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Problems of Understanding, Registering, Systematizing Sources of Modern Russian Penitentiary Law: Review of Reports and Speeches of Participants of the Interregional Round Table "Sources of Modern Penitentiary Law of Russia" (Vologda, Vologda Institute of Law and Economics of the Federal Penitentiary Service of Russia, January 17, 2023)

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Abstract

The article reviews speeches made at the interregional round table "Sources of Modern Penitentiary Law of Russia" (Vologda Institute of Law and Economics of the Federal Penitentiary Service of Russia, January 17, 2023) to streamline new information, critically assess the contribution of reports to scientific discussions, identify research trends and determine problematic aspects. This paper reveals theoretical issues of the concept, essence and system of sources of penitentiary law. Attention is drawn to the necessity to build a typology of penitentiary law sources. The article substantiates the relevancy of distinguishing between typical and atypical sources and the existence of the latter due to the actualization of manifestations of "living" law associated with the rule-making practice of issuing subordinate acts of departmental rulemaking, clothed in very vague attributive forms (letters, recommendations, instructions, etc.) or expressed in the form

of an oral order of commanding officers. It is proposed to consider the role of "quasi-sources" that reflect the law-making orientation of individual decisions of the Supreme and Constitutional Courts in the sphere of their law enforcement activities.

Close attention is paid to the problem of technical and legal quality of penitentiary law sources. Attention is focused on risks of applying a broad approach to the concept "legislation", features of the concept of legal culture of penitentiary law sources, forms of manifestation of law and order in the penitentiary law sources system, the role and correlation of sources of international and penitentiary law, characteristics of anti-corruption and delegated legislation in the system of penitentiary law sources.

Keywords: penitentiary law; sources of law; quasi-sources of law; system of law; international law; legal culture; penitentiary law and order.

5.1.1. Theoretical and historical legal sciences.

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On January 17, 2023, the Vologda Institute of Law and Economics of the Federal Penitentiary Service of Russia hosted an interregional round table "Sources of Modern Penitentiary Law of Russia". The event was organized by the Vologda Institute of Law and Economics of the Federal Penitentiary Service of Russia together with the interregional public organization "Penitentiary Science Club", the Kuzbass Institute of the Federal Penitentiary Service of Russia, as well as the Irkutsk Regional Branch of the Interregional Association of State and Law Theorists.

The Head of the Vologda Institute of Law and Economics of the Federal Penitentiary Service of Russia, Colonel of the Internal Service, Candidate of Sciences (Law), Associate Professor Evgenii L. Khar'kovskii addressed the round table participants with a welcoming speech.

The topic of the round table seems to be very important and significant. In modern conditions of dynamic development of the Russian penal system, a key role is assigned to formal sources of penitentiary law. They act as powerful drivers for renewal and development of the penitentiary system. This circumstance determines not only the theoretical, but also practical significance of problematic issues put up for discussion. To achieve the goals of correction of convicts and improve the performance of the penitentiary system is possible only if close attention is paid to content features and legal forms of penitentiary law.

Within the framework of the round table, participants discussed a wide range of issues related to the concept and essence of sources of law, the specifics of penitentiary law as a branch of Russian law, the ratio of national and international sources of penitentiary law, the role of strategic planning acts in activities of the penitentiary system, directions for implementing the Concept for the development of the penal system of the Russian Federation up to 2030.

A wide range of issues of the problem field, including both general theoretical and sectoral aspects of the penitentiary law sources, testifies to the importance and relevance of the round table.

The main report on the topic ***"Origin and sources of modern penal law"*** *was presented by Roman A. Romashov, professor at the Department of State and Legal Disciplines of the Vologda Institute of Law and Economics of Russia, Doctor of Sciences (Law), Professor.*

The problem of sources of law in general and formal sources of penitentiary law in particular has both scientific-theoretical and practical significance. It seems appropriate to focus on three aspects: analysis of the relationship between concepts "origin" and "sources" in relation to penitentiary law; understanding and systematization of typical sources of penitentiary law; atypical sources of "living" penitentiary law of modern Russia.

The concepts "origin" and "source" correlate as a prerequisite and a condition. The history of penitentiary law consists of public relations in the field of penitentiary life (material origins); ideological and theoretical concepts of penitentiary scientists, doctrinal positions of politicians and practitioners of the Federal Penitentiary Service of Russia (ideological origins), which, having a direct relationship to the system of penitentiary law, at the same time do not have a real legal force and are not capable of having a regulatory and protective effect on penitentiary relations. Formal legal sources of penitentiary law represent externally expressed in certain legal forms (material and procedural) legal prescriptions endowed with legal force and applied by authorized entities as means of legal regulation and legal protection of penal relations.

