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Issues of Interaction of Penitentiary Agencies and Institutions with the Departments on Combating Crime in Ukraine and Poland

У статті аналізуються питання взаємодії пенітенціарних органів та установ з іншими правоохоронними органами України та Польщі. Автори вказують, що боротьба зі злочинністю є спільною метою всіх правоохоронних органів, яка досягається тільки шляхом взаємодії останніх один з одним. Визначено форми взаємодії пенітенціарних органів та установ з підрозділами по боротьбі зі злочинністю в Україні та Польщі. Автори виконали порівняльний аналіз законодавства обох країн з цього питання і розробили деякі пропозиції щодо його удосконалення.

Ключові слова: *пенітенціарні органи та установи, правоохоронні органи, боротьба зі злочинністю, взаємодія.*

В статье анализируются вопросы взаимодействия пенитенциарных органов и учреждений с другими правоохранительными органами Украины и Польши. Авторы указывают, что борьба с преступностью является общей целью всех правоохранительных органов, которая достигается только путем взаимодействия последних друг с другом. Определены формы взаимодействия пенитенциарных органов и учреждений с подразделениями по борьбе с преступностью в Украине и Польше. Авторы выполнили сравнительный анализ законодательства обеих стран по этому вопросу и разработали некоторые предложения по его усовершенствованию.

Ключевые слова: *пенитенциарные органы и учреждения, правоохранительные органы, борьба с преступностью, взаимодействие.*

The issues of interaction of penitentiary agencies and institutions with other law enforcement agencies in Ukraine and Poland have been analyzed in the article. The authors point out that crime combating is the common objective of all law enforcement agencies, which is achieved only by the way of interaction of the latter between each other. Forms of interaction of penitentiary agencies and institutions with the departments on combating crime in Ukraine and Poland have been determined. The authors have accomplished the comparative analysis of the legislation of both countries regarding this issue and has elaborated some propositions on its improvement. The authors emphasize that crime combating is one of the most important components of functioning and development of any state; it is an instrument that assists the society to be steadily developed and to be secured. Considering stated above we can confirm that fighting (combating) against crime is one of the main overall objectives of law enforcement agencies in the state. Therefore, the activities of all law enforcement agencies along with direct functions provided by the legislation are somehow reduced to one common objective – combating crime. This is also related to penitentiary agencies and institutions that are law enforcement agencies as well.

To analyze the processes of interaction of penitentiary agencies and institutions with the departments on combating crime in Ukraine and Poland the authors consider it necessary to determine what kind of law enforcement agencies operate in both countries and what system of penitentiary agencies and institutions is

functioning in these countries. Therefore, the issues of interaction of penitentiary agencies and institutions with other law enforcement agencies in Ukraine and Poland have been analyzed in the article. The authors point out that crime combating as the common objective of all law enforcement agencies is achieved only by the way of the interaction of the latter between each other. Forms of interaction of penitentiary agencies and institutions with the departments on combating crime in Ukraine and Poland have been determined. The authors have accomplished the comparative analysis of the legislation of both countries regarding this issue and has elaborated some propositions on its improvement.

Keywords: *penitentiary agencies and institutions, law enforcement agencies, crime combating, interaction.*

Issue. Nowadays the processes of European integration become more tangible in Ukraine. They take place due to the gradual adaptation of current legislation to the European standards.

This tendency is also observed in the penal law of the country in the sphere of interaction between law enforcement agencies in the process of fighting against crime. It should be noted that taking into account international experience of European countries on this issue is essential for the process of European integration of Ukraine.

Penal legislation of Ukraine and Poland is similar mainly in the content. This includes regulation of the process of interaction of penitentiary agencies and institutions and the departments on combating crime. This can be explained by the impact of historical and geopolitical factors. So, considering the history of the countries Ukraine and Poland were influenced by totalitarian regimes, had a socialist organization of the society and ideology at certain stages of development. Besides, both countries are neighbors, which also finds its expression in the common past, similarities in daily life and culture. It should be also outlined that there is the agreement between Ukraine and Poland among the international treaties of Ukraine on legal relations within civil and criminal cases dated from May 24, 1993, which is an example of the similarity of Ukrainian and Polish law. This fact indicates on the necessity of studying and considering the experience of Polish legislation and on its great similarity to Ukrainian legislation. But we can also trace some differences in the legislation area concerning the issues of interaction of penitentiary agencies and institutions with other law enforcement agencies in the process of fighting against crime. Considering this, it is appropriate to follow these differences and use some of them to improve the regulation of criminal and legal relations in both countries, especially in Ukraine (to ensure the European integration processes on the example of European country like Poland).

