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## The legal and penitentiary system as repressive apparatus: Legal methods of protecting a civil and political rights

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### Abstract

The relevance of the study lies in the growing role of legal and penitentiary systems in the conditions of modern challenges, in particular, the state of war in Ukraine, which necessitates a clear understanding of the mechanisms of legal regulation of the execution of criminal punishments, taking into account the principles of protection of human rights, namely prisoners. The purpose of the research was to carry out a comprehensive study of the mechanism of legal and penitentiary systems, which includes the disclosure of concepts, features and principles of their functioning. The theoretical and methodological approach, the method of synthesis, legal hermeneutics and others were used to conduct the research. The results of the study demonstrated that the combination of theoretical and practical aspects of work in the field of legal and penitentiary systems allows creating a holistic view of the mechanisms that are based on the change in the social orientation

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of criminal punishment and contribute to the further development of paradigms of treatment of convicts. In the course of conducting this study, the impact of martial law on the legal and penitentiary systems was characterized. The peculiarities of the legal regulation of execution of criminal punishments in the conditions of martial law in Ukraine are determined. In addition, the practice of applying measures of criminal enforcement influence on convicts was analysed and, accordingly, the experience of foreign countries in ensuring the rights and freedoms of convicts was summarized. The results obtained during the research can be used by state authorities, penitentiary institutions, scientific and public organizations to improve the legal regulation of the execution of punishments, ensure the rights and freedoms of convicts, and humanize their detention

**Keywords:** civil society; human rights; management; public control; prison service; executive criminal justice

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### **Introduction**

The study of legal and penitentiary systems in the context of the protection of human rights and freedoms acquires special importance in the conditions of martial law in Ukraine. The growing role of these systems, on the one hand, is due to the need to ensure the safety of society, and on the other hand, it carries risks of violation of human rights, especially of prisoners. The war in Ukraine significantly affects the functioning of the penitentiary system. In accordance with the Law of Ukraine No. 3687-IX (2024) on the introduction of the institution of conditional release of persons from serving their sentences for direct participation in the defense of the country, adopted on 8 May 2024, a mechanism for the mobilization of convicts into the ranks of the Armed Forces of Ukraine has been implemented. This decision, in addition to ethical aspects, carries risks of violation of human rights, because it can lead to deterioration of the conditions of detention of convicts, discrimination and other violations. In such conditions, a critical study of the mechanisms of legal regulation of execution of criminal punishments and methods of protection of human rights in the penitentiary system

becomes extremely necessary. This will allow not only to ensure that the rights of convicts are respected, but also to minimize the risks associated with martial law and preserve the humanitarian principles of treatment of people deprived of their liberty. Convicted persons constitute a large category of persons to whom restrictions on their rights, freedoms and interests are lawful. On this basis, the issue of studying an effective mechanism that will act as a legal regulator on the execution of criminal sanctions, taking into account the peculiarities and achievements of convicts in the field of protection of their rights is quite topical and important.

From 2020 to the present, many important works related to the study of various aspects of the observance of the rights of convicts have been published. P.C. Traverso *et al.* (2021) presented the results of an extensive field study conducted in penitentiaries in six Chilean regions, which consisted of observations of interrogations, examination of criminal cases, interviews with officials and prisoners, and examination of x-rays. Scientists have come to the conclusion that the problem of non-observance of the rights of

prisoners will not be resolved until a law on prisons is developed. Until then, the protection of those held in prisons depends on the discretion of the administrative authorities. N.E.A. Santiago and M.F. de Paula Pessoa (2021) asked whether the emergency measures and legal guarantees enshrined in the American Convention on Human Rights are respected for persons deprived of their liberty in Brazil, given the instability of the Brazilian penitentiary system. I. Renzulli (2022) is exploring the normative prerequisites for the abolition of prisons as the dominant form of punishment and the search for alternative approaches to holding people who have committed serious crimes accountable. M. Bolcato *et al.* (2023) dealt with the issue of prison medicine in Italy, namely the search for opportunities for prisoners to undergo rehabilitation after illness, that is, to realize the right to health and an adequate level of treatment. V. Ottone (2022) investigated the problem of overcrowding in prisons in European countries, in particular in Italy, during the coronavirus pandemic. G. de Angelucci *et al.* (2021) studied the attitude of the judiciary towards mothers and pregnant women in a prison in the Brazilian state of Parana. F.R. Trabucco (2021) considered the issue of force-feeding prisoners on a hunger strike: whether this is a violation of human rights. M.C.R.F. de Souza *et al.* (2020) investigated the issue of ensuring the right to schooling of women incarcerated in Brazil. How freedom of religion is exercised in the penitentiary systems of various European countries, including Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Montenegro, the Netherlands, Norway and Poland, found out authors of the collective work "Religion and prison: An overview of contemporary Europe" (Martínez-Ariño & Zwilling, 2020). O.V. Haltsova *et al.* (2020) analysed the issue of

how Ukraine complies with the recommendations of the Council of Europe on the observance of rights in the penitentiary system, aimed at the application of alternative sanctions and measures, which ultimately should reduce the number of people held in prisons. O. Kolb's *et al.* (2023) research showed that those sentenced to life imprisonment in Ukraine currently do not have the right to temporary release due to legal restrictions. The researcher is a supporter of such a strict regime, as he believes that it is aimed at preventing future crimes and ensuring public safety.

