

Research article

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## Some Problematic Aspects of Registering and Verifying Crime Allegations in Russian Penal Institutions

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### Abstract

*Introduction:* the article deals with problematic procedural aspects of registration and verification of crime allegations carried out by officials of territorial bodies of the Federal Penitentiary Service of Russia in institutions of the penal system. Analysis of published statistical data shows that, despite a significant reduction in the number of convicts in correctional institutions subordinate to the Federal Penitentiary Service of Russia, there is a steady increase in the number of crimes. In addition, due to specifics of initiating cases of private and private-public prosecution and criminal subculture it may be difficult to conduct investigation in procedural and tactical terms. Having analyzed departmental statistical data, regulatory legal acts, scientific research on the subject under consideration, the authors formulate and discuss topical problems of the application of the departmental order approving the instructions regulating reception, registration and verification of crime reports in penitentiary bodies and institutions. The authors come to the conclusion that numerous changes in the norms of criminal procedural legislation are not properly fixed in the departmental normative act, undermining effectiveness of activities of officials who register and verify crime allegations in penitentiaries. Thus, these gaps lead to contradictory regional law enforcement practice, which is reflected in their different interpretation by both law enforcement agencies and prosecutor's offices. As a result, this leads to acts of prosecutorial response and bringing employees of the Federal Penitentiary Service of Russia to disciplinary and other responsibility. *Purpose:* on the basis of generalization and analysis of normative legal acts, scientific sources, opinions of penitentiary scientists and official statistical data, to disclose prospects for improving the institution of registration and verification of crime reports in institutions of the penal enforcement system of Russia. *Methods:* dialectical cognition method, general scientific methods of analysis and generalization, empirical methods of description, interpretation, theoretical methods of formal and dialectical logic. *Results:* the conducted research reveals a number of urgent problems, in particular: absence of forms of procedural documents in the Criminal Procedural Code of the Russian Federation, the instructions refer to; uncertainty of the content of emergency response measures and other verification actions and their relationship with

legislation norms and other departmental regulations; inconsistency of the subjects of urgent investigative actions specified in the instructions; unsettled list and powers of officials authorized to investigate crimes and incidents; absence of timing, medical or other special studies in the instructions; gap in the procedure for obtaining an explanation from convicts during verification of statements and reports of crimes and lack of the form of the specified procedural document; legal and organizational problems of issuing a registration document to the convicted applicant. *Conclusions:* for all the problems considered, the authors propose solutions implying amendments to the Criminal Procedural Code of the Russian Federation, departmental instructions and other regulations.

*Key words:* penal enforcement system; reception and registration of reports; initial inquiry body; convicts; urgent investigative actions; verification actions; explanations; register document.

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### *Introduction*

Considering problematic issues of crime registration in all types of correctional institutions, prisons and pre-trial detention centers, it is first necessary to indicate relevance of this topic. For almost twenty-year operation of the Criminal Procedural Code of the Russian Federation, more than 280 federal laws have been adopted, providing for changes in both individual procedural norms and entire institutions [3, p. 754]. However, the Order of the Ministry of Justice of the Russian Federation No. 250 of July 11, 2006 (amended August 15, 2016) “On approval of the Instructions on reception, registration and verification of reports on crimes and incidents in institutions and bodies of the penal enforcement system” has not undergone significant changes in the aspect under consideration. These issues were also reflected in a number of dissertation studies, in particular of E.R. Pudakov and A.M. Sautiev [10; 11].

### *Research*

Let us consider departmental statistics, in particular individual indicators of the activity of the penal enforcement system in 2013–2020, given in the table. Statistical data show that the number of persons held in penal institutions is steadily decreasing from year to year (table, Column 2), however, it does not correlate with a rise in the number of crimes

committed in penitentiary institutions (table, Column 3), and so is the number of registered crimes and burden on persons carrying out their registration and verification.

The situation does not change dramatically for the better with the number of decisions made by law enforcement agencies on refusal to initiate criminal proceedings based on materials received from penal institutions (table, Column 4). They are based on registered reports in penitentiaries (parts 1, 2 of Article 140 of the Criminal Procedural Code of the Russian Federation) that were handed over in accordance with the jurisdiction (paragraph 3 of Part 1 of Article 145 of the Criminal Procedural Code of the Russian Federation). The information, sent to law enforcement agencies for investigation and further dismissed, can be conditionally divided into two groups: 1) data on crimes committed by convicts before admission to penal institutions (crimes of “past years”); 2) data on ambiguous cases (injuries of convicts, deviation from convicts’ routes of movement without escort, etc.). In these cases, employees gathering information and registering crime complaints should correctly determine availability of sufficient data indicating constituent elements of the offence in order to exclude excessive data registration. To support this position, it is worth quoting I.L. Bednyakov: “Duty officers

at the correctional facility register reports on illegal actions of convicts without detailed consideration of their content. Low requirements in competent compilation of primary documentation carried out by correctional facility employees leads to unreasonable registration in the crime report registration book” [1, p. 29].