Analysis of recent research. The issue of comparative analysis of penal legislation of Ukraine and Poland were the interests of such scholars as N. H. Kalashnyk, N. S. Kalashnyk, N. Naulik. Certain issues of interaction of the State Penitentiary Service has studied S. K. Hrechaniuk in his monograph. However, there was not a separate study concerning the issue of interaction of penitentiary agencies and institutions with the departments combating crime. It indicates on the relevance of the paper in this area.

The purpose of this article is to analyze the interaction of the penitentiary agencies and institutions with the departments on combating crime in Ukraine and Poland and to develop propositions on this basis to improve the legislation of both countries in this area.

Main body. Crime combating is one of the most important components of functioning and development of any state; it is an instrument that assists the society to be steadily developed and to be secured. Combating crime – is a special integrated, multilevel object of social management that includes different forms of activities of relevant subjects (state, non-government agencies and institutions, public organizations and individuals) that interact in the form of a system of diverse measures directed to find the ways, means and other possibilities to effective influence on crime rate to reduce the intensity of crime determination at all levels, neutralization of its reasons and conditions for limiting the number of criminal offenses to socially tolerant population [1, p. 44-45]. Considering stated above definition we can confirm that fighting (combating) against crime is one of the main overall objectives of law enforcement agencies in the state. Therefore, the activities of all law enforcement agencies along with direct functions provided by the legislation are somehow reduced to one common objective – combating crime.

This statement also concerns penitentiary agencies and institutions that are law enforcement agencies as well. For example, the main task of the State Penitentiary Service of Ukraine is to implement the state policy on execution of criminal punishments [2]. Based on the definition of the punishment's objective, which is not only the punishment but correction of a prisoner, and the prevention of the commission of new crimes both by prisoners and other persons, we can say that the execution of criminal penalties is carried out for combating crime through prevention of crimes' commission in the future both by criminals and other persons.

To analyze the processes of interaction of penitentiary agencies and institutions with the departments on combating crime in Ukraine and Poland we consider it necessary to determine what kind of law enforcement agencies operate in both countries and what system of penitentiary agencies and institutions is functioning in these countries.

The Law of Ukraine "On the State Protection of Court and Law Enforcement Agencies' Employees" dated from December 23, 1993 provides the lists of law enforcement agencies of Ukraine, which is not exhaustive. Thus, in accordance with the p. 1, Art. 2 of this Law of Ukraine law enforcement agencies include: prosecutor's office, the National Police, the Security Service, Military Police of the Armed Forces of Ukraine, the National Anti-Corruption Bureau of Ukraine, agencies of state border protection, agencies of inland and revenue, penitentiary agencies and institutions, pretrial detention centers, agencies of the state financial control, fisheries, the state forest protection, other agencies engaged in realizing enforcement or law enforcement functions [3]. Such law enforcement agencies operate in Poland, including the National Police, Military Police, Anti-Corruption Bureau, border protection agencies, Tax Department, probation service and others.

Regarding probation agencies, it must be said that functioning of such a service (including Poland) taking into account international experience was a precondition for the adoption of the Law of Ukraine "On Probation", which has been adopted almost two years ago that also indicates the recent strengthening of European integrative processes in the state. In particular, a lot of regulatory acts in Ukraine were amended in regard to the adoption of the stated Law, which come into force on January 1, 2018.

Regarding the system of penitentiary agencies and institutions in Ukraine and Poland, we should stress that they are similar. Thus, the system of penitentiary agencies and institutions in Ukraine is the State Criminal Executive Service (hereinafter – SCES), which is subordinated to the Ministry of Justice of Ukraine. The structure of the SCES includes: central executive agency that implements the state policy in the sphere of execution of criminal penalties – the State Penitentiary Service (hereinafter – SPS), territorial agencies of the SPS, criminal and executive inspection (hereinafter - CEI), penal institutions, pretrial detention centers, paramilitary forces, educational institutions, health care facilities, penal enterprises, other enterprises, institutions and organizations formed to accomplish the tasks of the SPS of Ukraine. The Prison Service in Poland is the Agency of Corrections composed of the Main Department headed by the Director General and 15 territorial departments (Directorates) and is subordinated to the Ministry of Justice.

