

Original article

UDC 343.241

doi 10.46741/2686-9764.2024.65.1.006



Socio-Political Factors Influencing Achievement of the Criminal Punishment Goal to Prevent New Crime Commission

PAVEL A. AKIMENKO

University of Prosecutor's Office of the Russian Federation, Moscow, Russia,
nochnoy_patrul@mail.ru, <https://orcid.org/0000-0003-1886-2752>

Abstract

Introduction: the article is devoted to the consideration of problems related to the establishment and analysis of socio-political factors influencing the achievement of such a criminal punishment goal as prevention of the commission of new crimes. *Purpose:* to give a brief description of the specified purpose of criminal punishment, its main features and conditions of achievement on the example of the formation and analysis of proposals to prevent the involvement of combat veterans in criminal environment. *Methods:* general scientific dialectical method of cognition, system-structural, comparative legal, sociological, formal legal methods. *Results:* key features and elements of the specified purpose of criminal punishment, criteria and ways to achieve it are characterized and some legislative changes are considered. The impact of post-traumatic stress disorder, characteristic of combat veterans, on their post-war adaptation in society is analyzed. An attempt is made to forecast possible causes of a significant increase in criminal behavior among this category of citizens, which is an additional obstacle to achieving the stated goal of criminal punishment. *Conclusion:* based on the analysis results, specific measures are proposed to prevent the involvement of combat veterans in criminal environment, which is one of the important conditions for achieving the goal of criminal punishment. The author concludes that it is necessary to organize specific psychocorrective, social, etc. work with persons who participated in the special military operation, especially from among former convicts, as well as determine a more selective approach to choosing categories of convicts involved in military operations.

Keywords: punishment goal; criminal punishment; prevention of new crimes; social adaptivity; rehabilitation; volitional sign; intellectual sign.

5.1.4. Criminal law sciences.

For citation: Akimenko P.A. Socio-political factors influencing achievement of the criminal punishment goal to prevent new crime commission. *Penitentiary Science*, 2024, vol. 18, no. 1 (65), pp. 51–57. doi 10.46741/2686-9764.2024.65.1.006.

Preventing commission of new crimes is one of the fundamental goals of punishment, which is enshrined in both norms of criminal and penal law due to its socio-historical nature.

In this regard, we would agree with the opinion of E.V. Kurochka, according to which the goals of correcting a convicted person and preventing commission of new crimes are intersectoral

categories, since they are fixed in criminal and penal legislation [1, p. 85]. At the same time, the Concept for the Development of the Penal System of the Russian Federation for the Period up to 2030, approved by the Government Resolution No. 1138-r of April 29, 2021, does not stipulate a goal of preventing commission of new crimes and fixes correction of convicts, as well as their resocialization and social adaptation as key goals of penal legislation. This circumstance may cause confusion, since prevention of the commission of new crimes as one of the main goals of punishment is enshrined in both criminal and penal legislation, which is absolutely logical and corresponds to the existing trends of scientific thought in this field of knowledge.

Moreover, Aristotle paid special attention to the preventive role of punishment. Most people refrain from violating the law not out of high motives, but out of fear of punishment [2].

C. Beccaria correctly argued that it would be better to prevent crimes than to punish offenders [3]. Therefore, in his opinion, punishment should be aimed primarily at preventing commission of new crimes [4].

According to the theory developed by L.A. Feuerbach, people are deterred from committing a crime by fear of punishment [5].

However, there is another point of view. Thus, the Norwegian scientist N. Christie denies the very possibility of preventing crime through punishment, since the only purpose of punishment is to inflict pain [6, p. 34].

On the other hand, the generally accepted point of view in Soviet criminal law was the recognition of prevention as one of the main goals of criminal punishment, which was also reflected in the current Russian legislation in the order of succession. At the same time, it does not contain any definition of the specified goal, which causes some concern, since it is the basis for numerous disputes about its features and criteria for evaluating the possibility of achieving it. At the same time, it should be remembered that an accurate interpretation of the legal nature of the purpose of punishment is the most important basis for the scientific development of optimal and effective methods to achieve it, forms of its further actual application, predetermining success of the criminal law and penal policy in a particular state.

