

EDN: TXQXHE  
УДК 343.8

## The Effectiveness of a Progressive System of Serving a Sentence in the Form of Imprisonment: Psychological and Legal Aspects

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Received 01.05.2023, received in revised form 05.06.2023, accepted 29.04.2024

**Abstract.** The effectiveness of a progressive system of execution (serving) sentence in the form of imprisonment from the legal and psychological point of view is rarely analysed in the literature. Meanwhile, taking into account the fact that the Concept of Development of Penal Execution System of the Russian Federation until 2030 establishes the need to improve educational and psychological work with inmates aimed at their correction, the determination of effectiveness of certain elements of progressive current (and possibly future) system of serving imprisonment may be of importance for implementation of state penal policy.

In this paper, based on the analysis of official statistical data, the results of the ninth census of persons sentenced to imprisonment, as well as the interviews with practitioners, it is concluded that the “progressive” system of serving imprisonment in Russia today not only does not take into account the criminological characteristics of convicts, but also does not correspond to the socio-economic conditions prevailing in the state and the recommendations of international acts in the field of execution of punishments.

The paper questions the approach existing in the domestic theory and law enforcement practice, in which the progressiveness of the system of serving punishment is reduced only to changes in individual elements of detention conditions (increase in the number of parcels, transfers, visits to spend money, etc.) or the type of correctional institution. Such criteria, as the conducted study has shown, in the absence of kinship and other useful ties among inmates undermine the whole meaning of the system and the effectiveness of correctional and preventive measures along with it.

As a result, there is a hypothesis that the construction of the system of execution (serving) of imprisonment should be based on the symbiosis of “regime-care”, “regime-safety” and

consistent expansion of dispositive principles of criminal-executive law. The latter include, in particular, the possibility to wear civilian clothes, use the internet and improve the food ration (e.g. on lighter conditions).

**Keywords:** progressive system of serving punishment, differentiation and individualization of execution of punishment, criteria of progressive system, effectiveness of correction.

Research area: social structure, social institutions and processes; criminal law sciences.

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Citation: Savushkin S. M., Khramov A. A., Agabekian A. L. The effectiveness of a progressive system of serving a sentence in the form of imprisonment: Psychological and legal aspects. *J. Sib. Fed. Univ. Humanit. soc. sci.*, 2024, 17(6), 1153–1162. EDN: TXQXHE

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## Эффективность прогрессивной системы отбывания наказания в виде лишения свободы: психологические и юридические аспекты

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**Аннотация.** Эффективность прогрессивной системы исполнения (отбывания) наказания в виде лишения свободы с юридической и психологической точки зрения достаточно редко анализируется в литературе. Между тем с учетом того, что Концепцией развития уголовно-исполнительной системы Российской Федерации до 2030 года устанавливается необходимость совершенствования воспитательной и психологической работы с осужденными, направленной на их исправление, определение эффективности отдельных элементов прогрессивности существующей (и, возможно, будущей) системы отбывания лишения свободы может иметь важное значение для реализации уголовной политики государства.

В настоящей работе на основе анализа официальных статистических данных, результатов девятой переписи осужденных к лишению свободы, а также опроса практических работников делается вывод, что существующая ныне в России «прогрессивная» система отбывания лишения свободы не только не учитывает криминологическую характеристику осужденных, но и не соответствует сложившимся в государстве социально-экономическим условиям и рекомендациям международных актов в сфере исполнения наказаний.

В работе под сомнение ставится существующий в отечественной теории

и правоприменительной практике подход, при котором прогрессивность системы отбывания наказания сводится лишь к изменению отдельных элементов условий содержания (увеличению количества получаемых посылок, передач, свиданий возможности тратить денежные средства и др.) или вида исправительного учреждения. Подобные критерии, как показало проведенное исследование, при отсутствии родственных и иных полезных связей у осужденных нивелируют весь смысл данной системы, а вместе с ней и эффективность исправительно-предупредительного воздействия.

