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## **Scientific Research Center for the objectives of criminal punishment**

Currently, the correctional system of Kazakhstan has 20 detention centers and 75 agencies (19 penal colony, 19 strict regime colony, 5 special treatment, 1 prison, 17 colonies/settlements, 8 hospitals, four juvenile correctional facilities, 2 rehabilitation centers for persons released from prison). There had been 53,359 convicts and 8736 arrested persons by the 1st June, 2009. It represents 0.1% of the total population, (according to preliminary results of the national census in 2009, the population of Kazakhstan was 16,304,840 people). Kazakhstan's imprisonment rate is 382 per 100,000 population (is the seventeenth in the number of prisoners per 100,000 populations). It is far more for a country with 16 million people<sup>1</sup>.

The funding of the correctional system of Kazakhstan has increased. For example, in 2003 it came to 7 billion tenge, in 2004 – 10 billion tenge, 2005 – 15 billion tenge, 2007 – 22 billion tenge, 2008 – 23 billion tenge, it is about 150 million \$<sup>2</sup>.

The reformatory system, where about 100 convicted people are on completion of their term is still preserved. Convicted is never left alone and given the possibility to recover. There they have to think not about crime, which they had done, but about how to survive in such a tense situation. Of course, circumstances, in the crush and permanent residence, one can't preserve his physical and mental health, it's inhumane, it corrupts, displays the normal condition of man.

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<sup>1</sup> K. Rahimberdin, *Penitentiary system of Kazakhstan is an indicator of unresolved problems*, „Law and time” 2010, № 5.

<sup>2</sup> E.M. Kenzhetaev, *The legality of the execution of criminal penalties in the Republic of Kazakhstan*, Bulletin of the Expert Meeting on the development of Correctional system of RK, Astana, August 14, 2008, Almaty.

Information on cases recorded 31 cases of suicide among prisoners in 2000, in 2001 – 27 facts, 2002 – 18 cases, 44 in 2003, 32 cases in 2004, 43 in 2005, in 2006 – 31 cases, in 2007 – 47, in 2008 – 56 cases. According to international standards, one of the indicators of correctional institutions is to ensure the safety of inmates in prisons that is violated and unfortunately, for a long time, is not provided by our state. For example, in 2008 were committed 295 crimes, (in 2007 – 199), 44 of them were very serious crimes (2007 – 45)<sup>3</sup>.

The number of tuberculosis and HIV-infected patients are increasing among prisoner's diseases. The number of HIV-infected people in Kazakhstan's prison in 2001 amounted to 446 people, in 2002 – 531, in 2003 – 525, in 2004 – 598, in 2005 – 705 convicted prisoners, in 2006 – 1176, in 2007 – 1598<sup>4</sup>.

Currently, there are about 56 thousand people in the colonies and prisons in Kazakhstan. According to ITAR-TASS, the Kazakh government allocates budget of more than 9 billion (more than \$ 65 million) for the maintenance of correctional facilities in the country. Most of the funds will be directed to the reconstruction of old and construction of new prisons. In addition, with the introduction of a death penalty moratorium in Kazakhstan there will be built prison for prisoners who are serving life sentences in Pavlodar<sup>5</sup>.

In our view, it will help to solve the problems of the purposes of criminal punishment, as the state is concerned about not only the prisoners welfare, but also the organization and ensuring their ability to live in accordance with the penal legislation.

Cooperation with the organization "International system of Imprisonment" allowed correctional officers to visit overseas prisons. It was found that "Polish prisons have large windows that can be opened and ventilated room. They have a lattice, but they do not prevent the ingress of light. In our colonies in the cell-type lights are on even during the day. In addition, they are equipped with shutters grilles. Neither light nor air gets into. The floor is concrete, it isn't worth talking about sanitary conveniences"<sup>6</sup>.

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<sup>3</sup> N.A. Isakov, *Crime statistics in the correctional system. Execution of a punishment*, 2009, № 1.

