

Legal and Social Foundations of the Resocialization Institute: The Experience of Ukraine and Foreign Countries

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Legal and Social Foundations of the Resocialization Institute: The Experience of Ukraine and Foreign Countries

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Abstract

The correction and resocialization of the convicted person are considered processes of positive changes that occur in his most personality and create readiness for self-directed obedient behavior, as well as the return of the convicted person to an independent and generally accepted social and normative life in society, that is, the successful reintegration into society after release and deprivation of a criminal worldview. This remains one of the most important issues debated by scholars to determine the best way to achieve the goals of corrections and rehabilitation of ex-offenders. In addition, resocialization is of fundamental importance for solving a wide range of social and socio-practical problems, not only for the prevention and eradication of crime but also for the prevention of social deviance in general. Since the reintegration of criminals into society is an urgent social problem, a detailed analysis of the process of resocialization of criminals is of practical importance. The methodological basis of the research was the dialectical, historical, analysis and synthesis, structural-functional, classification and grouping, logical-semantic, comparative-legal, and hermeneutic methods. The purpose of this article is the study of the concept and essence of the legal concept of resocialization, the study of the means of correction and resocialization of convicted persons, the analysis of the experience of foreign countries in the field of resocialization of convicts, the analysis of the priority directions of the Ukrainian social policy on resocialization of persons, and the outline of the ways to improve the state of resocialization of convicted persons in Ukraine.

Keywords: penitentiary system, resocialization, social adaptation, social rehabilitation, reintegration.

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Fundamentos jurídicos y sociales del instituto de resocialización: la experiencia de Ucrania y de otros países

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Resumen

La corrección y la resocialización del sentenciado son considerados procesos de cambio positivos que se producen en su personalidad y crean disposición para un comportamiento obediente y autodirigido, así como su retorno a una vida social y normativa independiente y generalmente aceptada en la sociedad; es decir, la reinserción satisfactoria en la sociedad tras la puesta en libertad y la desvinculación de una visión delictiva. Esta sigue siendo una de las cuestiones centrales debatidas por los estudiosos para determinar la mejor manera de alcanzar los objetivos de la reinserción y la resocialización de los exdelincuentes. Además, la resocialización tiene una importancia fundamental para resolver una amplia gama de problemas sociales y socioprácticos, no solo para la prevención y erradicación de la delincuencia, sino también para la prevención de la desviación social en general. Dado que la reinserción de los delincuentes en la sociedad es un problema social urgente, un análisis detallado de este proceso reviste una importancia práctica. La base metodológica de la investigación fueron los métodos dialéctico, histórico, de análisis y síntesis, estructural funcionalista, de clasificación y agrupación, lógico-semántico, comparativo-jurídico y hermenéutico. El propósito de este artículo es el estudio del concepto jurídico de resocialización, el estudio de los medios de corrección y resocialización de los condenados, el análisis de la experiencia de los países extranjeros en el ámbito de la resocialización de los condenados, el análisis de las direcciones prioritarias de la política social de Ucrania en relación con la resocialización de las personas y el esbozo de formas de mejorar el estado de resocialización de los sentenciados en este país.

Palabras clave: resocialización, sistema penitenciario, adaptación social, rehabilitación social, reinserción.

Introduction

When an offender returns to society after serving his sentence, he is obliged to comply with the norms and laws, but due to the peculiarities of his personal characteristics and difficulties in social adaptation, he cannot always comply with them. Therefore, the problem of resocialization of offenders has become an urgent problem in the work of penitentiary institutions.

Resocialization is a process by which individuals accept previously lost or incorrectly assimilated social norms and cultural values or re-establish them at a new stage of social development. In a sense, resocialization involves the assimilation of certain values and norms by the individual, which differ from previously acquired values and norms.

Resocialization of convicts can be effective only under the condition of maximum consideration of the peculiarities of the convicts' psyche, age, gender, state of health, interests, prospects for further life in society; creation of a system of individual and differentiated influences of social, pedagogical, psychological, and legal direction, taking into account the level and nature of social behavior, as well as the specifics of responding to specific psychological and pedagogical situations of convicts. In places of deprivation of liberty, resocialization is considered a holistic process of correction, education, re-education, and social and pedagogical support of the convict with the use of punitive, educational, occupational therapy, and other technologies in the institution for the execution of punishments.

During the implementation of resocialization, the main directions of penitentiary activity are determined, these being the assimilation of the convicted person of the norms, values, and basic knowledge necessary and sufficient for inclusion in life in society. At the same time, it puts forward special requirements for the conditions under which sentences are served. They should at least be sufficient for the convict not to lose the skills and behavior that are practiced in normal conditions of society. In the conditions of isolation from society, the convict's personality undergoes significant changes, as a result of which the values ensuring individual existence become the most important for him, and the values reflecting the social essence of a person become secondary. Many studies by both foreign and Ukrainian scientists testify to this.

Resocialization is a rather complex and controversial phenomenon, not only from the theoretical justification point of view but also from the standpoint of its practical application, especially for the staff and institutions of execution of sentences and workers who enter into work with convicts released from prisons. On the one hand, this situation can be interpreted as the result of the process of formation of the concept of “resocialization” of convicts, which is one of the main categories of national science of criminal law; at the same time, such a situation cannot have a positive effect on the practice of serving and executing the sentence in the form of deprivation of liberty.

In the context of the further reform of the criminal justice system in Ukraine, there is a growing need to research the issue of legal and social foundations of the resocialization of offenders, the priority direction of which is the application and implementation of international standards into the national penitentiary legislation, aimed at ensuring the successful resocialization of convicted offenders. Although this problem is reflected in the scientific publications of S. F. Denisov,¹ D. E. Zaika,² M. V. Vyunyuk,³ V. V. Vasylyk,⁴ I. S. Chaly⁵ and other authors, today it is not sufficiently resolved.

