

## **Problems of Countering the Criminal Subculture in the Penitentiary System of Kazakhstan**

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### **Abstract**

The present paper examines the problematic issues of countering the criminal subculture in the conditions of the penitentiary system of Kazakhstan. Currently, the administration of these institutions, various state bodies, and numerous public organisations are engaged in the rehabilitation of prisoners. Through joint efforts, it was possible to stop the wide spread of criminal ideology in places of detention. At the same time, a detailed study of the current situation shows that the criminal subculture, primarily the phenomenon of "code-bound thieves", still plays a certain role there, since it was formed over many decades of Soviet and post-Soviet history. In modern conditions, this phenomenon has been significantly transformed, but nevertheless, it seeks to strengthen its influence in the penitentiary system of Kazakhstan.

**Keywords:** Criminal Environment; Justice System; Criminal Intelligence Operations; Prison Community; Prisoners.

### **Introduction**

The relevance of the subject matter is evidenced by the words of the President of the Republic of Kazakhstan K. Tokayev, spoken at a meeting of law enforcement agencies on 29 October 2020: "Against the background of the difficult socio-economic situation in the country, the reinforcement of organised crime and the spread of prison subculture must in no way be allowed. It is evident

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that the situation here is by no means favourable" (The head of state held an expanded..., 2020). The danger of the penetration of criminal ideology into the consciousness of people, especially young people, lies in its consolidation as a way of life, morality, and attracting new members to the ranks of crime. This is especially evident in penitentiary institutions, where the efforts of negatively oriented convicts form a different level of regulation of relations – informal, which is radically different from the official, created by various social norms. The majority of convicts who are serving their sentences there and do not belong to the leaders of the criminal environment constantly feel a sense of anxiety for their personal safety. The most accessible condition for its provision is the observance of criminal traditions (Mendybaev, 2011; Akimzhanov et al., 2014; Koulis & Fouskas, 2022).

The term "criminal subculture" implies a phenomenon that has a high cultural and social specificity. Criminological studies from all over the world have proved that in most prisons there is a "code of prisoners". This has been defined as a "prison subculture". Classic early studies from the 1950s and 1960s in the United States showed that this subculture consists of oppositional views on prison administration and rules of prisoner behaviour, which usually promoted cooperation and peaceful coexistence (Abdrasulov, 2023). While the subculture of prisoners helps to restore order, it is described as a decentralised system of norms that is internalised and operates without coercion. Violation of these norms does not entail predictable penalties, but can lead to ostracism. On the contrary, "prison gangs" are detected in many penitentiary systems. These are centralised, limited and hierarchical structures involved in criminal activities in prison, which control and ensure compliance with clear sets of, often written, informal rules.

A special culture of relations is caused by the strict isolation of convicts from society, a narrow circle of choice of subjects of communication, a high degree of their criminal contamination, restriction of rights and social opportunities. The majority of convicts are forced to share the specific values of the prison community in one way or another (Mendybaev, 2011). The problem is that these traditions and customs can neither be destroyed nor banned overnight, since it is impossible to change centuries of inherited attitudes, ways of thinking, habits at once (Barquín et al., 2019; Sarkissian et al., 2018; Volker & Galbraith, 2018). According to S.I Shpak (2012), a certain ideology and value system is present in the criminal world in any country of the world. But it was only in the Soviet Union and, later, in the post-Soviet states, including Russia, that the criminal ideology, and the criminal subculture as a whole, have reached the highest perfection. This is manifested in the existence of the phenomenon of "code-bound thieves", unknown in other states.

It is believed that it originated in the 1930s in prisons as a result of the struggle for supremacy between different categories of professional criminals. Then, among the numerous strands of professional criminals, a group that called itself "thieves" stood out. A "thief" could be an applicant who had significant criminal experience, who was able to organise and manage criminal activities both in places of detention and outside them. He not only assumed the obligation to strictly follow the "criminal code", which is aimed at preserving and strengthening the criminal community, ensuring the parasitic state of its members. The unity and stability of such a community were based on their organisation and strict sanctions for violations of the rules of conduct. Modern "code-bound thieves" – are persons who received their status at a "sit-down" (a meeting of criminal authorities), as a rule, repeatedly convicted, deeply assimilated criminal customs and traditions. At the same time, now they mostly move away from committing thefts, since they are at the top of the hierarchy of the criminal world (Malchuk, 2018). Thus, the influence of a criminal ideology is the most relevant in the criminal subculture of penitentiary institutions in Kazakhstan.

