

The Carceral Continuum and the Penitentiary System in Ukraine

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Abstract

The penitentiary system is an integral part of the carceral continuum. It is one of its ultimate boundaries. It is there that the main tendencies in the approach to the education of a disciplined individual can be traced. Obviously that this approach has not had much success in Ukraine, as the achievements over thirty years of reforms have been very modest. The article attempts to examine the problems, existing standards and the situation in Ukrainian prisons. To critically rethink the recommendations and identify the reasons why they are not being implemented and may not be implemented. If they cannot be implemented, what prevents this and what is the possible way forward or out of the current situation. Methodology of this short study is based on an examination of the problems of the structural penitentiary system of Ukraine and the proposed solutions to them. The official view on these problems by the Government of Ukraine and the recommendations and reports of international organisations and the European Court of Human Rights have been taken as a basis. The study concluded that Ukraine does not have an institutionalised carceral system and that approaches applied to such systems in other countries will not have a positive effect. Successful reform of the penitentiary system and its humanisation require a comprehensive social, political and legal effort, which must take place against a background of rethinking the place and role of prison in dealing with those who have committed crime.

Keywords: Penitentiary system; prisoners; policy; carceral practices; coercion; Ukraine.

Карцеральний континуум і пенітенціарна система України

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Анотація

Пенітенціарна система є невід'ємною частиною карцерального континууму. Вона є однією з його кінцевих меж. Саме тут простежуються основні тенденції у підході до виховання дисциплінованої особистості. Очевидно, що в Україні цей підхід не мав особливого успіху, оскільки досягнення за тридцять років реформ виявилися дуже скромними. У статті зроблено спробу дослідити проблеми, наявні стандарти та ситуацію в українських в'язницях. Критично переосмислити рекомендації та визначити причини, чому вони не виконуються і не можуть бути виконані. Якщо вони не можуть бути виконані, то що цьому заважає і який можливий вихід із ситуації, що склалася. Методологія дослідження ґрунтується на вивченні структурних проблем пенітенціарної системи України та запропонованих шляхах їх вирішення. За основу взято офіційне бачення цих проблем Урядом України, а також рекомендації та звіти міжнародних організацій та Європейського суду з прав людини. У роботі сформульовано висновок, що в Україні не існує інституціоналізованої карцеральної системи, а підходи, які застосовуються до таких систем в інших країнах, не матимуть позитивного ефекту. Успішне реформування пенітенціарної системи та її гуманізація потребують комплексних соціальних, політичних і правових зусиль, які мають відбуватися на тлі переосмислення місця і ролі в'язниці у роботі з особами, які вчинили кримінальні правопорушення.

Ключові слова: пенітенціарна система; засуджені, політика; карцеральні практики; примус; Україна.

Introduction

The penitentiary system is a major problem for the Ukrainian state. The practice of the ECHR shows that a significant part of the decisions of this body is somehow related to the observance of prisoners' rights:

64 – violation of Art. 13 (right to an effective remedy);

51 – violation of Art. 3 (prohibition of torture and ill-treatment);

45 – violation of Art. 6 (duration of court proceedings) [1].

Despite the fact that the violations established by the Court are primarily related to the provisions of the Convention, they are always closely connected with the activities of penitentiary institutions and are often caused by the fact that the convicted person is in such institutions.

The Government of Ukraine acknowledges that there has been a violation of Art. 3 (Prohibition of Torture) of the Convention in connection with the inhuman and/or degrading treatment suffered by the applicants due to overcrowding in the cells, inadequate conditions of detention and failure to provide adequate medical care during detention, as well as Art. 13 "The right to an effective remedy" of the Convention due to the lack of an effective legal remedy for such complaints, as stated by the European Court of Human Rights in about 190 cases concerning Ukraine, of which 133 cases are under the

enhanced supervision of the Committee of Ministers of the Council of Europe as not having been implemented [2].

All this gives grounds to assert that the penitentiary system in Ukraine is in a state of deep crisis. The crisis phenomena have existed for almost thirty years and are acquiring signs of chronic problems.

At the same time, Ukraine is constantly receiving assistance and support, both in identifying violations, their causes and remedies, and in providing technical and financial support for penitentiary reform measures. However, it is evident that most of the efforts are not having the desired effect. There are probably reasons for this. The present study would like to explore these reasons.

The purpose of this article is to examine the problems of the penitentiary system and the situation in prisons, to critically reflect on these problems in the light of the available empirical data and to formulate, on the basis of these data, probable reasons for the failure of reforming the penitentiary system of Ukraine.

Literature Review

In Ukraine, there is an extensive specialised scientific literature devoted to the issues of penitentiary system reform. A number of Ukrainian penitentiary scholars have devoted monographic studies to the issues of reform of the penitentiary service of Ukraine and tried to identify specific directions of such reforms.

Tetyana Denisova notes that it is important to take into account a number of factors when reforming. In her opinion, reform will be successful if it takes into account different categories of offenders. For those who have committed non-serious offences, the penalties should not be too severe, and as a rule should not involve imprisonment. Those who have committed serious offences, on the other hand, should undergo imprisonment. However, work with them should not be limited to isolation only. The author concludes that changes in approaches to the execution of punishment and legal regulation should be fundamental, not cosmetic. She proposes that the main emphasis should be placed on work with convicts outside the penal colonies, i.e. the application of non-custodial sentences and active intervention on the part of special subjects in the life of the offender. At the same time, punishment should retain its preventive potential [3].

Anatoliy Stepanyuk believes that reform is only possible if a unified legal terminology is used. This, in his opinion, is exactly what is needed. This remark is particularly relevant to the fact that there is no such thing as a penitentiary system in the Ukrainian legal space. In Ukraine, there is only the criminal

executive service, and it is this service that needs to be reformed. He also believes that it is impossible to reform the old colonial system, which is the heir to the NKVD camps, using modern standards.

He also believes that achieving the goal of creating a humanistic penal system that would meet international standards is impossible in principle. The fact is that international standards are not established in relation to the execution of sentences, they provide recommendations on the treatment of prisoners. According to international standards, prisons should not have the function of executing sentences. The execution of sentences, i.e. the implementation of punishment by penitentiary institutions that are law enforcement agencies (punitive bodies) and the treatment of prisoners, which involves the provision of social services to clients, are in different planes. As a result, the scientist comes to an unexpected conclusion that in order to eliminate all these contradictions and inconsistencies, Ukraine should abandon national standards for the execution of punishment, the policy in the field of execution of punishment, in favour of the introduction of penal management through unbiased incorporation of recommendations developed by the international community. Stepanyuk's thoughts are quite understandable, but his proposals for reform are inconsistent. The author hesitates between recognising the need to move away from purely punitive models and approaches to the execution of punishments and at the same time appealing to the fact that each of the punishments should have a clear and effective punitive potential [4].

