

## THE INTERNATIONAL LEGAL AND REGULATORY APPROACHES ON PROVISION OF PERSONAL SAFETY OF CONVICTS

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**Summary.** The scientific publication is despite a large number of scientific works, that are devoted to the issues of execution and serving of sentences in the form of deprivation of liberty and, in particular, to the problems connected with provision the right of convicts to personal safety, need an in-depth and comprehensive development of such issues in the designated problem: the meaning of the concept of personal safety of convicts and its system-forming features; the ratio of domestic and international legal acts on the specified theme of research and the task of their harmonization among themselves; other aspects that make up the content of subject matter and the tasks of this scientific development (current state of provision, characteristic features and methods of committing of encroachments on the personal safety of convicts in correctional colonies; features and classification of convicts belonging to the risk groups of probable victims of criminal encroachments in correctional colonies, etc.).

**Key words:** international legal acts, international, covenant, civil, political, rights

### INTRODUCTION

According to international organizations, that are monitoring (in Eng. the monitoring – that, who warns, cautions against, counselor, consultant<sup>1</sup>) of the observance of human rights in places of deprivation of liberty, every year in Ukraine there are frequent cases of cruel, inhuman or degrading treatment by personnel of the State Criminal Service of Ukraine SPSU against convicts<sup>2</sup>. In particular, the reports of the European Committee for the pre-

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<sup>1</sup> *Yurydychna encyklopediya*, v. 6 t., t. III, ed. Yu.S. Shemshuchenko, Ukr. encykl., Kyiv 2001, p. 792.

<sup>2</sup> *Preduprezhdenye pytok v Ukrayne: doklady Komyteta Soveta Evropy po preduprezhdenyyu pytok po ytoham vyzyta v Ukrainu delegacyy Komyteta v 1998, 1999 y 2000 gg. y` otvety Pravytelstva Ukrainy na ety doklady*, ed. 2, Doneczkyj Memoryal, Doneczk 2003, p. 252.

vention of torture have been severely criticized for many aspects of the criminal-executive activities, and also has been noted that the unsatisfactory conditions for the convicts in places of detention, especially in IW, the overcrowding of places of pre-trial detention, many other disadvantages related to the nutrition of prisoners, medical services, and the treatment of them by the personnel of the 28/5000 Ustanova vykonannya pokaran Institution of execution of punishment (IEP) are all an element of such behavior that degrades the treatment of convicts<sup>3</sup>.

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

1) The Universal declaration of human rights, its art. 3 states that every person has the right to personal integrity and art. 5 states that nobody should be subjected to torture or cruel, inhuman or degrading treatment or punishment<sup>4</sup>. The same provisions, in particular, are defined in part 3 of Art. 50 of the CC of Ukraine and part 1 of Art. 1, 10 of CEC of Ukraine;

2) International covenant on civil and political rights, which also is one of the priorities, recognized the right to personal integrity (Article 9) and enshrined the principle of the activity of each state for the prevention of torture and inhuman or degrading treatment with convicts (Article 7, 10, 11, etc.)<sup>5</sup>. A similar provision is reflected in Art. 28 of the Constitution of Ukraine and in Art. 5 of CEC, considering that, as a form of expression of social and moral freedom, the notion of dignity includes the human right to respect, the determination of his rights and unequivocally implies his awareness of duty and liability to society<sup>6</sup>;

3) The Declaration on the rights and duties of Individuals, groups and bodies to encourage and protect generally accepted human rights and fundamental freedoms, in part 1 of Art. 2 of which, it is stated that each state has

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<sup>3</sup> A.P. Bushhenko, *Proty katuvan. Analiz vidpovidnosti ukrayinskogo zakonodavstva ta praktyky standartam i rekomendaciyam Yevropejskogo komitetu zapobigannya katuvanniam ta zhorstkomu povodzhennyu*, Prava lyudyny, Xarkiv 2005, p. 240.

<sup>4</sup> Zagalna deklaraciya prav lyudyny, in: *Prava lyudyny i profesijni standarty dlya pracivnykiv penitenciarnoyi systemy v dokumentax mizhnarodnyx organizacij*, Sfera, Kyiv 2002, pp. 9–12.