Moreover, shortage of personnel in institutions of the penitentiary system is noteworthy; as of January 1, 2021, it was 10.6% [5]. This condition has a direct impact on the quality of registration and verification of crime reports. It leads to mistakes, filing acts of prosecutorial response, recognizing evidence obtained during verification of crime allegations as inadmissible, bringing employees of territorial bodies of the Federal Penitentiary Service of Russia to justice.

It is also worth paying attention to Column 5 of the table, where data on the injuries of convicts are indicated. It seems that some of these injuries may be of a criminal nature;

however, as Part 1 of Article 115 of the Criminal Code of the Russian Federation “Minor harm to health” refers to cases of private prosecution, criminal proceedings are initiated not otherwise than at the request of a convict. Besides, it is important to mention Part 1 of Article 132 of the Criminal Code of the Russian Federation “Violent acts of a sexual nature” relating to cases of private and public prosecution, the initiation of which is possible only at the request of a victim (with the exception of Part 4 of Article 20 of the Criminal Procedural Code of the Russian Federation) [4, p. 20]. In addition, laying of complaints is influenced by a criminal subculture supported by negatively minded convicts who have a physical and psychological impact on the applicant who violated unofficial norms of behavior. Thus, it can be argued that some of the crimes committed in penal institutions are latent in nature; it is important to improve procedures for detecting, registering and verifying the latent offenses we have indicated.

Table

*Statistics data on a number of incidents, offenses in penitentiary institutions*

Year	Number of convicts held in penitentiary institutions, as of January 1	Number of registered crimes committed by convicts in penitentiary institutions, criminal proceedings were initiated	Number of registered crimes committed by convicts in penitentiary institutions, criminal proceedings were not initiated. No data for 2019 and 2020 in departmental statistics collections	Registered injuries, total (domestic, industrial, self-mutilation)
2013	585 088	974	1 268	27 415
2014	559 938	861	4 053	28 380
2015	550 852	940	3 330	26 282
2016	524 848	960	2 313	26 932
2017	519 491	974	2 293	25 156
2018	495 016	1025	2 731	24 445
2019	460 923	1171	-	26 024
2020	423 825	1184	-	23 579

So, it is worth pointing out that greater burden on employees engaged in registering facts of convicts’ illegal behavior, together with personnel shortage in the penal enforcement system negatively affects the quality of decisions made. The situation is aggravated by a latent nature of crimes of private and private-public prosecution. At the same time, the most important negative aspect in this sphere is imperfection of the departmental regulatory legal act, namely the Order of the Ministry of Justice of the Russian Federation No. 250 of July 11, 2006 “On approval of the Instructions

on reception, registration and verification of reports on crimes and incidents in institutions and bodies of the penal enforcement system” (hereinafter – the Instructions). The Instructions have discrepancies with the criminal procedural legislation norms; besides, the content of certain provisions is not disclosed. We share the point of view of N.V. Gryazeva and E.S. Kabanen that “regulatory and legal regulation in the field of activity under consideration should not cause a double interpretation, that is, it should be unambiguously understood by the law enforcement officer” [6, p. 123].

According to Paragraph 2 of the Instructions, responsibility for correct registration of received documents falls directly on security department employees and duty assistants to the head of the institution (their deputies). Besides, Paragraph 11 stipulates that “it is heads of penal institutions and bodies who shall ensure reception and registration of complaints, provide legality when considering information about offenses and incidents, as well as monitor its conduct”. In accordance with Paragraph 29 of the Instructions and Paragraph 1 of Part 1 of Article 40 of the Criminal Procedural Code of the Russian Federation (with regard to the reference norm to the Federal Law “On operational investigative activities”), employees of operational units of the penal enforcement system are engaged in direct verification of crime allegations; Paragraph 25 of the Instructions determines that urgent investigative actions are carried out by heads of institutions of the penal enforcement system.

We find it crucial to focus directly on certain problems in the regulatory act under consideration.

