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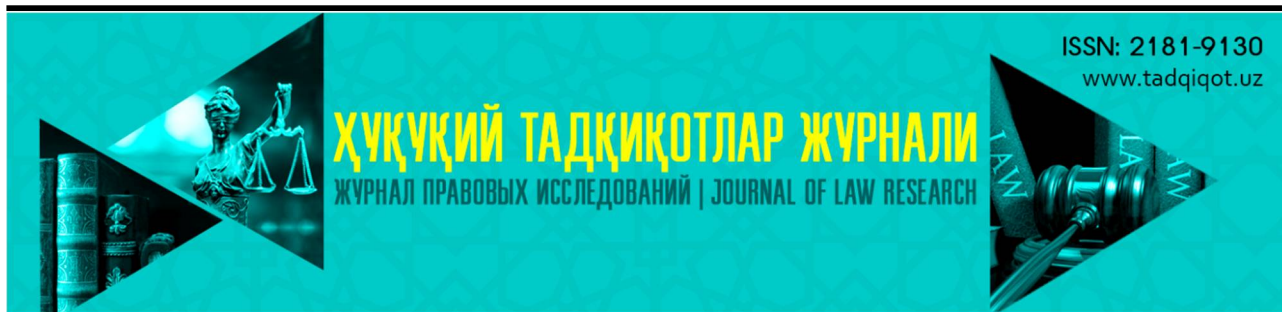
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Salaev Nodirbek Sapparbaevich,


Professor of the Department of Criminal Law,
Criminology and Fight against Corruption
of Tashkent State University of Law, DSc in Law

ORCID: 0000-0002-2147-8762

E-mail: n.salayev@tsul.uz

THE CONCEPT OF THE PENITENTIARY SYSTEM

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ANNOTATION

This article analyzes the role of penitentiary policy in achieving the goals of criminal punishment from a legal point of view. According to the author, punishment is necessary as a means of self-defence of society from violations, regardless of the living conditions of society. In many countries and in the modern criminal law doctrine as a whole, punishment is used to correct the morality of the convict, to prevent him from continuing his criminal activity, to restore social justice, and to prevent both the convict and other persons from committing a new crime. In the article, he analyzed the best practices of foreign countries and the approaches of legal scholars to the form of public administration in this regard. In addition, the author gave a legal assessment of the main directions of penitentiary policy

Keywords: penitentiary system, convict, sentencing, execution of punishment, differentiation

Salayev Nodirbek Sapparbayevich,

Toshkent davlat yuridik universiteti
Jinoyat huquqi, kriminologiya va korrupsiyaga
qarshi kurashish kafedrasini professori,
yuridik fanlar doktori

ORCID: 0000-0002-2147-8762

E-mail: n.salayev@tsul.uz

PENITENSIAR TIZIMNING TUSHUNCHASI

ANNOTATSIYA

Mazkur maqolada penitensiar siyosatning jinoyiy jazo qo'llashdan ko'zlangan maqsadlarga erishishdagi roli huquqiy jihatdan tahlil etilgan. Muallifning fikricha, jamiyatning yashash sharoitlari qanday bo'lishidan qat'i nazar, huquqbuzarliklardan jamiyatning o'zini o'zi himoya qilish vositasi sifatida jazo zarurdir. Ko'plab davlatlarda va umuman hozirgi zamon jinoyat huquqi doktrinasida jazo mahkumni axloqan tuzatish, uning jinoyiy faoliyatni davom ettirishiga to'sqinlik qilish, ijtimoiy

adolatni tiklash hamda mahkum, shuningdek, boshqa shaxslar yangi jinoyat sodir etishining oldini olish maqsadida qoʻllanadi. Maqolada xorijiy mamlakatlarning ilgʻor tajribasi hamda huquqshunos olimlarning davlat boshqaruvi shakliga oid bu boradagi yondashuvlari tahlil qilingan. Shu bilan bir qatorda, muallif tomonidan penitensiar siyosat asosiy yoʻnalishlarining oʻziga xos xususiyatlariga ham huquqiy jihatdan baho berilgan.