<sup>4</sup> The situation in prisons of Kazakhstan in the field of health, materials of the II Central Asia Regional Forum on Drug Use and Infectious Diseases in prison, Bishkek, 29–31 October 2008, <http://stop-spид.kz/news/2008-11-17-10>.

<sup>5</sup> Administrative authorities of Kazakhstan allocate \$ 65 million for prisons // Eureka, 18 June 2004.

<sup>6</sup> T. Bazygina, *Five-star zone*, „Diapason”, 8 November 2002.

The Constitution of Republic of Kazakhstan, the Penal and Penitentiary Kazakh legislation does not include provision about keeping prison sentenced in closed rooms without windows with a concrete floor. Here is not taken into account that these conditions may affect the health, for mind, in general, the formation of a correction way.

Humanization of criminal policy in our views should be considered as an extensive program for implementation of the objectives of criminal punishment.

We have introduced a proposal to develop comprehensive and scientific approaches to solve problems of criminal punishment.

Based on studies of the theory and practice of punishment in the form of deprivation freedoms we come to a conclusion, that during the execution all kind of applied punishment methods, tools, techniques, food and conditions of serving the sentence must be scientifically sound and in full conformity with the current legislation of Kazakhstan achieve the objectives of punishment.

In our opinion, it is necessary to review all the old methods and techniques, new approaches, new ways of working with convicted to deprivation of freedom.

It seems that in any kind of activity in order to get a positive result should be developed a science-based approach. Based on this position, we assume that to resolve the problems of the penal objectives should be created a new government body – Scientific Research and Scientific-Analytical Center in the Ministry of Justice of the Republic of Kazakhstan.

In order to clarify its position concerning about the name of the body, one must specify the meaning of two words, such as “explore” and “analyze”.

According to the “Dictionary of the Russian Language” by S.I. Ozhegov the word “study” means: 1. To be scientific. 2. Examine (look) ask anything of research<sup>7</sup>.

The word “analysis” means “to analyze everything.” And the word “analysis” – a method of scientific research by studying certain aspects, features, components, something<sup>8</sup>. It seems that these concepts are related as “part” and “whole”, that is, the word “examine” on the content is wider than the “analyze”.

It follows that a new government agency should not be called Research and Analysis Center, but Scientific Research Centre for the objectives of criminal

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<sup>7</sup> S.I. Ozhegov, *Dictionary of Russian language* // N.Yu. Shvedova (Russian language), Moscow 1983, p. 228.

<sup>8</sup> *Ibidem*, p. 26.

punishment (hereinafter will be referred as SRC), which can subsequently develop into a research institute on the objectives of criminal punishment.

In structure of the body are entitled to work only highly qualified specialists with working experience in this specialty for at least five years, and in the presence of a degree. The new body should include: teachers, psychologists, psychiatrists, lawyers, drug experts, doctors, sociologists, and representatives of foreign countries, who can share experiences with more advanced methods of working with convicted in prisons.

The scientific organization of life convicts includes many components, including the protection of their constitutional rights. Based on of scientific expertise of a method of working with convicted, study, conditions of their welfare, in particular, the room brightness, heat, radiological studies, etc., are intended to determine the suitability of the spaces for keeping people, scientific justification methods and techniques applied to convict.

It can be assumed that the new body acts as a permanent body – a lawyer – the defense of prisoners. No illegal signs from the administration, prison workers should hinder the achievement of the purposes of punishment. One of the tools used in his work – is the conversation, testing, acceptance of applications, taking into account the psychological situation, the mental state of the entire team of convicts and individually. The responsibility includes holding a certain work to improve professional skills in correctional labour institutions (CLU). It may be mastering ethics of workers CLU, professionalism and conscientious fulfillment its responsibilities, benevolence, professional suitability according to the level of education and intelligence. Car is repaired by the master, as it is needed, but sometimes convicted are observed by sadistic, uneducated, violent people (movie N. Kazhgalieva)<sup>9</sup>. SRC members have free access to all prisoners with any regime. CLU workers should have their ethical and moral obligation, a certain level of moral human qualities.

