

DOI: 10.12731/2070-7568-2016-2-35-50**УДК 343.13****THE MAJOR TRENDS IN THE PENAL SYSTEM***Evseev I.V.*

The paper considers the development of scientific knowledge concerning the system of imprisonment as a criminal penalty. The author defines his own vision of the issue of what constitutes the penal and penitentiary system. The following categories are explained from the point of view of the encyclopedic knowledge, namely: prison studies, criminology, penology, etc. For each of the listed categories the author determines its place in the legal knowledge system.

Keywords: *prison; prison studies; penology; penitentiary system; criminology; criminal correctional system.*

**ОСНОВНЫЕ ТЕНДЕНЦИИ
В УГОЛОВНО-ИСПОЛНИТЕЛЬНОЙ
СИСТЕМЕ ПРАВА***Евсеев И.В.*

В статье рассматривается вопрос развития научного знания о системе исполнения уголовного наказания в виде лишения свободы. Автор определяет собственное видение проблемы, отвечая на вопрос, что считать уголовно-исполнительной и пенитенциарной системой. С позиции энциклопедического знания объясняется, что скрывают следующие категории: тюрьмоведение, криминология, пенология и т.д. Автор для каждой из представленных категории определяет свое место в системе правовых знаний.

Ключевые слова: тюрьма; тюрьмоведение; пенология; пенитенциарная система; криминология; уголовно-исполнительная система.

Over several decades, many representatives of mass media, public authorities as well as ordinary people have not differentiated between criminal correctional and penitentiary systems of the state. Therefore, media sometimes substitute a penal colony for a ‘prison’ and talk about the penitentiary system meaning a system which is aimed at punishment execution. It appears that two concepts (‘penitentiary system’ and ‘criminal correctional system’) are mixed up, thus confusing the institutions of different types and regimes.

This paper is aimed at helping the audience to clearly perceive the concept of the criminal correctional system as well as its components which deal with penitentiary, labor-related and repressive issues.

All these concepts are certain aspects of law and constitute a component part of the criminal correctional system of the state, yet possessing various and complementary attributes and meanings. According to A.S. Smykalin, ‘Fundamental concepts of any science derive from its categorical framework... An ability to accurately understand a theory or a hypothesis depends upon academic and encyclopedic support provided by the categorical framework of the relevant studies.’¹

The criminal correctional system is primarily focused on execution of a sentence made by the court against a law breaker who had committed some acts which fall within the scope of offences punishable under criminal law. The definition derives from the very name of the system and is supported by the legal regulations pertaining to this branch of law. The aim and objectives of the Criminal Correctional Code are set forth in Paragraphs 1–2 of Article 1 of the Criminal Correctional Code of the Russian Federation (UIK RF) that clearly define

¹ Speech made at the all-Russia conference named “Acute Issues of Historical and Legal Science”, proceedings of the conference being held by Russian Historical and Legal Society in South Ural. Publishing Office UMTs UPI. Yekaterinburg, 2009, p. 12.

activities being typical for all components of the penal institutions, namely, penal colonies² and prisons³. Each article refers to the basic function of the criminal correctional system, i.e., execution of punishment, being the essential focus of the whole system. This gives us grounds to assume that the law maker is primarily concerned with execution of punishment as such. It shows a concern about protection of society and suppression of recidivism in view of inevitable punishment. Punishment of a law breaker is the main target of the criminal correctional system, thus, its main aspect being retribution. Retribution to a law breaker appeared together with the rise of human society and was being strengthened as the state developed; the execution place of such retribution was the prison.

The word 'prison' (German 'Thurm' – tower) means: a) in its specific sense it means the isolated and guarded premises for forced retention of persons subject to the confinement under the court judgment or law enforcement authorities' decree. Since the Middle Ages the following types of prison have appeared: 1) prison in its narrow sense as the place for serving punishment for misdemeanor and minor offences, 2) prison compartments, 3) bridewells (Zuchthäuser), 4) penal servitudes, 5) remand prisons, 6) transit prisons, 7) military prisons, 8) juvenile prison, 9) prisons for disabled, ill and abnormal people (Invaliden-Gefängnisse), 10) intermediate prisons (in Irish system), 11) political prisons, 12) prisons for war prisoners (British-run concentration camps in South Africa for boers), 13) prisons for bankrupt debtors, 14) men and women prisons.⁴ – this is the interpretation of this category from Brockhauz and Efron Encyclopedic Dictionary. One could see a similar definition in V. Dal's Explanatory Dictionary.