Let's analyze the processes of interaction between the units combating crime and penitentiary agencies and institutions in Ukraine and Poland.

It should be noted that only during the interaction processes of law enforcement agencies it is possible to succeed common main objective of their functioning in both countries – crime combating that has mentioned before. The interaction between penitentiary agencies and institutions in Ukraine is the joint activities of the agencies and institutions of the SPS of Ukraine government and non-governmental institutions in general organized in accordance with the current legislation agreed by the objectives, place and time, aimed at achieving the goals and tasks of interacting subjects, where the unifying priority objective is the realization of the single state policy in the sphere of execution of criminal penalties [4, p. 76]. The same definition of interaction can be applied to the penitentiary agencies and institutions in Poland.

Analysis of the penal legislation of Ukraine and Poland on the issues of cooperation of penitentiary agencies and institutions with the departments on crime combating gives reasons to distinguish the main forms of such an interaction:

1. Supervision and control over penitentiary agencies and institutions from other law enforcement agencies.

2. Mutual assistance of penitentiary agencies and institutions and the departments on combating crime while performing their functions.

3. Supervision over the persons released from prisons.

Let's study every form of interaction separately.

The Art. 22 of the Penal Code of Ukraine (hereinafter – the PC of Ukraine) stipulates that the prosecutor in accordance with the Law of Ukraine "On Prosecutor's Office" carries out supervision over the compliance with laws within penitentiary agencies and institutions, and his instructions are mandatory and must be immediately executed [5, p. 14-15]. It should be noted that the prosecutor's office in Ukraine is the agency, which basic tasks include supervision over the compliance with legislation and state accusation in court, supervision over the compliance with laws while executing judgments in criminal cases, as well as the application of other measures of compulsory nature related to the restraint of personal liberty of citizens and representation of the interests of citizens or the state in the court. [6] Thus, the prosecutor's office carries out general function of combating crime like all law enforcement agencies by implementing their immediate functions defined in the law. However, according to c. 1 of the Transitional Provisions of the Criminal Procedural Code of Ukraine prosecutor's office also exercises the investigation of criminal offenses falling within the jurisdiction of the State Bureau of Investigation, until the latter is formed [7, p. 330]. Therefore, for now we can talk about prosecutor's office direct participation in the investigation of criminal offenses in Ukraine, nut not just on the supervision and procedural guidance during the investigation.

Polish prosecutor's office performs almost the same functions. Concerning the issues of cooperation with penitentiary agencies and institutions, the prosecutor's office in Poland carries out supervision over pretrial detention and the implementation of decisions on imprisonment, as well as interaction with public authorities on the prevention of crime and violations of the laws [8, p. 116-117].

A distinctive feature of Ukrainian legislation in the process of implementing the supervision over penitentiary agencies and institutions in Poland is the presence of penitentiary judges and the system of penitentiary courts. Noteworthy feature of the legislation of the Republic of Poland is the monitoring the observance of human rights and freedoms while executing the punishment in the form of imprisonment, arrest, detention, fines and other compulsory measures. The inspection is executed by the penitentiary judge, who has the right to visit the penal institutions and pretrial detention centers without time limits and previous administrative agencies [9, p. 117]. Thus, there is the supervision by the penitentiary judge besides the prosecutor's supervision over penitentiary agencies and institutions. He can make written instructions, as well mandatory for execution or make a submission to other government agencies to ensure the proper functioning of penal institutions, elimination of violations of the law. Cases related to the violation of prisoners' rights or violation of the requirements of the current legislation to enforce execution of penalties are heard in a special penitentiary court.

Taking into account the amendments to the legislation regarding the adoption of the Law of Ukraine "On Probation", it should be noted that so-called penitentiary probation in Ukraine is applied to persons convicted to the restriction of liberty or imprisonment for a specific term. Thus, penitentiary probation – is the preparation of persons, who sentenced to the restriction of liberty or imprisonment for a specific term, to be released in order of labor and domestic placement of such persons after their release according to chosen by them the place of residence [10]. However this function put on the authorized agency on the issues of probation is made just to promote the adaptation of convicted persons to normal living conditions in freedom after their release. The terms of implementing the supervision over the convicted persons' rights are not provided by it.

