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Legal and institutional changes in the Ukrainian penitentiary system since independence in 1991 and in the aftermath of the Russian aggression on Ukraine

Zmiany prawne i instytucjonalne ukraińskiego systemu penitencjarnego po uzyskaniu niepodległości w 1991 r. oraz jako następstwo rosyjskiej agresji na Ukrainę

Abstrakt: The State Criminal Executive Service of Ukraine has gone through a difficult path of development, which was accompanied by changes in the system of criminal punishment, criminal justice, and criminal punishment. The article analyzes the main periods of the development of Ukraine's prison system since independence in 1991. Special attention is paid to legal and factual changes during the war and after 2014 in general. The main factors and reasons that influenced the formation of modern state policy and specific changes in this regard were identified. The determining factor was Ukraine's choice for democratic development, a course for European integration, and transformations to establish the higher values of law. The article analyzes the legal aspects of criminal punishment, criminal justice, and enforcement. The article also examines changes to regulations in these areas in connection with reforms that were carried out. It was demonstrated that the reform of the prison system took shape as a new approach to the treatment of prisoners and the creation of appropriate conditions in penitentiaries. It was noted that due to these reforms in the prison system, there were changes to the purpose and task of penal institutions. In particular, penitentiaries changed the nature of their purpose from an exclusively repressive and isolating institution to a resocializing one.

The article draws attention to the fact that the reforms to the management and organization of the prison service led to fewer prisoners. Before the early 2000s, the number of prisoners in Ukraine was significantly higher, decreasing fourfold after that time. Corresponding steps in the prison policy of Ukraine to optimize the work of penitentiaries in recent years have been to

“conserve” them (suspend operations for a certain period)¹, to sell them, and to introduce paid cells in detention centers.

Significant attention in the article is paid to the challenges in the development of the prison system associated with the Russian military aggression since 2014 and in its most difficult phase, which began on February 24, 2022. The significant steps taken in the prison policy to confront these problems with a view to ensuring the functioning of penal institutions unaffected by the Russian occupation and to guaranteeing the protection of prisoners' rights are analyzed.

Keywords: prison law, penitentiary institution, prison service, Ukraine, prison, prisoners

Abstrakt: Państwowa Służba Więzienna Ukrainy przeszła trudną ścieżkę rozwoju, której towarzyszyły zmiany w systemie prawa karnego, postępowania karnego i wykonywania kary kryminalnej. W artykule dokonano analizy głównych okresów rozwoju systemu więziennego Ukrainy od uzyskania niepodległości w 1991 roku. Szczególną uwagę zwrócono na zmiany prawne i faktyczne w okresie wojny i ogólnie po 2014 roku. W artykule omówiono główne przyczyny, które wpłynęły na kształtowanie się nowoczesnej polityki karnej państwa oraz konkretne zmiany w tym zakresie. Decydującym czynnikiem było to, że niepodległa Ukraina wybrała demokratyczną ścieżkę rozwoju. Dąży też do integracji europejskiej i przeobrażeń w kraju w duchu praworządności. W tekście dokonano analizy regulacji prawnych z zakresu prawa karnego i postępowania karnego oraz prawa karnego wykonawczego przez przyjrzenie się ich ewolucji w trakcie realizowanych reform. W związku z reformą systemu karnego wykonawczego nastąpiły zmiany celu i zadań instytucji wykonywania kar: instytucje penitencjarne, które wcześniej były nastawione na represję i izolację, w wyniku reform zaczęły działać w kierunku resocjalizacji.

Na reformy systemu zarządzania i organizacji państwowej służby więziennej wpłynęły zmiany w liczbie więźniów. Przed początkiem lat 2000 nastąpił znaczny wzrost liczby więźniów, ale w ciągu lat 2000 ich liczba zmniejszyła się czterokrotnie. Wraz ze spadkiem liczby osadzonych podjęto kroki w celu optymalizacji funkcjonowania instytucji penitencjarnych poprzez rozpoczęcie ich sprzedaży oraz wprowadzenie płatnych cel w aresztach śledczych (o podwyższonym standardzie).

W artykule zwrócono uwagę na wyzwania grożące rozwojowi systemu karno-egzekucyjnego w związku z rosyjską agresją militarną na Ukrainę, która trwa od 2014 roku, łącznie z jej najtrudniejszą fazą, czyli wojną, która rozpoczęła się 24 lutego 2022 roku. Omówiono ważne kroki w polityce karno-egzekucyjnej państwa, mające na celu sprostanie tym wyzwaniom w celu zapewnienia funkcjonowania zakładów karnych, wyzwolenia ich spod okupacji rosyjskiej oraz zapewnienia ochrony praw więźniów.

Słowa kluczowe: prawo karne wykonawcze, służba więzienna, Ukraina, więzienie, więźniowie, zakład karny

¹ Conservation of institutions and enterprises is carried out by implementing measures aimed at long-term storage of the fixed assets of institutions and the main production assets of enterprises in the event of temporary cessation of activity with the possibility of later restoring their functioning (deconservation) or other use in accordance with the procedure established by law (No. 396/2017).

Introduction

The prison system of Ukraine has gone through a difficult development path since the country's independence in 1991. A number of factors have had a significant impact on this: historical, political, economic, and social ones. In general, this development is marked by changes in the strategy of prison policy. These changes were a rethinking of the forms and methods of its implementation, changing from repression to resocialization. It took place in the context of general transformations in Ukraine regarding the chosen course of European integration to establish the values of rule of law and democracy. Today, it can be rightly noted that the chosen strategy for the development of the prison system is mainly built on protecting the interests of individuals, society, and the state from criminal behavior, on the one hand, and on protecting the rights of prisoners while emphasizing their resocialization, on the other hand.

The article analyzes the development of the prison system of Ukraine since independence in 1991, the ways it was reformed, and the main factors influencing the modern state policy in this area. Particular attention is paid to the current challenges associated with the military aggression of Russia, which has set new tasks for ensuring the stable development of the prison system.

The paper is based on a theoretical analysis of important problems which the prison system encountered in its development and which have contributed to its reform and the creation of an optimal systemic strategy for its further development. The development of the prison system in Ukraine has passed through several periods since independence, each of which was filled with significant changes in the legislation that regulates the issues of criminal punishment, criminal justice, the execution of criminal sentences, and in general the state policy regarding the management, organization, and functioning of prisons and penal agencies. The most profound reforms concerned new provisions of criminal law introduced from 2001 to 2012:

- the Criminal Code of Ukraine No. 2341-III dated April 5, 2001 (2001, No. 2341-III) (which took effect on September 1, 2001 and replaced the Criminal Code of the Ukrainian SSR);
- the Criminal Executive Code No. 1129-IV of July 11, 2003 (which started functioning in 2004 and replaced the Correctional and Labor Code) (2003, No. 1129-IV);
- the Criminal Procedure Code No. 4651-VI of April 13, 2012 (2012, No. 4651-VI).

1. Major changes in Ukrainian criminal law in the 21st century

At the heart of any system of punishment execution is criminal law, which can be very severe (as in the USSR) or more humane. The adoption of new legal acts since

2001 significantly updated the legislation that regulates the system of criminal punishment in Ukraine. Accordingly, this influenced the formation of a modern approach to the treatment of and relationship with prisoners, and the conditions of their stay in penitentiaries.

The Criminal Code of April 5, 2001 defined a new approach to the penal system, due to the list of punishments being updated (it was adopted back in 1960 and became invalid on September 1, 2001). One of the significant innovations of the Criminal Code of Ukraine from 2001 were changes in the classification of sentences.

The Criminal Code of December 28, 1960 (Art. 23) provided for seven main types of punishment for a criminal offense:

- 1) deprivation of liberty,
- 2) exile,
- 3) expulsion,
- 4) correctional work without deprivation of liberty,
- 5) deprivation of the right to hold certain positions or engage in certain activities,
- 6) fines,
- 7) public reprimand.

Conscript servicemen may also be punished by being sent to a disciplinary battalion. In addition to the main punishments, the following additional punishments may be applied to those convicted of a crime:

- 1) confiscation of property,
- 2) deprivation of a military or special rank,
- 3) deprivation of parental rights. Banishment, expulsion, deprivation of the right to hold certain positions or engage in certain activities, and fines can be applied as the main punishment or as additional ones (1960, No. 2001-05).

