

CONCERNING THE CONTENT  
OF PERSONNEL'S INSTITUTIONS  
OF UKRAINE'S PENALTIES  
AND RELIGIOUS ORGANIZATIONS ON PREVENTION  
OF APPLICATIONS OF FORCE TO THE PROTECTED

Ivan Kolb

Department for Supervising the Observance of Laws in the Execution of Criminal Penalties  
and Probation of the Prosecutor's Office of the Kiev Region

**Summary.** The article analyzes the state of interaction of religious organizations and personnel of penitentiary institutions on the issues of preventing the use of force against convicts, establishes the most problematic aspects of the identified problem of research, as well as developed scientifically grounded ways and proposals for their solution and improvement of the legal mechanism in this direction.

**Key words:** interaction, coordination, religious organization, penitentiary personnel, condemned, prevention, physical strength, special means, scope of punishment, criminal-executive activities

INTRODUCTION

**Formulation of the problem.** According to the practice of criminal-executive activity of the personnel of the penitentiary institutions of Ukraine, annually, these subjects apply to the convicts the means of harassment specified in the law (physical force and special means, as well as, sometimes, weapons), which often leads to emergency adventures and other resonance Consequences in the field of execution of punishment. At the same time, despite the fact that such activity and its legal principles are clearly defined in the Criminal-Executive Code of Ukraine (in particular, in Article 106), beginning in 1991 from now on<sup>1</sup>, the quantity and the structure of the use of these means of curtailing the convicts is unchanged, which indicates a low

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<sup>1</sup> *On activities of the units of protection, supervision and fire safety of penitentiary institutions in 2016: inform. Bullet*, Ministry of Justice of Ukraine, Kyiv 2017.

level of prevention of these phenomena and processes, as well as on the psychological and generally non-preparedness of personnel actions in extreme conditions.

In this context, as established in the course of special scientific research<sup>2</sup>, religious organizations and their authorized representatives play an important role in shaping the corresponding psychology and behaviour of the personnel of the institutions for the execution of sentences and convicts, and in particular the content of their legal relations. In particular, conducting in accordance with Art. Art. 128,128-1, the CEC of Ukraine, worship and other religious ceremonies, as well as pastoral care, clergymen thus positively affect the moral and psychological state of both the first and other objects of religious influence, reducing aggressiveness, distrust and conflict in the relationship.

At the same time, as the results of this study have shown, this state of affairs is still in an unsatisfactory way, especially as regards the interaction of personnel of penitentiary institutions and religious organizations on the impact of the latter on the legal consciousness of the former, with the aim of solving existing problems of criminal-executive activity, not by force methods and means, and verbal forms, methods, and methods that are taking place in practice at the present time.

Consequently, there is a complex application problem that needs to be resolved, including at the theoretical level.

It is these circumstances that led to the choice of the subject of this scientific article and defined its main task, namely, on the basis of the analysis of the state of interaction between religious organizations and the personnel of the penitentiary institutions on the application of force to the convicts to develop scientifically grounded measures to eliminate the problems in practice, and as well as improving the legal mechanism on these issues.

**State of research.** The study of scientific literature shows that the issue of preventing the use of force against convicts is a constant subject of research in the works of I.G. Bohatyriov, O.G. Kolb, V.V. Lopoha, S.Yu. Lukashevich, O.A. Martynenko, M.V. Tarasov and other scholars who, in particular, monitored the crimes committed by the personnel of penitentiary bodies and institutions during the period from 1991 to 2014 inclusive. In addition, in none of these scientific researches this problem was comprehensively

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<sup>2</sup> *Features of the spiritual upbringing of convicts and the personnel of the State Criminal-Executive Service of Ukraine: teach. manual*, ed. M.O. Suprun, Atika, Kyiv 2016.

studied, but the subject of the investigation was either the unlawful aspects of the activity of the personnel of the penal institutions, or the criminal behaviour of the staff of the Department of Social Security.

That is why one of the peculiarities of this research and, at the same time, its task is to monitor the interaction of personnel of the penal institutions of Ukraine and religious organizations on the prevention of the use of force against the convicts.

### STATEMENT OF THE MAIN PROVISIONS

In scientific literature, the interaction is understood as the mutual relationship between objects in action, as well as the concerted action between someone, something<sup>3</sup>. As practice shows, this term is widely used in theory and in social activity, since it reflects the nature of nature and the participation of various actors and actors in solving the problems facing them. However, as O.G. Kolb established, despite the prevalence of the use of the concept of “interaction”, to this day there is no general definition of it<sup>4</sup>. Thus, linguists interpret the word “interaction” as a co-operation, co-operation, a mutual relationship between objects in action, and a concerted action between someone<sup>5</sup>.

In the broadest sense, “interaction” acts as a philosophical category, which reflects the process of influence of objects on each other, their mutual conditionality and the generation of one object of another<sup>6</sup>. In this interaction acts as an objective and universal form of motion, development, which determines the existence and structural organization of any material system. Moreover, without the ability to interact, matter could not exist<sup>7</sup>.

Modern philosophy recognizes interaction as a concept for the purpose of influencing things one by one and for mapping the relationships between different objects and for characterizing the forms of human existence, human

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<sup>3</sup> T.V. Kovaleva, *Great explanatory dictionary of the Ukrainian language*, Folio, Kharkov 2005, p. 57.

<sup>4</sup> V.P. Zakharov, O.G. Kolb, S.M. Myronchuk [et al.], *Organization of individual prevention of crimes in the criminal-executive institution: Monograph*, 2nd form: *Processing*, P-th Iva-nyuk V.P., Lutsk 2007, p. 285.

<sup>5</sup> *New Explanatory Dictionary of the Ukrainian Language*, t. I, View “Aconit”, Kyiv 2003, p. 259.

<sup>6</sup> *Philosophical dictionary*, ed. I.T. Frolova, 6th ed., Politizdat, Moscow 1991, col. 65.

<sup>7</sup> V.P. Zakharov, O.G. Kolb, S.M. Myronchuk [et al.], *Organization of individual prevention of crimes*, p. 285–286.

activity and knowledge<sup>8</sup>. In this case, the concept of “interaction” captures the direct and inverse effects of things, it covers the direct and indirect relations between objects and systems. Such a definition of interaction is comprehensive and is used to reflect any processes and forms of manifestation of consciousness, including criminal-executive relations<sup>9</sup>.

