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Azhibayev M. G.**Ажибаев М. Г.****REFORMATION ISSUES OF THE PENAL SYSTEM
IN THE REPUBLIC OF KAZAKHSTAN****ВОПРОСЫ РЕФОРМИРОВАНИЯ УГОЛОВНО-
ИСПОЛНИТЕЛЬНОЙ СИСТЕМЫ РЕСПУБЛИКИ КАЗАХСТАН**

Abstract. The article is devoted to the experience of the Republic of Kazakhstan in reforming the penal system by transferring it from the law enforcement to the civil block. Taking into account the world experience, the transfer of the penal system to a non-law enforcement structure, including one based on public-private partnership, seemed to be the most promising direction of the planned reform to humanize the domestic penal legislation. The main idea was that a Civil Agency, not associated with the tasks of protecting public order and fighting crime, will be able to ensure the planned implementation of the state policy on reforming the penal system. In 2002, correctional facilities were fully transferred to the Ministry of Justice of the Republic of Kazakhstan. But the events that took place further (a number of armed escapes with human victims) actually showed that the Ministry of Justice of the Republic of Kazakhstan did not cope with the task assigned to it, and the goal of reforming the penitentiary system was not achieved. By decree of the President of the Republic of Kazakhstan (adopted on 26.07.2011) “On the penitentiary system”, the penal system was again transferred to the Ministry of Internal Affairs of the Republic of Kazakhstan. Today, the penal system in Kazakhstan actually operates autonomously in the system of the Ministry of Internal Affairs, not subordinate to other services and departments. At the same time, according to the author, the transfer of the penal system to a Civil Agency will make it possible to increase the openness of this institution. In addition, this step will provide access to the real situation of human rights in places of detention for the public and supervisory authorities. However, domestic and foreign experience shows that the transfer of the penal system to civil departments, its isolation as a separate body does not guarantee its deep humanization and effective system reforms. Being inside the civil department, it actually continues to work on previously established practices, limiting it with cosmetic changes. Therefore, if the purpose of transferring the penal system or its divisions to other bodies is to comply with international standards and reduce criticism of human rights organizations, then this should not be done without a high-quality study. Based on the research, the author comes to the conclusion that in order to implement reforms

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in the penal system of the Republic of Kazakhstan, it is necessary to: 1) to develop a single comprehensive scientific and practical approach when reforming the penal system; 2) to conduct a qualitative study of the risks that may be associated with decisions taken within the framework of the reform; 3) implementation of foreign and international experience should be carried out only taking into account the specifics of national legislation and the structure of the state's law enforcement system.

Keywords: Republic of Kazakhstan, penal enforcement system, reformation of the penitentiary system, humanization of the execution of sentences, penitentiary legislation.

Аннотация. В статье освещается опыт Республики Казахстан по реформированию уголовно-исполнительной системы (УИС) путем передачи из правоохранительного блока в гражданский. С учетом мирового опыта передача УИС в правоохранительную структуру, в том числе основанную на государственно-частном партнерстве, казалась наиболее перспективным направлением запланированной реформы по гуманизации отечественного уголовно-исполнительного законодательства. Основная идея заключалась в том, что гражданское ведомство, не связанное с решением задач по охране общественного порядка и борьбы с преступностью, сможет обеспечить запланированную реализацию государственной политики по реформированию системы исполнения наказаний. В 2002 г. исправительные учреждения полностью были переданы в Министерство юстиции Республики Казахстан. Но произошедшие далее события (ряд вооруженных побегов с человеческими жертвами) фактически показали, что Министерство юстиции Республики Казахстан с возложенной на него задачей не справилось, а сама цель реформирования пенитенциарной системы не была достигнута. Указом Президента Республики Казахстан от 26 июля 2011 г. «О пенитенциарной системе» УИС вновь была передана в МВД Республики Казахстан. Сегодня УИС в Казахстане фактически действует автономно в системе Министерства внутренних дел, не подчиняясь другим службам и ведомствам. Вместе с тем, по мнению автора, перевод УИС в гражданское ведомство даст возможность повысить открытость данного института. Кроме того, данный шаг обеспечит доступ к реальной ситуации с соблюдением прав человека в местах лишения свободы для общества и надзорных органов. Однако отечественный и зарубежный опыт показывает, что сама по себе передача тюремной системы в гражданские ведомства, выделение ее как обособленного органа не гарантируют ее глубинную гуманизацию и эффективные системные реформы. Находясь внутри гражданского ведомства, она фактически продолжает работать по ранее наработанной практике, ограничившись лишь косметическими преобразованиями. В силу этого в случае если целью передачи УИС или ее подразделений в другие органы является желание соответствовать международным стандартам и снизить критику правозащитных организаций, то делать этого без качественной проработки не следует. На основании проведенного исследования автор приходит к выводу о том, что для проведения реформ в системе УИС Республики Казахстан необходимо: 1) выработать единый комплексный научный и практический подход при реформировании системы исполнения наказаний; 2) провести качественную проработку рисков, которые могут нести в себе решения, принимаемые в рамках реформы; 3) внедрение зарубежного и международного опыта проводить только с учетом особенностей национального законодательства и структуры правоохранительной системы государства.

