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# ПЕНИТЕНЦИАРНАЯ НАУКА

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# CONTENT

# JURISPRUDENCE

Original article
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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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# On Some Urgent Problems of Prevention and Counteraction to Extremist and Terrorist Ideas in the Russian Penal System

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Abstract

*Introduction*: the article considers problems that became urgent for the penitentiary system only in the last two or three decades, since neither in the years of the USSR, nor in the initial period of Russia's formation as a sovereign state, the issue of prevention and countering extremism was relevant. *Purpose*: to reveal problems that the Russian penal system faces in connection with the intensification of extremist and terrorist manifestations both in our country and abroad, as well as to suggest possible ways to solve them. There is a need to create a comprehensive system for training special personnel from among employees of the Russian penitentiary system, as well as scientific and organizational support for activities aimed at preventing and countering illegal activities of carriers of extremist and terrorist views. *Results*: the research has scientific and practical significance, since it reveals for the first time the need to take into account the specifics of each type of extremist and terrorist activity in terms of illegal activity motives driven by the mental specifics of carriers of extremist and terrorist ideas, as well as the necessity to train special personnel from among penitentiary institution employees in preventing and counteracting these extremely destructive phenomena. *Methods*: a combination of logical, systematic methods, as well as conceptual types of analysis of the current state of prevention and counteraction to extremist activity in the penal system is effectively used to solve the set research tasks. Hermeneutical, comparative and exegetic methods help study sources that determine consciousness, cognitive abilities and behavior of modern extremists and terrorists. *Conclusion*: the authors state the relevance of the problem under study, its complexity and propose, taking into account the results formulated in the article, elaboration of the concept of prevention and counteraction to the most diverse types of extremist and terrorist views, which, in turn, should be reflected in the concepts of psychological, educational, operational and regime services, as well as the entire system of the Federal Penitentiary Service of Russia. In addition, the authors consider the introduction of a cycle of subjects related to prevention of extremist and terrorist views into curricula of higher and secondary educational institutions of the Federal Penitentiary Service of Russia to be an equally important task, which has not yet been solved, taking into account specialization of students.

Keywords: penal system of Russia; extremism; terrorism; mental civilizations; prevention and counteraction to illegal acts.

5.1.1 Theoretical and historical sciences.

5.1.4 Criminal law sciences.

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*Introduction*

Forms and types of extremism and terrorism manifestations are poorly studied both in scientific and practical terms, since they are rather new phenomena. Besides, the phenomena of extremism, which in the modern world are qualified as illegal, were not considered as such even a hundred years ago. Moreover, in almost all world countries they were revered as acts demonstrating selfless devotion to religion, language and fatherland [1]. We cannot but mention the well-known slogan driving soldiers of tsarist Russia to march into battle not sparing their lives "For the faith, for the tsar for the Fatherland", as well as many works of folklore and fiction, which, according to modern law, fall under articles 280 and 282 of the Criminal Code of the Russian Federation, for example, "A Word about Igor's regiment", "Taras Bulba", etc.

Moreover, the texts of holy scriptures, such as the Torah, the New Testament and the Koran are extremist, otherwise on November 23, 2015, Vladimir Putin would not have signed a special law on the non-jurisdiction of the contents of the Bible, the Koran, Tanakh and Ganjur, as well as quotations from them [2]

The Soviet period is known to have no problems with religious or other types of extremism (racial, ethnic, linguistic, etc.) in the penal system, since ideological attitudes of atheism and internationalism were dominant in the country and state propaganda and education systems were effective.

Therefore, manifestation of even simple religiosity was condemned by the majority of society, and any political dissent or deviation from the main course of the CPSU was severely suppressed by all means and methods, including the state power structures. Therefore, the insignificant experience that tsarist Russia had accumulated before 1917 in keeping "political prisoners" in places of detention was completely forgotten during the Soviet period. Concepts, such as "religious extremism", "political extremism", "social extremism", "racial" and other extremism were perceived in the USSR as manifestations characteristic of capitalist countries.

Undoubtedly, there were manifestations of xenophobia, religious intolerance, and political confrontation in the USSR, but the government was considered people's, and all those who opposed the people's power were called enemies of the people. Thus, dissenters turned out to be in places of deprivation of liberty, in particular, "correctional labor camps and colonies of the NKVD of the USSR. It was believed that detention itself and forced labor would give an appropriate educational effect even without a purposeful resocialization system.

In this article we try to show new challenges and related problems that the Russian penal system addresses in connection with the intensification of extremist and terrorist ideas and manifestations in our country, as well as outline the most effective ways to solve them.

Unlike the problems of extremism, the problem of terrorism and countering it is relevant for the penal system of Russia purely in connection with the task of resocialization of those convicted of this act, since periodically occurring so-called "prison riots" cannot be attributed to terrorism in any way. Prevention and countering extremism are not only extremely important, but also complicated for all services for the penal system of our country and the world.

Suffice it to recall that legal acts aimed at legislative regulation of extremist and terrorist activities in the Russian Federation appeared only in the early and mid-2000s. In particular, the Federal Law No. 114-FZ "On countering extremist activity" was adopted on July 25, 2002, and the Federal Law No. 35-FZ "On countering terrorism" entered into force on March 6, 2006 [12,13].

Since within the framework of a journal article it is not possible to highlight all (even the most urgent) problems related to resocialization of persons with extremist and terrorist ideas in the penal system of Russia, we will focus on some, from our point of view, most relevant, and try to determine the most appropriate ways to solve them.

*Research methods*

The article uses a set of research methods. The first group includes logical, systemic and conceptual analyses of the current state of prevention and counteraction of extremist activities in the penal system and identification of unresolved problems of resocialization of persons with extremist and terrorist ideas that require their own understanding and solution. The second group comprises hermeneutical, comparative and exegetical methods of investigating sources that determine consciousness, cognitive abilities and behavior of modern extremists and terrorists.

*Discussion*

We consider it fundamentally important to determine terms and concepts, such as resocialization, prevention and counteraction, which, despite their frequent use, nevertheless, are often inconsistently interpreted. We will not define concepts of extremism and terrorism, since in the last decade they were widely and, from our point of view, correctly disclosed in special dictionaries (legal, political, sociological, etc.) and clearly defined in modern legislative acts, in particular, the Federal Law "On countering extremist activity" No. 114-FZ of July 25, 2002 (latest edition) and the Federal Law "On countering terrorism" No. 35-FZ of March 6, 2006 (latest edition). Penal institution employees should be guided by them in service. Another thing is that in the modern world, including our country, there are other types of extremist activities besides those listed in the mentioned federal laws, which should be the focus of attention of employees of the penal system of Russia. However, our special work was devoted to this problem [1], so we will not dwell on it now.

There is generally accepted and reflected in special dictionaries understanding of resocialization. In particular, we consider resocialization as the process of formation of those norms and rules of social life, and cultural values that are accepted in our country in those convicted of criminal offenses. Resocialization is achieved by purposeful influence on the consciousness, thinking and behavior of suspected, accused and convicted people, including extremists and terrorists, of a wide variety of psychological and pedagogical methods, techniques and means, with mandatory consideration of the specifics of the "type" of extremist activity and motives for committing terrorist acts.

We understand prevention (from Greek "prophylaktikos") as a set of systematized preventive measures, aimed at strengthening or forming of legally fixed or generally accepted norms and rules of conduct, in particular, formation of their tolerance for religious, ethnic, linguistic, racial and other diversity of people, education (particularly education) of tolerant thinking and behavior.

Counteraction to extremist and terrorist ideas is understood as activities of penal system employees of all services aimed at blocking, opposing, resisting the destructive influence of carriers of extremist and terrorist views in the penal system of Russia, which implies purposeful formation of a moral world and behavior in the society corresponding to the social norm.

It follows from the above definitions that both prevention and counteraction to extremism and terrorism in the penal system are an integral part of resocialization of persons in places of deprivation of liberty.

One of the most difficult problems associated with resocialization of extremists and terrorists is the one that relates to the determination of the functions of employees of each of the services of the Russian penal system.

In our publications, we have dealt with issues related to the role of clergy in the process of forming religious tolerance and ethnic tolerance among suspects, accused and convicted persons, therefore we will not dwell on them, noting, however, that persons invested with spiritual dignity, due to the specifics of their professional activities, as well as their knowledge and skills, are not able to ensure effective resocialization of extremists in the fields of politics, language and the social sphere [3].

Up today functions of resocialization of extremists and terrorists that each division of the Federal Penitentiary Service of Russia fulfils are not defined. Therefore, the penal system still does not have curricula, training and retraining programs to prevent and counteract extremism and terrorism for universities, secondary educational institutions and training and retraining courses. Besides, there is an extremely insufficient number of scientifically-based research and, accordingly, recommendations for functional responsibilities of each service for resocialization of extremists and terrorists and identification of the mental (more broadly, ideological) specifics of those who adhere to extremist and terrorist ideas in various spheres of human existence [4].

It is no secret, for example, that people who adhere to religious extremist and terrorist ideas are fundamentally different in their worldview and aspirations from those who adhere to nationalist and chauvinistic views. For monotheistic religions (Judaism, Christianity and Islam) the ethnic origin of a person or his/her racial and linguistic differences are not important, since everyone must obey norms and behavior rules laid down by the One God, and the diversity of people on earth, according to the Scriptures, is provided by God himself. There originates the preaching of the World Caliphate in modern Islam, aspiration of Catholicism and Orthodoxy apologists that all the people of the earth accept their very tenets of faith as the most correct and therefore pleasing to God.

We consider it important for the penal system employees to know that the specifics of political extremism is primarily aimed at changing the constitutional system of the country, and language extremism – humiliating, suppressing and displacing all other languages used in the country by changing the state language policy. At the same time, political, linguistic, social, ethnic and other types of extremism, as a rule, do not go beyond the borders of a particular state, although their apologists can maintain close ideological contacts with groups of nationalists, chauvinists and political extremists from other countries related to them on ideological bases [4].

Are penal employees able to organize effective work on resocialization of extremists and terrorists without knowing their mental specifics, without being aware of the most effective ways, methods and techniques, prevention and counteraction to the most diverse types and forms of extremism? The answer is definitely no. This is more than convincingly evidenced not only by our domestic, but also the relevant world experience. No wonder that a well-known British psychologist, after the terrorist attack committed by his ward on November 30, 2019, with whom he, like employees of other services of the UK penitentiary system, worked for six years in a London prison, argues that psychologists are not able to “reprogram” consciousness of religious extremists and terrorists [5]. We believe that British psychologists have been helpless when working with religious extremists and terrorists purely for the reason that that they themselves do not use ideological foundations of the scriptures to form not only religious, but also ethnic tolerance. They do not know, for example, crucial lines of the New Testament and the Koran, such as “Do not be afraid of those who kill the body but cannot kill the soul. Rather, be afraid of the One who can destroy both soul and body in hell” (Gospel of Matthew, chapter 10:28) [1]; And only Satan inclines you to fear your loved ones. Do not be afraid of them, but only fear Me, since you have surrendered and believe” (Sura 3:175).

It is these edifications of the New Testament of Jesus Christ and the Koran that guide those who make self-sacrifice for the sake of their religious beliefs, being sure that they will receive in heaven not only eternal life, but also all the benefits of Paradise.

British psychologists also do not take into account such lines of the Koran as “Let there be no compulsion in religion, for the truth stands out clearly from falsehood. So whoever renounces false gods and believes in Allah has certainly grasped the firmest, unfailing hand-hold. And Allah is All-Hearing, All-Knowing!” (Sura 2:256). Not only British, but also most modern psychologists, including those who work in the Russian penal system, do not take into account the edification of Jesus (Isa, son of Maryam) “Blessed are the peacemakers, for they will be called children of God” (Matthew’s Beatitudes, Chapter 5:9].

It is worth mentioning that for the last two or three decades, new psychology areas, such as “Orthodox psychology” and “Islamic psychology”, have been intensively developing. They focus primarily on mental specifics of religious people and their specific worldview. These directions have not yet been reflected in the work of Russian penal psychologists to re-socialize persons with religious extremist and terrorist ideas and political, social, racial and linguistic extremists and terrorists, since they use methods recommended by Western psychological schools, such as Minnesota Multiphasic Personality Inventory (MMRI); California Psychological Inventory (CPI); Multilevel Personality Questionnaire (MLO) (Maklakov A.G.); Mississippi Scale for Combat-Related Posttraumatic Stress (M-PTSD); Luscher Color Test; Eysenck Personality Inventory; Buss-Durkee Hostility Inventory; Beck Depression Scale (BDI); Sixteen Personaflity Factor Questionnaire by R. Cattell (16 PF); Differential Diagnostic Inventory (DDI); Pavlovian Temperament Survey (PTS) (Jan Strelau), etc.

These methods, as a rule, do not take into account either ethnic, genealogical, or religious characteristics of persons in places of deprivation of liberty. A religious extremist is not a person with deviant behavior, but the one whose worldview, way of thinking, aspirations and behavior are predetermined by the Holy Scriptures, which for thousands of years have regulated a way of life of both specific ethnic groups, peoples and all the mankind. These people, although they are carriers of the mentality outgoing from the historical arena, but, nevertheless, representatives of an impressive part of humanity. Moreover, the inviolability of this mentality is guaranteed by Article 28 of the Constitution of the Russian Federation, which clearly states that “everyone is guaranteed freedom of conscience, freedom of religion, including the right to profess individually or jointly with others any religion or not to profess any, freely choose, have and disseminate religious and other beliefs and act in accordance with them”.

For religious people behavior of modern people who consider themselves, for example, gays and lesbians is a deviation from the norm according to which hundreds of generations of their ancestors have lived, guided by the prescriptions set forth in the Torah, the New Testament and the Koran. Religious extremists seek to protect those spiritual values that they consider righteous and correct. Moreover, they do not think about the fact that they are embarking on the path of extremism in violation of all the norms of tolerance that are characteristic of the modern mental civilization of people with a scientific worldview [6].

Another thing is that a psychologist, educator and head of the squad in a correctional facility should know the Scriptures so well that they can convincingly show a religious extremist that his/her views is contrary to the information about mental specifics of a person, as well as stages of mental development of the mankind that are indicated in the Scriptures themselves, in particular, about inevitable transition of the main mass of humanity from the era of pagan views to monotheistic ones, and further to a scientific worldview and independent regulation of one’s own vital activity precisely because of the mental specifics of a person fundamentally different from all other beings of the earth [6]. And that, therefore, life according to constitutions of modern secular states is an inevitability that any truly religious person should accept.

After all, the Torah, New Testament and Koran state that man is the bearer of the Spirit of God, that he (unlike all other beings of the earth) was created in the image and likeness of the Almighty and that God Himself taught man names of everything that exists in the Universe, having conquered to him the universe.

However, even if a psychologist, educator and a head of the squad are aware of the ideological and ideological basis of the Scriptures, their structure, composition and plot-event unity, this is not enough, since they need to possess not only methods and techniques of working with their wards, but also have appropriate training aids, including appropriate didactic material for convicts [7].

By the way, priests who have devoted themselves to prison service will not tell religious extremists and terrorists about the information of the Scriptures regarding the inevitability of a change of mental civilizations, otherwise they

will have to admit that their role in society is limited to purely religious mental epochs (paganism and monotheism) and that in their life a person living in a secular state should be guided by the Constitution and other normative legal acts of the country, and not by the prescriptions set out in the Scriptures [4].

There are also specific features in resocialization of nationalists, neo-Nazis, chauvinists, racists, as well as extremists in other spheres of social life. For example, an operational service officer will not be able to organize effective agent work if he is not aware of specific features of nationalists and racists.

However, the problems of psychologists, educators, heads of detachments, as well as employees of operational and regime services for resocialization of extremists and terrorists of various directions are not only and not so much in the listed points. They, as noted, are primarily related to a lack of a scientifically-based concept of the role, place and specific functions of all penal institutions in resocialization of extremists and terrorists. The goals and objectives that were developed and set for employees of psychological, educational, operational and regime services in the early 2000s did not take into account the tasks that the new times put forward.

Thus, the Order of the Ministry of Justice of the Russian Federation No. 238 of December 12, 2005 does not set goals and objectives for either psychological or other services in the subject matter concerned, corresponding to the direction of their official activities. The same can be said about the Instruction on the prevention of offenses among persons held in institutions of the penal system, issued in the form of the Order of the Ministry of Justice No. 72 of May 20, 2013.

So, psychologists together with "interested services" should develop and carry out "preventive measures with persons placed on preventive registration". Moreover, along with other convicts, "leaders and active participants of groups of a negative orientation, as well as persons who have a negative impact on other suspected, accused and convicted people ... studying, propagandizing, professing or spreading extremist ideology" are in preventive care. There is nothing more. And this is despite the fact that, as noted above, extremists and terrorists are by no means homogeneous, that they have completely different motives for their illegal activities, different views on life and the world order and, accordingly, require specific forms, methods and means of resocialization.

Although, it is fair to say that certain efforts to organize and methodically ensure professional work of penitentiary psychologists and operational services staff with convicted extremists and terrorists were made by employees of the Research Institute of the Federal Penitentiary Service of Russia together with the Department of Educational, Social and Psychological Activities of the Federal Penitentiary Service of Russia and the Operational Department of the Federal Penitentiary Service of Russia. At the same time, similar work was not carried out in the direction of educational work (heads of detachments). So, in 2018, based on the study of generalized, typological socio-psychological characteristics of convicted extremists and terrorists, the staff of the Research Institute of the Federal Penitentiary Service of Russia developed a Basic program for psychological correction of personality for persons convicted of terrorism-related crimes (hereinafter – BP). BP was approved by the management of the Department of Educational, Social and Psychological Activities of the Federal Penitentiary Service of Russia and sent to territorial bodies of the Federal Penitentiary Service of Russia for practical use in the work of psychologists.

In 2019, the staff of the Research Institute of the Federal Penitentiary Service of Russia prepared a professional development program "Prevention of countering terrorism and extremism in institutions of the penal system. Resocialization of persons convicted of committing crimes of a terrorist nature and extremist orientation" (hereinafter – PDP). It was assumed that this PDP would be actively used by departmental penitentiary educational organizations and institutes of advanced training of employees of the Federal Penitentiary Service of Russia for the purpose of their professional training to work with convicted extremists and terrorists. However, this did not happen, since even at the stage of preparation of BP and PDP their developers realized how difficult a category to study were

persons convicted of extremism and terrorism. It became clear that it was impossible to consider only generalized, typological socio-psychological characteristics of convicted extremists and terrorists due to the fact that the categories of convicts were too different in their mental and (more narrowly – in their psychological) specifics. The conclusions that emerged as a result of the conducted research work suggest the need for appropriate changes to the content of the Order of the Ministry of Justice of the Russian Federation No. 72 of May 20, 2013 "Instruction on the prevention of offenses among persons held in institutions of the penal system" in relation to persons studying, propagandizing, professing or distributing extremist ideology.

By the way, we cannot but mention another problematic aspect of organizing work of psychologists and educators in the aspects of resocialization of extremists and terrorists in the penal system of Russia. It is directly related to the ratio of psychologists to the number of convicts. In accordance with the existing regulations, a psychological service employee is obliged to simultaneously provide psychological support to 300 suspected, accused, convicted persons, as well as employees of the institution (body).

The load of a squad head (senior tutor in a juvenile correctional facility) is determined within 50–100 people, depending on the type of regime of the institution. It is not difficult to calculate how much time (how many minutes per week) each psychologist, educator and squad head can devote to each individual convict, even if employees of all services combine their efforts and clearly distribute their responsibilities for resocialization of extremists and terrorists.

On the other hand, the question arises, whether it is advisable to train every employee of the penal system as a specialist in the field of prevention and counteraction of extremism and terrorism, especially since each type of extremism and terrorism, having its own specifics, requires extensive special knowledge, as well as possession of specific methods, skills and abilities? From our point of view, it is impractical.

It seems that this problem can be solved by introducing into the staffing table of each territorial body of the Federal Penitentiary Service of Russia of 2–3 specialists in the prevention and combating of extremism and terrorism, who should direct and coordinate the work of all interested services. Today, the Federal Penitentiary Service of Russia does not have such employees, that is why the personnel retraining system is rather relevant.

*Conclusions*

Thus, we have touched upon only a part of the problems related to resocialization of extremists and terrorists in the penal system of Russia, without considering, for example, those related to the creation of special training and retraining programs for employees of psychological, educational, regime and operational services designed to prevent and counter each type of extremist and terrorist activities; development of appropriate textbooks and teaching aids, as well as a wide variety of audiovisual educational tools using digital technologies.

The modern world faces previously non-existent phenomena and challenges that are inevitable and that states will have to deal with, including with the help of their penitentiary systems. The penal system of Russia should not neglect them, hoping that convict's detention will solve the problem, without solving problems of reprogramming the worldview, thinking and behavior of extremists and terrorists. Hence, the Russian penal system should work out the concept for prevention and countering the most diverse types of extremist and terrorist ideas, which, in turn, should be reflected in concepts of psychological, educational, operational and regime services, as well as the entire system of the Federal Penitentiary Service of Russia. In addition, we consider it important to introduce a cycle of subjects related to prevention and counteraction of extremist and terrorist ideas into the curricula of higher and secondary educational institutions of the Federal Penitentiary Service of Russia, taking into account the specifics of students' specialty. Besides, it is necessary to systematically develop methods, techniques and a wide variety of tools aimed at preventing and countering extremism and terrorism for both educational institutions and places of detention.

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# Enhancing the Penal Legislation in Modern Conditions: Key Factors and Directions

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Abstract

*Introduction:* the modern Russian reality has changed correlation between the factors determining the penal legislation improvement. In the period from the adoption of the Penal Code of the Russian Federation until the beginning of 2022, this process was carried out under the priority influence of foreign policy factors, consisting in the need to maintain interstate cooperation at the proper level and comply with international, primarily European standards for the treatment of convicts. The termination of Russia's membership in the Council of Europe has led to the leveling of the influence of international standards for treating convicts on the penal legislation. With the weakening of the foreign policy factor in modern conditions, the importance of economic factors that hinder full-scale codification of the penal legislation and adoption of the new Penal Code of the Russian Federation increases. *The purpose* of this article is to determine relevant directions for the penal legislation enhancement in modern conditions in Russia. *Methods:* a factual analysis helps consider political, economic, social and spiritual conditions or factors prevailing in the state and society. *Conclusions:* taking into account the changed influence of various factors, the author contemplates directions for improving the penal legislation, including regulation of public relations related to the adopted Probation law in the Russian Federation, convicts' fulfillment of the constitutional duty to protect the Fatherland, establishment of additional guarantees for protecting the rights and legitimate interests of convicts. The task of eliminating gaps, contradictions and errors in the penal legislation is also discussed.

Keywords: convict; codification; factors; penal legislation; international standards; guarantees of the rights of convicts; probation; lawyer; visits to institutions and bodies executing sentences; participation of convicts in the special military operation.

5.1.4. Criminal law sciences.

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*Introduction*

In recent decades, the factors determining the penal policy and the penal legislation have been actively studied in legal science [1, p. 54; 2; 3]. Among them, there are objective and subjective [4], permanent and temporary [5, p. 95], internal and external [6, p. 6, 7] factors, etc. The factor analysis seems to be the

most promising, as it considers political, economic, social and spiritual conditions, or factors, of the state and society [7]. Moreover, at various stages of the development of the state and society, the impact of certain factors becomes decisive or priority, and the role of other factors weakens.

Thus, in the period from the moment of the adoption of the Penal Code of the Russian Federation (hereinafter – PC RF) and until the beginning of 2022, the penal legislation implementation was influenced by foreign policy factors; interstate cooperation should be organized at the proper level and international, primarily European standards for the treatment of convicts, should be implemented. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter – CPT) and the European Court of Human Rights (hereinafter – ECHR) promoted the trend of taking into account European standards for the treatment of convicts. The CPT, through annual inspections of places of forced detention in Russia, studied and summarized the practice of treating convicts and sent its recommendations to the state authorities of the Russian Federation. According to the complaints of convicts and their relatives, the ECHR, taking into account materials of the CPT inspections, made decisions on Russia's violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms and awarded financial compensation to victims. In addition, the ECHR ordered Russia to adopt so-called general measures, often consisting in amendments and additions to the penal and other legislation of the Russian Federation. All these activities were accompanied by various forms of diplomatic persuasion and economic coercion.

The modern period of Russian reality has changed the priorities among the factors determining the penal legislation improvement. The choice between a unipolar and multipolar world has led to an extraordinary aggravation of interstate contradictions between the Russian Federation and a number of Western countries. The conduct of a special military operation in Ukraine led to the application of economic and political sanctions against Russia. Since March 16, 2022 our country has ceased to be a member of the Council of Europe, and the Federal Law of March 16, 2022 terminated the following international treaties: the Statute of the Council of Europe of May 5, 1949; the General Agreement on Privileges and Immunities of the Council of Europe of November 6, 1952 with the relevant protocols thereto; the European Convention on the Suppression of Terrorism of January 27, 1977; the European Charter of Local Self-Government of October 15, 1985; the European Social Charter of May 3, 1996; the European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 with the corresponding optional protocols thereto (hereinafter – Convention on Human Rights or Convention).

The termination of membership in the Council of Europe automatically entailed Russia's withdrawal from the jurisdiction of the ECHR, which in its Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights of March 22, 2022 stated that Russia ceased to be a High Contracting Party to the Convention on September 16, 2022. At the same time, the ECHR remains competent to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the Convention provided that they occurred until September 16, 2022.

In contrast to the above-mentioned decision of the ECHR, the Russian Federation adopted the Federal Law No. 183-FZ of June 11, 2022 "On amending certain legislative acts of the Russian Federation and invalidating certain provisions of legislative acts of the Russian Federation", according to which the ECHR rulings that came into force after March 15, 2022 are not subject to execution in Russia. Monetary compensation under the ECHR rulings that came into force before March 15, 2022 inclusive can be paid exclusively in Russian rubles to accounts in Russian credit organizations and cannot be made to accounts in foreign credit organizations located in for-

eign countries that commit unfriendly actions against the Russian Federation.

The impact of international standards for the treatment of convicts on the penal legislation has weakened. However, in our opinion, it is still present.

First, the UN standards mostly represented by recommendatory acts, for example, the Minimum Standard Rules for the Treatment of Prisoners (Nelson Mandela's Rule) exert their influence. The existing acts obligatory for Russia are limited to several conventions and covenants, such as the International Covenant on Civil and Political Rights and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter –Torture Convention).

The UN documents themselves and their optional protocols provide for convention mechanisms for monitoring compliance with the above-mentioned international agreements, consisting in: a) submission and protection of periodic reports of states on the observance of civil and political rights and the fulfillment of obligations under the Torture Convention;

b) consideration of complaints of persons under the jurisdiction of Russia about violations of civil and political human rights and the use of torture;

c) consideration of statements by other states on violations of civil and political human rights in Russia and the use of torture.

Such a form of monitoring compliance with the Torture Convention provisions as the creation and operation of a preventive mechanism is not introduced in Russia.

Second, there are currently no grounds for concluding that the influence of European standards for the treatment of convicts on the penal legislation has been completely eliminated. The statement of the Ministry of Foreign Affairs of the Russian Federation of March 15, 2022 "On launching the procedure for withdrawal from the Council of Europe" states that "provisions of the main contractual legal acts of the Council of Europe are included in the Russian legislation. The already adopted decisions of the European Court of Human Rights will be implemented, if they do not contradict the Constitution of the Russian Federation". Besides, according to the Russian Foreign Ministry, "Russia remains open to pragmatic and equal interaction with the Council of Europe members on issues of mutual interest and within the framework of those conventions in which we decide to continue participating" [8].

With the decreased impact of the foreign policy factor on the penal legislation improvement in modern conditions, the importance of economic factors goes up. First of all, we are talking about those that characterize the state of the economy in Russia (gross domestic product, its volume and dynamics) and the priorities of the state's economic policy. Amid economic sanctions, increased spending on the Armed Forces of the Russian Federation and provision of the country's defense capability, the need to restore a destroyed infrastructure of the territories included in Russia, we should expect, if not a reduction, then freezing of the funds allocated to the penal system. All this raises risks of implementing individual projects that require additional federal budget spending. Among such risky projects is the construction and opening in 2024 of institutions of the united type, provided for by the Concept for the development of the penal system of the Russian Federation for the period up to 2030. Consequently, it becomes problematic to supplement the penal legislation with norms regulating the specifics of serving sentences in the above-mentioned institutions.

In 2012–2019, a new codification of the penal legislation was discussed in science [9, pp. 22–23]. It was proposed to develop and adopt a new PC RF or a new revision of the PC RF, and either together with the adoption of a new Criminal Code of the Russian Federation [10, p. 281; 11, p. 84], or separately from it [12, p. 114]. In many ways, these proposals were triggered by the adoption of new criminal codes in the CIS countries. Thus, the Republic of Kazakhstan in 2015 developed and put into effect new criminal, penal, criminal procedural and administrative codes. The example of Kazakhstan was followed by the Republic of Kyrgyzstan and partly by the Republic of Armenia.

In Russia, the reform of criminal and penal and other criminal legislation resulted in the introduction of numerous amendments and additions to the existing codes. So, at the beginning of 2023, 106 federal laws were amended and supplemented in the PC RF, 16 articles and an appendix to the code were declared invalid, and 31 new articles were introduced. Amendments and additions to the PC RF affected 140 articles out of 190 originally contained in it, which amounted to 73.7%. The most stable were the articles regulating the execution of criminal penalties against convicted military servants (arrest, restriction on military service and placement in a disciplinary military unit), changes and additions affected 44.8% of the articles. Conversely, the least stable were the articles regulating control of those conditionally convicted (100% of the articles were amended and supplemented), punishments without isolation from society (88.6%), deprivation of liberty (80.2%). In the General Part of the Penal Code of the Russian Federation, amendments and additions affected 15 out of 24 articles (62.5%), in the sections on the exemption from serving a sentence and execution of the death penalty – 66.7%. Even in the section on the execution of criminal punishment in the form of arrest, which is not used in judicial and penal practice since the adoption of the criminal and penal codes, 40.0% of the articles were amended and supplemented over the years.

The way of introducing amendments and additions to the penal legislation seems to prevail both at the current stage and in the medium term. Moreover, the amendments and additions adopted should not require budget expenditures for their implementation. A similar rule also applies to legislative acts other than the PC RF relating to the penal legislation. For instance, the Federal Law No. 10-FZ "On probation in the Russian Federation" adopted on February 6, 2023 (hereinafter – Probation law) determines in the explanatory note that its introduction will not require additional costs from the federal budget.

Let us consider further directions for improving the penal legislation, which will be particularly relevant taking into account the prevailing modern conditions in Russia.

