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## REFORMING THE PENITENTIARY SYSTEM IS NOT HOPELESS. INSPIRING EXAMPLES FROM BELGIUM

**Statement of the issue.** This research is carried out within the framework of the fundamental topic 'European Integration Direction of Formation of the Concept of Criminal Executive Activity in Ukraine' (registration number in the Ukrainian State Register of Intellectual Property Rights 0124U005234), which is providing at the Department of Criminal Executive Law Research at Academician Stashis Scientific Research Institute for the Study of Crime Problems of National Academy of Legal Sciences of Ukraine.

I am deeply convinced that the Ukrainian penitentiary system today looks very helpless because it does not have its own concept of activity. This situation resembles a ship without sails. It seems to have everything it needs, but when there is no understanding of where and why to sail, everything available turns out to be unnecessary and ineffective. For the same reason, all attempts to reform the penitentiary system also seem futile. Again, it is unclear why any changes should be made to a system that no one needs and looks like a complete abyss in which funds disappear, efforts remain fruitless, and punishment is ineffective. It is very likely that the penitentiary system is perceived as a necessary evil that simply has to exist. Nothing is expected from this evil, it has 'occupied' its niche and everyone is 'satisfied' with the way it is.

Ukraine constantly declares its adherence to European values in life and normative standards in the field of legal regulation. At the same time, if we pay attention to how prison systems in Europe function, the first thing we notice is that they all have a very specific and pragmatic focus on the goal. It is to achieve this goal that standards are formulated and

approaches are developed. European prison systems are located in a rather energetic social context that constantly demands action and cooperation. Such an 'active' position of the penitentiary system in society implies that this system not only pursues a certain goal, but also has its own ideas, methods, tools and closely cooperates with other social institutions. In fact, penitentiary systems have their own concept.

At the same time, of course, very often the system faces problems and 'failures', it requires revision, rethinking, setting new benchmarks and even significant reformatting.

**State of development of the issue.** The reason for this is that the need to study the experience of the execution of punishments in other countries always remains relevant, and therefore it is impossible to develop this problem. I believe that such studies should take place constantly. and the more critical they are, the better it will affect the penitentiary law of Ukraine.

Among Ukrainian researchers, many have paid attention to the issues of considering the experience of execution of punishments in other countries. Among these researchers are A. Stepaniuk, D. Yahunov and others.

**Purpose of the article.** I would like to share one example of how such challenges are being addressed in this article. It may also be useful for Ukrainian penitentiaries.

It is the experience of Belgium, which in the 90s of the last century faced a rather acute problem of prison overcrowding, the need to renovate prisons, improve material conditions for prisoners and other challenges. Since then, Belgium has maintained

a leading position among European countries in terms of prison overcrowding.

**Outlining the basic material.** According to statistics, with a total population of 11,200,000 people in 2015, the relative rate of imprisonment per 100,000 people was 99. The total number of prisoners was 11,040, held in 45 institutions. Under these conditions, the overcrowding was 110%<sup>1</sup>.

Ten years later, the situation has not changed for the better. According to Le Monde, as of 15 February 2023, there were 11,326 prisoners in Belgian prisons for 9,752 places available in the system. This corresponds to an overcrowding rate of 16%.<sup>2</sup>

Statistics from 2024 confirm the same trend: the population of Belgium was 11,754,004, the total number of prisoners was 12316, the number of prisoners per 100,000 population was 104, and the overcrowding of institutions was 114.6%.

The result of this unrestrained growth in the number of prisoners is a disastrous consequence: prisoners are crammed into small cells with inadequate conditions.

The Council of Europe's Committee for the Prevention of Torture – the central council for prison supervision (a body attached to the Belgian Parliament), along with mayors who have threatened to close down prisons, lawyers and prison directors all condemn a situation that is considered dramatic, even a «national disaster,» as the growing number of prisoners is exacerbating the state of buildings that are often dilapidated, poorly equipped and do not meet minimum health standards.

