

DOI: 10.17516/1997-1370-0915  
EDN: XKJBDS  
УДК 343.814:340.132.83(47+57)

## Optimal Model of Public Control in the Penitentiary System of Modern Russia

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Received 11.02.2021, received in revised form 27.02.2021, accepted 13.05.2022

**Abstract.** In the modern period of development of administrative mechanisms in the penitentiary system, a special place is occupied by the nature and role of the public presence, the institution of public control, which is the subject of this article. Revealing the topic through the significance and strategic necessity of social influence on the legal, organizational, managerial, informational and ideological parameters of the penal mechanism, the authors proclaim the purpose of the study in the form of substantiating the optimal model of the institution of public control in the penitentiary system.

In the methodological aspect, the material is supported by the authentic views of researchers on the nature and main models of civil society participation in the control of the penitentiary system. It is shown that the proper functioning and effectiveness of public control in the area under consideration depends on the level of mutual coordination of the system of legal means, forms, procedures for the activities of public observers, experts, observation groups and commissions.

The conclusion states that the redemption of convicts can be achieved only in the conditions of real presence of public structures in given area of government administration, broad implementation of the aspirations and recommendations of specialized monitoring commissions. The author notes the features and prospects for the development of the most optimal model of public control in the penitentiary system with active interaction between society and the state. The proposed partnership model is a promising and practice-oriented direction for the development of the modern penitentiary system in Russia.

Among the various models of public control in the penitentiary system, precisely the partnership one can serve as the basis for the development and implementation of a legal policy of public influence on the sphere of execution of criminal sentences.

A number of novels are proposed, as conclusions, among which is the creation of a central union (association) of public structures exercising public control in the penitentiary sphere. The need to develop a legal standard that fixes the main attributes and technology

of informing all interested parties about the activities of public oversight commissions is substantiated.

**Keywords:** civil society, public control, partnership model, convicted, penitentiary system; human rights.

Research area: law.

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Citation: Teplyashin, P.V., Teplyashin, I. V. (2022) Optimal model of public control in the penitentiary system of modern Russia. J. Sib. Fed. Univ. Humanit. soc. sci., 15(8), 1126–1133. DOI: 10.17516/1997-1370-0915

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## Оптимальная модель общественного контроля в пенитенциарной системе современной России

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**Аннотация.** В современный период развития управленческих механизмов в пенитенциарной системе особое место занимают характер и роль общественного присутствия, институт общественного контроля, что выступает предметом исследования настоящей статьи. Раскрывая тему через значимость и стратегическую необходимость общественного воздействия на правовые, организационно-управленческие, информационно-идеологические параметры уголовно-исполнительного механизма, авторы излагают цель исследования в виде обоснования оптимальной модели института общественного контроля в пенитенциарной системе.

В методологическом аспекте материал подкрепляется аутентичными взглядами исследователей на природу и основные модели участия гражданского общества в вопросах контроля в отношении пенитенциарной системы. Показано, что должное функционирование и результативность общественного контроля в рассматриваемой сфере зависят от уровня взаимной координации системы правовых средств, форм, порядка деятельности общественных наблюдателей, экспертов, наблюдательных групп и комиссий.

В заключение указывается, что исправления осужденных можно достичь только в условиях реального присутствия общественных структур в данной области государственного управления, широкой реализации устремлений и рекомендаций специализированных наблюдательных комиссий. Отмечаются особенности и перспективы развития наиболее оптимальной модели общественного контроля в пенитенциарной системе при активном взаимодействии общества и государства. Предложенная модель – партнерская – выступает перспективным и практико-ориентированным направлением развития современной пенитенциарной системы России.

Среди различных моделей общественного контроля в уголовно-исполнительной системе именно партнерская может выступить основой для разработки и претворения

в жизнь правовой политики общественного воздействия на сферу исполнения уголовных наказаний.

В качестве выводов предлагается ряд новелл, среди которых создание центрального союза (ассоциации) общественных структур, осуществляющих общественный контроль в пенитенциарной сфере. Обосновывается потребность разработки правового стандарта, закрепляющего основные атрибуты и технологию информирования всех заинтересованных субъектов о деятельности общественных наблюдательных комиссий.

**Ключевые слова:** гражданское общество, общественный контроль, партнерская модель, осужденный, пенитенциарная система, права человека.

Научная специальность: 12.00.00 – юридические науки.