In the narrow sense in law enforcement, the term “interaction” means ordering, interconnection, and coordination<sup>10</sup>, that is, as O.G. Kolb rightly pointed out, the process of interdependent, coordinated activity of various subjects<sup>11</sup>.

As shown by the results of special scientific studies, the indicated relationship or mutual actions are possible in the presence of certain conditions, namely:

a) at least two subjects must participate in the interaction

This means that each participant must clearly understand that he is the subject of interaction and performs the functions assigned to it together with another subject<sup>12</sup>,

b) the general purpose and objectives for all participants of the interaction should be outlined (defined, approved, etc.)

Their dissociation, as practice shows, leads to the loss of the content of interaction<sup>13</sup>.

The mentioned methodological approaches were used in this work in clarifying the current state of interaction between religious organizations and the State Criminal-Executive Service of Ukraine on issues of ensuring the right of convicts to imprisonment for freedom of outlook and religion. In particular, based on the results of the analysis of the content of doctrinal sources, we will deduce the following definition of the concept of “the interaction of religious organizations and bodies and penal institutions to ensure the constitutional right of prisoners to imprisonment for the freedom of worldview and religion”, which should be understood as regulated at the regulatory level activity of the indicated subjects, which is agreed upon bet-

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<sup>8</sup> *Modern philosophy. Dictionary and textbooks*, ed. V.P. Kokhanovsky, Phoenix, Rostov-na-D. 1995, p. 65.

<sup>9</sup> V.P. Zakharov, O.G. Kolb, S.M. Myronchuk [et al.], *Organization of individual prevention of crimes*, p. 286.

<sup>10</sup> *Soviet Encyclopedic Dictionary*, Sov. Encyclopedia, Moscow 1986, p. 626.

<sup>11</sup> V.P. Zakharov, O.G. Kolb, S.M. Myronchuk [et al.], *Organization of individual prevention of crimes*, p. 286.

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

<sup>13</sup> *Ibidem*.

ween them by objects, objects, tasks and directions of cooperation and aimed at achieving the general goal as a whole in punishment, and the purpose of the pastoral care of the convicted, in particular.

### SYSTEM-FORMING FEATURES

#### **1. This is organized at the regulatory level of activity**

In this case, first of all, the following legal sources are discussed: a) the Law of Ukraine “On Freedom of Conscience and Religious Organizations” (directly related to the interaction is Article 21 “Religious Rites and Ceremonies”, in which it is stated, that worship and religious ceremonies in the places of pre-trial detention and serving of punishment are carried out at the request of citizens who are in them, or on the initiative of religious organizations. The administration of the said institutions contributes to this, participates in determining the time and other conditions for worship, rite or ceremony); b) KVN (Article 128, 128-1); c) subordinate normative-legal sources (for example, the Agreement on cooperation between the Ukrainian Orthodox Church and the State Department of Ukraine on the Execution of Sentences<sup>14</sup>; DD UDC dated August 11, 1999, No. 5 / 1-101 “On Measures to Interact with Religious Organizations for questions of their participation in the spiritual upbringing of persons held in institutions of the criminal-executive system”<sup>15</sup>; the order of the Ministry of Justice of Ukraine dated 16 May 2016 “On approval of programs of differentiated influence on convicts”<sup>16</sup>, etc.).

Of course, in this list, the Constitution of Ukraine (Article 35) and the international legal acts, discussed in section 1.3, are the priority. This study (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Optional Protocol to the International Covenant on Civil and Political Rights, etc.).

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<sup>14</sup> Agreement on cooperation between the Ukrainian Orthodox Church and the State Department of Ukraine on the Execution of Sentences dated November 25, 1999, operative-service and production-economic activity of penitentiary organs and institutions of Ukraine in 1999, DDUPUP, Kyiv 2000, p. 29–30.

<sup>15</sup> On measures to interact with religious organizations on their participation in the spiritual education of persons held in institutions of the criminal-executive system: the direction of the State Department of the Interior on August 11, 1999, No. 5/1-101, DDUPVP, Kyiv 1999.

<sup>16</sup> On approval of programs of differentiated influence on convicts: the order of the Ministry of Justice of Ukraine dated May 16, 2016, No. 1418/5, in: <http://old.minjust.gov.ua/news/48539> [accessed: 14.03.2018].

## **2. The indicated activity is carried out by clearly defined subjects**

Such as it follows from the content of Part 7 of Art. 128 CEC of Ukraine, there are only representatives of those religious organizations that are officially registered in accordance with the procedure established by law.

The procedure for registration of religious organizations is defined in the Law of Ukraine “On Freedom of Conscience and Religious Organizations” (Articles 12-14) of this Law, for registration and statute (regulation) of a religious community citizens in the number of not less than ten persons who formed it and reached 18 years old, submit an application and the statute (regulation) for registration to the regional, Kyiv city state administration.

The body that registers, within a month’s time, examines the application, statute (position) of a religious organization, takes a decision and notifies the applicants in writing within ten days at the latest. In cases of necessity, the body which registers the statutes (regulations) of religious organizations may require the conclusion of the local state administration, the executive body of the village, settlement, city council, as well as specialists. In this case, the decision to register the statutes (regulations) of religious organizations is made within a three-month period.

Another intermediary is the administration of the colony (Part 3 of Article 128 of the Criminal Code) and the administration of other penitentiary institutions (Part 6 of Article 128-1 of the Criminal Code), as well as territorial penal organs and the central executive body, which implements the state policy in the field of execution of criminal penalties.

In accordance with Part 1 of Art. In the present case, 11 KVN, the penal institutions, in this case, include: the central executive body, which implements the state policy in the field of execution of sentences, and its territorial authorities.

Institutions for the enforcement of sentences, in turn, include: criminal-executive agencies; special educational institutions (educational colonies); investigative isolation units in cases provided for by the Criminal Code (Part 2 of Article 11 of this Code).

The notion of the term “administration of the colony (penitentiary institution)” is absent in the current criminal-executive legislation of Ukraine.

In scientific sources, the administration understands the governing body of an institution, organization, enterprise, etc.; persons managing the institution, enterprise, etc.<sup>17</sup>

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<sup>17</sup> T.V. Kovaleva, *Great explanatory dictionary*, p. 12.

