

Assessment of Risk of Committing New Offences as Determinant of Prisoner Classification

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Abstract

The main purpose of this article is to hold an independent study of some international regulatory initiatives concerning the mechanism of assessment of the risk of committing new offences and the main area of up-to-date legal regulation of classification of convicts and assessment of the risk of committing new offences by convicts in Ukraine. The chosen research subject involved the application of the comparative law approach as the main method, combined with a number of general scientific (dialectical, historical, systemic, statistical) and specific scientific (formal law, specific sociological) cognition methods. The conclusion drawn by the author allowed to form a conceptual understanding of the assessment of the risks of committing new offences as a determinant of the classification of convicts. A brief overview of the implementation and evolution of this regulation obviously demonstrates that Ukraine tries to look up to borrowed progressive approaches to the work with convicts and, in particular, it introduces a system of assessment of risk and needs of convicts using automated conclusion algorithms to reduce recidivism and new crimes. The relevant legal mechanisms proposed by scientists can be implemented in the legislation of Ukraine regulating the procedure of assessment of the risks of committing new offences by convicts.

Keywords: Correctional facilities, Reclassification, Penal law, Discretionary restrictions, Legislation

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Introduction

The issue of differentiation of convicts serving sentences is still one of the most important issues in terms of optimization of corrective actions during serving sentences. In this sense, classification is an ongoing process of collecting and assessing information about each convict in order to determine the risk and need for imprisonment, medical treatment, programmes and assignment of corrective labour, which tries to balance the interests of convicts, departments and the public preparing convicts to return to the society. The classification of prisoners at work (Holovkin, & Stepanyuk, 2019) means the segmentation of convicts into approximately similar categories that has specific features, in order to develop the environment that would be most suitable for achieving the objectives of punishment. Classification solutions can be divided into several types: initial security classification, housing programme and work assignments and reclassification. The main purpose of convict classification systems is to find differences between convicts (Bakishev et al., 2019).

The results of the study show that the use of subjective approaches to the classification of convicts often results in the so-called overstatement of the category, which results in the detention of convicts in excessively strict conditions and hinders the reintegration efforts (Haltsova, 2019). For this reason, an objective and evidence-based classification system with clear processes and procedures should be considered as an important factor in protection of the rights of prisoners and ensuring of transparent and accountable administration of prisons in general (United Nations, 2020).

The consideration of the main issues related to the classification of convicts and assessment of the risks of commitment of new crimes by convicts as a determinant of the relevant classification is rather relevant. To achieve the objective, the following tasks were set: 1) to consider the major features of the current state of legal regulation of the classification of convicts in Ukraine and to assess the risks of commitment of new crimes by convicts; 2) to consider international initiatives and recommendations of lawyers on the mechanism of assessment of the risks of commitment of new crimes by convicts with a view to their possible implementation in the relevant procedure in Ukraine.

Materials and Methods

This article was written with the use of the basic provisions of philosophy, sociology, psychology, general theory of law. The chosen research subject involved

the application of the comparative law approach as the main method, combined with a number of general scientific (dialectical, historical, systemic, statistical) and specific scientific (formal law, specific sociological) cognition methods. The methodological basis of the study is the dialectical method of study of legal phenomena, which made it possible to identify the special features of enforcement of prison sentences, special features and determinants of classification of convicts in accordance with the provisions of the current legislation of Ukraine. As part of the approbation of the concepts of comparative jurisprudence, the comprehensive nature and effectiveness of legislative regulation of the rights of convicts serving sentences in Ukraine have been assessed, and foreign innovations to improve the classification of convicts and special features of risk assessment have been researched. Comparative research in the chosen subject area allowed to focus attention on legislative gaps in the Ukrainian legislation, to form comprehensive author's proposals to reform the current legislation and to summarise the law enforcement practice. The historical method allowed to trace the stages of development of the rights of convicts in the territory of Ukraine, to specify the features and criteria of the existing classifications of convicts in our country, to identify facts of violation of the rights of convicts and existing constrains in the classification process. The systemic and formal legal analysis was used to research the provision of the current legislation of Ukraine and international recommendations on the classification of convicts and to develop a comprehensive author's idea of determinants of the classification of prisoners. It was stated thanks to the application of this method that the assessment of the risks of commitment of new crimes produced a direct effect on the results of classification of prisoners in the territory of Ukraine.

