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IMPROVEMENT OF PREVENTIVE PRINCIPLES IN CRIMINAL EXECUTIVE LEGISLATION

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Abstract: This article analyzes the role of penitentiary policy in achieving the goals of criminal punishment from a legal point of view. In many countries and in the modern criminal law doctrine as a whole, punishment is used to correct the morality of the convict, to prevent him from continuing his criminal activity, to restore social justice, and to prevent both the convict and other persons from committing a new crime. In the article, he analyzed the best practices of foreign countries and the approaches of legal scholars to the form of public administration in this regard.

Keywords: penitentiary system, convict, sentencing, execution of punishment, differentiation

The principles of law are basic ideas, initial assumptions or leading principles of the process of its formation, development and functioning.

We believe that the question of the principles of the criminal-executive law does not lose its relevance, since at the present time the process of radical reform of the penitentiary system is underway, which began almost from the beginning of the 1990s, after gaining national independence. Due to objective and subjective reasons, it was not possible to implement the planned reforms to the full extent. One of these reasons should be considered the lack of proper legal support for reform both at the stage of developing conceptual and legislative approaches and their implementation.

Without the definition of the concept and essence of the principles of the penal enforcement legislation, effective reform of the penal enforcement system is impossible, since the principles as the basic ideas determine the directions of the development of legislation, allow deeper understanding of the goals and tasks assigned to the penal enforcement system, the essence of the means to achieve them.

The urgency of the problem of the principles of the criminal-executive law is also conditioned by the significant changes that have taken place in the penitentiary system. Despite this, a significant layer of problems has remained undeveloped in the scientific literature, it is necessary to study the issues of improving the preventive principles in criminal-executive legislation.

It should be said, that Article 6 of the PEC stipulates that: "The criminal executive legislation is based on the principles of legality, justice, humanism, democratism, differentiation and individualization of the execution of punishment, the rational use of coercive means and the encouragement of lawful behavior of convicts". However, it does not provide a general concept (definition) of these principles.

In their content, the principles are guiding legal ideas expressing the main legal views of the state on the nature of the criminal-executive law and the regulation of public relations in the execution of punishment. These legal ideas, before becoming principles, find expression in the criminal-executive policy, which is the main source of formation of the principles of the criminal-executive law.

At the same time, in Article 6 of the CEC, the legislator limited himself to enumerating

the principles of the penal enforcement legislation. It neither reflects the content, the essence of these principles, nor provides guidelines for the use (application) of these principles. In our opinion, the CEC should disclose the content of each principle and pay special attention to their preventive nature.

The consolidation of the system of principles of this or that branch of law by the legislator in the relevant articles of law eliminates the difference in the definition of the range of guiding legal ideas, that could be considered as principles of this or that branch of law and lead to an unified understanding of the system of principles, norms of this legislative act.

Art.6 CEC contains the principles of the penal enforcement legislation, which, in our opinion, are inherently different from the system of principles of the criminal-executive law. The principles of the penal enforcement legislation determine the development of rulemaking, the adoption of legal norms. But at the same time, one can not deny their influence on the principles of the criminal-executive law.

So, in Art.6 CEC, there is a general legal principle - the principle of justice, which is reflected in the norms of the criminal-executive law.

The system of principles of criminal-executive law, in our view, should reflect the principles of treatment of convicts, which are fixed in relevant international instruments. First of all, this refers to the Standard Minimum Rules for the Treatment of Prisoners adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1956 [2], the Code of Principles for the Protection of All Persons from Torture and Other Cruel, Degrading Treatment or Punishment, adopted by the United Nations in 1984 [3]. The principles enshrined in them affect the priority human rights of a person deprived of liberty, which must undoubtedly be enshrined in national legislation and enforced in law enforcement. Even exceptional circumstances can not be used to justify torture or other cruel, inhuman or degrading treatment or punishment (Article 3 of the Declaration on the Protection of All Persons from Torture and Other Cruel, Degrading Treatment or Punishment) [4].

We also believe that, the system of principles of the criminal-executive law should be based on the Constitution, since the principles and general provisions enshrined in it, in the first place - the determining rights and freedoms of a person have direct effect.

In our opinion, among the general legal principles of this branch of law are:

- legality;
- humanism;
- justice.

To the interbranch principles should be attributed:

- The principle of equality of convicts before the law;
- The principle of the inevitability and individualization of criminal liability.

To branch principles, in our opinion, it is necessary to carry:

- The principle of rational application of coercive measures means of correcting convicts and stimulating their law-abiding behavior;
- differentiation of punishment;
- individualization of the execution of punishment;
- The principle of combining punishment with other measures of corrective action.

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