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**ON THE READINESS
OF THE PENITENTIARY SYSTEM OF UKRAINE
TO COUNTERACT THE SPREAD OF COVID-19**

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INTRODUCTION

Faced with the challenge of worldwide spread of infectious disease, the human community does not always demonstrate the ability to effectively avoid the spread of the disease. The epidemiological situation in many countries has forced the governments to take unprecedented measures directed at stopping the quick spread of the disease. However, even when harsh measures are taken, some objects still remain beyond the attention of governments and society, being at the same time one of the most dangerous sources of the spread of the disease. We are talking about places of imprisonment in general and about penitentiary institutions in particular.

THE PROBLEM THAT NEEDS TO BE SOLVED

Currently more than 52 000 persons are detained in penitentiary institutions and pre-trial detention centers in Ukraine, according to the information from the Ministry of Justice. Add to this number 28 000 of employees and we will receive the real picture that indicates another risk group that must be kept in sight when we talk about counteracting COVID-19.

It should be noted that the convicts and employees of the penitentiary institutions are among the people at increased risk of contracting a disease, since penitentiaries are the crowded places які that are impossible to remove and that are already recognized as the sources of spread on dangerous infectious diseases, such as tuberculosis, hepatitis and HIV-infection. Moreover, penitentiary institutions had and still have major problems and difficulties with medical care. Now, when Ukraine and the entire world is faced with mass spread of the disease, the measures that are deployed are most effective in countries where health care is at the appropriate level and where an outbreak of an infectious disease is a problem that the relevant health care system is able to deal with.

It is clear that in Ukraine, especially at times when medical care is in the state of constant reformation, the question of creating conditions for effective prevention of spread of COVID-19 can become crucial. However, it should be noted that Ukraine is not the only country treading on razor's edge in the issue of preventing the spread of coronavirus in prisons. Italy was faced with a similar problem which, by the way, led to mass riots. In this seemingly prosperous country there was a wave of riots among the convicts, the riots were related to the convicts' concerns about the protection of their health and provision of adequate medical assistance. Currently with the introduction of quarantine measures there were riots in many penitentiaries in Italy and almost 100 prisoners escaped. And in the current situation it may be impossible to bring the persons responsible for the escapes to responsibility, since their concerns about the guarantees of maintaining their health could have had a basis.

Therefore, the purpose of this report is to identify and delineate the problem area in the form of penitentiary institutions and pre-trial detention centers that contain the convicts and detainees who actually form a group vulnerable to spread of COVID-19, and in which, despite the relative controllability of the entire system, it would be very hard to stop the spread of the disease in case of its emergence in the institutions.

Based on the stated purpose we would like to draw the attention to the problem of the spread of COVID-19 in penitentiary institutions, propose particular actions which could contribute to prevention of uncontrolled spread of the disease and develop the proposals which could be useful during their implementation in the practical activities of the State Penitentiary Service of Ukraine.

RECOMMENDATIONS OF THE INTERNATIONAL INSTITUTIONS

Today on an international level there is already a developed number of recommendations and measures that are necessary to implement in the penitentiary institutions and that should help to take the situation under control and manage it. This work was conducted by many international institutions, in particular, it involved such organizations as International Criminal Reform, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Amnesty International, Office of the United Nations High Commissioner for Human Rights, Human Rights Watch (HRW), Association for the Prevention of Torture (APT), Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), WHO which issued Interim Guidelines for COVID-19 in Prisons, US Federal Bureau of Prisons, John Hopkins University for the public and experts.

All these organizations have made efforts and formulated certain recommendations. They were processed by the Danish Institute Against Torture DIGNITY and introduced into General Guidelines and Recommendations for the prevention and control of the spread of COVID-19 in prisons.

IMPLEMENTATION OF GUIDELINES AND RECOMMENDATIONS FOR THE PREVENTION AND CONTROL OF THE SPREAD OF COVID-19 IN PRISONS

The first thing that international institutions pay attention to is the state's duty to be responsible for the safe and adequate detention of the prisoners. Especially regarding the provision of proper medical assistance and access to medical assistance.

Criminal executive law of Ukraine contains a special principle enshrined in Art. 5 of CEC, according to which the state and the convict bear mutual responsibility. The point is that the state must be held accountable and enforce criminal penalties in such a way and with such procedure that would guarantee that a person serving his or her sentence will be subject to a court-ordered measure of coercion and that measure would be exhausted by an appropriate amount of restrictions, in every other aspect the execution of a criminal sentence should not harm the person, should not cause him or her suffering and humiliation, should not undermine the convict's mental or physical health or affect negatively the entire subsequent life of that person. We have to state that in Ukraine this principle does not work and the state does not guarantee to the convicts that during their stay in the penitentiary institutions they won't be subject to ill-treatment or will keep their health or their lives. After all, for domestic legal reality this recommendation is, on one hand, a main one, and, on the other hand, is the most difficult, since the same inadequate conditions of detention in the penitentiary institutions pose the biggest danger for the society even without the threat of uncontrolled spread of infectious diseases. The overcrowding of convicts, improper material and household conditions, as well as sanitary and hygiene, the lack of proper, and sometimes any medical care, high level of infectious and chronic diseases among the convicts — all this is by no means an exhaustive list of the problems that have the signs of systemic ones in the penitentiary system of Ukraine. Besides, the persons serving their sentences related to physical isolation from the society are often subject to torture and degrading treatment, and their consequent life after release usually takes place “under the sign” of their sentences.

The following recommendation is the need to develop and publish the event plans concerning the prophylactic and control over the spread of COVID-19 virus in penitentiary institutions.

This recommendation is very important and is not only related to the existing situation. The quarantine and anti-epidemic measures will end at some point, like everything in general. But the present

allows us to be sure that the system of penitentiary institutions is not ready for such situations, it cannot quickly and effectively react to a changing situation, it is fully dependent on the decisions of the higher bodies and proper funding, it doesn't have a proper system of medical assistance or sanitary and epidemiological mechanisms.

Nevertheless, in pursuance of this recommendation, the leadership of the SPS of Ukraine adopted the following several regulations:

- the Order by the Ministry of Justice “On prevention of spread of COVID-19 coronavirus on the territory of the penitentiary institutions, pre-trial detention centers and health centers of the SPS of Ukraine” of 13.03.2020 No. 950/5 (hereafter — the Order);
- the Order by Ministry of Justice, State institution “Health Center”, the Department of Execution of Criminal Punishments “On approval of the Plan of anti-epidemic measures to prevent the spread of acute respiratory disease caused by the new coronavirus in the penitentiary institutions and pre-trial detention centers of SPS of Ukraine, for 2020” of 12.03.2020 No. 57-ОД/08/ОД-20 (Hereafter — Joint Order);
- Letter from the Department for the Execution of Criminal Punishments of 17.03.2020 No. 1/1-243/ТВ (hereafter — the Letter).

If we turn to the text of the above-mentioned documents we would notice that they are mostly formulated according to the recommendations that are currently developed in medical and administrative spheres and which are designed to promote the prevention of spread of infectious diseases.

