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The Regime as a primary means of correction for convicts: theory and practice

The article discusses the specifics of a correctional tool, such as the regime, which is part of the system of correctional measures for prisoners and is intended by the legislator to contribute to the achievement of the declared goals of the criminal and penal enforcement legislation of the Republic of Kazakhstan. It is emphasized that the regime, being the main means of correcting convicts, is in fact not such, but has turned into a total means of controlling convicts and what is especially worth noting, taking into account the penetration of modern means of technical control into places of deprivation of liberty, provokes a contingent of criminal environment to resist this type of supervision from which you cannot escape, which leads to this type of violation of the established procedure for serving a sentence, such as damage to technical equipment (video cameras). The work makes an attempt to compare the regime with other means of correction in institutions of various security and as a result, the authors offer their proposals for inclusion in Kazakhstan's criminal and prison legislation, along the way, an understanding of the role and place of the regime among other main means of correction of convicts and its purpose is proposed and voiced, and also proposals were formulated for criminal legislation in the form of a separate article draft.

Keywords: security, regime, convicted person, establishment of the penal system, criminal liability, damage to engineering and technical means of supervision, control and security.

Introduction

As you know, in life everything flows and changes, regardless of our desire. In the current rapid age of informatization, innovations permeate into all spheres of society and the state, and this is exactly what happened: video surveillance and other novelties are increasingly penetrating into such conservative departments as places of detention. Therefore, the reason for writing this article was such a problem as the damage of controls (video surveillance) and, accordingly, responsibility for such offenses while serving a sentence, since the main task of the regime is safety and, as a goal, still the prevention of escapes. All this prompted us to choose the topic of our work.

It is worth noting that almost no one had previously addressed the topic of the means of correcting convicts among domestic scientists, namely the regime, but such researchers as Kairzhanov E.I., Skakov A.B., Sydykova L.Ch, Tokubaev Z.S., Bastemiev S.K., Baranov M.N., Nazmyshev R.O., Konovalova L.V., Chukmaitov D.S. in their works dealt with the means of correction in fragments, without affecting their features and role, contribution and purpose. But we, asking ourselves the question put in the title of our manuscript, considered that it was still not possible to achieve a full-blooded regime. And along the way, we note that with the establishment of the Republic of Kazakhstan as a “democratic, secular and rule of law state, the highest values are a person, his life, rights and freedoms” [1]. And you can't argue with this principle! And, strictly speaking, the regime is aimed at the safety of both convicts and staff in prisons. Therefore, we decided to turn to this tool, and then tried to identify and weigh the different opinions and judgments of both domestic and foreign, international scientists and approaches, which actually formed the basis of the article.

Methods and materials

In the process of considering the topic, the authors applied well-known general scientific research methods, such as analysis and synthesis of national penal enforcement and criminal legislation, the method of historicism, comparative jurisprudence, the study of departmental legal statistics, indirect questioning, taking into account the norms, principles and standards of international law in the penitentiary sphere. The use of logical approaches, from the standpoint of grammatical interpretation, contributed to the clarification of the etymology and essence of the legal concept, as the main means of correction of convicts under study, defined in prison law as a regime, but from the standpoint of supervision.

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The above-mentioned methods and approaches have made it possible to identify a number of legal phenomena that are closely intertwined with the process of criminalization: the action, construction and subsequent application of criminal law norms. In the course of the research, special scientific literature was studied, an exchange of opinions with people with work experience in places of deprivation of liberty, personal experience and a competent approach during the presentation of the topic of work.

So, in order to clarify the essence of such a legal concept as “regime” and in order to understand it correctly, it is necessary to understand the social nature of this phenomenon, therefore, let's turn to dictionaries, for example, the Great Soviet Encyclopedia, well-known in the scientific community, gives the following explanation of the mentioned noun “regime” (in French and Latin means management): 1) The state system; the method of government; 2) A well-established routine of life, work, rest, nutrition, sleep; 3) A set of rules, measures, norms to achieve a particular goal, for example, in our case, security in places of detention.

In such a work respected among linguists, Ushakov's Explanatory Dictionary indicates the following understanding of the term regime, as in “strict dormitory, regime is important, hospital regime, keep the right mode” [2]. Thus, we have a close understanding of the regime as, all the rules, the daily routine of a convicted person during the period of serving a sentence in the form of imprisonment in order to achieve the goal set by law. By the way, such a remedy is inherent in penitentiary pedagogy, and the daily routine is used in society. The Penal Enforcement Code assigns a separate chapter to the regime, and it is mentioned first among other methods of correctional and educational influence, and this is not accidental. Further, the legislator in Article 97 of the Penal Execution Code of the Republic of Kazakhstan (hereinafter referred to as the PEC of the Republic of Kazakhstan) defines the essence of which is ... “the established procedure for the execution and serving of punishment, ...constant supervision over them” [3] and further in subsequent articles (98–102) follow detailed regulation and execution of regime requirements and conditions.