The system of typical sources of penitentiary law consists of three main legal forms: normative legal acts (constitutions, laws, bylaws), normative contracts, and legal customs. The hierarchical structure of the system of sources presupposes the predominant role of normative legal acts, both defining features of the formal expression and content of contracts and customs derived from them, and endowing them with legal force. A special place in this system is occupied by strategic planning documents (federal concepts, federal programs), the main purpose of which is the medium-term forecasting of the development of the Federal Penitentiary Service of Russia.

The concept of "living" law ("living" constitution) introduced into the conceptual apparatus of modern Russian law actualizes the problem of understanding sources of "living" penitentiary law. They are numerous subordinate acts of departmental rulemaking, clothed in very vague attributive forms (letters, recommendations, instructions, etc.) or presented in the form of an oral order of commanding officers. The conduct of the special military operation led to the use of such an atypical source of legal impact as advanced law enforcement practice, when penal relations arise in conditions of a gap in the law and are based solely on the will of persons endowed with powers (involvement in the special military operation of those sentenced to punishment in the form of deprivation of liberty, detention of prisoners of war in a pretrial detention center, etc.).

Nikolai I. Polishchuk, professor at the Department of the Theory of State and Law, International and European Law of the Academy of the FPS of Russia, Doctor of Sciences (Law), Professor made a speech on the topic ***"Quasi-sources of law and their role in legal realization of the state"***.

Due to their historical path of origin, formation and development, the specifics of lawmaking and law-realization activities, and the presence of other features, current national legal systems, as a rule, simultaneously use several basic sources of law that form their basis, as well as a number of quasi-sources that perform a supporting role.

Basic sources are the ones objectively established in sovereign states (legal families), with the help of which official regulators of public relations are legalized, while quasi-sources – the ones that perform a secondary, auxiliary role in normative, legal implementation and legal interpretation activities.

In the Russian national system of law, the basic sources include a legal custom, normative legal act, contract of normative content and principles of law, since they contain fundamental ideas determining the content and key directions for legal regulation of public relations, as well as legitimize legal norms created to achieve these goals. Their characteristic feature is that they are consistently used in rule-making and law-realization activities, and consequently, the entire national system of law is created and operates on their basis.

Quasi-sources of Russian law are interpretative documents (decisions, resolutions, definitions) emanating from authorized state bodies (the Constitutional Court of the

Russian Federation, the Supreme Court, etc.) aimed at uniform application of basic sources.

Quasi-law-making by the highest judicial and other authorized bodies does not contradict the principle of separation of powers and is carried out in strict accordance with the current Russian legislation. All the documents emanating from them are quasi-sources of Russian law, perform a secondary, auxiliary role in the rule-making and legal implementation activities of the state. The need for quasi-sources of law arises when there are atypical situations associated with gaps in the law, conflicts of legal norms, violations of the fundamental principles and norms of international law, the sanctioning of significant discretion of the law enforcer, etc. in the legal implementation activities of subjects.

The speech of Mikhail Yu. Spirin, associate professor at the Department of the Theory and History of State and Law and International Law of the Samara State Aerospace University named after academician S.P. Korolev (National Research University)", Candidate of Sciences (Law), Associate Professor, was devoted to the topic ***"The ratio of legislation and legislative activity"***, *in particular, problems of different meanings of the categories "legislation" and "legislative activity".*

The round table participant drew attention to significant risks of perceiving these categories in a too broad approach to legal understanding and subsequent enforcement. This refers to subordinate regulatory legal acts of the head of state, government, ministries and departments, etc., as well as corresponding activities for their publication. The speaker argued the controversy of the thesis about the origin of legal force solely from the formal shell of legal norms (formal source of law) and substantiated the existence of a two-way dialectical connection between a form and content, since the main properties of legal norms fixed in a specific formal source of law (and not only its place in the hierarchy of such sources of law and the powers of the subject of lawmaking) also affect its legal force.