Kalit soʻzlar: penitensiar tizim, mahkum, jazo maqsadi, jazoni ijro etish, differentsiatsiya

Салаев Нодирбек Сапарбаевич,

Профессор кафедры «Уголовное право, криминология и противодействие коррупции» Ташкентского государственного юридического университета,
доктор юридических наук
ORCID: 0000-0002-2147-8762
E-mail: n.salayev@tsul.uz

ПОНЯТИЕ ПЕНИТЕНЦИАРНОЙ СИСТЕМЫ

АННОТАЦИЯ

В данной статье с правовой точки зрения анализируется роль пенитенциарной политики в достижении целей уголовного наказания. По мнению автора, наказание необходимо как средство самозащиты общества от нарушений вне зависимости от условий жизни данного общества. Во многих странах и в современной уголовно-правовой доктрине в целом наказание используется для исправления нравственности осужденного, недопущения продолжения им преступной деятельности, восстановления социальной справедливости, предотвращения совершения нового преступления, как осужденным, так и другими лицами. В статье автор проанализировал передовой опыт зарубежных стран и подходы ученых-правоведов к форме государственного управления в этом отношении. Кроме того, автор дал правовую оценку основным направлениям пенитенциарной политики

Ключевые слова: пенитенциарная система, осужденный, назначение наказания, исполнение наказания, дифференциация

Introduction

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, P.6], this word (from Latin "poenitentia" - "remorse") means the maintenance of the system of execution of punishment [2, P.365]. 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); 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 [3, P.13] and others), as well as in studies on foreign law and foreign legislation [4, P.98].

Materials and methods

General scientific methods such as historical, comparative legal, and logical (analysis and synthesis) methods were used in the framework of the article.

Research results

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 [5,P.54].

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"[6, P.38].

Scientists V.B. Spitsnadel and S.I. Velezhev [7, P.143] 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.

Penitentiary system is a system of execution of punishments and application of other measures of a criminally-legal nature, which covers the whole set of institutions and bodies executing criminal punishment.

In general, the criminal-executive system is a social multi-component, multifunctional and multi-level system"[8, P.113].

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"[9, P.170]. A.Ovchinnikova has an analogical opinion"[10, P.53].

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 .

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.

At the first stage of the Concept implementation (2018-2020), it is planned to:

- approve the plan of measures to implement the Concept;
 - develop normative legal acts aimed at implementing the provisions of the Concept;
 - develop and adjust target programs for the main directions of the Concept implementation;
 - develop new mechanisms to promote the activities of public monitoring commissions;
 - the development of new approaches to the application of the institution of conditional early release;
 - the formation of the organizational structure of the medical service criminal o-executive system ensuring the effective implementation of activities aimed at achieving a single level of medical care for both employees and convicts as well as those held in custody;
 - the development of the issue of providing medical assistance to convicts and persons held in custody, in full volume by health care institutions that are not part of the criminal execution system.
- At the second stage of the Concept implementation (2021-2023) it is envisaged:
- re-profiling most of the penal institutions into general, reinforced and special prisons;
 - creating new settlement colonies, analyzing the work done and (if necessary) adjusting the activities envisaged by the Concept.

At the third stage of the Concept (2024-2027), planned and programmed activities will be completed in the main areas of the criminal-executive system, as envisaged by the Concept. It is planned to develop a document on planning the development of the penal system for subsequent years.

So, which provisions should be included in the proposed concept?

In our opinion, the reform of the penal system of Uzbekistan can not be considered only from the perspective of reorganizing the system itself, it must be carried out in a comprehensive manner, linking the state, structure and dynamics of crime in the country, criminal and penal enforcement policies and legislation, the system of enforcement agencies, their tasks, functions, the structure of management apparatuses and their competence, the organization of the entire criminal-executive system and individual links.

