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On Application of Digital Technologies in Penal Enforcement: Trends, Innovations, Risks

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Abstract

Introduction: the article studies priority directions of the use of digital technologies in activities of the penal system. Despite a rather conservative nature of penitentiary practice, it is nevertheless susceptible to modern technological innovations, including high technologies such as big data, artificial intelligence, etc. *Purpose*: to consider national priorities for digital transformation of the penitentiary system and potential opportunities for improving its activities through the introduction of innovative technological solutions. *Objectives*: to study the role of legal science in technologization of the public administration system, to analyze national priorities in the field of digital transformation, to determine directions of digitalization of the penal system, to reveal the potential use of criminological knowledge in the development of software products suitable for predicting individual behavior, as well as to structure the risks that may be associated with the introduction of innovative technologies in activities of the penal system. *Methods*: induction and deduction, abstraction, historical and legal, comparative, modeling. *Results*: the dialogue between representatives of legal and engineering branches of knowledge is much closer than it might seem. Strategic priorities for developing the domestic penal system indicate that technological innovations that perform a predictive function are in demand in penitentiary practice. Elaboration of these assessment tools requires not only the necessary infrastructure that meets modern requirements, but also the development of an algorithm based on the results of interdisciplinary scientific research, the subject of which is the identification of patterns of criminal behavior. In this regard, a conceptual model for personality assessment and behavior forecasting is constructed. It serves as a methodological basis of the PRO-SCORE computer program.

Keywords: digitalization; criminal justice; execution of sentences; convict's personality assessment; criminological forecasting.

5.1.4. Criminal law sciences.

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Introduction

Today, digitalization is perceived as the process of penetration of modern information technologies into various spheres of society and the state. Humanitarian sciences largely focus on designing outcomes of interaction between technology and social practice, conducting interdisciplinary research, studying

promising areas for the modernization of existing relationships, consumer behavior, production and business models, as well as many other aspects related to reality technologization.

Like any phenomenon, digitalization generates both positive and negative consequences. The first ones include changes related to the search for effective solutions aimed at developing the economy, improving the public administration system, ensuring and protecting the rights, freedoms and legitimate interests of citizens, etc. Negative manifestations of digitalization are observed in the use of information and communication technologies to commit illegal acts: remote fraud, incitement to terrorist crimes, etc.

It is worth mentioning that the business environment has most quickly assessed capacities that information technologies have to achieve additional economic benefits. Restrictions imposed during the COVID-19 pandemic became a definite catalyst for accelerating the process of digital technology perception by businesses, resulting in a sharp increase in demand for remote ways to purchase goods and services (educational, medical, legal, etc.).

Along with the transformation of business models, digital technologies exerted certain influence on the administration system in the public sector. Thus, in the last decade, the provision of public services, taxation, placement of state and municipal orders, road safety management and many industries were significantly modernized.

It should be noted that technological solutions are also being actively introduced into the field of criminal justice to ensure realization of the private and public interests both at the stage of criminal proceedings and at the stage of execution of a criminal penalty or a criminal law measure. Thus, technological capabilities are used to ensure access to justice, monitor the behavior of certain categories of suspected, accused and convicted persons registered with criminal executive inspections, and maintain socially useful ties with relatives and close people. Along with this, modern technological solutions are used to counter illegal encroachments that destabilize normal functioning of penal institutions.

Legal science and technology: from cybernetics to digitalization

Legal scientists, along with representatives of other branches of scientific knowledge, are actively involved in assessing the synergetic effect caused by the change of technological structure. Legal science at the doctrinal and law-making levels is making efforts to understand emerging relations and propose solutions to their regulation.

Current digital transformation is not new for legal thought. In the 1960s – 1970s, researchers considered development of cybernetics as a trigger of a scientific and technological revolution and an accelerator of the process of automation of production, transport, and the service sector [1, p. 18]. According to N.V. Vitruk, “mathematization and well-known cybernatization of sciences is an essential feature of the modern stage of the scientific knowledge development. Development of cybernetics and its use by other sciences lead to the synthesis of sciences, emergence of new cybernetic sciences: mathematical linguistics, economic cybernetics, biocybernetics, bionics, medical cybernetics, legal cybernetics, etc.” [1, p. 25]. He also defined legal cybernetics as “... the science of laws and basic principles of the application of cybernetics in law and practice of legal institutions, of specific methods and ways to optimize the solution of individual legal problems based on the creative use of mathematical apparatus, ideas, methods and technical means of cybernetics” [1, p. 35].