Since the reintegration of offenders into society is an urgent social problem, a detailed analysis of the concept, essence, and process of resocialization of criminals is of practical importance. At the same time, at the present stage of the national legislation development on the resocialization of offenders, especially research in criminology and criminal law is insufficient. This is explained by the fact that within the framework of scientific research, researchers mostly opted for narrowly defined issues related to the resocialization of specific categories of offenders (adolescents, women), or limited themselves to general approaches to determining the legal meaning of the concept of “re-socialization.”

¹ S. F. Denisov and D. E. Zaika, “International legal standards regarding the correction and resocialization of convicts,” *Bulletin of the Penitentiary Association of Ukraine* 1 No. 15 (2021): 49-66

² S. F. Denisov and D. E. Zaika, “Correction and resocialization of convicts on the territory of Ukraine in the 19th-20th centuries: Theoretical and practical aspects,” *Legality Problems* 153 (2021): 131-154.

³ M. V. Vyunyuk, *Criminal law regulation in Ukraine: Realities and prospects (analytical materials)* (Kharkiv: Pravo, 2020).

⁴ V. V. Vasylyk, “Correction and resocialization of those sentenced to deprivation of liberty in the system of means of implementing the tasks of criminal law enforcement,” *Legal Journal of the National Academy of Internal Affairs* 2 (2020): 33-39

⁵ I. S. Chaly, *Social rehabilitation of convictism* (Zaporizhzhia: Classical Private University, 2021).

The purpose of this study was to analyze the meaning and essence of the legal concept of resocialization, to investigate the means of correction and resocialization of convicts, analyze the experience of foreign countries in the field of resocialization of convicts, examine the priority directions of Ukraine social policy regarding the resocialization of persons, and outline ways to improve the condition and legislative regulation of the resocialization of convicts in Ukraine.

Materials and methods

The methodological basis of the study is the dialectical method, which was used during the study of the legal nature of the concept of “resocialization” in the field of criminal enforcement. With the help of the historical method, the sources of the formation of the resocialization of convicts were revealed. Using methods of analysis and synthesis, the place and role of resocialization of convicts in the process of recovery and return to life after serving the sentence is determined.

The structural-functional method, methods of classification, and grouping helped in studying the system of resocialization means. These methods were also used in structuring the forms of public influence on the process of correction and resocialization. The logical-semantic method was used to determine the essence and meaning of the interaction of the public with the institutions of execution of sentences regarding the exercise of public influence on the correction and resocialization of convicts.

The comparative legal method was used during the research on the foreign experience of implementing the process of resocialization of convicts and the possibility of its application in the national legislation. The hermeneutic method was used for the scientific analysis of the provisions of the local legislation concerning the resocialization of convicted persons.

In the course of the research, the following works were analyzed: S. F. Denisov and D. E. Zaika: “Correction and resocialization of convicts and related concepts”,⁶ M. V. Vyunyk: “Criminal law regulation in Ukraine: Realities and prospects”,⁷ M.

⁶ S. F. Denisov and D. E. Zaika, “Correction and resocialization of convicts on the territory of Ukraine in the 19th-20th centuries: theoretical and practical aspects,” *Legality Problems* 153 (2021): 131-154.

⁷ Vyunyk, *Criminal law regulation in Ukraine: realities and prospects*.

Yu. Kutypov: "Regarding some aspects of resocialization of convicts";⁸ "Problems of social adaptation and resocialization of persons released from prisons";⁹ and "Correction and resocialization of convicted juveniles: Ways of improvement";¹⁰ I. S. Yakovets, K. A. Avtukhov and M. Yu. Kutieпов: "Modern criminal enforcement policy of Ukraine: monograph";¹¹ V. V. Vasylyk: "Correction and resocialization of those sentenced to deprivation of liberty in the system of means of implementing the tasks of criminal law enforcement";¹² S. F. Denisov, T. A. Denisova and M. V. Puzyrevskiy: "Criminal law. Dictionary-reference";¹³ V. S. Shkrabyuk and O. V. Fedyk: "Social and psychological rehabilitation of persons sentenced to imprisonment";¹⁴ L. Forsberg and T. Douglas: "What is Criminal Rehabilitation?";¹⁵ I. S. Chaly: "Social rehabilitation of convicts";¹⁶ S. F. Denisov and D. E. Zaika: "International legal standards regarding the correction and resocialization of convicts";¹⁷ Y. V. Baulin and V. Ya. Tatsii: "Tasks of domestic criminal law science in the context of reforming the criminal legislation of Ukraine";¹⁸ V. O. Navrotskyi: "Cross-cutting and separate concepts of the criminal law of Ukraine";¹⁹ D. O. Peters: "International practice of penitentiary systems";²⁰ Yu. A. Vorobyev: "National features of the process of resocialization of convicts in the penal system of Germany at the current stage";²¹

⁸ M. Yu. Kutypov, "Regarding some aspects of resocialization of convicts," *Comparative and Analytical Law* 4 (2017): 228-231.

⁹ M. Yu. Kutypov, "Problems of social adaptation and resocialization of persons released from prisons," *Scientific Bulletin of the Uzhhorod National University. Series "Law"* 54 (2019): 156-159.

¹⁰ M. Yu. Kutypov, "Correction and resocialization of convicted juveniles: ways of improvement," *Legal Scientific Electronic Journal* 1 (2020): 222-226.