«Two of our four boilers have broken down in extreme cold, sometimes we have to choose between showers and heating, the kitchen has been out of order for six months, ceilings are collapsing, 60% of the cells are infested with bedbugs, but overcrowding prevents us for cleaning it up for good,» explained Vincent Spronck, head of the prison in Mons, a 166-year-old institution. In Liege-Lantin, the central tower of the building is sinking. In Merksplas, in the province of Antwerp, inmates suffocating in the heat broke dozens of windows last summer<sup>3</sup>.

<sup>1</sup> 'Belgium 2015' (Prison insider) <<https://www.prison-insider.com/en/countryprofile/belgique-2015>> (Accessed: 01.05.2025)

<sup>2</sup> 'The state of Belgian's prisons is becoming a 'national catastrophe' (Le Monde) <[https://www.lemonde.fr/en/europe/article/2023/03/02/in-belgium-the-state-of-the-prisons-is-becoming-a-national-catastrophe\\_6017868\\_143.html#](https://www.lemonde.fr/en/europe/article/2023/03/02/in-belgium-the-state-of-the-prisons-is-becoming-a-national-catastrophe_6017868_143.html#)> (Accessed: 01.05.2025)

<sup>3</sup> —

As you can see, the situation is quite similar to the problems that exist in Ukraine and that need to be addressed in our country.

But the most interesting thing is the ways that have been chosen to overcome the current situation and the trend of overcrowding in prisons.

The Belgian penitentiaries initially set out to build new prisons that could accommodate a large number of prisoners. In 2008, a large-scale project to build a number of new prisons was announced. It involved the construction and refurbishment of five prisons: Marche-en-Famenne (opened 2013), Beveren (opened 2014), Leuze-en-Hainaut (opened 2014), Haren (opened September 2022), Dendermonde (French: Termonde) (opened December 2022)<sup>4</sup>.

The most striking example of this action was the creation of the Haren prison. This prison was designed not only to accommodate prisoners, but also to provide them with more acceptable conditions of serving their sentences. In general, this project was called the creation of a 'prison village'. Indeed, a closer look at the prison design reveals that it is not so much a building that focuses on security and isolation, but rather on the broader goal of reintegration and recovery. As Vincent Van Quickenborne notes, Minister for Justice in Belgium: The Haren prison is laid out like a village, with a central square at the juncture of streets lined with various buildings. Each building houses a different function. This familiar typology reflects the small-scale character in size and materials, and creates a pleasant working and residential climate. As a result, life within the walls corresponds as much as possible with life on the outside. The 'normal' and friendlier environment stimulates good behaviour and a more humane approach to the detainees. This increases the chances of successful resocialization and a significant reduction in the level of recidivism. And it creates a more pleasant working environment for staff<sup>5</sup>.

In fact, the prison complex creates a whole infrastructure that really resembles a large town rather than a place of detention. And this makes sense. It seems that under such conditions, we can expect that a convicted person, upon entering such a prison, immediately adjusts to a different format of behaviour than he would have had if he had been behind the walls of a tall tower without windows and doors. Such

<sup>4</sup> 'Haren Prison' (Wikipedia) <[https://en.wikipedia.org/wiki/Haren\\_Prison#cite\\_note-19](https://en.wikipedia.org/wiki/Haren_Prison#cite_note-19)> (Accessed: 01.05.2025)

<sup>5</sup> 'Haren prison village, Brussels (Belgium)' (EGM) <<https://www.egm.nl/en/architects/projects/gevangeniscomplex-haren/501>> (Accessed: 01.05.2025)

a starting point can help inmates in the early stages of their sentence to further reintegrate into free society. At least, the chances of not feeling so deeply alienated from free people who also live in small towns are significantly increased. The illusion of maintaining a connection with a free society is more stable and has a very obvious physical basis. Of course, it is impossible to say for sure that this practice will be successful, but there is certainly a rational basis for this approach.

In parallel with this approach, Belgium has developed the idea of creating small detention houses in terms of size and capacity. The main idea of this approach is to create a system of small houses where convicts serving short sentences (up to 3 years) will be held under guard and where conditions will be created for them that, firstly, do not aim to significantly isolate the convict and pull him or her completely out of the social context, and secondly, to encourage him or her to gradually integrate into free life by setting priorities in activity (work, study), social activities, communication, etc.