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## **Introduction**

Currently, the trend of reforming the penitentiary system of the Russian Federation is associated with the idea of optimizing its utilitarian properties, determining the balance of social and legal impact on a person, strengthening the social component in the mechanism of redemptive action on a convicted person. The phenomenon of interconnection of such continuums as society, criminal punishment and the functioning of a correctional institution presupposes the presence of a certain significant for the society role of the tandem – the creation, on the one hand, of a stereotype of social solidarity, justice and cohesion, and on the other, ensuring public safety and order. This role is performed artificially and this presupposes compulsory social and legal impact on the penitentiary sphere.

The relevance of the topic is due to the need to modernize the mechanisms for guaranteeing human rights, preserve and develop human potential, establish social indicators of legality and legal stability.

Objective- determination of the optimal model of social influence on the penitentiary system of modern Russia, that takes into account the socio-legal, ethical, cultural principles and forms of harmonious development of the individual and society.

One can note the results of special studies that the process of implementing criminal punishment is illusory and inherently violent, therefore penitentiary institutions are not able to contain the tension and contradictions that

they personify, and are constantly “in crisis” (Carvalho&Chamberlen, 2017; Lesnikov, Ulezko&Klochkova, 2020).

In the legal field of modern Russia, the penitentiary system is a priority and requires close attention from the legislator, law enforcement officer and legal science. In turn, the mechanism for improving the internal segment of the penal system requires an alternative influence from public structures, which must be transformed into an appropriate legal model. So, the legal model is a system of principles, norms, requirements adopted by a specific professional community, which implements the technology of legal impact on the corresponding object (sphere) in order to solve a number of interrelated public tasks. The legal model is organizationally stable, sustainable, which, in turn, reflects the relevant views and ideas that meet objective reality, progressive principles of social development.

## **Historical aspect of public control in the penitentiary system**

The penitentiary system and its specific historical model at different times acts as the most dynamic and capacious management phenomenon, demonstrating the legitimacy and quality of such values as human rights, humaneness, democracy, mutual responsibility of society and the state, solidarity of ideas.

For example, in the pre-revolutionary period of the development of the penitentiary system (from the beginning of the XIXth century), the participation of public structures in the work of the prison and exile-hard labor system, the re-

education of convicts was characterized by public paternalism and wide donations (Romashov & Bryleva, 2019: 833–834), the detachment of the elite and the middle class from solving relevant issues and problems in the presented area.

In the Soviet period, the practice of public participation in the implementation of corrective labor policy followed the path of direct participation of public collectives in the work of corrective labor institutions, supervisory commissions, boards of trustees were created, a mechanism for patronizing the colony was formed by enterprises, collective farm and production links, Soviets of Working People's Deputies, Komsomol and trade union organizations. But this form of public presence was predominantly ideological in nature, was in the mainstream of socialist relations and the construction of a nationwide state, and did not always achieve the desired results in the real re-education of convicts.

If we talk about the 90s of the XX century, we can observe the general tendencies of state-legal relations: a high level of corruption, detachment of society from solving many issues of a public nature, disunity of opinions and interests, legal nihilism and passivity, lack of mutual trust of society and state (Teplyashin, 2011: 530–531). Criminal and correctional legislation during this period was still based on Soviet nominations and established practice, however, in fact, it did not allow maintaining public patronage in its previous form and seeking mechanisms for the influence of public structures on the penitentiary system.

## Discussion

In the modern period, the organizational, legal, informational, cultural and value aspects of the participation of civil society in management relations, combating corruption, monitoring the activities of authorities are the subject of research both by Russian and foreign experts. (Mikheev, Dudko & Mikheeva, 2015; Norboev, 2020) Public presence in the penal sphere by citizens and public associations is carried out mainly in the form of public control. In theory and practice, public control is understood as the activities of non-state structures carried out in order to monitor the work of state authori-

ties and local self-government bodies, state and municipal organizations and institutions, as well as for the purpose of public verification, analysis and assessment of their issued acts and decisions.

The legislative consolidation of this form of social influence on the activities of state bodies carrying out the forced detention of persons in places of detention was formalized in 2008 in the federal law No. 76-FZ “On public control over the provision of human rights in places of detention and on assistance to persons in places of detention “. Subsequently, the foundations of the mechanism of public control were unified by the legislator in 2014 as a result of the adoption of federal law No. 212-FZ “On the foundations of public control in the Russian Federation”.

Reflecting the aforementioned legal acts, the main forms of public control over ensuring human rights in places of detention are: observation; general inspection of the activities of places of detention; targeted control checks on individual messages, appeals, complaints; legal expertise; monitoring of adopted local legal acts.