В результате формируется гипотеза о том, что при построении системы исполнения (отбывания) лишения свободы следует исходить из симбиоза «режима-кары», «режима-безопасности» и последовательного расширения диспозитивных начал уголовно-исполнительного права. К последним, в частности, можно отнести предоставление возможности носить гражданскую форму одежды, пользоваться сетью «Интернет», улучшение пищевого рациона (например, на облегченных условиях).

**Ключевые слова:** прогрессивная система отбывания наказания, дифференциация и индивидуализация исполнения наказания, критерии прогрессивной системы, эффективность исправления.

Научная специальность: 5.4.4 – социальная структура, социальные институты и процессы; 5.1.4 – уголовно-правовые науки.

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Цитирование: Савушкин С. М., Храмов А. А., Агабекян А. Л. Эффективность прогрессивной системы отбывания наказания в виде лишения свободы: психологические и юридические аспекты. *Журн. Сиб. федер. ун-та. Гуманитарные науки*, 2024, 17(6), 1153–1162. EDN: TXQXHE

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## Introduction

Despite the fact that in the science of penal execution law the problems of implementation of progressive system of serving the sentence have always been paid close attention, often such studies were (and still are) of superficial nature, bypassing its psychological aspects, the importance of studying which is difficult to overestimate. First of all, it is guided by the Concept of Development of Penal Execution System of the Russian Federation until 2030, which establishes the necessity of improving the educational and psychological work with convicts aimed at their correction as one of its main objectives. This issue has become particularly relevant in the light of the increased risk of COVID-19 infection, as social distancing in correctional institutions (hereinafter – CI) is practically impossible. Meanwhile, most CI around the world operate at maximum capacity or are overcrowded, making them ideal environments for crowding and rapid spread of the coronavirus (Grace et al., 2021). People in these environments sleep, use the toilet, wash, eat

and work in very cramped quarters, accelerating the transmission of infectious diseases (Williams, 2020). All this cannot but cause the inmate to want to improve his or her regime for the better.

The analysis of legal literature and current legislation allows us to conclude that the current progressive system of serving imprisonment in Russia provides not only for different types of CI assigned to inmates depending on their socio-demographic, criminal, psychological and other criteria, but also the existence within one CI of different conditions (regimes) of serving the sentence, which may change not only for the better but also for the worse for prisoners. The latter, as noted in the legal literature, increase the degree of isolation and are associated with a decrease in the number of special rights exercised by prisoners, in particular, the number of visits, parcels, funds that can be spent to purchase food and basic necessities, phone calls (Lozhkina, 2020; Egorova, 2020).

Unfortunately, as practice shows, not all elements of this system in conditions of constantly changing socio-economic situation

can effectively meet the goals and objectives set by the penal legislation in Article 1 of the Penal Executive Code of the Russian Federation (hereinafter – PEC RF). A clear example of this is the growth of prison crime rate in CI, which has increased by 62 % over the last five years. This is primarily due to the increase in the proportion of prisoners serving their sentence for the second, third or more times in the total number of prisoners. Thus, if in 2016 their share was 53 %, in 2021 it is already 61 %. Such a trend, as P. V. Teplyashin rightly points out, distorts the socially acceptable “image of the future” and contributes to repeated criminality after release (Teplyashin, 2020).

It should be noted that the solution of the above, as well as other problems related to the effective activity of the domestic penitentiary institution, does not lose its relevance throughout the existence of the prison system as a state institution. In particular, in the context under consideration one cannot ignore the peculiarities of the very implementation of criminal punishment in respect of different categories of convicts, both by legal and psychological criteria. In this respect, special attention should be paid to understanding the complexity of organizational structure, multidimensionality, multifacetedness and multifunctionality of activities of CI, which results in the development of a set of optimal conditions facilitating the implementation of penitentiary practices taking into account the requirements of modern legislation and the realities of Russian society. It is obvious”, writes O. N. Uvarov, “that in order to implement such changes a conceptual shift in the theory, legislation and law enforcement practice of imprisonment from the ‘regime-cara’ and ‘regime of security’ to a symbiosis of these approaches is needed (Uvarov, 2022).

