

Penitentiary Policy of the State in the Context of Sociological, Political and Legal Views: Reality and Prospects

Salaev Nodirbek

Tashkent State University of Law, Uzbekistan
Department of Criminal Law and Criminology

Acting Associate Professor, PhD

E-mail: salaev.nodirbek@gmail.com. nodir-law@mail.ru

Abstract: This article is devoted to the sociological, political and legal point of views of organization of the penitentiary system, the problems of modern penitentiary policy of Uzbekistan, promising trends of reforms in this area, and contains the appropriate conclusions and proposals. Moreover in this article also was analyzed both the negative influence of the Soviet repressive prison policy to the Uzbek penitentiary system and the current state of the penitentiary system of Uzbekistan. It revealed the difference between «colony system» and «prison system».

At the same time the author clearly specified the target issues and ways of reorientation and increase of the transparency of the penitentiary system as well as the implementing to the national system international and foreign experience of penitentiary policy.

Keywords: criminality, punishment, prison, penitentiary system.

I. Background

For the last 70 years of the former Soviet Union toughing the fight against criminality became a dominant factor in formation of the criminal policy of Uzbekistan as well as all post-Soviet countries. In the so-called period of the class struggle, this factor served primarily political purposes when the appropriate authorities were set the task of eliminating the class enemies, such «hostile elements» as the nobility, the clergy, the kulaks, the Cossacks.

Ultimately, these tasks were completed, but the rigidity of the state of criminal policy remained, and it did not bring the positive results in the fight against crimes. But the population coverage of the repressive measures of the forced labor system was huge.

Under the influence of such trends of repressive criminal policy a complex and contradictory public legal consciousness formed, when on the one hand the people developed a fear and distrust of law enforcement bodies, and on the other hand, the majority part of population still believe that success in the fight against crime can be achieved mainly by toughening a punishment.

In recent years, the gradual decline in sentencing to imprisonment, expansion of types of criminal penalties alternative to imprisonment have been able to be observed in the light of the liberalization policy in Criminal Law in Uzbekistan, but these figures are still much higher than

those ones in developed European countries. They are indicators of the direction of criminal law policy and practice of the courts and law enforcement bodies, which demonstrates the need for major changes in both policy and all legislation with its application practice.

II. Current condition (sociological aspect)

As it is known, the state assumes the right to punish. So, here a question arises: «Why does a state do it?» The penalty is always sure to be directed to both the past and future. To make it clear, to some extent it represents a revenge which is more reflective act rather than an appropriate one. The government resorts to it based on the features of human nature and immutable laws of society. The future-oriented feature involves re-correction of a person, prevention of recidivism and crime prevention.

However, if the direction of penalty to the past does not require any justification, then the issues of correction and re-education through criminal penalty are highly problematic in a moral sense. The problem is that, in the sociological sense, correction and re-education in an environment of similar immoral people is not possible. But the state jails and fines offenders, and some states still impose a death penalty to their citizens.

The criminal-executive system of any state, being its integral part, formed, developed and reformed under the influence of social, economic, political, ideological and

other factors that occur in society. In the past 25 years since gaining national independence in Uzbekistan full-scale social, political and cultural reforms have taken place and the system of political institutions and economic relations, the state and social system have changed dramatically. During the transition period the state of criminality sharply worsened.

The former Soviet penitentiary system, with its main focus on large-scale forced labor, neglect of human rights and freedoms and creation of powerful political and ideological influence, was one of the most characteristic structures and features of a totalitarian state.

The new Constitution of Uzbekistan proclaimed the priority interests of the individual as a fundamental principle. This principle has been the basis of the policy of reforms and legislation which includes the field of execution and serving of criminal penalties and has been providing, first of all, a system of measures aimed at their humanization, strengthening civilized principles in the activities of the penitentiary system authorities.

At the same time, reforming the penitentiary system is a long-term and multistage process. Its effectiveness depends on a lot of various factors and conditions of economic, social, legal and other measures, including criminal and penitentiary policy of the state.

