

The Penitentiary Crime in the Republic of Kazakhstan: The Prevention and Prophylaxis

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Abstract

The article is devoted to the complex research of the issues of prevention and prophylaxis of the penitentiary crime. In this paper the basic ideas and principles have been objectively reflected, of improving the practice of organizing prevention activities with persons sentenced to deprivation of liberty in prisons. The author proposes a number of innovations of legal and social nature conducted through the implementation of international law in the legislation of the Republic of Kazakhstan.

Keywords: Prison crime, crime prevention, penal crime prophylaxis, correctional institutions, reforming the penal system.

1. Introduction

At the present stage of development of the Republic of Kazakhstan, in conditions of building a civil society and legal state, Kazakhstan headed for humanization and compliance with international standards of the legislation in general and the prison system in particular.

For instance, if in 2005 Kazakhstan ranked third in the world by the number of prisoners per 100 thousand population, trailing only the U.S. and Russia, at the present time, due to institutional arrangements and legislative measures undertaken at the national level (adopted a series of regulations aimed at humanization of criminal and penal legislation: "The Concept of Legal Policy Concept of the Republic of Kazakhstan for the period 2010 to 2020" (2009), "The concept of improving the penal policy in the Republic of Kazakhstan for 2007-2015" (2006), The Law of the Republic of Kazakhstan "On prevention of offenses" (2010) and etc.), the number of the prison population decreased by half.

However, it must be said that, despite the measures taken, the number of persons in prisons is still high. According to the official statistics of the Committee of the penitentiary system of the Ministry of Internal Affairs, as of December 31, 2012 – 58,149 convicted prisoners and investigative arrested are contained in prisons of the republic (2012). Such quantity of the prison population entails the quantitative growth of crimes committed in correctional facilities.

According to official statistics of the Prosecutor General of the Republic of Kazakhstan, 9538 crimes have been committed in the prisons of the Republic of Kazakhstan within the last 5 years in the period from 2009 to 2013, including: 1538 crimes in 2009; 1391 in 2010; 1975 in 2011; 2357 in 2012; and 2277 in 2013 (Diagram 1) (Statistical information in Kazakhstan, 2014).

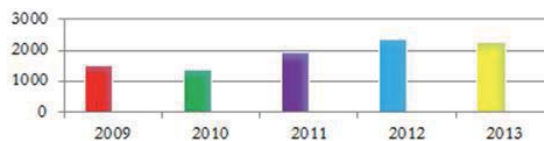


Diagram 1

It should be noted that in the last three years (2011, 2012 and 2013) the number of offenses perpetrated by persons serving their punishment has increased gradually.

It should be noted that creation of an environment conducive to achievement of the purposes of punishment in correctional facilities of the Committee of the penitentiary system of MIA of the Republic of Kazakhstan, is hampered by penal crimes in correctional facilities which poses a real threat to the order and conditions of Penal Correction, safety of prisoners and staff in the correctional institutions.

Typical for correctional institutions crimes are escapes, illegal trespass to the person, disorderly conduct, along with the high level of persistent disobedience to administration in the task of maintaining discipline and order in prisons.

Among the prisoners the criminal environment traditions are supported and informal norms of behavior are cultivated.

Meanwhile, in practice virtually every hour there are problems associated with the lack of proper legal and organizational support of the prison crime prevention processes. There is also a number of scientific and theoretical problems of attributive nature, which, in turn, significantly reduce the practical value of the currently developed prevention methods.

The problems of prevention and crime prophylaxis in general and prison criminality in particular have been described in the works of such scholars as Nils Christie (2013), Carroll T. Capers (2008), Homer Baxter Warren (1987), J.M. Pollock-Byrne (1990), T.B. Marvell and C.E. Moody Jr. (1994), D.R. Eichenthal and L. Blatchford (1997), R.E. Dzhan Saraeva (2006), N.S. Artemyev (1997), S.F. Milyukov and O.V. Starkov (2001), G.S. Sarkisov and G.F. Khokhryakov (1988) and others.

In the works of these authors penal, penitentiary and criminological aspects of the fight against crime in prisons were considered, as well as criminological characteristics of convicted perpetrators of criminal acts or exposed to criminal manifestations. Nevertheless, the problems of the prison criminality and its prevention cannot be considered completely understood. That, in turn, necessitated a comprehensive study of the problems under consideration.

Purpose of this study is a comprehensive study of the problems of the penitentiary criminality prevention in the Republic of Kazakhstan in the new socio-economic and legal environment; and also development of the recommendations for improving such activity and its legal and regulatory framework.