It is worth noting that non-state structures, their individual active links, are somehow interested in organizing a stable law and order and legality in the penal sphere, and in the proper re-education of convicts. At the same time, the professional nature of management relations and the need to take into account the specifics of the proposed form of public presence affect the choice of means, forms, directions of influence on a given object of public control. In this regard, the features of public activity in the national penitentiary system are:

1) the presence of deep and ambiguous historical foundations and practice of integrating the penitentiary system into the social sphere, social processes.

2) significant social capacity of the presented object of public control. So, as of July 1, 2020, 499 406 people were kept in the institutions of the penal system, including 104 507 detainees, which forms a dense communicative social space.

3) a fairly stable social contact and the presence of a “feedback” between the subject

and the object of control, which is due to the peculiarities of the long-term static legal status of participants in activities related to the identification of violations in the penitentiary system.

### **Models of public control in the penal system**

In the context of an active discussion of a local model of public-private partnership in the penitentiary system (Skiba, 2019: 78–79; Kozin et al., 2019: 259), the relevance and prospects of a corresponding modernization of public control are increasing. It seems that such modernization can be carried out along the path of “sectoral” specialization of public control, the formation of a high level of legal culture and legal awareness of its active participants. Of no small importance are such aspects of the study of the model behavior of public structures in the penitentiary system, such as: the establishment of real criteria for the effectiveness of public activities, the consolidation of legal practice, monitoring of regional experience, the technique of identifying and eliminating shortcomings and gaps, as well as the systematic use of digital technologies. In this regard, the practical implementation of theoretical views and proposals is due to a long period of reforming the national judicial and penal systems.

When modeling the institution of public control, one should recognize the spatio-temporal variability of this public law institution. Within the boundaries of public administration in the penal sphere, specific approaches that establish an appropriate species range of models of public control can be determined.

So, depending on the object of observation, the model of public control can be: static and dynamic; depending on the chosen and implemented methods and means: non-democratic and democratic; from the level of formation: international and national. In turn, the national model can be divided into: a) an external model implemented at the central and regional levels through the creation and operation of public councils under the Federal Penitentiary Service; b) an internal model, which is

implemented through the formation and activities of public oversight commissions.

The most representative criterion is the goal of exercising public control and the completeness of the results obtained, depending on which the chamber, detailed and progressive model is determined.

The chamber model is formed during the implementation of public control, which is aimed at checking and diagnosing the state of human rights in the penitentiary system, its legal status, as well as in order to bring to the public information about the violations identified both by specific officials and the system as a whole.

The detailed model is aimed at establishing objective and real facts of corruption in the penal system, determining the specifics and characteristics of the work of specific penitentiary institutions. This model contributes to the creation of a national map of tension in the field of observance of the rights of convicts, the development of recommendations and proposals from public professional groups aimed at improving the penitentiary educational mechanism.

A progressive model is able to identify complex problems and shortcomings in the functioning of the penitentiary system, determine its deformation, and also establish latent offenses in this area. The model provides for the formation of a holistic and systemic worldview of persons exercising public control in this area, as well as a mechanism for predicting the dynamics of the implementation of civil initiatives.

It is extremely important to pay attention to the nature of the rights and freedoms of convicted persons and, at the same time, to the legal status of public figures exercising public control. The following models are distinguished here: imperative, local, liberal, coordination, partnership.

The imperative model is based on the principle of priority of public funds and methods in matters of public participation in the operation of the object of control. In this model, the rights and interests of persons in places of imprisonment and other forms of isolation are considered in the context of labor and produc-



tion resources, the material condition of correctional institutions, and their possibilities in state construction. At the same time, the social and legal status of a public figure to a greater extent depends on his place in the management hierarchy, where the state of his real interests and aspirations in public verification is practically leveled. The presented model operated during the socialist period of the development of the national penitentiary system.

The local model is characterized by the selectiveness of the object of control, a truncated set of means and forms of social influence. In this case, the consistency and scale of the implementation of the institution of public control are lost. The presented model was characteristic of the period of the 90s of XXth century, as well as the 2000s. During this period, the first forms and technologies of interaction between public structures and the state apparatus were launched. The local model ensured the rehearsal nature of individual links in the mechanism of public control, made it possible to establish the most acceptable forms and methods of public influence, as well as to determine specific areas of the penal system included in the supervisory relationship being formed.

