and an integral part of criminal-executive activity, in particular, the such one, which is related to provision the right of convicts to personal safety. We share the opinion of scientists (K. K. Goryainov, V. S. Ovchynskyi, G. K. Synilov, A. Yu. Shumylov), who consider that operational investigative policy is a component of criminal policy, that is, the policy of state in the field of combating crime[1]. The latter, as an element of the internal policy of the state, also defines the main directions, goals and means of impact on crime in the IES with the help of means of forming the criminal, criminal procedure and criminal-executive legislation and practices of its application, as well as by developing and implementing measures, that are aimed at preventing crime, in particular by forms, forces and means of the OIA[2].

The operative investigative policy and the practice of its implementation have a long history, in the general sense they are interpreted as secret tracking

[1] Operatyvno-rozisknaia deiatelnost: ucheb. pod red. K. K. Horiainova, V. S. Ovchynskoho, H. K. Synylova, A. Yu. Shumylova. [2-e yzd., dop. y pererab.]. M. YNFRA M, 2004. S. 89.

[2] Fris P. L. Narys istorii kryminalno-vykonavchoi polityky Ukrainy: [monohr.]. za zah. red. M. V. Kostytskoho. K. Atika, 2005. S. 32.

and the search for criminals[1]. The first mentions of them, according to research by O. M. Bandurka, are contained in ancient religious texts[2]. For example, in the Bible (Book of the Old Testament, The Fourth book of Moses, chapter 13, article 3, 18–30, 1990), it is said that Moses sent several of his supporters (twelve observers) to the land of Canaan in order them to establish: what is the number of its residents, do they defend the city, what is the yield of the soil, etc. In forty days the messengers returned and, having told about the results of the intelligence, confirmed the words with samples of the land of Canaan[3].

At the same time, operative investigative policy, like other types of policies in the area of combating crime, is a function from criminal law policy and is closely linked to it[4]. As a result of this displacement of emphasis on certain aspects of counteraction to crime in correctional colonies, in particular, to the questions, that are related to provision the right of convicts to personal safety, and the process of development of criminal legal policy generally require an appropriate correction of operative investigative po-

[1] Dolzhenkov A. F. Operatyvno-rozisknaia deiatelnosty kak hosudarstvenno-pravovaia forma borbi s prestupnostiu. Dolzhenkov A. F., Dushko F. K. y dr. O. OHU, 1994. S. 7.

[2] Bandurka O. M. Operatyvno-rozshukova diialnist: [pidruch.]. Ch. 1. Bandurka O. M. Kh. Vyd-vo nats. un-tu vnutr. sprav, 2002. S. 10–11.

[3] Bibliia Knyha Staroho Zavitu. Chetverta Knyha Moiseia. K. Ukrainska Pravoslavna Tserkva, 2010. S. 284–285.

[4] Suchasna kryminalno-vykonavcha polityka Ukrainy: [monohr.]. [2-he vyd. vypr. i pererobl.]. [Kolb O. H., Zakharov V. P., Kondratishyna V. V. ta in.]; za zah. red. O. H. Kolba. Lutsk. PP V.P. Ivaniuk, 2008. S. 82.

licy. Adoption of the Law of Ukraine "On amendments to the Criminal and Criminal Procedural Codes of Ukraine regarding the humanization of criminal liability" of April 15, 2008[1] and the new CPC also caused changes in the content of operative investigative policy in the IES, namely: the punitive (repressive) direction of the OIA is changed to the preventive impact of operative investigative measures in this direction and the protection of the lawful rights of convicts[2].

In general, the operative investigative policy of Ukraine orients the subjects of its implementation towards counteraction to crime with the help of special operative investigative means. The scientists O. F. Dolzhenkov, A. F. Dushko, I. P. Kozachenko do not carry the content of operational investigative policy only to law-making, in their opinion, it also implies law enforcement activity[3]. The content of the operative investigative policy of Ukraine is defined by the tasks facing this type of policy in the field of combating crime (in particular, in the IES), as well as by the principles on which it is based. The latter are very specific – they reflect the general principles of

[1] Pro vnesennia zmin do Kryminalnoho ta Kryminalno-protsesualnoho kodeksiv Ukrainy shchodo humanizatsii kryminalnoi vidpovidalnosti: Zakon Ukrainy vid 15 kvit. 2008 r. Vidomosti Verkhovnoi Rady Ukrainy. 2008. № 24. St. 236.

[2] Stanovlennia systemy nehlasnoho rozsliduvannia u kryminalno-protsesualnomu zakonodavstvi Ukrainy: materialy kruhloho stolu (Kyiv, 7 zhovt. 2011 r.). K. FOP Lipkan O. S., 2011. 168 s.

[3] Dolzhenkov O. F. Operatyvno-rozshukova diialnist yak pravookhoronna funktsiia kryminalnoi militsii. Dolzhenkov O. F., Dushko F. K., Kozachenko I. P. O. NDRVV OIVS, 2000. S. 12.

criminal legal policy in the field of operative investigative law, which, being enshrined in the norms of law, become the principles of the OIA[1]. In addition, the implementation of operative investigative policy involves identify and justifying the social conditionality of projected and current norms of operative investigative legislation of Ukraine. In this approach, operative investigative policy should be closely linked to legislative and enforcement practice, should become the basis for the formation of operative investigative measures and maximally meet the real needs of society and the state. This is how the operative investigative policy of Ukraine in general and in the field of combating crime is being formed and implemented (in particular, regarding the provision the right of convicts to deprivation of liberty on personal safety).

The generalization of various doctrinal sources made it possible to formulate the following definition of operative investigative policy of Ukraine in the IES in the context of the subject of our study: it is an appropriate direction of the law-making activity of the state and enforcement activity of the operational units of the IES in relation to the development and application of operative investigative measures for counteracting crimes by the side of individuals, who are serving sentences in the form of deprivation of liberty, and the provision of the right of convicts for personal safety. The specialists of the outlined theme (E. O. Didorenko, S. O. Kyrychenko, B. G. Rozovskyi)

[1] Davidov Ya. Operatyvno-rozisknaia deiatelnost: [konspekt lektsyi]. Davidov Ya. M. Pryor-yzdat, 2005. S. 11.

rightly point out, that there are two aspects of the implementation of the OIA in this direction, namely: legal (in practice, it consists in the legal regulation of this activity and the direct application of legal norms in the process of its implementation) and procedural-educational (organization and tactics of the implementation of transparent and secret operative and investigative measures and the applying of operational and operational-technical means)[1]. At the same time, another approach, which is suggested by D. Y. Nykyforchuk, deserves attention. According to the scientist, the introduction in the new CPC of Ukraine of secret investigatative institute will provide an opportunity to solve a number of problems, which are available in the current law and practice of law enforcement activity, first of all, will bring the OIA closer together and the criminal trial[2]. The above determines the peculiarities of the current operative investigative policy of Ukraine in the IES, which are related, in particular, to provision the right of those convicts to deprivation of liberty for personal safety, namely:

a) regulation of general issues of the OIA, which is carried out by open normative and legal acts, the main among which are the Law of Ukraine "On operative and investigative activity" and art. 104 of CEC

[1] Dydorenko E. A. Protsessualnii status ORD v uholovnom sudoproyzvodstve. Dydorenko E. A., Kyrychenko A. S., Rozovskyi B. H. Luhansk, 2000. S. 24.

[2] Nehlasni slidchi (rozshukovi) dii: [kurs lektsii]. D. Y. Nykyforchuk, S. I. Nikolaiuk, O. I. Kozachenko ta in.; za zah. red. D. Y. Nykyforchuka. K. Nats. akad. vnutr. sprav, 2012. S. 4.

of Ukraine "Operative and investigative activity in colonies";

b) a clear definition of the subjects of the OIA in the IES (employees of the operational units) and their competencies;

c) establishment by the law of a list of operative and investigative measures;

d) involvement of the public and individuals in assistancing to the operational units of the IES;

e) requirements of strict adherence to the lawfully in the activity of the subjects of the OIA in the IES (article 19 of the Constitution of Ukraine, article 5 of the CEC of Ukraine, article 4 of the Law of Ukraine "On operative and investigative activity", etc.);

f) restriction of constitutional rights of convicts in the process of implementation of the OIA only on the basis of law and in the established procedure[1].

At one time, F. Lyst defined criminal legal policy as an independent branch of the science of criminal law[2]. In modern conditions it is expedient, in our opinion, to attribute the peculiarities of operative investigative policy in the IES to the subject of the study of the theory of the OIA, that, along with other issues, it is necessary to study and operative investigative policy, which is implemented by a law-enforcement body determined by law. In this case, the implementation of operative investigative policy in

[1] Slipchenko V. I. Perspektyvy reformuvannia operatyvno-rozshukovoi diialnosti (v konteksti rozrobky novoho KPK Ukrainy [Elektronnyi resurs]. V. I. Slipchenko. Rezhym dostupu: http//www.corp-lguvd.uad 120108.html

[2] Lyst F. Zadachy uholovnoi polytyky. Prestuplenyia kak sotsyalno-patolohycheskoe yavlenye. Lyst F. M. YNFRA M, 2004. S. 7.

the IES will have a significant impact on the theory of the OIA, but at certain stages may also be crucial for determining the directions of further development of operative investigative science in the field of provision the fundamental rights and freedoms of human and citizen, in particular the rights of convicts to deprivation of liberty for personal safety in the IES. Changes in operative investigative policy, which led to the adoption of legislation on OIA, in particular art. 104 of the CEC of Ukraine "Operative and investigative activity in colonies", brought out the theory of operational work (inquisitorial, undercover, etc.) beyond exclusively the secret category and legalized the emergence of a new section in domestic science – the theories of the OIA in the IES[1].

Given the fact that in the legislation on the issues of the OID has implemented the general tasks – purposes of operative investigative policy (art. 1 of the Law of Ukraine "On operative investigative activity", art. 104 of the CEC of Ukraine), it is necessary to take systematic measures in the IES, which are conditioned by the content of modern criminal-law policy[2] and are aimed at improving the system of measures for the safety of life in correctional colonies, among which are:

[1] Bohatyrov I. H. Diialnist operatyvnykh pidrozdiliv ustanov vykonannia pokaran shchodo vyiavlennia osib, skhylnykh do vchynennia zlochynu. I. H. Bohatyrov. Naukovyi visnyk Dnipropetrovskoho derzhavnoho universytetu vnutrishnikh sprav. 2006. № 4 (30). S. 275–281.

[2] Fris P. L. Kryminalno-pravova polityka Ukrainy: avtoref. dys. na zdobuttia nauk. stupenia doktora yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". P. L. Fris. K. Kyiv. nats. un-t vnutr. sprav, 2006. 36 s.

1. To reorient its contents and to determine as the priority tasks the timely prevention, detection and suppression of crimes in the IES, above all, those relating to the encroachment of the life and health of convicts and the provision of their personal safety (part 2 of article 10 of the CEC of Ukraine). The specified is due to the requirements: a) paragraph 1 of part 1 of article 7 of the Law of Ukraine "On operative investigative activity", b) part 1 of art. 104 of CEC of Ukraine "Operative and investigative activity in colonies"; c) part 2 of art. 50 of the CC of Ukraine "Concept and purpose of punishment"; d) part 2 of art. 1 of CEC of Ukraine "The purpose and tasks of the criminal-executive legislation of Ukraine"; e) art. 2 of the CPC of Ukraine "The task of criminal proceedings"; f) another normative legal acts (Manual for the organization and conduct of operative and investigative activity in the bodies, institutions and IW of the criminal-executive system; The rules of the internal order of penitentiary institutions, etc.).

The range of the issues reflects the content of operative investigative prevention of crime (operative investigative prevention) as task of the OIA, which is implemented through the implementation of appropriate operative investigative measures and provides, first of all, general and individual prevention of crimes and personal safety of convicts in the IES[1]. The indicated function predicts:

[1] Badyra V. A. Kryminalno-vykonavche pravo: [navch. posib.]. [Badyra V. A., Denysov S. F., Denysova T. A. ta in.]; za zah. red. T. A. Denysovoi. K. Istyna, 2008. S. 16.

a) initiative gathering of information about the most socially dangerous persons in correctional colonies, as well as about the facts, the study of which is necessary to provide the personal safety of convicts (article 10, 104 of the CEC of Ukraine);

b) dedicated operational observation to collect data on convicts and other persons of operational interest, for timely identification of their criminal intentions or unlawful activity, as well as the identification of potential sources of danger and victims of crimes in the IES[1];

c) realization of received information for:

– the creation of artificial obstacles in order to retention of the objects of OIA (specific individuals and groups) from the realization of criminal intents to commit preparatory acts to crime to provide the personal safety of convicts in the IES[2];

– reorientation of persons, who are potentially inclined to criminal activity in IES, on other socially significant values (conditional release from serving a sentence, amnesty, pardon, etc.);

[1] Kopotun I. M. Okhorona hromadskoi bezpeky ta pravoporiadku u mistsiakh pozbavlennia voli yak skladova suchasnoi kryminalno-vykonavchoi polityky. I. M. Kopotun. Naukovyi visnyk Instytutu kryminalno-vykonavchoi sluzhby. 2012. № 2. S. 44–45.

[2] Kopotun I. M. Kryminolohichni zakhody zapobihannia pravoporushenniam, poviazanym iz pronyknenniam zaboronenykh predmetiv do ustanov vykonannia pokaran, ta nedozvolenym (nesluzhbovym) zviazkam personalu iz zasudzhenymy. I. M. Kopotun. Derzhavna penitentsiarna sluzhba Ukrainy istoriia, sohodennia ta perspektyvy rozvytku u svitli mizhnarodnykh standartiv ta Kontseptsii derzhavnoi polityky u sferi reformuvannia DKVS Ukrainy: tezy Mizhnar. nauk.-prakt. konf. (Kyiv, 28–29 berez. 2013 r.). K. DPtS, 2013. S. 61–63.

– dissolution or self-dissolution of criminal groups; neutralization of the causes and conditions that are revealed by way of conducting the OIA, which contribute to the committing of crimes in the IES, in particular with regard to the convicts held in correctional colonies[1].

Realizing the functions of general and individual prevention of crimes and provision the personal safety of convicts, the subjects of the OIA in the IES must, in our opinion, use, first of all, their powers of administrative and legal nature[2] (in the context of criminal executive activity, for example, in accordance with article 6 of the CEC of Ukraine, these are the main means of correction and re-socialization of convicts), which they have been granted in accordance with the current criminal-executive legislation of Ukraine, and later – the possibilities of the OIA. At the same time, the legislator obliged the operative units of the IES to apply the necessary operative investigative measures to prevent and stop crimes and provide personal safety, in particular regarding convicts (art. 104 of the CEC of Ukraine), realizing one of the methods of OIA (personal search) in the IES and considering that the specified forms of prevention of crimes regarding convicts to deprivation of liberty and provision their right to personal safety

[1] Operatyvno-rozisknaia deiatelnost orhanov vnutrennykh del. pod red. V.M. Atmazhytova. M. Akademyia MVD SSSR, 1990. S. 87–91.

[2] Rebalko M. M. Deiaki chynnyky udoskonalennia zakonnosti ta dystsypliny personalu orhaniv i ustanov vykonannia pokaran upravlinskyi aspekt. M. M. Rebalko. Naukovyi visnyk Instytutu kryminalno-vykonavchoi sluzhby. 2012. № 1. S. 79.

(art. 10 of the CEC of Ukraine) are stipulated by two stages of an unfinished crime, which are established in the law on criminal liability (part 2 of art. 13 of the CC of Ukraine): a) preparing for a crime (art. 14 of the CC of Ukraine); b) an attempt to commit a crime (art. 15 of the CC of Ukraine)[1].

It is precisely operative investigative provision of personal safety of convicts in the IES must be connected with the first stage, which provides:

1) the detecting by the operative investigative way the persons and groups, who:

a) practically commit preparatory actions for committing a crime while serving a sentence in correctional colonies (are exploring the objects of a criminal encroachment, develop plans, look for or adapt the instrument of committing criminal actions, look for accomplices, create favorable conditions for the achievement of a criminal purpose, etc.)[2];

b) may turn out to be involved in criminal encroachments, which have been already actually prepared by unidentified persons, and in their committing[3];

2) detection of the necessary factual data, namely evidence of the involvement of these individuals and groups in the preparation of crimes, appropriate

[1] Nekrasov V. A. Operatyvne rozpiznavannia: [monohr.]. Nekrasov V. A., Matsiuk V. Ya., Filipenko N. Ye., Rodyniuk L. V. K. KNT, 2007. S. 16–36.

[2] Byriukov H. M. Problemi ynformatsyonnoho obespechenyia taktyky borbi s prestupnostiu orhanyzovannikh hrupp v uslovyiakh sovremennosty y puty ykh razreshenyia. H. M. Byriukov. Visnyk Odeskoho instytutu vnutrishnikh sprav. 2000. № 3. S. 16.

[3] Kozachenko I. P. Operatyvno-rozshukova diialnist yak derzhavno-pravova forma borotby zi zlochynnistiu. Poniattia, sut, zavdannia ta pidstavy: [navch. posib.]. Kozachenko I. P. K. UAVS, 1995. S. 12.

fixation (documenting) of these evidences and further realization of the received data in the criminal procedure detention (criminal proceedings; criminal prosecution with the application of art. 14 of the CC of Ukraine "Preparing for a crime", etc.)[1].

Operative investigative provision of personal safety of convicts should be connected with the stage of an attempt to commit a crime in the IES, the content of which in the OIA is limited mainly to carrying out operative investigative combinations or operations[2] regarding the realization of previously obtained operative investigative information in order to:

a) neutralize the real threat of a criminal attack on a specific convict in the IES by the way of arresting the criminal at the moment of this attack;

b) apprehend a criminal "red-handed" at the moment of the beginning or at a certain stage of the development of criminal actions;

c) subsequently bring the perpetrators to criminal liability, applying art. 15 of the CC of Ukraine "Attempt to commit a crime"[3].

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[1] Nahorska O. F. Zastosuvannia spetsialnykh tekhnichnykh zasobiv u kryminalnomu provadzhenni novatsii proektu KPK Ukrainy. O. F. Nahorska, F. M. Nahorskyi. Spetsialna tekhnika u pravookhoronnii diialnosti: materialy V Mizhnar. nauk.-prakt. konf. (Kyiv, 25 lystop. 2011 r.). uporiad. Yu. Yu. Orlov, S. V. Kukharenko, V. B. Shkolnyi. K. Nats. akad. vnutr. sprav, 2012. S. 51–52.

[2] Prihunov P. Ya. Psykholohycheskoe obespechenye spetsyalnikh operatsyi operatyvnoe vnedrenye: [ucheb. posob.]. Prihunov P. Ya. K. KNT, 2006. 472 s.

[3] Fris P. L. Kryminalne pravo Ukrainy. Zahalna chastyna: [navch. posib.]. Fris P. L. K. Tsentr navch. lit-ry, 2004. S. 153–158.

In accordance with the requirements of chap. 20 and 21 of the CPC of Ukraine, the operational departments of the IES are required to prevent and stop the crimes at the stage of their preparation or attemption[1], accepting and verifying, at the same time, statements and reports of crimes, that are committed by convicts to deprivation of liberty[2].

In addition, the important tasks of realization of the modern operative investigative policy in the IES are: provision of high-speed, complete and impartial investigation by the operational units of the IES; protection of person, society and state from criminal offenses; protection of the rights, freedoms and legitimate interests of participants in criminal proceedings (article 1 of the Law of Ukraine "On operative and investigative activity", article 2 of the CPC of Ukraine). Specified goal, which is also subject to the task regarding finding and fixation factual data about the criminal actions of individuals and groups, explains the meaningful interpretation of these interests as elements of a single whole, which determine the complex function of operative investigative provision of personal safety of convicts during the conduct of criminal proceedings in the IES, which should provide certain actions, namely: the realization, in accordance with the requirements of the CPC of

[1] Dzhuzha O. M. Zakonodavche rehuliuvannia operatyvno-rozshukovoi diialnosti. O. M. Dzhuzha, Yu. Yu. Orlov. Visnyk akademii prokuratury Ukrainy. 2007. № 1. S. 81.

[2] Kryminalnyi protsesualnyi kodeks Ukrainy: nauk.-prakt. koment.: [u 2 t. T. 1]. [Ie. M. Blazhivskyi, Yu. M. Hroshevyi, Yu. M. Domin ta in.]; za zah. red. V. Ya. Tatsiia, V. P. Pshonky, A. V. Portnova. Kh. Pravo, 2012. S. 526–532.

Ukraine, the task of provision the safety of participants in criminal proceedings by the way of the application of necessary secret investigative actions by operational units[1]. The focus should be placed on that the issue of the fulfillment of this task by the operational units of the IES is rather problematic in connection with the ambiguous interpretation of some legal provisions. In particular, the concept of investigation of crime, on the one hand, is understood in the context of the criminal process[2], and, on the other, - as a result of the OIA, which provides for the identification of signs of a crime, as well as the receipt of factual data (evidence) about the person and groups, who committed the crime[3]. The double nature of this concept causes difficulties in the practice activity of operational units of the IES, first of all, regarding the consideration and evaluation of their work to provide the personal safety of convicts.

Thus, in the above case, the recognition of the need for obtaining information in the interests of the safety of convicts (article 10 of the CEC of Ukraine) defines the multifaceted function of the OIA regar-

[1] Pro zatverdzhennia Nastanovy pro diialnist orhaniv i pidrozdiliv vnutrishnikh sprav Ukrainy z poperedzhennia zlochyniv zatv. nakazom MVS Ukrainy vid 25.06.2001. № 507. K. MVS Ukrainy, 2001. 14 s.

[2] Kliuiev O. M. Otsinka efektyvnosti i stymuliuvannia rezultativ diialnosti operatyvnykh pidrozdiliv i pidrozdiliv karnoho rozshuku. O. M. Kliuiev, O. Ye. Sudakov. Visnyk Dnipropetrovskoho universytetu vnutrishnikh sprav. 1996. Vyp. 1. S. 136.

[3] Tertishnyk V. M. Neposredstvennoe obnaruzhenye y tekhnycheskoie dokumentyrovanyie prestupnoho deianyia (kontseptualnaia model protsessualnoho ynstytutu y novoho sledstvennoho deistvyia. V. M. Tertishnyk. Pravo y polytyka. 2004. № 5. S. 117.

ding obtaining the searchable, exploration and counterintelligence information that meets the needs of criminal executive activity and criminal proceedings of Ukraine, as well as the creation of special automated information systems for as a whole in the SPSU, its bodies and the IES, as well as in other law enforcement agencies[1].

