



Principles of Penitentiary Crime Prevention: Conditioning Factors, Sources and Their Classification

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Abstract

Introduction: the article shows a special place of penitentiary crime in criminological research and law enforcement and substantiates the importance of understanding methodological foundations of its prevention. *Purpose:* to determine theoretical prerequisites and the structure of crime prevention principles in places of deprivation of liberty. *Methods:* the research methodology mainly covers the analysis and synthesis of socio-legal phenomena, generalization and concretization, formal and system-structural analysis of legal doctrine, hermetic study of legal norms, as well as taxonomic classification. *Results:* the features of preventive impact on penitentiary crime are due to a number of factors that lie in the plane of theoretical understanding and practical significance of the prevention system. The identified factors determine the nature of penitentiary crime prevention principles. Normative and doctrinal sources of principles for the prevention of penitentiary crime should be singled out. *Conclusions:* conditioning factors express objectively existing problems of penitentiary reality, connected, first, with the personality of the convicted person as an object of prevention, second, with the implementation of preventive functions of subjects of prevention and, third, with measures of preventive impact on penitentiary crime. Transformation of conditioning factors leads to the objective need to revise principles of penitentiary crime prevention. The classification of principles provides an understanding of the extent of coverage of the relevant areas, levels and trends reflecting an object of the penitentiary crime prevention system, conceptual provisions, guided by which an effective preventive effect can be achieved. In the conditions of building a new security architecture of the penal system of the Russian Federation, there is an objective increase in the number of principles of the prevention of penitentiary crime and their acquisition of a complex character, in which the guiding principles express features of several interrelated scientific branches of knowledge.

Key words: isolation of convicts from society, correctional and preventive impact, criminal threats, prevention of recidivism.

5.1.4. Criminal law sciences.

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Introduction

Penitentiary crime occupies a special place in criminological research and law enforcement activities. This type of crime has specific patterns, requires special criminological knowledge in its cognition, leads to undermining the significance of the relevant type of state activity. According to V.S. Ishigeev and A.A. Protasevich, crimes committed in places of deprivation of liberty “pose a serious scientific, theoretical and practical problem, since the corresponding socially dangerous acts undermine the authority of the penal system, hinder the achievement of punishment goals, destabilize the situation in correctional institutions, and have a negative impact on convicts, reducing capacities of correctional and preventive effects on them” [1, p. 59]. In this regard, M.S. Krasil’nikova correctly sums up that the criminality of “convicts in places of deprivation of liberty is to some extent a criminological phenomenon, since the purpose of penitentiary institutions is to purposefully correct criminals” [2, p. 53]. Therefore, it is necessary to understand methodological foundations of the prevention of penitentiary crime, have an idea of the cornerstones of its implementation and thereby develop valid features of criminopenology, which actualizing the relevant socio-legal problems “represents a set of ideas, views, theories about the patterns of formation and development of penal crimes and criminality, causes, conditions of penalized crimes and criminality, persons committing penalized crimes and their victims, prevention of penalized crimes and criminality” [3, p. 85].

The analysis of penitentiary crime prevention ideas is possible on the basis of prerequisites of their scientific justification, which, with a certain degree of conditionality and in relation to the current study, can be called conditioning factors. Such a scientific justification allows us to outline not only the legally taken into account the discussed prevention principles, but also to identify promising doctrinal ideas that claim to be included in the list of penitentiary crime prevention principles. Thus, features of preventive impact on penitentiary crime are determined by a number of key factors that lie in the plane of theoretical understanding and practical significance of the prevention system, the construction and implementation of which is based on the relevant principles.

Results

Taking into account conditioning factors makes it possible to optimize the system of building principles for the prevention of penitentiary crime.

