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Features of National Penitentiary Policy and Their Methodological Significance

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Abstract

Introduction: modern legal science has not sufficiently developed methodological foundations of penitentiary policy, which is understood as a socio-legal phenomenon explaining the patterns and processes of applying criminal law measures in order to ensure law and order in society and the state. *Purpose*: to formulate ontological features of national penitentiary policy, as well as to reveal their essence and methodological significance. *Tasks*: to study theoretical approaches to understanding the essence of penitentiary policy; determine vectors of development of scientific penitentiary thought; identify trajectories of the evolution of penitentiary policy features. *Methods*: induction and deduction, abstraction, historical and legal, comparative, modeling. *Results*: to comprehend the essence of penitentiary policy is possible through the prism of understanding the content of its structural elements outlining the contours of this concept. The penitentiary doctrine, legal regulation of measures of criminal legal impact, the procedure for their execution, as well as indicators of penitentiary statistics most fully characterize the essence of national penitentiary policy. *Conclusion*: the author substantiates the essence and methodological significance of features of national penitentiary policy, which determine it as an integral political and legal phenomenon, different from other related categories used in criminal law science. It is noted that methodological aspects of penitentiary policy took shape in the second half of the XIX century – the first quarter of the XX century, thanks to the scientific schools of England, France, Germany, Italy, Belgium and Russia.

Keywords: penitentiary policy; measures of criminal law impact; penal legislation; enforcement of punishments; penitentiary statistics.

5.1.4. Criminal law sciences.

5.1.1. Theoretical and historical legal sciences.

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Introduction

Modern scientific literature lacks research on penitentiary policy elements. As the analysis of strategic planning documents (for example, the Concept for the Development of the Penal System of the Russian Federation for the Period up to 2030) shows the relevancy of the development of conceptual provisions of penal

policy. Despite the variety of works devoted to individual issues in this area, methodologically significant aspects remain without due attention.

As a rule, the greatest research interest is attracted by such theoretical constructions as the essence and content of penitentiary policy, as well as its goals, objectives and principles. For any structure, these elements are fundamental, determining methodological maturity. At the same time, features of penitentiary policy, which are no less important than the abovementioned structural categories, have not received sufficient scientific consideration. Their knowledge provides a methodological opportunity to talk about the evolution of penitentiary policy, which is very important when differentiating its models.

In addition, the identification of penitentiary policy features can continue a constructive line of dialogue about its substantive status. For example, in the scientific community there is a widespread opinion about attribution of penitentiary, sometimes called penal, policy to an integral part of criminal policy. At the same time, despite close relationship with criminal law, it is possible to discuss the auxiliary role of penitentiary policy.

Penitentiary policy in methodological discourse

Methodological significance of features is very significant in the postmodernist paradigm, for which law is a phenomenon that, on the one hand, reflects social reality and, on the other, defines it. Determination of features of a phenomenon indicates the degree or depth of knowledge of its essence. Based on such key elements, scientists make efforts to streamline knowledge, which is expressed in the construction of various classifications, definition of periodizations, construction of models, etc.

The epistemology of postmodernism is based on the relativity of knowledge and its subjectivity. I.L. Chestnov, considering jurisprudence in the traditions of the constructivist paradigm, notes that "constructivism as a paradigm of social sciences is characterized by antiuniversalism, contextualism of the social world, relativism of all social phenomena, overthrow of naive realism, replacement of objectivism by intersubjectivity (between individualism and holism). At the same time, methodological individualism and anthropologism are characteristic of social constructivism: social phenomena and processes are mental representations and interactions of people" [1, p. 65].

According to many legal scholars, perception of postmodern ideas contributed to overcoming dogmatism, including ideological, in legal science. The expansion of the limits of scientific search, critical consideration of the postulates, refutation of the provisions of generally accepted theories and doctrines, undoubtedly have a positive effect on the advancement of knowledge of the surrounding reality. At the same time, a sharp change in scientific paradigms may trigger emergence of pseudoscientific statements that distract scientific thought from achieving its main goal.

In this regard, it is appropriate to recall discussions about positive and negative principles of legal fictions. Acting as a scientific hypothesis or assumption, fictions, on the one hand, are productive in the construction of theoretical constructions, which may later receive legislative formalization. Thus, A.I. Sitnikova, as an example of the constructive influence of fiction on the development of legal matter, mentions a theory of the stages of committing a crime, which was developed by Soviet criminal law science and served as an impulse for the formation of related institutions in criminal law [2, p. 62].

At the same time, fictions can have a negative impact due to the fact that the formulated provisions are based on unsubstantiated conclusions, erroneous calculations or violation of the methodology for collecting empirical data. Strategies, concepts, and doctrines constructed on erroneous statements, as a rule, do not reflect the actual state of things, set destructive goals and objectives, and set erroneous transformation vectors.

