



DEVELOPMENT OF PUBLIC-PRIVATE PARTNERSHIP IN THE PENAL SYSTEM

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The subject. The production sector of the Russian penitentiary system requires development and modernization in order to increase the level of convicts' employment, to ensure the growth of their labor productivity, which is ultimately aimed at increasing the level of correctional impact of socially useful labour. In modern conditions of market economy development, low efficiency of state production organizations economic activity on competitive markets, as well as the lack of budget funds for the modernization of production assets, the most promising form of organization of penitentiary institutions production activities is public-private partnership. The aim of the article is to develop scientifically based provisions that define the most promising areas for the development of Russian legislation, which will significantly improve the practice of implementing public-private partnership projects in the production sector of the penitentiary system. The methodology. In the course of the study, a complex of general scientific and special methods of scientific search was used, including scientific abstraction, a systematic approach, a dialectical method of cognition, as well as comparative legal and structural-system methods of research. The information base of the study is represented by scientific works of Russian and foreign scientists-penitentiaries, statistical data, regulations, as well as data on legal practice in the field under study. The main results, scope of application. The prerequisites for promising changes in the legislation that determine the need for a significant modernization of the production sector of the penitentiary system are identified. The expansion of the practice of implementing production projects with the involvement of private business initiatives in penitentiary institutions makes it possible to strengthen the corrective impact of socially useful labour, to improve convicts' food and clothing provision, as well as the communal living conditions of their detention. Conclusion. The article substantiates the need to develop a concept of interaction between the penitentiary system and the business community in order to improve the efficiency of convicts' employment and their correction, within the framework of which the most relevant directions and stages of the development of public-private partnership should be determined in the future.

1. Introduction

Penal legislation of Russia, theory of criminal penalties execution and practice of penitentiary institutions and bodies are currently at a new stage of their development. [1; 2; 3; 4; 5] Studies mainly of the Soviet and partly of the first two decades of the post-Soviet period at one time ensured the creation of the necessary organizational and legal framework in this area, however, the changing socio-economic and socio-political situation in Russia requires the development of original approaches to improve the effectiveness of convicts' correction and prevention of new crimes as goals of the penal legislation (article 1 of the Penal Code of the Russian Federation), as well as to improve the activities of state bodies, including the penal system, and non-governmental organizations. This requires searching and analyzing existing theoretical and applied penological problems, developing ways to solve them, revival and improving of legal institutions that previously existed in legislation, taking into account foreign approaches and international standards in the field of sentences execution, etc.

One of such directions of improving the theory, legislation and practice of criminal sentences execution in Russia is seen in the gradual development of public-private partnership in the penitentiary sphere, including more effective involvement of convicts in socially useful work. [6; 7; 8; 9]. The gradual reform of the penal legislation is also necessary due to the fact that this will entail an adjustment of state criminal policy.

2. Problem statement

2.1. Actual problems of penal system production sector development

The production sector of the penitentiary system is an important organizational and economic mechanism that performs a number of specific functions that ensure the fulfillment of all the assigned to penitentiary department tasks. First of all, the functioning of the penitentiary system production sector ensures the use of one of the main means of convicts' correction – socially useful

labor. The centers of labor adaptation based on institutions executing deprivation of liberty are an alternative employer capable to provide convicts with job places within regime restrictions and security requirements.

At the same time, the penitentiary system production sector plays an important role in providing the penitentiary department with food, clothing and other resources. Herewith Russian Government has entrusted the function of the main guarantor of penitentiary system food security on its production sector. Increasing the level of self-sufficiency in food products was identified as one of the main directions of the penitentiary system improvement in the Concept of its development until 2020. In the Concept of the Russian Federation penitentiary system development until 2030 the priority focus remains on solving a complex of problems related to increasing the level of food self-sufficiency of the national penitentiary system.

Thus, according to the results of the control event of the Accounts Chamber of the Russian Federation "Checking the effectiveness of attracting prisoners to work" on 23.01.2018, was published a press release, according to which an inspection was carried out in 2014-2016 in correctional institutions of three subjects of the Russian Federation from the Volga Federal District: Yaroslavl, Kostroma and Ulyanovsk regions (we extrapolate the results of the inspection with a certain degree of conditionality to all penitentiary production sector - author's note).

Employees of the Accounting Chamber of the Russian Federation during the analyzed period revealed a significant decrease in the number of convicts involved in socially useful work from 223 thousand people to 190 thousand people (respectively 41.7% and 37.6% of the total number of persons sentenced to imprisonment), as well as the volume of production by 1.4 billion rubles (-4.2%) to 31.2 billion rubles. At the same time, only 2% of the total number of convicts were employed at the production facilities of the federal state unitary enterprises of the Federal Penitentiary Service of Russia, taking into account the fact that these enterprises provided up to 50% of the department's procurement volume.