*Regulation of public relations related to the adoption of the Probation law in the PC RF norms*

The penal legislation of the Russian Federation consists of the code and other federal laws (Part 1 of Article 2 of the Penal Code of the Russian Federation). It establishes general provisions and principles of the execution of punishments and application of other criminal law measures provided for by the Criminal Code of the Russian Federation; the procedure and conditions for the execution and serving of punishments, the use of means of correction of convicts; the procedure for the activities of institutions and bodies executing punishments; the procedure for the participation of state authorities and local self-government bodies, other organizations, public associations, as well as citizens in correction of convicts; the procedure for release from punishment; the procedure for providing assistance to released persons (Part 2 of Article 2 of the Penal Code of the Russian Federation).

The Probation law regulates public relations arising in the sphere of organization and functioning of probation in the Russian Federation, including defining the goals, objectives and principles of probation, the legal status of persons in respect of whom probation is applied, activities and powers of probation subjects in the Russian Federation (Article 1). At the same time, probation is defined as a set of measures applied to convicts, persons who have been assigned other criminal law measures, and persons released from institutions executing sentences in the form of forced labor or imprisonment who find themselves in a difficult life situation, including resocialization, social adaptation and social rehabilitation, protection of the rights and legitimate interests of these persons.

There are three types of probation. The first, enforcement probation, is a set of measures applied by criminal executive inspections in relation to persons in a difficult life situation, in the execution of punishments not related to isolation from society (with the exception of those sentenced to a fine imposed as the main punishment, and forced labor) and other criminal law measures.

The second, penitentiary probation applied to convicts in institutions executing sentences in the form of forced labor or imprisonment, is a set of measures aimed at correcting convicts, as well as preparing convicts serving sentences in the form of forced labor or imprisonment for release.

The third, post-penitentiary probation, is applied to persons released from institutions executing sentences in the form of forced labor or imprisonment, and who find themselves in a difficult life situation. It is a set of measures aimed at resocialization, social adaptation and social rehabilitation.

As can be seen from the above, the subject of the Probation law is included in the subject of the penal legislation. Both the penal legislation and the Probation law regulate public relations on the use of basic means of correction of convicts during the execution (serving) of criminal penalties and other criminal law measures, as well as the assistance to released persons. In a small part, the subject of the Probation law goes beyond the scope of the subject of the penal legislation by regulating relations to provide assistance to persons released from punishment after serving a term of imprisonment or forced labor. At the same time, the provision of similar assistance to persons conditionally released from these punishments is covered by the provision of penal legislation, since we share the opinion of Yu.A. Golovastova and other scientists that parole is a criminal law measure [13, p. 92].

The Probation law provides for a rather diverse set of measures for re-socialization, social adaptation and social rehabilitation of persons, subject to probation. For the most part, they are covered by the main means of correction of convicts provided for in Part 1 of Article 9 of the Penal Code of the Russian Federation, for example, educational work with convicts, their general and vocational education, public influence. However, the Probation law also provides for the use of other corrective measures, for example, social work in the form of various forms of providing material and other social assistance to convicts. Article 17 of the Probation law regulates the provision of assistance in restoring and strengthening social ties of convicts.

It should be recalled that the theory of penal law proposed to expand the list of basic means to correct convicts fixed in Part 2 of Article 9 of the Penal Code of the Russian Federation by including social work with convicts and maintaining positive social ties [9, p. 33]. The adoption of the Probation law seems to give additional grounds for the implementation of these proposals. This should be done in order to ensure the leading role of the PC RF as a codified legislative act of a systemic nature in the field of regulation of penal relations.

The experience of the CIS states should also be taken into account. Article 7 of the 2015 Penal Code of the Republic of Kazakhstan, for example, provides for the maintenance of positive social relations by convicts as the main means of correcting convicts.

*Regulation of relations related to convicts' fulfillment of the constitutional duty to protect the Fatherland in the penal legislation*

Article 8 of the Penal Code of the Russian Federation enshrines the principle of democracy, the implementation of which ensures convicts' participation in the state affairs. With all the negative reaction of the state and society to crimes committed by the convicted, it would be erroneous to consider them as outcasts, a social group cut off from the state and society. This provision, which is crucial for the penal policy and legislation, is enshrined in Article 10 of the Penal Code of the Russian Federation, according to which a convicted person, regardless of the type of sentence served, is not deprived of citizenship and the legal status of a citizen. This law provision allows to appeal to the civil feelings of convicts in the daily practice of execution of punishments and thereby diversify means of educational work. Appealing to civil feelings of convicts was recorded in the history of our state, for example during the Great Patriotic War, liquidation of the consequences of the earthquake in Spitak (Armenia, 1988), gas explosion and death of passengers of two passenger trains (Bashkiria, 1989). Nowadays, materials of the official website of the Federal Penitentiary Service of Russia describe convicts' assistance in extinguishing forest fires in Krasnoyarsk Krai,

the Komi Republic and other regions of our country.

It is possible to distinguish several forms of convicts' participation in state affairs, which allows us to conclude that a convicted citizen, like other citizens, is a subject of state administration [14]. One of these forms is the protection of our Fatherland. In our opinion, there are necessary constitutional and legal grounds for this. First of all, it is necessary to point to Article 59 of the Constitution of the Russian Federation, which imposes on citizens the honorable duty to protect the Fatherland. As the chairman of the State Assembly – Kurultai of the Republic of Bashkortostan, Doctor of Sciences (Law), Professor K.B. Tolkachev (in the 1990s, a teacher at the Ryazan Higher School of the USSR Ministry of Internal Affairs), quite correctly notes, "convicts also have the right to feel like citizens and be responsible for the future of the country in which they live. It would be fundamentally wrong to limit their ability to implement this duty" [15].

Certain steps were taken by the legislator to create a legislative framework for the fulfillment of the convicts' civil duty to protect the Fatherland. Thus, the Federal Law No. 421-FZ of November 4, 2022 "On amendments to the Federal Law "On mobilization training and mobilization in the Russian Federation"" stipulates that citizens who have an unexpunged or outstanding conviction for committing not all serious crimes, but only crimes against sexual integrity of a minor, or crimes according to the list established in Part 4 of Article 17 of the Law on mobilization are not subject to mobilization. This law has created a legal basis for military mobilization of convicts who have served a criminal sentence but have a criminal record, as well as for conditionally convicted persons on the basis of Article 73 of the Criminal Code of the Russian Federation, since it is possible to assign the duty of monitoring conditionally convicted persons to the command of military units in accordance with Part 1 of Article 187 of the Penal Code of the Russian Federation.

However, there are still no legal grounds for military mobilization of convicts serving criminal sentences. Norms of the criminal and penal legislation do not contain grounds for suspending punishment or exemption from its serving due to military mobilization of the convicted person. The situation could be partially changed by the adoption of the law introduced by the State Assembly – Kurultai of the Republic of Bashkortostan to the State Duma of the Russian Federation at the end of September 2022, aimed at changing the criminal legislation norms to legalize participation of convicts serving imprisonment and forced labor in the special military operation. However, this is not enough. It would be appropriate to solve the legislator's task on military mobilization of convicts serving sentences without isolation from society only on the basis of slightly different principles. We are talking about such punishments as compulsory labor, a fine (if it is executed in installments or delayed in execution), correctional labor, restriction of liberty, restriction of the right to hold certain positions and engage in certain activities, forced labor.

It is also advisable to regulate the grounds and procedure for the release of those serving a suspended sentence (Article 73 of the Criminal Code of the Russian Federation) and those released on parole from serving their sentence (Article 79 of the Criminal Code of the Russian Federation). Persons with a deferred sentence in connection with drug treatment (Article 82.1 of the Criminal Code of the Russian Federation) or with the upbringing of a child by a single parent (Article 82 of the Criminal Code of the Russian Federation) hardly can supplement this list.

*Establishment of additional guarantees in the penal legislation to ensure the rights and legitimate interests of convicts*

The termination of membership in the Council of Europe and withdrawal from the jurisdiction of the ECHR should not lead to a decrease in the level of human rights protection at the national level. It seems that in the current realities, measures should be taken to strengthen guarantees of compliance with the rights of subjects of penal relations, which requires amendments and additions to the penal legislation norms.

One of such changes should be made to Article 24 of the Penal Code of the Russian

Federation, which regulates grounds and the procedure for visiting institutions and bodies executing punishments without special permission. Considering a list of the subjects to whom this right is granted, it should be recognized that such visits are not an end goal. They are aimed at solving tasks of ensuring the observance of the rights and legitimate interests of convicts and increasing the effectiveness of the state's activities in the implementation of criminal penalties. One of the guarantees for the fulfillment of these tasks is the possibility of obtaining reliable information directly from convicts. The current version of Part 2.1 of Article 24 of the Criminal Code of the Russian Federation stipulates that only the Commissioner for Human Rights in the Russian Federation and the Commissioners for Human Rights in the constituent entities of the Russian Federation enjoy the right to talk with convicts alone in conditions when a representative of the administration of an institution or body executing sentences can see speakers, but cannot hear them. The Commissioner for the Rights of the Child under the President of the Russian Federation, the Commissioners for the Rights of the Child in the subjects of the Russian Federation, the Commissioner under the President of the Russian Federation for the Protection of the Rights of Entrepreneurs, authorized to protect the rights of entrepreneurs in Russian subjects, are deprived of such an opportunity. Meanwhile, they, like no one else, should also be provided with guarantees of the confidentiality of conversations with convicts, since in addition to information about human rights violations while serving their sentence, information about a person's private life, for example, the secret of adoption or commercial secrets, can be disclosed in conversations with these ombudsmen.

In addition, the literal interpretation of Part 2.1 of Article 24 of the Penal Code of the Russian Federation in comparison with Part 1 of Article 24 of the Penal Code of the Russian Federation allows us to conclude that other officials specified in Part 1 of Article 24 of the Penal Code of the Russian Federation are not entitled to talk with convicts alone in conditions when a representative of the administration of a penitentiary institution or body can see speakers, but cannot hear them. This provision hinders performance of official duties by the Prosecutor's Office and higher bodies of the penal system within the framework of their prosecutorial supervision or departmental control.

As for the President of the Russian Federation, the Chairman of the Government of the Russian Federation, the Minister of Justice of the Russian Federation, members of the Federation Council, deputies of the State Duma and other officials specified in Part 1 of Article 24 of the Penal Code of the Russian Federation, the lack of the right to talk to convicts alone is ethically flawed, since it actually means a lack of trust to them.

In connection with what is stated in Part 2.1 of Article 24 of the Penal Code of the Russian Federation, the words "Commissioner for Human Rights in the Russian Federation, Commissioners for Human Rights in the subjects of the Russian Federation" should be replaced by the wording "Officials specified in Part 1 of this Article". A similar solution is proposed in the theoretical model of the General Part of the new Penal Code of the Russian Federation [16, p. 216].

It is necessary to work out once again the question of the role of a lawyer in providing legal assistance to convicts and strengthening guarantees of its implementation. Let us consider guarantees of attorney-client confidentiality as an example.

Currently, the Penal Code of the Russian Federation regulates forms of providing legal assistance by lawyers to persons sentenced to imprisonment, such as visits and correspondence with them. At the same time, it is established that visits of convicts with a lawyer are provided in private, outside the hearing of third parties and without the use of technical means of listening. The secret of correspondence with the convicted person, according to Part 3 of Article 91 of the Penal Code of the Russian Federation, is no longer guaranteed to all lawyers, but only to a trial lawyer of the convicted person, which significantly limits the application of this norm: the trial lawyer is a procedural position of the lawyer in criminal and administrative proceedings. However, a lawyer can act as a representative of a con-

victed person in civil proceedings, for example, in divorce and division of property, administrative proceedings, for example, when appealing against illegal actions of the administration of a correctional institution in court or other state bodies. In both cases, it is necessary to ensure attorney-client confidentiality, which, in accordance with Part 1 of Article 8 of Federal Law No. 63-FZ of May 31, 2002 "On advocacy and defense attorneys in the Russian Federation" includes any information related to the provision of legal assistance by a lawyer to his/her client.

It should also be borne in mind that the secrecy of correspondence between a convict and a trial lawyer is not guaranteed in all cases. If the administration of a correctional institution has reliable data that the information contained in the correspondence is aimed at initiating, planning or organizing a crime or involving other persons in its commission, the control of letters, postcards, telegraphic and other communications is carried out by a reasoned resolution of a head of the correctional institution or his deputy. This exception also raises doubts about its validity: it has been repeatedly discussed in the theory of penal law that it is the court, and not a head of the correctional institution or his deputy, should make a decision to control correspondence between a convicted person and a trial lawyer [16, p. 147].

Telephone conversations between a convicted person and a lawyer acting both as a trial lawyer and as a representative can be monitored by correctional institution employees (Part 5 of Article 92 of the Penal Code of the Russian Federation). Such a decision of the legislator seems to us rather contradictory. During phone talks between a lawyer and a convicted person, the confidentiality of information is not guaranteed, unlike their personal meetings. Meanwhile, the Penal Code of the Republic of Moldova No. 443-XV of December 24, 2004 (with amendments and additions as of July 21, 2022) prohibits censorship of correspondence and wiretapping of telephone conversations between a convicted person and a lawyer without any exceptions (Article 210). Perhaps this should also be fixed in the PC RF.

*Elimination of gaps, contradictions and errors in the penal legislation*

Gaps, systemic and private contradictions and errors, unfortunately, are found in most legislative acts. They testify to the low quality of legislative work. In the PC RF, they are both present in original articles and ill-conceived amendments and additions to it. In the theory of penal law, certain attention is paid to these shortcomings [17]. Without setting the task of their exhaustive enumeration and detailed analysis, we will focus only on one, the most revealing contradiction.

Article 158 of the Penal Code of the Russian Federation regulates the procedure for conducting visits with convicted servicemen serving sentences in a disciplined military unit. Part 3 of this article stipulates that long visits to convicted servicemen are granted with their spouse and close relatives, and with the permission of the commander of the disciplinary military unit – with other persons four times during the year for up to three days with the right to live together in a specially equipped room of the disciplinary military unit or at the discretion of the commander of the disciplinary military unit outside its borders.

Meanwhile, according to Part 1 of Article 55 of the Criminal Code of the Russian Federation, detention in a disciplinary military unit is assigned to military personnel doing compulsory military service, as well as military personnel doing volunteer military service in the positions of enlisted and non-commissioned officers, if they have not served the term of service established by law on conscription at the time of the court verdict.

According to Part 1 of Article 22 of the Federal Law No. 53-FZ of March 28, 1998 (as amended of September 24, 2022) "On military duty and military service" (with amendments and additions, entered into force on October 13, 2022), male citizens aged 18–27 who are in military service are subject to conscription registered or not, but obliged to be on military registration and not in reserve.

Thus, only male persons serve their sentences in disciplinary military units. The provision of an opportunity for a serviceman to hold meetings with his spouse (a male person) presupposes the conclusion of a

same-sex marriage between them, since such marriages cannot be concluded in the Russian Federation. In Article 72 of the Constitution of the Russian Federation, the institution of marriage is defined as the union of a man and a woman. This is also evidenced by norms of the Family Code of the Russian Federation, where Part 3 of Article 1 fixes a principle of the family, such as a voluntary union of a man and a woman. Article 12 of the same code stipulates a condition for marriage, such as mutual consent of a man and a woman.

This contradiction appeared in the code following results of the linguistic examination of the draft PC RF in 1996 after the second reading. It was explained by the need to ensure gender equality. However, such equality can be ensured in this case if women serve their sentences in a disciplinary military unit. To do this, it is necessary to introduce mandatory conscription of women for military service, as provided for in Israel. So far, such a solution is not expected in the future, therefore, this contradiction needs to be corrected.

*Conclusions.*

1. The modern period of Russian reality has changed priorities among the factors determining the penal legislation improvement. The influence of foreign policy factors, which consist in the need to maintain interstate cooperation at the proper level and comply with international standards for the treatment of convicts, has significantly weakened (but not disappeared).

2. With the decreased influence of foreign policy factors on the penal legislation improvement in modern conditions, the importance of economic factors increases. First of all, we are talking about those that characterize the state of the economy in Russia (gross domestic product, its volume and dynamics) and the priorities of the state's economic policy.

3. Under the influence of economic factors, the way of making partial changes and additions to the penal legislation will prevail both at the present stage and in the medium term. Moreover, the adopted amendments and additions should not require budget expenditures for their implementation.

4. The most relevant (but not the only) directions to improve the penal legislation, with regard to current conditions in Russia, are the regulation of public relations related to the adoption of the Probation law in the Russian Federation, the convicts' fulfillment of the constitutional duty to protect the Fatherland, the establishment of additional guarantees to ensure the rights and the legitimate interests of convicts. The task of eliminating gaps, contradictions and errors in the penal legislation deserves special attention.

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# Correlation of Goals and Tasks of Criminal Law, Punishment and Its Execution

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Abstract

*Introduction*: the article analyzes criminal and penal legislation norms, their tasks, goals of punishment and its execution, as well as determines their correlation. It is argued that the main social task of these legislations is to protect a person, society and the state from criminal encroachments, while their main legal task is to prevent crimes. All institutions and norms of criminal and penal legislation, as well as purposes of punishment, including correction of the convicted person, should be subordinated to this task. Correction is the main way to prevent new crimes. The problem of convicts' resocialization is also considered in this context. Correction should be part of resocialization of convicts. *Purpose*: on the basis of generalized historical and modern legislative experience in the formation of goals, tasks of criminal law, punishment and its execution, to identify their common and distinctive features, determine their optimization and draw attention of the legislator and law enforcement practice to them. *Methods*: the research is based on the use of methods traditional for criminal and penal law: analysis and synthesis, logical, retrospective, formal-logical, and comparative-legal ones, as well as interpretation of legal norms. *Results*: the author comes to the conclusion that the tasks of criminal law, punishment and its execution should not coincide. The main task that punishment and its execution should focus on is a socio-legal task, which is defined in Part 1 of Article 2 of the Criminal Code of the Russian Federation: protection of the individual, state and society's interests from criminal encroachments. At the same time, prevention of new crimes should be the main goal of punishment, and re-socialization – the key goal of penal legislation ensuring punishment execution. It is crucial to restore the effect of the prohibitive norm of the criminal law (the state of positive criminal liability). All this is determined by the current trend to optimize the goals that can be achieved in the penal system conditions, shift efforts from correcting the offender to his/her re-socialization and adoption to the conditions of life in society, which meets international law recommendations. The tasks of penal law should go beyond the goals of punishment, and penal law should include not only penal, but also post-penal blocks of norms. *Conclusions*: conducting the research, the author substantiates the necessity of revising the goals and objectives of the criminal law and penal legal systems, optimizing them in accordance with the requirements of new trends in social development and international norms of law, directing activities of criminal justice on fulfilling the tasks in demand.

Keywords: socio-protective task; protective function of criminal law; crime prevention; correction of a criminal; resocialization of a convict.

5.1.4. Criminal law sciences.

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*Introduction.*

The main interest in criminal prosecution is to protect the individual, society and state's interests from criminal encroachments. Such a socio-legal function of the state is defined by the legislator in Part 1 of Article 2 of the Criminal Code of the Russian Federation. It has been and remains unchanged throughout the history of the existence of the Russian state. The same function determines goals of punishment. It is perceived as the ultimate goal of punishment of other institutions of criminal law.

This provision corresponds to the views of thinkers and scientists who addressed a similar topic in the 19th and 20th centuries. Thus, Cesare Beccaria argued that the sovereign's right to punish crimes was based "on the need to protect the repository of the common good from the encroachments of individuals" [1, p. 200]. The Russian legal scholar A.F. Kistyakovskii stated, "The ultimate goal of punishment from the first moment of its appearance to the present day was and is the same ... Self-preservation is this goal" [2, pp. 292–293]. According to Karl Marx, punishment "is nothing else than a means of self-defense of society against violation of its conditions of existence" [3, p. 531]. The Russian scientist N.D. Sergievskii wrote about the same thing [4, p. 8].

The same is stated in modern Western criminal law theories. Thus, the English punishment doctrine determines the following goals: retribution, triumph of justice, intimidation, correction of a criminal and protection of the society. The latter is still the main goal of punishment [5, p. 40].

A very important idea was expressed by the French scientist Marc Ansel in the 1970s. He emphasized that different epochs created different goals of punishment, but they all served to ensure protection of society from crimes, that is, social protection" [6, pp. 27–28].

Soviet scientists also supported a similar idea. For example, V.V. Kirin, having considered the interrelation of branches of the criminal legal complex, noted that criminal punishment is a criminal legislation means to fulfill the task of law enforcement [7, p. 146]. I.I. Karpets, having studied social legal and criminological aspects of punishment, came to the conclusion about protection of the society as its main purpose [8, p. 140]. A similar opinion was expressed by M.P. Melent'ev who desclosed functions of correctional labor law [9, p. 19].

Thus, we have decided on the main task of criminal law and punishment, which originates from the moment of the state existence. The social and protective task dictates the need for legislative registration of other tasks. We have to answer the question, how other goals and tasks of criminal and penal law institutions, such as punishment and its execution, relate to each other?

**Criminal law protection and crime prevention (defensive and protective functions)**

Part 1 of Article 2 of the Criminal Code of the Russian Federation defines a key interest of the state, a social guideline in the form of the task of criminal law norms, in particular, protection of a person, the state and society from criminal encroachments. By defining punishment and its goals, the state strives to satisfy this interest. In terms of criminal law, punishment ensures this social interest, it is a means to achieve it. Whatever the epoch and socio-economic formation, this main interest of the state always remains, since it predetermines existence of the state itself. The socio-protective task of the state is primary, all other criminal-legal goals and tasks are secondary to it, since they ensure its implementation.

The criminal legislation itself specifies this task as essential. The rejection of it leads to artificial promotion of other tasks as the main ones, overshadowing a crucial task. From a legal standpoint, criminal protection proceeds from the presence of socially dangerous acts and the state's reaction to them. This is obvious if you pay attention to the recent,

quite often repeated changes introduced by the State Duma of the Russian Federation to the Criminal Code of the Russian Federation: the state actively protects itself from possible or ongoing criminal encroachments.

The state fulfils its protective task mainly through establishing prohibitions on the commission of socially dangerous actions in criminal law. Primarily, this is ensured by citizens' voluntary positive implementation of criminal law norms. The prohibitive norm in the form of disposition of articles of the Special part is recognized as a regulatory norm of criminal law, it calls citizens not to violate the law (the state of positive criminal liability). Thus, a prohibitive norm ensures law and order in the country, which is the result of the implementation of the main social and protective function of criminal law.

Criminal law protection is a strategic task of criminal legislation, which is implemented not only through establishment of prohibitions, but also through creation of conditions for citizens to abstain from committing crimes. The state should create legal and organizational conditions for citizens to comply with criminal law prohibitions, as well as establish liability for their non-compliance and practice of its implementation. The state should actively promote citizens' compliance with prohibitions. Only active participation of state bodies can ensure effective implementation of this task.

Criminal law norms are also implemented through a system of means that affect criminal's personality by transforming it and making it not socially dangerous in the future. To do this, the legislator uses another main task – prevention of crimes (Part 1 of Article 2 of the Criminal Code of the Russian Federation). This is the main legal task of criminal law, to which, in our opinion, all criminal legal means of solving it should be subordinated. It should prevent new recidivism.

These two tasks (socio-protective and legal) have received international recognition. Thus, Rule 4 of the Nelson Mandela Rules states that "the purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism".

The preventive task as if complements the socio-protective one, acts together with it (Part 1 of Article 2 of the Criminal Code of the Russian Federation). But at the same time, it is subordinate to the main task, since it ensures its restoration.

By what means will these main tasks of criminal legislation be solved? The legislator offers the solution in Part 2 of Article 2 of the Criminal Code of the Russian Federation by determining elements of crimes, types of punishments and other measures of a criminal nature for their commission. By establishing elements of crimes, that is, prohibitions, the legislator warns that law violation will be followed by punishment. A criminal law norm has both a general preventive effect of prohibitions on all citizens and private preventive effect of punishment on the person who committed the crime. If the first is implemented as a positive social analogue of liability, then the second is a negative legal analogue. These tasks act together; implementation of the law norms on punishment restores the norms-prohibitions. Punishment performs a security function in relation to prohibitions. It is designed to restore the viability (legal personality) of prohibitions.

If criminal law protection performs a general preventive function by establishing prohibitions, then the second main task of the Criminal Code of the Russian Federation (crime prevention) – a private preventive function. In our opinion, this is what the legislator had in mind when fixing these two main tasks of the law. Otherwise, they would overlap and repeat themselves, which is unacceptable in the legal sense: each concept should have its own essential definition and content.

Crime prevention performs a defensive function, not a protective one. The protective function of criminal law prohibitions is static, preventive, affects all citizens and is not associated with a specific subject. In this case, so-called absolute general legal relations arise. Protection is implemented, as we have already noted, through regular preventive measures, regardless of whether the offense has been committed or not.

Private preventive measures are manifested as elements of response to the prohibitive

norm violation or the real threat of its violation. Defense in the form of private prevention of crimes is implemented if the criminal law prohibition is violated, the act called a crime is committed. Defensive measures are implemented within the framework of special legal relations that develop between an offender and state bodies authorized to bring him/her to justice.

Protection of the rights and interests of the person, society and state is regularly provided, and defense in the form of private prevention of new crimes is manifested in violation or threat of violation. Protection is the whole set of measures that ensure these rights and interests. They can be legal and non-legal (organizational, pedagogical, social, psychological, etc.). As stated above, protection is of permanent nature and has a pronounced general preventive character. Defense is provided by the use of punishment, other measures of a criminal legal nature, through the implementation of their goals: restoring social justice, correcting convicts and preventing commission of new crimes. Alleged objects of legal relations (rights, interests, public relations) are the object of protection, while specific subjects of legal relations (criminal, victim, state) are the object of defense.

The state's absolute rights in protection are implemented within the framework of a regulatory legal relationship, and in defense of the rights and obligations of subjects – within the framework of a specific special criminal law relationship, and this happens when imposing and executing a criminal law measure.

If we use the concept of a criminal law norm operating as a sanction, then the concept of protection includes defense as its special case, when active restoration measures are taken to restore effect of the criminal law prohibition. These measures are related to the application of punishment, correction of an offender and prevention of recidivism.

Prohibitions and punishment for their violation (Part 2 of Article 2 of the Criminal Code) are ways to implement the main tasks defined by the legislator in Part 1 of Article 2 of the Criminal Code of the Russian Federation. At the same time, punishment, as an independent phenomenon in criminal law, has its own goals and tasks, which may or may not coincide with key tasks of the Criminal Code. We share the opinion of V.A. Grigor'ev that "identifying criminal law and punishment goals is one of the means by which the tasks of legal regulation are solved. The goals of criminal law are primary to the goals of punishment. If punishment is the only means of solving the tasks of achieving the goal of criminal law, then its goals will coincide with the goals of law. If punishment is one of the means, then its goals can only be part of the totality of the goals the law faces" [10, p. 42].

**Prevention of new crimes and correction of convicts**

Article 43 of the current Criminal Code of the Russian Federation defines the following purposes of punishment: restoration of social justice, correction of convicts and prevention of new crimes commission. It follows from the content of this law provision that only one goal – prevention of new crimes – coincides with the second task of criminal law.

Here the legislator defines these goals as equal, does not put forward a dominant goal. However, researchers evaluate these goals differently, identifying the main one among them [8, pp. 85–92]. For most of them it is correction [11, pp. 15–20]. For example, in the nineteenth century, with the emergence of a positivist approach to the problem of punishment the Russian scientist M.V. Dukhovitskii wrote that criminal law should learn how to organize punishment so that it achieves its crucial, but also its only goal – maintaining order in the social system. It should not only punish and take revenge on the criminal, as the classical school of criminal law traditionally believed, but should correct him/her [12, pp. 29, 32–33]. Then this idea was supported by the majority of legal scholars, in particular, A.F. Kistyakovskii, I.Ya. Foinitskii, N.S. Tagantsev, N.D. Sergievskii, S.V. Poznyshev, etc. According to A.F. Kistyakovskii, "considering provision of punishment in relation to the only possible and really prevailing punishment in our time, i.e. imprisonment, of various types, it is necessary to recognize provision identical with correction ... Thus, correction of punishment is not only a product of love for one's neighbor, but rather a real need caused by the society's sense of self-preservation" [2, p. 302].

Many modern scientists believe that correction is the end result of punishment execution, that is, the convicted person should have a respectful attitude towards the person, society, work, norms, rules and traditions of human community and strive for law-abiding behavior (Part 1 of Article 9 of the Penal Code of the Russian Federation). Having corrected him/herself, a person is not dangerous for society and will not commit a new crime. This goal is a guaranteed result of the activities of the entire criminal justice system.

The current criminal legislation also links the use of many institutions, including those related to improvement of the legal status of convicts, with achievement of the correction goal. Thus, when imposing punishment, the court should take into account the impact of the imposed punishment on correction of a convicted person (Part 3 of Article 60 of the Criminal Code). When assigning punishment in case of any kind of recurrence, the circumstances are taken into account, due to which the corrective effect of the previous punishment has been insufficient (Part 1 of Article 68 of the Criminal Code). A suspended sentence may be imposed on the guilty person if the court comes to the conclusion that it is possible to correct the convicted person without serving a real sentence (Part 1 of Article 73 of the Criminal Code). Conditional early release from serving a sentence may be applied if the convicted person does not need to fully serve the sentence imposed by the court for his/her correction (Part 1 of Article 79 of the Criminal Code). The legislator provides the possibility of correcting minors when applying coercive measures of educational influence (Part 1 of Article 90, Part 2 of Article 92 of the Criminal Code).

Based on this interpretation of correction, many authors believe that all other goals of punishment, including prevention of new crimes, should be subordinated to it. In this regard, it is concluded that private crime prevention is one of the means to achieve the goal of correction. Correction is perceived as a crucial way to ensure the main social and protective task of criminal law. In the Soviet times, the idea of building communism was promoted in education of convicts. Convicts were to comply not only with criminal law prohibitions, but also with other laws and moral norms; moreover, correction and re-education relied on coercion supported by political organizations. At present, the situation is changing, since the idea of the impossibility to correct convicts is spread among employees of correctional facilities. According to the conducted survey, 73% of the respondents put the solution of the problem to ensure convicts' compliance with regime and discipline requirements in the foreground, while only 13% – their correction. The period of reforms witnessed changes in the state of mind of correctional facility employees, refusing the illusion of possible correction of every convict, as it was in Soviet times. We once called this task a fiction in the execution of punishment [13, pp. 124–125].

Let us contemplate about the purpose of correcting convicts? The answer is obvious: so that a convicted person does not commit a new crime. No wonder the legislator defined in Part 1 of Article 2 of the Criminal Code of the Russian Federation the main task of the criminal law, such as prevention of crimes. The same task is relevant for punishment as one of key institutions of criminal law (Part 2 of Article 43 of the Criminal Code of the Russian Federation). In terms of law, the main idea is that the task of correcting convicts is conditioned by a preventive task, it acts as a means of solving it.

