



Legal and Organizational Support for the Distribution of Convicts in Correctional Institutions: Problems and Improvement Directions



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Abstract

Introduction: the article discusses problems associated with the activities of correctional institutions in assessing personal qualities of convicts for their distribution into squads (departments) from the quarantine department. The *purpose* of the study is to identify potential risks associated with the organization and legal regulation of the work of the correctional institution's commission for the distribution of convicts, as well as to develop proposals for optimizing this process. *Methods:* historical-legal, formal-legal, comparative-legal, descriptive, method of legal modeling. The *results* of the study confirm the need to improve penal legislation in the field of legal regulation of the procedure for the distribution of convicts in correctional institutions, as well as the development of a unified model of criteria for assessing personal qualities of convicts in the process of their distribution into detachments.

Key words: correctional institutions; a group of convicts; distribution of convicts; criteria for assessing the personality of a convict; educational work.

5.1.4. Criminal law sciences.

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Introduction

Execution of custodial sentences should be organized in such a way that the goals set (correcting convicts and preventing them from committing new crimes) can be achieved taking into account various risks associated with the activities of penitentiary institutions.

In accordance with the Concept for the Development of the Penal System of the Russian

Federation for the Period up to 2030, approved by the decree of the Government of the Russian Federation No. 1138-r of April 29, 2021, one of the priorities of ensuring security of the penitentiary system is to create conditions for separate detention of certain categories of convicts. The importance of risk assessment and prevention in this area is confirmed by the presence of various socially negative phenomena in places

of detention, such as interpersonal conflicts, spread of criminal subculture, manifestations of extremism, etc.

The authors discuss possible risks in the distribution of convicts in a correctional institution into squads, which largely determine the success of further adaptation of convicts to serving their sentences in isolation and the effectiveness of correctional treatment on them.

It is important to understand that the performance of correctional institutions largely depends on the correct process of classifying and distributing convicts both at the initial and subsequent stages of serving their sentences. Therefore, it is necessary for the administration of institutions to support the overall strategy using logical and systematic criteria and administrative mechanisms necessary for its implementation. In practice, any mistakes in distributing a convict to the appropriate category during placement can have serious consequences both for the convict him/herself and for the activities of the institution as a whole. Thus, proper assessment of risks associated with the distribution of convicts in a correctional institution is one of the key elements of preventing offenses and crimes, as well as an important aspect of the correctional process management policy.

Research

The analysis of scientific papers shows that various aspects of the classification of persons sentenced to imprisonment and their distribution in a correctional institution are reflected in the research of T.F. Minyazeva [1], S.M. Savushkin [2], A.V. Simonyan [3], V.E. Yuzhanin [4], R.Z. Useev [5] and others. As a rule, works are devoted to classification of certain categories of persons serving imprisonment with regard to their personal characteristics, such as a degree of disability, criminological, psychological and pedagogical characteristics, etc. However, the process of convict distribution in terms of organization of correctional institutions' activities is improperly studied.

One of the latest studies in this area is the work of E.E. Novikov, who points out shortcomings leading to organizational mistakes in the distribution of convicts at the initial stage of serving their sentences in the context of a progressive system of punishment. The researcher also emphasizes a low level of interaction be-

tween investigative authorities, courts, pre-trial detention centers and correctional institutions in matters of accumulation, systematization and transfer of information about personal data of criminals [6].

Taking into account the absence of a legally established concept, E.E. Novikov suggests considering certain scientifically-proved activities of the institution's administration on distributing newly arrived convicts after their stay in the quarantine department as placement of convicts in correctional facilities.

We share the position of V.E. Yuzhanin and L.E. Prikhozhaya that the priority goals of this activity are to create a normal socio-psychological climate, to counteract to the negative influence of certain convicts, as well as to differentiate and individualize correctional impact [7, p. 127].

Undoubtedly, the analysis of legal support is of particular importance in the prevention of risks in the activities of penitentiary institutions in this area. It should be noted that in the Penal Code of the Russian Federation, the basic document of penal legislation, there are no legal guidelines directly regulating the process of organizing distribution of convicts in correctional institutions.