Therefore, in order to consider this effective mechanism, it is necessary to consider the experience of foreign countries, which will allow identifying their advantages and disadvantages in order to avoid mistakes in Ukrainian law enforcement practice. Despite the fact that the law of States reflects national traditions, but the stated desire in Ukraine to continue the reform processes in the socio-cultural and political direction requires a critical approach in the form of an analysis of positive experience of others.

The purpose of the research was to conduct a comprehensive study of the mechanisms of the legal and penitentiary systems, including the exploration of their concepts, features, and principles of operation. The activity of this mechanism is the basis of the change in the social orientation of criminal punishment, as well as will contribute to the further development and establishment of scientific paradigms in the field of preventive and corrective action of the State on the offender. A study of the functioning of the Ukrainian penitentiary system and penitentiary system in other European countries will highlight the advantages and disadvantages of the mechanisms under study, which will therefore help to promote the development of penitentiary reform of the Ukrainian penitentiary system by implementing

the recommendations received on the basis of the experience of the European states. As a result, this will lead to more effective implementation of the penitentiary systems in Ukraine.

### ***Materials and Methods***

The scientific study, which was carried out as part of the study of the legal and penitentiary system and the identification of legal ways of protecting a citizen from the State, was carried out thanks to methodological approaches, which help in the disclosure of the theoretical and practical component of scientific work. The disclosure of the theoretical aspect of the study, which can be achieved through a theoretical methodological approach, is an issue of great importance for a meaningful analysis. This phase involves the analysis of the concepts of legal and penitentiary systems, the identification of their characteristics and the principles of the operation of these systems. The legal hermeneutics method allows for a more detailed knowledge of the legal norms that govern the legal and penitentiary systems, which, helps to examine their characteristics. In this case, the use of a systemic and structural methodological approach plays an important role; it allows considering the legal norms established by the legislator through the prism of their study in the form of a system. The functional methodological approach in the provided research was used to study the legitimate ways of protecting a citizen from the State, thus highlighting the types of these methods and features of their implementation. In general, using the induction method, it is possible to study the holistic mechanism of legal and penitentiary systems implementation on the basis of their inherent elements of functioning. Since the subject of the study is the analysis of legal ways of protecting a citizen from the State, the question of the use of

the cultural method becomes particularly important, which helps to examine this branch of law through the lens of viewing it as a regulator of social interaction.

In the course of the research, the content of a number of normative legal acts was analysed and studied, namely: Decree of the President of Ukraine No. 392/2020 "On the Decision of the National Security and Defense Council of Ukraine" dated September 14, 2020 "On the National Security Strategy of Ukraine" (2020); Decree of the Cabinet of Ministers of Ukraine No. 654-p "On Approval of the Concept of Reform (Development) of the Penitentiary System of Ukraine" (2017); UK Prison Act (1952); Criminal Code of the Republic of Hungary (2012); Recommendation of the Parliamentary Assembly No. 1741 "Social Reintegration of Prisoners" (2006); The Prisons and Young Offenders Institutions (2011); Federal Constitution of the Swiss Confederation (1999); Swiss Criminal Procedure Code (2007); Special report of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine (2024); Analytical report on the results of monitoring the state of compliance with the rights of persons detained in the institutions of the State Penitentiary Service of the Executive Service of Ukraine (2022); Standard Minimum Rules for the Treatment of Prisoners (1955); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1992); Resolution 45/111 of the UN General Assembly "Basic Principles of the Treatment of Prisoners" (1992); European Penitentiary (Prison) Rules (1987). The sources provided critical insights into the legal and penitentiary systems, highlighting how they can function as repressive apparatuses and exploring legal methods for protecting civil and political rights.

## Results and Discussion

The protection and realization of the rights, freedoms and legitimate interests of citizens is one of the priorities of the modern world community. This right is enshrined in article 3 of the Constitution of Ukraine (1996). It states that a person, his/her rights and freedoms are defined as the highest value, and their consolidation, realization and protection are the responsibility of the state. In carrying out the penitentiary enforcement study of the functioning of penitentiary systems, it is first necessary to examine the theoretical component, which constitutes the basic theoretical and methodological character.

Considering the correctness of the use of the term “penitentiary system”, it should be noted that this emphasizes civility and the use of a historical approach to the treatment of prisoners who are in detention, and also focuses on the system of institutions that enforce criminal sanctions related to isolation from society (Melossi & Pavarini, 2018; Abderhalden *et al.*, 2021). In this context, it is important to note that the penitentiary system is not merely about housing prisoners in facilities. Rather, it is a correctional system focused on implementing imprisonment sentences and employing various legal measures and methods to rehabilitate convicted individuals, restore social justice, and prevent further criminal activity.

Distinguishing the main types of penitentiary systems, it is complex constructions that are located in a taxonomic social continuum. This type is a special object, which is formed by abstract highlighting of some characteristic features of penitentiary systems, which are conditioned by predetermined criteria of typologization, with leveling of others (Peterman, 2021). That is, the ideal type allows you to ensure the expediency of using a large number of multi-factor models.

Based on the content of the criteria, we can distinguish morphological, empirical, theoretical, cultural-geographical, historical, structural and other typologies (Frank *et al.*, 2020). Of the above typologies, the most important is theoretical, as it sets the contours of knowledge of the object, aims at the formation of an ideal design and fixes the idea of taxonomic coverage of the set of investigated features of the object. That is, this typology considers an object as a system with intrinsic elements of structure and is a way to create theories of a private nature.