Olexander Kolb also recognised that most of the directions of reforming the penitentiary system of Ukraine were punitive or punitive-repressive in nature [5].

Iryna Yakovets adds to the list of problems of the penitentiary system of Ukraine its management and concludes that reforms are necessary, but their content will depend on the direction chosen by the Ministry of Justice of Ukraine [6].

If we summarise the ideas related to the reform of the penitentiary system of Ukraine, we can come to the conclusion that the bulk of penitentiary scholars agree that punishment pursues a number of goals, among which are punishment (punishment itself), reintegration (or as it is called in the Criminal Executive Code of Ukraine – resocialisation) and correction. As a rule, the content of these concepts is exhausted by normative definitions and is not discussed by scholars. In addition to the above-mentioned objectives is the statement that the penitentiary system of Ukraine should be brought to international standards. At the same time, the content of these standards is identified with the norms of international acts.

Materials and Methods

This study uses general scientific methods. The concept of the penal system originates from sociology and social anthropology. But later it was also used by criminologists and scholars who study penitentiary systems, the phenomenon of punishment and criminal law. So today this concept is known in all these fields of knowledge. At the same time, the concept of punitive confinement is used for the first time, at least in the sense intended by the author of this article.

This concept is hardly ever used in Ukrainian legal science. But this does not mean that this phenomenon does not exist in Ukrainian society. It is for this reason that this article uses the methods of study and review of scientific literature to highlight this issue. Moreover, this method is crucial because it allows us to delve into the essence of the carceral continuum and the systems it generates.

The method of studying the scientific literature is complemented by the historical method, which allows us to observe the development of penal systems and the patterns that are formed in the course of the functioning of these systems. And although this study does not focus on the definition and characteristics of the carceral system itself, it nevertheless complements its understanding and highlights some of its features.

The author uses the comparative or comparativist method to highlight the features that the penal system is acquiring in the Ukrainian legal reality, and also to find out its efficiency and viability. In European countries, penal systems are sustainable because they have an intellectual basis, traditions, validity and awareness on the part of both researchers and those who create and apply the law. In Ukraine, these systemic links are often absent, which the author substantiates in his work. That is why the comparative method is an important part of the study.

The article makes extensive use of the method of studying the judicial and case law practice of law enforcers and researchers. In particular, the author refers to the judgments of the European Court of Human Rights relating to Ukraine. In particular, to those judgments which directly affect the practice of execution of criminal sentences. The main focus is on the judgments which are pilot judgments, i.e. those which require immediate practical response by the state and law enforcement agencies of Ukraine.

The same is true of the ECHR case law. In Ukraine, it is recognised as binding on the courts, so it is impossible to carry out legal research without it.

In addition to court decisions, the materials used in the course of the research also include national regulations and official positions of the Ukrainian state authorities. It is in these documents that the most general and systematic political and legal approaches to solving certain problems are fixed or algorithms of actions agreed at the state level in the execution of criminal sentences are defined.

It should be noted that the national regulations of Ukraine in the field of execution of criminal sentences have been and continue to be significantly influenced by reports and recommendations provided by international bodies, in particular those established in Europe. The reports of the Committee against Torture, UN monitoring missions and other institutions are also included in the range of materials on which this study is based.

It is also clear that any research will not be complete and reliable unless its findings are confirmed or tested in practice. This is the reason why the author has relied on a very wide range of empirical material in writing this article. The issues and problems that the researcher addresses in his work were identified and observed during more than a hundred monitoring visits to penal institutions in Ukraine.

All of these methods and materials form the research basis of this study.

Results and Discussion

Structural problems of the penitentiary system

In all this variety of goals of punishment, the question of how to achieve these goals remains unresolved, as well as the question of why all the efforts made so far have not yielded any clear and sustainable results. The topic of reforming the penitentiary system of Ukraine today remains one of the most topical and at the same time one of the most routine and uncreative. It is based on tautological statements and recommendations.

Year after year, the reports of international bodies and organisations always contain a number of comments and recommendations regarding the penitentiary system of Ukraine and the need for its reorganisation and reform. As a rule, these recommendations are repeated. As a result, this situation has led to the establishment of an obvious fact – the problems of the penitentiary system of Ukraine are structural in nature. This fact was stated in the proceedings conducted by the ECtHR.

In particular, the decision "Sukachev v. Ukraine" became a pilot case and it was in this case that the ECtHR stated that the problems of the Ukrainian penal

system are structural. The Court determined that Ukraine does not pay due attention to the problems of the penitentiary system and does not eliminate those problems that the Court and other bodies and institutions have repeatedly pointed out.

The Court notes that the present case concerns a recurring problem which underlies Ukraine's repeated violations of Art. 3 of the Convention. In particular, since its first judgment on the conditions of detention in Ukraine (*Nevmerzhitsky v. Ukraine*, application No. 54825/00, ECHR 2005-II), the Court has delivered fifty-five judgments (some of which involved several applicants) finding a violation of Art. 3 of the Convention in connection with poor conditions of detention in pre-trial detention centres.

Also in the judgement, the court notes:

137. Most of the cases against Ukraine in which the Court found violations of Art. 3 of the Convention concerned overcrowding and various other recurrent problems related to the living conditions of detention: inadequate sanitary and hygienic conditions, insufficient lighting and ventilation, the presence of parasites and mould in cells, limited access to showers, limited daily walks, lack of privacy when using the toilet, poor quality of food, etc. Violations were found in a large number of institutions in different regions of Ukraine. Thus, it is indeed clear that the violations were not caused by an isolated incident or the result of specific events in each individual case. They arose as part of a widespread structural problem resulting from the poor functioning of the Ukrainian penitentiary system and insufficient safeguards against treatment prohibited by Art. 3 of the Convention.

138. It appears that despite the Court's findings in respect of Ukraine almost every year since 2005, the structural problem has not yet been resolved at the national level. In fact, according to the Court's case database, there are currently around 120 apparently well-founded applications against Ukraine complaining about the conditions of detention pending. This figure itself indicates the existence of a recurring structural problem [7].

All this has led to the obligation on Ukraine to take measures aimed at addressing these problems at all levels, including by introducing appropriate legislative changes.

In addition to individual spot measures aimed at fulfilling the requirements of the Convention that are imposed on States parties in the event of pilot judgements by the Court, these circumstances eventually led Ukraine to take note of the facts and prepare a Strategy for the Reform of the Prison System for the period up to 2026. This document contains the formulation of the main problems, their

content, ways to solve these problems and a plan of such measures, as well as the expected results from the implementation of the envisaged measures.

For the purposes of this study, we have identified those problems that are recognised by the state as systemic and structural, which require the same systemic and structural changes. Their formulation is important in order to try to find out why all the measures taken do not have a significant effect.