We believe that existence of the system of penitentiary courts and supervision by the penitentiary judge is a very effective method of ensuring legality in penal institutions and improvement of penitentiary agencies and institutions' activities. Indeed specially formed agencies and officials that are penitentiary judges and penitentiary courts can ensure the accomplishment of the assigned for them tasks in the full extent, fulfilling only those issues. Prosecutor's office in Ukraine, besides the supervision over penitentiary agencies and institutions has a number of other functions that were listed above that is negatively reflected on keeping the rights and

freedoms of prisoners and legality in penal institutions.

The second form of interaction of penitentiary agencies and institutions with the departments on fighting against crime is the mutual assistance between penitentiary agencies and institutions and the departments on combating crime. The largest manifestation of this form is found in the interaction of penitentiary agencies and institutions with the National Police agencies both in Ukraine and Poland.

This form of interaction in Ukraine may include reconduction of people, who do not appear, when summoned to the penal inspection, conduction of individual and preventive work with prisoners released on probation, search of persons, whose location is unknown and who evade serving punishment, as well as exchange of information on the causes and conditions that contributed to the commission of crimes by convicts.

Thus, p. 2, Art. 163 of the Penal Code of Ukraine stipulates that the conduction of individual and preventive work with prisoners released on probation according to their residence is imposed on the agencies of the National Police. The control itself over the behavior of these individuals during the probationary period is imposed on the penal inspection, and in regard to soldiers – on the commanders of military units. Therefore, we can talk about the fact that the agencies of the National Police of Ukraine assist to accomplish control over the behavior of prisoners released on probation, because the preventive work contributes to correction of prisoners and observance of their proper behavior.

The Art. 164 of the penal Code of Ukraine determines the possibility to accomplish the reconduction or search of convicted by the National Police agencies on the petition of the penal inspection. In this case, the penal inspection requests the head of the National Police agency to implement the reconduction of a person who evades appearance. The heads of the National Police agency sends a request to the court. The court alone decides the issue on the possibility to exercise the reconsuction of the convict. Only on the basis of the court's decision it is possible to apply the reconduction of a person. Implementation of the reconduction, adjudgement of a convicted in search directly contributes to the execution of punishment by the appropriate penitentiary agencies and institutions.

Carrying out individual and preventive work (according to new changes on applying probation programs – social and educational work) with the convicted persons through adopting amendments to the penal Code of Ukraine, is put on the authorized agency on probation issues, but not on the National Police agencies, as it is set nowadays. We believe that such amendments are positive, because they directly assist the execution of such functions by a certain agency established with this purpose.

Providing information to the penitentiary agencies and institutions on the causes and conditions that contributed to the commission of crimes by convicts assists to eliminate weaknesses in operational and service, production and economic activity of penal institutions and penal inspection to implement social and psychological work with prisoners, to form personnel files, etc. Provision of this information is possible both while serving sentence by convicted and after their release from penal institutions and expiry of punishment that are not related to imprisonment [10, c. 105]. It should be also noted that provision of such information can be made not only to the penitentiary agencies and institutions, but vice versa – from the penitentiary agencies and institutions to the agencies of the National Police, which will contribute, for example, an investigator in the implementation of the pre-trial investigation in the case of the crime commission by a convicted. That is, in this case we can talk about the bilateral exchange of information.

In Poland we can observe that the implementation of the reconduction and other supporting functions by the National Police agencies as well as in Ukraine, through the courts. Only the penitentiary agencies and institutions address the court with these requests, and the police acts under a court ruling. So, §1, Art. 10 of the Penal Code of the Republic of Poland (hereinafter – PC RP) indicates that the police carries out judgments on a mandatory basis [11]. That is, we can talk in this case about the facilitated procedure of implementing the reconduction of persons who evade to appear before penal authorities, as the latter may directly apply to the court, but not first to the police, as it is in Ukraine.

Thus, we can conclude after considering the second form of cooperation of the penitentiary agencies and institutions with the departments on combating crime, that it is more perfect in Poland. This is reflected in the possibility of the penitentiary agencies and institutions to appeal directly to the

court to implement the reconduction of convicted released from prisons, but not to appeal to the National Police.

Passing to the analysis of the supervision over the convicts released from prisons, by other law enforcement agencies, it should be noted that this form of interaction occupies a prominent place in the legislation of both Ukraine and Poland.