In fact, the classification and distribution of newly arrived convicts to serve their sentences are carried out in accordance with the requirements set out in Part 1 of Article 82 of the Penal Code of the Russian Federation concerning the provision of various conditions of detention depending on the type of institution appointed by the court and changes in the conditions of serving their sentences. The implementation of these requirements by the administration staff begins with the reception and placement of convicts in a quarantine unit for up to 15 days, as specified in Part 2 of Article 79 of the Penal Code of the Russian Federation.

The organization of activities of the correctional institution administration for distributing convicts into squads is described in the provisions of departmental regulations, in particular, the Internal regulations of correctional institutions (hereinafter referred to as Internal regulations), approved by the order No. 110 of the Ministry of Justice of the Russian Federation of July 4, 2022, as well as the Procedure for carrying out social and educational work with those

sentenced to forced labor or imprisonment providing them with psychological assistance approved by the order No. 350 of the Ministry of Justice of the Russian Federation of November 29, 2023 (hereinafter referred to as the Procedure). These documents establish the only way to distribute convicts into detachments. In accordance with Paragraph 328 of the Internal regulations and Paragraph 91 of the Procedure, this task in a correctional institution is performed by a commission under the supervision of the head of the institution or a person acting in his place.

It is the commission distribution of convicts that is most appropriate, since only joint actions and interaction of all commission members, and not an individual official, make it possible to effectively carry out this procedure. This, in turn, can contribute to better adaptation of newly arrived convicts to the conditions of imprisonment.

It is worth mentioning to note that at various stages of the activity of the penal system, the approach to the formation of the commission was subject to adjustments. Nowadays, in accordance with Paragraph 328 of the Internal regulations, representatives of the following departments are included in the commission:

- 1) security department (regime and supervision);
- 2) operational department (group);
- 3) department for educational work with persons sentenced to imprisonment;
- 4) social protection group;
- 5) labor adaptation center;
- 6) psychological laboratory;
- 7) medical organization of the penal system.

Previously, the organization and activities of the commission were regulated by norms of the Regulations on the squad of convicts of the correctional facility of the Federal Penitentiary Service of Russia, approved by the order of the Ministry of Justice of the Russian Federation No. 259 of December 30, 2005, as well as the Internal regulations of correctional institutions, approved by the Order of the Ministry of Justice of the Russian Federation No. 205 of November 3, 2005 (Internal regulations 2005). We believe that the need for a comprehensive study of convicts' personality characteristics was a key factor that influenced the review of the commission composition, the activities of which are di-

rectly related to convicts' behavior as subjects of adaptation to isolation conditions. In this regard, it seems quite logical that representatives of special accounting and security units are no longer involved in the process of distributing convicts in correctional institutions.

In juvenile correctional facilities, it seems appropriate to include the director of a general education organization and the director of a professional educational organization in the commission. This is due to the need to organize a unified educational process with juvenile convicts in accordance with the requirements of Paragraph 1.3 of the Instructions on the organization of educational work with convicts in juvenile correctional facilities of the Federal Penitentiary Service of Russia, approved by the order of the Ministry of Justice of Russia No. 91 of June 21, 2005 (hereinafter referred to as the Instruction).

It should be emphasized that some norms of this document regulating the described process do not comply with current legislation. In particular, according to Paragraph 4.4 of the Instruction, the law enforcement officer, when appointing the commission, must still be guided by the provisions of the expired order of the Ministry of Justice of Russia No. 311 of October 6, 2006 "On approval of the Internal regulations of juvenile correctional facilities of the penal system", which is a legal error requiring elimination.

Special attention should be paid to the consideration of a set of criteria for assessing personal qualities of convicts, on the basis of which the commission members decide on their distribution into squads in a correctional institution. It should be noted that the criteria have been adjusted by the legislator at various times. The analysis of the mentioned departmental regulations shows that the criteria established two decades ago for evaluating juvenile convicts in a juvenile correctional facility remained unchanged.

In accordance with Paragraph 4.5 of the Instruction, individual psychological characteristics of adolescents, their psychological compatibility, educational level and other factors are subject to assessment when distributing convicts to departments. However, it should be emphasized that, according to this rule, the list of criteria is not exhaustive, which, in our opin-

ion, poses potential risks to the members of the institution's commission when making the right decisions.

It should be noted that in correctional institutions of other types, the situation with the distribution of persons sentenced to imprisonment into detachments is somewhat different for the commission members. A comparative analysis of the regulations in force at different times in this area indicates that there is a specific set of criteria, which greatly simplifies the work of the administration staff.

