



Promoting fair and
effective criminal justice

Status of human rights implementation for vulnerable prisoners in Ukraine

Results synopsis

Full report in Ukrainian: [РЕЗУЛЬТАТИ ДОСЛІДЖЕННЯ "Стан реалізації засудженими з числа вразливих груп наданих прав і свобод"](#)

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II. Comparative Analysis of International Norms, Standards and National Legislation that Regulate the Basic Rights of Vulnerable Groups of Prisoners

In order to obtain a clear understanding of the actual conditions of keeping vulnerable prisoners, a comparative analysis of international and national experience in this area is highly needed.

According to the generally accepted approach, women serving sentences in penitentiary facilities are the largest part in the list of vulnerable groups of prisoners.

As of August 1, 2015, 2,613 convicted persons serve sentences in 11 penitentiary facilities for women.

During the last years, the international community has been paying a special attention to this vulnerable group of prisoners, as it refers, among other things, to a significant increase in the number of such prisoners. This resulted in UN adopting a set of Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, also known as the Bangkok Rules that have been approved without vote by the UN General Assembly on December 21, 2010.

As noted in previous comments to the abovementioned document, the Standard Minimum Rules for the Treatment of Prisoners apply to all prisoners without discrimination of any kind, so in their use the special needs and the real condition of all prisoners, including women prisoners should be taken into account. However, the Rules were adopted over 50 years ago, and they did not pay sufficient attention to the specific needs of women. With an increasing number of convicted women worldwide, the need for clarifying the issue of treatment of women prisoners is of particular importance and urgency.

The Bangkok Rules are advisory in nature, because each state has its own mechanisms and algorithms for their implementation, which depends on the political will of the state top officials. However, according to the researchers, it is necessary to analyze the national laws and regulations for compliance with provisions of the Bangkok Rules. This could result in the development of appropriate conclusions and recommendations for further preparation of the law taking into account the views of civil society institutions that deal with issues of gender initiatives.

As observed by domestic researchers, some provisions of the Bangkok rules are more or less respected in Ukraine. This applies, in particular, to female staff during inspections etc., while other provisions are totally missed out from the Ukrainian laws in general (for example, on women with children who have got to penitentiary facilities). But despite the fact that from a legal point of view, this document does not oblige the state to take certain measures to bring national laws into conformity with these Rules, but as the document of the United Nations of advisory nature trying to help the

country to improve the situation, it can be recognized as an integral part of the regulations of the Penitentiary Service of Ukraine. This will allow for a real implementation of the humanization of punishment, giving women a chance to start a new life in freedom.

The analyzed document covers various issues relating to the situation of women in the criminal justice system and consists of 70 rules. The main issues covered by the rules are: • Prisoners under arrest or awaiting trial: access to activities not related to imprisonment; the provisions in force after the verdict; • Prisoners serving sentences: classification and individual approach, mode of punishment, social relations and assistance after release, including: reception: registration and accommodation; personal hygiene; healthcare: medical examination at the reception; assistance taking into account gender factors; mental health; HIV / AIDS prevention, treatment, care and support; addictions treatment program; suicide and self-mutilation; preventive work with health care; assistance in case of allegations of rape and other forms of violence and torture; safety and security, searches; discipline and punishment: means of pacification, informing inmates and complaints of prisoners; inspections; contacts with the outside world; corrections institutions staff training; the special needs of pregnant women, nursing mothers, women with dependent children, female juveniles, foreigners, minorities and indigenous peoples; the need for research, planning and evaluation; public awareness, information sharing and training.

Along with special regulations that expose the legal status of women in prison in detail, such as the Bangkok Rules and other international regulations for the protection of prisoners' rights, there are separate regulations on the subject.

Hence, in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) adopted on May 21, 2015, their developers have addressed the women issue several times. Rule 28 states: women's penitentiary institutions should have special facilities for the necessary treatment and care for pregnant women and mothers. Where possible, the administration should take care that the childbirth would take place not in prison but in a civil hospital. If a child was born in prison, this fact should not be mentioned in the birth certificate. Rule 45 focuses on the prohibition of the use of solitary confinement and similar measures in cases involving women.

Rule 48 contains an indication that the means of pacification should never be applied to women during labor, childbirth and immediately after delivery.

Rule 81 stipulates that only female employees should take care of women in confinement, and supervise them. This should not, however, hinder male employees, including doctors and teachers, to carry out their

professional duties in women's correctional facilities or in designated offices for women prison institutions.

A special rule was also formulated regarding maintenance of women in prisons within the set of the European Prison Rules (adopted by the Committee of Ministers of the Council of Europe on January 11, 2006):

In addition to specific provisions of these Rules relating directly to women prisoners, the authorities should, when deciding on any aspect of their detention, pay special attention to women's needs including their physical, professional, social and psychological problems.

Special efforts should be taken to ensure access to specialized services for female prisoners, who face problems related to physical, psychological or sexual violence.

Women prisoners should be allowed to give birth outside the penal institution, and, in case of birth in detention, the administration should give the woman all necessary support and maintenance.

As to drawing up a list of international regulations incorporated into the scope of domestic laws, one can agree with the conclusion of the gender legal review of the Penal Code (PC) of Ukraine that took into account the Convention on the Elimination of All Forms of Discrimination against Women (1979); European Prison Rules (2006); United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (2010), and others. The review stated that the Penal Code provides a number of provisions that reflect certain benefits provided to women compared to male convicts. In particular, women are granted some additional rights and privileges associated with physiological and social differences between people of different sexes.

This applies especially to such important physiological function as birth and nursing of a child. It appears that these benefits are reasonable and necessary.

In particular, the legislator's concern for the health of pregnant women, nursing mothers and their protection is expressed in the following provisions of the Penal Code:

exemption from punishment by correctional labor of a woman who became pregnant after the adoption of the verdict (part six of Article 42);

release from the restriction of liberty for women that conceived (part nine of Article 59);

permission to buy food and basic necessities for a larger amount than for men, issued to convicted pregnant women and women with children in children's homes at penal colonies (part five of Article 108);

creation of improved living conditions and the establishment of higher standards of food for pregnant women and nursing mothers (part three of Article 115);

providing free food, clothing, shoes, underwear and communal services for convicted women of more than four months pregnant, unemployed women with children in nurseries at correctional facilities (part four of Article 115);

permission to women with more than four months of pregnancy and women with children in nurseries at correctional facilities to work of their own free will based on the conclusions of the colony's medical panel (part two of Article 118);

prohibition to place pregnant women and women with children in nurseries at correctional facilities into disciplinary cells, cell-type premises (solitary confinement) (part two of Article 132);

permit for women prisoners diligent at their the work and keeping the regime to reside outside the penitentiary institution at the time of release from work due to pregnancy and childbirth, and before the child is three years of age (part one of Article 142);

early release from punishment of a woman sentenced to community or correctional labor in case of her pregnancy (part nine of Article 154).

Part five of Article 102 of the Code is also important gender-wise, as it states that personal search must be conducted by persons of the same sex with inmates.

It should be emphasized that the review not only found a significant amount of special rules for women and stated a sufficient level of implementation of international regulations, but it concluded that there are gender misbalanced rules in the Code, not associated with such an important biological difference between genders as child birth and nursing.

However, Ukrainian researchers also expressed other views on the degree of implementation and opinions that the Bangkok Rules were not fully implemented in Ukraine. In particular, Rule 4 states: Women prisoners shall be placed in places of imprisonment situated as near as possible to the place of their residence or place of social rehabilitation, taking into account their duties of release, as well as individual preferences of women and availability of appropriate programs and services. According to Art. 93, Penal Code (PC) of Ukraine, a person sentenced to prison shall serve full sentence in a penitentiary facility typically within his/ her territorial unit according to his/ her place of residence prior to conviction or the place of permanent residence of relatives of the convicted person. This provision would ensure proper maintenance of relationships with relatives as specified in international standards. But the realities of today are such that women are often the ones most disadvantaged in terms of accommodation, as presently only 11 female colonies are located at the territory of Ukraine and their location is not proportional. All this is combined with the lack of money within families for trips, lack of time, paperwork difficulties if the child of a convicted woman is in

a boarding school, drastically complicates contacts with their families. Most women lose such relationships in general because of these circumstances.

