Original article
UDC 343.8
doi 10.46741/2686-9764.2024.65.1.002

Modern Penitentiary Systems: Problems of Understanding, Classification, Functioning (Reviewing Speeches of Participants of the Interregional Round Table "Modern Penitentiary Systems", Vologda, VILE of the FPS of Russia, October 28, 2023)

ROMAN A. ROMASHOV
VILE of the FPS of Russia, Vologda, Russia, romashov_tgp@mail.ru, https://orcid.org/0000-0001-9777-8625

EVGENII V. SVININ
VILE of the FPS of Russia, Vologda, Russia, https://orcid.org/0000-0003-2866-651X, evsvinin@yandex.ru, https://orcid.org/0000-0003-2866-651X

NATAL'YA N. KIRILOVSKAYA
VILE of the FPS of Russia, Vologda, Russia, natasha.8172@mail.ru, https://orcid.org/0000-0002-9031-5182

Abstract

The published review based on results of the interregional round table "Modern Penitentiary Systems: Problems of Understanding, Classification, Functioning" held on October 28, 2023 at the VILE of the FPS of Russia is prepared to summarize key ideas of the speakers' reports on theoretical, legal and applied issues of the functioning of various penitentiary systems. Theoretical issues of the concept and essence of the penitentiary system are considered. Attention is focused on features of theoretical modeling and practical implementation of the penitentiary system as a polysymic phenomenon, represented by models of the regulatory system, the system of national legislation and the national legal system. The objectives and value priorities underlying the formation and functioning of the Russian penitentiary system are outlined. Historical features and patterns of its formation, development, and modernization are analyzed. The necessity to distinguish three modal constructions of the penitentiary system is substantiated. Practical recommendations to optimize structuring and functioning of territorial divisions and educational institutions of the Federal Penitentiary Service of the Russian Federation are formulated in order to strengthen their effectiveness in humanizing the penal system and provide it with qualified professional personnel.

Keywords: law system; penitentiary law; penitentiary systems; legal culture; penitentiary legal relations; penitentiary law and order.

5.1.1. Theoretical and historical legal sciences.

For citation: Romashov R.A., Svinin E.V., Kirilovskaya N.N. Modern penitentiary systems: problems of understanding, classification, functioning (reviewing speeches of participants of the Interregional round table "Modern Penitentiary Systems", Vologda, VILE of the FPS of Russia, October 28, 2023). *Penitentiary Science*, 2024, vol. 18, no. 1 (65), pp. 13–20. doi 10.46741/2686-9764.2024.65.1.002.

© *Romashov R.A., Svinin E.V., Kirilovskaya N.N., 2024*

On October 28, 2023, the VILE of the FPS of Russia hosted an interregional round table "Modern Penitentiary Systems".

The event was organized by the VILE of the FPS of Russia together with the interregional public organization "Penitentiary Science Club", representatives of the KI of the FPS of Russia, as well as the Irkutsk regional branch of the Interregional Association of State and Law Theorists.

Within the framework of the round table, participants discussed a wide range of issues related to the concept and structure of the penitentiary system, the specifics of penitentiary law as its normative basis; the search for optimal forms of regulation of the penitentiary system; the problem of typology of penitentiary systems; the legal policy of reforming penitentiary systems; legal relations, legality and law and order in penitentiary systems.

A wide range of issues of the problem field, including both general theoretical and sectoral aspects, testifies to the importance and relevance of the round table.

The key report on the topic ***"Penitentiary system: experience of theoretical modeling and classification criteria"*** *was provided by Roman A. Romashov, professor at the Department of State and Legal Disciplines of the VILE of the FPS of Russia, Doctor of Sciences (Law), Professor, Honored Scientist of the Russian Federation.*

So, a systematic approach to modern penitentiary science involves identification of three model structures: normative system of penitentiary law, penitentiary legislation system and national penitentiary system.

The penitentiary law system as a normative community (intersectoral legal array) is represented by a set of legal norms united into specialized institutions (definitions, principles, values, etc.) and sub-sectors (procedure for the execution of punishment in the form of imprisonment, arrest, restriction of liberty, forced labor, etc.). In terms of its content, penitentiary law is not identical to penal law, since it includes not only norms of the above-mentioned branch, but also legal prescriptions of other branches of Russian law (constitutional, administrative, criminal, civil, labor, etc.), united by a single social sphere of legal regulation – environment of penitentiary life.

