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DOI <https://doi.org/10.32849/2663-5313/2021.10.13>**Kyrylo Muraviov,***Doctor of Law, Associate Professor, Head of the Department of Administrative, Financial and Banking Law, Educational and Scientific Institute of Law named after Prince Volodymyr the Great of Interregional Academy of Personnel Management, 2, Frometivska street, Kyiv, Ukraine, postal code 03039, donkirill@ukr.net***ORCID:** [orcid.org/0000-0002-4422-4116](https://orcid.org/0000-0002-4422-4116)Muraviov, Kyrylo (2021). Specificities of optimising the system of penal bodies and institutions. *Entrepreneurship, Economy and Law*, 10, 84–89, doi <https://doi.org/10.32849/2663-5313/2021.10.13>

## SPECIFICITIES OF OPTIMISING THE SYSTEM OF PENAL BODIES AND INSTITUTIONS

**Abstract. Purpose.** The aim of the article is to study the process of optimization of the system of penal bodies and institutions.

**Results.** In the article, the author analyses the process of optimising the system of penal bodies and institutions. The problems of inadequacy of the management of the domestic penitentiary system are underlined. The optimization of the activities of the State Penitentiary Service of Ukraine in the field of management of the penitentiary system and optimization of the activities in the field of execution of sentences are studied. It is underlined that one of the areas of optimization of the activity of the State Penitentiary Service of Ukraine in the field of penitentiary system management is a significant optimization of the activities of pre-trial detention centres, penal institutions, and enterprises of penal institutions. It is determined that the Ministry of Justice of Ukraine is the main actor entrusted with optimizing the system of penal institutions. The main tasks of optimizing the system of penal bodies and institutions are determined.

**Conclusions.** It is concluded that penal policy should include the following main tasks: reduction of the number of penal institutions; improvement of financial and logistical support of existing institutions and, accordingly, provision of appropriate condition of newly established institutions; personnel changes in modern penal policy; improvement of organizational and managerial structure of the system of execution of sentences. In addition, it is important to determine the range of actors to carry out optimization of penal institutions with a clear division of functions between them and the legal mechanism of its realization. The focus is on the issue of execution of sentences, alternative to deprivation of liberty, which are realized by means of the mechanism of probation supervision.

**Key words:** optimization, penal bodies and institutions, State Penitentiary Service of Ukraine, probation.

### 1. Introduction

One of the important areas of improving the mechanism for public policy on execution of sentences is optimization of the system of penal bodies and institutions. This is a necessary step toward solving the problem of improving the effectiveness of the organization and activity of penal bodies, which has permanent relevance for Ukraine, as well as for any other civilized country. In fact, the limited State financial and material resources that fund these bodies' performance, as well as the necessity and importance to protect human rights and society during execution of sentences, especially in the form of deprivation of liberty, significantly complicate the tasks of successful solution of the above problems.

The aim of the article is to study the process of optimization of the system of penal bodies and institutions.

Individual aspects of activities of penal bodies and institutions have been under study by scientists such as: K.V. Avtukhov, I.H. Bohatyrov, O.A. Hrytenko, A.P. Helia, O.H. Kolb, V.A. Lvochkin, O.V. Lysodied, I.S. Mikhalko, M.V. Romanov, A.Kh. Stepaniuk, V.M. Trubnikov, I.S. Yakovets, et al. However, the issue of analysing the state of affairs in optimization of the system of penal institutions today remains unclear and requires a comprehensive study.

### 2. Determination of areas for reforming the State Penitentiary Service of Ukraine

Today, the system of management of the penal bodies and institutions is undergoing reform, which requires to define certain areas of its improvement. K. Muraviov argues that such areas include determination of clear hierarchy of actors of the system of management of penal bodies and institutions at the regulatory level;

improvement and specification of the legal status of parties to legal relations that arise within the system of management of penal bodies and institutions; updating of current and adoption of new legal regulations, which establish legal principles of functioning of the system of management of penal bodies and institutions, first of all, in so far as its reform; legislative consolidation of the regional offices' activity; improvement of personnel, logistical and financial support of the penal bodies and institutions (Muraviov, 2016, p. 247).

With regard to the ways of reforming the State Penitentiary Service of Ukraine, L. Holovko stresses that the main priority areas of public policy in this field are the solution of the following problems:

- bringing the conditions of detention of prisoners in pre-trial detention centres and persons in the places of deprivation of liberty to European standards;
- overcrowding of places of detention of prisoners and convicts;
- growth of TB and HIV infection and other epidemic diseases among prisoners and convicts;
- insufficient logistics of the penal bodies and institutions;
- prevention of new crimes by persons taken into custody and serving sentence, as well as prevention of tortures or inhuman or degrading treatment of persons held in penal institutions;
- improvement of work with personnel of the penitentiary service, upgrading of their professional training (Holovko, 2016).

