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UNDERSTANDING THE VICTIMISATION OF CONVICTS IN PENITENTIARY INSTITUTIONS IN A SPECIAL PERIOD

РОЗУМІННЯ ВІКТИМІЗАЦІЇ ЗАСУДЖЕНИХ В УСТАНОВАХ ВИКОНАННЯ ПОКАРАНЬ В ОСОБЛИВИЙ ПЕРІОД

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In the provisions of the scientific article, the authors examine crime in penitentiary institutions as a complex social phenomenon that is in a multifaceted system of microsocial interactions, requiring a comprehensive study of the relationship: crime – offender – criminality, given that, according to the criminological concept, crime is a consequence of the interaction between the individual and the environment. The authors define that victimological situations in places of detention, which give rise to or cause crime in penal institutions, should be understood as specific life situations in which victims of crime in penal institutions and pre-trial detention centres find themselves under the influence of certain individual characteristics, as well as the influence on these persons from the environment, other convicts, staff of penal institutions and pre-trial detention centres, as well as other persons, which contributes to the manifestation of victim behaviour of a particular victim of crime in places of detention in a special period. In the scientific article, the authors also define the victimological principles in penitentiary institutions, and on this basis, determine the author's vision of the directions of victimological crime prevention in penitentiary institutions. The victimological characteristics of the crime mechanism include victimisation, its process and result; victimological situation and its components; victim behaviour in the crime mechanism and the process of interaction with the perpetrator in a criminal situation.

The authors define that, the effectiveness of the activities of penal institutions in terms of the execution of sentences of deprivation of liberty at all levels of government, including in its indicators the state of security of convicts, staff and other persons involved in criminal executive activities to some extent, and to adopt a special Instruction 'On the procedure for ensuring the security of persons held in penal institutions and pre-trial detention centres', to amend the normative legal acts on protection, supervision, security and crime prevention by defining relevant sections in them, such as 'Peculiarities of ensuring the security of convicts belonging to victimisation vulnerable groups' and clearly defining the types (objects) of such convicts.

Key words: victimisation, convict, crime, punishment, special period, penitentiary institution, war.

У положеннях наукової статті автори досліджують злочинність в установах виконання покарань, як складне соціальне явище, що перебуває в багатогранній системі мікросоціальних взаємодій, потребує сукупного вивчення зв'язку: злочин – злочинець – злочинність, враховуючи те, що відповідно до кримінологічної концепції, злочин – це наслідок взаємодії особистості й середовища. Автори визначають, що під віктимологічними ситуаціями в місцях позбавлення волі, що породжують або обумовлюють злочинність в установах виконання покарань, слід розуміти конкретні життєві ситуації, в які потрапляють жертви злочинів в установах виконання покарань і слідчих ізоляторах під впливом певних індивідуальних властивостей, а також вплив на цих осіб із боку оточуючого середовища, інших засуджених, персоналу установах виконання покарань та слідчих ізоляторах, а також інших осіб, що сприяє прояву віктимної поведінки конкретної жертви злочину в місцях позбавлення волі в особливий період. У науковій статті також, автори визначають віктимологічні засади в установах виконання покарань, та на цій основі визначають авторське бачення, щодо напрямів віктимологічного запобігання злочинам в установах виконання покарань. До віктимологічної характеристики механізму злочину автори відносять віктимізацію, її процес та результат; віктимологічну ситуацію та її складові; поведінку жертви в механізмі злочину та процес взаємодії зі злочинцем у кримінальній ситуації. Автори пропонують змінити методологію оцінки діяльності установах виконання покраньа щодо ефективності виконання покарання у виді позбавлення волі на всіх рівнях державної влади, включивши в її показники стан забезпечення безпеки засуджених, персоналу та інших осіб, які задіюються певною мірою до кримінально-виконавчої діяльності, і прийняти спеціальну Інструкцію «Про порядок забезпечення безпеки осіб, які тримаються в установах виконання покарань та слідчих ізоляторах», внести зміни у нормативно-правові акти з питань охорони, нагляду, безпеки та запобігання злочинам, визначивши в них відповідні розділи, типу «Особливості забезпечення безпеки засуджених, які належать до віктимологічно вразливих груп» і чітко визначити типи (об'єкти) таких засуджених.

Ключові слова: віктимізація, засуджений, злочин, покарання, особливий період, установа виконання покарань, війна.