The following is an abstract from the dictionary referring to the word in question: 'Prison, jail, pit, place of confinement of convicts, accused persons, prisoners... Prison tower, dungeon ... prison is like a grave.' According to this

² Article 120 of Criminal Correctional Code of the Russian Federation as of January 08, 1997 No. 1-FZ (as amended on July 23, 2013).

³ Article 130 *ibidem*.

⁴ Brokgauz and Efron Encyclopaedic Dictionary. Publishing Office: Semenovskaya Typolitografia (I.A. Efron) – St. Petersburg, 1890–1907.

source, the etymology of the word implies some tall tower, fortress or its part in the form of a tower based on the undercut or the root cellar, dungeon, etc.⁵ or on the underground block house. This is what the archeologists found in the city of Novgorod in the IX century. Taking into account the scanty interior of the block house, and mainly the bog hole at the center of that house, the archeologists concluded as follows, ‘The construction is nothing but a dungeon or more simply – ancient prison’. Prisons were organized in castles and city halls, abbeys and factories, etc. A famous scholar M.N. Gernet believed prison policy to be an important part of criminal policy which, in its turn, is closely connected with overall government policy⁶. Every village, town and state had a prison system with its peculiar confinement regime that immediately encouraged the researchers to study those institutions to invent new patterns of prison punishment. This gave birth to the science to study the prison phenomenon, namely, prison studies. That science established a system of specialized knowledge focused on the optimal arrangement of prison-based execution of punishment implying deprivation of liberty.⁷ The new knowledge system promoted the prison confinement as the best choice to apply multiple correctional measures as compared to other known types of punishment; furthermore, the prison regime ensures the correction of the majority of convicts. This is what L. Fox, a well-known English researcher, dealt with in his work. He pointed out that the first measures to correct a convict’s behavior were introduced in prisons,⁸ where such measures could be supported with a specific regime which ensured isolation from deleterious influence of other prisoners.

A detailed study of prison confinement systems as a practical part of prison studies proves that the confinement along with the isolation of a law breaker

⁵ See Explanatory Dictionary of the Living Great Russian Language. Vladimir Ivanovich Dal: In 4 volumes – Saint Petersburg, 1863–1866.

⁶ See Gernet M.N. History of tsarist prison. In 5 volumes. Moscow, 1951.

⁷ Sergeevsky N.D. Russian Criminal Law: A handbook for lectures / Author’s note – Saint Petersburg: Tipografia Kh.Sh. Gelpert, 1890, p. 191.

⁸ Fox L.W. The English Prison and Borstal Systems. London: Routledge&Kegan Paul Limited, 1952, p. 24.

from the society 'either in severe or in mild conditions has occupied the central place among existing punitive systems and still holds this position.'⁹ This conclusion is due to the high punitive (repressive) effect of the prison confinement has: the imprisonment deprives a person of their basic value, namely, physical (and often even mental) liberty; furthermore, deprivation of liberty makes it possible to apply a wide range of methods and measures to correct a convict's behavior¹⁰. M.N. Galkin pointed out the importance of duration of imprisonment. He was sure that this type of punishment 'could have various duration and severity according to criminal and developmental status of a person and has the benefit of taking optimal measures to correct the behavior of a convict.'¹¹ Furthermore, N.D. Sergeevsky talked about the advantage of the prison confinement over all other types of punishment due to its 'gradual' and 'divisible' character, 'no suffering' and 'good influence on a convict'. According to the researcher, such type of punishment as imprisonment is fully consistent with the position of a citizen within a contemporary state as well as present-day public morality, therefore it has superseded the capital punishment, corporal punishment, types of punishment oriented to dignity, and, finally, all other types of deprivation of liberty.

As a result, the prison studies were a science with developing knowledge which was complemented with different knowledge subsystems and branches. The end of the XIX century saw the uprise of penitentiary science which was complemented with the special scientific knowledge on correctional education, that is, penology.

Thus, prison studies have undoubtedly become a universal platform for studying 'punishment as means to fight crime, punishment with its external

⁹ Chubinsky M.P. Criminal Policy Course. Yaroslavl: Provincial Government Typography, 1909, p. 429.