So, the OIA in the IES by their main purpose in modern legal conditions (adoption of the new CPC of Ukraine and improvement of operative investigative legislation) is a complex law enforcement activity, the basis of which should be such actions of operational units that would protect a person (including life and health of the convicts to deprivation of liberty), society and the state from criminal offenses. The content of specified activity should be commensurate with the content of the current operative investigative policy, which has normative law, organizational, logistical and other levels of provision and implementation in Ukraine. Taking into account the news of the CPC of Ukraine and the changes, that are introduced into the operative investigative legislation, the issues concerning the establishment of proper legal mechanisms for the activity of law enforcement agencies on these issues remain relevant in the context of provision personal safety of convicts. Also, taking into account the content of art. 214 of the CPC of Ukraine "The beginning of the pre-trial investiga-

[1] Kharaberiush I. F. Formuvannia novykh operatyvno-tekhnichnykh zakhodiv yak napriam rozvytku ORD. I. F. Kharaberiush. Visnyk Luhanskoho derzhavnoho universytetu vnutrishnikh sprav im. Ye. O. Didorenka: [u 2 ch. Ch. 1]. Luhansk LUVS im. Ye. O. Didorenka, 2010. S. 62.

tion", the requirements of art. 10 of the CEC of Ukraine "The right of convicts to personal safety" and other normative legal acts should be regularized, in order to coordinate the procedure of actions of the personnel of the UVP on the statements of the convicts regarding the provision their personal safety with the current criminal-procedural legislation of Ukraine. One of the algorithms for these actions is defined in art. 250 CPC of Ukraine "Conducting an implicit investigative actions pending a decision of the investigating judge", namely: in exceptional emergency cases, that are related to saving people's lives and preventing the commission of a grave or especially grave crime, as provided for in sections I, II, VI, VII (art. 201 and 209), IX, XIII, XIV, XV, XVII of the Special part of the CC of Ukraine, implicit investigative actions may be begun pending a decision of the investigating judge in cases, which are provided for by the CPC of Ukraine, upon the decision of the investigator, in agreement with the prosecutor or upon the decision of prosecutor.

In accordance with the specified, it is necessary to make changes to art. 10 of the CEC of Ukraine, by supplementing its part 6 with the following content: "The implicit investigative actions, which are aimed at provision the personal safety of convicts, are carried out in accordance with the current procedural and operative investigative legislation of Ukraine".

According to some researchers (O. M. Bandurka, Ye. M. Blazhivskyi, Ye. P. Burdol and etc.), with whom one should agree, as exceptional and urgent in this case, consideration should be given to such circum-

stances in which it is impossible to prevent the threat to human life or prevent the crimes, that are specified in the CPC of Ukraine (preventing them) in complying with the general procedure for organizing the conduct of implicit investigative (search) actions[1]. We share the opinion of D. Y. Nykyforchuk, that the issue of conducting these actions is decided on the basis of already received vowel or implicit information, of written instructions of law enforcement bodies, investigators and officials who conduct criminal process, of requests of international law enforcement bodies and organizations of other states[2].

At the same time, considering the content of art. 10 of the CEC of Ukraine and normative and legal sources in the area of OIA in the IES, for the implementation of specific tasks to provide the personal safety of convicts in correctional colonies it is necessary to carry out a number of organizational and tactical operative investigative activities, namely:

1) at the level of operative investigative prevention – by the way of studying persons who are under operative investigative surveillance[3].

The specifics of the implementation of specified tactical actions by the operational units of the IES

[1] Kryminalnyi protsesualnyi kodeks Ukrainy: nauk.-prakt. koment.: [u 2 t. T. 1]. [Ie. M. Blazhivskyi, Yu. M. Hroshevyi, Yu. M. Domin ta in.]; za zah. red. V. Ya. Tatsiia, V. P. Pshonky, A. V. Portnova. Kh. Pravo, 2012. S. 639–640.

[2] Nehlasni slidchi (rozshukovi) dii: [kurs lektsii]. D. Y. Nykyforchuk, S. I. Nikolaiuk, O. I. Kozachenko ta in.; za zah. red. D. Y. Nykyforchuka. K. Nats. akad. vnutr. sprav, 2012. S. 6.

[3] Teoryia operatyvno-rozisknoi deiatelnosty: [ucheb.]. pod red. K. K. Horiaynova, V. S. Ovchynskoho, H. K. Synylova. M. YNFRA–M, 2007. S. 589–591.

lies in the fact that: a) carry out operational and preventive surveillance of the convicts, who are taken for preventive supervision in the correctional colony, in connection with the high probability of committing crimes regarding them crimes or other unlawful encroachments on their personal safety (it refers to so-called probable victims).

Given the specified, it is necessary to the article 10 of the CEC of Ukraine add part 8 of the following content: "In order to provide the personal safety of the convicts, moving them to a safe place and using other urgent measures regarding them can carry out and without the statement of these persons about the danger to their lives and health, in accordance with the current criminal-procedural and operative investigative legislation of Ukraine".

Legal grounds for making proposed changes to article 10 of the CEC of Ukraine has been defined in: a) art. 93, 252 of the CPC of Ukraine; b) art. 10 of the Law of Ukraine «On operative and investigative activity»; c) instructions on organizing the prosecution of accused, defendants, persons who evade serving sentences, the missing persons and the establishment of unidentified bodies[1]; d) other sources;

2) the success of individual prevention of crimes and provision the personal safety of convicts in the IES is achieved through operational awareness of the probable victims of encroachment in correctional colonies.

[1] Pro orhanizatsiiu diialnosti Departamentu karnoho rozshuku ta pidrozdiliv karnoho rozshuku HUMVS, UMVS [Tekst] zatv. Nakazom MVS Ukrainy vid 30.06.2009 № 285. K. MVS Ukrainy, 2009. 33 s.

This direction, which is scientifically proved by scientists (K. K. Goryainov, V. S. Ovchynskyi, G. K. Synilov)[1] and that is confirmed in practice, is provided by the way of the interaction of various services of the IES, other operational units, it provides relevance to the preventive intervention of operational workers, as well as implicit forces[2]. They carry out adjustments to the measures of individual safety of convicts, during this time, in particular by the way of submission relevant information into documents of operative investigative nature[3] and an individual program of social and educational work, which is approved by the head of the IES, in accordance with the requirements of part 2 of art. 95 of the CEC of Ukraine. Relevant in connection with the specified is addition to part 2 of art. 95 of the CEC of Ukraine "Detention of convicts to deprivation of liberty at the station of quarantine, diagnostics and distribution" with the words «operative investigative studying» and "provision of personal safety of convict", setting

[1] Teoryia operatyvno-rozisknoi deiatelnosty: [ucheb.]. pod red. K. K. Horiaynova, V. S. Ovchynskoho, H. K. Synylova. M. YNFRA–M, 2007. S. 591.

[2] Sokolkin V. L. Teoretyko-prykladni zasady prokurorskoho nahliadu za dotrymanniam zakonnosti pry provadzhenni operatyvno-rozshukovoi diialnosti orhanamy vnutrishnikh sprav na zaliznychnomu transporti: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.09. V. L. Sokolkin. L. LDUVS, 2013. S. 12–13.

[3] Filipenko N. Ye. Orhanizatsiino-taktychni osnovy vyiavlennia osib i faktiv, shcho stanovliat operatyvnyi interes u protsesi zdiisnennia operatyvno-rozshukovoi profilaktyky pravoporushen u penitentsiarnykh ustanovakh. N. Ye. Filipenko, V. Ye. Solokha. Metodolohichni problemy teorii i praktyky ORD v suchasnykh umovakh Visnyk Luhanskoi akademii vnutrishnikh sprav. Spetsvypusk. Luhansk, 2004. S. 210–212.

out it in the following wording: "According to the results of medical examination, primary psychodiagnosis and psycho-pedagogical and operative investigative studying, as well as on the basis of the criminological and criminal legal characteristic of each convict make an individual program of social and educational work and provision the personal safety of the convict, which is approved by the head of the colony".

The need for these changes is due to the results of scientific research (Z. V. Zhuravska)[1], as well as due to the requirements of art. 1, 10, 104 of the CEC of Ukraine, in which the task of provision the personal safety of convicts is fixed;

3) the important of individual prevention of crimes and the personal safety of convicts is also the direction of the OIA, that is the study of persons of operative interest in order to identify the signs (process) of the development of criminal behavior with regard to probable victims of crimes in correctional colonies. The peculiarity of holding the operative investigative measures in this case is the absence of a specific object, which requires the target "attachment" of an implicit confidant (agent). That is why the information with operative investigative nature becomes the decisive one in every individual case[2] and methods of its analysis (analysis by the way of

[1] Korzhanskyi M. Y. Klasyfikatsiia zlochyniv: [navch. posib.]. Korzhanskyi M. Y. K. Atika, 2001. S. 133.

[2] Teoryia operatyvno-rozisknoi deiatelnosty: [ucheb.]. pod red. K. K. Horiaynova, V. S. Ovchynskoho, H. K. Synylova. M. YNFRA–M, 2007. S. 592.

means of mental actions of the operational officer or with the help of software tools)[1].

As a result of the research, which has been carried out, it was established that the legalization of information, that is related to the provision of personal safety of convicts in the IES, that is, its introduction into the official procedure of operative investigative prevention, in practice, two types of operative investigative information of preventive destination define, namely:

a) information of orientation value.

This type of information provides an opportunity to identify sources of danger that may encroach the lives and health of convicts; personal characteristics of probable victims of crimes; the degree and nature of danger, etc. In addition, indicative prevention information is used to realization operational and tactical actions, that are aimed at provision the personal safety of convicts in correctional colonies. In particular, it is used during the introduction of an agent into certain groups of convicts, the implementation of operational combinations, that are aimed at eliminating (blocking, neutralizing, etc.) sources of danger for specific individuals, who are kept in the IES, documenting the unlawful actions of those subjects who prepare (article 14 of the CC of Ukraine) or commit an attempt (article 15 of the CC of Ukraine) on objects of legal protection, are defined in art. 10 of CEC of Ukraine;

[1] Analitychna robota v operatyvno-rozshukovii diialnosti: [navch.-prakt. posib.]. Nykyforchuk D. Y., Busol O. Yu, Biriukov H. M. K. Nats. un-t DPS Ukrainy, 2012. S. 27.

b) information, that is used directly during the implementation of individual preventive measures (inducement of convicts whose life and health is in danger in the IES to submitting applications of sources of this danger, in accordance with part 2, article 10 of the CEC of Ukraine; interviews with these persons in order to identify the content of the activity of sources of danger; tacit accompaniment to the process of provision the personal safety of convicts and other objects, etc.).

This type of information in correctional colonies is introduced into the procedure of operative-investigative prevention, as evidenced by the practice of information provision. In this case, the documentation provides the receipt of official materials, which are specified in art. 10 of the CEC of Ukraine (statement of the convict with the request to provide personal safety; registration of it in the Unified register of pre-trial investigation (article 24 of the CPC of Ukraine); materials for checking and responding to an application, etc.).

Some features have organizational and tactical operative and investigative measures, that are aimed at provision the right of convicts to personal safety at the level of direct protection of persons, who applied to any officer of the IES in this regard (part 2 of article 10 of the CEC of Ukraine). Their content, according to the results of our study, is as follows:

a) after the moving of the convict to the safe place regarding life and health of whom appeared danger, the attempts of the persons do not stop, who created it personally or with the help of personnel of

the IES (using the possibilities and means of so-called non-service links with representatives of the administration of correctional colonies, miscalculations and shortcomings in the organization of oversight and protection of objects of the IES, other shortcomings in the operative service activity of the SPSU) to continue psychologically and otherwise to influence the applicants so that they rejected their application and return to the familiar environment. In these circumstances, operative and investigative measures regarding the blocking and neutralization of specified intentions should become a very important barrier for the achievement of criminal or other unlawful purposes of these entities. The coordinating role should belong to the head of the correctional colony, who, in accordance with the current operative investigative legislation of Ukraine, bears personal liability for the organization and results of the OIA in general, as well as for carrying out separate tactical measures and special operations.

Given this, it is useful to part 3 of Art. 10 of the CEC of Ukraine add a sentence of the following content: "The coordinating activity regarding provision the personal safety of the convict in this case is carried out by the operational unit of the correctional colony, and the head of the penal institution carries personal liability for the safety of the applicant";

b) the efforts are not terminated by those who have created a danger to the life and health of a specific convict, his persecution and after the moving of the latter to another IES (part 4, 5 of article 10 of the CEC of Ukraine). By these circumstances, the

forms and means of influencing these convicts may be different – from the use of the "internal" capabilities of the PIs, as specified above, to the application of own intelligence using sources in other IES and territorial law enforcement agencies. In this situation, the coordinating role in provision the personal safety of the convict, who has been moved for further serving a sentence in another correctional colony, should be owned by the operative unit of the SPiSU.

Logical, in connection with the above, is an addition to paragraph 3 of the Provision on the State penitentiary service of Ukraine "The main tasks of the State penitentiary service of Ukraine"[1] such a task as "provision the personal safety of convicts, who are moved to another penitentiary institution regarding the grounds, which are specified in article 10 of the CEC of Ukraine".

Similar tasks should be fixed in the Instruction of the State penitentiary service of Ukraine on the procedure for taking measures to provide the safety of persons, who are involved in criminal proceedings, in the institutions of the execution of sentences and investigative wards of the State penal service of Ukraine[2], as well as other departmental normative legal acts on these issues.

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[1] Pro zatverdzhennia Polozhennia pro Derzhavnu penitentsiarnu sluzhbu Ukrainy: Ukaz Prezydenta Ukrainy vid 6 kvit. 2011 r. № 394–2011. Ofitsiinyi visnyk Ukrainy. 2011. № 28. St. 1161.

[2] Instruktsiia pro poriadok zdiisnennia zakhodiv shchodo zabezpechennia bezpeky osib, yaki berut uchast u kryminalnomu sudochynstvi, v ustanovakh vykonannia pokaran i slidchykh izoliatorakh Derzhavnoi kryminalno-vykonavchoi sluzhby: zatv. nakazom DDUPVP vid 4 kvit. 2005 r. № 61 Ofitsiinyi visnyk Ukrainy. 2005. № 21. St. 1160. 10 cherv.

Operational-tactical peculiarities of carrying out operative investigative measures also has an OIA, which is connected with the provision of personal safety of convicts who are participants in criminal proceedings (part 3 of article 10 of the CEC of Ukraine) considering that, along with the internal problems of this activity and the external forms and means of unlawful influence on persons who ask protection to the officers of the IES, about whom it is mentioned above, other subjects, first of all, the participants in the criminal proceedings (lawyers, victims, their legal representatives, the accused, defendants, etc.) exert significant pressure on these objects of protection. But, neither the CEC nor the Law of Ukraine "On provision the safety of persons, who are involved in criminal proceedings"[1] nor the corresponding Instruction of the State penitentiary service of Ukraine[2] do not contain norms, which would determine the place and role of operational units of law enforcement agencies (article 5 of the Law of Ukraine "On operative and investigative activity") in implementing measures to provide the safety of the specified category of convicts[3].

[1] Pro zabezpechennia bezpeky osib, yaki berut uchast u kryminalnomu sudochynstvi: Zakon Ukrainy vid 23 hrud. 1993 r. № 3782 XII. Vidomosti Verkhovnoi Rady Ukrainy. 1994. № 11. St. 51.

[2] Instruktsiia pro poriadok zdiisnennia zakhodiv shchodo zabezpechennia bezpeky osib, yaki berut uchast u kryminalnomu sudochynstvi, v ustanovakh vykonannia pokaran i slidchykh izoliatorakh Derzhavnoi kryminalno-vykonavchoi sluzhby: zatv. nakazom DDUPVP vid 4 kvit. 2005 r. № 61. Ofitsiinyi visnyk Ukrainy. 2005. № 21. St. 1160. 10 cherv.

[3] Pro operatyvno-rozshukovu diialnist: Zakon Ukrainy vid 18 liut. 1992 r. Vidomosti Verkhovnoi Rady Ukrainy. 1992. – № 22. St. 303.

In view of the above, it is expedient the Law of Ukraine "On provision the safety of persons, who are involved in criminal proceedings" to supplement with art. 3-1 "Bodies that coordinate activity regarding provision the safety of persons, who are involved in criminal proceedings" with the following content:

"1. In the event of availability of a danger to the life and health of the convicts, to which by the law, in connection with their participation in criminal proceedings, has been decided on the application of safety measures, the coordination activity is performed by the operative units of the State penitentiary service of Ukraine.

2. In the event of availability of a danger to the life and health of another participants in criminal proceedings regarding which are applied safety measures, which are envisaged by this Law, the coordination of the actions of the bodies , which provide their safety, is assigned to the operative units of the territorial law-enforcement bodies, in accordance with article 216 of the Criminal Procedure Code of Ukraine to the appropriate investigative jurisdiction".

In this context, norms of the Law of Ukraine "On operative investigative activity" and various draft laws of this Law that are under consideration by the Verkhovna Rada of Ukraine are subject to change. In particular, paragraph 1 of part 1 of art. 6 of the said Law "Grounds for conducting operative and investigative activity" should be supplemented with a sentence of the following content: "of convicts, whose life and health are at real danger during the execution of a sentence, which is imposed by a court", and

to post this norm in the following wording: "The grounds for conducting operative and investigative activity are: the availability of sufficient information, which has been received in the manner prescribed by law, which needs the verification by means of operative investigative measures and means, about the convicts, whose life and health are at real danger during the execution of a sentence, which is imposed by a court"[1].

Relevant changes must be made in paragraph 4 of part 1 of art. 10 of the Law of Ukraine "On operative and investigative activity", which defines the legal grounds for the use of materials of the OIA (in this case – of information, which is related to the provision of personal safety of convicts). It is also important to take into account changes in the Law of Ukraine "On the State penal service of Ukraine"[2]. We propose the second sentence of part 1 of art. 4 of this Law shall be supplemented by the phrase "as well as provide the personal safety of convicts", with posting it in the following wording: "The personnel of the state penal service of Ukraine is obliged to respect the dignity of a person, treat to her with humanity, as well as to provide the personal safety of convicts".

[1] Blazhivskyi Ye. M. Monitorynh protydii zlochynnosti v Ukraini: avtoref. dys. na zdobuttia nauk. stupenia doktora yuryd. nauk: spets. 12.00.08 "Kryminalne pravo ta kryminolohiia; kryminalno-vykonavche pravo". Ye. M. Blazhivskyi. Kh. Khark. nats. un-t vnutr. sprav, 2013. S. 13.

[2] Pro Derzhavnu kryminalno-vykonavchu sluzhbu Ukrainy: Zakon Ukrainy vid 23 cherv. 2005 r. Ofitsiinyi visnyk Ukrainy. 2005. № 29. St. 1697.

Such, if to choose the provision of art. 10 of the CEC of Ukraine and the current operative investigative legislation of Ukraine as a ground, are the main organizational and tactical operative investigative measures to prevent the encroachment on the personal safety of convicts in correctional colonies. The classification of the specified tactical means may be different, depending on the criteria for their division. In this work, only a scientifically grounded attempt of compartmentalizing was made, taking into account the absence of it in the science of criminal executive law, as well as the OIA, as well as the existing practical problems of the operative units of correctional colonies and the results of this study.

3.2. The meaning of preventive activities to ensure the personal safety of convicts and the main ways of its improvement in Ukraine

By creating a legal mechanism and safeguards of implementation of its norms in a certain area of activity, any state and its public instituts can not do without the control of their implementation by the relevant subjects of legal relations[1]. The specified is also true for the activities of the personnel of the SPSU, including issues, which are related to provi-

[1] Benkovskyi S. Yu. Sotsialno-pravove pryznachennia kontroliu za diialnistiu derzhavnykh orhaniv. S. Yu. Benkovskyi. Formuvannia penitentsiarnoi systemy Ukrainy: materialy nauk.-prakt. konf. (Odesa, 25 trav. 2012 r.). O. Upravlinnia DPtS Ukrainy; Odeskyi derzh. un-t vnutr. sprav; Mizhnar. humanit. un-t, 2012. S. 19.

sion the personal safety of convicts in correctional colonies, but control is not the single and main content of its activity. At the same time, we share the position of V. B. Averyanov and O. F. Andriyka, who are certain that undervaluing and diminishing of the role of control can lead to uncontrollability of the situation, decrease of controllability level and even chaos. On this basis, one should not lean toward the complete denial of control and criticism of its redundancy, the trend of which has become widespread in recent years; this also applies to the exaggeration of the significance of control, in which is predicted the resolution of all problems that exist in public administration[1]. Without trying to find out different values of the meaning of the concept of "control" and its synonymous expressions of words "monitoring", "controlling", etc., which are used in scientific literature[2] and in practice, since this is not included in the subject and tasks of our dissertation research, it is appropriate to analyze its essence and social legal content in general, as well as the level of provision and realization in the activity of the SPSU.

In scientific sources the concept of "control" is considered in a broad and narrow aspects. In particular, in the first case, under control, is understood as

[1] Derzhavne upravlinnia teoriia i praktyka. za zah. red. V. B. Averianova. K. Yurinkom Inter, 1998. S. 34.

[2] Benkovskyi S. Yu. Sotsialno-pravove pryznachennia kontroliu za diialnistiu derzhavnykh orhaniv. S. Yu. Benkovskyi. Formuvannia penitentsiarnoi systemy Ukrainy: materialy nauk.-prakt. konf. (Odesa, 25 trav. 2012 r.). O. Upravlinnia DPtS Ukrainy; Odeskyi derzh. un-t vnutr. sprav; Mizhnar. humanit. un-t, 2012. S. 19–23.

verification, mainstreaming of activity of someone, something, supervision of someone, something[1]. In the narrow content this term is reduced to verification: execution of decisions, which were taken by a supreme organization; regulations of different levels of management system; observance of organizational, economic and other standards, etc.[2]

Consequently, if to follow these theoretical approaches, the control over the activiy of the personnel of the correctional colony regarding respect of law and internal order in the process of provision the personal safety of the convict should be understood as the activity of the subjects, which are determined by the law, by the level of implementation of the relevant legal norms and requirements, which are aimed at the fulfillment of tasks, that are related to the constitutional right of a person to safe his life during the serving of a criminal sentence, which is determined by a court.

The analysis of the current criminal-executive and operative investigative legislation of Ukraine provides an opportunity to distinguish the following types of control in this direction of activity of the personnel of the SPSU of Ukraine: 1) prosecutorial supervision of the serving of criminal sentences

[1] Velykyi tlumachnyi slovnyk ukrainskoi movy. [uporiad. T. V. Kovalova]. Kh. Folio, 2005. S. 294.

[2] Benkovskyi S. Yu. Sotsialno-pravove pryznachennia kontroliu za diialnistiu derzhavnykh orhaniv. S. Yu. Benkovskyi. Formuvannia penitentsiarnoi systemy Ukrainy: materialy nauk.-prakt. konf. (Odesa, 25 trav. 2012 r.). O. Upravlinnia DPtS Ukrainy; Odeskyi derzh. un-t vnutr. sprav; Mizhnar. humanit. un-t, 2012. S. 20.

(article 22 of the CEC of Ukraine); 2) departmental control (article 23 of the CEC of Ukraine); 3) the control, which is exercised during the visit of the President of Ukraine and other officials to the IES (article 24 of the CEC of Ukraine); 4) judicial control (article 4 of the CEC of Ukraine, articles 21, 35, 369 and other of the CPC of Ukraine, the Law of Ukraine "On the legal status of judges"[1]); 5) public control over the observance of the rights of convicts during the serving of criminal sentences (article 25 of the CEC of Ukraine); 6) international control (International covenant on civil and political rights[2], Law of Ukraine "On international treaties"[3], etc.[4]); 7) control

[1] Laptionova O. K. Prokurorskyi nahliad za diialnistiu orhaniv i ustanov vykonannia pokaran v Ukraini. O. K. Laptionova. Derzhavna penitentsiarna sluzhba Ukrainy istoriia, sohodennia ta perspektyvy rozvytku u svitli mizhnarodnykh standartiv ta Kontseptsii derzhavnoi polityky u sferi reformuvannia DKVS Ukrainy: tezy mizhnar. nauk.-prakt. konf. (Kyiv, 28–29 berez. 2013 r.). K. DPtS, 2013. S. 215–218.