¹¹ I. S. Yakovets, K. A. Avtukhov and M. Yu. Kutieпов, *Modern criminal enforcement policy of Ukraine: monograph* (Kharkiv: Pravo, 2016).

¹² Vasylyk, "Correction and resocialization of those sentenced to deprivation of liberty in the system of means of implementing the tasks of criminal law enforcement."

¹³ S. F. Denisov, T. A. Denisova and M. V. Puzyrevskiy, *Criminal law. Dictionary-reference* (Chernihiv: Desna Polygraph, 2020).

¹⁴ S. Shkrabyuk and O. V. Fedyk, "Social and psychological rehabilitation of persons sentenced to imprisonment," *Young Scientist* 11 No. 63 (2018): 55-59.

¹⁵ L. Forsberg and T. Douglas, "What is Criminal Rehabilitation?," *Criminal Law and Philosophy* 1 (2020): 1-24.

¹⁶ Chaly, *Social rehabilitation of convictism*.

¹⁷ Denisov and Zaika, "International legal standards regarding the correction and resocialization of convicts."

¹⁸ Y. V. Baulin and V. Ya. Tatsii, "Tasks of domestic criminal law science in the context of reforming the criminal legislation of Ukraine," *Law of Ukraine* 2 (2020): 17-30.

¹⁹ V. O. Navrotskyi, "Cross-cutting and separate concepts of the criminal law of Ukraine," *Law of Ukraine* 2 (2020): 81-86.

²⁰ D. O. Peters, "International practice of penitentiary systems," *Domestic Jurisprudence* 1 (2017): 44-46.

²¹ Yu. A. Vorobyev, "National features of the process of resocialization of convicts in the penal system of Germany at the current stage," *Person: Crime and Punishment* 3 (2018): 285-289.

M. Mollaie, M. Ghayumzadeh and S. Mirkhalili: "Resocialization and Correcting Criminals in Iran's Criminal Policy."²²

Results

The idea of re-education in places of deprivation of liberty was put forward at the end of the 18th century by American Quakers. The educational influence was based on a religious background: while in solitary confinement, the person studied the Bible, which was supposed to contribute to his moral purification and repentance. One of the first and most complete definitions of resocialization was given by researchers in the field of penitentiary pedagogy, defining it as "the process of correcting a convict, forming law-abiding behavior in him, stimulating the formation of a personality in such a life position that corresponds to social norms, based on the restoration, preservation, and development of socially useful qualities during the execution of the sentence and the subsequent adaptation of the convict to the conditions of independent life at large."

Note that the term "resocialization" is mostly inherent in the legal opinion of the states of the former USSR. In European sources, the categories "social rehabilitation", "social adaptation", and "reintegration" are more often found. In our opinion, this is due to the fact that in foreign concepts resocialization is placed mainly in the paradigm of psychological, sociological, and pedagogical sciences, considering the criminological features of crime as a social phenomenon, the identity of the perpetrator, measures of crime prevention, etc. In the imagination of the bearers of everyday legal awareness, resocialization appears as a specific and rarely applied process, a phenomenon that occurs in special conditions and mostly has a negative color.²³

Despite the inherent nature of such everyday legal understanding, it is worth noting that practically all spheres of social life provide a place for resocialization in case of isolation of a person or a change in significant parameters of the system (not only the legal one) in which he is located. In such a case, the usual way of life of

²² M. Mollaie, M. Ghayumzadeh and S. Mirkhalili, "Resocialization and Correcting Criminals in Iran's Criminal Policy," *IAU International Journal of Social Sciences* 8 No. 3 (2018): 19-32.

²³ O. M. Yaroshenko et al., "Commercial secret as an object of labour relations: Foreign and international experience," *Journal of Legal, Ethical and Regulatory Issues* 21 No. 1 (2018).

an individual is violated, and contact is lost not with a separate aspect of his life, but the distance from a whole complex of social systems and ties occurs.²⁴

A broad interpretation of the concept under study envisages the possibility of resocialization for any person who at some stage of life has lost some social ties, or skills or has not acquired the necessary skills to continue to have a comfortable social existence; a narrow interpretation focuses attention on a separate group of people. This is particularly evident in the field of law, since, in the case of legal resocialization, they refer to persons convicted and released from penitentiary institutions as those who need to be re-integrated into society. It should be noted that their return to society must take place under the influence of other norms and be based on other ideas and values than those previously learned.

Resocialization as a complex institution combines various political, legal, and socio-cultural features and performs different roles depending on the orientation of scientific knowledge. In most of the sources studied, resocialization is understood as a specific process with a dynamic nature and characterized by two polar sides - internal (subjective) and external (objective). Such a distinction is based, first of all, on the subject composition of the process.

Within the framework of the internal process, it is appropriate to consider the conditioned active activity of the subject in the internally legal sphere - a person sentenced to serve a sentence in the form of restriction or deprivation of liberty for a certain period of time; released from the institution of execution of the sentence after serving the penalty; discharged from the institution of execution of the sentence based on an act of pardon or the Law of Ukraine "On the Application of Amnesty in Ukraine"²⁵, which is expressed in his awareness of the inappropriateness, illegality, social harmfulness and dangerousness of his behavior, in the desire to correct his behavior and in the conscious correction, assimilation of new norms, values, roles, skills, instead of outdated or incompletely mastered ones, re-assimilation, and improvement of socially desirable skills, etc.²⁶

²⁴ Kutyepov, "Problems of social adaptation and resocialization of persons released from prisons."

²⁵ Verkhovna Rada of Ukraine, "About the use of amnesty in Ukraine," [https://zakon.rada.gov.ua/laws/show/392/96-~~bp~~#Text](https://zakon.rada.gov.ua/laws/show/392/96-bp#Text) (1996).

