

Control And Supervision Over Penitentiary Systems In France And The USA*

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Abstract. *This article is devoted to the study of the institution of control and supervision over penitentiary systems in France and the USA. It is noted that this institution, especially in the European penitentiary systems, in general, is similar to the institution of control and supervision over institutions and bodies implementing criminal penalties in Russia. Firstly, this is due to belonging to two most recognized legal systems in the world - Anglo-Saxon (USA) and Romano-German (Russia, France). Secondly, this is due to using the international law in their domestic legal systems, although the forms of implementing the international norms have their own peculiarities. Thus, foreign specialists in the field of international law singled out two models in the mechanism of implementing the international legal norms within the national legal system - transformational (implementational) and adoptive (incorporative) (Vaneek, 1949; Brownlie, 2003), which were used in the countries of the Anglo-Saxon legal system.*

A distinctive feature of the US legal system is the priority of US national legislation over the international treaties involving the USA.

Thirdly, the relative uniformity of control and supervision over the penitentiary systems of France and the USA is due to the sufficient identity of the systems of criminal penalties and types of correctional facilities. Punishment in the form of deprivation of liberty forms the backbone of the system in almost all civilized countries of the world, and prisons are the eternal companions of almost any state in the world.

Fourthly, the effectiveness of the institution of control and supervision over penitentiary system depends to a large extent on the institutional model of penal system existing in a given country both abroad and in Russia. The effectiveness of the institution of control and supervision over penitentiary system makes impact on the effectiveness of penitentiary system itself. The indicators of the system effectiveness are represented by the level of post-penitentiary relapse, that is, the number of persons having committed crimes after serving their sentence. The statistics, unfortunately, indicate that more than half of former prisoners commit the crimes again in the USA (Bykov, 2015), and the post-penitentiary relapse is up to 60% in the prisons in France (Utkin, 2016).

From our point of view, the efficiency of penitentiary system is influenced by the institution of pardon, which is stipulated by French law (Articles 133-7, 133-8 of the Criminal Code of France) (Bakulina, Bakulin, 2015) and the US law. As a rule, pardons commit secondary offenses fewer times than just those released or amnestied.

Key words: penitentiary system of France; penitentiary system of the USA; effectiveness; departmental control; judicial review; prosecutor supervision; release on parole.

Introduction

There are several different institutional models of correctional systems in the world. According to the correctional system belonging to a particular state agency, N. P. Kovalyov points out five models of organization of such systems:

1) the model in which the correctional system is fully accountable to the Ministry of Internal Affairs or its equivalent (Spain, Israel, Kuwait, Lebanon, Belarus, Uzbekistan, Turkmenistan, Singapore, Egypt, Mexico, Uruguay, England - until 2007, Russia - until 1988, etc.).

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2) the model in which the correctional system is fully administered by the Ministry of Justice (Russia, USA, Austria, Belgium, Germany, Italy, France, Czech Republic, Sweden, Japan, Chile, Turkey, Morocco, Liberia, etc.)

3) the model in which the correctional system is administered by the joint Ministry of Justice and Internal Affairs (Police) - it usually includes the countries with a small population - Andorra, Malta, Norway, Panama, El Salvador, Suriname and Switzerland.

4) a model in which the correctional system is under the jurisdiction of a separate state department that is not under the control of the Ministry of Justice or the Ministry of Internal Affairs, but is directly accountable to the head of the government or state. South Africa and Ukraine are among such countries.

5) a mixed model in which different types of punishments or coercive measures are under the jurisdiction of various departments: the penitentiary institutions, holding the convicted persons, are under the jurisdiction of the Ministry of Justice - China, Iraq, Kazakhstan .

Accordingly, the penitentiary systems are more accessible for the control and supervision, especially for the public, referring not to the militarized, but to the civil department, i.e. the Ministry of Justice.

Methods

As already noted, the French penitentiary system is under the jurisdiction of the Ministry of Justice, which includes a special Penitentiary Administration Directorate (an analogue of the Russian Federal Penitentiary Service).