Article 28 of the Rules is not fully implemented, it states that a visit should be preferably carried out in more or less comfortable conditions reminiscent of home conditions. The gender feature that must be taken into account in this case is the emotional needs of a mother in close physical contact that can only occur in favorable conditions. After analyzing national laws, a scientist concluded that these requirements are not respected in Ukraine.

In Ukraine, according to departmental regulations, the procedure of medical examination of prisoners is almost identical for all categories. Thus, at admission to correctional facilities, prisoners are mandatorily subjected to medical examination and sanitized. Here, no regulation indicates the need for privacy during such procedures, everything happens in a general manner at the presence of all newly-arrived prisoners and staff. There are not even formal provisions for women prisoners to request examination by a female doctor or nurse. In penitentiaries for women prisoners, the staff did not even hear about specific types of examinations.

Beside contradictions between national laws and the Bangkok Rules, it is worth mentioning that Ukraine has not fulfilled some of the requirements of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), adopted on May 21, 2015. As we stated above, Rule 48 contains a reference according to which no pacifying should ever be applied to pregnant women during labor pains, childbirth and immediately after delivery. Instead, the national laws contain no such prohibition and facts of handcuffing women during childbirth in Ukraine are already being examined in the European Court for Human Rights.

Thus, Ukraine has considerable achievements in the implementation of international instruments on the protection of women prisoners, but some contentious issues remain unsolved.

Another category of vulnerable prisoners that we will review in terms of comparison to international and domestic experience are minors. Peculiarities of the legal status of convicted minors are described in Chapter 21 of the PC of Ukraine (art. 143-149) and in a number of subordinate regulations. As pertains to international regulations, the system of documents describing international standards of treatment of juveniles is quite extensive. It includes: the UN Standard Minimum Rules for the Administration of Juvenile Justice of 1985 (the Beijing Rules), Convention on the Rights of the Child (1989), the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990), the UN Guidelines for the Prevention of Juvenile Delinquency (1990), European Prison Rules (2006).

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) are the main international regulations directly related to minors.

In this document, the international community is offering national legislators the exact standards of treatment of those minors whose behavior was so socially dangerous that it was qualified as a crime.

The Beijing Rules structurally consist of six parts: Part 1 - The General Principles; Part 2 - The investigation and Prosecution; Part 3 - Adjudication and Disposition; Part 4 - Non-Institutional Treatment; Part 5 - Institutional Treatment; Part 6 - Research, Planning, Policy Formulation and Evaluation) and, accordingly, 7 rules with commentaries.

The Rules include as the main objectives: the aspirations of all states to contribute to the welfare of minors (Clause 1.1); create conditions for a meaningful life in society for teenagers (Clause 1.2); implement measures to mobilize all possible resources to promote the well-being of teenagers; minimize interference of law in the life of a teenager; effective, fair and humane treatment of teenagers in conflict with the law (1.3); comprehensive support within each country of social justice for all juveniles (1.4); create a system of staff development for the justice service for minors (1.6).

For the first time, this document clarified the term "juvenile offender", which means "a juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult," i.e., for the first time the juvenile offender is defined as a special subject of legal liability at the age range of 7 to 18 years of age or older, which is associated with different from the minimum age limits depending on historical and cultural features of a particular state.

The Beijing Rules also have a dual use in the specific area: first, their norms are formulated in such a way that they could be used under different legal systems; and, secondly, they define common minimum standards relating to the administration of juvenile justice.

According to clause 5.1 of the Beijing Rules, the criminal justice system for juveniles should be directed primarily at ensuring the well-being of minors, in particular through the correlation of any measures of influence on juvenile offenders with the individual features of the offender and the circumstances of the offense. Thus, the main purpose of the legal liability for minors is defined by principles of responsibility and correlation between offense and punishment.

Furthermore, the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) adopted by the General Assembly resolution on December 14, 1990, are among the most important international instruments for the treatment of minors.

According to the Riyadh Guidelines recommendations, the national plan for prevention of juvenile delinquency should include the following mandatory activities:

- In-depth analysis of issues;
- Lists of existing programs, services, facilities and resources available;
- Clear responsibilities of competent organizations, institutions and personnel involved in activities on prevention of juvenile delinquency;
- Mechanisms for proper coordination of governmental and non-governmental agencies in the prevention of juvenile delinquency;
- Policies, programs and strategies based on predictions, which should be constantly supervised and be subjected to scrutiny during their implementation;
- Methods of efficiently reducing the possibility of juvenile offenses;
- Participation of communities within a wide range of services and programs to prevent juvenile delinquency;
- Close cooperation between national, state and local governments with the participation of the private sector, community representatives and institutions dealing with child labor, childcare etc. in developing and carrying out joint measures to prevent juvenile delinquency;
- Availability of qualified personnel at all levels.

The European Prison Rules of 2006 also raise the issue of juvenile prison inmates. Rule 35 states: Where exceptionally children under the age of 18 years are detained in a prison for adults the authorities shall ensure that, in addition to the services available to all prisoners, prisoners who are children have access to the social, psychological and educational services, religious care and recreational programs or equivalents to them that are available to children in the community. Additional help should be provided to minors released from prison. If minors are in prison, they are held separately from adults unless it is considered that it is contrary to the interests of minors.

In general, it should be noted that juvenile delinquency in general, and young offenders in penal institutions in particular, have long been under the scrutiny of the international community, as evidenced by the significant amount and number of international instruments in this field.

The domestic researchers observe that, internationally, the legal status of juvenile prisoners is considerably higher than in Ukraine. Obviously, the complexity of the provisions of the international instruments guide the states, including Ukraine, to the most differentiated approach to different categories of prisoners. Then prisoners, including minors, receive a number of rights and legitimate interests that may be implemented in the process of their re-socialization. In this context, the Ukrainian laws and regulations (primarily penal laws) should take greater account of international standards for the treatment of minors sentenced to imprisonment, which will have a positive

impact on the national regulation of their legal status, and, as a result, on efficient re-socialization of the specified categories of persons in terms of educational colonies.

Unfortunately, a number of international instruments' provisions presently is embodied neither in law nor in practice of the juvenile penal system. Rule 26 of the UN Standard Minimum Rules for the Administration of Juvenile Justice states: In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access. But today in Ukraine, there are only 6 correctional facilities, and only one of them is for female juveniles and this causes considerable difficulties with the implementation of the rule, because a large number of parents from remote corners of Ukraine lack the possibility to properly maintain family ties.

According to rule 28, minors conditionally released from correctional institutions receive assistance and are supervised by an appropriate authority and should receive support from the community. However at present, the law does not provide a clear procedure and responsibility of local communities to help former prisoners. Unfortunately, this issue has not found a clear solution in the new law "On Probation".

Under the domestic law, the provisions of rule 29, which state that efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centers and other such appropriate arrangements that may assist juveniles in their proper reintegration into society, remain undefined. In practice, it is not about creating any real alternatives to correctional colonies, and even no easing of the regime provided by the PC of Ukraine is done. Art. 94 of the PC of Ukraine provides for the establishment of social adaptation station holding prisoners with lawful behavior and diligence in training and work and who are to be released not more than in six months. However, as it has been noticed many times by representatives of human rights organizations, the Kuriazska correctional colony does not have such station at all.

So, we can say that the domestic legal system has not completely absorbed the many years of international experience of management of convicted minors, incorporated in international regulations. There is a significant reserve for further improvement of both laws and enforcement practice. Educationally neglected children require particular attention as they often commit crimes by ignorance.

The number and volume of international regulations on different categories of vulnerable prisoners significantly vary. There are several internationally adopted regulations on juveniles and women in penal institutions, but there are no separate international regulations for categories such as HIV / AIDS-positive people, those infected by tuberculosis, elderly and disabled people. However, we cannot say that the international community has not addressed the issue of these categories of convicts. The

international experience on the matter is expressed in general regulations that apply to all prisoners, or in the documents that were adopted regarding certain special groups, without restricting the prisoners issue to a separate document.

It is worth mentioning among the general international instruments such already implemented documents as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, European Prison Rules, the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), etc.

