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DETERMINANTS OF PENITENTIARY CRIME

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Abstract

Isolation of a person from society, whether it be imprisonment or punishment in the form of imprisonment, should lead to the complete impossibility of these persons to continue (and even more so to start) their criminal activities. Nevertheless, while in pre-trial detention centres or correctional institutions, convicts, suspects and accused commit crimes. The activity of the penitentiary system is based on two main goals: the correction of convicts and the prevention of new crimes. In recent years, there has been an increase in the number of penitentiary crimes. The science of criminology tells us that the main link in understanding crime, and as a consequence of its prevention, is to identify the causes and eliminate the conditions of illegal activity. It is necessary to understand that the causes and conditions of penitentiary crime in a broad sense are the same as for “common” crime, crime “at large”. Nevertheless, the limited territory of pre-trial detention centres and correctional institutions, the existence of a regime and the special legal status of persons who are there, give rise to highly specific determinants that are inherent exclusively in the penitentiary system. It is also worth noting that the Criminal Code of the Russian Federation in its content includes crimes, the commission of which is possible only by convicts or prisoners. Following the official departmental statistical reporting of the Federal Penitentiary Service, in this article we attempted to identify and describe the determinants that are decisive in the commission of penitentiary crimes.

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1. Introduction

The scientific understanding of the category of determination means connection, the dependence of various events and processes and their change from any external factors. In a broad sense, determination (determinism) is the fixability of some phenomena and processes by others with the obligatory presence of a relationship. It is generally accepted that crime is a social phenomenon. Consequently, crime has a close relationship with the social processes of social, economic, political, legal nature. Based on the above, we can conclude that the study of the determinants of crime is a cornerstone in understanding the phenomenon of crime (Zhubrin et al., 2019). Note that in this article, by determinants, we mean causes, conditions, and their interconnection. The causes and conditions of crime are the most crucial category of sciences of the criminal legal cycle. Without a correct understanding of the causes of crime and an adequate study of the conditions for committing crimes, it is impossible to develop effective measures to prevent them (Nuzhdin, 2015). Identifying the reasons and conditions for committing crimes allows studying and understand in more detail the personal characteristics of the offender, which will allow applying such measures of a criminal-legal nature to him, which will subsequently contribute to the achievement of the goals of the penal legislation.

A legislatively fixed list of causes and conditions of crime cannot be found in any normative act (including codified). Consequently, in the Russian (and in the world) doctrine, a lot of theories and opinions have appeared regarding the understanding of the determinants of crime.

The reasons and conditions in criminal law in the classical sense do not exist; at the same time in the Criminal Code of the Russian Federation, there is the concept of motive and setting. The motive in criminal law plays an important role; it directly affects the circumstances, mitigating or aggravating punishment. Thus, the commission of a crime motivated by compassion is a mitigating circumstance (Art. 61, Criminal Code of the Russian Federation). In contrast, the commission of a crime motivated by political, ideological, racial, national or religious hatred aggravates the punishment (Art. 63, Criminal Code of the Russian Federation).

In the science of criminal law, the situation in the commission of a crime is an optional feature of the objective side. It affects the qualification of the crime (for example, the commission of an act at nuclear power facilities or illegal hunting in a specially protected natural area – Articles 215 and 258, the Criminal Code of the Russian Federation). Naturally, the concept of cause and motive, as well as conditions and situations, are not synonymous. However, in a broad sense, they are quite similar and define one side of criminal behaviour.

In criminal procedural law, it will also not be possible to find a list (and at least definitions) of the causes and conditions of crime. At the same time, the Criminal Procedure Code of the Russian Federation obliges in the course of the investigation to identify circumstances conducive to the commission of a crime. There is no list of circumstances that need to be identified, as well as the definition of this term in the criminal procedural law. However, the analysis of regulatory acts, the practice of investigating crimes allows asserting that in this case, the circumstances that contributed to the commission of the crime are precisely the reasons and conditions.

The science of criminology is more substantive in understanding the causes and conditions of crime and includes them in its subject of study. Correlation of the reasons and conditions for the

commission of a crime with the personality traits of a person makes it possible to determine a set of preventive measures.

Based on the previous, we can conclude that understanding, determining the causes and conditions of crime, and their subsequent elimination will contribute, if not to the complete eradication of crime, then to its significant minimization.