Thus, the Order defined only the general direction, establishing quarantine in the penitentiary institutions. Under the Order all kinds of visits were prohibited in the institutions, as well as the visits of the representatives of media, public associations and charity organizations to the institutions, except for the employees of the law-enforcement bodies and court. It should be noted that the restrictions imposed raise questions about their legal nature. We would like to note at once that we do not discuss the expediency or correctness of certain measures and events. We are drawing attention to the fact that the administration of State Penitentiary service for unknown reasons does not follow the path of use of those mechanisms and tools which are provided by the current criminal executive legislation. The first thing we would like to note is that CEC of Ukraine provides for such regime measures as the introduction of special regime measures in the prisons. According to Art. 105 of CEC, in case of natural disaster, epidemics, accidents in the systems that are important for life support, mass riots, the signs of group insubordination of convicts or in case of a real threat of armed attack on a prison or in connection with the imposition of the state of emergency or martial law in the area of the prison the security and control over the convicts is intensified, and there are other additional regime measures. Exactly this is the introduction of special conditions regime in the colony. As could be seen, this measure is fully consistent with the situation which has developed in the country and it provides a number of proper regime measures. Therefore we believe that the administration of SPSU should have used special conditions regime in the institutions.

The second thing to consider is the regulations of the Law of Ukraine “On protection of the population from infectious diseases”. This Law contains the concept of quarantine, which means administrative and health measures applied to prevent the spread of particularly dangerous infectious diseases. Article 29 of the Law means that the quarantine is established and lifted by the Cabinet of Ministers of Ukraine. The question about the establishment of quarantine is raised before the Cabinet of Ministers of Ukraine by the central executive body which ensures the formation of public policy in health sphere, at the request of the Chief State Sanitary Doctor of Ukraine. After all, given that the Ministry of Justice is part of the structure of the Cabinet of Ministers, it should solve the issue concerning the particularities of the introduction of quarantine in subordinate bodies and institutions at the same time with its introduction. Those responses should go hand in hand, unite and consider a possible effect on subordinate systems and the features of introduction of quarantine in peniten-

tiary bodies and institutions. In practice we can see that the Ministry of Justice, while adopting the relevant Acts, did not have a clear idea of whether there would be funding for the activities that were proposed to implement in connection with the prevention of the spread of disease. There was no strategic understanding and planning of the events directed at decreasing the number of persons held in the penitentiary institutions.

National specifics were also not avoided. The Annex to the List contains the recommendations concerning the acquisition of and accounting for the disinfectants and personal protective equipment, their contents suggest that the acquisition of those means is not always possible. Based on the recommendations it is possible to reach the conclusion that non-medical institutions of SPSU cannot obtain medical supplies without the violations of budgetary discipline. After all, the higher body recommends them to purchase these means and account for them as “household materials and stationary”. The above indicates less to the existing violations, and more to the inflexibility of the regulatory requirements which often pose an obstacle in implementation of necessary measures.

At the same time it should be noted that the restrictions of visits also affected penitentiaries in a negative way, since the lack of possibility to visit the convicts and detainees has spread to the visits by the representatives of public and religious organizations, the representatives of National Prevention Mechanism. And while the contacts with relatives and friends are partially compensated by the safeguarded right to visits and contacts by Internet, the communication with other persons and organizations became more difficult and less prompt. Since a convict's contact with a lawyer is carried out through a glass partition with safety measures it is unclear what prevents the provision of possibility of the same short visits by relatives and other persons. Furthermore, the convicts' access to Internet is limited and the communication through Internet can only partially substitute the visits. Thus, according to the answers to the questionnaires, in 4 of 36 institutions that we studied the convicts had access to Internet in specially designed rooms once a day according to schedule, in 9 institutions — twice a week, in 7 — once a week, in 16 institutions they did not have access to Internet.

The Joint Order contains the list of specific anti-epidemic measures directed at prevention of the spread of disease. It should be noted that they are clear and understandable and are oriented at creation of necessary conditions. After all, among the measures of counteraction the legislator names the restrictions on the visits to institutions, the restrictions on staff movement, the reduction of social and educational mass events with the convicts, the restrictions on movement of convicts between the institutions, the application of online mode of the convicts' contact with the outside world, transfer of court hearings with the participation of convicts to online conferences, etc.

However, in our opinion, those measures are not sufficient. We believe that the measures imposed do not consider the change of the situation, in particular, the fact that currently the public transport does not work or works in a limited regime. The situations often arise when the employees of the institutions are unable to reach the place of service. Regrettably, the State Penitentiary Service does not arrange for the delivery of its personnel to locations of the penitentiary bodies and institutions. Such state of affairs does not promote the proper service and avoidance of unnecessary contacts of the staff of the institutions with other people.

The Joint Order contains the regulation according to which it is planned to involve convicts serving sentences in disinfection works. Such practice does not seem to be correct. We believe that the disinfection works require at least minimum knowledge about the methods and features of such works, the knowledge about the particularities of the disease and the knowledge about human physiology and infectious diseases. Furthermore, we believe that the disinfection works also require a certain level of protection and labor protection conditions. There are doubts about complying with these conditions when the convicts themselves conduct the disinfection. Usually the involvement of the convicts in the works is connected with the possibility to use free workforce and the execution of someone's own work by the convicts. Such practice is unacceptable. The attention should also be

paid to the fact that the disinfection in the penitentiary institutions is carried out with the use of the cheapest means, in particular, chlorine, or with the use of homemade disinfectants, the composition of which is unknown. The use of homemade “disinfectants” is noted by the convicts who were interviewed with the help of dissemination of anonymous questionnaires in electronic form in the penitentiary institutions.

The Joint Order states that in case of introduction of quarantine and other anti-epidemic measures in connection with the spread of coronavirus infection at the location of bodies and institutions, the questions of imposition of special conditions regime should be solved in a prescribed manner according to Article 105 of Criminal Executive Code of Ukraine and Article 19 of the Law of Ukraine “On Pre-Trial Detention”. It is possible to draw a conclusion from the given passage that the administration of the State Penitentiary Service still believes that there is no quarantine on the territory of Ukraine and that coronavirus infection is spreading in some kind of local clusters on separate territories, and that these “clusters” can be fixed in some places, in particular, at the location of penitentiary bodies and institutions. According to the specialists from the State Penitentiary Service, the current state of the spread does not concern the penitentiary bodies and institutions and does not require the reaction provided by criminal executive legislation. This is a very strange situation (non-introduction of special conditions regime), especially considering that the actual signs of this regime are already seen in many prisons.

Among the measures provided by the Joint Order the lack of plans to provide the convicts with personal protective equipment is surprising. Given that the convicts that are held in the penitentiary institutions, as well as detainees, are under full control of the state (since they are placed in special conditions and are isolated from society), the latter, given the principle of responsibility towards the convicts, as well as the regulations of CEC concerning the provision of adequate detention conditions, should provide all persons detained in those institutions with personal protection equipment. Those persons should not be required to provide themselves with such means, since sometimes they simply cannot provide themselves with them, and even if they can, they should not be required to. The state itself must care for the people it detained with the purpose of subsequent correction and reintegration in society. However, such plans are not formulated in the Joint Order. It only envisages the provision of the personal protective equipment to the employees of the institutions and medics. It also requires the use of such equipment by the persons, who enter the territory of the penitentiary institutions.

In general such approach seems to be strange, when the staff, medics and visitors of the prisons use the personal protective equipment, and the convicts do not.

The interviewed convicts state that many institutions lack personal protective equipment. Only some employees of the institutions use them, and they often take off their masks after going through the checkpoint.

The cases are not infrequent that can be called systemic, connected to non-compliance with the recommended social distance. This recommendation is not complied with in the institutions and no measures are taken related to its implementation.

The Joint Order does not contain the regulations regarding the staffing of medical units and medical institutions that belong to the State Penitentiary Service with adequate number of qualified medical employees. The problem of insufficient number of medical staff in penitentiary institutions has long been known. There is almost no work towards solving this problem. It is understandable that in the conditions of quarantine this question would be even harder to resolve. In such situation it would be appropriate to create temporary on-duty groups of the medical employees or other options of temporary help to the medical employees (business trips to the penitentiary institutions, the introduction of periodic shifts of medical workers from other institutions in penitentiary institutions etc) that work in SPSU system towards solving the question of replenishment of medical staff.