In these international instruments, there are only a few rules concerning the peculiarities of the legal status of the studied categories of vulnerable prisoners. Thus, the European Prison Rules set the doctor's responsibility to ensure that HIV-positive prisoners are not to be isolated solely for this reason (Rule 42), but unfortunately, at the time when Ukraine's Medical Service staff are officers of the State Penal Service and subject to administrations of correctional institutions, there are frequent violations of the said provision.

Rule 24 of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) indicates that health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including HIV, tuberculosis and other infectious diseases, as well as drug dependence.

In domestic practice, this international norm has not been observed neither as legal studies in law nor as the current practice of treatment and care of infectious convicts.

As for the special international regulations, there are primarily documents adopted to ensure the rights of certain categories of citizens to receive decent treatment, care and social security, and these documents do not contain certain exceptions or additions for the benefit of convicted persons.

Among international instruments regulating such issues, it is worth mentioning the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted at the 37th session of the UN General Assembly on December 18, 1982; Recommendations of the Committee of Ministers of the Council of Europe Rec. R (93) 6 concerning prison and criminological aspects of the infectious disease control including AIDS and related health problems in prison; The Convention on the Rights of Disabled Persons, adopted by the UN General Assembly on December 13, 2006.

Domestic human rights groups have noted significant problems with the implementation of the specified documents in the national laws; it is even worse with real endorsement of already secured guarantees. And this pertains to the people outside correctional institutions. Within penal institutions, the specific rights of the disabled, the elderly, patients with HIV/ AIDS and tuberculosis, are observed even less. It very difficult for prisoners serving sentence to obtain adequate support from the state and private institutions, and unfortunately we have to state that the legal status of HIV/ AIDS, TB-infected, elderly, and disabled persons is characterized by the same complexity as that of persons who are not in penal institutions, subject to the conditions of detention in isolation from society.

One of the main problems appears to be a proper material welfare of those persons as it was repeatedly reported to human rights defenders. In conditions of imprisonment, the possibility to obtaining high-quality medical care and to receive specific drugs becomes considerably complicated. The problem of filing complaints against the administration of correctional institutions, including at violation of the rights of these vulnerable prisoners has become quite common for the national penal system.

Among other things, we must indicate that problems of prisoners suffering from HIV/ AIDS are not reduced to their treatment but rather to the manipulation of the statistics in order to make an impression of the improvement of the situation in the penitentiary service, as it has been noted by human rights activists.

The international community does not define in regulations the specific features of maintenance of elderly and disabled persons in prisons, and devotes more attention to the need to exclude cases of elderly prisoners penalties involving deprivation of liberty. In addition, the foreign practice widely uses release of persons who were sentenced to long terms or even for life after they reach a certain age.

In general, it should be noted that the legal status of HIV/ AIDS and TB-infected, the disabled, the elderly people is insufficiently detailed both in domestic laws and international regulations. The problems of low health and social security of the specified categories of persons are only intensified in isolation from society.

III. RESEARCH RESULTS

General Information on Prisoners in Ukraine's Penal Institutions

As of August 1, 2015, there were 177 institutions and 669 units of penal inspections (of which 29 institutions and 47 units of penal inspections were at the territory of Donetsk and Lugansk regions, these territories are temporarily under control of Ukrainian authorities) under management of the State Penitentiary Service of Ukraine. In the prisons and detention centers located at the territory controlled by the Ukrainian authorities, there are 71,325 people; thus directly in 113 prisons there are 54,909 convicts. Of them:

7 maximum security colonies - 2,844 persons;

32 colonies with medium level of security for repeat convicts - 21,854 persons;

27 colonies with medium level of security for first-time convicts - 15,825 persons;

7 colonies with minimum level of security and general conditions for holding men – 2,053 persons;

4 colonies with minimum level of security and eased conditions for holding men - 642 persons;

11 colonies for holding women - 2,613 persons;

4 specialized medical institutions - 1,239 persons;

in medical institutions at prisons and detention centers – 1,741 persons;

21 correctional centers - 2,397 persons;

6 correctional facilities (for minors) - 371 persons.

Women and women with children

Specific National Penal Legislation

The Penal Code of Ukraine (further on the PC of Ukraine) establishes a procedure of punishment by imprisonment of sentenced women:

According to Art. 18 of the PC of Ukraine, women are serving sentences in penal colonies at minimum level of security with general or eased conditions and at middle security colonies. That is, they must have a smaller number of rights restrictions than the convicted men. The legislator does not establish or outline any specific features. The law does not provide either for any differences related to physiology, psychology and physical abilities of women. Women prisoners are provided with food, clothes, and communal services according to norms established for prisoners serving sentences in correctional facilities.

In case of need, women's correctional facilities could organize nurseries. Convicted women have the right to put their children under three years old in these nurseries. A nursery at a penitentiary institution is a

childcare institution. In nurseries, children are under the care of the administration of the childcare facility, at full state support, they are provided with the necessary conditions for normal life and development. If a convicted woman has expressed no desire to live in the nursery together with her child, she should be given the opportunity to communicate with the child without any restrictions.

If a convict is required to attend her child at the time free from performing her duties, it is not considered a communication restriction.

Nursing mothers and pregnant women can receive varied food parcels (transfers) as determined in their medical conclusions.

Convicted women can live with their children of under three years old in the nursery, for this the penitentiary administration creates the necessary conditions for living and controlling the behavior of women in the nursery.

In cases when there is no applicable exemption from punishment under Article 83 of the Criminal Code of Ukraine, convicted women pregnant over four months or those having children up to three years are sent by the penal colony administration for further serving their sentence to a penal colony with a nursery.

The central executive body regulates visits of close relatives of a child in the nursery and the conditions of communication thus ensuring the formation and implementation of the state policy in the area of execution of criminal penalties. Children of women prisoners, with the consent of the mother, may be transferred to her relatives or, with the consent of the mother and by the decision of the guardianship and trusteeship, to other individuals or, upon reaching the age of three years old, are to be sent to children's institutions. If the mother of a child who has reached the age of three years old, has an unserved part of the sentence not exceeding one year, and she faithfully fulfills her motherhood duties, the presence of the child in the nursery can be extended by the penitentiary administration until the release of the mother (Article 141 of the PC of Ukraine). Convicted women who faithfully put to work, if any, and keep to the regime are permitted (by the decision of the Penitentiary Colony Chief in agreement with the Supervisory Commission) to live outside the penal colony at the time of release from work due to pregnancy and childbirth, as well as until the child reaches the age of three years old.

Convicted women who are allowed to stay outside the penitentiary:

Have to settle near the penal colony and are under the supervision of the prison administration;

They can wear clothing appropriate at civilian life, to carry money, mobile phone, mobile accessories and valuables;

They can correspond without limit, receive remittances, postal parcels, spend money, have meetings with relatives and others, use mobile communications at their own expense;

They have the right to freedom of movement on the territory, the boundaries of which are determined by the Penitentiary Colony Chief;

In the case of childbirth/ illness of prisoners or their children, they may be placed in local hospitals;

After the period of leave from the work due to pregnancy and childbirth, they do the work as directed by the penitentiary administration, they are accrued earnings at the same basis as other prisoners serving sentences at penal colonies of this type.

Food, clothes, and communal services are provided according to the norms established for prisoners serving a sentence at a penal colony. In the case of systematic or willful violation of the rules of conduct, the right to live outside the colony is canceled by order of the Penitentiary Colony Chief agreed with the Supervisory Commission, and the sentenced woman is to be returned to the colony for further serving the sentence (Article 142 of the PC of Ukraine).

The care for the health of pregnant women, nursing mothers and their protection is expressed in the following provisions of the PC of Ukraine:

Convicted pregnant women and women with children in nurseries at penal colonies have permission to buy food and essentials for a larger amount than men (part five of Article 108);

Creation of improved living conditions and the establishment of high standards of food for pregnant women and nursing mothers (part three of Article 115);

Providing free food, clothing, shoes, underwear and communal services for convicted women of more than four months pregnant, unemployed women with children in nurseries at correctional facilities (Article 115);

Permission for women with more than four months of pregnancy and women with children in nurseries at correctional facilities to work on their own free will based on the conclusion of the medical panel of the colony (part two, Article 118);

Prohibition to place pregnant women and women with children in nurseries at correctional facilities, into a disciplinary cell, cell-type premises (solitary confinement) (part two, Article 132);

Prohibition to use straitjackets on convicted juveniles and women (part three of Article 106).

