

## **VIOLENT CRIME IN PENAL INSTITUTIONS: CRIMINOLOGICAL CHARACTERISTICS**

**Bohatyrova O. I., Bohatyrov A. I.**

### **INTRODUCTION**

The commission of the violent crime by prisoners in penal institutions is not only a dangerous encroachment on the goals and objectives of justice, the adequate functioning of the State Criminal-Executive Service of Ukraine (SCES of Ukraine) but also a real threat to the life and health of both prisoners and the staff of the penal institutions.

In addition, over three recent years, prisoners have committed 415 crimes in the penal institutions of the Ministry of Justice of Ukraine, and its vast majority is related to violence. Their social danger is caused not only by quantitative indicators but, as a rule, by threats of a large number of prisoners oriented on the conflict both among themselves and with the staff of the penal institution.

Thus, crimes committed in penal institutions are always of public attention, subject of discussion for Ukrainian and international human rights organizations, and they are often politicised.

Consequently, criminology, whose modern development provides strong evidence of its potential to be the most important tool for determining the degree of reliability of scientific substantiation and prediction regarding the prevention of crime among prisoners in penitentiary facilities, is an integral part in this process.

Theoretical problems of violent crime in penal institutions have been discussed by the following domestic and foreign scholars: Ya.S. Bezpala, I.H. Bohatyrov, O.V. Brynzanska, L.D. Haukhman, O.M. Dzhuzha, A.I. Druzin, B.C. Ishyheiev, I.V. Kernadzhuk, I.Ia. Kozachenko, N.I. Korzhanskyi, V.N. Kudriavtsev, N.F. Kuznietsova, S.V. Nazarov, I.H. Prasolova, A.A. Piontkovskyi, A.I. Raroh, O.N. Rumiantsev, A.V. Tkachenko et al.

Studying the violent crime in penal institutions, the authors can't ignore the definition "violence" which is used to describe different phenomena and determined in broad and narrow senses. Violence is

identified as a category of sociology (broad) and as a criminal category (narrow). In the course of discussions that have been lasting for over a hundred years, there has been a change of concepts which the parties do not notice. Using the same term, opponents differently interpret it.

According to the definition of the World Health Organization, violence is the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation<sup>1</sup>.

The above definition combines the intentionality and de facto commission of an act of violence regardless of its outcome, and the use of the words “use of power” extends the traditional understanding of the nature of the act of violence by including violence acts into the concept whose source is power over a man, that is, threats and intimidation. However, the definition is a wide-ranging concept for its application in criminal law; particularly, it is controversial to use the power, which in the authors’ opinion, is not a common phenomenon and has a different meaning in jurisprudence<sup>2</sup>.

The Special Part of the Criminal Code of Ukraine uses the term “violence” in more than 40 articles of the Special Part as a constructive or qualified feature of some crimes of individual types. Violence involves not only the whole range of violent actions covered by the term “violence” but also criminal phenomena defined by other terms describing actions that, in the scholars’ opinion, are “violence” in its broadest sense, or “violence” as a form of its manifestation. L.D. Haukhman writes: “Sometimes, there are actions which are essentially violence or may be manifested in violence or the mentioned consequences of violence in the form of death or personal injury”<sup>3</sup>.

Unfortunately, the Criminal Code doesn’t define the concept “violence” providing scholars with an unlimited area for research and scientific discussions. Although most scholars are limited to the listing of force actions and their consequences, some interpretations of “violence” seem like the definition of a criminal act.

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<sup>1</sup> Насилие и его влияние на здоровье. Доклад о ситуации в мире / под ред. Этьенна Г. Круга и др. / Пер. с англ. М: Издательство «Весь Мир», 2003. 376 с.

<sup>2</sup> Ведмідський О. В., Богатирьов А. І., Некрасов О. О. Втеча в’язнів з місць несвободи (міжгалузеве дослідження) : монографія. К. : ВД «Дакор», 2015. С. 26.

<sup>3</sup> Гаухман Л. Д. Насилие как средство совершения преступления. М., 1974. С. 74.

