



Planning Documents to Develop the Russian Penal System in the Period of 2010–2030: Name, Type and Procedure for Entry into Legal Force

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Abstract

Introduction: recently, development of the Russian penal system is based on the conceptual provisions enshrined in legal documents that are the result of strategic planning. The conceptual provisions are being developed in order to achieve the desired state of the penal system in the future and represent a system of views aimed at improving activities of its institutions and bodies. Planning documents set up the final result, as well as priority development directions, as a rule, for a ten-year period according to the national legislation with regard to international norms and standards. *Purpose:* to conduct a comparative analysis of individual conceptual provisions in the terminated and newly adopted planning document aimed at improving the management system; taking into account results of the study, unresolved issues identified during implementation of the conceptual provisions, and positions of scientists and practitioners, to formulate theoretical and practical recommendations for the developers of a new legal document focused on developing the entire system of penal institutions and bodies. *Methods:* the methodological basis of the study is made up of general scientific methods, such as generalization, analysis, synthesis, deduction and induction, a system-structural method of comparison, as well as private scientific means of analyzing normative documents. *Conclusions:* the conceptual documents introduced in recent decades reflecting the leading ideas to optimize activities of the penal system and the chosen direction to execute criminal penalties predetermined the vector of its development. Moreover, the considered system of views has had a significant positive impact on the functioning of the institutions and bodies executing criminal punishment, as well as law enforcement practice. *Results:* the authors have identified unresolved problematic and debatable aspects of conceptual documents related to the implementation of departmental provisions, the form, methods and subjects that put into effect the legal acts under study. Based on the results of the analysis, the researchers made a theoretical conclusion and proposed doctrinal and practical recommendations that can form the basis for working out a new conceptual document occupying a higher position in the hierarchy of legal acts aimed at developing the entire system of institutions and bodies executing punishments.

Keywords: document; planning; form; method; concept; system.

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Introduction. Undoubtedly, the implementation of principles of the modern penal policy in the field of executing criminal penalties requires continuous significant transformations, including in the Russian penal system. This, in turn, determines the relevance of the research, need for scientific, based on official legal documents, modeling of the content and stages of development of the system of penitentiary institutions, including forecasting the expected results that should manifest themselves in its new qualitative state. The authors, backing the penal system reforms as a process of improving its activities, find it important to reconsider objectives of the conduct and results of their achievement.

In modern conditions, most developed countries, including Russia, are searching for optimal directions to develop activities of institutions and bodies executing criminal penalties, including in the form of incarceration. The improvement of activities, among other factors, directly affects criminalization of the convict's personality, which is confirmed by foreign researchers. F. Mirić studied causes of the criminogenic influence of penitentiary institutions in the Republic of Serbia in detail and came to the conclusion about the state of stress of all convicts sent to serve a sentence of imprisonment in a penitentiary institution. In his opinion, they have to put an end to their former way of life, live in a closed-type penitentiary institution with a very diverse contingent of prisoners. Due to the loss of freedom, some of the convicts are deprived of the privileges they had outside of prison. In response to these restrictions, they commit new crimes and serve new sentences. For this reason, the time spent in prison, from the author's point of view, can be a sufficient criminogenic factor [15, p. 37].

In the context under consideration, we note a steady trend of introducing official le-

gal documents of the so-called atypical legal nature over the past two decades.

Important components of giving legitimacy to the legal documents under consideration are the form, method and subjects that put them into effect and meet modern realities of life.

Concepts [14] and programs are the documents of atypical legal nature focused on enhancing the penal system.

The introduced conceptual documents are for departmental use. The sphere of application is limited, as the need for their elaboration always comes from the body in charge of criminal penalty execution, and their developers are research and educational institutions under its jurisdiction. Accordingly, provisions of these development documents do not apply to the entire set of institutions and bodies executing punishment, but only to the organizations that are part of the penal system. For example, betterment of punishment execution by bailiffs in the form of a fine remain is not provided for in the document.

In the 1990s, to enter into force, concepts were to be approved by the head of state. Currently, a program is approved by the resolution of the supreme executive collegial body of state power, and a concept by its order. It results in the ambiguity of the subject of giving legal force to the documents under study.

For a more objective characterization of the issue under consideration, it is important to note the position of a number of legal experts who believe nowadays the level of approval of a modern conceptual document has been significantly lowered. So, according to Professor V.I. Seliverstov, a new conceptual document to develop the penal system should be validated by the President of the Russian Federation, since the head of state, by virtue of the Basic Law, defines basic directions of the country's domestic and foreign policy.

Besides, he runs force structures, including the Federal Penitentiary Service, its institutions and bodies [9].

We will conduct a comparative analysis of the documents aimed at the penal system development, approved over the past two decades.