<sup>5</sup> Mizhnarodnyj pakt pro gromadyanski ta politychni prava, in: *Prava lyudyny*, pp. 13–23.

<sup>6</sup> *Filosofskij slovnyk*, URE, Kyiv 1973, p. 600.

a primary responsibility and duty to protect, encourage and exercise all human rights and fundamental freedoms, in particular by taking such measures as may be necessary to create all the necessary conditions in the social, economic and political, as well as in other areas and legal safeguards, that are necessary to ensure that all persons under its jurisdiction, individually and jointly with others, are able to enjoy all these rights and freedoms in practice<sup>7</sup>;

4) A set of principles for the protection of all persons who are subjected to detention or imprisonment in any form, in the principles 1, 3, 4, 6, and etc. of which, it is determined that the legal mechanisms and guarantees for the implementation by these individuals the right to personal safety<sup>8</sup>;

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

6) The code of conduct for officials in the maintenance of law and order, its art. stipulates that during the performance of their duties specified persons respect and protect human dignity, support and protect human rights in relation to all persons<sup>10</sup>;

7) Other international legal acts related to the regulation in the sphere of activity of serving of sentences<sup>11</sup>.

At the same time, the legal sources directly related to the official activity of personnel of the correctional colonies are of primary importance. In particular, in Art. 5 of the Code of Conduct for the officials in the maintenance

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<sup>7</sup> Deklaracyya o prave y obyazannosti ot delnykh lytzh, grupp y organov obshchestva pooshhryat y zashhyshhat obshhepry znanye prava cheloveka y osnovnye svobody, in: *Prava lyudyny*, pp. 29–33.

<sup>8</sup> Zvid pryntypiv zaxystu vsix osib, shho piddayutsya zatrymannyu chy uvyaznennyu u budyakij formi, in: *Prava lyudyny*, pp. 34–40.

<sup>9</sup> Osnovnye pryntypy pryomenenyya syly y ognestrelnogo oruzhyya dolzhnostnymy lytzhamy po podderzhanyu pravoporyadka, in: *Prava lyudyny*, pp. 40–45.

<sup>10</sup> Kodeks povedinky posadovykh osib u pidtrymanni pravoporyadku, in: *Prava lyudyny*, pp. 78–81.

<sup>11</sup> Pryntypy efektyvnogo rozsliduvannya i dokumentatsiyi katuvan ta inshogo zhorstokogo, nelyudskogo abo takogo, shho pryntzhuje gidnist, povodzhennya abo pokarannya: rekomendovani Rezolyuciyeyu Generalnoyi Asambleyi OON vid 4 grud. 2000 r., No. 55/89, in: *Prava lyudyny*, pp. 202–206.

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

#### 1. SEPARATE ELEMENTS AND GUARANTEES OF PROVISION OF PERSONAL SAFETY OF CONVICTS IN CORRECTIONAL COLONIES

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

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

In the same context, other international legal acts of human rights and citizen were formed, that constitutes a methodological basis both for the analy-

sis of existing problems in domestic law-enforcement practice and for the development of scientifically grounded measures, which are aimed at improving the efficiency of activity to ensure the right of convicts to the personal safety in the correctional colonies of Ukraine. These include, in particular, the Principles of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment, that have been recommended by Resolution of General Assembly 55/89 of 4 December 2000<sup>12</sup>.

In the specified context, the Council of Europe's legal and regulatory acts have also formulated. In particular, in the European convention on human rights (so-called "Rome convention"), adopted on November 4, 1950, the preamble states that the purpose of the Council of Europe is to achieve unity between its members and that one of the methods, which achieves this goal, is the observance and further exercise of rights and fundamental freedoms of human<sup>13</sup>. The mechanism for the implementation of specified principal is defined in the relevant articles of the Convention, namely: 1) in part 1 of Art. 2, which states that no one can be deliberately deprived of life other than by the execution of a court judgment, which is rendered after confessing her guilty of committing a crime for which such punishment is provided by law; 2) Art. 3 – no person shall be subjected to torture, inhuman or degrading treatment or punishment; 3) part 1 of Art. 5 – every person has the right to liberty and personal integrity. No person can be deprived of liberty other than before the procedure, which is established by law; 4) Art. 17 – nothing in this Convention may be construed as conferring any State, group or person the right to engage in any activity or to commit any action, which is aimed at elimination any rights and freedoms, that are set forth in this Convention or at limiting them to a greater extent than is provided for in the Convention, etc.