Correctional intervention is based on the typology of appropriate forms, means and approaches to the penitentiary system in the State. Thus, the general characteristic of the European penitentiary system shows the marginal model in the humane treatment of convicts. Other types of European penitentiary systems provide structural models for such treatment of convicted persons. On this basis, the European penitentiary system is an abstract structure that reflects the originality and logic of its formation, as well as the transformation processes and development of the penitentiary systems in the countries, which are located within the respective geographical space (Piotrowski *et al.*, 2020). As a result, the penitentiary system is an ideal object of social reality.

Over the past two centuries, the attitude towards prisoners has undergone significant changes. Historically, their conditions of detention and treatment were often cruel and inhumane. Fortunately, over time, an understanding of the importance of protecting human rights, including those deprived of their liberty, has developed. This development led to the creation of international standards for the treatment of convicts. One of the first international documents dealing with the rights of prisoners was the Standard Minimum Rules for the Treatment of Prisoners (1955) (also

known as the “Mandela Rules”), approved by the United Nations. These rules became the first comprehensive international document defining the standards of treatment of prisoners. The Mandela Rules cover a wide range of issues such as living conditions, health care, work, education, religion and family contact. Since then, a number of other important documents have been adopted, developing and supplementing the “Mandela Rules”. Including: Recommendation of the Parliamentary Assembly No. 1741 “Social reintegration of prisoners” (2006), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); Resolution of the UN General Assembly No. 45/111 “Basic principles of the treatment of prisoners” (1990), European Penitentiary (Prison) Rules (1987). These documents establish the principles of humane and respectful treatment of all persons deprived of their liberty, regardless of their crimes or status. They also set minimum standards for conditions of detention, medical care, nutrition, education and other aspects of prisoners’ lives.

Special attention should be paid to the development of standards for the treatment of prisoners abroad, in particular the UK Prison Act (1952) defines the legal framework for the management and administration of prisons in England and Wales. It covers aspects such as the treatment of prisoners, their rights and responsibilities, and the responsibilities of prison staff. An analysis of this law can be useful for understanding the particular national approach to prison management and comparing it with international standards. The Criminal Code of the Republic of Hungary (2012) defines the types of criminal penalties applicable in Hungary, including imprisonment. It is likely to specify different sentences for different crimes and conditions attached to them. Studying this code can be helpful in understanding how

Hungary classifies crimes and the potential relationship between crimes and prison sentences. The Federal Constitution of the Swiss Confederation (1999) and the Swiss Criminal Procedure Code (2007) provide the legal framework for the Swiss criminal justice system. The Constitution enshrines fundamental rights that apply even to persons in prison. The Swiss Criminal Procedure Code (2007) details the legal procedures for criminal investigation, trial and sentencing. Analysis of these documents allows us to identify Switzerland’s approaches to integrating human rights principles into its criminal justice system, which potentially affects the treatment of prisoners.

One of the problems in the European penitentiary systems is to find on a permanent basis new ways and variants of legal means of execution of punishments, which are connected with isolation from society to such a category of persons as reformed criminals, recidivists and persons who do not have the desire to pass the stage of correction (Cuadrado *et al.*, 2021). This problem is most acute in the area of long-term and life imprisonment. This is a problematic aspect, since this category of convicted persons is characterized by profound social disadaptation combined with the social danger of the convicted person and a high degree of criminalization.

Despite the fact that Ukraine has taken a step forward in the direction of compliance with international standards for the treatment of prisoners, significant problems remain. National documents, such as Decree of the President of Ukraine No. 392/2020 (2020), and Decree of the Cabinet of Ministers of Ukraine No. 654-p (2017), which defines the Concept of Reforming the Penitentiary System, both recognize the need for improvement. These documents emphasize the importance of humane treatment and improvement of rehabilitation conditions. However, the reports of

human rights organizations indicate a negative situation. The Special report of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine (2024) raises concerns about the continuation of torture and other ill-treatment in some places of deprivation of liberty. Similarly, the Analytical report on the results of monitoring the state of compliance with the rights of persons detained in the institutions of the State Penitentiary Service of the Executive Service of Ukraine (2022) detailed observations of inadequate living conditions, limited access to medical care, and potential due process violations. These reports highlight the gap between aspirations and reality. Despite the fact that Ukrainian legislation recognizes the need for reform, its implementation seems to be lagging behind.

Analysing the above-mentioned documents, it is possible to single out the main factors that negatively affect the level of compliance with the rights of convicts in Ukraine. First of all, it should be noted about the overcrowding of places of deprivation of liberty. As a result, this leads to unsanitary conditions, limiting access to personal space and medical care, and also complicates the implementation of resocialization programs. In addition, there is an acute lack of resources in penitentiary institutions, which, accordingly, negatively affects the conditions of detention, nutrition, medical care and psychological assistance for prisoners. Particular attention is paid to outdated infrastructure in the above-mentioned documents. Many places of deprivation of liberty in Ukraine need repair and modernization, which negatively affects the conditions of detention and security. Equally important is the imperfection of the rehabilitation system, in particular, in connection with poorly developed programs of resocialization and prevention of recidivism, the process of returning prisoners to a full life in society is complicated. In

addition, despite the official prohibition of torture and ill-treatment, this practice still occurs in some places of deprivation of liberty. These problems indicate that Ukraine needs systemic changes in the field of the penitentiary system.

