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## Systemic, Institutional and Idiosyncratic Factors of Corruption in Foreign Penitentiary Systems: Experience in Countering Administrative Discretion

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### Abstract

*Introduction:* the article analyzes issues of improving legislation and organizational and managerial (administrative) activities in the field of combating corruption in foreign penitentiary systems. *Purpose:* to study problems of combating corruption in the penitentiary sphere with the help of administrative and legal means in foreign countries. The article notes that detention and punishment in the form of deprivation of liberty contribute to the emergence of threats of hypertrophied application of administrative discretion in relation to convicts by the administration of penitentiary institutions. Systemic and institutional corruption in the penitentiary sphere is formed only in idiosyncratic conditions of manifestations of illegal corrupt behavior of senior management of penitentiary bodies and institutions. The *methodological basis* of the work consists of general scientific and private scientific (logical-legal, comparative-legal, descriptive, content analysis) methods of cognition of legal reality. *Conclusions:* the fight against corruption in the penitentiary sphere can be effective only if the share of administrative discretion in relation to prisoners is reduced by the administration of penitentiary institutions through establishment of strict regulatory restrictions and prohibitions in the field of administrative activities, implementation of constant external independent control by state bodies and the public over correctional facility activities, conduct of various educational and promotional activities, strengthening of social protection of the staff of institutions and carrying out of measures aimed at increasing public prestige of the penitentiary service. The *scientific and practical significance* of the work lies in the substantiation of practical proposals on the possibility of using foreign experience in combating corruption in the penitentiary sphere in the domestic practice of state-legal construction.

**Keywords:** penitentiary sphere; idiosyncratic corruption; administrative control; administrative discretion.

5.1.2. Public law (state law) sciences.

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### Introduction

Execution of criminal penalties is the most important law enforcement function of any

modern democratic state, the implementation of which is primarily associated with social justice restoration [1]. Social justice itself

is a multidimensional phenomenon. Being a philosophical and socio-legal category in a civilizational context, it is considered in conjunction with basic legal values, such as human and citizen rights, expressing in the legal consciousness and activity of people the general conditions for realization of legal, moral and other socio-cultural imperatives of the proper state of the individual and society in specific historical conditions [5]. In this regard, global requirements for the quality of execution of criminal penalties are significantly increasing, especially in terms of its social effectiveness as the most important legal and organizational means of establishing social justice. A significant obstacle to achieving a necessary level of social efficiency of modern penitentiary practices is a high corruption level in the sphere of execution of criminal penalties, which necessitates the conduct of relevant scientific research, as well as a wide range of international (supranational) and domestic measures in the field of combating corruption.

#### *Discussions*

Corruption in the sphere of execution of criminal penalties should be considered as a global problem with deep social, political, economic, historical, legal and organizational reasons. Worldwide prevalence of this phenomenon is connected with the systemic nature of crime in the penitentiary sphere, maximum possible concentration and organization of criminal communities in penitentiary institutions, constant increased risks of involvement of the personnel of penal bodies and institutions in illegal activities. According to foreign researchers, in a number of countries (USA, Great Britain, Brazil, Colombia, Philippines, etc.), the scale of penitentiary corruption is staggering [15]. Investigative bodies of these countries established numerous facts of merging of criminal syndicates and prison administrations in order to commit various crimes both inside and outside institutions in exchange for improved conditions of detention – the so-called “luxury behind bars”. This led to the emergence and development of institutional penitentiary corruption, with penitentiary crime being its integral part, the structural basis (basis) of activities of not only the correctional system, but high-

er-level state systems, such as law enforcement, judicial, parliamentary, etc.

Penitentiary activities in closed-type correctional institutions are characterized by a special vulnerability of personnel to corruption manifestations due to the specifics of the regime of punishment execution in the form of imprisonment, due to the closed nature of penitentiary activity and associated risks of insufficient state and public control. In these conditions, detention and punishment in the form of deprivation of liberty mean not only a serious restriction of the personal freedom of persons in custody and sentenced to imprisonment, but also possible hypertrophied application of administrative in relation to these persons on the part of the penitentiary institution administration. In closed-type penitentiary facilities, there are always threats and risks of situations of a kind of imbalance of internal administrative power in the direction of strengthening administrative discretion and administrative arbitrariness. On the other hand, criminal communities themselves actively seek to gain power and control over the institution administration by recruiting, provoking and blackmailing staff and their family members [7]. These circumstances make it necessary to increase the requirements for the activities of personnel, vigilance and prudence on the part of the administration of institutions, control over personnel at all stages of the process of criminal punishment execution.

