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CONTENT

Research article
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Is There Any Reason to Single Out Penitentiary Law in the System of Russian Law?

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Abstract

Introduction. Public relations are partly regulated by law, defined as rules of conduct, generally binding, formally defined, accepted in accordance with the established procedure, and guaranteed by the state. The system of Russian law includes a set of independent branches of law. The internal structure of the system of law has its own regularities, its development is conditioned by objective necessity, changes in legislation and social relations themselves, that is, the subject of regulation. The article considers existence and changes in the Russian system of law in connection with active identification of new branches of law in it by "progressive" researchers. The views available in science on the possibility or impossibility of recognizing penitentiary law as a branch are analyzed, and the etymological meaning of the term "penitentiary" for Russian reality is revealed. It is noted that initially there were prison studies, which gradually transformed into the science of penitentiary law. The *purpose* of the article is to define the content of penitentiary law as one of the directions of scientific research and refute the idea that penitentiary law belongs to the branch of Russian law. The *methodological basis* is formed by general scientific and private scientific (logical-legal, comparative, system-structural, content analysis) methods of cognition of legal reality. *Conclusions:* the article authors come to the conclusion that penitentiary law, as an independent branch, complex branch or sub-branch of penal law, has not been formed, and the attempts to substantiate it are artificial and theoretically untenable. It is necessary to focus legal scholars' efforts on the problems existing

within traditional and established branches of law, and not on artificial replication of new ones. At the same time, in the system of scientific knowledge, penitentiary science is certainly present as a field of study of issues related to the organization and functioning of the Russian penal system of representatives of various branches of law (penal, criminal, administrative, civil law, etc.).

Keywords: branch of law; system of law; administrative law; penitentiary law; penitentiary science; subject and method of legal regulation; penitentiary norms; penitentiary relations; penitential; correctional.

12.00.01 – Theory and history of the law and state; history of the law and state studies.

5.1.1. Theoretical and historical legal sciences.

12.00.14 – Administrative law, administrative process.

5.1.2. Public legal (state legal) sciences.

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Law is a fundamental and living social phenomenon of objective reality, immanently reflecting state and social reality. Representing an orderly system, it is designed to regulate social relations that develop in various spheres of public life. In the course of historical development of law, its classical branches have been gradually formed: criminal law, administrative law, and civil law. At the same time, the subject of regulating law branches can objectively change; in particular, this applies to the subject of administrative law due to the breadth and diversity of administrative legal relations, increasing role of the protective, human rights function of the branch, and development of administrative justice [13, p. 53; 15, pp. 61–66].

At the same time, it should be noted that formation of the system of law and singling out of its new branches undoubtedly influenced and, obviously, will further influence development of the legal system. As you know, the system of law and the legislative system are not identical concepts. The same can be said about the branch of law and the science of law. However, some authors, unfortunately, do not distinguish between them, thus coming to the erroneous conclusion about formation and existence of new branches of law. For example, this is exactly what happened in one of the last works of K.K. Korablin and A.B. Ostapenko "Development of conceptual foundations of the science of penitentiary (prison) law – prison studies – as an independent branch of Russian criminal law (the second half of the 19th – beginning of the 20th century)" [8, p. 484]. These authors identified the science of penitentiary (prison) law with the branch of law; so, already in the second half of the 19th century it was considered nothing else than an independent branch of Russian criminal law.

In terms of pedagogy, G.F. Shershenevich believe that the huge, ever-increasing material of law does not allow simultaneous study of it without dividing it into parts [31, pp. 513–514]. Over the past decades, all possible branches of law have been designed: advertising law, sports law, transport law, investment law, urban planning law, service law, personnel law, disciplinary law, educational law, digital law, energy law, consumer law, medical law, anti-corruption law, natural resource law, nuclear law, juvenile law, tort law, anti-criminal law, evidentiary law, bioethical law and even law to treat animals, etc. This list can be continued. The analysis of publications in the legal literature over the past two decades alone makes it possible to name more than a hundred new branches of law. Given a huge number of legal institutions in the system of law, it can be concluded that the number of new branches singled out on their basis will only increase in works of "progressive" scientists. What will

remain inside the classical branches of law and how will this contribute to understanding of the system of law as a whole?

Identification of the so-called "militarized" branches of law, such as penitentiary law [5; 23; 33], military law [14; 24], migration law [3; 25; 27], police law [2; 9; 32] is no exception for domestic jurisprudence. At the same time, it is clear that all these names refer meaningfully to the sphere of public administration in the administrative and political sphere, traditionally considered in a special part of administrative law. In addition, in accordance with the previously valid passport of the specialty 12.00.14 – Administrative law, administrative process – these issues are the area of administrative and legal regulation, within which the activities to protect security of the individual, state and society are studied. At present, it is administrative law that mostly divided into new branches or sub-branches. We believe that none of the branches of law cited as an example is today either a branch or even a subbranch of law; moreover, in fact, it is largely pseudoscientific in nature. When training a future professional lawyer, one should always remember about responsibility to society and the state, because a bad lawyer, entangled in the "web" of industry knowledge, is no better than a bad surgeon, amputating or, conversely, sewing the wrong part of the human body. We share the position of the well-known theorist of the state and law N.I. Matuzov that legal nihilism and legal idealism are two sides of the same coin [10, p. 4]. Moreover, the latter is its naive side, without overcoming which the idea of a rule-of-law state is not feasible.

Within the framework of this work, we would like to focus only on the issue of possible distinguishing of "penitentiary law" in the Russian system of law. It is necessary to defend the "honor" of classical branches of law in a reasoned manner. Therefore, in this paper we will consider the etymology of the word "penitentiary", as well as refer to the classical criteria for distinguishing a branch of law – the subject and method of legal regulation.

Formation of a new branch is usually associated with a certain science. Initially, the issues of execution of punishments related to isolation from society were considered within the framework of "prison science", hereinafter referred to as "penitentiary science". According to the pre-revolutionary and Soviet lawyer S.V. Pozdnyshev, penitentiary science is an achievement of modern times [19, p. 7]. The English philanthropist John Howard can rightfully be considered its founder. An invaluable contribution to the development of new science was also made by the English utilitarian philosopher Jeremy Bentham (1748–1832) [34] and one of the followers of the Religious Society of Friends, whose representatives were also called Quakers (from English *quake* – to tremble) William Penny (1644–1718) [35]. According to Quakers, founders of the Philadelphia prison system, the crime is apostasy, and therefore the criminal must be corrected religiously by solitary confinement in prison, called "penitentiary" (from Latin *poenitentiarius* – penitential, correctional) or house of repentance, alone with God and the Bible [19, pp. 7–10]. According to R.A. Romashov, in the context of this understanding, the federal service of punishment execution is translated as "federal penitentiary service" [12, p. 22]. At the same time, as T.N. Demko rightly points out, the term "penitentiary", having become familiar with the execution of criminal punishment, etymologically and by application in the past has other semantic accents [7, p. 135].

In pre-revolutionary Russia, as well as abroad, initially the science of execution of sentences in the form of imprisonment was called "prison studies". Sergei V. Poznyshev used a term "penitentiary science" in his work "Fundamentals of penitentiary science" at the beginning of the 20th century [19, p. 10]. At the same time, there is not a word about "penitentiary law" there. Nothing is said about such a branch of law in a later period. The term "penitentiary science" was initially replaced by the term "science of correctional labor law", and already in modern Russia – by "criminal correctional law". Moreover, the Soviet system for punishment execution, opposed to the bourgeois system, in every possible way avoided using, wherever it was, the concept of "penitentiary". Interest in penitentiary science and penitentiary law reappears in the works of modern legal theorists-representatives of departmental science, as well as criminal and penal law.

Among the most significant and voluminous works at the beginning of the 21st century, the Encyclopedia of penitentiary law is "the first scientific reference publication in domestic and world practice", prepared by 119 authors under the general editorship of R.A. Romashov, substantiating existence of penitentiary law [33, p. 14].

What is penitentiary law in the works of modern authors? It seems that the most appropriate definition of penitentiary law is proposed by R.B. Golovkin. In his opinion, "penitentiary law is a system of legal norms regulating penitentiary relations" [5, p. 25]. However, he does not disclose what penitentiary norms and relations are. In his interpretation, everything is reduced to studying specifics of the impact of penitentiary law on public relations and considering certain aspects of the theory and practice of this process. It is not clear, whether he recognizes penitentiary law as an independent branch of law or its sub-branch, as well as what place this phenomenon occupies in the system of Russian law.

Reflecting on penitentiary law, another well-known representative of the science of penal law V.A. Utkin reduces everything only to discussing concepts of penitentiary institutions, traditionally considered as places of deprivation of liberty (primarily prisons), and the penitentiary system as a system of institutions executing criminal penalties in the form of deprivation of liberty [29, pp. 62–63]. He regards penitentiary law a complex branch of legal knowledge, but *not a branch of law* (emphasis added) and actually identifies it with law of deprivation of liberty. In another work, V.A. Utkin, highlighting socio-political periods of development of the national science of penal law, identifies penitentiary law with penal and correctional labor law [28, p. 70]. R.A. Romashov, for example, does not agree with this approach. In his opinion, the "normative community of penitentiary law, along with norms and institutions of penal law, includes norms of criminal, criminal procedural, constitutional, administrative, civil, labor law and other branches" [20, p. 215]. Here, as can be seen, unfortunately, the trend traditional for Russia has again prevailed: replacement of one name with another (usually borrowed from Western European languages) is considered a means capable of changing the meaningful nature of the concept [23, p. 69].

At the same time, it is worth noting that constitutional law, for example, is included in the normative community of any branches of law, and the legal branches themselves in their "pure form" have never existed and will not exist.

According to S.M. Oganesyan, penitentiary law is a complex branch of Russian law [18, p. 11]. In turn, R.A. Romashov refers penitentiary law to an inter-sectoral normative community [9, p. 41], while not using the concept of complex branch of law. In his opinion, "penitentiary law, in the most general sense of this concept, is a regulatory and protective system that unites legal norms and institutions, which enshrine the rules of possible, proper, unacceptable behavior of subjects of penitentiary relations (penitentiary legal norms), defines fundamental principles and mechanisms for their implementation, establishes incentives for positive behavior and negative responsibility for committing offenses" [22, p. 204].

It should be said that Russian legislation does not have such concepts as "penitentiary law", "penitentiary system", etc. So, identification of penitentiary law as a separate branch is clearly hasty and caused not otherwise than by personal ambitions of some authors, artificially eroding the established and time-tested system of Russian law. To be fair, it should be said that in the Concept for development of the penal system of the Russian Federation for the period up to 2030, approved by the Decree of the Government of the Russian Federation No. 1138-r of April 4, 2021, the term "penitentiary" is used six times. Basically, this term is applied in relation to activities of penitentiary services and penitentiary systems of foreign countries, as well as to international cooperation in the penitentiary sphere. It is obvious that here the meaning of the term "penitentiary" is unambiguous and does not imply other semantic options, otherwise than service for the execution of criminal penalties [7, p. 137].

There is also no academic discipline called "penitentiary law" in departmental educational institutions of the Russian penitentiary system. There was also no such specialty in the new nomenclature of scientific special-

ties for which academic degrees are awarded [16].

The attempt to consider penitentiary law as a sub-branch of penal law should be considered unambiguously erroneous in theoretical terms [4; 24; 26]. The same can be said about the position of Y.A. Golovastova, who believes that in the future, taking into account development of the structure of the branch under study, we can talk about existence of two more sub-branches of penal law: "alternative penitentiary law" and "alternative penal law" [4, p. 87]. It is impossible to agree with these statements. Penal law, in itself, is a relatively small branch of law in terms of volume, which is not independent.

Theoretically, the problem of distinguishing penitentiary law is inextricably linked with the definition of elements of the system of law in general. As is known, the division of law into branches is traditionally based on such objective criteria as a subject and method of legal regulation. According to S.S. Alekseev, a branch of law is characterized by legal originality (a special method of regulation), a specific subject of regulation and structural features [1, p. 131]. Division of law into branches, based on criteria, such as a subject and method of legal regulation, is the most coherent and logical for constructing a system of law. The rejection of this model requires serious reasons and weighty arguments. We share the stance of A.A. Grishkovets that "along with these quite objective criteria, subjective criteria for the formation of branches of law are also known, which, especially recently, are used by modern authors to justify their proposed new branches of law (for example, presence of a codified normative legal act, liability, subjects of law, etc.)" [6, p. 55]. This entails unjustified allocation of a great number of new branches of law. The subject of legal regulation is the primary criterion to single out a branch of law. It is public relations, which, due to their specifics, form special communication systems between legal norms [17, p. 136].

According to R.A. Romashov, the subject of penitentiary law is complex in nature, it unites institutions and relations regulated by norms of various legal branches [9, p. 145]: penitentiary institutions (material and procedural) and penitentiary relations (public and private) or public relations in the field of penitentiary life [4, pp. 48–49].

There arises the question about the specifics and uniqueness of the subject of penitentiary law singled out by some scientists? It seems that there is no specifics in this case. Regulated by norms of law, the relevant public relations relate mainly to constitutional, administrative, criminal, and civil law. Of course, in many ways they are intertwined, but at the same time they remain within their respective established branches.

According to Y.A. Golovastova, the subject of legal regulation of penitentiary law, as a sub-branch of penal law, includes a set of public relations, "which regulate part of the subject of penal law, namely: execution and serving of criminal penalties related to isolation from society; application of means of correction to convicts who are isolated from society; ensuring vital activity of convicts who are isolated from society". The author argues that the "subject of penitentiary law is part of the direction of public relations regulating exclusively execution of criminal penalties related to isolation from society, and outside of it there are norms of penal law regulating execution of criminal penalties not related to isolation from society, and other measures of a criminal-legal nature" [4, pp. 87–90]. This understanding of the subject is extremely week. Currently, these relations are included in the subject of penal law, which is "not overloaded" in comparison with many other established branches of law.

In the fair opinion of S.S. Alekseev, the concept of "subject of legal regulation" covers system-forming factors in a generalized, summary form. With a more detailed analysis of the structure of law, it turns out to be necessary to take a differentiated approach to the circumstances included in the subject of regulation, highlighting, in particular, the content and nature of behavior, position of subjects, objects, conditions for the emergence and functioning of relations, etc. [1, p. 135].

A special method of legal regulation is the second objective criterion for distinguishing a branch of law in the system of law. An independent subject of the branch will form only the kind of public relations that requires a

unique method of regulation. In order to recognize the totality of legal norms as a branch of law, such a qualitatively specific type of public relations is necessary, which in these conditions objectively requires a legal regulatory framework, and above all regulation by means of a special method [1, p. 133]. In penitentiary law, R.A. Romashov considers methods of legal regulation as such: a set of methods used in other branches of law, both imperative (methods of criminal prosecution and justice, authoritative administration, material and procedural legal restriction, etc.) and dispositive (legal support and protection of the rights and legitimate interests of convicts, contractual regulation in the field of educational relations, resocialization and adaptation after release from prison, etc.) [11, p. 48]. Without dwelling on names of the methods, we should note that there is no uniqueness in this criterion either. Having analyzed various points of view on singling out penitentiary law, we come to an unambiguous conclusion that such a branch of law does not exist and cannot exist, since there are no penitentiary relations. At one time, the classic of the theory of law S.S. Alekseev made a correct note that the "really existing types of public relations do not allow the use of various methods, they objectively require only a precisely defined legal method" [1, p. 136].

Conclusions

Thus, there is every reason to unequivocally believe that penitentiary law singled out by some scientists has neither its own subject nor a method of regulation. All proposals for its separation in one form or another in the system of law are reduced to a comprehensive understanding of their content, which simultaneously has both public-legal and private-legal components. This approach, which is very doubtful in terms of its theoretical validity, not only fails to promote development of legal science, but on the contrary, hinders it seriously, since there is no clearly defined the nature of the phenomenon under study. What is more, R.A. Romashov is clearly inconsistent in defining penitentiary law. In one case, penitentiary law, in his opinion, is a regulatory and protective system that unites legal norms and institutions, which enshrine rules of possible, proper, unacceptable behavior of subjects of penitentiary relations (penitentiary legal norms), defines fundamental principles and mechanisms for their implementation, establishes incentives for positive behavior and *negative responsibility for crime commission* (emphasis added) [33, p. 28]. In another case, R.A. Romashov states that "only positive (in terms of legal assessment) forms of communication should be considered as penitentiary legal relations. Illegal relations expressed in offenses are considered as legal facts that cause emergence of protective legal relations in the field of legal responsibility" [23, p. 73]. Distinguishing between penitentiary legal relations and offenses in the penitentiary sphere, R.A. Romashov uses the term "protection-oriented penitentiary legal relations", which result from the fact of a penitentiary offense [21, pp. 47–54]. So, it remains unclear whether the relations arising in the penal enforcement system in connection with illegal acts are penitentiary or they are not included in the subject of penitentiary law?

In conclusion, we would like to note the following. Law is not only a property of the world community, dynamically developing together with the state, but also a fairly conservative social phenomenon. It should not be modified only for the sake of someone's political, ideological, departmental, theoretical and any other dubious, especially pseudoscientific ambitions. Law is a guarantee of civilized relations between people. Without disparaging the cited above authors' contribution to the development of penitentiary science, we believe that neither at present nor in the long term there is any reason to single out "penitentiary law" either as a new branch or even as a sub-branch of law. Inconsistency of this theoretical construction is also confirmed by the fact that representatives of academic and university science of the theory of law and the state do not support the "departmental" concept; moreover, they do not even find it necessary to pay at least minimal attention to it. It seems that it may be possible to consider penitentiary law in the system of law within the framework of public administration in the administrative and political sphere, which is included in a special part of administrative law. It seems reasonable to concentrate

scientific thought, including “departmental” thought, not on endless expansion of branches of law, but on problems existing in classical branches of law. For example, administrative law remains the most unsystematic branch of Russian law, in which even many issues of the general part remain poorly developed. For example, this is the case with administrative legal relations, which remain largely unexplored at the doctrinal level. Within the framework of penal law, it is also important to develop the main provisions related to execution of criminal penalties, but not to replace or mix penal legal relations with administrative legal relations.

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Protected by Criminal Law, Historical Memory of the Peoples of the Russian Federation of the World War II and the Great Patriotic War: Experience of Sociological Research

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Abstract

Introduction: the article analyzes problems of falsification of historical facts and history of the Great Patriotic War. Nowadays, the international public debate is devoted to the role of the USSR, its army in World War II, their contribution to the victory over fascism, and significance of the results of the Great Patriotic War. Attempts to rewrite the history of the war, diminishing the importance of the Soviet army, are connected with the desire of certain Western countries to discredit the Russian Federation in the international arena. Russia, as the successor of the USSR, is obliged to preserve historical truth about events of the Second World War; therefore, the policy of protecting it is being carried out at the state level. In 2014, the Criminal Code of the Russian Federation introduced liability for "falsification of historical information established by the verdict of the International Military Tribunal", but the norm is limited only to the facts established by the International Military Tribunal in Nuremberg. In this regard, the study of criminal-legal aspects of protecting historical memory is relevant from the point of view of criminal legislation development. *Purpose:* to substantiate the expansion of criminal liability for falsification of historical information about events of the Second World War and the Great Patriotic War. *Research results:*

in order to consider the proposed issue, the authors conducted a sociological study to identify respondents' opinion on establishment of criminal protection of historical memory of the events of the Second World War and determined a vector of legislative initiatives afterwards. *Conclusions:* the ways to protect history of the Great Patriotic War require improvement of criminal law norms providing for liability for encroachments on historical heritage of the Russian Federation, in particular, by including in the Criminal Code of the Russian Federation a new special norm capable of protecting not only the facts established by the International Military Tribunal, but also a number of others confirmed by official historical sources.

K e y w o r d s : criminal liability; World War II; Great Patriotic War; falsification of history; historical memory.

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Dedicated to the memory of the defenders of the Fatherland

Problem statement

At the end of the 21st century, the geopolitical situation in the world changed significantly, which, first of all, was facilitated by the collapse of the USSR. The reshuffle of forces in the international arena led to establishment of a unipolar world with the hegemony of the United States and its allies, who seek to consolidate their superiority in all spheres of public life.

Having taken a course towards total hegemony, politicians of the Western countries are making every effort to strengthen their positions, including through a certain reformatting of historical consciousness of the peoples, primarily living in the former Soviet Union. The US leadership and their satellites seek to impose on other peoples their own non-objective view on the causes, nature, events and consequences of the Second World War, and, most importantly, on the place and role of the USSR in this large-scale military conflict. The resolutions of the European Community became the apotheosis of the totalitarian approach to the historical past, state institutions' active intervention in scientific disputes and discussions of historians. So, on September 19, 2019, to commemorate the 80th anniversary of the outbreak of World War II, European parliamentarians approved the text of the document (resolution) condemning the USSR and Nazi Germany for unleashing World War II. In addition, the resolution accuses the Soviet Union of building a "dictatorship" in Eastern European countries in the post-war period. In other words, responsibility for the outbreak of the war is shifted to the Soviet Union; the USSR turns from a victim of the war into its culprit. Liberation of the world from fascism is presented in the resolution as the victory of one totalitarian state over another, as a social phenomenon of a regressive rather than progressive nature.

Without going into historical controversy, in our opinion, we should pay attention to other aspects of the consequences of such a policy for the entire population of our planet, and the Russian Federationб in particular.

To begin with, a shift in emphasis in assessing the place and role of the USSR in World War II will inevitably entail a desire to change the international security system created in 1945, and will give the Anglo-Saxon political forces the theoretical basis to change territorial borders of states formed as a result of the victory of the countries of the Anti-Hitler coalition over the Fascist bloc in 1939–1945. Thus, the peoples of the Earth can be plunged into

a world war again, which will inevitably lead to destruction of human civilization.

Furthermore, reformatting of historical consciousness will contribute to preservation of undemocratic forms of the current world order, create difficulties in building a multipolar system of international relations. The need for its formation is discussed by many progressive politicians.

Besides, rewriting of history has led to the revival and activation of neo-Nazi forces in the world, especially in Eastern Europe, in certain states of the former USSR (Ukraine, Georgia, Lithuania, Latvia, and Estonia). These forces seek to take historical revenge, unleash local military conflicts (Donbass, South Ossetia, Abkhazia, Transnistria), cultivate hatred and enmity between peoples.

A politically biased view of the historical past, enshrined in the most important normative legal acts of the European Parliament, potentially infringes on the political rights of the Russian Federation as a subject of the United Nations (UN), creates legal prerequisites for discrimination against Russian citizens in the international arena. All these possible consequences, some of which are already a fact of reality, require a comprehensive analysis, and, in our private scientific opinion, legal counteraction.

The Russian Federation, represented by the legislative and executive authorities, is aware of political forces' possible interference in the process of reformatting historical consciousness of the peoples of Russia. According to the National Security Strategy of the Russian Federation (approved by the Decree of the President of the Russian Federation No. 400 of July 2, 2021), protection of traditional Russian spiritual and moral values, culture and historical memory is carried out in order to strengthen the unity of the peoples of the Russian Federation on the basis of all-Russian civic identity, preservation of primordial universal principles and socially significant guidelines for social development. Attempts to falsify Russian and world history are one of the ways to erode traditional Russian spiritual and moral values and weaken the unity of the multinational people of the Russian Federation, which is one of the threats to national security.

This clearly and unambiguously defines the true meaning of socially dangerous activities carried out by persons who mock the memory of our people, including by falsifying historical facts about the Soviet Union's activities during the Great Patriotic War.

In order to counteract ousting of Russia to the world sidelines, prevent destabilization of the situation inside the country by external forces, the legal regime for protecting historical memory of the events of the Second World War and the Great Patriotic War is established in the country. "In the Russian legal tradition, legal protection implies establishment of a general legal regime for certain public relations. Legal protection is conducted on a constant basis. Legal defense is a regime that is activated in case of violation of the protected relations, rights and freedoms. In the context of protecting and defending historical memory, these legal regimes imply that the objects of protection (tangible and intangible) must be defined, the regime of maintaining historical memory – ensured; and liability for violating the historical memory protection regime – established" [7].

The Constitution of the Russian Federation, adopted on December 12, 1993, is a key document for forming such a regime; its preamble justifies the need to preserve the multinational state unity of our country, as well as educate young people to honor previous generations, "who transmitted love and respect for the Fatherland to us". Article 44 of the Constitution of the Russian Federation obliges every person on the territory of Russia to preserve historical and cultural heritage and protect historical and cultural monuments. According to the basic law of the country respect for acts of heroism performed by previous generation is an obligation of Russian citizens. Since arbitrary and sometimes false interpretation of events of the Great Patriotic War is being intensified by external forces, the legislators decided to include amendments to the Constitution of the Russian Federation adopted as Law No. 1-FKZ of March 14, 2020 "On improving regulation of certain issues of the organization and functioning of public power", which states that "The Russian Federation honors memory of defenders of the Fatherland, provides protection of historical truth. Diminishing significance of feat of heroism of the people in the defense of the Fatherland is not allowed.

In addition to the Constitution, legal protection of historical memory of the peoples of the Russian Federation on the events of 1941–1945 is provided by federal laws No. 80-FZ of May 19, 1995 "On perpetuating the

victory of the Soviet people in the Great Patriotic War of 1941–1945", No. 68-FZ of May 7, 2007 "On the Victory Banner", of March 13, 1995 No. 32-FZ "On the days of military glory and memorable dates of Russia", etc. The regime of protection of historical heritage is established by the Federal Law No. 73-FZ of June 25, 2002 "On objects of cultural heritage (historical and cultural monuments) of the peoples of the Russian Federation".

At the same time, numerous cases of falsification and rewriting of the history of the Great Patriotic War have strengthened the stance of Russian state structures on the impossibility of allowing encroachments on historical heritage of the country, making protection of historical truth a priority state policy.

Creation of the Commission under the President of the Russian Federation to counter attempts to falsify history to the detriment of Russia's interests in 2009 became a preventive measure for non-proliferation of false information about activities of the USSR during the Great Patriotic War. Although some scientists perceived this measure as an attempt to form a state ideology and interfere in science, the very fact of combating falsification of historical facts was supported. According to the all-Russian survey conducted by the Russian Public Opinion Research Center, the majority of those aware of the Commission creation (78%) positively assessed this step of the President of the Russian Federation, considering it a timely measure. Moreover, according to the respondents, the Great Patriotic War (34%) needed protection from falsification of distortion of history first of all [23].

Since the 2010s, the policy of protecting historical memory in the Russian Federation has acquired a multilateral character, which was reflected in the establishment of the Russian Historical Society (RHS), the Russian Military Historical Society (RMHS), adoption of a number of laws protecting objects of the country's historical heritage. At the same time, the national project "No Statute of Limitations" and the public initiative to hold the annual action "Immortal Regiment" were supported. Speaking on July 2, 2020 at a meeting of the Russian Organizational Committee "Victory", the President of the Russian Federation V.V. Putin said: "The memory, which is carefully passed down from generation to generation, is the strongest guarantee that together we will never allow the meaning and results of the Victory to be changed, to belittle the feat of the Soviet people who defended their Homeland, saved the peoples of Europe, and suffered irreparable – and not only combat – losses" [26].

Ensuring safety of citizens and protecting them from criminal encroachments on historical heritage led to introduction of criminal liability for rehabilitation of Nazism (Article 354 of the Criminal Code of the Russian Federation) in 2014. Violation of the law prohibiting justification of Nazism, deliberate spread of false information about activities of the USSR during the war and post-war period, as well as a number of acts committed in order to express obvious disrespect for public memory found expression in the objective side of the crime under consideration, in particular:

1. denial of the facts established by the verdict of the International Military Tribunal for the trial and punishment of the main war criminals of the European axis countries, committed in public;
2. approval of crimes established by the specified sentence;
3. dissemination of deliberately false information about activities of the USSR during the Second World War, committed in public;
4. spread of information expressing obvious disrespect for society about the days of military glory and memorable dates of Russia related to protection of the Fatherland;
5. desecration of symbols of military glory of Russia;
6. insulting memory of defenders of the Fatherland;
7. humiliation of honor and dignity of a veteran of the Great Patriotic War.

Responsibility for the listed acts was introduced in order to eliminate a legislative gap – absence of criminal law norms establishing responsibility for approving crimes provided for by the International Military Tribunal for the trial and punishment of the main war criminals of the European Axis countries. Introduction of this norm, in our opinion, was a timely step, since the methods of committing such crimes have become more sophisticated, encroaching on security of the whole society.

In 2013, the first trial was held in the case of rehabilitation of Nazism. Citizen L. published an article entitled "15 facts about Bandera, or what the Kremlin is silent about" on December 24, 2013 on the personal page of the Vkontakte social network. According to statistics, the publication was seen by more

than 20 users. Employees of the Investigative Committee of the Russian Federation initiated a criminal case. The case materials stated that the citizen, having reposted article, spread "deliberately false information" about activities of the USSR during the Second World War (Archive of the Semenovskii District Court of Nizhny Novgorod Oblast. Criminal case No. 1-55/2013). It should be noted that the process took place at the time when a coup d' tat was committed in Ukraine and neo-Nazi ideas were actively introduced into the practice of state-building in the post-Soviet space, in particular, Eastern Europe.

Meanwhile, having a fairly broad regulatory framework for preserving historical memory, none of the current legal acts enshrines the concept of "historical memory". In general, the phenomenon of historical memory is one of the most poorly researched spheres of public consciousness in relation to jurisprudence. The current state of affairs can hardly be considered acceptable, especially in the situation when Russian society faces encroachments on its own history, and is also in the state of intensive search for ways to preserve its own historical identity.

From a scientific point of view, the concept of "historical memory" cannot be unambiguously deciphered. Foreign sociologists consider memory as an individual and collective phenomenon. Thus, J. G. Mead considers memory as a phenomenon of individual consciousness that is located in the "depths of the spirit" and is a repository of "traces" and "imprints" to understanding that the content of memory and its internal organization is determined from the outside, through tools provided by culture, prevailing norms, sociopolitical context, etc. [18, p. 119]. Individual memory in aggregate forms its collective form, through shared memories of events experienced together. In turn, E. Renan noted that the existence of a nation is impossible without shared memories, although there is a collective oblivion of some moments of the past [1, pp. 113–116].

Russian researchers also studied the concept and content of historical memory, often in the context of historical consciousness. For example, M.A. Barg notes that "public consciousness is historical not only because its content improves and progresses over time, but also because it "turns" to the past with its certain side, "plunges" into history" [2, p. 59]. L.P. Repina believes that "at the heart of every description of history there is historical consciousness that unites the present and the past, which, in turn, are then projected into the future" [21, p. 119]. In general, scientists speak of historical memory as an individual memory of an individual subject, which was transformed into a collective one by forming public consciousness of persons who experienced a certain event in the past. In addition to those who directly experienced a particular event, knowledge about it is passed down from generation to generation, which also forms historical memory of society.

Meanwhile, it is difficult to understand the term "historical memory", as it itself is synthesized from various sources and includes a subjective point of view related to individual characteristics of perception of certain events. In our opinion, in order to exclude subjectivity of reproducing events, individual experience should not form the basis of historical memory, but that of historical information space created through communication and educational environment. Historical information comprises official science, products of human creative activity (literature, art), as well as political interest of the country. This creates a final product "historical memory", represented by tangible and intangible objects: memorial structures, historical sources, public holidays, etc.

From a legal point of view, the situation is also not that simple. Since there is an object of legal protection in the form of historical memory of the peoples of the Russian Federation about events of the Second World War and the Great Patriotic War, it is necessary to consider gaps in criminal legislation that do not allow the norm to be fully applied.

Thus, the current criminal liability for falsifying historical information about events of the Second World War and the Great Patriotic War is limited only to the facts announced in the verdict of the Nuremberg Tribunal. However, many scientists and experts agree that it is important to expand the scope of application of criminal legal means in relation to deliberate distortions of historical facts about events of the Great Patriotic War, deliberately false assessments and statements regarding the place and role of the USSR in World War II, which were the result, first of all, of the collapse of the USSR, and, in turn,, were not the subject of consideration by the International Military Tribunal in Nuremberg. Moreover,

many experts in this case refer to criminal law regulations, norms and precedents created in individual European states. We believe, in view of the above, that such a position deserves every attention.

At the same time, these proposals provoked a great public outcry in the Russian community. Some citizens are afraid of possible state censorship on subsequent products of scientific and creative activity of people in the historical sphere. Others believe that introduction of new criminal law norms in the field of protection of historical memory will contribute to strengthening repressive functions of the state. In other words, legal innovations in this area are met with caution in Russian society.

This sociological study is aimed at identifying public attitude to introducing criminal liability for falsification of historical information about events of the Second World War and the Great Patriotic War and those facts that were not considered at the international trial in Nuremberg.

Methods: the article is based on results of the sociological study conducted by in January 2022. An online questionnaire survey was completed by participants of the online panel "Webanketa.com". Methods of analysis, synthesis, generalization and comparison were used to process received results.

Public opinion on the need to improve criminal legislation in relation to preventing distortion of historical facts about events of the Second World War and the Great Patriotic War is the research subject.

The work is based on the hypothesis that establishment of criminal liability for falsification of historical information can effectively counteract distortions of history in modern society and will cover a wider range of criminal acts in the field of protection of historical memory of the peoples of the Russian Federation. Accordingly, it pursues to identify respondents' opinion on the need to counter attempts to falsify history, historical events that need criminal protection, prerequisites for committing crimes in this sphere, goals pursued by falsifiers of history, key directions of history distortion, and practical measures, capable of qualitatively countering falsification of historical information.

The online survey involved 628 people, in particular teachers of higher educational institutions, university students, law enforcement officers, practicing lawyers, as well as persons who have accounts in social networks, such as "Vkontakte", "Instagram", "Odnoklassniki". The respondents filled in the questionnaire prepared by the authors of the study at: https://webanketa.com.

Fifteen questions in the questionnaire are distributed in the following areas: social prerequisites for falsification of history as an illegal (criminal) phenomenon; qualitative definition of events in need of criminal legal protection of the state; goals and directions of distortion of the history of the Great Patriotic War; consequences of spreading deliberately false information about activities of the USSR during the war for society; measures for prevention of offenses and crimes in the field of protection of historical truth. The last set of questions is devoted to the age of citizens, their gender distribution, level of education and field of activity. Respondents are given the opportunity to express their own opinion on a number of issues. Logically, the questions are arranged according to the principle from general to particular. Some of them have several answer options.

The authors suggest that the results of the study can contribute to obtaining scientifically sound proposals on the need to criminalize the acts under study at the legislative level and determining the vector of legislative initiatives.

Results

More than 75 years have passed since the end of the Second World War and the Great Patriotic War, several generations have changed, and it can be assumed that the memory of those terrible events in modern society has somewhat weakened. All this is accompanied by continuous attempts to distort and belittle the undeniable historical significance of the feat of Soviet soldiers. The Second World War is still the most global military clash, surpassing in scale all previous and subsequent wars in the history of the planet. The war was of particular importance for the Soviet people, who, despite possible enslavement and destruction, braced themselves and repelled Hitler's aggression. Undoubtedly, the war caused significant damage to the Soviet Union. "About 30 million Soviet people died on the battlefields, in concentration camps, occupied territories, besieged Leningrad, and on the home front; a third of the country's national wealth was destroyed; 1,710 cities, more than 70 thousand villages, a huge number of factories, mines, many kilometers of railway tracks were destroyed; the proportion of the male population decreased"

[5, p. 22]. The consequences are such that mass extermination of Soviet people during the war still affects the demographic situation in Russia. That is why the victory in the Great Patriotic War of 1941–1945 is a matter of pride and heritage of our people; care for participants of the war and protection of historical memory of the events of that time becomes a historical duty of the state.

