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"Global Challenges and Prospects of the Modern Economic Development"****PUBLIC-PRIVATE PARTNERSHIP IN THE PENITENTIARY
SPHERE: ECONOMIC ASPECTS OF LAW ENFORCEMENT
ACTIVITY**

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Abstract

The article presents the results of the research of problems and prospects of public-private partnership implementation in modern economic conditions. The urgency of this problem is determined by the need to ensure the economic security of the national penitentiary system and improve the efficiency of its activities including the economic sphere. Economic conditions of Russian penitentiary system's functioning were investigated. The methodological basis for the work is presented by modern ideas and concepts related to the positive impact of private business initiatives on the activities of national penitentiary systems. Foreign experience of organization and functioning of private prisons is analyzed. Shortcomings in economic activity of correctional institutions and corruption risks of private prisons institute application on further development of penitentiary systems are noted. The possibilities of effective development of public-private partnership in the production activities of correctional institutions, as well as the positive impact of private production initiatives on the growth of employment and productivity of convicts in correctional facilities are substantiated. The interrelation between the processes of ensuring public security in the penitentiary sphere and national economic security is substantiated. The influence of private industrial initiative on correctional institutions in the processes of national economic security ensuring is determined.

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Keywords: Public-private partnership, economic security, convicts' labor organization, labor productivity, penitentiary system.



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1. Introduction

The problems of public-private partnership in the penitentiary sphere is an issue that has been in the focus of organizational, economic and legal studies during a long period. This is largely determined by the objective need to intensify the processes of public participation in all areas of penitentiary activities at all stages of its development. For a number of objective reasons, prison systems of the vast majority of countries are quite closed from the influence of civil society, which is largely determined by the issues of public security. However, the objective need to strengthen the influence of public institutions and use the advantages of business structures (primarily in the projects of production organization and labor adaptation of convicts) in the development of national penitentiary systems – require improvement of existing approaches to solving the most acute problems in the studied area.

2. Problem Statement

Objectivity of the needs in the organization and development of public-private partnership of Russian penitentiary system with private business structures and public is determined by repeated official statements of Federal penitentiary service of Russia (hereinafter FPS of Russia) administration and the high frequency of the relevant representational activities with a wide involvement of all possible participants. The high depreciation and obsolescence of fixed assets in the centers of labor adaptation, as well as the low competitiveness of existing industries determine the low employment of convicts in correctional facilities, which respectively actualizes the issues of attracting private business structures to the problems of organization of convicts' labor. At the same time, there is a high public demand for openness of the penitentiary system, the broad participation of civil society in its activities and to create conditions for a corresponding increase of all indicators of efficiency (both economic and criminological) of the system that is under study.

3. Research Questions

In the framework of this study, the public-private partnership in the field of execution of criminal penalties is considered by us in the broadest sense and includes the problems of public participation in the processes of ensuring respect for human rights in penitentiary institutions; issues of possible participation of private business structures in penitentiary activities; partnership projects in the field of production and convicts' labor adaptation. Given the complex nature of the studied phenomenon, in our view, the most urgent task of this work is a comparative analysis and study of the experience of public-private partnerships organization in correctional institutions and study of economic preconditions of the researched procedures implementation in Russian law-enforcement practice. Special attention should also be paid to the search of objective opportunities for the implementation of public-private partnership procedures in the field of execution of criminal penalties.

4. Purpose of the Study

The main purpose of the research work, the result of which is presented in this article is to determine the existing opportunities for expanding the practice of public-private partnership procedures in the Russian penitentiary system. Among the main tasks, the solution of which determines the achievement of the purpose should include comparative legal research and identification of risks for economic security. Consistent solution of these problems determined the achievement of the research purpose.

5. Research Methods

The research is based on modern developments in the field of criminology (Koryakin, 2017), economics (Devine-Wright, Baybutt, & Meek, 2019), management (Hennebel, Simper, & Verschelde, 2017), technology of penitentiary production (Death & Horan, 2018) and organization of convicts' labor (Simioni, 2019). The work took into account the experience of organizing food self-sufficiency in penitentiary institutions (Bejarano-Roncancio, Celedón-Dangond, & Socha-Gracia, 2015), as well as the possibility of creating new types of correctional institutions (Gilmer & Comerford, 2019). The work also takes into account modern views on the differentiation of persons held in penitentiary institutions in the context of public-private partnership projects (Nieminen, 2019), as well as the ideas of modern researchers in the field of increasing public influence on national prison systems. The work is based on the use of a systematic approach, which was used to combine the methods of analysis, synthesis, induction and deduction. The method of comparative legal analysis was also applied. The information base of the study is presented by the official statistical data of the FPS of Russia.

