

Provision of the Right to Health of Convicted and Personnel under Conditions of Prison in Ukraine

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ABSTRACT

The origins of the right to health care are analyzed. The purpose is to establish the state of observance of the right of convicts and staff to health protection, to determine the main directions for improving legal regulation and organization of medical services in the criminal Executive practice of Ukraine. The methodological basis of the study is a dialectical method of scientific knowledge, which allows us to consider the observance of the right to health of prisoners and staff in prison in their development, relationship, and mutual influence. On this methodological basis, separate scientific methods of cognition are used. In particular, system-functional, structural-logical, as well as statistical and sociological research methods. The problems with the right to health protection in conditions of deprivation of liberty are outlined, namely, when serving sentences of imprisonment for a certain period and life imprisonment. It provides an overview of the problems in respect of the right to health protection, related to personnel who carry out sentences against convicted persons. Attention is drawn to the practical level and today's extremely low assessment of the work of medical institutions in places of detention: unsatisfactory pricing policy for medicines, outdated equipment, and lack of professional medical personnel. Proposals are made to ensure the rights of convicts to health care in places of detention in Ukraine.



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The right to health protection is natural and inalienable right of every citizen, which is guaranteed by the Universal Declaration of Human Rights, the European Convention on Human Rights, the Constitution of Ukraine and other normative documents [1- 3]. Everyone's equal access to the provision of qualified medical care, the absence of discrimination in the medical care of individuals on any grounds, including the presence or absence of a criminal record, is simultaneously a fundamental principle and a problem of bioethics in medicine. This is especially true in developing countries with unformed civil society, which includes modern Ukraine. In fact, the identical problems, described in this article, are typical for many other states, which are now at the initial stage of democratic development. As it was defined in human rights field in the national strategy, approved by the Decree of the President of Ukraine, dated August 25, 2015 No. 501/2015: "Human rights ensuring and freedoms remain the main responsibility of the state. It should determine the content and direction of the state in all its efforts." [4]. In the Civil Code of Ukraine, it will be called CC hereinafter, the legislator has divided moral rights into two types: moral rights that provide natural existence of a physical person. It is stated in Articles 281-293 in Civil Code of Ukraine. Second type of rights is moral rights, which provide a social Genesis [5]. In particular, the right to life; the right to eliminate danger that threatens the life and health, the right to health; the right to health care and information about their health status, the right to confidentiality about state of health, the rights of a person to receive inpatient treatment are determined in Civil Code of Ukraine. The right to liberty and security of person; the right to be donated; the right to family care; the right to have care for life and health of the environment are also mentioned as the moral rights that provide natural existence of individuals in the legislation. In general, it should be pointed out that human health and various branches of law, in particular, constantly consider the rights to health protection. However, this does not apply to persons, who have committed a crime and they are serving a sentence in prison. Despite the importance of this issue, this issue has been studied in fragments. Therefore, it remains non-investigated or not fully investigated: the observance of the right to prisoners' health in penitentiary institutions, so-called PI, correctional colonies, and detention centers, so-called SIZO. In the article, it was not given a clear financial report on the state of medical care, the availability of updated equipment, pharmaceutical support; not specified issues, associated with the acquisition of professional medical personnel. If we consider the right to protect the health of personnel, who performs extremely important law enforcement functions in conditions of deprivation of liberty, we can say that this issue has not been given attention at all. That is the reason for the purpose of the provided work, which is to establish the state of observance of the right of prisoners and health care personnel, to determine the main directions of improvement of legal regulation and organization of the provision of medical services in criminal-enforcement practice of Ukraine.

The methodological basis of the study is a dialectical method of scientific knowledge, which allows us to consider the observance of the right to health of prisoners and prison staff in their development, relationship and mutual influence. In particular, certain scientific methods of cognition are applied on this methodological basis, using the system-functional method to the problems of functioning of the mechanism of legal protection of health of convicts, who are in penitentiary institutions and personnel, are studied, as well as the analysis of the system of medical services in the criminal-executive practice of Ukraine. Statistical methods are used to analyzing the disease indicators of convicts, as well as data indicating the causes of poor quality of medical services. Sociological research methods, such as questionnaire and survey, are used to studying opinions on the issues under consideration. The structural-logical method is used to formulating the main tasks and conclusions of the work. They are reviewed in parts of introduction, results, and conclusions.