## Discussion

Note that the traditionally progressive system of serving the sentence implies the possibility of improving the conditions of the convicts’ detention, which should ultimately contribute to a more successful re-adaptation in the post-penitentiary period (Yuzhanin et al., 2017). At the same time, it has a close relationship with the formation of positive behavior of the inmate in

places of incarceration. A number of researchers note that in the process of serving a criminal sentence, the life of an inmate is subject to detailed double regulation. In the first case, inmates are under constant control of the penitentiary institution staff, they are subject to the approved daily schedule, regulated requirements of communication with the staff, participate in work activities, training and other educational activities. In the second case, when entering the environment of inmates, they discover that there are “unwritten laws” (informal life, sub-culture of inmates), non-compliance with which may not only complicate their stay in prison, but also lead to more tragic consequences. All this together has a significant impact on his attitude (and, consequently, the development of a certain behavior model) towards the very fact of being in social isolation, as well as his internal readiness for life in the post-penitentiary period (Molchanova et al., 2018).

As early as the late 19th century I. J. Foinickiy noted that the basic idea of a progressive system of punishment comes from the field of psychology and is based on the idea that the success of prison activities is most assured if prisoners are involved in contributing to them. The best measure for this seems to be a penal arrangement which makes the fate of each prisoner dependent on his own conduct and diligence (Foinickiy, 2000). Disagreeing with such conclusions, A. E. Natashev believed that the progressive system, on the contrary, stimulates the adjustment of prisoners, which pushes them to deceive the administration of the institution, creating a false idea of the correction of convicts (Natashev, 1961). According to Y. M. Tkachevskiy, this criticism addresses possible perversions of the progressive system rather than its essence (Tkachevskiy, 1981). It would seem that such views are entitled to life, but with a few reservations.

Thus, if a convict deceives the administration by not committing crimes and violations of the established order of serving the sentence for several years, in conditions of mass detention of convicts, it is at least a prerequisite not only for effective work with other convicts, but also for ensuring their personal safety. As to Y. M. Tkachevskiy’s position, elements of the

progressive system should be considered not only from the legal, but also from the psychological point of view. It seems that only such an interdisciplinary approach to the consideration and solution of the indicated problem will allow to more effectively implement the criminal and penal policy of the state.

From the point of view of law (first of all, criminal law), differentiation of punishment requires appropriate categorization of the convicts as a basis for further effective execution of imprisonment and related correctional measures. This allows us to speak about the necessity of conducting consistent and differentiated psychological and pedagogical work with the convicts (Foinickiy, 2000), which has a comprehensive character. In its turn, individualization of the execution of punishment implies not only changing the conditions of detention of convicts depending on their correction. It should be emphasized that in the course of implementation of various penitentiary measures by penitentiary staff in relation to inmates, as a rule, the latter either experience a psychological, moral change in their outlook, contributing to the formation of pro-social orientation, or continue to develop criminal lifestyle, affecting all personal areas, primarily the behavioral.

Meanwhile, the United Nations Standard Minimum Rules for the Treatment of Prisoners 2015 (the Nelson Mandela Rules) state that the prison regime should seek to minimize the difference between life in prison and life at liberty which weakens prisoners' sense of responsibility or respect for their dignity as human beings. However, an analysis of the rights, obligations and prohibitions of prisoners enshrined in the rules of criminal law and penal execution shows that such a principle is only partially implemented in the domestic penal system, which is not conducive to the reform of the prisoner. In turn, the level of progressiveness of imprisonment in Russian penitentiary practice significantly differs depending on the category of the convicted person. Let us demonstrate this on its individual elements.