So, for example, the previously valid Internal regulations 2005 and Regulations on the convict squad in paragraphs 5 and 8 fixed the same set of criteria for assessing the personality of convicts, on the basis of which the commission decided on their distribution to the appropriate squad. The criteria for the distribution were personal characteristics of the convicts, their involvement in labor and training in the system of general and vocational education. At the same time, as V.E. Yuzhanin rightly notes, the production criterion was of dominant importance in the distribution of convicts by squads [8, p. 15].

We believe that the emphasis on the ability of convicts to work was associated with the obligation to ensure productive activities of correctional institutions and to attract the maximum number of persons serving imprisonment to work as the main means of correction. Such distribution could negatively affect the process of correcting newcomers, causing pressure from "seasoned" convicts, interpersonal conflicts in their places of residence and work, as well as contribute to the commission of crimes against the individual.

Recently, there has been a gradual transition to a new system for the distribution of convicts by squads based on criteria that take into account the final results of the administration's work – correction and re-socialization of convicts. As a result, a more complete set of criteria was fixed in Paragraph 10 of the Internal regulations 2016 and subsequently reflected in Paragraph 328 of the current Internal regulations. Thus, the commission's staff must now take into account not only their personal characteristics, but also their subsequent employment, the need for general and vocational education, vocational training, and their state of health when distributing prisoners to prison.

In our opinion, this step highlights the personal approach to the classification of convicts in the distribution of correctional facilities.

In addition, some progress should be noted in this area marked by the introduction of probation, the purpose of which is re-socialization, social adaptation and rehabilitation of convicts, as well as prevention of new crimes. This is confirmed by the fact that now the commission members, in addition to the previously mentioned assessment criteria, are required to take into account the type of correctional institution, the nature and degree of public danger of the crime, the sentence imposed, detention conditions, behavior of the convicted person during his/her stay in the institution, as well as the state of his/her spiritual, professional and physical development, the need for social assistance and psychological adaptation in accordance with Paragraph 91 of the Procedure adopted in accordance with the Federal Law No. 10-FZ of February 6, 2023 "On probation in the Russian Federation".

In our opinion, this innovation is a tool for improving the process of distributing convicts in a correctional institution, but it also has some drawbacks. The specifics of the distribution of convicts is that this process is dynamic and continues throughout the entire term of serving the sentence. In this context, the main purpose of expanding the number of criteria is the need for periodic reassessment of risks in the allocation of convicts, taking into account their behavior. In practice, assessments of personal qualities of convicts carried out at later stages of serving their sentences may turn out to be more accurate, as employees have more time to interact with them.

At the same time, the difference in assessment criteria in the mentioned normative acts is a negative factor that creates ambiguity in understanding the legal regulation of the institution of organizing the distribution of convicts in a correctional institution. The severity of this problem lies primarily in the difficulty of the law enforcement officer's orientation in individual criteria for assessing personal qualities of convicts, which makes it difficult to make an objective decision on distribution without any discrimination.

In addition, the competence of the commission's representatives in an objective assess-

ment of such criteria as the state of the convict's spiritual development is questionable. According to experts, "positive development of human spirituality should take place on the basis of active interaction with society, and at two levels of its organization: the surrounding social environment and the religious and spiritual environment (the church)" [9, p. 138]. In this regard, representatives of the prison ministry should be considered one of the subjects of assessing the spiritual development of a convict. Their mission is primarily aimed at creating conditions for a full-fledged spiritual life and assisting in the moral healing of convicts. The Church is able to shape the life outlook of convicts, as it touches the deepest sides of the human soul [10, p. 115].

The analysis of provisions of the document adopted at the meeting of the Holy Synod on March 12, 2013 indicates that activities in the field of prison ministry can include not only medical, rehabilitation, social and psychological aspects, but also counseling [11]. In this regard, it seems necessary to ensure the prison ministry representatives' participation in the work of the commission for the distribution of convicts in a correctional institution to assess the state of the convict's spiritual development.

We believe that the current approach in this area requires optimization by developing a unified model of criteria for assessing personal qualities of convicts in the process of their distribution into detachments. To solve this problem, it is advisable to turn to the study of scientific papers devoted to the analysis of capacities for improving the correctional process, as well as implementing international experience.