The liberal model is predominantly based on modern European standards, practices and largely avant-garde advances in the penitentiary system (Tomczak & Thompson, 2019). It is based on the progressive nature of social impact on the results of penitentiary standards, which does not guarantee that historical traditions and features of the national development of the penal educational system are taken into account. In turn, the subjects of public control, not receiving significant means of influencing the object, are faced with new requirements and technologies (for example, V.I. Seliverstov quite correctly points out the problems of using measuring instruments by members of public supervisory commissions to control the microclimate in residential and industrial premises (Seliverstov, 2018: 401)), ultimately concentrate their attention only on certain areas of the functioning of the penal mechanism. The attention of social activists is mainly drawn to human rights, the legal status of the convict, while individual components of the optimal

mechanism of public presence remain aside: the algorithm for re-educating the convict, the possibility of his post-penitentiary adaptation, means of public assistance, information and ideological support of the reform being implemented.

The coordination model is aimed at an organized and consistent social impact on the practice and standards of keeping convicts in social isolation, the procedure for observing the established rules by the administration of the penitentiary institution. Here there is a high level of supervision of the subjects of public control on the part of civil society institutions, the parameters and target orientation of the behavior of public figures are detailed. The coordination model should be recognized as acceptable in the absence of traditions and experience of interaction between civil society institutions and the state.

The partnership model presupposes significant autonomy and a high degree of independence of supervisory commissions and public councils in exercising public control in the penitentiary system. A special role in the proposed model is assigned to the development and adoption of legal provisions regulating this activity, legal acts adopted by the authorities in conjunction with advanced public structures. Here the consolidated interests of the subjects of public control, details the rights, guarantees and legitimate interests of a public figure are taken into account. The institution of public control itself is primarily based on the principles of democracy, mutual trust of society and the state, dynamism and constant organizational improvement. The presented model of public control in the penitentiary system seems to be the most optimal for modern Russia.

## Conclusion

To a certain extent, public control in the penitentiary system, taking into account its specific features of a closed and targeted nature, shows the promise of the concept of public-private partnership of public participation in corrective action on convicts, and acts as a qualitative indicator of the development of civil society. It is possible to outline the main directions of increasing the efficiency of public

control and the development of its partner model in the modern national penitentiary system:

1) it is extremely important to create a systematic and practically demanded mechanism for informing society about the activities of public oversight commissions and other subjects of public control in the penitentiary system. For example, the Public Chamber of the Russian Federation only publishes individual authentic decisions. In turn, the Ministry of Justice of the Russian Federation practically does not record the law enforcement activities of public structures. In this case, it is important to raise statistics, development indicators, achievements of penitentiary and post-penitentiary measures to the public level. The establishment of technical, legal, organizational, managerial and informational support in the implementation of public initiatives in the field of the penitentiary complex can only contribute to the strengthening of law and order in society and the state

2) the Russian society, in close cooperation with state authorities, needs to create a central union (association) of public structures exercising public control in the penitentiary sphere. Today there are public oversight commissions at the level of each region. At the same time, a centralized and effective public structure that monitors and improves this direction of public control has not been formed today. In unison with the noted direction, it is advisable to reform national monitoring mechanisms in accordance with the recommendations of international organizations (in particular, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) and detailing the corresponding reporting procedure;

3) the process of codification of legal norms aimed at the comprehensive regulation of public control in the national penitentiary system seems to be in demand. A federal law

that provides motivation for the organizational work of public figures, social significance and guarantees of their activities, as well as the forms, types and stages of such control, assessment criteria and indicators of the effectiveness of public control in the penal system of Russia should be adopted;

4) an interesting and promising solution to the issue of holding joint research events (conferences, seminars, symposia) with the participation of not only specialists-scientists of the penitentiary direction, but also researchers of the institute of public control itself. The interdisciplinary, inter-sectoral nature of scientific communication can serve as the basis for a qualitative understanding not only of current problems and omissions, but also the development of proposals, ideas aimed at their promising implementation (experimental projection, forecasting) into life;

5) today we can talk about the emergence of a new form of legal policy in the development of the penitentiary system – public penitentiary control. This type of legal policy is being formed in the context of the convergence of European standards into the national penal system. The legal policy of public control in the penitentiary system is a systemic organizational, managerial and informational and analytical activity of public structures aimed at forming criteria, performance indicators and ways to optimize the partnership model of public control in the context of objective modernization of the penal system in Russia.

As a result, the consolidation of public and state structures in the formation of the desired model of public control in the penitentiary system will ensure the progressive development of civil society. At the same time, it is the partnership model of such control that can act as a nodal link in the mechanism of optimal functioning of the penitentiary system in modern Russia.

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