

THE ROLE AND PLACE OF PUBLIC CONTROL IN THE LEGAL MECHANISM FOR THE PREVENTION OF PENITENTIARY CRIME IN UKRAINE

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Summary

This scientific article analyzes the potential social and legal possibilities of public control in the preventive sphere of activity related to the prevention of the commission of recidivist criminal acts by those sentenced to deprivation of liberty in the process of execution.

In addition, based on the results of the research and the problems identified in this regard, scientifically based ways of their elimination and improvement of the existing legal mechanism of public control in the sphere of execution of punishments of Ukraine have been developed.

In particular, it was found that the administration of bodies and institutions for the execution of punishments, guided by the principle of non-interference of the public in their operational and service activities, create various artificial obstacles to objective social monitoring on issues of prevention of crimes by convicts in closed penal institutions, the exclusive list of which is fixed in the law, new (recidivist) criminal offenses.

It was also established that from the time of Ukraine's independence (from 1991) to the present (2022) at the official level, it is stated that recurrent crime, including its penitentiary component, is one of the real threats to national security.

Moreover, the specified determinant has an extremely negative effect on the effectiveness of the execution process - the serving of punishments, as well as on the implementation of the goals and objectives of the criminal enforcement legislation of Ukraine defined in the law.

Key words: public control; relapse; penitentiary crime; the scope of execution of punishments; prevention; execution process – serving sentences; imprisonment.

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1. Introduction

Setting the problem in general and its connection with important scientific or practical tasks. One of the tasks of the Criminal Code (CC) of Ukraine (Article 1) and the purpose of punishment defined in it (Article 50), as well as the goal of criminal enforcement legislation (Article 1) is to prevent the commission of new criminal offenses by both convicted persons and others persons.

Along with this, as practice shows, starting from the time of independence (1991) of our state and up to the present, the level and other quantitative and qualitative indicators of penitentiary crime remain unchanged and tend to increase annually (*Kolb et al., 2020: 127-157*).

In particular, if in 1991, per 1,000 people sentenced to imprisonment, the level of penitentiary crime (one of the types of recidivism (Article 34 of the Criminal Code)) amounted to 3.9 cases of committing the specified socially dangerous acts (*GUYN of the Ministry of Internal Affairs of Ukraine, 1992: 1*), then already in 2016 (the last period of public publication by the Ministry of Justice of Ukraine of open information on these issues), the specified indicator

amounted to 4.91 crimes (*DKVS of the Ministry of Justice of Ukraine, 2017: 6*). At the same time, it is worth noting that according to the data of the Unified Register of Pretrial Investigations (Article 214 of the Criminal Executive Code (CEC)), during 2017-2022, the level of recidivism in Ukraine did not undergo significant changes (*Unitary Register of Pretrial Investigations: 2022*).

In the context of the problems investigated in this scientific article, the fact that during 1991–2022 the number of committed criminal offenses increased many times, the subject of which in the process of execution – serving of punishments was the personnel of bodies and institutions for the execution of punishments (UVP). Thus, in 1991, 19 crimes were registered by these persons (*GUYN of the Ministry of Internal Affairs of Ukraine, 1992: 22*), and already in 2016 – 102 such socially dangerous acts (*DKVS of the Ministry of Justice of Ukraine, 2017: 12-13*).

The existence of the specified problem at the official level was also stated in the Concept of Reform (Development) of the Penitentiary System of Ukraine, approved at the state level in September 2017 (*Cabinet of Ministers of Ukraine: 2017*). Moreover, at the normative and legal level (*Cabinet of Ministers of Ukraine: 2017*), as well as in doctrinal sources, determinants contributing to the commission of criminal offenses in the field of execution of punishments are named, among which a special place is occupied by those related to the implementation public control over the process of execution – the serving of punishments (*Kolb, Makhnitskyi, 2019: 223-230*).

2. Formulating the purposes of the article (setting the task)

Taking into account the above, the purpose of this scientific article is to determine the role and place, as well as the potential socio-legal possibilities of the specified type of social monitoring in the mechanism of prevention of penitentiary crime in Ukraine, and the main task is to develop scientifically based proposals aimed at eliminating existing ones in connection with these problems and improving the overall content of preventive activities in the field of execution of punishments.

The study of scientific literature showed that such scientists as: K. A. Avtukhov, O. M. Bandurka, E. Yu. Barash, O. A. Hrytenko, O.