In paragraph 3 of the resolution of the Plenum of the Supreme Court of Ukraine of March 26, 1993, No. 2 “On judicial practice in cases of crimes connected with the violation of the regime of serving sentences in places of deprivation of liberty”, the following explanation is given to the term “administration of a place of deprivation of liberty” – these are officials who, on the basis of Art. 135 KVK of Ukraine enjoy the right to apply measures to encourage and enforce convicts, as well as regular assistants of colonial mentors and other persons of the commanding staff, persons carrying out medical care in the places of detention, cultural and educational work, general and vocational training of convicts, administrative and the engineering and technical staff of penitentiary institutions<sup>18</sup>.

In addition, in the context of the problem under consideration, one should pay attention to another one defined in the law of the subject of activities related to ensuring the rights of convicts to freedom of opinion and religion, namely, to an advisory body established under the central executive body, which implements state policy in the field of execution of criminal penalties, which includes representatives of interested religious churches and departments, the statute (regulations) of which is registered in accordance with the procedure established by law (Part 2 of Article 128-1 of the Criminal Code).

According to the provision according to which this advisory body acts, on the one hand, it requires the function of interaction with other public, including religious, organizations, including abroad, and, on the other hand, coordinates activities of subjects that provide worship, religious ordinances and organization of the pastoral care of the convicted (discussed above).

In scientific sources, under coordination, is understood as consent, reduction to conformity, establishment of interconnection, contact in the activities of people, between actions, concepts, etc.<sup>19</sup>

In a more narrow sense, coordination is considered to coordinate the activities of various parts of the state apparatus, institutions and organizations for solving their tasks<sup>20</sup>. At the same time, in contrast to the interaction, the

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<sup>18</sup> On judicial practice in cases concerning crimes connected with violation of the regime of serving sentences in places of deprivation of liberty: the resolution of the Plenum of the Supreme Court of Ukraine of March 26, 1993, No. 2, in: V.V. Rozhnov, A.S. Sizonenko, L.D. Udalova, *Resolution of the Plenum of the Supreme Court of Ukraine in criminal cases*, Publisher A.V. Palivoda, Kyiv 2011, p. 103–110.

<sup>19</sup> T.V. Kovaleva, *Great explanatory dictionary*, p. 296.

<sup>20</sup> V.P. Zakharov, O.G. Kolb, S.M. Myronchuk [et al.], *Organization of individual prevention of crimes*, p. 290.

coordination relationship is inherent not direct, but indirect and multi-valued determination of elements<sup>21</sup>. That is why there is no sign of equality between coordination and interaction, as the first one is the function of one of the subjects of the system, and the second is the principle of activity, the means of contacts with the subjects of other systems. Moreover, coordination, unlike interaction, contains an element of subjugation of the will of the coordinating body of the system, which directs autonomous activity to fulfil the general tasks assigned to the performers<sup>22</sup>.

Thus, it must be recognized that today the advisory body at the Ministry of Justice of Ukraine has a dual role and serves both as a subject of interaction and as a subject of coordination of activities to ensure the right of convicts to imprisonment for freedom of opinion and religion.

### **3. The interaction of these entities is coordinated in an activity**

To agree means to match to something; to establish conformity, unity between something<sup>23</sup>.

The substantive elements, harmonization of the activities of religious organizations in the field of execution of sentences are defined in the normative legal acts regulating the issues of worship, religious rites and the organization of pastoral care of the convicted. So, in part 7 of Art. 128-1 KVK in this regard states that clergy (chaplains) should visit penitentiary institutions to carry out activities for the pastoral care of the past under a special permission of the administration of such institutions in advance agreed with the administration of the institution time. And in Part 3 of Art. 128 KVN in this regard indicates that the administration of the colonies promotes the invitation of clergy, participates in determining the place and other conditions for worship, rite or ceremonies.

The relevant elements of interaction are also defined in the Agreement on cooperation between the Ukrainian Orthodox Church and the State Department of Ukraine on the Execution of Sentences (assistance in equipping the premises for the implementation of prayers and religious ceremonies in the Department of the Interior, providing assistance in the creation of libraries of

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<sup>21</sup> *Ibidem*.

<sup>22</sup> G.O. Dusheyko, *Some aspects of improving the organization of interaction between investigators and inquiries in the process of disclosure of crimes*, "Bulletin of the Zaporizhzhya Law Institute" 2 (1998), p. 139.

<sup>23</sup> T.V. Kovaleva, *Great explanatory dictionary*, p. 691.



spiritual literature, the participation of clergy in seminars on spiritual education of staff UVP, etc.)<sup>24</sup>.

#### **4. The said activity is coordinated according to the objects, subject, tasks and directions of cooperation**

In the theory of law under the object of legal relationship is understood as the material or immaterial benefit, from the time of reception, transmission or use of which the subjects enter into a legal relationship<sup>25</sup>. In this case, the object of legal relations that arise between religious organizations and the administration of the institutions of execution of punishment is the right of the convicted persons to be deprived of liberty for a certain period of time on the constitutional level and in other laws, on the freedom of world outlook and religion (Article 35 of the Constitution of Ukraine; 128 KVK, etc.).

In scientific literature, the subject of legal relations refers to things of the material world, protected by the rules of law<sup>26</sup>. In the investigated situation, the subject of interaction is the activity of religious organizations and administration of penitentiary institutions aimed at satisfying the religious needs of convicts and their spiritual upbringing (Part 1 of Article 128-1 of the Criminal Code).

Under the task in science, understand the predetermined, planned workload, work, etc., etc.; the purpose to which they seek; those that want to achieve. In the interaction of religious organizations and administration of penitentiary institutions, the unifying tasks of these subjects of the legal relationship are those arising from their statutory tasks (respectively, the tasks defined in Article 1 of the Law of Ukraine “On Freedom of Conscience and Religious Organizations” as well as those which are enshrined in Part 2, Clause 1 of the Criminal Code), are common to them, namely, the guaranteed right of the convicts, as well as their protection and protection of the legitimate interests of these persons.

In scientific literature, in the direction understood by the way of activity, the development of someone, something; orientation of some action, pheno-

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<sup>24</sup> Agreement on cooperation between the Ukrainian Orthodox Church and the State Department of Ukraine, p. 29–30.