It is important to bridge this gap. Continued monitoring by human rights organizations and international pressure are essential to ensure accountability and progress. In addition, there is a need to increase investment in the penitentiary system to improve living conditions, health care and rehabilitation programs. Ultimately, a more humane, rights-respecting approach to incarceration not only benefits prisoners, but also contributes to a safer and more just society.

In examining the punitive measures that emerged at the end of the 20<sup>th</sup> century, the goal is not only to provide alternatives to short-term imprisonment but also to shield offenders from its detrimental effects. The essence of such punitive measures is to get the offender to comply with certain requirements that help in one way or another to become a full member of society again (Mroz, 2019). That is, by imposing such social sanctions, the legislator gives the court the right to choose one or the other punishment that is different from the traditional one. For example, the criminal measure of probation is an alternative to traditional punitive measures in general, such as a fine, but not necessarily a substitute for imprisonment. This measure is autonomous and self-serving.

In analysing the current state of the Ukrainian penitentiary system, the idea of a gradual reduction of the minimum sentences that are necessary for parole should be constructively considered. The minimum terms of the sentence may be the lower limit of the sentence, which is provided in the corresponding sanction of the criminal law rule for which the sentence is prescribed. This is

because the limit of the punitive measures, which is regulated in the corresponding sanction, can reflect the essence of a material nature and show its social danger. The minimum limits of punishment demonstrate the minimum punitive procedures necessary to meet the objective of restoring and enforcing social justice.

It has recently been noted that judicial practice tends to reduce criminal punitive measures, regardless of the seriousness of the offence committed and the limits established by the legal nature of the criminal penalty provided. Programs for the correction of convicted persons to deprivation of liberty help to achieve the goal of correction of convicted persons, based on the optimal organization of their life in the conditions of execution of criminal punishment (Eshetu & Admasu, 2020). A set of measures, the evaluation of which is based on the knowledge of trends in the reform of convicted persons, is based on the recording of results through a correction system for this category of persons. Thus, the recording of the results of the convicted person's personality will not be a completed process unless the stimulation measures, which are based on the results of the evaluation, are determined.

Considering such basic criteria for the assessment of the convicted person's actions as his attitude to the crime committed by him, to socially useful work, to training, or the behavior of the convicted person while serving his sentence, it is worth noting that they allow to characterise only the main part of the structure of the personality of this category of persons. Therefore, by assessing the personality of the convicted person, it is possible to obtain information on his attitude to the requirements of the administration of the institution where he is serving his sentence. This information may provide information about the alleged form of behavior of a convicted person no longer

in isolation, but in freedom (Morgan, 2019). The program should be entirely voluntary for prisoners who have reached the age of majority and should not have negative consequences if the prisoner refuses to be incarcerated. On the basis of this assertion, the aim of the correctional task of convicted persons is to bring this category of persons to true freedom and to make it capable of making informed behavioral decisions.

At present, organised work with individual convicted persons is fragmented. Its purpose is to solve individual tasks with this category of persons, namely, solving social problems related to labor adaptation, correction of mental condition, as well as planning educational work with specific categories of convicted persons (James, 2018). The diary of individual work of an educational nature with the studied category of persons in a correctional institution does not allow consolidating the expedient interests of the convicted person and allow building educational work on parity basis, while work in this segment should be properly structured with the possibility of parole being granted to the convicted person. Supervision of the behavior of persons who have been released from penal institutions and assistance in their social adaptation should be carried out by a specialized post-penitentiary institution. Post-penitentiary measures should be understood as criminal coercion, which is a variation of the existing system of security measures, the prospect of which reflects a shift from ideal rehabilitation to the concept of control (Dumont *et al.*, 2021).

In the process of considering the comparison of restriction of liberty with the obligations of probation, the experience of European countries should be considered here. This institute in European countries is called probation institute, by which should be understood "testing". But, for example, in British Ukrainian law, this means

conditional enforcement with the appointment of a specialized official, who is authorized to monitor the behavior of the convicted person and compliance with the duties and conditions for the granting of probation (Karthaus *et al.*, 2019). In general, probation requires compliance with such conditions and obligations as the performance of duties, which are stipulated in the verdict, in the case of which the consequence is the complete release of the prisoner from any form of punishment for the wrongful act committed and the absence of a criminal record as a certain restriction of rights, and the other condition is that the new unlawful acts are not committed.

In the process of the analysing the duties that underlie the probation period and are imposed on the convicted person during probation, the classical form of conviction of this category of persons does not include any specific obligations, except the inadmissibility of repeated commission of a crime. For example, in Hungary, supervision by a probation officer is mandatory only for recidivists or juveniles, in other cases the appointment is subject to judicial discretion. The purpose of this form of conditional imprisonment is to protect the offender from the harmful effects of serving a sentence in prison. In Italy, for example, this is criticized by supporters of simple postponement, as it does not provide for general measures of restraint, but is perceived by supporters as a sort of free pardon of a legal nature. This undermines public confidence in the criminal justice system.

The examination of the general mechanism for the implementation of the penitentiary system does not show the main trends in its functioning, but reflects only a private nature. It is therefore of particular importance to study the international framework for the functioning of the penitentiary system in Europe, which will allow a more detailed analysis of the penitentiary system as a whole.