The experience of foreign countries in working with prisoners, described in the United Nations criminal justice reference materials [12], is of great interest. In Somalia, prison staff were trained to use a simple basic assessment tool consisting of 45 questions that are asked to prisoners who are believed to be violent extremists. This assessment, conducted in relation to more than 800 convicts, reveals that only 148 people acted on the basis of ideological or religious considerations, while the rest were motivated by financial rewards provided by a group of violent extremists. The main motivation for these prisoners to join a group of violent

extremists was poverty, not ideological or religious beliefs.

Another example is the experience of US penitentiary institutions, where one of the most valuable tools in this area is a procedure called confirmation of membership in a group that poses a threat to security (hereinafter referred to as GPUB). This procedure includes assessment of likelihood of a prisoner's participation in the GPUB on the basis of an objective analysis of predefined factors, such as nature of the current criminal offense, criminal history, own confession, tattoos, connections with known members of the GPUB, as well as presence of symbols of the GPUB and (or) documents, photographs, etc. Each of these factors is assigned a numerical value. If the sum of these values reaches a certain threshold, it is possible to confirm that the prisoner belongs to this group based on his/her level of participation in its activities. Due to differences in laws and regulations, as well as cultural characteristics of different regions of the country, the factors and the weights assigned to them may vary from state to state, but the procedure itself remains generally the same. At the same time, in most states, inmates are entitled to appeal against determination of their association with a GPUB, as this may affect decisions regarding classification, placement, and participation in programs during their sentence, as well as other aspects of incarceration. Thus, it can be concluded that maximum familiarization with information about a prisoner, his/her personal background, criminal past, important contacts and beliefs helps to correctly attribute him/her to the appropriate category and ensure adequate placement in a penitentiary institution.

In our opinion, in the Russian penal system, a thematic plan for conducting classes with convicts serving sentences in the quarantine department, fixed in appendix No. 6 to the Procedure, can serve as a general strategy for developing a unified model of criteria to assess convicts' personal qualities in the process of their distribution into squads.

The first steps in managing the adaptation process begin with the arrival of convicts in a correctional facility. In order to make informed decisions about the classification and place-

ment of convicts by squads, as well as the development of effective individual rehabilitation programs, it is important to know as much as possible about their criminal past, character traits, beliefs and behavior while serving their sentences. Currently, this work is organized in the form of classes by representatives of the concerned departments of the correctional institution, who record the implementation of the lesson plan. The content of this plan includes 29 lessons devoted to the procedure for serving imprisonment. It is signed by the head of the department of educational work with convicts and approved by the head of the institution.

The analysis of the lesson plan allows us to conclude that the proposed topics provide an opportunity for all representatives of the commission to express their opinions on each criterion for assessing personal qualities of a convict. We consider it advisable to use the sample lesson plan as a unified assessment criteria diary for all types of correctional facilities. In this diary, representatives of each department, based on the results of classes with a convict in the quarantine department, not only record the fact the class, but also formulate specific recommendations for the distribution of a convict to a correctional institution, taking into account security aspects and based on the results of a risk assessment in their area of competence. The main idea is that the assessment results serve as the basis for making decisions about the best ways to manage risks and reduce them in the future.

Conclusions

To summarize, we can draw the following conclusions:

1. Proper assessment of the risks associated with the distribution of convicts in a correctional institution at various stages of serving their sentences is one of the main components of an effective organization of the institution's activities.

2. Currently, there are no norms in penal legislation that directly regulate the issue of distributing convicts. Organization of this activity is regulated by several departmental regulations, the provisions of which establish various criteria for assessing personal qualities of convicts. This creates difficulties for law enforcement agencies in making objective decisions about placement of convicts in correctional facilities without any discrimination.

3. It is advisable to introduce a unified diary of assessment criteria, in which representatives of each department, based on the results of classes with convicts in the quarantine department, will make specific recommendations on the distribution of convicts, taking into account safety aspects, based on the results of risk assessment in their area of competence.

4. Objective assessment during the distribution is the key to effective educational work and reduces the likelihood of new crimes being committed by convicts while serving their sentences.

The organizational and legal issues considered require further development of a conceptual approach to the distribution of persons sentenced to imprisonment in a correctional institution, taking into account the solution of specific tasks and the achievement of the goals of Russian penal legislation.

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