Ключевые слова: Республика Казахстан, уголовно-исполнительная система, реформирование пенитенциарной системы, гуманизация исполнения наказаний, пенитенциарное законодательство.

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In August 2000 Head of state N. A. Nazarbaev instructed the Government to transfer the penal system from the Ministry of Internal Affairs to the Ministry of Justice of the Republic of Kazakhstan. This decision was a logical continuation of the implementation of the State program of legal reform in the Republic of Kazakhstan, approved by the decree of the President of the Republic of Kazakhstan on 12.02.1994 No. 1569. In particular, the specified program includes: “Consider other measures to exempt the Ministry of Internal Affairs from functions that are not related to the protection of public order, investigation and inquiry, and prevention of offenses”. The main goals pursued by the transfer of the penal system to a Civil Agency were:

1) separation of the functions of criminal prosecution and criminal penalties execution;

2) improving the legal protection of convicts, more complete realization of their rights and legitimate interests;

3) implementation of international norms and standards for the treatment of prisoners in national legislation;

4) demilitarization of the penal system (‘the Penal system of the Republic of Kazakhstan 2000–2008: current state and prospects of development: analytical report’ 2008).

Taking into account the world experience, the transfer of the penal system to a non-law enforcement structure, including one based on public-private partnership, seemed to be the most promising direction of the planned reform to humanize the domestic penal legislation. The main idea was that a Civil Agency that is not involved in the tasks of protecting public order and fighting crime will be able to ensure the planned implementation of the state policy on reforming the penal system. In 2002, correctional institutions were fully transferred to the Ministry of Justice of the Republic of Kazakhstan as the Agency responsible for the formation of National legislation. At the same time, units of the internal troops remained part of the Ministry of Internal Affairs of the Republic of Kazakhstan.

According to E. Salamatov (2018), in the sphere of organization of the penal system, the internal troops and the penal system are a single organism that cannot be torn into two parts. As a result of this fragmentation, a number of high-profile escapes of armed prisoners swept through the country, which revealed a number of systemic problems and mistakes made during the implementation of this reform. For example, in Aktau on June 22, 2010, more than 20 convicts escaped, weapons were delivered to the territory of a high-security colony for 10 thousand tenge. In Balkhash on the night of 11.07.2011, 12 prisoners of the AK-159/21 facility armed with cold weapons and firearms tried to escape. As a result, two employees of the penal system were stabbed and four were shot. One of them died. The criminals took refuge in the industrial zone of the colony, where they committed a self-explosion. As it was established during the investigation, weapons and ammunition were hidden in the sleepers that were brought to the territory of the colony shortly before the incident. Employees of the colony missed the cargo, despite the fact that no construction work was carried out in the institution at that time (Chaus, Yu. 2011).

The events actually showed that the Ministry of Justice of the Republic of Kazakhstan failed with its task, and the goal of prison reform was not achieved. Taking into account the results of the reform, the Head of state on 26.07.2011 by his decree “on the penitentiary system” again returned the penal system to the Ministry of Internal Affairs of the Republic of Kazakhstan. “The transfer of the UIS to the Ministry of justice is a mistake. We got ahead of ourselves: we transferred the correctional system from the Ministry of internal Affairs to the Ministry of justice. Everyone tried to persuade us all over the world. And what did we get? A complete disgrace! Weapons, sharpeners, drugs, and anything else are taken out of places of detention by KAMAZ Trucks!”, said N. A. Nazarbaev at a joint session of the Chambers of Parliament on 01.10.2011.

“Before going to any new developments, all our comrades who are concerned about these reforms should think very hard and check,” the First President concluded (Mukanov, B. 2011).