Thus, P.N. Nazarov renders violence as a volitional, socially dangerous, unlawful, guilty action, with the use of physical or mental force trespassing on public relations ... protected by the laws specified in the Special Part of the Criminal Code ... and harming or threatening them, which is expressed within the scope and intensity of the law<sup>4</sup>.

L.D. Haukhan<sup>5</sup>, R.D. Sharapov<sup>6</sup>, L.V. Serdiuk<sup>7</sup> et al. presented their fundamentally different definitions for the category concerned. V.I. Symonov divides modern ideas into four groups: a) the use of physical force towards the victim; b) any influence on the physical integrity of the victim; c) the influence on the victim, which may involve striking blow(s), causing bodily injury or death; d) any unlawful action towards the body of another person against his will<sup>8</sup>.

Analysing the dispositions of the norms of the CC of Ukraine, one can conclude that the legislator considers the concept of violence as a cause of death, grievous, moderate, and mild harm to human health, bodily blows or commission of other violent acts that provoke physical pain to the victim. In general, the authors agree with P.E. Tokarchuk, who claims that the category “violence” cannot be defined in the Criminal Code of Ukraine as a concept because it is evaluative one and selectively contains several particularly aggressive forms of physical coercion due to which it should be cleared up<sup>9</sup>.

Consequently, without digging too much into a scientific discussion based on the above, the authors propose own alternative for the understanding of the concept “violence” in the criminal sense. Violence is considered as the intentional unlawful use of physical force using weapons and objects, which may be used as weapons, other objects or substances or without such towards another person, aimed at the violation of physical integrity or damage to health or deprivation of life.

In the crimes under consideration, except crimes related to infliction of bodily harm, violence is used during committing penitentiary crimes,

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<sup>4</sup> Назаров П. Н. К вопросу о насилии при грабеже и разбое. *Труды Киевской ВШ МООН СССР*. Киев, 1968. Вып. 1. С. 91.

<sup>5</sup> Гаухман Л. Д. Борьба с насильственными посягательствами. М., 1969. С. 7.

<sup>6</sup> Шаратов Р. Д. Физическое насилие в уголовном праве. СПб., 2001. С. 31.

<sup>7</sup> Сердюк Л. В. Насильники и их жертвы: криминологическое и уголовно-правовое исследование. Уфа, 2002. С. 16.

<sup>8</sup> Симонов В. И. Уголовно-правовая характеристика физического насилия : автореф. дис. ... канд. юрид. наук. Свердловск, 1972. С. 16.

<sup>9</sup> Токарчук Р. Е. Насилие как составообразующий признак хищений: вопросы уголовной ответственности : автореф. дис. ... канд. юрид. наук: 12.00.08. Омск, 2008. С. 14.

that is, actions which disorganize the work of correctional institutions, and escape from the institutions. In article 393 of the CC of Ukraine, violence is a qualifying feature during the escape from a penitentiary institution or custody by a person who serves his/her sentence of imprisonment or arrest, or who is under pretrial detention.

Moreover, the above is qualified if it has been committed with the use of violence threatening to life or health, or with the threat of such violence as well as with the use of weapons or objects utilizing as weapons. In other words, violent crime in penal institutions is not only dangerous for life or health, but it also requires an individual qualification as a whole.

Purpose of the article is to study violent crime in penal institutions through the prism of criminology and to identify the determinants of the negative phenomenon to develop relevant preventive measures.

In order to get a vision of the extent of violence in the penal institutions over the last five years, the authors have analyzed statistics, which, unfortunately, is not based on all canons of statistical generalization as there is no access to all information units. However, due to the available data, the authors analyze some of the modern causes of violence in penal institutions.

### **1. The commission of a new crime by a prisoner in the penal institution**

Undoubtedly, the commission of a new crime by a prisoner in the penal institution is an extraordinary event, or as I.M. Kopotun calls it, an extraordinary event of criminal nature in the penal institution<sup>10</sup>. First of all, malicious defiance of authorities of the penal institution, escape from the institution of confinement disorganizing the functioning of correctional institutions, murders of convicts or the staff of penal institutions cause a negative resonance in society, adversely affects the authority both a criminal executive system and the entire system of law enforcement and judicial bodies.