1. Absence of forms of procedural documents in the Criminal Procedural Code of the Russian Federation, the Instructions refer to [2, p. 92]. In accordance with the Federal Law No. 87 of June 5, 2007 “On Amendments to the Criminal Procedural Code of the Russian Federation and the Federal Law ‘On the Prosecutor’s Office of the Russian Federation’”, Article 476 of the Criminal Procedural Code of the Russian Federation, where forms of procedural documents were submitted, became invalid. However, the Instructions in paragraphs 5, 31 refers to appendices 1, 10, 11 of Article 476 of the Criminal Procedural Code of the Russian Federation. In addition, when describing rules for keeping crime report registration books, references are also made to appendices 1–3 of Article 476 of the Criminal Procedural Code of the Russian Federation. Before repeal of the specified article of the Criminal Procedural Code of the Russian Federation, the Instructions contained the following sample documents: report on detection of essential elements of the offense, protocol for accepting an oral complaint about the crime, protocol of surrender, a res-

olution on transfer to the appropriate investigative jurisdiction, resolution on the transfer of a complaint to the court. We believe that in order to solve this problem, it is necessary to supplement the Instructions with the above-mentioned sample documents.

2. Failure to disclose the content of emergency response measures and other verification actions and their correlation with legislation norms and other departmental regulations. Paragraph 5 of the Instructions states that “an employee takes urgent response measures and immediately informs a duty officer at the penal institution or body...”. Paragraph 26 of the Instructions discloses emergency response measures as “... arrival to the crime scene, prevention and suppression of a crime, ensuring safety of traces of a possible offense, carrying out operational investigative measures to identify and detain persons preparing, committing or committed a crime red-handed or shortly after, obtaining explanations or performing other verification actions”. We believe that the authors of the Instructions tried to combine employees’ authorities to conduct regime (Article 82 of the Criminal Procedural Code of the Russian Federation) [9, p. 65] and operational search activities and some procedural powers specified in Part 1 of Article 144 of the Criminal Procedural Code of the Russian Federation; however, they did not enumerate all of them and did not provide reference rules to this article. It seems that the Instructions should also contain a clear list of what an employee of the initial inquiry body of the penal enforcement system is entitled to do when verifying crime allegations; it should correspond to Part 1 of Article 144 of the Criminal Procedural Code of the Russian Federation or be broader, taking into account current non-procedural authorities of employees of the penal enforcement system (regime and operational investigative measures). At the same time, groups of powers and authorities should be clearly differentiated in separate paragraphs of the Instructions.

It is also not clear what constitutes the content of other verification actions in Paragraph 26 of the Instructions. They seem to be regime measures. For example, in accordance with Order No. 95 of June 23, 2005, a duty assistant to the correctional facility head,



upon receipt of the report about the escape or detection of its elements, “organizes a name check of convicts in order to establish identity of the escapee; organizes a thorough search of his/her work and sleeping places, and withdraws all personal belongings and correspondence”. In this regard, it seems that the list of other verification actions (non-procedural measures) should also be described in more detail in the Instructions. It would be logical if these measures included regime measures, such as a regime search, examination, and inspection of convicts. At the same time, it should be clearly understood that the conduct of investigative actions provided for in Part 1 of Article 144 of the Criminal Procedural Code of the Russian Federation (inspection, examination, appointment of the expertise) when checking reports of crimes should be carried out in the first instance, since investigative actions carried out initial inquiry bodies of the penal enforcement system form independent evidence. This is not true for regime measures that require further procedural consolidation.

Summing up, we note that the possibility to carry out regime measures should also give an opportunity to use them as evidence in the future, which implies amendments to Article 74 of the Criminal Procedural Code of the Russian Federation. These changes are due to the fact that the stated article does not consider the results of regime measures as independent evidence, and law enforcement practice shows that these materials are not used as other documents. It also seems logical to introduce Instructions on the use of regime measures like the one “On the procedure for submitting results of operational investigative activities to the initial inquiry body, investigator or the court”. We believe that Paragraph 26 of the Instructions should include several categories of urgent (immediate) response measures, which should be set out sequentially and involve procedural (inspection, examination, appointment of expertise), regime and operational search measures. We assume that the list of urgent response measures in itself is broader in scope than measures related to the conduct of a procedural revision and regulated only by the Criminal Procedural Code of the Russian

Federation, the implementation of which is carried out in accordance with Paragraph 29 of the Instructions.