²⁶ Denisov and Zaika, "Correction and resocialization of convicts on the territory of Ukraine in the 19th–20th centuries: Theoretical and practical aspects."

In this case, the individual is an active subject who is entrusted with all the work in the field of resocialization. The external process consists of the appropriate measures taken by other actors: the State (through the relevant agencies, companies, organizations, and institutions) and public institutions. In this case, the individual is the object of the various appropriate measures. The interaction of these aspects of the resocialization process creates normal conditions for the individual to function on a new level of social relations.²⁷

Resocialization is a long-term process that takes some time and includes several stages. It is based on a complex of psycho-educational, economic, medical, legal, and organizational measures aimed at forming the convict's ability and readiness to enter the normal conditions of society after his release from prison. Traditionally, two main stages of resocialization are distinguished - penitentiary (while serving the sentence) and post-penitentiary (adaptation after release). It is the existence of stages and concrete actions at each of them that speaks in favor of understanding resocialization as a process.

The study of the legislation in the field of resocialization shows that the legislator has provided for a wide network of bodies and organizations, which promote the social rehabilitation of persons both during the execution of the sentence and after their release from the penitentiary institution. These are local self-government bodies as subjects of social patronage, social protection bodies, internal affairs bodies, local executive bodies, public associations, and others.²⁸

The analysis of foreign sources gives reason to believe that in foreign practice resocialization is considered mostly from the point of view of sociology and psychology - as a process of changing consciousness and feelings, forming a new structure of behavior, a system of values, a positive self-concept, and involving an individual in socially useful activities.

Most countries in the European Union define resocialization as a set of measures carried out during the execution of sentences, the result of which is to enable the offender to adapt to the standards established by society and to continue to abstain from committing illegal acts. An important aspect of resocialization is not so much the forced weaning of an individual from negative skills, but the neutralization of

²⁷ Yaroshenko et al., "Commercial secret as an object of labour relations: Foreign and international experience."

²⁸ Vyunyk, *Criminal law regulation in Ukraine: realities and prospects*.

antisocial attitudes on the basis of a new positive social experience. Along with this, it should be noted that resocialization is the basic task of carrying out punishment.²⁹

Thus, the process of resocialization in Germany is based not so much on the creation of ideal conditions for re-education, as on the creation of normal conditions for the formation of fully law-abiding behavior in society in general. In German criminal law, there are special measures which are not punishments in nature, but are the legal consequences of committing an offense. Such a system of measures is both an embodiment of the idea of resocialization and a means of prevention.³⁰

For a long time, resocialization took place mainly in the field of social rehabilitation (education, employment, sports, and organization of free time) and was practically not regulated by legal norms. During the existence of such a trend, resocialization was quite “fragmentary.” The existence of a clear legal framework allows to determine its purpose, means, competence of authorities and institutions for execution of punishments, to plan the budget considering the needs of relevant institutions, etc. The introduction of the institution of resocialization into the legal system imposes a certain imprint of legal science, legal technique, and legal practice. As a result, this gives grounds for using a narrower concept, namely “legal resocialization.”

This category is derived from the concept of “legal socialization” and denotes the process of accumulating knowledge about the normative system of law and the formation of such a value worldview, in which the normative system of law itself is perceived as a value. Legal socialization is an unconscious process and begins from the moment a person enters the legal space of the state. Failure at any of the stages of legal socialization can lead to deviant behavior of a person and thus to the need for legal resocialization in the future.

Thus, resocialization occurs when socialization has not been sufficiently successful and is essentially a correction of its previous results. The presence of successful legal socialization (as well as resocialization) can be determined when individuals want to act as they should according to the requirements of the society in which they live, that is, when the internal imperative and external requirements of behavior coincide in the actions of a given person. This concept is based on the scientific achievements of social psychology.

²⁹ Yaroshenko et al., “Commercial secret as an object of labour relations: Foreign and international experience.”

³⁰ Yakovets, Avtukhov and Kutieпов, *Modern criminal enforcement policy of Ukraine: monograph*.

In legal science resocialization is understood as the process of reintegration of a deviant (released from a penitentiary, juvenile offender, convict, etc.) into the system of values existing in society.³¹ The Ukrainian legislator constructed the definition of resocialization as follows: resocialization is the conscious restoration of the convicted person to the social status of a full member of society; returning him to an independent, generally accepted social and normative life in society (Article 6 of the Criminal and Executive Code of Ukraine). It can be seen that the definition given by the legislator combines not only the signs of the external and internal sides of the resocialization process, but also elements of various humanitarian sciences (“conscious”, “generally accepted”, “social-normative life”).

The law considers the correction of a convict as a necessary condition for his resocialization. The means of correction and resocialization of convicts shall be applied taking into account the nature of the punishment, the guilty person, his character, the degree of public danger and the motives of the crime, as well as the behavior of the convict while serving the sentence.

At the same time, under such legislative wording, many issues regarding its content and essence remain unclear, in particular, regarding the level of mandatory resocialization, whether it is the right or the duty of the convicted person; whether the state should take measures for the resocialization of certain categories of persons, whether rehabilitation is an integral part of the sentencing process. It is quite natural that due to such legislative ambiguity, scientists have not yet formed a single coherent vision of the criminal-legal content of resocialization.³²

It is worth noting that there are some peculiarities in the legal understanding of resocialization. The first and most institutionalized feature is the legal definition and consolidation of resocialization in criminal law, which gives the concept of resocialization an official interpretation. Unlike in sociological, psychological, and pedagogical literature, where the terms “social adjustment, social rehabilitation, correction, re-education” are used synonymously to denote the concept under study, in law the category “resocialization” requires a clear separation from related concepts (as is the case in the Criminal Executive Code, which provides for two different concepts - resocialization and correction). This is the second important feature of the legal understanding of resocialization.

