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Humanizing Imposition and Enforcement of Sentences on Women

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Abstract

Introduction: humanization of assignment and execution of punishment is one of the priority vectors of modern criminal and penal policy. The existence of even the most humane and just legislation does not yet lead to the desired goal. In turn, this obliges to consider legislation as an integral element of criminal policy, which should timely respond to the ongoing changes in society, taking into account modern realities and trends. *Purpose:* to determine consistency of humanization of sentencing and its implementation, relationship between sanctions enshrined in domestic criminal legislation and effectiveness of the state's criminal legal response to crimes committed by women, as well as women with young children. *Methods:* historical-legal, formal-legal, comparative-legal, descriptive, statistical methods and the method of legal modeling. The *results* of the study confirm the need to formulate a strategy for the humanization of criminal and penal legislation on combating crimes committed by women. *Conclusion:* when choosing measures of procedural coercion and criminal punishment, it is necessary to take into account the data related to the characteristic of a woman, her age, state of health, occupation, marital status, presence of minor children, dependents and other individual circumstances.

Key words: humanism; enforcement of punishment; women's identity; punishment; criminal policy; penal policy

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Introduction

Humanism manifests itself not only in the essence of domestic law, its legal nature, principles, but also in how it is practically implemented, in what forms and methods. In this regard, at present, certain institutions of domestic criminal and penal law have ceased to be ex-

clusively repressive in nature and have been strengthened to a greater extent by educational and correctional potential.

This state of affairs is associated with democratization and globalization of society, priority of freedom in choosing a preventive measure and imposing criminal punishment, as a

result, recognition of rights and freedoms as the highest value.

In this regard we back the point of view of M.R. Balasanov that the relevance of a particular legal phenomenon is justified by various factors, such as socio-economic and political conditions of the existence of society and the state [1, p. 187].

Consequently, humanization in the appointment and execution of criminal penalties obliges legislators and law enforcement officers to take into account the characteristics and specific needs of citizens, especially women.

In this regard, the formation of domestic legislation and the practice of its application should be not only gender-based, allowing for gender-specific characteristics, but also gender-sensitive, responding to specific characteristics and needs of a particular offender. Gender sensitivity is an approach that takes into account specific social, cultural, economic and political contexts of women and men's lives [2, p. 14].

With this in mind, the strategy for humanizing criminal and penal legislation aimed at combating crimes committed by women should be based on limiting the use of a preventive measure – detention of women who have committed nonviolent crimes, as well as against women with young children and suspects with serious illnesses.

In the light of the penal system reform, scientists pay close attention to the issues of humanization of criminal and penal legislation. Nowadays, certain aspects of humanization in the process of assigning and executing punishments against women are touched upon in the works of D.Yu. Alekseev, S.E. Apatov, I.V. Vetrova, V.Yu. Golubovskii, N.A. Ivanova, E.V. Kunts, L.A. Latysheva, N.I. Polishchuk, T.N. Radochina, V.I. Seliverstova, and Yu.P. Sinel'shchikov.

Research

Certain manifestations of humanized execution of punishment against women have been observed throughout the entire period of the Russian state. In the modern period, the activities of the penal system are aimed at improving the institution of parole, providing additional visits and visits to women with young children.

In turn, one of the main directions of the penal system development in the Concept for the Development of the Penal System of the Russian Federation for the period up to 2030 indi-

cates the improvement of penal policy in order to humanize it, including regulatory and legal regulation. The State Duma of the Federal Assembly of the Russian Federation approved in the first reading a draft law on limiting arrest in relation to certain categories of citizens, in particular women accused of committing minor crimes [3].

The Federal Law No. 591-FZ of December 12, 2023 "On Amendments to the Criminal Code of the Russian Federation" introduced amendments aimed at humanizing criminal legislation in relation to women serving sentences of imprisonment for committing a minor crime and having children kept in the children's home of the correctional institution.