That is, no significant differences in the punishment of women convicts is stipulated by the legislator, and the only exceptions are pregnant women and women with children.

Recommendations for Improvement of Punishment and Enforcement of Rights and Freedoms

The results of the study suggest that the process of organizing proper conditions in penal institutions for women and women with children is difficult. One has to take into account the problems of institutional, economic and social nature that women have to face when being released from imprisonment. The society is generally more demanding towards them (more demanding than to male prisoners), warily accepts their return to society, which has a significant impact on their subsequent re-socialization and return to normal life. The presence of children makes the identified problems of material and moral nature even more complex for woman.

The penal system, the organization of institutions for implementing the sentence of women imprisonment require conceptual thinking. The issue of peculiarities of punishment by imprisonment concerning condemned women should take its proper place in criminal law and penal policy of the State. A more damaging impact of imprisonment on a woman's personality makes this issue very important.

To improve the existing conditions of serving the sentence for convicted women and in order to facilitate their social adaptation after release, it is appropriate to introduce such measures:

1. Introduce amendments to the provisions of the PC of Ukraine and other regulations:

1) In order to eliminate the problem of lack of awareness of female convicts of their rights on arrival to the correctional institutions, there is a need to improve the provisions of paragraph 1 part 1, Art. 8 of the PC of Ukraine. It is necessary to supplement the said paragraph with the following sentence: "In case the administration of the institution or agency of punishment fails its obligation to provide the said information to the convicted persons, the responsible person and the head of the institution or penitentiary colony should be held accountable."

2) In order to address the possibility for the prisoners to inform their relatives on arrival to the correctional institution, even while in the diagnostics quarantine station and distribution, we offer to supplement part 5, Art. 110 of the PC with the following sentence: "The ability to make telephone calls becomes available to prisoners right upon arrival to the penitentiary, including during their stay in the diagnostics quarantine station and distribution."

3) In order to ensure medical secrecy on the health status of sentenced women, Art. 116 of the PC of Ukraine should be supplemented in part 6 with: "For disclosure of *medical secrecy*, the doctor of the penal institution may be subject to liability established by current legislation."

4) Given the characteristics of the *female body* and the provisions of international instruments, art. 166 of the PC of Ukraine should also

complement part 7 as follows: "women convicts are guaranteed the right not to provide information and not to pass inspection in connection with the history of reproductive health. Upon request, the woman should be provided medical *examination* by a female doctor. During medical examination, only medical staff can be present, unless a doctor thinks that there are exceptional circumstances or when a doctor asks a fellow penitentiary employee to attend patient for security reasons or when the sentenced person requests it."

5) The issue of development and adoption of a separate regulation is very important, which would settle the peculiarities of treatment of prisoners' drug addictions. The development of this document should be initiated in cooperation with the Ministry of Justice of Ukraine and the Ministry of Healthcare.

6) *We propose to introduce certain easement in providing visits for mothers and their children. To this end, we offer to phrase the second sentence in part 1, Art. 110 of the PC of Ukraine as follows: "Short visits are provided with relatives or other persons in the presence of a colony representative, except for women serving time that are provided children visits without the mandatory presence of a colony representative."*

7) In order to resolve peculiarities of assistance associated with pregnancy and childbirth to women prisoners, there is a need to introduce changes to the Resolution # 1751 of the Cabinet of Ministers of Ukraine of December 27, 2001 "On the Procedure of Appointment and Payment of State Aid to Families with Children." Paragraph 4 of the Resolution should be supplemented with the following sentence: "The basis for the appointment of assistance in connection with pregnancy and childbirth to a woman prisoner is established by a formalized medical certificate issued by the medical unit of a correctional institution and the mother's statement composed in accordance with the form approved by the Ministry of Social Policy."

8) In order to guarantee the retired women prisoners the possibility to accumulate certain funds from pension income, we propose to supplement Art. 122 of the PC of Ukraine, part 6 as follows: "The cost of keeping prisoners in the penal colony is reimbursed from pensions (food, items property, municipal services, etc.), with at least twenty-five percent of the pension credited to the account of the prisoner".

9) In order to address the issue of permission to travel outside the institution to a woman before having a baby, we propose to supplement Article 3. 111, the PC of Ukraine, with part 4 as follows: "Pregnant convicted women serving a sentence of imprisonment may be allowed a brief visit outside the correctional facility in Ukraine to address domestic issues on further placement of children with relatives, guardians or in children's homes for not more than ten days without accounting for the time spent in transit (not more than three days)."

10) In order to enable the normal development and upbringing of a child, pregnant women and women with children up to three years old should be given the opportunity to be transferred to the district social rehabilitation center. To do this, we propose to delete paragraph 3 from part 2, Art. 101 of the PC of Ukraine.

2. Improvement of the Practice of Punishment in the Form of Imprisonment should consist of:

1) A thorough *informing* of women prisoners about their rights should be ensured with the aid of control measures in the penitentiary facilities, both from the public and the state authorities.

2) It is appropriate to conduct explanatory *work (briefings)* on the peculiarities of emotional state of women and on the need for its consideration in the organization of imprisonment institutions, explain the duty of the administration to provide women prisoners with hygiene-related products.

3) It is necessary to expand the practice of giving women prisoners opportunities to pass special tests such as Papanykolau test. In particular, this possibility should be ensured by granting access to international donor organizations and enhancement of cooperation with the Ministry of Healthcare of Ukraine.

4) Apart from the sentence implementation process, the stage of appointment of the sentence also requires improvement. This is about the application of Art. 96 of the Criminal Code of Ukraine by courts. In particular, there is a need to appeal to the *High Specialized Court for Civil and Criminal Cases* in order to consolidate at the *level of plenum* the provision that the rule of the Art. 96 Compulsory Treatment does not expressly provide for the possibility of compulsory treatment to inmates suffering from drug addiction, if the addict has no other diseases that actually pose a risk to the health of others.

5) It is worth attracting attention of the penal institution employees, of the Ministry of Justice, and prosecutors to the need to improve the prisoners' ability to file complaints, particularly confidential complaints.

6) An urgent task is to eradicate the practice of involving women prisoners in unpaid and harmful to their health work. Compliance with labor legislation should be a priority in the organization of production in prisons for women.

When conducting inspections in penal institutions, primarily during the prosecutor supervision, it is essential to pay attention to the correlation of wage accrued to working women to the amount of actually performed work. Also, the control should be provided so that when convicts are released from the penal colony they are paid in full the entire amount of their earnings.

7) Special attention should be paid to the issue of prison psychologists' professionalism. It is important to organize the work of constant improvement of their skills, because these officers are entrusted with important tasks of psychological component of the educational process in women's institutions.

Minors

Specific National Penal Legislation

In recent years, the penal laws of Ukraine have undergone considerable changes, the vast majority of which, by definition of the legislator and legislation users, are aimed at introducing in practice the execution of criminal penalties in accordance with progressive European standards. The humanization of criminal and penal policy resulted in a significant decrease of the number of convicted juveniles: if in 2004 in Ukraine there were 11 correctional facilities with 2,882 prisoners, in 2015 the number of colonies decreased to 6, and the number of people held in them – to 418 people.

In Ukraine, the rights of children in the family are affirmed at the constitutional level, in particular, equality rights of children are declared (Article 24, 52), child protection (Art. 51), prohibition of child abuse and their exploitation (p. 52), right to life (Art. 27), protection and assistance of the state to child deprived of a family environment (Art. 52), right to education (Art. 53). However, for this category of subjects, most of the basic human rights are not different from those of adults. Another group of such rights is specified in a certain way. It is recognized that juveniles have other, special, unique to them opportunities enshrined in the UN Convention on the Rights of the Child in all kinds of rights.

Deprivation of liberty of a minor does not negate his/ her rights in general. The starting point in this regard, in our opinion, is the provision of Art. 3. of Article 63 of the Constitution of Ukraine, according to which a convicted person has all human and civil rights, with the exception of restrictions determined by law and established by court. Close to the text of the rules, there is formulated the contents of Art. 2, Art. 7 of the PC of Ukraine "convicted have all the rights of man and citizen provided by the Constitution of Ukraine, except for the limitations established by this Code, laws of Ukraine and court verdict". Thus, the Constitution of Ukraine and the PC of Ukraine point out two sources of limits of the rights and freedoms of the convicted - court verdict and legislation. Therefore, the right of convicted juveniles who were got into penal institutions should not undergo significant changes.