³¹ Verkhovna Rada of Ukraine, “Criminal and Executive Code of Ukraine,” <https://zakon.rada.gov.ua/laws/show/1129-15#Text> (2004).

³² Kutypov, “Correction and resocialization of convicted juveniles: ways of improvement.”

However, there are certain gaps in modern national legislation: in some legal acts, the concept of resocialization is merged with the concept of social adjustment; in others, these terms are distinguished together with the concept of social rehabilitation. Thirdly, at the legal level, resocialization is only possible for persons who have experienced isolation from society, that is, for dissocialized persons. These are persons sentenced to serve a sentence in the form of arrest, detention in the disciplinary battalion of military personnel, restriction of freedom, deprivation of liberty for a certain period; released from the institution of execution of punishment after serving the sentence, released from the institution of execution of punishment on the basis of an act of pardon or the Law of Ukraine “On the Application of Amnesty in Ukraine.”³³

The fourth characteristic is based on the fact that convicted persons will sooner or later return to normal living conditions; therefore, resocialization applies to persons who are subject to a restriction of their freedom, but this restriction is of a temporary nature and in no way applies to persons sentenced to life imprisonment. Regarding the latter, it should be noted that such persons may also be subject to resocialization, but only from the point of view of adapting to the environment of the penitentiary institution. All convicts go through this stage, but for those sentenced to a certain term it is only the first stage of resocialization, while for those sentenced to life imprisonment it is the only stage.³⁴

Recommendation N Rec (2003) 23 of the Committee of Ministers of the Council of Europe “On the Execution of Sentences in the Form of Life Imprisonment and Other Long Terms of Imprisonment by the Administrations of Places of Deprivation of liberty”³⁵ sets out the principles and mechanisms for the adaptation of such sentenced persons to the conditions of the institution where the sentence is to be executed. In particular, the principle of normalization (life in prison should be as close as possible to the conditions of life in society) and the progressive principle (individual planning of the execution of punishment for those sentenced to life

³³ Verkhovna Rada of Ukraine, “About the use of amnesty in Ukraine,” <https://zakon.rada.gov.ua/laws/show/392/96-бп#Text> (1996).

³⁴ Vasylyk, “Correction and resocialization of those sentenced to deprivation of liberty in the system of means of implementing the tasks of criminal law enforcement.”

³⁵ Committee of Ministers of the Council of Europe, “Recommendations N Rec (2003) 23 'On the implementation of punishment in the form of life imprisonment and other long terms of imprisonment by the administrations of places of deprivation of liberty'”, <https://xn--80aagahqwyibe8an.com/radi-ministriv-komitet/rekomendatsiya-rec-2003-komiteta-ministrov-2003-21955.html> (2003).

or long-term imprisonment should be aimed at protecting positive development through the penitentiary system) have been established.

Dividing the understanding of resocialization into different scientific paradigms allows to conclude that resocialization is most fully expressed by understanding it as a process. It is important to note that for a better understanding of this legal institution, the use of the integration approach is of exceptional importance. According to Art. 6 of the Criminal Enforcement Code (CEC) of Ukraine, the main means of correction and resocialization of convicts are the established order of execution and serving of punishment (regime), community service, social and educational work, general and professional training, and public influence.³⁶

The regime itself is an instrument of resocialization and punishment of convicted persons while serving their sentence. Execution and serving of criminal punishment are carried out under the conditions of the regime established in places of deprivation of liberty, which, being a certain order of execution and serving of punishment according to the legal content, is regulated by the norms of the criminal enforcement law. The mode of serving a sentence is a complex legal phenomenon, which should have a clear definition at the normative level of the concept, since the mode of execution and serving of a sentence in the form of deprivation of liberty should ensure the performance of the most important functions, the achievement of which determines the goals of the sentence.³⁷

The next means of resocialization is probation. This is the preparation of persons serving a sentence in the form of restriction of liberty or deprivation of liberty for a certain period of time prior to release for employment and provision of accommodation for such persons after release in the chosen place of residence. The essence of penitentiary probation is that the law imposes an obligation on social security bodies to help released persons by implementing a complex of legal, economic, organizational, psychological, and other measures, including the provision of services aimed at social adaptation. Penal probation is the creation of certain conditions for resocialization, not the correction of a person sentenced to imprisonment for a certain period of time.

³⁶ Verkhovna Rada of Ukraine, "Criminal and Executive Code of Ukraine."

³⁷ Kutypov, "Regarding some aspects of resocialization of convicts."

It should be noted that the effectiveness of probation directly depends on the degree of correction of a person sentenced to imprisonment. In other words, if correction is not achieved, the creation of conditions for social adaptation will have no effect on the offender's resocialization - his behavior will continue to be criminogenic. It follows that the achievement of the goal of penitentiary probation depends on the application of adequate means, which creates a certain "subsidiarity" of probation as a tool. Nevertheless, we believe that this instrument deserves to be included among the most important ones, since it lays the foundations for resocialization and, in the case of correction, it directly helps the convicted person to return to society as a full member after serving a prison sentence.

