

Original article

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Formation of Legislative Regulation of the Execution of Criminal Punishments in relation to Women in Russia in the XVI–XIX Centuries

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Abstract

Introduction: the interest of the modern academic environment and the scientific community in the analysis of issues related to the evolution of the legislative framework governing the execution of criminal penalties in relation to women does not lose its relevance. In this regard, the *purpose* of this study is to analyze the evolution of legislative processes of domestic legal thought in the XVI–XIX centuries in the field of execution of criminal penalties among women based on a set of diverse empirical data, including legal sources and materials published in research papers. *Methods:* this study was conducted using the methods of scientific knowledge, including historical, comparative analysis, logical, etc. The author analyzed a number of legislative acts of the period under study related to the functioning of the domestic penitentiary system. *Results:* the conducted study shows that for a long time the domestic penal policy providing for punitive measures for the commission of illegal acts had not differentiated liability of men and women. What is more, during the period under review, the types of execution of penalties applied by the state to female offenders were influenced by their social and marital status. *Conclusion:* the processes of legislative regulation of the execution of criminal penalties in relation to female persons were caused by the need to improve the policy aimed at effective achievement of the criminal punishment goals in relation to this category of convicts. At the same time, progressive legislative ideas in the area under consideration were introduced into practice extremely slowly in the conditions of tsarist Russia throughout the analyzed period. As a result of these legislative approaches, female persons were kept in rather hazardous conditions, complicated due to the extreme population density of prison institutions.

Key words: legislative framework; historical processes; convicted women; penitentiary system; legislative regulation; execution of criminal penalties; prison science.

5.1.1. Theoretical and historical legal sciences.

5.1.4. Criminal law sciences.

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Introduction

The problem studied in this work does not lose its scientific significance. In particular, the history of formation of the legislative framework for the enforcement of criminal penalties against women is of interest to specialists in penal law and other domestic researchers.

Active and comprehensive study of the execution of criminal penalties in relation to women conducted by foreign researchers at the turn of the XVIII–XIX centuries encouraged other scientists and practitioners around the world to discuss this issue. In Russia, this scientific direction emerged only in the XIX century, since there had been no legislative differences between men and women as subjects of penal relations in our country for centuries.

Discussion

Imposition of criminal liability measures on women was initially fixed in *Russkaya Pravda* [Russian Truth], as well as the Pskov Judicial Charter. These legislative documents list measures that criminalize women, including “on the flow and looting, monetary, sale and monetary punishment, prescribing the community to extradite a criminal who committed robbery-related homicide with his wife and children, etc.” [1, p. 61]. As a rule, in the case of these illegal acts women were imprisoned in a monastery. For many centuries, these religious communities, in addition to their main role as monasteries for the sake of serving God, were also assigned the duty to perform the functions of prison institutions.

It is also important to note that “in pre-Petrine times, the right to be imprisoned in monastic prisons belonged to the tsar, the patriarch and the metropolitans, but in the XVIII century most of those arrested were exiled to the monastery by order of the secret investigation department of the chancellery, and since 1835 by the Highest command” [2, p. 35]. At the same time, female persons exiled to monasteries had a number of privileges, in particular, they were kept in special cells. They were closely supervised by nuns assigned to them. It should be noted that monasteries were located in most Russian regions, including Moscow, Vladimir, Perm,

Tver and a number of other Russian provinces. However, it was not much easier for women to serve their sentences in monasteries than for male prisoners, since the conditions of serving their sentences, including food and labor duties, were equal for any gender. By exiling female convicts to monasteries, the authorities pursued punishment goals to bring to justice those responsible for committing various kinds of illegal acts.

Moreover, female offenders were also held in prisons, which had been established in the Russian state since the reign of Tsar Ivan IV (the Terrible). It is worth mentioning that exile to a monastery was the main type of criminal punishment applied to women. Burning and imprisonment in an earthen prison were also fixed in local regulations and therefore they were applied to women accused of committing state or religious illegal acts, including for committing witchcraft [3, p.120].