In the PC of Ukraine the procedure of serving sentences of convicted juveniles is determined by a separate chapter. These provisions are supposedly based on international standards and more focused on protection

of children and return them to society than the punishment for the crime. These individuals have the ability to get a job outside the institution before release; food, clothing and footwear, municipal services of convicted minors are free. In order to consolidate the results of rectification and graduation from school, prisoners can be left in educational colonies until they are 22 years old (compared with other countries, Azerbaijan, Georgia, Kazakhstan - 20 years old, Belarus, Russia, Estonia - 21 years old).

The prisoners in correctional facilities sentenced on the basis of the Penal Code of Ukraine have the right to:

Spend money earned in correctional facility to buy food items and basic necessities in the amount of up to hundred percent of minimum monthly wage (in a number of different cases, including while being in the infirmary, the amount may include money received by wire transfers, pensions and other sources of income);

Have short visitations without limitations and one long visitation monthly; receive free high school education. With good behavior, hard work and dedication to studies, after serving at least a quarter of the sentence, the prisoners have the right for improvement of the conditions of imprisonment. They may be allowed to spend additionally up to sixty percent of minimum monthly wage; subject to warden's approval, a prisoner may also be allowed to receive one short visit outside of prison once every three months. Also, with good behavior, hard work and dedication to studies, active participation in self-regulating organizations and educational events, the underage prisoners may receive some more encouragements in addition to those available to all prisoners: receiving the right to attend cultural and sport events outside the prison accompanied by an employee of the prison; having the right to go outside the prison accompanied by parents or any other close relative.

The important moment of organizing sentencing terms to underage individuals is mandatory education that is outlined in the Penal Code of Ukraine. It is the real opportunity to those who are in conflict with law to receive education, learn additional skills and qualifications. Overall, as you can see from the title of these establishments, they are aimed first of all at the correction of individual. The underage person is more receptive, he/she can be influenced in order to correct the behavior, his/her habits and attributes can be changed, and it is easier to educate and correct such person. That's why in correctional institutions it is important to have a routine that would pay

more attention to education and not have such level of rights' limitations that separate underage person from the entire world¹.

The national penitentiary system has been permanently forming for a very long time; however, there have been no significant changes in fortifying the rights of prisoners, including the underage ones. Significant number of principles that identify the rights of prisoners in correctional facilities is declarative in nature, the mechanism of execution has not worked out and it is complicated in applying. There are multiple instances when a lawmaker announcing compassion for children in correctional institutions is in fact limiting their rights and lawful interests in comparison with adult prisoners as well as free children. Most of these restrictions are not caused by isolation in prison and it seems they do not have a rational basis.

By definition, penal institutions, as extreme forms of private social organizations, especially in their present form, have a considerable negative potential. Even external paraphernalia of "zone" (tower guards, automatic weapons, fences, barbed wire, dogs, etc.) consistently cause a sense of danger. Social and psychological problems associated with isolation are extremely difficult to overcome even to an adult, and to a child especially. Adolescents who are in prison have a high level of anxiety, exhaustion of the nervous system, their cognitive processes are reduced, negative emotions dominate over positive, activity and mood are lost. Obviously, children and adolescents are the least protected and most vulnerable social layers of the population due to many socio-economic, medical, psychological and physiological reasons. As for minors, these problems are considerably catalyzed, because they are associated with physical isolation from society, compelling and accountability detention in a closed environment, significant limitations in realizing their needs, critical inevitable changes in mental state, weakening of physical health and high dependence on somatic and infectious diseases typical for prisons. These circumstances do not allow to achieve fully the goals of penal legislation and keep them out from further crime².

The legislation does not contain worded separate provision on prohibiting the corporal punishment of prisoners, but based on the total doctrine of penalties and other types of legal liability, such kind of

¹ Romanov M. Ensuring the rights of the sentenced minors while undergoing the punishment in the form of sentence / M. V. Romanov // Law and order issues : acad. comp. of scient. works. / Nat. Univ. "Law Academy of Ukraine n.a. Ya. Mudroho". - Kh. : Nat. Univ. "Law Academy of Ukraine n.a. Ya. Mudroho", 2012. - Ed. # 119. - P. 188

² Kushnariov S. Issues of resocialization of sentenced minors in the penal process context. [Electronic source]. – Access mode: http://lib.iitta.gov.ua/2342/1/Кушнарѡв_С.В._Проблеми_ресоцїалїзацї_неповнолїтнїх_засудженїх.pdf. – *Title from the screen.*

punishment, of course, is prohibited. The staff of educational institutions should identify and prevent cases of violence of minors, including informing the chief of institution and services for children. But this duty of staff, unfortunately, is not direct and rather follows the general requirements of the organization of the execution and punishment process³

These problems become of particular relevance regarding to convicted juvenile females, due to several factors: first, minor female persons - are those who are in the process of forming basic values, attitudes, moral attitudes in finding their place in society; secondly, the crimes committed by minors females - are not only a reserve for an adult crime in the future and female criminals - are future mothers who will form positive or negative features of character of their children; thirdly, the wrongful conduct of minor girls can be corrected easier than the behavior of adult women due to organization and implementation of the system of preventing criminal behavior of minor girls that will provide reducing adult women crimes in the future and strengthen law and order in society⁴.

³ Romanov M. Ensuring the rights of the sentenced minors while undergoing the punishment in the form of sentence / M. V. Romanov // Law and order issues : acad. comp. of scient. works. / Nat. Univ. "Law Academy of Ukraine n.a. Ya. Mudroho". - Kh. : Nat. Univ. "Law Academy of Ukraine n.a. Ya. Mudroho", 2012. - Ed. # 119. – O. 190.

⁴ N. Skrynnikova. Criminological characteristics of the personality of a minor criminal (female) who commits crimes in Ukraine // Kyiv Law University Journal. – 2010. – № 3. – P. 259.

Recommendations for Improvement of Punishment and Enforcement of Rights and Freedoms

To improve the existing conditions of serving the sentence by convicted juveniles and facilitate their social adaptation after release, it is appropriate to introduce such measures.

1. Amendments to provisions of the PC of Ukraine and other regulations:

1) Analysis of convicted juveniles' awareness of their rights reaffirms the need to adopt our proposed amendments to the legislation on the base of analysis of the legal status of women, in particular, to address the problem of prisoners' lack of information about their rights after arrival to prison. It is appropriate to amend the claim to paragraph 1, part 1, Art. 8 of the PC of Ukraine, and to supplement the abovementioned paragraph with the following sentence: "In case the administration of the institution or agency of punishment fails its obligation to provide the said information to the convicted persons, the responsible person and the head of the institution or penitentiary colony should be held accountable"

2) In order to increase the opportunities to stimulate convicted minors, appropriate amendments are to be made to Art. 111 of the PC of Ukraine, in particular, to provide possibility for working minors to leave the correctional facilities.

3) Departmental regulations of the Ministry of Education of Ukraine need revision, with the purpose of ensuring stipend payments to convicted juveniles enrolled in vocational schools in correctional facilities. This will extend the opportunity to stimulate their conduct.

4) In order to protect minors from illegal actions of administration connected with the unreasonable imposition of penalties on the prisoners, we propose to add Article 145 of the PC of Ukraine with part 2 as follows: "While imposing penalties on a convicted person the administration of the colony gives him the opportunity, in accordance with the established procedure, to inform relatives, lawyer or other specialists in law, who are entitled by law to provide legal assistance personally or on behalf of a legal entity."

5) In order to improve tools of exercising public control over the observance of the rights of convicted minors, it seems appropriate to grant supervisory commissions authority to monitor not only correctional but also educational colonies. For this, we propose to supplement part 1, Art. 149 of

the PC of Ukraine with the sentence: "Civil enforcement of minors' rights can be done by supervisory commissions."

2. Improving the practice of punishment in the form of imprisonment must be as follows:

1) It is worth paying attention to the nutrition of convicts. Of course, difficult economic situation does not allow to hope for a sharp improvement in this area, but we must remember that poor or malnourished nutrition of people in their teens often provokes significant complications that accompany these individuals throughout their life.