Next, we will look at the socially useful work of convicts, noting that the legislator assumed that work is an important and powerful means of influencing a person, his consciousness and lifestyle, since involvement in work is primarily aimed at teaching convicts to see work as a positive and necessary part of their lives, including further life in freedom. This point of view is supported by the fact that, in general, work brings about positive changes in the personality of the convict, contributes to his correction, and enables him to acquire positive skills that can be used for a certain period of time after his release from prison.³⁸

Attention should be paid to such means of correction and resocialization as social and educational work. According to Part 1 of Art. 123 of the CEC of Ukraine, social and educational work is a purposeful activity of the personnel of penal institutions and other social institutions, thanks to which the goal of correction and resocialization of convicts is achieved.³⁹ Social and educational work contributes to the formation and consolidation of the convicts' desire to engage in socially useful activities, conscientious attitude to work, observance of laws and other rules of behavior adopted in society, as well as to the raising of their general educational and cultural level. In our opinion, this definition of social and educational work is quite successful, as it emphasizes that it is a purposeful activity of the relevant state bodies. It also sets out objectives to be achieved, which can be used as criteria for assessing the degree of correction and resocialization of a person sentenced to a term of imprisonment.

³⁸ Denisov, Denisova and Puzyrevskiy, *Criminal law. Dictionary-reference*.

³⁹ Verkhovna Rada of Ukraine, "Criminal and Executive Code of Ukraine."

Education and vocational training would be another important means of correction and resocialisation. According to Part 1 of Art. 125 of the Criminal Code of Ukraine⁴⁰ in the colonies, the laws of Ukraine “On education”⁴¹ and “On general secondary education”,⁴² provide convicts with access to free general secondary education. General education and vocational training are carried out to promote the development of the personality and its correction and consist not only in providing a system of knowledge about the laws of nature and society, expanding the boundaries of the worldview, promoting the mental development of convicts, involving them in science and technology, but also in directly influencing the education of convicts.⁴³

The most problematic, in our opinion, is such a means of correction and resocialization as public influence. It should be immediately added that the Central Committee of Ukraine in Art. 5 establishes public participation in the activities of law enforcement bodies and institutions as a principle of criminal prosecution, execution, and enforcement of punishments in cases provided for by law. At the same time, the CEC of Ukraine does not contain a clear definition of what should be understood by public participation, it is only stated in Art. 25 of the Criminal Procedure Code (CPC) of Ukraine (Verkhovna Rada of Ukraine 2013) the thesis that: “Associations of citizens and mass media, religious and charitable organizations, natural persons, in the manner established by this Code and the laws of Ukraine, may assist bodies and institutions for the execution of punishments in the correction of convicts and the implementation of social and educational work.”⁴⁴

Two conclusions can be drawn directly from the provisions of the above-mentioned article: social influence is closely related to the performance of social-educational work and, *de facto* can take place only during the performance of this social-educational work; the legislator, in constructing this norm, operates with the category “can assist”, which indicates that the public does not directly participate in correction and resocialization, but can only contribute to it. The logical question is why, despite its subsidiary nature, social influence is established as the main means of correction and resocialization?

⁴⁰ Verkhovna Rada of Ukraine, “Criminal codex of Ukraine,” <https://zakon.rada.gov.ua/laws/show/2341-14#Text> (2001).

⁴¹ Verkhovna Rada of Ukraine, “About education,” <https://zakon.rada.gov.ua/laws/show/2145-19#Text> (2017).

⁴² Verkhovna Rada of Ukraine, “About general secondary education,” <https://zakon.rada.gov.ua/laws/show/651-14#Text> (1999).

⁴³ Shkrabyuk and Fedyk, “Social and psychological rehabilitation of persons sentenced to imprisonment.”

⁴⁴ Verkhovna Rada of Ukraine, “Criminal Procedure Code of Ukraine,” <https://zakon.rada.gov.ua/laws/show/4651-17#Text> (2013).

It should also be noted that according to the above-mentioned gender, the public can assist by the procedure established by the Central Committee of Ukraine. Thus, Art. 5 of the Criminal Procedure Code of Ukraine and Art. 25 of the Criminal Procedure Code of Ukraine are the only legal norms concerning public influence and public activity. In the CEC of Ukraine there is no mechanism of public participation, there are no fixed forms, which indicates the absolute ineffectiveness of such a basic means of correction and resocialization due to careless legislative regulation.⁴⁵

When executing punishments, the State, in the form of the competent authorities, must simultaneously assist persons released from prisons in choosing a socially useful (or socially acceptable) way of life to prevent the repetition of criminal acts. Therefore, properly organized preventive work among convicts plays an important role in the process of resocialization - both at the stage of serving the sentence and immediately after release from prison. Prevention in this context should be understood as a set of measures aimed at the timely identification and elimination of negative factors that have occurred or may potentially occur and cause the recurrence of intentional crimes by persons sentenced to long terms of punishment.

The experience of foreign countries will be analyzed. In the penitentiary systems of European countries, general education and vocational training, psychological support programs, as well as production work are considered the main means contributing to the resocialization of criminals. In most countries, attention is paid to social work with convicts, since convicts should return to society in a way that it is as easy as possible for them, as well as the least burdensome for relatives, the community, and the state.

First of all, it should be noted that in several countries an important role in the resocialization of convicts is played by public associations, private organizations, volunteers, there are institutes of guardianship councils (especially in Germany), priests through the service of prison chaplains in the USA, Germany, the Czech Republic, and Estonia. For example, in Great Britain, in addition to the state structures, there is a developed network of non-state structures controlled by the state and aimed at developing specific rehabilitation programs, implementing them, providing social assistance, and hiring the necessary specialists on a public basis to provide various assistance to convicts. In these countries, the state also actively participates in resocialization and finances these processes.⁴⁶

⁴⁵ Forsberg and Douglas, "What is Criminal Rehabilitation?"