General trends in understanding the definition of crime are applicable to penitentiary crimes. At present, the determination and possible elimination of the causes and conditions for the commission of crimes by persons held in institutions of the penal system acquires particular relevance. Thus, with a decrease in the total number of crimes in Russia (in 2015, 2352.1 thousand crimes were registered; in 2016 – 2160 thousand crimes; in 2017 – 2058.5 thousand crimes; in 2018 – 1992 thousand crimes; in 2019 - 2000 thousand criminal acts respectively), in the penal system, the crime of convicts and persons in custody has a tendency to increase (in 2015, 940 crimes were registered; 2016 – 960 crimes; 2017 – 977 crimes; 2018 – 1024 crimes; 2019 – 1171 crimes), even though the total number of "special contingent" is decreasing (2015 – 646 085 people; 2016 – 630 155 people; 2017 – 602 176 people; 2018 – 574 447 people; 2019 – 535 514 people).

2. Problem Statement

Currently, the penal system is taking unprecedented measures to prevent crimes committed by convicts and persons in custody. Nevertheless, as official departmental statistics show, they are not enough. We believe that to the development of effective measures to prevent, the key to understanding the crime of convicts and prisoners, it lies in the definition and classification of the determinants of penitentiary crime. Moreover, it is necessary to find out what character is the penitentiary criminal determinism. In this regard, the question arises: is penitentiary criminal determinism general or particular? Is it possible to define a general classification of the causes and conditions of penitentiary crimes, or does each group of them have its own, individual determinants purely?

3. Research Questions

In this article it is planned to consider the most common crimes committed in correctional institutions and pre-trial detention centres; to identify the reasons for the commission of this category of crimes; establish conditions conducive to the commission of crimes.

4. Purpose of the Study

The study aims to identify the leading group of determinants of penitentiary crime.

5. Research Methods

The research methods mainly served as a general scientific method of cognition of the phenomena and processes taking place on the territory of the correctional institution, which made it possible to study

them and trace their development in dynamics systematically. Also, in the process of research, various general scientific and specific scientific methods were used: analysis and synthesis (in the study and systematization of methods of committing penitentiary crimes); formal-logical (when constructing and formulating inferences); comparative legal (when identifying patterns in the means, methods and methods of preparing and committing crimes); statistical method (when calculating, analyzing and comparing statistical data of the Ministry of Internal Affairs and the Federal Penitentiary Service of the Russian Federation).

6. Findings

An analysis of the statistical reports of the Federal Penitentiary Service allows stating that the bulk of crimes committed by convicts and prisoners are typical and are repeated every year. The most widespread crimes committed by convicts and persons in custody are crimes in the sphere of illegal drug trafficking, shoots, disorganization of the activities of institutions that provide isolation from society.

An analysis of the practice of investigating these crimes has shown that the reasons and conditions for their commission are different and it is not possible to identify anyone group of determinants (and even more so one reason). This fact is primarily because these crimes are quite different, are either selfish or violent, or aimed at satisfying the basic needs of the convicts or are committed by chance (spontaneously).

Drug trafficking crimes are one of the most widespread in prisons: in 2019, 231 crimes were registered, or 19.73 % of the total number of registered crimes. Two «types» of convicts and prisoners commit this category of crimes: distributors and consumers.

Practice shows that in institutions of the penitentiary system, persons who use narcotics and other psychotropic drugs are being held or are being held. In most cases, these persons end up in places of isolation from a society already with an addiction syndrome; sometimes convicts begin to use drugs while serving their sentences. Accordingly, "demand creates supply", and drugs are being smuggled into the territory of correctional institutions or pre-trial detention centres.

The analysis of statistical reports shows that the bulk of drugs are seized upon delivery. Nevertheless, attempts to smuggle, transfer or transfer narcotic drugs are not decreasing: in 2019, about 65 kg of narcotic drugs were seized in the institutions of the penal system. So, near one of the correctional colonies of the Federal Penitentiary Service of Russia in the Samara region, near the territory of one of the penal colonies of the Federal Penitentiary Service of Russia, a man was detained during an attempt to "transfer". During the examination, 11 parcels were seized from him, rewound with clerical tape, in which there were a green-brown substance and tablets. In 2019, 421 citizens were prosecuted for attempting to deliver them to the territory of correctional institutions and pre-trial detention centres.

The practice of the penitentiary system shows that there are situations when drugs are tried to be delivered using vehicles. In such cases, it is rather challenging to identify the persons who carried out the dispatch and even more so the persons to whom these drugs were provided. Thus, in one of the correctional colonies of the Federal Penitentiary Service of Russia in the Republic of Tatarstan, when inspecting a railway carriage that delivered coal to the restricted area for production needs, three packages

were found, one of which contained a brown substance (the examination showed that the substance is narcotic – hashish).

