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THEORETICAL AND PRACTICAL PROBLEMS OF APPLICATION IN UKRAINE OF ACTIONS OF PHYSICAL FORCE, SPECIAL MEANS AND WEAPONS TO CONVICTED, IMPRISONED

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The monograph clarifies the content and essence of theoretical and practical problems that arise in the process of application in Ukraine to convicts, persons deprived of their liberty, measures of physical force,special means and weapons and developed a set of scientifically based proposals, aimed at improving the legal framework on this topic of research.

This scientific study is designed for scientists, scientific and pedagogical workers, postgraduate students and students of law and humanities and law enforcement practitioners.

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The list of conditional abbreviations

BC – Budget code
CC – Correctional colony
CLC – Correction and labour code
ComC – Commercial code
CBREA – Central Board of Punichment Execution Administration
SPRDU – State punishment execution department of Ukraine
DC – Disciplinary confinement
SPS – State penitentiary service
SCES – State criminal executive service
ECTP – European committee on torture prevention
EU – European Union
EPR – European penitentiary rules
SRPI – Single register of pre-trial investigation
CEC – Criminal executive code
CrC – Criminal code
CCP – Code of criminal procedure
CP – Checkpoint
CAV – Code of administrative violations
MIA – Ministry of Internal Affairs
MJ – Ministry of Justice
OSA – Operation and search activity
UNO – United Nations Organization
PEI RIO – Punishment execution institution rules of internal order
CTP – Cell type room
EC – European Council
SSU – Security service of Ukraine
IIW – Investigative isolation ward
CIS – Commonwealth of independent states
PEI – Punishment execution institutions
PIW – Penal Isolation Ward

The introduction

As social practice, including international one, proves, applying suppressing measures even legal one to any person draws a wide response among people both in a separate state and outside it.

Tragic events on Maidan (Square) taking place in 2013–2014[1] are a clear example in this context, as well as analogical phenomena in France (meetings and skirmish of the so called "yellow jackets" with police)[2], in Spain (demonstrations for independence of Catalonia in 2017)[3], in Turkey (dispersal of protesters in 2016 demanding political regime change)[4], etc. In all mentioned cases the actions of law enforcing bodies were legitimate, though as a result of disobedience, resistance and different demonstrators' infringements on the life and health of authority representatives hundreds of these people became victims of such illegal activity.

This problem is especially urgent for the sphere of punishment execution exactly in Ukraine, as in all civilized states it is established at the legislative

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[1] Pro maydan 2013–2014 rr. *Nezlamni. Luts'k*/uklad. V. Medvid'. Luts'k: Tverdynya, 2014. 122 s.

[2] Pro diyi "zhovtykh zhyletiv" u Frantsiyi (2018–2019 rr.). *Zhovti zhylety: chogo nas uchyt' istoriya/*uklad. Zh. Nuaryel'. Kyyiv: Zhurn. "Spil'ne", 2018. S. 5.

[3] Pro nezalezhnist' Kataloniyi (2017 r.). Ispaniya: u sutychkakh prykhyl'nykiv nezalezhnosti Kataloniyi z politsiyeyu. URL: https://www.pravda.com.ua/news/2018/12/22/7202018/

[4] Pro sprobu derzhavnogo perevorotu u Turechchyni (2016 r.). *Sproba perevorotu v Turechchyni.* URL: https://tyzhden.ua/News/204865

level, that a convict enjoys all rights of a person and a citizen, with the exception of restrictions, determined by law and established by court verdict.

Moreover, being a member of UNO, EC or other authoritative international organizations, each state member undertook juridical obligations to bring national legislation to generally recognized principles and norms[1].

In 2004 already Ukraine adopted Law "On national programmer of adapting legislation of Ukraine to European Union legislation"[2], in 2014 – "On introducing changes to Criminal executive code of Ukraine concerning adaptation of convicts' legal status to European standards"[3], which laid the foundations of modifying criminal executive legislation taking European law requirements and norms into consideration, including the problems of applying physical force, special means and weapon to imprisoned convicts (international law norms call it suppressing convicts measures[4]).

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[1] Statut Rady Yevropy vid 5 travnya 1949 r. *Ofitsiynyy visnyk Ukrayiny.* 2004. № 26. St. 17.

[2] Pro zagal'noderzhavnu programu adaptatsiyi zakonodavstva Ukrayiny do zakonodavstva Yevropeys'kogo Soyuzu: Zakon Ukrayiny vid 18 bereznya 2004 r. № 1629-IV. *Uryadovyy kur'yer.* 2004. 20 kvit. S. 2–3.

[3] Pro vnesennya zmin do Kryminal'no-vykonavchogo Kodeksu Ukrayiny shchodo adaptatsiyi pravovogo statusu zasudzhenogo do yevropeys'kykh standartiv: Zakon Ukrayiny vid 08.04.2014 r. № 1186-V. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 2014. № 2. St. 869.

[4] Minimal'ni standartni pravyla povodzhennya iz zasudzhenymy: pryynyati 30.08.1955 r. na I Kongresi OON z poperedzhennya zlochynnosti ta povodzhennya z zasudzhenymy. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy*/uporyad. O. I. Shynal's'kyy ta in. Kyyiv: Anna-T, 2008. S. 25.

Adopting the Conception of reforming (developing) penitentiary system of Ukraine in September 2017 also became an important step in this direction, as the activity of realizing the content of penitentiary policy instead of present criminal executive policy in the sphere of punishment execution was defined to be one of its priorities[1].

For all that, one of the circumstances conditioning quality modification of the content of present criminal executive policy of Ukraine is the practice which existed in criminal executive activity of Ukraine in 1991–2018 (before and after adopting a new CEC in 2003) and was connected with applying physical force, special means and weapon to imprisoned convicts, that is, measures established by law.

As the given research results proved, besides positive moments of SCES personnel activity (preventing damage caused to the surrounding or convicts themselves, escape and committing other offences), application of suppressing measures sometimes results in terrible consequences like death, bodily injury, property destruction other actions disorganizing the work of punishment execution institutions, etc., which were caused by illegal actions or failure of SCES personnel[2].

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[1] Pro skhvalennya Kontseptsiyi reformuvannya (rozvytku) penitentsiarnoyi systemy Ukrayiny: Rozporyadzhennya Kabinetu Ministriv Ukrayiny vid 13.09.2017 r. № 654-R. *Uryadovyy kur'yer.* 2017. № 178. 20 veres. S. 8–9.

[2] Didenko A. O. Biytsi spetspidrozdilu Derzhavnoyi penitentsiarnoyi sluzhby znovu masovo kalichat' v'yazniv. URL: http//ukr.prison/org/ua/new:1309978900

These are the facts established not only in courts of Ukraine[1], but they become often case at law in European Court of Justice[2]. The determinants causing the above mentioned situations in practice are the following:

– lack of the instruction established in international law norms, that the above mentioned measures must be always extreme (p. 64.1 European penitentiary rules)[3], in valid legislation of Ukraine regulating the order of applying suppressing measures to physical persons (art. 105–106 CEC of Ukraine[4]; Laws of Ukraine "On State criminal executive service of Ukraine"[5], "On National guard of Ukraine"[6], "On National police"[7], and others;

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[1] Pro sudovu praktyku u spravakh pro perevyshchennya vlady abo sluzhbovykh povnovazhen': Postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26 grudnya 2003 r. № 15. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uporyad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A.V., 2011. S. 254–258.

[2] Poltorats'kyy proty Ukrayiny: rishennya Yevropeys'kogo Sudu z prav lyudyny vid 19 kvitnya 2003 r. *Oglyad rishen' Yevropeys'kogo Sudu z prav lyudyny.* Donets'k: Donets'k. Memorial, 2011. S. 27–30.

[3] Yevropeys'ki penitentsiarni pravyla: Rekomendatsiya № R (2006) Komitetu Ministriv Rady Yevropy vid 11 sichnya 2006 roku. Donets'k: Donets'k. Memorial, 2010. 32 s.

[4] Kryminal'no-vykonavchyy kodeks Ukrayiny: pryynyatyy 11 lypnya 2003 r. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 2004. № 3–4. St. 21.

[5] Pro Derzhavnu kryminal'no-vykonavchu sluzhbu Ukrayiny: Zakon Ukrayiny vid 23 chervnya 2005r. *Ofitsiynyy visnyk Ukrayiny*. 2005. № 30. S. 4–10.

[6] Pro Natsional'nu gvardiyu Ukrayiny: Zakon Ukrayiny vid 13 beryeznya 2014 roku № 876-VII. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2014. № 17. St. 594.

[7] Zakon Ukrayiny "Pro Natsional'nu policiyu". Polozhennya pro Natsional'nu politsiyu: ofits. tekst. Kyyiv: Alerta, 2016. 84 s.

– using militarized specialized units in cases of mass disturbances, display of convicts' group insubordination and others, established by law, whose legal status and activity order are prescribed in normative legal by-laws, which contradicts the requirements of p. 14, p. 1 art. 92 of the Constitution of Ukraine, according to which the activity of punishment execution institutions and bodies must be defined exclusively by laws[1];

– SCES personnel behavior stereotypy in the cases of arising conflict situations with imprisoned convicts, namely: the personnel as a rule prefer force forms and measures instead of verbal methods and means of solving these problems[2].

So, every year from 1991[3] till present the amount of applying physical force, special means and weapon to 1 thousand convicts is constant – 12 cases[4]. PEI personnel applied handcuffs (62 %), physical force

[1] Konstytutsiya Ukrayiny: chynne zakonodavstvo stanom na 16 sichnya 2019 r.: ofits. tekst. Kyyiv: Alerta, 2019. 81 s.

[2] Konfliktologiya: navch.-metod. posib./B. I. Baranenko, L. I. Kazmirenko, V. G. Androsyuk ta in.; za zag. red. Ya. Yu. Kondrat'yeva. Kyyiv: Nats. akad. vnutr. sprav Ukrayiny, 2003. S. 39.

Didenko A. O. Chy spryyaye pobyttya ta znushchannya vypravlennyu zasudzhenykh?! (Pro podiyi v Kopychyns'kiy koloniyi № 112 26 ta 27 lypnya 2012 roku). URL: http://khpg.orgipda/indekh.php?id=1343408901

[3] Nekotoryye pokazateli deyatel'nosti uchrezhdeniy ugolovno-ispolnytelnoy sistemy MVD Ukrainy v 1991 godu: inform. byulet. Kiyev: Glavnoye upravleniye po ispolneniyu nakazaniy MVD Ukrainy, 1992. 28 s.

[4] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 22.

(25,4 %), rubber sticks (8 %), irritants (4,1 %) and straitjacket (0,2 %) to convicts[1];

– professional inability of SCES personnel to take a right decision in extraordinary situations. So, the majority of suppressive measures were connected with physical resistance put up by convicts (applied handcuffs – 58 %; rubber sticks – 99 %; physical force – 78 %; irritants – 92 %)[2];

– low level of scientific support of the given problems. As it was ascertained in the course of special scientific research, in modern history of Ukraine (1991–2018) the problems concerning application of physical force, special means and weapon to imprisoned convicts were not elaborated by SCES experts, but other law enforcing bodies.

Moreover, their research results were published on the whole in scientific sources with limited access to information[3], that's why they did not become the point of discussions, criticism, objections, etc., for considerable amount of criminal and executive activity subjects and participants.

Just the indicated circumstances conditioned the topicality, theoretical and practical significance of this monograph.

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[1] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 22.

[2] Ibid, p. 22–23.

[3] Okhman O. V. Pravove regulyuvannya zastosuvannya zakhodiv fizychnogo vplyvu, spetsial'nykh zasobiv i zbroyi shchodo zasudzhenykh u mistsyakh pozbavlennya voli v Ukrayini: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: NAVS, 2015. S. 2.

In this connection the following fact became rather important, that is, among the principles of criminal executive legislation, punishment execution and sentence service (art. 5 CEC of Ukraine) the leading place is given to: the principle of humanism, respect for human rights and freedoms, mutual responsibility of a state and a convict, applying forced measures and encouraging law-obedient behavior[1], which have to become priorities in activity content, connected with applying suppressing measures to imprisoned people, and on this ground to intensify scientific exploration in this area.

At the same time, it should be mentioned that nowadays scientists of different areas created the corresponding methodological basis for conducting substantive and purposeful research, concerning directly the subject content of this monograph. Particularly the following scientists made the contribution to modern doctrinal developments: K. A. Avtukhov, V. A. Badyra, O. M. Bandurka, V. S. Batyrhareyeva, Ye. Yu. Barash, Yu. V. Baulin, I. H. Bohatyriov, V. I. Borysov, O. V. Vedmidskiy, A. P. Hel, V. V. Holina, B. M. Holovkin, V. K. Hryshchuk, T. A. Denysova, O. O. Zhytny, O. I. Ivankiv, A. V. Kyryliuk, Yu. V. Kerniakevych-Tanasiychuk, O. H. Kolb, N. V. Kolomiyets, V. Ya. Konopelskiy, I. M. Kopotun, O. M. Kostenko, O. V. Kresin, O. V. Lysodied, O. M. Lytvynov, V. A. Lipkan, S. Yu. Lukashevych, V. O. Merkulov,

[1] Stepanyuk A. H. Rol' pryntsypiv u formuvanni kryminal'no-vykonavchogo zakonodavstva. *Visnyk Akademiyi pravovykh nauk Ukrayiny*. 2000. № 1. S. 171–181.

I. S. Mykhalko, I. P. Mishchuk, A. A. Muzyka, Ye. S. Nazymko, S. I. Nezhurbida, V. I. Osadchiy, O. I. Osaulenko, O. V. Okhman, M. B. Panasiuk, M. I. Panov, O. V. Petryshyn, V. P. Pietkov, A. A. Popovych, M. S. Puzyriov, O. V. Romanenko, O. P. Riabchynska, A. V. Savchenko, A. O. Selivanova, A. Kh. Stepaniuk, Ye. L. Streltsov, V. Ya. Tatsii, V. O. Tuliakov, S. Ya. Fareniuk, P. L. Fris, O. H. Frolov, M. I. Khavroniuk, O. S. Khrystiuk, N. B. Khutorska, Yu. V. Chakubash, Yu. A. Chebotariov, V. I. Shakun, S. A. Shalhunova, Yu. V. Shynkariov, O. O. Shkut, D. V. Yahunov, I. S. Yakovets and others.

Without any doubt, historical scientific sources concerning the indicated problems could not be avoided either, as well as their authors, such scientists as: P. P. Andrushko, Yu. M. Antonian, Z. A. Astemirov, L. V. Bahriy-Shakhmatov, M. I. Bazhanov, L. Sh. Berekashvili, E. D. Bluvshtein, V. M. Bryzhalov, S. Ye. Bitsyn, R. R. Haliakbarov, M. I. Hernet, E. A. Hovorukhin, A. I. Hurov, I. M. Danshyn, V. K. Duyunov, M. P. Zhuravliov, A. P. Zakaliuk, A. V. Estrin, K. Ye. Ihoshev, B. I. Kaminska, I. I. Karpets, M. I. Kovaliov, M. Y. Korzhanskiy, A. I. Korobeyev, H. A. Kryher, C. I. Kurhanov, V. H. Lykholob, V. V. Lunieyev, V. A. Liovochkin, A. I. Martsev, M. P. Melentiev, Yu. A. Minakov, H. M. Minkovskiy, P. P. Mykhailenko, A. I. Mikhlin, A. A. Natashev, I. S. Noy, P. P. Osipov, Ya. I. Padokh, M. I. Pashe-Ozerskiy, S. V. Poznyshev, V. V. Pokhmelkin, H. I. Rahulin, H. O. Radov, A. L. Remenson, Yu. I. Rymarenko, L. M. Savrasov, T. S. Sarkisov, O. P. Sevierov,

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Besides, other collected empiric materials of doctrinal and applied character (official statistic data concerning the problems of criminal executive activity; periodical scientific publications; appropriate respondents' surveys results, etc.) are used in this work.

Section 1

The theory and methodology of studying the content of the application of physical force, special means and weapon for convicted

1.1. The essence and focus of modern scientific investigation concerning the issues of application of physical force, special means and weapon to offenders

The carried out in the course of current study analysis of the scientific literature and regulatory and legal acts concerning the content of the activity, which is related to the application of preventive measures to convicted, who were held in places of deprivation of liberty (closed type IIW and CVU (p. 3 of the art. 11 of the CEC of Ukraine)), provided an opportunity to distinguish several periods of formation of legal foundations and scientific opinion on the designated problematic (historical criterion forms the basis its typology)[1] namely:

1. 1991–2003 – the period of regulation of criminal executive legal relations, including those that are

[1] Kolb I. O. Pro aktual'nist' ta ob'yektyvnu neobkhidnist' doslidzhennya problem, pov'yazanykh iz zastosuvannyam v Ukrayini zakhodiv vgamuvannya do zasudzhenykh, pozbavlenykh voli. *Pravo i suspil'stvo: nauk. zhurn.* 2019. № 2. S. 191–196.

one of elements of the subject matter of this scientific development, norms of the CLC of Ukraine that adopted in 1970[1]. In particular, three norms concerning the activity related to the application of preventive measures to convicted and imprisoned have been fixed in the section 13 'Security measures and reasons for application weapon' of the chapter II 'The order and conditions of execution of punishment in the way of imprisonment' of specified Code:

a) the art. 81 of the CLC 'The application of preventive measures to persons, who are imprisoned' (the following have been attributed by the legislature: the handcuffs, a straitjacket, the rubber truncheons, the tear-gas substances and other special means, which were discussed in the art. 14 of the Law of Ukraine 'On the police'[2], in particular, in the p. 1 of the art. 14 of the Law of Ukraine 'On the police' the following special means have been attributed, which were allowed to be used by police officers to offenders: 1) the handcuffs; 2) the rubber truncheons; 3) the straightjacket means; 4) the tear-gas substances; 5) the light and sound devices with distracting effect; 6) the devices for opening premises and forcibly stopping transport; 7) the water-cannons; 8) the armored vehicles and other special and vehicles; 9) the service dogs[3].

[1] Pro zatverdzhennya Vypravno-trudovogo kodeksu Ukrayins'koyi RSR: zatverdzhenyy Zakonom Ukrayin'skoyi RSR vid 23 grudnya 1970 roku № 3325-07. *Vidomosti Verkhovnoyi Rady Ukrayins'koyi RSR.* 1971. № 1. St. 6.

[2] Naukovo-praktychnyy komentar do Zakonu Ukrayiny "Pro militsiyu". Kyyiv: Ukr. akad. vnutr. sprav, 1996. 144 s.

[3] Ibid, p. 100–101.

In addition, as it follows from the content of the p. 3 of the art. 14 of the Law of Ukraine 'About the police', the full list of special means, as well as the rules for their application, were established by the Cabinet of Ministers of Ukraine on the conclusion of the Ministry of Health of Ukraine and the Prosecutor General's Office of Ukraine and were published in the mass media[1].

Thus, on February 27, 1991, the resolution of the Council of Ministers of the SSR № 49 approved The Rules for application of the special means for the protection of public order[2], which were effective until December 20, 2017, when the resolution of the Cabinet of Ministers of Ukraine № 1024 approved the List and the Rules of application of the special means by servicemen of the National Guard in the execution of official tasks[3]. The list of special means, which were allowed to be used by the identified subjects of law enforcement activity, was identified in the p. 12 of the chapter II of The Rules, which were approved by relevant the resolution of the Council of Ministers of the SSR in February 27, 1991, namely:

1) the personal protective equipment: helmets, (steel military, composite martial, 'Sphere', plastic

[1] Naukovo-praktychnyy komentar do Zakonu Ukrayiny "Pro militsiyu". Kyyiv: Ukr. akad. vnutr. sprav, 1996. S. 101.

[2] Pravyla zastosuvannya spetsial'nykh zasobiv pry okhoroni gromads'kogo poryadku: zatverdzheni postanovoyu Rady Ministriv URSR vid 27 lyutogo 1991 r. № 49. URL: https://zakon.rada.gov.ua/laws/show/49-91-%D0%BF

[3] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

protected hard hat), body armors; impact resistant and armored shields;

2) the rubber truncheons; the plastic truncheons of the type of 'Tonfa'; the handcuffs; the electroshock devices; the ammunitions and the devices of its domestic production, equipped with rubber or similar by its properties metallic projectiles with non-lethal action;

3) the manual gas grenades, as well as the ammunitions with gas grenades ('Cheremuha-1', 'Cheremuha-4', 'Cheremuha-5', 'Cheremuha-6', 'Cheremuha-7', 'Cheremuha-10', 'Cheremuha-12', 'Syren'-1', 'Syren'-2', 'Syren'-3'); the cartridges, the ammunitions, the grenades and other special means with the products of tear-gas and irritant effect on the basis of natural capsaicinoids, morpholine of pelargonic acid (MPA), orthochlorobenzolmalonitrile (CS) and substances of 'Algogen';

4) the means of provision of special operations: backpack apparatus 'Oblako'; light and sound grenade 'Zarya' and light and sound device 'Plamya'; ammunitions with rubber bullet 'Volna-R'; water-cannons; armored vehicles other vehicles, devices for forcibly stopping transport 'Yosh-M';

5) the devices for opening premises, which are captured by offenders: small-sized blasting devices 'Klyuch' and 'Impuls';

6) the service dogs[1].

[1] Pravyla zastosuvannya spetsial'nykh zasobiv pry okhoroni gromads'kogo poryadku: zatverdzheni postanovoyu Rady Ministriv URSR vid 27 lyutogo 1991 r. № 49. URL: https://zakon.rada.gov.ua/laws/show/49-91-%D0%BF

As established in current study, the issue of application of the defined means of physical force and special means in the mentioned legal and regulatory acts, in general terms, were also regulated by PEI RIO[1], and weapons – also by the Martial statute of the Internal Troops[2] and by the Law of Ukraine 'On Internal Troops of Ukraine'[3]. However, if to summarize the content of all the above-mentioned legal and regulatory sources, none of them fixed the provision about the fact, that physical force and special means are applied to offenders in exceptional circumstances, as, at that time, it was already defined in norms of international law on defined problematic.

In the art. 3 of the Code of the behavior of law enforcement officials, which was adopted by resolution № 34/169 Of the General Assembly of December 17, 1979, it was noted that the law enforcement officials are allowed to apply force only in cases of urgent necessity and to the extent that it required for the discharging their responsibilities[4].

In turn, in the p. 33 of the International Standard Rules on the treatment of convicts, which were

[1] Pravyla vnutrishnyogo poryadku vypravno-trudovykh ustanov: zatv. nakazom Derzhavnogo Departamentu Ukrayiny z pytan' vykonannya pokaran' vid 5 chervnya 2000 r. № 110. Kyyiv: DDUPVP, 2000. 85 s.

[2] Boyovyy statut Vnutrishnih viys'k: zatv. Zakonom Ukrayiny vid 16 bereznya 1992 r. *Vidomosti Verhovnoyi Rady Ukrayiny*. 11.06.1999. № 22.

[3] Pro Vnutrishni viys'ka Ukrayiny: Zakon Ukrayiny vid 16 bereznya 1992 roku. *Golos Ukrayiny.* 1992. 21 lyp. S. 5–8.

[4] Kodeks povedeniya dolzhnostnykh lits po podderzhaniyu pravoporyadka: prinyat rezolyutsiey № 34/169 General'noy Assamblei OON ot 17 dekabrya 1979 goda. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: Anna-T, 2008. S. 54.

approved by the I Congress of the UN Congress on the prevention of crime and the treatment of convicts on 30.08.1955, the following dissertation was established: such instruments of restraint should not be used for punishment, as the handcuffs, the shackles, the straightjackets and the leashes. In addition, the shackles and the leashes are not allowed to be used as restraints. Other specified means can be used only in certain cases[1].

In this regard, as T. Snyder aptly remarked, if you carry a weapon, you should think. If you carry a weapon in public service, be blessed and saved by God. But remember, in the past, the evil was done with police and soldiers involved, who one day discovered that they were doing the not predicted by the rules things. Be ready to say 'no'[2];

b) the art. 81-1 of the CLC 'The special regime in the places of deprivation of liberty', in which it were identified the grounds for establishment such a regime for convicts, and also in a veiled form – the principles of applying to these persons restraint measures from the side of not only PEI, but also of other law enforcement agencies, which were involved for provision the special regime in the places of deprivation of liberty.

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[1] Minimal'ni standartni pravyla povodzhennya iz zasudzhenymy: pryynyati 30.08.1955 r. na I Kongresi OON z poperedzhennya zlochynnosti ta povodzhennya z zasudzhenymy. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy*/uporyad. O. I. Shynal's'kyy ta in. Kyyiv: Anna-T, 2008. S. 25.

[2] Snayder T. Pro tyraniyu. Dvadtsyat' urokiv dvadtsyatogo stolittya. Kyyiv: Meduza, 2017. S. 48–49.

At the same time, the latter were guided in their activity by both the norms of the CLC and their own regulatory and legal acts, which determined its legal status (by the Laws of Ukraine 'On the police', 'On the Internal Troops', 'The statute of the combat service of the Internal Troops'; etc.). Such a peculiar 'split' and dualistic (from Germ. dualistich, from Gr. dualis-dual; forked)[1] fulfilling their functional responsibilities under the conditions of the PEI, as it was shown by practice, quite often led to extraordinary events in the places of deprivation of liberty[2].

In particular, in 1991, namely the specified unprofessional actions of the staff of the PEI led to a group refusal of prisoners to work and to eat in correctional colonies of the PEI of Vinnytsia, Dnipropetrovsk, Kyiv and other regions (only 10 regions of Ukraine and 12 correctional colonies)[3]. At the same time, this tendency became decisive throughout defined period in this work (1991–2003).

Thus, in 1999, 6 persons of the personnel of the service supervisory and security of the Ukrainian PEI, due to unprofessional actions and inability to communicate with the convicts, were assaulted from the side of the latter and got bodily harms[4].

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[1] Buliko A. N. Bolshoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. S. 211.

[2] Kopotun I. M. Zapobigannya zlochynam, shcho pryzvodyat' do nadzvychaynykh sytuatsiy u vypravnykh koloniyakh: monografiya. Kyyiv: PP "Zoloti vorota", 2013. S. 15.

[3] Nekotoryye pokazateli deyatel'nosti uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy v 1991 godu: inform. byulet. Kiyev: Glavnoye upravleniye po ispolnyeniyu nakazaniy MVD Ukrainy, 1992. S. 2.

[4] Kopotun I. M. Zapobigannya zlochynam, shcho pryzvodyat' do nadzvychaynykh sytuatsiy u vypravnykh koloniyakh: monografiya. Kyyiv: PP "Zoloti vorota", 2013. S. 20.

As D. O. Nikolenko aptly remarked in this regard, the paradigm of 'violent governance' as an integral part of our culture, of our mentality is manifested in the character of thinking regarding the research of means necessary punishment those, who behavior is different from the imagine 'norm', from the model of obedient and submissive performer[1];

c) the art. 82 of the CLC 'The grounds for the application of weapon', in which was established that in the way of committing by person, who is deprived of liberty, assault or other wilful act that directly threatens the lives of workers of correctional colonies or other persons, as well as in the event of an escape from custody, as an exceptional measure, the application of weapon is allowed, provided that other measures cannot stop the specified actions. The application of weapon is not allowed in the accident of women and minors' escape.

In this regard, it must be acknowledged that in the art. 82 of the CLC of Ukraine it was reflected two important moments, which should be taken into account when improving the current criminal executive legislation on the designated problematic, namely:

a) in the CLC, unlike the CEC, the special (separate) norm was fixed, regarding the grounds for application of weapons against convicts, considering that the units of supervision and security that are in direct contact with these persons, and the specified grounds in the law (the art. 81 of the CLC and the p. 1

[1] Nikolenko D. O. Kul'tura profesiynogo spilkuvannya z zasudzhenymy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1997. № 2. S. 5.

of the art. 106 of the CEC) fully corresponded with the content of the activities of namely specified members of personnel of the PEI;

b) in the specified legal norm, the phrase 'as an exceptional means' is used, which is not in the CEC of Ukraine (in particular, in the art. 105, 106).

An additional argument in this regard is the criminal executive practice on the specified issues (1991–2018), namely: during this period no weapon was used against the convicts in secured areas of the PEI. At the same time, this remedy was only used when attempting to escape these persons from places of deprivation of liberty.

So, February 13, 1998 at 4:10 am in the IIW № 1 of Dnipropetrovsk region, dismantling the wall of the camera along the slant of the window opening, which was without bars, through the main fence near the CP for vehicles, convicted to exceptional penalty S. and P. escaped and were detained on the same day, and convicted K. was detained at the crime scene by the way of application of weapon by the personnel of the IIW and inflicting the gunshot wound against last[1].

Another peculiarity of the analyzed period in this monograph (1991–2003) was that the functions of security and supervision of convicts in the PEI were carried out by the relevant units of the Internal Troops of the MIA of Ukraine, and the administra-

[1] Operatyvno-sluzhbova i vyrobnycho gospodars'ka diyal'nist' organiv ta ustanov vykonannya pokaran' Ukrayiny u 1998 rotsi: inform. byul. Kyyiv: DDU PVP, 1999. S. 20.

tion of the PEI dealt only with the issue of correctional and labor influence on convicts and with the prevention of their offenses and crimes[1].

As a result, including until 1999 (complete redeployment of the SPRDU from the subordination of the MIA of Ukraine and transfer of functions of security and supervision from the SPRDU to its PEI on the places[2]), wrongful and hasty (instead of verbal resolution of conflict) the application of physical force and special means to convicts, deprived of liberty, as a rule, it was associated with the activities of officials of the Internal Troops of the MIA of Ukraine, the legal bases of which were defined in the Military Statute of these military formations[3] and only indirectly in the CLC of Ukraine[4].

As established in the course of this scientific search, special in this period (1991–2003) were research in this problematic, which were mainly done only by police and other law enforcement agencies,

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[1] Kolb I. O., Kolb O. G. Pro deyaki istorychni aspekty reformuvannya sfery vykonannya pokaran'. *Visnyk penitentsiarnoyi asotsiatsiyi Ukrayiny. Penitentsiarna asotsiactsiya Ukrayiny; Naukovo-doslidnyy instytut publichnogo prava.* Kyyiv: FOP Kandyba T. P., 2018. № 4 (6). S. 137–145.

[2] Pro vyvedennya Derzhavnogo departamentu Ukrayiny z pytan' vykonannya pokaran' z pidporyadkuvannya MVS Ukrayiny: Ukaz Prezydenta Ukrayiny vid 12 bereznya 1999 r. № 248/99. *Ofitsiynyy visnyk Ukrayiny.* 1999. № 11. St. 24.

[3] Boyovyy statut Vnutrishnikh viys'k: zatv. Zakonom Ukrayiny vid 16 bereznya 1992 r. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 11.06.1999. № 22.

[4] Kopotun I. M. Zapobigannya zlochynam, shcho pryzvodyat' do nadzvychajnykh sytuatsiy u vypravnykh koloniyakh: monografiya. Kyyiv: PP "Zoloti vorota", 2013. S. 39.

given, that by 1998 (the time of creation of the SPRDU[1]) authorities and the PEI were part of the system of units of the MIA of Ukraine.

In this regard, scientists of administrative law and criminal law have worked particularly active in developing issues related to the application of means of physical influence, special means and weapon to convicts, deprived of liberty, (in the context of the content of such circumstances that preclude crime action, as the necessary defense and detention of the offender[2]).

Thus, in 1985, P. P. Andrushko formulated the content and types of circumstances that exclude public danger and wrongfulness of action[3] in his works, in particular, the legal nature and importance of the execution of the order and the performance of professional functions (1987)[4], that at that time it was important to consider the methodological foundations of the activity, which, among other things, is related to the application of restraint means to convicts in the places of deprivation of liberty.

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[1] Pro utvorennya Derzhavnogo departamentu Ukrayiny z pytan' vykonannya pokaran': Ukaz Prezydenta Ukrayiny vid 22 kvitnya 1998 roku № 344/98. *Uryadovyy kur'yer*. 1998. № 82–83. 30 kvit. S. 3.

[2] Kvasha O. O., Andrusyak G. M. Neobkhidna oborona (zakhyst vid posyagan' na statevu svobodu ta statevu nedotorkannist' osoby): monografiya. Kyyiv: Vyd. dim "ArtEk". 2016. 264 s.

[3] Andrushko P. P. Pro ponyattya ta vydy obstavyn, shcho vyklyuchayut' suspil'nu nebezpeku ta protypravnist' diyan'. *Visnyk Kyyivs'kogo universytetu. Yurydychni nauky*. 1985. № 26. S. 67–71.

[4] Andrushko P. P. Yuridicheskaya priroda i znacheniye ispolneniya prikaza i vypolneniya professional'nykh funktsiy v sovetskom ugolovnom prave: avtoref. dis. … kand. yurid. nauk: 12.00.08. Kiyev: Kiyev. gos. un-t im. T. Shevchenka, 1987. 24 s.

Significant contribution to the development and justification of the legal grounds relating, in particular, to circumstance such as the detention of a perpetrator, which, in its turn, involves the application of means of physical influence, special means and the weapon, was made by M. I. Bazhanov, justified setting out these issues in the relevant educational and methodological manuals on the course 'Criminal Law of Ukraine'[1].

At that time, Yu. V. Baulin received analogical results on the specified issue, who defended his dissertation in 1991 and received a scientific doctoral degree in Law on theme 'Criminal law problems of the doctrine of circumstances that preclude crime (public danger and wrongfulness) action' (the specialty 12.00.08: criminal law and criminology; criminal executive law)[2].

The works of K. O. Goryslavsky, who investigated the content and essence of human rights guarantees for self-protection of life and health (2003)[3], were interesting and theoretically and practically significant in this context, as well as of G. O. Zavgorodnya and L. I. Ilkovets, who (1992) found out the social

[1] Bazhanov M. Y. Ugolovnoye pravo Ukrainy. Obshchaya chast': konspekt lektsyy. Dnepropetrovsk: Porogi, 1992. 167 s.

[2] Baulin Yu. V. Ugolovno-pravovyye problemy ucheniya ob obstoyatel'stvakh, isklyuchayushchykh prestupnost' (obshchestvennuyu opasnost' i protivopravnost') deyaniya: avtoref. dis. … d-ra yurid. nauk: 12.00.08. Khar'kov: Khar'kov. yurid. yn-t im. Yaroslava Mudrogo, 1991. 41 s.

[3] Goryslavs'kyy K. O. Pravo lyudyny ta gromadyanyna na samozakhyst zhyttya i zdorov'ya vid protypravnykh posyagan': dys. … kand. yuryd. nauk: 12.00.02. Donets'k, 2003. 205 s.

and legal content of the right to necessary defense at the doctrinal level[1].

Several methodological foundations of issues the lawful application of physical influence, special means and weapons were created by I. P. Zakorko in 2000, who, in particular, on the scientific level, brought the peculiarities of the test of psychological stability of law enforcement officers in the process of preparing for the conduct of a hand-to-hand fight with an armed criminal[2] and the author team (O. G. Kolb, I. L. Baran, T. V. Kuzmuk), who developed methodological recommendations on procedure of application security means to prisoners and convicts in Ukraine (2000)[3].

M. Y. Korzhanskyi and P. S. Matyshevskyi made (1996) the extended and detailed interpretation of circumstances that preclude crime activity in their works[4] (1997)[5] and O. M. Kostenko evaluated these rules through the prism of the content of the principle of naturalism, proving, in particular, the natural right of man to life and health and the indispen-

[1] Zavgorodnya G., Il'kovets' L. Pravo na neobkhidnu oboronu. *Pravo Ukrayiny*. 1992. № 6. S. 16–19.

[2] Zakorko I. P. Osoblyvosti vidpratsyuvannya psykhologichnoyi stiykosti u spivrobitnykiv pravookhoronnykh organiv v protsesi pidgotovky do vedennya rukopashnogo poyedynku iz ozbroyenym zlochyncem. *Problemy penitentsiarnoyi teoriyi i praktyky.* 2000. № 5. S. 225–227.

[3] Zakhody bezpeky, shcho zastosovuyut'sya do uv'yaznenykh i zasudzhenykh v Ukrayini: metod. rek./O. G. Kolb, I. L. Baran, T. V. Kuz'muk. Luts'k: RVV "Vezha" Volyn. derzh. un-tu im. Lesi Ukrayinky, 2000. 19 s.

[4] Korzhans'kyy M. Y. Ugolovne pravo Ukrayiny. Chastyna zagal'na: kurs lektsiy. Kyyiv: Nauk. dumka ta Ukr. vyd. grupa, 1996. 336 s.

[5] Kryminal'ne pravo Ukrayiny. Zagal'na chastyna/za red. P. S. Matyshevs'kogo. Kyyiv: Yurinkom Inter, 1997. 512 s.

sability of their deprivation by anyone, including by the state[1].

At the time, scientists of the so-called Kharkov school were working actively and productively on the solution of the specified issues (V. I. Borysov, V. V. Stashys, V. Ya. Tatsiy, etc.), who in textbooks (2002) and other scientific and educational and methodological editions thoroughly investigated each of the circumstances that excluded crime activity and were fixed at that time in the current CrC of Ukraine[2].

In a similar vein, an analogous contribution was made for a more objective understanding of the content of the specified circumstances, in particular, the authors of scientific and practical comments on the CrC of Ukraine, which were published during the period under studying (1991–2003)[3].

The scientific study of scientists and other fields of law in that time were important, given the social legal nature of the preventive measures, which are applied to convicts in the places of deprivation of liberty.

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[1] Kostenko O. M. Volya i svidomist' zlochyntsya (doslidzhennya iz zastosuvannyam pryntsypu naturalizmu): avtoref. dys. … d-ra yuryd. nauk: 12.00.08. Kyyiv: Kyyiv. derzh. un-t im. Tarasa Shevchenka, 1995. 46 s.

[2] Kryminal'ne pravo Ukrayiny: zagal'na chastyna: pidruch. dlya stud. yuryd. spets. vyshch. zakladiv osvity/V. I. Borysov, M. I. Bazhanov, Yu. V. Baulin ta in.: za zag. red. M. I. Bazhanova, V. V. Stashysa, V. Ya. Tatsiya. Kyyiv; Kharkiv: Yurinkom Inter; Pravo, 2002. 416 s.

[3] Naukovo-praktychnyy komentar do Kryminal'nogo kodeksu Ukrayiny: za stanom zakonodavstva i postanov Plenumu Verkhovnogo sudu Ukrayiny na 1 grudnya 2001 roku/za red. S. S. Yatsenka. Kyyiv: A.S.K., 2002. 936 s.

Thus, V. S. Oliynyk (2000) found out the content of the constitutional right to liberty and personal inviolability at the doctrinal level[1], and O. I. Osaulenko (1994) proved the role of by-law regulation of the rights and freedoms of persons, who have been serving sentences in the form of deprivation of liberty[2]. L. M. Podkorytova (1999), who clarified the socio-legal nature of such one of them as the detention of persons, who had committed of crime[3], approached more substantively, in turn, the content of problems relating to circumstances that preclude crime actions[4].

At the same time, the scientific researches of A. I. Popovych (2003), who identified the contented elements and legal principles of the investigation of physical force, special means and weapons by law enforcement officers[5], were similar directed, and

[1] Oliynyk V. S. Konstytutsiyne pravo na svobodu ta osobystu nedotorkannist': ponyattya ta kharakterni rysy. *Pravo Ukrayiny.* 2000. № 12. S. 33–36.

[2] Osaulenko O. I. Pidzakonne regulyuvannya prav ta svobody osib, yaki vidbuvayut' pokarannya u vyglyadi pozbavlennya voli. *Kryminal'no-vykonavcha systema Ukrayiny: teoriya, praktyka, zakonodavstvo.* Kyyiv: Ukr. akad. vnutr. sprav, 1994. S. 59–64.

[3] Podkorytova L. M. Zatrymannya osib, yaki vchynyly zlochyn, yak obstavyna, shcho vyklyuchaye zlochynnist' vchynku (sotsial'ni ta kryminal'no-pravovi problemy): dys. … kand. yuryd. nauk: 12.00.08. Kyyiv, 1999. 217 s.

[4] Ibid.

[5] Popovych A. Zastosuvannya syly, spetsial'nykh zasobiv ta zbroyi pratsivnykamy pravookhoronnykh organiv. *Mizhnarodna politseys'ka entsyklopediya: u 10 t.*/vidp. red.: Yu. I. Rymarenko, Ya. Yu. Kondrat'yev, V. Ya. Tatsiy, Yu. S. Shemshuchenko. Kyyiv: Kontsern "Vydavnychyy Dim «In'yure»", 2003. T. 2: Prava lyudyny u konteksti politseys'koyi diyal'nosti. 2003. S. 312.

V. I. Plysko explored issue that are related to the regulation of the state of stress of law enforcement officers' in stressful situations, to which he attributed the procedure of application of measures of physical influence, special means and the weapon to offenders (2002)[1].

Also, the developments of A. V. Savchenko were important in this direction, who investigated the motives and motivation for committing crimes, including those that were directly related to the content of circumstances that preclude crime of activity at that period (1999)[2], as well as the scientific searches of A. S. Saichyn on issues related to the commission of premeditated murder in case of exceeding the limits of necessary defense or in case of exceeding the measures necessary for apprehending the offender (2002)[3].

The scientific works of Dj. F. Revel[4] and of A. Kh. Stepanyuk, who substantiated the need for strict observance of the principle of lawfulness in the

[1] Plisko V. I. Regulyatsyya sostoyaniya napryazhennosti sotrudnikov v stressogennykh situatsiyakh. *Problemy penitentsiarnoyi teoriyi i praktyky.* 2001. № 6. S. 376–380.

[2] Savchenko A. V. Motyv i motyvatsiya zlochynu: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Ukr. akad. vnutr. sprav, 1999. 18 s.

[3] Saichyn O. S. Umysne vbyvstvo pry perevyshchenni mezh neobkhidnoyi oborony abo u vypadku perevyshchennya zakhodiv, neobkhidnykh dlya zatrymannya zlochyntsya. *Visnyk Odes'kogo instytutu vnutrishnikh sprav*. 2002. № 3. S. 30–35.

[4] Revel' Zh. F. Zastosuvannya syly ta porushennya prav lyudyny. *Mizhnarodna politseys'ka entsyklopediya: u 10 t.*/vidp. red.: Yu. I. Rymarenko, Ya. Yu. Kondrat'yev, V. Ya. Tatsiy, Yu. S. Shemshuchenko. Kyyiv: Kontsern "Vydavnychyy dim «In'yure»", 2003. T. 2: Prava lyudyny u konteksti politseys'koyi diyal'nosti, 2003. S. 312–314.

activities of bodies and the PEI, including on issues related to the topic that is covered in this monograph[1], had considerable importance for solving problems that arise when applying means of preventive measures to offenders in the study period (2003).

The publication of a Study aid on the history of the penitentiary system of Ukraine (compiled by G. O. Radov and I. I. Reznyk)[2] became an interesting event in that time, in view of determining the genesis of the development of institute of application of physical influence, special means and weapons to convicts in the places of deprivation of liberty. The scientific developments B. O. Shapovalov (1999), who substantiated in it the need to review the legal regulation of the application of weapons in the implementation of the necessary defense[3], had the theoretical and practical significance in the same sense.

With regard to the sphere of execution of sentences of Ukraine, methodological bases on the issues of application against convicts, who are deprived of liberty, of measures of physical influence, special means and weapons in the period, which is studied in this monograph, have been developed in great detail

[1] Stepanyuk A. H. Printsip zakonnosti v dyeyatelnosti organov i uchrezhdeniy ispolneniya nakazaniy. *Problemy zakonnosti: respublik. mizhvid. nauk. zb.*/vidp. red. V. Ya. Tatsiy. Kharkiv: Nats. yuryd. akad. Ukrayiny, 1999. № 40. S. 172–179.

[2] Khrestomatiya z istoriyi penitentsiarnoyi systemy Ukrayiny/uporyad. G. O. Radov, I. I. Reznyk. Kyyiv: RVV KIVS, 1998. T. 1. Ch. 1. 414 s.

[3] Shapovalov B. Pravovu reglamentatsiyu zastosuvannya zbroyi pry zdiysnenni neobkhidnoyi oborony dotsil'no pereglyanuty. *Pravo Ukrayiny*. 1999. № 1. S. 98–101.

at the scientific level by V. M. Trubnykov[1] and O. M. Djuja[2].

The following works attract attention among other sources of that time: of A. G. Kozmyuk 'Administrative coercion in the law enforcement activity of the police in Ukraine' (2002)[3]; of O. B. Andreyeva 'Activity of internal affairs agencies on the prevention of offenses in modern conditions (1999)'[4]; of P. M. Bilyi 'Legal culture in the administrative activity of a public security police officer' (1998)[5]; of A. O. Galay 'The organizational and legal principles of forming and functioning of the personnel of the punishment execution institutions' (2003)[6]; of O. V. Djafarov 'The legal foundations of the partnership between police and population' (2003)[7]; of

[1] Trubnikov V. M. Kryminal'no-vykonavche pravo: navch. posib. Kharkiv: Rubikon, 1998. 144 s.

[2] Kryminal'no-vykonavche pravo Ukrayiny (Zagal'na ta Osoblyva Chastyny): navch. posib./za zag. red. O. M. Dzhuzhy. Kyyiv: Yurinkom Inter, 2002. 448 s.

[3] Komzyuk A. T. Administratyvnyy prymus v pravookhoronniy diyal'nosti militsiyi v Ukrayini: avtoref. dys. … d-ra yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2002. 37 s.

[4] Andreyeva O. B. Diyal'nist' organiv vnutrishnikh sprav po profilaktytsi pravoporushen' v suchasnykh umovakh: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: Khark. un-t vnutr. sprav, 1999. 17 s.

[5] Bilyy P. M. Pravova kultura v administratyvniy diyal'nosti pratsivnyka militsiyi gromads'koyi bezpeky: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: NAVS Ukrayiny, 1998. 18 s.

[6] Galay A. O. Organizatsiyno-pravovi zasady formuvannya ta funktsionuvannya personalu ustanov vykonannya pokaran': avtoref. dys. … kand. yuryd. nauk: 12.00.07. Irpin: Nats. akad. derzh. podatk. sluzhby Ukrayiny, 2003. 20 s.

[7] Dzhafarova O. V. Pravovi osnovy partnerstva militsiyi i naselennya: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2003. 19 s.

V. O. Zarosylo 'The comparative analysis of the administrative activity of the police of Ukraine and the police of foreign countries (Great Britain, USA, Canada and France)' (2002)[1]; of M. O. Ilichov 'The administrative and legal status of the official of the internal affairs of Ukraine' (2002)[2]; of Ya. M. Kvitka 'The prevention of administrative offenses among minors' (2002)[3]; of Yu. V. Korneyev 'The administrative and legal support of personal security of the employees of the tax policy' (2002)[4]; of Yu. F. Kravchenko 'The actual issues of the problem of the reforming the internal affairs bodies of Ukraine (organizational and legal issues)' (1998)[5]; of O. Ya. Lapka 'The social and legal protection of police officers of Ukraine (administrative-legal aspect)' (2003)[6]; of

[1] Zarosylo V. O. Porivnyal'nyy analiz administratyvnoyi diyal'nosti militsiyi Ukrayiny ta politsiyi zarubizhnykh krayin (Velykobrytaniyi, SShA, Kanady ta Frantsiyi): avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: NAVS Ukrayiny, 2002. 19 s.

[2] Illichov M. O. Administratyvno-pravove stanovyshche posadovoyi osoby organiv vnutrishnikh sprav Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: NAVS Ukrayiny, 2002. 19 s.

[3] Kvitka Ya. M. Poperedzhennya administratyvnykh pravoporushen' sered nepovnolitnikh: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: NAVS Ukrayiny, 2002. 20 s.

[4] Kornyeyev Yu V. Administratyvno-pravove zabezpechennya osobystoyi bezpeky pratsivnykiv podatkovoyi militsiyi: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Irpin': Nats. akad. derzh. podatk. sluzhby Ukrayiny, 2002. 18 s.

[5] Kravchenko Yu. F. Aktual'ni problemy reformuvannya organiv vnutrishnikh sprav Ukrayiny (organizatsiyno-pravovi pytannya): avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 1998. 19 s.

[6] Lapka O. Ya. Sotsial'no-pravovyy zakhyst pratsivnykiv militsiyi Ukrayiny (administratyvno-pravovyy aspekt). Kyyiv: Akad. derzh. podatk. sluzhby Ukrayiny, 2003. 19 s.

O. M. Lytvynov 'The administrative territorial coordination of the activity of crime prevention actors in Ukraine at the local level' (2002)[1]; of M. V. Loshytskyi 'The administrative legal relations in the field of the protection of the public order' (2002)[2]; of R. S. Melnyk 'The providing the lawfulness of application administrative enforcement measures that are unrelated to liability' (2002)[3]; of O. M. Muzychuk 'The organizational and legal foundations of the citizens' participation in the protectionof the public order and the combating offenses' (2003)[4]; of O. P. Nagornyi 'The legality in the administrative activity of internal affairs agencies and ways of its improvement'[5]; of V. V. Novikov 'The administrative and legal basis for the prevention of offenses of traffic regulations' (1997)[6]; of M. V. Parasyuk 'The administrative and

[1] Lytvynov O. M. Administratyvno-terytorial'na koordynatsiya diyal'nosti sub'yektiv profilaktyky zlochyniv v Ukrayini na mistsevomu rivni: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2002. 20 s.

[2] Loshyts'kyy M. V. Administratyvno-pravovi vidnosyny v sferi okhorony gromads'kogo poryadku: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: NAVS Ukrayiny, 2002. 17 s.

[3] Mel'nyk R. S. Zabezpechennya zakonnosti zastosuvannya zakhodiv administratyvnogo prymusu, ne pov'yazanykh z vidpovidal'nistyu: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2002. 19 s.

[4] Muzychuk O. M. Organizatsiyno-pravovi osnovy uchasti gromadyan v okhoroni gromads'kogo poryadku i borot'by z pravoporushennyamy: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2003. 20 s.

[5] Nagornyy O. P. Zakonnist' v administratyvniy diyal'nosti organiv vnutrishnikh sprav ta shlyakhy yiyi udoskonalennya: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: NAVS Ukrayiny, 2003, 21 s.

[6] Novikov V. V. Administratyvno-pravovi osnovy profilaktyky porushen' dorozhn'ogo rukhu: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: Nats. akad. vnutr. sprav Ukrayiny, 1997. 24 s.

legal regulation of official discipline of the employees of the internal affairs agencies' (1995)[1]; of V. A. Pyetukhov 'The organizational and legal aspects of traineeships and internships in the departments of the MIA of Ukraine' (2003)[2]; of V. A. Plyeva 'The organizational and legal problems of financial liability of persons of ordinary and commanding staff of internal affairs agencies' (1999)[3]; of V. G. Polishchuk 'The administrative and legal regulation and practice of conducting of mass events' (1999)[4]; of V. V. Posmetnyi 'The organizational and legal aspects of initial vocational training of personnel of the IAA of Ukraine' (2003)[5]; of O. Yu. Salmanova 'The administrative and legal measures of the provision of the road traffic safety by police' (2002)[6]; of L. A. Sydorchuk 'The legal and organizational issues of creation

[1] Parasyuk M. V. Administratyvno-pravove regulyuvannya sluzhbovoyi dystsypliny pratsivnykiv organiv vnutrishnikh sprav: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: Ukr. akad. vnutr. sprav, 1995. 22 s.

[2] Pyetukhov V. A. Organizatsiyno-pravovi aspekty prokhodzhennya praktyky ta stazhuvannya v pidrozdilakh MVS Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2003. 20 s.

[3] Plyeva V. A. Organizatsiyno-pravovi problemy material'noyi vidpovidal'nosti osib ryadovogo ta nachal'nyts'kogo skladu organiv vnutrishnikh sprav: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: NAVS Ukrayiny, 1999. 19 s.

[4] Polishchuk V. G. Administratyvno-pravove regulyuvannya ta praktyka provedennya masovykh zakhodiv: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 1999. 17 s.

[5] Posmetnyy V. V. Organizatsiyno-pravovi aspekty pochatkovoyi profesiynoyi pidgotovky personalu OVS Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2003. 19 s.

[6] Salmanova O. Yu. Administratyvno-pravovi zasoby zabezpechennya militsiyeyu bezpeky dorozhn'ogo rukhu: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2002. 19 s.

and functioning of criminal police in Ukraine' (1998)[1]; of O. Yu. Synyavska 'The means of providing service discipline in internal affairs agencies' (2001)[2]; of O. V. Synyov 'An administrative liability for offenses affecting the rights and freedom of citizens' (2001)[3]; A. A. Starodubtsev 'The organizational and legal issues of the activities of personnel inspectorates to strengthen legality and discipline of internal affairs agencies' (1999)[4]; O. I. Ulyanov 'An administrative and legal protection of the rights of citizens in the area of public order by the police' (2002)[5]; of M. P. Fedorov 'An administrative and legal regulation of relations related to the realization of citizens' rights to firearms and special personal protective equipment' (2000)[6]; of V. I. Felyk 'The reforming the services of

[1] Sydorchuk L. A. Pravovi ta organizatsiyni pytannya stvorennya i funktsionuvannya kryminal'noyi militsiyi v Ukrayini: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: NAVS Ukrayiny, 1998. 18 s.

[2] Synyavs'ka O. Yu. Zasoby zabezpechennya sluzhbovoyi dystsypliny v organakh vnutrishnikh sprav (organizatsiyno-pravovi pytannya): avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2001. 20 s.

[3] Synyov O. V. Administratyvna vidpovidal'nist' za pravoporushennya, shcho posyagayut' na prava i svobody gromadyan: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2001. 20 s.

[4] Starodubtsev A. A. Organizatsiyno-pravovi pytannya diyal'nosti inspektsiy z osobovogo skladu shchodo zmitsnennya zakonnosti i dystsypliny v organakh vnutrishnikh sprav: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 1999. 19 s.

[5] Ul'yanov O. I. Administratyvno-pravovyy zakhyst militsiyeyu prav gromadyan u sferi gromads'kogo poryadku: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2002. 18 s.

[6] Fedorov M. P. Administratyvno-pravove regulyuvannya vidnosyn, pov'yazanykh z realizatsiyeyu prava gromadyan na vognepal'nu zbroyu ta spetsial'ni zasoby indyvidual'nogo zakhystu: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: NAVS Ukrayiny, 2000. 17 s.

internal affairs agencies that are performing administrative activity' (2003)[1]; of M. Yu. Frolov 'The municipal and district of internal affairs in circumstances of the legal reform' (2001)[2]; of O. S. Frolov 'The problems of the legal regulation and practice of the application of the firearms, special means and measures of physical influence by employees of internal affairs agencies' (2000)[3]; of V. P. Chaban 'An acts of an administrative coercion in the activity of the police of Ukraine' (2001)[4]; L. G. Chystoklyetova 'An administrative and legal foundations of the application of the firearms by the police' (1997)[5]; V. Yu. Shcherbatykh 'The organizational and legal foundations of the creation and activity of military militia (police) of Ukraine' (2001)[6]; N. V. Yanyuk

[1] Felyk V. I. Reformuvannya sluzhb organiv vnutrishnikh sprav, shcho zdiysnyuyut' administratyvnu diyal'nist': avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: NAVS Ukrayiny, 2003. 17 s.

[2] Frolov M. Yu. Mis'krayorgany vnutrishnikh sprav v umovakh pravovoyi reformy: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2001. 19 s.

[3] Frolov O. S. Problemy pravovogo regulyuvannya i praktyky zastosuvannya vognepal'noyi zbroyi, spetsial'nykh zasobiv ta zakhodiv fizychnogo vplyvu pratsivnykamy organiv vnutrishnikh sprav: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2000. 19 s.

[4] Chaban V. P. Akty administratyvnogo prymusu v diyal'nosti militsiyi Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: NAVS Ukrayiny, 2001. 18 s.

[5] Chystoklyetov L. G. Administratyvno-pravovi osnovy zastosuvannya militsiyeyu vognepal'noyi zbroyi: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: NAVS Ukrayiny, 1997. 24 s.

[6] Shcherbatykh V. Yu. Organizatsiyno-pravovi osnovy stvorennya ta diyal'nosti viys'kovoyi militsiyi (politsiyi) Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Irpin: Akad. derzh. podatk. sluzhby Ukrayiny, 2001. 20 s.

'An administrative and legal status of an official' (2003)[1]; etc.[2]

Also, the scientists of specialty 12.00.08 – the criminal law and criminology; the criminal executive law developed the methodological basis of the issues on the application of measures of the physical influence, special means and weapons to convicts, who are deprived of their liberty during the study period (1991–2003).

The following scientific developments attract the attention in that sense: of Yu. V. Baulin 'The criminal legal problems of the doctrine of circumstances excluding crime (of public danger and unlawfulness of activity)' (1991)[3]; of P. A. Vorobey 'The theory and practice of criminal and legal treatment to guilt' (1999)[4]; of V. O. Navrotskyi 'The theoretical problems of the criminal legal qualification' (2000)[5]; of N. M. Yarmysh 'The theoretical problems of causa-

[1] Yanyuk N. V. Administratyvno-pravovyy status posadovoyi osoby: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: In-t derzhavy i prava im. V. M. Korets'kogo NAN Ukrayiny, 2003. 17 s.

[2] Dovidnyk pro avtoreferaty vykonanykh v Ukrayini za 1991–2008 roky dysertatsiy na zdobuttya naukovogo stupenya doktora i kandydata yurydychnykh nauk/uklad.: V. K. Gryshchuk, B. O. Kyrys', O. F. Pasyeka. L'viv: L'viv. derzh. un-t vnutr. sprav, 2000. S. 235–279.

[3] Baulin Yu. V. Ugolovno-pravovyye problemy ucheniya ob obstoyatel'stvakh, isklyuchayushchykh prestupnost' (obshchestvennuyu opasnost' i protyvopravnost') deyaniya: avtoref. dis. … d-ra yuryd. nauk: 12.00.08. Khar'kov: Khar'kov. yuryd. in-t im. Yaroslava Mudrogo, 1991. 41 s.

[4] Vorobey P. A. Teoriya i praktyka kryminal'no-pravovogo stavlennya v vynu: avtoref. dys. … d-ra yuryd. nauk: 12.00.08. Kyyiv: NAVS Ukrayiny, 1992. 32 s.

[5] Navrots'kyy V. O. Teoretychni problemy kryminal'no-pravovoyi kvalifikatsiyi: avtoref. dys. … d-ra yuryd. nauk: 12.00.08. Kharkiv: Nats. yuryd. akad. im. Yaroslava Mudrogo, 2000. 35 s.

tion in criminal law (philosophical and legal analysis)' (2003)[1]; of Banya Issa Abdel Machdi Makh'de 'The liability for crimes against Life under the criminal law of Jordan' (1998)[2]; of A. I. Boyko 'The criminal legal duty of compensation for the harm that caused by the crime' (1995)[3]; of O. V. Burko 'The criminal liability for the commission of premeditated murder in a state of intense emotional disturbance' (1997)[4]; of Yu. A. Vapsva 'The mistake in the content of the subjective side of the crime' (2000)[5]; of V. B. Vasylets 'The legal and criminological problems of the prevention of the escape of convicts from correctional labor institutions' (1996)[6]; of O. V. Gorokhovska 'The criminal liability for the murder through careless-

[1] Yarmysh N. M. Teoretychni problemy prychynno-naslidkovogo zv'yazku v kryminal'nomu pravi (filosofs'ko-pravovyy analiz): avtoref. dys. … d-ra yuryd. nauk: 12.00.08. Kharkiv: Nats. yuryd. akad. im. Yaroslava Mudrogo, 2003. 40 s.

[2] Bani Issa Khuseyn Abdel' Machdi Makhd. Vidpovidal'nist za zlochyny proty zhyttya za kryminal'nym pravom Yordaniyi: istoriya ta suchasnist': avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: In-t derzhavy i prava im. V. M. Korets'kogo NAN Ukrayiny, 1998. 19 s.

[3] Boyko A. I. Kryminal'no-pravovyy obov'yazok vidshkoduvannya zapodiyanoyi zlochynom shkody: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Kyyiv. un-t im. Tarasa Shevchenka, 1995. 24 s.

[4] Burko O. V. Kryminal'na vidpovidal'nist' za vchynennya umysnogo vbyvstva v stani syl'nogo dushevnogo khvylyuvannya: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: In-t derzhavy i prava im. V. M. Korets'kogo NAN Ukrayiny, 1997. 18 s.

[5] Vapsva Yu. A. Pomylka u zmisti sub'yektyvnoyi storony skladu zlochynu: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: KhNUVS, 2000. 19 s.

[6] Vasylets' V. B. Pravovi ta kryminologichni problemy poperedzhennya vtech zasudzhenykh z vypravno-trudovykh ustanov: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Ukr. akad. vnutr. sprav, 1996. 20 s.

ness' (2003)[1]; of S. I. Dyachuk 'The legal nature of the execution of the order; the criminal law evaluation of the activity of the person who gave or complied with the illegal order' (2000)[2]; of V. M. Mamchur 'The criminal liability for the willful murder of a person or his close relative in connection with the performance of official or public duty by this person' (2002)[3]; of T. M. Maritchak 'The in the qualification of the crimes' (2003)[4]; of S. I. Nezhurbida 'The criminal negligence: concepts, mechanism and ways of countering' (2001)[5]; of Omar Mukhamed Mussa Ismail 'The circumstances excluding crime of activity in the criminal law of Ukraine and Jordan' (2003)[6]; of V. I. Osadchyi 'The criminal liability for causing

[1] Gorokhovs'ka O. V. Kryminal'na vidpovidal'nist' za vbyvstvo cherez neoberezhnist': avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: In-t derzhavy i prava im. V. M. Korets'kogo NAN Ukrayiny, 2003. 18 s.

[2] D'yachuk S. I. Yurydychna pryroda vykonannya nakazu; kryminal'no-pravova otsinka diyannya osoby, shcho viddala chy vykonala protypravnyy nakaz: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Kyyiv. nats. un-t im. Tarasa Shevchenka, 2000. 17 s.

[3] Mamchur V. M. Kryminal'na vidpovidal'nist' za umysne vbyvstvo osoby chy yiyi blyz'kogo rodycha u zv'yazku z vykonannyam tsiyeyu osoboyu sluzhbovogo abo gromads'kogo obov'yazku: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Kyyiv. nats. un-t im. Tarasa Shevchenka, 2002. 20 s.

[4] Maritchak T. M. Pomylky u kvalifikatsiyi zlochyniv: avtoref. dys. … kand. yuryd. nauk: 12.00.08. L'viv: L'viv. nats. un-t im. Ivana Franka, 2003. 16 s.

[5] Nezhurbida S. I. Zlochynna neoberezhnist': kontseptsiyi, mekhanizm i shlyakhy protydiyi: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: In-t derzhavy i prava im. V. M. Korets'kogo NAN Ukrayiny, 2001. 20 s.

[6] Omar Mukhamed Mussa Ismayil. Obstavyny, shcho vyklyuchayut' zlochynnist' diyannya u kryminal'nomu pravi Ukrayiny ta Yordaniyi: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: In-t derzhavy i prava im. V. M. Korets'kogo NAN Ukrayiny, 2003. 19 s.

bodily harms to a law enforcement officer (art. 189-4 of the CrC of Ukraine)' (1994)[1]; of L. A. Ostapenko 'The criminal legal characterization of premeditated murders in mitigating circumstances (art. 116, 117, 118 of the CrC of Ukraine)' (2003)[2]; of O. I. Pluzhnik 'The criminal liability for violation of the regime of serving sentence in correctional facilities and facilities of deprivation of liberty' (2003)[3]; of L. M. Podkorytova 'The Detention of persons, who committed the crime as a circumstance excluding the crime of act (social and criminal legal problems)' (1999)[4]; of V. I. Rybarchuk 'The criminal legal and criminological aspects of the combating illegal actions in the treatment of the weapons, an ammunition and an explosives' (2001)[5]; of I. V. Samoshchenko 'The liabi-

[1] Osadchyy V. I. Kryminal'na vidpovidal'nist' za zapodiyannya tilesnykh ushkodzhen' pratsivnykovi pravookhoronnogo organu (stattya 189-4 KK Ukrayiny): avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Ukr. akad. vnutr. sprav, 1994. 23 s.

[2] Ostapenko L. A. Kryminal'no-pravova kharakterystyka umysnykh vbyvstv pry pom'yakshuyuchykh obstavynakh (statti 116, 117, 118 KK Ukrayiny): avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Kyyiv. nats. un-t im. Tarasa Shevchenka, 2003. 17 s.

[3] Pluzhnik O. I. Kryminal'na vidpovidal'nist' za porushennya rezhymu vidbuvannya pokarannya u vypravnykh ustanovakh ta trymannya pid vartoyu: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: NAVS Ukrayiny, 2003. 20 s.

[4] Podkorytova L. M. Zatrymannya osib, yaki vchynyly zlochyn, yak obstavyna, shcho vyklyuchaye zlochynnist' vchynku (sotsial'ni ta kryminal'no-pravovi problemy): avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: KhNUVS, 1999. 17 s.

[5] Rybachuk V. I. Kryminal'no-pravovi ta kryminologichni aspekty borotby z nezakonnymy diyannyamy pry povodzhenni zi zbroyeyu, boyovymy patronamy ta vybukhovymy rechovynamy: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Odesa: Odes. nats. yuryd. akad., 2001. 21 s.

lity for threat in the criminal law of Ukraine (the concepts, the types, the contentious issues)' (1997)[1]; of T. Ye. Sevastyanova 'The slightness of act under the criminal legislation of Ukraine' (2003)[2]; of O. S. Sotula 'The Criminal liability for encroachment on the life of the governmental or public figure' (2003)[3]; of V. I. Terentyev 'The liability of a special subject of the crime under the criminal law of Ukraine' (2003)[4]; of M. I. Khavronyuk 'The Criminal liability for excess of a power or authority by military official' (1998)[5]; of S. O. Kharytonov 'The Criminal legal assessment of the application of firearms by a police officer' (2000)[6]; etc.[7]

[1] Samoshchenko I. V. Vidpovidal'nist' za pogrozu v kryminal'nomu pravi Ukrayiny (ponyattya, vydy, spirni problemy): avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: Nats. yuryd. akad. im. Ya. Mudrogo, 1997. 23 s.

[2] Sevast'yanova T. Ye. Maloznachnist' diyannya za kryminal'nym zakonodavstvom Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Nats. akad. vnutr. sprav, 2003. 19 s.

[3] Sotula O. S. Kryminal'na vidpovidal'nist' za posyagannya na zhyttya derzhavnogo chy gromads'kogo diyacha: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: KhNUVS, 2003. 20 s.

[4] Terent'yev V. I. Vidpovidal'nist' spetsial'nogo sub'yekta zlochynu za kryminal'nym pravom Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Odesa: Odes. nats. yuryd. akad., 2003. 20 s.

[5] Khavronyuk M. I. Kryminal'na vidpovidal'nist' za perevyshchennya viys'kovoyu posadovoyu osoboyu vlady chy posadovykh povnovazhen': avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: In-t derzhavy i prava im. V. M. Korets'kogo NAN Ukrayiny, 1998. 24 s.

[6] Kharytonov S. O. Kryminal'no-pravova otsinka zastosuvannya vognepal'noyi zbroyi pratsivnykom militsiyi: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: KhNUVS, 2000. 18 s.

[7] Dovidnyk pro avtoreferaty vykonanykh v Ukrayini za 1991–2008 roky dysertatsiy na zdobuttya naukovogo stupenya doktora i kandydata yurydychnykh nauk/uklad.: V. K. Gryshchuk, B. O. Kyrys', O. F. Pasyeka. L'viv: L'viv. derzh. un-t vnutr. sprav, 2000. S. 312–356.

In addition, the scientists of criminal executive law actively developed issues related to the application to convicts, who are deprived of liberty, measures of physical influence, special measures and weapon, in the period that investigated in this work (1991–2003).

In particular, at that time such scientists created methodological foundations on the specified problematic as: A. Kh. Stepanyuk 'An actual problems of serving sentences (an essence and principles of the criminal executive activity: the theoretical and law research)' (2008)[1]; V. A. Lyovochkin 'The legal and regulatory and organizational principles for the ensuring the realization in Ukraine of the international standards on the rights and freedoms of convicts for deprivation of liberty' (2002)[2]; O. B. Ptashynskyi 'The legal problems of the reforming the penitentiary system in Ukraine' (2002)[3]; M. V. Romanov 'The legal regulation of the penalty measures applicable to persons that deprived of the liberty' (2003)[4]; T. A. Shu-

[1] Stepanyuk A. H. Aktual'ni problemy vykonannya pokaran' (sutnist' ta pryntsypy kryminal'no-vykonavchoyi diyal'nosti: teoretyko-pravove doslidzhennya): avtoref. dys. … d-ra yuryd. nauk: 12.00.08. Kharkiv: Nats. yuryd. akad. Ukrayiny im. Yaroslava Mudrogo, 2002. 34 s.

[2] Lyovochkin V. A. Normatyvno-pravovi ta organizatsiyni zasady zabezpechennya realizatsiyi v Ukrayini mizhnarodnykh standartiv z prav i svobod zasudzhenykh do pozbavlennya voli: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: NAVS Ukrayiny, 2002. 18 s.

[3] Ptashyns'kyy O. B. Pravovi problemy reformuvannya penitentsiarnoyi systemy v Ukrayini: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: In-t derzhavy i prava im. V. M. Korets'kogo NAN Ukrayiny, 2002. 18 s.

[4] Romanov M. V. Pravove regulyuvannya zakhodiv styagnennya, shcho zastosovuyut'sya do osib, pozbavlenykh voli: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: Nats. yuryd. akad. Ukrayiny im. Yaroslava Mudrogo, 2003. 20 s.

lezhko 'The peculiarities of the punitive and upbringing influence on the repeatedly sentenced to the deprivation of liberty of women serving sentences in correctional and labor institutions' (1996)[1]; other scientific developments on the specified problematic[2].

As established during this study, another feature of that period (1991–2003) was that in June 2000, the instruction on the conditions and procedure of the forced feeding in the institutions of the criminal executive system of persons, who were refusing to eat was approved by the order of the SPRDU № 127[3], which was in force until 2014[4] and according to the current criminal executive legislation of Ukraine (the CLC, the CEC, the PEI RIO, etc.) did not belong to the restraint measures of prisoners. Moreover, until 2000 this issue was governed by a special order of the MIA of Ukraine, which had the stamp 'secretly'.

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[1] Shulezhko T. A. Osoblyvosti karal'no-vykhovnogo vplyvu na neodnorazovo sudymykh do pozbavlennya voli zhinok, yaki vidbuvayut' pokarannya u vypravno-trudovykh ustanovakh: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Ukr. akad. vnutr. sprav, 1996. 24 s.

[2] Dovidnyk pro avtoreferaty vykonanykh v Ukrayini za 1991–2008 roky dysertatsiy na zdobuttya naukovogo stupenya doktora i kandydata yurydychnykh nauk/uklad.: V. K. Gryshchuk, B. O. Kyrys', O. F. Pasyeka. L'viv: L'viv. derzh. un-t vnutr. sprav, 2000. S. 357–359.

[3] Instruktsiya pro umovy trymannya i poryadok prymusovogo goduvannya v ustanovakh kryminal'no-vykonavchoyi systemy osib, yaki vidmovlyayut'sya vid vzhyvannya yizhi: zatv. nakazom DDUVP vid 12 chervnya 2000 r. № 127. *Ofitsiynyy visnyk Ukrayiny*. 2000. № 30. St. 1295.

[4] Pro vidminu Instruktsiyi pro umovy trymannya i poryadok prymusovogo goduvannya v ustanovakh kryminal'no-vykonavchoyi systemy osib, yaki vidmovlyayut'sya vid vzhyvannya yizhi: nakaz Ministerstva yustytsiyi Ukrayiny vid 12.02.2014 r. № 324/5. *Ofitsiynyy visnyk Ukrayiny*. 16.05.2017. № 38. S. 7.

Therefore, it should be acknowledged that since the independence of Ukraine and in fact until 2014, the specified activity of the administration of the PEI at the normative legal level were not associated with the content of application to prisoners, deprived of liberty, defined in the law of physical influence, special means and weapon (in particular, at that time – in the art. 81, 81-1, 82 of the CLC of Ukraine). This is despite the fact that in the Constitution of Ukraine that adopted in June 1996, and namely – in the p. 14 of the part 1 of the art. 92 – the provision was fixed about that only the laws determines the activity of bodies and punishment execution institutions[1].

Another important point in that period that substantially altered the legal practice of application restraint measures to convicts became the adoption in April 2001 of a new CrC, which expanded the number of circumstances excluding the crime of the activity (from the two art. Of the CrC of 1960 (the art. 15–16))[2], in which 3 such circumstances were fixed (the necessary defense, an absolute necessity and the detention of the offender)[3], to 8 in the CrC of 2001 (the art. 36–43) (the necessary defense; the imaginary defense; the detention of the offender; an absolute necessity; the physical or psychological influence; the execution of an order or order; the acts

[1] Konstytutsiya Ukrayiny: chynne zakonodavstvo stanom na 16 sichnya 2019 r.: ofits. tekst. Kyyiv: Alerta, 2019. 81 s.

[2] Kryminal'nyy kodeks Ukrayins'koyi RSR: zatverdzhenyy 28 grudnya 1960 roku. *Vidomosti Verkhovnoyi Rady Ukrayinskoyi RSR.* 1961. № 2. St. 14.

[3] Kryminal'ne pravo Ukrayiny. Zagal'na chastyna/za red. P. S. Matyshevs'kogo. Kyyiv: Yurinkom Inter, 1997. S. 189–197.

involving risk; the execution of order or instruction; the actions related to risk; the performing a special task to prevent or disclose criminal activity of an organized group or a criminal organization)[1].

The Law of Ukraine 'On Pre-Prison' (1993) was played a similar role in this sense in this period, in the art. 7, 18, 19 of which the provisions on the possibility of introducing special regime into the IIW was fixed and the procedure for the application security measures to prisoners and convicts (physical force, special means and weapon)[2] was fixed.

2. The second period of development of the organizational and legal foundations of the application of the legal measures of physical influence, special means and weapon established in the law to convicts, deprived of liberty, falls on 2004–2013.

During this time, a number of normative legal acts were adopted that were directly related to the activity, concerning the procedure of application against persons, who were held in places of deprivation of liberty of restraint measures defined in the law. First, in this case we are talking about the CEC of Ukraine, the relevant rules on these issues[3] set out in the art. 105–106 and are in force today.

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[1] Kryminal'nyy kodeks Ukrayiny: pryynyatyy zakonom Ukrayiny vid 5 kvitnya 2001 roku № 2341-III. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 2001. № 25–26. St. 131.

[2] Pro poperednye uv'yaznennya: Zakon Ukrayiny vid 30 chervnya 1993 r. № 3352-KHII. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 1993. № 35. St 360.

[3] Kryminal'no-vykonavchyy kodeks Ukrayiny: pryynyatyy 11 lypnya 2003 r. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 2004. № 3–4. St. 21.

In doing so, it should be noted that none of these provisions were stated in these articles, that the measures of physical influence, the special means and the weapon should be applied to convicts that deprived of liberty, in exceptional cases, which was characteristic of the content of international legal acts on the specified problematic[1]. In addition, this despite the fact that the necessity of such streamlining of domestic and international legal acts was stated in the Law of Ukraine of March 18, 2004 'On a government-wide program of adaptation of the legislation of Ukraine to the legislation of the European Union'[2].

However, neither in this period (2004–2013), nor in the future this task has not been solved at the legislative level. Moreover, the CEC of Ukraine on the specified issues remains at the level of previous periods (1991–2013).

The adoption of the Laws of Ukraine in 2014–2015 'On the national guard of Ukraine'[3] and 'On the national police'[4] did not change the situation in this context, in which there is also no provision that the

[1] Minimal'ni standartni pravyla povodzhennya iz zasudzhenymy: pryynyati 30.08.1955 r. na I Kongresi OON z poperedzhennya zlochynnosti ta povodzhennya z zasudzhenymy. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy*/uporyad. O. I. Shynal's'kyy ta in. Kyyiv: Anna-T, 2008. S. 18–36.

[2] Pro zagal'noderzhavnu programu adaptatsiyi zakonodavstva Ukrayiny do zakonodavstva Yevropeys'kogo Soyuzu: Zakon Ukrayiny vid 18 bereznya 2004 r. № 1629-IV. *Uryadovyy kur'yer.* 2004. 20 kvit. S. 2–3.

[3] Pro Natsional'nu gvardiyu Ukrayiny: Zakon Ukrayiny vid 13 bereznya 2014 roku № 876-VII. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2014. № 17. St. 594.

[4] Zakon Ukrayiny "Pro Natsional'nu politsiyu". Polozhennya pro Natsional'nu politsiyu: ofits. tekst. Kyyiv: Alerta, 2016. 84 s.

measures of restraining are applicable only in exceptional cases at the specified normative legal level.

It seemed that this problem should be solved by the Law of Ukraine of June 23, 2005 'On the State punishment execution department of Ukraine'[1], in the art. 19 of which 'The application of force by personnel of the State punishment execution department' it was stated that persons of the ordinary and commanding staff of the State punishment execution department during the execution of tasks for execution of criminal penalties within the powers, have the right in the procedure and cases that stipulated by the CEC of Ukraine, the Law of Ukraine 'On police' and by other laws of Ukraine, to apply physical strength, to use service dogs, as well as to store and carry special means and weapon, to use and apply it independently or as part of units[2].

At the same time, as in the specified law, actually, in the Law of Ukraine 'On police', in particular, in art. 13–15-1, there was no fixed provision about the exclusive nature of such actions[3].

It had not reflected in the PEI RIO of December 2003[4]. In particular, in the section XII of these rules 'The grounds for the application of measures of phy-

[1] Pro Derzhavnu kryminal'no-vykonavchu sluzhbu Ukrayiny: Zakon Ukrayiny vid 23 chervnya 2005 r. *Ofitsiynyy visnyk Ukrayiny*. 2005. № 30. S. 4–10.

[2] Ibid.

[3] Pro militsiyu: Zakon Ukrayiny vid 20 grudnya 1991 roku. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 1991. № 4. St. 20.

[4] Pravyla vnutrishnyogo rozporyadku ustanov vykonannya pokaran': zatv. Nakazom DD UPVP vid 25 grudnya 2003 roku № 275. *Ofitsiynyy visnyk Ukrayiny.* 2004. № 52 (ch. 2). St. 2898.

sical influence, special means and weapon', although an extended interpretation has been given[1] of the relevant norms of the CEC of Ukraine, however, nothing has been said about the exceptional content of such activity by the personnel of the SPRDU, which was important in view of the requirements of international legal acts on the specified issues and in the light of the practice of the European court of the human rights, of which decision since 2006 (at the time of the adoption of the Law of Ukraine 'On enforcement of the decisions and application of the practice of the European Court of Human Rights'[2]) is binding for execution of the state of Ukraine.

Nothing was said about this in the first at that time (2005) scientific practical commentary on the CEC of 2003[3] and in further similar doctrinal sources of 2008[4], of 2010[5] and of 2012[6], as well as in other

[1] Kel'man M. S., Katukha O. S., Koval' I. M. Zagal'na teoriya derzhavy i prava: pidruchnyk/za zag. red. d-ra yuryd. nauk, prof. M. S. Kel'mana. Ternopil': TOV Terno-graf, 2018. S. 480–481.

[2] Pro vykonannya rishen' ta zastosuvannya praktyky Yevropeys'kogo sudu z prav lyudyny: Zakon Ukrayiny vid 23.02.2006 r. № 3477-IV. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2006. № 30. St. 260.

[3] Kryminal'no-vykonavchyy kodeks Ukrayiny: naukovo-praktychnyy komentar/A. H. Stepanyuk, I. S. Yakovets'; za zag. red. A. Kh. Stepanyuka. Kharkiv: TOV "Odissey", 2005. S. 353–356.

[4] Naukovo-praktychnyy komentar do Kryminal'no-vykonavchogo kodeksu Ukrayiny/A. P. Gel', O. G. Kolb, V. O. Korchyns'kyy ta in.; za zag. red. A. H. Stepanyuka. Kyyiv: Yurinkom Inter, 2008. S. 314–316.

[5] Naukovo-praktychnyy komentar do Kryminal'no-vykonavchogo kodeksu Ukrayiny/I. G. Bogatyryov, O. M. Dzhuzha, O. I. Bogatyryova ta in.; za zag. red. d-ra yuryd. nauk, prof. I. G. Bogatyryova. Kyyiv: Atika, 2010. S. 228–229.

[6] Kryminal'no-vykonavchyy kodeks Ukrayiny: naukovo-praktychnyy komentar/za zag. red. d-ra yuryd. nauk, prof. V. V. Kovalenka, d-ra yuryd. nauk, prof. A. Kh. Stepanyuka. Kyyiv: Atika, 2012. S. 318–321.

educational and methodical editions of the period (textbooks[1]; teaching aids[2], etc.).

And again, nevertheless, Ukraine in 2006 fully ratified (from Latin. *ratificatio* – resolved, approved)[3] the Convention against torture and other cruel, inhuman or demean types of treatment and punishment, to which partially acceded in November 1998[4].

At the same time, it should be noted that the issue of conformity with the terminology and norms of international law, including on the issues of the application of measures of physical influence, special means and weapon, have constantly been in the spotlight of scientists during this period (2004–2013).

In this context, in particular, as a methodological basis for the specified scientific development, we should distinguish the following works of such scientists of the criminal executive direction, as: O. G. Kolb 'The punishment execution institution as a subject of crimes prevention' (2007)[5]; T. A. Denysova 'The cri-

[1] Kryminal'no-vykonavche pravo Ukrayiny: pidruchnyk/O. M. Dzhuzha, I. G. Bogatyryov, O. G. Kolb ta in.; za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy. Kyyiv: Atika, 2010. S. 572–573.

[2] Kryminal'no-vykonavche pravo: navch. posib. Vyd. 2-ge, zmin. i dopovn./V. A. Badyra ta in.; za zag. red. T. A. Denysovoyi. Kyyiv: Istyna, 2010. 480 s.

[3] Buliko A. N. Bol'shoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. S. 488.

[4] Konventsiya proty katuvan' ta inshykh zhorstokykh, nelyuds'kykh abo takykh, shcho prynyzhuyut' gidnist', vydiv povodzhennya i pokarannya: rezolyutsiya General'noyi Asambleyi OON № 39/46 vid 10 grudnya 1984 roku. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy/*upo-ryad. O. I. Shynal's'kyy ta in. Kyyiv: Anna-T, 2008. S. 63–69.

[5] Kolb O. G. Ustanova vykonannya pokaran' yak sub'yekt zapobigannya zlochynam: avtoref. dys. … d-ra yuryd. nauk: 12.00.08. Kyyiv: Kyyiv. nats. un-t vnutr. sprav, 2007. 32 s.

minal punishment and realization of its functions' (2010)[1]; O. P. Ryabchynska 'The system of punishment in Ukraine: concepts, meanings and principles of construction' (2013)[2]; I. S. Yakovets 'The theoretical and applied foundations of optimization of the process of execution of criminal sentences' (2013)[3]; V. A. Badyra 'The correcting of women, who are convicted to deprivation of liberty as a the purpose of punishment' (2006)[4]; Ye. M. Bodyul 'The legal and organizational principles of execution of penalties in open-type criminal executive institutions' (2005)[5]; O. V. Romanenko 'The penitentiary function of a democratic law state and the role of civil society in the mechanism of its realization' (2004)[6]; Yu. A. Chebotaryova 'The legal status of the convicts to depriva-

[1] Denysova T. A. Kryminal'ne pokarannya ta realizatsiya yogo funktsiy: dys. … d-ra yuryd. nauk: 12.00.08. Kyyiv: In-t derzhavy i prava im. V. M. Korets'kogo NAN Ukrayiny, 2010. 506 s.

[2] Ryabchyns'ka O. P. Systema pokaran' v Ukrayini: ponyattya, znachennya ta pryntsypy pobudovy: monografiya. Zaporizhzhya: Aktsent Investreyd, 2013. 448 s.

[3] Yakovets' I. S. Teoretychni ta prykladni zasady optymizatsiyi protsesu vykonannya kryminal'nykh pokaran': monografiya. Kharkiv: Pravo, 2013. 392 s.

[4] Badyra V. A. Vypravlennya zhinok, zasudzhenykh do pozbavlennya voli, yak meta pokarannya: avtoref. dys. … kand. yuryd. nauk: 12.00.08. L'viv: L'viv. nats. un-t im. Ivana Franka, 2006. 17 s.

[5] Bodyul Ye. M. Pravovi ta organizatsiyni zasady vykonannya pokaran' v kryminal'no-vykonavchykh ustanovakh vidkrytogo typu: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Nats. akad. vnutr. sprav Ukrayiny, 2005. 18 s.

[6] Romanenko O. V. Penitentsiarna funktsiya demokratychnoyi pravovoyi derzhavy ta rol' gromadyans'kogo suspil'stva v mekhanizmi yiyi realizatsiyi: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Nats. akad. vnutr. sprav, 2004. 19 s.

tion of liberty' (2005)[1]; K. A. Avtukhov 'The serving sentence as an arrest' (2012)[2]; Z. A. Zhuravska 'The victimological principles of the combating crime in the places of deprivation of liberty' (2012)[3]; A. V. Gradetskyi 'The peculiarities of punitive and educational influence on convicts, former judges and law enforcement officials, who serve sentences in the form of deprivation of liberty' (2010)[4]; O. A. Grytenko 'The disciplinary practice in the women's criminal executive institutions of minimum security level with general conditions of maintenance' (2012)[5]; V. A. Kyrylyuk 'An investigative isolation ward as a subject of pre-trial detention and criminal punishment in the form of deprivation of liberty' (2011)[6]; S. Yu. Luka-

[1] Chebotaryova Yu. A. Pravovyy status zasudzhenykh do pozbavlennya voli: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: KhNUVS, 2005. 22 s.

[2] Avtukhov K. A. Vykonannya pokarannya u vydi areshtu: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: Nats. un-t "Yurydychna akademiya" im. Yaroslava Mudrogo, 2012. 20 s.

[3] Zhuravs'ka Z. V. Viktymologichni zasady borot'by zi zlochynnistyu u mistsyakh pozbavlennya voli: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: NAVS, 2012. 20 s.

[4] Gradets'kyy A. V. Osoblyvosti karal'no-vykhovnogo vplyvu na zasudzhenykh kolyshnikh suddiv ta spivrobitnykiv pravookhoronnykh organiv, yaki vidbuvayut' pokarannya u vydi pozbavlennya voli: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Zaporizhzhya: Klasych. pryvat. un-t, 2010. 19 s.

[5] Grytenko O. A. Dystsyplinarna praktyka v zhinochykh kryminal'no-vykonavchykh ustanovakh minimal'nogo rivnya bezpeky iz zagal'nymy umovamy trymannya: teoretychni ta sotsial'no-pravovi aspekty: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Odesa: Odes. nats. yuryd. akad., 2012. 23 s.

[6] Kyrylyuk V. A. Slidchyy izolyator yak sub'yekt vykonannya poperednyogo uv'yaznennya ta kryminal'nogo pokarannya u vydi pozbavlennya voli: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: NAVS, 2011. 18 s.

shevych 'The prevention of crime of convicts in the places of deprivation of liberty' (2006)[1]; I. S. Mykhalko 'The provision the principle of the rational application of coercive measures and stimulus the law-abiding conduct of the convicts' (2012)[2]; M. S. Puzyryov 'The differentiation and individualization of the serving sentence in the form of deprivation of liberty for a certain term' (2012)[3]; G. S. Reznichenko 'The features of serving and execution of sentence in the form of deprivation of liberty regarding convicted women' (2009)[4]; T. V. Rudnyk 'The realization of the principle of humanism in the execution and serving of sentence in the form of deprivation of liberty' (2010)[5]; I. V. Salenkov 'The regime of execution and serving of the criminal sentence in the form of deprivation of liberty' (2011)[6]; O. O. Stulov 'The realization

[1] Lukashevych S. Yu. Poperedzhennya zlochynnosti zasudzhenykh v mistsyakh pozbavlennya voli: monografiya. Kharkiv: Vydavets' SPD Vapnyarchuk N. M., 2006. 104 s.

[2] Mykhalko I. S. Zabezpechennya pryntsypu ratsional'nogo zastosuvannya prymusovykh zakhodiv i stymulyuvannya pravoslukhnyanoyi povedinky zasudzhenykh: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: Nats. yuryd. akad. im. Yaroslava Mudrogo, 2012. 20 s.

[3] Puzyryov M. S. Dyferentsiatsiya ta indyvidualizatsiya vykonannya pokarannya u vydi pozbavlennya voli na pevnyy strok: dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: NAVS, 2012. 252 s.

[4] Reznichenko G. S. Osoblyvosti vykonannya i vidbuvannya pokarannya u vydi pozbavlennya voli stosovno zasudzhenykh zhinok: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Dnipropetrovs'k: DUVS, 2009. 18 s.

[5] Rudnyk V. I. Realizatsiya pryntsypu gumanizmu pry vykonanni ta vidbuvanni pokarannya u vydi pozbavlennya voli: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: NAVS, 2010. 20 s.

[6] Salenkov I. V. Rezhym vykonannya i vidbuvannya kryminal'nogo pokarannya u vydi pozbavlennya voli: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: KhNUVS, 2011. 20 s.

of the principle of lawfulness while executing and serving a sentence in the form of deprivation of liberty for a certain term' (2011)[1]; S. V. Tsaryuk 'The criminal executive characteristics of the convicts, who are serving sentences in correctional colonies of the maximum level of the security' (2009)[2]; Yu. V. Shynkaryov 'An arrest as a type of criminal sentence and peculiarities of legal regulation of its execution and serving' (2006)[3]; O. O. Shkuta 'The correcting and re-socialization of convicts, who are serving sentences in the correctional colonies of the middle level of the security' (2011)[4]; other scientific developments on the specified theme of research which is the subject of search in this work.

In turn, among scientists of the criminal law, the works of whom are related to issues of the application of the measures of the physical influence, special means and weapon, in this sense during this period

[1] Stulov O. O. Realizatsiya pryntsypu zakonnosti pry vykonanni ta vidbuvanni pokaran' u vydi pozbavlennya voli na pevnyy strok: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Zaporizhzhya: Klasych. pryvat. un-t, 2011. 20 s.

[2] Tsaryuk S. V. Kryminal'no-vykonavcha kharakterystyka zasudzhenykh, yaki vidbuvayut' pokarannya u vypravnykh koloniyakh maksymal'nogo rivnya bezpeky: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Dnipropetrovs'k: DUVS, 2009. 20 s.

[3] Shynkaryov Yu. V. Aresht yak vyd kryminal'nogo pokarannya ta osoblyvosti pravovogo regulyuvannya yogo vykonannya ta vidbuvannya: dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: Khark. nats. ped. un-t im. G. S. Skovorody, 2006. 243 s.

[4] Shkuta O. O. Vypravlennya ta resotsializatsiya zasudzhenykh, yaki vidbuvayut' pokarannya u vypravnykh koloniyakh serednyogo rivnya bezpeky: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Dnipropetrovs'k: DUVS, 2011. 20 s.

(2004–2013) such scientific developments attract the attention as: of V. I. Osadchyi 'The problems of the criminal law defense of the law enforcement activity' (2004)[1]; of A. V. Savchenko 'The comparative analysis of the criminal legislation of Ukraine and the federal criminal legislation of the United States of America (2007)[2]; of P. L. Firs 'The criminal law politics of Ukraine' (2005)[3]; of M. I. Kafronyuk 'The criminal legislation of Ukraine and other states of continental European: the comparative analysis, the problems of the harmonization' (2007)[4]; of Yu. V. Abakumova 'The criminal liability of a person for committing a crime while performing a special task of preventing or opening an activity of an organized group or criminal organization' (2007)[5]; of O. V. Avramenko 'The state of strong emotional worry: crimi-

[1] Osadchyy V. I. Problemy kryminal'no-pravovogo zakhystu pravookhoronnoyi diyal'nosti: avtoref. dys. … d-ra yuryd. nauk: 12.00.08. Kyyiv: NAVS Ukrayiny, 2004. 36 s.

[2] Savchenko A. V. Porivnyal'nyy analiz kryminal'nogo zakonodavstva Ukrayiny ta federal'nogo kryminal'nogo zakonodavstva Spoluchenykh Shtativ Ameryky: avtoref. dys. … d-ra yuryd. nauk: 12.00.08. Kyyiv: Kyyiv. nats. un-t vnutr. sprav, 2007. 36 s.

[3] Fris P. L. Kryminal'no-pravova polityka Ukrayiny: avtoref. dys. … d-ra yuryd. nauk: 12.00.08. Kyyiv: NAVS Ukrayiny, 2005. 35 s.

[4] Khavronyuk M. I. Kryminal'ne zakonodavstvo Ukrayiny ta inshykh derzhav kontynental'noyi Yevropy: porivnyal'nyy analiz, problemy garmonizatsiyi: avtoref. dys. … d-ra yuryd. nauk: 12.00.08. Kyyiv: Kyyiv. nats. un-t vnutr. sprav, 2007. 36 s.

[5] Abakumova Yu. V. Kryminal'na vidpovidal'nist' osoby za vchynennya zlochynu pry vykonanni spetsial'nogo zavdannya z poperedzhennya chy rozkryttya zlochynnoyi diyal'nosti organizovanoyi grupy chy zlochynnoyi organizatsiyi: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: Nats. yuryd. akad. im. Yaroslava Mudrogo, 2007. 23 s.

nal law and psychological aspects' (2008)[1]; of M. V. Anchukova 'The justified risk as a circumstance, which causes the crime of activity' (2004)[2]; of S. V. Blynska 'The criminal law nature of the detention of a person committing a crime as a circumstance excluding the crime of activity' (2006)[3]; of R. V. Veresha 'The The notion of guilt as an element of the content of the criminal law of Ukraine' (2004)[4]; of V. O. Gatselyuk 'The realization of the principle of the legality of the Criminal law of Ukraine (general foundations of the conception)' (2005)[5]; of I. M. Gorbachova 'The measures of security in the criminal law (the comparative legal analysis)' (2008)[6]; of O. L. Gurtovenko 'The psychological violence in the criminal law of Ukraine' (2008)[7];

[1] Avramenko O. V. Stan syl'nogo dushevnogo khvylyuvannya: kryminal'no-pravovi ta psykhologichni aspekty: avtoref. dys. … kand. yuryd. nauk: 12.00.08. L'viv: L'viv. nats. un-t im. Ivana Franka, 2008. 19 s.

[2] Anchukova M. V. Vypravdanyy ryzyk, yak obstavyna, shcho vyklyuchaye zlochynnist' diyannya: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: Nats. yuryd. akad. Ukrayiny im. Yaroslava Mudrogo, 2004. 20 s.

[3] Blyns'ka S. G. Kryminal'no-pravova pryroda zatrymannya osoby, shcho vchynyla zlochyn, yak obstavyny, shcho vyklyuchaye zlochynnist' diyannya: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Kyyiv. nats. un-t vnutr. sprav, 2006. 19 s.

[4] Veresha R. V. Ponyattya vyny yak element zmistu kryminal'nogo prava Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Kyyiv. nats. un-t im. Tarasa Shevchenka, 2004. 18 s.

[5] Gatselyuk V. O. Realizatsiya pryntsypu zakonnosti kryminal'nogo prava Ukrayiny (zagal'ni zasady, kontseptsiyi): avtoref. dys. … kand. yuryd. nauk: 12.00.08. L'viv: L'viv. nats. un-t im. Ivana Franka, 2005. 19 s.

[6] Gorbachova I. M. Zakhody bezpeky v kryminal'nomu pravi (porivnyal'no-pravovyy analiz): avtoref. dys. … kand. yuryd. nauk: 12.00.08. Odesa: Odes. nats. yuryd. akad., 2008. 20 s.

[7] Gurtovenko O. L. Psykhichne nasyl'stvo u kryminal'nomu pravi Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Odesa: Odes. nats. yuryd. akad., 2008. 17 s.

of I. I. Davydovych 'The criminal law security of the government and public representatives, who protect the rule of law' (2007)[1]; of I. M. Zalyalova 'The criminal liability for an intervention in the activity of the officer of law enforcement' (2007)[2]; of I. M. Kopotun 'The public order as an object of criminal law protection' (2008)[3]; of P. M. Kulyk 'The combating crimes, which are committed with the application of weapon' (2006)[4]; of N. V. Lisova 'The absolute necessity as a circumstance that excludes the crime of activity' (2007)[5]; of O. M. Lupinosova 'The premeditated murder at exceeding the limits of necessary defense' (2007)[6]; of Yu. V. Mantulyak 'The performing a special task of the prevention or disclosure of the criminal activity of an organized group or criminal organization as a circumstance that excludes

[1] Davydovych I. I. Kryminal'no-pravova okhorona predstavnykiv vlady i gromads'kosti, yaki okhoronyayut' pravoporyadok: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Kyyiv. nats. un-t im. Tarasa Shevchenka, 2007. 20 s.

[2] Zalyalova I. M. Kryminal'na vidpovidal'nist' za vtruchannya v diyal'nist' pratsivnyka pravookhoronnogo organu: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Akad. advokatury Ukrayiny, 2007. 18 s.

[3] Kopotun I. M. Gromads'kyy poryadok yak ob'yekt kryminal'no-pravovoyi okhorony: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Kyyiv. nats. un-t vnutr. sprav, 2008. 20 s.

[4] Kulyk P. M. Borot'ba zi zlochynamy, shcho vchynyayutsya z vykorystannyam zbroyi: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: In-t derzhavy i prava im. V. M. Korets'kogo NAN Ukrayiny, 2006. 19 s.

[5] Lisova N. V. Kraynya neobkhidnist' yak obstavyna, shcho vyklyuchaye zlochynnist' diyannya: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: In-t derzhavy i prava im. V. M. Korets'kogo NAN Ukrayiny, 2007. 20 s.

[6] Lupinosova O. M. Umysne vbyvstvo pry perevyshchenni mezh neobkhidnoyi oborony: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Odesa: Odes. nats. yuryd. akad., 2007. 20 s.

crime of activity' (2006)[1]; of Yu. V. Orel 'The criminal liability for malicious disobedience to the requirements of the administration of the correctional institution' (2008)[2]; of T. A. Pavlenko 'The conception of the criminal law protection of the human rights for the life in Ukraine' (2008)[3]; of V. F. Prymachenko 'The detention of a person who has committed a crime as a circumstance excluding the crime activity' (2008)[4]; of Ya. I. Soloviy 'The limits of the criminal liability' (2004)[5]; of M. I. Sorochynskyi 'The prevention of the crime by the measures of criminal law' (2004)[6]; of N. B. Khlystova 'The promotion of the public useful motivation' (2008)[7]; of L. I. She-

[1] Mantulyak Yu. V. Vykonannya spetsial'nogo zavdannya z poperedzhennya chy rozkryttya zlochynnoyi diyal'nosti organizovanoyi grupy chy zlochynnoyi organizatsiyi yak obstavyny, shcho vyklyuchaye zlochynnist' diyannya: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Akad. advokatury Ukrayiny, 2006. 17 s.

[2] Orel Yu. V. Kryminal'na vidpovidal'nist' za zlisnu nepokoru vymogam administratsiyi vypravnoyi ustanovy: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Dnipropetrovs'k: DUVS, 2008. 20 s.

[3] Pavlenko T. A. Kontseptsiya kryminal'no-pravovoyi okhorony prava lyudyny na zhyttya v Ukrayini: avtoref. dys. … kand. yuryd. nauk: 12.00.08. L'viv: L'viv. nats. un-t im. Ivana Franka, 2008. 20 s.

[4] Prymachenko V. F. Zatrymannya osoby, yaka vchynyla zlochyn, yak obstavyna, shcho vyklyuchaye zlochynnist' diyannya: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Dnipropetrovs'k: DUVS, 2008. 20 s.

[5] Soloviy Ya. I. Mezhi kryminal'noyi vidpovidal'nosti: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: NAVS Ukrayiny, 2004. 17 s.

[6] Sorochyns'kyy M. G. Poperedzhennya zlochynnosti zasobamy kryminal'nogo prava: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Odesa: Odes. nats. yuryd. akad., 2004. 18 s.

[7] Khlystova N. B. Zaokhochennya suspil'no korysnoyi motyvatsiyi: kryminal'no pravovi ta kryminologichni aspekty: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Akad. advokatury Ukrayiny, 2008. 20 s.

khovtsova 'The emotional the state of the person who committed the crime under the criminal legislation of Ukraine' (2007)[1]; of O. I. Yushchyk 'The criminal law regulation of the activity related to the risk by the legislation of Ukraine' (2004)[2]; of T. I. Yakimets 'The absolute necessity by the criminal law of Ukraine' (2008)[3]; other science works related to the content of this work.

As the results of the specified study showed, criminologists created appropriate methodological foundations on the issues of the application of measures of the physical influence, special means and weapon in the specified term (2004–2013), too.

In particular, the following scientific developments attract the attention in that sense: of O. A. Martynenko 'The crimes among police officers of bodies of internal affairs: its determination and prevention' (2007)[4]; of D. I. Balabanova 'The theory of the criminalization' (2007)[5]; of D. L. Vygovskyi 'The criminal

[1] Shekhovtsova L. I. Emotsiynyy stan osoby, yaka vchynyla zlochyn, za kryminal'nym zakonodavstvom Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Akad. advokatury Ukrayiny, 2007. 19 s.

[2] Yushchyk O. I. Kryminal'no-pravove regulyuvannya diyannya, pov'yazanogo z ryzykom, za zakonodavstvom Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Odesa: Odes. nats. yuryd. akad., 2004. 19 s.

[3] Yakimets' G. I. Kraynya neobkhidnist za kryminal'nym pravom Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Kyyiv. nats. un-t im. Tarasa Shevchenka, 2008. 16 s.

[4] Martynenko O. A. Zlochyny sered pratsivnykiv OVS Ukrayiny: yikh determinatsiya ta poperedzhennya: avtoref. dys. … d-ra yuryd. nauk: 12.00.08. Kharkiv: Nats. yuryd. akad. im. Yaroslava Mudrogo, 2007. 36 s.

[5] Balabanova D. O. Teoriya kryminalizatsiyi: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Odesa: Odes. nats. yuryd. akad., 2007. 17 s.

subculture in the mechanism of the crime of the juvenile' (2006)[1]; of T. L. Kalchenko 'The prevention of the crime of juvenile in Ukraine by the special bodies and facilities' (2004)[2]; of O. M. Podilchak 'The motives and motivation of crimes that committed by women' (2005)[3]; of O. Yu. Yurchenko 'The role of victim behavior of victims while committing serious violent crimes against the life and health of a person in Ukraine' (2004)[4]; of O. S. Yara 'The criminological aspects of the prevention of useless violent crime' (2007)[5]; another science developments of the specified theme of the study in this work.

An important contribution to solving the problems associated with the application of restraint measures during the study period (2004–2013), were made by scientists of the administrative law, namely: I. L. Borodin 'An administrative and legal ways of the protection of the rights and freedoms of the hu-

[1] Vygovs'kyy D. L. Kryminal'na subkul'tura v mekhanizmi zlochynnosti nepovnolitnikh: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: In-t derzhavy i prava im. V. M. Korets'kogo NAN Ukrayiny, 2006. 20 s.

[2] Kal'chenko T. L. Zapobigannya zlochynnosti nepovnolitnikh v Ukrayini spetsialnymy organamy ta ustanovamy: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: NAVS Ukrayiny, 2004. 19 s.

[3] Podil'chak O. M. Motyvy ta motyvatsiya zlochyniv, uchynenykh zhinkamy: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: Nats. yuryd. akad. Ukrayiny im. Yaroslava Mudrogo, 2005. 20 s.

[4] Yurchenko O. Yu. Rol' viktymnoyi povedinky poterpilykh pry vchynenni tyazhkykh nasyl'nyts'kykh zlochyniv proty zhyttya ta zdorov'ya osoby v Ukrayini: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: Nats. yuryd. akad. im. Yaroslava Mudrogo, 2004. 16 s.

[5] Yara O. S. Kryminologichni aspekty zapobigannya nekoryslyvoyi nasyl'nyts'koyi zlochynnosti: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: In-t derzhavy i prava im. V. M. Korets'kogo NAN Ukrayiny, 2007. 20 s.

man and citizen' (2004)[1]; T. O. Kolomoyets 'An administrative coercion in the public law of Ukraine: the theory, the experience and the practice of realization' (2005)[2]; O. V. Negodchenko 'The provision of human rights and freedoms by internal affairs agencies: organizational and legal foundations' (2004)[3]; O. Yu. Synyavska 'An organizational and legal foundations of the provision of livelihood of personnel of an internal affairs agencies' (2008)[4]; Yu. Ye. Barash 'The organizational and legal foundations of an activity of the punishment execution institutions' (2006)[5]; A. V. Basov 'An administrative-legal regime of the state of emergency' (2007)[6]; V. M. Bilyk 'The organizational and legal foundations of realization of the police function of Ukraine' (2008)[7]; S. G. Bratel 'The public

[1] Borodin I. L. Administratyvno-pravovi sposoby zakhystu prav ta svobod lyudyny i gromadyanyna: avtoref. dys. … d-ra yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2004. 38 s.

[2] Kolomoyets' T. O. Administratyvnyy prymus u publichnomu pravi Ukrayiny: teoriya, dosvid ta praktyka: avtoref. dys. … d-ra yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2005. 43 s.

[3] Negodchenko O. V. Zabezpechennya prav i svobod lyudyny organamy vnutrishnikh sprav: organizatsiyno-pravovi zasady: avtoref. dys. … d-ra yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2004. 36 s.

[4] Synyavs'ka O. Yu. Organizatsiyno-pravovi zasady zabezpechennya zhyttyediyal'nosti personalu organiv vnutrishnikh sprav Ukrayiny: avtoref. dys. … d-ra yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2008. 42 s.

[5] Barash Ye. Yu. Organizatsiyno-pravovi zasady diyal'nosti ustanov vykonannya pokaran': avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2006. 20 s.

[6] Basov A. V. Administratyvno-pravovyy rezhym nadzvychaynogo stanu: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2007. 18 s.

[7] Bilyk V. M. Organizatsiyno-pravovi zasady realizatsiyi politseys'koyi funktsiyi v Ukrayini: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: Kyyiv. nats. un-t vnutr. sprav, 2008. 20 s.

control over the police activity' (2007)[1]; A. V. Garkusha 'An administrative and forced activity of the divisions of the DMV' (2004)[2]; A. V. Golovach 'The measures of administrative coercion that is not related to the liability in the activity of the state tax service of Ukraine: issues of the theory and practice' (2004)[3]; A. P. Golovin 'An administrative-legal regulation of the activity of police of the public security' (2004)[4]; L. M. Gorbunov 'The by-laws legal and regulatory acts: organizational and legal issue of the provision of crime' (2005)[5]; S. V. Gorodyanko 'An organizational and legal provision of safety of employees of an internal affairs agencies of Ukraine' (2007)[6]; S. K. Grechanyuk 'An organizational and legal foundation of the interaction of criminal executive insti-

[1] Bratel' S. G. Gromads'kyy kontrol' za diyal'nistyu militsiyi: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: Kyyiv. nats. un-t vnutr. sprav, 2007. 20 s.

[2] Garkusha A. V. Administratyvno-prymusova diyal'nist' pidrozdiliv DAI: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Irpin': Nats. akad. derzh. podatk. sluzhby, 2004. 18 s.

[3] Golovach A. V. Zakhody administratyvnogo prymusu, ne pov'yazani z vidpovidal'nistyu, v diyal'nosti organiv derzhavnoyi podatkovoyi sluzhby Ukrayiny: pytannya teoriyi ta praktyky: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Irpin': Nats. akad. derzh. podatk. sluzhby Ukrayiny, 2004. 19 s.

[4] Golovin A. P. Administratyvno-pravove regulyuvannya diyal'nosti militsiyi gromads'koyi bezpeky: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: NAVS Ukrayiny, 2004. 20 s.

[5] Gorbunova L. M. Pidzakonni normatyvno-pravovi akty: organizatsiyno-pravovi pytannya zabezpechennya zakonnosti: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: Kyyiv. nats. ekon. un-t im. Vadyma Get'mana, 2005. 21 s.

[6] Gorodyanko S. V. Organizatsiyno-pravove zabezpechennya bezpeky diyal'nosti pratsivnykiv OVS Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: Kyyiv. nats. un-t vnutr. sprav, 2007. 20 s.

tutions with state and non-governmental organizations' (2006)[1]; I. O. Iyerusalimova 'The mechanism of an administrative-legal provision of the rights and freedoms of the human and citizen' (2006)[2]; D. S. Kablov 'An administrative-legal status of members of public formations for the protection of public order and the state border' (2008)[3]; O. M. Kaplya 'An internal affairs agencies of Ukraine in the conditions of its integration into the European Union' (2007)[4]; M. M. Kalyuka 'The administrative-legal problems of liability of the employees of an internal affairs agencies' (2004)[5]; V. Yu. Kryvenda 'The forms and methods of the activity of the police of the public security in the modern conditions' (2005)[6]; L. S. Kryvo-

[1] Grechanyuk S. K. Organizatsiyno-pravovi zasady vzayemodiyi kryminal'no-vykonavchykh ustanov z derzhavnymy ta nederzhavnymy organizatsiyamy: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Irpin': Nats. akad. derzh. podatk. sluzhby Ukrayiny, 2006. 20 s.

[2] Iyerusalimova I. O. Mekhanizm administratyvno-pravovogo zabezpechennya prav i svobod lyudyny ta gromadyanyna: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: In-t zakonodavstva Verkhovnoyi Rady Ukrayiny, 2006. 20 s.

[3] Kablov D. S. Administratyvno-pravovyy status chleniv gromads'kykh formuvan' z okhorony gromads'kogo poryadku i derzhavnogo kordonu: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2008. 21 s.

[4] Kaplya O. M. Organy vnutrishnikh sprav Ukrayiny v umovakh yiyi integratsiyi v Yevropeys'kyj Soyuz: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: Kyyiv. nats. un-t vnutr. sprav, 2007. 19 s.

[5] Kalyuka M. M. Administratyvno-pravovi problemy vidpovidal'nosti pratsivnykiv organiv vnutrishnikh sprav: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: Nats. yuryd. akad. Ukrayiny im. Yaroslava Mudrogo, 2004. 15 s.

[6] Kryvenda V. Yu. Formy i metody diyal'nosti militsiyi gromads'koyi bezpeky v suchasnykh umovakh: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: Nats. akad. vnutr. sprav Ukrayiny, 2005. 16 s.

ruchko 'An organization of professional preparation of the employees of an internal affairs agencies to actions in the extreme conditions' (2008)[1]; O. O. Kuleshov 'An activity of an administrative service of the police on the termination of offenses (organizational and legal aspect)' (2005)[2]; M. N. Kurko 'An activity of the Ministry of internal affairs of Ukraine regarding the European integration: organizational and legal foundations' (2004)[3]; O. I. Lezhenina 'An organizational and legal foundations of the participation of the internal affairs agencies of Ukraine in international law enforcement activity' (2004)[4]; M. I. Logvynenko 'The legal regulation of the activity of police on the provision of the legal citizens' right to freedom of the assembly, the rallies, the street processions and the demonstrations' (2004)[5]; S. O. Magda 'The provision the rights, freedoms and realization of the

[1] Kryvoruchko L. S. Organizatsiya profesiynoyi pidgotovky pratsivnykiv organiv vnutrishnikh sprav do diy v ekstremal'nykh umovakh: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2008. 20 s.

[2] Kuleshov O. O. Diyal'nist' administratyvnoyi sluzhby militsiyi po prypynennyu pravoporushen' (organizatsiyno-pravovyy aspekt): avtoref. dys. … kand. yuryd. nauk: 12.00.07. Irpin': Nats. akad. derzh. sluzhby Ukrayiny, 2005. 20 s.

[3] Kurko M. N. Diyal'nist' Ministerstva vnutrishnikh sprav Ukrayiny shchodo yevropeys'koyi integratsiyi: organizatsiyno-pravovi zasady: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2004. 21 s.

[4] Lezhenina O. I. Organizatsiyno-pravovi zasady uchasti organiv vnutrishnikh sprav Ukrayiny u mizhnarodniy pravookhoronniy diyal'nosti: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2004. 20 s.

[5] Logvynenko M. I. Pravove regulyuvannya diyal'nosti militsiyi po zabezpechennyu politychnogo prava gromadyan na svobodu zboriv, mityngiv, vulychnykh pokhodiv i demonstratsiy: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2004. 21 s.

duties of citizens under emergency administrative and legal regimes' (2008)[1]; T. O. Matselyk 'An administrative coercion in the activity of bodies of the state tax service of Ukraine' (2005)[2]; I. V. Melnyk 'The application of the measures of an administrative coercion under the construction of the constitutional state' (2004)[3]; O. M. Okopyna 'The internal affairs agencies in the organizational and legal mechanism of the realization of the executive power in Ukraine' (2007)[4]; Ye. B. Olkhovskyi 'An administrative and legal means of the provision of the public security' (2004)[5]; N. G. Pavlenko 'An administrative and legal foundation of the activity of personnel of police of the public security' (2006)[6]; S. M. Pashkov 'An organizational and legal foundations of the participation

[1] Magda S. O. Zabezpechennya prav, svobod ta realizatsiyi obov'yazkiv gromadyan v umovakh nadzvychaynykh administratyvno-pravovykh rezhymiv: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: Nats. yuryd. akad. Ukrayiny im. Yaroslava Mudrogo, 2008. 20 s.

[2] Matselyk T. O. Administratyvnyy prymus v diyal'nosti organiv derzhavnoyi podatkovoyi sluzhby Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Irpin': Nats. akad. derzh. podatk. sluzhby Ukrayiny, 2005. 17 s.

[3] Mel'nyk I. V. Zastosuvannya zakhodiv administratyvnogo prymusu v umovakh rozbudovy pravovoyi derzhavy: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: NAVS Ukrayiny, 2004. 20 s.

[4] Okopyna O. M. Organy vnutrishnikh sprav v organizatsiyno-pravovomu mekhanizmi realizatsiyi vykonavchoyi vlady v Ukrayini: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2007. 21 s.

[5] Olkhovs'kyy Ye. B. Administratyvno-pravovi zakhody zabezpechennya gromads'koyi bezpeky: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: Nats. yuryd. akad. im. Yaroslava Mudrogo, 2004. 17 s.

[6] Pavlenko N. G. Administratyvno-pravovi zasady diyal'nosti personalu militsiyi gromads'koyi bezpeky: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Irpin': Nats. akad. derzh. podatk. sluzhby Ukrayiny, 2006. 20 s.

of the judicial police on the provision the safety of persons involved in criminal proceedings' (2008)[1]; I. P. Petrova 'The normative legal regulation of the organization and activity of the police of Ukraine' (2004)[2]; I. I. Piskun 'An administrative and legal foundation of establishment and application of administrative arrest, correctional and public works' (2007)[3]; V. O. Prodayevych 'The place of an administrative liability in the system of the measures of an administrative coercion' (2007)[4]; K. M. Rudoy 'An adaptation of an administrative legislation of Ukraine in the area of the protection of personal rights of citizens to the norms of the European Union' (2004)[5]; O. V. Ryashko 'The legality in the context of the prevention of offenses in the service activity of the

[1] Pashkov S. M. Organizatsiyno-pravovi zasady diyal'nosti sudovoyi militsiyi po zabezpechennyu bezpeky osib, yaki berut' uchast' u kryminal'nomu sudochynstvi: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Irpin': Nats. un-t derzh. podatk. sluzhby Ukrayiny, 2008. 18 s.

[2] Petrova I. P. Normatyvno-pravove regulyuvannya organizatsiyi i diyal'nosti militsiyi Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Irpin': Nats. akad. derzh. podatk. sluzhby Ukrayiny, 2004. 21 s.