The relevance of the topic is due to the fact that since 17 March 2014, when the first wave of partial mobilisation was announced due to russian aggression, and later a full-scale war, a special period has been in force in Ukraine. After ten years of war in Ukraine, there were often misunderstandings about whether the special period is still in force, and the answer is unequivocally yes, as the Supreme Council in 2016 and the Supreme Court in 2018 confirmed [1],[2] that the special period is still in force. In addition, the fight against crime in places of detention cannot be effective if all the social consequences of crime are not taken into account. In particular, among the persons against whom a crime has been committed, it is the victim who has a direct relationship with the perpetrator. In view of the above, special attention should be paid to the crime in penitentiary institutions as a significant factor in the mechanism of general crime and its variation. The penitentiary elements of victimological crime prevention should include: 1) the victim of a crime in penal institutions at three levels: a) individual (single); b) the totality of victims in a particular penal institution (special); c) the totality of victims of the entire system of execution of criminal sentences (general); 2) the mechanism of criminal behaviour in prisons in terms of the determinants of the qualities of the victim of crime and the relationship with the offender; 3) victimisation potential in penitentiary institutions, its role in the system of crime determinants and the mechanism of criminal behaviour; 4) organisational and legal framework, tactical and methodological approaches to victimisation prevention in penitentiary institutions. We believe that the object of theoretical analysis for the development of victimological

principles of crime prevention in penitentiary institutions may be individuals, groups of individuals, and penitentiary institutions.

In our opinion, this approach makes it possible to identify a wider range of victims of crimes committed in penitentiary institutions. Since both specific individuals and legal entities, which in this case include penitentiary institutions, including the community that works there, as well as persons serving their sentences, have been harmed to some extent. The second approach significantly narrows the circle of victims to include specific individuals. Under this approach, it seems that some of the objects defined as "victim" are not taken into account by the means of victimological prevention of crime in penitentiary institutions.

Analysis of recent research and publications on criminal behaviour in prisons due to the qualities of the victim of a crime and the relationship with the perpetrator shows that the presence of negative behaviour of the victim in prisons causally related to the crime is one of the factors that significantly affects the mechanism of committing a crime. However, misconduct should not be equated with guilt, as these concepts are not the same. The victim's guilt as a victimological problem was mentioned in the works of Bocheluk V. Y. [5], Badira V. A. [6], Vasilevich V. V. [4], Gel A.P. [6], Dzhuzha O.M. [4], Denisova T.A. [5], Zakharov E.Y. [6], Kuznetsov N.F. [3], Kirilyuk A.V. [4], Kolb O.G. [6], Yakovets I.S. [6]. However, it should be noted that the victimisation of convicts in penitentiary institutions has been studied only by some scholars, such as Bogatyrev I.G. [9], Borovyk A.V. [7], Kolb I.O. [8], Puzyryov M.S. [9], Shkuta O.O. [9], which was the motivation for writing this scientific article.

The purpose of the scientific article is to study crime in penal institutions as a complex social phenomenon that will allow to determine the understanding of the victimization of convicts in penal institutions, to characterize the victimological principles in penal institutions, and to formulate the author's vision regarding the directions of victimological crime prevention in penal institutions.

Presentation of the research material and its main results. It is worth noting that O. M. Dzhuzha and A. V. Kyryliuk define that 'among convicts, victimisation is a special subject of study and disclosure of the main issue of "penitentiary victimology", namely, for what reasons and due to what conditions certain persons become victims of crimes (both convicts and representatives of the administration and other persons), while others are not in danger' [4, p. 27-28]. In our opinion, victimisation is the possibility and even the 'ability' of a person to become a victim of a crime in a situation where such consequences could not have occurred if the victim had exercised sufficient caution and prudence. Seriousness in assessing the situation, courage, common sense – and not turning the behaviour into such frivolous, risky, lecherous, provocative, etc.

In characterising the mechanism of criminal behaviour in detention facilities in terms of the relationship between the qualities of the victim and the relationship with the perpetrator, we should consider the following components

a) victimological factors;

b) victimological situations

c) victimisation;

d) victimological prevention.

In particular, victimological factors should be understood as social and psychological factors that are associated with the emergence, existence and manifestation of individual or mass victimisation of victimological situations. These include the following in detention facilities:

1) conflicts among convicts as a result of a clash of opposing goals, interests, positions, opinions or views of opponents or subjects of interaction.

