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CRIMINAL LIABILITY FOR VIOLATION OF DISCIPLINE BY PRISONERS AND PROVISION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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SUMMARY

Humanism and humanistic ideas are covered in many criminal law works. In this study, the existence of an article describing criminal liability for discipline in prisons is considered a form of inhumane treatment. However, criminal law should not be seen as the sole means of influencing a person's behavior. Other mechanisms are needed to influence convicts who violate the rules of the institution. The provisions of criminal law must comply with the principles of criminal law and international obligations assumed by the state.

Key words: humanity, inhuman treatment, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, disciplinary action, restorative practices, prison system, treatment of prisoners.

УГОЛОВНАЯ ОТВЕТСТВЕННОСТЬ ЗА НАРУШЕНИЕ ДИСЦИПЛИНЫ ОСУЖДЕННЫМИ В КОНТЕКСТЕ ПОЛОЖЕНИЙ КОНВЕНЦИИ ПРОТИВ ПЫТОК И ДРУГИХ ЖЕСТОКИХ, БЕСЧЕЛОВЕЧНЫХ ИЛИ УНИЖАЮЩИХ ДОСТОИНСТВО ВИДОВ ОБРАЩЕНИЯ И НАКАЗАНИЯ

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АННОТАЦИЯ

Гуманизм и гуманистические идеи рассматриваются во многих работах по уголовному праву. В этом исследовании существование статьи, описывающей уголовную ответственность за нарушение дисциплины в местах лишения свободы, рассматривается как форма бесчеловечного обращения. Вместе с тем уголовный закон не должен восприниматься как единственное средство воздействия на поведение человека. Нужны другие механизмы воздействия на осужденных, нарушающих правила пенитенциарного учреждения. Положения уголовного законодательства должны соответствовать принципам уголовного права и международным обязательствам, которые взяло на себя государство.

Ключевые слова: гуманность, бесчеловечное обращение, Конвенция против пыток и других жестоких, бесчеловечных или унижающих достоинство видов обращения и наказания, дисциплинарные взыскания, восстановительные практики, пенитенциарная система, обращение с осужденными.

Statement of the problem. In order to protect the individual from harm by the State for its dignity, the international community has adopted relevant international legal instruments in which the inhuman treatment of a person is considered a crime, in particular the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Tor-

ture), which defines the term “torture”, but does not identify other types of ill-treatment.

The relevance of the research topic and status of research. E.V. Shytkina, in her dissertation “The concept of the prohibition of ill-treatment and its evolution in the activities of the Council of Europe” (Kyiv, 2009) suggested to treat the concepts of “cruel” and “inhuman



treatment” as synonyms and “ill-treatment” as designating all types of subject under the qualification of such behavior [8]. G.N. Telesnytsky considered the peculiarities of criminal liability for torture in a comparative legal aspect (Kyiv, 2013) [6]. L.I. Skrekla viewed cruelty as a cross-cutting criminal concept [5]. L.A. Nakonechna considered violence as a cross-cutting criminal concept (Lviv, 2016) [3].

In addition, certain aspects of the issues involved: V.O. Gatselyuk, M.M. Hnatowsky, V.V. Mytsyk, V.O. Tuliakov, M.I. Khavroniuk, E.V. Shishkina. At the same time, there are still some questions, including methodological ones, that need attention and research.

The purpose of the article is a formulation of proposals to improve the criminal law.

Presentation of the main material. Humanism is a democratic and ethical life stance that affirms that human beings have the right and responsibility to give meaning and shape to their own lives. Humanism stands for the building of a more humane society through an ethics based on human and other natural values in a spirit of reason and free inquiry through human capabilities [10].

The main distinguishing features of a person dedicated to human rights are activism, empathy, impact. *Empathy*: a feel for the humanity of others, an ability to see others in the world as though you were they, a capacity for spontaneous solidarity. *Impact*: the desire to make a difference, to achieve tangible outcomes – a freed prisoner; a humanely treated detainee; the previously hungry now well fed [12]. To be a humanist it means to care about another people [7].

Criminalization and humanism. Ya.I. Hilinsky noted: “There is no single behavioral act, which would be “criminal” himself, according to their content, regardless of social context. Thus, the “criminal” use of drugs, in particular, derivatives of cannabis, was permissible, “normal” legal in many Asian countries as well, and in the modern Netherlands. As history shows, even the value of life as the highest value is not absolute. There are an exceptions, due to political necessity. Murder in war does not qualify as murder, but is a violent deprivation of another person’s life. Every crime encroaches on the human freedom and security; state

and society security, and also violates the principles of Criminal Law (justice, equality, legality, humanism). Criminal Code guarantees each person the protection of these rights, and also helps ensure her safety” [1, p. 391].