The problem of the imperfect management of the domestic system of execution of sentences was stated in the Concept of State Policy in the Field of Reforming the State Penitentiary Service of Ukraine, adopted by Decree 631/2012 of the President of Ukraine of November 08, 2012. In particular, it provides for that despite the adoption of the Penitentiary Code of Ukraine, which provides for qualitatively new principles of execution of sentences, today in Ukraine the Soviet system of management of legal institutions with the features of administrative and command management, which prevents proper execution of tasks vested to the State Penitentiary Service of Ukraine, is actually preserved. At the same time, it is planned to carry out organizational, methodical and informational measures aimed at introduction of a modern model of management of the State Penitentiary Service of Ukraine, providing it with qualified personnel, humanization of conditions of detention of convicts and persons taken into custody, modernization of production of enterprises of the penal institutions (Decree of the President of Ukraine on the Concept of State Policy in the Field

of Reforming the State Penitentiary Service of Ukraine, 2012).

The current Concept of State Policy in the Field of Reforming the State Penitentiary Service of Ukraine points to the inefficiency of the system of execution of sentences, alternative to deprivation of liberty, which is caused by the inconsistency of logistics and the number of personnel of the penitentiary inspection with the scope of tasks and functions assigned to it. The process of execution of sentences, not related to deprivation of liberty, does not provide social and educational influence on convicted persons and is mainly a formal control over the fulfilment of duties imposed on them by the court (Decree of the President of Ukraine on the Concept of State Policy in the Field of Reforming the State Penitentiary Service of Ukraine, 2012).

At the end of 2015, the recommendations of the Administration of the State Penitentiary Service of Ukraine concerning further development of this body noted that the priority of this way is optimization of the system of functioning of penal bodies and institutions, pre-trial detention centres, personnel of the State Penitentiary Service of Ukraine and increase of its efficiency in the context of the new policy on public administration (Leikovskiy, 2015).

However, the issue of optimization of the process of serving sentences not connected with the deprivation of liberty, unfortunately, is not under focus of the Concept of reforming (development) of the penitentiary system of Ukraine (Order of the Cabinet of Ministers of Ukraine On approval of the Concept of reforming (development) of the penitentiary system of Ukraine, 2017).

The process of optimization started with adoption of Resolution 396 of the Government of Ukraine On the procedure for optimizing the activities of pre-trial detention centres, Penal Institutions and enterprises of penal institutions in 2017. This Resolution empowered the system with a legal and organizational instrument, enabling to formalize conservation of unnecessary penal institutions. The previous practice of using this instrument led to the occurrence of 27 optimized institutions, 2 of which found a "new life" in the system of the Ministry of Defence of Ukraine.

As for today, Ukraine is one of the three "leaders" in terms of the number of complaints to the European Court of Human Rights concerning conditions of detention and treatment in places of deprivation of liberty, the domestic system of execution of sentences requires significant changes.

The essence of the reform in the field of execution of sentences is the fulfilment of the following main tasks:

1. Optimization of the organizational structure of penal and probation bodies and institutions. Development of the basic law on the system and status of penal and probation bodies and institutions.

2. Optimization of the number of institutions. Totally, in Ukraine there are 148 penal institutions and pretrial detention centres, 121 operating ones with more than 52 thousand prisoners and convicts at scheduled filling of 112 thousand. According to preliminary estimates, the demand for a penal system for the even detention of convicted and imprisoned persons is 55-60 institutions.

3. Introduction of optimal system of outsourcing in penal institutions. It is about providing ready-made quality services on nutrition, education, treatment, clinical, protection, etc. That is, there is no need for service and house-keeping units, and the head of the colony will have an opportunity to independently control the quality and quantity of services provided on the basis of agreements concluded. The previously proposed system of private prisons, according to the world experience, is subject to severe criticism because of significant violations of human rights and the principles of execution of sentences.

4. Gradual transfer of the function of supervision by the Prosecutor's Office with parallel changes in the system of execution of sentences and probation, as well as supervisory powers. That is, to organize systematic interdepartmental control and monitoring by experts of relevant State and law enforcement bodies with the involvement of human rights defenders, representatives of the Ombudsman. Then the role of the Prosecutor's Office will be to coordinate these processes (Website of the Prosecutor General's Office of Ukraine, <https://www.gp.gov.ua>).

### **3. Finding out the required number of penal institutions**

One of the areas of optimization of the activity of the State Penitentiary Service of Ukraine in the field of penitentiary system management is a significant optimization of the activities of pre-trial detention centres, penal institutions, and enterprises of penal institutions.