Results and discussion

The constant supervision of convicts, present in the very concept of this term, testifies to a lot, and it was this feature that was mentioned by the famous Soviet and Russian legal scholar G. Khokhryakov, who wrote about places of deprivation of liberty, who very accurately noted: ... regulation covers all spheres of life “of the convict and how It would all be justified! and it reflects the “good purpose — the inculcation of skills” of law-abiding behavior” [4]. However, the widespread overregulation of all aspects of life may be good in itself, but it still resembles the desire for omnipotent control.

Further, according to Khokhryakov, it follows that “the administration of places of detention cannot control”, as well as the regime “for the behavior of prisoners is total”. And this is true, because we know the situation firsthand: after all, there are still cases of excesses among convicts, self-harm, suicides, complaints about freedom, appeals to human rights defenders [5].

A brief digression into history shows that for the first time the term “regime” is mentioned in the Temporary Instruction of the People's Commissariat of Justice of the RSFSR entitled “On deprivation of liberty as a measure of punishment and on the procedure for serving such” (1918), the words “regime of persons under investigation” were written in it. Russian scientist, associate professor A.A. Raskevich rightly notes that “the regime regulates life in penitentiary institutions continuously” [6]. About a little more than a hundred years ago, the famous Russian prison scientist S.V. Poznyshv made his attempt to define the regime in the special and scientific literature, the essence of which was reduced to “the regime's coverage of all measures by which penitentiary institutions strive to achieve their goals” [7]. Continuing our thought, we want to cite another fact from history regarding our topic, namely, more than two hundred years ago (1819), on October 11, the Emperor Alexander I ordered that “5 means of correction were introduced in prisons and places of detention according to convenience” and the first of them, there was “close and constant supervision of prisoners” [8].

Thus, it is possible to distinguish such aspects of the regime as its main purpose: constant, continuous, round-the-clock supervision, the goal is certainly good and it is safety, but it should be both for the prisoners themselves and for the staff of the institution and this is the standard. But still, along the way, we will note; today is the twenty-first century and the days have long passed when, according to the figurative expression of the penitentiary Gernet, who remained in the history of the penitentiary, there are few “strong locks and an efficient prison chief!” Therefore, I would like to draw attention to Article 99 of the Penal Execution Code of the Republic of Kazakhstan, which also refers to the regime and is called “Engineered technical means of supervision, control and protection”, in Part 1., which defines that the administration of places of detention uses “audiovisual (video control system) ...” [9] and accordingly other modern means to prevent escape in-

tentions (visible), violations of the daily routine throughout the institution. A similar approach is preserved in the Prison Code of the Russian Federation [10]. And in this regard, let us turn to international documents on this issue. So in the International Covenant on Civil and Political Rights, article 10 (3) states that: “the penitentiary system provides for a regime for prisoners, ... the purpose of which is ... correction and social re-education” [11].

And the Standard minimum Rules for the Treatment of Prisoners, Rule 65, orient the prison administration to the fact that “in the treatment of persons sentenced to imprisonment or other similar punishment, one should strive, taking into account the length of time they serve, to instill in them the desire to obey the laws and ensure their existence after release”. In other words speaking, it is always necessary to keep in mind the dignity of the convicted person, not forgetting the responsibility on the part of the administration, since simply humanity and impartiality are not enough, justice is needed “in prison more than ever and it is simply necessary in today's rapidly changing world” [12]. In the works of such foreign scientists as, for example, G. Slade, A. Trochev, L. Piachentini [13], M. Butler [14], L. Azbel [15] touched upon the issues of the penitentiary system only in general and from the standpoint of criminological analysis: such as the role of the prison service in reducing and releasing the prison population from punishment, problems and difficulties in reforming Kazakhstan's criminal justice, the limits of criminal law and penal enforcement policy and other aspects of the prison system, without touching on the topic of our research, it is understandable! The regime is a purely internal matter. And we know this firsthand. The famous Kazakh researcher B. Shnarbayev in his works, concerning the current state of the country's penal enforcement system, focused on the relevance of ... “taking into account legal, technical ...” [16] and other aspects that must be borne in mind, at least indirectly, concerns the regime, however, such a hint is enough for research specialists! But the change and application of modern (“... technical”, according to Shnarbaev) means of tracking prisoners did not exclude violations of the established order of serving punishment, violations did not decrease and did not sink into existence, although the eye of the all-seeing camera should have fixed everything, but no! This did not happen, because total control / regime did not lead and did not give and will not give the desired result.