PROBLEMATIC ISSUES

The information policy concerning the prevention of spread of COVID-19 in penitentiary institutions is a big problem. The conditions of physical isolation impose a significant specificity on all processes related to prophylactic and quarantine. On one hand, the physical isolation seemingly facilitates the implementation of anti-epidemic measures, on the other hand it increases the responsibility, since the conditions of physical isolation complicate the implementation of certain precautionary measures. We believe that timely, relevant, true and exhaustive information is the lion's share of proper anti-epidemic work in the institutions. There were many statements among the interviewed convicts about the fact that information and awareness-raising work is not conducted among the convicts. Such state of affairs leads to, increased tension and nervousness among the convicts concerning their own health and the possibility to maintain it in the conditions of deprivation of liberty. The convicts complained about the lack of information about the virus, its etiology and virulence, the means and methods to avoid its spread, the capabilities of modern medicines in curing the diseased, the existence of medical procedure of treating the coronavirus, about the quarantine measures imposed, the procedure of their implementation and compliance with them. Also important is the lack of relevant information concerning the state of affairs outside the prisons. All this does not contribute to the ability of convicts to protect themselves from the disease on their own, to help each other and not complicate the epidemiological situation.

The situation with medical care for convicts and detainees remains difficult. This problem also has a significant history and is also not solved by the state. Currently the penitentiary medicine, despite the creation of the State institution "Health Center", is almost absent. This, in fact, is evidenced by the actions of this institution in a difficult situation, when the questions of medical assistance and sanitary and epidemiological protection have surfaced. Here it is possible to tell without the risk of being wrong that SPSU and Health Center would not be able to provide the treatment, or even the placement of the diseased convicts in medical institutions which can provide effective treatment in case of convicts or detainees contracting diseases while being held in penitentiary institutions. The medical establishments for free persons (the convicts will be eventually sent there) do not have enough ventilators and oxygen concentrators. In such situation it is understandable that the convicts will receive medical care on residual basis. The convicts very often noted the complications in contacting a doctor in their responses. Some of them stated that medical assistance was untimely and incomplete, while some noted that it was very hard to see a doctor. Such situation is not strange, given that some prisons lack medical workers altogether (they retired due to improper working conditions and low wages), while some do have medics but they do not have the necessary qualification.

Among its plans the Ministry of Justice points out the need to implement particular medical-oriented measures. In particular, there was a general instruction that in case of presence of symptoms of acute respiratory infection among the employees of SPS of Ukraine during their service the person with the symptoms should be isolated and it is necessary to notify a medical worker about the incident. The procedure for implementation of that instruction is unclear, given the lack of proper means of diagnosing of this particular disease.

In addition, it is proposed to define in the institutions the facilities for additional (in case of need) deployment of insulators for temporary isolation of persons with signs of acute respiratory disease caused by SARS-CoV-2 coronavirus, including property and material resources, and to ensure the deployment, if needed. This step is also very hard to make, given the overcrowded institutions or the lack of proper facilities in which it would be possible to provide the necessary conditions for holding and treating the diseased.

It is planned to carry out active detection, through the daily visual examinations, temperature screening and questioning of the convicts and detainees. According to the convicts, this direction of

activity is not followed even in the institutions where the administration introduced and maintained quarantine actions.

Measures such as inpatient treatment of persons with COVID-19 in healthcare institutions of Ministry of Health of Ukraine with provision of protection to the convict or detainee are surprising given that they should not be related to the specifics of the existing epidemic situation. The current criminal executive legislation requires to provide treatment for any diseased convicts and detainees, regardless of whether it is coronavirus or other disease, infectious or otherwise. Thus, in our opinion, the discriminating norms cannot be introduced in the plan of strategic actions. In this issue we again have to state the inability of the penitentiary system to diagnose the presence of the disease, therefore the formulated points of the plan cannot be implemented fully and effectively.

The instruction to increase the control over the food and water supply facilities, sanitary conditions of the institution and ongoing disinfection measures is directed at maintaining the sanitary and epidemiological welfare. It must be a norm that should not depend on the presence of epidemics or pandemics. The need to implement and maintain such measures is also indicated by the legal norms and recommendations of many researchers and specialists. It is generally accepted in European countries that the task of health care service in the penitentiary institutions should not be limited to the treatment of diseased patients. In case of absence of specialized services its responsibility also includes the control over the catering arrangements, in cooperation with other competent authorities (quality, quantity, preparation and distribution of food) and compliance with hygiene requirements (the cleanliness of clothes and bed linen, access to running water, sanitary equipment), as well as the provision of heating, light and ventilation of the cells. It is also necessary to provide the relevant working conditions, as well as an active lifestyle [Andres Lehtmetts, Jorg Pont. Prison health care and medical ethics/ a manual for health care workers and other prison staff with responsibility for prisoners' wellbeing. 2016. c. 10]. Sadly, for domestic institutions the creation of proper sanitary and hygiene conditions is a problem. Moreover, currently the penitentiary institutions do not have sanitary and epidemiological services, as separate structural subdivisions. This leads to the question, who will implement this direction of activity?

The Ministry of Justice has set very appropriate tasks to ensure the readiness of health care institutions of Health Care Center of SPSU to detect and isolate the persons with acute respiratory disease caused by SARS-CoV-2 coronavirus, in particular, the availability of necessary medicines, disinfectants and personal protective equipment, the provision of pulse oximeters, ventilators, oxygen concentrators etc. The Ministry has pointed out the need to develop the new or to enhance the existing schemes of prospective re-profiling of health care institutions in case of mass flow of the persons with acute respiratory disease caused by SARS-CoV-2 coronavirus, to transfer all health care establishments to strict anti-epidemic regime, create mobile medical teams with the aim to actively detect persons with acute respiratory disease caused by SARS-CoV-2 coronavirus, and determine the insulators for hospitalization of contact persons with the aim of their examination and the implementation of treatment. Those directions of activity are very important, but we all understand that their implementation requires significant funds, obtaining of which is difficult in the existing conditions. Still, currently there are additional places for people with coronavirus in multidisciplinary hospitals of HCC of SPSU. The sources in the Ministry of Justice report that in case of maximum filling of hospital bases (support hospitals) of Ministry of Health the hospitals of HCC of SPSU will be re-profiled for the diseased convicts. In particular, it is planned to create the following number of beds in the hospitals:

- Strizhavka multidisciplinary hospital No. 81 — 50 beds;
- Dnipropetrovsk multidisciplinary hospital No. 4 — 14 beds;
- Buchanska multidisciplinary hospital No. 85 — 30 beds;
- Lviv multidisciplinary hospital No. 19 — 50 beds;
- Daryivka multidisciplinary hospital No. 10 — 70 beds;

— Temnivska multidisciplinary hospital No. 100 — 120 beds;

— Shepetivska multidisciplinary hospital No. 98 — 22 beds.

There will be separate places for persons with tuberculosis who were diagnosed with coronavirus:

— Kherson specialized tuberculosis hospital No. 61 — 7 beds;

— Hola Prystan specialized tuberculosis hospital No. 7 — separate local unit for 48 beds.

Thus, certain measures to create the conditions for accepting the diseased were taken.