Crime prevention is the ultimate goal of the entire criminal justice system. The main idea here is to restore the effect of the prohibitive norm of the criminal law so that it is not violated by either a criminal or other persons. Correcting convicts should not go beyond this. The main thing is to be within the framework of the criminal law and not to go beyond its limits. It is not the penal system but the society as a whole that should take care of upbringing and re-educating criminals. Operation of the criminal law has certain limits – these are terms of repayment of the criminal record of a person who has served a sentence (Article 86 of the Criminal Code of the Russian Federation).

The idea of recognizing correction of a criminal as a way to achieve the goal of preventing new crimes is developed in the works of M.D. Shargorodskii, N.A. Struchkov, N.A.

Ogurtsov, V.N. Kudryavtsev, E.A. Sarkisova, I.I. Karpets, V.I. Zubkova, M.N. Tagiev and others. An interesting idea in this regard is expressed by N.A. Struchkov, emphasizing that the system of measures to combat crime at the same time is a system of measures to prevent it, the correction system also has a preventive orientation [14, p. 6]. To ensure implementation of punishment means to prevent a new crime on the part of the offender, and, most importantly, protect society [15, p. 14].

Nowadays the idea of legal correction, implying that a convict will not commit new crimes, is becoming more popular. According to A.E. Zhalinskii, the goal of correction is "essentially the goal of special prevention of crimes and is achieved when a convicted person does not commit new crimes" [16, p. 376]. A.V. Naumov also argues that it is "a real task to solve and to force a convict, at least under penalty of punishment, not to violate the criminal law, that is, not to commit new crimes in the future" [17, p. 530].

We could add here that the criminal defense reaction ends with repayment (removal) of the criminal record. All restrictive measures related to a criminal record have a pronounced preventive orientation. Therefore, the positive result of correction of a convicted person is recorded if he/she does not commit a new crime within the period of time stipulated by law.

Therefore, one should disagree with the authors of the Comments to the Criminal Code of the Russian Federation and the Penal Code of the Russian Federation that prevention of crimes is associated with implementation of legal restrictions inherent in punishment, as well as preventive and educational measures aimed at preventing commission of new crimes during the period of serving a sentence, as well as after serving it. At the same time, they do not associate the post-penal period with a criminal record [9; 18, p. 217; 19].

There is another compromise position that correction is aimed at preventing violations of the norms of not only the Criminal Code of the Russian Federation, but also other laws, so that the convicted person leads a law-abiding lifestyle. This position is clearly expressed in Article 7 of the Criminal Executive Code of the Republic of Belarus, fixing the task of forming "the convict's readiness to lead a law-abiding lifestyle".

In our opinion, neither the idea of correcting convicts in the spirit of respect for man, society, work, norms, rules and traditions of human community and stimulating law-abiding behavior (Part 1 of Article 9 of the Penal Code of the Russian Federation), nor the idea of readiness to lead a law-abiding lifestyle (Article 7 of the Criminal Executive Code of the Republic of Belarus) meet criminal law provisions. Most likely, they correlate with the process, and do not determine final results of correction. If they are used as tasks of the penal legislation, they will be exaggerated for the penal system, since these are tasks of the whole society. The main thing in the criminal legal system, with the penal system being its part, is to restore the effect of prohibitive criminal law norms so that the socio-protective function of the state is performed.

Goals and tasks of criminal and penal legislation should be optimized as follows: 1) active protection of the person, society and state from criminal encroachments is the main goal of the legislation regulating the fight against crime; 2) crime prevention is the main direction and result of its achievement; 3) correction of convicts is one of the means of preventing new crimes.

**Correction and re-socialization of convicts**

Many authors consider resocialization as one of the goals of criminal punishment and understand it as "convicts' learning of the lost skills of behavior in society, social norms and value orientations, restoration of broken positive social ties" [20, p. 1,107].

The process of re-socialization has been long discussed. Many states include this punishment goal in legislation. Modern Russian scientific literature refuses the idea of correction in favor of re-socialization. Many dissertations in various branches of knowledge are associated with resocialization, not correction [21–25]. The same can be traced in the penal policy. So, in the concepts for the development of the penal system up to 2020 and 2030, the term "resocialization" is more often used than "correction".

In fact, criminals can be corrected, but if they do not get any assistance in the adaptation to a social life after their release, then they may again embark on a criminal path. Social adaptation is part of resocialization, one of the features that distinguish it from correction. Resocialization is associated with socialization of an individual in society, this is the renewal of his/her socialization into socially acceptable forms of life [26, p. 42].

Today, researchers have come to the conclusion that lawful behavior after serving a sentence is possible due to normal socialization of offenders, and not their correction. Therefore, the purpose of re-socialization of a convict should find its place in legislation. Correction of convicts is only one of the ways of re-socialization. According to M.S. Rybak, "resocialization is a broader definition, including the concept of "correction of convicts", covers the time period not only of the term of serving the sentence, but also convicts' adaptation to conditions at liberty" [22, p. 89].

The definition of this goal in the Penal Code of Ukraine is rather sufficient. The Code "regulates the procedure and conditions for the execution and serving of criminal sentences in order to protect interests of the individual, society and state by creating conditions for correction and re-socialization ... correction of the convicted person is a necessary condition for re-socialization" [27, p. 806].

In addition to correction, the following should be ensured in the process of re-socialization: the sentence is served according to a progressive system, convict's socially useful ties are restored, convicts are prepared for release, problems of social adaptation after release are solved, etc.

The subject of penal legislation should not be limited to regulating the means of correction of convicts as the purpose of criminal punishment. This branch of legislation should become a resocialization branch, "include regulation of those relations that a convicted person has as a subject who has served his/her sentence, but retains a restrictive legal status during his/her criminal record" [28, p. 28].

A similar approach to determining punishment goals and tasks in relation to deprivation of liberty and its execution is fixed in Rule 4 of the Nelson Mandela Rules: "those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life". Rule 87 recommends taking measures for the gradual return of the prisoner to life in society, introducing a special regime for released persons. Rule 90 establishes that "there should, therefore, be governmental or private agencies capable of lending the released prisoner efficient aftercare directed towards the lessening of prejudice against him or her and towards his or her social rehabilitation".

For such recommendations of international norms to become a reality, it is necessary to implement them in Russian legislation and, best of all, penal legislation. V.A. Utkin has put forth an interesting idea that from the standpoint of the international approach, penal law can be considered as a mega-branch of enforcement law, which includes three large blocks: pre-penal, penal and post-penal [29, p. 79]

Expanding a subject of penal legislation, it is necessary to remember that it should not go beyond the scope of criminal law norms related to time intervals for the repayment of a criminal record. The final stage of re-socialization, based on other means than correction of convicts, should be carried out within the framework of a criminal record. According to the legislator, this is the limit of solving the problem of preventing recidivism. After repayment (removal) of the criminal record, a person is no longer connected with his/her past crime.

*Conclusion.*

Correlation of goals and tasks of criminal law and its institutions (punishment and its execution) is the following (from general to particular): socio-protective task (as the main task of criminal law) – crime prevention (as the task of criminal law and punishment) – resocialization of convicts (as the main task of the penal legislation) – correction of convicts (as part of resocialization and one of the ways to prevent new crimes in punishment).

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# Improving Disciplinary Measures against Persons Serving Restriction of Liberty and a Suspended Sentence

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Abstract

*Introduction*: the article analyzes problems of stimulating law-abiding behavior of persons sentenced to restriction of liberty and a suspended sentence. The specifics of disciplinary measures enshrined in the norms of two similar legal institutions are consistently disclosed. Many convicts continue to violate the established procedure for serving their sentences and evade the duties imposed on them by the court. Every year, statistics show an almost constant number of persons removed from the register of criminal executive inspections in connection with the commission of a repeat crime. The situation is complicated by the fact that this is happening against the background of an ever-increasing number of persons sentenced to punishments and criminal law measures not related to deprivation of liberty. The analysis of the practice to implement norms of the current penal legislation shows that the staff of criminal executive inspections do not always effectively apply incentives to encourage law-abiding behavior of convicts, focusing on penalties. The need to change a system of measures to promote law-abiding behavior in legal institutions of restriction of liberty and a suspended sentence is considered through the prism of activities of foreign probation services, as well as psychological reactions of persons registered with criminal executive inspections. What is more, the article presents the point of view of practitioners whose professional activity is directly related to the execution of punishment in the form of restriction of freedom and monitoring of the conditionally sentenced. *Purpose*: to substantiate the need to improve means of stimulating law-abiding behavior applied to prisoners sentenced to restriction of liberty and a suspended sentence, as well as to formulate specific proposals for their development. *Methods*: comparative analysis; methods of deconstruction and appercipation; survey conducted by means of questionnaires with open questions; formal-logical methods. *Conclusion*: recommendations have been developed to improve measures aimed at stimulating law-abiding behavior of persons sentenced to restriction of liberty and a suspended sentence. First, Part 1 of Article 74 of the Criminal Code of the Russian Federation should fix the norm that in case a person serving a suspended sentence is assigned an additional type of punishment and before the expiration of the probation period he/she has corrected his/her behavior and has already served at least half of the term of the additional type of punishment, then the court on the recommendation of the body exercising control over his/her behavior is entitled to cancel a suspended sentence and remove the criminal record from a convicted person with exemption from an additional type of punishment. At the same time, it will be necessary to amend Article 86 of the Criminal Code of

the Russian Federation to eliminate contradictions related to the current order of repayment of the criminal record of a person sentenced to a milder punishment than imprisonment. Second, it is necessary to establish the opportunity for convicts serving restriction of liberty to be released on parole in the legislation. Third, it is advisable to supplement Article 58 of the Penal Code of the Russian Federation by the provision that a convicted person is recognized as maliciously evading from serving a sentence in the form of restriction of freedom by a resolution of the inspection head and the imposed penalty in the form of an official warning remains relevant until all penalties are lifted or extinguished.

Keywords: punishment; incentives; penalty; probation; probation period; disciplinary impact.

5.1.4. Criminal law sciences.

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*Introduction*

The retributivism theory with its radically punitive orientation and the main goal of "causing the guilty person suffering commensurate with the crime" has won a large number of opponents. Even R. Garofalo [1, p. 47] and Ch. Bekkaria [2, p. 89] noted that the purpose of punishment should be to deter people from committing crimes, and not social revenge. Modern penology postulates fully correspond to this statement. Alternative measures of criminal legal impact, carrying fewer restrictions on the rights and freedoms of convicts in comparison with deprivation of liberty, are also designed to provide private and general prevention. However, repeated criminality among persons serving sentences and measures of a criminal nature without isolation from society continues to remain at a high level. Thus, in 2015, 11,549 convicts were removed from the register of criminal executive inspections (CEI) in connection with the commission of a new crime (this is 3.76% of the total number of the registered persons). We observe similar indicators in 2016 – 10,652 (2.51%), in 2017 – 15,692 (3.11%), in 2018 – 19,002 (3.72%), in 2019 – 19,413 (3.99%), in 2020 – 16,732 (3.6%), and in 2021 – 15,929 (1.76 %). Meanwhile, inspections' performance cannot be assessed only by repeat crime rates. It is worth mentioning that English and Welsh probation services, similar in their functionality to the Russian counterpart, do not consider the presence or number of repeated violations as the main indicator of effectiveness of employees' activity, but the statistics of risk changes, indicating the success of corrective measures [3].

Crime commission risks are changed due to continuous corrective impact throughout the entire period of person's registration with the inspection. An indispensable condition for corrective measures to be effective is the accurate and strict enforcement of laws, strengthening of law and order and a stable criminal situation. Legal, organizational, psychological, social and other means, in particular incentives and penalties, provided for by the current penal legislation, applied to convicts, help employees of criminal executive inspections. Taking into account the similarity of the legal status of persons sentenced to restriction of liberty and a suspended sentence, as well as their significant number, it becomes necessary to find ways to enhance measures for promoting convicts' law-abiding behavior.

*Research methodology*

The method of comparative analysis is used to compare practical activities of the inspection staff and foreign probation services. With the help of deconstruction and appercipation methods, separate fragments of scientific and applied literature are used to prove the authors' stance and identify problems in the field of stimulating law-abiding behavior of persons serving sentences and criminal law measures not related to imprisonment. As for the empirical basis, in May 2021, scientists from the Research Institute of the Federal Penitentiary Service of Russia con-

ducted a face-to-face survey of 50 inspections employees in 10 territorial bodies using questionnaires with open questions. The respondents hold the following positions: head of the branch of the criminal executive inspection – 60.7%; deputy head of the branch – 9.3%; senior inspector of the branch – 14.8%; inspector of the branch –15.2%. All survey participants have higher education, the service experience in the stated positions is more than 10 years (59.8%), 6–10 years (24.6%), 2–5 years (15.2%). Formal logical methods substantiate the reliability and validity of the conclusions and recommendations formulated by the authors.

*Results*

Restriction of liberty and a suspended sentence are two essentially similar legal institutions in Russia [4], despite the fact that the first is called punishment, and the second is a criminal law measure. At the same time, the legal nature of a suspended sentence is not fully defined [5–8]. It should only be noted that, in essence, this measure of criminal legal impact is reduced to the imposition of a suspended sentence, which is not carried out if the guilty person proves his/her correction during the probation period. The Concept for the development of the penal system of the Russian Federation up to 2030, approved by the Decree of the Government of the Russian Federation No. 1138-r of April 29, 2021, fixes the priority task to boost effectiveness of individual preventive work to prevent offenses among convicts, which actualizes the search for new and improvement of existing measures to stimulate law-abiding behavior. The essence of these measures is based primarily on inter-related functions: 1) individualization of punishment, which plays a primary role in the educational impact on convicts; 2) ensuring implementation of both basic and optional means of correction.

At the same time, the concept of "means of stimulating law-abiding conduct" should cover not only incentives and penalties, which are directly referred to by the legislator, but also other measures provided for by current legislation that improve the legal status of convicts or are aimed at providing them with any benefits and advantages (positive impact measures), or, on the contrary, they are aimed at depriving benefits, advantages and deterioration of legal status (measures of negative impact). For example, the early cancellation of a suspended sentence and removal of the criminal record from a convicted person fixed in Part 1 of Article 74 of the Criminal Code of the Russian Federation is a measure of positive impact, while the replacement of the unserved part of punishment in the form of restriction of freedom for forced labor or imprisonment is a measure of negative impact.

Some scientists consider concepts "disciplinary measures" and "penalties" as equivalent. Thus, V.N. Chornyi notes that "an important place belongs to disciplinary measures. Penalties applied to convicts represent one of the types of legal liability that has a number of specific features ..." [9, p. 5]. From this context, it is obvious that disciplinary measures and penalties are used as interchangeable.

We believe the concept "disciplinary measures" be generic in relation to penalties, since discipline of any person, not only convicts, is a balance that combines both positive measures to stimulate proper behavior and negative ones. E.A. Sizaya proposes to establish a general incentive principle in the penal legislation instead of the sectoral and special principle "the rational use of coercive measures, means of correcting convicts and stimulating their law-abiding behavior". Thus, this principle, which implies both coercive measures (penalties) and incentive measures, will become more understandable and specific for a law enforcement officer [10, p. 49].

Besides, some researchers refer certain measures of positive impact to criminal law measures. Thus, I.E. Zvecharovskii considers conditional early release, replacement of the unserved part of the punishment with a milder type of punishment, amnesty, etc. to be criminal law measures [11, p. 7]. However, these incentive institutions do not quite fit into the outline of measures of criminal legal impact, since they are not intended for a direct reaction of the state to a socially dangerous act committed, but serve for subsequent differentiation and individualization of punishment. We agree with E.V. Medvedev that the types of exemption from punishment "are not authentic means of criminal law applied for the crime commission. All types of release from punishment, its serving, postponement, as well as types of substitution of punishments

are integral elements of the punishment system that cannot exist outside its limits" [12, p. 142–143].

Based on the above conclusions, we propose to consider the following concepts as equally significant for the purposes of this article: means (measures) of stimulating law-abiding (lawful) behavior; incentives for law-abiding (lawful) behavior; disciplinary means (measures).

Incentives and penalties are a common practice for many countries to stimulate law-abiding behavior of convicts [13, p. 16]. Applying these stimuli on feelings and emotions of persons undergoing punishments and criminal law measures without isolation from society, it is possible to encourage them to comply with the norms established in society and the state. At the same time, various reactions of convicts generated by such stimuli are predictable: in the case of penalties – anger, aggression, despair, hopelessness, fear, irritation, anxiety, confusion, resentment, panic; in the case of incentive measures – satisfaction, joy, inspiration, indifference, surprise, etc. However, if a convicted person does not react correctly to the penalties and incentives imposed, or there is insincerity in his/her positive actions, achieved only due to the existing control of the penitentiary staff, then later this will still affect the formation of promising lines of behavior. Otherwise, the strictest measure of influence will be applied to him/her. Legislations of many foreign states fix the same. For example, A.V. Serebrennikova writes that in accordance with the criminal codes of Switzerland and Austria, the court is authorized to cancel a suspended sentence if, during the probation period, a person registered with the competent authority who has an official warning commits a repeat crime or misdemeanor violating instructions of the court, and also continues to evade protective supervision or otherwise neglect the trust granted to him/her [14, p. 152].

J. Leibrich mentions about a "tortuous" path from crime to law-abiding behavior. His research shows that about half of the convicted persons and persons with the suspended or expunged criminal record still adhere to antisocial behavior: they abuse alcohol, take narcotic and psychotropic substances, have been caught in fights, hooliganism or conflicts with law enforcement agencies [15, p. 134]. The commission of the above actions can be considered as patterns of criminal behavior, that is, behaviors similar in psychological mechanism to criminal acts. At the same time, incentives for legal behavior can and should act as prevention of immoral behavior and minor offenses.

F. Doherty rightly points out the need to empower probation service employees with broad powers to ensure convicts' compliance with the established rules. The case of Harris County, Texas, the USA is rather indicative: there probation service employees can adjust seemingly inflexible norms governing their activities to ensure probation conditions. For instance, in order to employ convicts, the Harris County Probation Department follows a policy according to which unemployed convicts are required to submit an application to four employers every weekday to show the sufficiency of their efforts to find employment. In 2013, the court, on the recommendation of the probation inspector, appointed a two-year prison term to the supervised person, since excessive discrimination was found in the submission of applications for employment: the convict tried to find a job only in those organizations that were related to his profession. This decision was not overturned in the Texas Court of Appeals [16, p. 313–314].

In the above case, we state that probation service inspectors have significant powers, but at the same time there is a variety of sanctions on their wards. A similar pattern is observed in all American probation services, there are various possibilities of disciplinary measures against those convicted of violating probation conditions. To petition the court to cancel the probation period and send a person to prison is the most severe possible option. Probation officers are required to respond to every violation committed by a convict. So, it is possible to apply a reprimand, tighten reporting requirements, restrict travel or strengthen the so-called open surveillance. If violations are repeated, there is a positive test result for the presence of narcotic drugs or prohibited drugs in the blood, a new arrest occurs for acts that are not a criminal offense, then stricter sanctions are applied, such as increased supervision, curfew, home detention, electronic monitoring, placement in a reception center for monitoring [16, p. 314].

The application of disciplinary measures to convicts who are registered with criminal executive inspections in a similar way acts as a kind of intermediate stage before the cancellation of a suspended sentence or replacement of punishment with a more severe type. Also, in the case of a suspended sentence, disciplinary measures are directly related to the possibility of a person to be removed from the register ahead of time and be not convicted. At the same time, incentive measures and penalties in relation to the specified category of convicts are not established by law, and the disciplinary impact is carried out on the basis of provided by Article 190 of the Russian Penal Code warnings about possible cancellation of a suspended sentence, issued by the staff of the criminal executive inspections in written form.

In addition, according to paragraphs 124–126, 128, 129 of the Rules on organizing execution of punishments and criminal law measures without isolation from society, approved by the Order of the Ministry of Justice of the Russian Federation No. 142 of May 20, 2009, when convicts evade performance of the duties assigned to them by the court or when they violate the public order and get an administrative penalty, the inspection summons the convicted or visits them at their place of residence and conducts preventive conversations. In case of repeated detection of the facts that they evade performance of the duties assigned to them by the court or violate the public order and get an administrative penalty, the inspection again issues a warning about the possibility of a suspended sentence no later than three working days. If those serving a suspended sentence systematically violate the ublic order during the probation period, for which they are brought to administrative liability, systematically fail to fulfill the duties assigned to them by the court or disappear from the control, the inspection within three days (excluding weekends and holidays) from the moment of establishing these facts sends the court a submission about cancellation of the suspended sentence and execution of the sentence imposed by the court verdict [17].

It should be noted that inspection employees actively use the only opportunity to stimulate the law-abiding behavior of this category of convicts in the form of a warning. According to the Report of the Federal Penitentiary Service of Russia – FSIN-1 from 2015 to 2021 (Section 15 “Information on the activities of criminal executive inspections”), in 2021, 12,426 conditionally convicted persons violated probation conditions (0.96% less than in 2020), including in relation to 11,669 people the materials to cancel a suspended sentence, extend probation or assign additional duties were previously sent to the court (by 0.52% more than in 2020).

In practice, questions arise about the expediency of applying incentive measures, such as cancellation of a suspended sentence and removal of the criminal record, to conditionally convicted persons, if they are assigned an additional punishment. As prescribed by Paragraph 12 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 21 dated December 20, 2011, in case an additional type of punishment is assigned to a conditionally convicted person, but he/she has proved his/her correction by his/her behavior before the expiration of the probation period, then the court is entitled to cancel a suspended sentence and remove the criminal record only after he/she has served an additional sentence.

In the Russian Federation, there is a shift in disciplinary impact to punishments and in criminal law measures without isolation from society – to penalties. For example, according to the above-mentioned report of the Federal Penitentiary Service of Russia, in 2021, 267,274 convicts registered with criminal executive inspections had a warning or an official warning, while incentive measures were applied to 590 convicts. The approximate ratio of incentive measures to penalties was 1:453. There are several reasons for a negligibly small number of incentives. First, of all the persons registered with inspections, the use of incentive measures, according to the current penal legislation, is possible only to those serving a sentence in the form of restriction of liberty. Second, employees, executing punishment in the form of restriction of liberty, are more focused on the application of penalties, as this is one of the indicators of statistics, which is regularly compared with similar peri-

ods of the past years, which ultimately affects assessment of the inspection's performance. Third, there is excessive attention to incentive measures on the part of prosecutors, who consider them as corruption-causing factors and require employees to provide sufficient grounds for their application.

It seems that leveling the percentage of the number of incentives and penalties, expanding the powers of employees of criminal executive inspections in this aspect, as well as the inclusion in the penal legislation of new incentives for law-abiding behavior of convicts will serve as an additional impulse to the development and improvement of disciplinary practice and educational impact in general. Based on the principles of pedagogy, the ratio of incentives and penalties should be approximately 1:1. One of the steps to strengthen incentive measures is an increase in the number of measures applied in the form of early deregistration of persons sentenced to probation.

The results of the study conducted by the Research Institute of the Federal Penitentiary Service of Russia indicate that 73.2% of the surveyed employees of criminal executive inspections consider it appropriate to provide in Part 1 of Article 74 of the Criminal Code of the Russian Federation a norm that persons sentenced to a suspended sentence can be completely released from serving and additional punishment if they have proved correction by their behavior. On the one hand, such a measure will make it possible to equalize the legal status of probationers, both having additional punishment and not having it, but on the other hand, additional punishment has an important preventive value, especially when the court appoints deprivation of the right to occupy certain duties or engage in certain activities.

Taking this into account, it seems reasonable to supplement Article 74 of the Criminal Code of the Russian Federation with Chapter 1.1 as follows: "if a convict serving a suspended sentence has been assigned an additional type of punishment and, before the expiration of the probation period, he/she has proved his/her correction by his/her behavior, fulfilling the requirements provided for in Part 1 of this article, and has also served at least half of the term of the additional type of punishment, then the court, at the suggestion of the body exercising control over behavior of a conditionally convicted person, may decide on the cancellation of a suspended sentence and removal of the criminal record from a convicted person with exemption from an additional type of punishment. At the same time, if an additional penalty is imposed on a conditionally convicted person in the form of a fine, then a suspended sentence can be canceled only if the fine is paid in full".

It is worth paying attention to the fact that such changes will contradict the current version of Article 86 of the Criminal Code of the Russian Federation, since, based on Paragraph "b" of Part 3 of this article, a criminal record against persons sentenced to milder types of punishments than imprisonment is extinguished after one year after their completion (execution). In this regard, we agree with the opinion of T.G. Chernenko, who, based on the lesser public danger of conditionally convicted persons in comparison with persons sentenced to real imprisonment, proposes to establish more lenient rules for repayment of criminal records than for persons to whom a conditional conviction is not applied. Thus, it is advisable to supplement Article 86 of the Criminal Code of the Russian Federation with the provision stipulating that the criminal record of persons serving a suspended sentence and having additional punishment should be extinguished immediately after serving an additional sentence or abolition of a conditional sentence in accordance with Part 1 of Article 74 of the Criminal Code of the Russian Federation [18, p. 129]. In addition, it will be necessary to adjust Paragraph 12 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 21 of December 20, 2011 in accordance with the above-mentioned amendments to the criminal law.

The absolute advantage of domestic legislation is the existence of norms that establish incentives and penalties applied to persons sentenced to restriction of liberty. The procedure for their application is regulated by articles 57–59 of the Penal Code of the Russian Federation, as well as sections 5 and 6 of the Rules on organizing execution of punishment

in the form of restriction of liberty, approved by the Order of the Ministry of Justice of the Russian Federation No. 258 of October 11, 2010. In addition, incentive measures should include, for example, termination of the use of technical supervision and control means against this category of convicts [19, p. 103].

According to the Report of the Federal Penitentiary Service of Russia – FSIN-1 from 2015 to 2021, in 2018, 515 persons sentenced to restriction of freedom had incentives, which comprised 1.34% of the total number of persons sentenced to restriction of freedom registered with criminal executive inspections at the end of the year. Similar indicators were observed in the subsequent three years: in 2019 – 549 convicts (1.41%), in 2020 – 601 convicts (1.56%), and in 2021 – 590 (1.6%). In this case, we see a slight increase in the applied incentive measures. Meanwhile, during this period, the number of persons sentenced to restriction of liberty registered with inspections at the end of the year slightly decreased (from 38,370 people in 2018 to 36,971 people in 2021). The very possibility of applying incentive measures to convicted persons is the most important means of correcting their behavior along with educational work. The system of incentives and penalties, should be diverse, contain measures of approximately the same order together with less or more significant measures, thus consolidating foundations of a progressive system of serving sentences. In this regard, the extent of authorities of probation officers in Pakistan is noteworthy. In order to stimulate law-abiding behavior of persons under supervision, they can apply incentives using various social, entertainment and educational opportunities of a separate territorial entity [20, pp. 3–4]. Incentives are as such: the right to free full-time or distance learning (taking courses, trainings; attending conferences, lectures, webinars and seminars); the right to free admission to museums, exhibitions, galleries, sports, cultural and spiritual events.

French and English criminal proceedings have a distinctive feature: presence of separate judges who resolve issues at the sentence execution stage. They exercise control over convicts with the help of reports provided by probation officers, on the basis of which the court can mitigate restrictive measures applied against the convict [21, p. 226]. Thus, convicts should work on accumulating evidence, including incentives, demonstrating the possibility of a court decision to reduce the scope of restrictive measures. It is the convicted person him/herself who has to prove such a right; it makes him/her responsible for his/her behavior and at the same time allows him/her to assess progress in achieving punishment goals.

It is obvious that in order to positively stimulate law-abiding behavior of convicts serving a sentence of restriction of liberty as the main punishment, it is rational to provide for the possibility of being released earlier than the term indicated in the court verdict. Based on Part 1 of Article 74 of the Criminal Code of the Russian Federation, the court is entitled to apply an incentive norm to a conditionally convicted person in the form of cancellation of a suspended sentence and removal of the criminal record from him/her, but no such incentives for early release are provided for persons sentenced to restriction of liberty. Those sentenced to a suspended sentence and restriction of liberty are almost in the same conditions. The legal restrictions and obligations provided for in Part 5 of Article 73 of the Criminal Code of the Russian Federation in relation to a conditionally convicted person and Part 1 of Article 53 of the Criminal Code in relation to those sentenced to restriction of liberty are similar in nature and scope. Therefore, from our point of view, those sentenced to restriction of freedom are unreasonably deprived of the opportunity to be released early.

In the Republic of Belarus, in contrast to the Russian Federation, conditional early release is applicable to persons serving sentences in the form of deprivation of the right to hold certain positions or engage in certain activities, correctional labor, restrictions on military service, restrictions on freedom [22, p. 203].

Soviet scientists-penitentiaries insisted on the early release of persons in respect of whom criminal punishment goals had been achieved. Thus, B. S. Utevskii notes that a convict serving to forced labor strengthens character traits and skills that help attract him/her to work, deter him/her from commit-

ting further crimes, and raise his/her overall development level. But this task can be solved even before the expiration of the term appointed by the court [23, p. 5].

The convict's desire for early release is fully correlated with the provisions of the goal-setting theory, the developer of which is the American psychologist E. Locke [24]. Considering conclusions of this theory within the framework of the problem to stimulate law-abiding behavior of convicts, it can be predicted that if early release is the final goal for a person subjected to punishment, then all his/her behavior will be determined by the stated goal, and, accordingly, we can expect it to be exceptionally positive.

In our opinion, conditional release implies the mandatory presence of restrictions and prohibitions imposed on a person after his/her early release from punishment. Taking into account the nature of conditional release, those sentenced to restriction of their freedom will again be monitored by penal enforcement authorities, possibly with a set of lesser restrictions and prohibitions. In case of evasion of the duties assigned to the released person or commission of an administrative offense that encroaches on the public order, the inspection is entitled to send the court a submission about cancellation of conditional early release and execution of the unserved part of the punishment in the form of restriction of freedom. If a released person commits a grave or especially grave crime, the unserved part of the punishment in the form of restriction of freedom will be added to the punishment imposed by a new court verdict. These guarantees will serve as a means of preventing commission of violations and will have a greater impact on a released person.

M. Hamilton argues that when assessing risks of committing repeat crimes in the future, the court does not take into account rehabilitation successes, that is, the defendant's achievements associated with past criminal behavior (restoration of damage caused by his/her actions, performing socially useful work, presence of offenses, etc.) [25, p. 130–132]. It seems reasonable that such findings can be relevant not only for assessing recidivism risks, but also for making a decision on conditional early release from punishment of those sentenced to restriction of liberty. The researcher, analyzing dynamic risk factors of repeated offenses, touches on the problem of consolidating positive efforts of convicts who cease to resist correctional influence registered by the probation service. Such consolidation consists in reward, which, in turn, also helps some people to cope with a sense of guilt suppressing their will and reduce risks of repeat crime, and also encourages convicts to re-evaluate their past and stop identifying themselves with destructive elements, gives them faith that a person can change over time. In the longer term, it is also a successful reintegration of the convicted person into society, but it all starts with the application of the least amount of encouragement to him/her.