2) The issue of using minor convicts labor remains extremely topical. Despite recent changes in legislation dated April 8, 2014, it was determined that labor is the right of prisoners; the administration actually has not changed its attitude, and often forces prisoners to work. This issue is particularly acute concerning convicted juveniles, because, firstly, they particularly acutely perceive unlawful coercion of the administration, and secondly, before getting to colony, minors often have no work experience and receiving it in the forced form can produce sustainable negative attitude toward work. In case of juvenile desire to work it is important to comply with labor safety rules, not to involve them in hazardous and dangerous industries.

3) Issues of carrying out educational activities of the convicted persons in the colonies are topical as well. Unfortunately, in most cases, the administration relates to those activities only formally. Employees of the colony and the public sector should continuously expand the list of educational activities, and control not only the quantity, but real quality. Employees of educational institutions use mainly outdated technologies of social and educational work with children. To ensure the effectiveness of these activities, taking into account the reorientation of the direction of State Penal Service of Ukraine it is proposed to:

1. Introduce progressive methods of work with prisoners, founding these methods on the principles of risk assessments and needs; introduce permanent system of retraining teachers and psychologists.

2. Initiate work with children based on individual programs on resolving conflicts, developing skills, life skills, carrying out psychotherapeutic work, education and employment, taking into account the needs and abilities of the young people.

The study showed that the administration should make efforts to develop and support the initiative of their charge.

4) The need to combat drug and alcohol abuse among minors does not lose its relevance. A possible area of improvement in this area would be to use a variety of new technologies.

5) Administration of correctional facilities should not abuse measures related to religious education, because it promotes the development of total rejection of the values and importance of social institutions in children.

It seems that if these measures are combined in a comprehensive and systematic manner, one can achieve a significant reduction of negative effects of people stay in correctional institutions, and contribute to the objective of punishment.

1. The system of integrated learning subjects for those minors who are not able to acquire secondary school program requires development and implementation in juvenile prisons. These learning subjects should be formed based on special requirements, including practical knowledge and skills needed in everyday life, as well as basic knowledge for blue-collar jobs.

2. It is necessary to implement educational programs with sections (or learning subjects) for juvenile convicts to be able to acquire life skills aimed at adapting to free life, further employment, education, and to learn socially acceptable behavior.

3. Extracurricular work system at secondary schools in correctional facilities requires development and introduction of new forms under conditions of wide involvement of cultural and educational professionals, schools and university students, representatives of non-governmental sector.

4. At the state level one should pay more attention to clarifying the specific causes of illegal behavior among minors. Without common science-based national program of actions for overcoming this problem it is impossible to deploy the appropriate work locally. This applies to political stability, socio-economic development, program of actions for the proper upbringing and development of the nation's potential in such areas as education, sports, entertainment etc.

Prisoners with disabilities and people with chronic diseases, HIV / AIDS, tuberculosis

General information, national penal legislation and departmental regulations on issues of healthcare

Information on the organization of healthcare and medical sanitation on the official site of SPSU is limited to a few figures, namely:

- mortality: deaths of prisoners and persons in custody - 139 persons (on 01.04.2015), from them in detention facilities - 29 persons (on 01.04.2014 - 246 and 40 respectively);

- freed because of illness (Art. 537 of the PC of Ukraine): 79 persons (on 01.04.2015), on 01.04.2014 - 181 persons;

- HIV infection, 3883 persons were registered (on 01.04.2015), on 01.04.2014 - 7299 persons; 2,844 persons receiving ART (on 01.04.2015), on 01.04.2014 - 1905 persons;

- tuberculosis, 2171 persons were registered (on 01.04.2015), among them in detention facilities - 233 persons (on 01.04.2014 - 3914 and 410 respectively);

- medical staff: doctors 78.8% (on 01.04.2015), on 01.04.2014r. - 73.6%; nurses 93.3% (on 01.04.2015), on 01.04.2014 - 93.2%.

Information on the real difficulties or problems in the system of healthcare of prisoners and persons taken into custody, is unavailable on the official website of SPSU. At that, the increase in healthcare quality, improvement of healthcare of prisoners and detainees are mentioned among the main priorities of SPSU for 2015⁵.

According to official figures, taking into account the significant number of prisoners with physical and mental illnesses, spreading of infectious diseases among prisoners, especially HIV, there is an acute problem of providing proper medical help to these people. SPSU healthcare institutions of Ukraine are based in the former penitentiary buildings, and structures of these buildings do not meet modern state construction norms. There is an urgent need for a multidisciplinary hospital for convicted women. Currently in SPSU healthcare institutions of Ukraine there are only a few functioning separate wards for providing such medical care.

Another problematic issue is provision of SPSU healthcare institutions with transport to provide specialized medical care and timely hospitalization of

⁵ Activity priorities of SPSU // http://kvs.gov.ua/Dost_public/Propozicii_2015.pdf.

patients to health facilities of Ministry of Healthcare of Ukraine, as well as preventing the spread of infectious and parasitic diseases in prisons and detention centers.

In recent years, high mortality from AIDS and HIV-associated TB remains.

The main regulations that are laid as the foundation of work with healthcare of prisoners and convicted persons are:

The Penal Code of Ukraine, Art. 116 provides that medical preventive and sanitary epidemiological work in prisons is organized and carried out according to the laws on healthcare. Administration of colonies is obliged to conform with the necessary medical requirements, ensuring healthcare of prisoners. The order of providing healthcare to convicts, organizing and conducting of sanitary health surveillance, the use of healthcare institutions and involvement for this purpose of their medical staff is determined by regulations of the central body of executive power on execution of sentences and the Ministry of Healthcare of Ukraine.

The Law of Ukraine On Pre-trial Detention, Art. 11 stipulates that healthcare and medical preventive and anti-epidemic work in detention centers are organized and conducted according to the laws on healthcare. The procedure for providing medical care to prisoners, using for this purpose bodies not subordinate to detention centers, such as state and municipal healthcare institutions, engaging their medical personnel and conducting medical examinations are determined by the Cabinet of Ministers of Ukraine. The provisions of this law apply to detention centers of the State Penal Service of Ukraine, guardhouses of the Military Service of the Armed Forces of Ukraine, temporary isolation wards of all departments.

The Law of Ukraine On the State Penal Service of Ukraine assigns responsibility of personnel to enforce human and civil rights, the implementation of legal rights and interests of prisoners and persons taken into custody, legal requirements regarding performance and serving criminal sentences.

The list of healthcare institutions of the State Penal Service of Ukraine, approved by the Order of the Ministry of Justice of Ukraine dated 21.03.2013 No. 499/5.

Internal regulations of penal institutions approved by the Order of the Ministry of Justice of Ukraine dated 29.12.2014 No. 2186/5 broadly outline the initial principles of the organization and implementation of the medical support of prisoners.

The mentioned order envisages that the order of medical preventive and sanitary epidemiological work in prisons is determined by Fundamentals of laws of Ukraine on healthcare. Overall in penal institutions they carry out clinical examination and supervision of convicted persons to assess health, when identifying diseases - medical assistance and assessment of working ability; outpatient, inpatient and specialized treatment in healthcare institutions of SPSU.

Providing medical care to prisoners by healthcare institutions is carried out in accordance with the Procedure for the provision of medical assistance to prisoners sentenced to imprisonment, approved by the Ministry of Justice of Ukraine, Ministry of Healthcare of Ukraine dated August 15, 2014 No. 1348/5/572, registered in the Ministry of Justice Ukraine August 20, 2014 by No. 990/25767.

Internal regulations of detention centers of the State Penal Service of Ukraine, approved by the Ministry of Justice of Ukraine No.460/5 dated 18.03.2013, registered in the Ministry of Justice of Ukraine 20.03.2013 under No. 445/ 22 977, setting the particular organization of medical units in these institutions.

It should be noted that the internal regulations of detention centers determine the basic approaches to these issues in greater detail (compared to the internal regulations of penal institutions). They provide that in accordance with Article 11 of the Law of Ukraine On Pre-trial Detention, medical care and medical preventive and anti-epidemic work in the prison are organized and conducted according to the laws on healthcare. For this purpose, on medical units are created within detention centers as their structural units.