¹⁰ Teplyashin P.V. Sources and development of British prison studies: Monograph. Krasnoyarsk: Siberian Law Institute at the Ministry of Internal Affairs of Russia. 2005, p. 19.

¹¹ Galkin M.N. Materials for studying the prison-related issues. Saint Petersburg: Typography of the Second Section of His Imperial Majesty Own Secretariat, 1868, pp. 8–9.

actual use and its internal effects as derived from the facts.¹² In this context, a famous researcher, I.Ya. Foinitsky, has fairly considered prison studies as a special domain of political and legal studies. However, the definition he gives for the category in question is too extensive and implies the branch based on experience and focused on philosophical and practical (positive) resolution of the problem. This branch is engaged in finding out the institutes able to influence prisoners to the benefit of community life by accurate studying of peculiarities of criminal people and the influence which the measures, having been applied, have on those people. For this purpose, the guardian association, councils and committees were established in Russia¹³ as well as other countries to implement reformation and further resocialization. The committees of the Guardian Association supplied the prisoners with food, clothes, linen, footwear, books, established hospitals, churches at prisons and employed priests, arranged for teaching young children, opened workshops to train prisoners. Thanks to the Guardian Association the prisoners attained the right to regularly attend baths, furthermore, the prisons received money for feeding the prisoners' children who lived alongside with their parents in prisons. The Guardian Association supported laying out vegetable gardens at prisons. Thanks to the Guardian Association the criminal correctional system became more open and socially significant.

The prison activity became a branch of public assistance and education which varies according to the peculiarities of a criminal class it is applied to; that is why its success depends on strong activities in the sphere of public as-

¹² Przhevalsky V.V. Professor Franz List and his principal views as regards crime and punishment // Legal and social science collection book: Works of Law Society at the Imperial Moscow University and its statistical department. Sixth volume. Saint Petersburg: M.M. Stasyulevich's typography, Vasilievsky Island, 5th line, 28, 1896, p. 79.

¹³ Draft provision of the Prison Guardian Association was adopted on July 19, 1819. See Zabrovskaya, L.Yu. Organizational and managerial peculiarities in establishing the prison system of the Russian Empire in the XIX century / L.Yu. Zabrovskaya – Tambov: Publishing Office of Tambov State Technical University, 2006, 16 p.

sistance and education.¹⁴ When describing the prison system, I.Ya. Foinitsky pointed out that people tried to use the prison studies as some ‘panacea’ to cure all criminality-related problems. A single scientific field could not cover all aspects of criminal sentence execution.

Taking into account the above-mentioned, it may be reasonable to conclude that the evolvement of national-wide punitive activity on the basis of religious and philosophic, social and economic as well as legal aspects gave rise to various theories of punishment and correction combinations. This resulted in establishing a specific discipline, that is, penology.¹⁵ Penology is a field of knowledge on legal control over punishment execution which includes a law breaker acquiring social and psychological treatment when serving punishment that finally results in a prisoner’s adaptation to their future life outside prison.¹⁶ However, that process requires a system of punishment execution institutions which are able to use special measures in order to implement the resocialization program. The system was finally formed by a range of penal institutions that have a certain psychological focus. According to S.V. Poznyshev, the penitentiary system is a system of ‘social health facilities’ which have a special confinement regime based on penitence of prisoners¹⁷.

The penitentiary treatment means the process of correction or the correction itself on the basis of full penitence of a person and return of the person, who has previously committed a crime, back to society. In the course of this process the person begins to realize that violation of laws entails punishment

¹⁴ Foinitsky, I. Ya. Studies on punishment with reference to prison studies. Moscow. Dobrosvet-2000; Gorodets, 2000, pp. 291–292.

¹⁵ See Rivman D.V., Smirnov L.B. Uprise and evolvement of penology and penitentiary science // Entrepreneurship in Russia: experience, problems, case studies: Materials of interregional research and practice conference (April 19, 2001). – Part II. – Saint Petersburg: Institute of Foreign Economic Relations, Economics and Law, 2001. p. 47; Smirnov L.B. Uprise and evolvement of penology // History of State and Law. 2003. No. 4, pp. 8–10.

¹⁶ Penology derives from Latin word ‘poena’ meaning ‘punishment’ and Greek word ‘logos’ meaning ‘study of’ that together mean ‘study of punishment execution’.