Article 51 of the Criminal Code of April 5, 2001 provides for 12 main types of punishment:

- 1) fine,
- 2) deprivation of a military or special title, rank, or qualification class,
- 3) deprivation of the right to hold certain positions or engage in certain activities,
- 4) public work,
- 5) corrective work,²
- 6) service restrictions for military personnel,
- 7) confiscation of property,
- 8) arrest,

² According to the Criminal Code, “public work,” the type of which is determined by local government bodies, consists in the performance of unpaid community service by the convicted person during their time outside of work or education; “corrective work” is carried out at the convicted person’s place of work. The state income is deducted from the remuneration of the person sentenced to corrective work, in the amount determined by the court judgment, but within the limits of 10 to 20 percent (2001, No. 2341-III).

- 9) restriction of liberty,³
- 10) keeping servicemen in a disciplinary battalion,
- 11) deprivation of liberty for a certain period,
- 12) life imprisonment.

Additional punishments, according to Article 52 of the Criminal Code, are deprivation of military or special rank or qualification class and confiscation of property (2001, No. 2341-III).

The types of punishments that were not previously provided for by the criminal legislation of Ukraine included community service orders, service restrictions for military personnel, arrest, restriction of liberty, and life imprisonment. The set of punishments in the 2001 Criminal Code did not include some that existed in the 1960 Criminal Code, for example, deprivation of parental rights, as well as the death penalty referred to in Article 24 of the 1960 Criminal Code. In Ukraine, it was recognized that the death penalty contradicts the Constitution of Ukraine in the Decision of the Constitutional Court of Ukraine No. 11-пн/99, dated December 29, 1999. The death penalty was finally abolished in 2000. The 2001 Criminal Code no longer provides for the death penalty as a form of punishment.

In the 2001 Criminal Code, the names of some types of punishments and, accordingly, some features of implementing these types of punishment were changed. Instead of correctional work without deprivation of liberty, corrective work has been established. Instead of deprivation of liberty, the deprivation of liberty for a certain period was introduced (Denysova 2012). Thus, the 2001 Criminal Code included community service as an alternative to imprisonment, which is a less severe form of punishment than correctional work.

Community service, according to Article 56 of the 2001 Criminal Code, consists of the convict carrying out unpaid work to benefit the community in their free time. The type of such work is determined by the local authorities. Such public work is set for a period of 60 to 240 hours and takes no more than four hours per day. At the same time, according to Article 57 of the 2001 Criminal Code, correctional work is established for a period of six months to two years and takes place at the convict's place of work. A deduction is made to the state income from the earnings of a person sentenced to correctional work, in the amount established by the court verdict, but ranging from 10 to 20 percent.

The main conceptual provisions of the 2001 Criminal Code were as follows:

- The Code is based on the Constitution of Ukraine and generally recognized principles and norms of international law.
- The fundamental principles of democratic criminal law, which had no place in Soviet law, were implemented, in particular, that “no crime – no punishment without law.”

³ “Restriction of liberty” is a punishment that consists in keeping a person in open penal institutions without being isolated from society, under supervision, and with the mandatory involvement of the convict in labor (Article 61 of the Criminal Code of Ukraine).

- Criminal responsibility is based on a person's commission of a socially dangerous act, which contains signs of a criminal offense provided for by the Criminal Code.
- The Code enshrines the principle of personal and culpable responsibility of individuals.
- The Criminal Code provides articles that define criminal liability for crimes committed by organized groups or criminal organizations, which strengthens the fight against organized crime.
- The system of noncustodial sentences was expanded.
- The death penalty was finally rejected and life imprisonment was introduced, but only for crimes related to aggravated murder.
- The use of custodial sentences for less serious crimes was reduced.
- A number of new norms were introduced which provide exemption from criminal liability and punishment.
- The Criminal Code introduced a number of incentive norms for convicts: the possibility of criminal responsibility being withdrawn; exemption from criminal liability (Chapter IX of the 2001 Criminal Code); exemption from criminal punishment or serving it; early removal or cancellation of a criminal record; the criminal burden being mitigated (for example, prescriptions about circumstances mitigating responsibility, early release from serving a sentence, replacing a sentence with a milder one, and including the time spent on correctional work in total work experience). These norms stimulate the correction of convicts and program positive post-criminal behavior in a convicted person.
- Actions that are not particularly harmful and can be adequately handled through administrative, disciplinary, civil, or other legal measures were decriminalized (Tatsij, Stashys 2001).

However, the new Criminal Code still needed to be eventually revised in order to bring the criminal legislation in line with European standards. An important element of criminal justice reforms since 2015 was the formation of the probation service through the Law On Probation of February 5, 2015 (2015, No. 160-VIII). The law took effect on February 27, 2015 and was implemented six months later. It introduced probation into the penal practice. Its aim was to focus on convicted people by organizing alternative methods of punishment that better protect their social rights and highlighting the importance of social educational work with them (Barash, Dubchak 2017). After the adoption of this act, additional tasks were assigned to the prison inspectorate, in particular, the implementation of the probation program, which takes three forms (pretrial, supervisory, and penitentiary) (Barash, Dubchak 2017).

Criminal law provisions have been continuously revised in the recent past, due to the sociopolitical situation, namely, the development of Ukraine's legal system and the war started by Russia in 2014.

Large-scale changes to the Criminal Code took place on July 1, 2020, when the reforms adopted by the Parliament of Ukraine (Verkhovna Rada) on November

22, 2018 took effect (2018, No. 2617-VIII). Various clauses underwent significant revision. In particular, in more than 100 articles of the Code, fines were increased by a factor of 20 to 100; in many articles, they were added as an alternative punishment for crimes sentenced with custodial measures. Such changes indicate a special focus on fines as a type of criminal punishment.

With the beginning of the second stage of the Russian–Ukrainian war, i.e. the Russian aggression initiated on February 24, 2022, it was necessary to revise war crimes. Important changes to the Criminal Code were made by the Law “On Amendments to the Criminal Code of Ukraine Regarding Strengthening Liability for Crimes Against the Basics of National Security of Ukraine in the Conditions of Martial Law” of March 3, 2022 (2022, No. 2113-IX). The new law added two types of crimes – treason and sabotage – which impact the national security of Ukraine. Accordingly, the most severe types of punishments for these crimes were determined:

- 1) for treason – imprisonment for a term of 12 to 15 years with or without confiscation of property; under conditions of martial law – for a term of 15 years or life imprisonment with confiscation of property;
- 2) for sabotage – imprisonment for a term of 10 to 15 years with or without confiscation of property; under conditions of martial law or during an armed conflict – imprisonment for a term of 15 years or life imprisonment with confiscation of property.

Such innovations in criminal law, which have taken place in Ukraine since the time of independence, also influenced the formation and development of the prison policy and the specifics of reforms implemented in the prison system of Ukraine.

2. Changes in the Ukrainian prison system

2.1. Legislative changes

In general, the Ukrainian prison system underwent the following main development periods, each marked by additional transitional stages.

The first period, 1991–1995, saw changes to the sentencing law and prison law, in the direction of humanizing the prison policy. The first stage of reforms in the prison system was aimed at changing prison rules so as to improve the conditions of detention, raising the problem of protecting convicts’ rights to a certain level, and defining the main goals of penal institutions.

The second period, 1996–2001, was focused on restructuring the management and organization of the prison system by separating it from the Ministry of Internal Affairs (according to European standards).

The third period, 2001–2013, was aimed at updating provisions of criminal law, criminal justice, and prison law. The new Criminal Code of Ukraine (2001) (2001,

No. 2341-III), the Criminal Executive Code of Ukraine (2003) (2003, No. 1129-IV), and the Criminal Procedural Code of Ukraine (2012) (2012, No. 4651-VI) were adopted.

The fourth period, since 2010, saw reforms in the management, organization, and functioning of the criminal executive system under the influence of changes that took place in the sociopolitical life of the state, the criminal executive policy, and the legal public consciousness in Ukraine.

Each of the periods of development played a significant role in the formation of a modern approach to the management, organization, and functioning of the prison service of Ukraine, taking into account the values of the law and ensuring a modern state criminal executive policy that creates conditions for the resocialization of prisoners.