At the same time the attention should be paid to the fact that according to the statements made by the convicts during the interviewing, the actual implementation of the measures is not uniform. Some convicts sentenced to life imprisonment report that the communication with the outside world is really transferred to the video conference regime, catering is organized in the rooms where the convicts are held, the reception of parcels is carried out with the use of personal hygiene products — gloves and masks. Furthermore, the parcels are left for keeping for a day and only after that they are given to the convicts. The transfers of the convicts to the court and between the institutions is decreased. On the other hand, many requirements that can have decisive meaning are almost not complied with. For example, there are no changes concerning the movement of the prisoners around the territory of the prison, there are no additional sanitary and hygiene restrictions during the convicts' work. The disinfection in the institutions is carried out with excessive use of chlorine which is a toxic substance that can cause poisoning, acting, by the way, through the human respiratory system. Among the shortcomings the convicts also note the lack of opportunity to exercise which is important in the conditions of decreased immune capability of the organism. The convicts do not always have the opportunity to have a walk in fresh air which also does not contribute to maintaining the good condition of the respiratory organs of the convicts. The possibility to provide the recommended social distance in the places of detention is a great problem, as well as the lack of awareness among the convicts on the issues of desired behavior algorithms in prevention of disease and in case of detection of the symptoms of the disease. Among other problems noted was the lack of disinfectants, continuous temperature screening of convicts (according to the convicts, in one of the institutions the temperature was measured with a malfunctioning thermometer) and the disinfection of the places of common use. The convicts call the non-compliance of the staff with the requirements of avoidance of the spread of disease one of the main shortcomings of anti-epidemic work, in particular it concerns the non-usage of personal protective equipment. It is a matter of simply ignoring the measures that are recommended in institutions.

So, we can be sure that at the regulatory level the administration of the penitentiary service reacted by adopting the Acts in which it provided for the number of organizational measures directed at the prevention of spread of the disease. The implementation of such actions in practice and the real state of affairs with provision the sanitary and hygiene welfare in penitentiary institutions remain the main issues. As can be seen from the comments and the reports of the convicts, There is a great number of problems in practice, and they are all connected to the lack of funding, as well as the lack of strategic planning, the discipline of implementation and the shifting of accent from medical and anti-epidemic measures to administrative and managerial ones. By the way, some of them are not related to the epidemic of COVID-19 at all. If you look at the list of activities it is not hard to see that most of them are directed at keeping the order in the penitentiary institutions, and not at provision of sanitary and epidemiological welfare of the convicts. It is a question of restriction of movement, visits, contacts, communication, but there is almost nothing about promptness and effectiveness of medical assistance, on the provision of medicines, creation of facilities for the isolation of the diseased, the testing to detect that very disease, and not a diseased condition in general. This list can be continued indefinitely, but the main moment is that the State Penitentiary Service once again resorted to administrative and managerial efforts, instead of reintegration in society and support for convicts and detainees. We have an example of protection and supervision, and not the example of care and provision. And the last thing

that we would like to note in connection with the accepted regulatory acts, is their contents, technique of implementation and situationality. We mean that the situation of the epidemic has detected the unpreparedness of the penitentiary system to unexpected emergencies. The problem was the lack of prompt regulation, the inability to respond quickly, the lack of funding, the executive discipline and quick decision making. Thus, we believe that the State Penitentiary Service needs a constant regulatory act or a separate norm that would regulate the questions connected to the algorithm of actions in difficult situations, procedure of introduction of actions related to special conditions regime, the provision of the convicts' rights and their material and household support, maintaining order in the institutions, and the main one — funding for such situations.

The indicated shortcomings were often noted by human rights activists and public monitors. At least the officials of the Ministry of Justice themselves understand the existing threats and difficulties. In particular, the Ministry has developed three strategies of development of the situation with diseases in the colonies. According to the first one, coronavirus will not get to pre-trial detention centers and penitentiaries. This “strategy” should not even be considered, since it is a “status quo” that does not require a reaction. Besides, it is unlikely. According to the second one, there will be diseased individuals in some institutions, but the situation will be under control, and the disease will not spread. Such way of events is, of course, desirable, but, as it is known, to have an effective arsenal of reaction, you should prepare for the worst hoping that it will not happen. The third scenario is a large-scale outbreak. In this case we are talking about danger that can quickly become reality in the conditions of isolation of the convicts from the society, therefore it would be strategically correct to focus on the third strategy which involves a significant spread of disease among the convicts. and here we have to state the unpreparedness of the penitentiary system for such a blow.

By the way, it is surprising that such organization as World Health Organization does not provide any measure that would be oriented at the places of deprivation of freedom and their compliance with medical and sanitary and hygiene measures in its acts that regulate the procedure for introduction of precautionary measures for the spread of infectious diseases. For example, the International Health Regulations (2005) do not mention the actions that are necessary to perform in the places of imprisonment in case of the risk of spread of the disease among the prisoners.

In addition to the above the organization of a properly functioning sanitary and hygiene service in penitentiary institutions will be important. Currently there is no such service and its functions are in no way compensated by other structural subdivisions.

The following recommendation of the international institutions is an indication of the fact that all actions that further restrict freedom (for example, medical isolation, reduction of visits etc) should:

- a) have a legal basis;
- b) be limited in volume and duration;
- c) be truly necessary and comply with the best scientific practices;
- d) neither be nor seem punitive.

This issue is very important, since currently there is a kind of “race” concerning the introduction of “strict” quarantine, with the maximum and often unreasonable restriction of rights and freedoms not only of the convicts, but also of free people. That’s why it is necessary to be very attentive to the question of conformity of the quarantine measures to the volume and intensity of the threat. It is necessary to realize while introducing them, that the persons sentenced to the deprivation or restriction of liberty are the persons subjected to coercive influence which is defined by a certain measure and legal expediency and is connected to the criminal offence perpetrated by the person. Therefore, the introduced measures should not be punitive in any case. However surprising that may be, it is much easier to implement in the penitentiary institutions than on freedom. For example, if there is adequate equipment, it is much easier to provide the convicts with the protective equipment in the institutions. It is much easier to provide constant temperature screening and medical examinations of the convicts in institutions etc. On the other hand, such measures are much more difficult in the

conditions of free society, since the limitations of human rights and fundamental freedoms should always have their reasons and limits. Regrettably, today we sometimes see unjustified and destructive prevention measures.

Concerning the convicts, in connection with the above recommendations, it is unclear why the control for the implementation of the plan of events to prevent the spread of COVID-19 among the convicts was given to the commander of military subdivision "CYCLONE-CENTER". Should the security forces be related to the implementation of anti-epidemic measures? How can the "experts" in counteracting mass riots effect the improvement of sanitary and hygiene conditions, the compliance of the employees and convicts with the quarantine rules?

The measures to track contacts in the penitentiary institutions are implemented in case of finding a disease confirmed by a test. However, based on logistical capabilities of the institutions and penitentiary service in general we can't talk of any specific efforts. The range of contacts is established based on the interviewing of the patient, his or her official duties (if the issue concerns the staff), a particular place of serving the sentence (if the issue concerns a detainee or a convict). According to the information of HC of SPSU, all contact persons are to be tested in cases of the confirmation of the disease by a laboratory. However, the number of tests of the staff of the penitentiary institutions, medical workers and prisoners is very small. According to HC data, only 784 tests were completed as of 31 July, 624 of them concerned the contact persons. There are 57 diagnoses confirmed by a laboratory, out of them 2 detainees, 3 convicts, 43 SPSU employees and 9 medical workers had the disease. One convict died, 40 persons recovered: 30 SPSU employees, 7 medics, 2 prisoners, 1 convict.

