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Verification of Reports on Prison-Related Crimes in the Context of Ensuring the Rights and Legitimate Interests of Convicts

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Abstract
Introduction: the article considers problematic issues related to the participation of penal system officials in procedural activities to verify reports of crimes committed by convicted persons, accused persons, and suspects in correctional institutions, and puts forward proposals aimed at improving the effectiveness of these activities. Our arguments are directly related to the following: determining the moment from which the calculation of the terms of such an inspection should begin, assessing the expediency of such an inspection, actual content of the procedural actions it contains and participation of the defender in them. *Aim:* to analyze the stages of participation of officials of bodies and institutions of the penal system in procedural activities to verify reports of crimes committed by convicted persons, accused persons, and suspects in places of imprisonment, in order to classify the problems of implementing this process and identify ways to solve them. *Methods:* we use complex analysis to make a classification of the problems of responding to various violations of criminal law prohibitions on the part of persons sentenced to imprisonment, as well as suspects and accused persons in custody. *Results:* in the course of the analysis, we identified the following groups of problems: 1) problems related to the reasons for initiating a criminal case; 2) problems related to the verification of reports of prison offences; 3) problems related to the adoption of final procedural decisions and the provision of qualified legal assistance to convicted persons in the implementation of verification actions. Taking into account the specifics of the problems, we propose the ways to solve them. *Conclusions:* we convincingly show that the timely and professional response of officials of correctional institutions (including pre-trial detention centers) to various violations of criminal law prohibitions on the part of those sentenced to imprisonment, as well as suspects and accused persons held in custody, is mandatory and has a number of specific features due, first of all, to the environment in which such a response is carried out.

Keywords: initiation of a criminal case; pre-trial proceedings; correctional institution; urgent investigative actions; convicted person; report of a crime; penal system.

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Introduction

The bodies and institutions of the Russian penal system function on the basis of the principles of legality, humanism, and respect for human rights. According to the current legislation, the work of Russia's penal system is clearly and unambiguously aimed at the execution of criminal penalties imposed on convicted persons and the detention of persons accused or suspected of committing crimes [3]. However, in reality, such activities are multidimensional and go beyond the application of the norms of the penal enforcement law alone. For example, in cases when convicted persons commit new crimes while doing their time, the work of the bodies and institutions of the Federal Penitentiary Service of Russia related to the initiation of criminal cases and the execution of urgent in-

vestigative actions is organized taking into account relevant provisions of the current criminal procedure legislation.

Officially published statistical data indicate that the need for such activities arises quite often; moreover, it is continuously increasing against the background of the counteraction to the preliminary investigation [2] and a noticeable increase in the total number of prison offenses (from 838 in 2015 to 1,015 in 2019, that is, by 21%) [9]. If we group the crimes by type, we can see that, most often, convicts, while in strict isolation, decide to commit illegal actions connected with:

– extortion, deception and abuse of trust (28%);

– illegal trafficking of narcotic drugs and psychotropic substances (26%);

– disruption of the work of correctional institutions (21%);

– escapes from correctional institutions (13%);

– violent actions (12%).

No doubt, in such conditions, there is a growing need for a timely and professional response on the part of correctional officers (in pre-trial detention centers, too) to various violations of criminal law prohibitions by those sentenced to imprisonment, as well as suspects and accused persons held in custody. Such a response is mandatory and has a number of specific features due to the environment in which it is carried out. Despite the fact that for many years penitentiary scientists have been purposefully, consistently and thoroughly studying these features [1; 4; 5; 6; 7; 10], the amount of issues directly related to the participation of penal officers in criminal procedural activities is not diminishing. It seems that the most significant of them are associated with the verification of reports of crimes and the production of verification actions during the implementation of such a verification.