Briefly describing the places of execution of criminal punishments, it should be noted that the prisons of that period were stone and secure. Imprisonment as a type of criminal punishment was fixed in the 1550 Judicial Code of Ivan IV, a collection of legislative acts of the period of the estate monarchy. It was the first ever normative legal act, not only of written law, but also of a peculiar technique for the implementation and organization of trials. The issues of imprisonment were regulated in great detail by this monument of Russian law. In particular, the 1550 Judicial Code contained key aspects of criminal penalties as types of illegal activities. The fact that in the middle of the XVI century, legislators began to devote special attention to the issue of mandatory imprisonment for perpetrators is a clear indication that this type of criminal punishment was considered by legislators as an integral element of the fight against crime in the Russian state [4, p. 119].

In the XVI–XVII centuries, the centralization of the Russian state was in full swing. This process was reflected “in strengthening the position of the state apparatus; at the same time, the changing state life gradually transformed

Russian law” [5, p. 35]. At the same time, there is a “priority relationship between customary law and legislation, and by the beginning of the 17th century the main sources of law had been decrees and collections of laws” [6, p.118]. It is also noteworthy the 1649 Cathedral Code was the first document that stipulated the application of a death penalty in relation to women. According to Article 14 of Chapter 22, a wife who killed her husband was to be publicly buried alive in the ground up to her shoulders. It is worth mentioning that until the sentence was carried out, women accused of murdering their husbands were held in prisons. This legislative act, among other things, provided for a special privilege for accused and sentenced women who were pregnant – the postponement of execution until their child was born [7, p. 35].

Peter I tried to regulate the system of execution of criminal penalties. The Military Article of 1715, being the main legislative collection on military criminal legislation of that time, included 209 articles combined into 24 chapters. This legislative act established a number of new types of execution of criminal penalties, such as exile and penal servitude, which were often used instead of the death penalty [8, p. 155].

Ya.I. Foinitskii, the brightest Russian prison scholar of the pre-revolutionary period, wrote in his scientific research on the execution of criminal penalties that “poverty, hunger and disease prevailed in prisons of that period, prisoners tried to escape from them, they were not distributed by age, type of crime, or even by gender”. [9, p. 211]. Sometimes there were even cases where males were shackled together with other women, not their own wives, which in turn led to unwanted pregnancies. N.S. Tagantsev, the largest Russian criminologist, also wrote about such unfavorable conditions of execution of punishment in Russian prisons [10, p. 182].

Female convicts were actively attracted to labor during the reign of Peter the Great. In the 18th century, penal servitude was also applied to women. For example, the imposition of punishment in the form of exile or hard labor

provided an opportunity to use women’s labor even more intensively. According to Russian researchers, “penal servitude was established for a certain period or for life, and in addition to men, women’s labor was also used during the period under review, and women, as a rule, worked in specially created spinning houses” [11, p. 182]. The authorities also sought to reduce all available costs, including reducing any costs and expenses in the process of holding prisoners in places of detention. For example, the authorities tried in every possible way to pay salaries to prisoners and even receive taxes from exiles to replenish the Russian treasury.

Analyzing the formation of legislative regulation of the execution of criminal punishments against women, it should be pointed out that during the reign of Empress Elizabeth, significant changes affected such a measure of punishment as the use of the death penalty. In 1744, the execution of the death penalty was suspended and the decision on the application of this sentence was granted to the Senate [12, p. 73]. From 1753 to 1754, the death penalty was replaced by imprisonment and exile. The decree of Elizabeth in 1753 differentiated eternal settlement and exile. At the same time, this type of punishment, such as eternal settlement, was accompanied by the need to perform compulsory work. By the decree of Elizabeth in 1760, criminal offenders were exiled only to Siberia. At the same time, the issue of joint detention of men and women was becoming extremely relevant, therefore, in order to “reduce immorality in the sexual sphere, the decree of the Senate of February 21, 1744 imposed a ban on the joint detention of men and women, but special prisons for women began to be built only in the late XIX and early XX century” [13, p. 201].

