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## ***A place of criminal responsibility for actions which will disorganize work of establishments of implementation of punishments in structure of penitentiary crime***

Raising of problem. The problem of preventing the commission of criminal offences, which are provided in article 392 of the criminal code of Ukraine, in the penal institutions of the Ministry of justice of Ukraine, due to the fact that the prison system, which is designed for the detention of criminals, they serve a sentence, have the opportunity to commit crimes not only against their own kind, but also to the personnel, there are scruples about the perfection of this system in General, as an essential attribute of the state, which is designed to counter crime in prison.

So, penitentiary criminological settings of combating of a criminal offence under article 392 of the Criminal code of Ukraine should be based on philosophical, legal and psychological nature of its criminological indicators during performing of punishment in the form

of imprisonment for a certain term, lifelong imprisonment by bodies and institutions of the Ministry of justice of Ukraine.

In this regard, improving the efficiency of combating of a criminal offence under article 392 of the criminal code of Ukraine, which encroaches on the established order of management of penal institutions has become an urgent task of the present stage of reforming of bodies and establishments of execution of punishments of Ministry of justice of Ukraine, the key aspects of which are outlined in the concept of state policy in the sphere of reforming State criminal Executive service of Ukraine.

However, the conducted research in correctional and educational colonies regarding the commission of a criminal offence under article 392 of the Criminal code of Ukraine indicates that the staff of these institutions are not

still fluent in the methodology and recommendations for the organization and implementation of the prevention of this crime.

Exactly the lack of legal science applied development of combating of a criminal offence under article 392 of the criminal code of Ukraine, scientifically based recommendations, educational and methodical literature of these issues has limited the legal ability of the staff of penitentiary facilities to increase efficiency of preventive activity in this area of operational activities.

Thus, actions which disorganize the work of the institutions of executing punishment, is a crime more common for prisoners in middle age. At this age they have a great desire to self-assertion, and the effect of useful social ties on the formation of personality is significantly weakened. Often people in this age group is distinguished by apathy, indifference to others, inability to understand life's conflicts, uncontrolled behavior, which is characterized deviations from the norms of morality, the presence of narrowly egoistic attitudes and stereotypes.

Feasance from the side of convict actions that will disorganize work of establishments of implementation of punishments is not only the dangerous trenching upon a purpose and task of justice and normal activity of establishments of implementation of punishments of a State Penitentiary Service of Ukraine but also hinder gaining end punishment and, foremost, prevention of feausance of new crimes. In the structure of penitentiary crime among crimes against the state one of leading places is occupied actions that will disorganize work of attendance centres (an item 392 CC of Ukraine).

On liquidation of consequences of doing of this crime considerable facilities are outlaid, the far of personnel of establishments of implementation of punishments and organs of internal affairs is mobilized, that hinders them to normal activity.

Social insecurity of feausance of actions by condemned that will disorganize work of establishments of implementation of punishments consists also and in that very often they are connected with the feausance of other grave crimes against a property and against a person. All of it testifies to actuality of questions of prevention and criminal law counteraction these crimes.

The release of item 392 CC of Ukraine was considerably changed a legislator by comparison to CC in 1960. However much the analysis of judicial practice shows that traditionally existent problems remain in qualification of these crimes. Absence of judicial interpretation of signs of feausance of actions by condemned is instrumental in it that will disorganize work of establishments of implementation of punishments, and also absence of decisions of them, in regulatory legal acts of the Ministry of Justice and the State Penitentiary Service ( SPS ) of Ukraine.

In this connection there is a necessity of analysis of approaches of legislator, judicial system, establishments of implementation of punishments, and also organs of internal affairs to the decision of problems of prevention of feausance of actions by condemned that rule-making will disorganize work of establishments of implementation of punishments, research of problems of qualification of this crime, from the improvement of legislation in this sphere.

The purpose of the article is a location criminal responsibility for actions which will disorganize work of establishments of implementation of punishments in the structure of penitentiary crime and grant of recommendations in relation to its prevention.

Theoretically based on writing of the article became scientific labours of the known native and foreign scientists, in particular: J. V. Baulina, O. M. Bandura, V. T. Bilous, I. G. Bogatiryov, V. V. Vasilevich, V. B. Va-

silets, P. I. Vorobey, V. K. Grischuk, I. A. Gel'fand, A. P. Hetman, V. V. Golyan, O. M. Dzhuzhi, V. M. Dryomin, T. A. Denysova, V. P. Emel'yanova, Z. V. Zhuravska, A. F. Zelinskiy, V. J. Kvashis, O. O. Knizhenko, V. A. Kirilyuk, O. G. Kolba, I. M. Kopotun, O. M. Kostenko, L. G. Krakhmal'nik, O. M. Litvinova, O. M. Litvak, S. J. Lukashewich, M. I. Melnyk, P. P. Mikhaylenko, S. S. Miroschnichenko, V. O. Navrotskiy, V. I. Osadchiy, M. I. Panova, O. I. Pluzhnik, M. S. Puzryyova, V. K. Saulyak, A. V. Savchenko, V. V. Stashis, J. L. Streltsova, V. J. Tatsiy, V. P. Tyhiy, P. L. Fris, S. I. Khalimon, V. B. Kharchenko, J. S. Shemshuchenko, N. M. Yarmysh, S. S. Yatsenko and other.