[3] Piskun I. I. Administratyvno-pravovi zasady vstanovlennya i zastosuvannya administratyvnogo areshtu, vypravnykh ta gromads'kykh robit: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: Kyyiv. nats. un-t vnutr. sprav, 2007. 20 s.

[4] Prodayevych V. O. Mistse administratyvnoyi vidpovidal'nosti v systemi zakhodiv administratyvnogo prymusu: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: In-t zakonodavstva Verkhovnoyi Rady Ukrayiny, 2007. 19 s.

[5] Rudoy K. M. Adaptatsiya administratyvnogo zakonodavstva Ukrayiny u sferi okhorony osobystykh prav gromadyan do norm Yevropeys'kogo Soyuzu: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2004. 20 s.

police of Ukraine' (2006)[1]; A. G. Sachavo 'An administrative legal foundations of the activity of the private security structures and its interaction with the bodies of internal affairs of Ukraine' (2004)[2]; A. V. Sergeyev 'An organizational and legal foundations of the activity of the units of local police for regarding the protection of public order' (2004)[3]; V. I. Sichkar 'The application of the experience of police of the foreign countries in the activity of the police of Ukraine on the provision of rights and freedoms of human (organizational and legal aspect)' (2007)[4]; O. P. Ugrovetskyi 'An organizational and legal foundations of the protection activity of the state service of protection at the MIA of Ukraine (2004)[5]; S. O. Shaparenko 'The liability of the servicemen and persons of ordinary and commanding staff of the bodies of internal affairs for committing administrative offen-

[1] Ryashko O. V. Zakonnist' u konteksti profilaktyky pravoporushen' v sluzhboviy diyal'nosti militsiyi Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: Kyyiv. nats. un-t vnutr. sprav, 2006. 20 s.

[2] Sachavo A. G. Administratyvno-pravovi osnovy diyal'nosti pryvatnykh okhoronnykh struktur ta yikh vzayemodiya z OVS Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: NAVS Ukrayiny, 2004. 18 s.

[3] Sergeyev A. V. Organizatsiyno-pravovi zasady diyal'nosti pidrozdiliv mistsevoyi militsiyi shchodo okhorony gromads'kogo poryadku: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2004. 20 s.

[4] Sichkar V. O. Vykorystannya dosvidu politsiyi zarubizhnykh krayin v diyal'nosti militsiyi Ukrayiny po zabezpechennyu prav ta svobod lyudyny (organizatsiyno-pravovyy aspekt): avtoref. dys. … kand. yuryd. nauk: 12.00.07. Irpin': Nats. un-t derzh. podatk. sluzhby Ukrayiny, 2007. 20 s.

[5] Ugrovets'kyy O. P. Organizatsiyno-pravovi zasady okhoronnoyi diyal'nosti derzhavnoyi sluzhby okhorony pry MVS Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2004. 20 s.

ses and the procedure for its realization' (2008)[1]; V. I. Shapoval 'An organizational and legal foundations of the activity of the State service of protection at the MIA of Ukraine regarding the prevention and termination of the offenses' (2005)[2]; S. O. Shatrova 'An administrative legal foundations of the activity of the special units of the police' (2007)[3]; S. I. Shestakov 'An administrative legal status of the employer of the police' (2004)[4]; O. G. Yarema 'An administrative legal foundations of the bodies of internal affairs on rail transport in the field of the public order' (2008)[5]; other scientific works concerning the content of the subject of the specified work.

In general, to summarize the received results of the study, it should be noted that in the second period (2004–2013) of the forming and development of the organizational and legal foundations of the appli-

[1] Shaporenko S. O. Vidpovidal'nist' viys'kovosluzhbovtsiv ta osib ryadovogo i nachal'nyts'kogo skladu OVS za skoyennya administratyvnykh prostupkiv ta poryadok yiyi realizatsiyi: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: Nats. agrar. un-t, 2008. 22 s.

[2] Shapoval V. I. Organizatsiyno-pravovi osnovy diyal'nosti Derzhavnoyi sluzhby okhorony pry MVS Ukrayiny shchodo poperedzhennya ta prypynennya pravoporushen': avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kyyiv: NAVS Ukrayiny, 2005. 20 s.

[3] Shatrova S. O. Administratyvno-pravovi zasady diyal'nosti spetsial'nykh pidrozdiliv militsiyi: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2007. 20 s.

[4] Shestakov S. V. Administratyvno-pravovyy status pratsivnyka militsiyi: avtoref. dys. … kand. yuryd. nauk: 12.00.07. Kharkiv: KhNUVS, 2004. 20 s.

[5] Yarema O. G. Administratyvno-pravovi zasady diyal'nosti organiv vnutrishnikh sprav na zaliznychnomu transporti u sferi okhorony gromads'kogo poryadku: avtoref. dys. … kand. yuryd. nauk: 12.00.07. L'viv: LUVS, 2008. 16 s.

cation of physical influence, special means and weapon to the convicts, who are deprived of liberty, the specified question was not raised in a direct setting in scientific developments and, as a whole, substantially reflected the problems and trends that were characteristic of the previous study period (1991–2003).

However, this situation was changed neither by the regulatory approaches (for example, the adoption in 2005 of the Law of Ukraine 'On the state criminal executive service of Ukraine'[1]), no by the organizational and legal measures that were aimed at the modification the content of management activity in the sphere of the execution of sentences of Ukraine. These, in particular, should be included the following:

a) an assignment to the Minister of justice of Ukraine in December 2010 the functions of coordination of activities of the SPS of Ukraine;

b) an approval of the Regulation on the State penitentiary service of Ukraine in 2011[2];

c) the recognition at the legislative level in 2012 by a central body of the executive power that realize the state policy in the sphere of the execution sentences and probation, of the Ministry of Justice of Ukraine[3].

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[1] Pro Derzhavnu kryminal'no-vykonavchu sluzhbu Ukrayiny: Zakon Ukrayiny vid 23 chervnya 2005 r. *Ofitsiynyy visnyk Ukrayiny*. 2005. № 30. S. 4–10.

[2] Pro zatverdzhennya Polozhennya pro Derzhavnu penitentsiarnu sluzhbu Ukrayiny: Ukaz Prezydenta Ukrayiny vid 6 kvitnya 2011 r. № 394-2011. *Ofitsiynyy visnyk Ukrayiny*. 2011. № 28. St. 1161.

[3] Pro vnesennya zmin u normatyvno-pravovi akty, shcho stosuyut'sya sfery vykonannya pokaran' Ukrayiny: Zakon Ukrayiny vid 16.10.2012 r. № 5461-VI. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2014. № 5. St. 62.

In this case, such a task, according to the art. 1 of the Law of Ukraine 'On the State criminal executive service of Ukraine', as a whole rested on the SCES of Ukraine[1], but as it was derived from the content of the art. 1 of the regulation on the SPS of Ukraine – to this state body.

Thus, in 2010–2012, in Ukraine for the first time at the legislative level was set a precedent (from the Latin praecedens – previous – a case that occurred earlier, which serves as an example or justification for further cases of this kind)[2] in the sphere of punishment execution, when two central executive bodies of the state executive power were simultaneously engaged in the managerial activity – the Ministry of justice of Ukraine and the SPS of Ukraine, the provision of which is in force until now.

Already this, as established in the course of the specified study, could not affect the state of the normative legal provision of the criminal executive activity, including issues that were related to the use of physical force, special means and weapon to the convicts in the places of deprivation of liberty.

In particular, none of the laws that were passed in the form of amendments and modifications to the CEC in 2011–2013 had a significant impact on the practice of the application restraint measures to persons, who were hold in the correctional and educatio-

[1] Pro Derzhavnu kryminal'no-vykonavchu sluzhbu Ukrayiny: Zakon Ukrayiny vid 23 chervnya 2005 r. *Ofitsiynyy visnyk Ukrayiny*. 2005. № 30. S. 4–10.

[2] Buliko A. N. Bol'shoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. S. 465.

nal colonies. Thus, its number per 1 thousand of convicts in 2013 amounted to 8,9 cases (15 % less than in 2012, while simultaneously reducing in 2013 on 13 % of the number of convicts, who served sentences in the form of deprivation of liberty)[1].

Moreover, as in the previous period (1991–2003), the main reason for the application of physical influence, special means and weapon to the convicts that deprived of liberty was as an action of physical resistance and rage by these persons (73,1 % of the total structure of the applications)[2].

However, as the results of this study showed, in such a situation there was no intensification of scientific searches regarding the problems of applying restraint measures to persons, who were held in the places of deprivation of liberty – as a rule, administrative and criminal law professionals continued to address these issues, the subject of development of which was the activity not of the personnel of the SCES of Ukraine, but of the employees of police and other law enforcement agencies.

Scientists made some changes in this direction, as it established in the course of the current scientific search, in the third period (2014 – till present time).

The candidate's dissertation of O. V. Okhman 'The legal regulation of the application of measures of physical influence, special means and weapon against convicts in the places of deprivation of

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2013 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2014. S. 34.

[2] Ibid, p. 35.

liberty in Ukraine' was defended, in particular, in 2015, for the first time in Ukraine (the specialty 12.00.08: criminal law and criminology; criminal executive law), in which in the open information space had been researched the state of scientific developments on the identified problematic, as well as the issues related to:

a) the content of the legal foundations and of the procedure for application of the specified restraint measures to persons, who were held in the places of deprivation of liberty;

b) the main characteristics and current state and trends of the application of these measures;

c) the content of the features of legal regulation and procedure of the application of the measures of the physical influence, special means and weapon to persons, who are deprived of liberty;

d) an international approaches on current issues;

e) the ways of improving the legal foundations and practice of its realization in the field of the applying restraint measures to persons, who were held in the places of deprivation of liberty, in the context of the content of the current criminal executive policy of Ukraine[1].

In addition, a textbook 'An application of the measures of the physical influence, special means and weapon in the places of deprivation of liberty' was published in 2016 with the stamp of the Ministry of

[1] Okhman O. V. Pravove regulyuvannya zastosuvannya zakhodiv fizychnogo vplyvu, spetsial'nykh zasobiv i zbroyi shchodo zasudzhenykh u mistsyakh pozbavlennya voli v Ukrayini: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: NAVS, 2015. S. 3.

Education and Science of Ukraine in which, in addition to the specified concepts, also considered those that disclosed concepts, content and types of the measures of the physical influence, special means and weapon, that are applied against the convicts in the places of deprivation of liberty, as well as the content of the legal regulation of the special conditions of their application to persons held in correctional and educational colonies had been found[1].

As shown by the results of the study of the specified scientific and educational sources, they were based on the scientific development of scientists of the first (1991–2003) and the second periods (2004–2013), as well as theoretical and applied searches of the scientists of the defined in this research third period (from 2014 to the present).

In particular, the doctoral dissertation of I. M. Kopotun 'The theoretical, applied and legal foundations for the prevention of crimes that cause the appearance of emergencies in the correctional colonies of Ukraine' was defended in 2014, in the unit 3.2 of which 'The causes and conditions of the commission of crimes causing the emergencies in the correctional colonies' the author drew attention to such as: an inappropriate execution of the official duties and the failure to provide the security measures and the service regulations by the personnel of the PEI, as

[1] Zastosuvannya zakhodiv fizychnogo vplyvu, spetsial'nykh zasobiv i zbroyi u mistsyakh pozbavlennya voli: navch. posib./za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy ta d-ra yuryd. nauk, prof. O. G. Kolba. Kyyiv: Kondor, 2016. 236 s.

well as unprofessional actions of the personnel and their violation of legitimacy, which leads to the provocation of unlawful actions of the convicts[1].

N. O. Chechel told about the analogical determinants that caused the commission of crimes from the side of women that convicted to deprivation of liberty in Ukraine, in her candidate's dissertation in 2014, namely, in subsection 2.3. 'The causes and conditions contributing to the perpetration of crimes by women, who sentenced to deprivation of liberty for a certain term in Ukrain'[2].

In turn, V. Ya. Konopelskyi in doctoral dissertation 'The criminal-executive foundations of the differentiation and individualization of execution of the sentence in the form of deprivation of liberty in Ukraine' (the specialty 12.00.08) (2015) of the one of the determinants contributing to the violation by the personal of the PEI of the order of the application of measures of the physical influence, special means and weapon to convicts, who are deprived of liberty, determined the non-observance of the principle of differentiation and individualization of the execution of this punishment by these persons (the section 4, 'The role and place of the differentiation and individualization in the legal mechanism of realization of the

[1] Kopotun I. M. Zapobigannya zlochynam, shcho pryzvodyat' do nadzvychaynykh sytuatsiy u vypravnykh koloniyakh: monografiya. Kyyiv: PP "Zoloti vorota", 2013. S. 21.

[2] Chechel' N. O. Zapobigannya zlochynam, shcho vchynyayutsya zhinkamy, zasudzhenymy do pozbavlennya voli v Ukrayini: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: NAVS, 2014. S. 9.

purpose and tasks of the criminal executive legislation of Ukraine')[1].

In general terms, the issue of the application of restraint measures to convicts in the places of the deprivation of liberty was also considered in the candidate dissertation of Yu. P. Stepanova 'The criminal-executive foundations of the execution and serving of sentence in the form of the deprivation of liberty for a certain term in relation to previously convicted persons' (2015) (the specialty 12.00.08), in section 3.3. of which 'The ways of the improvement in Ukraine the effectiveness of the regime of the execution of sentences in the form of deprivation of liberty' she proved that the one of the circumstances, which adversely affects the effectiveness of the corrective and re-socialization process against previously convicted persons, as well as contributes to the formation of the unlawful behavior of the relevant category of convicts and to the commission of crimes by them in the closed type institutions, there is an established regime of execution and serving of the sentence in the form of the deprivation of liberty, which substantially includes the procedure of application to the convicts, the specified in law (the article 106 of the CEC of Ukraine) measures of the physical influence, special means and weapon[2].

[1] Konopel's'kyy V. Ya. Kryminal'no-vykonavchi zasady dyferentsiatsiyi ta indyvidualizatsiyi vykonannya pokarannya u vydi pozbavlennya voli v Ukrayini: avtoref. dys. … d-ra yuryd. nauk: 12.00.08. Kharkiv: KhNUVS, 2015. S. 14–16.

[2] Stepanova Yu. P. Kryminal'no-vykonavchi zasady vykonannya ta vidbuvannya pokarannya u vydi pozbavlennya voli na pevnyy strok shchodo ranishe sudymykh osib: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Akad. advokatury Ukrayiny, 2015. S. 12.

The important methodological foundations on the specified problematic were created in the candidate dissertation of O. A. Suprunenko 'The prosecutor's office as a subject of the prevention of crimes in Ukraine' (the specialty 12.00.08) (2016), in the section 2.3. 'The realization of the preventive functions of the prosecutor's office in the process of supervising the observance of laws in the execution of court decisions, the execution of criminal penalties and post-penitentiary influence on people that released from the places of deprivation of liberty' the issue that is related to the order of the application of the restraint measures to convicts in correctional and educational colonies has been considered[1].

An analogical approach was applied in the candidate dissertation of N. V. Ryabykh 'The provision the rights for protection of health and safety of convicts to the deprivation of liberty in Ukraine' (the specialty 12.00.08) (2016), in particular, in the section 2.3. 'The control and supervision of the activity of the personnel of correctional colonies in the process of the provision of the rights for protection of life and health is corrected'[2].

Certain methodological foundations, in the context of the subject of this study, were developed in the candidate's dissertation of V. V. Lopokha 'The

[1] Suprunenko D. O. Prokuratura yak sub'yekt zapobigannya zlochynam v Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: NAVS, 2016. S. 9–10.

[2] Ryabykh N. V. Zabezpechennya v Ukrayini prav zasudzhenykh do pozbavlennya voli na okhoronu zhyttya ta zdorov'ya: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Zaporizhzhya: Klasych. pryvat. un-t, 2016. S. 9–10.

prevention of crimes, that are committed by the personnel of the correctional colonies of Ukraine' (the specialty 12.00.08) (2016), in the section 2.3. 'The main determinants that give rise to and condition the commission of crimes by the personnel of correctional colonies during the execution of sentences in the form of deprivation of liberty', those include those of it, that related to the service activity of the personnel of the PEI, including the application of physical influence, special means and weapon[1].

The content of the right for humane treatment and respect for human dignity of convicts to deprivation of liberty has been thoroughly investigated, which is one of the elements of the mechanism of unlawful assault in the course of applying of the measures of restraint to persons that deprived of liberty, in the candidate's dissertation of I. M. Vasylyuk (the specialty 12.00.09) (2017)[2].

Some substantive directions for crime prevention, concerning the order of application of the security and restraint measures, also developed in the candidate dissertation of K. I. Vasylenko 'The social and educational work in the system of basic means of correction and re-socialization of the convicts in the correctional colonies of Ukraine of medium level of security' (the specialty 12.00.08). In particular, in

[1] Lopokha V. V. Zapobigannya zlochynam, shcho vchynyayut'sya personalom vypravnykh koloniy Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Akad. advokatury Ukrayiny, 2016. S. 10.

[2] Vasylyuk I. M. Pravo zasudzhenykh do pozbavlennya voli na gumanne stavlennya ta povagu yikh lyuds'koyi gidnosti: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Zaporizhzhya: Klasych. pryvat. un-t, 2017. S. 8.

the section 2.1. 'The interrelationship and interaction of social and educational work with the mode of execution and serving of sentence in the form of deprivation of liberty in the correctional colonies of medium level of security' (2017) to such means of the educational influence on the person are related to restraint means[1].

Among the motives for committing crimes by personnel of the SCES of Ukraine, including such, that related to the application of the restraint measures to convicts that are deprived of liberty, V. I. Rudenko in his candidate dissertation (the specialty 12.00.08) (2018) singled out a special group – the so-called 'the service motives', that is, those were related to committing criminal offenses by these persons in the sphere of their official activity[2].

In turn, Ya. O. Likhovitskyi in his doctoral dissertation 'The criminological foundations of the prevention of crimes that are committed by the personnel of the state criminal executive service of Ukraine (the specialty 12.00.08) (2018), along with the specified reasons for the unlawful behavior of these individuals, he singled out others, that are directly related to the activity associated with the application of

[1] Vasylenko K. I. Sotsial'no-vykhovna robota v systemi zasobiv vypravlennya i resotsializatsiyi zasudzhenykh u vypravnykh koloniyakh Ukrayiny serednyogo rivnya bezpeky: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: NAVS, 2017. S. 8.

[2] Rudenko V. I. Motyvy vchynennya zlochyniv personalom ustanov vykonannya pokaran' Ukrayiny: ponyattya ta zapobigannya yikh realizatsiyi na praktytsi: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Zaporizhzhya: Klasych. pryvat. un-t, 2018. S. 8.

the of measures of the physical influence, special means and weapon to convicts, who are deprived of liberty:

a) the general social and legal phenomena, events and processes that are determined by the historical development of society and the state, as well as by the political regime, form of government and structure of the State and their reflection in the criminological research;

b) the specific social and legal events, phenomena and processes that related to the activity of law enforcement and formation, in this regard, to the antisocial installations of their employees, the unlawful psychology and ideology of criminal activity;

c) the isolated (immediate) phenomena, events and processes that have resulted from the activity of personnel of bodies and the punishment execution institutions and determined the commission of crimes by these persons in the sphere of serving sentence)[1].

As established in the course of the current study, some elements of the methodological nature are outlined in general terms in the scientific developments of modern criminologists.

Thus, V. V. Shablystyi in his works substantiated the safe dimension of criminal law, including questions concerning the circumstances defined in the law that exclude the crime of action[2].

[1] Likhovyts'kyy Ya. O. Kryminologichni zasady zapobigannya zlochynam, shcho vchynyayut'sya personalom Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny: avtoref. dys. … d-ra yuryd. nauk: 12.00.08. Kyyiv: In-t derzhavy i prava im. V. M. Korets'kogo NAN Ukrayiny, 2018. S. 15.

[2] Shablystyy V. V. Bezpekovyy vymir kryminal'nogo prava: lyudynotsentrysts'ke doslidzhennya: monografiya. Dnipropetrovs'k: DDUVS; Lira LTD, 2015. 420 s.

N. M. Yarmysh, in addition, summarize the typical mistakes that can be made when qualifying actions on the realization the right to necessary defense, which is important in order to prevent unlawful acts being that committed by the personnel of the SCES of Ukraine in the application of the restraint measures against convicts, deprived of liberty (2013)[1].

In addition, the important in this sense are the results of scientific developments: of O. M. Bondaruk 'The necessary defense when encroaching on the property' (2012)[2]; of V. V. Bondarchuk 'The concept of circumstances excluding crime of the activity: analysis of scientific definitions' (2013)[3]; of V. M. Burdin 'The issues about the legal nature of the circumstances of the crime of activity' (2015)[4]; of R. Ya. Zayets 'The legal analysis of circumstances excluding the administrative liability' (2012)[5]; of

[1] Yarmish N. N. Tipichnyye oshybky pri kvalifikacii deystviy po realizatsii prava na neobkhodimuyu oboronu. *Aktual'ni problemy kryminal'noyi vidpovidal'nosti: materialy Mizhnar. nauk.-prakt. konf. (m. Kharkiv, 10–11 zhovt. 2013 r.).* Kharkiv: Pravo, 2013. S. 158–162.

[2] Bondaruk O. M. Neobkhidna oborona pry posyaganni na vlasnist': dys. … kand. yuryd. nauk: 12.00.08. Kyyiv, 2012. 230 s.

[3] Bondarchuk V. V. Ponyattya obstavyn, shcho vyklykayut' zlochynnist' diyannya: analiz naukovyh vyznachen'. *Visnyk Lugans'kogo derzh. un-tu vnutr. sprav im. E. O. Didorenka.* Lugans'k: RVV LDUVS im. E. O. Didorenka, 2013. Vyp. 2 (63). S. 150–159.

[4] Burdin V. M. Do pytannya pro pravovu pryrodu obstavyn, shcho vyklyuchayut' zlochynnist' diyannya. *Obstavyny, shcho vyklyuchayut' zlochynnist' diyannya: problemy teoriyi ta praktyky: zb. nauk. pr. za materialamy kr. stolu (L'viv, 28 trav. 2015 r.).* L'viv: Galyts. vyd. spilka, 2015. S. 5–8.

[5] Zayets' R. Ya. Pravovyy analiz obstavyn, shcho vyklykayut' administratyvnu vidpovidal'nist': avtoref. dys. … kand. yuryd. nauk: 12.00.07. L'viv: LDUVS, 2012. 20 s.

O. O. Kvasha 'The imaginary defense: the criminal legal qualification and liability' (2012)[1]; of D. M. Mashchenets 'The institute for necessary defense in the criminal law of Ukraine' (2016)[2]; of V. V. Rubtsov 'The circumstances excluding crime in the activity of experts' (2016)[3]; of O. G. Kolb 'The right to the personal safety of the convicts to deprivation of liberty in Ukraine: concept; content and forms of provision' (2014)[4]; of O. I. Ivankov 'The international legal standards in the field of protection of the rights of convicts to deprivation of liberty' (2016)[5]; of M. I. Lysenko 'The Isolation of convicts to deprivation of liberty for a certain term in correctional colonies' (2017)[6]; of S. V. Luchko 'The social work with the convicts as a direction for functioning of peniten-

[1] Kvasha O. O., Anishchuk V. V. Uyavna oborona: kryminal'no-pravova kvalifikatsiya ta vidpovidal'nist'. Luts'k: Vezha-Druk, 2012. 180 s.

[2] Mashchenets' D. M. Instytut neobkhidnoyi oborony u kryminal'nomu pravi Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: In-t derzhavy i prava im. V. M. Korets'kogo NAN Ukrayiny, 2016. 20 s.

[3] Rubtsov V. V. Obstavyny, shcho vyklyuchayut' zlochynnist' diyannya u diyalnosti ekspertiv. *Teoriya kryminal'no-pravovoyi kvalifikatsiyi yak fenomen ukrayins'koyi kryminal'no-pravovoyi doktryny: tezy dop. ta povidoml. uchasnykiv nauk.-prakt. konf. (m. L'viv, 16 sich. 2016 r.).* L'viv; Kyyiv: Vyd. dim "ArtEk", 2016. S. 147–152.

[4] Pravo na osobystu bezpeku zasudzhenykh do pozbavlennya voli v Ukrayini: ponyattya, zmist ta formy zabezpechennya: navch. posib./ A. V. Bab'yak, V. V. Vasylevych, Z. V. Zhuravs'ka ta in.; za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy ta d-ra yuryd. nauk, prof. O. G. Kolba. L'viv: Galyts. vyd. spilka, 2014. 254 s.

[5] Ivankov O. I. Mizhnarodno-pravovi standarty u sferi zabezpechennya zakhystu prav zasudzhenykh do pozbavlennya voli: dys. … kand. yuryd. nauk: 12.00.08. Kharkiv, 2016. 233 s.

[6] Lysenko M. I. Izolyatsiya zasudzhenykh do pozbavlennya voli na pevnyy strok u vypravnykh koloniyakh: dys. … kand. yuryd. nauk: 12.00.08. Kharkiv, 2017. 218 s.

tiary system of the foreign countries' (2014)[1]; of Ye. S. Nazymko 'The foreign experience of the criminal law reglementation of the institution of punishment of the juvenile' (2015)[2]; of S. I. Nezhurbida 'The criminological doctrine on the causality of the crime' (2015)[3]; of M. S. Puzyryov 'The Comparative analysis of the execution of sentences in the form of deprivation of liberty in Ukraine and foreign countries' (2018)[4]; of O. O. Severyn 'The application to persons that convicted to deprivation of liberty, of means of correction and re-socialization: individual aspects' (2015)[5]; of A. V. Tkachenko 'The implementation of the international legal norms in the criminal executive legislation of Ukraine' (2014)[6]; of I. G. Bogatyryov 'The transformation of the criminal executive

[1] Luchko S. V. Sotsial'na robota iz zasudzhenymy yak napryam funktsionuvannya penitentsiarnykh system zarubizhnykh krayin. *Naukovyy visnyk Khersons'kogo derzhavnogo universytetu. Seriya: Yurydychni nauky.* 2014. Vyp. 4. T. 2. S. 166–169.

[2] Nazymko Ye. S. Zarubizhnyy dosvid kryminal'no-pravovoyi reglamentatsiyi instytutu pokarannya nepovnolitnikh: monografiya/za zag. red. O. M. Lytvynova. Kyyiv: KNT, 2015. 368 s.

[3] Nezhurbida S. I. Kryminologichne vchennya pro prychynnist' zlochynnosti: dys. … d-ra yuryd. nauk: 12.00.08. Kyyiv: NAVS, 2015. 605 s.

[4] Puzyryov M. S. Porivnyal'nyy analiz vykonannya pokarannya u vydi pozbavlennya voli na pevnyy strok v Ukrayini ta zarubizhnykh krayinakh: monografiya. Kyyiv: VD "Dakor", 2018. 514 s.

[5] Severyn O. O. Zastosuvannya do osib, zasudzhenykh do pozbavlennya voli, zasobiv vypravlennya ta resotsializatsiyi: okremi aspekty. *Aktual'ni problemy kryminal'nogo prava ta kryminologiyi u svitli reformuvannya kryminalnoyi yustytsiyi: zb. materialiv Mizhnar. nauk.-prakt. konf. (Kharkiv, 22 trav. 2015 r.).* Kharkiv: KhNUVS, 2015. S. 199–200.

[6] Tkachenko A. V. Implementatsiya mizhnarodno-pravovykh norm u kryminal'no-vykonavche zakonodavstvo Ukrayiny. *Naukovyy visnyk Instytutu kryminal'no-vykonavchoyi sluzhby.* 2014. № 1. S. 158–161.

legislation of Ukraine (the penitentiary doctrine)' (2014)[1]; of V. M. Trubnykov 'The problems of personnel provision of the penitentiary system of Ukraine as the foundation for its normal activity' (2015)[2]; of V. O. Chovgan 'The restrictions on the rights of prisoners: legal nature and justification' (2017)[3]; of O. O. Shkuta 'The theoretical and applied foundations of functioning of the criminal executive system of Ukraine' (2018)[4]; of K. V. Bondaryeva 'The wilful disobedience of the demands of the administration of the punishment execution institutions: thr criminal legal and criminal executive characteristic' (2018)[5]; of K. S. Ostapenko 'The legal regulation of the execution of sentences in the correctional colonies of minimum level of security' (2018)[6]; of A. V. Godlevska-

[1] Transformatsiya kryminal'no-vykonavchogo zakonodavstva Ukrayiny (penitentsiarna doktryna)/za zag. red. I. G. Bogatyryova. Kyyiv: Dakor, 2014. 156 s.

[2] Trubnikov V. M. Problemy kadrovogo zabezpechennya penitentsiarnoyi systemy Ukrayiny yak fundament normal'noyi yiyi diyal'nosti. *Kryminal'no-vykonavcha polityka Ukrayiny ta Yevropeys'kogo Soyuzu: rozvytok ta integratsiya: zb. materialiv Mizhnar. nauk.-prakt. konf. (Kyyiv, 27 lystop. 2015 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2015. S. 512–518.

[3] Chovgan V. O. Obmezhennya prav v'yazniv: pravova pryroda ta obgruntuvannya: monografiya. Kharkiv: Prava lyudyny, 2017. 608 s.

[4] Shkuta O. O. Teoretyko-prykladni zasady funktsionuvannya kryminal'no-vykonavchoyi systemy Ukrayiny: avtoref. dys. … d-ra yuryd. nauk: 12.00.08. Irpin': Un-t derzh. fiskal. sluzhby Ukrayiny, 2018. 38 s.

[5] Bondaryeva K. V. Zlisna nepokora vymogam administratsiyi ustanovy vykonannya pokaran': kryminal'no-pravova ta kryminal'no-vykonavcha kharakterystyka: 12.00.08. Kyyiv: NAVS, 2018. 20 s.

[6] Ostapko K. S. Pravova reglamentatsiya vykonannya pokarannya u vydi pozbavlennya voli u vypravnykh koloniyakh minimal'nogo rivnya bezpeky: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: Nats. yuryd. un-t im. Yaroslava Mudrogo, 2018. 20 s.

Konovalova 'The prevention of the wilful disobedience to the requirements of the administration of the punishment execution institutions'[1]; other scientists.

In addition, and in the third period, which began in 2014 and continues to the current time, as actually in the previous two periods (1991–2013) at the normative regulatory, organizational, scientific and other levels of the proper (doctrinal-applied) foundations of the application to convicts that are deprived of liberty, of measures of physical influence, special means and weapon in Ukraine are not created, which determined the choice of theme of the current study, as well as identified the substantive elements of its subject, which have not been previously developed at the theoretical level, namely – still are staying not developed:

a) the modern state of research of problems associated with the application of restraint measures to individuals that are serving sentences in the form of deprivation of liberty (2014–2019) in the science;

b) the social legal nature of the activity related to the convicts that are deprived of liberty, of measures of physical influence, special means and weapons;

c) the modern practice (2014–2019) of the activity of the personnel of the PEI on the specified issues;

d) the influence of the modern of criminal executive policy of Ukraine on the formation of the new organizational and legal foundations of the applica-

[1] Godlevs'ka-Konovalova A. V. Zapobigannya zlisniy nepokori vymogam administratsiyi ustanovy vykonannya pokaran': avtoref. dys. … kand. yuryd. nauk: 12.00.08. Zaporizhzhya: Klasych. pryvat. un-t, 2019. 20 s.

tion of the restraint measures against persons, who are held in the places of deprivation of liberty;

e) the principles of the specified type of the service activity of the personnel of correctional and educational colonies.

An additional argument for the relevance, theoretical and practical importance of the current monograph are such tasks and functions, that rely on the PEI in the current conditions and are defined at the normative regulatory level. These are, in particular, are enshrined in:

– the concepts of reforming (development) of the penitentiary system of Ukraine, in section I 'General provisions' of which is one of the tasks of the reform to define the preparation of legislation in the field of operation of the IIW and PEI in accordance with legislation of European Union[1];

– the laws of Ukraine of March 13, 2014 'On the national guard of Ukraine', in the art. 2 of which to the main functions of current law enforcement agency is the protection of public order, provision of the security and protection of the life, health, rights, liberties and legitimate interests of citizens[2];

– the rules for the application of the special means by National Guard servicemen in the performance of

[1] Pro skhvalennya Kontseptsiyi reformuvannya (rozvytku) penitentsiarnoyi systemy Ukrayiny: Rozporyadzhennya Kabinetu Ministriv Ukrayiny vid 13.09.2017 r. № 654-R. *Uryadovyy kur'yer.* 2017. № 178. 20 veres. S. 8–9.

[2] Pro Natsional'nu gvardiyu Ukrayiny: Zakon Ukrayiny vid 13 beznya 2014 roku № 876-VII. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2014. № 17. St. 594.

their service duties (approved by the resolution of the Cabinet of Ministers of Ukraine of December 20, 2017 № 1024)[1];

– the law of Ukraine of May 21, 2018 'On the national security of Ukraine', in the part 3 of art. 3 which states that the fundamental national interests of Ukraine are the integration of Ukraine into the European political, economic, security, legal space, membership in the European Union and in the organization of the North Atlantic treaty, development of equal beneficial relations with other states[2];

– the law of Ukraine of April 8, 2014 'On amendments to the Criminal executive code of Ukraine on the adaptation of the legal status of the convict to the European standards'[3];

– the other normative legal acts:

• the laws of Ukraine of September 6, 2016 'On amendments to certain legislative acts of Ukraine on the provision of the execution of sentences and realization the rights of convicts'[4];

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[1] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

[2] Pro natsional'nu bezpeku Ukrayiny: Zakon Ukrayiny vid 21 chervnya 2018 roku № 2469-VIII. *Uryadovyy kur'yer.* 2018. № 132. 18 lyp. S. 2–5.

[3] Pro vnesennya zmin do Kryminal'no-vykonavchogo Kodeksu Ukrayiny shchodo adaptatsiyi pravovogo statusu zasudzhenogo do yevropeys'kykh standartiv: Zakon Ukrayiny vid 08.04.2014 r. № 1186-V. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 2014. № 2. St. 869.

[4] Pro vnesennya zmin do deyakykh zakonodavchykh aktiv Ukrayiny shchodo zabezpechennya vykonannya kryminal'nykh pokaran' ta realizatsiyi prav zasudzhenykh: Zakon Ukrayiny vid 6 veresnya 2016 roku № 1492-VIII. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 2016. № 42. St. 699.

• the law of Ukraine 'On amendments to certain legislative acts of Ukraine in the area of the execution of sentences'[1];

• the law of Ukraine of September 6, 2016 № 1492-VIII 'On amendments to the Criminal executive code of Ukraine on the improving the procedure of the application of measures of encouragement and enforcement to convicts'[2];

• other legislative acts on the specified problematic.

Undoubtedly, in the specified list of legal sources that are directly related to the activity that are aimed at improving including legal bases of application of the measures of physical influence, special means and weapon to convicts that deprived of liberty, the priority place is occupied by:

– the strategy of the sustainable development 'Ukraine – 2020'[3];

– the strategy of the reforming of the judiciary, procedure and the related legal institutions for 2015–2020[4];

[1] Pro vnesennya zmin do deyakykh zakonodavchykh aktiv Ukrayiny u sferi vykonannya pokaran': Zakon Ukrayiny vid 18 travnya 2017 roku. *Golos Ukrayiny.* 2017. № 111. 20 cherv. S. 2–3.

[2] Pro vnesennya zmin do Kryminal'no-vykonavchogo kodeksu Ukrayiny shchodo vdoskonalennya poryadku zastosuvannya do zasudzhenykh zakhodiv zaokhochennya i styagnennya: Zakon Ukrayiny vid 6 veresnya 2016 r. № 1487-VIII. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 2016. № 42. St. 699.

[3] Pro Strategiyu stalogo rozvytku "Ukrayina – 2020": Ukaz Prezydenta Ukrayiny vid 12.01.2015 r. № 5/2015. *Uryadovyy kur'yer*. 15.01.2015. № 6.

[4] Pro Strategiyu reformuvannya sudoustroyu, sudochynstva ta sumizhnykh instytutiv na 2015–2020 rr.: Ukaz Prezydenta Ukrayiny vid 20.05.2015 r. № 276/2015. *Ofitsiynyy visnyk Prezydenta Ukrayiny.* 03.06.2015. № 13. St. 864.

– the national strategy for the human rights[1].

As the study of its content shown, in which are set out conceptual directions of development of all spheres of the activity in Ukraine, including the area of the serving sentences and the specific measures and subjects of the realization of these state programs have been identified, which has been decisive in the choice of the object, purpose and task of the current scientific research.

In addition, the results of an anonymous survey testify to the relevance and necessity of holding the scientific research on the specified problematic, which is hold among the personnel of the PEI and convicts that are deprived of liberty. Thus, to the question 'Is the problem of the measures of the physical influence, special means and weapon to convicts relevant for today?' the persons from the personnel of the SCES of Ukraine gave the following answers: yes – 1477 (73 % of 2016 interviewed respondents); no – 18 (1 %); partially – 521 (26 %). In turn, the convicts answered this question as follows: yes – 1287 (63 % of 2016 interviewed respondents); no – 100 (6 %); partially – 629 (31 %) (the supplements A, B, C, C1).

So, the analysis of the state of the scientific developments that are related to the application to convicts that are deprived of liberty, of the of the physical influence, special means and weapon, as well as studying of regulatory legal sources on the spe-

[1] Pro zatverdzhennya Natsional'noyi strategiyi u sferi prav lyudyny: Ukaz Prezydenta Ukrayiny vid 25.08.2015 r. № 501/2015. *Uryadovyy kur'yer.* 2015. № 160. 2 veres. S. 2–4.

cified problematic give reason to argue that this research topic is an urgent issue of the present and is of theoretical and applied nature, and therefore requires the activation of scientists in this direction.

1.2. The methodological foundations for research into the problems related with the application of physical force, special means and weapon to the convicts in the colonies

As the results of the current scientific search have shown, the methodology is one of the important components of the any research[1]. The issue is an actual to the sphere of the execution of sentences, given the peculiarities of the content of the criminal-executive legal relationship that occur during execution and serving of sentence, namely:

1) they occur only after the entry into force of the sentence.

In accordance with the requirements of the part 1 of art. 532 of the CEC of Ukraine, the sentence or decision of the court of first instance shall come into force after the expiry of the period of appeal, that established by this Code, if no such appeal was filed (within 30 days from the day of their proclamation

[1] Kolb I. O., Kolb O. G. Pro rol' metodologiyi doslidzhennya u z'yasuvanni zmistu diyal'nosti, pov'yazanoyi iz zastosuvannyam syly do nepovnolitnikh zasudzhenykh. *Problemy pravovogo regulyuvannya statusu nepovnolitnyoyi osoby u kryminal'no-pravoviy sferi: materialy Mizhnar. krug. stolu (m. Luts'k, 13 trav. 2019 r.).* Luts'k: Skhidnoyevrop. nats. un-t im. Lesi Ukrayinky, 2019. S. 31–33.

(paragraph 1 of the part 2 of the article 395 of the CCP));

2) the most of these legal relationships are of a lasting nature because they have a real period of validity that is established by the judgment of the court (the art. 368, 374 of the CCP);

3) the subjects of these legal relationships can only be the personnel of the bodies and the punishment execution institutions and the convicts. At the same time, a characteristic peculiarity of the subjects of criminal executive legal relationship is their legal inequality, as guilt are based on the subordination of one part to the other;

4) for the specified legal relationship, the specific are the objects, the content of which constitutes public relations arising from the phenomena and processes that defined by law, as well as from the relevant subjects, as well as the real committed by the subjects of the relations acts or omissions (as one of the grounds of legal liability) in the course of execution – serving sentences;

5) the purpose set out in the criminal executive legislation of Ukraine is the logical reflection of the purpose of punishment, which is enshrined in the part 2 of the art. 50 of the CrC of Ukraine;

6) the other features of these legal relationship, which are discussed in the scientific literature[1].

[1] Kryminal'no-vykonavche pravo Ukrayiny: pidruchnyk: u 2-kh t. T. 1/ V. A. Muzyka, V. Ya. Konopel's'kyy, Ye. O. Pys'mennyy ta in.; za zag. red. d-ra yuryd. nauk, prof. Ye. Yu. Barasha. Kyyiv: Nats. akad. vnutr. sprav.; FOP Kandyba T. P., 2018. S. 227–229.

At the same time, in the context of the holding of scientific research in the field of the execution of the sentence, one of the features that significantly affects their results and, in general, the choice of particular methods of the scientific search, the procedure for visiting the PEI (the art. 24 of the CEC) is defined in the law, as well as the appropriate regime of the execution – serving sentences, including the issue of the pass of citizens to the territory of the PEI (the part 6 of the art. 102 of the CEC).

Namely, the specified features were used in this work in the realization of its task, as a methodology for the research of the content of the activity, which is related to the application in Ukraine to convicts that deprived of the liberty, of the enshrined in the law the measures of the physical influence, special means and weapon (the art. 106 of the CEC).

In scientific sources, the word 'methodology' is interpreted as a set of the research methods that used in any scientific activity in accordance with the specifics of the object of the its knowledge[1], and under 'research' is meant a scientific work in which any issue is studied[2].

At the same time, as A. P. Zakalyuk rightly noted, the highest form of cognition is scientific knowledge, which is the result of scientific research, which differs from other forms of cognition by its qualitative features, namely:

[1] Velykyy tlumachnyy slovnyk suchasnoyi ukrayins'koyi movy/uklad. O. Yeroshenko. Donets'k: TOV "Gloriya Treyd", 2012. S. 371.

[2] Ibid, p. 191.

a) it is always purposeful, that is, it is not carried out spontaneously, but for the intended purpose;

b) this cognition is systemic, that is, in a certain way provided with orderliness, which is why scientific cognition, as a rule, is usually systemically logical;

c) the system and regularity make scientific knowledge the controlled, that is, it is always possible to check its adequacy, compliance with the current level of scientific knowledge;

d) these and other properties attach to the scientific knowledge of reliability;

e) the result of scientific knowledge, as a rule, is the definition (or confirmation) of the certain laws, theories, concepts, scientific facts;

f) the scientific research always has the methodological provision;

g) if to consider scientific cognition as a certain system, then namely scientific method itself is the system-forming element in it, in connection with which and depending on which are all other elements, in particular, the result of scientific cognition[1].

Given the specified particularities of scientific research, M. S. Kelman proves in his works that a deep analysis of all phenomena, determining the basic guidelines for the further development of legal science is the most important direction of scientific research, the basis of effectiveness of which should be the methodology of the jurisprudence.

[1] Zakalyuk A. P. Kurs suchasnoyi ukrayins'koyi kryminologiyi: teoriya i praktyka: u 3-kh kn. Kyyiv: Vyd. dim "In Yure", 2008. Kn. 3: Praktychna kryminologiya. S. 96–97.

That is why, in his opinion, the formation of a methodological system is a priority task for Ukrainian legal science[1].

An important in this regard is the following conclusion on the specified problematic – like any social activity, the methodology of scientific research performs the following functions:

1) identifies ways of acquiring scientific knowledge that reflects the dynamics of processes and phenomena;

2) provides for a special way by which research goal can be achieved;

3) provides the comprehensiveness of getting information regarding the processes or phenomena that are studied;

4) helps to introduce the new information;

5) provides the clarification, the enrichment, the systematization of the terms and the concepts in the science;

6) creates a system of scientific information that based on objective phenomena and logical analytical tools of scientific cognition[2].

On this basis, scientists share three types of methodologies:

1. The philosophical or fundamental, that is, such a system of dialectical methods, which are the most

[1] Kel'man M. S. Metodologiya yak forma myslennya u skladovykh kultury doslidnyka: navch. posib. dlya aspirantiv ta magistriv/za zag. red. M. S. Kel'mana. L'viv: Rastra-7, 2017. S. 5.

[2] Osnovy metodologiyi, naukovykh doslidzhen': navch. posib. dlya stud. i kursantiv/P. S. Prybutko, N. V. Zayats', G. I. Luk'yanets'; za red. P. S. Prybutka. Kyyiv: NAVS, 2015. S. 11–12.

general and operate in the whole field of scientific cognition, concretizing both through the general scientific methodology and through the methodology of the individual sciences.

2. The general scientific that is used in the vast majority of sciences and based on general scientific principles of the research: historical, logical, systemic, modelling, etc.

3. Specifically scientific, that is, that is a set of specific methods of each particular science, which are the basis for solving the research problem[1].

The specified scientific approaches regarding the content of the methodology of the research have been used with this work to study issues, that concern the social and legal nature of the measures of physical influence, special means and weapon, including the formulation of concepts that are directly relevant to the specified problematic, while meeting the requirements that are applied to the conceptual apparatus[2].

In addition, such scientific position is based on this work on the conclusions of A. P. Ryabchynska about that in the current legal science methodology, there are not only crisis phenomena that associated with the prevalence of the research of purely descriptive character, which are reduced to commenting on legal acts, because of that it has no relevant scientific value, but there is also no clear submission of the

[1] Osnovy metodologiyi, naukovykh doslidzhen': navch. posib. dlya stud. i kursantiv/P. S. Prybutko, N. V. Zayats', G. I. Luk'yanets'; za red. P. S. Prybutka. Kyyiv: NAVS, 2015. S. 12.

[2] Ibid, p. 20.

methodological toolkits of specific scientific research, including the sphere of the execution of sentences[1].

Based on this and taking into account the peculiarities of criminal executive legal relationship, as well as the specifics of scientific research in the sphere of the execution of sentences, in this paper, under the 'methodology of the research of the content of activity that related to the application to convicts, who are deprived of liberty, defined by the law the restraint measures', means a system of methods, techniques and means of the scientific cognition, which consists of the complex of tried-and-tested on the practice most rational ways, means and forms of the movement of the thinking that are used in the course of scientific search and targeted at the right study of the content of the socio-legal nature of the specified social phenomenon.

Thus, the system-forming features that make up the meaning of the current concept include the followings:

1. It is not just a set, but also the system of methods, techniques and means of the scientific cognition.

The system in science is understood to be an order that is caused by the correct, orderly arrangement and interconnection of parts of anything[2], and the

[1] Ryabchyns'ka O. P. Systema pokaran' v Ukrayini: ponyattya, znachennya ta pryntsypy pobudovy: monografiya. Zaporizhzhya: Aktsent Investreyd, 2013. S. 11.

[2] Velykyy tlumachnyy slovnyk suchasnoyi ukrayins'koyi movy/uklad. O. Yeroshenko. Donets'k: TOV "Gloriya Treyd", 2012. S. 609.

method is understood as a way of knowing the phenomena of nature and social life; the reception or system of receptions that used in any field of activity[1].

In turn, the word 'the reception' means a certain attitude towards someone; something[2], and 'the remedy' – any special action that makes it possible to accomplish anything; to achieve something; way[3].

On this basis, it can be stated that in such a systematic approach, the classification of the research methods should be discussed.

The scientific methods of research are classified according to the following features: a) the level of cognition – the empirical and theoretical; b) the accuracy of assumptions – the deterministic and academic as well as probabilistic – the statistical; c) the functions that realized in the process of scientific cognition – the methods of systematization, explanation and prediction; d) the specific field of research – the physical, biological, social, technical, etc.[4]

The methods of the research are also divided in science into: 1) the general scientific (they can be used in all fields of the jurisprudence); 2) the special (are applied in a specific field of science)[5].

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[1] Velykyy tlumachnyy slovnyk suchasnoyi ukrayins'koyi movy/uklad. O. Yeroshenko. Donets'k: TOV "Gloriya Treyd", 2012. S. 371.

[2] Ibid, p. 539.

[3] Ibid, p. 237.

[4] Osnovy metodologiyi, naukovykh doslidzhen': navch. posib. dlya stud. i kursantiv/P. S. Prybutko, N. V. Zayats', G. I. Luk'yanets'; za red. P. S. Prybutka. Kyyiv: NAVS, 2015. S. 22.

[5] Ibid, p. 23.

In doing so, as the practice shows, both first and second methods of scientific cognition are used in the any research.

In turn, of general scientific methods are divided into three large groups by scientists: a) the methods of empirical research: observation, measurement, experiment, monitoring; b) the methods of theoretical research: ascent from abstract to concrete, idealization, imaginary experiment, formalization, axiomatic method or deductive-axiomatic; c) the general methods (used both at empirical and theoretical levels of research): abstraction and concretization, analysis and synthesis, induction and deduction, abduction, modeling, analogy, historical and logical methods, other methods of knowledge of social and legal phenomena and processes[1].

In addition, the specific methods of research are applied based on the specified three groups of general scientific methods, as well as of features of the content of the object and subject of research, which are able to achieve its purpose and to realize fully defined tasks of a specific scientific search.

As the practice of scientific research shows, the order of application of special methods of scientific research may be different, depending on one or another feature of separation.

In particular, scientists mainly consider three methods: a) the legal and historical (history of law);

[1] Osnovy metodologiyi, naukovykh doslidzhen': navch. posib. dlya stud. i kursantiv/P. S. Prybutko, N. V. Zayats', G. I. Luk'yanets'; za red. P. S. Prybutka. Kyyiv: NAVS, 2015. S. 23.

b) the legal and dogmatic (system of law); c) the political and legal (improvement of current law and generally the creation of codes or separate laws)[1].

In doing so, it should be noted that many of the special methods are not limited by the above.

2. The specified methods, receptions and means of scientific knowledge should be tested in the course of previous (historically determined) research.

In this case we are talking about the correlation of the empirical and theoretical levels of scientific cognition, which though differ from one another but are organically interconnected and mutually conditioned in a coherent structure of scientific cognition[2].

At the same time, the empirical research reveals new facts, new data of observations and experiments, stimulates the development of the theoretical level, puts before it new problems and tasks.

At the same time, the theoretical research, considering and concretizing the theoretical content of science, opens new perspectives of explaining and predicting facts and, thus, orients and directs empirical research.

However, as scientists rightly point out, it should be borne in mind that the theoretical level of scientific knowledge is based on a broader and more complex foundation than ordinary empirical research and

[1] Kel'man M. S. Metodologiya yak forma myslennya u skladovykh kul'tury doslidnyka: navch. posib. dlya aspirantiv ta magistriv/za zag. red. M. S. Kel'mana. L'viv: Rastra-7, 2017. S. 16.

[2] Osnovy metodologiyi, naukovykh doslidzhen': navch. posib. dlya stud. i kursantiv/P. S. Prybutko, N. V. Zayats', G. I. Luk'yanets'; za red. P. S. Prybutka. Kyyiv: NAVS, 2015. S. 43.

is based on a revision, rethinking and development of previous theories. This is one of its most important features[1].

That is why approbation (from the Latin *approbation* – official approval, which is based on verification, testing, broad discussion)[2] of the empirical and theoretical methods of scientific knowledge in practice is a necessary element of the methodology of any research.

3. The specified methods, receptions and measures of scientific cognition are the most rational in the way of movement of thinking of the researcher and achievement of its goal.

In explanatory dictionaries, the rational means what is based on the requirements of reason, logic; smart[3]. Some of the rational methods of scientific research include the so-called heuristic (from the Greek *heuriso* – find, search)[4] methods.

In the narrow sense, they are ways of learning (logical, intuitive, etc.), and in the broad – informal methods, which allow to explore creative activity, discover new in judgments, ideas, ways of action[5]. In the

[1] Osnovy metodologiyi, naukovykh doslidzhen': navch. posib. dlya stud. i kursantiv/P. S. Prybutko, N. V. Zayats', G. I. Luk'yanets'; za red. P. S. Prybutka. Kyyiv: NAVS, 2015. S. 43.

[2] Buliko A. N. Bol'shoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. S. 54.

[3] Velykyy tlumachnyy slovnyk suchasnoyi ukrayins'koyi movy/uklad. O. Yeroshenko. Donets'k: TOV "Gloriya Trejd", 2012. S. 82.

[4] Buliko A. N. Bol'shoy slovar' inostrannych slov. 35 tysyach slov... S. 670.

[5] Osnovy metodologiyi, naukovykh doslidzhen'... S. 53.

same context, it is worth mentioning the differences between the concepts of 'rational' and 'sensual', as well as between 'theoretical' and 'empirical' research.

In particular, 'sensual' and 'rational' characterize the cognitive abilities of human, but 'empirical' and 'theoretical' – relatively independent stages and levels of scientific research[1], which, of course, should be taken into account when choosing certain methods of scientific cognition.

The rational methods also include methods of the theoretical level of scientific research, which underlies the creative process.

In doing so, the peculiarity of these methods is that they come together on abstract representations, ideas, concepts that are directly related to the process of the practical cognition[2].

The methods of theoretical level include: a) the method of ascending from abstract to concrete; b) the method of formalization and idealization; c) the axiomatic method; d) the hypothetical deductive method; etc.

4. The scientific research is directed to the correct cognition of the content of the social and legal nature of the social phenomenon related to the activities related to the application of measures of restraint to convicts that deprived of liberty.

In the current case we are talking about a particular subject of methodology and about the subject

[1] Osnovy metodologiyi, naukovykh doslidzhen': navch. posib. dlya stud. i kursantiv/P. S. Prybutko, N. V. Zayats', G. I. Luk'yanets'; za red. P. S. Prybutka. Kyyiv: NAVS, 2015. S. 42.

[2] Ibid, p. 37.

of this study – social legal nature of the measures of physical influence, special means and weapon to convicts that are deprived of liberty, as well as about a set of those methods, tools and receptions by which new knowledge on the specified problematic of scientific cognition of knowledge are obtained and substantiated.

In doing so, such research shall meet the following system requirements:

a) the selected methods of scientific cognition are objectively predetermined by its subject;

b) the identified methods are necessary and possible to prove and verify the truth by means of objective criteria;

c) the chosen methods are an indispensable indicator of the acceptability of a particular conceptual approach and research method, which is able to approximate to the disclosure of the social essence of the phenomena under study, and not to their concealment or blurring[1].

In this approach, the methodology serves as a conceptual statement of the content and methods of study of phenomena that related to the application to convicts in the places of the deprivation of liberty of the restraint measures, and which provide the achievement of the goal and the obtaining the most objective, accurate and systematic information about the specified phenomena.

[1] Osnovy metodologiyi, naukovykh doslidzhen': navch. posib. dlya stud. i kursantiv/P. S. Prybutko, N. V. Zayats', G. I. Luk'yanets'; za red. P. S. Prybutka. Kyyiv: NAVS, 2015. S. 13.

It is this the theoretical 'model' is used in the research of the subject of this scientific development, taking into account the peculiarities of the content of criminal executive activity, which relates to the process of the application regarding convicts that deprived of liberty, of the measures of physical influence, special means and weapon, as well as of specifics of the process of scientific knowledge in the sphere of execution of sentences of Ukraine, which is conditioned by the requirements of the regime of execution and serving of sentences in the form of imprisonment for a definite term.

Regarding the content of the specific methods of scientific cognition that are used in this study, the priority among them became the dialectical method, by which were examined all, without exception, issues that made up the content of the tasks of this scientific development (there are 15 according to the structure of the research).

Given the essence of the current method (from the Greek dialektikos – related with dialectics, based on dialectics (the most general laws of the development of nature, society and thinking, in their development and interconnection and interdependence[1]), in the specified work it is established and proven:

1) the periods of formation and development of legal foundations of the application regarding convicts that deprived of liberty, of the measures of physical influence, special means and weapon, as well

[1] Buliko A. N. Bol'shoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. S. 194.

as their interconnection, interaction and interdependence with the content of criminal executive policy and in general in Ukraine (the section 1.1 of the specified scientific development).

As O. M. Dzhuzha rightly pointed out in this regard, the laws and categories of the dialectics are at the heart of the methodology of research. This is the basis of both general scientific and special methods (sociological, statistical, psychological, etc.)[1];

2) the objective connection of the national legislation and the norms of the international law on the specified problematic of the study due to the legal obligations that have been undertaken by Ukraine when joining the relevant international associations (UN; CoE; Interpol, etc.), as well as the need to enforcement of the practice of the application of measures of restraint to convicts in the places of the deprivation of liberty to the best overseas specimens or international standards (the section 1.3 of this scientific work).

In this connection, as stated in the part 1 of the art. 9 of the Constitution of Ukraine, the current international treaties, the consent to the compulsory of which was provided by the Verkhovna Rada of Ukraine, is the part of the national legislation of Ukraine.

The specified provision fully applies to the sphere of the execution of sentences, which is why it is one of the constituent sources of criminal executive law

[1] Kryminologiya: pidruch. dlya stud. vyshch. navch. zakl./O. M. Dzhuzha, Ya. Yu. Kondrat'yev, O. G. Kulyk, P. P. Mykhaylenko ta in.; za zag. red. O. M. Dzhuzhy. Kyyiv: Yurinkom Inter, 2002. S. 11.

of Ukraine and the international legal acts defined in the such form (the ratified in whole or in part (from the Latin *ratus* – resolved, approved)[1].

In this context, it is also reasonable conclusion that was made by M. V. Buromenskyi, namely: the order and rules of national implementation of the norms of international law are in Ukraine at the level of scientific doctrinal phenomena and beliefs[2]. In doing so, its types and means also have a doctrinal interpretation.

Namely, the national implementation (from Latin implere – to implement)[3] of the norms of international law is related to the practice of the so-called 'the sectorial mechanism' in the Ukrainian legislation, as well as the incorporation (German incorporation; Latin incorporation – the accession)[4] of the norms of international treaties to the acts of the Ukrainian legislation[5].

3) the content and legal basis for the application in Ukraine of the specified measures to convicts, as well as their social conditionality in the context of the circumstances that caused the crime of the act (necessary defense; detention of the offender; execu-

[1] Buliko A. N. Bol'shoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. S. 488.

[2] Ukrayins'ka doktryna spivvidnoshennya mizhnarodnogo i natsional'nogo prava. *Pravova doktryna Ukrayiny: u 5 t.* Kharkiv: Pravo, 2013. T. 2: Publichno-pravova doktryna Ukrayiny/M. V. Buromens'kyy, Yu. P. Bytyak, Yu. G. Barash ta in.; za zag. red. Yu. P. Bytyaka. S. 661.

[3] Buliko A. N. Bol'shoy slovar' inostrannych slov... S. 226.

[4] Ibid, p. 231.

[5] Ukrayins'ka doktryna spivvidnoshennya mizhnarodnogo i natsional'nogo prava... S. 661–662.

tion of the order; etc.) (the chapter 2 of this scientific development).

As A. Kh. Stepanyuk and K. A. Avtukhov concluded in this regard, after the entry into force of a court sentence, for its implementation a regulated by the norms of the criminal executive law the special criminal executive activity of the administration of bodies and institutions of execution of the punishment execution institutions is necessary for its implementation, is subordinated to the purpose of the punishment, which is lead by means of material substantive and legal means, methods and techniques to a concrete result in the form of the committing of the state coercion[1];

4) the trends and structure of the law-enforcement practice that related to the application of measures of the physical influence, special means and weapon to convicts in the correctional and educational colonies of Ukraine that formed during 1991–2018 and are objectively conditioned by the content of the criminal executive activity, which was carried out during the specified period (the chapter 3 of the specified scientific work).

The point in this case is that criminal executive activity, which is related to the application to convicts in the places of deprivation of liberty of the restraint measures, is closely linked to the criminal

[1] Stepanyuk A. Kh., Avtukhov K. A. Protsesual'ni aspekty doktryny kryminal'no-vykonavchogo prava. *Pravova doktryna Ukrayiny: u 5 t.* Kharkiv: Pravo, 2013. T. 5: Kryminal'no-pravovi nauky v Ukrayini: stan, problemy ta shlyakhy rozvytku/V. Ya. Tatsiy ta in.; za zag. red. V. Ya. Tatsiya, V. I. Borysova. S. 791.

executive process as a whole of the execution – the serving of sentences in the form of deprivation of liberty, the significance of which, according to experts, as a scientific tool for cognition of criminal executive activity is that a particular procedure appears as a model that is necessary in the study of other directions of activity of bodies and the punishment execution institutions[1].

That is why, in their conviction, further comprehension of the problems of procedural form should clearly prove that this sign has quite stable in nature and finds its expression in any form of the activity of bodies and punishment execution institutions[2], including that which is the subject of the current scientific study;

5) the main directions of the improvement of the legal mechanism and practice of the application in Ukraine of the restraint measures to convicts that deprived of liberty, who are directly interconnected and interdependent by the content of modern state strategies to combat crime in Ukraine[3] and, in general, state policy in the sphere of rights human[4] (the chapter 4 of the current scientific development).

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[1] Stepanyuk A. Kh., Avtukhov K. A. Protsesual'ni aspekty doktryny kryminal'no-vykonavchogo prava. Vybrani pratsi/uklad. K. A. Avtukhov. Kharkiv: Pravo, 2017. S. 599.

[2] Ibid.

[3] Pro Strategiyu reformuvannya sudoustroyu, sudochynstva ta sumizhnykh instytutiv na 2015–2020 rr.: Ukaz Prezydenta Ukrayiny vid 20.05.2015 r. № 276/2015. *Ofitsiynyy visnyk Prezydenta Ukrayiny.* 03.06.2015. № 13. St. 864.

[4] Pro zatverdzhennya Natsional'noyi strategiyi u sferi prav lyudyny: Ukaz Prezydenta Ukrayiny vid 25.08.2015 r. № 501/2015. *Uryadovyy kur'yer.* 2015. № 160. 2 veres. S. 2–4.

In particular, in the General provisions of the Concept of the reforming (the development) of the penitentiary system of Ukraine in this regard stated that the legacy of the Soviet Union was oriented on the establishment of a police-punitive apparatus for the supervision under prisoners, whereas the purpose of the execution of sentences should be to correct and re-socialization of the convicts[1].

That is why the purpose of the current Concept identified to further reform the penitentiary system of Ukraine for the unquestioningly observance of the rights of human and citizen and humanization of the criminal executive mechanism, the establishing conformity between the tasks and functions of such bodies, on the one hand, by the structure and their number, on the second, and financial provision, and on the third, since the system had being financed at the rate of 40 % of the needs during the years of the independence[2].

Thus, the dialectical method delivered in the course of the current scientific search as an instrument of cognition the content of all problematic issues, that formed the essence of this research, as well as allowed the systematic approach to solve existing problems, taking into account their interconnection, interdependence and interaction.

The important in this context became the use of empirical-level research methods in the specified

[1] Pro skhvalennya Kontseptsiyi reformuvannya (rozvytku) penitentsiarnoyi systemy Ukrayiny: Rozporyadzhennya Kabinetu Ministriv Ukrayiny vid 13.09.2017 r. № 654-R. *Uryadovyy kur'yer.* 2017. № 178. 20 veres. S. 8–9.

[2] Ibid.

scientific development, with which the facts of science and facts of science are clearly defined, that directly related to the executive criminal activity, which is related to the application to convicts, who are deprived of liberty, the measures of physical influence, special means and weapon.

In science, the facts of an activity means events, phenomena and processes that have taken place or are taking place in reality (different sides, properties, and relation of the studied objects), and under the scientific facts – the reflected in the mind of the person (the researcher) the facts of reality that have been verified, realized and fixed in the language of the science (this is an element of the logical structure of a certain system of scientific knowledge)[1].

In the specified scientific work to the facts of the reality classified as such life situations that occur during the application to convicts in the places of the deprivation of liberty of the restraint measures that are defined in the law.

In doing so, their evaluation was carried out using such methods of the empirical level as:

– the description and observations (the subsections 2.1., 2.2., 3.1.–3.3. of this work);

– the comparison (the subsections 1.1. and 1.3.);

– the measurement (the subsections 3.1.–3.3.).

At the same time, the immediate empirical materials that were used in the research of the current problematic became:

[1] Osnovy metodologiyi, naukovykh doslidzhen': navch. posib. dlya stud. i kursantiv/P. S. Prybutko, N. V. Zayats', G. I. Luk'yanets'; za red. P. S. Prybutka. Kyyiv: NAVS, 2015. S. 25.

a) the official statistic data[1] that obtained by the way of the use of appropriate statistical methods of the studying phenomena and processes that related to the practice of the application to convicts that deprived of the liberty of the measures of physical influence, special means and weapon (the method of mass statistical observation (in this case, the practice of the application of the restraint measures during 1991–2018 was investigated));

b) the grouping method (the practice of applying a particular the restraint measure was subjected to scientific evaluation (the physical influence, special means, weapon));

c) the statistical analysis (data that were published in the official statistical sources were examined (the state reporting, departmental newsletters of the SCES of Ukraine, the Prosecutor General's Office of Ukraine and other law enforcement agencies of our country)), as well as other methods that are used in statistics (the tabular and the graphical methods, the method of the average values, the correlation method)[2].

All of the specified cognition methods have been applied in the course of this scientific development to clarify the content of the task that related to clarifying the current state, structure and trends of the application to convicts, who served the sentences in the form of deprivation of liberty in the correctional

[1] Pro derzhavnu statystyku: Zakon Ukrayiny vid 17 chervnya 1992 r. № 2614-XII. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 1992. № 43. St. 608.

[2] Pravova statystyka: pidruchnyk/O. M. Dzhuzha, V. V. Vasylevych, G. S. Polishchuk ta in.; za red. prof. O. M. Dzhuzhy. Kyyiv: Atika, 2014. S. 15–16.

colonies, of the measures of physical influence, special means and weapon (the chapter 3, the introduction and the subsection 2.1).

In addition, the empirical sources of the current study became:

1) the results of an anonymous poll in 2016 of convicts that deprived of liberty and in 2016 of persons of personnel of the SCES of Ukraine that was conducted on a voluntary basis in 2018 in 5 regions of Ukraine (Volyn, Zhytomyr, Zaporizhia, Kyiv and Kharkiv) on a specially designed questionnaire developed by the author of the scientific development (the supplements A, B);

2) the summarized data that presented in the analytical certificates on these issues (the supplements B, C1);

3) the information that reflected in analytical certificates concerning the analysis of 312 archival criminal proceedings (cases) on the facts of the application of the restraint measures to the convicts in the places of deprivation of liberty (1991–2018) (the supplement D);

4) the results of the studying of the 312 archival materials of the service investigations that conducted on the specified issues in 2013–2018 (the chapter 3, the introduction and the subsection 2.1 of this scientific development) (the supplement F).

The possibilities of comparative legal (comparative) method[1] that used in the current work to clarify

[1] Khavronyuk M. I. Suchasne zagal'noyevropeys'ke kryminal'ne zakonodavstvo: problemy garmonizatsiyi: monografiya. Kyyiv: Istyna, 2005. S. 3–16.

the content of international legal approaches to the specified problematic of research (in particular, when studying those rules of international law that directly relate to the application to convicts that deprived of liberty, of the restraint measures, namely:

– the European penitentiary rules;

– the international standard rules on the treatment of convicts;

– the Convention against torture and other cruel, inhuman or degrading types of treatment or punishment;

– in the analysis of foreign practice on the specified issues (in particular, in the study of law enforcement and enforcement activity in the US, EU, CIS, Japan and other countries) (the subsection 1.3 of this scientific development)

As O. Lysenko concluded on this regard, the comparative legislation gives an opportunity to assess the state of development of the national legal system with the global trends in the development of law, and, on the basis of comparison, to select the best examples from legal experience to improve the first, as well as leads to a new interpretation of the provisions of the legislation and to the emergence of new meanings, which are realized in human activity and gives an opportunity to identify common features and peculiarities, mutual influence, tendencies and patterns of development of legislation of different countries in the conditions of integration processes that are taking place now in Europe and the world[1].

[1] Lysenko O. Predmet porivnyal'nogo pravoznavstva. *Pravo Ukrayiny.* 2001. № 3. S. 153.

In the same context, the historical and legal method of research has been used in this work, by which: a) found the nature of the normative legal provision of the activities of the personnel of the colonies that related to the application in Ukraine of the enshrined in the law of restraint measures to the convicts that deprived of liberty; b) defined historical scientifically substantiated periods of the forming and development of these legal bases (the subsection 1.1 of the current scientific development); c) the content of the criminal executive policy on these issues, which are realized into practice during 1991–2018 (the subsection 4.1) is established.

An important role in the studying of the essence of certain legal concepts, phenomena and processes and the formation of their author's analogues and variants played in the current study and logical method of scientific cognition.

In particular, in the subsection 1.2 of this work, using this method was the concept formulated such as 'the methodology for the research of the content of activity that related to the application to convicts that deprived of liberty, of the defined in the law restraint measures', as well as the analysis of its system-forming features was carried out.

This method also provided an opportunity to:

– find out the content of the concept of the restraint measures that are applied to convicts that deprived of liberty (the subsection 2.1 of this scientific development);

– formulate the author's definition of the current concept (the subsection 2.1), which has both theore-

tical significance (creates promising directions for more active scientific search on the specified issues) as well as practical direction, since it allows at a more practice level the personnel of colonies to approach solving of problems, that arise in their relationship with persons, who are serving sentences in the form of deprivation of liberty.

In turn, such a general scientific method of scientific research as analysis has allowed:

1) to find out the appointment and consequences of the application to convicts that deprived of liberty, of the each individual restraint measure;

2) to implement their typology on the criterion of impact on the lives and health of these persons, namely: a) the measures of the psychological character; b) the measures that related to carrying of specific harm to the health of offender; c) the measures that infringe upon the life of this person (the subsection 2.2 of this scientific development);

3) to establish a link between the defined in the law measures of the physical influence, special means and weapon, which made it possible to prove both the autonomy and the systematic application of them in cases that determined at the legal level (the subsection 3.1).

In the same sense, the obtained relevant scientific results owing to the application of the method of synthesis in this study. In particular, with its help, the need to modify normative regulatory approaches has been brought, that determine the content of the activity regarding the application to convicts that deprived of liberty, of the restraint measures, namely –

in all cases, such actions by the personnel of the colonies should be of exceptional nature only, and priority in the relationship between the specified subjects of the criminal executive activity should be the verbal methods, including those moments that were related to conflict between them (the subsection 4.2 of this scientific development).

An important place in the system of methods of this scientific research was also taken by the method of social naturalism[1], by which:

– the defined social nature of the restraint measures;

– has been proved the natural right of any person to self-protect their life and health and other natural human rights against unlawful encroachment, which are enshrined in law in the form of circumstances that exclude crime of activity (the subsection 4.2 of this scientific development (the subsections 2.1, 4.3 of this scientific development).

The structural-system method also played a role in the realization of the tasks of this research, which made it possible to develop a number of scientifically sound measures that are aimed at improving the legal foundations of the application to convicts in the places of deprivation of liberty, of the measures of the physical influence, special means and weapon, having proved that a systematic approach should be dominant in the way of the specified activity of the personnel of colonies, namely: the offender must be subjected

[1] Kostenko O. M. Kul'tura i zakon – u protydiyi zlu: monografiya. Kyyiv: Atika, 2008. 352 s.

to the restraint measures that are defined in the law (the art. 106 of the CEC of Ukraine) according to the following algorithm:

a) the use in the situation that was established (the manifestations of rampage, malicious disobedience, other unlawful acts, etc.) of verbal methods for the resolution of conflict;

b) the warning about the possibility of the application of restraint measures (by the voice; through the loudspeaker; etc.);

c) the application, in the first place, those restraint measures that are less vulnerable to the offender (in particular of the handcuffs);

d) the repeated warning of the application of other identified in the law the restraint measures;

e) the direct application of these measures (of physical force or various special means);

f) the urgent informing on the application of restraint measures to the immediate head of the colony;

g) the immediate provision of medical care for the person regarding whom appropriate restraint measures were applied;

h) the procedural (documentary) processing of the results of the application of the restraint measures that are identified at the regulatory and legal level;

i) providing psychological assistance to persons from the number of the personnel of colonies who applied the appropriate restraint measures to convicts.

In doing so, it has been proved that firearms regarding convicts under the circumstances that are established by law, should only be used in exceptional

cases, when other restraint measures have not allowed the unlawful encroachment on the life or health of any person, who was either a subject (the personnel of colonies or convicts) or a party to the specified criminal executive legal relationship (the close relatives of convicts; prosecutors; the public; other persons that are discussed, in particular, in the art. 22–25 and the art. 105 of the CEC of Ukraine) (the subsections 2.2, 2.3, 5.1, 5.2 of this scientific development).

In turn, the prognostic method of the research was used in this work to develop the main directions of improvement of the legal mechanism and practice of the application in Ukraine of the restraint measures to convicts that deprived of liberty (the chapter 4).

In particular, by using the specified method of the scientific cognition, along with other, which are discussed above, the necessity of changing the content of modern criminal executive policy in the context of those problems has been proved, which appear in relation to the application to convicts that deprived of liberty of the measures of the physical influence, special means and weapon (the subsection 4.1), as well as the strengthening of state and public control over the activity of the personnel of the colonies on the specified issues (the subsections 4.3, 5.3) and the improvement of the normative legal foundations of the application of these restraint measures on a fundamentally new science-based basis (the subsections 4.2, 5.2).

In addition, each subsection of the current scientific development used also other methods of the cognition the content of the socio-legal nature of the measures of the physical influence, special means and

weapon that are applicable in the cases, which are specified by law and are quite common in the holding of research:

1) the analogies (when comparing the legal foundations of the application of restraint measures by other law enforcement agencies (by the National Police, the National Guard of Ukraine, the SBU, etc.) (the subsections 2.3, 5.1);

2) the induction (when determining the state of the modern practice on the specified issues) (the subsection 3.3);

3) the abstracting (for development an authoring variant and algorithm for actions of the personnel of colonies in the application of the restraint measures to convicts that deprived of liberty) (the subsections 4.2, 5.2);

4) the deductions (in the general characterization and evaluation of the individual taken types of the restraint measures to convicts in the places of deprivation of liberty) (the subsections 2.1 and 2.2 of this work);

5) the modeling (in the forming of copyright variants of drafts of law relating to the activity that is related to the application to convicts in the colonies of the measures of the physical influence, special means and weapon) (the subsections 4.2, 4.3, 5.3 of the specified scientific development);

6) the other known in the science methods of the scientific research[1].

[1] Kel'man M. S. Metodologiya yak forma myslennya u skladovykh kul'tury doslidnyka: navch. posib. dlya aspirantiv ta magistriv/za zag. red. M. S. Kel'mana. L'viv: Rastra-7, 2017. S. 22–133.

Thus, the use of the mentioned in these scientific development methods of the cognition of the social-legal phenomena and processes that are related to the content of the application to convicts that are deprived of liberty, which are defined in the law (the art. 106 of the CEC of Ukraine) of the measures of the physical influence, special means and weapon allowed not only to fully realize the tasks that are established for carrying out the current research, but also to achieve the goal set for this purpose, namely:

1) to find out the essence of the socio-legal nature of the restraint measures that the personnel of the colonies are entitled to apply in the certain legally defined situations;

2) to develop on this basis a set of the scientifically sound measures, which are aimed at improving the legal mechanism on the specified problematic, in particular, also in the form of a comparative table to the current legislation of Ukraine, which is addressed into the relevant Committee of the Verkhovna Rada of Ukraine for use in norm-setting activity (the supplements J, O).

In doing so, it should be stated that properly chosen methodology of a particular scientific research not only creates effective and conditions for the cognition the content of the object and subject of any scientific development but also is necessary element of the scientific activity in general, since the latter is intended to accompany (to support or apply) those reforms that are carried out in a particular area of the public relations.

In particular, in this precisely the dialectical connection of the current scientific study is manifested with such state programs that are related to area of execution of sentences (for example, with the Concept of the reform (development) of the penitentiary system of Ukraine[1] and of the Strategy for reforming of the judiciary, procedure and related institutions for 2015–2020[2]).

1.3. The application to convicts that are deprived of liberty, of the measures of physical force, special means and weapon abroad: the international legal acts and the practice of their realization

A one of the tasks of modern reform of bodies and punishment execution institutions, which are enshrined in the Concept of the reform (the development) of the penitentiary system of Ukraine in September 2017, determined development of legislation in the field of functioning of the IIW and the PEI in accordance with legislation of the EU[3].

[1] Pro skhvalennya Kontseptsiyi reformuvannya (rozvytku) penitentsiarnoyi systemy Ukrayiny: Rozporyadzhennya Kabinetu Ministriv Ukrayiny vid 13.09.2017 r. № 654-R. *Uryadovyy kur'yer.* 2017. № 178. 20 veres. S. 8–9.

[2] Pro Strategiyu reformuvannya sudoustroyu, sudochynstva ta sumizhnykh instytutiv na 2015–2020 rr.: Ukaz Prezydenta Ukrayiny vid 20.05.2015 r. № 276/2015. *Ofitsiynyy visnyk Prezydenta Ukrayiny.* 03.06.2015. № 13. St. 864.

[3] Pro skhvalennya Kontseptsiyi reformuvannya (rozvytku) penitentsiarnoyi systemy Ukrayiny... S. 8–9.

Accordingly, the putting the question regarding the international legal approaches and the practice of the application to convicts that are deprived of liberty, of the restraint measures is obvious and such that has theoretical and applied importance[1].

In addition, the results of an anonymous survey that was conducted among the staff of the PEI and convicts that are deprived of liberty testify to the relevance and necessity of the conducting of the scientific research on this issue. Thus, on the issue 'Does the current Ukrainian legislation on the issues of the application of the restraint measures to convicts in the places of deprivation of liberty meet the requirements of international law' the members of personnel of the SCES of Ukraine gave the following answers: yes – 1268 (63 % from the 2016 of the asked respondents); no – 137 (7 %); partly – 611 (30 %). In turn, the convicts answered this question as follows: yes – 177 (15 % from the 2016 of the asked respondents); no – 926 (42 %); partly – 973 (43 %) (the supplements A, B, C, C1).

As M. I. Rudnytskyi noticed in this regard, the application of punishment to the convicts leads to the restrictions on the natural and civil rights of the man and citizen, and it is not surprising, therefore, that the world community pays special attention to

[1] Kolb I. O., Gorbachevs'kyy V. Ya. Mizhnarodno-pravovi pidkhody shchodo zabezpechennya deyakykh prav zasudzhenykh. *Aktual'ni pytannya reformuvannya pravovoyi systemy Ukrayiny: zb. materialiv XII Mizhnar. nauk.-prakt. konf. (m. Lutsk, 26–27 cherv. 2015 r.).* Luts'k: Vezha-Druk, 2015. S. 177–179.

the development of common rules and the setting of boundaries for the person[1].

However, it should be borne in mind that the need to harmonize of the domestic law with the rules of international law applies, in particular, not only the legal space of the EU, but also of the legal space of other international associations that exists in the Europe[2].

Thus, according to the art. 1 of the Statute of the Council of Europe, the EC objective is also achieved through the conclusion of agreements and the application of joint measures in the legal field[3].

In addition, scientists point to the existence of several modern processes that affect the legislative provision of the field of crime the combating, the organic constituent element of which is the criminal executive activity, namely: a) the globalization of world relations, which also entails negative consequences; b) the significant expansion of the EU recently (the accession to the European Union of the Montenegro, the Croatia, etc.); c) the perception of the Ukraine at the level of the state of legislative

[1] Rudnyts'kyy M. I. Zagal'na kharakterystyka mizhnarodnykh normatyvno-pravovykh aktiv u sferi vykonannya pokaran' i povodzhennya iz zasudzhenymy. *Kryminal'no-vykonavche pravo Ukrayiny: pidruchnyk: u 2-kh t.).* T. 1/za zag. red. d-ra yuryd. nauk, prof. Ye. Yu. Barasha. Kyyiv: Nats. akad. vnutr. sprav; FOP Kandyba T. P., 2018. S. 124.

[2] Khavronyuk M. I. Suchasne zagal'noyevropeys'ke kryminal'ne zakonodavstvo: problemy garmonizatsiyi: monografiya. Kyyiv: Istyna, 2005. S. 7.

[3] Statut Rady Yevropy vid 5 travnya 1949 r. *Ofitsiynyy visnyk Ukrayiny.* 2004. № 26. St. 17.

work of the EU[1]; d) the integration of Ukraine, including on the issues of the execution – serving sentences to the EU[2].

In the context of the explored problematic in this work, another fact that contributes the necessary the pursuit of the communist (the comparative-legal) scientific searches in the field of the execution of sentences is that despite the worldwide recognition and the distribution in Ukraine as well as in foreign countries, of sentences, which are not related to the deprivation of liberty, and of the system of probation, according to the international official data, the number of convicts in the last 15 years in the world has increased by 25–30 %, and the coefficient of the convicts to the deprivation of liberty in the world is 144 per 100 thousand persons[3].

If you summarize all the scientific approaches that are involved in clarifying the content of the international legal acts in the field of the serving sentences, then it should be noted that most of them lead to the international standards of a general nature. These include:

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[1] Pro zagal'noderzhavnu programu adaptatsiyi zakonodavstva Ukrayiny do zakonodavstva Yevropeys'kogo Soyuzu: Zakon Ukrayiny vid 18 bereznya 2004 r. № 1629-IV. *Uryadovyy kur'yer.* 2004. 20 kvit. S. 2–3.

[2] Pro vnesennya zmin do Kryminal'no-vykonavchogo Kodeksu Ukrayiny shchodo adaptatsiyi pravovogo statusu zasudzhenogo do yevropeys'kykh standartiv: Zakon Ukrayiny vid 08.04.2014 r. № 1186-V. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 2014. № 2. St. 869. S. 198.

[3] Astaf'yeva K. Yu. Dosvid ta osoblyvosti pidgotovky tyurem u tsentri yurydychnyh doslidzhen' ta spetsializovanoyi pidgotovky "GENERAL-TAT DE CATALUNEA". *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv V Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 24 lystop. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby; FOP Kandyba T. P., 2017. S. 114–117.

– the General Declaration of the human rights;

– the Declaration of the rights of the child;

– the International covenant on the economic, the social and the cultural rights; the other.

In addition, the subject of research on the specified problematic are also the international legal sources of the special direction, namely:

a) the minimum standard rules for the treatment of the convicts;

b) the European penitentiary rules;

c) the set of principles for the protection of all persons who are detained or imprisoned in any way;

d) the other international legal acts concerning the sphere of the execution of sentences[1].

In doing so, the scientists have come to the conclusion that international legal acts on the legal technique of their execution was inherent in, so to speak, 'the description', whereas for the national legal sources was more inherent in 'the normativity'[2].

Moreover, in studies of the provisions of the different international acts and standards, it is generally accepted that the term 'the prison' is used to refer to any place of the isolation of a person (with the exception of the special treatment institutions), and 'the imprisoned' – to identify both the convicts

[1] Kryminal'no-vykonavche pravo Ukrayiny: pidruchnyk: u 2-kh t. T. 1/ V. A. Muzyka, V. Ya. Konopel's'kyy, Ye. O. Pys'mennyy ta in.; za zag. red. d-ra yuryd. nauk, prof. Ye. Yu. Barasha. Kyyiv: Nats. akad. vnutr. sprav.; FOP Kandyba T. P., 2018. S. 127–128.

[2] Rudnyts'kyy M. I. Zagal'na kharakterystyka mizhnarodnykh normatyvno-pravovykh aktiv u sferi vykonannya pokaran' i povodzhennya iz zasudzhenymy. *Kryminal'no-vykonavche pravo Ukrayiny: pidruchnyk: u 2-kh t.).* T. 1/za zag. red. d-ra yuryd. nauk, prof. Ye. Yu. Barasha. Kyyiv: Nats. akad. vnutr. sprav; FOP Kandyba T. P., 2018. S. 125.

and persons that are arrested or placed in a special institution without the pressing charges[1].

In addition, based on the results of the current research, the international legal acts on the issues of the application to the convicts in the places of their isolation (and namely, in this sense are used in this work such terms, that are enshrined in the specified sources and relate to the characteristic of these individuals) of the restraint measures that are classified (it is based on the criterion of the legal regulation of the specified issues) into:

1) the international legal acts of the general nature, that is, those which are set out the general principles and approaches that are related to the legal restrictions, which are imposed on the convicts (the General Declaration of the human rights[2], etc.);

2) the international legal sources of the specialized content, that is, those that directly regulate the issues of the execution – the serving sentences and the treatment with the convicts;

– the minimum standard rules for the treatment with convicts[3];

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[1] Rudnyts'kyy M. I. Zagal'na kharakterystyka mizhnarodnykh normatyvno-pravovykh aktiv u sferi vykonannya pokaran' i povodzhennya iz zasudzhenymy. *Kryminal'no-vykonavche pravo Ukrayiny: pidruchnyk: u 2-kh t.).* T. 1/za zag. red. d-ra yuryd. nauk, prof. Ye. Yu. Barasha. Kyyiv: Nats. akad. vnutr. sprav; FOP Kandyba T. P., 2018. S. 125.

[2] Zagal'na deklaratsiya prav lyudyny. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: ANNA-T, 2008. S. 13–17.

[3] Minimal'ni standartni pravyla povodzhennya iz zasudzhenymy: pryynyati 30.08.1955 r. na I Kongresi OON z poperedzhennya zlochynnosti ta povodzhennya z zasudzhenymy. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy*/uporyad. O. I. Shynal's'kyy ta in. Kyyiv: Anna-T, 2008. S. 18–36.

– the EPR[1];

– the convention against the torture and other cruel, inhuman or degrading types of the treatment and punishment[2];

– the Minimum standard rules of the UN regarding the execution of the justice regarding juvenile[3];

– the other acts of the special content;

3) the international legal acts that directly relate to issues that are related to the application the restraint measures to convicts:

– the code of the conduct for the law enforcement officials in maintaining law and order[4];

– the principles of the medical ethics[5];

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[1] Yevropeys'ki penitentsiarni pravyla: Rekomendatsiya № R (2006) Komitetu Ministriv Rady Yevropy vid 11 sichnya 2006 roku. Donets'k: Donets'k. Memorial, 2010. 32 s.

[2] Konventsiya proty katuvan' ta inshykh zhorstokykh, nelyuds'kykh abo takykh, shcho prynyzhuyut' gidnist', vydiv povodzhennya i pokarannya: rezolyutsiya General'noyi Asambleyi OON № 39/46 vid 10 grudnya 1984 roku. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy/*uporyad. O. I. Shynal's'kyy ta in. Kyyiv: Anna-T, 2008. S. 63–69.

[3] Rudnyts'kyy M. I. Zagal'na kharakterystyka mizhnarodnykh normatyvno-pravovykh aktiv u sferi vykonannya pokaran' i povodzhennya iz zasudzhenymy. *Kryminal'no-vykonavche pravo Ukrayiny: pidruchnyk: u 2-kh t.).* T. 1/za zag. red. d-ra yuryd. nauk, prof. Ye. Yu. Barasha. Kyyiv: Nats. akad. vnutr. sprav; FOP Kandyba T. P., 2018. S. 124–152.

[4] Kodeks povedeniya dolzhnostnykh lits po podderzhaniyu pravoporyadka: prinyat rezolyutsyej № 34/169 General'noy Assambley OON ot 17 dekabrya 1979 goda. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: Anna-T, 2008. S. 53–58.

[5] Rudnyts'kyy M. I. Zagal'na kharakterystyka mizhnarodnykh normatyvno-pravovykh aktiv u sferi vykonannya pokaran' i povodzhennya iz zasudzhenymy... S. 124–152.

– the set of principles for the protection of all persons who are detained or imprisoned in any way;

– the other acts that are directly related to the problematic that is explored in this work.

Such approach not only made it possible to compare the content of similar regulatory sources of national and international law, but also to develop a number of scientifically sound proposals, which are aimed at improving the legal basis and order of the application in Ukraine of the measures of physical influence, special means and weapon to convicts that deprived of liberty.

In particular, such a general international legal act as the General Declaration of human rights states the following:

1. Every human has the right to life, liberty and personal safety (the art. 3 of the Declaration)[1].

In turn, in the art. 3 of the Constitution of Ukraine this provision has been expanded and has the following content: the human, his life and health, the honor and the dignity, the safety and the security are determined in Ukraine by the highest social value[2].

Moreover, the art. 27 of the Basic law states that everyone has an inalienable right to the life, the art. 28 – the provision about that no one can be tortured, inhuman or degrading treated or punished, and in the art. 29 – the requirement that every human has the right to liberty and the personal safety[3].

[1] Zagal'na deklaratsiya prav lyudyny. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: ANNA-T, 2008. S. 13.

[2] Konstytutsiya Ukrayiny: chynne zakonodavstvo stanom na 16 sichnya 2019 r.: ofits. tekst. Kyyiv: Alerta, 2019. 81 s.

[3] Ibid.

In unison (from Latin. *unus* – one sound)[1] with this, in the art. 7 'The Basis of the legal status of the convicts' of the CEC of Ukraine it is stated that convicts enjoy all the human and civil rights that are enshrined in the Constitution of Ukraine, except for the restrictions that are set out in this Code, the laws of Ukraine and those are established by the judgment of the court.

In addition, in the art. 10 'The right of convicts for the personal safety' of the CEC the procedure of actions of the administration of the PEI in case of the inception of danger to the life and health of convicts that are serving sentences in the way of deprivation of liberty was determined.

At the same time, neither in the specified norms of this Code, nor in its entirety in the chapter 'The Legal status', is not maintained that the restraint measures, which are applied to convicts that are deprived of liberty, also refer to measures of the provision the right of these persons for personal safety.

Given the specified and the provisions of the art. 3 of the Declaration, the art. 10 of the CEC of Ukraine should be supplemented with the part 6 with the following content:

'In the defined by law cases of the provision the right of convicts for the personal safety is applied by the way of the application of the measures of physical influence, special means and weapon to offenders'.

[1] Buliko A. N. Bol'shoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. S. 601.

Such an approach would organically combine the norms of the General and Special part of the CEC, that are governing the above issues and would realize at the normative level the principle of systematic construction of legal norms, even in cases of their codification[1].

Moreover, in the current case, the proposed changes to the art. 10 of the CEC fully reflect the content of the part 1 of the art. 106 of this Code, according to which the measures of physical influence, special means and weapon to the convicts that are deprived of liberty to prevent harming the environment by these persons.

2. Nobody must not be subjected to torture or to cruel, inhuman or degrading treatment and punishment (the art. 5 of the Declaration)[2].

A similar provision was reflected in the art. 28 of the Constitution of Ukraine, the Convention against torture and another cruel, inhuman or degrading treatment and punishment[3], which has been ratified

[1] Teoriya derzhavy i prava: pidruch. dlya stud. yuryd. vyshch. navch. zakl./O. V. Pogrebnyak, V. S. Smorodyns'kyy ta in.; za red. O. V. Petryshyna. Kharkiv: Pravo, 2014. S. 200–201.

[2] Zagal'na deklaratsiya prav lyudyny. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: ANNA-T, 2008. S. 13–17.

[3] Konventsiya proty katuvan' ta inshykh zhorstokykh, nelyuds'kykh abo takykh, shcho prynyzhuyut' gidnist', vydiv povodzhennya i pokarannya: rezolyutsiya General'noyi Asambleyi OON № 39/46 vid 10 grudnya 1984 roku. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy/*uporyad. O. I. Shynal's'kyy ta in. Kyyiv: Anna-T, 2008. S. 63–69.

by Ukraine and which, in accordance with the requirements of the art. 9 of 'The Basic law', became part of the national legislation of the our country, and also – in the part 3 of the art. 50 of the CrC and in the part 1 of the art. 1 of the CEC of Ukraine.

However, it should be noted that in the art. 106 of the CEC nothing is noticed in this regard, although the restraint measures that determined by law to convicts prisoners have objectively inherently certain physical, mental and other consequences for their application.

Based on this, and taking into account the provisions of the art. 5 of the Declaration logically would be that the art. 106 of the CPC should be supplemented with the part 7 of the following content:

'The application of measures of physical influence, special means and weapon is not intended to cause the physical suffering or the humiliation human dignity'.

As E. Svanidze rightly noticed in this regard, absolute prohibition of torture and inhuman or degrading treatment in all likelihood require the fight against impunity where such a prohibition is violated[1].

The same conclusion was reached by D. Mardokh, who reasonably believes that the right to freedom from torture and to cruel, inhuman or degrading

[1] Svanidze E. Effektivnyye rassledovaniya zhestokogo obrashcheniya. Rukovodyashchiye printsipy po primeneniyu yevropeyskikh standartov. Kyev: TOV "VPK «Ekspress-poligraf»", 2011. S. 6.

treatment and punishment is the imperative norm of the international law[1].

Considering that one of the goals of the criminal executive legislation of Ukraine, which is enshrined in the part 1 of the art 1 of the CEC, is the prevention of the torture and inhuman or degrading treatment with convicts, the supplement to the art. 106 of this Code with the proposed provision is a reasonable and necessary measure, which, as in the previous cause, is objectively conditioned by the requirements of the General part of the CEC.

3. In the execution their rights and freedoms, every human should only be subject to such restrictions that are prescribed by law solely for the purpose of the provision of the proper recognition and of the respect, the rights and the freedoms of others and the provision of the just requirements of the morality, the public order and the general well-being in a democratic society (the part 2 of the art. 29 of the Declaration)[2].

In the Constitution of Ukraine, the specified provision is reflected in several norms, namely:

a) the art. 23, which states that every human has the right to the free development of his or her personality, without violating the right and the freedom of others, and has the duties to a society that ensures the free and full development of his personality;

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[1] Mardokh D. Borot'ba z zhorstokym povodzhennyam i bezkarnistyu ta efektyvne rozsliduvannya zhorstokogo povodzhennya. Dopovid' po Ukrayini. Kyyiv: K. I. S., 2010. S. 5.

[2] Zagal'na deklaratsiya prav lyudyny. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: ANNA-T, 2008. S. 13–17.

b) the part 3 of the art. 63, in which it is stated that the convict enjoys all the rights of the human and citizen, except for the limitations that are specified by law and established by a verdict of the court;

c) the art. 68, in which the provision that everyone is obliged to strictly abide by the Constitution of Ukraine and the laws of Ukraine, not to infringe on the rights and the freedoms, the honor and the dignity of others is enshrined.

Considering the provisions of the General Declaration of the rights of human and of the Constitution of Ukraine, the part 1 of the art. 106 of the CEC of Ukraine should be supplemented by the by the sentence with the following content:

'The application of the specified in the law restraint measures is a right of the persons from the number of the personnel of the colonies, even in the causes of the receiving orders from the side of their management regarding the execution of such actions.

With this approach, it seems that not only the number of the applications to convicts that deprived of liberty, of the measures of physical influence, special means and weapon will decrease, but the principle of the rational application of coercive measures and the stimulus of the law-abiding behavior will also be implemented more substantially and effectively on the practice.

As I. S. Mykhalko rightly noticed in this regard, the peculiarity of the current principle is, first of all, in the fact that the subject of its regulation are:

– firstly, the various emergent extreme forms of the deviant behavior of the convicts, the most conflicting, deviating from the norm of relations;

– secondly, the law-abiding behavior that deserves stimulation, where the methods, the measures of the influence, the remedies and the re-socialization of the convicts are mainly indicated and united in the content of the principle[1].

It is for these reasons and in the order of the prevention of unlawful application to persons, serving the sentences in the educational and correctional colonies, of the specified in the law measures of the restraint nature, and so, the realization on the property level such an element of an order of the criminal executive legislation of Ukraine as the prevention of the torture and inhuman or degrading treatment with convicts, and the proposed above modification of the part of the art. 106 of the CEC of Ukraine.

So, if to summarize the results of comparing the content of the General Declaration of the rights of human and the norms of the criminal executive legislation of Ukraine, which concerns legal grounds of the application to convicts in the places of deprivation of liberty, of the restraint measures (the places of isolation – on the international legislation), then it should be noted that the latter do not conform

[1] Mykhalko I. S. Galuzevyy pryntsyp ratsional'nogo zastosuvannya prymusovykh zakhodiv i stymulyuvannya pravoslukhnyanosti povedinky zasudzhenykh yak pidgruntya efektyvnosti diyi osnovnykh zasobiv vypravlennya i resotsializatsiya zasudzhenykh. *Zasoby vypravlennya i resotsializatsiyi zasudzhenykh do pozbavlennya voli: monografiya*/za zag. red. d-ra yuryd. nauk, prof. A. H. Stepanyuka. Kherson: Krossroud, 2011. S. 285.

to the specified general international normative legal act, which necessitated the development, within the framework of the current study, of appropriate science-based measures regarding the improvement, in particular, of the norms of the current CEC of Ukraine.

As the results of the study of some other common international legal acts on the specified problematic have demonstrated, the similar approaches are enshrined in these sources.

Thus, in the part 2 of the art. 2 of The International covenant on the civil and political rights it is stated that if it has not been yet provided for by the existing legislative and other measures, each state – the a participant of this Covenant undertakes to take the necessary measures, in accordance with its constitutional procedures and the provisions of this Covenant for the taking such legislative or other measures, which may be necessary for the execution of the rights that are set out in this covenant[1].

Moreover, in the part 2 of the art. 5 of the current general international law source enshrined that no one restriction or humiliation of any fundamental rights of the human, which are recognized or existing in the any state – the a participant of this Covenant by the virtue of the law, the conventions, the rules or the customs, it is not permissible on the

[1] Mizhnarodnyy pakt pro gromadyans'ki ta politychni prava: pryynyatyy 16 grudnya 1966 roku General'noyu Asambleyeyu OON (rezolyutsiya № 2200 A (XXI). *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: ANNA-T, 2008. S. 38.

pretext that such covenants do not define such rights or that they are less defined in such covenants.

In the same context, in the covenant, other rules that are related to the general features of the procedures of the application to convicts in the places of the deprivation of liberty (of the isolation) that are determined in the law, are formulated, namely:

1) in the part 1 of the art. 6 it is determined that the right for the life is an inherent right of every person. This right is protected by the law. No one can be arbitrarily deprived of the life.

In the current criminal executive legislation of Ukraine, despite the fact that a similar norm is in the Constitution of Ukraine (the art. 27), there is no specific article on these issues, although its availability, taking into account the specified provisions and content, in particular, of the grounds of the application to convicts that are deprived of liberty, of the measures of physical influence, special means and weapon (the art. 106 of the CEC of Ukraine), is an obvious.

It is told in this case about that in the CEC of Ukraine the procedure for application regarding the persons that are deprived of liberty, the weapon as the strictest measure of influence on the person, is not defined. Only partly (in the formal view) in the part 1 and the parts 5, 6 of the art. 106 of this Code in the form of remark describes the application of the weapon.

In particular, in the part 5 of the art. 106 of the CEC it is specified that about every cause of the

application of the weapon a report is drawn up and the prosecutor and the Commissioner of the Verkhovna Rada for the rights of human are immediately notified.

As established in the course of this study, the procedure for the application of weapon against convicts is defined in the Instruction on the organization of the protection of the criminal executive institutions of the closed type[1] and in the Instruction on the organization of the protection and supervision in the correctional colonies[2], that is, this issue is governed by the by-laws normative legal acts that contrary to the requirements of the paragraph 14 of the part 1 of the art. 92 of the Constitution of Ukraine, according to which this activity should be determined only by the law.

In addition, this despite the fact of the application of weapon often convicts receive firearm wounds, and this also leads to their death[3].

At the same time, there was a special article even in the CEC of Ukraine in 1970, in which the procedure of the application of weapon to convicts in the

[1] Pro zatverdzhennya Instruktsiyi z organizatsiyi okhorony kryminal'no-vykonavchykh ustanov zakrytogo typu: nakaz DDUPVP vid 8 grudnya 2003 r. № 237. Kyyiv: DDUPVP, 2003. 87 s.

[2] Pro zatverdzhennya Instruktsiyi z organizatsiyi okhorony ta naglyadu u vykhovnykh koloniyakh: nakaz DDUPVP vid 20.07.2004. № 220. Kyyiv: DDUPVP, 2004. 69 s.

[3] Yakovets' I. S. Isnuvannya ta diya spetspidrozdiliv ta grup shvydkogo reaguvannya. Rozkryttya zlochyniv. *Problemy zabezpechennya prav zasudzhenykh u kryminal'no-vykonavchiy systemi Ukrayiny*/za zag. red. Ye. Yu. Zakharova. Kharkiv: Prava lyudyny, 2009. S. 104.

places of deprivation of liberty was determined (the art. 82)[1].

Instead, in the current CEC, the legislator only stated that the application of weapon to convicts, who are deprived of liberty, is also allowed in other cases that are stipulated by the laws of Ukraine 'On the National police' and 'On the National guard of Ukraine' (the part 6 of the art. 106 of the Code), which, according to the requirements of the criminal executive legislation of Ukraine (of the CEC; of the Law of Ukraine 'On the State criminal executive service of Ukraine'; of the Law of Ukraine 'On the Pretrial Prison', etc.), has no bearing to the protection of the PEI and the supervision for the convicts that are deprived of liberty, except in cases, which are specified in the art. 105 of the CEC.

So, today, it's worth acknowledging that the procedure of the application of the weapon to convicts, who are held in the educational and correctional colonies of Ukraine, not only does not conform to the Constitution of Ukraine (in particular, art. 92), but also to the norms of international law (such as: the part 1, of the art. 6 of the International covenant on civil and political rights).

On this basis, the CEC of Ukraine should be supplemented by the art. 106-1 'The grounds and procedure of the application of firearms to convicts that are deprived of liberty' taking as a basis the pro-

[1] Pro zatverdzhennya Vypravno-trudovogo kodeksu Ukrayins'koyi RSR: zatverdzhenyj Zakonom Ukrayins'koyi RSR vid 23 grudnya 1970 roku № 3325-07. *Vidomosti Verkhovnoyi Rady Ukrayins'koyi RSR.* 1971. № 1. St. 6.

visions of the articles 43, 46 of the Law of Ukraine 'On the National police', namely:

1. The firearm is applied to convicts that are deprived of liberty in exceptional cases, when another predicted measures of the influence on the personality of the offender failed to produce the desired result.

2. The personnel of the colonies are able to apply the firearm in the following causes:

1) for the reflection an attack on a person of the personnel of the colony in the event of a real threat to his or her life or health;

2) for the protection of other persons, who are in the protected territory of the colony from the attack that endanger their life or health;

3) for the exemption of the hostages, who are held in the protected territory of the colony;

4) for the reflection of the attack on convoys and protected objects of colonies and the exemption them in the event of capture;

5) for the apprehending a person that was caught in a committing the serious or particularly serious crime and who tried attempting to flee;

6) for the detention of the convict, who offers armed resistance and tries to escape from custody, as well as the weaned convict, who threatens by the application of weapon and other subjects that endanger their life or health of the persons from the number of the personnel of the colonies and other persons;

7) for the stopping the vehicle by the way of the damaging it, if the convict uses it for the committing the unlawful actions and creates in such a way the endanger the life or health of the persons from the

number of the personnel of the colonies and other persons;

3. Before the using firearms, the personnel of the colony is obliged to warn the convict in advance of the use and to give him sufficient time to fulfill the legitimate requirement of the person of the personnel, except the causes when a delay can cause the endanger the life or health of another person or the personnel of colony, or other grave consequences, or in the established situation, such a warning is either unjustified or impossible.

4. The warning about the application of a firearm may be the voice of a person of the personnel of the colony, but at a considerable distance to the offender or to a large group of convicts – through loudspeakers or sound amplifiers.

5. The person of the personnel of the colony who has used a firearm has the right to cause such harm to the offender, which is necessary and sufficient in such an environment.

6. In the case of injury of a convict, the person from the personnel of colony who applied firearm, is obliged to provide him with urgent medical care and to inform immediately about this case the management of the specified punishment execution institutions, as well as to apply another actions, that specified in the law.

The analogical grounds for the application of firearms are enshrined in the art. 18 of the Law of Ukraine 'On the National guard of Ukraine'.

Thus, it must be acknowledged that, for both police officers and servicemen of the National Guard

of Ukraine, the legislator has created the proper conditions and legal guarantees for the application of firearms in correctional and educational colonies in cases, about which is told in the part 6 of the 106 of the CEC of Ukraine.

At the same time, the activity of the personnel of the colonies on the specified issues are still not regulated at the law level, which is not only contrary to the requirements of international legal acts, but also to the Constitution of Ukraine (the part 2 of the art. 19 and the paragraph 14 of the part 1 of the art. 92), and therefore, solving this problem is an urgent task today.

Interesting in this regard is the such practice in Swiss prisons, namely: the personnel of this correctional institutions are not provided by the measures of the protection, which are applied in the time of the active resistance of convicts in other countries.

The only type of special means that is used by the personnel of the prisons in this country is the handcuff, but its application is possible only then, when the convict wants to harm himself.

However, about the rubber truncheons or weapon (including gas) are not discussed at all.

Moreover, in Switzerland there are no penitentiary paramilitary units and specialized units, who have the right to use forceful methods of influence on the convicts[1].

[1] Sakhnik O. V. Praktychna ta gumanistychna spryamovanist' profesiynoyi pidgotovky penitentsiarnogo personalu zarubizhnykh krayin. *Zarubizhnyy dosvid funktsionuvannya penitentsiarnykh system: storinky istoriyi ta vyklyky syogodennya: materialy krug. stolu (Kyyiv, 14 trav. 2015 r.)*/ vidp. red. O. V. Sokal's'ka. Kyyiv: In-t krym.-vykon. sluzhby, 2015. S. 84.

Of course, this approach is not indisputable, especially given the quantitative and qualitative characteristics of the convicts, which are held in the correctional and educational colonies of Ukraine, however, the fact is obvious that the carrying of special measures and weapons by personnel of this PEI does not contribute to the establishing a trusting and sincere relationship with individuals that are deprived of liberty, as well as is the circumstance that provokes (encourages, seduces, etc.) the latter to its application in cases where it is unnecessary and inappropriate in the relationship between the convict or the group of them;

2) the art. 7 of the of the International the covenant on civil and political rights, in which it is specified that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.

These provisions are reflected in the art. 28 of the Constitution of Ukraine and in the part 1 of the art. 8 of the CEC, in which it is discussed the right of the convicts for the humane treatment and for the respect for their human dignity, as well as about that these persons shall not be subjected to torture or cruel, inhuman or degrading treatment.

All this serves as an additional argument regarding the modification of those norms of the criminal executive legislation of Ukraine, which is related to the issues of the application to the convicts that are deprived of liberty, of the measures of the physical influence, special means and weapon;

3) the part 1 of the art. 9 of the Covenant, in which it is established that every person has the right to liberty and security of person.

A similar provision is enshrined in the part 1 of the art. 29 of the Constitution of Ukraine and in the part 1 of the art. 8 of the CEC of Ukraine, in which it is specified that the measures of influence may be applied to the convicts solely on the basis of the law, which also confirms the conclusion that it is necessary to supplement this Code with a separate norm on the grounds and the procedure for applying firearms to convicts that are deprive of the liberty.

Therefore, in this regard, we can find another way.

Thus, in the art. 256 of the CEC of the Republic of Poland it is discussed that the application of the measures of direct coercion, weapon or service dogs to persons that are deprived of liberty, are regulated by the law[1];

4) the part 1 of the art. 10 of the Covenant, in which it is determined that all persons that deprived of the liberty have the right for humane treatment and respect for the dignity, which is inherent in the human personality.

The same provision is enshrined in the part 1 of the art. 28 of the Constitution and in the part 1 of the art. 8 of the CEC (in the form of the rights of the convicts to their humane treatment to them and respect for their dignity), as well as in the art. 5 of the specified Code (in the form of the principle of huma-

[1] Rol' i vplyv kryminal'nogo ta kryminal'no-vykonavchogo zakonodavstva Pol'shchi u reformuvanni pravovogo polya Ukrayiny: metod. rek. zi spetskursu "Osnovy reformuvannya kryminal'no-vykonavchogo zakonodavstva Ukrayiny"/O. G. Kolb, A. B. Kosylo, O. M. Yukhym'yuk, A. M. Oktysyuk. Luts'k: RVV "Vezha" Volyn. derzh. un-tu im. Lesi Ukrayinky, 2001. 84 s.

Kryminal'no-pravova kharakterystyka kryminal'no-vykonavchogo Kodeksu Pol'shchi: metod. rek. dlya stud. yuryd. f-tu/uklad. O. M. Yukhym'yuk, O. G. Kolb, A. B. Kosylo. Luts'k: Yustas, 2001. S. 74.

nism – as of one of the principles of the criminal executive legislation, the execution and the serving sentences).

Given the specified, the art. 106 of the CEC it would be logical to supplement by the part 8 of the following content:

'In the application to convicts that deprived of the liberty, of measures of the physical influence, special means and weapon, the personnel of the colonies and others that are involved in the procedure that is determined in the part 6 of the current Code, the persons should provide the right for the humane treatment to them and respect for their dignity.'

This approach builds on the existing practices of the activity of the personnel of the colonies on these issues, as well as on the decisions of the European Court of the rights of human.

In particular, the judgment of 15 May 2012 in the case 'Kaverzin against Ukraine', the specified Court has determined about the violation of the art. 3 of the Convention on the protection of the rights of human and fundamental freedoms in connection with the torture of the applicant and the application of handcuffs in the colony[1].

Moreover, the ECHR that is based on the art. 46 of the Convention, immediately obliged Ukraine to implement the reforms that are aimed at eradicating the practice of ill-treatment with convicts[2].

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[1] Kaverzin proty Ukrayiny: rishennya Yevropeys'kogo sudu z prav lyudyny vid 15 travnya 2012 roku. *Praktyka Yevropeys'kogo sudu z prav lyudyny. Rishennya. Komentari.* Kyyiv: M-vo yustytsiyi Ukrayiny, 2013. № 2 (11). S. 15.

[2] Ibid.

As the results of this study showed, the analogical norms that are related to the activity, which refers to related to infringement of the life and health of the person, including because of the application of the restraint measures that are determined in the law, which are specified as well as in the another international legal acts of the general nature:

– the Optional protocol to the International covenant on the civil and political rights[1];

– the Declarations on the protection of the all persons from the torture and other cruel, inhuman or degrading treatment or punishment[2];

– the Convention for the protection of the rights of human and fundamental freedoms[3];

– the other international sources of the general content.

As O. O. Shkuta rightly concluded in this regard, the progressive changes in Ukrainian society at the

[1] Fakul'tatyvnyj protokol do Mizhnarodnogo paktu pro gromadyans'ki ta politychni prava vid 16.12.1966 r.: nabuv chynnosti dlya Ukrayiny 25 zhovtnya 1991 r. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: ANNA-T, 2008. S. 46–48.

[2] Deklaratsiya o zashchite vsekh lits ot pytok i drugikh zhestokikh, beschelovechnykh ili unizhayushchikh dostoinstvo vidov obrashcheniya i nakazaniya: Rezolyutsiya № 3452 General'noy Assamblei OON ot 9 dekabrya 1997 g. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: ANNA-T, 2008. S. 49–52.

[3] Konventsiya pro zakhyst prav lyudyny i osnovopolozhnykh svobod vid 30.11.1964 r. Nabula chynnosti dlya Ukrayiny 29.12.1995 r. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: ANNA-T, 2008. S. 235–245.

turn of the XX–XXI centuries, which are largely stem from the accession to the Council of Europe and the ratification of the line of international legal acts, are reflected on the state of functioning of the sphere of execution of sentences of Ukraine, namely – finally defined the European integration vector of its reforming and development[1].

Along with that, it's worth noting that although general international legal acts are both binding and recommendatory, the principles and standards about the protection of the rights of human and the treatment with the convicts are enshrined in them, including when the application of restraint measures to them, are extremely important because they have the interstate nature: are stable, are not vulnerable to influence of the social and political situation, which consists in the particular state, and is independent from ideological and criminogenic factors[2].

Namely the specified the approaches of scientists have become the methodological basis for the development and justification of the proposed in this work, scientifically based measures, which are aimed at improving the legal mechanism on the issues of the application in Ukraine to convicts that are deprived of liberty, of the determined in the law, measures of the physical influence, special means and weapon.

[1] Shkuta O. O. Penitentsiarna systema Ukrayiny: teoretyko-prykladna model': monografiya. Kherson: Vyd. dim "Gel'vetyka", 2017. S. 6.

[2] Kryminal'no-vykonavche pravo Ukrayiny: pidruchnyk: u 2-kh t. T. 1/ V. A. Muzyka, V. Ya. Konopel's'kyy, Ye. O. Pys'mennyy ta in.; za zag. red. d-ra yuryd. nauk, prof. Ye. Yu. Barasha. Kyyiv: Nats. akad. vnutr. sprav; FOP Kandyba T. P., 2018. S. 124–125.

As established in this study, no less important provisions in this context are enshrined in the special international legal acts, which directly regulate the procedure of the execution and serving of punishment in the form of the deprivation of liberty (the isolation from society – according to the international terminology).

Thus, in the paragraph 33 of the Minimal standard rules of the treatment with the convicts it is specified that such restraint measures as: handcuffs, shackles, straitjackets or chains[1] have never been used for the punishment. In addition, the shackles and chains cannot be used as the restraint measures.

In its regard, other named means may be used only in the following cases: a) for the prevention of the escape during transportation, provided that convicts are exempted from bondage as soon as they are brought before a court or administrative authority; b) for the reasons of medical nature or as directed by a physician; c) on the order of the director of the correctional facility, if other means prove ineffective, when it is necessary to prevent the harming himself or others or material harm by convict; in other cases, the director is obliged to consult the doctor immediately and report to the higher administrative bodies.

[1] Minimal'ni standartni pravyla povodzhennya iz zasudzhenymy: pryynyati 30.08.1955 r. na I Kongresi OON z poperedzhennya zlochynnosti ta povodzhennya z zasudzhenymy. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy*/uporyad. O. I. Shynal's'kyy ta in. Kyyiv: Anna-T, 2008. S. 18–36.

At the same time, the methods and methods of the application of the restraint means are determined by the central prison administration.

These measures cannot be used for longer than it is necessary[1].

Also interesting in the context of the content of the subject matter of this study are the provisions that are enshrined in the paragraph 54 of these Rules, namely:

1) in their relationships with convicts, the personnel of the correctional facilities has the right to resort to violence only for the self-defense or for the attempting to escape, as well as in the cause of the active opposition to orders that are based on applicable laws or rules.

The employees who have been forced to resort to violence must defend themselves to the extent necessary and immediately report such incidents to the director of the facility;

2) the personnel of the prisons should provide the special physical training, which will allow them to curb the aggressive intentions of prisoners;

3) the personnel, who commits its function in the direct contact with convicts, may carry weapons in exceptional cases. In addition, the right to carry the weapon should have only those persons, who have an appropriate training[2].

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[1] Minimal'ni standartni pravyla povodzhennya iz zasudzhenymy: pryynyati 30.08.1955 r. na I Kongresi OON z poperedzhennya zlochynnosti ta povodzhennya z zasudzhenymy. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy*/uporyad. O. I. Shynal's'kyy ta in. Kyyiv: Anna-T, 2008. S. 18–36.

[2] Ibid, p. 29.

If to compare the specified norms of the Rules with the provisions of the current criminal executive legislation of Ukraine on issues of the application of the measures of physical influence, special means and weapon to convicts that deprived of liberty, than we are able to make the following conclusions:

1. In the Minimum standard rules for the treatment of convicts, as in the normative legal acts of the general direction, the principle of exclusivity is enshrined, which is which is a priority in the application to persons that are held in the places of deprivation of liberty (isolation) of restraint measures that are defined in the law.

In addition, this, in turn, is an additional argument regarding the addition of the part 1 of the art. 106 of the CPC of Ukraine, namely – 'the principle of the exclusivity' in the actions of the personnel, which are caused by the unlawful behavior of the convicts.

2. Unlike the CEC and other laws of Ukraine ('On the National police' and 'On the National guard of Ukraine'), in the Rules this procedure of the application of the restraint measures is defined by the central prison administration, which, in the view of the requirements of the Constitution of Ukraine (the part 2 of the art. 19 and the paragraph 14 of the part 1 of the art. 92), is inadmissible, whereas the granting of the right to such activity is based on the ground of the by-law normative legal acts, as well as defining the grounds and the procedure of the application of the measures of the physical influence, special means and weapon by the departmental legal sources, as the history of the places of the deprivation of liberty

shows, leads to arbitrariness, torture and other inhumane treatment of convicts.