However, these two poles do not fully represent the essence of legal fictions. A wide range of scientific ideas remains outside their framework, which may remain unclaimed for a long time, but at the same time this does not reduce their scientific value. Thus, scientific research often leads to conclusions that may not be implemented for objective reasons, for example, due to the prevailing doctrine, political conjuncture, specifics of the established legal system, etc. At the same time, such ideas are very con-

structive, since they form a competitive scientific environment and fulfill a dialogic function.

Structuring scientific knowledge about the object under study is a process of "cleansing" its elements from all kinds of "impurities". For example, the famous Austrian positivist scientist H. Kelsen used a similar formulation to justify his "pure doctrine of law", in which he identified legislation and law, believing that a true law is the legal norm fixed in the legislation. Thus, he constructed an ideal model of law, which served as the methodological basis of the normative school of law.

Modern political and legal research focuses on objects that are formed at the junction of interaction between social and legal reality. Such objects can rightfully include penitentiary policy, the subject field of which is formed in the process of mutual influence of the two abovementioned realities. When they interact, social relations are transformed into legal relations regulated by normative prescriptions. In this case, law acts as a means of ensuring a balance of public and private interests, the bearers of which are numerous actors.

The postmodern paradigm, expanding the framework of methodological approaches, at the same time creates a temptation to blur the principles on which scientific research is based: objectivity, reliability, validity, consistency, etc. Excessive subjectivism, contextuality of conclusions can only lead to a devaluation of the value of scientific knowledge, excessive evaluation and engagement. In this regard, the definition of the attributes of penitentiary policy should provide for the identification of key elements characterizing the essence of the phenomenon under study.

Features of national penitentiary policy and their essence

An analysis of the evolution of penitentiary policy allows us to identify the following features that reflect its internal content:

– penitentiary doctrine;

– a legal system of criminal consequences;

–normatively established rules for the application of criminal law measures;

– penitentiary statistics.

The combination of these attributes indicates the formation of the structure of penitentiary policy of a particular state, carried out on the basis of scientific justification, purposefulness, rationality and balance of the application of measures of criminal repression.

Since the presented approach to understanding penitentiary policy in the science of criminal and penal law has not been applied, let us consider in more detail the essence of each of the highlighted features.

Penitentiary doctrine.

When studying the institutionalization of penitentiary policy, the existence of a corresponding scientific doctrine is of fundamental importance. The main place in it is occupied by the doctrine of punishment and its execution. It is this focus that makes it possible to separate it from the criminal law doctrine in the depths of which it originally developed.

The doctrinal foundations of modern understanding of punishment were laid down in the 18th century. S.V. Poznyshev associates the emergence of penitentiary science with the name of the English philanthropist D. Howard, "penitentiary science is an achievement of modern times. It has existed for only a little over a century, which is a very short time for the scientific industry. It began with those descriptions of dreadful and ugly old prisons, with more or less detailed indications of their desirable changes discussed at the end of the XVIII century. The Englishman John Howard initiated literature of this kind" [3, p. 7]. However, in the full sense, D. Howard's works were not doctrinal in nature, they were descriptions of those prison institutions that he visited around the world with proposals for their reforming.

It should be noted that activities of D. Howar's compatriots, in particular, V. Venning and E. Fry, who advocated humanization of the penal system, were important for the reform of the penal system. Thus, I. Ya. Foinitskii points out that the idea of creating a prison trust society in Russia, realized in 1819, belonged to V. Venning, who also proposed "to rebuild all prisons, classify prisoners according to moral categories and occupy them with compulsory work together with religious and moral education" [4, pp. 294–295].

E. Fry's activities were based on philanthropic principles; she was engaged in charity work in English prisons and expressed progressive ideas for that time about humanization of the execution of punishments in relation to women and minors.

At that time the English utilitarian philosopher J. Bentham presented works, such as "An introduction to the principles of morals and legislation", "Deontology; or the science of morality", "The basic principles of the Criminal Code", "The panopticon", etc. The idea of a panopticon, which was later called the model of an ideal prison, was outlined by J. Bentham in a series of letters to his friend. On the one hand, the theoretical model represented an architectural solution for the creation of a special institution (prison, workhouse, psychiatric hospital, etc. e.) with constant supervision of convicts. On the other hand, the author considered the possibility of implementing means of correction of convicts, such as "compulsory labor, vigilant supervision and arousing the imagination of prisoners through religious rituals" [4, p. 290]. Also, the proposed model of a penitentiary institution provided for solving problems related to the conditions of detention of convicts.

The concept of rationalization of punishment was also widespread among French Enlightenment philosophers. Ch. Montesquieu, F. Voltaire, C. Helvetius, P. Holbach, D. Diderot, and others, "who advocated rationalization of law enforcement activities of the state, codification of criminal procedure norms and mitigation of criminal penalties, actually prepared the grounds for the emergence of a more effective social control system than the monarch's power. In this system, the government had to lose arbitrariness features and was bound by certain rules. It was forced to recognize in the individual a subject endowed with certain rights and freedoms, and to use punishments only in a strictly standardized dose" [5, p. 764].