The analysis of Russian legislation shows that only Article 2 of the Federal Law No. 182-FZ of June 23, 2016 "On Fundamentals of the Crime Prevention System in the Russian Federation" defines crime prevention as "a set of social, legal, organizational, informational and other measures aimed at identifying and eliminating the causes and conditions that contribute to the commission of offenses, as well as the provision of educational influence on persons in order to prevent commission of offenses or antisocial behavior". With some degree of conditionality, we can try to project this definition onto the prevention of crimes. At the same time, it can be assumed that the legislator, without going into details in the crime prevention category, was guided by the fact that it is rather conditional and relatively declarative in nature and, on the one hand, has features for public understanding and, on the other hand, legislative consolidation of the definition of this term may adversely affect possibilities of achieving it.

When analyzing the above-mentioned topic, one should start with the consideration of the validity of the court verdict that has entered into force, on the basis of which a particular punishment is imposed. We cannot but agree with the statement "validity of the imposed punishment, based on the validity of criminal law, plays an important role in correcting a convicted person and preventing him/her from committing new crimes" [7, p. 151]. Moreover, it is worth mentioning that an unfairly imposed punishment, as a rule, influences person's perception of reality, which can lead to irreversible consequences in the form of uncontrolled anger at everyone and everything. It will trigger further formation of stable deviant behavior

Analyzing signs determining the process of achieving the specified goal of criminal punishment, the scientific opinion of S.V. Poznyshev is worth considering. So, punishment is imposed not in the interests of the injured person, but in the interests of the entire state. The idea of punishment that arose in person's soul after the idea of crime should extinguish a criminal desire or paralyze criminal aspiration. General and specific crime prevention are only moments of this goal. Criminal punishment affects both criminals themselves and other citizens. The idea of the benefits of a crime is replaced

only by the idea of adverse consequences of punishment. Psychology teaches us that one idea can only be displaced from consciousness by another. Only if cases of impunity are a rare exception, people believe in the inevitability of punishment. Otherwise, the idea of the threat of punishment will not have such an effect on the will. Punishment should have sufficient repressive force, i.e. the ability to suppress the desire for criminal activity, as the evil inevitably follows the crime. At the same time, punishment should not cause any suffering unnecessary for crime prevention” [8].

One can identify three main conditions that directly affect achievement of the considered goal of criminal punishment –inevitability of the punishment itself, its severity, as well as promptness of appointment and subsequent application. Only the interrelation of these conditions can testify to the effectiveness of the criminal law and penal policy pursued in the state.

Thus, D. Locke was the first to formulate the punishment inevitability idea, because only a sanction can guarantee order in society [9].

According to I.I. Karpets, punishment is an integral part of preventive measures. There are two points of view in the legal literature about general prevention as a specific property of punishment. The first suggests that general prevention of criminal law (hence punishment) affects all society members. The second, shared by the overwhelming majority of lawyers, boils down to the fact that the generally punitive effect of punishment affects only people with unbalanced psyche. The punishment inevitability principle is expressed in the activities of judicial authorities – one of the guarantees of its preventive effect. General preventive effect of criminal law (as well as punishment) is achieved not only and not so much by the severity of punishment, but by the practical provision of its inevitability, by the very fact of the existence of a law that fixes punishment for committing a crime, and most importantly – by people’s knowledge of laws and about consequences of their violation. Private preventive effect of punishment is achieved primarily by its inevitability. Private prevention in sentencing is achieved by psychological impact exerted on the offender” [10, pp. 112–115, 137–138, 153, 157].

This judgment is quite accurate and logical. At the same time, special emphasis should be

placed on the fact that general preventive effect of punishment loses its importance to a greater extent, turning into the state-fixed prohibition, without the possibility of real state coercion.

The scientific opinion of I. Andene is of genuine interest in the context of the previous judgment. So, not only the very fact of the threat of punishment, but also the size and relative severity of the latter has general preventive force. According to the researcher, if a potential criminal dwells on possible punishment, he/she takes into account not only risks of disclosure, but also the severity of punishment. As a general rule that has exceptions, general preventive effect of the criminal law rises with the enforced penalty. So, punishment has a general preventive effect of three types: it can have a deterrent effect, strengthen moral prohibitions (moral effect) and stimulate habitual law-abiding behavior. Individual preventive effect takes place when punishment renders the punished harmless either permanently, by applying the death penalty or exile, or temporarily, by sentencing to imprisonment for a certain period” [11, pp. 13–14, 29–31].

According to E. Durkheim, in order to clarify causes of the crime, it is necessary to investigate not the state of a certain person, but the conditions in which the “social body as a whole” is located [5].