In particular, according to the current special scientific research, on the basis of a telegram that was signed by J. V. Stalin (the head of the USSR) on February 10, 1939, the practice of the application to the person under investigation and convicts of measures of physical influence was introduced[1], 'the metastases and 'the relapses' of which are manifested today in the activity of the number of personnel of the colony.

In addition, 'the departmental' approach, the main ideologies and subject of the formation and the realization in the USSR from 1917 to 1953 was the People's Commissariat of Internal Affairs (the PCIA), led, in particular, to the mass executions of convicts by the hands of employees of this department in June 1941 in Lutsk, and in 1941 in Orlovsk, Moskow, Kuibyshev and other prisons, as well as the execution of more then 21 thousand of Polish prisoners of war in Katyn, Midnyi and Kharkiv[2].

Unfortunately, the issue of 'the departmental approaches' in Ukraine, especially in the area of the punishments, is still relevant in the current time[3].

3. The legal grounds of the carrying weapons by the personnel of the correctional facilities in the

[1] Avakov A. B. Lenin s nami? Khar'kov: Fomykh, 2017. S. 154.

[2] Ibid, p. 155.

[3] Denysova T. A. Malen'ki problemy masshtabnoyi reformy kryminal'no-vykonavchoyi systemy. *Visnyk Penitentsiarnoyi asotsiatsiyi Ukrayiny: nauk. zhurn.* Kyyiv: Penitentsiarna asotsiatsiya Ukrayiny, Nauk.-doslid. in-t publichnogo prava, 2018. № 2 (4). S. 96–103.

Rules are formulated sufficiently blurred, unclear and haphazard, and it is not discussed about its application.

Therefore, speaking about the standards of the treatment of convicts from the specified areas of activity of the personnel of the PEI that are enshrined in the current Rights, it can only be conditional and only in that part, which is able to be used in Ukraine for the development of the legal foundations of the application of the measures of the physical influence, special means and weapon to such persons.

More substantially and successfully, as it is identified in this study, this issue is disclosed in the European penitentiary rules (the EPR)[1].

Thus, in the paragraph 64.1 of this Rules it is specified that the personnel of the penitentiary facility shouldn't apply the force regarding the convicts exempt the causes of self-defense or in the event of an escape attempt, or of the active or passive physical resistance to the procedure that is prescribed by law, and these should always be extreme measures.

In doing so, the extents of the application of force should be minimally necessary and it should be applied whenever possible during a minimum period.

In addition, paragraph 65 of the EPR states that detailed procedures for the application of force must be developed, including the provisions on: a) the dif-

[1] Yevropeys'ki penitentsiarni pravyla: Rekomendatsiya № R (2006) Komitetu Ministriv Rady Yevropy vid 11 sichnya 2006 roku. Donets'k: Donets'k. Memorial, 2010. 32 s.

ferent types of the force actions that can be applied; b) the circumstances, when every type of the force actions can be applied; c) the personnel, which has the right to apply the different types of the force actions; d) the level of the administration, which give the permission for any application of force; e) the reports that are drawn up after the application of force.

Again, if to compare the specified provisions of the EPR with norms of the criminal executive legislation of Ukraine, then it should be stated that next to such of them, which match in content, there is a link of provisions, which have not yet been reflected in national legal doctrine, as well as such, that are controversial.

First of all, it is discussed that, in particular, in the art. 106 of the CEC of Ukraine there is no clear procedure for the application of the specified in the law types of special legal means, that is, the grounds and the procedure for their use is general in nature for everybody.

This approach of the legislator can hardly be considered as correct, since each separate restraint type of the convicts that are deprived of the liberty, not only have its meaningful features, and also the real consequences of the application, which necessitates the addition of the CEC by the norms that concerning the individual procedure of the application of physical force, special means and weapon.

The legislator went down this path, for example, by adopting the Law of Ukraine 'On the National police', in which the procedure of the application of

physical force (the art. 44), special means (the art. 45) and weapon (the art. 46) is separately defined.

The analogical norms regarding the specifically taken restraint measure are also enshrined in the Law of Ukraine 'On the National guard of Ukraine' (the art. 16 'The application of the measures of the physical influence'; the art. 17 'The application of the special means', the art. 18 'The application of the firearm'), which stands an additional argument of the supplementing the CEC of Ukraine with relevant provisions in the form of individual its articles.

Ultimately, the need for such modification of the current criminal executive legislation of Ukraine is also due to the fact that the by-laws normative legal acts that regulate the sphere of punishment, as it follows from the content of the judgment of the Constitutional Court of Ukraine of July 9, 1998 № 12-rp/98 (the case of the interpretation of the term 'the legislation'), do not apply to its sources and in this sense is contrary to the requirements of the paragraph 14 of the part 1 of the art. 92 of the Constitution of Ukraine, according to which the issue of the application to convicts that are deprived of liberty, of the measures of physical influence, special means and weapon should be determined only on the basis of the law[1].

[1] Pro sudovu praktyku u spravakh pro neobkhidnu oboronu: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26.04.2002 r. № 1. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/ uporyad. V. P. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 169–171.

As the results of this study have shown, the international legal acts are formulated in the same context, that are referred to the third group of sources that is output in this work, concerning the grounds and the procedure of the application to convicts in places of their isolation (the deprivation of liberty) of the restraint measures – so-called, of the direct international legal norms governing this issue.

Thus, in the art. 3 of the Code of the behavior of an officials in the maintaining law and order it is stated that an officials are able to apply the force only in the causes of the absolutely necessary and in the and in such extent that is required for the performance of their duties[1].

In this case, as follows from the content of the comments to the art. 3 of this Code, namely:

a) the application of the force the application of the force must be of an exceptional nature; although the specified norm provides that law enforcement officials (and according to the comment on the art. 1 of the Code, the personnel of the PEI applies also to such) may be authorized to apply the force, which is reasonably necessary in the current setting, for the purpose of the preventing crime or in the committing of the lawful detention of the offenders or the suspected offenders or in the in the assistance in

[1] Kodeks povedeniya dolzhnostnykh lits po podderzhaniyu pravoporyadka: prinyat rezolyutsyey № 34/169 General'noj Assambley OON ot 17 dekabrya 1979 goda. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: Anna-T, 2008. S. 53–58.

such detention the force may not be applied, in excess of the limits that are required for these purposes;

b) when interpreting of the art. 3 of the Code, the national principles of proportionality should be respect.

In particular, in paragraph 4 of the resolution of the Plenum of the Supreme Court of Ukraine from 26 April 2002 № 1 'On the court practice on the cases about the necessary defense' it is stated in this regard that the exceeding the measures that are necessary to apprehend the offender is the intentionally causing to the person, who committed the crime, which clearly does not correspond to the danger of the encroachment or the environment of arresting the perpetrator[1].

In addition, in the paragraph 5 of this resolution it refers to the fact that in order to establish the existence or not of the signs of exceeding the limits of the necessary defense, the courts must consider not only the compliance or non-compliance of the instruments of the defense and attack, but also the nature of the danger, threatened the protected person, and of the circumstance that could affect the real ratio of the forces, in particular: the place and the time of the attack, its suddenness, the reluctance for its defending, the number of attackers and those defending themselves, their physical data (the age,

[1] Pro sudovu praktyku u spravakh pro neobkhidnu oboronu: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26.04.2002 r. № 1. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/ uporyad. V. P. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 170.

the gender, the state of health) and other circumstances.

If the court finds that the actions of person exceed the limits of the necessary defense, it should be noted in the verdict, what exactly it consists[1].

In doing so, as it is explained in the paragraph 6 of the specified resolution of the Plenum, the government representatives, the law enforcement officials, the members of public associations on the protection of public order and state border or the military personnel are not criminally liable for the harm that is caused in the performance of the service duties in the prevention of socially dangerous infringement and detention of the offender, if they did not allow excess of the measures that were necessary for the lawful detention of the offender[2].

In view of the set out, it should be noted that the current legislation and practice of its application in Ukraine on issues, which are related to the application of the force to the offender, meets the requirements of the art. 3 of the Code of the behavior of law enforcement officials[3], and this, in turn, necessitates its full or partial ratification in the our country;

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[1] Pro sudovu praktyku u spravakh pro neobkhidnu oboronu: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26.04.2002 r. № 1. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/ uporyad. V. P. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 170.

[2] Ibid.

[3] Kodeks povedeniya dolzhnostnykh lits po podderzhaniyu pravoporyadka: prinyat rezolyutsyej № 34/169 General'noy Assambley OON ot 17 dekabrya 1979 goda. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: Anna-T, 2008. S. 53–58.

c) according to the provisions of the art. 3 of this Code and the comments to it, the application of the firearms is considered as a last resort.

That is why all effort should be made to eliminate the application of firearms, especially against the children.

As a rule, the firearm cannot be applied, except where the suspected offender commits armed resistance or otherwise endangers the lives of other persons, and when other measures, which had an exceptional nature, are insufficient to the condemn or detain this person[1].

It should also be noted that other articles of the Code have in fact reproduced the provisions of the general and special norms of international law, which, to varying degrees, are related to the issues of the application of the restraint measures to convicts that are deprived of liberty, namely:

1) in the art. 5 of the current Code it is discussed that no one official by the maintaining law and order, cannot commit, instigate, or tolerate any action, torture and inhuman or degrading treatment or punishment.

In addition, the specified persons may not invoke the orders of superior persons or such exceptional circumstances, as the state of war or the threat of war, the threat to national security, the internal

[1] Kodeks povedeniya dolzhnostnykh lits po podderzhaniyu pravoporyadka: prinyat rezolyutsyej № 34/169 General'noy Assambley OON ot 17 dekabrya 1979 goda. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: Anna-T, 2008. S. 54.

political instability or any other emergency provision to justify the torture and inhuman or degrading treatment or punishment[1].

Given the importance of the specified in the art. 5 of the Code, as well as its absence in the art. 106 of the CPC of Ukraine, it would be logical to supplement it with the part 9 of the following content:

'The execution of a clearly criminal order or command regarding the application of the physical force, special means and weapon to convicts that are deprived of liberty, does not exempt the personnel of the colonies from the liability, which is predicted by the law'.

This approach will not only lead to the content of the art. 106 of the CEC of Ukraine to the requirements of international law and will allow at the regulatory level to implement the provisions of the art. 60 of the Constitution of Ukraine about that nobody is obliged to perform the clearly criminal orders or commands, but also will give the opportunity on the practice to prevent the unlawful activity of the personnel of colonies, which is related to the application to convicts that are deprived of liberty, of the defined in the law measures of physical influence, special means and weapon;

2) in the art. 6 of the Code of the behavior of an officials on the maintaining the law and the order

[1] Kodeks povedeniya dolzhnostnykh lits po podderzhaniyu pravoporyadka: prinyat rezolyutsyej № 34/169 General'noy Assambley OON ot 17 dekabrya 1979 goda. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: Anna-T, 2008. S. 55.

according to which the officials on the maintaining the law and the order provide the full protection of the health of the convicted by them persons and, in particular, shall take the necessary measures to provide medical assistance in the case of the need.

In this regard, the comment is interesting on this article of the Code, in which, in particular, it is discussed that since medical personnel are usually involved in the maintaining law and order, an officials on its support, it should take into account the submission of this personnel, according to which he recommends the providing the detainee with appropriate medical care through / or the way of consultation with those medical personnel, who did not participate in the activity of the maintaining law and order.

Based on the content of the art. 6 of the current Code, the second sentence of the part 4 of the art. 106 of the Criminal Code of Ukraine should be revised in the new redaction:

'In the all causes of the application of the measures of the physical influence, special means and weapon, the person, who has applied them, is obliged to use the opportunities of the medical personnel of the colonies to determine the state of the health of the victim, and, if it is necessary, to involve the medical personnel of the territorial health authorities in providing assistance'.

Such approach is based on the provisions:

a) the art. 49 of the Constitution of Ukraine, according to which everyone has the right to the health care and the medical care;

b) the Law of Ukraine 'On the fundamentals of the health care in Ukraine', in which also the specified right of citizens is enshrined[1];

c) the art. 8 and the art. 107 of the CEC of Ukraine, where stated that the convict has the right to the health care;

d) of the section XXVII of the PEI RIO, in which the legal mechanism of the provision of the right of convicts that are deprived of liberty on the health protection and the medical care is defined.

In this case, in order to correspond to the proposed changes to the art. 106 of the CEC with other norms of the current Code, the part 1 of the art. 8 and the part 1 of the art. 107 of the CEC of Ukraine should be supplemented by the sentence with the following content:

'The convict has a right for the receiving the medical care and in the case of the application to them by the personnel of the bodies and the punishment execution institutions, that are determined in the law, of the measures of physical influence, special means and weapon';

3) in the art. 8 of the Code of the behavior of the officials on the maintaining law and order, in which it is stated that the specified persons respect the law and this Code.

If this provision compares with the norms of the current criminal executive legislation of Ukraine, then it should be noted that the proper legal safe-

[1] Pro osnovy okhorony zdorov'ya v Ukrayini. Zakon Ukrayiny vid 19 lystopada 1992 roku. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 1993. № 4. St. 19.

guards for the activity are created in our country that is related to the application to convicts that are deprived of liberty, of the defined in the law restraint measures. It is discussed in this case about:

a) the part of the art. 19 of the Constitution of Ukraine, in which it is discussed that the public authorities (in this work – this are the bodies and the punishment execution institutions) and their officials should act only on the basis within the limits of powers and in the ways that are stipulated by the Constitution and laws of Ukraine;

b) the part 2 of the art. 60 of the Basic law of Ukraine, which states that the legal liability comes for the issuance and the execution of a clearly criminal order or command;

c) the paragraph 14 of the part 1 of the art. 92 of the Constitution of Ukraine, in which it is stated that only laws determine the activity of the bodies and the punishment execution institutions. In this case, according to the requirements of the part 1 of the art. 8 of the Basic Law, the Constitution of Ukraine has the highest legal force. The laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine and must comply with it;

d) the art. 5 of the CEC of Ukraine, in which the principles of the criminal executive legislation and the execution and serving the sentences are enshrined, the principle of the legality is priority of which;

e) the art. 2 of the Law of Ukraine 'On the State criminal executive service of Ukraine', in which the principle of the legality in the activity of the bodies and the punishment execution institutions are also enshrined.

As it is established in this study, the similar provisions are defined in other international legal acts that directly regulate issues that are related to the application of the measures of the physical influence, the special means and the weapon.

Thus, in the principle 6 of the Set of the principles of the protection of all persons who are subjected to the detaining or imprisonment in any form, it is stated that no one detained person or person that is in the prison, cannot be subjected to the torture or cruel, inhuman or degrading treatment or punishment.

In this case, no circumstances can justify the torture and other unlawful acts that are specified above[1].

The principle 34 of the current Set of the principles in the context of content of the subject is especially actual according to which, if the death or disappearance of a detained person or person,, who is in the prison, is in the time of his detaining or imprisonment, then the a judicial or other body conducts an investigation, either on its own initiative or at the request of such person or any other person, who has the information of the current case[2].

Including that there is no provision in the art. 106 of the CEC, it would be logical to supplement this Code with the part 10 by the following content:

'In each case the application to the convicts that are deprived of liberty, of the measures of the phy-

[1] Svod printsipov zashchity vsyekh lits, podvergayemykh zaderzhaniyu ili zaklyucheniyu v kakoy by to ni bylo forme. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: ANNA-T, 2008. S. 77.

[2] Ibid, p. 83.

sical influence, the special means and the weapon, the service checking is conducted by the highest governing body in the field of the execution of sentences, the results of which are referred to the prosecutor who conducts the supervision for the compliance with laws in the bodies and the punishment execution institutions regarding to the Law of Ukraine 'On the prosecutor's office' and the art. 22 of the current Code'.

In this sense, and in connection with the need to improve the legal mechanism on the specified problematic, such provisions that are stated in the principle 33 of the Set of the principles can be recognized important, namely: the damage that is caused as a result of acts or the omissions of a government official in the violation of rights that are in this Set of the principles, shall be reimbursed in accordance with the applied norms on the liability that is provided for by domestic legislation[1].

Given the specified, the art. 106 of the CEC could be supplemented by the part 11 of the following content:

'The compensation for the damage that is caused during the application to the convicts that are deprived of liberty, of the measures of the physical influence, the special means and the weapon, is committed in the order, which is determined by the law'.

[1] Svod printsipov zashchity vsyekh lits, podvergayemykh zaderzhaniyu ili zaklyucheniyu v kakoy by to ni bylo forme. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: ANNA-T, 2008. S. 84.

In terms of the formation of system of the preventive measures, which is related to the application of the restraint measures, the certain normative legal basis are defined also in the principle 36 of the Set of the principles.

In particular, it is discussed in this principles that it is prohibited to impose restrictions regarding the detained persons, who have no the immediate need for the purpose of the detaining or removing obstacle to the progress of the investigation, or the practice of justice, or the maintenance of security and order at the place of the detention[1].

In the same context, the legal grounds and procedure of the application to the convicts that are deprived of liberty, of the restraint measures and in the other international legal acts are defined, the individual provisions of which have been used in this study have been investigated in the improving the domestic legal mechanism on these issues.

Along with this, a kind of moment of 'the truth' and, in fact, 'the litmus paper', which reflected the nature of the explored in this work theme, the results of studying foreign practical experience on the issues have become that are related to the content of the application to the convicts that are deprived of liberty that are defined on the normative legal level, of the restraint measures.

[1] Svod printsipov zashchity vsyekh lits, podvergayemykh zaderzhaniyu ili zaklyucheniyu v kakoy by to ni bylo forme. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: ANNA-T, 2008. S. 84.

As it is established in the course of this scientific search, the specified activity of the personnel of the correctional institutions (the prisons), basing the standard of the normativity, three groups can be classified, namely:

a) the states, in which the legal grounds, type and procedure of the application to the convicts in the places of the isolation (the deprivation of the liberty) are defined in the CEC and special laws (the states of the previous USSR; Serbia; Cuba; others);

b) the states, which regulate this question on the level of the special laws (the Republic of Poland; Germany; USA; the Republic of Turkey; others);

c) the states, in which the specified issues are regulated by the norms of the criminal and civil law (Thailand; Switzerland; Norway; China; etc.).

In the first qualifying group, in terms of the practical relevance of the results of the current study, the normative legal regulation of the specified problematic in the Republic of Belarus[1] attracts attention.

First of all, it is discussed that in the CEC of the Republic of Belarus, along with the general provisions of the application to the convicts of the physical force, the special means and the weapon (the art. 77), the separate rule focus on each of the set of the restraint measures that essentially meets the requirements of international legal acts on these issues and, in turn, is an additional argument regarding the supplementing the CEC of Ukraine with similar norms.

[1] Ugolovno-ispolnityel'nyy kodeks Respubliki Belarus'. Minsk: Nats. tsentr pravovoy informacii Respubliki Belarus', 2000. 144 s.

Another feature of the CEC of the Republic of Belarus is that in every norm it is discussed the personnel of the PEI and the military personnel, who are involved in the specified activity, which equals the legal status of this two entities in the application of the restraint measures.

Among other features of the CEC of the Republic of Belarus are the following:

1) in the general provisions (the art. 77) the provision for the state of necessary defense and absolutely necessary is enshrined, in which the persons of the number of personnel of the correctional institutions and military personnel are able to act, what is important in view of the recognition of their activities as lawful, as circumstances that preclude the crime of the action.

It seems that such an approach could be used in the CEC of Ukraine.

At the same time, in the general provisions of the CEC of the Republic of Belarus no word has been spoken about such ground of the application of the detained in the law restraint measures as the apprehending the offender, as well as about another circumstances that exclude the crime of the action and therefore, in this sense, the CEC of Ukraine is more sophisticated than this Code;

2) the provision about the application of the determined in the law restraint measures are related to all convicts, who are serving sentences in the correctional colonies (the art. 77 of the CEC of the Republic of Belarus),

According to the art. 64 of the CEC of the Republic of Belarus, the correctional institutions include:

– the correctional and educational colonies;

– the prisons and the medical institutions;

– the IIW, which commit the functions of the correctional colonies regarding the convicts to the deprivation of liberty, left in the investigative isolation ward for implementation works on maintenance.

Given the specified, it was logical, in this regard, to supplement the part 6 of the art. 106 of the CEC of Ukraine with the phrase 'as well as with the Law of Ukraine 'On the National guard of Ukraine' and present it in the new redaction:

'The execution of the physical force, special means and weapon is also allowed in other cases that are stipulated by the Laws of Ukraine 'On the National guard of Ukraine', as well as by the Law of Ukraine 'On the pre-trial detention''.

This approach is based on the following provisions:

a) the part 4 of the art. 3 of the CEC of Ukraine, according to which the convicts that were left in the IIW for the work with housekeeping, are kept in the isolation from others on conditions that are predicted by this Code for the correctional colonies of the minimum level of the safety with the general conditions of the keeping and correctional colonies of the medium level of the safety;

b) the art. 90 of the CEC of Ukraine, in which the procedure for temporary detention in the IIW and the transfer of convicts from the arrest house, the correctional center, the disciplinary battalion or the colony to the investigative isolation ward is enshrined;

c) the art. 18 of the Law of Ukraine 'On the pre-trial detention', in which the grounds of the application of the measures of the physical influence, the

special mans and the firearm in the IIW are determined[1];

d) the art. 19 of the Law of Ukraine 'On the pre-trial detention' in which the grounds of the legal grounds for the introducing a special regime in the places of the pre-trial detention'.

In addition, in the part 7 of the art. 77 of the CEC of the Republic of Belarus the provisions are enshrined about that the unlawful application of the physical force, the special mans and the weapon entails the liability that is established by the legislation of the Republic of Belarus.

Given the specified and in the order of the prevention of the unlawful application to the convicts that are deprived of liberty, of the restraint measures, it would be logical to supplement the art. 106 of the CEC of Ukraine with the part 12 of the following content: 'The unlawful application to the convicts that are deprived of liberty, of the physical force, special means and weapon entails the liability that is established by the legislation of Ukraine'.

Among other countries of the I group attracts attention the normative legal regulation of the issues that are related to the application to the convicts that are deprived of liberty, of the restraint measures in the Russian Federation.

Thus, in the part 1 of the art. 86 of the CEC of the RF it is specified that in the cases where the prisoners commit the resistance for the personal of

[1] Pro poperednye uv'yaznennya: Zakon Ukrayiny vid 30 chervnya 1993 r. № 3352-XII. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 1993. № 35. St 360.

the correctional institutions, the malicious disobedience to the requirements of the personnel, the manifestations of rage, the participation in riots, the taking of hostages, the attacks on citizens or the committing other socially dangerous acts, as well as the escape or detention of persons who escaped from the correctional institutions, in order to prevent the specified unlawful actions, but directly – the prevention of the inflicting of the harm by these convicts to the convicts or themself, the physical force, special means and weapon are applied.

In this regard, the procedure of the application of the specified measures of the safety in the part 1 of the art. 86 of the CEC of the RF, as this follows from the content of the part 2 of this article of the Code, determined by the legislation of the Russian Federation[1].

Another feature of the RF is that the art. 86 has a name 'The measures of the safety and the foundations of their application', despite the fact that in the norms of the international law, as actually in the Ukraine, the restraint measures are discussed[2].

In addition, if in the PEI RIO of Ukraine a special section of the XX is devoted to this issue, then in the PEI RIO of the RF it is not considered at all[3].

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[1] Ugolovno-ispolnityelnyy kodeks Rossiyskoy Federatsii. Moskva: Omega-L, 2012. 91 s.

[2] Yevropeys'ki penitentsiarni pravyla: Rekomendatsiya № R (2006) Komitetu Ministriv Rady Yevropy vid 11 sichnya 2006 roku. Donets'k: Donets'k. Memorial, 2010. 32 s.

[3] Pravila vnutrennego rasporyadka izolyatorov vremennogo soderzhaniya, sledstvennykh izolyatorov, ispravitel'nykh uchrezhdeniy i vospitatyel'nykh koloniy Rossiyskoy Federatsii. Novosibirsk: Izd. Sib. in-ta, 2011. 111 s.

As established in this study, the specified above two approaches (the Republic of Belarus and RF) in this or another measure characteristic for the CEC of other states of the I group[1].

Regarding the content of the normative legal regulation of the issues, regarding the application to the convicts that deprived of liberty, of the restraint measures, which are characteristic for countries of the II group, then in this case it should be noted that the specified activity is determined not by the CEC norms, but by special laws.

Thus, in the art. 256 of the CEC of the Republic of Belarus it is specified that the application of the measures of the immediate influence, the application of weapon or the service dog to persons that are deprived of liberty, are regulated by the individual law[2].

The analogical approach on the specified issues is applied in the Germany[3] and France, in which the main sources of the law that regulate the procedure of the execution of sentences, is the CC and the relevant laws (for example, 'On the regulation of the

[1] Skakov A. B. Ugolovno-ispolnitel'nyy kodeks Kazakhstana v XXI veke. *Derzhavna penitentsiarna sluzhba Ukrayiny: istoriya syogodennya ta perspektyvy rozvytku u svitli mizhnarodnykh penitentsiarnykh standartiv ta Kontseptsiyi derzhavnoyi polityky u sferi reformuvannya Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny: materialy Mizhnar. nauk.-prakt. konf. (Kyyiv, 28–29 berez. 2013 r.).* Kyyiv: DPtS Ukrayiny; VD "Daker", 2013. S. 246–250.

[2] Kryminal'no-pravova kharakterystyka kryminal'no-vykonavchogo Kodeksu Pol'shchi: metod. rek. dlya stud. yuryd. f-tu/uklad. O. M. Yukhymyuk, O. G. Kolb, A. B. Kosylo. Luts'k: Yustas, 2001. S. 82.

[3] Chomakhashvili O. Sh., Mykytys' I. M. Zarubizhnyy dosvid diyal'nosti systemy vykonannya pokaran'. *Visnyk Akademiyi advokatury Ukrayiny.* 2022. Ch. 3. S. 133–139.

issues of the serving the preventive conviction and on execution of the sentences in the metropolis')[1].

To the third group relate the states, in which the personnel of the correctional institutions or does not carry special means at all (Switzerland[2]; Norway[3]; Denmark[4]; others) or its application in the service activity is limited[5].

Thus, in 2013 in Thailand the decision was accepted prohibit the application of shackles for the convicts to death penalty in the prison of the maximum level of safety[6].

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[1] Puzyryov M. S. Porivnyal'nyj analiz zastosuvannya osnovnykh zasobiv vypravlennya i resotsializatsiyi zasudzhenykh v Ukrayini ta Frantsiyi. *Kryminal'no-vykonavcha polityka Ukrayiny ta Yevropeys'kogo Soyuzu: rozvytok ta integratsiya: zb. materialiv Mizhnar. nauk.-prakt. konf. (Kyyiv, 27 lystop. 2015 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2015. S. 604.

[2] Sakhnik O. V. Praktychna ta gumanistychna spryamovanist' profesiynoyi pidgotovky penitentsiarnogo personalu zarubizhnykh krayin. *Zarubizhnyy dosvid funktsionuvannya penitentsiarnykh system: storinky istoriyi ta vyklyky syogodennya: materialy krug. stolu (Kyyiv, 14 trav. 2015 r.)*/ vidp. red. O. V. Sokal's'ka. Kyyiv: In-t krym.-vykon. sluzhby, 2015. S. 84.

[3] Yarmola N. S. Reformuvannya ukrayins'koyi penitentsiarnoyi systemy: zarubizhnyy dosvid (na prykladi nimets'koyi ta norvez'koyi modeli). *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv V Mizhnar. nauk.-prakt. konf. (Kyyiv, 24 lystop. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby; FOP Kanbyba T. P., 2017. S. 231–234.

[4] Isevych O. O., Palamarchuk I. M. V'yaznychna systema Korolivstva Daniya na suchasnomu etapi. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv V Mizhnar. nauk.-prakt. konf. (Kyyiv, 24 lystop. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby; FOP Kanbyba T. P., 2017. S. 226–229.

[5] D'yachuk V. Yu. Mizhnarodna praktyka zastosuvannya rezhymu maksymal'nogo rivnya bezpeky v ustanovakh vykonannya pokaran'. *Nauka ta osvita: klyuchovi pytannya suchasnosti.* Chernigiv, 2018. T. 2. S. 52–59.

[6] Ibid, p. 54.

In turn, USA prisons have increasingly used the specialized technique in the supervision of the convicts: from the portable personified devices of alarm to the supervision robots that allow security in the correctional colonies[1].

In the Great Britain, the personnel of the prisons, although it is not provided with the special means of the protection, but in the official activity it uses them only on the order of the director in the cases that are specified in the law[2].

At the same time, these institutions is absent the radio communication and the departmental dedicated networks of the telephone connection, significantly reduces the likelihood of the escaping of convicts from the prisons[3].

Instead, in Norway, the main direction of the work with convicts is not so much the provision of their isolation as the provision of their personal safety[4].

In the context of the content of the subject of the current study, in particular in the part of the development of the legal foundations of the application of the restraint measures to convicts that are deprived of the liberty, deserves the attention of the practice

[1] D'yachuk V. Yu. Mizhnarodna praktyka zastosuvannya rezhymu maksymal'nogo rivnya bezpeky v ustanovakh vykonannya pokaran'. *Nauka ta osvita: klyuchovi pytannya suchasnosti.* Chernigiv, 2018. T. 2. S. 55.

[2] Ibid, p. 56.

[3] Ibid.

[4] Yarmola N. S. Reformuvannya ukrayins'koyi penitentsiarnoyi systemy: zarubizhnyy dosvid (na prykladi nimets'koyi ta norvez'koyi modeli). *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv V Mizhnar. nauk.-prakt. konf. (Kyyiv, 24 lystop. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby; FOP Kanbyba T. P., 2017. S. 234.

of counteraction to the illegal starvation from the side of the latter in Armenia, which is based only on the norms of the international law on these issues, as well as builds taking into account the decisions of the European Court of the rights of human[1].

In order to prevent conflicts between the convicts and personnel of the prisons in Sweden the proper conditions for the serving and execution of the sentence in the form of the deprivation of liberty were created for these subjects (under the law of that state – from 14 days to the life imprisonment).

Thus, the convicts are kept in the single hotel type cameras, and the functions of the supervision by the personnel of the prisons largely is carried out by technical means[2].

As D. Makh-Manus noticed in this regard, we will never learn to respect the rights of the prisoners, if we unless we truly start to respect the rights of the prison personnel[3].

Indicative in this sense we can call the organization of the preventing of the personnel of the prisons in France for the work, in particular, with the radical

[1] Ayrapetyan A. S., Krymoyan S. G., Sargsyan A. A. Osobennosti poryadka provedeniya golodovok v mestakh lisheniya svobody. *Aktual'ni problemy zakhystu prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv VI Mizhnar. nauk.-prakt. konf. (Kyyiv, 25 zhovt. 2018 r.).* Kyyiv: In-t krym.-vykon. sluzhby; FOP Kandyba T. P., 2018. S. 5.

[2] Isevych O. O. V'yaznychna systema Shvetsiyi: etapy formuvannya ta suchasnyj stan. *Aktual'ni problemy zakhystu prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv VI Mizhnar. nauk.-prakt. konf. (Kyyiv, 25 zhovt. 2018 r.).* Kyyiv: In-t krym.-vykon. sluzhby; FOP Kandyba T. P., 2018. S. 84–86.

[3] Mak-Manus D. Rol' personalu u zberezhenni prav lyudyny u v'yaznytsi. *Aspekt: inform. byul.* 2003. № 2 (10). S. 5–6.

tuned convicts (the potential offenders that are classified into 3 groups, depending on the public safety), who are held in the special sectors of the strengthened isolation (no more than 2 persons in the one camera and 100 persons in the one prison) and the contact of whom with the personnel of the prisons is minimized – the issues of the supervision and communication execute the means[1].

As the results of the current study showed, the relevant legal guarantees of the activity of the personnel of the correctional institutions have been created in the criminal legislation of the foreign states.

Thus, the status of the necessary defense of these persons regarding the convicts should be stated by:

– 'the available danger of the unlawful encroachment' (the CC of the Italian Republic);

– 'the unlawful attack or the immediate threat' (the CC of the Swiss Confederation);

– 'the immediate threat of the causing of the unlawful harm' (the CC of Japan);

– 'the application or the real (the looming) threat of the application of the physical force (the CC of the New York State); others[2].

[1] Samosyonok A. O., Astaf'yeva K. Yu. Organizatsiya roboty z radykal'no nalashtovanymy zasudzhenymy u Frantsiyi, yak klyuchova skladova zabezpechennya bezpeky osobystosti v ustanovakh vykonannya pokaran'. *Aktual'ni problemy zakhystu prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv VI Mizhnar. nauk.-prakt. konf. (Kyyiv, 25 zhovt. 2018 r.).* Kyyiv: In-t krym.-vykon. sluzhby; FOP Kandyba T. P., 2018. S. 203–207.

[2] Strel'tsov Ye. L., Orlovs'kyy B. M. Provokatsiya kryminal'no-pravovogo zakhystu osoby u zakonodavstvi zarubizhnykh krayin. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti z zakonom, kriz' pryzmu pravovykh reform: zb. materialiv Mizhnar. prakt. konf. (Kyyiv, 2 grud. 2016 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2016. S. 224.

At the same time, in the CC of the Spain the prohibition of provocation of necessary defense from the side of the defending party is disused (paragraph 4 of the art. 20); and in the CC of Argentina, the lack of the sufficient provocation of necessary defense from the side of the defending party is disused[1].

In Israel, the approach to the provision of the security in correctional institutions was quite original: its basis consists of the application of the system 'DoqGuard' – of the patented security organization system that is based on the natural instinct of dogs that are used in the protection of objects of these institutions[2].

In addition, in Japan, the priority direction in training of the personnel of the prisons and other correctional institutions is the physical training of these persons, which they are engaged in throughout the course of study in special schools (from 15 to 21 months) and constantly during their service activity[3].

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[1] Strel'tsov Ye. L., Orlovs'kyy B. M. Provokatsiya kryminal'no-pravovogo zakhystu osoby u zakonodavstvi zarubizhnykh krayin. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti z zakonom, kriz' pryzmu pravovykh reform: zb. materialiv Mizhnar. prakt. konf. (Kyyiv, 2 grud. 2016 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2016. S. 225.

[2] Goldyryev A. A. Peredovoy opyt zarubezhnykh stran po okhrane ob'yektov s ispol'zovaniyem sluzhebnykh sobak sovmestno s tekhnicheskimi sredstvami. *Suchasna nauka – penitentsiarniy praktytsi: materialy Mizhnar. nauk.-prakt. konf. (Kyyiv, 24 zhovt. 2013 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2013. S. 515–518.

[3] Bilodid K. S., Ostashko O. I. Inozemnyy dosvid organizatsiyi spetsial'noyi fizychnoyi pidgotovky v pravookhoronnykh organakh. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti iz zakonom, kriz' pryzmu pravovyh reform: zb. materialiv V Mizhnar. nauk.-prakt. konf. (Kyyiv, 24 lystop. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby; FOP Kandyba T. P., 2017. S. 310–311.

One of the circumstance that are due to this approach is the absence in the CC of Japan of the criteria and the clear boundaries of the necessary defense, as well as the concept and the possibilities of its exceedance.

In addition, the CC of this state has no norms on imaginary or real defense, the excess of defense and the form of guilt, in doing so[1], what is an important element of the activity of the personnel of prisons in the application of the restraint measures regarding the convicts that are deprived of liberty.

In its tern, in the CC of the People's Republic of China (the PRC) the definition of the necessary defense is not only provided (the part 1 of the art. 20), but also the listed encroachments for the avoidance of which the prevention of the personal injury or death to the person, who encroaches, are not the exceedances between the necessary defense and does not entail an onset of the criminal liability (the part 3 of the art. 20)[2].

At the same time, both in the CC of Japan and in the CC of China do not clearly provide such a sign of the necessary defense as the proportionality, and the norms governing the excess of the required defense are rather blurred that creates the difficulty in the qualification the actions of a person who is in the

[1] Senik A. V. Instytut neobkhidnoyi oborony u krayinakh Dalekoskhidnoyi pravovoyi sim'yi. *Aktual'ni problemy kryminal'nogo prava, protsesu, kryminalistyky ta operatyvno-rozshukovoyi diyal'nosti: tezy III Vseukr. nauk.-prakt. konf. (Khmel'nyts'kyy, 1 berez. 2019 r.).* Khmel'nyts'kyy: NADPSU, 2019. S. 320.

[2] Ibid, p. 320–321.

conditions of protection of the rights and interests of the person, society and state[1].

As established in this study, in the foreign practice there are other moments (both positive and negative) that should be taken into account when the solving of tasks, which are related to the application to convicts that are deprived of liberty, of physical force of the special means and weapon[2].

In doing so, as individual scholars have correctly concluded, even in the context of the limited funding, the of the duration of the mental process, given that Ukraine has ratified the relevant conventions, remains the one – to abide by their obligations and move towards the direction of the harmonization of criminal executive legislation in accordance with the norms of the international law and, in particular, of the EU. And that involves real reform, not an imitation of this process, remembering that the norm becomes legal only when it is reflected in social practice[3].

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[1] Senik A. V. Instytut neobkhidnoyi oborony u krayinakh Dalekoskhidnoyi pravovoyi sim'yi. *Aktual'ni problemy kryminal'nogo prava, protsesu, kryminalistyky ta operatyvno-rozshukovoyi diyal'nosti: tezy III Vseukr. nauk.-prakt. konf. (Khmel'nyts'kyy, 1 berez. 2019 r.).* Khmel'nyts'kyy: NADPSU, 2019. S. 321.

[2] Kalashnyk N. G. Urakhuvannya inozemnogo dosvidu v podal'shomu rozvytku Derzhavnoyi penitentsiarnoyi sluzhby Ukrayiny (porivnyal'nyj analiz). *Kryminal'no-vykonavcha polityka Ukrayiny ta Yevropeys'kogo Soyuzu: rozvytok ta integratsiya: zb. materialiv Mizhnar. nauk.-prakt. konf. (Kyyiv, 27 lystop. 2015 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2015. S. 48–50.

[3] Kyrychenko V. Ye. Kryminal'no-vykonavcha systema Ukrayiny – reformy zarady reform. *Kryminal'no-vykonavcha polityka Ukrayiny ta Yevropeys'kogo Soyuzu: rozvytok ta integratsiya: zb. materialiv Mizhnar. nauk.-prakt. konf. (Kyyiv, 27 lystop. 2015 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2015. S. 275.

In this regard, another conclusion is important, which has been made by M. V. Kostytskyi and N. V. Kushakova-Kostytska, namely: given the postmodern and virtual innovations in the society, the changing the worldview paradigm on a personal level, the question arises: which of the named entities (the personnel of the colonies and the convicts) are ready for such turn of events? In addition, what about the vaccine of 'the sense of duty' to the new generation, who and by what means will do it?[1]

In particular, the analysis of the norms of the international law and the foreign practice of the application to convicts that are deprived of the liberty, of the restraint measures and their comparison with domestic counterparts indicates the available potential opportunities for the abuse by their own right of the personnel of colonies in these situations[2].

First of all, their number includes:

a) the evaluation concepts (the terms) that have been used in the current legislation of Ukraine (the articles 36–43 of the CC and the art. 106 of the CEC)[3];

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[1] Kostyts'kyy M. V., Kushakova-Kostyts'ka N. V. Zakhyst prav zasudzhenykh u suv'yazi z vyroblennyam u nykh pochuttya obov'yazku (sproba filosofs'ko-pravovogo analizu). *Aktual'ni problemy prav lyudyny, yaka perebuvaye u konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv V Mizhnar. nauk.-prakt. konf. (Kyyiv, 24 lystop. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby; FOP Kandyba T. P., 2017. S. 266.

[2] Kolb I. O., Kolb O. G. Suchasnyy stan ta tendentsiyi zlochynnosti u zarubizhnykh derzhavakh. *KELM.* 2016. № 3 (15). S. 105–114.

[3] Kolb I. O., Dzhuzha O. M. Shchodo deyakykh kryteriyiv otsinky efektyvnosti diyal'nosti prokuratury yak sub'yekta zapobigannya zlochynam. *Aktual'ni problemy kryminal'nogo prava ta protsesu i praktyky yikh zastosuvannya: materialy krug. stolu (m. Kyyiv, 10 lystop. 2016 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2016. S. 9–11.

b) the not enough high level of the general and legal culture as important determinants of the conscience of personnel of the colonies;

c) the existence of certain opportunities in the law for the abuse of the their own right by the personnel of colonies;

d) the unlawful activity of the personnel of the colonies in this case has the hidden or disguised nature (in the form of the provocation of the necessary defense, in particular), that is, the criminal-law behavior of these persons contradicts the 'the spirit' of the law, its principles, natural law, etc.[1]

Namely the specified problems made the content of the tasks of the current scientific study and determined the nature and the directions of activity that is aimed at the improving the legal mechanism of the application of the measures of physical influence, special means and weapon to the convicts in the places of the deprivation of liberty in Ukraine, taking into account, in so doing, the requirements of the international legal acts both the mandatory and the recommendatory nature and the positive foreign experience[2].

[1] Gryshchuk V. K. Teoretyko-prykladni pytannya zlovzhyvannya kryminal'nym pravom. *Aktual'ni problemy prav lyudyny, yaka perebuvaye u konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv V Mizhnar. nauk.-prakt. konf. (Kyyiv, 24 lystop. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby; FOP Kandyba T. P., 2017. S. 25–26.

[2] Kolb I. O., Dzhuzha O. M. Shchodo pytannya vidpovidal'nosti kadrovoyi polityky v kryminal'no-vykonavchykh systemakh svitu zagal'nonatsional'nykh program protydiyi zlochynnosti. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 24 lystop. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2017. S. 32–34.

The conclusions to the section 1

1. The periods of the formation of the legal foundations and the science thought on the issues that are related to the application of the determined in the law measures of physical influence, special means and weapon to the convicts that are deprived of liberty in Ukraine, are determined (it is based on the historical and regulatory criteria), namely:

a) 1991–2003 – the time period when the specified type of official activity was regulated by the norms of the Corrective Labor Code of Ukraine that adopted back in 1970, which reflected the content of the relevant repressive punitive punishment in the field of the execution sentences that rude ignored the rights of the convicts to deprivation of liberty, including in the cases of the application of the restraint measures especially in the conditions when it has been involved this activity the forces and capabilities of the so-called special units of the system of the execution of sentences and other law enforcement agencies of our country;

b) 2004–2013 – the period that is related to the adoption of the new CEC of Ukraine (2004), the Law of Ukraine 'On the State criminal executive service of Ukraine' and other normative legal acts including the organizational and managerial nature (such as: the partial subordination of the SCES of Ukraine in December 2010 and the complete merger of this state structure with the Ministry of Justice of Ukraine in October 2012), that though they displayed the content of the criminal executive, but not the repressive

punitive politic of Ukraine, but did not fully comply with the norms of the international law on these issues (the EPR, the International standard rules on the treatment of convicts; the Convention about the prohibition against the torture, inhuman or degrading types of the treatment and punishment; etc.) science it did not contain the provisions on the exclusive nature of such activity of the personnel of the colonies;

c) 2014 – till current time – the a time period during which, as in the previous two periods (1991–2013) on the normative legal, organizational, scientific and other levels (the doctrinal-applied) property foundations to convicts that are deprived of liberty, of the measures of physical influence, special means and weapon in Ukraine also are not created, which has led to the choosing of the theme of this study, as well as determined the meaningful elements of his subject that were not fully developed on the theoretical level.

2. The author's concept 'The methodology for exploring of the content of the activity that is related to the convicts that are deprived of liberty, of the determined in law restraint measures' is formed, under of which in this work it is meant by a system of the methods, techniques and means of the scientific knowledge, which consists of a set of tried on the practice most rational ways, means and forms of the direction of thinking, that is used for the proper study of the content of the social and legal nature of the specified social event.

Based on the results of the use of appropriate methods of the cognition in this study, it is proved

that the right chosen methodology of a specific scientific search is not only creates the effective and optimal conditions for understanding the content, object and nature of scientific development, but is also a necessary element of scientific activity as a whole, since the latter is intended to accompany (to support or deny) those reforms that are taking place in a particular area of public relations.

In particular, namely the dialectical connection of the scientific research with those state programs is evident, which is related to the area of the execution of sentences (of the Concept of the reforming (the development) of the penitentiary system of Ukraine, of the Strategy for the Reform of the judiciary, procedure and related institutions for 2015–2020; etc.).

3. The content of the international legal acts that are related to the application to convicts in the places of the isolation, of the measures of physical influence, special means and weapon is found out and its classification into the sources is committed:

a) of the general direction (the Declaration of the rights of human; the Declaration of the rights of child; the ional covenant on the economic, social and cultural rights; etc.), in which the general principles and approaches governing the issues of the imposition of restrictions on convicts are determined;

b) of the special nature (the International standard rules on the treatment of the convicts; the European penitentiary rules; the Minimum standard rules of the UNO that are related to the application of the justice regarding the juveniles; others);

c) of the direct content (the Code of the behavior of an officials on the maintaining the law and order; the Principles of the medical ethics; the Set of principles for the protection of all persons who are subjected to the detention or confinement in any way; etc.).

The typology of the states is committed on the basis of the studying of the international experience on the specified problematic (it is based on the criterion of the normative certainty), in which the issues of the application of the restraint measures are regulated:

1) by the criminal executive legislation and special laws (Republic of Belarus; Russian Federation; Kazakhstan; etc.);

2) only by the special laws that are related to the all categories of the population including the convicts to deprivation of liberty (Republic of Poland; Germany; France; etc.);

3) by the norms of the criminal law (People's Republic of China; Japan; Spain; etc.).

Based on the results of the study, the need to supplement the current CEC of Ukraine is substantiated by the relevant provisions and norms of the international legal content.

Section 2

Conception and contents of measures of physical force, special means and weapon and legal principles of their application to convicts serving a sentence in colonies

2.1. Conception of measures of physical force, special means and weapon applied to imprisoned convicts

As the practice proves, any public activity is based on the corresponding principles (legal, moral, religious, corporative, etc.).

Proceeding from this, when clarifying the essence and content of this or that behavior of a person or a group of people, it is very important to define what key principles were determinative ones for committing certain actions or omission to act.

To a considerable extend such an approach concerns SCES personnel, who according to its legal status are endowed with appropriate official powers and guaranties of their realization, including the right to using measures of suppressive character, provided for by law, to imprisoned convicts. That's why it is so important to elucidate the essence and content of this activity, as well as its social and legal nature.

Moreover, the results of anonymous poll conducted among PEI personnel and imprisoned convicts prove actuality and necessity of undertaking scientific research on the given topic. So, answering the question 'Do you understand the social nature of applying the suppressive measures to imprisoned convicts?' 1001 people of SCES personnel (50 % of 2016 respondents polled) said 'yes', 81 (4 %) said 'no', 934 (46 %) – 'partly'. For the part of convicts, 28 (2 % of respondents polled) said 'yes', 1311 (65 %) said 'no', 677 (33 %) – 'partly' (Supplements A, B, C, C1).

One of the principles of personnel activity of correctional and educational colonies of Ukraine, determined in the Constitution of Ukraine (art. 19, 92) and CEC of Ukraine (art. 5), is the principle of legitimacy.

Its essence means ensuring supremacy of law in general, and law regulating execution – serving a sentence, in particular, as well as anticipates its priority over other principles and normative and legal instructions, concerning the sphere of punishment execution[1].

As A. Kh. Stepaniuk mentions, criminal executive legislation principles are punishment realization, determined with objective law and main regulations, principles, determining executive direction, character, reasons and scope of legal regulation of

[1] Kolb I. O., Kolb O. G. Bezpekova funktsiya kryminal'nogo pokarannya v Ukrayini. *Naukovyy visnyk Uzhgorods'kogo natsional'nogo universytetu. Seriya: Pravo.* 2016. T. 3. S. 47–50.

punishment execution bodies and institutions, fixed in Criminal Executive Code[1].

For all that, the principle of legitimacy (in juridical literature it is called the principle of legitimacy and of legal guarantee of personal rights and freedoms, fixed in law, conformity of state bodies officials activity to legislation norms, or the principle of legitimacy in the process of forming and realizing legal norms, etc.) concerns special legal principles of law, the content of which lies in the fact that proceeding from art. 8 of the Constitution of Ukraine, the Fundamental Law has the highest legal force, but laws and other normative and legal acts are adopted according to the Constitution and have to correspond to it[2].

The mentioned constitutional provision is of great importance when elucidating legality of normative and legal determination of the list and reasons of applying physical force measures, special means and weapon to imprisoned convicts.

At the same time, as the results of the given research showed, the conception 'legitimacy' has wide interpretation in international acts and in the practice of making decisions by European Court of human rights.

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[1] Stepanyuk A. Kh. Aktual'ni problemy vykonannya pokaran' (sutnist' ta pryntsypy kryminal'no-vykonavchoyi diyal'nosti: teoretyko-pravove doslidzhennya. Vybrani pratsi/uklad. K. A. Avtukhov. Kharkiv: Pravo, 2017. S. 286.

[2] Kel'man M. S., Katukha O. S., Koval' I. M. Zagal'na teoriya derzhavy i prava: pidruchnyk/za zag. red. d-ra yuryd. nauk, prof. M. S. Kel'mana. Ternopil': TOV Terno-graf, 2018. S. 343–344.

The requirement 'legitimacy' does not only expect, that state representatives have to act within granted powers, but use these powers reasonably, fairly, according to the circumstances considered[1].

Moreover, according to its content, the word 'legitimacy' refers to national legislation and obliges to keep its material and procedural norms, as well as international right norms require any imprisonment to correspond to the purpose of article 5 of Convention on Human Rights and Fundamental Freedoms – protecting people from any groundless imprisonment.

At the same time, all measures applied in the process of executing such punishment have to correspond not only to valid legislation, but to be necessary in the appropriate situation[2].

It was the mentioned methodological approaches that was used for elucidating the conception content of suppressing measures, applied in to imprisoned convicts in Ukraine[3].

Moreover, at present this problem is one of key problems in the sphere of punishment execution, emphasized both by experts[4], and by developers of the Conception of reforming (developing) penitentiary system in Ukraine[5].

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[1] Kryminal'no-vykonavchyy kodeks Ukrayiny: naukovo-praktychnyy komentar/za zag. red. d-ra yuryd. nauk, prof. V. V. Kovalenka, d-ra yuryd. nauk, prof. A. Kh. Stepanyuka. Kyyiv: Atika, 2012. S. 19.

[2] Ibid.

[3] Ibid, p. 106–113.

[4] Chernyshov D. Pro problemy reformuvannya penitentsiarnoyi systemy. *Dzerkalo tyzhnya.* 2017. № 32. S. 3.

[5] Pro skhvalennya Kontseptsiyi reformuvannya (rozvytku) penitentsiarnoyi systemy Ukrayiny: Rozporyadzhennya Kabinetu Ministriv Ukrayiny vid 13.09.2017 r. № 654-R. *Uryadovyy kur'yer.* 2017. № 178. 20 veres. S. 8–9.

As V. T. Maliarenko concluded, the very fact of social punishment non-efficiency is rather significant and it forces to look for the ways of its improvement[1].

The given research results showed, that the list and the order of applying physical influence measures, special means and weapon to offenders in Ukraine including imprisoned convicts had two distinct periods of normative legal establishment, namely:

a) since 1991 till 2017, when this conception was generally regulated by the Resolution of Council of Ministers of the USSR of February 27, 1991, No. 49, which approved the Rules of applying special means for protecting public order[2];

b) since 2017 till present the mentioned activity is regulated by the resolution of Council of Ukraine of December 20, 2017, № 1024, which cancelled the Resolution of Council of Ministers of the USSU of February 27, 1991, № 49 and approved the List and Rules of applying special means by military men of the National Guard when performing official tasks[3].

At the same time, it is worth stating that in comparison with the previous resolution of the Govern-

[1] Malyarenko V. T. Pro sotsial'nu zumovlenist' i spravedlyvist' pokarannya. *Visnyk Verkhovnogo sudu Ukrayiny.* 2002. № 3 (33). S. 33.

[2] Pravyla vnutrishnyogo rozporyadku ustanov vykonannya pokaran': zatv. nakazom Ministerstva yustytsiyi Ukrayiny vid 28 serpnya 2018 roku № 2823/5. *Ofitsiynyy visnyk Ukrayiny.* 2018. № 70.

[3] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

ment (1991) in 2017 the resolution without any reason reduced the amount of subjects who have the right to apply special means when performing official tasks, but granted such a right to military men of the National Guard of Ukraine.

Such illogical approach is obvious, as at the same time when the Cabinet of Ministers of Ukraine adopted the resolution of December 22, 2017, № 1024, the Law of Ukraine 'On the National Police'[1]: 'On State Criminal Executive Service of Ukraine'[2]; Criminal Executive Code of Ukraine and other laws concerning the activity of law-enforcement bodies established in our country were and are valid nowadays[3].

Paragraph 5 of the resolution of the Plenum of the Supreme Court of Ukraine of June 6, 1992, № 8 'On applying legislation by courts providing for liability for infringement upon life, health, dignity and property of judges and law-enforcement officers' says, that beside judges, military men and members of public formation for public order protection law-enforcement officers also can be victims of crime, which is specified in p. 1, art. 2 of the Law of

[1] Zakon Ukrayiny "Pro Natsional'nu politsiyu". Polozhennya pro Natsional'nu politsiyu: ofits. tekst. Kyyiv: Alerta, 2016. 84 s.

[2] Pro Derzhavnu kryminal'no-vykonavchu sluzhbu Ukrayiny: Zakon Ukrayiny vid 23 chervnya 2005 r. Ofitsiynyy visnyk Ukrayiny. 2005. № 30. S. 4–10.

[3] Pro derzhavnyy zakhyst pratsivnykiv sudu i pravookhoronnykh organiv: Zakon Ukrayiny vid 23.12.1993 r. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 1994. № 11. St. 50.

Ukraine of December 23, 1993 'On state protection of court and law-enforcement officials'[1].

Proceeding from above-mentioned, it would be logical to change the title of the resolution of the Cabinet of Ministers of December 27, 2017, № 1024 and state it in a new edition – 'On approving the List and Rules of applying physical force, special means and weapon for public order protection', which will enable to involve other law-enforcement bodies in this activity (and legalize it), taking into consideration, that the laws determining their legal status and powers, give the right to apply measures of physical influence, special means and weapon to offenders.

Moreover, according to hierarchy of normative legal acts, established in art. 8 of the Constitution of Ukraine, laws have higher legal force, then resolutions of the Cabinet of Ministers of Ukraine, that's why changing the title of the mentioned Government's resolution is indisputable.

Within the context of the subject content in the given research, and the task realization concerning improving legal mechanism of applying suppressing measures, determined in law, to imprisoned convicts, other differences between the resolutions of the Government of Ukraine in 1991 and 2017 are striking, namely:

[1] Pro zastosuvannya sudamy zakonodavstva shcho peredbachaye vidpovidal'nist' za posyagannya na zhyttya, zdorov'ya, gidnist' ta vlasnist' pratsivnykiv pravookhoronnykh organiv: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26.06.1992 r. № 8. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uklad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 101.

1) the Rules and List of 1991 determine 17 special means that could be applied for public order protection (part II 'List of special means'), also service dogs can be used for public order protection.

But in the Rules of 2017 the number of such special means is reduced to 15, including service dogs and horses, which were in the List approved by the Cabinet of Ministers of Ukraine.

Besides, the List of 2017 includes such special means that are partly absent in the List of 1991:

a) electroshock devices of contact and contact-remote action (in 1991 it was only electroshock devices);

b) means of mobility restriction (chains, nets for binding, etc. (in 1991 – handcuffs);

c) means and devices of restricting access to a certain territory (protective barriers, turnstiles) (in 1991 – absent at all)

d) barriers of forced transport stop (in 1991 – device for forced motor transport stop 'Ezh-M');

e) means of acoustic and microwave influence (in 1991 – means of providing special operations);

f) special marking and forcing means (in 1991 – absent);

g) other means;

2) the Rules and List of 1991 had distinct classification of special means (in 2017 – absent), namely:

a) means of individual protection;

b) means of active defense;

c) means of providing special operations;

d) devices for unlocking rooms seized by offenders.

Besides, the List of 1991 distinctly names the types of each special means that could be used for public order protection, which, unfortunately, the List of 2017 lacks (except for some: rubber and plastic clubs, electroshock devices and service dogs);

3) the Rules of 1991 told about the List of special means (in 2017 – separate supplements to the resolution of the Cabinet of Ministers of Ukraine determine the List and Rules of special means);

4) in the Rules of 1991 special part III defined the peculiarities of applying the means of active defense and providing special operations (in 2017 – p. 8 of the Rules specified general rules of applying special means);

5) other differences, used in the given work as additional arguments for elaborating scientifically substantiated measures aimed at improving legal principles of colony personnel activity when applying measures of physical influence, special means and weapon to imprisoned convicts.

Proceeding from the results of comparative legal analysis of the above mentioned resolutions of the Cabinet of Ministers of Ukraine, it would be worth supplementing art. 106 of CEC of Ukraine with part 13 of the following content: 'The List of special means and the rules of their application, are determined by the Cabinet of Ministers of Ukraine'.

Besides, taking normative legal approaches used in resolutions of the Government of Ukraine in 1991 and 2017 into consideration, special means applied to imprisoned convicts can be classified in the following way (the criterion of influence on a person lies in the basis):

a) measures of psychological influence (demonstrating special means determined in the List to an offender (or a group of such people) without applying to convicts 9 they can include the means squads of security and supervision departments in bodies and PEI are equipped with (rubber and plastic clubs; chains; electroshock devices, etc.));

b) preventive measures (applied in convoy; for suppressing riots; preventing infliction of damage to surrounding or themselves by convicts; etc, (physical force, straitjacket, etc.)

c) measures of direct individual influence on an offender (applied by colony personnel in cases, determined in art. 106 of CEC of Ukraine (depending on the situations arisen, - any special means or weapon);

d) measures taken during special operations in colonies (for example, in case of introducing the regime of special conditions in these PEI (art. 105 of CEC) (light and noise grenades, water cannons; armoured vehicles, etc.).

If the criterion of meaningful purpose is laid in the basis, special means applied to imprisoned convicts, can be classified in such a way:

1) means of individual protection (helmets, bulletproof vests, shockproof and armour shields, etc.);

2) means of active defense (rubber and plastic clubs; chains; electroshock devices; hand gas grenades; sprays with tear gas and irritating drugs, etc.);

3) means of providing special operations (water cannons, light and noise grenades; cartridges with rubber bullet; backpack sets, etc.);

4) means for unlocking rooms seized by offenders (small-size blasting devices; devices for forced room unlocking, etc.)

If the criterion of normative certainty is used for classification, special means applied to imprisoned convicts can be divided into:

a) means provided for colony personnel (bullet-proof vests; chains; rubber and plastic clubs, etc.);

b) means in service with special subdivisions of SCES of Ukraine (means for conducting special operations);

c) means used by other law-enforcement bodies involved in suppressing imprisoned convicts, in the manner prescribed in art. 105 and p. 6 art. 106 of CEC of Ukraine (according to provision standards established for officials of National Police and military men of National Guard of Ukraine).

Scientific sources can give some other classification groups of special means applied to offenders[1].

Proceeding from this, it should be stated that scientific classification of suppressing means is of both theoretical and practical significance.

So, its theoretical importance consists in the fact that in such a way knowledge limits are widened about the essence and content of physical force measures, special means and weapon applied to offenders, that

[1] Korol' M. O., Sydoruk D. A. Osoblyvosti zatrymannya osib, shcho pomishchayut'sya do mists' tymchasovogo trymannya Derzhavnoyi prykordonnoyi sluzhby Ukrayiny za pidozroyu u vchynenni kryminal'nogo pravoporushennya. *Aktual'ni problemy kryminologichnogo prava, protsesu, problematyky ta operatyvno-rozshukovoyi diyal'nosti: tezy III Vseukr. nauk.-prakt. konf. (Khmel'nyts'kyy, 1 berez. 2019 r.).* Khmel'nyts'kyy: Vyd-vo NADPSU, 2019. S. 474–477.

are established in law, as well as their role and place in legal mechanism of law-enforcement bodies in any democratic state for ensuring protection of personal rights and legal interests, of society and state and, on the whole, law and order in it.

As for practical importance of the given classification, more specific conditions are created for making adequate decision by an official of SCES personnel about applying (or avoiding) this or that suppressing measure to an offender.

At the same time, it forms additional assessment criteria concerning legality of a law-enforcement official's act and its correlation with consequences of applying the corresponding suppressing measure to an imprisoned convict.

On the whole, generalizing the information concerning the measure of physical influence, special means and weapon, determined in law (in art. 106 of CEC of Ukraine, in particular), their content can be defined in such a way:

'Suppressive measures applied to imprisoned convicts are measures of psychological and physical influence, established in law, which are taken by bodies and PEI personnel to deal with an offender in confinement, aimed at stopping the illegal acts, committing of which is the legal and actual reason for their application'[1].

[1] Kolb I. O. Pro zmist ta kharakterystyku systemoutvoryuyuchykh oznak ponyattya "zakhody vgamuvannya, shcho zastosovuyut'sya do zasudzhenykh u mistsyakh pozbavlennya voli Ukrayiny". *Naukovyy visnyk publichnogo ta pryvatnogo prava.* 2019. Vyp. 3. S. 120–126.

So, the system-forming features making up the content of the defined concept are as follows:

1. Suppressing measures established in law.

The importance and necessity of this feature is obvious and is based on requirements of p. 14 art. 92 of the Constitution of Ukraine, according to which the activity of bodies and PEI is defined only by law.

Proceeding from art. 106 of CEC, one of the types of criminal executive activity is applying measures of physical influence, special means, a straitjacket and weapon to imprisoned convicts in cases, defined in law[1].

Although it should be mentioned, that the Constitutional Court of Ukraine in its resolution of July 9, 1998, № 12-pn/98 (a case about interpretation of the term 'legislation') explained, that the legislation of Ukraine, besides the Constitution of Ukraine, included: resolutions of the Supreme Rada of Ukraine; international treaties, agreed by the Supreme Rada of Ukraine; decrees of the President of Ukraine; resolutions and decrees of the Cabinet of Ministers of Ukraine[2].

Taking the above-mentioned into consideration, legislative acts regulating the problem of applying

[1] Kolb I. O. Ponyattya, zmist i vydy zakhodiv fizychnogo vplyvu, spetsial'nykh zasobiv i zbroyi, shcho zastosovuyut'sya do zasudzhenykh u mistsyakh pozbavlennya voli. *Pravookhoronna ta pravozakhysna diyal'nist politsiyi v umovakh formuvannya gromadyans'kogo suspil'stva v Ukrayini: materialy Pidsumk. nauk.-prakt. konf. (m. Kyyiv, 9 kvit. 2016 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2016. S. 181–185.

[2] Rishennya Konstytutsiynogo Sudu Ukrayiny "U spravi za konstytutsiynym zvernennyam Kyyivs'koyi mis'koyi rady, profesiynykh spilok shchodo ofitsiynogo tlumachennya chastyny tretyoyi statti 21 Kodeksu zakoniv pro pratsyu Ukrayiny (sprava pro tlumachennya terminu "zakonodavstvo"), № 12-pr/98 vid 9 lypnya 1998 roku. *Ofitsiynyy visnyk Ukrayiny*. 1998. № 32. St. 1209.

suppressive measures to imprisoned convicts, should include the resolution of the Cabinet of Ministers of December 20, 2017, № 1024 'On approval of the list and rules of applying special means by military men when performing official tasks'[1], who are involved in protecting and ensuring law and order in PEI, according to art. 105 and p. 6 art. 106 of CEC of Ukraine.

At the same time approving the order of applying physical force, special means and weapon to imprisoned convicts in normative legal by-laws, namely: Instruction on convicts protection organization in closed criminal executive institutions, educational colonies and IIW; Instruction on the order of supervising convicts' security of safety and isolation; PEI IOR; etc. – cannot be considered the normative approach corresponding to the resolution content of the Constitutional Court of Ukraine, which was spoken about before.

Such a conclusion proceeds from the content of art. 8 of the constitution of Ukraine, where the principle of law supremacy is defined, and it is based on the provisions of p. 1 of the Plenum resolution of the Supreme Court of November 1, 1996, № 9 'On applying the Constitution of Ukraine for administering justice', according to which this principle is one of priorities when justice is administered[2].

[1] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

[2] Pro zastosuvannya Konstytutsiyi Ukrayiny pry zdiysnenni pravosuddya: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 01.11.1996 r. № 9. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uklad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 136.

Especially, p. 2 of the given resolution says that courts considering specific cases have to assess the content of any law or other normative legal act from point of view of its conformity to the Constitution, and in all necessary situations to use the Constitution as an act of direct action[1].

The importance of approving legal grounds of applying suppressive measures to imprisoned convicts in law, not in other normative legal acts, can be discussed taking analogy requirements (conformity, similarity, etc.[2]) into consideration, namely: provisions of p. 2 art. 42 of CC of Ukraine, saying that an order or instruction is legal if they are issued by the corresponding person in an appropriate manner and within his powers, don't contradict current legislation in essence and are not related to violation of constitutional rights and freedoms of a person and citizen.

As far as suppressive measures applied to offenders are concerned, their list is defined in the resolution of the Cabinet of Ministers of Ukraine of December 20, 2017, № 1024 'On approving the list and rules of applying special means by military men of the National Guard when performing official tasks'[3].

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[1] Pro zastosuvannya Konstytutsiyi Ukrayiny pry zdiysnenni pravosuddya: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 01.11.1996 r. № 9. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uklad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 136.

[2] Buliko A. N. Bol'shoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. S. 39.

[3] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

Measures of psychic and physical influence.

In this case the question is about applying psychic and physical violence to imprisoned convicts.

For all that, as it is stated in p. 4 of Plenum resolution of the Supreme Court of Ukraine of June 26, 1992, № 8 'On applying legislation by courts that provides for liability for encroachment on life, health, dignity and property of judges and law-enforcement officers' lawful applying physical influence, special means or weapon by law-enforcement officer to an offender excludes liability for damage[1].

Scientific literature explains violence as applying force for achieving something, forceful influence on somebody or something[2]. Legal sources distinguish psychic and physical violence.

Thus, in p. 8 of Plenum resolution of the Supreme Court of Ukraine of June 6, 1992, № 8 violence means delivering blows, battery, inflicting bodily harm, threat of applying violence means expressions or actions about person's intentions to apply violence[3].

P. 8 of Plenum resolution of the Supreme Court of Ukraine of February 7, 2003, № 2 'On court practice in cases about crimes against person's life and

[1] Pro zastosuvannya sudamy zakonodavstva shcho peredbachaye vidpovidal'nist' za posyagannya na zhyttya, zdorov'ya, gidnist' ta vlasnist' pratsivnykiv pravookhoronnykh organiv: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26.06.1992 r. № 8. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uklad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 101.

[2] Velykyy tlumachnyy slovnyk suchasnoyi ukrayins'koyi movy/uklad. O. Yeroshenko. Donets'k: TOV "Gloriya Treyd", 2012. S. 401.

[3] Pro zastosuvannya sudamy zakonodavstva... S. 103–104.

health' tells about violence with extreme cruelty (p. 4 p. 2 art. 115 of CC), when a victim is subjected to special physical, psychic or moral suffering[1], and p. 28 tells about cruel treatment meaning ruthless, brutal actions which subjected victims to physical or psychic suffering (tortures, systematical inflicting bodily harm, battery, deprivation of food, water, clothes, dwelling, etc.)[2].

P. 5 of Plenum resolution of the Supreme Court of Ukraine of December 11, 2009, № 10 'On court practice in cases about crimes against property' tells about other kinds of violence (violence that is not dangerous for a victim's life or health and violence dangerous for a person's life or health)[3].

Thus, violence that is not dangerous for a victim's life or health means deliberate infliction of trivial bodily harm, which did not cause short-term health disorder or slight disability, as well as committing other acts of violence (striking a blow, battery, unlawful imprisonment) provided they were not dangerous for life or health at the moment of infliction.

Violence dangerous for life or health (art. 187, p. 3, 189 of CC) is deliberate infliction of trivial bo-

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[1] Pro sudovu praktyku v spravakh pro zlochyny proty zhyttya ta zdorov'ya osoby: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 07.02.2003 r. № 2. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uklad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 204.

[2] Ibid, p. 212.

[3] Pro sudovu praktyku u spravakh pro zlochyny proty vlasnosti: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 11.06.2009 r. № 10. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/ uklad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 428.

dily harm to a victim, causing short-term health disorder or slight disability, average or severe bodily harm, and other acts of violence, which did not result in the indicated consequences, but were dangerous for life or health at the moment of committing them.

They include violence causing loss of consciousness, or being a torture, pressing the neck, dropping from a height, applying special instruments[1].

Proceeding from this, it should be admitted, that violence measures applied by SCES personnel to imprisoned convicts mustn't have unlawfulness features, mentioned above, namely: infliction of bodily harm or victim's death cannot be deliberate and exceed the limits of necessary defense or detention of a criminal.

Here belongs deliberate infliction of grave bodily harm to the person who encroaches, which evidently does not correspond to encroachment danger or defense situation or criminal detention situation, all this proceeds from the content of p. 4 of Plenum resolution of the Supreme Court of Ukraine of April 26, 2002, № 1 'On court practice in cases about necessary defense'[2].

[1] Pro sudovu praktyku u spravakh pro zlochyny proty vlasnosti: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 11.06.2009 r. № 10. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/ uklad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 429.

[2] Pro sudovu praktyku u spravakh pro neobkhidnu oboronu: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26.04.2002 r. № 1. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uporyad. V. P. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 170.

As far as psychic violence is concerned, in legal literature where crimes against property are classified, it means any threat (intimidation with words, gestures, weapon demonstration, etc.) aimed at the fact that a victim should have an impression, that the threat will be realized if he counteracts the person who expressed it or does not fulfill his requirements[1].

Taking this into consideration, psychic violence that can be applied by bodies and PEI personnel may have the nature and content of violence, mentioned above, on condition that the limits of necessary defense and criminal detention are observed (articles 36, 38 of CC of Ukraine).

3. Suppressive measures can be applied only by SCES personnel and other people involved in this activity according to law (p. 6 art. 106 of CEC).

Art. 14 of Law of Ukraine 'On State criminal executive service of Ukraine' determines an exclusive list of people referring to personnel category of bodies and punishment execution institutions.

It should be taken into consideration that such category includes a person who does not only meet the requirements for SCES personnel (art. 16 of Law), but began to exercise his powers after issuing the corresponding order of employment he got acquainted with under the receipt; after written acquaintance

[1] Pro sudovu praktyku u spravakh pro zlochyny proty vlasnosti: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 11.06.2009 r. № 10. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/ uklad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 430.

with functional responsibilities and other formal requirements, determined in normative legal acts concerning the sphere of his activity.

Such additional requirements proceeding from the content of p. 81.1 of EPR include:

– successful passing exams by bodies and PEI personnel concerning the knowledge of international and regional documents and norms in the sphere of human rights, especially European Convention on Human Rights and European Convention on Preventing tortures or cruel degrading treatment or punishment;

– studying the practice of applying European Penitentiary Rules (EPR).

At the same time, it should be stated that every person who is legally in PEI, has the right to necessary defense, including application of any objects, except for those determined only for SCES personnel and attached forces (art. 105 and p. 6 art. 106 of CEC).

4. Suppressing measures are applied only to the people kept in the places of confinement.

Such people include convicts imprisoned for a certain term, whose sentence was validated (art. 532 of CEC) and was enforced (art. 535 of CEC) according to requirements of criminal executive legislation of Ukraine (art. 86–99 of CEC).

At the same time, when committing the actions said in p. 1 art. 106 of CEC by other people who are legally in correctional colonies (art. 22–25 and art. 110 of CEC), the personnel have no right to apply physical force, special means and weapon, but to take measures that constitute the content of necessary defense (art. 36 of CC).

In such cases only policemen (art. 42–46 of Law of Ukraine 'On National Police') or military men of the National Guard of Ukraine (art. 15–19 of Law of Ukraine 'On National Guard of Ukraine') have the right to take suppressive measures.

5. Suppressive measures are taken only against the convict who committed the offences determined in p. 1 art. 106 of CEC, as a reason for their application.

In jurisprudence an offence means socially dangerous or harmful, illegal action committed by delictual subject (physical or juridical person), for which legal responsibility is provided for[1].

Within the context of the theme investigated applying measures of physical influence, special means and weapon to imprisoned convicts is possible only when the offences mentioned in p. 1 art. 106 of CEC are committed.

If SCES personnel don't follow this requirement the court will not qualify it as exceeding official powers (p. 5 of Plenum resolution of the Supreme Court of Ukraine of December 26, 2003, № 15 'On court practice in cases about exceeding power or official authority'[2].

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[1] Pravoznavstvo: slovnyk terminiv: navch. posib./za red. V. G. Goncharenka. Kyyiv: Yurys. konsul't. 2007. 438 s.

[2] Pro sudovu praktyku u spravakh pro perevyshchennya vlady abo sluzhbovykh povnovazhen': Postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26 grudnya 2003 r. № 15. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uporyad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A.V., 2011. S. 255.

6. The purpose of applying suppressive measures is determined in p. 1 art. 106 of CEC, namely: a) stopping unlawful encroachment (physical resistance; malicious non-compliance with legal requirements; manifestations of riots, etc.) mentioned in this article; b) preventing an offender from inflicting harm to surrounding or himself.

The latter is connected with the fact that inflicting harm to himself, including suicide, is considered in law practice as one of forms of avoiding to serve a sentence in prison for a certain term (art. 390 of CC) and refers to prohibitions determined in p. 4 art. 107 of CEC of Ukraine.

7. There must be legal and actual grounds for applying physical influence, special means and weapon to imprisoned convicts.

Scientists understand legal grounds as regulating public relations by rules of law[1].

Within the context of the problem studied legal grounds of applying suppressing measures to imprisoned convicts by colony personnel are enshrined in: CEC (art. 105, 106); special laws ('On State criminal executive service of Ukraine'; 'On National police'; 'On National Guard of Ukraine'); departmental normative legal acts (PEI IOR, Instructions on organization of protection and supervision in correctional and educational colonies; etc.)

[1] Kryminologiya: pidruchnyk/V. V. Golina, B. M. Golovin, M. Yu. Valuys'ka ta in.; za zag. red. V. V. Goliny, B. M. Golovina. Kharkiv: Pravo, 2014. S. 146.

Scientists suggest that SCES personnel should understand actual grounds as real behavior of offenders in the situations, determined in law as legal grounds for applying suppressing measures to them[1].

For all that a significant number of researchers of this problem prove in their works that actual grounds of applying suppressing measures provided by law are priority in all situations except for those, when an offender made a real inevitable threat in the current situation of defending person's life or health[2].

It is worth stating that the previous and other system-forming features of the conception investigated in this work should be considered as an interacting complex, on the ground of which social legal essence and content of suppressing measures, applied to imprisoned convicts, can be fully and thoroughly clarified.

In spite of all this, theoretical importance of the conception formulated in the given research consists in the fact, that on the doctrinal level knowledge limits are widened about social component of such legal category as applying suppressive measures in the sphere of punishment execution of Ukraine, that is, as a circumstance which doesn't exclude criminal actions of the people who have the right to apply them,

[1] Kryminologiya: pidruchnyk/V. V. Golina, B. M. Golovin, M. Yu. Valuys'ka ta in.; za zag. red. V. V. Goliny, B. M. Golovina. Kharkiv: Pravo, 2014. S. 146.

[2] Zhdanova I. Ye. Fizychnyy abo psykhichnyy prymus yak obstavyna, shcho vyklyuchaye zlochynnist' diyannya: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Nats. un-t im. Tarasa Shevchenka, 2013. S. 10–11.

but is socially useful in the context of ensuring law and order in the places of confinement and of preventing socially dangerous consequences of unlawful actions of offenders among convicts in correctional and educational colonies[1].

Practical significance of the conception consists in the fact that scientifically substantiated algorithm of SCES personnel actions is formulated in it, in the cases when legal and actual grounds of applying physical force, special means, a straitjacket and weapon to imprisoned convicts arise.

Moreover, it is proved that such activity must be based on the principles of legitimacy, humanity and justice, and also actual grounds for applying suppressing measures to offenders in correctional and educational colonies.

As it is established at the scientific level, with another approach such actions of law-enforcement officers can be qualified by court as: torture[2]; exceeding necessary defense limits[3]; exceeding official po-

[1] Kolb I. O., Cherednichenko S. Yu. Ponyattya, zmist ta vydy zakhodiv fizychnogo vplyvu, spetsial'nykh zasobiv i zbroyi, shcho zastosovuyut'sya do zasudzhenykh u mistsyakh pozbavlennya voli. *Zastosuvannya zakhodiv fizychnogo vplyvu spetsial'nykh zasobiv i zbroyi u mistsyakh pozbavlennya voli: navch. posib.*/za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy ta d-ra yuryd. nauk, prof. O. G. Kolba. Kyyiv: Kondor, 2016. S. 18–32.

[2] Telesnits'kyy G. N. Kryminal'na vidpovidal'nist' za katuvannya: porivnyalno-pravove doslidzhennya: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: KhNUVS, 2013. 20 s.

[3] Gusar L. V. Neobkhidna oborona: kryminologichni ta kryminal'no-pravovi aspekty: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: KhNUVS, 2009. 20 s.

wers[1] and other circumstances qualified as criminal action[2].

On the whole, taking into consideration the scientific research results of the defined problem[3] and the lack of special Instruction on order and conditions of applying physical force, special means, a straitjacket and weapon in practice in the sphere of punishment execution, the content and essence of SCES personnel activity can be formulated in the project form of the specified Instruction, where the following questions can be reflected:

1. General principles.

In this part it is necessary to give definitions of the terms used in criminal executive legislation of Ukraine according to the problems studied, and also to list legal sources on the ground of which SCES of Ukraine apply physical force, special means and weapon.

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[1] Kovalenko V. P. Kryminal'na vidpovidal'nist' za zlovzhyvannya vladoyu abo sluzhbovym stanovyshchem, vchynene pratsivnykom pravookhoronnogo organu: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: NAVSU, 2009. 20 s.

[2] Zhupina O. S. Rozsliduvannya nasyl'nytskykh zlochyniv, vchynenykh pratsivnykamy OVS pid chas vykonannya sluzhbovykh obov'yazkiv: avtoref. dys. … kand. yuryd. nauk: 12.00.09. Kyyiv: NAVSU, 2009. 20 s.

[3] Taranenko M. M. Kryminal'no-pravova kharakterystyka masovykh zavorushen': avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: NAVSU, 2013. 20 s.

Denysova O. V. Kryminal'no-pravova kharakterystyka katuvannya: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: KhNUVS, 2016. 20 s.

Shevchuk O. M. Zasoby derzhavnogo prymusu u pravoviy sluzhbi Ukrayiny: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Kyyiv: Kyyiv. nats. un-t im. Tarasa Shevchenka, 2009. 20 s.

2. Legal principles of activity of bodies and punishment execution institutions personnel in the specified direction.

In this part broadened explanation of the situations on the ground of which suppressive measures are applied, and assessment of by-law normative legal acts concerning the given problem is worth giving.

3. The order of applying suppressive measures established in law.

Here it is necessary to elaborate distinct algorithm of SCES personnel actions when legal and actual grounds for applying physical force, special means, a straitjacket and weapon to imprisoned convicts are available.

4. The peculiarities of applying suppressive measures.

The most significant differences of applying suppressive measures established in law should be reflected, and the necessity of their application should be proved – from most essential to most perceptible for offender's life and health.

5. Providing first aid to the person suppressive measures were applied to.

This part has to prove the duty of SCES personnel to provide necessary first aid to the convict suffered from its actions when suppressive measures were applied.

6. Documentation execution of the results of applying suppressive measures to imprisoned convicts.

This part has to work out the list of actions and documents, which PEI officials must necessarily com-

mit in the cases of applying suppressive measures to imprisoned convicts.

7. Final provisions.

This part of the Instruction has to determine main organizational and administrative aspects of SCES personnel activity for applying physical force, special means, a straitjacket and weapon to imprisoned convicts.

So, exact and full clarification of the essence and content of correctional and educational colony personnel activity connected with applying suppressive measures provided for by law to the people serving a sentence in the indicated PEI, and also distinct determining action algorithm in it will enable to reduce committing unlawful actions by SCES personnel and to prevent more socially dangerous consequences for the sphere of punishment execution in cases of exceeding official powers by these persons.

2.2. Types of measures of physical force, special means and weapon which can be applied to convicts according to the law

The significance of considering this question in the given work is due to several circumstances, namely – necessity:

1) to define action efficiency of suppressing measures and their potential opportunities concerning suspension of offences, committing of which is a legal reason for their application;

2) to establish a specific kind of suppressive measure, which can be applied in this or that situation,

that is, adequacy (Lat. *adaequatus* – sufficient; satisfactory)[1] of SCES personnel actions in such cases;

3) to substantiate preventive influence of suppressive measures applied to imprisoned convicts when demonstrating them to an offender, as intimidation before direct applying to the offender;

4) to define the consequences of applying specific suppressive measures as certain harm to offender's health, life, honour, dignity and property aimed at minimizing and substantiating the priority of preventive activity on the specified subject of the research;

5) to correlate the order of applying suppressive measures established in law to imprisoned convicts with better international experience, and also to international law requirements[2].

Besides, such approach will enable:

– to determine exactly action algorithm of correctional and educational colony personnel, when people kept in the indicated PEI commit offences mentioned in p.1 art 106 of CEC of Ukraine;

– to prevent more severe consequences of exceeding the limits of necessary defense or of criminal detention in the form of actions disorganizing PEI work; group disobedience of convicts to PEI administration; group hooliganism; mass refusal to eat, etc.[3]

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[1] Buliko A. N. Bol'shoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. S. 17.

[2] Kolb I. O. Vydy zakhodiv vgamuvannya, shcho zastosovuyut'sya do zasudzhenykh, pozbavlenykh voli v Ukrayini, ta yikh kharakterystyka. *Prykarpats'kyy yurydychnyy visnyk.* 2018. № 1. T. 3. S. 142–147.

[3] Kolb I. O. Pro deyaki taktyko-tekhnichni dani spetsial'nykh zasobiv, shcho zastosovuyut'sya v Ukrayini do zasudzhenykh, pozbavlenykh voli. *Yurydychnyy byuleten.* 2019. № 9. URL: http://www.lawbulletin.oduvs. od.ua

In such a way the events in Southern correctional colony of Odesa region were over in May 2019[1].

It should be mentioned that analogical events took place in other years – as a consequence of unlawful actions of SCES personnel applying suppressive measures to imprisoned convicts[2].

Besides, the results of anonymous polls among PEI personnel and imprisoned convicts proves the topicality and necessity of conducting scientific research on the given problem. Thus, answering the question "Can you do without applying suppressive measures to convicts in the places of confinements" 1222 representatives (61 % of 2016 polled) of SCES personnel said 'yes'; 794 (39 %) said 'no'; 0 (0 %) – partly. For the part of convicts, 1480 (74 % of 2016 respondents) said 'yes'; 536 (26 %) – 'no'; 0 (0 %) – partly (Supplements A, B, C, C1).

So, the chosen question is pressing and is of theoretical and practical significance, taking into consideration that nowadays among normative legal acts of Ministry of Justice of Ukraine there is not any open act determining the order and conditions of lawful applying suppressive measures established in art. 106 of CEC to imprisoned convicts by the personnel of correctional and educational colonies[3].

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[1] Bunt v odes'kiy koloniyi: postrazhdaly 13 pratsivnykiv, troye z nykh u likarni. URL: https://www.ukrinform.ua/rubric-regions/2709716-bunt-v-odeskij-kolonii-postrazdali-13-pracivnikiv-troe-z-nih-u-likarni.html

[2] Didenko A. O. Chy spryyaye pobyttya ta znushchannya vypravlennyu zasudzhenykh?! (Pro podiyi v Kopychyns'kiy koloniyi № 112 26 ta 27 lypnya 2012 roku). URL: http://khpg.orgipda/indekh.php?id=1343408901

[3] Kolb I. O. Prymusove goduvannya zasudzhenykh yak zasib zabezpechennya yikh osobystoyi bezpeky. *Naukovyy visnyk Natsional'noyi akademiyi vnutrishnikh sprav: nauk. zhurn.* 2013. № 3 (88). S. 146–155.

As the study of some acts showed, the indicated procedures are enshrined in normative legal acts with security classification 'for official use', they are inaccessible for people kept in PEI, which contradicts to some extend the requirements of art. 57 of the Constitution of Ukraine, according to which everybody is guaranteed the right to know their rights and duties.

Besides, as it is found during the given research, not a single imprisoned convict is acquainted in writing with this aspect of criminal executive activity.

According to supplement 6 to PEI IOR (p. 1 part V), each person arriving at correctional or educational colony to serve a prison sentence give a written receipt about familiarization with CEC, CCP, CC requirements and normative legal acts regulating the order and conditions of serving a sentence by imprisoned convicts.

However, there is not a word in this receipt, that in case these people commit the offences defined in p. 1 art. 106 of CEC, physical force, special means, a strait jacket and weapon can be applied to them.

Though this receipt mentions: convict's right to personal and some means of providing it; criminal responsibility for committing intentional disobedience to PEI administration legal demands; for terrorizing other convicts; for escape from places of confinement, etc.[1]

[1] Pravyla vnutrishnyogo rozporyadku ustanov vykonannya pokaran': zatv. nakazom Ministerstva yustytsiyi Ukrayiny vid 28 serpnya 2018 roku № 2823/5. *Ofitsiynyy visnyk Ukrayiny.* 2018. № 70.

For all that, it is worth paying attention to the fact that art. 107 of CEC lacks the indicated information, where imprisoned convicts' rights and duties are enshrined, and there is only a remark (also in PEI IIOR), that imprisoned convicts have the right to receive information and explanation about service conditions and the order of punishment execution determined in a court sentence.

Taking the indicated legal gap and particular significance of the questions of applying suppressing measures to imprisoned convicts into consideration, it would be logical to supplement art. 107 of CEC of Ukraine with part 5 of the following content:

'On bringing rights, duties and prohibitions to imprisoned convicts, concerning punishment execution and service a sentence, and on possibility of applying suppressive measures to them in cases indicated in art. 107 of CEC of Ukraine: each person arriving to serve a sentence at correctional or educational colony, signs the receipt, the form and content of which is determined by Ministry of Justice of Ukraine, the original of the receipt is attached to the personal file, and the copy is handed out'.

As far as types of suppressing measures applied to imprisoned convicts are concerned, their exhaustive list is determined in p. 1 art 106 of CEC of Ukraine, namely: a) physical influence measures; b) special means; c) a straitjacket; d) weapon.

For all that, not a single normative legal act, including departmental sources of Ministry of Justice of Ukraine, concerning the sphere of punishment execution, do not clarify the essence and consequences of

their applying to the people kept in correctional and educational colonies, though it is important from standpoint of preventive activity content.

But in this connection there are some exceptions, they are normative legal acts with security classification 'for official use' and the resolution of the Cabinet of Ministers of Ukraine of December 20, 2017, № 1024 that approved the list and rules of applying special means by military men of the National Guard during official tasks performance[1], and art. 19 of Law of Ukraine 'On State criminal executive service of Ukraine' where still nothing is said about potential possibilities and consequences of applying suppressive measures.

Moreover, the last legal source (art. 19, in particular) indicates one more suppressive measure – service dogs.

So, for these reasons it is absolutely necessary to characterize every single suppressive measure applied to imprisoned convicts at theoretical, normative legal and practical levels.

The first and the least susceptible measure for an offender is connected with applying physical force to him.

Scientific sources treat physical force as some people's ability to make movements straining their muscle, to perform physical actions, physical ability

[1] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

or possibility of doing, accomplish something[1], and application implies using something and putting into practice[2].

Proceeding from this, some researchers suggested the following definition, concerning applying physical force to imprisoned convicts, namely: SCES personnel individual actions, connected with using their own physical abilities, including muscle strength, to overcome counteraction of the people who offer resistance, intentionally don't comply with legal requirements of colony administration, show riots, take part in mass uprising, seize hostages or commit other acts of violence, and also for preventing infliction of damage to surrounding or self-injury[3].

Without giving profound analysis of scientific conception of physical force applied to people kept in correctional and educational colonies, it is necessary to state that this conception is worth adding to legal norms, regulating the order of applying it in the sphere of punishment execution, what scientists insist on, and what is necessary legal condition of PEI personnel activity legality in practice[4].

As A. M. Popovych aptly remarked on this, legal regulation of applying force, special means and weapon is aimed at not only ensuring fulfillment of law-

[1] Velykyy tlumachnyy slovnyk ukrayins'koyi movy/uporyad. T. V. Kovalova. Kharkiv: Folio, 2005. S. 588.

[2] Ibid, p. 217.

[3] Zastosuvannya zakhodiv fizychnogo vplyvu, spetsial'nykh zasobiv i zbroyi u mistsyakh pozbavlennya voli: navch. posib./za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy ta d-ra yuryd. nauk, prof. O. G. Kolba. Kyyiv: Kondor, 2016. S. 20.

[4] Ibid.

enforcement officers' requirements, but at defending their life and health from criminal infringement by offenders[1].

In this connection additional argument is the practice of applying physical force to imprisoned convicts, which is realized in different forms: by way of striking blows on offender's body; twisting his hands behind his back; pressing this person to a wall or other technical obstacle, etc.[2]

Along with this, an important component of applying suppressing measure is colony personnel skills of hand-to-hand fighting and self-defense techniques, they acquired during their training and extension in corresponding centres of SCES personnel professional training according to requirements of normative legal acts of Ministry of Justice and Ministry of Education and Science of Ukraine.

Art. 17 of Law of Ukraine 'On State criminal executive service of Ukraine' indicates that SCES personnel training, retraining and extension are conducted according to legislation about education.

For this purpose SCES of Ukraine can create corresponding educational institutions and also organize

[1] Popovych A. Zastosuvannya syly, spetsial'nykh zasobiv ta zbroyi pratsivnykamy pravookhoronnykh organiv. *Mizhnarodna politseys'ka entsyklopediya: u 10 t.*/vidp. red.: Yu. I. Rymarenko, Ya. Yu. Kondrat'yev, V. Ya. Tatsiy, Yu. S. Shemshuchenko. Kyyiv: Kontsern "Vydavnychyy Dim «Iny'ure»", 2003. T. 2: Prava lyudyny u konteksti politseys'koyi diyal'nosti. 2003. S. 312.

[2] Zastosuvannya zakhodiv fizychnogo vplyvu, spetsial'nykh zasobiv i zbroyi u mistsyakh pozbavlennya voli: navch. posib./za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy ta d-ra yuryd. nauk, prof. O. G. Kolba. Kyyiv: Kondor, 2016. S. 20.

expert training in other educational institutions on a contract basis.

Moreover, art. 14 of the indicated Law says, that the service in SCES of Ukraine is a special state service, consisting in professional activity of citizens of Ukraine, suitable for it by state of health and age (p. 2), and that people who are able to efficiently perform appropriate official duties due to their practical, moral and other qualities and state of health are taken on service in SCES of Ukraine.

But in this Law, as in other normative legal acts concerning the indicated problem there is no mention of essential analogical provisions determined in the norms of international law.

Thus, p. 66 of EPR states, that the personnel working directly with convicts, must be taught methods enabling to suppress aggressive people among them with minimum force application.

Proceeding from this, and taking colony personnel physical training state to repel any attack on themselves or other people into consideration, it's worth admitting at normative legal level, that applying physical force to imprisoned convicts in the cases of legal and actual grounds available for taking such actions is a priority direction among other suppressive measures.

For this reason it is advisable to supplement p. 1 art. 106 of CEC of Ukraine with a sentence of the following content:

'For all that applying physical force is a priority for cessation of offences indicated in this article of the Code'.

It is necessary to change art. 106 of CEC because the norm about the content and order of applying physical force to imprisoned convicts is enshrined neither in the previous Rules of applying special means for protecting public order[1], nor in current Rules of applying special means by military men of the National Guard when performing official tasks[2], nor in Law of Ukraine 'On State criminal executive service of Ukraine' (p. 7 p. 2 art. 18, 19).

Moreover, in these and in other normative legal sources there is not a single word about the algorithm of correctional and educational colony personnel actions in the situations that are the grounds for applying suppressive measures, which is important for preventing unlawful behavior of those people and for minimizing the consequences of applying suppressive measures provided for by law, including physical force, to imprisoned convicts (p. 64.2 EPR).

Special means are next suppressive measures established in p. 1 art. 106 of CEC of Ukraine. It should be stated that as in the first case, concerning the content of physical force, the conception of special means is not determined in normative legal acts regulating the question of applying suppressive measures. At the same time such a concept is defined at scientific level.

[1] Pravyla zastosuvannya spetsial'nykh zasobiv pry okhoroni gromads'kogo poryadku: zatverdzheni postanovoyu Rady Ministriv URSR vid 27 lyutogo 1991 r. № 49. URL: https://zakon.rada.gov.ua/laws/show/49-91-%D0%BF

[2] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

Thus, scientists interpret special means as the list of special tools, distinctly determined in normative legal acts of Ukraine, aimed at overcoming counteractions of people serving a sentence in correctional and educational colonies, in the cases established in law[1]. Such an approach is based on the analysis results of the system –forming features that make up the content of 'special means' term. Scientists interpret 'means' as something serving an instrument in any action, affair[2], 'special' means intended for something; having specific purpose[3].

As it is ascertained in the course of the given research, the list of special means applied by SCES personnel to imprisoned convicts is determined by normative legal acts of Ministry of Justice of Ukraine by analogy and on the basis of the resolution of Cabinet of Ministers of Ukraine of December 20, 2017, № 1024, that approved the List of special means applied by military men of the National Guard when performing official tasks, which, given requirements of legitimacy principle, enshrined in p. 2 art. 19 and p. 14 art. 92 of the Constitution of Ukraine, cannot be considered the right approach in the law-enforcement body practice.

So, it should be admitted that nowadays in Ukraine after approving the resolution of Cabinet of Mini-

[1] Zastosuvannya zakhodiv fizychnogo vplyvu, spetsial'nykh zasobiv i zbroyi u mistsyakh pozbavlennya voli: navch. posib./za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy ta d-ra yuryd. nauk, prof. O. G. Kolba. Kyyiv: Kondor, 2016. S. 21.

[2] Velykyy tlumachnyy slovnyk ukrayins'koyi movy/uporyad. T. V. Kovalova. Kharkiv: Folio, 2005. S. 215.

[3] Ibid, p. 621.

stry of Ukraine of December 20, 2017, № 1024[1] and cancelling in connection with it the previous resolution of Cabinet of Ministers of February 27, 1991, № 49 'On approving the Rules of applying special means for protecting public order'[2], a legal gap arose in practice, namely: if the content of the previous resolution of Cabinet of Ministers of Ukraine of 2017 is interpreted literally, only the National Guard of Ukraine has the right to apply special means.

However, nowadays our state has more that 20 law-enforcement bodies, that have the right to apply suppressive measures according to the status determined for them in law (National police; SSU; National anti-corruption agency of Ukraine (NACA); State Investigation Agency (SIA); others).

Proceeding from this, it is necessary to change and supplement the title and content of the resolution of the Cabinet of Ministers of December 20, 2017, № 1024, entitling in the following way – 'On approving the list and Rules of applying special means by law-enforcement bodies of Ukraine' and also to make changes to its text and supplements, changing the word-combination 'military men of the National Guard' into 'law-enforcement bodies of Ukraine'.

[1] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

[2] Pravyla zastosuvannya spetsial'nykh zasobiv pry okhoroni gromads'kogo poryadku: zatverdzheni postanovoyu Rady Ministriv URSR vid 27 lyutogo 1991 r. № 49. URL: https://zakon.rada.gov.ua/laws/show/49-91-%D0%BF

With such an approach and taking into consideration that, according to the requirements of Law of Ukraine 'On state protection of court and law-enforcement bodies officials'[1] and Law of Ukraine 'On State criminal executive service of Ukraine'[2], SCES personnel belong to the list of law-enforcement bodies, one of legal guarantees and ways of realizing in practice these people' right to apply physical force, special means, a straitjacket and weapon to imprisoned convicts, established in art. 106 of CEC of Ukraine will be formed.

The list of such special means, as it follows from the resolution of the Cabinet of Ministers of December 20, 2017, № 1024[3], includes: 1) rubber and plastic clubs; 2) electroshock devices of contact and contact-remote action; 3) mobility restriction means (chains, nets for binding, etc.); 40 means and devices of restricted access to a certain territory (protective barriers, turnstiles); 5) means of forced stopping transport; 6) service dogs and service horses; 7) means of acoustic and microwave influence; 8) special marking and painting means; 9) devices, grenades and ammunition of light and sound action; 10) means equipped

[1] Pro derzhavnyj zakhyst pratsivnykiv sudu i pravookhoronnykh organiv: Zakon Ukrayiny vid 23.12.1993 r. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 1994. № 11. St. 50.

[2] Pro Derzhavnu kryminal'no-vykonavchu sluzhbu Ukrayiny: Zakon Ukrayiny vid 23 chervnya 2005 r. *Ofitsiynyy visnyk Ukrayiny*. 2005. № 30. S. 4–10.

[3] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

with rubber or similar non-lethal projectiles; 11) mean equipped with tear gas and irritating drugs; 12) devices for shooting special means, indicated in p. 8–11 of this list; 13) devices, grenades, ammunition and small-scale blasting devices for destroying obstacles and forced unlocking rooms; 14) means equipped with safe smoke-forming devices; 15) water cannons, armoured vehicles without regular weapons and other special transport means.

Comparing this List with the special means mentioned in art. 106 of CEC of Ukraine, and with those applied in criminal executive activity of bodies and PEI personnel, the following discrepancies can be detected:

1. When guarding correctional and educational colonies, also when conducting searches, supervision and other regime measures by SCES personnel, service dogs are widely used, which, apart from this, perform the function of preventing the offences (as a way of intimidation), that are the grounds for applying suppressive measures to imprisoned convicts.

Thus, in 2015 1 thousand 671 service dogs were used in the sphere of punishment execution of Ukraine while their regular number was 1.712 (incompleteness made up 2,4 %)[1].

For all that, during the same year service dogs were used in PEI and IIW: performing tasks in guards protecting these institutions (the perimeter blocked

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2015 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2016. Kn. 2. S. 8.

by service dogs was 54 thousand 560,8 meters long or 46 % of the total perimeter length of all PEI and IIW); protecting some production objects, storehouses with explosive materials; in oncoming, mixed and planned motor-car guards when convicts were removed; conducting general search in the place of life imprisonment; vehicle inspection through check-points; for searching drugs or their analogues during convicts' luggage, personal articles and rooms inspection.

As a result, in 2015 in PEI and IIW 0,5 litre of alcohol, 150 litres of homemade beer, 80 mobile phones and other forbidden things were confiscated with the help of service dogs[1].

Besides, in 2015 service dogs helped to arrest 2 convicts who escaped from Sofiia correctional colony №55 in Zaporizhia region, to uncover 1 murder and expose 2 personal thefts[2].

So, service dogs can be classified as special means applied to imprisoned convicts in cases indicated in p. 1 art. 106 of CEC of Ukraine, making corresponding changes in this Code.

2. According to the requirements of art. 105 of CEC and art. 6 of Law of Ukraine 'On State criminal executive service of Ukraine' for maintaining law and order in correctional and educational colonies special militarized subdivisions of SCES of Ukraine are involved, the provisions and order of their usage are regulated by corresponding normative legal acts

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2015 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2016. Kn. 2. S. 8.

[2] Ibid, p. 9.

of Ministry of Justice of Ukraine, including closed (confidential) ones, which contradicts the requirements of p. 14 art. 92 of the Constitution of Ukraine, because such an activity must be regulated exclusively by laws.

In this connection Law of Ukraine 'On State criminal executive service of Ukraine' should be supplemented with art. 19-1 'The order of involving other militarized formations of State criminal executive service of Ukraine in maintaining law and order in colonies' of the following content:

'In cases determined in art. 105 of Criminal executive code of Ukraine, for ensuring the regime of particular conditions in correctional and educational colonies forces and measures of special militarized formations of State criminal executive service of Ukraine can be used, the provisions about them are approved by the Cabinet of Ministries of Ukraine.

Applying suppressive measures to imprisoned convicts by the personnel of the indicated subdivisions, established in art. 106 of Criminal executive code of Ukraine, must be realized only on the basis of law and bear personal character of influence of an offender.

The responsibility for determining this or that suppressive measure and the results of its application are imposed on a particular person of the personnel of State criminal executive service of Ukraine, who is involved in this activity in colonies'.

As practice affirms, ensuring law and order in colonies, special militarized subdivisions of SCES of Ukraine arm themselves according to the List appro-

ved by Ministry of Justice of Ukraine of December 20, 2017, № 1024[1], so in this case changes also should be made in CEC of Ukraine.

Activity results of the mentioned subdivisions of SCES of Ukraine are an additional argument in this connection.

On 01.12.2016 actual number of the personnel of territorial (inter-regional) militarized formations of SCEC of Ukraine made up 156 people, though 196 were needed (incompleteness – 21 %)[2].

For all that, involving these people in taking special measures, 8 inspections and searches (4 general and 4 spot checks) of residential and industrial area, convicts' personal belongings, other people and their things, vehicles on the territory of SCES objects were carried out, during which a) 110 gram of drugs; b) 9 litres of alcohol; c) 64 prickly-cutting objects; d) 504 units of forbidden items[3].

Besides, the indicated subdivisions of SCES of Ukraine once applied special means and physical force to imprisoned convicts and people taken into custody.

In 2015 the personnel of these militarized formations twice took part in search for convicts who escaped from custody[4].

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[1] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

[2] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 31.

[3] Ibid, p. 32.

[4] Ibid.

The analysis conducted gives all grounds to ascertain the fact, that the activity of special militarized formations, ensuring particular conditions of regime in correctional and educational colonies, should be regulated at legislative level, including introduction of changes and supplements to art. 106 of CEC of Ukraine, namely: part 1 of this article of the Code should be supplemented with the expression 'and also the personnel of other militarized formations of bodies and punishment execution institutions, who is involved in ensuring law and order for introducing the regime of particular conditions in colonies' and say it in the following wording:

'Physical force, special means, a straitjacket, service dogs and other suppressive measures established in law, including weapon, are applied to imprisoned people, if they offer physical resistance to colony personnel, and also to personnel of other militarized formations of bodies and punishment execution institutions, involved in ensuring law and order for introducing the regime of particular conditions on colonies, deliberately don't comply with its requirements, show riots, take part in mass uprisings, seizure of hostages or commit other violent actions, escape from custody in order to stop illegal actions, and preventing infliction of damage to surrounding or self-injury by these people'.

3. As it follows from the content of art. 105 and p. 6 art. 106 of CEC of Ukraine, the officials of the National police of Ukraine are involved in ensuring law and order in correctional and educational colonies in established cases.

But the List of special means they have the right to apply to imprisoned convicts is determined nowadays not on the grounds of above-mentioned resolution of the Cabinet of Ministers of Ukraine of December 20, 2017, № 1024, and on the ground of departmental normative legal acts of Ministry of Internal Affairs of Ukraine, which cannot be admitted as lawful activity taking p. 14 art. 92 of the Constitution of Ukraine into consideration.

So, in all cases analyzed in this work the key problem is, that the Cabinet of Ministers abolishing 'old' Rules of applying special means by law-enforcement bodies[1], in new Rules granted the right for such an activity to military men of the National Guard of Ukraine, withdrawing other law-enforcement officers' activity from the field of legal regulation, especially those involved in ensuring the regime of particular conditions in colonies.

For eliminating this gap, it is necessary to supplement p. 1 art. 106 of CEC of Ukraine with the sentence of the following content:

'The list of special means applied to imprisoned convicts is determined by the Cabinet of Ministries of Ukraine, and the Rules of their application – by this Code, and also other laws regulating law-enforcement body activity'.

As far as the Rules of applying special means are concerned, they are also approved by the resolution

[1] Pravyla zastosuvannya spetsial'nykh zasobiv pry okhoroni gromads'kogo poryadku: zatverdzheni postanovoyu Rady Ministriv URSR vid 27 lyutogo 1991 r. № 49. URL: https://zakon.rada.gov.ua/laws/show/49-91-%D0%BF

of the Cabinet of Ministries of Ukraine of December 20, 2017, № 1024[1], which contain wider content of the provisions determined in art. 106 of CEC of Ukraine.

In this connection it is worthwhile mentioning, that p. 2 of this Rules, defining legal grounds of such activity, especially for military men of the National Guard of Ukraine, its developers didn't say a word about art. 106 of CEC, taking into consideration, that these people are involved in ensuring the regime of particular conditions in correctional and educational colonies in the cases, established in law (art. 105 of the given Code).

Undoubtedly, the indicated legal gap should also be removed, supplementing p. 2 of the Rules with the following word-combination at the end of the sentence 'and also art. 106 of the Criminal executive code of Ukraine'.

Among other provisions of the Rules, which could be reflected in departmental Instruction on the conditions and order of applying physical force, special means, a straitjacket, service dogs and weapon (to solving this problem at legislative level) to imprisoned convicts, taking scientifically substantiated changes and supplements, suggested by scientists[2] and

[1] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

[2] Zastosuvannya zakhodiv fizychnogo vplyvu, spetsial'nykh zasobiv i zbroyi u mistsyakh pozbavlennya voli: navch. posib./za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy ta d-ra yuryd. nauk, prof. O. G. Kolba. Kyyiv: Kondor, 2016. 236 s.

elaborated in this work, into consideration, the following can be named:

1. Responsibilities imposed on the people applying special means mentioned in p. 3 of the Rules, namely:

a) to warn of the intention of their application, to give the people the special means can be applied to, enough time for fulfilling their requirements (the warning can be given by voice, and at a considerable distance or when addressing people – through loudspeakers, and in each case it is desirable to speak in the language understandable for people against whom these means are applied, and also in Ukrainian not less than twice to give the time enough for ceasing an offence), except cases when delaying special means application creates a real threat to the life and health to the policeman, the personnel of the National Guard, of diplomatic representatives and consulate establishments of foreign states in Ukraine, to other people, and can cause serious consequences or in the case if such a warning is impossible or irrelevant in the current situation;

b) to provide the victims with pre-medical assistance in the shortest time possible in every case of applying special means, reporting doctors and medical establishments what kind of assistance and medicine was given.

2. The provision, that the type of special means, the starting time and intensity of its application is determined taking the current circumstances, the type of offence and the personality of the offender into consideration (p. 4 of Rules).

For all that, special means are applied in the cases provided for by law, if other forms of the previo-

us influence didn't give the desired results or if it is impossible to apply other means for exercising authorities (p. 11 of Rules).

Moreover, applying special means must be in proportion to the offence that it is necessary to cease. Military men are obliged to immediately stop applying a certain kind of special means in the moment, if the expected result is achieved or if there is no need in further applying such a special means (p. 11 of Rules).

3. The provision about the official responsible for ensuring law and order or operation manager or commander of the corresponding military unit (subdivision, group) determined in established manner, who take decisions of applying special means during the service in subdivision or group.

4. General rules of applying special means, in particular:

a) it is forbidden to strike blows on the head, neck, clavicular part, sexual organs, coccynx and stomach with rubber (plastic) clubs;

b) it is forbidden to apply chains more than 2 hours of continual usage or without weakening their pressure;

c) applying light and voice devices should be at the distance not nearer than two metres from a person;

d) it is forbidden to shoot with the means equipped with rubber or analogical non-lethal projectiles breaking the requirements determined by technical characteristics concerning the distance to a person, and to shoot in the head, chest, heart part, solar plexus, groin, sexual organs;

e) applying means equipped with tear gas and irritating drugs, it is forbidden to conduct aimed shooting at offenders, to scatter and shoot the means in a crowd, and reapply them during the action period of these substances within affected area;

f) it is forbidden to apply water cannons if air temperature if below +10* (p. 8 of Rules).

Apart from this, it should be stated that the Rules enshrined the provisions, that applying devices, grenades, ammunition and small-scale blasting device for unlocking rooms is justifiable, if the harm infringed to rights and interests protected by law is less that the damage averted (p. 8 of Rules).

5. The provisions, that service dogs can be used during official tasks performance, which passed the corresponding training course, are recognized suitable for serving and are in the staff of the dog service.

Along with this, the people who serve with dogs have the right to use service dogs, which can have a long or short leash, a muzzle (or not) according to current situation (p. 8 of Rules).

6. The provision, that the people applying suppressive measures are obliged to report their direct commander (head) about independent applying special means for reporting the prosecutor, if there was an injury or death – to report these heads in writing for reporting the prosecutor (p. 10 of Rules).

7. The provision, that special means are applied in a manner and following the requirements provided for by safety measures during special means application.

At the same time, the parameters of permissible physical, chemical and other influence of special means on a human body are determined according to the requirements of p. 7 art. 45 of Law of Ukraine 'On National police' (p. 13 of Rules).

According to the requirement of p. 7, art. 45, the permissible parameters of special means, taking their physical, chemical and other influence on human body into consideration, are determined by authorized institutions of the executive power central body, ensuring formation and realizing state policy in health sphere.

So, it is worth while admitting, that reference in above mentioned Rules to art. 45 of Law of Ukraine 'On National police' is infelicitous, as neither the first nor the second normative legal act determines specific permissible parameters of affecting human body by special means.

Proceeding from this, p. 13 of Rules of applying special means by military men of the National Guard when performing official tasks, approved by the resolution of Cabinet of Ministers of Ukraine of December 20, 2017, № 1024, should be supplemented with the provision about the indicated permissible parameters stated in normative legal acts of Ministry of Health Care of Ukraine. Such an approach will enable to improve the efficiency of preventive activity on these issues and will serve as a way of intimidation and suppression for an offender.

Among other drawbacks of the current Rules the following ones should be paid attention to:

1. Lack of provisions in the given normative legal act reflected in p. 10 of the previous Rules of 1991[1] saying that heads of bodies and institutions if internal affairs, commanders of formations and units of the National Guard have to:

– carry out systematically the work to ensure legality of applying special means, call the people who allowed their unlawful application to account;

– organize personnel's training in applying special means and training of qualified experts-instructors according to established programme;

– give out special means to personnel only after their passing tests in the rules and order of their application.

The significance of the indicated provisions is obvious, as they are pithily oriented to preventing unlawful application of suppressive measures to offenders by law-enforcement personnel.

All things considered, it would be logical to supplement present Rules[2] with p. 15, reflecting the above indicated analogical requirements from p. 10 of the 'old' Rules[3].

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[1] Pravyla zastosuvannya spetsial'nykh zasobiv pry okhoroni gromads'kogo poryadku: zatverdzheni postanovoyu Rady Ministriv URSR vid 27 lyutogo 1991 r. № 49. URL: https://zakon.rada.gov.ua/laws/show/49-91-%D0%BF

[2] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

[3] Pravyla zastosuvannya spetsial'nykh zasobiv pry okhoroni gromads'kogo poryadku...

2. Within the context of realizing in practice the measures of special criminological prevention of crimes, special means classification made in the previous Rules would be a necessary provision in the present Rules.

In particular, it was worth mentioning in the present Rules at least conceptually the pithy purpose of these means in p. 16, namely:

'Only special means can be applied to offenders as follows: individual protection means; active defense means; special operation provision means; devices for unlocking rooms seized by these people; and also service dogs.

Their list and permissible parameters of affecting human organism are determined by normative legal acts of Ministry of Health Care of Ukraine, laws, defining law-enforcement body status and these Rules'.

3. The provisions determining the peculiarities of applying special means, mentioned in part III of the Rules of 1991, are of great practical significance[1].

The applied value of their enshrining in new Rules of 2017 consists in the fact, that in such a way the level of law enforcement practice in the indicated issues, the efficiency of prevention activity, aimed at reducing the cases of unlawful applying suppressive measures with participation of law enforcement officers, including bodies and punishment execution institutions will increase.

[1] Pravyla zastosuvannya spetsial'nykh zasobiv pry okhoroni gromads'kogo poryadku: zatverdzheni postanovoyu Rady Ministriv URSR vid 27 lyutogo 1991 r. № 49. URL: https://zakon.rada.gov.ua/laws/show/49-91-%D0%BF

Again, for solving the given legal gaps it would be logical to enshrine all the suggestions and actions algorithm, offered in this work, in a separate Instruction on the conditions and order of applying physical force, special means, a straitjacket and weapon to imprisoned convicts.

As the results of the given scientific developments showed, weapon also has its peculiarities of application, SCES personnel use it in the cases established by law, scientific sources treat it as an instrument for attack or defense; a set of tools for waging war, battle; armament[1].

Taking into account that Ukraine has not had a special law on weapon, scientists worked out and suggested its following classification: a) combat; b) civil hunting; c) training sport; d) criminal[2].

Besides, in scientific literature another classification of weapon can be found. It is divided into firearm and cold (white) weapon[3].

Proceeding from the requirements of art. 106 of CEC and the content of Law of Ukraine 'On State criminal executive service of Ukraine', it should be stated that the personnel of bodies and punishment execution institutions have the right to use both firearm and cold weapon for performing official duties,

[1] Velykyy tlumachnyy slovnyk ukrayins'koyi movy/uporyad. T. V. Kovalova. Kharkiv: Folio, 2005. S. 227.

[2] Kriminalistika: uchyeb. dlya vuzov/pod red. prof. R. S. Byelkina. Moskva: NORMA-INFRA, 1999. S. 249.

[3] Naukovo-praktychnyy komentar Kryminal'nogo kodeksu Ukrayiny. 3-tye vyd., pererobl. ta dopov./za red. M. I. Mel'nyka, M. I. Khavronyuka. Kyyiv: Atika, 2005. S. 645–646.

including ensuring the regime of particular conditions in correctional and educational colonies (art. 105 of CEC). For all that, combat firearm includes the weapon produced at a plant and is intended for shooting bullets (single-barreled; repeating; with rifled barrel) and, as a rule, with a slippery lock[1].

Cold weapon implies the objects meeting standards or historically manufactured weapon types, or other objects causing prickly, stabbing and cutting, chopping, breaking effect (bayonet, stiletto, knife, dagger, arbalest, nunchaki, knuckle-duster, etc.), intended for affecting live target with the help of a person's muscle force or his mechanical device[2].

On the whole, scientists consider at doctrinal level the weapon, applied to offenders as a suppressive measure, any weapon law enforcement officers, including the personnel of correctional and educational colonies, can actually use when performing official duties, in the cases provided for by law[3]. It includes the following types of weapon:

1) any firearm: artillery (cannons, howitzers, mortars, recoilless guns, immobile antitank missile launcher; rocket-propelled grenade launchers, jet bombers, jet torpedoes, etc.) and small arms (revolvers,

[1] Kriminalistika: uchyeb. dlya vuzov/pod red. prof. R. S. Byelkina. Moskva: NORMA-INFRA, 1999. S. 249.

[2] Ozhegov S. Y. Slovar' russkogo yazyka. 18-ye izd., styeryeotip./pod red. N. Yu. Shvedovoy. Moskva: Rus. yaz., 1986. S. 646.

[3] Naukovo-praktychnyy komentar Kryminal'nogo kodeksu Ukrayiny. 3-tye vyd., pererobl. ta dopov./za red. M. I. Mel'nyka, M. I. Khavronyuka. Kyyiv: Atika, 2005. S. 923.

pistols, carbines, machineguns) and also grenade launchers;

2) other usual hitting means, mine and fire weapon, in particular;

3) cold weapon – objects meeting the standards and give the effect mentioned above (stabbing and cutting, etc.);

4) gas weapon of nervous paralytic action; air guns with a caliber over 4,5 mm and bullet flight speed over 100 metres a second;

5) explosive weapon (explosives, or ammunition)[1].

Along with this, it should be stated that art. 106 of CEC of Ukraine lacks any information concerning weapon, colony personnel have the right to apply to imprisoned convicts.