2.1.1. The first stage of reforms in the criminal executive system

An important and at the same time difficult period in the development of the criminal executive system began in 1991, when Ukraine embarked on the path of rebuilding its statehood after a long time of imperial enslavement in the prevailing totalitarianism of the USSR. At that time, the entire society faced the task of laying the groundwork for the latest legal standards in Ukraine (more on this below), taking into account the highest humanistic values and, accordingly, updating the legislation in the criminal punishment system. The main legal reference points for the formation of the modern criminal executive policy were the Universal Declaration of Human Rights, adopted on December 10, 1948, the Minimum Standards for the treatment of prisoners, adopted on August 30, 1955, and the Declaration on the State Sovereignty of Ukraine of July 16, 1990.

Changes in the philosophy of state policy regarding the execution of punishments began with the adoption of Resolution of the Cabinet of Ministers of the Ukrainian SSR No. 88 “On the Main Directions of the Reform of the Criminal Executive System in the Ukrainian SSR” of July 11, 1991. In that document, the main directions for reforming the criminal executive system of the Ukrainian SSR in terms of its management were determined regarding the following issues:

- 1) carrying out reforms in the management of the criminal and educational system (it is envisaged in the future to separate the system of executing punishments into an independent department);
- 2) introducing transparency in the activities of correctional and labor institutions through openness to media coverage of their activities; promoting public organizations for providing real assistance to correctional and labor institutions in the education of convicts and post-penitentiary adaptation of those released from penal institutions;
- 3) activating international cooperation on penitentiary problems;
- 4) improving the separate detention of convicts in correctional and labor institutions by creating different types of institutions; providing separate detention of convicts according to the nature and severity of the crime committed, the number of prior convictions, and the psychological characteristics and social

- and moral impoverishment of the person;
- 5) predicting possible maximum limits for occupancy of correctional and labor institutions;
 - 6) in matters of organizing educational work, creating a psychological and pedagogical service in penal institutions; developing and introducing methods of psychological, psychiatric, and social diagnosis of the convict's personality; and developing an educational program of differentiated individual impact on offenders taking into account their behavior, mental state, and degree of social impoverishment;
 - 7) guaranteeing convicts the right to receive secondary education and providing the option of obtaining higher education through the correspondence education system;
 - 8) in matters of convict labor organization, production, and economy, ensuring the material and moral interest of convicts in the results of their work; providing convicts with opportunities to choose competitive professions in the colony and at the enterprises where they work; paying convicts the full amount without deductions (the costs of food, material support, communal and household services, accommodation, and other services, established by the local authorities depending on the peculiarities of detention and the location of the institution)⁴;
 - 9) accruing convicts' wages in the full amount without deductions (the cost of food, material support, communal and household services, accommodation, and other services, established by the local authorities depending on the peculiarities of maintenance and location institutions);
 - 10) regarding the detention of juveniles in penal institutions, limiting the number of convicts in educational and labor colonies (ELC) for juveniles; creating special detention facilities at ELCs in the regional centers of the country and various types of departments for the detention of juveniles;
 - 11) in matters of executing punishments without deprivation of liberty, introducing a new type of criminal punishment (restriction of liberty) instead of the existing criminal punishments⁵ (deprivation of liberty in settlement colonies, conditional deprivation of liberty with mandatory involvement in work, and conditional release from penal institutions with mandatory work); applying restriction of liberty only to juvenile, able-bodied persons

⁴ Article 121 of the Criminal Executive Code of Ukraine of 2003 defines the legal norms of deduction from earnings or other income of persons sentenced to imprisonment. "Persons serving sentences in correctional colonies should reimburse the costs of their maintenance, except for the cost of food, shoes, clothing, underwear, special food, and special clothing. The procedure for reimbursing the costs of keeping convicts in correctional colonies is established by the Cabinet of Ministers of Ukraine. Reimbursement of the costs by convicted persons is established by the first part of this article. It belongs to the correctional colonies' own revenues and is carried out after deducting personal income tax and alimony. Deductions for executive letters and other executive documents are carried out in the manner established by law" (No. 80/2017).

⁵ Detention of a person in open penal institutions without being isolated from society, under supervision, and with the mandatory involvement in work.

- convicted for the first time; reorganizing the special commandant offices and settlement colonies⁶ into open institutions;
- 12) in matters of correctional work without deprivation of liberty, regulating the rights and obligations of those serving their punishment in the form of correctional work (without deprivation of liberty); including the time spent on correctional work in the total work experience for convicts who show a conscientious attitude toward correctional work; providing convicts with leave once a year at the request of the labor team, etc.;
 - 13) in matters of organizing the social adaptation of persons who have served their sentences, introducing post-penitentiary guardianship at the employment service; creating material assistance funds and social adaptation centers to deal with employment and housing assistance; ensuring the provision of minimal free services, including food, the opportunity to acquire a profession, and a foothold in the workforce; opening special boarding houses for sick and elderly persons who have been released from penal institutions with no family ties or the opportunity to arrange their lives and acquire housing;
 - 14) improving the legislation on execution of criminal punishments, etc. (No. 88/1991).

An important successful step in the adoption of the above-mentioned resolution was that it was ensured that real assistance would be provided to penal institutions in the education of convicts and the post-penitentiary adaptation of former prisoners, firstly, through the creation of certain public bodies (associations, charitable foundations, patronages, and boards of trustees, etc.) and secondly, through official reports about prison life, an information support system for the bodies that execute punishments, and a special journal on penitentiary problems.

The Resolution of the Cabinet of Ministers of Ukraine (No. 88/1991) initiated important changes in the criminal policy and the system for executing punishments of independent Ukraine. An important achievement of this document was attempting to ensure the transparency and openness of the criminal execution system by removing the strict secrecy surrounding the execution of punishments, which was characteristic of the Soviet times.

The covert functioning of the penitentiary system in Soviet times was determined by the ideology of that time. Any real situation regarding the prison policy and the functioning of the prison service was hidden. It created the idea of an ideal model of a society in which general well-being and order reign and crime seems to be completely absent. In order to remove all doubt about it, even certain normative legal acts in criminal legislation during Soviet times were under the seal of secrecy (for example, the Basics of Correctional Labor Legislation of the USSR and the

⁶ Until 1991, the special commandant's office was a correctional penitentiary facility in Ukraine for convicts on probation with mandatory work, where the convict had to live in a special dormitory and work at a specified enterprise. Settlement colonies were micro-villages, the territory of which was not protected if located far from settlements. If such a colony was located on the territory of a settlement, then it was surrounded only by a fence with a checkpoint. Chamber-type premises were not arranged in the colony-settlements. Only the penal isolation ward was available for punishment.

Union Republics – approved by the Law of the USSR dated July 11, 1969 – were announced by the secret order of the Ministry of Internal Affairs of the USSR dated October 12, 1969 No. 06635) (Сборник 1974).

The following reforms took place through the adoption of new normative legal acts, which determined a new course of implementation of the state policy of executing punishments.

Table 1. Legislative innovations in the regulations on serving sentences

Legal acts adopted from 1991 to 1995	Innovations in criminal law in the direction of humanizing law
“Rules of Internal Procedure of Correctional Labor Institutions of the Ministry of Internal Affairs” dated December 20, 1991.	It became easier for convicts to serve their sentences: they were allowed to wear short hairstyles and civilian-style shirts; breast badges were abolished; an expanded range of food products and consumables were available for purchase and storage, including wristwatches, sports suits, etc.
Law of Ukraine “On Pension Provision” No. 1788-XII dated November 5, 1991 (1991, No. 1788-XII). Resolution of the Cabinet of Ministers of Ukraine No. 81 “On Measures to Apply the Law of Ukraine “On Pension Security” dated February 22, 1992 (No. 81/1992).	Article 89 of the Law “On Pension Provision” stipulates that in the case of deprivation of liberty of a pensioner, the payment of the appointed pension must be made on general grounds, as all disabled citizens of Ukraine, who, in accordance with the Constitution of Ukraine, have the right to material support at the expense of public consumption funds through the provision of labor and social pensions.
Law of Ukraine No. 2175-XII “On Abolition of Criminal Punishments in the Form of Exile and Deportation” dated March 6, 1992 (1992, No. 2175-XII)	Criminal punishments in the form of banishment ⁷ and deportation ⁸ were abolished.
Resolution of the Cabinet of Ministers of Ukraine No. 31 “On the Program for Reducing the Conditions of Detention of Convicts Serving Sentences in Places of Imprisonment of Free Will, as well as Persons Held in Pretrial Detention Centers and Medical and Labor Prevention Centers, in accordance with International Standards” dated January 26, 1994 (No. 31/1994)	The resolution defines the task of approving a program for bringing into compliance with international standards the conditions in prisons, pretrial detention centers, and medical and labor prevention centers: <ul style="list-style-type: none"> – the tasks of improving the legal regulation of serving of punishments by citizens of Ukraine were set, – conditions of detention were created in accordance with international standards, – nine new detention centers were constructed, – the existing detention centers were expanded by 7,900 places the capacity of penal institutions was increased by 17,000 places.