For the current period, 22,042 video cameras have already been installed in 52 institutions of the country's penitentiary system. By the end of this year, 13,822 additional video cameras will be installed in 26 institutions. As can be seen, the purpose of the project is to prevent offenses, primarily on the part of both convicts and staff. The control will be carried out in real time, and what is most unexpected, since the introduction of the video surveillance system, the number of registered offenses has increased by 40%, 3 escape attempts and 13 suicide attempts have been prevented, many group fights and riots. Unfortunately, convicts deliberately disable video surveillance cameras in order to conceal their illegal actions. So, since the beginning of this year, they have damaged more than 300 video cameras, which, in fact, leads to considerable material damage, according to the information of the Committee of the Criminal Correctional System of the Ministry of Internal Affairs of the country [17].

Continuing our research, along the way, we note once again that the essence of deprivation of liberty and placement of convicts in institutions of deprivation of liberty is to protect society from crime, while not forgetting how possible and realistic it is). At the same time, we must not forget about the level of possible and acceptable regime security, in other words, there must be a reasonable balance. Thus, the following aspects of the regime can be distinguished, namely: strengthening the regime with the help of video surveillance in places of detention did not lead to a decrease in violations of the established procedure for serving sentences, on the contrary, there is a tendency towards an increase in the number of violations. As for the damage to the technical means of surveillance, this is the reaction of convicts to total control, and this is another side of the regime that has not existed before, because the regime was carried out physically, by circumvention, checks, which was not often, and even more so at night, since the daily outfit of the institution simply will not have time to be everywhere and always! An indirect survey of ex-employees, now veterans of the department, personal practical experience [18] suggests that convicts are trying to break, disable cameras in various ways, however, for example, they invented a method of “throwing a kind of hat, hats, caps” made of solid material, paper, cloth on video surveillance systems.

Conclusions

The problem of introducing criminal liability for damage to video cameras in correctional institutions has been overdue for a long time and, of course, persistently demanded an exit in search of a solution. And it is no coincidence that the President instructed to introduce criminal liability against persons who damage video surveillance systems in institutions of the country's prison system [19].

As you know, criminal liability occurs when guilt is established, and in the presence of several signs: public danger, illegality, guilt and punishability. Now let's move on to the composition of the crime: the subject of the crime is obvious to us — this is a convict acting with direct intent, the purpose: convicts serving sentences of imprisonment, arrest to damage / disable the video monitoring system.

1. By the object of this crime, we mean: the proper operation of institutions where convicts serve sentences of imprisonment, arrest, as well as where they are detained. An additional object is the identity of an employee of these institutions, as well as the identity of the convicted person.

2. The objective side of this crime is expressed:

1) The threat of violence against an employee of institutions of places of deprivation of liberty;

2) The threat of violence against an employee of places of detention;

3) Threatening to use violence against a convicted person out of revenge for the performance of his public duty.

In our opinion, the above actions are sufficient to recognize the existence of an objective side of the crime.

3. Employees of places of deprivation of liberty or detention should be considered all employees of institutions of all degrees of security, pre-trial detention centers, arrest houses, temporary detention facilities, guardhouses with the rank of an ordinary or commanding staff.

4. An important condition for the application of the proposed article of the Criminal Code is that the threat must be in deep connection with the past or present official activities of the employee. If such a connection is not seen, then the action can be qualified as a crime against the person.

5. The threat of violence is sufficient to declare the crime over, regardless of whether the perpetrator has achieved his goal.

6. On the subjective side, this crime can only be committed with direct intent. The perpetrator is aware that he threatens to use violence against an employee of the institution where he is serving his sentence or is in custody, and also threatens the convicted person because of revenge for the performance of his public duty and wants to commit these actions.

7. We consider it is necessary to highlight a mandatory feature of the composition of this crime — a special purpose: threats against the convicted person: a motive in the form of revenge for the performance of his public duty.

8. The subject of this crime may be sane persons who have reached the age of 16. When making an attempt to criminalize intentional so-called “damage to audio/video surveillance cameras”, it is always worth remembering the judgment of the famous Russian prison researcher of the last century Ivan Foynitsky who proposed... “specifically stipulate” [20] in codes / laws cases when mass offenses occur, with the aim of disabling video monitoring and supervision facilities.