In the course of the development and establishment of the European penitentiary systems, the basic requirements for the operation of the penitentiary systems as a whole have been elaborated. These requirements include the distribution of prisoners according to their legal characteristics of the crime committed, correctional work on the behavior of the prisoner, the educational process of the prisoners through religious, pedagogical influence, as well as vocational and general training, changing the orientation and impact depending on the results achieved in the transformation of the behavior of prisoners, supervisory supervision of the prison regime by specialized personnel staff. The work of convicted persons should be the main way of changing the behavior of this category of persons and their socialisation, as well as providing assistance to prisoners until their full rehabilitation (Standard Minimum Rules..., 1955). These requirements are still commonly referred to as the seven universal maximums of adequate penitentiary conditions.

European penitentiary systems should be characterised as a set of interconnected elements that have a theoretical and normative character. They combine prison policy, which includes strategic regulations, penitentiary doctrine and world view, which reflects the culture of legal orientation of the society, specialized legislation in this field, the system of bodies and institutions responsible for the implementation of punitive measures, as well as the peculiarities of law-making and law-enforcement practice and the range of appropriate means and methods; which help to achieve the goals and objectives of the penitentiary system (Analytical report on the results..., 2022). That is, these characteristic features reflect the broad meaning of the studied category.

European Council and United Nations resolutions mandate the monitoring of the content

and implementation of international standards, which aids in maintaining high political status and credibility on the global stage (Abderhalden *et al.*, 2021). For example, prison policy in Wales and England does not have a strong focus on the adoption of many international standards for the enforcement of sentences and on the implementation of standards for the treatment of convicted persons (Resolution of the UN General Assembly No. 45/111, 1992). It cannot be said that the States in question have a low level of penitentiary technology or that there has been a lack of progress in the ideas on the treatment of the subject in their national systems. The reason is that British legislation and prison practice is a universally recognized standard of the world's penitentiary system. This state has a great historical experience in the researched sphere, which has received worldwide recognition and fame. The United Kingdom therefore supported its own criminal law policy and did not intend to change it at the present time to conform to completely different standards of prevention.

The need to consider international standards and European penitentiary norms in addressing internal issues arises from the development of international penitentiary law, a subset of international criminal law. This branch encompasses principles and norms that define the legal status of convicted individuals, establish international standards for various punitive measures, and regulate international cooperation within the penitentiary sphere (Swiss Criminal Procedure Code, 2007).

The Anglo-Irish penitentiary system is characterised by a highly progressive system. For example, The Prisons and Young Offenders Institutions (Scotland) Rules 2011 paragraph 17, provides for three levels of control and supervision of prisoners, namely low, medium and high

(Peterman *et al.*, 2021). The transition of a convicted person from a high to a medium to a low level is possible only after a period of at least six months of detention at a certain level, in the absence of warnings from the administration of prisons and institutions. Retrograde movement, from low to medium and from medium to high levels, is possible with at least three disciplinary warnings or with more severe punitive measures, as, for example, solitary confinement for up to three days. The choice of the initial level of the convicted person depends on the seriousness of the wrongful act committed, the existence of a previous criminal record, the late payment of any type, the length of pre-trial detention and the behavior of the convicted person during detention and other criteria, which are determined by administration of prison institution (Peterman *et al.*, 2021). At the same time, when this category of persons enters specialised institutions for serving their sentence, it is generally possible to place them at the lower or middle level. There are four levels in Wales and England, namely reduced, basic, standard and improved (Resolution of the UN General Assembly No. 45/111, 1992). What is equally important for this system is to cultivate the idea of building one's own positive qualities. In the Northern Ireland Prison Rules and Juvenile Centre, the basic principles in the treatment of prisoners are support for their welfare, health, self-esteem, personal responsibility, as well as allowing convicted persons to make individual decisions about their time in prison (Frank, 2020).

The German type of penitentiary system, which is characteristic of States such as Germany, Liechtenstein, Switzerland and Austria, is characterized by the introduction of the penitentiary system by two prisons, with the exception of Liechtenstein, which has one prison. Article 76 of the Swiss Constitution (1999) provides for two

types of correctional institutions, namely, safe and open prisons. Under article 56 of the Swiss Constitution, safe prisons also have a section that can operate in an open prison; open prisons have a section that can operate in a secure prison (Piotrowski *et al.*, 2020). The difference between these species is in the degree of providing security. Open prisons are characterized by the absence of external fences, the territory is designated conditional and, with the permission of the administration, convicted persons have the right to work outside the institution. Closed prisons are characterized by the fact that the category of convicted persons is supervised and does not have the right to go beyond the established territory (Recommendation of the Parliamentary Assembly No. 1741, 2006). It is also worth noting that the German-type penitentiary systems are characterized by the absence of uniform legislation on the enforcement of punitive measures. In Switzerland, for example, each canton has the right to establish it independently, but on the basis of the State's criminal law. The law establishes the cantonal system of punitive measures (Cuadrado *et al.*, 2021).

This type of penitentiary system also has a high incarceration rate, which is slightly lower than the standard penitentiary occupancy rate. This means that the Slavic type of penitentiary system has traditionally had a large number and size of penitentiary institutions in the national penitentiary system. When examining the peculiarities of the penitentiary system, it should be noted that it does not adequately organize the security requirements and accommodation of prisoners in multi-bed sleeping area rather than dormitories.