Researchers studied methodological issues of interaction between cybernetics and legal science, which set priority directions for the development of scientific knowledge. For example, A.R. Shlyakhov made a report “The use of methods and means of cybernetics in legal science and practice” at the joint meeting of academic councils of leading scientific and educational organizations (the All-Union Scientific Research Institute of Legislation of the USSR Ministry of Justice, the All-Union Institute for the Study of Causes and Development of Crime Prevention Measures, the All-Union Scientific Research Institute of the USSR Ministry of Internal Affairs, etc.) held on June 5, 1972 and devoted to the topic “Methodology and effectiveness of legal science”. The speaker identified three such areas, mainly covering the use of electronic computing machines and mathematical and statistical methods in the processing of legal information:

– development of a system for obtaining, storing, automated search and reproduction of legislative acts in order to provide legal services to state authorities;

– application of mathematical methods and cybernetic tools to improve management based on mathematical and statistical analysis of legal information;

– use of cybernetic tools in criminology, forensic technology, forensic examination and forensic psychology [2, p. 14].

Accordingly, more than fifty years ago, the scientific community studied prospects of a dialogue between law and technology. This was especially evident in the field of criminal justice.

Modern legal science once again faces rapid technologization of public relations in need of regulation. Digital technologies, robotics, virtual space, artificial intelligence in a different plane require consideration of issues of law and human rights, legal personality and other fundamental legal categories. At the same time, digitalization in the public administration system is still associated with the use of technological advances to process legally relevant information. As some researchers have noted, "currently, in the Russian administrative-legal and information-legal doctrine, legal regulation and practice of public administration, three concepts simultaneously coexist and develop – electronic document management, data turnover and data management" [3, p. 130].

In this regard, there is a certain universality in the subject field, where the interests of law and technology intersect. At the same time, the nature of technological solutions and the breadth of spheres of life certainly determine features that characterize the process of interaction between legal science and technological innovations in the past and today.

National priorities in the field of digital transformation

The concept of national priorities is ambiguous and has an intersectoral character. In scientific literature and regulatory legal acts, this category is interpreted in a variety of ways and is used along with concepts similar in meaning, which include, for example, national interests, national goals, etc. National interests, as rightly noted by scientists, are universal in nature and express the needs of a particular society and state [4]. National priorities that determine development vectors of a particular sphere of the society are based on them. National goals in this construction clarify the orientation of national priorities and reflect immediate development guidelines, fixing in their content the results expected.

Accordingly, national priorities are more variable in nature than national interests. They reflect the needs of society and the state for the foreseeable planning time-frame. In this case, the teleological component specifies the strategic vector of development and the expected effect.

The terms discussed above have been normalized in various strategic planning documents. In our case, of the entire array of regulatory legal acts, those that mention the importance of digitalization in modern conditions of technological transformation are of interest for analysis.

It should be noted that for more than a decade and a half, the priorities and goals of accelerating technological development have been clarified. Thus, the strategies for the development of the information society in the Russian Federation, the first of which was approved by the President of the Russian Federation on February 7, 2008 No. Pr-212, and the second on May 9, 2017 No. 203, show the evolution of priorities in the field of technologization of the public administration system. Initially, the strategic priorities were aimed at improving the public administration system by using capacities of information and telecommunication technologies in the implementation of their functions by public authorities and improving the quality of services provided. The Strategy for the Development of the Information Society in the Russian Federation for 2017–2030 focuses not on general provisions of the formation of the information society, but on the need to develop technologies such as big data, artificial intelligence, robotics, the Internet of things, the industrial Internet, etc.