So, the main problems that are structural and have been persistent for a long time in Ukraine are the following:

1. The moral obsolescence and material depreciation of the resources of the system of penitentiary bodies and institutions, destruction and damage to infrastructure (dormitories, cells, other premises and equipment) as a result of hostilities, forced compression of penitentiary institutions, and insufficient funding make it impossible to fully implement the policy and reform the sphere of execution of criminal sentences and probation.
2. The infrastructure of the penitentiary system has never met international standards. The conditions of detention in many pre-trial detention centres and penal institutions do not meet the basic needs of convicts and detainees and are equated by the European Court of Human Rights with torture, making it difficult to achieve the goals of reforming and re-socialising convicts, reducing the number of repeat offences and emergency incidents.
3. Ineffective response at the national level to applications and complaints from convicts and detainees regarding inappropriate behaviour of penitentiary system staff and other convicts and detainees, ineffective investigation of complaints about such treatment, the influence of prison subculture and criminal environment create preconditions for recognition by the European Court of Human Rights, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, other international organisations and experts to recognise violations of the Convention in relation to torture, cruel, inhuman and/or degrading treatment or punishment.
4. To date, violations of Article 3 (Prohibition of Torture) of the Convention in connection with the inhuman and/or degrading treatment suffered by the applicants due to overcrowding in cells, inadequate conditions of detention and failure to provide adequate medical care during detention have been found by the European Court of Human Rights, as well as Art. 13 "The right to an effective remedy" of the Convention due to the lack of an effective legal remedy for such complaints, as stated by the European Court of Human Rights in about 190 cases concerning Ukraine, of which 133 cases are under the enhanced monitoring of the Committee of Ministers of the Council of Europe as not having been implemented.

Given the significant number of cases of this category, which constitute almost a fifth of the total number of cases under the control of the Committee of Ministers of the Council of Europe, it can be concluded that this violation of the Convention is one of the main grounds for initiating cases against Ukraine.

5. One of the ways to improve the situation in pre-trial detention centres and penal institutions is to develop probation and improve the procedure for applying alternative methods of punishment to deprivation of liberty.

6. Significant problems in providing assistance and support to convicts. In particular, among the problems that need to be solved is the lack of 100 per cent passportisation of prisoners and convicts.

7. One of the most significant problems, in my opinion, is the problem of direct work with convicts. For a long time there has been a formal approach to the process of correction and resocialisation, as well as a lack of attention to the departments of social, spiritual and psychological work with convicts and persons under sentence.

There is a need to expand the list of tools and forms of social, spiritual and psychological work with convicted persons during the period of punishment and after their release, improvement of the procedure for providing educational services to convicts, provision of proper employment of convicts, efficient use of their free time [2].

All the above problems are formulated in the Strategy. It is interesting how some of the problems are formulated. In particular, those that describe the difficulties in the sphere of social and educational work, which should be focused on re-socialisation of convicts. The very description of the problem indicates that such activities as educational interaction with inmates, social work with them, their training and other such activities remain insubstantial.

For example, the Strategy states that for a long time, social and psychological work with convicts and remand prisoners has been characterised by a formal approach to the process of correction and re-socialisation, as well as a residual focus on the departments of social and psychological work.

The use of such a word as "residual focus" principle to social-educational and psychological work indicates that for officials it is clear what the penitentiary service does, but they regret that not enough attention is paid to education and social work in these activities.

Approaches to problem solving

This raises a logical question: what does the penitentiary service do, what is the main purpose of its activity and what is the content of this activity?

The impression is that the penitentiary system lives an autonomous life of its own, which has little in common with the idea of punishment as a social institution. It falls out of the general social context and gradually loses the signs of social value (if it had any at all).

Of course, this raises the question of social values themselves and how Ukraine relates to and perceives them.

If we do not follow the usual ideological clichés and claim that the penitentiary system counteracts crime and is the system that implements and gives reality to criminal punishments, we will probably be forced to admit that punishment in Ukraine today is marginalised.

In other words, this type of activity has all the hallmarks of something that involves intractable problems that do not merit significant effort, funding and quality-oriented approaches. It is an activity that can be performed by anyone for low remuneration and that ultimately has no social value. It exists only because the convicts need to go somewhere and do something with them for a certain period of time.

It goes without saying that such an approach cannot have any positive potential and no tangible results either in the social sphere or in the sphere of public policy.

This is exactly the approach we see today in the Ukrainian penitentiary policy. And this is what gives reason to believe that the "strategic" plans formulated by the Government will not have any success.

The question arises as to why the approach to penitentiary policy is exactly the same, and why the penitentiary system for thirty years has not known any significant changes towards normalisation of its activity, its transformation into a system that is integrated into the general social context.

Leaving aside material conditions and circumstances, we will be forced to state that the disdain for prisons, the removal of these issues from the focus of attention are born of the public perception of criminal punishment, society's expectations of this activity and society's willingness to make efforts to realise it.

Michel Foucault [8], in outlining his thoughts on the various state institutions that aim to discipline subjects, drew parallels with Bentham's Panopticon and noted that, in the end, almost all systems operating in the state and dealing with a large number of people, in one way or another imply the organisation and ordering of such subjects. In other words, almost all state institutions pursue the goal of creating a disciplined subject.

A similar idea is expressed in "Punishment and reformation a study of the penitentiary system": punishment is inflicted, not by the State alone, but by all persons vested with any measure of legal authority, however local or temporary: by parents upon their children, by teachers upon their pupils, by masters upon their slaves, by employers upon their employees, by military and other officers upon their subordinates, and by the Church upon those subject to its ecclesiastical jurisdiction. As we can see, both authors express a very similar idea, the essence of which boils down to the fact that state institutions pursue a single goal. Each of the institutions has its own arsenal of achieving the set goals, but all of them are perceived as necessary and "useful" and, obviously, oriented to the creation of law-abiding subject of social relations [9].

Can we say the same about the Ukrainian penitentiary system? Does it have value in the eyes of Ukrainian society?

Art. 6 of the Criminal Executive Code of Ukraine says so directly, defining the purpose of correction and re-socialisation as "conscious restoration in social status" and "ability to lead a law-abiding way of life".

However, the rate of recidivism among those who have served a custodial sentence remains quite high. In particular, the Office of the Prosecutor General provided the following data on recidivism: In 2021, the total number of persons notified of suspicion was 106929, of which 19017 were persons who committed criminal offences for which the conviction was not cancelled or repaid (recidivism), which also accounts for 17.8 % of the total number of persons; In 2022, the total number of persons notified of suspicion was 85285, including 10981 persons who committed criminal offences for which the conviction was not cancelled or repaid (recidivism), which is also 12.9 % of the total number of persons. In 2023 (as of October), the number of persons notified of suspicion is 89847, including 10591 persons whose previous conviction has not been cancelled or expunged, which is 11.8 % of the total number of persons notified of suspicion [10].

Of course, these data cannot be regarded as definitive, as it is not always the case that a declared suspicion results in a conviction. However, this fact may rather indicate that the proportion of recidivism will only increase.