The structural penitentiary system of France, according to Sleptsov I.V., consists of 8 regional directorates; missions of overseas territories; 188 penitentiary institutions (detention houses, central prisons, detention centers, penitentiary centers, semi-free autonomous centers); 102 rehabilitation and probation services; service of penitentiary employment and the National School of Penitentiary Administration.

It should be assumed that the departmental control over penitentiary institutions is administered by the Directorate of the Penitentiary Administration of the Ministry of Justice of France.

The penitentiary institutions of France are also available for public control, and in particular for the non-governmental organizations such as the National Association of Prison Visitors, the French Red Cross, Catholic Relief, etc., which monitor the observance of human rights and assist the administration in working with prisoners.

The visit to prisons by way of charity was the only form of public participation in the affairs of penitentiary institutions until 1945. According to Kalinin Yu.V., the so-called social prison service was created in 1945. Its staff provides assistance to the families of prisoners (working with children, applying for various payments to a prisoner or his family, etc.) and contributes to the preservation of family ties. Another form of public participation in the re-socialization of prisoners is the visit to prison facilities by the members of various

mutual social aid societies.¹

According to the reports of the European Committee for the Prevention of Torture, there are no problems with prison overcrowding in France in general, but there are such problems as excessive violence against prisoners on the part of personnel, violence among prisoners, a high percentage of prisoners with drug addiction and AIDS.

It is no coincidence that in 2010 the General Controller of detention facilities, Jean-Marc Delarue, described a French prison with such words that have become world-famous: "Anarchy, cruelty, poverty and humiliation of dignity".²

Great attention is paid to judicial control over the execution of sentences in France. Prisoners are the persons with limited legal status due to a court verdict, but at the same time they are the holders of a whole range of rights not subject to deprivation and restriction by national legislation. In this case, the role of judicial control is not to allow excessive infringement of the rights and freedoms of prisoners and especially not to violate the rights and freedoms that have not been deprived and restricted by the state.

A state that dominates a person deprived of liberty also cares about the need for public security, so a person is placed in unequal conditions with regard to the protection of his rights. Ultimately, the purpose of judicial control is to restore the protection of this individual and his rights, primarily by examining the complaints of prisoners.³

A distinctive feature of the French penitentiary system is the presence of a judge, executing punishments (penitentiary judge), who, on the basis of the Criminal Procedure Code of France, has the authority to intervene in the process of serving and executing criminal penalties and security measures.

He resolves the issue of changing the regime for holding convicts to deprivation of liberty, granting leave, release on parole, etc.

The right to apply the release on parole is imposed on the penitentiary prisoner and the Minister of Justice of France. If the convict is sentenced to imprisonment for a term of up to five years, the decision is taken by the judge, and if the appointed term exceeds five years, the release on parole is provided by the Minister of Justice. However, in the latter case, the proposal on the release on parole is submitted by the judge taking into account the opinion of the penitentiary commission, and then all the necessary documents are sent to the Minister. In any case, it should be asked the prefect's opinion of that department, in which the convict intends to move after release. After the expiration of the established term, the serving of which may be the basis for the release on parole, "the situation of each convict is investigated at least once a year (Article 730 of the Criminal

¹ Yu. V. Kalinin Yu.V. 1978. "The Prison System of France," in *Jurisprudence*, V (1978), p. 59.

² P. V. Teplyashyna, "The French Type of European Penitentiary Systems," in *Bulletin of the Samara Juridical Institute of the Federal Penitentiary Service of Russia*, I (2016), no. 19, p. 68.

³ S. M. Zubarev, *Control over the Personnel Activities of the Penitentiary System in Russia*, Moscow, Monograph, 2005, p. 89.

Procedure Code of France).⁴

On the basis of the foregoing, we can make a conclusion on the peculiarities of the control and supervisory functions over the French penitentiary system, which is characterized by a combination of two types of control - judicial and departmental - when applying the release on parole. In this regard, we consider this practice to be cumbersome, inexpedient and corrupt, since the issue of release on parole should be solved by the body prescribing punishment, which should, in addition, release from it, rather than the Minister of Justice reporting for the penitentiary system. Moreover, this statement is consistent with Article 110 of the Rome Statute of the International Criminal Court, which states that only the International Criminal Court has the exclusive right to decide on any reduction in the term of punishment imposed.⁵