Problems related to the reasons for initiating a criminal case

It is important to note that participation in criminal procedural activities for correctional officers has been and will be a secondary task. According to the law, they can do it, in particular, when checking reports of crimes committed or being prepared by convicted persons and when conducting urgent investigative actions after the initiation of a case, the preliminary investigation of which is recognized by the law as mandatory. Usually, penal staff are involved in the implementation of criminal procedural activities immediately after receiving the information about the crime (or crimes). As a rule, it is issued in the form of a report which the correctional officer submits to the head of the correctional institution. The convicts themselves, as well as their representatives, also have the right to address the latter with such messages, but, striving to ensure their safety, they resort to this extremely rarely.

The procedure for receiving and registering messages of this kind in the bodies and institutions of the penal system is provided for by a special instruction approved by the Order of the Ministry of Justice of the Russian Federation no. 250 of July 11, 2006, and generally corresponds to the procedure reflected in the joint order of the heads of law enforcement agencies of the Russian Federation “On unified accounting of crimes” [8]. The existence of problems, which will be discussed further, is largely due to the fact that the Criminal Procedure Code of the Russian Federation does not define the jurisdiction of the Federal Penitentiary Service as an executive authority empowered in accordance with federal law to carry out intelligence-gathering measures, and also does not take into account the specifics of carrying out criminal procedural activities in a compact and heavily guarded territory of a correctional institution, in strict compliance with regime requirements, among the convicts that can be carriers of criminal subculture, adherents of antisocial views, concepts, etc. Moreover, according to Federal Law 154-FZ of May 26, 2021, correctional officers have the right to announce official warnings to convicts about the inadmissibility of actions that create conditions for committing crimes (Article 17 of the RF Criminal Code). It is logical to assume that now the verification of reports of crimes of convicted persons will be preceded (or accompanied) by the work aimed at determining whether they continue to behave antisocially and recording their specific actions that create conditions for committing offenses, including those with signs of certain crimes for which there is criminal liability. The need to verify the report of a crime that appeared as a result of such proceedings will have to be determined by the head of a correctional institution on the basis of the actual content of the results of the professional activities of its employees, as well as the requirements of federal legislation and departmental regulatory legal acts. The head of a correctional institution can act as a body of inquiry in considering such reports about prison-related offences as legitimate reasons for initiating a criminal case,

if the reports meet certain criteria (that is, they were submitted by the appropriate subject and executed in accordance with the established procedure). If the received message does not meet these requirements, then before making a decision to refuse to check it, the head of a correctional institution must find out whether it is possible to receive a message that satisfies all the requirements of the law.

With the legal insolvency of the reason, a practical problem usually arises. It consists in the fact that the total period of the stage of initiation of a criminal case begins from the moment of registration of the message about a crime (including the one that is not formally a reason) rather than from the moment in which the verification begins. As a result, there may be cases of refusal to verify the received message of a crime allegedly on a legal basis. The confusion is caused by subordinate regulatory legal acts that in fact identify applicants (calling them persons against whom a crime has been committed) with eyewitnesses (who appear in them as persons who know something about the crime). Literally, they can be interpreted in the sense that an applicant is any person who reports a crime committed both against themselves and against other persons (except in cases of turning oneself in). However, according to the meaning of Article 143 of the RF Criminal Procedure Code, if an eyewitness notifies officials about the commission of a crime, then not a message, but a report of a law enforcement officer is made (that is, there is another reason to initiate a criminal case).

In fact, the same person in the RF Criminal Procedure Code is called the applicant and the victim, the suspect and the person detained on suspicion of committing a crime. Consequently, convicted persons who submit a message when they notify officials about a crime committed against them should be considered as applicants. After the decision to initiate a criminal case is made, these persons become victims, civil plaintiffs or their representatives, that is, participants in criminal proceedings who have an independent legal interest in the criminal case recognized at the legislative level. In turn, a convicted person who has declared a crime they themselves committed, as a rule, later becomes a suspect. Other persons who witnessed the commission of a crime on the territory of a correctional institution, or penal staff of this institution who were informed about the crime, may later become witnesses in a criminal case (for example, an operational officer who received information about a committed or impending crime from a trusted person) or not become such (for example, a prosecutor who identified signs of a crime during the inspection they were conducting, who eventually issued a resolution on sending the materials they collected to the head of the investigative body to resolve the issue of criminal prosecution of a convicted person). However, all these subjects of criminal procedural relations usually appear at the stage of preliminary investigation (that is, after the decision to initiate a criminal case is made), and the victim and the civil plaintiff – only after the decision is made to grant them the appropriate procedural status, which, according to law, depends on the will of the participant in the criminal process responsible for the course and outcome of the criminal proceedings.