An incentive measure in the form of early release should be applied to convicts serving restriction of liberty exclusively as the main type of punishment. At the same time, it is reasonable to establish a formal condition for release, such as actual completion of at least half of the sentence imposed by the court, and for minors – at least one third of the sentence due to their individual psychological characteristics of personality development. It is rational to determine a six-month minimum term for adult convicts and a three-month term for minors, after serving which parole will be possible, since employees of criminal executive inspections require a certain amount of time to study convicts' identity and degree of their correction.

In general, the application of the most significant incentive measure in the form of early release to persons sentenced to restriction of liberty should be considered as an effective means of stimulating law-abiding behavior that can have an effective educational impact, as well as ensure achievement of the goals of correction and prevention of crimes among this category of convicts.

Penalties are another side of disciplinary impact on those sentenced to restriction of liberty. In accordance with Part 2 of Article 58 of the Penal Code of the Russian Federation, in case a convicted person violates the order and conditions of serving a sentence in the form of restriction of freedom, an inspection officer imposes disciplinary punishment

in the form of a warning. If a convicted person commits any of the violations listed in Part 1 of Article 58 of the Penal Code of the Russian Federation within one year after the issuance of the warning, then the inspection applies to him/her a measure of punishment in the form of an official warning about the inadmissibility of violating the restrictions established by the court.

According to the FSIN-1 Report, the following disciplinary practice of those sentenced to restriction of freedom has developed in recent years: in 2018, 23,541 convicts violated the order and conditions of serving their sentences (61.35% of the total number of those sentenced to restriction of freedom registered with the criminal executive inspection as of the end of the year); in 2019 – 24,825 people (64.04%); in 2020 – 24,343 people (63.13%), and in 2021 – 24,014 people (64.95%). In addition, in 2018, 22,412 persons sentenced to restriction of liberty had a warning or an official warning, in 2019 – 23,536, in 2020 – 23,143, and in 2021 – 22,795. Thus, the proportion of persons who violated the order and conditions of serving their sentences among convicted persons registered with the criminal executive inspections always exceeded 60% at the end of the year, which indicates increased crime commission risks among this category of persons. In the above statistics, we see insignificant annual differences in the number of convicts subjected to disciplinary punishment. This fact also indicates almost unchanged indicators for disciplinary misconduct among registered persons since 2018.

The above situation is partly triggered by the existence of certain flaws in the legal mechanism for bringing those sentenced to restriction of liberty to disciplinary liability. In accordance with Paragraph "a" of Part 4 of Article 58 of the Criminal Code of the Russian Federation, a person sentenced to restriction of liberty is recognized as maliciously evading serving a sentence if, within one year after the application of a penalty in the form of an official warning, he/she again violates the order and conditions of serving a sentence. This circumstance serves as the basis for the inspection employee to send the court a submission about replacement of restriction of liberty with forced labor or imprisonment (Part 5 of Article 58 of the Penal Code of the Russian Federation). The difficulty lies in the fact that if the court refuses to satisfy this submission, no other stricter disciplinary measures can be imposed on him/her according to the penal legislation.

As a result, a deadlock situation develops when employees cannot impose a penalty on the convicted person who is recognized as maliciously evading serving a sentence if he/she again commits violations. In practice, this problem is solved by receiving an explanatory note from the person who has again violated the order and conditions of serving a sentence, and by sending another submission to the court to replace the unserved part of the punishment in the form of restriction of freedom with forced labor or imprisonment.

Moreover, Part 4 of Article 59 of the Penal Code of the Russian Federation prescribes to consider a convicted person as having no penalty if a new penalty is not applied within one year from the date of its imposition and, accordingly, in this case, a person maliciously evading from serving a sentence in the form of restriction of freedom will be no longer considered as such. So, we will dwell on the following situation: in January 2021, a penalty in the form of an official warning was applied to the convicted person, and in December 2021, he violated the order and conditions of serving his sentence. In this regard, the inspection sent a submission to the court to replace the unserved part of the punishment in the form of restriction of liberty with forced labor or imprisonment. The court issued a decision to refuse it; hence, from January 2022, this convict was considered to have no penalties according to Part 4 of Article 59 of the Penal Code of the Russian Federation.

Court decisions on the refusal to satisfy submissions on the replacement of the unserved part of the punishment in the form of restriction of freedom with forced labor or imprisonment may have two groups of reasons: 1) presence of certain shortcomings in the application of penalties and interpretation of the penal legislation regarding the recognition of the convicted person as a malicious evader from serving a sentence; 2) the court's subjective perception of the inexpediency of replacing the sentence at the moment and the need to give a convicted person the opportunity to improve within the framework of serving a sentence not related to deprivation

of liberty, that is, to give him/her a second chance. Additionally, in such cases, the court may motivate its decision by various difficult life circumstances of the convicted person.

Here is an example from judicial practice concerning the first group of reasons. The head of the Dimitrovgrad Branch of the Criminal Executive Inspection of the Federal Penitentiary Service of the Russian Federation in the Ulyanovsk Oblast filed a submission to the court to replace the unserved part of the punishment in the form of restriction of liberty with imprisonment. The court concluded that there were no grounds for recognizing G. maliciously evading from serving a sentence in the form of restriction of liberty, since the convicted person, after issuing him an official warning, committed an administrative offense that affects public safety, and not the public order. After the official warning was issued, he committed an administrative offense under Part 1 of Article 20.6.1 of the Administrative Code of the Russian Federation, which was not disputed by the convict. The court found that the above circumstances were not grounds for satisfying the submission of the inspection, since, according to Paragraph "d" of Part 1 of Article 58 of the Penal Code of the Russian Federation, violations of the order and conditions of serving a sentence in the form of restriction of liberty include the commission not of any administrative offense, but related to the public order violation, for which the convicted person was brought to administrative liability (Decision of the Dimitrovgrad City Court of the Ulyanovsk Oblast of June 10, 2021 in case No. 22-64/2021).

Another situation illustrates reasons for the courts' refusal to satisfy the submission of replacing the unserved part of the punishment in the form of restriction of liberty with deprivation of liberty. The head of the Krasnokamsk District Branch of the Criminal Executive Inspection of the Main Directorate of the Federal Penitentiary Service in Perm Krai sent the court a submission to replace an unserved term of restriction of liberty of the convicted A. with imprisonment.

As follows from the court decision under consideration, A. on April 20, 2017 was brought to administrative liability under Article 20.21 of the Code of Administrative Procedure of the Russian Federation, for which the inspection issued a warning to the convict. During the period from July 8 to July 14, 2017, A. was not at his place of residence, in connection with which, by the decision of the inspection, this period was not included in the term of the sentence served. By the Resolution of the Krasnokamsk City Court of Perm Krai of July 21, 2017 Zh., was imposed an additional restriction "not to leave the place of residence from 21:00 to 06:00 o'clock". Meanwhile, on July 21, 2017, Zh. again committed an administrative offense under Article 20.21 of the Administrative Code of the Russian Federation, for which he was given an official warning. On October 20, 2017, Zh. was not at his place of residence, thereby violating the obligation imputed to him, which, together with previously committed violations, became the basis for sending a submission to the court to replace the remaining part of the restriction of liberty with deprivation of liberty.

The Court, having taken into account the information about the identity of the convicted person, in particular the presence of a disease and disability of Group 3, as well as two young children, decided to refuse to satisfy the submission of the criminal executive inspection. Thus, despite the actual establishment of all the grounds provided by law for replacing the unserved part of the punishment in the form of restriction of liberty with deprivation of liberty, the court did not satisfy the submission (Resolution of the Krasnokamsk District Court of Perm Krai of December 13, 2017 in case No. 22-457/2017).

In this regard, in order to further influence persons in respect of whom court decisions based on the second group of reasons were made, it seems appropriate to fix the provision of the Penal Code of the Russian Federation stipulating official granting of the convicted person the status of maliciously evading punishment. He/she will have this status until the repayment or removal of all penalties imposed on him/her. If, after the court's refusal to satisfy the submission to replace the unserved part of punishment in the form of restriction of liberty with forced labor or imprisonment, a convict again violates the order and conditions of serving a sentence, it will be the basis for sending another submission of replacing the unserved term of punishment in the form of restriction of liberty with forced labor or imprisonment.

In order to implement such a legal structure to promote law-abiding behavior of persons sentenced to restriction of liberty, it is proposed to formally endow a person with the status of maliciously evading punishment simultaneously with sending to the court the submission of replacing the unserved part of the punishment with a more severe one. Thus, as established by the current legislation, after the first violation, a penalty in the form of a warning is imposed. If a person commits a violation again within a year after the warning is issued, then a penalty in the form of an official warning is imposed on him/her. After a new violation has been committed within one year by a person who has an official warning, a resolution is issued by the head of the criminal executive inspection on the recognition of the convicted person maliciously evading from serving a sentence and a penalty in the form of an official warning is imposed. In turn, this fact obliges the inspection to send to the court a submission to replace the unserved part of the punishment in the form of restriction of liberty with forced labor or imprisonment.

These changes in the law will prevent impunity in case the court refuses to replace the unserved part of the punishment in the form of restriction of liberty with forced labor or imprisonment. It should be noted that one of the arguments for making these changes to the current penal legislation is that, according to Part 4 of Article 116 of the Penal Code of the Russian Federation, a person sentenced to imprisonment is recognized as a malicious violator of the established procedure for serving a sentence by a resolution of the head of a correctional institution on the recommendation of the correctional institution administration simultaneously with the imposition of a penalty. Moreover, if the head of the correctional institution issued a resolution recognizing a convicted person as a malicious violator of the established procedure for serving a sentence, then a convict maintains this status up to the moment of release, since no norms of the Penal Code of the Russian Federation fix the procedure for terminating this status in the process of serving a sentence. This circumstance is regularly discussed in scientific works on penological topics [26, p. 65].

Consequently, a person sentenced to restriction of liberty should be recognized as maliciously evading serving a sentence and imposed a penalty in the form of an official warning. In this regard, it is advisable to supplement Part 4.1 of Article 58 of the Penal Code of the Russian Federation as follows: “a convicted person is recognized as maliciously evading from serving a sentence in the form of restriction of liberty by a resolution of the head of the inspection, is imposed a penalty in the form of an official warning and maintains this status until all penalties are lifted or extinguished”. At the same time, if restriction of liberty is appointed as an additional type of punishment, then a convicted person, recognized in accordance with the established procedure as maliciously evading serving a sentence, is subject to criminal liability under Part 1 of Article 314 of the Criminal Code of the Russian Federation.

*Conclusion*

For a long time, the Russian legislator, in the aspect of the educational impact exerted on convicts, made a bias towards the institution of deprivation of liberty. Alternative types of punishments did not receive due attention in terms of the development of disciplinary practice. Meanwhile, incentives and restrictions are important for correction of convicts, regardless of the degree of rights and freedoms restriction. Despite the very fact of conviction, specific circumstances improving or worsening convicts’ situation are still most effective. This is easily explained by the well-known statement of K. Marx and F. Engels that “being determines consciousness” [7, p. 491]. Only real things of objective reality are able to influence behavior of wards of criminal executive inspections.

Restriction of liberty and a suspended sentence are essentially similar legal institutions and can be considered together in the aspect of applying measures to convicts to encourage law-abiding behavior. Undoubtedly, incentives not only stimulate social activity (compliance with the established rules of serving a sentence or criminal law measures, fulfillment of duties imposed by the court, participation in educational activities, etc.), but also contribute to correction and resocialization of convicts. In contrast to incentive measures, there are penalties, the application of which should also be balanced, objective and justified. Therefore, the system of disciplinary measures should give law enforcement the opportunity to choose a method of en-

couraging or bringing to disciplinary liability that corresponds to behavior of the convicted person. The progressive process of their application trigger achievement of punishment goals and exclude the possibility of avoiding liability in the case of non-compliance with the regulations.

Our research has revealed a number of gaps among disciplinary measures exerted on those sentenced to a suspended sentence and those sentenced to restriction of liberty. So, we propose the following:

– to supplement Part 1.1 of Article 74 of the Criminal Code of the Russian Federation as follows: "if a convict serving a suspended sentence has been assigned an additional type of punishment and, before the expiration of the probation period, he/she has proved his/her correction by his/her behavior, fulfilling the requirements provided for in Part 1 of this article, and has also served at least half of the term of the additional type of punishment, then the court, at the suggestion of the body exercising control over behavior of a conditionally convicted person, may decide on the cancellation of a suspended sentence and removal of the criminal record from a convicted person with exemption from an additional type of punishment. At the same time, if an additional penalty is imposed on a conditionally convicted person in the form of a fine, then a suspended sentence can be canceled only if the fine is paid in full". At the same time, it will be necessary to amend Article 86 of the Criminal Code of the Russian Federation to eliminate contradictions related to the current procedure for repayment of the criminal record of a person sentenced to a milder punishment than deprivation of liberty;

– to establish in the penal legislation the opportunity to be released on parole for convicts serving restriction of liberty as the main type of punishment. At the same time, it seems important to establish a formal basis for parole for those sentenced to restriction of liberty in the form of actual serving at least half of the sentence imposed by the court, and for minors – at least one third of the sentence;

– supplement Article 58 of the Penal Code of the Russian Federation with Part 4.1 stipulating that "a convicted person is recognized as maliciously evading from serving a sentence in the form of restriction of liberty by a resolution of the head of the inspection, is imposed a penalty in the form of an official warning and maintains this status until removal or repayment of all penalties".

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# Problems of Qualifying Crimes against the Established Order of Service Committed by Employees of Institutions and Bodies of the Penal System

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Abstract

*Introduction*: crimes against the established order of service, committed by employees of institutions and bodies of the penal system, are determined by the legislator not in the Criminal Code of the Russian Federation, but in Paragraph 5 of Part 2 of Article 157 of the Criminal Procedural Code of the Russian Federation, which defines the competence of heads of institutions and bodies of the penal system to perform urgent investigative actions on the specified category of crimes for which the preliminary investigation is mandatory. *Purpose*: to answer the question posed by the law enforcement officer about which illegal acts relate to crimes against the established order of service, the subjects of which are penal system employees. The author identifies several independent research subjects: 1) norms of the Criminal Code of the Russian Federation; 2) Chapter 30 of the Criminal Code of the Russian Federation, listing crimes against state power, the interests of public service and service in local self-government bodies; 3) certain provisions of the criminal codes of the RSFSR of 1922, 1926, 1960; 4) monographs of scientists; 5) textbooks that consider the specifics of crimes encroaching on state power, the interests of public service; 6) statistics of the Federal Penitentiary Service of Russia for 2021, revealing the categories of crimes taken into account and committed by employees of the penal system; 7) judicial practice, generalized and published by the Constitutional Court of the Russian Federation, the Supreme Court of the USSR, the Russian Federation; 8) Section V of the Code of Criminal and Correctional Punishments (1845); 9) federal laws regulating certain issues of public service; 10) the federal law, the law of the Russian Federation, the decree of the President of the Russian Federation, and regulations establishing the rules of service for the penal system employees. The volume and variety of the research subject require, in turn, the use of a number of scientific *methods*, such as description, comparison, specification, idealization, analogy, expert assessments, reference points, deduction, induction, and comparative legal research. As a result, the author comes to the conclusion that the wording of Paragraph 5 of Part 2 of Article 157 of the Criminal Procedural Code of the Russian Federation is not fully correct. It is hardly advisable to point out the “order of service”, which is the object of illegal activity of penal system employees, if this is not stated in the Criminal Code of the Russian Federation.

Keywords: civil servant; employee of the penal system; crimes against state power, interests of public service, order of service.

5.1.4. Criminal law sciences.

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*Introduction*

Law enforcement practice, ideally, should mirror the provisions prescribed by law, while eliminating violation of the rights, freedoms and legitimate interests of citizens. The ideal situation is when the law describes an illegal act in all aspects, simplifying the law enforcement qualification (application). The act that appeared in a certain period of time is perceived by citizens as normal and not dangerous, and only after it is recognized as such and falls under a legislative prohibition, authorized officials are entitled to combat it by legal means. Thus, only from the moment the act is declared criminal, it practically receives the status of a crime with all the ensuing legal consequences. In legal terms, illegality is evidence that the issue of combating this socially dangerous act is included in the agenda of national importance, the state has recognized the public danger of such an act. Declaring an act criminally punishable is a legal act (the right) of state power. The disposition of a criminal law norm describes an act for which a specific punishment is provided. This is a general approach to the construction of criminal law norms.

The article considers crimes against the established order of service, committed by employees of institutions and bodies of the penal system, which are referred to in Paragraph 5 of Part 2 of Article 157 of the Criminal Procedural Code of the Russian Federation. This problem is widely discussed in the scientific community [1, pp. 59–327; 2; 2–7]. Besides researchers' opinions, we analyze the Criminal Code of the Russian Federation, law enforcement practice provided by the Constitutional Court of the Russian Federation, the Supreme Court of the USSR, the Russian Federation, and statistics of the Federal Penitentiary Service of Russia, as well as legal acts of the Russian Empire and the RSFSR.

*Research part*

In the current version of the Criminal Code of the Russian Federation, the word "service" is used about 90 times, but the phrase "employee of the penal system" is missing. Chapter 23 of the Criminal Code of the Russian Federation provides a list of crimes (7) against the interests of service in commercial and other organizations [8, pp. 577–589], Chapter 30 – 17 elements of crimes against state power, interests of public service and service in local self-government [8, pp. 837–868]. Chapter 33 also enumerates a list of crimes in which the word "service" is mentioned, but they are directly related to military service (22 elements). Proceeding from the fact (and not only) that the generic object of military crimes is the relations that develop regarding the provision of the established procedure for military service [8, pp. 932–950], additional specialized legal acts are used for their qualification (dispositions of the articles are of a blank nature), for example, federal laws No. 53-FZ of March 28, 1998 ) (as amended of September 24, 2022) "On military duty and military service"; No. 76-FZ of May 27, 1998 "On the status of military personnel", Presidential decrees No. 1,237 of September 16, 1999 "Issues of military service" together with the Regulations on the procedure for military service; No. 1,495 of November 10, 2007 (as amended of July 31, 2022) "On approval of the general military charters of the Armed Forces of the Russian Federation".

In the above regulatory legal acts, the spheres of life of a serviceman are explicitly stated. Therefore, the established illegal acts of military personnel encroach on certain components of the military service procedure, for instance, non-execution of an order (Article 332 of the Criminal Code of the Russian Federation) – on the order of subordination, desertion – on the military service pro-

cedure (Article 338 of the Criminal Code of the Russian Federation).

The stated above shows the possibility (in case the legislator strives for and practice needs) to form a separate chapter in the Criminal Code of the Russian Federation "Crimes against the order of service in the penal system". There is a sufficient number of normative legal acts specifying its individual circumstances, but the practice of illegal activity is not so diverse, and activities of the penal system (its employees) are fundamentally different from the order and conditions of military service.

Based on the subject of the study, we focus on the illegal acts stipulated by Chapter 30 of the Criminal Code of the Russian Federation, some elements presented in it encroach on the state power and interests of civil service. They differ from other criminal encroachments and are named as official by criminal law specialists. With regard to the penal system, these crimes encroach on public relations that ensure normal and legitimate activities of authorities of other state bodies. Researchers point out that "the direct object of this group of crimes are social relations that ensure normal functioning of individual parts of the state apparatus... In some corpus delicti, an additional object may be legitimate interests of citizens or organizations (articles 285, 286 of the Criminal Code of the Russian Federation); health (Part 3 of Article 286 of the Criminal Code of the Russian Federation); life (Part 2 of Article 293 of the Criminal Code of the Russian Federation); property (articles 285, 286, 293 of the Criminal Code of the Russian Federation)" [8, p. 838].

The specifics of the crimes under consideration is predetermined by public service – professional activity to execute powers of state bodies – official duties of authorized persons. According to the Federal Law No. 58-FZ of May 27, 2003 "On the system of public service of the Russian Federation", the system of public service includes public civil service, military service, and law enforcement service. In Article 7 law enforcement service is defined as "a type of federal public service, which is the professional official activity of citizens holding positions of law enforcement service in state bodies, services and institutions performing functions to ensure security, law and order, combat crime, and protect human and civil rights and freedoms".

It is worth mentioning that Paragraph 1 of Article 19 of this law in the first edition stipulates that "the definition of law enforcement service as a type of federal public service can be applied *from the date of entry of the federal law on law enforcement service*" (emphasis added). The draft federal law "On the law enforcement service of the Russian Federation" has been worked out for about 10 years, but it has not been completed.

For this reason, since January 1, 2016, this article has become invalid. The Federal Law No. 262-FZ of July 13, 2015 "On amendments to certain legislative acts of the Russian Federation regarding clarification of the types of public service and invalidation of Part 19 of Article 323 of the Federal Law "On customs regulation in the Russian Federation"" amended Article 2 of the Federal Law "On the system of public service of the Russian Federation". In the new edition, the system of public service includes public civil service, military service, public service of other types. Part 3 of this article states that "military service and public service of other types, which are established by federal laws, are types of federal public service". In accordance with Paragraph 2 of Article 9, lists of standard positions of federal public service of other types are approved by the President of the Russian Federation. There is no such a list so far.

The Federal Law No. 197-FZ of July 19, 2018 "On service in the penal system of the Russian Federation and on amendments to the law of the Russian Federation "On institutions and bodies executing criminal penalties in the form of imprisonment'" does not disclose the specifics of this service. It, as if repeating the provisions of similar federal laws, says that it is a type of "... federal public service, which is a professional official activity of citizens of the Russian Federation ... in positions in the penal system of the Russian Federation ..." (Paragraph 1 of Article 1). At the same time, it points out that "... positions of the penal system employees... are established in the federal body of executive authority ..." (Paragraph 2 of Article 1). The specifics of professional activities of federal civil servants is to a

certain extent reflected in the Law of the Russian Federation No. 5473-1 of July 21, 1993 (as amended July 26, 2021) "On institutions and bodies executing criminal punishment in the form of imprisonment".

It is noteworthy that Part 1 of Article 26 of this Law specifies the delegation (transfer) of powers of legal entities to employees. It says that "employees of the penal system perform their duties and enjoy, within their competence, the rights granted to institutions or bodies of the penal system, which are provided for by this law and other legislative acts of the Russian Federation". According to Article 14, the rights of institutions executing punishment include the exercise of control over compliance with a set of requirements, use of measures of influence and coercion provided for by regulatory acts against offenders, inspection and search of convicts, other persons, their belongings, vehicles (Ruling of the Constitutional Court of the Russian Federation No. 428-O-P of March 6, 2008 "On the complaint of citizen Irina P. Kiryukhina on the violation of her constitutional rights by Part 6 of Article 82 of the Penal Code of the Russian Federation and Paragraph 6 of Article 14 of the Law of the Russian Federation "On institutions and bodies executing criminal penalties in the form of deprivation of liberty").

Chapter 5 of the Law "On institutions and bodies executing criminal punishment in the form of deprivation of liberty" and Paragraph 12 of Article 14 provide for the procedure for the use of physical force, special means and firearms by penal system employees. At the same time, it determines territories (institutions executing punishments, pre-trial detention facilities, adjacent territories where regime requirements are established, protected facilities of the penal system) and duties to be performed (escorting and other cases established by law).

From a brief description of the specifics of the service of employees of the penal system, we return to the category of crimes against the state power, interests of public service and service in local self-government bodies specified in Chapter 30 of the Criminal Code of the Russian Federation. They can only be committed:

– by special subjects (officials [9], representatives of the authorities (entitled to the personal application of state coercion measures), serving in state bodies). The exceptions are bribery and mediation in bribery, as well as assignment of the powers of an official and official forgery (officials are also responsible for the commission of official forgery);

– by virtue of the official position held by a person or using the powers granted to him/her by the position [10; 11];

– with causing harm to ordinary activities of public authorities, public service [8, pp. 838–839].

"The articles of the Criminal Code themselves, writes B.V. Volzhenkin, do not offer any criteria for determining the materiality of the violation of the rights and legitimate interests of citizens, organizations, society or the state, as well as criteria for distinguishing a significant violation from grave consequences. Harmful consequences of official crimes committed in various spheres of activity of officials are very diverse, and it is hardly possible to list them specifically in the law. Significant violation of the rights and legitimate interests is not limited only to causing material damage. It can be physical, moral, political, ideological harm, etc." [1, p. 129].

Having considered the legislative norms of Chapter 30 of the Criminal Code of the Russian Federation, as well as the above conclusion made by a well-known Russian scientist and other researchers mentioned above, we come to the conclusion that law enforcement officers are entitled to give a reasoned, evidence-based assessment themselves and attribute an illegal act to one of these categories of official crime. Thus, we are talking about an evaluative concept.

According to the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 19 of October 16, 2009 "On judicial practice in cases of abuse of official powers and exceeding official authority", "significant violation of the rights of citizens or organizations as a result of abuse of official powers or exceeding official authority should be understood as violation of the rights and freedoms of individuals and legal entities guaranteed by generally recognized principles and norms of

international law, the Constitution of the Russian Federation (for example, the right to respect for honor and dignity of the individual, personal and family life of citizens, the right to inviolability of the home and secrecy of correspondence, phone conversations, postal, telegraphic and other messages, as well as the right to judicial protection and access to justice, including the right to an effective remedy in a state body and compensation for damage caused by a crime, etc.). When assessing the materiality of the damage, it is necessary to take into account the degree of negative impact of the illegal act on normal work of the organization, the nature and size of the damage, the number of injured citizens, the severity of physical, moral or property damage caused to them, etc.".

According to V.I. Dineka and N.G. Kadnikov, "to assess the materiality of the violation of rights and legitimate interests, the totality of the circumstances of the case should be taken into account: these include a number of victims whose rights have been violated; a size and nature of the harm, its materiality for the victim, law enforcement interests; presence of losses and lost profits for a citizen, state... organizations; creating an environment that hinders activities of the organization; disruption of the workflow, etc."[8, p. 840].

We back the point of view of B.V. Volzhenkin that "elements of the crime included in Chapter 30 of the Criminal Code are the ones of so-called general crimes against state power, interests of public service and service in local self-government bodies. They can be committed by any officials (employees) in any sphere of managerial activity, any state or municipal body or institution, as well as Armed Forces, other troops and military formations of the Russian Federation, and entail various consequences. Besides, other chapters of the Criminal Code contain many special elements of crimes committed specifically by certain officials or in a certain sphere of activity, or encroaching on certain social benefits and interests, except for normal activities of the public administration apparatus" [1, p. 153]. We would like to add that the law lacks instructions on officials of the penal system and the corresponding sphere of their activities.

To establish what specific crimes against the established order of service are committed by penal system employees, let us consider the statistics of the Federal Penitentiary Service of Russia, conducted by the Research Institute of Information Technologies of the Federal Penitentiary Service of Russia (RIIT of the FPS of Russia) [12].

In 2021, 211 indictments were issued for criminal crimes, in particular:

– crimes against life and health (Chapter 16 of the Criminal Code of the Russian Federation), in particular, murder (Article 105 of the Criminal Code of the Russian Federation), newborn child murder by the mother (Article 106 of the Criminal Code of the Russian Federation), murder committed in a state of passion (Article 107 of the Criminal Code of the Russian Federation), murder committed when exceeding the limits of necessary defense or when exceeding the measures necessary for detention of a person who has committed a crime (Article 108 of the Criminal Code of the Russian Federation) – 2; causing death by negligence (Article 109 of the Criminal Code of the Russian Federation) – 0; intentional infliction of serious harm to health (Article111 of the Criminal Code of the Russian Federation), intentional infliction of moderate harm to health (Article 112 of the Criminal Code of the Russian Federation) – 2;

– crimes against property (Chapter 21): theft (Article 158 of the Criminal Code) – 8; fraud (Article 159 of the Criminal Code) – 13; embezzlement (Article 160 of the Criminal Code) – 1; extortion (Article163 of the Criminal Code) – 0;

– crimes against public safety (Chapter 24): hooliganism (Article 213 of the Criminal Code of the Russian Federation) – 0;

– crimes against public health and public morality (Chapter 25): illegal acquisition, storage, transportation, manufacture, processing of narcotic drugs, psychotropic substances or their analogues, as well as illegal acquisition, storage, transportation of plants containing narcotic drugs or psychotropic substances, or their parts containing narcotic drugs or psychotropic substances (Article 228 of the Criminal Code of the Russian Federation) – 19;

– crimes against traffic safety and operation of transport (Chapter 27): violation of traffic rules and operation of vehicles (Article 264 of the Criminal Code of the Russian Federation) – 9:

– crimes against the state power, interests of public service and service in local self-government bodies (Chapter 30): abuse of official powers (Article 285 of the Criminal Code of the Russian Federation) – 8; abuse of official powers (Article 286 of the Criminal Code of the Russian Federation) – 45; taking a bribe (Article 290 of the Criminal Code of the Russian Federation) – 71; official forgery (Article 292 Criminal Code of the Russian Federation) – 3; negligence (Article 293 of the Criminal Code of the Russian Federation) – 14 (crimes against the service committed – 141, or 66.8%);

– other crimes (other chapters and articles of the Criminal Code of the Russian Federation) – 16 (7.58%).

So, in 2021, employees of institutions and bodies of the penal system did not commit any specific crimes against the established order of service, fixed in Paragraph 5 of Part 2 of Article 157 of the Criminal Procedural Code of the Russian Federation; 66.8% of their illegal activities, provided for by Chapter 30 of the Criminal Code of the Russian Federation, were directed against state authorities and interests of the civil service.

For the analysis to be more sophisticated, let us consider history of the issue, individual legal documents of the Russian Empire and the RSFSR. The outstanding Russian pre-revolutionary scientist N.S. Tagantsev wrote that "historical interpretation is known to be important in the field of current legislation. For example, we want to study some legal institution that exists at a given time, then in order to properly understand it, we should trace its historical fate, i.e. the reasons for which this institution was established, and the modifications that it underwent in its historical development" [3, p. 21].

The Code of Criminal and Correctional Punishments of 1845 [14] had Section 5 "On crimes and misdemeanors in public and social services". It contained 11 chapters (articles 329–505), each of which had its own individual name in accordance with the content of criminal law norms (Figure), which covered a wide variety of illegal activities and provided for various types of punishments. In our research we are interested in Chapter 11, in particular Section 1 "On crimes and misdemeanors of officials during investigation and trial" (articles 426–434) and Section 3 "On crimes and misdemeanors of police officials" (articles 446–459).