Let us consider types of corruption risks in correctional institutions, factors of administrative discretion and conditions of their occurrence.

In foreign studies, attention is drawn to the fact that the subordinate position of prisoners, freedom and uncontrolled actions of correctional personnel, increased anxiety and concern of relatives and friends about prisoners' fate contribute to the creation of conditions for the use of excessive administrative control (administrative discretion) on the part of the administration and corruption risks [17]. These risks cause the emergence of systemic (institutional) corruption, which implies constant interaction between the personnel and criminal community leaders, who, in turn, often assume the functions

of intermediaries in solving the most complex problems of prisoners. At the same time, the most severe forms of systemic (institutional) corruption arise in the conditions of constant cooperation of high-ranking heads of correctional institutions and their management bodies with leaders of criminal communities serving sentences in the form of imprisonment and the ones who are at large.

In conditions of systemic corruption, correctional facility employees may allow prisoners to conduct criminal activities or even manage criminal organizations within institutions in exchange for bribes, sexual services, the share of illegal profits, etc. In foreign practice, there are facts of the use of prisoners as cheap labor at various enterprises outside correctional institutions in order to obtain illegal profits [7].

According to the Reuters news agency, “in Mexico, more than 40,000 prisoners accused of crimes are locked up in state prisons every year, where cartel killers are often held together with petty thieves, juvenile prisoners or those awaiting trial” [20]. There are numerous facts of detention in prisons without trial and investigation. According to the Mexican expert Guillermo Zepeda, “the proportion of such persons in Mexican prisons is about half of the total contingent, and prisoners in pre-trial detention pay about 539 million pesos (43 million US dollars) a year in bribes for everything from a place in the cell to air conditioners” [22]. Numerous facts of arbitrary delaying of trials have been noted in Peru, thus “more than 70% of all detainees in correctional institutions do not have a sentence” [16]. In Bolivia, correctional administrations actively cooperate with prisoners and drug cartels in the production and distribution of cocaine [9], etc.

In foreign studies, it is noted that corruption in national penal systems differs significantly from corruption phenomena in other public administration systems, it has pronounced specific features, in particular:

1) correctional facility staff controls every aspect of prisoners’ daily lives, including their access to basic necessities, and in certain cases their luxury goods, illegal goods, services and activities. This objectively creates a “market situation” with the availability of ap-

propriate demand and supply for the commission of corruption offenses;

2) national states, being the exclusive power subjects in the field of control and supervision in the penitentiary sphere, legislatively establish a high degree of inequality in the relations between the prison administration (prison bureaucracy) and convicts;

3) the closed nature of prisons and the fact that they are largely hidden from the public eye and excluded from political discourse limit the possibilities for transparency and accessibility of public control;

4) against the general background of poor internal management and ineffective leadership on the part of correctional administrations, organized crime is intensifying, which has a devastating impact on the overall work of the penitentiary system [14].

These and similar phenomena in foreign literature are described as the grounds or factors for the emergence of idiosyncratic corruption [8], that is, specific corruption that occurs only under certain conditions and in a special social environment, which certainly includes the environment of convicts who are in prison institutions of a closed type. At the same time, idiosyncratic corruption itself is not homogeneous in essence. It is conditioned by many factors, both system-wide, i.e. inherent in global and national penitentiary practices, and purely subjective, depending on individual personality characteristics of leaders of criminal communities and corrupt heads of correctional institutions. In this regard, idiosyncratic corruption in the penitentiary sphere should be studied in broad and narrow senses, considering personal subjective corruption preferences and inclinations of managers and staff of correctional institutions, as well as features of their official position (official opportunities for corrupt behavior), as specific idiosyncratic features of penitentiary corruption.