The Concept for the development of the penal system of the Russian Federation up to 2020 approved by the by-law of the Department (hereinafter referred to as the 2010 Concept) expired at the end of 2020. The ten-year period, divided into 3 unequal stages (2010 – 2012; 2013 – 2016, 2016 – 2020), was designed to implement the concept.

The provisions of the 2010 Concept have positive and negative sides. The conceptual document contains original ideas and measures of state influence on persons who committed crimes and were found guilty. At the same time, despite the complexity to implement the conceived intentions in the Russian conditions, some of the conceptual provisions have found their embodiment in practical activities of the penal system. Separation of individuals sentenced to imprisonment for the first time and those who have served a sentence of this type earlier is normatively consolidated and implemented in practice. These measures made it possible to accommodate a larger number of convicts in the region of residence, while reducing costs to transport a special contingent to other Russian subjects.

With all this, it is impossible not to take into account the current situation associated with the inclusion in the 2010 Concept of, at first glance, advanced ideas that in fact do not correspond to real goals and objectives. At the same time, clearly set and relevant goals make the planning document itself realistic [4]. One of the unattainable aspirations was to bring the performance of institutions and bodies executing punishments to European standards for treating convicts. Upgrading organizational structure of the penal system was another important direction of its reforming. In fairness, we should mention the work within the framework of the legal basis concept on changing the profile of correctional institutions, which provides for the creation of isolated areas that operate as prison.

The results of the 2010 Concept implementation show insufficient study of certain provisions and their inconsistency with reality; additions and amendments were introduced into the planning document in 2012 and 2015. To be more specific, the Russian Government's Decree No. 1877-R of September 23, 2015 amended the initial direction for the penal system development associated with the conversion of correctional facilities into prisons [2]. Another deviation from the intended goal was to improve activities of penal institutions and bodies to meet international standards. Besides, this planning document was supplemented with significant provisions to protect convicts' legitimate interests and rights, including their labor rights, thus boosting effectiveness of the 2010 Concept. At the same time, as a result of the changes, the document lost innovative ideas, moving into the category of important, but private improvements. This thesis is supported by P.V. Teplyashin, who argumentatively asserts that the rejection of one of the original core goals – expansion of prisons in the penal system, has entailed the loss of the idea containing a creative meaning in the document under consideration [11].

At the same time, though the issue of re-profiling of institutions is rather neglected, it does not exclude the relevance of the issue on separate placement of convicts in cells or rooms designed for one person to meet recommended international standards [10].

Since the transfer to the prison system is rather costly, during the transition period it seems right to develop a new type of institutions that should combine several types of regime and types of institutions, which in turn should be reflected in the conceptual document [3]. There are a number of Russian and foreign studies devoted to this problem.

R.Z. Useev, at the level of assumption, analyzed issues related to the formation and development of Russian institutions of a unified type. The author studied 3 fundamental areas to improve the institutions under consideration, including spatial development, legislation and law enforcement. Each of these directions was considered from the perspective of unresolved issues [12].

We find it reasonable to study experience of creating institutions of this kind in the penal system of the Republic of Azerbaijan. Thus, N.S. Salaev notes that the State program for the development of Azerbaijani justice for 2009–2013 provided for the construction of a new type of institutions, namely, penitentiary complexes, which include, among other things, a prison model. From the scientist's point of view, institutions that combine several types of regime and types of penitentiary institutions will create conditions for consistent application of the basic guidelines related to separation and individualization of punishment execution. As a result, according to the expert, convicts will be held in cells of penitentiary institutions during the transitional, thus, a new type of prison will be tested [16].

It is rather difficult to assess the degree of scientific elaboration of issues related to the conceptual development of the penal system, while in recent years they have been the focus of close attention of professional communities.

Scientists, law enforcement officers, human rights defenders and former penal system employees positively assess the penal system transformation as a process to improve its activities, accompanied by a change in the properties of institutions and bodies executing punishment.

Yu.A. Reent, having conducted a detailed assessment of its provisions implementation, identifies a number of controversial points in it, unresolved issues, and also focused on the positive results achieved [7].

Other legal experts point out serious shortcomings in the concept, associated with unreal nature of certain provisions. V.B. Malinin, who, having considered key provisions of this document, also concludes about the presence of flaws and impossible proposals in it [6].

The Minister of Justice of Russia K.A. Chuchenko admits that not all the provisions of the 2010 Concept were implemented. According to the minister, the document was largely aimed at eliminating unresolved complex issues in the penal system, which infrastructure had been used for centuries and the depreciation of fixed assets had been more

than seventy percent [8]. The 2010 Concept, with the inclusion of truly noteworthy conceptual provisions, a few months later, gave legal force to the Concept for the development of the penal system of the Russian Federation for the period up to 2030 (hereinafter referred to as the 2021 Concept).