Separate elements and guarantees of provision of personal safety of convicts in correctional colonies also contain documents of the World medical association, the main leitmotif of which is expressed as follows: "Currently, only the doctor can register the torturing. Doctors who work in the public service must deliberately confront the tendency of biased generalizations and assessments, which is typical of state institutions. The doctor should not be

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<sup>12</sup> *Ibidem*.

<sup>13</sup> *Prava cheloveka y predvartelnoe zaklyuchenye: sbornik mezhdunarodnykh standartov, kassyushhysya predvartelnogo zaklyuchenyya*, Konsum, Xarkiv 1997, p. 124.

interested in the results of service or court proceedings. Only in this way the doctor can speak up for defense of the truth and fulfill his professional duty to provide medical care without becoming a defender of one or the other party”<sup>14</sup>.

## 2. PROBLEMS, THAT ARE ASSOCIATED WITH PROVISION THE RIGHT OF CONVICTS TO PERSONAL SAFETY IN CORRECTIONAL COLONIES

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

1) those that are determined (bonds that include different functions and dependence: causing, mediation and conditioning)<sup>15</sup> by the objective disparity in the content of the terms and concepts used in domestic and international law;

2) the lack of proper public control over the activities of correctional colonies due to the uncertainty in the legislation of Ukraine of the relevant legal mechanisms and guarantees of their implementation<sup>16</sup>;

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

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<sup>14</sup> Pryncypy efektyvnogo rozsliduvannya i dokumentaciyi katuvan ta inshogo zhorstokogo, nelyudskogo abo takogo, shho prynyzhuye gidnist, povodzhennya abo pokarannya: rekomendovani Rezolyuciyeyu Generalnoyi Asambleyi OON vid 4 grud. 2000 r., No. 55/89.

<sup>15</sup> A.P. Zakalyuk, *Kurs suchasnoyi ukrayins`koyi kry`minologiyi: teoriya i prakty`ka*, vol. I: *Teorety`chni zasady` ta istoriya ukrayins`koyi kry`minologichnoyi nauky*, In Yure, Kyiv 2007, p. 424.

<sup>16</sup> S. Xutorna, *Gromadskyj vplyv yak zasib vypravlennya i resocializaciyi zasudzhenyx u vpravnyx koloniyax serednogo rivnya bezpeky*, in: *Derzhavna penitenciarna sluzhba Ukrainy: istoriya sгодennya ta perspektyvy rozvytku u svitli mizhnarodnyx penitenciarnyx standartiv ta koncepciyi derzhavnoyi polityky u sferi reformuvannya Derzhavnoyi kryminalno-vykonavchoyi sluzhby Ukrainy: materialy mizhnar. nauk.-prakt. konf. (Ky`yiv, 28–29 berez. 2013 r.)*, DPtS Ukrainy, VD Dakor, Kyiv 2013, pp. 517–519.

the manner defined by the Constitution of Ukraine and Art. 5 of CEC of Ukraine;

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

As for the first group of problems, it should be noted that in the analyzed and other international legal acts is not used the term “personal safety”, as in the domestic law (Article 3 of the Constitution of Ukraine, Article 10 of the CEC, Article 47 of the CPC, etc.), but it is used the term “personal inviolability”, which, in our opinion, can not be equated fully. In particular, under the inviolability in science understand the guarantee from any encroachment on the part of anyone. At the same time, only the right of a convict of personal safety is enshrined in the current Ukrainian legislation, but the real mechanisms and guarantees of its implementation are not defined, which has become an additional argument in the choice of the theme of this dissertation study. This conclusion on this problem was made by other scientists<sup>17</sup>.