PEI IOR also lacks these data (part XXVI)[2]. These questions are regulated by departmental normative legal acts of Ministry of Justice of Ukraine, which are closed.

Proceeding from this, p. 5 art. 106 of CEC should be supplemented with the following sentence:

'Colony personnel have the right to use only the weapon issued in established manner for ensuring official duty performance'.

As it is indicated in p. 2 of the Plenum resolution of the Supreme Court of Ukraine of April 26, 2002

[1] Naukovo-praktychnyy komentar Kryminal'nogo kodeksu Ukrayiny. 3-tye vyd., pererobl. ta dopov./za red. M. I. Mel'nyka, M. I. Khavronyuka. Kyyiv: Atika, 2005. S. 923–924.

[2] Pravyla vnutrishnyogo rozporyadku ustanov vykonannya pokaran': zatv. nakazom Ministerstva yustytsiyi Ukrayiny vid 28 serpnya 2018 roku № 2823/5. *Ofitsiynyy visnyk Ukrayiny.* 2018. № 70.

'On court practice in cases of stealing and other illegal handling weapon, combat items, explosives, explosive devices and radioactive materials', courts must follow the Provisions on permissive system and current normative legal acts, solving the problem of illegal carrying, storing, purchasing, producing, repairing, transferring or selling weapon (except for smooth-bore), also carrying, producing, repairing or selling cold weapon, ammunition, explosives or explosive devices.

Along with this, the question of the responsibility for illegal actions with weapon, ammunition, explosives of the people who use them in connection with official activity, are solved taking normative legal acts (instructions, rules, orders, etc.) regulating the order of handling these objects[1].

P. 14 of the Rules of applying special means by military men of the National Guard when performing official tasks, approved by the resolution of Cabinet of Ministry of Ukraine of December 20, 2017, № 1024 indicates in connection with this, that the norms of belonging, the order of adopting and equipping, accounting, operation, maintenance, storage, write-off, destruction of special means, safety mea-

[1] Pro sudovu praktyku u spravakh pro vykradennya ta inshe nezakonne povodzhennya zi zbroyeyu, boyovymy prypasamy chy boyovymy rechovynamy, vybukhovymy prystroyamy chy radioaktyvnymy materialamy: postanova Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh vid 26 kvitnya 2002 r. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uporyad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 176–177.

sures during application are determined by Ministry of Internal Affairs of Ukraine[1].

As far as one more suppressive measure applied to imprisoned convicts is concerned – a straitjacket, its potential opportunities, purpose and other data are determined in normative legal acts of Ministry of Health Care of Ukraine, which are open, that's why this question does not need being considered in this work as a separate task.

At the same time, to improve the content of these legal norms regulating the conditions and order of applying a straitjacket, it would be worth while supplementing p. 3 art. 106 of CEC of Ukraine with the following sentence:

'The order of applying a straitjacket to other imprisoned convicts is regulating by normative legal acts of Ministry of Health Care and Ministry of Justice of Ukraine'.

Thus, elucidating the essence and content of affecting human organism with each individual means and weapon is not only of theoretical cognitive, but of practical (applied) significance, as such an approach enables to find non-regulated norms and determine problems correctional and educational colony personnel have, and the influence of applying suppressive measures defined in law on the whole content of law enforcement practice.

[1] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

Besides, the research of technical and tactical features of each individual special means and weapon in this monograph enabled to develop a number of scientifically suggestions, aimed at improving legal mechanism on the indicated theme of the research and efficiency and role of preventive measures in it.

2.3. Legal principles of applying physical force, special means and weapon to convicts in colonies

Generalizing the data concerning legal principles of applying suppressive measures to the people kept in correctional and educational colonies of Ukraine enables to distinguish their following types:

1) general rules defined in art. 16 of CEC of Ukraine[1];

2) special provisions regulating colony personnel action order concerning minors, pregnant women and people showing riots (p. 3, art. 106 of CEC)[2].

3) specific norms regulating actions of military men of National Guard of Ukraine and officials of National police of Ukraine involved in providing the

[1] Kolb I., Kolb O. Pro pravovi zasady zastosuvannya v Ukrayini zakhodiv vgamuvannya do zasudzhenykh, pozbavlenykh voli. *Pravo Ukrayiny.* 2019. № 7. S. 66–77.

[2] Kolb I. O. Zmist prav zasudzhenykh v Ukrayini. *Zlochynnist v Ukrayini: suchasni tendentsiyi ta chynnyky: materialy Mizhvidom. krug. stolu (m. Kyyiv, 23 grud. 2016 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2016. S. 36.

Kolb I. O., Kolb O. G. Pro osoblyvosti zastosuvannya syly do nepovnolitnikh u vykhovnykh koloniyakh. *Aktual'ni problemy zakhystu prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv VI Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 25 zhovt. 2018 r.).* Kyyiv: FOP Kandyba T. P., 2018. S. 111–113.

regime of particular conditions according to the requirements of p. 6 art. 106 and art. 105 of CEC;

4) other norms detailing the actions of the above mentioned subjects[1] who have the right to apply special means to imprisoned convicts (p. 8 of the Rules of applying special means by military men of National Guard when performing official tasks, the resolution of Cabinet of Ministers of Ukraine of December 20, 2017, № 1024[2]; part XXVI of PEI IOR[3]; Law of Ukraine 'On National Guard of Ukraine' and 'On National police');

5) normative legal acts of confidential character with broadened interpretation of the provisions, mentioned in art. 106 of CEC of Ukraine (Instructions on protection and supervision in IIW, correctional and educational colonies; etc.)[4].

For all that it is worthwhile stating that none of the legal sources regulating the problem of legal principles of applying physical force, special means, a straitjacket and weapon satisfies the international

[1] Kolb I. O., Kolb O. G. Shchodo osoblyvostey zastosuvannya v Ukrayini zakhodiv bezpeky do osib, zasudzhenykh do dovichnogo pozbavlennya voli. *Istoryko-pravovyy chasopys: nauk. zhurn.* Luts'k: Skhidnoyevrop. nats. un-t im. Lesi Ukrayinky, 2016. № 1 (7) S. 147–152.

[2] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

[3] Pravyla vnutrishnyogo rozporyadku ustanov vykonannya pokaran': zatv. nakazom Ministerstva yustytsiyi Ukrayiny vid 28 serpnya 2018 roku № 2823/5. *Ofitsiynyy visnyk Ukrayiny.* 2018. № 70.

[4] Kolb I. O., Gorbachevs'kyy V. Ya. Pro deyaki pravovi umovy zastosuvannya zakhodiv bezpeky do zasudzhenykh v Ukrayini. *KELM*. 2015. № 3 (11). S. 108–119.

law norms, which stipulated for choosing the given question as a separate task of the given research[1].

Apart from this, the results of anonymous polls among PEI personnel and imprisoned convicts proves the topicality and necessity of conducting scientific research on the given problem. Thus, answering the question 'Are suppressive measures applied to convicts in correctional and educational colonies determined precisely enough in law?' 985 representatives (49 % of 2016 polled) of SCES personnel said 'yes'; 58 (3 %) said 'no'; 973 (48 %) – partly. For the part of convicts, 285 (15 % of 2016 respondents) said 'yes'; 992 (49 %) – 'no'; 739 (15 %) – partly (Supplements A, B, C, C1).

On the whole, scientists understand legal grounds (principles, bases) as legal acts system determining general admissibility, establish principles and rules, regulate the order and conditions of applying these or those means, including scientific and technical ones, for solving the tasks of fighting crimes and ensuring law and order[2].

At the same time, scientists suggest considering law application such a legal form of activity of authorized subjects concerning ensuring law norms

[1] Kolb I. O. Pro deyaki istorychno znachushchi zmistovni elementy formuvannya pravovykh zasad zastosuvannya do zasudzhenykh zakhodiv ugamuvannya. *Pidpryyemnytstvo, gospodarstvo i pravo.* Kyyiv: TOV "Garantiya", 2019. № 3. S. 273–277.

[2] Artemenko P. Pravovi osnovy zastosuvannya tekhnichnykh zasobiv. *Mizhnarodna politseys'ka entsyklopediya: u 10 t.*/vidp. red.: V. V. Kovalenko, Ye. M. Moiseyev, V. Ya. Tatsiy, Yu. S. Shemshuchenko. Kyyiv: Atika, 2010. T. 6: Operatyvno-rozshukova diyal'nist' politsiyi (militsiyi). 2010. S. 759.

realization in specific life situations by approving individual legal decisions[1].

Proceeding from the indicated and other present in doctrinal sources definitions, the following conception is formulated in criminal executive science 'legal grounds of applying physical influence, special means and weapon to convicts in places of confinement', that is, it's a system of legislative and other normative legal acts determining general admissibility, establishing principles and rules, regulating the order and conditions of correctional and educational colony personnel activity of applying the indicated measures and means to imprisoned convicts in specific life situations by taking individual legal decisions to the point[2].

Without detailed analysis of the given conception content on the whole, the attention should be paid to some essential methodological moments that don't allow to take the indicated definition as a basis and applied principles of SCES personnel activity in the course of applying suppressive measures to imprisoned convicts[3]. In particular, it concerns the following:

[1] Voronina M. A. Zastosuvannya norm prava yak spetsyfichna forma yogo realizatsiyi: teoriya derzhavy i prava: pidruchnyk/za zag. red. O. V. Petryshyna. Kharkiv: Pravo, 2014. S. 265.

[2] Zastosuvannya zakhodiv fizychnogo vplyvu, spetsial'nykh zasobiv i zbroyi u mistsyakh pozbavlennya voli: navch. posib./za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy ta d-ra yuryd. nauk, prof. O. G. Kolba. Kyyiv: Kondor, 2016. S. 33–34.

[3] Kolb I. O. Fizychnyy opir yak odna z pidstav zastosuvannya syly do zasudzhenykh: sotsial'no-pravovyy aspekt. *Istoryko-pravovyy chasopys.* Luts'k: Vyd-vo Skhidnoyevrop. nats. un-tu im. Lesi Ukrayinky, 2019. № 2 (8). S. 136–141.

1) the term 'system' means order stipulated by correct disposition and mutual connecting parts of something[1].

Taking into consideration that Rules of applying special means approved by the resolution of Cabinet of Ministers of Ukraine of December 20, 2017, № 1024 concern only the military men of National Guard of Ukraine, it can hardly be spoken about the system of legislative acts concerning the given question, as each law enforcement body, including SCEC of Ukraine, has its legal sources regulating the order of applying suppressive measures to different categories of offenders.

Proceeding from this, in the current situation of normative legal activity and law enforcement practice it would be properly and scientifically to introduce the word 'totality' into the content of the indicated conception, which scientists interpret as an total number; integral unity of something; amount of something[2];

2) if the activity of bodies and punishment execution institutions is determined exceptionally by laws of Ukraine, as it follows from the content of p. 14 art. 92 of the Constitution of Ukraine and the principle of legitimacy, defined in p. 2 art. 19 of the Fundamental Law and art. 5 of CEC of Ukraine, it can hardly be spoken about other normative legal acts in the investigated conception (except for those,

[1] Velykyy tlumachnyy slovnyk suchasnoyi ukrayins'koyi movy/uklad. O. Yeroshenko. Donets'k: TOV "Gloriya Treyd", 2012. S. 609.

[2] Slovnyk ukrayins'koyi movy: v 11 tomakh. Kyyiv: Nauka, 1978. T. 9. S. 832.

of course, that make up the content of the term 'legislation of Ukraine'[1], that is, by-law acts (PEI IOR; Instructions; Provisions; etc.).

So, in this case it would be more logical to use the word combination 'legislative acts' in this conception;

3) none of the current normative legal acts, concerning punishment execution sphere and regulating the order and rules of applying suppressive measures to imprisoned convicts, enshrines the principles of such activity or makes any remark or reference to general principles determined in art. 5 of CEC of Ukraine.

The principles of applying physical force, special means and weapon are not mentioned in Law of Ukraine 'On National Guard of Ukraine' either (part V (art. 15–19) that a lawmaker refers to in p. 6 art. 106 of CEC of Ukraine.

Art. 29 of Law of Ukraine 'On National police' mentions only in general these principles, which establishes requirements to a police measure (it should be legal, necessary, proportional and efficient) (part V), though this question is not reflected directly in the norms regulating the order of applying enforcement measures by policemen (art. 43–46).

Proceeding from this, it should be mentioned in the formulated conception, that personnel must

[1] Rishennya Konstytutsiynogo Sudu Ukrayiny "U spravi za konstytutsiynym zvernennyam Kyyivs'koyi mis'koyi rady, profesijnykh spilok shchodo ofitsiynogo tlumachennya chastyny tretyoyi statti 21 Kodeksu zakoniv pro pratsyu Ukrayiny (sprava pro tlumachennya terminu "zakonodavstvo"), № 12-pr/98 vid 9 lypnya 1998 roku. *Ofitsiynyy visnyk Ukrayiny*. 1998. № 32. St. 1209.

observe exactly the principles of official activity determined in law (especially those defined in art. 5 of CEC and art. 2 of Law of Ukraine 'On State criminal executive service of Ukraine'), applying suppressive measures;

4) the content and form of the given conception don't coincide in the suggested definition according to the essence.

Thus, the name uses the word combination 'in places of confinement', and the definition uses 'people who serve a custodial sentence', which are not equivalent.

According to current legislation of Ukraine, places of confinement include: correctional (art. 18 of CEC) and educational (art. 19 of CEC); investigative isolation wards, punishing the convicts left in these institutions for maintenance work (art. 89 of CEC) and for investigative actions (art. 90 of CC); arrest homes (art. 15 of CEC), in which the conditions of keeping arrested convicts are equal to the people kept in confinement (p. 2 art. 51 of CEC).

Therefore, the appropriate changes should be made in previously formulated conception and in the given case;

5) at the end of the formulated conception the word combination 'by taking individual legal decisions to the point' seems to be infelicitous, instead of using another one – 'by taking individual decisions by these institutions personnel to the point according to law'.

So, proceeding from the results received in the course of the given research and the content of

modern developments on the indicated problem, the following definition of the conception 'legal principles of applying physical influence measures, special means, a straitjacket and weapon to imprisoned convicts' can be suggested, namely – it is a complex of legislative acts, establishing the principles, conditions and order of personnel activity of State criminal executive service and other law enforcement bodies of Ukraine, connected with suppressing illegal behavior of the people, who are kept in confinement, in cases, exactly determined in law norms, and also further actions, which the indicated subject of suppression is obliged to perform next.

Proceeding from this, the system forming features of the content of the formulated conception should be as follows:

1. It is a set of legislative acts concerning the given problem, which should include: a) the Constitution of Ukraine (art. 3, 19, 63, 92, etc); b) CEC of Ukraine (art. 105, 106); c) Law of Ukraine 'On pretrial detention' (art. 18, 19); d) Law of Ukraine 'On State criminal executive service of Ukraine'; e) Law of Ukraine 'On National Guard of Ukraine' (art. 15–19); f) Law of Ukraine 'On National police' (art. 42–46); g) CC of Ukraine (art. 36–41); i) resolution of Cabinet of Ministers of December 20, 2017, № 1024 'On approving the list and Rules of applying special means by military men of National Guard when performing official tasks'.

As far as by-law (departmental) normative legal acts (PEI IOR, Instructions, provisions, etc. in particular) are concerned, their legal character is deter-

mined in the corresponding resolution of the Constitutional Court of Ukraine[1] and in p. 14 art. 92 of the Constitution of Ukraine.

Along with this, it is necessary to admit that legal sources, as practice proves, play a great role for SCES personnel of Ukraine, giving broadened interpretation (content clarification, explanation)[2] of law norms regulating the question of applying suppressive measures to imprisoned convicts.

2. The activity of applying suppressive measures is based on the corresponding principles.

Scientists suggest three large groups of classification:

a) constitutional principles (art. 8, 19, 21, 24, others of the Constitution of Ukraine);

b) inter-branch principles (humanism, punishment individualization and differentiation; justice; criminal repression economy; etc.) which are enshrined in criminal legal norms;

c) branch principles, concerning specific sphere of legal relations (enshrined in art. 5 of CEC and in international acts, agreed by the Supreme Rada), namely in:

[1] Rishennya Konstytutsiynogo Sudu Ukrayiny "U spravi za konstytutsiynym zvernennyam Kyyivs'koyi mis'koyi rady, profesiynykh spilok shchodo ofitsiynogo tlumachennya chastyny tretyoyi statti 21 Kodeksu zakoniv pro pratsyu Ukrayiny (sprava pro tlumachennya terminu "zakonodavstvo"), № 12-pr/98 vid 9 lypnya 1998 roku. *Ofitsiynyy visnyk Ukrayiny*. 1998. № 32. St. 1209.

[2] Kel'man M. S., Katukha O. S., Koval' I. M. Zagal'na teoriya derzhavy i prava: pidruchnyk/za zag. red. d-ra yuryd. nauk, prof. M. S. Kel'mana. Ternopil': TOV Terno-graf, 2018. S. 480–481.

– Convention on prohibiting tortures, cruel degrading treatment and punishment[1];

– Convention on convict transfer[2];

– European Convention of preventing tortures or cruel degrading treatment or punishment[3];

– other analogical normative legal acts.

It should be mentioned that the principles of applying physical force, special means, a straitjacket and weapon in a specialized form, as a separate legal norm have not been determined so far in criminal executive legislation of Ukraine.

To eliminate the given legal gap it is necessary for CEC of Ukraine to supplement art. 106-2 'The principles of applying suppressive measures to imprisoned convicts' with the following content:

'Colony personnel apply physical influence measures, special means, a straitjacket and weapon, determined in law, exclusively for ensuring their

[1] Konventsiya proty katuvan' ta inshykh zhorstokykh, nelyudskykh abo takykh, shcho prynyzhuyut' gidnist', vydiv povodzhennya i pokarannya: rezolyutsiya General'noyi Asambleyi OON № 39/46 vid 10 grudnya 1984 roku. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy/*uporyad. O. I. Shynal's'kyy ta in. Kyyiv: Anna-T, 2008. S. 63–69.

[2] Konventsiya pro peredachu zasudzhenykh osib: pryynyata Parlaments'koyu Asambleyeyu Rady Yevropy 21.03.1983 r. Nabula chynnosti dlya Ukrayiny 01.01.1996 r. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy.* Kyyiv: ANNA-T, 2008. S. 253–262.

[3] Yevropeys'ka konventsiya pro zapobigannya katuvannya chy nelyuds'komu abo takomu, shcho prynyzhuye gidnist', povodzhennya chy pokarannyu: pryynyata PARYe 26.11.1987 r. Nabrala chynnosti dlya Ukrayiny 01.09.1997. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy/*uporyad. O. I. Shynal's'kyy ta in. Kyyiv: Anna-T, 2008. S. 267–273.

powers exercise, observing herewith the principles of legitimacy, necessity, proportion and efficiency'.

The given suggestion is based on the provisions of art. 29 of Law of Ukraine 'On National police' which mention the requirements to a police measure in the form of norms – principles of its ensuring (p. 2 of the indicated article of the law)[1].

This or that measure of suppressing an imprisoned convict chosen by colony personnel is legal if it is determined by law.

It appears that SCES of Ukraine is forbidden to apply any other measures and means but those determined in legislative acts on these issues.

At the same time the suppressive measure chosen by colony personnel is necessary, if it is impossible to apply another one for exercising their powers, or its application will be inefficient, or such a measure will infringe the least harm to both measure initiator and other people.

As specified in p. 6 of Plenum resolution of the Supreme Court of Ukraine of April 4, 2002, № 1 'On court practice of necessary defense', law enforcement officials are not made criminal responsible for harm inflicted, when performing official duties of preventing socially dangerous encroachment and of detaining offenders, if they didn't exceed the measures required for lawful criminal detention[2].

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[1] Zakon Ukrayiny "Pro Natsional'nu politsiyu". Polozhennya pro Natsional'nu politsiyu: ofits. tekst. Kyyiv: Alerta, 2016. 84 s.

[2] Pro sudovu praktyku u spravakh pro neobkhidnu oboronu: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26.04.2002 r. № 1. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uporyad. V. P. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 170.

As it appears from the content of p. 2 art. 38 of CC of Ukraine, exceeding measures necessary for criminal detention means deliberate inflicting severe harm to the person committing a crime, which does not correspond to the danger of encroachment or to the situation of a criminal detention, and exceeding the limits of necessary defense means intentional inflicting severe harm to the encroaching person, which doesn't correspond to the danger of encroachment or to the defense situation (p. 3 art. 36 of CC).

So, the principle of necessity enables not only to cease an offence mentioned in p. 1 art. 106 of CEC, but to prevent causing more harm to a convict than it is necessary in the situation connected with applying suppressive measures determined in law to him.

Along with this, the proportion principle, when applying suppressive measures to offenders in confinement, consists in the fact, that the harm caused to them doesn't exceed the harm which could be caused to the objects protected by law, and concern punishment execution sphere, justice, life and health of other people, who are kept in correctional and educational colonies, arrest houses and IIW on legal grounds.

In spite of all this, as p. 3 of Plenum resolution of the Supreme Court of Ukraine of April 26, 2002, № 1 'On court practice in the cases of necessary defense' mentions that applying weapon or any other means or items should be considered lawful, no matter what kind of harm is caused to the person who encroaches, if it is done for defending from attacking by armed person or group of people, and also for preventing

illegal forcible intrusion into a dwelling or another premises[1].

Moreover, as it appears from the content of the given Plenum resolution, harm inflicted in the state of necessary defense without exceeding the limits of the latter, is not compensated[2].

Thus, the proportion principle enables colony personnel in current situation not only to apply the corresponding suppressing measure to the convict committing the offence indicated in p. 1 art. 106 of CEC and being a legal ground for applying physical force, special means, a straitjacket and weapon, but to prevent inflicting more harm to offender than it was caused by necessity (not proportional to the harm inflicted).

As for the efficiency principle, its content is closely connected with the activity of ensuring exercise of official powers by SCES of Ukraine.

That is, an efficient suppressive measure applied to imprisoned convict is the measure which didn't only ensure realizing its application purpose, defined in p. 1 art. 106 of CEC, but created real guarantees of such an activity for colonies, arrest houses and IIW personnel.

As p. 7 art. 29 of Law of Ukraine states, an enforcement measure stops, if the purpose of its appli-

[1] Pro sudovu praktyku u spravakh pro neobkhidnu oboronu: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26.04.2002 r. № 1. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uporyad. V. P. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 170.

[2] Ibid, p. 171.

cation is achieved, and if it is clear that achieving measure purpose is impossible, or if there is no need in further application of such a measure.

If in this case harm is accidentally inflicted to the person not privy to offence, the responsibility can be imposed depending on the consequences for causing harm through negligence. Similarly, court evaluates the actions committed in imaginary defense (art. 37 of CC) (p. 3,7 (accordingly) of Plenum resolution of the Supreme Court of Ukraine of April 4, 2002, № 1 'On court practice in cases of necessary defense')[1].

So, enshrining in CEC of Ukraine certain norms – principles concerning application of suppressing measures established in law to imprisoned convicts is not only theoretically substantiated postulate (Latin. *postulatum* – the same; axiom – a statement that is not to be proved)[2], but legal necessity of ensuring lawful activity of SCES personnel on these issues.

3. The conditions and order of SCES personnel activity of suppressing imprisoned convicts are determined in legislative acts.

In science a condition implies mutual obligations of the agreeing parts, suggested for concluding, observing a treaty, agreement[3], an order implies a

[1] Pro sudovu praktyku u spravakh pro neobkhidnu oboronu: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26.04.2002 r. № 1. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/upo-ryad. V. P. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 170–171.

[2] Buliko A. N. Bol'shoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. S. 460.

[3] Velykyy tlumachnyy slovnyk suchasnoyi ukrayins'koyi movy/uklad. O. Yeroshenko. Donets'k: TOV "Gloriya Treyd", 2012. S. 657.

state when everything is done, fulfilled properly, according to certain requirements, rules, etc.[1]

Legal conditions of applying measures of physical influence, special means, a straitjacket and weapon are determined in p. 1 art. 106 of CEC. But they don't always coincide on the content with actual grounds of SCES personnel activity on the indicated issues[2].

Moreover, it should be stated that these grounds are exceptional.

Such conditions include: a) offering physical resistance to colony personnel by convicts; b) malicious non-compliance of legal colony personnel requirements by a convict; c) showing riots by a convict; d) participation of a convict in mass uprising; e) participation of a convict in hostage seizure; f) committing other acts of violence by a convict; g) escape from custody.

According to scientific literature offender's physical resistance is considered mostly through the content of such legal categories as 'physical violence', 'physical enforcement', 'physical resistance to authority', etc.[3].

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[1] Velykyy tlumachnyy slovnyk suchasnoyi ukrayins'koyi movy/uklad. O. Yeroshenko. Donets'k: TOV "Gloriya Treyd", 2012. S. 527.

[2] Kolb I. O. Shchodo zmistu pravovykh pidstav zastosuvannya zakhodiv pryborkannya do zasudzhenykh v Ukrayini. *Protydiya zlochynnosti: teoriya ta praktyka: materialy VIII Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 26 zhovt. 2018 r.).* Kyyiv: Nats. akad. prokuratury Ukrayiny, 2018. S. 202–204.

[3] Khramtsov O. M. Kryminal'no-pravove ta kryminologichne zabezpechennya okhorony osoby vid nasyl'stva: monografiya. Kharkiv: Nika Nova, 2015. S. 55–56.

Along with it, it should be mentioned, that law practice, criminal law, in particular, doesn't speak about 'physical resistance', but about 'resistance' in general, which implies physical counteracting the performance of official duties or duties of protecting public order or state body by law enforcement, authority official or other people, determined in art. 342 of CC of Ukraine[1].

At the same time, the actions of the person who offers resistance, can be aimed directly at, for example, law enforcement official or at objects necessary for performing his duties (an attempt to snatch a radio station or another special means from law enforcement official's hands)[2].

So, the word combination 'physical resistance' used in p. 1 art. 106 of CEC of Ukraine somewhat doesn't correspond to the name of the legal norms determining legal responsibility for offering resistance (for example, in art. 342 of CC), that's why it should be brought from these formal requirements to the general legal category by way of making changes in the indicated article, namely – instead of word combination 'physical resistance' the word 'resistance' should be used in p. 1 of the given article of the Code.

Besides, such an approach is based on the pithy features uniting the indicated conceptions.

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[1] Kryminal'nyy kodeks Ukrayiny. Naukovo-praktychnyy komentar: u 2 t./ za zag. red. V. Ya. Tatsiya, V. I. Borysova, V. I. Tyutyugina. 5-te vyd., dopov. Kharkiv: Pravo, 2013. T. 2: Osoblyva chastyna/Yu. V. Baulin, V. I. Borysov, V. I. Tyutyugina ta in. 2013. S. 716.

[2] Ibid.

As the study of archival criminal proceedings connected with resistance of convicts to colony personnel showed, this socially dangerous action is characterized by the following features:

1) physical resistance (resistance in general) consists in active actions (the conclusion can be made that this offence cannot be committed by inaction – in that case such an action should be classified as disobedience, that is non-compliance of duties by convicts, determined in law (in art. 107 of CEC of Ukraine, in particular);

2) a guilty person's actions (convict committing an offence) are aimed at a victim's body (a certain representative of correctional or educational colony personnel);

3) the indicated actions prevent (counteract) victims (colony personnel) from performing their functions, realizing powers'

4) a guilty person's (convict's) actions are committed in the moment of victim's performing his duties. Here, for objective part, it is necessary for resistance to appear during colony personnel performing just official, not other duties[1].

Performing official duties means colony personnel activity of realizing duties, provided for by criminal executive legislation of Ukraine.

For all that, there will not be a composition of the offence in the form of physical resistance, if a person

[1] Kryminal'nyy kodeks Ukrayiny. Naukovo-praktychnyy komentar: u 2 t./ za zag. red. V. Ya. Tatsiya, V. I. Borysova, V. I. Tyutyugina. 5-te vyd., dopov. Kharkiv: Pravo, 2013. T. 2: Osoblyva chastyna/Yu. V. Baulin, V. I. Borysov, V. I. Tyutyugina ta in. 2013. S. 716.

of SCES personnel committed evidently illegal actions. As practice shows, the rules of necessary defense are applied to such resistance[1].

Again, one moment is important in the indicated case, that is, resistance is over from the moment of active counteraction of a convict to colony personnel performing their duties.

As it follows from the content of p. 8 of Plenum resolution of the Supreme Court of Ukraine of December 22, 2006, № 10 'On court practice on hooliganism', if resistance was after ceasing hooligan actions – as counteracting offender detention, the responsibility must come for a set of crimes, provided for by the corresponding articles 296 and 342 of CC[2].

In scientific literature also other peculiar features of resistance can be found. For example, O. M. Gumin considers it one of violence form, causing socially dangerous and illegal affect on the victim[3], and S. M. Abeltsev is convinced that the conception 'violence' embraces all cases of applying physical violence and threats of its application[4].

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[1] Kryminal'nyy kodeks Ukrayiny. Naukovo-praktychnyy komentar: u 2 t./ za zag. red. V. Ya. Tatsiya, V. I. Borysova, V. I. Tyutyugina. 5-te vyd., dopov. Kharkiv: Pravo, 2013. T. 2: Osoblyva chastyna/Yu. V. Baulin, V. I. Borysov, V. I. Tyutyugina ta in. 2013. S. 717.

[2] Pro sudovu praktyku u spravakh pro khuliganstvo: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 22.12.2006 r. № 10. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uporyad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 372.

[3] Gumin O. M. Kryminal'na nasyl'nyts'ka povedinka osoby: teoretyko-prykladni aspekty: dys. … d-ra yuryd. nauk: 12.00.08. L'viv: L'viv. nats. un-t. im. Ivana Franka, 2010. S. 79.

[4] Abel'tsev S. N. Kriminologicheskoye izucheniye nasiliya i zashchita lichnosti ot nasil'stvennykh prestupleniy: dis. … d-ra yurid. nauk: 12.00.08. Moskva, 2000. S. 290.

A number of scientists (B. M. Holovkin[1]; V. V. Holina and O. M. Marshuba[2]; O. M. Khramtsov[3]; M. I. Panov[4]; others) consider the content of violence conception in context or as a separate crime (their groups, types, etc.), or in connection with its criminal legal classification.

Taking complete identity of notions 'resistance', 'violence' and 'physical resistance' into consideration, the results of above mentioned and other scientific developments on this problem should undoubtedly be taken into account when defining actual grounds of applying suppressive measures to imprisoned convicts.

As it was established in the course of the given research, such a legal ground of applying physical influence measures, special means, a straitjacket and weapon as 'malicious non-compliance of colony personnel legal requirements by a convict' creates a lot of difficulties in practice.

In scientific sources malicious means full of evil, malevolence; angry, and also deliberately dishonest; stubborn[5].

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[1] Golovkin B. M. Kryminologichni problemy umysnykh vbyvstv i tyazhkykh tilesnykh ushkodzhen', shcho vchynyayut'sya v simeyno-pobutoviy sferi: monografiya. Kharkiv: Nove slovo, 2004. 252 s.

[2] Golina V. V., Marshuba M. O. Kriminologicheskaya kharakteristika lichnosti nesovershennoletnego korystno-nasil'stvennogo prestupnika v Ukrainye: monografiya. Khar'kov: Pravo, 2014. 280 s.

[3] Khramtsov O. M. Kryminal'no-pravove ta kryminologichne zabezpechennya okhorony osoby vid nasyl'stva: monografiya. Kharkiv: Nika Nova, 2015. 472 s.

[4] Panov N. Y. Kvalifikatsiya nasil'stvennykh prestupleniy. Khar'kov: Yurid. in-t, 2014. 280 s.

[5] Velykyy tlumachnyy slovnyk suchasnoyi ukrayins'koyi movy/uklad. O. Yeroshenko. Donets'k: TOV "Gloriya Treyd", 2012. S. 246.

In the context of criminal legal category, maliciousness consists in open, demonstrative and impudently expressed by a convict non-compliance of persistent, repeatedly stated legal requirements of a colony personnel person, who has the right to make such requirements, and a convict is obliged and has an opportunity to fulfill them[1].

At the same time, it should be mention that in the first case (concerning physical resistance), and in the present situation the lawmaker used in p. 1 art. 106 of CEC the word combination 'malicious non-compliance' instead of 'malicious disobedience', which is one of classifying features of crime composition, provided for by art. 391 of CC, showing in such a way an element of legal 'nihilism' which should be eliminated changing one into another in p. 1 art. 106 of CEC, as it is important, taking terms monotony in the present legislation of Ukraine and court practice on these issues into consideration.

P. 16 of Plenum resolution of the Supreme Court of Ukraine of March 26, 1993, № 2 'On court practice in the cases of crimes connected with breaking the regime of serving a sentence in places of confinement' states, that breaking detention regime in correctional colony doesn't contain the features of malicious disobedience, unless this institution admi-

[1] Kryminal'nyy kodeks Ukrayiny. Naukovo-praktychnyy komentar: u 2 t./ za zag. red. V. Ya. Tatsiya, V. I. Borysova, V. I. Tyutyugina. 5-te vyd., dopov. Kharkiv: Pravo, 2013. T. 2: Osoblyva chastyna/Yu. V. Baulin, V. I. Borysov, V. I. Tyutyugina ta in. 2013. S. 897.

nistration representative addressed a convict with specific requirements as regards this[1].

So, defining actual grounds of applying suppressive measures to imprisoned convicts, colony personnel should take the above mentioned moments into account.

As for another legal ground of such colony personnel activity – showing riots by a convict, this term concerns medical notion, defined in normative legal acts regulating the sphere of health care of Ukraine[2], that's why it is desirable to detect the appropriate features characterizing the state of the person who showed it to SCES personnel, when establishing actual grounds for applying the corresponding suppressive measures to convicts in colonies.

In scientific literature, in particular, riot is meant as extremely excited state; fight; disorder[3].

So, the very behavior has to become an actual ground for applying suppressive measures to imprisoned convicts, if in this case as in the previous ones other measures and means fail to cease the indicated offences.

[1] Pro sudovu praktyku v spravakh pro zlochyny pov'yazani z porushennyamy rezhymu vidbuvannya pokarannya v mistsyakh pozbavlennya voli: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26.02.1993 r. № 2. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uporyad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 114.

[2] Pro osnovy okhorony zdorov'ya v Ukrayini. Zakon Ukrayiny vid 19 lystopada 1992 roku. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 1993. № 4. St. 19.

[3] Ozhegov S. Y., Shvedova N. Yu. Tolkovyy slovar' russkogo yazyka. 2-ye izd., dopol., isprav. Moskva: Nauka, 1988. S. 69.

One more legal ground for applying suppressive measures in colonies is participation of convicts in mass uprisings.

The conception of mass rising is given in art. 294 of CC of Ukraine.

Social danger of mass uprising consists in the fact that this crime is the result of crowd activity – a large number of people, whose actions are of uproar character and accompanied with: violence against people; massacres; arson; property destruction; seizure of building and structures; forced eviction of citizens; resistance to authority representatives using weapon or other objects used as weapon[1].

That's why, as it follows from the content of p. 9 of Plenum resolution of the Supreme Court of Ukraine of March 26, 1993, № 2 'On court practice in the cases of crimes connected with breaking the regime of serving a sentence in places of confinement', in the cases when attacking colony administration is combined with organizing mass disorders, accompanied by violence against a person, massacres, arson, property destruction, resistance to authority representative and using weapon or other objects used as weapon, and active participation in mass disorders, the actions of guilty people should be qualified according to the totality of crimes – according to art. 294 of CC 'Mass uprising' and to art. 392 of CC

[1] Kryminal'nyy kodeks Ukrayiny. Naukovo-praktychnyy komentar: u 2 t./ za zag. red. V. Ya. Tatsiya, V. I. Borysova, V. I. Tyutyugina. 5-te vyd., dopov. Kharkiv: Pravo, 2013. T. 2: Osoblyva chastyna/Yu. V. Baulin, V. I. Borysov, V. I. Tyutyugina ta in. 2013. S. 579.

'Actions disorganizing punishment execution institution work'[1].

For all that, participation of convicts in mass uprising means personal criminal action or participation of these subjects in committing any actions determined in art. 294 of CC[2].

So, direct personal participation of a certain person in any action recognized as a mass uprising, according to the law, is an actual ground for applying suppressive measures to convicts.

Proceeding from this, it is necessary to state that in this case suppressive measures cannot be applied to the convicts who are eyewitnesses, witnesses or just passive participants (observers) of mass uprisings in colonies, owing to their presence on the place of a crime (territory of the PEI where the mentioned offences are committed).

In this situation the principle of punishment individualization should be realized in practice (art. 5 of CEC), namely: suppressive measures must be applied only to the offenders who take an active part in mass uprising.

[1] Pro sudovu praktyku v spravakh pro zlochyny pov'yazani z porushennyamy rezhymu vidbuvannya pokarannya v mistsyakh pozbavlennya voli: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26.02.1993 r. № 2. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uporyad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 111.

[2] Kryminal'nyy kodeks Ukrayiny. Naukovo-praktychnyy komentar: u 2 t./ za zag. red. V. Ya. Tatsiya, V. I. Borysova, V. I. Tyutyugina. 5-te vyd., dopov. Kharkiv: Pravo, 2013. T. 2: Osoblyva chastyna/Yu. V. Baulin, V. I. Borysov, V. I. Tyutyugina ta in. 2013. S. 580.

The disposition of art. 294 of CC is formulated just in this context, recognizing only a person's active actions in places of uprising a crime[1].

Taking the mentioned into consideration, the word combination 'participation in mass uprising' used in p. 1 art. 106 of CEC, should be changed into 'active participation in mass uprising', which, in its turn, will enable to prevent illegal applying suppressive measures to imprisoned convicts by colony personnel, and to distinctly decide in practice on establishing actual grounds for such an activity.

As practice shows, the legal ground 'convict's participation in hostage seizure' is of great importance for committing the indicated actions by colony personnel.

The content features of this offence are determined in art. 147 of CC of Ukraine.

Along with this, it is worth while stating that p. 1 art. 106 of CEC doesn't tell about seizing hostages as it is marked in the name and disposition of art. 147 of CC, but about 'taking hostages', that is, as in the previous cases there are certain legal inadequacies.

Taking this circumstance and the fact, that the norms of material law (CC, in particular) are primary (priority) for other norms of legal regulation (procedural, derivative, etc.)[2] into consideration, it is nece-

[1] Kryminal'nyy kodeks Ukrayiny. Naukovo-praktychnyy komentar: u 2 t./ za zag. red. V. Ya. Tatsiya, V. I. Borysova, V. I. Tyutyugina. 5-te vyd., dopov. Kharkiv: Pravo, 2013. T. 2: Osoblyva chastyna/Yu. V. Baulin, V. I. Borysov, V. I. Tyutyugina ta in. 2013. S. 579–581.

[2] Teoriya derzhavy i prava: pidruch. dlya stud. yuryd. vyshch. navch. zakl./O. V. Pogrebnyak, V. S. Smorodyns'kyy ta in.; za red. O. V. Petryshyna. Kharkiv: Pravo, 2014. S. 180.

ssary to change the word 'taking' used in p. 1 art. 106 of CEC into the word 'seizing' enshrined in art. 147 of CC.

As for legal nature of the given criminal offence, its objective part consists in seizing or keeping a person as a hostage.

Committing one of the indicated actions is enough for establishing, and a crime is considered completed from the moment of seizing a victim or from the moment of actual depriving the hostage of the right to freely move, that is, legal grounds determined in p. 1 art. 106 of CEC till the moment of legal fact in this case completely coincide with actual grounds of applying suppressive measures to imprisoned convicts.

The difference in this case consists in the fact that having actual grounds colony personnel is obliged to establish illegal actions determined in p. 1 art. 106 of CEC.

As the given research results showed, the legal ground enshrined in p. 1 art. 106 of CEC of applying suppressive measures 'performing other acts of violence by a convict' makes many problems in practice.

All laws lack their interpretation, which is one of the conditions helping in some cases to illegally apply measures of physical influence, special means, a straitjacket and weapon to imprisoned convicts by colony personnel.

Besides, in scientific sources the indicated ground doesn't find a single meaning: some authors identify it with the content of physical violence (unlawful imprisonment; binding other people; striking blows,

beating, bodily harm, etc.)[1]; other expert include psychic violence to this action classification[2]; the third group is convinced that criminal violence has recently undergone qualitative changes owing to increase of danger degree, cruelty and impudence of committing violent crimes[3]. O. M. Khramov was right stating that in spite of the fact, that violence is divided into physical and psychic in criminal law doctrine, law understands the term 'violence' only as physical violence[4].

Along with this, as B. V. Yatsenko mentioned, formally such a method of lawmaking technique doesn't correspond to terminology requirements, and the word 'violence' as broader in volume, should be changed in law into word combination 'physical violence'[5], taking into consideration that psychic violence is mentioned only in some corpus delicti (for example, in art. 129 of CC of Ukraine).

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[1] Kryminal'nyy kodeks Ukrayiny. Naukovo-praktychnyy komentar: u 2 t./ za zag. red. V. Ya. Tatsiya, V. I. Borysova, V. I. Tyutyugina. 5-te vyd., dopov. Kharkiv: Pravo, 2013. T. 2: Osoblyva chastyna/Yu. V. Baulin, V. I. Borysov, V. I. Tyutyugina ta in. 2013. S. 718.

[2] Mashynskaya N. V. Nasiliye v sem'ye (kriminologicheskiye i ugolovno-pravovyye aspekty): dis. … kand. yurid. nauk: 12.00.08. Moskva, 2001. S. 139.

[3] Kazimirova O. Nasiliye kak kvalifitsyruyushchiy priznak i yego rol' v postroyenii sanktsyy. Ch. 1, 3 st. 321 UK RF. *Rossiyskiy sledovatel'*. 2007. № 23. S. 10.

[4] Khramtsov O. M. Kryminal'no-pravove ta kryminologichne zabezpechennya okhorony osoby vid nasyl'stva: monografiya. Kharkiv: Nika Nova, 2015. S. 182.

[5] Yatsenko B. V. Protivorechiya ugolovno-pravovogo regulirovaniya: monografiya. Moskva: Izd-vo MYuY MVD Rossii, 1996. S. 173–174.

In court practice violence, when law enforcement official is resisted (art. 342 of CC), implies intended infliction of bodily harm, blows, beating to these people[1].

Apart from this, in legal sources violence is identified with the term 'special cruelty' (infliction of much bodily harm, torture, torment, etc.) (p. 8 of Plenum resolution of the Supreme Court of Ukraine of February 2, 2003, № 3 'On court practice in the cases of crimes against human life and health'[2].

Court practice mentions also violence dangerous for life and health (art. 187, p. 3 art. 189 of CC), that is, intended infliction of actual bodily harm causing momentary health disorder or slight disability, average or severe bodily harm, and also other acts of violence, which didn't cause the indicated consequences but were dangerous for life and health in the moment of their performance.

Court also refers here the violence causing loss of consciousness or was a kind of torture; pressing the neck; dropping from a height; applying electric current; applying weapon or special instruments; app-

[1] Pro zastosuvannya sudamy zakonodavstva shcho peredbachaye vidpovidal'nist' za posyagannya na zhyttya, zdorov'ya, gidnist' ta vlasnist' pratsivnykiv pravookhoronnykh organiv: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26.06.1992 r. № 8. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uklad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 103.

[2] Pro sudovu praktyku v spravakh pro zlochyny proty zhyttya ta zdorov'ya osoby: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 07.02.2003 r. № 2. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uklad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 204.

lying drugs, psychotropic, poisonous or drastic (gas) substances to a victim without his consent (p. 9, 10 of Plenum resolution of the Supreme Court of Ukraine of November 11, 2003, № 10 'On court practice in the cases of crimes against property'[1].

So, the analysis of scientific and other legal sources conducted proves the complexity of defining in practice such a term used in law as 'performing other acts of violence', and also stipulates the necessity of clarifying it in the form of a comment, particularly to art. 106 of CEC of Ukraine, of the following content:

'Other acts of violence are the offences, which are not embraced with the content of the notions used in p. 1 art. 106 of the given Code, and are the grounds for applying suppressive measures to imprisoned convicts, and also intended infliction of bodily harm to a victim which are dangerous for his life and health in the moment of their performance'.

Such an approach will enable: to broaden colony personnel knowledge limits of the content of the given ground of their activity of applying suppressive measures to imprisoned convicts; to determine exactly in practice actual grounds for performing such actions by SCES personnel, and thus to prevent their unlawful behavior.

And finally, the last ground, determined in law, of applying physical force, special means, a strait-

[1] Pro sudovu praktyku u spravakh pro zlochyny proty vlasnosti: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 11.06.2009 r. № 10. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/ uklad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 429.

jacket and weapon to imprisoned people – a convict's escape from custody.

Content features of this criminal offence are determined in art. 393 of CC of Ukraine.

It should be kept in mind, that both in criminal law (art. 13–15 of CC) and in criminal executive legislature of Ukraine, the legal ground for applying suppressive measures to the convict committing this crime is both an act (preparation for the crime) and direct committing it in the form of attempt (or completed) crime.

Along with this, following from the content of p. 13 of Plenum resolution of the Supreme Court of Ukraine of March 26, 1993, № 2 'On court practice in the cases of crimes connected with breaking the regime of serving a sentence in places of confinement', such an escape is completed corpus delicti from the moment of intended illegal leaving the place of imprisonment by a convict or a person in custody.

For all that the responsibility for escape arises if there is a direct intend, regardless of the motives of leaving imprisonment place[1].

So, the conclusion of the analysis conducted can be made, that actual grounds for applying suppressive measures to people escaping from places of imprisonment, arise only in the cases of intended performing such an act, and when such actions are criminal.

[1] Pro sudovu praktyku v spravakh pro zlochyny pov'yazani z porushennyamy rezhymu vidbuvannya pokarannya v mistsyakh pozbavlennya voli: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26.02.1993 r. № 2. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uporyad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 112.

At the same time, in the cases indicated in p. 2 art. 393 of CC of Ukraine, colony personnel are obliged to perform immediately some actions to detain the criminal, including suppressive measures application determined in law.

Such actions are referred by lawmaker to, as follows: performed by a group of people by prior agreement; in the manner dangerous for other people's life and health; connected with weapon possession or usage; violence or threat of its application; undermining; damage of engineering technical protection means[1].

As it is established in the course of the research, SCES personnel in practice has either one legal and actual or several grounds of applying physical force, special means, a straitjacket and weapon to imprisoned convicts.

For all that, it has to observe by all means the general order and peculiarities of applying each individual suppressive measure, told in p. 2–5 art. 106 of CEC.

4. The next system forming feature of the conception 'legal principles of applying physical influence measures, special means, a straitjacket and weapon to imprisoned convicts' is performing further actions by colony and other law enforcement body personnel.

Legal conditions of the indicated activity are determined in p. 4–5 art. 106 of CEC of Ukraine. Thus, p. 5 of this article says, that colony administration is obliged to provide assistance to victims if necessary.

[1] Kryminal'nyy kodeks Ukrayiny. Naukovo-praktychnyy komentar: u 2 t./ za zag. red. V. Ya. Tatsiya, V. I. Borysova, V. I. Tyutyugina. 5-te vyd., dopov. Kharkiv: Pravo, 2013. T. 2: Osoblyva chastyna/Yu. V. Baulin, V. I. Borysov, V. I. Tyutyugina ta in. 2013. S. 902–903.

Such an approach cannot be considered felicitous, as the given legal norm doesn't say a word, how a person of PEI personnel, who performed such an act, has to do after applying this or that suppressive measure, which is important considering legal evaluation of his actions later, particularly in the context of art. 135 of CC 'Leaving in danger' and art. 136 'Providing assistance to the person in dangerous state of life'.

Moreover, colony personnel further actions in this situation can prove their intended actions after applying suppressive measures, determined in law, to imprisoned convicts, and severe consequences for the victim.

In this connection scientific literature distinguishes the following types of failure to provide assistance:

a) failure to provide assistance to the person who found himself in the situation dangerous for life (inactivity – non-interference);

b) leaving a person in danger by the person, who put another person in a dangerous for life state owing to his actions[1].

In the first case the guilt as for consequences can be expressed both in the form of intention and of carelessness.

For all that, intended actions can be performed owing to the motives of revenge, jealousy, etc.

[1] Kryminal'nyy kodeks Ukrayiny. Naukovo-praktychnyy komentar: u 2 t./ za zag. red. V. Ya. Tatsiya, V. I. Borysova, V. I. Tyutyugina. 5-te vyd., dopov. Kharkiv: Pravo, 2013. T. 2: Osoblyva chastyna/Yu. V. Baulin, V. I. Borysov, V. I. Tyutyugina ta in. 2013. S. 88.

In the second situation the guilt as for consequences can be only in the form of carelessness (criminal arrogance or criminal negligence)[1].

Although, as it follows from p. 6 of Plenum resolution of the Supreme Court of Ukraine of April 26, 2002, № 1 'On court practice of necessary defense', law enforcement officials are not subjected to criminal liability for harm inflicted when performing official duties of preventing socially dangerous encroachment and offender detention, if they didn't exceed the measures necessary for lawful criminal detention[2], the indicated people are obliged to provide first aid to the offender in such cases.

So, it should me admitted that p. 4 art. 106 of CEC is formulated somewhat formal and scholastic (Gr. *sholastikos* – formal knowledge, detached from life and practice)[3], that's why it needs a new version, considering suggested in this work and in some normative legal acts measures, connected with the actions of the people, who after applying appropriate suppressive measures to offenders (p. 4 art. 43 of Law of

[1] Kryminal'nyy kodeks Ukrayiny. Naukovo-praktychnyy komentar: u 2 t./ za zag. red. V. Ya. Tatsiya, V. I. Borysova, V. I. Tyutyugina. 5-te vyd., dopov. Kharkiv: Pravo, 2013. T. 2: Osoblyva chastyna/Yu. V. Baulin, V. I. Borysov, V. I. Tyutyugina ta in. 2013. S. 88.

[2] Pro sudovu praktyku u spravakh pro neobkhidnu oboronu: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26.04.2002 r. № 1. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uporyad. V. P. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 170.

[3] Filosofskiy entsyklopedicheskiy slovar'/gl. red.: L. F. Il'yichyov, P. N. Fedoseyev, S. M. Kovalyov, V. G. Panov. Moskva: Sov. entsykl., 1983. S. 666–667.

Ukraine 'On National police'), namely: the person applying suppressive measures determined in this Code, is obliged to provide first aid to the people who suffered from their application.

The necessity of the indicated change of p. 4 art. 106 of CEC is stipulated with the fact that colony personnel, on the one hand, will have the duty to perform further actions after applying suppressive measures, and, on the other hand, it will enable to prevent from making them criminally responsible for leaving a victim in danger or for failure to provide him assistance if he is in dangerous for life state (according to art. 135, 136 of CC of Ukraine). Given the requirements of art. 3 of the Constitution of Ukraine, that human life and health is the highest social value, and art. 27 of the Fundamental Law of human integral right to life and state's duty to protect human life, and the requirements of art. 24, 25 of CEC of Ukraine and Law of Ukraine 'On Plenipotentiary on human rights of the Supreme Rada'[1], modification of p. 5 art. 106 of CEC is objectively stipulated in the manner of broadening cases of Plenipotentiary's reports about applying suppressive measures to imprisoned convicts.

At present Plenipotentiary immediately reports about applying weapon in PEI (p. 4 art. 106 of CEC of Ukraine), though applying other measures determined in law (special means, a straitjacket, etc.) a convict's life and health is also inflicted.

[1] Pro Upovnovazhenogo Verkhovnoyi Rady Ukrayiny z prav lyudyny: Zakon Ukrayiny vid 23 grudnya 1997 roku № 776/97-VR. *Ofitsiynyy visnyk Ukrayiny*. 1998. № 1. St. 5.

Generalizing analysis results of system forming features of author's conception 'legal principles of applying physical influence measures, special means, a straitjacket and weapon to imprisoned convicts', it is necessary to state that current approaches in present criminal executive legislation of Ukraine need improving and systematizing, considering new recently adopted legal sources, namely: Law of Ukraine 'On National Guard of Ukraine'[1]; 'On National police'[2]; List and Rules of applying special means by military men of National Guard when performing official tasks[3]; Law of Ukraine 'On making changes to Criminal executive code as regards convict adapting legal status to European standards'[4]; other analogical legislative acts.

Such a conclusion is based also on the purposes enshrined on law and concern activity content, connected with applying suppressive measures to offenders.

Thus, p. 11 of the above mentioned Rules says that military men of National Guard apply special

[1] Pro Natsional'nu gvardiyu Ukrayiny: Zakon Ukrayiny vid 13 bereznya 2014 roku № 876-VII. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2014. № 17. St. 594.

[2] Zakon Ukrayiny "Pro Natsional'nu politsiyu". Polozhennya pro Natsional'nu politsiyu: ofits. tekst. Kyyiv: Alerta, 2016. 84 s.

[3] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

[4] Pro vnesennya zmin do Kryminal'no-vykonavchogo Kodeksu Ukrayiny shchodo adaptatsiyi pravovogo statusu zasudzhenogo do yevropeys'kykh standartiv: Zakon Ukrayiny vid 08.04.2014 r. № 1186-V. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 2014. № 2. St. 869.

means exceptionally in necessary cases provided for by law, if other forms of the previous influence on an offender didn't give the desired results, or if it is impossible to apply other measures for performing powers, that is, the purpose of such actions directly correspond to the content of official activity.

An indirect purpose of applying suppressive measures is achieving desired result of military men's actions or if there is no need of further applying a certain special means (p. 11 of Rules).

The analogical purposes are determined in art. 15 of Law of Ukraine 'On National Guard of Ukraine'.

The purpose of applying suppressive measures is connected with ensuring policemen's performance of powers, enshrined in p. 29 of Law of Ukraine 'On National police'. Thus, p. 2 of this article of Law says that the police measure is applied only for performing police authority.

At the same time, p. 1 art. 106 of CEC states this purpose somewhat differently, namely: suppressive measures established in law are applied to imprisoned convicts with the purpose: a) of ceasing illegal actions indicated in Code; b) preventing infliction of harm to surrounding by these people; c) preventing self-injury by these people.

In such a way, unlike Law of Ukraine 'On National Guard of Ukraine' and Law of Ukraine 'On National police', CEC doesn't determine the purpose of applying suppressive measures as a need of ensuring colony personnel official powers.

This approach doesn't only reduce the level of guaranteeing SCES personnel activity on these issues,

but doesn't largely correlate with the provisions of above mentioned laws, according to which, including p. 6 art. 106 of CEC of Ukraine, physical force, special means and weapon are applied by military men of National Guard and officials of National police of Ukraine[1].

Proceeding from this, and with the purpose of unification (Latin. *unificate* – bringing something to a single form, system, norm. etc.)[2] of the content of normative legal acts, regulating the problem of applying suppressive measures by law enforcement bodies, it is worth while supplementing p. 1 art. 106 of CEC with word combination 'and also for ensuring official powers performance by the indicated institutions personnel' and stating in the following wording:

'If imprisoned convicts offering physical resistance to colony personnel, don't fulfill its legal requirements, show riots, take part in mass uprisings, in hostage seizure or perform other acts of violence, and also incase of escape from custody, the personnel of the indicated institutions apply physical force, special means, a straitjacket and weapon for ceasing illegal actions, preventing infliction of harm to surrounding or self-injury by these people, and also for ensuring official powers performance by the personnel of the indicated institutions'.

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[1] Kolb I. O. Pro zmist pravovykh pidstav zastosuvannya zakhodiv fizychnogo vplyvu, spetsial'nykh zasobiv i zbroyi do zasudzhenykh v Ukrayini. *Visnyk Chernivets'kogo fakul'tetu Natsional'nogo universytetu "Odes'ka yurydychna akademiya"*. 2018. № 3. S. 220–228.

[2] Buliko A. N. Bol'shoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. S. 601.

On the whole, summing up this research problem, the following characteristic elements and features[1] of legal grounds content of applying suppressive measures, determined in law, to the people kept in correctional and educational colonies[2], namely:

1) the indicated activity concerns only offences, distinctly enshrined in legislation, committing of which by convicts can be the reason (actual ground) for applying suppressive measures to imprisoned convicts (p. 1 and p. 6 art. 106 of CEC, art. 15 of Law of Ukraine 'On National Guard of Ukraine', art. 45 of Law of Ukraine 'On National police');

2) such an activity is exactly motivated and doesn't stipulate achieving the purposes, not determined in law (p. 1 art. 10 of CEC; p. 1 art. 16 of Law of Ukraine 'On National Guard of Ukraine');

3) the given activity is the right for all law enforcement officials, if the purpose determined in law can be achieved within it limits.

Along with this, art. 106 doesn't tell exactly about colony personnel right, unlike other normative legal acts on these issues, where lawmaker used the

[1] Zastosuvannya zakhodiv fizychnogo vplyvu, spetsial'nykh zasobiv i zbroyi u mistsyakh pozbavlennya voli: navch. posib./za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy ta d-ra yuryd. nauk, prof. O. G. Kolba. Kyyiv: Kondor, 2016. S. 34–35.

[2] Kolb I. O., Godlevs'ka-Konovalova A. V. Zmist normatyvno-pravovykh pidstav zapobigannya zlochynam, povyazanym iz zastosuvannyam syly do zasudzhenykh v Ukrayini. *Kryminologichna teoriya i praktyka: dosvid, problemy syogodennya ta shlyakhy yikh vyrishennya [tekst]: materialy Mizhvuz. nauk.-prakt krug. stolu (m. Kyyiv, 22 berez. 2019 r.)*/ redkol.: V. V. Cherney, S. D. Gusaryev, S. S. Chernyavs'kyy ta in. Kyyiv: Nats. akad. vnutr. sprav, 2019. S. 26–28.

term 'can' or 'right' (art. 16 of Law of Ukraine 'On National Guard of Ukraine'; art. 44 of Law of Ukraine 'On National police'; others)

Taking the indicated points into consideration, it is necessary to supplement p. 1 of art. 106 of CEC of Ukraine with the sentence of the following content:

'Application of suppressive measures stated in this Code is an exceptional right of colony personnel, if the activity purpose determined in law can be achieved within its limits';

4) such an activity of SCES personnel is authoritative, that is, stipulates taking legally necessary decisions and includes:

a) warning of the intention of applying suppressive measures determined in law to an offender (p. 2 art. 106 of CEC of Ukraine);

b) applying these measures and means without warning in the cases, if direct threat to colony personnel or other people's life or health arose (p. 2 art. 106 of CEC);

c) the procedure of informing about the facts of applying suppressive measures to imprisoned convicts by colony personnel to these institutions administration, higher officials of SCES of Ukraine, prosecutor, and Plenipotentiary on human rights of the Supreme Rada of Ukraine (p. 5 art. 106 of CEC).

5) applying suppressive measures stipulates in all cases taking individual legal decisions an appropriate suppressive measure in different situations, including the activity in the structure of special subdivisions of SCES of Ukraine and other law enforcement bodies involved in this activity according to art. 105 of CEC

(p. 1 art. 106 of CEC; p. 3 art. 15 of law of Ukraine 'On National Guard'; p. 3 art. 43 of Law of Ukraine 'On National police'; others);

6) applying suppressive measures determined in law is an activity performed by exactly authorized subjects – correctional and educational personnel (p. 1 art. 106 of CEC, art. 14, 18, 19 of Law of Ukraine 'On State criminal executive service of Ukraine'), by military men of National Guard of Ukraine (art. 105, p. 6 art. 106 of CEC and art. 15–19 of Law of Ukraine 'On National Guard of Ukraine') and by police officials (art. 105, p. 6 art 106 of CEC, art. 42–46 of Law of Ukraine 'On National police');

7) applying physical force, special means, a straitjacket and weapon to imprisoned convicts is performed according to the order distinctly determined at legislative level (p. 2–5 art. 106 of CEC; art. 15–19 of Law of Ukraine 'On National Guard of Ukraine' and art. 42–46 of Law of Ukraine 'On National police');

8) applying suppressive measures is over, if the purpose of such actions determined in law, performed by colony personnel and other law enforcement officials, is achieved (p. 4 art. 106 of CEC; p. 3 art. 15 of Law of Ukraine 'On National Guard of Ukraine'; others);

9) the activity connected with applying physical force, special means, a straitjacket and weapon to imprisoned convicts is sure to stipulate providing medical assistance to the people suffering from colony personnel and other law enforcement officials actions (p. 4 art. 106 of CEC; p. 3 art. 15 of Law of Ukraine

'On National Guard of Ukraine'; p. 4 art. 43 of Law of Ukraine 'On National police').

So, elucidating the content of legal principles determined in law of applying physical influence measures, special means, a straitjacket and weapon is not only of theoretical cognitive character, enabling at doctrinal level to find out controversial, disputable and problematic moments on these issues, but also of practical significance, because it enable to elaborate a number of scientifically substantiated suggestions aimed at improving legal mechanism and guarantees of SCES personnel activity in the given direction[1].

The conclusions to the section 2

1. The author's conception 'suppressive measures applied to imprisoned convicts' is formulated and its essence is clarified, which means measures of psychic and physical influence, enshrined in law, performed by the personnel of bodies and punishment execution institutions towards offenders who are kept in the places of confinement, aimed at ceasing the illegal actions, performance of which is a legal and actual ground for their application.

On the basis of the analysis results of system forming features which make up the content of the given conception, the draft of the Instruction on the

[1] Kolb I. O. Provokuyucha protypravna povedinka zasudzhenykh – odna z pidstav zastosuvannya do nykh zasobiv pryborkannya. *Visnyk penitentsiarnoyi asotsiatsiyi Ukrayiny.* Kyyiv: FOP Kandyba T. P., 2018. № 3 (5). S. 128–135.

order of applying physical force, special means and weapon to imprisoned convicts is elaborated, which is absent in the sphere of punishment execution, and in practice it's the reason of committing different offences by SCES personnel (exceeding necessary defense limits, criminal detention; tortures; exceeding authority and official powers, etc.).

Scientifically substantiated action algorithm of bodies and punishment execution institutions personnel in cases of applying suppressive measures to offenders determined in law, based on the principles of legitimacy, humanity and justice.

2. The types of suppressive measures applied to imprisoned convicts are determined and their characteristics are made.

It is established that the significance of evaluating tactical and tactic data of the indicated measures in stipulated by a number of circumstances connected with necessity of:

a) defining action efficiency of different suppressive measures and their potential opportunities to cease offences, committing of which is a ground for their application;

b) establishing a specific type of suppressive measure which can be applied in this or that situation, that is, colony personnel actions adequacy in these cases;

c) substantiating preventive influence of different suppressive measures applied to imprisoned convicts, demonstrating them to the offender, as a way of intimidation before their direct applying to the offender;

d) determining the consequences of applying specific suppressive measures in the form of certain harm to offender's health, life, dignity and property,

aimed at their minimizing and substantiating the priority of preventive activity on the indicated research subject;

e) bringing the order and practice of applying suppressive measures determined in law to imprisoned convicts to better international experience, and also to international law requirements.

3) The essence and content of the conception 'legal principles of applying physical influence measures, special means, a straitjacket and weapon' are ascertained and its author variant is given, namely – it is a set of legislative acts establishing the principles, conditions and order of the personnel activity of State criminal executive service and other law enforcement bodies of Ukraine, connected with ceasing illegal behavior of the people kept in the places of confinement, in the cases distinctly determined in law norms, and also further actions which the indicated suppressive subjects are obliged to perform henceforward.

The types of these grounds are determined and their typology is made (it is based on a criterion of legal prevalence and immediacy of influence on criminal executive legal relations), including:

a) general rules determined in art. 106 of CEC;

b) special provisions regulating colony personnel actions as for minors, pregnant women and people showing riots (p. 3 art. 106 of CEC)[1];

[1] Kolb I., Zatko Y. Pro deyaki problemni pytannya, shcho vynykayut' pry zastosuvanni syly do nepovnolitnikh zasudzhenykh, pozbavlenykh voli. *Naukove zabezpechennya zakhystu prav ta svobod gromadyan Ukrayiny v umovakh integratsiyi v Yevropeys'kyy prostir: materialy Mizhnar. nauk.-prakt. konf. (L'viv, 25 zhovt. 2018 r.).* L'viv: Nats. un-t "L'vivska politekhnika", 2018. S. 64–66.

c) specific norms connected with regulating actions of military men of National Guard of Ukraine and officials of National police of Ukraine, involved in ensuring the regime of special conditions according to the requirements of art. 105 and p. 6 art. 106 of CEC of Ukraine;

d) other norms detailing the actions of above mentioned subjects, who have the right to apply special means to imprisoned convicts (p. 8 of Rules of applying special means by military men of National Guard when performing official tasks, approved by the resolution of Cabinet of Ministers of Ukraine of December, 20, 2017, № 1024, part XXVI PEI IOR; Law of Ukraine 'On National Guard of Ukraine' and 'On National police').

A number of scientifically substantiated suggestions are elaborated, aimed at improving legal mechanism on the indicated research problems.

Section 3

Characteristics of main indices of the activity concerning application of physical force, special means and weapon to imprisoned convicts in Ukraine

3.1. Present state and tendencies of applying physical force, special means and weapon to convicts in colonies

As the practice proves and as it is proved at scientific level[1], the informational support is of great significance for any activity, that is, news about the state and tendencies about of certain social phenomena and processes development.

A. P. Zakaliuk made a conclusion, that information on the whole, social, in particular, is the means to receive notions (information) about an object, depending on qualities of which this process turns into subject's social cognitive activity with more or less life interest of the latter[2].

He is convinced, that criminological information is one of social information types, intended to be one of the forms of the problems in the crime fight sphe-

[1] Zakalyuk A. P. Kurs suchasnoyi ukrayins'koyi kryminologiyi: teoriya i praktyka: u 3-kh kn. Kyyiv: Vyd. dim "In Yure", 2008. Kn. 3: Praktychna kryminologiya. S. 6–15.

[2] Ibid, p. 26.

re, including the places of confinement, and pithily performs functions and tasks in the indicated direction, being:

a) the means of cognizing criminological significance of this or that processes, phenomena, events, relations and manifestations making up criminological information objects;

b) the source and means of cognizing tendencies, regularities, dynamics of social reality manifestations in the form of crime, of its changes processes and its factors aiming at prevention of this social phenomenon, in which criminological information transforming character is manifested;

c) the means of forming and realizing state policy, state programs in the sphere of preventing and counteracting crime and social phenomenon (drugs, alcoholism, crimes in the sphere of moral relations, force cult formation, etc.) connected with it;

d) the administrative decisions source in the sphere of crime fight, especially criminological planning of this activity, which proves the constructive characteristics of criminological information;

e) the source of organizational and methodical recommendations and of determining directly in the sphere of crime fight, including the places of confinement, which makes criminological information a preventive one;

f) the source and means of increasing the level and ensuring subjectivity in the sphere of criminological education, training and advanced training, which shows the educational peculiarity of criminological information;

g) the means of conducting applied analytical work and scientific research, in which its analytical and research function is realized;

e) the means of criminological predicting which is a manifestation of a prognostic character of criminological information;

f) the source and means of criminological examination, first of all, drafts of legislation acts and of other normative legal acts, which defines criminological information role in lawmaking[1].

It is the indicated methodological that is used in this work for determining the general content of the activity connected with applying physical force measures, special means, a straitjacket and weapon to imprisoned convicts.

Apart from this, generally recognized knowledge about the state, structure and tendencies of applying suppressive measures to the indicated people categories, and the results of anonymous polls, conducted among PEI personnel and imprisoned convicts are used for information characteristics concerning the given type of correctional and educational colony personnel official activity. Thus, answering the question 'Is applying suppressive measures to convicts in the places of confinement justified?' 319 representatives (16 % of 2016 polled) of SCES personnel said 'yes'; 596 (29 %) said 'no'; 1101 (55 %) – partly. For the part of convicts, 237 (13 % of 2016 respondents)

[1] Zakalyuk A. P. Kurs suchasnoyi ukrayins'koyi kryminologiyi: teoriya i praktyka: u 3-kh kn. Kyyiv: Vyd. dim "In Yure", 2008. Kn. 3: Praktychna kryminologiya. S. 26–27.

said 'yes'; 1106 (54 %) –'no'; 669 (33 %) – partly (Supplements A, B, C, C1).

In criminology crime state implies the general number of crimes and the number of people, committing them on a certain territory for a certain period of time[1].

For all that, it should be mentioned, that modern criminological sources don't use this index, but crime rate as the absolute amount of crimes committed on a certain territory for a certain period of time, and of criminals as well[2].

Applying this approach to analogical estimated indicators of the research on the given problem, the state (level) of applying suppressive measures to imprisoned convicts should be considered as the number of such actions colony personnel performed towards convicts for a certain period of time and in the corresponding correctional and educational colonies of Ukraine.

Taking into consideration that also such an indicator as a crime coefficient is used for receiving the data suitable for comparison in space and time[3], in the given research the coefficient of applying suppressive measures to imprisoned convicts is used for the characteristics of the action efficiency by colony personnel per 1 thousand people.

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[1] Kriminologiya: uchyebnik/pod red. prof. V. D. Malkova. Moskva: Yustitsinform, 2004. S. 40.

[2] Kryminologiya: pidruch. dlya stud. vyshch. navch. zakl./O. M. Dzhuzha, Ya. Yu. Kondrat'yev, O. G. Kulyk, P. P. Mykhaylenko ta in.; za zag. red. O. M. Dzhuzhy. Kyyiv: Yurinkom Inter, 2002. S. 43.

[3] Ibid.

As far as the structure of applying the indicated measures is concerned, the content features of 'crime structure' conception are used[1], since this indicator characterize their inner structure through the types of individual suppressive measures (physical force; special means; a straitjacket and weapon) and their correlation (specific weight) in the general amount of the actions committed by colony personnel.

Except for these, such estimated indicators of the activity concerning applying suppressive measures, determined in law, to the people kept in correctional and educational colonies, which are known in criminology (crime dynamics; its price; geography, etc.) are used in this research[2].

Such an approach and interpreted (Latyn. *interpretation* – clarification; explanation; revealing a content of something)[3] methodological principles of criminological analysis deduced by scientists[4], enabled to finally establish the regularities of phenomena and processes development concerning applying physical force, special means, a straitjacket and weapon to imprisoned convicts.

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[1] Kryminologiya. Zagal'na chastyna. Al'bom skhem/avtory-uporyad.: S. F. Denysov, T. A. Denysova, S. G. Kulyk, O. S. Sheremet. Chernigiv: PAT "PVK «Desna»", 2015. S. 183.

[2] Pro sudovu praktyku v spravakh pro zlochyny proty zhyttya ta zdorov'ya osoby: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 07.02.2003 r. № 2. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uklad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 202–212.

[3] Buliko A. N. Bol'shoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. S. 235.

[4] Kulyk O. G. Zlochynnist' v Ukrayini: tendentsiyi, zakonomirnosti, metody piznannya: monografiya. Kyyiv: Yurinkom Inter, 2011. S. 14–26.

In doctrinal dissertations a tendency is implied as a process with vividly pronounced direction[1], that is, the direction of developing a phenomenon or a process[2].

Aiming at defining the tendencies of colony personnel activity connected with applying suppressive measures to imprisoned convicts, the time period from 1991 to 2018 of the indicated process became the subject of analysis and estimation in the given research.

Though the results of studying the main indices of the indicated activity in 1991 showed, that open official sources lacked the information about the amount and other indices of applying physical force, special means, a straitjacket and weapon[3].

The results of such activity were published in the corresponding materials with security classification stamp 'for official use' or 'top secret'.

But the Basic directions of reforming criminal executive system in the Ukrainian SSR, approved by the resolution of Cabinet of Ministers of the Ukrainian SSR of July 7, 1991 № 88, enshrined the following provision: for ensuring openness of correctional institutions activity it is necessary to define the list if statistic and other information for publishing in

[1] Velykyy tlumachnyy slovnyk suchasnoyi ukrayins'koyi movy/uklad. O. Yeroshenko. Donets'k: TOV "Gloriya Treyd", 2012. S. 639.

[2] Ozhegov S. Y., Shvedova N. Yu. Tolkovyy slovar' russkogo yazyka. 2-ye izd., dopol., isprav. Moskva: Nauka, 1988. S. 674.

[3] Osnovnyye napravleniya reformy ugolovno-ispolnitel'noy sistemy v Ukrainskoy SSR: postanovleniye Kabineta Ministrov Ukrainskoy SSR ot 11.07.1991 g. № 88. Kiyev: RYO MVD Ukrainskoy SSR, 1991. 18 s.

official and foreign mass media, and also to create information support of bodies activity of punishment execution, to publish a special newspaper about penitentiary problems, accessible for the population[1].

Along with this, the Central Board of punishment execution administration (CBPEA) of Ministry of Internal Affairs of Ukraine, reporting on the measures taken for reforming criminal executive system of Ukraine in 1991, didn't say a word talking about performing (or failure to perform) the given government decision[2].

At the same time, in 1991 a group of imprisoned convicts refused to work and eat in PEI of 10 regions of Ukraine[3], which could not do without applying suppressive measures to these people by colony personnel.

Besides, 33 escapes were registered in PEI of Ukraine in the same year, including 20 – in the guarded colony premises (41,1 % in its general structure), 11 – by overcoming engineering technical guard means, 1 – by ramming main fence and 3 – through colony checkpoint[4].

Within the context of the researched problem content the following fact can be drawn attention to:

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[1] Osnovnyye napravleniya reformy ugolovno-ispolnitel'noy sistemy v Ukrainskoy SSR: postanovleniye Kabineta Ministrov Ukrainskoy SSR ot 11.07.1991 g. № 88. Kiyev: RYO MVD Ukrainskoy SSR, 1991. S. 4.

[2] Nekotoryye pokazateli deyatel'nosti uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy v 1991 godu: inform. byulet. Kiyev: Glavnoye upravleniye po ispolneniyu nakazaniy MVD Ukrainy, 1992. S. 23–28.

[3] Ibid, p. 2.

[4] Ibid.

in 1991 the convicts of PEI of Ukraine committed 2 thousand 138 offences connected with refusal of work; 1 thousand 866 cases were connected with petty crime; 10 thousand 477 – with using alcohol and other offences, being the grounds for applying suppressive measures to them[1].

So, even lacking open information about applying physical force, special means, a straitjacket and weapon to imprisoned convicts, the analysis of materials, accessible for it, gives the grounds to assert, that in 1991 the state, level an other indicators of the mentioned colony personnel activity were high and correlative with threats and challenges, stipulated by committing the offences concerning the grounds of applying suppressive measures, determined in law, to the people kept in colonies.

As the results of studying information official sources concerning the sphere of punishment execution of Ukraine showed, in 1992, as in the previous period, there were no open data on activity quantitative indices connected with applying physical measures, special means, a straitjacket and weapon to imprisoned convicts.

Along with this, the following indices of PEI activity in 1992 clearly showed that these measures were applied, namely:

1) more than twice the number of escapes from colonies increased (from 236 – in 1991 to 342 – in 1992);

[1] Nekotoryye pokazateli deyatel'nosti uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy v 1991 godu: inform. byul. Kiyev: Glavnoye upravleniye po ispolneniyu nakazaniy MVD Ukrainy, 1992. S. 12–13.

2) PEI registered 45 cases of convicts' resistance to institution personnel and 1 case of hostage seizure (the correctional colony № 14 in Odesa region), resulting in infliction of bodily harm to PEI personnel, and in the correctional colony № 6 in Kirovohrad region one of these people was killed;

3) during the indicated period 4 thousand 177 crimes of imprisoned convicts in PEI were prevented, namely: 12 mass riots, 62 acts disorganizing PEI activity; 434 escapes from the places of confinement; 2 thousand 868 physical violence; 9 hostage seizures, etc.;

4) within the structure of offences, committed by convicts, the offences concerning alcoholic drink usage (9 thousand 140 cases) took a considerable place;

5) in the period under review the number of petty crimes, committed by colony convicts, increased by 5 % in comparison with 1991, and the number of cases of playing gambling games by these people for material profit-making purposes increased by 27 %;

6) on the whole, in 1992 the number of offences committed by the convicts, serving a sentence in colonies, increased by 15 % per 1 thousand people[1].

Along with this, reporting on the work for the period under review, as in 1991 CBPEA of MIA of Ukraine didn't publish any information on these problems[2].

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[1] Operativno-sluzhebnaya deyatel'nost' uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy v 1992 godu: inform. byul. Kiyev: GUYN MVD Ukrainy, 1993. № 4. S. 44–46.

[2] Operativno-sluzhebnaya i proizvodstvenno-khozyaystvennaya deyatel'nost' uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy za 1993 god: inform. byul. Kiyev: GUYN MVD Ukrainy, 1994. № 10. S. 44–46.

There is not such information for the year 1993[1].

At the same time, the following facts prove applying suppressive measures by PEI personnel to the people serving a sentence in colonies in 1993, namely:

a) the increase of the number of crimes committed by colony convicts by 3,7 % in comparison with 1992, among them 2 criminal offences disorganizing PEI activity, 392 escapes (the number of which increased 1,2 times), including 20 escapes from custody[2];

b) high level of the offences committed by colony convicts (1032 cases per 1 thousand people)[3];

c) dramatic increase of suicide among the convicts (up to 74 cases)[4];

d) increase 3,5 times of the offences connected with drug usage by colony convicts, by 25 % – non-compliance with legal requirements of PEI administration, by 17 % – gambling games for material profit-making purposes, etc.[5]

Thus, in 1993 there were 30 thousand 806 cases of non-compliance with PEI administration legal requirements by the people kept in colonies; 8 thousand 450 cases of using alcoholic drinks and drugs by convicts and 1 thousand 701 cases of petty crimes[6];

e) high crime rate in IIW, where 1 thousand 17 crimes, including 450 escapes from custody; 82 attacks

[1] Operativno-sluzhebnaya i proizvodstvenno-khozyaystvennaya deyatel'nost' uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy za 1993 god: inform. byul. Kiyev: GUYN MVD Ukrainy, 1994. № 10. 88 s.

[2] Ibid, p. 3–4.

[3] Ibid, p. 4.

[4] Ibid, p. 5.

[5] Ibid, p. 16.

[6] Ibid, p. 19.

on these institutions personnel; 27 mass riots; 450 suicides were prevented;

f) complicated operational situation (low level of enforcing rule of law in educational colonies), where 2,07 crimes per 1 thousand people (42 % of which – escapes) were committed[1];

g) high level of offences committed by PEI personnel.

Beginning from 1991, 97 people were made criminally liable, 75 of which for illegality, including 19 of whom were convicted[2].

In 1993 67 people of colony personnel violated the law, 9 of which are convicted (3 – in Vinnytsia region; in twos – in Donetsk and Dnipropetrovsk regions; in ones – in Odesa and Ternopil regions)[3].

In the same year PEI personnel committed 10 illegal acts, including excess of authority and official powers (3 – in Lviv region; in twos – in Dnipropetrovsk and Kharkiv regions; in ones – in Vinnytsia, Poltava and Donetsk regions).

For all that, among the people made legally liable 52 are junior officers, directly communicating with convicts and applying suppressive measures determined in law to the latter (9 of them are convicted)[4].

In this sense the following incident is indicative, when B., the head of the correctional colony № 81 in

[1] Operativno-sluzhebnaya i proizvodstvenno-khozyaystvennaya deyatel'nost' uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy za 1993 god: inform. byul. Kiyev: GUYN MVD Ukrainy, 1994. № 10. S. 62.

[2] Ibid, p. 65.

[3] Ibid.

[4] Ibid, p. 66.

Vinnytsia region groundlessly placed the convict into disciplinary cell, committing the offence in the form of abusing his office[1].

Another no less interesting fact in the context of the problem researched happened in 1993, when 3 people of PEI personnel were wounded and 4 people were bodily injured, owing to unskillful handling the weapon when performing official powers[2].

In 1993, as in the previous years (1991–1992), reporting on the activity conducted, including the drafts of normative legal acts concerning the sphere of punishment execution, CBPEA of MIA of Ukraine didn't present the information about the state, tendencies and directions of improving the legal mechanism and the practice of applying suppressive measures to convicts in colonies[3].

As it was established in the course of the given research, official data on applying physical force, special means and weapon to imprisoned convicts were not published in open informational sources in 1994–1995 either.

At the same time, certain information was revealed in the corresponding official publications of CB PEA of MIA of Ukraine.

Thus, 4 cases of illegal applying special means by PEI personnel (3 – in 1994) and 18 other illegal ac-

[1] Operativno-sluzhebnaya i proizvodstvenno-khozyaystvennaya deyatel'nost' uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy za 1993 god: inform. byul. Kiyev: GUYN MVD Ukrainy, 1994. № 10. S. 66.

[2] Ibid, p. 67.

[3] Ibid, p. 82–87.

tions to the convicts, kept in colonies, (9 – in 1994) were registered in 1995[1].

Apart from this, 517 people of PEI personnel were dismissed from the service in criminal executive system of Ukraine because of negative motives, or 22 % of the total number of the dismissed from the system (2 thousand 347 people), including 172 people in their first year of service (7,3 %)[2].

22 criminal cases were initiated against 22 people of PEI personnel.

Thus, IIW inspector A. in Volyn region was drunk on service, and a convict took advantage of it, took possession of his service weapon and escaped from custody[3].

All in all, in 1995 PEI personnel committed 147 offences as compared to 89 in 1994[4].

Among other data concerning, to one degree or another, the activity connected with applying suppressive measures to colony convicts in 1995, the following ones should be drawn attention to:

1) committing 99 thousand 327 different offences by 156 thousand 208 people serving a service in PEI (635 per 1 thousand people, 795 – in 1994), 53 % of which makes up the cases of convicts' non-compliance with legal requirements of PEI administration

[1] Operatyvno-sluzhbova i vyrobnycho-gospodars'ka diyal'nist' ustanov kryminal'no-vykonavchoyi systemy u 1995 rotsi: inform. byul. Kyyiv: GUVP MVS Ukrayiny, 1996. № 16. S. 96.

[2] Ibid, p. 91.

[3] Ibid, p. 92.

[4] Ibid.

and 30 % – the cases of alcoholic and psychotropic substances usage[1];

2) the number of crimes disorganizing PEI activity increased by 10 % as compared to 1994[2];

3) the number of escapes from the places of confinement remained at the level of 1994 (1 cases), including 2 – by way of overcoming engineering and technical guard means[3];

4) the level of suicides among PEI convicts remained high (69 cases as against 65 in 1992; 72 – 1993; 66 – 1994)[4];

5) victimity level (a person's ability to become crime victim) and imprisoned convicts' criminal activity were considerable in the period under review, as evidenced by preventing 1 thousand 224 crimes in PEI and IIW, including 455 escapes; 54 attacks on these institutions personnel; 12 mass riots and other socially dangerous actions[5];

6) high crime rate in IIW (12 cases, 60 % of which – escapes from custody)[6].

Thus, on April 14, 1995, taking advantage of supervision absence, 2 convicts overcame the main fence and escaped from IIW № 1 in Donetsk region[7].

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[1] Operatyvno-sluzhbova i vyrobnycho-gospodars'ka diyal'nist' ustanov kryminal'no-vykonavchoyi systemy u 1995 rotsi: inform. byul. Kyyiv: GUVP MVS Ukrayiny, 1996. № 16. S. 33.

[2] Ibid, p. 12.

[3] Ibid, p. 19–22.

[4] Ibid, p. 30.

[5] Ibid, p. 54.

[6] Ibid.

[7] Ibid, p. 54–55.

For all that, it should be stated that, as in the previous years (1991–1994), not a single open report of CB PEA of MIA of Ukraine presents the information about the state, tendencies and measures of reducing cases of applying suppressive measures to PEI convicts.

The approaches of the given central administration body in the sphere of punishment execution didn't change essentially in 1996–1997, including the problems of publishing news concerning application of physical force, special means and weapon by PEI personnel.

Though the study of the corresponding sources reflecting the essence of criminal executive activity of Ukraine in 1997 enabled to elucidate the information concerning the process of applying suppressive measures to convicts in the places of confinement, namely:

a) the number of violating legitimacy by PEI personnel during the period under review was considerable (62 cases as compared to 115 in 1996 or reducing by 31 %)[1].

Besides, in 1997 the number of PEI personnel violation of discipline increased by 1001 cases or by 20,2 % as compared to the year 1996, in connection with which 710 people were dismissed from the service in criminal executive system (20,8 % of the total amount of the dismissed in 1997), including 230 people (6,7 %) in the first year of service[2];

[1] Operatyvno-sluzhbova i vyrobnycho-gospodars'ka diyal'nist' ustanov kryminal'no-vykonavchoyi systemy u 1997 rotsi: inform. byul. Kyyiv: UUVP MVS Ukrayiny, 1998. № 20. S. 110.

[2] Ibid, p. 110–111.

b) in the structure of crimes committed by convicts serving a service in PEI, 4,4 % (23 cases) of crimes in 1997 were serious (37 – in 1996).

And, though in the period under review the crimes connected with PEI activity disorganization were not registered, in 1996 there were 3 such socially dangerous actions[1].

Along with this, the number of escapes from the places of confinement remained at the level of 6 cases in 1996.

Thus, on 05.04.1997 at 22.30 a convict A. escaped from the correctional colony № 38 in Luhansk region by way of overcoming the main fence with the help of the 'cat' 'rope'. Similarly, on 09.05.1997 an 29.09.1997 the convict B. escaped from the correctional colony № 20 in Zaporizhzhia region and convict C. – from the correctional colony № 40 in Lviv region[2].

c) 1 thousand 291 crimes were prevented in IIW, including 395 escapes from custody; 21 attacks on these institutions personnel; 10 hostage seizures; 383 physical violence; 339 suicides[3].

Along with this, one case of convict's infliction of bodily harm to a person of the personnel and of hooliganism was registered in IIW in 1997.

Thus, on 05.02.1997 at 15.40 3 juvenile convicts attacked the junior supervision inspector and caused

[1] Operatyvno-sluzhbova i vyrobnycho-gospodars'ka diyal'nist' ustanov kryminal'no-vykonavchoyi systemy u 1997 rotsi: inform. byul. Kyyiv: UUVP MVS Ukrayiny, 1998. № 20. S. 22–23.

[2] Ibid, p. 24.

[3] Ibid, p. 43.

head injury in IIW if Cherkasy region, and on 14.03.1997 convict K. struck several blows to the junior supervision inspector's face in IIW of Kharkiv region[1];

d) in the structure of 1997 offences the following offences took the leading place: non-compliance with PEI administration legal requirements (19 as against 29 in 1996); using alcoholic drinks and drugs (accordingly 23 and 29 cases); petty hooliganism (2 as against 5); participation in gambling games for material profit-making purposes (16 as against 12); etc.[2]

So, the indicators analysis of estimating processes connected with applying suppressive means to colony convicts in 1991–1997 (when bodies and punishment execution institutions were a part of MIA of Ukraine) enabled to make the following conclusions:

1. Despite the fact, that open type official and departmental edition didn't publish the information about the state and other data on applying suppressive means to imprisoned convicts, the extrapolation method (spreading the conclusions observing one part of a phenomenon to another part of it)[3] enabled to make a scientifically substantiated supposition, on the grounds of generalizing the information concerning the process of applying suppressive means, that such an activity took place in PEI.

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[1] Operatyvno-sluzhbova i vyrobnycho-gospodars'ka diyal'nist' ustanov kryminal'no-vykonavchoyi systemy u 1997 rotsi: inform. byul. Kyyiv: UUVP MVS Ukrayiny, 1998. № 20. S. 43–44.

[2] Ibid, p. 57.

[3] Kryminologiya: navch. posib./O. M. Dzhuzha, V. V. Vasylevych, O. G. Kolb ta in.; za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy. Kyyiv: Atika, 2009. S. 20.

2. Again, as in the first case, because of lacking official statistics of departmental character on the indicated issues it was impossible to deduce principal indicators characterizing this phenomenon (process), and also to define the regularities of its development further on.

3. At the same time, proceeding from the results of criminological analysis conducted (studying the information about the phenomenon which makes up a criminology subject, and other phenomenon to determine their criminological content and meaning)[1], it can be assumed that in the period studied the tendencies of applying physical force, special means, a straitjacket and weapon to imprisoned convicts were increasing from year to year.

4. Not paying attention to the fact that the following principles were enshrined in criminal executive legislature of Ukraine (art. 2, 9, 10, others of CLC of Ukraine[2]), namely, participation of the community in convicts correction (art. 9) and legitimacy (art. 10), glasnost (openness) in the resolution of Cabinet of Ministers of July 11, 1991[3], during the period under review the Central Board of punishment execution administration of MIA of Ukraine never dared to

[1] Zakalyuk A. P. Kurs suchasnoyi ukrayins'koyi kryminologiyi: teoriya i praktyka: u 3-kh kn. Kyyiv: Vyd. dim "In Yure", 2008. Kn. 3: Praktychna kryminologiya. S. 55.

[2] Pro zatverdzhennya Vypravno-trudovogo kodeksu Ukrayins'koyi RSR: zatverdzhenyy Zakonom Ukrayins'koyi RSR vid 23 grudnya 1970 roku № 3325-07. *Vidomosti Verkhovnoyi Rady Ukrayinskoyi RSR.* 1971. № 1. St. 6.

[3] Osnovnyye napravleniya reformy ugolovno-ispolnitel'noy sistemy v Ukrainskoy SSR: postanovleniye Kabineta Ministrov Ukrainskoy SSR ot 11.07.1991 g. № 88. Kiyev: RYO MVD Ukrainskoy SSR, 1991. 18 s.

publish or in another manner to promulgate the information on applying suppressive means to imprisoned convicts in open official sources.

In such a way, it can be spoken about one more tendency during that period of PEI activity, namely, about 'half-transparency' of its controlling by the society on the one hand, and about a high level of latency of offences and crimes committed in the sphere of punishment execution, on the other hand[1].

At the same time, it was this aspect of criminal executive activity that became one of the criticism and negative estimation subjects of international organizations and experts, whose member Ukraine was.

Thus, the report of the European Committee on preventing tortures, whose delegation visited Ukraine from the 8th to the 24th of 1998, indicated that visiting the institutions of criminal executive system of Ukraine its members received a lot of complaints about harsh treatment of prisoners and convicts.

Particularly, the Committee got the information on one of such cases, taking place in IIW of Kharkiv on 10.02.1998, according to which one of condemned people kept in a block, stated that he refused to eat, then this institution personnel under compulsion (without any verbal methods) put him against the wall, spread his legs away from each other as far as possible, put handcuffs on his hands behind his back.

He was standing in such a pose until he fainted (part 5 of the report, p. 114)[2].

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[1] Preduprezhdeniye pytok v Ukrainye. 2-ye izd. Donetsk: Donetsk. Memorial, 2003. S. 159–162.

[2] Ibid, p. 39.

In connection with it the answer of the Government of Ukraine, prepared by CB PEA of MIA of Ukraine was interesting, namely: the inner investigation mentioned in the Report of the European Committee on preventing tortures was conducted and it showed, that the condemned citizen NN, visited by the prison administration representatives in his cell, put up extremely strong resistance and didn't want to leave the cell, threatening to commit a suicide, which proves applying the indicated preventive measures to him to be legally relevant.

For the part of the citizen NN, on 04.03.1999 he also confirmed in written form the legality of applying handcuffs to him[1].

Yes, it is so, but nobody disprove the fact that the convict was in handcuffs to the very loss of consciousness, that is, the procedure of applying suppressive means determined in law (art. 81 of CLC) was still violated.

Scientists spoke rather actively about such a problem at that time, insisting on its solving in more open manner within criminal executive system of Ukraine[2].

For example, G. O. Radov was convinced that the personnel of punishment execution institutions and bodies have to contact mass media, to visit working collectives, to meet deputies lobbying them to pass necessary decisions.

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[1] Preduprezhdeniye pytok v Ukrainye. 2-ye izd. Donetsk: Donetsk. Memorial, 2003. S. 100.

[2] Tyur'ma i obshchestvo: materialy seminara dlya personala uchrezhdeniy po ispoln. nakaz. Donetsk. obl. Donetsk: Donetsk. Memorial, 2000. 116 s.

In short, in his opinion, criminal executive system problems should reach a certain level of social consciousness, and also set everybody's teeth on edge, as nobody begins to build a house from the chimney, but from the foundation.

Informing social consciousness by all means available is such a basis for further interaction of criminal executive system and society[1].

These indicated techniques had to become priorities for reforming punishment execution institutions and bodies, which began in April 1998 in connection with forming State punishment execution department of Ukraine (SPEDU) and partial withdrawal punishment execution institutions and bodies from subordination of MIA of Ukraine[2] and approval of Provision on SPEDU[3].

However, according to the given research results, in 1998 the situation didn't change – again, as in the previous years, not a single open official information source published the data on the state and tendencies of applying physical force, special means, a straitjacket and weapon to imprisoned convicts.

At the same time, other printed matters presented the data concerning the process of applying

[1] Radov G. Personal i vzaimodeystviye tyur'my i obshchestva. *Tyur'ma i obshchestvo: materialy seminara dlya personala.* Donetsk: Donetsk. Memorial, 2000. S. 21.

[2] Pro utvorennya Derzhavnogo departamentu Ukrayiny z pytan' vykonannya pokaran': Ukaz Prezydenta Ukrayiny vid 22 kvitnya 1998 roku № 344/98. *Uryadovyy kur'yer*. 1998. № 82–83. 30 kvit. S. 3.

[3] Polozhennya pro Derzhavnyy departament Ukrayiny z pytan' vykonannya pokaran': zatv. Ukazom Prezydenta Ukrayiny vid 31 lypnya 1998 r. № 827/98. *Uryadovyy kur'yer.* 1998. № 154/155. St. 637.

suppressive measures in correctional and educational colonies of Ukraine, namely:

1) for the period under review in PEI 4 thousand 762 crimes (4 thousand 953 – in 1997)[1], in IIW – 1 thousand 433 crimes were prevented, including: 383 escapes; 15 attacks on personnel; 6 hostage seizures; 361 physical violence; 322 suicides[2].

Thus, on 13.02.1998 at 04.10 condemned people C. and P. escaped from IIW № 1 in Dnipropetrovsk region, disassembling the cell wall on the slope of the window opening that was reinforced, through the main fence near transport checkpoint, and were detained on the same day[3];

2) in the structure of convicts' disciplinary offences, as in the previous years (1991–1992) the following cases took the leading places: non- compliance with PEI administration requirements (44 cases as against 65 in 1997); usage of alcohol and drugs (15 as against 23 – in 1997); petty hooliganism (accordingly 1 and 2 cases); gambling games for material profit-making purposes (8 and 10 cases); other offences, concerning the legal grounds for applying suppressive measures to these people[4];

3) in crime structure the following socially dangerous actions were unchangeable beginning from 1991: escape from custody (3 cases as against 6 in 1997); malicious disobedience to PEI administration

[1] Operatyvno-sluzhbova i vyrobnycho gospodars'ka diyal'nist' organiv ta ustanov vykonannya pokaran' Ukrayiny u 1998 rotsi: inform. byul. Kyyiv: DDU PVP, 1999. S. 70.

[2] Ibid, p. 20.

[3] Ibid.

[4] Ibid, p. 73.

requirements (accordingly 213 and 225 cases); hooliganism (3 and 6 cases); illegal weapon possession (23 and 43 cases); other similar offences[1].

In the correctional colony № 64 on 16.07.1998 at 4.20 a convict B. from the local section broke into the room for short-term visits, where he sawed bars on the window, disassembled glass blocks and escaped; in the correctional colony № 81 on 12.09.1998 about 1 o'clock at night a convict M. freely entered the transport lock and escaped overcoming engineering and technical means of guard[2];

4) in the period under review the level of committing suicides by convicts was high (59 cases as against 71 – in 1997), including: 46 – in correctional colonies; 10 – in IIW; 1 – in prison; 1 – in educational colonies)[3];

5) as in the previous years, one of the conditions contributing to such state of law and order in PEI was a considerable number of crimes and offences committed by SPEDU personnel (93 cases of law violation and other extraordinary events, which is 11 times as many as in 1997)[4].

Apart from this, in 1998 3 people of colony personnel were wounded and injured when exercising official powers[5].

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[1] Operatyvno-sluzhbova i vyrobnycho gospodars'ka diyal'nist' organiv ta ustanov vykonannya pokaran' Ukrayiny u 1998 rotsi: inform. byul. Kyyiv: DDU PVP, 1999. S. 67.

[2] Ibid, p. 18.

[3] Ibid, p. 29.

[4] Ibid, p. 63.

[5] Ibid, p. 64.

The level of PEI personnel breaking discipline in this year remained high, their number increased by 1 thousand 120 cases or by 22,5 %.

At the same time, this index was 21 offences per 100 people (18 – in 1997)[1].

In 1998 501 people of SPEDU personnel were dismissed from PEI and bodies on the negative grounds (including 117 people of the first year of service (23,3 % of the total number of the dismissed)[2].

Thus, IIW inspector in Kherson for promised pecuniary reward tried to bring alcoholic drinks to a convict and was detained by the corresponding people of operational subdivision personnel in the given institution[3].

So, in 1998 there were the same tendencies in SPEDU activity, mentioned as generalized conclusions in this work, according to the results of indicators analysis for 1991–1997 (secrecy; lack of proper interaction with community; illegitimacy, etc.).

The situation didn't change greatly in 1999, when SPEDU was completely withdrawn from subordination of MIA of Ukraine[4] and till 2010 inclusive had the status of an independent body within the system of the central bodies of state executive power of

[1] Operatyvno-sluzhbova i vyrobnycho gospodars'ka diyal'nist' organiv ta ustanov vykonannya pokaran' Ukrayiny u 1998 rotsi: inform. byul. Kyyiv: DDU PVP, 1999. S. 64.

[2] Ibid.

[3] Ibid, p. 65.

[4] Pro vyvedennya Derzhavnogo departamentu Ukrayiny z pytan' vykonannya pokaran' z pidporyadkuvannya MVS Ukrayiny: Ukaz Prezydenta Ukrayiny vid 12 bereznya 1999 r. № 248/99. *Ofitsiynyy visnyk Ukrayiny.* 1999. № 11. St. 24.

Ukraine[1], including the problems connected with promulgating data on applying suppressive measures to imprisoned convicts.

Moreover, the annual newsletter published by SPEDU on the results of official operational and economic production activity of punishment execution institutions and bodies got security classification stamp 'For official use', making criminal executive system still more closed for the society and non-controlled by the public.

Along with this, taking into consideration that nowadays SPEDU is liquidated, and the analogical newsletter became again open as an informational source about the state of law and order within SCES system, there are all the grounds to promulgate the data concerning formally the process of applying physical force, special means, a straitjacket and weapon to imprisoned convicts, that is, in 1999:

a) 71 cases of PEI personnel illegitimacy (93 – in 1998), 3 people were held criminally liable for abusing their power or office[2].

Besides, in the period under review the personnel violated discipline 6 thousand 516 times, 10 % of all people who died or committed suicide, were wounded and injured while performing official duties (4 people)[3].

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[1] Pro optymizatsiyu systemy tsentral'nykh organiv vykonavchoyi vlady: Ukaz Prezydenta Ukrayiny vid 9 grudnya 2010 roku. *Ofitsiynyy visnyk Ukrayiny*. 2010. № 94. St. 3334.

[2] Operatyvno-sluzhbova ta vyrobnycho-gospodars'ka diyal'nist' organiv i ustanov vykonannya pokaran' u 1999 rotsi: inform. byul. Kyyiv: DDU PVP, 2000. S. 56.

[3] Ibid.

The situation in IIW was especially complicated, as its personnel committed 1 thousand 146 disciplinary offences, including 565 violations connected with exercising official powers[1].

Thus, 30.08.1999 in Odesa IIW № 21 junior supervision inspector B. was detained for the attempt to bring 37,73 gram of marihuana into the territory of this institution, intended to sell to convicts and people in custody, and junior inspectors P. and D. of the same IIW – for the attempt to transfer the convicts alcoholic drinks for a reward[2].

On the whole, during this year within SPEDU system 162 people of PEI and IIW personnel were dismissed on negative grounds, 124 of whom – for breaking official discipline; 6 – for committing crimes[3];

b) high crime rate among convicts and prisoners in custody, in the structure if which, as it was in the previous years, a considerable weight fell on escapes from the places of confinement (6 cases)[4].

Thus, on 04.04.1999 convicts C. and S. by prior arrangement escaped from Krasnoluchansk correctional colony in Luhansk region, overcoming engineering technical means[5], and on 20.06.1999 convicts M. and K. escaped from Manevychi correctional colony of Volyn region in the same manner[6].

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[1] Operatyvno-sluzhbova ta vyrobnycho-gospodars'ka diyal'nist' organiv i ustanov vykonannya pokaran' u 1999 rotsi: inform. byul. Kyyiv: DDU PVP, 2000. S. 57.

[2] Ibid.

[3] Ibid, p. 56–57.

[4] Ibid, p. 4–5.

[5] Ibid, p. 12.

[6] Ibid, p. 12–13.

c) a great number of disciplinary offences committed by convicts (469 offences per 1 thousand people as against 523 – in 1998)[1], including: 13 cases of non-compliance with PEI administration legal requirements (at the level of 1998); 8 cases (13 – in 1998) of using alcoholic drinks and drugs; 1 – petty hooliganism (at the level of 1998); 7 – gambling games for material profit-making purposes (8 – in 1998)[2].

In this connection interesting information was presented in the report of the European Committee on preventing tortures to the Government of Ukraine on the results of visiting PEI in 1999.

Thus, part 5 (p. 25) of the report said that the delegation didn't receive any statement from imprisoned convicts and prisoners in custody about harsh treating them.

At the same time, there were a lot of remarks on applying physical force and damaging convicts' personal items in the correctional colony № 85 in Kyiv region.

Mainly, physical force was applied to the people kept in pre-trial detention centre.

The delegation discussed this problem with SPEDU representatives, who admitted that such actions were committed by Department special subdivisions, the function of supervising and searching PEI residential and working areas; 'deterring' discipline violators and

[1] Operatyvno-sluzhbova ta vyrobnycho-gospodars'ka diyal'nist' organiv i ustanov vykonannya pokaran' u 1999 rotsi: inform. byul. Kyyiv: DDU PVP, 2000. S. 62.

[2] Ibid.

preventing actions contradicting PEI IOR was imposed on[1].

Despite the commitments to conducting official investigation of these facts taken by SPEDU[2], the written answer of the Government of Ukraine concerning the mentioned report of the European Committee on preventing tortures didn't speak about the results of such inspection[3].

According to the research results, in 2000[4] – 205[5] SPEDU newsletters didn't publish data on the state, structure and tendencies of applying suppressive measures to imprisoned convicts either, but other additional indicators of the problems indirectly confirming such process in PEI didn't differ much from those of analysis subject in this work for the previous years (1991–1999).

Proceeding from this, there was no need for their criminological analysis in this scientific development, considering this process stability and permanency (Latin. *permanens* – constant, continual[6]), and also frequency and similarity of additional indicators

[1] Preduprezhdeniye pytok v Ukrainye. 2-ye izd. Donetsk: Donetsk. Memorial, 2003. S. 111.

[2] Ibid.

[3] Ibid, p. 128.

[4] Operatyvno-sluzhbova i vyrobnycho-gospodars'ka diyal'nist' organiv i ustanov vykonannya pokaran' Ukrayiny u 2000 rotsi: inform. byul. Kyyiv: DDU PVP, 2001. № 6. 78 s.

[5] Pro diyal'nist pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2007 rotsi: inform. byul. Kyyiv: DDU PVP, 2008. Kn. 1. 56 s.

[6] Buliko A. N. Bol'shoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. 704 s.

characterizing the mentioned activity of PEI and bodies personnel of Ukraine.

As it was established in the course of this scientific search, first the information on applying physical influence, special means, a straitjacket and weapon was published in printed official SPEDU sources in 2006, after adopting Law of Ukraine of 23.06.2005 'On State criminal executive service of Ukraine'[1] and change of leadership of this central body of state executive power in the sphere of punishment execution.

The mentioned information was promulgated annually on the ground of the corresponding Provision[2] until 2016, when SPS of Ukraine, formed in 2010 instead of SPEDU[3], stopped publishing special newsletter about the activity of protection, supervision and security subdivisions of criminal executive institutions.

And this is despite the fact that in other law enforcement bodies (in National police, in particular) the principle of publicity in their activity and participation of the community in it was a priority.

Thus, Law of Ukraine 'On National police' devoted a special part VIII 'Public control of police' to it,

[1] Pro Derzhavnu kryminal'no-vykonavchu sluzhbu Ukrayiny: Zakon Ukrayiny vid 23 chervnya 2005 r. *Ofitsiynyy visnyk Ukrayiny*. 2005. № 30. S. 4–10.

[2] Pro zatverdzhennya Polozhennya pro Derzhavnu penitentsiarnu sluzhbu Ukrayiny: Ukaz Prezydenta Ukrayiny vid 6 kvitnya 2011 roku № 394-2011. *Ofitsiynyy visnyk Ukrayiny*. 2011. № 28. St. 1161.

[3] Pro optymizatsiyu systemy tsentral'nykh organiv vykonavchoyi vlady: Ukaz Prezydenta Ukrayiny vid 9 grudnya 2010 roku. *Ofitsiynyy visnyk Ukrayiny*. 2010. № 94. St. 3334.

which stipulates: reports on police activity (art. 86); adopting resolutions of non-confidence in the heads of police bodies (art. 87); solving interaction tasks (art. 88); mutual projects with the community (art. 89); involving the community in considering complaints about policemen' actions or omission (art. 90)[1].

As for the information on applying physical force, special means, a straitjacket and weapon to imprisoned convicts, in 2006–2007 it looked like this.

In 2007 suppressive measures determined in law were applied to imprisoned convicts in 1396 cases, or 12 times per 1 thousand people, which is 295 cases more than in 2006[2].

The mentioned indicator per 1 thousand convicts was the highest in PEI of Volyn (61,8); Zhytomyr (25); Ivano-Frankivsk (20); Kirovohrad (33); Mykolayiv (21,9); Sumy (21,6) and Kharkiv (30) regions.

At the same time, the lowest indicators were in PEI of the Autonomous Republic of Crimea (4,2); Dnipropetrovsk (4,3); Luhansk (2); Rivne (3) an Chernivtsi (2,9) regions[3].

On the whole, in 2007 compared to 2006 the number of applying suppressive measures to the people, kept in correctional and educational colonies, increased in PEI of Volyn, Donetsk, Zhytomyr, Kirovohrad, Luhansk, Mykolayiv, Sumy, Kharkiv, Khmel-

[1] Zakon Ukrayiny "Pro Natsional'nu politsiyu". Polozhennya pro Natsional'nu politsiyu: ofits. tekst. Kyyiv: Alerta, 2016. 84 s.

[2] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2007 rotsi: inform. byul. Kyyiv: DDU PVP, 2008. Kn. 1. S. 19.

[3] Ibid, p. 19.

nytsk, Cherkasy and Chernihiv regions, which according to SPEDU indicates the increase of aggressiveness among convicts and possible worsening operational situation in these regions of Ukraine[1].

But the scientists explained it by the lack of proper communication between PEI personnel and convicts[2].

Furthermore, V. M. Ivaniv appropriately remarked, that human behavior cannot be managed basing exclusively on fear, cruelty[3].

As this research results showed, in 2007 PEI personnel mainly applied: handcuffs (915 cases or 65,5 % of the total number of cases of applying all suppressive measures); rubber clubs (394 cases or 28 % within the application structure)[4].

For all that, rubber clubs per 1 thousand convicts were applied 3,4 times, which is 62 cases more than in 2006. This indicator was the highest in PEI of Volyn (31,8); Zhytomyr (10,6); Ivano-Frankivsk (7,5) and Sumy (7) regions.

Practice study of applying rubber clubs to imprisoned convicts confirmed, that the main reason for

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[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2007 rotsi: inform. byul. Kyyiv: DDU PVP, 2008. Kn. 1. S. 19.

[2] Nikolenko D. O. Kul'tura profesiynogo spilkuvannya z zasudzhenymy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1997. № 1 (2). S. 57–61.

[3] Ivanov V. M. Sotsial'no-psykhologichni aspekty perekhodu vid systemy vykonannya pokaran' do penitentsiarnoyi systemy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1997. № 1 (2). S. 128.

[4] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2007 rotsi... S. 19.

such colony personnel actions became offering physical resistance or manifesting riot by the indicated people (354 cases or 90 % within the structure of applying the given special means)[1].

By the way, rubber clubs were applied with the permission of the institution commander assistant on duty (ICAD) (317 times or 80 % within the structure of applying these special means)[2].

Besides, it was established that in 2007 in most cases (375 times or 95 % within the application structure) rubber clubs were applied by PEI shift personnel on duty.

Within the context of establishing civilized relations with convicts and of preventing conflicts with these people[3], the following fact is interesting and significant, that in 2007 in PEI of the Autonomous Republic of Crimea, Rivne and Chernihiv regions rubber clubs were not applied to imprisoned convicts.

This example confirms the fact that observing the principles of criminal executive activity (humanity, justice, legitimacy, etc.) enshrined in art. 5 of CEC of Ukraine and exactly realizing in practice the order of applying suppressive measures to offenders, established in p. 2 art. 106 of CEC, in preference to verbal methods of influencing these people and to convincing warning, that in case of continuing illegal

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2007 rotsi: inform. byul. Kyyiv: DDU PVP, 2008. Kn. 1. S. 19.

[2] Ibid.

[3] Khrystyuk O. S. Spivrobitnyky ta zasudzheni: problemy spilkuvannya. *Problemy penitentsiarnoyi teoriyi i praktyky.* 2008. № 5. S. 158–162.

behavior appropriate suppressive measures will be applied to them, it is possible to avoid such actions and to preserve in such a way human relations between these subjects of criminal executive legal relations.

As regards this, V. M. Ivanov made a conclusion that external zone attribute (watchtower, automatic weapon, fence, wire, dogs) causes a sense of danger among free citizens, whose attitude towards convicts, kept there, makes the latter feel themselves thieves.

There is nothing more harmful, our society found in crime fight, than this approach[1].

As for applying handcuffs in 2007, this indicator made up 8 cases per 1 thousand convicts, which is 191 cases more than in 2006[2].

The highest indicator was in PEI of Volyn (30), Zhytomyr (14), Ivano-Frankivsk (15), Kirovohrad (27,9), Mykolayiv (16,4), Sumy (15) and Kharkiv (20) regions[3].

The main reason for applying handcuffs in 2007 was: offering physical resistance or riot by imprisoned convicts (453 cases or 50 % within the structure of applying this special means); attempts to cause body parts injury or to commit suicide (321 cases or 35 % of the total number of their application).

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[1] Ivanov V. M. Sotsial'no-psykhologichni aspekty perekhodu vid systemy vykonannya pokaran' do penitentsiarnoyi systemy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1997. № 1 (2). S. 130.

[2] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2007 rotsi: inform. byul. Kyyiv: DDU PVP, 2008. Kn. 1. S. 19.

[3] Ibid.

The research results showed that handcuffs, as a rule, are applied 94 % (857 times) by PEI shift on duty with the permission of ICAD (679 times or 74 % of all applications)[1].

As far as a straitjacket is concerned, in 2007 it was applied 52 times, which is 28 cases more than in 2006: in PEI of Vinnytsia (1 case), Donetsk (1), Poltava (2) and Kharkiv (48) regions[2]. Main reasons for performing such PEI personnel actions became: a) offering physical resistance or manifesting riots (41 cases); b) refusal of going to DC or CTR (5 cases); c) attempts to cause body parts injury or suicide (6 cases).

Moreover, in all cases a straitjacket was applied only with the permission of PEI commander or the person performing his duties at this time[3].

As it was established in the course of the given scientific search, during 2007 irritating means were applied 35 times to imprisoned convicts, which is twice as much as in 2006 (PEI of Vinnytsia (2 cases); Donetsk (2); Zaporizhzhia (10); Ivano-Frankivsk (4); Kyiv (3); Kirovohrad (1); Luhansk (1); Mykolayiv (1); Ternopil (1); Kharkiv (3); Kherson (6) and Cherkasy (1) regions)[4].

The main reason for performing the indicated actions by PEI personnel was offering physical resistance or riot by imprisoned convicts.

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[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2007 rotsi: inform. byul. Kyyiv: DDU PVP, 2008. Kn. 1. S. 20.

[2] Ibid.

[3] Ibid.

[4] Ibid.

At the same time, in PEI of Donetsk and Kyiv regions the given means was applied in connection with a convict's refusal to go to IIW or CTR and their attempt to cause body parts injury or commit suicide, and in PEI of Luhansk region – with the attack on convicts or other people[1].

As a rule, the permission for applying irritating means was given by ICAD (86 % within the structure of applying the given special means).

For all that, this means was applied in 31 cases was by PEI shift on duty; in 3 cases – by colony supervision and security department personnel; in 1 case – by operational group of these institutions[2].

Generalizing all the information on applying physical force, special means and a straitjacket in 2007 on the whole, the following can be stated:

1. The main legal and actual reason for performing such actions by PEI personnel became physical resistance or riot manifestation of the people kept in correctional and educational colonies (880 cases of 1 thousand 396 applications or 63 % in their structure).

Besides, in 10 % of cases (142 times in the total number of applications) it was connected with convicts' refusal to go to IIW or CTR premises and in

[1] Andrushko P. P. Yuridicheskaya priroda i znacheniye ispolneniya prikaza i vypolneniya professional'nykh funktsiy v sovetskom ugolovnom prave: avtoref. dis. … kand. yurid. nauk: 12.00.08. Kiyev: Kiyev. gos. un-t im. T. Shevchenka, 1987. S. 20.

[2] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2007 rotsi: inform. byul. Kyyiv: DDU PVP, 2008. Kn. 1. S. 20.

25 % (353 times) – with an attempt to cause body parts injury or commit suicide, and also in 1,4 % (19 times) – with convoying the convict who was detained after escape[1].

2. Most often suppressive measures are applied by the shift on duty (1308 cases or 94 % of the total number of application.

At the same time, in 486 cases (35 % in the structure of application) it was performed by PEI personnel on DC or CTR premises.

In this analysis PEI of Ivano-Frankivsk, Kyiv, Lviv and Cherkasy regions are the exception, as there suppressive measures most often were applied at inter-zone checkpoint.

3. Physical force measures, special means and a straitjacket most often were applied to convicts from 9 o'clock in the morning to 18 o'clock in the afternoon (791 cases or 57 % of the total number of all application), least – from 22 o'clock in the evening to 6 o'clock in the morning (159 cases or 11 % in the structure of all application).

4. In the period under review the cases of violating the current legislature of Ukraine, concerning the problems of applying suppressive measures to the people, kept in correctional and educational colonies, were not registered.

So, proceeding from the analysis results, it can be stated that in PEI of Ukraine lack of proper communicative feature of SCES personnel and non-profes-

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2007 rotsi: inform. byul. Kyyiv: DDU PVP, 2008. Kn. 1. S. 20.

sional actions of these people concerning preventive measures, said in p. 2 art. 106 of CEC, were one of the conditions promoting offences committed by convicts, which became the ground of applying suppressive measures to them.

In 2008 the situation concerning the indicated problems didn't change much.

Thus, in PEI suppressive measures were applied in 1503 cases or 12 times per 1 thousand convicts, which is 107 cases more than in 2007[1], which affirms the tendency of increasing the number of applying physical force, special means and a straitjacket to the latter, and low level of preventive, including precautionary (within the requirements of p. 2 art. 106 of CEC of Ukraine) activity of PEI personnel.

Again, as in the previous years, the highest indicators per 1 thousand people was in PEI of Volyn (35 cases); Kherson (28); Mykolayiv (26,8) and Zhytomyr (26) regions, the lowest ones – in PEI of the Autonomous Republic of Crimea (0,5 %), Odesa (1,4), Luhansk (3,2) an Ternopil (4,3) regions[2].

