

# НАПРЯМ 1. АКТУАЛЬНІ ПРОБЛЕМИ ВИКОНАННЯ І ВІДБУВАННЯ КРИМІНАЛЬНИХ ПОКАРАНЬ В МІСЦЯХ НЕСВОБОДИ УКРАЇНИ

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## INTERNATIONAL EXPERIENCE OF PUNISHMENT FOR CRIMES AGAINST THE BASICS OF NATIONAL SECURITY

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**Relevance of the topic** is determined by the fact that since February 24, 2022, mass perpetration of war crimes began on the territory of Ukraine, so according to official data from the Office of the Prosecutor General of Ukraine, as of May 27, 2022, 20 877 crimes against Ukraine were registered in Ukraine, including 14 193 crimes of aggression and war crimes and 6684 crimes against national security [1].



We note that the member states of the United Nations recognized at the World Summit in 2005 that genocide, crimes against humanity, and war crimes are such dangerous crimes that the population of the Earth needs a collective international responsibility to protect (“responsibility to protect”) from these actions. In view of this, the international community, acting through the United Nations, undertook to use diplomatic, humanitarian and other peaceful means to protect the population from international and, in particular, war crimes (article 139 of the Final Document). In addition, states agreed to support the efforts of the United Nations for the establishment of opportunities for early warning of these actions. At the same time, the obligation of the members of the international community to stop mass violations of human rights cannot be recognized as an innovation in international law and the practice of international relations. We note that the military crimes that are directly related to international criminal law are especially dangerous to humanity and undermine the international system of security and law and order. The long-term efforts of the international community have yielded fruitful results, which is reflected in the formation of international legal norms that establish the grounds and conditions of responsibility for crimes against peace, human security, and the international legal order. An international body of criminal justice officially operates on a permanent basis with the signing of the Rome Statute of 1998, from July 1, 2002, the competence of which includes the prosecution of persons responsible for genocide, war crimes, crimes against humanity and aggression [2, p. 79].

It is worth noting that international provisions of a special nature have found their place in the national legislation on the penitentiary policy, such as: Minimum standard rules for the treatment of prisoners, European penitentiary (prison) rules; European Convention on the supervision of conditionally sentenced or parole offenders, Minimum standard rules for non-custodial measures, Resolution № (76) 10 on certain alternative punishment measures to imprisonment, Recommendation № R (82) 16 of the Cabinet of Ministers of the Council of Europe to member states on the provision of short-term vacations to prisoners, Recommendation № R (99) 19 on mediation in criminal cases, Recommendation № R (2003) 17 on enforcement, Recommendation № R (2003) 22 on conditional release, Recommendation № R (2003) 23 “On the implementation of punishment in the form of life imprisonment and other long terms of imprisonment by the administrations of places of deprivation of liberty”.

It is appropriate to note that if a military serviceman has acquired the status of a convicted person, the regulation of this status already takes place in accordance with the provisions of the criminal-executive law. The rights, freedoms and legitimate interests of a person are limited based on the norms of domestic and international law. The procedure for completing military

service in the event of a person being held criminally liable is regulated by the provisions of the Criminal-Executive Code of Ukraine (article 47, chapter 10, article 55, chapter 11, articles 71–85, chapter 14); departmental documents (instructions about the procedure and conditions of detention of convicted, detained servicemen, about the procedure for serving the sentence of convicted servicemen in the form of detention in a disciplinary battalion); special regulations (Law of Ukraine “On Military Obligation and Military Service”, regulations on military service in various military formations, regulations on military service by relevant categories of servicemen, etc.).

It is worth agreeing with scientists who believe that the unity of standards for their integral system as a single model for organizing the execution of punishments applied exclusively to military personnel, taking into account their status, did not achieve the appropriate result. Provisions need to be normalized: 1) regarding the separate detention of different categories of convicts (minors, women, servicemen of various categories); 2) their application to minor military personnel; 3) differentiation of servicemen by categories, taking into account such criteria as military service under a draft or contract, which is accordingly not coordinated with the norms of the current legislation; 4) introduction of the implementation of basic means of correction and resocialization as a comprehensive and integrated institution; 5) targeting the achievement of the goal of punishment, taking into account the specifics of the legal status; 6) initiation of scientifically based methods and programs for the psychological and pedagogical study of the convict’s personality, means of correcting his behavior, specialized methods and recommendations regarding the forms and methods of influence on convicted military personnel; 7) transfer of the declarative norms on the involvement of convicted servicemen to work at their own production facilities and at contractors’ facilities into the practical plane; 8) executive aspects for their comprehensive settlement; 9) establishment of a single body in the military justice system to maintain military discipline and law and order among servicemen of all military formations with implementation of complex functions, including penitentiary functions regarding servicemen [3, p. 352-353].

**As a conclusion**, we note that the analysis of international legal norms of the general and regional essence of criminal law in general and of a penitentiary nature in particular states that generally accepted norms-standards, international provisions of a special nature regarding the regulation of the order of appointment and execution of punishments regarding servicemen for committing crimes against national security are implemented in the provisions of domestic legislation and relate to: firstly, the priority of achieving the goal of correction; secondly, ensuring the basic rights and freedoms of convicted servicemen; thirdly, differentiation of convicts according to certain criteria; fourthly, the conditions of detention in places of

isolation of convicts; fifth, the humanization of punishment in the expansion of normative possibilities of applying the system of measures alternative to deprivation of liberty.

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### **ЩОДО ПОНЯТТЯ «ІНДИВІДУАЛЬНЕ ЗАПОБІГАННЯ ПОТРАПЛЯННЮ У МІСЦЯ ПОЗБАВЛЕННЯ ВОЛІ ЗАБОРОНЕНИХ ПРЕДМЕТІВ, ВИРОБІВ І РЕЧОВИН»**

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Поняття «індивідуальне запобігання потраплянню у місця позбавлення волі заборонених предметів, виробів і речовин» виведено Березюк (Махніцькою) К.Г. та професором Колбом О.Г. при здійсненні дослідження цього питання.

Отже, «індивідуальне запобігання потраплянню у місця позбавлення волі заборонених предметів, виробів і речовин» – це комплекс заходів спеціально-кримінологічного характеру, що здійснюються відповідними суб'єктами запобігання злочинності згідно принципів нормативно-