Equally important is the demilitarisation of the penitentiary system and its humanisation. The current penitentiary system should introduce additional human rights guarantees for the serving of sentences, in the form of the exclusion of

the vulture from the acts regulating the rights and obligations of convicted persons, as well as the expansion of methods and techniques to support social communication. It should also be noted that Slavic-type penitentiary systems are characterized by inhuman or degrading treatment or execution of punishment towards convicted persons, which indicates violations of the rights of convicted persons. On this basis, an important stage in the study is the provision of recommendations to improve the effectiveness of the Ukrainian penitentiary systems and their compliance with international standards.

First of all, strict observance of the principle of separation of convicted persons with different degrees of danger to society is proposed. This principle should also be applied in the execution of criminal sanctions by extending the types of punishment. It should be noted that it is important to build a functional basis for corrective action on convicted persons, which will be based on a system of individual influence on this category of persons. The focus will be on the full social adaptation of the former offender through the provision of employment opportunities and the re-establishment of social networks.

To improve efficiency, it is worth mentioning the reform of the institutional framework of the penitentiary system, taking into account the experience of the European penitentiary systems. It is necessary to develop a concept that will aim at improving the quality of the work of the authorities and institutions that implement the punitive measures, regulating their activities in accordance with European standards in the treatment of convicted persons and moving towards improving the activities of these bodies in accordance with international standards. These recommendations will contribute not only to improving the quality and efficiency of the treatment of convicted

persons, but also to the work of the penitentiary system as a whole.

### **Conclusions**

The importance and relevance of the study of legal and penitentiary systems was highlighted by a scientific study of the subject. This is because the realisation and protection of the rights, freedoms and legitimate interests of citizens are among the priorities and objectives of modern civilization and the world community, and convicted persons are the category of persons whose rights and freedoms are most often restricted. The penitentiary system is a correctional framework focused on administering punishment through deprivation of freedom, utilizing various legal measures to influence convicted individuals. Its primary aims are to restore social justice, rehabilitate offenders, and prevent future crimes. Key aspects of the studied penitentiary systems include classifying prisoners based on the legal nature of their crimes, implementing correctional programs to modify prisoner behavior, providing educational and religious guidance, and assisting prisoners until they achieve full rehabilitation.

The analysis of the current situation with the observance of the rights of convicts in Ukraine shows a number of systemic problems that require a comprehensive solution. Overcrowding in prisons, a lack of resources, outdated infrastructure, an imperfect rehabilitation system and a culture of abuse were identified as key obstacles, the study

found. All of the above factors lead to unsanitary conditions, limited access to medical care and personal space, and also complicate the process of resocialization of prisoners. It has been established that the presence of these problems violates not only humanitarian principles, but also negatively affects society in general, contributing to the increase in the level of recidivism and undermining trust in the law enforcement system. Based on this, it was established that it is possible to achieve the goals of punishment and resocialization, as well as to strengthen the rule of law in Ukraine, only if proper conditions of detention and treatment of prisoners are ensured. In this connection, the experience of European penitentiary systems, namely Anglo-Irish and German, was examined, each with its own characteristics. For the first system there is widespread use of the system of serving sentences, as well as their separation into levels. The German-type penitentiary system is characterized by the representation of the penitentiary system by two prisons, with the exception of Liechtenstein, which has one prison. In the following scientific works, it is advisable to investigate the gender aspects of ensuring the rights of convicts in the modern penitentiary system of Ukraine.

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### **Conflict of Interest**

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### **References**

- [1] Abderhalden, F.P., Baker, T., & Gordon, J.A. (2021). The impact of individual and organizational factors on correctional officers' job satisfaction. *Corrections*, 6(1), 320-336. [doi: 10.1080/23774657.2019.1668313](https://doi.org/10.1080/23774657.2019.1668313).
- [2] Analytical report on the results of monitoring the state of compliance with the rights of persons detained in the institutions of the State Penitentiary Service of the Executive Service of Ukraine. (2022). Retrieved from <http://surl.li/wogserg>.