According to O.O. Stulov, the state of crime in penal institutions for 2004 – 2008 indicates that the bulk of crimes are committed by prisoners who are serving custodial sentences. Thus, an analysis of the crime for

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<sup>10</sup> Копотун І. М. Поняття надзвичайних подій кримінального характеру в кримінально-виконавчих установах. *Південноукраїнський правничий часопис*. 2012. № 3. С. 40.

2008 shows that 536 criminal cases were initiated during a year against persons sentenced to imprisonment as compared to 489 cases in 2007 (2006 – 411, 2005 – 386, 2004 – 324 criminal cases). Almost 60% of their number is cases are commenced based on “preventive articles” (arts. 342, 345, 390, 391 of the CC of Ukraine). Compared to 2007, the number of escapes of prisoners from penal establishments with minimum-level security with less strict conditions of detention (former colonies-settlements) increased the number of deliberate killings by 100% and the serious injuries that caused the death of the victims by 200%. At the same time, the number of prisoners’ escape from custodial institutions was reduced by 66.6%<sup>11</sup>.

Therewith, many crimes committed by prisoners in detention facilities are peculiar only to this category of persons since the perpetration is possible only while they are serving their sentences. In particular, they involve: 1) evasion of punishment not related to imprisonment (Art. 389); 2) evasion of a sentence in the form of restriction of freedom and the form of imprisonment (Art. 390); 3) malicious disobedience to the requirements of authorities of a penal institution (Art. 391); 4) actions that disorganize the functioning of penal institutions (Art. 392); 5) escape from prison or custody (Art. 393); 6) escape from a specialized medical establishment (Art. 394).

Thus, despite the sharp decrease in the number of prisoners from 149,000 in 2009 (186,000 in 2013) to 60,000 in 2018, the number of reported crimes committed in penal institutions has a disappointing trend. The above fact is also confirmed by statistical reports of the State Judicial Administration, analytical reports of the State Department of Ukraine on the Execution of Sentences, the State Penitentiary Service of Ukraine and the Ministry of Justice of Ukraine for the period 2008–017.

According to official statistics, a specific feature of crimes, which have been committed by prisoners in penal institutions over the last 10 years (2009–2018)<sup>12</sup>, is a tendency to a significant reduction of their number with some dynamic fluctuations. In particular, if during the

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<sup>11</sup> Стулов О. О. Характеристика злочинності засуджених в установах виконання покарань. *Держава та регіони. Серія: Право*. 2009. № 4. С. 126.

<sup>12</sup> Статистична інформація Про зареєстровані кримінальні правопорушення та результати їх досудового розслідування за 2011–2017 рік. URL: <https://www.gp.gov.ua/ua/stat.html>

period (2009–2010), the number of crimes decreased from 422 to 404 in 2010 and in 2011–2012, the absolute rate of crime among prisoners increased from 465 to 576 in 2012, respectively.

However, further, in the dynamics of fluctuations, there was a slight decrease in the absolute number of crimes committed by prisoners in penal institutions – from 324 in 2013 to 298 in 2014. In the following years, the dynamics of fluctuations were associated with a slight increase in the absolute number of crimes committed by convicts in prisons from 302 in 2015 to 314 in 2018.

## **2. Classification of crimes in penal institutions**

The very high latency of violent crime in penal institutions is associated with some shortcomings in the system of performance evaluation of correctional facilities. Besides, it should be noted that the showings for 2014–2018 don't include statistical indicators of the number of crimes committed by prisoners in penal institutions which are located in the temporarily occupied territory of the Autonomous Republic of Crimea and some areas of Donetsk and Luhansk regions. The authors divide crime in the penal institutions into three groups.

The first group includes penitentiary offenses: escape from imprisonment or custody, malicious disobedience to the requirements of authorities of correctional institutions, which generally are more than half of all crimes committed in prisons.

According to quantitative indicators, the authors attribute crimes in the distribution of narcotic drugs, psychotropic substances, their analogues or precursors to the group. In particular, the level of the crimes has recently increased that may indicate the inaction of staff of penal institutions in the prevention of these crimes.