In the law enforcement practice, the requirement is strictly observed that the applicant is a fully capable person who has reached the age of eighteen (that is, they have all the rights and obligations provided for by civil legislation). But here a reasonable question arises: if a crime was committed against a convicted minor, then who should submit the application – the minor or their legal representative? We believe that the statement about a committed crime should be accepted both from the legal representative and from the convicted minor, since the minor is the primary source of information about the crime. Granted, this opinion does not look indisputable, since, being underage, a young person does not yet have all the rights. In such a situation, it is not so much the minor, but their legal representative who should decide whether to apply for a crime committed against the minor. Therefore, the official who receives and registers the application, in addition to all other circumstances, should establish the right of the person, who submitted the application, to represent the interests of the convicted minor. Taking into account the fact that the Civil Code of the Russian Federation in Articles 21 and 27 allows for the full legal capacity before a person reaches the age of eighteen (for example, in the case of marriage and emancipation), the official should find out the presence or absence of relevant circumstances when accepting the statement about a crime.

In this regard, it is necessary to mention such a mandatory attribute of a statement about a crime as the applicant's signature verifying the fact that they were explained the possibility of the occurrence of liability provided for by law

under Article 306 of the RF Criminal Code for a deliberately false denunciation. Since criminal liability for this crime occurs only from the age of sixteen, it is not possible to fulfill this requirement of the legislator when accepting an application from a convicted person who has not reached this age.

A convicted eyewitness who made an oral or written statement about a crime can serve as an independent source of information about the crime. At the stage of initiating a criminal case, they can inform the representatives of the administration of a correctional institution about the crime that they personally observed or indicate the person who committed this crime, which may become the basis for detention. Nevertheless, the RF Criminal Procedure Code does not regulate the procedure for receiving reports on crimes from eyewitnesses: Article 143 mentions only the obligation of officials to draw up a report on the detection of signs of a crime based on the results of the survey, and only after they verify the message of the eyewitness.

The next subject who has the opportunity to form a reason for initiating a criminal case is the convicted person who has turned themselves in, that is, who made a voluntary oral or written report about the crime they had committed. The analysis of the norms of the current criminal procedure legislation allows us to identify a number of requirements, in the presence of which a confession on the part of a convicted person can be considered as a reason for initiating a criminal case:

– the report must be personal and voluntary, that is, made of one's own volition;

– the voluntary surrender must take place before the convicted person's crime becomes known from other sources.

Another reason for initiating a criminal case, provided for in the RF Criminal Procedure Code, is a message about a crime received from other sources. It has already been said that it can be a report of a correctional institution employee who revealed a crime. Such a report is often compiled based on the results of intelligence-gathering activities, since Part 2 of Article 11 of Federal Law 144-FZ of August 12, 1995 (as amended on July 1, 2021) "On intelligence-gathering activities" establishes that the results of this kind can serve as a reason and a basis for initiating a criminal case, be submitted to the body of inquiry, to the investigator or to the court in which the criminal case is being conducted, and also be used in proving criminal cases in accordance with the provisions of the criminal procedural legislation of the Russian Federation regulating the collection, verification and evaluation of evidence.