The strategic planning documents defining the development vector of digital technology include the decree No. 309 of the President of the Russian Federation of May, 2024 "On national development goals of the Russian Federation for the period up to 2030 and in perspective up to 2036". It mentions technological leadership and digital transformation of public

and municipal administration, economic and social spheres among national goals. In addition, attention is focused on the importance of scientific developments and the introduction of artificial intelligence, big data processing and other modern technologies.

Artificial intelligence occupies a special place in the strategic planning system. In particular, the National Strategy for the Development of Artificial Intelligence for the period up to 2030, approved by the decree of the President of the Russian Federation No. 490 of October 10, 2019 (the wording was significantly updated by the decree of the President of the Russian Federation No. 124 of February 15, 2024 "On amending the decree of the President of the Russian Federation of October 10, 2019 No. 490 "On the development of artificial intelligence in the Russian Federation" and the National Strategy approved by this decree") defines goals and key objectives of artificial intelligence development in the Russian Federation, as well as measures aimed at using it to ensure the national interests and implement strategic national priorities, including in the field of scientific and technical technological development.

Strategic priorities for the creation of a modern information infrastructure based on the use of high technologies in the system of state and municipal administration are reflected in the Strategic direction in the field of digital transformation of public administration approved by the decree of the Government of the Russian Federation No. 637-r of March 16, 2024. The purpose of this direction is to ensure free, stable, secure information interaction between government authorities of the Russian Federation, citizens, businesses, as well as technological independence and security of critical information infrastructure.

Digitalization directions of the penal system

The use of modern technologies in the public administration system is focused not only on reducing costs in this area, but primarily on creating a human-centered environment. The priorities of the penal system are fully consistent with this approach, since they involve creation of necessary conditions for serving sentences and measures of a criminal-legal nature, as well as rehabilitation of convicts after their release.

This priority is system-forming and of a cross-cutting nature, defining the content of conceptual provisions to develop the information security system in recent decades. It can be noted that the Concept for the Development of the Penal System of the Russian Federation up to 2020 approved by the decree of the Government of the Russian Federation No. 1772-r of October 14, 2010 stipulated humanization of detention conditions of detainees and convicts and increasing guarantees of respect for their rights and the legitimate interests in accordance with international standards as one of the goals. This guideline is fully accepted by the current Concept for the Development of the Penal System of the Russian Federation for the period up to 2030, approved by the decree of the Government of the Russian Federation No. 1138-r of April 29, 2021.

In this regard, it should be noted that previous federal targeted programs related to reforming the penal system were focused on improving activities of institutions and bodies executing criminal penalties in order to ensure the rights and legitimate interests of suspected, accused and convicted persons.

At the same time, if the previous strategic planning documents indicated the use of certain technologies in the implementation of their functions by institutions and bodies subordinate to the Federal Penitentiary Service, then the Concept for the Development of the Penal System up to 2030 fixes digital transformation and scientific and technical development of the penitentiary system.

Technologies that can boost the efficiency of the Federal Penitentiary Service of Russia occupy one of the most significant places in determining priorities for the development of this sector of public administration. Despite the fact that the regulations do not identify areas of digitalization of the information security system, the conducted legal analysis allows us to identify some of them, depending on targets and the scope of the application:

1. Optimization of management activities of institutions and bodies executing criminal penalties.

First of all, the implementation of this area covers technological solutions that improve infrastructure for the collection, exchange and storage of information. The creation of a unified information environment facilitates the routing of data flows, establishing relationships

between media and information objects, etc. The elements of such an environment include an electronic document management system (both departmental and interdepartmental), automated personnel workstations, information security tools, personal data repositories, legal reference systems, etc.

Section XIV "Digital transformation and scientific and technical development of the penal system" of the Concept for the Development of the Penal System up to 2030 defines priorities of digital transformation, including introduction of a unified information system in activities of the Federal Penitentiary Service of Russia, its territorial bodies and institutions, providing end-to-end automation of work processes, and formation of databases on activities services. At the same time, Appendix 1 to the order of the Federal Penitentiary Service of Russia No. 984 of December 30, 2020 "On approval of the departmental program for digital transformation of the Federal Penitentiary Service for 2021 and for the planning period of 2022 and 2023" indicates the availability of such information systems and resources: the federal state information system "Electronic document management of the penal system", the information system "Electronic archive of the penal system", the information system "Electronic database of court cases", the federal state information system "Automated electronic information statistical information processing "UIS Statistics", the automated workplace of the "ARM of the penitentiary psychologist" (Psychometric expert), etc.