At the same time, taking into account the latency of these crimes, the dynamics likely indicate the random nature of indicators rather than the actual state of crime in the institution. At the same time, the increase in the distribution of narcotic substances in penal institutions may indicate an intensification of the influence of the criminal subculture.

The third, however, no less dangerous than other types, group involves violent crimes: intentional homicide, attempted murder, intentional grievous bodily harm, hooliganism, threat or violence.

Also, it is necessary to distinguish thefts in penal institutions as an individual category. Predominantly, prisoners take things of other prisoners that leads, as a rule, to physical altercations following the traditions of the gangland. Frequently, personal belongings and food and parcels are penetrated by those who are leaders in the penal establishment. Experience has proven that the above facts are often hidden from authorities of penal institutions, or when the facts come to light, they either are ignored, or disciplinary actions are taken.

While studying violent crime among convicts in penitentiary institutions, criminologists rarely pay attention to the study of prisoners, the processes and phenomena that occur inside and mainly focus their efforts on the criminal aspects of the problem.

Individual research makes it possible to look at such crime through the prism of victimology. In particular, structural and functional analysis of victimhood of the convicts in connection with the criminal activity of the SCES staff during professional activity deserves special attention. The basic provisions of such an analysis are synthetic and, at the same time, differentiated attention to the victimology-relevant personal (structural victimogenic factors) qualities of prisoners and their manifestations in psychophysical activity (functional victimogenic factors) in a particular social context where the employee of SCES is involved anyway.

However, criminological insight is somewhat broader and implies its expression in real life, which inevitably involves a number of restrictions and risks in the context of social isolation. Thus, Ya.O. Likhovitskyi presents them as follows:

- 1) forced contact with the staff of the SCES while performing the duties of a convict and with the exercise of the relevant rights;

- 2) limited movement, choice of location;

- 3) in the conditions of restricted access facilities of closed penal institutions; limited arsenal of actually available personal, including legal, physical protection tools, especially in the context of unlawful behavior by the SCES staff. For example, the inability to use telephone promptly, to use means of individual protection, in relation to which the regime of correctional facility set well-known restrictions, etc.

- 4) low efficiency of control system over the observance of the rights of prisoners, their protection;

5) prisonization of a person, a disruption or a significant limitation of his socially useful connections (labor, family, leisure, etc.). In this sense, victimhood of convicts can be defined, first of all, as a status<sup>13</sup>.

Thus, the insufficient elaboration of the scientific problem under consideration at the doctrinal level cannot adversely affect the functioning of the penal institutions of the Ministry of Justice of Ukraine. Moreover, the lack of a criminological basis for a common cross-branch method of preventing violent crime among convicts leads to difficulties and contradictions in the formation of individual measures of its preventive activity.

This, in turn, reduces the scientific and practical value of improving the current legislation and methodological recommendations, complicates their implementation in the practical activity of the penal institutions of the Ministry of Justice of Ukraine.

Analyzing violent crime among convicts, it should be remembered that with the development of penitentiary criminology of Ukraine on crime in penal institutions, it is not only a complex, multidimensional phenomenon, but most important that it is conditioned by the need for scientific and theoretical comprehension and study of crime problems among convicts; its features are as follows:

- commission of crimes by the convicts; a lack of control and supervision over them on the part of the staff of the penal institutions;
- increased risk of serious consequences for both staff and prisoners;
- inadequate control over crime by the authorities and staff of penal institutions, etc.

At the doctrinal level, a strong argument in favor of analyzing violent crime in penitentiary institutions of the Ministry of Justice of Ukraine is a lack of proper legal regulation of public relations in the area of crime prevention in penitentiary institutions and public evaluation of the effectiveness of crime prevention activities in the institutions under consideration.

According to the modern theory of penitentiary criminology, violent crime in penal establishments is the result of the correlation of criminogenic factors (causing crime among convicts) and anti-criminogenic factors (causing its prevention in penitentiary institutions).

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<sup>13</sup> 1.Ліховіцький Я. О. Характеристика віктимності засуджених в аспекті злочинів у сфері службової діяльності, що вчиняються працівниками Державної кримінально-виконавчої служби України. *Форум права*. 2017. №. 1. С. 90–91.