⁷ Banishment was a type of criminal and criminal/political punishment in Soviet times, which consisted in the removal of a convicted person from their place of permanent or temporary residence with mandatory settlement in a certain area (according to Article 27 of the Criminal Code of 1960) (1960, No. 2001-05).

⁸ Deportation was a type of criminal and criminal/political punishment in Soviet times, which consisted in the removal of a convicted person from their place of residence with the prohibition of residence in certain areas (according to Article 28 of the Criminal Code of 1960) (1960, No. 2001-05).

Thus, the first stage of reforms in the criminal executive system was to achieve certain changes in the rules regarding serving sentences in penal institutions, which eased the conditions of convicts' detention, raised the problem of protecting their rights to a certain level, and defined the main goals of penal institutions.

2.1.2. The second stage of reforms in the criminal justice system

This stage involved changes in the system of management and organization of the prison service, which actively began in the second half of the 1990s. Ukraine's accession to the Council of Europe on November 9, 1995 was the determining factor for these changes in the criminal executive policy, which set certain tasks for the state, in particular approaching European values, including those that provide criminal executive policy.

In 1996, experts of the Council of Europe visited Ukraine and for two months studied the legal framework governing the execution of punishments and the practice of its application. A total of 22 penitentiary institutions in eight regions of Ukraine were inspected. As a result, a report of experts of the Commission of the European Union and the Council of Europe called "Evaluation of the Penitentiary System of Ukraine" was prepared and published in January 1997 (*Спільна програма Комісії європейських 1997*). It contained recommendations on the implementation of the penitentiary service of Ukraine in accordance with European standards. The "necessity of creating a penitentiary service as an autonomous public organization" was also emphasized.

Heeding these recommendations, certain reforms were gradually implemented in public administration regarding the execution of punishments. In 1998, the Central Department of Punishment of the Ministry of Internal Affairs of Ukraine was liquidated and the State Department of Punishment of Ukraine was established as a central body of executive power with a special status that was intended to implement a unified state policy in the field of criminal punishment. In 1999, the Department was already withdrawn from the structure of the Ministry of Internal Affairs, receiving the status of a central body of executive power which was to report directly to the Cabinet of Ministers of Ukraine and to implement a unified state policy on the execution of criminal punishments (No. 248/99 про виведення 1999).

The third stage in the development of the state criminal executive service in Ukraine consisted of legislative reforms, regulating the issue of executing punishments. Since 2001, significant steps have been taken to revise the criminal legislation of Ukraine. The most important thing here was that new legislative acts were adopted:

- the Criminal Code of Ukraine (dated April 5, 2001),
- the Criminal Executive Code (dated July 11, 2003),
- the Criminal Procedure Code (dated April 13, 2012).

With the adoption of the new criminal legislation, significant changes began in the reformation of the criminal punishment and criminal justice system and the criminal executive service.

The penitentiary service also needed a new approach to ensuring the execution of criminal punishments for crimes. This approach was already significantly determined by the Criminal Executive Code adopted in 2003. The most important achievement was a new perspective regarding the purpose and tasks of penal institutions. For the first time, the Criminal Executive Code set as a goal the correction and resocialization of convicts by purposeful activities of the personnel of authorities and institutions of punishment execution and other social institutions (Part 3, Article 6 of the Criminal Procedure Code). However, in order to implement these values, significant reforms were needed in the state penitentiary policy and the system of management and organization of penitentiary institutions to ensure the execution of punishments in Ukraine. Such reforms have been implemented since 2010.

The fourth stage of development of the State Criminal Executive Service in Ukraine began in 2011. It was related to changes in the system of management and the functioning of the criminal executive system. However, these reforms were not always of a systemic nature, since restructuring occurred several times and was often associated with political processes that took place in power and, accordingly, with power reformatting.

On April 6, 2011, the “Regulation on the State Penitentiary Service of Ukraine” was approved by a Decree of the President of Ukraine (No. 394/2011). According to Article 1 of this Regulation, “the State Penitentiary Service of Ukraine (SPS of Ukraine) is the central body of the executive power, the activity of which is directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Justice of Ukraine. It is a part of the system of executive authorities that ensures the implementation of state policy in the field of execution of criminal punishments.”

The State Penitentiary Service of Ukraine, as the central body of executive power ensuring the implementation of state policy on the execution of criminal punishments, existed until 2016. But on May 18, 2016, by the decision of the Cabinet of Ministers of Ukraine, the State Penitentiary Service of Ukraine and its territorial management bodies were liquidated and their tasks and functions were entrusted to the Ministry of Justice. It created six interregional departments for the execution of criminal punishments and probation (Western, Southern, Southwestern, Southeastern, Northeastern, Central and Central-Western interregional administrations for the execution of criminal punishments and probation of the Ministry of Justice).

However, this reform was also short-lived. Only a year later, on September 13, 2017, the Cabinet of Ministers of Ukraine approved the “Concept of Reform (Development) of the Penitentiary System of Ukraine” dated September 13, 2017 (No. 654-r/2017). According to the Concept, in order to optimize the structure of the bodies of the State Criminal Executive Service, the Ministry of Justice had to

establish the Administration of the State Criminal Executive Service of Ukraine “as a territorial body of the Ministry of Justice with the status of a legal entity, which accumulated powers, in particular, regarding the organization of the activities of paramilitary formations and the organization of security and regime, organization and control over the execution of court verdicts and other court decisions and the application of the means of convicts’ correction provided for by law, and organization and control of operational and investigative activities of bodies and institutions for the execution of punishments and pretrial detention centers, with the subordination to the Administration of all interregional offices for the execution of criminal punishments and Probation of the Ministry of Justice.” Also, according to the Concept, investigative units of the State Criminal Executive Service were to remain in the apparatus of the Ministry of Justice, which would ensure the procedural independence of investigators and avoid the influence of the managers and staff of bodies and institutions of the State Criminal Executive Service on the pretrial investigation process.

Regarding the probation system, it was proposed to liquidate the Department of Probation of the Ministry of Justice and the structural subdivisions on probation issues of interregional offices and to create a unified state institution “Probation Center” with the authorized bodies on probation issues subordinate to it (No. 654-r/2017).

Another reform in the management system of the State Criminal Executive Service of Ukraine was the adoption of the Resolution of the Cabinet of Ministers of Ukraine dated January 24, 2020: “Some Issues of Territorial Bodies of the Ministry of Justice.” This decree liquidated the territorial bodies of the Ministry of Justice, the Administration of the State Criminal Executive Service of Ukraine, and the Central Interregional Administration for the Execution of Criminal Punishments and Probation of the Ministry of Justice as legal entities under public law. In turn, the Department for the Execution of Criminal Punishments (the Interregional Territorial Body of the Ministry of Justice for the Execution of Criminal Punishments) was formed as a legal entity under public law. This department acquired the status of the legal successor to the territorial bodies of the Ministry of Justice which were liquidated; it was joined to the Department of the Southern Interregional Administration for the Execution of Criminal Punishments.

2.2. Ways to optimize the functioning of the Criminal Executive Service of Ukraine in view of changes in the number of prisoners

Reforms in the system of managing and organizing the State Criminal Executive Service also took into account the changes in the number of prisoners in Ukraine. Since gaining independence, Ukraine has experienced both a sharp increase in the number of prisoners (until the early 2000s) and a subsequent significant decrease (more than fourfold from the 2000s to the present).