Enlightenment philosophers did not deny the system of state coercion, which performed repressive functions, prescribing and executing punishments in cruel ways sometimes. M. Foucault vividly illustrates criminal proceedings of France at that time when describing execution of R.F. Damien (the soldier who stabbed Louis XV) on March 2, 1757: "he (Damien – author's note) had to be brought there (the central gate of the Paris Cathedral – author's note) in a cart, in one shirt, with a burning candle weighing two feet in his hands, then in the same cart he was taken to the Greve Square and, after tearing his nipples, arms, thighs and calves with red-hot forceps, he was placed on a block, and in his right hand he should hold a knife, with which he intended to commit regicide; this hand had to be burned with hot sulfur, and a concoction of liquid lead, boiling oil, resin, molten wax and molten sulfur should be poured into the places torn with tongs; then his body had to be torn and dismembered with four horses, the trunk and severed limbs had to be put on fire, burned to ashes, and the ashes – scattered to the wind" [6, p. 7].

Such an illustration of the judicial system is more reminiscent of the Middle Age Inquisition than of France in the middle of the 18th century, which is usually represented when talking about French enlighteners.

In these conditions, humanistic thought sought to substantiate a new role of a person becoming the bearer of inalienable rights, the restriction or deprivation of which cannot be carried out unconditionally. A person has received a legal dimension and punishment, accordingly, should be applied taking into account new realities. According to Ch. Montesquieu, the effectiveness of punishment is measured not in its severity, but in its inevitability. In addition, the function of punishment is primarily to prevent subsequent criminal acts. To do this, the criminality of acts should be established by law, which determines the correspondence of the punishment measure to the severity of the crime committed. Ch. Montesquieu writes about the proportionality of punishment, "It is necessary that there be mutual harmony between punishments; the legislator should strive to ensure that, first of all, major crimes causing great harm to society are not committed than less serious one"" [7, p. 238].

A.A. Herzenzon, analyzing the influence of works of Ch. Montesquieu and French political teachings on the punishment theory formation, indicates that "Montesquieu speaks in favor of saving punitive means: the disadvantages of fighting crime are not the weakness of punishments, but the impunity of crimes. At the same time, he considers it important that "the most sensitive part of punishment" consists in "the shame of being shamed"" [8, p. 33].

The depenalization concept was of particular importance in the 18th century and the need to reduce the practice of using a death penalty or abolish it altogether was argued.

Despite his humanism, Ch. Montesquieu did not deny the necessity and validity of applying a death penalty. Thus, in his opinion, "a death penalty for a criminal is justified, since the law that punishes him/her was created for his/her own benefit. For example, the murderer was protected by the law that condemned him, the latter was protecting his life every minute, and therefore he cannot protest against it" [7, p. 363].

However, F. Voltaire was peremptory about a death penalty. In his articles "Death sentences" and "Executions", he considered the death penalty as a type of legal murder and shared the idea of aimlessness and uselessness of such [8]. According to F. Voltaire, "instead of a death penalty, it would be more expedient to force convicts to build large roads, country roads, plow uncultivated lands, etc." [9, p. 203].

Educational and humanistic ideas found their supporters outside France. Their doctrinal positions were developed in the works of the famous Italian philosopher C. Beccaria. A.A. Herzenzon assesses the influence of encyclopedic scientists on the work of the Italian humanist in this way: "it is enough to compare the work of Beccaria and the works of Montesquieu, the dates of appearance of the first and second, to unconditionally recognize the priority of Montesquieu over Beccaria. Beccaria developed, specified, systematized, and popularized Montesquieu's views in the field of criminal law and procedure; to a small extent, he also accepted the views of the Russians, but he borrowed the main thing in the field of criminal law from Montesquieu [8, p. 36]. The influence of the enlighteners was by no means one-sided. For example, it should be noted that the work of C. Beccaria "On crimes and punishments", in turn, prompted Voltaire to publish in 1766 the fundamental work "A commentary on the book of crimes and punishments", expressing there his ideas about criminal law.

It would be wrong to reduce the work of C. Beccaria to the level of copying progressive ideas of his predecessors and contemporaries, no matter how great they were. For example, he significantly expanded the concept of differentiation of punishments depending on the nature of crimes. Thus, C. Beccaria in his work "On crime and punishments" mentions a "ladder of crimes", which corresponds to the "ladder of punishments", which is an interpretation of the principle of justice in its modern sense. In the paragraph "Theft" he talks about the institution of substitution of punishment. In particular, based on the need to punish theft only with monetary penalties, C. Beccaria suggests imposing punishments related to forced labor instead of a fine, which is very problematic to recover, since, as a rule, mercenary crimes are committed because of financial stringency.