3. Inconsistency of the subjects of urgent investigative actions specified in the Instructions. The concept of urgent investigative actions is fixed in Paragraph 19 of Article 5 of the Criminal Procedural Code of the Russian Federation: it is investigative actions carried out after initiation of cases that require preliminary investigation. Paragraph 5 of Part 2 of Article 157 of the Criminal Procedural Code of the Russian Federation defines subjects entitled to perform them in penitentiary institutions, in particular, heads of institutions and bodies of the penal enforcement system. The investigative procedure term is specified in Part 3 of Article 157 of the Criminal Procedural Code of the Russian Federation and it is no later than 10 days from the criminal case initiation date. The concept under consideration is presented in paragraphs 25 and 28 of the Instructions. In Paragraph 25, the issue of conducting urgent investigative actions is addressed exclusively to heads of institutions and bodies of the penal enforcement system. However, Paragraph 28 of the Instructions states: “If essential elements of a crime are found in the process of reviewing other information, as well as during immediate actions or official duty performance by an employee of the institution or body of the penal enforcement system who has identified them, a report is drawn up on detection of elements of a crime ...”. Hence, interpreting Paragraph 28 of the Instructions, it is possible to conclude that a report on detection of essential elements of a crime during conduct of immediate actions can be filed by an indefinite circle of employees of the penal enforcement system who have identified elements of a crime, but their production is possible only by the subject defined in Paragraph 5 of Part 2 of Article 157 of the Criminal Procedural Code of the Russian Federation and Paragraph 25 of the Instructions. Based on the above, we believe that Paragraph 28 of the Instructions should be set out in the following wording: “If essential elements of a crime are detected by heads of the institutions of the penal enforcement system during immediate actions,

as well as by all its employees in the process of reviewing the information received, both related and unrelated to the performance of their official duties, a report is drawn up ... (hereinafter as in the Instructions)".

4. Insufficient regulation of the list and powers of officials authorized to verify crime allegations. This problem goes beyond the limits of the departmental regulatory act and is more significant, as it concerns uncertainty of the legal status of employees of penitentiary institutions and bodies in the Criminal Procedural Code of the Russian Federation. This aspect was considered on the pages of periodical literature, where amendments to the norms of procedural law were proposed [12, p. 502].

The Criminal Procedural Code of the Russian Federation directly defines only heads of penal institutions and bodies as procedurally authorized subjects of the Federal Penitentiary Service of Russia entitled to carry out procedural actions, (Paragraph 5, Part 2 of Article 157 of the Criminal Procedural Code of the Russian Federation). However, Paragraph 1 of Part 1 of Article 40 of the Criminal Procedural Code of the Russian Federation states that initial inquiry bodies include executive authorities authorized to carry out operational investigative activities. Thus, the Criminal Procedural Code of the Russian Federation makes reference to the Federal Law No. 144-FZ of August 12, 1995 (amended December 30, 2021) "On operational investigative activities", where Article 13 indicates the Federal Penitentiary Service of Russia, along with other bodies. Consequently, employees of the operational units of the Federal Penitentiary Service of Russia act as an inquiry body. At the same time, the analysis of Article 151 of the Criminal Procedural Code of the Russian Federation shows that these divisions of initial inquiry bodies are not entitled to conduct an inquiry in full under any articles of the Criminal Code of the Russian Federation. It turns out that employees of operational units in accordance with Article 144 of the Code of Criminal Procedure of the Russian Federation have the right to verify a crime allegation and transfer it under investigation. Our stance on this issue fully coincides with Paragraph 1.1 of the Instructions of the Prosecutor General

No. 456/69 of October 25, 2013 "On strengthening the prosecutor's supervision of the procedural activities of institutions and bodies of the penal enforcement system", which also emphasizes limited powers of employees of the Federal Penitentiary Service of Russia: they are authorized to carry out verification measures, and in case of receipt of a crime report they are obliged to hand over the materials under investigation within 3 days.

The entire list of verification measures implemented by employees of the penal enforcement system is defined in Part 1 of Article 144 of the Criminal Procedural Code of the Russian Federation: obtaining explanations, samples for comparative research, requesting documents and objects and their seizure, appointment of a forensic examination, inspection of the scene, documents, objects, corpses, examination, demand for documentary inspections, revisions, etc.

The results of A.S. Shatalov's research are very convincing. Of the list of measures provided for by Article 144 of the Criminal Procedural Code of the Russian Federation, the following were practically not carried out: appointment of forensic examinations or obtaining samples for comparative research, conducting revisions, research and obtaining expert opinions. Much less often, employees of the penal enforcement system performed inspections of the scene of the accident, corpses, examination [13, pp. 517–518]. We believe that a lack of legal regulation of this issue in the Instructions could also affect quantitative expression of the procedural measures taken.