<sup>25</sup> O.V. Petryshin, S.P. Pogrebnyak, V.S. Smorodinsky [et al.], *The theory of state and law: under the arm*, ed. O.V. Petryshin, Right, Kharkov 2014, p. 237.

<sup>26</sup> T.V. Kovaleva, *Great explanatory dictionary*, p. 500.

menon, orientation of thoughts; interests<sup>27</sup>. The main areas of interaction between religious organizations and the administration of penitentiary institutions regarding the provision of religious needs of convicts, based on the content of laws governing this issue, include the following: 1) the conduct of worship; 2) the implementation of religious ceremonies and ceremonies; 3) organization of the soul of the pastoral care of the convicts; 4) creation of conditions for the acquisition of literature and religious objects; 5) promotion of facilities for the implementation of prayers and religious rites in the administrative departments; 6) Assistance in the creation of libraries of spiritual literature, provision of UHP video and audio materials of spiritual and educational content; 7) conducting seminars on issues of spiritual enlightenment of staff of the UVP; 8) the publication through the mass media of joint materials on the interaction of religious organizations and organizations of the Ministry of Health; 9) the establishment of appropriate coordinating authorities; 10) implementation of charity and cultural and educational activities on specified issues; 11) providing material connections and contacts on the given problem.

**5. The interaction of these entities is carried out with the corresponding purpose, which is clearly specified in the law**

As it follows from the contents of Part 1 of Art. 128-1 CEC of Ukraine, the purpose of pastoral care of convicts (one of the main activities of religious organizations in the field of execution of sentences) is to ensure the religious needs of convicts, as well as their spiritual upbringing.

In turn, the purpose of punishment in accordance with the requirements of Part 2 of Art. 50 of the Criminal Code is a correction of convicts, the creation of conditions of which is related to the purpose of the criminal-executive legislation of Ukraine (Part 1 of Article 1 of the Criminal Code).

If we proceed from the literal understanding of the meaning of the “correction of the convict” (the process of positive changes that take place in his personality and create his readiness for self-directed obedient behaviour) (Part 1 of Article 6 of the Criminal Code), it should be noted that spiritual education is one from the means of influencing the person of the convicted person, in this case the purpose of the activity of religious organizations and the administration of the prisoner and in the form, in terms of content.

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<sup>27</sup> O. Yeroshenko, *Great explanatory dictionary of contemporary Ukrainian language*, LLC Gloria Trade, Donetsk 2012, p. 400.

In the same context, it is possible to speak about other elements of the purpose of punishment (punishment, prevention of crimes), which, when practicing spiritual education by religious organizations, increase, as practice shows, its effectiveness and effectiveness of action.

Of course, the tactical (local) goal in the whole activity of both religious organizations and their authorized representations, as well as the administration of the UPP, is to satisfy the religious needs of the convicts and to ensure the constitutional right of these persons to freedom of opinion and belief, which is also to be understood outside of their realization is not always, again, as practice shows, does not lead to the achievement of the strategic goal of interaction – the correction and re-socialization of convicts.

At the same time, it is worth while guiding the postulate (from the Latin *postulatum* – the axiom<sup>28</sup>: an indisputable statement; an obvious truth<sup>29</sup>), which in due time led G.O. Radov, namely: the need for solicitude for convicts is more acute than for any other category of citizens. Man realizes that a terrible mistake has been made, and everything that was well-fortunate (social status, family), everything is destroyed. She seeks solace and, as a rule, finds it not in everyday matters, but in spiritual matters, in religion. Then there is a sincere repentance, and therefore, the penitential idea is realized<sup>30</sup>.

Consequently, the interaction should be recognized as one of the most significant and effective means of work of both religious organizations and institutions for the execution of sentences in general. Moreover, interaction is a necessary condition for the functioning of each of the convicted subjects to ensure the right of prisoners to be deprived of liberty for worship, religious ceremonies and the soul of pastoral care.

As established in the course of special studies<sup>31</sup>, the Law of Ukraine “On Freedom of Conscience and Religious Organizations”, adopted on April 23,

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<sup>28</sup> A.N. Bulko, *The Great Dictionary of Foreign Languages. 35 thousand words*, 3rd ed. corrected, Martin, Moscow 2010, p. 460.

<sup>29</sup> *Ibidem*, p. 24.

<sup>30</sup> G.O. Radov, *Formation of the convicts' spirituality in the context of the penitentiary process*, “Problems of Penitentiary Theory and Practice” 3 (1998), p. 49.

<sup>31</sup> I.V. Pakhomov, V.I. Yatsenko, *Interaction of personnel of penitentiary institutions with the Ukrainian Orthodox Church in the implementation of the pastoral (spiritual and educational) work: a manual*, ed. M.O. Suprun, Bila Tserkva School of PPP DKVS of Ukraine, Belaya Tserkov 2016, p. 247.

1991<sup>32</sup>, facilitated the interaction of these participants in criminal legal relations with penitentiary institutions and institutions.

Important in this context was the Law of Ukraine “On pre-trial detention” of June 30, 1993, in Art. 9 which enshrines the right of prisoners in custody and convicts to send religious rites individually and use religious literature and their religious beliefs that are inherent in their religious beliefs, made from inert materials, provided that the procedure established in places of pre-trial detention is not violated, as well as are not limited to the rights of others<sup>33</sup>. One of the legal guarantees for the implementation of this right of prisoners in custody and convicts was the adoption of the Internal Rules of the SIZO, the new version of which was approved by the order of the Ministry of Justice of Ukraine dated March 18, 2013 No. 460/5<sup>34</sup>. In accordance with the requirements of paragraph 4.5 of this order, prisoners in custody and convicts have the right to send religious ceremonies on an individual basis and to use religious literature and religious worship. Religious ceremonies are conducted at the request of detainees in custody (convicted) or on the initiative of religious organizations.

Historically and invaluable in this context, the adoption of the Constitution of Ukraine in 1996, and in particular the consolidation in Art. 35 the rights of every citizen and person to freedom of world outlook and religion.