During the reign of Catherine II, legal regulation of the execution of criminal penalties, such as penal servitude and exile, developed further. This was facilitated by the decree of Catherine II of 1765 “On the right of landlords to send peasants out of favor to hard labor”, according to which they received the right to impose pe-

nal servitude on guilty serfs" [14, p. 502]. It is noteworthy that in accordance with the "provisions of the Decree of Catherine II of January 17, 1765, landlords were also given the right to send their serfs to hard labor without specifying their gender" [15, p. 85]. A number of other legislative decisions infringed on the rights of the common people. On August 22, 1767, "a decree was issued prohibiting serfs from complaining about landowners, and in 1775, another harsh decree of Catherine II granted landlords the right to imprison serfs, including women" [16, p. 207]. The analysis of the listed sources shows that at the end of the XVIII century it was not so much the nature and severity of the illegal acts committed, but the state's need for free labor that began to determine the places where convicts served criminal sentences, regardless of their gender and the criminal offenses committed.

Besides, we would like to point out that ideas about the need for separate detention of women and men in penitentiary institutions were actively developed with the adoption of the 1787 Charter on Prisons. Significant attention was paid to various issues of external and internal arrangement of penitentiary institutions, their sanitary and hygienic services and rules for the maintenance of persons serving sentences. This document also provided for separate detention of male and female convicts in penitentiary institutions, as well as establishment of special female penitentiary institutions [17, p. 75]. According to this regulatory legal act, county and city prison institutions were to have facilities for separate detention of women and men.

However, it took almost fifty years for the majority of transformations of the penitentiary system conceived by Catherine II to be carried out and only "The 1831 Instructions to the Caretaker of the Provincial Prison Castle" [18, p. 475] normatively fixed the need for separate detention of prisoners of different sexes in prisons. For example, Article 33 of this legal act specified personalized detention. The specifics of the contingent held in this institution necessitated the use of various approaches

and techniques for the treatment of mental and other physical illnesses and health disorders. In this regard, the prison castle had a hospital with departments for men and women. And if the arrested were to be hospitalized from their cells, then this could only be done with the consent and permission of the assistant caretaker of the men's part or the caretaker of the women's half of this institution.

However, the legislative norms of that period Russia did not imply gender-related differentiation of the conditions of serving sentences, there were only some individual, almost insignificant privileges. So, in accordance with "Article 89 of the 1832 Statute on Detainees, women were excluded from the category of prisoners who shaved one of the halves of their heads" [19, p.85]. According to the 1845 Code of Criminal and Correctional Punishments, "for female prisoners hard labor in mines was replaced by less heavy work in factories" [20, p. 12].

What is more, "in accordance with the provisions of the Law of April 17, 1863, female prisoners were not subjected to corporal punishment; and in relation to exiled women, these punishments were abolished on March 29, 1893" [21, p. 50]. According to the "law on compulsory labor for all categories of prisoners of January 6, 1886, female labor was limited only to intra-prison work" [22, p. 130]. In particular, the legislators "took into account the condition of convicted women serving their sentences, since Article 182 of the 1890 Statute on Detainees recommended providing pregnant and nursing mothers with separate rooms" [23, p. 1,411]. According to Article 970 of the 1864 Statute of Criminal Procedure, pregnant convicts should be released from work and nursing mothers should be given light work. In their efforts to keep pace with European countries, the Russian authorities took very decisive and advanced actions for that time to ensure the regime of female prisoners.

However, in reality, special penitentiary institutions for women were seldom built in order to avoid high additional costs. Along with this, such an approach also caused even greater hatred towards employees of penitentiary in-

stitutions who did not respond sufficiently to problematic situations in places of serving sentences [24, p. 31]. In the pre-revolutionary period, the role of the 1857 Statute on Detainees (as amended in 1886 and 1890) was very significant in penal institutions [25, p.85]. Its impact on the state penitentiary policy of the Russian Empire is difficult to assess. However, the provisions on separating female and male convicts had not been implemented in practice for many years.

The processes of humanizing the situation of women in prison were hindered by difficulties in organizing their work. First of all, the employment of women in places of detention required serious financial costs on the part of the state. It is quite obvious that the involvement of women in labor relations in places of detention would have had a significant impact on the optimization of their detention. However, the government was not interested in financing the construction of enterprises, the purchase of equipment for workshops and raw materials, and the training of prisoners in various necessary labor skills. Thus, until almost the end of the XIX century, the state did not seek to move from implementing only punitive functions in places of detention to organizing measures of educational and labor influence on female prisoners.