The information and empirical basis are generalization of statistics of Ukrainian Ministry of Justice for the period from January 1, 2014 to January 1, 2019 on the number of convicts held in prisons, the number of

medical institutions that are detached or located on the territory of penitentiary institutions. They are called as CES (UVP) in this work. The number of staff and the number of people with health problems, the results of prosecutorial activity for 2014-2018 are defined in this work. The results of generalization of the conducted questionnaires of convicts and surveys of the staff of the prison, staff of medical institutions of Dnipropetrovsk Donetsk, Zaporizhzhia, Kirovohrad, Kyiv, Luhansk, Lviv, Mykolaiv, Sumy, Ternopil, Kharkiv, Kherson regions are also the information and empirical basis. The surveys of convicts and staffs were conducted with the permission and with the support of the Administration of the State Criminal Enforcement Service of Ukraine, hereinafter referred to as DCA. The survey of convicts was conducted in medium-and maximum-security correctional colonies, as well as in pre-trial detention centers. The survey was subjected to the staff of the CES (UVP), persons in charge of the staff, employees of medical institutions, medical workers of regional, and city hospitals.

2. Results

The Charter of the Constitution of World Health Organization defines that health is "a state of complete physical, mental and social well – being, and not only the absence of diseases and physical defects". The components of the right to health protection are the right to medical care; the right to information about the state of one's health; the right to secrecy about the state of one's health; the right to health insurance [6]. The provisions of the criminal Executive legislation and departmental acts, at first glance, quite fully define the basic rights of convicts, including the protection of health is provided by the system of medical, health-improving, and preventive measures, as well as a combination of free and paid forms of medical care [7], [8]. In addition, the requirements for the SCES (DKVS) personnel state that the latter is obliged to treat prisoners and persons taken into custody humanely. "Cruel, inhuman or degrading actions are incompatible with service and work in bodies, institutions of execution of punishments and pre-trial detention centers" (Art. 16) [9]. Considering general characteristic of the observance condition of the convicts' and personnel rights to health care, it is necessary to specify their total number. In 182 CES (UVP), which related to the management of SCES (DKVS), 127 830 convicted were imprisoned on 01.01.2014. In 01.01.2015 in 177 CES (UVP) about 72 thousand convicts were kept. In detention centers more than 16 thousand prisoners were kept. SCES (DKVS) gave such not revised data in connection with the fact that the authorities of the territories did not control some of the institutions of Donetsk and Lugansk regions and Crimea. Moreover, the number of prisoners was not clearly defined. It should be added that at the end of 2015, the number of institutions, located on uncontrolled territories, increased to 28. In 01.01.2016, there were 69,997 people. In 01.01.2017, there were 60,399 people. In 01.01.2018, there were 57,100 prisoners. In 01.01.2019, there were 55,078 people. This number did not take into account the number of persons, stayed in PIs (SIZO). This number makes from 17 thousand to 20 thousand convicts annually on average. Thus, as of 01.01.2018, 17,587 people were imprisoned in pre – trial detention centers 12 and 17 penitentiary institutions with the function of pre-trial detention centers. In 01.01.2019, 18,030 people were imprisoned. It should be noted that the number of convicts per 100 thousand of population of Ukraine is quite high and is 131. In addition, the adverse conditions of detention in places of deprivation of liberty, including inadequate household conditions, a significant percentage of persons sentenced to a term of over 10 years (more than 8 thousand persons), the prevalence of diseases tuberculosis, mental disorders, and other negative factors, indicating low level of compliance with convicts' rights, contrary to international standards. In order to test this hypothesis, we studied the state of health protection of convicts in places of imprisonment based on correctional colonies of medium and maximum security, medical units and departmental hospitals, conducted a survey of 620 convicts serving a sentence of more than 5 years of imprisonment. There was also a survey of the medical staff of the CES (UVP) and medical workers working in regional health care institutions.