Marking indisputable meaningfulness of the conducted researches, together with that, appears, that they do not dip out the circle of questions which require the decision. To this day debatable are questions of a place of criminal responsibility for actions which will disorganize work of establishments of implementation of punishments in the structure of penitentiary crime.

In particular, analysis of scientific developments from the problems of criminal responsibility for actions that will disorganize work of establishments of implementation of punishments, and also the analysis of the archived materials rotined that the different going are near qualification of crimes, foreseen item, 392 CC of Ukraine which generates numerous problems in to apply a right activity of organs of pre-trial investigation and court. Thus, foregoing certifies about actuality of this article and predetermines the necessity of its publication with the purpose of scientific discussion.

Basic maintenance of the article. In the structure of penitentiary crime among crimes against the state one of leading places is occupied by actions that will disorganize work of attendance centres (an item 392 CC of Ukraine). The analysis of scientific developments and archived materials is

conducted by us from the problems of criminal responsibility for actions, which will disorganize work of attendance centres rotined the variety of going near qualification of crimes, foreseen item., 392 CC of Ukraine which draws numerous problems in right to apply activity of organs of pre-trial investigation in general and to the court in particular.

The analysis of legal literature enables to draw conclusion us that two basic groups of research workers were presently formed in relation to understanding of term "justice". In accordance with the first, justice is understood as activity of court from consideration and decision in the judicial order of attributed set a law to his jurisdiction of civil, economic, criminal and administrative cases. [1, p. 678].

First group of scientists, explaining the position, allude to the chine legislation of Ukraine. Yes, in accordance with the item of a 6 Constitution state power in Ukraine is divided into legislative, executive and judicial; the item of 124 justices in Ukraine is carried out exceptionally by courts [2].

The law of Ukraine determines "On judicial system and the status of judges", that delegation of functions of courts, and also the appropriation of these functions is shut out other organs or public servants (part 1 item 5) [3].

By an argument on maintenance of the noted position separate authors consider adjusting of process of inquest, pre-trial investigation and judicial trial, the different heads of the Criminal code of practice of Ukraine, and to the process of implementation of sentences, in general separate normatively legal an act – Criminally executive code of Ukraine [4, p. 2].

Among research workers which determine justice as activity inherent exceptionally to the courts, there are ideas about the necessity of concentration for the proper section of the Criminal code only of norms which would guard realization of justice.

Also there are suggestions in relation to an exception from composition of crimes against justice those criminally punishable acts, which trench upon activity of establishments implementation of punishments, because such activity is in opinion of author, is not justice, in particular, and item 392 CC of Ukraine of "Actions which will disorganize work of establishments of implementation of punishments"[5, p. 111].

We are predisposed to the second group which determines justice some more wide, to activity of court from consideration and decision of businesses, also takes activity of the special organs which further justice, in particular, organs of pre-trial investigation, office of public prosecutor, and organs of implementation of court decisions, sentences and appointed punishments. Only in an aggregate they form the system of organs of justice.

We consent with opinion authors, which acknowledge that crimes which are directed against activity of attendance centres are directed against justice. In fact such activity provides efficiency of justice on the stages of pre-trial investigation and implementation of punishment. Trenching upon such activity hinders justice on the whole, and that is why, to our opinion, it follows to determine justice as family object of this crime and his taking of Chapter XVIII – "Crimes is logical against justice".

However, it should be noted that, conviction and conclusion, which depart punishment and became on the way of correction, in the cases of terror of establishment of implementation of punishments, is victims in the crime of foreseen item 392 CC of crime. In fact this crime is directed against an order and terms of serving of punishment, that directionally on a correction and resocialization of convicted.

Infliction, for example, of bodily harms to convict from the personal reasons, above all things, directionally against life and health of individual,

and that is why it does not follow to consider such actions as a crime against justice. In this case encroachments take place on public relations in the field of life and health of person. However, if such encroachments were feaseance with the purpose of disorganization of work of establishment of implementation of punishments, they are an additional object in a crime, foreseen item 392 CC of Ukraine.

In this connection suggest to foresee in an item 392 CC responsibility for terrors of convicts, which became on the way of correction and resocialization. Such pointing simply attributes such offence to the crimes against justice, as concretely specifies on an object – order and terms of serving of punishment which pursues the purpose of correction and resocialization of convicts.