Thus, the first factor indicates the existence of a certain specifics and closeness of the corresponding object of preventive action. This specifics is manifested in objective-subjective patterns of the formation and gradual modification of penitentiary crime. In addition, the mentioned object exists against the background of a steadily recurring relationship between the state and the convict, who is mostly isolated from society, which reduces the transparency of relevant phenomena and processes accompanying criminal manifestations in the penitentiary reality. In addition, persons serving a criminal sentence in the form of imprisonment are primarily the object of correctional influence, while prevention of new offense commission has only a secondary character. Such prevention should be focused both on eliminating criminal tendencies of the convict’s personality that have led him/her to commit a crime(s) and, accordingly, on imposing criminal punishment, and on preventing the causes and conditions that may determinate new manifestations of his/her socially dangerous behavior during detention in places of deprivation of liberty.

The indicated features of penitentiary criminality should be perceived through the prism of the increase in the share of convicts serving imprisonment for the third or more time, which indicates their significant criminal involvement, subcultural absorption and personal resistance to correctional and preventive effects.

The second factor lies in the fact that there is a competitive looseness or a secondary nature of preventive functions of the subjects of countering penitentiary crime. A comprehensive analysis of the system of such subjects (both specialized, partially specialized, and non-specialized), as well as their content characteristics, demonstrates isolation of the tasks and functions of preventive activities as derivatives of the main competence. The primary competence in correctional institutions is correction, general management and coordination in bodies of criminal penalty execution, supervision of the execution of criminal penalties in prosecutors’ office, and investigation investigative

bodies. Undoubtedly, operational units and security departments of correctional institutions are focused on the priority implementation of preventive measures, but these units, being structural transitional units, are closely related to the achievement of the primary goal of penal legislation, enshrined in Part 1 of Article 1 of the Penal Code of the Russian Federation – correction of convicts. Moreover, all departments of a correctional institution will be engaged in the implementation of penitentiary probation, enshrined in the Federal Law No. 10-FZ of February 6, 2023 “On Probation in the Russian Federation” (hereinafter referred to as the Probation Law).

The third factor presupposes the isolation of officially fixed means and forms of crime prevention from the actually required tools for preventing recidivism in places of deprivation of liberty. Thus, Part 2 of Article 6 of the Federal Law No. 182-FZ of June 23, 2016 “On the Basics of the System of Prevention of Violations in the Russian Federation” (hereinafter referred to as the Prevention Law) fixes means of implementing key directions to prevent offenses in the Russian Federation. However, both directions and means of their implementation do not sufficiently informatively correlate with the specifics of penitentiary crime. After all, the Prevention Law is not focused on closed social systems in which the emphasis of integrational relationships of the relevant organization and the environment is laid on interpersonal relationships, each part (level) of the organization performs strictly defined functions and is based on procedural coordination of its levels, and one of the main indicators of effectiveness is the formation of socially adaptive abilities of individuals, leaving it. The fundamental difference between a closed social system and an open one is that the effect of external influence is significantly ignored (in relation to the performance indicators of its functioning). This thesis is also supported by Yu.Yu. Tishchenko, stating that “when a convicted person enters places of deprivation of liberty, his/her communication circle is significantly narrowed” [4, p. 230]. Consequently, we may consider the penal system as a closed social system. It seems possible to extrapolate such criticism to forms of preventive impact, which are fixed in Part 1 of Article 17 of the Prevention Law. In addition, it should be noted

that the legislator in Part 2 of this article fixes the right of officials of penitentiary institutions, within the established competence, to prevent offenses by conducting preventive measures provided for in paragraphs 2-6 of Part 1 of Article 17 of the Prevention Law. However, since the Probation Law becomes effective on January 1, 2024, it is required to normalize the right of officials of penitentiary institutions to prevent offenses within the established competence and in such forms of preventive impact as social adaptation, resocialization, social rehabilitation (paragraphs 7–9 of Part 1 of Article 17 of the Prevention Law). After all, penitentiary probation is a set of measures aimed at both correcting convicts and preparing convicts (which in one way or another involves the implementation of social adaptation, resocialization, and social rehabilitation) serving sentences in the form of forced labor or imprisonment for release from these institutions.