It was from this period, as the study of scientific literature showed, and a systematic visit to the SIZO OVP by authorized representatives of religious organizations and the establishment of their interaction with the administration of these institutions began<sup>35</sup>. At the same time, the first significant event in this sense was the meeting of the clergy of the Ukrainian Orthodox Church and the leadership of the Main Office for the Execution of Punishments of the Ministry of Internal Affairs of Ukraine, which took place in Kyiv on October 29-30, 1996.

Interesting in this respect are the results for 1997, including the result of the participation of religious organizations and their authorized representati-

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<sup>32</sup> On freedom of conscience and religious organizations: Law of Ukraine dated April 23, 1991, “Bulletin of the Verkhovna Rada of the Ukrainian SSR” 1991, No. 25, Art. 283.

<sup>33</sup> On pre-trial detention: Law of Ukraine dated June 30, 1993, “Bulletin of the Verkhovna Rada of Ukraine” 1993, No. 35.

<sup>34</sup> Rules of the internal order of investigative isolators: the shutter, by By Order of the Ministry of Justice of Ukraine dated March 18, 2013, No. 460/5, “Official Bulletin of Ukraine” 2013, No. 25, Art. 853.

<sup>35</sup> I.V. Pakhomov, V.I. Yatsenko, *Interaction of personnel of penitentiary institutions*, p. 24.

ves in the field of execution of sentences. In particular, in spite of the deterioration of the criminal structure and the low level of employment by the prisoners' work, by the results of 1997, compared with 1996, 16 regions of Ukraine achieved a reduction in the number of convicted violations per 1,000 people, and on average in the country this figure fell from 608 to 584 (-4%). The percentage of gross violations of the convicts as a whole and in all of their main cases decreased from 32% to 27%. At the same time, it was not allowed to increase the extreme measures of disciplinary response (placement in a penalty (now – it's a disciplinary) isolator, transfer to a room of a chamber type).

In addition, 5% in 1997 (14 thousand 533) in comparison with 1996 (15 thousand 305) decreased the number of persons who previously served in places of deprivation of liberty, and in 1997, new laws came into force. In the same year, the number of suicides decreased, as in the whole system of bodies and penal institutions (from 85 to 71 cases), as well as in correctional colonies, in particular (from 75 in 1996 to 55 in 1997)<sup>36</sup>.

The peculiarity of the period of 1996-1999 was that cooperation on pastoral care of the staff of the Internal Affairs Department of Ukraine and convicts was carried out by clerics who at the same time provided religious needs to other persons serving in the Armed Forces and other armed forces of Ukraine<sup>37</sup>.

As the results of this study showed, a new impetus in relations between religious organizations and penitentiary institutions came in 1999, when DDU VVP became an independent agency in accordance with the Decree of the President of Ukraine of March 12, 1999, No. 248/99 "On the withdrawal of the State Department of Ukraine on the implementation punishments from the subordination of the Ministry of Internal Affairs of Ukraine"<sup>38</sup>. In particular, already on August 11, 1999, in accordance with the instruction of the State Tax Administration of the Republic of Armenia on the issues of interaction with religious organizations regarding their participation in the spi-

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<sup>36</sup> Operational and production and economic activity of the institutions of the criminal-executive system in 1997, "Newsletter GVVP of the Ministry of Internal Affairs of Ukraine" 1997, No. 20, p. 49.

<sup>37</sup> I.V. Pakhomov, V.I. Yatsenko, *Interaction of personnel of penitentiary institutions*, p. 24–25.

<sup>38</sup> On the withdrawal of the State Department of Ukraine for Execution of Sentences under the jurisdiction of the Ministry of Internal Affairs of Ukraine: Decree of the President of Ukraine dated March 12, 1999, No. 248/99, "Official Bulletin of Ukraine" 1999, No. 11, Art. 24.

ritual upbringing of persons held in the institutions of the criminal-education system, the order of interaction of the Ukrainian The Orthodox Church and the State Department of Ukraine for the Execution of Sentences. As indicated in this direction, the relationship with representatives of religious organizations should be built in the interests of correction of convicts on the basis of mutual respect and mutual understanding, strictly adhere to the legislation. At the same time, spiritual work should be carried out on their own accord and with the consent of the convicted<sup>39</sup>.

Even more substantively, the issue of the interaction of religious organizations and penitentiary institutions and institutions was highlighted in the Agreement on cooperation between the Ukrainian Orthodox Church and the DDU of the Ukrainian Orthodox Church on November 25, 1999, which approved six main areas of cooperation of these subjects of religious-legal relations<sup>40</sup>.

There is no doubt that the basis of these legal and regulatory decisions was the positive results achieved by the DDU PVP in conjunction with religious organizations in the process of correction of convicts in the period 1996-1999. Thus, in 1999, the level of violations of the regime of convicts in the calculation of 1 thousand people decreased by 10% on equalization, in particular, since 1998, and the number of suicides of prisoners sentenced to imprisonment – from 46 in 1998 to 31 cases in 1999 (a decrease of 48.4%).

In addition, in 1999, the number of convicted prisoners released from the colonies increased by 6% (in 1999, one of the criteria for the application of this law institute was the correction of these persons (Article 3, Article 81 of the Criminal Code of Ukraine), which in including religious organizations engaged in the pastoral care of convicts)<sup>41</sup>.

Of great importance in the context of improving the organization of interaction between religious organizations and penal institutions and institutions was the creation on February 26, 2002 of the Ukrainian Interfaith Christian Mission “Spiritual and charity care in places of imprisonment”, the founders

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<sup>39</sup> On measures to interact with religious organizations on their participation in the spiritual education, No. 5/1-101.

<sup>40</sup> Agreement on cooperation between the Ukrainian Orthodox Church and the State Department of Ukraine, p. 29–30.

<sup>41</sup> Operational and production and economic activity of penitentiary organs and institutions of Ukraine in 1999, “Inform. bullet DD UUPV” 2000, No. 4, p. 22.

of which were 12 Christian denominations, given that the said Mission represents Ukraine in the International Association of Prison Service<sup>42</sup>.