2. Research Methods

The methodological bases of research were scientific methods of cognition, involving consideration of phenomena in their constant development, interconnection and interdependence. During the research a complex of separate scientific methods has been used: comparative jurisprudence, system analysis, statistical and sociological (questionnaires, surveys, interviews).

The theoretical bases for the study were scientific works on criminal law, criminology, penal law, sociology and other branches of science. Normative ground for the present study were the Constitution of Republic of Kazakhstan (1995), the Criminal Code of Republic of Kazakhstan (1997), the Criminal Executive Code of the Republic of Kazakhstan (1997), as well as departmental regulations on strengthening law and order and the fight against crime.

The empirical base of the research is represented in the results of concrete sociological research, during which the questionnaires have been developed for the study of criminal cases, personal files of convicts, survey of prison administration.

Using the study instruments 116 archival criminal cases have been investigated in relation to crimes committed in prisons.

Also the researches have examined 300 criminal cases, 150 individual cases of convicted persons and 200 materials on the persistent offenders of the punishment regime, to which disciplinary measures have been applied in correctional institutions of the penitentiary system of the Almaty, Kostanay, East Kazakhstan and Pavlodar regions.

In addition, 200 correctional officers, and more than 300 prisoners were interviewed. The static data on the criminality in correctional institutions over the past five years have been analyzed.

Methodology and techniques used in the research provided the necessary reliability and validity of the results.

3. Results and Discussion

In the consideration of the crimes committed by persons serving sentences, it can be argued that currently this type of crime is a complex and sustainable socio-legal phenomenon that requires mandatory legal regulation.

When considering the features of behavior of convicts it should be noted that due to the parole the characteristics of individuals serving their sentences in prison have changed dramatically. Recent increase in the number of those convicted of serious and heinous crimes contributes to worsening of the crime situation in prisons. This is evidenced by the fact that more than half of all convicted persons are currently serving sentences for violent crimes.

Taking into account the research, it can be argued that prevention of the penitentiary crimes is a specific kind of preventive activities. And in accordance with that the crimes of the convicted persons are specific. The specificity of such offenses is confirmed by their increased public danger, but also by the stubborn refusal of the perpetrator to take the path to reform, the active opposition to the society, its values and the morals.

Analysis of criminal cases and materials of official investigations of the offenses committed by convicts reveals that among most of the crimes, committed in prison, prevail offenses against life and health, as well as violent, sexual and

other crimes.

Analysis of the criminality level among convicted persons testifies to its instability, which causes difficulty in predicting. Key indicators of the penitentiary criminality reflect its particular resistance, which determines the need to improve not only the penal correction system, having significant disadvantages at the present stage of the penitentiary crimes development, but also unconventional approach to addressing issues related to the achievement of the main goals of punishment – reformation of the convicted.

Numerous criminological research and statistics show that the vast majority of crimes is committed in detention places by males, mainly because of their overwhelming prevalence among prisoners. It is enough to say that they represent almost 95% of all crimes committed in places of detention, while the share of females falls on only 5% of the offenses.

Among the most active criminal groups of convicts the leading position is occupied by people at the age of 24-30 years, as evidenced not only with statistical data characterizing the state of general criminality, but also a tendency towards its rejuvenation.

A characteristic feature of the convicted persons is the absence of employment in the vast majority. Conducting parasitical lifestyles, unwillingness to work and learn directly affected their financial situation, which in most cases is the main reason why they commit crimes. This is confirmed by the data obtained in the present study.

The situation is ambiguous with the presence of the data on family offences, which often acts as a deterrent criminal behavior. For instance, by results of our study, more than 69.4% of inmates did not have families at all, and 53.6% of the prisoners were previously raised in single-parent families. While 48.4% of these individuals were not married or were divorced (Diagram 2).

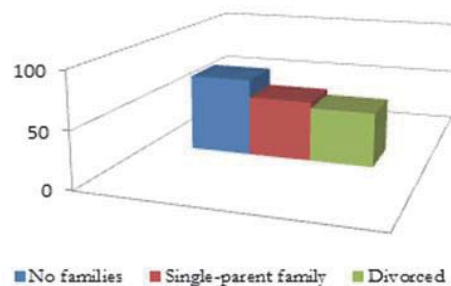


Diagram 2

In the study of individual cases of the convicted was estimated that up to the first offense they have committed, more than half of them had been detained for various administrative offenses. Subsequently, more than 90% of the persons with a criminal record, in the conditions of the penal colony, were repeatedly brought to disciplinary liability.

Originality, normativity, inevitability of a clash with the phenomenon of criminal subculture in prisons, give grounds to testify about the institutionalization of the phenomenon currently, which in certain situations may act as a cause contributing to the existence of the prison crime.