The penitentiary legislation system unites normative legal acts regulating relations between subjects of penitentiary relations. This system elements are: the basic law (Constitution of the Russian Federation), strategic planning acts (Concept for the Development of the Penal System of the Russian Federation for the period up to 2030), codified (Penal Code of the Russian Federation, Criminal Code of the Russian Federation, Criminal Procedural Code of the Russian Federation, Administrative Code of the Russian Federation, etc.) and uncodified (laws "On Service in the Penal System of the Russian Federation", "On Institutions and Bodies Executing Criminal Penalties in the Form of Imprisonment", etc.) legislative acts adopted both at the national and regional levels. In addition, consolidation at the constitutional level of two types of law understanding (normative and natural law), actualizes the problem of "living" penitentiary legislation, represented by the duality of textual and interpretative rulemaking, as well as "proactive law enforcement", when institutions and officials of the penal system are required to commit legally significant acts that go "beyond" the legally established rules and procedures.

The system of national penitentiary law includes a set of sources (legal forms) of penitentiary law (acts of penitentiary legislation, normative agreements, legal customs), organizational structures of the state and civil society (bodies and institutions of the penal system, public structures), penitentiary legal awareness (public, group, individual) and penitentiary behavior (lawful, illegal). Being an integral part of the national state legal system of Russia, penitentiary law is a socio-cultural phenomenon, which organization and functioning depends on the state of national legal culture.

Consolidation of the definition of Russia as a unique "civilization state" at the level of the Concept of Foreign Policy of the Russian Federation determines the need to identify classification criteria characterizing the national penitentiary system, which makes it possible to determine its place among relevant organizational structures of the modern world. As

such criteria, it is proposed to consider departmental affiliation of the penal system, legal technique of penitentiary law-making and law enforcement, militarization/demilitarization of the penal system, and the ratio of state bodies and civil society institutions in the penitentiary organization, etc.

Natal'ya N. Kirilovskaya, Head of the Department of State and Legal Disciplines of the VILE of the FPS of Russia, Candidate of Sciences (Law), Associate Professor, spoke on the topic: ***"Security as a condition for effective functioning of the penitentiary system"****.*

Security-related issues have always attracted scientists' attention. Recently, security issues have become especially relevant. The concept of security in domestic and foreign literature causes great debate and different interpretations. The commonly used content of the security concept is to understand it as a position in which someone or something is not in danger. Normative understanding of safety was enshrined in the Law of the Russian Federation No. 2446-I of March 5, 1992. "On Security", stipulating that security is the state of protection of vital interests of the individual, society and the state from internal and external threats. This law became invalid due to the adoption of the new Federal Law of the Russian Federation No. 390-FZ "On Security" of December 28, 2010, which does not fix a security concept. At the same time, the law stipulates that ensuring security (national security) is a set of coordinated and unified political, organizational, socio-economic, military, legal, informational, special and other measures. Thus, the law is focused not on security subjects, but on its threats and, accordingly, the areas to be protected. The complexity of the national security concept includes all spheres of state life: political, public, environmental, economic, information, transport, energy, cultural, social, etc. In order to form national security, it is necessary to ensure protection of all its spheres. Thus, national security is comprehensive. Penitentiary security is one of the components of state and public national security. Penitentiary security is understood as a system of protection of subjects and participants in penal relations from external and internal threats.

Section II of the Concept for the Development of the Penal System for the Period up to 2030 fixes exclusively internal threats as challenges the penal system faces. This does not seem to be entirely true. Taking into account the Concept of the Foreign Policy of the Russian Federation No. 229 of March 31, 2023, as well as the National Security Strategy of the Russian Federation No. 400 of July 2, 2021, approved by the Decree of the President of the Russian Federation, external threats, such as terrorism, extremism, drug trafficking, organized crime, incitement of interethnic and interfaith conflicts, computer attacks, etc. also refer to the penitentiary system. In this regard, we propose to supplement Section II with a paragraph providing for strengthening measures to prevent the spread of extremism with such challenges as terrorism, drug trafficking, organized crime, incitement of interethnic and interfaith conflicts in penitentiary institutions. This addition is important, as these are threats that lead to weakening, disorganization and destruction of the penal system as a whole. These threats represent external challenges the state faces in general and the penal system in particular.