2. Improvement of security tools and methods.

Another area of digital transformation in the penal sphere involves the use of technological advances that enhance security in the execution of preventive measures, punishments and measures of a criminal-legal nature. The Concept for the Development of the Penal System up to 2020 prescribed the use of technical capacities to monitor convicts' behavior (video surveillance, electronic wristbands, wireless technologies, etc.), the application of satellite global positioning systems to monitor the movement of special vehicles, the introduction of modern engineering and technical means of protection and supervision, integrated security systems, modern technical means of supervision (first of all, video surveillance systems) and some other innovations. When working out the Concept for the Development of the Penal System up to 2030, the legislator considered these priorities as guidelines for designing security systems at penitentiary facilities and executing control over persons serving sentences or punishments not related to deprivation of liberty.

According to the order of the Federal Penitentiary Service of Russia No. 984 of December 30, 2020, federal state information systems "Electronic monitoring system for controlled persons" and "Information system for monitoring vehicles of the penal system using GLONASS satellite navigation equipment" are currently being used in the penal system.

Along with available technological capabilities, the Concept for the Development of the Penal System up to 2030 sets an ambitious goal to introduce artificial intelligence technology into penitentiary practice. Thus, Paragraph 3 of Section XIV of this document indicates the need to develop data collection and processing systems and make decisions on the basis of results of the use of artificial intelligence for ensuring security (including using video analytics and forecasting the behavior of convicts and correctional officers) and monitoring persons serving sentences unrelated to deprivation of liberty and those released. In this regard, the need for introducing a facial recognition system, behavioral analysis and post-analysis of the collected data within the framework of a "digital profile of the convict" is normatively fixed (order of the Federal Penitentiary Service of Russia No. 984 of December 30, 2020) in order to adjust the resocialization program based on artificial intelligence technology. The implementation of such a task, which rightfully corresponds to modern trends in the organization of prison management, will require the use of other technologies that make it possible, based on the analysis of large amounts of data, to build algorithms suitable for assessing personality and forecasting behavior.

3. Expanding possibilities for suspected, accused and convicted persons to exercise their rights and legitimate interests.

The development of the information environment is focused not only on realizing public interests, but also on expanding opportunities to ensure the rights and legitimate interests of

suspected, accused and convicted persons. At the same time, the introduction of modern technologies can often have a double effect. On the one hand, this optimizes activities of penitentiary institutions and at the same time creates conditions for minimizing negative legal consequences associated with the imposed punishment. An example of this is the introduction into law enforcement practice of electronic monitoring systems for convicts sentenced to restriction of liberty. Electronic bracelets for this category of convicts were actively used, especially at the first stage of the implementation of the Concept for the Development of the Penal System up to 2020. It was an effective tool for criminal executive inspections to carry out proper control over convicts' observance of the restrictions established by the court. At the same time, this contributed to the expansion of the possibility of applying punishments not related to the isolation of convicts from society, and thereby saving criminal repression when using state coercion measures.

In addition, the improvement of penitentiary practice by means of upgrading information and telecommunications infrastructure affected the execution of sentences in the form of imprisonment. In particular, the use of remote technologies helped reduce isolation of convicts and digital inequality, provided communication and education opportunities, ensured access to the job market, etc. Having been tested during the COVID-19 pandemic, they confirmed their effectiveness in solving certain tasks related to ensuring the rights and legitimate interests of convicts. The application of remote technologies is fixed in the Concept for the Development of the Penal System up to 2030, in particular communication with relatives via e-mail and video conferencing.