⁴⁶ Chaly, *Social rehabilitation of convictism*.

In 2009, the American state of Illinois passed a law to reduce crime, by providing additional funding to counties with lower recidivism rates among ex-prisoners. The main tool for resocialization in French correctional institutions is to provide inmates with vocational training for further employment. Schooling is compulsory until the age of 16. Each year, up to 28,000 convicts undergo training courses, including 800 or more who receive full-time higher education in the county's various higher education institutions, and up to 3,000 people who study by correspondence.

In Germany, on the other hand, more than 50% of convicts have no education (not even primary or public school). This is corrected by various forms of individual work with each convict, as well as a whole range of different educational programs. Convicts can also receive higher education. In Norway, 20% of convicts study at higher education institutions. They offer lectures and various forms of independent work, which guarantees full employment of prisoners.

In many countries the stage of resocialization is provided by the probation service, which can implement one of two models: prosocial, when the employee mainly performs the function of a social worker, interacts with the convict's family, the convict himself (Germany, France, the Netherlands); supervision, when an officer supervises a parolee and ensures that the parolee behaves according to the conditions of release (sentence) (UK, USA).

The Mandela Rules state that the regime adopted in the institution serving the sentence should be aimed at minimizing the difference between life in prison and life in freedom, which destroys the prisoner's sense of responsibility and awareness of human dignity. To implement the recommended norms of the Mandela Rules, the above-mentioned norm is duplicated in the Criminal and Executive Code of Ukraine.⁴⁷

In this regard, the following example deserves attention. In Germany, many prisons have open sections for people who have been sentenced to short terms and have not committed serious crimes. Other convicts are transferred here from regular prisons a year before their release. There are no bars in the mentioned prisons, you can cook food in the kitchen and call your relatives. Once a week, convicts have the right to spend a day with their families.

⁴⁷ Denisov and Zaika, "International legal standards regarding the correction and resocialization of convicts."

After release, a semi-liberal regime is applied, for which special institutions are opened, and convicts are sent there 6–9 months before release. At the same time, convicts live according to the principle of self-sufficiency, and work outside the correctional institution; they are allowed to find a job on their own or on the basis of a contract concluded between the penitentiary and one of the enterprises.

The Third United Nations Congress on the Prevention of Crime and the Treatment of Prisoners held Stockholm in August 1965, noted that in many countries, to liberalize the regimes of correctional institutions and resocialize convicts, short-term leave is widely used. It is not just a benefit or a reward that can be earned by a conscientious attitude to work and compliance with the rules established in places of deprivation of liberty. Granting vacations is one of the methods of returning offenders to normal life. Vacations serve to gradually accustom the prisoner to the idea of a free life and to convince him that he still belongs to the society to which he will eventually have to return.

Yes, in Canada, the procedure is used, according to which convicts are often allowed to leave the prison in good faith. Under the “gradual release” method, a convict who is on parole or at the end of his sentence is allowed to leave prison daily or overnight for a certain period of time (from one week to three months prior to release). “Gradual release” usually includes permission to visit shops, go to a bank to open a current account or register with a national employment office, attend church, visit friends, and participate in sports and various forms of entertainment. Sometimes convicts are allowed to leave the prison every day to find permanent work.⁴⁸

In Switzerland, to improve the chances of prisoners on the labour market after their release, small production enterprises are created in correctional institutions, some of which are tax-exempt. In Finland, convicts are also allowed to have vacations, during which they leave places of deprivation of liberty, and there are no time or number restrictions on visits to relatives. In Thailand, there is an annual week-long campaign called “Open Door Week”, during which convicts have the right to an unlimited number of visits with their relatives.

⁴⁸ Baulin and Tatsii, “Tasks of domestic criminal law science in the context of reforming the criminal legislation of Ukraine.”

In addition, various agencies and services are being created in the states, to promote the resocialization of convicts. For example, in Finland, the Association for Probation and Aftercare works successfully to help solve the social problems of citizens who have been conditionally released from places of deprivation of liberty. Functionally similar services operate in South Korea and China. In Great Britain, there is an institution of “mentorship”, the essence of which is to help solve the problems faced by people released from prisons. Mentors can be both specially trained social workers and volunteers.⁴⁹

In our opinion, the following are the most positive experiences of foreign countries, which Ukraine should follow when developing a policy in the field of resocialization of convicts. Increasing the role of general education and vocational training, programs of psychological support, productive work, and social work with convicts. Creation of open units without bars, with a kitchen where they can prepare their food, for people sentenced to short terms and who have committed a non-serious crime, and convicts who have only one year left before their release. Application of a semi-free regime before release in special institutions, where convicts are sent 6-9 months before release and live on the principle of self-service, work outside the correctional institution, are allowed to find a job on their own, or be employed on the basis of a contract concluded by the institution with one of the enterprises.

Short-term vacations are also a very positive practice and one of the methods of returning offenders to normal life. Vacations serve to gradually accustom the prisoner to the idea of a free life and to convince him that he still belongs to society. Another good practice that should be borrowed from Ukraine is the creation of small production enterprises that are partially exempt from taxes.

We are convinced that for the sake of an effective program of resocialization and post-prison adjustment of convicted persons, a separate legal act (the Law of Ukraine “On Resocialization and Post-Penitentiary Adaptation of Persons Serving or Having Served a Sentence of Imprisonment for a Certain Term”) should contain a declaration, norms, and regulations that would be mandatory. After all, in our opinion, based on the analyzed sources, resocialization and post-penitentiary adaptation are the most important elements of prevention of antisocial behavior and recidivism.

⁴⁹ Navrotskyi, “Cross-cutting and separate concepts of the criminal law of Ukraine.”

