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TÍTULO: Personas condenadas por delitos económicos y mala conducta oficial en centros de detención: una necesidad de nuevos enfoques.

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RESUMEN: Este artículo se centra en un proyecto científico que se ocupa de cumplir una condena penal en forma de privación de libertad después de ser condenado por delitos económicos en el ámbito de los negocios y/o malversación en el cargo. Analiza la relevancia de desarrollar un modelo científico de encarcelamiento para las categorías de delincuentes anteriores, y posibles formas de diferenciar las penas de prisión basadas en las características criminológicas y sociodemográficas de los convictos.

PALABRAS CLAVES: persona condenada, privación de libertad, delitos económicos, mala conducta oficial, modelo científico para cumplir una condena en forma de prisión.

TITLE: Persons convicted for economic crimes and official misconduct in detention facilities: a need for new approaches.

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ABSTRACT: This article focuses on a scientific project dealing with serving a criminal sentence in the form of deprivation of liberty after being convicted for economic crimes in the field of business and/or malfeasance in office. It analyzes the relevance of developing a scientific model of imprisonment for the above categories of criminals, possible ways of differentiating prison sentences based on convicts' criminological and socio-demographic characteristics.

KEY WORDS: convicted person, deprivation of liberty, economic crimes, official misconduct, creating a scientific model of serving a sentence in the form of imprisonment.

INTRODUCTION.

Combating economic crime and closely related malfeasance in office, especially their corruption and business component, is of paramount importance.

First, it involves formidable economic damage which these types of crimes inflict especially when facts of plundering the federal and regional budgets come to light. The losses run not in the millions but billions of Rubles which are systematically embezzled by officials obligated by law to make economic and rational use of these budget funds. There is no need to illustrate this point in this article with examples of such criminal actions, because, unfortunately, their name is legion and they are constantly being added up to in the media.

Secondly, this kind of crime produces a great adverse effect politically. The commission of economic corruption crimes discredits state power in Russia, and economic crime in the field of entrepreneurship shores up the position of extremist forces that oppose Russia's market economy.

Thirdly, such crimes provoke social tensions in society. It is no secret that Russia is undergoing a major social stratification due to considerable differences in the incomes and living standards of various social groups. The criminal methods of obtaining material goods, often associated with the plundering of budget funds and loans, falsification of goods, funneling funds to offshore accounts, receiving millions and billions of dollars in bribes, serve only to aggravate the contradictions between the rich and the poor and provide a breeding ground for the spread of social conflicts.

Fourthly, these types of crime negatively affect the international prestige of our state, hampering the creation of a favorable investment climate, and hindering the establishment of interstate and intercorporate economic ties.

Fifthly, due to the very fact of its existence white-collar and corporate crime provokes the spread of economic crime at a grassroots domestic level.

Crime prevention is known to be better than cure. However, once preventive measures fail to stop a crime then a question arises about punishing the offender and how proportionate the criminal penalty should be to the offence.

DEVELOPMENT.

Research methodology.

Dialectical method of cognition allowed to ensure the objectivity and comprehensiveness of the researched phenomena, general scientific methods were used (system, structural-functional, concrete-historical, comparative-legal), general methods of theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc.) and private-science methods (comparative law, technical and legal analysis, concretization, interpretation, etc.) [Komarov (2019), p. 32-40].

Study results.

In the recent years, the science of criminal law has been actively engaged in discussing a proposal to send major economic criminals and bribe takers acting as part of organized criminal groups and communities to some detention places (correctional institutions) located in remote ‘bears’ corners’ in our country [1].

In evaluating this proposal, it should be borne in mind that:

Firstly, whether these categories of prisoners are so much dangerous today as to “be shipped off to the back of beyond”. Terrorism proves to be more dangerous in terms of its distribution and consequences, and those convicted of these crimes should indeed serve their sentences in correctional institutions miles from anywhere.

Secondly, suppose such “bears’ nooks and corners’ have remained intact somewhere in our country, how much will it cost to build correctional institutions and keep these categories of citizens in custody there?

Thirdly, how would a scheme like this be assessed by international human rights bodies, especially the European Court of Human Rights (ECHR)? In its ruling on case No. 35090/09 dated March 7, 2017 “Polyakova and Others v. Russia”, the ECHR found Russia in violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the right to respect for family and private life) because the plaintiff had to serve time in geographical areas far away from the place of their family members’ residence. In this particular case, in passing its judgment in the interests of nine family members of the convicted persons the court recognized as a human rights violation the fact that the convicted person had to serve his time in the Krasnoyarsk Territory while the family lived in the Altai Territory. Accordingly, the Russian Federation was obliged to pay compensation to the convicted person’s family members. Will family members of economic and official criminals follow suit and claim similar compensation too?