In this connection the following fact is interesting, that it was almost for the first time when SPEDU admitted at official level that applying suppressive measures by some PEI (Vinnytsia, Luhansk, Lviv, Mykolayiv, Rivne anKherson regions) was of reasonable character, taking the current situation and offence content into consideration, and resulted from

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2008 rotsi: inform. byul. Kyyiv: DDUPVP, 2009. Kn. 1. S. 42.

[2] Ibid, p. 42–43.

unsatisfactory individual educational work with the convicts[1].

As for specific activity characteristics concerning directly applying suppressive measures, determined in law, to convicts, in 2008 within the general structure of performing such actions by PEI personnel in 58,2 % (875 cases) handcuffs and in 34 % (510 cases) rubber clubs were applied.

At the same time a straitjacket was applied 73 times or 4,8 % in the general structure of application and irritating means – 45 times (3 % in application structure) to the people serving a sentence in correctional and educational colonies.

It was established in the course of the given research that in 2008 the number of applying rubber clubs (by 116 cases), a straitjacket (by 21 cases), irritating means (by 10 cases) to convicts increased.

Speaking about applying handcuffs (875 times), it made up 7 cases per 1 thousand cases.

PEI of Mykolayiv (19,5 %), Volyn (19), Kharkiv (16) and Zhytomyr (12) regions were especially active in this sense, as they in the previous years also took the palm in these questions and presented 'geography' of convicts' illegal actions in Ukraine, on the one hand, and efficiency, in some hurry, of reacting to them by PEI personnel corresponding means, on the other hand.

For all that, as in the previous years, the main actual ground for applying handcuffs was convicts'

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2008 rotsi: inform. byul. Kyyiv: DDUPVP, 2009. Kn. 1. S. 43.

physical resistance (463 cases or 53 % in the general number of their application) and attempts to cause body parts injury or committing suicide[1].

Handcuffs, as a rule, were applied by PEI shift on duty (795 % cases or 90,8 % in the structure of all their application). In 70 % (613 cases) ICAD gave permission for applying handcuffs.

As for rubber clubs, in 2008 they were applied 510 times or 4 cases per 1 thousand of PEI convicts.

The highest indicator of this special means, as the previous ones, was in PEI of Volyn (16,3), Kherson (15,8), Ivano-Frankivsk (13,5) and Zhytomyr (13) regions.

The main reason for their applying to imprisoned convicts was physical resistance of the latter (465 cases or 91,2 % of the total number of applying rubber clubs) and also their attempt to cause body parts injury or commit suicide (25 cases or 4,9 % accordingly)[2].

As the results of studying archive materials showed, most often rubber clubs were applied with ICAD permission (394 cases or 77,2 % in the structure of all their application), and the subjects of performing such actions was PEI shift personnel on duty (468 cases or 91,7 % of the total number of applying these special means).

Again, in 2008 rubber clubs were not applied in PEI of the Autonomous Republic of Crimes and Chernihiv region, which confirms a large verbal wordy

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2008 rotsi: inform. byul. Kyyiv: DDUPVP, 2009. Kn. 1. S. 43.

[2] Ibid.

and preventive potential, available to SCES personnel, and their readiness to solve any problems, conflicts, irrelevances, etc. treating the convicts without applying suppressive measures.

In this connection M. B. Panasiuk remarked to the point, there is a highly influential numerous group of people, having an interest in forcing public fear in connection with increasing crime rate (it concerns power structures).

All these people are interested in preserving their working places, that's why it is necessary for them to remind average citizens that without them Ukraine would have turned into the paradise for criminals long ago, and at the same time they fight crime in such a manner that they will never give a chance to change significantly the situation[1].

It fully concerns the estimation of some PEI personnel activity involving applying suppressive measures to imprisoned convicts.

As for a straitjacket, in 2008 it was applied 73 times, which is 21 times more that in 2007[2], that is, in this activity direction, beginning from 2005, a clear tendency of increasing the number of such application in PEI was outlined.

It should be mentioned that among all regions only in 4 of them a straitjacket was applied to imprisoned convicts in PEI, namely: in Mykolayiv and

[1] Panasyuk M. B. Problemy reabilitatsiyi uv'yaznenykh: zakhidnyy dosvid. *Problemy penitentsiarnoyi teoriyi i praktyky.* 2001. № 6. S. 156.

[2] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2008 rotsi: inform. byul. Kyyiv: DDUPVP, 2009. Kn. 1. S. 44.

Kherson (in twos), Poltava (11 cases) and Kharkiv (58 cases) regions.

The legal reason for performing such actions by PEI personnel became physical resistance or riot manifestation of convicts (64 cases) and attempts to cause body parts injury or commit suicide (5 cases).

In 55 situations a straitjacket was applied on DC or CTR premises; in 7 cases – in PEI unit on duty and in 11 – on other colony premises. All cases of applying the indicated suppressive measures took place with the permission of PEI commander[1].

At the same time, in 2008 special irritating means were applied 45 times to imprisoned convicts.

Most of such actions were performed by PEI of Khmelnytsk (10 cases); Zaporizhzhia (9); Kherson (6) and Zhytomyr (4) regions.

The main reason for PEI actions on indicated issues became convicts' physical resistance (42 cases or 93,3 % of the total number of applying these special means).

On the whole, ICAD gave the personnel the permission for such actions (35 cases or 77,7 % in their structure)

Applying irritating means was performed: in 42 cases (93,3 % of its total number) by PEI shift on duty; in 2 cases (4,4 % in their structure) – by colony operational group; in one case – by PEI supervision and security department personnel[2].

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2008 rotsi: inform. byul. Kyyiv: DDUPVP, 2009. Kn. 1. S. 44.

[2] Ibid.

A peculiar 'leader' of applying all the suppressive measures, determined in law, to imprisoned convicts in 2008, as in the previous years, remained PEI of Kharkiv region (263 cases out of 1503 in general in all PEI of Ukraine)[1].

Generalized data on applying physical force, special means and a straitjacket to the people serving a sentence in correctional colonies in 2008 confirmed the following criminologically meaningful features of PEI personnel activity:

a) main actual reasons for performing the indicated colony personnel actions became convicts' physical resistance or riot (1038 cases or 69 % of the total number of applying suppressive measures, determined in law).

Apart from this, the indicated measures were applied: on the occasion of convict's refusal to go to DC or CTR (89 cases or 6 % in the structure of all application); in an attempt to cause body parts injury or to commit suicide (349 times or 23,3 % of the total number of application); when convoying the escaped prisoner after detention – 22 cases (1,4 % in application structure); 5 times (0,3 % in the total number of application) when attaching convicts or other people[2];

b) most often suppressive measures were applied to PEI convicts in DC and CTR (487 cases or 32,4 % in the structure of all applications) and on the pre-

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2008 rotsi: inform. byul. Kyyiv: DDUPVP, 2009. Kn. 1. S. 44.

[2] Ibid.

mises of colony units on duty (452 times or 30 % of the total application number).

Along with this, in some PEI colony personnel performed such actions at inter-zone checkpoint or in the colony units on duty (Vinnytsia, Volyn, Dnipropetrovsk, Zaporizhzhia, Kyiv, Kirovohrad, Sumy, Ternopil, Kherson and Cherkasy regions)[1].

c) depending on the time applying suppressive measures in PEI took place: most often – from 9 a. m. till 6 p. m. (890 cases or 59 % in the structure of all applications) and least often – from 10 p. m. till 6 a. m. (152 times or 10 % of all application number)[2].

So, despite adopting of Law of Ukraine 'On State criminal executive service of Ukraine' in June 2005 and enshrining the principles of personnel activity of punishment execution institutions and bodies (legitimacy; respect and observing rights and freedoms of a person and a citizen; humanity; etc.) in it, during 2005–2008 SCES activity of applying suppressive measures to imprisoned convicts remained unchangeable and acquired quantitative and qualitative features of increasing repressiveness in this direction.

As it was established in the course of the given research, there were no cardinal changes of the above mentioned PEI activity in 2009[3].

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[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2008 rotsi: inform. byul. Kyyiv: DDUPVP, 2009. Kn. 1. S. 44.

[2] Ibid.

[3] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2009 rotsi: inform. byul. Kyyiv: DDUPVP, 2010. Kn. 1. 56 s.

Thus, in the period under review physical force, special means and a straitjacket were applied to the convicts, kept in correctional and educational colonies, 1 thousand 296 cases or 10 times per 1 thousand people, which is 207 cases less that in 2008.

Again, this indicator was the highest, as in the previous years, in PEI of Volyn (34,3); Kherson (32,3); Zhytomyr (29,4) and Mykolayiv (28,2) regions, and the lowest –in PEI of Luhansk (1,7), the Autonomous Republic of Crimea (3,6) and Chernihiv (3,8) regions[1].

In this connection the following fact is significant, that in 2009 SPEDU admitted at official level: increasing cases of applying suppressive measures to the people, serving a service in places of confinement, is caused by unbalanced approach of PEI personnel considering the current circumstances, offence type and criminal personality[2].

As for the characteristics of each individual suppressive measure applied by PEI personnel in 2009, the largest share in the structure of all application fell on handcuffs (749 cases or 57,8 %) and rubber clubs (461 cases or 35,6 % in the total application number)[3].

At the same time, in the period under review a straitjacket was applied to offenders 44 times, which made up 3,4 % of the total number of applying supp-

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2009 rotsi: inform. byul. Kyyiv: DDUPVP, 2010. Kn. 1. S. 47.

[2] Ibid.

[3] Ibid.

ressive measures, and irritating means 0,42 times (3,2 % accordingly)[1] [484, p. 47].

In 2009 rubber clubs were applied in PEI in 3,6 cases per 1 thousand convicts.

The highest indicator was again in PEI of Volyn (20,8), Kherson (16,7), Mykolayiv (13,9) and Zhytomyr (12,7) regions[2].

As the results of archive materials analysis on these issues showed, the main actual reason for applying rubber clubs to imprisoned convicts became their resistance to PEI personnel (445 % cases or 96,53 % of the total number of applying this special means) and a convict's refusal to go to DC or CTR (8 times or 1,73 % in the structure of applying rubber clubs).

It was also established that the permission for applying this special means in 78,3 % of the total number was given by ICAD.

Along with this, rubber clubs were applied to the convicts in the places of confinement in 94,3 % by the personnel of PEI shifts on duty.

At the same time, as in the previous years, (2006–2008) in PEI of the Autonomous Republic of Crimea and Chernihiv regions rubber clubs were not applied to the people kept in correctional and educational colonies, which can be spread within SCES system as a positive experience of PEI personnel establishing human relations with convicts, as a result of appro-

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2009 rotsi: inform. byul. Kyyiv: DDUPVP, 2010. Kn. 1. S. 47.

[2] Ibid.

priate individual educational and preventive activity with convicts on the indicated issue.

As for another special means – handcuffs, in 2009 they were applied 749 times (875 – in 2008, which made up 6 cases per 1 thousand convicts[1].

Again, as in the previous years, the highest indicator was in PEI of Zhytomyr (16), Kherson (14,4), Mykolayiv (14,3) and Volyn (14) regions.

For all that, the main legal reason for PEI personnel actions became physical resistance (423 cases or 56,5 % of the total number of applying the given special means) of the convicts kept in correctional and educational colonies and attempts to cause body parts injury or their committing suicide (256 times or 34,2 % in the structure of handcuffs application)[2].

As a rule, according to archive materials study analysis in 2009 handcuffs were applied by PEI shift on duty (92,4 % of the total numbers of their application) and with ICAD permission (75,9 % cases in the structure of their application)[3].

In 2009 the quantitative indicators of applying a straitjacket to imprisoned convicts somewhat reduced (44 cases as against 73 in 2008).

Such PEI personnel actions took place in the colonies of Kharkiv (39 cases), Poltava (2), Kherson (2) and Odesa (1) regions[4].

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2009 rotsi: inform. byul. Kyyiv: DDUPVP, 2010. Kn. 1. S. 47.

[2] Ibid.

[3] Ibid, p. 48.

[4] Ibid.

Actual reasons for applying the given suppressive measure became: physical resistance and riot manifestation of the people serving a service in correctional and educational colonies (40 cases); attempts to cause body parts injury or committing suicide (2 cases).

Along with this, in 39 cases a straitjacket was applied on DC or CTR premises; in 2 cases – on other premises and PEI unit on duty, and in 1case – in colony residential area.

All the cases of applying a straitjacket in PEI by colony personnel were permitted by these institutions commanders.

As it was established in the course of the scientific search, the practice of applying special irritating means to imprisoned convicts remained almost at the same level (42 cases – 2009, 45 – 2008).

Such personnel actions took place in PEI of Vinnytsia, Donetsk, Dnipropetrovsk, Zhytomyr, Kirovohrad, Kyiv, Luhansk, Lviv, Kherson, Cherkasy and Khmelnytskyi regions[1].

For all that, the main reason for applying the given special means became: convicts' physical resistance to PEI personnel (39 cases or 92,9 % of the general number of applying the indicated suppressive measures); attacks on convicts or other people (3 cases pr 7,1 % in this application structure).

In most cases the permission for applying special irritating means was given by ICAD (73,8 % among all their application), but the indicated actions were

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2009 rotsi: inform. byul. Kyyiv: DDUPVP, 2010. Kn. 1. S. 48.

performed mainly by PEI shift personnel on duty (40 cases or 95,2 % in application structure) and colony supervision and security departments personnel (2 cases or 4,8 %)[1].

In general, the activity characteristics of applying physical force, special means and a straitjacket to imprisoned convicts in 2009 looked like this:

1) mostly the indicated suppressive measures were applied in PEI of Mykolayiv region (150 cases out of total 1 thousand 296 within SCES system of Ukraine), that is, the institutions with 'geography' of increased aggressiveness in relations between colony personnel and people, serving a service there, were distinctly defined;

2) the main legal and actual grounds for applying suppressive measures to imprisoned convicts became their physical resistance or riot manifestation (947 cases or 73,1 % of their total application number).

Because of offenders' refusal to go to DC or CTR suppressive measures were applied by PEI 68 times or 5,2 % in their application structure, and because of convicts' attempt to cause body parts injury or to commit suicide – 262 times (20,2 % of total application number).

Besides, when escorting the escaped prisoner after detention – 7 times (0,5 % in application structure) and attacking convicts or other people – 12 times (1 % in total application number);

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2009 rotsi: inform. byul. Kyyiv: DDUPVP, 2010. Kn. 1. S. 48.

3) as for the place, most often suppressive measures applied to imprisoned convicts were taken on the premises of PEI units on duty (452 cases or 34,9 % of the total number).

At the same time, in some PEI suppressive measures were mostly applied on DC or CTR premises;

4) depending on the time of applying suppressive measures to the people serving a service in correctional or educational colonies, PEI personnel mostly performed such actions from 9 a. m. till 6 p. m. (802 cases or 62 % in the structure of all application), least (84 cases or 6,5 %) in the period from 10 p. m. till 6 a. m.[1]

So, as in the previous years (2005–2008), in 2009 coercive and forceful methods of persuasion and influence had priority over verbal and wordy ones in the relationship between PEI personnel and imprisoned convicts[2], which was criticized by international organizations[3], but on the other hand, had absolutely negative influence on the efficiency of correctional and re-socializing process, and also on the results of crime and offence prevention, the number of which increased per 1 thousand convicts almost two times

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2009 rotsi: inform. byul. Kyyiv: DDUPVP, 2010. Kn. 1. S. 48.

[2] Levchuk I. P. Mystetstvo publichnogo vystupu: verbal'nyy skladnyk. Luts'k: Volyn. obl. tsentr perepidgotovky ta pidvyshchennya kvalifikatsiyi organiv derzh. vlady, organiv mistsevogo samovryaduvannya, derzh. pidpryyemstv, ustanov i organizatsiy, 2018. 20 s.

[3] Mezhdunarodnaya tyuremnaya reforma: godovoy otchyot 2005. Kiyev: Penal Reform Interneshl (Penal reform International), 2005. S. 20–22.

more as compared to 2005, including offences concerning malicious disobedience to PEI administration requirement[1].

Unfortunately, as the given scientific search results showed, the content of PEI personnel activity of applying physical force, special means and a straitjacket to convicts in correctional and educational colonies of Ukraine in 2010 didn't change either, that is, the principle of humanity didn't become the priority in criminal executive legal relations[2].

In spite of all this, in the period under review suppressive measures were applied in 1030 cases (8 times per 1 thousand convicts), which is 266 cases less than in 2009[3].

For all that, the highest indicator was in PEI of Zhytomyr (25), Sumy (23,2), Volyn (22), Cherkasy (19,1), Kherson (17), Mykolayiv (15,4), Kyiv (14) and Lviv (13,7) regions, the lowest one – in PEI of Luhansk (1,7), Kharkiv (1) and Chernihiv (1) regions[4].

Again, as in 2009, SPEDU admitted at official level that in some PEI (Kyiv, Lviv, Sumy, Ternopil and Cherkasy regions) increased cases of applying suppressive measures to imprisoned convicts, which

[1] Godlevs'ka-Konovalova A. V. Zapobigannya zlisniy nepokori vymogam administratsiyi ustanovy vykonannya pokaran': dys. … kand. yuryd. nauk: 12.00.08. Zaporizhzhya: Klasych. pryvat. un-t, 2019. S. 26–27.

[2] Vasylyuk I. M. Pravo zasudzhenykh do pozbavlennya voli na gumanne stavlennya ta povagu yikh lyuds'koyi gidnosti: avtoref. dys. … kand. yuryd. nauk: 12.00.08. Zaporizhzhya: Klasych. pryvat. un-t, 2017. 20 s.

[3] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. S. 46.

[4] Ibid.

is caused, among others, by unbalanced approach of PEI personnel, considering the current situation, colony personnel directly performing such actions, and also offence type[1].

According to archive materials studied, as in the previous years (2006–2009), PEI personnel in 2010 mostly applied handcuffs (567 cases or 55,05 % of their total number) and rubber clubs (311 or 30,19 % accordingly) to colony convicts.

At the same time, physical force was applied to offences 116 times (11,26 % in all application structure); irritating means – 26 times (2,53 % of the total application number) and a straitjacket – 10 times (0,97 % accordingly)[2].

As for specific suppressive measures characteristics, in 2010 rubber clubs, in particular, were applied 311 times (461 –in 2009) to convicts serving a sentence in correctional and educational colonies, which made up 2,4 cases per 1 thousand people.

The highest indicator was again in PEI of Volyn (15,3), Zhytomyr (10,1), Kherson (7,6) and Sumy (7) regions[3], that is, exactly in the same complicated institutions, beginning from 2006, as for civilization and the principle of humanity, and also the relations between PEI personnel and convicts in 'geographical' dimension.

As in the previous years (2006–2009), the main actual reason for applying rubber clubs in 2010 beca-

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. S. 46.

[2] Ibid.

[3] Ibid.

me convicts' physical resistance (282 cases or 90,6 % of the total number of applying this special means), and also attempts to cause body parts injury or to commit suicide (15 times or 4,8 % in this application structure).

Most often rubber clubs were applied with the permission of ICAD (78,1 % of the total number of this application), but PEI shift personnel on duty was the most active subject of such action (94,5 % in this application structure).

Again, as in the previous years, in 2010 PEI of the Autonomous Republic of Crimea, Chernihiv and Chernivtsi regions didn't apply rubber clubs, which confirms businesslike and balanced relations between the personnel and convicts kept in PEI, and the priority of verbal (not forceful) methods of correctional re-socializing influence on these people.

As for handcuffs, in 2010 this special means was applied to imprisoned convicts 567 times (749 – in 2009), which made up 4 cases per 1 thousand people.

The highest indicator was only in PEI of Sumy (13), Zhytomyr (13), Kyiv (9), Mykolayiv (8,8), Vinnytsia (8), Cherkasy (8) and Volyn (7) regions.

The main actual reason for performing such actions by colony personnel became convicts' physical resistance (335 cases or 59 % of the total number of their application), and also attempts of these people to cause body parts injury or to commit suicide (172 times or 30,3 % in this application structure)[1].

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. S. 46.

As a rule, handcuffs were applied by PEI shift on duty (94,3 % of the total number of such application) and with the permission of ICAD (76 %).

A straitjacket was applied to imprisoned convicts 10 times (44 – in 2009), namely: in PEI of Kharkiv (5 cases), Odesa and Sumy (in twos) and Poltava (1 case) regions[1].

The legal reason for performing such actions by PEI personnel became physical resistance and riot manifestation of the people serving a sentence in correctional and educational colonies (8 cases) and attempts to cause body parts injury or to commit suicide (2 cases).

Besides, it was established that in 2010 irritating means were applied 26 times (42 – in 2009) to the people serving a sentence in correctional and educational colonies of Ukraine, namely: in PEI of the Autonomous Republic of Crimea, Odesa, Rivne and Cherkasy regions (one case in each), Zaporizhzhia an Lviv (in twos), Vinnytsia an Khmelnytskyi (in threes), Kherson (5 cases) and Kyiv (7 cases) regions[2].

Physical resistance of convicts became the main legal and actual reason for applying the indicated special means (24 cases or 92,3 % of the total number of these application).

For all that, in 61,5 % of the cases the permission for performing these actions by PEI personnel was given by ICAD, and they were applied 24 times by colony shifts personnel on duty, and one time by

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. S. 46.

[2] Ibid, p. 47.

PEI supervision and security department personnel and operational group[1].

In 2010 physical force also was applied to imprisoned convicts (116 cases)[2].

In this year PEI of Cherkasy region had the highest indicator (25 cases).

As in the previous years, such facts were not registered in PEI of the Autonomous Republic of Crimea and Chernihiv region and (for the first time during 2006–2010) – Volyn region.

The main actual reason for applying physical force to the people serving a sentence in colonies became their physical resistance (105 cases or 90,5 % in the structure of this suppressive measure application), and attempts to cause body parts injury or to commit suicide (7 times or 6 % of the total application number)[3].

For all that, ICAD gave the permission to PEI personnel (as a rule, it is colony shift personnel on duty (81 % in this application structure)) for applying physical force to imprisoned convicts (49,1 % of its total application number)[4].

On the whole, the characteristics of the indicated PEI personnel activity in 2010 (the last year of independent SPEDU functioning within the central bodies system of state executive power[5]) looked like this:

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[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. S. 47.

[2] Ibid.

[3] Ibid.

[4] Ibid.

[5] Pro optymizatsiyu systemy tsentral'nykh organiv vykonavchoyi vlady: Ukaz Prezydenta Ukrayiny vid 9 grudnya 2010 roku. *Ofitsiynyy visnyk Ukrayiny*. 2010. № 94. St. 3334.

1. The main legal and actual reason for applying suppressive measures determined in law, as in the previous years (2006–2009), was physical force or riot of imprisoned convicts (754 cases or 73,3 % in all application structure), that is, during this period (since adopting Law of Ukraine 'On State criminal executive service of Ukraine'[1] and changing SPEDU leaders) a distinct tendency of reducing the number of such PEI personnel actions was formed.

As for other reasons for applying suppressive measures to the people kept in correctional and educational colonies, the legal reasons for performing such actions by PEI personnel became: a) refusal of these people to go to DC or CTR (51 cases or 4,9% of their total application number); b) attempts to cause body parts injury or commit suicide by PEI convicts (196 cases or 19 % in all application structure); c) necessity of escorting escaped people after their detention (22 cases or 2,2 % in application structure); d) attacking convicts or other people (7 times or 0,6 % of the total application number)[2].

2. Most often suppressive measures were applied on the premises of PEI units on duty (368 cases or 35,7 % in their application structure).

3. Depending on the time of applying physical force, special means and a straitjacket, PEI personnel applied the indicated measures from 9 a. m. to 6 p. m.

[1] Pro Derzhavnu kryminal'no-vykonavchu sluzhbu Ukrayiny: Zakon Ukrayiny vid 23 chervnya 2005 r. *Ofitsiynyy visnyk Ukrayiny*. 2005. № 30. S. 4–10.

[2] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. S. 47.

(573 cases or 55,6 % of the total application number), and least – from 10 p. m. to 6 a. m. (101 cases or 3,8 % in application structure).

4. In the period under review the cases of applying suppressive measures to imprisoned convicts determined in law were not registered in PEI of the Autonomous Republic of Crimea, Chernihiv and Chernivtsi regions.

At the same time, in terms of 'geography' of applying these measures, in 2010 their largest number fell on PEI of Zytomyr region (117 tines as against 132 – in 2009).

For all that, in PEI of this and Volyn regions during 2006–2010 a negative tendency of increasing number of applying suppressive measures to imprisoned convicts was outlined, which proved a complicated content of criminal executive activity of ensuring law and order, on the one hand, and hasty, unbalanced actions of PEI personnel, concerning current situation estimation, offence type and convict's personality, which made up the actual reasons for performing such actions by the personnel at this very time, on the other hand.

In December 2010 and October 2012 a number of normative legal changes concerning punishment execution sphere took place, namely:

a) in December 2010 punishment execution institutions and bodies were transferred to the administration of Ministry of Justice of Ukraine, who had to coordinate criminal executive activity[1];

[1] Pro optymizatsiyu systemy tsentral'nykh organiv vykonavchoyi vlady: Ukaz Prezydenta Ukrayiny vid 9 grudnya 2010 roku. *Ofitsiynyy visnyk Ukrayiny*. 2010. № 94. St. 3334.

b) in April 2011 State penitentiary service of Ukraine (SPS) was formed and Provisions on this body was approved instead of SPEDU as a central executive power body realizing state policy in the sphere of punishment execution[1];

c) in October 2012 Ministry of Justice of Ukraine became a central body in the sphere of punishment execution instead of SPS of Ukraine[2].

Given that, in this work it was necessary to analyze the practice of applying physical force, special means and a straitjacket to imprisoned convicts within the context of changing the central body of administration in the sphere of punishment execution of Ukraine.

Further more, in 2011 the suppressive measures were applied in 1212 cases or 9 times per 1 thousand convicts, which is 182 times more than in 2010[3].

For all that, as in the previous years (2006–2010), the highest indicator was in PEI of Volyn (39), Zhytomyr (21,8), Mykolayiv (12,7) and Zaporizhzhia (12,4) regions, and the lowest one – in PEI of Kharkiv (1,9), Rivne and Cherkasy (in 2,9 cases) regions per 1 thousand people.

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[1] Pro zatverdzhennya Polozhennya pro Derzhavnu penitentsiarnu sluzhbu Ukrayiny: Ukaz Prezydenta Ukrayiny vid 6 kvitnya 2011 r. № 394-2011. *Ofitsiynyy visnyk Ukrayiny*. 2011. № 28. St. 1161.

[2] Pro vnesennya zmin u normatyvno-pravovi akty, shcho stosuyut'sya sfery vykonannya pokaran' Ukrayiny: Zakon Ukrayiny vid 16.10.2012 r. № 5461-VI. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2014. № 5. St. 62.

[3] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2011 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2012. Kn. 2. S. 49.

Along with this, suppressive measures were not applied to convicts, serving a sentence in colonies, in PEI of Chernivtsi region[1].

According to archive materials study, in 2011 PEI personnel mostly applied handcuffs (654 cases or 54 % of the total number of applying all suppressive measures).

At the same time, physical force was applied to imprisoned convicts 343 cases or 11,8 % in the structure of all application, special irritating means – 40 times (3,3 %), a straitjacket – 11 times or 0,9 % of the total number of all suppressive measures application[2].

Characterizing each individual suppressive means, in 2011 rubber clubs were applied 364 times (311 – in 2010) to convicts in places of confinement, which made up 2,6 cases per 1 thousand people.

The highest indicator was in PEI of Volyn (10,3), Zhytomyr (8,5), Vinnytsia (7,9), Kyiv (7) and Lviv (6) regions[3].

As it was established in the course of the given scientific search, the main legal reason for performing such PEI personnel actions became convicts' physical resistance (341 cases or 93,7 % of the total suppressive measure application).

Besides, it was found that ICAD gave most permission for applying rubber clubs (71,9 % in such application structure), but PEI shift personnel on duty performed such actions in 90,9 % of cases.

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2011 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2012. Kn. 2. S. 49.

[2] Ibid.

[3] Ibid.

In 2011 the following fact was interesting, that, as in the previous years studied (2006–2010), rubber clubs were not applied to convicts in PEI of the Autonomous Republic of Crimea.

There was no analogical practice in PEI of Chernivtsi and Rivne regions either[1].

As for handcuffs, in 2011 they were applied to imprisoned convicts 654 times (567 – in 2010), which made up 5 cases per 1 thousand people.

PEI of Volyn (27), Sumy (13,1), Kyiv (12,7), Zhytomyr (10,9), Vinnytsia and Chernihiv (8,7 cases each) regions had the highest indicators of this kind.

As with the preceding suppressive measure, the main reason for PEI personnel handcuffs application became convicts' physical resistance (413 times or 61,1 % of the total application number) and attempts to cause body parts injury or commit suicide (162 cases or 24,8 % in application structure)[2].

As a rule, in 2011 handcuffs were applied 616 times (94,1 % of the total application number) by PEI shift on duty, and permission for such actions was given by ICAD in 81,3 % of cases.

In the period under review a straitjacket was applied to imprisoned convicts 11 times (10 times – in 2010), namely – 7 cases in PEI of Kharkiv region, in twos – of Poltava and Kherson regions[3].

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[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2011 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2012. Kn. 2. S. 49.

[2] Ibid, p. 49–50.

[3] Ibid, p. 50.

Again, as in previous periods, this suppressive means was applied to imprisoned convicts in connection with their physical resistance or riot.

Along with this, a straitjacket was applied 5 times on DC or CTR premises, thrice – on other PEI premises, twice – in colony unit on duty, once – in PEI official room.

As it was found in the course of the given scientific search, in all cases PEI commander directly gave the permission for applying this suppressive means.

As far as another suppressive measure – irritating means – is concerned, in 2011 PEI personnel applied it 40 times (26 – in 2010).

Among them, once – in PEI of Volyn, Khmelnytskyi and Luhansk regions; twice – in PEI of Luhansk region; 4 times – in PEI of Donetsk and Kharkiv regions; 6 times – in PEI of Zaporizhzhia region and 21 times – in PEI of Kyiv region.

In 38 cases (95,8 %) this suppressive means was applied by colony personnel in connection with convicts' resistance.

And in 34 cases (85 %) the permission for such actions was given to the personnel by ICAD.

In 37 cases special irritating means was applied by PEI shift personnel on duty and in 3 cases – by colony operational group[1].

In 2011 physical force was applied 143 times (116 – in 2010) to imprisoned convicts.

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2011 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2012. Kn. 2. S. 50.

The highest indicator was registered in PEI of Dnipropetrovsk region (30 cases or 2 per 1 thousand convicts)[1].

As in the previous measures, convicts' physical resistance became the main actual reason for performing such actions by PEI personnel (129 cases or 90,2 % of the total application number).

The shift personnel on duty (79,7 % in all application structure) was the main subject of such actions. In 62,2 % of cases the permission for these colony personnel actions was given by ICAD[2].

On the whole, in 2011 the results of applying the indicated measures to imprisoned convicts looked like this:

a) convicts' physical resistance and riot manifestation (932 cases or 76,9 % in the structure of all suppressive measures application) became the main legal and actual reason for performing the corresponding actions by PEI personnel.

Apart from this, in 75 cases (6,2 % of the total application number) physical force, special means and a straitjacket were applied to the imprisoned convicts when they refused to go to DC (CTR); in 178 cases (14,7 % in total application structure) – when attempting to cause body parts injury or to commit suicide; in 21 cases (1,7 % of the total application number) when escorting escaped people after detention; in 6 cases (0,5 %) when attacking convicts or other people;

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2011 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2012. Kn. 2. S. 50.

[2] Ibid.

b) most often suppressive measures were applied on the premises of PEI units on duty (383 cases or 31,6% of total application number) and on DC or CTR premises (268 times – 22,1 %);

c) depending on time, physical force, special means and a straitjacket were applied to the people kept in places of confinement mostly from 9 a. m. till 6 p. m. (607 cases or 50 % in their application structure), least (122 cases or 10 % of total application number) – from 10 p. m. till 6 a. m.;

d) the highest indicator of applying suppressive measures to convicts was registered in PEI of Donetsk (166 cases) and Zhytomyr (117 cases) regions.

So, in 2011 (the first period under review of punishment execution institutions and bodies stay within the system of Ministry of Justice of Ukraine) a distinct tendency of increasing number of applying all suppressive measures, without any exception, to imprisoned convicts, including those kept in IIW[1].

There were also analogical tendencies in 2012[2] and continued to develop further on.

Thus, in 2013 physical force, special means and a straitjacket were applied in 1048 cases (8,9 cases per 1 thousand convicts) to the people kept in correctional and educational colonies, which 178 times or 15 % in total application structure less than in 2012.

[1] Stan operatyvno-sluzhbovoyi diyal'nosti slidchykh izolyatoriv u 2011 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2012. № 3. 34 s.

[2] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2012 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2013. Kn. 1. 59 s.

At the same time, convict average number reduced by 13 % (from 135 thousand people in 2012 to 118 thousand 400 convicts – in 2013)[1].

According to archive materials results studied, in 2013 the largest number of cases per 1 thousand people was registered in PEI of Volyn (65,1 cases), Sumy (30,4), Kirovohrad (28,9), Zaporizhzhia (19,1), Zhytomyr (16,1), Mykolayiv (14,7) and Odesa (12,6) regions, the lowest ones – in PEI of Vinnytsia (1,9), Chernihiv (3), Rivne (3,1), Ternopil and Cherkasy (3,6 each), Luhansk and Khnelnytskyi (4,3 each) regions.

But in PEI of Kharkiv and Chernivtsi regions suppressive measures were not applied to imprisoned convicts in 2013[2].

In this respect the official SPS conclusion was significant, saying that increasing number of suppressive measures, applied in 2013 as compared to 2012 in some PEI (Volyn, Kirovohrad, Luhansk, Odesa and Ternopil regions) was caused by insufficient level of individual educational work with convicts[3], and not by unbalanced approach to taking decisions of their application by colony personnel, as it was indicated in the previous SPEDU reports in 2006–2010[4].

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[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2013 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2014. S. 44.

[2] Ibid.

[3] Ibid.

[4] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. S. 46.

As it was ascertained in the course of the given research, in 2013 PEI personnel mainly applied handcuffs (593 cases or 56,5 % of their total number)[1].

Besides, in 223 cases (21,2 %) physical force was applied to imprisoned convicts; in 174 cases (16,7 %) – rubber clubs; in 39 (3,7 %) – special irritating means; in 20 cases (1,9 %) – a straitjacket[2].

Handcuffs were applied in 5 cases per 1 thousand people. In 2013 this indicator was the highest in PEI of Volyn region (26 times), as in the previous years (2006–2012).

This indicator was in PEI of Sumy 16,6 cases, Kirovohrad (16,4), Zaporizhzhia (10,1), the Autonomous Republic of Crimea (9,5 %) and Odesa regions - 0,4 cases per 1 thousand of convicts.

According to this research results, the main legal reason for applying handcuffs to imprisoned convicts was these people's physical resistance (365 cases or 61,6 % of total application number in 2013) and attempt to cause body parts injury or commit suicide (163 cases or 15,5 % in their application structure).

In most cases handcuffs were applied by PEI shift on duty (545 times or 92 % of total facts number) and with ICAD permission (484 times or 81,7 % of total application number)[3].

As for rubber clubs, in 2013 this suppressive measure was applied 174 times (290 – in 2012) by

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2013 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2014. S. 44.

[2] Ibid.

[3] Ibid.

PEI personnel, which made up 1,5 times per 1 thousand convicts.

One of the highest indicators was again in PEI of Volyn (4,7 cases), in other PEI it was like this: Zhytomyr (5,5), Mykolayiv (5,2), Lviv (4,8), Kirovohrad (3,4), Ivano-Frankivsk and Kyiv (3,1 each) regions[1].

As it was established on the course of the given scientific search, the main legal and actual reason for applying rubber clubs to imprisoned convicts was their physical resistance (165 cases or 94,8 % of total application number).

For all that, most often these suppressive measures were applied with ICAD permission (67,2 % in total application structure) and PEI shifts on duty (95,4), and also on the premises of colony units on duty (44,2 %) and of DC (CTR) (20,1 %)[2].

In 2013 the following fact was significant, that in PEI of the Autonomous Republic of Crimea, Vinnytsia, Kharkiv, Chernihiv and Chernivtsi regions rubber clubs were not applied at all[3].

In 2013, compared to 2012, the number of physical force application cases to imprisoned convicts somewhat increased (223 – in 2013, and 214– in 2012)[4].

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[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2013 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2014. S. 44.

[2] Ibid, p. 45.

[3] Ibid.

[4] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2014 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2015. Kn. 1. S. 45.

The indicated suppressive measure was most often applied in PEI of Sumy (41 cases), Zaporizhzhia (34), Volyn (23), Kirovohrad (21) and Dnipropetrovsk (19) regions.

Along with this, physical force per 1 thousand convicts was most intensely applied in PEI of Volyn (21,7 times), Sumy (12,4), Kirovohrad (8) and Zaporizhzhia (4,8) regions with the average indicator 1,9 cases on the whole within the system of SPS of Ukraine[1].

According to archival materials study result, the main legal and actual reason for applying this suppressive measure became convicts' physical resistance (186 cases or 83,4 % of total application number) and the main subject of those actions was shift personnel on duty (189 times or 83,4 % in the structure of physical force application).

In most cases Pei personnel performed such actions with ICAD permission (133 times or 59,6 % of total number of physical force application). Among others, it was performed in PEI unit on duty (61 cases or 27,3 %) and in colony residential area (49 times or 21,9 %)[2].

At the same time, in PEI of the Autonomous Republic of Crimea, Vinnytsia, Kharkiv and Chernihiv regions colony personnel didn't apply physical force to imprisoned convicts[3].

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2013 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2014. S. 45.

[2] Ibid.

[3] Ibid.

As for special irritating means, in 2013 these measures were applied 39 times (30 – in 2012) to the people, kept in the places of confinement, including: in PEI of Volyn region – 13 cases, of Kyiv region – 6, of Donetsk, Kirovohrad and Kherson regions – 3 times each, of the Autonomous Republic of Crimea, Dnipropetrovsk, Zhytomyr and Zaporizhzhia regions – twice in each, of Luhansk, Lviv, Khmelnytskyi regions – once in each.

As it was established in the course of the given scientific search, the main legal reason for PEI performing such actions became convicts' physical resistance (33 cases or 84,6 % of total number of applying this special means).

In most cases the permission for applying special irritating means was given by ICAD (24 cases or 61,5 % in their application structure).

These suppressive measures were applied most often in PEI unit on duty, on DC (CTR) premises and in residential area 9 times each or 23 % of total application number.

As it was found, in all cases these actions were performed by PEI shifts on duty[1].

The research results also showed that in 2013 the number of applying a straitjacket to imprisoned convicts increased by 1,3 times (20 cases as against 14 in 2012), among them: 15 cases – in PEI of Zaporizhzhia, 3 – of Kherson and 2 – of Poltava regions.

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2013 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2014. S. 45.

This measure application structure looked as follows:

1) in 17 cases a straitjacket was applied because of convicts' physical resistance or riot manifestation;

2) thrice – in the attempt to commit suicide or to cause body parts injury;

3) this suppressive means was applied in PEI unit on duty -12 cases; on DC (CTR) – once; on other premises – 7 cases;

4) in all cases a straitjacket was applied by colony personnel with the permission of these PEI commander[1].

On the whole, in 2013 suppressive measures were applied to imprisoned convicts under the following circumstances:

a) the main legal and actual reason for PEI personnel actions became physical resistance or riot manifestation of the people serving a service in correctional and educational colonies (766 cases or 73,1 % of total application number).

Suppressive measures were applied as regards: convicts' refusal of going to DC (CTR) room – 65 times (6,2 % in all application structure); in the attempt to cause convicts' body parts injury or commit suicide – 186 times (17,7 %); escorting an escaped convict after detention – 23 times (2,2 %); attack on convicts or other people – 8 times (0,8 % of total number of suppressive measures application);

b) physical force, special means and a straitjacket were applied to convicted offenders most often on the

[1] Stan operatyvno-sluzhbovoyi diyal'nosti slidchykh izolyatoriv u 2011 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2012. № 3. 34 s.

premises of PEI units on duty (363 cases or 34,6 % of total application number) and of DC (CTR) – 229 times or 21,8 % in all application structure;

c) in terms of time of applying suppressive measures, determined in law, PEI personnel performed such actions most often from 9 a. m. till 6 p. m. (600 cases or 57,3 %).

In 224 cases (21,4 %) the indicated measures were applied from 6 p. m. till 10 p. m., in 125 cases (11,9 %) – from 6 a. m. till 9 a. m., in 99 cases (9,4 %) – from 10 p. m. till 6 a. m.;

d) in the period under review the tendency of increasing cases of applying suppressive measures to imprisoned convicts continued, which was typical for years 2011–2012;

e) in 2013 there was no illegal application of physical force, special means and a straitjacket by PEI personnel to the people kept in correctional and educational colonies.

In spite of all this, as it was established in the course of the given scientific search, in 2013 during a monitoring visit of Ombudsman Secretariat of the Verkhovna Rada of Ukraine to Bilenkivsk correctional colony № 99 in Zaporizhzhia region and inspection of this PEI personnel operational and official activity by SPS apparatus, a number of normative legal acts requirements violations were found, when materials on the facts of applying special means, handcuffs and rubber clubs, were registered[1].

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2013 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2014. S. 46.

Guilty PEI officials were held disciplinarily liable for the violations (order of SPS of Ukraine of 28.02.2013 № 122/OD-13 'On drawbacks of operational and official activity of Bilenkivsk correctional colony № 99'[1], but it didn't prevent other PEI personnel from committing analogical offences henceforward.

In the same 2013 during the inspection of operational and official activity of Olshansk correctional colony № 53 in Mykolayiv region by SPS apparatus, the following facts were revealed: convicts, special means (handcuffs) were applied to, were not examined by medical workers, and no entries were made in the medical cards of the people kept in this PEI[2].

Moreover, analogical cases and, on the whole, the tendencies of increasing the number of suppressive measures application to imprisoned convicts were preserved in 2014 too[3].

These indicators didn't change much in 2015[4].

This year suppressive measures were applied to imprisoned convicts in 697 cases, which is 12 times per 1 thousand convicts, and 27 cases or 3,8 % less than in 2014[5].

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[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2013 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2014. S. 46.

[2] Ibid.

[3] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2014 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2015. Kn. 1. 62 s.

[4] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2015 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2016. Kn. 1. 58 s.

[5] Ibid, p. 44.

During the period under review this indicator was the highest in PEI of Volyn (90,7 times per 1 thousand people), Khmelnytskyi (26,5), Kherson (25,2). Kirovohrad (22,2), Ivano Frankivsk (18,9), Zaporizhzhia and Sumy (17,2 each), Dnipropetrovsk (14,2) regions, and the least one – in PEI of Donetsk (0,3), Kharkiv (1,3), Cherkasy (2,1), Ternopil (2,7), Chernihiv (2,8) and Zhytomyr regions.

For all that, in PEI of Chernivtsi region (in Sokyriansk correctional colony № 67, in particular) physical force, special means and a straitjacket were not applied to imprisoned convicts[1].

Again, in 2015, as in the previous years, SPS of Ukraine admitted at official level (but, unfortunately, didn't establish), that increasing cases of applying suppressive measures, in comparison with 2014, in some PEI of Ukraine (of Vinnytsia, Volyn, Zaporizhzhia, Kirovohrad, Rivne and Khmelnytskyi regions) proves possible operational situation worsening in these punishment execution institutions, and also insufficient level of individual educational work with convicts[2].

As the given scientific search results showed, PEI personnel applied mainly handcuffs in the period under review (417 cases or 59,8 % of their total application number).

At the same time, physical force was applied 162 times (23,2 % in all application structure) to the people

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2015 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2016. Kn. 1. S. 44.

[2] Ibid.

kept in correctional and educational colonies; rubber clubs – 74 times (10,6 %); special irritating means – 41 times (6 %), and a straitjacket – 3 times (0,4 % of total application number)[1].

As far as the characteristics of individual suppressive measures are concerned, in 2015 handcuffs were applied to imprisoned convicts 417 times (472 – in 2014), which meant 7,2 cases per 1 thousand people.

The highest indicator was in PEI of Volyn (44,2), Kirovohrad (13,3), Kherson (12,6), Dnipropetrovsk (11,5), Khmelnytskyi (10,7), Rivne (9,9), Mykolayiv and Sumy (9,2 each) regions.

At the same time, the main legal reason for performing such actions by PEI personnel became convicts' physical resistance (232 cases or 55,6 % in all application structure of the given special means) and attempts to cause body parts injury or commit suicide (94 times or 23,5 % of total application number).

Along with this, in Sokyriansk correctional colony № 67 of Chernivtsi region handcuffs were not applied to convicts.

As it was established in the course of this research, in 2015 PEI personnel applied rubber clubs 74 times (75 – in 2014), which meant 1,3 cases per 1 thousand convicts.

This indicator was the highest in PEI of Khmelnytskyi 96,7 cases). Lviv (6,5), Ivano-Frankivsk (5,8), Zaporizhzhia (3,5) and Mykolayiv (1,7) regions.

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2015 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2016. Kn. 1. S. 44.

Rubber clubs were most often used in connection with convicts; physical resistance (65 cases or 87,8 % of total application number).

In half of the cases (50 % in application structure) rubber clubs were applied with ICAD permission. In 75,6 % of the cases such actions were performed by PEI shifts personnel on duty. In 41,9 % – rubber clubs were applied on DC (CTR) premises and 18,9 % – on other premises[1].

One fact is interesting in this respect, in 2015 rubber clubs were not applied to the convicts in PEI of Volyn, Dnipropetrovsk, Donetsk, Kirovohrad, Poltava, Rivne, Ternopil, Kharkiv, Chernihiv and Chernivtsi regions, which confirms SPS increasing attention and level of preventive and individual educational work with SCES personnel.

As the results of this scientific search showed, physical force was applied 162 times (143 – in 2014) to people serving a sentence in places of confinement[2].

This suppressive measure was applied most often in PEI of Volyn (26 cases), Zaporizhzhia (22), Khmelnytskyi (20), Kirovohrad (17), Dnipropetrovsk (16), Sumy (13), Poltava (12) and Kherson (11) regions, and these indicators per 1 thousand convicts (when average indicator within SCES system of Ukraine was 2,8) was the highest in PEI of Volyn (30,2), Kirovohrad (8,4), Khmelnytskyi (7,9), Sumy (7,5), Ivano-

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2015 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2016. Kn. 1. S. 45.

[2] Ibid.

Frankivsk (4,4), Kherson (4,2) and Poltava (3,4) regions[1].

In 2015 convicts' physical resistance became the main and actual reason for applying physical force (130 cases or 80,2 % of total application number).

As a rule, this suppressive measure was applied by PEI shift on duty – 69 times (80,8 % in its application structure).

In 75 cases (46,3 % of total application number) physical force was applied to the people, kept in correctional and educational colonies, with the permission of ICAD.

In 41 cases (25,3 % in application structure) PEI personnel performed such actions on the premises of colony units on duty and in 39 cases (24 %) – in DC (CTR).

Along with this, in 2015 physical force was not applied to imprisoned convicts in PEI of Donetsk, Lviv, Rivne, Kharkiv, Cherkasy, Chernihiv and Chernivtsi regions[2].

As the given research results stated, in the period under review also special irritating means were applied to the people kept in the places of confinement (41 cases as against 31 in 2014)[3].

PEI personnel performed such actions in 0,7 cases per 1 thousand convicts, including: 14 – in PEI of Volyn, 13 – of Zaporizhzhia, 3 – of Khmelnytskyi, in

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2015 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2016. Kn. 1. S. 45.

[2] Ibid.

[3] Ibid.

twos – of Dnipropetrovsk, Zhytomyr, Kyiv, Kherson, and once each – of Kirovohrad, Odesa and Rivne regions.

For all that, the main legal reason for applying special irritating means was convicts' physical resistance (38 cases or 92,6 % of total number of this suppressive measure)[1].

Apart from this, in 2015 PEI personnel applied thrice a straitjacket to the people, serving a sentence in custody, in connection with convicts' physical resistance and riot manifestation[2].

The indicated actions were performed by these institutions shifts on duty on the premises of PEI units on duty as ordered by colony commanders.

On the whole, estimating the activity in 2015 connected with suppressive measures application fixed by law, they had the following form:

1) the main legal and actual reason for performing such actions by PEI personnel became convicts' physical resistance and riot manifestation (468 cases or 67,1 % of total number of all suppressive measures application).

Besides, suppressive measures were applied 111 times (15,9 % in their application structure) in convicts' attempt to cause body parts injury or commit suicide; 82 times (11,8 %) – when these people refused to go into DC (CTR) room; 17 times (2,5 %) – when attacking convicts or other people; 18 times

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2015 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2016. Kn. 1. S. 45.

[2] Ibid, p. 46.

(2,7 %) – when escorting escaping person after detention;

2) despite some reduction of applying suppressive measures to imprisoned convicts on the whole, some means application much increased, for example: rubber clubs (at the level of 2014); physical force (increase by 19 cases); special means (by 10 cases), which confirms developing in 2015 repressive not individual and educational tendencies in PEI of Ukraine.

For all that, in PEI of Volyn, Zhytomyr, Mykolayiv and Zaporizhzhia regions the indicated negative tendencies existed still since 2006, but SPS of Ukraine didn't take corresponding organizational, methodical, recommended and other measures.

In this respect the situation in IIW of Ukraine was not better in 2015[1];

3) within the system of SPS in a number of PEI (of the Autonomous Republic of Crimea, Chernihiv and Cherkasy regions) the activity of applying suppressive measures to imprisoned convicts has been minimized since 2006, which was worthwhile spreading this positive experience to other regions by SPS of Ukraine.

On the other hand, the above mentioned facts prove that with humane and respectful attitude towards rights and legal interests of the people, kept in the places of confinement, the latter are able to be subjected to correctional and re-socializing influence

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'novykonavchykh ustanov u 2012 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2013. Kn. 1. S. 50–51.

of SCES personnel without any forceful interference, suppressive measures including.

Moreover, considering the requirements of Law of Ukraine 'On bringing the conditions of keeping imprisoned convicts to European standards' of 08.04.2014[1], the activity of SCES personnel of Ukraine should have been such in other PEI of SPS of Ukraine.

Nevertheless, as the results of studying archival materials concerning the practice of applying physical force, special means and a straitjacket to imprisoned convicts showed, the situation in 2016 didn't change in terms of quality.

In the period under review PEI personnel applied suppressive measures in 585 cases (12,1 times per 1 thousand people), which is 112 cases less that in 2015 (697 cases (12 ones per 1 thousand convicts))[2].

PEI personnel performed the indicated actions most often in the Western region (19,7 cases per 1 thousand convicts); Central (18) and Southern (14,1) regions of SCES interregional administrations of Ministry of Justice of Ukraine.

At the same time, in the period under review, as compared to 2015, there was a considerable reduction of applying suppressive measures to imprisoned con-

[1] Pro vnesennya zmin do Kryminal'no-vykonavchogo Kodeksu Ukrayiny shchodo adaptatsiyi pravovogo statusu zasudzhenogo do yevropeys'kykh standartiv: Zakon Ukrayiny vid 08.04.2014 r. № 1186-V. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 2014. № 2. St. 869.

[2] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 22.

victs, except for PEI of Zhytomyr region, where their number increased from 11 in 2015 to 84 in 2016, which proves, according to SPS of Ukraine, possible worsening operational situation in these punishment execution institutions, and also insufficient level of individual educational work with convicts.

And again, not a single word about hastiness, inadequacy and other unbalanced actions of PEI personnel in the current situation that became actual reasons for applying appropriate suppressive measures to offenders[1].

As in the previous years, PEI personnel applied in 2015 mainly handcuffs to imprisoned convicts (364 cases or 62,2 % of total application number).

Apart from this, in 149 cases (25,4 % in their application structure) physical force was applied; in 47 cases (8 %) – rubber clubs; in 24 cases (4,1 %) – special irritating means and once (0,2 %) – a straitjacket[2].

Characterizing each individual suppressive measure, in 2016, in particular, handcuffs were applied to the people, kept in the places of confinement, 53 cases less than in 2015 (364 and 417 accordingly).

This indicator made up 7,6 cases per 1 thousand people. The highest indicator was in PEI of the Central Western (11,9 cases), Western (10,6) and Central (10,3) interregional administrations of Ministry of Justice of Ukraine[3].

[1] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 22.

[2] Ibid.

[3] Ibid.

As it was established in the course of the given scientific search, the main legal and actual reason for applying handcuffs was convicts' physical resistance (211 cases or 58 % of total application number) and attempts to cause body parts injury or commit suicide (84 times or 23 % in their application structure).

As for rubber clubs, in 2016 PEI applied these means 47 times to imprisoned convicts (74 times – in 2015), which was 1 case per 1 thousand people[1].

This indicator was the highest in PEI of the Southern and Central interregional administrations of Ministry of Justice of Ukraine (2,5 and 2 times per 1 thousand convicts).

In 46 cases out of 47 convicts' physical resistance became the legal reason for applying rubber clubs.

The permission for such actions of PEI personnel in 87 % of total application number was given by ICAD, and shifts personnel on duty was the main application subject (8 % in all cases structure)

As in the previous years (2006–2015), DC (CTR) rooms were the most common places of applying rubber clubs (38 % of total number of applying this special means)[2].

As far as applying physical force to imprisoned convicts is concerned, in 2016 PEI personnel performed such actions 149 times (162 – in 2015)[3].

[1] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 23.

[2] Ibid.

[3] Ibid.

The highest indicators of these issues per 1 thousand people were recorded in PEI of the Western (6,9 cases) and Central (4,6) interregional SCES administrations of Ministry of Justice of Ukraine (average indicator 3,1 cases per 1 thousand convicts in SCES system).

Convicts' physical resistance became the main reason for applying physical force by PEI personnel (116 cases or 78 % of its total application).

The indicated suppressive measure was applied by PEI shifts personnel on duty (131 cases or 88 % in its application structure).

The permission for performing such actions by PEI personnel in 80 % (119 times) was given by ICAD.

Physical force was applied to the convicts serving a sentence in correctional and educational colonies in 33 % (49 times) on the premises of PEI units on duty[1].

In its turn, special irritating means were applied 24 times in 2016 (41 – in 2015), which is 0,5 cases per 1 thousand convicts.

Among them, the indicated suppressive means were used 18 times in PEI of the Central and Western interregional administrations (9 times each). At the same time, in the Central-Western and Northern-Eastern interregional SCES administrations of Ministry of Justice of Ukraine special irritating means were not applied in 2016.

[1] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 23.

As it was established in the course of the given search, convicts' physical resistance became the main legal and actual reason for performing such actions by PEI personnel (22cases or 92 % of total number of applying special irritating means)[1].

As for a straitjacket, in 2016 this suppressive means was applied once in PEI (thrice – in 2015) of the Southern interregional SCES administration of Ministry of Justice of Ukraine, in connection with a convict's physical resistance (this means was applied on PEI commander's instruction on DC (CTR) premises)[2].

On the whole, activity indicators concerning suppressive measures application to imprisoned convicts were as follows:

1. The main legal reason for PEI personnel performing such actions became convicts' physical resistance or riot manifestation (396 cases or 67 % of total number of applying suppressive measures fixed by law).

Along with this, physical force, special means and a straitjacket were applied: in convicts' attempt to cause body parts injury or commit suicide 96 times (16 % in their application structure); when convicts refused to go into DC (CTR) room – 59 times (10 %); when escorting escaping a convict after detention (20 times (3 %); when attacking convicts or other people – 14 times (2 %).

[1] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 23.

[2] Ibid.

2. Although the case number of PEI personnel applying suppressive measures to the people kept in custody increased, it occurred owing to reducing the total number of convicts in PEI by 13 % as compared to 2015.

At the same time, the number of such applications per 1 thousand people in 2016 remained at the level of 2015 (12 cases).

All that proves that, in spite of a number of reforms, launched in May 2016[1], repressive and forceful methods, but not persuasive ones, were a priority in relations between PEI personnel and convicts in 2016.

3. PEI within the system of SCES lacks the practice of applying suppressive measures to imprisoned people, which confirms that criminal executive activity content has perspective potential to apply to other PEI, on the whole, and to improve preventive and individual educational work with convicts on order to 'humanize' communication of the indicated subjects in the course of serving a criminal sentence or executing punishment, connected with isolation of a person from the society.

It is this content which is reflected in Law of Ukraine of 18.03.2004 'On national programme of adapting the legislation of Ukraine to European Union legislation'[2] and Law of Ukraine of 08.04.2014 'On

[1] Pro likvidatsiyu terytorial'nykh organiv upravlinnya Derzhavnoyi penitentsiarnoyi sluzhby ta utvorennya terytorial'nykh organiv Ministerstva yustytsiyi: Postanova Kabinetu Ministriv Ukrayiny vid 18 travnya 2016 r. № 348. *Ofitsiynyy visnyk Ukrayiny*. 2016. № 44. St. 1117.

[2] Pro zagal'noderzhavnu programu adaptatsiyi zakonodavstva Ukrayiny do zakonodavstva Yevropeys'kogo Soyuzu: Zakon Ukrayiny vid 18 bereznya 2004 r. № 1629-IV. *Uryadovyy kur'yer.* 2004. 20 kvit. S. 2–3.

making changes to Criminal Executive Code of Ukraine concerning convict's legal status adaptation to European standards'[1].

In spite of all this, SCES of Ministry of Justice of Ukraine, unfortunately, went another way, at first cancelled publishing special newsletter of PEI security, supervision and protection subdivisions activity[2], and only in 2018 introduced again an informational site which was absent more than a year.

Proceeding from this, the data on the state, structure and tendencies of applying suppressive measures to imprisoned convicts were received from the corresponding subdivisions of Prosecutor General's Office that keeps official statistics on these issues.

Thus, it was established that both in 2017[3] and in 2018[4] the number of such cases within the system of SCES of Ukraine didn't reduce.

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[1] Pro vnesennya zmin do Kryminal'no-vykonavchogo Kodeksu Ukrayiny shchodo adaptatsiyi pravovogo statusu zasudzhenogo do yevropeys'kykh standartiv: Zakon Ukrayiny vid 08.04.2014 r. № 1186-V. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 2014. № 2. St. 869.

[2] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. 34 s.

[3] Pro stan doderzhannya zakoniv v organakh i ustanovakh vykonannya pokaran' v 2017 rotsi pry vykonanni sudovykh rishen u kryminal'nykh spravakh, a takozh pry zastosuvanni inshykh zakhodiv prymusovogo kharakteru, pov'yazanykh z obmezhennyam osobystoyi svobody gromadyan: materialy kolegiyi General'noyi prokuratury. Kyyiv: Gen. prokuratura, 2017. 89 s.

[4] Pro stan doderzhannya zakoniv v organakh i ustanovakh vykonannya pokaran' v 2018 rotsi pry vykonanni sudovykh rishen' u kryminal'nykh spravakh, a takozh pry zastosuvanni inshykh zakhodiv prymusovogo kharakteru, pov'yazanykh z obmezhennyam osobystoyi svobody gromadyan: materialy kolegiyi General'noyi prokuratury. Kyyiv: Gen. prokuratura, 2018. 76 s.

The structure of each individual suppressive measure, analyzed in this scientific development, remained unchangeable.

On the whole, summing up the indicated issue of the scientific research, it is worthwhile stating that three periods of informational support can be distinguished in SCES personnel activity, connected with applying physical force, special means and a straitjacket to imprisoned convicts in PEI during the years 1991–2018, namely:

1) from 1991 till 2005, when the data on state, structure and other criminologically significant information on the indicated directions of PEI personnel activity was published in closed informational sources, which were inaccessible to some subjects, including convicts, community, etc., who didn't have special admittance to its possession, usage, distribution, etc.

At the same time, additional data analysis characterizing these processes indirectly (about crime rate, disciplinary offences, unofficial PEI personnel contacts, etc.) enabled to make a conclusion, that in the period under review such practice existed and it was of repressive and forceful character;

2) from 2006 till 2016, when information on the indicated issues was published in special bulletins of SCES of Ukraine and enabled to determine their essential features and tendencies[1];

[1] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. 34 s.

3) from 2017 till present, when such information again became inaccessible owing to cancelling publication of the bulletins of Ministry of Justice of Ukraine and its absence on official site of SCES Administration.

Such approach certainly doesn't only contradict the principles of criminal executive legislation, punishment execution and serving a sentence enshrined in art. 5 of CEC of Ukraine, but the principles of SCES personnel criminal executive activity, determined in art. 2 of Law of Ukraine 'On State criminal executive service of Ukraine'[1].

In its turn, main indicators analysis concerning suppressive measures application to imprisoned convicts in 1991–2018 enabled to define the following characteristic features of PEI personnel activity:

1. In spite of making a number of reforms in the sphere of punishment execution, the content of the process, connected with suppressing illegal behavior of certain people in the places of imprisonment, didn't change – it is based on repressive and forceful, not verbal preventive and persuasive methods, which determines every year such a state, structure and other typical features of applying suppressive measures, and didn't humanize (civilize) relations between PEI personnel and convicts either.

It resulted in unchangeable penitentiary criminality situation, the level of convicts' disciplinary offences and influence of the so called background pheno-

[1] Pro Derzhavnu kryminal'no-vykonavchu sluzhbu Ukrayiny: Zakon Ukrayiny vid 23 chervnya 2005 r. *Ofitsiynyy visnyk Ukrayiny*. 2005. № 30. S. 4–10.

mena, like using alcohol, drugs, etc. and establishing illegal relations on these issues with PEI personnel on these processes.

In its turn, the latter (background phenomena) produce either criminality and convicts' disciplinary offences, or become one of the conditions contributing to committing offences by these people, which is a legal reason for applying suppressive measures, fixed by law, to them.

2. The main legal and actual reason for performing forceful actions by PEI personnel, on the whole, and given each individual suppressive measure (physical force, special means and a straitjacket) was imprisoned convicts' physical resistance and riot manifestation, which directly reflects their character, formed at this time between these two subjects of criminal executive legal relations, and also confirms unbalanced approach of the people, who took decisions on applying suppressive measures and their inadequate situation assessment, preceding such actions[1].

3. Every year there were cases within the system of SCES of Ukraine, when in some PEI (regions, areas, etc.) suppressive measures were not applied to convicts, and so, it can become the very perspective and preventive PEI personnel activity direction, on the basis of which a new state policy in the sphere of punishment execution can be formed.

[1] Kolb I. O. Pravove regulyuvannya osoblyvykh umov zastosuvannya do zasudzhenykh fizychnoyi syly, spetsial'nykh zasobiv i zbroyi. *Tekhnologiyi profesiynoyi diyal'nosti: teoriya i praktyka: materialy Mizhnar. nauk.-prakt. konf. (m. Chernigiv, 2 serp. 2016 r.).* Chernigiv: Akad. derzh. penitentsiarnoyi sluzhby, 2016. S. 87–89.

On the other hand, such practice proves the potential within the system of SCES of Ukraine, which will enable to bring the process of punishment execution and serving a sentence closer to the best world standards, all state programs of Ukraine are focused on.

4. Lack of appropriate and efficient control of PEI process, and low results of the corresponding bodied in this context (public prosecutor's office, Ombudsman of the Verkhovna Rada of Ukraine, higher structures of SCES of Ukraine, etc.) is one of the conditions promoting the present state and negative tendencies of activity development concerning suppressive measures application to imprisoned convicts.

Of course, without abolishing, neutralizing, eliminating the indicated determinant, it is impossible to change conceptually the activity content of applying suppressive measures to imprisoned convicts.

3.2. Peculiarities of applying physical force, special means and weapon by the personnel of specialized subdivisions of SCES of Ukraine

As the practice, concerning application of physical force, special means, a straitjacket and weapon to imprisoned convicts, affirms, one of the problems, causing numerous complaints of convicts, their close relatives, community and international organizations, is involving special subdivisions of SCES of Ukraine in the cases determined in law, which are the so called militarized formations, and, according to Law of Ukraine 'On State criminal executive service of

Ukraine' (art. 6, 12)[1], act in accordance with the Provision approved by the central body of executive power, realizing state policy in the sphere of punishment execution[2].

Particularly, p. 162 of the report of European Committee on preventing tortures informed the Government of Ukraine about the results of visiting PEI on February 8–24, 1998, saying that Kharkiv IIW personnel should be placed on one year probation, then study in Dnipropetrovsk special school of MIA of Ukraine taking the course of studying MIA instructions and directions on battle training (suppressive measures, using weapon, etc.), because presently it treats convicts and prisoners with hostility[3].

In its turn, according to analogical visit on July 15–23, 1999, in p. 25 of the report to the Government of Ukraine the same Committee obliged SPEDU to investigate the methods, applied by specialized detachments of MIA of Ukraine, when conducting special operations in PEI[4].

Again, the delegation of European Committee on preventing tortures paid attention to this problem after visiting PEI of Ukraine on September 10–26,

[1] Pro Derzhavnu kryminal'no-vykonavchu sluzhbu Ukrayiny: Zakon Ukrayiny vid 23 chervnya 2005 r. *Ofitsiynyy visnyk Ukrayiny*. 2005. № 30. S. 4–10.

[2] Polozhennya pro terytorial'ne (mizhregional'ne) voyenizovane formuvannya Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny: zatv. nakazom Ministerstva yustytsiyi Ukrayiny vid 06.02.2017 № 292/5. *Ofitsiynyy visnyk Ukrayiny*. 2017. № 15. St. 458.

[3] Preduprezhdeniye pytok v Ukrainye. 2-ye izd. Donetsk: Donetsk. Memorial, 2003. S. 53.

[4] Ibid, p. 111.

2000, stating the fact in p. 62 of its report to the Government of Ukraine about illegal actions of regime and guard towards convicts in Vinnytsia prison № 176[1].

Analogical facts were indicated in p. 63 of Committee report after visiting PEI of Ukraine from November, 24 to December, 6, 2003[2].

Community representatives didn't bypass the indicated problems either.

Thus, in p. 74 of the report 'On observing convicts' rights in Ukraine in 2005' 'Donetsk Memorial', the public human rights organization, pointed out at content imperfection of art. 106 of CEC of Ukraine, namely: it doesn't prescribe the opportunity to control applying suppressive measures to convicts by civil structures and the community in the situations, when human rights violation is likely to increase[3].

Besides, Ombudsman of the Verkhovna Rada of Ukraine drew attention more than once to the problem of using specialized subdivisions of SPEDU for ensuring law and order, indicating that such practice should be considered torture.

Involving these militarized formations in the so called working off in PEI and conducting common searches, cruel methods humiliating human dignity are introduced, including mass battery of people.

Such negative phenomena were detected in 2005 by Ombudsman in correctional colonies of Vinnytsia,

[1] Preduprezhdeniye pytok v Ukrainye. 2-ye izd. Donetsk: Donetsk. Memorial, 2003. S. 156.

[2] Ibid, p. 226.

[3] Dotrymannya prav uv'yaznenykh v Ukrayini u 2005 rotsi: dopovid'. *Aspekt: inform. byul.* Donets'k: Donets'k. Memorial, 2005. № 2 (15). S. 17.

Zaporizhzhia and Khmelnytskyi regions (p. 99 of 'Donetsk Memorial' report)[1].

This public organization report told about similar facts in 2007[2] and 2008[3].

In particular, p. 113 of 2008 report stated that Kharkiv human rights group received the information of March 18, 2008 that specialized forces in masks and full combat gear arrived at PEI № 55 of Zaporizhzhia region and beat the convicts in pre-trial detention centre and CTR, and also convicts sentenced to life imprisonment[4].

According to the information, convicts were beaten with feet, hands, rubber clubs, convicts were put on the so called 'stretcher' (the legs were taken away on the sides as much as possible on the width of shoulders), and somebody's head was pressed into the toilet bowl.

Besides, after beating by specialized forces some convicts were poured with water to regain consciousness[5].

As the given facts needed inspection, the indicated organization sent the information to Ombudsman of the Verkhovna Rada of Ukraine[6].

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[1] Dotrymannya prav uv'yaznenykh v Ukrayini u 2005 rotsi: dopovid'. *Aspekt: inform. byul.* Donets'k: Donets'k. Memorial, 2005. № 2 (15). S. 17.

[2] Kryminal'ni pokarannya v Ukrayini: dopovid'. Donets'k: Donets'k. Memorial, 2007. S. 33.

[3] Dotrymannya prav uv'yaznenykh v Ukrayini u 2008 rotsi: dopovid'. Donets'k: Donets'k. Memorial, 2009. S. 22–26.

[4] Ibid, p. 26.

[5] Ibid.

[6] Ibid.

This research results showed, that scientists also pay attention to the necessity of solving the mentioned problem and to improving legal principles of applying physical force, special means, a straitjacket and weapon to imprisoned convicts[1].

Thus, I. S. Yakovets pointed out that the activity of rapid response teams is not normatively enshrined and covered in open normative legal acts, as a result, it leads to groundless and illegitimate applying force and special means[2].

For the sake of justice it is worthwhile mentioning that SCES of Ukraine informed in the corresponding sources about the activity of territorial (interregional) militarized formations[3].

According to these data, in 2016, particularly, the actual personnel number of these subunits was 156 people, and staffing one – 196, that is, there were 40 vacancies, namely: Donetsk subunit – 7 vacancies; Dnipropetrovsk – 1; Zhytomyr – 7; Kyiv – 15; Kharkiv – 7; Odesa – 3[4].

As archival materials study showed, in 2016 the facts of bodily injuries of the indicated militarized formation personnel, inflicted by convicts or prisoners, when performing official duties were not registered.

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[1] Problemy zabezpechennya prav zasudzhenykh u kryminal'no-vykonavchiy systemi Ukrayiny/za zag. red. Ye. Yu. Zakharova. Kharkiv: Prava lyudyny, 2009. S. 102–108.

[2] Ibid, p. 106.

[3] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. 34 s.

[4] Ibid, p. 31.

Apart from this, the analysis conducted affirmed, that during 2016 626 educational methodical trainings with these subunits personnel, aiming at increasing the level of battle training were conducted, including:

a) with personnel of territorial (interregional) militarized formations – 366;

b) with rapid response teams of PEI and IIW – 141;

c) with subdivisions of other ministries and departments – 35.

Besides, during above mentioned trainings motor transport and armoured vehicles (135 times) and explosives (50 times) were used[1].

In the course of the given research it was found that practical training were conducted according to different themes, namely: 1) releasing hostages – 173 times; 2) ceasing mass riots – 157 times; 3) convicts' escape – 70 times; 4) other extraordinary events – 414 times.

Involving militarized formation personnel in 2016 in taking special measures in PEI 8 inspections and searches were conducted: of the territory of colony residential and production areas; things of convicts and people in custody, other people and their things, territorial means situated on object territory of the system of SCES of Ukraine (4 general and 3 selective measures)[2].

[1] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 31.

[2] Ibid, p. 32.

The personnel of territorial (inter-territorial) militarized formations confiscated: a) 110 g of drugs; b) 9 litres of alcoholic drinks; c) 64 pieces of stabbing and cutting articles and 504 units of other forbidden things[1].

For comparison: in 2016 PEI personnel confiscated from imprisoned convicts the following: 1) 164 g of drugs; 2) 55 litres of alcoholic drinks; 3) 1 thousand 289 units of stabbing and cutting articles; 4) 4 thousand 42 mobile phones; etc.[2]

The given research results also showed that, involving militarized formations personnel in PEI measures, special means and physical force was once applied to convicts and people in custody[3].

In 2016 militarized formation personnel was involved twice in searching convicts escaped from custody[4].

So, the activity of territorial (inter-territorial) militarized formations of SCES of Ukraine is effective.

Along with this, the question of legitimacy and legal basis of involving these subunits in ensuring law and order in PEI remains open.

But art. 12 of Law of Ukraine 'On State criminal executive service of Ukraine' specifies that militarized formations are subdivisions, which, according to law, operate within punishment execution bodies and institutions, investigative isolation wards, are

[1] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 32.

[2] Ibid, p. 17.

[3] Ibid, p, 32.

[4] Ibid.

designed to protect them, prevent and cease the actions disorganizing correctional institutions activity.

Proceeding from this, it should be admitted that militarized formations are called for fulfilling the following functions in PEI:

1. Protection.

Subunits personnel in such a status have the right to apply suppressive measures, determined in art. 106 of CEC of Ukraine, to imprisoned convicts.

2. Prevention of actions, disorganizing correctional institutions work.

According to requirements of art. 392 of CC of Ukraine, the actions disorganizing punishment execution institutions work (not correctional institutions, which are absent in Ukraine according to art. 11 of CEC of Ukraine) imply terrorizing convicts in PEI or attack on administration, or forming an organized group for that purpose or active participation in such a group, by people serving custodial sentence or sentence of liberty restraint[1].

In this connection rather logical question arises: how can militarized formation personnel prevent this crime, if it doesn't belong to OSA subjects, the list of which is determined in art. 5 of Law of Ukraine 'On operation and search activity'.

Most likely, in this case it is a question of preventing actions which disorganize PEI work, preparing for or committing such a crime, that is, of socially dangerous and punishable action, which has already begun, and can be ceased by militarized formation

[1] Naukovo-praktychnyy komentar kryminal'nogo kodeksu Ukrayiny. 2-ge vyd. pererobl. i dopov./za zag. red. O. M. Dzhuzhy, A. V. Savchenka, V. V. Chernyeya. Kyyiv: Yurinkom Inter, 2018. S. 382–383.

personnel only when applying suppressive measures to imprisoned convicts determined in law.

Furthermore, these subunits have the right to prevent only the given crime.

Then, for what reason are militarized formations involved in ensuring the regime of special conditions in colonies, legal principles of which are determined in art. 105 of CEC of Ukraine?

So, given the analysis conducted, it should be stated that the content of art. 18 in Law of Ukraine 'On State criminal executive service of Ukraine' is somewhat unsettled and needs clarification.

3. Cessation of actions disorganizing correctional institutions work.

This is the case when militarized formations personnel have the right to apply suppressive measures to imprisoned convicts.

But here also a question arises: have these people the right to cease other illegal actions determined in p. 1 art. 106 of CEC of Ukraine, as a reason for applying physical force, special means, a straitjacket and weapon to offenders in PEI, besides, neither p. 1 nor p. 6 of this article of the given Law says anything about militarized subunits personnel.

So, art. 18 of Law of Ukraine 'On State criminal executive service of Ukraine' defines exceptional list of powers, the personnel of militarized formations of SCES of Ukraine have the right to realize in practice.

For these reasons scientists' conclusions can be admitted substantiated[1], as well as the complaints of

[1] Avtukhov K. A., Yakovets' I. S. Mekhanizm optymal'nogo vykonannya pokarannya u vydi pozbavlennya voli: nauk.-prakt. posib./za zag. red. A. Kh. Stepanyuka. Kharkiv: Prava lyudyny, 2013. S. 225.

convicts and other people, concerning illegal expansion of personnel rights of the corresponding militarized formations to ensure law and order in PEI, to be involved in searches, inspections and other regime measures in criminal executive activity.

The activity of these military formations in PEI seems especially absurd considering the requirements of Law of Ukraine of March 20, 2003 'On fight against terrorism', in art. 4 of which SPS is referred to the subject of counteracting the mentioned crime[1].

For this purpose, the indicated central body of executive power in the sphere of punishment execution has the right to establish special formations or to be included into inter-branch formations[2]. At the same time, art. 18 of Law of Ukraine 'On State criminal executive service of Ukraine' doesn't say anything apropos of this.

As in this connection UNO Committee against tortures made a conclusion on the results of the five period report of the Government of Ukraine, the Committee is worried about the known facts of using anti-terrorist subunit in masks inside punishment execution institutions, which leads to frightening convicts and badly treating them.

Proceeding from this, the Committee recommended the Government of Ukraine to ensure anti-terro-

[1] Kolb I. O., Novosad Yu. O. Prokuratura v systemi sub'yektiv zapobigannya teroryzmu v Ukrayini. *Protydiya terorystychniy diyal'nosti: mizhnarodnyy dosvid i yogo aktual'nist' dlya Ukrayiny: materialy Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 30 veres. 2016 r.).* Kyyiv: Nats. akad. prokur. Ukrayiny, 2016. S. 164–165.

[2] Pro borot'bu z teroryzmom: Zakon Ukrayiny vid 20 bereznya 2003 r. *Ofitsiynyy visnyk Ukrayiny.* 2003. № 16. St. 697.

rism subunit not to be used inside PEI and IIW, so that it would prevent cruel treating and frightening them[1].

Taking the indicated idea and the results received in the course of this research into consideration, art. 12 of Law of Ukraine 'On State criminal executive service of Ukraine' would be worthwhile stating in the following wording:

'Militarized formations are the subdivisions of punishment execution bodies, which in the cases, determined in law, are involved in realizing criminal executive legislation tasks of fighting against terrorism and ensuring law and order on punishment execution institutions territories'.

Provisions on militarized formations of punishment execution bodies are approved by Cabinet of Ministers of Ukraine.

Such an approach to militarized formations legal status, and also to their activity content in the sphere of punishment execution will enable:

1) to bring it to the requirements of p. 14 art. 92 of the Constitution of Ukraine, according to which the activity of punishment execution bodies and institutions is determined exceptionally with the authority of law;

2) to separate these subunits from PEI system, directly executing criminal punishment, because their periodical involvement in this process cannot be considered punishment execution on the whole.

[1] Avtukhov K. A., Yakovets' I. S. Mekhanizm optymal'nogo vykonannya pokarannya u vydi pozbavlennya voli: nauk.-prakt. posib./za zag. red. A. Kh. Stepanyuka. Kharkiv: Prava lyudyny, 2013. S. 225.

As regards this K. A. Avtukhov and A. Kh. Stepaniuk made a conclusion, that punishment execution process form is a set of homogeneous procedural requirements, advanced to PEI administration and aimed at achieving a result in the form of realized punishment. They are convinced, that arranging PEI administration activity into the appropriate procedural form will characterize it as a special legal construction realizing the principles of the most reasonable punishment execution procedure[1].

At the same time, procedural form is one of the legal guarantees of ensuring convicts' rights and freedoms, it promotes criminal executive activity efficiency, because it contains execution process organization rules – serving a sentence, PEI administration realizing the authority vested in it, applying state coercion to criminal executive (law-enforcement) activity[2].

Considering these theoretical postulates, the militarized unit personnel of SCES of Ukraine can hardly be attributed to PEI administration.

As p. 22 of Plenum resolution of the Supreme Court of Ukraine of 26.03.1993, № 2 'On court practice in cases of crimes concerning regime violation of serving a sentence in the places of confinement' indicated, that institution officials who have the right, with the authority of law, to discipline convicts,

[1] Stepanyuk A. Kh., Avtukhov K. A. Protsesual'ni aspekty doktryny kryminal'no-vykonavchogo prava. *Pravova doktryna Ukrayiny: u 5 t.* Kharkiv: Pravo. 2013. T. 5: Kryminal'no-pravovi nauky v Ukrayini: stan, problemy ta shlyakhy rozvytku/za zag. red. V. Ya. Tatsiya, V. I. Borysova. S. 793.

[2] Ibid, p. 794.

belong to punishment execution institution administration representatives[1].

3) to attribute militarized formations to one of the structural subdivisions of executive power central body realizing state policy in the sphere of punishment execution, and to its territorial administration bodies.

Such a conclusion follows from the content of p. 1 art. 11 of CEC of Ukraine, which defines the list of punishment execution bodies, and also from scientific searches results, one of which is the statement, saying that procedural forms of criminal executive activity are caused by the necessity of ensuring punishment execution order, of criminal executive activity algorithm as a system of PEI administration consecutive legal actions, according to strictly determined criminal executive law norms, to the rules of applying punishment execution techniques and methods, legal ways and material means, which promotes stability, firmness and stereotypy for these PEI to solve problems.

Procedural form of criminal executive activity can be considered as a peculiar programme ensuring punishment execution order, directing PEI administration actions towards realizing punishment, restraining convicts' rights and liberties[2].

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[1] Pro sudovu praktyku v spravakh pro zlochyny pov'yazani z porushennyamy rezhymu vidbuvannya pokarannya v mistsyakh pozbavlennya voli: postanova Plenumu Verkhovnogo Sudu Ukrayiny vid 26.02.1993 r. № 2. *Postanovy Plenumu Verkhovnogo Sudu Ukrayiny u kryminal'nykh spravakh*/uporyad. V. V. Rozhnova, A. S. Syzonenko, L. D. Udalova. Kyyiv: Palyvoda A. V., 2011. S. 114.

[2] Stepanyuk A. Kh., Avtukhov K. A. Protsesual'ni aspekty doktryny kryminal'no-vykonavchogo prava. *Pravova doktryna Ukrayiny: u 5 t.* Kharkiv: Pravo. 2013. T. 5: Kryminal'no-pravovi nauky v Ukrayini: stan, problemy ta shlyakhy rozvytku/za zag. red. V. Ya. Tatsiya, V. I. Borysova. S. 795.

So, for those reasons militarized formations personnel cannot be attributed to PEI administration and criminal execution legal relations subject, but only to their participants (in this case – as representatives of higher administration bodies in the sphere of punishment execution)[1].

4) to bring militarized formation involvement to the real practice of ensuring law and order in PEI, particularly, in the situation of special conditions regime in colonies (art. 105 of CEC) and the practice of applying suppressive measures to imprisoned convicts (art. 106); conducting searches, inspections and other regime measures (art. 102 of CEC) and others.

In this connection I. S. Yakovets in due time remarked that nowadays SPEDU continues using illegal levers of influence on convicts' behavior, formed by means of correcting the present legislation with departmental acts, mechanisms of frightening them and unpunished applying physical force[2].

As regards this, such a question is also rhetoric: how will colony personnel look into convicts' eyes after introducing militarized formations to PEI, establish partnership (within the law) and, on the whole, influence them efficiently by correction and re-socialization means, determined in law, (social educational work, general and professional training, public influence, etc. (art. 6 of CEC))?

[1] Pravovi zasady diyal'nosti prokuratury Ukrayiny u sferi vykonannya pokaran': navch. posib./za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy, d-ra yuryd. nauk, prof. O. G. Kolba. Kyyiv: Kondor, 2016. S. 15–32.

[2] Problemy zabezpechennya prav zasudzhenykh u kryminal'no-vykonavchiy systemi Ukrayiny/za zag. red. Ye. Yu. Zakharova. Kharkiv: Prava lyudyny, 2009. S. 107.

Apropos of this, J. J. Russo made a conclusion, that there is only one morality lesson useful for childhood and, to the greatest extent, important for any age – it is to do no harm to anybody[1].

The material, collected in 1996 concerning the results of surveyed convicts as for PEI personnel actions estimation, is both interesting and instructive in this context (the so called 'view from behind the fence')[2].

In convicts' opinion, in short, colony personnel can be characterized as: young, inexperienced, and hotheaded. Maybe, in due course they will become real specialists.

One of convicts gave such a vivid example. A young inspector is walking along the route and see – a convict is standing unbuttoned. What would an experienced official do?

Right, he would come up and politely and persistently offered to button up. But the young inspector said, 'Hey, button yourself up!' And the convict is in blue mood: 'Boss, go to...'

Again, the question: what would the experienced inspector do?

He would immediately offer to come up to institution commander assistant on duty and draw up a corresponding act. Without any shout or noise. But the young man's answer is: 'Go to...by yourself...'

And after such case should convicts treat him with respect? He can neither come up politely nor make a remark... You must understand, a convict is a

[1] Materinskiy dolg. *K novoy zhyzni.* 1990. № 1. S. 12.

[2] Soldatenko G. Poglyad z-za parkanu. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1996. № 1. S. 110–114.

convict, that's why he can afford to behave in such a way, but a person who is an authority representative, must never do this[1].

Therefore, as D. O. Nikolayenko thinks, a humanistic direction of reforming punishment execution system provides for thorough human factor activation, aimed at full type interaction between judgment execution subject and its object, based on subjective genetic principle of interaction between a person and surrounding reality[2].

It provides for such conditions of realizing judgments on custody, when an object turns into the subject of spiritual transformation, an active copartner of re-socializing process.

Undoubtedly, penitentiary official personality thereat is a leading link, and communication is a leading activity[3].

Given that, it is so important to systematize legal norms concerning involvement of militarized units in ensuring law and order in PEI, especially in the situations of introducing special conditions regime in colonies, as a consequence of anti-humane relations with convicts and complete PEI helplessness in solving any complications, conflicts, etc. which occur thereat.

I. C. Yakovets made a conclusion to the point, special purpose units continue functioning, but there

[1] Soldatenko G. Poglyad z-za parkanu. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1996. № 1. S. 111.

[2] Nikolenko D. O. Peredbachennya v strukturi profesiynogo spilkuvannya spivrobitnykiv UVP iz zasudzhenymy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1998. № 3. S. 53.

[3] Ibid.

is not any legal regulation of their formation and functioning, and afterwards – no control of their activity[1].

In her opinion, the most cynical is the fact, when such units are asked 'to help' in the cases of 'taming' convicts who express their dissatisfaction of keeping conditions or try to stand on their rights[2].

I. C. Yakovets can hardly be agreed with, that until the proper regulation of militarized formations as anti-terrorist unit within SPEDU system is introduced, according to the tasks imposed on it by the current legislation, such formation is out of the question[3].

Such a position is based on several circumstances, namely:

1. Annual reducing the number of convicts in the places of confinement (from more than 200 thousand in 1991[4] to less than 50 thousand in 2018[5]) led to concentration of most criminogenic part of criminal surrounding people in correctional and educational colonies, who constantly counteract the established

[1] Problemy zabezpechennya prav zasudzhenykh u kryminal'no-vykonavchiy systemi Ukrayiny/za zag. red. Ye. Yu. Zakharova. Kharkiv: Prava lyudyny, 2009. S. 104.

[2] Ibid.

[3] Ibid.

[4] Nekotoryye pokazateli deyatel'nosti uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy v 1991 godu: inform. byul. Kiyev: Glavnoye upravleniye po ispolneniyu nakazaniy MVD Ukrainy, 1992. S. 1.

[5] Zagal'na kharakterystyka Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2019 rotsi. URL: https://www.kvs.gov.ua/peniten/control/main/uk/publish/article/628075:jsessionid=6204DE81B237C408D5D7D16EBF5BE7

order of punishment execution and sentence service, in order to decrease regime requirements as for these problems, and that's why commit the actions, which are the reason for applying suppressive measures to them, according to art. 106 of CEC of Ukraine.

Thus, on 01.01.2019 imprisoned convict structure looked like this:

a) 1 thousand 541 – people serving a sentence to life imprisonment;

b) 5 thousand 514 – sentenced to more than 10 years;

c) 6 thousand 967 – convicted of intentional murder;

d) 2 thousand 939 – convicted of infliction of intentional severe bodily injury;

e) 7719 – convicted of robbery, plunder and racket;

f) 12 thousand 140 – convicted of theft;

g) 693 - convicted of rape;

h) 14 – convicted of crimes against national security[1].

Considering this information in the context of dynamics and tendencies in the punishment execution sphere since adoption Law of Ukraine 'On State criminal executive service of Ukraine' in 2005, that is, since practical establishing the legal status of punishment execution institutions and bodies personnel, including militarized formations units, in 2005–2018 the indicated data were as follows:

[1] Zagal'na kharakterystyka Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2019 rotsi. URL: https://www.kvs.gov.ua/peniten/control/main/uk/publish/article/628075:jsessionid=6204DE81B237C408D5D7D16EBF5BE7

1) 01.01.2005 – 188 thousand 465 convicts or 1,68 % less than in 2004;

2) 01.01.2012 – 154 thousand 029 convicts or 0,001 % more than in 2005;

3) 01.01.2013 – 147 thousand 112 (-4,49 %);

4) 01.01.2014 – 126 thousand 937 (-13,71 %);

5) 01.01.2015 – 73 thousand 431 (-42,15 %);

6) 01.01.2016 – 69 thousand 997 (-4,68 %);

7) 01.01.2017 – 60 thousand 339 (-13,17 %);

8) 01.01.2018 – 57 thousand 100 (-5,46 %);

9) 01.07.2018 – 56 thousand 638 (-0,82 %);

10) 01.01.2019 – 55 thousand 078 (-2,44 %).

It is worthwhile mentioning that in 2016 there were almost 4 thousand convicts inclined to different offences in PEI prophylactic registry[1], and crime rate was 4,19 cases per 1 thousand people (4,06 – in 2015), which remained unchanged as compared to 2005[2].

2. In penitentiary crime structure (repeated crimes committed by imprisoned convicts, during sentence service) such criminal offences, as malicious disobedience,[3] based on the actions which are the reason for applying suppressive measures to convicts, make up almost a half (p. 1 art. 106 of CEC).

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[1] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 16.

[2] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2007 rotsi: inform. byul. Kyyiv: DDU PVP, 2008. Kn. 1. S. 1.

[3] Godlevs'ka-Konovalova A. V. Zapobigannya zlisniy nepokori vymogam administratsiyi ustanovy vykonannya pokaran': dys. … kand. yuryd. nauk: 12.00.08. Zaporizhzhya: Klasych. pryvat. un-t, 2019. S. 2.

3. Imprisoned convicts always have forbidden articles (alcoholic drinks, drugs, stabbing and cutting things, etc.) used for committing crimes and offences, and encouraging them to disobey PEI administration legal requirements.

4. There is an objective phenomenon in vital activity of imprisoned convicts, called a criminal subculture by scientists, that is one of the determinants causing the very offences, which become the reason of applying suppressive measures to these people[1].

As K. V. Muraviov remarked on this occasion, convicts don't react to administration attempts to point them to the right direction not because they don't want it, but their negative stereotypes are stable enough.

The real reason is much deeper, it has its roots in 'the second life' of the places of confinement, formed for decades, where their own ideals, mechanisms, customs, the concept of good and evil exist.

The reason of the phenomenon consists in the fact that this life is closer and more significant to them, considering security, than what PEI administration suggests[2].

5. And, finally, militarized formations activity nowadays is based on the legal reality within which they function (art. 18 of Law of Ukraine 'On State criminal executive service of Ukraine' and art. 4 of

[1] Aniskimov V. M. Antiobshchestvennyye traditsii i obychai "prestupnogo mira" sredi osuzhdyonnykh v mestakh lisheniya svobody: dis. … kand. yurid. nauk: 12.00.08. Moskva: Akad. MVD SSSR, 1991. 196 s.

[2] Muravyov K. V. "Areshtants'ka spil'nota", yak suspil'no-psykhologichnyy fenomen u mistsyakh pozbavlennya voli. *Problemy penitentsiarnoyi teoriyi i praktyky.* 2000. № 5. S. 156.

Law of Ukraine 'On fight against terrorism') and according to which they are designed to ensure safe-keeping of convicts in PEI, and also to prevent and cease the actions disorganizing correctional colony work, and terrorist acts.

The indicated conclusions fully concern other analogical units of the system of SPEDU of Ukraine, which are involved in enforcing law and order in PEI.

But in I. S. Yakovets' opinion, the following fact is of even greater concern, when the so called 'rapid response teams', formed in 2000 by a secret departmental order of SPEDU, are used for performing analogical illegal tasks[1].

Further on these militarized subdivisions were mentioned as a separate group of special purpose units, despite the fact, as I. S. Yakovets found, that they are the very militarized formations[2].

She came to such a conclusion, analyzing the corresponding normative legal SPEDU act, where p. 5 says that the indicated formations leaders are obliged to make suggestions to punishment execution institutions leaders, concerning operational situation improvement and special purpose teams training[3].

It gives her reasons to believe that rapid response teams and special purpose units are different formations, but, however, are involved in performing the same functions – disobedient convict punishment[4].

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[1] Problemy zabezpechennya prav zasudzhenykh u kryminal'no-vykonavchiy systemi Ukrayiny/za zag. red. Ye. Yu. Zakharova. Kharkiv: Prava lyudyny, 2009. S. 105.

[2] Ibid.

[3] Ibid.

[4] Ibid.

I. S. Yakovets is convinced, that because of these formations identification, after cancelling secret order state registry of special purpose units, such important formations seem to be also eliminated.

But it is not entirely true. Attention is not usually sharpened to rapid response team, but SPEDU actually confirms their actions (see press release comments on official site, saying that such formations were not introduced)[1].

As the given research results showed, these original 'flying Dutch' really exist and are involved in taking different measures in PEI (from ensuring special conditions regime in colonies (art. 105 of CEC) to conducting searches, inspections and other regime actions[2]) (nowadays these units in official reports are called 'territorial (interregional) militarized formations of SCES of Ukraine' and 'PEI and IIW rapid response team'[3].

The direction of their operational official activity is confirmed by the fact that SCES of Ukraine constantly draw attention of the Department of resource provision to insufficient equipping militarized formations with up-to-date facilities, weapons, special means[4], that is, according to I. S. Yakovets, not only provi-

[1] Problemy zabezpechennya prav zasudzhenykh u kryminal'no-vykonavchiy systemi Ukrayiny/za zag. red. Ye. Yu. Zakharova. Kharkiv: Prava lyudyny, 2009. S. 105.

[2] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 31–32.

[3] Ibid, p. 31.

[4] Ibid, p. 32.

ding these formations with protection means, but special attack means is spoken about[1].

For example, only in 2007 active attack means ('Teren', rubber clubs and handcuffs) made up 100 % in the structure of militarized formations resource provision of SCES of Ukraine, but special protection means of these units personnel (protective vests, shock-proof shields, sets for arms and legs protection) – within 21,3 % – 79 %[2].

So, the analysis conducted gives all grounds to claim that involving militarized formations of SCES of Ukraine in the activity of applying suppressive measures to convicts, legal principles of which have not enough conditions and guarantees at law level, particularly, criminal executive legislation of Ukraine, is one of the conditions influencing negatively the state of applying physical force, special means, a straitjacket and weapon to imprisoned convicts.

Besides, without solving this problem it is rather difficult to establish business-like relations with convicts in terms of influencing them with correction and re-socialization means determined in art. 6 of CEC of Ukraine, and of achieving punishment purpose enshrined in p. 2 art. 50 of CC[3].

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[1] Problemy zabezpechennya prav zasudzhenykh u kryminal'no-vykonavchiy systemi Ukrayiny/za zag. red. Ye. Yu. Zakharova. Kharkiv: Prava lyudyny, 2009. S. 105.

[2] Ibid.

[3] Kolb I. O., Savchenko A. V. Pokarannya za katuvannya u kryminal'nomu zakonodavstvi Ukrayiny. *Kryminal'na vidpovidal'nist' za katuvannya v Ukrayini ta zarubizhnykh krayinakh: navch. posib.*/za zag. red. d-ra yuryd. nauk, prof. A. V. Savchenka. Kyyiv: Vyd. dim "Kondor", 2018. S. 110–123.

Proceeding from this, together with above suggested measures elaborated in this research, p. 6 art. 106 of CEC should be supplemented with the word-combination and 'On State criminal executive service of Ukraine' and adopted in the following wording:

Applying physical force, special means and weapons is admitted also in other cases provided for by Law of Ukraine 'On National police'. 'On National guard of Ukraine' and 'On State criminal executive service of Ukraine'.

As regards this European penitentiary rules say that other law-enforcement department officials have to be involved in the work with convicts in penitentiary institutions, but only under exceptional circumstances (p. 67.1).

Furthermore, if relations with other law-enforcement departments are not regulated by national legislation, the agreement between penitentiary institution administration and such departments should be concluded (p. 67.2).

Such an agreement has to provide:

a) the conditions under which the officials of other law-enforcement departments can arrive at penitentiary institution to resolve any conflict;

b) the scope of authority such law-enforcement departments must have during their stay in penitentiary institution, and their relation with penitentiary institution commander;

c) different types of forceful actions such department officials can apply;

d) circumstances under which each type of forceful actions can be applied;

e) administration level giving the permission for any force application;

f) reports which should be made after force application[1].

Taking into consideration that such procedure are not enshrined in CEC (art. 105, 106), in Law of Ukraine 'On State criminal executive service of Ukraine' (art. 16, 19), in PEI IOR (part XXVI), the indicated EPR norms are relevant to militarized formations of SCES of Ukraine.

For this purpose, art. 105 of CEC of Ukraine 'Special conditions regime in colonies' should be supplemented with p. 4 of the following content:

'Conditions, scope of authority and action order of other law-enforcement body unit's personnel in punishment execution institutions of State criminal executive service of Ukraine are determined by Cabinet of Ministers of Ukraine'.

So, generalizing the results on the indicated issues received in the course of the given research, the following can be stated:

1. Involving the corresponding units of militarized formations of SCES of Ukraine in ensuring special conditions regime in colonies and realizing other criminal executive legislation tasks is an objective motivated necessity, determined by concentration of most socially dangerous and neglected convicts, in terms of social moral, psychological and

[1] Yevropeys'ki penitentsiarni pravyla: Rekomendatsiya № R (2006) Komitetu Ministriv Rady Yevropy vid 11 sichnya 2006 roku. Donets'k: Donets'k. Memorial, 2010. 32 s.

psychic aspects, in places of confinement, who, in their turn, live in the system of two coordinates:

a) an official one, determined in law, in the form of status and appropriate rules of vital activity under the conditions of isolation from the society (art. 107 of CEC; PEI IOR);

b) an unofficial one, in the form of influence of criminal subculture rules, behavior norms, traditions, etc. within this social surrounding[1].

It is the conflict of these formal and informal (legal, official) and illegal (unofficial) requirements that cause committing offences by imprisoned convicts, including those, which are the reasons for applying suppressive measures determined in law[2].

2. Current legislation, regulating the questions concerning militarized formations involvement in establishing law and order in places of confinement, is imperfect, and doesn't satisfy the principles of legitimacy, humanism and justice, as well as international law norms, which causes numerous complaints of convicts, community and international experts on the indicated activity type, and specifies the necessity of improving legal mechanism on the indicated problem.

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[1] Aniskimov V. M. Antiobshchestvennyye traditsii i obychai "prestupnogo mira" sredi osuzhdyonnykh v mestakh lisheniya svobody: dis. … kand. yurid. nauk: 12.00.08. Moskva: Akad. MVD SSSR, 1991. 196 s.

[2] Kolb I. O. Pro zmist osoblyvostey zastosuvannya zakhodiv bezpeky shchodo osib, zasudzhenykh do dovichnogo pozbavlennya voli. *Kryminologichna teoriya i praktyka: dosvid, problemy syogodennya ta shlyakhy yikh vyrishennya (tekst): materialy nauk.-prakt. konf. (m. Kyyiv, 25 berez. 2016 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2016. S. 87–89.

The results of anonymous survey conducted among PEI personnel and imprisoned convicts prove the urgency of this problem. Answering the question 'Is involving SCES and other law-enforcement body units in this activity justified?' SCES personnel people said: yes – 826 (41 % of 2016 surveyed respondents); no – 673 (33 %); partly – 517 (26 %). Convicts answered in such a way: yes – 13 (5 % of 2016 surveyed); no – 1634 (81 %); partly – 369 (14 %) (Supplements A, B, C, C1).

3. Introducing special conditions regime in colonies and involving additional forces and means, including the corresponding units of militarized formations of SCES of Ukraine (territorial (interterritorial) units; PEI and IIW rapid response teams, etc.) confirms that PEI administration allowed the situation, when imprisoned convicts' informal behavior rules (criminal subculture) became the priority for these people, and these institutions administration and colony personnel authority have no effective correctional re-socializing influence not only on offenders, but on all convicts in general[1].

That is, applying suppressive measures in a collective way (by PEI personnel forces and involving militarized formations) – is a 'litmus' paper, reve-

[1] Kolb I. O., Kovalenko V. V. Viktymologichni aspekty koruptsiynykh ta inshykh zlochyniv, shcho vchynyayut'sya u sferi vykonannya pokaran'. *Zmist ta spryamovanist' mizhnarodno-pravovykh aktiv, shcho stosuyut'sya zapobizhnoyi diyal'nosti u sferi vykonannya pokaran'. Koruptsiyni ta inshi zlochyny, shcho vchynyayut'sya u sferi vykonannya pokaran': kryminologichna kharakterystyka ta zapobigannya: navch. posib.*/za zag. red. d-ra yuryd. nauk, prof. O. G. Kolba. Kyyiv: Vyd. dim "Kondor", 2019. S. 221–249.

aling the conflict arising in relations between criminal executive activity subjects (colony personnel and convicts) on the one hand, and assessment of the possibilities and potential, PEI administration possesses at the moment, on the other hand, considering its ability to perform the tasks determined in criminal executive legislation and to achieve the purpose of punishment.

4. Conditions, order and reasons for applying suppressive measures determined in law (physical force, special means, a straitjacket and weapon) to imprisoned convicts have to be analogical for militarized formation personnel of SCES of Ukraine, as well as for PEI personnel on the whole.

Moreover, the permission for their collective applying to the people kept in the places of confinement must be given only by PEI commander, where the indicated measures are taken, as he is the only official responsible for punishment execution, owing to procedural peculiarities of realizing court decisions on these issues.

5. In order to avoid the activity connected with applying suppressive measures to imprisoned convicts, it is necessary to find a new approach to forming staff potential in the sphere of punishment execution, including militarized formations units, to its training and heightening qualification, namely: such programmes must be based on two components minimum:

a) PEI personnel ability to possess verbal and persuasive methods in communication with convicts of any category (aggressive ones, malicious offenders, psychopaths, etc.);

b) PEI personnel perfect knowledge of basic rights, freedoms and guarantees of a person and a citizen, which are generally recognized in the civilized world, and are a legal postulate saying that a person, his life, health, honour and dignity, inviolability and security are the highest social value, and human rights and freedoms and guarantees determine the content and direction of any democratic state.

Forming such activity psychology of PEI and militarized formations personnel of SCES of Ukraine will enable to not only prevent committing offences by convicts, which is the reason of applying suppressive measures to them, but to minimize the consequences of their application in the situations, when other measures fail to cease illegal behavior of these people.

3.3. Types of background phenomena and their process of applying physical force, special means and weapons to imprisoned convicts

As the practice of applying physical force, special means, a straitjacket an weapons to convicts in correctional and educational colonies, one of the conditions influencing this process is the so called background phenomena in the places of confinement[1],

[1] Kolb I. O., Dzhuzha O. M. Pro deyaki osoblyvosti realizatsiyi na praktytsi kryminologichnoyi kharakterystyky zlochyniv, shcho vchynyayut'sya zasudzhenymy u vydi pozbavlennya voli. *Aktual'ni pytannya reformuvannya pravovoyi systemy: zb. materialiv XIII Mizhnar. nauk.-prakt. konf. (m. Lutsk, 24–25 cherv. 2016 r.).* Luts'k: Vezha-Druk, 2016. S. 265–267.

which in science imply the processes alternative to activity legal norms, institutions and form, destabilizing social relation system and causing violation of legal instructions and of criminal legal prohibitions[1].

They include: drunkenness, drug addiction, prostitution, children's homelessness, negligence, etc.[2]

In places of imprisonment together with the indicated background phenomena (about 25 % of imprisoned convicts are chronic alcoholics or drug addicts, 20 % more – people with different pathology in psyche)[3], there are forbidden articles, substances and goods, the list of which is defined in supplements 3 and 5 of PEI internal order rules (PEI IOR) (alcoholic drinks, drugs, stabbing and cutting things, weapon, some food, etc.)[4].

As the results of archival criminal cases (proceedings) study, concerning the practice of applying suppressive measures to convicts, showed, almost

[1] Kryminologiya: pidruchnyk/V. V. Golina, B. M. Golovin, M. Yu. Valuys'ka ta in.; za zag. red. V. V. Goliny, B. M. Golovina. Kharkiv: Pravo, 2014. S. 80.

[2] Kolb I. O. Pro deyaki viktymologichni aspekty vchynennya zlochyniv personalom Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny pid chas zastosuvannya zakhodiv pryborkannya do zasudzhenykh. *Naukovyy visnyk Uzhgorods'kogo natsional'nogo universytetu.* 2019. Vyp. 54. S. 152–155.

[3] Zapobigannya pravoporushennyam u mistsyakh pozbavlennya voli: navch. posib. 2-ge vyd. dopov. i vypr./za zag. red. d-ra yuryd. nauk, prof. V. L. Ortyns'kogo ta d-ra yuryd. nauk, prof. O. G. Kolba. Luts'k: PP Ivanyuk V. P., 2010. S. 78–79.

[4] Pravyla vnutrishnyogo rozporyadku ustanov vykonannya pokaran': zatv. nakazom Ministerstva yustytsiyi Ukrayiny vid 28 serpnya 2018 roku № 2823/5. *Ofitsiynyy visnyk Ukrayiny.* 2018. № 70.

50 % of them are connected with the indicated background phenomena[1].

At the same time, for the last years (2014 – till present) this tendency is a determinant factor in the sphere of punishment execution of Ukraine[2].

So, we have a complicated problem to solve immediately, at theoretical level, including[3].

It is the indicated circumstance that specified the choice of the task in the content of the given scientific research[4].

On the whole, background phenomena in PEI can be classified into several groups:

a) a considerable number of articles an substances prohibited to keep and use by imprisoned convicts in colonies[5];

b) a considerable number of people with different deviations from psyche among convicts;

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[1] Kolb O. G. Ustanova vykonannya pokaran' yak sub'yekt zapobigannya zlochynam: avtoref. dys. … d-ra yuryd. nauk: 12.00.08. Kyyiv: Kyyiv. nats. un-t vnutr. sprav, 2007. 32 s.

[2] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. 34 s.

[3] Kolb I. O. Ponyattya zapobigannya zlochynam, shcho vchynyayut'sya u zv'yazku iz zastosuvannyam syly do zasudzhenykh v Ukrayini. *KELM.* 2018. № 2 (22). S. 80–87.

[4] Kolb I. O., Gura O. A. Viktymnist' ta yiyi rol' u mekhanizmi vchynennya zlochynu u mistsyakh pozbavlennya voli. *Viktymologichna profilaktyka okremykh vydiv zlochyniv (tekst): tezy dop. krug. stolu (m. Kyyiv, 29 kvit. 2014 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2014. S. 45–47.

[5] Kolb I. O., Kolb O. G. Pro vplyv retsydyvu zlochynu na stan vykonannya pokarannya u vydi pozbavlennya voli v Ukrayini. *Suchasna nauka penitentsiarniy praktytsi: materialy Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 24 zhovt. 2013 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2013. S. 241–246.

c) low level of colony personnel official discipline;

d) constant attempts of some people outside the colony to deliver (to carry in any way) forbidden articles and substances to convicts serving a sentence in colonies[1];

e) influence of norms, rules, traditions, etc. of criminal subculture on convicts' legal consciousness and culture[2].

As it was proved at doctrinal level, determination of any social phenomenon is a complicated, multilevel, complex problem, concerning a lot of social relations and processes, which are the subject of many social sciences[3].

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[1] Kolb I. O., Kolb O. G. Pro deyaki elementy kryminal'noyi kharakterystyky zlochyniv proty dovkillya, shcho vplyvayut' na riven' bezpechnosti zhyttyediyal'nosti osoby i suspil'stva. *Zakhyst prava vlasnosti ukrayins'kogo narodu: vitchyznyani realiyi ta zarubizhnyy dosvid dlya Ukrayiny: materialy I Shchorich. mizhnar. nauk.-prakt. konf. (m. Kyyiv, 22 veres. 2016 r.).* Kyyiv: Nats. akad. prokuratury Ukrayiny, 2016. S. 146–147.

[2] Kolb I. O., Gumin O. M. Zastosuvannya zakhodiv pryborkannya do zasudzhenykh: viktymologichni aspekty. *Naukovi pidkhody do pidgotovky fakhivtsiv-yurystiv: vyklyky ta perspektyvy: materialy nauk.-prakt. krug. stolu (m. Luts'k, 15 lyut. 2019 r.).* Luts'k: Inform.-vyd. vid. Luts'k. NTU, 2019. S. 18–19.

Kolb I. O., Konopel's'kyy V. Ya. Pro vplyv kryminal'noyi subkultury ta efektyvnist' realizatsiyi na praktytsi pryntsypu dyferentsiatsiyi ta indyvidualizatsiyi vykonannya pokaran' v Ukrayini. *Naukovyy visnyk Instytutu kryminal'no-vykonavchoyi sluzhby: materialy krug. stolu "Penitentsiarna ideya Georgiya Radova: mynule, syogodennya, maybutnye" (m. Kyyiv, 6 lyutogo 2014 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2014. № 1 (spets. vyp.). S. 90–92.

[3] Kolb I. O., Savchenko A. V. Udoskonalennya protsedury pidgotovky materialiv ta rozglyadu pytan' nadannya zasudzhenym dozvolu na korotkochasnyy vyyizd za mezhi koloniyi. *Korotkochasni vyyizdy zasudzhenykh do pozbavlennya voli za mezhi koloniyi: navch. posib.*/za zag. red. d-ra yuryd. nauk, prof. O. G. Kolba. Kyyiv: Kondor, 2017. S. 113–135.

That's why, according to A. P. Zakaliuk's conclusion, solving determination problem, including crime determination, needs knowledge of social processes determination basis, formations and social expediency, which philosophy and psychology, as well as sociology and social psychology suggest[1].

The research theme is especially pressing for the sphere of punishment execution, considering PEI personnel participation in criminal activity one of conditions, causing crime committing, which is a reason for applying suppressive measures to imprisoned convicts, while it is obliged to prevent penitentiary crimes according to law (p. 1 art. 1, p. 2 art. 50 of CC and p. 1 art. 1 and art. 104 of CEC of Ukraine).

At the same time, one more peculiarity of this offence type determination is the fact, that within the structure of especially dangerous and punishable actions committed by PEI personnel, delivering forbidden articles, substances and means for mercenary motives as a crime instrument and means, makes up almost 30 %[2].

Thus, in 2016 (the period of active reforms in the sphere of punishment execution[3]) 45 % of PEI per-

[1] Zakalyuk A. P. Kurs suchasnoyi ukrayins'koyi kryminologiyi: teoriya i prkatyka u 3-kh kn. Kn. 1: Teoretychni zasady ta istoriya ukrayins'koyi kryminologichnoyi nauky. Kyyiv: Vyd. dim "In Yure", 2007. S. 184.

[2] Koruptsiyni ta inshi zlochyny, shcho vchynyayut'sya u sferi vykonannya pokaran': kryminologichna kharakterystyka ta zapobigannya: navch. posib./za zag. red. d-ra yuryd. nauk, prof. O. G. Kolba. Kyyiv: Vyd. dim "Kondor", 2019. S. 103–114.

[3] Pro likvidatsiyu terytorial'nykh organiv upravlinnya Derzhavnoyi penitentsiarnoyi sluzhby ta utvorennya terytorial'nykh organiv Ministerstva yustytsiyi: Postanova Kabinetu Ministriv Ukrayiny vid 18 travnya 2016 r. № 348. *Ofitsiynyy visnyk Ukrayiny*. 2016. № 44. St. 1117.

sonnel crimes registered were crimes connected with illegal circulation of drugs, their analogies and precursors (46 criminal proceedings out of 102 of all crime committed)[1].

Though crimes committed by imprisoned convicts in drug sphere made up 30 % in the general penitentiary crime structure (150 out of 458 registered in PEI)[2].

Another group of background phenomena in places of confinement in Ukraine is connected with money circulation in PEI, which is forbidden for convicts by current legislation of Ukraine (p. 7 art. 102, p. 4 art. 114 of CEC) during sentence service.

As practice proves, and the content of the Conception of reforming (development) penitentiary system of Ukraine, approved by order of Cabinet of Ministers of Ukraine of September 17, 2017, says, the indicated problem became chronic and hasn't been solved since the time of independence of Ukraine (1991) till present.

Thus, in 1991, 293 people of PEI personnel and servicemen of Internal forces of Ukraine (17,7 % more than in 1990 (249)) were held legal responsible (19 people – criminal responsible) for establishing unofficial relations with convicts, receiving and delivering them different forbidden articles (money, alcoholic drinks and drugs)[3].

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[1] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 13.

[2] Ibid, p. 2.

[3] Nekotoryye pokazateli deyatel'nosti uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy v 1991 godu: inform. byul. Kiyev: Glavnoye upravleniye po ispolneniyu nakazaniy MVD Ukrainy, 1992. S. 22.

During the same period 10 thousand 447 imprisoned convicts were made disciplinarily liable (6,8 % of total number of people kept in PEI (152 thousand)) for using alcoholic drinks, and 1 thousand 825 convicts – for participation in gambling games (1,2 % in the structure of all people serving a custodial sentence)[1].

Besides, in 1991 50 % of all murders registered in PEI (16 cases or 25 % more than in 1990) were committed by imprisoned convicts using stabbing and cutting items and 2 of these crimes – in the state of drunkenness (PEI № 27 in Donetsk and PEI № 38 in Luhansk regions)[2].

Significant changes on these issues didn't take place during other years of punishment execution institutions and bodies within the system of MIA of Ukraine (till March 12, 1999)[3].

In 1998 there were 217 cases of unofficial (out-of-status) relations between PEI personnel and imprisoned convicts, connected with delivering forbidden articles, substances and goods to the latter[4].

In the same year, 165,8 litres of alcoholic drinks was confiscated from convicts, on the whole, there

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[1] Nekotoryye pokazateli deyatel'nosti uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy v 1991 godu: inform. byul. Kiyev: Glavnoye upravleniye po ispolneniyu nakazaniy MVD Ukrainy, 1992. S. 12.

[2] Ibid, p. 1–2.

[3] Pro vyvedennya Derzhavnogo departamentu Ukrayiny z pytan' vykonannya pokaran' z pidporyadkuvannya MVS Ukrayiny: Ukaz Prezydenta Ukrayiny vid 12 bereznya 1999 r. № 248/99. *Ofitsiynyy visnyk Ukrayiny.* 1999. № 11. St. 24.

[4] Operatyvno-sluzhbova i vyrobnycho gospodars'ka diyal'nist' organiv ta ustanov vykonannya pokaran' Ukrayiny u 1998 rotsi: inform. byul. Kyyiv: DDU PVP, 1999. S. 69.

were 2 thousand 575 such cases of violating the regime of serving a custodial sentence[1].

At the same time, 41 thousand 579 hryvnias, 973,9 litres of alcoholic drinks and 520 g of drugs were confiscated at the attempt to deliver forbidden articles, substances and goods to these people[2].

For indicated drawbacks and committing 1285 official discipline violation, including 1052 by junior commanding staff, 1361 people of PEI personnel were made legally responsible, including 3 people – criminally responsible (PEI of Vinnytsia, Kherson and Cherkasy regions)

Besides, 169 people were dismissed from office for legality and discipline violation[3].

As it was established in the course of the given research, the situation on the indicated issue in the so called period of independent SPEDU functioning within the system of the central bodies of state executive power (1999–2010) didn't improve either.

The letter of 17.02.2011 № 3/2-1081/cd sent by SPS administration of Ukraine to PEI commanders obliged them (as actually in the previous years) to ensure efficient supervision of convicts' behavior, their effective isolation in order not to allow crime and offence commitment[4].

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[1] Operatyvno-sluzhbova i vyrobnycho gospodars'ka diyal'nist' organiv ta ustanov vykonannya pokaran' Ukrayiny u 1998 rotsi: inform. byul. Kyyiv: DDU PVP, 1999. S. 22.

[2] Ibid, p. 69.

[3] Ibid, p. 23.

[4] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. S. 4.

At the same time, the administration informed that in 2010 officials of PEI personnel were held legally responsible, due to the facts of extraordinary events in PEI of Ukraine (committing 404 crimes by convicts, including 119 people of prophylactic register (27 % of total number of people held criminally responsible), one convict murder and inflicting intentional bodily injury on more than 10 convicts; and for unsatisfactory organization of the regime of executing and serving a custodial sentence[1].