Supporters of this idea have even united in RESCALED – the European movement for detention houses. They define three main principles for the construction and operation of detention houses:

- These houses are small in size and capacity (the number of convicts housed in the houses);
- These houses provide for a differentiated approach to their residents;
- These houses are located within small communities (districts or microdistricts), which implies the involvement of all residents of the detention house in the life of this small community. This involvement includes all kinds of activities, ranging from playing sports with the local population, working in local businesses, service centres and other institutions, to the possibility of staying in the area in the future, in case of successful reintegration<sup>1</sup>.

The initiators of this approach consider these three principles to be fundamental and significantly different from the 'prison' concept. In their opinion, this is a qualitatively new approach that has completely opposite orientations compared to the prison as a social phenomenon. The small size of the houses allows for more human and personal contact between staff and residents. Of course, all participants in these social

relations get to know each other well, learn each other's names, abilities and behavioural patterns. Over time, they learn some of each other's life stories, etc. All of this is known to contribute to the establishment of stable and empathetic relationships and is likely to lead to the avoidance of feelings of alienation, uselessness and other negative psychological states. Under such conditions, the chances of positive reintegration increase. Of course, negative relationships can also be established, but this is also a sign of 'humanity', a determination of preferences and priorities, as it can also help in reintegration into a free society.

In contrast to the above, the 'prison' concept is focused on effective isolation and securing society. The other side of this is the severance of social ties, the creation of completely artificial conditions of isolated existence with special rules and procedures governing the procedure for staying in such institutions. The difference is obvious.

It is interesting to see how employees and experts in the field of penitentiary practices assess these two approaches that have now emerged in the field of penitentiary services in Belgium.

Prison Insiders interviewed such specialists. In the article 'Belgium: Diverging paths. Building 'mega-prisons' and opening detention houses: a paradox' contains the opinions of H  l  ne De Vos, Executive Director of Rescaled, a European movement that promotes the concept of detention houses instead of large prisons, and An-Sophie Vanhoosh, Associate Professor specialising in correctional institutions and the experience of detention in Belgium.

In general, they state positive effects from the introduction of new practices in the use of secure detention houses. At the same time, this does not mean that large prisons are completely unacceptable. It seems to be a matter of 'preferences' and political 'profiles' of certain initiators and supporters of the respective introductions.

As H  l  ne De Vos notes: The functioning of a small-scale facility can have a real impact on prison staff and how they work. One of the prison officers who came to work in Kortrijk detention house came from a large-scale prison. He asked for a transfer because it was closer to his home, but he was rather sceptical at first. He changed his mind completely when he started working at the detention house. He really started to believe in small-scale detention because he felt the difference.

<sup>1</sup> 'European movement for detention houses' (Rescaled) <<https://www.rescaled.org/>> (Accessed: 01.05.2025)

An-Sophie Vanhush adds about the staff: They are now differentiating two types of officers in ordinary prisons: «detention counsellors» and «security officers». The role of counsellors is more than just opening and closing doors. It's about interacting with imprisoned persons, asking them how they feel, if they want to take part in activities and so on. It will take time before it is fully implemented because the staff need to be trained.

It is very important that both interviewees share the same opinion that awareness-raising among judges is needed. They play a very important role and they are not always aware of their impact on the situation. Immersing judges in the situation in prisons gives them the opportunity to get a sense of what it is like to be a prisoner<sup>1</sup>.

The explanations of Petra Kolpaert, the head of the Kortrijk detention house, were interesting. She described the principles of operation and the conditions for reintegrating the residents of this house as follows: In Kortrijk, as a new facility, we adopted a proactive approach towards the community. They are treated as partners rather than outsiders. They were involved from the beginning, working together to create an inclusive environment for the residents, which is different from a typical prison in Belgium. Additionally, a 'boarding community' was established where professionals from different fields collaborate to determine and implement the necessary steps for providing services within Kortrijk.

We've taken measures to try shifting the community's perception of residents in the detention house, who are solely seen as criminals. We organised an information session and arranged visits to allow community members to discover the facility. These visits may not always be pleasant for the residents, as it can feel like they are being observed like animals in a zoo, so we respect their choice to participate or not. We've also organised a visit attended by mayors from different towns and other government officials. They were initially opposed to the idea of more detention houses, but their stance shifted after witnessing the residents behaving cordially and going about their lives<sup>2</sup>.