Disturbing and terms of serving of punishment in establishments of implementation of punishments can result in imposition of penalty, foreseen CEC of Ukraine, and in the specially foreseen cases – criminal responsibility. For example, feaseance of attacking administration of establishments of implementation of punishments; terror of convicted; organization of the to that end organized group or active voice is in such group of action of guilty, that thus break rule internal order of serving of punishment in establishments of implementation of punishments, it is required to consider as actions which will disorganize their work.

We divide opinion of Pluzhnik O. I. that, at terror of convicted, there is criminal influence on victims. Such influence is carried out, to compel convicted not to adhere to the requirements of the mode of serving of punishment [6, p. 170]. As see, an order and terms of serving of punishment belong under the threat of violation, when a victim, rather afraid violence above itself from the side of other convicted, will not execute legal requirements, that produced him. And the mode of serving of punishment is

violated as a result, and the purpose of punishment is not arrived at.

Organization of group is in establishment of implementation of punishments with the purpose of terror of convicted, to attacking administration or active voice in such group (an item 392 CC) also to a full degree conflicts with the mode of serving of punishment. In establishments implementations of punishments are assumed amateur organizations of convicted.

However created they are with the purpose of development of skills of collectivism for convicted, encouragement of them to useful initiative, for the use influence of collective on a

correction and resocialization of convicted. Such organizations work under beginning administration. Creation and functioning of the organized group is directed on injury of the mode of serving of punishment.

Conclusions. On the basis of foregoing suggest to make alteration and additions in Criminally executive to the code of Ukraine and rules of internal order of day of establishments of implementation of punishments and expressly to mark that terror of convicted; creations of the organized group for such purpose or active voice in this group pull criminal responsibility.

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#### **Богатирьов А. І. Місце кримінальної відповідальності за дії, які дезорганізують роботу установ виконання покарань в структурі пенітенціарної злочинності**

У статті розглядається питання щодо місця кримінальної відповідальності за дії, які дезорганізують роботу установ виконання покарань у структурі пенітенціарної злочинності та надання рекомендацій щодо її запобігання. Автором доведено, що вчинення засудженими дій, що дезорганізують роботу установ виконання покарань, є не тільки небезпечним посяганням на мету і завдання правосуддя, нормальну діяльність установ виконання покарань Державної кримінально-виконавчої служби України, але й перешкоджають досягнення кінцевої мети покарання (його виправленню) і, насамперед, запобігання вчиненню нових злочинів. На підставі аналізу чинного законодавства та досліджень вітчизняних науковців розкрито поняття «правосуддя». Визначене місце норми, що передбачає відповідальність за дезорганізацію роботи установи виконання покарань, у кримінальному законодавстві. На підставі дослідження запропоновані зміни до Кримінального кодексу України.

**Ключові слова:** кримінальна відповідальність, дії, дезорганізація, встановлення виконання покарань, пенітенціарна злочинність, профілактика.

**Богатырев А. И. Место уголовной ответственности за действия, которые дезорганизуют работу учреждений исполнения наказаний в структуре пенитенциарной преступности**

В статье рассматривается вопрос о месте уголовной ответственности за действия, дезорганизующие работу учреждений исполнения наказаний в структуре пенитенциарной преступности и рекомендации по ее предупреждению. Автором доказано, что совершение осужденными действий, дезорганизующие работу учреждений исполнения наказаний, является не только опасным посягательством на цели и задачи правосудия, нормальную деятельность учреждений исполнения наказаний Государственной уголовно-исполнительной службы Украины, но и препятствуют достижению конечной цели наказания (его исправлению) и, прежде всего, предотвращению совершения новых преступлений. На основании анализа действующего законодательства и исследований отечественных ученых раскрыто понятие «правосудие». Определено место нормы, предусматривающей ответственность за дезорганизацию работы учреждения исполнения наказаний в уголовном законодательстве. На основании исследования предложенные изменения в Уголовный кодекс Украины.

**Ключевые слова:** уголовная ответственность, действия, дезорганизация, установление исполнения наказаний, пенитенциарная преступность, профилактика.

**Bogatirev A. A place of criminal responsibility for actions which will disorganize work of establishments of Implementation of punishments in structure of penitentiary crime**

In the article a question is examined in relation to the place of criminal responsibility for actions which will disorganize work of establishments of implementation of punishments in the structure of penitentiary crime and grant of recommendations in relation to its prevention. By the author it is proved that commission by convicts of actions, disorganizing work of institutions of execution of punishments, is not only dangerous infringement of the purposes and tasks of justice, normal activity of institutions of execution of punishments of the Public criminal and executive service of Ukraine, but also interfere with achievement of an ultimate goal of punishment (its correction) and, first of all, prevention of commission of new crimes. On the basis of the analysis of the current legislation and researches of domestic scientists the concept "justice" is opened. A certain place of the norm providing responsibility for disorganization of work of establishment of execution of punishments in the criminal legislation. On the basis of a research the offered changes in the Criminal code of Ukraine.

**Keywords:** criminal responsibility, actions, disorganization, establishment of implementation of punishments, penitentiary crime, prevention.