Section 1 contains elements of crimes and offenses with certain penalties. They are the following:

– an official fails to comply with the rules and forms prescribed by law during investigation due to the negligence or ignorance of their duties (1), or selfish or other personal purpose (2) (Article 456);

– negligence of an official who has not launched the investigation, having sufficient reason (1) or if he/she is guilty due to excessive leniency or any predilection for persons, subject to investigation (2) (Article 429);

– an official does not conduct an initial interrogation with the accused within a day after he/she appears or is brought by a judicial investigator or a police officer who, in case the investigator does not arrive to interrogate a person within a day, does not draw up a protocol attached to the case and does not announce to the accused the reasons for his/her detention (Article 460);

– slow investigation conducted by an official in the absence of special obstacles or difficulties or due to hatred, enmity, other illegal motives (Article 461);

– an investigator threatens the accused to confess or a witness to testify, or the torture and cruelty during the investigation (Article 462);

– an official provides the guilty person with means of justification prohibited by law during the investigation or trial, or weakens the strength of evidence against the guilty person (Article 463)

– any negligence or abuse of an official "in cases not fixed in this section" in office, during investigation or in court (Article 464).

Section 3 stipulates liability for:

– the failure to provide the authorities with the papers submitted by detainees, unless prohibited by law (Article 478);

– the failure to inform the authorities on the part of a police official who has taken a citizen

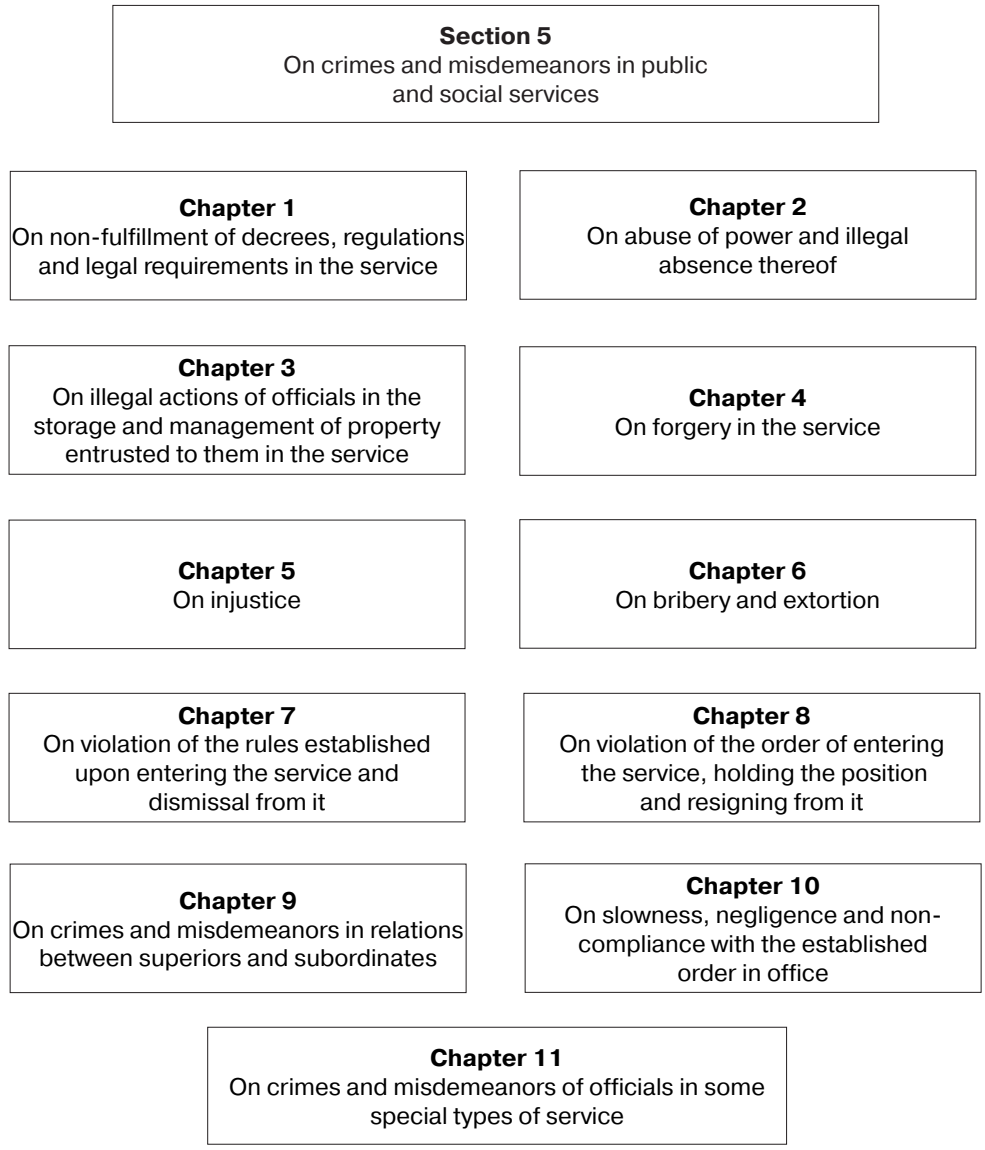


*Figure.* Code of Criminal and Correctional Punishments (1845)

into custody when it is provided by law (in cities within one day, in the county within a week or with the first mail) (Article 479);

– detention in custody for more than a period determined by a court sentence (without legal grounds) (1) or if it is proved that this is done because of enmity, revenge or for other similar reasons (2) (Article 480);

– negligence of an official or guards in case a prisoner escapes (1) or deliberate favoring, facilitating the escape (2) (Article 481);

– any violence against detainees even to prevent escapes or pacify prisoners, any unspecified and illegal measure on the part of prison guards and warders (Article 482);

–predilection of an official for one of the parties to the detriment of the other when executing a court decision (Article 484);

– harassment of a party when executing a court decision (Article 485);

– mitigating execution of punishment (by mistake, leniency or weakness) contrary to a court sentence (1) or out of self-interest of different types (2) (Article 486);

– strengthening punishment by a police official beyond the measure established by the court by mistake (1) or intentionally, out of revenge, self-interest (2) (Article 487);

– negligence or abuse of authority in cases "not specifically indicated in this section in particular, about the duties and responsibilities of police officials" (Article 488).

Having meaningfully presented two sections of the Code on Criminal and Correctional Punishments (1845), we will outline provisions of the criminal legislation of the Soviet period.

Chapter 2 of the Criminal Code of the RSFSR of 1922 was called "Official crimes". It provided for the following crimes: abuse of power (Article 105; the article had a note: "officials are persons holding permanent or temporary positions in any public (Soviet) institution or enterprise, as well as in an organization or association that has certain rights, duties and powers under the law in the implementation of economic, administrative, educational and other nationwide tasks"); excess of power (Article 106); inaction of power (Article 107); negligent attitude to service (Article 108); discrediting of power (Article 109); abuse of power, excess or inaction of power and negligent attitude to service (Article 110); an unjust sentence imposed by the judge for mercenary motives (Article 111); illegal detention and coercion to testify during interrogation through the use of illegal measures by the party conducting investigation or inquiry (Article 112); embezzlement of money or other valuables by virtue of the official position (Article113); receipt of any form of a bribe by a person doing state, union or public service personally or through intermediaries to perform or non-perform of any action included in the scope of official duties of this person in the interests of the giver. The same actions committed by an official with special powers, or appropriation of particularly important state values. Mediation in the commission of the stated crime, as well as concealment of bribery. Receiving a bribe committed under aggravating circumstances, such as: a) special powers of the official who has taken a bribe, b) violations of his/her duties of service or c) admission of extortion or blackmail (Article 114) (the person who has given a bribe is not punished only if he/she promptly declares extortion of a bribe or assists in the disclosure of a bribery case); provocation of a bribe (Article 115); official forgery (Article116); disclosure by officials of information not subject to disclosure (Article 117); officials' failure to submit the necessary information, certificates, reports, etc. on time at the request of central or local authorities, the submission of which is mandatory for them by law (Article 118).

As the researchers note, in the above chapter, "along with elements of general official crimes that can be committed in any field of activity and by any subject belonging to the category of officials, elements of special crimes in the service were also included, which were subsequently (in the Criminal Code of the RSFSR of 1960) singled out as crimes against justice ..." [1, pp.31–32].

Chapter 3 of the Criminal Code of the RSFSR of 1926 "Official crimes" practically repeated Chapter 2 of the Criminal Code of the RSFSR of 1922 with separate editorial clarifications. Chapter 7 of the Special Part of the Criminal Code of the RSFSR of 1960 was called "Official crimes" and included 6 articles: Article 170 (abuse of power or official position; the article had a note: "officials in the articles of the present chapter are understood to be persons who permanently or temporarily perform functions of government representatives, as well as those who permanently or temporarily hold positions in state or public institutions, organizations or enterprises related to the performance of organizational and administrative or administrative-economic duties, or performing such duties in the specified institutions, organizations and enterprises by special authority"); Article 171 (abuse of power or official authority); Article 172 (negligence); Article 173 (taking a bribe); Article 174 (giving a bribe; the article had a note: "the person who has given a bribe is released from criminal liability in case of extortion of a bribe or if this person has voluntarily reported the incident after giving a bribe"); Article 175 (official forgery).

Without going into a detailed analysis, we will mention that the number of crimes against state power and the interests of the civil service decreased significantly in the Soviet period, while their names correlate with the Code of Criminal and Correctional Punishments of 1845.

*Conclusion*

So, let us sum up the stated above.

1. The Code of Criminal and Correctional Punishments exhaustively defined illegal activity of officials, police officials, prison lock keepers, wardens, guards, judicial investigators and, accordingly, depending on the nature of the illegal act, provided for a certain type of punishment. There was an interesting form of punishment that would be relevant today. It is as a deduction from the time of ser-

vice (from seniority) from six months to one year. Such a type of punishment would be effective and in modern conditions, would have a positive effect on the responsibility of decisions taken by civil servants, would not entail a criminal record and other negative consequences.

2. The Code of Criminal and Correctional Punishments of 1845 is the most important legal act of the Russian Empire, some of its provisions are of undoubted interest to modern legislators and scientists. Russians should have an idea of it as a significant historical legal monument. However, this does not mean mindlessly copying its provisions, even borrowing some without taking into account modern reality. Attractiveness of the document cannot be compensated by the complexity of its practical application, it contained 1,711 norms (in different editions in different ways and without taking into account the additions made).

3. In Paragraph 5 of Part 2 of Article 157 of the Criminal Procedural Code of the Russian Federation, the legislator should not talk about crimes against the established order of service committed by employees of institutions and bodies of the penal system, since such a category of illegal acts is not mentioned in the Criminal Code of the Russian Federation. All new laws providing for criminal liability should be included in this code. Hence, (new) criminal law norms cannot be contained in any other normative act. In this case, we are referring to the Criminal Procedural Code of the Russian Federation.

4. Encroachments of the penal system employees on the order of service are not provided for by the norms of the Criminal Code of the Russian Federation, as statistics show, they are not in practice. The illegal acts committed by the considered subjects are covered by the legal norms concentrated in Chapter 30 of the Criminal Code of the Russian Federation, which provide for crimes against the state power and interests of the civil service. This should be indicated in Paragraph 5 of Part 2 of Article 157 of the Criminal Procedural Code of the Russian Federation. There is no need to establish special norms for penal system employees' encroachments on the order of service.

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# Comparative Analysis of Criminal Pretrial Procedures in Anglo-Saxon and Continental Legal Systems

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Abstract

*Introduction*: the article is devoted to the study of foreign experience in the legal regulation of pretrial procedures in criminal cases, as well as the analysis of the possibility of implementing the most effective forms of judicial control over the legality of the preliminary investigation in the Russian criminal procedure legislation. *Purpose*: based on a comparative legal analysis of the regulation of criminal pretrial procedures, to determine ways to further reform the stage of preliminary hearing of a criminal case in the Russian criminal procedure legislation. *Methods*: dialectical method of cognition, as well as general theoretical methods based on it: analysis, synthesis, induction, deduction, ascent from the abstract to the concrete, etc. The validity of the conclusions and recommendations contained in the article is ensured by the complex application of general and private scientific methods: historical, logical, comparative legal, statistical, sociological and others. *Results*: in the continental and Anglo-Saxon systems of law, with the difference in the forms of judicial activity on committal for trial, the legislator determines judicial verification of the legality of the preliminary investigation, as well as the validity of charges against the person, as the main tasks to be solved at this stage of criminal proceedings. Legalization of these tasks is carried out through the subject and limits of the control activity of the court, which are expressed either in the procedural form of trial, or in the scope of the powers of the court at this stage. *Conclusions*: in the Anglo-American and continental legal systems, there are two models of committal for trial: 1) by criminal justice bodies at the stage of completion of pre-trial proceedings, or by an independent judicial body to whose jurisdiction this criminal case is not assigned. In this model, the legislator explicitly states that the legality and validity of charges against a person, as well as the sufficiency of evidence for consideration of the criminal case on the merits, are subject to prosecutorial or judicial control; 2) by the court authorized to resolve the criminal case on the merits. Following the principle of the court's independence when deciding on the guilt (innocence) of the defendant when making the final court decision, the legislator models the control judicial activity in a veiled manner, avoiding direct indication of the need to assess factual and procedural sides of the prosecution at the preliminary hearing stage. However, this goal can be traced in the scope of the powers granted to the court, which presuppose an assessment of the sufficiency of suspicion or materials for consideration of the case in court.

Keywords: criminal proceedings; judicial control; preliminary hearing; powers of the court; prosecution; legality; prosecutor; defense party.

5.1.4. Criminal law sciences.

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*Introduction*

In the countries of the Anglo-Saxon legal family, summary proceedings in criminal cases of small and medium gravity are quite popular; they imply simplification of the procedural form due to the absence of additional stages, including committal for trial. It should be emphasized that preliminary inquiry and preparatory hearings are two independent procedures with specific tasks conducted by the Magistrate's Court and the Corona Court [1]. The legislation of the United Kingdom assumes such only in the Crown Court for criminal cases related to the jurisdiction of jury, which brings us back to the practice of the Russian legislator after amendments and additions to Article 432 of the RSFSR Criminal Procedural Code (as amended by the Law of the Russian Federation of July 16, 1993). A distinctive feature of the English model of preliminary inquiry is separation of jurisdiction, which provides independent judicial control over the legality of pre-trial proceedings and the validity of charges. This issue falls within the competence of the Magistrate's Court, which does not consider the criminal case on the merits, which saves the Crown Court from assessing factual circumstances of the case before the trial begins.

*The core*

In accordance with Paragraph 3 (a) of Article 44 of the Criminal Procedure and Investigations Act 1996, the trial is carried out according to the rules of preliminary inquiry of the case, that is, the magistrate judge analyzes factual and formal sides of it. The relevant procedural activity is as follows.

First, the judge considers a prima facie case to exclude an unfounded accusation in court. In the specialized literature, attention is focused on the fact that in this case, accusatory evidence is subject to verification, which in their totality illustrate the quality of the prosecution's work in pre-trial proceedings [2]. A prima facie case, which is translated as "evidence at first glance" or "sufficient to establish a fact or create assumptions" [3, p. 156], at the stage of committal for trial, should represent the establishment of a legally required refutable presumption of the commission of a crime by a specific person. A prima facie case, verified by a magistrate judge, is a factual basis for a criminal claim that is sufficiently substantiated by evidence to justify the verdict in favor of one party, provided that such evidence is not refuted by the other party [4]. When investigating the actual basis of the charge, the judge is entitled to conduct investigative and judicial actions, such as, for example, examination of written documents, interrogation of witnesses, etc. It should be noted that the evidentiary activity of the magistrate's court at this stage of the process is formalized and limited to certain limits. Thus, from the point of view of subjects of evidence at the stage of preliminary inquiry, only the evidence collected by the prosecution is examined, and from the point of view of sources – written testimony of witnesses given under oath, and other documents.

Second, preliminary inquiry is aimed at familiarizing the parties with each other's actions, which implies not only mandatory participation of the accused at this stage, but also determination of its procedural position regarding the charge. The parties work out the tactics of defense and prosecution and consider possibilities and conditions for using the mediation mechanism. The powers of the judge in verifying the sufficiency of evidence have a vector of favoring the defense, which is manifested in the following rule: the decision to bring to trial, taking into account the sufficiency and content of the indictment evidence, and not only their quantitative characteristics, is taken if the accused does not have a defender or if the defender indi-

cates that the evidence available in the case is not enough to establish the existence of a prima facie case. That is, in fact, the existence of a legal dispute about the sufficiency of evidence for trial excludes formal adoption of the corresponding decision by the judge.

Third, as in the stage of preparing a case for judicial review in the Russian criminal process, at the stage of preliminary inquiry, the jurisdiction of the criminal case and the composition of the court are determined, which in certain cases depends on the will of the accused.

Thus, the trial procedure is sufficiently balanced from the point of view of checking the legality and validity of the charge, the sufficiency of evidence to consider the case on the merits, but in the absence of any influence on the internal conviction of the court directly making the final procedural decision.

A different situation develops during preparatory hearings in the Crown Court. This stage can also be defined as subsidiary, but the list of grounds for its conduct is open, which leaves a wide field for judicial discretion. Thus, in accordance with Article 29 of the Law on Criminal Proceedings and Investigations 1996, preparatory hearings in criminal cases considered both with the participation of jurors and in another composition of the court can be appointed if:

– the judge of the Crown Court, based on the content of the indictment, determines that this case is of particular complexity;

– it takes the jury a long time to swear;

– at least one of the crimes incriminated in the indictment to at least one of the accused is related to terrorist activities.

The powers of the judge during preparatory hearings are not limited to solving organizational issues, since he/she is entitled to make a decision on admissibility of evidence, termination of criminal prosecution against a person, as well as consolidation of charges brought against one person. In our opinion, the fact that the court gets acquainted with materials and analyzes a factual side of the case is also evidenced by the content of orders that it is entitled to give to the prosecutor, in particular: preparation of evidence for the prosecution in a form that is understandable to jurors, as well as provision of these proofs to the accused and the court with a separate list of those proofs to which the rule on witness protection applies (that is, disclosure of information is not possible), according to Chapter 4 (b, c) Article 29 of the Criminal Procedure and Investigations Act 1996

Speaking about the problem of the judge's independence in resolving criminal cases in the context of the existence of a procedure for preparatory hearings, we believe that an open list of the grounds for their conduct, as well as the powers obliging the judge to delve into a factual side of the charge, neutralize the importance of independent trial in magistrate's courts.

The specifics of the federal structure of the United States predetermines the different attitude of state legislation to preliminary hearings of a criminal case. So, in some states, they are carried out for every significant criminal case [5], in others – only on the initiative of the defense [6], and somewhere – in cases of serious crimes [7, p. 499]. Jurisdiction also differs accordingly. As a general rule, preliminary hearings are conducted by magistrate's courts, but they can also be included in the composition of courts of another levels, for example, justice or local, Supreme Court of the state, etc. The trial model is similar in its content to the English one described above. We will highlight a few features common to the legislatures of various states.

First, unlike the English model, committal begins with registration of the indictment document with the judge, entitled to call the official initiating the prosecution, request additional materials, call the defense, and decide on a measure of restraint. Second, a closed trial is held with the participation of the parties for preliminary consideration of the case and study of the sufficiency of evidence collected by the prosecution. During it, it is possible to conduct interrogations of the accused and witnesses, examine documents and, as a result, make a decision on further movement of the criminal case or its

termination. The described mechanism is characterized as a pre-accusation phenomenon, since the judge analyzes the totality of the accusatory evidence and their sufficiency for bringing a person to court. Third, committal has significant differences depending on an initiator. So, if a criminal action is initiated by a complaint of the victim or information received from the police, then the decision of the magistrate judge is final. If a criminal case with the indictment is submitted by the prosecutor, then the final decision on committal for trial is made by a grand jury. At the same time, the grand jury process rules do not imply a n adversarial core, since only the prosecutor participates in the closed meeting, and only the evidence presented by him is subject to investigation. The only question put before the grand jury is the approval of the indictment [8, p. 134]. Fourth, during preparatory hearings, the parties are familiarized with the evidence of the procedural opponent. The result of this procedural action may be a statement by the defense party of a petition for the recognition of the totality of evidence by the prosecution insufficient to consider the criminal case on the merits, as well as a petition for the recognition of inadmissible evidence that was obtained in violation of the rights of the accused.

Russian researchers have different points of view to the Anglo-American model of preliminary hearings. Thus, some specialists back division of jurisdiction [9; 10]; however, as we have already said, committal and preparatory hearings in both models are conducted by different judges, while in the latter case, as in the Russian model, the judge whose competence includes consideration of a criminal case on the merits does not remain neutral to the preliminary analysis of collected evidence. The undoubted advantage, in our opinion, is the absence of a voluminous and time-consuming and financially costly judicial investigation, since there is no need to collect evidence at the judicial stage and postpone the trial. Besides, as T.K. Ryabinina rightly points out, the termination of a criminal case at the trial preparation stage is not perceived as failed work by the prosecution, and judicial decisions not related to the appointment of a court session are not regarded as unreasonable, premature and indicative of judges' prejudice, since the court should not consider the essence of the accusation at this stage [11].

In the countries of the continental legal system, the legislative approach to the committal regulation is radically different from the one in the UK and the USA. We will consider the most illustrative criminal procedural forms adopted in France and Germany.

Thus, in accordance with Articles 175–179 of the 1958 Code of Criminal Procedure of France [12], committal is not an independent stage of the criminal process, but is a form of the preliminary investigation completion. Procedural actions at this stage are carried out by the investigating judge under the supervision of the prosecutor. Having recognized the investigation as over, the investigating judge notifies the defense party about it and transfers the criminal case to the prosecutor, who within one month, if the accused is in custody, or three months in other cases, studies the materials of the criminal case for the legality and validity of the charge, completeness of the investigation and makes one of the following decisions: on the termination of the criminal case, referral of the case for additional investigation, and referral of the case to the court. In 2019, Article 175.1 of the 1958 Code of Criminal Procedure of France has been amended to grant the defense the right to petition the prosecutor to send a criminal case for additional investigation, indicating procedural actions that, in its opinion, should be carried out by the investigating judge [13].

To fulfill the requirement for a reasonable period of criminal proceedings, a person who has been charged, a witness who has been assisted, or a civil plaintiff has been granted the right, after the expiration of the period established for the investigation, to apply to the investigating judge with a petition for a decision on the indictment and the transfer of the case to the court or the termination of the criminal case. A similar petition may be filed if no investigative actions are carried out in a criminal case within four months.

It should be noted that the prosecutor's instructions on the conduct of additional investigation or the termination of a criminal case are not final and can be appealed by the investigating judge at the investigative chamber of the Court of Appeal, entitled to conduct criminal proceedings and make a final decision on either committal or termination of criminal prosecution (articles 229.1 and 230 of the Code of Criminal Procedure of France).

If the decision on further movement of the criminal case is agreed, the investigating judge is entitled to refer the case to the court, if it belongs to the jurisdiction of the assize court. A distinctive feature of committal is the mandatory requirement for the investigating judge to substantiate the sufficiency of evidence of the person's guilt, if the evidence itself collected by the by the prosecution is not given in this document.

The trial preparation procedure is interesting. Thus, on the basis of the Law No. 2002-1138 of September 9, 2002, the effect of Article 268 of the Code of Criminal Procedure of France (the obligation for the judge to serve an indictment order with the criminal case being submitted to the court) was struck down, which was related to the above-mentioned procedure for completing the preliminary investigation. In 2021, Article 222.1 of the Code of Criminal Procedure of France was put into effect. It stipulated the possibility for the accused to file a petition for violation of his/her right to know what he/she is accused of (failure to inform about the initiation of a criminal case, failure to submit a decision on the indictment) to the president of the investigating chamber, which, as already noted, is the body of procedural control over the activities of the investigating judge. This petition can also be filed after the entry into force of the decision on the indictment [14]. Thus, the legislator excluded the powers of the court to monitor compliance with the rights and legitimate interests of the accused at the stage of preliminary investigation. We believe that the current committal model to the greatest extent prevents the court from participating in the investigation of factual circumstances of the criminal case before its consideration on the merits due to assignment of this function to the prosecution represented by the investigating judge and prosecutor.

The trial preparation procedure provided for by the German Code of Criminal Procedure of 1987 is the closest to the Russian one. This stage is one of the main ones, characterized as "preparatory hearings" and is mandatory in all criminal cases, regardless of the severity of the act imputed to the person, as well as the jurisdiction of the case. In connection with the latter, the composition of the court authorized to make a decision on the appointment of preparatory hearings can be as such:

– the judge alone, if the case is referred to the jurisdiction of the local court;

– a panel of three judges, if the case is referred to the jurisdiction of the grand chamber of the land court;

– a senate consisting of five judges, if the case is referred to the jurisdiction of the Supreme Land Court (articles 24, 73, 129 of the Courts Constitution Act of 1975 [15]).

In accordance with Article 203 of the German Code of Criminal Procedure, the subject of judicial review is the validity of the charge, which is formulated as follows: "the court shall decide to open main proceedings if, in the light of the results of the preparatory proceedings, there appear to be sufficient grounds to suspect that the indicted accused has committed an offence" [16]. The German legal community criticizes the above formulation on the same grounds as in the doctrine of the Russian criminal process. Researchers point out the need for judicial preliminary assessment of the facts and evidence available in the case materials, since the court should decide whether conviction of the accused is more likely than an acquittal [17, p. 392]. It is proposed to change the subject of judicial control at the preliminary hearing stage by assigning assessment of the evidentiary material in terms of refuting the presumption of innocence to the prosecutor's office [18, p. 179], as it is done in the French model described above.

The German legislator, like the Russian counterpart, is constantly improving the committal procedure to minimize the court's

intrusion into the field of checking the charge at this stage. However, the study of the substantive side of judicial control, as well as final procedural decisions that can be taken by the court before the start of the main hearing, allows us to state that the construction of such a model is still far from completion. In particular, the court is authorized to study the contents of the indictment and evaluate key results of the investigation, and if there are doubts about their legality and the validity of the charges, to terminate the criminal case (Part 2 of Article 200 of the German Code of Criminal Procedure). Moreover, in 2021, this norm was amended to expand limits of judicial control. In case of doubts about the sufficiency of evidence or the presence of a corresponding petition from the defense, the court is entitled to decide on collecting new evidence before the start of the main trial "to better clarify the essence of the case" [19], and such a decision is not subject to appeal. In our opinion, the obligation to study and evaluate factual and legal sides of the charge is also evidenced by the requirement that the court's decision to terminate the criminal case shall be based on factual or legal grounds (Article 204 of the German Code of Criminal Procedure). However, the legislator focuses on the impartiality of the court when making decisions on opening the main hearing, terminating or suspending proceedings in the case, since in none of the above cases the court is bound by the opinion of the prosecution office (Article 206 of the German Code of Criminal Procedure).

The special literature notes that the very content of the decision to appoint the main hearing of a criminal case (Article 207 of the German Code of Criminal Procedure) characterizes the activity of judicial control as "an assessment of the sufficiency of suspicion in terms of the volume of evidentiary material, as well as its content" [20, p. 28]. Thus, the descriptive and motivational part of the procedural act should specify the amendments subject to which the court admits the charges for the main hearing: several crimes are charged and criminal prosecution is terminated for certain episodes; a person is charged with an act that differs from the one described in the indictment by qualifying features. If the court has reclassified the actions of a person at the preliminary hearing stage, then the public prosecution office shall submit a new bill of indictment corresponding to the court's decision (Part 3 of Article 207 of the German Code of Criminal Procedure).

It should be noted that the effectiveness of judicial activity at the preliminary hearing stage is subjected to well-founded criticism, which, when summarizing various scientific positions, boils down to two main problems: formalism of judicial control, as well as its impact on the judge's inner conviction in the preliminary and main judicial proceedings.

A common feature in the characterization of the control function of the court is the thesis that preliminary hearings practically do not fulfill their tasks, since a deep judicial investigation of the results of the prosecution's actions is not carried out in the vast majority of cases [21, p. 4]. The validity of this thesis is also evidenced by statistical data, according to which in German courts in 99% of the cases, decisions on the appointment of the main hearing are made based on the results of the preliminary hearing [22, p. 163]. The quality of the prosecution office' activity, which we do not question, cannot substantiate this situation; however, according to the judges themselves, there is no "filtering effect", since for the overwhelming majority of criminal cases considered, for example, in district courts, the procedure for obtaining evidence is almost never conducted, and the activity is reduced to filling out the form required for the start of the main hearing [23, p. 330]. We believe that the above can be fully attributed to the Russian courts, which is also characterized by excessive workload of the system and the need to comply with the deadlines set for the start of the trial. Besides, all the circumstances related to the study of evidence collected in the case are determined during judicial investigation. It is a time-consuming stage from a time point of view.

An independent problem for both Russian and German criminal proceedings is formed by the fact that the preliminary hearing is conducted by the same judge who will consider the criminal case on its merits. Such procedural rules, despite their practical validity, cannot protect the judicial community from accusations of bias, which is based on the opinion already formed by the judge at the time of the preliminary hearing, both about the identity of the accused and the validity of the claimed criminal claim. In this regard, the results of empirical studies conducted using the method of computer procedural modeling are interesting, which showed that the judges overwhelmingly sought to confirm the hypotheses previously put forward on the basis of the indictment, limiting themselves in the main trial to the statement of already established facts [24, p. 297]. As a counterargument, it can be mentioned that neither in accordance with the provisions of Article 204 of the German Code of Criminal Procedure, nor in accordance with the rules provided for in Article 229 and Chapter 34 of the Criminal Procedural Code of the Russian Federation, the judge is not charged with a thorough study, analysis and evaluation of the indictment. Hence, a certain dualism arises in assessing the significance of preliminary hearings, since the scope and totality of the judge's powers, as well as their actual implementation, on the one hand, reduce procedural guarantees of the right to defense and level the regime of "protecting" the accused from unfair involvement in the trial as a defendant and, on the other hand, prevent emotional fixation of the judge on the hypotheses of the prosecution, the presence of which, as we have already noted, is established empirically. So, following the logic of the German legislator, by appointing the main hearing, the judge publicly expresses consent with the presence of reasonable and sufficient suspicion in the materials received from the prosecutor, which implies a high probability of the verdict of guilty, as required by the prescriptions of Article 203 of the German Code of Criminal Procedure. This circumstance devalues the human rights significance of the preliminary hearing mechanism [25, p. 211].

Both in Western and Russian legal science, there is an opinion on the need to abolish the institution of preliminary hearing, that is, in fact, to eliminate judicial control over preliminary investigation results. It seems that this position is too peremptory. For example, in the German criminal process, general preparatory actions are woven into the structure of preliminary hearings, during which procedural issues necessary for the consideration of the case on the merits are resolved (for example, jurisdiction, subject of the trial). The judge also solves a whole range of organizational issues related directly to the preparation of future hearings, which cannot be transferred, say, to the preparatory part of the main trial. Taking into account the fact that the vast majority of criminal cases are investigated by the police, the abolition of the intermediate stage of proceedings implies that the quality of their work will determine the possibility of trial. Historically, in those periods when the state wants to raise the importance of the prosecutor's office (or the prosecutorial power as a whole, as it was in Russia in the last century), or the trend to simplify (accelerate) judicial proceedings prevails, the legislator abolishes the stage of preliminary hearing or minimizes the powers within the function of judicial control [26, p. 40; 27, p. 911].