M.Yu. Spirin asked Professor R.A. Romashov the question about the possibility and necessity of using the term "forms of law" in the meaning of formal sources of law, including sources of penitentiary law. Having noted the importance of the question asked, R.A. Romashov pointed out the steady use of terms "form of substantive law" and "form of procedural law" in legal science and practice, as well as potential practical difficulties in using the category "form of law" in the plural in the meaning of formal sources of law.

Natal'ya N. Kirilovskaya, Head of the Department of State and Legal Disciplines of the Vologda Institute of Law and Economics of the Federal Penitentiary Service of Russia, Candidate of Sciences (Law), Associate Professor, *made a report on the topic* ***"Critical problems of correlating norms of international and national law"***.

The question of the relationship between norms of international and national law has always been the subject of acute discussion both in the theory of law and in the theory of international law. Penitentiary science is no exception. In the penitentiary sphere, as in any other, a ratified international treaty that does not contradict the provisions of the Constitution of the Russian Federation will have priority over federal laws. This constitutional norm has an imperative character. At the same time, the penitentiary sphere refers to the area of adoption of documents mainly of a recommendatory nature at the international level. Is the state obliged to follow norms of a recommendatory nature? So, for example, the Nelson Mandela Rules known in international penitentiary law are advisory in nature. According to their legal status they are a resolution of the UN General Assembly and the rule of Paragraph 4 of Article 15 of the Constitution of the Russian Federation does not apply to them. However, states, being members of international organizations, assume certain obligations under membership and, in this regard, should strive to adopt and implement generally accepted rules. However, the recommendatory nature of norms does not oblige member states to strictly follow them, giving them the opportunity to determine the relevancy of implementing international organizations' decisions in part or in full, as well as the format of their realization.

Evgeniya V. Lungu, Head of the Department of State and Legal Disciplines of the Kuzbass Institute of the Federal Penitentiary

Service of Russia, Candidate of Sciences (Law), Associate Professor, *in her speech on the topic* ***"Problems to classify sources of law"*** *drew attention to the fact that the classification of sources of law is essential for regulation of public relations.*

In Russian legal science, a special place has always been given to the vertical classification of sources of law on such grounds as legal force of normative legal acts. However, in the conditions of legal reality, this approach does not consider both the diversity of normative legal acts and their position in the system of sources of Russian law. The solution to this problem is seen in the identification of new grounds for the classification of sources of law with regard to the objectively established practice.

The report ***"Legal culture of sources of penitentiary law"*** made by *Viktoriya V. Karpunina, associate professor at the Department of State and Legal Disciplines of the Voronezh Institute of the Russian Federal Penitentiary Service, Candidate of Sciences (Law), Associate Professor was devoted to the problem of correlation and interaction of legal culture, sources of law and law and order.*

Legal culture is one of the significant indicators of technical and legal development and perfection of legislation.

The current Penal Code of the Russian Federation was prepared in the mid-1990s, during the period of drastic renewal of legislation, and performs a fundamental role in regulating penitentiary legal relations. At the same time, it should be noted that certain norms and institutions enshrined in the PC RF contribute to excessive uncertainty in legal regulation, thereby reducing the level of technical and legal culture. For example, the penal legislation widely uses expressions "can", "is entitled to". From the position of the institute of anti-corruption expertise it is considered as a manifestation of such a technical and legal defect, the overcoming of which is possible through legislative consolidation of the term and types of legitimate interests of convicts and other persons.

A problematic aspect of the legal culture of penitentiary law sources may be the inaccuracy and inconsistency of the subject of regulation. For example, Chapter 21 of the Penal Code of the Russian Federation regulates grounds for exemption from punishment, thereby competing with Chapter 12 of the Criminal Code of the Russian Federation. The current PC RF contains primarily material norms, as a result of which a number of bylaws, in particular Internal Regulations, acquire a value actually comparable to the PC RF, thereby claiming the conditional status of the law in the material sense. Overcoming these and a number of other technical and legal shortcomings will contribute to improving the level of legal culture of the sources of penal law.

