

THE ROLE OF THE PENITENTIARY SYSTEM IN REFORMING THE STATE'S CRIMINAL LEGAL POLICY

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Abstract. The article is devoted to the modern issues of criminal and penitentiary policy. Author analyzed the prospects of development and ways of improving legislation in the Republic of Uzbekistan. As a result of the study, it was formed specific suggestions for improving the current legislation of on the basis of in-depth analysis from the historical and legal point of view.

Keywords: crime, crime prevention, liberalization, punishment, (criminal-executive) policy

Аннотация. Статья посвящена современным вопросам уголовной и пенитенциарной политики. Автор проанализировал перспективы развития и пути совершенствования законодательства Республики Узбекистан. В результате исследования были сформулированы конкретные предложения по совершенствованию действующего законодательства на основе углубленного анализа с историко-правовой точки зрения.

Ключевые слова: преступность, профилактика преступности, либерализация, наказание, (уголовно-исполнительная) политика

The establishment of civilized penitentiary systems in many states, especially in the US and most of Western European countries, was influenced by the ideas of the sociological school of criminal law on the imposition of punishment and its execution, the emergence of penology and penitentiary science.

In the current criminal-executive legislation of the Republic of Uzbekistan, the term "penitentiary system", "penitentiary institution",

"penitentiary policy" is not used. At the stages of development of criminal law in our Republic alternative terms are used in these concepts: labor correction system, criminal penalties system, penitentiary system and others.

The history of penitentiary has a very long period [1], this word (from Latin "poenitentia" - "remorse") means the maintenance of the system of execution of punishment [2] The use in the modern legal literature of the term "penitentiary system" occurs most often in two cases: in works of a historical and legal nature, in which the concepts of "penitentiary system" and "penitentiary institutions" are of a general nature and used to characterize various stages of historical development (these concepts are often combined with terms officially used in specific historical conditions)[3]; in acts containing the norms of international law (such as the "Standard Minimum Rules for the Treatment of Prisoners" adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders on August 30, 1955, "European Prison Rules" of February 12, 1987[4] and others), as well as in studies on foreign law and foreign legislation[5]. Most scientists believe that the penitentiary system includes all organs and institutions of the state that carry out all types of criminal punishment, organizational and legal, social and public institutions that provide the goal of correcting convicts[6].

Currently, the term "penitentiary system" and other phrases with the adjective "penitentiary": "penitentiary policy", "penitentiary institutions" find their application only in the scientific environment. Thus, I.Kamalieva believes that the penitentiary system includes all organs and institutions of the state that carry out all types of criminal punishment, organizational and legal, social and public institutions that provide the goal of correcting convicts[7].

According to M.P.Melentiev, "the penitentiary system is not a system of placing prisoners in prisons, but the whole correctional system connected with the execution of the punishment in the form of imprisonment, together with the means and methods of legal influence on the convicted persons, with the aim of

restoring social justice, correcting the convict and warning committing new crimes"[8].

Scientists V.B. Spitsnadel and S.I. Velezhev[9] under the penitentiary institutions and the penitentiary system understood institutions and bodies that carry out sentences in the form of imprisonment. At the same time, we think, that such interpretation is too narrow.

Most often in modern legal literature it is a question of the penitentiary *system*. For example, concepts that characterize social systems operating in the political and legal field are "law enforcement system" and "judicial system". In all these cases, we are talking about certain institutions, means and methods, the totality of which in their interrelationship constitutes a certain system.

In general, the criminal-executive system is a social multi-component, multifunctional and multi-level system[10] However, the use of the concept of "criminal executive system" does not deny the understanding of the penitentiary system as a set of all means and methods aimed at correcting convicts. Therefore, we can talk about the penitentiary system in a narrow and broad sense. Also, T.Sinelnikova claimed that, the penitentiary system is a set of interconnected and interrelated state and legal means, methods and guarantees aimed at achieving the goals of criminal punishment (restoring social justice, correcting a convicted person, preventing the commission of new crimes) in institutions connected with isolation from society[11]. A.Ovchinnikova has an analogical opinion[12].

The penitentiary system in the narrow sense is a system of institutions and bodies that carry out criminal penalties related to isolation from society, which are currently the correctional facilities. Thus, in modern legal science there is not yet a single approach to the definition of the concept of "penitentiary system". In our opinion, the most reflective of the content of the socio-legal phenomenon "penitentiary system" is the approach within which the penal system is examined in a broad and narrow sense.