### **Materials and Methods**

The study of the problems of rehabilitation of convicts in places of detention in Kazakhstan requires a certain methodological framework based on an integrated approach. This methodology should include both theoretical principles of related branches of law, and knowledge of the immediate problems encountered in prisons. Scientific cognition of intra-industry relations involves the use of a system-structural method, which lies in the analysis of the essence and connections between various elements. This allows identifying the specifics and nature of the interaction that occurs between the various elements of the legal institutions under consideration: criminology, criminal intelligence, and correctional code. These institutions are closely connected, forming the basis for the organisation of the work on the rehabilitation of prisoners. The comparative method helps to identify the continuity and specificity of various approaches to the creation of an optimal model for ensuring the regime of detention in penitentiary institutions. Apart from the above, the study applies a logical method and a method of transition from general to particular concepts.

Theoretical and methodological foundations of the study. The study of the status of a "code-bounded thief" in the context of prison subculture on the example of prison mythology of post-Soviet countries was conducted based on an ontognoseological approach to the study of culture, the essence of which is a non-judgemental consideration of culture as a special form of being – "secondary reality", "second nature" created by people; a systematic approach and the concept

of subcultures, according to which subcultures are subsystems of culture as a whole and strive to expand their borders. From the position of this approach, an essential property of the prison subculture is its desire for expansion, and one of the means of its implementation is prison mythology. For an in-depth analysis and reliability of the results, such methods of scientific cognition formation as factor, system, causal methods, methods of classification and systematisation were used. The theoretical and methodological basis of the research is the works of researchers, analysts, and experts in the field of operation and reform of penitentiary systems, theory and practice of managing the processes of improving the efficiency of penitentiary institutions. The study is based on the analysis of the legal framework of the penitentiary system as a method of data collection, and conducting an expert survey. The main approach was the method of analysis. Analysis is a method of cognition that implies the separation of an integral subject into its component parts (sides, signs, properties, or relationships) for the purpose of their comprehensive study. With the help of the analysis, the features of the criminal subculture of the participants of the penitentiary system of the Republic of Kazakhstan were determined from similar systems in other countries. The comparative analysis constitutes a powerful and versatile tool that expands the ability to understand and describe political processes and changes in any country in accordance with the existing reality, concepts, and goals facing any political system. With the help of comparative analysis, the differences between various criminal trends and groups in criminal circles were determined. The features of different subcultures were compared. The comparison also helped to determine the most effective methods for making changes in the criminal culture of participants in the penitentiary system of the Republic of Kazakhstan.

This study is unique for the region. However, in the early reviews, pre-existing tools from other regions of the world were used as the basis for testing. In particular, the prisoner survey tool used the Serious and Violent Offender Reentry Initiative (SVORI), used by researchers in the United States to determine gang membership in US prisons. The survey for prisoners used questions from the Measurement of the Quality of Prison Life (MQPL) developed in the UK. In both cases, many questions were significantly changed to reflect the Kazakh realities and better focus on the specific problem of the criminal subculture. Finally, expert testimony from government officials, NGO representatives, and professors was requested during the review mission. In each case, the goal was to understand the perception of the criminal subculture and its impact on the prison, and the actions of criminals and the criminal justice system and society as a whole.

## **Results and Discussion**

The current "code-bound thieves" are the main carriers of criminal ideology, the top of the criminal world. This is the legislative, executive, and judicial power in one person (Zhadaev, 2020). The central element of this power is the common cash fund or the so-called "obshchak". In criminal jargon this is the name of the mutual assistance fund, which must be replenished by all members of the criminal community. Its funds are used to organise new crimes, bribe officials and law enforcement officers, and provide support to prisoners in difficult situations or their families. "Obshchak" is under the control of an authoritative criminal leader who enjoys the trust of criminals. In places of detention, it consists of money, food, cigarettes, tea, other items. "Obshchak" outside of places of detention is formed at the expense of proceeds from criminal activity: contributions of professional criminals, racketeering, remuneration for assistance in resolving disputes between entrepreneurs (Obtshak, 2020).