Undoubtedly, making changes to Art. 10 of CEC in this regard is obvious, taking into account the principle of priority of international legal norms, which is defined in the Law of Ukraine “On international treaties” and the decree of the president of Ukraine “On the plan of measures of carrying out the responsibilities and obligations of Ukraine stemming from its Membership in the Council of Europe” dated January 20, 2006, No. 39/2006<sup>18</sup>.

In turn, the content of the second group of problems is related not only to the lack of definition at the legal level of the concept of “public control in institutions of serving of sentences”<sup>19</sup>, but also to the proper principles of its implementation<sup>20</sup>. In addition, as V.M. Trubnykov rightly notes, in the scientific literature, along with the term “control”, there are such concepts as

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<sup>17</sup> O. Kolb, *Pro zmist prava zasudzheny`x na osoby`stu bezpeku*, in: *Aktualni problemy kryminologichnoyi polityky v Ukrayini: materialy mizhvuz. nauk.-teoret. konf. (Kyiv, 25 kvit. 2012 r.)*, eds. O. Kolb, I. Kolb, Nacz. akad. vnutr. sprav., Kyiv 2012, pp. 215–219.

<sup>18</sup> Pro Plan zaxodiv iz vykonannya obovyazkiv ta zobov'язan` Ukrayiny, shho vplyvayut z yiyi chlenstva v Radi Yevropy: zatv. Ukazom Prezydenta Ukrayiny vid 20 sich. 2006 r., No. 39/2006, “Oficijnyj visnyk Ukrayiny” 2006, No. 4, p. 143.

<sup>19</sup> S. Xutorna, *Gromadskyj vplyv yak zasib vypravlennya*, pp. 517–519.

<sup>20</sup> Konvenciya proty katuvan ta inshyx zhorstokyx nelyudskyx, abo takyx, shho prynyzhuyut gidnist vydiv povodzhennya i pokarannya, in: *Prava lyudyny*, pp. 45–52.

“monitoring”, “controlling”, etc., which only complicate the specified problem<sup>21</sup>.

The problems of the third group largely arise from the fact that in a number of cases, social relations in the field of serving sentences are regulated not by normative and legal acts, which form the meaning of the term “legislation” and follow from part 2 of Art. 19 and paragraph 12 of Art. 92 of the Constitution of Ukraine, according to which state authorities (in particular, the SPSU) and local self-government bodies and their officials are obliged to act only on the basis, within the limits of authority and in the manner that are prescribed by the Constitution and laws of Ukraine<sup>22</sup>.

The scientists (A.Kh. Stepanyuk and I.S. Yakovets) are paying attention to these groups of problems, reasonably considering that the system of criminal-executive legislation of Ukraine needs the harmonization and the refinement<sup>23</sup>. As for the fourth group of problems related to the implementation of international legal requirements in terms of ensuring personal integrity by the forces, forms and means of the OIA, their content and ways to solutions will be analyzed in a separate section of this dissertation.

However, let’s consider some of them. In particular, the so-called operative and investigative control over the activity of personnel of correctional colonies deserves attention. The Article 1 of the law of Ukraine “On operative and investigative activity” stipulates that the tasks of the OIA are to search for and fixation factual data about unlawful actions of individuals and groups, responsibility about which is provided by the CC of Ukraine, as well as obtaining information in the interests of the safety of citizens, society and the state.

In Art. 104 of CEC of Ukraine one of the main tasks of the OIA is also the provision of the safety of convicts and the detection, prevention and disclosure of crimes committed in the colonies, as well as of violations of the established order of serving sentences, that is, by the form of Art. 1 of the Law “On operative and investigative activity” and Art. 104 of CEC are coincided. At the same time, the content of the terms that have been taken by the legislator has a restrictive (narrowed) character of the activity of correctional

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<sup>21</sup> V. Trubnykov, *Pravove reguluvannya kontrolyu za osobamy, yaki perebuvaют na obliku kryminalno-vykonavchoyi inspekciyi*, “Naukovyj visnyk Instytutu kryminalno-vykonavchoyi sluzhby” 2 (2) 2012, pp. 84–91.