*Conclusion*

Comparative legal analysis of the committal mechanism in legislation of individual countries allows us to state that, with the exception of some nuances due to established legal traditions, there are two models in the Anglo-American and continental legal systems:

– by the criminal justice authorities at the end of pre-trial proceedings or by an independent judicial body to whose jurisdiction this criminal case has not been assigned;

– by the court authorized to resolve this criminal case on the merits.

When regulating the first of these models, the legislator directly indicates that the legality and validity of the charges brought against

the person, as well as the sufficiency of evidence for consideration of the criminal case on the merits, are subject to prosecutorial or judicial control. In the second case, following the principle of independence of the court when deciding on the guilt (innocence) of the defendant when making the final court decision, the legislator models the control judicial activity in a veiled manner, avoiding direct reference to the need to assess factual and procedural sides of the accusation at the preliminary hearing stage. However, this goal can be traced in the scope of the powers granted to the court, in particular, assessment of the sufficiency of suspicion or materials for the case consideration in court. If in the first of these models, legally and psychologically, the court remains independent when making a decision on a criminal case, then in the second it is bound by its own decision on committal, based on a preliminary assessment of the received materials of the criminal case.

The search for the optimal model of the preliminary hearing at the legislative level has not been completed. The analysis of the changes and additions made, for example, to the German legislation reveal the following trends:

– the preliminary hearing stage is maintained in district and supreme courts in criminal cases of serious and especially serious crimes; in courts of the first link of the judicial system, proceedings are simplified and accelerated, including through the use of conciliation procedures;

– the forms of judicial control over the quality of preliminary investigation are detailed, among which it is particularly necessary to mention the invitation of the accused to the court for interrogation and hearing of the indictment, giving them the opportunity to petition for the inclusion of new evidence in the case;

– at the level of legislative initiative, the issue of amendments concerning the rules of jurisdiction is being actively discussed, in accordance with which the judge who has conducted the preliminary hearing is not able to participate in the main hearing of the criminal case.

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# On the Issue of Legal Regulation of Public Service of Other Types in the Russian Public Service System

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Abstract

*Introduction*: the article is devoted to the analysis of public service of other types in the system of public service of the Russian Federation, introduced by the legislator instead of law enforcement service in 2015. Other types of public service currently include service in the internal affairs bodies of the Russian Federation, service in the Federal Fire Service of the State Fire Service, service in the Penitentiary System of the Russian Federation, service in customs authorities, service in enforcement bodies of the Russian Federation, service in the Investigative Committee of the Russian Federation, service in bodies and organizations of the Prosecutor's Office. *Purpose*: based on the analysis of the current legislation and scientific literature, to determine prospects for combining other types of public service into a single law enforcement service and propose a concept of its legal regulation. *Methods*: general scientific and special methods, including comparative legal, systematic and logical, analysis and synthesis, historical. *Results*: the analysis of domestic legislation regulating other types of public service shows that the scientific community and the legislator should again raise the issue of combining all these other types of public service into a single type, since there is a large number of unifying features of all other types of public service; a significant part of the federal law provisions of regulating certain types of public service of other types coincide; there are federal laws that apply to several types of public service. *Conclusions*: at present there are no obstacles to the unification of all other types of public service into a single type (law enforcement service) and adoption of two federal laws: one regulating the service procedure and another on social guarantees of civil servants of law enforcement service.

Keywords: public service system; other types of public service; law enforcement service; civil servant.

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*Introduction.*

Public administration in modern society is a complex socio-legal category that includes a variety of public relations, including those aimed at maintaining the established law and order, strengthening the rule of law, and ensuring security. The central place in ensuring implementation of the listed functions is assigned to specialized law enforcement agencies, as well as their officials. Law enforcement activities should be carried out by qualified and professionally trained law enforcement officers, and the legal regulation of public service should meet modern requirements for the formation and development of a democratic state [1]. The improvement of public administration is currently doomed to failure if attention is not paid to improving the efficiency of professional activities of civil servants, which, in turn, cannot be realized without building a unified system of public service. It is worth mentioning that the unity of organizational and legal foundations of the civil service is one of the fundamental principles of building the civil service system, enshrined in Part 1 of Article 3 of the Federal Law "On the civil service system of the Russian Federation" (hereinafter – Federal Law No. 58-FZ). This principle provides for the need to ensure a uniform approach to the construction, organization and legal regulation of civil service. In our opinion, the task of ensuring the unity of civil service today is an unsolved problem, which affects effectiveness of functioning of the state apparatus in Russia.

Public service of other types in the Russian public service system

The very first law adopted in modern Russia in relation to the civil service, which laid foundations for its legal regulation and construction, was the federal law "On the foundations of the civil service of the Russian Federation", adopted in 1995. The construction of a comprehensive modern system of public service in fact began in 2003 with the adoption of the Federal Law No. 58-FZ, establishing three separate types of public service: public civil service, military service and law enforcement service. However, Part 2 of Article 3 of this law fixed the need for separate federal laws on each type of public service. Part 1 of Article 19 of the Federal Law No. 58-FZ stipulated that the definition of law enforcement service as one of the types of federal public service would be applied only from the date of adoption and entry into force of the relevant federal law on law enforcement service (at the moment this norm is canceled).

So, according to the original plan of the legislator, the existing system of legal regulation of the civil service in our state would have to include a fundamental basic law defining key provisions concerning the service system as a whole (its role is assigned to the Federal Law No. 58-FZ) and federal laws on the existing separate types of civil service: civil, military and law enforcement. We believe that the implementation of this idea would have a positive impact on ensuring the integrity and unity of the civil service in our country, as well as on the state of its legal regulation.

As a separate federal law regulating one of the types of civil service, the Federal Law "On public civil service of the Russian Federation" (hereinafter – Federal Law No. 79-FZ) was adopted in 2004. Military service and other issues related to it are regulated by the Federal Law No. 53-FZ "On military duty and military service". However, there is no federal law regulating the service procedure and the legal status of law enforcement officers. Initially, the development of this law was entrusted to the Ministry of Internal Affairs of Russia. As A.A. Grishkovets mentions, there was a close discussion of the draft law without representatives of scientists, practitioners, and experts. The developers did not provide any opportunity for interested persons to familiarize themselves with the draft law. Though it took a long time to work out a draft law [2], it was never completed.

Instead, the Federal Law No. 342-FZ of November 30, 2011 "On service in the internal affairs bodies of the Russian Federation and amendments to certain legislative acts of the Russian Federation" (hereinafter – Federal Law No. 342-FZ) was adopted. Since the Federal Law No. 58-FZ still provided for the need to regulate the law enforcement service by a separate federal law, the adoption of a federal law on the service in the internal affairs bodies in the absence of a law on the law

enforcement service seemed illogical. Apparently, already by that period the legislator had understood that there would be no single law enforcement service [3].

Thus, the process of forming a unified public service system has not been completed. The Federal Law No. 262-FZ of July 13, 2015 abolished the term "law enforcement service" was and introduced "public service of other types". According to the Clarification of the State Duma of July 6, 2016, the Russian legislation lacks a definition of the concept "law enforcement body", criteria and features to comply with; as well as a list of law enforcement bodies. Besides, the draft law took into account foreign experience, presupposing elaboration of separate laws for each direction of the law enforcement service [4]. When discussing the draft law in the State Duma, it was mentioned that "there was the task to differentiate the status of the law enforcement service, single out sub-statuses for various types of public service ... differentiate in order to highlight the features that are characteristic of each type of the law enforcement service" [5].

The abolition of the law enforcement service as an independent type of public service has divided scientists researching this problem into its supporters and opponents. For example, A.A. Grishkovets notes that the "attempt to define and consolidate a single universal term "law enforcement service" is hardly productive and is not practically justified in the sense of improving legal regulation of public service in the relevant bodies" [2]. R.V. Nagornykh, on the contrary, believes that public service in the law enforcement sphere is an independent type of public service and should be fixed in the current legislation along with military and civil [6, p. 17]. The same opinion is shared by A.V. Ol'shevskii and E.D. Zayaev [7]. S.E. Channov insists that "it is too early to put the point to the existence of the law enforcement service as a special type of public service of the Russian Federation" [3]. According to V.A. Kozbanenko, other types of public service fixed in the current legislation are a type of the federal public service related to the implementation of law enforcement activities [8].

In solidarity with the authors justifying the need to consolidate the law enforcement service as a separate type of public service, while not entering into a discussion about its name, we can state the following.

The term "public service of other types" enshrined in the Federal Law No. 58-FZ is not disclosed in the legislation. The legislation provides neither a list of state bodies where this kind of public service is carried out, nor enumeration of other types. The absence of this concept, as well as any objective criteria for attribution to other types of public service, do not make it possible to identify, in which specific state bodies of the state it is implemented. Also, the definition of "other types" suggests that the public service of other types does not necessarily have to be associated with law enforcement. In addition, as S.E. Channov rightly writes, now we do not have three types of public service, but an indefinite number of them [3]. The only requirement for each other type of public service is its introduction by the relevant federal law.

The uncertainty is also caused by the fact that according to Part 1 of Article 9 of the Federal Law No. 58-FZ, a list of standard positions of the federal public service of other types, included in the register of positions of the federal public service, must be approved. But to date, such a list has not been worked out. At the same time, there is no information that any work is being done on its creation.

In our opinion, the main arguments of the opponents of combining the so-called other types of public service into a single type are mainly reduced to the fact that combining these types would require unification of a number of legislative provisions. At the same time, for many public servants, especially employees of other types of public service, there is the privileged position of certain types of public service in relation to others, that is why equalizing the status of civil servants of various state bodies will cause some dissatisfaction. A.A. Grishkovets argues that "for example, the Russian prosecutor's office turned 295 in 2017. It is obvious that over the centuries-old history the supervisory authority has accumulated traditions, and for prosecutor's office employees themselves

belonging to such a body is of great moral importance, and for most of them to dissolve into an inexpressive and rather indefinite concept of "law enforcement service" is absolutely unacceptable" [2, p. 62]. According to V.A. Kozbanenko, the draft federal law on the law enforcement service was not agreed "due to unresolved disagreements between law enforcement agencies and the Prosecutor General's Office of Russia on the legal status of law enforcement officers, unification of conditions, the order and procedures of their service that do not consider features of various federal government agencies, inevitable leveling of social guarantees and logistics, the structure of monetary maintenance and other similar issues" [8].

Researchers believe the legislator refuses to adopt a single federal law on the law enforcement service, since its introduction would require equalization of social guarantees of civil servants of all law enforcement bodies (housing, monetary allowance, pension provision, etc.). At the same time, as noted by A.V. Ol'shevskii and E.D. Zayaev, it should be done, so as not to worsen employees' current situation [7], which would lead to an increase in the financial burden on the federal budget of the Russian Federation.

In our opinion, based on the analysis of the current federal laws on various state bodies, the following types of public service can be attributed to the public service of other types.

*Table 1*

*Public service of other types*

| No. | Type of public service | Federal Law |
|---|---|---|
| 1 | Service in the internal affairs bodies of the Russian Federation | Federal Law No. 342-FZ of November 30, 2011 "On service in the internal affairs bodies of the Russian Federation and amendments to certain legislative acts of the Russian Federation" |
| 2 | Service in the Federal Fire Service of the Russian State Fire Service | Federal Law No. 141-FZ of May 23, 2016 "On civil service in the Federal Fire Service of the Russian State Fire Service and amendments to certain legislative acts of the Russian Federation» (hereinafter – Federal Law No. 141-FZ) |
| 3 | Service in the penal system of the Russian Federation | Federal Law No. 197-FZ of July 19, 2018 "On service in the penal system of the Russian Federation and amendments to the Law of the Russian Federation "On the institutions and bodies executing criminal punishment in the form of deprivation of liberty" (hereinafter – Federal Law No. 197-FZ) |
| 4 | Service in the customs bodies | Federal Law No. 114-FZ of July 21, 1997 "On service in customs bodies of the Russian Federation" |
| 5 | Service in the enforcement bodies of the Russian Federation | Federal Law No. 328-FZ of October 1, 2019 "On service of the enforcement bodies of the Russian Federation and amendments to certain legislative acts of the Russian Federation" (hereinafter – Federal Law No. 328-FZ) |
| 6 | Service in the Investigative Committee of the Russian Federation | Federal Law of December 28, 2010 No. 403-FZ "On the Investigative Committee of the Russian Federation" (hereinafter, Federal law No. 403-FZ) |
| 7 | Service in the bodies and organizations of the prosecutor's office | Federal Law No. 2202-1 of January 17, 1992 "On the prosecutor's office of the Russian Federation" (hereinafter, Federal Law No. 2202-1) |

The presence of many types of public service and federal laws on its regulation results in their inconsistency, different legal status of civil servants of various types of public service and their various social protection, which entails violation of the principle of unity of the legal and organizational foundations of public service, enshrined in Article 3 of the Federal Law No. 58-FZ. From an ethical point of view, the argument that public service in some

state bodies should be more prestigious due to the establishment of higher social guarantees is seen unacceptable rather than requiring discussion.

We believe that the listed types of public service of other types have common characteristic features, which also indicate the possibility of their unification. Unfortunately, the current legislation does not define terms "law enforcement body" and "law enforcement activity". So, it is not clear what state authorities are engaged in law enforcement activities and belong to law enforcement bodies. According to Yu.V. Stepanenko, law enforcement activity of the state performs the protective function of law [9]. V.L. Barankov is sure that "law enforcement bodies are the ones whose main or special function is to protect law and order, the rights and freedoms of citizens, fight against crime, other offenses, ensure protection of public order and state security, restore violated civil rights, and, if necessary, apply sanctions provided for by law" [10]. So, we believe that all the bodies listed above should be attributed to law enforcement bodies in which the law enforcement service is implemented. What is more, the list should be supplemented by the Federal Security Service, the Federal Protective Service, and the Federal National Guard Service. However, employees of these federal services are military personnel or employees of the internal affairs bodies (Paragraph 3 of the Decree of the President of the Russian Federation No. 510 of September 30, 2016 "On the Federal National Guard Service"), therefore, no other types of public service are implemented in the listed bodies.

Having analyzed works of R.V. Nagornykh [11], A.M. Bobrov, A. S. Telegin [12], D.N. Bakhrakh [13], we identified the following features of the law enforcement service.

1. Increased requirements for employees' state of health, moral and psychological qualities, physical fitness level. For example, there is an age limit for entering the service (more often 35–40 years); besides, persons who have or have had a criminal record, as well as those released from criminal liability for non-rehabilitating grounds cannot serve.

2. Power and authority nature of professional activity. Additionally, this is emphasized by oath-taking, after which law enforcement officers acquire the full scope of official rights and official duties, including performing tasks associated with risks to their life and health [12].

3. Civil servants are assigned special ranks (most often) or class ranks.

4. Employees are required to wear uniforms and insignia in accordance with the assigned special ranks and class ranks.

5. Additional restrictions and prohibitions apply to employees of the listed types of public service. The explanatory note to the draft federal law "On the service in the penitentiary system of the Russian Federation" notes that the "number of prohibitions and restrictions proposed for legislative regulation in the penitentiary service exceeds the number of prohibitions and restrictions on civil service and military service due to its specifics" [14]. In addition to the restrictions, prohibitions and obligations established by the Federal Law No. 273-FZ "On combating corruption", articles 17, 18, 20–20.2 of the Federal Law No. 79-FZ, additional restrictions are established by Part 1 of Article 14, Part 5 of Article 17 of the Federal Law No. 197-FZ.

6. The observance of official discipline in these state bodies is ensured by a broader list of incentive measures and disciplinary penalties. If the Federal Law No. 79-FZ provides for 7 types of incentives and 4 types of disciplinary penalties, then the Federal Law No. 197-FZ provides for 10 types of incentives and 5 types of penalties. Federal laws No. 403-FZ and No. 2202-1 fix 10 types of incentives and 8 types of disciplinary penalties.

7. Employees of some listed types of public service are brought to disciplinary liability for committing administrative offenses (with the exception of administrative offenses provided for in Part 2 of Article 2.5 of the Code of Administrative Offenses of the Russian Federation).

7. The most important feature of the attribution of public service to law enforcement is the empowerment of a significant part of employees with the authority to use weapons, special means and physical force.

8. Performing their functions, law enforcement officers mainly specialize in the imple-

mentation of the law enforcement function of the state, in contrast to civil servants engaged, as a rule, in regulatory activities [13].

*Substantiating the possibility of combining other types of public service into a single one.*

Hence, we believe that the scientific community and the legislator should once again raise the issue of combining all these "other" types of public service into a single one and adopting one federal law for its regulation. The question of how this type of public service should be called, in our opinion, is secondary. The definition of "law enforcement service" seems to be the most successful, but it can also be "public service related to law enforcement", "special public service" [8], "police service" [13], etc. The main thing here is a unified legislative regulation, without gradations of public service into more or less privileged. S.V. Vedyashkin and R.V. Nagornykh write about the need to form a unified system of public service in the law enforcement sphere of the Russian Federation as an integral administrative and legal institution [1].

Here are two, in our opinion, quite weighty arguments confirming the possibility of combining other types of public service into one.

First, the federal laws regulating various types of public service often coincide in many respects in their content. For example, the comparison of the Federal Law No. 197-FZ and the Federal Law No. 342-FZ shows that most of the articles coincide almost word for word. Principles of service, employees' rights and duties, requirements for official behavior, restrictions and prohibitions, emergence and change of legal relations in the service, service procedure, service discipline, etc. are the same [15]. In many respects, the provisions of the Federal Law No. 328-FZ and the Federal Law No. 141-FZ get in line with these laws. Though there are differences in the content of these federal laws, they are of a private nature. For instance, these federal laws include about 100 articles (except for the final provisions), the content and titles of chapters and individual articles, definitions of basic terms, principles of service, a list of disciplinary penalties, the normal length of service time, types of vacations, etc. are almost identical. As A.V. Kalyashin rightly notes, the legal acts adopted in recent years regulating certain aspects of the service (including at the departmental level), organization and the legal status of employees seem as if done "under one carbon copy" [16].

Second, the federal laws that simultaneously relate to several types of public service are already in force, particularly, the Law of the Russian Federation No. 4468-1 of February 12, 1993 and the Federal Law No. 52-FZ of March 28, 1998. The Federal Law No. 283-FZ of December 30, 2012 applies to employees of institutions and bodies of the penal system, enforcement agencies of the Russian Federation, the federal fire service and customs authorities of the Russian Federation. At the same time, the provisions of this federal law mostly coincide with the provisions of the Federal Law No. 247-FZ of July 19, 2011. As practice shows, the extension of the legal force of these federal laws to several types of public service does not entail any negative consequences.

Third, today there are various federal executive authorities, the service in which is regulated by one law. As we have already noted above, these are the Federal Security Service, the Federal Protective Service, and the Federal National Guard Service. In all these federal services, employees are military personnel (in the Federal National Guard Service they can also be employees of internal affairs bodies), their legal status is determined by the Federal Law "On military duty and military service", but this does not entail any organizational problems.

*Proposals for the creation of a unified concept for legal regulation of the public law enforcement service.*

The analysis of the current legislation on various types of public service shows that today, as a rule, 2 federal laws apply to each service type. One of them regulates general provisions, service principles, legal status of employees, admission requirements, service procedure, service discipline, service and rest time, and service termination. Another federal law is devoted to social guarantees of employees, which, as a rule, include employees' monetary allowance, housing, medical care and health-resort treatment, measures

of social support for family members of employees, died or missing when performing official duties. The exception is public service in the Prosecutor's Office of the Russian Federation and the Investigative Committee of the Russian Federation: both a service procedure and social guarantees of employees are regulated in one law.

It should be noted that the legal regulation of service in the Prosecutor's Office of the Russian Federation and the Investigative Committee of the Russian Federation has certain specifics, in particular, the service procedure and social guarantees are regulated not by the laws on certain types of public service, but by those fixing the legal status of these bodies, their powers, system, and public service as well. Moreover, if such legal regulation of prosecution service can be explained by the prescription of the adoption of the law, the Federal Law "On the Investigative Committee of the Russian Federation" was adopted quite recently, in 2010. This is probably due to the fact that the Investigative Committee of the Russian Federation was separated from the Prosecutor's Office and the Federal Law No. 2202-1 was taken as the basis for the development of the Federal Law No. 403-FZ. It should be also noted that the Prosecutor's Office and the Investigative Committee of the Russian Federation are not part of the system of executive authorities, unlike the rest, in which other types of public service are implemented.

The fact that the public service procedure, social guarantees of employees, and the legal status of a state body are regulated in one federal law, in our opinion, is rather a disadvantage than an advantage. To begin with, there is a fewer number of the norms devoted to legal regulation of public service and social guarantees of employees than in individual federal laws, and the current norms are smaller in scope and semantic content. Thus, the Federal Law No. 403-FZ contains 29 articles regulating service, the Federal Law No. 2202-1 – 27, and federal laws No. 342-FZ, No. 197-FZ, No. 328-FZ, No. 141-FZ – more than 90. This leads to gaps in the legal regulation of a number of individual aspects of public service and social guarantees for employees of the Prosecutor's Office and the Investigative Committee of the Russian Federation. For Instance, federal laws No. 403-FZ and No. 2202-1, unlike federal laws No. 342-FZ and No. 197-FZ (let us take them as an example), do not disclose the following aspects of public service:

– service principles;

– rights and official duties of an employee;

– requirements for the employee's official behavior;

– emergence and change of legal relations in the service (Chapter 4 of the Federal Law No. 197-FZ, Chapter 4 of the Federal Law No. 342-FZ). Federal laws No. 403-FZ and No. 2202-1 have only the test for admission to service and the oath. Federal laws No. 197-FZ and 342-FZ also regulate the right to enter the service, documents submitted for admission to the service, grounds for the emergence of legal relations in the service, contract, its types and duration, its content, replacement of positions by competition, etc.

– gross violations of official discipline.

Regarding social guarantees of prosecutors and employees of the Investigative Committee, federal laws No. 403-FZ and No. 2202-1 contain only 3 articles: material and social security of employees, housing, mandatory state personal insurance of employees (articles 35, 35.1, 36 of the Federal Law No. 403-FZ, articles 44, 44.1, 45 of the Federal Law No. 2202-1). In relation to other types of public service, there are separate federal laws that disclose each social guarantee in more detail.

We believe that the existence of two federal laws for each type of public service is a successful experience and it is necessary to adhere to this principle of building legislation on public service in the future.

*Conclusions*

In our opinion, there are currently no obstacles to the unification of all other types of public service into a single one (law enforcement service) and the adoption of 2 federal laws: one regulating a service procedure and another – on social guarantees of civil servants of law enforcement service.

The first law should define a term of law enforcement service and basic terms, deter-

mine legal regulation of law enforcement service and enumerates types of law enforcement service and state bodies, in which it is carried out. Also, this law should fix positions of law enforcement service, special ranks, rights and duties of employees, restrictions and prohibitions, requirements for official behavior, admission, service and its termination procedures, service and rest time, service discipline, etc.

These aspects of public service are initially regulated by labor legislation, as a result of which federal laws on certain types of public service are rather uniform. In this regard, nothing hinders regulation of all listed aspects in one law. On the contrary, there arises a question: why civil servants should have different working hours and rest periods, types of vacations, disciplinary penalties and the procedure for imposing them, incentive measures, rights and obligations.

Similarly, social guarantees for employees of various types of public service should be enlisted in one law, since in general they are quite identical. For example, monetary allowance of any employee consists of a monthly salary in accordance with the position held and a monthly salary in accordance with the assigned special rank, as well as other monthly additional payments (for service experience, special conditions of service, qualifying rank, working with information constituting a state secret, etc.). Salaries for positions and special ranks are set at the subordinate level, and nothing prevents them from being set different for different types of law enforcement service, depending on the complexity of the tasks performed and the relevance of this type of law enforcement service for the state at this historical moment. Also, the presence of a one-time payment for the purchase or construction of residential premises as a social guarantee in each type of public service does not negate the fact that the amount of funding allocated for these purposes is different for different state bodies. However, we believe that general provisions should be uniform for everyone.

Based on the above, we propose to amend Article 2 of the Federal Law No. 58-FZ regarding the introduction of a law enforcement service to replace the currently existing public service of other types. We propose to work out and adopt a federal law on law enforcement service, regulating a service procedure and a federal law on social guarantees for law enforcement officers.

The necessity of adopting a law on the law enforcement service o is supported by A.M. Artem'ev [17, p. 13]. V.N. Isaenko proposes to develop and adopt a federal law "On law enforcement activities" [18].

The adoption of these laws will lead to restoration of the basic principle of the unity of public service and the unity of state bodies activities and will have a positive impact on the performance of public service as a unified system.

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# Reforming the State Control (Supervisory) System in the Context of Changing Legislation

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Abstract

*Introduction:* the article discusses issues of reforming the control and supervisory system in modern Russia. It analyzes stages of formation and development of these bodies, as well as transformation of legislation on control and supervision. *Purpose:* to consider transformation of the state control and supervisory institution in modern Russia; analyze the regulatory framework on the basis of which the "architecture" of the state control and supervisory mechanism is carried out; consider new approaches to the powers of control and supervisory authorities of the Russian Federation, enshrined in the current legislation on control and supervision. T*he methodological basis* consists of logical-legal, comparative-legal, descriptive, content analysis, and legal reality cognition methods. *Conclusions:* the analysis of the current legislation in the field of control and supervision suggests that the last stage of reforming the control and supervisory mechanism and its activities, expressed in the development of the Federal Law "On state control (supervision) and municipal control in the Russian Federation", has a number of advantages: the scope of application of the risk-based approach in the implementation of state control and supervision is expanded; all kinds of control and supervisory measures and tools that can be used by control and supervisory bodies in carrying out their activities are fixed in legislation; the total use of inspections as the main tool in the work of control and supervisory bodies is avoided; a unified system of principles for elaborating a control and supervisory mechanism is created.

Keywords: control, supervision; state mechanism; control and supervisory bodies; control and supervisory activities; prevention-oriented (preventive) approach; risk-oriented approach; control and supervisory institute of the state mechanism; selective control; inspection visit.

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*Introduction*

The relevancy of the study is justified by the appearance of atypical controlled and supervised objects that leads to the need to reform the modern system of control and supervisory bodies and legislate new methods of conducting control and supervisory measures.

The development of the modern state control (supervision) system is determined by the correlation of concepts "control" and "super-

vision", their reflection in the current legislation and the general theory of law [1].

Special attention should be paid to the last stage of the reform of control and supervisory activities in the Russian Federation. Thus, when conducting a comparative analysis of the Federal Law "On state control (supervision) and municipal control in the Russian Federation" with the Federal Law "On the protection of the rights of legal entities and individual entrepreneurs in the exercise of state control (supervision) and municipal control", we identified the following advantages of the first one: detailed regulation of control and supervisory measures carried out by state control (supervisory) bodies; wider use of the risk-oriented approach, new for the state control (supervisory) system; democratization of the mechanism for implementing control and supervisory measures by competent authorities and avoidance of inspections as a bright tool of the control and supervisory system; avoidance of the punitive approach in the implementation of control and supervisory activities and its replacement with a prevention-oriented (preventive) approach, which, according to the law developers, will reduce the administrative pressure of state control (supervision) bodies on controlled and supervised objects when they carry out control and supervisory activities. The law establishes a unified system of principles of state control (supervision), municipal control [2].

It also remains obvious that in modern Russian legislation there is a problem of unification of the conceptual and categorical apparatus of the control and supervisory sphere. It should be emphasized that this problem remains unresolved at the current stage and does not lose its relevance.

*The core*

Considering the system of control and supervisory bodies and their activities, it is important to note that the system of state bodies and their activities is the link of the entire system of public administration. However, both in the theory of law and the current domestic legislation there is no clear distinction between control and supervision. This question about the relationship of these concepts is still debatable.

There are several explanations for this problem. The legislator does not give a clear distinction between definitions of control and supervision. In a number of regulations, these concepts are treated as synonyms and aggravates the state of the control and supervisory system [3].

There are several approaches to definition of the above concepts in administrative law. According to the first one, control and supervision are identical concepts [4]. For instance, in accordance with Article 2 of the Federal Law "On the protection of the rights of legal entities and individual entrepreneurs in the exercise of state control (supervision) and municipal control", control (supervision) is interpreted as follows: "state control (supervision) is activity of authorized state authorities aimed at preventing, detecting and suppressing violations of the requirements of the current legislation of the Russian Federation by legal entities, their managers and other officials, individual entrepreneurs, their authorized representatives". So, the legislator in this law does not differentiate the terms; similar formulations can be found in a number of articles of the Administrative Code of the Russian Federation, as well as other regulatory legal acts.

Yu.A. Tikhomirov [5] has another point of view that supervision is an inseparable component of control.

Another stance is that supervision is an independent way of exercising state power by competent authorities, aimed at establishing discipline and legality in supervised facilities. At the same time, it is noted that both supervision and control can have elements of the implementation of specific activities that are similar in content. Supporters of this position are F.S. Razarenov, E.V. Shorina, V.F. Lomkina.

We back the point of view of N.M. Konin [2] that control is an organizational and legal way of establishing state discipline and legality in controlled objects, through the implementation of specific state-governmental activities and systematic monitoring of activities of controlled objects in order to establish compliance of their decisions and actions with the regulatory requirements of current legislation. The researcher identifies several mandatory parts of control:

1. Implementation of systematic verification of the real result of the work of controlled objects in comparison with the planned indicators.

2. Implementation of control activities to check the methods and means used to achieve necessary results in terms of their legality, business and official ethics, financial and economic necessity, as well as expediency;

3. After conducting control measures, appropriate necessary measures are taken with respect to controlled objects, which can be both positive and negative.

When considering the term "control" in this way, we note that the purpose of control is not limited solely to establishing law and order, but is also aimed at ensuring expediency and efficiency.

Based on the above, it is possible to deduce the following criteria for distinguishing the terms under consideration: parameters of coverage of the field of activity under consideration; a variety of methods, means and legal forms of implementation of specific activities.

Control is carried out in relation to organizationally subordinate persons (subjects of activity), supervision is the activity of persons (supervised entities) who, when carrying out supervisory activities are not administratively or otherwise subordinate to the supervisory bodies. Considering objects of control and supervisory activities, it is necessary to emphasize that discipline, finance, and other controlled objects are usually included in a wide range of different activities of controlled objects. When compared with a supervision object, this condition changes and some special rules (sanitary, fire-fighting, etc.) are added.

So, the study of terms, such as control and supervision, in their identity, does not seem to be correct. In modern realities, taking into account changes in legislation, special attention should be paid to the proposals on differentiating control, supervision, and their activities, which should be considered as separate, independent functions of state authorities, as well as on consolidating various procedures for their implementation.

When considering the formation and development of the institute of state control and supervision in the Russian Federation, we will define several conditions under which this institute carries out its activities in the general mechanism of the modern Russian state.