In the middle of the XIX century, many progressive foreign experts sought to build a system of punishment based on the principles of humanism and legality. They held a number of international congresses with the participation of the most renowned experts in the field of prison studies. These foreign experts, in turn, suggested introducing significant amendments to the penitentiary system in order not to suppress the personality of female prisoners. In the domestic penitentiary policy of that period, there was a strong lag behind progressive ideas of European countries. The Russian authorities did not seek to study the positive foreign experience in prison reform.

As a result, the inertia of the legislative regulation under consideration led to the fact that in the institutions of the Russian peniten-

tiary system of the pre-revolutionary period, women serving criminal sentences were held in an environment that could not withstand any criticism. Prisons were overcrowded and characterized by poor sanitation and insufficient medical care. The lack of separate detention of women and men in the penitentiary institutions led to the use of shackles, pads, and slingshots in relation to female prisoners.

However, in the second half of the XIX century, capitalism began to develop in Russia, destroying the feudal and estate order. This trend became a dominant one for the entire subsequent evolution of both the country and the penitentiary system. Feudal relations became a significant obstacle and a serious barrier to building up and increasing production capacity, thereby contributing to Russia's significant lag behind European countries. And therefore, having abolished serfdom, the country began to rapidly develop capitalist relations, while adapting the entire state and legal mechanism to the new conditions. The penitentiary system, which had previously been functioning in accordance with the principles of class status, also did not stand aside. However, the budget deficit, bureaucracy, and the excessive occupancy of penitentiary institutions that arose after the abolition of serfdom did not contribute to rapid prison reform. Only at the end of the XIX century, the influence of foreign legal penitentiary views and teachings contributed to the gradual reformation of domestic penal legislation.

Conclusion

Thus, the following conclusions can be made.

First, the situation of female prisoners in pre-revolutionary prisons was extremely difficult, since for a long time the Russian penal policy focused on the application of punitive measures had not distinguished between certain types of liability for men and women. In particular, secular and ecclesiastical legislative measures providing for the types of execution of criminal penalties had also not differed by gender for a long time.

Second, progressive legislative ideas in this area were introduced into practice extremely

slowly in tsarist Russia. As a result of such legislative approaches, in most institutions of the Russian penitentiary system, female persons serving criminal sentences were held in an environment that did not stand up to any criticism. Despite a number of legislative measures taken to improve their detention in penitentiary institutions, legislative initiatives may have diverged from reality. In most cases, the types of penalties that the state applied to female perpetrators of crimes were influenced by their social status and marital status.

Third, the study of the issue under consideration allows us to assert that there are various causes and conditions that led to significant inertia in legislative changes aimed at humanizing the legal status of female convicts. For example, until the abolition of serfdom and subsequent Russian penitentiary reforms in the second half of the XIX century, the practice of implementing domestic criminal law legislation in relation to women indicates that the authorities had no desire to get rid of the foundations of the feudal state system, which had long been a priority in the Russian Empire. And even despite the fact that in the process of reviving domestic and foreign policy since the time of Peter the Great, as well as the country's rise to a number of leading positions in the international arena, over the years the country had experienced a significant lag in improving

the standards of enforcement of penal legislation regulating the status of women. It is for this reason that prison reform, including those affecting the execution of sentences by women, became possible only with the abolition of serfdom and the organization of the Main Prison Department.

Fourth, the end of the XIX century actually marked the beginning of public and state attention to the development of the legal status of female prisoners. The centuries-old period of absolute monarchy was coming to an end. The state sought to regulate all spheres of life, adopting a wide variety of legislative acts, including legal norms in this area.

Fifth, in general, the analysis of genesis of the penal legislation improvement in relation to female detainees, which took place during the historical period under review, clearly illustrates the evolution of domestic penal policy, the formation of legal penal theoretical provisions, as well as their implementation in practice.

Sixth, it is possible that a number of results, provisions and key conclusions proposed in this paper will attract the attention of representatives of scientific and educational organizations of the Federal Penitentiary Service of Russia who are interested in the issues outlined in this paper and will be used by them in their professional activities.

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