Those figures look highly questionable against the background of the spread of the disease in Ukraine. Indeed, HC of SPSU regularly publishes and updates online the statistical data about the number of discovered and confirmed cases of the disease, the number of recovered persons, as well as the total number of tests that were carried out. However, the fact that the process of collecting and processing the statistical data, the lack of methods of its collection and approved statistical forms that would allow to assess the representation and reliability of the collected information, as well as the dynamic demonstrating the spread of the disease in the institutions, raises doubts concerning the collected information.

So, the collected information about the spread of COVID-19 disease is not very reliable and does not allow to rely on it with confidence.

THE DIRECTION FOR THE COUNTERACTION OF THE SPREAD OF THE DISEASE IN PENITENTIARY SYSTEM

One of the most important recommendations points out the appropriateness of reduction of the number of prisoners (custody/parole for the people with low risk level, for example, for those that have grounds for their release, or who are on the stage of pre-trial investigation of the proceedings concerning lesser offences). It is also recommended to consider the possibility to use other preventive measures for the persons concerning whom the pre-trial investigations are ongoing and postponement of the execution of court sentence involving imprisonment. Draft regulations are currently being discussed and agreed upon concerning this recommendation which will enable or simplify the procedures for early release of convicts. It is a question of application of amnesty, parole and commutation of punishment.

Based on the above recommendations, bearing in mind the lack of proper funding for introduction of adequate anti-epidemic measures and given that penitentiaries are crowded places, the first and probably one of the most effective means of counteracting the spread of COVID-19 is the release of some categories of the convicts and detainees on appropriate legal grounds.

Such measure is one of the most common in other countries of the world. An example is France, where in March the Minister of Justice initiated the early release of several thousand convicts whose sentences were close to expiration (almost 10% of all imprisoned persons were released). In Iran more than 70 000 persons were released from the places of imprisonment, Turkey considers the law according to which 100 thousand prisoners would be released. It is planned to release 3.5 thousand prisoners in Great Britain and 30 thousand in Indonesia. Some other countries also resorted to such practice.

In Ukraine currently the main question in the direction of counteracting the spread of COVID-19 in penitentiary institutions should be the issue of release of the prisoners from serving their sentences. It is explained by the fact that avoidance of significant crowds will allow to not only unload penitentiary institutions and pre-trial detention centers, but also to decrease the risk of spread of the disease among the convicts, facilitate the tasks of the State Penitentiary Service, improve the sanitary and epidemiological situation in institutions by reducing the number of detainees as well as save the funds. Rather, not so much to save them as to allow them to be spent more efficiently for a smaller number of prisoners.

The most widespread and universal practice is the release under the law on amnesty, parole and commutation of the sentence.

Currently the Draft law No. 3181 "On Amnesty in 2020" is pending in the Verkhovna Rada of Ukraine, in our opinion, it must receive the status of an urgent one. In addition, the project concerning the amnesty is prepared by the Ministry of Justice and Cabinet of Ministers of Ukraine (No. 3397). According to the prognoses of the Ministry of Justice, slightly more than 3000 persons could be released under amnesty, constituting 9% of the total number of convicts. This number of convicts is too small, given the epidemiological situation. Therefore, we believe that it is necessary to expand the circle of the released persons and ensure a broader amnesty. In our opinion, the emphasis should be on full amnesty and not on the shorter sentence terms, and a norm should be introduced in the project that would allow to release the greatest number of convicts. Among the persons to be released there should be the persons of retirement age convicted of crimes of small and medium gravity as well as serious crimes, who have less than one year of punishment left at the moment of release. In addition, it is necessary to analyze and evaluate the possibility to release under amnesty the persons who are convicted of crimes not related to encroachment on human life and health (violent crimes), as well as the persons who constitute the vulnerable groups of people and can potentially be in the risk groups of contracting COVID-19. We also consider it possible to release under amnesty all prisoners, regardless of their crimes, who had three months or less left until their release. We mean the persons who are actually undergoing the "courses on the preparation for release" and who undergo measures of penitentiary probation. We consider it possible to add the persons sentenced to the restriction of liberty to the above categories, since they have the opportunity to move among the free citizens and constitute the risk group through which the disease can enter the institutions. In our opinion, they should also be released. Concerning them it is necessary to choose the most loyal approach in the issue of release and consider the question of wide use of replacing the unserved part of the sentence with a milder one that would not be related to the deprivation or restriction of freedom. The procedures concerning their release should also be as simplified and accelerated as possible.

Speaking of release under amnesty, we consider it necessary to draw attention to the persons convicted under the Art. 307 of CC of Ukraine among the persons who became the victims of human trafficking in Russian Federation. Most of them at the same time have victim status in criminal proceedings concerning the international crime syndicate that searched for and recruited the drug couriers who were the citizens of Ukraine seeking work in Russian Federation. Some of those persons received the official status of victims of human trafficking. Given the circumstances under which those persons committed the relevant offences and were sent to serve their sentences, we propose to apply to them such a humanistic measure as amnesty, namely, we propose to exclude Art. 307 of CC of Ukraine from the list of criminal offences for which the convicts are not subject to amnesty. Ukraine should make

that important step, guided by the social orientation of public policy and the fact of preparation of the law on amnesty. It would allow to untie the knot that was artificially created by criminal actions of the above-mentioned drug syndicate.

Concerning the second way of release of the prisoners — the parole, we consider it possible during the quarantine measures to temporarily turn to the practice of “automatic” release on that basis of the persons who formally met the two main criteria formulated in the law, namely: serving a certain part of the sentence and a proof that they are on the path of correction. We believe that in case of presence of formal signs of these criteria for such persons the release on parole should be done as quickly and easily as possible. Such release can also be carried out according to a court procedure, but in the shortest time possible. In that case the prolonging of the parole procedure can be fatal in some cases.

Kharkiv Human Rights Protection Group has developed comments to the Draft Law “On amendments to some legislative acts of Ukraine concerning the prevention of appearance and spread of coronavirus disease (COVID-19) in the penitentiary institutions and the places of pre-trial detention” (No. 3396). The Draft Law of Ukraine provides for the introduction of a mechanism for accelerated submission of materials to the court by the administrations of the penitentiaries concerning parole of the convicts. It is planned to create an automated procedure of submitting documents to the court while maintaining for the administration of the penitentiary the opportunity to submit objections concerning the possibility and expediency of parole of the convicts. Such objections become the subject of court examination with provision of the principle of adversarial proceedings and equality of subjects of criminal proceedings before the law and the court.

The above mechanism should become a logical conclusion to the changes proposed in the Draft Law and it would allow to solve the questions of parole in a quick, prompt and efficient manner.

In addition, we have offered to introduce amendments to part 3 of Art. 154 of CEC of Ukraine that consist of the following: in the period of quarantine on the entire territory of Ukraine in order to prevent the outbreaks and spread of particularly dangerous infectious diseases among the persons serving their sentences, the administration of a penitentiary body or institution, after the convict has served the part of his or her sentence that was prescribed by the Criminal Code of Ukraine, must within three days send to the court the materials concerning the parole of that convict. In case of objections concerning the release on parole for that convict the administration provides to the court their findings and reasoning that are examined and evaluated by the court while resolving the issue of the release on parole. The court makes a decision concerning the release on parole in time and according to the procedure determined by the criminal procedural legislation for the cases of quarantine on the entire territory of Ukraine.

In turn, the rejection of the proposed changes will nullify the whole idea of the Project, since Art. 154 of CEC which is proposed to be amended gives the administration of a penitentiary body or institution one month for consideration of the issue of the possibility and expediency of parole. This will make it pointless to use the institution of parole, since the procedure this lasting cannot be considered an efficient one in the conditions of quarantine.