Because, some actions, which are enshrined in the criminal law over time, lose their social danger.

Under the influence of a number of factors, the outlook and the level of tolerance for violations of the right to life have changed, as well as the understanding of the right to life, not only enshrined in domestic law and international legal instruments, the possibility of certain human behavior aimed at ensuring the integrity of one’s life and freedom to dispose of it (narrow understanding), but also as a human freedom to directly realize the opportunities that it has as a result of belonging to the species *Homo Sapiens*, and to satisfy the necessary biological, social, spiritual, economic and other needs are inseparable from human about objectively due to the achievement of human development (widely understood) [4].

Accordingly, in the sense of the Convention, the violation of the right to life also implies an encroachment on the freedom to directly fulfill the natural needs necessary for the life and human development. In particular, it is important for both the human freedom and security.

In order to ensure the right to life in the broadest sense, the Criminal Code of Ukraine provides for criminal liability for bringing a person to suicide (art. 120 of the Criminal Code), which is the result of ill-treatment, blackmail, systematic humiliation of his human dignity or systematic unlawful coercion to acts that they contradict her will, suicide inclination, and other acts that promote suicide. Under ill-treatment should be understood ruthless, rude acts that cause the victim of physical or mental suffering (torture, systematically causing bodily injury or beating, deprivation of food, water, clothing, housing, etc.). The systematic humiliation of human dignity is the continued humiliation of the victim (constant insults, mockery of him, etc.).

In this context, the individual should be responsible for the freely chosen undesirable behavior, but in the manner prescribed by law. It is impossible to achieve justice by illegal means, as well as by

means that do not comply with the principles of equality, humanism, personal culpability, the presumption of innocence and more.

Some of the crimes, based on their wording, contradict the principles of criminal law and the obligations assumed by the state.

For example, art. 391 of the Criminal Code of Ukraine, establishes criminal liability for malicious disobedience to the legal requirements of the administration of the institution of punishment. Based on the practice of applying art. 391 of the Criminal Code, persons are criminally responsible for refusing to clean, on duty, landscaping, not cleaned the bed, changing the bed in the cell, not performing the command “Lift!”, not holding hands behind his back during a walk, etc.

The possibility of bringing convicted persons for repeated violations of discipline to criminal responsibility is a manifestation of inhumane treatment (within the meaning of art. 3 of the Convention).

Pursuant to art. 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“Prohibition of Torture”), no one may be subjected to torture or to inhuman or degrading treatment or punishment.

V.V. Mytsyk analyses the Convention on the Prevention of Torture concludes that: Convention provides non-judicial system of a preventive character. The task of the committee is not condemning states for violations, and the desire of the spirit of cooperation and consultation to improve where necessary, protection of persons deprived of their liberty. Article 3 of the Convention defines a general provision for cooperation [2, p. 508].

The Committee for the prevention of torture Council of Europe in its reports have repeatedly called Ukraine decriminalization act which described current version of art. 391 of the Criminal Code.

According to the UN Standard Minimum Rules for the Treatment of Prisoners, discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life; no prisoner shall be employed, in the service of the institution, in any disciplinary capacity; no prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence [11, p. 27, 28, 30].



Definitions of torture, inhuman or degrading treatment, treatment or punishment were first introduced by the European Commission on Human Rights (existing until 1998) in the case of Denmark, France, Norway, Sweden and the Netherlands v. Greece (1969), known as the Greek case.

Inhuman treatment or punishment is behavior that intentionally causes a person severe mental or physical suffering.

Degrading or punishing behavior is behavior that grossly humiliates a person in front of others, or compels them to act on their own volition or in good faith.

In the case of the ECtHR Ireland v. The United Kingdom (1978), the definition of these categories has changed.

Inhuman treatment or punishment are the acts that caused a person severe physical and mental suffering.

Dignity-degrading treatment or punishment is abuse that should cause the victim to feel fear, suffering and inferiority, and to diminish her dignity and, if possible, to break her physical and moral resistance.

In deciding whether a degrading treatment or punishment is to be resolved, the court shall consider whether the suffering was a result of mental anguish or suffering, and then determine whether it intended to humiliate the victim [9, p. 46].

The bill "On amendments to some legislative acts of Ukraine (concerning the elimination of corruption schemes in the prison system by removing art. 391 Criminal Code Ukraine)" № 2079 of 9 June 2019 deleted art. 391 of the Criminal Code "malicious disobedience to the requirements of the administration of the penitentiary institution", as well as references to the this article in paragraphs 2 and 3 of part 1 of art. 140 of the Criminal Executive Code of Ukraine.

Criminal law should not be seen as the single means of influencing a person's behavior. The prison (penitentiary institution) is the same total institution (Michel Foucault) as the school, university, family, church. However, there is no question about criminal liability of students who systematically violate discipline and fail to meet the requirements of the school or university administration.