F.R. Sundurov states that “an employee CLU can not instill condemned what he himself had not to raise the belief in himself that he does not believe”<sup>10</sup>.

Scientific research center for the purposes of criminal punishment is to be created at the Ministry of Justice of Kazakhstan. The development of instructions guidelines, regulations for the Committee of the penal system of Ministry of Justice of RK are included into its competence.

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<sup>9</sup> O. Gubaydullin, *Blame all supervisors* // „Caravan”, 27 February 2004.

<sup>10</sup> F.R. Sundurov, *Imprisonment and socio-psychological conditions of its effectiveness*, Kazan 1980, p. 127.

This body is radically different from the National Centre for Human Rights, which provides information and analytical, organizational, legal and other support to the activities of the Authorized for Human Rights. In turn, in accordance with paragraph 1 of the Statute<sup>11</sup> the Commissioner for Human Rights – an official exercising observation of over compliance of the rights and freedoms of man and citizen, endowed within its jurisdiction the power to take measures to restore the violated rights and freedoms of man and citizen. Paragraph 2 of the Regulations on the Commissioner for Human Rights states that the Authorized of his work complements the existing state protection of the rights and freedoms of the citizen. This authority pursuant to paragraphs 4 Section 15 of the Regulations of the Commissioner for Human Rights to take measures to protect the violated rights and freedoms of man and citizen, and we believe that convicted persons as well. The Commissioner shall, within its competence, verify information about violations of the rights and freedoms of man and citizen, if official sources or the media became aware of the violations.

The main objective of the SRC is a research organization of life convicts in prison. This body also receives calls and complaints, but only convicted persons in order to eliminate all the things that hinder the achievement of the purposes of punishment. The main principle of the SRC: to approach the solution of all problems only from the perspective of the objectives of criminal punishment, namely:

- 1) to improve the criminal and penal law;
- 2) the types of punishments prescribed;
- 3) a change in the conditions of detention of prisoners;
- 4) to develop and implement health-technology;
- 5) the organization of the labor of convicts and vocational training;
- 6) a differentiated approach to the personality of the offender;
- 7) to a term of imprisonment;
- 8) to the regime of detention of convicts;
- 9) to the internal regulations of convicts;
- 10) for the selection staff for work with prisoners;
- 11) to the study and application of foreign experience in the execution of criminal penalties.

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<sup>11</sup> Statute on the National Center for Human Rights. Approved by the Decree of the President of the Republic of Kazakhstan on December 10, 2002, № 992.

In our opinion, these objectives will contribute to the preservation of a healthy psyche, the best personal qualities, to prevent degradation.

Research Center for the purposes of criminal punishment differs from the Board of Trustees at juvenile correctional penal system. According to Section 4 of the Regulations on the Board of Trustees at juvenile correctional penal system, the main tasks of the Council are: 1) to assist in the administration of the colony organization of the educational process, strengthening the material-technical base of the institution; 2) to assist in addressing issues of social protection convicts, labor and consumer devices frees up<sup>12</sup>.

The proposed body performs similar functions with the Council, but the main difference lies in the fact that the Research Centre for the purposes of criminal punishment defines the scientific validity of all the activities of the Board of Trustees at juvenile correctional penal system. At the same time, the Research Center is different composition or structure. According to item 9 of the Regulations of the Board of Trustees at young offenders' criminal – executive system the Council is made up of representatives of government agencies, public associations and citizens.

It should be noted that this body does not replace the role of the Prosecutor's Office for Supervision over the legality of the execution of punishment in prisons.