Among the background phenomena creating conditions for PEI convicts' committing offences (total number more that 125 thousand as of 01.01.2011), which became the reasons for applying suppressive measures to them in 2010, the following ones should be distinguished:

a) confiscating 1 thousand 339 litres of alcoholic drinks and 12 thousand 200 g of drugs at the attempts to deliver them;

b) confiscating 4 thousand 977 litres of home brewed beer and 1 thousand 364 stabbing and cutting articles directly from them;

c) a great share of confiscated forbidden things at the attempt to deliver to PEI per 1 thousand of convicts, namely: 1690 hryvnias; 12,5 litres of alcoholic drinks; 114,3 g of drugs;

d) considerable share of confiscated things directly from convicts (per 1 thousand of people): 47 litres of

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. S. 6.

home brewed beer; 6,4 g of drugs; 13 stabbing and cutting articles; 379 hryvnias, etc.[1]

Substantial qualitative improvements in this direction was not noticed after subordinating punishment execution institutions and bodies to Ministry of Justice of Ukraine (partly in December 2010[2] and fully in 2012[3]).

The following indicators on these issues were significant in 2015, when essential organizational and administrative changes began in the sphere of punishment execution.

Thus, in this period 35 litres of alcoholic drinks, 49 g of drugs, 164 hrvs, other forbidden means (6 thousand 181 attempts totally) were confiscated from imprisoned convicts on the channels of forbidden articles, substances and goods incoming[4].

At the same time, 88 thousand 531 offenders' violating requirements of the established order of serving a sentence (176 per 1 thousand people and 50,5 thousand convicts kept in criminal executive institutions)[5], a considerable part of which was con-

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. S. 17–19.

[2] Pro optymizatsiyu systemy tsentral'nykh organiv vykonavchoyi vlady: Ukaz Prezydenta Ukrayiny vid 9 grudnya 2010 roku. *Ofitsiynyy visnyk Ukrayiny*. 2010. № 94. St. 3334.

[3] Pro vnesennya zmin u normatyvno-pravovi akty, shcho stosuyut'sya sfery vykonannya pokaran' Ukrayiny: Zakon Ukrayiny vid 16.10.2012 r. № 5461-VI. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2014. № 5. St. 62.

[4] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2015 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2016. Kn. 2. 20 s.

[5] Ibid, p. 3–4.

nected with increasing number in 2015 as compared to 2014 of confiscated alcoholic drinks by 24 % and stabbing and cutting articles by 6 %[1].

It was background phenomena that caused committing crimes by convicts.

Thus, on 13.09.2015 at midnight two imprisoned convicts in Sofiya correctional colony № 55 got into PEI production area where they used alcoholic drinks and through main colony fence escaped[2].

Analogical extraordinary situations happened also in the following years (2016–2018)[3], which confirmed dialectic interconnection and interaction of the indicated background phenomena and offences in PEI, and also their influence on its determining illegal convicts' behavior, which became later a legal and actual reason for applying suppressive measures to these people.

According to the given research results, background phenomena, concerning convicts with psychic deviation, play a special role in background phenomena structure in places of confinement.

R. M. Kubrak and V. V. Len' made a conclusion apropos of this, that a lot of scientists denote increa-

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2015 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2016. Kn. 2. S. 7.

[2] Ibid, p. 36.

[3] Pro stan doderzhannya zakoniv v organakh i ustanovakh vykonannya pokaran' v 2018 rotsi pry vykonanni sudovykh rishen' u kryminal'nykh spravakh, a takozh pry zastosuvanni inshykh zakhodiv prymusovogo kharakteru, pov'yazanykh z obmezhennyam osobystoyi svobody gromadyan: materialy kolegiyi General'noyi prokuratury. Kyyiv: Gen. prokuratura, 2018. 76 s.

sing psychic diseases connecting it with negative consequences of scientific and technological progress, urbanization, mental overload, increased intensity and large amount of different information absorbed by human brain, increasing nervous overload, rapid pace of life, etc.

Analogical tendency among people with mental disorder is observed under PEI conditions[1].

According to special scientific developments, every other imprisoned convict has deviation from psyche norms.

Moreover, a part of these deviations happen in the course of serving a sentence in PEI, which later on determines committing repeated crimes by these people[2].

There are still more convicts committing severe crimes against the person, the number of which makes up 68 % in total structure[3].

Examining this aspect of imprisoned convicts, R. I. Mikheyev paid attention to the fact, that out of 10 mentally abnormal 7 people are found sane, according to forensic medical examination[4].

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[1] Kubrak R. M., Len' V. V. Kryminal'no-vykonavcha kharakterystyka zasudzhenykh z psykhichnymy vidkhylennyamy do pozbavlennya voli na pevnyy strok: monografiya. Dnipro: Vyd. Bila K. O., 2018. S. 9.

[2] Kolb O. G. Ustanova vykonannya pokaran' yak sub'yekt zapobigannya zlochynam: avtoref. dys. … d-ra yuryd. nauk: 12.00.08. Kyyiv: Kyyiv. nats. un-t vnutr. sprav, 2007. S. 11–12.

[3] Antonyan Yu. M., Golubev V. P., Kudryakov Yu. N. Psihologicheskiye osobennosti osuzhdyonnykh za krazhy lichnogo imushchestva i individual'naya rabota s nimi: ucheb. posobiye/pod red. Yu. M. Antonyana. Moskva: VNYY MVD SSSR, 1989. S. 13.

[4] Mikheyev R. Y. Problemy vmenyayemosti i nevmenyayemosti v sovetskom ugolovnom prave. Vladivostok: Izd-vo Dalnevostoch. un-ta., 1983. S. 84.

M. H. Ivanov came to the same conclusions, determining that 74–75 % of people, guilty of committing crimes, have mental disorders, which don't exclude sanity[1].

So, it should be admitted that a considerable part of convicts is concentrated in places of confinement, and due to formal features (mental state), they are dangerous for other people kept in correctional and educational colonies and IIW of Ukraine, as well as for these PEI personnel, and in such a way increase the level of victimhood (ability to became a crime victim) in the indicated institutions.

According to official data of SCES of Ukraine, the number of people with mental disorders within criminal and diminished sanity kept in PEI and IIW in 2004–2009 was 7 % of total number of imprisoned convicts, and more than 9 % – in 2010–2017[2].

As it is established in the course of special scientific researches, 4 thousand 665 imprisoned convicts with the first diagnosis of a mental illness were registered in dispensary of PEI and IIW of Ukraine in 2004, their number increased to 12 thousand 248, and in 2017 – 3 thousand 344 and 4 thousand 246 accordingly[3].

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[1] Ivanov N. G. Problemy ugolovnoy otvetstvennosti lits s psikhicheskimi anomaliyami: dis. … d-ra yurid. nauk: 12.00.08. Moskva: Akad. MVD RF, 2003. S. 253.

[2] Pidsumkovi oglyady organizatsiyi okhorony zdorov'ya v ustanovakh vykonannya pokaran' i slidchykh izolyatorakh, zgidno rozporyadzhen' DDUPVP Ukrayiny, DPtS Ukrayiny, DKVS Ukrayiny 2004–2017 rr. Kyyiv: Administratsiya DKVS M-va yustytsiyi Ukrayiny, 2018. 132 s.

[3] Kubrak R. M., Len' V. V. Kryminal'no-vykonavcha kharakterystyka zasudzhenykh z psykhichnymy vidkhylennyamy do pozbavlennya voli na pevnyy strok: monografiya. Dnipro: Vyd. Bila K. O., 2018. S. 23.

On the whole, affected by mental illness people made up 37,3 cases per 1 thousand convicts[1].

The most widespread mental disorders among these people within criminal sanity (art. 19 of CC) and diminished sanity (art. 20 of CC) are organic (including symptomatic) disorders and mental deficiency (oligophrenia)[2].

Along with this, it should be denoted that in comparison with 2004 (12 thousand 077 people were registered, 8 thousand 273 of them – with mental disorders medically established) in 2017 (3 thousand 344 and 902 people accordingly) the number of convicts with mental disorders within criminal sanity reduced (per 1 thousand – from 35,6 in 2004 to 31,01 cases in 2017)[3].

Given that the indicated category of people are kept in PEI together with other imprisoned, undoubtedly, it is necessary for SCES personnel of Ukraine to know the fundamentals of psychiatry and psychology, and possess certain experience of communication with mentally sick people within criminal (diminished sanity), and especially with the subjects who show mental disorder.

That's why, according to S. M. Kubrak's correct conclusion, PEI personnel have to take measures of neutralizing the indicated factors[4].

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[1] Kubrak R. M., Len' V. V. Kryminal'no-vykonavcha kharakterystyka zasudzhenykh z psykhichnymy vidkhylennyamy do pozbavlennya voli na pevnyy strok: monografiya. Dnipro: Vyd. Bila K. O., 2018. S. 24.

[2] Ibid, p. 25.

[3] Ibid.

[4] Kubrak S. M. Zasoby regulyuvannya povedinky osib iz psykhichnymy vidkhylennyamy, zasudzhenykh do pozbavlennya voli na pevnyy strok, v umovakh kryminal'no-vykonavchoyi ustanovy. *Suchasne ta maybutnye v tendentsiyakh pidgotovky studentiv VNZ: materialy Mizhnar. nauk.-prakt. konf. (Chernigiv, 12–14 zhovt. 2010 r.),* Chernigiv: ChYuK, 2010. S. 87.

Within the context of the given subject content and influence of the indicated background phenomenon on the state and tendencies of applying them to imprisoned convicts, the following fact deserves special attention, that only 40,2 % of these people during the survey mentioned the proper psychological support in PEI.

At the same time, 35,5 % said that it is necessary to improve this support, and 24,4 % complained about inappropriate activity on these issues[1].

Proceeding from the analysis conducted, it is possible to state that executing the criminal custodial punishment for people with mental disorders for a certain period is a complicated process, and the mentioned convict category is peculiar, problematic and specific, which should be taken into consideration, when ensuring law and order and making decisions of applying suppressive measures to the people kept in correctional and educational colonies, adequate to the present situation, by PEI personnel.

Aiming at reducing the influence of the indicated background phenomenon on the content of actual reasons of applying physical force, special means, a straitjacket and weapon, determined in law, in places of imprisonment, p. 3 art. 92 of CEC of Ukraine 'Separate keeping imprisoned convicts in correctional and educational colonies' could be supplemented with the sentence 'the convicts with mental disorders

[1] Rezul'taty sotsiologichnogo doslidzhennya "Sotsial'no-psykhologichnyy mikroklimat u seredovyshchi zasudzhenykh ta personalu ustanov vykonannya pokaran' Ukrayiny". Bila Tserkva: Bilotserk. uchylyshche prof. pidgotovky personalu DKVS Ukrayiny, 2011. S. 27.

medically established' and stated in the following wording:

'Convicts with mental disorders medically established are kept in colonies isolated from other convicts and separately'.

Statistical data here are additional argument, concerning applying suppressive measures to imprisoned convicts by PEI personnel, main legal and actual reason of which are physical resistance, riots, bodily parts injury and suicide attempts.

As practice proves, it is the indicated socially dangerous actions that are characteristic of convicts with mental aberration[1].

As for the second group of background phenomena in places of confinement causing committing offences by convicts, which is a legal reason for applying suppressive measures to them, their social and legal nature is connected with a low level of counteracting criminal subculture norms, rules and traditions in PEI.

According to the special scientific researches results, this kind of social culture (actually, counterculture) have the functions of:

1) forming social consciousness and impairing population charity;

2) transforming, keeping and passing on criminal experience to following generations;

3) blocking youth socialization process, directing it to criminal way, and involving youth in criminal activity;

[1] Kubrak R. M., Len' V. V. Kryminal'no-vykonavcha kharakterystyka zasudzhenykh z psykhichnymy vidkhylennyamy do pozbavlennya voli na pevnyy strok: monografiya. Dnipro: Vyd. Bila K. O., 2018. S. 86–113.

4) forming a positive image to some categories of criminals;

5) blaming and despising the citizens who help law-enforcement bodies to detain them;

6) forming public opinion of expediency of violating certain rules and norms and preparing different sections of population for it by appropriate methods[1].

That's why, as official materials of SCES of Ukraine state, preventing criminals' consolidation in places of imprisonment and of pretrial detention, neutralizing their negative influence on law and order state in punishment execution sphere is always a priority direction of PEI administration activity[2].

In this context the following fact should be paid attention to, that every year more than 3,3 thousand convicts are registered as people prone to malicious disobedience (583) and prone to attack and hostage seizure (232)[3].

The following information is also significant, as convicts kept in PEI doubled control area are the people who:

a) tried to support and spread 'criminal traditions', were participants or leaders on negative direction groups in places of imprisonment and committed similar actions – 13 % of total number of convicts transferred to the indicated colony areas;

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[1] Mizhnarodna politseys'ka entsyklopediya: v 10-ty t. Kyyiv: NAVS, 2014. T. 8. S. 960–961.

[2] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 10.

[3] Ibid, p. 16.

b) organized and spread gambling games among convicts, keeping and producing forbidden articles, and were prone to escape and hostage seizure – 28 % in the structure of all convicts transferred;

c) didn't fulfill PEI administration legal requirements and create conflict situations – 59 % of total number of the transferred[1].

As for age types of the indicated category of criminal subculture representatives in PEI, 54 % of these convicts were at the age of 21–30; 41,7 % – 31–50 years old; 4,3 % – more than 50 years old[2].

Considering these people in terms of criminal legal characteristics, 42,9 % of all convicts transferred from other PEI areas and colonies served a sentence before[3].

Moreover, in different periods the so called 'thieves in law' and always – other criminal group authorities and leaders were kept in PEI[4].

As it is found in the course of the given research, it is the indicated convict categories that promote, due to their behavior and influence on other people kept in colonies, committing offences by the latter, which are the reason for applying suppressive measures determined in law to them.

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[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. S. 36.

[2] Ibid.

[3] Ibid.

[4] Operatyvno-sluzhbova ta vyrobnycho-gospodars'ka diyal'nist' organiv i ustanov vykonannya pokaran' u 1999 rotsi: inform. byul. Kyyiv: DDU PVP, 2000. S. 16.

Thus, in 1991 criminal authorities organize group convict refusal of food and work in 12 PEI of Ukraine[1].

In 1992 an intentional murder of certified worker of correctional colony № 6 in Kirovohrad region and of a free worker in correctional colony № 11 in Odesa region was committed by convicts[2].

In 1993 more than 270 criminal groups operating at large were kept in IIW of Ukraine, they had 1 thousand 20 accomplices, 400 of them in criminal activity specializing in racket, that is, violent actions[3].

In 1995 criminal authorities caused committing crimes disorganizing PEI work in correctional colonies of Sumy and Ternopil regions[4].

In 1999 in Starobabanivsk correctional colony № 92 of Cherkasy region distributing 'leadership' among convicts and reviving criminal traditions two convicts inflicted bodily injuries on another person serving a sentence in this PEI, which resulted in death of the latter[5].

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[1] Nekotoryye pokazateli deyatel'nosti uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy v 1991 godu: inform. byul. Kiyev: Glavnoye upravleniye po ispolneniyu nakazaniy MVD Ukrainy, 1992. S. 2.

[2] Operativno-sluzhebnaya deyatel'nost' uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy v 1992 godu: inform. byul. Kiyev: GUYN MVD Ukrainy, 1993. № 4. S. 8.

[3] Operativno-sluzhebnaya i proizvodstvenno-khozyaystvennaya deyatel'nost' uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy za 1993 god: inform. byul. Kiyev: GUYN MVD Ukrainy, 1994. № 10. S. 3.

[4] Operatyvno-sluzhbova i vyrobnycho-gospodars'ka diyal'nist' ustanov kryminal'no-vykonavchoyi systemy u 1995 rotsi: inform. byul. Kyyiv: GUVP MVS Ukrayiny, 1996. № 16. S. 12.

[5] Operatyvno-sluzhbova ta vyrobnycho-gospodars'ka diyal'nist' organiv i ustanov vykonannya pokaran' u 1999 rotsi: inform. byul. Kyyiv: DDU PVP, 2000. S. 12.

There were analogical facts, criminal group leaders were involved in, during the following years, including present time (2018)[1].

Among other background phenomena influencing directly the state and tendencies of applying suppressive measures to imprisoned convicts, attention is drawn to constant cases of transferring (or transporting in some other way) forbidden articles to these people[2].

For all that, the indicated tendency is determinative from 1991 till present.

Thus, in 1991 drugs were confiscated 6,8 times more and alcoholic drinks 3,4 times more than in 1990 at the attempts to deliver them to guarded colony objects (their supply channels)[3].

In 1993 through the supply channels to educational colonies PEI personnel confiscated 85% of money, 77 % of drugs, 66 % of stabbing and cutting articles of total number of them, from the convicts serving a sentence in these colonies[4].

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[1] Didenko A. O. Biytsi spetspidrozdilu Derzhavnoyi penitentsiarnoyi sluzhby znovu masovo kalichat' v'yazniv. URL: http//ukr.prison/org/ua/new:1309978900

[2] Kolb I. O., Kolb O. G. Pro deyaki aspekty ta napryamy viktymologichnogo zapobigannya zlochynam u sferi navkolyshnyogo pryrodnogo seredovyshcha v Ukrayini. *Aktual'ni pytannya reformuvannya pravovoyi systemy: zb. materialiv Mizhnar. nauk.-prakt. konf. (m. Luts'k, 16–17 cherv. 2017 r.).* Luts'k: Vezha-Druk, 2017. S. 218–219.

[3] Nekotoryye pokazateli deyatel'nosti uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy v 1991 godu: inform. byul. Kiyev: Glavnoye upravleniye po ispolneniyu nakazaniy MVD Ukrainy, 1992. S. 2.

[4] Operativno-sluzhebnaya i proizvodstvenno-khozyaystvennaya deyatel'nost' uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy za 1993 god: inform. byul. Kiyev: GUYN MVD Ukrainy, 1994. № 10. S. 63.

In 1997 more than 20 kg of drugs and 966 items of stabbing and cutting articles were confiscated at the attempt to deliver to PEI[1].

In 1998 more than 12 kg and 1 thousand 137,7 litres of alcoholic drinks were confiscated in supply channels[2].

In 1999 more than 8 kg of drugs, 738,4 litres of alcoholic drinks and 1 thousand 875 items of stabbing and cutting articles were confiscated in supply channels (approaching PEI guarded objects)[3].

The situation on these issues didn't change greatly in 2000–2010 (the period of independent SPEDU functioning in the system of state power central bodies of Ukraine).

Thus, in 2010 498 litres of alcoholic drinks (118,5 litres in 2009, which is 373,3 litres more); 1 thousand 769,83 g of drugs (427,7 g – in 2009) and 777 mobile phones (60 – in 2009) were confiscated from supply channels[4].

At the same time, in 2016 (the last period of SCES publishing information on this issue in open

[1] Operatyvno-sluzhbova i vyrobnycho-gospodars'ka diyal'nist' ustanov kryminal'no-vykonavchoyi systemy u 1997 rotsi: inform. byul. Kyyiv: UUVP MVS Ukrayiny, 1998. № 20. S. 31.

[2] Operatyvno-sluzhbova i vyrobnycho gospodars'ka diyal'nist' organiv ta ustanov vykonannya pokaran' Ukrayiny u 1998 rotsi: inform. byul. Kyyiv: DDU PVP, 1999. S. 22.

[3] Operatyvno-sluzhbova ta vyrobnycho-gospodars'ka diyal'nist' organiv i ustanov vykonannya pokaran' u 1999 rotsi: inform. byul. Kyyiv: DDU PVP, 2000. S. 19.

[4] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. S. 2.

newsletters) 1 thousand 790 litres of alcoholic drinks (177,8 litres – in 2015); 6 thousand 254,30 g of drugs (8408,757 g – in 2015) and 4 thousand 612 mobile phones (6 thousand 193 – in 2015) were confiscated at the attempt to deliver to PEI guarded areas[1].

As the results of studying archival materials, concerning applying suppressive measures to imprisoned convicts, showed, the indicated PEI personnel activity, aimed at preventing forbidden articles delivery to these people, caused committing offences in certain situations, which became a legal reason for performing forceful actions by colony personnel.

As it was found in the course of the given scientific search, other background phenomena also influence this process to some extend.

First of all, it is the question of low state of official PEI personnel discipline concerning its activity of punishment execution during the years 1991–2018.

Thus, in 1991 293 people of colony personnel and servicemen of Internal forces (243 – in 1990 (increase by 17,7 %)) were made legally responsible, including 19 people – criminally responsible, for unofficial relations with imprisoned convicts[2].

PEI personnel discipline didn't improve in 1992–1993, most of offences concerned establishing unof-

[1] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 18.

[2] Nekotoryye pokazateli deyatel'nosti uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy v 1991 godu: inform. byul. Kiyev: Glavnoye upravleniye po ispolneniyu nakazaniy MVD Ukrainy, 1992. S. 22.

ficial relations with people serving a sentence in places of confinement[1].

In 1993 IIW inspector of Kharkiv region was arrested at the attempt to give 2 letters and 10 g of drugs to a prisoner in custody[2].

In 1998 (the last period of SPEDU being included in MIA of Ukraine) 22,5 % more people of PEI and IIW personnel were held disciplinarily responsible than in 1997 (or 1120 cases more), 1171 of them – IIW personnel.

In 1998 PEI and IIW personnel committed 21 violations per 100 people (18 – in 1997)[3].

Most of all discipline was violated in PEI of Luhansk (35 cases per 100 people); Cherkasy (34); Lviv (33); Donetsk (29); Termopil regions and the Autonomous Republic of Crimea (27 cases each)[4].

The violations concerning establishing forbidden contacts with convicts had the greatest share in the structure of PEI and IIW personnel disciplinary offences[5].

At the same time, in 2010 (the last period of independent PEI and bodies functioning within state bodies of Ukraine) unsatisfactory detecting supply channels of delivering forbidden articles to imprisoned

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[1] Operativno-sluzhebnaya i proizvodstvenno-khozyaystvennaya deyatel'nost' uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy za 1993 god: inform. byul. Kiyev: GUYN MVD Ukrainy, 1994. № 10. S. 65.

[2] Ibid.

[3] Operatyvno-sluzhbova i vyrobnycho gospodars'ka diyal'nist' organiv ta ustanov vykonannya pokaran' Ukrayiny u 1998 rotsi: inform. byul. Kyyiv: DDU PVP, 1999. S. 64.

[4] Ibid.

[5] Ibid, p. 65.

convicts became the largest problem in SCES personnel activity, for which guilty people were made legal responsible.

Thus, 6 thousand 499 cases were registered in 2010, including:

– 2 thousand 97 or 45,7 % of total number – throwing over forbidden articles;

– 1 thousand 572 (24,1 %) – supply channels were not found;

– the rest of these things reached the convicts through long meeting rooms, in parcels and with the help of PEI personnel.

In PEI of Volyn region in 72 (97,3 % of total number) out of 74 cases of finding forbidden articles in convicts the supply channels were not established, in Chernihiv region this figure was 90,7 %, in Vinnytsia and Cherkasy regions – 77 %[1].

In 2016 along with the above mentioned problems, another problem arose, concerning protection, supervision and security personnel service.

Thus, in the period under review there were 63 cases of sleep on the post, 37 – non-arrival at the service, and 10 – using alcoholic drinks when exercising official powers by these people[2].

According to the given research results, the indicated offences also caused committing crimes by con-

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. S. 9.

[2] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 31.

victs, which law considers legal reasons of applying suppressive measures to imprisoned convicts.

In 2016 PEI personnel was attacked 13 times by convicts and prisoners in custody[1].

One fact is interesting, that in 2016 PEI protection activity coefficient (correlation of offences amount committed and their prevention) was much lower as compared to 2012–2015, and made up 0,3[2].

As it was established in the course of the given research, this background phenomenon is displayed in PEI and IIW through the following personnel actions:

a) gross violation of normative legal acts requirements regulating the order of executing and serving punishments[3];

b) PEI and IIW administration shortcomings in educational and organizational work with these people[4];

c) low level of PEI and IIW personnel personal responsibility[5];

d) other shortcomings of recruitment, training and heightening qualification of SCES personnel of Ukraine.

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[1] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 16.

[2] Ibid, p. 30.

[3] Nekotoryye pokazateli deyatel'nosti uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy v 1991 godu: inform. byul. Kiyev: Glavnoye upravleniye po ispolneniyu nakazaniy MVD Ukrainy, 1992. S. 3.

[4] Operativno-sluzhebnaya i proizvodstvenno-khozyaystvennaya deyatel'nost' uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy za 1993 god: inform. byul. Kiyev: GUYN MVD Ukrainy, 1994. № 10. S. 6–7.

[5] Operatyvno-sluzhbova i vyrobnycho-gospodars'ka diyal'nist' ustanov kryminal'no-vykonavchoyi systemy u 1995 rotsi: inform. byul. Kyyiv: GUVP MVS Ukrayiny, 1996. № 16. S. 4.

G. O. Radov remarked to the point, that nobody needs criminal executive system nowadays in our country.

There is no room for this system in modern economy either, that's why the government loses interest in it.

However, the government has the duty to carry out court decisions: to keep the people, the corresponding judgment was rendered to, in places of imprisonment[1].

In this connection other problems also become urgent, those, concerning the influence of background phenomena in places of imprisonment on convicts' committing offences, which are legal and actual reasons for applying suppressive measures to them[2].

Especially, one of them is annual under-financing punishment execution institutions and bodies from State budget of Ukraine to necessary needs (at present SCES is financed only by 40 %[3].

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[1] Radov G. Personal i vzaimodeystviye tyur'my i obshchestva. *Tyur'ma i obshchestvo: materialy seminara dlya personala.* Donetsk: Donetsk. Memorial, 2000. S. 15.

[2] Kolb I. O., Gorbachevs'kyy V. Ya. Kryminal'na subkul'tura ta zagal'nosotsial'ni zasady protydiyi danomu yavyshchu v Ukrayini. *Aktual'ni problemy psykhologiyi obdarovanosti ta tvorchosti: novitni rozrobky: materialy Mizhnar. nauk. konf. (m. Kyyiv, 12 cherv. 2014 r.).* Kyyiv: In-t obdarovanosti dytyny, 2014. S. 33–35.

[3] Pro stan doderzhannya zakoniv v organakh i ustanovakh vykonannya pokaran' v 2017 rotsi pry vykonanni sudovykh rishen' u kryminal'nykh spravakh, a takozh pry zastosuvanni inshykh zakhodiv prymusovogo kharakteru, pov'yazanykh z obmezhennyam osobystoyi svobody gromadyan: materialy kolegiyi General'noyi prokuratury. Kyyiv: Gen. prokuratura, 2017. 89 s.

And this, in its turn, leads to tension between PEI personnel and convicts because of corresponding costs lack for ensuring protection of these people's health, nutrition, living conditions and other aspects of vital activity in places of imprisonment, and, finally, increases the number of artificial conflicts in PEI and IIW.

Among other background phenomena, concerning the research problems, scientists name also the following ones:

1. High level of suicide among convicts and prisoners[1].

According to official statistics of SCES of Ukraine, every year 10 and more people of that kind commit suicide. Only in 1992–1995 the number of such cases varied within 65–72 suicides and was 272 people on the whole[2]. At the same time, beginning from 1999 (45 suicides)[3], a clear tendency of reducing the number of such cases in PEI and IIW was outlined[4].

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[1] Sulyts'kyy V. V. Osnovy zapobigannya suyitsydu u vypravnykh koloniyakh. *Problemy penitentsiarnoyi teoriyi i praktyky.* 2001. № 6. S. 278.

[2] Operatyvno-sluzhbova i vyrobnycho-gospodars'ka diyal'nist' ustanov kryminal'no-vykonavchoyi systemy u 1995 rotsi: inform. byul. Kyyiv: GUVP MVS Ukrayiny, 1996. № 16. S. 30.

[3] Operatyvno-sluzhbova ta vyrobnycho-gospodars'ka diyal'nist' organiv i ustanov vykonannya pokaran' u 1999 rotsi: inform. byul. Kyyiv: DDU PVP, 2000. S. 24–25.

[4] Pro stan doderzhannya zakoniv v organakh i ustanovakh vykonannya pokaran' v 2017 rotsi pry vykonanni sudovykh rishen' u kryminal'nykh spravakh, a takozh pry zastosuvanni inshykh zakhodiv prymusovogo kharakteru, pov'yazanykh z obmezhennyam osobystoyi svobody gromadyan: materialy kolegiyi General'noyi prokuratury. Kyyiv: Gen. prokuratura, 2017. 89 s.

2. HIV/AIDS sick people among convicts.

As the results of special scientific research show, PEI administration, where the given category of imprisoned convicts serve a sentence, often face HIV-positive people protest actions, who don't limit themselves only to complaints to public prosecution bodies, supervising law observance during criminal punishment execution according to art. 22 of CEC of Ukraine, but try in such a way to obtain special conditions of maintenance – bed rest, etc.[1]

Moreover, as O. M. Dzhuzha found, in 24 % of cases of HIV-positive convicts often have conflicts with other convicts and in 60 % – they show aggression towards the people surrounding them[2].

3. Physical and moral wear and tear of protection and supervision means used for ensuring law and order in PEI and IIW.

According to official data of SCES of Ukraine, still in 1998 (the last period of punishment execution institution and bodies functioning within MIA of Ukraine) a wooden fence was not replaced with a concrete or more reliable one.

Besides, it was necessary to replace 2023 'MPP' packets, 14,5 km of 'Shypshyna' means, 6,9 km of 'TESS', 95 items of 'Pivoniyi', 369 communication means, etc.[3]

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[1] Kryminologichni zasady zapobigannya zlochynam v ustanovakh vykonannya pokaran' Ukrayiny (penitentsiarna kryminologiya): posibnyk/ za red. O. M. Dzhuzhy. Kyyiv: NAVS, 2013. S. 612.

[2] Dzhuzha O. M. Informatsiyne zabezpechennya profilaktyky VIL/ SNIDU v Ukrayini. *Nauk. visn. KNUVS*. 2007. Vyp. 2. S. 75.

[3] Operatyvno-sluzhbova i vyrobnycho gospodars'ka diyal'nist' organiv ta ustanov vykonannya pokaran' Ukrayiny u 1998 rotsi: inform. byul. Kyyiv: DDU PVP, 1999. S. 24.

Analogical problems remained unsettled till present[1]. As it was established in the course of special scientific research, it necessary to replace and reconstruct about 20 long km or 12,4 % of total engineering protection means area (141 long km); to modernize and re-equip 2 thousand 190 items or 49,6 % of all operated; in PEI and IIW only 30 % of modern telecommunication means are operated; etc.[2]

For all that, out of 96 special vehicles, used for transportation of convicts and prisoners to PEI and IIW of SCES of Ukraine, 90 % are operated more than 20 years and need major repairs, some of them need writing off and immediate replacement[3].

What is most dangerous, given preventing conflicts between PEI and IIW personnel and imprisoned convicts and prisoners in custody, is that prevailing number of IIW was built more that 100 years ago, some of them are much older (Lviv IIW is more than 400 years old, Kherson IIW is 230 years old, Kharkiv IIW is about 220 years old, etc.[4]

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[1] Pro stan doderzhannya zakoniv v organakh i ustanovakh vykonannya pokaran' v 2017 rotsi pry vykonanni sudovykh rishen' u kryminal'nykh spravakh, a takozh pry zastosuvanni inshykh zakhodiv prymusovogo kharakteru, pov'yazanykh z obmezhennyam osobystoyi svobody gromadyan: materialy kolegiyi General'noyi prokuratury. Kyyiv: Gen. prokuratura, 2017. 89 s.

[2] Pravovi zasady diyal'nosti prokuratury Ukrayiny u sferi vykonannya pokaran': navch. posib./za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy, d-ra yuryd. nauk, prof. O. G. Kolba. Kyyiv: Kondor, 2016. S. 106–107.

[3] Zagal'na kharakterystyka Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny (stanom na 1 travnya 2012 roku). Kyyiv: DPtS Ukrayiny, 2012. S. 12.

[4] Zagal'na kharakterystyka Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny (stanom na 25 grudnya 2014 roku). Kyyiv: DPtS Ukrayiny, 2014. 98 s.

As M. V. Romanov noticed, convicts face keeping conditions every day, and these conditions reveal punitive essence.

It is no exaggeration to say, they discredit and humiliate a person[1], and, eventually, cause conflicts with PEI and IIW personnel, which become an original state 'hostage' in this situation[2].

4. Other background phenomena in places of confinements causing committing offences by imprisoned convicts, which is the reason for applying suppressive measures to them (art. 106 of CEC)[3].

They include, in particular: a) high level of unemployment in the places of confinement and low convicts' salaries due to obsoleteness (moral, physical, technological, etc.) of main production means at PEI works[4]; b) high death and disease rate of convicts and prisoners[5];

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[1] Problemy zabezpechennya prav zasudzhenykh u kryminal'no-vykonavchiy systemi Ukrayiny/za zag. red. Ye. Yu. Zakharova. Kharkiv: Prava lyudyny, 2009. S. 10.

[2] Kolb I. O., Savchenko A. V. Zlisna nepokora yak odna z pidstav zastosuvannya syly do zasudzhenykh, pozbavlenykh voli. *Problemy reformuvannya kryminal'noyi yustytsiyi Ukrayiny: materialy Mizhnar. nauk.-prakt. konf. (m. Chernivtsi, 23–24 trav. 2019 r.).* Chernivtsi, 2019. S. 127–131.

[3] Kolb I. O. Istorychnyy analiz rozsliduvannya zlochyniv ta protydiyi yomu z boku zasudzhenykh u mistsyakh pozbavlennya voli. *Yevropeys'ka integratsiya Ukrayiny: suchasnyy stan ta perspektyvy rozvytku: tezy dop. Pidsumk. nauk.-teoret. konf. (m. Kyyiv, 22 kvit. 2016 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2016. S. 102–104.

[4] Zhuk I. L. Pratsya zasudzhenykh v mistsyakh pozbavlennya voli: monografiya. Kyyiv: Kondor, 2009. S. 34–35.

[5] Zvit. Doslidnyts'ko-prykladnyy proekt PRAJD. Persha faza "Otsinka zdorov'ya zasudzhenykh v Ukrayini". Kyyiv: DPtS Ukrayiny, Ukr. in-t doslidzhen' polityky shchodo gromads'kogo zdorov'ya, Medychnyy f-tet Yel'-s'kogo un-tu (USA), 2012. 89 s.

c) low level of general development of imprisoned convicts[1], etc.[2]

So, proceeding from the results, received in the course of the given research, it can be stated that without reducing the influence of background phenomena in PEI and IIW it is impossible to reduce substantially the number of cases of applying physical force, special means, a straitjacket and weapon to imprisoned convicts[3].

On the other hand, even if some PEI of Ukraine have not such practice, punishment execution institutions and bodies, including militarized specialized units of SCES of Ukraine, National police and National Guard of Ukraine involved in it, can and are obliged to follow the principles of such activity, determined in law, when applying suppressive measures[4].

First of all, these principles are as follows: the principle of humanism, respect to human rights and freedoms, the principles of justice and tolerance,

[1] Chechyn M. Yu. Osvita yak zasib vypravlennya i resotsializatsiyi zasudzhenykh do pozbavlennya voli: dys. … kand. yuryd. nauk: 12.00.08. Kharkiv: NDIVPZ im. akad. V. V. Stashyna NAPrN Ukrayiny, 2018. 233 s.

[2] Kolb I. O. Kryminologichna kharakterystyka osoby z chysla personalu koloniy, yaka vchynyaye zlochyny, pov'yazani iz zastosuvannyam syly do zasudzhenykh. *Naukovyy visnyk Uzhgorods'kogo natsional'nogo universytetu.* 2018. Vyp. 48. T. 2. S. 78–81.

[3] Kolb I. O. Pro deyaki kil'kisno-yakisni pokaznyky zlochyniv, shcho vchynyayut'sya pry zastosuvanni syly ta inshykh zakhodiv bezpeky do zasudzhenykh. *KELM.* 2017. № 4 (20). S. 155–168.

[4] Kolb I. O. Pro deyaki motyvy protypravnoyi povedinky personalu koloniy v Ukrayini pry zastosuvanni syly do zasudzhenykh, pozbavlenykh voli. *Naukova dumka suchasnosti i maybutnyogo: zb. st. XVI Vseukr. prakt.-piznav. internet-konf. (m. Dnipro, 10 sich. 2018 r.).* Dnipro: Vyd-vo NM. Dnipro, 2018. S. 16–20.

which are determinative in communication of any civilized human beings, including PEI and IIW personnel and convicts kept in these institutions[1].

However, such a paradigm can be realized in practice only after changing the content of the present criminal executive policy of Ukraine and increasing the efficiency level of public control of criminal executive activity in our state.

The conclusions to the section 3

1. Three periods of informational support of PEI personnel activity in Ukraine during 1991–2018 are established, connected with applying physical force, special means and a straitjacket to imprisoned convicts, namely:

a) from 1991 till 2005, when the data on the state, structure and other criminally significant information on PEI personnel on the indicated issues were published in closed informational sources, inaccessible for the given subjects, including convicts, community, etc., who had no special admittance to its possession, usage, dissemination, etc.

Along with this, additional data analysis, indirectly characterizing these processes (criminality, disciplinary offences, unofficial contacts, etc.), enabled to

[1] Kolb I. O. Personal vypravnykh koloniy yak ob'yekt zapobigannya zlochynam, pov'yazanykh iz zastosuvannyam syly do zasudzhenykh. *Kryminologichna teoriya i praktyka: dosvid, problemy syogodennya ta shlyakhy yikh vyrishennya: materialy Mizhvuz. nauk.-prakt. krug. stolu (m. Kyyiv, 21 kvit. 2018 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2018. S. 66–68.

make a conclusion, that in the indicated period such practice existed and was of repressive forceful type;

b) from 2006 till 2016, when information on the indicated issue was published in special newsletters of SCES of Ukraine, which enabled to determine essential features and tendencies of activity development, concerning both applying all suppressive measures to imprisoned convicts according to law, and each individual means (physical force, special means and a straitjacket);

c) from 2017 till present, when such information again became inaccessible due to stopping these newsletters publication and its absence on official site of SCES Administration of Ukraine, which not only contradicts the principles of criminal executive legislation (art. 5 of CEC and art. 15 of Law of Ukraine "On State criminal executive service of Ukraine"), but the content of the present criminal executive policy of Ukraine, aimed at bringing the conditions of punishment execution and serving a sentence to European standards.

2. Essential problems, concerning the activity of corresponding militarized formations (territorial (inter-territorial)), rapid response teams of PEI and IIW in punishment execution institutions, elucidated, as well as it is proved that:

a) involving these units in ensuring law and order and solving other tasks of criminal executive legislation of Ukraine is motivated by the necessity connected with not only official rules of convicts' behavior, but illegitimate ones in the form of criminal subculture norms, determine illegal behavior of these people,

which is a reason for applying suppressive measures to them;

b) current legislation of Ukraine, regulating this question of involving these units in maintaining law and order in colonies, is imperfect and doesn't correspond to the principles of legality, humanism and justice, as well as international law norms, which causes numerous complaints of convicts, community and international experts on this issue and provides for improving legal mechanism if the indicated problem;

c) applying suppressive measures in collective manner (by colony personnel and involving militarized formations) is a 'litmus paper', revealing a conflict between these institution administration and convicts, on the one hand, and assessing the possibilities and potential the colony personnel possess at the moment, considering its ability to perform tasks defined in law, and achieve punishment purpose, on the other hand;

d) in order to avoid applying suppressive measures to convicts, it is necessary to change the approach to PEI and militarized formation staffing, that is, training and qualification heightening should be based on two components: personnel's possessing verbal and persuasive methods; perfect knowledge of basic rights and freedoms of a person and a citizen, and of legal postulate that life, health, honour and dignity, inviolability and security are the highest social value, determining the content and direction of any democratic state.

3) The following groups of background phenomena in places of confinement are established, which

cause committing offences by convicts and become legal reasons for applying suppressive measures to them, namely: 1) a considerable number of things and substances, imprisoned convicts have, which are forbidden to keep and use in colonies; 2) a great number of people with various mental disorder among convicts; 3) low level of colony personnel official discipline; 4) constant attempts of some people outside to deliver (transport in any way) forbidden articles and substances for convicts; 5) influence of criminal subculture norms, rules, traditions, etc. on convicts' legal consciousness and culture.

It is proved that, without reducing their influence on the process of punishment execution and serving a custodial sentence, it is impossible to reduce substantially the number of cases of applying suppressive measures to convicts, determined in law, and that even under such conditions PEI and IIW personnel and other law-enforcement bodies can and are obliged to follow this activity principles, like the principle of humanism, respect to the rights of a person and a citizen, the principle of justice and tolerance, which are determinants in communication of any civilized beings.

Section 4

Current policy in the sphere of punishment execution of Ukraine and some ways of its modification

4.1. The influence of state policy in the sphere of punishment execution of Ukraine on the practice of applying physical force, special means and weapon to convicts

In scientific sources policy implies general direction, character of a state, a certain class or a political party activity[1]. Proceeding from this, state policy can be internal and external.

Besides, depending on social relations sphere, scientists distinguish legal, social, economic, cultural and other subtypes of internal party policy[2].

The state policy in the sphere of punishment execution of Ukraine is one of legal policy type, though on a doctrinal level it means mainly criminal executive policy[3] and penitentiary policy[4].

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[1] Velykyy tlumachnyy slovnyk suchasnoyi ukrayins'koyi movy/uklad. O. Yeroshenko. Donets'k: TOV "Gloriya Treyd", 2012. S. 524.

[2] Kernyanevych-Tanasiychuk Yu. V. Kryminal'no-vykonavcha polityka Ukrayiny: monografiya. Ivano-Frankivs'k: Prykarpat. nats. un-t im. Vasylya Stefanyka, 2019. S. 147.

[3] Ibid, 336 p.

[4] Bogatyryov I. G., Puzyryov M. S., Shkuta O. O. Doktryna penitentsiarnogo prava Ukrayiny: monografiya. Kyyiv: V. D. "Dakor", 2017. 236 s.

While agreeing that the indicated names of the policy, connected with criminal executive activity, refer to synonymic notions reflecting the essence of the same social legal phenomenon, it should be admitted that, the term 'state policy in the sphere of criminal punishment and probation execution' (in p. 1 art. 11 of CEC of Ukraine, in particular) being enshrined at legislative level, just this approach to assessing the given type of legal policy of Ukraine is a priority.

As regards this, the results of scientific research on the indicated problems are additional arguments, in the course of which scientists determined essential differences between policy types formulated at doctrinal level, concerning the process of punishment execution and serving a sentence[1].

For example, G. O. Radov mentioned apropos of this, that the problems of penitentiary policy of Ukraine begin from the elementary thing – a lack of adequate idea concerning the conception and essence of penitentiary policy as a social legal phenomenon in modern Ukrainian science and social practice[2].

On a scientific level the conception 'penitentiary policy' is used as a synonym defining any state legal activity in the sphere of criminal punishment execu-

[1] Kolb I. O. Pro deyaki pravovi zasady vykonannya pokarannya u vydi pozbavlennya voli v Ukrayini. *Reformy zakonodavstva Ukrayiny v umovakh Yevrointegratsiyi (tekst): materialy Vseukr. nauk.-prakt. konf. (m. Kyyiv, 30 zhovt. 2014 r.): u 2-kh ch.* Kyyiv: Nats. akad. vnutr. sprav, 2014. Ch. 1. S. 159–161.

[2] Radov G. O. Pershochergovi problemy penitentsiarnoyi polityky Ukrayiny na suchasnomu etapi. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1996. № 1. S. 12.

tion in the form of imprisonment. But such conception treating, as he is convinced (and it is worth completely agreeing to this), gives distorted idea of this phenomenon essence, and can result in deadlock of improving penitentiary system of Ukraine[1].

As G. O. Radov proved in his works, the main criteria of penitentiary policy assessment are as follows:

a) its content conformity to human nature, civilized society law and morality norms;

b) ensuring balanced satisfaction of legal rights and interests of a citizen, society and state;

c) system solving entire complex of main problems of state penitentiary functions;

d) maximum and efficient applying the whole national potential in crime re-socialization[2].

Under modern conditions, continuing to develop doctrinal principles of penitentiary policy of Ukraine, I. G. Bohatyriov deduced the following tasks of penitentiary system:

1. Ensuring realization of provisions of the Constitution of Ukraine, current legislation requirements, resolutions of state power bodies on penitentiary activity problems.

2. Forming the basis for observing the principles of law supremacy, justice and humanism in the bodies and institutions of penitentiary system, enabling a convict to feel protected by state and society.

[1] Radov G. O. Pershochergovi problemy penitentsiarnoyi polityky Ukrayiny na suchasnomu etapi. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1996. № 1. S. 12.

[2] Ibid, p. 13.

3. Introducing the latest psychological and pedagogical, modern scientific methods of influence on a personality into convict behavior correction practice.

4. Involving all national potential, human resources, finances and materials including, in psychological and pedagogical process, forming funds owing to voluntary payments and donations of private companies, establishments, organizations, individuals.

5. Ensuring social and legal protection of penitentiary personnel according to objective needs of their honest performing official duties.

6. Promoting penitentiary personnel to solve social, communal, legal, psychological, pedagogical, material and methodical problems concerning their performing official duties[1].

But Yu. V. Kerniakevych-Tanasiychuk formulated the following up-to-date tasks of criminal executive policy of Ukraine:

a) determining the types of social relations subjected to legal regulation in the process of punishment execution and serving a sentence;

b) determining the legal status of subjects and other participants of criminal executive relations;

c) improving mechanisms and order of punishment execution and serving a sentence aimed at convict correcting and re-socializing and preventing committing new crimes by convicts;

d) improving criminal executive system activity by its optimization;

[1] Bogatyryov I. G. Doktrynal'na model' pobudovy penitentsiarnoyi systemy Ukrayiny novogo typu: innovatsiynyy proekt. Kyyiv: In-t krym.-vykon. sluzhby, DPtS Ukrayiny, 2014. S. 18–19.

e) improving the order of releasing from serving a sentence, assisting the people released from serving a sentence, and the order of their controlling and supervising;

f) increasing cooperation of criminal executive system and other bodies and institutions, participating in crime fight, public society institutions including[1].

Proceeding from theoretical postulates of state policy realization elements in the sphere of punishment execution (normative and legal; organizational and institutional; guarantee; resource providing; functional (instrumental))[2], and taking the given research subject content into consideration, it is very important to determine the essence of the indicated subtype of internal policy of Ukraine owing to the analysis of legislative acts of Ukraine, and in the context of legal principles of applying physical force, special means, a straitjacket and weapon, established in law[3].

First of all, p. 2 art. 1 of CEC of Ukraine is meant, where the following tasks of criminal executive legislation are mentioned:

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[1] Kernyanevych-Tanasiychuk Yu. V. Kryminal'no-vykonavcha polityka Ukrayiny: monografiya. Ivano-Frankivs'k: Prykarpat. nats. un-t im. Vasylya Stefanyka, 2019. S. 52.

[2] Ibid, p. 119.

[3] Kolb I. O., Kolb O. G. Pro deyaki shlyakhy udoskonalennya diyal'nosti Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny. *Problemni pytannya stanu dotrymannya zakhystu prav lyudyny v Ukrayini (tekst): zb. materialiv IV Vseukr. nauk.-teoret. konf.: u 2-kh ch. (m. Kyyiv, 5 grud. 2013 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2013. S. 18–19.

1. Determining the principles of criminal punishment execution, convicts legal status, guarantees of their rights, legal interests and duties protection[1].

2. Determining the order of applying influence measures to them, aimed at asocial behavior correction and prevention.

3. Determining the system of punishment execution bodies and institutions, their functions and activity order.

4. Determining the order of supervising and controlling criminal punishment execution, of public participation in this process.

5. Regulating the order and conditions of criminal punishment execution and serving a sentence.

6. Regulating the order of releasing from serving a sentence, of assisting people released from punishment, of their controlling and supervising[2].

So, only superficial comparison of state policy tasks in the sphere of punishment execution of Ukraine, determined in law, with penitentiary policy tasks, determined on a scientific level, gives grounds to claim that they are not identical (analogous, similar).

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[1] Kolb I. O., Nykyforchuk D. Y. Pro deyaki zmistovni aspekty pryntsypiv kryminal'no-vykonavchoyi diyal'nosti personalu organiv ta ustanov vykonannya pokaran' Ukrayiny. *Kryminal'ne pravo: tradytsiyi ta novatsiyi: zb. anotatsiy dop. III Mizhnar. krug. stolu, prysvyach. vshanuv. pam'yati akad. V. V. Stashysa (m. Chernigiv, 7–8 veres. 2017 r.).* Chernigiv: Desna-Poligraf, 2017. S. 66–67.

[2] Kolb I. O., Vorobey P. A. Pro zmist deyakykh pryntsypiv vzayemozv'yazku vykonannya pokaran' z osnovnymy zasobamy vypravlennya ta resotsializatsiyi zasudzhenykh do pozbavlennya voli v Ukrayini. *Suchasna nauka – penitentsiarniy praktytsi: zb. materialiv II Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 4 grud. 2014 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2014. S. 391–393.

At the same time, the developers of modern Conception of reforming (developing) penitentiary system of Ukraine[1] don't see any difference in it, moreover, as it appears from the given Conception name and content, its authors are going to reform and develop what is not created at the legislative, organizational administrative, practical and other levels of realizing state policy in the sphere of punishment execution[2].

Such a conclusion follows from the list of the main reform tasks enshrined in this Conception, namely:

1) involving new personnel in the system at all levels – first of all, due to increasing the level of salary;

2) elaborating legislation in the sphere of IIW and PEI functioning according to European Union legislation;

3) increasing operational efficiency of 100 state enterprises in penitentiary system owing to establishing production association according to branch principle, purchasing through 'ProZorro' electronic system;

4) building new investigative isolation wards and punishment execution institutions in big cities of Ukraine within the framework of state-private partnership.

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[1] Pro skhvalennya Kontseptsiyi reformuvannya (rozvytku) penitentsiarnoyi systemy Ukrayiny: Rozporyadzhennya Kabinetu Ministriv Ukrayiny vid 13.09.2017 r. № 654-R. *Uryadovyy kur'yer.* 2017. № 178. 20 veres. S. 8–9.

[2] Kolb I. O., Zhuravs'ka Z. V. Pro deyaki pryntsypy suchasnoyi kryminal'no-vykonavchoyi polityky Ukrayiny. *Osoblyvosti ta perspektyvy rozvytku gromadyans'kogo suspil'stva v Ukrayini (tekst): zb. materialiv Pidsumk. nauk.-teoret. konf. (m. Kyyiv, 15 kvit. 2014 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2014. S. 17–18.

So, considering etymological meaning of the word 'system' (an order specified by right, regular location and mutual connection of parts of anything[1]), what penitentiary system can be spoken about, if the indicated Conception tasks lack the following ones:

a) elaborating (not generalizing (a peculiar 'retouch' (Fr. *retouch* – correcting, improving, airbrushing a picture[2]) penitentiary legislation of Ukraine;

b) building modern penitentiary institutions, not building punishment execution institutions, which is a system feature of criminal executive, not penitentiary system;

c) creating other elements of penitentiary system which are described by G. O. Radov in his works, namely:

– modern penitentiary policy must be based on the principle of sovereignty, scientific substantiation and independence from ideological attitudes and political parties and movements decisions, generally recognized human values priority, human life and health, advantage of human rights over state and social interests; humanism and charity, justice and morality, maximum usage of socialization institutions, which state and society have at their disposal, etc.[3]

– main priorities of penitentiary policy must be uniting all subjects of local social life around peni-

[1] Velykyy tlumachnyy slovnyk suchasnoyi ukrayins'koyi movy/uklad. O. Yeroshenko. Donets'k: TOV "Gloriya Treyd", 2012. S. 609.

[2] Buliko A. N. Bolshoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. S. 501.

[3] Radov G. O. Pershochergovi problemy penitentsiarnoyi polityky Ukrayiny na suchasnomu etapi. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1996. № 1. S. 14–15.

tentiary institutions aimed at rendering them additional assistance and support by human resources, finance and materials; ensuring all-round control of penitentiary personnel observing the requirements of current legislation, creating conditions, affirming general human values, personal culture, ideals of good, justice and humanism, which would teach convicts lessons of morality, charity, kindness, etc.; other priorities[1].

Considering the content of the Conception of reforming (developing) penitentiary system of Ukraine, given content modification of legal principles and practice of applying suppressive measures to convicts in places of confinement, in this case there is no need to speak about penitentiary policy, because nothing is said as apropos of this. Thus, neither the Conception purpose (part II), nor the problems to be solved (p. III), nor ways of their solving establish the task of changing punishment execution institutions and bodies personnel psychology as for their attitude towards convicts (into partnership, humane relations, of mutual respect and assistance, etc.).

Along with this, the rudiments (Latin. *rudimentum* – basics, basic level; traces of a phenomenon that has disappeared) of correctional labour and criminal executive policy are clearly expressed in the Conception, as the following provisions prove:

1. The Conception purpose is humanizing criminal executive mechanism, not forming penitentiary

[1] Radov G. O. Pershochergovi problemy penitentsiarnoyi polityky Ukrayiny na suchasnomu etapi. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1996. № 1. S. 13–14.

principles of state policy in the sphere of punishment execution of Ukraine (part II).

2. The Conception provides for reforming penitentiary system by improving the legislation regulating SCES activity of Ukraine (p. IV), not creating penitentiary institutions and penitentiary legislation.

3. For realizing the indicated provisions of the Conception parts II and IV it is suggested: a) to provide territorial (interregional) militarized formations of SCES of Ukraine with up-to-date armaments, special means, personal protection means and active defense means (p. IV), presence of which in penitentiary system, in EU countries, in particular, is inadmissible (p. 64.1–67.3 of EPR); b) to modernize technical protection means available, including video surveillance in PEI and IIW (p. IV); c) to optimize PEI and IIW protection (p. IV); d) improve security measures in PEI and IIW; e) to involve public organizations in the work with convicts as much as possible (p. IV), not to strengthen public control of PEI and bodies personnel.

Considering criminal executive activity problem solving, including the problem of applying suppressive measures to imprisoned convicts, the measures enshrined in other normative legal acts of Ukraine[1] are also illogical and unsystematic. Thus, in Law of

[1] Kolb I. O., Dzhuzha O. M. Povaga do lyuds'koyi gidnosti zasudzhenykh: ponyattya ta shlyakhy zabezpechennya v protsesi vykonannya – vidbuvannya pokarannya u vydi pozbavlennya voli. *Aktual'ni problemy prav lyudyny, yaka perebuvaye u konflikti zi zakonom, kriz' pryzmu pravovykh reform: materialy Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 2 grud. 2016 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2016. S. 266–269.

Ukraine 'On national security' the given aspect of punishment execution sphere functioning is reflected in general only in some of its norms. For example, p. 2 art. 12 'Security and protection sector composition' of this Law says, that other state bodies perform their functions of ensuring national security together with the bodies included in security and protection sector. But, neither Ministry of Justice of Ukraine, as the central executive power body realizing state policy in the sphere of punishment execution and probation, nor SCES Administration of Ukraine, as a structural MJ subunit, directly responsible for the given policy realization, don't belong to security and protection sector of Ukraine[1].

Moreover, if part IV of 'Security and protection sector' of Law of Ukraine 'On national security' defines distinctly authorities, concerning these problems, to each member of security and protection sector (art. 15–24), the authorities of other state bodies on the indicated problems are not mentioned at all in this normative legal act.

At the same time, proceeding from provisions of art. 1 of the given Law, defining terms (public security and order; state security; national security of Ukraine; etc.), it should be admitted that presence of punishment execution institutions and bodies in security and protection sector is obvious.

Provisions of p. 2 art. 26 of Law of Ukraine 'On national security' are additional arguments apropos

[1] Pro natsional'nu bezpeku Ukrayiny: Zakon Ukrayiny vid 21 chervnya 2018 roku № 2469-VIII. *Uryadovyy kur'yer.* 2018. № 132. 18 lyp. S. 2–5.

of this, where the content of national security strategy enshrines the requirement of its determining the priorities of national interests of Ukraine and of ensuring national security, purposes, main directions of state policy in national security sphere.

Besides, both quantitative and qualitative contingent of convicts in the places of confinement, 70 % of whom are made criminally liable for committing serious or gravest crimes (p. 4, 5 art. 12 of CrC), and annual committing crimes against justice by these people, while serving a sentence, 40 % of which are connected with malicious disobeying PEI administration (art. 381 of CrC), with actions disorganizing PEI work (art. 392), escapes from colonies and correctional centres, prove the necessity of including Ministry of Justice of Ukraine or SCES (in case autonomy and independence are given to it) in security and protection sector.

And finally, in the structure of all applying physical force, special means and weapon to imprisoned convicts in 70 % cases PEI personnel overcome physical resistance, riot and other displays of these people' disobedience[1].

Proceeding from this, p. 2 art. 12 of Law of Ukraine 'On national security' could be supplemented with such security and protection sector member, as the central body of executive power, which realizes state policy in the sphere of punishment execution.

[1] Kolb I. O., Savchenko A. V. Pro deyaki pytannya, shcho stosuyut'sya efektyvnosti zastosuvannya osnovnykh zasobiv vypravlennya ta resotsializatsiyi do zasudzhenykh v Ukrayini. *KELM.* 2017. № 3 (19). S. 191–198.

Besides, this Law is worth supplementing with art. 23-1 'Central body of executive power realizing state policy in the sphere of punishment execution' of the following content:

'The central body of executive power realizing state policy in the sphere of punishment execution together with other members of security and protection sector determines priority directions of ensuring public order and security in punishment execution institutions and investigative isolation wards in this sphere of social relations, analyses the state and tendencies of criminal executive system development and organizes fulfilling the strategy of national security of Ukraine within the authorities established in law'.

As the results of the given research showed, the National strategy in the sphere of human rights approved by Decree of the President of Ukraine of August 25, 2015, № 501/2015[1] has also a lot of legal gaps concerning the process of punishment execution and serving a sentence, and, particularly, the problems of applying suppressive measures in places of confinement. Thus, having enshrined in General part of the given strategy the necessity of improving state activity of affirming and ensuring human rights and freedoms, and forming efficient protection mechanism on these problems in Ukraine, and also tasks of solving system problems in the indicated sphere, among strategic directions its authors didn't deter-

[1] Pro zatverdzhennya Natsional'noyi strategiyi u sferi prav lyudyny: Ukaz Prezydenta Ukrayiny vid 25.08.2015 r. № 501/2015. *Uryadovyy kur'yer.* 2015. № 160. 2 veres. S. 2–4.

mine such direction as 'ensuring rights and legal interests of convicts and the people kept in places of confinement, as well as of punishment execution institutions and bodies personnel', which is extremely a necessary measure given existing problems on the indicated questions in the sphere of punishment execution.

At the same time, only partly is said about its solution in the following subsections and sections of the National strategy:

1. Subsection 'Ensuring right to life' of section 4 'Strategic directions' says that human life if the highest social value. Under present conditions the duty of a state to protect human life acquires a special meaning, taking existing problems, particularly, non-proportional using force and special means by law-enforcement body officials, into consideration.

So, the Strategy doesn't speak about psychology change of law-enforcement officials and practice of applying suppressive measures on the whole, and also about the possibility of resolving any conflicts in the society (personal or collective ones) by preventive measures, including verbal means.

Under such state policy it is hardly possible to change the status quo in the sphere of punishment execution of Ukraine. And this is despite the fact that s. 1 'General part' of this Strategy points out, that events of the Revolution of Dignity (November 2013 – February 2014) proved plain aspiration of the Ukrainian people for building legal and democratic state, in which human rights and freedoms are guaranteed and ensured.

Strategic purpose of measures enshrined in s. 1 s. 4 of the Strategy is ensuring proper guarantees of protecting the right to life and legal means available of protecting mechanisms of efficient investigation of violating the right to life, and expected results are conformity to international standards of protecting the right to life, conditions of keeping and treating people in the places where they stay forcefully according to court judgment and law.

Analogical purpose is determined in subsection 2 'Counteracting tortures, cruel or degrading treatment or punishment' section 1of the given Strategy, and in s. 3 'Ensuring the right to freedom and personal inviolability' of this section.

2. Other subsections of the National strategy concern the indicated problems to some extend (discrimination prevention and counteraction; ensuring equal rights and possibilities of men and women; ensuring the right to health care; ensuring the right to education; ensuring child's rights; releasing hostages and restoring their rights, etc.) which could be placed in a special section dedicated to ensuring rights and legal interests of the people kept in places of confinement, including the questions concerning directly applying suppressive measures to imprisoned convicts.

3. In this respect the provisions defined in subsection 'Realization, monitoring and control of the Strategy implementation' are important, according to which for monitoring the Strategy realization by the President of Ukraine, Cabinet of Ministers of Ukraine the corresponding additional bodies can be formed, which can involve representatives of state

bodies, of civil society institutions, Ombudsman of the Verkhovna Rada, international organizations, people's deputies, scientists and other experts.

As the given research results showed, the Strategy of stable development 'Ukraine – 2020' approved by the Decree of the President of Ukraine of January 12, 2015, № 5/2015[1] also lacks direct problem of observing human rights in places of confinement, including applying suppressive measures to imprisoned convicts.

Along with this, general conceptual provisions of the given Strategy could be used for improving legal principles and practice of applying physical force, special means and weapon to imprisoned convicts, namely, while realizing:

a) Strategy purpose, according to which European standards of life have to be introduced in Ukraine, and also its realization owing to security vector possibilities (part 1);

b) measures concerning law-enforcement system reform (p. 4 p. 1), aimed at correcting tasks and functions of law-enforcement bodies, introducing new service principles, new criteria of assessing law-enforcement officials' work for increasing the level of protecting rights and freedoms, society and state interests from unlawful encroachments;

c) measures aimed at renewing the personnel of civil servants in law-enforcement bodies by 70 % (p. 14 p. 4 of the Strategy);

[1] Pro Strategiyu stalogo rozvytku "Ukrayina – 2020": Ukaz Prezydenta Ukrayiny vid 12.01.2015 r. № 5/2015. *Uryadovyy kur'yer*. 15.01.2015. № 6.

d) main premise of Strategy realization, according to which public agreement between authorities and civil society is established, and each side has its own area of responsibility. Particularly, in this Strategy civil society responsibility is treated as an activity of controlling authorities, life according to the principle of dignity and steadily observation of the Constitution of Ukraine and Laws of Ukraine (p. 5 of the Strategy 'Means of the Strategy realization (public agreement)';

e) measures connected with normative legal ensuring the given Strategy, according to which appropriate normative legal acts have to be elaborated and adopted (as the Conception of reforming (developing) penitentiary system of Ukraine, approved by the resolution of Cabinet of Ministers of Ukraine of September 13, 2017, № 654-p became for the sphere of punishment execution)[1].

So, it should be admitted that the Strategy of stable development 'Ukraine – 2020' didn't enshrine the conceptual provisions concerning directly ensuring safe vital activity conditions in places of confinement, including the problems of modifying legal principles and practice of applying suppressive measures to convicts[2].

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[1] Pro skhvalennya Kontseptsiyi reformuvannya (rozvytku) penitentsiarnoyi systemy Ukrayiny: Rozporyadzhennya Kabinetu Ministriv Ukrayiny vid 13.09.2017 r. № 654-R. *Uryadovyy kur'yer.* 2017. № 178. 20 veres. S. 8–9.

[2] Kolb I. O., Kolb O. G. Pro deyaki determinanty konstytutsiynykh pravoporushen', shcho vchynyayut'sya narodnymy deputatamy Ukrayiny. *Zlochynnist' u globalizovanomu sviti: materialy XVI Vseukr. kryminal. konf. dlya stud., aspir. ta molodykh vchenykh (m. Kharkiv, 12 grud. 2017 r.).* Kharkiv: Pravo, 2017. S. 160–161.

As it was established in the course of the given research, there are analogical legal gaps in the Strategy of reforming judicial system, court proceedings and related legal institutes for years 2015–2020, approved by the Decree of the President of Ukraine of May 20, 2015, № 276/2015[1]. Although its part 1 'General provisions' apropos of this points out, that the given Strategy determined the purpose of movement vector, a road map, top priority of political legal conditions of formation and development of Ukraine, and the Strategy aim is practical realizing the principle of law supremacy, which is important considering problem solving in the sphere of punishment execution (part 2).

In its turn, one of the Strategy tasks is to outline the round of problems and define their reasons, necessary to eliminate by reforming judicial system, court proceedings and related legal institutes, which became an additional argument of choosing the theme of the given research and approving its corresponding tasks[2].

In this context the task mentioned in the given Strategy is of considerable importance, as it is connected with increasing degree of population trust in judicial power bodies and related legal institutes (which is absolutely urgent for the sphere of punishment exe-

[1] Pro Strategiyu reformuvannya sudoustroyu, sudochynstva ta sumizhnykh instytutiv na 2015–2020 rr.: Ukaz Prezydenta Ukrayiny vid 20.05.2015 r. № 276/2015. *Ofitsiynyy visnyk Prezydenta Ukrayiny.* 03.06.2015. № 13. St. 864.

[2] Kolb I. O., Kolb O. G. Pro perspektyvy rozvytku organiv probatsiyi v konteksti suchasnoyi polityky u sferi vykonannya pokaran'. *Instytut probatsiyi v Ukrayini: suchasnyy stan i perspektyvy rozvytku: materialy Mizhnar. krug. stolu (m. Kyyiv, 16 kvit. 2019 r.).* Kyyiv: Nats. akad. prokuratury Ukrayiny, 2019. S. 105–107.

cution within the context of the present practice of applying suppressive measures to imprisoned convicts).

Along with this, p. 5.11 of part 5 in this Strategy devoted only two out of seven approved measures concerning the problems indicated in this work, namely: 1) elaborating and practical applying modern approaches to penitentiary institutions administration (p. 1); 2) improving ethical and disciplinary rules and mechanisms of internal control in penitentiary institutions (p. 2), which is not mentioned at all in the Conception of reforming (developing) penitentiary system of Ukraine. As, properly speaking, in the indicated Strategy and Conception – about increasing public control of the punishment execution sphere, which is entirely important considering the present practice of applying physical force, special means, a straitjacket and weapon to imprisoned convicts.

So, elaborating the indicated Conception, its authors didn't fully correspond its provisions with the appropriate part of the Strategy of reforming judicial system, court proceedings and related legal institutes for years 2015–2020, which proves unsystematic approach to solving present problems and threats of national security, existing in the sphere of punishment execution of Ukraine[1].

[1] Kolb I. O., Cherednichenko S. Yu. Suchasnyy stan ta problemy vykonannya pokarannya u vydi pozbavlennya voli v Ukrayini, vklyuchayuchy pytannya dyferentsiatsiyi ta indyvidualizatsiyi. *Suchasna kryminal'no-vykonavcha polityka Ukrayiny ta yiyi rol' u realizatsiyi pryntsypu dyferentsiatsiyi ta indyvidualizatsiyi vykonannya pokarannya u vydi pozbavlennya voli. Realizatsiya pryntsypu dyferentsiatsiyi ta indyvidualizatsiyi vykonannya pokaran' u kryminal'no-vykonavchiy diyal'nosti Ukrayiny: navch. posib.*/ za zag. red. d-ra yuryd. nauk, prof. O. G. Kolba ta d-ra yuryd. nauk, prof. O. M. Dzhuzhy. Kyyiv: Kondor, 2016. S. 222–241.

The provisions of the normative legal sources, concerning to a certain extend the problems of punishment execution and serving a sentence, are an additional argument as regards this[1]. Thus, Ukraine determined the aim of Law of Ukraine 'On national programme of adapting legislation of Ukraine to the legislation of the European Union' as achieving the corresponding legal system of Ukraine acquis communautaire, considering the criteria the European Union put forward to the states intending to join it, and included criminal executive legislation in the first stage of its fulfillment, thereby such an indicated approach confirmed the secondary nature of the problems existing in places of confinement (part V of the National programme).

Maybe, for these reasons the project content of Law of Ukraine 'On penitentiary system' was formulated and elaborated by people's deputies of Ukraine (I. V. Mosiychuk, I. S. Lutsenko, A. A. Kozhemiakin and others)[2], which was not adopted by the Verkhov-

[1] Kolb I. O. Suchasni zasady okhorony prav zasudzhenykh v Ukrayini. *Pravovi reformy v Ukrayini (tekst): materialy V Vseukr. nauk.-teoret. konf.: u 2-kh ch. (m. Kyyiv, 16 zhovt. 2013 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2013. Ch. 2. S. 117–118.

[2] Barash Ye. Yu. Garantuvannya prav lyudyny v protsesi reformuvannya systemy vykonannya pokaran'. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv Mizhnar. prakt. konf. (Kyyiv, 2 grud. 2016 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2016. S. 3–5.

Kyrylyuk A. V. Spivvidnoshennya ponyat' "penitentsiarna systema" ta "penitentsiarna sluzhba" v konteksti proektu Zakonu "Pro penitentsiarnu systemu". *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti iz zakonom, kriz' pryzmu pravovykh reform: materialy Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 2 grud. 2016 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2016. S. 199–122.

na Rada, and it also lacked the norms concerning PEI and bodies personnel activity connected with applying suppressive measures to imprisoned convicts. Moreover, among the principles, enshrined in draft law, its authors indicated supremacy of law, lawfulness, humanism, respect to human dignity, observance of rights and freedoms of a person and citizen, transparency for public control.

Only in general the problems studied in this work are enshrined in art. 4 of the Project. Thus, p. 1 of this article points out, that penitentiary system personnel is obliged to respect honour and dignity, rights and freedoms of convicts and the people in custody, showing humane treatment to them.

P. 2 art. 4 of the Project apropos of this says that rights and freedoms restrictions applied to convicts and people in custody must be provided for by law, pursue purposes substantiated by international standards and be necessary in a democratic society according to European Court of human rights. Such restrictions must be based on just balance of individual and public interests. They must be minimum necessary for achieving substantiated purposes, and cannot be used, if there is less alternative restriction for efficient achieving purposes, posed on them. For all that, proceeding from the content of p. 3 of the given Project article, in case of applying restriction of rights and freedoms to convicts and people in custody, penitentiary system personnel take written motivated decision given p. 2 of this article, pointing out the order of its appealing. The copy of such a decision is given to the convict or person in custody.

Considering penitentiary system structure, the provision of p. 4 art. 8 of the Project is completely analogical, saying that within territorial bodies of criminal punishment execution territorial (interregional) militarized formations, as structural subunits, can be formed, main tasks of which are preventing and ceasing actions disorganizing PEI and IIW work, terrorist and other crimes at penitentiary system, protection and security objects[1].

[1] Kyrylyuk A. V. Spivvidnoshennya ponyat' "penitentsiarna systema" ta "penitentsiarna sluzhba" v konteksti proektu Zakonu "Pro penitentsiarnu systemu". *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti iz zakonom, kriz' pryzmu pravovykh reform: materialy Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 2 grud. 2016 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2016. S. 199–122.

Kolb I. O., Kolb O. G. Pro deyaki shlyakhy udoskonalennya diyal'nosti Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny. *Problemni pytannya stanu dotrymannya zakhystu prav lyudyny v Ukrayini (tekst): zb. materialiv IV Vseukr. nauk.-teoret. konf.: u 2-kh ch. (m. Kyyiv, 5 grud. 2013 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2013. S. 18–19.

Kolb I. O., Zhuravs'ka Z. V. Pro deyaki pryntsypy suchasnoyi kryminal'no-vykonavchoyi polityky Ukrayiny. *Osoblyvosti ta perspektyvy rozvytku gromadyans'kogo suspil'stva v Ukrayini (tekst): zb. materialiv Pidsumk. nauk.-teoret. konf. (m. Kyyiv, 15 kvit. 2014 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2014. S. 17–18.

Kolb I. O., Kolb O. G. Bezpekova funktsiya kryminal'nogo pokarannya v Ukrayini. *Naukovyy visnyk Uzhgorods'kogo natsional'nogo universytetu. Seriya: Pravo.* 2016. T. 3. S. 47–50.

Kolb I. O., Cherednichenko S. Yu. Suchasnyy stan ta problemy vykonannya pokarannya u vydi pozbavlennya voli v Ukrayini, vklyuchayuchy pytannya dyferentsiatsiyi ta indyvidualizatsiyi. *Suchasna kryminal'no-vykonavcha polityka Ukrayiny ta yiyi rol' u realizatsiyi pryntsypu dyferentsiatsiyi ta indyvidualizatsiyi vykonannya pokarannya u vydi pozbavlennya voli. Realizatsiya pryntsypu dyferentsiatsiyi ta indyvidualizatsiyi vykonannya pokaran' u kryminal'no-vykonavchiy diyal'nosti Ukrayiny: navch. posib.*/ za zag. red. d-ra yuryd. nauk, prof. O. G. Kolba ta d-ra yuryd. nauk, prof. O. M. Dzhuzhy. Kyyiv: Kondor, 2016. Pidrozdil 2.2. S. 105–114; pidrozdil 5.1. S. 222–241.

So, the analysis of present normative legal acts and projects conducted, concerning the content of state policy in the sphere of punishment execution of Ukraine, gives grounds to claim that, despite their names of penitentiary character, criminal executive, not penitentiary, doctrine, a determinant in European Union countries, continues to prevail at legislative and other normative legal levels, as well as in practice. And this, in its turn, is on of the conditions influencing negatively the state and tendencies of applying physical force, special means, a straitjacket and weapon to imprisoned convicts, but above all – doesn't lead to qualitative modification of action psychology of punishment execution institutions and bodies personnel of Ukraine towards humanization and respect of rights and freedoms of people who serve a service in places of his isolation from the society.

4.2. Ensuring security in places of imprisonment by measures of physical force, special means and weapon

As the study of normative legal sources showed, the right to personal security of the subjects and participants of criminal executive legal relations refers to one of the priorities in the sphere of punishment execution[1]. It is told in art. 1 of CEC 'The purpose and tasks of criminal executive legislation of

[1] Kolb I. O. Kryminologichni ta kryminal'no-vykonavchi zasady zabezpechennya bezpeky v ustanovakh vykonannya pokaran' Ukrayiny. *KELM.* 2016. № 4 (16). S. 122–134.

Ukraine', art. 7 of this Code 'The fundamentals of convict's legal status', art. 10 'Convict's right to personal security', art. 102 'Regime in colonies and its main requirements', art. 104 'Operation and search activity in colonies', art. 105 'Regime of special conditions in colonies', art. 106 'Reasons for applying physical force, special means and weapon' and some other norms of CEC of Ukraine[1].

Proceeding from this, and aiming at improving legal mechanisms on the indicated problems, including the order of applying suppressive measures to imprisoned convicts, elucidating the social legal nature of 'security' term is important, which caused the given problem choice as a separate research task[2].

According to p. 1 art. 10 of CEC of Ukraine, convicts have the right to personal security. Enshrining the indicated right in criminal executive legislation of Ukraine became a consequence of Constitutional norms realization, defining rights and duties of a person and citizen (part 2 of the Constitution of Ukraine), that is, created one of mechanism elements of legal regulating this problem. Though, up till now, neither CEC, nor the Constitution of Ukraine has a meaningful definition of the notion 'convict's right

[1] Kolb I. O. Kryminal'no-vykonavchi zasady zastosuvannya zakhodiv bezpeky do zasudzhenykh, pozbavlenykh voli v Ukrayini. *Kryminologichna teoriya i praktyka: dosvid, problemy syogodennya ta shlyakhy yikh vyrishennya: materialy Mizhvuz. nauk.-prakt. konf. (m. Kyyiv, 24 berez. 2017 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2017. S. 161–163.

[2] Kolb I. O. Zabezpechennya osobystoyi bezpeky zasudzhenykh u vypravnykh koloniyakh Ukrayiny: monografiya. Kyyiv: Nats. akad. vnutr. sprav, 2014. 292 s.

to personal security', which specified the urgency of considering this problem[1].

The right to personal security belongs to fundamental rights of a person and citizen. Art. 3 of the Constitution of Ukraine states that a person, his life and health, honour and dignity, inviolability and security are considered the highest social value[2]. The content of state, its bodies and officials activity consists in protecting and confirming the indicated value. Due to this, some scientists (A. Kh. Stepaniuk, I. Ya. Yakovets) rightly attribute convict's right to personal security, enshrined in art. 10 of CEC, to fundamental rights of the people serving a criminal sentence[3].

Security in its wide meaning is a state of protecting vitally important interests of a person, society and state from outer and inner threats[4].

Having generalized the definitions of notions 'security' and 'personal security' formulated in science, it can be ascertained that personal security of imprisoned convicts should be understood as pro-

[1] Kolb I. O. Shchodo ponyattya ta deyakykh pravovykh mekhanizmiv zabezpechennya prava zasudzhenykh na osobystu bezpeku. *Legea si Viata.* Chisinau, 2013. S. 77–80.

[2] Kolb I. O., Yavors'ka O. O. Zabezpechennya bezpeky zasudzhenykh mozhlyvostyamy indyvidualnogo zapobigannya zlochynam. *Aktual'ni problemy zastosuvannya kryminal'nogo zakonodavstva: materialy krug. st. (m. Kyyiv, 5 lystop. 2015 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2015. S. 63–65.

[3] Kryminal'no-vykonavchyy kodeks Ukrayiny: naukovo-praktychnyy komentar/A. H. Stepanyuk, I. S. Yakovets'; za zag. red. A. Kh. Stepanyuka. Kharkiv: TOV "Odissey", 2005. S. 47.

[4] Mizhnarodna politseys'ka entsyklopediya: v 10-ty t. Kyyiv: NAVS, 2014. T. 8. S. 42.

tection of their rights and legal interests, determined and guaranteed at normative legal level, ensured by law-enforcement activity of punishment execution institutions and bodies officials and other people, from different threats encroaching upon their life, health, honour and dignity, inviolability and other legal interests[1].

In such a way, the analysis of the notion 'security' conducted gives grounds for the following conclusions:

a) first, the category 'safety' is close in meaning to the category 'security'. However, as Ye. P. Zhelibo and V. V. Zatsarnyi point out, if security characterizes objects or system state, safety is their property[2];

b) second, security is inextricably linked to danger, that is, every person feels danger and understand its meaning in his own way;

c) third, some scientists (Yu. I. Rymarenko, O. V. Kopan) proved, that the institute of legal security has two problems:

1) protection of a person's vitally important interests from threats in the sphere of legal relations[3];

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[1] Kolb I. O. Zabezpechennya osobystoyi bezpeky zasudzhenykh u vypravnykh koloniyakh Ukrayiny: monografiya. Kyyiv: Nats. akad. vnutr. sprav, 2014. S. 25.

[2] Ibid, p. 18.

[3] Kolb I. O., Dzhuzha O. M. Pro zmist kryminologichnoyi diyal'nosti personalu koloniy, pov'yazanoyi iz zabezpechennyam bezpechnykh umov zhyttyediyal'nosti zasudzhenykh, pozbavlenykh voli v Ukrayini. *Kryminal'no-pravove, kryminologichne ta kryminal'no-vykonavche zabezpechennya mekhanizmu realizatsiyi prav ta svobod lyudyny i gromadyanyna: materialy krug. stolu (m. Zaporizhzhya, 10 berez. 2017 r.).* Zaporizhzhya: Klasych. pryvat. un-t, 2017. S. 36–38.

2) legal protection of a person's vitally important interests[1].

For understanding the notion 'security' one of the key words is 'danger', that every person (convicts, in particular) feels in his own way, which depends mostly on: 1) the level of a person's social and public development; 2) the situation and social order affecting positively or negatively a person's (citizen's) world outlook[2].

For all that, having generalized all given definitions of the notion 'danger', it is possible to make a conclusion that it is phenomena, processes, objects, information and people, that can cause undesired consequences and lead to worsening a person's health state or death, do harm to environment and public activity objects[3].

As the practice proves, natural processes and phenomena, man-made environment and human actions are danger sources. Considering that a man constantly interact with environment and transform it, it affects society vital activity, danger exists

[1] Kolb I. O. Zabezpechennya osobystoyi bezpeky zasudzhenykh u vypravnykh koloniyakh Ukrayiny: monografiya. Kyyiv: Nats. akad. vnutr. sprav, 2014. S. 18.

[2] Kolb I. O., Gorbachevs'kyy V. Ya. Pro zmist ponyattya deyakykh zakhodiv bezpeky, shcho zastosovuyutsya do zasudzhenykh. *Kryminal'no-pravovi ta kryminalistychni zakhody protydiyi zlochynnosti: materialy Vseukr. nauk.-prakt. konf. (m. Odesa, 13 lystop. 2015 r.).* Odesa: Odes. derzh. un-t vnutr. sprav, 2015. S. 43–44.

[3] Kolb I. O. Kharakterni oznaky ta sposoby posyagan' na osobystu bezpeku zasudzhenykh u vypravnykh koloniyakh Ukrayiny. *Teoretychni ta praktychni pytannya stanu dotrymannya prav urazlyvykh kategoriy zasudzhenykh ta zvil'nenykh: materialy Vseukr. nauk.-prakt. konf. (m. Kyyiv, 19–20 kvit. 2016 r.).* Kyyiv: Palyvoda A. V., 2016. S. 49–52.

objectively in space and time and is realized in the form of streams of energy, substances, information. In other words, interaction of a man and environment is displayed in direct and reverse connections. This interaction consequence can change within wide limits – from positive to catastrophic, accompanied by people's death and environment components damage. Under these conditions there is an evident manifestation of danger in the form of negative consequences, appearing suddenly, as a rule, and are determined as dangers action, according to scientists (Ye. P. Zhelibo, V. V. Zatsarnyi)[1].

The study of the practice of punishment execution and serving a sentence in Ukraine proves that mostly danger for convicts is hidden and turns into actual danger under following conditions: a) danger really exists; b) a convict is in danger zone; c) a convict has no efficient protection means, doesn't use them, these means are not effective.

Danger is potential, embracing all above mentioned conditions, for convicts, first of all for people kept in PEI owing to accumulation in an isolated area of danger carriers for other objects (citizens, society and state on the whole). It is specified by the fact that potential danger axiom proves, absolute safety cannot be achieved in any kind of activity, that is, any human activity is potentially dangerous. Apart from this, according to this axiom, all human actions and all living environment components, except for

[1] Kolb I. O. Zabezpechennya osobystoyi bezpeky zasudzhenykh u vypravnykh koloniyakh Ukrayiny: monografiya. Kyyiv: Nats. akad. vnutr. sprav, 2014. S. 18.

positive properties and consequences, are able to create danger. Any new positive action is inevitably accompanied by arising a new potential danger or a group of dangers. That's why absolute danger sources elimination is impossible, even at the highest level, technology, in particular. The task is only to minimize it.

So, having generalized above mentioned and other approaches to defining the content of the terms 'security' and 'danger', it can be stated that 'convicts' right to personal security" is the measure of possible convict's behavior when serving a sentence, determined at normative legal and personal levels, which ensures protection of vitally important interests of a person and citizen[1].

Consequently, system-forming elements, making up the content of this notion, are as follows:

1) it is a measure of possible (permitted) convict's behavior, that is, it's his right. Generally recognize provision in the theory of criminal executive law of Ukraine says that a convict's right is a type and measure of his behavior when serving a criminal sentence, possibility of enjoying certain social benefits for satisfying personal needs, enshrined in the norms of the Constitution and other legislative acts. In A. Kh. Stepaniuk's opinion, convict's right to personal security, enshrined in p. 1 art. 10 of CEC of Ukraine, is his universal right as a person and citizen. This conclusion is based on the fact that, accor-

[1] Kolb I. O. Zabezpechennya osobystoyi bezpeky zasudzhenykh u vypravnykh koloniyakh Ukrayiny: monografiya. Kyyiv: Nats. akad. vnutr. sprav, 2014. S. 25.

ding to p. 3 art. 63 of the Constitution of Ukraine, a convict enjoys all rights of a person and citizen, except restrictions determined by law and established by court verdict. Apart from this, as art. 3 of the Constitution of Ukraine enshrines the universal right of a person and citizen to personal security, it should be admitted that, guided by the requirements of art. 10 of CEC of Ukraine, convict's right to personal security is his universal right, which doesn't belong to right restriction list determined to a convict on the ground of court verdict and law (art. 532–540 of CCP of Ukraine)[1].

2) a convict can enjoy this right when serving a sentence. In criminal executive law of Ukraine the following position is generally recognized, when serving a sentence is understood as a convict's legal state ensured by state coercion, which appears after guilty verdict is legalized, and consists in convict's behavior subordination to rights and freedoms restriction by corresponding punishments prescribed in CrC of Ukraine. According to requirements of art. 532–540 of CEC of Ukraine, court verdict is legalized after the term of filing an appeal expired, and the verdict of court of appeal – after the term of cassation expired, if it was not appealed or submitted, for all that a guilty verdict is executed after validation. Just that verdict is the reason for convict's serving a sentence, as it is said in art. 4 of CEC of Ukraine[2].

[1] Kolb I. O. Zabezpechennya osobystoyi bezpeky zasudzhenykh u vypravnykh koloniyakh Ukrayiny: monografiya. Kyyiv: Nats. akad. vnutr. sprav, 2014. S. 25–26.

[2] Ibid, p. 26.

The legal convict's status (state) is determined in p. 2 of CEC of Ukraine and other laws of Ukraine, especially those establishing order and conditions of a certain punishment execution and serving a sentence[1];

3) the indicated convict's right is determined at normative legal level. Convict's right to personal security is guaranteed by art. 3 of the Constitution of Ukraine and art. 10 of CEC of Ukraine, and its ensuring procedure – by special laws ('On ensuring security of the people participating in criminal court proceedings'), art. 42 of CEC of Ukraine, some norms of CEC of Ukraine (102–104), and p. 89 of PEI internal order rules, other by-law normative legal acts of Ministry of Justice of Ukraine[2];

4) convicts ensure this right at a personal level, that is, it is connected with the so called a person's victim behavior, that can be, as scientists (Ye. M. Moiseiev, O. M. Dzhuzha, V. V. Vasylevych) ascertained, careless, risky, provocative objectively dangerous for the very victim, as a result, it may lead to criminogenic situation, and sometimes – to committing a crime[3].

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[1] Kolb I. O., Gorbachevs'kyy V. Ya. Kryminal'ne pokarannya u pravovomu mekhanizmi sotsial'no-kryminologichnogo zapobigannya zlochynam ta zabezpechennya bezpeky osoby. *Suchasna kryminologiya: dosyagnennya, problemy, perspektyvy: materialy Mizhnar. nauk. konf. (m. Kharkiv, 9 grud. 2016 r.).* Kharkiv: Nats. yuryd. un-t im. Yaroslava Mudrogo, 2016. S. 84–85.

[2] Kolb I. O. Zabezpechennya osobystoyi bezpeky zasudzhenykh u vypravnykh koloniyakh Ukrayiny: monografiya. Kyyiv: Nats. akad. vnutr. sprav, 2014. S. 26–27.

[3] Kryminologichna viktymologiya: navch. posib./za zag. red. prof. O. M. Dzhuzhy. Kyyiv: Atika, 2006. S. 62.

5) vital interests of a convict, both as a person and a citizen are his protection object. According to p. 1 art. 7 of CEC of Ukraine, during punishment execution and serving a sentence a state protects only legal convict's interests, which are important interests of a person and a citizen, given the content of the right to personal security. Science consider legal convict's interests their aspirations, enshrined in legal norms of a specific action, as for enjoying certain benefits they are usually satisfied, according to the results of assessing convict behavior by punishment execution bodies officials or punishment execution institution administration, public prosecutor's office, court, etc.[1]

So, only when there are all enumerated system features, convicts' right to personal security acquire real meaning, and it should be taken into consideration during measures realization connected with ensuring the indicated right by a state and a person, according to the fact that the definition of the notion 'convicts' right to personal security' is important both in terms of law theory and of the practice of its realization, ensuring at normative legal and personal (victimological) levels[2]. Given the indicated, it is necessary to supplement art. 10 of CEC 'Convicts' right

[1] Kolb I. O. Zabezpechennya osobystoyi bezpeky zasudzhenykh u vypravnykh koloniyakh Ukrayiny: monografiya. Kyyiv: Nats. akad. vnutr. sprav, 2014. S. 27.

[2] Kolb I. O. Ponyattya ta zmist prava zasudzhenykh do pozbavlennya voli v Ukrayini na osobystu bezpeku. *Pravo na osobystu bezpeku zasudzhenykh do pozbavlennya voli v Ukrayini: ponyattya, zmist ta formy zabezpechennya: navch. posib.*/za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy ta d-ra yuryd. nauk, prof. O. G. Kolba. L'viv: Galyts. vyd. spilka, 2014. S. 8–59.

to personal security' with the note defining this notion according to the algorithm suggested on this work, in particular.

Taking the conditions of punishment execution and serving a sentence, determined in law, into consideration, it can be confirmed that the notion 'convicts' right to personal security' is most fully and exactly reflected by scientists' activity approach to its definition, what was used in this work.

Legal principles of ensuring the indicated right of imprisoned convicts in Ukraine make up on the whole the content of this research[1]. Each of legal sources is thoroughly analyzed and critically reinterpreted, considering the scientific development tasks and ways of improving the present legal basis of ensuring personal security of the people, serving a sentence in correctional colonies, including the problems connected with applying suppressive measures to imprisoned convicts. Among normative legal acts it is worth while emphasizing the following ones:

– the Constitution of Ukraine (art. 3, 21, 23, 63 and others);

– CEC of Ukraine (art. 1, 7, 8, 10, 104, 107 and others);

– CCP of Ukraine (art. 42)'

– law of Ukraine 'On pretrial detention';

– law of Ukraine 'On operation and search activity';

– law of Ukraine 'On ensuring security of the people participating in criminal court proceedings';

[1] Kolb I. O., Rudenko V. I. Pro deyaki problemni pytannya diyal'nosti personalu koloniy, pov'yazani z garantiyamy zabezpechennya prav zasudzhenykh v Ukrayini. *KELM.* 2017. № 2 (18). S. 167–178.

– law of Ukraine 'on State criminal executive service of Ukraine';

– PEI internal order rules;

– instruction on ensuring security of the people participating in criminal court proceedings; etc.[1]

For solving the problems indicated in this subsection of the work it is necessary to take such measures:

1. To supplement art. 10 of CEC of Ukraine with a note enshrining legally the notion 'convicts' personal security'.

The necessity for this is caused by the following circumstances:

a) the need of expanding convict and PEI personnel knowledge on these problems and the task of preventing any threats against them;

b) action extension of precedent norms used for the notion 'security' in other branches of law and normative legal acts;

c) the results of anonymous surveying imprisoned convicts and PEI personnel as for the content of the indicated problems.

2. To supplement CEC of Ukraine with art. 10-1 'Peculiarities of ensuring convicts' right to personal security for certain categories of people' of the following content:

'Taking gender, age, state of health and other individual convicts' peculiarities into consideration, appropriate conditions ensuring their right to personal security must be created in punishment execution

[1] Kolb I. O. Sotsial'no-pravova pryroda ponyattya prava zasudzhenykh na osobystu bezpeku. *Naukovyy visnyk Natsional'noyi akademiyi vnutrishnikh sprav.* 2012. № 1 (80). S. 130–138.

institutions and bodies. The order of determining such conditions is regulated with the norms of Special part of this Code'.

The necessity of making these supplements is caused by the following factors:

1) the peculiarities of serving a custodial sentence by convicted women and delinquents (p. 21); peculiarities of serving a sentence in different type colonies (p. 20); punishment execution in the form of life imprisonment (p. 22) and others are determined in CEC of Ukraine at the legislative level. Besides, law clearly establishes separate detention of imprisoned convicts in correctional and educational colonies (art. 92 of CEC); removal of imprisoned convicts (art. 88 of CEC); transfer of imprisoned convicts (art. 101 of CEC) and others, considering some peculiarities of detention of certain convict categories, and what is not done in the context of ensuring personal security of these people[1].

2) as the practice proves, the former delinquents are the most vulnerable subjects in PEI, who served a sentence in educational colonies (art. 19), or whom the court rendered the decision of their changing probation (art. 77 of CrC of Ukraine) into actual imprisonment and of sending them to correctional colonies, according to art. 147 of CEC of Ukraine 'Transferring convicts from educational colony to correc-

[1] Kolb I. O. Zastosuvannya syly do zasudzhenykh – odna iz form zapobigannya posyagannya na yikh bezpeku. *Zlochynnist' yak suspil'na problema ta shlyakhy yiyi vyrishennya v Ukrayini: materialy Vseukr. stud. nauk. konf.: u 2-kh t. (m. Kharkiv, 4 lystop. 2016 r.).* Kharkiv: Nats. yuryd. un-t im. Yaroslava Mudrogo, 2016. S. 171–172.

tional colony'. In this connection art. 92 of CEC of Ukraine 'Separate detention of imprisoned convicts in correctional and educational colonies' needs correcting, namely: p. 3 of this article should be supplemented with the word combination of the following content: 'People transferred from educational to correctional colonies are kept isolated and separated from the others in the manner prescribed by this Code'[1].

So, having generalized suggested ideas of scientists and practical workers, concerning correctional colonies personnel activity, connected with ensuring convicts' personal security in correctional and educational colonies by applying suppressive measures, such people can be grouped into three categories:

a) people performing directly operational official tasks with exactly established functions (protection, supervision, etc. – without administrative and coordinative functions); that is, it's an instructive executive activity type aimed at this task fulfillment;

b) people performing the same functions, but they are connected with organizing and coordinating actions of subordinate junior personnel – it's a reproductive personnel activity type of this direction;

c) people performing the functions of senior and higher administrative personnel at the level of productive type of such activity.

Thus, the indicated approach will enable:

1) to increase the level of individual correctional colony personnel responsibility as to ensuring con-

[1] Kolb I. O. Zabezpechennya osobystoyi bezpeky zasudzhenykh u vypravnykh koloniyakh Ukrayiny: monografiya. Kyyiv: Nats. akad. vnutr. sprav, 2014. S. 28–30.

victs' personal security and taking decision of applying suppressive measures to these people;

2) to apply more efficiently OSA forces and means of operational and search prevention, first of all, at the stages of preparation for (art. 14 of CrC) and attempt at a crime (art. 15 of CrC), and when correctional colony personnel realize directly the measures aimed at ensuring convicts' personal security, including prevention of applying suppressive measures to these people by colony personnel;

3) to improve the practice, including court one, of counteracting crimes in correctional colonies, including that of applying suppressive measures to convicts[1].

3. To supplement CEC of Ukraine with part 4-1 'Punishment execution institutions and bodies personnel' and adopt it in the following wording:

Article 21-1. 'Principles of the legal status of punishment execution institutions and bodies personnel' of the following content:

'The legal status of punishment execution institutions and bodies personnel and requirement for it are determined by special law'.

Article 21-2. 'Punishment execution institutions and bodies personnel responsibility' in the following wording:

'1. In cases of cruel degrading treatment of convicts, punishment execution institutions and bodies

[1] Kolb I. O. Deyaki organizatsiyno-pravovi problemy, shcho pov'yazani iz zabezpechennyam kryminologichnoyi bezpeky u mistsyakh pozbavlennya voli Ukrayiny. *Kryminal'no-pravovi ta kryminologichni aspekty protydiyi zlochynnosti: materialy Mizhnar. nauk.-prakt. konf. (m. Odesa, 25 lystop. 2016 r.).* Odesa: Odes. derzh. un-t vnutr. sprav, 2016. S. 40–41.

personnel are subject to dismissal from service (work) and are held legally responsible.

2. Reemployment of the people, indicated in part 1 of this article, is not allowed'.

Article 21-3. 'Relationship of punishment execution institutions and bodies personnel'.

'1. Relationship of punishment execution institutions and bodies personnel and convicts is based on strict observation of law and other principles of criminal executive legislation of Ukraine, of punishment execution and serving a sentence.

2. Punishment execution institutions and bodies personnel is strictly prohibited to have unofficial relations with convicts and their relatives, if they don't meet service interests, and also use their services.

3. Punishment execution institutions and bodies personnel address the convicts as "you" and call them "convict" or "citizen" and a surname, in educational colonies – as "you" or "pupil" and a name.

Convicts address punishment execution institutions and bodies personnel as "you", call their name and patronymic or "citizen" and their rank or post occupied'.

The necessity for this modification is caused by the following circumstances[1]:

– first, by content and structure of criminal executive legal relations, main subjects of which are PEI

[1] Kolb I. O., Kolb O. G. Zastosuvannya zasobiv pryborkannya do zasudzhenykh, yak odna iz umov bezpechnogo funktsionuvannya vypravnykh koloniy. *Stan ta perspektyvy reformuvannya sektoru bezpeky i oborony Ukrayiny: materialy II Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 30 lystop. 2018 r.).* Kyyiv: FOP Kandyba T. P., 2018. S. 330–331.

and bodies personnel and convicts. For all that, the legal status of the latter is clearly determined in law (art. 7–10 of part 2 of CEC), the present CEC doesn't say anything about the first ones. A paradoxical situation arises: certain convicts serve a sentence, whose individual and general status is regulated at normative legal level, but non-personified (anonymous) PEI and bodies, not the corresponding state officials, execute punishments[1];

– second, by system principle of legal norm formation, establishing mutual agreement and interconnection of both general compulsory rules of conduct and other norms, included in normative legal act in the form of changes and supplements;

– third, international legal acts of punishment execution contain the norms determining the content of activity and legal status of both convicts and PEI and bodies personnel;

– forth, international legal practice (CEC, laws, etc.) is of the same structure, stipulating the role and place of the two above mentions subjects in criminal executive legal relations.

4. To change and supplement Law of Ukraine 'On State criminal executive service of Ukraine', namely:

4.1. To supplement the first sentence of p. 1 art. 16 of the Law with the following word combinations: '...and also the requirements of international

[1] Kolb I. O. Kryminologichni ta kryminal'no-vykonavchi zasady zabezpechennya bezpeky v ustanovakh vykonannya pokaran' Ukrayiny. *Aktual'ni pytannya kryminal'no-vykonavchogo zakonodavstva ta praktyky: zb. materialiv krug. stolu (m. Kyyiv, 30 berez. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2017. S. 56–58.

legal acts concerning punishment execution, approved by the Verkhovna Rada of Ukraine', and also – 'not to abuse and go beyond the official powers vested by law' and adopt in the following wording: 'SCES personnel of Ukraine is obliged to steadily observe laws of Ukraine, and also the requirements of international legal acts concerning punishment execution, approved by the Verkhovna Raa of Ukraine, keep professional ethics norms, treat convicts and people in custody humanely, not to abuse and go beyond the official powers vested by law'[1].

The necessity for such modification is caused by: the requirements of art. 9 of the Constitution of Ukraine, in which international legal acts are attributed to national legislation sources; the content of Law of Ukraine 'On international treaties' determining the priority of ratified international legal acts on the territory of Ukraine; court practice concerning criminal cases of exceeding power or official authority.

4.2. To supplement the second sentence of art. 17 of this Law with the word combination 'including abroad or involving foreign experts' and adopt in the following wording: 'For this purpose SCES of Ukraine can create the corresponding educational institutions, and organize expert training in other educational institutions on a contractual basis, including abroad or involving foreign experts'.

[1] Kolb I. O. Zabezpechennya osobystoyi bezpeky zasudzhenykh u vypravnykh koloniyakh Ukrayiny: monografiya. Kyyiv: Nats. akad. vnutr. sprav, 2014. S. 43.

The indicated modification legalizes the activity performed in Ukraine for a long time which is connected with involving international experts and other specialists in SCES personnel heightening qualification in the form:

a) of monitoring human rights and freedoms observation in PEI of Ukraine and publishing the corresponding methodical and other textbooks, also training materials collections;

b) of travelling abroad of representatives of SCES of Ukraine for studying foreign experience (only in 2012 24 trips with 74 participants were taken);

c) of setting up funds assisting reforms in criminal executive system of Ukraine, also model punishment execution institutions, etc.[1]

So, exact and thorough elucidating the notion content 'security in places of imprisonment' is an important and, definitely, necessary element of preventive activity of SCES of Ukraine[2], connected with applying suppressive measures to convicts, determined in law, and the right guideline for taking decision and choosing a specific measure of influence on an offender.

[1] Bogatyryov I. G. Doktrynal'na model' pobudovy penitentsiarnoyi systemy Ukrayiny novogo typu: innovatsiynyy proekt. Kyyiv: In-t krym.-vykon. sluzhby, DPtS Ukrayiny, 2014. 53 s.

[2] Kolb I. O., Dzhuzha O. M. Pro deyaki pravovi zasady kryminologichnoyi diyal'nosti personalu koloniy shchodo zabezpechennya bezpeky zasudzhenykh do pozbavlennya voli v Ukrayini. *Aktual'ni problemy kryminal'nogo prava, protsesu, kryminalistyky ta operatyvno-rozshukovoyi diyal'nosti: tezy Vseukr. nauk.-prakt. konf. (Khmel'nyts'kyy, 3 berez. 2017 r.).* Khmel'nyts'kyy: Nats. akad. derzh. prykord. sluzhby Ukrayiny im. B. Khmel'nyts'kogo, 2017. S. 186.

4.3. Public control in the practice of applying physical force, special means and weapon to imprisoned convicts

The study of criminal executive legislation of Ukraine (art. 2 of CEC) showed that in its norms the term 'the public', as a key element in the word combination 'public control', is used in such a context:

1) as a task of the given legislation – in the form of the public participation in the process of controlling criminal punishment execution (p. 2 art. 1 of CEC);

2) as a principle of criminal executive legislation, punishment execution – in the form of the public participation in the cases, stipulated by law, in punishment execution institutions and bodies activity (art. 5 of CEC, art. 2 of Law of Ukraine 'On State criminal executive service of Ukraine');

3) as one of main means of convicts' correction and re-socialization – in the form of public influence (p. 3 art. 6 of CEC);

4) as one of convicts' rights – in the form of their rights to appeal to public associations;

5) as one of the subjects visiting punishment execution institutions (p. 1 art. 24 of CEC);

6) as a subject of public control of convict rights observation during criminal punishment execution in punishment execution institutions (correctional colonies, arrest houses, correctional centres and investigative isolation wards) in the form of watch committee (p. 2 art. 25 of CEC);

7) as an independent imprisoned convict organization (art. 127 of CEC; art. 27 of Law of Ukraine 'On State criminal executive service');

8) as a subject of performing the mass and religious ceremonies in colonies (art. 128, 128-1 of CEC) – in the form of pastoral care of convicts[1];

9) as participants of correcting and re-socializing juvenile convicts (art. 149 of CEC);

10) as a subject of supervising the behavior of people released from serving a service with probation (p. 2 art. 163 of CEC);

11) as a participant of disciplinary committee activity in punishment execution institution – in the form of being invited to its meeting (p. 3 art. 135 of CEC);

12) as subjects of cooperation with punishment execution institutions and bodies – in the form of assisting them to perform the tasks established in law (art. 5, 20 of Law of Ukraine 'On State criminal executive service');

13) as a subject of democratic civil control (Law of Ukraine 'On democratic civil control over Military organization and law-enforcement bodies')[2].

It would seem that a proper legal mechanism for public control in the sphere of punishment execution in Ukraine is formed. However, according to the results of the given scientific research, in practice

[1] Kolb I. O., Shevchenko O. D. Shchodo zmistu vzayemodiyi personalu ustanov vykonannya pokaran' Ukrayiny ta religiynykh organizatsiy z pytan' zapobigannya zastosuvannya syly do zasudzhenykh. *Particularitarii adaptarii Legislatiel republicii Moldova si ucrainei la Legislatia uniunii euro pene: conf. international stintifico-practica (Chisinau, Republica Moldova, 23–24 martie 2018).* Chisinau: Lulian, 2018. S. 288–289.

[2] Pro demokratychnyy tsyvil'nyy kontrol' nad Voyennoyu organizatsiyeyu i pravookhoronnymy organamy derzhavy: Zakon Ukrayiny vid 19 chervnya 2003 roku № 975-IV. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2003. № 46. St. 366.

these problems don't correspond fully with the above indicated forms and kinds of the public activity concerning criminal punishment execution and serving a sentence, especially with the process of applying physical force, special means, a straitjacket and weapon to imprisoned convicts.

The question is, that not any indicated above normative legal act and law norm enshrines the provision saying that public organizations have the right to control applying suppressive measures to imprisoned people.

At the same time, in the present history of Ukraine a number of important measure are taken, concerning directly the problems studied in the given work, which created an appropriate basis for the public, along with Ombudsman of the Verkhovna Rada of Ukraine and public prosecutor (p. 5 art. 106 of CEC) participating in the process of controlling the activity of punishment execution institutions and bodies, also other law-enforcement bodies personnel, involved in ensuring the regime of special conditions in colonies (art. 105, p. 6 art. 106 of CEC), connected with applying suppressive measures in places of confinement.

Thus, there is a special part VIII 'Public control of the police' in Law of Ukraine 'On National police', enshrining the provision, that a police chief and chiefs of territorial police bodies once a year prepare and publish the report on police activity on official web portal of police bodies, aimed at informing the public of police activity (p. 1 art. 86)[1].

[1] Zakon Ukrayiny "Pro Natsional'nu politsiyu". Polozhennya pro Natsional'nu politsiyu: ofits. tekst. Kyyiv: Alerta, 2016. 84 s.

Moreover, the chiefs of territorial police bodies are obliged to regularly promulgate the data on measures used, concerning detecting, preventing and ceasing public order violation, on official web portals of the bodies they stand on the head of (p. 3 art. 86 of the given Law).

But the most important thing in this Law is, that, according to the results of assessing the activity of territorial police body, the Verkhovna Rada of Ukraine or the corresponding local council deputies can take the resolution of distrust of a chief of the corresponding police body (subunit), which is the reason of dismissal him from the post held (art. 87).

Apart from this, according to the requirements of art. 90 of Law of Ukraine 'On National police', the control of police activity can be exercised by involving the public representatives in common considering complaints and actions or failure of policemen and in checking the information of proper performing duties imposed on them, in accordance with laws and other normative legal acts of Ukraine.

Nowadays, as it was established in the course of the given research, the provisions, mentioned above in Law of Ukraine 'On National police', are not enshrined in any law and other legal source concerning the sphere of punishment execution and personnel activity of punishment execution institutions and bodies of Ukraine, in particular.

As regards this, nothing is said in the Conception of reforming (developing) penitentiary system of Ukraine, and in other state programmes (the National strategy in human rights sphere; strategy of re-

forming judicial system, court proceedings and related institutes for the years 2015–2020; strategy of stable development 'Ukraine – 2020'; etc.)

The indicated norms are not suggested in a draft Law 'On penitentiary system', though they are absolutely essential, proceeding from the present state of punishment execution sphere of Ukraine.

As the given research results showed, fundamental principles of public control are determined in Law of Ukraine 'On democratic civil control over Military organization and law-enforcement state bodies'[1]. Art. 1 of the given Law enshrined the content of the notion 'democratic civil control over Military organization and law-enforcement state bodies' (civil control), which implies the complex of legal, organizational, informational measures for ensuring steady observing legitimacy and transparency of the activity of all components of Military organization and law-enforcement state bodies, for assisting their efficient activity and performing the functions imposed on them, for strengthening state and military discipline, taken according to the Constitution and laws of Ukraine.

In the contest of the subject content of the given scientific search, main civil control tasks, established in this Law, are also important (art. 2), namely:

1) directing punishment execution institutions and bodies activity to realizing tasks, established by

[1] Pro demokratychnyy tsyvil'nyy kontrol' nad Voyennoyu organizatsiyeyu i pravookhoronnymy organamy derzhavy: Zakon Ukrayiny vid 19 chervnya 2003 roku № 975-IV. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2003. № 46. St. 366.

the principles of internal and external policy, in the sphere of law-enforcement activity, aimed at strengthening national security and public order;

2) observing legitimacy of punishment execution institutions and bodies activity;

3) creating the conditions making applying military formations and other law-enforcement bodies for restricting imprisoned convicts' rights and freedoms impossible;

4) preventing and prohibiting violation of constitutional rights and freedoms, protecting legal interests of punishment execution institutions and bodies personnel, people dismissed from service (work) in SCES of Ukraine, also their family members;

5) taking public opinion, suggestions of citizens and public organizations into account, when discussing and approving decisions of punishment execution institutions and bodies activity and strengthening public order and legitimacy in the sphere of punishment execution;

6) allotting, according to laws, in the required amounts and efficiently using budget funds, aimed at maintaining and functioning punishment execution institutions and bodies of Ukraine;

7) using state property for its intended and functional purposes, which was transferred to punishment execution institutions and bodies;

8) opportune, full and reliable informing state power bodies and society about punishment execution institutions and bodies activity, ensuring its accordance with requirements of the Constitution of Ukraine and laws of Ukraine, international law norms, actual criminal situation, public order.

Proceeding from the fact that neither control forms determined in Law of Ukraine 'On National police', nor public control tasks mentioned in Law of Ukraine 'On democratic civil control over Military organization and law-enforcement state bodies' are determined, it would be logical to modify CEC of Ukraine, taking these provisions into consideration. It is worthwhile supplementing this Code with art. 25-1 'Public control tasks and principles of observing convicts' rights and legitimacy, when executing criminal punishments', and say it in the following wording:

'Public control tasks and principles of observing convicts' rights and legitimacy, when executing criminal punishments, are determined by legislation of Ukraine, concerning democratic civil control over Military organization and law-enforcement state bodies'.

Taking into consideration, that one of the tasks, determined by Law of Ukraine 'On democratic civil control over Military organization and law-enforcement state bodies', is the task of ensuring civil control of conformity of punishment execution institutions and bodies to the Constitution and laws of Ukraine and international law norms, and aiming at improving legal principles of applying suppressive measures to imprisoned convicts, art. 106 of CEC of Ukraine should be supplemented with part 14 of the following content:

'For ensuring public control of applying physical force, special means, a straitjacket and weapon to imprisoned convicts by punishment execution insti-

tutions and bodies, such cases are informed to the public organizations, which have the right to exercise the indicated control in the sphere of punishment execution, according to the present legislation of Ukraine'.

Besides, by analogy with the corresponding norms of Law of Ukraine 'On National police', it is necessary to supplement CEC of Ukraine with art. 25-2 'Public control over personnel activity of State criminal executive service of Ukraine' of the following content:

'Punishment execution institutions and bodies heads are obliged to prepare and publish annually reports on their official web portals on the activity results of the subunits, they are on the head, aimed at informing the public and taking appropriate decisions apropos of this.

Public control over the personnel of State criminal executive service of Ukraine can be exercised in other forms, determined in legislation, concerning the democratic civil control over Military organization and law-enforcement state bodies, and in the form of involving the public representatives in common considering complaints and actions, or failure of punishment execution institutions and bodies personnel, and in checking the information on improper performing the duties imposed on these people.

The Verkhovna Rada of Ukraine, Verkhovna Rada of the Autonomous Republic of Crimea, Kyiv and Sevastopol city councils, regional, district and city councils have the right, according to public control results, to adopt the distrust resolution of the corresponding punishment execution institution and

body head, which is one of the reasons for dismissing him from the post held'.

With such modification of public control in the sphere of punishment execution of Ukraine the practice of applying suppressive measures to imprisoned convicts will also change, and the tasks, determined in law, connected with preventing tortures and cruel degrading convict treatment, will be realized at much higher level[1].

As some researchers stated, the full life of a modern society implies the presence of the third sector in it (the first one is state, the second – private business sector), that is, public organizations activity and public control over the first two ones[2]. But, as G. O. Radov ascertain, the problem is more acute than it seems at first sight. Not to find themselves in such a situation, punishment execution institutions and bodies personnel have to initiate public activity. First of all, it should be done to support themselves[3]. He is convinced (and it should be fully agreed), only civil society and its institutes can either blame personnel, or justify them[4].

The significance of modifying legal principles and, on the whole, meaningful elements of public

[1] Kolb I. O. Do pytannya vyrishennya problemy protypravnoyi povedinky personalu vypravnykh ta vykhovnykh koloniy v Ukrayini u razi zastosuvannya do zasudzhenykh, pozbavlenykh voli, fizychnoyi syly. *Naukovyy visnyk Khersons'kogo derzhavnogo universytetu. Seriya "Yurydychni nauky".* 2017. Vyp. 6. T. 3. S. 68–71.

[2] Tyur'ma i obshchestvo: materialy seminara dlya personala uchrezhdeniy po ispoln. nakaz. Donetsk. obl. Donetsk: Donetsk. Memorial, 2000. S. 28.

[3] Ibid, p. 17.

[4] Ibid.

control in the sphere of punishment execution is also caused by the fact that in the present criminal executive legislation of Ukraine, given art. 25 of CEC, this form of public organization activity is actually brought to its two kinds: a) assisting punishment execution institutions and bodies to correct convicts and carry out social and educational work (p. 1 of this Code article); b) exercising control by the only legal body – watch committees (p. 2).

However, studying the content of the Provision on watch Committees, approved by Cabinet of Ministers of Ukraine (resolution of April 1, 2004, № 429), proved that the indicated public control is formal and doesn't concern essential aspects of criminal executive activity, particularly, the problems connected with applying physical force, special means, a straitjacket and weapon to imprisoned convicts.

Moreover, most norms of the given Provision don't correspond to the content of changes and supplements introduced to the present CEC of Ukraine during the years 2005–2018, including those, concerning accordance of conditions of serving custodial punishment with European standards[1], and with the corresponding articles of Law of Ukraine 'On democratic civil control over Military organization and law-enforcement state bodies'[2]. Thus, for these rea-

[1] Pro vnesennya zmin do Kryminal'no-vykonavchogo Kodeksu Ukrayiny shchodo adaptatsiyi pravovogo statusu zasudzhenogo do yevropeys'kykh standartiv: Zakon Ukrayiny vid 08.04.2014 r. № 1186-V. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 2014. № 2. St. 869.

[2] Pro demokratychnyy tsyvil'nyy kontrol' nad Voyennoyu organizatsiyeyu i pravookhoronnymy organamy derzhavy: Zakon Ukrayiny vid 19 chervnya 2003 roku № 975-IV. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2003. № 46. St. 366.

sons, neither watch committees, nor other public associations can properly realize the following principles of exercising civil control in art. 4 of the given Law:

1) separation of functions and powers of political administration of punishment execution sphere of Ukraine, especially under the President of Ukraine V. A. Yushchenko (2005–2010) and the President of Ukraine P. O. Poroshenko (2014–2018), when the central executive power body, realizing state policy in the sphere of punishment execution, was headed by representatives of coalition political parties united in the Verkhovna Rada of Ukraine;

2) cooperation and responsibility of state power bodies and punishment execution sphere administration bodies for realizing state policy of strengthening legitimacy and public order, for opportune and thorough material and financial provision of punishment execution institutions and bodies for realizing functions imposed on them (absence of control on these problems contribute to the fact that every year, beginning with 1991 till present, only 40 % of punishment execution sphere needs was allotted from State budget of Ukraine[1], and the state of repeated and penitentiary criminality and malicious offences remains unchangeable);

3) transparency of expenses for maintaining punishment execution institutions and bodies (as part II of the Conception of reforming (developing) peniten-

[1] Pro Derzhavnyy byudzhet Ukrayiny na 2019 rik: Zakon Ukrayiny 28 lyutogo 2019 roku № 2696-VIII. *Ofitsiynyy visnyk Ukrayiny*. 2019. № 25. St. 878.

tiary system of Ukraine of 2017 marks, during all years of independence SCES of Ukraine was financed in the amount of 40 % of its needs. Only in 2017 the additional need for financing the sphere of punishment execution made up 730 million hryvnias (part VI of the Conception))[1];

4) openness of information on SCES of Ukraine activity for the society, which is not a state secret, considering the peculiarity of state law-enforcement bodies, determined by law (at the same time, the newsletter of the central executive policy body, realizing state policy of Ukraine in the sphere of punishment execution, published from 1991 till 2016, at present is not published by SCES Administration of Ministry of Justice of Ukraine);

5) responsibility of officials for opportune, full and reliable information issued, and reacting to appeals of citizens, public organizations, mass media.

Of course, if public organizations and other subjects of civil control, determined in art. 6 of Law of Ukraine 'On democratic civil control over Military organization and law-enforcement state bodies'[2], used the powers and principles, established in this normative legal act, in more active and civilized manner, the situation, connected with applying physical for-

[1] Pro skhvalennya Kontseptsiyi reformuvannya (rozvytku) penitentsiarnoyi systemy Ukrayiny: Rozporyadzhennya Kabinetu Ministriv Ukrayiny vid 13.09.2017 r. № 654-R. *Uryadovyy kur'yer.* 2017. № 178. 20 veres. S. 8–9.

