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International experience of correction and resocialization of convicts sentenced to imprisonment

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Abstract

The purpose of the research is to reveal international experience in the correction and re-socialization of persons sentenced to deprivation of liberty. *Main content.* This paper analyzes articles of the Criminal-Executive Code of Ukraine, which contain measures of encouragement applied to convicts sentenced to deprivation of liberty (imprisonment) for a certain period of time, and foreign experience of European countries and CIS countries. Measures to encourage convicts should be considered as an important component in the legal regulation of the process of execution and service of punishment; use of such measures encourages law-abiding behavior. *Methodology:* The methodological basis of the research is presented as comparative-legal and systematic analysis, hermeneutic method as well as methods of analysis and synthesis. *Conclusions.* In foreign legislation the system of various types of measures stimulating law-abiding behavior of convicted persons is clearly regulated; this system allows to systematically and consistently change conditions of serving punishment from hard ones to soft ones. This system consists of certain types of incentives; the content

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and essence of such incentives differ depending on whether these measures are one-time or permanent and in relation to a certain category of convicted persons.

Keywords: incentive standards; incentive measures; convicts; resocialization; incarceration.

Experiencia internacional de corrección y resocialización de condenados a pena privativa de libertad

Resumen

El propósito de la investigación fue revelar la experiencia internacional en la resocialización de personas sentenciadas a privación de libertad. Se analiza los artículos del Código Penal-Ejecutivo de Ucrania, que contienen medidas de estímulo aplicadas a los convictos condenados a privación de libertad por un cierto período de tiempo y la experiencia internacional de países europeos y de la Comunidad de Estados Independientes CEI. Las medidas para alentar a los condenados deben considerarse como un componente importante en la regulación legal del proceso de ejecución y servicio del castigo; el uso de tales medidas fomenta el comportamiento respetuoso de la ley. La base metodológica de la investigación se presenta como análisis comparado-jurídico y sistemático, método hermenéutico así como métodos de análisis y síntesis. Se concluye que en la legislación internacional se regula el sistema de diversos tipos de medidas que estimulan el comportamiento respetuoso de la ley de las personas condenadas; este sistema permite cambiar consistentemente las condiciones de cumplimiento del castigo. Este sistema consiste en ciertos tipos de incentivos; el contenido y la esencia de tales incentivos difieren dependiendo de si estas medidas son únicas o permanentes y en relación con determinada categoría de personas condenadas.

Palabras clave: estándares de incentivos; medidas de incentivos; convictos; resocialización; encarcelamiento.

Introduction

Introduction of liberal European values into the everyday life of the Ukrainian society necessitated modernization of criminal-executive legislation. Created ideological principles, economic and political conditions

force the state authorities to search for updated forms of preventive activity taking into account foreign experience. According to the State Criminal Executive Service of Ukraine, the number of incentives applied to convicts is three times smaller than the number of enforcement measures.

In view of individualization of criminal punishment, an important tool in the process of serving this punishment are incentive measures that encourage convicts to correct themselves and stimulate them to observe proper behavior, therefore, such an institution of measures in criminal-executive law needs improvement in accordance with international legal standards.

1. Literature review

Ukraine, as a social and legal state, considers provision and protection of human rights to be its main tasks. In recent years, the system of state power and governance has undergone certain changes, including the criminal-executive sphere of state power. The main task in this sphere is to coordinate content of convicts' rights and freedoms with international standards. Now the main international instrument regulating these issues is the European Prison Rules, which have been developed by the Council of Europe and are being actively implemented in activities of developed European states.

The nature of mass violations of human rights in places of imprisonment is caused by non-observance of personal, civil, socio-economic, cultural rights, which in the theory of criminal enforcement law belong to the general ones, as well as by violations of special rights that arise in convicts in connection with serving their sentence appointed by the court (Bezpalova *et al.*, 2021).

The problem of increasing the effectiveness of incentive influence (in particular by means of applying incentive measures to persons convicted to punishment in the form of imprisonment) is caused by a considerable number of factors of social, theoretical, legislative and practical nature (Buha *et al.*, 2022). In the social sphere, the need to study incentive measures is connected with the fact that such positive incentives are an important means of social adaptation of persons (Kolinko *et al.*, 2021).

The UN Congress on the Prevention of Crime and the Treatment of Prisoners developed and adopted the "Minimum Standard Rules for the Treatment of Offenders", which stipulate that each institution must have a system of benefits and develop different methods of treatment for different categories of offenders in order to encourage them to behave well, develop a sense of responsibility in them, instill in them an interest in re-education and seek their cooperation in this sphere (Trubnikov, 2008).

When recognizing significant contribution made to the sphere of criminal law through conceptual research on the disclosure of international experience in corrections and resocialization of convicts sentenced to imprisonment, it is worth noting that such research has not been conducted in recent years; and this determines topicality of this research topic.

2. Materials and methods

The research is based on the works of foreign and Ukrainian researchers on methodological approaches of understanding principles of law as a universal normative framework.