In our opinion, the prompt introduction of those two practices will allow to release a significant number of the prisoners from among those who do not pose a significant public danger.

On 17 June the Profile Parliamentary Committee on law enforcement finally considered the draft laws Nos. 3181, 3397 and 3396 on its session. Unfortunately, it rejected the draft law No. 3396, and returned the draft laws No.3181 and No.3397 for refinement. On 1 July 69 members of the Parliament introduced the draft law No. 3765 “On the grounds and the range of persons to whom the amnesty applies in 2020”, which significantly decreased the range of persons eligible for amnesty compared to the draft Law of the Ministry of Justice No.3397. The consideration of that draft law will not take place until September 2020. Of course, this draft law will be primary from now on. Kharkiv Human Rights Protection Group has filed its observations and additions to the draft law.

Continuing the topic of reduction of the “population” of the places of imprisonment, the attention should be paid to the pre-trial detention centers. In fact, these institutions are a big problem since they contain a great number of people in appalling conditions which even with some effort will not be significantly changed in the short term. Therefore it is necessary to unload the pre-trial detention centers by avoiding such measure as detention for the “new” suspects, accused and defendants, as well as by canceling the chosen preventive measure concerning the persons that do not pose a significant level of public threat, do not create threat for society and concerning which the doubts about their avoiding of justice and court are minimal. We believe that such persons include all those who have committed negligent criminal offenses, the persons who committed the offences of low and medium gravity, as well as those whose terms of detention expire the next month and who do not demonstrate the conduct indicating the existence of significant public danger posed by such persons. In such cases it is advisable to involve the probation authorities that can provide the options of pre-trial reports that characterize the persons released from detention and assess the risks of re-offending for such persons.

The recommendation concerning the testing for COVID-19 (SARS-CoV-2) according to the recommendations of health care bodies also seems the one that can relate not only to the convicts. Regrettably, today Ukraine cannot provide such testing for the free citizens, not to mention the convicts. Therefore the recommendation concerning the testing refers to the long term prospect.

We have examined the recommendation concerning the prevention of the spread of the virus among the prison employees and the convicts and we determined that certain actions were performed in this direction and the efforts were made which regrettably are still not enough and are not always fully complied with. In this direction we consider it appropriate to provide the medical examinations and supervision over the personnel, as well as the proposition to the employees of the penitentiary institutions to refrain as much as possible from contact with the third parties that are not part of their usual circle of communication and professional activities, as well as comply with the strict requirements of the personal hygiene and protection.

The proposition for non-spread of the virus outside the prisons and to mitigate its effects in the domestic conditions fully concerns the issues of provision of the penitentiary service. Today the Ministry of Justice received the additional targeted financing in the amount of 3,6 million hryvnias that should be directed at procurement of protective equipment and other anti-epidemic measures. Of course, this amount is not sufficient for proper equipment and preparation of the system of institutions for the possible spread of the disease. Therefore the measures to expand the campaign concerning the release of the prisoners and detainees should be emphasized, as well as administrative and managerial measures concerning the optimization of the work of those institutions, the allocation of facilities for the isolation of the diseased, the implementation of measures to prevent persons and objects that can carry the virus with them from getting into the institutions, the optimization and adjustment of the medical provision, examinations and consultations for the convicts and employees of the institutions. All those directions of activities should be carried out in a complex manner and simultaneously.

The recommended alternative/compensatory strategies for visits to the penitentiary institutions or, conversely, other institutions and bodies (for example, court hearings in the form of video conference, online meetings, simplified access to telephone etc) are currently partially introduced in penitentiary institutions. And this direction is probably one of the easiest.

The international institutions recommend to resort to measures to maintain the health of the convicts and detainees. Well-known are the medical regulations on maintaining the immunity and sanitation. They include compliance with the regime of rest and activity, mandatory physical exercises (for example, in India there are yoga breaks for public sector office workers), mandatory stay in fresh air, healthy food, abandonment of bad habits, compliance with the rules of collective and personal hygiene, as well as hygiene of the facilities where the people are held. Unfortunately, such measures are not formulated in the regulations of the State Institution “Health Center” and today they are almost not implemented in the penitentiary institutions. This strange tendency is also noticed among the free

population. All the measures introduced are actually directed at preventing the citizens from maintaining their health. It is a question of restriction of stay in fresh air, the prohibition of visits to the parks and forest park zones, the prohibition of exercises on sports grounds etc. This is an unacceptable practice which does not help stop the disease or maintain immunity and which should be immediately reconsidered.

An important point among the recommendations is the provision of conditions for the released persons to have access to the relevant housing and health care services. It is a very important direction, oriented first of all towards the released persons and their social adaptation. In the conditions of the quarantine measures, the released convicts and detainees should have opportunity to be integrated in society at once, to have access to main vital benefits and be able to serve themselves or ask for help. In Ukraine there is the Law "On social adaptation of the persons who are serving or have served punishment on the form of restriction of liberty or deprivation of liberty for a certain term". It lacks the norms that regulate the order of actions of the subjects of social patronage in case of the introduction of the quarantine measures. But this does not absolve these entities from their responsibilities to implement the adaptation and patronage measures during the quarantine. Therefore, the Law includes the central and local executive bodies and local self-government bodies, as well as the enterprises, institutions and organizations, associations of citizens and physical entities conducting the social patronage in the list of persons that should support and assist the released people. Sadly, the examined regulations of the Ministry of Justice do not contain the provisions directed at organization or definition of the features of activities of the social patronage service. Therefore the mass release of the convicts from the penitentiary institutions can cause certain difficulties related to the social situation of those persons.

However, in connection with the release of the convicts and their adaptation the probation authorities charged with penitentiary probation should also be mentioned. Article 11 of the Law of Ukraine "On probation" defines that penitentiary probation is the preparation of persons serving their sentence in the form of restriction or deprivation of liberty for a certain term to be released with the purpose of employment and living arrangement of such persons at the chosen place of residence after release. The probation authority with the state authorities and self-government bodies help the convicts who prepare to be released in determining their place of residence after the release; their placement in the special institutions for the released persons; hospitalization to the health care institutions of the persons who require inpatient medical assistance; employment of persons who are able to work.

As could be seen, the probation authorities are in the epicenter of the activity of helping the persons released from the penitentiary institutions.

After all, in quarantine conditions it is necessary to pay attention that the released convicts should not appear on the street at the time when most services and institutions work in online mode or do not work at all. Otherwise we will receive the opposite situation, when the released persons would not be able to satisfy even the minimal social needs and faced with this, will replenish the risk groups on the possibility of contracting the disease.

Listening to the recommendation to ensure the opportunity to provide direct help to the convicts, we have to state that there is no such opportunity in Ukraine in the conditions of quarantine. Currently the possibility to implement the normal permitting procedures for the free citizens is complicated. After all, it is necessary to create an interim subdivision or service that would be able to urgently provide help to the convicts who found themselves in a difficult situation connected with the disease. It seems consistent to temporarily place such functions on the administrations of the penitentiary institutions, in the case of a convict who serves his or her sentence, or on probation authorities in case of a released person. This recommendation is closely related to the previous one. It is understandable that it is necessary to carefully analyze the possibilities of the completion of that task by said bodies and institutions, before driving the executors into a dead end with a normative instruction.