In his speech at the Government meeting on 25.09.2017, the Minister of Internal Affairs, K. Kasymov pointed out the reasons for this decision: “the operational situation in the colonies and pre-trial detention centers was extremely tense. Numerous cases of group disobedience of convicts to the legal requirements of colony employees, virtually free trafficking of drugs, cold weapons, self-harm and other violations of the regime – all this took place in the vast majority of colonies. Serious crimes became more frequent in the colonies, attacks on supervisors were allowed, there was a dangerous trend of merging criminality with religious extremism, attempts were made to recruit new supporters from among prisoners by religious radicals” (“Kalmukhanbet Kasymov “defeated” the Ministry of Justice in his story about the colonies’ 2017).

A coalition of Kazakhstan non-governmental human rights organizations expressed their disagreement with the decision to return the penal system to the system of the Ministry of Internal Affairs of the Republic of Kazakhstan, arguing that it contradicts Kazakhstan’s intentions to bring the system of criminal penalties execution to generally recognized international standards, stated in the Concept of the state’s legal policy for the period 2010-2020. According to the executive Director of the center for legal policy research N. Ergaliev, the presence of the penal system in the hands of the police is one of the essential features of the police state (Toguzbaev, K. 2011). According to international standards, our prison system is characterized as repressive and inhumane because it is located inside the Ministry of Internal Affairs. The same rating is given to prisons in Belarus, Turkmenistan and Uzbekistan because of their departmental affiliation with the Ministry of Internal Affairs.

Turning to the experience of other countries, the experience of Ukraine and Kyrgyzstan

should be highlighted. In Ukraine, in 2010, when the system of penitentiary institutions was reformed, it was removed from the Ministry of Internal Affairs by creating the State penitentiary service of Ukraine, and in 2017 it was transferred to the Ministry of Justice. In Kyrgyzstan, the reform of the penal system was carried out in the reverse order. In 2002 the penitentiary system was transferred to the Ministry of Justice, and in 2009 an independent department was created on its basis – the State penitentiary service under the government of the Kyrgyz Republic. These countries have implemented this reform by transferring not only the correctional facilities themselves, but also the relevant law enforcement units. At the same time, there are a lot of materials on the Internet about torture in correctional institutions in Ukraine and Kyrgyzstan, riots and other acts of mass disobedience on the part of prisoners, the influence of various criminal elements on the atmosphere of law enforcement in institutions, the behavior of convicts both inside and outside correctional institutions. Thus, the strategy of reformation by transferring from one department to another does not always have a positive effect.

The strategy, according to N. A. Andreev and V. B. Korobov (2013, p. 69), is a system of management decisions aimed at implementing the mission of law enforcement entities and their organizations, its transformation into a new qualitative state. In some foreign countries (e.g. Austria, Belgium, Germany, Denmark, France, USA) the Ministry of Justice includes not only the prison system, but also prosecutors, police, courts. At the same time, being inside the Ministry of Justice, prisons are not subordinate to the police and have an equal status with all these departments.

Today, the penal system in Kazakhstan actually operates autonomously in the system of the Ministry of Internal Affairs, not subordinating to other services and departments. In this regard, the reform of the penal system should be accompanied by its transfer as a separate division of the Internal Affairs bodies to the

Ministry of Justice or the separation of the penal system as an independent body in a comprehensive manner, with all services (including medical), weapons and equipment, while maintaining the status and benefits for all the staff of the penal system, reforming the entire law enforcement and judicial system, and modernizing current legislation with an emphasis on national legal features.

Since 2019, the issue of transferring the penal system's medical services to civilian medical institutions is being discussed at the government level. The study of international practice on this issue has shown that there are various models of providing medical care to the penal system in the world. For example, in the CIS countries, Asia and some European countries (Ireland, Albania), the departmental model is successfully applied, when the medical staff of correctional institutions is located in the state of the institution, under the control of the penal system. In Norway, England, France, Australia, Spain, and Scotland, third-party organizations provide medical care to convicts. In the United States, there is a mixed system, when along with regular staff, commercial medical organizations provide medical care to prisoners on the basis of a contract with a correctional institution. In Russia, the prison medical service was divided into separate medical and sanitary units under the regional departments of the Federal penitentiary service of Russia.

According to the regional Director of the penal reform international (PRI) in Central Asia, A. Shambilov: "The transfer of medical services to the civil department of the penal system is necessary, because prison officers are employees of the penitentiary service, they cannot be responsible for health management. They cannot know certain diseases that appear in society and exist in places of liberty deprivation" (Nurseitova, T. & Shambilov, A. 2017). In turn, at a meeting with doctors of the penal system in August 2019, the Minister of Health of Kazakhstan Ye. Birtanov noted that this issue needs to be approached thoughtfully

and carefully. According to the opinion of the medical services staff, expressed during the meeting with the Minister, in the case of transfer, there are risks of personnel shortage of specialists.