Figure 1. Number of persons serving sentences in penal institutions in Ukraine (total)⁹

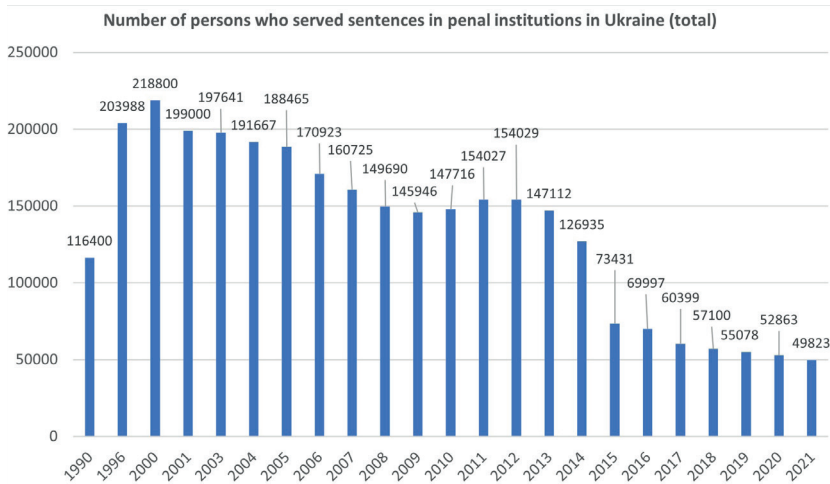
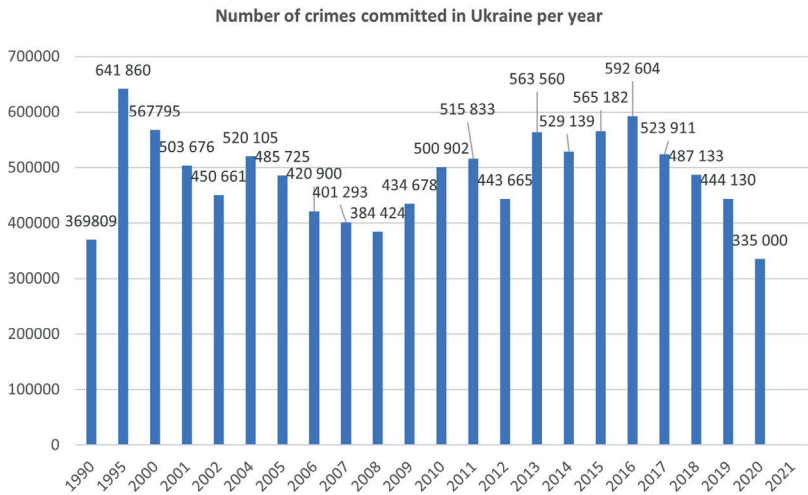


Figure 2. Number of crimes committed in Ukraine per year¹⁰



The number of prisoners serving sentences in penal institutions from 1990 to 2000 increased 1.9-fold; from 2000 to 2021, it decreased 4.4-fold. These changes were directly dependent on a number of factors. On the one hand, it could be

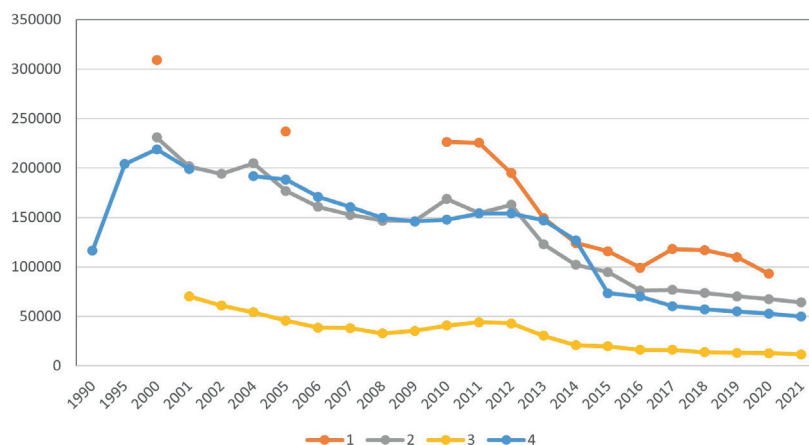
⁹ The data since 2014 does not take into account the number of convicts serving sentences in the territory of Crimea, annexed as a result of Russian aggression, or the occupied territory in the east of Ukraine (parts of Donetsk and Luhansk regions); 1990, 1995, 2000 (Злочинність в Україні n.d.); 2019–2001 (Статистика n.d.).

¹⁰ 1990, 1995, 2000 (Злочинність в Україні n.d.); 2001–2019 (Статистика n.d.).

assumed that the decrease in incarcerated persons was directly dependent on the total number of crimes committed in Ukraine. However, as statistics show, the dynamics of the number of crimes did not match the growth from 1991 to 2000 and fall from 2000 to 2021 seen in the number of persons serving sentences in penal institutions. According to the data available from certain years, during this period there were different tendencies of increase and decrease of criminal offenses. The highest number of crimes was observed in 1995, and criminality in 2016 almost equaled this indicator. In 2016, however, the number of people serving sentences was more than 3-fold lower than in 1995.

However, the changes during the specified time intervals in the number of persons serving sentences in penal institutions is more dependent on the changes in the number of persons who 1) committed crimes, 2) were convicted by the courts and had decrees on criminal punishment issued against them, and 3) were sentenced to imprisonment for a certain term by a court decision (according to sentences that have entered into force). From the data available in the study, this dependence is reflected in Figure 3.

Figure 3. Changes in the number of persons who served prison terms in Ukraine, committed crimes, were convicted by the courts and had decrees on criminal punishment issued against them, and were sentenced to imprisonment by court decision



- 1 – Number of persons who committed crimes
- 2 – Number of persons convicted of all types of crimes
- 3 – Number of persons sentenced to imprisonment for a certain term (under sentences that had entered into legal force)
- 4 – Total number of persons serving sentences in Ukraine (total)

Table 2. Crime statistics in Ukraine and the number of persons who committed crimes, received a criminal punishment by court order, received a criminal punishment of imprisonment for a certain term by court order, and served a sentence in Ukraine

	Number of crimes committed in Ukraine per year	Number of persons who committed crimes	Number of persons convicted of all types of crimes ¹¹	Number of persons sentenced to imprisonment for a certain term (under sentences that had entered into legal force)	Total number of persons serving sentences in Ukraine
1990	369,809	no information available	no information available	no information available	116,400
1993	no information available	no information available	no information available	no information available	129,500
1995	641,860	no information available	no information available	no information available	204,000
1996	no information available	no information available	no information available	no information available	203,988
1999	no information available	no information available	222,239	no information available	
2000	567,795	309,057	230,903	no information available	218,800
2001	503,676	no information available	201,627	70,308	199,000
2002	450,661	no information available	194,212	61,013	
2003	556,351	no information available	201,081	60,983	197,641
2004	520,105	no information available	204,794	54,212	191,667
2005	485,725	237,187	176,934	45,739	188,465
2006	420,900	no information available	160,865	38,565	170,923

¹¹ 2002–2006 (Структура видів покарання n.d.); 2007 (Стан здійснення судочинства судами загальної юрисдикції у 2007 n.d.); 2008 (Аналіз стану здійснення судочинства судами загальної юрисдикції в 2008 n.d.); 2009 (Аналіз стану здійснення судочинства судами загальної юрисдикції в 2009 n.d.); 2010 (Аналіз стану здійснення судочинства судами загальної юрисдикції в 2010 n.d.); 2012 (Аналіз стану здійснення судочинства судами загальної юрисдикції у 2012 n.d.); 2013–2014 (Аналіз стану здійснення судочинства судами загальної юрисдикції у 2014 n.d.); 2015 (Огляд даних про стан здійснення правосуддя у 2015 n.d.: 11); 2015–2016 (Аналіз стану здійснення судочинства у 2016 n.d.); 2017–2018 (Аналіз стану здійснення правосуддя 2019); 2019 (Аналіз стану здійснення правосуддя у кримінальних провадженнях та справах про адміністративні правопорушення у 2019 n.d.: 36–37); 2020–2021 (Стан здійснення правосуддя у кримінальних провадженнях та справах про адміністративні правопорушення судами загальної юрисдикції у 2021 n.d.: 41–42).