III. The main directions of the reform of the penitentiary system

1. Reduction in the number of convicts

Overcrowding of the prisons is a multifaceted phenomenon due to the existence of a huge number of reasons. Such circumstances may vary greatly and should be sought not only in the framework of criminal and penitentiary policy, but also in other spheres of responsibility of the state - in the field of health policy, education, employment and others.

In this context, the issue of reducing the number of people who are in prison and kept in detention centers is one of the most important in the reform of the penitentiary system, which has important political, economic and criminological value.

The economic aspect of this is that the load on the budget increases or decreases due to the change of the prison population. In addition, the secret (criminal) income of persons supplying prohibited items, things to prisons is affected by this change.

Criminological significance of the number of persons in this category is determined by the fact that the people who have passed the test of pre-trial detention or imprisonment acquire or enrich their criminal experience, and on the release they encounter a difficulty in re-socialization, as a result of which by force of the acquired skill, tendency or desperation they have to apply the obtained knowledge, skills and commit new crimes.

Moreover, the environment where the convicted find themselves does not consist of the best members of our society. In many cases, the situation in this environment has a negative impact, including on the psychology of convicts. In some cases, there are facts concerning violence among the convicted especially by those who adhere to the «thievish customs» and «traditions». As a result, on the one hand, the fact of deprivation of liberty itself and on the other hand, the

aggression of representatives of the criminal world influences the psychology of the convicted. Accordingly, there is the criminalization of society, because about five million people come out of institutions of the penitentiary system within one year and these people bring a temper, customs, and subculture of the criminal world to freedom[1].

It should be noted that M.N.Gernet said that the prison is a school of criminal professionalization, but not the place of correction[2].

In addition to the negative factors of «Colony system» [3] of the execution of punishment of imprisonment it is necessary to add the following: the purpose of punishment – correction is not achieved, since it is proved that when being jailed a person is less dangerous to society than at the time of release after serving a penalty period specified in the court verdict; in a colony convicts have an opportunity to consolidate which leads to the creation of various types of «informal rules of relationships», «concepts», «thievish traditions and customs» and other variations of the criminal world subculture; the main purpose of this category of convicts is the transformation of the so-called «red zone» in the «black» in which real power is managed by the so-called «thieves in law», «lookers» and other «rogues»; in a colony convicts have an opportunity to widely share experiences and form criminal gangs to commit new crimes after their release. «Colony system» does not reduce crime rates, but surely generates recidivism, brings up new criminals, creating a «small society» living with its own «laws (rules)», and the release from prison poses new challenges for a newly released person and also for society[4].

The political significance lies in the fact that the criminal policy largely determines the main directions and policy objectives in the field of execution of criminal penalties, which is directly implemented in the relevant legislation and its application in practice. In this regard, the general softening of penal policy of the state, as well as curtailment of violent forms of punishment, cause reduction in the number of convicts.

The current situation demonstrates the need for a gradual transition of the penitentiary system of Uzbekistan to the more civilized version of execution of the penalty in the form of deprivation of liberty, i.e., from «colony system» to «prison (penitentiary) system».

2. Reorientation of the Criminal law policy

According to the reasonable opinion of some scholars, the content of paradigm «fight against crime» should not be understood as a declaration of war on criminals, the complete suppression and eradication of crime (and it did not just sound in the past), but as a systematic and direct control of two interrelated and interdependent processes: crime prevention and criminal-legal control over the criminality»[5].

It is fully agreed with this view since this approach allows the state to determine the real resources required for combating crime at the appropriate level. And in this context there is no need for just a declaration, but the development and definition of a clear mechanism of implementation of the Conception of the state policy to combat crime. Otherwise, a positive result in the fight against crime is hardly to be expected[6].

In addition, it allows taking into account the economic, national, religious and other characteristics, because the methods of preventive work cannot be universal for all convicts. The Conception can also contribute to the revival of relations between law enforcement officers and various segments of the population, without which there cannot be effective preventive measures.

The realization of the state policy in the fight against crime can only be made through the concerted efforts of all subjects of legal decision making activity, but also concerning economic, social, political and other measures. For example, such an approach of the state towards the crime prevention has been very successfully implemented in Finland, which today is a country with one of the lowest crime rates and the number of persons sentenced to imprisonment (the prison population)[7]. Therefore, the Conception of the state policy to combat crime must be imbued with the idea and the spirit that the fight against crime is a problem of not only state law enforcement agencies, but also the entire society, every citizen. In this connection it is necessary to take into account the recommendations contained in international instruments, the experience of Western countries which have long placed the emphasis on law enforcement cooperation with the population at all stages of combating crime.