In terms of the determinants of violent crime in penal institutions, the authors identify objective (external) and subjective (internal) manifestations. In particular, objective (external) ones include: shortcomings in the activities of agencies and institutions of penalties of organizational-legal, living, social-educational, practical, technical nature, which support and sometimes stimulate the action of subjective and objective causes of crime in penal establishments<sup>14</sup>.

Moreover, most of modern criminological studies of violent crime in penitentiary institutions, for objective and subjective reasons (analysis of previous studies despite their obsolescent nature, constant discussion of the problem; criticism and comments, etc.) have not formed a strategy and tactics for relevant practical activity and criminological influence on the state policy of crime prevention in penitentiary institutions and probation of the Ministry of Justice of Ukraine.

It is expedient to mark that general measures for prevention of violent crime in penal establishments provide for:

- further gradual improvement of the conditions of serving the criminal sentence and gradual approximation of these conditions to the requirements of international standards and positive experience of serving sentences in the leading countries of the world;
- creation of conditions for maximum involvement of convicts in work activities;
- search for new forms and methods of educational and preventive work with prisoners and qualitative improvement of their content.

Thus, analyzing violent crime in penitentiary institutions among prisoners through 2009 to 2018, the authors find that it is largely determined by the same criminogenic factors that have been identified before, but today, crime among convicts is becoming more threatening and dangerous for penitentiary institutions.

Moreover, its constant instability indicates insufficient results of anti-criminogenic factors. By the way, the system of prevention of violent crime in penitentiary establishments in the years under

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<sup>14</sup> Зубов Д. О. Деякі питання запобігання пенітенціарній злочинності. *Державна пенітенціарна служба України: історія, сьогодення та перспективи розвитку у світлі міжнародних пенітенціарних стандартів та Концепції державної політики у сфері реформування Державної кримінально-виконавчої служби України, затвердженої Указом Президента України від 8 лист. 2012 р. № 631* : матеріали міжнар. наук.-практ. конф., Київ, 28–29 березня 2013 р. К. : Державна пенітенціарна служба України, 2013. С. 373.

consideration led to the actual reduction of such crime. It was especially observed until 2013.

In the crimes under investigation, violence, in addition to crimes related to the infliction of bodily injury, is also used during the commitment of prison crimes; violence is a qualifying feature during the escape from a prison, from arrest or from custody, which is committed by a person who is serving his sentence or in pre-trial confinement.

Moreover, it is qualified if it has been committed with the use of violence threatening to life or health, or with the threat of such violence as well as with the use of weapons or objects utilizing as weapons. That is, escape during the violence, which is dangerous to life or health, requires an individual qualification in the whole.

It is worth noting that Art. 392 of the CC of Ukraine provides for the terrorization of condemnation, which is understood as the use of violence or the threat of violence to compel them to give up on their conscientious attitude to work, observance to the rules of the regime as well as the performance of the same acts for revenge for the fulfillment of public duties to strengthen discipline and order in the penal establishment.

The term “violence” covers both actions and consequences. Consequences of violence are recognized as trivial and moderate bodily injuries. That sort of conclusion is confirmed by other research<sup>15</sup> as well as by the instructions of the Supreme Court Plenum. In particular, it was noted that the attacks on the authorities or terrorizing of prisoners, who are pursuing a better path, related to threats, bodily blows, causing trivial, less serious (moderate) bodily harms and other similar activities are covered by the crimes stipulated in Art. 392 of the CC of Ukraine and do not require additional qualifications in other articles of the CC.

Consequently, the authors can't agree with V.V. Shablysty, A.V. Tkachenko who attributes exclusively violence, which is not dangerous to life or health, to violence during activities disorganizing the work of penal institutions<sup>16</sup>. Thus, using the interpretation of criminal law by analogy, according to the Resolution of the Plenum of

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<sup>15</sup> Насилие и его влияние на здоровье. Доклад о ситуации в мире / под ред. Этьенна Г. Круга и др. / Пер. с англ. М: Издательство «Весь Мир», 2003. С. 107.