The essence of methodological approaches of understanding universal human principles of law as a universal normative framework was determined by the use of the gnoseological method; thanks to the logical-semantic method, the conceptual apparatus was deepened, the essence of the international experience of correction and resocialization of convicts sentenced to imprisonment was determined.

By using the system-structural method, investigated were constituent elements of methodological approaches to understanding the international experience of correction and resocialization of convicts sentenced to imprisonment. The structural-logical method was used to define the basic directions for optimization of methodological approaches to understanding international experience of correction and resocialization of convicts sentenced to imprisonment.

3. Results and discussion

According to part 1 of Article 130 the Criminal Executive Code of Ukraine, the following incentive measures may be applied to persons deprived of liberty (imprisoned) for a certain period of time, if they fulfill duties laid on them and observe the rules of conduct established by this Code and the rules of internal order of the colony, observe of the rules of labor order and the requirements of labor safety: appreciation; early removal of previously imposed penalty; awarding a certificate of commendation; awarding of the honorary title “best in behavior”, “active participant in amateur activities”, etc.; payment of a monetary award; awarding a gift; transfer to improved conditions of detention.

Granting permission to travel outside the colony for the purpose of visiting relatives for up to seven days to convicts who are held in the social rehabilitation wards of correctional colonies of minimum security with general conditions of detention and medium security; provision of

additional short-term or long-term dating; permission to spend additional money for purchase of food and basic necessities in the amount of up to fifty percent of the minimum wage; increasing the duration of a walk for convicts who are kept in areas of enhanced control of colonies and cell-type premises of correctional colonies of the maximum security level, up to two hours (Law of Ukraine, 2003).

It is clear that each state has its own socio-economic and political differences, but the problematic issues of correcting convicts with the help of incentive measures are topical for any of them. Therefore, research of the legislation of foreign countries on this issue and implementation of certain provisions in the criminal-executive legislation and practice of execution and serving punishment in the form of imprisonment is one of the directions of improvement of the criminal-executive system of Ukraine.

If we consider incentive measures containing similar norms, we should refer to the normative legal acts of post-Soviet countries. Considering the incentive measures provided for convicts sentenced to imprisonment, we should note that they have a certain similar list of measures provided for in the Criminal Executive Code of the Republic of Belarus and the Criminal Executive Code of the Russian Federation, but each list contains certain differences.

According to Article 110 the Criminal Executive Code of the Republic of Belarus contains a similar list of incentives for persons sentenced to imprisonment, but there are certain features:

- There is no such incentive as awarding a certificate of commendation or awarding a gift.
- Duration of walk may be increased only by 1 hour; there are certain incentives that are not provided for in the Criminal Executive Code of Ukraine (in particular, incentives in the form of permission to spend weekends, state holidays and public holidays declared by the president of the Republic of Belarus as non-work days outside the correctional colony-settlement may be applied to convicts serving their sentences in correctional colonies-settlements as well as short-term visits to close relatives lasting up to five days without taking into account the time required for travel there and back; transfer of convicts from cell-type premises to ordinary living quarters) (Law of Belarus, 2000).

The Criminal Executive Code of the Russian Federation in Article 113 has the following features: there is no an incentive as awarding of a certificate of commendation and awarding of the honorary title “best in behavior”, “active participant in amateur activities”, etc.; there are some other incentives provided: convicts serving their sentences in penal colonies settlements may receive an incentive measure in the form of permission to

spend weekends and holidays outside the colony settlement; convicts may be given a recommendation to replace the unserved part of their sentence with a milder type of punishment after actually serving the part of the sentence specified in the law; permission to additionally spend money in the amount of up to one thousand five hundred rubles to purchase food and basic necessities (Leheza *et al.*, 2021).

The incentives provided in these countries are almost similar to domestic norms, however, their norms are designed not as encouraging ones (incentives), but faster as empowering or permissive ones. However, the two mentioned Codes contain provisions that resolve the issue of incentive measures applied to persons sentenced to life imprisonment, in contrast to the Criminal Executive Code of Ukraine

Since the legal status of persons sentenced to life imprisonment and imprisonment for a certain period of time in the Republic of Belarus and the Russian Federation is regulated by the same provisions of the law, all incentive measures provided for persons deprived of liberty for a certain period of time shall be applied to life prisoners as well, with the exception of norms, when the law provides for a direct prohibition regarding impossibility of applying a certain type of incentives (Ilina, 2010).

When considering incentive measures, which contain special provisions, we note that an interesting means of influencing a minor is the three-stage system of incentives for convicts developed by the employees of the Heinsberg prison (Germany).

Thus, the first level (initial stage of serving the sentence) is characterized by the fact that a convicted person shall have only a wall-mounted radio receiver in his detention cell. If this convict behaves adequately, that is he does not violate the conditions of detention, studies at school, then he is transferred to the second step. This second step is characterized by the fact a convict shall have the right to have a TV set in his detention cell (at his own expense).