The main factor in the emergence and resistance of idiosyncratic corruption risks in the penitentiary sphere is the presence of large, uncontrolled and often excessive administrative power of correctional personnel. It is implemented with the help of persuasion and coercion, within which various means of encouragement and punishment are used. At the

same time, the system of extrajudicial disciplinary punishments and other coercive measures in conditions of idiosyncratic corruption is, as a rule, not only nonlegal (organizational), but also illegitimate (illegal) in nature.

Identifying elements of potential corruption, understanding its causes and planning measures to reduce it is an important managerial (organizational and legal) task of law enforcement in correctional institutions. The success of this kind of activity depends on the will, abilities and integrity of the staff ("prison administrators") at all levels. However, in conditions when persons controlling the management system of penitentiary bodies and institutions and authorities of bodies and institutions executing criminal penalties allow the possibility of committing or commit corruption offenses themselves, subordinate staff, as well as inmates, consider corrupt behavior as acceptable and expected. For example, if a correctional institution head lets friends or colleagues attract prisoners to unpaid work, this sends a clear signal to employees that the exploitation of prisoners for personal purposes is permissible. Besides, there are other forms of corruption in the penitentiary sphere, such as systematic informal fees for the staff, various forms of protectionism (localism, trade in positions, patronage in the commission of offenses), etc. In this connection, it should be concluded that systemic corruption in the penitentiary sphere is formed only in conditions of idiosyncratic manifestations of illegal corrupt behavior of senior managers of penitentiary bodies and institutions.

In most cases, the risks of both systemic and its core, i.e. idiosyncratic, corruption depend on the nature (type of regime) of a correctional institution. As noted by I.M. Matskevich and I.I. Isakov, administrations of penitentiary institutions in foreign penitentiary systems often acquire the status of mini-governments, in which the leaders have significant powers in the field of control over prisoners [3]. In these conditions, the administration of correctional institutions itself should be considered as an object of the closest control and supervision on the part of authorities of general and sectoral competence, as well as the public. This point of view is the most common in special foreign lit-

erature. For example, a well-known American expert in the field of penitentiary corruption, Professor at the University of Pennsylvania John J. Dilulio notes that "... the prison administration should be subject to a powerful system of internal and external control of its behavior, including judicial and legislative supervision, media attention, operation of professional norms and ethical standards, strict internal control and inspections, constant internal evaluations and openness to external research" [10]. According to the scientist, external supervision of activities of the correctional institution administration is difficult due to the closeness of institutions and the fact that the staff is "physically hidden from prying eyes". At the same time, John J. Dilulio argues that the "key to improving prisons is a highly disciplined constitutional government, which involves hiring prison managers who are able to control themselves while simultaneously working to control prisoners" [10].

Non-transparency of the processes of execution of a sentence in the form of imprisonment should also be attributed to crucial conditions for the emergence and resistance of idiosyncratic penitentiary corruption. Foreign literature presents several reasons for such opacity.

To begin with, in most penitentiary systems personal information about prisoners in custody and convicts in correctional institutions is of a closed nature and is not subject to use (processing, lighting, etc.). The unspoken nature of the circulation of any information about the special agent (general civil personal data, and even more so specific information about convicts in connection with criminal punishment and conditions of serving a sentence in a particular correctional institution), on the one hand, hinders the information exchange between convicts and criminal communities outside the correctional institution and, on the other, contributes to concealment of information about committed offenses inside the correctional institution and violations of convicts' rights.

In most foreign countries, legislation protects citizens' rights to privacy, including in the penitentiary sphere; therefore, the disclosure of personal information about prisoners is significantly restricted from the public. Prisoners lose not only certain rights to pri-

vacy after conviction, but also the right to inviolability and independent use of personal information about their lives, depending on the nature of the crime committed and the type of punishment regime. In particular, the practice of concealing personal information and personal data in relation to persons detained and convicted of acts related to organized crime, banditry or terrorism is worldwide. In general, taking into account the increased attention paid by administrations of correctional institutions to persons detained and convicted in connection with the commission of such crimes, information about methods, security procedures and reports of internal audits or investigations is extremely reluctant to be disclosed or carefully concealed. According to Gwenola Ricordeau, professor at the Department of Political Science and Criminal Justice at California State University, figuratively notes that taken in totality these precautions create an atmosphere in which prison walls, in addition to keeping prisoners inside, do not allow external publicity. Controlling people's lives without transparency increases the likelihood of corruption [19].