At the same time the international institutions propose to not abolish the practice of visits to the penitentiary institutions, but to find ways of alternative performance of their monitoring with the purpose of determining the real state of implementation of quarantine measures and compliance with them, and their effect on the status of the convicts. Based on all the above and given the negative tendency which consists of large-scale attack on observance and protection of human rights in the quarantine conditions, we believe this recommendation to be very important and appropriate. In Ukraine, in existing conditions, regrettably, there is no mechanism which would allow to provide efficient monitoring of compliance with all previous recommendations, as well as compliance with the norms of Convention for protection of human rights and fundamental freedoms. We believe that to implement this measure it is appropriate to grant the access to the penitentiary institutions to one or two persons who would have the opportunity to inspect the institutions and fix their real state of affairs. In addition, the provision of responses to written requests of the public ad state monitors and the distribution of questionnaires among the convicts remains possible. It is clear that such methods of monitoring of the institutions would not be able to provide the real picture, but it is still entirely possible to gather minimum information with their help.

CONCLUSIONS

Given that the infectious diseases, especially the respiratory ones, as well as those connected with respiratory organs, have much in common in terms of etiology, virulence, course and prophylactic, we would like to note that their prevention in the conditions of physical isolation from the society has a long negative history. Thus, many WHO manuals repeatedly determined the range of preventive measures, hygienic and medical measures, directed at counteracting the spread of infectious diseases (in particular, tuberculosis) among the convicts, and repeatedly reported weak and disappointing results of such events in several countries [WHO: Combating the tuberculosis in penitentiary institutions: a guide for program managers (Geneva 2000) at WHO/CDS/TB/2001/.281; Muller L. and others: Health in penitentiary institutions: WHO prison health guidelines (Geneva 2007); USAID/TBCTA/1CRC: Handbook on tuberculosis in penitentiary institutions (2009); CDC: Weekly summary of disease and lethality data, 7 July 2006 (Atlanta, Georgia 2006); CDC: Prophylactic and control of Tuberculosis in correctional places of imprisonment: Recommendations of CDC (Atlanta, Georgia 2006)]. In addition, today exists the well-formed case law of the European Court of Human Rights on the violations of Articles 2 and 3 of the European Convention on Human Rights, connected to the improper supervision over the convicts and detainees with tuberculosis. And the Court determined among the causes that lead to significant violations of human rights of those persons, the conditions of detention in the penitentiary institutions, in particular, the fact that they are overcrowded, they lack sufficient ventilation and daylight etc. After all, the Court found that those conditions reached the level of inhuman and degrading treatment (Melnik vs. Ukraine 72286/01; Malenko vs. Ukraine 18660/03; Vasyukov vs. Russia 2974/05; Hummatov vs. Azerbaijan 9852/05; Logvinenko vs. Ukraine 13448/07; Maharadze and Sikharulidze vs. Georgia 35254/07). It is not hard to understand that the current situation in the penitentiary institutions of Ukraine which is related to the prevention of spread of COVID-19 disease among the convicts provides all the grounds to foresee the possibility of emergence of such situations.

The above makes it possible to formulate the following general conclusions concerning the situation in penitentiary institutions and the introduction of measures to prevent the spread of infectious diseases among the convicts and detainees.

1. The studied regulations and results of anonymous interviewing of the convicts allow to state that the situation is critical in the penitentiary institutions. It was repeatedly discussed by human

rights organizations and some representatives of state authorities, but in a declared pandemic such situation becomes especially dangerous. We have to admit that in case of the disease entering the penitentiary institutions the chances to stop its spread or control it are illusory.

2. The adopted regulatory acts and implemented measures suggest that the central executive body that implements the policy in the sphere of execution of criminal punishments does not fully realize that the penitentiary institutions constitute perhaps the most vulnerable system which can be significantly affected by the disease, even with its insignificant spread in the country. We believe that the adopted acts are characterized with excessive schematicity. They lack the wording of the mechanisms of implementation of the measures that are planned to be implemented in the institutions, the sources of funding for those measures, the instruction for resource provision (both human resources and material and technical) for the established provisions.

3. We observe a very slow introduction and implementation of the relevant measures. In our opinion, most of the measures that should be implemented within the maximum of first two weeks of the quarantine are not yet implemented as of today or are on the stage of discussion.

4. It causes concern and surprise that the measures concerning the provision of personal protective equipment do not cover the convicts and detainees. They mostly cover the staff and medical employees of the institutions. There is also no provision for testing of the prisoners: there are neither funds for this, nor the possibility for the implementation by the medical institutions of the HC of SPSU.

5. We consider it necessary to pay more attention to such measures that can promote the strengthening of the immunity of the convicts, — in particular, physical exercises, walks on fresh air, proper food for the prisoners, the compliance with sanitary and hygiene norms and the requirements of the personal hygiene by the persons in the penitentiary institutions.

6. There is low executive discipline during the implementation of the measures provided by the relevant regulations and related to the prevention of spread of COVID-19 disease.

7. There is no control, interaction or support on the stage of implementation of the measures. We believe that during the implementation of the anti-epidemic measures it is necessary to achieve control that would not bear repressive or inspectional manner, but be the one that reveals the problems and contributes to their removal.

8. There is no complex developed algorithm of action of the State Penitentiary Service in case of emergencies, especially those that have a long course.

9. There is no norm (norm system) that would regulate the order of actions in such situations and which would have been carefully developed and tested in the conditions of unexpected and uncontrolled events instead of having a temporary emergency nature.

RECOMMENDATIONS

In connection with the above we believe it possible to provide the recommendations which in our opinion could be useful during the quarantine measures, as well as during the reformation of the State Penitentiary Service.

1. Adopt the regulations of permanent effect that would formulate the rules and patterns of behavior and the procedure for implementation of quarantine and regime measures in case of epidemic, as well as other conditions and events that could pose increased risk to life and health of the people in case of their congestion.

2. Study the issue of creation and functioning of the sanitary and epidemiological services in penitentiary institutions. Realizing that this issue is difficult and complex and requires coordination and agreement with the Ministry of Health, we propose to take the decisions in this area with involvement

of the specialists from the Ministry of Justice of Ukraine, as well as medical and sanitary and epidemiological specialists.

3. Carry out the largest possible campaign to reduce the number of convicts held in penitentiary institutions, as well as detained persons in pre-trial detention centers. In this direction we propose to focus on the convicted persons of retirement age, the persons convicted for the offences of low and medium gravity, as well as grave offences that had less than one year of serving the sentence left at the moment of release. In addition, it is necessary to analyze and assess the possibility to release under amnesty the persons convicted of crimes not related to encroachment on human life or health (violent crimes), as well as persons who constitute vulnerable groups of people and can potentially constitute the risk groups of contracting COVID-19. We also consider it possible to propose to release under amnesty all convicts, regardless of their crimes, that have three months until the end of their sentences or less. That is, those who are actually on the “courses for the preparation for release” and who undergo the measures of penitentiary probation. We consider it possible to add to the above categories the persons sentenced to the restriction of liberty who have the possibility to move among the free citizens and constitute a risk group through which the disease can enter the institution. In our opinion, they should also be released if more than half of their sentence has been served. Concerning them it is necessary to choose the most loyal approach in the question of release and consider the question of a broad use of replacement of unserved part of the sentence with a mildest one which would not be related to the deprivation or restriction of liberty. The procedures concerning their release should also be simplified and accelerated to the most possible extent.

4. The other direction of reducing the number of convicts and detainees is parole. We believe it possible during the quarantine measures to temporarily resort to the practice of “automatic” release on parole of the persons concerning which two main criteria that are formulated in the law are formally met, namely: their serving a certain part of the sentence and the existence of proof that they are on the path of correction. In case of existence of formal signs of those criteria for such persons the release on parole should be carried out in the quickest and easiest manner. Such release can also be carried out according to court procedure, but in the shortest terms.