The opposite point of view in relation to economic crime has been expressed by representatives of the business community and some human rights activists. Based on the experience of a number of foreign countries (USA, Great Britain and others), they propose to introduce private prisons for businessmen [2].

The subject of private prisons needs further examination as it appears highly promising on the surface of it but in reality, it proves to be hardly feasible at all given the current conditions of the Russian penitentiary system. We hope that we will be able to discuss the problem of private prisons as a separate issue in our journal at a later stage.

The third position is expressed in the traditional approach which sends such offenders to ordinary correctional institutions in accordance with current legislation. At the same time, its proponents expect white-collar criminals to be discouraged from repeating their wrongdoing by having them serve time in the company of the usual criminal element, which is characterized by criminal leanings and frequent aggressive behaviors.

The essence of this idea is quite simple: to assist the state in white-collar crime prevention (in the field of entrepreneurship and official misconduct) by involving the criminal environment of detention places. Those convicted of economic and malfeasance crimes are influenced in places of deprivation of liberty by criminally oriented, socially excluded, and often aggressively inclined types of inmates convicted of other crimes (against the person, public security, etc.). The criminal environment and its unwritten rules of conduct in prisons significantly aggravate the punitive content of the punishment for those convicted of economic crimes and official misconduct.

But is this position moral, how does it comply with the principles of the criminal and penal enforcement legislation? As Professor Yu. Antonyan reasonably remarks, if a court sentences a person only to a prison term, then why is it that the convict is forced to live ... in overcrowded conditions in an atmosphere full of mistrust and hostility? This scholar goes on to say that any

convicted person may be victimized and robbed there given the fact that informal antisocial and especially criminal groups exercise a strong control over the prison population, and the so-called “thieves in law” have a free hand [Antonyan Yu. M. (2017)].

As we can see, the proposed solutions in dealing with economic and official criminals are quite debatable, but what it is certain is that in modern conditions characterized by contradictions between the developing market economy and the inherent corruption of the state apparatus, the most important task is to further differentiate prisoners sentenced to imprisonment by separating those convicted of economic crimes and crimes of prevarication into a separate group.

How is it possible to make such a differentiation, especially one that takes into account every economic, political, social and spiritual factor? Differentiation that would have a sound scientific rational instead of ‘This-Is-What-We-Think’ assertions. As the first stage of solving the problem of differentiated and effective execution of punishment in the form of deprivation of liberty, it is advisable to work out a doctrinal model of imprisonment for those convicted for economic fraud (in the field of entrepreneurship) and official misconduct. Here are the reasons that make this model expedient.

Firstly, these categories of convicts differ from others in their socio-demographic, criminal law and criminal executive characteristics. As shown by the November 2009 Special Census of detainees and convicts serving their time in prison, people convicted for economic crime and criminal misconduct in office are more likely to have socially beneficial ties with their families and other socially positive surroundings. Those convicted of these crimes have higher educational qualifications in the field of general and vocational education. They typically possess professional experience in the field of economics and management. In addition, these convicts are characterized by stable positive behavior during the imprisonment and willingness to engage in steady professional work. Most of them have intellectual potential, which has enabled them, on the one

hand, to acquire certain economic capital and (or) to occupy certain heights in the state structure of society. On the other hand, this potential prevented them from properly assessing the risks of their criminal economic and official behavior, which can be partially accounted for by fast changing political, social and economic realities both at home and abroad.

Secondly, the interests of combating crime in general call for the need to create a doctrinal model for white-collar criminals serving time in prisons since the coalescence of economic, official and common crime in custody results in its further reproduction and replication at a new integrative and highly dangerous level. In today's places of deprivation of liberty, the criminal circles are clearly interested in getting the activities of correctional institutions under their control. Not infrequently do the activities of various kinds of "inmate bosses", "shot-callers" and other underworld leaders impede production work at places of deprivation of liberty, depriving convicts willing to work of their jobs, and their families of means of subsistence. Besides, the inmate bosses see those convicted for crimes in the economic sphere and misconduct in office as "money bags" for their comfortable existence in the prison and continued criminal activity. If viewed in the context of the economy as a whole, this may lead to further irreversible criminalization of business, which is fraught with negative consequences not only economically, but also politically and socially.

Thirdly, there is a great urgent need to create a doctrinal model for white-collar criminals serving time in prisons because the law's pattern of undifferentiated and mixed imprisonment of inmates is dangerous because of potential human rights violations in prison since this category, as practice shows, is subject to victimization by illegal actions of the prison staff, on the one hand, and continued criminal activities of other prisoners convicted of ordinary crimes, on the other hand.

Fourthly, the solution of this problem requires that the economic interests of the state in general and business in particular be served in the first place. The commission of an economic or malfeasance crime in economically and politically unstable society should not cancel the desire and ability of

convicts to use their higher professional level of development, their knowledge and intelligence to develop the country's economy and the production potential of the penitentiary system.