These data are only given to illustrate that deprivation of liberty practices do not produce the expected results.

We need this information primarily in order to use it to try to trace how the Ukrainian state views its own penal system and how inmates themselves experience incarceration, what they expect from this punishment, and how they use the time during which they are under the full control of the state.

Social scientific literature in Ukraine tends to focus on the administrative and material conditions of the execution and serving of this punishment, on the external observance/non-observance of the rights of convicts and prisoners. It is these, I would say, external conditions and factors that are considered as the most problematic and those that require reform, revision and new regulation [11; 12].

In this regard, Western scholarship has focused more on the behavioural and psychological tendencies of imprisonment. Many authors have pointed out that convicts themselves do not seek to change and are discouraged from using the institutions and opportunities offered to them during imprisonment, which seem to expand the range of their rights. This is because inmates are afraid to enter into relationships and activities that require a higher level of self-control and situational control, and therefore increase the risk of offending. Accordingly, such situations potentially carry the risk of receiving additional penalties or punishments, and thus a possible "prolongation" of the sentence or at least continued "communication" with the penitentiary or probation system.

It turns out that the convicts themselves are not interested in expanding their rights [13].

If such trends exist, it can be argued that the penitentiary system is not seen as one that can help.

The state of affairs in Ukraine. The carceral system

Are there such tendencies in Ukraine?

Looking ahead, I have to admit that this kind of research has not been conducted in Ukraine. However, the experience of monitoring visits to penitentiary institutions and personal communication with inmates gives grounds to assert that something similar exists in Ukraine. But here it has a significant specificity due to the fact that in Ukraine there are persistent traditions, stretching back to the times of the USSR, of perceiving the penal system as a "black hole" where people disappear. And if they come out of it, they can never fully integrate into society. In fact, society does not need them any more. Such an attitude of society towards one of the social institutions can probably be characterised as indifferent or, more precisely, one in which penitentiary institutions are not seen as a value. Even if negative, but a value.

When the penitentiary system finds itself in such a status, it seems to fall out of the system of social institutions. It does not take part in the formation of social myths. Neither positive – prison is a reward, hard and unpleasant, but necessary for the correction of a person, nor negative – prison is a terrible place where

a person undergoes torment and deprivation, one should be afraid of prison. In the form that the penitentiary system of Ukraine has today, penitentiary institutions, together with those who serve sentences in them, as well as those who serve this system, are taken "out of the brackets" of the social context and social institutions.

This is indicated by the current state of penitentiary institutions. Regular visits, as well as the provision of legal assistance to convicts and prisoners, in the provision of which I had to participate as an expert on penitentiary law, give grounds to assert that the situation in the penitentiary institutions of Ukraine does not change. It remains stably and predictably equally negative. I took part in the monitoring of places of detention in Ukraine at the beginning of the war and the result is a short summary describing the current situation. The research team formulated the following conclusions:

- the systematic violation of the human rights of inmates serving criminal sentences in penitentiary institutions (conditions of detention, medical rights, transfer, failure to ensure basic rights, violence against prisoners, torture, etc.);
- lack of proper legal regulation for the effective and timely evacuation of detainees and prisoners (terms, routes, logistical and transport support for evacuation, material support, the means and powers to ensure security and safety during the movement of inmates);
- problems with the funding of penitentiary institutions and their staff; shortcomings in identifying and meeting the humanitarian needs of the penitentiary system under martial law;
- the improper arrangement of shelters in penitentiary institutions for the protection of inmates and staff during shelling and bombing;
- the lack of informational support and coordination for inmates and staff regarding the actions to be taken in various circumstances (martial law, nearby hostilities; the occupation of the institution);
- the belated and limited application of early release for inmates of penitentiary institutions;
- the failure to record war crimes in penitentiary institutions under martial law or an incomplete record of their occurrence;
- insufficient efforts to transfer detainees and prisoners from the occupied territories to areas under the control of Ukraine; the creation of humanitarian corridors for penitentiary institutions in the occupied territories, etc.;
- the limited involvement of civil society institutions in support and assistance to the penitentiary system [14].

Some of them are directly related to the war and concern mainly managerial and organisational issues. However, the bulk of the findings indicate that the

situation in Ukrainian colonies has not changed much. The same inadequate conditions of detention, the same violations of the rights of convicts, the same torture, restrictions in access to medical care (including those resulting in the death of convicts), and so on. In fact, we can talk about the fact that most of the problems of the penitentiary system of Ukraine are structural. This, in turn, may indicate that these are features of the system rather than signs of problems. Today these problems have turned into features of the penitentiary system of Ukraine.

It seems to me that the main reason for this is precisely what was pointed out above, namely that the prison is not valuable to Ukrainian society. It has been formed as a place where outcasts are held for a certain period of time to be released. On the external side, this exhausts the function of the prison. On the internal side, penitentiary institutions are "temporary detention centres" of people, where their own orders and laws reign, which have nothing in common with the orders and laws of society, have no connection with the institutions of society and, ultimately, society has no influence on them either. The last conclusion is inevitable because, as stated above, the reforms that lasted almost thirty years could not change the situation in prisons, could not establish a regime of legality in the institutions, and could not link the normative acts for "free" society with the normative acts for convicts. In other words, when a person enters a penal colony, he falls out of society, and if he wants to survive, he must be able to adjust and adapt to the order and conditions in the colony.

It is noteworthy that in most countries where the carceral system has not spread, supported or become part of the organisation of the whole society and all its institutions, the situation of the penitentiary system is very similar. In some countries, particularly in the United States, the penitentiary system has acquired completely different attributes and characteristics, becoming a system that no longer seeks to return a disciplined subject to society, but is oriented towards the maintenance of order and risk management [15]. Such examples are found not only in scientific and legal literature, but also in fiction. For example, in the work *Shantaram* there is an episode where the protagonist gets into an Indian prison and is subjected to torture and beatings. The entire prison experience in this institution described by the author gives reason to say that the Indian Penitentiary system is not at all meant to nurture a disciplined individual and certainly has little to do with the carceral systems [16].

It is also noteworthy that the CPT actually points to this attribute in its reports. It seems to me that the Committee's staff were not fully aware of the trend they had identified, but the reports they submitted clearly indicate that the conjectures I have made above have been borne out in practice.

In particular, the 11th General Report (CPT/Inf (2001) 16) contains the following provisions:

"28. The negative phenomenon of overcrowding is common to prison systems throughout Europe and seriously undermines attempts to improve conditions of detention. The negative effects of overcrowding have already been highlighted in previous general reports. With the expansion of the CPT's activities on the European continent, the Committee has been confronted with a large prison population and the associated serious overcrowding in penitentiary institutions. The fact that the state keeps so many of its citizens behind bars cannot be explained by the high crime rate; the general attitude of law enforcement and judicial officials must be partly responsible.