In connection with the above, there is some concern about possible consequences of the relatively recent adoption of a number of legislative changes against the background of a special military operation (SVO) on the territory of the Republic of Ukraine, which to a certain extent have a direct or indirect impact on the existing prospects for achieving legally established goals of criminal punishment, in particular, prevention of new crime commission.

So, in our opinion, a negative example is the adoption of 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”, stipulating that only citizens who have unexpunged or outstanding conviction for crimes against sexual inviolability of a minor or crimes provided for in articles 205 – 205.5, 206, 208, 211, 220, 221, 275, 275.1, 276 – 280, 282.1 – 282.3, 360, 361 of the Criminal Code of the Russian Federation are no lon-

ger subject to conscription for military service. According to the previous version of the law, citizens with unexpunged or outstanding conviction for committing any serious crime were not subject to conscription for military service. In this regard, anyone convicted of committing a serious or especially serious crime that does not belong to the categories listed in the law can potentially be released from serving the sentence imposed on them by the court earlier than the term set in such a sentence only for the reason that they will be mobilized, despite any other circumstances of the criminal case, concerning the nature and degree of public danger of the crime committed by them, motives for its commission, the identity of perpetrators, and compensation for the harm caused by the crime.

For example, the convicted sentenced to imprisonment for the murder of a well-known human rights activist A. Politkovskaya was pardoned as a result of his voluntary participation in the SVO, and later even became the commander of an intelligence battalion [12].

Also, the Federal Law No. 270-FZ of June 24, 2023 "On the Specifics of Criminal Liability of Persons Involved in the Special Military Operation" was subsequently adopted. It fixes grounds for exemption from criminal liability and punishment for SVO participants who had committed crimes.

One can assume that due to the difficult military-political situation in our country, the issue of additional replenishment of mobilization human reserves was put at the forefront; however, it seems that no one thought about possible negative consequences of the decisions taken. Under these circumstances, one can hardly expect achievement of the criminal punishment goal, such as prevention of commission of new crimes in relation to convicted persons who have not served the term of their sentence, as well as persons against whom criminal prosecution is being carried out. At the same time, the victim's right to protection is not realized, which creates an immediate threat to the rule of law. So, prevention of the commission of new crimes is not achieved.

This conclusion is confirmed, since when differentiating the population by the appropriate categories, the deterrent effect of punishment applies to an intermediate category

– the category of potential criminals [11, pp. 123–125].

News about the commission of crimes by former convicts who returned from the SVO zone are spread in the media, though they are not of a mass nature.

At the same time, as the Deputy Minister of Labor and Social Protection of the Russian Federation O.Y. Batalina stated, "more than 133 thousand SVO participants have the status of a combat veteran" [13]. No doubt, not all SVO participants are potential criminals, but it is necessary to think in advance about their future adaptation to the conditions of post-war life, which, as it seems, should include a set of socially oriented, purposeful and consistent measures, in particular, provision of psychological assistance, moral support, and additional socio-economic guarantees and benefits, increase in the size of the so-called veteran's allowance and its annual indexation, etc.

In this context, attention should be paid to the fact that, according to the statement of the Vice-President of the Russian Division of the International Human Rights Defense Committee, psychologists should work with former prisoners returning from the SVO zone, otherwise an increase in crime can be expected [14].

Based on the above, it should be borne in mind that we rely on the ability of volitional control of our behavior by normal mentally balanced people without any pathologies and deviations that do not exclude sanity. At the same time, the very concept "will" seems to be derived from the process of educating an individual, his/her socio-moral attitudes, which are formed throughout life under the influence of family, society and the state. Besides, the role of the personality itself, which is not an amorphous formation, but has its own self-development skills.

On the other hand, we should also note an intellectual component of human consciousness, which has a certain influence on person's behavior, since it is mediated by his value-oriented thinking and education level, which together can contribute to crime prevention.

At the same time, returning to the issues under consideration related to military personnel participating in the SVO, the point of view of psychiatrists is of interest: people obey the law, acting in one way or another, not out of fear of

criminal law, but because of moral prohibitions or internalized norms. If there is no internal restriction, there is little threat of punishment, since criminals do not make rational choices, weighing the risk of punishment and the possibility of winning. They act in a state of emotional instability, lack of self-control, or because they have internalized criminal subculture values [14].

Military operations, as a rule, leave an indelible mark on the mental state of any participant, and the ongoing special military operation is no exception. Professionals in the field of psychiatry call this post-traumatic stress disorder (PTSD). Military personnel who have taken part in hostilities experience manifestations of aggression and self-aggression [15]. Mental processes are often very difficult to control and timely stop, which can lead to tragic consequences both for a participant in the hostilities and for the society around him. As a rule, combat PTSD with psychotic symptoms is characterized by significant severity [16].