<sup>1</sup> 'Belgium: diverging pathways. Building 'mega-prisons' while opening 'detention houses': a paradox' (Prison insider) <<https://www.prison-insider.com/en/articles/belgium-diverging-pathways>> (Accessed: 01.05.2025)

<sup>2</sup> 'Belgium: intersecting approaches' (Prison insider) <<https://www.prison-insider.com/en/articles/article-650163ef280fd>> (Accessed: 01.05.2025)

As we can see, this is about how the very fact of the existence of a detention house was introduced in a residential neighbourhood, among a small community. An attempt was made to overcome the prison 'stigma' and 'introduce' the community residents to the residents of the house, giving both sides the opportunity to make sure that each of them is an ordinary person.

And now, Ms. Petra Kolpaert's thoughts on how to work with the residents of the house so that they have a chance for recovery and reintegration. She noted the following: **We made a choice not to be solely risk-focused in our rehabilitation programmes. We've implemented the «Good Lives Model» developed by Tony Ward, a New Zealand professor. He developed an approach to interacting with prisoners that considers not only their risk factors but also their strengths and aspirations in life. In fact, if you look at the risk principle, you are always focusing on negative aspects, where as if you look at what the prisoners want to achieve, their response is going to be much more positive. In our philosophy, we look at both angles. If inmates say they need help, a detention officer will help them, but it is not our aim to systematically accompany them**<sup>3</sup>.

It is very important that the administration of the detention house is interested in cooperating with the residents and making efforts for their positive reintegration.

Both the construction of new prisons and the creation of detention houses have their advantages and disadvantages, and it is possible to consider which approach has more positive features and desirable consequences and which has less. But now my focus is somewhere else. I think the most important thing is that Belgian penitentiaries and those involved in the process of optimising the serving and execution of criminal sentences always work with a concept. First, they define what they want to achieve, then they look for ways to achieve their goals and solve their problems. At the same time, the focus is always on the social effects of punishment and expectations of the penitentiary system. And this focus always includes social institutions and the interaction between them. There is always an understanding that the staff of penitentiary institutions and facilities are not just

<sup>3</sup> 'Belgium: intersecting approaches' (Prison insider) <<https://www.prison-insider.com/en/articles/article-650163ef280fd>> (Accessed: 01.05.2025)



wardens whose sole task is to maintain order while serving their sentence. The staff and employees of penitentiary institutions are always involved in the process of establishing interaction between prisoners serving their sentences and other social institutions. That is, their activity is to accompany and support convicts in making attempts and making efforts to integrate into a particular social institution. Simply put, prisoners and staff work together to ensure that the prisoner has a chance to work, study, maintain social contacts, join various activities and initiatives that can help them realise that they are not abandoned, that they can and do act like any free person, and that they are capable of being useful and using not only criminal behaviour.

The general positive attitude of Belgian penitentiaries is also important. They are fully aware that reintegration activities are not always successful and easy, they know that many prisoners for various reasons cannot or will not exert themselves to change their lives, and they have no illusions about recidivism. And at the same time, they do not give up their activities and carry them out with an enthusiasm that is enviable.

The sober approach to their work by Belgian penitentiaries is impressive. In their responses, the interviewees noted: (Hélène De Vos) It's a quite complex policy, which in practice leads to an odd situation. In the 1990s, non-custodial measures, such as electronic monitoring and other alternatives were introduced to try and solve the overcrowding. The prison population remained similar while the number of non-custodial measures went up, which resulted in having more people in the justice system overall.

Today, we see the same trend of implementing new measures in the hope that it will resolve overcrowding. Instead, it ends up being an expansionist policy: more prisoners end up being put under these measures.