At the same time, nowadays there are facts of whitewashing and even glorification of persons who fought on the side of Nazi Germany, falsification of the history of the USSR during the war, perpetuating the memory of Nazi criminals, as well as their rehabilitation. In particular, since 2013–2014, in such an environment, the current position of the state is to fully protect historical memory of the feat of the Soviet people and prevent criminal acts aimed at neglecting the role of the USSR in the Victory over Nazi Germany.

Since memory of generations who have not experienced the hardships of war is based mainly on materials of school textbooks about the war, it can be assumed that the historical information about events of the mid-20th century presented in the general education programs of the Russian school potentially has a high degree of representativeness. Accordingly, a person who has received a high-quality secondary general education is able to distinguish false information about events of the Second World War from the true one and can identify cases of its intentional distortion. Thus, the majority of survey participants (71%) gave an affirmative answer to the first question about whether they noticed cases of deliberate distortion of the history of the bloodiest war.

Sixteen percent of the respondents, most of whom are students, did not notice facts of falsification of historical information; 13% of the respondents could not answer the question, most of which – representatives of Russian students. In general, the vast majority of respondents noted that they had experienced deliberate distortion of history (Table 1).

Table 1

Number of politicians and public figures claim that they have faced attempts to deliberately distort the history of the Russian Federation. Have you personally noticed cases of deliberate falsification of historical facts?

Answers	%	Number of respondents
I have often noticed it	71.02	446
I have not noticed it	15.93	100
Difficult to answer	13.05	82
	Total of answers:	628
	Number of those who have not answered:	0

In order to stop the negative impact of the spread of false historical information, it is necessary to prevent possible cases of deliberate distortion of history, especially those capable of whitewashing the crimes of Nazism and fascism. To the next question of the questionnaire, “Is it necessary, in your opinion, to counteract those who are trying to deliberately distort the history of Russia?” 93% of respondents answered in the affirmative (Table 2).

Table 2

Is it necessary, in your opinion, to counteract those who are trying to deliberately distort the history of Russia?

Answers	%	Number of respondents
Yes	95.56	602
No	1.27	8
Difficult to answer	3.19	20
	Total of answers: Number of those who have not answered:	628 0

The following answers were received to the question of ways to counteract attempts to revise historical facts. Let us note that within the framework of this question, respondents could choose several answer options. The majority of the respondents (79%) found it necessary to “improve the quality of teaching the discipline “History” in general education and higher educational institutions”; 52% of the respondents supported “strengthening patriotic education”. In addition to raising the level of education and upbringing, the respondents considered it important to “disseminate historical truth through the media and information and telecommunication technologies, including the Internet” (64%), “denounce falsifications and distortions”, and “monitor the quality of literature, art and cinema” (44%). Another sufficient part of the respondents (45%) backed “introduction of legislative liability” for deliberate distortion of historical facts. It should be noted that within the framework of this issue, it was not specified what kind of liability should be introduced as a measure to counter attempts to falsify history. A small part of the respondents con-

sidered "holding rallies, actions and protests to prevent distortion of history" (3%), "deportation of persons spreading false information from the country" (2%) as effective means of countering falsification of history. Two percent of the respondents found it difficult to answer the question (Table 3).

Table 3

How exactly, in your opinion, should attempts to revise historical facts be countered?

Answers	%	Number of respondents
Disseminate historical truth through the media and information and telecommunication technologies, including the Internet	64.2	401
Improve the quality of teaching the discipline "History" in general education and higher educational institutions	79.27	549
Monitor the quality of literature, art and cinema	44.39	276
Engage in patriotic education of young people	51.83	321
Introduce legislative liability	45.06	282
Hold rallies, actions and protests to prevent distortion of history	3.96	24
Denounce falsifications and distortions	44.12	265
Deport persons spreading false information	3.01	18
Difficult to answer	2.44	15

As for prevalence of false interpretation of historical events, the respondents supported the need for its protection by criminal law (89%) vs 7% of those who were against it. Four percent could not answer the question. These figures indicate the respondents' positive attitude to the criminal law protection of Russian history (Table 4).

Table 4

Do you think that historical memory of the peoples of the Russian Federation about the most significant events in the country's history needs criminal protection?

Answers	%	Number of respondents
Yes	88.85	558
No	7.16	45
Difficult to answer	3.98	25
	Total of answers: Number of those who have not answered:	628 0

Among the list of historical events in need of legal protection, according to 82% of the respondents, it is the history of the Second World War and the Great Patriotic War that requires it to a greater extent. Three percent of the respondents consider it necessary to protect the history of the Patriotic War of 1812, 6% – the history of the First World War of 1914–1918, 7% – the history of the October Revolution of 1917 (Table 5).

Table 5

Indicate which event, in your opinion, needs to be protected by criminal law more than others?

Answers	%	Number of respondents
Patriotic War of 1812	3.82	24
First World War of 1914–1918	6.53	41
October Revolution of 1917	7.32	46
Second World War of 1939–1945 / Great Patriotic War of 1941–1945	82.33	517
	Total of answers: Number of those who have not answered:	628 0

Distribution of the respondents' opinions on prerequisites for committing crimes in the field of protecting historical memory of the peoples of the Russian Federation of events of the Second World War was expressed in the following figures: 73% of the respondents highlighted a "low level of historical and legal literacy of the population", 58% – "oblivion of historical results of the war among the younger generation", 40% – "mismatch of politics and national interests of the state". Twenty percent mentioned an "unstable position of the state in the international arena", 17% – "consequences of globalization", "difficult economic situation of the population", "attractive economic promises from the followers of Nazism" (Table 5). We emphasize that the respondents could, in particular within this question, choose two or more answers.

Table 6

What prerequisites for committing crimes, in your opinion, exist in the field of protecting historical memory of the peoples of the Russian Federation about events of the Second World War?

Answers	%	Number of respondents
Consequences of globalization	17.99	112

Mismatch of politics and national interests of the state	40.55	254
Difficult economic situation of the population	17.68	111
Attractive economic promises from the followers of Nazism	15.85	99
Unstable position of the state in the international arena	20.43	128
Low level of historical and legal literacy of the population	73.48	461
Oblivion of historical results of the war among the younger generation	58.84	369

As for the question, which also provides the opportunity to choose several answers, about the purpose that falsifiers of history pursue, 83% of the respondents identified "belittling and distorting the role of any people or state in significant historical events". Besides, the respondents noted "establishing the historical right to a certain territory for a particular people" (36%), "proving legal succession of the state in relation to a particular historical predecessor" (19%), "substantiating the legitimacy of the ruling dynasty" (14%). The respondents also presented their own suggestions, such as "introduction of the idea of criminality of the Soviet state into citizens' consciousness to create conditions for delegitimization and subsequent revision of decisions taken during the Soviet period, which will lead to revision of the entire post-war world order", "justification of fascism and Nazism", "provocation" (Table 7).

Table 7

What purpose, in your opinion, do falsifiers of the Second World War history pursue?

Answers	%	Number of respondents
Establishing the historical right to a certain territory for a particular people	35.67	219
Substantiating the legitimacy of the ruling dynasty	14.33	87
Proving legal succession of the state in relation to a particular historical predecessor	18.6	113
Belittling and distorting the role of any people or state in significant historical events	82.62	514
Other	9.15	56

On the question of key directions of falsification of the history of the Second World War and the Great Patriotic War, the following results were obtained: 71% mentioned "diminishing the decisive role of the USSR in the defeat of Nazi Germany" as the main direction of distortion of the history of the Russian Federation; 61% – "glorification of collaborationist formations from among the Ukrainian nationalists (The Banderites), the Russian Liberation army (the Vlasovites), nationalists of the Baltic republics ("Forest Brothers") and justification of their activities"; 55% – "denial of the liberation mission of the Red Army ("USSR-occupier")". Thirty-five percent of the respondents argued about equal responsibility of A. Hitler and I. Stalin for unleashing the war as the main direction of falsification of the history of the beginning of the Second World War (Table 7). Let us note that the respondents could choose more than one answer.

Table 8

What are, in your opinion, key directions of falsification of the history of the Second World War and the Great Patriotic War nowadays?

Answers	%	Number of respondents
Equal responsibility of A. Hitler and I. Stalin for unleashing the war	35.98	225
Diminishing the decisive role of the USSR in the defeat of Nazi Germany	70.43	442
Denial of the liberation mission of the Red Army ("USSR-occupier"	54.57	342
Glorification of collaborationist formations from among the Ukrainian nationalists (The Banderites), the Russian Liberation army (the Vlasovites), nationalists of the Baltic republics ("Forest Brothers") and justification of their activities	60.67	381
Other	8.84	55

In addition to falsification of historical information and events of the Second World War and the Great Patriotic War, the acts provided for in Article 354.1 of the Criminal Code of the Russian Federation "Rehabilitation of Nazism" have become widespread on the territory of Russia, which should also not be ignored by the public. We asked the respondents about the growth of facts of rehabilitation, justification and propaganda of Nazi and fascist ideologies today. Twenty-three percent of the respondents spoke about a significant increase, 23% – a certain increase in these acts. The fact that the situation had not changed was reported by 13% of the respondents; a slight reduction in the facts of rehabilitation of Nazism was noted by 10%.

A significant reduction in the number of facts of rehabilitation, justification, propaganda of Nazi and fascist ideology was considered by 9% of the respondents. Twenty percent of the respondents could not answer the question (Table 9).

Table 9

Has the number of facts of rehabilitation, justification and propaganda of Nazi and fascist ideologies, in your opinion, increased nowadays?

Answers	%	Number of respondents
Yes, there is a significant increase	23.24	146
in general, it has increased	23.57	148
It is at the same level	13.38	84
It has decreased slightly	10.67	67
On the contrary, there is a significant decline	9.22	58
Difficult to answer	19.92	125
	Total of answers: Number of those who have not answered:	628 0

The majority of the respondents (45%) gave an affirmative answer to the question: "Criminal codes of foreign countries often contain articles stipulating liability for encroachment on established historical facts. Is, in your opinion, the introduction of such a criminal law norm in the Criminal Code of the Russian Federation justified?" Twenty-six percent did not find this proposal reasonable, 28% could not answer the question (Table 10).

Table 10

Answers	%	Number of respondents
Yes	45.38	285
No	26.11	164
Difficult to answer	28.51	179
	Total of answers: Number of those who have not answered:	628 0

Criminal codes of foreign countries often contain articles stipulating liability for encroachment on established historical facts. Is, in your opinion, the introduction of such a criminal law norm in the Criminal Code of the Russian Federation justified?

The choice of several answers was given to the question about practical measures aimed at countering falsification of the history of the Second World War, which, according to the respondents, will be able to reduce the number of encroachments on historical memory of the peoples of the Russian Federation about the events of 1939–1945. Most respondents (65%) were in favor of "providing open access to archival documents of the period of the Second World War and the Great Patriotic War, little known to the public, thus hindering revisionists' attempts to arbitrarily interpret them in their own interests, thereby deliberately distorting and falsifying national history". Many (49%) support "active military-patriotic work with the younger generation in educational organizations, summer health camps, youth forums, etc.", which once again confirms the previously presented answers about improving the quality of education of the younger generation. Forty-four percent of the respondents were for the "formulation of the question of responsibility of countries and statesmen who revise results of the Second World War, denigrate members of the anti-Hitler coalition, and justify the Nazis and their accomplices directly or indirectly in all authoritative international organizations". Forty-three percent chose "improving the regulatory framework related to liability for deliberate falsification of the history of Russia" as an effective counteraction measure. For 29% of the respondents it is the "creation of a nation-wide integral system to counteract falsification of the history of Russia, when every public body and organization would have a non-standard unit responsible for fulfilment of this task"; for 27% of the respondents – an "increase in the volume of state funding for patriotic mass media, the target audience of which is young people". In our opinion, providing state funding to all educational institutions of the country for subscriptions to such publications would contribute to the formation of positive historical consciousness and preservation of historical memory. What is more, "improvement of general scientific and special historical methods based on the latest scientific methodology" is one more effective measure to counteract revision of history (20% of the respondents). In conclusion, we note that none of the respondents neglected the question, which demonstrates citizens' concern for preserving historical memory and preventing falsification of the Russian history in the future (Table 11).

Table 11

Which of the presented practical measures aimed at countering falsification of the history of the Second World War to the detriment of Russia's interests, in your opinion, will be able to reduce the number of encroachments on historical memory of the peoples of the Russian Federation about events of 1939–1945?

Answers	%	Number of respondents
Creation of a nation-wide integral system to counteract falsification of the history of Russia, when every public body and organization would have a non-standard unit responsible for fulfilment of this task	28.96	181
Creation of public organizations to solve problems connected with history falsification	20.73	130
Formulation of the question of responsibility of countries and statesmen who revise results of the Second World War, denigrate members of the anti-Hitler coalition, and justify the Nazis and their accomplices directly or indirectly in all authoritative international organizations	44.51	279
Improving the regulatory framework related to liability for deliberate falsification of the history of Russia	43.6	273
Consolidation of scientific communities of Russia and the CIS countries, whose population and territories suffered the most from aggression during the war. Practical implementation of this direction involves regular holding of joint symposiums, conferences, publication of scientific papers devoted to the most significant events of the war and post-war periods	36.28	227
Interpretation of new and existing data with regard to the latest scientific methodology, general scientific and special historical methods	20.43	128
Active military-patriotic work with the younger generation in educational organizations, summer health camps, youth forums, etc	50	314
Increasing volume of state funding for patriotic mass media, the target audience of which is young people. Provision of budgetary funds to all educational institutions of the country for subscriptions to similar publications. The goal is to form positive historical consciousness and preserve historical memory	26.52	166
Providing open access to archival documents of the period of the Second World War and the Great Patriotic War, little known to the public, thus hindering revisionists' attempts to arbitrarily interpret them in their own interests, thereby deliberately distorting and falsifying national history	64.94	408

The last set of questions is devoted to the survey of the age of citizens, their gender distribution, level of education and field of activity. Thus, the studied audience has different gender distribution (women – 64%, 36% – men) (Table 12).

Table 12

Specify your gender

Answers	%	Number of respondents
Female	63.70	400
Male	36.30	228
	Total of answers: Number of those who have not answered:	628 0

The age of the respondents is presented in the following ratio: 23% represented the age group of 8–25 years, 19% – 26–35 years, 20% – 36–45 years, 23% – 45–60 years, and 15% over the age of 60 years (Table 13).

Table 13

Specify your age

Answers	%	Number of respondents
18-25 years	22.60	142
26-35 years	18.64	117
36 -45 years	19.90	125
45-60 years	23.73	149
over 60 years	15.14	95
	Total of answers: Number of those who have not answered:	628 0

The survey participants have a good level of education: 67% of the respondents have higher education, 25% are currently receiving higher education, 4% of the respondents have – secondary special education (technical school, vocational education institution), and 2% have graduated from college. Two percent of the respondents have secondary general education, no respondent have finished school (Table 14).

Table 14

Specify the level of your education

Answers	%	Number of respondents
Incomplete secondary (grades 8–9)	0	0
General secondary (grades 10–11)	2.22	14
Secondary vocational (college)	1.60	10

Secondary special 1 technical (technical school)	3.66	23
Incomplete higher education (at least 3 years of study)	25.00	157
Higher education	67.52	424
	Total of answers: Number of those who have not answered:	628 0

The respondents are occupied in law (65%), social work (16%), healthcare (10%), history (11%), and economics (2%). Marketing specialists, accountants, teachers, etc. comprise 1% of the total number of respondents each. Thus, the survey participants are highly educated people, among whom there is a large proportion of representatives of legal specialties who are able to give a high-quality legal assessment and professionally answer the proposed questions.

Discussion

The authors of the research analyze results of the sociological survey conducted as part of the study of possible use of criminal legal means to protect historical memory of the peoples of the Russian Federation about events of the Second World War and the Great Patriotic War. The sociological research allows us to obtain a cross-section of public opinion about phenomena that are studied by specialists, experts, scientists, but have a contradictory nature of discussions. The analysis of the empirical material of this study helps determine that falsification of the history of the Second World War and the Great Patriotic War is a common phenomenon today and does not leave the citizens of the Russian Federation indifferent. Russians, whose grandfathers and great-grandfathers defended their homeland with immeasurable losses, honor the memory of heroes and are certainly interested in objective coverage of the history of the war and all events related to it.

The criminal distortion of events of the national history of the Second World War can be conditionally divided into three vectors of falsification: falsification of history committed by representatives of Western countries, distortion of history in the post-Soviet space, domestic falsification.

1. Falsification of the history of the Second World War triggered by Western countries.

As part of the fight against external interference in Russian political life, it is necessary to consider deliberate distortion of the history of the most significant misanthropic event of the 21st century, and the role of the USSR in the victory over Nazi Germany. Although the tragedy of the Second World War itself is not disputed at the official level, the assessment of its causes, its nature, and results is interpreted by representatives of the Atlantic community members (the United States and Western European countries) in accordance with their own priorities and interests that contradict national interests of Russia and its allies. All this is focused on understating Russia's role in the international arena, and transforming spheres of influence in the world. The collective West in the presented concept proposes to consider itself the liberator of mankind from Nazism, and presents Russia only as a follower of the totalitarian Soviet Union. Moreover, this concept often emphasizes that "Nazism" and "Communism" are equivalent regimes with a totalitarian aggressive nature. Here we mention the statement of British Prime Minister Boris Johnson that "the Soviet Union lured Poland between the hammer of fascism and the anvil of communism" published in "Twitter". It should be noted that the authors of this concept apparently do not take into account the rationale of the American researcher Carlton Hayes, who in 1939, speaking at the scientific symposium, pointed out that "totalitarianism is a market economy phenomenon, a phenomenon of bourgeois civilization and outside of it, it does not work" [32]. Carlton Hayes attributed Mussolini's Italian fascism and Hitler's Nazism in Germany to totalitarian regimes. Stalin's Soviet Union, in his opinion, is a completely different type of state, where there is no private property and classes, where systemic anti-capitalism – socialism was built, where the ideology fundamentally different from the Nazi ideology prevailed [32].

The desire to belittle the role of the Soviet people in the victory over fascism is illustrated by the example of biased coverage of the events of the Second World War. Thus, according to historian H. Baldwin (USA), the outcome of the Second World War was decided by 11 battles ("great campaigns"), namely, Operation Market Garden in Holland, the landing of Anglo-American troops in Normandy, the Battle for Midway Atoll in the Pacific Theater of Operations, etc. At the same time, of the battles won by the Red Army, he mentions only the Stalingrad one [31]. Surely, during 4 years of the war the parties conduct-

ed countless battles, some of which became significant, but there were battles that determined the outcome of the most terrible war in the history of mankind, such as the Battle of Moscow (1941–1942), during which Germany suffered the first major defeat in World War II, and for the first time the myth of invincibility of its army was dispelled; the Battle of Kursk (1943), which resulted in the change in the military balance dramatically in favor of the Red Army and created favorable conditions for subsequent strategic operations. Obviously, the American historian deliberately does not mention the main successes of the USSR during the war, which determined the course of historical events, in order to belittle its role in the Victory.

2. Distortion of the history in the post-Soviet space.

The next vector of falsifications is "reinterpretation" of historical events of the Second World War and the Great Patriotic War occurred in the territories of the former Soviet republics. Unfortunately, the common past between countries of the post-Soviet space and Russia generates not only "good-neighborly" partnerships, but, often, relations built on rejection of the common Soviet past. Ukraine is a leader in these relations. Falsification of history in Ukraine is one of the main components of modern Ukrainian Russophobia. The essence of this phenomenon is that some, as a rule, nationalist Ukrainians who do not want to have a common history with the Russians interpret events of the Second World War in such a way that they are victims not only of Hitler's repressions, but also of Stalin's repressions. For the sake of building their own historical concept, Ukrainian pseudo-historians resort to numerous omissions and historical speculations, and outright lies and distortion of facts. For example, the myth was actively spread on the territory of the country that during the Second World War, not one (Great Patriotic War), but several wars were fought in Ukraine – German-Ukrainian, Soviet-Ukrainian, Polish-Ukrainian" [28].

Georgia is another country that equated the communist regime with fascism. So, in 2013, the Parliament of Georgia amended the Code of Administrative Offenses and the Charter of Freedom [9], according to which the use of fascist and communist symbols in public places will be punished with a fine of 600 US dollars. The Georgian government does not see the difference between the crimes of Nazism and communism, and considers it necessary to introduce a ban on wearing Soviet orders and medals, which offends memory of exploits of veterans of the Great Patriotic War, and as a result falsifies the history of the Great Patriotic War.

A glaring fact is Poland's adoption on September 23, 2009 of the resolution that qualified liberation of the Polish-occupied lands of Western Ukraine and Western Belarus by the Red Army in September 1939 as aggression against Poland. There is an obvious disregard for the official history and contribution of the peoples of the Soviet Union to liberation from the "brown plague of the 20th century". In general, at the official level, the USSR was declared an aggressor who along with Germany unleashed World War II [15]. In this context, we agree with the statement of the Minister of Foreign Affairs of the Russian Federation S.V. Lavrov: "attempts to falsify history, equalize victims and executioners cause outrage... Russia will continue to harshly oppose such plans that threaten stability of the entire world order" [16, p. 1].

3. Domestic falsification of our own history.

Russian researchers are also incredibly productive in interpretation of history according to their own scenarios, ignoring archival materials and official historical sources.

The most famous propagandist of myths about events of the Second World War and the Great Patriotic War is the former intelligence officer and literary author Viktor Suvorov (real name — Vladimir Rezun), now living in the UK. In the published books "Icebreaker", as well as the subsequent books "M-Day", "The Last Republic", "Suicide", "Purification", etc., he consistently developed the thesis that allegedly the USSR was the initiator of the Second World War [10, p. 446].

Thanks to the journalist Yulia Latynina, the myth that Soviet soldiers, at the beginning of the war, surrendered en masse and went over to Hitler's side became widespread: "how did it happen that the Russian people, name me at least one more war in which such crowds went over to the enemy, threw such fantastic weapons and how to explain it..." [17]. This statement has nothing to do with reality, since even in the most difficult conditions of combat, the Soviet people restrained Hitler's blitz attack and retained a large number of soldiers [12, pp. 289–332].

Of course, within the framework of this study, it is impossible to consider the en-

tire array of falsifications that are so actively coming to us from abroad and from individual compatriots. These examples clearly show directions of falsification of the history of the Second World War and the Great Patriotic War, methods and means to revise history.

In modern mass media, the Internet, cinema and literature, history is not always covered objectively, and criminal encroachments on historical memory are actively spreading in society and create unfavorable ground for the cultivation of a new generation of young people who are not able to recognize the truth of historical information. Methods and means of criminal falsification of history are being actively improved. The Russian historian V.V. Korneev identifies the following methods for falsification of history: falsification of a fact, event, phenomenon, or source, as well as their subjective interpretation, which "all together lead to the creation of a mythological picture of the world, disinforming society, which can have sad consequences for functioning of Russian society in the context of modern global challenges" [14].

These methods are effectively used by falsifiers of the history of the Second World War. As it seems, Russia's geopolitical opponents in the person of special services and organizations of individual states, Nazi ideologists and leaders of extremist structures focus in their activities mainly on young people (sports and student environment, informal associations of nationalists, etc.) in order to dilute traditional Russian spiritual and moral values, provoke crimes and offenses, destabilize domestic political and social situation.

In order to prevent the undermining of national interests, countering falsification of history should be an important component of maintaining historical consciousness of the society. "The purpose of state policy in this regard is to effectively counteract attempts to falsify history at different levels of formation of public consciousness by forming and maintaining an appropriate discourse in the information field of the country, to help bridge gaps in public consciousness and thus strengthen the Russian identity, historical subjectivity of the Russian state" [27].

Measures to counter attempts to falsify and distort history are different, and the respondents consider betterment of the quality of education in schools and higher educational institutions as key ones. This proposal has certain ground, as since the 1990s the ideas of patriotism and citizenship have been "washed out" from the school curriculum, many significant Russian victories – excluded from textbooks, and unfounded events that are personally interpreted by the author of the textbook and have no historical basis – included [29].

In addition to these measures, it is advisable to support the so-called "memory policy" at the state level. "Modern historical policy is aimed at forming the political unity of Russian society on the ways of glorification and mythologization of the common past" [22]. We note that in Russia the policy of historical memory in the Russian Federation has recently been widening: nowadays various national projects, for example, "No Statute of Limitations", are created, and crimes against humanity committed by Hitler and his followers – documented. Various events and international conferences are organized covering topics, such as causes and consequences of the Second World War, the policy of I.V. Stalin, the lessons of Nuremberg, the years of the Cold War, etc.

It seems to us that improving the quality of teaching history, and accordingly, state support for historical research, as well as control of historical information disseminated in society (including introduction of legislative liability for false information) will facilitate counteraction of falsification of history, preserve traditional spiritual and moral values and prevent erosion of cultural identity in society.

It should be noted that the interviewees see prospects in the legislative consolidation of liability for falsifying historical information about events of 1939–1945, in particular, the norm of criminal law would contribute to expansion of the protective function of the state in the field of protecting historical memory of the peoples of the Russian Federation. Moreover, respondents are sure that it is the Great Patriotic War that needs protection by criminal legal means, since the victory in the war of 1941–1945 is the pride of our people, national treasure and important component in the patriotic education of the country's younger generation. It is fair to note that it is indeed the period of 1939–1945 that is subjected to the greatest number of false interpretations of events, since the Victory of the Soviet people remains the "cornerstone" in the world understanding of the results of the Second World War, which encourages the state to take a special attitude to attempts to revise the reasons

for its beginning, results, as well as activities of the USSR during the war. The first crimes encroaching on the protection of historical heritage of the history of the Great Patriotic War were recorded long before the introduction of Norm 354.1 in the Criminal Code of the Russian Federation. During the period of perestroika, "persistent attempts were made to break the historical and moral code of perception of the Great Patriotic War through the implantation of a significant number of various black myths into the official ideology and mass consciousness: about the nature of the war, scale of losses, key moments of hostilities, price of Victory, etc." [30].

Care for participants of the war and protection of historical memory of the events of that time become not only the historical duty of the state, but also the personal responsibility of each descendant of the participants of those terrible events. Of course, the decline in the level of historical and legal literacy of the population boost activities of falsifiers of history and, due to the fact that many years have passed since those events, historical events of the Second World War, reasons for its beginning and results are being forgotten.

This thesis once again highlights the problem of the insufficient level of school education, which creates grounds for new attempts to falsify history of the Second World War and the Great Patriotic War. Chairman of the Board of Trustees of the Russian Military Historical Society, Special Representative of the President of the Russian Federation on environmental protection, ecology and transport S.B. Ivanov noted: "attempts to revise the results of the Second World War in the West are politicization of history, focused on young people who do not know historical facts about the events of 80 years ago. After all, our current schoolchildren do not know history as well as, say, my generation did". He also added that when interviewing fifth- and sixth-grade students, a "simple question of who the Soviet Union fought with, how the Great Patriotic War ended has, to put it mildly, different answers" [11].

Such a situation in educational programs cannot but cause concern, since it is pupils and students who become the main object targeted by falsifiers of history. In this regard, the establishment of control over the quality of teaching history and other humanities in universities and schools will contribute to improving literacy rates of the population and prevent penetration of false destructive information about the most significant events of our history into its consciousness. Professor of MGIMO E.G. Ponomareva defines "reformatting of consciousness" as the main goal of falsifications of history, which is a "kind of 'artillery preparation' " that creates opportunities for solving a complex of financial, economic, geopolitical and psychohistorical tasks of competitors and direct enemies of our country" [20, p. 6].

These prerequisites facilitate criminal manifestations of history distortion; the respondents consider belittling the role of the Soviet victory over Nazi Germany in order to discredit Russia as a successor of the Soviet Union in the world community as the crucial goal of history revision. For example, a correspondent of the Komsomolskaya Pravda newspaper conducted a survey of representatives of different countries on the results of the Second World War before the Victory Day in 2019. Thus, 90% of the French residents reply that the United States won the war, the residents of Italy and Belgium also answer that "the Americans liberated the world", and the Americans note that "the average American has no idea about details of the USSR's participation in World War II. Most Americans would say that the allies were, for example, England, France and possibly the Netherlands". In Germany, compared to the whole of Europe, the largest number of people remember that the USSR was the main force in the fight against Nazism. In England, 59% of the respondents are sure that it was the British army that defeated Hitler [29]. Statistics of responses indicates that criminals achieve their goal effectively, and the whole world does not know about the feat that Soviet soldiers performed and what losses (26 million people) the USSR suffered.

Without any doubt, the criminal purpose of falsifying history is destructive for our country and mainly aimed at splitting the peoples that were part of the USSR (Ukraine as an example), as well as at establishing a negative attitude towards the entire Russian people as the successor of the Soviet one. Falsifiers are focused on depriving Russia of the status of a victorious country and the USSR of the right to play a decisive role in the victory over Nazi Germany. "In this area of information warfare, myths are used about "weakness of the Soviet military art, Soviet commanders and military leaders", as well as that "lend-lease supplies were the economic basis of the victory of the Soviet Union in the Great Patriotic War" [4].

Falsifiers of history try to establish equality between those who started the war and those who preserved peace with their courage and heroic self-sacrifice, as well as glorify collaborationist formations from among the Ukrainian nationalists (the Banderites), the Russian Liberation Army (the Vlasovites), nationalists of the Baltic republics ("Forest Brothers") and justify their activities. This opinion is undoubtedly connected with the country's political past and geographical location of the Russian Federation and its neighbors. Thus, glorification of Nazism in Ukraine worries not only Russia, but also the entire world community. An American political scientist of Dutch origin, C. Mudde, who studies modern right-wing radicalism, after the 2013–2014 events in Ukraine, issued a statement condemning the entry of representatives of the neo-fascist Svoboda party into the illegally formed new government and appointment of members of another even more dangerous right-wing extremist group Right Sector to responsible government posts [3]. The policy of the current Ukrainian authorities is aimed at rehabilitating Nazi figures, justifying their crimes, cooperating with the Nazis, and praising such persons. There is a bright example: the annual (since 2016) march of radical individuals to the glory of S. Bandera, whose biography is associated with creation of the Ukrainian insurgent army and numerous terrorist acts against opponents. Such a "favorable" position is used by persons who distort the history of the Second World War, relying on the support of countries where neo-Nazism is reviving.

Occupation of the Baltic countries by Soviet troops is a popular area of falsification in recent years. In particular, on May 7, 2020, the Presidents of Latvia, Lithuania and Estonia accused the USSR of occupying and annexing their territories in congratulation on the 75th anniversary of the Great Victory. In their opinion, the Russian Federation is trying to falsify history, distorting the truth about past events: "the end of the Second World War did not bring freedom to the peoples of Central and Eastern Europe. Instead, one totalitarian regime was replaced by another when the Baltic countries were cynically incorporated into the Soviet Union..." [24].

Leaders of some Western countries (the Baltic States, Poland and Ukraine) constancy speak about causes of the outbreak of war, already confirmed by historical archival sources. They claim that not only Hitler, but also I. Stalin was responsible for unleashing the Second World War. Thus, there appeared a whole global concept, reflected in the resolution "On the importance of preserving historical memory for the future of Europe", adopted by the European Parliament in 2019. The international legal act attempts to equate the Nazi regime of Hitler and the communist regime of Stalin, as well as recognize the USSR as an aggressor country. Russia spoke negatively about the content of the resolution, emphasizing the inadmissibility of distorting the past: "History, in our deep conviction, should remain the lot of responsible professionals, and not politicians who use it for their own selfish purposes" [19].

The progress that humanity should strive for excludes falsification of history as a human activity, since the "modern world is interested not only in obtaining breakthrough technologies..." [25, p. 109], but also in objective coverage of world history. Not all Western countries are aimed at distorting world history, in many of them world history is protected by legislative norms. The respondents draw a parallel between the existence of foreign legal norms to protect historical facts and the absence of such in the national legislation; consider it possible to adopt the experience of some Western European countries and establish a criminal law regime for protecting crucial historical events of the middle of the 20th century. Indeed, the national legislations of some Western European countries have legislative norms, including criminal law, establishing liability for distortion of historical information [8]. In particular, Austria, Israel, Switzerland, Belgium, Hungary, Lithuania, Poland, Slovenia, France and others criminalize Holocaust denial. Public denial of the Holocaust, distortion of historical facts about persecution of the Jewish people during World War II, belittling the number of victims among the Jewish people, refutation of established facts of violence against them are considered criminal in these countries. For example, at the beginning of the 21st century, the persons who did not recognize the Holocaust were prosecuted: "in 2000 a Swiss resident was sentenced to one year in prison for denying the Holocaust, because he published personal doubts about the existence of gas chambers and the number of dead Jews on the pages of the journal" [6].

In addition to a positive attitude to establishment of a rather repressive measure for protecting historical memory of the events of the Second World War and the Great Patriotic War

in the form of a new special criminal law norm, the study allowed us to identify other practical measures to counteract falsification of history. Thus, the interviewees note that open access to archival documents of the period of the Second World War and the Great Patriotic War, their study in the framework of general education courses will contribute to improving the legal and historical literacy of the population; encouragement of military-patriotic work with the younger generation can weaken the decline in morale of the country's residents. Since the persons attempting to falsify historical information about activities of the USSR during the Great Patriotic War and spreading deliberately false or deliberately distorted information use insufficient awareness of Russian citizens about the crimes and facts established by the International Military Tribunal in Nuremberg, as well as no access is provided to the Russian-language text of the verdict of the Tribunal, it is necessary to publish and disseminate this unprecedented significant document among citizens of the Russian Federation. Inclusion in the "Domestic History" program of the history of the International Military Tribunal and key facts established by the Tribunal would be a timely measure. All this should be focused on increasing the level of historical literacy of young people, promoting reliable historical knowledge and clarifying unreliability of the most popular myths not only about the Great Patriotic War, but also other significant events in the history of Russia.

Conclusion

Summarizing the above, we note that the hypothesis proposed by the authors that the Russian Federation does not fully protect historical truth about the Second World War and the Great Patriotic War by criminal legal means was confirmed by the responses of 628 respondents. The results of the conducted sociological survey can be used in rule-making activities to substantiate the need to improve the current domestic criminal legislation in the field of protecting historical heritage of the Russian Federation on the events of the Great Patriotic War, including by introducing a new special norm into the Criminal Code of the Russian Federation that can protect not only from falsification and oblivion of facts established by the International Military Tribunal, but also a number of other events and activities of the persons involved in them, confirmed by official historical sources.

The authors of the article are sure that it is highly important to preserve history in its original form, without political "embellishments" and biased interpretations and deliberate distortion that can belittle the role of the Soviet people in the bloodiest war of the 20th century.