C. Beccaria outlined his approach to the essence, purpose and functions of punishment as follows, "in order for punishment not to be violence by one or many people against an individual citizen, it should necessarily be public, immediate, necessary, the least possible under the circumstances, proportionate to the crime established in the laws" [10, pp. 411–412].

So, the evolution of penitentiary thought is obvious. It is noteworthy that the author recognized the need for a public nature of punishment. This revealed the class inequality of feudal society. Here one can see a certain inconsistency in the humanistic ideas of the philosopher, who gave priority to the rational idea of preventing crime rather than intimidation. Public executions pursued the goal of illustrating retribution. According to M. Foucault, they recalled a ceremonial and its episodes were spelled out in detail in the sentences; it was "never forgotten to list how important they were for the judicial and legal mechanism: processions, stops at intersections, standing at church gates, public announcement of the verdict, kneeling, public repentance for transgressions against God and the king" [6, p. 64].

Moderate humanism is also inherent in C. Beccaria's arguments on the issue of a death penalty. He, like Ch. Montesquieu, allowed the possibility of using the death penalty, but only in extreme cases. These include circumstances in which the preservation of a criminal's life "threatens the security of the nation and his existence may cause a transition dangerous to the established way of government" [10, p. 316]. Limits of the death penalty application were further discussed by followers of humanism, which emerged in the 19th century in several scientific directions.

Doctrinal provisions on the essence of punishment were set out in German classical philosophy. I. Kant, G. Hegel, J. Fichte and A. Feuerbach expressed different views on

the nature of punishment, thereby developing principles of absolute and relative theories of punishment. The German philosophical tradition of the 18th century is more characterized by a metaphysical approach to understanding criminal law reality and its elements, primarily origins of criminal liability.

I. Kant's doctrine of punishment is based on the concept of free will, absolutizing human behavior as a rational being. A.A. Piontkovskii in his Doctor of Sciences (Law) dissertation, which he defended in 1939, wrote about I. Kant's understanding of practical reason, "Practical reason is the human will, acting in accordance with understanding of pure reason. The field of practical reason is the field of behavior of people as intelligent beings" [11, p. 25]. The autonomy of human will, based on moral law, cannot be determined by natural or other factors. So, according to I. Kant, a person commits any act consciously, understanding its consequences both for others and for him/herself. He did not recognize as lawful an act committed in a state of extreme necessity. This is confirmed by the following words: "the necessity, the causality of human behavior for Kant, therefore, never destroys the transcendental freedom of a person, and, consequently, freedom in the field of his/her practical behavior and imputation of the committed act to him/her" [11, p. 32]. However, in his "Anthropology", the German philosopher paid attention to the specifics of liability for an act committed by an insane person.

I. Kant, following a general doctrine of man as a "thing in itself', opposed utilitarian goals of punishment, since a person cannot be a means to achieve someone's goals. At the same time, the application of punishment should result in the achievement of justice, which is elevated to the absolute. For example, I. Kant supported a death penalty and considered it a requirement of justice. In the case of rape, justice, in his opinion, can only be restored by castration. "Kant sees the fulfillment of the requirement of punitive justice for bestiality in the removal of the criminal forever from civil society, since by his actions he destroyed his human dignity" [11, p. 56].

Believing in free will and inevitability of justice, I. Kant denied the possibility of releasing a criminal from punishment or pardoning him. Pardon by the head of state is possible only if the crime was committed against a criminal him/herself.

Philosophical views on the nature of punishment in the works of A. Feuerbach acquired a more legal form. Unlike I. Kant, he separated morality from law and gave punishment a legal form. According to A. Feuerbach, a person is not associated with a transcendent being devoid of any sensual principles, but is viewed by him as "the concentration of certain passions, vices and virtues not in their specific unity, but as a kind of arena in which passions struggle with each other, with each passion developing according to its own laws" [11, p. 86]. Based on this thesis, the task of punishment in the teachings of A. Feuerbach is to influence "the mind so that it can triumph over passions and aspirations that lead to crime commission" [11, p. 86].

A. Feuerbach outlined his doctrinal views on punishment as a method of state coercion in his work "Criminal law, published in Russia in 1810 (First book) and 1812 (Second Book). It was one of the first works on criminal law published in Russia. The First book "The philosophical or universal part of criminal law" presents a system of criminal law. Much attention is paid to the purpose, principles and types of punishment.

Speaking about the purpose of punishment, A. Feuerbach states that "every punishment has the necessary (main) purpose to turn everyone away from the crime by threatening them" [12, p. 122]. At the same time, he points to "side goals" of punishment, which include direct aversion from the crime, ensuring safety and lawful correction of the convicted person [12, p. 122].