[2] Mizhnarodnyi pakt pro hromadianski ta politychni prava: Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 13–23.

[3] Kalchenko T. L. Reformuvannia kryminalno-vykonavchoi systemy vidpovidno do mizhnarodnykh penitentsiarnykh standartiv. T. L. Kalchenko. Derzhavna penitentsiarna sluzhba Ukrainy istoriia sohodennia ta perspektyvy rozvytku u svitli mizhnarodnykh penitentsiarnykh standartiv ta Kontseptsii derzhavnoi polityky u sferi reformuvannia Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy: materialy Mizhnar. nauk.-prakt. konf. (Kyiv, 28–29 berez. 2013 r.) K. DPtS Ukrainy; VD "Dakor", 2013. S. 121–124.

[4] Pryntsypy efektyvnoho rozsliduvannia i dokumentatsii katuvan ta inshoho zhorstokoho, neliudskoho abo takoho, shcho prynyzhuie hidnist, povodzhennia abo pokarannia rekomendovani Rezoliutsiieiu Heneralnoi Asamblei OON vid 4 hrud. 2000 r. № 5589: Prava liudyny i profesiini standarty dlia pravookhoronnykh orhaniv v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 202–206.

of the Commissioner of the Verkhovna Rada of Ukraine on human rights[1]; 8) operative and investigative control (article 104 of the CEC of Ukraine, the Law of Ukraine "On operative and investigative activity"[2]).

The essence of these types of control from the specified problem was quite aptly identified by S. Yu Benkovskyi, who noticed that having information on the legality of a body or official and its activity, in particular regarding the issues of provision the personal safety of convicts in correctional colonies, it is possible promptly to intervene, to coordinate management levers with the emerging conditions and to prevent undesirable consequences. In addition, control provides the opportunity not only to correct management activity on the specified problem, but also helps to predict the prospects for further development and the achievement of specific result[3]. The results of our study have shown that each of the types of controls, which are defined at the legal level in the IES, has its own forms and means of expression in practice and provides a corresponding effect

[1] Karpachova N. I. Stan dotrymannia ta zakhystu prav i svobod liudyny v Ukraini: dopovid Upovnovazhenoho Verkhovnoi Rady Ukrainy z prav liudyny. Nina Ivanivna Karpachova, Upovnovazhenyi Verkhovnoi Rady Ukrainy z prav liudyny. K. Ombudsman Ukrainy, 2006. 374 s. tabl.

[2] Mizhnarodna politseiska entsyklopediia: [u 10 t. T. 4]. vidp. red.: Yu. I. Rymarenko, Ya. Yu. Kondratiev, V. Ya. Tatsii, Yu. S. Shemshuchenko. K. Kontsern «Vydavnychyi dim "In Yure", 2006. 1223 s.

[3] Benkovskyi S. Yu. Sotsialno-pravove pryznachennia kontroliu za diialnistiu derzhavnykh orhaniv. S. Yu. Benkovskyi. Formuvannia penitentsiarnoi systemy Ukrainy: materialy nauk.-prakt. konf. (Odesa, 25 trav. 2012 r.). O. Upravlinnia DPtS Ukrainy; Odeskyi derzh. un-t vnutr. sprav; Mizhnar. humanit. un-t, 2012. S. 23.

on the level of provision of criminal punishment in the form of deprivation of liberty, and also has certain disadvantages and advantages. In particular, to the features of prosecutorial control[1] in the form of supervision over the execution of criminal penalties, in particular regarding personal safety issues, include the following:

1) specified activity, in accordance with art. 121 of the Constitution of Ukraine, is the exclusive competence of the prosecutor's office as a state body, which is the activity of the prosecutor regarding provision of compliance with laws during executing judgments in criminal cases, as well as the use of other measures of compulsory nature, that are related to the restriction of personal freedom of citizens[2];

2) subject of the prosecutor's supervision is, according to the content of art. 44 of the Law of Ukraine "On prosecutor's office", observance of the lawfulness during the stay of persons in places of keeping convicts, of pre-trial detention, in the IES, in other institutions, that are serving sentences or measures of coercive nature, which are appointed by the court; observance of the procedure established by the criminal-executive law and the conditions of maintenance or serving of sentence by persons in

[1] Laptionova O. K. Prokurorskyi nahliad za diialnistiu orhaniv i ustanov vykonannia pokaran v Ukraini. O. K. Laptionova. Derzhavna penitentsiarna sluzhba Ukrainy istoriia, sohodennia ta perspektyvy rozvytku u svitli mizhnarodnykh standartiv ta Kontseptsii derzhavnoi polityky u sferi reformuvannia DKVS Ukrainy: tezy mizhnar. nauk.-prakt. konf. (Kyiv, 28–29 berez. 2013 r.). K. DPtS, 2013. S. 215–218.

[2] Prokurorskyi nahliad v Ukraini: pidruch. [dlia stud.]. za red. I. Ye. Marochkinka, P. M. Karkacha. Kh. Odissei, 2005. S. 61–62.

these institutions, their rights and the fulfillment of their duties[1];

3) the legal basis of the said activity of the prosecutor's office in the IES are not only the norms of the Constitution of Ukraine and of the Law of Ukraine "On prosecutor's office"[2], but also special orders of the General prosecutor's office of Ukraine, in which is reflected the specifics of the subject of prosecutorial supervision, in particular, in correctional colonies[3];

4) despite the fact that one of the main forms of implementation of the prosecutor's oversight in the IES is to carry out complex checks of compliance with law, prosecutors have the right to freely visit the units of the SPSU, to accept convicts on personal matters and to carry out other unscheduled and urgent measures regarding provision the personal safety of persons, who are held in correctional colonies[4];

5) by the results of the inspections, the prosecutor contributes documents of the procuratorial

[1] Kurylo M. P. Nahliad za doderzhanniam prav i zakonnykh interesiv zasudzhenykh do pozbavlennia voli: avtoref. dys. na zdobuttia nauk. stupenia kand. yuryd. nauk: spets. 12.00.10 . M. P. Kurylo. Kh. NIuAU im. Yaroslava Mudroho, 1997. S. 9–10.

[2] Pro prokuraturu: Zakon Ukrainy vid 5 lystop. 1991 r. № 1789–XII. Vidomosti Verkhovnoi Rady Ukrainy. 1991. № 53. St. 793.

[3] Pro orhanizatsiiu prokurorskoho nahliadu za doderzhanniam zakoniv pry vykonanni sudovykh rishen u kryminalnykh spravakh, a takozh pry zastosuvanni inshykh zakhodiv prymusovoho kharakteru, poviazanykh z obmezhenniam osobystoi svobody hromadian: nakaz Heneralnoi prokuratury Ukrainy vid 26 hrud. 2005 r. № 7 [Elektronnyi resurs]. Rezhym dostupu: http//zakon.nau.uadoc?uid=1041.12262.0

[4] Ahanov H. D. Preduprezhdenye prestuplenyi y ynikh pravonarushenyi sredstvamy prokurorskoho nadzora pry yspolnenyy nakazanyia v vyde lyshenyia svobodi. H. D. Ahanov, E. N. Kovaleva. Uholovnoe pravo. 2005. № 4. S. 86.

action, which are provided for by the Law of Ukraine "On Prosecutor's Office", which are obligatory for serving by administration of bodies and IES of SPSU[1];

6) on the prosecutor's bodies of Ukraine, in accordance with art. 214 of the CPC of Ukraine, is entrusted with the function of controlling the submission of applications and notifications of a committed criminal offense, including the IES, to the Uniform register of pre-trial investigations, and therefore, the legislator created the relevant elements of the legal mechanism and of the issues of provision the personal safety of convicts in correctional colonies[2].

However, even the presence of these "special" powers does not enable the posibility to prosecutor's offices, in the current conditions, to timely influence the level of protection of the legal rights and interests of convicts in the IES, as a result of which the latter become victims of criminal encroachments and other unlawful actions that encroach on their lives and health[3].

According to the results of the study, one of the circumstances adversely affecting the work of prose-

[1] Mychko M. I. Problemy funktsii i orhanizatsiinoho ustroiu prokuratury Ukrainy: dys. … doktora yuryd. nauk: spets. 12.00.10. Mychko Mykola Ivanovych. Kh. NIuAU im. Yaroslava Mudroho, 2001. S. 46–52.

[2] Kryminalnyi protsesualnyi kodeks Ukrainy: nauk.-prakt. koment.: [u 2 t. T. 1]. [Ie. M. Blazhivskyi, Yu. M. Hroshevyi, Yu. M. Domin ta in.]; za zah. red. V. Ya. Tatsiia, V. P. Pshonky, A. V. Portnova. Kh. Pravo, 2012. S. 526–532.

[3] Mytrofanov I. I. Prokuratura yak subiekt zapobihannia zlochynam: [monohr.]. I. I. Mytrofanov, S. V. Stepanenko. Kremenchuk. Vyd. PP Shcherbatykh O. V., 2011. S. 124–128.

cutors in this direction is the non-compliance with them by the principle of transparency, which is defined as a priority in the Law of Ukraine "On Prosecutor's Office" and in special order of the Prosecutor General's office of Ukraine "On the organization of work of the prosecutor's bodies of Ukraine on the implementation of the principle of transparency" of July 14, 2006, № 11gn[1], as well as in the decree of the President of Ukraine "On measures of provision personal safety of citizens and counteracting crime" of July 19, 2005 № 1119/2005[2].

The specified problem is that the results of inspections of the level of compliance with the law in the SPSU convey only to the higher structures of the SPiSU and the General Prosecutor's office of Ukraine, as well as to the direct objects of the prosecutor's oversight, that is, they have, to a certain extent, the closed character from the public and other participants of the criminal-executive activity, so information about the actual situation in the IES is not published in special editions (as, for example, it is carried out by the Commissioner of the Verkhovna Rada of Ukraine on human rights[3] and by public

[1] Pro orhanizatsiiu roboty orhaniv prokuratury Ukrainy z realizatsii pryntsypu hlasnosti: nakaz Heneralnoho prokurora Ukrainy vid 14 lyp. 2006 r. № 11 [Elektronnyi resurs]. Rezhym dostupu: httpzakon.nau.uadoc?uid=1041.18049.0

[2] Pro zakhody shchodo zabezpechennia osobystoi bezpeky hromadian ta protydii zlochynnosti: Ukaz Prezydenta Ukrainy vid 19 lyp. 2005 r. № 11192005. Uriadovyi kurier. 2005. № 135. S. 3–4.

[3] Karpachova N. I. Zabezpechennia prav i svobod liudyny v penitentsiarnykh zakladakh. N. I. Karpachova. Stan dotrymannia ta zakhystu prav i svobod liudyny v Ukraini: dopovid Upovnovazhenoho Verkhovnoi Rady Ukrainy z prav liudyny. K., 2004. S. 278–308.

experts, in particular international[1]), and are not considered at meetings with the participation of representatives of other bodies of state power and local self-government, the public, and other subjects of monitoring of criminal-executive activity in Ukraine of the regional and central levels. Distributive materials in the form of "Informational and analytical materials" that only provide to participants of meetings of the General Prosecutor's office of Ukraine or regional prosecutor's offices and, which do not have the relevant requisites of the print edition [108] can not be a meaningful expression of principle of transparency of the activity of the prosecutor's office in the field of execution of sentences.

Given the specified and according to principle of legality that is defined in part 2 of art. 19 of the Constitution of Ukraine, according to which the prosecutor's office and its officials must act in the manner, which is specified in the Constitution and laws of Ukraine, it is expedient to supplement the Law of Ukraine "On Prosecutor's Office" with art. 56-1 "Publishing the results of verification of the level of provision of legality in the activities of state authorities and local self-government in the mass media" and put it in the following wording: "The results of verification of the level of provision of legality in the activities of state authorities and local self-government in a ten-day period are obligatory published in a special information bulletin, which is issued at the

[1] Yak zmusyty standarty pratsiuvaty: prakt. posib. po efektyvnomu zastosuvanniu Mizhnarodnykh tiuremnykh pravyl. [2-he vyd.]. Donetsk. Donetskyi Memorial; Skhidnyi vydavnychyi dim, 2011. 124 s.

regional and central levels as well as in other mass media".

For failure to submit this information officials of the prosecutor's office are attracted to the corresponding types of legal liability».

An analogous approach should be applied to change of art. 22 of the CEC of Ukraine "Prosecutor's supervision over the execution of criminal penalties", by supplementing the specified article of the Code with the part 3 with the following content: "The results of the prosecutor's oversight of compliance with the laws by the bodies and the institutions of enforcement of sentences must be set forth within the legal time limits in mass media".

Thus, the proposed changes will enable the principle of mutual responsibility of the state and the convict (article 5 of the CEC of Ukraine) to be filled with the real content in and create an appropriate element of the legal mechanism for provision the personal safety of convicts in correctional colonies.

Many irregular legal aspects, that adversely affect the organization and levels of provision of personal safety of convicts in the IES, have a departmental control over the activity of the divisions of the SPSU, which the higher authorities and officials of the SPiSU carry out (article 23 of the CEC of Ukraine). In particular, it has been established that, in addition to the norms of the CEC of Ukraine, the legal bases of this control are defined in art. 7 of the Law of Ukraine "On the State penal service of Ukraine", which states that the SPiSU coordinates and controls the activity of the SPSU; in paragraph 5 of the Rules

of the internal order of penitentiary institutions, which gives the right to inspection the IES to the head of the SPiSU, his deputies, heads of territorial departments of the SPiSU and their deputies, as well as in other normative legal acts of the SPiSU.

Other employees of the SPSU have the right to checking the IES on the basis of the regulations or tasks for business trips, that were approved in accordance with the established procedure. Complex inspection of the IES is held every five years by the SPiSU and every two years – its territorial governing body, proposals and observations regarding the results of which are entered by the officials carrying out the inspection, to the Book of comments and proposals (supplement 1 to the Rules of the internal rules of the penal institutions). In addition, the results of integrated inspection of the IES are discussed at operational meetings and meetings of the colleges of the SPiSU and its territorial bodies, by the conclusions of which they take appropriate measures of responding to identified shortcomings, draw up plans for eliminating disadvantages, etc. In order to check the efficiency and quality of neutralization, blocking, liquidation, etc., detected during inspection of miscalculation in the activity of the IES, during the year after the complex inspection, carry out control inspections, the results of which are considered on the operational meetings and meetings of the relevant panels. However, no normative and legal act in the field of execution of penalties, in particular, the CEC of Ukraine, does not oblige the SPiSU and its territorial bodies to send copies of inspection materials to prosecutors who carry out

prosecutorial supervision of the execution of criminal penalties, in accordance with art. 22 CEC of Ukraine and the Law of Ukraine "On Prosecutor's Office", that would enable the latter not only to properly coordinate the activity of other subjects in combating crime in Ukraine[1], but also in a timely to affect to the level of observance of legality in the IES, that also concerns the issue of provision the personal safety of convicts[2]. Based on the analysis of legal sources that determine the legal status of the organs and institutions of the SPSU, it can be concluded that the SPiSU and its territorial offices are not required to send certificates of inspection to either bodies of the local state administration[3] or local self-government bodies[4], that adversely affects the provision of personal safety of convicts and the level of cooperation of the IES with these subjects.

Given the specified, it is expedient the article 23 of the CEC of Ukraine «Departmental control» supplement with part 2 of the following content: "Written conclusions of the complex inspections of bodies and penitentiary institutions of the officials of the central executive body on the execution of

[1] Burbyka M. M. Pravovi osnovy koordynatsiinoi diialnosti orhaniv prokuratury u sferi protydii zlochynnosti [Elektronnyi resurs]. M. M. Burbyka. Forum prava. 2008. № 3. S. 81–82. Rezhym dostupu: http//www.nbuv.gov.uae-journalsFP2008-308bmmspz.pdf

[2] Klochkov V. V. Povnovazhennia prokurora z nahliadu za vykonanniam zakoniv u sferi okhorony prav i svobod liudyny. V. V. Klochkov. Visnyk prokuratury. 2009. № 6. S. 47–48.

[3] Pro mistsevi derzhavni administratsii: Zakon Ukrainy vid 9 kvit. 1999 r. № 586–XIV. Ofitsiinyi visnyk Ukrainy. 1999. № 18.

[4] Pro mistseve samovriaduvannia: Zakon Ukrainy vid 21 trav. 1997 r. № 28097–VR. Ofitsiinyi visnyk Ukrainy. 1997. № 25.

sentences and its territorial departments shall be forwarded to the prosecutor for note of and appropriate response, who, in accordance with the law and his powers, carries out prosecutorial supervision of the execution of criminal penalties, as well as to heads of local state administrations and to local self-government bodies".

The proposed change, on the one hand, will increase the level of provision of personal safety of convicts in correctional colonies and, on the other, will create an additional element in the legal mechanism of combating corruption in Ukraine[1], as well as will reduce the specific gravity of latent crime in IES[2]. It is logical, in this regard, the art. 5 of the CEC of Ukraine "Principles of criminal-executive legislation, execution and serving of sentences" to supplement with the principle of transparency, which would provide not only a more civilized approach to the execution of criminal penalties, in particular those related to the isolation of a person from society, but also more effective involvement of criminal investigative activity opportunities of institutes in civil society and individual individuals and entities[3].

[1] Khavroniuk M. I. Naukovo-praktychnyi komentar do Zakonu Ukrainy "Pro zasady zapobihannia i protydii koruptsii". Khavroniuk M. I. K. Atika, 2011. S. 8.

[2] Yzuchenye faktorov, vlyiaiushchykh na sostoianye, strukturu y dynamyku prestupnosty v yspravytelno-trudovikh uchrezhdenyiakh. [M. P. Zhuravliov, Y. V. Karetnykov, A. Ya. Markovych dr.]. M. VNYY MVD SSSR, 1978. 28 s.

[3] Pryshko I. Pro deiaki aspekty sotsialnoi pryrody zlochynnoi subkultury zasudzhenykh. I. Pryshko. Visnyk prokuratury. 2012. № 10 (136). S. 109.

Due to the lack of effective legal mechanisms for implementation, other types of control over the execution of criminal penalties in Ukraine, which are indicated in art. 24 of the CEC of Ukraine, are inadequate effective. In particular, during the visiting the IES by the President of Ukraine and other high-ranking state officials, the organization of their protection in places of deprivation of liberty does not allow any of the convicts directly to apply in accordance with art. 40 of the Constitution of Ukraine, with the Law of Ukraine "On appeal of citizens" and with the art. 113 of the CEC of Ukraine "The correspondence of convicts to deprivation of liberty". However, the peculiarity of the procedure for reviewing applications[1], in particular, in the administration of the President of Ukraine[2], which envisages sending them, mainly to the Prosecutor General of Ukraine or the head of the SPiSU, leads to aggravation of those problems which are objectively incorporated in the contents of the prosecutor's and departmental control, as discussed above.

In our opinion, the level of other types of control over the execution of punishment could be substan-

[1] Suryn V. V. Zashchyta ynformatsyy v penytentsyarnikh uchrezhdenyiakh opredelenye poniatyia, eho yspolzovanye v profylaktyke pravonarushenyi. V. V. Suryn. Derzhavna penitentsiarna sluzhba Ukrainy istoriia, sohodennia ta perspektyvy rozvytku u svitli mizhnarodnykh standartiv ta Kontseptsii derzhavnoi polityky u sferi reformuvannia DKVS Ukrainy: tezy mizhnar. nauk.-prakt. konf. (Kyiv, 28–29 berez. 2013 r.). K. DPtS, 2013. S. 401–404.

[2] Pro Polozhennia pro Administratsiiu Prezydenta Ukrainy: Ukaz Prezydenta Ukrainy vid 2 kvit. 2010 r. № 5042010. Ofitsiinyi visnyk Ukrainy. 2010. № 21. St. 978.

tially increased, subject to the correspondence of their results with the requirements of art. 214 of the CPC of Ukraine, of the Laws of Ukraine "On operative investigative activity" and "On the principles of prevention and counteraction of corruption"[1]. The content of the proposed approach is as follows:

1. In the case of confirmation, even partial, of the information, that is set out in the application of the convict, the materials collected should, in accordance with the CPC of Ukraine, be directed to the prosecutor who oversees the execution of sentences by territoriality (rayon, oblast or central level) for making the decision envisaged in the article 214 of the CPC of Ukraine "The beginning of pre-trial investigation".

2. Other materials, that have not been verified regarding the seeking of a convict, should be directed to the relevant operational units of the SPSU for use in the OIA.

3. Materials, by which did not initiate criminal proceedings, should also be sent to the operational units (article 216 of the CPC of Ukraine, "The investigative jurisdiction", article 5 of the Law of Ukraine "On operative and investigative activity") for the adoption of appropriate decision on the merits (art. 4 of the CPC of Ukraine "Operational units").

Given the specified, it is necessary the art. 24 of the CEC of Ukraine "Visits to penitentiary institutions" to supplement with part 3 of the following content: "In the case of receiving by persons, who are

[1] Pro zasady zapobihannia i protydii koruptsii: Zakon Ukrainy vid 7 kvit. 2011 № 3206-VI. Ofitsiinyi visnyk Ukrainy. 2011. № 44. St. 1764.

specified in paragraph 1 of this Code, information on violations of the lawful rights and interests of convicts, as well as on committing other actions that take place in the institution of execution of punishment, they are obliged to inform under the procedure, which is established by the criminal procedural law, the bodies of pre-trial investigation and prosecutor's office".

The proposed change of this article of the CEC of Ukraine, in our opinion, will provide an opportunity to create a clear and effective system for control of the level of compliance with the law and provision the personal safety of convicts in correctional colonies, instead of available list of controlling bodies that are not interdependent and do not interact properly with having a common subject of work – control over the execution of criminal penalties in Ukraine. On the other hand, this legal mechanism, which provides for system control over the object, will help minimize the facts of abuse and cover up of crimes and offenses in the IES, as well as reduce the level of corruption in this direction. Operative and investigative control over the level of observance of the lawfulness, rights and legitimate interests of all subjects and participants in the criminal-executive relations that arise during the impletation of the said activity in the field of execution of sentences in Ukraine is more substantive and targeted.

The essence of the specified type of control in the IES stems from the content of the OIA and is due to:

– the content of the notion of OIA (article 1 of the Law of Ukraine "On operative and investigative

activity", article 2 of the draft of Law of Ukraine "On operative and investigative activity"[1]);

– the tasks of the OIA (article 1 of the specified Law and article 3 of the draft, article 104 of the CEC of Ukraine);

– the grounds to carry out the OIA (article 6 of the specified Law and article 8 of the draft);

– the responsibilities of the units that carry out the OIA (article 7 of the specified Law and article 9 of the draft);

– the grounds to carry out the control of the OIA and the IES (part 2 of article 9 of the specified Law and part 4 of article 15 of the draft);

– the grounds for prosecution the OIA (part 1 of article 9 of the specified Law and part 2 of article 15 of the draft);

– other circumstances, in particular those arising from the content of the tasks of criminal-executive legislation of Ukraine (article 1 of the CEC of Ukraine) and the purpose of the punishment (part 2 of article 50 of the CC of Ukraine).