Among the significant problems, the specialists from Accounting Chamber also determined that the average monthly salary of convicts did not reach the minimum wage (it should be noted that in 2014-2020 this amount increased 2.5 times - from 5554 rubles to 12130 rubles). It is obvious that a corresponding increase in labor productivity in the penitentiary production sector has not been achieved. The growth of the wage fund without appropriate investments in the modernization of production and without increasing its efficiency while maintaining the current indicators of attracting convicts to work at a certain stage will objectively only ensure the accumulation of a significant amount of non-competitive products in warehouses with a simultaneous increase in accounts payable of correctional institutions. This kind of cash gap can be transformed into obligations of the federal budget.

The Government of the Russian Federation continues to reform the public sector of the economy, including the penitentiary production sector, aimed at liberalizing industrial relations in the field of public procurement and orders. On 29.12.2019, a Decree of the President of the Russian Federation was signed, suggesting the liquidation of all state and municipal unitary enterprises operating on the commodity markets until 2025. However, on 16.11.2020, First Deputy Prime Minister D. Grigorenko instructed the Ministry of Finance, Federal Property Management Agency, etc. relevant departments to liquidate or transform into joint-stock companies by the end of 2021 all state unitary enterprises operating in competitive markets.

At first glance, this situation does not have a significant impact on the employment of convicts, because only 2% of their total number are employed on unitary enterprises of the Federal Penitentiary Service of Russia. However, apparently, in modern conditions, the Government of the Russian Federation has taken a course to eliminate all entities that are not directly related to ensuring national defense and security and at the same time generate losses that are compensated at the expense of the state budget. Under these conditions, the accumulated cash gap (as a result of

an increase in the difference between the minimum wage and real labor productivity in penitentiary production) in the future is very likely to lead to the closure of many production facilities in the penitentiary system.

Thus, the actual amount of penitentiary unemployment may reach higher values in the comparison present numbers, which will actually lead to the rejection of socially useful work as the main means of correcting convicts. In our opinion, these consequences will lead to a significant reduction in the potential of correctional impact on convicts and subsequently to a decrease in the overall effectiveness of the penitentiary system.

2.2. Socially useful work as a means of correction

The involvement of convicts in socially useful work is one of the means of correction (Article 9 of the Penal Code of the Russian Federation) and contributes to the normal functioning of correctional institutions, in particular, and the penal penitentiary system as a whole.

This is also important given the fact that with significant expenditures of the state budget for the organization of criminal penalties execution, the economic, social and other "benefits" from penal activities are much less significant compared to the Soviet period (at the same time we understand that at present the number of convicts, including incarcerated prisoners, is significantly less than it was in the second half of the XX century – author's note). At the same time, the need to increase the financing of food and clothing provision for convicts, in conditions of a decrease in the level of their employment, including as a result of the fall in penitentiary production, which, unfortunately, is uncompetitive compared to private sector enterprises), it is necessary to strengthen the production sector of the penitentiary system in order to ensure the employment of convicts despite the high cost of job places creating (not to mention capital investments - author's note).

The need to find new organizational and legal ways to improve the criminal sentences execution effectiveness is also manifested in the fact that some of the issues under consideration were reflected in the Concept of the Development of the penitentiary system of the Russian Federation until

2030, approved. by Decree of the Government of the Russian Federation No. 1138-r dated 04.29.2021.

In the previous edition of this document (the concept of the development of the penitentiary system of the Russian Federation until 2020, approved. By the Decree of the Government of the Russian Federation No. 1772-r dated 14.10.2010), much less attention was paid to the development of the penitentiary system production sector. The production activities of the penitentiary institutions were considered exclusively from the point of view of ensuring the employment of convicts in order to correct them. The concept provided for the possibility of taking into account and using new organizational and legal forms of organizing convicts' socially useful work, as well as the introduction of new jobs, among other things, within the possibilities of public-private partnership (In 2004 The Ministry of Economic Development of the Russian Federation proposed to create private penitentiary institutions to simultaneously solve social problems and develop production capacities with an increase in profits for economic entities - author's note).

In the new version of the concept, the issues of the penitentiary system production sector development are identified among the strategic challenges facing the system, as well as among the goals and objectives of development. It should also be noted that concept contains direct indication of the prospects for developing contacts with the business community in matters of convicts' employment to forced works.