Punishment is based on principles such as legislative certainty, publicity, guilt, and compulsion. At the same time, "simple punishments" can be applied non-publicly, in order to correct convicts themselves. He also categorically denied the possibility of collective punishment.

A. Feuerbach systematized punishments, dividing them initially into two groups, in particular, "named" and "unnamed". The latter included "deprivation of certain rights and privileges, prohibition of some, however, permitted acts and corrections of cases, for example, prohibition of trade, dismissal from a solicitor's position, etc." [12, p. 130]. "Named" types of punishment, in turn, were divided into psycho-

logical and mechanical or physical. Psychological punishments were directly related to the deprivation of honor and all states, or to puberty, as well as were aimed at defaming a person (pillorying, branding, etc.). A. Feuerbach also included monetary fines and confiscation in this category.

The group of "mechanical" punishments included a death penalty (simple and qualified), self-mutilation and corporal punishment, punishments related to deprivation of liberty (exile, imprisonment). It should be noted that punishment by "public works ... under strict supervision ... in public places in favor of the state" [12, p. 134] was also attributed to penalties related to imprisonment.

An important part of A. Feuerbach's punishment theory is the differentiation of the punishment severity. At the heart of this hierarchy is the severity of the crime committed. As stated in the "Criminal law", "the punishment is more severe, the more evil it contains" [12, p. 139]. Accordingly, a death penalty is the most severe. It is followed by life imprisonment, self-harming punishments, corporal punishment with deprivation of honor and rights of the state, defamatory punishments without the use of physical force, confiscation of property, lifelong exile, light corporal punishment, imprisonment for a certain period, public repentance, and monetary fine [12, p. 139].

Based on the above, it can be concluded that at the end of the 18th – beginning of the 19th centuries there were several centers of scientific thought developing ideas about punishment and its application. These were England, France, Italy and Germany (Prussia). Subsequently, the penal doctrine significantly expanded the geographical scope. The ideas formed were further independently developed in the USA, Belgium, Russia and other national scientific schools. The developing system of academic exchanges in the university environment and the emergence of the practice of international disciplinary congresses played a huge role in this.

The next essential feature of penitentiary policy, in our opinion, is the presence of a legal system of criminal consequences. Despite the evolutionary process of forming legal foundations of punishment, it can be argued that the system of punishments in its modern understanding originates from codified acts of the beginning of the 19th century. It is not difficult to guess that this was to a certain extent a consequence of the punishment doctrine development. The research conducted was important not only for systematization of criminal legislation, but also in judicial practice. This is indicated by A.A. Herzenzon, speaking about the state of the French legal system of the 18th century, "the works of legal scholars were also used as a source of criminal law. These were numerous and rather vague sources of French criminal law used by the courts of royal jurisdiction" [8, p. 5]. This confirms the thesis about the absence of a normatively fixed system of criminal legislation. At the same time, the multitude of normative acts that existed in the territories of various states did not allow overcoming the chaotic nature of law enforcement. For example, S.A. Vasil'eva, referring to the English historian G. Trevelyan characterizes the state of criminal justice in England in the 18th century as "illogical chaos of laws", which angered the public, motivated lawyers to seek a solution to the legal conflict, and puzzled intellectuals with a moral dilemma [13, p. 131].

With the emergence of the first criminal laws, a list of criminal response measures was consolidated, which initially consisted of punishments imposed for committing a criminal act. As a rule, the entire range of criminal penalties was limited on the one hand by a death penalty, and on the other by a monetary fine. Such a scale of punishments in a somewhat transformed form is relevant for the present time. It is this concept that gives us reason to believe that the system of criminal consequences, in its legal consolidation, as a penal policy feature was formed and formalized in European countries at the turn of the 18th–19th centuries. Further, it underwent changes under the influence of various factors, such as scientific rethinking, social demand, political conjuncture, etc.

Illustrating the presented thesis, one can rely on the most studied criminal laws of European states of that era. The general trend can be traced to the criminal legislation of France, Germany (Prussia and other German states) and Italy.

Professor S.O. Bogorodskii studied this problem in detail and published "An essay on the history of criminal law in Europe since the

beginning of the 18th century" in 1862. He presented a thorough analysis of the genesis of criminal legislation of European countries, useful for understanding the process of formation and normative establishment of the system of criminal penalties.

Legal dogmatics has influenced the process of systematization of norms governing the public legal sphere. Criminal codes of France and Bavaria were one of the first criminal codified acts. According to the famous French criminologist M. Ancel, they were of great importance for further development of criminal legislation of European states. He considered the legislative process of the second half of the 19th century as the great neoclassical period, the purpose of which was to make criminal codes "more perfect than those that had served as a model for them, namely, than the French and Bavarian codes of the early (19th – author's note) century" [14, p. 61]. Professor M.A. Chel'tsov-Bebutov also underlines progressiveness of these normative legal acts for further construction of criminal legislation [15, p. 29].