The 2021 Concept acts as a kind of sum in strategic planning for the next decade. Among important directions to improve penal system activities, there are measures related to strengthening material and technical bases and enhancing working and living conditions of convicts. The document largely pays attention to the unresolved issue concerning the introduction of administrative probation mechanisms [5]. At the initial stage, the most important task is to consolidate the positive results that have been achieved in recent years due to liberalization of the criminal policy and interaction of the federal penitentiary body with agencies performing law enforcement functions and other public authorities.

Let us compare, without going into details, individual provisions of the concept, which ended in 2020, and the newly introduced one. This will make it possible to comprehend emerging patterns and directions of movement in the sphere of reforming the Russian penal system. It should be noted that the text of the new concept discussed since 2018 had characteristic differences from its final version. In terms of internal construction, they did not differ much. Each document included six sections, which consisted of 13 subsections in the expired Concept and 15 in the draft one (in the process of discussion and adoption). There are 23 sections in the final version of the 2021 Concept.

The approved 2021 Concept fixed only two chronological periods in its execution. Stage 1 (2021–2024) involves preparation of regulatory legal acts focused on fulfilling goals and objectives, as well as adjustment of related targeted programs at the federal level. We should note innovations, such as activities to improve electronic interaction with other state bodies and formation of a probation service.

Stage 2 (2025–2030) is aimed at developing the administration of the penal system. At the same time, the implementation of plans is

to be refined and optimized. Special attention is paid to timely summing up of interim results, which will be the basis for working out a next draft document, determining core directions for further improvement of the domestic system of punishment execution [1].

Among uncertain points in the name of both conceptual documents under consideration, as in many such acts, it is possible to single out the use of the time interval “up to 20 ...”. In fact, the wording “up to” does not fix in detail whether the validity time expires at the beginning of the calendar year, or at its end. So, it is possible to determine the time period of the Concepts “up to 20...” in whatever time period it pleases: until the beginning of 20 ... or until its end. From our position, the name of the document should have the interval “for the period of 2021–2030”.

Forms of the studied documents are the same (concept), in addition, the term “development” is used in their names, which is equally applied in the name of the Concept of the federal target program “Penal system development (2017–2025)”.

Hence, several documents of the same form and name were adopted, distinguished solely by type, period of validity and other words.

A way out of this situation was proposed by R.Z. Useev, who recommended accepting similar documents with different terms and fixed time intervals. In his opinion, the current concept refers to doctrinal legal acts and should be called as the “Penal system modernization concept (2021–2030)” [13].

The 2021 Concept looks like a planning document. However, the current system of legislative acts uses a term “strategic planning document”, that is why the legal nature of the concept as a type of document is uncertain.

Thus, the 2021 Concept cannot be attributed to strategic planning documents. Consequently, both it and the expired concept does not meet all the requirements of the Federal Law No. 172-FZ of June 28, 2014 “On strategic planning in the Russian Federation” (hereinafter – the Federal Law No. 172-FZ). At the same time, the Federal Law No. 172-FZ refers other strategic planning documents

that meet the stated requirements (Article 20) and were initiated by the President or Government to sectoral strategic planning documents. Hence, the federal target program “Penal system development (2018–2026)” satisfies requirements of the Federal law No. 172-FZ and is the strategic planning document. In turn, the 2021 Concept, unlike the federal target program, can be attributed to a sector policy document.

Conclusion

The stated above allows the authors to make a conclusion that the planning documents put into effect in recent decades, reflecting the leading ideas to develop the penal system and the chosen direction to execute criminal penalties predetermined the vector of its improvement. In addition, the studied method of understanding had a significant positive impact on the functioning of penal institutions and bodies, as well as law enforcement practice in the field of execution of criminal penalties.

Having analyzed results of the study and problems identified during implementation of the conceptual provisions, and having considered scientists and practitioners’ points of view, we would recommend to the developers of a new legal document focused on developing the entire system of penal institutions and bodies to proceed from the following (doctrinal and practical proposals):

1. A new conceptual document should not be reduced solely to the penal system development, but should be aimed at regulating transformations in the entire set of institutions and bodies executing criminal penalties. Such a legal document may bear the working title “Conceptual foundations for the development of institutions and bodies executing criminal penalties in the Russian Federation for the period of 2031–2040”.

2. It should be approved by the President of the Russian Federation, thus acquiring a higher position in the hierarchy of legal acts. The necessary quality level of fixing provisions in its content and their implementation in practice will be ensured.

3. The final results defined in the planning document and the range of tasks set for their achievement should correspond to reality, be

provided with sufficient funds, material and technical resources, as well as organizational and staff activities.

4. A newly introduced planning document should be of an interdepartmental nature, public bodies of various branches of government should engage in activities to execute criminal penalties. In this connection, it is im-

portant to involve specialists of various levels of government, including agencies implementing law enforcement functions, educational and research institutions, as well as practitioners from post-Soviet countries with experience in creating joint type institutions and implementing probation services, in preparing the text of the document.

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