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Prospects for Digitalization of Sentencing and Execution of Punishment

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Abstract

Introduction: the article is devoted to the study of issues related to the seemingly inevitable process of digital transformation of both criminal sentencing and its execution, the need for which is pushed by both consistently adopted relevant national and international legal acts and positive foreign practice. The *purpose* of the study is to substantiate the need to introduce capabilities of artificial intelligence as the most important tool for crime prevention, improve effectiveness of the execution of sentences, as well as discuss feasibility and readiness of modern reality for actual replacement of judges with artificial intelligence in sentencing. *Methods:* comparative legal, empirical methods of description, interpretation; theoretical methods of formal and dialectical logic; private scientific methods: legal-dogmatic and method of interpretation of legal norms. *Conclusions:* generalization of scientific stances and consideration of foreign practice allows us to conclude that, in our opinion, there is currently no urgent need to use artificial intelligence in sentencing. The arguments regarding expediency of such a decision in terms of limiting judicial discretion do not seem so convincing in order to abandon the human factor in sentencing. It seems advisable to further improve the legislation regarding the rules of sentencing and develop a more formalized approach. At the same time, we find positive the subsequent development of the penal policy focused on active introduction of artificial intelligence capabilities as an effective means of predicting criminal behavior, profiling (modeling) the personality of the criminal, identifying his/her distinctive features in order to further prevent crime.

Keywords: digitalization; punishment; artificial intelligence; prevention; sentencing; correctional institutions; Internet.

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Nowadays, the problem of legal space digitalization as an urgent need for its further improvement and increase in efficiency is one of the issues on the world scientific community's agenda. In this study, we will consider digitalization of the process of sentencing and execution of punishment, as well as the use of digital technologies in crime prevention. These issues are also addressed in the Decree of the President of the Russian Federation No. 490 of October 10, 2019 "On development of artificial intelligence in the Russian Federation". It should also be noted that the European Ethical Charter on the use of artificial intelligence in judicial systems and their environment, adopted at the 31st plenary session of the CEPEJ (Strasbourg, December 3–4, 2018) contains the Overview of open data policies relating to judicial decisions in the judicial systems of Council of Europe Member States.

The imposition of punishment is a complex process of applying the norms of the Criminal Code, requiring implementation of the principles of legality, justice, humanism, etc. This, in turn, is in direct correlation with such categories as judicial discretion, legal awareness, judge's experience, and impartiality. Legislative proposals for the exercise of judicial discretion are still being worked out, and this negatively affects the effectiveness of law enforcement practice and does not contribute to the formation of uniformity in it on specific issues. In relation to various institutions of criminal law, which in one way or another have broad prerequisites for judicial discretion, it is proposed to single out and consolidate certain criteria at the legislative level restricting judges' freedom in making decisions, at the same time introducing legal certainty. Abstracting from the imposition of punishment, one can also give an example of a relatively broad judicial discretion in deciding whether to release from criminal liability in connection with active repentance. Returning to punishment, the lack of uniformity in judicial practice when imposing punishment is worth mentioning. It is noted that the introduction of an electronic justice system, widely discussed recently, may contribute to limiting the discretion of judges, eliminating corruption, minimizing judicial errors, especially in cumulative sentencing. However, how justified is the exclusion of the human factor from the process of sentencing, or even if not the exclusion, but assigning it a secondary role in solving numerous issues?

Despite the validity of arguments about broad limits of judicial discretion, nevertheless, there arises a question on collision of artificial intelligence in justice with problems of implementing justice and humanism principles in sentencing. Involuntarily we recall the well-known Charles-Louis Montesquieu's work "On the Spirit of Laws" and ask ourselves, how artificial intelligence is able to cognize and perceive the spirit of law as the highest expediency found in a particular area of life, its ideological orientation.

It seems that it is possible to use artificial intelligence in the administration of justice only as an auxiliary tool for the judge. L.V. Inogamova-Khegai notes that the "increasing role of information technologies and potential possibility of their use in the process of monitoring execution of punishment and, moreover, making a decision on violation of the conditions of serving sentence, have formed a lively debate in legal science, whether artificial intelligence can correctly qualify actions of the guilty person and impose a punishment corresponding to the degree of the deed whose goals will be achieved" [6].

How reliable and objective are "decisions" made by artificial intelligence, what is the basis for their adoption? It is interesting to consider experience of the USA, resorting to the help of electronic justice when, for example, resolving issues about the possibility of parole from punishment, thereby trying to exclude excessive subjectivism and trusting artificial intelligence. In particular, artificial intelligence helps determine the probability of whether a particular person will commit a crime again in the future. However, it is noted that since this issue is not regulated at the legislative level and algorithms for decision-making are developed by private companies, the state, in particular, the judicial system has no idea about the mechanism of artificial intelligence.

A wide resonance was caused by the use of artificial intelligence in the United States when identifying risks of committing a repeat crime by the accused based on the study of data about him. So, in the case "Wisconsin v. Loomis", the Department of Corrections used the COMPAS risk assessment program during sentencing, which, after studying the history of the defendant's relationship with the law, assessed the

risks of recidivism as high, so the judge imposed the maximum penalty. The defense tried to challenge the decision, since the principle of operation of COMPAS is not disclosed. However, the court considered this argument insignificant and refused to appeal against the verdict, based on the fact that knowledge of the final solution of the algorithm already implies a sufficient level of transparency [14].

In the theory of criminal law, the question has repeatedly been raised regarding maximum formalization of the sentencing process in order to exclude subjectivism. Thus, engineer N.D. Oranzhireev noted that "due to the lack of a uniform way of taking into account circumstances of the case, the process of sentencing strongly resembles coffee cup reading. It is necessary to establish strict mathematical quantitative equivalents for all crimes, expressing them in appropriate sanctions, and for various circumstances significant in terms of determining the guilt of the convicted person, provide special coefficients, for example, with complicity, the coefficient of the perpetrator will be 1.0, of the instigator – 0.9, of the accomplice – 0.75, etc. The final punishment must be determined by algebraic operations with the equivalent of the crime and individual coefficients" [9]. N. Christie suggests not only applying a strictly formalized system of sentencing, but also eliminating a person from this process by transferring all the functions of sentencing to a computer [8]. The mentioned provisions, however, completely negate the possibility of the principle of individualization of punishment as the most important means of achieving justice.

Thus, several approaches to resolving this issue when sentencing emerged in the science of criminal law: 1) a subjective approach, in fact, defends the need for the court's broad realization of its opportunities to administer justice on the basis of its own legal awareness, inner conviction and experience; 2) an objective approach, whose supporters, in particular, N. Christie, N. Oranzhireev, D. Dyad'kin, A. Aryamov, argue for the need for full formalization the process of sentencing. Besides, there is an objective-subjective approach.

A clear formalized system of sentencing is used in US practice. In the United States, a system of indefinite punishments provided for in the "Federal Sentencing Guidelines Manual" (1987) has been used for many years. The Manual contains tables on sentencing for specific types of crimes; punishment for repeat offenders is determined separately. The judge calculates the level of the crime (there are 43 levels of danger of the crime in total) and the category of the criminal past of the convicted person and can assign minimum and maximum sentences in months. When imposing a punishment, the court is obliged to reduce or increase the punishment by the number of months indicated in the points table. So, if the defendant was the organizer or leader of the criminal activity that attracted five or more participants, then the penalty is increased by four levels (points). If the defendant was a "minimal" participant in any criminal activity, then the punishment is reduced by four levels (points). The circumstances aggravating and mitigating the punishment also correspond to the points.[13]

Nevertheless, we believe that the introduction of an electronic justice system will undermine all the fundamental principles on which the modern legal system is based.

This issue was studied by Kh.D. Alikperov in detail. In particular, he notes that the "formalized rules (there are more than five thousand of them in the motherboard of the proposed concept) are fixed on the scores of more than 400 algorithms for individualization of punishment, which together cover a huge number (about a billion) of all possible combinations of criminal manifestations in its real existence. Each of them regulates in detail the procedure for determining the optimal measure of punishment, taking into account both objective and subjective properties of the crime of small and medium gravity, grave or especially grave, committed by adults and minors, by negligence and intentionally, alone and in complicity, as a repeated offense, and the multiplicity of crimes, etc. Originality of the proposed technology lies in the fact that for the first time in the theory of criminal law, the process of sentencing is formalized as much as possible, and the procedure for determining punishment is carried out automatically, based on the initial data about the criminal case and the guilty person entered by the judge into the dialog box (interface) of the "Electronic scales of justice" [1].

Further, it is also noted that its independence from periodic changes in criminal legislation, including criminalization and decriminalization, changes in the sanctions of its Special part of

the Criminal Code of the Russian Federation, its terms or sizes is another characteristic feature of the electronic system for determining punishment. For these purposes, in all algorithms to individualize punishment, instead of the names of specific types of crimes, their categories are used, and the calculation of the terms (sizes) of punishment is carried out in the fractional calculation based on special formulas, the universality of which allows to adapt the "Electronic scales of justice" to any additions and changes in the Criminal Code of the Russian Federation to the maximum extent. Such issues as the nature and degree of public danger of a particular offense, its features, determined by the object of encroachment, remain outside the scope, or, more precisely, are significantly limited and formalized. Besides, there are proposals to change the current approach to categorization of crimes in the Criminal Code of the Russian Federation by taking the standard sanction as a basis for dividing crimes and including all types of punishments in it.

It is indicated that "this will allow assessing public danger of a specific corpus delicti only by pointing to a particular category of crime, simplify the solution of a number of problems when applying the retroactive force of the criminal law" [5]. In this regard, the point of view of A.V. Korneeva seems to be correct that the categories of crimes cannot affect the character, since, on the contrary, the category depends on the nature and degree of public danger [11].

We fully agree with A.P. Kozlov's statement that the nature of public danger of the type of crime reflects typical properties of this particular type of crime (theft has its own signs, murder has its own, hooliganism has its own, etc.) [7]. Thus, we cannot achieve a proper differentiation of punishment based only on categories of crimes.

For instance, F.S. Brazhnik notes that the nature of public danger of a particular type of crime is determined by the features specified in this article, reflecting:

– value of the goods encroached upon by this act;

– danger of the method that is used to cause harm;

– size of damage caused;

– conditions under which harm is caused;

– form of guilt or its type;

– sometimes personal qualities of the perpetrator of the crime" [10].

Since the indication of specific types of crimes is absent in the electronic justice system proposed by Kh.D. Alikperov, in our opinion, the degree of public danger of specific crimes will be ignored when sentencing, and, as a consequence, the principle of differentiation of criminal responsibility will be violated.

In accordance with Part 2 of Article 61 of the Criminal Code of the Russian Federation, when imposing punishment, circumstances not provided for in Part 1 of this Article may also be taken into account as mitigating. How is it possible to program these circumstances, recognized as mitigating in each case, in advance?

We believe that substantiation of extreme necessity and expediency of digitalization of sentencing is a rash decision, while at the same time we suggest paying significant attention to improving the current criminal legislation, creating a formalized system of sentencing rules that introduces clarity and uniformity in law enforcement practice. So, for example, it seems reasonable at the legislative level to resolve issues related to broad judicial discretion in matters of exemption from criminal liability due to active repentance and fixing cases, in which it is the duty of the court. Besides, it is required to consolidate cases in which the court is obliged to impose punishment according to the rules of Article 64 of the Criminal Code of the Russian Federation (appointment of a milder punishment than is provided for this crime).

This is also indicated by positive foreign experience of legal regulation, in particular, the criminal legislation of Spain, Italy, France, the USA is characterized by a fairly high degree of sentencing rules formalization.

For example, Spanish criminal legislation has the norm (Article 66 of the Criminal Code od Spain), which regulates in detail the actions of a judge (court) when choosing a specific punishment for a person found guilty of committing a specific crime. So: 1) if there are no aggravating or mitigating circumstances, or when there are both, the court individualizes punishment, assigning it in accordance with personal qualities of the offender and severity of the act, which is reflected in the verdict; 2) if there are one or more mitigating circumstances, the court appoints punishment according to the lower limit of the sanctions established by law; 3) if there are one or more aggravat-

ing circumstances, the court appoints punishment according to the upper limit of the sanctions established by law; 4) if there are two or more mitigating circumstances, the court can impose punishment for one or more two degrees below what is provided for in the law. [12]

One of the promising areas of development of the state's penal policy is the use of artificial intelligence in crime prevention, in particular in the systematic analysis of convicts' behavior, monitoring and identification of potential victims of crimes in places of deprivation of liberty (with regard to the level of penitentiary crime, conflicts between convicts, the vulnerable status of many of them) in order to conduct further victimological measures with them.

The problem of penitentiary institutions that exists both in the Republic of Armenia (as evidenced in the 2021 Annual report on activities of the Republic of Armenia) and the Russian Federation is provision of appropriate psychological assistance to convicts, manifested in frequent cases of suicide of convicts, insufficient and ineffective activities in this sphere. Thus, we propose to introduce an artificial intelligence system into the analyzed area, assigning it also the task of identifying persons prone to committing suicide in correctional institutions.

Foreign experience also testifies to broad prospects and significant positive results of the use of artificial intelligence in crime prevention and forecasting. For example, the analytical software package CEG (USA, 2016) helps analyze risks of committing a crime in a certain area, based on data obtained from social networks, video cameras, weather forecasts, etc. [2]. Introduction of artificial intelligence into the process of execution of sentences as one of the means of preventing recidivism also deserves attention.

The Ministry of Justice of the Russian Federation has proposed to create an independent structural unit in the Federal Penitentiary Service, responsible for digital transformation of the department. The use of artificial intelligence in correctional institutions will lower the workload of employees and create additional opportunities for effective prevention of offences. A significant role will be played in prevention of convicts' suicidal tendencies and conduct of the most focused individual work with such persons. With the help of systematic video surveillance of convicts' behavior, analysis of their connections (frequency and other factors) both with convicts and the administration of penal institutions, the program will be able to come to a conclusion about their suspicious behavior.

In places of detention, criminal subcultures, criminal infection of convicts, and their adoption of criminal traditions and ideology are widespread. The study of foreign experience is interesting in the analyzed context. For example, in May 2021, the first smart prison Tai Tam Gap was open in Hong Kong. Artificial intelligence plays a role of the warden: it remembers each prisoner in person, always knows where he/she is and what he/she is doing, is able to raise the alarm in case of fights, inappropriate behavior or suicide attempts, monitors the regular electronic journal and the self-management system of the cell inhabitants.

Meanwhile, the problem of penitentiary policy is its focus on preventing criminal behavior not only of convicts, but also of the administration, in particular, commission of corruption crimes. It is also possible to use capabilities of artificial intelligence to prevent escape from prison.

It should be noted that in the Republic of Armenia, in 2022, the video surveillance system consisting of more than 400 video cameras was installed in the penal executive facility "Armavir" to ensure transparency of activities of the penitentiary institution. With the help of this video surveillance system, the goal is to eliminate lawlessness and consequently protect human rights. The installation of this system will be important in the fight against drug trafficking, gambling, pressure and attacks on prisoners [4].

A very important direction is precisely ensuring convicts' safety in correctional institutions, identifying questionable frequent contacts of convicts with each other in order to prevent criminal infection.

It is worth mentioning that the Russian Federation plans to introduce the "Digital platform for the environment of labor adaptation of the Federal Penitentiary Service of Russia", focused on monitoring and analyzing convicts' labor activities [3].

The use of artificial intelligence in prisons to analyze types of prisoners' behavior will beneficial for both detainees and prison staff, as it will be possible to identify situations of potential harm. For instance, it will be easier for those on duty to notice signs of disposition to self-harm in prisoners.

The IT solution called "Facial recognition system, behavioral analysis and post-analysis of the collected data within the digital profile of the convict to adjust the resocialization program based on artificial intelligence" is to be established in 380 prisons and colonies.

Besides, artificial intelligence can be introduced into practice of executing other types of punishments, such as compulsory labor, correctional labor, forced labor, boosting effectiveness of timely detection of violations committed while serving these punishments by convicts.

In the context of the cybercrime spread, which often acquires a transnational character, it seems especially relevant to remove offenders from digital reality. This issue has been widely discussed and applied in foreign countries. The Russian Federation has certain experience in its application as well. For example, according to verdict No. 1-173/2017 of November 22, 2017, M.M. Magomedov was sentenced to imprisonment with deprivation of the right to use the information and telecommunication network "Internet" for a period of 2 years for committing a crime under Article 280 of the Criminal Code of the Russian Federation. Such withdrawal from the digital environment can have a certain criminological preventive effect on the convict. However, it is rather problematic to restrict access to the Internet completely to the convict and control actual execution of this prohibition by convicts.

The difficulties of law enforcement are related to the fact that the orders on restriction of use will be effective only to the extent that this order can be enforced. This may require probation officers to be trained in computer forensics to conduct thorough checks of the offender's computer, which is hardly possible for most probation services.

Commission of crimes against the sexual integrity of minors on the Internet, in our opinion, is of a particular danger.

There is no similar qualifying circumstance in Article 135 of the Criminal Code of the Russian Federation, however, the Order of the Plenum of the Supreme Court of the Russian Federation No. 16 of December 4, 2014 "On judicial practice in cases of crimes against sexual integrity and sexual freedom of the individual" stipulates that such actions in which there was no direct physical contact with the body of the injured person, including actions committed using the Internet, other information and telecommunication networks, can also be recognized as depraved. We believe that given the rapid development of crime through the use of digital technologies, their cross-border nature, possibility of involving an unlimited number of minor victims, the Russian legislator should borrow experience of Armenia, France, and Iceland and consolidate commission of the noted criminal act using the Internet as a qualifying feature.

Summing up results of the study, it is necessary to note rapid development of public relations, entailing digitalization of various areas, which in turn requires an adequate response at the legislative and law enforcement levels. It is necessary to state once again our disagreement with introduction of artificial intelligence directly into the sentencing process, which, in our opinion, levels such categories as legal awareness, internal judicial conviction, manifestation of an individual approach when considering each specific case, taking into account all the circumstances of the deed. We believe that in an effort to avoid numerous issues arising in connection with the wide scope of judicial discretion, it is not necessary to look for alternative ways in the form of the use of artificial intelligence. The solution to the problem is seen in improvement of the current legislation on the basis of key directions of the state criminal policy, based on the proclaimed principles of legality, justice, and humanism. The limitation of judicial discretion is necessary when solving various issues, in particular, when releasing from criminal liability (in connection with active repentance, for example), in which, unfortunately, the norm is of a discretionary nature, while the absence of a person's guarantee to be released from criminal liability negatively affects his/her corresponding positive post-criminal behavior. It is also necessary to refer to Article 64 of the Criminal Code of the Russian Federation, which is also of a discretionary nature and provides judges with ample opportunities for discretion. It is important to focus attention on the solution of these issues; therefore, we believe, without exhausting available opportunities and capacities, it seems hasty to transfer the function of the justice administration to artificial intelligence (in the context of the desire to reduce judicial discretion).

At the same time, we have outlined quite broad opportunities for digitalization of the process of execution of punishment, in par-

ticular, as noted above, it is necessary to use capacities of artificial intelligence as an auxiliary tool (not imperatively) in the prevention of penitentiary crime among convicts; monitoring their personality throughout the process of serving a sentence in order to address issues related to application, for example, of incentive measures, resolution of issues of parole from serving a sentence. Artificial intelligence can also assist in identifying and preventing the widespread spread of criminal infection among convicts.

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Introduction to Ethnocriminology

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Abstract

Introduction: the article considers crime from ethno-religious perspectives and in the context of interethnic conflicts, pays special attention to extremism and terrorism, and identifies critical features of these phenomena. The author emphasizes that extremism and nationalism in politics can put humanity on the brink of disaster. *Task:* to draw attention to insufficient study of crimes of an ethnic and ethno-religious nature, substantiate the need for criminological ethnological research aimed at developing new general theoretical approaches to understanding crime, its causes and measures to combat it. *Methods:* the axiological approach is a methodological basis of this research. To solve the research problem, general philosophical principles of dialectics and special methods of cognition, such as systematic, formal legal, sociological, etc., are used. *Results:* the author considers problems of fanaticism in ethnic and ethno-religious groups and emphasizes its particular danger. It is noted that it is fundamentally wrong to assert that there is a civilization that is at enmity with the rest of the world, since civilization includes not only a religious component. *Conclusions:* the state can successfully resist nationalism and ethno-religious fanaticism; in countries where these phenomena are punishable, criminals may renounce their beliefs.

Keywords: ethnic; ethno-religious; fanaticism; extremism; Nazism; ethnic and ethno-religious conflicts; ethnocriminology.

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Crimes of an ethnic and ethno-religious nature are insufficiently studied in Russian criminology, except for modern ethno-religious terrorism. Meanwhile, as it is well known, ethnic and ethno-religious factors play an important role in the life of mankind, therefore, they cannot but influence crime, in some epochs significantly. Knowing them is important, especially in multinational and multi-confessional Russia.

Ethnology is the science of nations and peoples, including those who have not reached the status of a nation, studying their characteristics as a nation and people, their culture, customs, traditions, archetypes and symbols. Its subject also includes religiosity, theistic positions, perversion of religious ideas and fanaticism arising on such grounds, which is especially important for law and order.

Conducting ethnocriminological research, it is necessary to abandon the idea of the transitory nature of the sense of ethnic and religious affiliation and the national and religious intolerance that grows on its soil, its limitation by narrow historical limits and the level of social development. The national character does not change due to shifts in the external material environment.

In our opinion, the national character is a combination of historically stable socio-psychological, moral and spiritual characteristics of a given nation, expressed in national and religious symbols, national and religious values. It is associated with historical, including unremembered unconscious collective experience, sometimes millennial, of a given nation or peoples, generated by it and can be considered the spirit or soul of a nation or peoples.

Such a character is stable, moreover, very conservative, inflexible, and reluctant to adapt to new conditions. But even adaptation by no means indicates a significant change in the ethnic formation itself and its religious and cultural basis. They, like individuals, can be transformed due to external stimuli, thus often creating the illusion of changes in these traits, therefore, it is crucial to take into account that external social conditions have relatively weak possibilities of influencing the core of the national and religious spirit, if we understand by it what arises as a result of the functioning of the collective unconscious by archetypal mechanisms and is the basis of existence of this ethnic group or religious group.

One of the paradoxes that give rise to religious and nationalist terror is that nationalists and religious extremists react very acutely to real or imaginary insults to their nation. Although they are usually completely insensitive to the humiliations and insults that other nations themselves or their individual representatives are subjected to.

Summarizing, we can identify the following grounds for interethnic conflicts, which they try to solve with the help of terrorism sometimes:

– desire to redistribute certain vital resources and natural wealth;

– mismatch of ethnic, national and religious borders, presence of territorial, political, and other claims of one nation to another; desire to make one's country mononational or monoreligious;

– impairment of nations' rights to self-determination (here we mean only those cases when they in fact have the right to claim sovereignty);

– desire of some national group or organization to seize state power by separating it from the rest of the country (sovereignizing) (surely, this is not reflected in slogans designed for mass consumption;

– violation of the personality rights of representatives of a certain nation (ethnos); humiliating, dismissive attitude towards them; failure to take necessary measures for their economic and spiritual development;

– desire to demonstrate one's superiority to another nation, peoples, or race and, at the same time, intimidate it. Sometimes this is provoked by impoverishment of the population, when they have nothing left but their national identity; marginal consciousness, as you know, can transform into national socialist (Nazi, fascist, racist) one;

– variety of people's ideas about national wealth, national dignity and national or racial interest, in which the most archaic, even primitive roots can be manifested.

– inept, ill-considered policy of the central government in relation to certain national regions; failure to take measures to neutralize negative consequences during restructuring of hierarchical structures and violation of the previous balance of power and capabilities.

– desire of any nation (ethnos), or race to preserve its national identity and in this regard resistance to another way of life, worldview and ideology, or other values imposed by authorities or other structures.

– emergence of a shadow national component in the formation of the national bourgeoisie and entrepreneurship. In some cases, they may resort to nationalist terrorism to defend and assert their economic interests, i.e. on the basis of wild market competition. In our country, organized criminal groups used terror against others under the guise of nationalist ideas.

– unwillingness of the authorities (at different levels) and the intelligentsia to outbreak of nationalism and inability to predict it in time, take preventive measures, and stop destructive behavior.

– political struggle based on religious, national or nationalist or racial movements.

– prevalence of sovereignization processes over economic expediency, political, spiritual, and other interests and values, promotion of maximalist demands, not confirmed by reality.

– growth of unemployment, especially in large cities with a diverse national and racial composition: minorities, i.e. refugees and migrants, will be blamed for the lack of work.

The hierarchy of causes of interethnic conflicts varies among different peoples and may change over time; but it seems that it is still stable over a long period of time.

Naturally, the question arises: what the role of religion in generating and provoking ethnoreligious crime is? The answer to it cannot be unambiguous.

To begin with, the sacred texts of different religions contain calls for violence or justify its use. In this sense, the Koran, for example, almost does not differ from the Bible, especially from the Old Testament. What is more, a lot depends on the interpretation of specific texts, i.e. on the position of the one who does it. That is why there is no reason to consider the same Koran as the main source of Muslim extremism. But even if the sacred books do not shy away from violence and one can get inspiration and justification for terrorism there, then religion turns out to be very involved in such a phenomenon. Revelation of Saint John the Theologian (Apocalypse) is very eloquent in this sense.

Besides, it is religion that is very sensitive to all encroachments on what it considers its

sanctity or important value. It is ready to protect it also through aggression, and in critical situations it is especially prone to a black-and-white perception of the world, dividing everyone into friends and foes.

The Church makes purely religious symbols the national heritage of the people and basis of their culture, declaring them inviolable and especially revered. People perceive them as such and therefore regard a real or imaginary infringement on them as the greatest danger, which should be avoided at all costs.

What is more, the sacred texts condemn violence and preach love, forgiveness and mercy. And in this respect, the Koran is no different from the Bible. Therefore, the fight against terrorism presupposes maximum reliance on religion and church ministers of all faiths.

Many authors distinguish between postulates of Islam and provisions of Sharia, which is a set of prescriptions governing the behavior of a Muslim in various life situations. Some authors believe that the public law of Sharia does not represent the law of Islam, which modern Muslims are obliged to follow in fulfillment of their religious duty. Sharia sometimes directly contradicts international law, which is not surprising, since it was formed in a completely different era. While the UN Charter prohibits the use of force in international relations except in cases of self-defense, Sharia, on the contrary, gives such permission in the name of spreading Islam and maintaining the purity of faith. Sharia legalizes slavery as one of the options for treating prisoners of war (execution and release with or without ransom, depending on the will of the winner, are other options). Sharia accepts discrimination by gender and religion and punishes deviation from Islam with the death penalty. Being created by Muslim lawyers in the first three centuries of Islam, Sharia, although it comes from the Koran and the Sunnah, is not sacred in itself.

Undoubtedly, the extremes of sharia in civilized Islamic countries are officially excluded, but they can persist in certain social groups.

In Islam, the right to declare and wage a holy war on behalf of the state, i.e. in order to repel aggression and protect freedom of religion, belongs only to the state itself. Individuals, public and religious communities are not entitled. It is noteworthy that the correct interpretation of the Koran can be given only by scientists who know both the context and the history of its revelation. The Koran states that "there is no compulsion in religion" (2:256), i.e. it explicitly prohibits forced conversion to Islam. Meanwhile, in justification of crimes against non-Muslims, Islamic fanatics use the following Koranic law: "And kill polytheists wherever you find them… O Prophet! Fight the infidels and hypocrites and be merciless to them" (9:5, 73). To justify the aggression against non-Muslims, the following statement of the Prophet Muhammad is also cited: "I was ordered to fight with people until they testify that there is no deity except Allah, and Muhammad is His Messenger, they start performing prayer and giving zakat, if they do this, their lives and property will be under my protection, otherwise they should be treated according to the law of Islam, and the judgment over them is in the hands of Allah Almighty". Both statements directly call for violence and can indeed be used to justify terrorism. However, we should bear in mind that they were written in the 6th century and addressed to completely different people for different purposes. Calls for violence can be found in the Bible in abundance as well.

However, nowadays Muslims come to the conclusion that Islam unequivocally condemns terrorism, violence can only be used as a way to protect this religion. Contrary to Islamic extremists' claims, they do not serve Islam, but harm it.

How can we describe the current ethno-religious situation in the world and what is its essence and main causes? We believe that it is mainly a clash of two world cultures – Islamic and Christian, East and West, if we understand them not geographically, but as areas of distribution of certain civilizations. It is a clash of two mentalities, two worldviews, two attitudes to life and work, to oneself and the world around us. The essence and content of these conflicts need constant in-depth and thorough research.

To begin with, one can see here the envy and even hatred of the relatively poor and not possessing sufficient military power of the East towards the rich, prosperous, leading a prestigious existence, having indestructible military forces of the West, moreover, not always fair and often aggressive towards its needy neighbor. That is why the World Trade Center, a symbol of the West's economic prosperity, and the Pentagon, a symbol of its military might, were attacked on September 11, 2001.

The Islamic East has no way to resolve the conflict with the West through military force, so it resorts to terror, which, as in other cases, becomes a weapon of the weak. In addition, the open use of military force is possible only on the part of the state, but no Muslim state expresses such a desire, and many of them really do not want any conflicts, but are simply unable to curb their terrorists.

Why does the modern terrorist aggression come from the Islamic, and not from any other extremists?

It would seem that most of the terrorists come from poor countries, which now have no chance of approaching the developed ones. This is true for Afghan and Iraqi Al-Qaeda fighters, Pakistanis and Algerians, Chechens and other representatives of the North Caucasus who were involved in terrorist actions. However, a closer analysis shows that many terrorists are not poor at all and fight for the sake of the idea. In addition, we can name a number of the poorest countries in the world that do not take any part in terrorism, have no idea about it at all. Consequently, it is not poverty or, more precisely, not so much poverty that can be the cause of terrorism.

In our opinion, the essence of the problem is that Islam is the youngest of the world's religions. Others, such as Christianity, Buddhism, Judaism, Hinduism, have long defined their place in the world, their identity and subjectivity. They have nothing to search for. Islam's attempt to find its own identity, often realized in a violent form, should not be surprising: at certain stages of development this was also characteristic of Christianity and some other religions (we can recall the Crusades, St. Barthalamew's Night in France, the Inquisition, etc.).

However, to say that the entire Muslim civilization is at war with the rest of the world would be fundamentally wrong, since civilization does not only consist of the religious component, which, in turn, is also not guided by aggressive attitudes only. The majority of Muslim clerics, as well as ordinary believers, actively and constantly oppose violence.

There is another significant circumstance: Islam in some backward countries (Afghanistan) forms and cements a traditional society, which has long been replaced by an industrial and post-industrial one, created primarily by Western Christian civilization. In addition, Islam sometimes, but not in everything, shows conservative trends, stubbornly defending the most archaic forms of human existence and their daily communication, and therefore perceives and evaluates anything from the Western world very hostilely.

Meanwhile, its influence in the conditions of modern globalization is active and even destructive for the values and symbols of traditionalnd any serious threats are perceived by this society extremely painfully. Modern extremist movements are gaining popular support, denying the very need to accept and even simply respect Western values. As a program of action, they call for living to meet the laws of Islam. We emphasize that we are not talking about Islam in general, but about extremist movements.

Admittedly, the West has simplified the task for theorists and ideologists of terrorism. Mere enumeration of acts of violence and injustice against Islamic countries, including in past colonies, causes violent resentment of Muslims and outweighs all positive economic consequences of relations with the West. Of course, one may urge the West not to put pressure on Eastern civilization, not to impose its values on it, but how realistic it is? Can it weaken intercultural contradictions? Will it help to overcome the largely negative attitude of the East? The answer will be negative, since some eastern Islamic countries may remain poor, it will not be possible to make them civilized "in their own way".

We face an unsolvable problem: the attitude of the population of the West and the East to work is completely different. The East will remain poor until it radically revises its attitude to work and removes all obstacles to improving its efficiency. However, there is a fear that this is an intractable problem, and the East will remain poor, since the work of its citizens in some countries does not meet the requirements of modern standards and lead to prosperity.

It should be borne in mind that competition and, in connection with it, conflict relations between the Christian and Muslim churches developed back in those distant centuries when Islam had just begun to spread in the world.

Extremist crimes are often committed in the field of ethno-religious conflicts. Extremism is a universal concept, it includes dangerous, even extremely socially dangerous phenomena, but in no case useful, even exceptional, overcoming certain boundaries and showing new frontiers of human capabilities, which then can become the norm. This is very likely in sport, in scientific research based on experiment. However, extremism and nationalism in politics, for example, and further development of mankind, can put it on the brink of disaster.

Critical features of ethno-religious and nationalist extremism are the following:

1. Ethno-religious extremism constantly sets goals that are difficult to achieve or even unattainable.

2. Extremist organizations can fight for political power themselves, or they can be used by any communities in the struggle for political power.

3. Such organizations are characterized by the division of the world into their own and others, into black and white, fairly clear representations of the enemy, but mainly of its external signs and manifestations that cause envy and a sense of injustice. The enemy is a permanent, enduring figure, an archetype.

4. Disrespectful attitude towards other cultures that seem unnecessary, harmful, subject to destruction or, in any case, should be taken under full and strict control.

5. Constant concern about acquiring supporters, allies, and like-minded people from among crowd, but the crowd that is not a gathering of people before a football match, but masses of people, illiterate, simple-minded, gullible, mainly from the middle and lower social strata of the population. To do this, extremists use all the media available to them, the Internet, and information networks. The crowd is the main creator and guardian of ethno-religious and nationalist mythology. The crowd itself can provoke and carry out extremist violence.

6. The most favorable ground for ethno-religious and nationalist extremism is a crisis society, but extremism can also appear in a prosperous society, striving to make it a crisis, especially if it receives help from outside.

7. If we keep in mind Islamic ethno-religious (more often religious) extremism, it should be noted that Islam itself emerged 6–7 centuries later than, for example, Christianity.

8. Technological equipment, fluency in modern means of communication, allowing to engage in the fight against state communications agencies and obtain the information necessary for terrorists.

When assessing ethno-religious risks, it should be borne in mind that religion does not play such a significant role in modern history as it did in the Middle Ages and the ancient world. It seems that criminological ethnological research can lead to emergence of new general theoretical approaches to understanding crime, its causes and measures to combat it.

Belonging to a nation or religion can cause fanaticism, generated by a passionate, even to the point of self-forgetfulness, desire to protect them from real or imaginary enemies, achieve victory and complete triumph. The idea of the nation and religion, their perception and significance predetermine the essence of the personality. Along with such an attitude to them, it is very dangerous to have an indisputable possession of the most important truth, the knowledge of how to get to heaven or create it on earth.

P. Konzen writes about fanaticism that a "large number of people are seized with uncontrollable fanatical emotional reactions, enthusiasm, indignation, passionate hatred, which can easily turn into unbridled violence and desire for destruction. This refers to the crowd calling for total war in the Berlin Sports Palace, the rampaging Hindus who destroyed Ayoja Moshe in December 1992, or the desperate mourning filled with hatred during the funeral rituals of the executed Palestinians. Mass mobilization is an ancient trick, which in the 20th century became a scientific experiment. The constant question is whether rationally disciplined forces will win during general strikes, or an uncontrolled furore will break out during the onset of the protest. Great political changes have always been possible only due to united collective forces. On the other hand, the rebellious masses, in an exalted sense of universal solidarity, could underestimate the strength of the enemy. They could – as in the uprisings of slaves and peasants – be brutally beaten with batons. Being in the crowd, a person is especially prone to "get infected" by the fanatical. An individual falls into a "collective whirlpool", into the abyss of primitive feelings. Everything that has been building a differentiated identity in a person for centuries disappears instantly. Collective intoxication suppresses the whispering of the critical-self, ethical motives – even high education and extraordinary intelligence – are often unable to protect from this disorganization" [2, p. 115].