In such circumstances, the problem cannot be solved by increasing financial allocations to penitentiary institutions. Instead, it is necessary to review the current legislation and practice regarding detention during pre-trial investigation and sentencing, as well as alternatives to imprisonment. This is exactly the approach advocated in the Committee of Ministers' Recommendation No. R (99) 22 on overcrowding in penitentiary institutions and the growing number of prisoners. The CPC very much hopes that the principles set out in this important document will be applied by member states; the implementation of these Recommendations requires close monitoring by the Council of Europe.

In fact, it is here that we encounter a key difference in approaches to the procedure and conditions of execution of punishments in general and penalties involving deprivation of liberty in particular. This key difference lies in the plane of expectations from criminal punishment, its understanding, from the goal that is set before it, from a deep understanding of this goal and its integration into the whole social reality. The purpose of punishment, its understanding and institutionalisation, is particularly important as well as close practical connection of punishment with other social activities.

In this connection, the carceral system that Foucault spoke of is again very illustrative. If punishment is one of the social institutions, among many others, which in their totality are oriented to the creation (in particular) of a disciplined citizen, then society will be interested in it, and thus it will receive full support from society and the state. Both the former and the latter will be interested in it, which means that the punishment will have an ideology and ideologists, quality staff, proper funding, etc.

In contrast to this approach, when a penitentiary system is established and marginalised it will not have the support of either society or the state. Of course, this does not mean that the system will be abolished. It means that it will be

displaced from society and will not acquire the signs of an institution. But at the same time it will retain the signs of a system. The latter, in turn, means that it will have rules, hierarchies, culture, and other mechanisms that will support its viability. However, this system will have nothing in common with a free society and will not relate to it constructively. This is exactly what we are witnessing in Ukraine. Here we have a system that functions as a marginal one. It has its own cruel laws, it has no place for human rights, it has no place for social initiatives, and free society has no interest in this system. This is the main reason why reforms and significant changes are impossible in the penitentiary system of Ukraine, that is why torture, bringing convicts to death, lack of opportunity to establish contacts with the outside world, with lawyers, human rights defenders and human rights protection mechanisms are possible and inexorable in the penitentiary system of Ukraine.

A striking manifestation of the "falling out" of Ukrainian prisons from the hierarchy of social institutions is that the introduced probation service has not been able to effectively solve the problems of resocialisation and its efforts have not led to successful resolution of the problems of convicts, implementation of resocialisation programmes that would really help them to adapt to life in a free society and integrate into it.

Unfortunately, no independent research has been conducted into the effectiveness of probation in Ukraine. Probation authorities themselves are engaged in the study of this activity, which does not make the results of these studies completely objective. However, even these studies demonstrate the low success of probation in Ukraine. The following figures can serve as an example:

More than 20 % of respondents from among probationers did not know about the creation and functioning of probation bodies. Officials explained this by the low level of preventive and individual work with probationers.

The survey also showed that the majority of probationers still do not see any significant difference between the newly created probation body and the penal inspectorates that operated during the Soviet era.

27 % of probationers are of the opinion that the newly created probation body is the same body, there was only a change of name, and 26 % said that they found it difficult to answer what exactly is the difference between the probation body and the CEP, which indicates a lack of understanding of the purpose, tasks and functions of the newly created body.

The overwhelming majority of probationers did not apply to the probation authority with their problems. This was stated by 79 % of them. All this

information can be found on the official website of the probation service of Ukraine [17].

Medicine has also remained a problem. In the last two years alone, human rights organisations (KHPG) have identified a number of egregious cases of deaths of convicts caused by failure to provide, untimely provision of or incomplete provision of medical care [18].

The situation is similar with education. Convicts are not interested in it, as they do not understand its necessity, accessibility and do not see the benefits for themselves in obtaining education, learning new skills [19, pp. 47-62].

It is obvious that the main social institutions – work, education, medicine, and social support – do not work for convicts and are not interesting to them.

A significant difference in approaches to the execution of sentences and executions as such is also noted by J. Pallot and L. Piacentini. They write that Russian penal institutions differ in fundamental respects from Western prisons in their physical and managerial structure, but, like them, they have developed as massive machines to control the bodies and behaviour of their inmates. The nature of the power exercised in Russian penal institutions has changed since Soviet times, when extra-legal coercion of the most brutal kind coexisted with technologies of surveillance aimed at the internal discipline of the subject. Soviet labour camps were in every sense ‘spaces of exception’, in which the inmate was reduced to a state of bare life. In the post-Stalin state the worst of the extra-legal practices of the gulag were eliminated and the administration of punishment was brought within the realm of legal process, although violations of prisoners’ human rights remained serious in the conditions in which prisoners were held and, by definition, in the use of incarceration (in prison or psychiatric hospital) as a means of punishing political opponents of the state [20]. Obviously, we are not talking about random episodes. We are talking about systemic differences and the very idea of punishment.

In order to better understand the fundamental difference in systemic approaches to the formation and functioning of the penitentiary system in countries where carceral practices have taken the lead and countries where penitentiary systems have developed according to different standards or spontaneously, it is necessary to briefly consider what lies at the heart of the carceral system.

The origins of the carceral system and the purposes of its formation become very clear if we refer to the work of Toth, Stephen A. *Mettray: A History of France’s Most Venerated Carceral Institution*. In it, the author quotes prison inspector Louis- Mathurin Moreau- Christophe, who points out that whereas

the child of the bourgeoisie lived in a world of the home, school, and church, the child of the urban poor inhabited only the space he could carve out on the streets. As Ariès has pointed out, in medieval and early modern cities there was little opposition to private lives lived on the street, but bourgeois reformers of the nineteenth century wanted to transform the urban space from "the familiar setting of social relations" into a natural "lieu de passage". As the streets teemed with poor youths they were vulnerable to bourgeois efforts at social control [21].

This passage about the origins of juvenile delinquency is largely true for adult offenders as well. And over time, its "spirit" has spread to adults as well.

At the same time, the very idea that there is an external impediment to the normal functioning of society, which is seen as quite removable, contains an obvious answer. The obstacle must be removed by introducing practices that would create the conditions and prerequisites for integrating any individual into one of the disciplining social institutions. Whether it is a school, a factory (a workplace with a work schedule), a hospital, a church, an army or, finally, a prison. In this context, it is obvious that prison should not be seen as something exceptional. It is one of the social institutions that ultimately fulfils the same role as a school or, say, a hospital. Namely it removes a nuisance by creating a disciplined subject. And what is remarkable here is precisely that the carceral system actually includes most social institutions that deal with and format large groups of people.

Quite succinctly, some of the features of the carceral system are described by Brendan Humphries in a short article on Lepoglava, a famous prison in Croatia. He notes: ... there were also varying carceral philosophies and approaches used in Lepoglava. In the late 19th century, it was run on the terms of the 'Irish System' of progressive incarceration, with an emphasis on education of prisoners and a view towards re-integration of inmates into civilian life [22].