The Procedure for optimizing the activities of pre-trial detention centres, penal institutions and enterprises of penal institutions, approved by Resolution 396 of the Cabinet of Ministers of Ukraine of June 7, 2017, provides for the mechanism for optimizing activities of pre-trial detention centres, penal institutions and enterprises of penal institutions with in order to save State funds and decrease the share of depreciation deductions in the cost of production of the enterprises of penal insti-

tutions (Resolution of the Cabinet of Ministers of Ukraine On the Procedure for Optimizing the Activities of Pre-trial detention centres, Penal Institutions and Enterprises of Penal Institutions, 2017), such optimization is carried out by means of their conservation (de-conservation), liquidation, as well as change of the type of the penal institutions.

Order 2865/5 of the Ministry of Justice of Ukraine On optimization of penitentiary institutions of September 13, 2017 determined 13 State penal institutions to be conserved. During the government meeting, the first Deputy Minister of Justice of Ukraine N. Sevostianova noted: "To save budget funds we offer to conserve 13 institutions, which are filled from 8% to 44%. This decision will allow to save more than UAH 70 million of budget funds as soon as next year". Meanwhile, human rights defenders express concern that the consequences of the reform may be different - both positive and negative. For example, the creation of large-scale penal institutions will have a negative impact on the observance of the rights of the convicts (Belous, 2017).

Further research of the necessary number of penal institutions is one of the important steps and stages of reform of the penal system of the State. Its implementation, in combination with other measures, will lead to rational use of the forces and means available, relocation of the prisoners to places of deprivation of liberty with better conditions, formation of financial preconditions for further reform.

The necessity of choosing the optimal number of penal institutions is also conditioned by the provision of the Law of Ukraine On the number of the State Penitentiary Service of Ukraine, and in accordance with para. 2 of this legal regulation, the total number of personnel, providing the activities of penal institutions, pre-trial detention centres, is 33 percent of the number of persons who are detained.

Hence, two aspects are problematic. The first one is that the legal provisions on execution of sentences in practice are not implemented and do not correspond to the modern state of things. The second one is a number of penal institutions of a reverse proportion, when the number of staff is more than the number of convicted persons. These problems should be solved within the framework of optimization of penal institutions.

For example, in one of the penal institutions for women, their number is about 100, while the number of personnel is about 200. Although at different times in this institution there were an average of 1000 convicted persons, and at worst, more than 1500. Accordingly, the infrastructure of such institution is aimed

at keeping a much larger number of people than there are physically. This requires the personnel to make efforts aimed at preserving the property at the disposal of the institution (which mainly begins to decline), and at the same time to provide security measures of the whole object, which is operated on an average of 30 percent (Vysotska, Hrechaniuk, & Nesyn, 2020).

The content of organizational measures should involve: development and practical application of modern approaches to the management of penal institutions; termination of the operation of the penal institutions with a significant reduction of the contingent and conservation of their objects; liquidation of and taking outside the cities those institutions objects thereof are in despair and do not correspond to the infrastructure of a modern city; construction of modern European pre-trial detention centres and penal institutions, in particular by conducting open competitions on involving private partners in realization of the principles of State-private partnership; establishment of the system of interregional bodies of management of the SPS of Ukraine; introduction of decentralization of management and transition to mixed type of management of penal bodies and institutions, pre-trial detention centres: central and territorial; change of the system of forming the staff structure of penal bodies and institutions by means of legislative establishment of fixed limit of the staff number, which will be reviewed annually depending on filling of penal institutions and pre-trial detention centres; legislative consolidation of the grounds for creation of penitentiary institutions of municipal and private ownership (Leikovskiy, 2015).

#### 4. Main problems in reforming the State Penitentiary Service

The issue of identifying the actors to carry out the process of optimization of the penal institutions remains unclear.

I.S. Yakovets argues that Ukraine does not have a single system of actors capable of optimizing the process of execution of sentences. Currently, the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Ministry of Justice of Ukraine and the State Penitentiary Service of Ukraine are engaged in organizing the process of execution of sentences. But their activities in the field of execution of sentences are irregular, lack necessary cooperation and interaction. Therefore, attempts to optimize the process of execution of sentences do not reach the set goals and have a formal character (Yakovets, 2013, p. 153).

Since the abolishment of the State Penitentiary Service, the Ministry of Justice of Ukraine has been recognized as its replacement, accord-

ingly, the process of optimization of the system of penal institutions has been assigned to it.