According to the results of the study, the essence and social legal content of operational investigative control of issues of provision the personal safety of convicts in correctional colonies consists in:

1) the determining the level of danger that threatens the life and health of a person who has filed a statement about its availability in relation to himself (part 2 of article 10 of the CEC of Ukraine) and the

[1] Pro operatyvno-rozshukovu diialnist: proekt Zakonu Ukrainy (vnosytsia narodnym deputatom H. H. Moskalem) [Elektronnyi resurs]. Rezhym dostupu: http//w1.c1.rada.gov.uaplszweb2webproc4_1?pf3511=31841

trends and dynamics of the development of this threat after the moving the convict to a safe place;

2) the operational support of measures, that are related to provision the safety of persons who are participants in criminal proceedings (part 4 of article 10 of the CEC of Ukraine);

3) the interaction with operative units of other IES in cases of moving of the convict to another correctional colony (part 5 of article 10 of the CEC of Ukraine);

4) the operative investigative observation (supervision) of the convict regarding which the personal safety measures envisaged by law and acts (action or inactivity) from the part of this object of legal protection are applied in the future (after moving to a safe place, another IES).

Thus, the main tasks of operative investigative control, that is related to provision the personal safety of convictss in correctional colonies, should be defined: a) evaluation of the specified activity, which is carried out by other subjects; b) an analysis of the level of compliance the safety rules by the convicts; c) the effectiveness of the use of the results, that are obtained as a result of the OIA, to completely eliminate the available sources of danger to this person's life and health during serving the sentence.

Summarizing analyzed materials, we can propose the following definition of operative investigative control on the issues of provision the personal safety of convicts in correctional colonies: it is the activity of the operative units of the SPiSU, which is defined by normative-legal acts and is aimed at checking by

the relevant operative investigative forms, methods and means of the level of safe life of the convict, regarding which, according to the current legislation of Ukraine, measures of safey have been applied in the form of moving to a safe place or another IES.

Thus, the system-forming features that make up the concept of this notion are:

1) the activity, which is defined in the normative-legal acts.

It is about the legal sources in the field of OIA – from the law to departmental normative legal acts on these issues. In particular, in part 2 of art. 9 of the Law of Ukraine "On operative and investigative activity" states that the control over the OIA in the SPSU is carried out by the central executive body, which implements the state policy in the field of execution of criminal penalties. At the same time, in the orders of the SPiSU, which regulate the issues of the OIA in the bodies and the IES, the realization of control is entrusted to the operative units of the territorial departments of the SPiSU, which must also be enshrined in the law, in order to coordinate this activity with the requirements of the principle of legality (part 2 of article 19 of the Constitution of Ukraine, article 5 of the CEC of Ukraine and article 4 of the Law of Ukraine "On operative and investigative activity");

2) the control function in the field of OIA is carried out by the operative units of the SPiSU and operative units of the territorial departments of the SPiSU.

The list of these units is defined in art. 5 of the Law of Ukraine "On operative investigative activity", in paragraph 7 of part 1 of which, in particular, it is noted that the OIA is carried out by the operative units of bodies, the IES and the IW of the SPiSU. However, this legislative approach can not be considered legally exact, given a number of circumstances, namely:

– the totality of bodies and IES, which form the structure of the SPSU, are defined in a special law of the same name[1], among which the central executive body in the field of execution of sentences, that is, now the SPiSU.

Therefore, operative units have all structural elements of the system of the SPSU, and consequently, the to Law of Ukraine "On operative and investigative activity" should put the corresponding (proposed above) changes;

– according to part 1 of art. 11 of the CEC of Ukraine, SPiSU belongs to the bodies of servinging the sentence, which are referred to in the Law of Ukraine "On operative and investigative activity", which is an additional argument for changing paragraph 7 of part 1 of art. 5 of this Law;

– according to art. 1 of the Law of Ukraine "On the State penal service of Ukraine", the task of implementing a unified state policy in the field of execution of sentences is assigned to the SPSU, and not to the SPiSU as an organ that is an integral part

[1] Pro Derzhavnu kryminalno-vykonavchu sluzhbu Ukrainy: Zakon Ukrainy vid 23 cherv. 2005 r. Ofitsiinyi visnyk Ukrainy. 2005. № 29. St. 1697.

of this system and performs the duty regarding provision the implementation of this policy (paragraph 1 of Regulation on the State penal service of Ukraine)[1]. The specified also provides the need of the introduction of putting the above-mentioned changes to the Law of Ukraine "On operative and investigative activity".

Taking into account the above, paragraph 7 of part 1 of art. 5 of the Law of Ukraine "On operative and investigative activity" should be canceled and layed out, taking into account the content of part 1 of this article, in the following wording: "The operative and investigative activity carry out operational units of the State penal service of Ukraine".

The next logical step in this direction should be to amend the Law of Ukraine "On operative and investigative activity" by the way of removing from art. 9 "Guarantees of legality during conducting of operative and investigative activity" the part 2, concerning the realization of control of the OIA. The law should be supplemented by art. 9-3 "Control over the operative and investigative activity", in part 1 of which should be laid down the content of part 2 of the current article 9.

In addition, in art. 9-3 of this Law it is necessary to provide the part 2 and to lay out it in the following wording: "In accordance with the Law and legal status, the control over the operative investigative activity may be carried out, in addition by the central executive authorities, by operative units of their territorial departments".

[1] Statut Yevropy. Ofitsiinyi visnyk Ukrainy. 2004. № 26. St. 1733.

In the note to art. 9-3, it is necessary to define the notion of the control over OIA, that is proposed in this study.

It is precisely such, in our opinion, that there should be a legal mechanism for operative investigative control over the provision of personal safety for convicts in correctional colonies.

3.3. Qualitative modification of control over the activity of the personnel of places of deprivation of liberty is one of the effective ways to increase the level of provision the personal safety of convicts in Ukraine

Adoption of the new CPC of Ukraine, putting the changes to the CC of Ukraine, the CEC of Ukraine, the Law of Ukraine "On operative investigative activity" and other normative legal acts regarding the issues of combating crime[1], as well as urgent practical problems, which are related to the provision of personal the safety of convicts in correctional colonies, lead to the need of the improvement of operative investigative and other legal regulation of the specified range of issues in the context of the reform of the SPSU. It is such the ways are defined in the Concept of state policy in the field of reform of the State penal service of Ukraine,which is approved by

[1] Zakon Ukrainy "Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy u zviazku z pryiniattiam Kryminalnoho protsesualnoho kodeksu Ukrainy" stanom na 25 trav. 2012 r. K. Alerta, 2012. 304 s.

the Decree of the President of Ukraine of November 8, 2012 № 631/2012, in section 3 of which "The ways and methods of solving the problem" is stated that the realization the provisions of the Concept will be implemented by the way of the adoption of new acts of legislation and putting the changes to the acts, that regulating the issue of activity of the SPSU and the procedure for the serving sentences[1].

A similar approach is also defined in the Concept for the implementation of state policy in the field of prevention of offenses for the period up to 2015 in the section "The ways and methods of solving the problem"[2].

Nevertheless, neither the specified nor other normative legal acts, including the new CPC of Ukraine, do not provide adequate safeguards and mechanisms for provision the personal safety of citizens, in particular of convicts in correctional colonies, limited to general concepts and formal provisions regarding the given theme. The revealing in this context is the CPC of Ukraine, which does not have a separate section (chapter, article, etc.), which is devoted to this issue. In paragraph 12 of part 3 of art. 42 of the CPC of Ukraine is stated, that the suspect (accused) has the

[1] Pro Kontseptsiiu derzhavnoi polityky u sferi reformuvannia Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy: Ukaz Prezydenta Ukrainy vid 8 lystop. 2012 r. № 6312012. Ofitsiinyi visnyk Ukrainy. 2012. № 87. St. 3531.

[2] Pro skhvalennia Kontseptsii realizatsii derzhavnoi polityky u sferi profilaktyky pravoporushen na period do 2015 roku: Rozporiadzhennia Kabinetu Ministriv Ukrainy vid 30 lystop. 2011 r. № 1209–r. Ofitsiinyi visnyk Ukrainy. 2011. № 93. St. 3389.

right to file a petition for conducting procedural actions to provide the safety regarding himself, members of his family, close relatives, property, housing, etc. The victim (paragraph 5 of part 1 of article 56 of the CPC of Ukraine), a representative of the victim (part 4 of article 58 of the CPC of Ukraine), a witness (paragraph 8 of part 1 of article 66 of the CPC of Ukraine) and another participants, the court and the parties of the criminal proceedings have the right to petition, but not to personal safety. At the same time, the criminal procedural law does not provide any guarantees of provision the safety of participants in criminal proceedings, as well as elements of the legal mechanism for provision this right.

Concerning the provision of the right of convicts to the personal safety at the general level is stated in the Concept of state policy in the area of the reform of the SPSU, despite the fact that in section 1 "The problem that needs to be solved" are given the circumstances that adversely affect the safety of a person's life in conditions of her isolation from society (unsatisfactory conditions for the keeping of convicts in the IES, inadequate quantity and quality of foodstuffs, low level of medical and sanitary and epidemic provision, etc.). Neither the purpose of the Concept (section 2) nor the section 3, which defines ways and means of solving the problem, do not consist of any mention of the right of convicts to personal safety. Instead, only terms that are approximate in content to the notion of safety are used, namely: the humanization of conditions of convicts, the improvement of these conditions, the improvement of

the health care system of persons, who are held in the IES and IW, etc. (section 3 of the Concept).

The quite formal approach is also proposed by the Concept for the implementation of state policy in the field of prevention of offenses for the period up to 2015[1]. In particular, by noting in the section "The problem that needs to be solved" about the deteriorating of the criminal situation and the emergence of new forms and ways of committing unlawful acts, its authors do not analyze the problem at all, such as the inadequate level of provision personal safety of the population and counteracting against the sources of encroachment on life and health of citizens. Only in the section "Ways and ways of solving problems" are elements of this problem, in particular, one of the indicated ways is determined improvement of the information provision of prevention and personal protection of citizens from unlawful encroachments with the help of mass media, as well as improvement of conditions for correction and re-socialization of convicts and social adaptation of persons, who are exempted from places of deprivation of liberty, prevention of committing offenses by them, raising the level of social educational work, stimulation of good behaviour.

Consequently, this Concept does not provide for concrete measures, that are aimed at creating safe living conditions of a person in Ukraine as a whole, and in particular in the IES.

[1] Wallace H Viktimology Legal Psychological and Social Perspectives. Wallace H. Fresno Allyn and Bacon. 1998. P. 1–18.

The specified are issues remained unresolved in various drafts of Law of Ukraine "On operative investigative activity"[1].

The bills also have similar gaps, which are related to the field of serving sentences. For example, the authors of the draft of the Law of Ukraine "On probation" (D. V. Yagunov and others), offering an alternative to punishment in the form of deprivation of liberty, have never mentioned issues, which are related to provision the right of a person to personal safety[2].

Indicative in this context are bills, that are directly related to provision the personal safety of convicts in the event of occurrence of threat to their life and health. In particular, in accordance with the requirements of part 3 of art. 116 of the CEC of Ukraine, in the case of a stated refusal to accept food by a convict, if it threatens his life, it is permissible to force feeding him according to a medical conclusion. At the same time, a number of authors offer part of 3 article 116 of the CEC of Ukraine should be

[1] Pro operatyvno-rozshukovu diialnist proekt Zakonu Ukrainy (vnosytsia narodnym deputatom Zhuravskym) [Elektronnyi resurs]. Rezhym dostupu: httpw1.c1.rada.gov.uaplszweb2webproc4_1?pf3511=45919

Pro operatyvno-rozshukovu diialnist proekt Zakonu Ukrainy (vnosytsia MVS) [Elektronnyi resurs]. Rezhym dostupu: httpwww.guboz.gov.uaindex.php?option=com_content&view=article&id=3017do-proektu-zakonu-ukrani-qpro-vnesennya-zmn-do-zakonu-ukrani&catid=182012-10-26-14-26-13&Itemid=13

Pro operatyvno-rozshukovu diialnist proekt Zakonu Ukrainy (vnosytsia Shvetsem) [Elektronnyi resurs]. Rezhym dostupu: httpsearch.ligazakon.ual_doc2.nsflink1JF1NA00I.html

[2] Pro probatsiiu: proekt Zakonu Ukrainy. D. V. Yahunov ta in. O. Feniks, 2009. 68 s.

worded as follows: "Forced feeding of a convict who declared a refusal to take food and, according to the conclusions of the commission of doctors, has no mental illness and is aware of his actions, is prohibited"[1].

In order to support or deny the proposed approach, it is necessary to find out the content and social legal nature of a number of important legal concepts and categories that are organically interdependent, interconnected and interact with a legal phenomenon such as forced feeding of a convict in places of deprivation of liberty. In our view, the concept of the content of criminal liability, punishment, execution and serving sentences, torture, etc., which nowadays constitute the content of state policy in the field of counteraction to crime, in particular criminal executive policy[2] and generally, of the legal basis for combating crime in Ukraine[3].

Prevalent is approach, according to which criminal liability is one of the types of legal liability, that is established by the state in the law on criminal

[1] Pro vnesennia zmin do Kryminalno-vykonavchoho kodeksu Ukrainy (shchodo prymusovoho hoduvannia zasudzhenykh) proekt Zakonu Ukrainy, vnesenyi narodnymy deputatamy Ukrainy A. B Avakovym, V. H. Yaremoiu ta in. (reiestr. № 2199 vid 5 liut. 2013 r.) [Elektronnyi resurs]. Rezhym dostupu: httpzakon.nau.uadoc?uid=1206.547.0

[2] Borysov V. I. Derzhavna polityka u sferi borotby zi zlochynnistiu ta yii napriamy. V. I. Borysov. Problemy zakonnosti Resp. mizhvid. nauk. zb. vidp. red. V. Ya Tatsii. Kh. NIuAU, 2009. Vyp. 100. S. 306.

[3] Holyna V. V. Prestupnost mnohoobrazye poniatyi y predmetnaia sushchnost yavlenyia. Holyna V. V. Problemy zakonnosti: Resp. mizhvidom. nauk. zb. vidp. red. V. Ya. Tatsii. Kh. Nats. yuryd. akad. Ukrainy, 2009. Vyp. 100. S. 335.

liability, as well as a court obligates persons who are convicted on the basis of its conviction of a crime and thay have to bear obligations of personal, property and organizational nature[1].

Given the content of this notion, one can conclude that, in the case of bringing any person to criminal liability, he has (in fact, the convict) certain obligations to the state which he has to fulfill within the time of serving the sentence, which is determined by the court, in full volume. On the other hand, the personnel of the bodies and the IES has the right to exercise the appropriate influence on the convicted person by the means, that are provided by the law (article 6 of the CEC of Ukraine), in order to the latter clearly fulfills these obligations – these are inseparable elements of the mechanism of legal regulation in any which branch of law[2], among which is criminal executive law[3]. In the Criminal executive Code of Ukraine (art. 9, 107) and other normative legal acts of Ukraine on the execution of sentences were determine the main responsibilities of convicts, which stipulate for these persons to strictly adhere to the rules of conduct and to carry out the legal requirements of the administration of the bodies and the

[1] Mizhnarodna politseiska entsyklopediia: u 10 t. vidp. red. Yu. I. Rymarenko, Ya. Yu. Kondratiev, V. Ya. Tatsii, Yu. S. Shemshuchenko. K. Kontsern "Vydavnychyi dim «In Yure»", 2003. S. 314.

[2] Skakun O. F. Teoriia derzhavy i prava: [pidruch.]. Skakun O. F.; per. z ros. Kh. Konsum, 2001. S. 499–501.

[3] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 125–128.

IES. Convicts' failure to comply with the duties and legal requirements of the specified bodies and institutions and their officials entails the liability, which is established by law. If to literally understand the meaning of art. 50 of the CC of Ukraine, then it should be recognized that punishment is a measure of state coercion and consists in the provided by law limiting the rights and freedoms of the convict, which generally are realized by the way of such its goal as the punishment[1]. Despite the diverse approaches of scientists to understanding the content of punishment, the vast majority of researchers believe that punishment is not a cruel revenge or retribution to person from the side of a state for the crime committed, and the legislative orientation of the court and organs and the IES to apply to the convict such a complex of restrictions of his rights and freedoms that will be tangible and, at the same time, sufficient to achieve other basic purposes of punishment – correction of the convict, as well as special and general prevention. According to this position, the punishment is only an interim purpose of sentence[2].

In the criminal executive legislation of Ukraine, the punishment is implemented through the regime,

[1] Denysova T. A. Kryminalne pokarannia zavdannia i funktsii, praktyka zastosuvannia T. A. Denysova Pravova systema Ukrainy istoriia, stan ta perspektyvy: [u 5 t.]. za zah. red. V. V. Stashysa. Kh. Pravo, 2008. – T. 5. Kryminalno-pravovi nauky. Aktualni problemy borotby zi zlochynnistiu v Ukraini. 2008. S. 32–33.

[2] Naukovo-praktychnyi komentar Kryminalnoho kodeksu Ukrainy. [4-te vyd., pererobl. ta dopov.]. za zah. red. S. S. Yatsenko. K. A.S.K., 2006. S. 107.

that is, the established by law and other normative-legal acts the procedure for the execution and serving sentences which ensures the fulfill the obligations, which are imposed on convicts (article 102 of the CEC of Ukraine)[1]. The term "serving a sentence" refers to bodies and the IES, that in their activities are obliged to realize the whole complex of rights restrictions, that are provided for in the regime of specific type of punishment, as well as to provide the implementation of the rights, which are provided to convicts, and obligations, which are imposed on convicts. The term "serving a sentence" refers to convicts who, by virtue of a court decision and in accordance with the requirements, that are established by the criminal executive legislation of Ukraine, must perform their duties and refrain from prohibited acts, realize the rights, which are granted, etc.[2]

Consequently, in view of this legally defined approach, in particular, and to the requirements of part 3 of art. 63 of the Constitution of Ukraine that the convict enjoys all rights of a person and a citizen, with the exception of restrictions, that are identified by the law and established by a court sentence, it is necessary to recognize that convicts do not have the right to hunger strike in the IES. An additional argument in this regard is the provisions of art. 8 of

[1] Naukovo-praktychnyi komentar Kryminalno-vykonavchoho kodeksu Ukrainy. [A. P. Hel, O. H. Kolb, V. O. Korchynskyi ta in.]; za zah. red. A. Kh. Stepaniuka. K. Yurinkom Inter, 2008. S. 300–310.

[2] Kryminalno-vykonavchyi kodeks Ukrainy: nauk.-prakt. koment. A. Kh. Stepaniuk, I. S. Yakovets; za zah. red. A. Kh. Stepaniuka. Kh. Yurinkom Inter, 2005. S. 6.

the CEC of Ukraine "The main rights of convicts" and art. 107 of the CEC of Ukraine "Rights and duties of convicts to deprivation of liberty", as well as art. 5 of the CEC of Ukraine "Principles of criminal executive legislation, execution and serving of sentences", which do not provide the right of convicts to hunger strike and oblige them to act on the principle of legality, that is, to carry out their duties[1] in accordance with the law[2]. In addition, this right is not foreseen in art. 10 of the CEC of Ukraine "The right of convicts for personal safety", as hunger strike is not included in the content of its realization in the IES.

In all other cases, the actions of the officials of the IES and convicts, who are related to their individual or collective hunger strike (refusal of food) may, according to the current legislation of Ukraine, be regarded as being:

– abuse of powers, that is, the committing of which is not provided by law[3];

– a form of convicts' evasion of serving a sentence in the form of deprivation of liberty (article 390 of the CC of Ukraine) by the way of suicide, deteriora-

[1] Kryminalno-vykonavche pravo Ukrainy: pidruch. [V. V. Holina, A. Kh. Stepaniuk, O. V. Lysodied ta in.]; za red. V. V. Holiny i A. Kh. Stepaniuka. Kh. Pravo, 2011. S. 26–28.

[2] Kryminalno-vykonavche pravo: pidruch. [dlia stud. yuryd. spets. vyshch. navch. zakl.]. za red. A. Kh. Stepaniuka. Kh. Pravo, 2006. S. 11–12.

[3] Pro sudovu praktyku u spravakh pro perevyshchennia vlady abo sluzhbovykh povnovazhen: Postanova Plenumu Verkhovnoho Sudu Ukrainy vid 26 hrud. 2003 r. № 15. Postanovy Plenumu Verkhovnoho Sudu Ukrainy u kryminalnykh spravakh. K. Vydav. dim "Skif", 2009. S. 255.

tion of health, self-harm, etc., considering that the evasion at this situation is a failure to fulfill the obligation of convict to serve a sentence[1];

– the evil disobedience to the legitimate demands of administration of the IES (art. 391 of the CC of Ukraine)[2] and evil misconduct (art. 133 of the CEC of Ukraine);

– form of pressure on the administration of the IES, another law enforcement agencies or a court in order to force them to take an unlawful (illegal) decision (article 376, 342 of the CC of Ukraine)[3]; or to receive certain benefits in the future for dismissal from a IES due to illness (article 84 of the CC) or pardon (article 87 of the CC of Ukraine). The study of the social legal content of offenses and crimes in the IES of Ukraine, in particular of the phenomenon of refusal of food by convicts, showed that the vast majority of them were conditioned by the failure of the convicts to perform their duties, which are results of their legal status (article 7 of the CEC of

[1] Kryminalno-vykonavchyi kodeks Ukrainy: nauk.-prakt. koment. za zah. red. V. V. Kovalenka, A. Kh. Stepaniuka. K. Atika, 2012. S. 114.

[2] Pro sudovu praktyku v spravakh pro zlochyny, poviazani z porushenniamy rezhymu vidbuvannia pokarannia v mistsiakh pozbavlennia voli: Postanova Plenumu Verkhovnoho Sudu Ukrainy vid 26 berez. 1993 r. № 2. Postanovy Plenumu Verkhovnoho Sudu Ukrainy u kryminalnykh spravakh. [3-tie vyd., zmin. i dop.]. K. Vydav. dim "Skif", 2009. S. 112–113.

[3] Pro zastosuvannia zakonodavstva, shcho peredbachaie derzhavnyi zakhyst suddiv, pratsivnykiv sudu i pravookhoronnykh orhaniv ta osib, yaki berut uchast u sudochynstvi: Postanova Plenumu Verkhovnoho Sudu Ukrainy vid 18 cherv. 1999 r. № 10. Postanovy Plenumu Verkhovnoho Sudu Ukrainy v kryminalnykh spravakh. uporiad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. K. PALYVODA A.V., 2011. S. 167–168.