Thus, the stated conditioning factors express objectively existing problems of the object, subject and measures of the penitentiary crime prevention system.

In the context of the factors outlined above, which lie in the plane of theoretical understanding and practical significance of the elements of the penitentiary crime prevention system, the principles of such prevention are of a significant scientific interest. These principles are the fundamental ideas on the basis of which the corresponding end result is achieved, the work of all subjects of preventive activity is consolidated, and the measures of influence applied by them are synchronized. The structure and content of the principles to prevent penal criminality are predetermined both by general tasks to prevent offenses, including crime, and by private ones, reflecting the specifics of relevant penal relations. Therefore, we cannot but consider principles of prevention of offenses, enshrined in Article 4 of the Prevention Law, which is largely of a framework nature and establishes general guidelines for influencing illegal behavior. In this case, the normative legal act is a source of the corresponding principles.

At the same time, in terms of the legal technique, the norms disclosing subjects and key directions for preventing offenses are fixed after Article 4 of the Prevention Law, that is, only after principles. This testifies to the meth-

odological priority of the principles to prevent human rights violations over elements of the prevention system and confirms the thesis put forward earlier about the fundamental role of ideas before the activities of subjects to implement appropriate measures of influence.

The legislator lists six points covering relevant principles of crime prevention. In the first two paragraphs, general legal principles are fixed, in particular, the priority of the rights and legitimate interests of a person and a citizen in the prevention of offenses and legality. The following two points unite the principles that can be qualified as systemic and procedural: ensuring the consistency and unity of approaches in the implementation of crime prevention, openness, continuity, consistency, timeliness, objectivity, sufficiency and scientific validity of the measures taken to prevent violations. The remaining fifth and sixth paragraphs consolidate the ideas reflecting fundamental requirements for the subjects of preventive activity: competence in the prevention of offenses, liability of these subjects and their officials for ensuring the rights and legitimate interests of man and citizen.

Considering normative legal acts as sources of relevant principles, it should be pointed out that, in accordance with Part 1 of Article 4 of the Probation Law, one of the probation goals is to prevent convicts from committing new crimes. Consequently, when implementing probation, it is necessary to be guided by the basic ideas enshrined in Article 3 of the Probation Law. Probation principles fixed in this norm can be divided into the following three groups depending on the functional purpose: 1) principles characterizing the legal basis for the implementation of probation (priority of the rights and legitimate interests of a person and citizen, compliance with the rule of law); 2) principles reflecting the status of its participants, or other organizational and legal principles (taking into account individual characteristics, circumstances and needs, voluntariness); 2) principles that characterize the procedure for the implementation of probation, or otherwise procedural principles (humanism, rationality of the use of coercive measures, corrective, social and other measures and measures to stimulate law-abiding behavior, openness (transparency), continuity). As can be seen, these fundamental ideas dif-

fer somewhat from the principles enshrined in Article 4 of the Prevention Law.

Comparing the principles of these laws, it is important to pay attention to the following points. So, on the one hand, from a theoretical and practical point of view it is reasonable to determine those principles of probation that most closely reflect fundamental ideas of preventing convicts from committing new crimes. On the other hand, all the probation measures, such as correction of social behavior, resocialization, social adaptation and social rehabilitation, protection of the rights and legitimate interests of these persons, are aimed, among other things, at preventing convicts from committing new crimes. Consequently, the principles underlying the implementation of these measures are also indirect postulates of the probation preventive process.

It is also necessary to focus attention on the fact that the probation principles can “cover” the architecture of prevention, including penitentiary crime, due to the presence of penitentiary probation, which, according to Paragraph 3 of Part 1 of Article 5 of the Probation Law, is applied to convicts serving imprisonment. In this regard, it is advisable to note that modern foreign studies also indicate a significant role of successful rehabilitation of prisoners in preventing recidivism of crimes [5; 6].