One more reason for initiating a criminal case, which the law recognizes, is the prosecutor's decision to send materials containing signs of a crime to the preliminary investigation body to decide upon the initiation of criminal prosecution. Let us pay attention to the fact that this wording literally repeats the wording of the prosecutor's right (Paragraph 2 of Part 2 of Article 37 of the RF Criminal Procedure Code) to make a reasoned decision on sending the relevant materials to the investigative body or the body of inquiry decide upon the initiation of criminal prosecution on the facts of violations of criminal legislation revealed by the prosecutor. We believe that highlighting this reason as a separate type did not have sufficient grounds, since it can well be considered as a message about a crime received from other sources.

Problems related to the verification of messages about prison-related crimes

The verification of messages about new prison-related offences and the adoption of procedural decisions based on its results are also accompanied by certain problems. As a rule, the latter are caused by the unresolved nature of many issues related to the use of the results of operational-regime measures carried out in accordance with the current penal enforcement legislation when checking reports on crimes, and the lack of proper interaction between related departments of penal institutions. This usually entails criminal procedural violations, the most typical of which include exceeding the deadlines for checking reports on crimes, red tape when transferring them under investigation, substitution of procedural actions provided for by the RF Criminal Procedure Code with operational-regime and other measures, etc.

In practice, determining the moment from which the duration of the inspection begins causes certain difficulties, since Part 1 of Article 144 of the Criminal Procedure Code of the Russian Federation says that the inquirer, the body of inquiry, the head of the body of inquiry, the investigator, the head of the investigative body is obliged to make their decision on the report of a crime within three days from the moment of its receipt. Thus, the course of the inspection period in the cases we are considering begins when the head of the correctional institution

receives a report on the detection of signs of a crime and makes a decision on it. At the same time, the head must instruct a subordinate official to verify the information contained in the report or other kind of message on the crime. On the basis of this instruction, this official is delegated the right to conduct the entire range of verification actions in accordance with the procedure established by the RF Criminal Procedure Code.

In their totality, these actions should form the content of each verification of reports on the crimes the convicts committed or prepared while serving the sentence imposed by the court. However, in reality, officials authorized by the heads of correctional institutions usually do not perform all verification actions, but only some of them, which are usually easy from the point of view of tactics and technology of practical implementation. The most common actions include receiving explanations, requesting documents and sending requests.

The correctional officers whom we interviewed in this regard almost never mentioned that, when checking reports on prison crimes, they resorted to appointing forensic examinations, obtaining samples for comparative research, conducting documentary checks, inspections, studies and obtaining a specialist's opinion. They conducted inspections of the crime scene, documents, objects, corpses, as well as examinations, only in isolated cases; at the same time, the total number of explanations received during a particular inspection usually varied from one to five. Most often, they interviewed convicts who suffered from the committed act, and convicts who allegedly committed it. It was much less often that they received explanations from other representatives of the administration of the correctional institution and from those convicts who witnessed the event that had taken place.

Problems related to the adoption of final procedural decisions and the provision of qualified legal assistance to convicted persons in the implementation of verification actions

On the basis of Part 1 of Article 145 of the RF Criminal Procedure Code, procedural activities related to the verification of a report on a crime committed on the territory of a correctional institution must end with the adoption of a procedural decision on the initiation of a criminal case, refusal to initiate it or transfer the received message in accordance with the jurisdiction. However, none of the representatives of the administration correctional institutions whom we interviewed could recall cases when they themselves or their colleagues initiated criminal cases. At the same time, decisions to refuse to initiate criminal cases were not uncommon in their practical activities, as was the transfer of received reports of crimes in accordance with the jurisdiction. Consequently, despite the existence of appropriate powers, in cases where the results of considering the report on a crime confirm the presence of signs of a crime, and it would be logical to adopt a decision to initiate a criminal case, representatives of the administration of the correctional institution avoid its adoption in every possible way, even though they will participate in the preliminary investigation afterwards.