<sup>16</sup> Шаблюстий В. В., Ткаченко А. В. Кримінальна відповідальність за дії, що дезорганізують роботу установ виконання покарань : монографія / за заг. ред. д-ра юрид. наук. доц. В. В. Шаблюстого. Дніпро : Видавець Біла К. О., 2018. С. 63.

the Supreme Court of Ukraine No. 2 as of 26.03.93, it indicates that violence that is not dangerous to life or health of the victim should be understood as bodily blows or commission of other violent acts related to causing the victim physical pain or restriction of his freedom (tying hands, using handcuffs, isolation in closed space, etc.)<sup>17</sup>. That is, intentional infliction of light bodily harm that did not cause short-term health disorders or minor disability as well as other acts of violence (striking blows, beating, unlawful imprisonment) provided that they were not dangerous to life or health at the moment of infliction.

At the same time, Arts. 391, 392, 393 of the CC of Ukraine, violence dangerous to life or health is a violence that has caused severe and moderate harm to the victim's health as well as causing mild harm to health that has caused short-term health disorders or trivial loss of working capacity<sup>18</sup>. In other words, it is the intentional infliction of a mild injury to a victim that caused a short-term health disorder or slight disability, moderate or serious injury as well as other violent acts, which did not lead to the above consequences but were dangerous to life or health at the moment of commitment. In particular, they should include violence that has led to the loss of consciousness or had the character of a torture, suffocation, drop from a height, the use of electric current, weapons, special tools as well as the use of narcotic drugs, psychotropic, toxic or potent substances (gases), etc. without the consent of the victim.

Thus, according to Art. 392 of the CC of Ukraine, violence is a violence which is not dangerous to life or health of a person. In the case of causing actions that disorganize the functioning of the institution to a prisoner or staff of the penal institution or committing actions during the escape from penitentiary establishment or custody or commission; such actions shall be qualified additionally by Art. 122 or Art. 115, Art. 348 of the CC of Ukraine.

Criminal doctrine also widely covers the concepts "physical and psychological abuse". In particular, physical abuse is an unlawful intentional physical effect on the body of another person contrary to his or her will that causes different severity level of harm to health or life and may restrict the freedom of movement of a person without violating

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<sup>17</sup> Про судову практику у справах про злочини проти власності : Постанова Пленуму Верховного Суду України від 6 листопада 2009 року № 10. *Постанови Пленуму Верховного Суду України в кримінальних справах*. К.: Алерта; ЦУЛ, 2011. 400 с.

<sup>18</sup> Там само.

bodily integrity. And psychological abuse is an intended effect on the mental sphere of the human body. It can take the form of threats of violence (an expression of intent to cause a person physical harm), an image aimed at causing the victim a mental trauma with the purpose of revenge or violent influence on his will, bullying, harassment, if it is not related to causing physical harm<sup>19</sup>. However, the provisions of the CC provide for only one form of this type of violence – physical menace.

In addition to the use of violence, which is dangerous or not dangerous to the life or health of the prisoner or the employee of the establishment, the disposition of Art. 392 of the CC of Ukraine also includes a threat of violence. The current criminal law lacks its concept, and scientific literature has different ideas both about its essence and the relation with other types of violence, in particular, psychological.

Thus, N.I. Panov assumes that the threat is a mental violence, which is expressed in the dangerous unlawful influence on the mental sphere (substructure) of the person, or either the ultimate purpose of the action of the perpetrator (for example, with murder threat) or “means” of limiting or suppressing the will of the victim and forcing him to perform a certain (passive or active) behavior<sup>20</sup>. The above position is shared by many experts.

L.D. Haukhman argues that the threat may include physical influence providing the following example: in the vestibule of a train carriage, the perpetrator pushes the victim to an open door demanding to cease legal activity<sup>21</sup>. The authors believe the described situation also points at information actions because the main thing is not the physical actions – pushing to the door, but the information they involve, how they affect the human psyche.

It is unjustified the statement that the threat can be modified (transformed) into physical violence if it causes harm to one’s health or life and the perpetrator reckoned on the result.