One important detail should be noted here. Carceral practices and the carceral system always have as an indispensable element the existence of physical institutions. In other words, such a system presupposes institutions where people are kept or where they come regularly.

The obligatory nature of this attribute became particularly evident against the background of the ideas proposed by Niels Christie. In his writings, Christie even pointed out the absurd situations to which the carceral system led. In *Crime control as industry: towards GULAGS, Western style*, the author notes: for a period, we had a great lack of space in our prisons. The solution to this crisis situation was obvious. We let those sentenced wait. In 1990 we had 2500

persons in prisons. But we had 4500 on waiting lists. We lined them up and let them wait for admission.

Authorities were embarrassed. Waiting lists for kindergartens, waiting lists for hospitals, waiting lists for home nurses. And then waiting lists for the reception of pain. It could not be right.

I understood the uneasiness among the authorities, particularly when I tried to explain this arrangement in England or in United States. It was as if the citizens in those countries could not believe in their ears. Waiting list for imprisonment? It sounds somehow out of style, a dissonance, like a piece of hard rock in the middle of Debussy [23].

The carceral system has institutions in which the individual undergoes a certain "course" of education, the content of which depends on the institution. In kindergarten – one education, in school – another, in hospital – a third, etc.

Christie's ideas were about moving away from these practices. While retaining the general idea of returning the individual, able and willing to abide by his rules, to society, he shifted the emphasis to exhaustion, the resolution of the contradictions between the transgressor and society. Similar ideas are expressed by Christie in *Limits to Pain: The Role of Punishment in Penal Policy*, and they remain perhaps the most "progressive" in this field today.

So, there is a clear difference between the penitentiary systems of different countries or even groups of countries. The boundary lies in the awareness and acceptance/ rejection of criminality. Where society recognises crime as an undesirable but inevitable phenomenon and is ready to accept those who commit crimes and integrate them into society into one of the socially positive groups that can carry a socially useful load, we are talking about the penitentiary system being a part of the carceral industry. Societies where crime and criminals are perceived as outcasts who do not and should not have a chance for social "development", we are talking about marginalised prison systems. The latter of course remain part of society, but are not at all oriented towards the creation of a "disciplined" subject.

The penitentiary system of Ukraine belongs to the latter. Monitoring visits to penitentiary institutions allow us to come to this conclusion. They provide an opportunity to observe the current situation in the penitentiary system, to identify violations of the rights of prisoners, to establish the systematic nature of such violations and their nature. All this together makes it clear that the penitentiary system of Ukraine has few points of contact with "socially useful" practices, it is not connected with social institutions.

During our visits to penitentiary institutions in 2022 and 2023, we observed few positive changes. To be more precise, we did not observe them at all. Of course, it is possible to explain the deterioration of the penitentiary system by the war that Russia unleashed against Ukraine, but the identified trends do not give grounds to say so. The main trend was that the situation in the colonies has not changed qualitatively. The following were named as unconditional features that are related to the war:

– humanitarian problems. In many institutions, the presence of current humanitarian problems was recorded. According to the monitoring data, the reasons for these problems are significant interruptions in the financing of the institutions (in some cases it was noted that the amount of financing did not reach 50 % of the real needs), difficulties related to the evacuation of the convicts and prisoners. Due to the increase in the number of people in the institutions, there were difficulties with the provision of food. In addition, during the evacuation, for unknown reasons, the persons who were transported were not allowed to collect their belongings and take them with them to the evacuation. As a consequence, people found themselves in other institutions without their belongings and basic necessities, leading to humanitarian problems. Similarly, the destruction of buildings and premises of institutions and facilities also contributed to these problems, as these events resulted in some institutions experiencing interruptions in heating and electricity, as well as the need for repairs to premises;

– the issue of ensuring the safety of life of the staff of the institutions and the convicts, the creation of safe living conditions in the institution. The situation in most of the institutions is not optimistic, there are significant problems with the safety of the living environment and the protection of people from of the hostilities;

– the full-scale invasion required prompt measures to evacuate penal institutions to save the lives of convicts, prisoners and staff and ensure the enforcement of criminal sentences. However, officials of the Ministry of Justice admitted that a quick evacuation was impossible. The institutions were simply not ready for it. As a result, a number of institutions were occupied by the Russian Federation, and convicts and prisoners were subjected to mass torture and other crimes;

– the poor organisation of the evacuation also leads to the fact that even the evacuated convicts and prisoners find themselves in inadequate conditions, sometimes without basic necessities and supplies (the number of convicts has increased, which requires more funding and supplies, as well as more staff) [24].

As can be seen from the descriptions of these problems, they are all related to the hostilities. They cannot be called a typical situation or something everyday.

Of course, if all the needs of the penitentiary system were met, these problems might not be so acute, but they cannot be recognised as structural for Ukraine, or at least as ordinary.

However, if we turn to other findings from the monitoring visits, we see that they refer to all the same problems and the same violations. Among them, the researchers point out:

- Inadequate conditions of detention. We are talking primarily about material and living conditions and provision of convicts and prisoners;
- Contacts with the outside world. This refers to excessive restrictions on such contacts or obstruction of contacts. Violations in this area also include restrictions on contacts with lawyers, state bodies, the Ombudsman, etc.;
- Violations in the application of disciplinary sanctions and penalties while serving a sentence. These violations are systematic in the penitentiary system. In general, disciplinary practice is often used as a tool to manipulate the behaviour of convicts;
- Violations of the right of convicts to medical care. One of the most problematic areas in the penitentiary system of Ukraine. As a result of such violations, inmates are exposed to a serious risk not only of loss of health and illness, but also of death. In practice, there have been cases when inmates died because of the failure to provide medical care [25]. Problems in the area of medical care for prisoners in Ukraine have a long history and are chronic. Significant work has been done in this area, aimed at recognising the problems and solving them;
- Gross violations of the rights of convicts – torture, beatings, humiliation, etc. Unfortunately, they are also common practice in the penitentiary system of Ukraine.

If we analyse the above violations, we can see that all of them are in one way or another connected with the fact that the penitentiary system of Ukraine does not cooperate with any of the institutions of the state of Ukraine. Neither with medical institutions, nor with other bodies, including law enforcement agencies. The system avoids contacts with relatives, lawyers and defence lawyers. At the same time, the system uses administrative and power tools to pressure and manipulate convicts.

It becomes obvious that the system demonstrates its marginalisation and alienation. Under such conditions, the question of why reforming the system does not work appears in a completely different form.

The proposed reforms and changes are based on social institutions; the reforms are based on the principle of interaction with civil society, expansion of opportunities for public participation, monitoring of the situation in the penitentiary system,

its reorientation to the "re-socialisation" direction. In general, this approach corresponds to the idea of carceral systems. And in those countries where this system is implemented, the approaches proposed in Ukraine work.