2007	401,293	no information available	152,772	38,210	160,725
2008	384,424	no information available	146,858	32,895	149,690
2009	434,678	no information available	146,383	35,500	145,946
2010	500,902	226,385	168,774	40,819	147,716
2011	515,833	225,517	154,356	44,201	154,027
2012	443,665	194,992	162,881	42,938	154,029
2013	563,560	149,560	122,973	30,479	147,112
2014	529,139	124,246	102,170	20,872	126,935
2015	565,182	115,833	94,798	19,765	73,431 (89,000 including the estimated number of convicted persons serving their sentences in the territory not controlled by Ukraine)
2016	592,604	99,307	76,217	16,140	69,997 (80,000 including the estimated number of convicted persons serving their sentences in the territory not controlled by Ukraine)
2017	523,911	117,947	76,804	16,143	60,399
2018	487,133	117,071	73,659	13,765	57,100
2019	444,130	109,825	70,375	13,230	55,078
2020	335,000	93,000	67,519	12,897	52,863
2021	no information available	no information available	64,080	11,580	49,823

The next factor that led to the lower number of people serving sentences in penal institutions was the reform of criminal justice in the state, which began at the time of Ukraine's independence and which was intended to humanize criminal law and impose criminal punishment by courts on those found guilty of committing crimes. This is evidenced by the fact that, for a given period, the proportion of convicts to whom the courts applied punishments other than imprisonment out of the total number of convicts gradually increased. At the same time, the proportion of convicts to whom the courts applied deprivation of liberty as a punishment decreased.

Table 3. Statistics by type of punishment for convicts to whom the courts applied a punishment, from 1999 to 2021¹²

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
	152,772	146,858	146,383	168,774	154,356	162,881	122,973	102,170	94,798	76,217	76,804	73,659	70,375	67,519	64,080
	115 (0.1%)	70 (0.05%)	96 (0.07%)	101 (0.06%)	45 (0.03%)	52 (0.03%)	53 (0.04%)	24 (0.02%)	45 (0.05%)	27 (0.04%)	21 (0.03%)	21 (0.03%)	11 (0.02%)	28 (0.04%)	19 (0.03%)
	38,210 (25%)	32,895 (22.4%)	35,500 (24.2%)	40,819 (24.3%)	44,201 (28.6%)	42,938 (26.4%)	30,479 (24.8%)	20,872 (20.4%)	19,765 (20.8%)	16,140 (21.2%)	16,143 (21.2%)	13,765 (18.7%)	13,230 (18.8%)	12,897 (19.1%)	11,580 (18.1%)
	2,000 (1.3%)	3,300 (2.3%)	4,500 (3.1%)	5,900 (3.5%)	5,900 (3.8%)	6,500 (4.0%)	4,500 (3.7%)	3,300 (3.2%)	3,510 (3.7%)	2,900 (3.8%)	2,700 (3.4%)	2,500 (3.5%)	2,500 (3.6%)	2,483 (3.7%)	2,825 (4.4%)
	3,600 (2.4%)	3,800 (2.6%)	3,600 (2.5%)	3,600 (2.1%)	3,600 (2.8%)	4,600 (2.8%)	2,700 (2.2%)	1,900 (1.8%)	1,504 (1.6%)	1,200 (1.6%)	1,100 (1.4%)	909 (1.2%)	827 (1.2%)	1,116 (1.7%)	1,770 (2.8%)
	1,300 (0.9%)	1,300 (0.9%)	1,100 (0.7%)	1,100 (0.7%)	1,100 (0.6%)	923 (0.6%)	503 (0.4%)	262 (0.3%)	224 (0.2%)	161 (0.2%)	122 (0.2%)	88 (0.1%)	65 (0.1%)	80 (0.1%)	170 (0.3%)
	4,300 (2.8%)	5,200 (3.6%)	7,700 (5.3%)	11,200 (6.6%)	7,400 (7.4%)	15,000 (9.2%)	11,400 (9.2%)	10,300 (10.1%)	8,622 (9.1%)	6,600 (8.7%)	5,300 (6.9%)	4,400 (6%)	4,200 (6.0%)	5,460 (8.1%)	8,593 (13.4%)
	15,600 (10.2%)	22,000 (15%)	21,500 (14.7%)	25,100 (14.9%)	14,100 (14.1%)	23,700 (14.5%)	24,600 (20%)	20,100 (19.7%)	18,652 (19.7%)	16,600 (21.8%)	18,500 (24.1%)	19,900 (27%)	21,400 (30.4%)	19,447 (28.8%)	11,900 (18.6%)
								22 (0.02%)	3 (0.003%)	4 (0.005%)	-	-	1	0	2
								103	340		43 (0.06%)	29 (0.04%)	43 (0.1%)	22 (0.03%)	32 (0.1%)
											85 (0.1%)	42 (0.1%)	28 (0.04%)	42 (.1%)	45 (0.1%)
	87,400 (57.2%)	77,900 (52.2%)	10,200 (49.3%)	6,600 (47.9%)	42.5% (42.5%)	69,100 (42.4%)	48,600 (39.6%)	45,300 (44.3%)	41,997 (44.3%)	32,200 (42.2%)	32,600 (42.4%)	31,900 (43.2%)	27,900 (39.7%)	25,800 (38.2%)	27,000 (42.2%)
	459	270	284	315	330	275	295	322	306	314		140	171		
	34,000	24,700		21,900		20,400	22,800	21,700	18,300	16,800		22,400	22,400		

¹² Information about the specific weight in the total number of convicts is given in parentheses.

	1999	2000	2001	2002	2003	2004	2005	2006
Total	222,239	230,903	201,627	194,212	201,081	204,794	176,934	160,865
Life imprisonment	104 (0.04%)	94 (0.04%)	138 (0.07%)	155 (0.08%)	130 (0.06%)	22 (0.01%)	71 (0.04%)	86 (0.1%)
Deprivation of liberty for a certain period			70,308 (34.9%)	61,013 (31.4%)	60,983 (30.3%)	54,212 (26.5%)	45,739 (25.8%)	38,565 (24%)
Arrest				1,674 (0.9%)	1,995 (1.0%)	2,089 (1.0%)	2,035 (1.1%)	1,994 (1.2%)
Limitation of will				3,121 (1.6%)	3,514 (1.7%)	3,826 (1.9%)	3,511 (2.0%)	3,415 (2.1%)
Corrective works				4,390 (2.3%)	3,292 (1.6%)	2,828 (1.4%)	2,111 (1.2%)	1,735 (1.1%)
Public works				1,794 (0.9%)	2,761 (1.4%)	3,424 (1.7%)	3,434 (1.9%)	3,914 (2.4%)
Penalty				10,510 (5.4%)	8,915 (4.4%)	11,393 (5.6%)	11,669 (6.6%)	14,196 (8.8%)
Deprivation of the right to hold certain positions or engage in certain activities				116 (0.06%)	87 (0.04%)	56 (0.03%)	39 (0.02%)	37 (0.02%)
Keeping in the disciplinary battalion and service restrictions for servicemen				137 (0.07%)	102 (0.05%)	124 (0.1%)	88 (0.05%)	41 (0.03%)
Service restrictions for servicemen				44 (0.03%)	68 (0.04%)	76 (0.04%)	82 (0.05%)	95 (0.1%)
Exempted from punishment				108,368 (55.8%)	119,146 (59.3%)	126,719 (61.9%)	108,144 (61.1%)	96,730 (60.1%)
Justified								910
Cases are closed								25,800

Comparing the dynamics of changes in the share of convicts to whom the courts applied punishments associated with the use of isolation means, in particular imprisonment for a certain term, with those sentenced to other types of punishments, according to statistics for 20 years from 2001 to 2021, the share of convicts sentenced to imprisonment for a certain term has significantly decreased. Comparisons were made among of punishments types, the specific weight of which in the total number of convicts was more than 0.1% among all court decisions on criminal punishments, in particular, imprisonment for a certain term, arrest, restriction of freedom, correctional works, public works, fine.