It seems that the reform of the penitentiary system in modern conditions becomes of paramount importance for the reason that based on the concept of «penitentiary» (from Latin «poenitentia» – repentance, correction), a change in domestic policy of state in the field of performance (serving) of criminal penalties[8].

Instead of «the penal policy (criminal-executive policy)» comes «Penitentiary policy», which a progressive system of serving a punishment in XXI century prisons is based on: in the settlement colonies with the usual observation, settlement colonies with increased supervision, treatment and correctional institutions, health care facilities, educational centers for juveniles, general regime prisons, strict regime prisons, special security prisons[9].

Prisons are normally not designed to be unsanitary, unsafe, or inhumane; most countries have become parties to treaties imposing obligations regarding the humane treatment of prisoners and specifying certain prison conditions. There are also international standards for prisons and other detention facilities which, though not legally binding, often derive from UN guidelines and manuals, and may be useful as a guide or check-list for ascertaining fair and humane prison conditions and treatment of prisoners[10].

This system aims to achieve the primary mission of the state – correction of convicts, formation of their true desire and aspiration for returning to normal life and becoming law-abiding members of society. It is able to provide them with moral correction based on the socialization of the individual, humanism and respect for rights, freedoms and legitimate interests of convicts. This system allows returning to the family, society and the state not criminally infected person, sick and embittered man, but full, law-abiding citizen of country.

Progressive penitentiary system with the use of so-called social mobility stimulates convicts for law-

abiding behavior on the basis of changes in the conditions of serving a penalty, type of correctional institution, the replacement of the unserved part of the punishment with a milder type of penalty or conditional discharge.

Besides it, I attempt to provide an overview of approaches for which there is some reliable evidence of effectiveness (or ineffectiveness) of penitentiary strategy. Strategies may be classified into three broad categories: programs for prisoners, situational approaches, and institutional reforms and management practice. All strategies rely on their success, of course, on far-sighted management that is willing to act on the basis of evidence[11].

3. Increase of the transparency of the penitentiary system

One of the main problems that I have seen in recent years is the problem of reducing the number of staff of temporary detention centers, jails, correctional colonies and prisons. The problem is that not all managers, but also ordinary employees of correctional colonies, detention centers and prisons want to understand and accept the reform in the penitentiary field. I, on the basis of my research of many years and practical experience, have to state that the majority of people are convinced that the penitentiary system still represents the Gulag[12].

Unfortunately, it must be noted that under the pretext of overcoming the threat of unity of criminally oriented team of convicts, as well as elimination of acts disorganizing the work of institutions of the penitentiary system and the maintenance of order and discipline in prisons often outdated, sometimes excessively harsh actions of the officials are observed. Sometimes they go beyond the official commissions. In this event such cases retain a high level of latency with the connivance of the governing body of institutions.

Of course, it is a common problem. While the most fundamental component of the prisoner's human dignity is the absolute prohibition of torture, the right to dignity includes the provision of adequate material conditions, including sufficient food, water and access to healthcare. De-humanizing or humiliating prison routines can also infringe the dignity of prisoners, such as particularly uncomfortable prison uniforms. In Texas and Rwanda, for example, male prisoners were forced to wear pink prison uniforms, purposefully humiliating them[13].

It is agreed that security and dignity in places of detention are interdependent. Prisons and human dignity must be compatible[14].

It is worth noting that these facts are, as it is said, «behind the scenes» due to almost complete lack of transparency, the passivity of the mass media, public organizations promote silencing of these facts, the legal nihilism of the population. It is not a secret that in many countries there is a tendency to hide the penitentiary system from the public demonstration as it is not desirable to let the merits and shortcomings of its existing systems be publicly discussed. Although there are a variety of materials in the media, the Internet space, different publications, as well as investigative journalism, which mainly chase PR and have no any sense, without much emphasis on science and its development.