Due to the application of the specific sociological and statistical methods, data on convicts' appeals concerning violations of their rights as a result of their classification, results of surveys of convicts and officers of the correctional system were obtained and interpreted. In addition, the statistical method with the use of the expert evaluation method allowed made it possible to carry out a selective generalization, consolidation, grouping and analysis of statistical reports and convict survey materials. Trends and patterns of the development of detention facilities were identified due to the use of the historical law method. The logical semantic method was used to develop concepts and terms, in particular, the concept of "classification of prisoners", "re-socialization of prisoners". The main methodological principles of the study were the principles of objectivity and historicism, scientific proceeding from abstract to concrete, organic unity of theory and practice, the principles of synergetics,

in particular, polyvariety, non-linearity, constructivity, etc. The chosen methodology and principles in their entirety allowed to summarize the author's considerations, to form the structure of the article as a statement of logic and terminology of scientific research and study of the principles underlying the statement of problems and substantiation of the assessment of risks of commitment of new offences as a determinant of prisoner classification.

Results

According to Article 67 of the Standard Minimum Rules for the Treatment of Prisoners (2015), the main purpose of the classification is the need to: separate from other prisoners those prisoners who, because of their previous convictions or ill nature, may produce bad influence; divide convicts into classes in order to make the work with them easier for the purpose of their social rehabilitation. Risk and needs assessment tools usually include a number of items used to collect data on the behaviour and attitudes of offenders, which, according to studies, are associated with the risk of recidivism (Barash, 2022). As a rule, convicts are classified as having a high, moderate or low risk of recidivism. When considering the classification of convicts, it is very important to understand the difference between the "division" of convicts by their age, sex and legal grounds for detention, on the one hand, and the "classification" of convicts, on the other hand. In this sense, the assessment tools include static and dynamic risk factors. Static risk factors do not change (e.g. the age at the time of the first arrest or sex), while dynamic risk factors may change on their own or due to an intervention (e.g. the current age, education or employment). The classification of convicts entails a structured risk and need assessment, which is a more complex process based on scientific data and regulated by international standards and regulations. In general, studies show that the most frequently used assessment tools can, with a moderate accuracy level, predict who is at risk of violence recidivism. It also suggests that the most frequently used risk assessments do not have any significant differences when it comes to prognostic validity.

According to the Handbook on Classification of the Prisoners (United Nations, 2020), an effective classification system requires that clear policies and guidelines are in place that would allow the prison administration, staff and prisoners to understand the way the classification decisions are made. Given the significant corruption risks the prison staff is exposed to, the integrity and accountability issues should be considered as part of the training of all staff of correctional facilities (United Nations

Office on Drugs and Crime, 2017). These strategies and guidelines should set forth responsibilities and procedures for the assessment, classification and distribution of convicts, including clear instructions on application thereof and requirements for training. Also, the procedure for informing convicts about classification decisions and the procedure applied if the convict objects to or wants to appeal the classification decision should be clearly determined. The risk-needs-response (RNR) model has become the dominant paradigm in assessing risks. The principle of risk shows that convicts should be placed into programmes corresponding to their risk level; in other words, it is necessary to provide more intensive work with high-risk offenders, while minimal or no intervention is required for low-risk offenders. The principle of necessity shows that effective work should also be focused on meeting criminal needs contributing to criminal conduct. The principle of sensitivity states that rehabilitation programmes should be implemented in a style and in a form corresponding to the abilities and training style of the offender.