And finally, the third degree provides that a teenager shall have the right to receive a music center and a computer in addition to a TV. If a convict violates the detention regime, he shall be immediately transferred to a lower level, losing the right to have the listed items in his detention cell. The system has a computer variant (program): prison employees only record behavior of convicts, enter the data into the computer, which immediately determines at what stage this or that teenager should stay (Leheza *et al.*, 2022).

In Germany, important incentive and rehabilitation measures for the execution of sentences for convicts consist in mitigation of punishment in accordance with Article 11 of the Law on Execution of Sentences of Imprisonment, which includes performing work outside the executive

institution under supervision and without supervision, leaving the executive institution for a certain time with accompaniment and without accompaniment of an employee of the institution, as well as granting a leave from places of imprisonment in accordance with Article 13 and Part 3, 4 of Article 15 (Law of the Federal Republic of Germany, 1871).

According to § 11 of the Law on Execution of Sentences of Imprisonment, important rehabilitation measures during execution of punishment is granting to convicts the right to work outside the penal institution under supervision and without supervision. This type of employment of convicts has certain positive consequences: personal awareness of the social significance of work performed; possibility of training and professional training outside the institution. Work outside the penitentiary institution is provided only to convicts who have demonstrated their readiness to achieve the goal of serving their sentence (Leheza *et al.*, 2018).

In accordance with Article 137 of the Criminal Executive Code of Poland, such incentives as permission for a meeting with a loved person or a trusted person outside the penitentiary institution for a period not exceeding 30 hours, and permission to leave the penitentiary institution without supervision for a period not exceeding 14 days may be used if the behavior of the respective convict while serving the sentence was such that there is no doubt that being outside the institution this convict will comply with the law and order. It is worth noting that one of the reasons for applying one of the above-mentioned types of incentives consists in the presence of half of the sentence served (Leheza *et al.*, 2022).

Besides the general incentive measures (number of parcels, visits, depending on the person convicted and phase) the Criminal Executive Code of France provides for application of the following incentive measures to convicts serving their sentence in juvenile correctional facilities (in case of their excellent behavior, conscientious attitude to work and study, active participation in the work of amateur organizations):

- 1) granting the right to attend cultural, educational and sports events outside the correctional facility accompanied by employees of this facility;
- 2) provision of the right to leave the juvenile correctional facility accompanied by parents, persons who replace parents, or other close relatives (in the case of minors); 3) early transition from strict conditions of punishment to ordinary conditions, etc., (Leheza *et al.*, 2020).

All these measures can stimulate good behavior of convicts at a high level. The first two measures have a special influence on minors, who generally show interest in cultural, educational and sports events, as well as in visiting other places of entertainment outside their juvenile correctional

facility. The third incentive measure includes exemption from one of the most severe disciplinary penalties.

If convicts are granted the right to attend cultural, educational and sports events outside their juvenile correctional facility accompanied by employees of this facility and the right to leave the facility accompanied by parents, persons who replace parents, or other close relatives, they are provided with civilian clothes.

The duration of going outside the juvenile correctional facility shall be set by the head of the respective facility and cannot exceed 8 hours (Malynyn, 2010). As we can see, the French legislation provides additional incentive measures which promote the re-socialization of persons and their development as individuals, which in its turn compensates for the unembodied psychological aspects in adolescence.

Having analyzed a large array of acts, we can add that the criminal legislation of most European countries provides for the possibility and replacement of an uncompleted part of the punishment, and early release on parole. And in our opinion, the list of incentive measures contained in Article 130 of the Criminal Executive Code of Ukraine should be much larger in order a convicted persons could receive a certain incentive for each positive moment in his/her behavior, and in finally, after proving his/her correction, he/she could be early released on parole (Leheza *et al.*, 2022).

Conclusions

Thus, measures to encourage convicts should be considered as an important component in the legal regulation of the process of execution and service of punishment aimed at stimulating them to law-abiding behavior. Presence of a considerable number of incentive measures contained in the Criminal Executive Code of Ukraine makes it possible to differentiate and individualize them according to certain groups of convicts and types of punishment.

However, the question arises as to the possibility of implementing certain types of incentives, for example, as “granting permission to leave the colony for the purpose of visiting relatives for up to seven days...”, whether the employees of the penal institutions will apply such an incentive, because when releasing a convicted person outside the borders of the penal institution, the employee must be sure that nothing will happen to the convict and he/she will return, since all responsibility for this or that situation lies with the administration.

In foreign legislation the system of various types of measures stimulating law-abiding behavior of convicted persons is clearly regulated; this system

allows to systematically and consistently change conditions of serving punishment from hard ones to soft ones. This system consists of various types of incentives, the content and essence of such incentives differ depending on whether these measures are one-time or permanent (they ease the legal status of convicted persons for a fairly long time)

In general, the system of stimulating the lawful behavior of an imprisoned convicted person should be quite extensive and provide for various types of moral and material stimulation, various opportunities to renew ties with relatives and the society, which will ultimately contribute to the achievement of the goal of punishment within a more optimal period of time. The process of introducing types of incentives into real life and the possibility of adopting certain foreign experience into national legislation deserve a special attention.

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