Section XXI of the Concept for the Development of the Penal System for the Period up to 2030, devoted to international cooperation as an important condition for improving the Federal Penitentiary Service provides for the expansion and strengthening of international cooperation within the framework of universal platforms (UN) and regional ones, in particular the Council of Europe. Due to Russia's withdrawal from the Council of Europe and unfriendly policies of these countries, we consider it necessary to reconsider interaction with foreign countries and expand it through the Commonwealth of Independent States. Thus, within the framework of the CIS, cooperation in the field of security is listed in the areas of cooperation. The organizational structure of this cooperation is the Department for Cooperation in Security and Counteracting New Challenges and Threats of the CIS Executive Committee. The penitentiary sector is one of the areas of such cooperation. Cooperation in the penitentiary sphere was legally formalized in 2015. The agreement "About Formation of Council of Heads of Penitentiary

Services of the State Parties of the Commonwealth of Independent States" was signed by the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic, the Russian Federation, the Republic of Tajikistan and the Republic of Uzbekistan. One of the key issues for the Council members to consider is the problem of countering the spread of terrorist and extremist ideas in penitentiary institutions. Consequently, the CIS recognized the exposition of the penitentiary system to external threats and created an organizational mechanism to prevent external threats.

Evgeniya V. Lungu, Head of the Department of State and Legal Disciplines of the KI of the FPS of Russia, Candidate of Sciences (Law), Associate Professor made a report on the topic ***"Constitutional principles of formation and functioning of the Russian penitentiary system"*** and considered constitutional principles of formation and functioning of the penal system in the light of the creation of a unified system of public authority of the Russian Federation. It is noted that the principles provided for by the current penal legislation do not reflect the 2020 constitutional reforms and need to be revised taking into account the innovations that have occurred. As a result, a new view is formulated on the constitutional principles of the formation and functioning of the penal system of the Russian Federation. It is proposed to highlight the following constitutional principles: humanism, legality, federalism, separation of powers, transparency, consistency of functioning of bodies included in the unified system of public authority of the Russian Federation and organizational, legal, functional and financial-budgetary interaction of bodies included in the unified system of public authority. At the same time, it should be considered that the principle of democracy cannot be implemented in the formation and functioning of the penal system in the sense in which it is understood in constitutional law.

Anna K. Zebnitskaya, Deputy Head of the Department of Criminal Procedure Law and Criminalistics of the Law Faculty of the VLI of the FPS of Russia, Candidate of Sciences (Law), Associate Professor in her speech ***"On the issue of meetings of a public defender and a defendant in Russian penitentiary institutions"*** focused on the following fact. Having overcome the judicial barrier, a public defender faces an equally serious problem, namely, getting admission to penitentiary institutions for a confidential meeting with his/her principal.

It would seem much easier to arrive at a pre-trial detention center or correctional institution and present an extract from the court session minutes in which the citizen is admitted by the court as a defender along with a lawyer, issue a request and go to the investigative office to provide legal assistance to the accused in custody.

However, there are cases when administration of the institution does not accept such extracts from minutes of the court session, arguing that the institution has not received the document and the reliability of the presented extract by a person other than the judicial authorities is questionable. Despite the fact that permits for short-term visits, also issued by the court to the applicant, are accepted by the institution administration and the same stamp of the court and the signature of the relevant judge serve as sufficient verification.

Conditions for meeting with the principal can be another obstacle. Since a public defender is not a professional lawyer, the meeting with the accused is held in the premises for short-term visits with relatives of detained persons. At the same time, the right of the accused to a confidential meeting with a lawyer is violated.