Table 4. Court rulings by type of punishment as a percentage of the total number of convicts, 1999 to 2021

	2021	2020	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003
	64,080	67,519	70,375	73,659	76,804	76,217	94,798	102,170	122,973	162,881	154,356	168,774	146,383	146,858	152,772	160,865	176,934	204,794	201,081
	0.03 %	0.04 %	0.02 %	0.03 %	0.03 %	0.04 %	0.05 %	0.02 %	0.04 %	0.03 %	0.03 %	0.06 %	0.07 %	0.05 %	0.1 %	0.1 %	0.04 %	0.01 %	0.06 %
	18.1 %	19.1 %	18.8 %	18.7 %	21.2 %	21.2 %	20.8 %	20.4 %	24.8 %	26.4 %	28.6 %	24.3 %	24.2 %	22.4 %	25 %	24 %	25.8 %	26.5 %	30.3 %
	4.4 %	3.7 %	3.6 %	3.5 %	3.4 %	3.8 %	3.7 %	3.2 %	3.7 %	4.0 %	3.8 %	3.5 %	3.1 %	2.3 %	1.3 %	1.2 %	1.1 %	1.0 %	1.0 %
	2.8 %	1.7 %	1.2 %	1.2 %	1.4 %	1.6 %	1.6 %	1.8 %	2.2 %	2.8 %	2.8 %	2.1 %	2.5 %	2.6 %	2.4 %	2.1 %	2.0 %	1.9 %	1.7 %
	0.3 %	0.1 %	0.1 %	0.1 %	0.2 %	0.2 %	0.2 %	0.3 %	0.4 %	0.6 %	0.6 %	0.7 %	0.7 %	0.9 %	0.9 %	1.1 %	1.2 %	1.4 %	1.6 %
	13.4 %	8.1 %	6 %	6 %	6.9 %	8.7 %	9.1 %	10.1 %	9.2 %	9.2 %	7.4 %	6.6 %	5.3 %	3.6 %	2.8 %	2.4 %	1.9 %	1.7 %	1.4 %
	18.6 %	28.8 %	30.4 %	27 %	24.1 %	21.8 %	19.7 %	19.7 %	20 %	14.5 %	14.1 %	14.9 %	14.7 %	15 %	10.2 %	8.8 %	6.6 %	5.6 %	4.4 %
	2	0	1	-	-	0.005 %	0.003 %	0.02 %								0.02 %	0.02 %	0.03 %	0.04 %
	0.1 %	0.03 %	0.1 %	0.04 %	0.06 %		340	103								0.03 %	0.05 %	0.1 %	0.05 %
	0.1 %	0.1 %	0.04 %	0.1 %	0.1 %											0.1 %	0.05 %	0.04 %	0.04 %
	42.2 %	38.2 %	39.7 %	43.2 %	42.4 %	42.2 %	44.3 %	44.3 %	39.6 %	42.4 %	42.5 %	47.9 %	49.3 %	52.2 %	57.2 %	60.1 %	61.1 %	61.9 %	59.3 %

	2002												
	2001	201,627	0.07 %	34.9 %									
	2000	230,903	0.04 %										
	1999	222,239	0.04 %										
Total													
Life imprisonment													
Deprivation of liberty for a certain period													
Arrest													
Limitation of will													
Corrective works													
Public works													
Penalty													
Deprivation of the right to hold certain positions or engage in certain activities													
Keeping in the disciplinary battalion and service restrictions for servicemen													
Service restrictions for servicemen													
Exempted from punishment													

Figure 4. Changes in the percentage of persons to whom the courts applied various types of punishment out of the total number of convicts

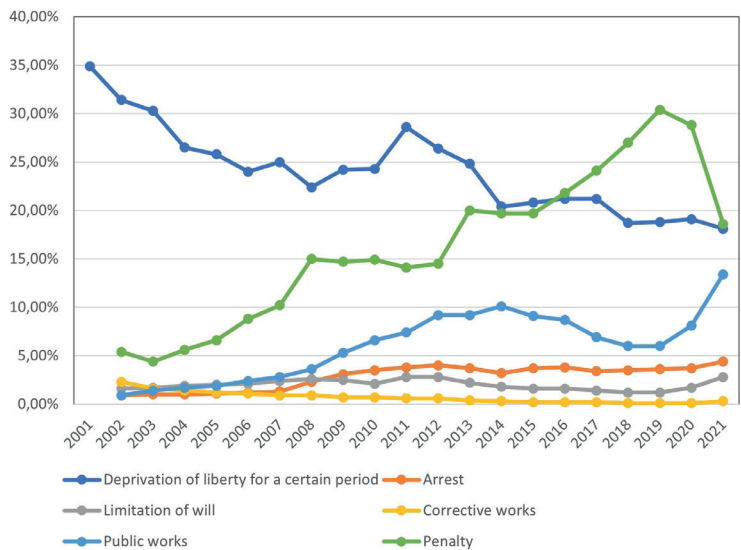


Figure 4 shows the changes in the percentage of persons to whom the courts applied various types of punishment out of the total number of convicts.

It is obvious from Figure 4 that the percentage of convicts to whom the courts had imposed imprisonment as a penalty decreased from 34.9% to 18.1% between 2001 and 2021. There was also a slight decrease in the percentage of convicts to whom the courts imposed correctional labor sentences: from 2.3% in 2002 to 0.1% during 2018–2020. Only in 2021 was there a slight increase (by 0.3%) in the proportion of convicts to whom the courts handed down correctional work as a punishment.

On the other hand, it should be noted that the tendency for a larger percentage of convicts to receive a punishment without deprivation of liberty. In particular, the percentage of convicts receiving punishment:

- in the form of restriction of liberty increased from 1.6% in 2002 to 2.8% in 2021,
- in the form of community service increased from 0.9% in 2002 to 13.4% in 2021,
- in the form fines increased from 5.4% in 2002 to 30.4% in 2019.

A significant (18.6%) decrease in percentage of convicted persons punished by a fine was observed only in 2021.

It is noticeable that the largest increase during 2002–2021 was observed for the proportion of convicts whom the courts sentenced to community service: almost 15 times. Also, fines have become more widely used in court decisions (by 2019, percentage of all fines increased in 5.6 times).

The important factor in the decrease in the number of people serving sentences in Ukrainian penal institutions was the war launched by Russia in 2014, as a result of which Crimea was annexed and part of the eastern territory of Ukraine (part of the Donetsk and Luhansk regions) was occupied. Due to the war, some penal institutions were on territory not controlled by Ukraine. The data on the number of convicts serving sentences in penal institutions in non-controlled territories were still relatively available for 2015 and 2016.

In 2015, the total number of convicts serving sentences in Ukraine (together with Crimea and the entire territory of Luhansk and Donetsk regions) was about 89,000 people; excluding penal institutions in the annexed territory of Crimea and the occupied territory of eastern Ukraine, there were 73,431 people. In 2016, the total number of convicts was about 800,000; excluding the territory annexed and occupied by Russian aggressors, it was 69,997.¹³

In accordance with these dynamics in the number of prisoners, a state policy for managing and organizing the penitentiary system was formed, with optimization as the primary goal. Steps in this direction have been taken in the last five years. The process began in 2017 with the Resolution of the Cabinet of Ministers of Ukraine “On the Procedure for Optimizing the Activities of Pretrial Detention Facilities, Penal Institutions and Enterprises of Penal Institutions” was passed on June 7, 2017. According to Article 2 of this document, “optimization of the activities of detention centers, penal institutions, and enterprises of penal institutions

¹³ Detailed information about this is in Section 3.

is carried out through their conservation (de-conservation), liquidation, as well as changing the type of penal institution.” As a result of the significant reduction of the prisoner population in Ukraine, 39 penal institutions were “conserved” in Ukraine during the period 2018–2021.

After the measures initiated to “conserve” penitentiaries, the question arose as to what the next target should be. On August 6, 2020, the Minister of Justice of Ukraine, Denys Maluska, announced the introduction of the sale of prisons. The sale of prisons meant that all buildings would lose their intended purpose and the proceeds from their sale would be partly used for the construction of new prisons and partly directed to the state budget. The first penitentiary put up for auction was Irpinsky Correctional Center No. 132, located in Kotsyubynske in the Kyiv region. It was planned that 70% of the costs from the sale of this facility was to be spent on the construction of new prison infrastructure that would “meet European standards,” while the remaining 30% was to replenish the state budget.

The next reforming step to optimize the functioning of penitentiaries was to introduce paid cells in pretrial detention centers on April 22, 2021. This was carried out within the framework of the experimental project of a paid service to provide improved living conditions in pretrial detention centers. It was introduced by the Ministry of Justice of Ukraine in May 2020 with the adoption of the government’s Resolution “On the Introduction of an Experimental Project Regarding a Paid Service to Provide Improved Living and Meal Conditions to Persons Taken into Custody in Detention Centers of the State Criminal Executive Service,” dated April 22, 2020. The funds generated by such cells were to go to a special fund, and in the future the plan was to use them to repair the premises of the detention centers. This experimental project was planned to be completed by December 31, 2021, but it was extended until April 22, 2023.

3. Ensuring the functioning of the Criminal Executive Service in the face of the Russian aggression in Ukraine

With all the measures, reforms, and corresponding changes in the system of management, organization, and functioning of the Criminal Executive Service, the war caused by Russian aggression which began in 2014 left a heavy mark. As a result of the annexation of Crimea and the occupation of a part of the Luhansk and Donetsk regions, 34 penitentiary institutions were now on territory not controlled by Ukraine (five in Crimea and 29 in parts of the Donetsk and Luhansk regions). Such circumstances were the result of both the aggressive policy of Russia and the unpreparedness of the authorities responsible for the evacuation of penitentiary institutions in wartime conditions.