In the United States, after the Vietnam War, the difficulties of integration in civil society pushed combatants (combat veterans) to the periphery of the social space, as a result of which a large percentage of them ended up in prison. At the same time, psychological problems of the Vietnam war participant worsened over time. Therefore, a special program of "Vietnam Veterans of America", Inc. is focused on supporting prisoners at the state level. In addition, the state compensated war participants for the mental, physical and social costs that had been incurred by military personnel in the name of patriotism and military duty [17].

In our country, combat veterans were affected, in fact, by the same processes of destructive mental deviation from normal behavior, called as "Afghan syndrome", "Chechen syndrome" depending on participation in one or another armed conflict.

It is the difficult adaptation to peaceful living conditions as a result of omissions in the work to restore the social and psychological status of a combat veteran that today leads to the fact that in places of detention in modern Russia there are a large number of convicts who participated in hostilities and committed offenses during the period of adaptation to peaceful liv-

ing conditions. People who have undergone combat experience have disorders affecting their entire personal structure: the cognitive (attitude to the process of cognition and perception of the world around them) sphere and perception change, the motivational and personal system is transformed, including its moral and ethical component, the attitude towards oneself and others, methods and the content of interpersonal interaction change. All these violations lead to criminalization of behavior. Moreover, it should be borne in mind that the improvement of methods to commit serious crimes and professionalism of the perpetrators of such crimes is directly related to the involvement of many highly professional and socially disadvantaged unemployed combat veterans after service in the army and special forces and those veterans who have served term [18].

So, it can be concluded that extreme events that have severely traumatized the psyche, may transform consciousness by changing the existing moral value system. Self-identification of a person in the surrounding world may be distorted. In case of untimely localization of the problem and improper socio-adaptation of a person, a stable model of criminal behavior will most likely form.

What is more, it is reasonable to work out an effective mechanism comprised of a set of consistent socially adaptive measures for integrating convicts-combat veterans into society. Otherwise, in the foreseeable future we will observe an uncontrolled increase in crime and social tension in society, which will be a destabilizing factor in the maintenance of law and order.

Thus, in the course of the analysis of socio-political factors influencing the achievement of the criminal punishment goal to prevent commission of new crimes, we believe it is possible to come to the following conclusions.

First, appropriateness of the punishment imposed, based on fairness of the criminal law, is a fundamental circumstance affecting prevention of new crimes.

Second, there are three main conditions that directly affect achievement of the considered goal of criminal punishment – inevitability of the punishment itself, its severity, and the pace of appointment and subsequent application.

Third, behavior of any person consists of volitional and intellectual components that have a direct impact on his/her choice of criminal or law-abiding behavior.

Fourth, during the adoption of any changes to regulatory legal acts, the legislator needs to consider not only immediate prospects for their implementation, but also possible negative consequences in the foreseeable fu-

ture, balancing all the positive and negative sides.

Fifth, to deter criminalization of society, i.e., in fact, to prevent commission of crimes, it is necessary at the state level in advance and for the long run to develop programs, including for providing all necessary assistance for rehabilitation and re-socialization of military operation veterans.