However, judicial practice confirms that imprisonment is still one of the most frequently imposed types of punishment for women. So, in 2023, 15,760 women were sentenced to imprisonment for a certain period. At the same time, 40,042 women were sentenced to other types of punishments that do not provide for isolation from society (restriction of freedom, restriction on military service, correctional labor, compulsory labor, forced labor, deprivation of the right to hold certain positions or engage in certain activities, a fine) [4]. This leads to the conclusion that almost 28% of the convicts are sentenced to imprisonment. Thus, the criminal penalty in the form of imprisonment is imposed on virtually every third woman. In this case, attention is drawn to the frequency of the appointment of this type of punishment in comparison with others. In addition, attention should be paid to the terms of imprisonment. For example, 3,222 women were sentenced to imprisonment for up to 1 year and 2,711 convicts for a term of 5–8 years [5]. Obviously, the difference is not significant.

Some scientists studying the specifics of the spread of criminal subculture among women have found that the prison subculture does not contribute to improving the process of correctional influence, adaptation in isolation and re-socialization after release. During the period of serving their sentence, some female convicts demonstrate norms of negative behavior, which significantly affect the correction process, limit possibilities of cooperation in the development of open constructive relations between employees and convicts [5, p. 349].

One could not but pay attention to the fact that the conditions of isolation can negatively affect women, they find it difficult to adapt to places of deprivation of liberty. For example, convicted women are more likely to experience stress and suffer from separation from their family [6, p. 107], divorce and unsettled personal life [7, p. 32].

As for punishments unrelated to isolation from society, this range is expanding, however, there are certain difficulties in their execution. For example, one of the recent changes supplementing the criminal law was the inclusion of a new type of punishment – forced labor. Since this type of punishment is relatively new, the practice of its appointment and execution has not been developed properly. Forced labor is not assigned to pregnant women and women with children under the age of three (Part 7 of Article 53.1 of the Criminal Code of the Russian Federation). Consequently, a convicted person with a child aged 3 years or older may be a priori sentenced to criminal punishment in the form of forced labor. Thus, it is impossible to avoid separation of the mother from the child, which, in turn, can negatively affect resocialization of the convicted woman and psychological well-being of her children. There are no children's homes in correctional centers. At the same time, not every female convict can realize the right to live with a child and close communication with him/her, since according to Part 6 of Article 60.4 of the Penal Code of the Russian Federation, only a convicted person who does not violate internal regulations of correctional centers and has served at least one third of the sentence can live with her family in a rented or own living space within the municipality on the territory of which the correctional center is located [8, p. 45].

It should be noted that the existing system of criminal penalties applied to women is not always effective in the context of achieving punishment goals. This applies, among other things, to punishments that do not provide for isolation from society. This is evidenced by the data on the recidivism of women.

With a relatively small difference in the number of men (46.5%) and women (53.5%) of the Russian population [9], the share of women in the total crime structure is only 16.3% [10], the share of convicted women serving imprisonment is significantly less (only 8.8%) [12], and

the share of women repeatedly serving a sentence is 5.7%, while the proportion of men is 94.3% [11].

These provisions necessitate updating of criminal and penal legislation in relation to women, improving the practice of its implementation, searching for and introducing new options for types of punishments and other criminal law measures that allow for a differentiated and individualized approach. It is important to understand that it is possible to influence women without resorting to punitive measures and without imposing severe punishments as part of repeat crime prevention. This includes, for example, the imposition of punishments for women that are not related to isolation from society and the use of other criminal law measures for committing nonviolent crimes of various categories.

Despite the fact that a woman has committed a crime, she continues to be a woman with her inherent characteristics, needs and problems. It, undoubtedly, should be taken into account when bringing her to criminal liability, which, in turn, should be reflected in the size and duration of punishments, the choice of a type of correctional institution and other aspects. The legislator is making attempts to differentiate and individualize criminal liability of women. For example, women who have committed a crime, regardless of the category, with the exception of crimes of minor and moderate severity and recidivism, serve a sentence only in a correctional facility of general regime.

It is necessary to provide additional privileges for certain categories of convicted women, in particular, pregnant women and women with young children. The reproductive function of a woman a priori determines a special "privileged position" of women. It should be pointed out that the differences between sexes, as implied by the sociocultural approach, are formed by society. According to Nancy Chodorow's concept of motherhood, girls initially prepare for motherhood [12]. Undoubtedly, this should be taken into account when forming criminal and penal policy towards women.