It can be summarized that the regulatory framework of penitentiary offense sources, including crimes, covers both relevant provisions of the Prevention Law and the Probation Law.

However, the sources of the penitentiary crime prevention principles can include not only normative legal acts, but also the corresponding criminological and scientific-branch doctrine. On this basis, the principles under consideration can be supplemented taking into account theoretical views of a number of researchers and a personal vision of the general paradigm of the issue.

To understand the socio-legal reality, it is advisable to use the methodology of taxonomic research. Therefore, to make the process of analyzing penitentiary crime prevention principles clear and scientifically representative, we apply a classification approach. This approach has already been used in the grouping of principles, with the normative legal acts being its sources.

It should be noted beforehand that the doctrinal application of penitentiary crime prevention principles depends on various grounds (criteria), the number of which, in fact, is unlimited and is in a permanent state of constant rotation and increase. Thus, considering the sectoral legal affiliation of preventive measures, we can talk about the existence of principles to prevent penitentiary crime based on relevant branches of law, legislation and science. For example, it is possible to form principles of intelligence-gathering prevention of penitentiary crime. According to S.S. Galakhov and N.B. Malikova, they "are the fundamental system ideas (principles) used in conducting law enforcement intelligence measures for the prevention of penitentiary offenses. Due to them, the process of implementing functions related to the execution of punishment in penal institutions and ensuring law and order and legality in them is improved" [7, p. 31]. In relation to the science of penal law, we can also assert the existence of a process of transformation of principles, which, among other things, are focused on guiding support and generalizing requirements for effective prevention of penitentiary crime. In particular, in the theoretical model of the General Part of the Penal Code of the Russian Federation (hereinafter referred to as the model), Article 2 fixes preventing convicts from committing new crimes as one of the goals of penal legislation. Accordingly, Article 9 contains principles of legal regulation, among which there is expediency, that is the combination of punishment with corrective and preventive action [8, pp. 63, 73–75, 77–79].

Consequently, by virtue of the sectoral criterion, the principles of penitentiary crime prevention can also have constitutional (administrative-legal), criminal-legal, criminal-procedural, and, of course, criminal-executive origin. At the same time, the doctrinal nature of the sources of relevant sectoral principles to prevent the type of crime under consideration presupposes a scientific interpretation of the fundamental ideas that are fixed in the norms of specific legal acts (in particular, Article 3 "Principles of law enforcement intelligence operations" of the Federal Law No. 144-FZ of August 12, 1995 "On law enforcement intelligence operations"). Attention should also be drawn to criminology that is also engaged in

the development of penitentiary crime prevention principles. Thus, penitentiary conflict is a particular direction of this scientific legal discipline, within the framework of which guidelines are also developed for the preventive impact on socially dangerous manifestations in places of deprivation of liberty. For example, A.P. Detkov states that analyzing "the nature of penitentiary conflicts, we come to the conclusion that there can be two or more subjects in the genesis of a conflict situation ("principle of layering"). During a conflict situation, objects of conflict can be correlated and modified depending on the level of complexity, or given a false character" [9, p. 38]. In turn, David Garland, a well-known foreign sociologist engaged in the study of criminological problems suggests using criminological expertise of relevant problems as an effective tool for the prevention of penitentiary crime in order to develop concrete proposals to reduce the level of criminal manifestations in this area, believing that it "also includes practical knowledge of how criminal justice institutions work" [10, p. 273].

Having chosen such a classification criterion as the criminological characteristics of persons in respect of whom the prevention of juvenile delinquency is carried out, it seems possible to identify a group of general fundamental ideas that should be guided by the prevention of delinquent behavior of each convict and groups of special ones involved in preventive work with certain categories of convicts. Thus, in the context of conceptual principles of prevention of neglect and juvenile delinquency, enshrined in Article 2 of the Federal Law No. 120-FZ of June 24, 1999 "On the Fundamentals of the System for the Prevention of Neglect and Juvenile Delinquency", E.G. Telegina draws attention "to basic principles that should include the legal basis for the prevention of penitentiary crimes among adolescents" [11, p. 96]. Accordingly, we can talk about principles of prevention of legal violations among women serving imprisonment, persons re-detained in correctional institutions, those with individual personality characteristics, etc.