**An-Sophie Vanhush: In the past, Belgium tried to reduce overcrowding by limiting the number of people who would be sent to prison. Before, if you had a sentence or a total of sentences below three years, you wouldn't go to prison. You would be subjected to electronic monitoring instead. A new legislation has passed and now, if you are sentenced from six months to three years of prison, you must serve the sentence, either in a detention house or an ordinary prison facility. People that were outside with electronic monitoring are suddenly being placed in detention. Instead of being an alternative**

**to those already serving, detention houses are now used to resolve a capacity problem of new people coming in<sup>1</sup>.**

And her colleagues continue: Wendy Mercelis: Recently, we have had less people wanting to work despite having more connections with outside organisations. Instances of drug use are increasing as well. Our policy is to send the prisoner back to an ordinary prison after being caught twice with drugs. Some of the people I send to do a job have to end their contract early because of their behaviour. Before, we had the luxury of an observation period of two months, the process was more gradual. Now, with people coming in and out all the time, everything goes faster, and activities and follow-ups are not adapted. These factors are all detrimental to our regime and our principles. So we need to strike a balance in relation to these changes. However, from speaking with colleagues in the closed prisons of Wortel, Merkplas and Turnhout, I can see that these developments are happening everywhere, so it is not just an open prison issue<sup>2</sup>.

The fact that efforts to reduce the prison population often lead to similar paradoxes was highlighted by Niels Christie when he discussed how the fight against crime is turning into an industry that has the opposite effect<sup>3</sup>.

**Conclusions.** For Ukraine, this experience can be positive and inspiring. Firstly, we understand that the problems faced by Ukrainian penal professionals today are quite typical and widespread in many countries, including Belgium, where there is a strong tradition of respect for human rights and mechanisms to ensure them. Secondly, experience shows that problems need to be and can be solved. Moreover, this should be done systematically, not sporadically, by 'plugging holes'. Thirdly, it points to a very important 'detail' that is completely absent from the Ukrainian approach to penitentiary issues. It is the existence of the concept of penitentiary activity. This

<sup>1</sup> 'Belgium: diverging pathways. Building 'mega-prisons' while opening 'detention houses': a paradox' (Prison insider) <<https://www.prison-insider.com/en/articles/belgium-diverging-pathways>> Belgium: intersecting approaches' (Prison insider) <<https://www.prison-insider.com/en/articles/article-650163ef280fd>> (Accessed: 01.05.2025)

<sup>2</sup> 'Belgium: intersecting approaches' (Prison insider) <<https://www.prison-insider.com/en/articles/article-650163ef280fd>> Belgium: intersecting approaches' (Prison insider) <<https://www.prison-insider.com/en/articles/article-650163ef280fd>> (Accessed: 01.05.2025)

<sup>3</sup> Nils Christie *Crime Control as Industry: Towards Gulags* (Western Style. Psychology Press, 2000) 209

is something like a reflected purpose of punishment, an answer to the question 'why' punishment exists and what we are trying to achieve when we sentence to it and then execute it. The key here is a certain 'honesty' in answering this question, because from a formal point of view, Ukraine has a purpose

of punishment and an answer to the question 'why'. But everyone who is involved in this system knows perfectly well that today's 'legal' purpose of punishment is an unattainable fiction, which is not aimed at by any of the institutions of the penal system of Ukraine.

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### **Романов М. В.**

#### ***Реформування пенітенціарної системи не безнадійне. Надихаючий приклад Бельгії***

*Пенітенціарна система України є утворенням, яке, на жаль, характеризується наявністю структурних проблем. Причому зміст цих проблем полягає у порушенні фундаментальних прав людини. Саме тому вони стали об'єктом розгляду в ЕСПЛ. Як підсумок, проти країни було постановлене пілотне рішення (Сукачов проти України).*

*Але не лише наявність пілотного рішення вказує на хронічні хвороби українських установ виконання покарань. Численні звіти правозахисних організацій, звіти Комітету проти катувань, інших міжнародних інститутцій неодноразово констатували наявність значних проблем у системі виконання покарань України.*

*Декларуючи прихильність Європейським стандартам, Україна є дуже непослідовною у своїх зусиллях щодо реформування пенітенціарних правовідносин.*

*Понад 30 років триває історія незалежної України. Весь цей час всі склади урядів вели мову про те, що вони реформують цю систему і зроблять її прийнятною і такою, яка буде відповідати принципам гуманізму та людяності. Однак цілком очевидно, що це не так. Сьогодні пенітенціарна система України все ще залишається проблемною.*