The Russian Federation signed the Rome Statute, but did not approve it. And France both signed and ratified the Rome Statute. Of course, the International Criminal Court considers a certain category of criminal cases (genocide, crimes against humanity, war crimes, etc.), but the French justice cannot ignore the provisions of permanent institute of international criminal justice. According to A. Ashves, the unified European law has a greater legal force than the national law. The reason for this is the fact that the International Criminal Court has been formed precisely for the implementation of this right and on the basis of respect for fundamental human rights.⁶

The French prosecutor's office is attached to the courts and is supervised by the Minister of Justice. The judges and prosecutors are called magistrates in France. The prosecutor's powers include the investigation of criminal cases, maintenance of prosecution in court, issuance of opinions, as well as supervision over legality in the places of their subordinate territories.

So, the control over the activities of penitentiary institutions is carried out by the higher authorities of the penitentiary system, - the court, the prosecutor's office, the local authorities (special supervision commissions chaired by the prefects), and the non-governmental (public) organizations.

The penitentiary system of the USA is under the jurisdiction of the Ministry of Justice, which is headed by the US Attorney General, since 1872.

The structure of the US Department of Justice includes, in addition to other law enforcement agencies, the Federal Bureau of Prisons, the Marshals Service, the Department of Punishment, Control, Detention, Registration and

⁴ R. M. Zhylyayev, E. V. Pavlova, I. N. Medvedeva, 2014. "A Brief Analysis of the Legislation of Foreign Countries Governing the Issues of Parole", in *Criminal-Executive System in the Modern Society and Prospects for its Development (dedicated to the 135th Correctional System and the 80th Anniversary of the Academy of the Federal Penitentiary Service of Russia): Collection of the Speaking Notes of the Participants of the International Scientific and Practical Conference (Ryazan, November 2014): In 2 Volumes*, vol. 1, Ryazan, Academy of the Federal Penitentiary Service of Russia, 2014, p. 399.

⁵ The Rome Statute of the International Criminal Court. – URL: [http://www.un.org/ru/law/icc/rome_statute\(r\).pdf](http://www.un.org/ru/law/icc/rome_statute(r).pdf), accessed on 12. 07. 2017.

⁶ A. Ashworth, *Principles of Criminal Law*, 3rd edition, New York; Oxford, Oxford University Press, 1999, p. 63.

Tracing of Persons Committed Sexual Offenses, etc.⁷

The law enforcement activities of the US Department of Justice and its agencies are comprehensively regulated by the federal legislation.

There are about 2.3 million prisoners in the USA, i.e. each 99th adult resident. More than 60% of prisoners are the representatives of racial and ethnic minorities. The terms of imprisonment are 5 times higher in the USA than in Canada and 10 times higher than in Japan. 25% of prisoners in the world are in the USA. According to the American Bar Association, the problem of the US penitentiary system is the overpopulation of prisons. Lack of independent supervision, excessively severe sanctions against racial minorities, violation of prisoners' rights, especially in private prisons, problems of solitary confinement in cells, rapes, which led the US Congress to adopt a law on the prevention of rapes in prisons and establish the National Commission on Eradication of Rapes in Prisons in 2003.⁸

Nevertheless, the total epidemic of rapes continues in the American prisons. In 2012, the US Department of Justice released a report, according to which 20,900 people were raped in the US prisons in 2008.⁹

On the basis of this characteristic, it can be concluded that there is no proper attention and, consequently, control over the penitentiary system in a highly developed, legal and democratic state.

At the same time, it should be noted that after all the control and supervisory activities over penitentiary system are carried out in several forms (types) in the USA.

The departmental control over the US penitentiary system, and in particular over the federal prisons, is exercised by the Federal Bureau of Prisons and a special department under the General Inspector of the US Department of Justice. Control over the state and county prisons and observance of prisoners' rights is carried out by the Department of Special Civil Processes of the US Ministry of Justice, established in 1980.

The US Marshals Service (an analogue of the Bailiff Service of Russia) makes searches, arrests, secures the participants in the judicial process, transports prisoners and arrested persons, controls the observance of the rights and freedoms of these people before they are placed in a correctional institution on the basis of court orders.