A new effective push to improve the issues related to ensuring the religious needs of sentenced persons to imprisonment and the legal mechanism for the joint activities of religious organizations and the administration of the UHP gave the adoption of a new CEC of Ukraine in 2003 instead of the WTC<sup>43</sup>. In particular, for the first time at the legislative level, legal guarantees were created for the conduct of worship and religious ceremonies by consolidating these procedures and ceremonies in Art. 128 of this Code. At the same time, it should be noted that, as at that time, in the said legal norm, the key provisions laid down in the regulatory legal acts (the Agreement on cooperation, methodological recommendations on issues of interaction, etc.) are not reflected in the specified legal norm, that, as practice shows, in a certain way affects the effectiveness of religious organizations in the field of execution of sentences. In this context, the Protocol of intentions of cooperation was signed on July 17, 2003, in which the main directions of cooperation between religious organizations and the administration of penitentiary organs and institutions were signed<sup>44</sup>.

These and other measures have had a fairly positive impact on the process of execution and serving of punishment, as well as the substantial increase of the influence of social work and social influence on convicts (Article 6 of the CEC of Ukraine), as evidenced in particular by the result of operational and service activities for 2003–2010 p. (period of independent functioning of DDU PVP in the system of central bodies of state executive power). Thus, in 2006–2007, in penal colonies, the number of convicted negatives decreased, who violently violated the established order of serving the sentence and were subject to the maximum security level in the chamber type of colony premises (the number of those transferred in 2007 decreased from 200 to 197 convicts, or 1.5% compared to 2006)<sup>45</sup>.

In turn, in 2009, by comparison with 2008, the number of violations according to Art. 391 of the Criminal Code “Malicious disobedience to the admini-

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<sup>42</sup> I.V. Pakhomov, V.I. Yatsenko, *Interaction of personnel of penitentiary institutions*, p. 26.

<sup>43</sup> The Criminal-Executive Code of Ukraine: Adopted July 11, 2003, “Bulletin of the Verkhovna Rada of Ukraine” 2004, No. 3–4, Art. 2-1.

<sup>44</sup> I.V. Pakhomov, V.I. Yatsenko, *Interaction of personnel of penitentiary institutions*, p. 26–27.

<sup>45</sup> *About activities of the units of protection, supervision and safety of criminal executive institutions in 2007*, t. II, DDUVV, Kyiv 2008, p. 15.

stration of the penal institution” (according to 245 crimes in 2008 to 186 crimes in 2009)<sup>46</sup>. And in 2010, after equalization from 2009, it decreased by 8.5% the level of crime per 1,000 convicts was 3.52 cases (in 2009 – 3.85). In total, in 2010, 404 criminal cases against the 422 in 2009 or 4.3% less<sup>47</sup>.

Similar tendencies persisted in 2011<sup>48</sup>–2014<sup>49</sup>, that is, until the period of active reforms in the field of execution of punishments, initiated by the Ministry of Justice of Ukraine, as the central executive body, implementing the state policy in the field of implementation criminal punishment.

One of these reform measures was the publication by the Ministry of Justice of Ukraine on May 16, 2016, of Order No. 1418/5 “On approval of programs of differentiated influence on convicts”, which included the “Spiritual Revival” program<sup>50</sup>. At the same time, the purpose of this Program is the formation of convicted mature moral and ethical consciousness and repentance of the crime, and one of the main tasks is to increase the level and effectiveness of cooperation between organs and penal institutions with religious organizations. Among other tasks in this sense are attention such as: a) raising the values of spiritual traditions and religious culture in the moral and ethical upbringing of convicts; b) development of a useful initiative and creative abilities of convicts; c) prevention of moral and psychological deformation associated with deprivation of liberty<sup>51</sup>.

In this case, it should be noted that the basis of the above program were laid the main content of the updated August 26, 2011 Agreement between the Ukrainian Orthodox Church and the DKVS of Ukraine<sup>52</sup> which, in particular, envisaged 6 areas of interaction between actors, namely:

1. Assistance in the construction of temples and prayer rooms in the UVP, the acquisition of the necessary literature, articles of church utensils.

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<sup>46</sup> *About activities of the units of guarding, supervision and safety of criminal executive institutions in 2009*, t. I, DDUPUP, Kyiv 2010, p. 3.

<sup>47</sup> *About activities of the units of guarding, supervision and security of criminal executive institutions in 2010*, t. I, The State Penitentiary Service of Ukraine, Kyiv 2011, p. 3.

<sup>48</sup> *On the activities of the departments of protection, supervision and safety of criminal-executive institutions in 2011*, t. I, DPTs of Ukraine, Kyiv 2011.

<sup>49</sup> *About activity of units of guarding, supervision and safety of criminal executive institutions in 2015*, t. I, DPTs of Ukraine, Kyiv 2016.

<sup>50</sup> On approval of programs of differentiated influence on convicts, No. 1418/5.

<sup>51</sup> I.V. Pakhomov, V.I. Yatsenko, *Interaction of personnel of penitentiary institutions*, p. 28.

<sup>52</sup> *Ibidem*, p. 36.



2. Involvement of convicts in custody, as well as persons under the supervision of criminal-executive inspections (today the bodies of probation<sup>53</sup>), to church life, spiritual and educational work with different categories of convicts.

3. Catechetical (from Greek: Katechesis – oral guidance, instruction, brief statement of the preacher of the principles of Christian doctrine in the form of questions and answers<sup>54</sup>) work and conducting talks of priests with the staff of the SCSU of Ukraine.

4. The recognition and encouragement of sentenced prisoners to church decorations for the best works on artistic-applied and literary subjects, for participation in the respective competitions.

5. Participation in scientific conferences and meetings both in Ukraine and abroad in the following areas: a) a meeting of priests from each diocese responsible for cooperation with the territorial departments of the Ukrainian SSR; b) Participation in international meetings on prison services.

6. Publishing activities, namely publishing of the Prayer Book for the Convicts, the periodical publication of the Synodal Department, as well as the publication of articles and materials on the pages of periodicals of the DKVD of Ukraine<sup>55</sup>.

As the results of this study have shown, the importance of improving the interaction between religious organizations and penal institutions and institutions to ensure the religious needs of sentenced persons to imprisonment, was not adopted on May 14, 2015 by the Verkhovna Rada of Ukraine Law “On Amendments to Certain Legislative Acts of Ukraine on the Regulation of the Activities of Clerics (chaplains) in the organs and institutions belonging to the sphere of management of the DPTs of Ukraine”<sup>56</sup>, which was supplemented by the CEC of Art. 128-1 “Organization of pastoral care of convicts” and amendments made in Art. Art. 9, 12 of the Law of Ukraine “On

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<sup>53</sup> O. Yeroshenko, *Great explanatory dictionary*, p. 400.