Medical unit shall provide primary treatment and preventive care to prisoners and convicts. It includes medical consultation, diagnosis and treatment of the most common major diseases, injuries and poisoning, preventive measures, transfer of ill prisoners to provide him/her with specialized and highly specialized care.

The rules also describe features of conducting preventive measures in case of mental disorders of prisoners and convicts.

The order of interaction of healthcare institutions of the State Penitentiary Service of Ukraine with other healthcare institutions on issues of providing medical assistance to detainees, approved by the Ministry of Healthcare and Ministry of Justice of Ukraine dated 10.02.2012, No. 239/5 / 104. This procedure determines the interaction of healthcare

institutions of the State Penitentiary Service of Ukraine with other health care institutions on issues of providing medical assistance to detainees.

The procedure for the provision of medical assistance to prisoners sentenced to imprisonment, approved by the Ministry of Justice of Ukraine, Ministry of Healthcare of Ukraine dated 15.08.2014 No. 1348/5/572, defines the basic principles of the organization of medical care for people sentenced to imprisonment and interaction of healthcare institutions of the State Penitentiary Service of Ukraine with other healthcare institutions on issues of providing medical assistance to detainees.

The procedure stipulates that in healthcare institutions of SPSU provide emergency medical care, primary care, specialized (secondary) medical care, sanitary and anti-epidemic measures are carried out, provision of medicinal products and medical devices is organized, rehabilitation treatment is performed after diseases and injuries. Annex 12 to the procedure for the provision of medical assistance to prisoners also establishes the list of diseases that are the basis for submitting materials to the court for release of prisoners from further punishment.

The order of interaction of healthcare institutions, police, detention centers and correctional centers to ensure continuity of treatment with substitution therapy, approved by the Ministry of Healthcare, Ministry of Interior, Ministry of Justice of Ukraine, the State Service on Drug Control dated 22.10.2012 No. 821/937 / 1549/5/156 (registered in the Ministry of Justice of Ukraine on November 7, 2012 under No. 1868/22180), provides a mechanism of substitution therapy treatment in detention and correctional centers.

The order of interaction of healthcare institutions, territorial bodies of internal affairs, penal institutions and detention centers to ensure continuity of follow-up of HIV-positive persons, the implementation of clinical and laboratory monitoring of disease course and conduct of antiretroviral therapy approved by the Ministry of Healthcare of Ukraine, Ministry of Internal Affairs of Ukraine, Ministry of Justice of Ukraine dated 05.09.2012 No.692/775/1311/5. It was designed to ensure follow-up of HIV-positive persons, the implementation of clinical and laboratory monitoring of disease course and conduct of antiretroviral therapy (ART) among:

Persons detained on suspicion of committing a crime, held in detention centers of internal affairs bodies;

Persons to whom a preventive measure was chosen, or they are in custody, or held in detention centers, and in some cases - in temporary holding wards;

Persons under administrative arrest, held in temporary holding wards and special reception units of internal affairs bodies;

Persons under sentences in prisons and detention centers.

Instructions on the prevention of HIV transmission from mother to child in institutions of the State Penitentiary Service of Ukraine, approved on 2007-11-23 by the Ministry of Healthcare of Ukraine, the Ministry of Education and Science of Ukraine, the Ministry of Ukraine for Family, Youth and Sports, the State Department of Ukraine for Execution of Punishment, the Ministry of Labor and Social Policy of Ukraine №740/ 1030/ 4154/ 321/ 614^a, and the ***Instruction on the provision of medical and social assistance to HIV-infected children***, approved by the Ministry of Healthcare of Ukraine, the Ministry of Education and Science of Ukraine, the Ministry of Ukraine for Family, Youth and Sports, the State Department of Ukraine for Execution of Punishment, Ministry of Labor and Social Policy of Ukraine from November 23, 2007 № 740/1030/4154/321 / 614a. The instruction assigns responsibility for executing measures to prevent HIV transmission from mother to child to the head of the medical facility of the State Penitentiary Service institution. Antiretroviral preventive therapy is assigned by specialists from a regional center of prevention and fight against AIDS according to current clinical protocol approved by the Ministry of Healthcare of Ukraine. An obstetrician-gynecologist of the medical facility or doctor-gynecologist of regional health authority takes measures to execute prescribed care, including forming drug sensitivity to prevent HIV development with newborns and their mode of feeding. The carrying out of preventive antiretroviral prophylaxis for newborn is held according to the specified clinical protocol of the Ministry of Healthcare of Ukraine. Appointment of ART to newborns that are at the corrective institution's nursery is under the control of a regional center for prevention and fight against AIDS. The ART drugs are generally provided through a regional center for prevention and fight against AIDS.

The analysis of the content of the above departmental regulations leads one to the conclusion that, in the system of execution of punishments, only a few aspects of the organization and documentation of prevention and treatment of prisoners and persons taken into custody are settled in

regulations. A comprehensive solution of this problem is absent at present. This creates additional difficulties for practical workers, because of the lack of doctors of all necessary specialties they have to use quite a large number of regulations while providing professional activities and they have to be specialists of much broader profile than provided by qualification requirements. As a result, knowledge of these workers is limited or the quality of the care and prevention measures becomes purely formal.

Recommendations for improvement of punishment and enforcement of rights and freedoms

1. Improving the practice of punishment in the form of imprisonment must be as follows:

1. Develop and approve departmental program of harm reduction from drug use and prevention and treatment of HIV / AIDS, tuberculosis, hepatitis and sexually transmitted diseases in prisons and detention centers.

2. Form the legal basis for the provision in prisons and detention centers services on prevention and treatment of HIV / AIDS, sexually transmitted diseases, tuberculosis, hepatitis and drug addiction, support and care of patients. This can be achieved by bringing into one regulation all norms and standards dispersed throughout various legislative and departmental regulations.

3. Expand through regulations the list of programs available to HIV-positive and AIDS patients and prisoners, to include programs of distribution of disinfectants, condoms, change injecting equipment; to amend the regulations that prohibit the use of such items and drugs. Develop a procedure for the implementation of such programs with defined rights and obligations of convicts and prisoners as well as staff, and specify their behavior. Models of condoms distribution should be revised to choose those that ensure their maximum availability, taking into account the psychological characteristics of prisoners, for example, use containers with condoms in baths, toilet rooms and stalls.

4. Consolidate and organize through regulations medical and rehabilitative programs of drug dependent inmates suffering from drug addiction and wishing to obtain access to free voluntary treatment. Prohibit the practice of compulsory treatment of such dependence if the person is not a threat to others.

5. It is necessary to improve the informing of prisoners and staff of what the disinfectants are, the conditions of their use, the possibility of obtaining free condoms, provide specific practical advice on reducing the risk of HIV / STI and other infections transmitted through blood, in conditions of SPSU.

6. It is necessary to pay more attention to the rational use of available personal protective equipment. The combination of active strategies for their distribution (distribution of condoms by health workers during VCT, by representatives of NGOs, SPS, volunteers following information activities) and passive (placement in locations such as rooms for visits, baths or toilets

where prisoners can take condoms without being seen by other prisoners or staff) is most appropriate.

7. Introduce into the practice of bodies exercising control over penal institutions, the study of the provision of post-exposure prophylaxis to both prisoners and staff. Introduce regular briefing of employees on these issues.

8. Change approaches to the appointment of personnel of penal institutions, detention centers, to include to the assessment indicator their ability to carry out tasks related to HIV-infected and AIDS patients convicts and prisoners as well as people suffering from drug addiction, tuberculosis and other sexually transmitted infections.

9. Change judicial practice of the application of Article 84 of the Criminal Code of Ukraine to the disabled who through clear signs of disability and health status can not pose a risk of committing new crimes, towards making decisions about dismissal because of illness, and only in extreme cases of unmotivated application of Article 84 of the Criminal Code of Ukraine.

10. Together with interested state and public institutions, to develop a program of social support for people suffering from HIV / AIDS and TB after they are released from penal institutions.

11. In the long term perspective, the question of transferring control over the health system in penal institutions to the Ministry of Healthcare of Ukraine should be considered, which will positively affect the system of medical care in particular, and counteract socially dangerous diseases.