According to the provisions of paragraph 6.3 of the Prosecutor's Office for Supervision over the legality of the execution of sentences in prisons: take measures in place to address the identified violations of the law, prosecute cases of arbitrary, dignity of prisoners, using the means of the prosecutor's response provided by the Decree of the President of the Republic of Kazakhstan having the force of law, "On the Prosecutor's Office of the Republic of Kazakhstan". Exercise control over the actual elimination of revealed violations of the law<sup>13</sup>. SRC for the purposes of criminal punishment reveals the causes and conditions that gave rise to a violation, and provides specific recommendations may be offered new ways of working with prisoners, changed conditions or temporary detention regime, i.e. the direction of the SRC is slightly different from the activities of the prosecution. Thus, the above suggests that

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<sup>12</sup> About the establishment of the Commissioner for Human Rights. Approved by the Decree of the President of the Republic of Kazakhstan from September 19, 2002, № 947 // SAPP RK. – 2002, № 30, Art. 328, p. 136.

<sup>13</sup> Statute of the Board of Trustees at juvenile correctional penal system: Approved by the Government of the Republic of Kazakhstan on 17 June 2002, № 655 // SAPP RK, 2002, № 17, p. 80.

the Scientific Research Centre for the purposes of criminal punishment – an independent body that aims to solve their specific problems that make it different from all existing bodies dealing with the convicts in the prisons.

It seems that in the long term, this research center could develop into a research institute to resolve the problems of the purposes of criminal punishment. The main task of which is the scientific organization of life convicts.

Attempting to create a research institute has been in the past, so “for the purpose of coordination of the research in 1925, created the NKVD of the RSFSR State Institute for the Study of Crime and the criminal. It was created 4 sections: socio-economic, penitentiary, bio-psychological and forensic science, as well as the Bureau of Statistics”<sup>14</sup>. The ideas of humane treatment of prisoners, the ways to implement the objectives of criminal punishment are reflected in international legal acts<sup>15</sup>.

This institution became the basis for the development of the penitentiary science, criminology and criminalities, but it does not pretend to – the need of a scientific approach to solving problems of the purposes of criminal punishment.

Summarizing all the above, it is proposed the creation of the Research Center for the purposes of criminal punishment in the Ministry of Justice of the Republic of Kazakhstan.

In this regard, a project of Regulation on the Scientific Research Centre on the implementation of the purposes of criminal punishment is offered. Also, we offer some conclusions and proposals reflected the Normative Resolution of the Supreme Court of the Republic of Kazakhstan.

It is also proposed the creation of the Council on the implementation of the purposes of criminal punishment, which may sum up the results of the month-

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<sup>14</sup> Statute the Prosecutor’s Office for Supervision over the legality of the execution of punishment in prisons: Approved by the Attorney General of the Republic of Kazakhstan on March 27, 2001, № 50 in the book. *Prosecutorial Supervision // Regulatory correction*, Almaty 2003, p. 59.

<sup>15</sup> A.A. Gertsenzon, *Criminology* (Ed. third, checked and added.), M. Yurid. lit., 1976, p. 190–198; *Human rights, Textbook*, Almaty 1999, p. 213–240; Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955. Economic and Social Council resolution approved on July 31, 1957 and May 13, 1977; Convention against torture and other cruel and inhuman degrading treatment or punishment (resolution 39/46), Adopted by the UN General Assembly December 10, 1984; European Convention for the Protection of Human Rights and Fundamental Freedoms. Adopted by the Council of Europe, November 4, 1950.

ly performance of each correctional institution for the purposes of criminal punishment concerning to each convicted. Council on the implementation of the objectives of criminal punishment works in conjunction with the Research Centre for the purposes of criminal punishment. During the month following the results of the audit, in cases where the offense is in custody after two warning of disciplinary offense Council may extend the term of imprisonment for one month. If the convicted person is on the path of correction, based on the application of methods and techniques proposed by the Research Center, the period of imprisonment set by the court verdict, reduced by one month, the maximum one-year period may be reduced by 6 months. This will speed up the repair process, to the desire to escape to freedom and a new start. If after release to ensure each convicted or condemned, even rental housing and jobs, it will hopefully prevent a second offence. When the verdict of the court is declared, it should be announced that the term of imprisonment may be reduced depending on the behavior of the convicted person in custody under a decision of the Council on the implementation of the objectives of criminal punishment.