The difference in the classification of convicts is made between external and internal classification. External (legal) classification is focused on determining the detention regimen or the security level of the convict and sending him to a facility corresponding to the needs related to the provision of security, development of programmes and measures of influence. Convicts are divided by age and sex, to foreign and stateless convicts, and by health conditions. Important attention is paid to previous convictions. The criminal legislation of Ukraine distinguishes some categories of criminals, for example: persons who have committed a crime repeatedly and recidivism - Article 32, 34, 67; minors – Article 97; women – Article 66, 83 (2001). At the same time, Chapter 3 of the Criminal Executive Code of Ukraine determines which categories of convicts must serve their sentences in a particular correctional facility of the appropriate security level. Thus, as a rule, convicts serve their sentences at the place of conviction in accordance with the regulations of the Criminal Executive Code: in detention centre, guardhouses (Article 50), in correctional centres (Article 56), disciplinary battalions (Article 71); in educational colonies and correctional colonies (Article 86), pre-trial detention centres (Article 89). The Central and Interregional Commissions, established in the Interregional Department for Enforcement of Criminal Sentences of the Ministry of Justice of Ukraine and in the Department for Enforcement of Criminal Sentences of the State Penitentiary Service of Ukraine, respectively, establish the form of the correctional facility and place of serving the sentence to persons sentenced to imprisonment for a

particular term, etc. Also, the Unified Register of Convicts and Detainees was formed during this period.

Internal (psychological) classification means decisions made at the level of the facility, including in which part of the prison and with whom convicts will be placed, the specific types and sequence of programmes and activities they will be included in, and about the forms of labour and leisure that can suit them (Tomashevski & Yaroshenko, 2020). Therefore, it is extremely important to determine prison positions and person who have the primary responsibility for the assessment and classification of convicts, documentation of the results and communication them to convicts, but the most promising practice is considered the interdisciplinary approach providing for the participation of various officers and specialists in activities carried out in prisons. Units of the social and psychological service of facilities are responsible for socio-educational and psychological work with convicts by developing appropriate individual programmes based on the assessment of risk of commitment of new criminal offences by convicts.

In Ukraine, the relevant work is started at the site of quarantine, diagnostics and distribution of convicts, following which the commission prepares proposals on their distribution to units of socio-psychological and employment services, in the course of which a survey is conducted to assess their urgent needs in the context of any serious safety, physical or mental health issues. In this regard, it is necessary to take into account the following factors when making an assessment to take classification decisions: sex; age; severity of the current crime; term of imprisonment; previous crimes, in particular violence; membership in, or affiliation with groups threatening the security (such as gangs or militant extremist organizations); involvement in incidents in correctional facilities; level of functioning in the society before arrival; mental and emotional stability; record of escape attempts; risk to the population in the event of escape. Decisions on the classification and placement of convicts should also take into account the needs of the offender since they concern both physical and mental health needs, and rehabilitation and social reintegration needs. Also, when creating and implementing a convict classification system, it is extremely important to rely on available research data on the main factors affecting male and female prisoners, youth, and elderly prisoners, and to develop an approach and tools that reflect these differences in order to ensure proper classification with determining the minimum required security level. In addition, the cultural background of the convict can play a great role in the manifestation of risks, as it is associated with behavioural

norms and expectations, acceptable reactions to the threat, expression of emotions, ways of communication, objectives and motives (Novikovas et al., 2017). Special attention in the assessment and classification of convicts is paid to people with special needs, including those with mental disorders, disabled convicts, lesbian convicts, gays, bisexuals, transgender and intersex people (LGBTI), and convicted foreign nationals.

Justification of decisions on classification and placement of convicts should be properly recorded and communicated to the convict, prison officers and other persons (e.g. the lawyer) in accordance with the principle of necessity (Hrytenko, 2020). Thus, units (groups, sectors, senior inspectors) of control over enforcement of court decisions of correctional facilities and pre-trial detention centres take part in: preparation of materials on convicts on parole, replacement of the unserved part of the sentence with a lesser sentence, establishment of administrative supervision, transfer of convicts on the basis of the assessment of the risks of commitment of a new criminal offence. The classification should be revised throughout the term of detention and supervision or in cases of significant events that could affect the security and confinement levels (a serious breach of discipline or security issues, successful completion of a programme or measure). The lack of an institutionalized reclassification process can lead to the fact that convicts who have served their sentences return to the society from high-security prison and facilities that restricted their liberty without being held in a pre-discharge regime that prepares them for social reintegration (United Nations, 2020). Therefore, taking into account the results of assessment and classification, the purpose should be to gradually reduce the classification and security level, as well as to ensure the transition to a detention regimen with less restrictions in order to better prepare the convict for further discharge (United Nations Office on Drugs and Crime, 2015). Ongoing reassessment of convicts and refinement of relevant case management or sentence serving plans, taking into account the progress in the areas related to their criminal needs, are key elements in determining the readiness of convicts for early release or release on probation.