[2] Pro demokratychnyy tsyvil'nyy kontrol' nad Voyennoyu organizatsiyeyu i pravookhoronnymy organamy derzhavy: Zakon Ukrayiny vid 19 chervnya 2003 roku № 975-IV. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2003. № 46. St. 366.

ce, special means, a straitjacket and weapon to imprisoned convicts, would be of quite different character, namely – it should be recognized as an extraordinary event by the public, because the indicated activity of SCES personnel of Ukraine concerns considerable right violation of the people, suppressive measures, established in law, are applied to (the right to life, health, dignity, security, etc.).

Along with this, it should be stated that the problems of public control have to become a subject of a special research, considering that nowadays its efficiency and results are low[1]. In addition to that, one of the circumstances, affecting negatively the given activity state, is the fact that just one public body is determined in the present criminal executive legislation of Ukraine, particularly, in p. 2 art. 25 of CEC, – watch committees, powers of which are 'scanty' (narrow and insignificant), and the forms of influencing PEI administration – formal and empty.

That's why it is so important to enshrine real legal guarantees of practical exercising public control in the sphere of punishment execution, and the principles and judicial consequences of such public activity at legislative level.

As regards this G. O. Radov aptly put it, criminal executive system will do without public organizations. That's why nowadays we not only can, but we

[1] Kolb I. O., Popel'nyuk T. V. Shchodo deyakykh istorychnykh periodiv vzayemodiyi religijnykh organizatsiy ta organiv i ustanov vykonannya pokaran'. *Pryklady pravovogo vregulyuvannya dushpastyrs'kogo sluzhinnya u penitentsiarniy systemi v krayinakh Yevropy: materialy Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 3 grud. 2018 r.).* Kyyiv: FOP Kandyba T. P., 2018. S. 64–66.

are obliged to promote establishing such organizations, as a necessary condition ensuring our system qualitative functioning. This is a categorical imperative, as any attempts to block public society participation in criminal executive system activity will inevitably lead to system collapse, will implicitly push it to the state, known as 'GULAG'[1]. For all that, in his opinion (and it is worthwhile agreeing fully to it), the normative base of these problems should not be abstract, on the contrary, it has to create the mechanisms enabling to actually use it[2].

Summing up the given subsection of the work, it should be stated that at present, public control, according to the practice of applying physical force, special means, a straitjacket and weapon to imprisoned convicts, is not determined at normative level in criminal executive law of Ukraine, and the potential possibilities, enshrined in law, concerning civil control of law-enforcement system on the whole, in real criminal executive legal relations are not almost realized.

In the end, all that don't allow to discover deep determinants, connected with forming illegal behavior, being the reason for applying the corresponding suppressive measures to convicts, and also psychology of punishment execution institutions and bodies personnel in such situations, taking adequate decisions apropos of this, and manifestation of humanism after ceasing offences and crimes of guilty

[1] Tyur'ma i obshchestvo: materialy seminara dlya personala uchrezhdeniy po ispoln. nakaz. Donetsk. obl. Donetsk: Donetsk. Memorial, 2000. S. 12.

[2] Ibid, p. 23.

people, including opportune pre-medical assistance provided to the latter[1].

So, the necessity of introducing public control over this area of SCES personnel activity is obvious.

Such a conclusion follows from analysis results conducted of applying physical force, special means, a straitjacket and weapon to imprisoned convicts in Ukraine during the years 1991–2018, and also from the normative legal principles determined in Law of Ukraine 'On democratic civil control over Military organization and law-enforcement state bodies' (particularly, in art. 5 'Civil control subject', art. 7 'Peculiarities and restrictions in exercising control', art. 19 'The public participation in exercising control', etc.[2]); 'Convention on prohibition of tortures or cruel degrading treatment', supplement to which enshrines the principles of efficient investigating and documenting such facts[3]; European convention on these problems, according to its requirements Euro-

[1] Kolb I. O. Problemni pytannya realizatsiyi na praktytsi prava zasudzhenykh na gumanne stavlennya ta povagu do lyuds'koyi gidnosti. *Aktual'ni problemy kryminal'nogo prava: materialy VII Mizhvuz. nauk.-teoret. konf. (m. Kyyiv, 18 lystop. 2016 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2016. S. 59–61.

[2] Pro demokratychnyy tsyvil'nyy kontrol' nad Voyennoyu organizatsiyeyu i pravookhoronnymy organamy derzhavy: Zakon Ukrayiny vid 19 chervnya 2003 roku № 975-IV. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2003. № 46. St. 366.

[3] Konventsiya proty katuvan' ta inshykh zhorstokykh, nelyuds'kykh abo takykh, shcho prynyzhuyut' gidnist', vydiv povodzhennya i pokarannya: rezolyutsiya General'noyi Asambleyi OON № 39/46 vid 10 grudnya 1984 roku. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy/*uporyad. O. I. Shynal's'kyy ta in. Kyyiv: Anna-T, 2008. S. 63–69.

pean committee and national prevention mechanisms are created[1]; other legal sources.

The conclusions to the section 4

1. The present state of state policy in the sphere of punishment execution of Ukraine and its influence on the practice of applying suppressive measures to imprisoned convicts are determined. According to the analysis results conducted of present normative legal acts and projects, concerning the content of the given policy, (Law of Ukraine 'On National security'); the Conception of reforming (developing) penitentiary system of Ukraine; the National strategy in human rights sphere; the Strategy of reforming judicial system, court proceedings and related legal institutes for the years 2015–2020; others) the conclusion was made, that in spite of their names of penitentiary character, criminal executive, not penitentiary doctrine, being a determinant in European Union countries, continues to prevail in Ukraine at legislative and other normative legal levels, and in practice as well. But it is one of the conditions influencing negatively the state and tendencies of applying physical force, special means, a straitjacket and weapon to imprisoned convicts, and the main

[1] Yevropeys'ka konventsiya pro zapobigannya katuvannya chy nelyuds'komu abo takomu, shcho prynyzhuye gidnist', povodzhennya chy pokarannyu: pryynyata PARYe 26.11.1987 r. Nabrala chynnosti dlya Ukrayiny 01.09.1997. *Zbirnyk mizhnarodno-pravovykh aktiv ta ugod z pytan' diyal'nosti penitentsiarnykh ustanov i povodzhennya z v'yaznyamy/*uporyad. O. I. Shynal's'kyy ta in. Kyyiv: Anna-T, 2008. S. 267–273.

thing is, that it doesn't lead to qualitative modifying activity psychology of punishment execution institutions and bodies personnel of Ukraine in terms of humanization and respect of rights and freedoms of the people, who serve a sentence in places of their isolation from the society.

2. The author's definition of the notion 'the right to personal security in places of confinement' is formulated, implying the extend of possible behavior of all subjects and participants of criminal executive legal relations during punishment execution and serving a custodial sentence, which is determined at normative legal and personal levels, as the behavior ensuring protection of vitally important interests of a person and a citizen, and also scientific analysis of its system forming features is carried out.

It is established that danger is mostly hidden and turns into real danger under following conditions:

a) danger really exists;

b) criminal executive legal relations subjects or participants are in danger zone;

c) these people have no effective protection means and don't use them;

d) the indicated means are ineffective.

Proceeding from this, it is proved, if only there are actual reasons, that is, for realizing danger, punishment execution institutions and bodies personnel have the right to apply suppressive measures, determined in law, to imprisoned convicts.

3. It is established, that at present, public control, according to the practice of applying physical force, special means, a straitjacket and weapon to imprisoned convicts, is not determined at normative level in

criminal executive law of Ukraine, and the potential possibilities, enshrined in law, concerning civil control of law-enforcement system on the whole, in real criminal executive legal relations are not almost realized.

In the end, all that don't allow to discover deep determinants, connected with forming illegal behavior, being the reason for applying the corresponding suppressive measures to convicts, and also psychology of punishment execution institutions and bodies personnel in such situations, taking adequate decisions apropos of this, and manifestation of humanism after ceasing offences and crimes of guilty people, including opportune pre-medical assistance provided to the latter.

Consequently, the necessity of introducing public control over this area of SCES personnel activity is obvious.

Such a conclusion follows from analysis results conducted of applying physical force, special means, a straitjacket and weapon to imprisoned convicts in Ukraine during the years 1991–2018, and also from the normative legal principles determined in Law of Ukraine 'On democratic civil control over Military organization and law-enforcement state bodies' (particularly, in art. 5 'Civil control subject', art. 7 'Peculiarities and restrictions in exercising control', art. 19 'The public participation in exercising control', etc.); 'Convention on prohibition of tortures or cruel degrading treatment', supplement to which enshrines the principles of efficient investigating and documenting such facts; European convention on these problems, according to its requirements European committee and national prevention mechanisms are created; other legal sources.

Section 5

Some directions of improving legal mechanism and practice of applying physical force, special means and weapon to imprisoned convicts

5.1. Preventing application of physical force, special means and weapon by verbal methods

As it is mentioned in p. 2 art. 106 of CEC of Ukraine, applying measures of physical influence, special means and weapon has to follow the warning of intention of applying the indicated measures and means, circumstances permitting.

Analogical provisions are enshrined in art. 43 of Law of Ukraine 'On National police'[1], art. 15 of Law of Ukraine 'On National guard of Ukraine'[2] and other normative legal acts concerning the given problems[3].

As regards this, p. 1 of part XXVI of PEI IOR enshrined the provision, that a warning can be soun-

[1] Zakon Ukrayiny "Pro Natsional'nu politsiyu". Polozhennya pro Natsional'nu politsiyu: ofits. tekst. Kyyiv: Alerta, 2016. 84 s.

[2] Pro Natsional'nu gvardiyu Ukrayiny: Zakon Ukrayiny vid 13 bereznya 2014 roku № 876-VII. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2014. № 17. St. 594.

[3] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

ded with a voice, at a considerable distance or addressing a large group of people – with the help of loudspeakers, speech amplifiers, but in each case, it is desirable to do it in the mother tongue of the people, these measures will be applied to[1].

At the same time, p. 1 p. 3 art. 15 of Law of Ukraine 'On National Guard of Ukraine' gives a broadened content for taking such actions, namely: applying the measures of physical influence, special means, except for individual protection means (helmets, bullet-proof vests and other special equipment), firearms, armament and military equipment, servicemen of National guard of Ukraine are obliged to warn of the intention to use them, to give the people, the corresponding suppressive measures can be applied to, enough time for fulfilling their requirements (the warning can be given in a voice, in case of a considerable distance or addressing a great number of people – through loudspeakers, and in each case, it is desirable to say it in the language understandable for people, these means will be applied to, also in Ukrainian not less than twice, giving time, enough to cease offences)[2].

The same requirements for people, applying suppressive measures, are determined in p. 3 of the Rules of applying special means by servicemen of National guard when performing official tasks, enshrined

[1] Pravyla vnutrishnyogo rozporyadku ustanov vykonannya pokaran': zatv. nakazom Ministerstva yustytsiyi Ukrayiny vid 28 serpnya 2018 roku № 2823/5. *Ofitsiynyy visnyk Ukrayiny.* 2018. № 70.

[2] Zakon Ukrayiny "Pro Natsional'nu politsiyu". Polozhennya pro Natsional'nu politsiyu: ofits. tekst. Kyyiv: Alerta, 2016. 84 s.

in the resolution of Cabinet of Ministers of Ukraine of December 20, 2017, № 1024[1].

So, the order, determined in p. 2 art. 106 of CEC, of warning imprisoned convicts by the colony personnel that in cases of continuing to commit offences the corresponding suppressive measures, prescribed by law, will be applied to them, doesn't fully coincide with the content of analogical normative legal acts, concerning these problems, that's why it needs unification (bringing something to unitary form, system, norm, etc)[2], considering both activity sameness of the corresponding people in this context and in connection with the requirements of p. 6 art. 106 of this Code, according to which servicemen of National guard of Ukraine and workers of National police have the right to apply physical force, special means and weapon in PEI[3].

The results of anonymous survey conducted among PEI personnel and imprisoned convicts prove the urgency if this problem. Thus, answering the question 'Should the ways, forms and methods of warning convicts of the intention to apply suppressive measures to them be clearly determined in law?', personnel

[1] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

[2] Buliko A. N. Bol'shoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. S. 601.

[3] Kolb I. O. Profilaktyka usunennya, zakhystu ta vidvernennya u mekhanizmi zapobigannya zlochynam, shcho vchynyayut'sya u zv'yazku iz zastosuvannyam syly do zasudzhenykh. *Visnyk penitentsiarnoyi asotsiatsiyi Ukrayiny.* Kyyiv: FOP Kandyba T. P., 2018. № 2 (4). S. 116–124.

people of SCES of Ukraine gave the following answers: yes – 1024 (51 % of 2016 respondents surveyed); no – 197 (10 %); partly – 795 (39 %). The convicts answered in such a way: yes – 1291 (64 % of 2016 respondents surveyed); no – 23 (1 %); partly - 702 (35 %) (Supplements A, B, C, C 1).

Taking the indicated facts into consideration, it would be logical to say the first sentence of p. 2 art. 106 of CEC in the following wording:

'Taking the decision about applying measures and means, determined in part 1 of this Code article, colony personnel are obliged to warn of the intention to use them, giving enough time for fulfilling their legal requirements (the warning can be given in a voice, in case of a considerable distance or addressing a large group of convicts – through loudspeakers, and in each case, in the language understandable for offender not less than twice, giving time, enough to cease offences)'.

The necessity of modifying the given legal norm, apart from this, is due to the following circumstances:

1) the purpose of applying physical force, special means, a straitjacket and weapon to imprisoned convicts, namely – to cease illegal actions of these people (p. 1 art. 106 of CEC);

2) the purpose of criminal executive legislation of Ukraine, that is, to protect the interests of a person, society and state; to prevent committing new criminal offences by convicts, and to prevent tortures and cruel degrading treatment of convicts (p. 1 art. 1 of CEC);

3) the principles of criminal executive legislation, punishment execution an serving a sentence, humanism, justice, legality and respect for human rights and freedoms, in particular (art. 5 of CEC);

4) international legal commitments of Ukraine as to bringing national legislation and practice, including the problems of applying suppressive measures to convicts, to the European Union requirements[1];

5) the present practice of applying suppressive measures to imprisoned convicts, which is a subject of constant criticism of international community[2], and causes sound complaints of these people[3].

Lack of vital and professional skills of civilized communication between PEI personnel and convicts, including the people kept in IIW and correctional and educational colonies, is especially problematic in this context[4].

As H. Soldatenko remarked appropriately, these people are always side by side. But their status is just different. The first ones are called criminals and serve a deserved sentence, the second ones control

[1] Pro zagal'noderzhavnu programu adaptatsiyi zakonodavstva Ukrayiny do zakonodavstva Yevropeys'kogo Soyuzu: Zakon Ukrayiny vid 18 bereznya 2004 r. № 1629-IV. *Uryadovyy kur'yer.* 2004. 20 kvit. S. 2–3.

[2] Preduprezhdeniye pytok v Ukrainye. 2-ye izd. Donetsk: Donetsk. Memorial, 2003. 252 s.

[3] Rezultaty sotsiologichnogo doslidzhennya "Sotsial'no-psykhologichnyy mikroklimat u seredovyshchi zasudzhenykh ta personalu ustanov vykonannya pokaran' Ukrayiny". Bila Tserkva: Bilotserk. uchylyshche prof. pidgotovky personalu DKVS Ukrayiny, 2011. 89 s.

[4] Kolb I. O., Novosad Yu. O. Pro deyaki problemy, shcho stosuyut'sya zmistu diyal'nosti personalu organiv ta ustanov vykonannya pokaran' Ukrayiny. *KELM.* 2017. № 1 (17). S. 185–200.

fulfilling detention regime and ensure protection 'on perimeter'.

The first ones don't mind at all breaking free in different ways, the second ones are obliged not to permit this in any case. They are aware of tricks and cunning of the first ones, whose puzzles they have to solve almost every day. There is always an uncompromising struggle between them, an original game, in which the stakes are rather high.

For the first ones it is a possibility of getting forbidden articles, alcoholic drinks, drugs, finally, of escaping from places of imprisonment, for the second ones – not to humiliate regimental honour, perform honestly the tasks, provided for by law. Furthermore, professionals play from both sides[1].

That's how one of the convicts spoke about these relations: people serving a sentence divide conditionally colony personnel into two categories – seniors and juniors.

Convicts treat old seniors with respect and never take liberties as regards them. Except when they sometimes address the seniors by name and patronymic – it is allowed now, as they have good training, a lot of experience, and just appearance with neatly ironed uniform, which make anyone treat them in a proper manner.

Of course, there is always a competition between colony personnel and convicts concerning permitted and not permitted things. But, as they say, who is who? For the sake of justice, it should be admitted

[1] Soldatenko G. Poglyad z-za parkanu. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1996. № 1. S. 110.

that the so called 'senior' PEI personnel are real pro, to compete with whom is not so easy. It's nice to deal with worthy opponent.

At to 'juniors', they can be shortly characterized: inexperienced, hot-tempered. Maybe, eventually they will become real specialists[1].

On the whole, scientists attribute communication between SCEC personnel of Ukraine and convicts to the so called paradigm elements of 'violent administration', as an integral part of our society culture, our mentality, displayed in the nature of thinking aimed at searching means of compulsory punishment of those whose behavior deviate from imaginary 'norm', the model of humble, obedient executor[2]. Apropos of this another conclusion of scientists is important – no one should be trusted, especially those who is inclined to punishment, because such people are of bad sort and origin, we can see the expression of an executioner and a detective[3].

Given that convicts of foreign countries serve a sentence in PEI of Ukraine, in the context of this research subject content, the problem of personnel knowing a foreign language is rather urgent, as they have to address the people committing offences, which is grounds for applying suppressive measures to them[4].

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[1] Soldatenko G. Poglyad z-za parkanu. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1996. № 1. S. 110–111.

[2] Nikolenko D. O. Kul'tura profesiynogo spilkuvannya z zasudzhenymy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1997. № 1 (2). S. 57.

[3] Ibid.

[4] Davydenko G. Y. Formuvannya movlennyevoyi kul'tury spetsialistiv penitentsiarnoyi systemy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1997. № 2. S. 101–105.

As D. O. Nikolenko appropriately remarked, the present stage of scientific thought development is aimed at searching and elaborating integrative psychological categories preserving all quantitative and qualitative features of mental reflection to the greatest extent.

One of such system forming categories is communication as a complicated multifaceted process of people' interaction mediating reflection and regulation of their actions, being a means of conveying culture and social experience forms and is caused by needs for common activity[1].

This conclusion is especially pressing as to the convicts who show aggressive behavior relative to PEI personnel, which is legal and actual reason for applying suppressive measures to them, considering aggression ambiguity and complexity (what creates threat and can lead to attack and moral, physical and material losses), connected with the variety of their components and manifestations, in places of imprisonment, in particular[2].

The results of conducting research, concerning the indicated problems, are significant apropos of this and in the context of the given scientific search content.

Scientists found that 36 % of convicts performed inadequate aggressive actions serving custodial sen-

[1] Nikolenko D. O. Peredbachennya v strukturi profesiynogo spilkuvannya spivrobitnykiv UVP iz zasudzhenymy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1998. № 3. S. 50.

[2] Kuriy T. R. Vyvchennya agresyvnoyi povedinky zasudzhenykh. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1999. № 4. S. 137.

tence, 69,8 % – were in the state of emotional excitement, not motivated by external factors, that is, emotional background and aggression, characteristic of them, don't always correspond to external irritants (PEI personnel, other convict, their close relatives, etc. actions or failure)[1].

The information that 22,1 % of convicts, participated in the research, had group status of antisocial leaders, and only 1,2 % – positive leaders, is not less valuable.

Besides, 26,7 % of respondents had the lowest group status, 22,1 % – average. At the same time, 10,5 % of convicts had the status of the person close to antisocial leader, 17,4 % – indefinite group status[2].

It is also proved at a scientific level that aggression predominance as a form of reaction and communication in each individual case is caused by one or several combined factors.

They include somatic, mental disorders, unsatisfactory psychological state of a person, distorted moral values, a narrow range of behavior models. Proceeding from this, scientists developed the algorithm of studying convict aggressive behavior[3].

PEI personnel must know the indicated peculiarities and appropriate counter – action measures when involved in direct work (communication including) with people serving a sentence, given providing warning of applying suppressive measures to offen-

[1] Morozov O. M., Morozova T. R. Agresyvni zasudzheni: monografiya. Kyyiv: MP Lesya, 2000. S. 143.

[2] Ibid.

[3] Ibid.

ders or preventing conflicts with this category of convicts a priori (Latin. *apriori* – from the previous; without checking anything; beforehand)[1].

Modern science 'conflictology' in preventing any conflict (a type of administrative activity consisting in timely identifying, eliminating or relaxing its premises) distinguishes the following premises of preventing this harmful phenomenon, which should be known in the context of personnel performing actions, connected with applying suppressive measures to imprisoned convicts, namely:

1) knowledge of general principles of social collective administration (in this case – people serving a sentence in correctional and educational colonies) and skills of its applying to conflict situation analysis (decision on applying or warning of suppressive measures to convicts);

2) appropriate level of general theoretical knowledge of conflict essence, reasons, types and development stages elaborated by conflictology;

3) depth of analysis of a certain pre-conflict situation on this theoretical basis;

4) degree of chosen dangerous situation prevention methods accordance with its specific content[2].

As O. M. Balynska made a right conclusion apropos of this, speech-behavior psychology plays important role in the sphere of crime fight, suggesting various means of verbal influence on psychics, for-

[1] Buliko A. N. Bol'shoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. S. 54.

[2] Konfliktologiya: navch. posib./P. S. Prybutko, R. V. Mykhaylenko, L. M. Dubchak ta in. Kyyiv: KNT, 2010. S. 114–115.

ming legal world outlook with further realizing formed moral and legal norms and values in behavior.

Proceeding from this, in her opinion, forming legal world outlook of a subject, law-enforcement body official, in particular, through verbal behaviorism means can be considered one of significant elements of preventing illegal actions, criminality on the whole[1].

As the given research results showed, setting the indicated problem on such a plane is rightful, considering some elements of aggressive PEI personnel behavior, which these people show in every day criminal activity, beginning with 1991, there is a widespread practice in the sphere of punishment execution of Ukraine, when PEI personnel are applied extreme influence measures for committing disciplinary offences as for convicts, namely, placing in DC or transferring to CTR.

Only in 1991 specific gravity of these disciplinary actions in their common structure was more than 40 % (in absolute figures it was: 43 thousand 681 convicts were placed in PIW (0,7 % more than in 1990), and 7 thousand 318 people – in CTR (9,3 % more than 1990))[2].

In 1992–1993 the situation on these problems didn't change. Thus, in the structure of disciplinary

[1] Balyns'ka O. M. Pravova komunikatsiya: verbal'no-bikheviorysts'kyy pidkhid: monografiya. Lviv: PAIS, 2008. S. 107.

[2] Nekotoryye pokazateli deyatel'nosti uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy v 1991 godu: inform. byul. Kiyev: Glavnoye upravleniye po ispolneniyu nakazaniy MVD Ukrainy, 1992. S. 12–13.

actions applied to imprisoned convicts extreme reaction measures made up 49 % (in absolute figures: 51 thousand 909 people were placed in PIW, 8 thousand 717 people were transferred to CTR, which is accordingly 10 % and 3 % more than in 1992[1], but in some PEI still more (in correctional colony № 42 of Volyn region – 78 %, in colony № 75 of Dnipropetrovsk region – 83 %, colony № 30 of Lviv region – 63 %, colony № 7 of Kherson region – 75 %)[2].

Moreover, as CBPEA of MIA of Ukraine officially acknowledged these facts, forming aggressive imprisoned convicts' behavior and its various manifestations in practice was influenced by the cases, when convicts, having no money on their personal bank accounts, were deprived of the right to buy food, to be visited and receive parcels for discipline violation[3].

In 1993 the following fact was interesting and disturbing, at the same time, as the indicated practice was applied to the convicts serving a sentence in IIW economic service, where they were recruited according to a special procedure, selecting the people who proved to be positive convicts in the places of pretrial detention.

Out of 743 offences registered in IIW 268 convicts of this category were placed in lock-up (almost 42 % in the structure of disciplinary actions)[4].

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[1] Operativno-sluzhebnaya i proizvodstvenno-khozyaystvennaya deyatel'nost' uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy za 1993 god: inform. byul. Kiyev: GUYN MVD Ukrainy, 1994. № 10. S. 17.

[2] Ibid.

[3] Ibid.

[4] Ibid, p. 19.

In 1998 (the last year of SPEDU stay within MIA of Ukraine) these indicators remained almost unchanged. Thus, extreme disciplinary measures applied to imprisoned convicts made up 51 % (52 % – in 1997) of their total number, whereas the so called grave offence made up only 23,2 % in offence structure (26,9 % – in 1997)[1].

The indicated practice remained analogical in 1999–2010 (the period of SCES of Ukraine independent functioning within the system of executive power state bodies)[2] and in 2011–2018 (the period of punishment execution institutions and bodies within the Ministry of Justice of Ukraine[3].

Active holding convicts criminally responsible for malicious disobedience to PEI administration demands became one more source, forming aggressive convicts' behavior, on the one hand, and displayed it in PEI personnel actions, on the other hand[4].

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[1] Operatyvno-sluzhbova i vyrobnycho gospodars'ka diyal'nist' organiv ta ustanov vykonannya pokaran' Ukrayiny u 1998 rotsi: inform. byul. Kyyiv: DDU PVP, 1999. S. 73.

[2] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. 69 s.

[3] Pro stan doderzhannya zakoniv v organakh i ustanovakh vykonannya pokaran' v 2018 rotsi pry vykonanni sudovykh rishen' u kryminal'nykh spravakh, a takozh pry zastosuvanni inshykh zakhodiv prymusovogo kharakteru, pov'yazanykh z obmezhennyam osobystoyi svobody gromadyan: materialy kolegiyi General'noyi prokuratury. Kyyiv: Gen. prokuratura, 2018. 76 s.

[4] Godlevs'ka-Konovalova A. V. Zapobigannya zlisniy nepokori vymogam administratsiyi ustanovy vykonannya pokaran': dys. … kand. yuryd. nauk: 12.00.08. Zaporizhzhya: Klasych. pryvat. un-t, 2019. S. 68–72.

The essence of this problem consists in the fact that, instead of reacting to the indicated illegal activity of really malicious offenders and criminal authorities in such a manner, PEI personnel followed the path of least 'resistance', making any people, who showed malicious disobedience to colony administration, criminally liable, thereat violating the principles of justice, respect for human rights and freedoms, humanism, determined in criminal executive legislation (art. 5 of CEC of Ukraine), though they could apply more mitigating repressive measures (for example, transferring to medium-security place, maximum-security correctional colony, establishing administrative supervision over these people, etc.).

Moreover, the central body in the sphere of punishment execution (CBPEA of MIA of Ukraine, SPEDU, SPS of Ukraine) always criticized and demanded to increase applying criminal repression to malicious offenders in PEI, hereby narrowing the limits of civilized communication between colony personnel and imprisoned convicts, and broadening, at the same time, the level of these criminal executive legal relation subjects' hostility and rejection of each other.

Such a conclusion is based on the given research results. Thus, in 1991 out of 214 convicts, committed crimes in PEI and were referred to as malicious offenders, only 24 were on the prevention list in colony[1].

[1] Nekotoryye pokazateli deyatel'nosti uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy v 1991 godu: inform. byul. Kiyev: Glavnoye upravleniye po ispolneniyu nakazaniy MVD Ukrainy, 1992. S. 8.

For malicious disobedience 70 people were held criminally responsible (72 – in 1990), which was 18 % in criminality structure[1].

In 1998 (the last year of punishment execution institutions and bodies stay within the system of MIA of Ukraine) this indicator was more than 52 %[2], in 1999 (the first year of functioning within the system of state executive power bodies) – almost 60 %[3].

Only in 144 cases out of 409, registered in PEI, these social actions were performed by convicts who were on the prevention lists[4].

The attitude of PEI administration and SCES authorities didn't change in the period of independent functioning punishment execution institutions and bodies in the system of state power bodies.

In 2010 the crimes connected with malicious convict disobedience to PEI administration made up almost 44 % in criminality structure (177 out of all crimes registered)[5].

In correctional colonies 4,2 thousand convicts, referred to as malicious offenders of the regime of

[1] Nekotoryye pokazateli deyatel'nosti uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy v 1991 godu: inform. byul. Kiyev: Glavnoye upravleniye po ispolneniyu nakazaniy MVD Ukrainy, 1992. S. 8.

[2] Operatyvno-sluzhbova i vyrobnycho gospodars'ka diyal'nist' organiv ta ustanov vykonannya pokaran' Ukrayiny u 1998 rotsi: inform. byul. Kyyiv: DDU PVP, 1999. S. 18–19.

[3] Operatyvno-sluzhbova ta vyrobnycho-gospodars'ka diyal'nist' organiv i ustanov vykonannya pokaran' u 1999 rotsi: inform. byul. Kyyiv: DDU PVP, 2000. S. 11–13.

[4] Ibid, p. 13.

[5] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. S. 3–4.

serving a custodial sentence, were on the prevention list, and only 119 of them committed crimes in these PEI[1].

Apart from this, in 2010 125 thousand regime violation were registered, which is 9 % less compared to 2009 (almost 137 thousand), for which 48,8 % of guilty people were held disciplinary responsible according to PEI heads rights, that is, the personnel representatives, who have the right to applying extreme reaction measures (placing in DC and transferring to CTR), the number of which reduced by 9 % and 11 % accordingly[2].

In 2016 (the last period of official promulgating data on law and order in PEI) 95 convicts were held criminal responsible for malicious disobedience to PEI administration demands (32 % in criminality structure)[3].

In this connection official reaction of SCES Administration of Ministry of Justice of Ukraine was interesting, as it stated that preventing crime consolidation in places of imprisonment and pretrial detention, neutralizing their negative influence on operational situation are priorities of PEI activity[4].

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[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. S. 5.

[2] Ibid, p. 5–6.

[3] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 2.

[4] Ibid, p. 10.

At the same time, in 2016 the number of imprisoned convicts held criminal responsible for malicious disobedience to PEI administration demands reduced by 36,7 %.

Moreover, according to art. 391 of CrC, for committing the mentioned crime only 4 leaders and 'authorities' of criminal surrounding were held responsible (PEI of Dnipropetrovsk, Donetsk, Kyiv and Mykolayiv regions), but in other regions (16 colonies in all) the measures of preventing and recording illegal negative convict activity were not taken at all[1]. In addition to that, more than 3 thousand malicious regime offenders were on the prevention PEI lists, including 583 people inclined to malicious disobedience[2].

The largest amount of such offenders per 1 thousand convicts were in PEI of Vinnytsia (107), Volyn (231), Lviv (186) and some other regions, where the practice of struggle with just this category of convicts was unsatisfactory[3].

So, the analysis conducted proves evident aggressive character of PEI personnel reaction to committing offences by convicts, and adequate reaction of the latter to the actions of the first in the manner of the corresponding aggressive behavior, including that one which is a legal and actual grounds for

[1] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 11.

[2] Ibid, p. 16.

[3] Ibid, p. 11.

applying suppressive measures to them, having the potential used quite little and more humane at their disposal, namely – transferring offenders to medium-security place and CTR of correctional colonies, according to the requirements of p. 3 art. 101 of CEC of Ukraine.

Thus, only in 2011 1 thousand 23 people stayed in medium-security places of correctional colonies (out of 2 thousand 420 places), which is 83 less than in 2010[1], and according to art. 3 of Law of Ukraine 'On administrative supervision over the people released from places of imprisonment'[2] 43,5 % of the convicts, who didn't want persistently to take the path of correction, was placed under administrative supervision[3].

In 2016 the situation didn't improve. Out of 6 thousand 266 people, who fell within the purview of above mentioned law, 5 thousand 91 convicts were placed under administrative supervision, or 81 % of their total amount[4]. In PEI of Southern-Eastern interregional administration this indicator was only

[1] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2011 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2012. Kn. 2. S. 36.

[2] Pro administratyvnyy naglyad za osobamy, zvil'nenymy z mists' pozbavlennya voli: Zakon Ukrayiny vid 1 grudnya 1994 roku. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 1994. № 52. St. 455.

[3] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2011 rotsi... S. 42.

[4] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 24.

19 % (367 convicts) of the total number of the people under supervision, in PEI of Southern interregional administration – 41 %[1].

That is, including punishment execution institutions and bodies in Ministry of Justice of Ukraine, what Council of Europe and other international organization experts insisted on[2], didn't change essentially punishment execution institutions and bodies personnel psychology, which continue resolving conflicts and other difficult situations in communication with imprisoned convicts by repressive and force methods, including applying suppressive measures to them.

At the same time, still in 2009 SCES of Ukraine realized the project 'Monitoring human rights violation and supporting former HIV-positive convicts' in the South of Ukraine (Odesa, Mykolayiv and Kherson regions), which gave examples of the most widely-spread cases of their cruel treating by PEI personnel, according to the results of this category respondents surveyed[3].

Criminologists' conclusions on the indicated problems were at that time (at present, as well) important in this context, saying that these problems

[1] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 24.

[2] Preduprezhdeniye pytok v Ukrainye. 2-ye izd. Donetsk: Donetsk. Memorial, 2003. 252 s.

[3] Prava lyudyny v mistsyakh pozbavlennya voli. Praktyka monitoryngu na Pivdni Ukrayiny. Odesa: OOBF "Za majbutnye bez SNIDU", 2000. S. 15–18.

should be studied within 'penitentiary victimology', as a specific criminogenic factor[1].

In their turn, psychologists warn practical workers of the fact that the possibilities of prevention activity shouldn't be underestimated, because there are a number of factors reducing the possibility of preventing conflicts and directing event development towards constructive decision, namely:

1) psychological factors based on overwhelming human aspiration for freedom and independence, and any attempts at interfering in their relations are usually considered negatively by them, as a desire to restrict their independence and freedom;

2) ethical factors. People consider their behavior merely private affair, and the third person's interference is considered as generally-recognized moral norms violation;

3) legal factors. In the countries with developed democratic traditions legal norms protect human rights and freedoms, and their violation in this or that manner can be qualified as illegal actions.

At the same time, while each conflict is connected with people' dissatisfying some needs or interests (both material and spiritual), in order to prevent it, the reasons, containing potentially conflict possibility, should be established.

That's why various conflict reasons have two levels: social and psychological[2].

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[1] Kryminologichna viktymologiya: navch. posib./za zag. red. prof. O. M. Dzhuzhy. Kyyiv: Atika, 2006. S. 298.

[2] Konfliktologiya: navch. posib./P. S. Prybutko, R. V. Mykhaylenko, L. M. Dubchak ta in. Kyyiv: KNT, 2010. S. 115.

Considering them through the prism of criminal executive activity, including the process of applying suppressive measure to imprisoned convicts, methods of preventing conflicts in PEI can be as follows:

a) forming a new criminal executive policy content on a theoretical level and its realization on a normative legal level[1], and modifying criminal executive activity content in this context[2];

b) strengthening the role of principles of social justice, humanism, convicts equality before the law, respect for human rights and freedoms, legitimacy in the sphere of punishment execution, and also the level of their realization in SCES personnel activity of Ukraine;

c) increasing conflictological literacy of PEI personnel and imprisoned convicts, and general cultural educational development, on the whole;

d) bringing the conditions of keeping convicts in places of imprisonment to international standards, and increasing the level of realizing in practice the laws, adopted in Ukraine in this connection[3].

As studying scientific literature showed, support and strengthening cooperation and mutual assistance relations is a central problem of all conflict prevention tactics, which is important, considering verbal

[1] Kernyanevych-Tanasiychuk Yu. V. Kryminal'no-vykonavcha polityka Ukrayiny: monografiya. Ivano-Frankivs'k: Prykarpat. nats. un-t im. Vasylya Stefanyka, 2019. 336 s.

[2] Shkuta O. O. Penitentsiarna systema Ukrayiny: teoretyko-prykladna model: monografiya. Kherson: Vyd. dim "Gel'vetyka", 2017. 366 s.

[3] Pro zagal'noderzhavnu programu adaptatsiyi zakonodavstva Ukrayiny do zakonodavstva Yevropeys'kogo Soyuzu: Zakon Ukrayiny vid 18 bereznya 2004 r. № 1629-IV. *Uryadovyy kur'yer.* 2004. 20 kvit. S. 2–3.

methods choice of warning of the intention to apply suppressive measures to imprisoned convicts, said in p. 2 art. 106 of CEC of Ukraine. Their decision, as practice proves, is of a complex character and includes the following methods:

1. Agreement method – implies taking measures aimed at involving potential conflict participants in the common cause (an offence ceased by a convict voluntarily can result in agreement, that's why there is no need to apply suppressive measures to him).

2. Kindness or sympathy method – develops skills of a coworker, partner, readiness to help them, understand their inner world.

Just this method allows to get rid of unmotivated hostility and aggression in relationship between PEI personnel and convicts.

It has to be essentially a priority, when PEI personnel take a decision of applying or not applying suppressive measures to imprisoned convicts.

3. Partner's reputation maintaining method consists in recognizing partner's dignity, showing respect for his personality in case of any disagreement, which is the most important method of preventing negative event development.

Recognizing an opponent's dignity and authority, the other person encourages appropriate attitude to him.

It seems, this method can be the most effective, when PEI personnel perform actions connected with warning an offender of the possibility of applying suppressive measures to him, established in law, and also after their applying.

This method is rather important, when harm is done to offender's health (this harm should be least given convict's ceasing illegal actions) and urgent medical assistance is provided to the victim (p. 4 art. 106 of CEC of Ukraine).

4. Mutual complement method enables to rely on the abilities of one group members, which others lack.

This method works when working groups are formed, in this case they turn out to be strong and non-conflicting.

At the same time, considering and skillful using not only positive but negative people, closely related to each other, helps to avoid conflict situations.

In the context of activity content connected with warning imprisoned convicts of the possibility of applying suppressive measures to them, the given method content consists in involving both the most authoritative PEI personnel representatives (for example, the head of social psychological service department), and convicts (for example, the head of their independent organization or religious association in places of imprisonment) in this process (art. 127–128-1 of CEC of Ukraine).

5. Discrimination prohibition method demand to exclude emphasizing the superiority in one over the other, and still better – any differences between them.

In case of convict group disobedience applying suppressive measures and the procedure of warning of their application, established in law, have to be observed as to each individual offender given their peculiarities (sex, age, health condition, etc.).

6. Psychological encouragement method is based on the fact that human mood and feelings can be regulated and need certain support.

In practice this method relieves stress and promotes emotional relaxation, thus creates moral and psychological atmosphere in the organization, preventing conflicts.

Considering the indicated method in the context of the problem researched in this work, its potential influence on the convicts committing offences, being the reason for applying suppressive measures to them, consists in the fact that PEI personnel in such situations have to display restraint, performing their actions and promote in any way voluntary convict refusal of further illegal behavior, in this case it is possible to refuse to detain offender, limiting oneself to preventive talk with him[1].

The analysis conducted gives the right to claim that knowledge and correct usage of the indicated methods of preventing conflicts by PEI personnel and other law-enforcement bodies, involved in ensuring law and order in correctional and educational colonies, according to art. 105, 196 of CEC of Ukraine, must become not only a separate subject (special course) of their study in educational centres and higher specialized institutions training experts for punishment execution sphere, but an integral algorithm of their actions preventing (p. 2 art. 106) or directly applying suppressive measures to convicts in

[1] Konfliktologiya: navch. posib./P. S. Prybutko, R. V. Mykhaylenko, L. M. Dubchak ta in. Kyyiv: KNT, 2010. S. 117–118.

places of imprisonment, thus preferring verbal methods of communication with convicts.

Apart from this, as O. Balynska remarked opportunely, verbal methods include oral speech in it and in external behavior manifestation (of law-enforcement bodies officials, in particular), which is considered in real life not only as a set of changes of smooth and transverse-striped muscles, thus adding the aspect of inner speech, thinking, conscious thought movement, governing actions and deeds, to chain reaction[1].

Along with this, it is necessary to agree to this with I. S. Mykhalko that such an approach has to be of individual character, as it is always accompanied with different application schemes, that is, concerns a convict personality to some extend, and is a differentiated manner, depending on the peculiarities of individual convict situation and his behavior in execution process – serving a sentence[2].

O. S. Khrystiuk's conclusion doesn't cause any objections, namely: to perform duties really well, an official must possess communicative principles, developed professional skills and abilities, to be well-versed in his specific activity conditions, show firmness and self-control in psychologically strained situations[3],

[1] Balyns'ka O. M. Pravova komunikatsiya: verbal'no-bikheviorysts'kyy pidkhid: monografiya. L'viv: PAIS, 2008. S. 39.

[2] Zasoby vypravlennya i resotsializatsiyi zasudzhenykh do pozbavlennya voli: monografiya/za zag. red. d-ra yuryd. nauk, prof. A. Kh. Stepanyuka. Kharkiv: Krossroud, 2011. S. 287.

[3] Khrystyuk O. S. Spivrobitnyky ta zasudzheni: problemy spilkuvannya. *Problemy penitentsiarnoyi teoriyi i praktyky.* 2008. № 5. S. 158.

including, undoubtedly, the cases of possibility or direct applying suppressive measures to imprisoned convicts.

Again, analyzing these psychological situations, the following fact becomes completely obvious, that it is a psychological phenomenon, which, according to procedural parameters, takes place between psychological processes (psycho-dynamic properties) and personality traits (polarization of which is conditional and which are stable over time).

That's why in crisis situations integration of psychic processes of different levels (psychosomatic, cognitive, emotional, behavioral) reflect individual adequacy of psychic individual's activity[1].

Considering this, it is rather important to check every fact of applying any suppressive measure, determined in law, to imprisoned convicts by the corresponding officials. That's why p. 5 art. 106 of CEC of Ukraine is worthwhile supplementing with the sentence of the following content:

'Every fact of applying physical force, special means, a straitjacket or weapon if checked by the corresponding officials in the manner prescribed by normative legal acts of Ministry of Justice of Ukraine'.

In this connection the research results, received by scientists in 1995–1996 in Kyiv institute of internal affairs are interesting, namely: as it was established, changing communication situation from the

[1] Tkachenko Ye. M. Aspekty problemy kryzovykh staniv, yaki vynykayut' u zasudzhenykh pid chas vidbuvannya pokarannya. *Problemy penitentsiarnoyi teoriyi i praktyky*. 2001. № 6. S. 299.

sphere of every day communication into the professional one is connected with:

– the lack of punishment execution institutions and bodies personnel need for contacts with convicts (65 % of all respondents surveyed);

– low motivation level of personal influence on them (37 %), lack of communication skills (49 %);

– reluctance to interest their listeners (28 %);

– excitement at inability to state information in concisely, exactly and clearly (19 %)[1].

As the results of the given scientific search showed, just the indicated circumstances were crucial in taking decisions by PEI personnel of applying suppressive measures to offenders among imprisoned convicts.

Scientists attribute life crises to other circumstances of that kind, which PEI personnel have after single or regular actions connected with applying suppressive measures.

I. I. Pampura proves in his works that the activity of SCES personnel of Ukraine takes place under constantly changing conditions, it is characterized by frequent extreme situations and is connected with life risk.

The very influence of these conditions on psychological overload leads to crisis state.

Besides, crisis can lead to partial or even complete personal development distortion or inhibition, subconscious aspiration for suicide (permanent suici-

[1] Nikolenko D. O. Peredbachennya v strukturi profesiynogo spilkuvannya spivrobitnykiv UVP iz zasudzhenymy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1998. № 3. S. 51.

de, caused by abuse of alcohol, drug addiction, excessive smoking), and actually to the very suicide[1].

Only in 2015 6 people of PEI personnel were dismissed from the service in SCES of Ukraine in protection, supervision and security subunits for health reasons[2], in 2010 – 54 people or 4,2 % of all dismissed from the service in colonies[3].

In previous years there were cases of suicide among SCES personnel of Ukraine.

Thus, in 1993 5 former officials of colony personnel committed suicide (2 – Dnipropetrovsk region, one case – Rivne, Donetsk and Kyiv regions)[4]; in 1997 – 2 people[5]; in 1999 – 4[6]; etc.

In this sense the following fact is indicative: according to statistic data of MIA of Ukraine, in 1999, as compared to 1998, the number of internal affairs department officials, including SPEDU personnel,

[1] Pampura I. I. Zhyttyeva kryza v umovakh profesiynoyi diyal'nosti pratsivnykiv kryminal'no-vykonavchoyi systemy ta organiv vnutrishnikh sprav. *Problemy penitentsiarnoyi teoriyi i praktyky.* 2000. № 5. S. 213.

[2] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2015 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2016. Kn. 2. S. 14.

[3] Pro diyal'nist' pidrozdiliv okhorony, naglyadu i bezpeky kryminal'no-vykonavchykh ustanov u 2010 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2011. Kn. 1. S. 10.

[4] Operativno-sluzhebnaya i proizvodstvenno-khozyaystvennaya deyatel'nost' uchrezhdeniy ugolovno-ispolnitelnoy sistemy MVD Ukrainy za 1993 god: inform. byul. Kiyev: GUYN MVD Ukrainy, 1994. № 10. S. 67.

[5] Operatyvno-sluzhbova i vyrobnycho-gospodars'ka diyal'nist' ustanov kryminal'no-vykonavchoyi systemy u 1997 rotsi: inform. byul. Kyyiv: UUVP MVS Ukrayiny, 1998. № 20. S. 110.

[6] Operatyvno-sluzhbova ta vyrobnycho-gospodars'ka diyal'nist' organiv i ustanov vykonannya pokaran' u 1999 rotsi: inform. byul. Kyyiv: DDU PVP, 2000. S. 56.

attributed to the groups of intensified psychological attention, increased more than twice (1651 people – in 1998; 3775 people – in 1999), the number of officials sent to psychological assistance and psychophysiological selection centres of the corresponding subunits of health care of MIA administration of Ukraine in regions also increased (696 people – in 1998; 1126 people – in 1999)[1].

It is important, undoubtedly, to take these circumstances into consideration, personnel staffing the subunits which have direct contact with imprisoned convicts, perform official duties, including applying suppressive measures (shifts on duty, operational groups, etc.).

As D. O. Nikolenko stated in due time, the process of psychological and pedagogical influence on imprisoned convicts is of stage character (plan, pan realization, analysis, and activity results estimation), in connection with it he distinguished a number of logical stages of professional pedagogical communication between PEI personnel and imprisoned convicts, which official applying suppressive measures should know, namely:

1) modelling future communication;

2) organizing direct communication;

3) managing communication process and analyzing communication system realized;

4) modeling a new communication system (which is important given establishing (renewing, suppor-

[1] Pampura I. I. Zhyttyeva kryza v umovakh profesiynoyi diyal'nosti pratsivnykiv kryminal'no-vykonavchoyi systemy ta organiv vnutrishnikh sprav. *Problemy penitentsiarnoyi teoriyi i praktyky.* 2000. № 5. S. 213.

ting) civilized relations after applying suppressive measures to convicts) for the future[1].

At the same time, he is convinced (and it doesn't cause any objections), introducing the indicated stages to practice is possible only under conditions of appropriate level of anticipation – a psychological phenomenon with a universal for all areas of human activity ability to apprehend and act with a certain space-time and cause-effect foreseen expected future events, which is spread to various areas of a subject' vital activity and concerns not only future changes of surrounding circumstances, but changes of his social situation, certain behavior forms, self-control of his and other people's actions[2].

Of course, this postulate must be a priority for the people applying suppressive measures, especially in the context of future relations between PEI personnel and imprisoned convicts.

In this connection the problems concerning communication culture between the indicated subjects of criminal executive legal relations arise on the agenda, which includes culture of behavior and is a system of knowledge, skills and abilities of business and personal communication, as well as moral orientations, on the basis of which mutual perception and mutual understanding between PEI personnel and convicts serving a service there take place[3].

[1] Nikolenko D. O. Peredbachennya v strukturi profesiynogo spilkuvannya spivrobitnykiv UVP iz zasudzhenymy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1998. № 3. S. 51.

[2] Ibid.

[3] Nikolenko D. O. Kul'tura profesiynogo spilkuvannya z zasudzhenymy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1997. № 1 (2). S. 58.

Moreover, as psychologists convince, the latter implies social psychological interpretation of each other and formation of such important quality for surrounding people, as tolerance, meaning the readiness for a dialogue as a peculiar existence form – coexistence[1], which is absolutely important considering colony personnel taking decisions of applying suppressive measures to offenders and choosing preventive behavior on the problems said in p. 2 art. 106 of CEC of Ukraine.

That' why the search for methods and forms of further studying the given problems in the structure of SCES personnel of Ukraine and convicts communication has to predict forming and applying the system of applied programmes and practical work of professional skills development to learning process with the first indicated people[2].

So, PEI personnel professional communication culture in the course of applying suppressive measure or performing preventive actions apropos of this should be understood as a social significant indicator of these people's skills and abilities, displayed in their relations with convicts in the given process, in the form of perceiving, understanding and reacting to illegal behavior of the latter, aimed at realizing the tasks arisen and achieving the purpose of the indicated official activity.

Proceeding from this, scientists distinguish two interconnected elements in the structure of profes-

[1] Nikolenko D. O. Kul'tura profesiynogo spilkuvannya z zasudzhenymy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1997. № 1 (2). S. 58.

[2] Ibid, p. 53.

sional punishment execution institution s and bodies personnel communication, which should be taken into consideration in the activity of the people involved in applying measures of physical force, special means, a straitjacket and weapon, including the personnel of the corresponding militarized formations, servicemen of National guard of Ukraine and workers of National police (p. 6, art. 106 of CEC of Ukraine), namely:

a) general communication principles, specified by the present social and political system of Ukraine and inherited universal values by our society and state (humanism; respect for human rights; equality of everybody before the law; justice, etc.);

b) individual communication principles, style, a set and character of specific methods and means, which PEI personnel and other law-enforcement bodies realize, applying suppressive measures to imprisoned convicts, due to their knowledge, professional experience, aptitudes, skills and abilities, depending on concrete conditions and possibilities[1].

On normative legal level general communication principles, connected with applying suppressive measures, are determined for punishment execution institutions and bodies in art. 5 of CEC of Ukraine and art. 2 of Law of Ukraine 'On State criminal executive service of Ukraine', and for other forces involved in this process as required by art. 105 and p. 6 art. 106 of CEC – in art. 6–12 of Law of Ukraine 'On National police' and art. 3 of Law of Ukraine 'On National guard of Ukraine'.

[1] Nikolenko D. O. Kul'tura profesiynogo spilkuvannya z zasudzhenymy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1997. № 1 (2). S. 60.

Along with this, the following principles are common for all the subjects of applying suppressive measures: respect and observing human rights and freedoms, legitimacy, openness for democratic civilized control, non-party status.

At the same time, among general principles of SCES personnel of Ukraine activity there is not such an important principle as supremacy of law, according to which a man, his rights and freedoms are recognized as the highest values and determine the content and guideline of state activity (Law of Ukraine 'On National police'), which is absolutely necessary for solving the problem of applying suppressive measures to imprisoned convicts.

Apart from this, the list of general principles lacks also transparency principle, according to which each state body has to ensure access to public information it owns in the manner prescribed by law (art. 9 of Law of Ukraine 'On National police').

Up till now not a single normative legal act, concerning the activity of SCES of Ukraine, has determined the duty of the given state body and its territorial bodies to ensure the access to public information.

Moreover, since 2016 Ministry of Justice of Ukraine, as a central executive power body, realizing state policy in the sphere of punishment execution and probation (p. 1 art. 11 of CEC), has stopped publishing special bulletin, where the information on the state and tendencies of applying suppressive measures to imprisoned convicts was published[1].

[1] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. 34 s.

General principles of punishment execution institutions and bodies personnel of Ukraine also lacks the principle of continuity, according to which SCES of Ukraine ensures continuous and twenty-four-hour performing its tasks (p. 1 art. 12 of Law of Ukraine 'On National police' and art. 102 of CEC of Ukraine).

Proceeding from this, and taking special significance of these leading principles for PEI personnel, applying suppressive measures to the people in correctional and educational colonies, into consideration, it would be logical to supplement art. 5 of CEC of Ukraine 'The principles of criminal executive legislation, punishment execution and serving a sentence' with the principles of supremacy of law, transparency and continuity and state it in new wording.

Analogical changes should be made in art. 2 of Law of Ukraine 'On State criminal executive service of Ukraine' which determines main activity principles of SCES of Ukraine.

At to individual principles, which a specific person of PEI personnel applying suppressive measures to imprisoned convicts should follow[1], some of their substantive elements are determined in art. 29 of Law of Ukraine 'On National police', namely:

1. Preventive and coercive measures, determined in law, restricting certain human rights and freedoms, are applied exclusively for exercising powers of the indicated law-enforcement officials.

[1] Kolb I. O., Khrushch V. I. Pro efektyvnist' realizatsiyi pryntsypu dyferentsiatsiyi ta indyvidualizatsiyi vykonannya pokaran' u vypravnykh koloniyakh Ukrayiny. *Aktual'ni problemy rozvytku pravovoyi systemy Ukrayiny (tekst): zb. materialiv krug. stolu (m. Kyyiv, 26 berez. 2014 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2014. S. 53–54.

2. Law-enforcement officials are prohibited to apply any other measures but determined by law of Ukraine.

3. The measure or means chosen for suppressing an offender must be legal, that is, prescribed by law.

4. The measure (means) is necessary, if it is impossible for law-enforcement official to apply another measure (means) in order to exercise his powers, or its application is ineffective, or such a measure (means) does (can do) the least harm to either measure (means) addressee or other people.

5. Applying suppressive measure (means) by law-enforcement official is proportional, if the harm, caused to human rights and freedoms, or society or state, protected by law, doesn't exceed the good, for protection of which it was applied, or the threat of doing harm.

6. The measure chosen by law-enforcement officer to suppress an offender is efficient if its application ensures exercising police powers.

7. A law-enforcement officer stops applying suppressive measure (means) if the purpose of its application is achieved, if it is obvious that achieving the purpose is impossible, or if there is no need to further apply such a measure.

The requirements of additional individual principles of applying suppressive measures to imprisoned convicts can be formulated based on the provisions of p. 3 art. 43 of Law of Ukraine 'On National police', according to which the kind and intensity of coercive measures are determined, considering a specific situation, character of offence and individual peculiarities of the person committing the offence.

Analogical norms – principles are determined in p. 4 of the Rules of applying special means by servicemen of National guard of Ukraine[1], p. 1 p. XXVI of PEI IOR[2] an some other bylaw normative legal acts.

Except for this, the individual norms-principles connected with applying suppressive measures to offenders should include those enshrining the duty of law-enforcement officials to undertake special training and systematic examination of the ability to act according to the procedure and order of performing such actions by law-enforcement officials, and the ability to provide paramedical assistance to victims (p. 2 art. 2 of Law of Ukraine 'On National guard of Ukraine').

Individual principles of law-enforcement official activity concerning suppressive measures can include general rules determined in p. 8 of Rules of applying special means by servicemen of National guard when performing official tasks.

One more principle if such official activity of law-enforcement officials should be mentioned separately, namely – social psychological protection of health, honour and dignity of the person who applied the corresponding suppressive measure (means) to offenders.

[1] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

[2] Pravyla vnutrishnyogo rozporyadku ustanov vykonannya pokaran': zatv. nakazom Ministerstva yustytsiyi Ukrayiny vid 28 serpnya 2018 roku № 2823/5. *Ofitsiynyy visnyk Ukrayiny.* 2018. № 70.

At present, as the results of the given scientific search showed, none of laws and departmental normative legal acts regulating this problem established such a procedure as one of the principles of guaranteeing legality of performing actions by law-enforcement officer aimed at suppressing illegal behavior of an offender or a group of such people.

Moreover, criminal executive legislation of Ukraine lacks the principles of individual PEI personnel activity when applying suppressive measures to imprisoned convicts on the whole[1], that's why it is so important to unify its norms with analogical law institutes, enshrined in Law of Ukraine 'On National police'[2], 'On National guard of Ukraine'[3], and Rules of applying special means by servicemen of National guard when performing official tasks[4], according the algorithms mentioned in the previous parts of the given work.

Besides, in this connection CEC of Ukraine should be supplemented with art. 106-2 'Social legal protec-

[1] Kolb I. O., Dragochyns'kyy O. M. Shchodo uchasnykiv kryminal'no-vykonavchykh pravovidnosyn. *Aktual'ni problemy kryminal'nogo prava, protsesu, kryminalistyky ta operatyvno-rozshukovoyi diyal'nosti: materialy tez II Vseukr. nauk.-prakt. konf. (m. Khmel'nyts'kyy, 2 berez. 2018 r.).* Khmel'nyts'kyy: Nats. akad. derzh. prykordon. sluzhby Ukrayiny, 2018. S. 157.

[2] Zakon Ukrayiny "Pro Natsional'nu politsiyu". Polozhennya pro Natsional'nu politsiyu: ofits. tekst. Kyyiv: Alerta, 2016. 84 s.

[3] Pro Natsional'nu gvardiyu Ukrayiny: Zakon Ukrayiny vid 13 bereznya 2014 roku № 876-VII. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2014. № 17. St. 594.

[4] Pro zatverdzhennya pereliku ta Pravyl zastosuvannya spetsial'nykh zasobiv viys'kovosluzhbovtsyamy Natsional'noyi gvardiyi pid chas vykonannya sluzhbovykh zavdan': postanova Kabinetu Ministriv Ukrayiny vid 20 grudnya 2017 r. № 1024. *Ofitsiynyy visnyk Ukrayiny*. 2018. № 3. St. 117.

tion of punishment execution institutions and bodies personnel who applied physical force, special means and weapon to imprisoned convicts' and say it in the following wording:

'People, who applied suppressive measures, provided for by law, to convicts in places of imprisonment, are liable to social and medical rehabilitation in special establishments, in the manner prescribed by Ministry of Justice of Ukraine.

Re-involvement of punishment execution institutions and bodies personnel in the activity, connected with applying suppressive measures to people kept in correctional and educational colonies and serving a sentence in investigative isolation wards, is possible only after successful passing exams on special training as to ability to apply physical force, special means and firearm, and skills of providing assistance to victims'.

Such an approach will enable not only to reduce aggressiveness, intolerance and hostility of this category of PEI and bodies personnel, but (and it is the main thing) to restore reputation and civilized relations both with the person the corresponding measure was applied to and, on the whole, with other convicts serving a sentence in colony, where they serve and perform powers vested in them by law. That is, in this situation also arise the problems directly concerning communication problem-solving between PEI personnel and convicts.

As D. V. Yahunov mentioned to the point, the fact, that a person finding himself in a total institution changes his behavior, is objective.

But these changes can be of different nature, depending on what type of character he begins to keep.

Person's socialization in prison doesn't occur according to certain patterns, it has a lot of tendencies and chooses its tendency[1].

This conclusion is especially urgent because on a scientific level four types of imprisoned convict behavior are distinguished, namely:

1) situational abstraction, when the indicated person tries to isolate himself from everything that doesn't concern his body, when the principle 'to know less is to sleep better' is used;

2) obstinacy, when a convict flatly refuses to cooperate with the total institution (the latter, in its turn, tries to 'break this obstinacy', and if it manages, the convict often moves on to situational abstraction);

3) colonization consists in the fact, that a convict perceives the total institution that tries to build a new world and refuses the old one;

4) conversion, when a convict tries to create 'a model convict' image for the total institution[2].

Among other classification groups in this sense one more group draws attention, including such types of imprisoned convict behavior:

a) the so called 'square Joe' – pro-social behavior of these people when they are not involved in criminal subculture and treat positively colony personnel and administration in general;

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[1] Yagunov V. D. Suchasna penologiya: al'ternatyvnyy kurs. Odesa: FENIKS, 2010. S. 114.

[2] Ibid, p. 114–115.

b) 'a politician' – when a person tries to create an image of a model convict, but actually is not such, attempting to manipulate both PEI personnel and other convicts;

c) 'one of the lads' is a convict with anti-social behavior, who is deeply involved in criminal subculture and treats PEI personnel and administration negatively;

d) 'an outlaw' is a person with asocial behavior applying maximum physical force both to the personnel and to convicts[1].

Possessing the information on the indicated categories of imprisoned convicts is, undoubtedly, of great significance not only given choosing prevention list objects and increased correctional re-socializing impact, but taking decisions of applying suppressive measures to these people, including verbal preventive methods, mentioned in p. 2 art. 106 of CEC of Ukraine[2].

As D. O. Nikolenko made a conclusion apropos of this, the present punishment execution institutions and bodies personnel and their future colleagues should remember the main thing: their own activity role in professional communication culture development; social role of their own professional purpose; the necessity of acting in such a way, that another person can always be a purpose but never means in their actions![3]

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[1] Yagunov V. D. Suchasna penologiya: al'ternatyvnyy kurs. Odesa: FENIKS, 2010. S. 115.

[2] Kolb I. O., Dzhuzha O. M. Pro deyaki kontseptual'ni aspekty spetsial'no-kryminologichnogo zapobigannya zlochynam, shcho vchynyayut'sya u mistsyakh pozbavlennya voli Ukrayiny. *KELM.* 2015. № 1 (9). S. 48–57.

[3] Nikolenko D. O. Kul'tura profesiynogo spilkuvannya z zasudzhenymy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1997. № 1 (2). S. 61.

So, proceeding from the results of the analysis of scientific literature, normative legal sources and their realization practice[1], it should be stated that it is rather difficult to prevent applying suppressive measures to imprisoned convicts without possessing and skillful using verbal methods by PEI personnel in their official activity. Moreover, ignoring potential possibilities of these methods in communicating with imprisoned convicts not only prevents conflicts from being resolved in a civilized manner, but enables to effectively stop them at the stage of warning of possibility of applying suppressive measures to offenders[2].

Apart from this, the significance of possessing verbal communication methods enables PEI personnel, that applied physical force, special means and weapon to imprisoned convicts, to maintain further on civilized and decent relationship with them and other convicts, and ensure the efficiency of correctional and re-socializing impact on these objects on the whole[3].

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[1] Kolb I. O., Savchenko A. V. Pro deyaki zmistovni elementy spetsial'no-kryminologichnogo zapobigannya zlochynam, shcho vchynyayut'sya u mistsyakh pozbavlennya voli. *Aktual'ni pytannya zastosuvannya kryminal'no-vykonavchogo zastosuvannya: materialy krug. st. (m. Kyyiv, 18 berez. 2015 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2015. S. 18–19.

[2] Kolb I. O. Pro deyaki zmistovni elementy diyal'nosti u sferi operatyvno-rozshukovogo zapobigannya zlochynam. *Protydiya zlochynnosti: teoriya ta praktyka: materialy VII Vseukr. nauk.-prakt. konf. (m. Kyyiv, 19 zhovt. 2016 r.).* Kyyiv: Nats. akad. prokur. Ukrayiny, 2016. S. 309–311.

[3] Kolb I. O. Pro deyaki kontseptual'ni aspekty spetsial'no-kryminologichnogo zapobigannya zlochynam, shcho vchynyayut'sya u mistsyakh pozbavlennya voli Ukrayiny. *Kryminologichna teoriya i praktyka: dosvid, problemy syogodennya ta shlyakhy yikh vyrishennya: materialy nauk.-prakt. konf. (m. Kyyiv, 26 berez. 2015 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2015. S. 48–49.

The indicated result is possible only under one condition – knowledge and skills of correctly possessing communication language with not simple social objects – people who are causes of great social danger, corresponding pathologies and estimated judgments, objectively formed before, about state, its institutes and colony personnel, in particular.

5.2 Improving the level of colony personnel professional training as one of the measures of preventing application of physical force, special means and weapon to imprisoned convicts

Enshrining in p. 1 art. 106 of CEC of Ukraine the list of suppressive measures PEI personnel have the right to apply to imprisoned convicts, the lawmaker established in such a way a peculiar hierarchy (subordination, correlation, etc.) of their usage in the cases prescribed by law. Though in p. 1 p. XXVI PEI IOR, concerning the procedure and order of applying physical force, special means, a straitjacket and weapon to offenders by correctional and educational colony personnel[1], and for servicemen of National guard of Ukraine[2] and workers of National police[3] the con-

[1] Pravyla vnutrishnyogo rozporyadku ustanov vykonannya pokaran': zatv. nakazom Ministerstva yustytsiyi Ukrayiny vid 28 serpnya 2018 roku № 2823/5. *Ofitsiynyy visnyk Ukrayiny.* 2018. № 70.

[2] Pro Natsional'nu gvardiyu Ukrayiny: Zakon Ukrayiny vid 13 bereznya 2014 roku № 876-VII. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2014. № 17. St. 594.

[3] Zakon Ukrayiny "Pro Natsional'nu politsiyu". Polozhennya pro Natsional'nu politsiyu: ofits. tekst. Kyyiv: Alerta, 2016. 84 s.

ditions are established in the corresponding statutory laws, according to which suppressive measure and means type and intensity are determined by the person who applies them, due to actions formulated in p. 2 art. 106 of CEC, stipulating the procedure of colony personnel warning of intention to apply them to an offender, the conclusion can be made, if there is an opportunity to stop illegal convict's actions, especially by means of physical force measures (using self-defense methods, striking knockout blows, twisting his arms and bringing them behind his back, etc.), PEI personnel activity can unlikely be considered as adequate, when in such a situation a rubber club, special irritant or weapon was applied, as the latter are more sensitive and dangerous than the first suppressive means, as to their impact on human body[1].

The results of anonymous survey conducted among PEI personnel and convicts prove the urgency of this problem. Thus, answering the question 'Does the practice of applying suppressive measures to imprisoned convicts in Ukraine meet the requirements of the international law?' PEI personnel people gave the following answers: yes – 603 (30 % of 2016 respondents surveyed); no – 648 (32 %); partly – 765 % (38 %). The convicts answered in such a way: yes – 108 (11 % of 2016 respondents surveyed); no – 1111 (55 %); partly – 797 (34 %) (Supplements A, B, C, C 1).

In this connection the European legislation and practice is interesting. Thus, p. 66 of European peni-

[1] Kolb I. O. Pro zmist zagal'nosotsial'nogo zapobigannya koruptsiyi u Derzhavniy kryminal'no-vykonavchiy sluzhbi Ukrayiny. *KELM.* 2016. № 1 (13). S. 104–114.

tentiary rules (EPR) states as regards this, institution personnel, working directly with convicts, have to be trained to apply the methods enabling them to suppress aggressive people with minimum force application[1].

P. 64.2 of EPR defines this principle more flatly, namely: the range of force application should be minimum necessary and it should be applied for as minimum period as possible.

Taking preventive activity significance on these questions mentioned in p. 2 art. 106 of CEC and lack of analogical provisions in present legislation of Ukraine into consideration, it would be logical to supplement the indicated Code norm with the sentence of the following content:

'According to the current situation, if possible, colony personnel have the right to apply the suppressive measure (means) which is minimum necessary for achieving such action purpose'.

Proceeding from this, SCES personnel training and heightening qualification on the indicated problems must be focused on forming economical and respectful attitude to imprisoned convict's life, health, honour and dignity, inviolability and security, which follows again from the content of the Constitution of Ukraine and international legal acts in the sphere of punishment execution.

As p. 72.1 of EPR says, correctional institutions should be administered in ethical way, which means

[1] Yevropeys'ki penitentsiarni pravyla: Rekomendatsiya № R (2006) Komitetu Ministriv Rady Yevropy vid 11 sichnya 2006 roku. Donets'k: Donets'k. Memorial, 2010. 32 s.

treating convicts with respect for human dignity. That's why special attention should be paid to relations organization between convicts and PEI personnel directly contacting them (p. 74 of EPR).

As scientists rightly state, with such a question PEI and body personnel should be considered not only as a criminal executive activity subject, but also as an object of criminological prevention of crimes and offences[1], which is important given improving the practice of applying suppressive measures to imprisoned convicts.

Such an approach is based on the fact, that any force measures in relations with the latter lead to further escalation and increase conflict level and, at the same time, decrease the level of civilized relations between these criminal executive law relations subjects.

Proceeding form this, it is significant enough to consider colony personnel within the indicated activity content as an object of psychological and professional forming features, which could prevent their applying suppressive measures under extreme conditions, particularly those, defined as legal grounds in p. 1 art. 106 of CEC, and also of intensifying preventive measures enshrined in p. 2 of this Code article, and could minimize the influence of these force measures on the life, health and other objects of impri-

[1] Koruptsiyni ta inshi zlochyny, shcho vchynyayut'sya u sferi vykonannya pokaran': kryminologichna kharakterystyka ta zapobigannya: navch. posib./za zag. red. d-ra yuryd. nauk, prof. O. G. Kolba. Kyyiv: Vyd. dim "Kondor", 2019. S. 64.

soned convicts' legal protection (art. 7–10, 107 of CEC of Ukraine).

The indicated position is again caused by the following circumstances:

1. The tasks as to defining and substantiating special social role of PEI and bodies personnel in the sphere of punishment execution as preventive activity object, and the necessity for proper assessing their actions and social protection of these people after their applying suppressive measure to imprisoned convicts.

As far as the first group of tasks is concerned, this question is answered in p. 1 'Main principles' of EPR, namely:

a) correctional (penitentiary) institution personnel fulfill an important social function, that's why the order of their recruiting, professional training and working conditions have to ensure their opportunity to maintain high standards of treating convicts (p. 8);

b) treating all imprisoned people it is necessary to observe their human rights;

c) all correctional (penitentiary) institutions must be regularly inspected by state bodies and must be liable to independent monitoring (p. 9);

d) these Rules must be applied unbiased, without any discrimination (p. 13).

Apart from this, some pithy task elements, concerning defining and ensuring special social PEI personnel role in practice, are enshrined in other EPR norms, namely:

1) p. 72.2 says that the personnel must be clearly aware of penitentiary (criminal executive) system purpose;

2) p. 72.4 enshrines the provision, according to which the personnel have to keep high professional and personal standards;

3) p. 75 states that the personnel have to influence convicts always in positive way and evoke their respect by behavior and performing their duties;

4) p. 77 says that when recruiting new personnel PEI administration should pay great attention to honesty, humanity, possessing professional skills and personal ability to perform difficult work required;

5) p. 81.4 enshrines the provision, that training course of all PEI personnel requires study of international and regional documents and norms in the sphere of punishment execution, particularly, European Convention on Human Rights and European Convention on Prevention of tortures or cruel degrading treatment or punishment, and study of applying European penitentiary rules; etc.[1]

Considering that the current criminal executive legislation of Ukraine lacks the indicated requirements as to punishment execution institutions and bodies personnel and international legal commitments of our state as to conformity of its norms to the European Union requirements, plus considering the peculiarity of activity content connected with applying suppressive measures to imprisoned convicts, it would be worth while supplementing p. 1 art. 16 of Law of Ukraine 'On State criminal executive service of Ukraine' determining the requirements for SCES

[1] Yevropeys'ki penitentsiarni pravyla: Rekomendatsiya № R (2006) Komitetu Ministriv Rady Yevropy vid 11 sichnya 2006 roku. Donets'k: Donets'k. Memorial, 2010. 32 s.

personnel of Ukraine with the paragraph of the following content:

'Punishment execution institutions and bodies personnel of Ukraine have to observe high professional and personal standards, and always influence positively the convicts and evoke their respect, thereat showing honesty, humanity and respect for the rights and freedoms of the convict as a person and citizen by their behavior and duties performance'.

As far as the second element of the given task is concerned, that is, considering PEI personnel as a prevention activity object, the pithy features apropos of this are established in p. 2 art. 106 on CEC and the corresponding norms of Law of Ukraine 'On National Police'[1], 'On National guard of Ukraine'[2], which stipulate the procedure of warning convicts of the possibility of applying suppressive measures to them.

It means, when training punishment execution institutions and bodies personnel, the approach developing exact immunity from applying force in any conflicts, and, on the other hand, making them apply maximum preventive influence on an offender by verbal methods in different and critical situations, must become a leading idea of influencing their legal consciousness.

That's why PEI administration activity and that of SCES of Ukraine, on the whole, is so important, as

[1] Zakon Ukrayiny "Pro Natsional'nu politsiyu". Polozhennya pro Natsional'nu politsiyu: ofits. tekst. Kyyiv: Alerta, 2016. 84 s.

[2] Pro Natsional'nu gvardiyu Ukrayiny: Zakon Ukrayiny vid 13 beznya 2014 roku № 876-VII. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2014. № 17. St. 594.

to the people who, nevertheless, applied suppressive measures to convicts, in order to assess the level of personnel readiness of correctional and educational colonies and IIW for further analogical actions of applying preventive arsenal of influence on an offender, and also to correct the behavior of those, who preferred applying suppressive measures in current situations, not warning of it, in the corresponding centres of Ministry of Justice of Ukraine.

2. The tasks of the present Conception of reforming (developing) penitentiary system of Ukraine, the main content of which is the fastest Ukraine integration and joining the European Union, by way of bringing the practice of applying suppressive measures to imprisoned convicts to international standards, including[1].

As regards this p. 89.1 of EPR indicates, PEI personnel should include, if possible, sufficient number of experts, for example, psychiatrists, psychologists, social workers, teachers, professional trainers, physical culture and sports teachers.

In the context of the problems studied in this work the following EPR provisions are also important, which say that PEI administration should ensure that each correctional (penitentiary) institution is always under full control of the head, deputy head or another authorized official (p. 84.3), which would reduce the number of permissions in practice in

[1] Pro skhvalennya Kontseptsiyi reformuvannya (rozvytku) penitentsiarnoyi systemy Ukrayiny: Rozporyadzhennya Kabinetu Ministriv Ukrayiny vid 13.09.2017 r. № 654-R. *Uryadovyy kur'yer.* 2017. № 178. 20 veres. S. 8–9.

Ukraine, given by ICAD for shift personnel on duty as to applying suppressive measures to imprisoned convicts.

Subparagraph 'c' of p. 68.2 of EPR determines analogical provisions and, at the same time, guarantees apropos of this, according to which suppressive measures are applied to offenders by PEI personnel only by order of the head[1].

Proceeding from this, p. 1 art. 106 of CEC can be supplemented with a sentence of the following content:

'Suppressive measures determined in this Code article are applied to an offender by colony personnel, if the current situation allows, only with the permission of this institution head or the person fulfilling his duties, according to the active legislation of Ukraine'.

3. The process optimization content of punishment execution and serving a custodial sentence, and, due to its results, deduction of optimal staff model of punishment execution institutions and bodies personnel[2], which is important given ensuring security in PEI, including correctional and educational colony convicts and personnel.

In addition to that, optimization should primarily concern administrative personnel and the people from among them, who is not involved in work with convicts.

[1] Yevropeys'ki penitentsiarni pravyla: Rekomendatsiya № R (2006) Komitetu Ministriv Rady Yevropy vid 11 sichnya 2006 roku. Donets'k: Donets'k. Memorial, 2010. 32 s.

[2] Yakovets' I. S. Teoretychni ta prykladni zasady optymizatsiyi protsesu vykonannya kryminal'nykh pokaran': monografiya. Kharkiv: Pravo, 2013. 392 s.

On the contrary, the number of those who constantly contact the latter should be brought to accordance with international requirements, European ones, in particular.

In this connection the requirements of p. 90.2 of EPR are opportune, according to which correctional (penitentiary) institution administration is obliged to promote everywhere, if it is appropriate, involving citizens in voluntary working in PEI.

4. Urgent problems connected with preventing cruel degrading treatment of convicts in places of imprisonment, and also with PEI personnel crimes in the sphere of punishment institution.

If in 1991 22 people of SCES personnel of Ukraine were made criminal liable[1], in 2016 (after several reforms and subordination of punishment execution institutions and bodies to other departments (MIA of Ukraine (1991–1998) and Ministry of Justice since 2010 till present)) their number increased almost five times and made up more than 100 people in absolute figures[2].

5. Other up-to-date tasks (equipping punishment execution institutions and bodies personnel with the latest protection and defense means; reconstructing supervision and security means (art. 103 of CEC);

[1] Nekotoryye pokazateli deyatel'nosti uchrezhdeniy ugolovno-ispolnitel'noy sistemy MVD Ukrainy v 1991 godu: inform. byul. Kiyev: Glavnoye upravleniye po ispolneniyu nakazaniy MVD Ukrainy, 1992. S. 22.

[2] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 12–13.

increasing the level of the public participation in criminal executive activity and especially of public control over the sphere of punishment execution, particularly, in terms of legitimacy, lawfulness and substantiation of applying suppressive measures to imprisoned convicts due to or instead of increasing efficiency of influence on them by other correctional re-socializing measures (art. 6 of CEC).

As V. M. Syniov made a conclusion apropos of this, penitentiary (criminal executive) system is multidisciplinary, according to its functions, and needs experts at least of such areas as judicial, psychological and pedagogical, production and economic ones[1].

Moreover, in his opinion, such multi-factor, stipulated and alternative ways of training experts of penitentiary direction needs applying modern methodology, substantiating its conception and specific structure[2].

Apart from this, V. M. Syniov is convinced (and it doesn't cause any objections), fundamental social significance of penitentiary (criminal executive) system activity of Ukraine, necessity of its bringing to compliance with world standards, which will speed up after our state joining the Council of Europe, and with commitments of convict re-socialization, demand joint coordinated actions of legal and culturological

[1] Synyov V. M. Pidgotovka spetsialistiv dlya penitentsiarnoyi systemy. *Problemy penitentsiarnoyi teoriyi i praktyky*. 1996. № 1. S. 19.

[2] Synyov V. M., Klymov M. V. Kontseptsiya kadrovogo zabezpechennya diyal'nosti penitentsiarnoyi systemy. *Problemy penitentsiarnoyi teoriyi i praktyky*. 1997. № 2. S. 71.

field representatives in returning criminal to an honest life[1].

As it seems, another conclusion on the problem essence, researched in this work, is valuable as regards this, namely: cardinal changes in social, political, economic and other spheres of our society development and building a real legal state in Ukraine in the 3rd millennium cause the necessity of applying new approaches, views and the like to defining further ways of social development, in the sphere of punishment execution, in particular, including the problems of applying suppressive measures to imprisoned convicts.

That's why scientists' exchange of opinions is important, as to special conception content of the mentioned problems, especially considering that nowadays none of approved state programmes (strategies, conceptions, main directions, etc.) didn't discuss these problems at all.

At the same time, as V. M. Syniov rightly remarked, the uniqueness of penitentiary (criminal executive) activity needs such experts, who would possess special professional mentality and other professional personality qualities formed by way of long-lived training in higher school, which enables to efficiently carry out the main system task – convict re-socialization[2].

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[1] Synyov V. M., Kryvusha V. I. Pedagogichni umovy pidvyshchennya efektyvnosti dozvil'nykh zanyat' zasudzhenykh. *Problemy penitentsiarnoyi teoriyi i praktyky*. 1999. № 4. S. 102.

[2] Synyov V. M. Pidgotovka spetsialistiv dlya penitentsiarnoyi systemy. *Problemy penitentsiarnoyi teoriyi i praktyky*. 1996. № 1. S. 19.

Along with this, the mentioned scientist and famous expert in criminal executive problems is convinced, in whatever sphere of penitentiary (criminal executive) activity an expert worked (security and protection, social, psychological and pedagogical, production and economic), having general culture background, he must be armed with profound professional knowledge and skills, ability to creatively solve non-standard problems urgently arisen, with a set of stable personality traits, important for purposeful influence on convicts, aimed at changing their consciousness and behavior[1].

So, placing priority on social psychological and pedagogical type personality in criminal executive activity, these scientific idea followers prove, that only in such a way it is possible to reproduce logics and content of the principle of custodial punishment inevitability and to express uncompromising attitude to convicts' delinquent behavior[2].

Agreeing to such an approach on the whole, especially in the context of PEI personnel psychology and attitude change, applying suppressive measures to imprisoned convicts, the attention should be drawn to the fact that, without realizing these ideas and principles by other subunits of correctional and educational colonies, exerting mostly preventive influence on these people (regime (art. 102 of CEC); opera-

[1] Synyov V. M. Pidgotovka spetsialistiv dlya penitentsiarnoyi systemy. *Problemy penitentsiarnoyi teoriyi i praktyky*. 1996. № 1. S. 19.

[2] Synyov V. M., Klymov M. V. Kontseptsiya kadrovogo zabezpechennya diyal'nosti penitentsiarnoyi systemy. *Problemy penitentsiarnoyi teoriyi i praktyky*. 1997. № 2. S. 85.

tion and search activity in colonies (art. 104 of CEC); operational and technical service (art. 103 of CEC); etc.), it will be rather difficult to achieve in practice both tasks realization determined in law and punishment purpose (p. 1 art. 1 of CEC).

Along with it, it is worth while disagreeing with A. Kh. Stepaniuk, believing that under present conditions, rejecting the former ideology of convict re-educating, it should be assumed that in intelligent society every citizen is considered as an intellectual (that's why socially and morally) fully-fledged creature, not needing strange prompts to define what is desirable, advantageous, valuable for him[1].

Proceeding from this, he is convinced, a state is obliged to flatly prohibit anybody (including itself) to treat a person as a child, who should be assisted and interfered in the sphere if his independent tactical judgments[2].

Such a position causes objections given that at present in PEI there are a lot of people with mental disorders, who are chronic alcoholics and drug addicts, and other categories of morally, psychologically and pedagogically neglected convicts, who actually need outside assistance, including PEI personnel, especially psychologists and pedagogues.

Moreover, leaving convicts in such a situation alone increases the level of their suicidal behavior, as

[1] Stepanyuk A. Kh. Aktual'ni problemy vykonannya pokaran' (sutnist' ta pryntsypy kryminal'no-vykonavchoyi diyal'nosti: teoretyko-pravove doslidzhennya. Vybrani pratsi/uklad. K. A. Avtukhov. Kharkiv: Pravo, 2017. S. 120–121.

[2] Ibid, p. 121.

practice show[1], and also probability of committing the offences, which are the grounds for applying suppressive measures to them (riots, injury of body parts, attacking surrounding people, etc.).

That's why in this case just the very researchers are right, who believe that realizing criminal executive legislation tasks and achieving punishment purpose, it is possible to apply any (including pedagogical, psychological, moral, etc.) not forbidden by law means of influence on a convict, according to the content of p. 1 art. 19 of the Constitution of Ukraine[2], which is, undoubtedly, important given elucidating the activity content and essence of punishment execution institutions and bodies personnel as an object of preventing offences and crimes, and a subject of applying suppressive measures to imprisoned convicts.

Taking the indicated idea into consideration, M. V. Klimov worked out a substantiated list of punishment execution institutions and bodies personnel training directions (a peculiar doctrinal model), which should include:

1. World-view humanistic training if these people aimed at studying the humanities.

2. Legal training of educational process indicated objects.

3. Their psychological pedagogical training.

[1] Sulyts'kyy V. V. Osnovy zapobigannya suyitsydu u vypravnykh koloniyakh. *Problemy penitentsiarnoyi teoriyi i praktyky.* 2001. № 6. S. 71–72.

[2] Zastosuvannya zakhodiv fizychnogo vplyvu, spetsial'nykh zasobiv i zbroyi u mistsyakh pozbavlennya voli: navch. posib./za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy ta d-ra yuryd. nauk, prof. O. G. Kolba. Kyyiv: Kondor, 2016. S. 82.

4. Penitentiary (criminal executive) training.

5. Administrative training of all people, without any exception, who study or heighten their qualification.

6. Their physical training.

7. These people battle training[1].

O. V. Romanenko also takes analogical position on indicated problems, supposing that the problem of understanding penitentiary state function essence is the most important among other problems to solve.

This problem-solving will prearrange further steps of forming modern criminal executive system of Ukraine[2].

He is convinced, the indicated function is much wider than correctional labour and criminal executive, and cannot be identified with them, since the two latter ate intended to ensure performing local, formal judicial state duties.

At the same time, realizing these functions apart from others, the state will not be able to make convicts repent, therefore to satisfy public interest[3].

Proceeding from this, O. V. Romanenko came to a sound conclusion that penitentiary function cannot be of minor importance, and therefore must rightfully have the status of a national one[4], which is

[1] Klimov M. V. Obgruntuvannya tsiley ta zmistu pidgotovky fakhivtsiv dlya penitentsiarnoyi systemy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1998. № 3. S. 118.

[2] Romanenko O. V. Sutnist' penitentsiarnoyi funktsiyi demokratychnoyi pravovoyi derzhavy. *Problemy penitentsiarnoyi teoriyi i praktyky*. 1997. № 2. S. 53.

[3] Ibid, p. 55.

[4] Ibid, p. 56.

significant enough, given modifying the practice of applying suppressive measures to imprisoned convicts, and PEI and bodies personnel psychology and attitude to it, in particular[1].

On the whole, the position of the given scientist boils down to the same approaches, that H. O. Radov suggested in due time, namely – to forming penitentiary, not criminal executive, state function and modifying, for all that, the activity of all subjects and participants of punishment execution sphere activity, including, first of all, punishment execution institutions and bodies personnel[2].

The works of scientist, specializing in penitentiary problems, are especially urgent nowadays, when the Conception of reforming (developing) penitentiary system of Ukraine is approved on normative legal level[3], on the basis of which the practice of applying physical force, special means and weapon to imprisoned convicts by PEI and bodies personnel has to be changed, considering the decision of European Court of human rights, which directly concern the problems researched in this work[4].

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[1] Romanenko O. V. Do pytannya uchasti instytutiv gromadyans'kogo suspil'stva u formuvanni penitentsiarnoyi polityky v Ukrayini. *Problemy penitentsiarnoyi teoriyi i praktyky.* 2000. № 5. S. 12–13.

[2] Radov G. O. Rol' ta mistse penitentsiarnoyi systemy v strukturi derzhavnogo upravlinnya Ukrayiny. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1997. № 2. S. 10.

[3] Pro skhvalennya Kontseptsiyi reformuvannya (rozvytku) penitentsiarnoyi systemy Ukrayiny: Rozporyadzhennya Kabinetu Ministriv Ukrayiny vid 13.09.2017 r. № 654-R. *Uryadovyy kur'yer.* 2017. № 178. 20 veres. S. 8–9.

[4] Davydov ta inshi proty Ukrayiny: rishennya Yevropeys'kogo Sudu z prav lyudyny vid 1 lypnya 2010 roku. *Praktyka Yevropeys'kogo Sudu z prav lyudyny*. Donets'k: Donets'k. Memorial, 2011. S. 32–38.

That's why selecting and heightening PEI and bodies personnel qualification in protection, supervision and security subunits of SCES of Ukraine is of great importance for their newly activity organization connected with applying suppressive measures to imprisoned convicts. As practice shows, staff apparatuses are engaged in these problems, principal functions of which are as follows:

a) prognosticating the need for PEI personnel (in science prognostication implies predicting on the basis of the data available the character and peculiarities of developing the indicated phenomena and processes in nature and society; forecasting state, development and result of something on the basis of present data[1];

b) selecting candidates for starting service in SCES of Ukraine, the order of which is regulated by the corresponding departmental acts concerning the sphere of punishment execution[2];

c) selecting personnel out of candidates due to a number of criteria (art. 16 of Law of Ukraine 'On State criminal executive service of Ukraine' (SCES personnel of Ukraine is obliged to steadily obey the law, keep professional ethics norms, treat humanely convicts and prisoners. And what is especially pres-

[1] Velykyy tlumachnyy slovnyk suchasnoyi ukrayins'koyi movy/uklad. O. Yeroshenko. Donets'k: TOV "Gloriya Treyd", 2012. S. 560.

[2] Pro zatverdzhennya Instruktsiyi pro poryadok doboru, vyvchennya, oformlennya kandydativ na posady ryadovogo i nachal'nyts'kogo skladu ta provedennya spetsial'nykh perevirok osib, yaki pryymayut'sya na sluzhbu (robotu) do kryminal'no-vykonavchoyi systemy Ukrayiny: nakaz Derzhavnogo departamentu Ukrayiny z pytan' vykonannya pokaran' vid 15 travnya 2000 r. № 94. Kyyiv: DDUPVP, 2000. 24 s.

sing in the context of the given scientific subject, – PEI and bodies personnel have no right to perform actions of cruel or degrading treatment of convicts and prisoners)[1];

d) taking measures of adapting people employed in service (work) in SCES of Ukraine at their places of work, and also introducing them to their post and junior specialists institute (this activity means mentoring in this process and junior expert school or similar institutes of professional patronage in the sphere of punishment execution);

e) realizing other measures as to PEI and bodies personnel (career support, improving social psychological climate, conflict prevention; increasing personal loyalty; ensuring personnel security; etc.)[2].

Proceeding from this, main scientists' task caused by the necessity of doctrinal support of staff work in SCES of Ukraine seems to elaborate a model of modern PEI and bodies personnel and to substantiate scientific criteria of their professional activity, taking international, European, in particular, standards into consideration[3], especially the aspects concerning pithy elements of applying suppressive measures to imprisoned convicts (taking decisions about ceasing such actions; warning of their application; direct application for suppressing an offender; providing paramedical assistance to the people the corresponding supp-

[1] Pro Derzhavnu kryminal'no-vykonavchu sluzhbu Ukrayiny: Zakon Ukrayiny vid 23 chervnya 2005 r. *Ofitsiynyy visnyk Ukrayiny*. 2005. № 30. S. 4–10.

[2] Yarmysh O. Kadry diysno vyrishuyut' vse. *Imenem Zakonu.* 2014. № 27. S. 6.

[3] Ibid, p. 7.

ressive measures were applied to; legal information about the results of performing such actions).

Moreover, it should be stated that nowadays it is time to elaborate and approve on normative legal level the special Conception of the condition and order of applying physical force, special means, a straitjacket and weapon to imprisoned convicts, main structural elements of which must become:

1. Assessing legal and actual current circumstances that are the reason for applying suppressive measures established in law to imprisoned convicts (p. 1 art. 106 of CEC of Ukraine).

2. Taking decisions as to warning of the intention to apply the corresponding suppressive measure (means) to an offender (p. 2 art. 106 of CEC).

3. Defining the kind, type and intensity of applying a suppressive measure (means) (p. 1, p. XXVI PEI IOR; art. 15 of Law of Ukraine 'On National guard of Ukraine'; art. 43 of Law of Ukraine 'On National police').

4. Direct applying suppressive measures to imprisoned convicts by PEI and bodies personnel and defining their actions limits (p. 4 art. 106 of CEC).

5. The procedure of providing paramedical assistance to the people suppressive measures were applied to (p. 4 art. 106 of CEC).

6. The order of registering the results of performing such actions by punishment execution institutions and bodies personnel (p. 5 of art. 106 of CEC).

7. Reporting about applying suppressive measures to bodies and officials determined in law (p. 5 art. 106 of CEC).

8. Involving other law-enforcement bodies and SCES of Ukraine in the activity connected with applying these measures.

9. Taking rehabilitation and other social psychological and medical measures as to people among PEI and bodies personnel who applied suppressive measures to imprisoned convicts.

Along with this, it is obligatory for the indicated Conception to mention the information about the order of training and heightening qualification of SCES of Ukraine, involved in applying suppressive measures, if taking exams in these problems, and about daily instructing PEI subunits directly contacting with convicts and compulsory instructing other people participating in performing such actions according to law (p. 6 art. 106 of CEC of Ukraine).

In this context it is worth while agreeing with K. A. Avtukhov and I. S. Yakovets who suggest for training PEI and bodies personnel using the Code of ethics of SCES personnel of Ukraine more often, that is, the system of moral norms, obligations and requirements of honest performing official duties by the mentioned officials, based on generally recognized moral principles and provisions of the national legislation, norms of criminal punishment execution system functioning in Ukraine and model European Code of ethics for penitentiary institutions[1].

Another conclusion made by scientists is important in this connection, namely: constructive refor-

[1] Yakovets' I. S., Avtukhov K. A. Regulyuvannya etychnoyi povedinky personalu Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny: okremi pytannya. *Visnyk kryminologichnoyi asotsiatsiyi Ukrayiny.* 2016. № 1 (12). S. 219.

ming punishment execution system of Ukraine must be realized lest it should destroy the foundations of existing PEI bodies structure, on the contrary, to improve, to bring to more civilized level[1].

O. M. Krevchun and A. Ye. Krutova expressed analogical position in scientific literature, thinking that SCES of Ukraine is at present at the stage of its reforming aimed, first of all, at searching efficient punishment execution mechanism[2].

They are convinced, such a mechanism must be based on the international standards in this sphere, correspond to euro-integration state development vector, which promotes punishment execution institutions and bodies modernization[3], and, undoubtedly, forming the practice of applying suppressive measures to imprisoned convicts by punishment execution institutions and bodies on legal and actual principles[4].

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[1] Kyrylyuk A. V. Spivvidnoshennya ponyat' "penitentsiarna systema" ta "penitentsiarna sluzhba" v konteksti proektu Zakonu "Pro penitentsiarnu systemu". *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti iz zakonom, kriz' pryzmu pravovykh reform: materialy Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 2 grud. 2016 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2016. S. 199.

[2] Krevchun O. M., Krutova A. Ye. Perspektyvy vdoskonalennya pravovogo regulyuvannya progresyvnoyi systemy vykonannya pokarannya u vydi pozbavlennya voli na pevnyj strok. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti iz zakonom, kriz' pryzmu pravovykh reform: materialy Mizhnar. nauk.-prakt. konf (m. Kyyiv, 2 grud. 2016 r.).* Kyyiv: In-t krym.-vyk. sluzhby, 2016. S. 142.

[3] Ibid.

[4] Kolb I. O., Savchenko A. V. Ponyattya sub'yektiv ta uchasnykiv kryminal'no-vykonavchykh pravovidnosyn. Zakhody shchodo vdoskonalennya diyal'nosti prokuratury, pov'yazani z realizatsiyeyu suchasnoyi kryminal'no-vykonavchoyi polityky Ukrayiny. Pravovi zasady diyal'nosti prokuratury Ukrayiny u sferi vykonannya pokaran': navch. posib./za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy ta d-ra yuryd. nauk, prof. O. G. Kolba. Kyyiv: Kondor, 2016. S. 144–171.

The suggestions of the scientists who substantiate the necessity of including penitentiary chaplains in SCES personnel of Ukraine are of special value in the context of the given scientific development content[1].

Apart from this, in the system of the measures, aimed at modifying PEI and bodies personnel activity content, scientists distinguish more effective using the principle of justice by these people, focusing on the fact that PEI administration representatives must be these ideas bearers in the eyes of convicts, that is, each of them should be confident that just institution administration, nobody else, will solve their problems in a just manner[2].

Among other directions concerning practice improvement of applying suppressive measures to imprisoned convicts, it is possible to distinguish the position of the scientists who suggest increasing the level of professional, including fire, PEI personnel training, in order to teach these people to think creatively, out of ordinary, taking quick and right decisions, sometimes in complicated extreme situations[3].

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[1] Zholtani M. I., Kopotun I. M., Kolb O. G. Religiyni organizatsiyi i religiyne vykhovannya yak uchasnyk kryminal'no-vykonavchykh pravovidnosyn: monografiya. Kyyiv: Kandyba T. P., 2018. S. 145–147.

[2] Zayats' M. V. Nedotrymannya prav zasudzhenykh u mistsyakh vykonannya pokaran' yak prychyna zlochynnosti v mistsyakh pozbavlennya voli. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti iz zakonom, kriz' pryzmu pravovykh reform: materialy Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 2 grud. 2016 r.).* Kyyiv: In-t krym.-vyk. sluzhby, 2016. S. 280.

[3] Sorochan M. O. Problemy ta spetsyfika profesiynoyi vognevoyi pidgotovky spivrobitnykiv kryminal'no-vykonavchoyi sluzhby. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti iz zakonom, kriz' pryzmu pravovykh reform: materialy Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 2 grud. 2016 r.).* Kyyiv: In-t krym.-vyk. sluzhby, 2016. S. 218–219.

As the results of special scientific research prove, it is possible, increasing the level of psychological SCES personnel training to act in extreme conditions of official activity which, without any doubt, include actions connected with applying suppressive measure to imprisoned convicts[1].

Along with this, forming the system of psychological ensuring punishment execution institutions and bodies personnel official activity if possible provided complex structure is created which consists of qualified specialists, has exact and transparent logistics, mobility, ability to react at places[2].

As it was established in the course of the present scientific search, solving the problem of development conditions and effective forming personnel firmness of SCES of Ukraine, particularly in the process of applying or taking decisions about performing such actions, is one of the most urgent and, at the same time, complicated applied tasks, given these people activity belongs to a risky dangerous kind, that is, needs considerable working capacity reserves, resistance to stress, etc., which, in its turn, determines expert's readiness for performing tasks answered the purpose and his professional activity efficiency[3].

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[1] Klimov M. V. Pobudova ta zastosuvannya modeli penitentsiarnogo personalu yak naukovo-pedagogichna problema. *Problemy penitentsiarnoyi teoriyi i praktyky.* 2000. № 5. S. 236.

[2] Ibid, p. 237.

[3] Levenets' A. Ye. Paradygma ponyattya osobystisnoyi stiykosti pratsivnykiv penitentsiarnykh zakladiv. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti iz zakonom, kriz' pryzmu pravovykh reform: materialy Mizhnar. nauk.-prakt. konf (m. Kyyiv, 2 grud. 2016 r.).* Kyyiv: In-t krym.-vyk. sluzhby, 2016. S. 301.

That's why, as V. S. Ryzhov rightly assumes, the results of work on expert's personality of criminal executive service of a new formation within departmental educational establishments must be strong formed beliefs in correctness and priority of applying humanistic forms and methods of influencing people in conflict with law, aimed at achieving their legal consciousness overload processes reduction, successful healing emotional wounds and returning to life at large as socially useful citizens[1].

As I. V. Shtanko aptly put it apropos of this, science representatives' contribution to the process of reforming punishment execution system should be more considerable, though science, unfortunately, considerably falls behind practice[2]. He is convinced, there is acute deficiency of fundamental researches in this sphere. Moreover, practical workers have been waiting for a long time for their social order for scientific development of such pressing problems as defining a new punishment execution institution model, generalized expert characteristics and his optimal workload, improving administrative personnel activity, etc. to be fulfilled[3].

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[1] Ryzhov V. S. Tsilisnyy pedagogichnyy protses v rozbudovi yurydychnoyi osvity yak skladova navchannya personalu v Ministerstvi yustytsiyi Ukrayiny. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti iz zakonom, kriz' pryzmu pravovykh reform: materialy Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 2 grud. 2016 r.).* Kyyiv: In-t krym.-vyk. sluzhby, 2016. S. 335.

[2] Shtan'ko I. V. Nagal'ni pytannya pidvyshchennya efektyvnosti diyal'nosti kryminal'no-vykonavchoyi systemy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1996. № 1. S. 10.

[3] Ibid.

As V. S. Mevediev established, necessary competency and protection level is achieved due to professional psychological training SCES personnel of Ukraine, which takes in Western Europe states and USA about 30 % of all study time spent on law-enforcement system expert training on the whole[1], which would be a very important step of taking correct decisions about applying suppressive measures to imprisoned convicts and of defining their types and limits of performing such actions by PEI and bodies personnel.

A. A. Lukashevych's scientific position is also significant in the given research sense, who proves, since PEI and bodies personnel is engaged in 'person – person' system activity, each of them, despite their post, should possess the corresponding and rather high spiritual culture level as an integral component of their professional skill[2].

The given search results showed that other scientifically substantiated directions concerning immediately practice improvement of applying suppressive measures to imprisoned convicts by punishment execution institutions and bodies personnel may include the following ones:

1) Increasing the level of psycho-physiological and physical convict training which is rather important

[1] Medvedyev V. S. Psykhologichna pidgotovka personalu v umovakh reformuvannya penitentsiarnoyi systemy Ukrayiny. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1997. № 2. S. 92.

[2] Lukashevych A. A. Dukhovna kul'tura penitentsiarnogo personalu – komponent profesiynoyi maysternosti. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1997. № 2. S. 86.

step of this activity algorithm realization when performing top priority actions by the personnel of SCES of Ukraine, mentioned in this work.

As C. I. Zhevago remarked to the point, the necessity for the indicated training is stipulated by the tasks of educating physically perfect and capable of fulfilling the work with convicts under specific conditions, caused by particular situations of self-defense functions, of the corresponding influence on convicts[1].

Moreover, the given researcher is convinced, daily communication with a great number of people over restricted area and nervous stress connected with it, sedentary life caused by specific professional functions, negative emotions accumulation changed into constant stress factor – all together it makes doing physical exercises PEI and bodies personnel vital needs[2].

2) More active using autogenic method (a person's self-control) in training SCES personnel of Ukraine.

As it is established in the course of special scientific research, the advantage of the indicated method consists in the fact that a person works on himself alone. The result is extremely widened in time because it is a person's self-control developed by autotraining that is much more efficient than social surrounding control. For all that, changing behavioral realia stereotypes a person protects himself from

[1] Zhevago S. I. Psykhofiziologichna ta fizychna pidgotovka spivrobitnykiv penitentsiarnoyi systemy. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1997. № 2. S. 106.

[2] Ibid.

inadequate actions in response to existing or far-fetched threat, insults, hardships[1].

3) Qualitative modifying the content of special forced reason of SCES personnel of Ukraine, which is important considering taking decisions by these people about warning or applying suppressive measures to the people kept in places of imprisonment.

As I. P. Zakorko made a sound conclusion, there is often a single fight, when PEI and bodies personnel have to protect not only citizens' interests, but their own life[2].

It is just the occasion when the skills of handling government-issue weapons, sports physical training, mastery of applying special methods of unarmed combat and hand-to-hand fighting can help.

That's why, he is convinced, the indicated subject matters are a basis of training law-enforcement officials in many European countries and the USA[3].

4) Reducing the number of mistakes in taking decisions about applying suppressive measures to imprisoned convicts by PEI and bodies personnel.

In this context O. M. Reva an O. V. Mykhaylov prove the necessity of taking five dangerous behavior properties, operational thinking and taking decisions deduced on a scientific level into consideration (ignoring, impulsiveness, invulnerability, self-confidence,

[1] Morozov O. M., Kuriy T. R. Metodyka avtogennogo trenuvannya. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1998. № 3. S. 104.

[2] Zakorko I. P. Osoblyvosti spetsial'noyi sylovoyi pidgotovky kursantiv navchal'nykh zakladiv MVS Ukrayiny na zanyattyakh z sambo i rukopashnogo boyu. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1999. № 4. S. 197.

[3] Ibid.

obedience) when training and heightening qualification of SCES personnel of Ukraine[1].

As these scientists established, the first place of probable displaying dangerous PEI and bodies personnel properties goes to self-confidence (37,12 % in behavior structure), the 2nd – to impulsiveness (17,70 %), the 3rd – ignoring (16,46 %), the 4th – obedience (12,09 %), the 5th – invulnerability (37,12 %)[2].

Along with this, according to the results of the research conducted, common antidotes (Grez. *antidoton* – anti-poison)[3] for neutralizing dangerous SCES personnel properties were as follows:

a) in cases of ignoring dangerous situations by these people thinking and behavior psychology like 'Rules exist for somebody else!' is intrinsic to them.

At the same time, the indicated activity subjects, connected with applying suppressive measure to imprisoned convicts, should think and act according the antidote 'Keep the rules, they are usually correct!'[4];

b) displaying impulsiveness these indicators are as follows: 'I don't have to act now, there is no time', while it was necessary in thinking and behavior to be guided by antidote 'Not so fast! First think it over'[5];

c) in the situations, when the character of dangerous person's property among PEI and bodies person-

[1] Reva O. M., Mykhaylov O. V. Otsinka nebezpechnykh vlastyvostey povedinky, operatyvnogo myslennya ta pryynyattya rishen' u maybutnikh yurystiv. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1999. № 4. S. 193.

[2] Ibid, p. 195.

[3] Buliko A. N. Bol'shoy slovar' inostrannych slov. 35 tysyach slov. Izd. 3-ye, ispr., pererab. Moskva: Martyn, 2010. S. 46.

[4] Reva O. M., Mykhaylov O. V. Otsinka nebezpechnykh vlastyvostey povedinky... S. 195.

[5] Ibid.

nel acquires the form of invulnerability, their behavior and thinking are of such a content: 'Nothing can happen to me!'

However, it would be worth while thinking and acting in somewhat different way – 'It can happen to everybody!'[1];

d) with self-confidence these people's thinking and behavior are displayed according to the pattern: 'I can do it', though it was necessary to act on the principle: 'It is unreasonable to risk'[2];

e) in cases of obedient thinking and behavior PEI and bodies personnel psychology is like this: 'Why? What's the point? What's the use?', while it was necessary to act in the following way: 'I'm not helpless! I can do something different, find another decision'[3].

Of course, applying these tests and person's psychology cognition methods, approved in practice, including foreign one[4], to each of the people performing actions of suppressing illegal imprisoned convicts' behavior, along with the materials of official revision of such a fact, immediately thinking-behavior 'picture' will appear, showing the dangerous state of this or that subject of the given operational official activity at the moment of applying suppressive measures[5].

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[1] Reva O. M., Mykhaylov O. V. Otsinka nebezpechnykh vlastyvostey povedinky, operatyvnogo myslennya ta pryjnyattya rishen' u maybutnikh yurystiv. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1999. № 4. S. 195.

[2] Ibid.

[3] Ibid.

[4] Ibid, p. 193.

[5] Kolb I. O., Kovalenko V. V. Pro zmist ponyattya "personal organiv ta ustanov vykonannya pokaran'" ta yogo systemoutvoryuyuchi oznaky. *Derzhava i gromadyans'ke suspil'stvo: grani vzayemodiyi: materialy krug. stolu (m. Kyyiv, 12 cherv. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2017. S. 27–30.

5) Opportune detecting and efficient solving life crises arising in professional activity of SCES personnel of Ukraine.

As I. I. Pampura mentioned apropos of this, the peculiarities of working conditions in the manner of strict regulation, constant tension, high responsibility leave imprints on power structures personnel, narrowing the borders of its necessary subjectivity rehabilitation, which causes incapability of independent productive getting out of crisis[1].

At the same time, in the given researcher's opinion, the crisis situation handled unsuccessfully can turn out to be the very dangerous non-adaptable factor able to cause certain neurotic symptoms, somatic diseases, deviant displays, professional deformation, low professional activity level[2].

Of course, the approach in practice is unlikely to be correct, when the indicated people out of punishment execution institutions and bodies personnel in such crisis state are admitted to the service in PEI (shifts on duty, in particular)[3].

6) Preventing and overcoming professional PEI and bodies personnel deformation.

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[1] Pampura I. I. Zhyttyeva kryza v umovakh profesiynoyi diyal'nosti pratsivnykiv kryminal'no-vykonavchoyi systemy ta organiv vnutrishnikh sprav. *Problemy penitentsiarnoyi teoriyi i praktyky.* 2000. № 5. S. 210.

[2] Ibid.

[3] Kolb I. O., Zhuravska Z. V. Pro zmist spetsial'no-kryminologichnogo zapobigannya zlochynam. *Pravovi reformy v Ukrayini: realiyi syogodennya (tekst): tezy VII Vseukr. nauk.-teoret. konf., prysvyach. Dnyu yurysta Ukrayiny (m. Kyyiv, 29 zhovt. 2015 r.): u 2-kh ch.* Kyyiv: Nats. akad. vnutr. sprav, 2015. Ch. 1. S. 190–192.

As V. S. Medvediev established, professional deformation is a complex of specific changes of certain personality features and structure on the whole.

The indicated changes consists in hypertrophy and further transformation of important professional features into its opposite (vigilance – into suspicion, confidence – into self-confidence, etc.), actualization of socially negative features development (cruelty, revengefulness, cynicism), disharmonious distorted correlation of certain features.

Along with this, not coordinated combining and stimulating development under common professional 'vector', but depressing one and abstracting another at the expense of the first become the main pattern[1].

Such category of SCES personnel of Ukraine, undoubtedly, cannot be admitted to the service in PEI protection, supervision and security subunits, shifts on duty, unless the corresponding restoring psychological correction measures as to their psychic and psychological state and behavior are taken.

Scientists attribute the following measures to them:

1. Administrative organizational direction, stipulating assigning a mentor out of SCES personnel to a newly appointed person, temporary facilitating work regime for them, giving them vacation in parts; transferring to other subunits, etc.[2]

2. Restoring rehabilitating direction, demanding regular doing sport, combat and tactic special training,

[1] Medvedyev V. S. Shlyakhy poperedzhennya ta podolannya profesiynoyi deformatsiyi pratsivnykiv UVP. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1996. № 1. S. 42–43.

[2] Ibid, p. 45.

organizing concerts, meetings with interesting people, etc. by PEI and bodies personnel[1].

3. Psychological educational direction, including measures of individual consulting people of SCES personnel of Ukraine, psychological encouraging in professional and general personal improvement, promoting cooperation pedagogy and appropriate style of interacting with convicts[2].

However, as experts psychologists remark apropos of this, efficiency of preventing and overcoming professional deformation depends mostly on consistent taking corresponding measures in all indicated directions.

In addition to that, the very measures must combine collective, differentiated group and individual forms of influence on a specific person of PEI and bodies personnel[3].

7) Other scientifically substantiated methods are aimed at improving legal mechanism and practice of applying suppressive measures established in law (increasing the level of civil control over the given activity type in the sphere of punishment execution[4],

[1] Medvedyev V. S. Shlyakhy poperedzhennya ta podolannya profesiynoyi deformatsiyi pratsivnykiv UVP. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1996. № 1. S. 46.

[2] Ibid.

[3] Ibid, p. 47.

[4] Kolb I. O., Likhovyts'kyy Ya. O. Diyal'nist' personalu koloniy shchodo zabezpechennya pryntsypu gumanizmu u kryminal'no-vykonavchiy diyal'nosti. *Aktual'ni problemy modernizatsiyi zakonodavstva ta osvity v umovakh yevrointegratsiynogo postupu Ukrayiny: materialy Mizhnar. nauk.-prakt. konf. (m. Chernigiv, 27–28 zhovt. 2016 r.).* Chernigiv: Akad. derzh. penitentsiarnoyi sluzhby, 2016. S. 147.

creating social[1], legal, financial and other guarantees of forming penitentiary policy in Ukraine, instead of criminal executive one[2]; enshrining penitentiary law doctrine on a normative legal level, elaborated by criminal activity scientists[3]; considerable changing the content of state control in the sphere of punishment execution[4]; others)[5].

So, summing up the given research problem, it should be stated that without qualitative modifying psychology and official training on the whole, process essence of heightening qualification, and also social rehabilitating and preventive measures[6], aimed at reducing the level of professional deformation of SCES personnel of Ukraine, it is absolutely difficult and problematic to carry out such a task as reducing the number of cases of applying suppressive measu-

[1] Pro demokratychnyy tsyvil'nyy kontrol' nad Voyennoyu organizatsiyeyu i pravookhoronnymy organamy derzhavy: Zakon Ukrayiny vid 19 chervnya 2003 roku № 975-IV. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2003. № 46. St. 366.

[2] Radov G. O. Pershochergovi problemy penitentsiarnoyi polityky Ukrayiny na suchasnomu etapi. *Problemy penitentsiarnoyi teoriyi i praktyky.* 1996. № 1. S. 12–16.

[3] Bogatyryov I. G., Puzyryov M. S., Shkuta O. O. Doktryna penitentsiarnogo prava Ukrayiny: monografiya. Kyyiv: V. D. "Dakor", 2017. 236 s.

[4] Diyal'nist' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny: administratyvno-pravovyy aspekt: navch. posib. Kyyiv: KNT, 2011. S. 125–184.

[5] Kolb I. O., Suprunenko D. O. Pro deyaki zmistovni elementy metodyky otsinky diyal'nosti po zapobigannyu zlochynam. *KELM.* 2016. № 2 (14). S. 87–95.

[6] Kolb I. O., Gorbachevs'kyy V. Ya. Pro zmist ponyattya zapobigannya zlochynam. *Kryminal'no-vykonavcha polityka Ukrayiny ta Yevropeys'kogo Soyuzu: rozvytok ta integratsiya: zb. materialiv Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 27 lystop. 2015 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2015. S. 258–260.

res to imprisoned convicts and on the whole regulating these people actions on civilized principles in situations which, according to formal grounds, enable them to take measures, mentioned in law, of ceasing illegal behavior in correctional and educational colonies and IIW[1].

Moreover, leaving the given kind of official PEI and bodies personnel activity without appropriate control of state bodies and the public, including official investigation of every case of applying suppressive measures to the people kept in places of imprisonment, will not eliminate, neutralize, block, etc. determinants causing and specifying the choice of just power, not preventive 'scenario' by SCES personnel of Ukraine, as to the problems which are further a peculiar 'boomerang' of expanding the objective conflict boundaries, forming the basis of criminal executive legal relations between these people and convicts[2].

5.3. The role of state control of the practice of applying physical force, special means and weapon to convicts

As it is established in the course of the given research, low level of state control over the mentioned

[1] Kolb I. O., Dzhuzha O. M. Pro zmist operatyvno-rozshukovogo zapobigannya zlochynam, shcho vchynyayut'sya personalom vypravnykh koloniy. *Suchasni kryminalistychni ekspertyzy v rozsliduvannya zlochyniv (tekst): materialy krug. stolu (m. Kyyiv, 25 lyut. 2015 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2015. S. 90–92.

[2] Kolb I. O., Kovalenko V. V. Pro deyaki teoretychni pidkhody shchodo sutnosti diyal'nosti personalu organiv ta ustanov vykonannya pokaran' v Ukrayini. *Istoryko-pravovyy chasopys.* 2017. № 1 (9). S. 109–114.

direction of SCES personnel activity in Ukraine is one of the conditions negatively influencing the state an other practice elements content of applying physical force, special means, a straitjacket and weapon to imprisoned convicts[1].

At the same time, it should be pointed out that none of normative legal act concerning the sphere of punishment execution, adopted for the last period (2014–2019) (National strategy in the sphere of human rights; Strategy of stable development 'Ukraine – 2020'[2]; Strategy of reforming judicial system, court proceedings and related institutes for the years 2015–2020[3]; Conception of reforming (developing) penitentiary system of Ukraine[4]; others) spoke about the ways of regulating and improving kinds of state control established in law.

Thus, there is a complicated applied problem to be solved, including on a doctrinal level, which beca-

[1] Kolb I. O. Pro zmist spetsial'no-kryminologichnogo zapobigannya koruptsiyi v Ukrayini. *Kryminal'no-pravovi ta kryminologichni zasady protydiyi koruptsiyi: zb. tez. dop. V Mizhnar. nauk.-prakt. konf. (m. Kharkiv, 31 berez. 2017 r.).* Kharkiv: Khark. nats. un-t vnutr. sprav, 2017. S. 100–101.

[2] Pro Strategiyu stalogo rozvytku "Ukrayina – 2020": Ukaz Prezydenta Ukrayiny vid 12.01.2015 r. № 5/2015. *Uryadovyy kur'yer.* 15.01.2015. № 6.

[3] Pro Strategiyu reformuvannya sudoustroyu, sudochynstva ta sumizhnykh instytutiv na 2015–2020 rr.: Ukaz Prezydenta Ukrayiny vid 20.05.2015 r. № 276/2015. *Ofitsiynyy visnyk Prezydenta Ukrayiny.* 03.06.2015. № 13. St. 864.

[4] Pro skhvalennya Kontseptsiyi reformuvannya (rozvytku) penitentsiarnoyi systemy Ukrayiny: Rozporyadzhennya Kabinetu Ministriv Ukrayiny vid 13.09.2017 r. № 654-R. *Uryadovyy kur'yer.* 2017. № 178. 20 veres. S. 8–9.

me a decisive factor determining the given research task in this work[1].

