Original article
UDC 343.8
doi: 10.46741/2686-9764.2023.61.1.003

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

VYACHESLAV I. SELIVERSTOV
M.V. Lomonosov Moscow State University, Moscow, Russia
Moscow State Linguistic University, Moscow, Russia
Research Institute of the Federal Penitentiary Service of Russia, Moscow, Russia
vis_home@list.ru, https://orcid.org/0000-0002-9554-5438

Abstract

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

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

5.1.4. Criminal law sciences.

For citation: Seliverstov V.I. Enhancing the penal legislation in modern conditions: key factors and directions. *Penitentiary Science*, 2023, vol. 17, no. 1 (61), pp. 19–29. doi: 10.46741/2686-9764.2023.61.1.003.

Introduction

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

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

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

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

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

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

eign countries that commit unfriendly actions against the Russian Federation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the Komi Republic and other regions of our country.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Elimination of gaps, contradictions and errors in the penal legislation

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

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

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

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

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

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

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

Conclusions.

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

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

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

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

REFERENCES

1. Antonyan E.A. Peculiarities of the penal policy in the modern society. *Vestnik universiteta imeni O. E. Kutafina (MGYuA) = Courier of Kutafin Moscow State Law University (MSAL)*, 2017, no. 7 (35), pp. 50–54. (In Russ.).

2. Grushin F.V. *Vliyanie sistemy faktorov na razvitie ugolovno-ispolnitel'noi politiki i ugolovno-ispolnitel'nogo zakonodatel'stva Rossiiskoi Federatsii: monogr.* [Influence of the system of factors on the development of penal policy and penal legislation of the Russian Federation: monograph]. Ed. by Seliverstov V.I. Moscow, 2017. 208 p.

3. *Ugolovno-ispolnitel'noe pravo Rossii: teoriya, zakonodatel'stvo, mezhdunarodnye standarty, otechestvennaya praktika kontsa 19 – nachala 21 veka : ucheb. dlya vuzov* [Penal law of Russia: theory, legislation, international standards, domestic practice of the late 19th – early 21st century: textbook for universities]. Ed. by Zubkov A.I. Moscow, 2006. 720 p.

4. Natashev A.E. The main factors of the development of correctional labor legislation. *K novoi zhizni = To a New Life*, 1972, no. 4, pp. 35–41. (In Russ.).

5. Grushin F.V. *Sistema faktorov, opredelyayushchikh razvitie ugolovno-ispolnitel'noi politiki i ugolovno-ispolnitel'nogo zakonodatel'stva: dis. ... d-ra yurid. nauk* [System of fac-

tors determining development of penal policy and penal legislation: Doctor of Sciences (Law) dissertation]. Ekaterinburg, 2019. 652 p.
6. Utkin V.A. *Ugolovno-ispolnitel'noe pravo: ucheb.-metod. kompleks* [Penal law: educational and methodological complex]. Tomsk, 2015. 120 p.
7. Grushin F.V., Seliverstov V.I. Penal policy. In: Maksimov S.V., Shul'ts V.L. (Eds.). *Ugolovnaya politika Rossiiskoi Federatsii: problemy i perspektivy: monogr.* [Criminal policy of the Russian Federation: problems and prospects: monograph]. Moscow, 2021. Pp. 717–741. (In Russ.).
8. On the launch of the procedure for withdrawal from the Council of Europe: Statement of the Ministry of Foreign Affairs of the Russian Federation of March 15, 2022. Available at: https://www.mid.ru/ru/foreign_policy/news/1804379/?ysclid=lee02rb88t76885926 (In Russ.). (Accessed November 22, 2022).
9. Seliverstov V.I. The concept for developing the General Part of the new Penal Code of the Russian Federation. In: Seliverstov V.I. (Ed.). *Obshchaya chast' novogo Ugolovno-ispolnitel'nogo kodeksa Rossiiskoi Federatsii: itogi i obosnovaniya teoreticheskogo modelirovaniya* [The General Part of the new Penal Code of the Russian Federation: results and conditions of theoretical modeling]. Moscow, 2017. Pp. 20–36. (In Russ.).
10. Shchedrin N.V. On the issue of coordinated preparation of new criminal and penal codes: "a horse ahead of a cart or a cart ahead of a horse". In: Seliverstov V.I. (Ed.). *Obshchaya chast' novogo Ugolovno-ispolnitel'nogo kodeksa Rossiiskoi Federatsii: itogi i obosnovaniya teoreticheskogo modelirovaniya* [The General Part of the new Penal Code of the Russian Federation: results and conditions of theoretical modeling]. Moscow, 2017. Pp. 279–298. (In Russ.).
11. Grushin F.V. New Penal Code of the Russian Federation: subject of legal regulation and structure. *Ugolovnaya yustitsiya = Russian Journal of Criminal Law,* 2019, no. 14, pp. 82–85. (In Russ.).
12. Golovastova Yu.A. Prospects and main directions of the codification of the criminal-executive legislation. *Zhurnal rossiiskogo prava = Journal of Russian Law,* 2019, no. 5, pp. 107–118. (In Russ.).
13. Golovastova Yu.A. *Ugolovno-ispolnitel'noe pravo kak otrasl' ros-siiskogo prava: predmet, metod, istochniki i sistema: monogr.* [Penal law as a branch of Russian law: subject, method, sources and system: monograph]. Ed. by Seliverstov V.I. Moscow, 2019. 560 p. (In Russ.).
14. Seliverstov V.I. Convicted as a subject of state management. In: *Ugolovnoe pravo kak sredstvo upravleniya obshchestvom: materialy vseros. nauch.-prakt. konf. (Moskva, 17 marta 2022 g.). Ch. 2.* [Criminal law as a means of managing society: proceedings of the All-Russian scientific and practical conference (Moscow, March 17, 2022). Part 2]. Moscow, 2022. Pp. 97–106. (In Russ.).
15. Zhukova A. Is it necessary to attract prisoners to participate in the special military operation? Available at: https://www.gazetametro.ru/articles/spornyj-vopros-nado-li-privlekat-zakljuchennyh-dlja-uchastija-v-svo-03-10-2022 (In Russ.). (Accessed November 22, 2022).
16. *Obshchaya chast' novogo Ugolovno-ispolnitel'nogo kodeksa Rossiiskoi Federatsii: itogi i obosnovaniya teoreticheskogo modelirovaniya* [The General Part of the new Penal Code of the Russian Federation: results and justifications of theoretical modeling]. Ed. by Seliverstov V.I. Moscow, 2017. 328 p.
17. Khramov A.A. *Probely v ugolovno-ispolnitel'nom zakonodatel'stve Rossii: dis. … kand. yurid. nauk* [Gaps in the penal legislation of Russia: Candidate of Sciences dissertation]. Ryazan, 2022. 230 p.

INFORMATION ABOUT THE AUTHOR

VYACHESLAV I. SELIVERSTOV – Doctor of Sciences (Law), Professor, Honored Scientist of the Russian Federation, professor at the Department of Criminal Law and Criminology of the M.V. Lomonosov Moscow State University, Moscow, Russia, professor at the Department of Criminal Law Disciplines of the Moscow State Linguistic University, Moscow, Russia, Chief Researcher at the Department of Coordination, Organization and Planning of Research Work of the Research Institute of the Federal Penitentiary Service of Russia, Moscow, Russia, vis_home@list.ru , https://orcid.org/0000-0002-9554-5438

Received February 10, 2023