Ukraine)[1], and therefore, the lifting of forced feeding of convicts in the IES of Ukraine will be unpredictable and not predictable with the socially dangerous consequences the legislator's step. It should also be taken into account that international legal acts on the issues of enforcement of sentences and the foreign practice[2] it is also predicted the forced feeding of certain categories of people, including of convicts to deprivation of liberty. For example, this procedure is identified in the Maltese Declaration regarding the persons, who started on hunger strike[3]. Namely, its

[1] Zapobihannia pravoporushenniam u mistsiakh pozbavlennia voli: [navch. posib.]. [2-he vyd., dopov. i vypr.]. [V. L. Ortynskyi, O. H. Kolb, V. P. Zakharov ta in.]; za zah. red. V. L. Ortynskoho ta O. H. Kolba. Lutsk. PP Ivaniuk V. P., 2010. S. 183–211.

[2] Cloward R. Drlinquency and Opportunity A Theory of Delinquent Gangs. Cloward R., Ohlin L. N. Y. The Free Press, 1960.

Cohen A. Delinquent Boys The Culture of the Gang. Cohen A. Clencoe, III. The Free Press, 1955.

Fattah E. Viktimology Past, Present and Future. E. Fattah Criminology. 2000. № 1 (33). P. 22–25.

Handbook on justiece for Victims. On the Declaration of Basic Principles of justice for Victims of Crime and Abuse of Power New York. UNODCCP, 1999. P. 2.

Hentig H. The Criminal and His Victim. H. Hentig. Classics of Criminology. Illinois, 1994. P. 32–33.

Kroeber A. Culture A Critikal Review of Concepts and Difinitions. Kroeber A., Kluckhohn C. New York Vintage Book, 1952.

Miller W. Lower Class Culture as a Generating. Milieu of Gang Delinquent. W. Miller. Journal of Social Issues. 1958.

Wallace H Viktimology Legal Psychological and Social Perspectives. Wallace H. Fresno Allyn and Bacon. 1998. P. 1–18.

[3] Maltyiskaia deklaratsyia otnosytelno obiavyvshykh holodovku pryniata 43-y Vsemyrnoi medytsynskoi assambleei, Malta, noiabr, 1991 h. Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 292–293.

content and approaches were used by the SPiSU at the time of approval of the Instruction on the conditions of detention and the procedure for forced feeding in the IES of people who refuse to eat food[1].

Similar approaches can be found in other international sources. In particular, in principle 5 of the supplement to the Principles of Medical Ethics regarding the role of health care workers, and in particular doctors, in protecting convicts or detainees from torture and other cruel, inhuman or degrading types of treatment or punishment the following is stated: "The participation of workers of protection, especially doctors, in any straight nature procedure regarding a convict or detained person is a violation of medical ethics, except when it is solely resulted from medical indicators as necessary for the protection of the physical or mental health or safety of the convicted or detained person himself"[2].

If to literally understand the content of the term "torture", which is defined in art. 1 of Convention against torture and other cruel, inhuman or degrading types of treatment or punishment, then it does not foresee pain and suffering that arose solely through lawful sanctions, are inseparable from or

[1] Instruktsiia pro umovy trymannia i poriadok prymusovoho hoduvannia v ustanovakh kryminalno-vykonavchoi systemy osib, yaki vidmovliaiutsia vid vzhyvannia yizhi zatv. nakazom Derzhavnoho departamentu Ukrainy z pytan vykonannia pokaran vid 12 cherv. 2000 r. № 127. Ofitsiinyi visnyk Ukrainy. 2000. № 30. St. 1295. 11 serp.

[2] Pryntsypy medychnoi etyky pryiniati rezoliutsiieiu 37194 Heneralnoi Asamblei OON vid 18 hrud. 1982 r. Prava liudyny i profesiini standarty dlia narodnykh orhanizatsii. K. Sfera, 2002. S. 83.

sanctioned by these sanctions by chance – this also applies to cases of forced feeding (which, for example, is provided in part 3 of article 116 of the CEC of Ukraine)[1]. The forced feeding of convicts is not considered as torture in the IES and by the current criminal law of Ukraine (article 127 of the CC of Ukraine)[2].

The personnel of the IES also have the right to apply coercion also in accordance with the requirements of paragraph 15 of the Basic principles on the use of force and firearms by officials of maintain law and order, which states that these subjects in their relations with persons, who stay in custody and in places of deprivation of liberty, do not use force, except in cases when it is strictly necessary to maintain safety and order in the IES or there is a threat to personal safety[3]. In this regard, the content of paragraph 4 of the supplement to the Basic principles on the treatment of convicts, which states that the IES are responsible for the keeping of the convicts and

[1] Konventsiia proty katuvan ta inshykh zhorstokykh neliudskykh, abo takykh, shcho prynyzhuiut hidnist vydiv povodzhennia i pokarannia. Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 45.

[2] Pro sudovu praktyku v spravakh pro zlochyny proty zhyttia ta zdorovia osoby: Postanova Plenumu Verkhovnoho Sudu Ukrainy vid 7 liut. 2003 r. № 2. Postanovy Plenumu Verkhovnoho Sudu Ukrainy v kryminalnykh spravakh. uporiad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. K. PALYVODA A. V., 2011. S. 204.

[3] Osnovnie pryntsypi prymenenyia syli y ohnestrelnoho oruzhyia dolzhnostnimy lytsamy po podderzhanyiu pravoporiadka. Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 44.

the protection of the society from the offenses, should be analyzed; in accordance with other social tasks of any state, this is its main liability in promoting the well-being and development of all members of society[1].

In Ukraine, these tasks are defined in part 1 of art. 1 of the CEC of Ukraine, namely, the protection of the interests of the person (in this case, of the convict who declared the refusal of food), first of all, his life and health. In addition, the current criminal executive legislation of Ukraine provides for control over execution of court decisions for the reimbursement by the convicts of material damage and moral harm inflicted by them, for the IES (article 4 of the CEC of Ukraine)[2]. In the case of hunger strike, the convicts violate the lawful rights and interests of victims of crime by the way of not return to work, as a result of which is not deducted the corresponding amounts of money to compensate for the damage and injury from the latter. That is why annually to victims are compensated about 45 % of the amounts, that are determined by the courts as actual losses[3].

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[1] Osnovni pryntsypy povodzhennia iz zasudzhenymy. Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 77.

[2] Zakhyst prav poterpiloho vid zlochynu v kryminalno-vykonavchomu pravi: [navch. posib.]. [V. V. Vasylevych, A. P. Hel, V. P. Zakharov ta in.]; za zah. red. A. Kh. Stepaniuka ta O. H. Kolba. Lutsk. PP Ivaniuk V. P., 2010. 176 s.

[3] Analiz stanu zdiisnennia sudochynstva sudamy zahalnoi yurysdyktsii v 2011 r. (za danymy sudovoi statystyky) [Elektronnyi resurs]. Rezhym dostupu: httpgovuadocs.com.uadocsindex–76683.html

At the same time, according to data of official statistics and the Commissioner of the Verkhovna Rada of Ukraine on human rights, the rate of illness and mortality among convicts is high in the IES, there are cases of suicide, which, in particular, have also hidden (latent) character, given that convicts, refusing from food, do not report about their decision to personnel of correctional colonies, as provided for in part 3 of art. 116 of the CEC of Ukraine[1].

The right to use coercion by personnel of the IES is in indirect form, in particular on issues of forced feeding, is recognized in other international legal acts, namely: a) art. 1, 3, 5 of the Code of conduct of officials in maintaining law and order[2]; b) paragraphs 33, 57–60, 63, 65 of the Minimum standard rules for the treatment of convicts[3]; c) other sources[4].

[1] Karpachova N. I. Stan dotrymannia Ukrainoiu Yevropeiskykh standartiv z prav i svobod liudyny spetsialna dopovid Upovnovazhenoho Verkhovnoi Rady Ukrainy z prav liudyny z nahody 60-richchia Konventsii pro zakhyst prav liudyny i osnovopolozhnykh svobod. Karpachova N. I. K., 2010. S. 53–54.

[2] Kodeks povedinky posadovykh osib u pidtrymanni pravoporiadku. Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 78–79.

[3] Minimalni standartni pravyla povodzhennia iz zasudzhenymy. Prava liudyny i profesiini standarty dlia pratsivnykiv penitentsiarnoi systemy v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 65–69.

[4] Pryntsypy efektyvnoho rozsliduvannia i dokumentatsii katuvan ta inshoho zhorstokoho, neliudskoho abo takoho, shcho prynyzhuie hidnist, povodzhennia abo pokarannia rekomendovani Rezoliutsiieiu Heneralnoi Asamblei OON vid 4 hrud. 2000 r. № 5589. Prava liudyny i profesiini standarty dlia pravookhoronnykh orhaniv v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 202–206.

The European Court of Human Rights does not recognize cases of forced feeding of convicts with violation of their rights, in particular, in the decision of the case "Nevmerzhytskyi against Ukraine" it has been noted that forced feeding, in principle, is not considered as behavior that violates of human dignity[1].

At the legal level (in the form of individual norms of the CEC or special laws) this issue was regulated abroad (in the Russian Federation[2], the Republic of Belarus[3], other states[4]).

Thus, it should be noted that the actual and legal grounds for the amendment of part 3 of art. 116 of the CEC of Ukraine (abolition of forced feeding of convicts to deprivation of liberty) is not available at present. We arrive at the specified conclusion on the basis of:

1) social legal content of criminal punishment in the form of deprivation of liberty (articles 50, 63 of the CC of Ukraine);

2) the content of the processes of execution and serving of punishment in Ukraine;

3) the legal status of the convicts to deprivation of liberty (articles 7–9, 107 of the CEC of Ukraine);

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[1] Praktyka Yevropeiskoho sudu z prav liudyny. Rishennia. Komentari. K. M-vo yustytsii Ukrainy, 2012. № 6 (08). 258 s.

[2] Uholovno-yspolnytelskyi kodeks Rossyiskoi Federatsyy. M. Omeha-L, 2012. 91 s.

[3] Uholovno-yspolnytelskyi kodeks Respublyky Belarus. Mynsk. Natsyonalnii tsentr ynformatsyy Respublyky Belarus, 2000. 144 s.

[4] Bohatyrov I. H. Porivnialne kryminalno-vykonavche pravo: [navch. posib.]. [Bohatyrov I. H., Kopotun I. M., Puzyrov M. S.]; za zah. red. I. H. Bohatyrova. K. In-t kryminalno-vykonavchoi sluzhby, 2013. S. 89–102.

4) the tasks of the criminal executive law of Ukraine, first of all, those related to provision the personal safety of convicts (articles 1, 8, 10, 102 of the CEC of Ukraine), execution of other decisions of the courts (in particular, regarding compensation of material and moral harms that are caused by convicts in the way of committing crimes);

5) tasks regarding preventing evasion convicts of serving a sentence by malicious violation of the established order for serving a sentence, malicious disobedience to demands of the administration of the IES, etc.;

6) the content of international legal acts on issues regulating the procedure and actions of officers of the IES regarding the application of enforcement, which concerns the forced feeding of convicts;

7) international legal practice.

Taking into account commitments, which are taken by Ukraine, during joining to the relevant international organizations[1], as well as the requirements of the Law of Ukraine "On the government-wide program of adaptation of Ukrainian legislation to the legislation of the European Union"[2] and other decisions on these issues[3], to change the current criminal executive legislation of Ukraine is necessary. At the

[1] Statut Yevropy. Ofitsiinyi visnyk Ukrainy. 2004. № 26. St. 1733.

[2] Pro zahalnoderzhavnu prohramu adaptatsii zakonodavstva Ukrainy do zakonodavstva Yevropeiskoho Soiuzu Zakon Ukrainy vid 18 berez. 2004 r. № 1629–IV. Uriadovyi kurier. 2004. 20 kvit. S. 2–3.

[3] Pro Plan zakhodiv iz vykonannia oboviazkiv ta zoboviazan Ukrainy, shcho vyplyvaiut z yii chlenstva v Radi Yevropy zatv. Ukazom Prezydenta Ukrainy vid 20 sich. 2006 r. № 392006. Ofitsiinyi visnyk Ukrainy. 2006. № 4. St. 143.

same time, at least several requirements and rules for the construction of legal norms should be observed, namely:

– the methods (forms) of the outlining rules of law in the articles of the normative-legal act (full, send, blanket and casuistic, abstract[1]);

– the general principles and functions of lawmaking, in particular the principle of systemicity, that is, the harmonization of the norms that are adopted, with other normative and legal acts (among them the articles of the CEC of Ukraine)[2];

– the peculiarities of the corresponding social relations, that are subject to legal regulation, which include criminal-executive legal relations[3];

– the comparative basis of the formation of legal norms, that is, the comparison of their content with international legal acts and practice[4];

– the legal sources of the functioning of the SPSU[5] and its analogues abroad[6];

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[1] Skakun O. F. Teoriia derzhavy i prava: [pidruch.]. Skakun O. F.; per. z ros. Kh. Konsum, 2001. S. 291–293.

[2] Right there. S. 295–297.

[3] Kryminalno-vykonavche pravo Ukrainy: pidruch. [O. M. Dzhuzha, I. H. Bohatyrov, O. H. Kolb ta in.]; za zah. red. O. M. Dzhuzhi. K. Atika, 2010. S. 138–140.

[4] Bohatyrov I. H. Porivnialne kryminalno-vykonavche pravo: [navch. posib.]. [Bohatyrov I. H., Kopotun I. M., Puzyrov M. S.]; za zah. red. I. H. Bohatyrova. K. In-t kryminalno-vykonavchoi sluzhby, 2013. S. 6–16.

[5] Zamula S. Yu. Profilaktyka vplyvu kryminalnoi subkultury na nepovnolitnikh zasudzhenykh u spetsialnykh vykhovnykh ustanovakh: navch.-metod. posib. S. Yu. Zamula. Bila Tserkva. DPtSU, 2011. 240 s.

[6] Bohatyrov I. H. Porivnialne kryminalno-vykonavche pravo: [navch. posib.]. [Bohatyrov I. H., Kopotun I. M., Puzyrov M. S.]; za zah. red. I. H. Bohatyrova. K. In-t kryminalno-vykonavchoi sluzhby, 2013. S. 89–123.

– the requirements of art. 3 of the Constitution of Ukraine and international legal acts on human rights[1], according to which the rights and freedoms of a person (in this case, both convicts and victims of crimes, society in general) should determine the content and direction of the activity of any state;

– other factors and elements of legal regulation, as well as features of legal technique[2].

Contradictory aspects and proposals that do not correspond with the provision of personal safety of convicts can be found in other draft laws, which are related, in particular, to the implementation of health care issues of persons, who are deprived of their liberty. The specified approaches not only do not resolve the above-mentioned problem, but also violate the principle of equality of convicts before the law (part 1 of article 24 of the Constitution of Ukraine, article 5 of the CEC of Ukraine), as well as contradict the current criminal-executive legislation of Ukraine, international legal acts and foreign experience. The content of this problem is as follows.

According to the requirements of aart 2 of art. 116 of the CEC of Ukraine, medical preventive and sanitary epidemiological work in places of depriva-

[1] Pryntsypy efektyvnoho rozsliduvannia i dokumentatsii katuvan ta inshoho zhorstokoho, neliudskoho abo takoho, shcho prynyzhuie hidnist, povodzhennia abo pokarannia rekomendovani Rezoliutsiieiu Heneralnoi Asamblei OON vid 4 hrud. 2000 r. № 5589. Prava liudyny i profesiini standarty dlia pravookhoronnykh orhaniv v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 202–206.

[2] Skakun O. F. Teoriia derzhavy i prava: [pidruch.]. Skakun O. F.; per. z ros. Kh. Konsum, 2001. S. 488–515.

tion of liberty are organized and conducted in accordance with the legislation on health care. The administration of the colonies is obliged to adhere to the necessary medical requirements that ensure the protection of health of the convicts. The convicts to deprivation of liberty are required to comply with the rules of personal and general hygiene, to comly with the requirements of sanitation. In addition, the convict, as indicated in part 5 of art. 116 of the CEC of Ukraine, has the right to apply for advice and treatment to institutions providing paid medical services. Counseling and treatment in these cases are carried out in the medical parts of the colonies at the place of serving sentences under the supervision of the personnel of the medical part.

At the same time, some authors propose to supplement the CEC of Ukraine art. 116-1, by providing for treatment for convicts to deprivation of liberty abroad[1]. However, according to this legislative defined approach, in particular, to the provisions of part 3 of art. 63 of the Constitution of Ukraine that the convict enjoys all human and civil rights, with the exception of the restrictions, that are provided for by law and established by the court sentence, it is necessary to recognize that convicts do not have

[1] Pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy (shchodo humanizatsii zakonodavstva pro poperednie uviaznennia ta zabezpechennia konstytutsiinykh prav i svobod osib, vziatykh pid vartu, osib, zasudzhenykh do pozbavlennia voli, a takozh zasudzhenykh, yaki perebuvaiut na likuvanni v zakladakh okhorony zdorovia za mezhamy ustanov vykonannia pokaran proekt Zakonu Ukrainy, reiestr № 2293 vid 13liut. 2013 r. [Elektronnyi resurs]. Rezhym dostupu: httpzakon.nau.uadoc?uid=1206.628.0

rights to treatment abroad. An additional argument in this context is the provision of art. 8 of the CEC of Ukraine "The main rights of convicts" and art. 107 of the CEC of Ukraine "The rights and duties of convicts to deprivation of liberty", as well as art. 5 of the CEC of Ukraine "The principles of criminal executive legislation, execution and serving of sentences", which do not provide for this right of convicts.

Other scientists also came to the specified conclusion[1]. In addition, the requirement regarding treat convicts abroad is, according to scientists, one form of evasion from serving a sentence[2] and unlawful pressure on the administration of correctional colonies in order to force personnel to make improper decisions[3]. Another aspect of this problem lies in the fact that the majority of socially dangerous persons are held in the IES of Ukraine, namely: 12 500 people,that are convicted for the term of more than 10 years for the committing of especially grave crimes (article 12 of the CC of Ukraine); 1778 persons, that are convicted to life imprisonment (article 64 of the CC of Ukraine).

In addition, in places of deprivation of liberty are held:

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[1] Kolb O. H. Deiaki aspekty pravovoho statusu zasudzhenykh do pozbavlennia voli. O. H. Kolb, I. A. Pryshko. Visnyk prokuratury. 2012. № 7 (133). S. 24–30.

[2] Pryshko I. A. Kryminalna subkultura yak nevidiemna chastyna zahalnosuspilnoi kultury. I. A. Pryshko. Visnyk prokuratury. 2012. № 7 (133). S. 88–93.

[3] Pyrozhkov V. F. Krymynalnaia psykholohyia. Pyrozhkov V. F. M. Os-89, 2013. 704 s.

a) 17,1 thousand people are convicted of premeditated murder (part 1 of article 115 of the CC of Ukraine), among whom 8,5 thousand – for premeditated murder with aggravating circumstances (part 2 of article 115 of the CC of Ukraine);

b) 9,9 thousand people - for causing premeditated grievous bodily harm (article 121 of the CC of Ukraine);

c) 29,2 thousand people – for banditry (article 187 of the CC of Ukraine); robbery (article 186 of the CC of Ukraine) and extortion (article 189 of the CC of Ukraine);

d) 2,3 thousand people – for rape (article 152 of the CC of Ukraine);

e) 34 persons - for the capture of hostages (article 147 of the CC of Ukraine);

f) 21,8 thousand people – for crimes in the sphere of illegal circulation of narcotic drugs, psychotropic substances, its analogues or precursors, and other crimes against the health of the population (section XIII of the Special Part of the CC of Ukraine)[1].

Every year in Ukraine from this category of convicts more than 50 thousand people become victims of crimes[2].

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[1] Sydorenko S. M. Shliakhy realizatsii Kontseptsii derzhavnoi polityky u sferi reformuvannia DKVS Ukrainy na suchasnomu etapi. S. M. Sydorenko. Derzhavna penitentsiarna sluzhba Ukrainy istoriia sohodennia ta perspektyvy rozvytku u svitli mizhnarodnykh penitentsiarnykh standartiv ta Kontseptsii derzhavnoi polityky u sferi reformuvannia Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy: materialy mizhnar. nauk-prakt. konf. (Kyiv, 28–29 berez. 2013 r.) K. DPtS Ukrainy; VD "Dakor", 2013. S. 9.

[2] Analiz stanu zdiisnennia sudochynstva sudamy zahalnoi yurysdyktsii v 2011 r. (za danymy sudovoi statystyky) [Elektronnyi resurs]. Rezhym dostupu: httpgovuadocs.com.uadocsindex–76683.html

So, if to guide the requirements of part 1 of art. 24 of the Constitution of Ukraine and art. 5 of the CEC of Ukraine, in which are established the principle of equality of citizens before the law, then it should be recognized that all the specified categories of convictss in the IES will also be entitled to treatment abroad. At the same time, it is obvious that no country in the world will dare to assume the duty not only to treat these persons, but also to provide social safety for medical personnel, other patients, guards, and others. No country currently has such a practice and does not send its convicts to be treated abroad[1], as well as no one international legal act of the issues of the enforcement of sentences provide for this[2]. In Ukraine[3], and abroad[4], the criminal punishment in the form of deprivation of liberty is imposed by the court as extreme mean of coercion to the perpetrators of the committing crime. By

[1] Khavroniuk M. I. Suchasne zahalnoievropeiske kryminalne zakonodavstvo problemy harmonizatsii: [monohr.]. Khavroniuk M. I. K. Istyna, 2005. 264 s.

[2] Pryntsypy efektyvnoho rozsliduvannia i dokumentatsii katuvan ta inshoho zhorstokoho, neliudskoho abo takoho, shcho prynyzhuie hidnist, povodzhennia abo pokarannia rekomendovani Rezoliutsiieiu Heneralnoi Asamblei OON vid 4 hrud. 2000 r. № 5589. Prava liudyny i profesiini standarty dlia pravookhoronnykh orhaniv v dokumentakh mizhnarodnykh orhanizatsii. K. Sfera, 2002. S. 202–206.

[3] Pro praktyku pryznachennia sudamy kryminalnoho pokarannia: Postanova Plenumu Verkhovnoho Sudu Ukrainy vid 24 zhovt. 2003 r. № 7. Postanovy Plenumu Verkhovnoho Sudu Ukrainy u kryminalnykh spravakh. [3-tie vyd., zmin. i dop.] K. Vydav. dim “Skif”, 2008. S. 165–366.

[4] Bohatyrov I. H. Porivnialne kryminalno-vykonavche pravo: [navch. posib.]. [Bohatyrov I. H., Kopotun I. M., Puzyrov M. S.]; za zah. red. I. H. Bohatyrova. K. In-t kryminalno-vykonavchoi sluzhby, 2013. 140 s.

isolating a person from a society and restricting his constitutional rights and freedoms (part 3 of article 63 of the Constitution of Ukraine), the state operates in conditions of extreme necessity, namely: on the one hand, causes certain suffering of convict within the law, but on the other – in this way restrains other persons from committing a crime – this is one of the main consequences of criminal liability[1].