Fanatics are very often filled with hatred and even hysteria, strive to dominate and suppress, in many cases they intend harm, including extremely cruel. Fanatics are narcissistic, they can admire themselves, they supposedly know the idea that will save people, not realizing that unshakable faith in it deprives them of freedom, because they cannot go beyond it. Outstanding personalities, gripped by fanatical fervor, incite the masses and subjugate them during the years of crises, while committing the most terrible crimes. All of them are demagogically justified by the fact that they are allegedly committed for the benefit of the people, who believe in it because they themselves passionately desire it.

National, or rather nationalistic and ethno-religious, fanaticism leads to a loss of connection with reality. At the same time, control over the loyalty of other people of the same nationalist or ethno-religious group to a common idea is being strengthened. Its leaders and most passionate members may seem to be only fighters for the rights of their humiliated people or their only true religion, but they show their deadly determination when it comes to fighting. Then they show fanaticism and cold-blooded cruelty. For some fanatical leaders, the persecution of people of a different national, religious and racial affiliation is a way to satisfy their gaming potencies and realize their sadistic drives. Being successfully opposed by the state, they may give up their fanatical lies under threat of punishment.

P. Konzen believes that some "leading" fanatics, obviously meaning, for example, Hitler, left an indelible imprint on their era, while others were killed like rabid dogs. The thirst for revenge has always fueled protracted conflicts between peoples and religious denominations, which manifested themselves in the form of irrational forms of retaliatory violence. In the past, political regimes always maintained their power through fanatically brutal repression. On the other hand, fanaticism inspired the masses, who set in motion the most important historical events, and each time at the most terrible cost.

In almost all forms of philosophical ethics, there are calls for abstinence, "apathy", curbing rage; the founders of religions and saints also called for sympathy, forgiveness and mercy. But, at the same time, it was the religious leaders who, as if they had broken loose, could conduct a dogmatic struggle against manifestations of evil, questioning the existence of the "spark of God" in man.

In the age of globalization and urbanization, there is inevitably a mixture of peoples, but it is unlikely that someday, even in the very distant future, humanity will turn into a single people. Such a merger will never happen, because peoples live in different social, socio-psychological and geographical conditions, develop at different rates and with different historical memories. But if such a merger happened, it would be a misfortune for the whole world, people in it would become monotonous and gray, all the unique, special beauties of language, religion, customs, art, etc. would disappear. Meanwhile, culturologists have long known that different peoples have the same or similar customs and traditions, myths and fairy tales, rules of behavior and even forms and ways of violating them. For example, the myth of the world flood has become widespread. D.D. Fraser writes about it this way: the similarity is explained by a simple borrowing with some more or less significant modifications, but there are many cases when similar customs and beliefs of different peoples arise independently of each other, as a result of the same work of human thought under the influence of similar living conditions [5, p. 64].

These factors, differences and similarities of peoples determine the structure, nature and dynamics of crime among them. Even in the conditions of living in one city, some national groups, as a rule, constituting a minority of its population, isolate themselves from the rest and behave to meet not only common requirements, but also those specific of this nation. Voluntary isolation is very relative, since no one can completely or mostly isolate themselves from other people, excluding religious fanatics with damaged psyche. Some small or scattered peoples, for example, Gypsies and Yezidis, are capable of voluntary or, in fact, forced isolation in certain countries. Compulsion may consist not in the forceful pressure of the state, but in the displacement of such peoples by society with the tacit consent of the same state.

But it should be emphasized once again that the creation of informal, national, isolated groups is not always a consequence of external, even disguised pressure, and in many cases a conscious or unconscious desire of national (and religious) groups to preserve their identity and their values. Although this requires a criminological assessment, but in general there is a huge benefit for humanity, since it does not allow it to turn into a dull and standard landscape. Undoubtedly, not all representatives of this people, even in one city, are closed within the framework of their national association. Obtaining a higher education and work qualifications, as well as accumulating wealth, people leave it (sometimes maintaining a facade of former connection).

Certain peoples may have their own settlements not only within the borders of cities, but also outside them. This is observed in many countries of the world. Their separation from the rest of the population, which makes up the majority in the country, in no way leads to their criminalization; however, certain types of crime can develop there, such as production and sale of drugs, cattle rustling, creation of gangster and extremist organizations, etc.

It is possible to raise a very difficult and even sensitive question, whether there are criminal peoples? The deliberately straightforward question shows that the answer to it should not also be as such.

To begin with, what the adjective "criminal" means in this context, whether it can be used in relation to a particular people. If the answer is positive, it is necessary to explain whether it presumes committing grave, especially grave or insignificant crimes constantly or in some acute periods of its history. It begs comparison of the people with a man; C. Lombroso writes about the latter that there is a criminal person, believing that he/she inherits criminal genes. The evidence of this scientist is based on sociological material, which is absolutely unsuitable and, therefore, his position is untenable. But still, it can be reasonably assumed that the criminal person is a reality. How else can we call a person who was brought up in unfavorable conditions, began to commit crimes even in adolescence, was brought to criminal responsibility 8 times,

and follow prison and antisocial ideas. This is a completely alienated person, and not all through his/her own fault; a considerable share of responsibility lies with the family, school and law enforcement agencies.

It is clear that a person and a people are different phenomena, although people of the nation make up the people. Crimes are committed only by some part of it, but it is known exactly which one. If we analyze the entire history of mankind, it turns out that some peoples, including in antiquity and the Middle Ages, attacked other peoples, usually neighboring ones. They destroyed them in whole or in part, the other part was captured, assimilated. At the same time, the invaders knew that by killing or capturing they were committing crimes, but they were sure that this was their right, that they were obliged to do so, that the defeated peoples themselves threatened them, which gave rise to their aggressive defense, that such peoples were inept and insignificant and they had no reason to live on earth, etc. Such a worldview and such a world interpretation have been popular among the ancient Jews who escaped from the Egyptian captivity, the ancient Romans and other modern peoples in the Middle Ages, modern and contemporary history. We see that civilization does not abolish the laws of history and does not change the psychology of peoples. Hitler's Germany and the people of that time can serve as a proof of this statement.

It was the Germans of such a Germany, and not Germans in general, one of the most civilized and educated nations in the world, who committed extremely cruel and heinous crimes during the Nazi era. Usually they blame Hitler for it, but cannot answer the question why the Fuhrer could not act in Great Britain or Russia, but particularly in Germany. Hitler as a necrophile [4, pp. 319–373] won a complete victory by organizing and implementing an unprecedented genocide and aggression against other countries in history. All this became possible only in Germany, whose history and archetypal values gave him unprecedented power, which he fully used to commit mass murder and destruction.

The Germans proved themselves to be brave warriors back in the era of resistance to the Romans, and at that time there emerged the archetype of the evil blonde gorges, merciless to those whom she considered enemies. For centuries, the cult of militarism and military force was created; so, Kaiser Wilhelm II had six sons and all of them were army officers. The Kaiser was one of the initiators of the First World War. Therefore, the Germans suffered defeats in the wars with Napoleon very painfully and invariably craved revenge.

The explanation of Hitlerism can be found in many works, in particular, H. Arendt, K. Bassiuni, I. Fest, E. Fromm, O.Yu. Plenkov, L. Rees, G. Lewy, K. Jaspers, T. Mann, H. Rauschning, W. Reich, P. Kontsen, etc. Considerations of the outstanding ethnologist and geographer Jacques lis e Reclus are important for understanding roots of German militarism and crimes committed by the Germans during the Hitler years. "The Germans, in the end, began to personify their empire as a woman armed from head to toe, threatening someone with her sword. Here one involuntarily recalls the "national" monument of Germany, towering on the high hill of the Niederwald, located on the right bank of the Rhine. The proud, armed statue of Germany, standing above surrounding hills and meadows, looks with hatred over the Rhine, towards France. In this monument, there is a threat not only to France, but to the whole world; every German, looking at this monument, is completely imbued with the consciousness that "Germany is above everything on earth" and therefore meekly makes heavy sacrifices to maintain the greatness and power of his/her beloved fatherland. Similar monuments, only of smaller dimensions, were erected to educate people in many cities and towns of Germany.

Recognizing the main task of the nation to achieve world power with the help of armed force, the Germans, of course, had to create a well-organized state power that could lead the nation to achievement of its ideals. Indeed, the state power in Germany has reached its highest development and there is no government in the world, whose representatives enjoy the same honor as in Germany" [3, p. 12].

E. Reclus cites a children's song, widespread in German rural schools back in the 19th century.

"Trumpets sound solemnly,
And banners are noisily unfurling.
March, march on the enemies in the name of God!
Chop them down until they all burn!
Beat them, do not give mercy!
If you cannot lift the sword,
Then strangle your enemies without being timid".

The very names of the Hitler era (Nazism) and the Hitler's Party (National Socialist" indicate not only the criminal regime in Germany, but also that all the monstrous crimes of the Germans were of a national character. Of course, not all Germans were affected by Nazism, but a significant majority of them were. There is every reason to think that all this was in the past, although in the recent past. But, of course, Germans, like any other nation (and race), can by no means be called criminal. Crimes are committed by individuals, perhaps even the majority of people of this nation

or racial group, but not the entire nation or racial group. Besides, any of these ethnic units can live in different countries.

We agree with H. Arendt that comparing the absolutely innocent Jewish people with the absolutely guilty German people does not mean that it is possible to make the entire German people look as guilty as the Nazis did with the Jews. Establishing and maintaining such differences would mean establishing and maintaining a permanent hell on earth [1, p. 349]. This, of course, does not mean that the German people do not bear any responsibility to the whole world, because it and no one else brought Hitler to power, which was officially handed over to him by President Hindenburg, who supported him in everything, applauded him, believed him implicitly, moreover, idolized him, not doubting the sanctity of his orders at all. Hitler and his criminal regime, with the almost full support of the people, attacked countries and peoples who obviously could not resist them, but showed a complete lack of strategic thinking by entering into war with democratic countries and the USSR. They were simply short-sighted.

A new post-communist Russia in the crisis period of its youth faced an acute national problem – the Chechen one. At first, people of non-Chechen nationality were forced out of Chechnya, and the civil war of this region with the rest of Russia began. Peace in this small republic was achieved at the cost of thousands of lives on both sides, but Chechen radicals often resorted to terrorist acts due to military actions, which is always characteristic of the weaker side of the conflict. At the same time, the following very important circumstance should be taken into account: the Chechen authorities and the people of this country were at war with Russia not because they hated Russians, Ukrainians, etc. Chechens would do the same if their freedom was hindered by the French or the Japanese, i.e. they fought with the Russian government, with a force that does not give them the opportunity to become independent, but not with other peoples, living in Russia.

This is not the first time for our country to address a national problem: after the 1917 October Revolution, the Bolsheviks faced a very painful task to restore Russian power in the Central Asian region. It was, basically, a colony of tsarist Russia and this status needed to be preserved.

Uprising of the peoples of Central Asia was not something extraordinary in world history, so did the inhabitants of many colonies of Great Britain, France, Spain and other European powers. Soviet propaganda, of course, did everything possible to denigrate and spit on the movement of Central Asian nations towards independence, presenting them as purely robbers and criminals, and people who took up arms as basmachs. They were heroes in the eyes of their peoples, which the Communists could not agree with in any way, especially since they acted against them with maximum cruelty.

There have never been racial conflicts in Russia, since there is a small number of representatives of the Negroid race in Russia. As for the Mongoloid race, for many centuries, peoples have become so close that they do not notice racial differences.

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On Taking into Account the Victim's View in The Process of Differentiation and Individualization of Criminal Punishment

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Abstract

Introduction: the article analyzes the legal position of the Supreme Court of the Russian Federation on the question of the permissibility (inadmissibility) of taking into account the victim's view (his/her legal representative) when sentencing by the court. *Purpose:* based on the analysis of Articles 61 and 63 of the Criminal Code of the Russian Federation and identification of features of their practical application, to show the need to take into account views of the parties when imposing punishment. *Methods:* comparative legal, interpretation, as well as private scientific – legal-dogmatic and method of interpretation of legal norms. *Results:* it is doubtful when the court takes into account the victim's view (his/her legal representative) as either an aggravating or only mitigating circumstance, since the criminal law (articles 61, 63 of the Criminal Code of the Russian Federation) does not classify it as either aggravating or mitigating. At the same time, the list of aggravating circumstances to date is exhaustive and cannot be interpreted broadly. At the same time, judicial practice knows cases of considering other circumstances not provided for in Article 63 of the Criminal Code of the Russian Federation for strengthening punishment, and Part 2 of Article 61 of the Criminal Code of the Russian Federation stipulates that other mitigating circumstances may be taken into account when imposing punishment. *Conclusion:* the court should always take into account the position of the parties in the criminal process, including when imposing a more or less severe punishment. In this regard, there is a need for clarification by the Plenum of the Supreme Court of the Russian Federation of the corresponding duty of courts when they make decisions on criminal cases.

Keywords: criminal punishment; differentiation and individualization of punishment; position of the Supreme Court of the Russian Federation; opinion of the victim; mitigating and aggravating circumstances.

12.00.08 – Criminal law and criminology, penal law.

5.1.4. Criminal legal sciences.

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In recent years, and especially in 2021, the Supreme Court of the Russian Federation has persistently drawn the courts' attention to the inadmissibility of their references to the position of the victim when assigning punishment to persons guilty of committing a crime. Thus, reducing the punishment of K., convicted under Part 1 of Article 105 of the Criminal Code of the Russian Federation, the Judicial Board for Criminal Cases of the Cassation Court of General Jurisdiction referred, in particular, to the fact that the victim's opinion about the type and size of the sentence in terms of stiffening the latter cannot be taken into account by the court [1, p. 47]. In another case, the verdict was also changed by the appeal decision: the descriptive and motivational part excluded the indication that the victims' opinions about strict punishment of P. were taken into account when imposing punishment [3, p. 29]. A similar position was taken by the Presidium of the Supreme Court of the Russian Federation in the case of L., D. and Sh.: changing the verdict and the appellate definition, it excluded the mention "on taking into account victims' opinion about strict punishment of the defendants" [2, p. 10].

At first glance, such an explanation is based on a misunderstanding and should be rejected immediately. Indeed, the victim is a party in the criminal process, endowed with a wide range of rights, since physical, property and (or) moral harm was caused to him/her. It is no coincidence that the decision to recognize as victim is taken immediately from the moment of criminal case initiation (Part 1 of Article 42 of the Criminal Procedural Code of the Russian Federation). The victim, his/her legal representative is entitled to participate in criminal prosecution of the accused, and in cases of private prosecution – to put forward and support the charge (Article 22 of the Criminal Procedural Code of the Russian Federation). The victim has the right to file petitions and challenges, speak in court debates, appeal the verdict, and file objections to complaints and submissions in the criminal case (Part 2 of Article 42 of the Criminal Procedural Code of the Russian Federation). When considering the possibility of making a decision on a verdict without a trial, it should be established whether there criminal case has all necessary conditions (Chapter 40 of the Criminal Procedural Code of the Russian Federation), in particular, the victim does not object to consideration of the case in a special order. If it turns out that the victim expresses disagreement in this part, the criminal case is considered by the court in a general manner (Part 4 of Article 314 of the Criminal Procedural Code of the Russian Federation).

Criminal legislation also takes similar positions on the issue under consideration. In particular, Article 76 of the Criminal Code of the Russian Federation provides for the possibility of exemption from criminal liability on non-rehabilitating grounds in connection with reconciliation with the victim only when the harm caused to the latter is smoothed out. If the victim does not agree to release the perpetrator, if he/she insists on bringing him/her to criminal liability, the application of this benefit to the offender is impossible in principle. Hence, not taking into account the opinion of the victim as party of the criminal process when solving relevant issues, including regarding the scope of criminal liability (its admissibility, type and size), looks inappropriate.

It is important in this regard to identify motives of the Supreme Court's prohibition to consider the victim's position when imposing punishment. According to the Decree of the Presidium of the Supreme Court of the Russian Federation of February 3, 2001 in the case of L. and others, the "victim's opinion on the appointment of strict punishment to the defendant is not attributed by the legislator to the circumstances aggravating punishment, the list of which is established by Article 63 of the Criminal Code of the Russian Federation, and reference to this circumstance when choosing punishment is inappropriate [2, p. 10].

It becomes clear that it is inadmissible to take into account such an opinion a) precisely when punishment is aggravated, b) on the grounds that there is no mention of this circumstance in the list of aggravating circumstances.

Does this mean that the victim's opinion on the application of less severe punishment is a mitigating circumstance and it cannot be ignored by the court, and not establishing it and not mentioning it in the sentence is unacceptable? And is the victim's opinion about severe punishment really an aggravating circumstance?

To answer these questions, it is necessary to consider mitigating and aggravating circumstances, their legal nature, and then criteria for their selection for inclusion in the lists of Articles 61 and 63 of the Criminal Code of the Russian Federation, reasons for the inadmissibility of recognizing the victims' opinion about punishment as an aggravating circumstance.

The first complication arises due to the fact that the criminal legislation of Russia has never contained definitions of mitigating and aggravating circumstances. To clarify their specifics, we might correlate them with related concepts, but this is not that simple. Thus, by virtue of Part 3 of Article 63 of the Criminal Code of the Russian Federation, the imposition of punishment involves taking into account the nature and degree of public danger of the crime and the identity of the perpetrator, including mitigating and aggravating circumstances. Thus, the close connection of such circumstances – in terms of content, origins – with the data on the crime and the identity of the perpetrator is emphasized. However, the ratio of the mentioned criteria in Part 1 of Article 6 of the Criminal Code is interpreted differently: punishment imposed by the court should correspond to the nature and degree of public danger of the crime, circumstances of its (crime) commission and the identity of the perpetrator; there is a different understanding of the nature of mitigating and aggravating circumstances; their connection, as well as other circumstances, only with the crime is shaded.

Not dwelling on the mentioned inconsistencies in the issues of normative interpretation of the circumstances under consideration, we can identify crucial features of the latter, such as their origin and the identity of the perpetrator. There are circumstances: a) manifested in the crime; b) not manifested in the crime, but closely related to subsequent behavior of the offender (for example, active repentance); c) unrelated to the crime, but characterizing a danger degree of the individual (for example, a positive household characteristic of the defendant); d) not characterizing a danger degree of the individual (for example, presence of young children, disability).

The first two varieties can be recognized as mitigating, the other two can be recognized by the court as mitigating under Part 2 of Article 61 of the Criminal Code of the Russian Federation (currently it is pregnancy and presence of young children of the perpetrator – paragraphs "v" and "g" of Part 1 of Article 61). Aggravating circumstances are those of the first type (manifested in the crime).

Hence, the attribution of the victim's opinion, that is, the data not manifested in the crime, to the category of aggravating and mitigating circumstances is rather doubtful. They can be taken into account by the court only as a characteristic of the danger of the crime and the identity of the perpetrator (under Part 1 of Article 6 and Part 3 of Article 60 of the Criminal Code of the Russian Federation), but, according to law, not as mitigating and aggravating circumstances.

It is noteworthy that the circumstances mentioned in the headings of Article 61 and 63 of the Criminal Code of the Russian Federation are endowed with the function of influencing punishment in a mitigating or aggravating manner; other circumstances are also endowed with this function (for example, characterizing a form of guilt, degree of implementation of criminal intent, role in complicity, etc.). A distinctive property of the circumstances referred to in the law as mitigating and aggravating, in addition to their attribution to the data on the crime and the identity of the perpetrator is significance of their impact on the punishment imposed by the court and liability in general.

Hence, the circumstances under consideration can be defined as data that are derived from the content of the crime and the identity of the perpetrator and able to significantly mitigate or enhance liability and punishment due to their significant impact on the degree of public danger of this crime, and are also able to reflect essential features of the personality of the perpetrator of the crime.

Specific types of mitigating and aggravating circumstances are given in the lists of Articles 61 and 63 of the Criminal Code of the Russian Federation.

Any circumstances referred to as mitigating and aggravating (both named in the lists and taken into account by the court on the grounds of Part 2 of Article 61) are endowed with two mandatory features: significance of influence and their non-characteristic for most crimes. So, the circumstance that is common for en-

croachments cannot act as aggravating or mitigating (for example, the fact of committing a crime for the first time).

The mentioned features are minimally necessary for any mitigating or aggravating circumstance. But these features are not enough to include a specific type of circumstance in the list – it is required to identify a number of additional features, namely: a) typicality; b) unconditionality (mandatory influence); c) strictly defined direction of influence; d) non-derivation from other mitigating and aggravating circumstances.

Typicality of the circumstances included in the law is understood as the possibility of their presence in a more or less extensive range of crimes. For example, the circumstance described in paragraph "k" of Part 1 of Article 63, in particular the use of primarily generally dangerous means, is conceivable in more than 60 types of crimes. On the contrary, the range of attacks committed in perverted forms or with penetration into the home is insignificant, and therefore such circumstances cannot claim to be included in the list.

Mandatory influence (unconditionality) means that the circumstances described in the list will certainly affect a level (degree) of public danger of the crime, identity of the culprit and particularly punishment. Hence, it is controversial to include commission of the crime against a person "dependent on the perpetrator" (paragraph "z" of Part 1) in the list of Article 63 as an aggravating circumstance, since only substantial, and not any other, dependence is criminally significant.

A strictly defined direction of influence is a feature that underlies the separate existence of two lists (Articles 61 and 63). It means that the circumstances applying for inclusion in one or another list are capable of either increasing or reducing punishment in all cases of crimes. Hence, the law should not include circumstances of a "variable" nature (close relationship, state of intoxication, etc.). The Plenum of the Supreme Court (Paragraph 10 of the Resolution No. 2 of January 11, 2007) emphasized in 2007 that the commission of a crime in a state of intoxication is not attributed to circumstances aggravating punishment, is not included in the list of Article 63 of the Criminal Code of the Russian Federation. Now, in connection with the inclusion of this circumstance in Article 63 of the Criminal Code (Part 1.1), the situation regarding this circumstance has changed: on the one hand, as it does not have the property of a strictly defined orientation and binding influence, it is legitimately not included in the list of aggravating factors; on the other hand, the court is granted the right to recognize the commission of a crime in a state of intoxication as aggravating "depending on the nature and degree of public danger of the crime, circumstances of its commission and the identity of the perpetrator" (Part 1.1).

Finally, the list should not include circumstances derived from others that have already been included there, that is, reflected in the law (for example, when there is minority as a mitigating circumstance – an additional indication of the juvenile age of the culprit).

The lists of Articles 61 and 63 of the Criminal Code of the Russian Federation should reflect only the circumstances endowed with the totality of the mentioned features.

As mentioned above, unlike Article 61, Article 63 of the Criminal Code of the Russian Federation does not contain a provision according to which the court could recognize other circumstances other than those mentioned in the list as significantly affecting punishment. This gave the Plenum of the Supreme Court of the Russian Federation [4, p. 4] the basis for the conclusion that the "list of circumstances aggravating punishment is exhaustive and cannot be interpreted extensively" (paragraph 28 of the Resolution No. 58 of December 22, 2015). The reason for closing the list is obvious: the legislator sought to limit judicial discretion, prevent the imposition of undeservedly harsh punishment and show humanism towards a person who has violated the law. Ninety-three percent of 477 practitioners (judges, prosecutors, lawyers) interviewed by us mentioned the same motives.

It should be noted, however, that the legislator has not achieved its goals: judicial practice steadily bypasses the list of Article 63, taking into account numerous circumstances that are not considered as aggravating to stiffen punishment. And this is not accidental, because with the closure of the list, a conflict of laws situation arose: Part 3 of Article 60 obliges the court to take into account aggravating (as well as mitigating) circumstances "among other things",

that is, it is assumed that there are other circumstances to be taken into account that characterize the identity of the perpetrator and the degree of public danger of the crime. The court has no right to ignore them, which the Plenum of the Supreme Court of the Russian Federation is forced to recognize.

If the court takes into account only those mitigating circumstances that are named in the list, ignoring other data aggravating punishment, it will violate the requirement of Part 3 of Article 60 on full consideration of the nature and degree of danger of the crime and the identity of the perpetrator. If the court takes into account the circumstances not mentioned in the list when strengthening punishment, it will violate regulations on the exhaustive nature of the list.

The way out, taking into account all of the above, is seen in the explanation by the Plenum of the Supreme Court of the Russian Federation of the courts' obligation to take into account the opinion of the parties on the issue under consideration each time when making decisions on a criminal case. To take into account means to consider, evaluate the proposed solution, and include it in the list of issues to be discussed.

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Distinctive Features of Resuming Criminal Proceedings due to New or Newly-Revealed Circumstances

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Abstract

Introduction: the article comprehensively examines a procedural mechanism for resuming criminal proceedings due to new or newly-revealed circumstances, specifically designed to ensure justness of judicial decisions. It is applicable in cases when, after the entry into force of a verdict, ruling or court decision on a once-resolved criminal case, certain circumstances become apparent that, for various reasons, have not been known to the court. Moreover, legal significance of these circumstances is so high that it allows the interested party to question legality, validity and fairness of a court decision that has already entered into force. In such cases a verdict, ruling or court order may be canceled, the criminal proceedings resumed due to new or newly-revealed circumstances, and any decisions of all judicial instances without exception that have entered into legal force can be reviewed. *Purpose:* to analyze the practice of applying the procedural institution of resuming criminal proceedings in view of new or newly-revealed circumstances and formulate proposals for improving the implementation of opportunities to protect the rights and legitimate interests of participants in the process. *Methods:* theoretical analysis and evaluation of the practical implementation of the institute of resumption of criminal proceedings in view of new or newly-revealed circumstances, based on generalizations of judicial practice and doctrinal studies of Russian scientists. *Conclusions:* having studied distinctive features of this proceeding, the author comes to the conclusion that the criminal proceedings in view of new or newly-revealed circumstances cannot be resumed in case of judicial errors, including those confirmed by additional evidence proving innocence or the lesser guilt of the convicted person revealed after the decision has become enforceable. The court's unawareness during ordinary consideration of the criminal case is the main distinguishing feature of resuming proceedings due to new or newly-revealed circumstances. It determines the specifics of these criminal proceedings and actualizes the question of optimizing the structure of the Criminal Procedural Code of the Russian Federation, through a clear separation of this procedural mechanism from other proceedings aimed at reviewing court decisions.

Keywords: newly-revealed circumstances; resumption of criminal proceedings; conclusion of the prosecutor; new circumstances; revision of judicial acts; right to judicial protection; criminal proceedings.

12.00.09 – Criminal procedure.

5.1.4. Criminal legal sciences.

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Introduction

Adoption of the Constitution of the Russian Federation in 1993, which proclaimed human rights and freedoms as the highest value, and their protection as the duty of the state, and recognition of the jurisdiction of the European Court of Human Rights in matters of application and interpretation of the Convention on the Protection of Human Rights and Fundamental Freedoms in 1998 led to the improvement of mechanisms for reviewing judicial acts. Due to the conducted reforms, the court decision that has entered into force in the cassation and supervisory procedure can be reviewed in cases of discovered violations of the law that have affected or could affect comprehensiveness and completeness of the case investigation, correctness of the criminal legal assessment of the act, as well as provision of the rights of participants in criminal proceedings. In such cases, the cancellation of the final court decision and return of the criminal case for a new consideration to the court of first instance or appeal allow the criminal prosecution authorities and the court to eliminate their own violations, regardless of whether they were intentional or were the result of a good faith error. The fact that these violations could and should have been prevented or corrected even before the entry into force of the relevant final decision on the criminal case does not eliminate the need for their subsequent correction. Unlike the review of court decisions in the appeal, cassation and supervisory procedure, the resumption of criminal proceedings is now carried out in connection with identification of such circumstances that either arose after consideration of the criminal case by the court, or already existed at the time of its consideration, but were not known to the court. At the same time, not absolutely everything is taken into account, but only those circumstances that do not allow, ultimately, to evaluate the decisions taken in the criminal case as legitimate, reasonable and fair.

Resuming criminal proceedings in view of new or newly-revealed circumstances, the court ensures not compensation for shortcomings of the prosecution and judicial activity, but the opportunity to study those factual data that the criminal law recognizes as important for determining the grounds and limits of criminal legal protection, but which, for objective reasons, could not previously be included in the subject of the criminal case investigation [17]. This mechanism can and should be used to eliminate violations committed in the course of criminal proceedings (i.e. as such), and not when the possibilities for their correction in the cassation and supervisory procedure have been exhausted. In this sense, in relation to these proceedings, it should not be positioned and perceived as a backup.

1. Revision of judicial acts in view of new and newly-revealed circumstances as an independent procedural proceeding

Resumption of criminal proceedings in view of new or newly-revealed circumstances as a separate criminal proceeding is specially designed for investigation, subsequent evaluation and practical use of information previously unknown to the court. Moreover, it is predetermined by the very fact of its emergence and, as already mentioned, is not used after or instead of other possibilities for reviewing a judicial act that has entered into legal force. Contrary to the widely accepted point of view in the legal literature [4, 7, 9, 20], there is nothing extraordinary or exceptional in this proceeding, since in the modern Russian criminal procedure it is applied quite independently, i.e. when circumstances are discovered after the court hearings, or already existed at that time, but for objective reasons were not known to the court. At the same time, not any of them should be taken into account, but only those that hinder assessment of the final decision on a criminal case as legitimate, reasonable and fair. Up to the end of its review, it is considered both lawful, justified, and fair because it corresponds to the factual data taken into account by the court at the time of its issuance. Erroneousness of such a decision is revealed in the light of emergence of new or newly-revealed circumstances.

Despite adoption of the Criminal Procedural Code of the Russian Federation in 2002, as well as the amendments and additions to it, this production still has certain flaws. There are a lot of them, and they are of a very different kind. Over two decades of its operation, it has become, in particular, obvious that differentiation of circumstances into new and newly-revealed ones to resume a criminal case does not produce the expected effect, due to the fact that it does not cover the entire scope of possible judicial errors, and, as a result, limits procedural possibilities of their identification, correction and restoration of citizens' rights, violated by unlawful decisions in criminal cases. At the same time, judicial acts of the Constitutional Court of the Russian Federation and the European Court of Human Rights are not circumstances, especially new or newly-revealed, by their status and legal nature. But despite the fact that the quality of the work of Russian courts is still far from ideal, thus it is hardly advisable to work out some additional mechanism for reviewing judicial acts that have entered into force. Indeed, mistakes of the court, made due to their ignorance of some essential circumstances when making a final court decision on a criminal case, may be eliminated within the framework of the application of this legal proceeding. We see its further development in the consistent improvement of legal proceedings for their correction, as well as vesting all interested persons with the right to directly appeal to law enforcement agencies for a review of the verdict or other decision that has entered into force.

In Russian criminal procedural law, the resumption of proceedings on a criminal case due to newly-revealed circumstances is quite reasonably considered one of its oldest institutions, which received their original normative consolidation in the 1864 Statute of Criminal Proceedings [5, pp. 33–94]. The General and some other provisions of this normative legal act contain information that allows us to state that at the end of the 19th – beginning of the 20th centuries, court decisions that entered into force were not subject to revision in principle, except in cases when the court recognized that "... the earlier pronounced verdict had been the consequence of forgery, bribery or of another crime", and "... discovery of exculpatory evidence of the convicted person or his/her punishment due to a judicial error in excess of the measure of what he did" was recognized as a legitimate reason. Thus, enforceable sentences could not be reviewed otherwise than to resume criminal proceedings due to newly-revealed circumstances. At that time, according to articles 23, 180, 934–940 only court decisions that had not entered into legal force were reviewed on appeal and cassation [19].

In 1917, the administration of the young Soviet state abandoned all previously existing forms of correcting judicial errors. Other ways of reviewing both the sentences that had and had not taken effect were proposed. Against this socio-political background, the institution of resuming criminal proceedings even strengthened its positions. This can be traced in all sources of the Soviet criminal procedural legislation (the Criminal Procedural Code of the RSFSR of 1922, 1923 and 1960). Moreover, its history is interwound with national specifics. It combines the Russian pre-revolutionary and subsequent Soviet approaches, on the one hand, [1, 3, 18] and modern (European), on the other [2, 6, 9,]. The idea formed over a century and a half about the place and role of this procedural mechanism in the general system of Russian criminal justice has been largely corrected by the decisions of the Constitutional Court of the Russian Federation [16] and the European Court of Human Rights[12–15], as certain provisions of the Russian criminal procedural legislation (including revision of enforceable sentences) do not comply with the Constitution of the Russian Federation, international regulations and contradict legal positions of the European Court.

These circumstances could not but affect the fact that criminal proceedings of this type are now resumed extremely rarely. According to the Judicial Department at the Supreme Court of the Russian Federation, in 2016, for example, out of 69 filed submissions from the Prosecutor's Office to resume criminal proceedings due to new or newly-revealed circumstances, the courts satisfied 64. In 2017, 167 submissions out of 260 and, in 2018, 161 out of 175 submissions filed by prosecutors, were satisfied [8, p.18]. Such an inexpressive dynamics of resuming proceedings is caused by the fact that in judicial practice there are difficulties with distinguishing cases to review a court decision by resuming criminal proceedings or as part of supervision procedure. The grounds for resuming criminal proceedings on newly-revealed and especially new circumstances remain unclear. The current legislation does not specify the procedural status of the convicted (acquitted) and the

person against whom the criminal case was terminated at this stage of criminal proceedings, the mechanism for the defender's participation in it, etc. What is more, less complex supervisory proceedings dominated the sphere of revision of enforceable sentences for decades, and the very decision on their revision due to newly-revealed circumstances entirely depended on the discretion of the prosecutor, whose refusal on this occasion was not subject to judicial control.

2. Initiation of proceedings due to new or newly-revealed circumstances

The logic of the current legal regulation is such that the grounds for practical application of this procedural mechanism must be previously established or verified in the pre-trial proceedings initiated by the prosecutor, regardless of the presence or absence of the initiative of the parties. This is due to the fact that the prosecutor is not only entitled, but also obliged to exercise his right to initiate proceedings in connection with new or newly-revealed circumstances, if these circumstances objectively predetermine his appeal to the court. In contrast to the prosecutor, convicts, whose right to further judicial protection from charges of wrongdoing after the entry into force of a guilty verdict, as a general rule, is considered to be realized, as well as other persons, personally interested in the course and outcome of the criminal case, are not entitled to demand the initiation of proceedings due to new or newly-revealed circumstances directly in court. This is explained by the fact that that in accordance with clause 4.2 of the Resolution of the Constitutional Court of the Russian Federation No. 53-P of December 12, 2021 in the case of checking the constitutionality of Articles 416 and 417 of the Criminal Procedural Code in connection with the complaint of citizen F.B. Iskhakov "...unlimited freedom to apply to the court for review of decisions that have entered into force under these circumstances, bypassing the prosecutor's activities in pre-trial procedures, would weaken possibilities of justice in protecting rights and freedoms, and would also cast doubt on stability of enforceable sentences". Analysis of this legal position of the Constitutional Court of the Russian Federation shows that the review of a criminal case due to such circumstances is not part of the usual practice of criminal proceedings, since after the entry into force of the verdict and exhaustion of all judicial remedies the interested persons cannot demand resumption of criminal proceedings from the court. The court's initiative to resume proceedings, implemented without the prosecutor's official appeal or other legitimate reasons, would be redundant in terms of the purpose of justice. Moreover, according to paragraph 6 of the Resolution stated above, implementation of the court's activities in the procedural forms inherent in the judicial authority does not always give it the opportunity to check and investigate the circumstances that can serve as a basis for reviewing a criminal case to the same extent as that of the prosecutor and the investigative body, the prosecutor sends materials to for investigating these circumstances.