<sup>54</sup> A.N. Bulko, *The Great Dictionary*, p. 297.

<sup>55</sup> I.V. Pakhomov, V.I. Yatsenko, *Interaction of personnel of penitentiary institutions*, p. 30.

<sup>56</sup> On Amendments to Certain Legislative Acts of Ukraine Regarding the Regulation of the Activities of Clerics (Chaplains) in the Bodies and Institutions belonging to the Management of the DPTS of Ukraine: Law of Ukraine dated May 14, 2015, No. 419-VIII, “Bulletin of the Verkhovna Rada of Ukraine” 2015, No. 28, Art. 254.

pre-trial detention”<sup>57</sup>, and in Art. 23 of the Law of Ukraine “On the State Criminal Execution Service of Ukraine”<sup>58</sup>.

In general, held in 1991–2016, joint activities of religious organizations and penal institutions and institutions allowed the involvement of almost 18 thousand convicts in worship, religious rituals and pastoral care. At the same time, the spiritual and educational work with these persons and staff of the DCFU of Ukraine is carried out on a regular basis by 210 Orthodox clerics with the involvement of laity (catechists, pennies and social workers) who carry out the specified activities in 106 Orthodox constructions (70 in temples and 36 in chapels)<sup>59</sup>. At the same time, at present, with more than 26 such religious structures, with the Ministry of Justice, the SIZO is being built.

In spite of the results obtained during this period, the state of interaction between religious organizations and the administration of penitentiary organs and institutions has somewhat deteriorated, due in the first instance to the liquidation in May 2016 by the relevant resolution of the Cabinet of Ministers of Ukraine of the territorial departments of the DPTU of Ukraine and creation of 5 between territorial departments of the Ministry of Justice of Ukraine<sup>60</sup>. As O.G. Kolb rightly pointed out in connection with this, during the formation and implementation of modern policy in the field of execution of sentences both at the doctrinal level and at other levels (legislative and enforcement), the established theoretical and methodological principles are not followed, which not only does not allow to use the existing legal mechanism of criminal activity of the personnel of the SCSU of Ukraine, but also creates additional artificial obstacles in this direction, which ultimately affects the effectiveness of the process of execution – serving punishment in our the state<sup>61</sup>.

Indicators in this sense are indicators of operative-service activity of the Internal Affairs Department of Ukraine, formed in 2016–2017 pp. (period of

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<sup>57</sup> On pre-trial detention: Law of Ukraine dated June 30, 1993.

<sup>58</sup> About the State Criminal Execution Service of Ukraine: Law of Ukraine dated June 23, 2005, “Official Bulletin of Ukraine” 2005, No. 30, c. 4–10.

<sup>59</sup> I.V. Pakhomov, V.I. Yatsenko, *Interaction of personnel of penitentiary institutions*, p. 39.

<sup>60</sup> On liquidation of territorial departments of the State penitentiary service of Ukraine and formation of territorial departments of the Ministry of Justice: the resolution of the Cabinet of Ministers of Ukraine dated May 18, 2016, No. 348, in: <https://www.kmu.gov.ua/ua/npas/249086737?Print> [accessed: 2.03.2018].

<sup>61</sup> A.V. Savchenko, O.G. Kolb, V.Ya. Konopelsky [et al.], *Prevention of crimes committed by the personnel of the State Penitentiary Service in Ukraine in the field of execution of sentences: monograph*, ed. V.V. Kovalenko, PJSC “Volyn Regional Printing House”, Lutsk 2017, p. 323.

active reforms in the field of execution of sentences). Thus, in 2016, the crime rate per 1,000 people increased significantly, which was 4.19 at 4.06 in 2015 in correctional colonies of maximum security<sup>62</sup>, in which the most socially dangerous and socially and spiritually abandoned prisoners are sentenced to imprisonment. At the level of 2015, in 2016, the number of executions and attempted assassinations of them in general in the Ukrainian SSRU, as well as intentional grave bodily injuries remained<sup>63</sup>, which in turn indicates a high level of socio-psychological stress among convicts and a low level of educational work among these people.

Equally disturbing is the situation in the correctional colonies of a minimum level of security with lightened conditions of detention, in which, according to the law, the least stringent conditions for the imprisonment of convicts have been established (paragraph 2 of Article 18, part 1 of Article 94, Article 138 of the Criminal Code), where in 2016 the crime rate per 1,000 people was 3.33 versus 0.95 in 2015<sup>64</sup>.

Another fact is that in this regard, it is worth noting that, in spite of the fact that the number of convicts was not reduced in 2016 by 13% by comparison with 2015<sup>65</sup>, the number of violent violators of the regime, which were on the preventive maintenance of HIV, remained almost unchanged (from 3,624 people in 2015 to 3304 convicts in 2016)<sup>66</sup>.

The negative trends mentioned above have not changed significantly either in 2017<sup>67</sup>. At the same time, one of the determinants of such a state of criminal-executive activity is the high level of crime among the personnel of the Internal Affairs Department of Ukraine, which, in comparison with 1991 in 2016, increased tenfold (from 2–4 crimes in 1991–2004 , to 14–20 – in

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<sup>62</sup> *About the state of law and order, isolation and supervision, activities of the units of protection, fire safety and paramilitary formations of the State Criminal-Enforcement Service of Ukraine in 2016: Inform. bulletin*, Department of the State Criminal-Enforcement Service of Ukraine, Kyiv 2017, p. 2.

<sup>63</sup> *Ibidem*.

<sup>64</sup> *Ibidem*, p. 4.

<sup>65</sup> *Ibidem*, p. 6.

<sup>66</sup> *Ibidem*, p. 16.

<sup>67</sup> *About the state of law and order, isolation and supervision, activities of the units of protection, fire safety and paramilitary formations of the State Criminal-Enforcement Service of Ukraine in 2017: Inform. bulletin*, Department of the Internal Affairs Committee of the Ministry of Justice of Ukraine, Kyiv 2018.

2005–2010, 35–70 – in 2011–2014, and to more than 100 such socially dangerous acts in 2015–1016 gg.)<sup>68</sup>.