It should be said that, in accordance with numerous studies, the main reasons of criminal activity of convicted lay in the nature of criminal punishment. It should be emphasized that the specific conditions of the penitentiary criminality hide primarily in conjunction of the relations that are associated with the implementation of criminal responsibility for the previous offense.

Considering the objective and subjective reasons and conditions that are the source of the penitentiary offense we should refer to its elements, which are characterized by criminal orientation of person, including virtually all driving forces, pushed to commit a crime, as well as other properties, processes and states both biological and psychological contributing to the penal offense.

Objective reasons for the penitentiary criminal behavior are associated with a particular life situation.

Should also be said that the confrontation between the correctional institutions and convicts largely determines the criminal activity in correctional institutions in Kazakhstan.

Objective conditions accompanying the crimes in prison, which are necessary, and therefore compulsory satellites are divided in the criminological literature into:

- directly contributing to crimes commitment;
- promoting the offensive criminal consequences.

When considering the components of general social prevention the objective features, contributing to a criminal situation should be identified. At the same time, the effectiveness of prison crime prevention is directly dependent on the maximum use of capacity of the state and society, and the latter are not confined to the area of the efforts specifically allocated for the solution of this problem.

General prison crime prevention, undertaken in the social scale, is defined as improvement of the penal system, removing the existing contradictions in this area.

For the formation of preventive policy at the general social level it is necessary to have reliable information on the causes of the prison crime that implies a scientifically sound criminological and sociological research.

On this basis, we can conclude that the main condition for the effectiveness of such studies should be their regularity (e.g. every five years), which will react quickly enough to changes in the state of the prison criminality, given the different changes in the social life of the country.

Individual prophylaxis measures against convicted occupy the most important place in the system of the penitentiary criminality prevention.

Individual prevention of penal offenses includes a system of measures for identification and positive impact on the convicted persons, who can really commit a crime before the end of serving their sentence on the assumption of their behavior.

Individual prevention of crime, of the category under consideration, among persons serving sentences should be built primarily on their study, which is achieved by various methods. The most common are conversations, document examination, testing.

Impact on convicts should be comprehensive, preventive measures should be designed to reflect the latest achievements in various fields of science, sociology, psychology, medicine, etc.

Among the methods of preventive influence special place occupy privileges and rewards.

Speaking of encouragement, it should be determined as a form of legal action and approval of voluntarily deserved behavior, whereby the subject is rewarded and obtains benefits. However, it should be noted that the lack of a clear hierarchy of incentive norms in the penal legislation often reduces the effectiveness of the measure.

Positive results of socialization of convicts are the primary educational goals of the correctional institutions that play a key role in the individual prevention of the prison crime. But it should be noted that at the moment these services in correctional institutions of the Republic of Kazakhstan lack the qualified personnel. The penitentiary system of the MIA of RK, unfortunately, lacks lawyers and psychologists due to several reasons, among which is an insufficient number of specialized educational institutions of the Ministry of Internal Affairs of the Republic of Kazakhstan, inadequate financial provision, along with the complexity of the tasks.

Particular importance in the process of reforming the penal system of Kazakhstan takes to bring it in line with international standards set by international instruments. At the same time extremely important question is to prevent torture and latent violence in prisons for convicted persons in paid employment, legal protection of prisoners, social rehabilitation services after their release.

However, the implementation of those aspects in accordance with international standards in a number of states is to some extent complicated by factors such as:

- economic downturn and related limitation of material and financial resources;
- growth of crime accompanied by an increase of “punitive claims” of the population and the increasing number of prisoners;
- increase in drug addiction, HIV infection;
- aggravation of international and interethnic conflicts;
- deterioration in relations between inmates and staff of penal institutions;
- relative decline of the prestige of professional penal correction action.

These factors indicate that, at the present stage of legal reform, the focus should be concentrated on improving existing and creating new procedures, institutions and mechanisms to ensure the reality of the constitutional rights and freedoms, protection of subjective rights and legitimate interests of citizens.

Reform of penal correction system in Kazakhstan is currently happening on the principles of humanism and democracy. The content side of each of the principles is disclosed in legal practice. It can be stated that consolidation and implementation of these principles meet international standards on the treatment of prisoners. This fact is an important factor in the formation of the new criminal and penal correction policy of Kazakhstan.