REFERENCES

1. Kurochka E.V. *Problemy nakazaniya v ugolovnom protsesse Rossii: dis. ... kand. yurid. nauk* [Problems of punishment in the criminal process of Russia: Candidate of Sciences (Law) dissertation]. Saratov, 2000. 156 p.
2. Gneusheva T.B. Problem of punishment in ancient philosophy. In: *Sotsial'no-kul'turnye protsessy v usloviyakh integratsii i dezintegratsii: materialy vseros. nauch. konf. s mezhdunar. uchastiem* [Socio-cultural processes in the context of integration and disintegration: materials of the All-Russian scientific conference with international participation]. Ulan-Ude, 2017. Pp. 124–127. (In Russ.).
3. Cesare B. *O prestuplenii i nakazanii* [On crimes and punishments]. Available at: https://royallib.com/read/bekkaria chezare/o_prestuplenii_i_nakazanii.html#0 (accessed July 27, 2022).
4. Pilipenko A.S. Cesare Beccaria's presentation on the essence of punishment. In: *Yurisprudentsiya i pravo v sovremennom obshchestve: sb. st. mezhdunar. nauch.-prakt. konf.* [Jurisprudence and law in modern society: collection of articles of the international scientific and practical conference]. Penza, 2020. Pp. 11–13. (In Russ.).
5. Dvoryanskov I.V. Conceptual issues of the goals of punishment. *Penitentsiarnaya nauka = Penitentiary Science*, 2021, vol. 15, no. 2 (54), pp. 247–259. (In Russ.).
6. Kulikov M.V. *Genesis ponyatiya "nakazanie" v istorii filosofii: novoe i noveishee vremya: ucheb. posobie* [Genesis of the concept "punishment" in the history of philosophy: new and modern times: textbook]. Novokuznetsk, 2022. 48 p.
7. *Tseli ugolovnogo nakazaniya: monogr.* [Goals of criminal punishment: monograph]. Ed. by Naumov A.V., Karabanova E.N. Moscow, 2021. 192 p.
8. Poznyshchikov S.V. *Osnovnye voprosy ucheniya o nakazanii: issled. privat-dots. Imperator. Mosk. un-ta* [Key questions of the punishment doctrine: research of the associate professor at the Imperial Moscow University]. Moscow, 1904. 407 p. (In Russ.).
9. Rogozin D.D. Philosophical meaning of punishment in European philosophy. In: *Nauka i obrazovanie: sokhranyaya proshloe, sozdaem budushchee: sb. st. XVIII Mezhdunar. nauch.-prakt. konf.* [Science and education: preserving the past, creating the future: collection of articles of the 18th International scientific and practical conference]. Penza, 2018. Pp. 175–178. (In Russ.).
10. Karpets I.I. *Nakazanie. Sotsial'nye, pravovye i kriminologicheskie problemy* [Punishment. Social, legal and criminological problems]. Moscow, 1973. 287 p.
11. Andenes I. *Nakazanie i preduprezhdenie prestuplenii* [Punishment and prevention of crimes]. Ed. by Nikiforov B.S. Moscow, 1979. 264 p.
12. The organizer of the murder of Anna Politkovskaya has been pardoned. *Gazeta.Ru: sait* [Gazeta.Ru: website]. Available at: <https://www.gazeta.ru/social/2023/11/14/17866147.shtml> (In Russ.). (Accessed November 23, 2023).
13. The Ministry of Labor named the number of participants with the status of a SVO combat veteran. *Izvestiya: sait* [News: website]. Available at: <https://iz.ru/1529498/2023-06-16/v-mintrudenazvali-kolichestvo-imeiuschchikh-status-veterana-boevykh-deistvii-uchastnikov-svo> (In Russ.). (Accessed October 25, 2023).
14. *Pravozashchitniki zhdu rosta prestupnosti posle vozvrashcheniya eks-zekov iz zony SVO* [Human rights defenders expect an increase in crime after the return of ex-convicts from their detention zone]. Available at: <https://nsn.fm/society/pravozaschitniki-zhdut-rosta-prestupnosti-posle-vozvrashcheniya-eks-zakluchennykh-iz-zony-svo> (accessed October 17, 2023).
15. *Voennyi psikholog rasskazal pro boevye psikhicheskie travmy* [A military psychologist told about combat mental injuries]. Available at: <https://www.mk.ru/social/2022/05/18/voennyi-psikholog-rasskazal-pro-boevye-psikhicheskie-travmy.html> (accessed October 20, 2023).

16. Reznik A.M. Schizophrenia and delusional disorders in veterans of local wars. *Psikhiatriya = Psychiatry*, 2013, no. 2(58), pp. 38–43. (In Russ.).
17. Surkova I.Yu. The social status of Vietnam War veterans: the attitude of society and social protection. *Zhurnal sotsiologii i sotsial'noi antropologii = Journal of Sociology and Social Anthropology*, 2011, vol. 14, no. 4, pp. 164–180. (In Russ.).
18. “*Veterany-osuzhdennye*” – *novoe ponyatie v istorii Rossii* [“Convicted veterans” is a new concept in the history of Russia]. Available at: <https://bfveteran.ru/publikacii/533-veterany-osuzhdennye-novoe-ponyatie-v-istorii-rossii.html> (accessed October 20, 2023).

INFORMATION ABOUT THE AUTHORS

PAVEL A. AKIMENKO – Candidate of Sciences (Law), Leading Researcher at the Research Institute of the University of Prosecutor’s Office of the Russian Federation, Moscow, Russia, nochnoy_patrul@mail.ru, <https://orcid.org/0000-0003-1886-2752>

Received October 31, 2023