6. Findings

As of September 2019, more than 460 thousand people are serving sentences of imprisonment in more than 1000 Russian penitentiary institutions. More than 500 thousand people are serving suspended sentences and are under record in penitentiary inspections. About 57% of those sentenced to imprisonment serve terms of 3-10 years. The dynamics of the number of persons sentenced to imprisonment serving sentences for the second or more times indicates an increase in the number of recidivists in the structure of the persons' contingent held in penitentiaries.

At the same time, official statistics data on the employment of convicted persons testify to their insufficient level of provision of jobs. No more than 40% of incarcerated convicts are consistently placed in paid jobs. Presented indicators initially determine the low level of effectiveness of corrective measures applied to convicts. In our opinion, this largely applies to their involvement in socially useful work. The existing models of convicts' attracting to work and the characteristics of the objects of organization of penitentiary production do not allow to fully ensure the effective correction of criminals brought to justice.

It should be noted that in modern conditions, there are significant difficulties in the food and logistical support of the penitentiary institutions. The production sector of the penitentiary system weakly compensates the costs of convicts' maintenance, and the level of production organization does not allow to perform the entire amount of work to meet their own food needs of the institutions of the penitentiary

system. It should also be mentioned that the production sector of the penitentiary system is not able to provide simple reproduction of fixed assets, which has a corresponding impact on the processes of convicts' labor organization.

Thus, the problem of convicts' labor organization is not only legal, but also economic. The economic and legal nature of the studied problems is also determined by the fact that the FPS of Russia, being the main operator of national penitentiary system, is one of the main consumers of budgetary funds. Russian penitentiary system is a large-scale economic system that unites the interests and mediates social relations of more than 1 mln convicts and persons under investigation, as well as 220 thousand employees. Sustainable functioning and optimum of the studied economic system largely determines the parameters of the implementation of those law enforcement functions of the state, which are defined as profile for the FPS of Russia. Thus, the implementation of state law enforcement functions in the field of execution of criminal penalties, to a large extent involves the solution of a number of economic problems.

The growth of recidivism and the number of convicts with criminal experience indicate a decrease in the level of correctional impact of the national penitentiary system. In this regard, it is necessary to analyze foreign experience in the application of public-private partnership procedures and determine the possibilities of its adaptation to the use in Russian conditions.

One of the most controversial areas of interaction between the state and non-state structures – private prisons is worth to be considered in detail. Modern science refutes the well-established opinion about the impossibility of partnership between the penitentiary system and the market (Kristi, 2011). This type of partnership assumes that the state does not connect to private business projects, but, on the contrary, the state invites business to participate in the implementation of socially significant projects. In different countries, the above type of public-private partnership has been used for a long time and the forms of this interaction are very diverse. Thus, in the United States, the history of private prisons organization starts since the second half of the XIX century – after the Civil war. African-American prisoners were sent to work for entrepreneurs and planters. Working conditions were almost slave and at the beginning of the XX century this practice was curtailed. The revival of the institution of private prisons, naturally with more humane conditions, has been going on since the 80s.

The active privatization of prisons in the United States, observed in the 1980s under R. Reagan and G. Bush Sr., reached its peak under President B. Clinton. In connection with Clinton's legislative initiative aimed at reducing the number of Federal employees, contracts with private prison corporations began to be concluded for the detention of undocumented persons and especially dangerous criminals" (Timofeeva, 2018, p. 270).

At the same time, the largest private companies providing services in the field of penitentiary activity in the United States are the Corrections Corporation of America, GEO Group (formerly Wackenhut corrections Corporation). These two companies control up to 75% of private services in the field of penitentiary activity in the United States" (Smorgunova, 2007). Government sets standards for the detention of prisoners, the observance of which is checked by state inspectors in private prisons. It should be noted the economic profitability of such institutions in the United States, which is associated with the effective use of

prisoners' labor. The USA prison industry produces: 100% of individual military ammunition, military helmets, uniform belts, body armor, identification cards, shirts, trousers, tents, backpacks and flasks; 98% of installation tools... etc. (Timofeeva, 2018). At the same time, the proportion of prisoners held in private prisons is not currently prevailing-approximately 9-20% of the total (figures vary by state).