2.3. Public-private partnership as a direction of development of the penitentiary system production sector

Problem solution of convicts' productivity increasing, as well as effective workplaces creation, on the base of which competitive products (that can meet the needs of both state orders and civilian consumers) can be produced, is largely determined by combining the capabilities of private economic structures and institutions of the penitentiary system.

We will highlight some issues on which interaction between private and public partners in the field under consideration is possible:

– correctional institutions have advantages in public procurement participating, which do not play a significant role for the penitentiary process, but is essential for private enterprises;

– government orders for many small and medium-sized enterprises can play the role of an “anchor” consumer, occupying a significant part of their production program with a certain break-even level and a guarantee of stable financing in the long term;

– private enterprises have fixed assets, technologies, production culture, qualified personnel, which allows to operatively organize the production process and start production.

A significant number of collisions and gaps in the Russian legislation offsets the significant potential of this direction of penitentiary production sector development. In these conditions, the risks are equally high both for officials of the criminal, administrative or disciplinary liability, and for private industrial and economic structures through financial losses.

It would be incorrect to say that the federal authorities are not making any efforts to eliminate existing conflicts and gaps in this area. In particular, on 18.07.2019 the President of the Russian Federation signed a law on amendments to the Penal Code of the Russian Federation, according to which it is allowed to create sections of correctional centers at enterprises, provided that they are located in one constituent entity of the Russian Federation and the availability of appropriate housing conditions for convicts involved in labor.. In addition, on 26.10.2019, senators A. Kutepov and D. Shatokhin submitted to the State Duma of the Russian Federation a bill on the possibility of concluding lease agreements for production facilities in the correctional institutions for the organization of production without conducting competitive procedures to accelerate the process of creating new jobs.

At the same time, the governance of the Federal Penitentiary Service of Russia intensified the search for potential partners in organizing production activities and reducing prison unemployment. As an example should be cited a trilateral agreement between the Federal Penitentiary Service of Russia, the Republic of Komi

and the Rustitan Corporation on the participation of convicts in labor activities during the development of the mineral resource base on the Pyzhemskoye field.

Despite the given positive examples, it should be noted, that significant progress in the implementation of public-private partnership projects in the penitentiary production sector has not been achieved. And this is not only due to the fact that changes to the Penal Code of the Russian Federation could not be fully implemented in the conditions of economic situation complication on the background of the COVID-19 pandemic, but also because of a significant number of collisions and gaps in legislation hindering the formation and implementation of public-private partnership projects in the production sector of the penitentiary system.

3. Analysis of recent research and publications

In Russian legal literature, various aspects of public-private partnership in the penitentiary sphere are considered:

- arguments “for” and “against” the expansion of private principles in the organization of the execution of criminal sentences [10; 11], including the context of convicts’ rights ensuring [12] and the inadmissibility of business interests prevalence before their correction [13; 14];
- theoretical and applied forms of such interaction [15; 16; 17; 18] and the economic interest of both business entities and the state on the basis of such a partnership [19; 20];
- peculiarities of interaction between state and business entities in the penitentiary sphere, as well as the functioning and efficiency of private penitentiary institutions in various countries: the USA [21; 22; 23], Great Britain [24], France [25], the Republic of Korea, etc.

Despite the considerable attention paid to the complex of issues of developing the theory and practice of implementing public-private partnership projects in the production sector of the penitentiary systems in Russia and other countries, there remains a significant number of problematic aspects that hinder the development of production activities in Russian penal institutions, which has a corresponding disincentive effect as on the

processes of using labor as the main means of correcting convicts, and on the processes of material provision of the penal system with products of its own production. Thus, the substantiation of a complex of urgent organizational and legal problems of effective interaction between private production structures and institutions of the penal system in modern conditions should be defined as an important scientific and practical task that requires an appropriate conceptual solution.

4. Results of the research

Actual task of the research is to highlight several possible directions for the development of public-private partnership in the penitentiary sphere (there may be much more of them - author's note).