The desire to replenish the community fund pushes convicts to new offences: extortion of newcomers, receiving money from persons who are "at large", gambling, etc. (Mendybaev, 2011). At the same time, it is characteristic that among minors, the primary "contamination" often occurs while still "at large". Penitentiary institutions receive individuals who have already been criminalised, "contaminated" with criminal ideology, criminal romance, and sometimes have formed stable criminal views and intentions (Levchenko & Vasylevych, 2022). Thus, the youth criminal movement "AUE" (Convicts' Codex is Universal), which is about 10 years old, is widely spreading in Russia. It promotes prison fraternity, unity, equality, and the need for mutual support. Thus, the prison subculture does not disappear, but to some extent revives, rejuvenates and acts as a prerequisite for the aggravation of the situation in the institution (Azis, 2019; Chirun, 2019).

In Kazakhstan, a similar picture was observed ten years ago in the south of the country. In the city of Taraz, one of the organised criminal groups established control over educational institutions. For years, young students paid a monetary "tax" to the criminal world. The system of extortion was fine-tuned to the smallest detail: the money was collected by the so-called "smotryaschiy" (enforcer, the first level of the criminal hierarchy) of school, college or university, then they fell to the "smotryaschiy" of the district, and he passed it even higher. It was believed that the considerable sums collected went as "grev" (material support) to places of detention (Vybornova, 2009). As a result of large-scale preventive measures, this criminal scheme has been eliminated. At the same time, more local manifestations of criminal ideology are periodically observed in different regions of the country. Such a practice of romanticising and supporting it entails a potential danger of criminalising public consciousness, primarily among young people and

adolescents, due to the age of those who are inclined to idealise the "strong personality". This is what propagandists of criminal ideology are guided by, trying to attract the attention of young people and prepare new personnel for criminal communities, whose loyalty directly depends on how attractive such "ideals" would look in their eyes (Shpak, 2012). The criminal subculture itself is often presented as an example of an honest attitude to people, in contrast to the official culture, which is permeated with the spirit of cynicism and hypocrisy (Holt, 2020).

According to T.A. Mendybaev, in such conditions, the administration of penitentiary institutions is not able to fully perform the function of social regulation. The official organisation of the life of convicts cannot cover all its aspects, since it is based not on the voluntary submission of prisoners, but on coercion: from the direct use of force to the threat of punishment and the promise of certain benefits and indulgences (Kovaliova & Sokolovska, 2021). At the same time, the criterion of "rehabilitation" is still taken as the obedience of the convicted person and his adaptability to the conditions of places of detention. Although, according to T. A. Mendybaev (2011), good adaptability to such conditions often indicates poor socialisation on the outside. The presence or absence of a criminal attitude does not correlate in any way with the controllability of the individual, and in certain conditions (for example, in a situation when a person falls into a group focused on criminal conduct), the controlled individual is more dangerous for society, since he does not have any moral norms independent of his group (Orlovskiy et al., 2022).

Such processes led to the fact that the so-called "black prisons" appeared in the penitentiary system some time ago, that is, institutions where representatives of "code-bound thieves" had real power. There were "common funds" operating there and large-scale propaganda of criminal ideology was carried out. The administration's attempts to restore order often led to conflict situations, during which there were riots of prisoners with numerous victims and dead (Spytska, 2023). The main goal of the prison community was to disorganise the regime of detention in institutions and subordinate them to their control (Choi et al., 2019). In contrast to the "black prisons" in the depths of the penitentiary system, the idea of creating so-called "red prisons" in which full-fledged power should belong to the administration began to mature. The main purpose of this approach was to establish a proper maintenance regime in them. For several years, this idea was implemented, as a result of which there were practically no "black prisons" left, and many institutions in Kazakhstan became "red" (Choi et al., 2019).

However, then the inferiority of this approach gradually began to manifest itself. It consists in the fact that the main efforts to maintain the regime in penitentiary institutions were again entrusted to prisoners, but this time from

among the henchmen of the administration. At the same time, their methods in many cases coincided with their predecessors in terms of the use of violence. "Activists" in the "red prisons" began to clearly dominate the rest of the prisoners, and in some cases beat and mock them. Thus, the good goal of correcting convicts was still achieved illegally, which was doomed to failure. Taking into account this negative experience, the penitentiary system of Kazakhstan refuses it and is currently in search of the most optimal model for its further development (Choi et al., 2019; Mitchell et al., 2020; Schabram et al., 2018).