It should also be noted that following the closure of the prison system, researchers of different countries do

not have opportunities for closer dialogue and cooperation, which to some extent hinders the development of penal policy.

This is largely due to deficiencies in the legal regulation of unpaid work in penitentiary institutions. These weaknesses include: disagreement, fragmentation and inconsistency of legal rules, including establishing the basic concepts in this area; provision of small opportunities for public associations to participate in activities of the penitentiary system of; absence of a systematic approach to the legal regulation of the considered issues; lack of a clear legal regulation of public control over the activities of institutions, declarative character of legal provision of the feasibility of such control by the various actors of the public.

This situation leads to a sharp narrowing of the extent of public participation in the activities of penal institutions, and first of all to participate in the correction of prisoners and public control, which results in the need for not only the appropriate changes and additions to the legislation on penalty execution, but also improvement on the organization started involvement the community.

The above mentioned leads to the conclusion about the effectiveness and need for employing new trends and directions of foreign criminal policy for the improvement and development of the national criminal policy related to the redundancy of the repressive trends, and hence the increase in expenses for its realization.

IV. International experience of penitentiary policy

A number of international documents have established principles and guidelines to be followed during the administration of justice by the public authorities of countries which have ratified them. However, according to the data presented in the report of the United Nations Former Secretary-General (13th UN Congress on Crime Prevention and Criminal Justice, in Doha, Qatar, 12-19 April 2015), at the global level in the period from 2011 to 2013 more than a quarter of all people who were in places of seclusion waiting for their judgment[15].

However, as pointed out by the famous scientist R. Allen, «... a short time prison is meaningless and financially burdensome, as for a long time one, it is barbaric»[16].

In addition, the modern trends in the development of the penitentiary affairs suggest a gradual transition of developed countries to application of criminal measures not connected with isolation from society. This interest is caused not only by the desire to reduce the cost of maintaining prisons, but also low efficiency of imprisonment in the precaution and the prevention of recidivism, its detrimental effect on the preservation of socially significant relationships in the process of serving the sentence[17].

In this regard, a number of European countries (the UK, Germany, etc.) and North America (the USA, Canada) are calling for a better use of alternative types of punishment (fines, suspension, probation, community service, restriction of freedom, and so on). The governments of these countries are actively creating projects of restorative justice, transformative justice[18].

The international community has developed a set of universal measures to overcome overcrowding in state prisons.

1. Conducting a fair social policy.

Crime, as it is known, has social roots and therefore is a social problem, so the criminal correctional system can only provide a part of the solution. The main element of the prevention of crime and violence, and, accordingly, reduction in the number of convicts is becoming measures aimed at preventing poverty and reducing social marginalization. To reduce the number of prisoners it is necessary to improve living conditions of citizens, poorer sectors of society.

2. The presence of political will.

An important part of achieving success in the reduction of prison overcrowding is the existence of political will. It allows creating a solid legal foundation implementing a reform program with consideration of the needs of society, using appropriate economic instruments.

3. Focusing on the progressive foreign practice.

The government should introduce innovative methods to work, rely on international experience and the best practice in other developed countries. The agreement on renting Swedish prisons to Switzerland provides a good example for interstate cooperation. A problem with the shortage of places in prisons in Switzerland makes criminals to wait in line in the prison for 3-12 months. Experts predict that keeping the convicted abroad will cost the country as eight times cheaper as building new prisons on its own territory[19].

4. Obtaining the public support.

Implementing the basic conceptual provisions the state should adhere to a policy aimed at maintaining cooperation with civil society institutions. The world practice shows that the state and society must preserve the ability to make an informal dialogue, which lets harmony between the political and legal development, balance between public and private interests to be achieved.

Thus, in the light of the need to improve the criminal and penitentiary policy of Uzbekistan it is necessary to keep to the following recommendations offered by advanced international practice:

- to carry out a fair social policy aimed at increasing employment, supporting the most vulnerable sections of society;
- to develop a national Conception of public policy to combat crimes, according to modern requirements;
- make more use of penalties alternative to imprisonment;
- to carry out reforms not only in the field of the penitentiary system, but also criminal justice;
- to actively involve civil society institutions in the penalty executive process;
- to create and realize programs of rehabilitation and adaptation of prisoners into society.