As established by V. Y. Bochelyuk and T. A. Denisova, conflicts in places of deprivation of liberty are a very common phenomenon. They occur both between the convicts themselves, criminal groups, and between offenders and colony staff [5, p. 77].

In our opinion, the attitude of the convicts to the administration of the places of deprivation of liberty is interesting. It is not just wary, but often hostile. It is in them, the representatives of the administration, that all the restrictions and all the troubles of the convicts are personified';

2) unemployment, low level of material and other support for prisoners in places of detention. V. A. Badira and A. P. Gel noted that in the penal institutions such material and living conditions are created that do not contribute to the person's awareness of their own dignity and do not orientate the person to respect for themselves and others [6, p. 71];

3) low level of funding of the Penitentiary Service of Ukraine from the State Budget of Ukraine.

4) criminogenically active convicted persons serving a sentence of imprisonment who are potentially threatening to victimised persons;

5) contradictions in the field of social existence of criminal punishment in the form of imprisonment.

Based on the studied theoretical sources and practice of combating crime in penal institutions, victimisation factors of crime in penal institutions should be understood as various social and psychological factors of a general and individual nature that contribute to victim behaviour of victims of crime in penal institutions and pre-trial detention centres.

Victimological situations are equally important in the development and implementation of victimisation prevention measures in penal institutions.

A victimological (sometimes called victimogenic) situation is not only a specific life situation that is formed under the significant influence of certain characteristics of the victim and his/her behaviour, but also the environment that contributes to the manifestation of these victim qualities of a person and causes or 'encourages' the offender to commit a crime.

Based on the findings of scholars, we can distinguish the following types of victims in prisons:

a) accidental victim – a convict becomes such a victim due to a set of circumstances (more than 70% of the victims of crime in penal institutions). In this case, the relationship between the victim and the offender did not depend on the victim's will and desire;

b) a victim with a low degree of risk (up to 10% in the structure of victims of crime in penal institutions) – convicts who lived under normal, risk factors and whose victimisation increased unexpectedly under the influence of a specific unfavourable situation

c) victim with an increased degree of risk – convicts who had a number of victim characteristics (up to 15% of the structure of crime in penal institutions).

This category includes two main types of victims of crime in penal institutions:

1) victims of careless crimes – in cases where the nature of the work they performed or their behaviour in prisons had a higher than normal victimisation rate (librarians, accountants, foremen from among the convicts);

2) victims of intentional crimes whose social status or role posed a high risk (penal institution staff, court, prosecutor's office and other law enforcement officials) or participants in any conflict situations;

d) very high-risk victims – convicts whose moral, psychological and social deformation does not differ from the perpetrators of the crime (warring members of criminal groups, convicts with different social status in the criminal hierarchy, etc.) (up to 5% of the structure of victims of crime in penal institutions);

d) latent victims – convicts who actually suffered from a crime, but for some reason this fact remained hidden from official records.

In prison conditions, these are often convicts with the lowest status in the criminal hierarchy (the so-called 'oppressed'). The number of such persons in penal institutions, as established by scientists, is almost 3% [4, p. 20].

It is worth noting that a special phenomenon that is directly related to the formation and implementation of criminal behaviour in places of deprivation of liberty is victimisation, which should be understood as a component of the concept of 'causes and conditions of crimes in penal institutions', as well as its victimisation consequences and the process of turning a particular person (convict, representative of the administration of a penal institution and others) or a certain community of people (penal institution or pre-trial detention centre, SPS in general, society and the state) into a victim of crime.

In this regard, the characterisation of crime in prisons should include such an important feature as victimisation from crime while serving sentences, which is not only social consequences, but also a real aggregate result, i.e. the sum of quantitative and qualitative characteristics of victims of crime.

Knowledge of these characteristics, together with data on crime in prisons, makes it possible not only to accurately identify the objects of crime prevention, including the objects of victimological prevention, but also to predict the likelihood of committing crimes against specific categories of prisoners and other persons and by them, and, as a result, to carry out an appropriate classification of victims of crime in penal institutions. At the same time, this classification on the basis of victimisation, as the ability to facilitate criminal acts, i.e. the presence of 'victimogenic deformation', can take place

– at the level of the individual, which involves a combination of characteristics of the individual and his or her social status (static characteristics of the victim's traits and dynamic – role characteristics during interaction); the latter can be both positive and negative;

– at the social level, where we can distinguish such features as:

a)'professional victimisation';

b) impersonal victimisation;

c) victimisation as a property caused by the performance of social functions, which forms specific relationships that contribute to criminal behaviour in prisons.