The first condition is that for state power sphere, the activity of the institute of state control and supervision is inseparable from the very nature of the state. In other words, checking the uniform execution and application of laws and other regulations is an essential condition for normal functioning of the state mechanism.

The next condition is a certain development level of the state: presence of written law (laws, resolutions, and orders); division of society into social groups and, as a consequence, clash of their interests (social, political, etc.); fundamental changes in the social and state structure and, as a rule, in the legislation.

Thus, the modern institute of state control and supervision of the Russian Federation has undergone several stages of its development.

The first (transitional) stage is the period from 1991 to 1993. It is characterized by a sharp weakening of state control and complete elimination of the public control institute. These transformations led to the fact that the state control and supervisory mechanism, responsible for the rational use of material and financial resources, was absent in the general mechanism of state bodies.

The second stage covers the time period from 1993 to 2001, characterized by the formation of a unified system of state control bodies and creation of federal districts [6].

Several regulatory legal acts are worth mentioning: 1) the Decree of the President of the Russian Federation No. 730 of June 29, 1998 "On measures to eliminate administrative barriers in the development of entrepreneurship" was the first attempt to systematize legal norms in this sphere. The norms regulating functioning of the state control and supervisory institute were not systematized; 2) the Federal Law No. 134-FZ of August 8, 2001 "On protection of the rights of legal entities and individual entrepreneurs during state control (supervision)", in which, for the first time in the practice of control and super-

visory activities, the legal foundations of the relationship between entrepreneurship and the state were fixed in the process of implementation by control and supervisory bodies of their activities.

As for shortcomings of this law, first, it assigned a fairly wide range of powers to persons exercising state control (for example, the norm regulating that a person exercising state control independently on the basis of his/her own discretion is entitled to make a decision on the suspension of control and supervisory measures in relation to a controlled object, including making a decision on the suspension of the object's activities; all the necessary conditions are created for corruption and unfair competition); second, the legal guarantees of business entities and other controlled entities enshrined in this normative act were not sufficient for systematic development of entrepreneurship.

The third stage (2001–2012) is characterized by the formation of the modern Russian system of state control and supervisory bodies and the mechanism of their work in federal districts.

The Federal Law No. 294-FZ "On protection of the rights of legal entities and individual entrepreneurs in the exercise of state control (supervision) and municipal control" is an important regulatory legal act of that period. In comparison with the previous law, it expanded a list of legal guarantees of business entities, thus increasing the legal protection level. It assigned a number of powers to the Prosecutor's Office: 1) formation of an annual federal plan for implementing control and supervisory measures in relation to controlled and supervised facilities; 2) the need to coordinate unscheduled control and supervisory measures.

The expansion of powers made it possible to reduce a number of control and supervisory measures and systematize the joint work of state control bodies and prosecutor's offices. There appeared a great number of amendments and additions to the Russian legislation on control and supervision.

To give an unambiguous assessment of the legal necessity of frequent amendments and additions to the legislation on control and supervision seems to be a very difficult task, given the fact that the law under consideration was had been amended and supplemented more than 70 times for 10 years of its operation. The changes were made in several (sometimes opposite) directions: 1) favorable conditions for Russian entrepreneurship development were fixed, 2) an expanded range of powers was assigned to the state control and supervisory bodies, thus influencing development of business entities in the country [7].

The legislative amendments led to the distortion of the legal integrity of the state control and supervisory mechanism, clearly observed in this mechanism functioning. Considering the law enforcement practice of implementing the norms of the above-mentioned law, it is possible to identify a number of violations committed by state control and supervisory bodies in the course of their activities. Examples will be given below in ascending order depending on the number of violations found out:

– limiting powers of economic entities that are not established by law;

– establishing restrictions that infringed upon economic freedom of entrepreneurs when conducting business;

– carrying out inspections in the absence of a regulatory framework (orders, instructions of authorized bodies) for the implementation of verification measures;

– demanding from controlled entities of a larger volume of documentation than required by law and is determined by the subject of verification [8].

The fourth stage of development and formation of the control and supervisory institution is the period from 2012 to the present.

While endless amendments and additions were made to the Law No. 294-FZ "On protection of the rights of legal entities and individual entrepreneurs in the exercise of state control (supervision) and municipal control", on the basis of the Instruction of the President of the Russian Federation of December 30, 2015 No. Pr-2724 and Paragraph 6 of the Decree of the Government of the Russian Federation of April 1, 2016 No. 559-r, the Government of the Russian Federation and the relevant ministry proceeded to the elaboration of a new draft Federal Law "On state control (supervision)

and municipal control in the Russian Federation".

Earlier, the legislative initiative adopted certain amendments that concerned the institute of state control and supervision in the Russian Federation. So, the new law established legal and organizational foundations of the system of state control (supervision) and municipal control of the Russian Federation. It is worth noting that the provisions proposed in the draft law concerning changes in the organizational and legal system of control and supervisory bodies at its various levels (federal, municipal) had repeatedly been the subject of scientific discussion both in the scientific community and among representatives of state authorities and business.

For the second time, the draft law was submitted in mid-2019. It determined procedural forms of the control and supervisory mechanism, which was its distinctive feature from the original legislative initiative, focused on changing the system of control and supervisory bodies. At the end of 2019 and the beginning of 2020, the Government of the Russian Federation submitted several draft laws to the State Duma of the Russian Federation for consideration, the first on state control, the second on mandatory requirements.

In mid-2020, the State Duma of the Russian Federation adopted in final reading the draft Federal Law No. 248-FZ of July 31, 2020 "On state control (supervision) and municipal control in the Russian Federation" and the Federal Law No. 247-FZ of July 31, 2020 "On mandatory requirements in the Russian Federation".

The first law came into force on July 1, 2021 and fixed the updated system of state control and supervision at various levels (federal and municipal). The stages of carrying out specific control and supervisory activities were spelled out in detail, as well as the institutions and tools necessary for implementing this activity and the work of the entire control mechanism.

The novelty of the Law No. 248-FZ "On state control (supervision) and municipal control in the Russian Federation" is the introduction of a risk-based approach into the system of control and supervisory authorities. This approach should be used when control and supervisory bodies identify objective patterns that could serve as reasons for violation of legislation. Therefore, these structures need to develop risk criteria and indicators, in which the objective reason can be or be determined as negative, and only in this case they will decide whether to carry out the necessary control or supervisory measures [9].

The institute of a risk-based approach for Russia is an innovation in the system of control and supervisory authorities and has been applied in practice quite recently. The Federal Law "On protection of the rights of legal entities and individual entrepreneurs in the exercise of state control (supervision) and municipal control" has a separate chapter devoted to it. Risks of causing damage (harm) is interpreted as a possible occurrence of a fact (event), which may lead to negative consequences, expressed in harm (damage) to the rights of other subjects or their values, protected by law. For this approach to be applied, risks of causing damage (harm) should be estimated by control or supervisory authorities to establish and determine the possibility (probability) of the occurrence of these facts (events), as well as the scale of possible harm (damage) in relation to the values protected by the legislation on control and supervision.

The legislator has laid down another legal concept when developing this regulatory legal act. Its essence lies in the fact that when control and supervisory bodies apply a risk-based approach, its impact extends not to a certain sphere of legal relations, but to all legal relations that arise or may arise in the process of carrying out control and supervisory activities between the body carrying it out and controlled and supervised objects.

Another novelty of the law is the causal relationship between the frequency of activities carried out by control and supervisory bodies and risk categories. Consequently, it can be said that the legislator smoothly moves away from the conduct of scheduled inspections by supervisory authorities without considering characteristics of controlled or supervised entities in favor of the specification of these entities based on characteristics of their activities and risk categories, controlled or supervised entity belong to.

The Federal Law "On state control (super-

vision) and municipal control in the Russian Federation" establishes a new conceptual apparatus, such as "control and supervisory measures", "control and supervisory actions". It clearly regulates types of control and supervisory measures, in particular: 1) on-site inspection; 2) control purchase; 3) monitoring purchase; 4) selective control; 5) inspection visit; 6) raid; 7) inspection. So, control and supervisory bodies, when carrying out their activities, move away from the monopoly of inspections.

Besides the law defines the following range of control and supervisory actions: 1) inspection; 2) search; 3) interview; 4) receipt of written explanations; 5) request for documents; 6) sampling; 7) instrumental examination; 8) test; 9) expertise; 10) experiment.

So, it can be concluded that the Law No. 294-FZ contains both norms of a material nature that establish a conceptual and categorical apparatus in the work of the control and supervisory mechanism and regulate the basics of the activities of control and supervisory bodies and procedural norms that establish the procedure for the operation of the entire control mechanism and supervision and ending with the procedure for appealing decisions taken by these bodies.

The legislator focused on operational and less costly measures carried out by control and supervisory bodies in their activities, which positively affected the entire control and supervisory mechanism of the state and made it flexible. In this regard, in scientific literature, the law under consideration is referred to as the control and supervisory procedural code.

Nevertheless, there are shortcoming in the law, one of them is the absence of the term "control and supervisory measure". So, at the stage of drafting the bill up to the final version of the law under consideration, this term was present in the final version, but, unfortunately, not adopted. At that time, the definition of a control and supervisory measure was defined as a set of interrelated actions, including control and supervisory actions performed by an authorized person(s) and persons involved by him(them) within the framework of control and supervisory proceedings in order to assess compliance by controlled persons with mandatory requirements. Consequently, the terms "control and supervisory measure" and "control and supervisory action" are correlated as a whole and a part.

One of the main novelties of the regulatory legal act under consideration is an attempt to legislate the principles of state control and supervision. The formation of these principles into a single system, regardless of the level of control and supervision (municipal or federal) [10]. According to the legislator, principles of state control and supervision are a fundamentals and rules that have a general, mandatory and universal character and their effect extends to all participants in the control and supervision system, including such specific areas as organization of control and supervisory activities, work of a unified system of control and supervisory bodies.

*Conclusions*

After analyzing the development of the state control and supervision institute in Russia and the influence of domestic legislation on it, as well as considering the opinions of a number of legal experts on the essence of control and supervision, we can conclude that the terms are not synonymous. The differentiation of control in the person of control bodies and supervision in the person of supervisory bodies needs legislative consolidation [10].

The study of the current legislation in this field shows that the last stage of reforming the control and supervisory mechanism and its activities, expressed in the development of the Federal Law "On state control (supervision) and municipal control in the Russian Federation", has a number of advantages: the scope of the risk-based approach application is changed and expanded; control and supervisory measures and instruments are fixed in the law; the total application of inspections as the main tool in the work of control and supervisory bodies is refused; the unified system of principles is created, on the basis of which a control and supervisory mechanism is being worked out and developed [11]. Nevertheless, the problem of systematization and unification of the conceptual and categorical apparatus in the field of control and supervision remains unresolved.

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# Assessing Radicalization Risks in the Adolescent and Youth Environment

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Abstract

*Introduction*: representatives of socio-psychological science focus their attention on the problem of radicalization due to the social demand to prevent this phenomenon in the adolescent and youth environment. The development of tools for assessing radicalization risks is a very important tool for early diagnosis. *Purpose*: theoretical and analytical research to critically analyze current models for assessing radicalization risks. *Results*: considerable attention is paid to the analysis of tools for assessing radicalization risks, used in penitentiary systems of different countries. In addition, risk assessment models in a wider population are discussed. *Conclusion*: the conducted study shows that it is necessary to consider the radicalization process through the prism of such a theoretical tradition that would be adequate to the study of the phenomenon itself (radicalization, being a process of terrorism legitimization, is understood as a phenomenon occurring in a group context). In addition, the model for assessing radicalization risks should be based on a theoretical tradition that would receive a solid experimental test.

Keywords: terrorism; radicalization; risk assessment; radicalization risk assessment models; adolescent and youth environment; explanation levels in social psychology, social identity.

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*Introduction.*

Among numerous definitions of terrorism that exist in the literature, we will consider the following: “actions of non-state actors associated with the threat or actual use of illegal force or violence to achieve a political, economic, religious or social goal through fear, coercion or intimidation” [1, p. 496]. Terrorist activity violates the fundamental prohibition of violence, directed at unarmed, innocent citizens, existing in different cultures and religions [1].

Radicalization is understood as the process leading to the commission of an act of terrorism and legitimization of terrorism [2]. A significant addition to the above definition of terrorism is an indication that terrorist activities are carried out by a group, similarly, it is important to understand that the process of radicalization is a process occurring in a group context.

The above indicates the importance and relevance of studying radicalization process mechanisms, as well as identifying predictors of involvement in terrorist activities. Only this kind of knowledge can be used as the basis for a risk assessment model. The purpose of the theoretical and analytical study proposed in this paper is to critically analyze current models for assessing radicalization risks.

*The core.*

**Critical analysis of models for assessing radicalization risks.**

Risk assessment (in the most general sense) can be defined as an attempt to “forecast the probability of a future, usually negative event, by considering factors that are believed to be associated with the probability of an event” [3, p. 283]. Mental health specialists use such tools to decide on risks of an individual committing a particular type of violence [3; 4]. The analysis of the tools used to assess risks in case of radicalization and transition to terrorist acts indicates that they are based on the same logic [4].

On the one hand, the advantages associated with the use of risk assessment tools are obvious, since the identification of individuals vulnerable to the process of radicalization is a way to prevent radicalization. The earlier this happens, the greater number of positive effects it has. Considering stage-by-stage radicalization models analyzed by M. King and D. Taylor [5], we observe that the radicalization rates vary from stage to stage and the mechanisms involved in this process differ.

On the other hand, there is a number of serious obstacles to assessing or forecasting risks of committing terrorist acts by an individual taking a radicalization path. One obstacle concerns the problem of forecasting in psychology in general [6]. Still, turning to step-by-step radicalization models, it becomes obvious that not all individuals who begin the process of radicalization reach its end [5; 7]. This is especially vividly demonstrated in the model proposed by F. Moghaddam, where radicalization is defined as a progressive process realized through the passage of 6 stages (or levels). The passage of each stage brings an individual closer to terrorism, making this action more legitimate [5; 7].

An attempt to forecast person’s action is most likely based on the postulates of the theoretical model or regularity and requires special care in application [4; 6]. This leads to another obstacle of an ethical nature: making a forecast may mean that an individual is giv-

en a kind of label regarding the risk of committing terrorist acts [4].

Besides, the logic of building a risk assessment model is not new, the obstacles outlined above on the way to make a forecast should be taken into account in order to find a more reliable and subtle tool for assessing radicalization risks

Traditionally, there are three approaches to risk assessment. On the one hand, we are talking about an approach in which experts who make decisions about risk assessment appeal to their professional experience and knowledge of the individual's characteristics. Such an expert assessment has shortcomings associated with various kinds of biases, effects of social perception, subjectivity in decision-making [4]. On the other hand, it is possible to distinguish between an approach based on risk assessment using a number of indicators, on the basis of which an integral indicator of an individual's risk is calculated with a help of a certain algorithm. This approach has some advantages, in particular, procedures and criteria are explicated here, on the basis of which decisions are made about risks, vulnerability of the subject, and probability of committing an act [4]. At the same time, as a serious drawback of this approach, one can see the theoretical construction that underlies the assumption on the basis of which a system of empirical indicators for measuring risk is being developed.

Finally, it seems possible to talk about an intermediate variant if the previous approaches are interpreted as a kind of continuum poles. The third variant combines the first two, which allows, up to a certain limit, to overcome shortcomings of each approach and use available advantages. Backing the stance of K. Sarma, we can argue that it is the third approach that turns out to be the most flexible and adequate in the situation of uncertainty (characterized by a lack of information when making a decision about risks) [4].

Current models for assessing radicalization risks have certain specifics, since they have been primarily used in the penitentiary system of some countries. Special programs to train penitentiary system employees give the opportunity to use various tools for assessing radicalization risks. As a result, decisions are made about the reintegration of convicts [4]. In addition, radicalization in prisons is an urgent problem, repeatedly discussed in literature [8, pp. 138–153]; the application of the tool for estimating radicalization risks helps develop and implement a monitoring system among convicts.

A monitoring system to identify the youth outside penitentiary institutions vulnerable to radicalization is developed to a lesser extent [4; 9]. Reflecting on the possibilities of using the currently available experience of risk assessment, we will undertake a critical analysis of relevant models used mainly for convicts in places of deprivation of liberty [4; 10; 11]. Tools and their mechanisms used by security specialists can be identified. Besides, some models are designed to assess risk in the general population (aged 12–14). Such risk assessment tools are of interest in the logic of our theoretical and analytical research. What is more, consideration of advantages and shortcomings of these models helps us work out a more effective system for assessing radicalization risks in the adolescent and youth environment.

Radicalization risks are estimated on the basis of one or another model [10; 11]; we will consider each of them.

***The VERA-2R model (Violent Extremist Risk Assessment 2 Revised)*** is designed to estimate the likelihood of extremist behavior associated with violence to further elaborate and use an appropriate control system. It is applicable to evaluate all ideological types of extremism (political, religious, social) among young people and adults. Thirty-four indicators are grouped into 5 domains: 1) beliefs, attitudes and ideology; 2) social context and intention; 3) history, actions and capacity; 4) commitment and motivation; 5) protective and risk-mitigating indicators. There are 11 additional factors (criminal history, personal history, mental distress). An expert makes a decision on the basis of indicators on the scales. Severity of each parameter can be estimated as low, moderate, and high. The model assumes that risk and protection fac-

tors are dynamic and changeable formations, hence repeated measurements are required to track individual dynamics [10; 11].

***The ERG22+ model (Extremism Risk Guidelines 22+)*** [10; 11] is designed to assess the likelihood of extremist behavior associated with violence to further elaborate and use an appropriate control system. This model is suitable for assessing risks in case of any type of extremism (political, religious, social) among those convicted of extremism (of any kind). Due to the screening system of the model, it can be used in relation to those who have not been convicted of extremism, but can be vulnerable to radicalization. The system includes 22 risk factors organized into three domains: 1) engagement; 2) intent; 3) capability. At the same time, the "+" sign in the model name suggests that a number of additional parameters can be used when making a decision [10; 11].

***The RRAP model (Radicalization Risk Assessment in Prisons)*** [11] is aimed at assessing a vulnerability degree and extremism risks to develop follow-up measures. The target population consists of convicts prone to extremism (political, religious or social) associated with violence. This tool integrates information received at various levels of the penitentiary institution hierarchy, namely: 1) information received from the management; the key here is to obtain data on situational factors of radicalization; 2) information given by ordinary employees (security guards, educational department representatives, etc.). Monitoring convicts' behavior, it is possible to record changes in it that indicate the process of radicalization (a kind of transition from the cognitive level to the behavioral); 3) information received from convicts themselves (screening tool). Thus, the decision is made on the basis of accumulating all the information. In general, the model includes 39 items grouped into 9 domains [11].

The purpose of ***the IR46 model (Islamic Radicalization)*** [10; 11] is to detect signs of radical Islamist behavior and readiness for committing violent acts. It is limited only to Islamist extremism, while being addressed to individuals from the general population; it is aimed at those who show signs of extremism. The age of the target group is 12 years and over. Forty-six indicators correspond to two spheres: ideology (20 indicators) and social context (26 indicators), while both spheres operate simultaneously, in each case either one or another outweighs [10; 11]. At the same time, the model takes into account the thesis that the process of radicalization unfolds over time, passing through stages (initial stage, social alienation stage, jihadization – the stage when an individual accepts the need to use violence, finally, at the last stage there is a transition to extremist actions or jihad). Risk indicators are dynamic and can change, so the model is more aimed at assessing the current state than at forecasting. The repeated use of indicators shows the dynamics of individual's radicalization risks.

***The RADAR-iTE model (Rule-Based Analysis of Potentially Destructive Perpetrators to Assess Acute Risk – Islamist Terrorism)*** is the most specialized one for the penitentiary context, since it is aimed at seeking out Islamists who are ready to commit violent acts, i.e. we are talking only about Islamist extremism. The target population is those already considered to pose a very high risk (well-known terrorists) who are about to be released from prison. The assessment process is carried out in two phases: 1) gathering of all available information about the extremist individual by a penitentiary system employee; 2) a questionnaire (73 questions) concerning a convicted person (an individual with a high risk level). It includes questions concerning personal and social life events and social network, as well as proof of jihad-motivated travel, history of violence, etc. [11].

All these models appeal to different explanatory constructs: for example, it is an ideology in the Violent Extremist Risk Assessment, an identity in the Extremism Risk Guidelines, and a social environment of the individual in the RADAR-iTE model [11]. The Islamic Radicalization model was initially based on the ideas of F.M. Moghaddam [7]. Attention is drawn to the fact that the mismatch of empirical facts and the theoretical framework led to the rejection of the logic of 6 stages of the model

leading to the commission of a terrorist act, which, from a theoretical point of view, turns out to be debatable.

The Violent Extremist Risk Assessment model combines proposals of some models and theories, including the model of M. Sageman, theories of A. Bandura and A. Kruglanski [10; 11]. In the Extremism Risk Guidelines the theoretical framework combines ideas belonging to various conceptual schemes: the theory of reasoned action by A. Ajzen and M. Fishbein [10], the theory of authoritarian personality by T. Adorno [10], and the social identity theory by H. Tajfel [12; 13].

The models differ in the number of risk factors on the basis of which a decision is made about radicalization risks. In the Violent Extremist Risk Assessment and the Islamic Radicalization, it is assumed that an expert making a decision about radicalization risks relies on additional risk factors [11]. Protection factors vary from a small number of fixed variables (Violent Extremist Risk Assessment) to an unlimited number (Islamic Radicalization) [11]. Along with critical comments, it is worth mentioning that risk factors are considered as dynamic and changeable formations, which makes all these systems tools for monitoring radicalization risks

All these instruments are intended for professional use and require special training to make decisions [11]. The analysis of models for assessing radicalization risks, used mainly in the penitentiary system of a number of countries [10; 11], suggests that these tools require the most serious theoretical and methodological understanding and experimental verification.

Finally, we can talk about some other models that go beyond the penitentiary system. They are of particular interest, since we plan to work out a model for assessing radicalization risks in the adolescent and youth environment.

***The IVP model (Identification of Vulnerable People)*** is aimed at identifying individuals vulnerable to recruitment for extremist actions [10]. The target population is individuals who may be prone to radicalization (this tool is applicable to a wide audience). The model includes two rows of indicators. Common risk indicators include the following: 1) cultural and/or religious isolation; 2) isolation from family; 3) risk-related behavior; 4) sudden change of religious practice; 5) rhetoric related to violence; 6) negative peer influence; 7) isolated peer group; 8) hate-related rhetoric; 9) political activism; 10) basic military training; 11) travel/residence abroad. The second group of indicators (the so-called “red flag” indicators): 1) rhetoric related to death; 2) membership in an extremist group; 3} contacts with known recruiters/extremists; 4) advanced military training; 5) participation in foreign military operations [10]. The model is intended for the use by specialists in the field of education.

***The MLG model 2 (Multilevel Governance 2)*** involves identification of individuals who are ready to commit violent acts as part of a group, including terrorism, i.e. we are talking about any variant of extremism. The target audience is individuals from the general population (aged 14 and over), members of any groups. The model includes 16 main risk factors grouped into four areas: individual, individual-group, group and group-social [10].

Finally, ***the TRAP-18 model (Terrorist Radicalization Assessment Protocol)*** is aimed at identifying individuals who are ready to commit an ideologically motivated and intentional act of violence against a person or group of persons. The target population is individuals who are ready to participate in ideologically motivated violence (identified by law enforcement officers). On the one hand, this model is more focused on single terrorists; however, on the other hand, it can also be applied to cases of terrorist activity in a group.

As noted above, among those models used in the penitentiary system, some can also be used in a wider population.

The controversial use of these risk assessment models is due to a number of features: even leaving aside ethical issues (although the models mention compliance with the ethical codes of psychological associations of certain countries [10]), there remains an open question about radicalization mechanisms these models rely on. Do they proceed

from the concepts that have been tested in experimental studies? At best, these evaluation models rely on a combination of ideas belonging to a number of theoretical models [10; 11]. At worst, the models are descriptive, based on a number of observations. In our opinion, the problem in the strategy of the synthetic theoretical framework is that these theories are individually empirically or even experimentally tested, but their fragmentary use requires appropriate consideration at the theoretical and methodological level, since the theories themselves belong to different levels of socio-psychological explanation, from intra-individual to ideological [14]. Experimental verification is necessary to establish causal relations.

Among other things, it is disputable whether the decision made is accurate, there are effects and phenomena of social perception that distort perception at the interpersonal level, complicating the accuracy of assessments, and a fundamental attribution error is allowed.

Along with the models discussed above used to assess radicalization risks in the general population, it is worth mentioning that in a number of countries in educational institutions and organizations working with young people, indicator systems are used to assess the vulnerability of individuals [4]. One system was developed as part of the SAFIRE project based on consultations with anti-radicalization specialists (N=28). This system includes indicators (21 signs) grouped in this way: 1) identity and identity search; 2) ingroup and outgroup differentiation; 3) social interaction that promotes violence, combined with distancing from the usual environment (friends and family); 4) image transformation; 5) association with extremist groups [4]. The system is based on the method of observing individuals' behavior.

Another example of such a system is a practical guide aimed at diagnosing the degree of vulnerability to radicalization. The first level includes features of the cognitive-emotional spectrum that make a person vulnerable to the influence of a terrorist group. The second level is a number of signs that indicate an individual's willingness to use violence, combined with the dehumanization of certain categories targeted by terrorist groups. The third level concerns infliction of harm (we are talking about knowledge, skills and abilities, free access to appropriate equipment) [4]. In general, we can talk about some allusions with step-by-step radicalization models [5].

Not diminishing the significance and importance of available risk assessment tools, nevertheless, we will make a number of critical comments. On the one hand, in both cases, there is neither clear description of psychological radicalization mechanisms, nor of a theoretical model that would substantiate this terrorism legitimization process. On the other hand, in both cases it seems possible to state the presence of certain allusions to the social identity approach, focused on psychological processes (social categorization, social comparison and social identification) that clarify how people's social identity differs from personal identity and how social identity is formed and operates [15, pp. 379–398].

In the first system an individual is radicalized as a member of a group [16; 17, pp. 75–85], which constructs a certain social reality for him/her, forms a social identity, and as a consequence distances him/her from the usual environment (family and friends).

The second system proposes to determine radicalization by observing the behavior of radicalized subjects with a set of indicators; so, the parameters of one of the levels will become clear in the logic of the social identity approach: for example, groups with extremist and radical views set their members social reality, determine what is right, and what is not. Consequently, group members receive an unambiguous basis for evaluating representatives of the outgroup, dehumanizing them, which, as a result, justifies any actions against these people [18, pp. 19–35].

Despite certain allusions to the social identity approach, in particular, it concerns the search for identity (in fact, social identity), intergroup perception (in- and outgroup differentiation), distancing from close surroundings (family and friends), and connection with

extremist groups can be interpreted as a change of identity; the however, both risk assessment systems are not formulated within the framework of this approach, and do not fully use its capacities, do not rely on the logic and mechanisms of the approach, which would increase the value of these models.

It is worth noting that the recognition of signs associated with radicalization in both systems indicates that an individual has passed a significant part of the path called radicalization (in accordance with the definition used above [2], this is the path leading to terrorism legitimization). In this regard, the technology of risk assessment should be based on diagnostic tools that would allow recognizing radicalization signs at an earlier stage. It can be assumed that the speed of the radicalization process differs at the very beginning and the end of this path. As the analysis of the stage-by-stage radicalization models shows, initially "radicalization events" occur mainly in cognitive terms and at the stages close to the radicalization process completion this process turns into the behavioral plan and the plan of social practices and relationships. This feature is also reflected in the risk assessment models discussed here. So, in both models, visible manifestations correspond to such a point on the radicalization path, when a significant part of the path has already been passed.

These examples clearly demonstrate that a radicalization risk assessment model should have an adequate theoretical scheme, the explanatory power of which correlates with the radicalization process specifics, in which the relationships between variables are conceptualized and based on experimental facts.

The current situation is developing in such a way that the needs of practice for the development of a tool to estimate radicalization risks are still ahead of the possibilities of psychological science. This concerns, first of all, the fact that the risk assessment model, which could be used to forecast the probability of committing terrorist activity, necessarily assumes an experimentally tested theoretical framework, and this, according to the current study results, is still the zone of proximal development in the field of radicalization risk assessment.

*Conclusion.*

A critical analysis of the existing radicalization models helps conclude that it is necessary to consider the radicalization process through the prism of such a theoretical tradition that is adequate to the study of the phenomenon itself (radicalization, being a process of legitimization of terrorism, is understood as a phenomenon occurring in a group context).

The speed of the radicalization process differs at the very beginning and at the end of this path (coming to the legitimization of terrorism). As the analysis of stage-by-stage radicalization models [5] reveals, initially "radicalization events" occur mainly in cognitive terms, then at the stages close to the completion of the radicalization process – in the behavioral plan, the plan of social practices and relationships. It is this transition that is often regarded as "rapid radicalization", although the behavioral plan of radicalization is preceded by the processes hidden from observation, occurring at the cognitive level.

In the risk assessment models currently used [4], this fact is taken into account. However, they are based on the method of observing behavioral characteristics of a radicalized individual, that is why vivid manifestations correspond to a point on the radicalization path when a significant part of the path has already been passed. The complexity to construct a model for radicalization risk assessment, based on early recognition of radicalization signs, is due to the fact that the focus is on what is happening at the cognitive level of an individual vulnerable to radicalization; each moment of the radicalization process probably has its own cognitive affective features; the diagnostic tool assumes a certain subtlety in order to prevent erroneous judgments about vulnerability of the subject.

The critical analysis of risk assessment models based on at least some theoretical basis allows us to talk about the need to develop such a model, which would proceed from a single approach, and not from a set

of ideas borrowed from a number of theories belonging, moreover, to different levels of the epistemological continuum [14]. Combining ideas will require appropriate theoretical and methodological substantiation of the provisions followed by experimental verification.

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# Prejudice against Psychology as a Factor in Increasing Extremity of the Service and Maladaptation of Penal System Employees

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Abstract

In the article, the authors consider the problem of prejudice against psychology and its creative possibilities on the part of the staff of penitentiary institutions. *Purpose*: based on the generalization of theoretical materials and analysis of the practice of activity in penitentiary institutions to show that in conditions of constant impact of quantitative and qualitative factors of penitentiary activity on the personality of employees, they should be ready for aggressive actions of inmates. Without professional psychological assistance, employees' adaptation process and behavior in extreme situations can be affected and risks of developing professional destructions can be created. *Results*: the attitude to uncertainty is considered by the authors as a personality trait underlying adaptation processes and processes to perceive extreme conditions of work. Having considered specific professional activity of penitentiary system employees, the authors show how the problem of prejudice against psychology increases extremity of service and what subsequent negative consequences can be, in particular in the adaptation period. *Conclusions*: the similarity of the processes of adapting to service activities and extreme conditions is shown, and the emphasis is also placed on the need to work with prejudice against psychological support of employees' activities.