The US Parole Board reviews and resolves the issues of parole for the persons serving sentences for violation of federal laws.¹⁰ Therefore, the court examines and resolves the issues of parole for the persons serving sentences for

⁷ US Department of Justice. ru.wikipedia.org/wiki/Министерство_юстиции_США, accessed 12. 07. 2017.

⁸ A. V. Babushkin, 2011. US Legal System. av-babuskin.livejournal.com/5590.html, accessed 12. 07. 2017.

⁹ Sexual Violence in Prison: Global Crisis of the Human Rights. [\justdetention.org\wp-content/uploads/2015/11/international.Summary/Russian.pdf](http://justdetention.org/wp-content/uploads/2015/11/international.Summary/Russian.pdf)., accessed 12. 07. 2017.

¹⁰ V. N. Dodonov, E. N. Primova, T. A. Reshetnikova, S. P. Shcherba, *Organization and Activities of the Prosecution Authorities of Foreign Countries. Informational and Analytical Reference Book*, Moscow, Yurlitinform, 2010, p. 180.

violation of state laws.

The Civil Rights of Institutionalized Persons Acts (CRIPA Act, 1980) establishes the possibility of exercising judicial control over the US penitentiary institutions in the event of inadequate conditions of detention and violation of the rights and freedoms of prisoners. But at the same time, the CRIPA Act limits the prisoners to file complaints directly with the court. Before exhausting the methods of administrative settlement, according to Babushkin A.V., the prisoners have no right to bring an action to court, and inaction or negligence of the state to the procedure of handling complaints is not a ground for filing an action.¹¹

According to the Federal Bureau of Prisons, 11% of prisoners served sentences in the private prisons as of October 2016.¹² The control and supervisory bodies are experiencing rather large difficulties when visiting these institutions.

The so-called prosecutor's supervision is exercised by the US Attorney General and his office, which supervises the execution of court decisions in criminal cases of federal jurisdiction.

The financial control over the expenditure of funds is entrusted to the US General Supervision Office in the penitentiary system (an analogue of the Accounts Chamber of the Russian Federation). The groups of the General Supervision Office are available in many US ministries, including the US Department of Justice.

Conclusions

A distinctive feature of the US legal system is the priority of US national legislation over the international treaties involving the USA.

Besides that the US legislation has primacy over the international law (by the way, in recent years the issue of supremacy of the international law has been revised in the Resolution of the Constitutional Court of the Russian Federation dated July 14, 2015), the USA does not particularly seek to sign and ratify the international human rights treaties.

As of 2012, the USA signed and ratified the Convention on Elimination of All Forms of Racial Discrimination, 1965, the International Covenant on Civil and Political Rights, 1966 and the Convention against Torture, 1984 out of a large number of international human rights treaties stipulating the supervision mechanisms. The International Covenant on Economic, Social and Cultural Rights, 1966, the Convention on the Rights of the Child, 1989, etc., were not ratified.¹³

Summary

1) The effectiveness of the institution of control and supervision over penitentiary systems depends to a large extent on the institutional model of penal

¹¹ A. V. Babushkin, "The Prison Supervisory System in the USA" \livejournal.com\4709.html, accessed 12. 07. 2017.

¹² Federal Bureau of Prisons. Official Web-Site of the FBI. URL: <http://www.bop.gov/about/agency/>, accessed 12. 07. 2017.

¹³ Report of the Ministry of Foreign Affairs of the Russian Federation on the Situation on the Provision of Human Rights in the United States of America. Moscow, 2012. www.gay.ru/miscldocs/o\105_938021.pdf, accessed 12. 07. 2017.

system existing in a given country both abroad and in Russia. The Institute of Control and Supervision is more developed in those countries in which the penitentiary system is under the jurisdiction of the Ministry of Justice.

2) A special feature of the control and supervisory functions of the French penitentiary system is the combination of two types of control - judicial and departmental when applying the release on parole. The issues of release on parole should be solved by the authority prescribing punishment, i.e. the court.

3) The factual information established in the analysis of the US penitentiary system speaks of the weakness of both international and departmental and judicial control and the inability to ensure the convicts' right to personal security.

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