Implementation of these and other directions and priorities of the criminal and penitentiary policy of Uzbekistan will allow in future avoiding a significant increase in the number of convicted people in prison, and thus increase of the funds for their maintenance. At the same time, it should not be forgotten that the implementation of the above policy reforms is not possible without any increasing costs directed at strengthening the

law enforcement bodies, enhancing the professionalism of their staff, improving technical equipment of these and auxiliary (e.g., expert, scientific) services and departments etc.

It is expected that each effort of our government to reform the socio-economic, political, legal, cultural and spiritual spheres of public life will affect the reduction of crime to some extent in general, ultimately will have a positive impact on the life of the people, improving their economic well-being, strengthening equality and order in the country. Because all the efforts made and the current efforts of the government, public institutions and every citizen, as a whole, should always be directed at achieving one common goal – to ensure the welfare of the society, i.e., to satisfy all the needs of life of every person, their rights and freedoms.

In conclusion, it should be pointed out that reality and prospects of the penitentiary system of the state ought to be analyzed considering sociological, political and legal perspectives as it has been done in this article. It is believed that this kind of approach is likely to be more fruitful than others.

References

1. Homel, R. & Thomson, C. (2005). Causes and prevention of violence in prisons. In Sean O'Toole & Simon Eyland (Eds.), *Corrections criminology* (– P.101-108). Sydney: Hawkins Press; Зубарев С.М. Уголовно-исполнительное право: М.: Высшее образование, 2008. – С. 422. (Zubarev S.M. Criminal Executive Law: M.: Higher Education, 2008. – P. 422).

2. Гернет М.Н. В тюрьме: очерки тюремной психологии. Киев: Юриздат Украины, 1930. – С. 254. (Gernet M.N. In prison: essays prison psychology. Kiev: Ukraine Yurizdat, 1930. – P.254).

3. Colony system - a system of organization of institutions for the enforcement of sentences of imprisonment, which was formed in the post-Soviet countries (a relic of the time of the Gulag) consisting in the organization of several types and kinds of places of deprivation of liberty in the form of colonies. They differ from the prisons, that prisoners are contained in relatively large spaces barrack type (in the same room sometimes up to 250-300 convicts), while they are free enough to communicate among themselves. For information, today in Uzbekistan there are 57 penal bodies and institutions, including one prison, two special-regime colonies (in one of these persons sentenced to life imprisonment are kept), one educational colony, a women's prison, eleven prisons, twenty five settlement colonies, sixteen general and strict regime colonies.

4. Austin MacCormick. The Prison's Role in Crime Prevention // *Journal of Criminal Law and Criminology*. Volume 41 | Issue 1. Article 4.// <http://scholarlycommons.law.northwestern.edu/jclc>. – P. 36-48.

5. Пирожков В.М. Влияние социальной изоляции в виде лишения свободы на психологию осужденного // *Вопросы борьбы с преступностью*. М., 1981. Вып. 35. С. 40–50.; Ялунин В. Лишение свободы на длительный срок и пожизненно: законодательные нормы и их применение // *Преступление и наказание*. 2002. №8. С. 4–9.; Пархоменко, А. Основная задача - снижение числа заключенных // *Преступление и наказание*.

2013. № 12. С. 2-3. (Pyrozkhov V.M. The impact of social exclusion in the form of imprisonment on the convict psychology // *Questions of combating crime*. М., 1981. Vol. 35. – P. 40-50.; Yalunin B. Deprivation of liberty for a long term and life: legislation and their application // *Crime and Punishment*. 2002. №8. – P.4-9.; Parkhomenko, A. The main task is to reduce the number of prisoners // *Crime and Punishment*. 2013. № 12. – P.2-3).

6. И.Н. Кондрат. Концепция уголовной политики и совершенствование уголовного и уголовно-Процессуального законодательства // *Ж. Право*. – С.105-109. (Kondrat I.N. The concept of criminal policy and the improvement of criminal and criminal procedural legislation // *Zh.Pravo*. – P.105-109).