5. Carry out the awareness-raising campaign the purpose of which should be informing about the virulence and etiology of the disease, its course, the ways of prevention and actions to be taken in case of contracting coronavirus, and not the distribution of statistical data about the coronavirus.

6. During the implementation of the quarantine and regime measures the attention should be focused on provision of the convicts with personal protective equipment. Given the lack of funding it is necessary to consider the question of introduction of self-manufacturing of the personal protective equipment at the production areas of the penitentiary institutions. However, in the prospect it is necessary to resolve the issue concerning the possibility to provide the convicts with personal protective equipment at the expense of the funds directed at prevention of the spread of the disease among the convicts.

7. Among the system of measures to prevent the spread of the disease among the convicts it is necessary to pay attention to the measures oriented at maintaining the health and immunity of prisoners and detainees (food quality, walks, exercises, additional cleaning, disinfection and compliance with sanitary and hygienic norms).

8. Assess the real state of readiness of the penitentiary system to the outbreak of COVID-19 disease. In particular, establish the existence of the places for the isolation of the diseased, develop an algorithm of actions in case of the spread of the disease in the institutions, define the resources for the availability of the medical workers that would be involved in working with the convicts, as well as the list of medical institutions where the convicts with severe course of the disease could be sent.

9. Provide the funding of the relevant directions in the activity of the penitentiary service with the aim of proper provision of the institutions with protective equipment and disinfectants.

10. Provide the measures to reduce the possibility to introduce the virus through the staff of the institutions. With that purpose in mind propose to the employees of the institutions to reduce their circle of communication during the quarantine and limit their own movement, outlining it by relatives and friends. Carry out the necessary disinfection, medical examinations and temperature screening of the staff of the institutions daily before the start of the work.

11. Limit the possibility of introduction of the disease by the convicts themselves, especially those who are able to leave the territory of the penitentiary institutions. With that purpose prohibit such persons to leave the territory of the institutions if it is not possible to release them, and limit their communication with the outside world. If it is impossible to implement such measures, provide the convicts with personal protective equipment and oblige them to keep social distance and quarantine limitations introduced for the free persons.

12. Provide the possibility to receive short visits from the relatives or other persons while meeting sanitary requirements.

THE SUGGESTIONS FOR ADDITIONS AND AMENDMENTS TO THE DRAFT LAWS OF UKRAINE “ON AMNESTY IN 2020” (Nos. 3181 AND 3397)

The suggestions are directed at expanding the range of the released persons. To this end, it is proposed to add to the categories of persons subject to release those who have reached the retirement age established by Article 26 of the Law of Ukraine “On the obligatory state pension insurance” on the day of entry into force of this Law, the disabled people of the first and second group, pregnant women and women with children under the age of three; persons convicted for a serious offence who at the moment of release had less than one year of the punishment left; people convicted of crimes not related to encroachment on human life and health (violent crimes) who had served at least a half of their sentence; the convicts who regardless of their crimes had three months of punishment left or less and who undergo the measures of penitentiary probation.

In addition, the proposals concern the removal of a discriminatory provision from the text of the law which suggests to release those who committed an especially grave offence and were sentenced to 12 years. Due to the fact that the appointment of twelve-year sentence cannot unequivocally suggest about smaller level of social danger of such persons, for example, comparing to those who were sentenced to 13 years we believe it possible to propose to expand this category of convicts by releasing those who committed a negligent particularly serious crime.

We would include among the changes the proposal to shorten the list of crimes for which the convicts are not subject to amnesty. These are crimes that in the current conditions force to pay attention to the priorities of human life and health (Art. 299 of CC of Ukraine), certain corpus delicti from among those that encroach on legal relations in the field of drug trafficking (Art. 307 of CC of Ukraine, Art. 229-1 of CC of Ukraine of 1960); parts 2 and 3 of Art. 309 of CC of Ukraine of 2001; parts 2 a 3 of Art. 229-6 of CC of Ukraine of 1960; part 2 of Art. 310 of CC of Ukraine of 2001; part 2 of Art. 229-3 of CC of Ukraine of 1960; Art. 314 of CC of Ukraine of 2001; Art. 229-15 of CC of Ukraine of 1960, Art. 315 of CC of Ukraine of 2001; Art. 229-5 of CC of Ukraine of 1960; Art. 316 of CC of Ukraine of 2001; Art. 229-16 of CC of Ukraine of 1960.

It is proposed to release from serving the sentence the persons sentenced to the restriction of liberty who have the possibility to move among free citizens and constitute a risk group through which the disease can enter the institutions (if more than a half of their sentence is served).

In addition an interim measure is proposed — the reduction of terms of consideration of the questions on release of persons under amnesty by the courts.

THE PROPOSALS FOR ADDITIONS
AND CHANGES TO THE DRAFT LAW OF UKRAINE
“ON AMENDMENTS TO CERTAIN LEGISLATIVE ACTS OF UKRAINE
ON THE PREVENTION OF EMERGENCE
AND SPREAD OF CORONAVIRUS DISEASE (COVID-19)
IN THE PENITENTIARY INSTITUTIONS
AND PRE-TRIAL DETENTION CENTERS”

The draft Law of Ukraine provides for the introduction of a mandatory and accelerated mechanism of submission of the materials to the court concerning release on parole of the prisoners by the administrations of the penitentiary bodies and institutions. It is planned to create an automatic procedure of submission of documents to the court while keeping the opportunity to submit observations on the possibility and expediency of the release on parole. Such observations should be the subject of court examination ensuring the principle of adversarial proceedings and equality of subjects of criminal proceedings before the law and the court.

The above mechanism should become a logical conclusion of the changes proposed by the project and would provide the ability to solve the issues of parole quickly, promptly and efficiently.

THE PROPOSALS FOR ADDITIONS
AND AMENDMENTS TO THE DRAFT LAW OF UKRAINE
“ON THE GROUNDS AND THE RANGE OF PERSONS
TO WHOM THE AMNESTY
IS APPLIED IN 2020” (No. 3765)

The aim of the proposals is to remove from the draft Law the inconsistent and discriminatory norms and widen the range of the released persons. In particular, the proposals concern the removal of the discriminatory provision that suggests to release the persons who committed a particularly grave crime and were sentenced to 12 years. Since the twelve-year sentence itself cannot undeniably state about a lesser level of danger such persons pose to society compared, for example, with the persons sentenced to 13 years, we consider it possible to propose to widen this category of the convicts by releasing those who committed a negligent particularly serious crime.

The changes include a proposal to reduce the list of crimes that do not the persons convicted for them to be released under amnesty. This concerns the particular crimes from the list of those which encroach on legal relations in the field of illicit drug trafficking (art. 107 of CC of Ukraine, art.229-1 of CC of Ukraine of 1960). Such proposal is due to the fact that among the persons convicted under Art. 307 of CC of Ukraine there are many people who became the victims of human trafficking in the Russian Federation. Most of them have the victim status in the criminal proceedings concerning the international drug syndicate which searched and recruited the drug couriers among the citizens of Ukraine who tried to find a job in Russian Federation. Some of those persons received an official status of the victims of human trafficking. Given the circumstances, due to which these persons committed the relevant crimes in Russia and were sent to serve their sentences, we propose to apply to them such measure of humanistic orientation as amnesty.

It is proposed to release the persons in correctional centers from serving the sentence if they served at least a half of their designated sentence. Being able to move among the free citizens, they constitute a risk group through which the disease can enter the institutions.

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Наукове видання

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ДО ПРОТИДІЇ ПОШИРЕННЮ COVID-1**

(англійською мовою)

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