The main reasons for committing crimes in the sphere of illegal drug trafficking in the institutions of the penal system are the desire to satisfy their drug addiction (on the one hand) and receive benefits when selling drugs or transferring them for the performance of any other merits (on the other hand).

The identification and elimination of the conditions for the commission of this category of crimes play an essential role since it is not always possible to eliminate the causes of the commission of crimes (García-Largo et al., 2020). At the same time, the complete suppression of the channels for the flow of drugs into the restricted area will contribute, if not to the complete eradication, then to the strong minimization of these crimes (Wallace & Wang, 2020).

Conditions conducive to the commission of the crimes in question include:

- engineering and technical conditions: the imperfection of the functioning and location of engineering and technical means of protection and supervision. Practice shows that not all correctional institutions and pre-trial detention centres are equipped with X-ray equipment for screening transmissions; video endoscopes for vehicle inspection. In several correctional institutions and pre-trial detention centres, video surveillance systems have been installed in violation of the principle of collecting evidence or orienting information. An analysis of the materials on which the initiation of criminal cases was denied showed that often-narcotic drugs are seized in violation of the requirements of the criminal procedure legislation, which subsequently does not allow them being used as evidence;
- organizational and managerial conditions: in many correctional institutions and pre-trial detention centres, the life of convicts or prisoners is improperly organized, the distribution of forces and means of the regime, supervision and security units does not allow covering the entire collective of persons isolated from society; understaffing in several structural units, lack of qualified personnel; low performing discipline (Kovalerova, 2012);
- operational-search conditions: the fight against drug trafficking in prisons should be carried out in close cooperation with other law enforcement agencies since prohibited substances enter the restricted area from the outside (unlike alcoholic products, it is almost impossible to manufacture them on the territory of a correctional institution). Lack of knowledge of the operational-search activity methods, unsatisfactory work with the secret service, poor organization of public and secret measures is becoming a frequent condition that contributes to the establishment and spread of illegal drug trafficking on the territory of a particular correctional institution or pre-trial detention centre.

Escapes from places of detention, arrest or protection are frequently reported crimes with low latency. It should be understood that almost all escapes are committed from under supervision (in 2019, 111 crimes were recorded under Article 313 of the Criminal Code of the Russian Federation, of which 108 escapes from supervision). At the same time, even one escape from protection is a very serious crime, since a person who is already serving a sentence or being held in custody for a crime is released. The socially dangerous nature of this crime lies in the fact that

- upon escape, the execution of punishment or detention is suspended;

- escaping is often accompanied by subsequent crimes;
- the positive escape of a convict or prisoner becomes a "precedent" for other persons;
- the authority of the bodies executing criminal punishments and the entire system of law enforcement agencies decreases (Kotlyar, 2018).

The reasons for escaping are as follows: persistent unwillingness to serve a sentence or be held in custody; the inability to perceive the life that exists in the institution; the desire to be "free"; threats to life and health from other convicts or prisoners.

Recently, the reasons for escapes have been the exits of convicts to the internal or external exclusion zone in order to obtain the so-called "transfer" (García-Largo et al., 2020). In most cases, the convicts had no intent to escape, but his detention outside the main fence is often qualified as an attempted escape, and sometimes as a completed crime.

As the practice of investigating these categories of crimes shows, the conditions for committing escapes can be divided into (Kotlyar, 2018):

- organizational conditions: unsatisfactory quality of planning and organization of the activity of structural units of a correctional institution or a pre-trial detention centre; formal response to instructions and orders from higher managers; inadequate knowledge of typical ways to escape; low level of control over the performance of service by security units; unsatisfactory work on the organization of prevention of escapes; weak interaction with the structural units of the penal system and other law enforcement agencies;
- personnel conditions: the unsatisfactory selection of personnel for service in one or another structural unit of the institution of the penal system; involvement of persons with poor knowledge of working with technical means of protection to serve in security units; low level of knowledge of federal and local regulations;
- technical conditions: use of outdated technical means of protection and supervision; malfunctioning of technical equipment; incorrect organization of the location of engineering security equipment; false alarms of various modifications of detectors; lack of widespread installation of video surveillance systems.