Anna K. Zebnitskaya gave the following example: a public defender L filed a lawsuit against a penitentiary institution. In his lawsuit, the defender pointed out that the meetings with the defendant had taken place in the investigative office equipped with a partition with a small window for the transfer of documents. Such conditions hindered joint familiarization and study of the criminal case materials to prepare for the trial, since the stitched volumes of materials did not pass well into the transfer window and the process of transferring "back and forth" was time consuming. During consideration of the administrative claim, the accused addressed the court that his placement behind a partition had not only created inconvenience

when familiarizing himself with materials of the criminal case, but also forced him to experience moral suffering in connection with humiliation of his human dignity.

The representative of the administration of the pre-trial detention center referred to the need to install such partitions, since the pre-trial detention center is a high-security institution and it contains persons suspected or accused of committing crimes of a certain severity [1].

The court resolved the administrative claim, referring to paragraphs 144–145 of the Internal regulations of pre-trial detention facilities [2]. It indicated that the suspected and accused persons were provided with visits with a lawyer in accordance with the procedure provided for by the current legislation of the Russian Federation. A defender can visit the suspected or accused alone without a partition and without limiting their number and duration; visits can be conducted in conditions that allow a pre-trial detention center employee to see the suspect or accused and the defender, but not to hear. In fact, it is another judicial precedent confirming the equal procedural status of a public defender and a lawyer.

Yuliya A. Perebinos, associate professor at the Department of State and Legal Disciplines of the VILE of the FPS of Russia, Candidate of Sciences (History), Associate Professor, in her speech on the topic ***"Penitentiary systems: history and modernity"*** considered the penitentiary system in terms of view of organization of service of sentences, detention conditions, and regime requirements. In this regard, in retrospect, historical types of penitentiary systems, such as Pennsylvania, Auburn, and progressive, are highlighted.

The Pennsylvania prison system was created in the last quarter of the XVIII century in Philadelphia (Pennsylvania) in the USA, therefore, it was called the Philadelphia or Pennsylvania system. The formation of the Pennsylvania system was associated with the opening of a special prison by the Quaker religious sect, where strict discipline based on the separation of convicts and complete silence. Initiators of the prison establishment, in turn, relied on ideas of the American psychiatrist Dr. Rush stating that criminals should be isolated from society until full recovery. In addition, the Quakers believed that even the most hardened criminal could turn to God and change, but only in prison. The specifics of the organization of serving sentences under the Pennsylvania system were as follows: prisoners served their sentences in solitary confinement; they were completely isolated from each other, communication between prisoners was prohibited (a silence system); a prisoner could only leave the cell with a hood covering his face. In the cell, a prisoner had only to eat and read the Bible. At the same time, a convict was allowed to engage in certain work activities with the aim that the need for daily work should become a stable habit. The most important drawback of the Pennsylvania system was solitary confinement, hopes for the correctional power of which were not proved even in the eyes of the founding fathers of this system themselves.

It should also be noted that the Philadelphia authorities paid great attention to the architecture of prisons. The Pennsylvania system was characterized by a fan-shaped prison structure: several buildings, where single cells were located, were arranged around the center in a fan. There were also prison buildings in the shape of a star (radiant or star-shaped). The Kresty prison in Saint Petersburg, which has a cross location, is a vivid example.

In 1820, a new prison system was introduced in the city of Auburn (USA). Its developers tried to mitigate negative characteristics of the Pennsylvania prison system. At the same time, the essence of punishment still consisted in complete isolation of a person, his solitary existence with his conscience and God, which, according to its creators, would make criminals to repentance and correct. Convicts were to keep silent, diligently study religious literature and pray to God. For violating prohibitions, they were severely whipped or sent to punishment cells. Under the Auburn system, convicts were engaged in collective labor and could live together. The brutality of punishments for offenses, characteristic of the Auburn system, led to the emergence of a new – progressive – system of serving sentences.

The progressive punishment execution system was introduced in England; therefore, it is often called English. Since it was also spread

and a bit changed in Ireland, it is also called English-Irish. The model of a progressive penitentiary system was designed in accordance with the sociological school. It is a system in which detention conditions of a convicted person changed taking into account his behavior and attitude to punishment. Under the progressive system, there were three categories of convicts. The first category called "star" meant that convicts had not previously been sentenced to prison, as a sign of this they wore a star on their clothes. The transitional category included those who had already been sentenced to prison, but had not received a star in accordance with their moral character. The third class included repeat offenders and persons who violated detention conditions.