Conclusions

In particular, in our view, in the future the following draft laws should be drafted and submitted to the country's parliament in order to implement the provisions of the proposed Concept: "On Amendments and Additions to the Criminal Code, the Code of Criminal Procedure and the Criminal Executive Code of the Republic of Uzbekistan and other legislative acts of the Republic of Uzbekistan "(on a significant change in the penal policy of the state)," On the order of service in institutions and bodies of the penal system," "On institutions and bodies of criminal justice" and a number of others.

During the same time, a system of training specialists for a new generation should also be created, not only through the existing educational institutions, but also through the deployment of a special profile training base - a network of training centers, secondary and higher educational institutions, training staff of penitentiary bodies and institutions.

Undoubtedly, stabilization of the penal system is impossible with a large number of convicts and people in custody. During the Soviet period, there was a constant increase in the number of contingent, while the possibilities for the normal placement of convicts in institutions were exhausted completely, and the investigative isolators were overcrowded.

Unfortunately, the modern penal system of Uzbekistan is not far from the old system. Numerous amnesties were carried out during the years of independence, and the system received only

a very brief respite, the problem should be solved radically through a radical change in the punitive policy that substantially reduces the number of convicts and those arrested.

The implementation of such measures is connected with the need to change the sense of justice of the population, law enforcement and judicial personnel, so as to shift the emphasis from the punitive policy towards preventive politics. This task is of a national scale, and it is necessary to solve it together, only the possibilities of a penal-executive system in this direction are very limited.

In general, the concept of reforming the penal system of the Republic of Uzbekistan includes the implementation of a number of the following major events:

1) adjustment of punitive policy, further humanization of criminal, criminal procedural and penal enforcement legislation, broadening the grounds for the application of criminal penalties and preventive measures, alternative to imprisonment or detention;

2) delineation of competencies in the management and provision of vital functions of the institutions of the penal system between the republican and regional bodies, as well as identifying areas for cooperation with other law enforcement agencies;

3) creation of conditions and order of execution of punishments, providing social and legal protection for convicts, suspects and accused in committing crimes, ensuring their constitutional rights to personal security, protection of health and property, education;

4) the change in the structure of institutions for the execution of punishment, the transition for serving sentences in one institution of various categories of convicts with their separate content, depending on the nature and degree of public danger of the crimes committed, the recurrence of crimes with a profound differentiation of the conditions for serving sentences;

5) reforming the industrial sector of the penal system on the basis of a special targeted program, and taking into account the creation of penal institutions in institutions and bodies in place of educational and production complexes, an expanded system of educational and research institutions, the development of the editorial and publishing base;

6) training of personnel of a new formation capable of adequately perceiving the requirements of international standards in the sphere of treatment of convicts, the behavior of law enforcement officials, professionally trained and willing to work in this field of activity. In the development of this provision, the Program of educational work with convicts in the conditions of reforming the penal system should be developed, which allows to implement the above requirements fully;

7) provision of the necessary conditions for introducing the experience (including foreign) of penitentiary activity and the requirements of international standards in the field of execution of criminal penalties and treatment of convicts to the practice of the penal enforcement system, the wide involvement of the public and its associations, the media in criminal activities executive system.

These measures should ultimately ensure the full implementation of the preventive function and the further humanization of the conditions and order of serving the sentence, the exclusion of unnecessary elements of its militarization, the more active involvement of convicted persons in civil society, the development and adoption of necessary legalbase, resource support aimed at normalizing the placement of convicts and persons in custody, reducing their numbers, and ultimately on adjustments of criminal policy.

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Tadqiqot LLC The city of Tashkent,
Amir Temur Street pr.1, House 2.

Web: <http://www.tadqiqot.uz/>; Email: info@tadqiqot.uz
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ООО Тадқиқот город Ташкент,
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Web: <http://www.tadqiqot.uz/>; Email: info@tadqiqot.uz
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