It can be most realistically hypothesized that the idea of this project is to keep convicts for economic crimes minus the above categories of inmates in detention centers separately from other categories, in other words they should be placed in separate correctional institutions.

The absence of counteraction from the common law criminal elements will help streamline an effective punitive-educational process that will help inmates work in a productive and creative way. Besides, keeping these inmates isolated from the rest of the convicts reinforces respect for human rights, the hallmark of any legal state. Imprisonment should ensure personal safety for the inmates and provide security for their existing assets, which would be too difficult to achieve in a “mixed form” of imprisonment.

An inherently dangerous downside for those convicted for economic crime and official misconduct is the broken social ties with their families during their imprisonment. However, it can be minimized by introducing technical means of communication (for example, video visits) into the modern penitentiary practice. In addition, as practice shows, this category of convicts and their families have a great financial potential to maintain their social relations.

In developing the above hypothesis, one should answer the question about whether it is admissible to introduce for this category of inmates a different order and conditions for serving imprisonment. For the sake of scientific objectivity and completeness of the study, it is necessary to consider three possible options for the imprisonment procedure and conditions for this category of convicts. Option One: the procedure and conditions should remain unchanged; Option Two: they should be tightened up, and Option Three: they should be loosened up.

To tackle this issue, one should proceed from the premise that the punitive content of a punishment in the form of imprisonment which implies some isolation from society cannot be subject to differentiation based on one's social and official status. This would go contrary to the principle that every citizen is equal before the law which is enshrined in Article 19 of the Constitution of the Russian Federation and is guaranteed in every respect including a citizen's social and official status. Differentiation in the use of the main instruments is necessary for different categories of convicts because Part 3 of Article 9 of the RF Penal Enforcement Code requires that remedies for convicted persons are to be applied by taking into account the type of punishment, the nature and degree of the public danger of the crime committed, the personality of convicted persons and their behavior. It is also quite possible to make differentiations in the creation of proper material and living conditions for various categories of convicts in prison.

Living conditions are excluded from the content of criminal punishment which is administered in the form of imprisonment, whereas Article 99 of the RF Penal Enforcement Code provides for minimum standards of living space, food and sanitary facilities per prisoner in prison establishments.

The preparation of the doctrinal model of imprisonment by those convicted of economic crimes should be based on a number of scientific studies on specific issues in order to help obtain scientifically reliable outcomes. We believe they should include among other things:

- a) An analytical review containing proposals based on the results of studying the domestic historical experience of white-collar criminals during their imprisonment.
- b) An analytical review containing proposals based on the results of studying the experience of white-collar criminals serving their imprisonment in the Russian correctional facilities.

- c) An analytical review containing proposals based on the results of studying the foreign experience of white-collar criminals serving their time in foreign correctional facilities.
- d) An analytical review and proposals based on the results of studying international legal documents and standards for treating persons sentenced to imprisonment, the legal positions of the European Court of Human Rights and the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).
- e) An analytical review containing proposals based on the results of examining the norms of the Constitution of the Russian Federation, the legal positions of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the practice of courts of general jurisdiction, as well as the norms of federal legislation governing the sentencing and execution of criminal punishment in the form of imprisonment.

Accordingly, the findings of such a scientific study should be based on the results of examining public, professional and expert opinions on the possibility of differentiating the conditions and procedure for imprisonment for those convicted for economic crimes.

If necessary, proposals should be prepared for creating public, professional and expert opinions in favor of the implementation of the project. It is also necessary to conduct polls among convicts serving criminal sentences in the form of imprisonment for committing economic offences and crimes of misconduct in office.

CONCLUSIONS.

The proposed scientifically based doctrinal model of imprisonment for those convicted for economic crimes should include a set of measures to adjust the criminal and penal enforcement policies of the Russian Federation with respect to the above category of convicts, to amend the norms of the Criminal Code of the Russian Federation, to introduce changes in the norms of the Penal Enforcement Code of the Russian Federation, to improve the practice of enforcing

punishment and correcting those convicted of economic crimes, and to form a positive public, professional and expert opinion in relation to the project.

It would be advisable to discuss this model at some scientific forums, to have it printed in the form of a separate scientific publication and submit it to the state authorities, including the legislators, for consideration.

Accordingly, this research activity should be followed up by media coverage, including the Internet and periodical scientific publications. The possibility of conducting such a scientific study was discussed in 2016–2017 at the Tkashevsky Research and Education Center (REC) “Problems of Penal Enforcement Law”, the Law Faculty of Moscow State University [4].

In May 2017, the REC began to implement this project and develop a scientific and theoretical model concerning those who serve time in places of the deprivation of liberty after being convicted for economic and malfeasance crimes.

Conflict of interest.

The authors confirm the absence of a conflict of interest.

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