Practice shows that the deterrent factor for convicts and the general population is the following criminal executive phenomenon and processes that have a place while serving a sentence in the form of deprivation of liberty:

1) results of application to persons, who are serving sentences, main means of correction and resocialization: regime; socially useful work; social education work, general education and technical-professional education and social impact, participation in the implementation of which for convicts is mandatory and such, which is indicative of the reduction of level of their public danger and the degree of correction (article 6 of the CEC of Ukraine);

2) permanent (continuous during the day and during the entire term of serving the sentence) supervision for the convicts, which is carried out at all objects of vital activity of the person in the conditions of places of detention, in particular in medical

[1] Mizhnarodna politseiska entsyklopediia: u 10 t. vidp. red. Yu. I. Rymarenko, Ya. Yu. Kondratiev, V. Ya. Tatsii, Yu. S. Shemshuchenko. K. Kontsern "Vydavnychyi dim «In Yure»", 2003. T. 1 Teoretyko-metodolohichni ta kontseptualni zasady politseiskoho prava ta politseiskoi deontolohii. 2003. S. 314.

institutions (article 102, 103 of the CEC of Ukraine), in order to prevent his committing a new one a crime (article 1 of the CEC of Ukraine, article 50 of the CC of Ukraine), suicide, self-harm, deviation from serving the sentence, ensuring the implementation of other court decisions regarding the convict (for the recovery of alimony, compensation for damage, which is caused by a crime, etc.);

3) the organization and level of provision safety of the personnel of the IES (article 104 of the CEC of Ukraine), other persons (article 1 of the CEC of Ukraine) and convicts (article 10 of the CEC of Ukraine);

4) the consequences of the separate maintenance of the most socially dangerous convicts from other categories in the stations of intensified control (article 94, 97 of the CEC of Ukraine) and the moving the persistent violators to the penal colony of the maximum level of safety (article 100 of the CEC of Ukraine);

5) an increase in the period of serving a sentence for certain categories of convicts in the case of application of conditional early release from serving a sentence; amnesty; pardon, etc. (articles 81–87 of the CC of Ukraine)[1];

6) the obligation to compensate the damage, that has been caused to victim by convict during the serving of the punishment[2].

[1] Yakovets I. S. Umovno-dostrokove zvilnennia ta zamina ne vidbutoi chastyny pokarannia bilsh miakym: [monohr.]. Yakovets I. S. M. Mikroprint, 2012. 212 s.

[2] Zakhyst prav poterpiloho vid zlochynu v kryminalno-vykonavchomu pravi: [navch. posib.]. [V. V. Vasylevych, A. P. Hel, V. P. Zakharov ta in.]; za zah. red. A. Kh. Stepaniuka ta O. H. Kolba. Lutsk PP Ivaniuk V. P., 2010. 176 s.

Of course, the life and health of the convict is the highest social value (article 3 of the Constitution of Ukraine), but another fact is evident: these objects are equally valuable for ordinary citizens, and therefore the state at the legal level is compelled to create such conditions of serving a sentence, which would ensure public safety for all, including convicted persons. That is why, taking into account all civilized achievements in the issues of execution of sentences, Ukraine, while adopting the CPC in 2003, included in this systematic law those restrictions for convicts (including those relating to the treatment of sentences) that do not cause unforeseen suffering for them and is the limiting an element of their further criminal activity. Other methods in the specified area of social activity in any country have not yet been used in practice.

In view of the specified, it should be recognized that the amendments and additions, that are proposed by some authors to the current CPC of Ukraine are chaotic, unsystematic and likely to lead to grave consequences for the Ukrainian state, since their adoption by the Verkhovna Rada of Ukraine eliminates the content actualy of the criminal punishment, as well as will create a dangerous precedent for the most aggressively-minded part of the population, the recidivists (both those who are still serving their sentence and those who have not been lifted and liquidated from the criminal record in accordance with articles 88–91 of the CC of Ukraine).

In order to improve the existing legal framework and the draft laws, that are proposed in various theoretical and applied sources in this direction, it is necessary to make the following changes (supplements 9, 10, 11).

1. The section 10 of the CPC of Ukraine to supplement by article 132-1 "The measures regarding provision the safety of participants in criminal proceedings" with the following content: "In accordance with the requirements of this Code, all participants in criminal proceedings have the right to provide personal safety. The procedure for provision the safety of persons, who are involved in criminal proceedings, is determined by a special law of Ukraine".

2. The Law of Ukraine "On provision the safety of persons, who are involved in criminal proceedings" must be agreed with the requirements of the CPC of Ukraine, of the current operative investigative law and the CEC of Ukraine, taking into account the changes and additions, which have been proposed and scientifically substantiated in this dissertation study and sent in the form of a bill for use in the work of the Verkhovna Rada Committee on issues of legislative provision of law-enforcement activity.

3. The first sentence of section 2 "Purpose and timing of the realization of Concept" of the Concept of the state policy in the field of reform of the State penal service of Ukraine should be supplemented with the provision of the following content: "The main task, that is aimed at achieving the specified

goal is the provision the safety of personnel of bodies and institutions of the execution of sentences and convicts during the execution and serving of criminal sentences, that are provided for by law".

The conclusions to the section 3

1. In this section, the following features of organizational and tactical operative and investigative measures aimed at the implementation of this task are defined and substantiated: 1) measures regarding the prevention of the encroachment on personal safety of convicts who applied for protection in the manner specified in part 2 of art. 10 of the CEC of Ukraine and regarding which have been applied the security measures in the form of moving to a safe place or another IES; 2) measures of personal safety, that are taken regarding convicted participants in criminal proceedings (part 4 of article 10 of the CEC of Ukraine). This provided an opportunity to identify the main directions of improving the legal mechanism for provision the personal safety of convicts in correctional colonies, the types and contents of which are conditioned by the peculiarities of the specified operative investigative measures.

Taking into account the significance of the problems, that are outlined in this context, it is substantiated the feasibility of a number of changes and additions, which are need to be made in the

normative legal acts on the issues of provision the personal safety of convicts in correctional colonies and, which are aimed to the Verkhovna Rada of Ukraine for use in work.

2. It was analized the types of control and supervision over the activity of the personnel of the IES regarding the observance of legality and internal order in the process of provision the personal safety of the convicts, as defined in the criminal-executive law and other normative legal acts of Ukraine, namely: prosecutorial supervision (article 22 of the CEC of Ukraine); departmental control (article 23 of the CEC of Ukraine); control during the visiting to the IES (article 24 of the CEC of Ukraine). It is proved the necessity to increase the level of operative and investigative control, first of all, in relation to checking the level of provision the safety of those persons regarding whom the safety measures (article 10 of the CEC of Ukraine) have been applied, as well as the effectiveness of their action after the moving of convicts to a safe place or another IES.

In addition, in order to solve the problems, that are related to the level of internal (cooperation of the relevant units of the correctional colony) and external (joint activity of operative units of different departments and ministries) interaction regarding provision personal safety for participants of criminal proceedings, it was developed scientifically based ways of improving the specified types of the interaction of operative units and elements of the legal

mechanism of operative investigative control from the identified problem in general.

3. Despite the fact that in November 2012 Ukraine adopted the Concept for the development of the State penal service of Ukraine and introduced, in that regard, certain amendments and additions to the existing criminal-executive legislation, it has to be noted that none of the normative legal acts envisages a significant improvement in the organization and provision of personal safety for convicts, including those, who serving sentences in correctional colonies. In this context meaningfully does not differ from the previous ones the draft laws, that were proposed in the field of execution of criminal penalties and the OIA. At the same time, some of them are haphazard and chaotic, which do not correspond to the logic of building legal norms and the system of law that has been formed in Ukraine and tested in practice.

Based on the analysis, that has been carried out in the section, scientifically grounded proposals for the improvement of specified bills and the legal mechanism for provision the personal safety of convicts in the correctional colonies of Ukraine in the present conditions are formulated. Attention is focused on those problems, which are systemic and need organizational and legal order, given the complexity of financial, material and technical, psychological and other nature, that led to the selection of this theme for research and its development in the specified plane.

The conclusions

1. One of the circumstances, that adversely affects the state and efficiency of the activity of correctional colony in provision the personal safety of the convicts is the inadequate scientific support of the mentioned problem and the lack of comprehensive, including at the monographic level, scientific researches in this direction. An additional argument concerning the necessity of activating scientific developments in this direction is the current state of the safety of a person's stay in conditions of his isolation from a society, that not only is constantly the object of unlawful encroachments on his life and health (in particular, in the period from 2004 to 2013 over 150 convicts became victims of crimes), but there are no proper and safe conditions of life in correctional colonies due to the high level of diseases and injuries, as well as of mortality.

2. The right of convicts to deprivation of liberty in Ukraine on personal safety belongs to the fundamental rights of human and citizen, namely this is a measure of the possible behavior of the convict while serving a sentence, which has been defined at the normative-legal and personal levels as one which ensures the protection of vital important interests of a human and a citizen. For the meaningful expression of this right of the convicts at the legal and practical levels, it is suggested that the following measures be taken: a) to supplement art. 10-1 "Features of ensuring the right of convicts to personal safety for certain categories of individuals" of the

CEC of Ukraine by the following content: "Given the gender, age, state of health and other individual characteristics of convicts, appropriate conditions (which ensures their right to personal safety) should be created in bodies and institutions of serving of sentences. The procedure for determining such conditions is regulated by the norms of the Special part of this Code"; b) part 3 of article 92 should be supplemented with the following phrase: "Persons who have been transferred from the educational institutions to the penal colony in accordance with the procedure established by this Code are isolated from other convicts, as well as are separated".

3. The necessity of making changes to the normative legal acts of Ukraine regarding issues concerning the provision of personal safety of convicts in correctional colonies, taking into account the requirements of international law and foreign practice, is substantiated. In particular, it is determined that in art. 104 of the CEC of Ukraine and art. 1 of the Law of Ukraine "On operative investigative activity" does not define such a task as the prevention of torture and inhuman or degrading treatment of convicts, which is a priority in international legal sources and is one of the elements of the content of the right of convicts for personal safety. In order to eliminate existing problems, it is proposed to carry out the following measures: a) part 4 of art. 7 of CEC of Ukraine "Fundamentals of legal status of convicts" should be supplemented at the end of the sentence by the following phrase: "as well as international treaties of Ukraine, the consent to necessity of which

has been given by the Verkhovna Rada of Ukraine" to put it in the following wording: "The legal status of convicts is determined by the laws of Ukraine, as well as by this Code, in accordance with the procedure and conditions for the execution and serving of a particular type of punishment, as well as by international treaties of Ukraine, the consent to which has been given by the Verkhovna Rada of Ukraine"; b) an article 2 of the CEC of Ukraine should be supplemented by the part 2 with following content: "The recommendations (declarations) of international organizations on the issues of the execution of sentences and treatment of convicts are implemented in the criminal-executive legislation of Ukraine in the presence of the necessary financial, economic, material and other social opportunities".

4. The current state (2004–2017) of provision the personal safety of convicts in penal institutions is such, that does not meet the normative legal requirements and the real needs of the individual, society and the state. Such a conclusion is based on objective criminal-law, criminological, criminal executive and operative investigative characteristics of the life of these persons in the conditions of stay in penal institutions.

It has been established, that the subjective right of the convicts to deprivation of liberty for personal safety may be violated in various forms and depending on the types of life in penal institutions, including the victimology of their behavior and of the environment in which they serving sentences and, accordingly, have several organizational levels of

provision, including the OIA, by the way of establishing guarantees and fulfilling certain duties by personnel of correctional colonies.

5. Provision personal safety of convicts in penal institutions is carried out in three directions by: 1) the consolidation of the specified right in the legislation; 2) the definition of the order of its realization on the legal level; 3) the realization of this right by convicts in practice. At the same time, each of the above-mentioned directions is realized through certain legal forms and instruments, that require substantial improvement and a higher level of assurance in practice.

To solve existing problems, it has been proposed to implement the following measures: a) to supplement part 1 of art. 1 of the CEC with the following phrase: "...by the way of creating safe conditions for the execution and serving of sentences" and to put it in the following wording: "The Ukrainian criminal executive legislation regulates the procedure and conditions for the execution and serving of criminal sentences in order to protect the interests of the individual, society and the state by the way of creating safe conditions for the execution and serving of sentences, correction and resocialization of convicts..."; b) part 1 of art. 8 of the CEC "The main rights of convicts" should be supplemented by the phrase "the right to personal safety", which logically follows from the content of art. 10 of this Code.

6. On the basis of generalization of the levels existing in science and practice (doctrinal, normative-legal, practical, international-legal, victimological),

it is necessary to carry out the classification of convicts belonging to the risk groups of probable victims of criminal encroachments in correctional colonies. To solve the existing problems, it is proposed to implement the following measures: a) to change the title of article 92 of the CEC of Ukraine, to supplement by the phrase "and its purpose" at the end of the sentence and present it in a new wording: "The separate detention of convicts to deprivation of liberty in correctional and educational colonies and its purpose". In accordance with this, the part 1 of this art of CEC of Ukraine should be amended and presented in the following wording: "The purpose of separate detention of convicts to deprivation of liberty is to provide their personal safety and fulfill tasks regarding correction and re-socialization of these persons"; b) the article 10 of the CEC "The right of convicts for personal safety" should be supplemented by part 6 of the following content: "In the same manner, the personal safety of convicts is provided, the source of danger to life and health of which was established as a result of operative-investigative activity or connected with the forced feeding of convicts in accordance with the provisions of this Code".

7. The abuse of office by the personnel of correctional colonies in Ukraine is a negative factor, which reduces the level of personal safety of convicts and is one of the determinants of crime, including recidivism. To resolve problems on these issues, it is proposed to supplement the CEC of Ukraine with chapter 4-1 "Personnel of bodies and penal institutions" and to

put it in the following wording: a) article 21-1 "Fundamentals of the legal status of personnel of bodies and penal institutions": "The legal status of the personnel of the bodies and penal institutions and requirements to it are determined by a special law of Ukraine"; b) article 21-2 "Liability of the personnel of bodies and penal institutions": "In cases of inhuman or degrading treatment with the convicts, the personnel of the bodies and penal institutions should be dismissed from the service (work) and brought to the appropriate form of legal liability. Repeated acceptance to the service (work) of persons, who specified in part one of this article, is not allowed".

8. Operative and investigative activity in penital institutions by its main appointment in current legal conditionss (adoption of the CPC and improvement of operative investigative legislatory of Ukraine) is a comprehensive law enforcement activity, the basis of which should be the actions of operative units, that are aimed at protecting the individual, society and state from criminal legal threats. The content of such activity should be commensurate with the content of the current policy in the field of crime control, one of the meaningful term of which is the OIA. The need for obtaining information in the interests of the safety of convicts (article 10 of the CEC of Ukraine) defines the multifaceted function of the OIA regarding obtaining the searchable, exploration and counterintelligence information that meets the needs of criminal executive activity and criminal proceedings of Ukraine, as well as the creation of special automated information systems for as a whole in the SPSU,

its bodies and the IES. In order to address the problems that exist in this context, it is proposed to implement the following measures: a) art. 10 of the CEC to supplement with part 7 of the following content: "The implicit investigative actions, which are aimed at provision the personal safety of convicts, are carried out in accordance with the current procedural and operative investigative legislation of Ukraine"; b) part 3 of art 10 of the CEC to supplement as follows: "The coordinating activity regarding provision the personal safety of the convict in this case is carried out by the operational unit of the correctional (educational) colony, and the head of the penal institution carries personal liability for the safety of the applicant".

9. It was established that from all types of control, that are specified in the law, over the state of criminal-executive activity the most effective is operative and investigative control, which should be understood as activity of the operative units of the SPiSU, which is defined by normative-legal acts and is aimed at checking by the relevant operative investigative forms, methods and means of the level of safe life of the convict, regarding which, according to the current legislation of Ukraine, measures of safey have been applied in the form of moving to a safe place or another IES. To solve the existing problems in this direction, it is proposed to implement the following measures: a) the Law of Ukraine "On operative investigative activity" to supplement with art. 9-3 "The control over the operative investigative activity", in part 1 of which to set the content of part

2 of the current existing art. 9 of this Law, removing it from the latter; b) art. 9-3 of the Law of Ukraine "On operative investigative activity" to supplement with the part 2 of the following measures: "In accordance with the law and the legal status, the control over the operative investigative activity, in addition to the central executive authorities, can be carried out by the operative units of their territorial departments (departments, services, etc.)".

10. It is proved, that Adoption of the new CPC of Ukraine, putting the changes to the CC of Ukraine, the CEC of Ukraine, the Law of Ukraine "On operative investigative activity" and other normative legal acts regarding the issues of combating crime, as well as urgent practical problems, which are related to the provision of personal the safety of convicts in correctional colonies, lead to the need of the improvement of operative investigative and other legal regulation of the specified range of issues. Nevertheless, neither the specified nor other normative legal acts, including the draft laws on the specified theme, do not provide adequate safeguards and mechanisms for provision the personal safety of convicts. To solve the existing problems in this direction, it is proposed to implement the following measures: a) the chapter 10 of the CPC of Ukraine to supplement with article 132-1 "The measures regarding provision the safety of participants in criminal proceedings" with the following content: "In accordance with the requirements of this Code, all participants in criminal proceedings have the right to provide personal safety. The procedure for provision the safety of persons, who

are involved in criminal proceedings, is determined by a special law of Ukraine"; b) the Law of Ukraine "On provision the safety of persons, who are involved in criminal proceedings" must be reconciled with the requirements of the CPC of Ukraine, of the current operative investigative law and the CEC of Ukraine, taking into account the changes and additions, which have been proposed and scientifically substantiated in this dissertation study and sent in the form of a bill for use in the work of the Verkhovna Rada Committee on issues of legislative provision of law-enforcement activity.

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The Supplements

The Supplement 1

The questionnaire of anonymous survey of convicts regarding the content of the right of persons, who serving sentences in the form of deprivation of liberty, to personal safety

1. **Total number of questioned** – 1500 persons.

1.1. **Among them:**

– female – 300;

– juvenile – 200.

2. **The regions where the survey was conducted** – 12 (Volyn, Rivne, Lviv, Ivano-Frankivsk, Donetsk, Dnipropetrovsk, Zaporizhia, Cherkasy, Kharkiv, Poltava, Odessa, Crimea).

3. **The period of the research** – 2013.

4. **Questions, that has been imposed in the survey:**

№ q/n	Content of the question	Answer	Absolute number of answers	Percent, %
1	Do you know that the Constitution of Ukraine guarantees everyone the right to personal safety?	Yes	1238	82,53
		No	262	17,47
2	Are other normative legal sources known to you regarding issues related to the right of convicts to personal safety?	Yes	1310	87,33
		No	190	12,67

№ q/n	Content of the question	Answer	Absolute number of answers	Percent, %
3	Is the content of the right of convicts for personal safety understandable for you?	Yes	137	9,13
		No	441	29,40
		Partly	922	61,47
4	Has the administration of the penal institution brought to you the content of this right?	Yes	1252	83,47
		No	248	16,53
5	Do you feel safe in your staying in places of deprivation of liberty?	Yes	26	1,73
		No	1348	89,87
		Partly	126	8,40
6	Do you consider that everything has been done at the legislative level to provide the right of convicts to personal safety?	Yes	119	7,93
		No	1118	74,53
		Partly	263	17,53
7	Does the personnel of penal institution do enough to provide your personal safety?	Yes	85	5,67
		No	764	50,93
		Partly	651	43,40
8	Who is the biggest source of a danger for your personal safety?	Personnel of colony	1067	71,13
		Convicts	283	18,87
		Another people	150	10,00

№ q/n	Content of the question	Answer	Absolute number of answers	Per-cent, %
9	Do you know about the right of a person to self-defense against any encroachments?	Yes	1431	95,40
		No	69	4,60
10	What are the most dangerous places for convicts in penal institutions?	Disciplinary ward	517	34,47
		Cell-type accommodation	432	28,80
		Working area	244	16,27
		Residential zone	147	9,8
		Infirmary	19	1,27
		Investigative ward	115	7,67
		Another places	26	1,73
11	Is your behavior dangerous to others?	Yes	9	0,6
		No	794	52,93
		Partly	697	46,47
12	Is your behavior provoking other people to encro-ach on your personal safety?	Yes	115	7,67
		No	602	40,13
		Partly	783	52,2
13	Which of the following cate-gories of con-victs most often becomes the subject of encro-achment on their personal security?	persons, who were moved from educa-tional colonies	97	6,47
		persons of dif-ferent sexual orientation	636	42,4

№ q/n	Content of the question	Answer	Absolute number of answers	Percent, %
13		persons who are members of the auxiliary administrative personnel of the colonies (foremen, duty officer, registrars, etc.)	517	38,47
		another persons (of other nationalities, religious beliefs, those who do not follow the prison rules of cohabitation)	190	12,67
14	From whom of the representatives of the personnel of the penal institution comes the biggest danger for the convicts?	heads of the colony	86	5,73
		other officers of colony	298	19,87
		junior inspectors of supervision and safety	1001	66,73
		freelance staff	115	7,67
Total			1500	100,00

The note: the survey was conducted in 12 regions of Ukraine in 2013, with the consent of the SPiSU, on the basis of the relevant request letter.

The Supplement 2

ANALYTICAL REFERENCE

about the results of anonymous survey of convicts regarding the content of the right of persons, who serving sentences in the form of deprivation of liberty, to personal safety

During 2017, in consultation with the SPiSU, in 12 regions of Ukraine, where are stationed the investigative wards and penal institutions, an anonymous survey of persons, who serving sentences in the form of deprivation of liberty was conducted the specially survey, which was designed by authors.

The specified survey was conducted in Volyn, Rivne, Lviv, Ivano-Frankivsk, Donetsk, Dnipropetrovsk, Zaporizhia, Cherkasy, Kharkiv, Poltava, Odessa regions, Crimea.

In total, 1500 convicts were involved in the survey, who who were kept in the IW and colonies, including 1200 men and 300 women. For the respondents, 14 questions were developed, answers to which were given by the way of strikethrough of the words "yes", "no", "partly". At the same time, it was explained to all respondents that the answer to the question should be given only unambiguously, that is, to cross out one of two or three words (answers), that are proposed for it, as well as the poll has an anonymous character, and therefore it is not necessary to put their surnames in the questionnaire. In addition, the anonymity of the survey was provided by the fact that all questionnaires (in agreement with the administration of a specific institution) were thrown into the mailboxes in each colony, including in the IW (for convicts of service personnel).

In the survey were received relevant results that formed the empirical basis of this dissertation study and were reflected in its text.

At the same time, the following answers of the convicts on the questions, that are proposed in the questionnaires deserve attention:

1. To the question "Do you know that the Constitution of Ukraine guarantees everyone the right to personal safety?" 17,47 % of respondents gave answer – "no".

2. To the question "Are other normative legal sources known to you regarding issues related to the right of convicts to personal safety?" 12,67 % of asked convicts gave answer – "no".

3. To the question "Is the content of the right of convicts for personal safety understandable for you?" answered "yes" only 9,13 % of respondents and 29,4 % – "no".

4. To the question "Has the administration of the penal institution brought to you the content of this right?" answered "no" only 16,53 % from all asked convicts.

5. To the question "Do you feel safe in your staying in places of deprivation of liberty?", "yes" answered only 1,73 % of asked persons and "partly" – 8,4 %.

6. To the question "Do you consider that everything has been done at the legislative level to provide the right of convicts to personal safety?" 47,53 % of convicts answered "no" and ony 4,53 % – "yes".

7. To the question "Does the personnel of penal institution do enough to provide your personal safety?", answered "no" 50,93 % of asked persons and 43,4 % – "partly".