The French and Bavarian criminal codes had a certain advantage of separating general provisions from the special part. This indicated a systematic approach to the application of punishment. For example, the First Book of the 1810 French Penal Code was devoted to punishments divided into criminal correctional and police. General rules for their application were established. In addition, the same part of the Criminal Code fixed post-penitentiary supervision over persons who had served hard labor or who had been released from a straitjacket house. It is also worth noting that this criminal law existed with certain changes until the entry into force of the new Criminal Code of France in1994.

The Bavarian Criminal Code of 1813 is no less significant, although it was not so long in force as the previous French criminal law. This code was drafted with the direct participation of A. Feuerbach, who, based on his philosophical ideas, built a system of criminal law. At the same time, S.O. Bogorodskii was critical of the punishment system, which included a death penalty, corporal and shameful punishments, pursuing a very archaic purpose of intimidation. Professor of the Potsdam University U. Hellmann describes the meaning of the Bavarian Criminal Code of 1813, "A. Feuerbach laid the foundation for the criminal law inherent in a state governed by the rule of law. Despite all the shortcomings, I. Feuerbach's Criminal Code became a criminal law model of that time ... The Criminal Code of Bavaria had a decisive influence on further codifications in Germany" [16, p. 120].

Further, criminal legislation followed the path of systematization of legal norms, dividing them into general and special parts. Thus, in such a construction, the doctrinal provisions on crime and punishment, previously developed by philosophical dogmatics, were legally consolidated and formed a system of criminal legal consequences arising from the commission of illegal acts. This circumstance allows us to attribute this feature to the number of systemic features of penitentiary policy.

Another methodologically significant feature of penitentiary policy is the presence of *normative established rules for the application of criminal law measures*, defining the provisions on which the system of execution of punishments (goals, principles) is based, the legal status of convicts, as well as the legal mechanism for implementing appropriate measures of state coercion.

The analysis of foreign and domestic legislation indicates the diversity of regulatory prescriptions in the 18th century and in earlier times. They were quite casuistic, since they assumed the normative consolidation of certain aspects of organizing execution of punishments, for example, regulation of certain procedures accompanying the execution of a death penalty, prisoner transfer under guard, branding or execution of corporal punishment, supervision of convicts, etc. This was caused by significant differences in socio-economic development, maturity of political institutions, mental and socio-cultural characteristics of the population, the development level of science and education, and many other specific factors.

At the same time, this state of affairs characterized the general picture of the state of legal regulation of the execution of criminal penalties, which, in turn, already testified to the existence of a universal trajectory of the evolution of penitentiary legislation.

Undoubtedly, there was a certain direction of the evolution of penal legislation and the prac-

tice of executing criminal penalties. This vector was given by the ideas of Enlightenment on the humanization of criminal justice, which were normatively fixed in the first criminal laws and subsequently developed during further reforms of national criminal legal systems. Such system-forming progressive legal postulates include the principles of legality and legal equality, prohibition of torture and other inhuman treatment, as well as correction of the convicted person as the main purpose of the punishment execution.

The formation of legal space was based on the generalization of national and foreign experience. Extra-legal forms of searching for advanced ways of executing criminal punishments were of significant importance. A lack of strict regulation of the penitentiary sphere provided ample opportunities for an experimental approach in this area. The need to overcome negative aspects of incarceration, such as overcrowding in isolation facilities, inadequate sanitary and hygienic conditions, lack of differentiation between convicts and persons in custody, served as an impetus for the emergence, for example, of the Pennsylvania and Auburn penitentiary systems, based on changing conditions of serving sentences depending on the time served and the convict's behavior, as well as the introduction of many other innovations aimed at humanizing and rationalizing penal enforcement practice.

Considering the process of legitimization of penitentiary practice, we should emphasize the importance of activities of the International penitentiary congresses. Since 1872, they had hold regular meetings, bringing together representatives of different countries, as well as well-known scientists in the field of criminal and penal law, criminology. I.Ya. Foynitskii described the purpose of their work as follows: "collecting data from prison experience, comparing information about activities of different prison systems, as well as comparing both the punitive effect of different punishments and other methods practiced in different states for punishment and prevention of criminal acts" [17, p. 344].

Generalization of penitentiary practice and understanding of the need to reform the penal sphere influenced the process of systematization of legislation, which began in the first quarter of the 20th century. At that time, there appeared the first laws, which were systematized normative legal acts regulating legal relations in the field of execution of criminal penalties. For example, the Law on the Criminal Responsibility of Minors (Jugendgerichtgesetz) was adopted in Germany in 1923, "which not only prescribed the execution of a custodial sentence for minors in special institutions, but also for the first time declared education of young criminals as the main purpose of the execution of a custodial sentence" [18, p. 81]. At the same time, Germany did not have a law fixing general rules for the execution of criminal penalties against minors in the first quarter of the 20th century. On the initiative of the Minister of Justice of the Weimar Republic G. Radbruch, the Reichstag approved "Principles of the execution of punishments in the form of imprisonment" (Grundsatze f r den Vollzug von Freiheitsstrafen) on June 7, 1923, which consolidated general provisions on the execution of penalties.