Against this background, the criminal world is becoming more active in places of detention. It seeks to build its own system of relations with the administration of institutions, for which regular complaints from prisoners about various violations of their rights are a big problem (Aryn et al., 2021). Therefore, sometimes criminal leaders offer the administration's leadership an unspoken agreement – stopping the flow of complaints in exchange for organising a "common fund" and promoting criminal ideology (Sousa et al., 2019; Albuquerque et al., 2020). Analysing these trends, one serious problem has been identified. According to the study, when considering the first and the second options of the penitentiary system organisation, an important issue was overlooked – the rehabilitation of convicts, and this is exactly the goal laid down in Article 4 of the Penal Execution Code of the Republic of Kazakhstan (2021). A significant drawback of organisational and legal measures developed by the established practice of executing detention and enshrined in criminal and penal enforcement legislation is manifested in the fact that their application does not allow to radically reduce the negative impact of the "authorities" of the criminal world on the bulk of convicts (Mendybaev, 2011). At present, increased attention is paid to the conditions of detention of convicts in places of detention. There are permanent public monitoring commissions, a National preventive mechanism under the leadership of the Commissioner for Human Rights, prosecutors on duty are regularly present in institutions, a daily medical examination is carried out to detect bodily injuries, etc. (Boreiko & Navrotska, 2023). All these measures are necessary to prevent physical and psychological violence against the contingent by the administration and other prisoners.

At the same time, according to the study, this overlooks the targeted effect of neutralising the influence of the criminal subculture, the main condition contributing to the commission of offences (Shevchuk et al., 2023). Only in this case the real rehabilitation of prisoners in places of detention can take place. Notably, the prison authorities are constantly educating prisoners. At the same time, such activities are carried out based on the official state ideology of combating crime. And as noted above, it does not always have the necessary effect

on the consciousness of prisoners and often creates the opposite effect for them. Therefore, alternative options of educational work based on other methods are needed. For example, a criminal ideology is promoted in an institution, building a criminal hierarchy, ignoring the legitimate demands of the administration, etc. This can be contrasted with the counter-propaganda that such an outcome of events is not beneficial primarily to the criminal world, since this may be followed by repressive measures on the part of the state.

Obviously, official, public methods of education are not applicable here. However, there is the criminal intelligence with its arsenal of various non-public tactical methods and means that are able to implement such an alternative. Nevertheless, this potential remains unused, although it is able to effectively eliminate the causes and conditions that contribute to the commission of offences, as stated in Article 3 The Law of the Republic of Kazakhstan dated April 29, 2010 "On the prevention of offences" (2020). To a certain extent, the current situation is conditioned by the imperfection of the current legislation. Thus, Article 100 of the Penal Execution Code of the Republic of Kazakhstan defines the following tasks of the criminal intelligence operations in penitentiary institutions:

- 1) ensuring the order and conditions of sentence enforcement and the safety of prisoners, staff, and other persons;
- 2) prevention, detection, suppression of criminal offences being prepared and committed in institutions and violations of penal procedure;
- 3) search for convicts who have escaped from institutions, and convicts who evade serving a sentence of imprisonment;
- 4) assistance in identifying and solving crimes committed by convicted persons before arriving at the institution;
- 5) prevention, disclosure, and suppression of intelligence and (or) subversive actions (Holt, 2020).

The consideration of the criminal situation in penitentiary institutions would allow developing measures to neutralise the negative influence of the prison (penitentiary) subculture on its representatives. Without considering the fundamental issues of the prison (penitentiary) subculture, it would be impossible to proceed to the consideration of the criminal situation, because without knowing the basics of the prison subculture, it is impossible to consider any processes occurring within this subculture related to the observance of its internal unwritten traditions, customs and "laws".