The relation between the assessment and making decisions on the classification, distribution and participation in reintegration programmes or other reintegration measures depends on the development of an individual case consideration or sentence serving plan that clearly identifies the risks and needs of the convict, ways to meet them in the correctional facility, and recommended measures to facilitate the social

integration of the convict. The goals set should meet the SMART (Specific, Measurable, Assignable, Realistic, Time related) principles(Doran, 1981, p. 36).

Algorithmic risk assessment tools are used in various decisions in criminal justice, assessing data such as the offender's previous crimes, education, employment, drug abuse and mental health, and then predict the likelihood of commitment of a new crime. In pursuance of objective 12.3 of the Programme of Activities of the Cabinet of Ministers of Ukraine (Resolution of the Verkhovna Rada of Ukraine No. 188-IX..., 2019), an innovative tool is implemented in Ukraine – “Assessment of risks of commitment of new crimes and individual planning of social and educational work with convicts in correctional facilities”. It should be noted that in 2020 the Ministry of Justice of Ukraine approved amendments to some relevant regulations. The amendments and supplements concern, in particular, the use of the CASSANDRA subsystem of the Unified Register of Convicts and Detainees for the purpose of preparation of character references for convicts based on an assessment of the risks of commitment of a new criminal offence using automated inference algorithms. The amendments relating to the operation of the CASSANDRA subsystem come into force on 1 January 2022. The data for risk assessment is supplemented by information on the implementation of individual plans and programmes of social, educational and psychological work; about Internet connection; about searches; about force, weapons, special means applied; about attacks on the staff or other convicts. CASSANDRA automatically determines the risk of commitment of a new criminal offence (low, medium, high, very high) based on the algorithm of calculation of the score and correspondence of the score to the established degrees of risk. The programme provides for: scientific developments, comparison of the forecast conclusions with the risk assessment results, improvement of the relevant methodology. CASSANDRA forecasts will be included in the character reference of convicts, which will have a significant impact on changes in their detention conditions, the decision on the release on parole, transfer of convicts, pardon, etc.

Based on the above, it can be concluded that the classification of convicts entails a structured risk and need assessment, which is a more complex process based on scientific data and regulated by international standards and regulations. An efficient classification system requires that there is a clear policies and guidelines in place, which should set forth responsibilities and procedures for the assessment, classification and distribution of convicts, including clear instructions on application thereof and requirements for training. Ukraine tries to look up to borrowed

progressive approaches to the work with convicts and, in particular, it introduces a system of assessment of risk and needs of convicts using automated conclusion algorithms to reduce recidivism and new crimes.

Discussion

The possibilities of placing convicts taking into account the security considerations are limited by the availability of different confinement levels (Haltsova, 2019, p. 185). However, it is important to note the fact that in order to implement a flexible system of classification of convicts pursuant to the Nelson Mandela Rules (Standard minimum rules for the treatment of prisoners, 2015), a country must at least be able to provide different confinement regimens, supported by differences in the infrastructure (e.g. places for individual or joint residence, perimeter security and checkpoints) so that the assessment results can be used to separate different categories of convicts depending on the risks they pose in the relevant environment (United Nations, 2020). The initial classification decision should focus on predicting the likelihood of escape and the likelihood of violence, as well as considering the risk of commitment of new offences of the destructive or disorderly nature by the convict. The classification assessment can be carried out in various ways in order to accurately identify the most dangerous criminals so that they can be placed in facilities with a higher security level, and resources for detention (Haltsova, 2019, p. 192). T. Minyazeva (2016) notes that it is the personal approach to the classification of convicts that can solve the tasks of their correction and socialization. Consideration of individual psychological characteristics of the individual, special features of psychodynamics allows to choose a micro-environment for the convict that is best compatible with the psychological characteristics of his nature.