### ***1. Visits of inmates***

From the point of view of the law, the most significant incentive for transferring from the

regular conditions of a penal colony to facilitated conditions is to increase the number of extended visits (for example, from four to six in a regular regime penal colony). The main purpose of enshrining such an element of progressivity in the legal literature, as rightly noted, is to maintain socially useful links and resocialization as well as family functionality (Barysheva, 2021), to develop (maintain) in the prisoner an appropriate role and awareness of his/her responsibility for children (Shpilev, 2021). However, it would be strange to believe that an additional six days of visits a year with a relative would fundamentally change a person's psychological attitudes by building a respectful attitude towards the individual, the community and the accepted rules and traditions of human society and make the penal system progressive in the literal sense of the word.

In this regard, I. V. Uporov rightly points out that at present there is a problem of criteria for severity of punishment in the domestic legislation, i.e. determination of the degree of punishment, both at its establishment (criminal law aspect) and at execution (penal-executive law aspect) (Uporov, 2021). If we take into account the fact that every second prisoner on average does not enjoy the right to a short visit, and two thirds of prisoners have never had a long visit at all, then the effectiveness of this element of the progressive system, which the legislator had intended when developing the Code, hardly corresponds to the expectations. Unfortunately, such a problem exists not only in Russia but also abroad (Latysheva, 2020). Thus, the mere fact of being able to receive visits in the absence of relatives (or in other circumstances which prevent it from being realized) has a negative impact on a person's psychology. This can be further aggravated by the fact that the management of an institution, as an incentive, gives an inmate the right to an additional visit, while the inmate has never benefited from any of the visits provided by law.

Based on the content of the legislation on the establishment of visits, it can be argued that in the absence of relatives, the system of serving the sentence ceases to be progressive. However, it is the meeting with relatives which, in accordance with international standards on

the enforcement of custodial sentences, is an essential element of successful social reintegration following release.

## **2. Receipt by convicts of parcels, transfers, packages**

Despite the fact that female and juvenile prisoners are allowed to receive parcels, transfers, packages without any limitation, and male prisoners are allowed to receive the amount specified by law depending on the type of CI and conditions of detention, the situation here is similar in approximately the same percentage: 67 % of them did not receive packages at all, 23 % received parcels and transfers, and 52 % received them below the legally established norms. Such statistics are due not only to the fact that prisoners have no one to send such parcels and deliver parcels to, but also to the existence in almost every CI of a shop (cafe), where prisoners can buy food and basic necessities every week (and once every fortnight in strict conditions) without a search procedure which is humiliating for some prisoners. This fact once again confirms the limited elements of a progressive prison system, as the mere existence of a right without the possibility to exercise it does not in itself indicate the effectiveness and humanity of imprisonment (Borchenko, 2021).

## **3. The possibility to spend money**

Since the penal legislation has been in force, the rules establishing the amount of money that a convict is entitled to spend, in addition to the money earned in the institution, have been changed several times (in some cases several tens of times). Meanwhile, as the ninth census of inmates showed ten years ago, more than half of inmates had no money at all in their personal accounts. It is absurd that the difference between simplified, regular and strict conditions in some types of correctional institutions is only 600 rubles. It appears that from the psychological point of view, this does not stimulate the convicted person to law-abiding behavior, even if he has money, not to mention persons who have no opportunity to earn money in the CI. This is also confirmed by the official statistics, according to which only one out of three convicts are currently

employed in paid work, with the employment being primarily for those who have claims. It turns out that the right to work for a convict without a lawsuit is a privilege.