Reports from citizens or officials about the presence of new or newly-revealed circumstances can become reasons for the prosecutor to initiate appropriate proceedings, conduct an inspection or send materials to the head of the investigative body to investigate the above circumstances and resolve the issue of criminal prosecution on the facts of revealed violations of criminal legislation. Upon completion of the inspection or investigation, the prosecutor either terminates the proceedings initiated earlier, or sends the criminal case with his conclusion, a copy of the verdict and materials of the inspection or investigation to the court. Having considered the prosecutor's conclusion on resuming criminal proceedings in view of new or newly-revealed circumstances, the court, after canceling the verdict (ruling or resolution), decides to transfer the criminal case for a new trial, returns the criminal case to the prosecutor, terminates the proceedings on it, or rejects the prosecutor's conclusion. Thus, the procedure for resuming a criminal case under new or newly-revealed circumstances, being a kind of revision of enforceable sentences, is an independent mechanism for ensuring fairness of judicial decisions, where elements of pre-trial proceedings (including its initiation by the prosecutor, verification or investigation of new or newly-revealed circumstances with the possibility of conducting interrogations, inspections, examinations, seizures, other necessary investigative actions and subsequent referral of materials to the court) are combined with examination of the case in court (including consideration of factual circumstances established as a result of the investigation or verification). It is important that

the decisions taken by the prosecutor based on the results of pre-trial proceedings create a prerequisite for the court to review the verdict, in connection with which they are not final and can be appealed to the court. At the same time, the information contained in the materials of the conducted inspection or investigation is subject to evaluation in accordance with the procedure established by the current criminal procedural legislation.

All this allows us to assert that the grounds provided by the law for reviewing the verdict, resolution, court ruling due to new or newly-revealed circumstances (Article 413 of the Criminal Procedural Code of the Russian Federation) predetermine the procedural specifics of its practical implementation. In contrast to appeal and cassation proceedings, consisting in reconsideration of the same materials of the criminal case, the proceedings on new or newly-revealed circumstances involve, in particular, implementation of procedural actions and decision-making, characteristic not only of judicial, but also of pre-trial proceedings (including on initiation of this proceeding by the prosecutor, investigation of new or newly-revealed circumstances involving production of investigative actions, as well as subsequent referral of materials to the court for retrial with regard to established results of the investigation or verification of factual data).

3. Resumption of proceedings due to new or newly-revealed circumstances in the general system of procedural mechanisms for reviewing judicial decisions in criminal cases.

We cannot but pay attention to a great number of judicial control proceedings specially formed to review court decisions in criminal cases that have entered into force. For instance, the supervisory proceedings implemented in Russian criminal proceedings (2001) and reformed from the top-down (2010) [11] cannot be an effective means of legal protection of the victim and the person subjected to criminal prosecution, initially, since it contradicts the generally recognized principles of inadmissibility of reconsideration of enforceable sentences, according to which they or other final court decisions should not be changed for the worse for the guilty person. Consequently, supervisory proceedings in its current state are nothing more than a procedural mechanism legalized by the Russian legislator, which has capacities for quite probable abuse of law when reviewing court decisions that have entered into legal force.

Besides, comparison of the norms of the Criminal Procedural Code of the Russian Federation regulating cassation and supervisory proceedings shows their obvious commonality. Their minor discrepancies are usually due to the supreme position of the Presidium of the Supreme Court of the Russian Federation in the hierarchical structure of the Russian judicial system and its exclusive right to review and cancel not only the decisions of lower courts, but also its own. So, the latter attempt to reform the procedural procedure for reviewing enforceable sentences failed, since internal legal proceedings were not unified. Consideration of the enforceable sentences legality inevitably leads to the fact that the courts of cassation and supervisory instances respond only to a small part of the appeals addressed to them. Priority of the legal procedure over the legal certainty of the judicial act protected by the Russian legislator does not enhance current cassation and supervisory proceedings. Procedural mechanisms for reviewing enforceable sentences cannot be regarded self-sufficient and effective procedural tools due to their multiplicity and unavoidable similarity. As the merits of the criminal case are excluded from the subject of verification, representatives of the parties may not be sure in success of the second appeal to a higher court.

In turn, when resuming proceedings on new and newly-revealed circumstances, the format of the judicial act review is fundamentally different. Here, the court considers a criminal case with regard to factual circumstances established as a result of investigation or inspection, which makes this procedure for resuming much more effective than supervisory and cassation proceedings. Against the background of the above arguments, it becomes quite logical to raise the issue of abolishing these proceedings as redundant in the general mechanism of procedural regulation. Resumption of proceedings due to newly-revealed circumstances should become the only form of control over legality and fairness of court decisions in criminal cases that have entered into legal force. However, this proposal cannot be realized in short term in conditions of the current Russian statehood. There are other objective reasons due to the conservative approach to judicial review mechanisms. Accordingly, it is very

problematic to achieve positive dynamics in their reforming.

In contrast to appeal, cassation and supervisory proceedings, consisting in re-examination of the same materials of the criminal case by the court, the proceedings on new or newly-revealed circumstances involve implementation of procedural actions, typical not only for judicial, but also for pre-trial criminal proceedings. In this regard, it is possible to mention the necessity stipulated by law for the initiation of this proceeding by the prosecutor. Besides, investigation of newly-revealed circumstances involves carrying out a number of investigative actions (including inspection, interrogation, forensic examination, seizure, etc.), followed by sending the collected materials to the court for consideration of the criminal case with regard to the information established as a result of the investigation or verification (Articles 415–418 of the Criminal Procedural Code of the Russian Federation). At the same time, the legal significance of new information gives the interested party the opportunity to question legality, validity and fairness of the court decision that has already entered into legal force. It is in such cases that the verdict, ruling or court order may be canceled, and criminal proceedings resumed for new or newly-revealed circumstances in accordance with the procedure established by Chapter 49 of the Criminal Procedural Code of the Russian Federation (Articles 413–419). It is worth mentioning that within its framework, any enforceable sentences of all judicial instances can be reviewed. At the same time, the review of the guilty verdict on new or newly-revealed circumstances in favor of the convicted person is not limited by any time limits. Even his/her death is not an obstacle to the resumption of criminal proceedings for the purpose of rehabilitation.

Unlike appeal, cassation and supervisory proceedings, criminal proceedings are not resumed because of the court's violation of the norms of substantive or procedural law. At the same time, the court's failure to take into account certain circumstances, for objective reasons unknown to it when making a decision on the criminal case, cannot be recognized as a mistake. This is a crucial distinctive feature of resuming proceedings due to new or newly-revealed circumstances. This determines its procedural specifics and actualizes the question of optimizing the structure of the Criminal Procedural Code of the Russian Federation through a clear separation of this procedural institution from other proceedings aimed at reviewing court decisions, and, first of all, from supervisory proceedings. Additional arguments in favor of this proposal are as follows:

1) resumption of proceedings due to new or newly-revealed circumstances differs significantly from other procedural mechanisms for reviewing judicial decisions in criminal cases by the persons who initiated it, grounds and procedure for review;

2) in the framework of supervisory, cassation and appeal proceedings, final decisions in criminal cases are actually reviewed anew; and when resuming criminal proceedings, only new information is taken into account, which for objective reasons could not be previously included in the subject of investigation in this case, but recognized by criminal law as essential for determining the grounds and limits of criminal law security;

3) investigation materials, according to which the decision on resuming proceedings due to new or newly-revealed circumstances attributed to the competence of a lower court, can be accepted by the higher court for its proceedings; however, no changes to the previously adopted decision of the court can be done;

4) consideration of a criminal case on appeal or cassation does not prevent its consideration by the same court in the order to resume proceedings in a criminal case in connection with new or newly-revealed circumstances;

5) after considering the prosecutor's conclusion on the need to resume criminal proceedings in connection with new or newly-revealed circumstances and identifying grounds for changing the previously adopted final decision on the case, the court is obliged to cancel it and send the criminal case for new examination;

6) the court is authorized to make a similar decision in the event of new factual circumstances that may worsen the situation of the acquitted or convicted person in this criminal case;

7) adoption of decisions leading to the change in the position of the accused to his or her disadvantage is impossible in the vast majority of cases due to the imperfect legal mechanism for making such decisions.

We are talking about a mechanism that appeared in the Criminal Procedural Code

of the Russian Federation in 2013 on the basis of the Federal Law No. 64-FZ of April 26, 2013 "On amendments to the Criminal Procedural Code of the Russian Federation". It is unique in its kind and acts when new socially dangerous consequences of the act incriminated to the accused occur during consideration of the criminal case by the court or after the decision is pronounced (paragraph 2.1, Part 4, Article 413 of the Criminal Procedural Code of the Russian Federation). This mechanism is only for those consequences that are the basis for charging a person with a more serious offence. This allows the court, in the event of new or newly-revealed circumstances leading to deterioration of the position of the accused, to decide on resuming criminal proceedings, which gives criminal prosecution bodies the opportunity to take these circumstances into account as a basis for changing the wording of the charge. Due to existence of this mechanism and established presence of signs of a more serious crime, it becomes impossible to refuse resumption of criminal proceedings and review of the decisions taken on it due to new or newly-revealed circumstances.

The above-mentioned features of resuming proceedings due to new or newly-revealed circumstances clearly indicate that the chapter with its legislative regulation in the Criminal Procedural Code of the Russian Federation should be separated from other procedures for reviewing court decisions in a special section. This will avoid its unjustified identification with other criminal procedural proceedings intended for revision of judicial acts.

Conclusion

Processualists' attention to the legal mechanism for resuming proceedings due to new and newly-revealed circumstances has been and is insufficient. Current research in this segment of procedural activity cannot be called active, even conditionally. This phenomenon is usually explained by a small number of criminal cases being considered due to new or newly-revealed circumstances. However, the problem lies not only and not so much in their number, but in the fact that each of them, one way or another, affects the level of legality in our country, degree of citizens' trust in Russian justice, and, no less importantly, state of criminal procedure science, which is in crisis nowadays. Practice of applying the criminal procedural law and its individual regulations (including regulating the review of sentences in criminal cases), selectivity of justice, violations of reasonable terms of criminal proceedings, etc. are criticized. It seems that this branch of scientific knowledge, as well as the criminal process in its normative expression, should be consistently and purposefully updated, seek for and implement new approaches that meet the most demanding criteria for ensuring protection of the rights and legitimate interests of victims of crimes, as well as individuals from unlawful accusation, conviction, restriction of the rights and freedom.

Summing it up, it should be noted once again that the specifics of this criminal proceedings is predetermined by the nature of judicial errors. As a general rule, this procedure is applied not in the absence of other possibilities to review the judicial act, but completely independently, i.e. upon discovery of circumstances that either arose after consideration of the criminal case by the court, or already existed at the time of its consideration, but were not known to the court. At the same time, not any of them should be taken into account, but only those, which presence makes it impossible to evaluate the decisions taken in the criminal case as legitimate, reasonable and fair. Accordingly, this method of reviewing judicial acts that have entered into legal force by its purpose and content is an independent procedural mechanism that does not replace, but complements other ways to ensure fairness of sentences and eliminate judicial errors. Its distinctive feature is, in particular, that the court's resumption of this proceeding by decision of the prosecutor can be carried out after the entry into force of judicial decisions, the revision of which is being questioned, regardless of the fact that they have been previously considered in the courts of appeal, cassation or supervisory instances. In accordance with paragraph 17 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of February 14, 2021 No. 43 "On the application by courts of the norms of Chapter 49 of the Criminal Procedural Code of the Russian Federation regulating resumption of criminal proceedings due to new or newly-revealed circumstances at the conclusion of the prosecutor" the subject of the trial, in cases where it is carried out by decision of the prosecutor, is not only to check legality, validity and fairness of a particular sentence, but also of other final and interim court decisions

due to new or newly-revealed circumstances, taking into account the arguments given in the prosecutor's conclusionfor instance, court rulings on issues related to the sentence execution.

The procedure for resuming criminal proceedings in connection with new or newly-revealed circumstances, being a kind of revision of court decisions that have entered into force, serves as an independent mechanism for ensuring fairness of court decisions, where elements of pre-trial proceedings are combined with subsequent consideration of the case by the court. It is applicable in cases when, after the entry into force of a verdict, ruling or court decision on a once-resolved criminal case, certain circumstances are revealed that, for various reasons, were not known to the court. At the same time, legal significance of these circumstances is so great that it allows the interested party to question legality, validity and fairness of the court decision that has already entered into legal force. It is in such cases that the verdict, ruling or court order can be canceled, and the criminal proceedings resumed due to new or newly-revealed circumstances. Within its framework, any decisions of all judicial instances can be reviewed. At the same time, criminal proceedings due to new or newly-revealed circumstances cannot be resumed in case of a judicial error, including that confirmed by additional evidence revealed after the entry into legal force, confirming innocence or lesser guilt of the convicted person. The distinctive feature of resuming proceedings due to new or newly-revealed circumstances, consisting in the court's unawareness when considering a criminal case, is crucial. This determines its procedural specifics and actualizes the question of optimizing the structure of the Criminal Procedural Code of the Russian Federation by separating this procedural institution from other proceedings aimed at reviewing court decisions.

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Types of Forensic Methods for Investigating Crimes Committed in Penitentiary Institutions by Degree of Generality

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Abstract

Introduction. The article is devoted to the analysis of types of forensic methods for crime investigation (case study of crimes committed in penitentiary institutions), their systematization according to the degree of generality of the relevant methodological recommendations. Problems of forensic support for investigation of crimes committed in correctional institutions and pre-trial detention centers were firstly addressed in the mid-1960s. A little later foundations of the forensic methodology for investigating such crimes were formed. To date, there is a certain number of methodological recommendations. *Purpose:* to generalize and systematize previously developed methodological recommendations of the subject area and create theoretical foundations for further evolutionary development of the methodological and criminalistic provisions for investigation of penitentiary crimes. *Methods:* dialectical method of cognition, general scientific methods of analysis, generalization, systematization, interpretation, and theoretical methods of formal and dialectical logic. *Results:* on the basis of a scientific approach, the author reveals types of forensic methods for investigating crimes committed in penitentiary institutions and proposes their system according to the degree of generality. *Conclusions:* to date, forensic knowledge contains a number of developed (improved) individual methodological recommendations for penitentiary crime investigation (related to the specifics of the criminal's personality, methods of crime, stage of investigation, etc.), private (specific) methods, and a general methodology for investigating crimes committed by convicts in correctional facilities. It is required to develop a concept for investigating crimes committed in penitentiary institutions in order to further improve theoretical foundations and applied aspects of the subject area, forming starting points for subsequent creation of a general (group) methodology for investigating crimes committed by persons held in pre-trial detention facilities, as well as development of new and clarification of existing private methods.

Keywords: crimes committed in penitentiary institutions; forensic methodology; investigation of crimes; correctional facility; pre-trial detention center; convict; suspect; accused.

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Introduction

In history of science, according to A.S. Maydanov, it is rather common when a developed scientific theory is perceived as absolute truth. In fact, emergence and existence of many theories seems to be only a stage in the process of solving a certain problem. At the same time, the author rightly notes that even those theories, which eventually do not fit into the final process and fail, deserve their historical assessment and have a certain scientific significance [18, p. 48]. With regard to the sphere of scientific knowledge related to development and betterment of methodological recommendations for crime investigation, one should agree with the opinion of Yu.P. Garmaev, who emphasizes the need to generalize and concretize methods for investigating crimes simultaneously with development of forensic science itself [7, p. 155]. The above, in our opinion, fully applies to the methodological recommendations for investigating crimes committed by convicted, suspected and accused persons in correctional institutions and pre-trial detention centers, being worked out (improved) over the past fifty years. It is important to study the entire volume of already developed methodological recommendations [32], in order to identify ways and means of further research into the problems of investigation of such crimes.

According to philosophical knowledge, the category of the singularity presupposes presence of something unique and inimitable. A specific crime, representing a social phenomenon, also has similar qualities. Each crime has its own features inherent only to it, related to the situation of its commission, specific characteristics of the time, place, object, subject matter of criminal encroachment, the motive of the crime and the mechanism of its implementation, personal properties of the perpetrator, and trace patterns. All crimes are individual and irrevocable. Investigation of each requires an individual approach and a specific investigation methodology. At the same time, despite all individuality of the crime itself and activities of its investigation, there are many similar components that allow us to identify commonalities, interconnections, and identify patterns that unite them. The study of such irregularities, as well as development on their basis of appropriate recommendations aimed at boosting effectiveness of crime investigation are the tasks of the methodology for crime investigation.

The variety of crimes committed presupposes the development of an appropriate number of methods of their investigation. Crimes can have similar commonalities not only in terms of the object and subject of criminal encroachment, but also in terms of the specifics of the situation of their commission, the identity of the offender, the method of committing the crime, etc. All this forces scientists and practitioners to develop methods of investigating crimes that reflect one or another specificity that unites different crimes into a single community.

It so happened that initially there was no system or scheme to adjust developed methods for investigating crimes. To date, science and practice have accumulated quite a large volume of such methods. Moreover, the analysis of results of the work of dissertation councils in the specialty 12.00.12 “Criminalistics; forensic examination activities; law enforcement intelligence-gathering activities” over the past five years has shown that during this period alone, more than sixty methods were newly developed and improved, which amounted to practically half of all dissertations defended in this specialty. In the conditions of such an increase in the amount of new knowledge, there is a need for their generalization and additional scientific understanding.

The process of scientific cognition of a phenomenon is a complex cognitive activity, during which a researcher can use a wide variety of scientific tools. Systematization is one of fundamental cognition methods. In this regard, the statement of A.Y. Golovin is appropriate: “... the use of forensic systems is cognitive in understanding the nature and essence of various forensic objects, concepts and terms, the most accurate perception and application of forensic recommendations...” [9, p. 4]. Using this method, we will attempt to generalize the entire scope of forensic methods for investigating crimes committed by convicts, suspects, and the accused in correctional institutions and pre-trial detention centers.

Professor R.S. Belkin’s proposal not only to single out private forensic methods, but also form their entire complexes covering types of crimes [2, pp. 340–341] has become a scientific and theoretical basis for identifying many modern group [16], enlarged [6], basic [13], and general [35] methods of crime investigation. At the same time, it should be noted that there are still no unambiguous and generally accepted criteria for attributing the developed forensic methods to a certain degree of generality.

However, we back Y.P. Garmaev and R.N. Borovskikh's ideas that different scientific opinions can be reduced to two conditional approaches: two-level and multi-level [6, p. 76].

Representatives of the first approach (V.A. Obraztsov, Yu.P. Garmaev, M.V. Kardashevskaya (M.V. Subbotina), R.N. Borovskikh, S.A. Kuemzhieva, etc.) distinguish two types of methods that have different alternative names, but do not have fundamental differences: private methods (specific, homogeneous, intraspecific, etc.) and enlarged (general, basic, specific, group, etc.).

According to the second approach, there are three or more levels of methods for crime investigation, depending on the degree of generality of methodological recommendations. Thus, E.P. Ishchenko identifies the following levels of methodological recommendations: methods of high degree of generality, methods of average degree of generality, methods of small degree of generality, specific methods for investigating certain types and subspecies of crimes in various common investigative situations [12, p. 484]. N.P. Yablokov adheres to a four-level approach, highlighting the highest level of generality of methodological recommendations, a lower level of generality of methodological recommendations, a traditional level, and methods for investigating specific crimes [37, pp. 45–46]. V.M. Proshin suggests considering the system of forensic methodology based on the following elements: a general forensic method, forensic generic method, forensic specific method, forensic subspecific method, and private methods of forensically similar groups of crimes [26, p. 77].

The current state of forensic methodology theory development and analysis of newly formed private methods, attempts to integrate them, and variety of crime classifications, fundamental to development of appropriate methodological investigation recommendations, necessitates elaboration of a multi-level approach. In this regard, we stick to the classification proposed by Professor N.G. Shurukhnov, singling out 4 levels of the degree of generality of methodological recommendations: 1) a concept for investigating a certain kind of crimes; 2) a general (group) forensic method; 3) a private (specific) forensic method; 4) individual methodological recommendations for crime investigation [33, pp. 252–253].

The study of scientific developments related to the development of methodological recommendations for investigating crimes committed in penitentiary institutions shows presence of the following developments in this area, the generalization of which allows us to talk about the possibility of their systematization (Fig. 1).

At the level of individual methodological recommendations for investigating crimes committed in penitentiary institutions, theoretical and practical provisions relate, as a rule, to a particular type of crime and reveal only certain features of crime investigation (due to the specifics of the offender's personality, means of committing crime, investigation stage, etc.) [23, p. 34]. They are the following:

methodological recommendations to identify methods of escape from correctional facilities and the use of this information for investigating such crimes [19];

methodological recommendations of the initial stage of investigation of escapes from correctional institutions [20];

methodological recommendations of the initial stage of investigation of crimes committed by leaders and members of organized criminal groups in places of detention [17];

methodological recommendations for investigation of crimes committed by minors in juvenile correctional facilities [8];

methodological recommendations for investigation of hooliganism, sexual crimes, theft, arson and criminal non-compliance with fire regulations committed by convicted persons to imprisonment [15].

The private (specific) method should include developments, the content of which reflects a full-scale process of investigating a particular type of crime committed in penitentiary institutions, in particular:

a method for investigating escapes from places of deprivation of liberty [11, 29, 39];

a method for investigating disorganization of the activities of institutions providing isolation from society [3, 28];

a method for investigating murders and harm to health committed by convicts in correctional institutions [10, 24];

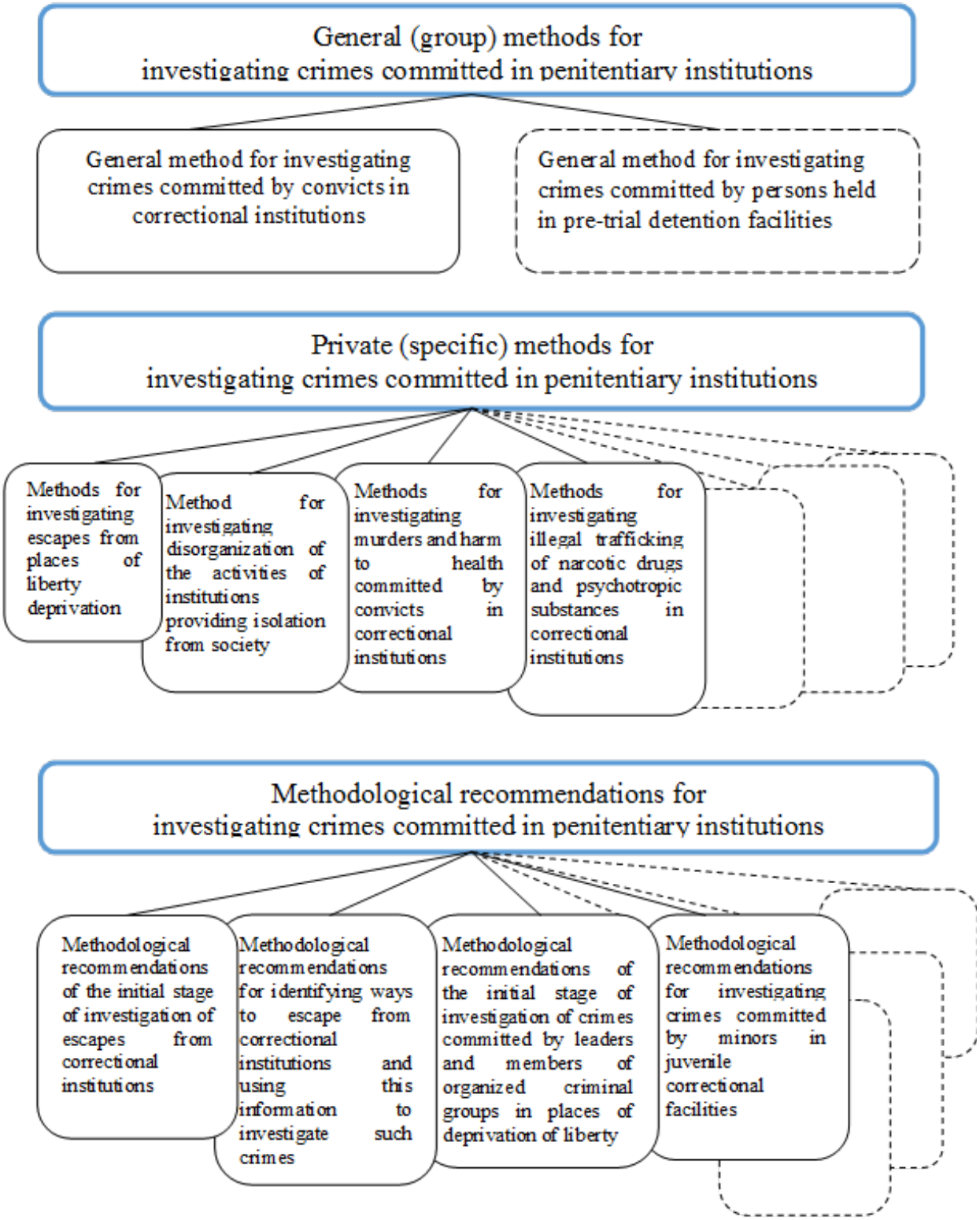
a method for investigating fraud committed by convicts in institutions of the penitentiary system using cellular mobile communication systems [22];

a method for investigating illegal trafficking of narcotic drugs and psychotropic substances in correctional institutions [5, 30].

Though the structure of the private (specific) method differs among the researchers, its

Figure 1

Types of forensic methods for investigating crimes committed in penitentiary institutions by degree of generality



essence is similar: this level of methodology should provide recommendations as close to practical application as possible concerning the entire process of investigating a specific type of crimes [14, p. 83].

It should be noted that we do not consider private methods of investigating crimes committed by employees of the penitentiary system in this research, despite the fact that there are scientific developments in this area [4], and forensic literature has other points of view on the system of crimes committed in institutions and bodies of the Federal Penitentiary Service of Russia [27], which differs from the one we use [1; 34].

The general (group) method of crime investigation combines theoretical, scientific and practical provisions, which are recommendations for investigating crimes grouped on a certain basis, having forensic significance in developing a common approach to investigation of such illegal acts. At the same time, it cannot (and should not) be a direct physical union of all private methods that fall under the group basis. General methods cannot replace private ones, but they are the starting point for them, since they generalize the specifics characteristic of private methods united by it, contain general provisions of theoretical and applied significance that allow complementing existing private methods, expanding and concretizing them with regard to the revealed general patterns inherent in the entire group of crimes.

In relation to the system of crimes committed in penitentiary institutions, the general investigation method is the method of investigating crimes committed by convicts in correctional institutions, developed by N.G. Shurukhnov [35]. Subsequently, it was partially supplemented with general methodological recommendations formulated by V.V. Nikolaichenko [21]. At the same time, it should be noted that this system of crimes includes not only illegal acts committed by convicts, but also crimes of suspected and accused people committed in correctional institutions and pre-trial detention facilities. To date, such a general methodology has not been formed yet.

As for the concept for investigating crimes, N.G. Shurukhnov states that at this systematization level one should develop theoretical foundations and applied aspects of illegal acts, united by generic characteristics that are of a certain forensic significance. In this understanding, the concept has a forecast and current orientation [36, p. 82]. We agree with S.N. Churilov that the content of group and generic methods "... does not reflect (and cannot reflect) description of ways of committing and concealing crimes of a certain type and their characteristic trace patterns ..." [31, p. 75]. This logically follows from the regularity existing between philosophical categories "quantity" and "quality". However, it should be noted that the method of a high generalization level should not solve the task of directly applying all its provisions in the process of investigating a specific crime. It is obvious that it is not possible to develop a unified method or methodology for investigating any crime [38, p. 560]. At the same time, the high level of generality of methodological recommendations is aimed at solving a number of tasks that lower-level methods cannot address, in particular:

to determine a terminological apparatus that has a fundamental importance for development of general methodology recommendations, clarify and systematize concepts and categories included in it, substantiate their content at the doctrinal level (in the absence of legislative regulation);

to identify a forensically significant basis for systematization of crimes that constitute a certain kind, which helps to further identify the place of a specific type of illegal act in the generic system of crimes;

to form a generic forensic characteristic that allows, when generalizing data, to identify common patterns of commission, concealment of crimes, which will subsequently represent starting points for the formation (clarification) of forensic characteristics of groups and types of crimes included in the kind under consideration;

to identify features of the system to investigate crimes forming a certain kind, clarify subjects of investigation and determine system-forming patterns of their activities that affect effectiveness of investigation of crimes united by a generic feature;

to establish patterns for formation of forensic situations characteristic of crimes united at the generic level; develop the basis for algorithmization of the investigation process in such conditions;

to identify patterns of counteraction provided during investigation of crimes united by a generic feature, determine the directions and form proposals to overcome it;

to develop a general idea of the tactical and forensic support for investigating crimes belonging to a certain kind.

According to V.M. Proshin and A.M. Kustov, the crime investigation concept is not only a generic methodology, but also includes "... scientific provisions on legal support, organization of crime investigation, etc..." [25, p. 123]. We share this point of view, since generalization of a significant number of different specific and group crimes due to expanded horizon of research of the subject area inevitably reveals general patterns of a legal and organizational nature that determine a common approach to the formation of a methodology for investigating crimes united by a generic feature.

The object of the concept for investigating crimes committed in penitentiary institutions is criminal activities of convicts, suspects, and accused persons staying in correctional institutions and pre-trial detention centers, and activities of subjects of investigation of such crimes, including neutralization of counteraction. Regularities of investigation of such offenses are the subject of the concept.

The content of the concept should be formed according to the following system:

– theoretical ideas on the concept, essence and criminalistic classification of crimes committed in penitentiary institutions;

– theoretical provisions on legal and procedural support for investigation of crimes in the penal enforcement system and the entities that carry it out;

– methodological foundations of forensic support, including provisions of the generic-level methodology aimed at investigating such crimes;

– theoretical provisions on countering investigation of criminal offenses, organizational and methodological recommendations for its neutralization.

The concept for investigating crimes committed in penitentiary institutions is understood as a system of theoretical ideas and provisions, methodological foundations, organizational and methodological recommendations concerning investigation of criminal acts committed by convicted, suspected, and accused persons held in correctional institutions, detention centers, neutralization of interested persons' counteraction, which is the starting point and basis for methods to investigate such crimes.

Conclusion

Identification of generic patterns will help form scientific and theoretical foundations and applied provisions for investigating crimes committed in penitentiary institutions, which will be starting points for development (clarification) of group and specific methods of investigating crimes committed by convicted, suspected, and accused persons in correctional institutions and pre-trial detention centers.

The functional purpose of the concept for investigating crimes committed in penitentiary institutions is to identify generic patterns affecting the mechanism of commission and investigation of such crimes, in particular the crime commission situation; personal qualities of convicts (suspects, the accused), determined by the influence of specific conditions of a closed institution (correctional facility, pre-trial detention center), high concentration of criminally oriented persons, persistence of informal norms of behavior; features of the system of investigation of such crimes, legal and organizational support for activities of the relevant subjects of investigation.

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Data on the Injured Convict: Following Results of the Investigation of Crimes Related to Intentional Infliction of Harm to Life and Health Committed in Places of Deprivation of Liberty

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Abstract

Introduction: the article presents data on the injured convict following investigation of crimes of intentional infliction of harm to life and health committed in places of deprivation of liberty. *Purpose:* based on analysis and generalization of theoretical and practical data, the attempt is made to form a typical portrait of the victim of intentional harm to life and health committed in places of deprivation of liberty. *Methods:* dialectical method of cognition, general scientific methods of analysis and generalization, empirical methods of description, interpretation, theoretical methods of formal and dialectical logic. *Results:* the article makes a brief historical digression in order to compare legal norms of the 1864 Statute of Criminal Proceedings, which regulated certain provisions constituting the legal status of the victim, with norms of modern legislation. The main attention is focused on crimes causing intentional harm to life and health committed in places of deprivation of liberty, their causes and commission conditions. The data of official statistics are given. The authors consider victimhood of victims, who are divided into three main groups depending on their behavior (negative, positive and neutral) during the period of serving the sentence. The specifics of each group are revealed. *Conclusions:* based on the available research, the authors present a typical portrait of the victim as a result of infliction of intentional harm to life and health committed in places of deprivation of liberty.

Keywords: intentional infliction of harm to life and health; investigation; victim; convict; place of imprisonment; causes; factors; data; forensic characteristics.

12.00.12 – Criminalistics; forensic examination activities; law enforcement intelligence-gathering activities.

5.1.4. Criminal legal sciences.

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Introduction

Crimes against life and health provided for in Chapter 16 of the Criminal Code of the Russian Federation (hereinafter referred to as CC RF) represent one of the serious threats to society and the state. The potential of their social danger is perhaps the highest, since they selectively claim the fundamental human rights and freedoms that are "inalienable and belong to everyone from birth" (Part 2 of Article 17 of the Constitution of the Russian Federation). Therefore, the state pursues the task of implementing various means, including criminal law and criminal procedure, to protect the individual from criminal encroachments. However, despite the efforts made by the state, its law enforcement, judicial and investigative bodies, 254.1 thousand crimes against the person were registered in 2021 (in 2016 – 347.3 thousand), including 7.3 thousand murders (in 2016 – 10.7 thousand), 17.9 thousand intentional infliction of serious harm to health (in 2016 – 27.4 thousand); 38.2 thousand minor injuries to health (in 2016 – 45.8 thousand) [2; 3].

As a result of criminal encroachments, 23.3 thousand people died, 32.8 thousand people suffered serious harm to their health. Rural areas account for 38.0% of the dead (8.8 thousand people), cities and urban–type settlements - 67.8% of people who have suffered serious harm (22.3 thousand people) [2].

Comparing the legal statuses of the victim [12] and the accused, established by the legislation on criminal proceedings of pre-revolutionary Russia, it can be concluded that the former lost to the latter in terms of protected rights and legitimate interests. This approach is traditional: victims have to prove the crime commission, moreover with considerable risk to themselves, since in the situations when the accused was acquitted, he/she could demand satisfaction [7, p. 5]. However, it is worth mentioning that this legislative approach has gradually changed. If we turn to the 1864 Statute of Criminal Proceedings (hereinafter referred to as SCP), it can be noted that "announcements and complaints of private persons" (Article 297 of the SCP) were recognized as legitimate reasons for preliminary investigation, while it was explained that "announcements of persons who have suffered from a crime or misdemeanor are recognized complaints" (Article 301 of the SCP). Article 303 of the SCP strengthened the legal role of complaints in criminal proceedings, indicating that they "are considered a sufficient reason to initiate an investigation. Neither a judicial investigator nor a prosecutor can refuse that to a person who has suffered from a crime or a misdemeanor". Not going into detail regarding the legal position of the victim under the 1864 Statute of Criminal Proceedings, let us mention that it was voluminous and specific. In support of our conclusion, we quote the wording of Article 304: "During the entire time of investigation, the person who has brought the complaint has the right to: 1) present their witnesses; 2) be present at all investigative actions and offer, with the permission of the investigator, questions to the accused and witnesses; 3) submit evidence in support of their claim and 4) demand the issuance of copies of all protocols and resolutions at their own expense". An important point was also reflected in Article 308 of the SCP, namely: "Filing an announcement or complaint does not impose an obligation to prove a criminal act, but exposes responsibility for any false testimony".