Table 5. General data on the prison system in Ukraine since 2000

	Institutions for the execution of punishments	Criminal executive institutions (correctional colonies and centers)	Pretrial detention centers	Institutions for executing punishments, functioning as detention centers	Correctional colonies and sectors for keeping minors, penal colonies for women	Industrial (Ind.) and agricultural (Agr.) enterprises of penal institutions	Health care institutions of the SCES of Ukraine	Conserved institutions	Under Russian occupation in Donetsk and Luhansk regions and in Crimea	Number of inmates	Number of personnel
2000 beginning					11						
2010	184	141	32		10	130 Ind. + 11 Agr.	105 medical units + 22 hospitals			147,700	47,600
2012	224	112 colonies + 23 centers	33	42 detention centers	8		6			154,029	54,067
2013		141	32		8	128 Ind. + 12 Agr.				147,112	48,500
2014	182		33			127	22			126,935	51,183
2016	148	113	12	17	6	90 Ind. + 11 Agr.	18		29 Donetsk, Luhansk regions + 5 Crimea	69,997 (80,000)	37,700
2017										60,399	57,100
2018	148	113	12	17	6			17	29 Donetsk, Luhansk regions + 5 Crimea	57,100	
2020	148	76 colonies + 14 centers	12	17	2			27	29 Donetsk, Luhansk regions + 5 Crimea	52,863	22,402
January 1, 2021	160	69 colonies + 10 centers	12	17	1					49,823	

At the time of the Russian invasion into the territory of Ukraine, the only legal act that regulated the questions of how the administration of institutions and/or local authorities and local governments should act in the event of hostilities and with the threat of physical danger from artillery fire, missile strikes, and/or occupation was Resolution of the Cabinet of Ministers of Ukraine No. 841 “On Approval of the Procedure for Evacuation in the Event of the Threat of Occurrence or Emergence of Emergency Situations” dated October 30, 2013 (amended in 2016 and 2020).

In addition, the issues of evacuating penitentiaries were regulated somewhat later by the Resolution of the Cabinet of Ministers of Ukraine No. 934 “On the Approval of the Procedure for the Mandatory Evacuation of Certain Categories of the Population in the Event of the Introduction of a Legal Regime of Martial Law,” dated October 7, 2018. Article 2 states that “in case of the introduction of a legal regime of martial law in areas close to regions where hostilities are taking place, the mandatory evacuation of convicts and persons taken into custody shall be carried out.” Hence, the organization of the evacuation of convicts and persons taken into custody is entrusted to the Ministry of Justice, the Military Law and Order Service of the Armed Forces, the National Police, and the Security Service of Ukraine.

The second phase of the war, which began on February 24, 2022, became a new challenge for the functioning of the system for executing criminal punishments in Ukraine. With the full-scale Russian invasion into Ukraine, other penitentiaries ended up in occupied territory or combat zones. As reported by the mass media, by mid-March 2022 there were 33 penal institutions in the war zone, while contact with detention centers in Mariupol, Starobilsk, and Kherson, as well as with correctional colonies in Melitopol and Azov, was lost. Also, during the first month of the war, five penitentiaries (detention centers in Mariupol and Chernihiv) and three penal institutions in the Mariupol, Berdyansk, and Kharkiv regions were damaged by shelling. As of mid-April 2022, according to the Department for the Execution of Criminal Punishments, there were already 40 penitentiaries in the war zone. At that time, about 2,500 convicts and detainees were evacuated. At the end of May 2022, it was known that about 4,670 prisoners had been evacuated from 13 Ukrainian penitentiaries located near the front line. But at least 3,000 prisoners remained in penitentiaries behind the front line in the uncontrolled territory of Ukraine.

The actual removal of the institutions of the State Criminal Executive Service from the control of the Ukrainian authorities led to the threat of potential collaboration between penitentiary staff and illegal representatives of the occupying regime. Such action is classified as a crime by the Criminal Code of Ukraine in Article 111-1 of the Criminal Code of Ukraine:

Intentional actions aimed at helping the aggressor state (assistance), armed formations and/or the occupation administration of the aggressor state, committed by a citizen of Ukraine, a foreigner, or a stateless person, with the exception of citizens of the aggressor state, with the aim of harming Ukraine by implementing or supporting decisions and/

or actions of the aggressor state, armed formations, and/or occupation administration of the aggressor state; voluntary collection, preparation, and/or transfer of material resources or other assets to representatives of the aggressor state, its armed forces, and/or the occupation administration of the aggressor state shall be punished by deprivation of liberty for a term of 10 to 12 years with deprivation of the right to hold certain positions or engage in certain activities for a term of 10 to 15 years with or without confiscation of property.

In order to prevent the above-mentioned crime and to create conditions for the protection of the rights of personnel of the Criminal Executive Service, the Ministry of Justice announced on May 14, 2022 “downtime” in 12 institutions of the State Criminal Executive Service until the expiration of martial law. This status of downtime of enterprises and institutions is regulated by Article 34 of the Labor Code of Ukraine and the actual suspension of work is caused by “the absence of organizational or technical conditions necessary for the performance of work, unavoidable force, or other circumstances.” The introduction of downtime mode has allowed the administration and staff of penitentiaries to be absent from their workplaces and not to fulfill their duties and orders by representatives of the occupying power. It also provided social protection for employees of penitentiaries based on the legislation of Ukraine for the duration of temporary work with pay for the downtime in the amount of two thirds of their official salary.

Conclusions

After Ukraine gained independence and chose a new course for the establishment of democratic values in the system of criminal punishment, criminal justice, and the execution of criminal punishment, it was necessary to carry out significant reforms, which would radically change official perspectives on the functioning of the criminal executive sphere from its isolating and repressive character to a resocialization approach. However, as evidenced by the analysis of the development of the criminal executive system of Ukraine, these changes required time and were carried out continuously. This, on the one hand, made it difficult to fulfill the main tasks and ensure stability in its development.

The reforms in the criminal executive system took into account both external factors (Ukraine’s accession to the Council of Europe and choosing a course for European integration) and specifically internal (political, economic, and social) factors. Often, changes and reforms in the system of management and organization of the Criminal Executive Service in Ukraine took place due to a change of power.

However, the call for constant attention to the need for further reforms in the Criminal Executive Service is due to the change in the number of convicts in

Ukraine. As the statistics presented in the article show, the changes in the number of convicts were quite significant. For instance, since the beginning of the 2000s, the number of convicts has decreased fourfold. Accordingly, this influenced the state policy in recent years to optimize the functioning of penitentiaries by reducing them (through the “conservation” of institutions, the initiative of selling off institutions, and offering “paid” cells). Thus, the humanization of the punishment policy and the promotion of probation over imprisonment led to a decrease in the number of inmates, which made it possible to reform institutions and even led to the sale of prison buildings.

All the measures mentioned in the article are difficult to ensure the stability of the development of the criminal executive system in Ukraine, since this definitely affects the issue of staffing of the Criminal Executive Service, which often caused massive reductions in the service’s personnel.

The Russian–Ukrainian war, which began as a result of Russian aggression, became an extremely difficult challenge for Ukraine. The Criminal Executive Service, as a special institution, faced extremely difficult tasks to ensure the following issues: saving the physical health of convicts; guaranteeing the rights of prisoners under a large territorial occupation, military attacks, and the corresponding consequences of destruction; evacuating penitentiaries in the occupied territory; rebuilding them for further use; and creating the necessary conditions for personnel to perform official duties. All these tasks are becoming more and more complicated today, especially with the continuation of the war, but the management of the Criminal Executive Service, volunteers, international and national institutions for the protection of human rights, and the public are looking for new ways to solve these problems.

The principal conclusion should be that the modern criminal executive system of Ukraine following the reforms carried out since the country’s independence still needs considerable attention in order to resolve the complex tasks and ensure its effective functioning while taking into account the highest values of the law. And, unfortunately, the fulfillment of these tasks is complicated due to the Russian aggression in Ukraine.

Declaration of Conflict Interests

The author declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author received a scholarship of the Polish Academy of Sciences to carry out scientific research at the Department of Criminology of the Institute of Law Studies of the Polish Academy of Sciences.

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