Evgenii V. Svinin, Deputy Head of the Department of State and Legal Disciplines of the Vologda Institute of Law and Economics of the Federal Penitentiary Service of Russia, Candidate of Sciences (Law), Associate Professor, *in his speech on the topic* ***"Sources of penitentiary law as the normative basis of penitentiary law and order"*** *focused on the need to study the interaction of these phenomena.*

One of the problems that deserves close attention is the multiplicity of forms of subordinate legal acts. The use of one or another form of a subordinate legal act should be justified by the need to regulate a certain type of public relations, thus each form of a subordinate legal act should have its own specific subject of regulation. At present, this issue does not have an unambiguous legal regulation; moreover, in law-making practice there are subordinate regulatory legal acts that are not formally stipulated by the Decree of the Government of the Russian Federation No. 1,009 of August 13, 1997 "On approval of the Rules for the preparation of regulatory legal acts of federal executive authorities and their state registration". In this regard, in order to strengthen the penitentiary law and order, it is important to optimize forms of law, determining the subject of their legal regulation.

Associate professor at the Department of Jurisprudence of the North-West Institute of Management of the Russian Presidential Academy of National Economy and Public Administration (RANEPA), Candidate of Sciences (Law) Galiya T. Romashova discussed ***"Anti-corruption legislation and its place***

in the system of sources of patent law of modern Russia".

The penitentiary system of the Russian Federation is characterized by a large number of corruption risks, which in itself actualizes the problem of anti-corruption security as the activity of bodies and officials that are part of the unified system of public authority based on anti-corruption legislation to prevent and counter corruption-related offenses. The factor that reduces the regulatory and protective effectiveness of anti-corruption legislation is departmental disunity, which causes multiple regulatory conflicts, as well as the absence of a single codified act in this area of legal regulation.

The speech of Olesya V. Moshnenko, associate professor at the Department of State and Legal Disciplines of the Kuzbass Institute of the Federal Penitentiary Service of Russia, Candidate of Sciences (Economics), *was devoted to the topic* ***"The legal nature of decisions of the Constitutional Court of the Russian Federation"***.

According to O.V. Moshnenko, the meaning and role of decisions of the Constitutional Court of the Russian Federation has not lost its relevance so far. Some decisions of the Constitutional Court of the Russian Federation seem to be considered as sources of law. We are talking about decisions that interpret norms of the Constitution or laws of the Russian Federation. They, indeed, possess some properties of the sources of law (for example, general obligation), which give them a normative character.

Despite the fact that the Constitutional Court of the Russian Federation does not establish new rules of conduct and does not make changes to the existing legislation, nevertheless, its decisions may imply the cancellation of one or another existing normative act or a separate norm, which, in turn, generates new rights and obligations for participants in public relations. Such decisions of the Constitutional Court of the Russian Federation, in our opinion, have a rule-making character, and can be recognized as a source of law.

However, we believe that by their legal nature, the decisions of the Constitutional Court are not judicial precedents, but a special independent type of sources of law. Decisions of the Constitutional Court of the Russian Federation that have normative content can legitimately be attributed to the sources of law in the formal legal understanding of this category. The unique, special legal nature of the decisions of the Constitutional Court of the Russian Federation is manifested primarily in the combination of normative and doctrinal principles, as well as in their extension to the most important issues concerning all branches of law, including penitentiary law.

Yuliya V. Perron, Senior Lecturer at the Department of State and Legal Disciplines of the Vologda Institute of Law and Economics of the Federal Penitentiary Service of Russia, Candidate of Sciences (Law), *contemplated on* ***"The role and place of international standards in the system of penitentiary law"***.

In modern conditions, when determining the place of international standards for the execution of criminal penalties in the system of sources of law, it is necessary to focus more not on the source of their consolidation, but on the nature of origin and content. Arising conflicts of international standards with Russian law should be resolved using principles of the sources hierarchy or application priority, taking into account the provisions of Part 4 of Article 15, articles 17, 46, 62, 63, 67.1, 69, 79, Paragraph "b" of Part 5.1 and Part 6 of Article 125 of the Constitution of the Russian Federation.

Anna P. Veselova, Senior Lecturer at the Department of State and Legal Disciplines of the Kuzbass Institute of the Federal Penitentiary Service of Russia, Candidate of Sciences (History), *analyzed individual trends in law-making in her report on the topic* ***"Delegation as a trend of modern law-making practice"***.

Undoubtedly, speaking of formal sources of law, one should be aware of the legal family. Significant interest is paid to general trends that guide the development of sources of law as a system category in recent times. One of these is the endowment of executive authorities with legislative powers. Its retrospective formation is represented by the appearance of the phenomenon of delegated legislation. With the passage of time, the very fact of dele-

gation gradually loses the need for formal expression, which is mostly not a consequence of the complication of public relations, but a concomitant process of strengthening executive authorities in the public administration system.

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