Depending on the mechanism of preventive impact and configuration of criminal threats, it can also be argued that there are various groups of penitentiary crime prevention principles. In the context of the described classification

K.A. Nasreddinova points out the expediency of highlighting the principles of victimological prevention in places of deprivation of liberty. According to the researcher, such prevention has its own characteristics (in particular, presence of broader opportunities for interaction with convicts, connection with the prevention of “inversion” crimes, where roles of a criminal and a victim are changed) and helps put forward fundamental ideas of its implementation [12, pp. 47–48]. In addition, it is possible to distinguish a group of principles of prosecutorial supervision over the observance of legality in activities of correctional institutions, or, for example, as K.A. Kadyrova notes, “the principle of acts of prosecutorial response” [13, p. 33]. It seems that within the framework of this classification it is permissible to single out “principles and rules of missionary activity in places of deprivation of liberty” [14, pp. 26–30], that is, as fundamental ideas of the measures of spiritual and moral prevention of penitentiary crime.

Considering scientific and sectoral affiliation of preventive measures, we can assert the existence of criminal offense prevention principles based on relevant branches of knowledge. This criterion corresponds to the identification of corresponding groups of principles in penitentiary psychology and pedagogy [15], penitentiary administration [16], architectural penology [17, pp. 16–18; 18, pp. 321–328], penitentiary ecology [19, pp. 408–410] (“green” criminology [20, pp. 79–102]) and a number of other branches of knowledge used for general and private prevention of socially dangerous acts committed in correctional institutions and pre-trial detention facilities.

Proceeding from the criminological and scientific-branch doctrine, extremely diverse criteria can act as the basis for the classification of penitentiary crime prevention principles – a level (hierarchy) of legal acts containing sources of initial principles, a degree of scientific elaboration of relevant guidelines, and their legal significance. This list of criteria is not exhaustive. The emergence of new grounds is preceded by the expansion of the scope of guidelines for preventive action on potential crime, which, in turn, is a response to the growth of practically significant preventive tasks, transformation of trends and needs for the development of the Russian

penal system and ensuring public safety, emergence of new challenges and threats, that is, for a very wide range of circumstances.

Conclusions

The presented material allows us to formulate a number of basic theoretically significant conclusions that demonstrate the existence of pressing research issues related to the prospects of further effective impact on penitentiary crime.

1. The conditioning factors indicate objectively existing problems of penitentiary reality, connected, first, with the personality of the convicted person as a prevention object, second, with the implementation of preventive functions of specialized, partially specialized and non-specialized prevention subjects and, third, with measures (means and forms) of preventive action on penitentiary crime.

2. The identified factors determine the nature of penitentiary crime prevention principles. The conditioning factors and the underlying principles of preventive impact on criminal manifestations in places of deprivation of liberty correlate with each other, therefore, the transformation of relevant penitentiary problems necessitates the revision of penitentiary crime prevention principles.

3. Normative and doctrinal sources of penitentiary crime prevention principles should be identified. In terms of dialectical cognition of their immanent properties, it seems possible to perceive normative sources as a form of the essence of preventive impact on penitentiary crime, while doctrinal ones – as content.

4. The classification of the principles considered shows the extent of coverage of the relevant areas, levels and trends reflecting an object of the penitentiary crime prevention system by guidelines, governed by which effective preventive impact can be achieved.

5. In the conditions of intensive transformation of penitentiary relations, increased amount of substantive tasks that the Russian penitentiary system addresses nowadays and the construction of a new architecture of its security, there is, first, an objective rise in the number of penitentiary crime prevention principles, and second, their acquisition of a complex character, in which the guiding principles express features of several interrelated scientific branches of knowledge.

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