What is more, the use of remote technologies makes it possible to overcome barriers to ensuring the constitutional right of suspected, accused and convicted persons to access justice, as well as to receive legal assistance. For example, the Federal Law No. 269-FZ of August 8, 2024 "On amendments to the Federal Law "On the detention of the suspected and accused of committing crimes" introduced Part 3 in Article 18 of the Federal Law No. 103-FZ of July 15, 1995 "On the detention of the suspected and accused of committing crimes", stipulating the possibility to attend a defense attorney via video conferencing. Currently, there are also legislative initiatives to extend such a mechanism to other entities that, as part of their professional activities, have the right to communicate with persons in custody.

Algorithmization of personality assessment and forecasting behavior of convicts as an innovative direction to improve penitentiary practice

The category "innovation" has relative and contextual significance due to intensive development of information technology. An implemented and widely used innovative technological solution is perceived after a short time as an integral element of a functioning infrastructure. Accordingly, this concept needs to be clarified depending on the problem under consideration.

In our case, it seems reasonable to focus on the possibility of algorithmizing assessment of the identity of suspected, accused and convicted persons and forecasting their behavior. In modern conditions, the demand for behavioral analysis and post-analysis of collected data within the framework of a "digital profile of the convict" is realized in order to adjust the resocialization program based on artificial intelligence technologies.

The use of forecasting capabilities to analyze behavior of persons held in correctional institutions is perceived as an innovation in domestic penitentiary practice. However, foreign law enforcement practice has software tools based on the methodology of assessing the identity of an offender and forecasting repeat crime risks. For example, in some US states (New York, California, etc.), the COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) software tool is used. Software tools for assessing criminal behavior risks are also used in the UK (OASys (Offender Assessment System) and some other countries.

Without going into a detailed analysis of the algorithm, the COMPAS is based on, we consider it appropriate to highlight only general characteristics of this methodology. In particular, it should be noted that it is aimed at assessing risks of general recidivism or repeat crime commission, regardless of its category and nature. Besides, the application of this algorithm makes it possible to assess recidivism risks [5,

p. 25]. The forecast is based on data from materials of the personal file, including the criminal case, as well as information obtained during conversations with a respondent. Recidivism risks are assessed according to established scales that take into account the person's criminal past, severity and nature of the crime committed, tendency to additive behavior, presence and level of education, profession, marital status, etc.

COMPAS is criticized by researchers for the subjectivity of the parameters used, racial bias, and low predictive accuracy. So, in 2016, the study to assess the quality and objectivity of predicting relapse was conducted. Based on the studied forecasting results for 10,000 cases in the two years preceding the study, experts identified a number of vulnerabilities in Broward County, Florida. For example, the significance level in forecasting total recidivism was 61%, while violent recidivism was only 20%. Along with this, the algorithm unreasonably established increased recidivism risks among the black population [6].

The strategic priorities for developing the domestic penal system indicate the necessity in technological forecasting innovations. The development of such assessment tools requires not only the necessary infrastructure that meets modern requirements, but also the development of an algorithm based on the results of interdisciplinary scientific research. At the same time, scientists note a shortage of methodological material necessary for criminological forecasting. Thus, O.R. Afanas'eva and O.V. Gleba, studying problems of criminological forecasting, point out that "nowadays, criminological science lacks an ideal methodology for forecasting individual criminal behavior and a general rule to reliably distinguish possible criminals from non-criminals" [7, p. 120].

To fill this gap, we attempted to design a conceptual model for assessing the personality of an offender (suspected, accused, or convicted personf) and forecasting behavior. The theoretical platform is based on the results of scientific research in the field of criminology, sociology, and psychology on criminogenic factors that determine individual criminal behavior.

In addition, the elaboration of this model was preceded by author's longitudinal studies aimed at determining legally significant personality characteristics of convicted persons and their behavior, which indicate recidivism risks. Such data are required at the sentence execution stage that involves assessing the convict's personality and the degree of his/her correction. An example would be the application of conditional early release from serving a sentence. In this case, for an objective and comprehensive solution of the issue, it is necessary to rely on scientifically based and empirically proven data indicating that a person does not need to fully serve the sentence imposed by the court in order to correct him/herself (Part 1 of Article 79 of the Criminal Code of the Russian Federation). There is also broad discretion in resolving other issues that are being considered at the sentence execution stage (Article 397 of the Criminal Code of the Russian Federation).