A woman is punished by serving a sentence imposed by the court, but at the same time it is advisable to realize her rights and legitimate interests. For example, in the conditions of a penitentiary institution, it is important to involve

women, if possible, not only in traditionally female types of work. Attention is drawn to the fact that sewing is the main type of production in correctional institutions [13, p. 42]. This, in turn, may make it difficult to find a job after release, since narrower specialties are becoming in demand on the labor market, which is dictated by the development of information and telecommunication technologies, and computerization of production processes. We are talking about various fields, including education, agriculture, the service sector, the financial sector, etc. A woman in this regard is in a somewhat discriminated position.

It should also be noted that the system of punishments and measures of a criminal legal nature applied to women, their implementation should initially assume humanistic principles. It is very interesting that the concept of humanization in relation to the penal system is revealed in the study of S.E. Apatov, in particular, he points out that humanization should be perceived as a set of measures that should contribute to changing the internal content of penitentiary institutions [14]. It is important to note that successful rehabilitation of convicts in places of detention is of particular importance in preventing recidivism [15].

In turn, E.V. Reshetnikova introduces the concept of "socialization of humanism", an important means of which is interpersonal interaction and regulation (humanization) of the immediate social environment [16, p. 10].

Summarizing the previous arguments, it can be said that today there is a need to impose punishments not related to isolation from society on women who have committed nonviolent crimes, in exceptional cases pregnant women and women with young children. Various alternatives should be developed, the list of criminal law measures – extended, and fundamentally new ones – searched for. Alternatively, it is possible to consider compulsory educational measures applied to minors.

Yu.P. Sinel'shchikov points out the use of arrest to achieve punishment goals, noting that arrest is considered as a promising punishment and can become an effective means of corrective action on women. Being held in an arrest house for several months, convicted women do not get used to isolation conditions, preserve socially useful connections, habits, and ways of

thinking, and do not get nervous diseases [17].

A fragmentary (interrupted) sentence is of scientific and practical interest, since it implies serving a criminal sentence in the form of imprisonment for a certain period in parts. In this regard, it is advisable to turn to foreign experience, which is reflected in the work of A.F. Kovalev. For example, in Brazil, a convicted person spends weekends and holidays in a special center and takes part in educational activities, and the duration of stay cannot be less than 5 hours [18, p. 687].

It is advisable to consider possible options for expanding the list of grounds for the release of women convicted of nonviolent crimes from criminal liability and punishment, as well as effective mechanisms for improving the application of early release from serving a sentence. It is possible to commute punishment for certain categories of convicted women, for example, those serving sentences for nonviolent crimes, pregnant women with young children, or provide additional types of conditions for serving sentences in correctional facilities.

Conclusion

Successful return of a woman to society is possible with the implementation of an individual approach to the appointment and execution of criminal penalties. Undoubtedly, specific needs and characteristics of a woman should be taken into account. In this context, we are talking about the formation of gender-sensitive legislation. The category of a crime and the degree of its public danger should be taken into account. So, V.R. Alekseitsev proposes to change the emphasis in criminal legislation in the direction of mitigating penalties for crimes not related to the threat to human life and health [19]. In this regard, it is advisable to impose punishments that are not related to isolation from society on women and to apply other criminal law measures for committing nonviolent crimes of various categories. In the future, it is reasonable to consider an analogy with compulsory educational measures applied to minors and to put into practice the use of fragmentary detention and arrest as an alternative to imprisonment.

In addition, the problem of preserving a woman's reproductive function requires special attention, since in most cases every woman is a mother, grandmother, and may have children in the future. Family and motherhood are an im-

portant criminogenic factor for a woman. At the same time, family and marital relations, which occupy an important place in a woman's life, have been increasingly prone to disintegration or distortion in recent years [20].

We believe it reasonable to establish rules according to which a woman with young children can be detained and subsequently sentenced to imprisonment only in connection with an accusation of committing a serious or especially

serious crime. The formulated recommendations can deepen the existing fundamental scientific knowledge about phenomena, events and processes related to further humanization of criminal and penal legislation as the main means of responding to crimes committed by women. They can serve as a basis for further promising scientific directions of humanization of domestic legislation in this scientific search.

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