It should be noted that Soviet Russia at that time was at the forefront of the process of penitentiary legislation formation. In particular, a normative legal act "On Approval of the Correctional Labor Code of the RSFSR" was adopted by the Decree of the Central Executive Committee of October 16,1924. It laid down the requirements for the system of execution of criminal penalties.

At the same time, it is important to understand that the significance of legislative acts was not only in the legal and technical design of legal regulations. Their primary purpose was seen in the essential definition of limits of state intervention in the legal situation of a person, which, by establishing legal restrictions, prohibitions and imposing special duties, could have an impact on the convicted person, thereby differentiating the degree of criminal repression.

The fourth feature that gives penitentiary policy the properties of consistency and measurability is **penitentiary statistics**.

Many people associate the formation of criminal statistics with the philosophy of the Belgian scientist Adolphe Quetelet, who tried to find statistical patterns between fertility and mortality, crime and punishment, as well as between other social phenomena on an interdisciplinary basis. The positivist paradigm, the central link of which was determinism on the broadest scale, allowed the scientist to formulate the idea of a crime budget. In his opinion, it is "paid with amazing correctness – it is the budget of prisons, hard labor in exile and scaf-

folds" [19, p. 7]. Speaking about forecasting crime, the scientist notes that "it is possible to calculate in advance how many individuals will get their hands dirty in the blood of their neighbors, how many fake paper makers, poisoners, etc. will appear, almost in the way the number of future births and deaths can be calculated" [19, p. 7].

According to M.N. Gernet, A.E. Ducpétiaux (Belgium) and A.M. Guerry (France) are the first scientists whose works were devoted to criminal statistics. He links the development of moral and statistical literature with their works, which "begins only in the thirties of the 19th century, when systematic collection of information about the crime movement, first in France, then in Belgium and in other countries began" [20, pp. 12–13]. At the same time, M.N. Gernet mentions the undeservedly forgotten name of Academician N.F. German, who was the first among Russian scientists to outlined crime patterns in his reports "Research on the number of self-murders and murders in Russia in 1819 and 1820" on December 17, 1823 and June 30, 1824 [20, p. 13]. However, "when German made his report at the meetings of the Academy of Sciences and sent it to A.S. Shishkov for publication, the latter responded sharply, "I consider the article on the calculation of homicides and suicides that have occurred in the past two years in Russia to be unnecessary and even harmful. ... It seems to me that such articles, indecent for the publication, should be sent back to the one who has sent them for publication with a remark so that he should not work on such empty things in the future. It is good to inform about good deeds, and such as murder and suicide should sink into eternal oblivion" [20, p. 14]. This was the official position, which greatly influenced criminal statistics development in Russia.

The appearance of penitentiary statistics occurred, as a rule, later than criminal statistics. At the same time, Switzerland was an exception to this rule, where information about the number of convicts and their movement appeared earlier [19, p. 38].

France was a pioneer in the field of prison statistics, where, as noted above, the foundations of official criminal statistics were formed. Statistical data on convicts began to be published in the collection "Penitentiary statistics". It provided "information about the movement of the prison population over the year, its division by gender, profession, nationality, religion, family status, earnings in prison, education in places of detention, crimes committed there, self-murder, disciplinary punishments, etc." [20, p. 39].

Along with this, M.N. Gernet associates the formation of prison statistics in Russia with the creation of the Main Prison Administration in 1879, which published its first report in 1882. At the same time, it should not be ignored that the first statistical information was published already in the materials on the judicial reform of 1864.

Further, criminal and penitentiary statistics, as the data collected became more detailed and the methods of processing them improved, became an important tool of penitentiary policy, since it provided the opportunity to monitor results of the application of punishments and other measures of a criminal nature. In addition, penitentiary statistics have gained wide relevance in the process of improving legislation and law enforcement practice, developing conceptual approaches to modernizing the penitentiary system and predicting forecasting risks of the decisions taken. Thus, the use of statistical data is an integral element of penitentiary policy.

Conclusion

Winding up the study of features of penitentiary policy, it should be noted that its results have important methodological significance, since they allow us to determine the contours of penal policy as a political and legal phenomenon. Such features include a penitentiary doctrine, a legal system of criminal consequences, normatively established rules for the execution of measures of criminal legal impact and penitentiary statistics. Their presence most fully characterizes the convergence of social and legal reality, which determines the ontological content of national penitentiary policy. Consideration of these features through the prism of the origin of penitentiary policy indicates that the process of its formation coincides with the second half of the 19th century – the first quarter of the 20th century. Most actively penitentiary policy was formed and developed in Western European countries, such as England, France, Germany, Italy, Belgium, as well as in Russia.