In the UK, private prisons have existed since 1992, and they are run by security companies. The local authorities act of 1991 established the principles for the construction and operation of new prisons with the involvement of private capital in order to eliminate the congestion of existing penitentiaries. A contract is concluded between the municipality and a private company under which the company manages the prison on a daily basis, and this contract may be terminated if any of its conditions are violated or if the government's policy in this area changes. The Director of the prison is appointed by a private company, he is responsible for its operation, provides the necessary security measures and cooperates with various organizations and local authorities. Such penitentiary institutions are under the control of the Prisons Department of the Ministry of internal Affairs (Yezhevsky, 2005). As for parts of the UK, there are two prisons in Scotland which are run by private sector operator Serco. In England and in Wales, in 1992, with the participation of the world's leading company in this area, G4S, a private prison Woolds was opened (in 2013 it was transferred to the public sector). There are currently 14 private prisons (one of which is run by Her Majesty's Prison service), including Europe's largest women's prison, Bronzefield. In addition to G4S (five prisons), the main private operators are Sodexo Justice Services (five prisons) and Serco (four prisons) (Teplyashin, 2017). There are no private prisons in Northern Ireland nor in the Republic of Ireland.

Since the end of the XX century, France has had prisons with public-private (delegated) management, in a form that might have been most appropriate for the conditions of post-totalitarian reality in a number of countries. Since 1984, the "13 000" program has been implemented in France. As part of this program, 25 new penitentiary institutions for 12,850 inmates were built. The essence of this program is that the construction of new prisons, their operation, the organization of production activities of convicts are engaged in private firms. They also provide food for convicts, as well as their professional training, etc. the Participation of the state in such prisons is reduced to ensure safety and security, various integration processes... the entire administration of such "private" prisons consists entirely of public servants" (Sleptsov, 2009). One of the main results of the delegated administration was the reduction of prison costs by 10-15% while maintaining the high quality of services provided by private companies, compared with public ones. Also, the delegated administration gave an opportunity for the management of the penitentiary institution to focus its efforts on the functions of management and execution of sentences (Timofeeva, 2018). Private prisons also exist in Australia, Canada, Sweden and a number of other States.

However, not all developed countries supported the introduction of the researched institution – such a state, in particular, is Israel. Adopted in 2004, the rule on the admission of private prisons in 2009 was recognized by the Supreme court contrary to the Constitution. One of the basic legal principles in Israel is that the right to use violence and, in particular, the right to enforce criminal law by putting people behind bars is one of the basic powers of the state. Thus, the transfer of the right to hold people in custody into the hands of a private company with a view to making a profit deprives the detention itself of a fair share of legitimacy.

It can be noted that the proportions of participation between the parties "state" and "private partner" differ, as well as its functional content. The state may involve private organizations as an "auxiliary force", but it can also give them at the mercy of most of the functions, retaining mainly control and Supervisory. It can assign a private partner to perform the functions of protection, which was traditionally previously the task of the state power structures, and use the partner organization as an employer (which is more typical of business) for prisoners.

In general, the prospects for the introduction of such practices should be evaluated positively, of course with a number of conditions. According to Timofeeva (2018) "... the advantages of private prisons for the state is that they reduce the overall financial burden on the prison system and improve the quality of its functioning ..." (p. 268). It is important that in foreign practice of private contractors' attracting, special preferential tax regimes are often applied. That allow to reduce production costs due to benefits on contributions to social funds (pension, insurance, etc.), which accordingly increases the competitiveness of production in correctional facilities (Smith, 2015). However, there are certain risks. First of all, they relate to the problem of corruption. "There are suggestions that each prisoner will be treated by the prison administration solely as a "future profit", in connection with this there may be corrupt interaction with judges... judges may impose more convictions for longer terms. Thus, the creation of private prisons can not only provoke new corruption flows, but also distort the very purpose of the prison as a correctional institution: prison owners will be interested in more prisoners, as their work will bring the main profit for the prison (Timofeeva, 2018).

Note that the practice of using the Institute of private prisons is not common in all the United States. In some States, there is a ban on the establishment of such penitentiaries. Private prisons are associated with significant corruption risks, which are determined by the interest of the judiciary to impose as many convictions with a penalty of imprisonment as possible. At the same time, this interest determines higher terms of serving the sentence. Conflict of interest is generated by lobbying the private prison business of its activities in the American courts.