- [3] Bolcato, M., Fiore, V., Casella, F., Babudieri S., Lucania, L., & Di Mizio, G. (2021). Health in prison: Does penitentiary medicine in Italy still exist? *Healthcare (Switzerland)*, 9(11), article number 1511. doi: [10.3390/healthcare9111511](https://doi.org/10.3390/healthcare9111511).
- [4] Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254к/96-бп#Text>.
- [5] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (1992, September). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_085#Text](https://zakon.rada.gov.ua/laws/show/995_085#Text).
- [6] Criminal Code of the Republic of Hungary. (2012, July). Retrieved from [https://legislationline.org/sites/default/files/documents/da/Hungary\\_Criminal\\_Code\\_of\\_2012\\_en.pdf](https://legislationline.org/sites/default/files/documents/da/Hungary_Criminal_Code_of_2012_en.pdf).
- [7] Cuadrado, A., Cobo, C., Mateo, M., Blasco, A.J., Cabezas, J., Llerena, S., & Crespo, J. (2021). Telemedicine efficiently improves access to hepatitis C management to achieve HCV elimination in the penitentiary setting. *International Journal of Drug Policy*, 88, article number 103031. doi: [10.1016/j.drugpo.2020.103031](https://doi.org/10.1016/j.drugpo.2020.103031).
- [8] De Angelucci, G., Garcia, M., Pessoa, O.A.G., & Gomes, M.T.U. (2021). Prisoned mothers: An empirical research on the treatment of the judiciary for pregnant women and mothers imprisoned at the Paraná Women's Penitentiary. *Revista de Estudos Empiricos em Direito*, 8. doi: [10.19092/reed.v8i.538](https://doi.org/10.19092/reed.v8i.538).
- [9] De Souza, M.C.R.F., Nonato, E.M.N., & da Conceição Ferreira Reis Fonseca, M. (2020). Scenarios of Education of young and adult women in a situation of deprivation of liberty in the Brazilian context. *Ensaio*, 28(108), 811-832. doi: [10.1590/S0104-40362020002801758](https://doi.org/10.1590/S0104-40362020002801758).
- [10] Decree of the Cabinet of Ministers of Ukraine No. 654-p "On Approval of the Concept of Reform (Development) of the Penitentiary System of Ukraine". (2017, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/654-2017-p#Text>.
- [11] Decree of the President of Ukraine No. 392/2020 "On the Decision of the National Security and Defense Council of Ukraine" dated September 14, 2020 "On the National Security Strategy of Ukraine". (2020, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/392/2020#Text>.
- [12] Dumont, D.M., Davis, D., Sadacharan, R., Lamy, E., & Clarke, J.G. (2021). A correctional-public health collaboration for colorectal cancer screening in a state prison system. *Public Health Reports*, 136(5), 548-553. doi: [10.1177/0033354920974668](https://doi.org/10.1177/0033354920974668).
- [13] Eshetu, B., & Admasu, B. (2020). [Viability of private prison policy in Ethiopia](#). *Bahir Dar University Journal of Law*, 11(1), 68-96.
- [14] European Penitentiary (Prison) Rules. (1987, February). Retrieved from [https://zakon.rada.gov.ua/laws/show/994\\_032](https://zakon.rada.gov.ua/laws/show/994_032).
- [15] Federal Constitution of the Swiss Confederation. (1999, April). Retrieved from <https://www.fedlex.admin.ch/eli/cc/1999/404/en>.
- [16] Federal Constitution of the Swiss Confederation. (1999, April). Retrieved from <https://www.fedlex.admin.ch/eli/cc/1999/404/en>.
- [17] Frank, J., Lambert, E.G., Qureshi, H., Myer, A.J., Klahm, C.F., Smith, B., & Hogan, N.L. (2020). Disentangling the direct and indirect effects of task, individual, and organizational factors on occupational citizenship behavior. *Criminal Justice Policy Review*, 31(8), 1136-1164.

- [18] Haltsova, O.V., Kutieпов, M.Yu., & Stepaniuk, A.F. (2020). Recommendations of the Council of Europe as a guide for the development of criminal executive law of Ukraine. *International Journal of Criminology and Sociology*, 9, 1557-1566. doi: [10.6000/1929-4409.2020.09.177](https://doi.org/10.6000/1929-4409.2020.09.177).
- [19] James, N.A. (2018). Risk and needs assessment in the federal prison system. *Congressional Research Service*. Retrieved from <https://sgp.fas.org/crs/misc/R44087.pdf>.
- [20] Karthaus, R., Block, L., & Hu, A. (2019). Redesigning prison: The architecture and ethics of rehabilitation. *The Journal of Architecture*, 24(2), 193-222. doi: [10.1080/13602365.2019.1578072](https://doi.org/10.1080/13602365.2019.1578072).
- [21] Kolb, O., Vasylevych, V., & Levchenko, Y. (2023). The problem of expanding the rights of those sentenced to life imprisonment. *Law Journal of the National Academy of Internal Affairs*, 13(4), 22-30. doi: [10.56215/naia-chasopis/4.2023.22](https://doi.org/10.56215/naia-chasopis/4.2023.22).
- [22] Law of Ukraine No. 3687-IX "On Amendments to the Criminal, Criminal Procedure, Criminal Executive Codes of Ukraine and Other Laws of Ukraine on the Introduction of the Institute of Conditional Release of Persons from Serving Sentences for Direct Participation in the Defence of the Country, Protection of its Independence and Territorial Integrity". (2024, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/3687-IX#Text>.
- [23] Martínez-Ariño, J., & Zwilling, A.-L. (Eds.). (2020). [Religion and prison: An overview of Contemporary Europe](#). In *Boundaries of religious freedom: Regulating religion in diverse societies*, 7. Cham: Springer.
- [24] Melossi, D., & Pavarini, M. (2018). *The Prison and the factory (40th anniversary edition). Origins of the penitentiary system*. London: Palgrave Macmillan. doi: [10.1057/978-1-137-56590-7](https://doi.org/10.1057/978-1-137-56590-7).
- [25] Morgan, J.N. (2019). [Reflections on representing incarcerated people with disabilities: Ableism in prison reform litigation](#). *Denver Law Review*, 96(4), 973-991.
- [26] Mroz, K. (2019). The standards of imprisonment in penitentiary isolation for people with disabilities. *Eastern European Journal of Transnational Relations*, 3(2), 57-72. doi: [10.15290/ejtr.2019.03.02.04](https://doi.org/10.15290/ejtr.2019.03.02.04).
- [27] Ottone, V. (2022). Il COVID-19 and prison overcrowding. *Rivista Italiana di Politiche Pubbliche*, 17(1), 129-156. doi: [10.1483/103479](https://doi.org/10.1483/103479).
- [28] Peterman, D.E., Rubien-Thomas, E., O'Brien, T., Richeson, J.A., Casey, B.J., Meares, T., & Baskin-Sommers, A. (2021). Procedurally just organizational climates improve relations between corrections officers and incarcerated individuals. *Psychology, Crime & Law*, 27(5), 456-475. doi: [10.1080/1068316X.2020.1818238](https://doi.org/10.1080/1068316X.2020.1818238).
- [29] Piotrowski, A., Sygit-Kowalkowska, E., & Hamzah, I. (2020). Work engagement among prison officers. The role of individual and organizational factors in the Polish and Indonesian penitentiary systems. *International Journal of Environmental Research and Public Health*, 17(21), article number 8206. doi: [10.3390/ijerph17218206](https://doi.org/10.3390/ijerph17218206).
- [30] Recommendation of the Parliamentary Assembly No. 1741 "Social Reintegration of Prisoners". (2006, April). Retrieved from <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17423&la%20ng=en>.
- [31] Renzulli, I. (2022). Prison abolition: International human rights law perspectives. *International Journal of Human Rights*, 26(1), 100-121. doi: [10.1080/13642987.2021.1895766](https://doi.org/10.1080/13642987.2021.1895766).