One of the factors that indicate an unsatisfactory attitude to the problems of health protection of convicts is the indicators in the medical field and in the provision of medical services. Firstly, we must talk about the level of morbidity, mortality, the number of suicides. In the future, we should pay attention to the functioning of medical institutions and the level of provision of appropriate equipment and medicines. It is well known that one of the key conditions for the right of a convicted person to health care is to provide him appropriate medical care, because most of them have certain chronic diseases. Moreover, they risk acquiring other diseases in prison, especially for long periods. There are some examples for recent years. Thus, according to the SCES (DKVS) of Ukraine during 2016, 523 people died in the CES (UVP), including 126 people in pre-trial detention centers. The total number of people with active tuberculosis in 2016 was 1,850 people. The number of HIV/AIDS-infected prisoners is gradually growing. It makes 3,730 people. The number of cases of suicide during the prisoners' stay in all institutions of deprivation of liberty SCES (DKVS) of Ukraine in 2016 was 60 people. 17 of them were in PIs (SIZO). In January 1, 2016, there were 43 persons, who have the first disability category, 517 persons, who have the second disability category, and 868 persons, who have the third disability category. During 2017, 568 people died in the CES (UVP), including 164 people in pre-trial detention facilities. The number of cases of suicide was 46, 13 people of which were cases in PIs (SIZO). The number of prisoners with tuberculosis at the end of 2017 was 1356 people, including 273 people PIs (SIZO). HIV/AIDS-infected quantity is 3830 people, including 975 people in PIs (SIZO). In January 1, 2018, 1,153 persons with disabilities were imprisoned in punishment institutions. During 2018, 484 people died in CES (UVP), including 138 people in PIs (SIZO). The number of cases of suicide was 47. 14 of them were committed in PIs (SIZO). At the end of 2018, the number of TB patients was 1141, including 223 people in PIs (SIZO). In addition, HIV/AIDS-infected number increased up to 3859 people, including 1017 people in PIs (SIZO). In addition to mentioned above, it is worth reminding that after committing a crime and conviction, staying in prison in a certain way causes mental trauma. As the famous doctor of Shlisselburg convict prison, doctor of medical Sciences, E. R. Eichholz "Criminal excess is a balance violation of human brain mechanism, occurring because of some reasons, which are still subjects to be studied" [10, p. 5]. However, in modern punishment colonies, specialists usually ignore these issues.

It should be noted that according to the Ministry of Justice of Ukraine, 18 departmental hospitals and 114 medical units in penitentiary institutions and pre-trial detention centers provide medical support to convicted persons and persons taken into custody. There are 8 tuberculosis hospitals, 9 multi profile hospitals and 1 psychiatric medical institution among them. It is logical that convicts not only have the right to health care, but also require the provision of appropriate medical care taking into account the level of morbidity, mortality, suicide, and the presence of a significant number of persons with disabilities. Indeed, according to the administration of the SCES (DKVS) of Ukraine, the state of medical care for convicts in correctional colonies of Ukraine could be considered unsatisfactory until 2017. The staff of medical workers was staffed only by 78-80%. Outdated medical equipment was represented in colonies. Lack of medicines and the like were approved by a lot of commissions. Health Center of SCES (DKVS) was created in 2017 by the order of the Cabinet of Ministers of Ukraine [11; 12]. Problematic issues in the field of health care were identified and the ways of the work improvement were introduced. In particular, the Center actively cooperates with the international Charity Foundation "Public Health Alliance", the Red Cross Society and other institutions. In most medical units, major repairs have been carried out, the personnel have been completed, the convicts are provided with medicines, sanitary and educational work is constantly carried out, and so on. Checking the information provided, we turned to the convicts and staff of CES (UVP), as well as conducted expert surveys of independent employees of other medical institutions, scientists [13; 14]. It was found that the majority of convicts complain about the poor quality of medical care (83%). In their responses, in particular, they noted that doctors, who conscientiously perform their

professional duty, almost have never been met (61%). In the future, they were given the opportunity to indicate what is manifested improper service (you could name a few options or offer their own answers). The anonymous survey revealed: rudeness of the staff (67%), inability to get medicines on time (66%), lack of medicines (39%), treatment at their own expense (57%) improper primary diagnosis (34%), lack of regular medical examination (37%), lack or limited opportunity to get advice from some specialists: dentists, surgeons, gynecologists, proctologists, etc. (29%). A significant part of the convicts (82%) is afraid that, while serving their sentence, there is a high probability of Contracting tuberculosis and other diseases. There were frequent responses about limited access to medical units and equipment, especially in the evening and at night (36%). The survey of medical workers also indicates problems with ensuring the health of convicts. Despite the fact that the medical staff of the Department of internal Affairs is legally independent from the administration of correctional colonies, employees formulated their own answers quite carefully, trying to avoid answers to pressing questions. However, it was established that the medical examination of convicts is carried out irregularly, usually at the time of their arrival in the institution, and in the future only if necessary or if the convicts themselves apply for medical care. There were also cases of underfunding of medical institutions, lack of medicines, and lack of understanding on the part of the administration of institutions when hospital treatment is necessary, failure to take urgent measures when there are threats of the spread of the measles epidemic, and so on. Most of all, what the doctors of the CES (UVP) insisted on, was the large number of convicts, who suffer from chronic diseases, the complexity of providing medical care to convicts during their transfer and to persons taken into custody, as well as the insecurity of medical personnel, the lack of their protection.