For example:

- the Strategy for Reforming the Penitentiary System of Ukraine provides for the establishment and operation of a dual system of regular penitentiary inspections (external and internal) to ensure the observance of human and civil rights and freedoms of persons held in pre-trial detention centres, penal institutions and healthcare facilities of the State Institution "Healthcare Centre of the State Criminal Executive Service of Ukraine";
- improving the procedure for recording bodily injuries of convicts and persons taken into custody by medical staff in accordance with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- building relationships between prison staff and prisoners on the basis of dynamic security.

Each of these measures involves close cooperation between the penitentiary system and other institutions. The system of penitentiary inspections is tasked with inspecting institutions, not so much in a "control-punishment" mode, but in a mode of constant interaction with penal institutions to ensure that the work there is transparent and efficient, and that convicts can integrate into free life after release.

Similarly with the fixation of bodily injuries. This activity also presupposes non-exclusive access to colonies for medical personnel, who are able to perform their activities there calmly and without pressure, based on medical ethics and standards, as well as international documents that describe the procedures for fixing bodily injuries.

As for the so-called dynamic security in the colonies, it is based solely on the co-operation of civil society institutions. One of them is the colony itself. The main idea of this system is to create a positive relationship between prison staff and inmates. This relationship allows, in the course of daily communication between the inmate and the prison staff member, to find the most acceptable options of behaviour, build relationships, solve problems and overcome difficulties that the inmate may encounter while serving his or her sentence or that he or she understands he or she will have to face in the future, after release.

One of the authors of this approach, Maxwell Jones, characterised the construction of dynamic interaction with a problem group in this way: "To me, the process becomes more important than the goal: treating patients or helping

prisoners, or whatever. Process means that you're not taking a straight line to develop a more articulate group of prisoners. What you're doing is allowing the paradigm to grow, in light of your information and your own interaction. As it grows, everyone is changing in harmony. It's a very subtle thing. A truly open system is a most sensitive body and everyday it changes. But that doesn't mean that it's unstable; it really means that it's flexible".

However, it is necessary to realise that dynamic security in the penitentiary system is not a type of special therapy. In its development, this approach has transformed from a psycho-therapeutic approach into an independent way of interacting with inmates.

In this regard, the authors of the monographic study on dynamic security noted: The concept dynamic security does not originate in the world of therapy or therapeutic communities (TCs) but was drawn together by Ian Dunbar, based on his exploration of the American and Swedish Prison Services in the 1980s. It points to what is a timeless value: being close enough to and talking with the prisoner population that prison staff members know what prisoners are thinking and what their concerns are within the establishment. It encompasses the concept, 'duty of care', but serves two purposes: that of ensuring the circumstances of men, women and young offender prisoners are properly understood and also as a means of developing accurate security within the establishment to ensure an underlying bedrock of personal safety for those within it [26].

This security system presupposes a significant involvement of the penitentiary system in social institutions and a high level of commitment and tolerance on the part of prison staff. In any other case, such a security system simply cannot arise.

Unfortunately, in Ukrainian prisons we observe the exact opposite situation.

Here we deal with polarisation of the administration and convicts, creation of "castes" in the colonies, each of which increases the distance not only between each other, but also between individual convicts, the administration and the outside world. The existence of so-called "rejected", "day watch" and other informal groups destroys positive community, destroys trust and the possibility of partnership between inmates (with each other) and inmates and administration. In addition, there are stereotypes that consider any form of interaction with the administration as inadmissible or even humiliating, destroying at the root any possibility of revision of criminal behaviour by inmates.

This creates a paradoxical atmosphere in the colony – on the one hand alienation and distrust, on the other hand complete conformism and acceptance of any violations, deprivation, abuse and humiliation as something taken for granted.

During monitoring visits, I often came across situations when inmates did not want to talk, arguing that "I just need to finish my time" ("your interference only makes things worse"). And this was not only because it was not safe to talk about violations committed by the administration (inmates could be beaten for such "revelations"), but also because the existence of such "order" in the colonies is perceived as a normal situation. This is the deep conviction of a large number of inmates.

Monitoring visits to the colonies allowed us to note the existence of a stable microclimate and special relations between the administration and inmates. They cannot be called enmity or confrontation. No. It is quite an established symbiosis, which, in fact, suits both sides.

It is a component of the "folk philosophy" of punishment. The conviction that a convict must undergo considerable deprivation, humiliation and suffering is so great and strong in Ukrainian society that the situation in the colonies does not surprise anyone. Even on the contrary. Whenever one speaks about the protection of convicts' rights, about creating normal conditions for them, about the possibility to complain about illegal actions and violations by the administration and other persons, in most cases one encounters incomprehension both from the convicts themselves ("what rights can there be if I am a criminal!") and from the public ("why make sanatoria out of prisons!").

Strangely enough, in this regard, the administration demonstrates the greatest understanding of the situation. It is the representatives of the administration who understand what they are talking about when they speak about violations, about the need to respect the rights of inmates, about the need to create normal conditions in institutions. This is probably not so surprising, taking into account that the administration are civil servants who are related to the mechanisms of power and coercion. They realise more than anyone that they are based on a normative act and its "political reading", and that this "political reading" may change as approaches change. However, the administration is also not interested in changes, because the existing way of life allows to realise the public demand for "justice", and for them, as direct executors of this "justice", conditions are created for profit.

Many scholars who have studied the role of administration in the success of penitentiary activities have noted similar phenomena. In particular, they noted in their works the behavioural patterns of prison staff, which have some international features. For example, the attitude to inmates as those who should be treated harshly. As well as the peculiarities of traditions developed in the prison systems of some countries, which establish torture and beatings as a norm accepted in the penitentiary system [27-29].

Perhaps as a general conclusion about the role of staff, the following statement can be cited: If a significant proportion of the people who make the prison institution work have weak legal socialisation themselves, how can they be expected to contribute to the very meaning of imprisonment? It seems to me to describe quite accurately the situation where the staff themselves do not possess sufficiently (for various reasons and factors) the necessary set of social, humanitarian and behavioural values, which leads to the manifestation of a "special" local penitentiary system.

A very vivid example of such a deeply rooted and "established" local system is the situation in Berdyansk penal colony No. 77 (also known as "two axes"). There, the administration, through brutal torture, created conditions in which it was possible to survive only by paying the administration certain amounts of money. In this example, we see the limit of marginalisation of an institution, which is characterised by the creation of its own "financial system". Of course, such a colony cannot be part of the carceral system; it contradicts its very essence [30; 31].

Relationships in the Ukrainian penitentiary system are based on the alienation of the administration and inmates, the lack of positive contact between them and the prevalence of the "power-subordination" model. This model is not related to future release, it is oriented towards "survival" during the serving of the sentence and the general "philosophy of prison justice". This latter has in mind compulsory suffering, humiliation and deprivation in order to undergo a cathartic purification of what has been done. That is, it is retrospective work.