There is a logical explanation for this behavior, since on the basis of Article 157 of the RF Criminal Procedure Code, the body of inquiry, if there are signs of a crime for which the preliminary investigation is recognized as mandatory, has the authority not only to initiate a criminal case, but also to carry out urgent investigative actions after the adoption of this procedural decision. However, according to law, the possibility of practical implementation of these rights depends on the discretion of the prosecutor, whose position in this matter is most strongly influenced by the requirements of departmental regulations, which, with reference to Paragraph 19 of Article 5, Paragraph 3 of Article 149 and Article 157 of the RF Criminal Procedure Code, encourage the body of inquiry to initiate a criminal case, in which the preliminary investigation is mandatory, but only if there are signs of a crime and the need for urgent investigative actions in order to detect and register traces of a crime, as well as collecting evidence that requires immediate consolidation, seizure and research, in case when investigative bodies cannot perform these procedural actions promptly. Therefore, if the current situation does not require urgent measures, then sending the materials that show verification of the report of a crime to the territorial investigative body for making a decision on initiating a criminal case is the only correct decision, as a result of which it is unlikely that the prosecutor will subsequently cancel it due to incorrect qualification, incomplete verification or technical errors.

In the context of the problems under consideration, the issues related to the participation of the defender at the stage of initiating a criminal case deserve special attention. They usually arise in connection with the need to ensure the right of

persons subjected to criminal prosecution to obtain free legal assistance. The complexity of their solution is determined not so much by the lack of opportunities for immediate enforcement of this right (since visits of lawyers to correctional institutions are not uncommon), but by the lack of funds in the budget of the correctional institution to pay for the services of a defender. To solve this problem, the experience accumulated by the Federal Bailiffs Service can be used; the appendix to the order of the Federal Bailiffs Service no. 04-18 of November 30, 2011 contains clear and understandable methodological recommendations on the procedure for remuneration for the work of a defender participating in criminal proceedings in its divisions. We believe that similar recommendations should be developed in the Federal Penitentiary Service. They should provide that the relevant decision on behalf of the head of the correctional institution should be made at the request of a lawyer, indicating the time and place of compilation, data on the official who compiled it, the reasons for making a decision on the remuneration of the lawyer and the amount of the payment due to them. This resolution must be certified with the seal of the correctional institution and the signature of its head. Then, together with the order attached to it, issued by the lawyer association, it must be submitted to the financial and economic division of the correctional institution for transferring funds to the appropriate settlement account.

Conclusion

Ensuring law and order in pre-trial detention centers and institutions that execute criminal penalties in the form of imprisonment is one of the most difficult tasks assigned to the Federal Penitentiary Service of Russia [3]. The clear and consistent implementation of this task is should ensure the safety of convicts held in these institutions, persons in custody, officials and citizens visiting them, as well as correctional officers. Despite the efforts made to ensure the rule of law, various offenses are often committed in correctional institutions. Of particular concern are prison-related crimes. They are distinguished not only by a fairly large prevalence, but also by a low detection rate, which is a consequence of shortcomings and omissions in the activities of law enforcement officers involved in their preliminary investigation. The fact that many heads of penitentiary institutions are afraid of a quantitative increase in criminally punishable actions in the territories under their control also has a negative impact on the quality of procedural activity. As a result, the official criminal statistics show mainly those crimes of convicted persons and persons in custody, which cannot be hushed up. Accordingly, the latency of prison crimes was and remains quite high, and the procedural activity itself carried out in connection with their commission is very far from ideal.

Closing remarks

Officials serving in the bodies and institutions of the penal system are not yet sufficiently motivated to use the procedural powers of the body of inquiry and their direct participation in pre-trial proceedings in criminal cases. Often, they are poorly prepared to participate in criminal procedural activities; this fact not only entails violations of the rights and legitimate interests of convicts, but also allows the latter to avoid criminal liability for new crimes committed on the territory of the correctional institution. In order to change the current situation, it is necessary, on the one hand, to systematically review their legal status in the penal enforcement and criminal procedure legislation, and on the other – to distinguish it clearly, depending on the nature of the tasks being solved.

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