Along with this, in the context of clarifying the role and place of this type of social monitoring in the legal mechanism for the prevention of penitentiary crime in Ukraine, the specified problem at the doctrinal level is insufficiently developed, which became decisive when choosing the object and subject of this scientific article.

3. Results and their discussion

At the legislative level, recidivism of crimes (criminal offenses) is understood as the commission of a new intentional criminal offense by a person who has a conviction for an intentional crime (criminal offense) (Article 34 of the Criminal Code).

A similar definition is formulated in scientific sources (*Zhuzha et al., 2020: 111-112*).

One of the types of recidivism is penitentiary recidivism, when a person who is serving a prison sentence for the second time or more commits a new intentional crime (*Cherney, Dzhuzha et al., 2020: 507*).

The social danger of penitentiary crime lies in the fact that such illegal behavior of a convicted person in the process of execution - serving a sentence in the form of deprivation of liberty indicates his stubborn unwillingness to embark on the path of correction (Article 6 of the Criminal Executive Code), as well as the low level of application to him of the provisions

specified in the law means of individual correctional and resocialization influence (part 4 of article 6 of the CEC).

These include, in particular, public influence (Part 3, Article 6 of the specified Code), which is understood as the participation of public associations or their authorized representatives in the activities of bodies and institutions for the execution of punishments (UVP) in various forms (through legal propaganda with convicts; the implementation of pastoral care for these persons; the involvement of convicts in the implementation of mass cultural and sports events, etc.) (Kovalenko, Stepaniuk, 2012: 35).

Important in this sense is the legal fact - among the principles of criminal law enforcement, the execution and serving of punishments (Article 5 of the Criminal Executive Code), one of them is enshrined as "public participation in the cases provided for by the Law in the activities of bodies and institutions for the execution of punishments", which including the implementation of public influence on convicts.

At the same time, it should be stated that a special place in the system of public influence measures and public participation in the activities of the bodies and the UVP, as well as in the composition and implementation of institutions of criminal law, is occupied by public control over the observance of the rights of convicts during the execution of criminal sentences in correctional and educational institutions colonies, detention centers, correctional centers and pre-trial detention centers (SIZO) (Part 2 of Article 25 of the Code of Criminal Executive). At the same time, the forms of such control can also include public visits to the UVP and its participation in the national preventive mechanism (Article 24 of the said Code), since by carrying out the specified activity, members of the public are thus able to control the state and content of the process of execution – serving punishments, in particular :

- a) visual surveillance of objects of criminal and executive legal relations;
- b) receiving oral appeals from convicts and their close relatives on various issues related to the observance of their rights, legitimate interests and freedoms;
- c) communication both with the subjects (convicts and staff of the UVP) and with the participants of the specified legal relationship;
- d) obtaining by other means information about the sphere of execution of punishments (in the course of a journalistic investigation; processing of public information; personal reception of convicts, etc.).

Representatives of the public can use and verify the results obtained during visits to the prison (Article 24 of the Criminal Executive Code), public participation in the activities of bodies and prisons in cases provided for by law, and when exercising individual public influence on convicts (Articles 5, 6 of this Code), in the course of their exercise of public control in the field of execution of punishments (Part 2 of Article 25 of the Criminal Executive Code).

An additional argument in this regard is the powers that, according to the relevant legal acts, are granted to the subjects of the specified type of social monitoring (observation commissions, guardianship councils, representatives of the national preventive mechanism, etc.).

In particular, as it follows from the content of subsection 1, paragraph 3 of the Regulation on observation commissions, one of the main tasks of their activity is the organization and implementation of public control over the observance of the rights, legitimate interests and freedoms of convicts and persons released from serving a sentence.

In order to carry out the specified task, the observation commissions are empowered by the Regulations, including to visit the prisons, to study the state of material, household and

health care of convicted persons, the conditions of their work and training, and the state of the organization of social and educational work (subparagraph 1, clause 6).

In the context of clarifying the potential socio-legal opportunities of the public in preventing penitentiary crime in Ukraine, special attention is paid to the following norms enshrined in the Regulations on the Monitoring Commissions, namely:

1. Members of these commissions have the right to participate in the meetings of the UVP commissions during the consideration of issues regarding the submission to the court of applications for conditional early release of convicted persons from serving a sentence (Article 81 of the Criminal Code), replacing the sentence with a milder one (Article 82 of this of the Code), exempting pregnant women and women with children under the age of 3 from serving a sentence (Article 83 of the Criminal Code), and participating in court hearings during the consideration of such applications (Article 539 of the Criminal Code) (subparagraph 1 p. 6 Regulations) (*Cabinet of Ministers of Ukraine: 2004*).