The modern Russian state gradually assumes the function of accusation and proof of the crime commission. In this regard, we should support one of the recent initiatives of the Plenum of the Supreme Court of the Russian Federation. Its Resolution No. 3 of April 6, 2022 stipulated submission of a draft federal law on changing the type of criminal prosecution in relation to crimes provided for in Part 1 of Article 115, Article 116.1 and Part 1 of Article 128.1 of the Criminal Code of the Russian Federation to the State Duma of the Russian Federation. We are talking about abolition of the powers of a private prosecutor (currently, criminal cases of the listed crimes are considered by magistrates in the order of private prosecution), and preservation of only public and private-public types of criminal prosecution in the Criminal Procedural Code of the Russian Federation.

Research

Crimes against life and health are quite common in such specific places as correctional facilities. Thus, in 2021, 1,271 crimes were committed by persons sentenced to deprivation of liberty in institutions of the penal

system of the Russian Federation. Approximately 8% are crimes related to intentional harm to life and health: murder (Article 105 of the CC RF) – 15 cases, attempted murder (articles 30 and 105 of the CC RF) – 7, intentional infliction of serious harm to health (Article 111 of the CC RF) – 29, intentional infliction of moderate harm to health (Article 112 of the CC RF) – 31, intentional infliction of minor harm to health (Article 115 of the CC RF) – 20 [5]. This is due to objective, subjective and complex factors.

Objective factors include a limited territory and a large number of persons concentrated on it. They are forced to have regulated and initiative relations. They are deprived of personal space, endowed with the same legal status with a different factual situation among the convicted, established by unofficial norms of behavior. They differ in the level of education, knowledge, upbringing, physical strength, state of health, orientation of beliefs, attitude to religion. Persons deprived of their liberty have to contact regularly: live together, stay in the same room for a considerable time, have a meal, medical procedures, work, collectively stay in sanitary rooms. All this in an environment in which they do not feel sympathy for each other. Constant presence of the same persons becomes a common, monotonous, annoying circumstance and causes internal rejection.

Conditions of isolation necessary for the execution of a sentence in the form of deprivation of liberty are the reason for aggravated interpersonal relations that often lead to multidirectional conflicts of a protracted nature, in which other convicts are involved. In addition, deprivation of liberty is associated with strict regulation of all spheres of life; deviation from the established norms entails the use of a wide range of penalties (sometimes with even greater isolation and restrictions). There is a special social environment with its own specific value orientations [8; 9].

Convicts are subjected to stress due to a specific environment and a relatively small enclosed area, accompanied by sexual abstinence, prison traditions, constant self-control. At the same time, those serving a sentence do not have the opportunity to calm down, relax psychologically and give the body a full rest. All this affects their mental state, provoke anger, irritability, inadequate emotional reactions, aggression, conflict, which develops into illegal acts associated with harming each other's life and health, even in situations that, it would seem, could be resolved without resorting to violence.

A long stay in conditions of limited space, monotony and uniformity of events, internal wary attitudes of convicts among themselves generate hostility, banal jokes, quarrels, demonstration of concretized gestures, use of phraseological expressions not cultivated among those deprived of freedom, and contact relationships lead to the spread of rumors that become motives of crimes, causing harm to health.

The group of subjective factors includes various general characterizing data and personality traits of convicts held in penal institutions:

– mental disorders (about 23% of those held in institutions providing isolation from society have mental anomalies of various genesis (Table 1));

Table 1

Ratio of the number of convicts with mental deviations and the total number of persons serving a sentence of imprisonment

Year	2016	2017	2018	2019	2020
Total number of convicts held in correctional facilities	519 491	495 016	460 923	423 825	378 668
Total number of convicts with mental disorders in these institutions	111 862	108 197	101 881	98 281	94 616
Share of convicts with mental disorders	21.5 %	21.9 %	22.1 %	23.2 %	25 %

– commission of (previous) serious crimes (as of the end of 2020, out of 482,832 persons held in penal institutions, 119,934 were convicted of committing serious crimes, and 213,201 – especially serious crimes);

– commission of intentional illegal acts (the number of persons convicted of particularly dangerous recidivism of crimes was 28 162);

– presence of past criminal experience (according to the data of the FSIN-1 statistical

reporting form for 2012–2021, 86,577 persons serving sentences in penal institutions were convicted twice, 153,277 – three times or more);

– duration of imprisonment terms (at the end of 2020, 72,345 convicts served a sentence of imprisonment from 1 to 3 years; 79,401 – from 3 to 5 years; 140,159 – from 5 to 10 years; 57,364 – from 10 to 15 years. In total, 72.3 % of the convicts served a sentence of imprisonment for 1–15 years) (In the specified period of time, 16,229 convicts served a sentence for up to 1 year inclusive; 18,469 – from 15 to 20 years; 5,789 – from 20 to 25 years; 404 – from 25 to 30 years; 2,013 served a life sentence. The total number of convicts was 482,832).

The prevalence of intentional harm to life and health in places of deprivation of liberty is also affected by a complex factor combining a number of diverse circumstances. This can include existence of unofficial norms of behavior and non-official differentiation of convicts [1, pp. 123–144; 14]. This determines the nature of both intergroup and personal relationships.

Intentional infliction of minor harm to health, which has caused a short-term health disorder or a slight persistent loss of general working capacity, can also trigger commission of crimes against the person in places of deprivation of liberty (Part 1 of the Article 115 of the Criminal Code of the Russian Federation). A number of these crimes in correctional facilities (only those registered in the column “other crimes”) is significant (Table 2). It is noted that basically such acts are either latent or hidden from accounting. Reasons for it are the following:

a) traditions of places of deprivation of liberty (convicts prefer to deal with their offenders on their own, rather than report the incident to the administration);

b) the private procedure for criminal prosecution established by the Criminal Procedural Code of the Russian Federation in relation to Part 1 of Article 115 of the Criminal Code of the Russian Federation (it does not always work in penitentiary institutions);

c) concealment of crimes of minor gravity.

Table 2

Number of registered intentional inflictions of minor harm to health (Article 115 of the CC RF) by prisoners in custody and sentenced to imprisonment

Year	Total	Correctional facility, medical correctional institution, medical prevention institution	Detention facility	Educational facility
2021	20	part 1 – 1	–	–
		part 2 – 18	part 2 – 1	–
2020	20	part 1 – 1	–	–
		part 2 – 19	–	–
2019	22	part 1 – 1	–	part 1 – 1
		part 2 – 19	part 2 – 1	–
2018	16	part 1 – 2	part 1 – 1	–
		part 2 – 13	–	–
2017	14	part 1 – 1	–	–
		part 2 – 13	–	–

The listed factors provoke causing intentional harm to life and health of convicts in places of deprivation of liberty.

In 2016, 960 crimes were registered in correctional facilities, of which 14.5% were illegal acts related to intentional harm to life and health [4], in 2021 – 1,271 crimes, of which 8% were crimes related to intentional harm to life and health [5].

In 2016, the persons sentenced to imprisonment committed 16 murders (Article 105 of the CC RF), 8 attempted murders (Articles 30, 105 of the CC RF), 24 intentional inflictions of serious harm to health that caused death of the victim (Part 4 of Article 111 of the CC RF), 38 intentional inflictions of serious harm health (Parts 1–3 of Article 111 of the CC RF), 34 intentional inflictions of moderate harm (Article 112 of the CC RF), 19 intentional inflictions of minor harm to health; in 2021 – 15, 7, 7, 22, 32, 20 accordingly (the total number of victims – 102) (Table 3) [4; 5]. The crime rate per 1,000 convicts held in penal institutions in 2016 accounted for 1.50, in 2020 – 2.39.

Table 3

Ratio of registered crimes against life and health to the total number of crimes among persons held in places of deprivation of liberty

Year	2016	2017	2018	2019	2020	2021
Total number of registered crimes among persons held in places of deprivation of liberty	960	974	1025	1171	1184	1271
Murder (Article 105 of the CC RF)	16	20	6	8	8	15
Attempted murder (articles 30, 105 of the CC RF)	8	12	5	7	4	7
Intentional infliction of serious harm to health that caused death of the victim (Part 4 of Article 111 of the CC RF)	24	9	18	9	7	7
Intentional infliction of serious harm to health (parts 1-3 of Article 111 of the CC RF)	38	23	18	25	17	22
Intentional infliction of moderate harm (Article 112 of the CC RF)	34	19	20	30	24	31
Intentional infliction of minor harm to health (Article 115 CC RF)	19	14	17	21	21	20
Total number of registered crimes under articles 105, 111, 112 and 115 of the CC RF among persons held in places of deprivation of liberty	139	97	84	100	81	102
Percentage ratio (%)	14.5 %	10 %	8.1 %	8.5 %	6.8 %	8 %

When studying the issue, in the period from 2006 to 2020 we analyzed 102 criminal cases on crimes under Articles 105, 111, 112 and 115 of the Criminal Code of the Russian Federation committed by convicts in places of deprivation of liberty in 20 subjects of the Russian Federation (republics of Bashkortostan, Komi, and Udmurtia, Arkhangelsk, Belgorod, Vologda, Ivanovo, Kirov, Kostroma, Kurgan, Murmansk, Novosibirsk, Omsk, Orenburg, Penza, Ryazan, Samara, Sverdlovsk, Chelyabinsk and Yaroslavl oblasts).

Analyzing the practice of investigating crimes against life and health committed by convicts serving sentences in places of deprivation of liberty, we determined their relationship. One illegal act can transform into another, the subject of the crime can become its victim, the crime itself can be characterized by special cruelty or a generally dangerous method used. It should also be said that the crimes mentioned are the most common in comparison with other socially dangerous acts committed by convicts held in penitentiary institutions and causing harm to life and health of citizens.

As for victims of intentional harm to life and health in places of deprivation of liberty, in 96.4% of cases it is convicts, in 3% – commanding staff and civilian employees of correctional institutions, 0.6% – citizens who arrived in the correctional institution due to work necessity and relatives – for extended visits. The overwhelming majority of crimes are caused by the objective factor – a limited territory with a large concentration of convicts [13] who are forced to actively contact each other. The victims in 93% of cases are male, in 7% – female. These figures are logical, since, as of the end of 2021, approximately 92% of those serving a sentence of imprisonment were men.

Intentional harm to life and health in conditions of places of deprivation of liberty is most often caused to convicts of three age groups: from 18 to 29 years (47%), from 30 to 39 years (30%), from 40 to 49 years (17%). The age group of 50 years and older accounts for 6% of the considered unlawful assaults. This is due to the fact that older people have a diverse life experience, prefer not to engage in conflict situations, determine their nature, predict consequences, quickly calculate the options for d tente to satisfy psychological interests of the two sides and not to humiliate the honor and dignity of prisoners.

A significant number of victims had incomplete secondary (45%) or secondary (37%) education. A low level of education, as a rule, correlates with underdevelopment of human intelligence, which causes non-acceptance of the point of view of another convict, inability to analyze and use common sense, and rudeness in dealing with community members. Hence, the lower the educational level, the poorer the life experience, the more likely it is that a person will find himself in the situation that provokes conflict with subsequent harm to life and health.

For the most part, the convicted victims were not employed and did not engage in

socially useful work in penitentiary institutions (73%). The main part of these persons had various penalties from the administration of the institution (68%). The use of alcoholic beverages, narcotic drugs, psychotropic substances or their analogues is one of malicious violations of the established procedure for serving sentences by persons sentenced to imprisonment. During the commission of illegal acts, 14% of citizens whose health was harmed were in a state of alcoholic intoxication or under the influence of narcotic drugs.

It is worth noting that 55% of the victims had one criminal record, 45% – two or more. Of these, 40% were convicted of crimes against life and health, 26% – against property, 19% – against public health and public morality, 8% – against sexual inviolability and sexual freedom of the individual, 4% – against public safety, 3% – other criminally punishable acts.

In the mechanism of intentional infliction of harm to life and health, carried out in conditions of places of deprivation of liberty, a special role is devoted to the victim's behavior before the crime commission and directly at the time of unlawful encroachment. First of all, victimhood of the convicted person's behavior is significant, in which negative, immoral, and sometimes insignificant, but socially dangerous signs prevail [10; 11]. Provocativeness in this regard is dangerous, as it leads to the position of a victim. Victim behavior is an independent constituent of the conditions for committing an illegal act. Often convicted persons, whose life or health is harmed, themselves create the ground for committing illegal actions against them, provoking this with their defiant, immoral, and sometimes illegal behavior.

On the basis of empirical data obtained in the course of studying the practice of investigating crimes related to intentional harm to life and health in correctional institutions, we have grouped all the victims from among those convicted of the analyzed criminal acts into three main groups, depending on their behavior during the period of serving their sentence, in particular: those with 1) negative, 2) positive and 3) neutral behavior.

Representatives of the first group (42.3%) spread negative information, humiliated, insulted, caused physical suffering, abused other convicts, which served as a motive for causing intentional harm to their life or health. So, in one of the correctional facilities of the Federal Penitentiary Service of Russia in the Republic of Bashkortostan, convicted H. R. R. periodically ridiculed the convicted H. S. Ya. in the presence of other persons serving sentences. One day H. R. R. decided to make fun of his companion: when he was sleeping, he poured detergent into his mouth, explaining that he allegedly snored and did not let others sleep. Experiencing personal hostility to H. R. R., the convicted H. S. Ya. grabbed a stool and struck his abuser several blows on the head, thereby causing serious harm to health (Archive of the Salavatskii city court of the Republic of Bashkortostan. Criminal Case No. 1-68/2015 of April 23, 2015).

The second group includes convicts with positive behavior (35.4%). They defended themselves and others from verbal attacks and actions of offenders by making demands to stop illegal behavior and unlawful use of physical force, as well as apologize for rashness of their statements and actions. For example, during a meal in the canteen in one of the correctional facilities of the Federal Penitentiary Service of Russia in the Murmansk Oblast, the convict K. E. V. tried to pass out of turn to the food distribution window. Convicted B. R. A. stopped him and asked him to get in line. The convicted K. E. V. responded rudely. After the meal, while being on the platz of the residential area of the correctional facility, the above persons continued to argue, as a result of which K. E. V. stabbed the convict B. R. with the sharpened aluminum spoon, thereby causing bodily injuries (Archive of the Lovozerskii district court of the Murmansk Oblast. Criminal case No. 1-11/2017 of July 24, 2017).

The third group consists of convicts with neutral behavior (22.3%), that is, those who did not contribute to or hinder perpetrators' actions. The reasons for such behavior are very different, often it is associated with negative personality traits (cowardice, indecision, the habit of pleasing, being humiliated and not resisting). For instance, the convicted Shch. A. S., being in the sleeping quarters of one of the detachments of the correctional institution of the Federal Penitentiary Service of Russia in the Arkhangelsk

Oblast, demonstrating his physical strength, deliberately struck several blows on the head and neck of the convicted O. N. N., thereby causing moderate harm to the latter's health. When striking, the convicted O. N. N. did not offer any resistance to the attacker, as he was frightened (Archive of the magistrate court of judicial sector No. 2 of the Pinezhskii district of the Archangesk Oblast. Criminal case No. 1-29/2013 of June 11, 2013).

The probability of becoming a victim in places of deprivation of liberty depends on the term for serving punishment by the person to whom the bodily injuries were inflicted, number of convictions, the time spent in a particular correctional institution. For convicts who are in penal institutions for the first time, the beginning of the sentence is particularly painful due to their adaptation to a new environment. Most crimes against life and health of a person are committed in relation to this group of convicts, as a new person provokes interest of others. They try to get information about him/her in various ways, check the newcomer and thereby determine the place he/she will occupy in the community of those deprived of freedom. Sometimes such checks are provocative and aimed at reducing the unofficial status of newcomer, which in some cases leads to a protracted interpersonal conflict that causes harm to life and health. However, in such a situation, it is not possible to identify the victim at an early stage.

The data characterizing victims' personal (internal) properties, as well as their connections, relationships with the environment are an integral part of the criminalistic characteristics of the designated group of crimes. When investigating specific cases, they give an opportunity to determine a subject of communication, identify persons with whom there were friendly and hostile relations, thereby delineating the circle of convicts involved in the commission of an illegal act. With their help, it is possible to identify persons who were eyewitnesses of the crime, have any information about it. The information that characterizes the victim and his/her relationships with close and distant surroundings allows investigators to put forward targeted versions about motives of the crime. The data on the victim of an illegal act, situation, circumstances, and means used to cause harm to life and health can be very useful for conducting a thorough investigation of the situation at the scene of the incident and developing tactical interrogation techniques for both the victim himself and the suspect, the accused, as well as witnesses. Based on the data about the victim, inquiry officers and investigators can easily establish false information in his/her testimony, which is very common in the investigation of crimes committed by convicts serving sentences in penal institutions, assume presence of abnormalities in the psyche of the interrogated, make a decision on expediency and timeliness of a forensic psychological or forensic psychiatric examination.

The identification and study of criminalistically significant features in the personality of the victim and his/her behavior (before, at the time and after commission of the crime) helps to deeper understand many circumstances of the illegal act and characterize the originality, orientation and motives of the criminal's behavior. When committing crimes related to intentional harm to life and health, the criminal does not accidentally choose an individual as the object of his encroachment. Therefore, it is not surprising that in the analyzed criminal acts, as a rule, the identification of the criminal largely follows the "victim – offender" chain. It is especially important to determine and study this connection at the beginning of the investigation, at the preliminary stage [13].

At the same time, special attention should be paid to correlations that reveal the relationship of the criminalistic characteristics data: method – situation of the crime commission; victim – perpetrator; properties of the victim's personality –means of harming life and health; means of crime – properties of the offender's personality. We emphasize that correlations are particularly evident, when a serious, thoughtful analysis of the circumstances of intentional harm to life and health in penitentiary institutions is conducted.

Conclusion

The data obtained in the conducted empirical research allows us to draw up a brief portrait of the victim, whose life and health were intentionally harmed in the conditions of places of deprivation of liberty. This is a man

(93%), convicted (serving a sentence of imprisonment) (96.4%), aged from 18 to 39 years (77%), with incomplete secondary or secondary education (82%), not employed and not engaged in socially useful work (73%), inclined to various violations of the regime of serving a sentence (68%), having appropriate penalties. The victims of the crimes in question in some cases (42.3%) themselves provoke illegal actions of the subject of the crime, and in others (35.4%) act as defenders of the honor and dignity of other convicts and their own.

According to the data provided, intentional infliction of harm to life and health by convicts serving sentences in places of deprivation of liberty is often associated with victimhood of the victim's behavior. Being realized through the orientation of the individual through a typical line of his behavior, victimhood acts as a significant factor in the analysis of the offender-victim interaction, evaluation of the testimony of participants in pre-trial proceedings and, first of all, of the victim himself. Testimony of the latter should be carefully checked, given that in some cases, at the first interrogation, the state of extreme mental stress, uncertainty of the behavior reproducing a stressful event, limits possibilities. The second interrogation is characterized by a more complete reproduction of the event (this should not be interpreted as deliberate concealment of information during the first interrogation), and correction of testimony due to understanding of their future serving a sentence of imprisonment, influence of other convicts, including the environment of the suspect, the accused.

The study of the victim's personality traits, psychological and physical characteristics, behavior (including victimhood), level of culture, value orientations, clarification of the presence of connections and relationships with others who have been deprived of liberty helps establish motives for committing a crime and more precisely outline the circle of persons – possible perpetrators of the illegal act [6]. In addition, it helps reveal crime scenarios, search for traces and instruments of crime, plan the investigation process, as well as choose certain techniques and their combinations in the production of individual investigative actions, operational search and other measures.

Successful investigation of intentional harm to life and health committed by convicts held in penitentiary institutions depends on various factors. It seems to us that effective interaction with correctional institution officials, skillful use of information characterizing the specifics of the personality of victims from among convicts serving a sentence of imprisonment are crucial.

It is not possible to investigate such crimes without interaction with authorized persons of correctional institutions in a timely, high-quality manner and clarification of the causes and conditions that contributed to its commission, since there are a lot of nuances present both in organization of activities and personality traits of convicts, official and unofficial norms of behavior, stratification of persons held in the institution that the subject of the investigation may not know about. Inquirers and investigators should cooperate not only with the operational staff, representatives of the security service, but also with the heads of detachments. A head of the detachment is an official who has the maximum information about each convict under his control. If he has appropriate experience, he already at the first acquaintance with the convict (when conducting a conversation, filling out documents outlining individual educational work) makes certain conclusions, including about the degree of victimhood, prospects of getting along in a team, ability to defuse conflict situations. Such information is important for investigation of the crime and establishment of other circumstances of intentional harm to life and health by convicts serving sentences in places of deprivation of liberty.

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Probation in the Russian Federation: Some Problems of the Content and Legal Regulation

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Abstract

Introduction: the article discusses some issues of regulatory support for creating a probation system in the Russian Federation, aimed at resocialization, social adaptation and rehabilitation of convicts and persons released from places of deprivation of liberty. *Purpose:* based on the analysis of the content of the draft law on probation submitted for public discussion, to identify current legal problems in this direction and propose measures to solve them. *Methods:* formal-logical, system-structural and comparative-legal methods are used in the course of the study. *Results:* the following legal problems are identified: the framework nature of the draft law, abstractness of the content of its individual norms, inconsistency of the legal content of probation and its individual types (directions), insufficiency of specific legal mechanisms to assist convicts and persons released from places of deprivation of liberty in social adaptation and rehabilitation. To further improve the legal framework of probation in the Russian Federation the author developed the following proposals: specifying powers and mechanisms of interaction of probation subjects, content of probation procedures and measures; strengthening legal regulation of the preventive direction of probation; introducing reconciliation (mediation) procedures with the victim (pre-trial probation); determining the place of public control in the field of probation; creating a single body in the system of state and municipal structures to which probation functions would be assigned; ensuring proper parity of social rights of convicts and persons released from prison with those of other categories of citizens who find themselves in a difficult life situation. *Conclusions:* elaboration of the draft law on probation has become an important stage in the development and humanization of domestic legislation; its adoption and subsequent implementation will form a fundamentally new system of work with convicts and persons released from prison, providing for widespread application of social rehabilitation and preventive measures to them, which, in turn, will have a positive impact on the level of their socialization and the state of recessive crime in the country.

Keywords: criminal policy; probation; alternative punishments; resocialization of convicts; social adaptation; social rehabilitation; crime prevention.

12.00.11 – Judicial activities, prosecutor's activities, human rights and law enforcement activities.

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Introduction

The issue of the need to organize a probation system in the Russian Federation has been actively discussed at the state level and in the scientific community over the past few years. Creation of a nationwide system of post-penitentiary assistance to persons released from places of deprivation of liberty was discussed in 2009 in Vologda at the meeting of the Presidium of the State Council of the Russian Federation. The probation service establishment was stipulated by provisions of the Concept for long-term socio-economic development of the Russian Federation for the period up to 2020 and the Concept for development of the penal enforcement system of the Russian Federation up to 2020. The probation service was to provide post-penitentiary adaptation and socio-psychological support for persons released from places of deprivation of liberty. The Decree of the President of the Russian Federation No. 761 of June 1, 2012 "On the national strategy of actions in the interests of children for 2012–2017" provided for creation of the probation service for juvenile offenders [14]. In 2011–2012, an attempt was made to create a full-fledged probation service in Russia, which failed [13]: the draft federal law "On probation in the Russian Federation and the system of bodies and organizations implementing it" was not implemented, and in 2015 work on formation of a probation institute in Russia was suspended [18, p. 7].

The Concept for development of the penal enforcement system of the Russian Federation for the period up to 2030 again stipulates creation and development of the probation system. However, this planning document does not set a task of establishing an independent probation service, but forming a single integral system for interaction of state authorities, local self-government, public organizations, institutions and organizations (enterprises) of social services when addressing issues of providing targeted social assistance to convicts and persons released from places of deprivation of liberty. As noted in the Concept, serving a criminal sentence in isolation from society entails weakening and often complete rupture of social ties, loss of life skills in society, which leads to formation of a maladaptive orientation in behavior and, as a consequence, commission of repeated crimes. Punishments without isolation from society and suspended sentences in practice are also far from always accompanied by effective individual preventive and social rehabilitation work with convicts. This is largely due to insufficient capabilities of the penal enforcement system to use the entire scope of means of influencing the offender: for example, personnel, financial, technological difficulties. These circumstances triggered creation of an effective system for resocialization and social adaptation of convicts and persons released from places of deprivation of liberty (probation system).

Legislative consolidation of this institution is a priority measure for the creation and development of an effective probation system in the Russian Federation. For this purpose, the Ministry of Justice of the Russian Federation has prepared and submitted for public discussion a draft Federal law "On probation in the Russian Federation" (Project ID 01/05/04-22/00126333). Public relations arising in the field of organization and functioning of probation in the Russian Federation is the subject of regulation of this federal law. In order to scientifically comprehend the proposed law and search for opportunities for its further improvement, we conducted a scientific and theoretical study, the results of which are presented in this article.

Results of the analysis of the law content

The draft Federal law "On probation in the Russian Federation" (hereinafter referred to as the draft law on probation) normatively defines basic concepts used in the regulated sphere; establishes goals and objectives of probation; sets powers, principles and organizational foundations of the activities of probation subjects, and a legal status of persons engaged in probation. Probation is aimed at correction of social behavior, resocialization, social adaptation and social rehabilitation of persons, and prevention of their commission of new crimes.

The legal structure of the draft law is based on the approach positioning probation as a set of measures of a social rehabilitation, supervisory and preventive nature, implemented both at the stage of execution of criminal punishment (sentencing (executive) probation, penitentiary probation) and at the post-penitentiary stage (post-penitentiary probation), as well as aimed at legal institutionalization of a uni-

fied system of probation subjects, regulation of their rights, duties, responsibilities and professional relationships. The chosen approach makes it possible to take into account the social value of probation as a whole, maximize its significant social rehabilitation and preventive potential in working with convicts and persons who have served their sentences, and ensure uniform principles and integrity in the work of probation subjects. A similar approach is used in the legislative regulation of probation in certain foreign countries. For example, the Law of the Republic of Kazakhstan of December 30, 2016 No. 38-VI "On probation" establishes the following types of probation: pre-trial, sentencing, penitentiary, and post-penitentiary.

It should be noted that a significant amount of the normative material presented in the draft law on probation duplicates the content of the norms of penal legislation and some bylaws in this area (it includes separate powers of correctional institutions, correctional centers and penal enforcement inspectorates (PEI), the rights, duties and responsibilities of convicts, tasks and the procedure for carrying out educational, psychological and social work with convicts). In addition, the authors of the draft law use a large number of blank norms referring to the rules defined by the penal legislation, legislation on education, legislation in the fields of social services and public health protection, personal data protection, etc. Thus, the draft law on probation, defining the basics of the probation system in the Russian Federation, legal status and activities of its subjects, in fact, is a framework intersectoral regulatory legal act of the legislative level, structured by analogy with the Federal law No. 182-FZ of June 23, 2016 "On the basics of the system for preventing offenses in the Russian Federation" (hereinafter – the law on the system for preventing offenses). The subject of legal regulation of the latter also includes implementation of forms of preventive influence, such as resocialization, social adaptation and social rehabilitation, including in relation to persons serving sentences without isolation from society, who have served a sentence of imprisonment and (or) subjected to other measures of a criminal nature.

In this regard, it seems that due to a great number of legal norms that duplicate regulatory provisions of other federal laws in the draft law on probation, there are risks of unjustified intrusion into the regulation subject of these laws, including regulation of penal relations. On the one hand, in this situation the legislator may adopt a federal law on introduction of appropriate amendments and additions to the special legislative acts already in force regulating issues of social adaptation and rehabilitation of persons in difficult situations (including the law "On the system for crime prevention" as a basic one), while focusing on convicted persons and persons released from places of deprivation of liberty, along with other categories of citizens. At the same time, taking into account special importance of the issues of crime prevention on the part of this category of persons, as well as the fact that a significant amount of regulation in this area falls on regional and local levels, adoption of the law on probation at the federal level is still seen as an urgent need.

Special attention should be paid to the legal definition of probation, enshrined in the draft law on probation. Clarification of the content of a particular definition predetermines successful implementation of those measures that follow from its content [6]. Yu.A. Golovastova rightly notes that the "distorted use of basic legal categories (and probation is such) leads to spontaneous rule-making, the manifestations of which change the essence of legal regulation" [2, p. 5].

As we have already indicated, the authors of the draft law understand probation as a set of measures of a social rehabilitation and preventive nature. At the same time, understanding of this term, which has developed in the domestic scientific doctrine and legislative practice of some foreign countries, differs quite significantly from the one proposed in the draft law, which, in turn, significantly affects the content of its regulation subject.

The term "probation" (from Lat. probatio – trial) is used most often as an institution accompanying conditional imprisonment or postponement of a sentence [8, p. 67], as well as in connection with activities for the execution of punishments alternative to imprisonment [4]. The essence of probation consists in compulsory supervision of convicts' behavior and performance of duties assigned to them by the court, correction of their behavior, assistance in social adaptation and prevention of commission of repeated crimes [9, p. 121]. Probation is usually provided for

minor and medium-gravity crimes, only in case the defendant expresses his/her willingness to comply with all the requirements and restrictions established by the court [10, p. 114]. At the same time, the nature and features of the forms of expression of probation institutions are directly dependent on the legal system of the relevant state. Thus, in some states, probation is a punishment (Sweden, Finland, Latvia), in others – measure of a criminal nature (England, Denmark) or the one connected with release from punishment (Austria, Estonia). Finally, in some countries it does not constitute an institution at all (USA) [19, pp. 13–14]. In the penitentiary systems of many world countries, the probation service is the most important institution in the field of criminal justice and crime prevention, which provides an opportunity to apply alternative types of punishment for committing a crime, instead of real imprisonment [13].

According to the Recommendation CM/Rec (2010) of the Committee of Ministers to member states on the Council of Europe Probation Rules of January 20, 2010, probation relates to the execution in the community of sanctions and measures, defined by law and imposed on an offender, that is, it is a reaction of the state to the committed offense. At the same time R.V. Novikov notes that in a combination of measures to support an offender and ensure compliance with the imposed restrictions, it is important to strike a balance, since the emphasis solely on rehabilitation measures or a formal approach to establishment of restrictions can lead to a crisis of the probation system [14]. Thus, the "probation system provides for the application of support measures and ensuring that a person complies with the obligations and restrictions imposed on him/her by criminal law in connection with the committed crime" [14].

In general, probation is a complex criminal legal measure (regime), aimed at influencing the person who has committed the crime, testing the offender by imposing legally stipulated duties, restrictions and prohibitions on him/her, in control (supervision), combined with the application of measures to correct his/her social behavior and providing him/her with assistance (psychological, medical, household and labor arrangements) in social adaptation [1]. The purpose of such a test is to determine the possibility of correcting the convicted person, stopping his/her antisocial behavior without applying stricter measures – criminal punishment. The test is based on trust and assistance to the convict, his/her active and socially responsible position in the process of correction (socialization).

S.A. Luzgin adheres to a similar position, defining probation as an institution of criminal justice, crime prevention, resocialization and social adaptation of released convicts, which includes a system of activities and individual measures of a socio-legal, educational, psychological, control and rehabilitation nature aimed at correcting behavior of certain defined by law categories of offenders with a purpose of their correction, resocialization, re-adaptation into society and crime commission prevention [11].

However, there are different points of view. According to I.V. Dvoryanskov, probation is not a punishment or other measure of a criminal nature, there is no criminal liability; it is an alternative to criminal prosecution, non-punitive form of neutralizing causes and consequences of committing a crime, special form of social responsibility, alternative to criminal [7]. The key difference between probation and criminal law measures is that it is applied outside of criminal prosecution and criminal enforcement activities [7].

It seems that the combination of diverse measures in the concept of the institute of probation, ranging from measures of social adaptation to the one of criminal punishment and correction of convicts, control (supervision) and prevention of offenses, makes its content unnecessarily abstract and pointless. It is important to determine, whether probation should be endowed with a specific criminal-legal content (positioned as an independent type of criminal punishment or another measure of a criminal-legal nature), represent a preventive legal measure (by analogy with administrative supervision or a criminal-procedural prohibition on certain actions) or just a complex of criminal-executive and social rehabilitation measures, as well as the relevant activities of probation subjects? The initial solution of this fundamental issue would contribute to improving the quality of normative material, determine specific directions of its further development. For example, probation could be positioned as a criminal-legal measure combining punishment in the form of restriction of liberty, condi-

tional conviction and postponement of serving a sentence, as well as release on parole. In the proposed draft law on probation this term covers the entire complex of educational, social rehabilitation and preventive measures implemented in relation to persons who have committed criminally punishable acts, both at the stage of execution of punishment and at the post-penitentiary stage.

Ambiguity in the solution of this issue is already inherent in the formulation of the purpose and principles of probation (Article 4 of the draft law on probation). Probation goals do not involve implementation of criminal liability, only correction of social behavior, resocialization, social adaptation and social rehabilitation of persons engaged in probation, prevention of their commission of new crimes. In this case, a natural question arises: what about sentencing (executive) probation, which provides for the execution of criminal penalties not related to isolation of the convicted person from society and the use of other measures of a criminal nature? The analysis of the rights and obligations of the penal enforcement system in the field of sentencing (executive) probation (Article 19) allows us to conclude that the difference between this legal institution and the institutions of penal law regulating execution of punishments without isolation from society consists only in giving the penal system powers in the field of social work. Article 17 establishes that this type of probation is applied on the basis of a court verdict. At the same time, according to Article 3 of the draft law on probation, the voluntary nature of its application is fixed as one of the principles of probation. Probation areas, such as execution of criminal penalties (other measures of a criminal legal nature), control (supervision) of convicted persons and persons who have served their sentences, use of special measures to prevent offenses (part 2 of Article 18), as well as educational work (articles 19, 21, 22 and 25) do not correlate with this principle. In addition, attention is drawn to the fact that among the subjects applying sentencing (executive) probation, only the penal enforcement system is indicated, while other subjects of crime prevention remain on the sidelines.

Thus, despite the fact that the approach to the meaningful definition of probation in the form of a complex of diverse measures has already found its support in the scientific community and implementation in the legislation of some foreign countries, it still seems more reasonable to position probation with regard to its criminal legal content, and all other measures (for example, providing former convicts assistance in social adaptation and rehabilitation) should be attributed to other functions of the probation service (system).

Provision of control and supervision of persons is one of the tasks of probation. In this case, it is not entirely clear what kind of supervision we are talking about: applied as part of the execution of a sentence in the form of restriction of liberty or administrative supervision of persons released from places of deprivation of liberty. In the latter case, there is competition with the norms of the Federal law No. 64-FZ of April 6, 2011 “On administrative supervision of persons released from places of deprivation of liberty” implemented by the police. Probation involves convicts, as well as persons released from institutions executing punishments in the form of forced labor or imprisonment, who find themselves in a difficult life situation. Consequently, it can be assumed that supervision is carried out in relation to those sentenced to restriction of liberty and, possibly, in relation to that part of the released convicts subject to administrative supervision who find themselves in a difficult life situation.