The conditions of professional activity of medical workers in the penal system have qualitative differences from the conditions of work in civilian hospitals and polyclinics. In particular, they have to perform their duties in compliance with the regime requirements inherent in places of liberty deprivation, often experiencing a sense of danger and insecurity due to the presence of a special contingent that they serve. Often their places of residence, due to the specificity of correctional institutions, are located far from large localities. As the materials studied on this issue show that penitentiary health care in general is characterized by a shortage of specialist doctors who are well paid in civil health care. The existing medical staff actually performs the work of several related specialists. This activity is practically not compensated by material or non-material motivational measures. In addition, speaking about the problem of doctors shortage and qualified medical workers, it is worth noting that in the civil sphere there is an acute shortage of them. Thus, the number of general practitioners in Kazakhstan is only 0.28 per thousand people, while the average figure, for example, for the Organization for economic cooperation and development (OECD) is 0.72 (according to the report of this organization published last year). The share of primary health care doctors from the total number of doctors in Kazakhstan is 7–16%, which is lower than the OECD average of 32%. (Veber, E. 2019).

In this regard, the transfer of medical services of the penal system to the health authorities will carry an additional burden on civilian doctors. If there is a personnel shortage in the field of medicine in general, such a step will not give the expected positive effect, but on the contrary may worsen the situation with medical care at all levels. As Professor V. N. Uvarov rightly pointed out: "In the law

enforcement system, it is character that the result of the impact of the law enforcement function of the state on public relations has a generalizing, summary character and is evaluated from the point of view of the interests of the individual, society and the state” (Uvarov, V. N. & Uvarova-Patenko, R. V. 2019, p. 403).

Without prior training and sufficient personnel, penitentiary medicine will be lost as an institution of penal correction, which will consequently lead to even more violations of convicts’ rights to receive medical care. As a solution, it is proposed to work out at the government level, first of all, the issue of attracting medical specialists to the penitentiary system by increasing wages and providing various benefits. At the same time, the fact that the medical services of the penal system are dependent on the administration of institutions contributes to providing false information about the facts of torture and the level of violence in the institution. The transition to a Civil Agency, we believe, will make it possible to increase the openness of this institution and will help reduce these facts. In addition, this step will provide access to the real situation of human rights in places of detention for the Public and Supervisory authorities.

At the same time, domestic and foreign experience shows that the mere transfer of the prison system to civil departments, its isolation as a separate body, does not guarantee its deep humanization and effective system reforms. Being inside the civil department, it actually continues to work according to the previously established practice, limiting itself only to cosmetic transformations. Therefore, if the purpose of transferring the penal system or its divisions to other bodies is to comply with international standards and reduce criticism of human rights organizations, then this should not be done without a high-quality study.

As President of the Republic of Kazakhstan K. K. Tokaev noted in his message to the people of Kazakhstan 02.09.2019: “Reforms will not be carried out for the sake of reform”. This approach is certainly justified. Thus, to

implement reforms in the penal system of the Republic of Kazakhstan, it is necessary:

1) to develop a unified comprehensive scientific and practical approach to the reform of the penitentiary system;

2) to conduct a qualitative study of the risks that may be associated with decisions taken within the framework of the reform;

3) to implement foreign and international experience, but it should be carried out only taking into account the specifics of national legislation and the structure of the state’s law enforcement system.

References

‘Penal system of the Republic of Kazakhstan 2000–2008: current state and prospects of development: analytical report’ 2008, *Center for legal policy research*, 14 August, viewed 2 September 2020, https://online.zakon.kz/Document/?doc_id=30380514#pos=312;-28.

Salamatov, E. 2018, ‘Should the prison system be transferred to the Ministry of Justice?’, *TENGRINEWS*, 23 October, viewed 2 September 2020, <https://tengrinews.kz/opinion/-peredavat-li-tyuremnuyu-sistemu-v-minyust-797/>.

Chaus, Yu. 2011, ‘In Balkhash 12 prisoners of one of the colonies tried to escape’, *TV channel “KTK”*, 17 July, viewed 2 September 2020, <https://www.ktk.kz/ru/news/video/2011/07/11/13262/>.

Mukanov, B. 2011, ‘Penal system of Kazakhstan: a return from “sanatoriums” to prisons?’, *The Kazakh Telegraph Agency*, 16 September, viewed 2 September 2020, <https://kaztag.kz/ru/content/ugolovno-ispravitelnaya-sistema-kazakhstanana-vozvratot-sanatoriev-k-tyurmam>.