Psychological abuse is different from the physical one not due to the consequences (they can be exactly the same), but in the mechanism of causing harm to health. “Physical violence is the intentional unlawful

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<sup>19</sup> Хахуда Ю. Насильство як спосіб перешкоджання здійсненню виборчого права. *Право України*. 2003. № 4. С. 102.

<sup>20</sup> Панов Н. И. О точности норм уголовного права и совершенствовании законодательной техники. *Правоведение*. 1987. № 4. С. 79.

<sup>21</sup> Назаров П. Н. К вопросу о насилии при грабеже и разбое. *Труды Киевской ВШ МОИП СССР*. Киев, 1968. Вып. 1. С. 18.

infliction of physical harm to another person against his will by the energetic impact on the organs, tissues or physiological functions of the victim's body". The energy group of methods includes those types of behavior which are related to or expressed in the entity's physical influence on the object and subject of the criminal attack (victim).

Some authors in identifying the threat rely on two criteria: a) its affiliation to psychological abuse and b) functional orientation. For example, V.F. Karaulov considers the threat as a mental abuse applied to the victim in order to change his behavior in the interests of the perpetrator<sup>22</sup>. According to K.L. Akoev, the threat is an intention expressed in any way to harm protected benefits<sup>23</sup>.

It is differently logical to reduce the content of the threat to an "externally expressed intent to cause harm". The true motives of the perpetrator often consist of not so much the desire to harm the wealth of the victim as of the desire to cause him feelings of fear, anxiety, and concern. N.V. Sterekhov renders the essence of the concept under consideration more adequately. He proposes to comprehend the threat as an encroachment on the freedom of activity of a citizen, which is expressed in the influence on the will of the victim by conveying information about the decision to cause essential harm to his interests<sup>24</sup>.

According to the authors, Art. 392 of the CC of Ukraine renders the threat as a socially dangerous information influence on the convict, employee of the penitentiary institution due to which the victim is in a state of choice: to pursue the fulfillment of the requirements of the regime, to assist authorities of the institution or body of the penitentiary system, to carry out official activities recognizing the possibility of realizing the threat and causing harm (to sacrifice one protected benefit for the sake of another) or to bend to the addressee of the threat to execute his will, to neglect own duties. However, it should be noted that not only the moral paradigm arises as the latter type of behavior means that due to the threat the victim causes harm to the work of the correctional institution.

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<sup>22</sup> Караулов В. Ф. Стадии совершения преступления : учеб. пособие. М., 1982. С. 74.

<sup>23</sup> Акоев К. Л. Место совершения преступления и его уголовно-правовое значение. Ставрополь, 2000. С. 22.

<sup>24</sup> Стерехов Н. В. Ответственность за угрозу по советскому уголовному праву (вопросы теории и практики) : дис. канд. юрид. наук. Свердловск, 1972. С. 131.

It should be emphasized that the informational nature of the threat determines its personification. In other words, it must be addressed to the particular person whose behavior is conquered to be changed, and that person is capable of perceiving the threat. Otherwise, the effect on the human psyche is excluded. Therefore, the authors considered it a mistake that the threat is a mental abuse also when it, for reasons independent of the perpetrator, was not or could not be perceived by the person – the addressee of the threat.

The authors support the opinion of A.A. Krashennynnikov and A.I. Chuchaev who point out what composes the threat according to Art. 392 of the CC of Ukraine. The legislator is inconsistent, as beyond the limits of criminal regulation, there is the threat of harm to victim's no less valuable benefits and legitimate interests<sup>25</sup>. Thus, during resorting, the threat can be expressed in the use of violence or destruction or damage to property as well as in the dissemination of information dishonouring the victim or his relatives or other information that may significantly violate the rights or legitimate interests of the victim or his relatives. It should be noted that this sort of crime is less dangerous than the disorganization of the work of penitentiary institutions, but it has a legally defined greater impact on the psyche of the victim. It is not very obvious that this type of threat will not lead to the desired effect for the perpetrator.

It should also be clarified that most often in the context of the escape and actions that disorganize the work of correctional facilities, it is used weapons or objects serving as weapons, which should be understood as their deliberate use by a person both for the physical impact and mental impact on the victim in the form of a threat to violence which is dangerous to life or health<sup>26</sup>. According to Art. 392 of the Criminal Code of Ukraine, liability also arises for the threat of violence when there are real grounds for the implementation of that threat as such acts are a form of mental abuse.