The draft law on probation proposes a concept of penitentiary probation, which includes, among other things, a set of measures aimed at correcting the convicted person. At the same time, correction of convicts and prevention of crimes on their part are the goals of criminal punishment and are implemented in the process of its execution. It turns out that the goals of penitentiary probation and the goals of punishment largely coincide. Moreover, according to Article 21 of the draft law on probation, penitentiary probation is carried out, inter alia, by conducting educational work with persons sentenced to imprisonment or forced labor (in accordance with the procedure established by the penal legislation).

The above indicates that the authors of the draft law actually attempted to bring together, within the framework of a special law, all measures of educational influence implemented in relation to persons sentenced to imprisonment and forced labor at the penitentiary and post-penitentiary stages. At the same time, the use in the framework of probation, along

with educational work, of other basic means to correct convicts (socially useful work, general education, vocational training, social impact and regime) is not regulated by the draft law in any way.

In our opinion, it would be advisable to more clearly distinguish the norms of the draft law on probation from the norms of the Criminal Code of the Russian Federation and the Penal Code of the Russian Federation. However, their complete differentiation does not seem to be entirely correct in terms of ensuring the complexity and continuity of social rehabilitation and preventive work with convicts. In this case, only the norms regulating relations arising at the post-penitentiary stage would be a subject of the draft law on probation. It is worth noting that until recently, in legal science and practice, the issue of adopting a federal law on social assistance to persons who have served a criminal sentence in the form of imprisonment has been worked out. For example, the draft federal law No. 97802711-2 "On social assistance to persons who have served their sentences and control over their behavior" was discussed even in 1997–2000 [14]. In addition, there is experience in adopting such laws at the regional level (for example, the regional law of the Arkhangelsk Oblast No. 402-27-OZ of December 16, 2011 "On social adaptation of persons released from institutions of the penal system", the law of the Tyumen Oblast No. 98 of May 12, 2011 "On resocialization of persons who have served a criminal sentence in the form of imprisonment and (or) those who have been subjected to other measures of a criminal-legal nature", etc.). This practice looks very logical, since most of the issues related to social adaptation of former convicts are solved at the regional and local levels.

As we have already noted, the draft law on probation is largely of a framework nature, contains a large number of general provisions and references to the current legislation, requires subsequent adoption of concretizing amendments and additions to other regulatory legal acts. For example, Article 37 of the draft law on probation is devoted to the issues of assistance in finding employment to persons in respect of whom post-penitentiary probation is carried out, but it does not contain specific mechanisms for such assistance.

According to Article 10 of the draft law on probation, the Ministry of Labor of the Russian Federation coordinates activities of post-penitentiary probation carried out by the executive authorities of the constituent entities of the Russian Federation in the provision of public services in the field of employment and social protection (service) of the population, including issues of job quotas. At the same time, with regard to the issues of job quotas, the draft law only provides for the preparation of appropriate methodological recommendations. Unfortunately, there are no clear guidelines for solving this issue at the legislative level.

Article 14 of the draft law on probation, which establishes the powers of the Commission on Juvenile Affairs and protection of their rights in the field of probation, also contains only vague formulations concerning assistance in the labor and household arrangement of minors, and only within the framework of post-penitentiary probation.

Article 13 of the draft law on probation establishes the rights of state authorities of the RF subjects in the field of probation, and the powers and obligations of other subjects of probation (in fact, the list of rights represents the powers).

In this regard, the adoption of a federal law on social adaptation of persons who have served a sentence of imprisonment would be preferable. At the same time, the use of the term "probation" as a basis, relying on the complexity and continuity in its implementation on a many-subject basis, is certainly justified by the need to focus law enforcement activities on solving social rehabilitation and preventive tasks and increase the level of responsibility of state, municipal bodies, and civil institutions in this direction.

Some research teams have proposed conceptual draft laws containing very specific measures for social adaptation of former convicts, including mechanisms for solving their most significant social problems (employment, housing, etc.). For example, the research team of the Federal Research Institute of the Federal Penitentiary Service of Russia worked out a draft federal law "On state support for persons who have served a criminal sentence in the form of imprisonment", providing targeted assistance to persons released from places of deprivation of liberty, in need of labor and household arrangements, housing and pension provision, health protection [15]. In contrast to a

rather abstract draft law on probation, one of the main ideas of the proposed draft law was to determine sources and mechanisms of financial support for activities of subjects providing state support to those who have served their sentences, as well as to fix specific measures of such state support (the unconditional right of persons released from prison to work and household arrangements, receiving other forms of social assistance; provision of state guarantees for investment loans received for the purpose of providing state support to those who have served their sentences, etc.).

Z. Sh. Makhmudov believes that the content of the federal law regulating issues of social rehabilitation of persons released from prison should contain specific measures, such as recognition that able-bodied persons released from places of deprivation of liberty require one-year social protection; determination of special enterprises and dormitories in the system of the Ministry of Justice of Russia for labor and domestic placement of the released; creation of social adaptation (rehabilitation) centers; determination by the local administration of the list of organizations that employ persons released from prison and provision tax benefits to them, etc. Also, in his opinion, it is important to clearly regulate issues of legal responsibility of subjects of social rehabilitation of persons released from places of deprivation of liberty and establish specific deadlines for implementation of their functions [12].

We believe that when dealing with probation issues of convicts and persons who have served their sentences, it is crucial to maintain a balance with the rights to social protection, support and assistance of other (law-abiding) categories of citizens who find themselves in a difficult life situation. Positioning of social problems of convicts (ex-convicts) at the legislative level as a special difficult life situation requiring priority resolution, it should not contradict the principles of social justice and equality of all citizens before the law (of course, recognizing the particular severity of this social problem).

Z. Sh. Makhmudov also points out that the system of state and municipal structures lacks a body or official who would be charged with the duty to provide the released person with very specific assistance in his/her work arrangement [12].

In accordance with the provisions of the draft law on probation, the powers to coordinate interaction of probation subjects are assigned to the Ministry of Justice of the Russian Federation, the functions to organize (provide) interaction – to other federal executive authorities. At the same time, the solution of organizational issues of providing targeted assistance to a specific convict is assigned to several subjects at once, depending on the type of probation used: penal enforcement inspectorates – for sentencing (executive) and post-penitentiary probation, correctional facilities and correctional centers – for penitentiary probation.

Without raising the issue of creating an independent probation service, the authors of the draft law provide for the possibility of creating specific bodies – probation centers (Article 40 of the draft law on probation), which are not classified as subjects of probation, but are specialized organizations created to assist persons engaged in probation, including provision of temporary place of stay. Probation centers can be established by socially oriented non-profit organizations, including religious organizations and public associations.

Providing that most of the functions implemented by penal enforcement inspectorates are probation ones (with the exception of monitoring suspected and accused persons, in respect of whom preventive measures in the form of house arrest, prohibition of certain actions and bail are applied), it would be more logical to create probation centers (probation services) on the basis of these state bodies. This approach would be more correct, since only state and municipal bodies and organizations (enterprises) are defined as subjects of probation in the draft law on probation (Article 6). This position is supported by I.V. Dvoryanskov, arguing that probation should be implemented through activities of the probation system in the Russian Federation, which includes a number of authorized state bodies, institutions and organizations, and therefore it is planned to create specialized probation departments in the structure of penal enforcement inspectorates [7].

Nowadays, penal enforcement inspectorates' functions are expanding. All this creates opportunities for their further development and formation of a full-fledged probation service on their basis [16, p. 29]. According to

the data of our research conducted in 2020 on the prospects for further development of the system of penal enforcement inspectorates, 34.1% of its employees surveyed considered it possible to expand probation functions of the agency while maintaining it as part of the Federal Penitentiary Service of Russia, 14.4% – widen probation functions of the agency with its subsequent transfer to an independent federal service – the Federal Probation Service of the Russian Federation. About half of the respondents (47.6%) believe that functionality of penal enforcement inspectorates is currently optimal and its expansion by analogy with functionality of foreign probation services is not advisable [3].

We believe that the issues of organizing interaction of probation subjects, as well as other subjects of crime prevention and re-socialization (social adaptation, rehabilitation) of convicts and persons who have served sentences deserve more thorough regulation. The draft law on probation mainly fixes lists of interacting parties and their general powers, procedural aspects of such interaction are regulated to a lesser extent, the solution of these issues is transferred to the level of agreements on interaction (cooperation), the list of which, in our opinion, is not complete. According to Article 10 of the draft law, the Ministry of Labor of the Russian Federation is to approve a model agreement on interaction of institutions executing sentences in the form of forced labor and deprivation of liberty, and penal enforcement inspectorates with employment service bodies in the implementation of activities in the field of post-penitentiary probation, while similar agreements in relation to other types of probation and other bodies (organizations) of social protection and social services of the population are not provided.

A.Ya. Grishko rightly points out the existence of the above-mentioned problem in foreign legislation, noting that "legislative and other regulatory legal acts regulating activities of the relevant entities involved in the process of re-socialization do not establish duties of the latter. They, at best, determine competencies and nothing more" [6].

It should be noted that Article 9 of the draft law on probation stipulates interaction of internal affairs bodies with penal enforcement inspectorates only within the framework of the application of post-penitentiary probation; interaction within the framework of sentencing (executive) probation is not provided, which does not seem fully justified from the standpoint of solving preventive tasks. Moreover, prevention of offenses is not mentioned among the main activities in the field of post-penitentiary probation (Part 2 of Article 27 of the draft law on probation).

Regulation of the legal status and activities of municipal bodies in the process of applying probation (primarily post-penitentiary probation) is also minimized. Perhaps, this is due to the need to take into account regional and local specifics of law enforcement activities, as well as the intersectoral nature of legal regulation in the field of probation.

The legislative introduction into the practice of work with former convicts of such tools as an individual program of re-socialization, social adaptation and social rehabilitation, unified register of persons for whom post-penitentiary probation is carried out, as well as criteria and methods for assessing individual need for social adaptation and rehabilitation deserves a positive assessment. However, it would be advisable to leave regulation of procedural issues related to preparation of individual programs within the framework of penitentiary and post-penitentiary probation at the subordinate regulatory level. As for a unified register, it seems that the register, as a registration legal tool, is most often formed and maintained for certain constitutive or restrictive purposes. In the context of solving probation tasks, it would be more accurate, in our opinion, to have a state information system, which is a single interdepartmental electronic information resource. This also raises the question of social support for other categories of citizens who find themselves in a difficult life situation, since working with them also requires creation of an appropriate state information system.

The analysis of the content of the draft law on probation reveals a number of other shortcomings of a technical and legal nature. We do not find it reasonable to include the Commissioner for Human Rights in the Russian Federation and the Presidential Commissioner for Children's Rights in institutions of civil society (Article 43). Articles 19 and 20 of the draft law stipulate bringing persons in respect of whom sentencing (executive) probation is carried out to liability established by criminal and penal legislation, while nothing is said about ad-

ministrative liability. It would be more logical to combine the normative material included in chapters 5–7 of the draft law on probation within one chapter. The heading of Article 38 "Assistance in obtaining general education" does not fully correspond to its content, since it refers to assistance in obtaining, including secondary vocational education, vocational training and advanced training. Article 27 provides for the application of post-penitentiary probation measures also in relation to persons to whom sentencing (executive) probation is applied. However, given that the latter type of probation is applied only on the basis of a court decision, the implementation of post-penitentiary probation measures, in our opinion, is still carried out within the framework of an independent type of probation.

Directions for improving the content of the draft law

In order to further improve the content of the draft law on probation, we believe it is possible to propose the following:

- ensuring proper differentiation of the norms of the law on probation and the norms of the Penal Code of the Russian Federation, including by replacing the norms of penal law contained in the law on probation with relevant reference norms;

- specifying the powers of probation subjects and the content of probation procedures and measures;

- conducting a more complete and detailed study of regulation of organization of interaction between probation subjects, as well as other subjects of crime prevention and re-socialization (social adaptation, rehabilitation) of convicts and persons who have served sentences;

- strengthening legal regulation of the preventive direction of probation;

- making amendments to the legislation regarding introducing procedures for reconciliation (mediation) with the victim (pre-trial probation) [17];

- determination of the place of public control over the probation system [5];

- further development of legislation on probation in the direction of creating a single body in the system of state and municipal structures, which would be assigned probation functions;

- ensuring proper parity of the social rights of convicts and persons released from places of deprivation of liberty with the social rights of other categories of citizens who find themselves in a difficult life situation.

Conclusion

Thus, we believe that working out the draft law on probation has become an important stage in the development and humanization of domestic legislation; its adoption and subsequent implementation will allow us to form a fundamentally new system of work with convicts and persons released from places of deprivation of liberty, providing for the widespread application of social rehabilitation and preventive measures to them, which, in turn, will have a positive impact on the level of their socialization and the recidivism rates in the country.

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Probation Service in Russia: Policy Choice and Development Prospects

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Abstract

Introduction: the article is devoted to the study of issues related to the formation of the state probation service in the Russian Federation and legislative regulation of its activities. *Purpose:* to study organization and activities of the probation service of Russia with regard to the specifics of functioning of the penal enforcement system of the Russian Federation. *Methods:* our research is based on the dialectical method of scientific cognition. The article uses general scientific (analysis, synthesis, induction, etc.), private scientific and special methods of cognition (comparative legal, formal legal, statistical). Results: general characteristics are given and specific features of the use of the probation institute are identified within the framework of the state penitentiary policy. It seems possible to determine key features of the probation service in Russia, such as comprehensive solution to the issue of social adaptation and resocialization of convicts by establishing three types of probation – sentencing (executive), penitentiary and post-penitentiary; identification of a wide list of probation subjects endowed with an appropriate amount of powers with regard to the specifics of the activity; organization of work with convicts according to specially formed individual programs; maintaining a register of convicts involved in the probation program. The draft Federal law "On probation in the Russian Federation" (Project ID01/05/04-22/00126333) is analyzed. It is determined that this draft law is largely of a framework nature. In particular, the procedure for interaction and coordination of probation subjects' activities is not described; there are no provisions on the exercise of control and supervision over the probation service; principles of the probation service functioning are not disclosed; the procedure for filling out and maintaining a personal file of the convicted person engaged in probation is not presented; and probation terms in relation to persons under administrative supervision are not considered. *Conclusions:* taking into account the study of foreign experience, the authors outline possible prospects for the probation service development in Russia, give certain proposals to improve the system of non-custodial sentences execution. In order to effectively organize activities of the service being created in Russia, it is necessary to develop a high-quality legal framework regulating the institute of probation, ensure interdepartmental interaction of probation subjects, establish a system of qualification requirements for probation service positions, proper material, resource and scientific support, use progressive international experience of similar services, and take into account the specifics of Russian conditions.

Keywords: penal enforcement system; probation; Federal Penitentiary Service of Russia; penal enforcement inspectorates; individual program of resocialization; social adaptation and social rehabilitation.

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Introduction

With the penal enforcement system of the Russian Federation being reformed, the legislator is concerned about developing a set of measures aimed at reducing recidivism of crime among persons both serving criminal sentences and those released from places of deprivation of liberty. To a large extent, this interest is due to the need to maintain public order and public safety at the proper level, including the general level of security and legality in the field of execution of criminal penalties.

The issues to prevent recidivism due to the functioning of the probation service became particularly relevant during the spread of the COVID-19 coronavirus infection in the world [10], since the years of 2020–2021 witnessed a widespread decline in people's income levels around the world, which undoubtedly triggered commission of new crimes and administrative offenses.

In Russia, the main functions for preventing convicts from committing new crimes and offenses are assigned to correctional institutions and penal enforcement inspectorates. In foreign countries, this function is fulfilled by to a special entity, the probation service, whose activities are aimed at preventing crimes committed by convicts. The word "probation" comes from the Latin verb "probare" – "to investigate, to test, to take care of" [6].

The institute of probation is actively used in most foreign countries, where work with persons sentenced to punishments, not related to isolation from society or released from prison, is organized by specially created services. At the same time, it should be emphasized that the probation service in foreign countries, in addition to performing the main functions aimed at preventing and reducing the recurrence of crime among convicts, implements social rehabilitation activities in relation to a wider range of persons who have violated the law.

Research methods

Our research is based on the dialectical method of scientific cognition. When preparing the article, general scientific methods of cognition, special methods of legal science and individual methods of social sciences were used.

The general scientific methods applied in the work include the following: induction and deduction, comparison and analogy, synthesis and generalization, statistics and system analysis. Private scientific methods, such as comparative-legal, normative-logical, helped solve the research tasks. Some problems were considered as intersectoral due to the stated tasks to conduct a comprehensive analysis of described relations.

The methodology is based on the scientific analysis of statistical data of the Federal Penitentiary Service of Russia, the Ministry of Internal Affairs of Russia, and the Prosecutor General's Office of Russia, as well as the foreign legislation regulating activities of the probation service.

Discussion

Having considered foreign experience in organizing activities of the probation service, we concluded that this type of activity has quite deep historical roots. As a rule, probation services carries out work with the following categories of convicts: persons received suspended sentence; deferred sentence; convicts whose term of serving a sentence in penal institutions goes to an end; conditionally released; persons to whom alternative punishments to deprivation of liberty are applied; persons who have served their sentences in

places of deprivation of liberty and who need post-penitentiary adaptation and resocialization.

As A. Sh. Gabaraev and A.V. Novikov note, there are significant differences in the nature, functions and organizational structure of the probation service in foreign countries [2]. In particular, in England and Finland, a convicted person is supervised by a special official (agent or assistant, probation commissioner) for a certain period of time or undergoes a correctional course based on an individual program [11, 13]. The experience of Sweden is also interesting, where volunteers and social workers are widely involved in activities of probation services [12].

In Sweden, the probation service and the prison administration form a single agency, the so-called national administration. In India, probation officers serve directly in the prison department. In Japan, Kenya and the Republic of Armenia, the probation service is subordinate to the Ministry of Justice. Moreover, in the Republic of Armenia, it is an independent type of the state civil service, probation officers fill the appropriate positions in the probation service according to the approved nomenclature of civil service positions.

Organizationally, the probation service can also function as an independent agency in close contact with institutions of the penitentiary system. For example, in England, the probation service is subordinate to an independent local committee, which includes magistrates and civilians who enjoy authority in society. In the USA the probation service is subordinate to courts and local governments. In a number of European countries, for example, in Hungary and Estonia, the probation service is integrated into the judicial system [5].

As you can see, probation services can be not only of state, but also non-police, non-penitentiary origin; often functions in the field of probation are assigned to civil departments and volunteers.

Regardless of the specifics of organization of activities and the structure of the probation service in foreign countries, inspectors of the probation service are engaged in supervision of the execution of the sentence imposed by the court alternative to imprisonment; provision of advice and assistance in the performance of the duties assigned by the court; assistance in convicts' social adaptation (assistance in finding a job, study, place of residence).

In Russia, at the legislative level the need to create conditions for preparing released persons for further post-penitentiary adaptation through the probation service was reflected back in 2008 in the Concept for long-term socio-economic development of the Russian Federation for the period up to 2020. Then it was specified in the Concept for development of the penal enforcement system of the Russian Federation up to 2020 and the Concept for development of the penal enforcement system of the Russian Federation for the period up to 2030.

Although practitioners and scientists showed considerable interest in the probation service from 2010 to 2020, it was not integrated in the structure of the penal enforcement system; thus, this direction for the penal system development should be prolongated in a new Concept. During this period, only individual attempts were made to introduce elements of the probation service in the field of execution of criminal penalties. So, for example, in the Vologda Oblast, employees of the penal enforcement inspectorate, when working with conditionally convicted juvenile offenders, implemented the project "Real". It was aimed at social adaptation, formation of socially approved behavior and recidivism prevention among minors. A specialized service was also created for this category of convicts, in particular, the service of socio-psychological support for minors in the detention center, preparing for release from the educational correctional facility or returning from a special educational institution of a closed type (for example, the Decree of the Government of the Vologda Oblast No. 1052 of September 7, 2012 "On approval of the strategy of actions in the interests of children in the Vologda Oblast for 2012–2017").

So, the probation service formation had been discussed in Russia for a long time; however, it was only at the beginning of 2022 that the Minister of Justice of the Russian Federation, K.A. Chuichenko, during a personal meeting with Russian President V.V.

Putin, substantiated the idea of the need to create a position of Deputy Director of the Federal Penitentiary Service of Russia, who will deal with probation issues and begin work on creating an independent specialized service within the framework of the structure of the Federal Penitentiary Service of Russia [9]. It is assumed that the probation service in Russia will be established by the middle of 2023; the number of staff of the Federal Penitentiary Service of Russia will amount to about 50 thousand people.

Moreover, on April 4, 2022, the Ministry of Justice of the Russian Federation submitted a draft Federal law "On probation in the Russian Federation" (Project ID01/05/04-22/00126333), which includes legal and organizational foundations of the probation service in the Russian Federation. Currently, the procedure of public discussions regarding the text of the draft regulatory legal act has already been completed and an independent anti-corruption examination – conducted; the final version of the draft law is being worked out.

According to K.A. Chuichenko, the draft law is aimed primarily at resocialization of convicts. This service will help solve one of the main problems of the Russian penal system, namely, preparation of prisoners for life in freedom. According to the authors of the draft law, the new probation service will deal with social adaptation and rehabilitation of prisoners not only during their stay in penal institutions, but also after their release from prison.

It is assumed that probation will be created on the basis of existing criminal enforcement inspectorates. According to official statistics of the Federal Penitentiary Service of Russia, as of April 1, 2022, there were 81 of them with 1,348 of their branches; 489,825 people were registered with them [4]. After the entry into force of the law on probation in the Russian Federation, in addition to the general duties of monitoring execution of criminal penalties in the form of compulsory and correctional labor, restriction of freedom, monitoring of probation prisoners and persons released from serving sentences on parole, penal enforcement inspectorates will assist former prisoners in their life arrangement outside the walls of correctional institutions [3].

In international practice, the institute of probation is used as a rule when it comes to the execution of sentences alternative to imprisonment. At the same time, the draft law "On probation in the Russian Federation" provides for the implementation of 3 types of probation: sentencing (executive), penitentiary and post-penitentiary. We believe that this circumstance indicates a more comprehensive approach of the legislator to solving the issue of preventing commission of new crimes and offenses among convicts and other persons who have violated the law.

According to the Ministry of Justice of the Russian Federation, sentencing probation will include measures applied by penal enforcement inspectorates in the execution of punishments not related to convicts' isolation from society.

Penitentiary probation is introduced in institutions that carry out punishments in the form of forced labor or imprisonment, and focused on correcting convicts, as well as preparing them for release.

Post-penitentiary probation provides for resocialization, social adaptation, as well as social rehabilitation of persons who are released from institutions executing criminal punishments in the form of imprisonment or forced labor and find themselves in a difficult life situation.

In the field of post-penitentiary probation, almost all probation subjects will be involved in one way or another. It is required to organize its work in cooperation with bodies, institutions and organizations that are subjects of probation, medical, educational and other organizations. At this stage, the authorized entities will provide universal assistance in employment, obtaining general (secondary vocational) education, vocational training and advanced training, social services, and choosing a medical organization.

In our opinion, post-penitentiary probation should not be considered as a measure of a criminal-legal nature, since the system of relations with a person released from places of deprivation of liberty, to a greater extent, is of administrative and legal regulation, and the subjects of probation involved at this stage of building relationships with the person engaged in probation pursue completely differ-

ent goals and objectives. In this case, we are also talking about the need to build correct relationships with civil society institutions, state authorities and local self-government bodies when assisting in the preparation of basic documents that a person may need to settle outside the walls of a correctional institution, in particular, a passport of a RF citizen, personal insurance policy number, personal tax reference number, medical policy number, which naturally implies the need to apply to relevant state authorities for their registration (for example, the Migration Department of the Ministry of Internal Affairs of the Russian Federation of the relevant municipality, tax inspectorate, insurance organization, etc.). Probation service employees should provide all possible assistance in registering a person at place of residence or temporary stay, and finding employment.

Thus, probation in modern interpretation acts "as a set of measures applied to convicts and persons released from institutions executing sentences in the form of forced labor or imprisonment who find themselves in a difficult life situation, including their resocialization, social adaptation and social rehabilitation, protection of the rights and legitimate interests of these persons, control and supervision of their behavior, prevention of their committing crimes and offenses" (Article 5 of the draft law on probation). Hence, the main task of creating the probation service in Russia is to assist a person in returning to a normal life in society.

Work with convicts will be provided on the basis of individually formed programs to restore and form socially useful ties, get employed after release, get education, unemployment benefits, medical care, counseling on social and legal issues, including psychological assistance. Every convict involved in the program will be registered and it will take them a year to complete it. At the same time, the relevant ministry emphasizes that the probation program for the convicted person will be carried out exclusively on a voluntary basis.

According to Article 6 of the analyzed draft law, the probation subjects include commissions for minors' affairs and protection of their rights, thus a separate direction to work with juvenile offenders is singled out in the probation service activities. We believe that this area of activity should be based on the juvenile justice principles.

The probation service is not focused on providing financial or material assistance to probation facilities. At the same time, it should act as an intermediary and assist in establishing relationships between convicts and other federal executive authorities, executive authorities of constituent entities of the Russian Federation, local self-government bodies, public associations and organizations.

A detailed study of the powers of employees of the penal enforcement inspectorates shows that the goals and objectives they implement coincide with the basics of the functioning of the probation service. At the same time, the probation service formation on the basis of the penal enforcement inspectorates provides for a significant expansion of the powers of the latter in the sphere of public relations under consideration. So, at present, inspectorates are not assigned functions related to social adaptation and rehabilitation of convicts. They do not assist in registration at place of stay (residence), preparation of necessary documents (passport, medical policy) and social payments (benefits), establishment of new social ties and restoration of old ones, do not provide psychological support. Hence, employees of the penal enforcement system, who will work in this field, should be competent in legal support, communication and social services, as well as psychology.

The organizational and managerial component of building a new probation service should be based on the formation of the staff of specially trained employees. A.I. Abaturov and A.A. Korovin note that probation service employees should be selected and appointed to the appropriate position, in case they meet qualification requirements for replacement of such positions to cope with the tasks assigned to them [1].

Thus, in most European countries (for example, Austria, Denmark, the United Kingdom, the Netherlands, Italy, Spain and Luxembourg), probation officers are subject to qualification requirements for the level of education. Preference is given to persons with a bachelor's degree in law, psychology, theol-

ogy, pedagogy or social work. In a number of countries, in particular, France, Germany and Ireland, in addition to similar requirements for the level of education, additional requirements for work experience are imposed.

In Denmark, probation service inspectors are required to be trained in specialized social work schools or a training center. In addition, in Denmark and France, various optional courses are regularly organized for probation service inspectors, during which employees take part in various trainings that form skills of working with special categories of convicts (drug addicts, alcoholics, persons with various kinds of mental disabilities). Organization of professional education and advanced training of probation officers, as a rule, is entrusted to the agency in charge of them [7].

Despite the importance of staffing the probation service with employees with necessary professional competencies, there are no provisions in the draft law on probation that establish basic requirements for persons applying for the relevant positions of the probation service. At the same time, we believe that it is not possible to talk about effective institutional development of a specialized service on the basis of penal institutions, in particular, inspectorates, without the availability of high-quality personnel that meets qualification requirements and has necessary professional competencies.

In addition to institutions of the penal enforcement system, the subjects of probation are federal executive authorities, state authorities of RF subjects, commissions for juvenile affairs and protection of their rights, state institutions of the employment service, social service organizations. To achieve crucial goals of probation for resocialization, social adaptation and social rehabilitation of persons, various commercial and non-profit organizations, as well as public associations can be involved (Article 6 of the draft law on probation).

The draft law on probation is largely of a framework nature. On the one hand, the draft law makes it possible to establish multiplicity of probation subjects and a list of their powers in the sphere of public relations under consideration, on the other hand, it leaves open the question of interaction of probation subjects and coordination of their activities. The draft law does not specify how the probation service will be managed, controlled and supervised; the probation service functioning principles are not disclosed; the procedure for filling out and maintaining a personal file of the person engaged in probation is not described; and the issues of probation to persons under administrative supervision are not considered. As we can see, many issues remained unresolved, which indicates the need to finalize the draft law.

We believe that to solve most of the issues we have identified, a new position of Deputy Director for the Probation Service will be assigned to the new position being introduced in the structure of the Federal Penitentiary Service of Russia. The adoption of the Federal law “On probation in the Russian Federation” will be the starting point for making changes to certain norms of criminal, penal, administrative and other branches of legislation.

Moreover, the Ministry of Justice of the Russian Federation empowers subjects of the Russian Federation to adopt regional state programs in this area, as well as measures to economically stimulate the organizations employing convicts. It seems that effective functioning of the probation service is achievable through close cooperation between probation officers and those who implement programs formed at the regional level that take into account territorial specifics and have a social and rehabilitation orientation. Public organizations and enterprises, including commercial ones, should be involved in work with persons engaged in probation.

We propose a fundamentally new approach to forming the probation service staff. Among other things, it is necessary to introduce new ways and methods to finance the service being created. In addition, it seems extremely important to introduce social ordering technology into the work of the department when solving probation issues, where the probation service will act as the customer, and a specialized service of another department, a public or commercial organization – the contractor.

Regions should work out special programs to employ persons engaged in probation. Employment centers should act as one of the active subjects of the probation service, they will be entrusted with the main function of organizing the search for work for former

convicts. We believe that public-private partnership will be one of the key forms of interaction between the state and civil society institutions to address the issues of employment of persons released from places of deprivation of liberty. Participation of the state and business in creation and organization of enterprises on mutually beneficial terms will not only solve the problem of employment of former convicts, but also a number of socially significant tasks. These enterprises should have psychologists and other social specialists who will assist in social adaptation and resocialization of persons released from prison. The solution of the issue of employment of persons released from their places of imprisonment will ultimately reduce tension in society and overall rates of crime and administrative offenses committed.

Despite positive experience of the probation service functioning in foreign countries, probation subjects may face the following problems in the process of implementing functions of social adaptation and resocialization of convicts. First, organization of the probation service will lead to a significant increase in the burden on the staff of panel enforcement inspectorates. So, in the period from 2008 to 2021 the number of persons registered with inspectorates remained at a consistently high level with a slight reduction in their total number, in particular, in 2008 their number was 558,346, in 2021 – 489,825. At the same time, the number of inspectorates during this period almost halved from 2,440 in 2008 to 1,429 in 2021. At the same time, the number of persons deregistered from inspectorates in connection with conviction for a new crime increased by 66.39% (in 2008 – 10,845, in 2021 – 16,335) [8]. The solution to this problem is seen in a certain increase in the staff of panel enforcement inspectorates, competent to work in new conditions.

In the penal enforcement system of the Russian Federation, the legislator assigned probation functions to employees of correctional centers. Correctional centers execute punishments not related to deprivation of liberty in the form of forced labor. Nowadays there are about 200 correctional centers and isolated areas functioning as such. Indeed, the presence of an extensive system of correctional centers on the territory of Russia can encourage courts to impose alternative types of punishments, the execution of which will allow convicts be part of the society. As K.A. Chuichenko noted, “according to the current law, 180 thousand convicts are entitled to it” [9].

Based on the above, we can conclude that the probation service needs sufficient personnel in terms of the number and level of professional training. The workload of each probation service employee should be comprehensively assessed, taking into account the specifics of the amount of work performed, since a general lack of human resources can limit possibilities of organizing activities of the probation service.

In addition, for the purpose of high-quality professional training of probation subjects, it will be necessary to develop specialized training, retraining and advanced training programs for probation service employees. They should be based on positive foreign experience in organizing the work of probation service subjects and involve scientific capacities of the Research Institute and institutions of higher education of the Federal Penitentiary Service of Russia.

We believe that reduction in recidivism of crimes and administrative offenses committed by convicted persons will be one of the key indicators to assess effectiveness of probation in Russia. Currently, recidivism accounts for about 44% of cases of crimes committed. According to the report of the Ministry of Internal Affairs of Russia, for the eight months of 2021, more than half (59.4%) of the crimes investigated by the department were committed by persons who had previously committed crimes. According to the Prosecutor General’s Office, in 2021, 58.2% of those who committed crimes did it again.

Results

A comprehensive analysis of the scientific literature on the issue under consideration and foreign legislation has made it possible to establish that around the world the tasks assigned to probation services differ. At the same time, the differences are not only in the functions they implement, but also in organizational structure. In the Russian Federation, the probation service formation is provided

for in the organizational and legal framework of the penal enforcement system of the Russian Federation on the basis of institutions that perform criminal penalties in the form of imprisonment and forced labor, as well as penal enforcement inspectorates.

We believe that one of the key indicators to assess probation effectiveness in Russia is the reduction in recidivism of crimes and administrative offenses committed by convicted persons.

Prospects to create and organize functioning of the probation service in the Russian Federation are largely determined by a number of circumstances, such as:

- it is necessary to develop a high-quality legislative framework that acts as the legal basis for activities of bodies (institutions) and organizations entrusted with the functions of probation;

- creation of the probation service based on interdepartmental cooperation will serve as an impetus for organizational and managerial transformations;

- effective functioning of the probation service is not possible without proper human, material, resource and scientific support;

- formation of the probation service in the Russian Federation should be carried out with regard to progressive international experience of similar services and the specifics of Russian conditions.

Thus, the probation service formation in Russia is a natural stage in the penitentiary system development. The application of foreign countries' experience help realize this project in the shortest possible time.

The focus of the Ministry of Justice of the Russian Federation on setting up an independent specialized probation service within the framework of the structure of the Federal Penitentiary Service of Russia, whose activities will be aimed at forming socially useful connections, professional and work skills among convicts, through the implementation of individual adaptation programs, will lead to reduced rates of recidivism among convicts.

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Life Plans of Convicts Serving Sentences in the General Regime Correctional Facility

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Abstract

Introduction: the research is relevant due to the importance of studying life plans of convicts serving sentences in correctional facilities of general regime. The article considers results of this study. Near, medium-term, and long-term life plans of convicts are analyzed. Stages of serving sentences (initial, middle, final) are highlighted. The theoretical and empirical research is based on the classification of V.G. Deev as upgraded by A.V. Napris. The empirical study was conducted at the correctional facility of the Federal Penitentiary Service of Russia No. 6 in the Ryazan Oblast. The sample size is 70 men. *Purpose:* to study life plans of convicts serving sentences in the general regime correctional facility and identify their correlation with stages of serving sentences. *Methods:* observation, survey, testing ("Self-assessment of life plans" by A.V. Napris (a modified version of the test "Self-assessment of orientation" by V.G. Deev). *Practical significance of the research:* the study of life plans of convicts serving sentences in places of deprivation of liberty, conducted with the purpose of further elaboration of a program for forming life plans of convicts and its use in the work of penitentiary psychologists. *Results:* the empirical study shows that convicts can be conditionally divided into three groups: those with near life plans (24.3%); with medium-term life plans (28.6%); with long-term life plans (47.1%). The majority of convicts with near life plans (24.3%) are at the initial stage of serving sentences (0–1 years) and have low self-esteem. They are characterized by stubbornness, passivity, lack of initiative, inclination to conflict, distrust, closeness in communication and loss of the meaning of their own lives. Getting into a correctional institution, they fall into the rigid framework of internal regulations, withdraw into themselves, and therefore hardly adapt to the new environment, having only near life plans. Most convicts with mid-term life plans (28.6%) are at the middle stage of serving

sentences (1–3 years) and have adequate self–esteem. They have traits of character, such as impulsivity, demonstrativeness, conflict, unpredictability, sensitivity to criticism and remarks. Convicted groups admit their mistakes and are not afraid to make them, they strive to realize mid-term life plans, but at the same time they are frivolous about the future. The vast majority of convicts with long-term life plans are at the final stage of serving sentences (3–9 years) and have inflated self-esteem. They are characterized by optimism, sociability, demonstrativeness. *Conclusions:* the empirical research analysis demonstrates that life plans (near, medium-term, and long-term) of convicts depend on the stages of serving sentences (initial, middle, final). In this regard, there is a need for prison psychologists to study and consider convicts' life plans.