It should be noted that Paragraph 29 of the Instruction provides that "for each complaint or report of crimes and incidents, the head of a penal institution or body is obliged to give written instructions to specific performers about their consideration in accordance with requirements of the Criminal Procedural Code of the Russian Federation and this Instructions".

Hence, the Instructions should include a list of verification measures specified in Part 1 of Article 144 of the Criminal Procedural Code of the Russian Federation, following the example of urgent response measures contained in Paragraph 26 of the Instructions. Also, Para-

graph 29 should fix that employees of operational units of bodies and institutions of the penal enforcement system act as authorized officials verifying crimes and incidents.

5. Absence of timing of revision, medical or other special studies. So, Paragraph 26 of the Instructions stipulates that “in cases where revision, medical or other special studies are required, decisions are made upon their completion”. However, according to Part 3 of Article 144 of the Criminal Procedural Code of the Russian Federation, if it is necessary to carry out documentary inspections, revision, forensic examinations, studies of documents, objects, corpses, the duration of their implementation is up to 30 days.

We are sure that the specified paragraph of the Instructions should be brought into compliance with the norms of the Criminal Procedural Code of the Russian Federation.

6. Absence of a procedure for obtaining explanations from convicted persons during verification of statements and reports of crimes and a form of the specified procedural document. Paragraph 26 of the Instructions stipulates the possibility to obtain explanations when verifying reports of crimes. However, employees, due to a lack of sample documents, receive explanations not as a procedural action provided for in Part 1 of Article 144 of the Criminal Procedural Code of the Russian Federation, but as a regime measure. So, Article 117 of the Criminal Procedural Code of the Russian Federation provides for receipt of written explanations before imposition of a penalty on a convicted person. Since convicts do not always know the whole essence of the case and are not sure, whether they are giving explanations in disciplinary or criminal proceedings. The Criminal Procedural Code of the Russian Federation implies an explanation of the rights and obligations of the participant when receiving explanations. Employees substantiate this substitution by the fact that convicts provide explanations to cases that are subject to disciplinary liability more willingly than to criminal. Having an explanation form and procedure for obtaining it in the Instructions may be the solution to this problem.

7. Legal and organizational problems of issuance of a registration document to the convicted applicant. Paragraph 4 of the In-

structions establishes the obligation to issue a registration document to a convicted person in case of filing of a complaint or voluntary surrender. Some authors emphasize a law enforcement aspect of the problem, as after receiving the document, a convict has to keep it somewhere, but it is difficult for the convict to ensure its safety. It is not about physical keeping of the document, but about saving of the fact that the convicted person submitted a complaint. If the document is found in the applicant’s possession, convicts adhering to unofficial norms of behavior can influence him/her. In this connection, it is proposed not to issue a register document to the convicted person personally, but to keep it in a special department of the penitentiary institution [8, p. 49]. Other authors do not consider it as a problem; on the contrary, if the document is not issued, the provisions of Part 4 of Article 144 of the Criminal Procedural Code of the Russian Federation are violated, triggering crime concealment [7, p. 32]. We agree with the stance of O.A. Malysheva that register document issuance should not occur in the form in which it is now fixed in the Instructions. From our point of view, it would be reasonable to supplement Paragraph 4 of the Instructions as such: “A convicted person who has received a register document is entitled to request that the original is attached to his/her personal file. The obligation to inform a convict about it falls on the person who has registered an application”.

#### *Conclusion*

On the basis of statistical data, current regulatory legal acts, scientific research results, the most significant legal problems concerning registration and verification of crime allegations in institutions of the penal enforcement system of Russia, regulated by the departmental Instructions, are analyzed. The conducted study revealed the following inconsistencies of the departmental normative act: absence of forms of procedural documents in the Criminal Procedural Code of the Russian Federation, the Instructions refer to; uncertainty of the content of emergency response measures and other verification actions and their correlation with legislation norms and other departmental regulations; inconsistency of the subjects of urgent inves-

tigative actions specified in the Instructions; poorly developed list and powers of officials authorized to conduct verification of crimes and incidents; absence of verification timing, medical or other special studies in the Instructions; gap in the procedure for obtaining an explanation from convicts during verification of statements and reports of crimes and

a form of the specified procedural document; legal and organizational problems of issuing a register document to the convicted applicant.

The proposals formulated in the article to improve the Instructions and other legal acts should undoubtedly have a positive effect on law enforcement practice in registration and verification of crime allegations.

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