The SPSU should also pay attention to the following points:

1. An analysis is needed of the abovementioned international standards and development of a basic conceptual document that would include the basic requirements of international standards in order to provide medical assistance to persons held in prisons, and it would become the first step for developing high-quality institutional regulation;

2. There is a need to develop a separate chapter dealing with preventive medicine. Healthcare, especially in prisons should not be limited to treatment and should encompass prevention as well. Instead, existing regulations do not contain any mentioning of such an important task.

Priority areas of prevention should be:

- a) hygiene;
- b) infectious diseases (transmitted);

- c) suicide prevention;
- d) prevention of violence.

It is also worth noting prevention of drug addiction and alcoholism.

3. Fixing the specific aspects of women's health with the maximum conformity to the Bangkok Rules requirements;

4. Solving the question on using of methadone treatment of prisoners, requiring initiation of discussions at SPSU level, not only prisoners and inmates in correctional centers.

2. Amendments to provisions of the PC of Ukraine and other regulations:

1) The question of release of persons that developed serious illness preventing them from serving their sentence, may be exempted from punishment or from further enduring it (Article 84 of the Penal Code of Ukraine) in the part of legal regulation also requires improvement.

First, in accordance with Articles 537, 539 of the Penal Code of Ukraine, the issues that arise during the execution of the sentence, including the exemption from punishment due to illness, are decided by the court at the location of penal institutions. Procedural terms of setting the date of the session to consider the raised question, the date of entry into the force (7 days - p.2 , Part 2, Article 395 of the Penal Code of Ukraine) do not differ from the conventional terms. We know that, in practice, it happens quite often that a sick person by the decision declared in court about the exemption from punishment is considered released, but the judge who heard the case, for whatever reason, does not mention in the decree that that decision has to be performed immediately. During the period for appeal, such persons sometimes die in the status of "prisoner", which in its turn causes a negative reaction from relatives of the deceased.

Secondly, neither Article 84 of the Penal Code of Ukraine nor joint order of the Ministry of Justice and Ministry of Healthcare of Ukraine dated 15.08.2014 No. 1348/5/572 "On approval of the provision of medical assistance to prisoners sentenced to imprisonment" have limits for quantity of court examinations on declaring a convicted person as having serious illness that prevents punishment. In penal institutions, it happens that persons who have previously served a sentence of imprisonment, there are cases when a sick person after being released was sentenced to punishment of

imprisonment again, and formally, according to available disease could again be subject to the above list of diseases established by the mentioned order.

2) The need for revision of Annex 7 (paragraph 2, Chapter 1, Section III) "List of indications and contraindications for transfer of patients to specialized and multidisciplinary hospitals (departments)" is crucial, as proposed contraindications for sending prisoners for treatment outside institutions is unacceptable and can reduce to a minimum the impact of positive orientation to a broader use of the capacity of hospitals outside the penitentiary institutions in practice.

3) The proposed changes to the PC of Ukraine will contribute to the achievement of improvement in the sphere of securing rights of the studied group of convicts, including the guarantee of informing prisoners about their rights and ensuring medical confidentiality.

IV. QUESTIONS OF SOCIAL ADAPTATION OF RELEASED PRISONERS

Specific national penal legislation

The process of serving a sentence of imprisonment is associated with a number of negative factors that impede social adaptation and reintegration of persons released from penal institutions. This is manifested in the weakening of family ties, loss of skills of rational use of material and moral resources and adequate decision-making in different situations. After serving the sentence a person is alone with the problems that he/she himself/herself cannot solve. Unfortunately, in most cases, this leads to repeated crimes, and therefore to the increase of recidivism.

That's why legislator and bodies of executive power attempted to create a normative basis for the order to solve these problems.

Thus, Article 156 of the Penal Code of Ukraine provides a mechanism to assist prisoners released from prison. It enshrines their right to work, domestic arrangement and other forms of social assistance. Prisoners released from prison are entitled to: the receipt of unemployment benefits; awareness on the status of the labor market in the region; learning a new profession (specialty), or advanced training, enabling further employment under the legislation of Ukraine.

Issues of arranging lives of individuals released from penal institutions are also revealed in a separate piece of legislation - the Law of Ukraine "On social adaptation of persons who are serving or have served their punishment in the form of restraint of liberty or imprisonment for a specified period" dated March 17, 2011 No. 3160 -VI. Before that in Ukraine there was the Law of Ukraine "On social adaptation of persons sentenced to restraint of liberty or imprisonment for a specified period" dated 10.07.2003 No. 1104-IV.

To address the problems faced by former prisoners, there are the provisions of the Procedure on interaction of penal institutions and subjects of social patronage in preparation for the release of persons serving punishment of restraint of liberty or imprisonment for a term, approved by the Ministry of Justice of Ukraine, Ministry of Social Policy of Ukraine, Ministry of Education, Youth and Sports of Ukraine, Ministry of Healthcare of Ukraine, Ministry of Internal Affairs of Ukraine dated March 28, 2012 No. 478/5/180/375/212/258 (hereinafter referred to as the Procedure). This Procedure establishes the

powers of the relevant authorities and the general principles of interaction between them.

The Procedure actually regulates the issues concerning information distribution, and not the real measures of providing assistance to prisoners after release, as well as through adequate preparation of such persons.

A significant impact on improving the process of social adaptation of convicts in society after release should play the Law of Ukraine "On probation" adopted on February 5, 2015. It will come into effect on August 27, 2015, but it is already clear that neither the State Penitentiary Service of Ukraine nor other central executive authorities are prepared to implement quality regulatory requirements of the mentioned Law.

Furthermore, due to the fact that the Law "On probation" and the Law "On social adaptation of persons who are serving or have served their punishment in the form of restraint of liberty or imprisonment for a specified period" have actually identical object of legal regulation, even a shallow analysis of these regulations can display a number of conflicting rules.

Recommendations for improving the procedure for social adaptation of persons released from penal institutions

To further improve the implementation of social adaptation of prisoners after their release, it seems appropriate to:

1. Coordinate the rules of two major Laws "On probation" and "On social adaptation of persons who are serving or have served their punishment of restraint of liberty or imprisonment for a specified period".

2. Develop a detailed algorithm of implementation of the Law "On probation", including the implementation of the penitentiary probation. The adoption of detailed departmental regulations, clear and understandable to both all employees of public institutions and convicts as well is very important.

3. With further development of models of social adaptation of ex-convicts, a reform of local government and central government authorities should be considered.

4. In order to improve the quality of social workers' work with prisoners, a special brochure should be developed, which will include typical problem situations faced by the person released from penal institutions and the algorithm of their solution, including the information what help is provided by the state budget, and what help – by the local one.

5. It is necessary to review the existing system of agencies and institutions that provide services in this area at the expense of public funds towards its simplification and strengthening of cooperation between them.

6. Priority of public and private agencies working with released prisoners should be shifted to their future employment.

VI. GENERAL CONCLUSIONS AND RECOMMENDATIONS

According to the survey of the state of implementation of granted rights and freedoms by convicts among vulnerable groups, the following conclusions can be reached:

1) Both in the national legislation and in practice, the government has not created a sufficient number of mechanisms to implement the needs of vulnerable groups of prisoners. Psychological and physiological peculiarities of such persons usually were not reflected in their rights and freedoms. Explanation for this situation lies not only in the difficult economic situation in the country, but also in significant miscalculations of administrative and managerial nature.

2) Significant resources that can be used to improve the legal status of vulnerable prisoners were found.

3) Some disadvantages of domestic practice of vulnerable prisoners treatment is conditioned not only by their disabilities, but also by problems with behavior that apply to all prisoners. Implementation of recommendations for changes in the law might not only improve the level of security of the rights of the studied categories of people, but of all prisoners in general.

4) The domestic legislative framework requires a deep and comprehensive revision as by amending the Penal Code of Ukraine and adoption of new normative regulations, including the procedure for providing medical care and treatment of inmates with HIV / AIDS and treatment of drug addicts in correctional facilities.

5) The recommendations on improving the practice of punishment in the form of imprisonment to ensure the rights and freedoms of vulnerable prisoners, in their vast majority do not require fundamental changes and reforms, and neither significant financial costs so they can be carried out in the near future.