*Проте ця проблема насправді притаманна всім без виключення європейським країнам. Всі вони зіштовхуються з такими викликами, як переповненість, значний рівень рецидиву, неналежні умови тримання, порушення прав людини тощо. Всі країни Європи намагаються вирішувати ці проблеми.*

*Один із прикладів того, як намагаються розв'язувати окремі складнощі, що виникають під час виконання кримінальних покарань, є заходи, котрі запроваджує Бельгія.*

*У статті описаний один із проектів, який реалізується у Бельгії. Йдеться про запровадження системи невеличких установ виконання покарань, де розміщують засуджених до нетривалих строків відбування покарання і де з ними проводять активну роботу з їх переорієнтування на законослухняний спосіб життя. Саме для таких осіб створені дома обмеження волі (detention houses).*

*Основними їх особливостями є те, що ці установи розташовані у невеличких цілком благополучних житлових кварталах, засуджені там перебувають у напіввільному статусі і вони залучаються до спільного життя цих громад. Засуджених в установі зазвичай незначна кількість, більшість із них працюють за межами установи та контактують з вільним світом, адаптуючись до нових соціальних ролей.*

Автор не має ілюзій щодо беззаперечної дієвості таких заходів, але розглядає побідні ініціативи як надихаючі приклади. Разом із тим він вважає, що найбільш важливим елементом реформування пенітенціарної системи є наявність у державі усвідомленої концепції пенітенціарної системи. Інакше кажучи, потрібно розуміти, навіщо існує система, чого від неї очікують і як потрібно досягати мети та очікувань.

**Ключові слова:** реформування пенітенціарної системи, мета покарання, концепція пенітенціарної системи

**Romanov M. V.**

### ***Reforming the penitentiary system is not hopeless. Inspiring examples from Belgium***

*The penitentiary system of Ukraine is an entity that is unfortunately characterised by structural problems. Moreover, the content of these problems is a violation of fundamental human rights. That is why they became the subject of consideration by the ECHR. As a result, a pilot judgement was delivered against the country (Sukachov v. Ukraine).*

*But it is not only the existence of a pilot judgement that indicates chronic illnesses in Ukrainian penal institutions. Numerous reports by human rights organisations, the European Committee for the Prevention of Torture and other international institutions have repeatedly stated that there are significant problems in the penal system of Ukraine.*

*Declaring its commitment to European standards, Ukraine is very inconsistent in its efforts to reform penitentiary system.*

*The history of independent Ukraine is more than 30 years old. All this time, all governments have been saying that they would reform this system and make it acceptable and in line with the principles of humanity. However, it is quite obvious that this is not the case. Today, Ukraine's penitentiary system is still problematic.*

*But this problem is actually inherent in all European countries without exception. They all face such challenges as overcrowding, high recidivism rates, inadequate conditions of detention, human rights violations, etc. All European countries are trying to solve these problems.*

*One example of how they are trying to solve some of the difficulties that arise in the execution of criminal sentences is the measures taken by Belgium.*

*The article describes one of the projects being implemented in Belgium. It is about the introduction of a system of small penitentiary institutions where prisoners sentenced to short terms are housed and where they are actively reoriented to a law-abiding lifestyle. Detention houses were created for such persons.*

*Their main features are that these institutions are located in small, quite prosperous residential neighbourhoods, the inmates are in a semi-free status and they are involved in the common life of these small communities. There are usually a small number of prisoners in the institution, most of them work outside the institution and are in contact with the free world, adapting to new social roles.*

*The author has no illusions about the undeniable effectiveness of such measures, but considers the poor initiatives as inspiring examples.*

*At the same time, he believes that the most important element of reforming the penitentiary system is the existence of a conscious concept of the penitentiary system in the state. In other words, it is necessary to understand why the system exists, what is expected of it and how to achieve the goals and expectations.*

**Keywords:** reform of the penitentiary system, purpose of punishment, concept of the penitentiary system

Стаття надійшла до редакції: 1.05.2025 р.

Прийнята до друку: 20.06.2025 р.,