Discussion

The formation of a high-quality system of resocialization of ex-convicts depends on the state policy. Having analyzed the priority directions of Ukraine's social policy regarding the resocialization of persons released from prisons, it can be concluded that they include the following: First, the implementation of social programs for the social adaptation of ex-prisoners is connected with the establishment of normal social ties and relations between the individual and society. This direction also includes cultural and educational programs for vocational training and retraining of persons who have served their sentences and expressed a desire to receive education; medical and recreational measures for those who need medical assistance in connection with deteriorating of health as a result of diseases acquired in prisons, etc.

Secondly, the implementation of psychological adaptation programs to form standards and rules of behavior and social norms existing in society and lost during the stay in social isolation in a person released from prison. Thirdly, the implementation of programs for labour adaptation of a person released from prison, related to employment, vocational training and retraining, adaptation to the work team, the formation of a positive attitude of the team to him, material and moral methods of encouragement to work.⁵⁰

Fourthly, the implementation of legislative projects on resocialization of persons released from prisons. Such as development and adoption of the Law of Ukraine "On directions of state social policy in the field of social adaptation of persons released from prisons", development of the program for social adaptation and resocialization of such persons, etc.

The implementation of the social policy regarding the post-penitentiary resocialization of persons released from prisons should be carried out by appropriate social services or organizations with the use of appropriate social technologies. It is worth noting that when developing technologies for social work with former convicts, the following factors should be taken into account: the degree of personality deformation as a result of the influence of the criminal subculture; the length of time spent by a person in social isolation; the number of criminal sentences received by the person, related to deprivation of liberty; the presence of negative personal characteristics formed as a result of the regime of detention of the convict in places of deprivation

⁵⁰ Peters, "International practice of penitentiary systems."

of liberty; the level of socio-legal neglect of the individual; the features and moods of the person's immediate social environment, primarily the family.⁵¹

The development of social work technologies with ex-convicts should be carried out by specialists of social protection institutions whose activities are aimed at post-penitentiary resocialization. In our opinion, in addition to the areas of work with ex-convicts, the following areas will be important: social work with the ex-convict's family; activity aimed at reducing the stereotyping and branding of the ex-convict's image in society; prevention of such phenomena as romanticizing the lifestyle of persons serving sentences in places of deprivation of liberty and the criminal lifestyle among teenagers and young people.

The problem of returning to a law-abiding life is very difficult, and it becomes even more difficult when a person has been convicted more than once and has spent a long time in prison. It is known that isolation from society causes the loss of socially useful contacts and deprives the person of independence in solving household issues. Professional help in overcoming social and personal problems for persons released from prison is an important condition for their effective resocialization, which in turn is a guarantee to prevent recidivism.⁵²

Conclusions

After a comprehensive study of the legal foundations of the resocialization regime, the following conclusions can be drawn: The return of ex-convicts to the conditions of social life is a complex and multifaceted phenomenon called resocialization. Resocialization is one of the key areas of activity of penal enforcement bodies, the effectiveness of which often depends on the quality of its implementation and on the state policy in the field of law enforcement.

Resocialization is the main field of activity of correctional institutions. It involves the assimilation of basic norms, values, and knowledge necessary and sufficient for integration into society. This will help the offender to fulfill some of the roles necessary for normal life with relative success in the early stages, and in the future will provide a basis for restoring the proper range of functioning as a member of normal society.

⁵¹ Vorobyev, "National features of the process of resocialization of convicts in the penal system of Germany at the current stage."

⁵² Mollaie, Ghayumzadeh and Mirkhalili, "Resocialization and Correcting Criminals in Iran's Criminal Policy."

It is necessary to consider the positive experience of European countries in regulating the main organizational aspects of resocialization. Increasing the role of general education and vocational training, programs of psychological support, productive work, and social work with convicts.

Creation of open units without bars, with a kitchen where people can prepare their own food, for persons sentenced to a short term and who have committed a non-serious crime, and for convicts who have only one year left before their release. Application of a semi-free regime before release in special institutions, where convicts are sent 6-9 months before release and live on the principle of self-sufficiency, work outside the correctional institution, are allowed to find a job on their own, or be employed on the basis of a contract concluded by the institution with one of the companies.

Short-term vacations are also a very positive practice and one of the methods of returning offenders to normal life. Vacations serve to gradually accustom the prisoner to the idea of a free life and to convince him that he still belongs to society. Another good practice that should be borrowed from Ukraine is the creation of small production enterprises that are partially exempt from taxes.

Suggestions

In our opinion, the legislator should also address the issues of the content and essence of resocialization, in particular, regarding the level of compulsory resocialization: whether it is the right or duty of the convicted person; whether the state should take measures for the resocialization of certain categories of persons; whether rehabilitation is an integral part of the sentencing process. As a result of such legislative ambiguity, scientists have not yet formed a unified vision of the criminal-legal content of resocialization.

Attention should also be paid to overcoming the following gaps: in some normative legal acts, the concept of resocialization is merged with the concept of social adaptation, in others, these terms are delimited together with the concept of social rehabilitation. In addition, the legislator should define in legal acts what is meant by public participation in the process of resocialization, as well as the mechanism of public participation, because there are no fixed forms, which indicates the absolute ineffectiveness of such a basic means of correction and social rehabilitation due to careless legislative regulation.

The conclusions and proposals presented in the study can be used: in the scientific research field - for further study of issues related to the correction and resocialization of convicts; in rule-making activities - to clarify and improve certain norms of the criminal law enforcement legislation of Ukraine; in the educational process – for preparation of educational and methodical materials for teaching.

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