Imprisonment conditions were also divided into three stages. The first stage was solitary confinement: convicts of the first and second categories spent no more than 3 months in solitary confinement and of the third – 9 months. Each woman had to spend at least 3 months in hospital. If solitary confinement did not have a proper effect on convicts, the term was extended. Prisoners were not employed at this stage. At the second stage, prisoners slept separately and worked together during the day. At this stage, convicts were divided into 5 categories, and each of them had to pass all four categories. For good work, convicts were awarded a so-called "mark" (token). After convicts gained a certain number of marks, they were transferred to another category of punishment. The third stage was conditional release, which was accompanied with a significant restriction of convicts' freedom.

The progressive system was also characterized by a special type of institution –a reformatory. The first reformatories were established in the 1870s in the USA. They were characterized by the division of prisoners into several groups according to the degree of their correction; each group had its own regime of detention (for example, those who reached the highest level were entitled to probation or early release; incorrigible people were usually kept in isolated solitary cells, without going to work; each category had its own color of clothing). Correction of convicts was encouraged by enhancing detention conditions (living conditions, better cuisine, use of electricity) and providing stamps as marks for good behavior; sport and professional activities were introduced for prisoners. Paramilitary formations were established: they were divided into units, companies and battalions, etc. Thus, a progressive penal system was based on the fact that prisoners were rewarded for conscientious work and good behavior. A detention regime depended on the correction process. In the progressive model, corrective measures were used, primarily labor impact.

Nowadays, in foreign countries, since prisons, being one of the penitentiary institution types, are widespread, cell conditions are the most common. At the same time, the higher crime rates, the greater number of prisons in the country. Thus, modern penitentiary systems are successors of the Pennsylvania system. At the same time, in most states, convicts are involved in labor (element of the Auburn prison system). At the same time, detention conditions in most foreign penitentiary institutions depend on convicts' behavior and socio-demographic characteristics (element of a progressive model).

The Russian penitentiary system has gone through a long development path; in different periods of evolution it was influenced by various penitentiary systems. The progressive penitentiary system had the greatest impact on it in the 20th–21st centuries.

Evgenii V. Svinin, Deputy Head of the Department of State and Legal Disciplines of the VILE of the FPS of Russia, Candidate of Sciences (Law), Associate Professor, presented a report on the topic ***"Social and legal aspects of penitentiary law and order"*** and emphasized the need to take into account the interaction of social and legal sides in penitentiary law and order.

Penitentiary law and order is a qualitative characteristic of penitentiary law. Currently, various, including polar, opinions have been expressed regarding penitentiary law. Thus, a number of authors believe that penitentiary law has neither its own subject nor a regulation method; therefore, neither at present nor in the long term there is a reason to single out penitentiary law as a new branch or a sub-branch of

law (A.M. Bobrov, N.A. Mel'nikova). For others, penitentiary law is a terminological form of penal law (V.A. Utkin). The third group of scientists interprets penitentiary law broadly, considering it either as a complex branch of Russian law (S.M. Oganesyan) or an intersectoral normative community (R.A. Romashov).

Evgenii V. Svinin drew attention to the methodological value of the category "penitentiary law". Expressing agreement with the position of R.A. Romashov, he emphasized that penitentiary law emerged due to, first of all, ideological changes related to the perception, creation and implementation of technical and legal tools for legal regulation of penitentiary relations. At the same time, not only norms should change, but also the attitude towards them, as well as towards their addressees.

It should also be borne in mind that penitentiary law is a set of norms regulating not only relations in the field of execution of punishment, but also a number of related relations. Among them are relations related to public control and assistance, administrative supervision, post-penitentiary probation, ensuring realization of certain rights of convicts, for example, the right to health protection and effective medical care.

Penitentiary law and order as a qualitative characteristic of penitentiary law is associated with the achievement of both legal (high level of legality) and social goals of legal regulation. It should be noted that strengthening of social efficiency is associated with the increase in the quality of guaranteeing the rights and legitimate interests of convicts, actual achievement of correction as a punishment goal, as well as implementation of other social goals of penitentiary law.