REFERENCES

1. Chestnov I.L. Constructivist paradigm in law. *Izvestiya vysshikh uchebnykh zavedenii. Pravovedenie = Proceedings of Higher Educational Institutions. Pravovedenie*, 2016, no. 2 (325), pp. 62–93. (In Russ.).
2. Sitnikova A.I. Fictions in criminal law. *Leningradskii yuridicheskii zhurnal = Leningrad Law Journal*, 2008, no. 1, pp. 60–67. (In Russ.).
3. Poznyshev S.V. *Osnovy penitentsiarnoi nauki* [Fundamentals of penitentiary science]. Moscow, 1923. 367 p.
4. Foinitskii I.Ya. *Uchenie o nakazanii v svyazi s tyur'movedeniem* [The doctrine of punishment in connection with prison studies]. Moscow, 2000. 464 p.
5. Bachinin V.A. *Sotsiologiya. Akademicheskii kurs* [Sociology. Academic course]. Saint Petersburg, 2004. 871 p.
6. Foucault M. *Nadzirat' i nakazyvat'. Rozhdenie tyur'my* [Discipline and Punish: The Birth of the Prison]. Transl. by V. Naumov. Moscow, 2023. 416 p.
7. Montesquieu Ch. *Izbrannye proizvedeniya* [Selected works]. Moscow, 1955. 779 p.
8. Herzenzon A.A. *Problema zakonnosti i pravosudiya vo frantsuz-skikh politicheskikh ucheniyakh XVIII veka* [The problem of legality and justice in French political teachings of the 18th century]. Moscow, 1962. 320 p.
9. Voltaire F.M. *Izbrannye proizvedeniya po ugolovnomu pravu i protsessu* [Selected works on criminal law and procedure]. Transl. from French by Lapshin N. Moscow, 1956. 339 p.
10. Beccaria C. *O prestupleniyakh i nakazaniyakh* [On crimes and punishments]. Transl. from Italian by Isaev M.M. Moscow, 1939. 463 p.
11. Piontkovskii A.A. *Ugolovno-pravovye vozzreniya Kanta, A. Feierbakha i Fikhte* [Criminal law views of Kant, A. Feuerbach and Fichte]. Moscow, 1940. 192 p.
12. Feuerbach A. *Ugolovnoe pravo: v 3 kn. Kn. 1* [Criminal law: in 3 books. Book 1]. Saint Petersburg, 1810. 146 p.
13. Vasil'eva S.A. *Genezis i evolyutsiya doktriny penitentsiarizma v anglo-amerikanskom sotsiokul'turnom prostranstve (konets XVII – nacha-lo XIX vv.): dis. … d-ra ist. nauk* [Genesis and evolution of the doctrine of penitentiarism in the Anglo-American socio-cultural space (late 17th – early 19th centuries): Doctor of Sciences (History) dissertation]. Ryazan, 2022. 540 p.
14. Ancel M. *Novaya sotsial'naya zashchita (gumanisticheskoe dvizhenie v ugolovnoi politike*) [New social protection (humanistic movement in criminal policy)]. Transl. from French by Lapshina N.S. Moscow, 1970. 312 p.
15. Chel'tsov-Bebutov M.A. *Prestuplenie i nakazanie v istorii i v sovetskom prave* [Crime and punishment in history and in Soviet law]. Kharkov, 1925. 112 p.
16. Hellmann U., Satolin V.N. The history of the German Criminal Code *Zhurnal Belorusskogo gosudarstvennogo universiteta. Pravo = Journal of the Belarusian State University. Law*, 2019, no. 2, pp. 118–124. (In Russ.).
17. Foinitskii I.Ya. Penitentiary Congress in Rome. *Vestnik Evropy = Bulletin of Europe*, 1886, vol. II, no. 3, pp. 340–374. (In Russ.).
18. Burtsev A.N. *Penitentsiarnaya sistema Germanii v XVI – nach. XXI vv. (istoriko-pravovoe issledovanie): dis. … kand. yurid. nauk* [The penitentiary system of Germany in the 16th – beginning of the 21st century (historical and legal research): Candidate of Sciences (Law) dissertation]. Ekaterinburg, 2007. 223 p.
19. Ketle A. *Chelovek i razvitie ego sposobnostei ili opyt obshche-stvennoi fiziki: v 2 t. T. 1* [Man and development of his abilities or experience of general physics: in 2 vols. Volume 1]. Saint Petersburg, 1865. 128 p.
20. Gernet M.N. *Moral'naya statistika (ugolovnaya statistika i statistika samoubiistv)* [Moral statistics (criminal statistics and statistics of suicides)]. Moscow, 1922. 295 p.

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