7. Lappi-Seppala, Tapio. Imprisonment and Penal Policy of Finland. – Helsinki, 2012.

8. Игумнова О.В. Современные тенденции в развитии пенитенциарных систем англоговорящих стран // *Вестник Кузбасского института ФСИН России*. 2014. № 3 (20). С. 38-46.; Лион, Ж. Новые тюрьмы не панацея // *Ведомости уголовно-исполнительной системы*. 2010. № 3. С. 6-7. (Igumnova O.V. Modern trends in the development of English-speaking country prison systems // *Herald Kuzbass Institute FSIN Russia*. 2014. number 3 (20). – P.38-46.; Lyon, J. The new prison is not a panacea // *Sheets of the correctional system*. 2010. № 3. – P.6-7).

9. Фефелов, В. А. Концепция социально-правовой цивилизации учреждений исполняющих наказание в виде лишения свободы // *Наказание: законность, гуманизм: материалы междунар. науч.-практ. конф.* Рязань, 1994. С. 56-63. (Fefelov, V.A. The concept of social civilization and legal institutions carrying out sentences of imprisonment // *Punishment: legality, humanism: Materials Intern. scientific-practical. Conf.* Ryazan, 1994. – P.56-63).

10. A Practical Guide to Understanding and Evaluating Prison System// Bureau of International Narcotics and Law Enforcement Affairs Bureau of Democracy, Human Rights and Labor Bureau of Consular Affairs // Printed by A/GIS/GPS, May 2012. – P.1.

11. Homel, R. & Thomson, C. (2005). Causes and prevention of violence in prisons. In Sean O'Toole & Simon Eyland (Eds.), Sydney: Hawkins Press. – P.6-9.

12. Gulag – a common concept which means the system of state repressive apparatus (General Directorate of «camps» - in the era of Stalinism).

13. For example <http://edition.cnn.com/US/9907/27/tough.sheriff/>; http://wagingnonviolence.org/2009/07/the-cruellest-sheriff-in-america; <http://www.theguardian.com/world/2011/mar/15/letter-from-rwanda-prisons-walls>.

14. Andrew Coyle, 'Prisons and human dignity: are they compatible?' A paper delivered at the 6th worldwide conference of the International Prison Chaplains' Association, Stockholm, 21 August 2010. – P.8.

15. Ban Ki-moon. The situation in the field of crime and criminal justice in the world. Report by the former UN Secretary-General. Doha, April 12-19, 2015. from. 24 // URL: http://www.unodc.org/documents/data-and-analysis/statistics/crime/ACONF222_4_r_V1500371.pdf.

16. Allen R. Trends in the use of imprisonment // *Global Prison Trends* 2016. С. 11. URL:

https://cdn.penalreform.org/wp-content/uploads/2016/05/Global_prison_trends_report_2016.pdf.

17. Маковский В.С. Зарубежный опыт исполнения наказаний, не связанных с изоляцией от общества // Ведомости уголовно-исполнительной системы. 2014. № 5. С. 40-43. (Makovsky V.S. Foreign experience in the penitentiary, not connected with isolation from society // Sheets of the correctional system. 2014. № 5. – P.40-43).

18. Пархоменко А. Зарубежная тюремная хроника за 2 апреля 2014 года заключенных // Преступление и наказание. 2014. № 5. С. 70. (Parkhomenko A. Foreign prison chronicle of April 2, 2014 // prisoners Crime and Punishment. 2014. № 5. – P.70).

19. Пархоменко, А. Основная задача - снижение числа заключенных // Преступление и наказание. 2013. № 12. С. 2-3. (Parkhomenko, A. The main task is to reduce the number of prisoners // Crime and Punishment. 2013. № 12. – P. 2-3).

Author Profile

Nodirbek Salaev had the B.S., M.S. and PhD. degrees from Criminal law and Criminology; Criminal-Executive Law in 2006, 2009 and 2012. He has been accomplishing scientific research at the Tashkent State University of Law, in the Department "Criminal law and Criminology" since 2009. Before he worked as a teacher in a Middle School 2006-2007, Assistant of Advocate 2007-2009, and since 2009 as teacher, Senior teacher, from the 2014 as an Acting Associate Professor at the Tashkent State University of Law.