First of all it is necessary to note that those released from prison in Ukraine can be divided into two groups:

1. Parole persons with a suspended sentence from prisons;

2. Persons released from prisons after serving their entire sentences.

As for the first group of people the supervision is carried out by the penal inspection and the commanders of military units (concerning soldiers), and if they commit systematic offenses or violations of the rights of others – by the National Police agencies (in this case, administrative supervision is applied to the mentioned persons). It should be noted that the Law of Ukraine "On Probation" establishes that the supervision over the convicted persons released on probation is realized by the authorized agency on the probation issues.

As for the second group of prisoners, administrative supervision in the manner prescribed in the Penal Code of Ukraine and in the Law of Ukraine "On Administrative Supervision over Persons Released from Prisons" is imposed for them. Thus, according to the aforementioned Law administrative supervision is imposed not for all persons released from prisons, but only to those, determined in the Art. 3 of this Law [12]. Part 2 of the Art. 159 of the Penal Code of Ukraine stipulates that the administration of the prison sends a ruling of a judge to the National Police agency concerning the residence selected by the supervised on the day of his release. The National Police agencies are obliged to monitor systematically the behavior of these individuals, to avoid violation of public order and the rights of other citizens.

The supervision over convicted in Poland (both released on the basis of sentence execution and probation) is imposed on the court and is carried out on the basis of the Penal Code of the Republic of Poland. Moreover, the supervision is required for all persons released after serving the sentence. Thus the legislator distinguishes three risk groups among the released, prone to commit offenses under § 1 of the Art. 169 b of the Penal Code of the Republic of Poland. A curator is set for each group of people. For high-risk groups – professional curators, for the main group and the group of reduced risk – court curator and social curator. Curators are required to maintain close cooperation with the police for obtaining information on compliance with law and order by a person under care, inform the police about the supervision or its completion, and provide reports on the supervision to the probation service.

Polish police agencies do not carry out such a supervision, but only are informed by the penitentiary judge or the director of penal institutions in cases of releasing people with sexual disorders from a prison, who as a result of these disorders committed crimes under the Articles 197-203 of the Criminal Code of Poland (crimes against sexual freedom and morality), and in the case of convicted escape from prisons [10, § 3, the Art. 168a].

In our opinion, the supervision over persons released from prisons in Poland is more advanced than in Ukraine. This can be explained again by the presence of special judicial curators who carry out such a supervision. Such a function in the cases determined by the law is imposed in Ukraine on the National Police agencies, which is not quite correct, because the police fulfills several other functions besides the administrative supervision, which is also reflected on the efficiency of this supervision. Besides supervision in Poland is implemented over all persons released from prisons, but in Ukraine only over certain categories of persons. We believe that if a person was in custody, this person must be obligatory supervised to the moment of the cancellation or clearing the criminal record. Therefore, we believe that the distribution of convicts released from prisons into certain groups in order to consolidate relevant officials for each group (with different range of authorities for each group and different procedure of supervision), and establishing supervision over all released will be an effective mean of improving administrative supervision in Ukraine by the example of Poland. We believe it appropriate to put such duties on supervising over the persons released from prisons on the authorized agencies on probation issues, setting for them such an additional task.

Summing up everything stated before, we can **conclude** the following:

1. One of the common main objectives of all law enforcement agencies' activities of any

state is fighting against crime (crime combating), which is achieved by fulfilling immediate legally defined functions of each law enforcement agency and only by the interaction of the latter between each other.

2. Interaction of penitentiary agencies and institutions in Ukraine and Poland is carried out in three forms: supervision over the penitentiary agencies and institutions; mutual assistance of the penitentiary agencies and institutions and departments on combating crime in the process of performing their functions, supervision over inmates released from prisons.

3. It is appropriate to implement in Ukraine the supervision over the penitentiary agencies and institutions by the penitentiary judges belonging to the system of penitentiary courts, by the example of Poland. Thus, it is possible to increase the effectiveness of the supervision and the level of legality in penal institutions.

4. Polish legislation contains a bit over simplified procedure for execution of persons, who evade to appear before penal authorities, which is a direct possibility of the latter to appeal the court with the request to use the detention, but not to appeal to the police, as it is in Ukraine.

5. Supervision over the prisoners released after serving a sentence or with a probation is more perfect in Poland than in Ukraine. This function is referred to the court's competences and is executed by specially appointed court advisors. We consider it appropriate to provide the function of such a supervision on the authorized agencies on probation issues easing the loading of the National Police agencies in Ukraine and to set the supervision over all persons released from prisons.

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