Thus, one of the priorities, tasks and goals set forth in the proposed reform of the penitentiary system of Ukraine is to improve the organizational structure and staffing of this system. At the same time, the reduction of the number of penal institutions should be accompanied by improvement of the quality of their organization and functioning. In particular, it is the necessity of re-equipment of existing and construction of new penal institutions in order to ensure proper, up-to-date requirements and standards, conditions of maintenance of persons.

The focus should be on a doubtful legal mechanism for optimization of the system of penal institutions.

Thus, depending on the nature of the relationship that needs regulation, it is necessary to distinguish the following basic types of legal methods that can be used for optimization: 1) penal methods that provide execution of punishment and an enabling environment for correction and re-socialisation; 2) administrative and legal methods, enabling to regulate relations between penal bodies and institutions of different levels; 3) civil and legal methods regulating economic relations; 4) labour methods regulating labour relations with the participation of convicts and staff (Yakovets, 2014, p. 173).

Moreover, nowadays the issue of alternative kinds of punishment and optimization of the activities of the State Penitentiary Service of Ukraine in the field of their implementation is especially topical.

The main priorities are announced to be: full implementation of the probation service – the first pilot offices for underaged persons, opened with assistance from *AGRITeam Canada*, have showed excellent results: 96% of underaged persons have not committed repeated offenses after the removal from the register of penal inspection; demilitarisation – reduction of the number of registered employees in the system from the current 77% to 28% (on the example of the new structure of central apparatus and interregional departments); re-socialisation – demilitarisation of the system will allow to shift the focus more on psychological work with convicted persons, to receive additional professional skills, which in turn will allow to increase the number of citizens who will be able to return to the society more easily; new people in the system – after the renewal, reorganization of the system and increase of the wages rate, new people (not less than 20% of the personnel) will be able to enter historically the most closed system (Maslyukivska, 2016).

Therefore, the importance of establishing an optimal model of the system of execution

of sentences is directly connected with the possibility of its development, while the steps taken within this process are aimed at improving the quality of penal activities and effectiveness of policy on execution of sentences in general.

### 5. Conclusions

Therefore, based on the analysis of the modern system of execution of sentences, it is necessary to emphasize once again the importance of optimising penal policy.

These activities should include the following main tasks: reduction of the number of penal institutions; improvement of financial and logistical support of existing institutions and, accord-

ingly, provision of appropriate condition of newly established institutions; personnel changes in modern penal policy; improvement of organizational and managerial structure of the system of execution of sentences.

In addition, it is important to determine the range of actors to carry out optimization of penal institutions with a clear division of functions between them and the legal mechanism of its realization. The focus is on the issue of execution of sentences, alternative to deprivation of liberty, which are realized by means of the mechanism of probation supervision.

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## ОСОБЛИВОСТІ ОПТИМІЗАЦІЇ СИСТЕМИ ОРГАНІВ ТА УСТАНОВ ВИКОНАННЯ ПОКАРАНЬ

**Анотація.** *Мета статті* полягає в дослідженні процесу оптимізації системи органів та установ виконання кримінальних покарань.

**Результати.** У статті автор проводить аналіз процесу оптимізації системи органів та установ виконання кримінальних покарань. Виокремлено проблеми недосконалості управління вітчизняною системою виконання кримінальних покарань. Досліджено оптимізацію діяльності Державної кримінально-виконавчої служби України у сфері управління кримінально-виконавчою системою та у сфері виконання покарань. Наголошено на тому, що одним із напрямів оптимізації діяльності Державної кримінально-виконавчої служби України у сфері управління кримінально-виконавчою системою є оптимізація діяльності слідчих ізоляторів, установ виконання покарань і підприємств установ виконання покарань. Визначено, що основним суб'єктом, на якого покладено здійснення процесу оптимізації системи установ виконання кримінальних покарань, є Міністерство юстиції України. Визначено основні завдання оптимізації системи органів та установ виконання кримінальних покарань.

**Висновки.** Констатовано, що кримінально-виконавча політика повинна включати в себе такі основні завдання: скорочення кількості установ виконання покарань; покращення фінансового й матеріально-технічного стану наявних установ та, відповідно, забезпечення належного стану новостворених установ; кадрові зміни в сучасній кримінально-виконавчій політиці; удосконалення організаційно-управлінської структури системи виконання кримінальних покарань. Окрім того, важливо визначати коло суб'єктів проведення оптимізації установ виконання покарань із чітким розподілом функцій між ними, а також правовий механізм її реалізації. На особливу увагу заслуговує питання виконання покарань, альтернативних позбавленню волі, які реалізуються за допомогою механізму наглядової пробації.

**Ключові слова:** оптимізація, органи та установи виконання покарань, Державна кримінально-виконавча служба України, пробація.

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