Additional assessments are used to obtain more detailed information about the risks posed by the prisoner and the need for developing programmes to facilitate decisions on placement and specific measures of influence. For example, the Static-99R tool (Phenix et al., 2016), which is based based on structured professional judgments, was developed specifically for the assessment of persons convicted of sexual offences. As to domestic violence and violence against an intimate partner, the Female Additional Manual has been recently been used to assess persons who committed acts of domestic violence (De Vogel et al., 2014). To effectively determine the current level of education (including literacy) of the convict, diagnose any possible problems with learning and determine the type of professional training that may be useful to the person concerned, specialized assessments can be very useful to check

the level of education and professional skills (United Nations Office on Drugs and Crime, 2018). When planning measures aimed at combating substance abuse for convicts, it is useful to organize targeted intervention, which can not only help in social rehabilitation for the purposes of release, but also to improve health and prison adaptation results (United Nations, 2020).

In the present-day situation, we can observe a complication of the situation because there is a significant number of persons among convicts, whose behaviour, including illegal, is influenced by mental deformations (mental deviations). According to the study by A. Kulakov (2019, p. 53), they make about 23%. These convicts are a special type of criminal, whose behavioural activities are characterized by increased social danger due to their proneness to conflict, aggression, latency of committed offences, increased victimhood, most often associated with sexual violence. The scientist emphasizes that the effectiveness of preventive actions in respect of persons of this category are possible in the event of application of a comprehensive approach with the use of psychological and, if necessary, psychiatric measures. A. Kulakov (2019) rightly believes that a scientifically based classification of convicts, based on which convicts should be distributed into prison units, is partly intended to solve this problem. Gender approaches to the classification of convicts should respond to qualitative and quantitative studies demonstrating women's gender and cultural history and experience (Kostruba & Lukianov, 2019). In addition, gender sensitivity requires a comprehensive understanding of how gender inequality is aggravated for certain groups of women and girls because of their age, ethnicity, race, mental health needs and/or disability. However, many penal systems continue to use a single classification tool to determine the security levels for both men and women, even though many factors predicting men's behaviour do not work equally for women.

Elderly prisoners at the other end of the age spectrum also need special attention. As noted by B. Williams (2018), although there is no consensus in the world about the age at which a prisoner becomes "elderly", some studies include people older than 50 or 55 to elderly prisoners. In addition, many criminal justice systems estimate that the physiological age of many prisoners is 10-15 years more than their actual age due to the higher health risk factors, such as disorders caused by substance abuse, traumatic brain injuries and low socio-economic status (2018). Elderly prisoners may have special needs that pose complex tasks for the administration of correctional facilities, including those related to mobility, hearing and cognitive functions. These needs can greatest limit the participation of elderly prisoners in

prison life and make them vulnerable to possible abuse by other prisoners (Surzik, 2022). According to the scientist, the measures intended to assist in the work with this group of prisoners include the inclusion of functional assessments in the activities in order to determine the best placement option, taking into account the capabilities of the respective person, screening for dementia and development of programmes taking into account geriatric data. Analysing the problems of classification of prisoners in the theory and coordination of ideas of social regulation, D. Yagunov (2021) emphasizes the fact that the further development of risk assessment tools poses a specific threat of even greater social control within the concept of “net widening”, which, in turn, can change the balance between the concepts of “liberty” and “provision of the security of the society”.

Algorithmic predictions of future crimes, known as risk assessment, have been used increasingly often in criminal justice to inform decision-makers at almost all stages of the criminal process: release on bail, sentencing, determination of the levels of supervision over a person under suspended sentence, transfer of the offender into the prison system and release on parole (Stevenson, & Doleac, 2021). Risk assessment tools developed on the basis of statistical analysis determine which factors best predict recidivism, summarize the relevant data in a standardized manner. Although studies so far have largely supported the use of risk assessment, most studies have implicitly assumed that algorithms will replace human judgment. M. Stevenson and J. Doleac (2021) insist that risk assessment is used to supplement human judgment; people reserve the right to make final decisions. Thus, although the discussion of risk assessment tools is often reduced to the question about man and machine, the question “How do they interact?” is still relevant. The impact of risk assessment depends not only on the properties of the algorithm, but also on the way the algorithm is integrated in the target function of its user. Scientists emphasize the importance of taking into account human stimuli and cognitive processes when using algorithms.