In all these cases, *penitentiary system - a system that includes the educational, moral, pedagogical, psychological, political, legal, socio-economic and other areas of activity of state bodies and institutions for the implementation of criminal penalties and other measures of criminal law aimed at correcting and resocialization of convicts.*

While revealing the importance of the penitentiary system in the organization of the criminal and legal policy of the state, it should be noted that the reform of the penal system began with the moment when Uzbekistan gained national independence. Since, it was necessary not only to rework the regulatory framework, but also to determine the strategy for the development of the system for a long period. Unfortunately, up to the present time, a harmonious and unified Concept for reforming the criminal execution system has not been developed in our country.

Today the creation of the penitentiary provides a clear example of the basic dynamic of penal reform. The penitentiary was originally hailed as a symbol of progressive political and religious ideas. Instead of tormenting wrongdoers, the penitentiary would effect their moral reformation. The penitentiary also filled a more basic need. The new nation, such Uzbekistan, founded upon ideals of a virtuous citizenry, found that the old penal methods were inadequate to keep many of its citizens virtuous. The penitentiary represented a new and more effective means of suppressing crime. Perhaps, the most important influence upon the nature of the new punishment had nothing to do with the goals of punishment, though-it was institutional. This system, adopted in most institutions across the nation, ensured that the penitentiary was a place, not of benevolent rehabilitation, but of often brutal repression [13].

Signs of the penitentiary system of Uzbekistan:

-as one of the elements of the constitutional foundations of the Republic of Uzbekistan for the purpose of strengthening and protecting the rule of law, it is implemented by a specially created state body with separate powers;

-operates in all spheres of penitentiary relations, regulated by legislative acts;

-carried out in connection with violation of laws.

On the base of national legislation, the followings are the tasks of the criminal-executive legislation of the Republic of Uzbekistan:

-execution of criminal penalties in the form of fines, compulsory public works, deprivation of certain rights, correctional labor, restrictions on service, restriction of freedom, deprivation of military or special ranks, referral to disciplinary units, imprisonment and life imprisonment;

-execution of supervision of the behavior of conditionally convicted persons, other measures of criminal legal effect in the form of compulsory medical measures, imposition of an apology on the minor, compensation or elimination of the damage caused, placement in a special educational institution;

-ensuring law enforcement and lawfulness in the bodies and institutions for the enforcement of criminal penalties, the safety of the convicted prisoners, workers and employees, officials and citizens on their territory;

-attraction of convicts to work, provision of their general and vocational education, vocational training;

-ensuring the health of convicts;

-rendering assistance to the bodies carrying out operatively-search activity, etc.

By the analyses of **several institutional models of the penitentiary systems in the world, based on the jurisdiction of these bodies and institutions to one or another government agency, we can identify five models of the organization of the penitentiary system:**

1) The model of the penitentiary system, which is located in the Ministry of Internal Affairs in full;

2) The model of the penitentiary system, administered in full by the Ministry of Justice;

3) The model of the penitentiary system, under the joint management of the Ministries of Justice and Internal Affairs;

4) The model of the penitentiary system, which is part of separate state department that is not controlled by the Ministry of Justice or the Ministry of Internal Affairs;

5) a mixed model where the execution of types of punishments or measures of procedural coercion are transferred to the competence of various departments (penitentiary institutions are under the jurisdiction of the Ministry of Justice, places of pre-trial detention are administered by the Ministry of Internal Affairs).

Based on this classification and complex analysis of penitentiary systems in a number of countries, it may be concluded that in the mechanism of the rule of law, penitentiary institutions perform certain functions of law enforcement and executive authorities.

In our opinion, today, in Uzbekistan, the existing legislative framework in this area has ceased to meet modern realities, especially in the aspect of the need to strengthen its preventive principles, which necessitates the development by the scientists and specialists of **the Concept of reforming the criminal execution system of the Republic of Uzbekistan for the period up to 2021**. This Concept, in our opinion, should contain a number of provisions that will help realize the real opportunities associated with the functioning of the executive system, without going beyond the scope of financial and economic costs.

Moreover, the measures envisaged in the Concept to reduce the number of convicts and detainees, reduce the intensity of their movement across the country and other measures should significantly reduce the costs of maintaining the penitentiary system. At the same time, in full accordance with modern ideas about the role and significance of institutions and bodies of the penitentiary

system, the preventive function of the penitentiary system should be at the heart of the matter.

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