‘Kalmukhanbet Kasymov “defeated” the Ministry of justice in his story about the colonies’ 2017, *“Total Kazakhstan” News agency*, 25 Septmber, viewed 2 September 2020, https://total.kz/ru/news/vnutrennyaya_politika/kalmuhanbet_kasimov_razgromil_minust_v_svoem_rasskaze_o_koloniyah_date_2017_09_25_11_28_40.

Toguzbaev, K. 2011, 'Transferring prisons to the MIA is a sign of a police state', *Radio "AZATTYK"*, 9 August, viewed 2 September 2020, <https://cdn.penalreform.org/wp-content/uploads/2013/05/Kazakhstan-media-coverage.pdf>.

Andreev, N. A. & Korobov, V. B. 2013, *Strategic management in law enforcement sphere*, UNITY-DANA, Moscow.

Nurseitova, T. & Shambilov, A. 2017, 'We are against private prisons. All prisons must be transferred to the government', *Online publications «Zakon.kz»*, 4 April, viewed 2 September 2020, <https://www.zakon.kz/4851929-azamat-shambilov-my-protiv-chastnykh.html>.

Veber, E. 2019, 'The deficit is huge. The regions are looking for doctors', *Radio "AZATTYK"*, 9 July, viewed 2 September 2020, <https://rus.azattyq.org/a/kazakhstan-regions-are-in-desperate-need-of-doctors/30043615.html>.

Uvarov, V. N. & Uvarova-Patenko, R. V. 2019, *Law enforcement function of the state*, Almaty.

Библиографический список

Уголовно-исполнительная система Республики Казахстан 2000–2008 гг.: современное состояние и перспективы развития : аналитический доклад // Центр исследования правовой политики. 2008. 14 авг. URL: https://online.zakon.kz/Document/?doc_id=30380514#pos=312;-28 (дата обращения: 02.09.2020).

Саламатов Е. Передавать ли тюремную систему в Минюст? // TENGRI NEWS. 2018. 23 окт. URL: <https://tengrinews.kz/opinion/-peredavat-li-tyuremnuyu-sistemu-v-minyust-797/> (дата обращения: 02.09.2020).

Чаус Ю. В Балхаше 12 заключенных одной из колоний попытались бежать // Телеканал «КТК». 2011. 17 июля. URL: www.ktk.kz/ru/news/video/2011/07/11/13262/ (дата обращения: 02.09.2020).

Муқанов Б. Уголовно-исправительная система Казахстана: возврат от «санаториев» к тюрьмам? // Казахское телеграфное агентство. 2011. 16 сент. URL: <https://kaztag.kz/ru/content/ugolovno-ispravitel'naya-sistema-kazakhstan-vozvrat-ot-sanatoriev-k-tyurmat> (дата обращения: 02.09.2020).

Калмуханбет Касымов «разгромил» Минюст в своем рассказе о колониях // Информационное агентство «Тотал Казахстан». 2017. 25 сент. URL: https://total.kz/ru/news/vnutrennyaya_politika/kalmuhanbet_kasimov_razgromil_minust_v_svoem_rasskaze_o_koloniyah_date_2017_09_25_11_28_40 (дата обращения: 02.09.2020).

Тогузбаев К. Передача тюрем в МВД – признак полицейского государства // Радио «АЗАТТЫК». 2011. 9 авг. URL: <https://cdn.penalreform.org/wp-content/uploads/2013/05/Kazakhstan-media-coverage.pdf> (дата обращения: 02.09.2020).

Андреев Н. А., Коробов В. Б. Стратегическое управление в правоохранительной сфере : учеб. пособие. М. : ЮНИТИ-ДАНА, 2013. 359 с.

Нурсейтова Т., Шамбиллов А. Мы против частных тюрем. Все тюрьмы необходимо передать в правительство // СИ «Zakon.kz». 2017. 4 апр. URL: <https://www.zakon.kz/4851929-azamat-shambilov-my-protiv-chastnykh.html> (дата обращения: 02.09.2020).

Вебер Е. Дефицит громадный. В регионах ищут врачей // Радио «АЗАТТЫК». 2019. 9 июля. URL: <https://rus.azattyq.org/a/kazakhstan-regions-are-in-desperate-need-of-doctors/30043615.html> (дата обращения: 02.09.2020).

Уваров В. Н., Уварова-Патенко Р. В. Правоохранительная функция государства : учеб. пособие. Алматы, 2019. 460 с.