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DISCUSSION ISSUES REGARDING THE PREVENTION OF MALICIOUS DISOBEDIENCE TO THE REQUIREMENTS OF THE ADMINISTRATION OF PENAL INSTITUTION IN PLACES OF LOCATION

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According to domestic scientists, the study of the legal basis of malicious disobedience to the requirements of the administration of penal institutions and its social conditioning is based on three stages: historical and legal; methodological and on the works of domestic and foreign scientists in the field of criminal, criminal executive law and criminology [1, p. 6].

The development of any society determines the urgent need for the formation of the appropriate type of social relations, as well as their regulation and ordering. This can implemented with the help of the legal form of its organization with a complex combination of legal levers, as well as internal and external factors.

This combination makes it possible for society to function as an organized system, to have its own dynamics and prospects for further development, and have internal stability. This provision also applies to the sphere of criminal liability for malicious disobedience to the requirements of the administration of the State Penitentiary Service of Ukraine (hereinafter the SPS of Ukraine), which is an integral part of the state's criminal policy.

Therefore, the prevention of malicious disobedience by convicts in places of deprivation of liberty to the requirements of the administration of penal institutions of the SPS of Ukraine depends on the level of socio-legal conditioning of the inevitability of criminal and legal response for the crime committed by the convicts.

Domestic scientists understand the prevention of malicious disobedience to the requirements of the administration of penal institutions as a kind of social and preventive activity, which is carried out in relation to those sentenced to deprivation of liberty at various levels, volumes, orientations and types, relevant entities and in accordance with the current legislation of Ukraine. It is aimed at identifying persons who can be expected to commit this type of crime, as well as at hindering the action of the determinants of

this crime and its manifestation, by limiting their influence, neutralizing or eliminating them in general [2, p. 55].

According to the current legislation of Ukraine, convicts, being in specially created conditions, are obliged to comply with the procedure and conditions of serving the punishment established by law. In the case they violate the normal activity of institutions for the execution of punishments, the legislator uses means of its protection. Then the Art. 391 of the Criminal Code of Ukraine, which provides for criminal liability for malicious disobedience to the requirements of the administration of penal institutions is used.

The social danger of this type of crime lies in the fact that the criminally punishable act is committed by convicts repeatedly in the process of serving a criminal sentence for previous crimes, in the conditions of their isolation from society, increased supervision and the use of the means of correction and resocialization provided by the administration of penal institution, which testifies to the stubborn disregard of the latest criminal and legal prohibitions and the increased social danger of such acts.

The admission of systematic violations of the order of punishment and the commission of new crimes by convicts, in particular, malicious disobedience to the requirements of the administration of the Criminal Justice Department, indicates the improper performance of their duties by the leadership of both the Criminal Court and the Criminal Justice Department regarding the implementation of management and control in the field of execution of criminal punishments.

The worth highlighting debatable issues for discussion are:

– Exclusion of the second form of criminal behavior of convicts (other opposition of the administration in the performance of its functions) from the disposition of Art. 391 of the Criminal Code of Ukraine;

– Should the commission created in the institution of execution of punishments of the State Criminal Enforcement Service of Ukraine, be referred to the representative of the administration, due to the fact that its decision is mandatory when criminal proceedings are initiated under Art. 391 of the Criminal Code of Ukraine;

– How the personal changes of the convict because of the application of means of correction and resocialization to him can be reflected in his criminal and executive characteristics;

– May the actions of the convicted person during the commission of a criminal offense under Art. 391 of the Criminal Code of Ukraine can be considered a criminal misdemeanor.

Finally, it can be concluded that punishment, including deprivation of liberty, according to the current legislation, aims not only to punish, but also to correct the convicted and prevent new crimes. However, the analysis of the activity of the domestic system of execution of punishments proves the

presence of a significant difference between the legally defined and the actual state of practice of the bodies and institutions of the execution of punishments of the State Security Service of Ukraine, which naturally gives rise to society's mistrust of the activity of the criminal-executive system. The worst thing is that the convict commits a new crime being in places of imprisonment, thereby challenging the society about his unwillingness to embark on the path of correction.

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ПЕНІТЕНЦІАРНА ІДЕНТИФІКАЦІЯ ЗЛОЧИННОСТІ В ПЕНІТЕНЦІАРНІЙ СФЕРІ УКРАЇНИ

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Заради справедливості зазначимо, що процес ідентифікації особи засудженого в місцях несвободи становить винятковий інтерес в умовах трансформації кримінально-виконавчої системи України в пенітенціарну систему. Оскільки як зазначають вітчизняні дослідники, формування системи запобігання злочинам у пенітенціарній сфері відбуваються в якісно новому правовому просторі, що пояснюється змінами історичних реалій, динамічністю розвитку всіх галузей національного законодавства, включенням і норм міжнародного права [1, с. 5].

Під пенітенціарною ідентифікацією варто розуміти систематизовану сукупністю понять, ідей та уявлень, через які засуджена особа усвідомлює свій стан у системі суспільних відносин, оцінює існуючий порядок і умови відбування кримінального покарання в місцях несвободи