<sup>22</sup> *Aktualni problemy konstytucijnogo prava Ukrainy*, ed. A. Olijnyk, Skif, Kyiv 2012.

<sup>23</sup> A. Stepanyuk, *Systema kryminalno-vykonavchogo zakonodavstva potrebuye uzgodzhennya ta doopracyuvannya*, “Problemy penitenciaranoi teorii i praktyky” 10 (2005), pp. 290–302.



colonies, since it only concerns the provision of the safety of the convicts and not the prevention of torture, etc., which also constitutes the meaning of the concept of “inviolability”, which is used in the norms of international law and relates only to the process of execution, and not the serving a sentence.

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

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

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

That is why one of the tasks of the OIA, that are defined in Art. 104 of CEC of Ukraine, there should be activity of operational units of correctional colonies not only for provision personal safety, but also the prevention of torture and other forms of inhuman treatment of convicts. But this is possible only if the legislator determines the task of detecting violations of the established order not only serving, but also the sentence. Such a conclusion follows, in particular, from the contents of the terms “serving” and “execution” of the sentence. In particular, the serving of sentence in science is understood as to be ensured the legal status of a convict by state coercion and the status occurs after the sentence legally entered into force and it lies in subordinate the behavior of the convict by the restriction of the rights and freedoms, that are provided for in the CC of Ukraine. In its turn, the execution of the punishment consists in the application by the personnel of correctional colonies of state coercive against the convict, that is, in the procedure of limiting their rights and freedoms, which are the content of punishments, defined by the CC of Ukraine. That is why (and this is proved by practice) the object of criminal-executive activity is a two-track process of execution – serving a sentence.

Thus, the changes in the content of operative-search prevention of crimes and offenses in correctional colonies are objectively predetermined. As the scientists rightly point out, competent, skillful, based on the law the applica-

tion of operational-search facilities by operational officials, of transparent and covert measures and methods will provide an opportunity to more fully identify, verify, and evaluate facts and individuals, which constitute operational interest; more promptly and purposefully interfering with the course of events in order to prevent crimes that are going to prepare and commit; to detect and detain criminals; to identify and maintain evidence that are relevant to criminal proceedings.

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

### 3. EXPERIENCE OF OTHER STATES IN DESIGNATED PROBLEM

In this regard, the experience of other states in this area is interesting in designated problem. At the same time, the legislations of foreign countries are gradually brought in line with the requirements of norms of international law, although there are certain obstacles to the implementation of international rules and standards for treatment of convicts, including those related to the provision of their personal safety, that may include: lack of sufficient state funding, overcrowding of the IES, insufficient number of personnel of the colonies and low level of their professional readiness, etc. In addition, the implementation of international standards is, to varying degrees, complicated by all countries almost: an economic downturn and related with it limitation of material and financial resources constraints; an increase in the level of crime, accompanied by an increase in “punitive claims” and an increase in the number of convicts; an increase in the level of drug addiction and HIV/AIDS; an aggravation of cross-national and inter-ethnic conflicts; the deterioration of relations between convicts and personnel of the IES, the fall in the prestige of professional criminal-executive activity.

As foreign researchers rightly consider, probably, no system of serving of sentences can fully meet at least to minimal requirements, which are set out in the Minimum standard rules, and some of them are far from even this. In

addition, as Yu.A. Alfyorov rightly pointed out, the question of preventing torture and latent violence in places of deprivation of liberty is relevant to all states to some extent. The providing the convicts with paid work, legal protection, and providing them with social and rehabilitation assistance after their release. That is why, in the CEC of the Russian Federation (part 4 of Article 3), contains a provision about that the recommendations (declarations) of international organizations of the issues of the execution of sentences and treatment of convicts is implemented in the criminal-executive legislation of Russia of in the presence of the necessary economic and social opportunities.