Yaroslav I. Tikhonov, Senior Lecturer at the Department of State and Legal Disciplines of the VILE of the FPS of Russia, Candidate of Sciences (Law), Associate Professor, in his report ***"On some aspects of correlation between penitentiary and post-penitentiary law"*** stated that terms "penitentiary law" and "post-penitentiary law" had become more common in legal science, being two closely interrelated phenomena in the field of correction and resocialization of criminals. Development of penitentiary and post-penitentiary law should ensure that these legal arrays effectively and harmoniously regulate the unified process of correction and resocialization of offenders. Stability of the security situation at the federal and regional levels directly depends on the quality of regulation of this process.

Penitentiary and post-penitentiary law are designed to ensure a holistic process of education and correction of criminals and their reintegration into society. The speaker mentioned that penitentiary and post-penitentiary law performed a common function, which can be determined as a correctional and preventive function. The correctional and preventive function of penitentiary and post-penitentiary law consists in the formation of legal awareness and raising the level of legal culture of convicts and persons who have served criminal sentences in order to form stable lawful behavior and prevent illegal behavior.

The participants of the round table emphasized the necessity to continue research aimed at understanding the phenomenon of the penitentiary system, analyzing its structural elements, legal techniques for the formation and functioning of penitentiary institutions, as well as optimizing penitentiary legislation and penitentiary legal relations.

The use of the integrative interdisciplinary synthesis method helps consider the penitentiary system in the context of the trinity of the normative intersectoral array, the system of national legislation and the national legal system. The material basis of the penitentiary system is social relations in their entirety, which form the environment of penitentiary life.

The activity characteristic of the penitentiary system presupposes determination of the subject composition of penitentiary regulatory and protective relations, as well as partnership and conflict communications, representing the substantial substance of the penitentiary regime as the main target setting of penitentiary law and order, with penitentiary legality being its element.

REFERENCES

1. *Sud priznal nezakonnym provedenie svidaniya zashchitnika-neadvokata s podzashchitnym v SIZO cherez peregorodku* [The court found it illegal to hold a meeting between a public defender and a defendant in a pre-trial detention center through a partition]. Available at: https://www.advgazeta.ru/novosti/sud-priznal-nezakonnym-provedenie-svidaniya-zashchitnika-neadvokata-s-podzashchitnym-v-sizo-cherez-peregorodku/ (accessed December 1, 2023).

2. *Ob utverzhdenii Pravil vnutrennego rasporyadka sledstvennykh izolyatorov ugolovno-ispolnitel'noi sistemy, Pravil vnutrennego rasporyadka ispravitel'nykh uchrezhdenii i Pravil vnutrennego rasporyadka ispravitel'nykh tsentrov ugolovno-ispolnitel'noi sistemy: prikaz Minyusta Rossii ot 04.07.2022 No. 110* [On approval of the Internal Regulations of pre-trial detention centers of the penal system, the Internal Regulations of correctional institutions and the Internal Regulations of correctional centers of the penal system: Order of the Ministry of Justice of the Russian Federation No. 110 of July 4, 2022. Available at: http://pravo.gov.ru/ (accessed December 1, 2023).

INFORMATION ABOUT THE AUTHORS

ROMAN A. ROMASHOV – Doctor of Sciences (Law), Professor, Honored Scientist of the Russian Federation, professor at the Department of State and Legal Disciplines of the Law Faculty of the VILE of the FPS of Russia, Vologda, Russia, romashov_tgp@mail.ru , https://orcid.org/0000-0001-9777-8625

EVGENII V. SVININ – Candidate of Sciences (Law), Associate Professor, Deputy Head of the Department of State and Legal Disciplines of the Law Faculty of the VILE of the FPS of Russia, Vologda, Russia, evsvinin@yandex.ru, https://orcid.org/0000-0003-2866-651X

NATAL'YA N. KIRILOVSKAYA – Candidate of Sciences (Law), Associate Professor, Head of the Department of State and Legal Disciplines of the VILE of the FPS of Russia, Vologda, Russia, natasha.8172@mail.ru, https://orcid.org/0000-0002-9031-5182

Received December 19, 2023