In this regard, very significant, in our opinion, should be the following ways to improve organizational measures to prevent the prison criminality:

1. Improving the penal enforcement legislation of the Republic of Kazakhstan.
2. Improving the activity of criminal executive system and other state bodies that implement the tasks of the prison prophylaxis.
3. Better interaction between the local authorities and law enforcement agencies in order to improve the prevention of the penitentiary crime and reduce the prison recidivism.
4. Improving the economic and social systems of the state.

One of the priority directions of development of legal policy of the country is the further development of the penitentiary legislation, the provisions of which should proceed from the recognition of the primacy and inalienability of human rights and freedoms as the highest social values protected by the Constitution of RK.

Under the provisions of the Concept of Legal Policy of the Republic of Kazakhstan [1], in the process of improving the criminal law, strict compliance should be ensured with such principles of criminal law as humanism and economy of criminal repression. In applying the law the perpetrators of offense shall be treated humanely, which excludes torture, humiliation; in relation to them, the criminal responsibility and punishment apply only in absence of legitimate grounds for exempting them from criminal responsibility and punishment; and more severe punishment from those provided for the crime shall be authorized only if the less stringent form will not achieve the goals of punishment.

Realization of criminal responsibility must be carried out not only by the sentencing. In this area, the prospect of further development should be the adoption of a set of legislative measures in the following areas:

- The continuation of the policy of the gradual restriction of the scope of the deprivation of liberty, including life imprisonment, the abolishing the death penalty;
- The continuation of decriminalization of criminal law, providing responsibility for offenses of low and medium gravity category;
- further decriminalization of penalties through increased sentencing not associated with isolation from society;
- development of the technology of interaction between society and government on issues of improving the institutions of restorative justice;
- legislative regulation of the differentiation of penalties in relation to certain categories of convicts, including the system of criminal law for minors (juvenile justice);
- improving and extending the use of such encouraging institutions in execution of punishments as a parole from serving the sentence, mitigation of procedures and conditions of sentence serving;
- legal regulation of the complex issues related to the interaction of interested state bodies and institutions of civil society in solving problems facing the penal correction system;
- improvement of the regulatory framework of selection, placement, training and education of personnel of the penitentiary system and their material and social support.

In addition, the further development of penal enforcement legislation must consider the basic provisions of international instruments on human rights and international agreements defining the basic principles and procedures for the treatment of prisoners, as well as further improvement of material and technical base of the penitentiary system, the continuation of the policy of its humanization.

However, in the further development of the penitentiary legislation must be considered the basic provisions of international instruments on human rights and international agreements defining the basic principles and procedures for the treatment of prisoners, as well as further improvement of material and technical base of the penal system, continued policy of humanization.

Under the policy of ensuring transparency of penitentiary and other closed institutions, preventing human rights violations, in our opinion, it is necessary to develop and adopt the Law "On public control over the observance of human rights in places of detention", where the independent social, medical and other controls would be regulated, as well as forms and methods of cooperation of correctional authorities with representatives of non-governmental organizations and the media.

In this regard, the implementation of public control in the sphere of activity of the penitentiary system should find its normative legal definition.

Developed regulatory acts aimed at further development of the penitentiary legislation, should not ignore the acute problems facing the prevention of recidivism. In this aspect of the system it is necessary to create conditions conducive to social adaptation of persons released from serving the sentence, the operation of the respective centers of social adaptation and development of probation services in Kazakhstan.

Quality of implementation of the above development directions of the penitentiary legislation should be provided appropriate social, legal, departmental control and supervision of the public prosecutor.

As part of the humanization of criminal policy the implementation into national law of the provisions of international legal instruments in the field of human rights, including persons in detention, seems to be relevant. It should be noted that in the present circumstances there is no ban on the use of international treaties and conventions not ratified by the Republic of Kazakhstan. The main criterion is to protect the fundamental rights and freedoms of a person and citizen.

Enhanced international cooperation of the Republic of Kazakhstan in the field of natural human rights has led to creation of the positive law complex in the republic aimed at ensuring the rights of persons in detention, as well as the inevitability of punishment for crime.

Our study confirmed that current prevention of the prison crime needs to be improved, and the successful solution of the problem is related not only to changes in penal policy, but also with the use of essentially new developments in various fields of science.

4. Conclusions

The study is a comprehensive solution of large social and legal problem, which has great importance for the prevention of the prison crime.

Conclusions and suggestions made in this article can be used for further improvement of criminal executive legislation, the results of which should be the adoption of the laws of the Republic of Kazakhstan "On Probation Service", "On public control in the execution of criminal penalties", "On the bodies and institutions of the criminal executive system of the Republic of Kazakhstan", "On amendments and additions to the laws of the Republic of Kazakhstan on the execution of sentences and other penalties of legal influence".

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