8. To the question "Who is the biggest source of a danger for your personal safety?", 71,13 % of convicts answered, that the personnel of colonies, and only 18,87 % – another people, who serving sentences in the form of deprivation of liberty.

9. To the question "Do you know about the right of a person to self-defense against any encroachments?", answered "no" 4,6 % of asked convicts.

10. To the question "What are the most dangerous places for convicts in penal institutions?", most of respondents answered, that it is the disciplinary ward (37,47 %) and the cell-type accommodation (28,8 %).

11. To the question "Is your behavior dangerous to others?" answered "yes" only 0,6 % and "partly" – 46, 47 % of asked people.

12. To the question "Is your behavior provoking other people to encroach on your personal safety?" 7,67 % of convicts answered "yes" and 52,2 % – "partly".

13. To the question "Which of the following categories of convicts most often becomes the subject of encro-

achment on their personal security?" convicts answered, that this is persons of different sexual orientation (42,4 %) and persons who are members of the auxiliary administrative personnel of the colonies (foremen, duty officer, registrars, etc.).

14. To the question "From whom of the representatives of the personnel of the penal institution comes the biggest danger for the convicts?", the answers of respondents were distributed as follows: a) from junior inspectors of supervision and safety (66,73 %); b) from officers of colony (except the head of the colony) – 19,87 %; c) from freelance staff – 7,67 %; d) from heads of the colony – 5,73 %.

Thus, the results of conducted anonymous poll of prisoners, who are held in the IW and penal institutions, made it possible to make the following conclusions:

1) in the opinion of the polled persons, the normative legal provision of the right of convicts to personal safety in Ukraine is insufficient, and therefore requires appropriate correction and improvement;

2) the activity of the personnel of the IW and the IES of Ukraine on these issues is not sufficiently effective and, consequently, should also be changed in a qualitative way in order to provide the personal safety of each individual convict in;

3) the most dangerous objects and sources of threats to the convicts are:

a) the disciplinary wards and the cell-type accommodations;

b) the convicts of different sexual orientation;

c) the junior inspectors of supervision and safety of IW and penal institutions;

d) the victim (provocative) behavior of convicts.

The obtained results of the questionnaire and the analytical reference on these issues were directed to the leadership of the SPiSU for use in the work and became one of the grounds for obtaining the act of introducing the results of this dissertation study into the practical activity of the bodies and the IES.

The Supplement 3

THE QUESTIONNAIRE

of anonymous survey of personnel of State penal service of Ukraine regarding the content of the right of convicts to deprivation of liberty, to personal safety

1. **Total number of questioned** – 1500 persons

1.1. **Among them:**

– male – 1000;

– female – 300;

– juvenile – 200.

2. **The regions where the survey was conducted** – 12 (Volyn, Rivne, Lviv, Ivano-Frankivsk, Donetsk, Dnipropetrovsk, Zaporizhia, Cherkasy, Kharkiv, Poltava, Odessa, Crimea).

3. **The period of the research** – 2012.

4. **Questions, that has been imposed in the survey:**

№ q/n	Content of the question	Answer	Absolute number of answers	Percent, %
1	Are you aware of normative legal acts on the issues of provision the right to personal safety of convicts to deprivation of liberty?	Yes	1386	92,40
		No	102	6,80
		Partly awared	12	0,80
2	Are there enough legal safeguards to provide the right to personal safety of convicts to deprivation of liberty?	Yes	117	67,80
		No	227	18,47
		Partly provided	206	13,73

№ q/n	Content of the question	Answer	Absolute number of answers	Per-cent, %
3	Is the right to personal safety of the convicts to deprivation of liberty in the penal institutions of Ukraine properly ensured?	Yes	713	47,53
		No	463	30,87
		Partly ensured	324	21,60
4	Do you adequate understand the meaning of the right of convicts to personal safety?	Yes	642	42,80
		No	131	7,73
		Partly	727	48,47
5	Is it necessary to amend the legislation of Ukraine on the issues of provision personal safety of convicts?	Yes	279	18,60
		No	410	27,33
		Partly	811	54,07
6	Do you know about normative legal acts regarding the personal security of convicts?	Yes	966	64,40
		No	52	3,47
		Partly	482	32,13
7	Can the activity of personnel of penal institutions be the source of encroachment on the personal safety of convicts?	Yes	46	3,07
		No	66	4,40
		Partly	1388	92,53

№ q/n	Content of the question	Answer	Absolute number of answers	Per-cent, %
8	Who is the most dangerous source of personal safety for convicts in penal institutions?	Convicts	994	66,27
		Criminal authorities	153	10,20
		Personnel of colonies	48	3,20
		Another people	76	5,07
		Own behavior of victim	129	8,60
9	Have you encroached on the personal safety of the convicts in connection with your activities?	Yes	96	6,40
		No	917	127,8
		Partly	487	32,47
10	Do you consider the current conditions of keeping of the convicts in the colonies to be sources of encroachment on their personal safety?	Yes	255	17,00
		No	526	35,07
		Partly	719	47,93
11	Do you always bring to the convicts the content of right to personal safety of convicts?	Yes	1156	77,07
		No	55	3,67
		Partly	289	19,27
12	Do you familiar with the international practice of provision the right of convicts to personal safety?	Yes	218	14,53
		No	16	1,07
		Partly	1266	84,40

№ q/n	Content of the question	Answer	Absolute number of answers	Per-cent, %
13	Do you consider the work of personnel of penal institutions to be safe?	Yes	27	1,80
		No	1164	77,60
		Partly	309	20,60
14	Do you respond to provocative behavior of convicts to deprivation of liberty by illegal forms and means?	Yes	84	5,60
		No	1304	86,93
		Partly	112	7,47
Total			1500	100,00

The Supplement 4

ANALYTICAL REFERENCE

by the results of anonymous survey of personnel of State penal service of Ukraine regarding the content of the right of convicts to deprivation of liberty, to personal safety

During 2012, under an agreement with the SPiSU in 12 regions of Ukraine, in which the IW and the IES are stationed, an anonymous survey of the personnel of the SPSU was carried out under a specially designed questionnaire by authors.

The specified survey was conducted in Volyn, Rivne, Lviv, Ivano-Frankivsk, Donetsk, Dnipropetrovsk, Zaporizhzhia, Cherkasy, Kharkiv, Poltava, Odessa regions, Crimea.

In total, 1500 representatives of the IW and the IES were involved in the survey, including 1200 men and 300 women.

For the survey, 14 questions were developed, answers to which were given by the way of strikethrough of the words "yes", "no", "partly", etc. At the same time, it was explained to all respondents that the answer to the question should be given only unambiguously, that is, to cross out one of two or more words (answers), that are proposed for it, as well as the poll has an anonymous character, and therefore it is not necessary to put their surnames in the questionnaire.

In addition, the anonymity of the survey was provided by the fact that all questionnaires (in agreement with the administration of a specific institution) were thrown into the mailboxes, which are in each colony, including in the IW (for convicts of service personnel).

In the survey were received relevant results that formed the empirical basis of this dissertation study and were reflected in its text. At the same time, the following answers of the personnel of SPSU on the questions, that are proposed in the questionnaires deserve attention:

1. To the question: "Are you aware of normative legal acts on the issues of provision the right to personal safety of convicts to deprivation of liberty?" answered "no" 6,8 % of respondents and "partly awared" – 0,8 %.

2. To the question "Are there enough legal safeguards to provide the right to personal safety of convicts to deprivation of liberty?" 18,47 % of asked persons gave the answer "no" and 13,73 % – "partly provided".

3. To the question "Is the right to personal safety of the convicts to deprivation of liberty in the penal institutions of Ukraine properly ensured?", "no" answered 30,87 % from the total number of respondents and "partly ensured" – 21,6 %.

4. To the question "Do you adequate understand the meaning of the right of convicts to personal safety?", 8,73 % of asked persons answered "no" and 48,47 % – "partly".

5. To the question "Is it necessary to amend the legislation of Ukraine on the issues of provision personal safety of convicts?", 27,33 % of respondents answered "yes" and 54,04 % – "partly".

6. To the question "Do you know about normative legal acts regarding the personal security of convicts?", "no" answered 3,47 % of asked persons and "partly" – 32,13 %.

7. To the question "Can the activity of personnel of penal institutions be the source of encroachment on the personal safety of convicts?", 4,4 % of respondents answered "yes" and 92,53 % – "partly".

8. To the question "Who is the most dangerous source of personal safety for convicts in penal institutions?" most of asked persons answered, that this is convicts (62,27 %), as well as 3,2 % – the personnel of colonies and the IW, 8,6 % – the behavior of victim.

9. To the question "Have you encroached on the personal safety of the convicts in connection with your activities?", "yes" answered 6,4 % of respondents, "partly" – 32,47 %.

10. To the question "Do you consider the current conditions of keeping of the convicts in the colonies to be sources of encroachment on their personal safety?", 17 % of respondents answered "yes" and 47,93 % – "partly".

11. To the question "Do you always bring to the convicts the content of right to personal safety of convicts?", "no" answered 3,67 % of asked persons and 19,27 % – "partly".

12. To the question "Do you familiar with the international practice of provision the right of convicts to personal safety?", 1,07 % of asked persons answered "no" and 84,4 % – "partly".

13. To the question "Do you consider the work of personnel of penal institutions to be safe?", "no" answered 77,6 % of asked persons and "partly" – 20,6 %.

14. To the question "Do you respond to provocative behavior of convicts to deprivation of liberty by illegal forms and means?", 5,6 % of respondents answered "yes", "partly" – 7,47 %.

Thus, the results, that are obtained during an anonymous survey of the personnel of the SPSU, gave an opportunity to draw the following conclusions:

1) in the opinion of the asked persons, the normative legal regulation of issues, that are related to the provision of personal safety of convicts in the IW and the Ministry of IES, needs correction and modification;

2) the activity of the personnel of the SPSU in this direction does not fully comply with the requirements of the current legislation of Ukraine and the generally accepted norms of international law, and therefore, should be improved both at the organizational and managerial levels;

3) the behavior of individual members of personnel of the IW and the IES is a source of danger for the convicts, and therefore it should become the basis for the activity of subjects of prevention of crimes and offences on their part and change qualitatively the work of staff selection into the service (work) in the SPSU;

4) both personnel and convicts do not fully understand the content of the right of convicts to personal safety. In addition, the personnel of the IW at the IES does not always prove and explain the content of this right to all convicts. Consequently, the programs of social and educational work with convicts should be substantially changed, and most importantly – the realization and effectiveness of their application to each individual person.

The obtained results of the questionnaire and the analytical reference on these issues were directed to the leadership of the SPiSU for use in the work and became one of the grounds for obtaining the act of introducing the results of this dissertation study into the practical activity of the bodies and the IES.

The Supplement 5

THE QUESTIONNAIRE

of an anonymous survey of convicts, who serving sentences in the form of deprivation of liberty, regarding the infliction them of bodily harm or torture

1. Total number of questioned – 508 persons.

2. The regions where the survey was conducted – Rivne region.

3. The period of the research – 2017–2018.

4. Questions, that has been imposed in the survey:

№ q/n	**Content of the question**	**Answer** (to circle)
1	Are you aware of the fact that international normative legal acts guarantee each person the right not to non-application force, torture against him?	yes no
2	Are you aware that the Constitution of Ukraine, other normative and legal acts of Ukraine guarantee each person the right to personal safety, non-use of force or torture?	yes no
3	Are other normative legal sources known to you regarding issues, that are related to the right of convicts to personal safety, the non-use force or torture regarding him?	yes no
4	Is it clear to you the content of the right of the convicts for personal safety, the non-use force or torture regarding convict?	yes no partly
5	Has the administration of the penal institution brought to you the contents of the right to personal safety, for non-use of force or torture regarding person?	yes no

№ q/n	Content of the question	Answer (to circle)
6	Do you feel safe of your staying?	yes no partly
7	Do you feel informal (authoritative) influence while staying in the places of deprivation of liberty?	yes no partly
8	Do you consider that everything has been done at the legislative level to provide the right of convicts to personal safety and the non-use of force or torture regarding person?	yes no partly
9	Do the personnel of penal institutions do enough to provide your safety, protection of life and health?	yes no partly
10	Who is the biggest source of a danger for your life and health?	Personnel of colony convicts another persons
11	Do you know about the right of a person to self-defense against any encroachments?	yes no
12	What are the most dangerous places for convicts in penal institutions regarding infliction them of bodily harm or torture?	Disciplinary ward Cell-type accommodation Working area Residential zone Infirmary Investigative ward Another places

№ q/n	Content of the question	Answer (to circle)
13	Is your behavior dangerous to others?	yes no partly
14	Is your behavior provoking other people to cause you the bodily harm or encroachment?	yes no partly
15	Which of the following categories of convicts most often becomes the subject of infliction of bodily harm, encroachment on their life and health?	persons, who were moved from educational colonies persons of different sexual orientation persons who are members of the auxiliary administrative personnel of the colonies (foremen, duty officer, registrars, etc.) another persons (of other nationalities, religious beliefs, those who do not follow the prison rules of cohabitation)

№ q/n	Content of the question	Answer (to circle)
16	Did you personally receive bodily harms while serving a sentence in an institution?	Yes no
17	From whom of the representatives of the personnel of the penal institution comes the biggest danger regarding infliction of bodily harm or torture to convicts?	heads of the colony other officers of colony junior inspectors of supervision and safety freelance staff
18	Did you cause bodily harm to other persons, who were preceded in the penal institutions, by your actions?	Yes No
19	Do you consider the work of the personnel of the institution to be safe from unlawful actions (causing bodily harm, torture)?	Yes no partly
20	Do you react to the provocative behavior of the personnel of the penal institution or other convicts regarding causing bodily harm or torture?	Yes no

The Supplement 6

THE RESULTS

of an anonymous survey of convicts, who serving sentences in the form of deprivation of liberty, regarding the infliction them of bodily harm or torture

1. **Total number of questioned** – 508 persons.

2. **The regions where the survey was conducted** – Rivne region.

3. **The period of the research** – 2017–2018.

4. **Questions, that has been imposed in the survey:**

№ q/n	Content of the question	Answer (to circle)
1	Are you aware of the fact that international normative legal acts guarantee each person the right to non-application force, torture against him?	yes – 5 % no – 95 %
2	Are you aware that the Constitution of Ukraine, other normative and legal acts of Ukraine guarantee each person the right to personal safety, non-use of force or torture?	yes – 80 % no – 20 %
3	Are other normative legal sources known to you regarding issues, that are related to the right of convicts to personal safety, the non-use force or torture regarding him?	yes – 15 % no – 85 %
4	Is it clear to you the content of the right of the convicts for personal safety, the non-use force or torture regarding convict?	yes – 25 % no – 70 % partly – 5 %
5	Has the administration of the penal institution brought to you the contents of the right to personal safety, for non-use of force or torture regarding person?	yes – 65 % no – 35 %

№ q/n	Content of the question	Answer (to circle)
6	Do you feel safe of your staying?	yes – 45 % no – 25 % partly – 30 %
7	Do you feel informal (authoritative) influence while staying in the places of deprivation of liberty?	yes – 30 % no – 25 % partly – 45 %
8	Do you consider that everything has been done at the legislative level to provide the right of convicts to personal safety and the non-use of force or torture regarding person?	yes – 45 % no – 40 % partly – 15 %
9	Do the personnel of penal institutions do enough to provide your safety, protection of life and health?	yes – 35 % no – 60 % partly – 5 %
10	Who is the biggest source of a danger for your life and health?	personnel of colony – 45 % convicts – 40 % another persons – 15 %
11	Do you know about the right of a person to self-defense against any encroachments?	yes – 92 % no – 8 %
12	What are the most dangerous places for convicts in penal institutions regarding infliction them of bodily harm or torture?	Disciplinary Ward – 5 % Cell-type accommodation – 2 % Working area – 75 % Residential zone – 13 % Infirmary – 0 % Investigative ward – 0 % Another places – 5 %

№ q/n	Content of the question	Answer (to circle)
13	Is your behavior dangerous to others?	yes – 3 % no – 95 % partly – 2 %
14	Is your behavior provoking other people to cause you the bodily harm or encroachment?	yes – 4 % no – 91 % partly – 5 %
15	Which of the following categories of convicts most often becomes the subject of infliction of bodily harm, encroachment on their life and health?	persons, who were moved from educational colonies – 5 % persons of different sexual orientation – 65 % persons who are members of the auxiliary administrative personnel of the colonies (foremen, duty officer, registrars, etc.) – 3 % another persons (of other nationalities, religious beliefs, those who do not follow the prison rules of cohabitation) – 27 %
16	Did you personally receive bodily harms while serving a sentence in an institution?	yes – 23 % no – 77 %

№ q/n	Content of the question	Answer (to circle)
17	From whom of the representatives of the personnel of the penal institution comes the biggest danger regarding infliction of bodily harm or torture to convicts?	heads of the colony – 2 % other officers of colony – 17 % junior inspectors of supervision and safety – 68 % freelance staff – 13 %
18	Did you cause bodily harm to other persons, who were preceded in the penal institutions, by your actions?	yes – 4 % no – 96 %
19	Do you consider the work of the personnel of the institution to be safe from unlawful actions (causing bodily harm, torture)?	yes – 25 % no – 60 % partly – 15 %
20	Do you react to the provocative behavior of the personnel of the penal institution or other convicts regarding causing bodily harm or torture?	yes – 15 % no – 85 %

The Supplement 7

THE QUESTIONNAIRE

of anonymous survey of personnel of State penal service of Ukraine regarding the content of the right of convicts to deprivation of liberty on prohibit the infliction bodily harm or torture

1. Total number of questioned – 90 persons.
2. The regions where the survey was conducted – Rivne region.
3. The period of the research – 2017–2018.
4. Questions, that has been imposed in the survey:

№ q/n	Content of the question	Answer (to circle)
1	Are you aware of international normative legal acts that guarantee each person the right to non-use force or torture regarding him?	yes no partly
2	Are you aware of national normative legal acts that guarantee each person the right to non-use force or torture regarding him?	yes no partly
3	Are there enough legal safeguards to provide the right of convicts to deprivation of their liberty for provision personal safety and the avoidance of causing bodily harm or torture?	yes no partly provided
4	Is the right to personal safety and avoidance of causing bodily harm or torture of the convicts to deprivation of liberty in the penal institutions of Ukraine properly ensured?	yes no partly ensured
5	Do you adequate understand the meaning of the right of convicts to personal safety and avoidance of causing bodily harm or torture?	yes no partly

№ q/n	Content of the question	Answer (to circle)
6	Is it necessary to amend the legislation of Ukraine on the issues of avoidance of causing bodily harm or torture?	Yes no
7	Can the activity of personnel of penal institutions be a source of causing bodily harm or torture?	Yes no partly
8	Who is the most dangerous source of causing bodily harm or torture for convicts in the penal institutions?	Convicts criminal authorities Personnel of colonies Another people Own behavior of victim
9	Did you cause bodily harm or torture to convicts to deprivation of liberty in connection with your activity?	Yes no partly
10	Do you consider the current conditions of keeping of the convicts in the colonies to be sources of causing bodily harm or torture?	Yes no partly
11	Do you always bring to the convicts the content of right to avoidance of causing bodily harm or torture?	Yes no partly
12	Do you familiar with the international practice of provision the right of convicts to avoidance of causing bodily harm or torture?	Yes no partly
13	Do you consider the work of personnel in penal institutions to be such as avoides causing of bodily harm or torture to convicts?	Yes no partly

№ q/n	Content of the question	Answer (to circle)
14	Do you respond to provocative behavior of convicts to deprivation of liberty by illegal forms and means?	Yes no partly
15	Which the category of convicts is the most inclined to provoke the causing of bodily harms or torture among convicts?	Convicts criminal authorities Personnel of colonies Another people

THE RESULTS

of anonymous survey of personnel of State penal service of Ukraine regarding the content of the right of convicts to deprivation of liberty on prohibit the infliction bodily harm or torture

1. Total number of questioned – 90 persons.
2. The regions where the survey was conducted – Rivne region.
3. The period of the research – 2017–2018.
4. Questions, that has been imposed in the survey:

№ q/n	Content of the question	Answer (to circle)
1	Are you aware of international normative legal acts that guarantee each person the right to non-use force or torture regarding him?	yes – 58 % no – 8 % partly – 34 %
2	Are you aware of national normative legal acts that guarantee each person the right to non-use force or torture regarding him?	yes – 92 % no – 0 % partly – 8 %
3	Are there enough legal safeguards to provide the right of convicts to deprivation of their liberty for provision personal safety and the avoidance of causing bodily harm or torture?	yes – 80 % no – 2 % partly – 8 % provided
4	Is the right to personal safety and avoidance of causing bodily harm or torture of the convicts to deprivation of liberty in the penal institutions of Ukraine properly ensured?	yes – 90 % no – 4 % partly – 6 % ensured
5	Do you adequate understand the meaning of the right of convicts to personal safety and avoidance of causing bodily harm or torture?	yes – 90 % no – 0 % partly – 10 %

№ q/n	Content of the question	Answer (to circle)
6	Is it necessary to amend the legislation of Ukraine on the issues of avoidance of causing bodily harm or torture?	yed – 18 % no – 82 %
7	Can the activity of personnel of penal institutions be a source of causing bodily harm or torture?	yes – 6 % no – 84 % partly – 10 %
8	Who is the most dangerous source of causing bodily harm or torture for convicts in the penal institutions?	convicts – 68 % criminal authorities – 60 % personnel of colonies – 16 % another people Own behavior of victim – 78 %
9	Did you cause bodily harm or torture to convicts to deprivation of liberty in connection with your activity?	yes – 6 % no – 92 % partly – 2 %
10	Do you consider the current conditions of keeping of the convicts in the colonies to be sources of causing bodily harm or torture?	yes – 8 % no – 88 % partly – 4 %
11	Do you always bring to the convicts the content of right to avoidance of causing bodily harm or torture?	yes – 90 % no – 6 % partly – 4 %
12	Do you familiar with the international practice of provision the right of convicts to avoidance of causing bodily harm or torture?	yes – 60 % no – 8 % partly – 32 %

№ q/n	Content of the question	Answer (to circle)
13	Do you consider the work of personnel in penal institutions to be such as avoides causing of bodily harm or torture to convicts?	yes – 28 % no - 60 % partly – 12 %
14	Do you respond to provocative behavior of convicts to deprivation of liberty by illegal forms and means?	yes – 2 % no – 78 % partly – 10 %
15	Which the category of convicts is the most inclined to provoke the causing of bodily harms or torture among convicts?	convicts – 80 % criminal authorities – 64 % personnel of colonies – 10 % another people – 0 %

The Supplement 9

THE PROPOSALS

regarding improving the legal mechanism for provision the personal safety of convicts in correctional colonies

1. The art. 10 of the Criminal executive code (CEC) of Ukraine "The right of convicts to personal safety" to supplement with note with the following content: "The right of convicts to personal safety is a measure of possible behavior of a convict during execution and serving of a punishment, which is defined at the normative-legal and personal levels as such, that provision the protection of his vital important interests as for person and citizen".

The definition of the specified concept is important both from the point of view of the theory of law and the practice of its implementation and provision at the normative-legal and personal (victimological) levels.