¹⁷ Poznyshev S.V. Fundamentals of penitentiary science. Moscow, 1923, p. 3.

from public authorities and that such punishment is inevitable. The more serious the crime is, the more severe the punishment is to be. Execution of punishment within the institution forms an ability to live and abide by the laws. According to the researches, at the initial stage of the penitentiary treatment convicts should be retained in prisons equipped with solitary cells which should ensure the prisoner's penitence. Such institutions should have special custodial regime. Prisoners should be as much isolated from each other as possible to prevent them from influencing each other that is aimed at depriving them of the opportunity to share their criminal experience. The prisoners should spend all their spare time on specific socially-oriented training and educational activities. The correctional education process should include such activities as the family ties restoration and assistance rendered by relatives. For the period of serving the punishment, penitentiary measures enable the convict to get society-required skills that help the person to find their own place in society when released. Family ties are thought to be able to strengthen the result. When the prisoner is released, the penitentiary treatment continues: special bodies help a person who has served the punishment in prison to find a job and a place of living, to restore their family ties, etc.

Summarizing the above-mentioned, the penitentiary system is a set of measures being taken by the government, as well as measures aimed at establishing and running the correctional facilities. The facilities' activities are focused on accurate and steady execution of punishment for the sake of protection of society against criminals, as well as on correctional education of criminals using a range of measures aimed at reducing the risk for society when a person is released and at teaching the law breakers to be on the right side of the law. Therefore, the main target for such treatment is the reformation of a criminal by means of relative methods and techniques intended for placing a person back to society after serving the punishment.

On the whole, the penitentiary system is a set of means and methods of influencing convicts to correct their behavior; furthermore, it is a scientific-related ancillary structure based upon rule of law which ensures that the crimi-

nal will become law-abiding after being subjected to psychological and social treatment.

Years of evolvement of the system gave birth to a list of principal requirements to the proper operation of the penitentiary system or, according to M. Foucault, ‘seven universal maxims of the good ‘penitential condition’¹⁸:

- correction of the criminal’s behavior (reformation);
- distribution of convicts according to the penal gravity of their act;
- alteration of the penalties according to the results that have been obtained by the convicts, progress or relapses in transformation of their behavior;
- the correctional education of convicts by taking religious and pedagogical measures, general and professional education;
- work must be one of the essential elements in the reformation and progressive socialization of convicts;
- the prison regime must be supervised and administered by a specialized staff;
- imprisonment must be followed by measures of supervision and assistance until the rehabilitation of the former prisoner is complete.

Modern penitentiary system is intended for supporting and managing penal institutions, social and psychological, legal and training activities oriented to a convict being confined in a special penal institution, and is aimed at transformation of the convict’s behavior and their further resocialization. The principal institution of the penitentiary system is a prison with a strict regime and isolation which contributes to the reformation process at the initial stage of punishment execution. The reformation process includes such components as educational work, improvement of educational level, labor training and strengthening of social relations. All the above-mentioned encourages a convict to regret committing a crime and correct their behavior. Therefore, the

¹⁸ See M. Foucault. *Discipline and Punish. The Birth of the Prison* / translated from French by Naumov V. / under the editorship of Borisova I. Moscow: Ad Marginem, 1999, pp. 393–396.

penitentiary system may be defined more clearly as a multi-aspect integration of various components resulted from the penitentiary practical activities implying the forced confinement of law breakers in a correction facility to apply correction measures as established by special authorities pursuant to law so as to ensure the process of resocialization.

In conclusion, the following trends of criminal correctional system should be relied on. First, prison was historically the first institution of punishment execution, therefore, the national system of correctional facilities had acquired the 'prison system' name since there were no other institutions within the system. Thus, the researchers who had been studying that phenomenon defined a new field of scientific knowledge, namely, the prison studies. As the knowledge evolved and the practical activities developed, the science saw birth of such new branches as penology being the studies of punishment, and the penitentiary studies involved in organizing and managing the process of reforming the prisoners. The studies of punishment gave birth to another field of knowledge, namely, criminology defined as the studies of crime and punishment. In general, however, the system of punishment execution was and still remains the basis for criminal correctional branch of legal science, while punitive, penal and penitentiary aspects are just the focus areas within this system. In addition, these areas may be considered as self-sufficient systems.

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