First, the development of new theoretical, organizational and legal aspects of attracting convicts to socially useful labor is relevant in general (i.e., in fact, the formulation of a new concept in this sphere - author's note). It seems that they may include:

- granting convicts the right to work (including the right to engage in entrepreneurial activity, as mentioned in the Instruction on the procedure for organizing entrepreneurial activity of convicts in the form of a limited liability partnership in correctional institutions for incarcerated prisoners, approved by Order of the Ministry of Internal Affairs of the Russian Federation No. 517 dated 30.11.1993), including for the manifestation of initiative in normal or extreme conditions (in cases of natural disasters, the introduction of a state of emergency, etc.), as well as for a more objective assessment of the degree of their correction;
- the settlement of numerous unresolved issues in the criminal executive legislation of the employment of persons sentenced to various punishments (forced works, correctional labor, etc.) and the introduction of relevant comprehensive amendments to the Penal Code of the Russian Federation and other legal acts regulating the execution of criminal sentences, to ensure an appropriate legal basis for public-private partnership in the penitentiary sphere in the context of the correction of convicts (possibly by analogy with the Law of the Republic of Korea "On the establishment and operation of private penitentiary institutions" -

author's note);

- theoretical development of an approach, according to which will be ensured: break-even operation of penitentiary institutions; convicts' labor organization both on the territory of the penitentiary institution and outside (in particular, as in the United States); income generation through the production development of the penitentiary system; compensation for maintenance costs and compensation for damage caused by the crime, at the expense of the proper salary received by convicts (for example, as in the Great Britain); increasing the effectiveness of convicts' correction (through the acquisition of professional knowledge, work skills, etc.) and their re-socialization; etc.;

- an increase in the methods of attracting non-state (private) economic entities to convicts' labor organization, both on the territory of correctional institutions and outside (for example, in the United States, prisoners in general can be provided as labor force to private entities - author's note), as well as other punishments (correctional labor, etc.), including on the territory of correctional institutions (in particular, those sentenced to forced works);

- organization of a full-fledged government order for the production of certain types of products (for example, military or medical products, as in the United States) with the involvement of convicts, as well as the definition of criteria for attributing them to intra-system needs (that is, for the needs of the penitentiary system itself).

Secondly, it is advisable to expand interaction between government agencies and business organizations interested in such cooperation, through the phased creation of the so-called. private correctional institutions (including taking into account international approaches (for example, according to the Materials of the First UN Congress on the Prevention of Crime and the Treatment of Criminals from 1955), as well as the experience of Great Britain, Germany, the United States and a number of other countries). Meanwhile, it is obvious that even with the creation of private correctional institutions in Russia (within the framework of

concession agreements with the relevant private organizations), the officers of the penitentiary system will have no alternative to ensure the safety and security of these facilities (for example, as in France or Brazil).

Thirdly, analyze of Russian history in the sphere under study piques science interest. In particular legal statues of various correctional institutions (state, landlord, monastery, etc.) in different periods.

Presumably, the complete "nationalization" of correctional institutions took place in Soviet times, when the penitentiary system was mainly charged with solving military-political, production-economic and other state tasks, rather than correcting convicts and preventing the commission of new crimes. Unfortunately, since the end of the XX century penitentiary institutions started to sharply lose their labor, production and other potential (which is clearly manifested at the present time). These situation was caused by well-known political events that took place in Russia and were accompanied by: correction of penal policy; the exclusion of the penitentiary system production sector from the centralized state order; the breakdown of cooperation with enterprises of the military-industrial complex and other negative phenomena.

In Soviet times, the assessment of penitentiary institutions activities also generally depended on the fulfillment of the state production plan. Sentenced to imprisonment prisoners were attracted to production process mainly as low-qualified labor force. It seems that in those times took place a systemic error manifested in convicts' involvement to labor, which was considered as a kind of basis for penitentiary system functioning (as well as the main goal of correctional institutions activities).

5. Conclusion

Thus, it is obvious that it is necessary to develop a concept of interaction between the penal system and the business community in order to increase the efficiency of employment of convicts (to forced works, imprisonment, etc.) and, in general, to correct them, within the framework of which the most relevant directions and stages of development of state private partnership in the penitentiary

sphere.

It seems that in Russia it is required, taking into account foreign experience, among other things, to determine: the importance of convicts' labor not only for the purpose of their correction and subsequent resocialization after release from serving their sentence, but also its role in the self-sufficiency of the penitentiary system; the organizational and legal status of centers for labor adaptation of convicts and other places of their involvement in socially useful work, including in the commercial sphere as subjects of entrepreneurial activity; organizational and economic measures to improve the efficiency of penitentiary production in order to ensure its competitiveness with civilian enterprises, including by organizing a full-fledged state order; incentives for attracting private investment in the penitentiary sphere, including the creation of private penitentiary institutions (or their separate sections or a specific area, taking into account the peculiarities of the correctional facility; directions for improving the legislation regulating the convicts; involvement to socially useful work, as well as the interaction of institutions and bodies of the penitentiary system with economic entities; ways of developing non-custodial punishments (for example, through revival of exile) to solve military-political, industrial-economic and other state tasks.

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