2. The CEC of Ukraine to supplement with art. 10-1 "The procedure for provision the right of convicts to personal safety", taking as a basis the provision of the Rules of the internal order of institutions of the execution sentences (RIO of IES) on these issues, namely: "In the event of a danger to the life and health of the convict, according to the law, in connection with his participation in the criminal proceedings, a decision has been made on the application of safety measures, the need to protect him from the execution from the side of other convicts or by the request of convict with asking for provision personal safety if he did not allow a violation of the regime, as well as the isolation of the convict on the time of the preparation of the necessary materials for his moving to other institution, based on the motivated decision of the head of the institution, it is allowed to keep him in a separate cell (CTA), the DW, cell-type accommodation, disciplinary ward and punishment cell on general grounds before the end of the verification, elimination of danger,

the final resolution of the conflict or receipt of a moving, but no more than 30 days.

Such convicts during isolation on a general basis enjoy all the rights, that are provided for in this Code".

3. The part 1 of art. 1 of the CEC to supplement with the phrase "…by creating safe conditions for the execution and serving of sentences" and to lay this part in the following wording: "The Criminal executive legislation of Ukraine regulates the procedure and conditions for the execution and serving of criminal sentences in order to protect the interests of the individual, society and the state by creating safe conditions for the execution and serving of sentences, correction and resocialization of convicts…" – and further on the text of this article of the CEC.

4. The article 19 of the Criminal Code of Ukraine "Educational colonies" to supplement with the second part of the following contents: "In educational colonies the convicts may continue serving sentence to 18 years of age or older in cases and in the manner, that are provided by this Code".

The need for modification of this legal norm is conditioned by the following circumstances:

1) requirements of art. 148 of the CEC "Leaving in the educational colonies of convicts under the age of eighteen", which will enable to implement in practice the systematic principle of the construction of legal norms, in particular, to harmonize the provisions of the General part of this Code (article 19) and its Special part (articles 147, 148);

2) as the practice and results of scientific research show, convicts, who are moved from education colonies to correctional colonies, in the first place, become victims of criminal encroachments in places of deprivation of liberty, and therefore it is necessary to create real legal mechanisms regarding provision their personal safety in the conditions of the namely educational colony and not correctional colony;

3) leaving of such convicts in the educational colonies will enable to consolidate the results of the correctional and re-socialization impact on the individual (article 6 of the CEC), as well as more effectively eradicate the motivational and psychological stopping of convicts the commission of new, including repeat (article 34 of the Criminal Code (CC of Ukraine) crimes – this is the priority task of the current policy of the field of fighting crime.

5. Part one of the article 147 of the CEC "The moving of convicts from the educational colony to the correctional colony" to supplement at the end of the sentence with a phrase with the following content: ".. in the cases and in the manner, that are specified in this Code" and lay it in the following wording: "Convicts under the age of eighteen are moved from an educational colony for further serving sentences to a correctional colony of a minimum standard of safety with general conditions of detention in the cases and in the manner, that are provided by this Code."

Such an approach is resulted from the following circumstances:

1) the requirements of part 1 of art. 93 of the CEC "Serving the entire period of sentence in one correctional or educational colony by convict", in which, in particular, is specified that the convict to the deprivation of liberty serves a full sentence in the same correctional or educational colony.

At the same time, in part 2 of art. 93 of the CEC among the grounds for the moving to the correctional colony of the convict, who serving the sentence in the educational colony, there are no those, that are specified in part 1 of art. 147 of the CEC, and therefore the modification of the last legal norm is logical, taking into account the realization of the logical and formal principle of the construction of legal norms;

2) requirements of art. 100 of the CEC "Change of institutions of keeping the convicts to deprivation of liberty" and art. 101 of the CEC "Moving of convicts to

deprivation of liberty", which are not discussed in art. 147 of the CRC.

6. Part 3 of the article. 94 of the CEC "Structural sections of correctional and educational colonies" to supplement the end of sentence with the phrase "…those persons who were 18 years of age or older while serving the sentence in the educational colonies" and lay it in the following wording: "In the re-socialization section are kept convicts who are sent from the station of quarantine, diagnostic and distribution, as well as who have been moved from other stations in accordance with the procedure, that is established by this Code and those persons who were 18 years of age or older while serving the sentence in the educational colonies".

The specified modifications will allow to systematize the norms of the General and Special part of the CEC of Ukraine and, in particular, will comply with the content of art. 19, 93, 100, 101 and 147 of the CEC.

COMPARATIVE TABLE

of the draft of Law of Ukraine "On amendments and additions to the Criminal executive code of Ukraine and other laws of Ukraine" (regarding the improvement of the legal mechanism for the provision of personal safety of convicts in the correctional colonies of Ukraine)

№ q/n	**Current wording** (Content of the legal norms of the CEC and other laws)	**New wording** (proposed changes and amendments to laws)	**The note**
1	Part 1 of article 1 of the CEC of Ukraine: The Ukrainian criminal executive legislation regulates the procedure and conditions for the execution and serving of criminal sentences in order to protect the interests of the individual, society and the state by creating conditions for the correction and resocialization of convicts, preventing the commission of new criminal offenses, both of convicts and other persons, as well as the prevention of torture and inhuman or degrading treatment with convicts.	Part 1 of art. 1 of draft of law: "The Ukrainian criminal executive legislation regulates the procedure and conditions for the execution and serving of criminal sentences in order to protect the interests of the individual, society and the state by creating conditions for the correction and resocialization of convicts, preventing the commission of new criminal offenses, both of convicts and other persons, as well as the prevention of torture and inhuman or degrading treatment with convicts".	The current wording in the draft is supplemented with phrase "by the way of creating safe conditions for the execution and serving of sentence"

№ q/n	**Current wording** (Content of the legal norms of the CEC and other laws)	**New wording** (proposed changes and amendments to laws)	**The note**
2	Part 1 of article 1 of the CEC of Ukraine: Convicts have the right: to receive information about their rights and duties, the procedure and conditions for the execution and serving of a sentence, that is imposed by a court; on a humane attitude towards oneself and respect for the dignity, which is inherent in the human person; to apply to the legislation, with proposals, applications and complaints to the administration of bodies and penal institutions, their parent bodies, as well as to the Commissioner of the Verkhovna Rada of Ukraine for human rights, the European Court of human rights and other relevant bodies of international organizations, a member or participant of which is Ukraine, to the authorized	Part 1 of the art. 8 oof draft: "Convicts have the right: to personal safety" – further on the text of current wording.	The current wording in the draft is supplemented with phrase "the right to personal safety".

№ q/n	**Current wording** (Content of the legal norms of the CEC and other laws)	**New wording** (proposed changes and amendments to laws)	**The note**
2	persons of such international organizations, the court, prosecutor's offices, other bodies of state power, local self-government bodies and associations of citizens; {Paragraph four of part one of article 8 as amended by the Law N 3166-IV (3166-15) of 01.12.2005} give explanations and correspondence, as well as make suggestions, statements and complaints in native language. Responses to convicts are given in the language of application. In the absence of the opportunity to answer by language of the application, it is given in Ukrainian with the translation of the answer to the language of appeal, which is provided by the body or institution for the execution of sentences; on health care in the amount, that is established		

№ q/n	**Current wording** (Content of the legal norms of the CEC and other laws)	**New wording** (proposed changes and amendments to laws)	**The note**
2	by the Fundamentals of Ukrainian health care legislation (2801-12), with the exception of the restrictions, that are provided for by law. Health care is provided by the system of medical and sanitary and health-preventive measures, as well as a combination of free and paid forms of medical care. Convicts, who have mental and behavioral disorders and due to the use of alcohol, narcotic drugs, psychotropic substances or their analogues or intoxicants may, with their written consent, undergo treatment for these diseases; {Paragraph six of part one of article 8, as amended by the Law N 1828-VI (1828-17) of 21.01.2010} on social security, including for pensions, in accordance with the laws of Ukraine.		

№ q/n	**Current wording** (Content of the legal norms of the CEC and other laws)	**New wording** (proposed changes and amendments to laws)	**The note**
3	Article 10 of the CEC: The right of convicts to personal safety: 1. Convicts have the right to personal safety. 2. In the event of occurrence a danger to the life and health of convicts, who are serving sentences in the form of arrest, restraint of liberty, keeping in a disciplinary battalion of servicemen or deprivation of liberty, they have the right to apply to any official of a body or penal institution with a request for provision personal safety. In this case, the official is obliged to take urgent measures regarding provision the personal safety of the convict. 3. The administration of the penal institution takes measures regarding moving the convict to a safe place, as well as other measures to eliminate the danger, decides on the	The note to art. 10 of draft: "The right of convicts to personal safety" is a measure of possible behavior of a convict during execution and serving of a punishment, which is defined at the normative-legal and personal levels as such, that provision the protection of his vital important interests as for person and citizen.	The art of the CEC in the draft is supplemented with the note.

№ q/n	**Current wording** (Content of the legal norms of the CEC and other laws)	**New wording** (proposed changes and amendments to laws)	**The note**
3	place of his further serving of sentence. 4. In the event of availability of danger to the life and health of convicts, who, according to the law, have decided on the application of security measures in connection with their participation in criminal proceedings, the administration of the penal institution shall take measures of provision the safety of these persons. In addition, the following measures may be applied to the specified persons: isolated keeping; moving to another penal institution. 5. The change of the conditions of detention of persons ragarding whom the measures of safety are applied, shall be carried out in compliance with the requirements, that are provided for in this Code and the legislation of Ukraine.		

№ q/n	**Current wording** (Content of the legal norms of the CEC and other laws)	**New wording** (proposed changes and amendments to laws)	**The note**
4	There is no norm in the CEC	Article 10-1 of the Draft "The procedure for provision the right of convicts to personal safety": "In the event of a danger to the life and health of the convict, according to the law, in connection with his participation in the criminal proceedings, a decision has been made on the application of safety measures, the need to protect him from the execution from the side of other convicts or by the request of convict with asking for provision personal safety if he did not allow a violation of the regime, as well as the isolation of the convict on the time of the preparation of the necessary materials for his moving to other institution, based on the motivated decision of the head of the institution, it is allowed to keep him in a separate cell (CTA), the DW,	The CEC is supplemented in the Draft with art. 10-1.

№ q/n	**Current wording** (Content of the legal norms of the CEC and other laws)	**New wording** (proposed changes and amendments to laws)	**The note**
4		cell-type accommodation, disciplinary ward and punishment cell on general grounds before the end of the verification, elimination of danger, the final resolution of the conflict or receipt of a moving, but no more than 30 days. Such convicts during isolation on a general basis enjoy all the rights, that are provided for in this Code".	
5	Article 19 of the CEC of Ukraine: Educational colonies. The educational colonies carries out punishment in the form of deprivation of liberty for a certain period in relation to convicted juveniles.	Part 2 of art. 19 of Draft: "In educational colonies the convicts may continue serving sentence to 18 years of age or older in cases and in the manner, that are provided by this Code".	The art. 19 of the CEC is supplemented with the part 2.
6	Part 3 of the article 94 of the CEC: In the re-socialization section, convicts are kept, who are sent from the section of quarantine, diagnostic and distribution, as well	Part 3 of art. 94 of Draft: "In the re-socialization section are kept convicts who are sent from the station of quarantine, diagnostic and distribution, as well	The part 3 of art. 94 of the CEC is supplemented with the phrase "and those persons who were 18 years of age or older while serving the

№ q/n	**Current wording** (Content of the legal norms of the CEC and other laws)	**New wording** (proposed changes and amendments to laws)	**The note**
6	as moved from other sections in accordance with the procedure, that is established by this Code.	as who have been moved from other stations in accordance with the procedure, that is established by this Code and those persons who were 18 years of age or older while serving the sentence in the educational colonies".	sentence in the educational colonies".
7	Part 1 of the art. 147 of the CEC: Convicts under the age of eighteen are moved from an educational colony for further serving sentences to a correctional colony of a minimum standard of safety with general conditions of detention.	Part 1 of art. 147 of Draft: "Convicts under the age of eighteen are moved from an educational colony for further serving sentences to a correctional colony of a minimum standard of safety with general conditions of detention in the cases and in the manner, that are specified in this Code".	Part 1 of the art 147 of the CEC is supplemented with the phrase "in the cases and in the manner, that are specified in this Code".
8	There is no norm in the CEC.	Article 42-1 of Draft "Provision the safety of persons, who are involved in criminal proceedings": "Persons, who are involved in criminal proceedings, in the event of a real threat	The CEC is supplemented with art. 42-1.

№ q/n	**Current wording** (Content of the legal norms of the CEC and other laws)	**New wording** (proposed changes and amendments to laws)	**The note**
8		to their lives, health, housing or property, have the right to provision the personal safety and safety of their family members. The procedure for provision the safety of such persons is specified in a special law".	
9	Article 92 of the CEC: Separate keeping of convicts in correctional and educational colonies. 1. In the colonies there is a separate keeping: men and women, minors and adults. 2. For the first time, convicted persons are kept separately from those, who served sentences in the form of deprivation of liberty. 3. Isolated from other convicts, as well as separately kept: convicts to life imprisonment; convicts, for whom punishment	Article 92 of the draft "Separate keeping of convicts to deprivation of liberty and its purpose". Part 1 of art. 92 of draft: "The purpose of separation of convicts to deprivation of liberty is to provision their personal safety and fulfill tasks of correction and re-socialization. Taking into account the proposed new wording of part 1 of art. 92 of the Draft, the numbering of other parts of this article is changed".	Changed title of article 92 by the way of supplementing of the phrase "and its purpose". The art. 92 of the CEC is supplemented with the part 1. According to it, the numbering of other parts of this article is changed.

№ q/n	**Current wording** (Content of the legal norms of the CEC and other laws)	**New wording** (proposed changes and amendments to laws)	**The note**
9	in the form of death penalty is replaced by life imprisonment; convicts, for whom punishment in the form of a death penalty or life imprisonment is replaced by deprivation of liberty for a certain period of time in the form of pardon or amnesty. 4. Separately are kept men, who the first time sentenced to imprisonment for crimes committed by negligence. 5. Separately are kept convicts, who worked previously in the court, in the bodies of prosecutor's office, the justice and law enforcement agencies. 6. The requirements for the separation of prisoners, that are established by this article do not apply to medical institutions of places of deprivation of liberty and colonies intended for		

№ q/n	**Current wording** (Content of the legal norms of the CEC and other laws)	**New wording** (proposed changes and amendments to laws)	**The note**
9	the holding and treatment of infectious sick convicts. The procedure for the keeping of convicts in medical institutions and these colonies is determined by the normative legal acts of the Ministry of justice of Ukraine. *{Part 6 of the art. 92, із змінами, as amended by the Law N 5461-VI (5461-17) of 16.10.2012}*		
10	Article 10 of the CEC: The right of convicts to personal safety: 1. Convicts have the right to personal safety. 2. In the event of occurrence a danger to the life and health of convicts, who are serving sentences in the form of arrest, restraint of liberty, keeping in a	Part 6 of the art. 10 of the Draft: "In the same manner, the personal safety of the convicts is provided, the source of danger to life and health of which was established as a result of operative investigative activity or was connected with forced feeding of the convict in accordance with the provisions of this Code".	Art. 10 of the CEC is supplemented with a new part 5.

№ q/n	**Current wording** (Content of the legal norms of the CEC and other laws)	**New wording** (proposed changes and amendments to laws)	**The note**
10	disciplinary battalion of servicemen or deprivation of liberty, they have the right to apply to any official of a body or penal institution with a request for provision personal safety. In this case, the official is obliged to take urgent measures regarding provision the personal safety of the convict. 3. The administration of the penal institution takes measures regarding moving the convict to a safe place, as well as other measures to eliminate the danger, decides on the place of his further serving of sentence. 4. In the event of availability of danger to the life and health of convicts, who, according to		

№ q/n	**Current wording** (Content of the legal norms of the CEC and other laws)	**New wording** (proposed changes and amendments to laws)	**The note**
10	the law, have decided on the application of security measures in connection with their participation in criminal proceedings, the administration of the penal institution shall take measures of provision the safety of these persons. In addition, the following measures may be applied to the specified persons: isolated keeping; moving to another penal institution. 5. The change of the conditions of detention of persons ragarding whom the measures of safety are applied, shall be carried out in compliance with the requirements, that are provided for in this Code and the legislation of Ukraine.		
11	Part 1 of the art. 104 of the CEC: Operative investigative activity in the colonies.	Part 1 of the art. 104 of the Draft: "According to the law, the operative and search activity	Part 1 of art. 104 of the CEC is supplemented with the word "personal".

№ q/n	**Current wording** (Content of the legal norms of the CEC and other laws)	**New wording** (proposed changes and amendments to laws)	**The note**
11	1. According to the law, the operative and search activity is carried out in the colonies, the main task of which is to search and fixation the actual data on the unlawful activity of individuals and groups with the aim of: provision of safety of convicts, colony personnel and other persons; prevention and detection of crimes, that are committed in the colonies, as well as violations of the established procedure for serving sentences; {paragraph 3 of particle 1 of article 104, as amended by the Law N 4652-VI (4652-17) of 13.04.2012}; study of the causes and conditions, that are conducive to the committing crimes and other offenses;	is carried out in the colonies, the main task of which is to search and fixation the actual data on the unlawful activity of individuals and groups with the aim of provision of safety of convicts, colony personnel and other persons".	

№ q/n	**Current wording** (Content of the legal norms of the CEC and other laws)	**New wording** (proposed changes and amendments to laws)	**The note**
	providing law enforcement agencies, which conducting operative investigative activity or criminal proceedings, to help in disclosing, stopping and preventing crimes. {Paragraph 5 of part 1 of article 104, as amended by the Law N 4652-VI (4652-17) of 13.04.2012}		

REASONING

of the draft of Law of Ukraine "On amendments and additions to the Criminal executive code of Ukraine and other laws of Ukraine" (regarding the improvement of the legal mechanism for the provision of personal safety of convicts in the correctional colonies of Ukraine)

1. To supplement article 10 of the CEC of Ukraine with a note, in which is legislate the concept of "personal safety of convicts", that has been proposed in this work. The need for this is due to the following circumstances:

a) the need to expand the knowledge of the convicts and the personnel of the IES on these issues and tasks to prevent any threats to them;

b) extension of the action of precedent norms, that are applied in relation to the concept of "safety" in other branches of law in normative legal acts.

2. The art. 10-1 of the CEC of Ukraine "Features of provision the right of convicts to personal safety for certain categories of persons" to supplement with the following content: "Given the gender, age, state of health and other individual characteristics of convicts, appropriate conditions should be created in bodies and penal institutions, that provide their right to personal safety. The procedure for determining such conditions is regulated by the norms of the Special part of this Code".

The need for such a modification is conditioned by the following:

1) at the legislative level in the CEC, the peculiarities of serving a sentence in the form of deprivation of liberty are determined by convicted women and minors (chapter 21); peculiarities of serving punishment in colonies of different kinds (chapter 20); execution of a sentence in the form of life deprivation of liberty (chapter 22); etc. In addition, it is clearly established in the law the separation

of keeping of convicts to deprivation of liberty in correctional and educational colonies (article 92 of the CEC); moving of convicts to deprivation of liberty (art. 88 of the CEC); transferring of convicts to deprivation of liberty (art. 101 of the CEC); etc., which take into account some features of certain categories of convicts;

2) as practice shows, the most vulnerable objects in the IES are former minors who served their sentence in educational colonies (article 19) or regarding of which the court decided to replace the trial (article 75 of the CC) with a real deprivation of liberty and to send them to the penal colonies in accordance with art. 147 of the CEC "The moving convicts from the educational colony to the correctional colony". In this regard, it requires correction of art. 92 of the CEC "Separate keeping of convicts for imprisonment in correctional and educational colonies", namely: part 3 of this article should be supplemented with the phrase "Isolated from other convicts, as well as the convicts who have been moved from the educational colony to the correctional colony in accordance with the procedure established by this Code".

3. The CPC of Ukraine to supplement with art. 42-1 "Provision the safety of persons, who are involved in criminal proceedings" and lay it out in the wording, that was specified in art. 52-1 of the CPC of Ukraine in 1961.

The need for such a modification is due to the following circumstances:

1) the provisions of art. 3 of the Constitution of Ukraine, which states that the state guarantees protection of life and health, of honor and dignity, of inviolability and safety of any person;

2) the requirements of part 4 of art. 10 of the CEC, which defines one of the guarantees of provision the right of convicts for personal safety as a party to criminal proceedings (keeping a convicted person is isolated from other persons);

3) the content of part 3 of art. 42 of the CPC, which states that the suspect, the accused has the right to file a

petition for provision safety of himself, family members, close relatives, property, life, etc.;

4) the provisions of paragraph 3 of part 6 of art. 206 of the CPC of Ukraine «General duties of a judge on the protection of human rights», in which it is indicated that the investigating judge is obliged to take the necessary measures to ensure the safety of a person in accordance with the legislation. However, this law does not establish such a duty for detectives and investigators, which is not logical according to the new rules for conducting criminal proceedings in Ukraine;

5) the other norms of the CPC of Ukraine, in particular part 1 of art. 220 "Consideration of petitions during pre-trial investigation", which should be combined with an the requirements of those normative legal acts, which regulate the issue of the safety of participants in criminal proceedings.

4. The part 1 of art. 1 of the CEC to supplement with the phrase "...by creating safe conditions for the execution and serving of sentences" and to lay this part in the following wording: "The Criminal executive legislation of Ukraine regulates the procedure and conditions for the execution and serving of criminal sentences in order to protect the interests of the individual, society and the state by creating safe conditions for the execution and serving of sentences, correction and resocialization of convicts ..." – and further on the text of this article of the CEC.

5. Part 1 of art. 8 of the CEC "The main rights of convicts" should be supplemented with the phrase "the right to personal safety", which logically follows from the contents of art. 10 of this Code.

6. To change the title of article 92 by the way of supplementing of the phrase "and its purpose" and to lay it out in the new wording "Separate keeping of convicts in correctional colonies and educational colonies and its purpose".

On this basis, part 1 of this article of the CEC must be amended and set forth in the following terms: "The pur-

pose of the separation keeping of convicts of deprivation of liberty is to provide their personal safety and fulfill their tasks of the correction and re-socialization of these persons".

Such modification is due to the following:

a) the need for harmonization of domestic criminal-executive legislation with the norms of international law, in particular with the requirements specified in the Minimum standard rules for the treatment of convicts, European penitentiary rules, the Basic principles for the treatment of convicts, etc., in which the purpose of the classification of these persons has a clear normative consolidation;

b) a system approach to streamlining the norms of the CEC of Ukraine, namely, in the law, only the general objective of the criminal-executive legislation of Ukraine (article 1 of the CEC of Ukraine) is defined, which only fragmentarily reflects the content of the classification of the convicts to deprivation of liberty and does not explain the practical basis and the need for such their division;

c) specified supplement will provide an opportunity to fill the basic means of correction and re-socialization of convicts by the real content, that is referred to in art. 6 of CEC of Ukraine, as well as will organically combine two processes of influence on the convict and the results of changes that occur in his personality – the process of correction and the process of re-socialization.

7. Taking into account the new wording of part 1 of art. 92 of the CEC, to change the numbering of other parts of this article of the law.

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A. V. Borovyk, I. O. Kolb

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