Penitentiary crimes and offences arising from the relations of the prison subculture are currently still presenting an increased danger, since the ability to paralyse the activities of a correctional institution shows the authority of the representative of the prison subculture within the penitentiary system. Based on



this, this person will occupy a certain position in the hierarchy of the prison subculture. The ability to organise the masses of convicts for insubordination to the requirements of the administration and the regime of the penitentiary institution is a weighty argument in resolving a dispute that arises between the administration of the penitentiary institution (detention centre, pretrial detention facility, correctional camp, juvenile correctional facility) and the leaders of the criminal world located there. And the administration cannot ignore this fact, because it becomes a hostage in such situations.

It is concluded that the main methods and ways to neutralise the negative influence of the prison (penitentiary) subculture should include:

- the pedagogical component of neutralising the negative influence of the prison (penitentiary) subculture on the bulk of convicts;
- the religious component of neutralising the negative influence of the prison (penitentiary) subculture on the bulk of convicts;
- the organisational and legal component of neutralising the negative impact of the prison (penitentiary) subculture on the bulk of convicts.

The system of measures to neutralise the negative impact of the prison subculture on its representatives should include measures aimed at reducing the level of committing penitentiary crimes and offences:

- strengthening measures for the prevention of penitentiary crimes;
- prevention of the main types of offences committed by representatives of the prison subculture who are in penitentiary institutions of the Republic of Kazakhstan.

Summing up the results of the study, the following can be identified as the main areas for improving the system of the educational process in penitentiary institutions, and neutralising the negative influence of the prison subculture on its representatives:

- organisation of the correctional environment in a penitentiary institution;
- active involvement of convicts by stimulating them to various positive factors of the correctional environment, taking into account the individual characteristics of the convict's personality;
- systematic reinforcement of the process of positive communion and qualitative development of the factors of the correctional environment;
- involvement of public organisations, religious denominations, parents, representatives of the prison (penitentiary) subculture, etc.;

- creation of amateur organisations of convicts, as a counterweight to the informal leaders of the prison (penitentiary) subculture;
- creating and improving living conditions, working conditions, increasing the number of positive incentives for those convicted of complying with the requirements of the regime;
- training of employees of the penitentiary system in pedagogical skills (training, creation of staff of psychologists, rehabilitation, etc.);
- development of public organisations of convicts (including public assistance funds).
- The measures directly aimed at neutralising the socio-economic factors contributing to the commission of crimes should include:
  - improving the social and living conditions of serving sentences by convicts, improving the quality of medical care;
  - providing convicts with greater opportunities to independently satisfy their material needs. The implementation of these and other measures similar in content should pursue a single goal – to deprive the "authorities" of the economic levers of influence used to carry out informal management of the community of convicts.

### **Conclusions**

The analysis of the tasks shows that there is no rehabilitation of convicts among them. Therefore, the tasks of the criminal intelligence operations specified in the Criminal Executive Code of the Republic of Kazakhstan, according to the study, are mainly aimed at eliminating the consequences of the impact of criminal ideology, and not at the real causes. Because of this, operational workers are not focused on preventive work with prisoners, leaving it to educators who are not able to cover all its aspects. Therefore, it is important to legislate such a task of the criminal intelligence operations and to focus on it the operational workers of penitentiary institutions. To this end, it is proposed to supplement the considered norm of Article 100 of the Penal Execution Code of the Republic of Kazakhstan with subparagraph 1-1) in the following wording: "1-1) Counteraction to criminal ideology in order to rehabilitate convicts;". The study suggests that the implementation of such a norm can fundamentally change the criminal enforcement policy of the state and develop new organisational and legal methods of countering crime.

The establishment of norms of the criminal subculture is conditioned by the fact that even under the condition of strict control and restrictions by the state and society, there are their own social interactions in penitentiary institutions and the criminal world. Hence, the main danger arises – the stabilisation of the antisocial

attitude and the gradual transition to a different life with an informal system of established relations, which produces a variety of forms of criminal conduct. One of the reasons for the spread of subculture is that the deep basis and source of prison law is traditional culture and customary (built on custom) law. Prison justice, like any community justice, uses compensatory and conciliatory technologies, which are the basis of restorative justice, to resolve conflict situations. In such conditions, the state and society should use the full range of legal mechanisms for the correction of convicted persons, including those of an unofficial nature, primarily the criminal intelligence operations. This requires appropriate legislative norms and the reorientation of the operational apparatus of penitentiary institutions to correct them.

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