In this sense, it is worth noting that only in relation to 69% of the total number of convicts, in respect of whom the UVP administration decided to release them on parole, the courts decided to apply Art. 81 of the Criminal Code (DKVS of the Ministry of Justice of Ukraine, 2017: p. 26), which indicates certain miscalculations of the public on the specified issues.

2. Supervisory commissions have the right to listen at their meetings on matters within their competence to information of officials of bodies and UVP, executive power bodies, local self-government bodies, enterprises, institutions and organizations regardless of the form of ownership and individual citizens (subparagraph 1 of 6 Regulations) (*Cabinet of Ministers of Ukraine: 2004*).

It is in the specified authority that the effective regulatory and legal capabilities of the observation commissions in the exercise of public control in the field of execution of punishments are laid, if it is supplemented with a phrase of the following content "... and in this connection make appropriate decisions, which are essentially sent to higher authorities for notification and regulation management and executive authorities".

This approach, in particular, is enshrined in Art. Art. 86–87 of the Law of Ukraine "On the National Police" (chapter VIII "Public control of the police").

Official statistical data on the current state of recidivism in Ukraine, including its penitentiary component, can serve as an additional argument in this regard. Thus, in the first half of 2022, almost 15,000 such socially dangerous acts (Article 11 of the Criminal Code) or 24.9% of the total crime structure (163,403 criminal offenses) were registered by persons who had previously committed criminal offenses. (*Unified register of pre-trial investigations: 2022*).

3. The monitoring commission makes a decision, which is formalized by a resolution and signed by the head of the commission after an open vote of its members by a majority of the votes of those present at the meeting (clause 20 of the Regulations) (*Cabinet of Ministers of Ukraine: 2004*).

However, again, as in the previous case above, the Regulation does not say a single word about the obligation to direct the decisions of the observation commissions to the relevant subjects of management and higher bodies of the executive power, that is, there is a so-called legal gap (*Petryshyn et al. , 2014: 271-272*).

Instead, in clause 20 of the Regulation there is only a remark that the specified resolution must be considered by the relevant bodies of the executive power, etc., based on the results of which the latter are obliged to notify the monitoring commission in writing about the measures taken for its implementation, or justify the reasons for its non-implementation.

As shown by the results of the study of other legal acts that regulate the activities of public associations in Ukraine, they also have a number of provisions that can potentially increase the level and effectiveness of public control over the process of execution - the serving of punishments, as well as positively influence the content preventive activities regarding recidivism.

4. Normative legal acts that regulate the activities of public associations in Ukraine

In particular, in Art. 21 of the Law of Ukraine "On Public Associations" these include the following:

- a) apply in accordance with the procedure established by law to state authorities, etc. (in this case – to the bodies and UVP (Article 11 of the Code of Civil Procedure)) and their officials and employees with proposals (remarks), statements (petitions) and complaints (item 2 part 1);
- b) to participate, in accordance with the procedure established by legislation, in the development of draft normative legal acts issued by state authorities, etc. and related to the sphere of activity of the public association and important issues of state and social life (clause 4 part 1);
- c) to exercise other rights (in particular, public control in the field of execution of punishments), not prohibited by law (clause 6 part 1) (*Verkhovna Rada of Ukraine: 2012*).

5. Conclusions

Thus, the results of the analysis of the content of doctrinal, practical and normative legal sources allow us to state the following:

First, the legal categories of the same name used in criminal law and whose root word is the term "public" are related to each other as general and specific, where the general legal category for all of them is the principle of "public participation in cases provided for by law in the activities of bodies and institutions for the execution of punishments" (Article 5 of the Criminal Executive Code), single - "public influence" (Article 6 of the Criminal Executive Code), and specific - "public control over the observance of the rights of convicts during the execution of criminal sentences" (Part 2 of Article 25 of the Civil Code).

Secondly, regardless of the fact that the above-mentioned legal criminal-executive categories are homogeneous, none of them is meaningfully and essentially related to the implementation of public control, although in practice it can serve as a basis for this type of social monitoring.

And, finally, both the first and second legal categories on issues of public activity have significant potential legal opportunities and resources, which should be more effectively, rationally and purposefully used in the prevention of penitentiary crime in Ukraine.

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