Second, the lack of transparency of information exchange is also characteristic of correctional facility personnel. The staff of institutions are reluctant to disclose information about methods, procedures for ensuring the regime of execution of sentences, the state of internal security, as well as reports on work in various areas of official activity. World practice shows that in most penitentiary systems of national states there are direct administrative prohibitions on the disclosure of such information, which is of a closed official nature and is not subject to dissemination to a wide range of the public. This circumstance determines the presence of idiosyncratic corruption risks associated with the involvement of the staff of institutions in illegal corruption activities inherent in a separate penitentiary institution (territorial body or the whole region).

Third, the Standard Minimum Rules for the Treatment of Prisoners establish that the use of force should always be an exception and used only as a last resort. In order to avoid any abuses in the use of force, the principles of legality, necessity and proportionality should be respected; monitoring procedures should

be implemented, and those responsible for abuses should be brought to justice [13].

At the same time, the need for the use of violence and the negative attitude of convicts to the use of violence by the staff of correctional institutions leads to the emergence of wide corruption opportunities. Individual idiosyncratic tendency of managers to use unlawful violence (excessive use of legal disciplinary coercion against convicts, and even more so illegal use of torture and bullying) are the basis for rallying the environment of convicts and attempts by criminal leaders to "solve issues" with the administration of institutions by appropriate illegal means.

According to foreign experts, insufficient professional training of staff (prison guard officers) puts them in the position of increased vulnerability from corruption risks [18]. Unskilled personnel, as a rule, are not sure about legality or illegality of certain actions in the context of the penitentiary service. Special reference literature for correctional institution heads notes that it is not particularly difficult to teach staff to use force, but teaching personnel the grounds for using force and its adequacy requires great skill and long practice [18]. At the same time, it is noted that the improper use of force, due to the full control of staff over prisoners, is a constant problem in pre-trial detention facilities and prisons ... in connection with which acceptable behavior of the staff should be determined by laws, regulations and procedures, institutional values and codes of conduct, as well as constant familiarization of staff with their content and order of application [18].

The literature also draws attention to the fact that in conditions when the prison administration and the public agree with the excessive use of force in correctional institutions and consider such violence justified, this contributes to the acceptance of corruption as a kind of deterrent to unlawful violence [12]. The lack of effective public monitoring, mechanisms for external independent investigation and open reporting on the facts of violence in places of detention or correctional institutions create conditions for impunity for unlawful actions of staff, which increases vulnerability of penitentiary systems to corrupt practices.

Fourth, the prevalence of corrupt behavior is also promoted by inefficient management of penitentiary activities, and in some cases by complete absence of procedural decisions determining the procedure and grounds for the detention of prisoners and their treatment. The staff of institutions does not always understand that the purpose, for example, of pre-trial detention is not punishment, but keeping the accused before trial. Persons in pre-trial detention are, by definition, not guilty of any crime and should be treated as normal citizens to the extent that the requirements of internal security and expediency permit. The personnel of institutions does not always understand legal, organizational and moral limitations in their work. In this regard, the level of perception of the illegality of behavior among the staff of institutions is significantly reduced and what the staff considers appropriate in relation to prisoners actually belongs to the category of unethical or corrupt practices.

Fifth, foreign literature also draws attention to a low salary level of the prison staff as one of the conditions for spreading corruption [2]. Thus, the Secretary General of the Association of Prison Guards in the UK has identified a direct link between low wages of the prison staff and corruption level [11]. For example, in the state of Georgia (USA) in 2016, the FBI simultaneously arrested over 50 prison guards involved in corruption, whose average salary was only about 24 thousand dollars a year; this sum approaches the poverty line for a family of four. In the state of Mississippi (USA), the initial salary of a prison guard entitles an employee to receive food stamps [15]. Most foreign experts pay attention to the direct link between staff corruption and low wages, their research shows that an increase in wages could help reduce corruption in penitentiary systems.