We need other mechanisms influence to prisoners who violate the rules of the institution. If a person commits

a crime in a penitentiary institution, he or she will be prosecuted in accordance with the Criminal Code. The threat to the safety of prison staff and/or other prisoners can be interpreted through other articles of the Criminal Code (articles 115, 120, 129, 125, 126, 121, 293, 296 of the Criminal Code of Ukraine and others). In addition, the security of staff and other prisoners is provided by other means.

It should also be noted that disciplinary penalties in the prison and so significantly affect the further fate of the prisoners. In particular, the so-called incentive measures (parole, softer punishment) apply to those who are not charged and who are being promoted. This is an internal restriction. However, the Commission of the penitentiary institution, which includes penitentiary institution employees and members of the public (as they usually do not attend or very rarely attend), does not approve the possibility of applying incentive rules to the person being charge.

In addition, now very much paying attention bullying in the school may need to think about bullying in prisons, including by staff and ensure appropriate arrangements for objective verification of the penal institutions of the state. No wonder the teacher is forbidden to raise his voice to the student, to beat on the hands, to expel from the class, to put in a corner, that is, to expose him to the practice of "education", which were in the past. But now they are also partially taking place. However, the behavior of a student in the classroom can also provoke others to mass riots, a massive violation of discipline, a significant threat to the safety of teachers and other students. This is also supported by practice.

The purpose of punishment is not only punishment, but also correction of the person and prevention of committing other crimes (art. 50 of the Criminal Code). But under conditions of hostility and fear, that objective cannot be achieved.

Conclusions. It is necessary to align the criminal law of individual States with the provisions of the Convention. In particular, the criminal legislation of Ukraine should be decriminalized the article, which establishes criminal liability for malicious disobedience to the legal requirements of the administration of the penitentiary institution. The provisions of this article are not in conformity with the provisions of the Convention.

Instead of punishment, particularly in this category of cases, it is necessary to promote dialog and mediation practices in the penitentiary institution, nonviolent communication, interest of convicts to perform certain work, and more.

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СУЩНОСТЬ МЕХАНИЗМА АДМИНИСТРАТИВНО-ПРАВОВОГО РЕГУЛИРОВАНИЯ ФАРМАЦЕВТИЧЕСКОЙ ОТРАСЛИ УКРАИНЫ

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АННОТАЦИЯ

В статье на основе анализа научных подходов к пониманию понятий «механизм», «правовое регулирование» и «механизм правового регулирования» определяется понятие механизма административно-правового регулирования фармацевтической отрасли Украины, раскрываются его особенности. Охарактеризованы составляющие механизма административно-правового регулирования фармацевтической отрасли Украины: административно-правовые нормы, административные правоотношения, акты реализации норм права, акты понимания норм права, правовое сознание; правовая культура; режим законности оборота фармацевтической продукции. Установлено, что сущность исследуемого механизма раскрывается через определение целей, задач, направлений, субъектов, объектов, форм и методов обеспечения фармацевтической деятельности.

Ключевые слова: механизм административно-правового регулирования, правовое регулирование, фармацевтическая деятельность, нормы права.

CONTENT OF THE MECHANISM OF ADMINISTRATIVE LEGAL REGULATION OF THE PHARMACEUTICAL INDUSTRY OF UKRAINE

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SUMMARY

In the article based on the analysis of scientific approaches to understanding the concepts of "mechanism", "legal regulation" and "legal regulation mechanism", the article defines the concept of the administrative-legal regulation mechanism of the pharmaceutical industry of Ukraine and reveals its features. The components of the mechanism of administrative regulation of the pharmaceutical industry of Ukraine are characterized: administrative legal norms, administrative legal relations, acts of the implementation of legal norms, acts of understanding the rules of law, legal consciousness; legal culture; rule of law for the circulation of pharmaceutical products. It is established that the content of the mechanism under study is revealed through the definition of goals, objectives, directions, subjects, objects, forms and methods of ensuring pharmaceutical activity.

Key words: administrative legal regulation mechanism, legal regulation, pharmaceutical activity, legal norms.

Постановка проблемы. Сегодня в мире производство фармацевтических препаратов является одной из самых перспективных отраслей. В течение нескольких последних лет мировой рынок фармацевтики демонстрирует устойчивую тенденцию роста. Фармацевтическая отрасль занимает ведущую позицию и в экономике нашей страны, поскольку является весьма

важной составляющей национального рынка и безопасности страны. Фармацевтическая отрасль Украины включает в себя: разработку и производство лекарственных средств и медицинских изделий; оптовую и розничную торговлю, специализированное хранение и распределение с помощью аптек и аптечных пунктов; подготовку кадров для фармацевтических предприятий