The results of anonymous survey conducted among PEI personnel and imprisoned convicts prove the urgency of this problem. Thus, answering the question 'Are the consequences of applying suppressive measures brought to convicts?' people of SCES personnel of Ukraine gave the following answers: yes – 969 (48 % of 2016 respondents surveyed); no – 268 (13 %); partly – 779 % (39 %). The convicts answered in such a way: yes – 11 (4 % of 2016 respondents surveyed); no – 1779 (84 %); partly – 226 (12 %) (Supplements A, B, C, C1).

As S. Yu. Benkovskiy mentioned opportunely, creating legal mechanism and guarantees of its norms in a certain activity sphere, any state and its public interests cannot do without control of their maintaining by the corresponding legal relations subjects[2].

V. B. Averyanov and O. F. Andriyko are convinced (and it's difficult to disagree to it), underestimating and belittling control role can lead to uncontrolled situation, reducing control level and to chaos[3].

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[1] Kolb I. O., Zhuravs'ka Z. V. Pro vydy i formy kontrolyu zabezpechennya bezpeky u kryminal'no-vykonavchiy diyal'nosti Ukrayiny. *Rol' pravookhoronnykh organiv u formuvanni pravovoyi derzhavy v umovakh Yevrointegratsiyi Ukrayiny (tekst): materialy Vseukr. pidsumk. nauk.-prakt. konf.: u 2-kh ch. (m. Kyyiv, 12 berez. 2015 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2015. S. 54–55.

[2] Benkovs'kyy S. Yu. Sotsial'no-pravove pryznachennya kontrolyu za diyal'nistyu derzhavnykh organiv. *Formuvannya penitentsiarnoyi systemy Ukrayiny: materily nauk.-prakt. konf. (m. Odesa, 25 trav. 2012 r.).* Odesa: Upravlinnya DPtS Ukrayiny; Odes. derzh. un-t vnutr. sprav; Minister. gumanit. un-t, 2012. S. 19.

[3] Derzhavne upravlinnya: teoriya i praktyka/za zag. red. V. B. Aver'yanova. Kyyiv: Yurinkom Inter, 1998. S. 34.

That's why, in their opinion, control should not be completely denied or criticized of its excessiveness, which tendency has become widespread in recent years, it also concerns control importance exaggeration, which is considered solving all problems in government available[1].

On the whole, not elucidating different meanings of the notion content 'control' and its synonymic expressions in the terms 'monitoring, controlling', etc., used in scientific literature[2] and normative legal sources, including those mentioned above, it is rather important to analyze its essence and social legal content in general, and also the level of its exercising in punishment execution institutions and bodies of Ukraine in the context of correctional and educational colonies, and IIW personnel activity, connected with applying suppressive measures in places of imprisonment, determined in law.

In scientific literature scientists consider the notion 'control' in wide and narrow meanings. In wide meaning control is treated as inspecting, registering the activity of someone or something, supervising someone or something[3].

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[1] Derzhavne upravlinnya: teoriya i praktyka/za zag. red. V. B. Aver'yanova. Kyyiv: Yurinkom Inter, 1998. S. 34.

[2] Benkovs'kyy S. Yu. Sotsial'no-pravove pryznachennya kontrolyu za diyal'nistyu derzhavnykh organiv. *Formuvannya penitentsiarnoyi systemy Ukrayiny: materily nauk.-prakt. konf. (m. Odesa, 25 trav. 2012 r.).* Odesa: Upravlinnya DPtS Ukrayiny; Odes. derzh. un-t vnutr. sprav; Minister. gumanit. un-t, 2012. S. 19–23.

[3] Velykyy tlumachnyy slovnyk ukrayins'koyi movy/uporyad. T. V. Kovalyova. Kharkiv: Folio, 2005. S. 294.

In its turn, this term in narrow meaning implies checking, namely: implementation of decisions taken by higher organization; orders of different administration system levels; observance of organizational and other norms, etc.[1]

As the study results of criminal executive legislation of Ukraine showed, the following kinds of state control exercised in the sphere of punishment execution are enshrined in it:

1. Departmental control exercised by the supreme bodies of government and the highest officials of central executive power body, realizing state policy in the sphere of criminal punishment execution (art. 23 of CEC of Ukraine).

2. Control exercised indirectly during PEI visits by the corresponding higher officials of our state and other officials of central state executive power bodies in Ukraine, established in p. 1 art. 24 of CEC, namely:

a) the President of Ukraine or the representatives specially authorized by him (not more that five people in each region, the Autonomous Republic of Crimea, Kyiv and Sevastopol), according to Law of Ukraine 'On legal status of the President of Ukraine'[2] and art. 106 of the Constitution of Ukraine;

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[1] Benkovs'kyy S. Yu. Sotsial'no-pravove pryznachennya kontrolyu za diyal'nistyu derzhavnykh organiv. *Formuvannya penitentsiarnoyi systemy Ukrayiny: materily nauk.-prakt. konf. (m. Odesa, 25 trav. 2012 r.).* Odesa: Upravlinnya DPtS Ukrayiny; Odes. derzh. un-t vnutr. sprav; Minister. gumanit. un-t, 2012. S. 20.

[2] Administratyvno-pravovyy status Prezydenta Ukrayiny. URL: https://pidruchniki.com/1097010755846/pravo/administrativno-pravoviy_status_prezidenta_ukrayini

b) the Prime Minister of Ukraine or the representatives specially authorized by him (not more than two people in each region, the Autonomous Republic of Crimea, Kyiv and Sevastopol), according to Law of Ukraine 'On the Cabinet of Ministers of Ukraine'[1] and art. 116 of the Constitution of Ukraine;

c) the Minister of Internal Affairs, Head of National police or the representatives specially authorized by him (not more than two people in each region, the Autonomous Republic of Crimea, Kyiv and Sevastopol), according to the requirements of art. 5 of Law of Ukraine 'On the National police'[2] and p. 11 of the Regulations on the National police[3];

d) the Verkhovna Rada Ombudsman or the representatives specially authorized by him, performing control functions, according to Law of Ukraine 'On the Verkhovna Rada Ombudsman'[4] and art. 101 of the Constitution of Ukraine;

e) the chairman, deputy chairman and members of the Clemency Committee under the President of Ukraine;

f) the Minister of Justice of Ukraine or the representatives specially authorized by him (not more than

[1] Pro Kabinet Ministriv Ukrayiny: Zakon Ukrayiny vid 27 lyutogo 2014 r. № 794-VII. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 2014. № 13. St. 222.

[2] Zakon Ukrayiny "Pro Natsional'nu politsiyu". Polozhennya pro Natsional'nu politsiyu: ofits. tekst. Kyyiv: Alerta, 2016. 84 s.

[3] Polozhennya pro Natsional'nu politsiyu: zatv. postanovoyu Kabinetu Ministriv Ukrayiny vid 28 zhovtnya 2015 r. № 877. *Ofitsiynyy visnyk Ukrayiny.* 2015. № 89. St. 2971.

[4] Pro Upovnovazhenogo Verkhovnoyi Rady Ukrayiny z prav lyudyny: Zakon Ukrayiny vid 23 grudnya 1997 roku № 776/97-VR. *Ofitsiynyy visnyk Ukrayiny*. 1998. № 1. St. 5.

two people in each region, the Autonomous Republic of Crimea, Kyiv and Sevastopol), according to the requirements of p. 1 art. 11 of CEC and the Regulations on the Ministry of Justice of Ukraine[1];

g) the Chairman of the Council of Ministers of the autonomous Republic of Crimea, heads of local state administrations, PEI are situated in, or the representatives specially authorized by them (not more than five people in the corresponding territory), who act according to Law of Ukraine 'On local state administrations'[2] and art. 119 of the Constitution of Ukraine.

3. Public prosecutor's control exercised in the form of supervising law observation in punishment execution institutions and bodies when carrying out judicial decision on criminal cases according to the requirements of art. 22 of CEC and Law of Ukraine 'On public prosecutor's office'[3].

4. Control exercised by other state bodies, – on the order following from law and their legal status (State emergency service (SES); Chamber of Accounts of the Verkhovna Rada of Ukraine; Ministry of health care of Ukraine; Ministry of education of Ukraine; State tax service; courts; others).

So, proceeding from the given list of control bodies of Ukraine, it can be stated that 'too many cooks'

[1] Polozhennya pro Ministerstvo yustytsiyi Ukrayiny: Postanova Kabinetu ministriv Ukrayiny vid 2 lypnya 2014 r. № 228. *Ofitsiynyy visnyk Ukrayiny*. 2014. № 54. St. 1455.

[2] Pro mistsevi derzhavni administratsiyi: Zakon Ukrayiny vid 9 kvitnya 1999 roku № 586-XIV. *Ofitsiynyy visnyk Ukrayiny.* 1999. № 18. St. 876.

[3] Pro prokuraturu: Zakon Ukrayiny vid 14 zhovtnya 2014 roku № 1697-VII. *Ofitsiynyy visnyk Ukrayiny.* 2019. № 76. St. 2631.

(this is SCES) spoil the 'broth', while since 1991 till present the key problems in the sphere of punishment execution have not solved so far, namely:

a) the problems concerning 100 % of financing the needs connected with normal functioning punishment execution institutions and bodies (every year only 40 % of all necessary cost is allotted from the State budget of Ukraine)[1];

b) ensuring secure conditions of serving a sentence by convicts in PEI (every year from 300 to 400 convicts become crime victims; about 200 people are injured in production; almost 1,5 thousand of these people from diseases, etc.)[2];

c) after being released from PEI almost 20 % of the former convicts commit repeated crimes[3];

d) administrative supervision is exercised over 20 % people released from places of imprisonment, as they broke maliciously established order of serving a sentence[4];

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[1] Pro Derzhavnyj byudzhet Ukrayiny na 2019 rik: Zakon Ukrayiny 28 lyutogo 2019 roku № 2696-VIII. *Ofitsiynyy visnyk Ukrayiny*. 2019. № 25. St. 878.

[2] Pro stan doderzhannya zakoniv v organakh i ustanovakh vykonannya pokaran' v 2018 rotsi pry vykonanni sudovykh rishen' u kryminal'nykh spravakh, a takozh pry zastosuvanni inshykh zakhodiv prymusovogo kharakteru, pov'yazanykh z obmezhennyam osobystoyi svobody gromadyan: materialy kolegiyi General'noyi prokuratury. Kyyiv: Gen. prokuratura, 2018. 76 s.

[3] Batyrgareyeva V. S. Retsydyvna zlochynnist' v Ukrayini: sotsial'no-pravovi ta kryminal'ni problemy: monografiya. Kharkiv: Pravo, 2009. S. 17–18.

[4] Pro administratyvnyj naglyad za osobamy, zvil'nenymy z mists' pozbavlennya voli: Zakon Ukrayiny vid 1 grudnya 1994 roku. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 1994. № 52. St. 455.

e) in the structure of penitentiary crimes almost half of them are criminal offences connected with convicts' malicious disobedience[1];

f) dwelling, production and technical engineering protection and supervision means are in unsatisfactory condition[2];

g) other chronic problems (of recruiting qualified staff to service; corruptible offences; cooperation of SCES of Ukraine with other state bodies and the public; etc.)[3].

As it was established in the course of the given research, among a number of conditions influencing negatively the efficiency of exercising state control in the sphere of punishment execution, particularly the problems of applying physical force, special means, a straitjacket and weapon, it is worth while distinguishing the following ones:

1. Having enshrined in law a considerable list of state bodies and officials who have the right to control criminal executive activity, the lawmaker narrowed their number to two (the Ombudsman of the Verkhovna Rada of Ukraine and public prosecutor),

[1] Godlevs'ka-Konovalova A. V. Zapobigannya zlisniy nepokori vymogam administratsiyi ustanovy vykonannya pokaran': dys. … kand. yuryd. nauk: 12.00.08. Zaporizhzhya: Klasych. pryvat. un-t, 2019. S. 203.

[2] Pro stan doderzhannya zakoniv v organakh i ustanovakh vykonannya pokaran' v 2017 rotsi pry vykonanni sudovykh rishen' u kryminal'nykh spravakh, a takozh pry zastosuvanni inshykh zakhodiv prymusovogo kharakteru, pov'yazanykh z obmezhennyam osobystoyi svobody gromadyan: materialy kolegiyi General'noyi prokuratury. Kyyiv: Gen. prokuratura, 2017. 89 s.

[3] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. 34 s.

in the cases concerning applying suppressive measures by correctional and educational personnel[1].

Along with this, it is necessary to mention, in this context territorial administration bodies and SCES Administration of Ministry of Justice of Ukraine, that is, departmental control subjects, went unnoticed[2].

The following bodies are not included in control bodies in indicated situations either:

a) the Verkhovna Rada Commissioner for the rights of the child of Ukraine[3], who could officially assess punishment execution institutions and bodies personnel activity of the facts of applying suppressive measures to juvenile convicts in educational colonies (p. 3 art. 106 of CEC of Ukraine);

b) territorial bodies of the National police of Ukraine in order of requirements of art. 214 of CEC for reporting information on the fact of applying a suppressive measure to imprisoned convicts to Unified register of pretrial investigations;

c) territorial bodies administrations of the National police and National guard subunits of Ukraine in the cases of involving their forces and possibilities in the process of applying suppressive measures to convicts in places of imprisonment (p. 6 art. 106 of CEC).

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[1] Kolb I. O., Dzhuzha O. M. Shchodo zmistu zapobizhnoyi diyal'nosti prokuratury Ukrayiny. *KELM.* 2015. № 4 (12). S. 111–121.

[2] Kolb I. O., Karpenko N. V. Pro deyaki problemy dosudovogo rozsliduvannya zlochyniv v ustanovakh vykonannya pokaran'. *Novitni kryminal'no-pravovi doslidzhennya: materialy nauk.-prakt. konf. (m. Odesa, 10–11 lyut. 2015 r.).* Odesa: Nats. un-t "Odes'ka yurydychna akademiya", 2015. S. 68–71.

[3] Pro Upovnovazhenogo Verkhovnoyi Rady Ukrayiny z prav dytyny: proekt Zakonu Ukrayiny. URL: http://search.ligazakon.ua/l_doc2.nsf/link1/JF1ZO00A.html

Taking the indicated legal reason into consideration and aiming at increasing control level and preventing illegal applying physical force, special means, a straitjacket and weapon to imprisoned convicts, it would be logical to supplement p. 5 art. 106 of CEC of Ukraine with the word-combination 'and other state power bodies and the Commissioner for the rights of the child of the Verkhovna Rada of Ukraine' and adopt it in the new wording:

'Applying physical force, special means, a straitjacket and weapon is reported to colony head.

Each case of applying the indicated suppressive measures to imprisoned convicts is reported to the public prosecutor exercising supervision over law observation in punishment execution institutions and bodies in the execution of court decisions, to the Verkhovna Rada Ombudsman and Commissioner for the Rights of the Child, and also other state bodies in the manner prescribed by law'.

The necessity of such modifying p. 5 art. 106 consists in the fact that the indicated legislative approach will enable:

a) to create real legal guarantees of realizing the requirements of art. 3 of the Constitution of Ukraine in practice, according to which a person, his life and health, honour and dignity, inviolability and security are recognized the highest social value in Ukraine. In addition to that, the state is responsible for its activity to the person;

b) to accord these provision to the requirements of p. 1 art. 7 of CEC of Ukraine indicating that the state respects and protect convicts' rights, freedoms

an legal interests, ensures necessary conditions for their correction and re-socialization, social and legal protection and their personal security;

c) to bring the activity of applying suppressive measures to convicts in places of imprisonment to international standards (to p. 64.1–70.7 of European penitentiary rules, in particular);

d) to create real legal possibilities of realizing the state programmes in the sphere of punishment execution, like: the National strategy in the sphere of human rights; the Strategy of stable development 'Ukraine – 2020'; the Strategy of reforming judicial system, court proceedings and related legal institutes for the years 2015–2020; the Conception of reforming (developing) penitentiary system of Ukraine; others;

e) to lay certain legal mechanism elements of forming penitentiary system, and also to introduce the provisions of penitentiary law doctrine of Ukraine in practice[1].

2. Low level of public prosecutor's supervision of law observation in carrying out court decisions in criminal cases in punishment execution institutions and bodies, which is stipulated for by a new content of public prosecutor's office activity enshrined in CEC of Ukraine and Law of Ukraine 'On public prosecutor's office'[2].

[1] Bogatyryov I. G., Puzyryov M. S., Shkuta O. O. Doktryna penitentsiarnogo prava Ukrayiny: monografiya. Kyyiv: V. D. "Dakor", 2017. 236 s.

[2] Novosad Yu. O. Pro deyaki argumenty shchodo neobkhidnosti zdiysnennya prokurors'kogo naglyadu u sferi vykonannya pokaran' i zapobigannya zlochynam. *Naukovyy visnyk Khersons'kogo derzhavnogo universytetu.* Kherson: Gel'vetyka, 2016. S. 68–73.

For example, current CEC, unlike CEC of the year 1960, containing commitments for agencies of inquiry, an investigator, a public prosecutor and judge (art. 23–23.2) in the course of pretrial investigation and trial of a case to reveal reasons and conditions caused committing a crime, and also to react to it by the corresponding procedural measures prescribed in law[1].

At present public prosecutor's office hasn't such powers, including the issues concerning applying suppressive measures to imprisoned convicts[2].

Such a conclusion is based on the requirements of p. 1 art. 26 of Law of Ukraine, according to which public prosecutor's office, exercising supervision of law observation in the execution of court decisions in punishment execution institutions and bodies, has the following rights:

1) to visit at any time, according to the certificate confirming the position, places of detention, of preliminary confinement, institutions where convicts serve a sentence, or to whom enforcement or medical measures were applied, or any other places with the purpose to draw up a report on administrative offence or conditions in which people are forcibly kept according to the judgment or to administration body decision;

[1] Pro zatverdzhennya Kryminal'no-protsesual'nogo kodeksu Ukrayins'koyi RSR: Zakon Ukrayiny vid 30 grudnya 1960 roku. *Vidomosti Verkhovnoyi Rady Ukrayins'koyi RSR.* 1961. № 2. St. 15.

[2] Kolb I. O., Karpenko N. V. Pro deyaki problemy dosudovogo rozsliduvannya zlochyniv v ustanovakh vykonannya pokaran'. *Yurydychna nauka i praktyka: vyklyky chasu: materialy V Mizhnar. pidsumk. nauk.-prakt. konf. (m. Kyyiv, 12 berez. 2015 r.).* Kyyiv: Nats. aviats. un-t, 2015. S. 44–47.

2) to interrogate the people in the places indicated in point 1 of this part, aimed at receiving the information on the conditions they are kept and treated, to read the documents on the grounds of which these people are kept in such places, are convicted or are applied enforcement measures;

3) to read the materials, receive their copies, check leading bodies orders, instructions or other acts lawfulness, and in case of non-compliance with the legislation to demand their cancellation and elimination of law violation by officials who have done it, and also to cancel illegal acts of individual action;

4) to demand to provide explanation for violations of officials, to eliminate violations and reasons and conditions causing them, to make guilty people responsible in the manner prescribed by law;

5) to get acquainted with the materials of enforcement proceedings on the execution of court decisions in criminal cases, to make extracts from them, to copy them and appeal against decisions, actions or omission of a state executor;

6) to demand to perform inspections by higher level bodies heads of subordinate and controlled bodies and institutions of pretrial detention, of punishment execution, of applying enforcement measures and inspection of other places indicated in point 1 of this part.

So, the provision of p. 3 p. 1 art. 26 of Law of Ukraine 'On public prosecutor's office' is the closest in the context of activity content connected with applying suppressive measure to imprisoned convicts,

which is about the public prosecutor's right to check orders, instructions or other acts lawfulness on the indicated problems, proceeding from the content of legal grounds for performing such actions by SCES personnel of Ukraine, mentioned in p. 1 art. 106 of CEC.

Along with this, not a single word is said in this norm about actual grounds of the indicated PEI and bodies personnel activity, which is important given establishing the reasons and conditions causing a conflict, in the context of legal principles content of applying suppressive measures determined in law.

The laws defining the legal status of other control subjects according to the activity concerning applying suppressive measures by PEI and bodies personnel ('On the Verkhovna Rada Ombudsman'; 'On the National guard of Ukraine'; 'On the National police'; 'On the State criminal executive service of Ukraine') also lacks such norms.

Taking the above mentioned into consideration and aiming at improving the practice on the indicated problems, it is worth while supplementing p. 5 art. 106 of CEC of Ukraine with the sentence of the following content:

'Every fact of applying suppressive measures to imprisoned convicts is checked, thereat both legal and actual grounds for performing such actions by correctional and educational personnel have to be covered'.

The necessity of such modification is stipulated by the fact that the mentioned legislative approach would enable to anew liquidate, neutralize, block,

etc. the determinants causing committing offences by imprisoned convicts, which is a legal reason for applying suppressive measures prescribed in law to them, while nowadays such facts estimation considering actual grounds for performing such actions by punishment execution institutions and bodies personnel is not determined in law.

Apart form this, modifying p. 5 art. 106 of CEC will enable to broaden legal limits of SCES personnel activity of Ukraine, connected with warning of the intention to apply suppressive measures to an offender, which is important from the viewpoint of preserving civilized and partner relations between these people and convicts.

Such modification of the indicated law norm is of considerable importance considering the future human relations of these criminal executive activity subjects, as they are based on essential elements of convicts' correction and re-socialization process, determined in p. 1 art. 1 and art. 6 of CEC of Ukraine.

And, finally, the measures suggested in this work are urgent from the viewpoint of the requirements of Istanbul protocol approving the Manual on Effective Investigation and Documentation of Tortures and Other Cruel, Inhuman or Degrading Treatment or Punishment[1], and the so called 'the Nelson Mandela

[1] Stambul'skiy protokol. Rukovodstvo po effektivnomu rassledovaniyu i dokumentirovaniyu pytok i drugikh zhestokikh, beschelovechnykh ili unizhayushchikh dostoinstvo vidov obrashcheniya i nakazaniya. Seriya publikatsyy po voprosam professional'noy podgotovke № 8/Rcv.1 N'yu-York; Zheneva: Upravleniye Verkhovnogo Komissara OON po pravam cheloveka, 2004. 114 s.

Rules' (Minimum standard UNO rules concerning convict treatment)[1].

Thus, part III of the Manual 'Legal investigation of torture application facts' enshrines the following activity elements which could be used when investigating the cases of applying suppressive measures to imprisoned convicts in Ukraine:

a) the purposes of investigating possible torture application;

b) the efficiency principles of investigating and documenting tortures and other cruel, inhuman or degrading treatment and punishment;

c) the procedures of investigating possible torture application (proper investigation body defining; probable victim and other witnesses inquiry; evidence identification and procurement; etc.)[2].

At the same time, as it proceeds from p. 77 of the Manual, the general investigation purpose conducted consists in establishing facts concerning probable cases of applying tortures, the people responsible for such cases, assisting their judicial investigation or using such facts within other measures in torture victims interests[3].

[1] Pravila Mandely. Minimal'nyye standartnyye pravila Organizatsii Ob'yedinyonnykh Natsiy v otnoshenii obrashcheniya s zaklyuchyonnymi. Khar'kov: OOO "Izdatyel'stvo «Prava cheloveka»", 2015. 40 s.

[2] Stambul'skiy protokol. Rukovodstvo po effektivnomu rassledovaniyu i dokumentirovaniyu pytok i drugikh zhestokikh, beschelovechnykh ili unizhayushchikh dostoinstvo vidov obrashcheniya i nakazaniya. Seriya publikatsyy po voprosam professionalnoy podgotovke № 8/Rcv.1 N'yu-York; Zheneva: Upravleniye Verkhovnogo Komissara OON po pravam cheloveka, 2004. S. 25–35.

[3] Ibid, p. 25.

The Manual includes the following principles of such investigation (p. 78):

1) elucidating facts and establishing and admitting individual and state responsibility to victims and their families;

2) determining necessary measures for preventing recidivism;

3) promoting prosecution or, on appropriate cases, disciplinary punishment of the people whose guilt was established in the course of the investigation, and substantiating the necessity of full refund and compensation from the state, including just and adequate financial compensation and provision of means for treatment and rehabilitation[1].

In the context of the problems researched in this work, there are provisions in the Manual concerning certain torture forms research and examination. Thus, subsection 'D' of part V of the given Manual describes the procedure of detecting such torture forms as:

a) beatings, or other kinds of blunt injuries;

b) striking blows on feet;

c) hanging up;

d) other tortures;

e) tortures by electric shock;

f) tortures by the impact on teeth;

[1] Stambul'skyy protokol. Rukovodstvo po effektivnomu rassledovaniyu i dokumentirovaniyu pytok i drugikh zhestokikh, beschelovechnykh ili unizhayushchikh dostoinstvo vidov obrashcheniya i nakazaniya. Seriya publikatsyy po voprosam professionalnoy podgotovke № 8/Rcv.1 N'yu-York; Zheneva: Upravleniye Verkhovnogo Komissara OON po pravam cheloveka, 2004. S. 26.

g) strangling;

h) sexual tortures, including raping[1].

Very valuable provisions directly concerning inhuman convict treatment prevention, including applying suppressive measures to them, are enshrined in the Nelson Mandela Rules[2].

The previous remarks indicate that the Rules evoke a constant desire to overcome practical difficulties in their realization, as they reflect in general and on the whole the minimum conditions, which the UNO considers appropriate.

On the other hand, the Rules embrace the activity area where the thought goes constantly forward. They don't aim at preventing researches and introducing the practice which is compatible with the principles in the Rules and are directed to achieving purposes indicated in them (p. 2)[3].

In the given international legal source the following general principles of treating convicts in places of imprisonment are enshrined, which should be a basis of taking decisions about applying suppressive measures to them:

1) all convicts should enjoy respectful treatment as they possess human dignity as the greatest value.

Not a single convict must be subjected to tortures and other cruel, inhuman or degrading treatment or punishment.

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[1] Stan operatyvno-sluzhbovoyi diyal'nosti slidchykh izolyatoriv u 2011 rotsi: inform. byul. Kyyiv: DPtS Ukrayiny, 2012. № 3. 34 s.

[2] Pravila Mandely. Minimal'nyye standartnyye pravila Organizatsii Ob'yedinyonnykh Natsiy v otnoshenii obrashcheniya s zaklyuchyonnymi. Khar'kov: OOO "Izdatel'stvo «Prava cheloveka»", 2015. 40 s.

[3] Ibid, p. 10.

All convicts should be protected form them, and no circumstances can be an excuse for them.

Convicts, personnel, serving people and visitors should be guaranteed protection and security;

2) for the purpose of practical applying non-discrimination principle correctional colony administration should take individual needs of convicts, especially of the most vulnerable categories, into consideration.

It is necessary to apply measures for protection and encouragement of the rights of convicts with special needs, and such measures should not be considered discriminatory;

3) correctional colony administration has to take reasonable measures of placing and adapting convicts so that people with physical, psychic and other disorders can have an access to the life in places of their isolation from the society on equal terms[1].

Other provisions of Nelson Mandela Rules are rather valuable in the context of the given research.

Thus, Rule 38 of this international legal act states as regards this: correctional institution administration is recommended to use as much as possible mechanisms of conflict prevention, of mediation or any other alternative methods of settling disputes for preventing disciplinary offences or resolving conflicts.

But Rule 43 says that suppressive measures can never be applied as disciplinary action.

[1] Pravila Mandely. Minimalnyye standartnyye pravila Organizatsii Ob'yedinyonnykh Natsiy v otnoshenii obrashcheniya s zaklyuchyonnymi. Khar'kov: OOO "Izdatel'stvo «Prava cheloveka»", 2015. S. 11–12.

The following provisions in Rule 47 are rather significant given improving the practice of control body activity in the sphere of punishment execution, concerning particularly applying physical force, special means, a straitjacket and weapon to imprisoned convicts, namely:

1) applying handcuffs, chains or other suppressive measures, which are degrading and painful, must be forbidden;

2) other suppressive measures should be applied if it is permitted by law, only under certain circumstances and according to correctional institution director order.

Rule 48 determines the principles of applying suppressive measures to imprisoned convicts, which can seem to be applied in Ukraine by the officials exercising control on the indicated problems:

a) suppressive measures should be applied only in the cases when less cruel forms turned out to be inefficient for eliminating risks connected with transferring convicts without any restrictions;

b) suppressive method should be least cruel out of those necessary and reasonably proved for controlling convicts transfer, considering the present risk level and character;

c) suppressive measures should be applied only during necessary time, and must be stopped as soon as possible, after the risks, connected with convict transfer without any restrictions, disappear.

For all that, as it follows from Rule 49, correctional institution administration should provide the access to control methods eliminating the necessity

of applying suppressive measures or replacing their cruel form, and also ensuring professional training when applying them[1].

So, only changing the psychology of the people checking suppressive measures application to imprisoned convicts in PEI, also organizational legal principles of such activity will increase control efficiency and, at the same time, reduce considerably quantitative and qualitative indicators on the given practice in the sphere of punishment execution.

As A. P. Zakaliuk remarked opportunely in this connection, all the described things is only a scheme!

For all that, it will not remain a scheme if through research and analysis of determining criminal manifestation of a certain kind specific determinants will be recognized as to their content, that is, phenomena, processes, actions, displays, etc., and also their dependence functions – that is, all that make up, according to the given scheme, the system and mechanism of determining a criminal display, and at the same time, have to indicate the preventive measures addressees, top priorities among them[2].

3. Formal content of departmental control in the sphere of punishment execution, which under the conditions of inappropriate PEI staff policy, the most important understaffed subunits (protection, super-

[1] Pravila Mandely. Minimalnyye standartnyye pravila Organizatsii Ob'yedinyonnykh Natsiy v otnoshenii obrashcheniya s zaklyuchyonnymi. Khar'kov: OOO "Izdatel'stvo «Prava cheloveka»", 2015. S. 22.

[2] Zakalyuk A. P. Kurs suchasnoyi ukrayins'koyi kryminologiyi: teoriya i prkatyka u 3-kh kn. Kn. 1: Teoretychni zasady ta istoriya ukrayins'koyi kryminologichnoyi nauky. Kyyiv: Vyd. dim "In Yure", 2007. S. 199–200.

vision, security, etc.) and other present problems available (considerable distance of interregional administrations of SCES of Ukraine from territorial PEI), is reduced to the activity popularly called 'regimental honour protection'.

Moreover, staffing the apparatuses of territorial administrations and Administration of SCES of the Ministry of Justice of Ukraine with the people served (worked) before in PEI, these subunits leaders don't perform any actions aimed at clarifying social psychological and other personal data of the indicated category of 'managers', even their re-training and heightening qualification in connection with transfer to administrative structures of the sphere of punishment execution.

Such an approach leads to the fact that behavior stereotypes, formed in newly appointed people to administration apparatus, are automatically reflected in their activity assessment results, including the problems concerning the practice of applying suppressive measures to imprisoned convicts.

That's why the opinion of the indicated administration structures officials have lately been so spread apropos of this, namely: in some PEI the number of cases of applying suppressive measures to imprisoned convicts increases, which proves possible operational situation worsening in these institutions, and also insufficient level of individual educational work with convicts[1].

[1] Pro stan pravoporyadku, izolyatsiyi ta naglyadu, diyal'nist' pidrozdiliv okhorony, pozhezhnoyi bezpeky ta voyenizovanykh formuvan' Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny u 2016 rotsi: inform. byul. Kyyiv: Departament DKVS M-va yustytsiyi Ukrayiny, 2017. S. 22.

But in such conclusions (as a supposition, not established facts) not a single word is said about PEI personnel actions, whether taking decisions about applying suppressive measures to imprisoned convicts there were actual reasons for performing such actions by punishment execution institutions and bodies personnel.

At the same time, any force application to a person abroad is considered as human right norm violation, considering that the order of applying the corresponding suppressive measures to offenders is usually given (and it is established in the course of the research in the sphere of punishment execution of Ukraine) by higher leaders (commanders, heads, etc.)[1].

As O. Dzhurych, the Serbian scientist, made a grounded conclusion, realizing, protecting rights and freedoms of a person in national law depends on relations of legislative, executive and judicial power.

Along with it, executive power has the most important task, as it has to create and implement state mechanisms for realizing and protecting human rights and freedoms on the grounds of previously adopted state strategy[2].

In his opinion, departmental ministries and specialized services are such state bodies (mechanisms).

That's why executive power can either prevent creating the corresponding state mechanisms, or create and put the corresponding mechanisms into effect[3].

[1] Dzhurych O. Porushennya norm gumanitarnogo prava: znachennya vstanovlennya kryminal'nykh motyviv. Kyyiv: VD. "Akademiya", 2009. S. 7.

[2] Ibid, p. 39.

[3] Ibid.

So, changing PEI personnel psychology, including the problems of applying suppressive measures to imprisoned convicts, depends directly on the state and modification of realization content of PEI people performing control functions in the sphere of punishment execution (the so-called 'managers').

As O. B. Ptashynskiy mentioned in due time, old traditional methods of administering places of imprisonment, based on maintaining strict regime of serving a sentence, promote less and less establishing law and order in punishment execution institutions[1].

According to the given research results, the participants of the first public monitoring 'The person of a convict and research of his keeping in places of imprisonment' held in Ukraine in 2001 by Ukrainian-American agency of human rights protection paid attention just to such facts[2].

In the course of monitoring, according to direct survey of the convicts in PEI, it was established that 71,6 % of them were subjected to violence when serving a custodial sentence (which, in the research leader's opinion, should terrify law-enforcement bodies officials).

Along with this, 12,1 % of the respondents said that such violence was applied to them during the detention[3].

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[1] Ptashyns'kyy O. B. Ukrayins'ke zakonodavstvo ta zaborona zhorstokogo povodzhennya z uv'yaznenymy. *Aspekt: inform. byul.* Donets'k: Donets'k. Memorial, 2001. № 3. S. 3.

[2] Mar'yanovskiy G. Yeshchyo nemnogo o pervom monitoringe v Ukrainye. *Aspekt: inform. byul.* Donetsk: Donetsk. Memorial, 2001. № 3. S. 16–17.

[3] Ibid, p. 17.

The Verkhovna Rada Ombudsman of Ukraine also repeatedly paid attention to the facts of inhuman treatment concerning:

a) incidence of tuberculosis, which in PEI is 17 times, and death rate 10 times higher than beyond these institutions[1];

b) the ratio of certified PEI personnel to convicts is 1:6 (European normative is 1:2), which makes it impossible to control constantly overcrowded institutions, conduct proper convicts re-socialization.

Besides, the personnel workload exceeds scientifically substantiated norms several times[2];

c) unfavourable surrounding of criminally dangerous people influences negatively the personnel activity, evokes rudeness, cruelty, indifference, punishment for minor regime violation, violence, groundless applying special suppressive means to convicts in places of imprisonment[3].

To eliminate the indicated and other convict rights violation in PEI, the Verkhovna Rada Ombudsman of Ukraine always recommends the central executive power body, realizing state policy in the sphere of punishment execution and probation, to take a number of measures, including classes with PEI personnel in different forms, involving qualified national and foreign experts in the problems of ensuring human

[1] Dotrymannya prav lyudyny v miseiyakh pozbavlennya voli (vytyag z Dopovidi Upovnovazhenogo Verkhovnoyi Rady Ukrayiny z prav lyudyny za 1998–1999 rr.). *Aspekt: inform. byul*. Donets'k: Donets'k. Memorial, 2001. № 3. S. 13.

[2] Ibid, p. 14.

[3] Ibid.

rights in places of imprisonment, according to international standards[1].

As M. Novytskiy, the Polish researcher, aptly put it, while everything connected with rights and freedoms occurs in terms of the relationship between a man and power, it is worth remembering three rather different approaches to these relations nature developed in practice[2].

According to the first approach, power is primary, and the same power by its grace gives people different rights.

Such an approach is enshrined in the constitutions of all communist states and of some European countries, adopted in the 19th century already[3].

The second approach is based on social treaty model, concluded a government, on the one hand, and people as a set of individuals, on the other hand. Along with this, those who are ruled, agree to give the rulers money, for example, to pay taxes, and the latter, from their side, commits themselves to do something for the first ones and exercise their rights and refrain from interfering in some areas of their life, that is, to recognize their rights.

Such a treaty, more or less beneficial for one of the sides, is often called a constitution[4].

[1] Dotrymannya prav lyudyny v miseiyakh pozbavlennya voli (vytyag z Dopovidi Upovnovazhenogo Verkhovnoyi Rady Ukrayiny z prav lyudyny za 1998–1999 rr.). *Aspekt: inform. byul*. Donets'k: Donets'k. Memorial, 2001. № 3. S. 15.

[2] Novitskiy M. Chto takoye prava cheloveka? *Aspekt: inform. byul.* Donetsk: Donetsk. Memorial, 2001. № 3. S. 46.

[3] Ibid.

[4] Ibid, p. 40.

The third approach is peculiar to American thinking, namely: people possessing natural rights and freedoms, stemming from the very essence of humanity, decide to create a state and appoint a government in order for them to live better and more prosperously.

And for the sake of the state to be able to function they voluntarily agree to restrict some of their rights, passing them on to the state[1].

So, the last of these models differs substantially from the first one: in the first approach people have as many rights as the government gives them, in the third one – the government has as many rights as people agree to pass on to it[2].

Proceeding from the fact that administrational structures in the sphere of punishment execution for the whole period of Ukraine's independence regard the practice of applying suppressive measures to imprisoned convicts by PEI and bodies personnel so 'heartlessly' (formally-bureaucratically), it should be stated that there are just estimated opinions of convict rights, formed according to the first model, determined on a doctrinal level, in psychology and ideology of the people serving (working) in the indicated subunits of the Ministry of Justice of Ukraine.

The very moments already analyzed in the given research can be called additional arguments apropos of this:

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[1] Novitskiy M. Chto takoye prava cheloveka? *Aspekt: inform. byul.* Donetsk: Donetsk. Memorial, 2001. № 3. S. 46.

[2] Ibid.

a) functioning special purpose militarized formations in the structure of authorized subunits of the Administration of SCES of Ukraine, the legal status of which is not determined at the level of law, but is established by departmental normative legal acts of the Ministry of Justice of Ukraine, which contradicts the requirements of p. 1 art. 92 of the Constitution of Ukraine;

b) stopping in 2016 publishing special newsletter of SCES of Ukraine reflecting main indicators of operational official activity of punishment execution institutions and bodies, including the practice of applying suppressive measures to convicts in places of imprisonment;

c) constant yearly 'circulation' of criminal proceedings according to art. 391 of CrC of Ukraine 'Malicious disobedience to punishment execution institutions administration', as one of the directions of preventive influence on the convicts, instead of applying correction and re-socialization measures determined by law more efficiently and rationally in preventive activity (art. 6 of CEC of Ukraine);

d) lack of any reacting of authorized structures to the facts of cruel treating convicts by PEI personnel in some regions, which is shown in exceeding average statistic indicators in Ukraine on the whole, particularly on the problems directly concerning the practice of applying suppressive measures to imprisoned convicts;

e) justifying the present PEI practice of applying suppressive measures to people kept in places of imprisonment, which is manifested in the content of

the state programs realized in the sphere of punishment execution (first of all, it concerns the Conception of reforming (developing) penitentiary system of 2017[1] and its analogies approved in the previous years[2]); others.

So, without eliminating the indicated and other determinants, conditioning the psychology of people out of administrational structure personnel of Administration of SCES of Ukraine, it is impossible to increase the level of realizing departmental control as to monitoring and estimating the practice of applying physical force, special means and weapon to imprisoned convicts;

f) low level and quite formal approach to realizing control functions in the sphere of punishment execution by other control subjects determined in law.

First of all, it is about the Chamber of Accounts which on the basis of Law[3] on behalf of the Verkhovna Rada of Ukraine exercises control over incomings to the State Budget of Ukraine and their usage (art. 98 of the Constitution of Ukraine).

Since the given state body establishment the question has never once been heard in the parliament and

[1] Pro skhvalennya Kontseptsiyi reformuvannya (rozvytku) penitentsiarnoyi systemy Ukrayiny: Rozporyadzhennya Kabinetu Ministriv Ukrayiny vid 13.09.2017 r. № 654-R. *Uryadovyy kur'yer.* 2017. № 178. 20 veres. S. 8–9.

[2] Pro Kontseptsiyu derzhavnoyi polityky u sferi reformuvannya Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny: Ukaz Prezydenta Ukrayiny vid 8 lystopada 2012 roku № 631/2012. *Ofitsiynyy visnyk Ukrayiny*. 2012. № 87. St. 750.

[3] Pro Rakhunkovu palatu Verkhovnoyi Rady Ukrayiny: Zakon Ukrayiny vid 2 lypnya 2015 roku № 576-VIII. *Ofitsiynyy visnyk Ukrayiny*. 2015. № 63. St. 2074.

the correspondent resolutions of the Verkhovna Rada has been adopted, which would concern the problems of criminal executive activity and its bringing to normative needs and international standards, including punishment execution institutions and bodies personnel selecting, training and heightening qualification.

The urgency of putting the given question in such a plane is obvious, since no reform in the sphere of punishment execution of Ukraine will be effective if the potential not only of the Chamber of Accounts but of the Verkhovna Rada on the whole is involved in this process, that is, if parliamentary control over the indicated sphere is not increased.

Such a conclusion is based on the provisions of p. 5 art. 85 of the Constitution of Ukraine, according to which the powers of the Verkhovna Rada of Ukraine include determining the principle of internal and external policy, appointing and dismissing the Chairman and other members of the Chamber of Accounts (p. 16 art. 85) and Ombudsman of the Verkhovna Rada (p. 17 art. 85), and also exercising parliamentary control (p. 33 art. 85 of the Constitution of Ukraine).

As the materials study of the Verkhovna Rada Ombudsman showed, this state institute doesn't use proper potential possibilities fully in its activity either.

The essence of this problem consists in the fact that, ascertaining in his report about critical situation in the criminal executive system of Ukraine, including high victimhood level (person's ability to become illegal encroachment victim) in places of imprisonment, the Verkhovna Rada Ombudsman during

the whole period of the given state institute existence didn't suggest essentially effective measures concerning eliminating, neutralizing and blocking the determinants, which cause rights violation of both convicts and punishment execution institutions and bodies personnel.

As O. O. Lapin remarked opportunely as regards this, the present state and tendencies of criminological situation development in the country affirm objectively that the traditional approaches before forming crime counteraction policy and understanding activity tasks and purpose in the given sphere of public relations, methods and means of their achievement cannot ensure safe society vital functions[1].

He is convinced (and it doesn't cause any objections, especially in the context of the given problem content), the official state position nowadays is based on the necessity of reducing the number of crimes, which essentially becomes the only object for law-enforcement bodies[2].

In such an approach the citizens, who can potentially become victims (also caused by applying suppressive measures to them) of crimes, are often left without any adequate social legal protection and compensation for not being provided with it, and for losses caused by the crime[3].

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[1] Lapin A. A. Strategiya obespecheniya kriminologicheskoy bezopasnosti lichnosti, obshchestva, gosudarstva i yeyo realizatsiya organami vnutrennikh del: monografiya/pod red. S. Ya. Lebedeva. Moskva: YuNYTY-DANA; Zakon i pravo, 2012. S. 6.

[2] Ibid.

[3] Ibid.

A clear example in this regard is state programmes adopted for the whole period of Ukraine's independence, including recently, (the National strategy in the human rights sphere (2015); the Strategy of stable development 'Ukraine – 2020' (2015); the Strategy of reforming judicial system, court proceedings and related legal institutes for the years 2015–2020; other), which did not bring one step closer the state activity and control over its results of ensuring fundamental rights and legal interests of a person and citizen in Ukraine, including imprisoned convicts, as evidenced by official statistic data on the indicated problems, in particular[1].

So, nowadays there is one of the key tasks of the internal policy of Ukraine on the agenda – ensuring safe conditions of a person's vital activity, including convicts in places of imprisonment, society and state – by way of adopting the National doctrine on these problems at normative legal level and improving the present state programmes on the indicated problems, in the sphere of punishment execution including.

As the results of the given research showed, control over observing and ensuring rights of a person and citizen in places of imprisonment plays an important role in this process, but it needs essential meaningful modification, along with improving legal mechanism of criminal punishment execution and serving a sentence on the whole.

[1] Pro stan doderzhannya zakoniv v organakh i ustanovakh vykonannya pokaran' v 2018 rotsi pry vykonanni sudovykh rishen' u kryminal'nykh spravakh, a takozh pry zastosuvanni inshykh zakhodiv prymusovogo kharakteru, pov'yazanykh z obmezhennyam osobystoyi svobody gromadyan: materialy kolegiyi General'noyi prokuratury. Kyyiv: Gen. prokuratura, 2018. 76 s.

First of all, it should be about proper carrying out decisions of the European Court of Human Rights in Ukraine, concerning restoring violated convicts' rights[1], and increasing the level of control over realizing in practice Law of Ukraine 'On carrying out decisions and applying the practice of the European Court of Human Rights'[2], which would enable to reduce the number of offences and crimes in the sphere of punishment execution, on the one hand, and to influence 'the philosophy' of criminal executive activity and its control concerning the practice of applying suppressive measures to imprisoned convicts, on the other hand.

It is especially urgent considering qualitative changes of organizing recruiting and training the personnel of punishment execution institutions and bodies of Ukraine in specialized educational institutions of SCES of Ukraine, which was emphasized by international experts of the committee of the European Community and Council of Europe in the branch of reforming legal system, local self-government and law-enforcement system of Ukraine[3]. The indicated experts suggested in due time:

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[1] Oglyad rishen' Yevropeys'kogo sudu z prav lyudyny. Donets'k: Donets'k. Memorial, 2011. 55 s.

[2] Pro vykonannya rishen' ta zastosuvannya praktyky Yevropeys'kogo sudu z prav lyudyny: Zakon Ukrayiny vid 23.02.2006 r. № 3477-IV. *Vidomosti Verkhovnoyi Rady Ukrayiny.* 2006. № 30. St. 260.

[3] Spil'na programa komisiyi Yevropeys'kykh spivtovarystv: Rady Yevropy u galuzi reformy pravovoyi systemy, mistsevogo samovryaduvannya ta pravookhoronnoyi systemy Ukrayiny. Dopovid' pro misiyi ekspertiv Rady Yevropy v Ukrayinu, u chervni ta serpni 1996 roku. Strasburg; Kyyiv: Pravovyy dyrektorat Rady Yevropy, 1996. S. 27–30.

a) excluding handling weapon, drilling and other exceptionally military training elements from the curricula, aimed at training penitentiary service personnel;

b) paying more attention to selecting and professional training junior officers of PEI personnel;

c) appointing a person in each PEI who will be responsible for institutions personnel training and organize and control introductory courses and further training for all punishment execution institutions and bodies personnel[1].

So, in this case international experts spoke about a peculiar type of the control in the sphere of punishment execution, namely – about the control of selecting, training and heightening qualification of SCES personnel of Ukraine.

As it was established in the course of the given research, just the indicated problem and the lack of proper departmental and other kinds of state control in this sphere of public activity was the most pressing during the whole period of SCES of Ukraine functioning.

National scientists constantly draw attention of the leaders of the Ministry of Justice of Ukraine, SCES of Ukraine, in particular, to its essence and necessity of its solving at a higher level. In this context

[1] Spil'na programa komisiyi Yevropeys'kykh spivtovarystv: Rady Yevropy u galuzi reformy pravovoyi systemy, mistsevogo samovryaduvannya ta pravookhoronnoyi systemy Ukrayiny. Dopovid' pro misiyi ekspertiv Rady Yevropy v Ukrayinu, u chervni ta serpni 1996 roku. Strasburg; Kyyiv: Pravovyy dyrektorat Rady Yevropy, 1996. S. 29–30.

scientifically substantiated developments of the following scientists come to the fore:

1) I. G. Bohatyriov, who elaborated the Doctrinal model of forming penitentiary system of a new type[1];

2) O. I. Bohatyriova, in whose developments the principles of probation bodies personnel activity and their cooperation with other law-enforcement bodies, including Administration of SCES of Ukraine, are substantiated[2];

3) A. Kh. Stepaniuk, who elaborated scientifically grounded state policy elements in the sphere of criminal punishment execution[3];

4) I. S. Yakovets, in whose developments the necessity of optimizing criminal punishment execution process in Ukraine is proved[4];

5) A. A. Muzyka, who worked out modern methodical recommendations as to preventing penetration of prohibited items into punishment execution institutions and investigative isolation wards[5];

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[1] Bogatyryov I. G. Doktrynal'na model' pobudovy penitentsiarnoyi systemy Ukrayiny novogo typu: innovatsiynyy proekt. Kyyiv: In-t krym.-vykon. sluzhby, DPtS Ukrayiny, 2014. 53 s.

[2] Bogatyryova O. I. Sluzhba probatsiyi yak analog kryminal'no-vykonavchoyi inspektsiyi: monografiya. Kyyiv: Dakor, 2013. 368 s.

[3] Stepanyuk A. Kh. Polityka derzhavy u sferi vykonannya kryminal'nykh pokaran'. *Vybrani pratsi*/uklad. K. A. Avtukhov. Kharkiv: Pravo, 2017. S. 523–536.

[4] Yakovets' I. Pererozpodil funktsiy mizh derzhavoyu ta gromads'kistyu yak sposib optymizatsiyi protsesu vykonannya pokaran': dosvid Uelsu. *Aktual'ni problemy yevropeys'koyi integratsiyi: zb. st. z pytan' yevrop. integratsiyi ta prava.* Odesa: Feniks, 2012. Vyp. 9. S. 174–181.

[5] Muzyka A. A. Metodychni rekomendatsiyi shchodo zapobigannya pronyknennyu zaboronenykh predmetiv do ustanov vykonannya pokaran' i slidchykh izolyatoriv. Kyyiv: Palyvoda A. V., 2016. 94 s.

6) P. L. Friz, in whose developments main meaningful elements of modern criminal executive policy of Ukraine are formulated[1];

7) other scientists, who among present problems of punishment execution sphere functioning distinguish the problem of exercising low level state control over criminal executive activity, observing rights and freedoms of a person and citizen in places of imprisonment, in particular, as one of key problems (O. M. Humin[2]; O. O. Kvasha[3]; K. Yu. Astafyeva[4]; O. I. Kislov[5];

[1] Fris P. L. Kryminal'no-pravova polityka ukrayins'koyi derzhavy: teoretychni, istorychni ta pravovi problemy: monografiya. Kyyiv: ATIKA, 2015. 332 s.

[2] Gumin O. M. Reformuvannya kryminal'no-vykonavchoyi polityky Ukrayiny v umovakh Yevrointegratsiynogo nastupu. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv V Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 24 lystop. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby: FOP Kandyba T. P., 2017. S. 29–32.

[3] Kvasha O. O. Zagroza natsional'niy bezpetsi yak pidstava neobkhidnoyi oborony. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv V Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 24 lystop. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby: FOP Kandyba T. P., 2017. S. 40–43.

[4] Astaf'yeva K. Yu. Dosvid ta osoblyvosti pidgotovky tyurem u tsentri yurydychnyh doslidzhen' ta spetsializovanoyi pidgotovky "GENERAL-TAT DE CATALUNEA". *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv V Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 24 lystop. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby; FOP Kandyba T. P., 2017. S. 114–117.

[5] Kislov O. I. Dosvid funktsionuvannya zarubizhnykh penitentsiarnykh system yak pidstava vyznachennya shlyakhiv reformuvannya vitchyznyanoyi penitentsiarnoyi systemy. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv V Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 24 lystop. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby: FOP Kandyba T. P., 2017. S. 133–135.

M. P. Neyizhzana[1]; O. M. Kostenko[2]; A. O. Samasionok[3]; M. C. Yatchuk[4]; Ye. Yu. Barash[5]; others)[6].

Authors of various comments to laws, regulating the indicated direction of law-enforcement bodies activity of Ukraine, also speak about the problems of rea-

[1] Neyizhzana M. P. Zarubizhnyy dosvid profesiynoyi pidgotovky pratsivnykiv Derzhavnoyi kryminal'no-vykonavchoyi sluzhby. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv V Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 24 lystop. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby; FOP Kandyba T. P., 2017. S. 171–174.

[2] Kostenko O. M. Prava lyudyny, zasudzhenoyi do pozbavlennya voli: zakonodavche zabezpechennya i problemy realizatsiyi. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv V Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 24 lystop. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby; FOP Kandyba T. P., 2017. S. 266–268.

[3] Samosyonok A. O. Do pytannya profesiynoyi pidgotovky pratsivnykiv Derzhavnoyi kryminal'no-vykonavchoyi systemy Ukrayiny. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv V Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 24 lystop. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby; FOP Kandyba T. P., 2017. S. 286–289.

[4] Yatchuk M. S. Problema psykhologichnogo zdorov'ya pratsivnykiv Derzhavnoyi kryminal'no-vykonavchoyi sluzhby Ukrayiny. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv V Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 24 lystop. 2017 r.).* Kyyiv: In-t krym.-vykon. sluzhby; FOP Kandyba T. P., 2017. S. 307–309.

[5] Barash Ye. Yu. Garantuvannya prav lyudyny v protsesi reformuvannya systemy vykonannya pokaran'. *Aktual'ni problemy prav lyudyny, yaka perebuvaye v konflikti zi zakonom, kriz' pryzmu pravovykh reform: zb. materialiv Mizhnar. prakt. konf. (Kyyiv, 2 grud. 2016 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2016. S. 3–5.

[6] Kolb I. O., Yavors'ka O. O. Stan naukovogo doslidzhennya ta kontseptual'ne vyznachennya prokuratury Ukrayiny yak sub'yekta zapobigannya ta protydiyi zlochynam. *Prokuratura Ukrayiny v umovakh Yevropeys'koyi integratsiyi: materialy Mizhnar. nauk.-prakt. konf. (m. Kyyiv, 19 trav. 2016 r.).* Kyyiv: Nats. akad. vnutr. sprav, 2016. S. 152–154.

lizing control functions by state bodies in practice as to applying suppressive measures to offenders, namely:

a) the developers of Scientific-practical commentary to Law of Ukraine 'On militia' (art. 12–15-1; 26–27)[1];

b) the scientists who prepared analogical comment to CEC of Ukraine (under general editorship of I. G. Bohatyriova[2]; under general editorship of A. Kh. Stepaniuk[3];

c) groups of scientists who prepared Scientific-practical comment to Law of Ukraine 'On the National police'[4].

On the whole, generalizing the results on the indicated problems received in the course of the given research, it is worth while ascertaining that nowadays due to unsuccessful reforms implemented both in Ukraine and in the sphere of punishment execution, in particular, during the years 2014–2018, and to improper activity of the public in this direction, state and other kinds of control over functioning punishment execution institutions and bodies in

[1] Naukovo-praktychnyy komentar do Zakonu Ukrayiny "Pro militsiyu". Kyyiv: Ukr. akad. vnutr. sprav, 1996. S. 96–111, 138–141.

[2] Naukovo-praktychnyy komentar do Kryminal'no-vykonavchogo kodeksu Ukrayiny/I. G. Bogatyryov, O. M. Dzhuzha, O. I. Bogatyryova ta in.; za zag. red. d-ra yuryd. nauk, prof. I. G. Bogatyryova. Kyyiv: Atika, 2010. S. 61–78.

[3] Naukovo-praktychnyy komentar do Kryminal'no-vykonavchogo kodeksu Ukrayiny/A. P. Gel', O. G. Kolb, V. O. Korchyns'kyy ta in.; za zag. red. A. H. Stepanyuka. Kyyiv: Yurinkom Inter, 2008. S. 76–91.

[4] Kolb I. O., Kolb O. G. Pro deyaki problemni aspekty diyal'nosti Natsional'noyi politsiyi Ukrayiny. *Suchasni problemy informatyky v upravlinni, ekonomitsi, osviti ta podolanni naslidkiv Chornobyl's'koyi katastrofy: materialy XV Mizhnar. nauk. seminaru (m. Kyyiv; Svityaz', 4–8 lyp. 2016 r.).* Kyyiv: Nats. akad. upr., Mizhnar. akad., 2016. S. 267–271.

our country significantly reduced, including over the practice of applying physical force, special means, a straitjacket and weapon to imprisoned convicts[1].

Proceeding from this, it is absolutely essential to approach substantiation of objective necessity of state control in the sphere of punishment execution on a new and scientific level, considering the legal and actual surrounding in which two main subjects of criminal executive legal relations have to contact and interact – punishment execution institutions and bodies personnel and convicts[2], and this, in its turn, causes difficult and conflict situations which is impossible to resolve without a detached onlooker (control body) and a kind of 'an arbitrator' and its influence as a participant of criminal executive activity on their content by specific control methods and means in a civilized manner (without suppressive measures)as to people serving a sentence by PEI personnel and without resistance, disobedience, riots, etc. by convicts[3].

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[1] Kolb I. O., Dzhuzha O. M. Shchodo deyakykh kryteriyiv otsinky efektyvnosti diyal'nosti prokuratury yak sub'yekta zapobigannya zlochynam. *Aktual'ni problemy kryminal'nogo prava ta protsesu i praktyky yikh zastosuvannya: materialy krug. stolu (m. Kyyiv, 10 lystop. 2016 r.).* Kyyiv: In-t krym.-vykon. sluzhby, 2016. S. 9–11.

[2] Kolb I. O., Kolb O. G. Realizatsiya zapobizhnykh funktsiy prokuratury v protsesi provedennya operatyvno-rozshukovoyi diyal'nosti. *Zapobizhna diyal'nist' prokuratury u sferi borot'by zi zlochynamy: teoriya i praktyka: navch. posib.*/za zag. red. d-ra yuryd. nauk, prof. O. M. Dzhuzhy. Kyyiv: Vyd. dim "Kondor", 2017. S. 173–193.

[3] Kolb I. O., Gorbachevs'kyy V. Ya. Mizhnarodno-pravovi pidkhody ta praktyka protydiyi organizovanym zlochynnym ugrupuvannyam. *Aktual'ni pytannya reformuvannya pravovoyi systemy Ukrayiny: zb. nauk. st. za materialamy XI Mizhnar. nauk.-prakt. konf. (m. Lutsk, 13–14 cherv. 2014 r.).* Lutsk: Vezha-Druk, 2014. S. 197–199.

That's why the modification of the present state policy content in the sphere of punishment execution of Ukraine is urgent nowadays, including the problem of essential reforming ideology and psychology of punishment execution institutions and bodies personnel activity, qualitative increasing public control level and maximum ensuring safe conditions of vital activity in places of imprisonment.

The conclusions to the section 5

1. The role of verbal methods in preventing applying suppressive measures to imprisoned convicts is determined. It is established, in particular, that the order of punishment warning, enshrined in criminal executive legislation of Ukraine, of convicts in places of imprisonment by colony personnel, that in case of not ceasing offences suppressive measures determined in law will be applied to them, doesn't fully coincide with the content of the analogical normative legal acts on the problems, concerning the activity of other law-enforcement bodies, that's why it needs unification.

It is proved that such modification is also stipulated by: a) the purpose of applying suppressive measures to the people kept in correctional and educational colonies, namely – ceasing illegal actions by convicts (p. 1 art. 106 of CEC); b) the purpose of criminal executive legislation of Ukraine, that is, protecting a person, society and state's interests; preventing committing new criminal offences by convicts, and preventing tortures and inhuman or degra-

ding treatment of these people (p. 1 art. 1 of CEC); c) the principles of criminal executive legislation, punishment execution and serving a sentence, particularly, such as humanism, justice, legitimacy and respect for human rights and freedoms (art. 5 of CEC); d) international legal commitments of Ukraine to bringing national legislation and practice including the problems of applying suppressive measures to imprisoned convicts to the requirements of the European Union; e) the present practice of applying suppressive measures to imprisoned convicts in Ukraine, which is the subject of constant criticism by international community and evokes grounded complaints of these people.

2. The content of measures aimed at increasing the level of professional correctional and educational personnel readiness for preventing and applying suppressive measures to imprisoned convicts is established.

Proceeding from this, and in order to improve the indicated practice in PEI a draft Conception on conditions and order of applying physical force, special means, a straitjacket and weapon to convicts in places of imprisonment is elaborated in the given work, main structural elements of which are as follows:

1) the plot where general principles and legal bases conditioning the necessity of elaborating and adopting the indicated Conception of SCES personnel activity of Ukraine on the mentioned problems at normative legal level are enshrined;

2) estimation of legal and actual present circumstances which are the reason for applying suppressive

measures determined in law to imprisoned convicts (p. 4 art. 106 of CEC of Ukraine);

3) taking decisions on warning of the intention to apply a corresponding suppressive measure (means) to the offender (p. 2 art. 106 of CEC);

4) determining a kind, type and intensity of applying suppressive measure (means) (p. 1 p. XXVI of PEI IOR, art. 15 of Law of Ukraine 'On the National guard of Ukraine'; art. 43 of Law of Ukraine 'On the National police');

5) direct applying suppressive measures to imprisoned convicts and determining such actions limits by punishment execution institutions and bodies personnel (p. 4 art. 106 of CEC);

6) procedure of providing paramedical assistance for the people suppressive measures were applied to (p. 4 art. 106 of CEC);

7) order of registering results of applying suppressive measures by colony personnel in places of imprisonment (p. 5 art. 106 of CEC);

8) reporting bodies and officials determined in law about applying suppressive measures (p. 5 art. 106 of CEC);

9) involving other law-enforcement bodies and subunits of SCES of Ukraine in the activity connected with applying suppressive measures (art. 105, p. 6 art. 106 of CEC);

10) implementing rehabilitating and other social psychological and medical measures for people of punishment execution institutions and bodies personnel who applied suppressive measures to imprisoned convicts.

3. The content of state control an its types concerning directly the problems of applying physical force, special means, a straitjacket and weapon to imprisoned convicts is determined.

They include the following state control types:

a) the departmental control exercised by the supreme bodies of government and top ranking officials of the central executive power body realizing state policy in the sphere of criminal punishment execution (art. 23 of CEC of Ukraine);

b) the control exercised indirectly during PEI visits by the corresponding top ranking officials of our state and other officials if the central executive power bodies, determined in p. 1 art. 24 of CEC (the President of Ukraine, Prime Minister of Ukraine, the Verkhovna Rada Ombudsman, others);

c) public prosecutor's control exercised in the form of public prosecutor's supervision of law observation in punishment execution institutions and bodies when court decisions in criminal cases are carried out according to the requirements of art. 22 of CEC and Law of Ukraine 'On public prosecutor's office';

d) the control exercised by other state bodies –on the order following from law and their legal status (courts; State emergency service; Chamber of Accounts of the Verkhovna Rada of Ukraine; Ministry of health care of Ukraine; State tax service; Ministry of social policy of Ukraine; other subjects).

It was established that the conditions influencing negatively the practice of applying suppressive measures in places of imprisonment include the following facts:

1) having enshrined in law an indicated list of state bodies and officials who have the right to control criminal executive activity, the lawmaker narrowed their number to two (the Ombudsman of the Verkhovna Rada of Ukraine and public prosecutor), in the cases concerning applying physical force, special means, a straitjacket and weapon to imprisoned convicts;

2) the level of public prosecutor's supervision is low further on, concerning law observation in punishment execution institutions and bodies when court decisions in criminal cases are carried out, due to a new content of public prosecutor's office activity enshrined in CEC and Law of Ukraine 'On public prosecutor's office', namely – the lawmaker didn't impose commitment on these state bodies at present as to revealing reasons and conditions contributing to committing crimes and offences, and also reacting to such facts by the corresponding legal measures;

3) the content of departmental control in the sphere of punishment execution remains formal, which under the conditions of staff turnover, the most important understaffed subunits of PEI (protection, supervision, security, etc.) and other present problems available (considerable distance of interregional bodies of SCES of Ukraine from territorial PEI), is reduced essentially to ascertaining facts of violating rights of a person and citizen in places of imprisonment, including illegal applying suppressive measures to convicts, but not preventing the indicated phenomena and other severe consequences of such activity by punishment execution institutions and bodies personnel.

The conclusions

1. The state of scientific researching the problems concerning the issues of applying physical force, special means and weapon to imprisoned convicts is established, namely:

a) as in the period of acting CLC of Ukraine of 1970 and since adopting the present CEC of 2004 during the years 1991–2018 the proper legal principles of the given colony personnel activity which would correspond to analogical norms of international law stipulating exceptional character of such actions, have not been created so far;

b) in this period the indicated subject on a scientific level was mostly researched within the activity of other law-enforcement bodies and only fragmentarily concerned the procedure of applying suppressive measures determined in law to imprisoned convicts;

c) in practice instead of using verbal (wordy) communication methods in conflict situations with convicts personnel, as a rule, apply forceful ways of solving problems which contradicts international legal approaches on these questions.

The indicated circumstances became crucial for defining the object and subject of the given research, and also stipulated its topicality, scientific and practical significance as evidenced by survey results of the corresponding respondents whose answers to the question 'Is the problem of applying physical influence, special means and weapon to convicts urgent nowadays?' were as follows: people of SCES personnel of Ukraine said 'yes' – 1477 (73 % of 2016 respondents

surveyed); 'no' – 18 (1 %); 'partly' – 521 (26 %). Convicts answered this question in such a way: 'yes' – 1287 (63 % of 2016 respondents surveyed); 'no' – 100 (6 %); 'partly' – 629 (31 %).

2. The essence of activity content research methodology is determined, connected with applying suppressive measures specified in law to imprisoned convicts, the peculiarity of which is caused by both special criminal executive relations, established between colony personnel and these people (the so called authoritative order method (imperative method) is used in communication between the indicated subjects), and specific access regime to protected objects of correctional and educational colonies of Ukraine, the regime of punishment execution and serving a custodial sentence, and also measures of ensuring security of the people in these criminal executive institutions, including scientists conducting the corresponding research in the sphere of punishment execution.

It is proved that all known in science cognition methods (general scientific; special (concerning the very area of punishment execution); specific scientific (belonging to a certain research)) play an important role in elucidating the given scientific development object content.

3. The essence and content of international legal approaches and practice of applying suppressive measures to imprisoned convicts abroad are clarified and the necessity of improving the legal mechanism on the indicated questions in Ukraine is proved. It is particularly suggested to supplement art. 106 of CEC of Ukraine:

a) p. 6 of such a content: 'In cases determined in law ensuring convicts' right to personal security is performed by way of applying physical influence, special means and weapon to offenders';

b) p. 7 of the following content: 'Applying physical influence, special means and weapon is not aimed at inflicting physical suffering and degrade human dignity';

c) p. 1 of this Code article with the sentence of such content: 'Applying suppressive measures indicated in law is the right of the colony personnel person, even in the cases of receiving the order of performing such actions by its commanders';

d) to supplement CEC with art. 106-1 'The principles and order of applying firearm to imprisoned convicts' of the appropriate content.

Anonymous survey results affirm the urgency and need for modification on the given problems, the respondents of which gave the following answers to the question 'Does the current legislation of Ukraine on applying suppressive measures to the convicts in places of imprisonment meet the requirements of international law?', people of SCES personnel of Ukraine said 'yes' – 1268 (63 % of 2016 respondents surveyed); 'no' – 137 (7 %); 'partly' – 611 (30 %). Convicts' answers were as follows: 'yes' – 117 (15 % of 2016 respondents surveyed); 'no' – 926 (42 %); 'partly' – 973 (43 %).

4. The notion, essence, content and social legal nature of suppressive measures are defined, their classification, depending on the consequences of psychological and physical influence on an offender, is carried out, namely: a) the measures of psycholo-

gical influence (demonstrating special means determined in law to the offender and explaining the consequences of their application to a person); b) preventive measures (applied in escort; preventing convict's suicide and harming himself or others); c) measures of direct individual influence on an offender (a specific person of colony personnel chooses a measure due to actual reason for its application); d) measures taken for performing special operations (in cases determined in art. 105 of CEC of Ukraine).

It is proved that colony personnel actions in such situations must be based on actual reasons of applying suppressive measures to offenders, as a real means of achieving such action purpose by the people who applied them.

In order to ensure lawfulness of applying suppressive measures by colony personnel it is suggested to supplement art. 106 of CEC of Ukraine with p. 13 of the following content:

'The list of special means and the rules of their application is defined by the Cabinet of Ministers of Ukraine'.

5. It is established that in legislative acts, defining types of means and weapon colony personnel have the right to apply to imprisoned convicts, procedural questions of their application are not enough regulated. To eliminate these legal gaps it is suggested to take the following measures:

5.1. To supplement art. 107 of CEC with p. 5 of such content: 'Every person arriving at correctional or educational colony for serving a sentence signs the receipt of becoming familiar with the rights, duties and prohibitions connected with punishment execu-

tion and serving the given sentence by imprisoned convicts, and also with the possibility of applying suppressive measures to them in the cases mentioned in art. 106 of CEC of Ukraine, the receipt form and content are defined by the Ministry of Justice of Ukraine, its original is attached to the personal convict's file, and the copy is handed over to the convict'.

5.2. To supplement p. 1 art. 106 of CEC with the sentence of the following content: 'For all that, applying physical force is a priority in the cessation of offences indicated in this Code article'.

5.3. To change the name and content of the resolution of the Cabinet of Ministers of Ukraine of December 20, 2017, № 1024, and say in the following wording: 'On approving the list and Rules of applying special means by law-enforcement bodies of Ukraine' and change this resolution text substituting word combination 'servicemen of the National guard' for 'law-enforcement bodies of Ukraine'.

6. It is established that the legal principles of applying physical influence, special means, a straitjacket and weapon to imprisoned convicts are imperfect, unsystematic and needs improving. For this purpose the necessity is scientifically substantiated regarding:

6.1. Supplementing CEC with art. 106-2 'The principles of applying suppressive measures to imprisoned convicts' of the following content:

'Colony personnel apply measures indicated in law of physical influence, special means, a straitjacket and weapon exclusively for ensuring their powers exercising, at the same time adhering to the principles of legality, necessity, proportion and efficiency'.

6.2. Substituting in p. 1 art. 106 of CEC the word combination 'physical resistance' for 'resistance'; 'malicious failure' for 'malicious disobedience'; 'participation in riots' for 'active participation in riots'; 'capture' for 'seizure'.

6.3. Supplementing art. 106 of CEC with the note of such a content:

'Other violent actions in this article imply all the offences not embraced by the content of the notions used in part 1 art. 106 of the given Code, and are the reasons for applying suppressive measures to imprisoned convicts, and are connected with inflicting a bodily harm to the victim or with the attempt to cause this person's death, which is dangerous for his life or health at the moment of committing them'.

6.4. Stating p. 5 art. 106 of CEC in the following wording:

'All the cases of applying physical force, special means, a straitjacket and weapon are immediately reported to the public prosecutor supervising law observation during criminal punishment execution in the manner prescribed by art. 22 of the given Code and Law of Ukraine "On public prosecutor's office", and also the Verkhovna Rada Ombudsman'.

7. It is established that despite making reforms in the sphere of punishment execution of Ukraine during the years 1991–2018, the content of the process connected with applying physical force, special means, a straitjacket to imprisoned convicts remained unchanged in this period, as the priority belonged to repressive forceful, not verbal preventive and persuasive methods, which determines from year to year the increase of quantitative and qualitative indicators

on these problems, and also causes committing new crimes by convicts and the increase of disciplinary offences, which are legal reasons for applying suppressive measures to them.

Along with this, the latter (as background phenomena) are one of the conditions increasing the level of aggression, tension and conflicts in relations between convicts and PEI personnel. That's why physical resistance to PEI personnel and riot displays are the main and actual reasons for applying suppressive measures both on the whole and as a separate one.

The urgency of the problem is evidenced by the results of the survey of the corresponding respondents who gave the following answers to the question 'Are applying suppressive measures to the convicts in places of imprisonment justified?', people of SCES personnel of Ukraine said 'yes' – 319 (16 % of 2016 respondents surveyed); 'no' – 596 (29 %); 'partly' – 1101 (55 %). Convicts' answers were as follows: 'yes' – 237 (13 % of 2016 respondents surveyed); 'no' – 1106 (54 %); 'partly' – 669 (33 %).

8. The peculiarities of applying suppressive measures to imprisoned convicts by special subunits personnel of SCES of Ukraine are elucidated, namely: a) the indicated activity is performed only in exceptional cases prescribed in law; b) these additional forces don't belong to colony administrations, they are structural elements of territorial administrations of SCES of Ukraine; c) the legal status of these militarized formations is not enough regulated at the level of law (mostly these questions are defined in departmental normative legal acts of SCES of Ukraine).

For the purpose of improving legal principles of the indicated activity it is suggested:

8.1. To adopt art. 18 of Law of Ukraine 'On State criminal executive service of Ukraine' in the following wording:

'Militarized formations are subunits of punishment execution bodies which are involved in realizing the tasks of criminal executive legislation, in fight against terrorism and ensuring law and order on the territories of punishment execution institutions location in the cases determined in law.

Regulations on militarized formations of punishment execution bodies are approved by the Cabinet of Ministers of Ukraine'.

8.2. To supplement p. 6 art. 106 of CEC of Ukraine with the word combination and 'On State criminal executive service of Ukraine' and adopt it in the following wording:

'Applying physical force, special means an weapon is allowed in other cases, provided for by Law of Ukraine "On the National police", "On the National guard of Ukraine" and "On State criminal executive service of Ukraine"'.

9. The essence and influence of background phenomena on the practice of applying suppressive measures to imprisoned convicts are defined.

Objective necessity of increasing PEI and IIW personnel activity efficiency regarding their liquidation, elimination, neutralization, etc., and also essential change of criminal executive policy and public control content is proved.

For this purpose it is suggested to supplement p. 3 art. 92 of CEC of Ukraine with the sentence

'convicts with mental disorders' and adopt it in new wording:

'Convicts with mental disorders established on a medical level are kept isolated from other convicts, and also separately'.

Additional argument of such modification are statistic data, according to which an attempt to offer physical resistance, cause body parts injury, commit riots and suicide, that is, the actions characteristic of people with mental anomalies, are main legal and actual ground for applying suppressive measures.

10. It is established that the present position of state policy in the sphere of punishment execution of Ukraine, which is reflected at the normative legal level, influences negatively the practice of applying physical force, special means, a straitjacket and weapon to imprisoned convicts.

In order to improve the legal mechanism on these problems it is suggested in this work:

a) to supplement p. 2 art. 12 of Law of Ukraine 'On National security', dealing with the component of security and defense sector, with the provision that the central executive power body realizing state policy in the sphere of punishment execution has the same function;

b) to supplement Law of Ukraine 'On National security' with art. 23-1 'The central executive power body realizing state policy in the sphere on punishment execution' and adopt it in the following wording:

'The central executive power body realizing state policy in the sphere of punishment execution, together with other security and defense sector members determines priority directions of ensuring public

order and security in punishment execution institutions and investigative isolation wards in this sphere of public relations, analyzes the state and tendencies of criminal executive system development and organizes implementation of the Strategy of the national security of Ukraine within authority specified in law'.

11. It is proved that the corresponding practice of applying physical force, special means, a straitjacket and weapon to imprisoned convicts is one of the measures of ensuring security in places of imprisonment.

In order to improve the legal mechanism on these problems it is suggested in the work:

a) to supplement art. 10 of CEC of Ukraine with the note in which the concept 'personal security in places of imprisonment' should be enshrined according to the algorithm deduced in this scientific development;

b) to supplement CEC with art. 10-1 'The peculiarities of ensuring convicts' right to personal security for certain categories of people' and adopt in the following wording:

'Considering convicts' sex, age, state of health and other individual peculiarities the appropriate conditions ensuring these people's right to personal security should be necessarily created in punishment execution institutions'.

12. It is established that nowadays criminal executive legislation doesn't stipulate public control over the practice of applying physical force, special means, a straitjacket and weapon to imprisoned convicts in Ukraine, which is one of he reasons influencing negatively ensuring safe conditions of criminal

punishment execution and serving sentences. In order to eliminate the indicated legal gap the necessity is scientifically substantiated in this work concerning:

12.1. Supplementing CEC with art. 25-1 'The tasks and principles of public control over observing convicts' rights and legitimacy when executing criminal punishments' and adopting it in the following wording:

'The tasks and principles of public control over observing convicts' rights and legitimacy when executing criminal punishments are defined by the legislation of Ukraine on the problems of democratic civil control of Military organization and law-enforcement state bodies'.

12.2. Supplementing art. 106 of CEC with p. 14 of such a content: 'For ensuring public control of the problems of applying physical force, special means, a straitjacket and weapon to imprisoned convicts by punishment execution institutions and bodies personnel such cases are reported to the public organizations, which have the right to exercise such control in the sphere of punishment execution, according to the current legislation of Ukraine'.

12.3. Supplementing CEC with art. 25-2 'Public control of personnel activity of the State criminal executive service of Ukraine' of the following content:

'Heads of punishment execution institution and bodies are obliged to prepare and publish yearly reports on the activity results of the subunits they administer aimed at informing the public and taking appropriate decisions as regards this.

Public control of personnel activity of the State criminal executive service of Ukraine can be exerci-

sed in different forms determined in the legislation on the problems of democratic civil control of Military organization and law-enforcement state bodies, and also in the form of involving the public representatives in common considering complaints, action or omission of punishment execution institutions and bodies and in checking the information on improper performing duties vested in them.

The Verkhovna Rada of Ukraine, the Verkhovna Rada of the Autonomous Republic of Crimea, Kyiv and Sevastopol city councils, regional, district and town councils have the right to adopt the resolution of non-confidence to the corresponding head of punishment execution institution or body of Ukraine, which is one of the grounds for his dismissal from office'.

13. The problems concerning the practice of using verbal methods in preventing applying suppressive measures to imprisoned convicts are established, and scientifically substantiated measures of their solving are suggested, namely:

13.1. Part 2 art. 106 of CEC of Ukraine should be adopted in a new wording:

'In case of taking decision about applying measures and means determined in part 1 of this Code article to imprisoned convicts colony personnel is obliged to warn of the intention of their applying, at the same time giving enough time for fulfilling their legal requirements (warning can be sounded with a voice, and in case of a considerable distance or addressing a large number of convicts – with the help of loudspeakers, but in each case, in the language

understandable for offenders, not less than twice to give time enough to cease the offence)'.

13.2. To supplement p. 5 art. 106 of CEC with the sentence of the following content:

'Every fact of applying physical force, special means, a straitjacket or weapon to imprisoned convicts is checked by the corresponding officials in the manner prescribed by normative legal acts of the Ministry of Justice of Ukraine'.

13.3. To supplement art. 5 of CEC with the principles of supremacy of law, transparency and continuity.

13.4. To supplement CEC with art. 106-2 'Social legal protection of punishment execution institutions and bodies personnel which applied physical force, special means and weapon to imprisoned convicts' of the following content:

'The people, who applied suppressive measures prescribed in law to convicts in places of imprisonment, are subjected to social medical rehabilitation in special institutions in the manner prescribed by the Ministry of Justice of Ukraine.

Re-involving punishment execution institutions and bodies personnel in the activity connected with applying suppressive measures to the people, kept in correctional and educational colonies and serving a sentence in investigative isolation wards, is possible only after taking and successful passing exams in the course of special training as to ability to perform actions of applying physical influence measures, special means and weapon and skills of providing assistance to victims'.

14. Scientifically substantiated measures of increasing the level of professional colony personnel readiness for preventing and applying suppressive measures to imprisoned convicts are elaborated. It is suggested, in particular:

14.1. To supplement p. 2 art. 106 of CEC of Ukraine with the sentence of the following content:

'In the current situation, if possible, colony personnel have the right to apply the very suppressive measure (means) to an offender which is minimum necessary for achieving such actions purpose'.

14.2. To supplement p. 1 art. 16 of Law of Ukraine 'On State criminal executive service of Ukraine' with a paragraph of the following content:

'Punishment execution institutions and bodies personnel of Ukraine have to observe high professional and personal standards, with their behavior and performing their duties influence convicts always positively and evoke their respect, while showing honesty, humanity and respect for rights and freedoms of a convict as a person and a citizen'.

14.3. To supplement p. 1 art. 106 of CEC with the sentence of the following content:

'Suppressive measures defined in this Code article are applied to an offender by colony personnel, if the current situation allows, only with the permission of this institution head or the person who performs his duties according to existing legislation of Ukraine'.

15. The content and types of state control over the problems of applying physical force, special means, a straitjacket and weapon to convicts are defined, and also scientifically substantiated measures aimed

at eliminating legal mechanism on the indicated social practice are elaborated, namely:

15.1. It is suggested to supplement p. 5 art. 106 of CEC of Ukraine with the word combination 'and other state power bodies and the Verkhovna Rada Commissioner for the Rights of the Child' and to adopt it in a new wording:

'Applying physical force, special means, a strait-jacket and weapon is reported to colony head. Each case of applying the indicated suppressive measures to imprisoned convicts is reported to the public prosecutor exercising supervision over law observation in punishment execution institutions and bodies in the execution of court decisions, to the Verkhovna Rada Ombudsman and Commissioner for the Rights of the Child, and also other state bodies in the manner prescribed by law'.

15.2. To supplement p. 5 art. 106 of CEC with the sentence of the following content: 'Each fact of applying suppressive measures is checked, while both legal and actual grounds for performing such actions by correctional and educational personnel have to be established'.

The results of anonymous survey of the corresponding respondents prove the urgency of this problem. Answering the question 'Are the consequences of applying any suppressive measures brought to convicts?' people of SCES personnel of Ukraine gave the following answers: yes – 969 (48 % of 2016 respondents surveyed); no – 268 (13 %); partly – 779 % (39 %). The convicts answered in such a way: yes – 11 (4 % of 2016 respondents surveyed); no – 1779 (84 %); partly – 226 (12 %).

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The supplements

Supplement A

Questionnaire
of the anonymous survey of the personnel of the State Penitentiary Service of Ukraine on the issues related to application of measures of physical influence, special means to convicts deprived of liberty

1	**The survey was conducted on a voluntary basis in 2018 in closed penitentiary institutions located in 5 oblasts** (Volyn, Zhytomyr, Zaporizhzhia, Kyiv, and Kharkiv Oblasts)	
2	**Number of respondents involved in the survey**	-2016 (100 %)
3	**Structure of respondents involved in the survey:**	
3.1.1	Males (of full age)	-1833 (91 %)
3.1.2	Females	-183 (9 %)
4	**Education of respondents**	-2016 (100 %)
4.1	Persons with higher education (Masters, Specialists, Bachelors)	-296 (15 %)
4.2	Persons with incomplete higher education (Specialized Secondary Education, Junior Bachelor, etc.)	-401 (20 %)
4.3	Persons with complete secondary education	-1319 (65 %)
5	**Work experience in the State Penitentiary Service**	-2016 (100 %)
5.1	From 1 to 5 years	-1804 (89 %)
5.2	From 5 to 15 years	-179 (9 %)
5.3	From 15 to 25 years and more	-33 (2 %)
6	**Age of respondents involved in the survey**	-2016 (100 %)
6.1	From 18 to 25 years	-1322 (66 %)
6.2	From 26 to 35 years	-482 (24 %)
6.3	From 36 to 50 years	-187 (9 %)
6.4	From 51 years and older	-25 (1 %)

7. The respondents of the survey were asked the following questions:

Item №	Question	Answer option	Absolute number of respondents	The ratio of answers to number of respondents	Note
1	2	3	4	5	6
1	Is the problem of applying measures of physical influence, special means and weapons to convicts relevant nowadays?	yes	1477	73 %	
		no	18	1 %	
		partially	521	26 %	
2	Is the social nature of applying restraint measures to convicts deprived of liberty clear?	yes	1001	50 %	
		no	81	4 %	
		partially	934	46 %	
3	Are restraint measures applied to convicts in penal colonies of Ukraine clearly fixed in the law?	yes	985	49 %	
		no	58	3 %	
		partially	973	48 %	
4	Should the law clearly fix the ways, forms and methods of warning convicts of the intention to apply restraint measures to them?	yes	1024	51 %	
		no	197	10 %	
		partially	795	39 %	

1	2	3	4	5	6
5	Should the law preserve peculiarities of applying restraint measures to juvenile convicts in places of detention?	yes	1621	80 %	
		no	93	5 %	
		partially	302	15 %	
6	Should the procedure for applying restraint measures to female convicts serving sentences in places of detention be left intact?	yes	1217	60 %	
		no	66	4 %	
		partially	733	36 %	
7	Is international practice on applying restraint measures to convicts deprived of liberty familiar?	yes	1522	75 %	
		no	87	5 %	
		partially	407	20 %	
8	Are the norms of international law on the defined problem familiar?	yes	1488	74 %	
		no	29	1 %	
		partially	499	25 %	
9	Does current legislation of Ukraine meet the requirements of international law on application of restraint measures to convicts in places of detention?	yes	1268	63 %	
		no	137	7 %	
		partially	611	30 %	
10	Does the practice of applying restraint measures to convicts deprived of liberty in Ukraine meet the requirements of international law?	yes	603	30 %	
		no	648	32 %	
		partially	765	38 %	

Continuation of Supplement A

1	2	3	4	5	6
11	Were restraint measures applied to the respondents of this survey?	yes	–	–	
		no	–	–	
		partially	–	–	
12	Is it justified to apply restraint measures to convicts in places of detention?	yes	319	16 %	
		no	596	29 %	
		partially	1101	55 %	
13	Should verbal methods be strengthened in practice when resolving conflicts between colony personnel and convicts without application of restraint measures?	yes	891	45 %	
		no	237	11 %	
		partially	888	44 %	
14	Is it possible to do without application of restraint measures to convicts in places of detention?	yes	1222	61 %	
		no	794	39 %	
		partially	0	0	
15	Is medical care always provided in proper manner for the persons subject to restraint measures?	yes	903	45 %	
		no	292	14 %	
		partially	821	41 %	
16	Does the personnel always warn convicts in places of detention of applying restraint measures whenever possible?	yes	1451	72 %	
		no	12	1 %	
		partially	553	27 %	

End of Supplement A

1	2	3	4	5	6
17	Is the list of grounds for applying restraint measures to convicts deprived of liberty exhaustive in the law?	yes	561	28 %	
		no	666	33 %	
		partially	789	39 %	
18	Is it justified to involve units of SPS and other law enforcement agencies in this activity?	yes	826	41 %	
		no	673	33 %	
		partially	517	26 %	
19	Are convicts informed of the consequences of applying certain restraint measures?	yes	969	48 %	
		no	268	13 %	
		partially	779	39 %	

Supplement B

Analytical report
on the results of anonymous survey of the personnel of the State Penitentiary Service of Ukraine on issues related to application of measures of physical influence, special means and weapons to convicts deprived of liberty

The survey was conducted on a voluntary basis in 2018 among the personnel of penal colonies of 5 Ukrainian oblasts, where closed penitentiary institutions were located (Volyn, Zhytomyr, Zaporizhzhia, Kyiv and Kharkiv Oblasts).

Before the survey, all respondents had been explained Articles 28 and 32 of the Constitution of Ukraine, under which participation of these persons in the survey must be voluntary, answers to the questions are confidential and cannot be disclosed by the author of this scientific research in regard to a particular respondent, but can be summarized in short form for the use in work and official activities of the personnel of the State Penitentiary Service of Ukraine.

Besides, each respondent had been explained the procedure for answering questions of the questionnaire: the person involved in the survey must choose only one of the 3 offered options ('yes', 'no' or 'partially'); the respondents had been shown the location of the ballot box, where the questionnaire filled in by the colony personnel should be placed by throwing through the hole.

The survey involved 2016 persons in total, namely 1833 males which comprised 91 % out of all respondents involved in the survey, and 183 females (9 %).

Among all respondents, 296 persons (15 % of the general structure) had higher education in the specific field (lawyers, teachers, psychologists, etc.) (Masters, Specialists, Bachelors); 401 persons had incomplete higher education (Special Secondary Education; Junior Bachelor, etc.) (20 %), and 1319 persons had complete secondary education (65 %).

Age characteristics of respondents were as follows: a) persons from 18 to 25 years (according to the requirements of Article 14 of the Law of Ukraine 'On the State Penitentiary Service of Ukraine', only persons of full age can work in penitentiary institutions) comprised 66 % (1322 respondents out of 2016 persons involved in the survey); b) persons from 26 to 35 years comprised 24 % (482 respondents); c) persons from 36 to 50 years comprised 9 % (187 respondents); d) persons from 50 years and older comprised 1 % (25 respondents).

Nineteen questions of the questionnaire specially created by the author of the survey had the following answers:

1. In question № 1 of the questionnaire ('Is the problem of applying measures of physical influence, special means and weapons to convicts relevant nowadays?') 'yes' answer was chosen by 1477 convicts or 73 % out of the whole number of respondents involved in the survey; 'no' – by 18 persons (1 %); 'partially' – by 521 persons (26 %).

2. In question № 2 ('Is the social nature of applying restraint measures to convicts deprived of liberty clear?') 'yes' answer was chosen by 1001 persons (50 % out of the whole number of respondents); 'no' – by 81 persons (4 %); 'partially' – by 934 persons (46 %).

3. In question № 3 ('Are restraint measures applied to convicts in penal colonies of Ukraine clearly fixed in the law?') 'yes' answer was chosen by 985 persons or 49 % of respondents; 'no' – by 58 persons (3 %); 'partially' – by 973 persons (48 %).

4. In question № 4 ('Should the law clearly fix the ways, forms and methods of warning convicts of the intention to apply restraint measures to them?') 'yes' answer was chosen by 1024 persons (51 % out of the whole number of respondents); 'no' – by 197 respondents (10 %); 'partially' – by 795 convicts (39 %).

5. In question № 5 ('Should the law preserve peculiarities of applying restraint measures to juvenile convicts in places of detention?') 'yes' answer was chosen by 1621 persons or 80 % out of the whole number of respondents involved in the survey, 'no' – by 93 persons (5 %); 'partially' – by 302 persons (15 %).

6. In question № 6 ('Should the procedure for applying restraint measures to female convicts serving sentences in places of detention be left intact?') 'yes' answer was chosen by 1217 persons (60 % out of the whole number of respondents); 'no' – by 66 persons (4 %); 'partially' – by 733 persons (36 %).

7. In question № 7 ('Is international practice on applying restraint measures to convicts deprived of liberty familiar?') 'yes' answer was chosen by 1522 persons or 75 % out of the whole number of respondents, 'no' – by 87 persons (5 %); 'partially' – by 407 respondents (20 %).

8. In question № 8 ('Are the norms of international law on the defined problem familiar?') 'yes' answer was chosen by 1488 persons (74 % out of the whole number of respondents involved in the survey); 'no' – by 29 persons (1 %); 'partially' – by 499 persons (25 %).

9. In question № 9 ('Does current legislation of Ukraine meet the requirements of international law on application of restraint measures to convicts in places of detention?') 'yes' answer was chosen by 1268 persons or 63 % out of the whole number of respondents; 'no' – by 137 persons (7 %); 'partially' – by 611 persons (30 %).

10. In question № 10 ('Does the practice of applying restraint measures to convicts deprived of liberty in Ukraine meet the requirements of international law?') 'yes' answer was chosen by 603 persons or 30 % out of the whole number of respondents; 'no' – by 648 persons (32 %); 'partially' – by 765 persons (38 %).

11. Personnel of the colony was not asked question № 11 ('Were restraint measures applied to the respondents of this survey?'), since it concerned only imprisoned convicts, who faced restraint measures specified in the law (Article 106 of the Criminal Procedure Code of Ukraine).

12. In question № 12 ('Is it justified to apply restraint measures to convicts in places of detention?') 'yes' answer was chosen by 319 persons (16 % out of the whole number of respondents involved in the survey); 'no' – by 596 persons (29 %); 'partially' – by 1101 persons (55 %).

13. In question № 13 ('Should verbal methods be strengthened in practice when resolving conflicts between colony personnel and convicts without application of re-

straint measures?') 'yes' answer was chosen by 891 persons or 45 % out of the whole number of respondents; 'no' – by 237 persons (11 %); 'partially' – by 888 persons (44 %).

14. In question № 14 ('Is it possible to do without application of restraint measures to convicts in places of detention?') 'yes' answer was chosen by 1222 persons (61 % out of the whole number of respondents involved in the survey); 'no' – by 794 persons (39 %); 'partially' – by 0 persons, since the question did not relate the staff of the colony.

15. In question № 15 ('Is medical care always provided in proper manner for the individuals subject to restraint measures?') 'yes' answer was chosen by 903 persons or 45 % out of the whole number of respondents; 'no' – by 292 persons (14 %); 'partially' – by 821 persons (41 %).

16. In question № 16 ('Does personnel always warn convicts in places of detention of applying restraint measures whenever possible?') 'yes' answer was chosen by 1451 persons (72 % out of the whole number of respondents involved in the survey); 'no' – by 12 persons (1 %); 'partially' – by 553 persons (27 %).

17. In question № 17 ('Is the list of grounds for applying restraint measures to convicts deprived of liberty exhaustive in the law?') 'yes' answer was chosen by 561 persons or 28 % out of the whole number of respondents; 'no' – by 666 persons (33 %); 'partially' – by 789 persons (39 %).

18. In question № 18 ('Is it justified to involve units of SPS and other law enforcement agencies in this activity?') 'yes' answer was chosen by 826 persons (41 % out of the whole number of respondents involved in the survey); 'no' – by 673 persons (33 %); 'partially' – by 517 persons (26 %).

19. In question № 19 ('Are convicts informed of the consequences of applying certain restraint measures?') 'yes' answer was chosen by 969 persons or 48 % out of the whole number of respondents; 'no' – by 268 persons (13 %); 'partially' – by 779 persons (39 %).

Summarized results of the survey of colony personnel in coordination with their authorities were sent to interregional penitentiary departments of the Ministry of Justice of Ukraine for information and use in official activities, and also became one of the empirical sources of this research.

Supplement C

Questionnaire
of the anonymous survey of convicts deprived of liberty on issues related to application of measures of physical influence, special means to them

1	**The survey was conducted on a voluntary basis in 2018 in penal colonies of regional offices of the Ministry of Justice of Ukraine, located on the territory of 5 oblasts (**Volyn, Zhytomyr, Zaporizhzhia, Kyiv and Kharkiv Oblasts)	
2	**Number of respondents involved in the survey**	-2016 (100 %)
3	**Structure of respondents involved in the survey:**	
3.1.1	Males (of full age)	-1783 (89 %)
3.1.2	Females	-233 (11 %)
	Including:	
3.2	Persons under age	-58 (2 %)
4	**Education of respondents**	-2016 (100 %)
4.1	Persons with higher education (Specialists, Bachelors, Masters)	-189 (9 %)
4.2	Persons with incomplete higher education (Specialized Secondary Education, Junior Bachelor, etc.)	-311 (15 %)
4.3	Persons with complete secondary education	-639 (31 %)
4.4	Persons with incomplete secondary education	-877 (45 %)
5	**Occupation of respondents** (having a particular speciality, profession, etc.)	-2016 (100 %)
5.1	Persons with occupation	-1222 (61 %)
5.2	Persons without occupation	-794 (39 %)
5.3	Persons who have acquired working profession or qualification in the colony	-637 (31 %)

6	**Penitentiary characteristics of respondents:**	
6.1.1	Convicted for the first time	-1088 (54 %)
6.1.2	Persistent criminals (persons whose convictions have not been canceled and revoked in the manner prescribed by law)	-601 (30 %)
6.1.3	Persons who have previously been convicted, but whose conviction has been canceled and revoked in the manner prescribed by law	-327 (16 %)
6.2.1	Malicious violators of penitentiary regime	-126 (6 %)
6.2.2	Other persons who were in the preventive records of the colonies (prone to escape, attack the staff of the colony, to actions disrupting activities of penitentiary institutions, etc.)	-349 (17 %)
6.2.3.	Other convicts (who neither belonged to the category of malicious violators nor were in the preventive records of the colonies)	-1541 (77 %)

7. The respondents of the survey were asked the following questions:

Item №	**Question**	**Answer option**	**Absolute number of respondents**	**The ratio of answers to number of respondents**	**Note**
1	**2**	**3**	**4**	**5**	**6**
1	Is the problem of applying measures of physical influence, special means and weapons to convicts relevant nowadays?	yes	1287	63 %	
		no	100	6 %	
		partially	629	31 %	

Continuation of Supplement C

1	2	3	4	5	6
2	Is social nature of applying restraint measures to convicts deprived of liberty clear?	yes	28	2 %	Restraint measures include measures of physical influence, special means, and weapons
		no	1311	65 %	
		partially	677	33 %	
3	Are restraint measures applied to convicts in penal colonies of Ukraine clearly fixed in the law?	yes	285	15 %	
		no	992	49 %	
		partially	739	36 %	
4	Should the law clearly fix the ways, forms and methods of warning convicts of the intention to apply restraint measures to them?	yes	1291	64 %	
		no	23	1 %	
		partially	702	35 %	
5	Should the law preserve peculiarities of applying restraint measures to juvenile convicts in places of detention?	yes	844	41 %	In this case places of detention include penal colonies
		no	275	15 %	
		partially	897	44 %	
6	Should the procedure for applying restraint measures to female convicts serving sentences in places of detention be left intact?	yes	328	16 %	
		no	1017	50 %	
		partially	689	34 %	

Continuation of Supplement C

1	2	3	4	5	6
7	Is international practice on applying restraint measures to convicts deprived of liberty familiar?	yes	249	13 %	This refers to international experience
		no	1318	65 %	
		partially	449	22 %	
8	Are the norms of international law on the defined problem familiar?	yes	87	5 %	This refers to universally accepted international acts
		no	1623	80 %	
		partially	306	15 %	
9	Does current legislation of Ukraine meet the requirements of international law on application of restraint measures to convicts in places of detention?	yes	117	15 %	
		no	926	42 %	
		partially	973	43 %	
10	Does the practice of applying restraint measures to convicts deprived of liberty in Ukraine meet the requirements of international law?	yes	108	11 %	
		no	1111	55 %	
		partially	797	34 %	
11	Were restraint measures applied to the respondents of this survey?	yes	1697	84 %	
		no	319	16 %	
		partially	–	–	

Continuation of Supplement C

1	2	3	4	5	6
12	Is it justified to apply restraint measures to convicts in places of detention?	yes	237	13 %	
		no	1106	54 %	
		partially	669	33 %	
13	Should verbal methods be strengthened in practice when resolving conflicts between colony personnel and convicts without application of restraint measures?	yes	1594	79 %	
		no	73	8 %	
		partially	349	13 %	
14	Is it possible to do without application of restraint measures to convicts in places of detention?	yes	1480	74 %	
		no	536	26 %	
		partially	-	-	
15	Is medical care always provided in proper manner for the individuals subject to restraint measures?	yes	219	12 %	
		no	777	38 %	
		partially	1024	50 %	
16	Does the staff always warn convicts in places of detention of applying restraint measures whenever possible?	yes	337	17 %	
		no	831	41 %	
		partially	848	42 %	

1	2	3	4	5	6
17	Is the list of grounds for applying restraint measures to convicts deprived of liberty exhaustive in the law?	yes	666	33 %	
		no	84	4 %	
		partially	1266	63 %	
18	Is it justified to involve units of SPS and other law enforcement agencies in this activity?	yes	13	5 %	SPS is State Penitentiary Service
		no	1634	81 %	
		partially	369	14 %	
19	Are convicts informed of the consequences of applying certain restraint measures?	yes	11	4 %	
		no	1779	84 %	
		partially	226	12 %	

Note: the survey was conducted on a voluntary basis, adhering to the principle of information confidentiality in regard to each respondent.

Supplement C1

Analytical report on the results of anonymous survey of the convicts, serving sentences in penal colonies, on issues related to application to them of measures of physical influence, special means and weapons in Ukraine

The survey was conducted with the help of a questionnaire, created by the author of the survey, on a voluntary basis among persons serving sentences of imprisonment in Ukraine in 2018.

Before the survey, all respondents involved had been explained the provisions of the Constitution of Ukraine, according to which nobody without its free consent can be subject to scientific experiments (Article 28), as well as collection, storage, use and distribution of confidential information about a person without its consent is prohibited (Article 32).

Besides, all respondents had been explained the procedure for filling out the questionnaire and answering its questions by choosing one of the offered options ('yes'; 'no'; 'partially'). They had also been shown the location of the sealed mailbox, where the persons involved in the survey, had to place the received and completed questionnaires.

The survey involved 2016 convicts serving sentences in penal colonies of Ukraine in 2018: 1783 (89 %) male convicts and 233 (11 %) female convicts. Juvenile convicts accounted for 2 % out of the total number of respondents (58 persons out of 2016 of those involved in the survey).

The survey covered 5 Ukrainian oblasts, where penal colonies of Ukraine were located (Articles 18, 19 of the Criminal Procedure Code), namely Volyn, Zhytomyr, Zaporizhzhia, Kyiv and Kharkiv Oblasts. This approach enabled the survey to cover main regions of the state (west, east, north and south), taking into account territo-

rial characteristics of population, as well as provisions of Article 93 of the Criminal Procedure Code of Ukraine, according to which a convict sentenced to imprisonment serves the entire term of imprisonment in one penal colony, within an administrative and territorial unit, in accordance with the place of permanent residence of a convict or his/her relatives.

Out of the total number of respondents involved in the survey, 639 persons or 31 % had complete secondary education, 877 (45 %) had incomplete secondary education, 311 (15%) had incomplete higher education, and 189 (9 %) had higher education (Masters, Specialists and Bachelors), which to some extent corresponded to general characteristics of convicts: at the moment of committing a crime 70 % of violators did not study anywhere.

A similar relationship between the general (criminal) and special (penitentiary) characteristics is observed in the occupation of respondents. In particular, 61 % (1222 persons) of convicts involved in the survey had a particular speciality (profession); 39 % (794 persons) did not have any speciality, and 31 % (637 persons) acquired working professions or qualifications.

The survey involved: 1,088 persons convicted for the first time (54 % out of all respondents), 601 persons whose convictions were not canceled and revoked in the manner prescribed by law (Articles 89–91; 108 of the Criminal Code of Ukraine (30 %)), and 327 previously convicted persons (16 %) whose convictions had been canceled or revoked.

Among the respondents, malicious violators of the penitentiary regime (Article 133 of the Criminal Procedure Code of Ukraine) accounted for 6 % (126 convicts); persons who were in the preventive records of the colonies (prone to escape, attack the staff of the colony, to actions disrupting activities of penitentiary institutions; to suicide or injury; to making weapons or explosives; to the use and distribution of drugs; as well as organizing games for

financial interest) – 17 % (349 convicts) and other persons sentenced to imprisonment – 77 %.

At the same time, it should be noted that the survey covered almost all penal colonies of Ukraine (with low security level and less strict regime; low security level and regular regime; medium security level; highest security level (Article 18 of the Criminal Procedure Code of Ukraine)), as well as educational colonies (for juvenile males and females (Articles 19, 143 of the Criminal Procedure Code)).

The author of the survey created 19 questions of the questionnaire that not only fully corresponded to the title and number of tasks identified in the survey, but also reflected the overall content of the subject of the research, providing only one answer option ('yes'; 'no'; 'partially').

The results of the survey were as follows:

1. In question № 1 of the questionnaire ('Is the problem of applying measures of physical influence, special means and weapons to convicts relevant nowadays?') 'yes' answer was chosen by 1287 convicts or 63 % out of the whole number of respondents involved in the survey; 'no' – by 100 respondents (6 %); 'partially' – by 629 convicts (31 %).

2. In question № 2 ('Is social nature of applying restraint measures to convicts deprived of liberty clear?') 'yes' answer was chosen by 28 respondents (2 % out of the whole number of respondents involved in the survey); 'no' – by 1311 convicts (65 %); 'partially' – by 677 persons (33 %).

3. In question № 3 ('Are restraint measures applied to convicts in penal colonies of Ukraine clearly defined in the law?') 'yes' answer was chosen by 285 convicts or 15 % out of the whole number of respondents involved in the survey; 'no' – by 992 persons (49 %); 'partially' – by 739 respondents (36 %).

4. In question № 4 ('Should the law clearly fix the ways, forms and methods of warning convicts of the intention to apply restraint measures to them?') 'yes' answer

was chosen by 1291 persons (64 % out of the whole number of respondents); 'no' – by 23 respondents (1 %); 'partially' – by 702 convicts (35 %).

5. In question № 5 ('Should the law preserve the peculiarities of applying restraint measures to juvenile convicts in places of detention?') 'yes' answer was chosen by 844 convicts or 41 % out of the whole number of respondents involved in the survey; 'no' – by 275 convicts (15 %); 'partially' – by 897 persons (44 %).

6. In question № 6 ('Should the procedure for applying restraint measures to female convicts serving sentences in places of detention be left intact?') 'yes' answer was chosen by 328 respondents (16 % out of the whole number of respondents involved in the survey); 'no' – by 1017 convicts (50 %); 'partially' – by 689 persons (34 %).

7. In question № 7 ('Is international practice on applying restraint measures to convicts deprived of liberty familiar?') 'yes' answer was chosen by 249 convicts or 13 % out of the whole number of respondents involved in the survey, 'no' – by 1318 persons (65 %); 'partially' – by 449 respondents (22 %).

8. In question № 8 ('Are the norms of international law on the defined problem familiar?') 'yes' answer was chosen by 87 persons (5 % out of the whole number of convicts involved in the survey); 'no' – by 1623 respondents (80 %); 'partially' – by 306 convicts (15 %).

9. In question № 9 ('Does current legislation of Ukraine meet the requirements of international law on the application of restraint measures to the convicts in places of detention?') 'yes' answer was chosen by 117 respondents or 15 % persons involved in the survey; 'no' – by 926 convicts (42 %); 'partially' – by 973 persons (43 %).

10. In question № 10 ('Does the practice of applying restraint measures to convicts deprived of liberty in Ukraine meet the requirements of international law?') 'yes' answer was chosen by 108 convicts (11 % respondents involved in the survey); 'no' – by 1111 persons (55 %); 'partially' – by 797 respondents (34 %).

11. In question № 11 ('Were restraint measures applied to the respondents of this survey?') 'yes' answer was chosen by 1697 persons or 84 % out of the whole number of convicts involved in the survey and 'no' – by 319 respondents (16 %).

12. In question № 12 ('Is it justified to apply restraint measures to convicts in places of detention?') 'yes' answer was chosen by 237 convicts (13 % out of the whole number of respondents involved in the survey); 'no' – by 1106 respondents (54 %); 'partially' – by 669 persons (33 %).

13. In question № 13 ('Should verbal methods be strengthened in practice when resolving conflicts between colony staff and convicts without application of restraint measures?') 'yes' answer was chosen by 1594 respondents or 79 % out of the whole number of respondents involved in the survey; 'no' – by 73 convicts (8 %); 'partially' – by 349 persons (13 %).

14. In question № 14 ('Is it possible to do without application of restraint measures to convicts in places of detention?') 'yes' answer was chosen by 1480 convicts (74 % out of the whole number of respondents involved in the survey) and 'no' – by 536 persons (26 %).

15. In question № 15 ('Is medical care always provided in proper manner for the individuals subject to restraint measures?') 'yes' answer was chosen by 215 respondents or 12 % out of the whole number of respondents involved in the survey; 'no' – by 777 convicts (38 %); 'partially' – by 1024 persons (50 %).

16. In question № 16 ('Does the personnel always warn convicts in places of detention of applying restraint measures whenever possible?') 'yes' answer was chosen by 337 persons (17 % out of the whole number of convicts involved in the survey); 'no' – by 831 respondents (41 %); 'partially' – by 848 convicts (42 %).

17. In question № 17 ('Is the list of grounds for applying restraint measures to convicts deprived of liberty exhaustive in the law?') 'yes' answer was chosen by 666 res-

pondents or 33 % out of the whole number of respondents involved in the survey; 'no' – by 84 convicts (4 %); 'partially' – by 1266 persons (63 %).

18. In question № 18 ('Is it justified to involve units of SPS and other law enforcement agencies in this activity?') 'yes' answer was chosen by 13 convicts (5 % out of the whole number of respondents involved in the survey); 'no' – by 1634 persons (81 %); 'partially' – by 369 respondents (14 %).

19. In question № 19 ('Are convicts informed of the consequences of applying certain restraint measures?') 'yes' answer was chosen by 11 persons or 4 % out of the whole number of respondents involved in the survey; 'no' – by 1779 convicts (84 %); 'partially' – by 226 respondents (12 %).

Summarized results of the survey were sent in the form of analytical report in coordination with the authorities of the colonies, where the anonymous survey had been conducted, to interregional penitentiary departments of the Ministry of Justice of Ukraine for information and use in official activities.

Supplement D

Analytical report
on the results of studying archived criminal proceedings (cases), based on the facts of application measures of physical influence, special means and weapons to convicts deprived of liberty in Ukraine

The study of archived materials was carried out in the courts of 10 oblasts of Ukraine (Volyn, Vinnytsia, Dnipropetrovsk, Zhytomyr, Zaporizhzhia, Kyiv, Lviv, Mykolaiv, Chernihiv and Cherkasy Oblasts), covering almost all major regions of the state (east, west, north and south), which meets the requirements of representativeness of any scientific research.

Besides, there was a sufficient number of criminal proceedings (cases) related to application of restraint measures to convicts (a total of 312 such materials), as well as the period of these proceedings (1991–2018).

The survey had the following results:

1. Archived criminal proceedings (cases) (a total of 312) had the following structure:

a) Article 364 of the Criminal Code of Ukraine 'Abuse of authority or office' – 100 (32 %);

b) Article 365 of the Criminal Code of Ukraine 'Excess of authority or official powers' – 180 (58 %);

c) Article 127 of the Criminal Code of Ukraine 'Torture' – 11 (4 %);

d) Article 126 of the Criminal Code of Ukraine 'Battery and torture' – 8 (2 %);

e) Article 118 of the Criminal Code of Ukraine 'Murder in excess of necessary defense or in excess of measures necessary to apprehend an offender' – 6 (2%);

f) Article 121 of the Criminal Code of Ukraine 'Intended grievous bodily injury' – 5 (1%);

g) Article 116 of the Criminal Code of Ukraine 'Murder committed in the heat of passion' – 2 (1 %).

2. Motives for illegal application of measures of physical influence, special means and weapons to convicts deprived of liberty were:

2.1	Total number	312 (100 %)
2.1.1	Fixed by the court	208 (67 %)
2.1.2	Not fixed by the court	104 (33 %)
2.2	Total number	312 (100 %)
2.2.1	Official	137 (44 %)
2.2.2	Ideological	39 (13 %)
2.2.3	Bullying	106 (34 %)
2.2.4	Mercenary	18 (6 %)
2.2.5	Other	12 (3 %)

3. Types of court judgements on criminal proceedings (cases):

3.1	Judgement of conviction	310 (99 %)
3.2	Judgement of acquittal	2 (1 %)

4. Subjects of committing criminal offenses related to application of measures of physical influence, special means and weapons to convicts deprived of liberty:

4.1	Senior officers	6 (2 %)
4.2	Mid-ranking officers	49 (16 %)
4.3	Junior officers	244 (78 %)
4.4	Other type of colony personnel	13 (4 %)

5. Content of the criminal activity of personnel:

5.1	Intended acts	56 (18 %)
5.2	Unintended acts	11 (3 %)
5.3	Unprofessional acts	245 (79 %)

6. Socially dangerous consequences resulting from application of measures of physical influence, special means and weapons to convicts deprived of liberty:

6.1	Actions leading to the death of the victim	11 (4 %)
6.2	Actions leading to the death of the colony personnel member	5 (2 %)

6.3	Actions leading to disorganization of penitentiary institution	28 (9 %)
6.4	Actions leading to mass disobedience of convicts	92 (9 %)
6.5	Actions leading to other socially dangerous consequences (infliction of bodily injury; malicious disobedience of convicts; destruction of property, etc.)	176 (56 %)

7. Circumstances that contributed to illegal application of restraint measures to convicts in places of detention:

7.1	Provocative behavior of convicts	183 (59 %)
7.2	Provocative behavior of colony personnel	11 (3 %)
7.3	Provocative behavior of other persons	5 (2 %)
7.4	Unprofessional actions of personnel	101 (32 %)
7.5	Actions of colony personnel that contradicted to legal procedure for application of physical measures, special means and weapons to convicts in places of detention	12 (4 %)

8. Legal grounds for application of restraint measures to convicts deprived of liberty:

8.1.	Acts of malicious disobedience committed by convicts	216 (69 %)
8.2.	Acts of outrage	39 (13 %)
8.3.	Other illegal acts	57 (18 %)

Analytical report on the results of studying archived criminal proceedings (cases) based on the facts of application measures of physical restraint, special means and weapons to convicts deprived of liberty in Ukraine was sent to regional penitentiary departments of the Ministry of Justice of Ukraine for information and use in official activities.

Supplement E

Analytical report on the results of analyzing materials of official investigations of applying measures of physical influence, special means and weapons to convicts deprived of liberty in Ukraine

The study of the archived materials was carried out in the courts of 10 oblasts of Ukraine (Volyn, Vinnytsia, Dnipropetrovsk, Zhytomyr, Zaporizhzhia, Kyiv, Lviv, Mykolaiv, Chernihiv and Cherkasy Oblasts), covering almost all major regions of the state (east, west, north and south), which meets the requirements of representativeness of any scientific development.

The analysis included a total of 312 materials of official investigations, conducted in the period from 2013 to 2018 inclusive.

The study had the following results:

1. Actions of the colony personnel in regard to application of measures of physical influence, special means and weapons to convicts in places of detention were recognized as legitimate – 248 (79 %).

2. The above-mentioned actions were recognized as illegitimate – 64 (21 %), and persons applying restraint measures to convicts were subjected to:

a)	disciplinary liability	12 (19 %)
b)	financial liability	3 (4 %)
c)	criminal liability	49 (77 %)

3. Decisions to apply restraint measures to convicts in places of detention were made:

a)	personally	288 (92 %)
b)	by verbal order of an immediate or direct superior	19 (6 %)
c)	by written order of these superiors	5 (2 %)

4. Measures of physical influence, special means and weapons prescribed in the law were directly applied by:

a)	persons of junior commanding staff of the colonies	267 (86 %)
b)	persons of middle ranking commanding staff of the colonies	28 (9 %)
c)	persons of senior commanding staff of the colonies	17 (5 %)

5. Restraint measures were applied to convicts:

a)	with a warning (by voice, loudspeaker, warning shot, etc.)	275 (88 %)
b)	without warning	37 (12 %)

6. After measures of physical influence, special means and weapons specified in the law were applied to the convicts:

a)	emergency medical aid was provided directly by the person who had applied restraint measures	79 (25 %)
b)	medical aid was provided by health care professionals	61 (20 %)
c)	medical aid was not provided, although it should have been provided under the circumstances	28 (9 %)
d)	medical aid was not provided as there was no need for it	144 (46 %)

7. Conclusion and materials of the official investigation:

a)	were sent to a regional police office to resolve the problem of initiation (or refusal of initiation) of a criminal proceeding	49 (16 %)
b)	were sent to prosecutor's office to enter information into the Unified Register of Pre-Trial Investigations	49 (16 %)

c)	were not sent to the law enforcement agencies specified in items ‘a’ and ‘b’	14 (4 %)
d)	were sent to a higher-level authority in the system of SPS of Ukraine	200 (64 %)

8. Results of the official investigation:

a)	were communicated to injured convicts	12 (4 %)
b)	were communicated to all convicts held in the colonies	5 (2 %)
c)	were not communicated to the persons specified in items ‘a’ and ‘b’	295 (94 %)

9. Materials of the official investigations were discussed:

a)	at the meetings of the corresponding boards of SPS of Ukraine where response measures to guilty officials from among the personnel of the colonies were adopted	62 (20 %)
b)	at the meetings of the corresponding boards without making any decisions	20 (7 %)
c)	were not discussed at all	17 (5 %)
d)	during services with the personnel of the colonies	213 (68 %)

This analytical report has been sent to corresponding penitentiary authorities and the Department of SPS of the Ministry of Justice of Ukraine for information and use in official activities.

Scientific publication

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THEORETICAL AND PRACTICAL PROBLEMS OF APPLICATION IN UKRAINE OF ACTIONS OF PHYSICAL FORCE, SPECIAL MEANS AND WEAPONS TO CONVICTED, IMPRISONED

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