Keywords: convicts; life plans; self-assessment of life plans; empirical research; places of deprivation of liberty; correctional facility.

5.3.9. Legal psychology and psychological security.

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Introduction

Problems related to identifying the content, structure, and features of convicts' life plans have recently become relevant for penitentiary science, since they give the convicted the opportunity to successfully adapt to society. To study life plans of convicts serving sentences in places of deprivation of liberty, it is necessary to consider a concept of "life plan" in more detail.

I.S. Kon considers the life plan of an individual as a priority "activity plan necessary for realization of life goals" [3]. Life plans are defined by I.T. Levykin as "goals expressing critical needs and interests, encouraging people to concentrate their aspirations and actions to achieve them" [4]. According to A.I. Ushatikov, a "life plan is a set of desired and probable concrete ways and means of realizing people's life goals" [10]. I.N. Astaf'eva defines the life plan of convicts as a "set of people's decisions to organize their life activity" [1]. Analysis of domestic scientists' research in convicts' life plans in places of deprivation of liberty (A.V. Napris [6], A.I. Ushatikov, B.B. Kazak [10], I.N. Astaf'eva [1], E.F. Stefan [12]) allowed us to identify kinds, types, structure of life plans, and groups of convicts by presence / absence of their life plans.

A.I. Ushatikov, having conducted a study of life plans of persons convicted of violent and mercenary crimes, found that "66.7% and 61% of these convicts have antisocial goals and life plans, manifested in their behavior: regime systematic violation and crime commission" [10]. V.G. Deev in his work came to the conclusion that "life plans are the highest level of personality orientation" [6].

Convicts' life is a segment of the life path limited by the framework of legislation, characterized by a temporary lack of life benefits necessary for an adequate world perception and aspirations to achieve goals. The convicts' life plans are a set of interests that prevail precisely in the environment in which the individual is located. To make plans for future life, a convict [8] has to adapt to a new environment, taking into account the lack of certain means and opportunities. After adapting to new conditions, a person can make plans for a longer period, depending on the entire sentence.

Based on the theoretical analysis conducted, we can define the concept of life plans as a set of life goals, prospects, programs, attitudes, and aspirations in achieving the tasks set, determined by setting deadlines and developing life strategies. We believe that life plans can be divided into 2 types: positive and negative.

Positive life plans [7] include those characterized by presence of positive factors, people's aspirations to achieve goals in the future. Positivity of the life plan depends on

indicators of subjective confidence in it and emotional experiences in connection with the planned future. In our opinion, convicts' positive life plans in relation to the future make the present valuable, without devaluing it and encouraging expectations and ideas about the future [2].

Negative life plans are a set of negative circumstances formed by segments of the life path from the past and present. They can both be aggravated by negative factors arising in the near future, and tend to improve when positive moments arise.

Methods

We conducted an empirical study of convicts' life plans at the correctional facility of the Federal Penitentiary Service of Russia No. 6 in the Ryazan Oblast. The surveyed group consisted of 70 male respondents serving sentences in the general regime correctional facility.

The research is aimed at identifying life plans of convicts serving sentences in places of deprivation of liberty. During the study, the following psychodiagnostic methods and techniques are used: observation, survey, testing "Self-assessment of life plans" by A.V. Napris (a modified version of the test "Self-assessment of orientation" by V.G. Deev) [6].

The research tasks are to conduct an empirical study of life plans of convicts serving sentences in the correctional facility of general regime and identify their correlation with the stages of serving sentences.

Results

In accordance with the purpose and tasks of the study, we considered life plans of convicts [11] serving sentences in the correctional colony of general regime. Analysis of its results allowed us to single out 3 groups of convicts: with near life plans (24.3%); medium-term life plans (28.6%); long-term life plans (47.1%) (Fig. 1). We will consider each of the selected groups in more detail.

Convicts' near life plans are characterized by permanence, immutability in time and narrowness of manifestation in various spheres of life. They are aimed at solving everyday life tasks, as well as satisfying drives and desires in a way familiar to them. This indicates that convicts focus on near life plans only at the initial stage of serving sentences, since it does not take convicts a lot of time to adapt to the penitentiary environment. Then there is a change in priorities and near life plans are replaced by mid-term life plans.

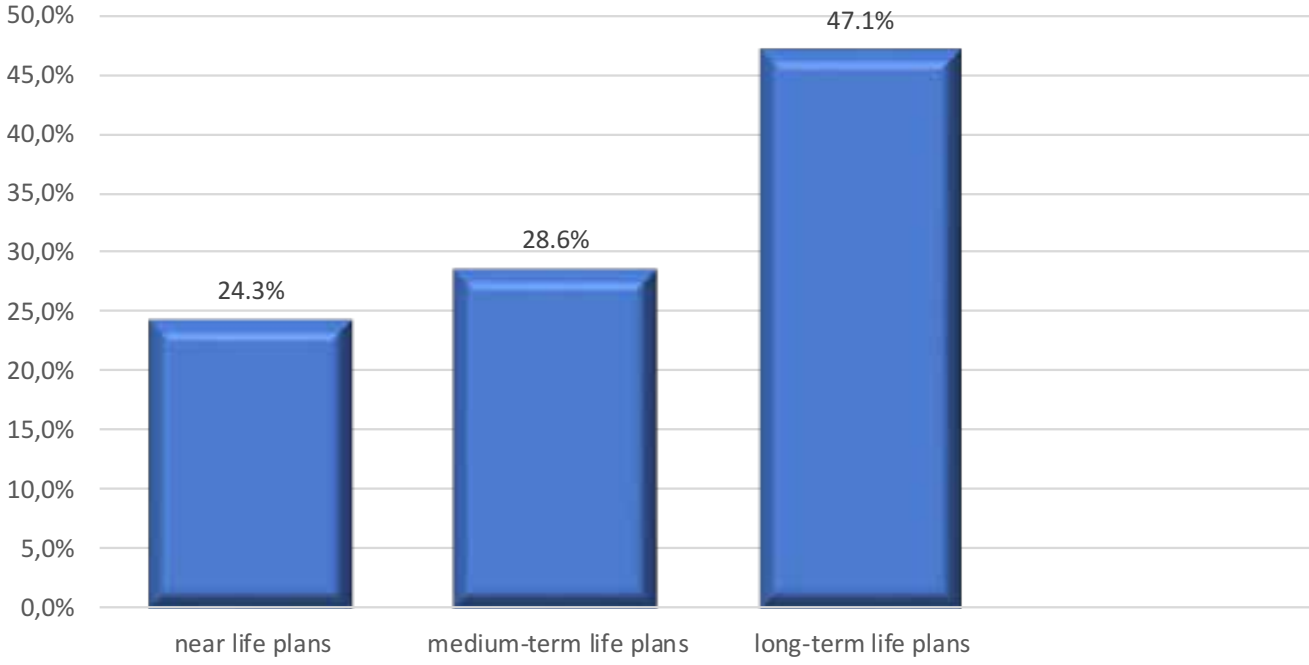

Fig. 1. Share of the identified groups of convicts serving sentences in the general regime correctional facility, according to the method of "Self-assessment of life plans" by A.V. Napris (a modified version of the test "Self-assessment of orientation" by V.G. Deev)

Using the method "Self–assessment of life plans" by A.V. Napris (a modified version of the test "Self-assessment of orientation" by V.G. Deev) [6], we found that the index of overall positive self-assessment of life plans of convicts with near life plans amounts to 0.2 : 0.46; negative – 0.1 : 0.13, indicating low self-esteem of this group of convicts and their weak motivation for the future and overcoming possible life difficulties.

Analysis of the group of convicts with near life plans (24.3%) shows their low self-esteem. They are characterized by stubbornness, passivity, lack of initiative, inclination to conflict, distrust, closeness in communication and loss of the meaning of their own lives. Getting into a correctional institution, they fall into the rigid framework of internal regulations, withdraw into themselves, and therefore hardly adapt to the new environment, having only near life plans.

Convicts with medium-term life plans, unlike those with near life plans, try to change themselves and their relationships with the surrounding reality, and also often show dissatisfaction with their lives due to the lack of life goals.

According to the conducted testing, the index of the overall positive self-assessment of life plans of convicts with medium-term life plans is 0.36 : 0.63; negative – 0.2 : 0.33, revealing adequate self-esteem of convicts. Life plans of this group convicts are more definite.

The study of convicts [9] with medium-term life plans demonstrated that convicts' self–esteem is adequate. The results of the observation and survey showed that convicts with average life plans have such personality traits as impulsivity, demonstrativeness, conflict, unpredictability, sensitivity to criticism and remarks. Convicted groups admit their mistakes and are not afraid to make them, they strive to realize mid-term life plans, but at the same time they are frivolous about the future.

Convicts with long-term life plans, unlike convicts with near and medium-term life plans, tend to repeat features of life plans of the previous two groups, but only at a higher level of development. The results of the observation and survey showed that this group of convicts [5] builds clearer life goals, considering imprisonment only as a stage on the way to implementing life strategies. At this stage, convicts with long-term life plans have more stable beliefs and ideals.

Analysis of the results obtained with the help of the method "Self-assessment of life plans of convicts" by A.V. Napris (modified by

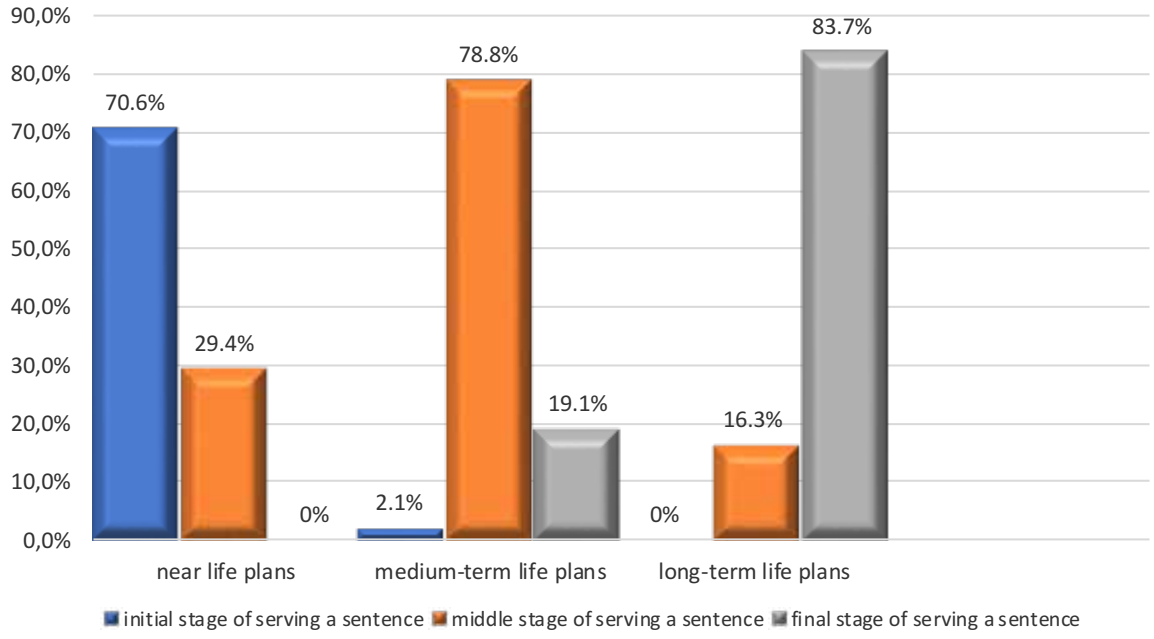

Fig. 2. Distribution of convicts' life plans at various stages of serving sentences

V.G. Deev) showed that the index of overall positive self-assessment of life plans of convicts belonging to this group is 0.53 : 0.77; negative – 0.2 : 0.43, indicating convicts' inflated self-esteem. They try to achieve their plans and realize their life goals.

A group of convicts with long-term life plans is characterized by inflated self-esteem, optimism, sociability, and ostentation. The results of the observation and survey reveal that convicts get used to different social roles easily and strive to realize long-term life plans, thus showing their stable life position.

In the course of the study, we classified stages of serving sentences: initial (0–1 year); middle (1–3 years); final (3–9 years).

Having studied each group of convicts, we found that the majority (70.6%) of the convicts in the group with near life plans are at the initial stage of serving sentences, 29.4% – at the middle stage of serving sentences, 78.8% of the convicts of the group with medium-term life plans are at the middle stage of serving sentences, 19.1% – at the final stage of serving sentences, 2.1% – at the initial stage of serving sentences; 83.7% of convicts of the group with long-term life plans are at the final stage of serving sentences, and 16.3% – at the middle stage of serving sentences (Fig. 2).

It is established that there is certain correlation between between stages of serving sentences and life plans of convicts. Thus, convicts who are mainly at the initial stage of serving sentences have near life plans; convicts who are at the middle stage of serving sentences – medium-term life plans; and convicts who are at the final stage of serving sentences – long-term life plans.

Conclusion

Based on the empirical study results, we came to the following conclusions:

1. Convicts with near life plans (24.3%) have low self-esteem and traits of character, such as stubbornness, passivity, lack of initiative, conflict, distrust, closeness in communication and loss of the meaning of their own lives. When they get into conditions of a correctional institution, they become introverted, fall into the rigid framework of internal regulations, and therefore hardly adapt to new environment, having only near life plans.

2. Convicts with medium-term life plans (28.6%) have adequate self-esteem. The results of observation and survey demonstrate that convicts with medium-term life plans have personality traits, such as impulsivity, ostentation, conflict, unpredictability, and sensitivity to criticism and remarks. They admit their mistakes and are not afraid to make them, they strive to realize medium-term life plans, but at the same time they are frivolous about the future.

3. Convicts with long-term life plans (47.1%) are characterized by inflated self-esteem, optimism, sociability, and ostentation. They build clearer and more definite life goals, considering serving a sentence in the form of imprisonment only as a stage on the way to implementing life strategies. At this stage, convicts with long-term life plans have more stable beliefs and ideals.

4. It is established that there is correlation between stages of serving sentences (initial, middle, final) and life plans of convicts (near, medium-term, and long-term). Thus, convicts who are mainly at the initial stage of serving sentences are characterized by near life plans; convicts who are at the middle stage of serving sentences – by medium-term life plans; convicts who are at the final stage of serving sentences are characterized by long-term life plans. In this regard, there is a need for prison psychologists to study and take into account life plans of convicts.

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Prevention of Cadets' Moral Alienation under the Personality-Developing Approach in Professional Education (Case Study of Professional Education of Future Specialists of the Penal System)

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Abstract

The article studies a topical problem of moral alienation of modern youth in terms of preventing professional moral alienation of cadets of departmental universities (on the example of professional education of future specialists of the penal system). *Purpose:* on the basis of analysis and generalization of the results of domestic and foreign studies, to concretize the concept of professional moral alienation in terms of the personality-developing approach in professional education, substantiate possibilities of preventing the emergence (development) of this personal phenomenon. *Methods:* theoretical research (axiomatic, hypothetical, analytical, abstraction, formalization, etc.) in combination with empirical methods (observation, comparison, interpretation, etc.). *Results:* the conducted research made it possible to identify contradictions, reflected in the problem of professional moral alienation; determine professional moral alienation of employees of the penal enforcement system as one of its types, emergence and developed under predominant influence of professional environment factors; show that its formation is inextricably linked with development of intrapersonal disharmony, preventing the perception and acceptance of spiritual rules, norms and traditions significant for the professional community, as well as its value-semantic dominants, accompanied by an increase in professional marginalism, and manifested in evasion of professional duties, deviant behavior, professional burnout and other adverse consequences. *Conclusions:* the objectives to prevent professional moral alienation are most consistent with the development and implementation of a comprehensive pedagogical program in the context of the personality-developing approach to educating students. Regular activities,

based on traditional and innovative methods and means, help cadets to achieve a sufficiently high level of formation of personal and professional qualities, significant for the prevention of emergence and development of professional moral alienation, stimulate formation of value-semantic dominants and professional identity as the antipode of professional marginalism of employees of the penal system.

Keywords: prevention; moral alienation; cadet; future specialist; personality-developing approach; professional education; penal enforcement system.

5.8.1. General pedagogy, history of pedagogy and education.

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Introduction

Modern youth's denial of spiritual and moral values that had developed in our country for decades (patriotism and citizenship, justice and humanism, collectivism and willingness to help those in need, faith in goodness and justice, etc.) and were largely lost during the radical transformations that began in the 1990s and are still present is acquiring increasingly dangerous features, creating real threats not only to the individual, but also society and the state. The situation is aggravated by the fact that, according to V.V. Putin, today humanity "faces the loss, erosion of moral values, loss of landmarks and a sense of the meaning of existence, if you like, of the human mission on Earth" [13]. At the same time, it is young people who are the most vulnerable in the current situation, because "at turning points of the society existence", they "turn out to be the most unprotected category of the population, which is in a kind of the value and spiritual vacuum [7, p. 4].

At the same time, young people who choose to serve in law enforcement agencies for their professional activities cannot be an exception. In this regard, it is appropriate to recall the following statement of V.I. Lenin, which has been not criticized and now remains relevant: "It is impossible to live in society and be free from society" [9, p.104]. Employees of penitentiary institutions, getting professional training and developing their moral and personal features in departmental universities, are not "free" from society, from influence of those processes that occur in political, social, economic, ideological and other spheres of its life. In this regard, it is relevant to study issues associated with modern youth's moral alienation, as well as possibilities of preventing the emergence and subsequent development of this dangerous and destructive personal phenomenon in future specialists of the penal enforcement system in the process of their professional education.

Methods

To study the problem of professional moral alienation of modern youth in this aspect, it is necessary to use methods of theoretical research (axiomatic, hypothetical, analytical, abstraction, formalization, etc.) in combination with empirical methods (observation, comparison, interpretation, etc.). They help identify, substantiate and test those actions that are of the greatest importance and are as effective as possible for preventing professional moral alienation of employees of the penal system.

Results and discussion

The attitude of young people to modern Russian reality is reflected in the following statement: "Our country is in the deepest spiritual crisis; the usual guidelines and meanings have been lost. After collapse of the old system of values, no common ethical ideals capable of uniting society in new historical conditions have been restored" [16, p.179].

We believe that the situation is not as gloomy and "deeply spiritual-crisis" as it

seems to some representatives of modern youth. However, we cannot but notice that dangerous development of moral alienation of modern youth is manifested not only in alcoholism, drug addiction, aggression, illegal acts, etc., but also in person's moral instability, accompanied by isolation and apathy, unwillingness to follow moral norms and principles, loneliness, withdrawal into virtual space and other negative processes.

Crime commission is an extreme manifestation of the indicated deviations. According to the Head of the Federal Penitentiary Service A.P. Kalashnikov, in 2020, 99 criminal cases were initiated against 56 employees of the penitentiary system and 170 employees were dismissed [15]. Those committed crimes are brought to criminal liability mainly under Article 285 of the Criminal Code of the Russian Federation (abuse of official powers), Article 286 of the Criminal Code of the Russian Federation (exceeding of official powers), Article 290 of the Criminal Code of the Russian Federation (receiving a bribe), as reported on the official website of the Public Committee for the Control of Corruption Cases and the Implementation of the Program of the President of the Russian Federation [6].

We would not exaggerate to say that criminal activity of employees of the penal system comes from professional moral alienation, originated and progressed under the influence of environmental and intrapersonal factors; for many people this process began in the period of obtaining professional education in departmental universities.

Problems of person's moral alienation have a centuries-old history, since alienation "appears already in Plato's philosophical system and appears in the image of the Demiurge – the world immortal soul" [7, p.779]. This phenomenon was actively studied by American sociologists in the 1950s–1960s, which was reflected in the publications of Peter Berger, Kenneth Keniston, John P. Clark, Stanley Pulberg, Gerald Sykes, Lewis Feuer, and others. Summarizing results of sociological research, it can be concluded that there was no general idea of the phenomenon of moral alienation at that time: if for G. Sykes it was "obscure but real suffering of anyone who does not respond to beauty, horror, wisdom, pathos, on passion" [20, p.67], then for P. Berger and S. Pulberg – "this is a process as a result of which a person forgets that the world in which he/she lives was created by him/herself" [19, p. 200]. However, the theoretical foundations of foreign sociologists of that period served as the basis for research by Russian scientists.

At the turn of the 20th-21st centuries Russian scientists understood that the problem of moral alienation needed a comprehensive study, the contradictions underlying escalated and required their immediate resolution. These findings were reflected in philosophical (D.V. Ivanov, I.I. Kal'noi, N.I. Lapin, A.I. Titarenko, etc.), sociological (P.N. Afanas'ev, D.V. Kanataev, A.I. Kravchenko, E.O. Smoleva, V.Yu. Tyulin, etc.), psychological (V.V. Abramenkova, K.A. Abul'khanova-Slavskaya, V. S. Mukhina, A. V. Petrovskii, etc.) and other works. However, to date, this relevant, significant, requiring comprehensive development problem remains insufficiently studied, especially in pedagogy, where little attention is paid to the issue of moral alienation in the aspect of preventing its emergence and development. The educational process of departmental universities neglects prevention of professional moral alienation of future specialists of law enforcement agencies.

At the same time, it should be noted that these contradictions do not only persist, but also escalate. They are the following:

- the contradiction between the need to substantiate prevention of young people's denial of the most important universal values and the lack of comprehensive psychological and pedagogical research identifying and characterizing the influence of external and internal factors on people's moral alienation in modern society;

- the contradiction between the need of higher education institutions for pedagogical technologies that contribute to the formation of significant personal and professional qualities of students and the lack of scientifically sound, tested, effective methods for preventing professional moral alienation of cadets in vocational education, etc.

Let us also identify another contradiction, inextricably linked with the specifics of training specialists for the penal enforcement sys-

tem, namely, the contradiction between the need of the modern penitentiary system for employees who have necessary moral and psychological resistance to the influence of destructive factors and the insufficient readiness of the teaching staff of departmental universities to carry out educational activities to prevent professional moral alienation of cadets.

Studying this problem in the aspect of preventing this dangerous personal phenomenon in the educational process of departmental universities, it is important to clarify the key concept of professional moral alienation with regard to the specifics of professional activity.

The analysis of results of domestic humanitarian studies shows absence of a single idea of alienation as a personal phenomenon in modern Russian science. The objectives of our research are most consistent with I.K. Dzherelievskaya's point of view: alienation is "discovery of an internal "inconsistency" of the individual (as a substance) and society, in which relationships and tendencies that hinder personal self-realization develop" [10, p. 117]. In the context of this definition, moral alienation represents not only established intrapersonal disharmony (inconsistency, diverseness, etc.), which prevents perception and acceptance of socially significant spiritual rules and norms regulating human behavior, accompanied by deformations of person's attitude to the outside world, other people and him/herself, but also the process that results in such intrapersonal disharmony.

The emergence and development of moral alienation of a person occurs under influence of many factors (in case a factor is understood as "the cause, the driving force of a process, a phenomenon that determines its character or its individual features" [18, p. 82]. When conducting research, it is possible to single out relatively isolated groups combining economic, social, political, informational, spiritual factors, etc. A certain place in the system will be occupied by professional factors, that is, those causes of person's moral alienation that are directly related to professional activity, interests, traditions, and norms of the professional community. In this case, professional moral alienation of employees of the penal system can be considered as one of the types of alienation of the individual, originated and developed under predominant influence of the professional environment. The formation of this personal phenomenon is associated with development of intrapersonal disharmony, hindering perception and acceptance of spiritual rules, norms and traditions, as well as value-semantic dominants of the community, accompanied by an increase in professional marginalism, manifested in evasion of professional duties, deviant behavior, professional burnout and other unfavorable consequences. Penitentiary subculture, considered earlier in [11, p. 82], may be a specific factor that has a significant impact on emergence and development of professional moral alienation of penitentiary system employees.

Studying causes, conditions and factors that generate professional moral alienation of employees of law enforcement agencies, we came to the conclusion that the concept of prevention most corresponds to the goals and content of pedagogical activity that prevents its emergence and subsequent development. Prevention is traditionally understood as an activity for anticipating, averting and warding off dangerous and undesirable phenomena" [10, p. 118], such that it can significantly reduce the likelihood of their occurrence.

Professional education can play a crucial role in preventing emergence and development of professional moral alienation in the educational process of departmental universities. According to I.F. Isaev, " professional education is a purposeful process that promotes successful socialization, flexible adaptation of students and correlation of person's own capabilities with requirements of modern society and professional community, formation of students' readiness for ... identification with future occupation, its activity forms, values, traditions, social and personal meanings"[5, p. 68]. The above definition reflects not only directions of this purposeful process, but also its significant results, such as familiarization with professional values, meanings and traditions, self-identification with profession and professional community.

Another characteristic of the definition given by I.F. Isaev is interesting for our research: upbringing is a process that contrib-

utes to achieving goals and obtaining results, that is, a process that presupposes interacting students instead of influencing them. At the same time, there are other approaches to the definition of professional education. For example, V.I. Belov believes that it "is a complex process of influencing a person, his/her skills and moral character, interests" and "promotes mental development, covers the whole set of elements of education, upbringing and labor training" [12, p. 166]. Leaving out of the scope of this article comments on this obviously untenable definition, we still note a characteristic of professional education, which should be taken into account in the study and organization of the education process in departmental universities: professional education should not be carried out exclusively through "influence on the individual", it is the process of interaction that stimulates formation of personally and professionally significant features of future specialists, preventing the emergence and development of intrapersonal disharmony associated with the influence of professional environment factors.

According to the study results, the goals of preventing professional moral alienation of future specialists of the penal system are most consistent with the development and implementation of a comprehensive pedagogical program in the process of professional education of cadets in the educational process of departmental universities. Its complex nature is determined by the fact that it includes a "set of various activities (actions) interrelated in terms of deadlines, performers, and resources, aimed at achieving a single, common goal" [8, p. 128]. Such a common program goal implies that cadets achieve such a level of formation of personal and professional qualities, value-semantic dominants, moral and psychological stability that minimizes the likelihood (excludes the possibility) of emergence and in the event of a phenomenon constrains the development of professional moral alienation.

The program for prevention of professional moral alienation of cadets, implemented by teachers, commanding officers and educators at lessons and in extracurricular educational activities, should include:

- an explanatory note, containing general information about the program, opportunities that open up with its implementation in the educational process of a departmental university, providing definitions of the basic concepts related to the prevention of professional moral alienation of cadets (moral alienation of the individual, professional moral alienation of employees of the penal system, destructive external and internal factors that cause professional moral alienation of employees, etc.);

- section 1, setting a purpose for developing and implementing the program and tasks concretizing its achievement, as well as results to achieve (cadets should have a sufficiently high level of formation of personal and professional qualities, value-semantic dominants, moral and psychological stability, significant for the prevention and development of professional moral alienation);

- section 2, presenting and briefly describing key activity areas for purposeful prevention of professional moral alienation of cadets (academic work and academic and educational work, moral and psychological, service, cultural and leisure); at the same time, identifying cadets' independent activity in each area;

- section 3, including certain measures for each activity area related to prevention of professional moral alienation of cadets in the educational process of a departmental university (in academic work: the topics determined by thematic plans for the study of humanities and specialized disciplines should include individual issues that guide the perception of educational material to prevent moral alienation, form professional identity, etc.; in academic and educational work: conducting extracurricular activities aimed at fostering conviction in the importance and social significance of the chosen profession, focusing cadets' attention on educational aspects that contribute to the formation of professional identity, prevention of professional marginalism, etc.; in moral and psychological work: conducting psychodiagnostics of cadets to identify individual tendencies to moral alienation and violations that require psychological correction; psychological counseling, etc.; in service: provision of legal and official infor-

mation with an emphasis on the importance, necessity and expediency of compliance with disciplinary requirements, events of questions and answers related to the penitentiary service, etc.; cultural and leisure work: conducting mass cultural and sports events that contribute to strengthening community spirit in cadet teams, developing communication skills, strengthening moral and psychological state of cadets, meetings with veterans of the penal system, figures of culture and art, etc.

- section 4, describing forms and methods of carrying out planned measures, which ensure their maximum efficiency and effectiveness (traditional, innovative, their combinations), as well as possible means (logistical, electronic, illustrative, etc.), contributing to successful conduct of events, solution of problems and achievement of the program goal;

- section 5, identifying individual stages to prevent possible emergence and subsequent development of professional moral alienation of cadets; the first stage includes mainly team work, the second stage – individual work:

- section 6, containing methodological materials; they are elaborated in 2 directions: 1) provision of methodological support for pedagogical activities of teachers, commanders, educators (methodological recommendations) and 2) ensuring cadets' readiness to participate in conducted events (methodological guidelines).

Distinctive features of the program under consideration are the following:

1) focus of conducted measures on forming personal and professional qualities of future specialists that ensure an extremely low probability (or even impossibility) of emergence and development of this destructive personal phenomenon under the influence of destructive external and internal factors;

2) application of forms and methods contributing to overcoming professional moral alienation of cadets who feel loneliness and internal disharmony, do not accept socially and professionally significant spiritual rules and norms; forms and methods are the most appropriate for a certain cadet, whose personal characteristics are taken into account and with whom individual work is carried out;

3) consistency of actions of all subject-subject interaction participants in the established activity areas (academic work and academic and educational work, moral and psychological, service, cultural and leisure), seeking to help each cadet – subject of collective or individual work, while avoiding formalism, mentoring, excessive moralizing and edification in the preparation process and events;

4) application of general measures, aimed at strengthening universal values, moral norms and rules, promoting a humanistic worldview, forming general and professional culture of an employee of the penal system, as well as personality-focused measures, forming stable value-semantic orientations of each cadet on accepting and reproducing crucial socially significant values, established traditions, behavioral norms of employees of the penal system (such events can be both of team and individual nature).

A detailed description of the program for prevention of moral alienation in professional education of cadets requires specifying presentation of the content of its individual sections, detailing the activities included in the plan for each of the established areas, as well as demonstrating the possibilities associated with the use of traditional and innovative methods of team and individual work with cadets that go beyond the scope of this article. It should also be noted here that achieving the goal of effective prevention of professional moral alienation with the help of the presented program will depend on how scientifically justified the actions of those who develop the program and organize its implementation in professional education of cadets are and how much the specifics of the influence of external (social, professional, informational, educational) and internal (individual-personal) factors are taken into account.

Scientific validity of such actions is largely determined by the methodological approaches underlying them. After all, a "concrete scientific methodology of any science and, accordingly, the practice it serves" is revealed through methodological approaches [14, p. 100]. In order to develop and implement a program for prevention of professional moral alienation in the process of educating cadets of departmental universities, the personality-developing approach should become dominant, used in conjunction with systemic, cul-

tural, activity, axiological and competence approaches in line with the humanistic paradigm of modern education.

The dominant personality-developing approach will make it possible to realize the advantages inherent in it, which are important for preventing professional moral alienation of cadets, in particular:

- to focus on "developing value aspects of the personality's consciousness, its thoughts and meanings and using internal factors that ensure its movement towards enhancement of its capabilities" [12, p. 4];

- to stimulate formation of value-semantic dominants of the professional community by spreading the idea of importance of the chosen profession for society and the state, as it provides legality, law and order, justice, and humanity;

- to develop professional identity, thereby restraining the formation of its antipode – professional marginalism, actively using for this purpose personality-developing situations that help "get the proposed experience in the context of future professional activity, as well as develop personal experience" [1, p. 22].

The personality-developing approach to educating cadets makes it possible to successfully carry out individual work with cadets at the second stage of the program implementation to continue team work conducted at the first stage. However, such work will be successful in case of competent and effective pedagogical diagnostics of students before the program implementation and at the end of its first stage. After all, the content, forms and methods of individual work with cadets significantly depend on the degree of their moral alienation and personal characteristics.

Russian pedagogical science has a wide experience of conducting pedagogical diagnostics, a special type of "activity of identifying and studying features characterizing the state and results of the process ... and on this basis predicting, determining possible deviation and ways to prevent them, as well as correcting the process" [4, p. 18]. It is very difficult to diagnose the presence of professional moral alienation as an intrapersonal state and determine the level of formation of this personal phenomenon in students. Therefore, to carry out pedagogical diagnostics, it is necessary to use tools that include well-known methods, questionnaires, and surveys ("Self-assessment of severity of motivation for professional activity" (A.A. Verbitskii, N.A. Bakshaeva), "Self-assessment of the formation of types of students' professional interest" (N.P. Kostyushkina), "Assessment of emotional and activity adaptivity" (N.P. Fetiskin, V.V. Kozlov, G.M. Manuilov), "Assessment of satisfaction with the profession" (V.A. Yadov's methodology – modified by N.V. Kuzmina, A.A. Rean), etc.), and specially developed methods aimed at identifying intrapersonal disharmony caused by professional environment factors and establishing its presence in cadets' behavior, their attitude to themselves, their fellows, performance of official duties, etc. Use of the expert assessment method also provides great assistance in conducting pedagogical diagnostics, if experts are correctly selected and sufficiently prepared to assess the state and behavior of cadets.

Conclusion. Based on the study of the problem of moral alienation in the aspect of preventing emergence and development of this personal phenomenon among cadets of departmental universities under the influence of professional environment factors, the following conclusions can be drawn:

1) in the conditions of modern Russia, contradictions not only persist, but also worsen, which are reflected in the pedagogical problem of preventing professional moral alienation in the process of professional training of future specialists, which determines the relevance, significance and timeliness of the study of this complex problem and its individual aspects;

2) professional moral alienation of employees of the penal system is one of the types of personality alienation, emerged and developed under the predominant influence of professional environment factors;, the development of intrapersonal disharmony is inextricably linked with its formation, hindering the perception and acceptance of spiritual rules, norms and traditions, as well as the value-semantic dominants of the community, accompanied by an increase in professional marginalism and manifested in evasion from performing professional duties, deviant be-

havior, professional burnout and other adverse consequences.;

3) professional education should play a crucial role in preventing the emergence and development of professional moral alienation of cadets, future specialists of the penal system, in the educational process of departmental universities. Its objectives are most consistent with elaboration and implementation of the comprehensive pedagogical program, including activities that are carried out in established forms, using traditional and innovative methods and means to ensure that cadets achieve a sufficiently high level of formation of personal professional qualities significant for preventing the emergence and development of professional moral alienation, as well as value-semantic dominants and moral and psychological stability;

4) in the system of methodological approaches underlying elaboration and implementation of the comprehensive pedagogical program under consideration (systemic, culturological, activity, axiological, personality-developing and competence-based), the personality-developing approach should become dominant, as it promotes formation of value-semantic dominants of the professional community in the process of educating cadets of departmental universities, development of professional identity, prevents development of professional marginalism, successfully carry out team work at the first stage of the program implementation and mainly individual work with cadets at the second;

5) the results of subject-subject interaction of teachers, commanding officers, educators with cadets significantly depend on the methodological support for the developed program implementation (methodological recommendations, methodological guidelines, etc.), accuracy of pedagogical diagnostics, methods used to identify professional moral alienation, establish the level of formation of this personal phenomenon, and determine effective forms, methods and means of organizing and conducting educational work with cadets on the basis of diagnostics results.

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