The carriers of professional victimisation in penal institutions are convicts of different social statuses (with the lowest status (the so-called 'oppressed') and the highest status ('thieves in law'), and persons from among the staff of penal institutions who enter into off-duty (non-statutory) relations with convicts. According to some studies, the number of such subjects is growing annually and amounts to up to 30 people [4, p. 24].

Impersonal victimisation includes legal entities ('penal institutions', 'pre-trial detention centres', 'SPS'), society and the state. Victimisation as a property caused by the performance of social functions includes victims of official (personnel of penal institutions) or public duties (accountants, foremen, day workers, etc.).

In view of the above, it should be noted that these properties should be taken into account in determining the 'victimisation potential' when organising victimisation prevention in penal institutions.

In order to implement these and other tasks, it is necessary to change the methodology for assessing the effectiveness of the activities of penal institutions in terms of the execution of sentences of deprivation of liberty at all levels of government, including in its indicators the state of security of convicts, staff and other persons involved in criminal executive activities to some extent, and to adopt a special Instruction 'On the procedure for ensuring the security of persons held in penal institutions and pre-trial detention centres', to amend the normative legal acts on protection, supervision, security and crime prevention by defining relevant sections in them, such as 'Peculiarities of ensuring the security of convicts belonging to victimisation vulnerable groups' and clearly defining the types (objects) of such convicts.

Thus, the victimological principles in penitentiary institutions are as follows:

1) the victim (victim of a crime) organically fits into the mechanism of criminal behaviour in penal institutions.

2) the attitude towards the victim in penitentiary institutions is considered from a number of perspectives:

– from the perspective of social and legal protection of their legitimate rights and interests;

– from the criminological point of view as a criminogenic factor that is part of the structure of determinants and mechanism of criminal behaviour;

– from the perspective of preventing recidivism of a person and recidivism of prison staff in penal institutions;

3) taking into account the existing practice of social and legal protection of victims of crime in penal institutions, it should be noted that this problem requires specialised consideration and study at all levels and directions – legal, educational and economic;

4) in view of this, specific preventive measures can be divided into two types depending on the object of influence:

– detection of potential victims from among the convicts whose behaviour may create criminogenic and victimogenic situations that objectively develop into a crime;

– measures aimed at preventing victimisation (especially recidivism) of convicts in penal institutions;

5) in turn, 'professional victimology', which is a complex of stable typical properties of individuals.

It is the presence of 'professional victimisation' in the activities of the penitentiary institution, its structures and officials that creates specific relationships in which circumstances arise that facilitate the commission of various types of crimes;

6) victimisation in penal institutions is a characteristic:

– of behaviour of an individual (when an individual in certain situations puts himself or herself in a dangerous position of a crime victim)

– of activities of representatives of the penal system (officials) as a specific community united by one goal and task of fighting crime;

7) victimisation in penal institutions is a component of the concept of determinants of crime in places of deprivation of liberty, as well as its victimising consequences and the process of turning a specific person (convicted person or penal institution employee) or a specific community of people (penal institution, its units, etc.) into a victim of crime;

8) the victimological situation is an effective interaction of the behaviour of the offender, the victim (casualty) and the social environment in interconnection with the subjective reflection of objective reality in the minds of the offender and the victim of an offence in places of deprivation of liberty;

9) the following measures will contribute to crime prevention:

– the safety of the casualty should be legally guaranteed and actually ensured;

– criminal policy should be increasingly focused on the application of tough measures against dangerous criminals and on the admission of alternative forms of liability to criminal prosecution for minor offences that do not pose a great danger to society, i.e. the expansion of non-punitive measures of influence;

– recording of crimes should be organised in such a way that it reflects the completeness and, most importantly, excludes the subjective approach of individual employees when assessing incoming reports;

– law enforcement officials, and especially police, prosecutors and judges, should be accessible to the public;

– compensation for victims should be considered as one of the most important indicators of justice.