Keywords: adaptation; readiness; penal system; extremity; extreme situations; psychological support; attitude to uncertainty.

5.3.9. Legal psychology and security psychology.

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*Introduction.*

The problem of adaptation to professional activity is a focal point of many disciplines. Despite a significant amount of both general theoretical and applied research, the specific of this problem lies in its intrinsic relevance, regardless of the current state of society. Any socio-economic, political, environmental and other changes, both positive and negative, make a person adapt to them [1, pp. 186–187; 2, p. 15]. The problem of adaptation to a specific work activity is refracted through the prism of specific conditions and factors caused by the boundaries set by the goal and the tasks it solves, as well as the implementation of a system of actions to achieve them with the individual and personal characteristics available to the subject. The Russian penal system is no exception in this matter.

*Key results.*

In the system of normal functioning of the society, the penal system occupies a special place, since it ensures the security of society not only by isolating offenders, but also by correcting them [3, pp. 8–9; 4]. The official statistics data provided by the Ministry of Internal Affairs of Russia and the Federal Penitentiary Service of Russia can demonstrate the relevance of the penal system activities. So, 1,966,795 cases were registered in the Russian Federation in 2022. Despite the fact that this indicator decreased by 1.9% compared to 2021, there was a rise in registered crimes in 10 subjects [5]. Employees of the penal system work with the convicted to correct them. As of January 1, 2023, 433,006 people were held in penitentiary institutions [6]. These figures show high workload on the penal system employees, who daily interact with this very diverse set of people, for whom the fact of committing a crime is common. The quantitative factor of impact on professional activity presupposes the presence of a qualitative one. This factor, in our opinion, is key in determining the real burden on the staff of the penal system. The qualitative composition of persons held in pre-trial detention facilities and correctional institutions is so diverse that the criteria for assessing and describing the discussed population are also multiple. For instance, according to the criterion of mental state, the spectrum of groups of convicts and persons in custody varies from a relative norm to the presence of mental anomalies within the boundaries of sanity [7, pp. 20–21; 8, pp. 291–293; 9, pp. 250–252]. Disabled people also require a special approach. Convicted persons with disabilities need additional attention and assistance on the part of the staff of the penitentiary system [10]. Besides, suspects, accused and convicted persons differ in terms of age, gender, criminal and prison experience, education level, upbringing characteristics, nationality, belonging to a certain social group, etc. [11, pp. 159–60]. It should also be taken into account that the listed criteria may constitute different combinations. At the same time, we deliberately do not touch on psychological characteristics, as they widen the diversity. All this is reflected in the behavior of persons in places of deprivation of liberty. In particular, convicts in correctional institutions may behave conditionally normally, observing the requirements established by law, or they may violate the regime up to the commission of crimes. Cases of attacks on correctional facility employees, infliction of bodily injuries of various degrees of severity, taking hostages, etc. are rather common [12].

Undoubtedly, the staff of the penal system is aware of such threats and constantly ready for aggressive actions on the part of the special agent. This affects their psychological and physical condition, causes fatigue, overstrain and other forms of depletion of their available resources. So, including for these reasons, professional activity in the penal system is considered extreme [12, p. 142; 13, p. 33–34; 14, p. 3; 15, p. 235–236].

This determines, on the one hand, special requirements for employees' personality, special knowledge, skills and abilities and, on the other hand, for organization of their work and creation of special conditions that take into account these circumstances of the

service, fulfill the supporting and developing functions and are based on modern scientific developments. Psychology here plays an important role, since it has modern achievements in the field of self-regulation of emotional state, overcoming life and professional difficulties, correcting negative personality traits, etc. At the same time, practical implementation of psychological knowledge is often hindered by employees' resistance and unwillingness to participate in psychological activities of both group and individual nature. Such behavior and attitudes may be based on employees' prejudice against psychology [16, pp. 290–297], formed due to the problems currently existing both in penitentiary psychology itself and its perception by the society. The authors have repeatedly covered this issue [16, p. 167; 17, pp. 19–20; 18, pp. 124–125], but it does not lose relevance [19].

In modern psychological science, there is no unambiguous interpretation of the term "prejudice". This phenomenon is provoked by many interrelated factors: economic, political, historical, cultural, socio-structural, socio-psychological.

In foreign psychology, prejudice is disclosed in works of F. Denmark, W. Lippman, D. Myers, T. Nelson, G. Allport, etc., in Russian – G.M. Andreeva, A.I. Dontsov, G.U. Soldatova, T.G. Stefanenko, P.N. Shikhirev, etc. Penitentiary psychologists Yu.M. Antonyan, S.N. Enikolopov, V.M. Pozdnyakov, A.I. Ushatikov and others consider certain phenomena of prejudice in the penal system.

We believe that the most complete definition of prejudice against psychological activity is given by G. Allport, arguing that prejudice is a negative attitude to some outgroup: an inaccurate, unreasonable and generalized attitude, necessarily including an affective reaction [20]. It should be noted that low-skilled psychologists themselves contribute to this state of affairs, discrediting psychology as a scientific and practical field of activity capable of providing assistance.

Hence, this circumstance causes an increase in the level of extreme professional activity of employees of the penal system and their maladaptation.

The maladaptation problem is relevant in the work of any team, but for occupations that have an extreme character, it is especially acute. Researchers note that the adaptation mechanism is developed by a person during his/her life and is used in different conditions [21, p. 8]. Adaptation is the process when a person enters and accommodates him/herself to a new system of professional requirements, values and social norms of behavior in a work team.

Problems and violations of the human adaptation process in various types of labor activity are revealed in the works of S.G. Antipin, I.A. Miloslavova, V.A. Korytkov, M.V. Sinel'nik, S.V. Smirnova, etc. In the penal system, various issues related to professional adaptation of an individual are studied within the framework of pedagogical, psychological and legal science by Yu.A. Aleksandrovskii, Yu.A. Alferov, Ts.P. Korolenko, L.E. Panina, V.B. Salakhova, A.I. Ushatikov, etc.

"Specialists' desire to work in a team and make a career in an organization" is considered as an indicator of their successful adaptation [22]. Besides persons' readiness to link their professional future with the organization, successful adaptation is also expressed in their performance. The higher performance indicators, the greater benefit of employees and the organization. This is an approximate pattern of successful adaptation; the problem is to work with people unable to successfully adapt to professional activity.

The adaptation mechanism factors in the penal system are the following: a period of official activity (initial, during service, after service), adaptation to the environment (including official and off-duty aspects), and specifics of professional activity. The first two factors are sufficiently fully represented by researchers of other professional groups, while the latter one is characteristic of the penitentiary service. Adaptation to the specifics of professional penitentiary activity is of the following types:

– professional (formation and development of professionally significant personality traits and qualities; motivation for the chosen professional activity, professional self-development, striving to achieve professional identity);

– psychophysical (adaptation to service conditions);

– socio-psychological (acceptance of new social roles);

– organizational and administrative;

– economic.

It is also worth mentioning that the success of the adaptation process depends on a significant number of factors, both internal and external, namely: an employee's adaptability level; mentors and psychologists' skills; nature of the socio-psychological climate in the department, etc. [17, p. 20; 23, p. 332].

The problem of successful adaptation and extreme situations have similar elements. We will consider people's willingness to act in a situation and attitude to uncertainty [24].

The term "attitude to uncertainty" has various interpretations in the scientific literature. For example, it can be interpreted as "an individual tendency to assess an uncertain situation as desirable or dangerous", "a kind of psychological discomfort", "a cognitive style associated with the inability to accept stimuli suggesting alternative interpretations without comfort", etc. [18, p. 113; 23, p. 233; 25, p. 529]. So, one way or another, this condition is associated with anxiety and self-doubt and self-confidence. This is an unstable state in which a person can commit actions that endanger both him/her and others. Hence, the process of adapting to professional activity is similar to an extreme situation as something indefinite.

Uncertainty in the activity is understandable for people who are just starting their professional path in a particular position, due to the lack of necessary work experience. At this time, a penal system employee needs to be assisted and supported by all employees of the institution, departments and services.

As a rule, with the accumulation of a certain amount of both life and professional experience, employees of the penal system already act more confidently in various suddenly arising situations, both standard and non-standard, which reduces the level of extremity of the service [18].

At the same time, the way to this level of professionalism, self-confidence is associated with a large number of hardship, overcoming difficulties, experiences, etc. Unfortunately, not everyone can make it, maintaining emotional balance, calmness, the desire to serve and carry out the assigned duties in good faith to the end. The inability to cope with such challenges leads to dismissals in early terms of service and maladaptation. It can lead to alcoholism, increased aggressiveness, sharpness in communication, alienation from the team, etc., which in fact represents the personnel loss, since the likelihood of negligent attitude to the performance of professional duties goes up, employees commit legal violations up to crimes.

*Conclusion.*

It seems that the psychologists' activity in working with penal system employees should be conducted in personal and organizational directions. Thus, the personal direction includes formation of a certain reputation of a psychologist as a person who is a professional in his/her field, confident in his/her professional capabilities, respected by the team, observes ethical principles prescribed by the profession. Employees come to a professional psychologist to solve both professional and personal problems, as well as the psychologist him/herself seeks supervisory help and psychological support as a demonstration of the need for this direction of professional support in the penitentiary system. Only such a psychologist can effectively work with employees' biases about possibilities of psychology.

The organizational direction consists in creating special conditions for conducting psychological work. Specially equipped rooms (offices) give the opportunity for both individual and group work, while maintaining the priva-

cy of classes. Besides, this direction includes management of a temporary resource. Time should be specially set aside for join work of a psychologist and employees. It should be exclusively working hours. In this matter, the position of the institution management, coordinating activities of all subordinate employees, is of great importance. If the management itself negatively relates to the role of a psychologist in the institution or does not attach appropriate importance to it, the overall organization of psychological work is jeopardized with all the consequences outlined in this article.

The indicated aspects of overcoming prejudices among employees of the penal system require special attention of both a psychologist and his/her direct and immediate heads for the normal organization of psychological work.

Obviously, psychological work with employees is not separate from the results of other departments and services of the institution. Success in the work of a psychologist has a beneficial effect on the performance of the entire institution, as it helps preserve the personnel and labor capacities.

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# PEDAGOGY

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# Current State and Promising Directions of Professional and Pedagogical Training of the Penal System Employees to Work with Juvenile Offenders

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Abstract

*Introduction*. The current stage of society's development is associated with the actualization of the problem of professional and pedagogical training of specialists to work with juvenile offenders. More and more attention is paid to the procedure for selecting candidates for service in penitentiary institutions where this category of citizens is held, service conditions, and the system for improving and maintaining employees' professional and pedagogical competence. *Purpose*: to study the current state of professional and pedagogical training of employees of the penitentiary system to work with juvenile offenders. *Methods*: when studying the current state of professional and pedagogical training of employees to work with juvenile offenders, the authors apply methods of theoretical research (analytical, axiomatic, formalization, etc.) and empirical ones (observation, conversation, comparison, questionnaire, interpretation, etc.). *Results*: the current state of professional and pedagogical training of employees to work with juvenile offenders (training in the course of official activity, professional retraining, advanced training) is determined, problematic issues and promising development areas are highlighted; the experience of interaction between territorial bodies of the Federal Penitentiary Service of Russia and third-party educational organizations is described. *Conclusion*: professional and pedagogical on-the-job and off-duty training of employees of the penal system to work with juvenile offenders is carried out nowadays. In juvenile correctional facilities and pre-trial detention centers, classes are organized as part of official training to improve their professional and pedagogical competence. In juvenile correctional facilities of the Federal Penitentiary Service of Russia, advanced training and professional retraining programs are implemented, including topics (sections, paragraphs, etc.) reflect-

ing certain aspects of working with minors. In a number of territorial bodies of the Federal Penitentiary Service of Russia, contracts are concluded with third-party educational organizations. At the same time, despite its relevance, the topic of professional and pedagogical training of employees of the penitentiary system to work with juvenile offenders is currently insufficiently studied. Within the framework of the research presented in the article, the main problematic issues related, first of all, to the organization, consistency and purposefulness of the learning process are identified.

Keywords: vocational and pedagogical training; juvenile offenders; suspects, accused and convicted persons; programs of additional professional education; pre-trial detention center; juvenile correctional facility; penal system.

5.8.1. General pedagogy, history of pedagogy and education.

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*Introduction*

Service in the penal system, especially in institutions where juvenile suspected, accused and convicted persons are held, places high demands on personal and professional qualities of employees. When working with minors, an employee should not only establish psychological contact with them, resolve conflict situations, but also contribute to their correction and resocialization. One of the conditions for achieving the tasks set before the penal system is a high level of development of professional and pedagogical competence of employees of juvenile correctional facilities and pre-trial detention centers, compliance of their professional and personal qualities with their position.

Paragraph 2.11. of the Minutes of the Meeting with the Director of the Federal Penitentiary Service of Russia No. 4 of December 9, 2015 stipulates that when appointing (moving) employees to positions in the juvenile correctional facility, it is necessary to conduct psychodiagnostic examinations in order to identify individual characteristics that allow successful interaction with the minor suspected, accused and convicted. This instruction also applies to the management of institutions.

At the same time, a juvenile correctional facility is not the only institution of the penal system in which juvenile offenders are held. Thus, the specified category of persons can be held in a pre-trial detention center according to a court decision. A pre-trial detention center is an institution where a minor faces prolonged isolation from society for the first time, which, of course, entails a break in the usual circle of communication, forced distancing from his/her relatives, friends, and acquaintances. This circumstance can have a significant impact not only on his/her mental state [1], but also on his/her socio-psychological adaptation [2]. Given this circumstance, one should not underestimate the role of this institution in influencing results of correction and resocialization of the convicted person.

The analysis of modern research on the problem under consideration shows that there are significant differences between minors held in detention centers and juvenile correctional facilities. First of all, this difference concerns minors' adoption of criminal norms and values. Thus, according to the study [3], the level of acceptance of criminal norms and values among minors in pre-trial detention centers is higher than among those serving sentences in juvenile correctional facilities. Many convicts, despite their young age, have early criminal experience and anti-social orientation. Every ninth teenager is intoxicated when committing a crime [4].

According to V.N. Andreev, A.D. Glotochkin, D.V. Sochivko, A.I. Ushatikov, it is in the

pre-trial detention center where a teenager understands his/her new legal status and consequences of the crime he/she has committed and rethinks values, etc.

E.V. Motova notes that minors in places of deprivation of liberty are characterized by increased anxiety, defectiveness of the value system, especially in the field of goals and meaning of life [5].

I.S. Ganishina and A.V. Vetra highlight that minors in custody are characterized by demonstrativeness of behavior, inability to assess their behavior, brusqueness, cynicism, egocentrism, superficiality in contacts, impulsivity, disregard for moral and ethical values, aggressive reactions, reduced guilt, emotional immaturity, conflict, propensity to physical and verbal aggression, increased conceit, etc. [6].

The results of another scientific study show that many juvenile offenders may have difficulties with self-control of emotional state and behavioral reactions, be embittered and vindictive, as well as show other negative qualities [7].

These circumstances impose additional responsibility on employees, primarily related to the psychological and pedagogical support of this category of citizens.

According to E.V. Zautorova, if a correctional institution employee has a positive attitude to the process of education and shows personal readiness for its implementation, professionalism and competence in this area, then he/she will certainly enthrall minors, thus ensuring effective organization of this process [8].

It should be noted that employees are a pattern of strict compliance with the rule of law and moral requirements for juvenile offenders to follow. An employee without appropriate qualities and competence cannot organize effective work on the education of juvenile offenders. Moreover, in case an employee does not comply with moral norms, but demand their observance from minors, it undermines the very essence of educational work, as well as reduces the authority and importance of the employee in the eyes of pupils.

According to E.V. Zautorova and N.G. Sobolev, the penal system employees fulfil the following tasks in their work with juvenile offenders:

– to form a socially-oriented approach to life phenomena;

– to change their worldview;

– to stimulate the need and desire for activity;

– to organize specific types of activities, achieving a dialectical combination of consciousness and activity to change and develop the personality of a teenager [9].

Considering the role of employees of juvenile correctional facilities and detention centers in the lives of juvenile offenders, A.I. Savel'ev and A.A. Urusov note that if penitentiary institutions have not achieved or have low positive results in changing negative traits and behavior of adolescents, then the probability of repeated crimes commission increases [10]. To prove the stated above, we present the data of the research conducted on the basis of the Research Institute of the Federal Penitentiary Service of Russia, focused on repeat crimes of juvenile suspects, accused and convicted persons [11].

The study involved convicts who repeatedly served their sentences in places of deprivation of liberty, previously convicted at a minor age and served their sentences in juvenile correctional facilities. The sample consisted of 1,159 convicts released from juvenile correctional facilities no more than 10 years ago. According to the data obtained, with a simultaneous decrease in the number of articles for crimes against property and crimes against public safety among these convicts, there was an increase in the number of articles for crimes against the person, against health and public morality, against sexual inviolability and sexual freedom of the individual. In other words, adult convicts previously served their sentences in juvenile correctional facilities are more likely to recommit serious and especially serious crimes, for which they subsequently serve their sentences already in correctional institutions.

Penitentiary scientists (A.A. Andreev, A.V. Vilkov, F.I. Kevlya, L.V. Kovtunenko, T.V. Kirillova, S.V. Kulakova, etc.) recognize fundamental differences in the work with mi-

nors from the one with other categories of the suspected, accused and convicted. The main purpose of professional and pedagogical training of the penal institution staff to work with juvenile offenders is to provide them with the basics of psychological and pedagogical knowledge and skills necessary for the organization of effective educational work with this category and promote the development of their pedagogical thinking.

*Methods*

To identify the current state of professional and pedagogical training of the penal institution staff in working with juvenile offenders, methods of theoretical and empirical research are used. The theoretical methods applied are analysis, comparison, generalization and systematization of currently available data (scientific literature, research, etc.) on the research problem, while the empirical ones – questionnaires, observation, conversation, analysis of regulatory documents on the research topic, as well as analysis of activities conducted by employees of various departments and services presented in journals of individual educational work with minor suspects, accused and convicted persons). In addition, the study includes the authors' personal experience in working with employees of the penal system and minor suspects, accused and convicted persons.

*Results and discussion*

The work presents data provided by 19 territorial bodies of the Federal Penitentiary Service of Russia, as well as 10 educational organizations of the Federal Penitentiary Service of Russia (Vologda Institute of Law and Economics of the Federal Penitentiary Service of Russia, Far Eastern Interregional Training Center of the Federal Penitentiary Service of Russia, Kuzbass Institute of the Federal Penal Service of Russia, Tomsk Institute of Improvement of Professional Skills of Workers of FAEP of Russia, Saint-Petersburg University of the Federal Penitentiary Service, Academy of the FPS of Russia, Pskov Branch of the Academy of the FPS of Russia, Samara Law Institute of the Federal Penitentiary Service of Russia, Perm Institute of the Federal Penitentiary Service, Kirov IPKR of the FPS of Russia).

The study was conducted in 38 pre-trial detention centers, where juvenile suspected, accused and convicted persons are held, and in 11 juvenile correctional facilities. In total, 415 employees took part in the study: 83 of them were employees of the psychological laboratory, 83 – of the educational work department, 83 – of the operational department, 83 – of the regime and supervision / security department (hereinafter referred to as the regime department), 83 – of the duty service.

The author chose penitentiary institutions with regard to the Instruction of the Director of the Federal Penitentiary Service of Russia No. 01-63156 of December 23, 2014, stipulating that penal institutions, where minors are held, should organize the work as follows: employees of the psychological laboratory and educational work, operational and regime departments should guide minors in order to carry out a comprehensive impact on minors' personality.

At the same time, employees of the psychological laboratory are not included in the study, since most often it is they who carry out professional and pedagogical training of other institution employees involved in guiding juvenile offenders. We will consider results of the survey of employees of the educational, operational and regime departments, including the duty service (332 people).

Before proceeding to the description of the content of professional and pedagogical training of the penal institution staff to work with juvenile offenders, we will consider the level of their education.

According to the Instruction of the Director of the Federal Penitentiary Service of Russia No. 01-63156 of December 23, 2014, candidates from among persons with psychological and pedagogical education or possessing psychological and pedagogical knowledge are prioritized for positions providing the educational process with minor suspects, accused and convicted persons. However, as our research has shown, most employees of regime / security, operational, educational departments, duty shift have higher legal education (50.6%), 12.7% – higher economic, technical and other higher education, 11.7% –

higher pedagogical education, 9% – secondary full general education, 8.4% – secondary specialized vocational education (legal direction), 6.6% – secondary specialized vocational education (pedagogical direction), 2.1% has completed advanced training courses and professional retraining in pedagogy and psychology [12].

We will present results of the analysis for each department and service in more detail:

100% of the interviewed employees of the operational department has higher legal education (8.4% – higher pedagogical education, 3.6% – higher economic, technical or other higher education, 1.2% – higher psychological education).

Most employees of the regime department also have higher legal education (61.4%), 30.1% of the respondents – higher economic, technical and other higher education, 7.3% – higher pedagogical education, 2.4% – higher psychological education, 2.4% has completed advanced training courses and professional retraining in pedagogy and psychology.

All employees of the educational department have higher education (39.8% – higher legal education, 27.7% – higher pedagogical education, 16.9% – higher economic, technical or other higher education, 9.6% – higher psychological education, 6% has completed advanced training courses and vocational training in pedagogy and psychology).

Among the duty service employees, most employees have secondary full general education (36.1%), 32.5% – secondary special / vocational education (legal direction), 26.5% – secondary special / vocational education (pedagogical direction), 3.6% – higher pedagogical education, 1.2% – higher legal education.

As follows from the presented data, the majority of the penitentiary system employees involved in guiding juvenile offenders do not have psychological and pedagogical education and have not passed advanced training courses and professional retraining in this area of activity.

According to the results of the study of the most typical conflict situations arising between suspects, accused and convicted persons and employees of penitentiary institutions conducted on the basis of the Research Institute of the Federal Penitentiary Service of Russia [13], officers with superficial psychological and pedagogical knowledge are more likely than other employees to appear in conflict situations with suspects, accused and convicted persons. If we consider the result obtained in relation to the positions held, then these are employees of operational and regime units.

Nowadays, in order to form professional and pedagogical readiness of employees of penitentiary institutions and bodies to work with juvenile offenders, their targeted professional training is organized. Training is carried out both out of work and on-the-job.

Training of juvenile correctional facility and pre-trial detention center employees in pedagogical support of juvenile offenders is carried out as part of official training. These classes are organized mainly by psychologists of psychological laboratories of institutions and include various areas of training, for example, increasing the conflictological and communicative competence of employees, awareness of issues of age pedagogy and psychology, training in basic forms and methods of psychological and pedagogical interaction with these persons, etc.

The study shows that most employees of regime, operational and educational departments (74.7%) believe that conducting these classes is a prerequisite for effective work with juvenile offenders. Moreover, 55.7% of them note that without this training it is quite problematic to effectively interact with this category of citizens.

Today, the regularity of these classes is often determined by psychologists of psychological laboratories of institutions independently. So, in some institutions they are held quarterly (the most frequent option for conducting classes), in some – monthly or once every six months or less.

It is important to find a favorable time to start conducting professional and pedagogical training. According to the study, most surveyed employees of educational, regime and operational departments believe that it should be started in advance, before the

appointment to a position involving interaction with minors. In addition, it is necessary to involve not only employees whose job responsibilities are directly related to minors, but also employees who perform duties of primary employees in case of their temporary absence (vacation, business trip, sick leave, etc.).

Special attention should be paid to the staff of duty shifts who take up daily duty and whose activity involves interaction with juvenile offenders, as well as their direct leadership (assistant on duty to the head of a correctional facility / pre-trial detention center, deputy assistant on duty to the head of a correctional facility / pre-trial detention center). The main feature of the service of these employees is their round-the-clock presence next to minors, even during those hours when most employees have already finished their working day. Many practitioners note that timely prevention of minors' destructive actions often depends on competence of the duty shift staff.

Thus, it is possible to distinguish the following categories of employees recommended to participate in classes aimed at the formation of professional and pedagogical readiness to work with minor suspects, accused and convicted:

– employees of the educational, regime and operational departments, whose activities are directly related to interaction with minor suspects, accused and convicted;

– employees of educational, regime and operational departments who perform duties of primary employees in case of their temporary absence e;

– duty shifts who take up daily duty and whose activity involves interaction with juvenile offenders, as well as their immediate heads.

When selecting employees for a position involving work with juvenile offenders, it is necessary to take into account employees' personal desire, as well as institution psychologists' recommendations.

The conducted research results show that the employees' personal desire to work in this direction is often neglected. Thus, a significant number of the surveyed employees (47.0%) note that their desire to work with underage suspects, accused and convicted persons has not been considered before being appointed to the appropriate position. This trend is especially pronounced among employees of the pre-trial detention center (88.0% of the employees of pre-trial detention centers against 38.0% of the employees of juvenile correctional facilities).

Neglect of employees' personal desire to work with minors partially determines these employees' attitude to their position. So, according to the study, employees of pre-trial detention centers are dissatisfied with their position and want to have another equivalent position, not related to the work with adolescents, more often than employees of correctional facilities.

Undoubtedly, the employee's lack of desire to continue service in the position also affects his/her general desire to engage in this type of activity, satisfaction with the work functions performed, attitude to him/herself as a professional in this field, current psychoemotional state, susceptibility to the development of such negative conditions as professional deformation and professional burnout [14].

Our earlier research aimed at identifying the level of professional burnout among pretrial detention center employees dealing with various categories of the suspected, accused and convicted revealed that the highest rates of professional burnout were among employees engaged in the work with minors. They had high indicators in the following categories: "exhaustion", "depersonalization", "reduction of personal achievements" [14].

In the course of the study, we also identified problematic issues related to the organization and conduct of classes to form professional and pedagogical readiness in employees to work with minors. So, the most common problems are the following:

– a lack of sufficient working time to search and prepare material for classes;

– difficulties in organizing regular classes;

– insufficient amount of theoretical and practical material (textbooks on legal, pedagogical and psychological issues; reference and periodical literature; visual aids, etc.);

– insufficient motivation of employees themselves to participate in these classes;

– insufficient support for the organization and conduct of these classes on the part of administration, etc.

In addition, the quality and effectiveness of these classes can also be influenced by the staffing of staff positions in a particular institution.

Professional and pedagogical training of employees to work with juvenile delinquents is not limited only to service training within penitentiary institutions, but is reflected in the framework of additional professional education.

The analysis of the programs of additional vocational education implemented in educational organizations of the Federal Penitentiary Service of Russia in 2020–2021 shows that during this time 7 programs of additional vocational education (2 professional retraining programs, 5 advanced training programs) were implemented, in which there was a section (paragraph, topic, etc.) revealing various aspects of interaction with juvenile offenders. These programs had 18 relevant sections, while only 8 of them fully reflected the work with minors. In other cases, such work, not appearing in the title of the section, was considered in them as one of the subsections, or issues of one of the topics.

It should be noted that nowadays there is only one professional development program entirely aimed at training employees serving in institutions where juvenile offenders are held. It is “Concepts and legal bases for the application of restorative justice (mediation) programs to juvenile suspects, accused and convicted persons”).

In addition to the presented types of professional and pedagogical training of employees to work with juvenile offenders, some territorial bodies of the Federal Penitentiary Service of Russia have concluded contracts with third-party educational organizations of various types (general education, professional educational organizations, as well as higher education organizations, organizations of additional education, additional professional education, etc.).

Forms of classes by teachers of educational organizations, the number, and topics under consideration are different. However, it can be noted that issues of mediation and conflict-free communication are the most common topic studied within the framework of the concluded agreements, and study groups include mainly employees engaged in psychological, educational, less often social work. Such a choice of employees is quite natural, since, first, these departments more often contact with minors in the course of their official activities; second, it is employees of these departments who most often conduct classes with employees of other departments and services interacting with minors to improve their professional and pedagogical competence; third, conduct of such classes, trainings and meetings involving teachers of third-party organizations are provided for in Paragraph 2.7. of the Plan of key activities of the Federal Penitentiary Service of Russia up to 2027, held within the framework of the Decade of Childhood. At the same time, employees of these departments most often already have basic knowledge about fundamentals of age pedagogy and psychology, while for employees of operational and regime departments such training is more relevant and in demand due to the lack or insufficient development of relevant competencies.

*Conclusion*

At present, the relevance of the topic of professional and pedagogical training of penitentiary system employees in working with juvenile offenders in isolation circumstances is beyond doubt, since employees’ readiness to carry out this activity largely depends not only on the effectiveness of their work, attitude to their duties, motivation to continue service, but also on the effectiveness of influencing the personality of a teenager who finds him/herself in a difficult life situation. Every employee who interacts with a minor in penal institutions is, first of all, an educator who contributes to the correction and development of the personality of a teenager.

As part of professional and pedagogical training, classes are organized in penal institutions in the framework of service training. In addition, educational organizations of the

Federal Penitentiary Service of Russia implement professional development and retraining programs, which include topics (sections, paragraphs, etc.) reflecting certain aspects of working with minors.

Involvement of competent teachers of third-party educational organizations in the educational process is an important condition for the formation of professional and pedagogical readiness of employees of penitentiary institutions where juvenile offenders are held. Nowadays, some territorial bodies of the Federal Penitentiary Service of Russia have contracts with third-party educational organizations of various types (general education, professional educational organizations, as well as higher education organizations, organizations of additional education, additional vocational education, etc.).

At the same time, noting advantages, it is necessary to point out some drawbacks, primarily related to the organization, regularity and purposefulness of the learning process. Thus, in penal institutions, there is no certain circle of persons to undergo such training, no requirements for the form and regularity of these classes and topics necessary for mandatory study.

Topics studied in the framework of various types of vocational training are rather narrow. Most classes, including those implemented by teachers of third-party educational organizations, are aimed at increasing the conflictological competence of employees. Within the framework of these classes, the issues of mediation and conflict-free communication are studied, which, in our opinion, is not sufficient. It is necessary to expand the subject of classes, include topics that address psychological and pedagogical characteristics of juvenile offenders, traditional and innovative methods and technologies of working with them, etc.

Participation of invited teachers of educational organizations is an important condition that contributes to the deeper professional and pedagogical training of employees in working with minors. However, employees without psychological and pedagogical education, interacting with minor suspects, accused and convicted should undergo such training. For example, employees of operational and regime departments, including employees of the duty service.

Special attention should be paid to the professional and psychological selection of employees standing in reserve for positions related to interaction with suspects, accused and convicted persons, taking into account their personal desire to work with this category of persons.

In conclusion, we would like to note that the circumstances presented in this article require a qualitatively different attitude to professional training of employees in working with minors, focusing on the psychological and pedagogical nature of their activities. We are convinced that any employee, regardless of their position, rank and work experience, involved in working with minors, makes a special contribution to their individual and personal development. However, at present, features of professional and pedagogical training of the penitentiary institution staff in working with minors remain insufficiently studied, which is reflected in the level of practical work with this category of persons.

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