In carrying out the empirical studies mentioned above, quantitative and qualitative research methods were used to determine characteristics of the convict's personality: analysis of documents (personal files), expert assessment, observation, and interviews.

Based on the results of theoretical and empirical research, we identified parameters that include a set of variables determining the significance of each variable for the overall assessment of criminogenicity of a personality and forecasting individual behavior. In addition to criminological significance, the established parameters meet the requirements of legal significance and are consistent with the provisions of criminal, criminal procedure and penal legislation, as well as with explanations of the rules of their application set out in the decisions of the highest judicial instances.

These parameters are grouped into four scales:

– the first scale takes into account variables characterizing the category and composition of the committed crime, as well as the specifics of behavior during and after the crime commission;

– the second scale covers parameters that determine the degree of criminality of a person, in particular, general socio-demographic parameters, the presence of previous convictions, evasion of punishment, recidivism, etc.;

– the third scale provides an assessment of the level of social well-being, including the presence of a profession, health status, etc.,

which is necessary to determine the degree of human capital of an individual;

– the fourth scale focuses on characteristics of the respondent's resource potential, which takes into account information about the value of available assets, amount of estimated income, presence of outstanding financial obligations, etc.

The constructed conceptual model for personality assessment and behavior forecasting served as the methodological basis of the PRO-SCORE program for electronic computing machines. The developed software product "PRO-SCORE program for assessing the offender's personality and forecasting behavior" was registered with the Federal Intellectual Property Service and included in the register of computer programs [8].

Potential risks of digital transformation of the penal system

Digital transformation of public administration is a multi-layered phenomenon that requires comprehensive study. Despite obvious progressiveness of the process of introducing innovative technologies, it is accompanied by certain risks that should be taken into account when making decisions. At the same time, researchers note a lack of knowledge of potential risks associated with the introduction of digital technologies into penitentiary practice [9, p. 659].

Integration of digital technologies into activities of institutions and bodies of the penal system is associated with the emergence of financial, organizational, technological and other risks. These are obstacles or circumstances that hinder implementation of digital innovations or reduce the expected effect of their use.

Financial risks are usually associated with a lack of budget financing. But such risks can also include inefficient use of available funds, such as purchase of equipment that does not functionally meet the requirements, devices or software that form a single information system, incompatible with each other, etc.

Legal risks consist in the lack of a legal framework governing public relations, for example, related to personal data processing, the use of algorithms to assess and forecast individual behavior, the application of such data in law enforcement practice, etc.

Organizational risks include inefficient use of technological capabilities due to a lack of qualified personnel, an inadequate management structure, the duplication of administrative procedures, the use of information technology to implement control and supervisory functions to the detriment of regulatory ones, etc.

The risks presented are universal and do not constitute an exhaustive list. Digital transformation may also face technological, scientific and technical risks, including climate risks.

Conclusion

Summing it up, it should be noted that the penitentiary sector, despite its conservatism, is a very technologically susceptible sector of public administration. Digital transformation of the penal system primarily involves modernization of the information infrastructure to optimize data processing, ensure the security of institutions and bodies of the Federal Penitentiary Service of Russia, improve the quality of monitoring convicts' behavior, etc.

At the same time, the process of digitalization is not reduced to limits of engineering improvements, but is associated with the rethinking of traditional approaches to the management system. Digital innovations are changing not only the technological contour, but also transforming social relations. Thus, humanitarian knowledge becomes no less in demand than technological solutions.

One of the examples illustrating the importance of the dialogue between engineering and humanitarian thought is the development and implementation in penitentiary practice of algorithms for assessing the personality and forecasting the behavior of suspected, accused and convicted persons. Identification of criminogenic factors, assessment of their impact on individual behavior, and determination of legally significant parameters form the methodological basis for software products capable of processing large amounts of data and building correlations between variables. Interdisciplinary fundamental and applied research in this field has significant capacities for the development of qualitatively new technologies that are in demand not only in penitentiary practice, but also in other segments of criminal justice.

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