## **4. The transfer to a different type of correctional institution**

One of the important steps in the process of socialization of a convict and preparation for release is transfer to a penal colony, but in reality, this mechanism is implemented in a truncated form, which calls into question its progressiveness. Thus, despite the fact that in 2022 there were more than 30,000 prisoners in CI who could be considered for transfer to an open prison in accordance with Article 78 of the Penal Execution Code of the Russian Federation, only one fifth of them applied to the court with the relevant applications. Of these, only half of the prisoners' applications were granted, which is less than 10 per cent of the total number of prisoners who have been granted the right. The growth in the number of prisoners transferred to open prisons is constrained by the unwillingness of quite a large number of prisoners, who already have material and formal grounds, to be transferred from ordinary-regime and strict-regime penal colonies, as well as to a correctional center for forced labor, where detention conditions differ radically from an open prison (at least, the possibility to use cellular phones for communication). This is mainly due to the lack of settlement colonies or sections of settlement colonies for the respective categories of prisoners in the regions where they reside or are convicted and the need to transport them in this case to those constituent entities of the Russian Federation where there are possibilities for accommodating them.

In a number of penal colonies, inmates are not employed or are used in few remote facilities. These problems are usually known to the inmates and are a deterrent that negatively affects the inmates' motivation to transfer (Nataшев, 1961).

## **5. The movement of convicts without an escort**

Part 1 of Article 96 of PEC PF that positively characterized convicts serving prison sentences in correctional colonies and educa-

tional colonies, as well as convicts left to do maintenance work in remand centers and prisons, may be allowed to move without an escort or escort outside the penal establishment if this is necessary due to the nature of the work they are doing.

As of 1 July 2022, the number of inmates permitted to live outside the facility for successful social adaptation was 131. The average number of inmates exercising the right to travel without escort was 653.

O. N. Uvarov notes that in medical correctional facilities, general and strict regime colonies, as well as in educational colonies and economic service units of pre-trial detention centers, prisons and special regime colonies there is a rather significant number of prisoners (from 30 % to 70 %, and among those left for economic service – almost 100 %) potentially able to move without an escort (Uvarov, 2013).

#### **6. Departure from the penal institution**

Pursuant to Part 1 of Article 97 of PEC RF prisoners held in correctional colonies and educational colonies, as well as convicts left in accordance with the established procedure in remand centers and prisons to carry out maintenance work may be allowed to leave the penitentiary institution.

In the first half of 2022, prisoners were allowed to leave the penitentiary establishment 698 times for annual leave, 167 times for preliminary decisions on employment and housing, and 84 times for exceptional personal reasons. In approximately every tenth case, the administration of the penitentiary institution refused to allow the prisoner to leave. If we refer to the statistics, less than 1 % of all convicts who were employed were granted this right, which does not allow us to refer this element to the progressive system of serving the sentence. The same should be said about granting convicts the right to reside outside the institution for the purpose of successful social adaptation: their number amounted to only about 100 people in the past year.

Thus, given the questionable effectiveness of the existing elements of the progressive system of serving the sentence, in order to bring

the regime of conditions of serving the sentence closer to life in freedom, we allow ourselves to propose possible elements of “progressivity”.

For this purpose, as well as to confirm other conclusions of the study, we conducted a sociological survey of practitioners from correctional institutions located in cities of the Siberian Federal District (hereinafter – SFD)<sup>1</sup>. Respondents were asked what measures could be used to improve the effectiveness of the progressive system of deprivation of liberty, which can be divided into organizational and legal measures.

The first group of correctional officers mentioned strengthening of correctional and preventive measures against inmates, providing them with employment and targeted professional training, improving material and living conditions (including by expanding the rights and legitimate interests), introducing different colors of clothes for inmates depending on the conditions, increasing the number of staff in the institution, introducing additional psychologist positions, creating “multi-regime” institutions allowing all inmates to serve their sentences in the penitentiary institutions. The latter (which, for the most part, have a criminal law nature rather than executive penal nature) include prohibition of release on parole for convicts for certain categories of crimes, reduction of dietary standards for convicts serving a disciplinary measure of placement in a cell-type room or a punishment cell, non-calculation of the time spent there in the total period of serving the sentence, exclusion of possibility for long visits with relatives other than relatives.