Disorganization of the activities of institutions that provide isolation from society, like escapes, are exclusive "prison" crimes with a low level of latency. Basically, in institutions of the penal system, actions that disorganize the activities of institutions are committed against personnel. In 2019, 217 criminal cases were initiated under Art. 321 of the Criminal Code of the Russian Federation in relation to suspects, accused and convicted persons. At the same time, an analysis of the so-called "refusal materials" shows that in 2019, in 27 cases, criminal proceedings were refused (Article 321, Criminal Code of the Russian Federation). It is also worth noting that, as a result of the analysis of the information provided by the territorial bodies of the Federal Penitentiary Service, in 2019 various types of video surveillance systems (including portable video recorders) were not recorded 30 cases of violence against personnel in connection with the performance of their official duties.

The results of the analysis of cases of use by convicts or prisoners of violence against employees show that most of the attacks are committed in the premises of punishment cells, cell-type, locked rooms with strict conditions for serving sentences and security buildings. So, in November 2019, in a

detachment with strict conditions for serving a sentence in one of the correctional colonies of the Federal Penitentiary Service of Russia in the Republic of Sakha (Yakutia), a convict struck with a fist in the face and two blows with a sharpened metal plate in the leg of the assistant to the head of the colony on duty. The actions of the convict were qualified as a crime, and a criminal case was opened against him (Art. 321, Criminal Code of the Russian Federation).

Practice shows that the bulk of attacks (about 70 %) are carried out on employees of regime units. The bulk of cases of violence against employees occurs during searches, rounds and checks on the presence of convicts and prisoners (75 %). It can be concluded that the main reason for the commission of crimes is associated with the performance by employees of their official duties, and in particular with attempts to detect and seize prohibited items. So, in November 2019, in one of the correctional colonies of the Federal Penitentiary Service of Russia in the Stavropol Territory, during the formation of a detachment for dinner, two convicts inflicted blows on the head and face of a security department officer. The reason for their actions was the seizure of two mobile phones by the officer from these convicts and the refusal to return them. The actions of the convicts were qualified under Article 321 of the Criminal Code of the Russian Federation.

An analysis of actions that disorganize the activities of institutions that provide isolation from society shows that the main reasons and conditions for committing this category of crimes are the following:

- lack of proper control on the part of the leadership of both correctional institutions and pre-trial detention centres and the leadership of the territorial bodies of the Federal Penitentiary Service;
- non-compliance by employees with personal safety measures; unsatisfactory knowledge of the rules of conduct in the event of a conflict situation with convicts and prisoners;
- ignorance of the procedure for the use of physical force and special means;
- violation and malfunctions of technical means of supervision, and in particular portable video recorders.

7. Conclusion

The development, application and implementation of effective measures to prevent penitentiary crime are impossible without correct identification, understanding and understanding of the reasons and conditions that contributed to the commission of criminal acts by persons held in institutions of the penal system. In a broad sense, the causes and conditions of crimes committed by convicts and prisoners are associated with factors that determine crime outside the restricted area.

As the official departmental statistical reports show, the main share is made up of the so-called "prison" crimes (escapes and disorganization of the activities of institutions that provide isolation from society) and crimes in the sphere of illegal drug trafficking (refuse to use drugs without proper medical care, and most importantly, desire and internal persuasion is almost impossible). Therefore, it is possible to single out several determinants that are inherent exclusively in the criminality of convicts and prisoners.

First, there is a complex of economic determinants. Insufficient material support of the penitentiary system in the field of equipping institutions with modern technical means of protection and

supervision is a condition for the commission of almost all types of crimes in places of deprivation of liberty.

Secondly, there are several legal determinants. The imperfection of the current criminal, criminal-executive and criminal-procedural legislation does not allow the prevention of crime by all possible legal means and methods.

Third, there are some organizational flaws. Ignorance of the rules for registering crimes, initiating criminal cases, seizing and storing material evidence leads to the impossibility of further investigation and transfer of case materials to the court. The "blurred" definition of the criminal procedural status of subdivisions of the penal system does not allow the timely initiation of a criminal case and the conduct of urgent investigative actions. Ignorance of the rules and techniques of operational-search activity does not allow detecting and preventing crimes at the stage of preparation (Malchuk & Nuzhdin, 2018). Errors in the organization of security measures lead to the widespread storage of prohibited items by convicts and prisoners.

Fourth, management factors. Shortcomings in the selection and placement of personnel, untimely professional development of employees of the penal system, emotional "burnout" leads to a decrease in the quality of performance of their duties. The lack of staffing in several correctional institutions and pre-trial detention centres did not allow organizing the service, control and supervision of convicts, suspects. It accused following the requirements of federal and local regulations. Unsatisfactory preventive work with employees and partly their low social status, in some cases lead to unofficial relations with convicts and prisoners, which is the reason for employees carrying prohibited items and concealing the commission of many crimes (Rumyantsev et al., 2017).

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