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

At the same time, the Concept of legal policy of the Republic of Kazakhstan suggests that criminal legislation should take into account the definition of primary and inalienable of human rights and freedoms as the highest social values protected by law. At the same time, as the scientists rightly point out (M.V. Paliy, E.N. Begaliyev, Ye.S. Nazymko, etc.), the historical experience and practice prove that criminal penalties and their system are in close interrelation and interaction with specific conditions and an era, with the general principles of life of society, with its social and political order, with moral and ethical and legal views, with customs and habits, as well as with ideological stereotypes that exist in society.

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

In Germany, imprisonment and disciplinary arrest for minors and the systems of their trusteeship education are separated by one another, that is, if a decision on imprisonment or a disciplinary arrest was taken by a juvenile court, then about trusteeship education – the trusteeship courts of social assistance.

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

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

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

All these and other positive points in the legislation and in the practical activity of foreign countries, without doubt, should be taken into account, with taking measures on the formation and implementation criminal-executive policy of Ukraine. How in this context, researchers note, despite the fact that current criminal-executive legislation of Ukraine, in most cases, meets international standards, the actual conditions for the keeping of convicts in the IES have significant divergences with international standards of treatment and the keeping of convicts, including issues, that are related to the provision of their personal safety. Thus, it is worth recognizing that a rather complex and lengthy process of reforming the SPSU is ahead, changing priorities in criminal-enforcement policy so that conditions for the holding of convicts not only prevent them from committing new crimes and criminal infringements on other convicts, restrain their degradation, as well as meet the requirements of modernity, including the international legal character, for provision their personal safety.

The specified conclusion is based not only on the positive successes received in this direction abroad, but also on the results of an anonymous survey of convicts sentenced to imprisonment and the personnel of some IES of Ukraine. In particular, the question “Are you familiar with other legal and

regulatory sources on issues that are connected with the right of convicts to personal safety?" (it was about international legal acts), 12.67% of those polled among number of convicts answered "no" (supplement B.4).

Among the personnel of the IES on this question, the answers were distributed as follows: "no" – 3,47 % of respondents and "partially" – 32,13% (supplement B.6).

## CONCLUSIONS

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

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

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

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

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

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

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

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

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

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

3. An Article 2 of the CEC of Ukraine should be supplemented by the part 2 with following content: “The recommendations (declarations) of international organizations on the issues of the execution of sentences and treatment of convicts are implemented in the criminal-executive legislation of Ukraine in the presence of the necessary financial, economic, material and other social opportunities”.

In particular, such modification is resulted from:

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

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

– the content of part 2 of Art. 102 of CEC of Ukraine “The regime in the colonies and its main requirements”, according to which the regime in the colonies should minimize the difference between living conditions in the colony and in freedom, that should contribute to increasing the responsibility of convicts for their behavior and awareness of human dignity.

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#### MIĘDZYNARODOWE PODEJŚCIE PRAWNO-NORMATYWNE CO DO ZAPEWNIENIA BEZPIECZEŃSTWA OSOBISTEGO SKAZANYCH

**Streszczenie.** Publikacja naukowa, bez względu na znaczną liczbę prac naukowych poświęconych zagadnieniom wykonywania i odbywania kary w postaci pozbawienia wolności, w tym problemom związanym z zapewnienia skazanym bezpieczeństwa osobistego, pogłębia rozwój następujących zagadnień: pojęcie koncepcji bezpieczeństwa osobistego skazanych oraz jej cechy systemowo-kształtujące; stosunek wewnętrznych i międzynarodowych aktów prawnych z omawianego zakresu badawczego i uzgodnienie ich między sobą; inne aspekty stanowiące treść przedmiotu i zadania wyznaczone do tego badania naukowego (współczesny stan zabezpieczenia, cechy charakterystyczne i metody ingerowania w bezpieczeństwo osobiste skazanych w zakładach karnych, osobliwości oraz klasyfikacja skazanych należących do grupy ryzyka prawdopodobnych ofiar przestępczego ataku w zakładach karnych, itd.).

**Słowa kluczowe:** międzynarodowe akty prawne, międzynarodowe, umowne, społeczne, polityczne, prawa