It appears that the list of measures outlined above can only be implemented in part. For example, it is questionable to prohibit long term visits from common-law spouses as this would further reduce the effectiveness of such an element of the progressive system as long-term visits. The same should be said about the prohibition of parole for those convicted of grave

<sup>1</sup> More than 270 employees of the penal system serving in penal colonies in Novosibirsk, Tomsk, Novokuznetsk, Abakan and other cities took part in the study. The age of respondents ranged from 23 to 57 years old. The average age of respondents in the sample is 34 years old. The margin of error was 3 %.

and especially grave crimes, as at present more than 80 % of convicts in penitentiary institutions serve their sentences for these categories of crimes. These conclusions are confirmed by the results of special criminological studies in a number of foreign countries, according to which the mechanism of parole is considered to be almost the best one for stimulating individuals to reform (Dagan et al., 2021). Researchers have therefore suggested that the state should opt for a 'sentence adjustment' model in which the state's primary goal is either to optimize crime deterrence (Polinsky et al, 2020) or not to impose a real sentence at all, but to make it conditional and non-custodial (Reid, 2020). This is perhaps difficult to disagree with.

At the same time, elements of a progressive penal system deserve attention, such as the possibility to wear civilian clothes, providing access to the Internet on facilitated (or preferential) terms, improving the food ration (both higher and lower in different conditions), and shaping the rules of penal enforcement law in a dispositive rather than imperative way, reducing the number of obligations while expanding the list of legal interests whose realization would have a positive impact.

## Conclusions

In general, while giving an overall negative assessment of the current progressive system of imprisonment in Russia, we would like to note that it is reasonable to apply it, but only with fundamental changes in mind. As the analysis of legislation and law enforcement practice shows, the current "progressive" system does not correspond to the realities of the time, recommendations of international acts in the sphere of execution of punishments and it is difficult to call it progressive in the literal sense of the word. In fact, it boils down to changing the conditions of detention (more parcels, visits, the possibility to spend money) or changing the type of CI. In the absence of kinship and other useful ties, as the study shows, such progressivity disappears, and with it the effectiveness of the correctional and preventive impact on convicts.

Taking into account the fact that at present more than 80 % of convicts are serving

their sentences repeatedly, the purpose of crime prevention dominates over the purpose of correction of convicts, which prevents the development of elements of progressiveness of serving any form of punishment. In this respect, the experience of implementation of the requirements of the progressive system of serving the sentence in the Soviet period is remarkable when simultaneously with the restriction of contacts with the outside world the community was actively used in correction of convicts (labor collectives, public monitoring commissions, distribution commissions, etc.). Unfortunately, as law enforcement practice shows, in the Russian reality this has also been abandoned, reducing the public impact mostly to public control of compliance with the penal enforcement legislation.

The Concept of Development of Penal Execution System of the Russian Federation until 2020 in different editions envisaged construction of more than 400 prisons, abandonment of the collective form of detention of convicts and reduction of the number of convicts held in one room. These plans did not contribute to distancing the architecture of modern correctional facilities from their Soviet-era counterparts (and, in fact, from the facilities themselves) of the 1970s.

Barracks-type dormitories in which convicts live, together with the entrenched position on the effectiveness of elements of the "progressive" penal system, have a negative impact on the process of correction of convicts.

A progressive system of serving the sentence is possible only in conditions where the inmates' contacts with the outside world are encouraged in every possible way. Limiting social contacts has a negative impact on correction of convicts and their subsequent resocialization. It is impossible to develop the penal and correctional system without resolving the deep and objective contradiction between the isolation of convicts and their resocialization.

The conceptual conditions for the development of a progressive system of serving the sentence are the norms stipulated in the penitentiary legislation and aimed at resocialization of convicts, providing for visits outside the penitentiary institution, visits outside the pen-



penitentiary institution, unconvicted movement of convicts, etc. In order to achieve the goal of the penitentiary legislation on the correction of convicts, it is enough to start applying the outlined norms, which are more conceptual than the provisions of the Concept of Development of Penal Execution System of the Russian Federation until 2030.

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