- [32] Resolution of the UN General Assembly No. 45/111 “Basic principles of the treatment of prisoners”. (1992, September). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_085#Text](https://zakon.rada.gov.ua/laws/show/995_085#Text).
- [33] Santiago, N.E.A., & de Paula Pessoa, M.F. (2021). The inter-American system of human rights and emergency measures in the Brazilian prison system: The perspective of “garantismo” in the protection of human rights. *Revista de Estudos Constitucionais, Hermeneutica e Teoria do Direito*, 13(2), 227-244. doi: [10.4013/rechtd.2021.132.07](https://doi.org/10.4013/rechtd.2021.132.07).
- [34] Special report of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine “On the state of affairs regarding the prevention of torture and other cruel, inhuman or degrading forms of treatment and punishment in Ukraine in 2023”. (2024). Retrieved from <https://ombudsman.gov.ua/storage/app/media/uploaded-files/додаток.pdf>.
- [35] Standard Minimum Rules for the Treatment of Prisoners. (1955, August). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_212#Text](https://zakon.rada.gov.ua/laws/show/995_212#Text).
- [36] Swiss Criminal Procedure Code. (2007, October). Retrieved from <https://www.fedlex.admin.ch/eli/cc/2010/267/en>.
- [37] The Prisons and Young Offenders Institutions (Scotland) Rules. (2011, September). Retrieved from <http://www.sps.gov.uk/Corporate/Information/PrisonRulesandDirections.aspx>.
- [38] Trabucco, F.R. (2021). [The new prisoner’s dilemma: The right to refuse feeding or forcefeeding as a duty?](#) In S. Mancuso (Ed.), *The language of law and food: Metaphors of recipes and rules* (pp. 106-126). London: Routledge.
- [39] Traverso, P.C., Riesco, A.V., & Piñones, M.M. (2021). The right to in prison defense in Chile: When there is no right. *Politica Criminal*, 16(31), 254-283. doi: [10.4067/S0718-33992021000100254](https://doi.org/10.4067/S0718-33992021000100254).
- [40] UK Prison Act. (1952, April). Retrieved from <https://www.legislation.gov.uk/ukpga/Geo6and1Eliz2/15-16/52/contents>.

## Судова та пенітенціарна система як репресивний апарат: правові способи захисту громадянських і політичних прав

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### Анотація

Актуальність дослідження полягає у зростанні ролі правової та пенітенціарної систем в умовах сучасних викликів, зокрема, стану війни в Україні, що зумовлює необхідність чіткого розуміння механізмів правового регулювання виконання кримінальних покарань з урахуванням принципів захисту прав людини, а саме засуджених. Метою дослідження стало проведення комплексного дослідження механізму правової та пенітенціарної систем, що включає розкриття понять, особливостей та принципів їх функціонування. Для проведення дослідження було використано теоретико-методологічний підхід, метод синтезу, юридичної герменевтики та інші. Результати дослідження показали, що поєднання теоретичних і практичних аспектів роботи у сфері правової та пенітенціарної систем дозволяє створити цілісне уявлення про механізми, які лежать в основі зміни соціальної спрямованості кримінального покарання і сприяють подальшому розвитку парадигм поведінки із засудженими. У ході проведення цього дослідження було охарактеризовано вплив воєнного стану на правову та пенітенціарну системи. Визначено особливості правового регулювання виконання кримінальних покарань в умовах воєнного стану в Україні. Крім того, проаналізовано практику застосування заходів кримінально-виконавчого впливу на засуджених та, відповідно, узагальнено досвід зарубіжних країн щодо забезпечення прав і свобод засуджених. Результати, отримані в ході дослідження, можуть бути використані органами державної влади, установами виконання покарань, науковими та громадськими організаціями для вдосконалення правового регулювання виконання покарань, забезпечення прав і свобод засуджених, гуманізації їх тримання

**Ключові слова:** громадянське суспільство; права людини; управління; громадський контроль; пенітенціарна служба; виконавча кримінальна юстиція

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