Therefore, what does not correspond to the European level is the state of health and medical care of convicted medical workers of regional hospitals. In addition, they pointed to frequent errors in the diagnosis of the inmates of the disease on initial examination in medical establishments of penal institutions, the inability of primary care doctors, medical subsidiaries, the lack of effective contact between CES (UVP) staff and medical institutions, which are not in subordination to SCES (DKVS). In addition, in the case of sending convicts to the city or regional hospitals, patients complained that in correctional colonies they are often treated negatively as malingerers, medical care is unqualified; the purchase of drugs is recommended only on their own expense. Comparing review of statistical data on the status of the disease in the CES (UVP) and jail, records of SCES (DKVS) Administration and health Centre of SCES (DKVS) with materials and questionnaires, we can conclude that the state of healthcare in the prison is satisfactory. There is a number of organizational, managerial, medical, and pharmaceutical problems. These include, first of all: problems of personnel of medical units of CES (UVP) and specialized hospitals; improper implementation of activities to provide medical care to prisoners and persons taken into custody; implementation of preventive measures to reduce morbidity, high mortality and suicide cases; limited provision of emergency, primary, and specialized care. It should be remembered that the implementation of health protection of convicts is the responsibility of the state within which health care must comply with international standards that exist in society. Convicts should be provided with free access to necessary medical services without any discrimination based on their legal status (p. 24 "Mandela Rules") [15]. Outlining the purpose of the study, we pointed out the need to respect the right of personnel to health care, including attention to the improper organization of medical services to persons, working in the PIs. It should be emphasized that although the medical care of convicts is organized, it needs to be improved. The staff remains on its own with its problems in the case of illness. It must be reminding that in the 90s of the twentieth century medical institutions of the Ministry of Internal Affairs of Ukraine served all law enforcement officers, including the Criminal Executive System. However, subsequently, the right to provide medical assistance to the staff of pre-trial detention centers and correctional colonies was denied from the moment of SCES (DKVS) submission to the Ministry of Justice. Therefore, it is very difficult to

calculate the number of personnel, who have fallen ill with an incurable disease during the service, have received a disability, and so on. Both, the convicts and the staff, have the same problems, regarding the unsatisfactory pricing policy for medical products, outdated equipment, and lack of professional medical personnel. Endless queues in medical institutions, the inability to get to a specialist with the necessary qualifications in time are added to all of this. High mental and psychological overload, which is caused not only by extraordinary conditions but also by everyday situations. The employee can be attacked by a convicted person or suffer from other conflict situations. Sometimes there is the necessity of simultaneous solution of several equally important tasks for the employee. All of this undermines the health of the employee. Since the Law of Ukraine "on the State Penitentiary Service" has lost its force since May, 2016, and the new Law of Ukraine "on the State Penitentiary Service" is still under discussion, it can be stated that there is no normative consolidation of the right of personnel to health care, except for General documents, in particular, the Constitution of Ukraine. As you can see, these issues need to be resolved as quickly as possible. In addition, in penal institutions, anti-corruption management is significantly complicated due to the lack of systemic external control, especially from the public. In this context, the observance of legal professional restrictions by medical workers is especially relevant. Legal professional restrictions of medical professionals are the limitation of professional rights and duties of medical professionals, established by law in order to ensure state interests, prevent offenses, protect the rights and legitimate interests of medical professionals themselves [16].

3. CONCLUSION

Despite certain changes in the medical provision of places of imprisonment, these data eloquently demonstrate inadequate medical care for prisoners, problems with the provision of modern medical equipment and medication. Ensuring the right to health protection for, both, convicts and staff is mainly declarative ones. This is stated by human rights defenders, who conduct annual monitoring of the rights of prisoners, confirmed by practitioners. It should be noted that today places of deprivation of liberty are institutions with a high risk of disease, death, suicide. We emphasize that such risks arise not only for convicts, but also for the personnel of the PIs. Considering all above, it is necessary to make efforts in order to improve the state of medical care, which is provided to prisoners in prisons. Consequently, the level of chronic, mental, and somatic diseases among those convicted is much higher than the level of diseases among ordinary citizens; such persons require constant monitoring and medical examination in penitentiary institutions. Convicts, who have chronic diseases and other health disorders, require separate medical care not only in PIs. However, they also require separate medical care outside of institutions. Moreover, it should have a normative fixation. я волі. Of course, the problems related to ensuring the right to protect the health of the personnel of the Department of internal Affairs require a separate study, but now this right must be confirmed in the Law of Ukraine "On State Criminal Executive Service", which is being discussed in the "Verkhovna Rada" of Ukraine.

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