As for dynamic security, its basis, idea and methods, it is described as follows: Prisons are only ever really governed with the consent of the prisoners governed and the balance between order and disorder is a 'continually re-negotiated state'. This continual re-negotiation, dialogue and debate should very much be the state of play in a typical prison TC, but there are arguments that it should be the case more widely. To ignore this dynamic aspect of security in prison runs the risk of a slide into psychological splitting and the creation of a division between staff and prisoners with all the potential for the projection of irritation, hostility, blame and at worst brutalization to generate within the divide created and for dehumanization that splits readily promote to develop into conflict-ridden reality.

Democratic TCs in prison appear to be useful for a wide range of men, women and young offenders who want to change their behaviour and understand what makes them behave in the way they do and grasp the effect they in their turn have had on others. These Communities also seem able to help some who enter them cynically or without an idea of why they do so.

Some of the recent success in TC work may lie in the efforts made to work with all departments more closely: security, education, work and programmes, rather than as an isolated regime delivered separately from the rest of the service [24].

As we can see, what is meant by dynamic security and what exists in Ukrainian penitentiary institutions have significant differences.

Summarising the three selected directions of reforming the penitentiary system of Ukraine, we can see that at the current moment they have all the signs of utopia. There are a number of reasons for this.

First of all, why is it important to understand the fact that the penitentiary system of Ukraine belongs to the "marginal"? Because knowing this fact will help to understand the reasons why carceral-oriented reforms fail and do not succeed. They cannot work in a system that lacks the fundamental prerequisites for their existence.

Summarising the above, I come to the following **conclusions**:

1. In Ukrainian society in general and criminal justice in particular, there is an enduring tradition that defines the convicted person as an outcast who must suffer suffering and hardship for the deed (crime) he or she has committed. The social and legal context in Ukraine quite recently contained such a concept as a crime. It was perceived as the ultimate manifestation of disrespect for the existing way of life and values and therefore implied the maximum level of condemnation and maximum coercive measures against the perpetrator. This is probably one of the reasons why imprisonment was (and still is) very widespread in Ukraine. Attitudes towards convicts in Ukrainian society continue to be quite tense. As a rule, those who find themselves in penal colonies are not seen or perceived as people requiring help and support. Rather, they are perceived as villains who need to be isolated from society for as long as possible and placed in the harshest possible conditions. And harsh conditions are not seen as something additional. That is, imprisonment itself is not seen as something painful. The painfulness begins inside the institution and must include other sufferings for the criminal – deprivation of comfort, hard labour, limited communication, etc. Such conditions are seen in the public consciousness as justified.

In addition, the punitive charge of punishment, as mentioned above, is directed to the past. It is, first of all, retribution for what has been committed.

As a result, we observe a conceptual "gap" between carceral ideas and the context that is dominant in Ukraine today. The carceral system is oriented towards the creation of a "disciplined" subject. For it, a committed offence is the basis for triggering the carceral mechanisms of the "ultimate" level, namely punishment. However, it deals exclusively with the future. The committed offence remains in

the past and the convicted person is included in a special process of integration of the subject into society in a new status.

Obviously, the Ukrainian penitentiary system and carceral systems are practically opposite.

2. The existing Ukrainian penitentiary system is very resistant. Perhaps this resilience can be explained by the fact that the system was formed spontaneously, in a "natural" way. The legal regulation of this system acquired the first signs of systematicity only in the early 70s, when the Correctional Labour Code of the Ukrainian SSR was adopted. But even this Code contained a very brief and restrained regulation of relations on the execution of punishments. Largely because the purpose to regulate these processes was not actually set.

This circumstance (persistence and spontaneity of the penitentiary system) is so important because it has acquired high adaptive qualities, developed "immunity" to various interventions on the part of society and reform efforts. The existing penitentiary system is a win-win situation for everyone. It suits the convicts, who just need to "sit" until the end of their sentence, survive and get out. Convicts understand well the model of relations "boss – convict" existing in the system. It is simple, accessible and logical, based on the social context. It suits the staff because they are able to fulfil their "duty" to society by maintaining an atmosphere of alienation, disenfranchisement and fear, and receive additional benefits from the inmates themselves in the form of work, services and money. It suits society because it corresponds to the social context of severe suffering for the convict and, finally, it suits the state because it does not require significant investments, but gives access to an easily manageable mass of people who can be used for various purposes (cheap labour, connections with the underworld, elections, "successful" law enforcement, etc.).

That is why no one seriously wants to reform this "ideal" model.

3. The penitentiary system in Ukraine is hermetically sealed. Even the significant liberalisation that has taken place in recent years, which has resulted in the availability of institutions for monitoring visits, has not had a significant positive impact on the system¹. The penitentiary system of Ukraine has a strong immunity to intrusion by society, and is able to cope with this intrusion and react to it, preserving all its qualities. In turn, society is not interested in the penitentiary system, does not perceive it as an integral part of society, which can give positive

¹ Probably, we can even state the opposite effect – the system has become "manually managed". If problems, conflicts and violations are identified, they are eliminated point by point, locally, under the "patronage" of the GPSU leadership. As a result, the leadership acts as a "noble virtue", solving a specific problem, while the system as a whole does not receive any impetus for change, retaining the sign of closedness.

results and impulses. There is no feedback between these two systems (the penitentiary system and the system of civil society institutions).

It seems that the most problematic feature of the penitentiary system is the latter. It indicates that the penal system in Ukraine does not imply a carceral continuum at all. It does not create and does not seek to make a disciplined subject. It plays the pathos role of a rigid purgatory.

4. In Ukraine, the penitentiary system is not included in the structure of social institutions working with a specific purpose. Actually, clarification of the purpose of the penitentiary system is one of the main conceptual, and in the future absolutely practical questions. If the goal is to create a penitentiary system as a unit of the general carceral system, it should mean structural reorganisation not only of a number of other institutions, but also the formation of a social context that would prepare and justify in the public consciousness the necessity of such structural rearrangements. In this case, it is necessary to build strong social institutions that will themselves regulate behaviour¹. The alternative is to continue to endeavour to improve the penitentiary system as an isolated one, which is integrated exclusively into specialised institutions. In this case, the effectiveness in terms of preventing recidivism will not be high, given the existing persistent subcultural component.

What does this mean for reforms? Yes, that they will not happen in Ukraine regardless of any technical, legal or financial efforts. They will be possible only in case of structural changes in the society itself, when it takes a step towards convicts and prisons, and the latter in turn take a step towards society. Or the final definition of the penitentiary system as a "special" system, which is taken out of the social "brackets".

Perhaps, in view of all of the above, the question that prison systems in different States should retain their own particularities is not so idle.

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¹ That this is possible was demonstrated by the example of the pandemic, when mass intimidation led people to stop thinking critically and a system of self-restraint was triggered. This is a very controversial approach, fraught with serious human rights violations.

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