All these factors of idiosyncratic corruption in the penitentiary sphere are connected and caused by excessive and uncontrolled administrative power of the administration of penitentiary institutions and their leaders, who are, in fact, key organizers and inspirers of corruption networks in the penitentiary sphere. Administrative discretion, unfortunately, is a permanent phenomenon and, in principle, characteristic of any kind of mana-

gerial activity, but in the penitentiary sphere it acquires the most sophisticated idiosyncratic forms and requires increased attention of state authorities and the public.

We will analyze anti-corruption practices in the penitentiary sphere, their paradigms, strategies and effectiveness.

Foreign researchers have recently considered corruption as a hidden factor that affects not only the state of individual spheres of public activities, but also political, economic, social and other processes on a country scale and even at the interstate level.

A well-known Italian expert, professor at the Department of Political Sciences at the University of Pisa Alberto Vannucci distinguishes three main paradigms of corruption. Within the framework of the economic paradigm, corruption is considered as the result of rational individual choice, and its spread within a certain organization is influenced by factors that determine the structure of expected costs and rewards. The cultural paradigm is based on differences in cultural traditions, social norms and internalized<sup>1</sup> values that shape moral preferences of individuals and take into account their social and institutional role, which contributes to the formation of idiosyncratic manifestations of corruption. The neo-institutional paradigm is associated with the use of mechanisms that allow for the internal regulation of social interactions (institutions) within corrupt networks, and their influence on people's beliefs and preferences. A. Vannucci emphasizes that modern corruption is the result of many individual and collective choices that significantly change public opinion regarding corruption and its spread in the state, markets and civil society. There is no unambiguous recipe for combating corruption manifestations, since corruption is a complex and multifaceted phenomenon. Reforms aimed at eliminating systemic corruption encounter counteraction of hidden management structures in corruption networks [21]. So, a vicious circle arises: the conduct of an effective anti-corruption policy is hindered by corrupt high-ranking officials,

<sup>1</sup> Interiorization (In French Interiorisation – transition from outside to inside, from Lat. interior – internal) is the process of transition from external actions to internal ones. Human education and upbringing is based on it: first adults explain and show, and then children, repeating, transfer necessary actions to the internal plan [6].

and the more an effective anti-corruption policy is needed by a particular society, the less likely it can be consolidated in law and implemented. Overcoming this vicious circle is possible only in conditions when the official state anti-corruption policy is complemented by activities of informal public institutions, an initiative from below. With regard to corruption problems in the penitentiary sphere, the presented paradigms allow us to determine corruption features in a certain national state and work out optimal models and strategies of anti-corruption policy for individual states.

Systemic, institutional and idiosyncratic corruption currently poses a serious security threat to penitentiary systems and personnel in any country. The study of foreign experience allows us to conclude that the crucial obstacle to the development of comprehensive nationwide (national) strategies for combating penitentiary corruption is the lack of effective tools to assess their real effectiveness. Corruption-related crimes are, as a rule, investigated post factum and cannot be considered as effective legal tools for identifying long-term corruption risks in the functioning of penitentiary systems and, moreover, countering them.

### Conclusions

The causes and conditions of penitentiary corruption, revealed during investigation of crimes, hinder assessment of the degree of phenomena prevalence and the scale of corresponding risks and elaboration of long-term programs to counteract penitentiary corruption. In this regard, the development of strategies to counteract penitentiary corruption in foreign countries should be based on a deep paradigmatic study of causes, conditions and factors of corruption in individual states and their penitentiary systems. At the same time, in all cases, the effectiveness of combating corruption in the penitentiary sphere can be achieved only if the share of administrative discretion in relation to prisoners is reduced by the administration of penitentiary institutions through the establishment of strict regulatory restrictions and prohibitions for staff [4], implementation of constant external independent control by state authorities and the public over administration's activities, conduct of educational and propaganda measures, strengthening of social protection of the institution personnel and measures aimed at increasing the public prestige of the penitentiary service.

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