Considering the above, in the conclusion of the study, we propose our author's version of the legal norm:

Article 429-1 of the Criminal Code of the Republic of Kazakhstan

Destabilization of the normal activities of institutions providing deprivation of liberty.

1. The threat of violence against an employee of a place of deprivation of liberty or a place of detention, as well as against a convicted person for the purpose of revenge for the performance of his public duty, is punishable by imprisonment for up to three years.

2. The use of violence that is not dangerous to life or health to the persons specified in the first part of this article shall be punishable by imprisonment for a term of three to five years.

3. The acts provided for in parts one or two of this article, committed by a group of persons by prior agreement or with the use of violence dangerous to life or health, shall be punishable by imprisonment for a term of five to ten years.

Perhaps our proposals are not indisputable, but they are aimed at further improving Kazakhstan's criminal legislation, which gives hope for ... “effective and fair law enforcement ...” [21] and will bring the penitentiary system of Kazakhstan closer to international norms and standards.

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В.Н. Жамулдинов, А.О. Шакенов

Режим сотталғандарды түзетудің негізгі құралы ретінде: теория және практика

Мақалада сотталғандарды түзету құралдарының жүйесіне кіретін режим сияқты сотталғанды түзету құралының ерекшеліктері және заң шығарушының ұйғарымы бойынша қазақстандық қылмыстық және қылмыстық-атқару заңнамасының мағлұмдау мақсаттарына қол жеткізуге ықпал ететін ерекшеліктері қозғалған. Режимнің қылмыстық-атқару жүйесі мекемелеріндегі сотталғандарды түзетудің негізгі құралы бола отырып, бірақ сотталғандарды бақылаудың толық құралына айналатыны атап өтілген және ерекше ескеретін жәйт, қазіргі заманғы техникалық бақылау құралдарының бас бостандығынан айыру орындарына енуі қылмысты адамның қашып құтыла алмайтын қадағалаудың бұл түріне қарсы тұруға итермелейді, бұл жазаны өтеудің белгіленген тәртібін бұзудың осы түріне әкеп соғады, мысалы техникалық құралдардың (бейнекамералардың) зақымдануы ретінде. Авторлар режимді әртүрлі қауіпсіздік мекемелеріндегі түзетудің қалған құралдарымен салыстыруға әрекет жасаған, нәтижесінде олар қазақстандық қылмыстық және қылмыстық-атқару заңнамасына ұсынымдар берді, сотталғандарды түзетудің басқа да негізгі құралдарының арасында режимнің рөлі

мен орнын түсіну және оны тағайындау ұсынылды және айтылды, сондай-ақ қылмыстық заңнамаға баптың жеке жобасы түрінде ұсыныстар тұжырымдалды.

Кілт сөздер: қауіпсіздік, режим, сотталған, қылмыстық-атқару жүйесінің мекемесі, қылмыстық жауаптылық, инженерлік-техникалық қадағалау, бақылау және күзет құралдарының зақымдануы.

В.Н. Жамулдинов, А.О. Шакенов

Режим как основное средство исправления осужденных: теория и практика

В статье затронуты особенности такого средства исправления осужденного, как режим, входящего в систему средств исправления заключенных и, по замыслу законодателя, способствующего достижению декларируемых целей казахстанского уголовного и уголовно-исполнительного законодательства. Отмечено, что режим, являясь основным средством исправления осужденных в учреждениях уголовно-исполнительной системы, на самом деле таковым, по сути, не является, а превращается в тотальное средство контроля осужденных, и, что особенно стоит учесть, проникновение современных средств технического контроля в места лишения свободы провоцирует контингент уголовно-преступной среды к сопротивлению такому виду надзора, от которого не скроешься, что и приводит к такому виду нарушений установленного порядка отбывания наказания, как повреждение технических средств (видеокамер). Авторами предпринята попытка провести сравнение режима с остальными средствами исправления в учреждениях различной безопасности, в результате ими внесены рекомендации в казахстанское уголовное и уголовно-исполнительное законодательство, попутно предложено и озвучено осмысление роли и места режима среди других основных средств исправления осужденных и его назначение, а также сформулированы предложения в уголовное законодательство в виде отдельного проекта статьи.

Ключевые слова: безопасность, режим, осужденный, учреждение уголовно-исполнительной системы, уголовная ответственность, повреждение инженерно-технических средств надзора, контроля и охраны.

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