In our opinion, victimisation should be understood as the process or final result of turning a person or group of persons into a potential victim of a criminal offence.

The implementation of the victimisation process as a moving and dynamic phenomenon is mostly conditioned by the interaction of various components, such as the offender and the victim of a criminal offence, the degree of victimisation, victimogenic factors and conditions. The objects of victimisation are the benefits, rights and interests of individuals, the state and society placed under criminal law protection. Victimisation factors are a set of circumstances in the lives of people and society that determine the process of turning a given person into a victim of a crime or contribute to the implementation of this process. The conditions of victimisation are a variety of objective and subjective phenomena that increase the level of victimisation, significantly facilitating the possibility of conflicts, and escalating the victimisation situation. The factors and conditions of victimisation of the population are manifested at the mass (political, socio-economic, cultural and informational) and individual and group levels. Victimisation should be characterised by data on the type of crime, time, place and methods of its commission, socio-demographic, psychophysiological, legal and other characteristics of the victim. Adding and comparing these characteristics within the framework of criminological research, with the active use of methodological tools and data from sociological science, allows researchers to obtain a significant amount of information about the peculiarities of victimisation of social groups that took place in a certain territory over a certain period of time. In this context, there are interpretations of victimisation as the process of turning a person into a victim of a crime and the consequences of this process at both the mass and individual levels. The subjects of victimisation are the subjects and participants of social relations who show increased victimisation and become victims of crime. The limits of victimisation are the parameters that determine the permissible number of all victims of crime in the population structure, which is normally perceived by society, does not cause a subjective sense of threat to social security, fear of crime.

In our opinion, victimisation is not only the process of turning a person or a social community into a victim, but, above all, the process of turning them into a potential victim.

The process of victimisation includes a complex system of phenomena related to the victim's participation in the formation of a criminal motive, interaction with the perpetrator in a specific life situation, and the commission of a violent crime against him or her, which leads to certain criminal consequences. In this sense, it is customary to distinguish five levels of victimisation. At the same time, both the parameters of victimisation of an individual and the parameters of victimisation of social groups are taken into account.

The first level consists of information about direct victims of crimes identified in the course of criminal proceedings or latent victims identified through victimisation surveys and the damage caused to them.

The second level includes data on the victim's family members indirectly affected by crimes committed against their loved ones.

The third level includes other social groups (labour collectives, friends, acquaintances, neighbours, etc.) who are also harmed, although indirectly, by the crime.

The fourth (social) level implies the existence of negative consequences of the crime for the whole region or the whole society.

The fifth level of victimisation is manifested in cases where so-called international criminal offences, crimes against humanity (genocide, criminal destruction of civilians during war) are committed.

Undoubtedly, the most acute and tangible consequences of victimisation are those on the first two levels, which manifest themselves in the deaths, injuries, disability, psychological trauma due to the loss of loved ones, material costs of treatment, etc. Potentially dangerous, often accompanying serious aggressively violent crimes, is the desocialisation of the victim, caused by pain, fear, shame, loss of faith in the state and society, which proved unable to protect them from the perpetrator, etc.

As a conclusion, we note that it is advisable to understand the victimisation of convicts in penitentiary institutions during the special period:

firstly, through the content of preventive activities related to the prevention of crimes committed by convicts, and only partially by the staff of penal colonies during the special period;

secondly, by describing the provisions of criminological and penitentiary activities in penitentiary institutions during the special period;

thirdly, through the disclosure of the content of criminal executive activity (the process of execution and serving of sentences), rather than activities related to the prevention of crimes in correctional colonies during the special period;

fourthly, through the results of monitoring the observance of the rights of convicts and the prevention of torture in places of deprivation of liberty, conducted by international experts, the Ukrainian Parliament Commissioner for Human Rights and civic organisations during the special period;

Fifth, through the analysis of the case law of the European Court of Human Rights during the special period;

Sixthly, through acts of response by prosecutors in accordance with Article 22 of the Criminal Executive Code and the Law of Ukraine 'On the Prosecutor's Office' to violations of the rights and legitimate interests of convicts in penal colonies during the special period;

seventh, due to problematic issues of participation of religious organisations in the penal and executive activity of Ukraine during the special period;

eighth, by highlighting the peculiarities of the impact of criminal subculture in penal institutions on convicts during the special period.

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