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<sup>25</sup> Крашенинников А. А. Угроза в уголовном праве России (проблемы теории и практики правового регулирования). / отв. ред. А. И. Чучаев. Ульяновск, 2002. С. 104.

<sup>26</sup> Зубов Д. О. Деякі питання запобігання пенітенціарній злочинності. *Державна пенітенціарна служба України: історія, сьогодення та перспективи розвитку у світлі міжнародних пенітенціарних стандартів та Концепції державної політики у сфері реформування Державної кримінально-виконавчої служби України, затвердженої Указом Президента України від 8 лист. 2012 р. № 631* : матеріали міжнар. наук.-практ. конф., Київ, 28–29 березня 2013 р. К. : Державна пенітенціарна служба України, 2013. 620 с.

To not descend in the study of murder as a form of violence, the authors mark that negligent homicide can be considered as an attack on the authorities of the institution concerned and, if any required features, it should be qualified by the totality of the crimes provided for in Art. 392 of the CC and the relevant part of Art. 119 of the CC of Ukraine. That standpoint is supported by other researchers, in particular, M.I. Bazhanov, A.Ya. Svetlov, V.I. Tobyugin et al.<sup>27</sup>.

## CONCLUSIONS

Thus, summarizing the above, the authors conclude that the criminological situation in the penitentiary institutions is still dangerous, tends and is predicted to be increasingly criminogenic one that influences and will influence on the increase of the number of new crimes, which are committed by prisoners.

At the same time, the authors conducted the analysis of violent crime in the penal institutions, based on the data of official statistical recording and registration of its manifestations over the specified period which shows dark prospects.

According to the research, the article confirms with certainty that violence is a complex social phenomenon not only in society but also in penal institutions where the problem concerned is particularly burning. Based on the conducted research, the authors were able to establish that in prisons, in addition to some crimes against sexual freedom, life and human health, there is also violence in penitentiary crimes (Art. 392, Art. 393 of the CC of Ukraine) and can be manifested in three forms:

1) the use of non-life-threatening or health-related violence against a convicted person or an employee of a custodial or confinement facility in connection with the exercise of his official activity;

2) the use of life-threatening or health-related violence against a convicted person or an employee of a custodial or confinement facility in connection with the exercise of his official activity;

3) the threat of violence against a convicted person or an employee of a custodial or confinement facility in connection with the exercise of his official duty.

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<sup>27</sup> Уголовное право Украинской ССР на современном этапе. Часть особенная. / отв. ред. А. Я. Светлов, В. В. Сташис. К., 1985. С. 269.

## SUMMARY

The article studies the problem of violent crime in penal institutions of the Ministry of Justice of Ukraine from the perspective of criminology. It is marked a high level of violent crime in penal institutions, and public danger of the crimes under consideration is determined. The authors analyse scientific literature in the context the interpretation of the concept “violence” and find out a large number of contradictory ideas of scholars concerning the concept “violence”. Based on the analysis, it is proposed the authors’ definition of “violence”. The paper studies the category “violence” as a feature of the objective aspect of elements of penitentiary crimes. It is proposed three forms during the implementation of malicious disobedience of authorities of the penitentiary institution, the escape from prison or custody and actions that disorganize the work of correctional institutions: the use of non-life-threatening or health-related violence against a convicted person or an employee of a custodial or confinement facility in connection with the exercise of his official activity; the use of life-threatening or health-related violence against a convicted person or an employee of a custodial or confinement facility in connection with the exercise of his official activity; the threat of violence against a convicted person or an employee of a custodial or confinement facility in connection with the exercise of his official duty.

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**Information about the author:**

**Bohatyrova O. I.**

Doctor of Law, Senior Research Associate,  
Professor at the Department of Criminal Law and Criminology,  
University of State Fiscal Service of Ukraine

**Bohatyrov A. I.**

PhD in Law,  
Senior Lecturer at the Department of Criminal Law and Criminology,  
University of State Fiscal Service of Ukraine