The high corruption risk of private initiative in the sphere of execution of punishments has a destructive impact on economic security and increases social tension in society. The most promising projects of public-private partnership in terms of strengthening national economic security and improving law enforcement in the penitentiary sphere is an organic union of private business initiative and the production sector of the penitentiary system. Conditionally, we can talk about such a formula as private production and the state regime. In this case, it is possible to combine the production capacity of private contractors and the needs of the penitentiary Department to create new jobs. This formula makes it possible to ensure reliable protection of human rights in places of detention, as well as to increase the level of correctional impact of the means of correction used.

7. Conclusion

Foreign experience in the application of public-private partnership in national penitentiary systems shows that the development of this legal institution has led to the replication of the practice of creating private prisons. It should be noted that this business acquires a transnational character and it has a negative impact on corruption processes in a number of countries. In this situation, it is necessary to

speak about the need to protect the national economic system, public and economic security systems from uncontrolled development of private initiatives in the business sphere. The practice of public-private partnership should be associated with detailed anti-corruption expertise and involve an assessment of economic security risks. Thus public-private partnerships reduce infrastructure costs, stimulate private investment and reduce public spending.

References

- Bejarano-Roncancio, J. J., Celedón-Dangond, C. A., & Socha-Gracia, L. (2015). Prison feeding: Between hygiene and rights. *Revista de la Facultad de Medicina*, 63(3), 527-535. <https://doi.org/10.15446/revfacmed.v63n3.48961.v63n3.48961>
- Death, W., & Horan, E. (2018). Closed loop food production and the 'greening' of corrections facilities: Using composted kitchen waste for fresh food production. In W.L. Filho, J. Rogers, U. Iyer-Raniga (Eds.), *Sustainable Development Research in the Asia-Pacific Region* (pp. 465-473). Cham: Springer. https://doi.org/10.1007/978-3-319-73293-0_27
- Devine-Wright, H., Baybutt, M., & Meek, R. (2019). Producing food in English and Welsh prisons. *Appetite*, 143, 104433. <https://doi.org/10.1016/j.appet.2019.104433>
- Gilmer, B., & Comerford, C. (2019). Promoting pirate prisons: Exploring the intersections of narratives, media, and criminal justice reform in East Africa. *Crime, Law and Social Change*, 71(4), 403-421. <https://doi.org/10.1007/s10611-018-9796-5>
- Hennebel, V., Simper, R., & Verschelde, M. (2017). Is there a prison size dilemma? An empirical analysis of output-specific economies of scale. *European Journal of Operational Research*, 262(1), 306-321. <https://doi.org/10.1016/j.ejor.2017.03.055>
- Koryakin, E. A. (2017). Labor of convicts in Russia and its role in preventing repeat offences: Defining the research issue. *Russian Journal of Criminology*, 11(1), 43-51. [in Rus.]
- Kristi, N. (2011). Fight against crime – Profitable industry. *Penitentiary System: Law, Economy, Management*, 5, 8-19. [in Rus.].
- Nieminen, K. (2019). The detainee, the prisoner, and the refugee: The dynamics of violent subject production. *Law, Culture and the Humanities*, 15(2), 516-539. <https://doi.org/10.1177/1743872116650868>
- Simioni, M. (2019). The price of prison labour: Building a compromise between economics and moral correction. *Revue Francaise de Sociologie*, 59(2), 191-217. <https://doi.org/10.3917/rfs.592.0191>
- Sleptsov, I. V. (2009). Penitentiary system of France (brief review). *Penitentiary System: Law, Economy, Management*, 2, 39-42. [in Rus.].
- Smith, P. S. (2015). Reform and research: Re-connecting prison and society in the 21st century. *International Journal for Crime, Justice and Social Democracy*, 4(1), 33-49.
- Smorgunova, A. (2007). Strategies of crime control in the USA and the UK: Privatisation of prisons. *News of the Russian State Pedagogical University Named after A. Herzen*, 9(46), 149-158. [in Rus.].
- Teplyashin, P. V. (2017). English-Irish type of European penal systems: Organizational and legal fundamentals, means of prisoners' treatment and conditions of their detention. *Journal of Foreign Legislation and Comparative Law*, 1(62), 127-128. <https://doi.org/10.12737/24308> [in Rus.].
- Timofeeva, E. A. (2018). Private prisons abroad: Historical-legal and economic aspects of functioning (USA, France, UK, Japan). *Legal Science and Practice: Journal of Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia*, 2(42), 267-271. [in Rus.].
- Yezhevsky, D. O. (2005). Changing the role and functions of local governments in the UK during municipal reforms of the late XX-early XXI centuries. *Law and Politics*, 5, 48-68. [in Rus.].