In addition, as MU O. Suprun rightly concluded, in the conditions of the reformation of the DKVS of Ukraine, fruitful cooperation between religious organizations and penal institutions and institutions provides additional opportunities to build a system of genuine spiritual values in the lives of convicts, which will contribute to their correction, socialization and social adaptation after release<sup>69</sup>.

Also, the interaction of these subjects creates conditions for the spiritual and educational work with the staff of the DCFU of Ukraine. Moreover, the joint efforts of religious organizations and the administration of penitentiary organs and institutions, which are aimed at the implementation of these issues, contribute to the implementation of Christian values, the enhancement of good and harmony in our state<sup>70</sup>.

## CONCLUSIONS

In general, summarizing the results obtained in the course of this study, one can make such a periodization of the formation and development of the Institute for the Interaction of Religious Organizations and Penitentiary Organs of Ukraine with regard to ensuring the religious needs of convicts, as well as their constitutional rights to freedom of opinion and religion, namely:

1. The first period begins with the adoption of the Law of Ukraine “On Freedom of Conscience and Religious Organizations” and is adopted by the adoption of the Constitution of Ukraine, in Art. 35 which enshrined the right of everyone to freedom of world outlook and religion (1991–1996).

In this main section, the formation of religious organizations in our country and the establishment of its authorized representatives of business contacts and professional relations with the leadership of the Main Directorate for the execution of punishments of the Ministry of Internal Affairs of Ukraine, as well as the promulgation of intentions about cooperation on the issues of ensuring the religious needs of the sentenced to imprisonment and the sentenced to custody.

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<sup>68</sup> A.V. Savchenko, O.G. Kolb, V.Ya. Konopelsky [et al.], *Prevention of crimes*, p. 6.

<sup>69</sup> I.V. Pakhomov, V.I. Yatsenko, *Interaction of personnel of penitentiary institutions*, p. 41.

<sup>70</sup> *Ibidem*.

2. The second period fell on 1996–1999 and was characterized by the fact that during this time, the legal and regulatory basis for the interaction of religious organizations and the administration of penitentiary organs and institutions was established at the departmental (sub-legislative) level to ensure the constitutional right of convicts and prisoners of conscience to freedom of opinion and belief (in particular, this has been reflected in the Methodological Recommendations and the Cooperation Agreement, which identified the main areas of cooperation of the abovementioned subjects).

3. The third period (1999–2010) is related to the stage of formation of the State Department of Ukraine for the execution of sentences as an independent agency in the system of central bodies of state executive power and the functioning of penitentiary bodies and institutions on the new legal conditions, number on interaction with religious organizations. It was during this period that the content of the mechanism of activity of the said subject in the field of execution of sentences and legal guarantees and their functioning and cooperation with the administration of the Ministry of Social Security and Prisons and the SIZO were determined by law. All this was expressed in the form of the adoption in 2003 of a new KVN, in Art. 128 which for the first time was assigned the right of convicts to worship and religious ceremonies; as well as in the adoption in 2005 for the first time in the history of the Law of Ukraine “On State Criminal Execution Service”, Art. 23 which was mandated by the leadership of the DKVS of Ukraine to assist religious organizations and their authorized representatives in conducting worship and religious ceremonies in correctional and educational colonies and investigative isolation units.

4. The fourth period (2010–2016) of the interaction of religious organizations and the administration of penitentiary bodies and institutions was caused by the partial loss of the SCSU of Ukraine of its departmental independence in the system of central executive authorities and subordinated to the Ministry of Justice of Ukraine, which included on themselves the functions of interaction with clergy (chaplains).

The decisive event of that time was the adoption in 2011 of the renewed Cooperation Agreement between the Orthodox Ukrainian Church and the SCF of Ukraine and the Law of Ukraine of May 14, 2015 “On Amendments to Certain Legislative Acts of Ukraine Regarding the Regulation of the Activities of Clergy (Chaplains) in Bodies and Institutions, belonging to the sphere of management of the DPTs of Ukraine”, on the basis of which the CEC of Ukraine was supplemented by Art. 128-1 “Organization of the soul of the pastoral care of the convicted persons” and amended the Law of Uk-

raine “On pre-trial detention” (Article 9.12) and “On the State Criminal Service of Ukraine” (Article 23).

5. The fifth period of interaction between religious organizations and penitentiary institutions and institutions began in May 2016, that is, since the full submission of the DKVS of Ukraine to the Ministry of Justice on the basis of the Resolution of the Cabinet of Ministers of Ukraine dated May 18, 2016 No. 348 “On the Elimination of Territorial Administrations The DPT of Ukraine and the formation of territorial departments of the Ministry of Justice” and continues to this day, the decisive feature of which is the active reform of the organizational and legal basis of activities in the field of execution of sentences, including issues of mutual actions with religious organizations and their authorized representatives.

In this work, periodization has both theoretical and practical significance beyond expanding the boundaries of knowledge about a rather complex social phenomenon, the content of which is the joint activity of religious organizations and bodies and penal institutions to ensure the constitutional right to freedom of thought and religion in the sphere of implementation punishments (doctrinal aspect), as well as a new approach to issues related to the improvement of the existing legal mechanism for the interaction of these subjects and the creation of legal safeguards for the provision of for the religious needs of sentenced prisoners and detainees in custody (applied aspect).

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O WSPÓŁPRACY PERSONELU ZAKŁADÓW KARNYCH NA UKRAINIE  
Z ORGANIZACJAMI RELIGIJNYMI  
W ZAKRESIE ZAPOBIEGANIA STOSOWANIA SIŁY WOBEC SKAZANYCH

**Streszczenie.** W artykule przeanalizowano stan współpracy organizacji religijnych oraz personelu zakładów karnych ds. zapobiegania stosowania siły wobec skazanych, określono najbardziej problematyczne aspekty dotyczące danego zagadnienia badawczego, a także opracowano naukowo uzasadnione kierunki oraz propozycje ich rozwiązania i udoskonalenia mechanizmu prawnego.

**Słowa kluczowe:** współpraca, koordynacja, organizacja religijna, personel zakładu karnego, skazany, zapobieganie, siła fizyczna, środki specjalne, przestrzeń odbywania kary, działalność karno-wykonawcza