Despite widespread support, risk assessment is based on the insufficient theory of change: it provides neither objectivity nor substantial criminal reform. According to the scientist, risk assessments do not provide any guarantees to reduce the arrest rates, instead, they are likely to legitimize the logic and policy of the criminal justice system. However, since the support for risk assessments partially stems from the socio-technical view considering that all problems can be solved by technology, criticism formulating the technical limits of risk assessment is likely to respond to calls for a “better” risk assessment. Therefore, it is necessary to carry out an

“epistemic reform” that challenges discourses rather than technical specifications of risk assessments. Such “epistemic reform” can shift the focus from risk assessment through the prism of the criminal justice system to the assessment of the criminal justice system through the prism of risk assessment. This may pave the way for more effective reforms of criminal justice.

However, there is also optimism that any assessment of the classification procedures can be useful because it helps prison administrators think about their policies using “operational terms”. The scientist emphasizes the fact that a perfect balance may never be reached between “security” and “least restrictive” placement of convicts, but these vague goals are what should be pursued, and this can contribute to some responsibility and efforts in the classification system. Based on the discussion, it can be concluded that it is the personal approach to the classification of convicts that can solve the tasks of their correction and socialization. It is necessary to take into account additional assessments, preventive actions for convicts with mental disorders, gender-based approaches to the classification of convicts, especially the elderly groups of convicts. The further development of risk assessment tools poses a specific threat of even greater social control, which, in turn, can change the balance between the concepts of “liberty” and “provision of the security of the society” (Shapoval et al., 2018). Therefore, risk assessment should supplement human judgment so that people reserve the right to make final decisions.

The classification of convicts requires a structured assessment of risks and needs, and is a more complex process, which is based on scientific data and relies on international standards and norms. Moreover, the implementation of the appropriate process requires clear policies and guidelines, which should set forth responsibilities and procedures for the assessment, classification and distribution of convicts, including clear instructions on application thereof and requirements for training (Rexhaj et al., 2023). The RNR model has become the dominant paradigm in assessing risks. When creating and implementing a convict classification system, it is extremely important to rely on available research data on the main factors affecting male and female prisoners, youth, and elderly prisoners, and to develop an approach and a set of tools that reflect these differences in order to ensure proper classification with determining the minimum required security level. In addition, the cultural background of the convict can play a great role in the manifestation of risks, as it is associated with behavioural norms and expectations, acceptable reactions to the threat, expression of emotions, ways of communication, objectives and motives. Special

attention in the assessment and classification of convicts is paid to people with special needs. Ongoing reassessment of convicts and refinement of relevant case management or sentence serving plans, taking into account the progress in the areas related to their criminal needs, are key elements in determining the readiness of convicts for early release or release on probation.

Conclusions

Ukraine tries to look up to borrowed progressive approaches to the work with convicts and, in particular, it introduces a system of assessment of risk and needs of convicts using automated conclusion algorithms to reduce recidivism and new crimes. It is the personal approach to the classification of convicts that can solve the tasks of their correction and socialization. Consideration of individual psychological characteristics of the individual, special features of psychodynamics allows to choose a micro-environment for the convict that is best compatible with the psychological characteristics of his nature. Additional assessments are used to obtain more detailed information about the risks posed by the prisoner and the need for developing programmes to facilitate decisions on placement and specific measures of influence. The effectiveness of preventive actions in respect of convicts with mental deformation are possible in the event of application of a comprehensive approach with the use of psychological and, if necessary, psychiatric measures. Gender approaches to the classification of convicts should respond to qualitative and quantitative studies demonstrating women's gender and cultural history and experience.

The measures intended to assist in the work with the group of elderly convicts include the inclusion of functional assessments in the activities in order to determine the best placement option, taking into account the capabilities of the respective person, screening for dementia and development of programmes taking into account geriatric data. The further development of risk assessment tools poses a specific threat of even greater social control within the concept of ("net widening"), which, in turn, can change the balance between the concepts of "liberty" and "provision of the security of the society". Therefore, risk assessment should be supplemental so that people reserve the right to make final decisions. An "epistemic reform" can shift the focus from risk assessment through the prism of the criminal justice system to the assessment of the criminal justice system through the prism of risk assessment. This may pave the way for more effective reforms of criminal justice. Any assessment of the classification procedures can be useful because it helps prison administrators think about their policies using "operational terms".

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